

ITEMS FOR CONSIDERATION OF THE COMMITTEE:

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ITEMS DEFERRED

1 [ID] [PE] Amendment to Section 94 Contribution Plan No. 6 - Street Trees

ITEM DEFERRED FROM MEETING HELD:

1 June 2005

399 COUNCIL DECISION:

***Administrator Boyd
Administrator Turnbull***

That the reports from the Director Planning & Environment, with the exception of Item 9 (Minute No. 400 refers), be deferred for consideration at the first Planning Committee Meeting.

FOR VOTE - Unanimous

1 [PE] Amendment to Section 94 Contribution Plan No. 6 - Street Trees

This item was deferred to the Planning Committee (Minute No. 399 refers).

ORIGIN:

Strategic Town Planning

FILE NO: GT1/S94/6

SUMMARY OF REPORT:

At its Ordinary meeting of 6 April 2005, Council resolved to amend and exhibit Section 94 Contribution Plan No.6 – Street Trees (CP6).

CP6 required amending to accommodate an increase in the cost of the trees and establishment costs. The use of mature trees (at least 1.5 metres in height) as they have a better chance of survival in the new estates is reflected in the higher costs of the trees, and it is also proposed to introduce a five year establishment period for the trees. As a result the total cost for the purchase, planting and establishment of each tree has increased from \$19.50 to \$135.

The new levy rate per lot for two trees is \$297 (currently \$42.90).

This plan was exhibited between 13 April 2005 and 11 May 2005. There were no responses to draft CP 6.

RECOMMENDATION:

That Council: -

- 1. Adopts the amended exhibited Section 94 Contribution Plan No.6 – Street Trees.**
- 2. Gives public notice in the Tweed Link of its decision in accordance with the Environmental Planning and Assessment Regulations 2000, specifying that the amended Section 94 Contribution Plan comes into effect on the date of the notice.**

REPORT:

At its Ordinary meeting of 6 April 2005, Council resolved to amend and exhibit Section 94 Contribution Plan No.6 – Street Trees (CP6).

CP6 required amending to accommodate an increase in the cost of the trees and establishment costs. The use of mature trees (at least 1.5 metres in height) as they have a better chance of survival in the new estates is reflected in the higher costs of the trees, and it is also proposed to introduce a five year establishment period for the trees. As a result the total cost for the purchase, planting and establishment of each tree has increased from \$19.50 to \$135.

The new levy rate per lot for two trees is \$297 (currently \$42.90).

This plan was exhibited between 13 April 2005 and 11 May 2005. There were no responses to draft CP 6.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

Nil.

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2 [ID] [PE] Amendment to Section 94 Contribution Plan No. 10 - Cobaki Lakes

ITEM DEFERRED FROM MEETING HELD:

1 June 2005

399 COUNCIL DECISION:

**Administrator Boyd
Administrator Turnbull**

That the reports from the Director Planning & Environment, with the exception of Item 9 (Minute No. 400 refers), be deferred for consideration at the first Planning Committee Meeting.

FOR VOTE - Unanimous

3 [PE] Amendment to Section 94 Contribution Plan No. 10 - Cobaki Lakes

This item was deferred to the Planning Committee (Minute No. 399 refers).

ORIGIN:

Strategic Town Planning

FILE NO: GT1/S94/10

SUMMARY OF REPORT:

At its Ordinary meeting of 6 April 2005, Council resolved to amend and exhibit Section 94 Contribution Plan No.10 – Cobaki Lakes (CP10).

CP10 required amending for the following reasons:

- Deletion of the second stage extension to the youth facilities (100m²) as it is considered upon review that the proposed first stage area of 400m² is of sufficient size to meet the needs at Cobaki Lakes;
- The lot threshold stages of 1,000, 3,000 and 4,000 lots for the construction of the community centre has been reduced to the 1,000 and 4,000 lot threshold;
- The estimated costs to construct the community centre has been increased to reflect the current building costs.
- A separate allocation of \$40,000 towards furnishings and equipment for the community centre has been added, as it was not included in the original work program.

The new contribution rates are as follows:

Single residential:	\$391 (currently \$244)
Medium density residential:	\$256 (currently \$160)

This plan was exhibited between 13 April 2005 and 11 May 2005. There were no responses to draft CP 10.

RECOMMENDATION:

That Council:

- 1. Adopts the amended exhibited Section 94 Contribution Plan No.10 – Cobaki Lakes.**
- 2. Gives public notice in the Tweed Link of its decision in accordance with the Environmental Planning and Assessment Regulations 2000, specifying that the amended Section 94 Contribution Plan come into effect on the date of the notice.**

REPORT:

At its Ordinary meeting of 6 April 2005, Council resolved to amend and exhibit Section 94 Contribution Plan No.10 – Cobaki Lakes (CP10).

CP10 required amending to include the following additional items:

- Deletion of the second stage extension to the youth facilities (100m²) as it is considered upon review that the proposed first stage area of 400m² is of sufficient size to meet the needs at Cobaki Lakes;
- The lot threshold stages of 1,000, 3,000 and 4,000 lots for the construction of the community centre has been reduced to the 1,000 and 4,000 lot threshold;
- The estimated costs to construct the community centre has been increased to reflect the current building costs.
- A separate allocation of \$40,000 towards furnishings and equipment for the community centre has been added, as it was not included in the original work program.

The new contribution rates are as follows:

Single residential:	\$391 (currently \$244)
Medium density residential:	\$256 (currently \$160)

This plan was exhibited between 13 April 2005 and 11 May 2005. There were no responses to draft CP 10.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

Nil.

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3 [ID] [PE] Amendment to Section 94 Contribution Plan No. 12 - Bus Shelters

ITEM DEFERRED FROM MEETING HELD:

1 June 2005

399 COUNCIL DECISION:

**Administrator Boyd
Administrator Turnbull**

That the reports from the Director Planning & Environment, with the exception of Item 9 (Minute No. 400 refers), be deferred for consideration at the first Planning Committee Meeting.

FOR VOTE - Unanimous

4 [PE] Amendment to Section 94 Contribution Plan No. 12 - Bus Shelters

This item was deferred to the Planning Committee (Minute No. 399 refers).

ORIGIN:

Strategic Town Planning

FILE NO: GT1/S94/12

SUMMARY OF REPORT:

At its Ordinary meeting of 6 April 2005, Council resolved to amend and exhibit Section 94 Contribution Plan No.12 – Bus Shelters (CP12).

CP12 required the following amendments:

- An increase in the cost of the bus shelters;
- An amendment to the occupancy rate per residential lot; and
- An amendment to the contribution rate
 - Single residential lot: \$26 per lot (currently(\$23)
 - Medium density: \$16 (18)

This plan was exhibited between 13 April 2005 and 11 May 2005. There were no responses to draft CP 12.

RECOMMENDATION:

That Council: -

- 1. Adopts the amended exhibited Section 94 Contribution Plan No.12 – Bus Shelters.**
- 2. Gives public notice in the Tweed Link of its decision in accordance with the Environmental Planning and Assessment Regulations 2000, specifying that the amended Section 94 Contribution Plan comes into effect on the date of the notice.**

REPORT:

At its Ordinary meeting of 6 April 2005, Council resolved to amend and exhibit Section 94 Contribution Plan No.12 – Bus Shelters (CP12).

CP12 required the following amendments:

- An increase in the cost of the bus shelters;
- An amendment to the occupancy rate per residential lot; and
- An amendment to the contribution rate
 - Single residential lot: \$26 per lot (currently(\$23)
 - Medium density: \$16 (18)

This plan was exhibited between 13 April 2005 and 11 May 2005. There were no responses to draft CP 12.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

Nil.

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4 [ID] [PE] Amendment to Section 94 Contribution Plan No. 13 - Cemeteries

ITEM DEFERRED FROM MEETING HELD:

1 June 2005

399 COUNCIL DECISION:

**Administrator Boyd
Administrator Turnbull**

That the reports from the Director Planning & Environment, with the exception of Item 9 (Minute No. 400 refers), be deferred for consideration at the first Planning Committee Meeting.

FOR VOTE - Unanimous

5 [PE] Amendment to Section 94 Contribution Plan No. 13 - Cemeteries

This item was deferred to the Planning Committee (Minute No. 399 refers).

ORIGIN:

Strategic Town Planning

FILE NO: GT1/S94/13

SUMMARY OF REPORT:

At its Ordinary meeting of 6 April 2005, Council resolved to amend and exhibit Section 94 Contribution Plan No.13 – Cemeteries (CP13).

Section 94 Contribution Plan No.13 - Cemeteries required amending to include the following additional items:

- Small excavator: \$100,000
- Off-road coffin transport vehicle: \$10,000
- Off-road elderly transport vehicle: \$18,000
- Site-works: \$ 100,000
- Self propelled dumpster: \$40,000
- An increase in the contribution rate:
 - Single lot rate: \$131 (currently \$126)
 - Medium density rate: \$90 (currently \$87)

This plan was exhibited between 13 April 2005 and 11 May 2005. There were no responses to draft CP 13.

RECOMMENDATION:

That Council: -

- 1. Adopts the amended exhibited Section 94 Contribution Plan No.13 – Cemeteries.**
- 2. Gives public notice in the Tweed Link of its decision in accordance with the Environmental Planning and Assessment Regulations 2000, specifying that the amended Section 94 Contribution Plan come into effect on the date of the notice.**

REPORT:

At its Ordinary meeting of 6 April 2005, Council resolved to amend and exhibit Section 94 Contribution Plan No.13 – Cemeteries (CP13).

Section 94 Contribution Plan No.13 - Cemeteries required amending to include the following additional items:

- Small excavator: \$100,000
- Off-road coffin transport vehicle: \$10,000
- Off-road elderly transport vehicle: \$18,000
- Site-works: \$ 100,000
- Self propelled dumpster: \$40,000
- An increase in the contribution rate:
 - Single lot rate: \$131 (currently \$126)
 - Medium density rate: \$90 (currently \$87)

This plan was exhibited between 13 April 2005 and 11 May 2005. There were no responses to draft CP 13.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

Nil.

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**5 [ID] [PE] Amendment to Section 94 Contribution Plan No. 16 -
Emergency Facilities (Surf Lifesaving)**

ITEM DEFERRED FROM MEETING HELD:

1 June 2005

399 COUNCIL DECISION:

**Administrator Boyd
Administrator Turnbull**

That the reports from the Director Planning & Environment, with the exception of Item 9 (Minute No. 400 refers), be deferred for consideration at the first Planning Committee Meeting.

FOR VOTE - Unanimous

**6 [PE] Amendment to Section 94 Contribution Plan No. 16 - Emergency
Facilities (Surf Lifesaving)**

This item was deferred to the Planning Committee (Minute No. 399 refers).

ORIGIN:

Strategic Town Planning

FILE NO: GT1/S94/16

SUMMARY OF REPORT:

At its Ordinary meeting of 6 April 2005, Council resolved to amend and exhibit Section 94 Contribution Plan No.16 – Emergency Facilities (CP16).

CP16 required amending for the following reasons:

- An increase in equipment and facility costs;
- Deletion of the amenities/first aid facilities/storage upgrade at Cabarita Beach as these facilities will be included in the proposed new Cabarita Beach clubhouse;

While there is an increase in the equipment and facility costs, the deletion of the amenities/first aid facilities/storage upgrade means that the net result is a slight decrease in the contribution rate.

As a consequence, the report to Council recommended the contribution levy for the remainder of the Shire be reduced as follows:

Per residential lot: \$207 (currently \$215)
Per medium density lot: \$136 (currently \$141).

The levy rate for the Kingscliff South development area (Casuarina, SALT etc), which has a separate rate to the remainder of the Shire, remains the same.

However Council resolved on 6 April 2005 that the contribution rates for the remainder of the Shire remain as they are currently, and not to decrease them as outlined above.

The plan was exhibited with the new amendments and decreased rate as set out above and advising of Council's resolution. The plan was exhibited with the new decreased rate as the rates reflect the proposed amendments in the plan. Unless further changes were to be made to the plan to increase the value of works there was no justification for leaving the contribution rate at its current level.

This plan was exhibited between 13 April 2005 and 11 May 2005. There were no responses to draft CP 16.

It is recommended that the plan be adopted with the new proposed rate, as exhibited.

RECOMMENDATION:

That Council: -

- 1. Adopts the amended exhibited Section 94 Contribution Plan No.16 – Emergency Facilities (Surf Lifesaving).**
- 2. Gives public notice in the Tweed Link of its decision in accordance with the Environmental Planning and Assessment Regulations 2000, specifying that the amended Section 94 Contribution Plan come into effect on the date of the notice.**

REPORT:

At its Ordinary meeting of 6 April 2005, Council resolved to amend and exhibit Section 94 Contribution Plan No.16 – Emergency Facilities (CP16).

CP16 required amending for the following reasons:

- An increase in equipment and facility costs;
- Deletion of the amenities/first aid facilities/storage upgrade at Cabarita Beach as these facilities will be included in the proposed new Cabarita Beach clubhouse;

While there is an increase in the equipment and facility costs, the deletion of the amenities/first aid facilities/storage upgrade means that the net result is a slight decrease in the contribution rate.

As a consequence, the contribution levy for the remainder of the Shire is as follows:

Per residential lot: \$207 (currently \$215)
Per medium density lot: \$136 (currently \$141).

The levy rate for the Kingscliff South development area (Casuarina, SALT etc), which has a separate rate to the remainder of the Shire, remains the same.

However Council resolved on 6 April 2005 that the contribution rates for the remainder of the Shire remain as they are currently, and not to decrease them as outlined above.

The plan was exhibited with the new amendments and decreased rate as set out above and advising of Council's resolution. The plan was exhibited with the new decreased rate as the rates reflect the proposed amendments in the plan. Unless further changes were to be made to the plan to increase the value of works there was no justification for leaving the contribution rate at its current level.

This plan was exhibited between 13 April 2005 and 11 May 2005. There were no responses to draft CP 16.

It is recommended that the plan be adopted with the new proposed rate, as exhibited.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

Nil.

- 6 [ID] [PE] Section 96 Application DA04/0723.01 for an Amendment to Development Consent DA04/0723 for a Pylon Sign at Lot 2 DP 1045941, Minjungbal Drive, Tweed Heads South

ITEM DEFERRED FROM MEETING HELD:

1 June 2005

399 COUNCIL DECISION:

**Administrator Boyd
Administrator Turnbull**

That the reports from the Director Planning & Environment, with the exception of Item 9 (Minute No. 400 refers), be deferred for consideration at the first Planning Committee Meeting.

FOR VOTE - Unanimous

- 8 [PE] Section 96 Application DA04/0723.01 for an Amendment to Development Consent DA04/0723 for a Pylon Sign at Lot 2 DP 1045941, Minjungbal Drive, Tweed Heads South

This item was deferred to the Planning Committee (Minute No. 399 refers).

ORIGIN:

Development Assessment

FILE NO: DA04/0723 Pt1

SUMMARY OF REPORT:

Council at its meeting of 4 May 2005 resolved to defer the application at the request of the applicant.

Following Council's previous resolution, Council officers contacted the Roads and Traffic Authority to arrange a formal meeting with the RTA and Development Assessment staff as requested by the applicant. Discussions with assessing RTA staff indicated that they would be unable to attend any such meeting, unless additional information was received or proposed by the applicant. Assessing RTA officers also commented that decisions regarding the position and need for safety treatment of the pylon sign should be Council's decision, not the RTA's.

The application was subsequently further reviewed by Council's Engineering and Operations unit whom commented that the pylon sign appeared to be outside the clear zone (it should be noted that the clear zone is measured to any point of the sign that could be struck by a vehicle and not just to the centre of the pylon.). As such, the proposal would not require any form of safety treatment, as discussed in the previous report and previously advised by the NSW RTA.

In light of the above it is recommended that Condition No. 7 be amended to read as follows:

"The pylon sign is to be located so that it is completely outside the 3 metre clear zone as measured from the lip of the adjacent gutter. A survey plan clearly displaying the location of the sign outside the prescribed clear zone is to be submitted to the satisfaction of the Director of Planning and Environment, prior to the issue of a construction certificate.

OR

The pylon sign is to be designed to include either;

- a) a guardrail system,*
- b) be of frangible design, or*
- c) an appropriately designed physical barrier*

The desired treatment is to meet NSW RTA design guidelines. The design/plans shall be designed and certified by a suitably qualified structural design engineer. Plans and specifications are to be submitted to the satisfaction of the Director of Planning and Environment, prior to the issue of a construction certificate."

Whilst subject condition no. 7 is now considered to be resolved, the requested removal of condition no. 8, relating to the appearance of the sign, is not supported and the condition should be upheld as detailed per the previous report.

RECOMMENDATION:

That Section 96 Application DA04/0723.01 for an amendment to Development Consent DA04/0723 for pylon sign at Lot 2 DP 1045941, Minjungbal Drive, Tweed Heads South be amended as follows: -

- 1. Condition No. 7 should be amended to read as follows:**
 - 7. The pylon sign is to be located so that it is completely outside the 3 metre clear zone as measured from the lip of the adjacent gutter. A survey plan clearly displaying the location of the sign outside the prescribed clear zone is to be submitted to the satisfaction of the Director of Planning and Environment, prior to the issue of a construction certificate.**

OR

The pylon sign is to be designed to include either;

- a) a guardrail system,
- b) be of frangible design, or
- c) an appropriately designed physical barrier

The desired treatment is to meet NSW RTA design guidelines. The design/plans shall be designed and certified by a suitably qualified structural design engineer. Plans and specifications are to be submitted to the satisfaction of the Director of Planning and Environment, prior to the issue of a construction certificate.”

2. The requested deletion of Condition No. 8 be refused for the following reasons: -
 1. Pursuant to Section 79C(1)(a)(i) the development application has not had due regard to relevant provisions of Tweed Local Environmental Plan 2000, in particular Clause 47.
 2. Pursuant to Section 79C(1)(a)(iii) the development proposal has not demonstrated due consideration or compliance with Tweed Shire Development Control Plan No.15 - Advertising Signs Code, as it relates primarily to the proposal complementing and conforming to the building or the locality.

REPORT:

As per summary

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

- 7 [ID] [PE] Development Application DA04/0517 for Demolition of Existing Dwelling and Erection of Multi Dwelling Housing Comprising of Five (5) Dwellings at Lot 415 DP 755701, No. 75 Tweed Coast Road, Hastings Point

ITEM DEFERRED FROM MEETING HELD:

1 June 2005

399 COUNCIL DECISION:

*Administrator Boyd
Administrator Turnbull*

That the reports from the Director Planning & Environment, with the exception of Item 9 (Minute No. 400 refers), be deferred for consideration at the first Planning Committee Meeting.

FOR VOTE - Unanimous

- 10 [PE] Development Application DA04/0517 for Demolition of Existing Dwelling and Erection of Multi Dwelling Housing Comprising of Five (5) Dwellings at Lot 415 DP 755701, No. 75 Tweed Coast Road, Hastings Point

This item was deferred to the Planning Committee (Minute No. 399 refers).

ORIGIN:

Development Assessment

FILE NO: DA04/0517 Pt1

SUMMARY OF REPORT:

Council is in receipt of a development application for the demolition of the existing building located on the above subject land and the erection of a multi dwelling housing development comprising 1 x two (2) bedroom unit, 3 x three (3) bedroom units and a penthouse with three (3) bedrooms and a study, within a predominantly three-storey building.

The subject site is currently zoned 2(b) – Medium Density under the Tweed Local Environmental Plan 2000.

The development application is accompanied by a SEPP 1 Objection to vary Clause 32B – Overshadowing of a Reserve to the North Coast Regional Environmental Plan 1988. In addition to this formal variation request, the application has a few numerical non-compliances with Council's Development Control Plan No. 6 – Multi Dwelling Housing, in relation to landscaping and building envelope.

The application incorporates minor encroachments into the building envelope, presents overshadowing to adjoining properties to the north and south, landscaping requirements and raises privacy concerns for some adjoining residences. However, notwithstanding these issues the application is considered to warrant a recommendation for approval on the architectural merits of the building and having regard to the medium-density land-use controls in this area.

RECOMMENDATION:

That: -

- 1. The State Environmental Planning Policy No. 1 objections to Clause 32B of North Coast Regional Environmental Plan 1988 regarding the overshadowing of the adjoining reserve be supported and the concurrence of the Director-General of the Department of Infrastructure, Planning and Natural Resources be assumed.**
- 2. Development Application DA04/0517 for the demolition of the existing dwelling and erection of multi dwelling housing comprising of five (5) dwellings at Lot 415 DP 755701, No. 75 Tweed Coast Road Hastings Point be approved subject to the following conditions: -**

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos P417DA01 Revision D, P417DA04 Revision E, P417DA05 Revision E, P417DA06 Revision D, P417DA07 Revision E prepared by Glen Petersen Architect and dated 18/08/2004, except where varied by these conditions.**
[GEN0010]
- 2. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within the subject property.**
[GEN0030]
- 3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**
[GEN0120]
- 4. The erection of a building in accordance with a development consent must not be commenced until:**

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

[GEN0150]

5. Kerb and gutter will be required for the full frontage of the site to Coast Road. The kerb will need to be 6.5m from the existing center line to kerb face. Detailed plans will need to be submitted for approval by the Director Engineering Services prior to issue of a construction certificate.

[GENNS01]

6. The existing cycleway is to be saw cut and removed at the driveway entrance as the path is not reinforced.

[GENNS01]

7. The proposed rendered block fence shown extending to the front property boundary will need to be stopped 5 metres from the boundary or lowered to comply with sight lines as per Australian Standards.

[GENNS01]

8. All wastes shall be collected, stored and disposed to the satisfaction of Director of Environment and Community Services. Wastes shall be presented at the kerb in a Council approved wheelie bin for collection. A screened, graded and drained bin storage area shall be provided within the boundary of the property.
[GENNS01]
9. The site shall not be dewatered and acid sulfate soils shall not be exposed or disturbed.
[GENNS01]
10. Wash water from the pervious car wash area shall not flow or perlocate to any watercourse or stormwater drain.
[GENNS01]
11. Lighting shall not be permitted to impact the amenity of any other premise.
[GENNS01]
12. No roofing or shade structure shall be permitted on the roof terrace.
[GENNS01]
13. Riparian vegetation shall not be removed or cut back.
[GENNS01]
14. Stormwater runoff or wastewater shall not be permitted to discharge to Cudgera Creek.
[GENNS01]
15. The use of EXTERNAL ground anchors, sheet piling or any other like method that extends beyond the property boundary is not permitted or approved by this consent, except where the written permission to carry out such works and the details of works have been submitted and approved with the Construction Certificate. Any such works proposed in Council's road reserve shall require the submission and approval of a separate s.138 application, which is to be accompanied with all necessary engineering detail to the satisfaction of Council's Director of Engineering and Operations.
[GENNS01]
16. Construction shall comply with AS3959 - 1999 level 3 'Construction of Buildings in bushfire prone areas'.
[GENNS01]
17. The entire property shall be managed as an 'Inner Protection Area' as outlined within Section 4.2.2 in Planning for Bushfire Protection 2001.
[GENNS01]

18. A 1.8 metre high radiant heat shield made of non-combustible materials shall be constructed along the full length of the western boundary adjacent to the hazard. A pedestrian access gate is to be provided along this boundary. Where steel cladding material is used; all posts and rails will be constructed from steel. The bottom of the fence is to be in direct contact with the finished ground level or plinth.
[GENNS01]
19. Access to the rear of the property shall be provided for fire fighting purposes.
[GENNS01]
20. Reticulated water supply shall comply with AS2419. Locations of fire hydrants are to be delineated by blue pavement markers in the centre of the road.
[GENNS01]
21. All fencing shall be of non-combustible materials.
[GENNS01]
22. Construction of the dwellings on the eastern and western aspects to comply with level 3 AS3959. Construction on the remainder of the dwelling to comply with table A3.3 of Planning of Bushfire Protection 2001.
[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

a.	Tweed Road Contribution Plan: S94 Plan No. 4 (Version 4.0) Sector8a_4	\$6,740
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	\$309
f.	Community Facilities (Tweed Coast) (South Coast) S94 Plan No. 15	\$2,336
g.	Emergency Facilities (Surf Lifesaving) (REMSHIRE) S94 Plan No. 16	\$539
h.	Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$963.05
i.	Cycleways S94 Plan No. 22	\$365
j.	Regional Open Space (Structured) S94 Plan No. 26	\$2,671
k.	Regional Open Space (Casual) S94 Plan No. 26	\$460

[PCC0050/PSC0005]

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

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

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

Water:	2.75 ET @ \$4325	\$11,894
Sewer:	2.75 ET @ \$3490	\$9,598

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

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

[PCC0070/PSC0004]

25. 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 Director of Environment and Community Services 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.

[PCC0130]

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

[PCC0160]

27. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.

[PCC0190]

28. 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
Stormwater quality control measures shall be implemented in accordance with Cozens Regan Williams Prove Drawing No. P.11.15 - Sk.2 (Issue C, dated 02/05), or subsequent amended versions approved by Council officers, unless otherwise directed by these consent conditions.

[PCC0230]

29. A construction certificate application for works that involve any of the following:-

- connection of a private stormwater drain to a public stormwater drain
- installation of stormwater quality control devices
- erosion and sediment control works

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

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

[PCC0240]

30. **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]

31. Design of all filling and/or retaining works on the site must address drainage of the site as well as any existing stormwater flows onto or through the site, and the likely impact on stormwater drainage in the locality. Where necessary, perimeter drainage must be installed to prevent ponding of stormwater on adjoining land. Drainage must be installed and operational prior to commencement of any building work.

[PCCNS01]

32. The basement car parking is to be protected against the inflow of water from Tweed Coast Road during storm events up to the ARI 100 year storm. This protection must be provided by construction of a permanent bund and appropriate driveway formation, not by mechanical means.

[PCCNS01]

33. Stormwater infrastructure works within Council's Road Reserve and Council's Coastal Reserve, shall be implemented in accordance with Cozens Regan Williams Prove Drawing No. P.11.15 - Sk.2 (Issue C, dated 02/05), or subsequent amended versions approved by Council officers, unless otherwise directed by these consent conditions. Full engineering details of the external drainage system, including sizing of the infiltration area, shall be provided with the Construction Certificate application, and associated s68 and s138 applications.
[PCCNS01]
34. Council's cycleway and road infrastructure must be fully reinstated to Council standards following construction and connection of the external drainage system. The concrete cycleway is to be saw cut to facilitate the construction of the system connection.
[PCCNS01]
35. Plans of all works within Council's Coastal Reserve shall be accompanied by rehabilitation/ revegetation plans to be implemented within all areas disturbed by the works, to the satisfaction of Council's Manager Recreation Services.
[PCCNS01]
36. The works shall at no time impose service interruptions on the sewer rising main located within the adjacent road reserve (Tweed Coast Road).
[PCCNS01]
37. Prior to the commencement of any demolition works all house drainage connections are to be suitably capped off by a licenced plumber and an inspection of the work obtained from Council.
[PCW0300]
38. Prior to the commencement of works sedimentation and erosion control measures shall be installed to the satisfaction of the Director of Environment and Community Services.
[PCWNS01]

PRIOR TO COMMENCEMENT OF WORK

39. 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.
[PCW0010]

40. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised to the satisfaction of the Principal Certifying Authority and provided with a dish drain or similar at the base or otherwise retained to the satisfaction of the Principle Certifying Authority. All retaining works shall be completed to the satisfaction of the Principal Certifying Authority prior to start of building work. Please note timber retaining walls are not permitted.

Note: All cut and or fill must comply with DCP 47. The top of any battered cut, toe or battered fill and the face of any retaining wall structure supporting cut or fill cannot be closer that 900mm to the boundary where the overall height at any point exceeds 500mm.

[PCW0040]

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

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

[PCW0060]

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

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

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

[PCW0070]

43. 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]

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

[PCW0090]

45. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational to the satisfaction of the Principal Certifying Authority. In addition to these measures an appropriate sign is to be clearly displayed on the most prominent position of the sediment fence or erosion control device which promotes awareness of the importance of the erosion and sediment controls provided.

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

[PCW0280]

46. Residential building work:
- (1) 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:
 - (a) in the case of work for which a principal contractor is required to be appointed:
 - (i) in the name and licence number of the principal contractor, and
 - (ii) the name of the insurer by which the work is insured under Part 6 of that Act,
 - (b) in the case of work to be done by an owner-builder:
 - (i) the name of the owner-builder, and
 - (ii) if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.

- (2) 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.

[PCW0290]

DURING CONSTRUCTION

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

[DUR0010]

48. 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.

[DUR0040]

49. The provision of nine (9) off street car parking spaces. Two (2) spaces are to be nominated for visitor use and signposted accordingly. The layout and construction standards to be in accordance with Development Control Plan No. 2 - Parking Controls.

[DUR0050]

50. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction.

[DUR0080]

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

[DUR0090]

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

[DUR0100]

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

[DUR0130]

54. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover Authority.

[DUR0160]

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

[DUR0170]

56. It is the responsibility of the applicant to restrict public access to the building site, building works or materials or equipment on the site when building work is not in progress or the site is otherwise unoccupied.

[DUR0200]

57. a. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
b. All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

[DUR0210]

58. If the work involved in the erection or demolition of a building:

- a. is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or
b. building involves the enclosure of a public place,

a hoarding or fence must be erected between the work site and the public place.

If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.

The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.

Any such hoarding, fence or awning is to be removed when the work has been completed.

[DUR0220]

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

[DUR0230]

60. Provision to be made for the designation of a durable and pervious car wash-down area/s. The area/s must be identified for that specific purpose and be supplied with an adequate water supply for use within the area/s. Any surface run-off from the area must not discharge directly to the stormwater system. [DUR0240]
61. All surface water collected from hard stand parking areas to be directed to Council approved pre-treatment facilities before discharge to approved discharge locations. Stormwater from covered or enclosed carpark areas shall not be discharged to the public sewer unless approved treatment facilities have been provided. Details are to be submitted to and approved by the Director of Environment and Community Services prior to installation [DUR0670]
62. Suitable covering and protection is to be provided to ensure that no material is removed from the site by wind, causing nuisance to neighbouring properties. [DUR0850]
63. All work associated with this approval is to be carried out so as not to cause a nuisance to residents in the locality from noise, water or air pollution. [DUR0870]
64. All necessary precautions shall be taken to minimise impact from dust during filling operations from the site and also from construction vehicles. [DUR0880]
65. Construction site work including the entering and leaving of vehicles is to be restricted to between 7.00 am and 7.00 pm Monday to Saturday and no work on Sundays or public holidays. [DUR0900]
66. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:
- A. Short Term Period - 4 weeks.
L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

B. Long term period - the duration.
L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0910]

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

[DUR0920]

68. Prior to and during construction provide a "shake down" area along the haul route located immediately before the intersection with the road reserve. The "shake down" area is to be 10 metres long, minimum 3.0 metres wide, constructed of minimum 50mm diameter crushed rock; or other such device approved by the Director, Engineering & Operations.

[DUR0930]

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

[DUR0940]

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

[DUR0960]

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

[DUR0980]

72. 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.

[DUR1000]

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

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

[DUR1020]

74. A. A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.

B. The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.

[DUR1030]

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

[DUR1040]

76. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993.

[DUR1090]

77. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard.

[DUR1110]

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

[DUR1130]

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

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

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

[DUR1160]

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

- i. All required erosion and sedimentation control devices have been installed and are operational.**
- ii. Required toilet facilities have been provided on the site.**
- iii. A sign has been erected on the site identifying:**
 - Lot number**
 - Builder**
 - Phone number of builder or person responsible for site.**

- iv. All conditions of consent required to be complied with prior to work commencing on the site have been satisfied.
- v. That the licensee has complied with the provisions of Section 98(1)(b) of the Environmental Planning and Assessment Amendment Regulations 2000.

[DUR1200]

81. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired to the satisfaction of the Director, Engineering & Operations prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[DUR1210]

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

[DUR1230]

83. A person must not commence occupation or use of the whole or any part of a new building (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0030]

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

[POC0050]

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

[POC0170]

86. 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.

[POC0180]

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

[POCNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

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

[POC0020]

USE

89. The use being restricted to the floor area designated on the approved plan.
90. 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.
91. All trade materials, product and plant to be kept within confines of the building at all times.
92. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust, fumes or the like.
93. All activities associated with the occupancy of the building are to comply with the Protection of the Environment Operations Act, 1997.

[USE0010]

[USE0040]

[USE0120]

[USE0160]

[USE0170]

REPORT:

Applicant: Detabo Pty Ltd
Owner: Detabo Pty Ltd
Location: Lot 415 DP 755701 No. 75 Tweed Coast Road, Hastings Point
Zoning: 2(b) Medium Density Residential
Cost: \$1,500,000.00

BACKGROUND:

Council is in receipt of a development application for the demolition of the existing building located on the subject land and the erection of a multi dwelling housing development comprising 1 x two (2) bedroom unit, 3 x three (3) bedroom units and a penthouse with three (3) bedrooms and a study, within a predominantly three-storey building.

The subject site is regular in shape and located along Tweed Coast Road, Hastings Point. The site has a 16.6m frontage to Tweed Coast Road to the east with an approximate depth of 50.3m, creating a total site area of 790.4m².

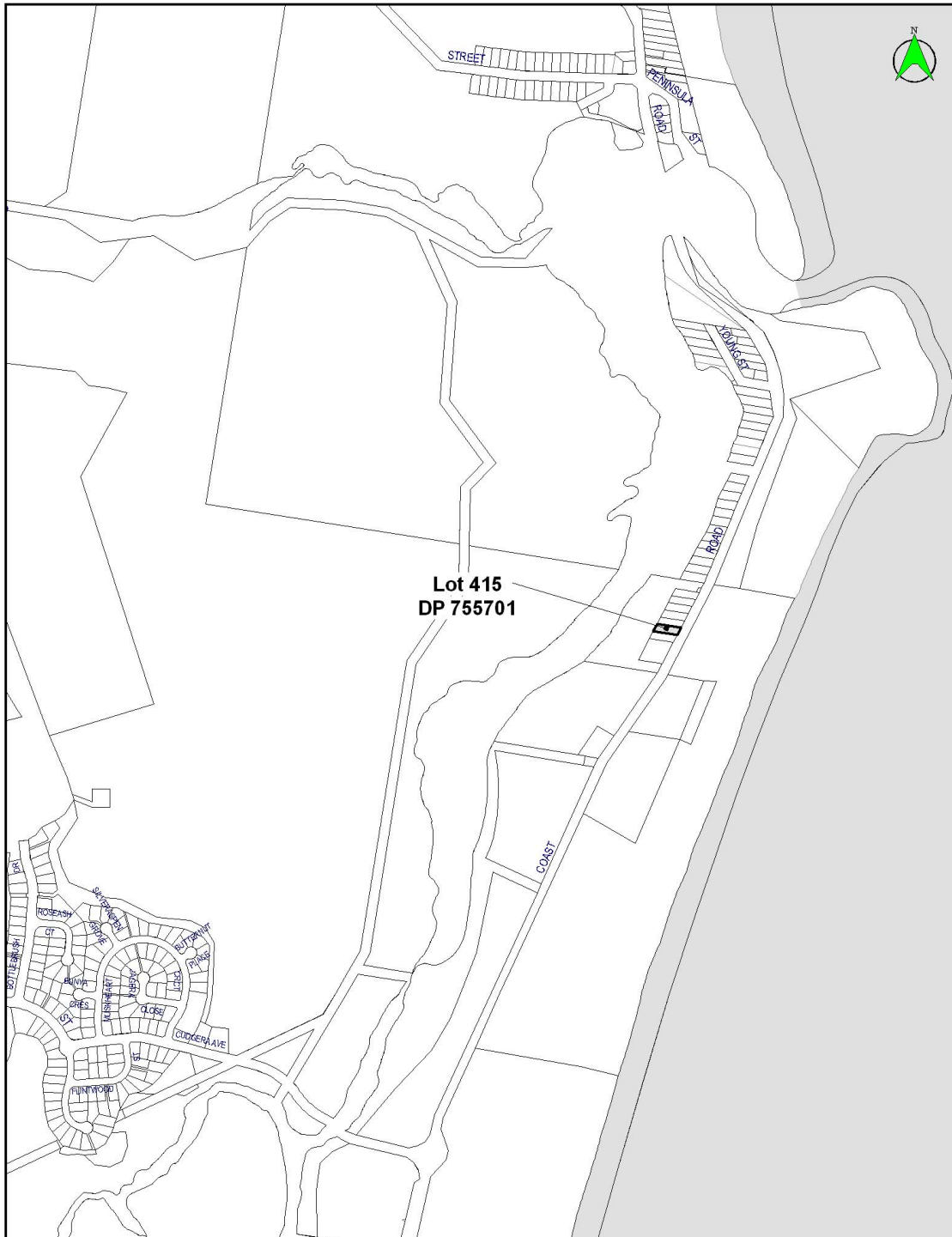
The proposed development incorporates the provision of landscaping, a carwash bay, and three private balconies for each unit above ground level. The development also accommodates a basement carpark, located off Tweed Coast Road. The basement includes 9 car parking spaces, allowing one exclusive space per unit, with 4 visitor spaces. Access to the building can be via internal stairs from the basement area or entry pathway along the northern boundary from Tweed Coast Road.

The development application is accompanied by a SEPP 1 Objection to vary Clause 32B – Overshadowing of a Reserve to the North Coast Regional Environmental Plan 1988. In addition to this formal variation request, the application has a few numerical non-compliances with Council's Development Control Plan No. 6 – Multi Dwelling Housing, in relation to landscaping and building envelope.

The proposed development was advertised for a period of two weeks, during this period two written submissions were received. The main issues raised within the submission period included; the size and scale of the proposal – particularly in relation to non-compliance with Council's building envelope requirements, overshadowing of adjoining properties, loss of visual and acoustic privacy, potential structural damage to adjoining properties, stormwater concerns, loss of amenity and potential impacts to underground water supply as a result of the basement carpark.

The issues raised by the proposal have been assessed in full and it is considered that on merit the proposal warrants approval.

SITE DIAGRAM:



**Lot 415
DP 755701**

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Tweed Shire Council
Lot 415 DP 755701,
No. 75 Tweed Coast Road, Hastings Point



STRATEGIC
PLANNING UNIT
Site Plan
Scale: 1:10,000
Sheet: 1 of 1

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

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

Tweed Local Environmental Plan 2000

The subject land is zoned 2(b) Medium Density Residential under the Tweed Local Environmental Plan 2000. The primary zone objective relates the provision of medium density housing, achieving good urban design outcomes. The proposed development is permissible with the consent of Council and is considered to be consistent with the primary objective of the zone.

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 undertaken in accordance with a building height plan, which identifies the site as being limited to three storeys with an objective to ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land. The proposed development is considered to meet the provisions of Clause 16. The proposal involves a roof top terrace, however this not constitute a fourth storey under the definition of a storey within the Tweed LEP 2000. Appropriate conditions of development consent have been recommended regarding any future roof structures.

Clause 35 of the TLEP requires that an acid sulfate soils management plan be assessed where the proposed development is likely to interfere with acid sulfate soils. The subject site is mapped as possessing Class 3 Acid Sulphate Soil levels. Council's Environment & Community Services Division, has reviewed the application, in light of the proposed depth of excavations, and the ASS testing submitted, no objections were raised.

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 DCP 6. The development has been designed generally having regard to these requirements.

However, the proposed development does result in the overshadowing of the open space reserve immediately adjacent to the subject site. In this regard the overshadowing plans indicate that some overshadowing will occur at and before 6.30pm mid summer (EDST) whilst no overshadowing will occur before 3pm mid winter. The expected shadow cast will be in the order of 185m² in area and will affect land immediately adjacent that the applicant contends is not currently used for either passive and active recreation.

Subsequently, the applicant has lodged a SEPP 1 Objection to this standard, which reads as follows:

“The extent of overshadowing at the prescribed time (approx 185m²) is considered to be minor in scale relative to the overall size of the Coastal Reserve;

That area subject to overshadowing provides for primary roadside verge and low-lying coastal vegetation and weeds. The area affected provides for little in terms of recreational or scenic amenity as it is located immediately adjacent to the Coast Road.

The open space area in question (Tweed Coast Reserve) is extremely large and extends for a depth of approximately 150m and a distance of approximately 1.5km. Accordingly, several alternative areas will remain available for the use of the public in the unlikely event that overshadowing does adversely impact upon users of the area;

The proposed overshadowing in no way precludes the future use or classification of the adjacent reserve;

No overshadowing will occur before 3pm in midwinter;

No overshadowing of the adjacent beach will occur; and

Given the timeframes of overshadowing expected, no impacts will occur in relation to existing or future landscaping or specific stands of vegetation in the adjacent open space area.”

It may be concluded that achieving the objective of no overshadowing of open space in urban environments may not be attainable in all circumstances. Having regard to Council's planning controls over the subject land it is considered that in order to achieve the development potential of the land a level of overshadowing will occur. It is not considered that the third-storey component of the building is the cause for the level of overshadowing and therefore in this instance, the objective of clause 32B cannot be fully realised without adversely impacting upon the development yield of the site, which would be inconsistent with Council's controls.

Therefore, having regard to the applicant's arguments above and the objectives of the REP the SEPP 1 objection is considered to have merit.

Clause 43 of NCREP requires density of development to be maximised without impacting on the environment. The proposed density is considered to be a reasonable response to the 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 construction works.

State Environmental Planning Policies

State Environmental Planning Policy (SEPP) No.1 Objection

The applicant has submitted a SEPP No.1 Objection to vary the two-storey height limit under the provisions of Clause 32B of North Coast Regional Environmental Plan 1988. This issue has been discussed earlier in this report. The SEPP 1 objection is considered to have merit.

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

Clause 30 of SEPP No. 65 requires the consent authority to consider each of the ten (10) design quality principles when determining a development application for a residential flat building.

In this regard, the applicant has provided a comprehensive assessment of the proposal against the relevant design quality principles. It is considered that the design of the proposed development exhibits suitable regard for these principles and demonstrates good practice in urban design. The modern appearance of the building is in keeping with the evolving character of the area.

State Environmental Planning Policy No. 71 – Coastal Protection

The proposed development is not State Significant development, and as such, Council is the consent authority. A SEPP 1 accompanies the application, however, the development is only 10.67m in height and therefore, the state significant development provisions are not triggered.

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

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

The proposal is not considered to be affected by any draft environmental planning instruments.

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

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

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 (25% for visitors) = 7.5 spaces with 1.9 marked for visitors	The basement includes 9 car parking spaces. This allows for each unit to have one exclusive space with 4 visitor car parking spaces. This complies with the requirements of DCP 2. However, two unburdened spaces in the basement will need to be marked as visitor car parking spaces and maintained accordingly.

The proposed development is considered to comply with DCP 2 (subject to the recommended conditions of consent) and ensures that there is adequate parking on site for each unit and their visitors.

Development Control Plan No. 6 – Multi Dwelling Housing

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

Standard	Requirement	Variation/complies
Floor Space Ratio	0.5:1.0	The total floor area of the units excluding the basement, internal stairs and common foyer areas is 678.6m ² . The site area is 790.4m ² . The floor space ratio is 0.86:1 While this exceeds the allowable floor space ratio it is considered that in the medium density zone the proposed development is reasonable. <u>See further assessment</u>
Landscaped Area	80m ² per unit = 400m ²	The proposed development provides approximately 360m ² and therefore does not comply with this criterion. <u>See further assessment</u>

Standard	Requirement	Variation/complies
Setbacks from street boundary	6.0m to Coast Road	The main building is setback 6m from Tweed Coast Road with open balconies also at a minimum of 6m from this frontage. <u>Complies.</u>
Side setbacks	3.0m from side boundaries	The proposed setbacks comply with the 3m requirements. The proposed balconies do not encroach beyond the allowable 1.5m in accordance with Clause 3.3.3 (A2) of DCP No. 6. <u>Complies.</u>
Minimum Private Open Space	20% of site area (158.1m ²) with minimum dimension of 3m	>20% of site area, with minimum dimension of 3m <u>Complies</u>
	One part min 25m ² with min dimension of 4m	>25m ² with min. dimension of 4m <u>Complies</u>
Front fences and walls	1.2m max if solid	The proposed development does not incorporate a fence along the front boundary of the site, proposing a landscaped area instead. The proposed rendered blockwall along the southern and northern boundaries reduces from 1.8m to 1.2m in accordance with the building line policy. <u>Complies</u>
Building Envelope	45° from 3.5m high at the boundary	Substantially complies, however there is an encroachment at the front and rear of the building. <u>See further assessment below.</u>

Standard	Requirement	Variation/complies
Car Wash Areas	1 required per 10 units.	The car wash bay is proposed at the ground level, which is accessible from Tweed Coast Road. A condition shall be imposed to identify the space as a car wash bay. <u>Complies.</u>

Floor Space Ratio

Council Development Control Plan No. 6 nominates that multi-dwelling housing shall not have a FSR of greater than 0.5:1. However this criterion has not been applied for assessment for residential flat buildings exceeding 2 units. However, the total floor area of the units excluding the basement, stairwell and common foyers is 678.6m². The site area is 790.4m². The floor space ratio is 0.86:1. While this exceeds the allowable floor space ratio it is considered that in the medium density zone the proposed development is reasonable and consistent with other recently approved development in the vicinity.

Landscaping

In accordance with the Acceptable Solutions contained within DCP No. 6 each unit is required to have a minimum landscaped area of 80m² per unit. This equates to 400m² in total.

The subject application has provided approximately 360m² of landscaping at ground level, which is 40m² short of the required landscaping. The calculated landscaped area excludes all concrete paving throughout the site including the driveway and the private terraces and decks.

Following is a list of reasons why in this instance the landscaping non compliance is acceptable:

- The proposed development incorporates extensive balcony areas and a roof top terrace that add to the open space available to residents;
- These balcony spaces are considered more than adequate to ensure the intent of the landscaping criteria is satisfied. They do not necessarily add to the bulk of the building but rather add interest and articulation to the design;
- The application generally complies with the nominated setbacks and therefore the non compliance with landscaping has no direct affect on adjoining properties

- Council's Engineering and Operations Division is satisfied with the submitted storm water management plan;
- The residential flat building presents well to Tweed Coast Road, with landscaping incorporated into the street frontage.

Whilst compliance with the numerical controls contained within DCP No. 6 is generally desirable, the circumstances of this case (considering the merits of the application) warrant relaxation of this criterion.

Building Envelope

The proposal includes some encroachment of the building envelope prescribed within DCP 6. The areas of encroachment include elements as viewed from the western elevation, namely, the 1st level vergola and the proposed stairs, laundry and main bedroom at the penthouse level. Accordingly, the applicant has requested a variation in this regard, submitting the following information to justify the request:

"Where encroachment is noted, it is evident that the proposed design does not exacerbate the issue by way of facilitating overlooking opportunities, whilst also limiting the primary areas of encroachment to the northern elevation.

The proposed development will not result in the loss of views associated with adjacent properties.

The proposed development does step in on both horizontal and vertical planes. Importantly, this stepping result in a reduced encroachment on the southern elevation, thereby restricting the extent of additional shadow cast on the adjacent property.

Furthermore, it is submitted that the proposal results in no 'significant' loss of amenity to adjoining properties and their residents relevant to the expected overshadowing/ amenity/ privacy impacts."

In light of the above, it is supported that the proposed design is considered to be adequate in its current form, particularly in regard to the desired development yield and context of the site. The proposed design exhibits high levels of articulation when viewed from Tweed Coast Road, masking the bulk and scale of the proposal. The siting and length of the proposal is not considered to lead to a significant loss of amenity to adjacent dwellings or land, complimented by the internal design of the proposal minimising potential overlooking to dwellings to the north and south. Accordingly, the proposal is considered to satisfactorily address P1 of DCP 6 Section 3.3 and warrants approval in its current form.

Summary

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

Development Control Plan No. 39 – Energy Efficient Housing

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

Standard	Requirement	Proposal	Complies
Unit Energy rating	3.5 stars minimum	Unit 5 = 3.5 stars Units 2 & 4 = 4.5 stars Units 1 & 3 = 5 stars	YES

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

Development Control Plan No. 47 – Cut & Fill

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

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

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

Development Control Plan No. 48 – Tweed Coast Building Heights

The subject land is identified as being affected by DCP 48 – Tweed Coast Building Heights, which was in draft form when the application was lodged. In this regard the proposal is considered to comply with the majority requirements contained within the document. The proposal requires a relaxation from the prescribed building envelope, however this has been addressed within the DCP 6 of the application and is considered to warrant approval in its current form. The proposal involves a minor encroachment of the prescribed maximum height (as detailed within Section 2.2 A2) and 9m from the finished ground level to the top plate of the highest external wall. Whilst the proposal involves areas of minor non-compliance, the proposal is considered to adequately address the relevant performance criteria and warrants approval in its current form.

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

NSW Coastal Policy

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.

Demolition

There is an existing single storey dwelling located on the subject site. Part of the development application involves the demolition of this dwelling. The applicant has lodged a demolition work plan, to the satisfaction of Council's Environment and Health Services Unit. Appropriate conditions will be applied in relation to the demolition.

Bushfire Hazard

The subject site has been identified as being located within a bushfire prone area, pursuant to the Tweed Shire Bush Fire Prone Land map (Feb 2004). The applicant has submitted a bushfire assessment, which was forwarded to the Far North Coast office of the NSW Rural Fire Services for comment. The Rural Fire Services responded by providing relevant conditions to be incorporated into any proposed consent.

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

It is considered the proposed development will not have an adverse impact upon the natural environment as the site is currently developed for residential purposes. In terms of the built environment the proposed residential flat building will replace an existing dwelling, and as such the development will have an impact upon the built environment. In relation to the potential likely impacts the following matters have been considered:

Character of the area

The area is made up of a mix of low-medium density development comprising primarily of single dwelling houses. The area is currently undergoing a transition phase as these older dwellings come under market pressures to be redeveloped for higher density residential development as encouraged under the applicable planning controls. The proposal is considered not to be out of character with the area and is consistent with the future built form as per Tweed LEP 2000 and applicable DCPs.

Loss of amenity – Overshadowing, visual and acoustic privacy

Neighbouring residences have raised concern that the proposal will adversely overshadow adjoining properties, particular the adjoining southern lot. Submitted shadow diagrams display overshadowing the adjoining northern lot at the prescribed 6pm Dec 22 and overshadowing of the adjoining southern lot at the prescribed 9am Jun 22 and 3pm Jun 22.

Detailed investigations have been made regarding potential shadow impact upon adjoining properties, particularly direct comparisons between the proposed 3-storey development and a similar 2-storey development. Results indicated minimal difference between the 2 and 3 storey developments. Submitted shadow plans are attached to this report for your reference.

The proposed development will result in overshadowing of the adjacent allotment, however the amount of overshadowing to be created is considered satisfactory and consistent with that to be expected in an area possessing a 3-storey height limit and a 2(b) medium density zoning. The proposal is considered to comply with the daylight and sunlight requirements within DCP 6. It should also be acknowledged that any proposal seeking to meet the desired development yield and context of the site is likely to adversely overshadow the adjoining property to the south given the orientation and positioning of the existing dwelling on the lot.

Concerns regarding loss of visual and acoustic privacy were also raised within the notification period. In an attempt to mitigate loss of privacy concerns the proposal incorporates adequate building orientation and setbacks, as detailed within DCP 6, 1.8m high fencing along side boundaries and privacy screens at a first storey level to minimise the opportunity of overlooking into areas of private open space.

It is considered that the proposal has had adequate regard to maintaining the amenity of adjoining properties and whilst some impact to the existing amenity levels may be experienced, the impacts generated are considered satisfactory and consistent with that to be expected with the desired development yield and context of the site.

The proposal is therefore considered to warrant approval in its current form.

Stormwater

The following comments regarding stormwater concerns have been detailed by Council's assessing infrastructure Engineer:

"As detailed in previous memos, Tweed Coast Road acts as a weir for stormwater runoff from the subject land and neighbouring allotments, which ponds and inundates the front portion of these lots. Due to an absence of drainage infrastructure in the locality, this water must then be infiltrated.

It is now proposed to construct a pipe under Tweed Coast Road to convey stormwater to the coastal reserve to the east. The latest plan indicates that construction of this pipe is feasible in terms of levels and minimising conflict with existing services. Similar drainage pipes have been constructed at other locations along Tweed Coast Road to rectify local drainage problems. These pipes discharge to excavated infiltration pits in the dunal sands within the road reserve and the adjoining Council owned coastal reserve. Implementing such a system will reduce ponding levels at the front of the affected lots, while efficiently infiltrating minor storms. Larger storm events will surcharge to minor watercourses through the dunes, without adverse impacts on Council's road infrastructure. It is considered that provision of this service will more than cater for the impacts on stormwater runoff from the subject development, and will provide a benefit to the neighbouring properties, some of whom have submitted objections to the project.

Construction of the new drainage service and its connections will require excavation and reinstatement of Council's cycleway and the Tweed Coast Road formation and seal. These must all be completed according to Council specifications. Construction must not affect the sewer rising main located within the road reserve.

Council's Manager Recreation Services has no objection to the construction of the pipe outlet and/or the infiltration area within the coastal reserve, provided appropriate revegetation plans are provided for all disturbed areas within the dunes. Council's Traffic & Transport Engineer has no objections to the proposal, subject to a s138 approval to carry out the works within the road reserve.

The applicant has previously advised that the driveway can be adequately graded to protect the basement from stormwater ingress from the road reserve. Basement stormwater will be treated in accordance with Council's specifications."

Council's assessing officer has accordingly included a number of conditions of development consent to ensure compliance with the supported stormwater management plan.

(c) Suitability of the site for the development

Suitability of the Lot for Multi-Dwelling Development

The subject site has a land area of 793m² and is of a regular shape. The topography of the slopes gently from southwest (high) to east (low) and neighbours residential lots to the north and south, public reserve to the west and Tweed Coast Road to the east. The site enjoys a 16.6m frontage to Tweed Coast Road and is approximately 50.29 metres deep. Neighbouring development comprises primarily of single dwellings, however, the majority of adjoining land parcels are currently zoned 2(b) – Medium Density development. Accordingly the context and setting of the area, whilst established, is progressing towards modern multi-dwelling developments. Council’s GIS system indicates that the lot is well above the required prescribed minimum habitable floor levels and is not considered to possess any other significant environmental constraints.

The site is considered suitable for multi-dwelling development with the land possessing limited hazards and limitations in terms of topography, lot size, shape, layout and surrounding development.

(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 17 June 2004.

Issue	Assessment
Size & Scale of the Development - <i>Concern was raised regarding the size and scale of the proposal, and compliance with relevant provisions within DCP 6 – Multi Dwelling Housing.</i>	This issue has been addressed in the above report. This objection does not warrant further amendment or refusal of the application.
Overshadowing - <i>Concern was raised regarding the level of overshadowing of adjoining properties (particularly to the south) as result of the proposal.</i>	This issue has been addressed in the above report. This objection does not warrant further amendment or refusal of the application.
Privacy Impacts - <i>Concern was raised regarding visual and acoustic impacts to adjoining properties as a result of the proposal.</i>	This issue has been addressed in the above report. This objection does not warrant further amendment or refusal of the application.

Possible Structural Damage – <i>Concern was raised regarding potential structural damage to adjoining properties as a result of the proposal.</i>	Council’s technical officers have reviewed the proposal with no objections raised. Appropriate conditions of development consent have been included to ensure no structural damage to adjoining dwellings will occur as a result of the proposal.
Stormwater - <i>Concern was raised regarding stormwater impacts likely to be generated by the proposal.</i>	Council’s assessing Infrastructure Engineer has extensively assessed the proposed development, with no objections raised, subject to appropriate conditions of development consent being applied. An appropriate approval is required from Council in addition to this application (Section 68 Approval) and this will provide Council a further opportunity to ensure that the proposed system is appropriate.
Sandspear/Groundwater – <i>Concern was raised regarding the depth and structure of the proposed basement carpark on groundwater.</i>	The application included an appropriate geotechnical report, concluding that no dewatering of the site was required as a result of the proposal. The submitted report was reviewed by Council’s assessing technical officers with no objections or concerns raised.
Sundeck/Roof Terrace - <i>Concern was raised regarding the sundeck/roof terrace forming a fourth storey within a 3-storey height zone.</i>	The proposed roof terrace is considered to comply with Council’s definition of a storey and as permissible in its current form.

(e) Public interest

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

OPTIONS:

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

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposal has been thoroughly investigated and is considered to be suitable to the site; unlikely to cause any significant negative impacts to the surrounding built and natural environment and satisfies all of Council's applicable requirements within the TLEP and relevant DCPs. The application has been assessed by Council's technical officers; with no objections being raised subject to the attached conditions of development consent. The proposed multi dwelling housing development is therefore considered to warrant approval.

UNDER SEPARATE COVER/FURTHER INFORMATION:

1. Shadow Diagrams (DW 1207191, 1207196, 1207197)
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8 [ID] [PE] Development Application DA04/0449 for a dual occupancy & demolition at Lot 475 DP 755740, No. 10 Charles Street Tweed Heads

ITEM DEFERRED FROM MEETING HELD:

1 June 2005

399 COUNCIL DECISION:

**Administrator Boyd
Administrator Turnbull**

That the reports from the Director Planning & Environment, with the exception of Item 9 (Minute No. 400 refers), be deferred for consideration at the first Planning Committee Meeting.

FOR VOTE - Unanimous

11 [PE] Development Application DA04/0449 for a dual occupancy & demolition at Lot 475 DP 755740, No. 10 Charles Street Tweed Heads

This item was deferred to the Planning Committee (Minute No. 399 refers).

ORIGIN:

Development Assessment

FILE NO: DA04/0449 Pt1

SUMMARY OF REPORT:

Council is in receipt of an application for a multi-dwelling housing (dual occupancy) development at 10 Charles Street, Tweed Heads. The subject land is identified as possessing significant topographical site constraints as well as a two-storey height restriction, as prescribed within the Tweed Local Environmental Plan 2000. Compliance with the prescribed height restriction is the primary issue within the assessment of the application.

The proposal is of particular importance within this locality as previous applications have approved the departure from the height limitation, leading to policy implications for this and future applications. In this regard it is noted that Council has had other non-compliant development proposals within the Razorback precinct. (see table 1).

Having considered the merits of this application against the relevant planning objectives, the application is considered suitable for conditional approval.

RECOMMENDATION:

That : -

- A. The State Environmental Planning Policy No. 1 objections to Clause 16 of Tweed Local Environmental Plan 2000 regarding the height of the building be supported and the concurrence of the Director-General of the Department of Infrastructure, Planning and Natural Resources be assumed
- B. That Development Application DA04/0449 for a dual occupancy & demolition at Lot 475 DP 755740, No. 10 Charles Street Tweed Heads be approved for the following reasons: -

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects prepared by Jim Glazebrook and Associates Pty Ltd, dated March 2004 and Plan Nos 3000/DA/01B, 3000/DA/02B, 3000/DA/03B and 3000/DA/04B prepared by Pat Twohill Designs Pty Ltd and dated 31/03/05, except where varied by these conditions. [GEN0010]
- 2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia. [GEN0120]
- 3. The erection of a building in accordance with a development consent must not be commenced until:
 - (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
 - (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - (b1) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - (b2) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:

- (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
- (ii) notified the principal certifying authority of any such appointment, and
- (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[GEN0150]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

4. 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]

- 5. All cut and fill earthworks shall be carried out in accordance with the recommendations of Soil Surveys Engineering P/L "Geotechnical Investigation & Stability Assessment" (June 2004), unless directed otherwise by the conditions of this consent. All retaining structures and associated drainage services shall be designed and constructed in accordance with AS/NZS 4678-2000 Earth-retaining Structures. All retaining structures shall be contained wholly within the subject allotment. Detailed engineering details of all retaining structures shall be submitted with the Construction Certificate application.

- (i) The development shall not impede stormwater flows from external catchments, cause ponding of stormwater on neighbouring allotments, or divert external overland stormwater flows onto adjoining properties.
- (ii) Drainage services for the development shall be adequately designed to convey all received runoff from external catchments, in events up to the ARI 100 year storm, to a legal point of discharge. Engineering details of the drainage system shall be submitted with the Construction Certificate application.
- (iii) The legal point of stormwater discharge for the development is the drainage easement located along the northern boundary of the site. Stormwater may not be discharged onto adjoining allotments.

[PCCNS01]

7. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.

[PCC0190]

8. 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*.**

[PCC0230]

9. A construction certificate application for works that involve any of the following:-

- connection of a private stormwater drain to a public stormwater drain
- installation of stormwater quality control devices
- erosion and sediment control works

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

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

[PCC0240]

10. Section 94 Contributions

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

a.	Tweed Road Contribution Plan: S94 Plan No. 4 (Version 4.0) Sector1_4	\$1,288
b.	Open Space (Structured): S94 Plan No. 5	\$240
c.	Open Space (Casual): S94 Plan No. 5	\$51
d.	Shirewide Library Facilities: S94 Plan No. 11	\$212
e.	Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$48
f.	Emergency Facilities (Surf Lifesaving) (REMSHIRE) S94 Plan No. 16	\$67
g.	Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$178.34
h.	Cycleways S94 Plan No. 22	\$50
i.	Regional Open Space (Structured) S94 Plan No. 26	\$361
j.	Regional Open Space (Casual) S94 Plan No. 26	\$67

[PCC0050]

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

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

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

Water:	1 ET @ \$4325	\$4,325
Sewer:	1 ET @ \$3490	\$3,490

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

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

[PCC0070]

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0060]

13. *WHERE PRESCRIBED BY THE PROVISIONS OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (QUALITY OF CONSTRUCTION) ACT 2003*, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

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

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

[PCW0070]

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

[PCW0090]

15. Prior to commencement of building works a stormwater drainage plan is to be submitted to and approved by the PCA.

[PCW0170]

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

[PCW0210]

17. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational to the satisfaction of the Principal Certifying Authority. In addition to these measures an appropriate sign is to be clearly displayed on the most prominent position of the sediment fence or erosion control device which promotes awareness of the importance of the erosion and sediment controls provided.

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

[PCW0280]

18. Residential building work:

(1) 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:

(a) in the case of work for which a principal contractor is required to be appointed:

(i) in the name and licence number of the principal contractor, and

(ii) the name of the insurer by which the work is insured under Part 6 of that Act,

(b) in the case of work to be done by an owner-builder:

(i) the name of the owner-builder, and

(ii) if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.

- (2) 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.

[PCW0290]

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

[PCW0300]

DURING CONSTRUCTION

20. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover Authority.

[DUR0160]

21. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR0730]

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

[DUR0850]

23. All work associated with this approval is to be carried out so as not to cause a nuisance to residents in the locality from noise, water or air pollution.

[DUR0870]

24. The burning off of trees and associated vegetation felled by clearing operations is not permitted unless such burning is carried out in a specially constructed pit provided with an air curtain over the top. Separate approval is required prior to any burning. [DUR0890]
25. Construction site work including the entering and leaving of vehicles is to be restricted to between 7.00 am and 7.00 pm Monday to Saturday and no work on Sundays or public holidays. [DUR0900]
26. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited. [DUR0920]
27. The burning of builders waste on site by open fire is prohibited. [DUR0940]
28. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate or complying development certificate was made). [DUR0010]
29. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction. [DUR0080]
30. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council. [DUR0130]
31. The principal certifying authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the principal certifying authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979. [DUR0170]
32. It is the responsibility of the applicant to restrict public access to the building site, building works or materials or equipment on the site when building work is not in progress or the site is otherwise unoccupied. [DUR0200]
33. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:
- a. internal drainage, prior to slab preparation;
 - b. water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
 - c. external drainage prior to backfilling.

d. completion of work and prior to occupation of the building. [DUR1020]

34. A. A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
B. The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.

[DUR1030]

35. Where two (2) or more premises are connected by means of a single house service pipe, the owner of each premises must (*unless all the premises are occupied by a single household or firm as a residence or place of business*) ensure that a separate water meter, of a class and size approved by Council, is installed on each of those premises.

[DUR1070]

36. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993.

[DUR1090]

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

[DUR1130]

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

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

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

[DUR1160]

39. In the event that Council is not utilised as the inspection/Certifying authority, within seven (7) days of building works commencing on the site a Compliance Certificate in the prescribed form is to be submitted to Council together with the prescribed fee, by the nominated principal certifying authority to certify the following:
- i. All required erosion and sedimentation control devices have been installed and are operational.
 - ii. Required toilet facilities have been provided on the site.
 - iii. A sign has been erected on the site identifying:
 - Lot number
 - Builder

- Phone number of builder or person responsible for site.
- iv. All conditions of consent required to be complied with prior to work commencing on the site have been satisfied.
- v. That the licensee has complied with the provisions of Section 98(1)(b) of the Environmental Planning and Assessment Amendment Regulations 2000.

[DUR1200]

40. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired to the satisfaction of the Director, Engineering & Operations prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[DUR1210]

41. 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.

[DUR0040]

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

[DUR0150]

43. The owner or contractor 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.

[DUR0430]

44. The provision of adequate vehicular access in accordance with Council's "Vehicular Access to Property Construction Specification" pamphlet, including the provision of an invert crossing at the kerb and gutter where required and paving of the driveway across the footpath to the front alignment to the satisfaction of the Director, Engineering & Operations. 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 vehicular access and its reconstruction. Paving bricks are not acceptable unless laid on a 100mm thick concrete base.

[DUR0470]

45. A 1.2 metre wide footpath will need to be constructed hard behind the kerb on Charles Street. The compacted base is to achieve 95% of maximum dry density determined in accordance with AS1289 5.4.1 for a minimum 100mm depth. A full depth construction joint is to be provided at 6.0 metre intervals and 20 millimetre deep groove joints provided every 1.5 metres, the balance area to be graded to the kerb and turfed. The footpath is to have a 3% crossfall which must be attained at each side boundary. This may result in work to be undertaken on the footpath at adjoining properties which must not exceed 1:14 and must be reinstated with turf. The footpaving is to be located 800 millimetres from the property boundary. The concrete footpath gradient shall be parallel to the top of kerb for the full frontage of the site and maintained unvaried across the (any) driveway cross-section. An inspection of the formwork is to be arranged with Council's Engineering & Operations Division prior to concrete being placed.

[DUR0520]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

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

[POC0020]

47. A person must not commence occupation or use of the whole or any part of a new building (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0030]

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

[POC0170]

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

[POC0080]

REPORT:

Applicant: Mr G Yuile and Mrs L Yuile
Owner: Mrs LA Yuile and Mr GA Yuile
Location: Lot 475 DP 755740 No. 10 Charles Street, Tweed Heads
Zoning: 2(b) Medium Density Residential
Cost: \$500,000.00

BACKGROUND:

Council has received a development application for a duplex at Lot 475 DP 755740, 10 Charles Street, Tweed Heads. The land has an area of 669.5m², is zoned 2(b) Medium Density and has a two-storey height limit under Tweed LEP 2000. The site supports an existing three-storey dwelling. The property is located on Razorback Hill approximately 1 kilometre to the southwest of the Tweed Heads CBD. The land enjoys panoramic views from north to south, with immediate views to the Tweed River and Pacific Ocean due to the sites elevated location. Levels within the site vary from approximately RL47.5m AHD at the street frontage to RL41m AHD at the south-eastern corner and RL39m AHD at the northeastern corner of the site. The site possess a cross fall from the south-western to the northeastern corner of the site of approximately 2metres.

The application was lodged with Council on 19 April 2004. The time period is extensive as a result of significant design issues in the original proposal, more noticeably the extent of non-compliance with the proposed third storey component and the overall visual impact of what was considered a bulky design. In this regard, extensive consultation with the project architect and applicant has lead to this final design. Whilst the development still comprises a third-storey component it is significantly reduced in area and the overall design is a significant improvement in terms of bulk, visual amenity and impact from the original proposal.

The site is located within an area known as 'Razorback Hill' and it is characterised by existing older style single dwelling houses. Although examples of medium density developments and newer dwelling houses are starting to emerge as the locality redevelops. Of note is that a number of dwelling houses, generally older buildings, in the locality possess a three-storey component. An existing dwelling house is situated upon the subject site. The dwelling is approximately 40-50 years old and has minimal heritage and architectural value. Its condition has deteriorated. The applicant contends that the existing dwelling house incorporates a three-storey component. Vegetation on site comprises of domestic gardens and trees, none of which hold any significance.

Council has had several applications with similar three storey components within the same catchment. Table 1 gives a summary of the previous applications submitted to Council.

Table 1

No. on Site Plan	DA Number	Definition	Storeys	Address	Status
(1)	DA03/1842	Dual occupancy	3-storey	38 Charles Street	Assessment
(2)	DA04/1024	Residential flat building (6-units)	3-storey	70 Adelaide Street	Assessment
(3)	DA03/0925	Subdivision: This application is supported with a dwelling design illustrating that a house can be erected on the proposed allotment - the house design is three-storeys		27 Charles Street	Approved
(4)	DA04/1129	Residential flat building (6 units)	3-storey	15B Charles Street	Approved
	DA03/0998	Dual Occupancy	3-Storey	40 Charles Street	Approved

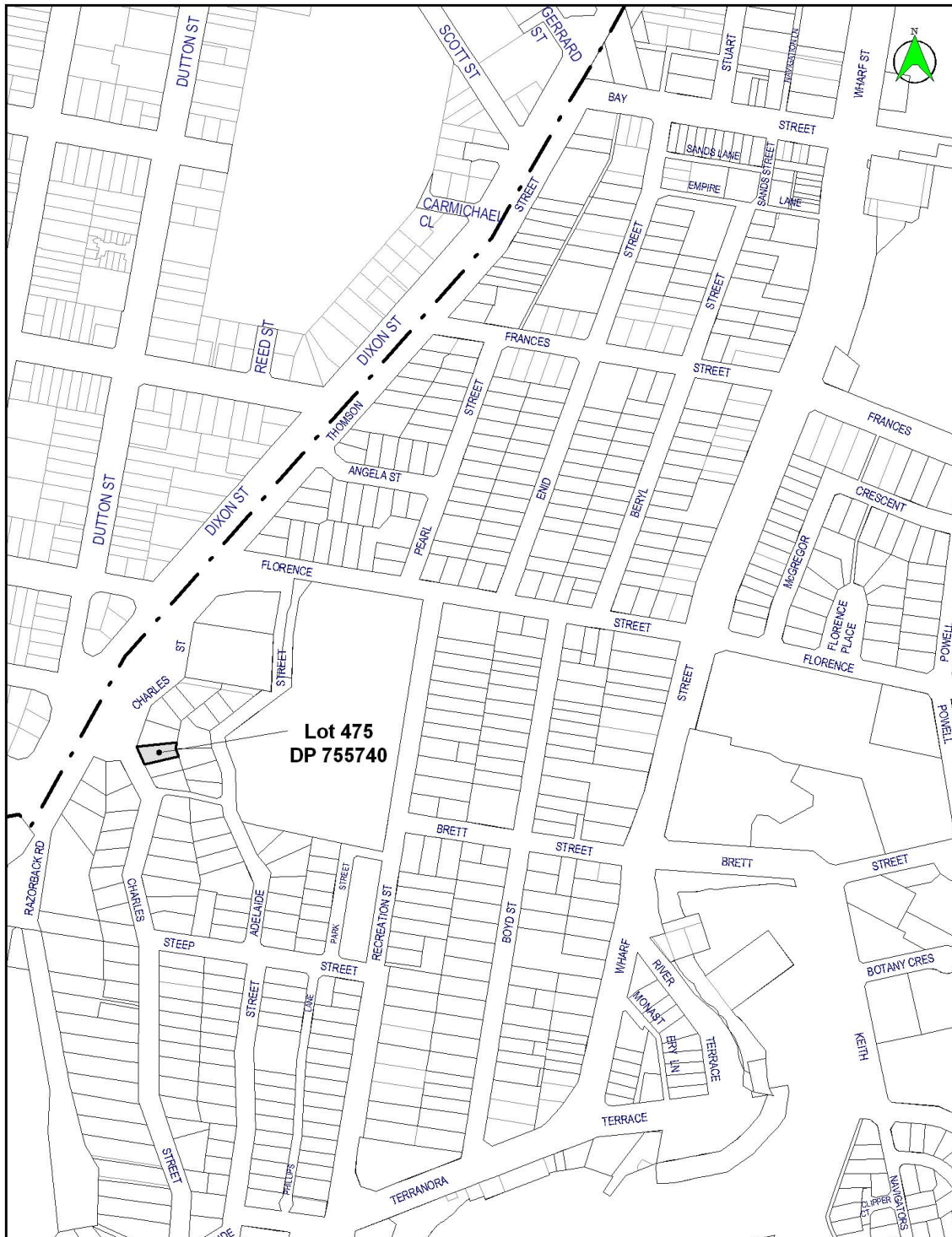
In particular, Council approved a development of the same kind at No.40 Charles Street at its Ordinary Meeting of 6 October 2004. The Council's report in relation assessing the appropriateness of the design states:

"Whilst approving non-conforming developments can act as a catalyst for further non compliant applications it is considered in this instance that the quality of this design could be used as a benchmark for the future assessment of development in the locality. Adopting this process will mitigate the policy implications on the Tweed LEP and ensure that the future development of the area attains a high level of design."

The principal areas of issue that have arisen in this application are set out below and addressed further in this report.

- Building design (bulk, mass, scale, height)
- SEPP 1 Objection to TLEP 2000 building height restriction

SITE DIAGRAM:



<p>© TWEED SHIRE COUNCIL 2005 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 816 Murwillumbah, NSW, 2484 Tel: (02) 6670 2409 Fax: (02) 6670 2468</p>	<p><i>Tweed Shire Council</i> Lot 475 DP 755740, No. 10 Charles Street Tweed Heads</p>	<p>STRATEGIC PLANNING UNIT  Site Plan Scale: 1:5,000 Sheet: 1 of 1</p>
<p>File: N:\MapInfo 7...A4P Site Plan.Wor Author: J.Batchelor Date: 25/May/2005</p>		

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

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

Tweed LEP 2000

Clause 8 - Zone objectives

The land is zoned 2(b) Medium Density Residential. The proposal being defined as multi dwelling housing under Tweed LEP 2000 is permissible with consent. The objectives of the zone are as follows:

Primary objective

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

Secondary objectives

- *to allow for non-residential development which supports the residential use of the locality.*
- *to allow for tourist accommodation that is compatible with the character of the surrounding locality.*
- *to discourage the under-utilisation of land for residential purposes, particularly close to the Tweed Heads sub-regional centre.*

The proposed development is defined as multi dwelling housing and is permissible in the zone. Although the zoning seeks to discourage the under utilisation of Residential 2(b) land in close proximity to the Tweed Heads sub-regional centre it is noted that the site constraints of the subject land would not cater to a more intensive form of development.

The revised building design is characterised as contemporary and comprises lightweight materials and use of modern technologies and colours. The proposal achieves good urban design and best practice principles. It is consistent with the land-use zoning and the emerging character of the locality.

Clause 15 - Essential Services

The site is serviced by existing infrastructure that is capable of servicing the proposed development.

Clause 16 Height Of Buildings

The land has a two-storey height limit under Tweed Local Environmental Plan 2000. Section 16(1) 'the objective' states:

- *to ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land.*

Section 16(2), in relation to development assessment state:

- (2) *Consent must not be granted to the erection of a building which exceeds the maximum height or number of storeys indicated on the Height of Buildings map in respect of the land to which the application relates.*

The proposed development has a three-storey component. A SEPP 1 objection has been provided to support a variation to Council's 'Development Standard'.

Tweed LEP 2000 adopted the height limit after extensive community consultation. The height limit has now been further reinforced with the adoption of DCP 18 Tweed Heads.

The proposed building possesses a three-storey component. The elevation constraint of the land does not lend itself to significant excavation for terracing purposes. It is noted that the site falls from the street frontage to the rear boundary with an average gradient of 30%. The effect of this is either a reasonable compact development design incorporating a three-storey component or a compliant development that would have a much greater site coverage.

The originally submitted design had quite a significant three-storey component. On going consultation between Council and the architect has resulted in an amended design that is different, incorporating a reduced third-storey component and a much-improved overall design that has consideration to the sites elevation. While the three-storey component exists for both units, it is centrally located within the development.

The development is considered to be of a high architectural design and responds appropriately to the topography of the site. It is considered that in keeping with the primary objectives of the 2(b) zone the part three-storey component is a reasonable response to enable multiple dwelling housing and encourage medium density development as prescribed by the policy.

The applicant has submitted a SEPP 1 Objection to the height restriction on the basis the sites topography does not lend itself to the development standard. The following reasons have been included in the application for a variation to the prescribed height:

- *There are special circumstances owing to the unusual topography of the subject land with in excess of three (3) storeys in height difference between the lowest level of the site at the north eastern boundary and the Charles Street frontage. The land is also subject to a cross fall from south to north of approximately 2.5 metres.*
- *The three (3) storey component is primarily a result of the cross fall on the subject land. The additional building height is created by the provision of the undercroft...*

It is reiterated that the unusual topography of the site results in the need for a third storey. It is considered that the current design is the most appropriate to the site having regard to the objectives of the 2(b) zone for medium density housing. Council's previous decisions in relation to this locality have dealt with this issue; a variation to the height limit could be supported in this instance given the location and extent of non-compliance.

In considering the extent of the three storey component it must be noted that this application is subject to the Savings and Transitional provisions of cl.16(3)(a) & (b) of the TLEP. That is, the definition of storey in this instance includes the measuring of height from natural ground level not as that in the present case, under the gazetted LEP 46 amendment of 7 January 2005, which refers to finished ground level.

Clause 35 - Acid Sulphate Soils

The land is mapped as ASS Class 5. No ASS is likely to be disturbed during construction of this duplex. Council's Environment and Community Services Unit has reviewed the proposal and raises no objection subject to conditions.

North Coast REP – Clause 43 Residential Development

The proposal is consistent with the relevant provisions of the REP pertaining to residential development.

State Environmental Planning Policies

State Environmental Planning Policy (SEPP) No.1 Objection

The applicant has submitted a SEPP No.1 Objection to vary the two-storey height limit under the provisions of Clause 16 of Tweed LEP 2000. This issue has been discussed earlier in this report. The SEPP 1 objection is considered to have merit.

State Environmental Planning Policy (SEPP) No. 71 – Coastal Protection

The site is located within the Coastal Protection zone and has been assessed in accordance with the objectives of SEPP 71. The proposal will not cause overshadowing of nor prohibit public access to the foreshore and is not expected to lead to any detrimental impacts that may conflict with the criteria as outlined in Clause 2 of SEPP 71. The proposal for a dual occupancy is therefore not seen to contradict the objectives of State Environmental Planning Policy No. 71.

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

There are no draft EPI's that would have an impact upon the assessment nor recommendations of this report.

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

Development Control Plan No. 2 – Access and Parking

Off street car parking needs to be supplied in accordance with DCP2. Table 2 identifies the level of on-site parking compliance.

Table 2

Standard	Requirement	Complies/variation
On site car parking	2 per dwelling where GFA exceed 125m ² = 4	Each dwelling is provided with a double car port (4 spaces) and is compliant

Development Control Plan No.6 – Multi Dwelling Housing

Development Control Plan No.6 - Multi Dwelling Housing is inherently flexible through its substantial utilisation of performance rather than prescriptive based criteria as its means for achieving the objectives of the design parameters. The performance criteria approach is adopted in this assessment.

The assessment table below considers the proposed development against specific design parameter objectives, provided in DCP 6, as a means of determining the appropriateness of the development.

Table 3

**TABLE OF COMPLIANCE – MULTI DWELLING HOUSING – RESIDENTIAL 2(b)
Zone**

DEVELOPMENT PROVISIONS	DCP SOLUTION	PROPOSED DEVELOPMENT	COMPLIANCE (Y/N –See Comment)
Site Analysis (s.3.1.1)	Submission of a detailed site analysis plan	Information provided in the application sufficiently supports on-site observations	Yes
Site Area	Not specified	669.5m ²	--
Site Density	0.5:1 Floor space ratio (GFA) (334.75m ²)	The development provides for 366.6m ² GFA representing a ratio of 0.55:1. This is 31.85m ² greater than the DCP example criteria: equivalently 15.925m ² per unit	Given the nature of the sites topographic constraints and the inherent difficulties in achieving the TLEP objectives with respect to multi-dwelling housing the floor space ratio of the proposed development is considered satisfactory
Boundary Set Backs (s.3.2.1(A2)): Front Secondary frontage Side Rear	6m N/A BCA BCA	Min 6m to dwellings Complies Complies	The building is setback a minimum of 6m from the street frontage. The carports are located within the front setback. Council's Building and Traffic Officers raise no objection. Side setbacks comply with the Building Code of Australia

Building Envelope (s.3.3.1(A1)): Max Height Envelope	(NGL) 12m 3.5m @ 45 ⁰	The applicant has provided on request a height plane illustrating the example criteria. The illustration is taken of three sections: having regard to the slope of the land	The illustrations indicate that the building is largely compliant, although it appears the envelope line passes through the upper floor / roof area of the rear of the building. The building height is satisfactory and consistent with like developments within the Shire.
Landscaping s.3.1.3 (A4)	30% of site – 200.85m ²	Using a Planimeter the area is calculated at a minimum 255m ²	Complies
Private Open Space	20% of site area (120.m ²)	225m ² total	Complies

DCP 6 Design Element 3.3: Building Siting and Design

Objective 1

To ensure that the height, scale and length of new developments is not excessive and relates well to the local context.

The applicant has worked closely with Council to ensure the development is suitable to the site and surrounding development, keeping in mind a three-storey component is proposed. The proposed building design (as amended) provides a well articulated visually interesting stepped design. The sectioning and articulation reduces the visual scale of the building and provides for improved separation and view sharing to neighbouring development. The maintenance of view sharing in this area is considered important and relevant as many properties have significant coastal aspects. Whilst it is generally considered that a right to a view does not exist, the amended design has sought to minimise the impact on view loss to neighbouring lands. The stepped configuration over three storeys permits the building to be sited as far forward as possible, further reducing the impact on lands to the east and views from the south-southwest. The height of the building when viewed from Charles Street presents predominantly as single storey. From Adelaide Street the building will present predominately as two-three storeys, depending on the vantage point.

Objective 2

To encourage design which creates desirable living conditions and ensures that the amenity of surrounding properties is properly considered.

The standard of design and liveability in this development is exceptionally high. As discussed the amended design respects the lands elevation and as such minimises the impact on neighbouring properties. It provides for extensive views from each unit and incorporates generous amounts of external private open space areas via balconies. There is generous setback from neighbouring development that maintains a good level of privacy and view sharing.

Objective 3

To allow flexibility in the siting of buildings and the provision of side and rear setbacks.

The site is heavily constrained by its steepness. The proposed development is fundamentally centrally located, providing for good building separation via appropriate setbacks.

Objective 4

To allow adequate natural light and ventilation between dwellings.

The development provides good separation to the neighbouring buildings. Acceptable levels of natural light and ventilation will be maintained.

It is considered that the proposed development attains the objectives of the building siting and design section of the DCP. The height, scale and articulation of the building are considered satisfactory.

DCP 6 Design Element 3.2: Streetscape

Objective 1

In developed areas, to ensure that new development enhances and makes a positive contribution to the character of existing streetscapes or desired future character of the area.

The existing character of the area is fast succumbing to change that will result in a move away from the existing older characterised houses to contemporary larger dwellings. The number of applications put before Council reinforces this, as referred to in Table 1. In addition, a site inspection of the site and surrounds identified that many dwellings, both new and old, comprise of three-storeys. In the immediate vicinity it was noted that Nos.21, 38, 40, 42, & 46 Charles Street are clearly three storey developments, whilst No.25 supports a single dwelling it is of scale not dissimilar to the proposed duplex. Council's file contains photographic illustrations of these properties.

The proposed design presents largely as a single level to Charles Street. The building would provide a significant improvement to the streetscape. It provides a modern, up-market and lively contribution that complements the newer development in the area. The proposed development is considered to have a number of positive elements that lead to attainment of the objective. They are summarised in the following table:

Table 4

Scale	The development by design maintains a low-density scale and addresses the street like a single dwelling. The design is very articulated and does not provide areas of massing that would lead to bulkiness. The building design provides a good level of visual interest.
Design	The design of the building incorporates modern architectural features and symmetry that provides a vibrant contemporary and desirable look.
Amenity	The building provides generous setbacks to neighbouring developments that maintain good view sharing, venting and amenity.
Aesthetics	The development allows for a well-proportioned area of open landscaping.
Context	The setback provision is generous and assists in reducing external impacts.

Objective 2

In new areas, to ensure that new development establishes appropriate and attractive streetscapes which reinforces the function of the street and is sensitive to the landscape and environmental conditions of the locality.

The development is considered to provide a contribution to the streetscape by establishing a visual connection in keeping with modern developments in the locality.

Objective 3

To encourage the creation of attractive, well design residential development.

The proposed development is considered to have a high level of design merit. The building is attractive, provides a positive contribution to the locality and responds well to the site constraints.

Objective 4

To allow flexibility in design and use of materials while encouraging high architectural standards.

As discussed in this report, the development is considered to be of a high architectural standard. It utilises a range of modern technologies and materials.

The development attains the objectives of the streetscape section of the DCP with respect to setback, bulk, scale, amenity and design.

DCP No. 18 Tweed Heads

The proposed site is located within the residential area known as the Razorback precinct.

The objectives of the Razorback precinct are to:

- Retain the Razorback Hill medium density zone as an attractive residential area, with buildings that respect the slope of the land and allow for 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 leafy character of the precinct.

The proposal is for a multi dwelling development and is acceptable in the medium density zone. The design of the building is considered to add to the amenity of the existing residential area and is respectful to the slope of the land with an under croft incorporated to minimise cut and fill. The building is oriented toward the east to capture views and sunlight. Overall the development is considered to be consistent with the Razorback precinct objectives.

Development Control Plan No. 39 – Energy Efficient Housing

The applicant has not submitted a NatHERS certificate for the amended proposal. Having regard to the orientation of the development, fenestration and use of materials it is considered that the development will achieve a minimum 3.5 Stars. In this regard it recommended that the NatHERS energy rating be provided prior to the issue of the Construction Certificate.

Development Control Plan No. 42 Public Notification Policy

The application was exhibited for two weeks from 19 May 2004 to 2 June 2004 and adjoining neighbours were notified. One submission was received objecting to the proposal. The issues raised are discussed further in the report.

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 requires, as a result of lowering the building, excavation works up to approximately 2 metres. A geotechnical report was requested from the applicant as required by section 2.3 of the policy. Council's Infrastructure Engineer has reviewed the report, with no objections raised subject to the recommended conditions of consent.

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

The development application has been prepared and assessed in accordance with all relevant provisions, and is considered satisfactory. The subject land is affected by the Coastal Policy 1997. The proposed development is not considered to be in conflict with the policies and strategies contained in the Policy.

Demolition

The existing dwelling is to be demolished. The submitted demolition plan has been considered as satisfactory. Further geotechnical investigation is required after the demolition and removal of existing site fixtures. An appropriate condition has been drafted to address this issue prior to issue of the Construction Certificate.

(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 proposal is sympathetic in design ensuring that the primary views of neighbours to the west will not be affected. In this regard the development presents to Charles Street as a predominantly low-key single storey building, enabling adjacent residents to look over the top of the development and thus retaining views. The proposal is modern in design and utilises lightweight modern materials. The design will not detract from the streetscape or the amenity of the neighbourhood.

(c) Suitability of the site for the development

It is not anticipated that the proposed residential development will create a land use conflict with surrounding development. Infrastructure is suitable to cater for the development and the development is not affected by any known impeding constraints however, a full geotechnical survey of the site is required upon removal of the existing buildings and prior to the issue of a Construction Certificate.

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

As stated above the proposal was exhibited for a period of two weeks from 19 May 2004 to 2 June 2004 and adjoining neighbours were notified, one submission was received. The submission objected to the proposal on the grounds that Charles Street could no longer cater to on street parking for safety reasons. Issue was raised that Charles Street does not have the capacity to support further development due to the on street parking. As previously discussed, the proposal complies with Council's policy for access and parking and the development includes two (2) double carports providing a total of four (4) off street vehicle spaces. Charles Street is considered to have adequate capacity to cater for the increase in traffic demand and a compliant level of off-street car parking is provided.

(e) Public interest

The proposed development is not considered contrary to the public interest.

OPTIONS:

1. Approve the application subject to the consent conditions provided in this report.
2. Defer the application and request that the applicant provide a compliant development.
3. Refuse the application and provide reasons for refusal.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be dissatisfied with the determination, avenues are available through the NSW Land and Environment Court for a merit-based appeal. Financial implications would be incurred in any legal proceedings.

POLICY IMPLICATIONS:

Previous consents in the locality have policy implications in terms of the two-storey height limit as defined under the Tweed LEP 2000 for the Razorback Hill Residential Precinct. Previous Council decisions have to date given approval to other developments in Charles Street with some components of three storeys. The circumstances of the site are not unusual or unique for the Razorback Hill Area in terms of topographical characteristics. Precedence is assumed to have been established with Council's support of previous applications. Of course it is also accepted that this application, if approved, will provide further precedent for landowners that a component of three-storeys is acceptable where there are severe gradient constraints.

CONCLUSION:

It has been established throughout this report that the proposed site is not unlike other sites in the Flagstaff Hill locality. Due to its topographical nature, a number of applications have proposed three storey components. Council has approved similar developments in Charles Street where this design solution best meets the objectives of the Tweed LEP and DCP6.

Having considered the additional supporting architectural plans submitted in support of the application it is concluded that the design of the building is as close to achieving compliance with the Tweed LEP 2000 as is likely to be achieved having regard to the density and architectural merit of the development. In this regard, the variation sought to clause 16 of the Tweed LEP 2000, as it relates to the height of buildings, could be supported.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

9 [ID] [PE] Amendment to Tweed Local Environmental Plan 2000

ITEM DEFERRED FROM MEETING HELD:

4 May 2005

332 RESOLUTION:
Cr H James
Cr M R Boyd

RESOLVED that this item be deferred for a further report to Council.

THIS REPORT IS THE SUBJECT OF A FURTHER REPORT AT ITEM 4 OF THE AGENDA.

ORIGIN:

Strategic Town Planning

SUMMARY OF REPORT:

The Engineering and Operations Division is seeking modification to Tweed Local Environmental Plan (TLEP) 2000 in order to simplify the process of obtaining approvals for engineering projects. The Engineering & Operations Division's preference is for public infrastructure works to be excluded from the provisions of Part 4 of the Environmental Planning & Assessment Act. That is to say, permissible without development consent but still subject to the environmental assessment regime contained in Part 5 of the Act.

It has become apparent that much time is spent in formulating and approving applications for works that are not anticipated to result in an adverse environmental impact, leaving less time for the larger projects or necessitating outsourcing of such work to consultants, resulting in increased expenditure on capital works.

The main provisions of the LEP that would require amendment for this objective to be achieved are:

- Acid sulphate soil (ASS) provisions applying to public infrastructure works (Clause 58 Savings) and
- Above ground works associated with water, sewer or drainage works (Schedule 5 Savings Clause 2), particularly sewer pump stations.

RECOMMENDATION:

That: -

- 1. Council resolves to include amendments for Council works within the next “housekeeping” amendment to Tweed LEP 2000.**
- 2. Pursuant to Section 54 of the Environmental Planning and Assessment Act, informs the Director-General of the Department of Infrastructure, Planning & Natural Resources of its intention to prepare a draft Local Environmental Plan to bring into effect amendments to Clause 58 and Clause 2 of Schedule 5 of Tweed LEP 2000**

REPORT:

The Engineering & Operations Division is seeking modification to Tweed Local Environmental Plan (LEP) 2000 in order to simplify the process of obtaining approvals for engineering projects. The Engineering & Operations Division's preference is for public infrastructure works to be excluded from the provisions of Part 4 of the Environmental Planning & Assessment Act. That is to say, permissible without development consent but subject to the environmental assessment regime contained in Part 5 of the Act.

It has become apparent that much time is spent in formulating and approving applications for works that are unlikely to result in an adverse environmental impact, leaving less time for the larger projects or necessitating outsourcing such work to consultants, resulting in increased expenditure on capital works.

The provisions of the LEP that would require amendment for this objective to be achieved are:

- Acid sulphate soil provisions applying to public infrastructure works (Clause 58 Savings) and
- Above ground works associated with water, sewer or drainage works (Schedule 5 Savings Clause 2), particularly sewer pump stations.

The problems arising with the above situations triggering a development application primarily relate to timing and workload. This is particularly relevant when permits are required from State Government Agencies, such as:

- "Bore Licence" applications from the Department of Infrastructure, Planning and Natural Resources for dewatering activities, and
- Fisheries permits from Department of Primary Industries for "dredging and reclamation" of "removal of marine vegetation".

When proposed works trigger the requirement for such permits and they are submitted in the form of a development application (usually because of the presence of acid sulphate soils), the DA becomes "Integrated Development" and is forwarded to the relevant State Government agency for approval. Despite this referral and resulting "General Terms of Approval", separate licence applications must be submitted and a further fee paid to receive the actual permit or licence sought.

The relevant State Government Agencies have advised Council that permits will not be issued until the DA is approved. In terms of time frame from lodgement until all approvals are obtained and work can legally commence for a project involving dewatering, the period varies between four and six months, comprised of:

- 4 weeks advertising
- 4 to 8 weeks State Government referral processing
- 2 to 4 weeks internal DA processing
- 6 to 8 weeks permit processing (mostly due to Native Title provisions).

If such applications were able to be dealt with as a Review of Environmental Factors (Part V of the EP&A Act) then an environmental assessment and all relevant permits would still be required but the time frame would be reduced to a maximum of eight weeks.

The proposed amendments are highlighted as additions within the relevant clauses below:

1. Acid Sulphate Soils

a. Amend Clause 58 Savings Provisions

58 Savings

Nothing in this plan is to be construed as restricting or prohibiting or enabling the consent authority to restrict or prohibit:

- (a) the carrying out of development of any description specified in Schedule 5 other than that specified in Clause 2 or 11 of that Schedule in respect of land to which Clause 35 applies, unless the work specified in Clause 2 or 11 of that Schedule in respect of land to which Clause 35 applies is carried out by or on behalf of Council in the provision of public infrastructure, or
- (b) the use of existing buildings of the Crown by the Crown, or
- (c) home occupations carried on in dwelling houses.

2. Above-ground works associated with water, sewer or drainage works

Amend Schedule 5 Clause 2 and 11 as follows:

- 2. The carrying out by persons carrying on public utility undertaking, being water, sewerage, drainage, electricity or gas undertakings, of any of the following development, being development required for the purpose of their undertakings, that is to say:
 - (a) development of any description at or below the surface of the ground,
 - (b) any other development except:
 - (i) the erection of buildings, the installation or erection of plant or other structures or erections and the reconstruction or alteration, so as materially to affect the design or external appearance thereof, of buildings, or
 - (ii) the formation or alteration of any means of access to a road

- (iii) unless works described in (2)(b)(i) and (ii) are carried out for or on behalf of Council in the provision of public infrastructure.
11. The carrying out or causing to be carried out by a council engaged in flood mitigation works or by the relevant State Government Department of any work for the purposes of soil conservation, mitigation, afforestation, reafforestation, flood mitigation, water conservation or river improvement in pursuance of the provisions of the relevant Acts and Regulations for the above work.
- (a) the erection of buildings, the installation or erection of plant or other structures or erections and the reconstruction or alteration of buildings so as materially to affect the design or external appearance thereof, up to a maximum of two storey or its equivalent.
 - (b) The formation or alteration of any means of access to a road unless works described in 11(a) and (b) are carried out for or on behalf of Council in the provision of public infrastructure.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The provisions, when implemented, will save time (staff resource) in undertaking minor Council works.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

Nil.

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10 [ID] [PE] Draft Tweed Local Environmental Plan 2000, Amendment No 67
- Two Storey Height Limit, SALT, Coast Road, South Kingscliff

ITEM DEFERRED FROM MEETING HELD:

1 June 2005

399 COUNCIL DECISION:

Administrator Boyd
Administrator Turnbull

That the reports from the Director Planning & Environment, with the exception of Item 9 (Minute No. 400 refers), be deferred for consideration at the first Planning Committee Meeting.

FOR VOTE - Unanimous

7 [PE] Draft Tweed Local Environmental Plan 2000, Amendment No 67 -
Two Storey Height Limit, SALT, Coast Road, South Kingscliff

This item was deferred to the Planning Committee (Minute No. 399 refers).

ORIGIN:

Strategic Town Planning

FILE NO: GT1/LEP/2000/67 Pt1

SUMMARY OF REPORT:

Draft Tweed Local Environmental Plan, Amendment No 67, was publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979 for 28 days from Wednesday 9 February 2005.

One (1) submission to the draft Plan was received from the general public requesting that a minor Amendment be made to the draft Plan to ensure the proposed provisions are consistent. However, the request was based on an incorrect presumption that *Integrated Housing* is a form of *Multi-dwelling Housing*.

Tweed LEP 2000 clearly establishes that *Integrated Housing* and *Multi-Dwelling Housing* are two different types of development. Hence it is considered that the request to amend the exhibited draft is not warranted.

It is considered that the exhibited Tweed LEP 2000, Amendment No 67, can be forwarded to the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration) to make the Plan.

RECOMMENDATION:

That Council:

- 1. Adopts draft Tweed Local Environmental Plan 2000, Amendment No 67, as exhibited.**
- 2. Forwards draft Tweed Local Environmental Plan 2000, Amendment No 67, to the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration) and requests the Minister to make the Plan in accordance with section 70 of the Environmental Planning and Assessment Act 1979.**

REPORT:

Introduction

Council, at its Extra-Ordinary Meeting 23 April 2003, resolved pursuant to Section 54 of the Environmental Planning and Assessment Act 1979 to prepare a draft Local Environmental Plan to apply a 2-storey height limit to future low-density residential development located on land commonly referred to as SALT. At the time of Council's resolution the land was described as Lots 194, 301 and 312 DP 755701 Coast Road, South Kingscliff.

The draft Plan was publicly exhibited for 28 days from Wednesday 9 February 2005.

The purpose of this report is to summarise to Council the public exhibition of the draft Plan and any submissions Council has received with regard to the adoption of a 2-storey building height for low-density residential development within SALT.

Background

Approval to construct the SALT Development resulted in the filling of land on average by 2m. Prior to the approval of the development, the Community strongly expressed that the filling of the subject land would result in an over-development of the area with respect to building bulk, density and scale, particularly if planning controls allowed for the measurement of building height from *finished ground level* as opposed to *natural ground level*.

Council resolved the Community's concern by negotiating with the applicant, as part of the development consent, that a building height limit of 2-storeys would be applied to all low-density residential dwellings within the estate including development on land that was not filled.

It was the intention of Council in proposing the building height provisions that, like other areas having building height controls, the proposed controls would be based upon those areas where a 2-storey height limit should apply and other areas where it should not. In doing this, the community were provided with some certainty as to what could be expected from the development of SALT in terms of the site's overall building bulk, density and scale.

The approved concept plan provided Council the means to achieve this. However, subsequent amendments to the concept plan have resulted in the implementation of Council's original intention unfeasible particularly if further amendments are proposed to those parts of SALT that which are undeveloped.

Therefore the exhibited draft Plan was prepared showing a 2-storey building height over the entirety of SALT but applicable only to certain types of development, these being the types of development identified in Council's original conditions of development consent.

The adoption of the proposed building height controls does create some uncertainty for the community particularly in respect of what character the SALT Development will finally take i.e. a larger percentage of the site, than that originally agreed to, may have a building height greater than 2-storeys. However, it is considered that no other options for building height controls could be established for SALT in view of the possibility that further amendments to the approved concept plan may be proposed.

The implementation of the proposed 2-storey building height limit will ensure that the bulk and scale of future detached dwellings on the subject land are consistent with the bulk and scale of permissible development prior to the filling of the subject area.

State Agency Consultation

No additional State Agency consultation was undertaken due to the relatively minor nature of the proposed Amendment and limited relevance to any State Agency and/or Department.

Public Exhibition

Pursuant to Section 66 of the Environmental Planning And Assessment Act 1979, draft Local Environmental Plan 2000, Amendment No 65 was placed on public exhibition from Wednesday, 9 February 2005 until Wednesday, 2 March 2005.

Submissions

Public exhibition of the draft Plan resulted in one (1) submission being received. The submission from Darryl Anderson Consulting (DAC) on behalf of South Kingscliff Developments Pty Ltd argues that *integrated housing* is in effect a form of *multi-dwelling housing* and requests that a minor amendment be made to the exhibited draft Plan to ensure that clauses (b) and (c) are consistent.

In response to DAC's submission Tweed LEP 2000 clearly defines *multi-dwelling housing* and *integrated housing* as two separate and different types of development.

Therefore it is considered that the exhibited version of the draft Plan, in particular clauses (b) and (c) are consistent with the definitions of Tweed LEP 2000 and hence DAC's request to amend the draft Plan is not warranted.

Recommendation

That Council:

1. Adopts draft Tweed Local Environmental Plan 2000, Amendment No 67, as exhibited.
2. Forwards draft Tweed Local Environmental Plan 2000, Amendment No 67, to the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration) and requests the Minister to make the Plan in accordance with section 70 of the Environmental Planning and Assessment Act 1979.

Conclusion

The adoption of the draft Plan will ensure that the density, bulk and scale of future detached dwellings on the subject land are consistent with the expectations of the surrounding community.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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REPORTS THROUGH GENERAL MANAGER

REPORTS FROM DIRECTOR PLANNING & ENVIRONMENT

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

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

MATTERS FOR CONSIDERATION

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

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1 [PE] Tweed Local Environmental Plan 2000 Amendment No. 64 - Tweed Heads Master Plan

ORIGIN:

Strategic Town Planning

FILE NO: GT1/LEP/2000/64

SUMMARY OF REPORT:

On 6 October 2004 Council resolved to implement the various strategies of the Tweed Heads Master Plan through various mechanisms. Council also resolved that LEP Amendments in respect of zoning and development bonus will be deferred until such time as the Minister of Lands has accepted the request to transfer certain lands nominated for development in the Masterplan to Council.

The Minister has identified that further discussion and negotiation is required in respect of this.

Work has also proceeded to identify amendments to the Tweed Local Environmental Plan 2000 arising from the Master Plan. However in view of Council's previous decision noted above, this cannot proceed without a change in attitude to the acquisition of land from the State Government. It is considered that there would be nothing gained from delaying the amendment.

RECOMMENDATION:

That Council proceeds with the exhibition of a draft Local Environmental Plan to implement the Tweed Heads Master Plan.

REPORT:

On 6 October 2004 Council resolved to implement the various strategies of the Tweed Heads Master Plan through various mechanisms.

In particular it was resolved that: -

- "5. Requests that the Minister of Lands transfer Lot 703 DP 877250 and Lot 7035 DP 1053313 to Council in fee simple at a nominal rate as these parcels have been identified by the Tweed Heads Ministerial Taskforce as having commercial opportunity to Council to provide capital funding to undertake infrastructure works for Tweed Heads as outlined in the Tweed Heads Masterplan.*

- 9. Informs the Director-General of the Department of Infrastructure, Planning and Natural Resources that, pursuant to Section 54 of the Environmental Planning and Assessment Act, Council intends to prepare a draft Tweed Environmental Plan 2000 amendment for the land identified in the Tweed Heads Masterplan and marked by a thick black line in Figure 1 of this report. The purpose of the Draft LEP is to give statutory effect to the Tweed Heads Masterplan. The draft Amendment in respect of building heights will be dealt with as a priority. Amendments in respect of zoning and development bonus will be deferred until such time as the Minister of Lands has accepted the requirements of Recommendation 5."*

The agreement of the Minister of Lands has been sought and responded as follows:

"Council's resolution on 6 October to seek concurrence to "transfer Lot 703 DP 877250 and Lot 7035 DP 1053313 to Council in fee simple at a nominal rate", is noted. In that regard it is assumed Council will effect any "transfer" using its powers under the Land Acquisition (Just Terms Compensation) Act 1991. However, at this stage of the project I understand that further discussion and negotiation on any acquisition of part or all of these lands is required between the Department and Council. Until such time as I have received confirmation from the Department that those discussions have satisfactorily progressed the provision of any consent to acquire would be premature.

In any event Council should note that, in accordance with NSW Treasury Guidelines the Department would be requiring payment of the land's full market value if acquired".

Work has also proceeded to identify amendments to the Tweed Local Environmental Plan 2000 arising from the Master Plan. However in view of Council's previous decision noted above, this cannot proceed without a change in attitude to the acquisition of land from the State Government. It is considered that there would be nothing gained from delaying the amendment.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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2 [PE] Amendment to Tweed Local Environmental Plan 2000

ORIGIN:

Strategic Town Planning

SUMMARY OF REPORT:

On 4 May 2005 Council resolved to defer a report in respect of amendments to the Tweed Local Environmental Plan 2000 which had been nominated by the Engineering and Operations Division. The item was deferred for a further report to Council.

The reasons for the deferral are as follows: -

1. There was some confusion as to the precise wording of the proposed amendments to the Local Environmental Plan (LEP). It appeared that subclauses were to be deleted when in fact they were to be retained unaltered. To avoid any further confusion the full text of the relevant LEP clauses have been amended with the proposed amendments highlighted in italics.
2. Reference to outdated legislation. This has been replaced with the words "relevant Acts and Regulations".

RECOMMENDATION:

That pursuant to Section 54 of the Environmental Planning and Assessment Act, Council informs the Director-General of the Department of Infrastructure, Planning and Natural Resources of its intention to prepare a draft Local Environmental Plan to amend Clause 58 and Schedule 5 Clauses 2 and 11 of Tweed Local Environmental Plan 2000.

REPORT:

On 4 May 2005 Council resolved to defer a report in respect of amendments to the Tweed Local Environmental Plan 2000 which had been nominated by the Engineering and Operations Division. The item was deferred for a further report to Council.

The reasons for the deferral are as follows: -

1. There was some confusion as to the precise wording of the proposed amendments to the Local Environmental Plan (LEP). It appeared that subclauses were to be deleted when in fact they were to be retained unaltered. To avoid any further confusion the full text of the relevant LEP clauses to be amended are set out below with the proposed amendments highlighted in italics.
2. Reference to outdated legislation. This has been replaced with the words "relevant Acts and Regulations".

The resultant proposed amendment to the LEP is as follows: -

1. Acid Sulphate Soils

a. Amend Clause 58 Savings Provisions

"58 Savings

Nothing in this plan is to be construed as restricting or prohibiting or enabling the consent authority to restrict or prohibit:

- (a) the carrying out of development of any description specified in Schedule 5 other than that specified in Clause 2 or 11 of that Schedule in respect of land to which Clause 35 applies, *unless the work specified in Clause 2 or 11 is carried out by or on behalf of Council in the provision of public infrastructure, or*
- (b) the use of existing buildings of the Crown by the Crown, or
- (c) home occupations carried on in dwelling houses."

2. Above-ground works associated with water, sewer or drainage works

Amend Schedule 5 Savings Clause 2 and 11 as follows:

- "2. The carrying out by persons carrying on public utility undertaking, being water, sewerage, drainage, electricity or gas undertakings, of any of the following development, being development required for the purpose of their undertakings, that is to say:

- (a) development of any description at or below the surface of the ground,
- (b) the installation of any plant inside a building or the installation or erection within the premises of a generating station or substation established before the appointed day of any plant or other structures or erections required in connection with the station or substation,
- (c) the installation or erection of any plant or other structures or erections by way of addition to or replacement or extension of plant or structures or erections already installed or erected, including the installation in an electrical transmission line of substations, feeder-pillars or transformer housing, but not including the erection of overhead lines for the supply of electricity or pipes above the surface of the ground for the supply of water, or the installation of substations, feeder-pillars or transformer housings of stone, concrete or brickworks,
- (d) the provision of overhead service lines in pursuance of any statutory power to provide a supply of electricity,
- (e) the erection of service reservoirs on land acquired or in process of being acquired for the purposes thereof before the appointed day, provided reasonable notice of the proposed erection is given to the Council, or
- (f) any other development except:
 - (i) the erection of buildings, the installation or erection of plant or other structures or erections and the reconstruction or alteration, so as materially to affect the design or external appearance thereof, of buildings, or
 - (ii) the formation or alteration of any means of access to a road

where such works are carried out for or on behalf of Council in the provision of public infrastructure.

11. The carrying out or causing to be carried out by a council engaged in flood mitigation works or by the ~~Department of Land and Water Conservation~~ *relevant State Government Department* of any work for the purposes of soil conservation, irrigation, afforestation, reforestation, flood mitigation, water conservation or river improvement in pursuance of the provisions of the ~~Water Act 1912, the Irrigation Act 1912, the Farm Water Supplies Act 1946 or the Rivers and Foreshores Improvement Act 1948,~~ *relevant Acts and Regulations for such works*, except:

(a) the erection of buildings, the installation of erection of plant or other structures or erections and the reconstruction or alteration of buildings so as materially to affect the design or external appearance thereof *up to a maximum of 2 storeys or its equivalent*, or

(b) the formation or alteration of any means of access to a road,

unless such works are carried out for or on behalf of Council in the provision of public infrastructure."

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

3 [PE] Youth Needs Analysis

ORIGIN:

Strategic Town Planning

SUMMARY OF REPORT:

This report requests Council endorsement of the action taken to select a consultant for the Youth Needs Analysis, following Council consideration on 16 March.

RECOMMENDATION:

That Council endorses the evaluation of the responses to the Expression of Interest to carry out the Youth Needs Analysis, and approves the appointment of the preferred consultants, 'Plan C and Fieldworx'.

REPORT:

On 16 March Council considered a report on youth issues and adopted a recommendation that the Council:

1. Undertakes a youth needs analysis within the Shire,
2. Uses the findings:
 - (a) as the basis for community consultation on the possible provision of services and facilities for youth:
 - generally in the Shire, and
 - specifically to meet any identified needs of Pottsville.
 - (b) to review and update as appropriate the Social Plan for the target group of Young People.

Expressions of interest were called for to undertake the Youth Needs Analysis, and two submissions were received from Rowlands & Associates (Qld) Pty Ltd (in conjunction with GTP Training and Consulting) and from Plan C (in conjunction with Fieldworx).

An evaluation of the submissions using a standard formula has been carried out, and although both would be generally suitable, the Plan C proposal better fits Council's needs in terms of previous experience, cost and timeframe.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The Plan C proposal is costed at \$31,966 including GST, and the Rowlands proposal is costed at \$77,550 including GST.

POLICY IMPLICATIONS:

The Plan C proposal extends for approximately 14 weeks, and the Rowlands proposal extends for 12 months, which indicates different time scales for determination of a strategy.

UNDER SEPARATE COVER/FURTHER INFORMATION:

1. Council Report of 16 March 2005. (DW 1170323)
-

4 [PE] Tweed Economic Development Strategy

ORIGIN:

Strategic Town Planning

SUMMARY OF REPORT:

The Strategic Planning Unit and the Tweed Economic Development Corporation (TEDC) have been updating the Economic Development Strategy for the Tweed. A draft was presented to Council in a workshop on 23 February. At this workshop Council discussed future funding arrangements with TEDC.

The Strategy identifies projects and undertakings by both Council and TEDC that will support economic development within the Tweed.

As the future funding arrangements have been negotiated and been incorporated into Council's draft Management Plan it is considered appropriate for Council to now finalise the Economic Development Strategy.

RECOMMENDATION:

That Council: -

- 1. Place the draft Tweed Economic Development Strategy on public exhibition for a period of 28 days,**
- 2. Provides a copy of the draft Tweed Economic Development Strategy to the Tweed Heads Chamber of Commerce, Murwillumbah Chamber of Commerce, Kingscliff and District Chamber of Commerce and the Kingscliff & Tweed Coast Business Association.**

REPORT:

In 2002 Council adopted the Tweed Economic Development Strategy. The Strategy established three key strategies which are based on the basic inputs to achieving economic development. These are;

- Land Availability

To ensure that there is an adequate policy framework in place and there is a suitable amount of land preserved for the establishment of employment generating developments as well as new and emerging industries.

- Investment and Employment

To encourage employment generating businesses to establish in the Tweed through financial incentives as well as its economic climate and lifestyle.

- Business Leadership

To foster business leadership within the Tweed by assisting in the promotion of innovative approaches to business development.

This Strategy also identified four key areas which should be encouraged because of their economic development;

- Primary Production
- Tourism
- Employment Generating Lands
- Community and Culture

This Strategy identified specific projects to encourage economic development within the Tweed. These projects were to be undertaken by Council, TEDC and Tweed and Coolangatta Tourism Inc.

Although it has achieved results it was considered appropriate to review this Strategy given the changes that have occurred to the Tweed economy over the last few years.

Tweed Futures – A Strategic Plan

In September 2004 Council adopted a new Strategic Plan for growth and development of the Shire. In this Plan economic development was identified as one of the most important issues facing the Tweed. Particularly the issues of the shortage of local jobs, high youth unemployment, a decline in rural industries, and an increasing aged population. Community consultation identified that economic growth in the Tweed should be linked to education and to the Tweed's environmental quality.

Tweed Economic Development Corporation (TEDC)

The TEDC are an independent organisation primarily funded by Council, but also funded by corporate membership. The board is made up of local Tweed business people and its charter is to assist in encouraging economic development through attracting and facilitating businesses to the Tweed.

This Strategy has been jointly drafted with TEDC and represents the current and proposed projects

Tweed Economic Development Strategy – A 4 Year Strategy

Earlier this year a Council workshop was held with TEDC in which a draft of the Economic Development Strategy was presented. This draft identified proposed projects that would have an impact on economic development for the Tweed. The drafting of this strategy has been a combined effort of the Strategic Planning Unit and TEDC.

The Economic Development Strategy undertakes the challenge of Council's Corporate Economic Goal, "to promote a strong economy and diverse employment opportunities", through its objectives:

- Giving leadership and direction to increase job-creating growth and investment attraction;
- Promoting, facilitating and assisting the national and international competitiveness of new and existing industries;
- Facilitating the provision of world-class infrastructure;
- Fostering a positive business culture and environment;
- Facilitating the diversification of the Shire's industry base to support a robust economy; and
- Being creative and innovative in the approach to promoting economic vitality, while maintaining the ecological integrity and cultural fabric of the Tweed.

The Strategy has identified several key areas that can be targeted to promote economic development. Within each of these areas specific projects have been identified. Below is a summary of these key areas and projects;

Research & Development	Principle Agency
Tweed & Northern Rivers Economic Model	TEDC
Industry Audit & Database	TEDC
Demographic & Statistical Research	TEDC
Land-Use Planning	
Tweed Rural Land Use Study	TEDC
Rural Land Release Strategy	TSC
Home-Based Business Development	TSC
Retail Strategy	TSC

Clusters & Industry Development Initiatives	
Marine Industry	TEDC
Transport, Aviation & Distribution Industries	TEDC
Other Cluster & Industry Development Initiatives	TEDC
Central Business District Revitalisation	
Tweed Heads CBD Revitalisation	TSC
Town & Village Centres	TSC
Rural Village Programme	TSC
Enterprise Land & Industry Attraction	
Tweed Enterprise Land Taskforce	TSC / TEDC
Industry Attraction Programme	TEDC
Tourism	
Tourism Visioning Project	TEDC
Tourism Infrastructure Audit	TSC
Tweed River Link	TEDC
Other River-Based Tourism Infrastructure	TEDC
Gateway Visitor Information Centre	TSC / TEDC
Transport Infrastructure & Issues	
Rail Connectivity with Southeast Queensland	TSC / TEDC
Gold Coast Airport	TSC / TEDC
Marketing, Promotion & Communication	
Tweed Marketing Group	TEDC
Marketing Collateral	TEDC
Trade Shows & Conferences	TEDC
Events & Presentations	TEDC
Website & E-Bulletin	TEDC
Regional Partnerships	
Northern Rivers Regional Development Board	TSC / TEDC
Southern Regional Organisation of Councils	TSC / TEDC
Northern Rivers Regional Organisation of Councils	TSC
Gold Coast Regional Economic Development Advisory Board	TEDC

Management Plan

The Economic Development Strategy is currently identified as a supporting plan to the Management Plan. It guides the programs and budget for the area of economic development. This revised Strategy will play a more prominent role in the Management Plan through providing an avenue for TEDC to communicate their outcomes and work priorities.

Conclusion

It is recommended that the Strategy be put on public exhibition for a period of 28 days.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

This report recommends the public exhibition of a revised economic development strategy for the Tweed Shire Council that is a policy document.

UNDER SEPARATE COVER/FURTHER INFORMATION:

1. Tweed Economic Development Strategy (DW 1213133)
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- 5 [PE] Development Application DA04/1300 for an Integrated Housing Development Incorporating 6 Dwellings Being Part Two (2) and Part Three (3) Storey at Lot 15 DP 21680, Lot 14 Sec 6 DP 17606, No. 17 & 19 Moss Street, Kingscliff

ORIGIN:

Development Assessment

FILE NO: DA04/1300 Pt1

SUMMARY OF REPORT:

Council has received an application for an integrated housing development comprising of six dwellings and associated subdivision. The site is located within a 2-storey height restricted area of Kingscliff. The buildings are predominantly three-storey. Council considered a Planning Report at its meeting of 20 April 2005. This report is attached.

Having considered the addendum documentation provided by the applicant the application is referred back for determination reiterating the recommendation for refusal.

RECOMMENDATION:

That Development Application DA04/1300 for an integrated housing development incorporating 6 dwellings being part two (2) and part three (3) storey at Lot 15 DP 21680, Lot 14 Sec 6 DP 17606, No. 17 & 19 Moss Street, Kingscliff be refused for the following reasons: -

- A. State Environmental Planning Policy No. 1 objections to Clause 16 of Tweed Local Environmental Plan 2000 regarding the height of the building not be supported and the concurrence of the Director-General of the Department of Infrastructure, Planning and Natural Resources not be assumed.
- B. Development Application DA04/1300 for an integrated housing development incorporating 6 dwellings being part two (2) and part three (3) storey at Lot 15 DP 21680 Lot 14 Sec 6 DP 17606, No. 17 & 19 Moss Street, Kingscliff be refused for the following reasons: -
 - 1. Pursuant to Section 79C(1)(a)(i) the proposed development being three-storey is pursuant to Tweed Local Environmental Plan 2000 a prohibited development.
 - 2. Pursuant to Section 79C(1)(a)(iii) the development proposal has not demonstrated due consideration or compliance with Tweed Shire Development Control Plan No.6 - Multi Dwelling Housing, as it relates primarily to the floor space ratio provisions.

3. Pursuant to Section 79C(1)(a)(iii) the development proposal has not demonstrated due consideration or compliance with Tweed Shire Development Control Plan No.43 - Kingscliff, as it relates to the precinct objectives in Section 7.2.
4. Pursuant to Section 79C(1)(a)(iii) the development proposal has not demonstrated due consideration or compliance with Tweed Shire Development Control Plan No.43 - Kingscliff, as it relates to the building design provisions in Section 8.
5. Pursuant to Section 79C(1)(a)(iii) the development proposal has not demonstrated due consideration or compliance with Tweed Shire Development Control Plan No.48 - Tweed Coast Building Heights, as it relates to the setback requirements provided in Section 2.3(A2).
6. Pursuant to Section 79C(1)(c) the development site is not considered suitable for the proposed development, as evidenced by the non compliances with Council's planning requirements.
7. Pursuant to Section 79C(1)(d) the application has attracted a number of public submissions in the negative. Issues raised relate predominantly to the non compliance with Council's planning requirements.
8. Pursuant to Section 79C(1)(e) the proposed development in unnecessarily compromising the integrity of Council's development control plan provisions is not considered to be in the public interest
9. Pursuant to Section 5 – Objects, of the Environmental Planning and Assessment Act, 1979 the proposed development cannot be determined to satisfy subsection (a)(ii), the orderly and economic use and development of the land, in the context of Council's planning requirements.

REPORT:

Applicant: Telco Select Pty Ltd
Owner: Telco Select Pty Ltd
Location: Lot 15 DP 21680, Lot 14 Sec 6 DP 17606 No. 17 & 19 Moss Street, Kingscliff
Zoning: 2(b) Medium Density Residential
Cost: \$4,800,000.00

BACKGROUND:

Council has received an application for an integrated housing development comprising of six dwellings and associated subdivision. The site is located within a 2-storey height restricted area of Kingscliff. The buildings are three-storey. Council considered a Planning Report at its meeting of 20 April 2005. The report concluded that the variation sought to the 2-storey height limit was excessive and that the SEPP 1 Objection was not supported, and consequently the report recommended refusal of the application. Council did not resolve to adopt the report's recommendation, instead resolving:-

"that this item be deferred for a further report to be submitted to Council."

Subsequent to the Council meeting Council Officers attended a meeting with the Applicant on 4 May 2005. The issues raised in the Council report were discussed with the Applicant, whilst the applicant attempted to further articulate their justification for the proposed development.

Council has since received an addendum to the SEPP 1 objection and application documentation. Of particular note is that the amended building design is now compliant with the 8-metre external building height as prescribed in Development Control Plan (DCP) No.48 - Tweed Coast Building Heights, and that the dwellings present to both street frontages as two-storey.

Notwithstanding the above, the development remains largely 3-storey in configuration. This is giving rise to difficulties in determining the appropriateness of the development relative to the existing planning controls, particularly as it is accepted that the impact of the development on amenity, views, overshadowing and traffic are considered acceptable having regard to the land-use zoning and the characteristics of the locality. The acceptance that the external impacts are however 'acceptable' does not render the proposal compliant with the DCP provisions.

The Applicant contends that the existing urban character, which comprises a range of building forms from single dwellings to 4-storey flat buildings, is a constraint upon the development of the site. There is an assertion that a precedence has been set by the existing 'larger' buildings to the extent that the amenity of the subject site is fettered, thus requiring the proposed development to be larger by design so as to achieve a perceived level of equitable view sharing and amenity. It was raised in the Council report of 20 April 2005 that this view of land-use constraint by precedence is not supported and this view is unaltered upon review of the addendum documentation. Furthermore, the Applicant's contention that enforcing the 2-storey height restriction will result in a development that will not be marketable is not concurred with.

Having considered the SEPP 1 objection at length it is concluded that it is well founded, that the having regard to the characteristics of the land, the existing urban context and the likely impacts of the development upon neighbouring properties that the two storey height limit may be unreasonable in this instance. However, having reviewed a number of non-conforming developments in the Kingscliff catchment none have been identified having a variation of the magnitude sought in this application. The Kingscliff Hill precinct is quite unique with its own established characteristics. Many of the properties are benefited with exceptional views to Cudgen Creek, the Ocean and Surrounds. Whilst the proposed development remains unobjectionable in isolation the redevelopment of other sites in the locality that would likely take advantage of the precedence set by this application would be objectionable, cumulatively undermining the strategic planning regime for the area by increasing the total visual and physical built impact upon the area. By comparison to the existing buildings the precedence set by this proposal would have far greater implications because of its assessment under a present not past planning regime. The probability that other sites in the vicinity will be redeveloped is not based on assumption. Council is presently in receipt of several applications in the same street, each seeking through SEPP 1 to exceed that prescribed 2-storey height limit. The determination of the 'other' applications, notwithstanding that each is assessed on its own merit, would likely be affected by an affirmative determination of this application, to the extent that it may prove difficult to refuse a future application of a similar nature.

In *Collis Radio Ltd & Anor v Secretary of State for the Environment & Anor* (1975) 29 P&CR 390, 73 LGR (UK) 211, Lord Widgery CJ (with whom Ashworth and Michael Davis JJ agreed) said in the course of a planning appeal (at 395-396):

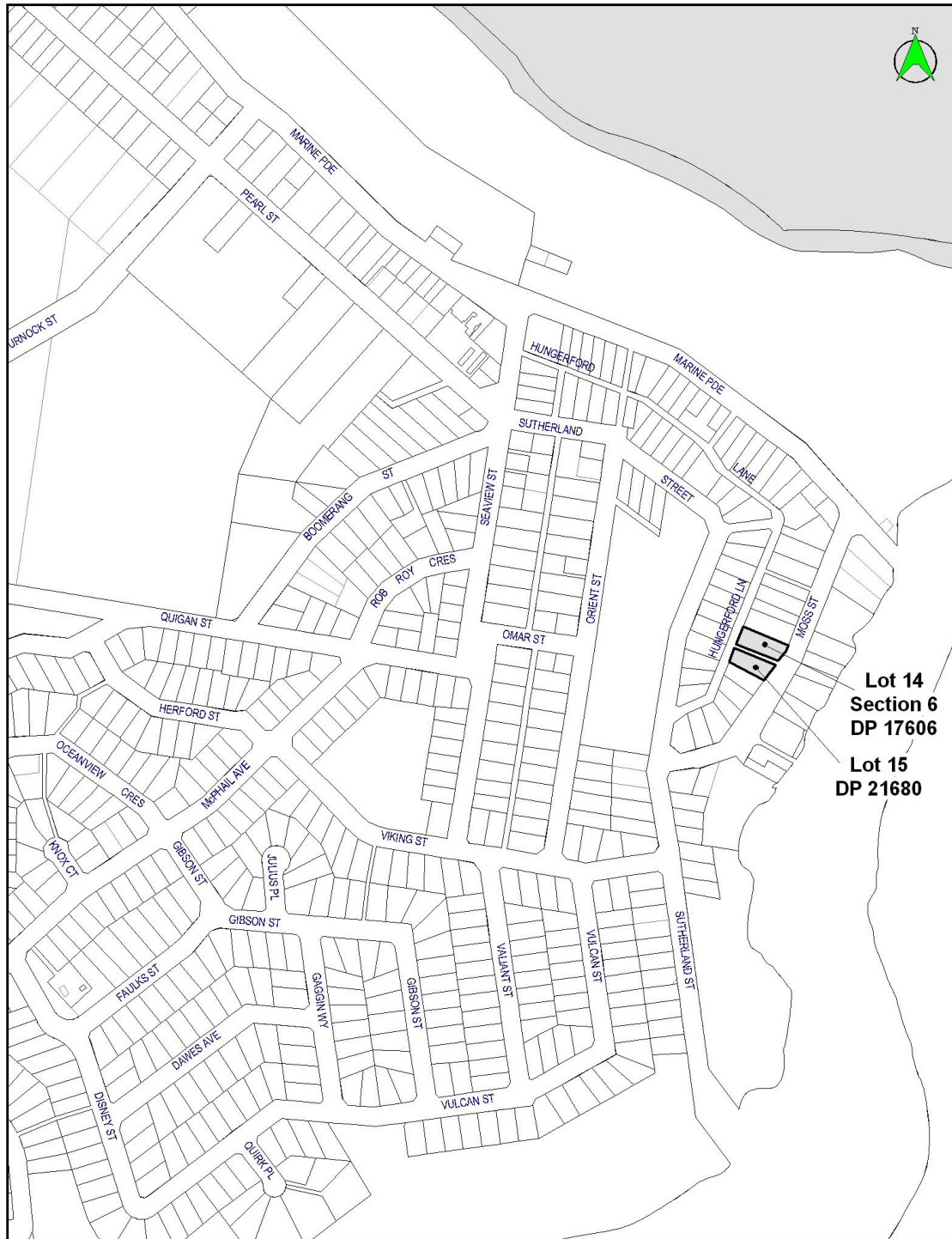
"This is a problem which has appeared in the administration of the planning law since its inception. There is no doubt whatever that, human nature being what it is, if permission is granted for a particular form of development on site A it is very difficult to refuse similar development on site B if the circumstances are the same. It must happen constantly in practice that a local planning authority refuses planning permission in respect of site A because of the consequences which it fears might flow in respect of sites B, C and D. No court has so far said that that is not a proper consideration to be adopted by a planning authority, and Mr Glidewell acknowledges, as one would expect, that he is putting forward a proposition which, so far, at any rate, is not to be found in the books.

In all planning cases it must be of the greatest importance when considering a single planning application to ask oneself what the consequences in the locality will be – what are the side effects which will flow if such a permission is granted. In so far as an application for planning permission on site A is judged according to the consequence on sites B, C and D, in my judgment no error of law is disclosed but only what is perhaps the most elementary principle of planning practice is being observed."

In considering the 'other' development applications presently submitted to Council against the subject application it is contended that the 'proposals' are similar. There exist several other (Australian) court judgements that indicate that the consideration of the precedence of an application is a valid planning consideration.


In light of the above the SEPP 1 objection remains not supported and the recommendation of the 20 April 2005 Council Planning Report is reiterated in this report.

SITE DIAGRAM:



**Lot 14
Section 6
DP 17606**

**Lot 15
DP 21680**

<p>© TWEED SHIRE COUNCIL 2005 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 816 Murwillumbah, NSW, 2484 Tel: (02) 6670 2489 Fax: (02) 6670 2488</p>	<p><i>Tweed Shire Council</i></p> <p>Lot 15 DP 21680 and Lot 14 Sec 6 DP 17606, No. 17 & 19 Moss Street, Kingscliff</p>	 <p>TWEED SHIRE COUNCIL</p>	<p>STRATEGIC PLANNING UNIT</p> <p>Site Plan</p>
<p>File: N:\MapInfo 7...V4P Site Plan.Wor</p>	<p>Author: J.Batchelor</p>	<p>Date: 14/Apr/2005</p>	<p>Scale: 1:5,000 Sheet: 1 of 1</p>

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

In not supporting the SEPP 1 objection to the 2-storey height limit the proposed development is prohibited under the Tweed LEP.

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

Satisfactory.

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

The level of compliance with the amended development has not changed that significantly. A comparison review of the 'old' and 'new' design will highlight this. It is noted, as previously discussed, that the external building height does now comply with the 8-metre requirement and that the gross floor areas of the buildings have been marginally reduced, but remain non-complaint. An assessment of the proposal is provided in the 20 April 2005 Council Planning Report.

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

Satisfactory.

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

A review of the addendum documentation has concluded that the proposal in isolation may not adversely impact on the locality. However, in conjunction with other similar developments will undermine the present strategic planning regime and controls, and impact upon the natural and built environment of Kingscliff Hill.

(c) Suitability of the site for the development

The site is not suitable for the reasons set out in this report.

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

This matter has been addressed in the 20 April 2005 Council Planning Report and does not warrant further assessment.

(e) Public interest

The proposal is not in the public interest.

OPTIONS:

1. Refuse the application in accordance with the recommendations of this report.
2. Defer the application and provide reasons for deferment.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be dissatisfied with the determination, avenues are available through the NSW Land and Environment Court for a merit based appeal. Financial implications would be incurred in any legal proceedings.

POLICY IMPLICATIONS:

As discussed in this report, support for the SEPP 1 objection upon the present format of the development would have detrimental planning policy implications and would likely lead to adverse natural amenity and built form impacts in the locality.

CONCLUSION:

For the reasons set out in this report the SEPP 1 objection is not supported. However, this is not to suggest that the proposed development would be materially incompatible with its surrounds or that the proposed level of three-storey is unacceptable in the circumstances. In many respects the proposal is not inconsistent with the existing urban form. The question arises as to whether there are 'special' circumstances with this site that should lend itself to an approval for a three-storey building, or whether the two-storey height restriction is in fact appropriate given the extent of the existing built form. It may be the case that the 2-storey height limit was a reactionary measure to curb higher density developments, but one that may not have had appropriate regard to the established urban character. Under these circumstances it is considered probable that if the issue of precedence did not arise in this matter that the proposal would likely be acceptable. Under the present planning controls it is considered that the proposal should not be supported whilst seeking a significant variation under SEPP 1 and that instead the application would be best served by a Tweed LEP amendment so as to permit three storey development on the site. Such a process would alleviate any perception of precedence for future development, as any development seeking such a significant variation would be forced to undergo the same process.

UNDER SEPARATE COVER/FURTHER INFORMATION:

1. Council Report from 20 April 2005 meeting (DW 1192143)
-

- 6 [PE] Development Application DA04/1288 for Multi Dwelling Housing Development Comprising of Five (5) Dwellings in a Part Two (2) and Three (3) Storey Building at Lot 34 DP 21680, No. 29 Moss Street, Kingscliff

ORIGIN:

Development Assessment

FILE NO: DA04/1288 Pt1

SUMMARY OF REPORT:

Council is in receipt of an application for a residential flat building comprising five units in a part two and three-storey building. The site is zoned 2(b) medium density and has a height restriction of two-storeys. The application is accompanied with a SEPP 1 objection.

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

RECOMMENDATION:

That: -

1. **State Environmental Planning Policy No. 1 objections to Clause 16 of Tweed Local Environmental Plan 2000 regarding the height of the building be supported and the concurrence of the Director-General of the Department of Infrastructure, Planning and Natural Resources be assumed.**
2. **That Development Application DA04/1288 for multi dwelling housing development comprising of five (5) dwellings in a part two (2) and three (3) storey building at Lot 34 DP 21680, No. 29 Moss Street, Kingscliff be approved subject to the following conditions: -**

GENERAL

1. **The development shall be completed in accordance with the Statement of Environmental Effects prepared by Planit Consulting Pty dated September 2004 and the addendum of 26 November 2004 and Development Plan Nos. 1 to 7 having the prefix 02575SK prepared by Agenti Architects Pty Ltd dated September 2004, except where varied by these conditions**

[GEN0010]

2. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within the subject property.
[GEN0030]
3. No retaining walls or similar structures are to be constructed over Council's sewer main.
[GEN0090]
4. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.
[GEN0120]
5. The erection of a building in accordance with a development consent must not be commenced until:
 - (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
 - (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - (b1) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - (b2) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[GEN0150]

6. The use of **EXTERNAL** ground anchors, sheet piling or any other like method that extends beyond the property boundary is not permitted or approved by this consent, except where the written permission to carryout such works and the details of works have been submitted and approved with the Construction Certificate. Any such works proposed in Council's road reserve shall require the submission and approval of a separate s.138 application, which is to be accompanied with all necessary engineering detail to the satisfaction of Council Director Engineering and Operations.
7. Appropriate signage is to be erected that nominates the use / allocation of car parking / visitor and wash down space(s).

[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

8. Section 94 Contributions

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

- | | |
|----------------------------------|----------------|
| a. Tweed Road Contribution Plan: | \$3,640 |
| S94 Plan No. 4 (Version 4.0) | |
| Sector6_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):
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 | \$309 |
| f. | Community Facilities (Tweed Coast)
(North Coast)
S94 Plan No. 15 | \$2,460 |
| g. | Emergency Facilities (Surf Lifesaving)
(REMSHIRE)
S94 Plan No. 16 | \$490 |
| h. | Extensions to Council Administration Offices
& Technical Support Facilities
S94 Plan No. 18 | \$963.05 |

- | | | |
|----|---|----------------|
| i. | Cycleways
S94 Plan No. 22 | \$365 |
| j. | Regional Open Space (Structured)
S94 Plan No. 26 | \$2,668 |
| k. | Regional Open Space (Casual)
S94 Plan No. 26 | \$499 |

[PCC0050/PSC0005]

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

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

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

Water: 2.75 ET @ \$4325 \$11,894
Sewer: 2.75 ET @ \$3490 \$9,598

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

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

[PCC0070/PSC0004]

10. Permanent Stormwater Quality Treatment

- (a) Permanent stormwater quality treatment shall comply with "*Tweed Urban Stormwater Quality Management Plan*" (adopted by Council 19 April 2000) section 5.5.3 "Stormwater Objectives During the Post Construction or Occupational Phase of Development" . New development is required to comply with table 5.4 of the plan and demonstrate compliance by modelling in accordance with section 5.5.4. Section 5.5.5 of the plan further advises that treatment that is in accordance with the "deemed to comply" provisions of *Appendix E - Tweed Shire Council, Aus-Spec D7 - Stormwater Quality* is deemed to comply with the objectives in 5.5.3.
- (b) Water sensitive design practices shall be adopted. Where it is practical, water quality features are to be designed into the land development site rather than rely on special end of pipe devices to strip pollutants and nutrients from stormwater prior to discharge. Typical water quality features that can be designed into the site development include use of porous pavements, directing runoff over filter strips or grass swales in landscaped areas, utilising landscaping as an integral part of stormwater quality management, maximising use of infiltration and stormwater reuse (eg. Rainwater tanks). These features can be complemented by site management practices which minimise creation of stormwater pollutants and nutrients and provide for appropriate operation, cleaning and maintenance of water quality control devices.
- (c) The Construction Certificate Application must include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development, prepared in accordance with Section D7.07 of *Tweed Shire Council Aus-Spec D7 - Stormwater Quality*.
- (d) Specific requirements:
 - (i) All driveway and undercover car parking runoff must be treated to remove oil and sediment pollutants prior to discharge to the public realm. Permanent stormwater treatment devices must be sized according to Council's Development Design Specification D7 - Stormwater Quality, Section D7.12, with full engineering details and maintenance schedules to be submitted with a s68 Stormwater Application.
 - (ii) The proposed car wash bay must be constructed of permeable material, preferably grass.

[PCC0230]

- 11. The legal point of discharge for the subject development is via discharge into the public drainage system in Moss Street.**

12. **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.**
13. **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.**
14. **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 proposed on-site excavation works, site stability and any other geotechnical matters of relevance relating to the proposed development.**
15. **The Engineering Plans and specifications to accompany the Construction Certificate application shall provide for:-**
 - i. **An adequately sized overland flow path is to be provided down basement stairwell and along the western boundary of the development to convey potential Q100 stormwater runoff from Hungerford Lane through the site, without any discharge occurring into the basement car parking area or onto neighbouring property.**
 - ii. **The driveway entrances and proposed car wash bay must be shaped, graded and bunded (as required) to convey potential Q100 stormwater runoff from Hungerford Lane through the site, without any discharge occurring into the basement car parking area or onto neighbouring property.**
 - ii. **The relocation of sewer mains within the subject site and neighbouring property (Lot 35 on DP 21680) to the satisfaction of the Director Engineering and Operations Division.**
16. **Access to the site shall be limited to Hungerford Lane only.**

17. The peak stormwater flow rate that may be discharged from the site to the public realm, in events of intensity up to the ARI 100 year design storm, shall be 200 l/s/ha. This may be achieved by on site detention (OSD), on site retention or a combination of both. Detention storage may be incorporated into surface depressions in landscaping, 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.

[PCCNS01]

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

[PCC0010]

19. A traffic control plan that complies with the provisions of the RTA document "Traffic Control at Work Sites" Version 2 shall be prepared by a person who is qualified, authorised and has passed an RTA approved training course, and submitted to Council, prior to issue of the Construction Certificate. All works are to comply with the Occupational Health and Safety Act and the RTA document and the approval particularly in respect to works on public roads. Safe public access shall be provided at all times.

[PCC0040]

20. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.

[PCC0190]

21. A construction certificate application for works that involve any of the following:-

- connection of a private stormwater drain to a public stormwater drain
- installation of stormwater quality control devices
- erosion and sediment control works

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

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

[PCC0240]

22. 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]

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

[PCC0160]

24. Prior to issue of a Construction Certificate details of the provision of a screened, graded and drained garbage store area are to be submitted for approval and must be to the satisfaction of Council's Director Environment and Community Services. The submission must be accompanied with a letter from Council's waste contractor that clearly expressed their satisfaction with the proposed storage / collection area.

[PCCNS02]

25. All roof waters are to be disposed of through properly jointed pipes to the street gutter, inter-allotment drainage, or elsewhere if so directed in the conditions of consent. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZ3500.3.2. Note: A detailed stormwater and drainage plan is to be submitted to and approved by the PCA prior to commencement of building works.

[PCC0350]

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0090]

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

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

[PCW0190]

28. 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.

[PCW0010]

29. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised to the satisfaction of the Principal Certifying Authority and provided with a dish drain or similar at the base or otherwise retained to the satisfaction of the Principle Certifying Authority. All retaining works shall be completed to the satisfaction of the Principal Certifying Authority prior to start of building work. Please note timber retaining walls are not permitted.

Note: All cut and or fill must comply with DCP 47. The top of any battered cut, toe or battered fill and the face of any retaining wall structure supporting cut or fill cannot be closer that 900mm to the boundary where the overall height at any point exceeds 500mm.

[PCW0040]

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

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

[PCW0050]

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

[PCW0060]

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

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

[PCW0070]

33. 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]

34. Sewer main within site is to be accurately located and the Principal Certifying Authority advised of its location and depth prior to start of any building works.

[PCW0180]

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

[PCW0210]

36. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational to the satisfaction of the Principal Certifying Authority. In addition to these measures an appropriate sign is to be clearly displayed on the most prominent position of the sediment fence or erosion control device which promotes awareness of the importance of the erosion and sediment controls provided.

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

[PCW0280]

37. Residential building work:
- (1) 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:
 - (a) in the case of work for which a principal contractor is required to be appointed:

- (i) in the name and licence number of the principal contractor, and
 - (ii) the name of the insurer by which the work is insured under Part 6 of that Act,
 - (b) in the case of work to be done by an owner-builder:
 - (i) the name of the owner-builder, and
 - (ii) if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.
- (2) 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.

[PCW0290]

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

[PCW0300]

39. Prior to commencement of works a detailed sedimentation and erosion control plan shall be submitted to Council for approval.

[PCWNS01]

DURING CONSTRUCTION

40. All proposed works are to be carried out in accordance with the conditions of development consent, approved construction certificate, drawings and specifications.
41. The layout and construction standards of the 5 covered and 3 uncovered proposed car parking spaces are to be in accordance with Council's Development Control Plan No. 2 - Site Access and Parking Code.
42. Landscaping of the site shall be carried out in accordance with the approved landscaping plans. The landscaping to be completed prior to occupation of the building, to the satisfaction of the Director, Engineering and Operations Division.
43. Any existing or new sewer manholes located on this site must not be covered with soil or other material or concealed below ground level.

Should earthworks be proposed in the area of a existing sewer manhole, Council's Engineering & Operations Division must be consulted and suitable arrangements made to raise / lower the manhole to the satisfaction of Council's Manager Public Utilities.

[DURNS01]

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

[DUR0030]

45. 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.

[DUR0040]

46. All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction.

[DUR0060]

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

[DUR0130]

48. The provision of adequate vehicular access in accordance with Council's "Vehicular Access to Property Construction Specification" pamphlet, including the provision of an invert crossing at the kerb and gutter where required and paving of the driveway across the footpath to the front alignment to the satisfaction of the Director, Engineering & Operations. 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 vehicular access and its reconstruction. Paving bricks are not acceptable unless laid on a 100mm thick concrete base.

[DUR0470]

49. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR0730]

50. The building is to be sited at least one metre horizontally clear of sewer main on site. All footings and slabs within the area of influence of the sewer main are to be designed by a practising Structural Engineer. The engineer is to submit a certification to the Principal Certifying Authority that the design of such footings and slabs will ensure that all building loads will be transferred to the foundation material and will not effect or be affected by the sewer main.

[DUR0830]

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

[DUR0850]

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

[DUR0860]

53. All work associated with this approval is to be carried out so as not to cause a nuisance to residents in the locality from noise, water or air pollution.

[DUR0870]

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

[DUR0880]

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

[DUR0890]

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

[DUR0900]

57. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:
- A. Short Term Period - 4 weeks.

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

B. Long term period - the duration.

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0910]

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

[DUR0920]

- 59. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired to the satisfaction of the Director, Engineering & Operations prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.**

[DUR1210]

- 60. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction.**

[DUR0080]

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

[DUR0010]

- 62. Provision shall be made for the collection of builder's solid waste in accordance with the following requirements:**

- a. A temporary builder's waste chute is to be erected to vertically convey builder's debris to a bulk container.**
- b. The chute shall be located in a position approved by the Principal Certifying Authority.**
- c. A canopy shall be provided to the chute outlet and container to reduce the spillage of materials and nuisance caused by dust.**

[DUR0070]

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

[DUR0090]

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

[DUR0100]

65. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover Authority.

[DUR0160]

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

[DUR0170]

67. It is the responsibility of the applicant to restrict public access to the building site, building works or materials or equipment on the site when building work is not in progress or the site is otherwise unoccupied.

[DUR0200]

68. If the work involved in the erection or demolition of a building:
- a. is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or
 - b. building involves the enclosure of a public place,

a hoarding or fence must be erected between the work site and the public place.

If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.

The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.

Any such hoarding, fence or awning is to be removed when the work has been completed.

[DUR0220]

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

[DUR0960]

70. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:
- a. internal drainage, prior to slab preparation;

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

[DUR1020]

71. A A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
- B. The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.

[DUR1030]

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

[DUR1040]

73. No portion of the structure may be erected over any existing sullage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains.

[DUR1050]

74. Where two (2) or more premises are connected by means of a single house service pipe, the owner of each premises must (*unless all the premises are occupied by a single household or firm as a residence or place of business*) ensure that a separate water meter, of a class and size approved by Council, is installed on each of those premises.

[DUR1070]

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

[DUR1100]

76. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard.

[DUR1110]

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

[DUR1130]

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

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

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

[DUR1160]

79. In the event that Council is not utilised as the inspection/Certifying authority, within seven (7) days of building works commencing on the site a Compliance Certificate in the prescribed form is to be submitted to Council together with the prescribed fee, by the nominated principal certifying authority to certify the following:
- i. All required erosion and sedimentation control devices have been installed and are operational.
 - ii. Required toilet facilities have been provided on the site.
 - iii. A sign has been erected on the site identifying:
 - Lot number
 - Builder
 - Phone number of builder or person responsible for site.
 - iv. All conditions of consent required to be complied with prior to work commencing on the site have been satisfied.
 - v. That the licensee has complied with the provisions of Section 98(1)(b) of the Environmental Planning and Assessment Amendment Regulations 2000.

[DUR1200]

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

[DUR0240]

81. Prior to and during construction provide a "shake down" area along the haul route located immediately before the intersection with the road reserve. The "shake down" area is to be 10 metres long, minimum 3.0 metres wide, constructed of minimum 50mm diameter crushed rock; or other such device approved by the Director, Engineering & Operations.

[DUR0930]

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

[DUR0940]

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

[DUR0980]

84. 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.

[DUR1000]

85. Acid sulfate soils shall be exposed or disturbed and the site shall not be dewatered. In the event that either or both is encountered or is required work shall cease until Council and any other relevant consent authority has been notified and relevant approval(s) obtained.

[DURNS02]

86. The guttering downpiping and roof waste water disposal system is to be installed and operational before the roofing is installed.

[DUR0950]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

87. 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.

88. A 3m wide easement is to be established over the sewer mains with the subject site and neighbouring property (Lot 35 on DP 21680). These easements are to be finalised and documentary evidence submitted to Council prior to the issue of an Occupation Certificate.

[POCNS01]

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

[POC0020]

90. A person must not commence occupation or use of the whole or any part of a new building (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0030]

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

[POC0050]

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

[POC0170]

93. 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.

[POC0180]

USE

94. All wastes shall be collected, stored and disposed to the satisfaction of the Director Environment and Community Services. Wastes shall be presented at the kerb for in a Council approved wheelie bin for collection.

[USENS01]

95. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust, fumes or the like.

[USE0160]

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

[USE0170]

REPORT:

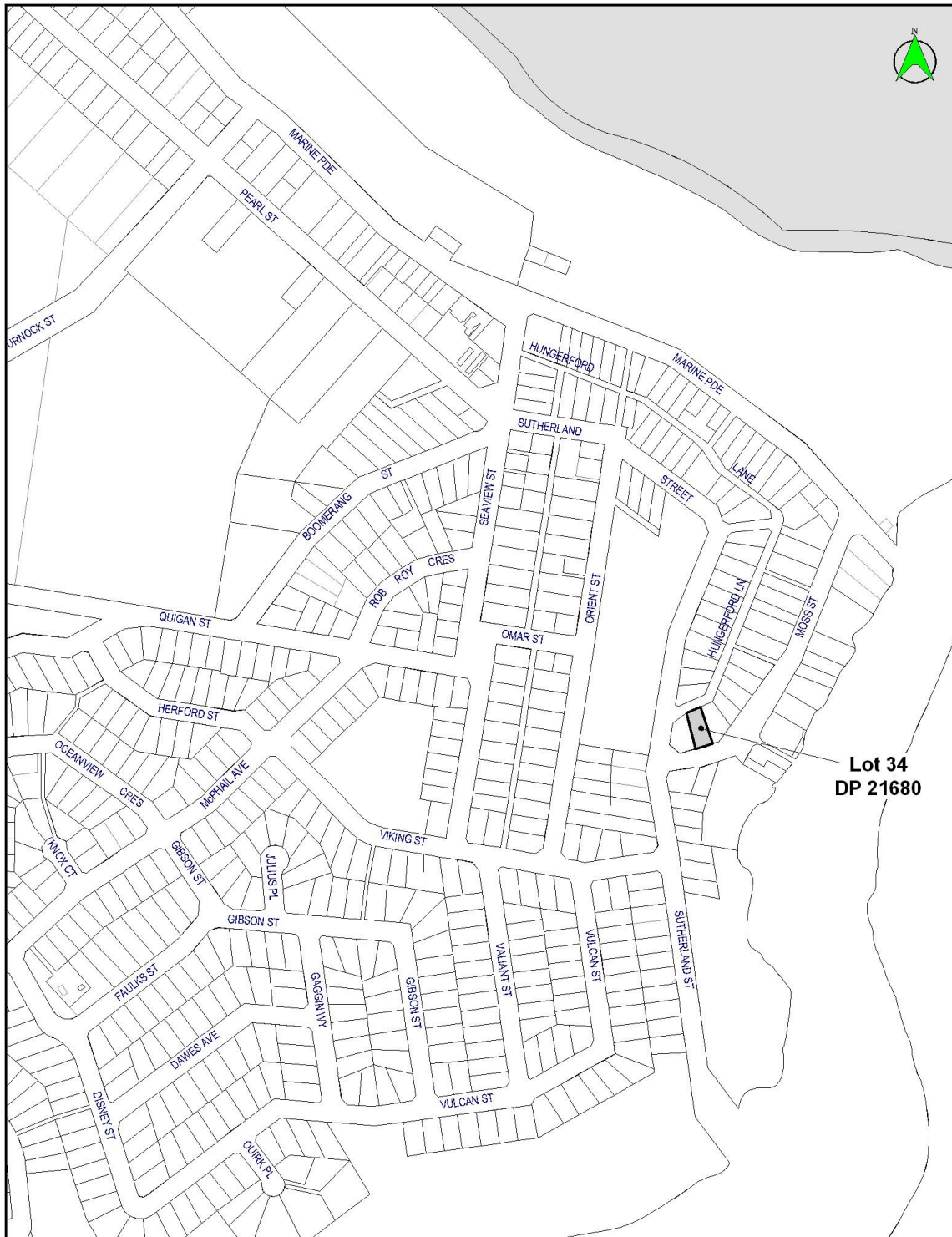
Applicant: Ocean Spray Developments Pty Ltd
Owner: Ocean Spray Developments Pty Ltd
Location: Lot 34 DP 21680 No. 29 Moss Street, Kingscliff
Zoning: 2(b) Medium Density Residential
Cost: \$1,200,000.00

BACKGROUND:


Council has received an application for a residential flat building comprising 5 units. Access to lower level car park is off Hungerford Lane. The existing single timber dwelling and garage is to be demolished. The building exceeds the two-storey height restriction imposed under clause 16 of the Tweed Local Environmental Plan 2000 (TLEP) in some of the units.

In order to facilitate the departure from the TLEP 2-storey height restriction the application has been accompanied with an objection to the clause 16 development standard made pursuant to State Environmental Planning Policy No.1 – Development Standards. To determine whether the TLEP cl.16 standard is unreasonable or unnecessary in this case, the application has been assessed having particular regard to the design details contained in Council's relevant adopted Development Control Plans (DCP). In this regard, it should be noted that certain DCP's are site specific. Their function, as a subordinate document to the TLEP, is to provide localised objectives and design guides for specific forms of development within identified and characterised precincts or catchments. The TLEP, as the principal Council planning instrument, serves to provide the 'macro' controls and objectives generally on a Shire wide, not site specific, basis.

SITE DIAGRAM:



**Lot 34
DP 21680**

<p>© TWEED SHIRE COUNCIL 2005 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 816 Murwillumbah, NSW, 2484 Tel: (02) 6670 2409 Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i> Lot 34 DP 21680, No. 29 Moss Street, Kingscliff</p>		<p>STRATEGIC PLANNING UNIT Site Plan</p>		
<p>File: N:\MapInfo 7...VA4P Site Plan.Wor</p>		<p>Author: J.Batchelor</p>	<p>Date: 23/May/2005</p>	<p>Scale: 1:5,000</p>	<p>Sheet: 1 of 1</p>

Site Description & Context

The development site has an area of 708m² and has a frontage to Hungerford Lane and Moss Street. Due to the lands topographical features vehicular access is not achievable from Moss Street. The land ranges in elevation from approximately RL20.5m AHD at the Hungerford Lane boundary to RL16m AHD at the Moss Street boundary. The site is approximately 420 metres to the central shopping and dining area of south Marine Parade. The existing development site supports a single-storey timber / fibro dwelling and associated garage.

On site assessment identified that land to the north supports a single-storey dwelling that appears to have been erected in excess of 30 years and is of timber and fibro construction. The neighbouring land to the southwest (31 Moss Street) supports a three-storey 6 unit residential flat building that was approved in July 1998. The neighbouring land to the east (27 Moss Street) supports a single-storey timber / fibro dwelling that also appears to have been constructed in excess of 30 years. The Applicant has advised that this property has been purchased and is likely to be the subject of future development application for multi dwelling housing. The property neighbouring 27 Moss Street supports a three-storey 4 unit residential flat building that was approved in February 1989.

Contrasting forms of development, comprising older single-storey dwellings that are either nearing the end of their lifecycle or functional purpose and multiple occupancy development, surround the subject site. The context of the site can therefore be summarised as one that is in a transitional phase of redevelopment.

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

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

Tweed Local Environmental Plan 2000

The subject land is zoned 2(b) Medium Density residential under the Tweed Local Environmental Plan 2000. The primary objective of the land use zone is to provide for medium density housing that achieves good urban design outcomes. The proposed development is a type that is permissible in the zone. The zone objectives have been attained by 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 applicant has provided plans, which indicate that the building is proposed in a two and part three-storey configuration. This non-compliance is discussed further under the heading *SEPP 1 - Development Standards* in this report.

It should be noted that this application is subject to the Savings and Transitional provisions of cl.16(3)(a) & (b) of the TLEP. That is, the definition of storey in this instance includes the measuring of height from natural ground level not as that in the present case, under the gazetted LEP 46 amendment, which refers to finished ground level. In this regard, the actual three-storey component of the development, by definition, is relatively small and estimated at approximately 20%. This would increase to an estimated 50% if the amended definition were applicable.

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

Clause 35 - Acid Sulfate Soils

Pursuant to the provisions of Clause 35 of TLEP 2000, the subject site is identified as being located within Class 5 soils. Acid Sulfate Soils are not considered likely to be encountered with this proposal. Dewatering of the site, based on its elevation, is not likely to be required.

Clause 39 - Remediation of Contaminated Land

Clause 39 of TLEP 2000 States:-

(1) Objective

- to ensure that contaminated land is adequately remediated prior to development occurring.

(2) State Environmental Planning Policy No 55-Remediation of Land applies to land to which this plan applies despite any other provision of this plan.

The subject allotment appears prima facia to have supported a residential dwelling in excess of 30 years. There are no previous land use activities known to have occurred that would give rise to land contamination and or warrant further investigation. Council's Environment and Health Services Unit raises no issues in relation to land contamination.

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

North Coast Regional Environmental Plan.

The provisions of the NCREP 1988 are relevant to the proposed development. The relevant provisions are:-

Clause 32(b) States:-

- (1) *This clause applies to land within the region to which the NSW Coastal Policy 1997 applies.*
- (2) *In determining an application for consent to carry out development on such land, the council must take into account*
 - (a) *the NSW Coastal Policy 1997*
 - (b) *the Coastline Management Manual*
 - (c) *the North Coast. Design Guidelines.*
- (3) *The council must not consent to the carrying out of development, which would impede public access to the foreshore.*
- (4) *The council must not consent to the carrying out of development:*
 - (a) *on urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out the development would result in beaches or adjacent open space being overshadowed before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time), or*
 - (b) *elsewhere in the region, if carrying out the development would result in beaches or waterfront open space being overshadowed before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time).*

The proposed development does not result in beaches or adjacent open space being overshadowed before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time).

Clause 51 of the NCREP 1988 states:-

- (2) *The council shall not, without the concurrence of the Director, grant consent to a development application for the erection of a building over 14 metres in height.*
- (3) *In deciding whether to grant concurrence to a development application in respect of development referred to in subclause (2), the Director shall take into consideration the likely regional implications of the development as regards its social, economic and visual effect and the effect which it will or is likely to have on the amenity of the area.*
- (4) *The provisions of sections 84, 85, 86, 87 (1) and 90 of the Act apply to and in respect of development for the purpose of a building over 14 metres in height in the same way as those provisions apply to and in respect of designated development.*

The proposed residential flat building has a proposed maximum height no greater than 11metres and is therefore consistent with the relevant provisions of the Plan.

Clause 81 of the NCREP 1988 states:-

- (1) *The council shall not consent to a development application for development on land within 100 metres of the ocean or any substantial waterway unless it is satisfied that:*
 - (a) *there is a sufficient foreshore open space which is accessible and open to the public within the vicinity of the proposed development,*
 - (b) *buildings to be erected as part of the development will not detract from the amenity of the waterway, and*
 - (c) *the development is consistent with the principles of any foreshore management plan applying to the area.*
- (2) *Nothing in subclause (1) affects privately owned rural land where the development is for the purpose of agriculture.*

The proposed residential apartment building will not impede access to the public foreshore and it is not considered to be in such contrast with its surroundings so as to detract from the amenity of the area in the vicinity of the waterway.

North Coast Regional Environmental Plan.

The proposal is considered to be consistent with the relevant provision of the Plan.

SEPP 1 - Development Standards

The proposed development comprises two and part three-storeys. The subject site is, under cl.16 of the TLEP, restricted to two-storeys. The application is accompanied with an objection made under SEPP 1 with the aim of demonstrating in this case that compliance with the two-storey height limitation is unreasonable given the site constraints.

SEPP 1 aims to provide flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979 (the Act).

Clause 6 enables a written objection to be made that compliance with a particular development standard is unreasonable or unnecessary in the circumstances of the case. In determining the suitability of a development standard examination of a number of factors is required, including:

- The objectives of the standard being varied.
- The objectives of the land use zoning.
- In the case of an identified precinct or area, any site specific objectives provided in a DCP.
- Whether a development seeking dispensation represents a better planning outcome than could otherwise be achieved.
- The level of compliance with any other planning provision.
- Any impact of the development that has arisen as a result of the dispensation sought.
- Density, scale, character, building form, height and mass.

Clause 7 of SEPP No. 1 enables the consent authority to grant consent to a development notwithstanding non-compliance with a development standard, were the consent authority is satisfied the objection is well founded and consistent with the aims of the policy.

The development standard to which this SEPP No. 1 objection relates is provided by cl.16 of the TLEP, which states:

Clause 16

(1)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 proposed development has a maximum external height of approximately 10.5 metres, which is within the maximum design guide criteria provided in DCP 6 & 48 for a three-storey residential development. The scale of the development is consistent with recent residential flat buildings approved in the Kingscliff locality, in particular it is noted that the floor space ratio of 0.75:1 is significantly smaller than many like developments which operate at approximately 1.3:1. The overall design of the building is modern and has a good level of architectural relief. The building is particularly well articulated and incorporates visual modulation through colour tones and construction techniques. The building respects the site contour by stepping the site. From the Hungerford Lane and Moss Street elevations the building is two-storeys. The predominate area of three-storey results from the two upper floor units. These units are split over two levels with the upper most level comprising the living / dining and master bedroom areas. They are not excessive in floor area at 135m² and 145m² respectively. By contrast to most 'penthouse' units they are moderately sized. Having considered the level of attainment with the relevant DCP provisions, which are discussed later in this report, it is considered that strict compliance with the provisions of cl.16 of the TLEP would be unreasonable in this instance. The cl.16 height restriction is necessary so as to ensure that appropriate heights are maintained, and through application of SEPP 1 flexibility is achieved so as not to hinder good planning opportunities without undermining the underlying planning principle of a two storey height restriction.

In conclusion, it is considered that the development is of scale and design that complements the locality without undue or unnecessary impact. Redevelopment of this area is likely to continue at a steady rate and developments such as that proposed will assist in ensuring that other future development will be of a like compatible form.

Clause 8 of the SEPP, as it relates to concurrence states that the matters to be taken into consideration in deciding whether concurrence should be granted includes the public benefit of maintaining the planning controls adopted by the environmental planning instrument. The objection is considered to have merit. The Development Assessment Unit recommends that the concurrence of the Minister administering the Environmental Planning and Assessment Act, 1979 be assumed in this instance.

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

SEPP 65 was gazetted in July 2002 and made provision that a consent authority is to take into account for all proposed residential development, as defined in Part 1 clause 3(1), including development applications not finally determined, the design quality principles contained in Part 2 section 6 through 18 of the Policy.

In accordance with the provisions of the SEPP the applicant has provided a Design Verification and 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 following table details the principles and requirements of the SEPP and provides comment in relation to the proposed development:

Table 1 - SEPP65 Principles

Principle	Requirement	Complies/variation
Context	New buildings will contribute to the quality and identity of the site	Complies through contemporary coastal design
Scale	The proposed bulk and height needs to achieve the scale identified for the desired future character of the area	Complies, refer to LEP and DCP 43 requirements
Built Form	Appropriate built form in terms of building alignments, proportions, building type and the manipulation of building elements	Complies, provides good articulation and modulation of building components
Density	Density appropriate for the site and its context in terms of floor space yields	Complies, provides lesser GFA than many similar developments
Resource Energy and water	Efficient use of natural resources energy and water through out its full life cycle including construction	Complies, refer to DCP 39 requirements
Landscape	Landscape design should optimise useability privacy and social opportunity equitable access and respect for neighbours amenity and provide for practical establishment and long term management	53m ² variation to the acceptable solution criteria of DCP 6 - considered satisfactory
Amenity	Provide amenity through the physical spatial and environmental quality of a development	Satisfactory
Safety and Security	Optimise safety and security both internal to the development and for the public domain	Complies, surveillance of the street is provided.

Social Dimensions	The development should optimise the provision of housing to suit the social mix and needs of the future community	Complies, development is of a standard for permanent occupation and provides for a mix of unit sizes.
Aesthetics	Aesthetics should respond to the environment and context and contribute to the desired future character of the area	Complies, the proposal is of a high standard and will improve the built form of Hungerford Lane / Moss Street.

State Environmental Planning Policy No. 71 – Coastal Protection

SEPP 71 was gazetted on 1 November 2002. 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 EPI's that would impact upon the assessment nor recommendation of this report.

(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.

Table 2 - DCP Compliance

Standard	Requirement	Complies/variation
On site car parking	1.5 per dwelling 25% for visitors = 8 spaces including 2 marked for visitors and 1 car wash bay	Complies.

Development Control Plan No.6 – Multi Dwelling Housing

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

Table 3 - DCP6 Compliance

Standard	Requirement	Variation/complies
Floor Space Ratio	0.5:1	0.75:1 recent approvals of development in the Kingscliff locality of a similar nature operate at approximately 1.3:1. The proposed development at 0.75:1 is considered a satisfactory design response.
Landscaped Area	360m ²	The proposed development provides for 307m ² which represents a 53m ² variation. If the 30% criteria were applied the requirement would be reduced to 212m ² . The proposed level of landscaping for is considered satisfactory having regard to the scale of the development and the provision of open space balcony areas.
Setbacks from street boundary	6.0m to Moss Street	The main building is setback a minimum of 6m from Moss Street with open balconies extending to 3.5m. The balconies are not strictly defined as open structures but having regard to their function, their potential impact and the benefit of requiring strict adherence to the building line policy, they are considered satisfactory.
Side setbacks	3.0m	The outer walls of the building is a minimum 3m from side boundaries. The sub level car park does extend upward to create a podium and stair way on the southeastern elevation. This area is proposed to be

Standard	Requirement	Variation/complies
		provided with privacy screens to protect internal and external units. The design is not uncommon with this type of development. The impact upon neighbouring amenity is not considered excessive or beyond that reasonably expected to be found with higher density living. The proposed development is considered satisfactory.
Front fences and walls	1.2m max if solid	The proposal does not include any new boundary fencing.
Building Envelope	45° from 3.5m high at the boundary	Plans submitted with the application illustrate compliance.
Car Wash Areas	1 required per 10 units.	The car wash bay is proposed at the ground level. Complies.

Development Control Plan No.39 – Energy Efficient Housing

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

Table 4 - DCP39 Compliance

Standard	Requirement	Proposal	Complies
Unit Energy rating	3.5 stars minimum	3.5-4 stars	YES

The proposed development complies with the requirements of DCP39.

Development Control Plan No.43 – Kingscliff

1. The precinct objectives of the Kingscliff Hill Precinct specifies, among others, that:
 - Ensure that development on visually prominent sites is relatively unobtrusive.

The proposed development is of a contemporary architectural style that represents its coastal context. It is generally in keeping with the development styles in the Kingscliff area and is not considered to significantly impact on the amenity of the area. Having regard to the lands medium density zoning the development is considered relatively unobtrusive.

2. Section 8 of the DCP provides the types of building design that is considered best suited to the identified precincts within the plan. The subject land is identified as having to provide a 'Type 5 Building'. These buildings are two storey in height. The DCP description states:

The type 5 building caters for residential development in the Kingscliff Hill area. The building steps down the slope of the land, such that it is no more than 2 storeys at any one point. Generally, the building should minimise obstruction of views and minimise impact on the natural features of the site. Parking can be provided underneath or to the side of the dwelling, with laneway access where available.

Without compromising the objectives of the type 5 building it is critical to note that the objective makes reference to a dwelling only. The proposed development is five dwellings in a stacked configuration. As discussed previously in this report, maintaining the two-storey height limit would result in the loss of two units. The proposed development whilst providing a third storey component does not obliterate views from surrounding properties. It is recognised that the views from the area are highly sought after and extremely marketable. It should be noted however that whilst the development does allow for view sharing it also comprises an unrestricted site. It could not be reasonably expected that constrained properties or units, those without primary access to views such as rear or side properties, would maintain unrestricted views over a property that is zoned for multi dwelling housing and where a reasonable scale of development is proposed. A significant area of the car park is below the existing natural ground surface and the building presents as two storey to the street. The development is considered to satisfactorily attain the provisions of the DCP.

Development Control Plan No.47 – Cut & Fill

The application is accompanied with preliminary geotechnical and stormwater management details. Council's Infrastructure Engineer, Development Engineer, Building Surveyor and Environmental Health Officer have assessed the application and raise no objection subject to conditions of consent.

Development Control Plan No. 48 – Tweed Coast Building Heights

The Aim of the DCP is to protect the established and future character of the Tweed Coast by:

- Providing guidelines on building height;
- Providing guidelines on building setbacks; and
- Providing guidelines for the design and use of rooftops.

The objectives of this DCP are to:

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

The requirements for the proposed development in relation to DCP 48 are assessed in the following table:

Table 5 - DCP48 Compliance

Standard	Requirement	Variation/complies
Development Context	Submit a detailed site analysis indicating opportunities and constraints	The application was accompanied by detailed analysis, which has enabled a thorough assessment of the application. <u>Complies</u>
Building Height	3 Storey Residential Development maximum height 9 metres with a further 2 metres allowed for roof structures.	<u>Complies</u>
Building Setbacks	Minimum Front Setback 6m	<u>Complies</u>
	Secondary Frontage minimum 3m	<u>N/A</u>
	Minimum Side & Rear Setbacks 3m	Main Walls Comply Balcony encroachments to 1500mm. As discussed under DCP 6 the podium level encroaches into the 3m setback. <u>Satisfactory</u>

Standard	Requirement	Variation/complies
Building Envelope	Project a 3.5m vertical line up from the property boundary and then at 45 degrees to the maximum height of the building.	<u>Complies</u>
Roof Design	Avoid unbroken roof or eaves (maximum 10 metres), use non reflective materials, screen ancillary structures and encourage solar efficiency.	The proposed roof design is considered modern and attractive. <u>Satisfactory</u>

The proposed development generally complies with the objectives of the DCP. The development is considered to be consistent with surrounding development and reasonable given the design and location of the building.

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.

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

Satisfactory.

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

Compatibility with Adjoining Land Uses

The surrounding development varies between single storey dwellings and three storey residential flat buildings.

The area is undergoing a gradual transition from low density to medium density living. The proposed development is consistent with the transition and the emerging housing designs in the locality.

Natural environment

The site is located adjacent to the estuary and provides exceptional views from the site and the site is itself of note when looking back across the creek. The proposed development provides a satisfactory level of landscaping that assists in maintaining the existing level of site amenity. This is based on the present level, which having regard to the condition of the sites existing improvements, is not that significant. The proposed development will improve the appearance of the site and positively contribute to the character of the area.

View Loss

The proposed development is considered to respect adjoining properties as far as practical. Whilst it is acknowledged that some views will be lost to neighbouring properties a reasonable level of view sharing does exist.

Overshadowing

The application is accompanied with shadow diagrams. It is concluded that varying levels of shadow will impact on neighbouring properties at different times of the day. The level of overshadowing having regard to the scale of the development, its site context and the existing planning controls is not considered excessive. The lands orientation dictates that early morning shadow will occur to the south-southwest but will predominantly occur internally and to the property to the east later in the day. It should be noted that early morning sun because of the low elevation will cast a long shadow but as the sun's elevation increases, reaching its maximum around 12.30pm, the shadow cast gets shorter. The general impact on the neighbouring south-western property is not considered to warrant amendment to the proposed development.

(c) Suitability of the site for the development

The site is considered suitable for the proposed development.

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

The application was publicly notified for a period of fourteen days from 27 October to 10 November 2004. Seven public submissions were received. The issues raised include:

- Non compliance with the 2-storey height limit
- Impact on property values
- Traffic and parking

- Stormwater
- Overshadowing
- Insufficient plan detail
- Loss of views
- Lack of details on submitted plans

These issues have been considered in the assessment of the subject application. Whilst the issues are not without some foundation they are not considered to be sufficient to warrant refusal of the application. The following table provides a response to the issues raised.

Table 6 - Issues raised in public submission.

OBJECTION	IMPACT ASSESSMENT	COMMENT
Proposal exceeds the 2-storey height limit.	The application is supported with a SEPP 1 objection that is considered well founded in justifying the variation sought. The SEPP 1 is addressed in this report.	Does not warrant amendment or refusal of application.
The proposal will act as a precedence for future like development.	If precedence were to be considered as a variable of noticeable weight the existing buildings in the locality would likely have far greater impact. The proposed development comprises a relatively confined area of non-compliance that will not significantly impact on the cumulative affect of all localised buildings that are greater than 2-storey.	Does not warrant amendment or refusal of application.
The application did not address the draft SEPP 1	The application has been amended with several addendums that included reference to the draft SEPP. The draft SEPP is not known to be imminent in its implementation or gazettal and as such compliance with the SEPP does not pose determining weight.	Does not warrant amendment or refusal of application
The proposal is based on greed.	The development yield at five units is not excessive having regard to the land size. This is reflected in the low gross floor area calculation of 0.75:1, compared to similar developments in the Kingscliff locality that operate at approximately 1.3:1.	Does not warrant amendment or refusal of application
The proposal is inconsistent with DCP 43 - Kingscliff	The DCP is discussed in this report. It is considered that the proposed development attains a satisfactory level of attainment with the relevant provisions.	Does not warrant amendment or refusal of application
Loss of views.	The proposed development is identified, by definition, as fundamentally two-storey. The building has been designed to maximise the available opportunities afforded to the site without unnecessarily impacting neighbouring	Does not warrant amendment or refusal of application

OBJECTION	IMPACT ASSESSMENT	COMMENT
	properties. It is considered that the building is a reasonable design response having regard the land-use zoning and constraints of the site. Varying levels of view sharing will exist to neighbouring properties.	
Increased traffic impact on the already burdened Hungerford Lane.	Hungerford Lane has been identified as having the capacity to cater for the increase in vehicle traffic generated by the redevelopment of existing land parcels. Whilst it is noted that the traffic issue does occur periodically, it is often the result of inappropriate parking. Council's Traffic Engineer has advised that appropriate signage may be employed in the near future. The proposed development will not significantly contribute to traffic in the laneway and provides the required off-street car parking.	Does not warrant amendment or refusal of application
The application plans were not dimensioned.	The submitted plans would have benefited from more detailed annotation however, as the plans were appropriately scaled measurements of building height and the like were readily obtainable. The submitted development plans are considered satisfactory for assessment purposes. It is considered that a satisfactory level of information was made available for any interested party to form an informed view of the proposal. In relation to omission of floor plans in the advertising material it should be noted that except in specified circumstances, e.g. designated development, Councils' are bound by legislation not to provide internal floor plans.	Does not warrant amendment or refusal of application
Impact on property values.	There is no evidentiary material that supports the suggestion that the proposed development will adversely impact on neighbouring property values.	Does not warrant amendment or refusal of application
Stormwater drainage	Council's Development Engineer has reviewed both the stormwater and sewer drainage of the site. No objections or issues were raised. A condition of any approval is the requirement for the proponent to seek approval for such works through a Section 68 (LGA) application. Preliminary designs indicate that drainage can be effectively managed.	Does not warrant amendment or refusal of application

(e) Public interest

Having regard to the matters raised in this report the proposed development is not considered contrary to the public interest.

OPTIONS:

1. Approve the application in accordance with recommendations of this report.
2. Refuse the application and provide reasons for refusal.
3. Defer the application and provide reason for doing so.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be dissatisfied with the determination, avenues are available through the NSW Land and Environment Court for a merit based appeal. Financial implications would be incurred in any legal proceedings.

POLICY IMPLICATIONS:

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

CONCLUSION:

Having considered the matters raised in this report it is concluded that the development standard applying to the site is unreasonable in the circumstances of the case. The SEPP 1 objection should be supported and the application approved subject to consent conditions.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

7 [PE] Development Application DA04/0858 for a 5 Unit Residential Development in 6 Storeys at Lot 106 DP 237806, No. 6 Ivory Crescent, Tweed Heads

ORIGIN:

Development Assessment

FILE NO: DA04/0858 Pt1

SUMMARY OF REPORT:

Council is in receipt of an application for a multi unit development at 6 Ivory Crescent, Tweed Heads. The development comprises the demolition of an existing dwelling and the construction of a 6-storey residential flat building comprising of 5 units with a basement car parking level providing on site parking for a minimum of 8 vehicles.

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

The application incorporates minor encroachments into the building envelope, presents overshadowing to adjoining property to the south, and raises privacy concerns for some adjoining residences. However, despite these issues the application is considered to warrant a recommendation for approval on the architectural merits of the building and having regard to the high-density land-use controls in this area.

The application attracted 6 public submissions.

RECOMMENDATION:

That: -

- 1. Council notes that a contribution plan is under preparation for the public infrastructure to implement the Tweed Heads Master Plan.**
- 2. Council generally supports the application and refers it to the Director Planning & Environment to negotiate a contribution of \$2,000 per unit under a voluntary agreement for public infrastructure identified in the Tweed Heads Master Plan.**
- 3. The approval be issued by the Director Planning & Environment under delegation in accordance with the recommended conditions in this report.**

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REPORT:

Applicant: Pat Twohill Designs Pty Ltd
Owner: Mr PA Twohill and Mrs KA Twohill
Location: Lot 106 DP 237806, No. 6 Ivory Crescent, Tweed Heads
Zoning: 2(b) Medium Density Residential
Cost: \$1,700,000

BACKGROUND:

Council is in receipt of a development application that seeks to construct a multi dwelling housing development comprising of five units over six (6) residential floors and a basement level car park. Levels 1 to 4 comprise one unit per level, with the fifth unit consisting of Levels 5, 6 and the roof level. The proposed building is a combination of rendered block work, with glass balustrades and metal cladding.

The site is described as Lot 106 DP237806 No. 6 Ivory Crescent, Tweed Heads. The total site area is 720.8m². The development site is rectangular in shape with a depth of approximately 39.6m and an approximate width of 18.3m. Existing site improvements comprise a single storey brick dwelling, swimming pool and garden shed, which are proposed to be demolished. Vegetation on the site is limited to domestic gardens, several fruit trees and lawns associated with the existing building. There is no other significant vegetation on site.

The Tweed River is located approximately 105m to the east of the site, while Centro Tweed (Tweed Mall Shopping Centre), Tweed Heads Bowls Club, the Tweed Heads Civic Centre, Tweed Heads Hospital and Tweed Heads main street (Wharf Street) are all located within a 400m radius.

The immediate locality surrounding the subject site is essentially residential in character, with a mixture of older two and three storey unit developments as well as single dwellings. The property adjoining the northern boundary consists of a single storey dwelling, with the southern adjoining property consisting of a two-storey dwelling. The local area is undergoing a period of transition, with newer residential projects replacing the older style of development. The adjoining property to the west comprises of a six storey residential development ("Ivory Place") completed in 2003, containing 17 units. The north side of Ivory Crescent is also dominated by a six storey residential building ("Waterline"), which was completed in 2004 and contains 21 units. The proposed development complements these existing developments.

The Proposal

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

Basement

Car parking for 8 vehicles, enclosed private storage areas, a wine cellar, a water storage tank (water recycling purposes) and plant rooms.

Level 1

Level 1 comprises 1 x three (3) bedrooms plus study, with a floor area of 199.6m². The unit design incorporates a private spa and large front deck area. This level also includes the lift lobby, car wash bay, courtyards and associated swimming pool and landscaping.

Levels 2 - 4

Each level supports 1 x three (3) bedroom units plus study, having a combined floor area of 201.1m² per level. Each unit has a private spa on the northern side of the development and large front deck area looking east to the river.

Levels 5 & 6

These two levels are combined to incorporate a four (4) bedroom unit, having a combined floor area of 263.1m². Access between the two levels is via internal stairs, with the lift terminating at level 5. Level 5 has a large living area, spa, pool and deck area. Level 6 incorporates the main bedroom, kitchen and dining / lounge area.

Roof Level

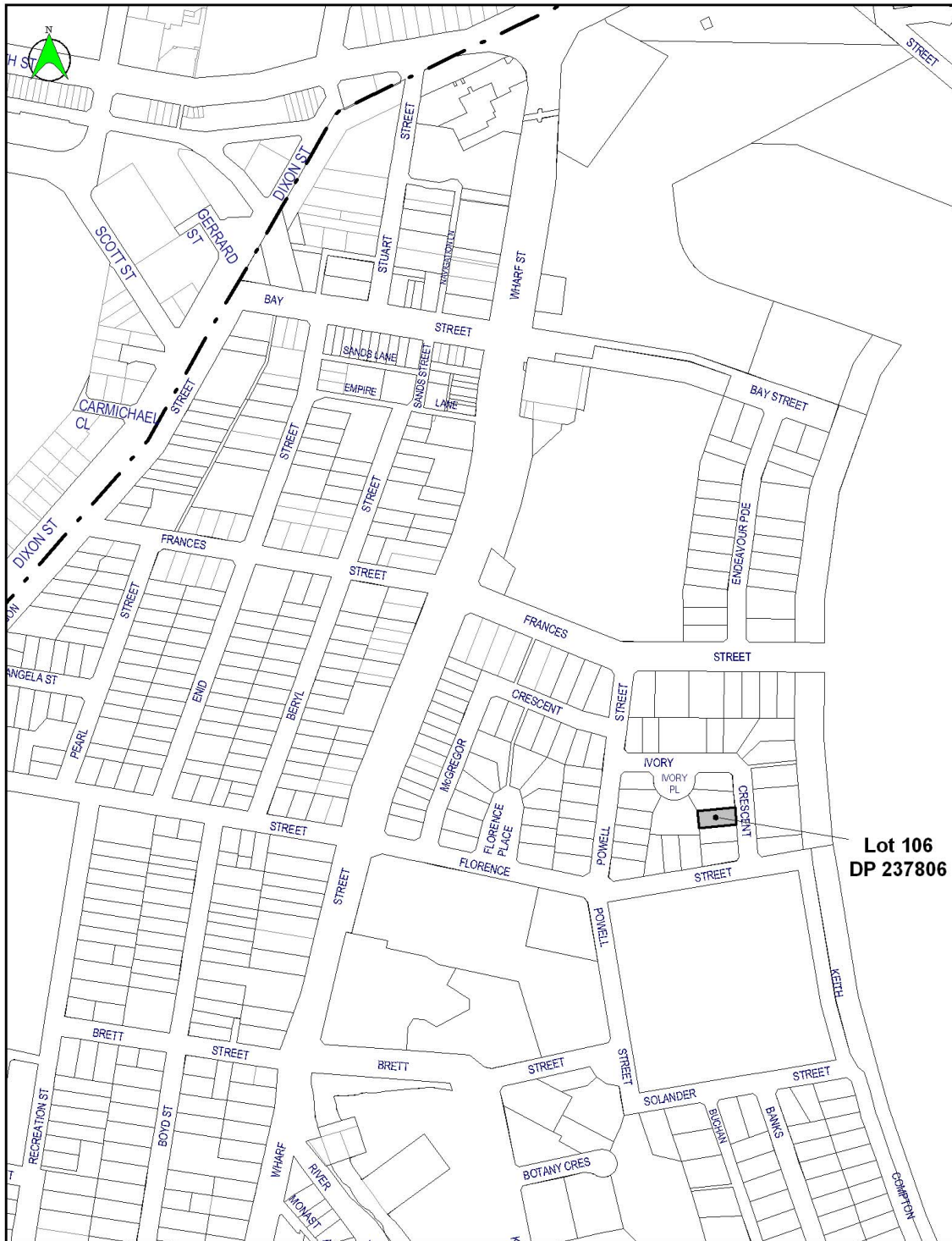
The private roof terrace incorporates an observation deck, roof garden and solar panels. Access to the roof is via a set of external spiral stairs located on the front deck of Level 5.

The proposed development is an innovative and contemporary design with strong articulation, effective utilisation of a combination of materials and the inclusion of cantilevered balconies, shaded verandah space, variation in cladding materials and a vegetated roof terrace at the uppermost level. Environmental features include: storage of roof water for reuse on the site; roof top solar panels for possible electricity generation; Reticulated natural gas for hot water heating, pool heating and cooking; and sun shading devices to reduce heat gain, as well as aid external aesthetics.

Given the narrow width of the subject site, the provision of only one unit per level allows solar access, cross ventilation and views to be maximised. The living areas for each unit is located at the front of the site, while the bedrooms are at the rear, in order to minimise any privacy issues with adjoining allotments. Privacy screens and landscaping have also been utilised for this reason.

Building setbacks are designed to be largely compliant, increasing from a nominal 3 metres (from the outer walls of the building) at first floor level to approximately 5.3 metres at level 5 and approximately 6.3 metres at level 6. Various sized balconies have been provided to the units. The front deck areas on each level are capable of providing a reasonable level of functionality, with the remainder of balcony areas providing for a more passive and design element role. Visual treatment measures include the use of a variety of textures and colours. Façades are stepped with height and further articulated and highlighted by the use of contrasting colours. The service core is cleverly screened by the use of metal cladding as a sculptural feature on the southern face of the building. Access between all levels within the building is available by both an external staircase and lift. Security for the proposal is provided by way of security intercom system.

SITE DIAGRAM:



Lot 106
DP 237806

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Tweed Shire Council
Lot 106 DP 237806
No. 6 Ivory Crescent, Tweed Heads



STRATEGIC
PLANNING UNIT
Site Plan

File: N:\MapInfo 7...A4P Site Plan.Wor Author: J.Batchelor Date: 7/June/2005 Scale: 1:5,000 Sheet: 1 of 1

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

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

Tweed Local Environmental Plan 2000

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

The proposed development is considered to be consistent with the zone objectives.

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

Clause 16 of the LEP ensures development is undertaken in accordance with the building height plan. The subject land is identified as being limited to a six-storey height limit. The proposed development complies with the height limitation for the site. The development is for a basement and six stories, with a roof level that incorporates an observation deck and roof garden.

Clause 17 of the LEP requires social impact assessments for development where it is considered that the development may result in a social impact. Being only a five unit proposal, the development does not fall into a category under Development Control Plan No. 45 – Socio-Economic Impact Assessment. As such, the proposed development does not necessitate further assessment in relation to socio economic impacts.

Clause 35 of the LEP requires acid sulfate soils management in relation to development where such is likely to be impacted upon. The applicant has provided an acid sulfate soils management plan in relation to the proposed development. Council's Environment and Health unit have assessed the management plan and provided relevant conditions of consent.

North Coast Regional Environmental Plan 1988

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

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

Clause 43 of NCREP 1988 provides that the consent authority shall consider density, environmental constraints, and road widths.

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

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

State Environmental Planning Policies

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

The applicant has submitted a Design Verification and statement addressing the 10 design principles under SEPP65. The following comments are provided on these design principles.

Context and Built Form

The development is considered to be consistent with the desired future character of the area as stated under DCP 18, Tweed Strategy 2000+, and the Tweed Heads Town Centre Master Plan. The context can be defined as the key natural and built features of an area. Responding to context involves the identification of desirable elements of the current as well as the future character, as defined in present planning and design codes. The local precinct, in this instance, is characterised by numerous medium density developments, with a mix of remaining undeveloped parcels or older buildings. Market pressure and availability of lightweight and alternative forms of construction are forcing and shaping the re-development of many existing properties. The proposal is contemporary in design and generally complies with the planning codes applying to this site, in particular DCP 18, which provides the basis for achieving the desired future character of the Tweed Heads area. In this regard the proposed development is considered to be in context with the future desired character and to varying degrees the existing character of the area.

Scale and Density

It is recognised that the proposed building is inconsistent with the scale and form of some of the neighbouring developments. Notwithstanding that some impacts will occur as a result of the development, the proposed building given the size of the land and the six storey height limit is suitable in terms of bulk and scale. The development is within the height limit and incorporates a design emphasis on articulation to assist in minimising scale. Density is maximised at 5 units given the size of the allotment. General compliance with the building height limits results in a design that is consistent with the medium density planning controls applicable to the site and a building that is appropriate in terms of scale and density.

Resource Energy and Water

The applicant has submitted a NatHERS Certificate demonstrating that the development complies in terms of energy efficiency. Each unit has adequate to good solar access provided to the living areas. Water usage is reduced by the use of the basement storage of stormwater for toilet flushing, landscaping and car washing purposes. The proposed development also includes the installation of hidden solar panels on the rooftop to generate power for the building.

Landscaping

Submitted landscaping plans indicate that the development will be suitably landscaped at ground level and on the podium with native trees and shrubs, to satisfy the provisions of DCP 18. At roof level, planter boxes along the rear of the roof deck will be planted with fruit trees and vegetables for the private use by Unit 5. Additionally, the development incorporates a common recreational area, which includes a pool, and deck areas. Appropriate conditions of consent have been imposed to ensure that landscaping will be completed prior to occupation of the development.

Amenity

Neighbouring residences have raised concern that the proposal will adversely overshadow the adjoining property to the south, which has a two-storey dwelling, and will result in privacy and amenity impacts.

The applicant has supplied shadow projection plans depicting the proposed shadow over a cadastral plan of the immediate locality to demonstrate the extent of the shadow. The plans indicate that the shadow from the proposed development would affect the dwelling to the south after 9.00am mid winter. Given the orientation of the site and the height limits permitted, this impact is considered to be unavoidable. This property, and other surrounding allotments would not be affected in summer.

To reduce the level of shadow significantly the building would also need to be significantly reduced. To reach a level of overshadowing that may be considered acceptable would almost certainly result in a development that under utilises the site and one that would not achieve the planning objectives for this and surrounding sites. On a cumulative basis this would undermine the purpose of the Tweed LEP, adopted DCP's and the Tweed Heads Master Plan.

In determining whether the subject application unreasonably impacts upon the amenity of the adjoining properties Council must consider the intended character of the area. The area is a nominated medium density area with a six-storey height limitation. The amenity of one or two properties must be weighed up against the future development objectives and potential of the subject property and impact on future development in the locality.

Having regard to the applicable planning controls and the desired future urban form of the area it is considered the proposal does not unreasonably detract from the amenity of this area. In terms of privacy, the architect has submitted that the proposed building offers a number of design elements to ensure appropriate amenity for residents and neighbours through orientation and siting of the building. A key element of the design is the orientation focus of the private open space functional areas which have been oriented toward the Ivory Crescent frontage where possible.

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

Safety and Security

Proposed development includes the following measures for safety and security.

- Each units fronts Ivory Crescent, thereby providing adequate means for casual surveillance of the street from units;
- Access into the building will be by way of an intercom device to screen visitors;
- Security access into the car park; and
- An easily recognisable and visible direct pedestrian access;

Social Dimension

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

Aesthetics

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

The overall aesthetics of the building provide a desirable modern development, which is in keeping with the future character of the surrounding area. It is considered that the proposed building will be prominent, however the height and scale of the building will be offset by good urban design and articulation.

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.

Tweed Heads Town Centre Master Plan

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

The subject site is located in the Riverside High Density Residential precinct and is restricted to a 6-storey height limit in accordance with the Plan. The Plan specifically nominates secondary streets such as Ivory Crescent to be traffic calmed and established as shared zones with equal priority for vehicles and pedestrians. The architecture is encouraged to maximize view sharing of the river and Letitia Spit with the use of large balconies and terraces.

The proposed design of the subject development clearly complies with all aspects of the Master Plan. The building reflects a character of outdoor living, with significant balcony spaces, and all elevations having strong vertical and horizontal articulation.

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

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

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

The principal development control plans governing the proposed development are DCP 2 & 18. The level of compliance with the design parameters of the DCP's is identified below.

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

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

Table 1 - Car parking analysis

Standard	Requirement	Complies/variation
On site Car Parking	1.5 per dwelling (25% for visitors) = 7.5 spaces with 1.88 marked for visitors	<p>The basement includes 8 car parking spaces. This allows for each unit to have one exclusive space with 2 visitor car parking spaces</p> <p>This complies with the requirements of DCP 2. However, two unburdened spaces in the basement will need to be marked as visitor car parking spaces and maintained accordingly.</p>

The proposed development is considered to comply with DCP 2 (subject to the recommended conditions of consent) and ensures that there is adequate parking on site for each unit and visitors. It is noted that Units 4 and 5 have the opportunity for further informal parking, via tandem length spaces and the Unit 5 space capable of yet another space due to its width.

A single access driveway is proposed, in approximately the same location as the existing access driveway. Only a narrow driveway ramp to the basement parking area is proposed, which does not allow two-way traffic movement. Council's Transport and Traffic Engineer has assessed the application and considers this to be adequate in such a low traffic situation. However, modification to the front section of the driveway is required, in accordance with AS2890.1. The first 6m of the driveway is to be widened to 5.5m, as a clear line of sight is not available at the bottom of the ramp. Conditions of consent will also restrict the height of any side boundary retaining wall or front boundary feature block work wall within 2m of the driveway to 600mm in height.

Development Control Plan No. 5 – Development of Flood Liable Land

The subject site is flood liable, with a minimum existing ground level of approximately RL 2.50m AHD at the street frontage, which is below the adopted design level for Tweed Heads of RL 2.65m AHD. Development Control Plan No. 5 – Development of Flood Liable Land requires the site to be filled to the design flood height. The applicant had not intended to fill any portion of the land, and has the pool deck at RL 2.50m AHD. This should be raised 150mm to meet the DCP requirements. Architectural plans for the development have the driveway graded to a maximum level of RL 3.15m AHD, which provides the required 500mm protection above the design flood level for the basement level car park. Council's Engineering Services have assessed the proposal and have provided the appropriate conditions.

With these conditions the proposed development will comply with DCP 5 requirements.

Development Control Plan No.18 – Tweed Heads

The subject land is within the Tweed River Precinct, which is identified as a High Density Residential Precinct. The objectives for this precinct are:

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

The proposed development is considered to be generally consistent with the objectives of the precinct. The proposed development has been assessed under the following matters relevant in DCP No.18.

Building Envelope

The building envelope for the subject land is a 72 degrees projection from the property boundary. This is to ensure the building is setback 1 metre from the boundary for every 3 metres of the building height.

The proposed development complies with the building envelope to the Ivory Crescent frontage. The building encroaches into the building envelope at the rear, this being the upper part of the balcony on level 5. The side boundaries are encroached upon from level 4 to 6. The rear balcony roof provides shade to Unit 5 from the western sun to reduce energy consumption and does not detrimentally impact upon any adjoining properties. The lift/stair encroachment on the southern elevation of the building is a sculptural feature to improve the visual appearance of the development by screening the service core and does not increase the overshadowing of the adjoining property. The Unit 4 sunroom encroaches the northern building envelope by approximately 1.4m. This is not considered to increase the level of overshadowing upon any adjoining properties. Other encroachments involve relatively minor protrusions of sun/privacy shades on the upper levels in order to improve the energy efficiency of the building.

These encroachments are not considered to be significant and the resultant impact to adjoining properties by way of over shadowing is not considered to be such to warrant refusal of the proposal. The encroachments are features that provide a high level of architectural design.

Building Mass

The development control plan requires development to have indentations and there must be a clear break in the building line.

The proposed development achieves various areas of indentation over the building elevations through the use of varying depths and balconies. The eastern façade of the building includes a variety of textures, colours and finishes to provide visual interest.

It is considered that the proposed design is generally consistent with the provisions of DCP 18 in relation to building mass.

Energy Efficiency

As each unit extends for the full building length and ventilation is provided through the use of window and door configuration to allow air movement for the depth of each unit. All of the apartments have the benefit of balconies which are located to provide cross ventilation.

The proposed design includes living areas for each unit, which face north and provide daylight penetration. The development has been accompanied by NatHERS certification that each unit complies with the minimum energy efficiency requirements.

Wind Mitigation and Overshadowing

To prevent impacts of down draft the proposed development incorporates deep balconies, privacy screens and a landscaped podium. The building is setback a minimum of 4 metres from the western elevation being the rear of the allotment and 3 metres at the closest point from the southern elevation, with the majority of the building being setback 4.3 metres. These setbacks will help minimise any potential down draft problems associated with tall buildings.

The proposed building does not result in the over shadowing of any public reserves. The applicant has submitted shadow diagrams which detail that the summer shadow is predominantly to the public street and is not considered to be impacting on adjoining properties in the summer. The winter shadow cast at 9.00am does extend past the property and impacts on the property to the south. The applicant has noted that this impact is unavoidable given the orientation of the land and the height limits permitted.

Roof Lines

DCP 18 encourages imaginative rooflines. The proposed development is unique in design and would be a feature in the local streetscape. The design has concealed the lift over run, incorporates a roof top garden and uses glass balustrades around the perimeter of the roof level.

Privacy

Visual privacy between developments is encouraged in DCP 18. A high degree of privacy between units has been achieved as there is only one unit per level and the proposed balconies are directly above one another.

Horizontal privacy screens are proposed on upper levels of the development to avoid overlooking and planter boxes are proposed along the boundaries to provide mutual privacy. The western deck areas on each level will have louvre screens for privacy and sun screening purposes. The living areas and balconies are sited towards the front of the site and the public street so as not to impact on the privacy of the existing neighbouring buildings.

It is considered that the design has achieved a relatively high level of privacy to adjoining developments.

Security

The proposed development achieves surveillance of the street and security through the design being orientated to the public street. Public access to the building is clearly defined by a ramped access from the street to the lobby entrance, which would be well lit. The proposed basement will be provided with a security entry system. Access from the basement to the various levels within the building is also controlled through the security system. This will not prevent the use of the basement by visitors rather control the use of the basement through the intercom system.

Materials and Colours

The proposed development has incorporated graduations of whites and lighter greys, with the use of contrasting colours to articulate the façade. The southern elevation will incorporate a section of metal cladding as a sculptural feature, acting as a screen to the service core.

Access and Parking

Access to the basement level parking is off Ivory Crescent. The proposed development provides the minimum requirements in terms of vehicle spaces, including visitor parking and complies with the provisions of DCP 2.

Car Wash Areas

The proposed development provides a car wash area within the front 6m setback area.

Open Space and Balconies

The minimum landscaping requirement is 25m² per dwelling i.e. 125m² in total. The area of ground level landscaped open space has been calculated as approximately 240m². Each unit has a front deck area that exceeds 30m² and is accessible from living areas. The proposed development meets the open space requirements of DCP 18.

Conclusion

The proposed development is of a relatively high design and complies with the requirements of DCP 18.

Development Control Plan No. 39 – Energy Smart Homes Policy

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

Table 2 – Energy Performance Ratings

Standard	Requirement	Proposal	Complies
Unit Energy rating	3.5 stars minimum	Units 1- 5 = 3.5 stars	YES

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

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

NSW Coastal Policy

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

Demolition

There is an existing dwelling located on the subject site. Part of the development application involves the demolition of this dwelling. The applicant has lodged a demolition work plan, to the satisfaction of Council's Building Services Unit. Appropriate conditions will be applied in relation to the demolition.

(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 impacts of the proposed development on the natural environment are relatively minor. The site is in an existing urban area and contains no natural stands of vegetation or natural landscape features.

The impacts of the proposed development to the built environment have been assessed as part of the DCP 18 assessment. The proposal will be replacing an existing single storey dwelling, however the area has been identified for six-storey development in Council's Tweed Local Environmental Plan 2000. These changes in the built environment will come at a cost to residents who wish to maintain the detached dwelling character of the area.

However it is noted from site inspection that there are a number of apartment buildings in the immediate vicinity of the subject land and the character of the neighbourhood is changing.

(c) Suitability of the site for the development

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

Dewatering

The proposed development requires dewatering for the construction of the basement level. As such, the proposal is considered to be integrated development and a copy of the application was forwarded to the Department of Infrastructure, Planning and Natural Resources for approval. DIPNR have provided relevant conditions of consent.

Acid Sulfate Soils

Council's GIS has identified the subject site as having Class 2 Acid Sulfate Soils. It is believed that the proposed development will extend below the depth of fill that was originally placed across Greenbank Island. Therefore, it is expected that the original soil below the fill material may be encountered. The applicant has subsequently provided an Acid Sulfate Soils and Dewatering Management Plan. Council's Environment and Health Services Unit have assessed the proposal and have provided the appropriate conditions.

Pre-demolition Testing

Council requires the applicant to determine the existence of possible contaminations of the sub-slab fill material of the two existing dwellings, prior to the determination of the application. The applicant has provided the results of testing of soil samples from the subject site. These results conclude that the soil below the concrete slab of the existing dwelling does was not treated with organochlorine pesticides at the time of construction and no further testing is required. Council's Environment and Health Services Unit have assessed the report with no objections raised.

Stormwater Drainage

The site is generally flat and grades towards the Ivory Crescent frontage, with stormwater being currently discharged to the kerb and gutter along this frontage. As the proposed development will increase the impervious area of the site, the applicant has proposed to install a 50,000L stormwater collection tank for re-use. This water is intended for use in toilets, clothes washing, landscaping, irrigation and car washing. Council's Infrastructure Engineer has assessed the proposed stormwater management plan. Although a great deal more detail will be required for the construction certificate application, the overall concept regarding the stormwater collection tank is acceptable. Appropriate conditions of consent have been provided.

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

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

Table 3 – Public Submission Issues

Issue	Comment	Assessment
Over development and bulk	A 6-storey building will be an overdevelopment given the size of the allotment. The style of development is bold and not in keeping with the locality.	The proposed development is considered to generally comply with the setback and building envelope provisions of DCP 18. A 3-storey building would most likely have a greater site cover and not reduce the bulk. The applicant has proposed a bold external appearance in order to provide some diversity in built form. The proposal does not warrant refusal on this issue.
Shadow impact	Questioning the accuracy of the summer shadow diagrams. Concern over the shadow impact to the adjoining property to south during winter.	The shadow diagrams were produced by a high quality architectural programme, which indicates that the proposal will not affect any adjoining properties in summer. Overshadow impact has been addressed in the report.
Privacy	Concern over loss of privacy even with the proposed screens.	The proposal includes privacy screens on each upper level and landscaped planter boxes along the boundaries to minimise privacy concerns. The applicant has noted that the living areas of the adjoining dwellings are offset from the boundary and face away from the proposed development. The proposal does not warrant refusal on this issue.
Community consultation	Concern over lack of consultation with adjoining owners.	The applicant has discussed the development with the adjoining owner on many occasions and provided sketches prior to lodgement. No requirement to hold an information evening for the whole neighbourhood. The proposal does not warrant refusal on this issue.
Sight distance and safety	Concern over lack of sight distance from the	The proposed wall will not be any greater than the existing

Issue	Comment	Assessment
	existing driveway on adjoining property to south due to the proposed driveway wall and safety risks for pedestrians as well as vehicles.	boundary wall. The applicant has since discussed the issue with the adjoining owner. Relevant conditions of consent will be imposed to ensure that the proposal complies with DCP 2 and Australian Standards. The proposal does not warrant refusal on this issue.
Loss of amenity and privacy	Concern over loss of amenity and privacy to northern adjoining property.	As noted above, the applicant has endeavoured to design the building so that any impact upon amenity or privacy is minimised, including the use of privacy screens for upper levels, landscaped planter boxes at the podium level and living areas of each unit to the front of the site. The proposal does not warrant refusal on this issue.
Location of pool	A query as to whether the pool is at ground level or podium level.	The applicant has confirmed that the proposed pool is at ground level, with a 1.2m high fence along the northern boundary. Council's Engineering Services require the pool level to be increased to RL 2.65m AHD.
Building Envelope encroachments	Concern over potential impact from building envelope encroachments on the northern side of the development.	Building Envelope encroachments have been addressed in the report.
Vehicle parking	Concern over lack of street parking available and further impact from the proposal.	The proposed development complies with the car parking requirements of DCP 2. The applicant has noted that there is a lack of street parking in this locality due to a large number of driveways from surrounding developments. The proposal does not warrant refusal on this issue.

(e) Public interest

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

DRAFT CONDITIONS OF CONSENT

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects prepared by Jim Glazebrook & Associates Pty Ltd and dated July 2004 and Plan Nos 6IC/DA/01, 6IC/DA/02, 6IC/DA/03, 6IC/DA/04, 6IC/DA/05, 6IC/DA/06, 6IC/DA/07, 6IC/DA/08, 6IC/DA/09 and 6IC/DA/10 prepared by Pat Twohill Designs Pty Limited and dated 29/6/04, except where varied by these conditions.
2. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within the subject property. [GEN0010]
3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia. [GEN0030]
4. The erection of a building in accordance with a development consent must not be commenced until: [GEN0120]
 - (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
 - (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - (b1) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - (b2) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.
5. No roofing or shade structure shall be permitted on the roof level. [GEN0150]
[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

[PCC0010]

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

- a. Tweed Road Contribution Plan: \$2,576
S94 Plan No. 4 (Version 4.0)
Sector1_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:

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

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): 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	\$309
f.	Emergency Facilities (Surf Lifesaving) (REMSHIRE) S94 Plan No. 16	\$539
g.	Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$963.05
h.	Cycleways S94 Plan No. 22	\$365
i.	Regional Open Space (Structured) S94 Plan No. 26	\$2,668
j.	Regional Open Space (Casual) S94 Plan No. 26	\$499

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. [PCC0050/PSC0005]

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

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

Water: 2.75 ET @ \$4325 \$11,894
Sewer: 2.75 ET @ \$3490 \$9,598

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

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

- [PCC0070/PSC0004]
9. The site is to be filled to a minimum of RL 2.65m AHD. This includes the pool decking. The filling is to be retained by perimeter structural walls with concrete lined perimeter drainage, or other approved treatment, to a design submitted to and approved by the Director, Engineering & Operations prior to the release of the Construction Certificate. The filling plan of the site is to address the drainage on the site as well as any existing stormwater flows onto or through the site and the likely impact on stormwater drainage in the locality from the proposed filling.
- [PCC0100]
10. The minimum habitable floor level for the development is RL 2.95m AHD.
11. The basement car parking is to be protected against the inflow of water to a level of 500mm above the design flood level of RL 2.65m AHD. This is relevant to any stairwell entry to the basement carpark area also. A detailed design of the basement stormwater pump out system is to be provided and designed for a storm event with a 10 year average return interval (ARI 10). The consequences of pump failure and the 100 year ARI storm event must be addressed and included with the above details prior to the issue of a Construction Certificate.
- [PCC0110]
12. Details from a Structural Engineer are to be submitted to the Principal Certifying Authority for approval for all retaining walls, shoring, ground anchors and support of adjoining properties, as a requirement of basement car parking excavation, prior to the issue of a construction certificate. If ground anchors are to be used under adjoining properties, written owners consent must be obtained. If ground anchors are to be installed into the road reserve, appropriate applications are to be submitted and fees paid prior to installation.
- [PCC0170]
13. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.
- [PCC0190]
14. Driveway access design must clearly show the existing electric light pole at the front of the site, and how it is intended to avoid conflict with it. Minor relocation of the driveway access may be required. Details are to be shown on the Construction Certificate
15. The proposed access driveway to and within the site requires modification in order to comply with AS2890.1 and Council's "Driveway Access to Property Design Specification". In this regard, the following matters are to be clearly addressed by the Construction Certificate:
-

- The initial driveway width is to be increased to 5.5m for the first 6m within the site, as the driveway does not provide for two-way traffic into the basement, and the hump does not allow a clear line of sight to the bottom of the ramp.
 - Where the driveway crosses the front boundary, all walls within 2m of the driveway must be no higher than 0.6m to comply with sight triangle requirements. This refers to any side boundary fencing and the proposed front blockwork decorative fencing.
16. Permanent Stormwater Quality Treatment
- (a) Permanent stormwater quality treatment shall comply with "*Tweed Urban Stormwater Quality Management Plan*" (adopted by Council 19 April 2000) section 5.5.3 "Stormwater Objectives During the Post Construction or Occupational Phase of Development" . New development is required to comply with table 5.4 of the plan and demonstrate compliance by modelling in accordance with section 5.5.4. Section 5.5.5 of the plan further advises that treatment that is in accordance with the "deemed to comply" provisions of *Appendix E - Tweed Shire Council, Aus-Spec D7 - Stormwater Quality* is deemed to comply with the objectives in 5.5.3.
 - (b) Water sensitive design practices shall be adopted. Where it is practical, water quality features are to be designed into the land development site rather than rely on special end of pipe devices to strip pollutants and nutrients from stormwater prior to discharge. Typical water quality features that can 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) An oil-grease arrestor shall be installed to remove pollutants generated from basement car parking and driveway areas, and shall have a minimum volume of 750L according to Cozens Regan Williams Prove Stormwater Management Plan (dated June 2004).
- [PCC0230]
17. Stormwater discharge management shall be implemented in general accordance with Cozens Regan Williams Prove Stormwater Management Plan dated June 2004. The peak stormwater flow rate to be discharged from the site to the public realm, in events of intensity up to the ARI100 year design storm, shall be 200L/s/ha. This requires a minimum available storage of 18cu.m, which may be incorporated into the proposed 50,000L (or similar) stormwater storage tank. The minimum available storage must be maintained via connection to a discharge control pit, designed in accordance with the Upper Parramatta River Catchment Trust On-site Stormwater Detention Handbook.

18. Should the re-use tank be connected to internal plumbing, including toilets and washing machines, the tank must be fitted with a mains top-up facility, to ensure water supply to plumbed services in the event that the tank approaches empty.
19. The final configuration of a combined stormwater re-use tank / OSD system shall be subject to the submission of detailed engineering design plans with a s68 Stormwater Application, to the satisfaction of the Director Engineering & Operations.
20. A construction certificate application for works that involve any of the following:-
 - connection of a private stormwater drain to a public stormwater drain
 - installation of stormwater quality control devices
 - erosion and sediment control works

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

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

- [PCC0240]
21. Erosion and Sediment Control During the Construction Phase of Development
 - (a) Construction phase stormwater quality treatment (erosion and sediment control) shall be designed and constructed in accordance with detailed engineering plans to be submitted and approved with the Construction Certificate. Erosion and sediment control shall be in accordance with *the "Tweed Urban Stormwater Quality Management Plan"* (adopted by Council 19 April 2000) section 5.5.2 "Stormwater Objectives During the Construction Phase of New Development". This section requires all new development to comply with Appendix E of the Plan "*Tweed Shire Council Aus-Spec D7 - Stormwater Quality*" and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works". Erosion and sediment controls shall remain in place until final approval is given and the maintenance bond (if required) has been released.
 - (b) The Construction Certificate Application must include a detailed erosion and sediment control plan (ESCP) for the construction phase of development, prepared in accordance with Section D7.07 of *Tweed Shire Council Aus-Spec D7 - Stormwater Quality*.

[PCC0320]

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0060]

23. **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.

24. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least **2 days** prior to work commencing. [PCW0070]
25. 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. [PCW0090]

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.

26. 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. [PCW0190]
27. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational to the satisfaction of the Principal Certifying Authority. In addition to these measures an appropriate sign is to be clearly displayed on the most prominent position of the sediment fence or erosion control device which promotes awareness of the importance of the erosion and sediment controls provided. [PCW0210]

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

28. Prior to the commencement of any demolition works all house drainage connections are to be suitably capped off by a licenced plumber and an inspection of the work obtained from Council. [PCW0280]

[PCW0300]

DURING CONSTRUCTION

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 or complying development certificate was made). [DUR0010]
30. All engineering works required to be approved prior to the issue of a construction certificate are to be constructed in accordance with the approval. [DUR0020]
31. 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. [DUR0040]
32. The provision of eight (8) off street car parking spaces. A minimum of two (2) unburdened spaces shall be marked as visitor spaces and maintained accordingly. The layout and construction standards to be in accordance with Development Control Plan No. 2 - Parking Controls. [DUR0050]
33. All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction. [DUR0060]
34. Provision shall be made for the collection of builder's solid waste in accordance with the following requirements:
- A temporary builder's waste chute is to be erected to vertically convey builder's debris to a bulk container.
 - The chute shall be located in a position approved by the Principal Certifying Authority.
 - A canopy shall be provided to the chute outlet and container to reduce the spillage of materials and nuisance caused by dust. [DUR0070]
35. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction. [DUR0080]
36. A garbage storage area shall be provided in accordance with Council's **"Code for Storage and Disposal of Garbage and Other Solid Waste"**. [DUR0090]
37. All demolition works are to observe the guidelines set down under the Environment Protection Authority publication "A Renovators Guide to the Dangers of Lead" and the WorkCover guidelines on working with and handling of asbestos. [DUR0100]
38. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council. [DUR0130]
39. A certificate is to be submitted by a Registered Surveyor certifying that all habitable floor areas are constructed above 2.95 metres AHD, and certifying the actual finished level of the total site. Certification of those levels by a registered surveyor must be submitted to the PCA prior to proceedings past floor level to ensure that the floor is above flood level. [DUR0140]
-

40. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate. [DUR0150]
41. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover Authority. [DUR0160]
42. The principal certifying authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the principal certifying authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979. [DUR0170]
43. It is the responsibility of the applicant to restrict public access to the building site, building works or materials or equipment on the site when building work is not in progress or the site is otherwise unoccupied. [DUR0200]
44. a. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
b. All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property. [DUR0210]
45. Provision to be made for the designation of a durable and pervious car wash-down area/s. The area/s must be identified for that specific purpose and be supplied with an adequate water supply for use within the area/s. Any surface run-off from the area must not discharge directly to the stormwater system. [DUR0240]
46. The owner or contractor 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. [DUR0430]
47. The provision of adequate vehicular access in accordance with Council's "Vehicular Access to Property Construction Specification" pamphlet, including the provision of an invert crossing at the kerb and gutter where required and paving of the driveway across the footpath to the front alignment to the satisfaction of the Director, Engineering & Operations. 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 vehicular access and its reconstruction. Paving bricks are not acceptable unless laid on a 100mm thick concrete base. [DUR0470]
48. Where the kerb is to be removed for driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb must be sawcut on each side of the work to enable a neat and tidy joint to be constructed. [DUR0490]
49. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

- [DUR0730]
50. Suitable covering and protection is to be provided to ensure that no material is removed from the site by wind, causing nuisance to neighbouring properties.
- [DUR0850]
51. All work associated with this approval is to be carried out so as not to cause a nuisance to residents in the locality from noise, water or air pollution.
- [DUR0870]
52. Construction site work including the entering and leaving of vehicles is to be restricted to between 7.00 am and 7.00 pm Monday to Saturday and no work on Sundays or public holidays.
- [DUR0900]
53. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:
- A. Short Term Period - 4 weeks.
L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.
- B. Long term period - the duration.
L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.
- [DUR0910]
54. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited.
- [DUR0920]
55. Prior to and during construction provide a "shake down" area along the haul route located immediately before the intersection with the road reserve. The "shake down" area is to be 10 metres long, minimum 3.0 metres wide, constructed of minimum 50mm diameter crushed rock; or other such device approved by the Director, Engineering & Operations.
- [DUR0930]
56. The burning of builders waste on site by open fire is prohibited.
- [DUR0940]
57. 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.
- [DUR1000]

58. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:
- a. internal drainage, prior to slab preparation;
 - b. water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
 - c. external drainage prior to backfilling.
 - d. completion of work and prior to occupation of the building.
- [DUR1020]
59. A. A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
B. The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.
- [DUR1030]
60. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position.
- [DUR1040]
61. Where two (2) or more premises are connected by means of a single house service pipe, the owner of each premises must (*unless all the premises are occupied by a single household or firm as a residence or place of business*) ensure that a separate water meter, of a class and size approved by Council, is installed on each of those premises.
- [DUR1070]
62. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993.
- [DUR1090]
63. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard.
- [DUR1110]
64. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.
- [DUR1130]
65. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired to the satisfaction of the Director, Engineering & Operations prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.
- [DUR1210]
66. Landscaping of the site shall be carried out in accordance with the submitted landscaping plans. The landscaping to be completed prior to occupation of the building, to the satisfaction of the Director, Development Services.
- [DUR1230]
67. Swimming Pools (Building)
- A. The swimming pool is to be installed and access thereto restricted in accordance with Council's "Code for the Installation of New Swimming Pools" and Australian Standard AS 1926-1986 (Copy of code enclosed).
 - B. Swimming pools shall have suitable means for the drainage and disposal of overflow water.

- C. The pool filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.
- D. In the event that Council is not utilised as the inspection/certifying authority:-
- a. Within seven (7) days of the filling of the pool a Compliance Certificate in the prescribed form shall be submitted to Council together with the prescribed fee, by the Accredited Certifier to certify that all works have been completed in accordance with the approved plans and conditions of Consent and that the swimming pool safety fencing has been installed and complies with AS 1926.
- [DUR1280]*
68. Backwash from swimming pool is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9.
- [DUR1290]*
69. The spa pool is to be installed and access thereto restricted in accordance with Council's "Code for the Installation of New Swimming Pools" and Australian Standard AS1926-1986 (Copy of code enclosed).
- [DUR1310]*
70. Spa pools shall have suitable means for the drainage and disposal of overflow water.
- [DUR1320]*
71. The spa filter and any pumps or aerators are to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.
- [DUR1330]*
72. Compliance with the conclusions and monitoring schedule during dewatering operations as outlined in Sections 7 and 8 of the Acid Sulfate Soil Assessment and Dewatering Management Plan for Lot 6 DP237806 Ivory Crescent Tweed Heads NSW prepared by HMC Environmental Consulting Pty Ltd dated December 2004.
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 within one hour of occurrence.
74. The plant room and swimming pool pump shall be acoustically treated where required to the satisfaction of Council's Director Environment and Community Services so as to avoid the creation of intrusive or unreasonable noise to any occupant of a neighbouring or adjacent residential premises.
75. All externally mounted artificial lighting is to be shielded to the satisfaction of Council's Director Environment and Community Services where necessary or required, so as to prevent the spill of light creating a nuisance to adjoining residential premises.
76. Appropriate arrangements to the satisfaction of Council's Director Environment and Community Services shall be provided for the storage and removal of garbage and other waste products.
77. Any pumps used for dewatering are to be electrically operated only. Diesel pumps are not to be used unless otherwise approved by Council's Director Environment and Community Services.
78. All pumps used for dewatering operations are to be installed on site in a location that will minimise any noise disturbance to neighbouring residential developments. Such location shall be to the satisfaction of Council's Director Environment and Community Services.

79. Practical measures to the satisfaction of Council's Director Environment and Community Services are to be taken to acoustically shield all pumps used for dewatering operations.
80. Where any pumps used for dewatering operations are proposed to be operated on a 24 hour basis, then the owners of adjoining residential premises shall be notified accordingly, prior to the commencement of such operations.
81. All waters that are to be discharged from the site shall have a pH between 6.5 and 8.5 and suspended solids not greater than 50 mg/kg. The contractor shall nominate a person responsible for monitoring of the quality of such discharge waters on a daily basis and the results recorded. Such results shall be made available to Council's Environmental Health Officer(s) upon request.
82. All erosion and sediment control shall be installed and monitored in accordance with the provisions of the document entitled "Erosion and Sediment Control Plan, Lot 106 DP237806, Ivory Crescent Tweed Heads" prepared by "Cozens Regan Williams Prove Pty Ltd" and dated "June 2004".

[DURNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

83. In the event that Council is not utilised as the inspection/certifying authority, prior to occupation of the building a Compliance Certificate in the prescribed form is to be submitted to Council from the nominated principal certifying authority, together with the prescribed fee, to certify that all work has been completed in accordance with the approved plans and specifications and conditions of Consent.
[POC0020]
84. A person must not commence occupation or use of the whole or any part of a new building (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).
[POC0030]
85. The building is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the building to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.
[POC0050]
86. Prior to occupation of the building **or** the issue of a Subdivision Certificate, all disused invert crossings are to be removed and replaced with kerb and gutter and all disused driveway across the footpath are to be removed and replaced with topsoil and turf to the satisfaction of the Director, Engineering & Operations.
[POC0080]
87. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate, a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.
[POC0170]
88. As survey certificate signed by a registered surveyor is to be submitted to the PCA to certify that:
 1. The habitable floor level of the building to be at a level of not less than RL 2.95m AHD.
 2. All finished ground levels are at or above RL 2.65m AHD.
 3. The basement carpark has been protected against the inflow of water to RL 3.15m AHD.

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

[POCNS01]

USE

90. The use being restricted to the floor area designated on the approved plan. [USE0010]
91. The premises shall be suitably identified by Unit No. (where appropriate) and Street Number displayed in a prominent position on the facade of the building facing the primary street frontage, and is to be of sufficient size to be clearly identifiable from the street. [USE0040]
92. All trade materials, product and plant to be kept within confines of the building at all times. [USE0120]
93. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust, fumes or the like. [USE0160]

DEPARTMENT OF INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES **GENERAL TERMS OF APPROVAL FOR A LICENSE UNDER THE WATER ACT 1912** **FOR DEVELOPMENT APPLICATION NUMBER 04/1132**

General Conditions

The purposes of these conditions are to -

- define certain terms used in other conditions
- specify the need to obtain a license, permit or authority before commencing any works
- specify that, in most cases an approval will only be issued to the occupier of the lands where the works are to be located (as required by the Water Act)
- require existing approvals to be cancelled or let lapse when a license is issued (if applicable)
- require the safe construction and operation of all works
- require the use of appropriate soil conservation measures
- limit vegetation destruction or removal to the minimum necessary
- require the separate authorisation of clearing under the NVC Act
- allow conditions to be imposed for management of fuel (petroleum)
- require the payment of fees on the issuing of an approval

In the following conditions relating to an approval under the Water Act 1912:

"the Department" means the Department administering the Water Act 1912;

"approval" means a license, permit, authority or approval under that Act;

"river" has the same meaning as in Section 5 of the Water Act 1912;

"work" means any structure, earthwork, plant or equipment authorised under the approval to be granted, as defined in Section 5 and 105 of the Water Act 1912;

"controlled work" means any earthwork, embankment or levee as defined in Section 165 of the Water Act 1912.

- Before commencing any works or using any existing works for the purpose of Temporary Dewatering for Construction Purposes, an approval under **Part 5** of the Water Act 1912 must be obtained from the Department. The application for the approval must contain sufficient information to show that the development is capable of meeting the objectives and outcomes specified in these conditions.

- An approval will only be granted to the occupier of the lands where the works are located, unless otherwise allowed under the Water Act 1912.
- When the Department grants an approval, it may require any existing approvals held by the applicant relating to the land subject to this consent to be surrendered or to let lapse.
- All works subject to an approval shall be constructed, maintained and operated so as to ensure public safety and prevent possible damage to any public or private property.
- All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry of sediments into any river, lake, waterbody, wetland or groundwater system.
- The destruction of trees or native vegetation shall be restricted to the minimum necessary to complete the works.
- All vegetation clearing must be authorised under the Native Vegetation Conservation Act 1997, if applicable.
- The approval to be granted may specify any precautions considered necessary to prevent the pollution of surface water or groundwater by petroleum products or other hazardous materials used in the construction or operation of the works.
- A license fee calculated in accordance with the Water Act 1912 must be paid before a license can be granted.
- Any license so issued, from the date of issue, will be subject to Annual Cost Recovery Water Management Charges as set by the Independent Pricing and Regulatory Tribunal.

Conditions relating to water entitlements

The purposes of these conditions are to -

- allow rules for water transfers to be applied
- specify an annual entitlement (regulated and unregulated streams)
- allow the placement of limitations as to when water may be taken to ensure a flow remains for other users and the environment (unregulated streams)
- A transfer of an entitlement shall be subject to the provisions of the Water Act 1912 the regulations made thereunder and the transfer rules applying at the time of application as determined by the Department
- The authorised annual entitlement will not exceed 10 megalitres.
- Extraction of water under the approval to be issued shall be subject to conditions with regard to availability of supply and such restrictions as are deemed necessary by the Department from time to time to ensure an adequate flow remains for other water users and the environment.

Conditions for water use

The purposes of these conditions are to -

- allow the department obtain an accurate measure of water use where necessary
- specify the purpose(s) for which the water may be used
- specify conditions to protect water quality and the environment
- ensure proper management of tailwater drainage
- ensure accessions to groundwater systems are restricted.
- If and when required by the Department, suitable devices must be installed to accurately measure the quantity of water extracted or diverted by the works.
- All water measuring equipment must be adequately maintained. It must be tested as and when required by the Department to ensure its accuracy.

- The use of water shall be conditional on no tailwater drainage being discharged into or onto -
 - any adjoining public or crown road
 - any crown land
 - any river, creek or watercourse
 - any groundwater aquifer
 - any area of native vegetation
 - any wetlands

Conditions for Bores and Wells

See also "general conditions" and "conditions for water use"

The purpose of these conditions are to -

- set a limited time for bore construction
- allow DIPNR access for inspection and testing
- specify procedures if saline or polluted water found
- specify procedures if the bore is abandoned
- require advice if water found
- specify the volumetric allocation for each purpose of the entitlement
- identify lands that may be irrigated
- specify the volumetric allocation for the works purpose
- allow DIPNR to alter the volumetric allocation at any time
- Works for construction of bores must be completed within such period as specified by the Department.
- Within 2 months after the works are completed the Department must be provided with an accurate plan of the location of the works and notified of the results of any pumping tests, water analysis and other details as are notified in the approval.
- Officers of the Department or other authorised persons must be allowed full and free access to the works for the purpose of inspection and testing.
- Water shall not be pumped from the works for any purpose other than dewatering for construction purposes.
- The use of water shall be conditional on no tailwater drainage being discharged into or onto -
 - any adjoining public or crown road
 - any crown land
 - any river, creek or watercourse
 - any groundwater aquifer
 - any area of native vegetation
 - any wetlands
- The work shall be managed in accordance with the constraints set out in the "Amended Acid Sulfate Soil and Dewatering Management Plan" as detailed in a Tweed Shire Council Inter-divisional Memo from Greg Newland to Garry Smith dated 28 October 2004.
- The volume of groundwater extracted as authorised must not exceed **10** megalitres.
- The Department has the right to vary the volumetric allocation or the rate at which the allocation is taken in order to prevent the overuse of an aquifer.
- The licence shall lapse within **six (6)** months of the date of issue of the licence.

OPTIONS:

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

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed development is of a high standard of design and has achieved the intentions of Council's development control plans for the area. Having had regard for all of the matters relevant to the proposal it is considered that the proposal warrants conditional consent.

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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- 8 **[PE] Development Application DA04/1058 for a 45 Lot Subdivision Comprising of 36 Urban Residential Lots and 9 Rural Residential Lots at Lot 1 DP 302949, Lot 1 DP 725165, Lot 5 DP 574986 and Lot 2 DP 30714, No. 38 & 142 McAllisters Road, Bilambil Heights**

ORIGIN:

Development Assessment

FILE NO: DA04/1058 Pt3

SUMMARY OF REPORT:

Council is in receipt of a 45 lot subdivision comprising 36 urban residential lots ranging in size from 561m² to 2939m², nine (9) rural residential lots ranging in size from 4155m² to 5.37ha, and a residue lot (proposed lot 6 with 5.37ha).

The site is partially zoned 2(c) Urban Expansion and partially zoned 1(c) Rural Living, and subsequently the proposed subdivision pattern has tried to reflect both of the zone objectives.

The site has physical constraints including soil contamination, drainage and road capacity. Since lodgement of this application in August 2004 Council has liaised with the applicant to resolve all of the issues. The layout now reflects the zoning, topography, natural watercourses and necessary drainage lines. Subsequently this application is now recommended for approval subject to conditions of consent to ensure the development is undertaken having regard to the site constraints.

RECOMMENDATION:

That: -

1. **Council utilises its assumed concurrence in relation to the State Environmental Planning Policy No. 1 in relation to Clause 21 of the Tweed Local Environmental Plan 2000; and**
2. **Development Application DA04/1058 for a 45 lot subdivision comprising of 36 urban residential lots and 9 rural residential lots at Lot 1 DP 302949, Lot 1 DP 725165, Lot 5 DP 574986 & Lot 2 DP 30714, No. 38 & 142 McAllisters Road BILAMBIL HEIGHTS be approved subject to the following conditions: -**

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Figure 3.0 prepared by BlueLand Engineers and dated April 2005, except where varied by these conditions. [GEN0010]
2. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within the subject property. [GEN0030]
3. The subdivision is to be carried out in accordance with Development Control Plan No 16 - Subdivisions Manual. [GEN0040]
4. No retaining walls or similar structures are to be constructed over Council's sewer main. [GEN0090]
5. Prior to commencement of work pursuant to this consent a Construction Certificate shall be obtained for the works proposed and required by this consent.
 - a) copies of compliance certificates relied upon
 - b) four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:
 - earthworks
 - roadworks
 - road pavement
 - road 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)
 - the approved Traffic Control Plan
 - the relevant maintenance manuals (eg. G.P.T's, water pump station)

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

[GEN0140]

6. All subdivision works are to be carried out in accordance with the recommendations and guidelines set out in the geotechnical report from Maiden Geotechnics dated July 2004 Job. No. 03/74. [GENNS01]
7. This subdivision has not nominated any sites for dual occupancy purposes, therefore, each lot is to be used for single dwelling purposes only, except where attached dual occupancies are permissible in accordance with the Tweed LEP 2000. [GENNS01]
8. The applicant is to obtain a 3A permit from the Department of Infrastructure Planning & Natural Resources. [GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

9. A detailed plan of landscaping is to be submitted and approved by Council's Director, Planning and Environment prior to the issue of a Construction Certificate. [PCC0010]
10. A traffic control plan that complies with the provisions of the RTA document "Traffic Control at Work Sites" Version 2 shall be prepared by a person who is qualified, authorised and has passed an RTA approved training course, and submitted to Council, prior to issue of the Construction Certificate. All works are to comply with the Occupational Health and Safety Act and the RTA document and the approval particularly in respect to works on public roads. Safe public access shall be provided at all times. [PCC0040]
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 Director, Development Services.

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

[PCC0080]

12. All fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided to ensure minimal impact on adjoining properties. If filling is required, a plan of proposed drainage is to be submitted and approved by the PCA prior to the issue of a construction certificate. Drainage must be installed and operational prior to commencement of any building work.

All fill and cut batters shall be obtained wholly within the subject land.

[PCC0090]

13. Details from a Structural Engineer are to be submitted to the Principal Certifying Authority for approval for all retaining walls, prior to the issue of a construction certificate.

[PCC0170]

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

- i. Construction along the full length of the proposed subdivision in McAllisters Road, vertical face kerb and gutter on an approved alignment along with associated sub-surface and over-land stormwater drainage systems and 11 metre wide road pavement from the lip of the new kerb and gutter to the face of the existing kerb and gutter.
- ii. Construction of an access street comprising vertical face kerb and gutter on an approved alignment along with associated sub-surface and over-land stormwater drainage systems and 6 metre wide road pavement measured from the face of the new kerb and gutter.
- iii. Construction of a stormwater drainage system that will convey all waters through the site to a legal point of discharge. The sub-surface and over-land drainage systems shall convey the respective flows from minor and major storm events. Clearly defined upstream catchment areas and supporting stormwater calculations shall accompany the engineering design plans.
- iv. The construction of a Cul de sac at the end of the proposed access road having a minimum radius of 9metres.
- v. Construction of an intersection in accordance with Austroads Pt 5 - Intersections at grade at the intersection of the proposed access road and McAllisters Road.
- vi. Specific elements for the upgrading of McAllisters Road (and associated drainage and other works) shall be designed and constructed in accordance with the following criteria (proposed lots referred to in this condition are those shown on B& P Surveys "Layout Plan of Lot 1 in DP 725165, Lot 1 in DP 302949, Lot 2 in DP 30714 and Lot 5 in DP 574968 McAllisters Road - Bilambil Heights" Drawing No 12971 B, Rev B 7/4/05).

Element	Design Criteria
1. General Design Criteria	As per DCP16, <i>Development Design Specification D1 - Road Design</i> and other associated Development Design Specifications, unless amended by this condition.
2. Scope of Work	
(a) Length to be constructed	From eastern boundary of Lot 2 DP30714 to western boundary of Lot 1 DP 302949, and such additional works as are necessary to merge the newly constructed road with existing road alignment at either end of the works.
(b) Width of roadworks	Full width construction, but, generally excluding existing kerb and gutter, verge and driveways (except those driveways and associated kerb and gutter adversely impacted) on south side of McAllisters Road
(c) Cross section and road widening	<ul style="list-style-type: none"> • Pavement width to be 11m kerb to kerb • Verge width north side to be 4m, incorporating 2.5m reinforced concrete footpath/cycleway. Verge to have 2.5% crossfall towards road. • The pavement cross section design will incorporate conventional centre crown and 3% crossfall. <ul style="list-style-type: none"> ○ The southern edge of the pavement shall generally be the edge of the existing kerb and gutter on the southern side of McAllister's Road. ○ An AC correction layer may be used over the existing sealed pavement to achieve this geometry ○ Elsewhere, the pavement is to be constructed in accordance with the above cross section geometry ○ Existing driveways (and associated kerb and gutter) adversely impacted by this change in crossfall must be modified to eliminate adverse impacts • Dedication of additional road reserve is required within the subdivision to accommodate the above cross section elements
3. Levels	
(a) Southern edge of pavement	Levels of the southern edge of the pavement will be generally fixed by the existing kerb and gutter
(b) Longitudinal grade	• A sag is not required in the longitudinal gradient of McAllisters Road near proposed Lot 19 to accommodate Q100 overland flow that cannot be accommodated in the piped drainage system.
4. Road Drainage	
(a) General Design	As per <i>Development Design Specification D5 - Stormwater Drainage Design</i>
(b) Transverse drainage near proposed lots 19 & 21	The natural watercourse traversing McAllisters Road near this location is to be conveyed under the road by a culvert sized to accommodate Q100 flows. This will include a suitable inlet structure upstream of McAllisters Road.
(c) Other Transverse Drainage	Transverse drainage under McAllisters Road is also required <ul style="list-style-type: none"> • near the boundary of proposed lots 2 & 7 and • near proposed lot 41

(d) Road Drainage	<p>• Minor system:- Drainage works (inlet pits and pipe systems) are to be provided on both sides of McAllisters Road, for the length of the road adjacent to the subdivision, to capture and convey road and upstream runoff to the transverse/downstream drainage systems. McAllisters Road is to be a major road for the purposes of Table 5.09.1 of QUDM. • Major system flow depths in McAllisters Road shall not exceed those designated in D5 and QUDM. Flow depths from Q100 runoff (including that from upstream catchments) must not exceed the roads overland flow capacity (where lots are lower than road, generally max 200mm flow depth in gutter if footpath 100mm higher than kerb and flows contained).</p>
(e) Upstream catchments	<p>Sufficient capacity is to be provided in McAllisters Road transverse and longitudinal drainage systems to capture concentrated and overland flow from catchments upstream of McAllisters Road. These drainage systems shall be sized to cater for runoff from these upstream catchments when they are developed to their ultimate capacity in accordance with the current zoning of the land.</p>
5. Retaining Walls	
(a) General	<p>The edge of the formation of McAllisters Road may be supported by retaining walls. Such walls shall be located within private subdivision lots. An easement for support shall be created over the footprint of such retaining walls granting Council the right (but not the obligation) to repair such retaining walls if their condition becomes a threat to public land.</p>
(b) Guardrail	<p>Guardrail is required behind the kerb and gutter where retaining walls support the McAllisters Road formation.</p>
(c) Safety barriers	<p>Appropriate pedestrian safety barriers are required at the top of retaining walls supporting the McAllisters Road formation.</p>

[PCC0180]

15. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.

[PCC0190]

16. The Engineering Plans required by this consent shall include details of settling ponds and the method of discharging the return water from the site. The design shall comply with the requirements of *"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", 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".

[PCC0220]

17. 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) Downstream of the transverse drain under McAllisters Road near proposed lots 19 & 21, a drainage reserve (then easement through proposed lot 45) and drainage works (open channel, pipes or a combination) are to be provided within the subdivision to accommodate Q100 flows and convey them to a lawful point of discharge.

(ii) Downstream of the transverse drains under McAllisters Road

- near the boundary of proposed lots 3 & 7 and
- near proposed lot 41

drainage easements and drainage works (open channel, pipes or a combination) are to be provided within the subdivision to convey runoff to a lawful point of discharge.

(iii) The drainage systems in (i) and (ii) shall be sized to cater for runoff from upstream catchments when they are developed to their ultimate capacity in accordance with the current zoning of the land.

[PCC0230]

18. A construction certificate application for works that involve any of the following:-

- connection of a private stormwater drain to a public stormwater drain
- installation of stormwater quality control devices
- erosion and sediment control works

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

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

[PCC0240]

19. A detailed site contamination report is to be provided which is prepared in strict accordance with the provisions of the NSW EPA's Contaminated Site "Guidelines for Consultants Reporting on Contaminated Sites" November 1997 and Council Contaminated Land Policy.

Note:-

1. It is a requirement of these Guidelines that all contamination reports include a clear statement from the consultant as to the suitability or otherwise of the subject site for the proposed use, together with a statement detailing all limitations and constraints that are applicable in relation to the use of the site.
2. Any contamination report that does not provide and follow the recommended report sections and information requirements as specified within the Guidelines will be returned on the basis of insufficient information provided.
3. Other relevant or applicable EPA Guidelines are to be used as appropriate.

[PCC0270]

20. 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]

- 21. 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:

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

[PCC0330]

22. **Prior to the issue of a Construction Certificate a site audit statement/s (SAS) certifying that the subject sites (Lot 1 DP 302949, Lot 1 DP 725165, Lot 5 DP 574986 and Lot 2 DP 30714) are suitable for the proposed land use and are to be issued and submitted to Council. These SAS's are to be issued in accordance with the requirements of the Contaminated Land Management Act 1997. If a long term Site Management Plan (SMP) is required to allow the proposed land use, the requirements of the SMP/S will form part of this consent.**

In circumstances where the requirements of the SMP/S is not consistent with Development Consent DA04/1058 the consent shall prevail to the extent of inconsistency and a Section 96 application pursuant to the provisions of the Environmental Planning and Assessment Act, 1979 will be required.

[PCCNS01]

PRIOR TO COMMENCEMENT OF WORK

23. **Subdivision work in accordance with a development consent must not be commenced until:-**
- (a) **a construction certificate for the subdivision work has been issued by:**
 - (i) **the consent authority, or**
 - (ii) **an accredited certifier, and**

- (b) the person having the benefit of the development consent:
 - (i) has appointed a principal certifying authority, and
 - (ii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment, and
- (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the subdivision work.

[PCW0020]

24. Prior to commencement of work, a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Consulting Engineer shall be erected and maintained in a prominent position at the site to the satisfaction of the Director, Development Services. The sign is to remain in place until the Subdivision Certificate is issued.

[PCW0030]

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

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

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

[PCW0070]

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

[PCW0090]

27. Prior to start of building works provide a certificate of adequacy, signed by a practising Structural Engineer on the proposed rock retaining wall. The certificate must also address any loads or possible loads on the wall from structures adjacent to the wall.

[PCW0100]

28. 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.

[PCW0110]

29. All imported fill material shall be from an approved source. Prior to commencement of filling operations details of the source of fill shall be submitted to the satisfaction of the Director Planning and Environment.

[PCW0140]

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.

[PCW0190]

31. Where water is required to be drawn from Council's water reticulation system it shall be the applicants responsibility to notify the Engineering & Operations Division prior to taking water.

All drawn water shall be via a Tweed Shire Council metered standpipe. The location of the hydrant shall be nominated by Tweed Shire Council and all water shall be only used for the purposes nominated by the applicant for the duration of the construction activities.

[PCW0260]

32. Prior to the 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.**

[PCW0270]

DURING CONSTRUCTION

33. **All engineering works required to be approved prior to the issue of a construction certificate are to be constructed in accordance with the approval.**
[DUR0020]
34. **No soil, sand, gravel, clay or other material shall be disposed of off the site.**
[DUR0030]
35. **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.**
[DUR0040]
36. **All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction.**
[DUR0060]
37. **The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate.**
[DUR0150]
38. **Prior to the application for a Subdivision Certificate a Compliance Certificate or Certificates shall be obtained from Council OR an accredited certifier for the following:-**
- (i) Compliance Certificate - Roads**
 - (ii) Compliance Certificate - Water Reticulation**
 - (iii) Compliance Certificate - Sewerage Reticulation**
 - (iv) Compliance Certificate - Sewerage Pump Station**
 - (v) Compliance Certificate - Drainage**

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

Roadworks

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

Water Reticulation, Sewer Reticulation, Drainage

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

Sewer Pump Station

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

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

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

[DUR0360]

39. Before the commencement of the relevant stages of road construction, reports shall be submitted to Council from a Registered NATA Consultant demonstrating.
 - a. That the pavement has been designed and constructed in accordance with subgrade analysis as per Austroads Pavement Design, A Guide to the Structural Design of Road Pavements.
 - b. That the pavement materials used comply with the specifications in RTA Form Q3051 (June 1998)
 - c. That the pavement layers have been compacted to RTA specifications.
 - d. That site fill areas have been compacted to the specified standard.
 - e. That supervision of Bulk Earthworks has been to Level 1 and/or Level 2 and frequency of field density testing has been completed in accordance with Table 8.1 of AS 3798-1996.
 - f. That pavement testing has been completed in accordance with Table 8.1 of AS 3798-1996.

[DUR0370]

40. All lots must be graded and trimmed to prevent the ponding of surface water. Additionally, all lots must be adequately vegetated and action must be taken to prevent erosion from wind and/or water to the satisfaction of the Director, Development Services.

[DUR0380]

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

[DUR0400]

42. Construction of the right of carriageway serving lots: -
 - 2, 5 and 6
 - 4 and 7 to 9
 - 10 to 14
 - 15 to 19
 - 42 to 44, and
 - Proposed sewerage pumping station

to a minimum concrete/bitumen sealed standard, in accordance with the provision of DCP16 - Subdivision Manual.

[DUR0410]

43. The concrete driveway across the footpath is to be constructed in accordance with the approved plan dimensions and be a minimum of 150 millimetres thick reinforced with F62 mesh.

[DUR0450]

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

[DUR0490]

45. Pram ramps are to be constructed at road intersections in accordance with Council's Plan No. A4-96 to the satisfaction of the Director, Engineering & Operations and in accordance with Council's Standard Plan No. A4-96. Mountable or roll top kerb does not meet pram ramp requirements, and therefore requires a pram ramp to be constructed as above.

[DUR0500]

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

[DUR0510]

47. A concrete ribbon footpath 1.2 metres wide and 100 millimetres thick is to be constructed on a compacted base along the entire length of the proposed access road and a concrete ribbon footpath/cycleway 2.5 metres wide and 100 millimetres thick is to be constructed on a compacted base along the entire length of the frontage in McAllisters Road. The compacted base is to achieve 95% of maximum dry density determined in accordance with AS1289 5.4.1 for a minimum 100mm depth. A full depth construction joint is to be provided at 6.0 metre intervals and 20 millimetre deep groove joints provided every 1.5 metres, the balance area to be graded to the kerb and turfed. The footpath is to have a 3% crossfall which must be attained at each side boundary. This may result in work to be undertaken on the footpath at adjoining properties which must not exceed 1:14 and must be reinstated with turf. The footpaving is to be located 800 millimetres from the property boundary. The concrete footpath gradient shall be parallel to the top of kerb for the full frontage of the site and maintained unvaried across the (any) driveway cross-section. An inspection of the formwork is to be arranged with Council's Engineering & Operations Division prior to concrete being placed.

[DUR0520]

48. The concrete footpath is to be saw cut and removed to facilitate the construction of the concrete driveway access.

[DUR0530]

49. On completion of the filling work, all topsoil to be respread and the site to be grassed and landscaped.

[DUR0550]

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

[DUR0580]

51. i. Dedication of the proposed drainage reserve at no cost to Council.
ii. 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.

[DUR0600]

52. The earthworks program shall be monitored by a Registered Geotechnical Testing Consultant to a level 1 standard in accordance with Appendix B, AS 3798-1996. In addition, the frequency of field density testing shall be to a Type 1 standard in accordance with Table 8.1 of AS 3798. The geotechnical report shall be accompanied by a certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798.

[DUR0630]

53. All stormwater discharged from the site including dewatering discharge is to be directed to a sediment pond prior to final discharge into any waterway. The sediment ponds or other approved devices are to be maintained in good condition until the maintenance bond is released.

[DUR0720]

54. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR0730]

55. i. **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.**
- ii. **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 (form 13) 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.

[DUR0820]

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

[DUR0850]

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

[DUR0860]

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

[DUR0870]

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

[DUR0880]

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

[DUR0890]

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

[DUR0900]

62. **All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:**

- A. **Short Term Period - 4 weeks.**
L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.
- B. **Long term period - the duration.**
L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0910]

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

[DUR0920]

64. **Prior to and during construction provide a "shake down" area along the haul route located immediately before the intersection with the road reserve. The "shake down" area is to be 10 metres long, minimum 3.0 metres wide, constructed of minimum 50mm diameter crushed rock; or other such device approved by the Director, Engineering & Operations.**

[DUR0930]

65. **Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired to the satisfaction of the Director, Engineering & Operations prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.**

[DUR1210]

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

[DUR1230]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

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

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's

"Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

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

Water:	41 lots @ \$4325	\$177,325.00
Sewer:	41 lots @ \$3490	\$143,090.00

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

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

[PCC0070/PSC0004]

68. Section 94 Contributions

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

- a. Tweed Road Contribution Plan: \$180,114.00
S94 Plan No. 4 (Version 4.0)
(Sector 4_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):
S94 Plan No. 5 | \$31,980.00 |
| c. | Open Space (Casual):
S94 Plan No. 5 | \$6,847.00 |
| d. | Street Trees:
S94 Plan No. 6 | \$1,758.90 |
| e. | Shirewide Library Facilities:
S94 Plan No. 11 | \$28,208.00 |
| f. | Bus Shelters:
S94 Plan No. 12 | \$943.00 |
| g. | Eviron Cemetery/Crematorium Facilities:
S94 Plan No. 13 | \$5,166.00 |

h.	Emergency Facilities (Surf Lifesaving) (REMSHIRE) S94 Plan No. 16	\$8,815.00
i.	Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$14,137.21
j.	Cycleways S94 Plan No. 22	\$6,560.00
k.	Regional Open Space (Structured) S94 Plan No. 26	\$48,257.00
l.	Regional Open Space (Casual) S94 Plan No. 26	\$9,061.00

[PCC0050/PSC0005]

69. **A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of Development Consent No DA04/1058 have been complied with.**

[PSC0010]

70. **The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act including the following:**

- i. **Easements for sewer, water supply and drainage over ALL services on private property.**
- ii. **Rights of carriageway to lots 2, 4 to 19, 42 to 44 and the proposed sewerage pumping station.**
- iii. **Easement for support over retaining walls granting adjoining owners the right but not the obligation to repair.**

Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating the right of carriageway/easement to drain water shall make provision for maintenance of the right of carriageway/easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis.

Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of Council.

[PSC0020]

71. Submit to Council's property officer an appropriate plan indicating the rural address number to both new and existing lots for verbal approval. Prior to the issue of a Subdivision Certificate, each lot shall have its' rural address number displayed in accordance with Council's "Rural Addressing Policy".
[PSC0030]
72. Prior to the issue of a Subdivision Certificate, Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council.
[PSC0040]
73. Where new state survey marks and/or permanent marks are placed a copy of the locality sketch relating to the marks shall be submitted to Councils Surveyor within two months of the issue of the Subdivision Certificate.
[PSC0060]
74. Any damage to property (including pavement damage) is to be rectified to the satisfaction of the Director, Development Services PRIOR to the issue of a Subdivision Certificate. 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.
[PSC0070]
75. Prior to registration of the plan of subdivision, a Subdivision Certificate shall be obtained.
- (i) The following information must accompany an application:
- original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
 - relevant development consent
 - detailed subdivision engineering plans endorsed with a construction certificate (where applicable)
 - evidence that the applicant has complied with all conditions of consent, that it is required to comply with before a subdivision certificate can be issued (where applicable)
 - a certificate of compliance from the relevant water supply authority (where applicable)
 - for subdivision involving subdivision works evidence that:
 - the work has been completed, or

- agreement reached with the relevant consent authority regarding payment of the cost of work or as to the time for carrying out the work, or
 - security given to the consent authority with respect to the completion of the work
 - Work as Executed Plans for ALL works
- (ii) Documentary evidence that all matters contained in Section 109J of the Act have been complied with.
- (iii) Written evidence from Council that the proposed road/street names have been approved.

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

[PSC0090]

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

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

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

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

[PSC0100]

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

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

[PSC0110]

- 78. 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 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 using any one of the following repair techniques or such other technique as may be approved by the Director, Engineering & Operations.

- Tiger Patch patch liner;
- Econoliner;
- PL Quick Sleeve System;
- Flexi-Bond method

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

[PSC0140]

79. Prior to issuing a Subdivision Certificate, outfall sewerage reticulation shall be provided to all lots within the subdivision including a minimum 150mm diameter sewer junction terminated at least 1.0m inside the property boundary of each lot in accordance with engineering plans to accompany the Construction Certificate application. The reticulation shall be designed and constructed in accordance with DCP16 - Subdivisions Manual.

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

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

[PSC0150]

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

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

[PSC0160]

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

[PSC0170]

82. i. The production of written evidence from Country Energy certifying that reticulation of underground electricity (residential and rural residential) has been completed; and

- ii. 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.

[PSC0190]

- 83. 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 to the satisfaction of the Director Planning and Environment.

[PSC0220]

- 84. (i) PRIOR to lodging an application for a Subdivision Certificate, 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.
- (ii) 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.

The names shall be approved PRIOR to lodgement of any plan of subdivision in respect of the development.

Names which duplicate existing and approved street names will not be approved.

[PSC0230]

GENERAL TERMS OF APPROVAL

PERMIT UNDER PART 3A OF THE RIVERS AND FORESHORES IMPROVEMENT ACT 1948

1. Soil disturbance in the natural drainage lines is to kept to the minimum necessary.
2. Any disturbance is to undertaken to ensure there is no reduction in the channel capacity of the drainage lines. Their capacity must be able to safely transmit the Q₁₀₀ run-off events.
3. The works area shall be revegetated to reduce erosion potential as soon as works are completed.
4. Sediment control measures shall be provided for the duration of works and until the site is stabilised.
5. Vegetation native to the local area only is to be used in the revegetation program (except grasses for initial soil stabilisation)
6. Operations shall be conducted in such a manner as not to cause damage or increase the erosion of adjacent bed and banks.
7. Any structural works shall be secure to withstand flow velocities at the bank-full discharge of the stream.

8. No materials shall be used that may pollute the downstream watercourses.
9. No materials may be used that may create a risk to public safety.
10. All scrub, undergrowth and timber removed from the area of operation shall be disposed of so that the debris cannot be swept back into the stream during a flood.
11. If, in the opinion of any officer of the Department of Infrastructure, Planning and Natural Resources, any work is being carried out in such a manner that it may damage or detrimentally affect the stream, or damage or interfere in any way with any work, the operation in that section of the said stream shall cease forthwith upon written or oral direction of such officer.
12. A copy of the permit shall be made available to officers of the Department upon request.
13. The site shall be restored and revegetated to the satisfaction of the Department of Infrastructure, Planning and Natural Resources
14. The permit holder and the owner or occupier of the land are responsible for any excavation, removal or placement of material or construction of works undertaken by any other person or company at the site.
15. This permit is not transferable to any other person or Company and does not allow operations at any other site.
16. This permit does not allow an extractive industry at the site.
17. If the permit conditions have been breached, the permit holder shall restore the site to the satisfaction of the Department. If the works as directed are not completed then the permit holder shall pay a fee prescribed by the Department.

GENERAL TERMS OF APPROVAL UNDER SECTION 100B OF THE RURAL FIRES ACT 1997

1. Asset Protection Zones shall be applied to the proposed development as identified on drawing 04002C prepared by Bushfire Safe Services dated June 2004.
2. All APZ's shall be managed as an Inner Protection Area as required by Section 4.2.2(b) of Planning for Bushfire Protection 2001.
3. Property access to proposed lots shall have a minimum paved surface of 3.5 metres.

REPORT:

Applicant: Masterbuilt Pty Ltd

Owner: Mr RB Faulks

Location: Lot 1 DP 302949, Lot 1 DP 725165, Lot 5 DP 574986 & Lot 2 DP 30714,
No. 38 & 142 McAllisters Road, Bilambil Heights

Zoning: Partially 1(c) Rural Living & Partially 2(c) Urban Expansion

Cost: \$1,500,000.00

BACKGROUND:

Council is in receipt of a 45 lot subdivision comprising 36 urban residential lots ranging in size from 561m² to 2939m², nine (9) rural residential lots ranging in size from 4155m² to 5.37ha, and a residue lot (proposed lot 6 with 5.37ha). It is proposed to construct one (1) new public road, a cul-de-sac, and an Austroads Type A intersection off McAllisters Road. Additionally, to facilitate future upgrades of McAllisters Road widening of the existing McAllisters Road pavement to 11 metres, along the site frontage is proposed.

This parcel as been zoned for development for a number of years and is a logical westerly extension of the existing residential settlement on McAllisters Road. The applicant has submitted that the recent surge in the property market land shortages have provided the motivation for investors/developers to seek approval to develop these more problematic areas as there is now an incentive to address and resolve these constraints.

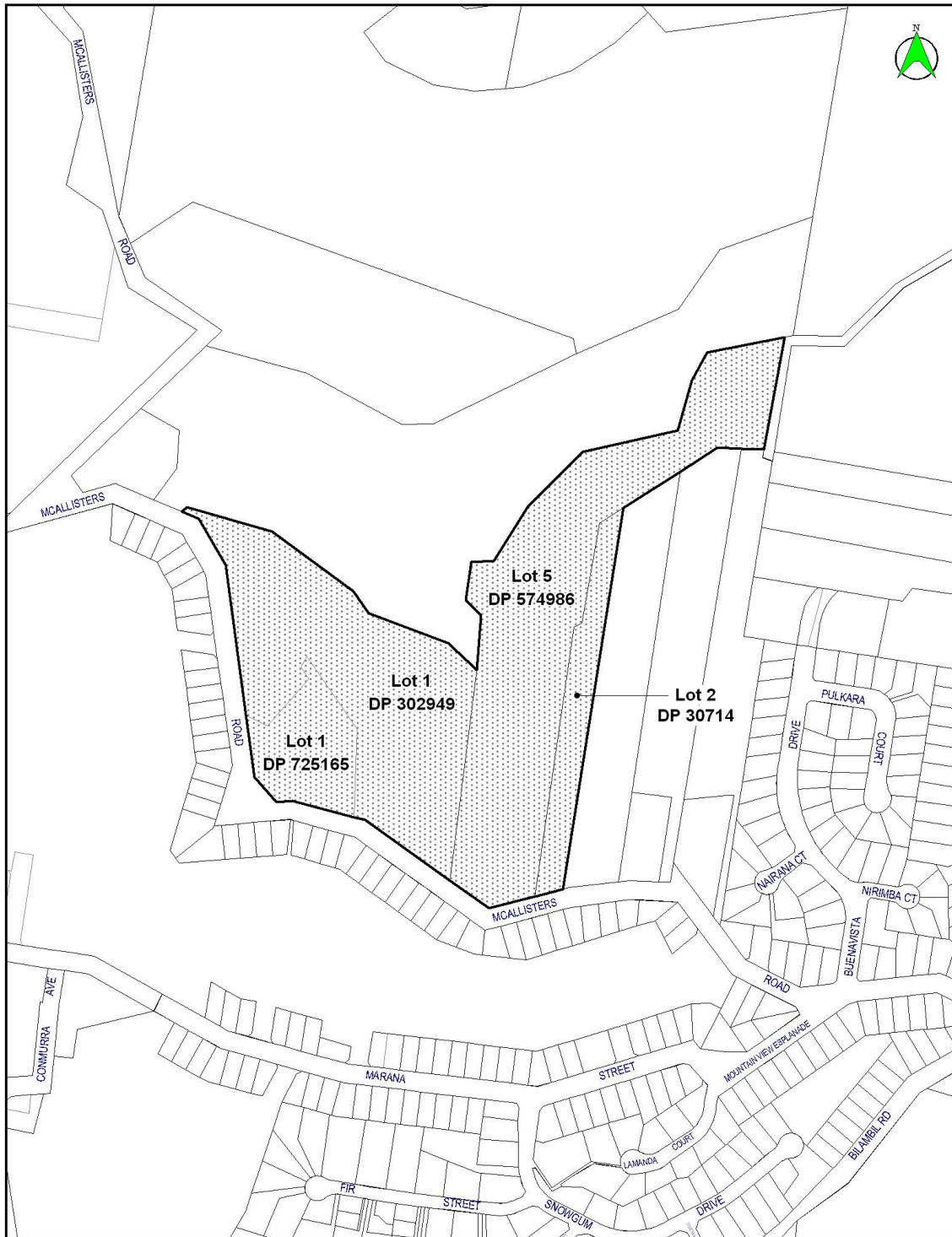
A SEPP 1 Objection to Clause 21 of the Tweed LEP 2000 has accompanied the application as eleven (11) of the residential 2(c) lots intrude marginally into the 1(c) zoned land. This creates a numerical non-compliance with the 0.4ha minimum allotment size. Having assessed the SEPP 1 Objection against the objectives of the zone the proposed variation is considered reasonable in the circumstances.


The application triggers the Integrated Development provisions in accordance with Part 3A of the Rivers and Foreshore Improvement Act 1912 and Section 100B of the Rural Fires Act 1997. In this regard both the Department of Infrastructure Planning & Natural Resources (DIPNR) and the Rural Fire Service (RFS) have provided their General Terms of Approval.

The assessment of the application has required the services of a Department of Environment & Conservation (DEC/EPA) accredited Site Auditor. This has been necessary to address the level of contamination caused by a cattle dip site and banana plantations. The site auditor has reviewed all aspects of the contamination investigation study, including site history, soil sampling, remediation, validation aspects, and has agreed to provide an Audit Statement to the effect that the site is suitable for the proposed residential development.

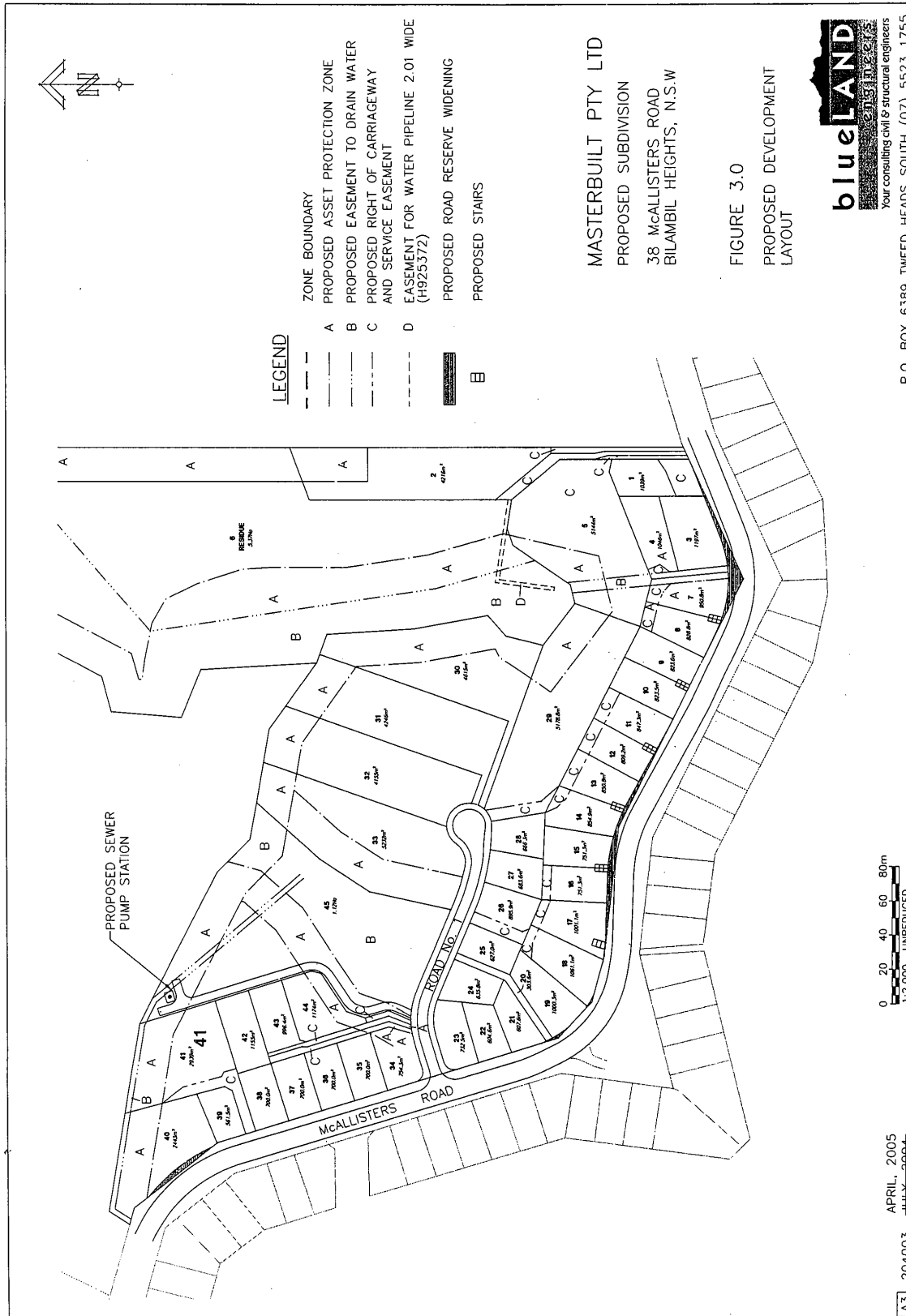
These issues combined with the sites steep topography have in the past deterred development. However, since lodgement of this application in August 2004 Council has liaised with the applicant to resolve all of the issues. Subsequently this application is now recommended for approval subject to conditions of consent to ensure the development is undertaken having regard to the site constraints.

SITE DIAGRAM:



<p>© TWEED SHIRE COUNCIL 2005 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 616 Murwillumbah, NSW., 2484 Tel: (02) 6670 2409 Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i> Lot 1 DP 302949, Lot 1 DP 725165, Lot 5 DP 574986 and Lot 2 DP 30714 No. 38 & 142 McAllisters Road, Bilambil Heights</p>	 <p>TWEED SHIRE COUNCIL</p>	<p>STRATEGIC PLANNING UNIT Site Plan Scale: 1:5,000 Sheet: 1 of 1</p>
<p>File: N:\MapInfo 7...A4P Site Plan.Wor</p>		<p>Author: J.Batchelor</p>	<p>Date: 7/June/2005</p>

Proposed Lot Layout



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 partially within the 1(c) Rural Living zone and partially within the 2 (c) Urban Expansion zone pursuant to the provisions of the Tweed LEP 2000.

Subdivision in both zones is permissible with consent subject to a minimum allotment size of 450m² in the 2(c) zone and 0.4ha in the 1(c) zoned land.

The proposed development is generally consistent with these standards, however, eleven (11) of the residential 2(c) lots intrude marginally into the 1(c) zoned land. Therefore creating a numerical non-compliance with the 0.4ha minimum allotment size.

The applicant has provided a SEPP 1 objection to Clause 21 of the Tweed LEP 2000 in this regard.

The primary objectives of the 1(c) zone are:

“to enable rural residential development in selected areas possessing particular environmental and servicing attributes which do not compromise the viability of rural activities on land in the vicinity, do not detract from the quality of the rural and natural environment, and do not create unreasonable or uneconomical demands, or both, for the provision or extension of public amenities or services.

to provide rural residential development of a design integration, quality and scale compatible with, and making a positive contribution to, the character of the rural area in the vicinity”.

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

‘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.’

The proposed subdivision creates 36 urban residential lots in accordance with the requirements of the 2(c) zoned land and 9 rural residential lots in accordance with the 1(c) zoned land component.

The proposed allotments vary in size but are all capable of accommodating detached dwelling houses at a similar density to those existing within the locality. It is evident that the proposed density is consistent with that of surrounding urban lands and is a satisfactory response to the constraints of the land.

The development is consistent with the zone objectives by optimising the use of the 2(c) zoned component of the site while integrating a rural residential design with the remaining site area.

Clause 15 of TLEP 2000 refers to the provision of services. In this regard the application was referred to Council's Water Supply and Sewerage Engineer and Council's Development Engineer who provided that:

- The water supply strategies outlined in section 8 of Appendix D of the report attached to the application by Blueland Engineers titled "Engineering Impact Statement For Proposed Subdivision 38 McAllisters Road Bilambil Heights NSW" are satisfactory.
- The sewerage strategies outlined in section 9 of Appendix D of the report attached to the application by Blueland Engineers titled "Engineering Impact Statement For Proposed Subdivision 38 McAllisters Road Bilambil Heights NSW" are satisfactory.
- Adequate electricity service is available via Country energy infrastructure. Recommended conditions of consent shall require the applicant to provide evidence to demonstrate service has been provided to all allotments.
- Adequate telecommunication service is available via Telstra infrastructure. Recommended conditions of consent shall require the applicant to provide evidence to demonstrate service has been provided to all allotments.
- Council offers a weekly domestic garbage collection service to the area.

The proposal is considered to be consistent with the provisions of Clause 15 of Tweed LEP 2000.

Clause 17 of Tweed LEP 2000 refers to Social Impact Assessment. Having regard to the provisions of DCP No.45, a detailed social impact assessment is not required as the proposed subdivision does not comprise more than 50 allotments.

Clause 21 of TLEP 2000 provides that "*Consent may be granted to the subdivision of land within 1(c) for residential purposes only if, in the case of land to be connected to a reticulated sewerage system, the area of each lot created is not less than 0.4 hectares*".

The proposed development is generally consistent with this standards, however, eleven (11) of the residential 2(c) lots intrude marginally into the 1(c) zoned land. Therefore creating a numerical non-compliance with the 0.4ha minimum allotment size.

The applicant has provided a SEPP 1 objection to Clause 21 of the Tweed LEP 2000 which reads as follows:

- In this case the land has a dual zoning being partially 2(c) Urban Expansion and partially 1(c) Rural Living. As a consequence of achieving a rational configuration and layout of lots, 11 of the residential lots protrude slightly into the 1(c) zone. The extent of the protrusion ranges from one (1) mere to about 14 metres, with the majority of lots protruding less than 10 metres into the 1(c) zone. This raises a somewhat anomalous situation where the lots must conform with the prescribed minimum lot sizes for both the 1(c) and 2(c) zones. In this case the lot size for the 1(c) zone (0.4ha for sewerred lots) is the prevailing standard.
- The departure from the clause 21 standard is numerically minor. It is for instance well within the 20 metres flexibility that would otherwise be permitted by Clause 14(2)(a) of the Tweed LEP 2000.
- A much larger portion of 2(c) zoned land is included within proposed rural residential lots 45 and 33.
- The zoning boundary as plotted on the Tweed LEP 2000 map is not based on any rational criteria related to site features or zone objectives. Detailed design work and analysis of constraints for this proposal has determined a rational planning outcome for development of the land.
- The proposed development achieves an outcome which is consistent with the objectives of each of the 2(c) and 1(c) zonings and which consequently respects the integrity of the Clause 21 development standard.

The objectives of this development standard include:

- To ensure that the semi rural character and environmental value of the area are protected;
- To assist in achieving the objectives of the zone;
- To establish, preserve and protect the rural residential character and amenity of 1(c) zoned land.

Having reviewed the applicant's argument above, the zone and clause objectives the numerical non-compliance with Clause 21 is considered to be negligible. Having specific regard to the merits of this application strict compliance with Clause 21 would be unreasonable and unnecessary. Therefore, the SEPP 1 Objection is recommended for approval.

Clause 22 relates to development near designated roads. Whilst McAllisters Road is a Council Designated Road the land immediately adjoining the site is zoned 2(c) and is therefore excluded from the provisions within this Clause.

Clause 35 of the Tweed LEP 2000 refers to Acid Sulfate Soils. In this regard, the land is not classed as being affected by Acid Sulfate Soils on Council's ASS Planning Maps.

Clause 39 of the Tweed LEP provides that contaminated land should be adequately remediated prior to development occurring in accordance with the provisions of SEPP 55 – Remediation of Land.

Council's Environmental Health Officer has reviewed the application and identified that the main issues with regard to site contamination are due to a Cattle Dip (Charles Dip) and banana cropping. Subsequently, prior to lodgement of the application the applicant was advised that they would need to engage the services of a Department of Environment & Conservation (DEC/EPA) accredited Site Auditor to review all aspects of the contamination investigation study, including site history and soil sampling, remediation and validation aspects, and provide an Audit Statement to the effect that the site is suitable for the proposed end use, in this instance residential development.

Interim Audit Statements stated that:

1. *Sufficient assessment has been conducted to allow determination of the broad remedial strategy.*
2. *The broad remedial strategy of vertical mixing of low level agricultural contaminants and onsite containment of higher concentration agricultural contaminants is considered appropriate. Based on this approach, it is considered that the site can be made suitable for the proposed residential land use.*
3. *Additional assessments are required to confirm the specific requirements of both components of the proposed remedial strategy. A more detailed interim audit advice will be provided directly, which addresses the issues which the audit believes are required to be addressed; and*
4. *The additional assessments and the specific design aspects of the proposed remediation should be reviewed as part of the site audit.*

Based on the above interim audit advice it appears that the site can be remediated to a level that will permit residential use. However, more detailed investigation was required.

The applicant subsequently provided a revised Interim Audit Advice 0103-0408-06 dated 22 March 2005. On review of the advice contained in this statement Council's Environmental Health Officer was satisfied that the site could be adequately remediated. Subsequently approval is recommended subject to the imposition of the following condition of consent;

Prior to issue of a Construction Certificate a site audit statement/s (SAS) certifying that the subject sites (Lot 1 DP 302949, Lot 1 DP 725165, Lot 5 DP 574986, and Lot 2 DP 30714) are suitable for the proposed land use is to be issued and submitted to Council. These SAS's are to issued in accordance with the requirements of the Contaminated Land Management Act 1997.

If a long term Site Management Plan (SMP) is required to allow the proposed land use, the requirements of the SMP/S will form part of this consent.

In circumstances where the requirements of the SMP/S is not consistent with Development Consent Number DA04/1058 the consent shall prevail to the extent of the inconsistency and a Section 96 Amendment pursuant to the provisions of the Environmental Planning & assessment Act 1979 will be required.

Therefore Clause 39 of the Tweed LEP 2000 is considered to have been adequately addressed subject to imposition of the recommended conditions of consent.

Clause 39A of the Tweed LEP 2000 provides that bushfire risk to built assets and people is to be reduced wherever possible. The proposed development is categorised as Integrated Development requiring a Bush Fire Safety Authority under section 100B of the Rural Fires Act 1997. The application was subsequently referred to the Rural Fire Service who have provided General Terms of Approval for the development.

The proposed development is considered to be consistent with the relevant provisions of Tweed Local Environmental Plan 2000.

North Coast Regional Environmental Plan

Clause 12 of the NCREP provides that prior to approving development on rural land you must first consider the impact the development will have on adjoining agricultural land and whether it will result in the loss of prime crop or pasture land. The subject site is zoned part 1(c) Rural Living and is suitable for allotments of 0.4 ha as proposed within this subdivision. No negative impact is envisaged for the adjoining rural land as a result of this development.

Clause 15 of the NCREP requires consideration of several factors to ensure protection of wetlands or fishery habitats. The proposed development utilises the sites natural watercourses for the conveyance of stormwater with existing vegetation in these areas being retained and enhanced. DIPNR have reviewed the application and provided their General Terms of Approval.

Clause 43 of NCREP provides as follows:-

43 Development control—residential development

- (1) *The council shall not grant consent to development for residential purposes unless:*
 - (a) *it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land,*
 - (b) *it is satisfied that the proposed road widths are not excessive for the function of the road,*
 - (c) *it is satisfied that, where development involves the long term residential use of caravan parks, the normal criteria for the location of dwellings such as access to services and physical suitability of land have been met,*
 - (d) *it is satisfied that the road network has been designed so as to encourage the use of public transport and minimise the use of private motor vehicles, and*
 - (e) *it is satisfied that site erosion will be minimised in accordance with sedimentation and erosion management plans.*

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. Furthermore, subject to compliance with the recommended conditions of consent the proposed roads and road widths are acceptable to cater for the development. A detailed sedimentation and erosion control plan will be applied in relation to the construction.

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

Clause 66 of the NCREP 1988 requires Council to consider the adequacy of community and welfare services available, prior to granting consent to a development application for the subdivision of land for residential purposes. It is considered that the existing community and welfare services are capable of catering for the additional allotments proposed.

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

State Environmental Planning Policies

SEPP44 – Koala Habitat Protection

Assessment of the habitat has indicated that there is no core koala habitat present and subsequently there is no requirement to prepare a plan of management.

SEPP55 – Remediation of Land

As detailed in the above report it is considered that the application is capable of conditional consent based on an Interim Audit Advice from an accredited Site Auditor.

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

The proposed development does not require any specific assessment in relation to any draft environmental planning instruments.

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

Development Control Plan No.16 – Subdivision Manual

The proposed development is considered to be generally consistent with the relevant provisions of DCP No. 16, however, Council's Development Engineer has identified several areas of small non compliance and subsequently conditions of consent have been adopted to address these non compliances.

Council's Development Engineer has assessed the following aspects of the proposal having regard to DCP 16;

Landforming

The information provided by Blueland Engineers indicates general compliance with the provisions of Development Design Specification D6 – Site Regrading. The standard condition of Consent requiring the subdivision to be in accordance with DCP16 will automatically call up compliance with D6.

Roads

The subject site is located within the Kennedy Drive Catchment Area which identifies traffic capacity based on the capacity of Cobaki Bridge. Council's records indicate that the proposed development is still within the traffic capacity figures and therefore is capable of approval based on the local road network.

Notwithstanding, the proposed development was referred to Councils Infrastructure Engineer for comment. The following detail was provided;

The proposed subdivision is adjacent to McAllisters Road which is a designated road on the Section 94, Tweed Roads Contribution Plan (TRCP).

McAllisters Road is sealed in this locality with sealed shoulder and kerb and gutter along most of the south side and a rural cross section (unsealed shoulder and no kerb and gutter) on the north side, adjacent to this proposed subdivision. The existing seal is generally around 7m wide.

DCP 16 would normally require construction of the shoulder, kerb and gutter and verge/footpath on the side of the road adjacent to the proposed subdivision to the standard required by DCP16, say a wider access street, 7.5m wide kerb to kerb with 3.5m verges. If it was a bus route it would increase to 9m width kerb to kerb.

However as it a road in the TRCP, its standard is designated in that plan as 11m wide kerb to kerb. The verge width required (adjacent to this subdivision) would be 4m (see DCP16 & Development Design Specification D1 – Road Design) equipped with a 2.5m wide footway/cycleway.

Schematic plans and typical long sections of the reconstruction of McAllisters Road prepared by Blueland Engineering were submitted with the application and Council requested further additional information.

Due to the strategic importance of McAllisters Road, the constraints of existing steep driveways on the southern side of the road and trunk drainage issues, Council's Design Unit have carried out preliminary survey and design of McAllisters Road in this area.

A number of meetings have been held with the applicant and Blueland Engineers regarding design issues and criteria relating to McAllisters Road.

At a meeting held 10 February 2005 it was agreed by the applicant that the proposed lot layout would be amended to accommodate a drainage reserve near chainage 320m on Council's preliminary design plan to accommodate runoff from a natural watercourse traversing McAllisters Road and the proposed subdivision near this location. At this meeting Council staff undertook to complete the preliminary designs and submit them to Blueland Engineering for comment.

At a meeting held Tuesday 5 April 2005 with Blueland Engineering (Martin Findlater and Olivia), Council's Manager Design and Council's Infrastructure & Planning Engineer it was agreed that the assessment process would proceed with Council staff drafting conditions of consent that would incorporate appropriate design criteria for McAllisters Road and associated works.

These criteria would include:

- The design would generally be fixed (location and level) on the southern side of McAllisters Road by the existing kerb and gutter
- The road formation would be 11m kerb to kerb from the existing kerb line

- The pavement cross section design will incorporate conventional centre crown and 3% cross-fall.
 - a) Beyond the existing seal, new pavement construction would be in accordance with this cross section
 - b) Where necessary, above the existing seal, an AC correction layer will be used to correct levels to match this cross section.
- Dedication of additional road reserve is required within the subdivision to accommodate the widened roadway and verge
- A sag is not required in the longitudinal gradient of McAllisters Road around Chainage 320m to accommodate Q100 overland flow that cannot be accommodated in the piped drainage system, however:
 - a) The natural watercourse traversing McAllisters Road in this location is to be conveyed under the road by a culvert sized to accommodate Q100 flows. This will include a suitable inlet structure upstream of McAllisters Road.
 - b) Downstream of this location, a drainage reserve and drainage works (open channel, pipes or a combination) are to be provided within the subdivision to accommodate Q100 flows.
- Drainage works (inlet pits and pipes) are to be provided on both sides of McAllisters Road for the length of the road adjacent to the subdivision, to capture and convey to transverse/downstream drainage systems, upstream and road Q100 runoff that is in excess of the roads overland flow capacity (generally max 200mm flow depth in gutter). These works are also needed to protect proposed subdivision lots north of (and lower than) the road from inundation.

As McAllisters Road is in the TRCP, the applicant would receive S.94 credits for constructing this road. The amount of credits available is limited by:

1. The apportioned amount of the project costing as set out on Schedule 6 of the TRCP, applicable to the section of road to be constructed and
2. The TRCP contributions payable by this development

Intersections

Initially Councils Traffic Engineer raised concern for safety at the intersection of Scenic Drive and Buena Vista Drive intersection as a result of the additional traffic generated by the development. Consultation with the applicant and his consulting engineer has confirmed that contributions already received by Council from other developments and S94 contributions that shall be levied to this development shall allow Council to undertake any upgrading works when considered necessary.

Bus routes/Shelters

McAllisters Road is a designated road and identified as a bus route. Road construction standards are specified to cater for bus travel. At this stage of development in the locality bus shelters are not required however Section 94 contributions for bus shelters are required to cater for future needs.

Access

All allotments shall generally have access from the proposed internal road or constructed Right of Ways. Lots 21, 22 and lots 35 to 38 shall have sole access to McAllisters Road. Requirements to place restrictions on the lots ensuring these access points are maintained are recommended to ensure minimum impact on traffic safety and prohibit any modification to retaining walls.

Footpaths / Cycleway

Footpaths and cycleways are tabled within Councils adopted Development Design and Construction Specifications. In this case the construction of McAllisters Road has been tabled within the current S94 plan. A 2.5m wide footpath/cycleway is required for the full length of the development in McAllisters Road. The proposed internal road shall require a 1.2m wide pathway on one side of the road in accordance with Development Design Specification D1 - Road Design.

Traffic Generation

The proposed development shall generate additional traffic movements. Contributions shall be required in accordance with Councils adopted Section 94 plan. As tabled by Councils Infrastructure Engineer some credit may be sought for the upgrading of McAllisters Road.

Parking

Adequate onsite parking shall be available to all proposed allotments.

Manoeuvring

Adequate manoeuvring area is available on all allotments and within the proposed road

Allotment Drainage / IAD

The land slopes away from McAllisters road and as such a number of allotments shall require access to drainage systems to ensure lower allotments are not impacted on by stormwater runoff. Recommended conditions of consent shall require the provision of IAD systems to be provided where necessary.

Road Drainage Network

There are significant catchments upstream of McAllisters Road that discharge runoff onto and through the proposed subdivision.

These catchments discharge through the subdivision in a generally northerly direction to then discharge into a defined creek that flows in an easterly direction through adjacent Lot 4 DP 574986 and then along the northern boundary of Lot 5 DP 574986.

The largest catchment discharges via a natural watercourse that traverses through proposed lots 21, 22, 23 & 45 and thence onto Lot 4 DP 574986.

A second catchment discharges through the subdivision between proposed lots 3 and 7, then through Lots 5 and 6 and thence into the creek along the boundary of Lot 5 DP 574986.

A third catchment discharges through the subdivision through proposed lots 39, 41 and 45 and thence onto Lot 4 DP 574986.

The ultimate point of discharge for the second catchment is within the proposed subdivision and appropriate easements can be provided as part of the subdivision process.

The ultimate point of discharge for the first and third catchments is the creek on Lot 4 DP 574986 which is not part of this subdivision. It could be argued that runoff from these catchments is contained within natural watercourses, and therefore easements are not required through Lot 4 DP 574986 (but, would be required through appropriate lots within the subdivision itself).

The catchments above McAllisters Road consist of urban allotments on the southern edge of the road and then partly undeveloped land zoned 2c and partly land zoned 1(a). The subdivision will be required to provide a drainage system that:

Collects and conveys all runoff from and upstream of McAllisters Road in appropriate longitudinal and transverse drainage systems sized for the Q100 event (that is in excess of McAllisters Road overland flow capacity, max 200mm flow depth in gutter)

Discharges the above runoff through the subdivision at the following locations

- Between proposed lots 19 & 21
- Between proposed lots 3 & 7 and
- On or near proposed lot 41

Downstream of these locations, provides drainage easements and drainage works (open channel, pipes or a combination) within the subdivision to convey runoff to a lawful point of discharge

Sizes the drainage system to accommodate runoff from the ultimate development of upstream catchments (as permitted by current zoning)

Trunk Drainage / Downstream Discharge

All stormwater shall discharge into natural water courses adjacent to the development.

Construction Phase

Standard conditions of consent shall require the applicant to provide sedimentation and erosion control measures during construction. A Stormwater Management Plan shall also be required.

Operational Phase

Treatment of subdivision stormwater quality is required in accordance with the DCP16, Tweed Urban Stormwater Quality Management Plan and Development Design Specification D7 – Stormwater Quality.

As the subdivision has less than 50 lots a wetland treatment facility is not required. Treatment would be in accordance with Clause 7.11-2.1 of D7 which requires provision of suitably sized oil/grit separators.

Council's specifications and DCP16 do not require treatment of external runoff traversing the site.

Landscaping

Landscaping of the development shall be required in accordance with Councils adopted Development Design and Construction Specifications.

Section 11.3 of DCP No.16 requires the provision of open space at a rate of 2.83ha per 1000 head of population, 60% of which will be structured and 40% casual. This will be provided by way of monetary contribution (S.94 Plan No.5 & S.94 Plan No.26).

Site Suitability

Each of the proposed allotments is considered capable of suitably accommodating a building envelope of 10m x 15m in accordance with the relevant provisions of DCP No.16.

In summary the proposal is considered to be consistent with the relevant provisions of DCP No.16 – Subdivisions.

Development Control Plan No.39 – Energy Smart Homes Policy

Development Control Plan No.39 provides for relevant principles relating to the siting and orientation of residential allotments. In this regard, the proposed subdivision reflects the physical and ecological constraints of the site, mainly the existing McAllisters Road alignment and site topography. The majority of allotments are oriented in a general north south direction. And therefore careful consideration will need to be had when individuals are designing dwellings for the allotments to ensure solar connectors face within 30° east and 20° west of true north. Compliance is achievable.

Accordingly, the proposal is considered to be generally consistent with the relevant provisions of DCP No.39.

Development Control Plan No.44 – Dual Occupancy

The proposed development does not incorporate the identification of any dual occupancy allotments. A condition of consent will be imposed specifying that the approved allotments are suitable for single dwelling purposes only.

Development Control Plan No.45 – Socio Economic Impact Assessment

The proposed development does not require the carrying out of a formal socio-economic impact assessment pursuant to the provisions of DCP No.45. However, the proposal is considered unlikely to create any adverse social or economic impacts within the locality.

Development Control Plan No.47 – Cut & Fill

The required earthworks may disturb and affect the stability of the site. A slope stability and Geotechnical assessment of the site was undertaken by Maiden Geotechnics. The report appended to the application identifies three zones based on topography advising little evidence of land-slip has occurred based on aerial photography. The author identifies concern for long term slope instability following the development of the site and recommends pre-emptive measures to be incorporated into the development process to provide acceptable risk of slope instability. The contributing factors raising this concern are tabled as, steep topography, loosely consolidated colluvium deposits and ground water seepage.

It is recommended that conditions of consent table the concerns raised and require the provision of site specific Geotechnical Assessment of all residential lots created prior to the release of a subdivision certificate. In addition a geotechnical assessment be provided prior to the construction of any retaining wall or structure on the land.

Additionally, Stormwater Management Plans and Erosion and Sediment Control Plans have been lodged and are considered satisfactory to mitigate the potential impacts.

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

There are no applicable 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

Each of the issues pertaining to the likely environmental impacts of the proposal are discussed as follows:

Visual Amenity

The proposed development will result in an alteration to the built form and character of the subject area. In this regard, many residents may have grown accustomed over the years to the vacant land and its use for crops and grazing only. The applicant has provided detailed artist impressions of the proposed subdivision after the construction of the proposed roads and after all earthworks. These images reflect how the proposed subdivision has responded to the physical constraints of the site.

The sites adjoining McAllisters Road are quite steep and currently fall away from the road. After earthworks some sites will have been filled while others will remain at a similar level. Any residences built on the proposed allotments would be restricted to the same height limits of those adjoining houses. Therefore the properties on the opposite side of McAllisters Road may lose some of their current vistas as a result of the development of individual sites, however, this is not considered to be unreasonable as there will be approximately 22 metres of separation between blocks on opposite sides of McAllisters Road.

Additionally whilst the overall outlook may change a similar level of amenity (ie solar energy, breezes, and general separation) will remain.

The subject site has been earmarked for some form of development for a considerable time and the large majority of residents would have been aware of its desired and likely future use. Therefore, the proposal is considered unlikely to create any unreasonable adverse impacts in this regard.

Fauna & Flora

No significant vegetation is located on the site, having regard to the relevant provisions of Section 5 of the Environmental Planning & Assessment Act, 1979, no significant impacts will occur in relation to fauna and flora in the locality.

Council's 1990 Tree Preservation Order applies to the subject land, however, no objection is raised to the necessary tree removal. In some parts of the site the existing trees will be enhanced and in time the re-vegetated sites will add to the scenic qualities of the area.

No adverse impacts are considered likely in this regard.

(c) Suitability of the site for the development

The proposed subdivision is to be carried out upon land that is zoned for residential and rural living purposes.

The proposed design and configuration of the subject allotments is considered to be a satisfactory response to the environmental and topographical constraints of the site, whilst remaining consistent with the surrounding land use character and pattern.

The suitability of the site for the purposes of the proposed subdivision has been demonstrated by way of general consistency with the relevant statutory and non-statutory guidelines applying to the site.

Suitable vehicular access arrangements and essential services are available to the site.

The subject site is considered able to satisfactorily accommodate the proposed development.

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

The proposed development was publicly exhibited for 14 days from Wednesday 15 September to Wednesday 29 September in accordance with Council's Policy. During this period Council received 5 submissions. The submissions focussed on the following areas of concern:

- Traffic congestion along McAllisters Road
- Inadequate road networks around the development
- Safety for young children in McAllisters Road
- The extent of site earthworks
- The loss of habitat and vegetation
- Inter-allotment drainage
- Erosion and siltation issues
- Loss of view
- Loss of property value

All of these issues have been addressed in the context of the above report.

Whilst some of these concerns are justified, upon assessment of all the issues, the proposed 45-lot subdivision is recommended for conditional consent. Issues pertaining to stability, traffic, drainage and erosion have all been addressed via conditions of consent as per the recommendation in this report.

The remaining issues such as loss of view and loss in property value are either not a matter of consideration in accordance with the Environmental Planning & Assessment Act 1979 or do not individually or collectively warrant refusal of this application.

(e) Public interest

On the balance of information provided and upon analysis of the likely impacts, the proposed development is considered unlikely to compromise the general public interest.

OPTIONS:

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

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be dissatisfied with the outcome they have a right of appeal to the NSW Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed development demonstrates general consistency with the requirements of Council and represents an infill subdivision of residential zoned land within the Bilambil Heights release area. The proposal has addressed all issues arising for the physical constraints of the site, and subsequently the proposed development seeking consent for the subdivision into 45 allotments is recommended for approval.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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