



Tweed Shire Council

# Planning Committee Agenda

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12 August 2005

Dear Minute Book

**NOTICE IS GIVEN** that a Meeting of the **Planning Committee** will be held at the Council Chamber, Murwillumbah Civic and Cultural Centre on Wednesday 17 August 2005, commencing at **5.30pm**.

Submitted,

A handwritten signature in black ink, appearing to read 'J Griffin'.

**Dr J Griffin**  
General Manager

## AGENDA

1. Confirmation of Minutes of the Planning Committee Meeting held XXX
2. Apologies
3. Disclosure of Interest
4. Items to be Moved from Ordinary to Confidential - Confidential to Ordinary
5. Access - Planning Matters
6. Reports through the General Manager
  - a. Reports from the Director Planning & Development
  - b. Reports from the Director Governance & Corporate Services
  - c. Reports from the Director Engineering & Operations
  - d. Reports from the Director Environment & Community Services
7. Confidential Matters - (exclude Press and Public)

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## ITEMS FOR CONSIDERATION OF THE COMMITTEE:

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2	[PD] Development Application DA05/0359 for an Attached Dual Occupancy at Lot 813 DP 1013074, No. 32 Donegal Court, Banora Point	33
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**CONFIRMATION OF MINUTES**

**Minutes of the of the Planning Committee Meeting held on 3 August 2005**

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

1. Minutes of the Planning Committee Meeting held on 3 August 2005 (DW 1244217).
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## REPORTS THROUGH GENERAL MANAGER

## REPORTS FROM DIRECTOR PLANNING & DEVELOPMENT

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

The following are the matters Council is required to take into consideration under Section 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 [PD] Review of Determination of Development Application DA04/0800 for Minor Factory Extensions and a Change of Use to Accommodate Mini Storage Units Incorporating a Mezzanine Level at Lot 2 SP 22917 & Lot 16 DP 712954, No. 2/4 Kay Street, Murwillumbah

**ORIGIN:**

Development Assessment

**FILE NO: DA04/0800**

**SUMMARY OF REPORT:**

Council is in receipt of a Section 82 A Review of Determination for DA04/0800. The DA seeks consent for a change of use to part of an existing industrial building to accommodate storage units. The application was originally reported to the Development Assessment Panel on 29 September 2004 and was refused primarily due to the lack of information provided with the application.

Since this time the applicant has engaged an Engineer to provide Council with the required information to enable a proper assessment of the application. The following report re-assess this application having regard to the additional information provided.

On review of the additional information the application is now considered suitable for approval subject to the recommended conditions of consent.

**RECOMMENDATION:**

That Development Application DA04/0800 for a factory mezzanine levels to be storage sheds at Lot 2 SP 22917 (Lot 16 DP 712954), No. 2/4 Kay Street Murwillumbah be approved subject to the following conditions of consent: -

**"DEFERRED COMMENCEMENT"**

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

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

**SCHEDULE "A"**

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

- A. Demonstration that all conditions of consent for DA02/2048 have been complied with.

**SCHEDULE B**

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

**GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan No's KS11, KS13, KS 14 prepared by Murray Spry, undated and Plan No's A1-996-001 Issue B dated December 2004 and A1 -996-02 Issue A dated November 2004 prepared by Richard Harry Engineering Services, 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. Advertising structures/signs to be the subject of a separate development application, where statutorily required. [GEN0070]
4. The erection of a building and civil works (i.e. associated earthworks, road pavement, storm water drainage, landscaping works, sedimentation and erosion management plans) in accordance with a development consent must not be commenced until:
  - (a) a construction certificate for the 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 work, and
    - (ii) notified the principal certifying authority that the person will carry out the work as an owner-builder, if that is the case, and
  - (b1) the principal certifying authority has, no later than 2 days before the 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 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 work.

[GEN0150]

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

5. 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]

6. The Engineering Plans and specifications to accompany the Construction Certificate application shall provide for:-
- i. Design detail of car parking areas including pavement reconstruction and line marking in accordance with DCP 2. It should be noted that parking space number 18 shall be deleted from the plans submitted with the development application.
  - ii. Construction of a storm water 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.

[PCC0180]

#### **7. 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]
8. 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]

9. Any premises proposing to discharge into Councils sewerage system a waste water other than domestic sewage, shall submit to Council a completed application for a Trade Waste Licence. This application is to be approved by Councils Manager Water and concurrence received from the Department of Land and Water Conservation, if required, PRIOR to the issuing of a Construction Certificate to discharge to Councils sewerage system.  
[PCC0280]

**10. Erosion and Sediment Control During the Construction Phase of Development**

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

[PCC0320]

**PRIOR TO COMMENCEMENT OF WORK**

**11. 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]

**12. 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]

13. 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]

#### DURING CONSTRUCTION

14. 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]

15. 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]

16. The provision of 29 off street car parking spaces. The layout and construction standards to be in accordance with Development Control Plan No. 2 - Parking Controls.

[DUR0050]

17. 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]

18. Car parking spaces for people with disabilities shall be provided and constructed in accordance with the provisions of Section D of the Building Code of Australia. Particular attention is to be given to the deemed-to-satisfy provisions of Part D-3.5 of the Building Code of Australia and it's requirement to comply with AS2890.1.

[DUR0300]

19. 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]

20. Provision to be made for a flood free storage area for stock and equipment susceptible to water damage.

[DUR0680]

21. Building materials used below Council's minimum floor level of RL 6m AHD must not be susceptible to water damage.

[DUR0690]

22. Subject to the requirements of Country Energy, all electrical wiring, power outlets, switches, etc, should, to the maximum extent possible be located above the design flood level. All electrical wiring installed below the design flood level should be suitably treated to withstand continuous submergence in water.

[DUR0700]

23. 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]

24. 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]

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. 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]

27. 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]

28. **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]

29. **Fire hose reels shall be installed in accordance with the provisions of Part E1.4 of the Building Code of Australia and comply with Australian Standard AS1221 and AS2441.**

**However, they shall not be installed until the PCA has been furnished with a certificate, signed by a Hydraulics Engineer stating that the design and proposed manner of installation complies with the relevant standards.**

[DUR1360]

30. **Exits are to be provided so that no point on the floor of the building shall be more than 20 metres from:**

(a) **an exit; or**

(b) **a point from which travel in different directions to two exits is available in which case the maximum distance to one of those exits shall not exceed 40 metres.**

[DUR1390]

31. **Exit signs which comply with Part E4.5 of the Building Code of Australia and are designed in accordance with Part E4.8 of the Building Code of Australia and installed. Mounting heights shall be in accordance with AS2293.1.**

[DUR1400]

32. **Emergency lighting to comply with Part E4.2 of the Building Code of Australia shall be provided. Details of the system to be used and a certificate from the electrical engineer to certify that the system will comply with all relevant requirements of Part E4.4 of the Building Code of Australia and AS 2293.1 are to be submitted to the PCA prior to installation.**

[DUR1410]

33. **Doors forming exits, paths of travel to exits and parts of exits shall comply with the relevant provisions of D2.19 and D2.20 of the Building Code of Australia.**

[DUR1420]



**PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

34. 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]

35. 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]

36. Portable fire extinguishers containing an extinguishing agent suitable for the risk being protected must be installed in accordance with Australian Standard AS 2444 "Portable Fire Extinguishers - Selection and Location" and Part E1.6 of the Building Code of Australia.

[POC0070]

37. 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]

**USE**

38. The use being restricted to the floor area designated on the approved plan.

[USE0010]

39. 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]

40. No items or goods are to be stored or displayed outside the confines of the premises.

[USE0050]

41. No part of the building is to be used or adapted for separate residential habitation or occupation.

[USE0070]

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

[USE0120]

43. All loading/unloading to take place within the boundary of the subject property.

[USE0130]

44. 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]

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

[USE0240]

**REPORT:**

**Applicant:** Teveta Pty Ltd  
**Owner:** Teveta Pty Ltd  
**Location:** Lot 2 SP 22917 (Lot 16 DP 712954), No. 2/4 Kay Street Murwillumbah  
**Zoning:** 4(a) Industrial  
**Cost:** \$44,000

**BACKGROUND:**

The site is located in the middle of an industrial area, however, historically the subject site has been used as a indoor sports facility that over the years has supported activities such as Ten Pin Bowling, Volleyball, Basketball and like activities.

On 1 April 2003 Council issued development consent DA02/2048 for the use of the building to be changed from an Indoor Sports Centre to a Factory to accommodate the manufacturing process of lightweight concrete assembly panels.

The building has a basement car park that has recently been blocked off to the general public and been used more as a storage area.

Council originally received DA 04/0800 on 1 July 2004. The application sought approval for minor extensions and a change of use to part of an existing industrial building to accommodate storage units for individuals domestic goods at a new mezzanine level. The applicant proposes to establish 53 storage units within an existing factory use. The storage units shall be generally located above the existing factory floor level however 6 units (6m x 3m) shall be located on the factory floor level. The applicant has defined manoeuvring areas around the factory floor to allow a forklift to service the storage units whilst not impacting on the activities of the factory floor. Additionally, the proposal also includes the provision of additional car parking and loading areas.

DA04/0800 was reported to the Development Assessment Panel in September 2004. The report detailed concerns with the littering of building products in the nominated parking areas, the poor access and surface conditions raising issues for stormwater management, the construction form of the north side of the site, the lack of manoeuvring areas for forward exit, the potential conflict between storage and the existing factory use and the lack of detail regarding stormwater management.

Subsequently, as the applicant failed to submit sufficient detail to address these concerns the application was refused for the following reasons:

1. Pursuant to Section 79C(1)(iii) the proposed development does not attain the provisions of Development Control Plan No.2 - Parking and Access Code.
2. Pursuant to Section 79C(1)(c) the suitability of the site for the proposed development can only be determined as unsuitable on the information provided to Council.

3. The applicant has not provided the following information which is considered necessary to determine the application favourably;
  - i. Full detail of proposed pavement within all parking and manoeuvring areas on the site.
  - ii. Detail stage areas for building materials currently stored within the parking areas located at the front of the building.
  - iii. Full stormwater detail in accordance with councils development design and construction specification d7.
  - iv. Detail manoeuvring areas in accordance with councils DCP 2 indicating vehicles may turn and exit parking areas in a forward direction including access ramps.
  - v. Cross sectional detail of the building for all storage areas.
  - vi. Detail indicating how all storage areas shall be accessed by delivery plant and the impact on the factory floor.

The proposed development is not considered in the public interest having specific regard to the lack of information provided which restricts a proper assessment of the application.

The applicant then lodged a Section 82 A Review of Determination on 27 October 2004 with attached Engineering Plans prepared by Richard Harry Engineering Services Pty Ltd. However, these plans still did not demonstrate compliance with DCP No. 2 – Site Access & Parking Code.

Amended plans have since been provided that demonstrate that the proposed change of use has sufficient onsite parking and manoeuvrability area to accommodate the existing factory use and the proposed storage facility.

Additionally, due to the age of the premises and the sites previous non compliances with the Building Code of Australia, Council's Building Surveyor has been liaising with the applicant to ensure the premises achieves compliance with the BCA.

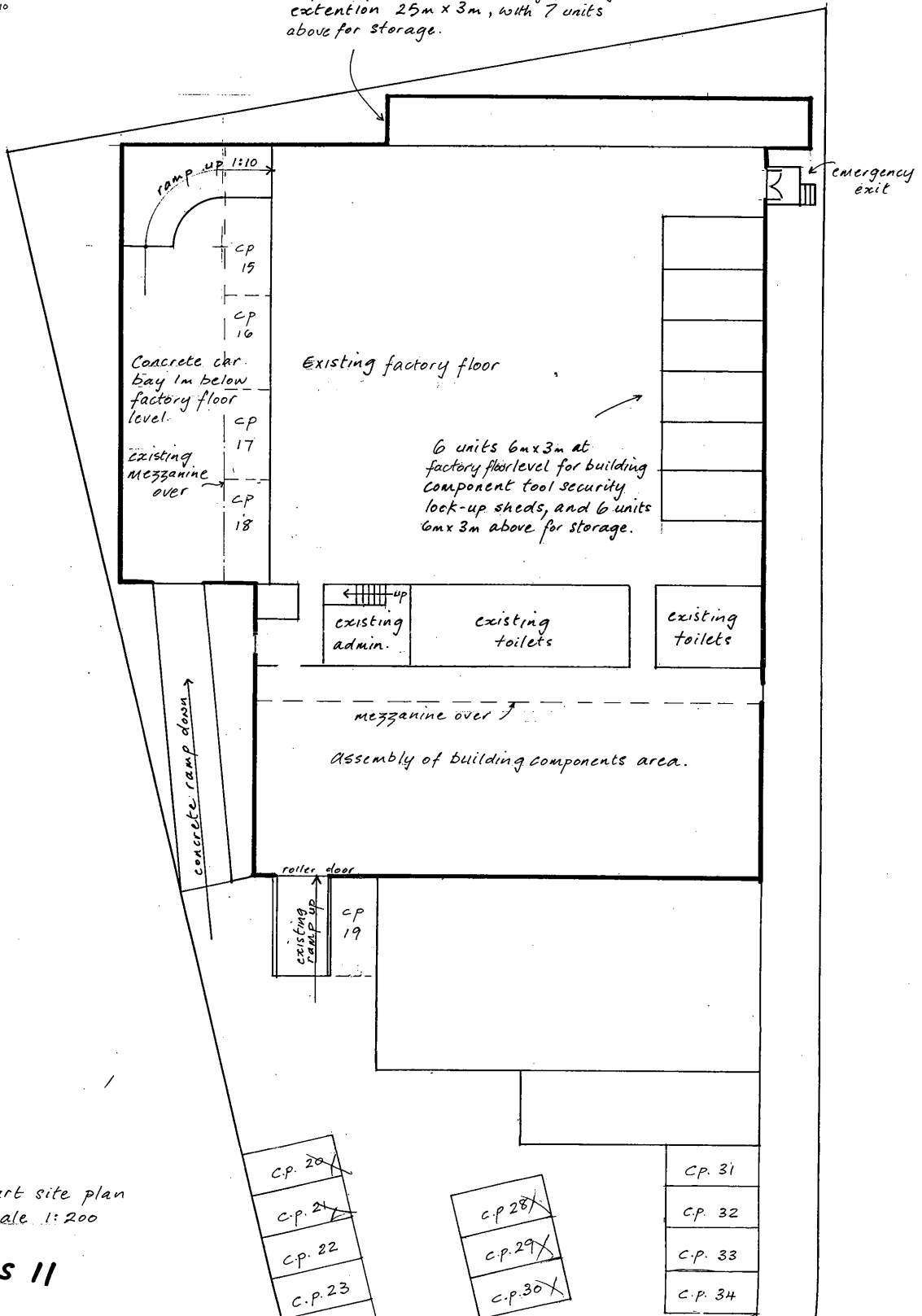
The proposed change of use is now considered suitable subject to the recommended conditions of consent that include a deferred commencement condition that ensures all conditions of the previously issued consent have been complied with.

**SITE DIAGRAM:**



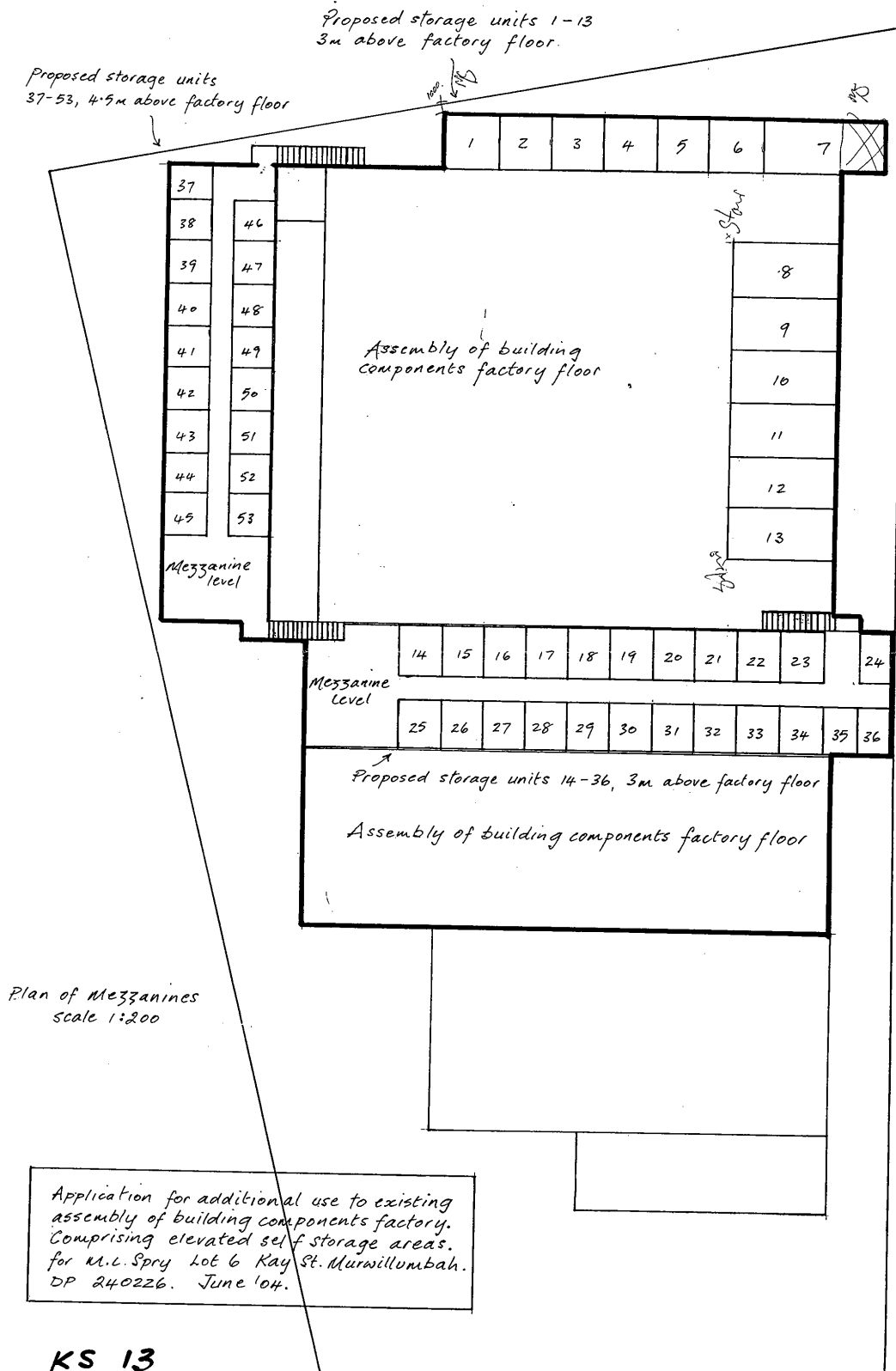
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 Rise 1 : 10

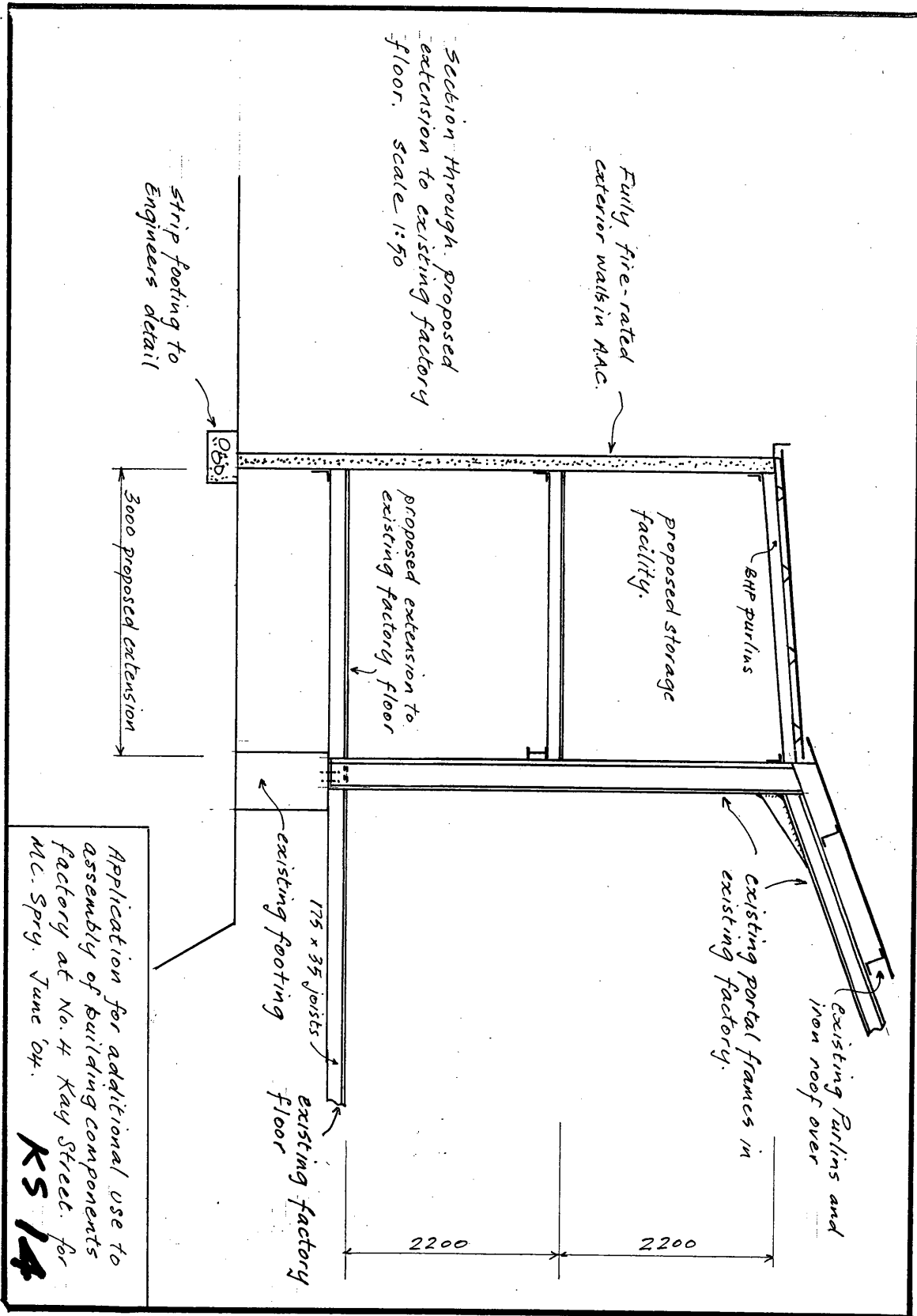
Proposed extension to existing factory floor  
 extension 25m x 3m, with 7 units  
 above for storage.



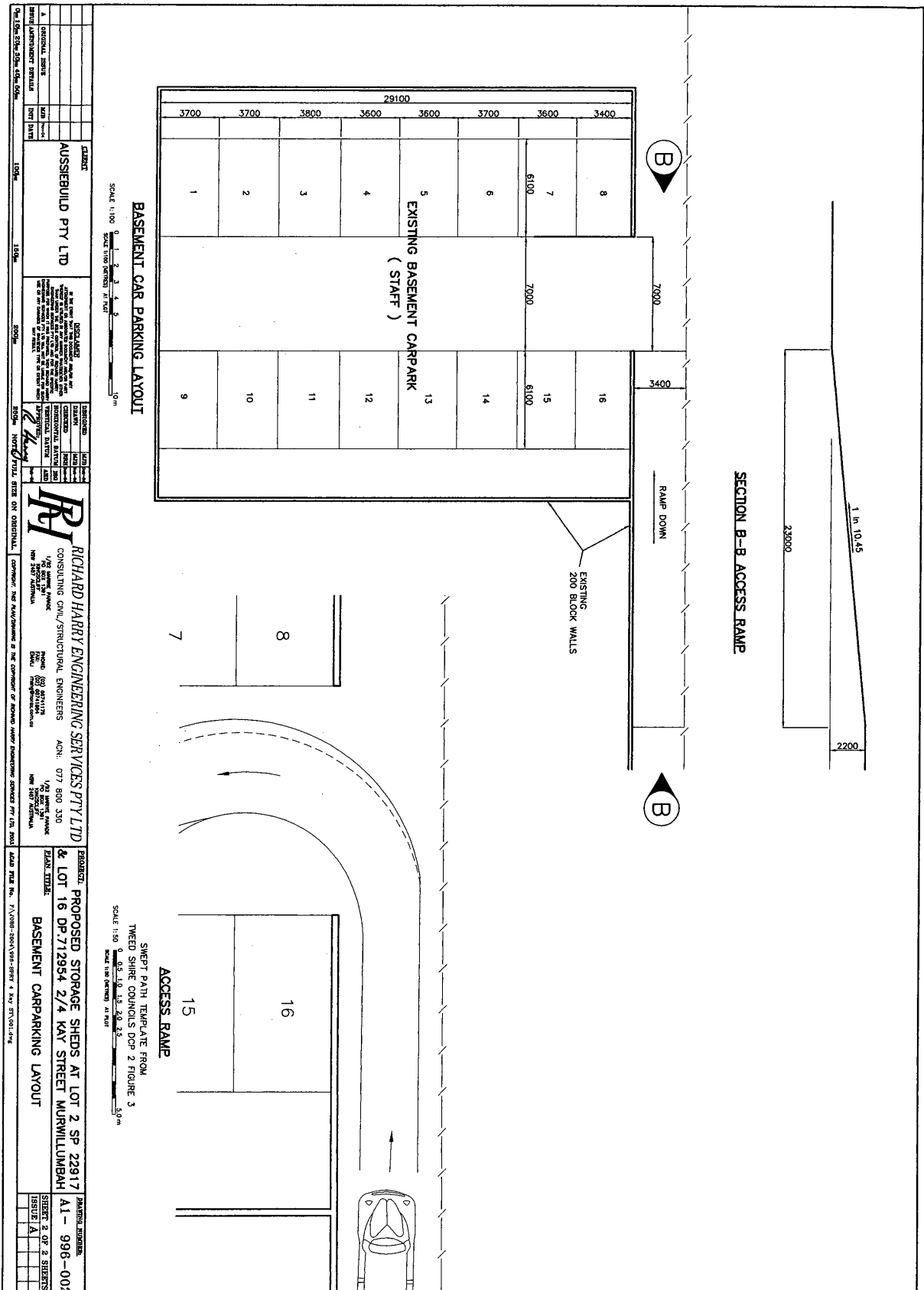
Part site plan  
 scale 1:200

KS 11









CLIENT	AUSSEBILD PTY LTD
DESIGNER	RICHARD HARRY ENGINEERING SERVICES PTY LTD
DATE	15/08/05
PROJECT	PROPOSED STORAGE SHEDS AT LOT 2 SP 22917 & LOT 16 DP 712954 2/4 KAY STREET MURWILLUMBAH
DRAWN BY	RH
CHECKED BY	RH
DATE	15/08/05
SCALE	1:100
PROJECT NO.	22917
DATE OF ISSUE	15/08/05
ISSUE	A



**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

Under the Tweed Local Environmental Plan 2000 the subject site is zoned 4(a) Industrial in which storage units are permissible with development consent. Furthermore, light industrial type uses are compatible with both the zone objectives and the consent considerations contained within the LEP.

The proposed storage units would occur within an existing building, which has all the necessary connections to all essential services.

The site is located within a defined flood area. Councils DCP 5 allows for industrial development where it can be demonstrated adequate storage areas above flood high is available. The proposed development complies with the objectives for flood prone land.

Having regard to the LEP the proposal is a permissible use.

North Coast Regional Environmental Plan 1988

The proposed change of use does not contravene any objective detailed in the North Coast regional Environmental Plan.

State Environmental Planning Policies

There are no State Environmental Planning Policies considered specifically relevant to this application.

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

There are no Draft Environmental Planning Instruments that affect this application for a change of use.

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

Development Control Plan No. 2

History files for the subject site indicate that the site had at one-point provision for 40 car parking spaces (as part of the previous use as an indoor sports centre).

The current approved use of the premises is broken down as follows:

- Factory with a floor space of 1760m<sup>2</sup> (1 space per 100m<sup>2</sup>)
- Commercial use of 322.65m<sup>2</sup> (1 space per 40m<sup>2</sup>)

This would equate for the need of 21 onsite parking spaces (this figure has incorporated the 20% ESD reduction as detailed in DCP No. 2).

Mini storage units would normally require a minimum of 2 staff parking spaces and adequate parking adjacent to each unit. This is not practical for the proposed storage facility as the storage units are proposed at a mezzanine level above a factory floor and access to this area should not be available to the general public. The applicant proposes that this storage facility will be serviced by a staff member using a forklift and therefore Council's Engineer has had to review the proposal regarding car parking and apply a parking rate that is acceptable based on merit. Therefore, the storage unit component of the development has been assessed as bulky goods storage.

Bulky goods storage area = 354.6m<sup>2</sup>

Parking required at 2 /100m<sup>2</sup> = 6 spaces

Total 21 + 6 = 27 spaces

The applicant has provided amended plans detailing a total of 30 spaces in addition to a designated loading area.

As the lower level car park is accessed by a single lane driveway along the southern side of the building to the rear of the site, concern had been raised for conflict between customer vehicles entering and leaving the site. It had been established this conflict may be minimised by restricting this area to employees on the site. Similar working hours shall reduce the incidence of two-way traffic movements.

In relation to the designated loading bay area, service vehicles shall access the site in a forward direction and reverse down a ramp to the loading area. Access is limited to this area by a narrow pavement between parking spaces 18 and 19. As the parking provided is in excess of Council requirements it is recommended that parking space number 18 be deleted so as to provide ample manoeuvring area for service vehicles.

The existing car park pavement areas are below standard and also require upgrading.

Subsequently subject to adherence with the recommended conditions of consent the proposed application is considered satisfactory having regard to DCP No.2.

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

The proposed storage use of the building has raised issues of compliance with the Building Code of Australia. Subsequently, Council's Building Surveyor has reviewed the application and provided the following comments:

*"The use of the building on the site has been changed many times over the past decade. Council previously issued development consent DA 02/2048 for the use of the building to be changed from an Indoor Sports Centre to a Factory on 1 April 2003.*

*For development application DA02/2048, Council carried out a detailed assessment of the building in term of compliance with the Building Code of Australia and imposed several conditions of consent in relation to the new use due to the non-compliance of the building at that time.*

*A report submitted to Council by the applicant and prepared by Coastline Building Certification indicates continued non compliance with numerous conditions of development consent and confirms deficiencies with the existing building in terms of egress, the provision of fire services and safety issues. This is despite the fact that they have not complied with consent conditions and that the building has been used for the purposes covered by DA 02/2048.*

*Due to the history of non compliance with conditions of development consent it is recommended that any future consent be issued as a deferred commencement and should not be activated until all previous conditions of development consent for development application (DA02/2048) have been complied with.*

*It is also recommended that Council issue a penalty infringement notice if it is found that the applicant continues to operate the premises in contravention to the conditions of development consent.*

*It is recommended that the current application be conditioned to require compliance with the Building Code of Australia by the submission of an application for a Construction Certificate.*

*Please include the recommended conditions of consent with any development consent."*

The Building Surveyors conditions of consent have been incorporated into the recommendation.

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

The proposed use for the site represents a new and additional use for the site. These uses are actually of a less intense development than that of the historical approval for the site to operate as an indoor recreational facility. Therefore the proposed expansion into mini storage has merit and subject to compliance with the recommended conditions of consent the proposed new and additional use is considered satisfactory having regard to the nature of the area.

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

The surrounding locality is characterised by industrial land uses.

The site is located within a defined flood area. Councils DCP 5 allows for industrial development where it can be demonstrated adequate storage areas above flood high are available. The proposed development incorporates a mezzanine level and therefore complies with the DCP.

The proposed expansion of the factory use into site storage is appropriate based on the additional information supplied by the applicant.

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

Originally, it was not considered necessary to notify this development as the application predominantly involved internal alterations. However, on receipt of the S82 Review in accordance with the Act the application was notified to adjoining landowners who were given an opportunity to comment on the proposal. No submissions were received.

**(e) Public interest**

It is considered in the public interest to ensure all applications are held to a certain standard. In this instance the information originally submitted to substantiate the application was below standard and did not enable a proper assessment of the application. However, the additional information now supplied is considered adequate to enable a conditional consent to be granted.

**OPTIONS:**

1. Overturn the decision to refuse the application and approve the application based on the recommended conditions of consent.
2. Uphold the decision to refuse the application based on the original reasons for refusal.
3. Uphold the decision to refuse the application based on amended reasons for refusal.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be dissatisfied with the decision for the Review of Determination the applicant may determine to Appeal to the NSW Land & Environment Court.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The application for a change of use is considered to be consistent with the zone objectives for the area. However, given the sites history of non compliance with the Building Code of Australia it is considered necessary to impose a deferred commencement condition that requires confirmation that all previously issued conditions of consent for DA02/2048 have been complied with. Such detail is to be provided within six months from the date of determination.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

1. Development Assessment Panel report of 29 September 2004 (DW 1102023)
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**2 [PD] Development Application DA05/0359 for an Attached Dual Occupancy at Lot 813 DP 1013074, No. 32 Donegal Court, Banora Point**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA05/0359**

**SUMMARY OF REPORT:**

Council is in receipt of a Development Application for an attached dual occupancy at Lot 813 DP 1013074 at No. 32 Donegal Court, Banora Point. The parcel of land is 1331m<sup>2</sup> in area.

The proposed development has been assessed in relation to Council's policies and is considered to be consistent with Council's policies and requirements. During the exhibition period, one (1) written submission was received raising objections to the proposed development. The submission was a petition with thirty-three (33) signatures from 17 local households opposed to the proposal. The objections raised in the submission are addressed in this report.

The scale of the development is not considered likely to result in any unreasonable impacts on adjoining properties. The proposal demonstrates compliance with all relevant Council controls and on a merit assessment, is considered to be satisfactory with regard to issues such as character, amenity and suitability of the site. As a result, the application is recommended for conditional approval.

**RECOMMENDATION:**

**That Development Application DA05/0359 for an attached dual occupancy at Lot 813 DP 1013074, No. 32 Donegal Court Banora Point be approved subject to the following conditions: -**

**GENERAL**

**1. The development shall be completed in accordance with the Statement of Environmental Effects and Sheet Nos 1-8 prepared by S. Todiee and dated 2 March 2005 and the Landscape Concept Plan prepared by Paul Lockhart of Boyds Bay Garden World, 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-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**

5. 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]
6. Development approval only is granted for a driveway from the development to connect with the adjacent public road.

**You will be advised separately of the determination of your application to Council for consent under Section 138 of the Roads Act 1993 to construct or modify a driveway on the public road adjacent to your property**

**You must receive this separate written consent from Council under Section 138 of the Roads Act 1993 prior to the issue of a construction certificate which includes any works on the adjacent public road and prior to any works taking place on the adjacent public road.**

[PCC0200]

- 7. A detailed site stormwater plan, which includes details of the method of collecting and disposing of overland flow of rainwater which enters the site, separate to the roof water drainage system, shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.**

[PCCNS01]
- 8. Construction Certificate drawings shall make provision for the regarding 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 & Operations Division.**

[PCCNS02]
- 9. 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.**

[PCCNS03]
- 10. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.**

[PCC0190]
- 11. 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]

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

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

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

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

[PCC0240]

13. 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. | Banora Point West/Tweed Heads South (DCP3)<br>Open Space Passive (Casual):<br>S94 Plan No. 1    | \$813   |
| b. | Banora Point West/Tweed Heads South (DCP3)<br>Open Space Active (Structured):<br>S94 Plan No. 1 | \$639   |
| c. | Tweed Road Contribution Plan:<br>S94 Plan No. 4 (Version 4.0)<br>Sector2_4                      | \$1,684 |

d.	Shirewide Library Facilities: S94 Plan No. 11	\$212
e.	Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$50
f.	Emergency Facilities (Surf Lifesaving) (REMSHIRE) S94 Plan No. 16	\$87
g.	Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$178.34
h.	Cycleways S94 Plan No. 22	\$110
i.	Regional Open Space (Structured) S94 Plan No. 26	\$361
j.	Regional Open Space (Casual) S94 Plan No. 26	\$67

[PCC0050/PSC0005]

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

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

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

Water DSP4: 1 ET @ \$4230      \$4,230  
Sewer Banora: 1 ET @ \$2634      \$2,634

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]

**PRIOR TO COMMENCEMENT OF WORK**

- 15. 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]

- 16. 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]

- 17. 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]
18. 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]
19. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.
- [PCW0090]
20. An application to connect to Council's sewer or carry out plumbing and drainage works, together with any prescribed fees including inspection fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.
- [PCW0210]
21. All roof waters are to be disposed of through properly jointed pipes to the street gutter, interallotment drainage or to the satisfaction of the Principal Certifying Authority. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZS3500.3.2. Note All roof water must be connected to an interallotment drainage system where available. A detailed stormwater and drainage plan is to be submitted to and approved by the PCA prior to commencement of building works.
- [PCW0250]
22. 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]

23. 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]

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

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

[PCW0190]



## DURING CONSTRUCTION

25. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate or complying development certificate was made).  
[DUR0010]
26. 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]
27. 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]
28. 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]
29. 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]
30. 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]
31. 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]
32. 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]
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. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position. [DUR1040]
36. 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]
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. The finished floor level of the building should finish not less than 225mm above finished ground level. [DUR1150]
39. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-
- \* 43.5<sup>0</sup>C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
  - \* 50<sup>0</sup>C in all other classes of buildings.
- A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works. [DUR1160]
40. 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]
41. 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]
42. All proposed works are to be carried out in accordance with the conditions of development consent, approved Construction Certificate drawings and Specifications.
- [DURNS01]
43. No soil, sand, gravel, clay or other material shall be disposed of off the site.
- [DUR0030]
44. 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]
45. 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]
46. 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]

47. 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]

48. All stormwater from roof catchment to be connected directly into road drainage pits if available, or to kerb and gutter, along the frontage of the site.

[DUR0640]

#### **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

49. 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]

50. 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]

**REPORT:**

**Applicant:** Mr S Todiee  
**Owner:** Mr S Mansouri and Mrs P Mansouri  
**Location:** Lot 813 DP 1013074, No. 32 Donegal Court Banora Point  
**Zoning:** 2(c) Urban Expansion  
**Cost:** \$230,000

**BACKGROUND:**

Two previous Development Applications have been submitted over the subject site. Development Application DA05/0035 for an attached dual occupancy was submitted to Council on the 14 January 2005 although pursuant to Section 51(1) of the Environmental Planning and Assessment Act Regulation 2000 the application was returned to the applicant as insufficient information was submitted with the application.

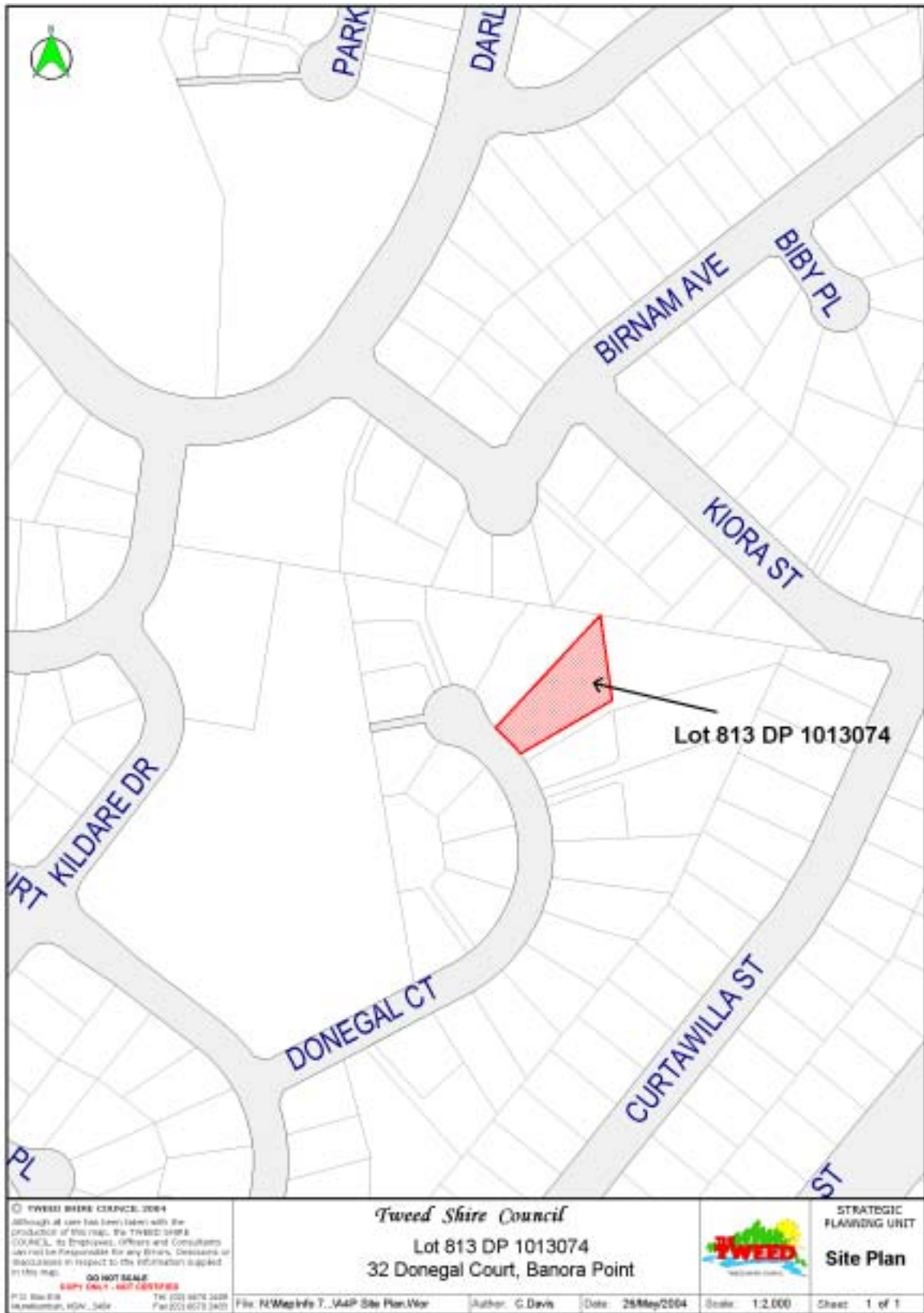
Previously Development Application DA04/0127 was submitted to Council for a two (2) lot subdivision over the subject land within Glen Ayre Estate seeking to create two allotments of 640m<sup>2</sup> and 690m<sup>2</sup> respectively. The Development Application was reported to the Council Meeting on the 2 June 2004 and recommended that the application be approved subject to conditions. The application was considered at the Council Meeting and it was resolved 'that the matter be deferred for Council staff to bring forward appropriate reasons and/or conditions for refusal'. On Wednesday 16 June 2004 Council resolved to refuse Development Application DA04/0127. The reasons for refusal were as follows:

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

The subject site is a vacant parcel of land within the Glen Ayre Estate subdivision. The site has a 15.5 metre frontage to Donegal Court and an approximate depth of 45 metres. The site splays out from the street frontage and is slightly irregular in shape, with a total area of 1331m<sup>2</sup>.

The topography of the site is relatively steep with levels ranging between 9.5m AHD and 24.5m AHD. The site slopes upward from the Donegal Court frontage at a gradient between 18-25%. There is no significant vegetation on the site. The surrounding development is characterised by a mix of single dwelling houses and vacant residential allotments.

**SITE DIAGRAM:**



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

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

Tweed Local Environmental Plan 2000

The subject land is zoned 2(c) Urban Expansion under the Tweed Local Environmental Plan 2000. The proposed development is permissible with the consent of Council. The proposed development is consistent with the primary objective of the zone.

The following Clauses of the Tweed Local Environmental Plan 2000 are relevant to the proposal:

**Clause 15** of the TLEP requires Council to ensure adequacy of services prior to determining the development application. All essential services are currently provided to the subject site.

**Clause 16** of the TLEP requires Council to ensure that the height and scale of development is appropriate to the site and the surrounding built and natural environment. Under the TLEP Height of Buildings Map the site is identified within the 3-storey height of restriction. The proposal comprises a single storey building. The proposal complies with the provision of clause 16.

**Clause 17** of the TLEP requires Council to ensure proper consideration of development that may have a significant social or economic impact. The proposal is not considered likely to generate any significant social or economic impacts. Further assessment is not considered warranted.

**Clause 56** Relates to the suspension of covenants, agreements and similar instruments. Clause 56 subclause (2) states: "For the purpose of enabling development to be carried out in accordance with this plan or a consent granted under the Act, any covenant, agreement or similar instrument that restricts development allowed by this plan shall not apply to the development to the extent necessary to serve that purpose." As a consequence of Clause 56 the Section 88B Instrument which applies to the land (limiting development to single dwellings) is suspended by the provisions of this Clause.

North Coast Regional Environmental Plan 1988

**Clause 32B** of NCREP applies as the subject land is located within the NSW Coastal Policy. The proposal will not create any overshadowing of beaches or waterfront open space or impede public access to the foreshore area, nor does the proposal contradict the strategic aims and objectives of The New South Wales Coast Government Policy, The Coastline Management Manual or, The North Coast: Design Guidelines.



**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 suitable for the function of the proposal and a detailed sedimentation and erosion control plan will be conditioned and enforced in relation to construction works.

State Environmental Planning Policies

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

The subject land is affected by SEPP 71 – Coastal Protection. The proposal will not impede public access to the foreshore, cause overshadowing to the foreshore or make any significant negative impacts that may conflict with the criteria contained in clause 2 and 8 of SEPP 71. The proposal complies with the provisions of SEPP 71.

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

The proposed development is not affected by any Draft Environmental Planning Instruments.

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

Development Control Plan No. 2 – Access and Parking Code

The following table details the compliance of the proposed development with the on-site car-parking provisions contained in DCP 2:

Standard	Requirement	Proposal	Satisfactory
On Site Car Parking	2 spaces per dwelling	4 spaces in total	YES

The proposed development proposes 4 onsite parking spaces in the form of two double garages. Furthermore, both driveway areas provide the possibility of providing additional onsite parking spaces in a stacked parking arrangement.

In regard to the proposed parking layout the development is considered to comply with DCP 2.

Development Control Plan No.3 - Banora Point West/Tweed Heads South

Glen Ayre estate is identified within the prescribed area subject to the provisions of DCP No.3. The purpose of DCP No.3 is to present Council's objectives with regard to development in these areas. In this regard, development must generally comply with the provisions of the relevant land

use category. There are four (4) types of Residential Areas identified in the plan.

Glen Ayre estate (inclusive of the subject site) is identified as a Residential 'B' Area. According to the provisions of the DCP, the Residential 'B' category is intended to provide for a housing form that is medium density in character. The document states that;

*"Duplexes, cluster and integrated housing development may also be accommodated within this area, provided the density of any proposed development is similar to townhouse density.*

*Unless exceptional circumstances exist, these areas preclude the development of conventional detached dwellings.*

*Within the DCP area, provision has been made for approximately 120 hectares (of Residential 'B' land), which equates to 2880 dwellings accommodating up to 6500 persons."*

It is evident in the nature of the existing development within Glen Ayre estate that the provisions of DCP have not been adhered to in previous proposals. This may be linked to the constraints applicable to the area relating to the topography of the land and the limited capacity of Donegal Court in accommodating medium density development.

It is apparent however, that the planned population densities are not being met by the current pattern of development. The Section 88B Instrument in place over the estate further limits the potential for meeting these population quotas. In this context, the proposed attached dual occupancy presents an opportunity to make a minor addition to the desired density of the area.

Development Control Plan No.6 – Multi Dwelling Housing

The following table assess the proposed development in relation to the provisions of the DCP:

<b>Standard</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Complies</b>
Floor Space Ratio	0.5:1 (665.5m <sup>2</sup> )	0.2:1 (266.2m <sup>2</sup> )	YES
Minimum Landscaped Area	30% site area (399.3m <sup>2</sup> )	Approximately 34% site area (452.5m <sup>2</sup> )	YES
Setbacks from street boundary	Primary frontage 6m	>6m to main wall	YES
Setbacks	900mm in accordance with BCA	>900mm	YES
<u>Streetscape</u>	The maximum width of the garages should be	Provision not applicable as	YES

	50% of the frontage width.	garages are addressing side boundary.	
Streetscape	Garages should be setback behind the front façade of the building.	The garages are setback behind the front façade of the building.	YES
Building Envelope	45° from 3.5m high at the side and rear boundary (excluding eaves and the like)	Generally Complies	YES
<u>Minimum Private Open Space</u>	20% of site area (266.2m <sup>2</sup> = 133.1m <sup>2</sup> per dwelling) with minimum dimension of 3m	Unit 1 = 145 m <sup>2</sup> Unit 2 = 240 m <sup>2</sup>	YES
	One part min 25m <sup>2</sup> with min dimension of 4m	>25m <sup>2</sup> & min. dimension of 4m	YES

Streetscape

The overall objective of Section 3.2.1 Streetscape is 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 cut and fill proposed for the proposed attached dual occupancy is designed to cater for the topography of the land and to limit the effect of bulk and scale from the streetscape. The subject lot is considered to comply with all applicable streetscape, setback and building appearance requirements detailed within DCP 6.

The subject application includes a detailed landscaping plan, incorporating extensive amounts of landscaping, particularly along Donegal Court. The proposed landscaping is seen to significantly soften the appearance of the development from the Donegal Court streetscape.

Summary

In all 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 requested Council’s Building Services Unit complete an ABSA certificate for the proposed development that outlines compliance with the requirements DCP 39 and the results are as follows:

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

The proposal is therefore considered to satisfy the requirements of DCP 39.

Development Control Plan No.42 – Public Notification Policy

The development application was notified to surrounding properties for a period of two weeks. During this period one written submissions was received in the form of a petition signed by thirty-three (33) residents from a total of seventeen (17) households. The main issues raised within the submissions included character, overdevelopment of the site and traffic issues. The issues raised are addressed further in this report.

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

A Geo-Technical Assessment has been undertaken on the site by Border-Tech. The Report contains recommendations concerning building foundations, site preparations and compaction. The Report makes comment that Border-Tech are aware of the Geo-Technical Testing and inspections that were carried out during the placement of the fill on site (during the creation of the lot) and consider the fill material ‘controlled’. Council’s Development Assessment Engineer has examined the submitted Geo-Technical Assessment and drawings and raised no objection to the proposal.

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

**NSW Coastal Policy**

The proposed site is located within the area covered by the Government Coastal Policy, and has been assessed with regard to the objectives of this policy. The Government Coastal Policy contains a strategic approach to help, amongst other goals, protect, rehabilitate and improve the natural environment covered by the Coastal Policy. It is not considered that the proposed dual occupancy contradicts the objectives of the Government Coastal Policy.

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

Context & Setting

The subject site and surrounding allotments are currently zoned 2(c) Urban Expansion under the TLEP 2000, with the area primarily expressing a detached residential development character. Whilst development is primarily of a detached nature, a number of differing lots sizes and building forms are present within the immediate vicinity.

The majority of lots along Donegal Court are generally of a regular shape and are relatively similar in terms of lot layout and size, however some are larger, deeper lots. Accordingly, the majority of housing developments along Donegal Court incorporate larger building setbacks, with a variety of traditional and coastal building designs, a number of styles and building heights ranging from single to three storeys.

Whilst the area does present an established context and setting, a number of recently approved dwellings in the vicinity has initiated the start of a progressive change to the streetscape, context and setting of the area. The proposed dual occupancy is considered enhance this progressive change and make a positive contribution to the context and setting of the site and its surrounds.

The density of the development is one (1) unit per 665.5m<sup>2</sup> of site area, which given the physical constraints of the site is appropriate. There are eight (8) other allotments that have dwellings located upon them below 665m<sup>2</sup> site area within Donegal Court, which suggests that the development is compatible with the existing and the desired future character of the locality.

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

Suitability of the Lot for Dual Occupancy Development

The subject site has a land area of 1331m<sup>2</sup>. The topography of the site is relatively steep with levels ranging between 9.5m AHD and 24.5m AHD. The site slopes upward from the Donegal Court frontage at a gradient between 18-25%. The site enjoys a 15.5-metre frontage to Donegal Court and is approximately 45 metres deep. The applicant has provided a Geo-Technical report that concludes that the land is suitable for the proposed development. Council's Development Assessment Engineer has reviewed the supporting information and resolved to support the proposal subject to the recommendations put forward in the Geo-Technical report.

Neighbouring land comprises primarily of single dwellings, with variant building heights between 1 and 3 storeys and architectural styles within the vicinity. Council's GIS system indicates that the lot is not bushfire prone and does not have any other significant environmental constraints.

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

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

The proposed development was notified in accordance with Council's Development Control Plan No. 42 for a period of fourteen (14) days. One submission was received during this period in the form of a petition signed by thirty-three (33) residents from a total of seventeen (17) households in

Donegal Court. The petition against the proposed development provides no specific basis for objection.

Following are the objections raised and a response to the matters raised in the submission:

- All lots displayed on Tweed Shire Council approved plans were for single dwelling only.

**Response:** The Section 88B Instrument which applies to the land, limiting the nature of the development to single dwelling houses is suspended by the provisions under Clause 56 of the Tweed Local Environmental Plan.

- Donegal Court cul-de-sac does not have sufficient capacity for street parking for visiting persons and the increased traffic generated by additional dwellings/driveways.

**Response:** Council's Development Assessment Engineer has assessed the proposed development and raised no concerns over the parking proposed to service to the development. The proposed development meets with the requirements of Development Control Plan No. 2.

- The proposed subdivision will no doubt multiply traffic noise and flow, and will disrupt the peace and quite enjoyed by others within Donegal Court.

**Response:** The proposal will result in one (1) additional dwelling requiring access via Donegal Court. The proposed development is serviced by a single driveway. Two (2) onsite car parking spaces per unit are provided. Donegal Court is a cul-de-sac which does not carry through traffic. Council's Development Assessment Engineer has raised no traffic generation issues and concludes that the existing road system is capable of accommodating the additional traffic that will be generated by this development. It has been assessed that the additional traffic noise associated with the proposed development will be negligible.

- The investment made when purchasing and expected growth in our investment will not be achievable.

**Response:** There is no evidence to suggest that the proposed development will have a negative impact on surrounding property values. The scale of the proposed development is relatively minor, facilitating the provision of one (1) additional dwelling within the estate. There are no significant impacts foreseen as a result.

- We have concerns the applicants have no intention of residing in either dwellings themselves.

**Response:** This objection is not relevant to the merits of the application and does not warrant a response.

- Will other vacant allotments in Donegal Court be encouraged to apply for multiple dwellings and give our wonderful street the appearance of cluster housing, which we are certain was never the intention of the original developer or the residents now occupying Donegal Court.

**Response:** Most of the allotments within Donegal Court have dwellings already located upon them. Applications can be lodged for dual occupancies on allotments although are required to be assessed on their merits and met with Council's adopted policies and planning documents. The proposal is unlikely to create a precedent for similar development proposals on other vacant allotments in the estate. The site is unusually large with an area of 1331m<sup>2</sup>, which is double the size of a standard residential allotment. Other vacant lots in the locality are generally in the order of 600-800m<sup>2</sup>.

#### Summary

Whilst certain issues raised in the submission raise valid points, they are not considered substantial enough to warrant the refusal of the development application. The application demonstrates compliance with all relevant Council controls and policies pertaining to an attached dual occupancy. As a result, it is considered that the proposed development will not compromise the amenity of the local environment.

#### **(e) Public interest**

Although the proposal received a submission in the form of a petition from local residents during the two-week notification period, the proposed development is not considered to undermine the general public interest in the locality, and is considered to have a wider public interest by providing a variety of housing options in the locality.

#### **OPTIONS:**

1. Approve the application in accordance with the recommendation and conditions of consent herein.
2. Refuse the application and provide applicable reasons for refusal.

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

Nil.

#### **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 meets all of Council's applicable requirements within the TLEP and relevant DCP's. 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 attached dual occupancy is therefore considered to warrant approval.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**3 [PD] Draft Development Control Plan No 50 - Bogangar/Cabarita Beach Locality Plan**

**ORIGIN:**

**Strategic Town Planning**

**FILE NO: GT1/DCP/50**

**SUMMARY OF REPORT:**

Draft Development Control Plan (DCP) No 50 was placed on public exhibition between 11 May 2005 and 10 June 2005. During this period 26 submissions were received. The main issues raised during the exhibition period focussed on two issues in particular, development of Council owned land within the Pandanus Parade Precinct, and 'tourist accommodation' development controls. As a result of these particular issues it is proposed to develop a masterplan for the Pandanus Parade Precinct. The issue of tourist accommodation is the subject of another report on Council's agenda and is intended to be addressed through a separate DCP specific for tourist accommodation land uses.

The DCP process for Bogangar/Cabarita Beach was always intended to be a two stage process. The issues raised as part of Stage 1 can be addressed as part of Stage 2 of the project. Adoption of the draft Plan will enable Council to implement planning controls in the locality whilst Stage 2 of the project is completed.

**RECOMMENDATION:**

**That Council:-**

- 1. Adopts Draft Development Control Plan No 50 - Bogangar/Cabarita Beach Locality Plan as referred to in Attachment 1 of this report.**
- 2. Commences preparation of Stage 2 of the project: -**
  - a. Completes a Development Control Plan for the whole of Bogangar and Cabarita Beach villages.**
  - b. Prepares a masterplan for the Pandanus Parade precinct that provides options as to how best to utilise the site.**
- 3. Prepares a Development Control Plan for Tourist Accommodation.**

## **REPORT:**

### **Introduction**

Draft Development Control Plan (DCP) No 50 was placed on public exhibition between 11 May 2005 and 10 June 2005. During this period 26 submissions were received. A copy of draft DCP No 50 is provided as Attachment 1 to this report.

The purpose of this report is to summarise and provide commentary on the submissions received during the exhibition period and recommend whether any amendments need to be made to the draft Plan or what other actions may be required. A matrix summarising each of the submissions received is provided in Appendix A.

### **Background**

A Steering Committee was established for the preparation of a Development Control Plan for the villages of Bogangar and Cabarita Beach. The Steering Committee was made up of local residents, business people and representatives from interest groups from the Bogangar/Cabarita area.

The purpose of the draft DCP is to establish design guidelines to manage future development within the Village. The draft Plan also establishes a strategy and planning framework for the Village.

Prior to placing the draft Plan on exhibition, Council amended two specific elements within the draft DCP from that which was adopted by the majority of the Steering Committee members. The two significant changes made are detailed below:

#### **1. Pandanus Parade Precinct**

The changes made to the draft DCP specifically affect 4 lots within this precinct (Lot 11, Section 5, DP 31209, Lot 10, Section 5, DP 31209, Lot 4, Section 5, DP 29748, and part Lot 5, Section 5, DP 29748) and the Pandanus Parade carriageway.

A majority of the Committee voted to restrict development of this public land and retain this land solely for car parking and open space purposes and to embellish Pandanus Parade through the implementation of a streetscape plan.

Council adopted the town planning recommendation to amend the draft DCP to enable a mix of uses on this public land. The draft Plan was advertised for the site to be developed for multi-dwelling units, tourist accommodation and commercial uses in addition to car parking and open space. The draft Plan also provides for the pedestrianisation (mall) of Pandanus Parade. The objective for the Pandanus Parade Precinct is to develop a village hub/square creating a focal point for the village. The draft Plan recommends that this area be the subject of a comprehensive Masterplan and Streetscape Plan for the area.

## **2. Tourist Accommodation**

The majority of the Steering Committee voted to apply multi dwelling design guidelines to tourist accommodation. This has resulted in the absence of design controls to manage tourist accommodation.

Currently, Council has few controls regulating tourist accommodation. This makes it difficult for Council's Development Assessment Officers to assess such developments, and leads to a lot of debate and confusion when attempting to advise on tourist development.

The changes made to the draft DCP result in tourist accommodation being assessed under the same development controls as those applied to multi-dwelling units. This change is intended to:

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

### **Submissions**

Of the 26 submissions received the majority of the submissions generally supported the draft DCP with the exception of the amendments made to the draft DCP relating to the Pandanus Parade Precinct. The change made to the draft DCP concerning Tourist Accommodation didn't raise as much public debate and was generally supported. Other issues raised included car parking provisions on Hastings Street, streetscape and traffic calming issues along Coast Road, building heights, provision of a Masterplan and review of design criteria.

### **Pandanus Parade Precinct**

Twenty three (23) submissions were received objecting to the changes made to the draft DCP that would enable the partial development of Council owned land and the part pedestrianisation of Pandanus Parade. The majority of submitters opposed any sale of this land and expressed that this land should be retained in public ownership for the purposes of public car parking and community open space.

Three (3) submissions supported the partial development of community land and the creation of a mall within the Pandanus Parade Precinct, and that this be developed through a Masterplan or as a result of an urban design study for the area.

The Pandanus Parade Precinct represents a focal hub for the Cabarita Beach/Bogangar Villages. It is located adjacent to Cabarita Beach, the Surf Club, the Cabarita Beach Hotel, is central to the Village business district, and is readily accessible to motor

vehicles, pedestrians and cyclists via Tweed Coast Road and the foreshore. The Steering Committee's recommendation is to retain land for car parking and open space purposes, and that this should be undertaken through beautification of the subject site and the streetscaping of Pandanus Parade.

The Council's amendment would realise the Steering Committee's objectives, but would also provide for part of the land to be developed for mixed use purposes, potentially a village square and possible part pedestrianisation of Pandanus Parade.

Important to note within this Precinct is that Council owned land is currently zoned 5(a) Special Uses. Development of any part of the land for mixed use development or any use other than car parking would require a LEP Amendment (rezoning of the land to 3(b) General Business). This process would also require public consultation and further community scrutiny.

The fear in the community is the Council's amendment to the draft Plan would lead to the entire site being built upon, hence losing all community/public space on site.

Given the prime location of the site and the opportunity to create a focal point for the village it is considered the site lends itself to something more than car parking, a land use which is generally considered to be a visually ugly, regardless of tree planting to help beautify it.

Council's amendment to the draft Plan would provide for the majority of car parking spaces be replaced underground. Part of the land being utilised for open space (village square) in conjunction with transferring part of Pandanus Parade into a mall, with the remainder of the land being developed for mixed use purposes (commercial/retail at ground level with tourist accommodation above). From an urban design and planning perspective this would provide for a more effective use of the land and would create a more useable and vibrant community focus for the Village.

The draft Plan intends to achieve this through the development of a Masterplan and Streetscape Plan for the Precinct. Given the number of submissions received objecting to this concept, it may be worthwhile to bring forward the preparation of a Masterplan for the site to provide the community with a visual illustration/representation of what can occur within the Precinct. The Masterplan process can develop several options on how to develop the site, stimulating community discussion, and providing Council and the community with clearer direction on how to best utilise the site.

Submissions were received requesting the public land be reclassified from "operational" to "community" land in accordance with the Local Government Act 1993. This would pre-empt the masterplanning process, and should not be considered at this stage.

**Recommendation:** That Council prepares a Masterplan for the site that provides options as to what could occur within the Precinct.

## **Tourist Accommodation**

Seven (7) submissions were received supporting Council's amendment to the draft Plan concerning tourist accommodation.

Three (3) submissions were received requesting tourist accommodation and design guidelines be reviewed and ensure that these controls provide for flexibility for such uses.

The draft Plan looks to apply the same development guidelines for tourist accommodation as that which are already applied to multiple dwelling units.

However, tourist accommodation and multiple dwelling units are distinct and different land uses. Although the structure itself may not differ significantly the actual use of the building does. Hence, arguments for concessions such as car parking, private open space, S94 Contributions etc, have merit.

Given the contention that currently exists concerning tourist accommodation and the absence of design guidelines specific to this type of development, it would be worthwhile to undertake a more detailed urban design study/review of tourist accommodation and multiple dwelling units within the study area.

The issue of tourist accommodation is not one that is specific to Bogangar/Cabarita Beach. It is a shirewide issue and is the subject of a separate report on Council's agenda. It is intended to prepare a shirewide DCP specific to Tourist Accommodation.

**Recommendation:** Council undertakes a review of development controls pertaining to tourist accommodation.

## **Car Parking - Hastings Street**

Four (4) submissions were received concerning car parking provisions on Hastings Road. The draft Plan identifies two parcels of land (Council owned) designated for public car parking purposes. The draft Plan also provides for one of those parcels of land to be utilised for the purposes of a multi-purpose car park. There is flexibility in the Plan that provides for the other Lot to be used for another purpose if it is determined that the car parking needs of the locality are satisfied by the multi-storey car park.

The submissions received request that both these Lots be held in Council ownership for car parking purposes indefinitely. This suggests that they would prefer stricter wording in the draft Plan to retain both parcels of land in public ownership.

Further, both parcels of land are currently zoned 5(a) Special Uses - Car Park. As the land is situated within the coastal zone in accordance with SEPP 71 - Coastal Protection - the subject land would require on LEP Amendment (rezoning of the land) and hence go through the necessary legislative process in accordance with the Environmental Planning and Assessment Act 1979 including consultation with relevant state government agencies and public exhibition of the draft Plan.

**Recommendation:** The draft Plan provides enough flexibility on how the two identified Lots can be used to accommodate car parking in the Village. No change to the draft Plan as a result of this issue is considered necessary.

### **Study Boundary Area**

One (1) submission was received requesting the draft Plan is too narrow and should be expanded to include the whole of the Bogangar/Cabarita Beach Village.

Preparation of the Locality Plan was guided by a Steering Committee established by Council. Given the immediate pressures being felt within the coastal area and business core of the Village it was resolved to divide the project up into two (2) stages. The first stage was to develop and implement planning controls within the core study area as quickly as possible to appropriately manage immediately foreseeable development. The second stage was to expand the draft Plan to cover the remainder of the Village where development pressures were not as strong.

It would have been ideal to prepare a draft Plan that covered the entire Village, but the focus at the time was to quickly get in place planning controls to address the pressures being felt in the core study area. Nothing prevents the second stage being completed now or later. Given that previous sections of this report recommend further studies to be undertaken (Masterplan of the Pandanus Parade Precinct and review of urban design guidelines pertaining to tourist accommodation), it is considered that the second stage of the project should be undertaken and completed in the interim to provide a holistic document.

**Recommendation:** That the second stage of the project be completed whilst the other studies (masterplan, tourist accommodation controls) are undertaken.

### **Drafting Anomaly**

A typing/printing anomaly was identified on Page 30 of the draft DCP. The last sentence on this page is unfinished. It is supposed to read:

*"This additional setback (approximately 4-6m) provides for an expensive wider streetscape that is not generally associated with commercial precincts".*

**Recommendation:** Rectify typing anomaly in accordance with above and draft DCP 50 in Attachment 1.

### **Other Issues**

Other issues raised during the exhibition period included:

- Undertaking a review of traffic/transport issues within the study area (including review of pedestrian and cycle linkages, traffic calming);
- Preparation of a streetscape Plan;
- Beautification of Foreshore Precinct.

All these issues are identified within the draft Plan and are intended to be implemented through further studies upon adoption of the draft Plan.

**Recommendation:** No change to the draft Plan is necessary.

### **Conclusion**

Some issues have been raised during the exhibition of the draft Plan that need to be considered:

- Masterplan preparation for Pandanus Parade Precinct;
- Review of urban design/planning provisions relating to tourist accommodation and multiple dwelling units;
- Expansion of the study area to cover the whole of Bogangar and Cabarita Beach area.

Options on how to proceed with the project include:

- Adopt draft Plan;
- Adopt draft Plan and complete further studies (masterplan, tourist accommodation, planning controls and include broader Bogangar/Cabarita Beach area) as Stage 2 of the project .
- Defer adoption of draft Plan until completion of further studies;
- Not to adopt draft Plan.

### **Recommendation:**

1. Council adopts draft Development Control Plan No 50 - Bogangar/Cabarita Beach Locality Plan as referred to in Attachment 1 of this report.
2. Commences preparation of Stage 2 of the project:
  - a. completes a Development Control Plan for the whole of Bogangar and Cabarita Beach villages.
  - b. prepares a masterplan for the Pandanus Parade precinct that provides options as to how best to utilise the site.
3. Prepares a Development Control Plan for Tourist Accommodation.

**Appendix 1**

**Summary Of Cabarita DCP Submissions**

No.	Issue	Response	Actioning DCP
1.	<ol style="list-style-type: none"> <li>1. Objected to Explanatory note at beginning of DCP because changes did not reflect majority Committee views.</li> <li>2. Pandanus Parade Precinct – retain carpark and grassed open space. (Redesign).</li> <li>3. Supports DCP building height provisions. Review DCP design provisions to ensure ugly unit development is not repeated.</li> </ol>	<ol style="list-style-type: none"> <li>1. Explanatory note can be amended or deleted.</li> <li>2. Urban design review/masterplan of precinct.</li> <li>3. Review design guidelines.</li> </ol>	<ol style="list-style-type: none"> <li>1. Amend Explanatory Notes.</li> <li>2. Undertake masterplan for the Precinct.</li> <li>3. Review design guidelines</li> </ol>
2.	<ol style="list-style-type: none"> <li>1. Generally supports DCP.</li> <li>2. Pandanus Parade Precinct should be the focus of urban design study.</li> <li>3. Review tourist accommodation design guidelines and provides for flexibility for such uses.</li> <li>4. Review pedestrian and Cycle linkages</li> <li>5. Retain both car parking sites on Hastings Road.</li> <li>6. Traffic/Transport review.</li> <li>7. Preparation of a streetscape analysis.</li> </ol>	<ol style="list-style-type: none"> <li>1. OK</li> <li>2. 2, 4, 5, 6 and 7 are already part of DCP planning framework. Possibly bring forward masterplan preparation for Pandanus Parade Precinct.</li> <li>3. Review urban design guidelines specific for Tourist Accommodation.</li> </ol>	<ol style="list-style-type: none"> <li>1. Undertake masterplan for the Precinct.</li> <li>2. Undertake urban design review urban design guidelines specific to tourist accommodation.</li> </ol>
3.	<ol style="list-style-type: none"> <li>1. Retention of Pandanus Parade carpark as open space and community use</li> <li>2. Retention of Hastings car parks</li> </ol>	<ol style="list-style-type: none"> <li>1. Prepare masterplan for the Precinct.</li> <li>2. DCP flexibility provides for this.</li> </ol>	<ol style="list-style-type: none"> <li>1. Undertake masterplan for the Precinct.</li> </ol>
4.	<ol style="list-style-type: none"> <li>1. Retention of Pandanus Parade carpark as open space and community use</li> <li>2. Retention of Hastings car parks</li> </ol>	<ol style="list-style-type: none"> <li>1. Prepare masterplan for the Precinct.</li> <li>2. DCP flexibility provides for this.</li> </ol>	<ol style="list-style-type: none"> <li>1. Undertake masterplan for the Precinct.</li> </ol>
5.	<ol style="list-style-type: none"> <li>1. Objection to development of Pandanus Parade Carpark and closing</li> </ol>	<ol style="list-style-type: none"> <li>1. Prepare masterplan for the Precinct.</li> </ol>	<ol style="list-style-type: none"> <li>1. Undertake masterplan for the Precinct.</li> </ol>



No.	Issue	Response	Actioning DCP
6.	<p>Pandanus Parade to traffic.</p> <ol style="list-style-type: none"> <li>1. Supports partial development of Pandanus Parade car park and creating the street into a pedestrian mall. Provides vision of how it should be done.</li> <li>2. Tourist development in 3(b) zone should allow for 25% of residential accommodation devoted to permanent residence.</li> <li>3. Supports building height controls. Look at building design guidelines to provide for a variety of rooflines.</li> <li>4. Traffic Calming and diverting should be examined on Coast Road.</li> </ol>	<ol style="list-style-type: none"> <li>1. Provide urban design/masterplan for the Precinct.</li> <li>2. Review of tourist accommodation design guidelines</li> <li>3. Review urban design guidelines.</li> <li>4. Provided for in DCP already.</li> </ol>	<ol style="list-style-type: none"> <li>1. Undertake masterplan for the Precinct.</li> <li>2. Undertake urban design review urban design guidelines specific to tourist accommodation and multiple dwelling units.</li> </ol>
7.	<ol style="list-style-type: none"> <li>1. General endorsement of draft DCP.</li> <li>2. Implementation of an Implementation plan that includes traffic flow, pedestrianisation and streetscape should be commenced upon adoption of DCP.</li> <li>3. Supports Commercial boundaries of DCP.</li> <li>4. Association divided on Pandanus Parade precinct. Should it be developed or not?</li> <li>5. Tourist development in 3(b) zone should allow for 25% of residential accommodation</li> <li>6. Supports building height controls. Look at building design guidelines to provide for a variety of rooflines.</li> <li>7. Supports beautification of Foreshore Precinct.</li> <li>8. Support multi-story car park, however other land should also be kept.</li> </ol>	<ol style="list-style-type: none"> <li>1. OK</li> <li>2. Provided for in DCP already.</li> <li>3. OK</li> <li>4. Masterplan for the Precinct</li> <li>5. Review of design controls for tourist accommodation.</li> <li>6. Review design controls</li> <li>7. Provided for in DCP already.</li> <li>8. Provided for in DCP already. May need to be amended to be more specific/certain.</li> </ol>	<ol style="list-style-type: none"> <li>1. Undertake masterplan for the Precinct.</li> <li>2. Undertake urban design review urban design guidelines specific to tourist accommodation and multiple dwelling units.</li> </ol>

<b>No.</b>	<b>Issue</b>	<b>Response</b>	<b>Actioning DCP</b>
8.	1. Objects to Pandanus Parade Precinct proposal and that development should be restricted to that adopted by the Steering Committee.	1. Prepare masterplan for the Precinct.	1. Undertake masterplan for the Precinct.
9.	1. Objection to Pandanus Parade proposal based on: i. Parking; ii. Access; iii. Emergency vehicle access; iv. Club equity in Lot 6; v. Amenity; vi. Future use requirements; vii. Future expansion of Clubhouse; viii. Club member feelings; ix. Community uses; x. Overdevelopment of important site; xi. Overshadowing; xii. Inconsistency with current zoning; xiii. Inconsistent with DCP Committee recommendations; xiv. Inconsistent with Council resolution not to sell the land;  2. Support DCP amendment concerning Tourist accommodation.	1. Prepare masterplan for the Precinct.  2. OK	1. Undertake masterplan for the Precinct.
10.	Retention of Council owned land in Pandanus Parade to be retained for public/community purposes.	Prepare masterplan for the Precinct.	Undertake masterplan for the Precinct.
11.	Generally supports DCP but objects to Pandanus Parade mixed use provisions.	Prepare masterplan for the Precinct.	Undertake masterplan for the Precinct.
12.	1. Objects to Pandanus Parade mixed use development proposal. 2. Supports Tourist accommodation design guidelines to reflect Multiple dwelling unit provisions.	1. Prepare masterplan for the Precinct. 2. OK	1. Undertake masterplan for the Precinct.
13.	1. Objects to Pandanus Parade mixed use development proposal. 2. Land should remain	1. Prepare masterplan for the Precinct. 2. Prepare masterplan for	1. Undertake masterplan for the Precinct.

No.	Issue	Response	Actioning DCP
	<p>under public ownership and for community purposes.</p> <p>3. Supports Tourist accommodation design guidelines to reflect Multiple dwelling unit provisions.</p>	<p>the Precinct.</p> <p>3. OK</p>	
14.	<p>1. Objects to Pandanus Parade mixed use development proposal.</p> <p>2. Land should remain under public ownership and for community purposes.</p> <p>3. Supports Tourist accommodation design guidelines to reflect Multiple dwelling unit provisions.</p>	<p>1. Prepare masterplan for the Precinct.</p> <p>2. Prepare masterplan for the Precinct.</p> <p>3. OK</p>	<p>1. Undertake masterplan for the Precinct.</p>
15.	<p>1. Objects to Pandanus Parade mixed use development proposal.</p> <p>2. Land should remain under public ownership and for community purposes.</p> <p>3. Supports Tourist accommodation design guidelines to reflect Multiple dwelling unit provisions.</p>	<p>1. Prepare masterplan for the Precinct.</p> <p>2. Prepare masterplan for the Precinct.</p> <p>3. OK</p>	<p>1. Undertake masterplan for the Precinct.</p>
16.	<p>1. Objects to Pandanus Parade mixed use development proposal.</p> <p>2. Land should remain under public ownership and for community purposes.</p> <p>3. DCP requires better clarification of building height provisions.</p> <p>4. Wording missing in Tweed Coast Precinct section of DCP.</p>	<p>1. Prepare masterplan for the Precinct.</p> <p>2. Prepare masterplan for the Precinct.</p> <p>3. Building height provisions are clear and consistent with DCP 48 – Tweed Coast Building Heights</p> <p>4. Typographical error</p>	<p>1. Undertake masterplan for the Precinct.</p> <p>2. Amend draft Plan to amend change.</p>
17.	<p>1. Objects to Pandanus Parade mixed use development proposal.</p> <p>2. Supports the implementation of a streetscape plan.</p> <p>3. Supports Tourist accommodation design guidelines to reflect Multiple dwelling unit</p>	<p>1. Prepare masterplan for the Precinct.</p> <p>2. Prepare masterplan for the Precinct.</p> <p>3. OK</p>	<p>1. Undertake masterplan for the Precinct.</p>

No.	Issue	Response	Actioning DCP
	provisions.		
18.	<ol style="list-style-type: none"> <li>1. Objects to the DCP being amended from that adopted by the Committee.</li> <li>2. Objects to Pandanus Parade mixed use development proposal.</li> <li>3. Land should remain under public ownership and for community purposes.</li> <li>4. Raises traffic impact issues.</li> <li>5. Provision of vegetation in Pandanus and Palm Avenue.</li> </ol>	<ol style="list-style-type: none"> <li>1. Prepare masterplan for the Precinct.</li> <li>2. Prepare masterplan for the Precinct.</li> <li>3. Prepare masterplan for the Precinct.</li> <li>4. Traffic Issues addressed in draft Plan. Further traffic studies and streetscape plans are a requirement of the Plan.</li> <li>5. Prepare masterplan for the Precinct.</li> </ol>	<ol style="list-style-type: none"> <li>1. Undertake masterplan for the Precinct.</li> </ol>
19.	<ol style="list-style-type: none"> <li>1. Objects to Pandanus Parade mixed use development proposal.</li> <li>2. Objects to the DCP being amended from that adopted by the Committee.</li> <li>3. Proposal to replace current beach access via Pandanus Parade and establish car parking is contradictory to inconsistent with Council's draft Coastal Management Plan and NSW Government Policy in regard to beach access.</li> <li>4. Community opposition to sale of public land.</li> </ol>	<ol style="list-style-type: none"> <li>1. Prepare masterplan for the Precinct.</li> <li>2. Prepare masterplan for the Precinct.</li> <li>3. It is not the intent of the draft plan to restrict access to the beach. All beach access is to be maintained and enhanced. It is not understood how the draft Plan is contradictory to the subject Plans mentioned. No change to the draft Plan is necessary as a result of this issue.</li> <li>4. Prepare masterplan for the Precinct.</li> </ol>	<ol style="list-style-type: none"> <li>1. Undertake masterplan for the Precinct.</li> </ol>
20.	<ol style="list-style-type: none"> <li>1. Objects to the DCP being amended from that adopted by the Committee.</li> <li>2. Objects to Pandanus Parade mixed use development proposal.</li> </ol>	<ol style="list-style-type: none"> <li>1. Prepare masterplan for the Precinct.</li> <li>2. Prepare masterplan for the Precinct.</li> </ol>	<ol style="list-style-type: none"> <li>1. Undertake masterplan for the Precinct.</li> </ol>
21.	Objects to Pandanus Parade mixed use development proposal.	Prepare masterplan for the Precinct.	Undertake masterplan for the Precinct.
22.	Objects to Pandanus Parade	Prepare masterplan for the	Undertake masterplan for the

No.	Issue	Response	Actioning DCP
	mixed use development proposal. Land should remain under public ownership and for community purposes.	Precinct.	Precinct.
23.	Objects to Pandanus Parade mixed use development proposal. Land should remain under public ownership and for community purposes.	Prepare masterplan for the Precinct.	Undertake masterplan for the Precinct.
24.	<ol style="list-style-type: none"> <li>1. Generally supports majority of draft DCP except for the Pandanus Parade Precinct mixed use development proposal.</li> <li>2. Supports Tourist accommodation design guidelines to reflect Multiple dwelling unit provisions.</li> </ol>	<ol style="list-style-type: none"> <li>1. Prepare masterplan for the Precinct.</li> <li>2. OK</li> </ol>	<ol style="list-style-type: none"> <li>1. Undertake masterplan for the Precinct.</li> </ol>
25.	Generally supports majority of draft DCP except for the Pandanus Parade Precinct mixed use development proposal.	Prepare masterplan for the Precinct.	Undertake masterplan for the Precinct.
26.	<p>Planit Consulting submitted a report on behalf of the Cabarita Beach/Bogangar Residents Association. The submission addresses a number of issues including: establishing design criteria for tourist accommodation and improving those for multiple dwelling units, retail analysis, traffic analysis, Pandanus Parade Precinct, density provisions, building height, coastal erosion, rezoning provisions. It provides a series of recommendation including:</p> <ol style="list-style-type: none"> <li>1. Exclusion of retail, commercial and residential uses within the public land on Pandanus Parade and retaining land for community purposes;</li> <li>2. Preparation of a masterplan;</li> </ol>	<ol style="list-style-type: none"> <li>1. Prepare masterplan for the Pandanus Precinct.</li> <li>2. Prepare masterplan for the Pandanus Precinct.</li> </ol>	<ol style="list-style-type: none"> <li>1. Undertake masterplan for the Precinct.</li> <li>2. Undertake urban design review urban design guidelines specific to tourist accommodation and multiple dwelling units.</li> </ol>

No.	Issue	Response	Actioning DCP
	<p>3. Preparation of design criteria;</p> <p>4. Traffic analysis;</p> <p>5. Exclusion of references to rezonings;</p> <p>6. Undertaking retail study;</p> <p>7. Undertaking streetscape plan;</p> <p>8. Reclassify public land at Pandanus Parade from operational to community land;</p> <p>9. Amend DCP to cover whole of Cabarita.</p> <p>Planit also presented findings of a survey undertaken by the Cabarita-Bogangar Residents' Association in May 2005 (approximately 180 responses). The findings of the survey were to retain the Council owned land in Pandanus Parade in public ownership and retaining the area for car park and green</p>	<p>3. Preparation of design criteria specific to Tourist accommodation and multiple dwelling units;</p> <p>4. Traffic analysis and streetscaping provisions are already provided for in draft DCP;</p> <p>5. The draft Plan was intended to provide a vision and planning framework for future management of the locality rather than to act as a typical DCP. The provisions aren't considered contrary to the EP&amp;A Act 1979 or the LEP because the draft Plan still emphasises the need for the necessary rezoning process to be observed.</p> <p>6. A draft retail study has been provided for the Shire that includes the study area. The proposals outlined in the draft Plan are consistent with the draft retail study.</p> <p>7. Traffic analysis and streetscaping provisions are already provided for in draft DCP;</p> <p>8. Reclassification of land may pre-empt the masterplanning process for the area.</p> <p>9. Stage 2 of the project was always intended to cover the remainder of the village.</p>	<p>9. Stage 2 of the project to encapsulate the remainder of the Bogangar/Cabarita Beach village.</p>

No.	Issue	Response	Actioning DCP
	area; not closing Pandanus Parade; better tourist development controls; no to a multi-storey car park, no to 3 storey development in residential areas. Other issues were raised which were outside the scope of the draft DCP.		

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

1. Draft Development Control Plan No 50 - Bogangar/Cabarita Beach Locality Plan
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**4 [PD] Draft Tweed Local Environmental Plan 2000, Amendment No 72 - Seabreeze Estate**

**ORIGIN:**

**Strategic Town Planning**

**FILE NO: GT1/LEP/2000/72 Pt1**

**SUMMARY OF REPORT:**

Council on 15 December 2004 resolved to prepare an Amendment to Tweed Local Environmental Plan 2000 to provide additional land at the Seabreeze Estate, Pottsville, for urban purposes.

Council's resolution to provide additional land at the Seabreeze Estate has since been divided into two (2) stages.

Draft Tweed LEP 2000, Amendment No 72 is to align the residential zone boundary with that of the approved subdivision. Whilst the second stage, to rezone the remainder of the subject site, will be undertaken at a later date.

Draft LEP, Amendment No 72 was publicly exhibited for 28 days from Wednesday, 15 June 2005. One (1) submission in support of the draft Plan was received from Cardno Consulting Engineers on behalf of the Developers of the Seabreeze Estate.

Adoption of the draft Plan, as exhibited, will enable the intended future character of the approved Seabreeze subdivision to be achieved.

The draft Plan, as exhibited, can be forwarded to the Minister to make the Plan.

**RECOMMENDATION:**

**That Council:**

- 1. Adopts draft Tweed Local Environmental Plan 2000, Amendment No 72, as exhibited.**
- 2. Forwards draft Tweed Local Environmental Plan 2000, Amendment No 72, to the Minister to make the Plan in accordance with Section 70 of the Environmental Planning and Assessment Act 1979.**

## **REPORT:**

### **Introduction**

Council at its meeting 15 December 2004, pursuant to Section 54 of the Environmental Planning and Assessment Act 1979, resolved to prepare an Amendment to Tweed Local Environmental Plan 2000 to provide additional land at the Seabreeze Estate, Pottsville, for urban purposes.

Since Council's resolution it has been identified that part of the Seabreeze Estate has been approved and constructed on land that is currently zoned 1(a) Rural. Therefore, Council's resolution to provide additional land at the Seabreeze Estate has been divided into two (2) stages.

Draft Tweed LEP 2000, Amendment No 72 is to align the residential zone boundary with that of the approved subdivision. Whilst the second stage, to rezone the remainder of the subject site, will be undertaken at a later date.

The purpose of this report is to summarise to Council the public exhibition of draft Tweed LEP 2000, Amendment No 72 and any submissions Council has received in respect of the Amendment.

### **Background**

Part of the Seabreeze Estate has been approved on land zoned 1(a) Rural as shown in Figure 1 of this report. The adoption of State Environmental Planning Policy No 71 Coastal Protection (SEPP 71) has since restricted the use of Clause 14 in the Coastal Zone, and hence the approval of further residential development on land zoned 1(a) at the Seabreeze Estate is not permissible without an amendment to Tweed LEP 2000.

### **State Agency Consultation**

Pursuant to Section 54 of the Environmental Planning and Assessment Act 1979 Council advised the Department of Infrastructure, Planning and Natural Resources of Council's resolution to prepare an amendment to Tweed LEP 2000 to provide additional land at the Seabreeze Estate, Pottsville, for urban purposes. Council also advised the Department of its intention to divide the amendment into two (2) stages.

The Department advised Council that an Environmental Study was not required for Amendment No 72 provided it remained limited to aligning the zone boundary with that of the approved subdivision.

No additional State Agency consultation was undertaken due to the minor nature of the proposed Amendment and given that the subject land has been assessed as part of the development approval for the Seabreeze Estate.

## **Public Exhibition**

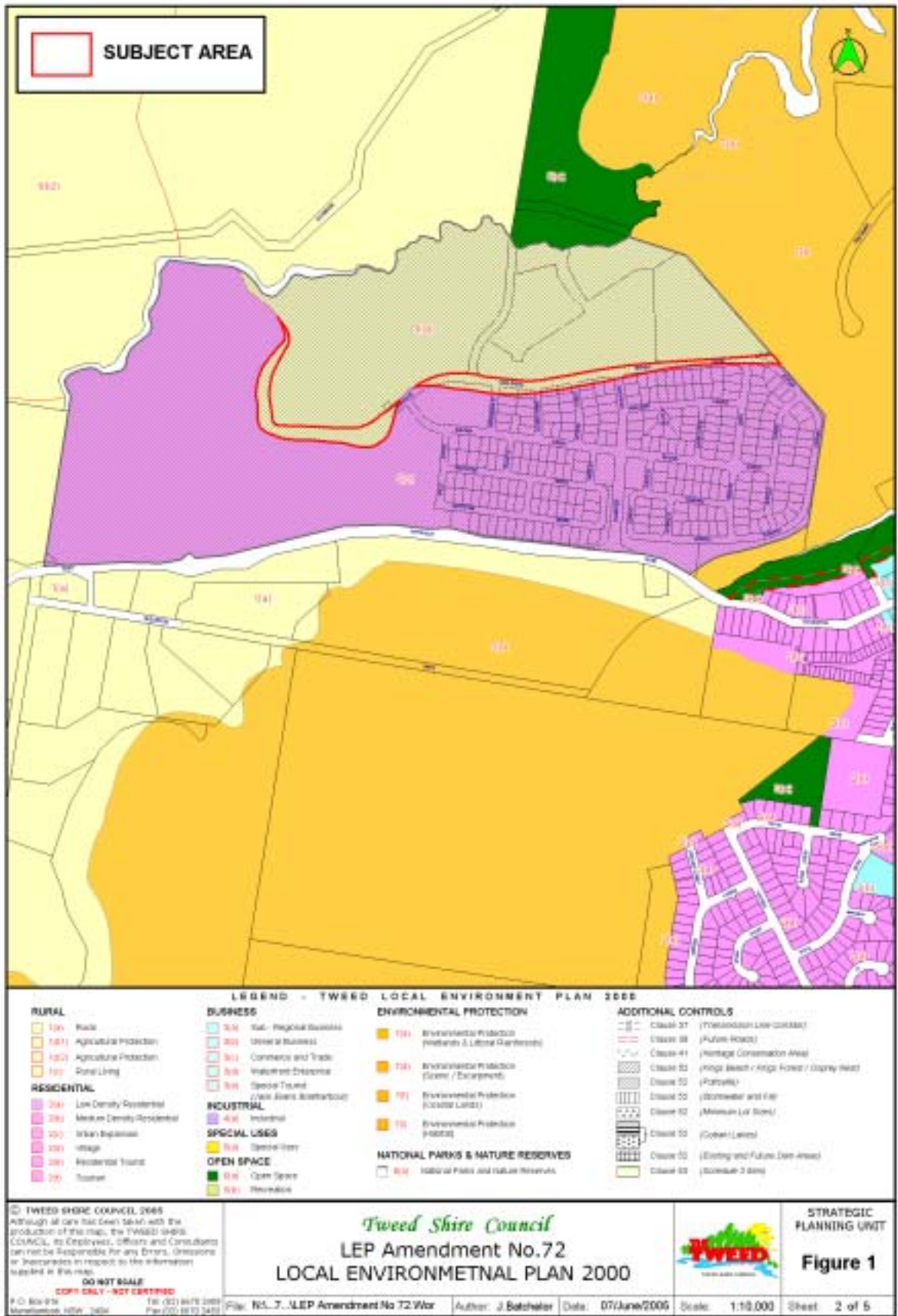
Pursuant to Section 66 of the Environmental Planning And Assessment Act 1979, draft Local Environmental Plan 2000, Amendment No 72 was placed on public exhibition from Wednesday, 15 June 2005 to Wednesday, 13 July 2005.

One (1) submission to the draft Plan was received from Cardno Consulting Engineers on behalf of the Developers of the Seabreeze Estate. The submission supported the adoption of the draft Plan and confirmed that the Developers were satisfied the proposed alignment of the zone boundary matched the boundary of the approved subdivision.

## **Conclusion**

Adoption of the draft Plan, as exhibited, will align the zone boundary with that of the approved subdivision for the Seabreeze Estate and therefore will enable the intended future character of the area to be achieved.

The draft Plan, as exhibited, can be forwarded to the Minister to make the Plan.



**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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