

ITEMS FOR CONSIDERATION OF THE COMMITTEE:

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CONFIRMATION OF MINUTES

Confirmation of the Minutes of the Planning Committee Meeting held 6 July 2005

UNDER SEPARATE COVER/FURTHER INFORMATION:

1. Minutes of the Planning Committee Meeting held 6 July 2005 (DW 1228966)
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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] Development Application DA05/0195 for a Residential Flat Building 6 Storeys Comprising of 12 Units and Two Levels of Underground Car Parking at Lot C DP 406494 No. 2 Boundary Lane and Lot 1 DP 350710, No. 4 Boundary Lane, Tweed Heads

ORIGIN:

Development Assessment

FILE NO: DA05/0195 Pt1

SUMMARY OF REPORT:

Council is in receipt of an application for a multi unit development at 2–4 Boundary Lane, Tweed Heads. The development comprises the demolition of the two existing dwellings and the construction of a six storey residential flat building comprising of 9 x 3 bedroom (plus study) units and 3 x 2 bedroom units with two basement car parking levels providing on site parking for 31 vehicles.

The land is zoned 2(b) Medium Density Residential under Tweed Local Environmental Plan 2000 and is located within the Flagstaff Hill precinct under Development Control Plan No.18 Tweed Heads. This location has the benefit of panoramic views and is subject to a 50m AHD height limit to allow for medium to high-density development that achieves good urban design outcomes.

Sean Gartner a qualified designer and registered architect has designed the building. The design has had regard to the design quality principles set out in SEPP 65 Design Quality of Residential Flat Development, Council's Development Control Plans and the Tweed Heads Master Plan.

Following exhibition of the proposal the application attracted fifteen individual objections. These objections focussed on the inappropriateness of the development being serviced by Boundary Lane, the bulk and scale of a six-storey building on the top of the hill, the extent of excavation for the two level car park, and the impact the proposal will have on local residents during and after construction. All of these issues have been considered in the assessment of this application as detailed in the following report.

Flagstaff Hill is a nominated high-density precinct, however, the area presently exhibits a mixture of residential flat buildings and single dwellings. Subsequently the proposed development is not going to be in character with these single dwellings. Notwithstanding, the proposed development is of a high urban design standard and has had regard for all of the planning policies in place to ensure the future desired character of the area is achieved.

Council has been served with a Deemed Refusal Class 1 Appeal in the Land & Environment Court NSW, in relation to this application. However, should this application be approved it is envisaged that this appeal will be withdrawn. Should the application be

refused Council's solicitors will be instructed to defend the appeal commencing with the first call over on 8 August 2005.

RECOMMENDATION:

That: -

- 1. Council utilises its assumed concurrence in relation to the North Coast Regional Environmental Plan Clause 51 - Tall Buildings.**
- 2. Council generally supports the application and refers it to the Director Planning & Development to negotiate a contribution of \$2,000 per unit under a voluntary agreement for public infrastructure identified in the Tweed Heads Master Plan.**
- 3. The approval be issued by the Director Planning & Development under delegation in accordance with the following conditions: -**

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos A01 - A07 prepared by Sean Gartner Architects and dated February 2005, except where varied by these conditions.**
[GEN0010]
- 2. No part of the proposed development shall exceed RL 49.8m AHD.**
[GEN0010]
- 3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**
[GEN0120]
- 4. The erection of a building in accordance with a development consent must not be commenced until:**
 - (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and**
 - (b) the person having the benefit of the development consent has:**
 - (i) appointed a principal certifying authority for the building work, and**
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and**

(b1) the principal certifying authority has, no later than 2 days before the building work commences:

- (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (b2) the person having the benefit of the development consent, if not carrying out the work as an owner-building, has:
- (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[GEN0150]

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

[GENNS01]

6. 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]

7. The enclosed portion of the building is to stand a minimum of 6 metres from the front boundary of the property.

[GEN0080]

8. The boundary fence to Boundary Lane is to be no greater than 1.6 metres in height and is to step down the site accordingly.

[GENNS02]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

9. Section 94 Contributions

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

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

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

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

a.	Tweed Road Contribution Plan: S94 Plan No. 4 (Version 4.0) Sector1_4	\$6,697
b.	Open Space (Structured): S94 Plan No. 5	\$4,560
c.	Open Space (Casual): S94 Plan No. 5	\$974
d.	Shirewide Library Facilities: S94 Plan No. 11	\$4,024
e.	Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$818
f.	Emergency Facilities (Surf Lifesaving) (REMSHIRE) S94 Plan No. 16	\$1,262
g.	Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$2,449.25
h.	Cycleways S94 Plan No. 22	\$940

- i. **Regional Open Space (Structured)** **\$6,875**
S94 Plan No. 26

- j. **Regional Open Space (Casual)** **\$1,286**
S94 Plan No. 26

[PCC0050/PSC0005]

10. **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: 5.5 ET @ \$4230 \$23,265
Sewer Banora: 9.25 ET @ \$2634 \$24,365

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]

11. **Waste material (soil, concrete, timber, masonry, steel and the like) generated by the development shall be disposed of in accordance with a Waste Management Plan which shall be submitted to and approved by the Director of Environment and Community Services PRIOR to the issue of a construction certificate.**

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

[PCC0130]

12. Permanent Stormwater Quality Treatment

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

- (ii) Dedicated car wash bays must be bunded to prevent contamination of basement stormwater. All collected carwash runoff must be treated to remove oil and sediment pollutants prior to discharge to sewer, requiring a Tweed Shire Council Trade Waste Application.

[PCC0230]

13. 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]

14. The legal point of discharge for the subject development is via discharge into the public drainage system in Boundary Lane.

[PCCNS01]

15. Construction Certificate drawings shall make provisions for the regrading of the subject site in accordance with Council's Development Control Plan 47 "Cut and Fill on residential Land " or to the satisfaction of the Director Engineering and Operations Division.

[PCCNS01]

16. 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.

[PCCNS01]

17. Prior to the issuing of a Construction Certificate, a full geotechnical assessment of the site is to be carried out and a report submitted to Council for approval. The report must include recommendations relating to site stability, proposed on-site excavation works including temporary and permanent retention methods proposed for the protection of adjacent structures, foundation design parameters, construction theories, as well as any other geotechnical matters of relevance relating to the proposed development. The report should detail any precautions considered necessary to protect such properties from damage in accordance with Tweed Shire Council's Building Excavation Dewatering Policy.

Ground anchors to retain sacrificial sheet piling (as required) will not be allowed within Council property without prior approval for installation by the Director Engineering and Operations Division and removal on completion or substantial financial compensation. Council will only allow ground anchors with neighbouring private property if consent by the owners of the property to be burdened is obtained prior to installation.

[PCCNS01]

18. Prior to Issue of Construction Certificate the applicant shall submit to Council documentation demonstrating General Public Liability Insurance to the value of \$5,000,000 which includes loss of support to neighbouring properties which is attributed to excavation vibration associated with the project in accordance with Tweed Shire Council's Building Excavation Dewatering Policy.

[PCCNS04]

19. An on site detention (OSD) system shall be installed in general accordance with stormwater management details provided by Northern Beaches Consulting Engineers (dated 21 February 2005, ref 041219), to limit peak stormwater discharge from the site to the public realm to 200L/s/ha in events of intensity up to the ARI 100 year design storm. These works and the connection to Council's drainage system shall be constructed in accordance with detailed design calculations, plans and specifications to be submitted with the construction certificate application and approved by the Director Engineering & Operations. Invert levels of all devices shall be reviewed to ensure efficient conveyance of stormwater to the Boundary Lane kerb and gutter.

[PCCNS01]

20. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place within the public road including the construction of new driveway access, footpath or kerb and gutter construction. 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.

[PCCNS01]

21. Appropriate arrangements to the satisfaction of Council's DECS shall be provided for the storage and removal of garbage and other waste products.

[PCCNS02]

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

[PCCNS03]

23. A detailed plan of landscaping is to be submitted and approved by Council's Director, Planning and Development 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]

24. 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]

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

[PCC0040]

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0010]

27. 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]

28. 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]

29. It is a condition of this approval that, if an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made must comply with the following:

- i. The person must, at the person's own expense:
 - a. preserve and protect the building from damage; and
 - b. if necessary, underpin and support the building in an approved manner.
- ii. The person must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars to the owner of the proposed work.

[PCW0080]

30. 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]

31. 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]

32. Prior to commencement of building works provide hydraulic drawings on the proposed sewer drainage systems including pipe sizes, details of materials and discharge temperatures.

[PCW0230]

33. 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]

34. Prior to commencement of any demolition works, drainage is to be disconnected from Council's Sewerage reticulation at the building's connection point. This work is to be carried out by Council staff at developers cost as per Council's current Fees and Charges.

[PCW0300]

35. Prior to the commencement of any demolition works on the site a development application for demolition is to be submitted to and approved of by Council.

[PCWNS01]

36. 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

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

[DUR0010]

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

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

[DUR0070]

39. 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]

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

[DUR0090]

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

[DUR0100]

42. 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]

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

[DUR0160]

44. 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]

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

[DUR0200]

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

[DUR0210]

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

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

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

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

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

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

[DUR0220]

48. Provision to be made for the designation of a durable and pervious car wash-down area/s. The area/s must be identified for that specific purpose and be supplied with an adequate water supply for use within the area/s. Any surface run-off from the area must not discharge directly to the stormwater system. [DUR0240]
49. No filling to is be placed hydraulically within twenty metres (20m) of any boundary that abuts private land that is separately owned. Fill adjacent to these boundaries is to be placed mechanically.
- No filling of any description is to be deposited, or remain deposited, within adjacent properties. [DUR0560]
50. Suitable covering and protection is to be provided to ensure that no material is removed from the site by wind, causing nuisance to neighbouring properties. [DUR0850]
51. All battered areas are to be topsoiled and grassed, or other suitable protection provided as soon as filling is placed adjacent to neighbouring properties. [DUR0860]
52. 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]
53. All necessary precautions shall be taken to minimise impact from dust during filling operations from the site and also from construction vehicles. †[DUR0880]
54. 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]
55. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:
- A. Short Term Period - 4 weeks.
L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

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

[DUR0910]

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

[DUR0920]

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

[DUR0930]

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

[DUR0940]

59. Any proposed cooling tower installation must also include details on the proposed means of back flow prevention to the water supply prior to installation.

[DUR0970]

60. 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]

61. 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]

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

[DUR1040]

63. 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]

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

[DUR1090]

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

[DUR1110]

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

[DUR1130]

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

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

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

[DUR1160]

68. 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]

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

[DURNS01]

70. A concrete ribbon footpath 100 millimetres thick for the full width of the nature strip between the back of kerb and the property boundary along the frontage of the site to Boundary Lane is to be constructed on a compacted base. The compacted base is to

achieve 95% of maximum dry density determined in accordance with AS1289 5.4.1 for a minimum 100mm depth. A full depth construction joint is to be provided at 6.0 metre intervals and 20 millimetre deep groove joints provided every 1.5 metres. The footpath is to have a 2.5% crossfall. This may result in work to be undertaken on the footpath at adjoining properties which must not exceed 1:14 and must be reinstated with turf. No steps or ramps will be permitted within the nature strip and the associated entrances to the proposed development must be designed accordingly. The concrete footpath gradient shall be parallel to the top of kerb for the full frontage of the site and be maintained unvaried across the proposed driveway and pedestrian entrances. An inspection of the formwork is to be arranged with Council's Engineering & Operations Division prior to concrete being placed.

[DURNS01]

71. 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.
[DURNS01]
72. Adequate site distances satisfying the provisions of Council's "Driveway Access To Property" pamphlet must be provided at the site's vehicular access.
[DURNS01]
73. All imported fill material shall be from an approved source. Prior to commencement of filling operations, details of the source of fill shall be submitted to the satisfaction of the DECS. Documentary evidence must be provided that the fill material is free of any contaminants.
[DURNS02]
74. Appropriate measures are to be put in place during the construction period to prevent the transport of sediment from the site. Should any material be transported onto the road or any spills occur it is to be cleaned up within one hour of occurrence.
[DURNS03]
75. All works (including support structures for excavation such as sheet piling) are to occur within the confines of the subject property boundaries.
[DURNS04]

76. The building is to constructed of non reflective materials with a complementary colour scheme.
[DURNS05]
77. No soil, sand, gravel, clay or other material shall be disposed of off the site.
[DUR0030]
78. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742.3-2202 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.
[DUR0040]
79. The provision of 31 off street car parking spaces, five to be nominated as visitor car parking and one to be a nominated car wash bay. The layout and construction standards to be in accordance with Development Control Plan No. 2 - Parking Controls.
[DUR0050]
80. 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]
81. 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]
82. Landscaping of the site shall be carried out in accordance with the submitted landscaping plans. The landscaping to be completed prior to occupation of the building, to the satisfaction of the Director, Planning and Development.
[DUR1230]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

83. In the event that Council is not utilised as the inspection/certifying authority, prior to occupation of the building a Compliance Certificate in the prescribed form is to be submitted to Council from the nominated principal certifying authority, together with the prescribed fee, to certify that all work has been completed in accordance with the approved plans and specifications and conditions of Consent.
[POC0020]
84. A person must not commence occupation or use of the whole or any part of a new building (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).
[POC0030]
85. The building is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the building to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.
[POC0050]
86. Prior to 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]
87. Prior to the issue of an occupation certificate, a "satisfactory inspection report" issued by Council must be produced for s68h2 permanent stormwater quality control devices. This inspection report must be obtained from Council prior to backfilling of any of the s68h2 approved devices.
[POCNS01]

USE

88. Owners of buildings served by plant involving the operation of "cooling towers", "evaporative condensers" or "tepid water systems" must submit to Council, half yearly, a report detailing the maintenance, cleansing and chemical treatment of such plant every three (3) months in accordance with Part 6 of the NSW Public Health Act.
[USE0180]
89. All mechanical ventilation, pool pumps, other plant and associated equipment shall be acoustically treated where required to the satisfaction of Council's DECS so as to avoid the creation of intrusive or unreasonable noise to any occupant of a neighbouring or adjacent residential premises.
[USENS01]

90. All externally mounted artificial lighting is to be shielded to the satisfaction of Council's DECS where necessary or required so as to prevent the spill of light creating a nuisance to adjoining residential premises.

[USENS02]

91. The premises shall be suitably identified by Unit No. (where appropriate) and Street Number displayed in a prominent position on the facade of the building facing the primary street frontage, and is to be of sufficient size to be clearly identifiable from the street.

[USE0040]

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

[USE0120]

93. A Strata Certificate shall not be issued for a Strata Plan or a Strata Plan of Subdivision unless the provision of the Strata Schemes (Freehold Development) Act 1973 and/or the Strata Schemes (Leasehold Development) Act 1986 have been complied with.

[USE0140]

94. The swimming pool is not to be used for commercial purposes without prior Development Consent.

[USE0260]

REPORT:

Applicant: Sean Gartner Architects
Owner: Point-D Pty Ltd and Kosalin Pty Ltd
Location: Lot C DP 406494 No. 2 Boundary Lane and Lot 1 DP 350710 No. 4 Boundary Lane, Tweed Heads
Zoning: 2(b) Medium Density Residential
Cost: \$3,400,000.00

BACKGROUND:

The surrounding sites exhibit a mixture of residential flat buildings and single dwellings. The diverse mixture of dwelling types comes from the relatively recent rezoning of the Flagstaff Hill precinct to high density residential, a style of housing type, which is slowly replacing the single storey cottages that were prevalent in the area.

The subject site is presently occupied by two dwelling houses known as 2 and 4 Boundary Lane. The land has a total area of 904.43m² with a frontage of 35.98 metres to Boundary Lane and an average depth of 25.15m. The site has a constant slope from the rear to the lane of 3m in addition to a cross fall from east to west of 2m.

This is the second application Council has recently received over No. 2 Boundary Lane. The first (DA03/1259) sought approval for a multi-dwelling housing development containing three (3) units in a five-storey configuration over 398.6m². The application was refused and considered an overdevelopment of the site due the proposed setback variations, non-compliance with on site parking requirements and non-compliances with DCP 18.

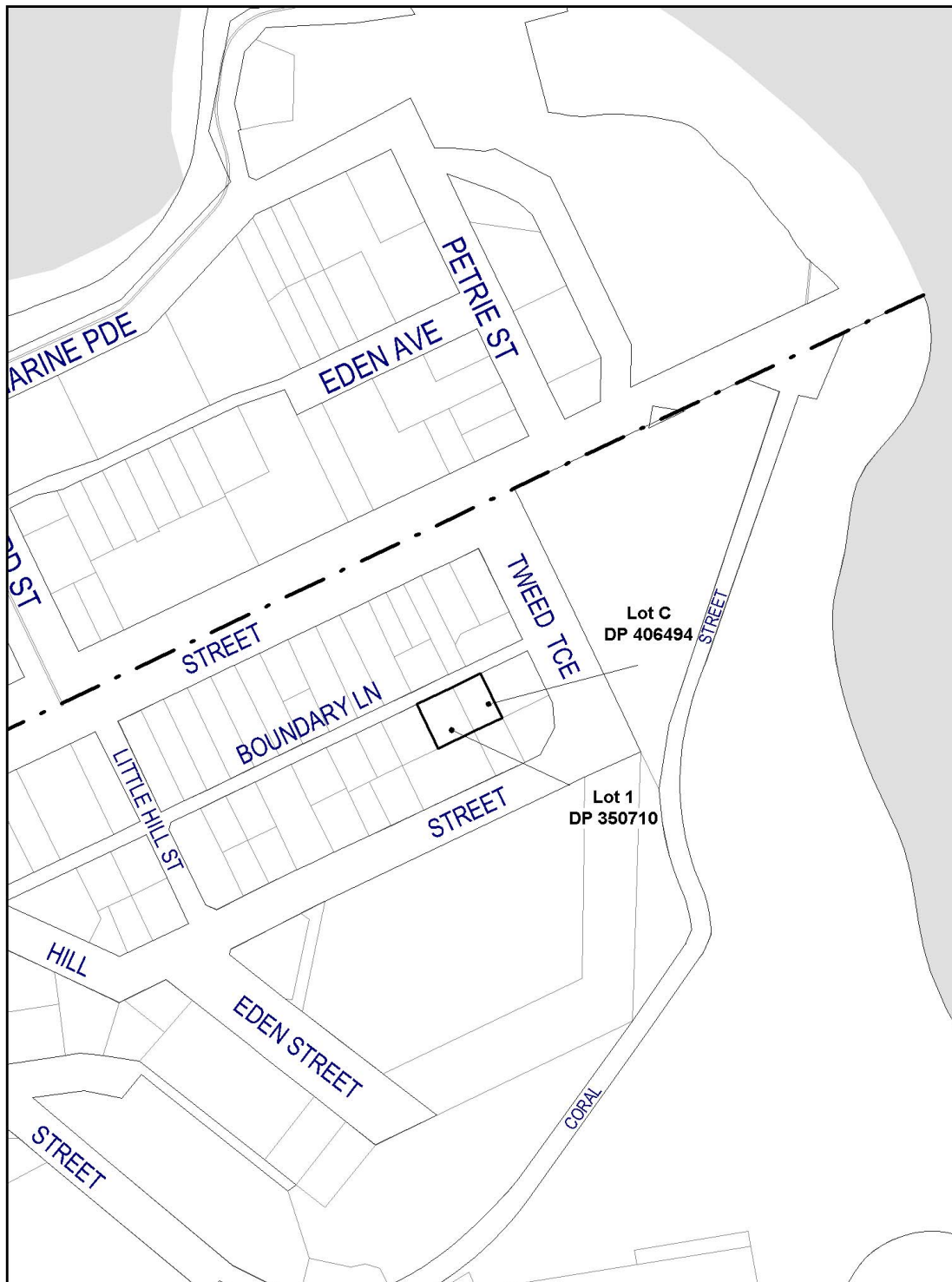
The application currently before Council seeks consent for the erection of a multi-dwelling housing development comprising 12 units within a six-storey building, over two allotments. Nine (9) of these units have three bedrooms (three with an additional study) with the remaining three (3) units containing only two bedrooms.

Vehicular access to the site is via a driveway off Boundary Lane (a one way four metre wide pavement that can not support any on street car parking). This driveway leads to a two-tier basement car park, which accommodates thirty-one spaces in total.

The proposed development incorporates extensive balconies for each unit (some with private upper level pools) in addition to ground level common open space areas and a pool.

In comparison to DA03/1259 this DA has had regard to the design quality principles set out in SEPP 65 Design Quality of Residential Flat Development, Council's Development Control Plans and the Tweed Heads Master Plan. Additionally, the proposed unit development is an attractive contemporary design with strong articulation through layering, depth and texture to create a vibrant addition to the streetscape.

SITE DIAGRAM:



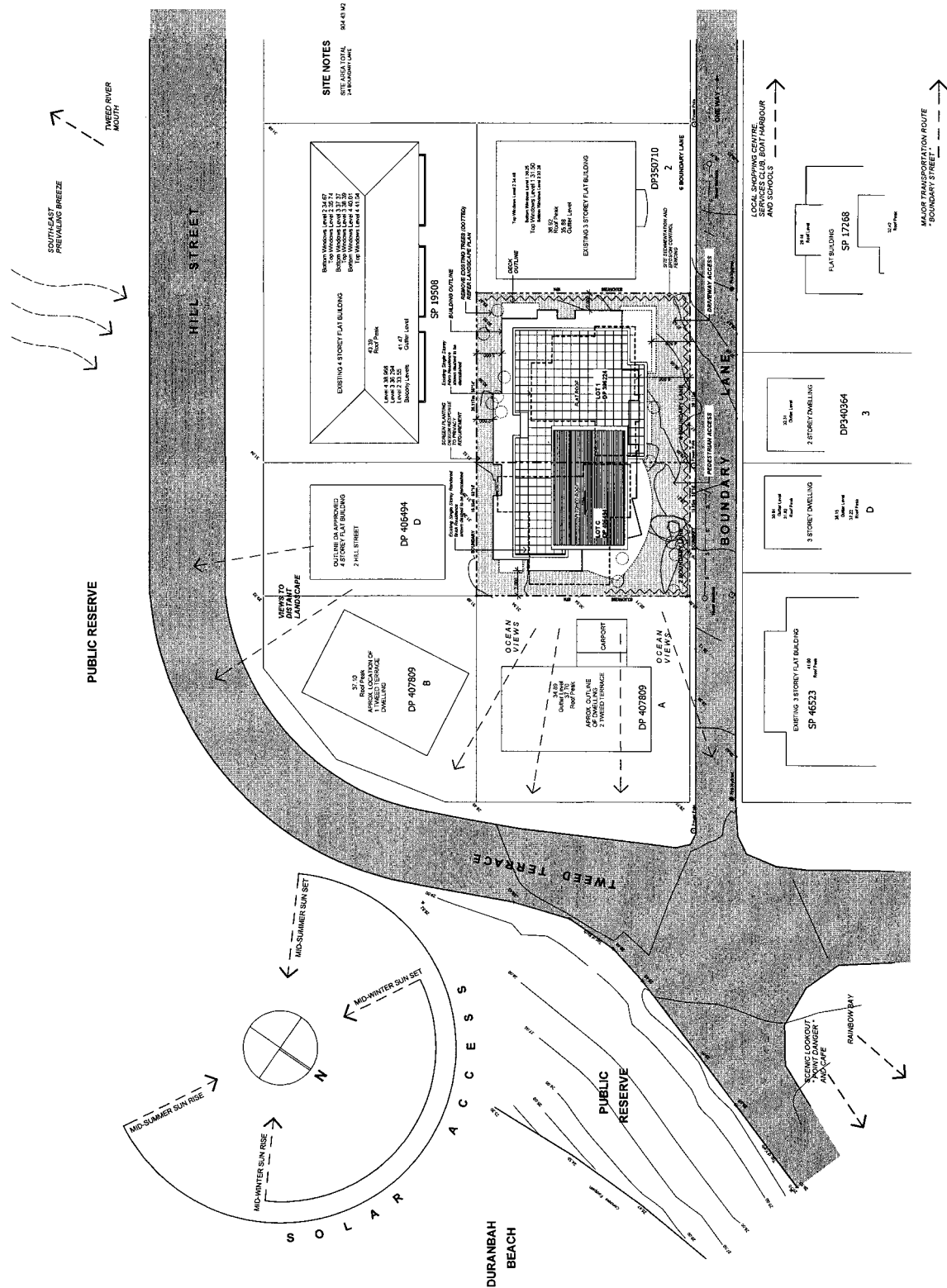
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Tweed Shire Council
 Lot C DP 406494 and Lot 1 DP 350710
 Boundary Lane, Tweed Heads
 File: N:\MapInfo 7...V4P Site Plan.Wor Author: C.Davis Date: 12/July/2005

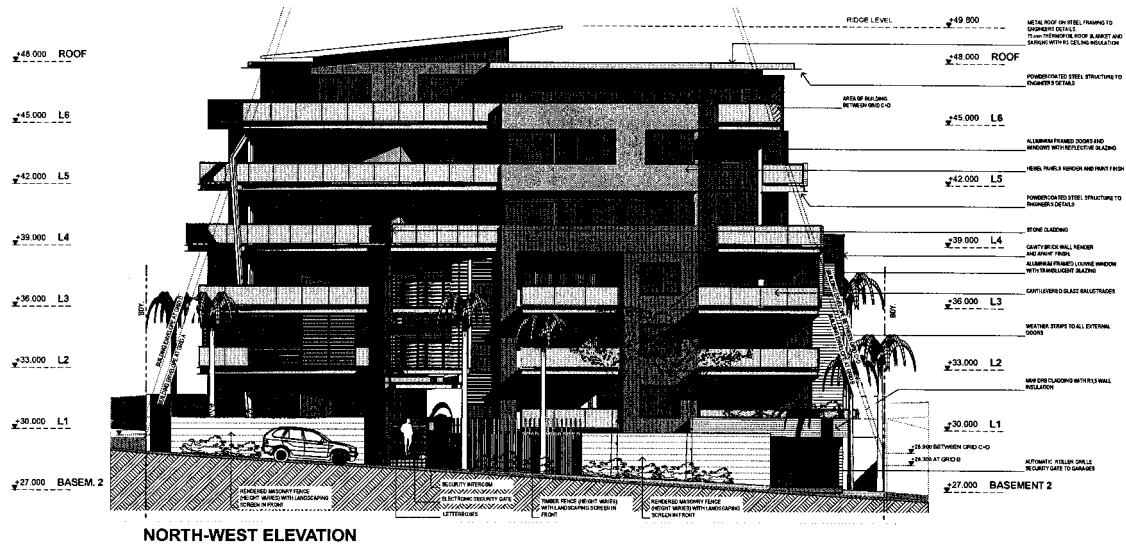


STRATEGIC PLANNING UNIT
Figure 1
 Scale: 1:7,500 Sheet: 1 of 1

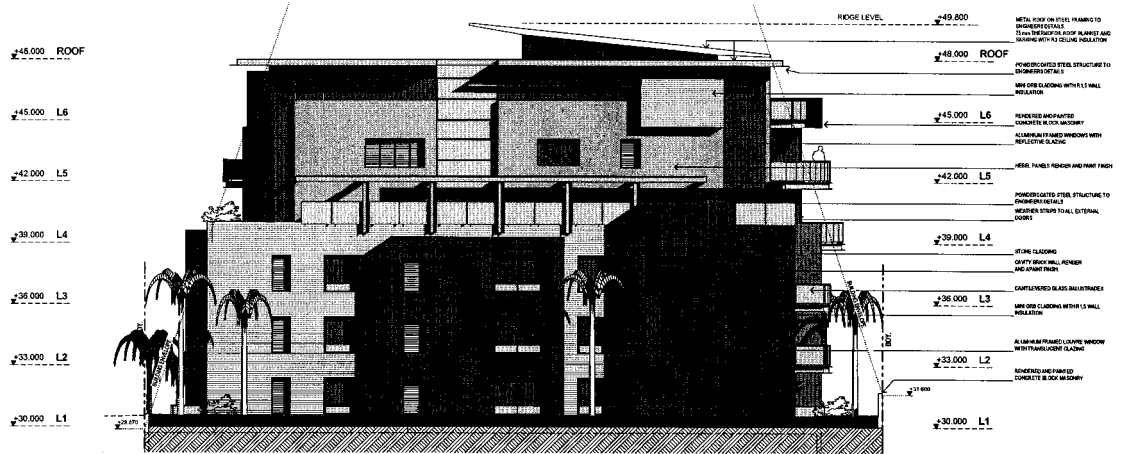
PLANS OF THE DEVELOPMENT:



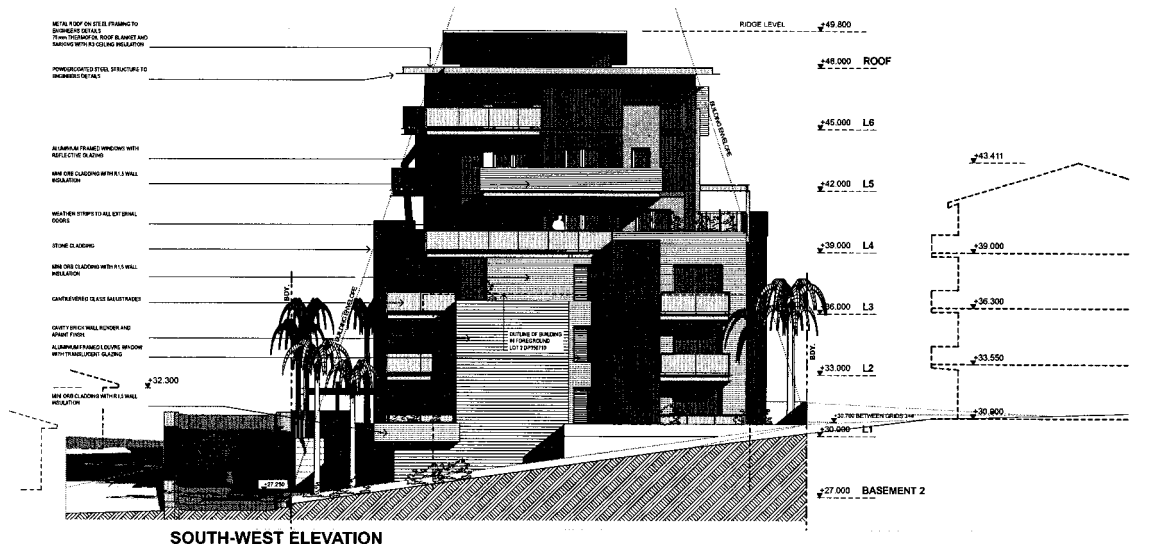
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Project ID: 0430		Project Number: 0430		Project Manager: DASH	Scale: 1:200 (A1)
Drawing No: 01		Drawing Title: SITE PLAN - ANALYSIS PLAN		Drawing No: A-01	Sheet No: A



NORTH-WEST ELEVATION

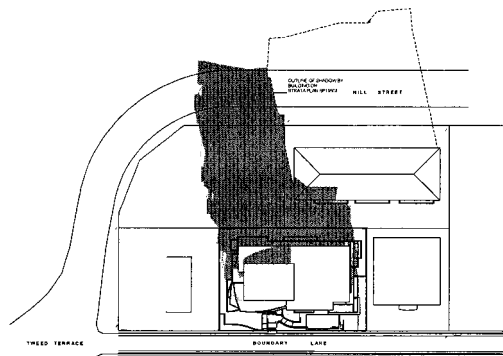


SOUTH-EAST ELEVATION

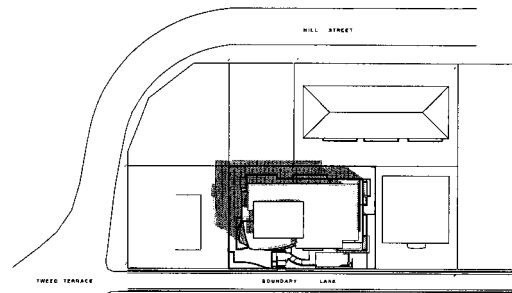


SOUTH-WEST ELEVATION

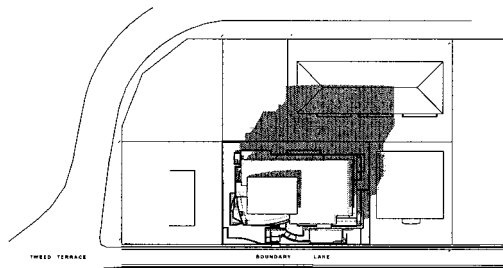
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						Drawing No: A-06	Sheet: A
Drawn by:	AE	Checked by:	AE	Project No:	0420	Scale:	1:100 (B.A.T)
Date:	15/07/2005	Project Name:	NEW APARTMENTS	Drawing No:	A-06	Sheet:	A



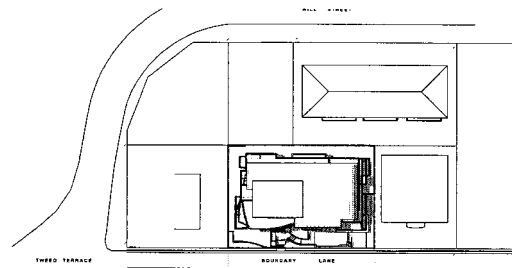
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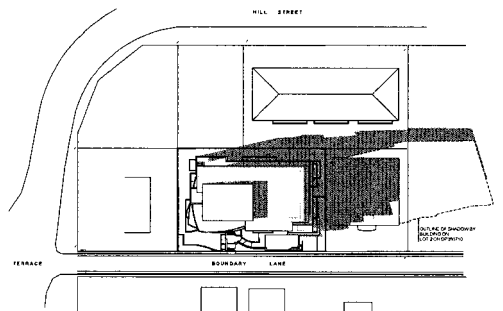
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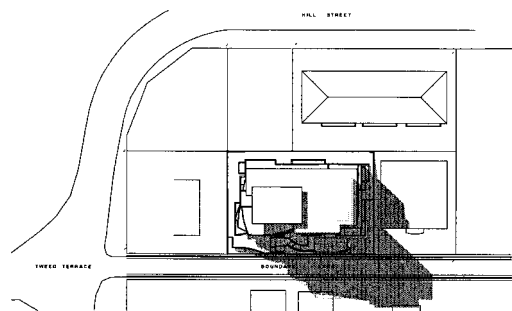
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AZIMUTH TRUE NORTH - ALTITUDE 37.20°



SHADOW DIAGRAM 12:00PM
AZIMUTH TRUE NORTH - ALTITUDE 78.20°



SHADOW DIAGRAM 09:00AM
AZIMUTH 143.11° - ALTITUDE 44.70°



SHADOW DIAGRAM 09:00AM
AZIMUTH 137.01° - ALTITUDE 58.60°

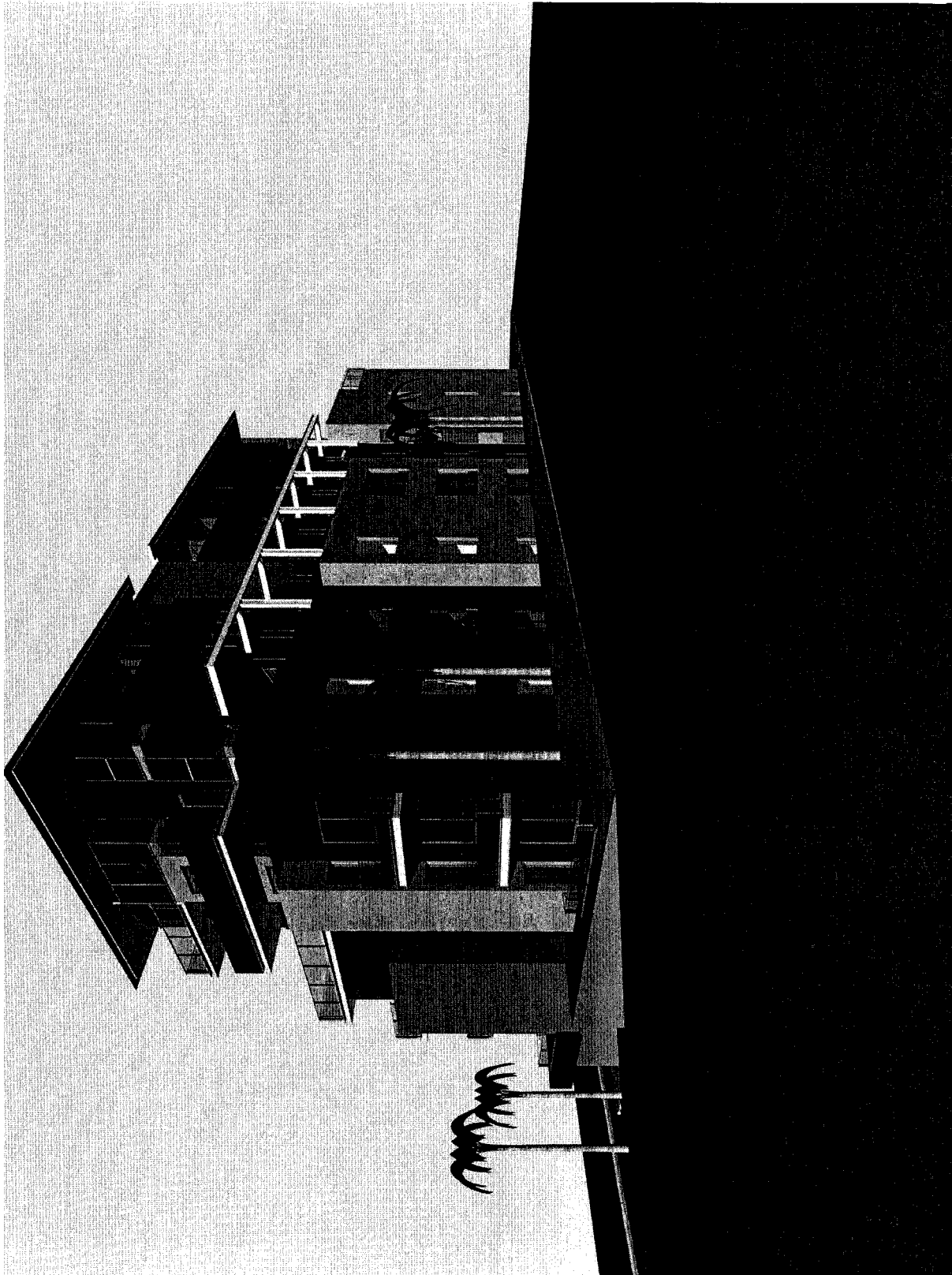
SHADOW DIAGRAMS WINTER

WINTER SOLSTICE - 21st JUNE
LATITUDE 28.10° SOUTH (TRUE NORTH) - TWEED HEADS

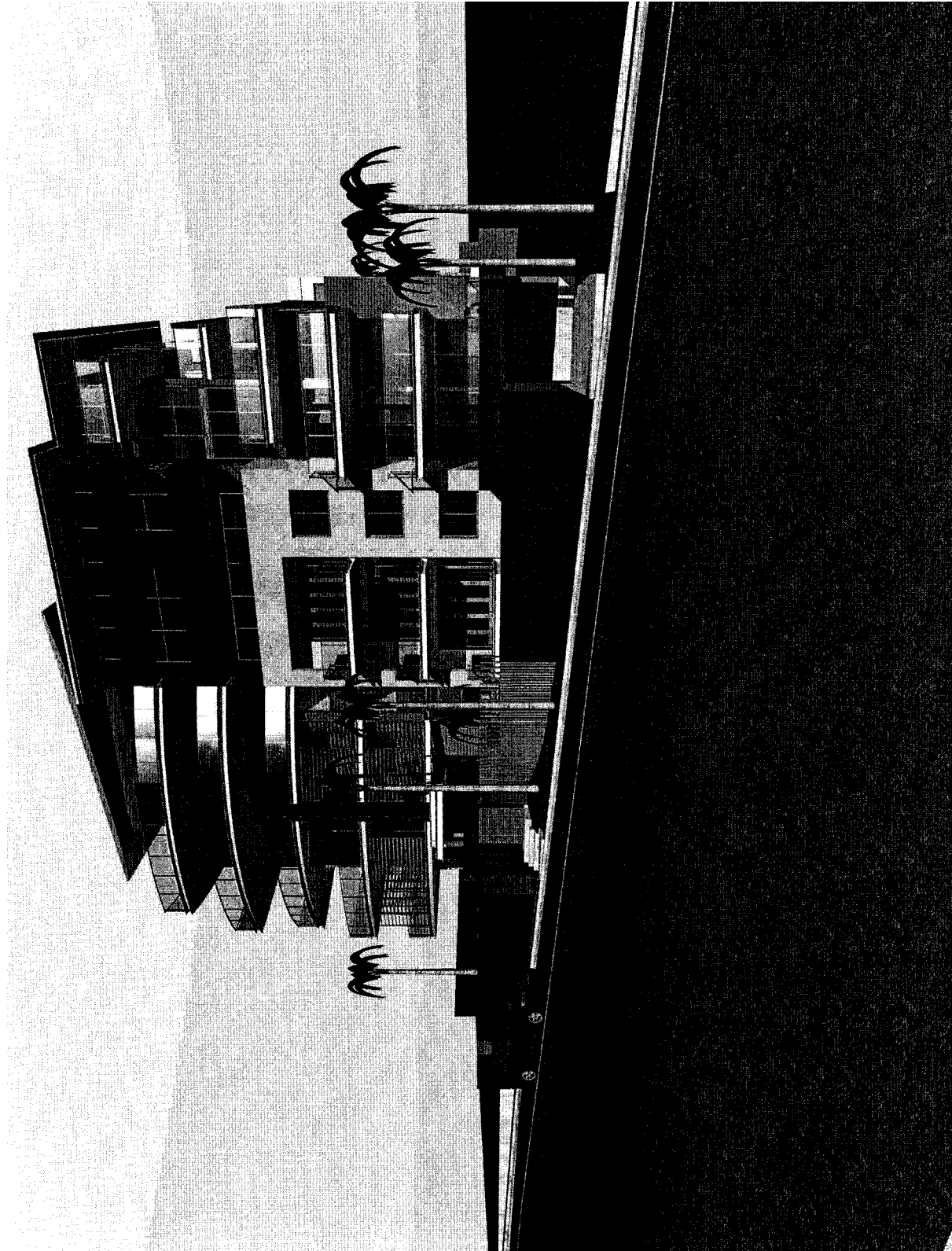
SHADOW DIAGRAMS SUMMER

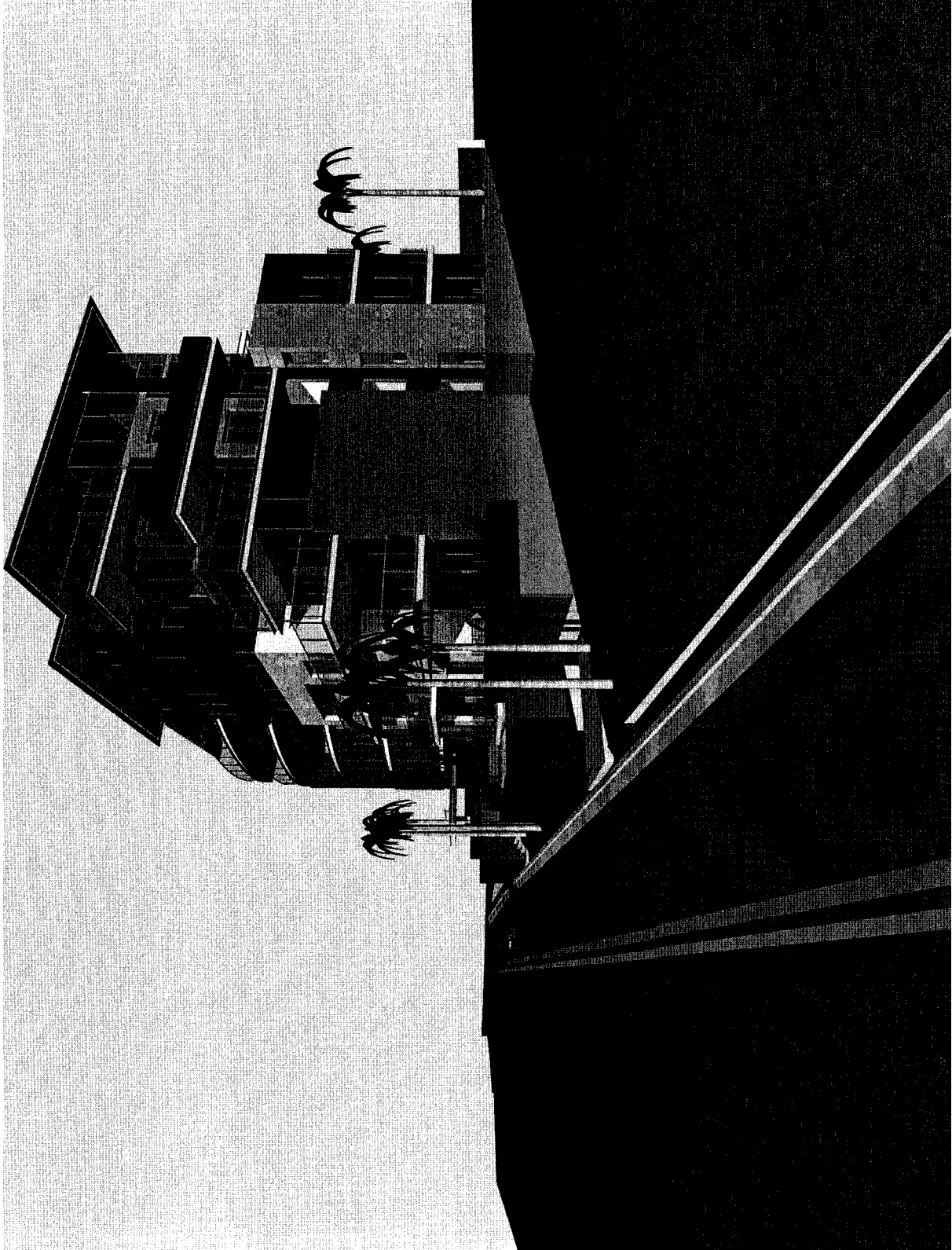
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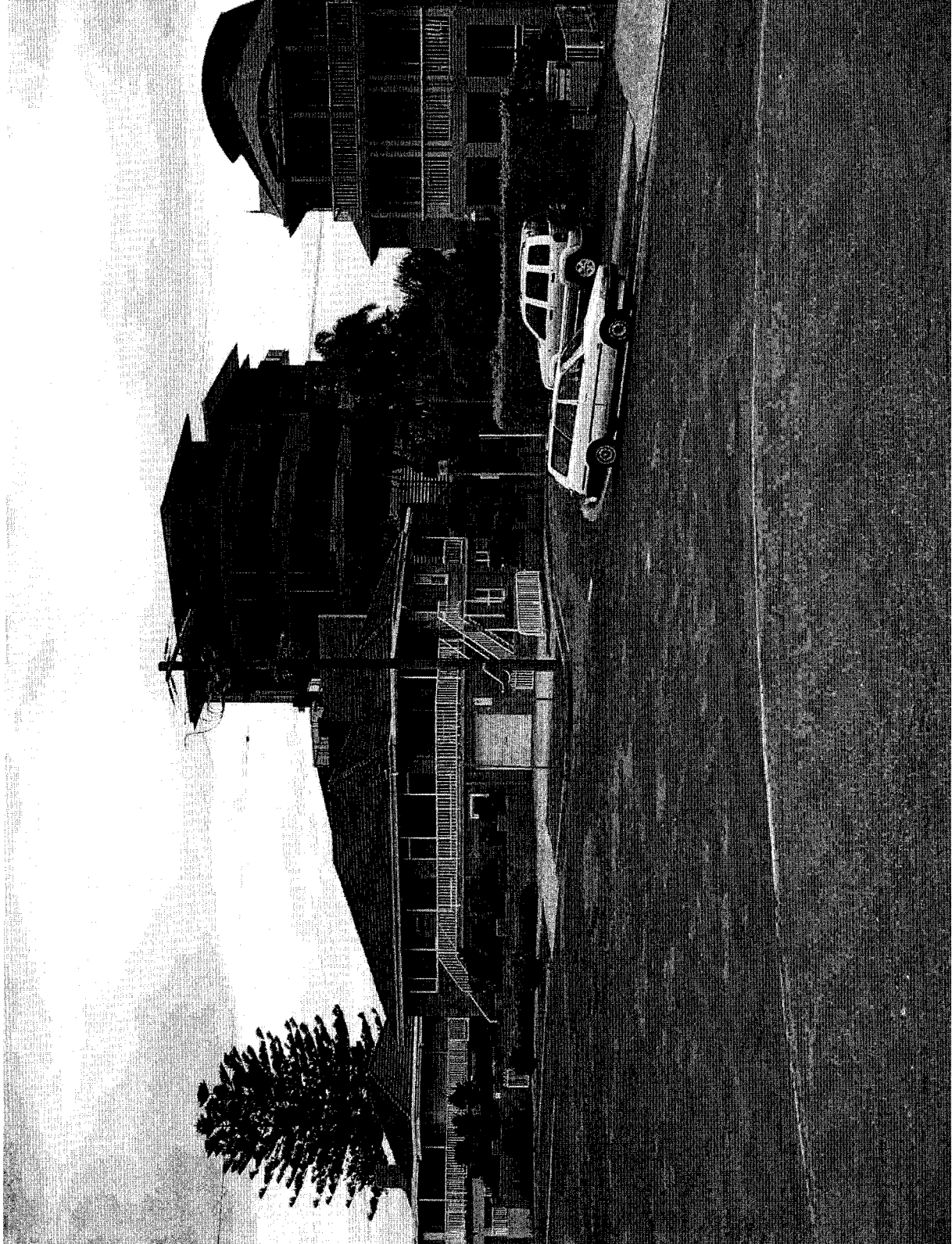
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				100 McPHERSON STREET TWEED HEADS NSW 2486		Client: P&F/D		Checked: J.P.		Scale: 1:100 @ A1(1)	
22/07/05		A		Development Application		Drawing: SHADOW DIAGR. - WINTER/SUMMER		Sheet: A-08		Rev: A	











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

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

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

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

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

The proposal to construct a 6 storey residential flat building on two parcels of land (with a total area of 904m²) is considered to be high-density development as permitted by the zone.

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

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

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

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

It is considered that the proposed building complies with the 50m AHD height limit by providing a building, which contains six levels (in addition to a two tier basement), reaching a maximum height of 49.8m AHD. The proposal complies with the numerical height requirements and has good urban design principles and incorporates interesting and appealing articulation.

Clause 17 of the TLEP requires a Social Impact Assessment to be submitted for residential development comprising 50 units or more. As the development is for only 12 units it is considered that the proposal in terms of these guidelines will not have a significant social or economic impact upon the area, and a SIA is not required.

Clause 33 of the TLEP requires Council to consider any current obstacle limitation surface plan or procedures for aircraft navigation services. Council has liaised with Mr Ian Rigby who acts for the Gold Coast Airport Limited (GCAL) and has ensured that an approval has been issued under the Airports (Protection of Airspace) Regulations. Additionally Mr Rigby has requested that a condition of consent be imposed to ensure the proponents make an application for any temporary intrusion into the airspace. The following condition has been incorporated in to the recommendation in addition to a condition restricting the top height of the building.

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

Clause 35 of the TLEP requires an acid sulfate soils management plan be assessed where the proposed development is likely to interfere with acid sulfate soils. The subject site is identified as possessing Class 5 Acid Sulphate Soil levels. Council's Environment & Community Services Division, have advised that as the excavations do not extend below RL 5.0m (where ASS are likely to occur) therefore there is no need for an Acid Sulphate Soils Management Plan, or a dewatering permit. However, appropriate conditions of consent have been recommended.

North Coast Regional Environmental Plan 1988

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

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

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

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

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

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

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

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

State Environmental Planning Policies

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

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

Context and Built Form

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

Scale and Density

Having regard to the size of the land and the 50m AHD height limit the proposed building is suitable in terms of bulk and scale. The blocks rectangular shape has allowed for a well-proportioned structure that has deliberately differentiated the first three floors from the upper three floors creating an interesting facade. The elevations have strong articulation to make them features of the building thus adding architectural merit to the building. Various elements in the design of the proposal including large balcony areas, variation in materials, attractive roof forms and general compliance with the building height plane results in a design that is consistent with the high density planning controls applicable to the site and a building that is appropriate in terms of bulk, scale and character.

Resource Energy and Water

The applicant has submitted a Energy Efficiency Certificate demonstrating that the development has a complying 4 & 5 star energy rating.

Landscaping

The development will be suitably landscaped at ground level and on the podium with native trees and shrubs, to satisfy the provisions of DCP 18. Appropriate conditions of consent have been imposed to ensure that landscaping will be completed prior to occupation of the development.

Amenity

Neighbouring residences have raised concern that the proposal will unreasonably overshadow adjoining properties. The applicant has supported this application with detailed shadow diagrams depicting shadow mid summer and mid winter.

The impacts from the summer shadow diagrams are negligible and are primarily contained within the subject properties boundaries after noon.

The mid winter diagrams demonstrate that adjoining properties will be affected by shadow from the proposed building but only for short periods before the shadow moves throughout the day.

At 9am No. 6 & 8 Boundary Lane will be overshadowed, however, by midday the shadow will have moved over to No. 4 Hill Street. By 3pm mid winter No 2 Hill Street will be the primary property overshadowed by the proposed development.

This shadow pattern is not considered to represent an unreasonable impact on any one property. All adjoining land parcels receive adequate solar access as the day progresses.

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

In terms of privacy the architect has provided that the proposed building offers a number of design elements to ensure appropriate amenity for residents visitors and neighbours. These measures are considered acceptable to satisfy the amenity objectives of SEPP 65.

Safety and Security

Proposed development includes the following measures for safety and security.

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

Social Dimension

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

Aesthetics

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

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

State Environmental Planning Policy No.71 - Coastal Protection

The subject land is not in a sensitive coastal location. The proposed development is 19.8 m above natural ground level at its highest point and as such Council is the consent authority for the proposed development.

Clause 8 of SEPP71 contains matters for consideration that have been addressed by the applicant. The proposed development is located in close proximity to the open space areas of point danger headland, however the proposed development does not result in overshadowing of the foreshore reserve areas.

The proposed development generally complies with the matters for consideration under SEPP71.

Tweed Heads Town Centre Master Plan

The Master Plan establishes a vision for the Town Centre of Tweed Heads which describes the desired future character for Tweed Heads and provides urban guidelines for each precinct together with indicative plans and sections to illustrate the principal planning objectives and design intent.

The subject site is located in the Flagstaff Hill precinct and is restricted to a 6 - storey height limit in accordance with the Plan. The Plan specifically nominates this area as a high-density residential zone that should have quality architectural style responsive to the location and microclimate.

The proposed design of the subject development clearly complies with all aspects of the Master Plan. The building has a distinctive change in form to break up the vertical elements of the proposal which adds to the overall aesthetics of the building.

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

There are no Draft Plans applicable.

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

Development Control Plan No.2 – Access and Car Parking

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

Standard	Requirement	Complies/variation
On site car parking	1.5 per dwelling = 18 Council has also consistently applied a merit based assessment for the provision of 25% of this parking to be allocated to visitor parking. Therefore this development would generate the need for 5 visitor spaces to form part of the 18 spaces	The basement contains thirty one (31) unconstrained spaces. Of these 31 spaces five (5) of them have been marked for visitor use. This is considered acceptable subject to a condition of consent confirming the need for a minimum of five visitor spaces that are clearly signposted accordingly.

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

DCP No. 18 – Tweed Heads

Part 6 – High Density Residential Precinct

The land is identified under the DCP as a high-density residential precinct and is within walking distance to the Tweed Heads/ Coolangatta CBD, clubs, sporting facilities and other recreational opportunities. The proposal being the consolidation of two properties and the construction of 6 storey residential flat building containing 12 units is consistent with the precinct objectives and the vision for Tweed Heads.

Part 9 - Building Height Plane

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

From the plans submitted the proposal has extremely minor areas of walls, and small areas of open decks that encroach the envelope. The minor encroachments for open balconies generally occur at levels 4, 5 and 6 while the minor wall encroachments occur at levels 2 and 3 on the southern side.

The applicant has submitted that the encroachments are minor and are equalised by not utilising other areas of available building envelope. It is further noted that the difference between the proposal and a fully complying building envelope would not result in any significant change to shadow impact.

Having regard to the slope and shape of the site it is considered that the proposal represents a sensible and well-balanced approach to the building envelope control. Furthermore, the development complies with intent of the planning controls with the bulk of the building falling within the building height plane. Considering the minor nature of the encroachments and the benefit the building obtains in articulation as a result, a variation to the Building Height Plane is supported in this particular instance.

Part 11 – Residential Design

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

Building Mass

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

Energy efficiency

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

Wind Mitigation and Overshadowing

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

The level of overshadowing is considered acceptable having regard to the movement of the shadow across adjoining properties.

Roof Lines

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

Privacy

The units and balconies have been orientated in such a way that views are obtained over the tops of the roofs at the rear, with smaller windows at the side elevations to respect adjoining privacy. In addition, adjustable louvre screening is prevalent to the side elevations to assist in privacy.

However, further privacy can be achieved through the use of planter boxes to obscure overlooking, but not prevent distant views.

Security

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

Materials and Colours

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

Access and Parking

The notification resulted in local residents expressing concern with the capacity of Boundary Lane to support access for a further 12 units.

The applicant has prepared a traffic and parking statement to analyse the capacity of Boundary Lane for access for this development. The statement concludes that the vehicle generation from the site post development may result in 6 additional vehicle trips per hour. The statement provides that this would not be noticeably different to that of the current use, as the development provides acceptable onsite parking.

Council's Traffic & Transport Engineer and Council's Development Engineer have reviewed the application and provided that Boundary Lane has the capacity to cater for the additional vehicle trips. Conditions of consent will be imposed to ensure that during construction consideration is had for the amenity of the adjoining properties.

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

Open Space and Balconies

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

Development Control Plan No.39 – Energy Efficient Housing

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

Standard	Requirement	Proposal	Complies
Unit Energy rating	3.5 stars minimum	4 –5 stars	YES

Development Control Plan No. 47 – Cut & Fill

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

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

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

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

Coastal Policy

The land is identified under the Coastal Policy. However, the site is significantly landward from the Coastal Erosion Zones, and is unlikely to be affected by the coastal processes, overshadowing of the foreshore reserves or restricting public access to the coast. Therefore, the proposed development is not considered to be in conflict with the policies and strategies contained in the coastal policy.

Demolition

The proposal requires the demolition of two existing dwellings. The applicant has not submitted an adequate demolition plan, and subsequently it is recommended that demolition form part of separate development consent. Appropriate conditions of consent have been recommended to control demolition activities.

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

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

Character of the area

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

Building Line Variation

The plans submitted identify a building line variation to Boundary Lane for part of the open balconies to be 4.5 metres from the alignment of Boundary Lane. Strictly the Building Line Policy does not apply to laneways, however in this case it is the primary and only frontage for the allotment, and as such the variation is being assessed against the objectives of the Building Line Policy which reads as follows:

- Achieve an attractive and reasonably landscaped streetscape;
- Provide for the safe and convenient circulation of pedestrian and parking of vehicles;
- Control the extent to which buildings overlook, overshadow and effect adjoining properties

The applicant has provided that the external walls to the front boundary comply with the nominated 6m setback criteria and therefore the variation is only for the open balconies. The open balconies recede and protrude in and out of the 6m setbacks to produce an average setback exceeding the required 6m.

Furthermore the applicant has argued that the proposed landscaping provides an emphasis on tall narrow features (palm trees) that provide a filtered screen to the building. The additional landscaping surrounding the building provides a degree of privacy to pedestrians on the street from overlooking.

The proposed variation of 1.5 metres for no more than 14 metres in length is considered minimal and will have negligible impacts on overlooking, overshadowing and general amenity to adjoining properties. Subsequently, the proposed variation is supported as it is considered that the variation in this instance adds to the articulation of the building and compliments the development.

Views

DCP 18 acknowledges that views provide a sense of place and identity, and that key view corridors should be retained. The Senior Commissioner in the Land & Environment Court in *Tenacity Consulting Pty Ltd v Warringah Council* adopted the following four-stage test to assess the reasonableness of view sharing:

1. The first step is the assessment of views to be affected;
2. The second step is to consider from what part of the of the property are the views obtained (an expectation to retain side views and sitting views would be unreasonable);

3. The third step is to assess the extent of the impact (the extent of the impact should be assessed for the whole of the property not just for the view that is affected. This could be done by ranking the affect from negligible to devastating); and
4. The fourth step is to assess the reasonableness of the proposal that is causing the impact (it may be unreasonable if it comes about as a result of non compliance with planning standards).

The proposed development will affect the views in some way from all adjoining properties, as the views currently enjoyed are generally panoramic.

The views would generally be obtained from the upper floors of the buildings (maximum fourth storey). The view would be obtained from various areas including side facing windows from bathrooms, bedrooms, living areas, external balconies, bedrooms, living and dining areas when standing up.

The impact on these properties would be a sense of enclosure and loss of partial views, which provide a higher level of amenity, however this impact would be considered acceptable given the panoramic views that these properties experience. The view to be lost is only one aspect of their view and could therefore allow for a reasonable sharing of views.

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

Therefore, it is concluded that the loss of view that will result from the construction of the proposed building is not unreasonable.

It is further noted that although the site is at the top of the precinct, the proposal will be hardly visible from Razorback Ridge, as it exists within the context of several other flat buildings on the western edge of the precinct between the site and Razorback Ridge.

Front Fence Height Variation

The plans submitted identify a fence across the front of the property (to Boundary Lane), which varies in height from 1.6 to 2.8m. The plans show that it varies from a rendered masonry fence to a timber fence with a landscaping screen in front. The proposed height of 2.8m is considered excessive and it is therefore recommended to condition the application to have a front fence that steps down the site to ensure there is no part of the fence higher than 1.6m. The variation from 1.2 metres to 1.6 metres is considered to assist in the design of the building by complimenting the development.

Excavation Policy

Excavation is proposed to the boundary of Boundary Lane and along the southern property boundary. Therefore following discussions with Council's Senior Building Surveyor it is recommended in this instance to recommend conditions of consent to ensure compliance with the nominated Policy as follows:

- 1. Prior to Issue Of Construction Certificate the applicant shall submit to Council for approval an appraisal carried out by a Geotechnical Consultant of the effect of the proposed excavation including any precautions considered necessary to protect such properties from damage on accordance with Tweed Shire Council's Building Excavation Dewatering Policy.*
- 2. Prior to Issue of Construction Certificate the applicant shall submit to Council documentation demonstrating General Public Liability Insurance to the value of \$5,000,000 which includes loss of support to neighbouring properties which is attributed to excavation vibration associated with the project in accordance with Tweed Shire Council's Building Excavation Dewatering Policy.*
- 3. All works (including support structures for excavation such as sheet piling) are to occur within the confines of the subject property boundaries.*

(c) Suitability of the site for the development

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

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

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

The proposal was advertised and notified for a period of 14 days from 16 March 2005 to 1 April 2005. During this period Council received fifteen individual objections.

The grounds for objection are discussed in the below table.

OBJECTION	IMPACT ASSESSMENT
<i>A variation to the DCP having regard to privacy and overshadowing should not be supported.</i>	Council's Development Control Plans are outcomes based and provide numerical specifications for guidance and in some instances strict compliances. As detailed in the above report the proposed variations are considered minor and do not warrant amendment or refusal of this application.
<i>The DA should have been accompanied with as shadow diagram as impacts on adjoining properties would be major.</i>	Shadow diagrams accompanied the application to assist in the assessment of the application. As detailed in the above report the implications from shadow are considered not to adversely affect any one property to an unreasonable level.
<i>A previous DA was refused on density, parking, and shadowing grounds. Since then the requirements have not changed.</i>	The previously refused application was only for development over No. 2 Boundary Lane which was some 300m ² , and subsequently the proposed five storey building in that instance was considered an over development of the site. This application has been assessed on its merits and is considered to warrant conditional consent.
<i>Air Conditioning on the southern side would be too noisy.</i>	Council's Environmental Health Officer has reviewed the proposal in this regard and recommended appropriate conditions regarding noise generation.
<i>Excavation should not go to the boundary to ensure protection of my property.</i>	Council's excavation policy requires appropriate measures are undertaken to ensure the stability of adjoining land. Strict conditions of consent have been recommended in this regard.
<i>Removal of a dwelling so young in age is a waste of building materials.</i>	Council is obligated to undertake an assessment of all applications received whether or not there is substantial infrastructure on the land or not. The current dwellings are considered an under utilisation of land given the objectives contained within the Tweed Heads Centre Master Plan and DCP 18 and subsequently the current application is considered appropriate.
<i>This development has not considered privacy implications on buildings that have yet to be built.</i>	It would be unreasonable to expect this application to pre-empt what developments will be built in the future. However, any purchasers of the subject units must do so on the understanding that their view and amenity may in time be impacted upon by future developments which will also be assessed on their merits.
<i>A higher density would be inappropriate for such a coastal location. Tall buildings belong away from the beach, river or lake.</i>	This opinion is contrary to the adopted plans for the Tweed Heads area. The proposed development is considered to be consistent with the relevant plans policies.
<i>The development is out of keeping with existing development</i>	Flagstaff Hill is a nominated high-density precinct, however, the area presently exhibits a mixture of residential flat buildings and single dwellings. Subsequently the proposed development is not going to be in character with these single dwellings. Notwithstanding, the proposed development is of a high urban design standard and has had regard for all of the planning policies in place to ensure the future desired character of the area is achieved.

OBJECTION	IMPACT ASSESSMENT
<i>Excavation will undermine the strength and support of the foundations of neighbouring properties</i>	Council's Excavation Policy ensures that the necessary studies and precautionary action is taken to ensure neighbouring properties are protected. Appropriate conditions of consent have been imposed
<i>Construction will cause disruption to traffic flow in the Lane.</i>	Unfortunately construction does cause disruption to adjoining properties, however, Council has standard conditions of consent to try to mitigate any adverse impact. Should residents have concerns during construction the Principal Certifying Authority can be contacted.
<i>There is insufficient parking.</i>	The proposed development provides 13 more on site car spaces than that required by DCP No. 2. Subsequently, the proposed development is considered satisfactory on parking grounds.
<i>Are shadows within regulations?</i>	As detailed in the above report the expected shadow from the development will not unreasonable impact on any one property thereby complying with the minimal policy requirements.
<i>What protection will be provided against any asbestos dust that may arise form demolition?</i>	During demolition the applicant will be required to comply with all Australian Standards regarding hazardous materials.
<i>During construction trade vehicles will disrupt traffic.</i>	Council has standard conditions of consent to try to mitigate any adverse impact. Should residents have concerns during construction the Principal Certifying Authority can be contacted.
<i>Have you ensured height and boundary restrictions have been complied with?</i>	The above report details the nominated requirements and details how the development satisfies the policy controls.
<i>We thought there was a 2-storey height limit why has a six-storey building materialised?</i>	The subject site has been a nominated high-density area for some time. Additionally more recently the Tweed Heads Town Centre Master Plan has re-assess height controls and as a result a draft LEP Amendment is being prepared for exhibition and public consultation.
<i>Height controls should be specific to an area taking in the uniqueness of any given area and should not exceed four stories in this area.</i>	Recent studies have undertaken detailed analysis of this issue. Following those studies it is envisaged that the subject area will be limited to a six-storey height limit as opposed to a 50m AHD height limit. Then each application will be subject to individual merit assessments.
<i>Building setbacks and envelopes have not been complied with.</i>	As detailed in the above report the minor variations are not considered to result in an unreasonable impact on any one property thereby satisfying the objectives of the controls.
<i>The existing two dwelling accommodate 3 cars this development will cater for 31 cars an increase of 1033%.</i>	The proposed development provides 13 more on site car spaces than that required by DCP No. 2. Subsequently, the proposed development is considered satisfactory on parking grounds.
<i>Privacy for dwellings to the north will be lost.</i>	In high density areas private open space areas do become compromised, and subsequently in this instance dwellings to the north will lose some privacy. However, balconies have been positioned to capture the ocean outlooks not the adjoining private open spaces areas. Landscaping will be utilised to minimise as much as possible the privacy implications.
<i>Views will be lost or at least negatively affected.</i>	As detailed in the above report the development will impact on some views currently enjoyed, however, there is opportunity for view sharing given the panoramic views currently experienced.

OBJECTION	IMPACT ASSESSMENT
<i>Pedestrian usage in the Lane is high but there is no footpath.</i>	Council's traffic and transport engineer has recommended a condition of consent requiring the applicant to construct a footpath between the kerb and property boundary for the length of the building.
<i>The design will just add a huge bulk not minimise visual or physical impact.</i>	The proposed development is considered to be of high architectural merit. Any six storey building is going to add to the bulk of the existing streetscape, however, through interesting design and attractive features the impact from this development is considered to be minimised.
<i>Access to the lane is limited as it is narrow lane – the laneway should be kept clear at all times to accommodate medical emergencies.</i>	During construction the proposed development will be required to comply with the nominated conditions of consent which govern hours of operation and the way in which the site will be worked.
<i>Approval of this type of housing would lead to more approvals like this which would be out of character with the existing developments.</i>	Each application received by Council is assessed on its individual merits having regard to the applicable planning controls in place at the given time. The proposed development is not considered to set any precedent given the high level of architectural merit of the application and the sites particular constraints.
<i>I object to the set of stairs in the road reserve.</i>	Council's Traffic and Transport Engineer has reviewed the proposal and determined that this element of the design should be removed. Appropriate conditions of consent have been recommended.
<i>We should be doing everything we can to stop beach erosion by avoiding buildings close to the coast.</i>	The proposed development is westward of the coastal erosion line and subsequently development on this site is considered suitable. Therefore there is no change recommended to the plans.

(e) Public interest

The creation of documents such as The Tweed Heads Town Centre Master plan and DCP 18 have provided the framework for developments in the Tweed Heads area. These plans were exhibited to the general public and once adopted are considered to be documents that represent the interest of the public to ensure development standards are maintained.

The proposed development has been designed having regard to the objectives and design outcomes listed in the relevant documents. The minor variations requested in no way compromise the broad objectives but rather improve articulation and ensure consistency in design. Strict compliance in this instance would not necessarily achieve better outcomes and subsequently, the proposed development is considered to reflect the intended development for the locality.

OPTIONS:

1. Approve the application in accordance with the recommended conditions.
2. Refuse the application and defend the appeal in the Land & Environment Court.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has lodged a Deemed Refusal Class 1 Appeal with the Land and Environment Court. Should Council approve the application it is anticipated that the appeal would be withdrawn.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

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

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

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

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

1. Confidential Floor Plans
-

2 [PD] Development Application DA05/0228 for a Surf Life Saving Club at Lot 921 DP 1076062, Bells Boulevard, Kingscliff

ORIGIN:

Development Assessment

FILE NO: DA05/0228

SUMMARY OF REPORT:

An application has been received for a surf club at the Salt development at South Kingscliff. The club is proposed to be constructed beneath the deck of the tavern contained in the Outrigger Resort. The site is owned by South Kingscliff Developments.

RECOMMENDATION:

That Development Application DA05/0228 for a surf life saving club at Lot 921 DP 1076062, Bells Boulevard Kingscliff be approved subject to the following conditions: -

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos A-WD-1-101, A-WD-2-301, A-WD-3-301 prepared by Raunik Design Group and dated June 05 and the Landscape Plan dated 28/06/05 prepared by EDAW Gillespies, except where varied by these conditions.**

[GEN0010]
- 2. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within the subject property.**

[GEN0030]
- 3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**

[GEN0120]
- 4. The erection of a building in accordance with a development consent must not be commenced until:**
 - (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and**
 - (b) the person having the benefit of the development consent has:**

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

[GEN0150]

5. All works are to be confined to the subject site. Any works required on the adjoining reserve is to be subject to a separate development application.

[GENNS01]

6. The adjoining reserve is not to be used for storage of equipment or materials.

7. This consent is valid until 3 January 2015.

[GENNS02]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

8. **Section 94 Contributions**

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has

sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

- | | |
|--|----------|
| a. Tweed Road Contribution Plan:
S94 Plan No. 4 (Version 4.0)
Sector7a_4 | \$18,416 |
| b. Extensions to Council Administration Offices
& Technical Support Facilities
S94 Plan No. 18 | \$69 |

[PCC0050/PSC0005]

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

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

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

Water DSP6:	2.4 ET @ \$4230	\$10,152
South Kingscliff Water Levy:	2.4 ET @ 215	\$516
Sewer Kingscliff:	3.6 ET @ \$4060.32	\$14,617

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

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

[PCC0070/PSC0004]

10. A construction management plan is to be submitted to Council for approval prior to issue of the construction certificate. The plan is to include a management programme for the adjoining reserve regarding safety and reinstatement of disturbed areas following construction.
11. Development Application DA04/0868 is to be withdrawn prior to issue of the construction certificate.

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0010]

13. 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]

14. 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]

- 15. 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]

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

[PCW0210]

- 17. Prior to commencement of 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]

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

[PCWNS01]

DURING CONSTRUCTION

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

[DUR0160]

20. 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]
21. It is the responsibility of the applicant to restrict public access to the building site, building works or materials or equipment on the site when building work is not in progress or the site is otherwise unoccupied. [DUR0200]
22. If the work involved in the erection or demolition of a building:
- a. is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or
 - b. building involves the enclosure of a public place,
- a hoarding or fence must be erected between the work site and the public place.
- If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
- The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- Any such hoarding, fence or awning is to be removed when the work has been completed. [DUR0220]
23. Access to the building for people with disabilities shall be provided and constructed in accordance with the requirements 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 and their requirement to comply with AS1428. [DUR0260]
24. All walls in the food preparation and food storage areas shall be of solid construction, easily washable, lightly coloured and tiled to a height of at least 2 metres above floor level, or where not tiled, cement rendered to provide a smooth even finish to ceiling. Note: Stud framed walls will not be acceptable. Intersections of all floors with walls shall be covered to a radius of not less than 25 millimetres. [DUR0320]
25. All flooring materials in the food preparation and storage areas are to be impervious, non slip, non abrasive and capable of withstanding heavy duty operation. Where tiling is to be used epoxy grout finished flush with the floor surface is to be used in joints or alternatively all tiles are to be butt joined and free of cracks or crevices. [DUR0330]
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26. Suitable covering and protection is to be provided to ensure that no material is removed from the site by wind, causing nuisance to neighbouring properties. [DUR0850]
27. 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]
28. All necessary precautions shall be taken to minimise impact from dust during filling operations from the site and also from construction vehicles. [DUR0880]
29. 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]
30. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:
- A. Short Term Period - 4 weeks.
L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.
 - B. Long term period - the duration.
L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence. [DUR0910]
31. The burning of builders waste on site by open fire is prohibited. [DUR0940]
32. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development. [DUR0980]
33. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:
- a. internal drainage, prior to slab preparation;

- b. water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
- c. external drainage prior to backfilling.
- d. completion of work and prior to occupation of the building. [DUR1020]
34. A. A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
- B. The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage. [DUR1030]
35. Where two (2) or more premises are connected by means of a single house service pipe, the owner of each premises must (*unless all the premises are occupied by a single household or firm as a residence or place of business*) ensure that a separate water meter, of a class and size approved by Council, is installed on each of those premises. [DUR1070]
36. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard. [DUR1110]
37. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level. [DUR1130]
38. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-
- * 43.5⁰C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
 - * 50⁰C in all other classes of buildings.
- A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works. [DUR1160]
39. In the event that Council is not utilised as the inspection/Certifying authority, within seven (7) days of building works commencing on the site a Compliance Certificate in the prescribed form is to be submitted to Council together with the prescribed fee, by the nominated principal certifying authority to certify the following:

- i. All required erosion and sedimentation control devices have been installed and are operational.
 - ii. Required toilet facilities have been provided on the site.
 - iii. A sign has been erected on the site identifying:
 - Lot number
 - Builder
 - Phone number of builder or person responsible for site.
 - iv. All conditions of consent required to be complied with prior to work commencing on the site have been satisfied. [DUR1200]
40. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired to the satisfaction of the Director, Engineering & Operations prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings. [DUR1210]
41. All landscaping is to comply with the 88B Instrument pertaining to the site. [DUR1240]
42. All materials used in the building must comply with the smoke developed and spread of flame indices specified in Specification C1.10 of the Building Code of Australia.
- Note: Many materials including some timbers such as western red cedar do not comply and it is the applicants responsibility to ensure that all materials to be used are within the criteria specified. [DUR1380]
43. 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]
44. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742.3-2202 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works. [DUR0040]
45. 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]

46. 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]
47. All waste water from the food preparation shall be directed to the existing trade waste separator. [DURNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

48. 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]
49. 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]
50. 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

51. A person must not commence a change of building use for the whole or any part of an existing building unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units). [USE0150]
52. 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]
53. Lighting or noise shall not be permitted to impact the amenity of any premise. [USENS01]
54. The club members food preparation area shall be maintained in a clean and healthy state. [USENS02]

55. Food preparation shall be for members only and food shall not be sold to the public.

[USENS03]

REPORT:

Applicant: South Kingscliff Developments Pty Ltd
Owner: South Kingscliff Developments Pty Ltd
Location: Lot 921 DP 1076062 Bells Boulevard, Kingscliff
Zoning: 2(f) Tourism
Cost: \$250,000.00

BACKGROUND:

The Outrigger Resort was approved as part of the Salt Development in April 2003. The approval included conditions requiring provision of surf lifesaving facilities at the development given the influx of tourists to the locality as a result of the development. The approval also required the lifesaving facility to be funded by the unit owners within the tourist resorts for ten years. The life saving facility building was constructed during 2004 and dedicated to Council and is now leased to the operators. A development application was lodged in July 2004 to construct a second storey on the surf facility building for use as a surf club. Council raised probity issues regarding the proposal and following this the application for the club on the Outrigger site was lodged with a request to put the second storey application on hold.

Proposal

The proposal involves construction of a surf club beneath the tavern deck. The floor area of the club is approximately 170m² and consists of a gym, meeting room, servery, toilets and an office. The existing tavern deck will be raised to be flush with the tavern floor level to accommodate the club room. A pergola is also proposed over the deck. The proposal does not include commercial food, beverage or gaming facilities.

The application provides the following explanation of the operation of the club: -

"Formation of the Salt SLSC has been approved by the senior body being SLSNSW and the Club has been incorporated and registered as "Salt Surf Life Saving Club Inc. The operation of the proposed Salt SLSC has no direct relationship with the existing surf life saving facility which is to be staffed by professional life guards.

The new SLSC will be privately owned and funded with memberships available to all Salt and local residents. The Club will be financially supported by foundation and annual major sponsorships, club membership fees and fund raising activities. There will be no cost to the community for running the Club.

The total cost of design and construction will be borne by Salt Developments Pty Ltd. No funds for construction or establishment will be required from council or the community.

The Club will be licensed to operate through its association with SLSNSW, in this regard relevant insurance for the Club is automatically provided by the blanket insurance policies provided by SLSNSW to all of its members\associates.

There is no request to licence the club for liquor or gaming, nor will the club provide any commercial kitchen services and the Club premises will only be available to Club Members.

Storage for any equipment will be contained off site at Club Members premises and/or within the Boat House proposed to be constructed at the north-west corner of Salt on Cudgen Creek."

Key Issues

Storage Area

The equipment required for the operation of surf club is large and is required to be stored in a secure manner. Eg. motorised watercraft, vehicles, boards etc. The proposed club does not have sufficient space to store the necessary equipment other than small items, flags etc. The applicants advise that the large items will remain under the control of the professional lifeguards in the surf facility building. Storage of equipment at members homes or in the proposed boathouse is not considered practical.

It is considered that the arrangement with the surf facility is satisfactory for the currently required ten year lifespan of the surf facility. Following the ten year period the use of the surf facility building may change including storage areas. The implication of this is that the surf club will not have a suitable area to store the necessary equipment and Council is likely to be requested to make arrangements for storage of surf club equipment.

To avoid the above scenario the lifespan of the consent for the surf club should be aligned with the lease period of the surf facility. A condition limiting the consent is proposed. The lease terminates on 3 January 2015.

Parking

The gymnasium category has been used for calculating car parking under DCP-2 Site Access and Parking Code given the club category includes bar areas and lounge/dining areas which are not part of this proposal. The toilets have been excluded from the car parking calculations given that they will not generate a parking demand. 100m² of floor area has been used to calculate car parking. The rate for gymnasiums is 6 spaces per 100m².

After applying the discount for ESD principles 4.8 spaces are generated by the proposal.

Additional spaces are not proposed to be constructed as they cannot physically be provided. The Salt development was required to provide 200 beachside car parking spaces. 202 spaces (when complete) have been provided around the central park. The applicant also argues that members of the surf club (estimated at 40) are unlikely to all meet during peak beach times and therefore adequate parking is available in the vicinity

of the surf club. It should also be noted that an additional 96 spaces are publicly available in front of the tavern and retail area.

It is considered that adequate car parking exists to serve the demands of the surf club.

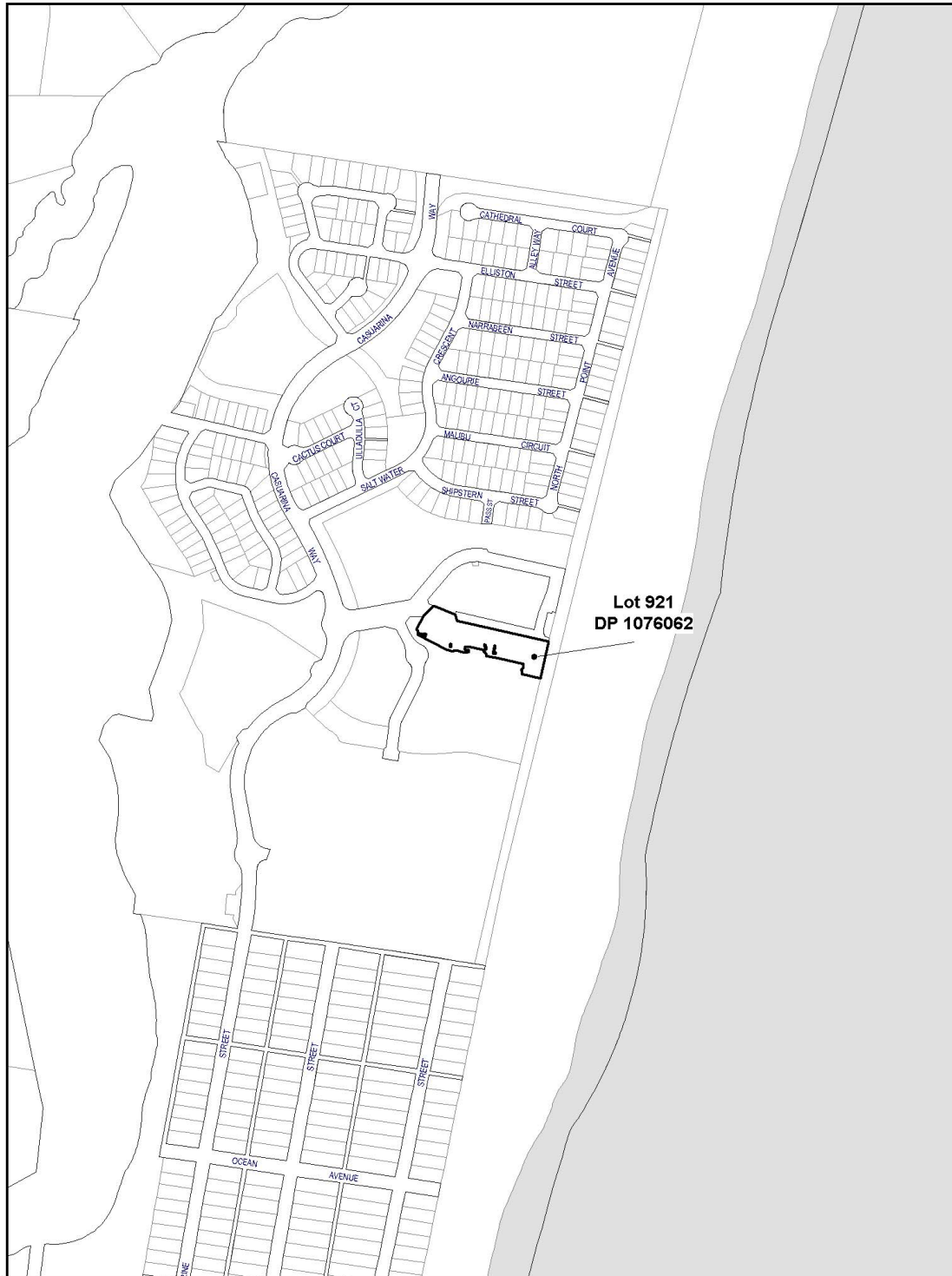
7(f) Environmental Protection (Coastal Lands)

The proposed works are within the private land zoned 2(f) Tourism however the proponents have indicated that some minor paving and landscaping work will be undertaken in the future to integrate the surf club with the adjacent land. These works will be subject to a separate development application.

Given the location of the proposed surf club the adjoining reserve will be used during construction, however, it is considered that this can be managed to eliminate any adverse impacts.

A condition has been imposed requiring a construction management plan to be submitted to Council identifying how issues such as safety and reinstatement of the reserve will be undertaken.

SITE DIAGRAM:



<p>© TWEED SHIRE COUNCIL 2005 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 816 Murwillumbah, NSW, 2484 Tel: (02) 6670 2499 Fax: (02) 6670 2483</p>	<p style="text-align: center;"><i>Tweed Shire Council</i> Lot 921 DP 1076062 Bells Boulevard, Kingscliff</p>		<p>STRATEGIC PLANNING UNIT Figure 1</p>
<p>File: N:\MapInfo 7...A4P Site Plan.Wor</p>		<p>Author: C.Davis</p>	<p>Date: 12/July/2005</p>
<p>Scale: 1:7,500</p>		<p>Sheet: 1 of 1</p>	

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

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

Tweed Local Environmental Plan 2000

The subject land is zoned 2(f) Tourism under the provisions of the Tweed LEP 2000 and clubs are permissible with consent.

The objectives of the zone are as follows-

Primary objectives

- to encourage integrated tourist development and uses associated with, ancillary to or supportive of the tourist development, including retailing and service facilities, where such facilities are an integral part of the tourist development and are of a scale appropriate to the needs of that development.
- to ensure that prime sites are developed for the best use and fulfil their economic and employment generating potential for the area.

Secondary objective

- to permit high quality residential development as being integral and supportive of the primary intent of this zone (tourist orientated development) in terms of design and management structure and only at a scale which enhances the proposed tourist resort character.

The proposal is not inconsistent with the objectives of the zone.

Clause 16 Height- a three storey height limit exists for this site. The proposal is one storey.

Clause 35 Acid Sulfate Soil- The site is categorised as class 4. Works are not proposed at a depth greater than 2 metres below natural surface level accordingly an acid sulfate soils management plan is not required..

Clause 36 –Coastal Erosion-Erosion rates have stabilised in this vicinity and it is unlikely the proposal will be affected by coastal erosion.

North Coast Regional Environmental Plan 1988

The proposal is not contrary to the North Coast REP regarding the Coastal Policy, Coastline Management Manual, North Coast Design Guidelines and foreshore shadow.

State Environmental Planning Policies

SEPP-71 Coastal Protection-The matters contained in clause 8 of the Policy are considered to be satisfied.

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

A draft LEP has been prepared for heights at Salt. The proposal does not contravene the draft LEP.

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

See above comments regarding DCP –2 Site Access and Parking under key issues.

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

The matters contained in the NSW Government Coastal Policy are considered to be satisfied. The surf club will improve safety for beach use at south Kingscliff.

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

The proposal is unlikely to have any significant environmental impacts given the club is to be built within the existing Outrigger building. The club is likely to have a positive social impact by providing a focal point for surf lifesaving in the locality.

(c) Suitability of the site for the development

Whilst the location of the club is unusual the options are limited and the site is considered more suitable than the second storey addition on the surf facility building.

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

The application was advertised in accordance with Council's DCP and two submissions were received.

One submission supports the surf club proposal and the other submission objects to storage of equipment in the proposed boatshed on Cudgen Creek given the response time to emergencies may be adequate.

The application states-

Storage for any equipment will be contained offsite at Club Members premises and/or within the boat house proposed to be constructed at the north-west corner of Salt on Cudgen Creek.

The development application for the boat house is currently being assessed. The application indicates that the boathouse would be used for the hiring of non powered watercraft for use on Cudgen Creek. The boathouse storage area is 10mx12m.

Small surf club items may be able to be stored in the boathouse (excluding rescue equipment) provided it is predominantly available for boathouse purposes. See previous comments regarding storage.

(e) Public interest

Formation of the surf club and construction of the premises at no cost to the community is considered to be within the public interest provided equipment storage issues don't become a burden for Council.

OPTIONS:

1. Approve the application as per the recommendation.
2. Resolve to approve the application and alter the recommendation.
3. Refuse the application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

If the applicant is dissatisfied with determination a right of appeal exists in the Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

It is considered that the proposed surf club is acceptable and that it is unlikely to have detrimental environmental impacts and it will provide for a positive social and community organisation.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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3 [PD] Draft Local Environmental Plan Amendment No. 63 and Development Application DA04/0814 for a Two (2) Lot Subdivision and Dwelling at Lot 346 DP 755701, Coronation Avenue, Pottsville

ORIGIN:

Development Assessment

FILE NO: DA04/0814

SUMMARY OF REPORT:

Council resolved on 15 September 2004 to prepare a draft local environmental plan and to advise the Director-General of the Department of Infrastructure, Planning and Natural Resources of this action.

The draft amendment seeks to amend Schedule 3 to clause 53 of the Tweed LEP to enable a two lot subdivision and dwelling house. The proposal includes dedication of land zoned 7(a) Environmental Protection to Council. The draft LEP has been exhibited and one submission was received from the Department of Lands. A local environmental study is not required.

A development application accompanies the draft LEP and it is recommended that the application be approved subject to the draft conditions contained in this report upon gazettal of the LEP amendment.

RECOMMENDATION:

That Council: -

- 1. Forwards a copy of draft Tweed Local Environmental Plan 2000 (Amendment No.63) to the Minister for gazettal.**
- 2. Upon gazettal of draft Amendment No.63 to the Tweed Local Environmental Plan 2000, Council assume the concurrence of the Director of the Department of Infrastructure, Planning and Natural Resources for the variation of the 30 metre setback contained in clause 24 of the Tweed LEP 2000 and development application DA04/0814 for a two lot subdivision and dwelling house at Lot 346 DP 755701 Coronation Avenue, Pottsville be approved subject to the following: -**

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan No 2113-2 dated 14 April 2004 prepared by Chapman Surveys and Plan No. 280 Amendment 1 Sheets 1 to 6 dated 10 February 2001 prepared by Parameter Designs, except where varied by these conditions. [GEN0010]
2. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within the subject property. [GEN0030]
3. The subdivision is to be carried out in accordance with Development Control Plan No 16 - Subdivisions Manual. [GEN0040]
4. No retaining walls or similar structures are to be constructed over Council's sewer main. [GEN0090]
5. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia. [GEN0120]
6. Prior to commencement of work pursuant to this consent a Construction Certificate shall be obtained for the works proposed and required by this consent.
 - a) copies of compliance certificates relied upon
 - b) four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:
 - earthworks
 - roadworks
 - road pavement
 - road furnishings
 - stormwater drainage
 - water supply works
 - sewerage works
 - landscaping works
 - sedimentation and erosion management plans
 - location of all service conduits (water, sewer, Country Energy and Telstra)
 - the approved Traffic Control Plan
 - the relevant maintenance manuals (eg. G.P.T's, water pump station)

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

[GEN0140]

7. 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]

8. The proponent may not:
- a) encroach upon the Crown land,
 - b) remove any vegetation from the Crown land,
 - c) use the Crown land as access to the property,
 - d) stockpile materials, equipment or machinery on the Crown land,
 - e) direct stormwater dischargers,
 - f) use the Crown land for bushfire hazard reduction works

[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

[PCC0040]

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

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

- i) Contours and terraces where the height exceeds 1m.
- ii) Cover with topsoil and large rocks/dry stone walls in terraces as necessary.
- iii) Densely plant with sub-tropical (rainforest) native and exotic species to suit the aspect/micro climate. Emphasis to be on trees and ground covers which require minimal maintenance. Undergrowth should be weed suppressant.
- iv) Mulch heavily (minimum 300mm thick) preferably with unwanted growth cleared from the estate and chipped. All unwanted vegetation is to be chipped and retained on the subdivision.
- v) The landscaping shall be completed to the satisfaction of the Director Planning and Development PRIOR to the issue of a Subdivision Certificate.

[PCC0330]

11. The habitable areas of all residential buildings are to be at a level not less than Council's adopted minimum level of 3.1 AHD
12. Prior to release of a construction certificate for subdivision works or building works a weed control strategy for proposed Lot 2 is to be submitted to Council for approval by the General Manager or his delegate. In this regard the works required are to be funded by the owner and carried out by Council.

The Strategy is to include the following: -

- Identification of both environmental and noxious weeds.
- A strategy for control of weeds including the prioritising the location and nature of weed control actions.
- Identification of required follow up maintenance work for a minimum of 1 year.
- A costing for the initial and follow up works.

13. An amended site plan is to be submitted to Council for approval prior to the issue of the construction certificate demonstrating compliance with the NSW Rural Fire Service conditions regarding asset protection zones. In this regard the 20m asset protection zone is to be measured from the southern boundary of the drainage reserve.

[PCCNS01]

14. Prior to the issue of a Construction Certificate, a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the works (minimum \$1,000).

The bond may be called up at any time and the funds used to rectify any non-compliance with the conditions of this consent which are not being addressed to the satisfaction of the Director Planning and Development.

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

[PCC0080]

15. 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]

16. The site is to be filled to a minimum of RL 2.8m AHD. The filling is to be retained by perimeter structural walls with concrete lined perimeter drainage, or other approved treatment, to a design submitted to and approved by the Director, Engineering & Operations prior to the release of the Construction Certificate. The filling plan of the site is to address the drainage on the site as well as any existing stormwater flows onto or through the site and the

likely impact on stormwater drainage in the locality from the proposed filling.

[PCC0100]

17. The Engineering Plans and specifications to accompany the Construction Certificate application shall provide for:-

- i. Construction along the full length of the proposed subdivision vertical face kerb and gutter on an approved alignment along with associated sub-surface and over-land stormwater drainage systems widening of the road pavement from the lip of the new kerb and gutter to the edge of the existing bitumen pavement including tapers.**
- ii. Construction of a stormwater drainage system that will convey all waters through the site to a legal point of discharge. The sub-surface and over-land drainage systems shall convey the respective flows from minor and major storm events. Clearly defined upstream catchment areas and supporting stormwater calculations shall accompany the engineering design plans.**

[PCC0180]

18. 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]

19. 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 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]

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

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

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

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

[PCC0240]

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

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

given and the maintenance bond (if required) has been released.

- (b) The Construction Certificate Application must include a detailed erosion and sediment control plan (ESCP) for the construction phase of development, prepared in accordance with Section D7.07 of *Tweed Shire Council Aus-Spec D7 - Stormwater Quality*.

[PCC0320]

PRIOR TO COMMENCEMENT OF WORK

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

- (a) a construction certificate for the subdivision work has been issued by:
- (i) the consent authority, or
 - (ii) an accredited certifier, and
- (b) the person having the benefit of the development consent:
- (i) has appointed a principal certifying authority, and
 - (ii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment, and
- (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the subdivision work.

[PCW0020]

23. Prior to commencement of work, a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Consulting Engineer shall be erected and maintained in a prominent position at the site to the satisfaction of the Director Planning and Development. The sign is to remain in place until the Subdivision Certificate is issued.

[PCW0030]

24. 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]

25. 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]

26. 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]

27. 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]

28. 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]

29. All imported fill material shall be from an approved source. Prior to commencement of filling operations details of the source of fill shall be submitted to the satisfaction of the Director Planning and Development.

[PCW0140]

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

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

[PCW0190]

31. 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]

32. 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]

33. Where water is required to be drawn from Council's water reticulation system it shall be the applicants responsibility to notify the Engineering & Operations Division prior to taking water.

All drawn water shall be via a Tweed Shire Council metered standpipe. The location of the hydrant shall be nominated by Tweed Shire Council and all water shall be only used for the purposes nominated by the applicant for the duration of the construction activities.

[PCW0260]

34. 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]

35. Residential building work:

(1) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

- (a) in the case of work for which a principal contractor is required to be appointed:
- (i) in the name and licence number of the principal contractor, and
 - (ii) the name of the insurer by which the work is insured under Part 6 of that Act,

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

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

(2) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0290]

DURING CONSTRUCTION

36. 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]

37. 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]

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

[DUR0030]

39. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742.3-2202 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

[DUR0040]

40. 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]

41. 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]

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

[DUR0150]

43. The 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]

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

[DUR0200]

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

- (i) Compliance Certificate - Roads
- (ii) Compliance Certificate - Water Reticulation
- (iii) Compliance Certificate - Sewerage Reticulation
- (iv) Compliance Certificate - Drainage

Note:1. Where Council is requested to issue compliance certificates, applications for such certificates must be accompanied by documentary evidence from the Developers Supervising Consulting Engineer certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, DCP16 - Subdivision Manual and good Engineering Practice.

2. Where Council is requested to issue the construction certificate all compliance certificates and a Subdivision Certificate, Council will carry out the following inspections as deemed necessary by Council based on the rates contained in Council's current Fees and Charges:-

Roadworks

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

Water Reticulation, Sewer Reticulation, Drainage

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

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

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

[DUR0360]

- 46. Before the commencement of the relevant stages of road construction, reports shall be submitted to Council from a Registered NATA Consultant demonstrating.
 - a. That the pavement has been designed and constructed in accordance with subgrade analysis as per Austroads Pavement Design, A Guide to the Structural Design of Road Pavements.
 - b. That the pavement materials used comply with the specifications in RTA Form Q3051 (June 1998)
 - c. That the pavement layers have been compacted to RTA specifications.
 - d. That site fill areas have been compacted to the specified standard.

- e. That supervision of Bulk Earthworks has been to Level 1 and/or Level 2 and frequency of field density testing has been completed in accordance with Table 8.1 of AS 3798-1996.
- f. That pavement testing has been completed in accordance with Table 8.1 of AS 3798-1996.

[DUR0370]

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

[DUR0400]

48. 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]

49. Provision of adequate vehicular access in accordance with Council's "Access to Property" pamphlet.

[DUR0460]

50. On completion of the filling work, all topsoil to be respread and the site to be grassed and landscaped.

[DUR0550]

51. No filling to is be placed hydraulically within twenty metres (20m) of any boundary that abuts private land that is separately owned. Fill adjacent to these boundaries is to be placed mechanically.

No filling of any description is to be deposited, or remain deposited, within adjacent properties.

[DUR0560]

52. The land to be filled to the design flood level of RL 2.8m AHD.

[DUR0610]

53. The earthworks program shall be monitored by a Registered Geotechnical Testing Consultant to a level 1 standard in accordance with Appendix B, AS 3798-1996. In addition, the frequency of field density testing shall be to a Type 1 standard in accordance with Table 8.1 of AS 3798. The geotechnical report shall be accompanied by a certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798.

[DUR0630]

54. Building materials used below Council's minimum floor level of RL2.8m AHD must not be susceptible to water damage.

[DUR0690]

55. 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]

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

[DUR0850]

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

[DUR0860]

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

[DUR0870]

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

[DUR0880]

60. 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]

61. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:

A. Short Term Period - 4 weeks.

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

B. Long term period - the duration.

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

[DUR0910]

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

[DUR0920]

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

[DUR0940]

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

[DUR0960]

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

[DUR0980]

66. 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]

67. 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]

68. 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]

69. No portion of the structure may be erected over any existing sillage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains. [DUR1050]
70. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993. [DUR1090]
71. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard. [DUR1110]
72. 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]
73. The finished floor level of the building should finish not less than 225mm above finished ground level. [DUR1150]
74. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-
- * 43.5⁰C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
 - * 50⁰C in all other classes of buildings.

A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works. [DUR1160]

75. 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]

76. 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]

77. The habitable floor area of the building is to be at a level not less than RL 3.1 m AHD.

[DUR1440]

78. A survey certificate signed by a registered surveyor is to be submitted to the PCA at floor stage to certify that the habitable floor level of the building to be at a level of not less than RL 3.1m AHD.

[DUR1460]

79. Excavation and treatment of soils, particularly those excavated greater than 1 metre below the existing ground level shall comply with the Acid Sulfate Soils Assessment Border Tech, February 2004.

[DURNS01]

80. All fill material shall be from a Council approved source and be free from contaminants or acid sulfate soils.

[DURNS02]

81. The site shall not be dewatered.

[DURNS03]

82. Vegetation within the proposed lot 2 shall not be removed, lopped or damaged.

[DURNS04]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

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

accordance with the approved plans and specifications and conditions of Consent.

[POC0020]

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

[POC0030]

85. Prior to occupation of the building a Occupation Certificate is to be obtained. If Council is requested to issue the Occupation Certificate, the application must be accompanied by relevant Compliance Certificates or documentary evidence of compliance.

[POC0040]

86. 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]

87. Prior to occupation of the building the property street number is to be clearly identified on the site by way of painted numbering on the street gutter within 1 metre of the access point to the property.

The street number is to be on a white reflective background professional painted in black numbers 100mm high.

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

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

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

[POC0180]

88. The proposed two (2) lot subdivision is to be registered with the Land and Property Information prior to issue of the occupation certificate for the proposed dwelling.

[POCNS01]

USE

89. The building is to be used for single dwelling purposes only.

[USE0110]

90. 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]

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

[USE0170]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

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

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate or Construction Certificate for the dwelling (whichever occurs first) shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

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

Water:	1.2 ET @ \$4230	\$5,076
Sewer:	1 ET @ \$2634	\$2,634
Pottsville Levy:	1.2 ET @ \$1416	\$1,699

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]

93. Section 94 Contributions

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

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate or Construction Certificate for the dwelling (whichever occurs

first) shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

- a. Tweed Road Contribution Plan: \$3,370
S94 Plan No. 4 (Version 4.0)
Sector8a_4

Heavy Haulage Component

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

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

where:

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

and:

- | | |
|----------------|---|
| Prod. | projected demand for extractive material to be hauled to the site over life of project in tonnes |
| Dist. | average haulage distance of product on Shire roads (trip one way) |
| \\$Unit | the unit cost attributed to maintaining a road as set out in Section 6.4 (currently 2.5c per tonne per kilometre) |
| Admin. | Administration component - 5% - see Section 6.5 |

b.	Open Space (Structured): S94 Plan No. 5	\$780
c.	Open Space (Casual): S94 Plan No. 5	\$167
d.	Shirewide Library Facilities: S94 Plan No. 11	\$688
e.	Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$126
f.	Community Facilities (Tweed Coast) (South Coast) S94 Plan No. 15	\$584
g.	Emergency Facilities (Surf Lifesaving) (REMSHIRE) S94 Plan No. 16	\$215
h.	Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$344.81
i.	Cycleways: S94 Plan No. 22	\$160.00
j.	Regional Open Space (Structured) S94 Plan No. 26	\$1,177
k.	Regional Open Space (Casual) S94 Plan No. 26	\$221

[PCC0050/PSC0005]

94. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of Development Consent No DA04/0814 have been complied with.

[PSC0010]

95. The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act including the following:

- i. Easements for sewer, water supply and drainage over ALL services on private property.

Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating the right of carriageway/easement to drain water shall make provision for maintenance of the right of carriageway/easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis.

Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of Council.

[PSC0020]

96. Submit to Council's property officer an appropriate plan indicating the rural address number to both new and existing lots for verbal approval. Prior to the issue of a Subdivision Certificate, each lot shall have its' rural address number displayed in accordance with Council's "Rural Addressing Policy".

[PSC0030]

97. Prior to the issue of a Subdivision Certificate, Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council.

[PSC0040]

98. Where new state survey marks and/or permanent marks are placed a copy of the locality sketch relating to the marks shall be submitted to Councils Surveyor within two months of the issue of the Subdivision Certificate.

[PSC0060]

99. Any damage to property (including pavement damage) is to be rectified to the satisfaction of the Director Planning & Development PRIOR to the issue of a Subdivision Certificate. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate.

[PSC0070]

100. Prior to registration of the plan of subdivision, a Subdivision Certificate shall be obtained.

(i) The following information must accompany an application:

- original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.

- relevant development consent
 - detailed subdivision engineering plans endorsed with a construction certificate (where applicable)
 - evidence that the applicant has complied with all conditions of consent, that it is required to comply with before a subdivision certificate can be issued (where applicable)
 - a certificate of compliance from the relevant water supply authority (where applicable)
 - for subdivision involving subdivision works evidence that:
 - the work has been completed, or
 - agreement reached with the relevant consent authority regarding payment of the cost of work or as to the time for carrying out the work, or
 - security given to the consent authority with respect to the completion of the work
 - Work as Executed Plans for ALL works
- (ii) Documentary evidence that all matters contained in Section 109J of the Act have been complied with.
- (iii) Written evidence from Council that the proposed road/street names have been approved.

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

[PSC0090]

- 101. Prior to the issue of a Subdivision Certificate, Works as Executed Plans shall be submitted in accordance with the provisions of DCP16 - Subdivisions Manual.**

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

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

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

[PSC0100]

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

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

[PSC0110]

103. Prior to issuing a Subdivision Certificate, outfall sewerage reticulation shall be provided to all lots within the subdivision including a minimum 150mm diameter sewer junction terminated at least 1.0m inside the property boundary of each lot in accordance with engineering plans to accompany the Construction Certificate application. The reticulation shall be designed and constructed in accordance with DCP16 - Subdivisions Manual.

Council does not permit the building over Council's sewers. When buildings are located in close proximity to the sewer, detailed plans of footing types, location and depth relative to the sewer are required to be included with the Construction Certificate Application.

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

[PSC0150]

104. Prior to issuing a Subdivision Certificate, Town Water shall be provided to each lot including a minimum size 25mm outside diameter water service terminated 1.0m inside the property boundary of each lot in accordance engineering with plans to accompany the Construction Certificate application. The reticulation shall be designed and constructed in accordance with DCP16 - Subdivisions Manual.

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

[PSC0160]

105. The production of written evidence from Country Energy certifying that the reticulation of overhead electricity (rural subdivisions) has been completed.

[PSC0180]

106. All stormwater gully lintels shall have the following notice cast into the top of the lintel: 'DUMP NO RUBBISH, FLOWS INTO CREEK' or similar wording to the satisfaction of the Director Planning and Development.

[PSC0220]

107. Payment to Council of the agreed amount for weed control works as required by Condition 12 prior to the release of the subdivision certificate.

108. Proposed Lot 2 is to be dedicated to Council at no cost.

[PSCNS01]

GENERAL TERMS OF APPROVAL UNDER SECTION 100B OF THE RURAL FIRES ACT 1997

1. The proposed dwelling shall be located within the lot so that an Asset Protection Zone in the shape of an Inner Protection Area as defined by section 4.4.2 (b) within 'Planning for Bushfire Protection 2001' can be adopted to an area defined by:
An area 40 metres to the south and south-west adjacent and parallel to the southern boundary and measured from the external wall of the proposed dwelling. An area 20 metres to the northwest and parallel to the open drainage reserve measured from the external wall of the proposed dwelling.
The remainder of the APZ will be formed by the existing northern boundary on Coronation Avenue and the boundary adjoining existing residential development to the east.
2. The proposed dwelling shall be constructed to comply with level 3 requirements of Australian Standard AS3959.

REPORT:

Applicant: Mr G Jones and Mrs J Jones
Owner: Sunvista Pty Ltd
Location: Lot 346 DP 755701 Coronation Avenue, Pottsville
Zoning: 1(a) Rural and 7(a) Environmental Protection (Wetland and Littoral Rainforest)
Cost: \$120,000.00

BACKGROUND:

It is proposed to amend the LEP by including an enabling clause in Schedule 3 of clause 53 of the LEP to permit a two lot subdivision of the subject site and construction of dwelling house on the lot zoned 1(a) Rural.

The subdivision proposal consists of one lot of 5751m² comprising the land zoned 1(a) and one lot of 3.795 hectares comprised of the land zoned 7(a) Environmental Protection. It is intended to dedicate the 3.795 ha lot to Council at no cost. Legal access to the lot will be via an unformed Crown Road however given this lot is to be dedicated to Council and Council owns the adjoining lot (Lot 65 DP 866656) access can gained via the existing Council owned land.

The proposed dwelling is predominately single storey with a two storey component. The dwelling is to be located on the site to comply with bushfire protection measures. A building site pad is to be filled for flood proofing purposes.

Council at it's meeting of 15 September 2004 resolved as follows-

"That Council:

- 1. Advises the Director-General of the Department of Infrastructure, Planning and Natural Resources that, pursuant to section 54(4) of the Environmental Planning and Assessment Act 1979 Council intends to prepare a draft Local Environmental Plan to amend Schedule 3 to clause 53 of the Tweed Local Environmental 2000 to enable a two lot subdivision and dwelling house at Lot 346 DP 755701 and that Council does not consider a Local Environmental Study is needed.*
- 2. Requests the Director-General to waive the requirement for a Local Environmental Study given the minor nature of the proposed amendment.*
- 3. Supports in principal the dedication of lot 2 to Council at no cost."*

DIPNR advice.

DIPNR advised Council on 25 November 2005 that a local environmental study was not required.

DIPNR requested that Council ensure that there is an adequate buffer between the SEPP-14 Wetland and the proposed lot for the dwelling given previous investigations into the accurate location of the SEPP-14 Wetland and unauthorised clearing on the site. It should be noted that the clearing was subject to action by Council which resulted in rehabilitation of the site. Part of the proposal involves dedication of the land zoned 7(a) to Council. This lot also contains the land designated as SEPP-14 Wetland inclusive of any mapping discrepancies. The proposed dwelling is located a minimum of 40 metres from the proposed lot boundary, the land zoned 7(a) and SEPP-14 Wetland. It is considered that a single dwelling house is unlikely to have any deleterious effect on the SEPP-14 Wetland in this instance.

A drainage reserve runs along the western boundary of the site. The proposed boundary will bisect the drainage reserve. DIPNR have suggested that it may be appropriate to include the drainage reserve in the lot to be dedicated to Council. The drainage reserve is owned by the Crown and there is no need for Council to include additional parts of the reserve into the lot to be dedicated to Council. The status of the drain is not changed whether it traverses privately owned land or land owned by Council.

DIPNR reminded Council to consider the matters for consideration contained in SEPP-71 Coastal Protection when preparing the draft plan. These matters have been considered and are also required to be considered as part of the development application assessment.

Section 62 consultation with relevant agencies

Prior to exhibition of the draft plan the following agencies were consulted-

- NSW Rural Fire Service
- DIPNR
- Department of Environment and Conservation
- Department of Primary Industries
- Tweed Byron Aboriginal Land Council
- Country Energy
- Telstra

The comments from the agencies that responded are summarised below-

Rural Fire Service

The development is classified as integrated development and the RFS have provided their terms and conditions to be included in the consent conditions.

DIPNR

DIPNR advised that the development does not require an approval under the provisions of the Rivers and Foreshores Improvement Act.

Primary Industries

DPI raised the following matters: -

- Questioned why a SEPP-1 was not required.
- Raised that the proposal involved a unique variation and that the circumstances to such a variation be accessible to other parties who may attempt to gain a dwelling entitlement.
- The Department of Environment and Conservation should be consulted.
- The Fisheries Group within DPI should be consulted if advice is required regarding aquatic habitat or the Fisheries Management Act.

Comment

SEPP-1 cannot be utilised in this instance as the site does not have a dwelling entitlement. An amendment to the LEP is the only lawful way the proposal can be facilitated.

Amendments to the LEP are considered judiciously. Amendments for dwelling entitlements are rare and depend on the planning circumstances of the case.

The DEC were consulted and no response was received.

NSW Fisheries have been consulted as part of the assessment for the dwelling and subdivision application.

The Draft Plan

The amendment to the LEP involves inserting an enabling clause into Schedule 3 of the LEP permitting a two lot subdivision and a dwelling house on the land zoned 1(a) Rural and dedication to Council of the land zoned 7(a) Environmental Protection.

Exhibition

The draft amendment and development application were jointly exhibited from 12 January to 10 February 2005. The exhibition of the draft plan was accompanied by a report on consistency with State Environmental Planning Policies, the North Coast Regional Environmental Plan 1988 and Section 117 Directions, checklists of consistency, a compliance checklist with the NSW Coastal policy and the explanatory notes concerning the draft plan.

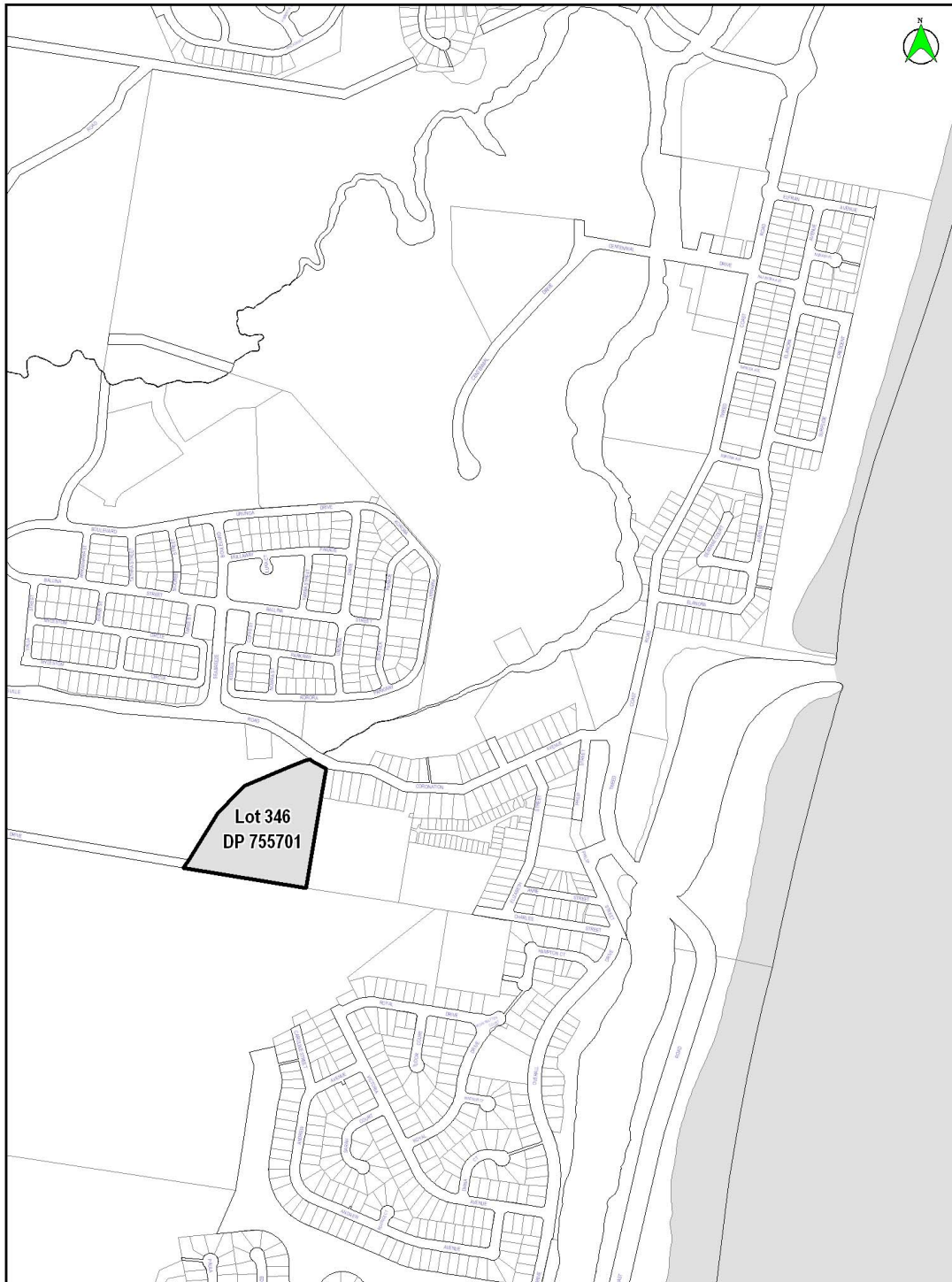
One submission was received from the Department of Lands who own adjoining land. The Department has made the following comments-

"While the proposal does not directly impact on the Crown estate please ensure that the applicant does not undertake any activity on the Crown land or use the Crown land for any purpose associated with the development. The proponent may not:

- *Encroach upon the Crown land,*
- *Remove any vegetation from the Crown land,*
- *Use the Crown land as access to the property,*
- *Stockpile materials, equipment or machinery on the Crown land,*
- *Direct stormwater discharges,*
- *Use the Crown land for bushfire hazard reduction works."*

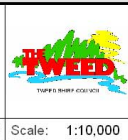
The above items are proposed as conditions of the consent.

SITE DIAGRAM:



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Tweed Shire Council
Lot 346 DP 755701
 Coronation Avenue, Pottsville
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STRATEGIC
 PLANNING UNIT
Figure 1
 Date: 29/June/2005
 Scale: 1:10,000
 Sheet: 1 of 1

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

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

Tweed Local Environmental Plan 2000

The relevant provisions of the Tweed LEP are as follows-

Clause 15 Essential Services- See section below under DCP's.

Clause 24 Setbacks to designated roads- A setback of 30 metres applies for dwellings on land zoned 1(a) Rural that adjoin designated roads. Pottsville Road (Coronation Avenue) is classified as a designated road. A SEPP –1 application has been submitted requesting a variation of the 30m setback standard. The applicant has provided the following information to support the SEPP-1 objection.

Coronation Avenue (Pottsville/Mooball Road) is a designated road under the provisions of Tweed LEP 2000. Clause 24 of the Local Environmental Plan contains a development standard requiring dwelling houses to be set back a minimum of 30m from the alignment of the road. The objectives of this development standard include:

- ♦ *To control development along designated roads;*
- ♦ *To preserve rural character and amenity;*
- ♦ *To facilitate future road widening.*

We submit that the 30m development standard is unreasonable and unnecessary in the circumstances of this case for the following reasons:

1. *The site adjoins land zoned 2(a) Residential to the east, on which is located a dwelling house with a nominal 6m setback;*
2. *Coronation Avenue is within a 60kph regulated speed zone;*
3. *The site is on the urban fringe and realignment of Coronation Avenue is most unlikely to be required;*
4. *The dwelling will be set back a minimum of 10m from the street alignment, thus providing adequate width within which to incorporate screen landscaping;*
5. *It is not possible to comply with the 30m requirement because of the need to provide environmental buffers to the wetland and asset*

protection zones in respect of the open forest/woodland vegetation to the south;

6. *The inclusion of a clause in Schedule 3 of the Local Environmental Plan to enable a dwelling house to be erected will, in effect, override the 30m standard.*

We submit that upholding of the objection would be consistent with the objects of the Act and State Environmental Planning Policy No. 1 and consistent with ecologically sustainable development principles in that it will facilitate preservation of the wetland area in perpetuity. Council is therefore requested to uphold the objection and grant development consent in respect of the development application.

It is considered that the standard is unreasonable and unnecessary in this particular instance. The proposed building line setback will not be inconsistent with the adjoining and adjacent residential land to the east of the site.

Clause 25 Development in and adjoining land zoned 7(a) Environmental Protection - Council is required to consider the impacts of the development on the flora, fauna, watertable and any effects of clearing, draining excavating or filling. Construction of the dwelling will not be within the land zoned 7(a). An 8 part test of significance for threatened species has been undertaken and a management plan has been prepared for the development.

The application was referred to the Department of Environment and Conservation and no comments were received. The application was referred to NSW Fisheries and no comments were received.

It is considered that the matters contained in clause 25 have been satisfied.

Clause 34 Flooding- See section below under DCP's.

Clause 35 Acid Sulfate Soils- An Acid Sulfate Soils Management Plan (ASSMP) has been prepared which indicates that potential acid sulfate soil is present on the site below a depth of 1 metre. Footing excavations are unlikely to disturb material at this depth, however the ASSMP provides for liming if this material was disturbed. An appropriate condition is proposed.

Clause 39A Bushfire-A Bushfire report has been prepared. The proposal is integrated development and the NSW Rural Fire Service has issued their terms and conditions to be included in the consent conditions. Asset protection zones are required around the proposed dwelling. A condition of consent has been imposed to require an amended site plan to be submitted to Council demonstrating compliance with the required asset protection zones. It is considered that adequate area exists on the site to enable compliance with the asset protection zones however the proposed building envelope is required to be moved to the east to ensure compliance.

Clause 44-Likely or known archaeological sites. The site of the proposed dwelling is unlikely to contain any archaeological sites. The application was referred to the Local Aboriginal Land Council and the Department of Environment and Conservation and no comments were received.

North Coast Regional Environmental Plan 1988

Clause 12 –Impact on Agricultural activities. The subject land and adjoining land is designated as Class 5 agricultural land. The proposal will not cause a loss of prime crop or pasture land.

Clause 15-Impact on Wetlands or Fishery habitats. The dwelling site is located a suitable distance from the wetland. It is unlikely that the dwelling will adversely affect the wetland. It is proposed to implement control measures so that the conservation values of the wetland are not affected.

Clause 29A-Natural Areas and Water Catchments. The existing zone boundaries include the significant vegetation communities and habitat areas in environmental protection zones. No clearing is proposed in the environmental protection zone.

Clause 43-Residential Development. The site is suitable for a single dwelling only given the constraints of the site.

State Environmental Planning Policies

The proposal is not contrary to any SEPP.

SEPP-44 Koala Habitat Protection. A koala plan of management is not required.

SEPP-55 Remediation of Land. The proposal is not inconsistent with the SEPP. A contaminated land assessment has been prepared and the site is suitable for a dwelling.

SEPP-71 Coastal Protection. The matters for consideration are satisfied. Land with high conservation value is to be transferred to Council.

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

None applicable other than the draft plan relating to this development application.

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

The following comments deal with relevant matters contained in DCP-5 Development of Flood Prone Land and DCP –16 Subdivision Manual. The matters contained in both DCP's are satisfied provide appropriate conditions are imposed.

Geotechnical/Earthworks

The site is identified as being flood prone, requiring some filling to provide a building pad above the 1 in 100 year flood event. The natural surface RL if the site has been identified as approximately 2.14m AHD at the site of the building pad. The 1% flood RL is tabled within Councils GIS system as being 2.8m AHD. Filling of approximately 700mm shall be required within the building envelope. Suitable conditions of consent are recommended to address level and quality of filling works.

Roads

Road Network

The existing road network provides a collector service to the surrounding areas. The proposed development shall not have a negative impact on the road network.

Road typical cross sections

The existing road fronting the site consists of a rural formation with a bitumen sealed pavement, gravel road shoulders and open table drains. The road standard does change to an urban formation at the eastern boundary providing a full width sealed pavement and upright kerb and gutter. The change to the Tweed LEP will permit residential use as such the road standard shall be required to be upgraded to an urban formation along the full frontage of the land.

Intersections

N/A

Bus routes/Shelters

N/A

Access

An application under Section 138 of the Roads Act shall be required prior to the issue of a construction certificate for the development. The access standard shall be required in regard to the standard of road formation following amendment to the Tweed LEP and in accordance with Council access policy.

Recommended conditions of consent shall require application under section 138 of the roads act.

Footpaths/Cycleway

No formal paved footpath exists along the frontage of the site. A formal path shall ultimately be constructed from the village of Pottsville, east of the site to the access road of the Seabreeze Estate located west of the site. These works have been funded under section 94 levies and shall ultimately provide an footpath network to the broader community.

Traffic Generation

The proposed development shall increase traffic movements as tabled within Councils adopted Section 94 plan. The road network shall accommodate the increase however appropriate S94 levies shall be applicable.

Parking

The site has adequate area to provide onsite parking for both residents and visitors.

Stormwater Drainage

Allotment drainage/IAD

N/A.

Road Drainage network

The road shoulder fronting the land has no formed open drain ensuring waters are conveyed to an acceptable point of discharge. Recommended conditions of consent shall require the applicant to provide a drainage system capable of ensuring uncontrolled flow of waters are not discharged onto the land.

Site Drainage

The subject site is flat and lightly vegetated. An open drain has been previously constructed within a drainage reserve along the northwest boundary of the site. This drain passes under Coronation Ave, discharging to a natural watercourse (Cudgera Creek). Runoff from small storm events would typically infiltrate into the sandy soil, with larger storms discharging via low velocity overland sheet flow to the open drain or the wetlands to the south.

The proposed dwelling will be located on the eastern side of the lot, to provide an adequate buffer to infiltrate flows and remove contaminants from runoff generated from the dwelling's impervious surfaces, before reaching the drain and the wetlands. Roof water may be discharged to rubble pits or similar to aid in stormwater infiltration. No additional runoff treatment measures are considered necessary for the development.

The applicant has adopted Council's Code of Practice for erosion and sediment controls for the construction stage of the development.

Trunk Drainage / Downstream Discharge

N/A

Stormwater Quality Management

Construction Phase

The applicant has provided basic detail for the construction phase of the development. Recommended conditions of consent shall require formal application under Section 68 of the LG Act prior to the issue of a construction certificate.

Operational Phase

The applicant has tabled waters shall be disposed of via infiltration trenches. Recommended conditions of consent shall require formal application under Section 68 of the LG Act prior to the issue of a construction certificate.

Services / Utilities

Water Supply

Councils reticulated water supply currently services the land. Recommended conditions of consent shall require the provision of an adequate service.

Effluent disposal

The applicant proposes to extend Councils exiting piped system from within the adjoining land to the site to service the proposed residence. The application has been supported with a letter from the adjoining land holder agreeing to the works within their land.

Recommended conditions of consent shall require the provision of an adequate service.

Electricity

The site is currently serviced by Country energy. Recommended conditions of consent shall require evidence of adequate service being provided.

Telecommunication

The site is currently serviced by Telstra. Recommended conditions of consent shall require evidence of adequate service being provided.

Waste (garbage) service

Council offers a weekly service for the collection of waste. In addition a number of private firms offer an industrial service to the area.

Natural Hazards

Flooding

The area is identified as being flood prone under Councils DCP 5. The applicant has tabled that filling shall be undertaken on the site to ensure building envelope levels are above RL 2.7 AHD. Councils GIS system identifies the level to be 2.8m AHD. Recommended conditions of consent shall identify the appropriate fill level.

DCP –39 Energy Smart Homes Policy. The proposal is not inconsistent with the provisions of the DCP.

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

The matters contained in the Coastal Policy are considered to have been satisfied.

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

It is considered that the relative impacts of the proposed subdivision and dwelling house will be within acceptable limits. Mitigation of impacts will be achieved via conditions of consent and actions contained in the management plans accompanying the application.

Council's Recreation Services Unit requires a weed control strategy to be developed and funded for proposed lot 2. The weed control works will be funded by the owner and undertaken by Council. A condition has been imposed requiring the works to be costed prior to release the of construction certificates and payment made prior release of the subdivision certificate.

(c) Suitability of the site for the development

Provided the recommended conditions of consent are imposed the site is considered suitable for the development.

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

One submission was received from the Department of Lands which is discussed previously in this report.

(e) Public interest

It is considered that the proposal is in the public interest as 3.8 hectares of environmentally sensitive land is to be dedicated at no cost to Council and the proposed dwelling is unlikely to have an adverse impact on the environment.

OPTIONS:

1. As per the recommendation
2. Resolve not to continue with the draft LEP and refuse the development application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

There is no right of appeal in the Land and Environment Court if Council resolves not to proceed with the draft LEP.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

It is considered that the draft LEP is acceptable and will facilitate an appropriate development and environmental outcome.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

4 [PD] Draft Tweed Local Environmental Plan 2000, Amendment No 9 - Wardrop Valley Industrial Area, Murwillumbah

ORIGIN:

Strategic Town Planning

FILE NO: GT1/LEP/2000/9

SUMMARY OF REPORT:

On 16 August 2000 Council resolved to prepare a draft Tweed Local Environmental Plan 2000 (LEP) Amendment over an area of land on Wardrop Valley Rd near Murwillumbah (refer to Figure 1).

The original subdivision proposal did not fit within the 4(a) Industrial zone area. Subsequently one of the development approval conditions removed four lots that were entirely within the 1(a) Rural zone. At the same meeting Council also resolved that a report be presented to Council considering the proposed industrial lots on the subdivision be considered for a LEP Amendment to an Industrial 4(a) Zone.

The draft LEP Amendment for the four (4) lots to be zoned 4(a) Industrial was exhibited and one (1) public submission was received. No changes have been made to the draft LEP Amendment from the draft that was exhibited as a result of this submission.

This report reviews the rezoning proposal and recommends forwarding the draft LEP Amendment to the Department of Infrastructure and Planning to prepare a report to the Minister in accordance with Section 69 of the Environmental Planning and Assessment Act.

RECOMMENDATION:

That Council:

- 1. Requests the Department of Infrastructure, Planning and Natural Resources resolve the outstanding requirement of an archaeological assessment required by the Department of Environment and Conservation.**
- 2. Requests that the Director General for Department of Infrastructure, Planning and Natural Resources prepare a report for the Minister in accordance with Section 69 of the Environmental Planning and Assessment Act.**

REPORT:

Background

On 16 August 2000 Council resolved to inform the then Regional Director of the Department of Urban Affairs and Planning of its intention to prepare a draft Tweed Local Environmental Plan 2000 (LEP) Amendment over three properties (previously described as Lot 31 DP133404, Lot 6 DP619717 and Lot 2 DP 591194) on Wardrop Valley Road, Wardrop Valley - see Figure 1. Council previously owned Lot 1 DP 1069561 (being part of Lot 31 DP133404 (old description)). This was the original LEP Amendment No 9.

The Department of Urban Affairs and Planning advised that an Environmental Study was not required in the preparation of this draft. In consultation with the State agencies several issues were raised and which would need to be addressed in the preparation of a draft Plan.

Part of the lot previously owned by Council was zoned for industrial purposes. The owners of the adjoining lot entered into negotiations with Council for the purchase of this industrial zoned portion of land. Subsequently, Amendment No. 9 was deferred pending the outcome of the sale of part of the land which was owned by Council.

Entered contract to purchase on 3 March 2004 Council approved a Development Application (DA02/1685) for an industrial subdivision for this land. Due to Council's previous ownership of the land, the report to Council on the DA was prepared by an independent planning consultant.

The original subdivision proposal extended beyond the 4(a) zone boundary and did not fit within the 4(a) Industrial zone area. One of the development approval conditions removed four lots that were entirely within the 1(a) Rural zone.

At the same meeting (3 March 2004) Council resolved to approve the industrial subdivision. It also resolved:

"That the Director Development Services submit a report to Council addressing the applicant's request for rezoning to industrial of those lands identified on the applicant's subdivision plan as proposed industrial lots which are located outside the Industrial 4(a) Zone".

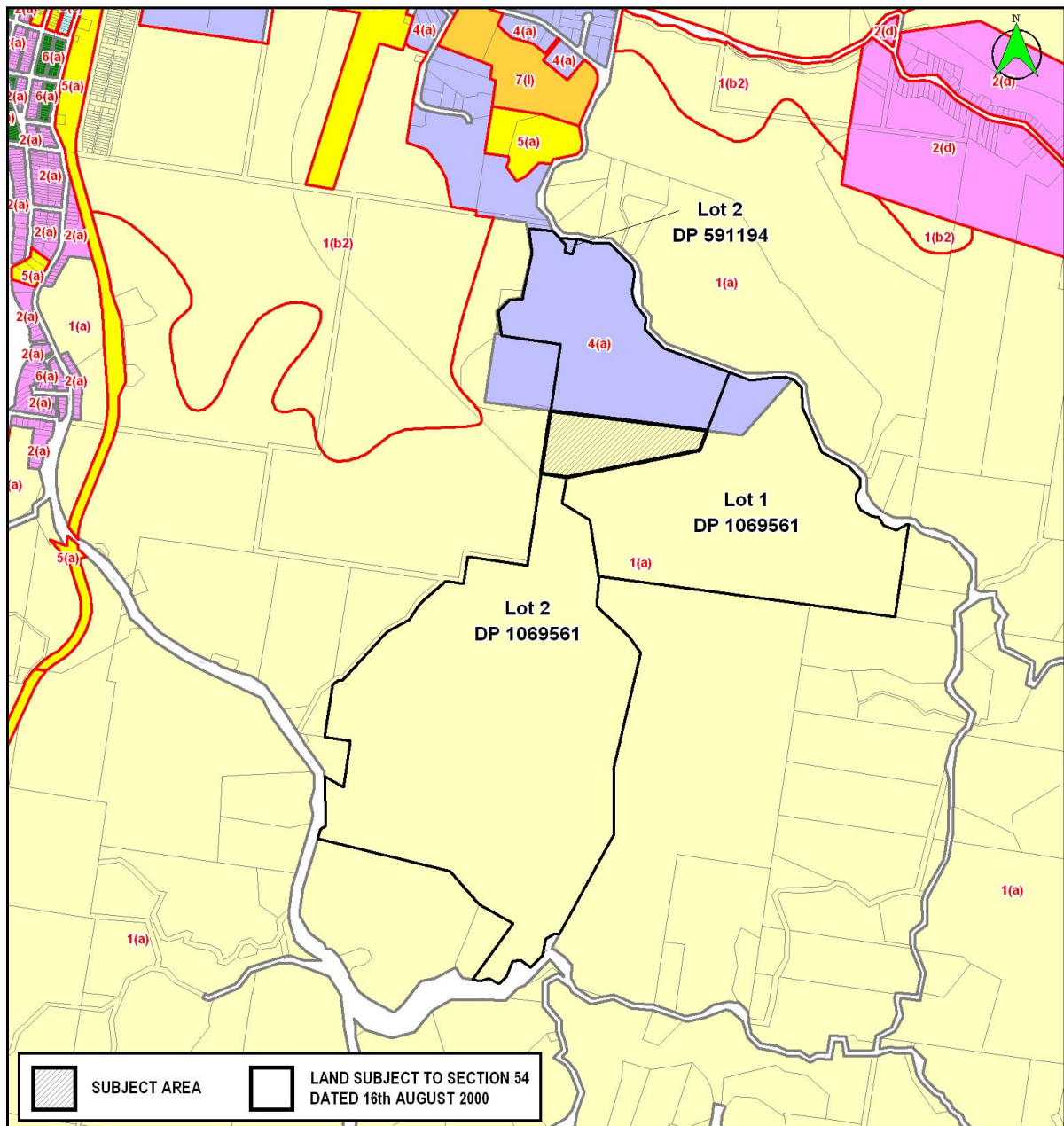
On 15 September 2004 a report was presented to Council reviewing this area for an LEP Amendment. At that meeting Council resolved to proceed with the amendment for the area of the proposed industrial lots.

Amendment No 9 has been exhibited as relating to the area of the four (4) lots. The original area proposed for the LEP Amendment No 9 has not been pursued in this LEP Amendment.

The proposed rezoning is a minor adjustment of the zone boundaries causing it to fit within the existing cadastre. It is considered that there are no significant issues with the proposed Amendment. This draft LEP Amendment will allow for an extension of the land for industrial uses on the subject land. The draft plan makes a zone adjustment to fit the 4(a) Industrial zone to the cadastre boundaries of the lot. The environmental constraints over the land covered by this draft LEP Amendment has previously been considered by the Statement of Environmental Effects for the DA.

This proposed draft LEP Amendment will modify the extent and size of a larger portion of Industrial 4(a) Industrial zone by approximately 9ha. The existing 4(a) Industrial zone within the area constitutes an area of 38.4ha. This increase in zone area would create an area of approximately 47ha.

Figure 1 - Locality Plan




LEGEND - TWEED LOCAL ENVIRONMENT PLAN 2000			
RURAL 1(a) Rural 1(b1) Agricultural Protection 1(b2) Agricultural Protection 1(c) Rural Living	BUSINESS 3(a) Sub-Regional Business 3(b) General Business 3(c) Commerce and Trade 3(d) Waterfront Enterprise 3(e) Special Tourist (Jack Evans Boat Harbour)	ENVIRONMENTAL PROTECTION 7(a) Environmental Protection (Wetlands & Littoral Rainforests) 7(d) Environmental Protection (Scenic / Escarpment) 7(f) Environmental Protection (Coastal Lands) 7(l) Environmental Protection (Habitat)	ADDITIONAL CONTROLS Clause 37 (Transmission Line Corridor) Clause 38 (Future Roads) Clause 41 (Heritage Conservation Area) Clause 52 (Kings Beach / Kings Forest / Osprey Nest) Clause 52 (Black Rocks) Clause 52 (Pottsville) Clause 52 (Stormwater and Fill) Clause 52 (Cobaki Lakes) Clause 52 (Existing and Future Dam Areas) Clause 53 (Schedule 3 Item)
RESIDENTIAL 2(a) Low Density Residential 2(b) Medium Density Residential 2(c) Urban Expansion 2(d) Village 2(e) Residential Tourist 2(f) Tourism	INDUSTRIAL 4(a) Industrial	NATIONAL PARKS & NATURE RESERVES 8(a) National Parks and Nature Reserves	
SPECIAL USES 5(a) Special Uses	OPEN SPACE 6(a) Open Space 6(b) Recreation		

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Tweed Shire Council
 Draft LEP Amendment No.9
 LOCAL ENVIRONMENT PLAN 2000

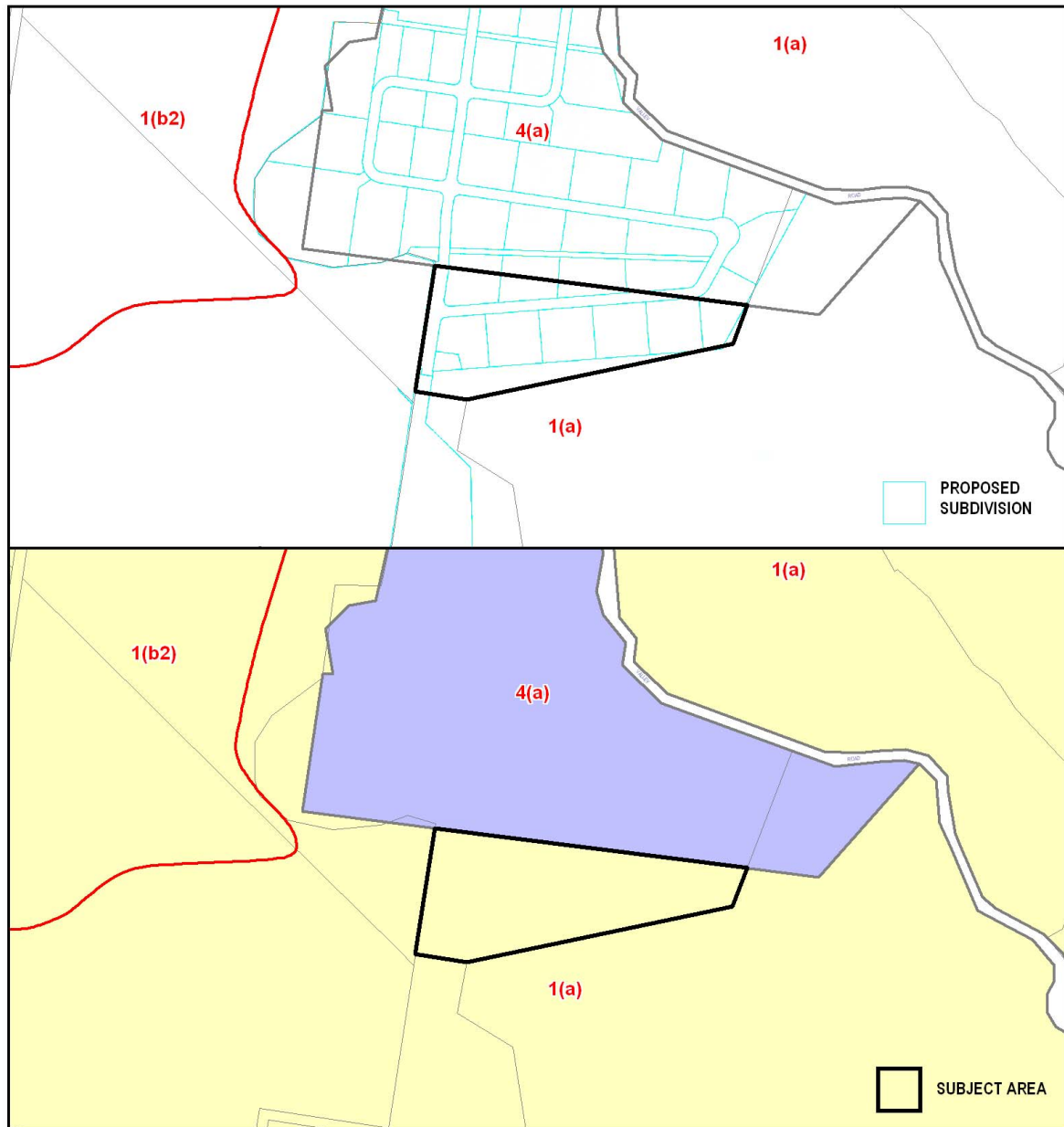
File: N:\...7...LEP Amendment No 9.Wor Author: J.Batchelor Date: 14/Sept/2004

STRATEGIC PLANNING UNIT
Part of Figure 1



Scale: 1:20,000 Sheet: 2 of 2

Figure 2 - Site Location - *Subject Land (Part Lot 1 DP 1069561)*



LEGEND - TWEED LOCAL ENVIRONMENT PLAN 2000			
<p>RURAL</p> <ul style="list-style-type: none"> 1(a) Rural 1(b1) Agricultural Protection 1(b2) Agricultural Protection 1(c) Rural Living <p>RESIDENTIAL</p> <ul style="list-style-type: none"> 2(a) Low Density Residential 2(b) Medium Density Residential 2(c) Urban Expansion 2(d) Village 2(e) Residential Tourist 2(f) Tourism 	<p>BUSINESS</p> <ul style="list-style-type: none"> 3(a) Sub - Regional Business 3(b) General Business 3(c) Commerce and Trade 3(d) Waterfront Enterprise 3(e) Special Tourist (Jack Evans Boat Harbour) <p>INDUSTRIAL</p> <ul style="list-style-type: none"> 4(a) Industrial <p>SPECIAL USES</p> <ul style="list-style-type: none"> 5(a) Special Uses <p>OPEN SPACE</p> <ul style="list-style-type: none"> 6(a) Open Space 6(b) Recreation 	<p>ENVIRONMENTAL PROTECTION</p> <ul style="list-style-type: none"> 7(a) Environmental Protection (Wetlands & Littoral Rainforests) 7(d) Environmental Protection (Scenic / Escarpment) 7(f) Environmental Protection (Coastal Lands) 7(i) Environmental Protection (Habitat) <p>NATIONAL PARKS & NATURE RESERVES</p> <ul style="list-style-type: none"> 8(a) National Parks and Nature Reserves 	<p>ADDITIONAL CONTROLS</p> <ul style="list-style-type: none"> Clause 37 (Transmission Line Corridor) Clause 38 (Future Roads) Clause 41 (Heritage Conservation Area) Clause 52 (Kings Beach / Kings Forest / Osprey Nest) Clause 52 (Black Rocks) Clause 52 (Pottsville) Clause 52 (Stormwater and Fill) Clause 52 (Cobaki Lakes) Clause 52 (Existing and Future Dam Areas) Clause 53 (Schedule 3 Item)

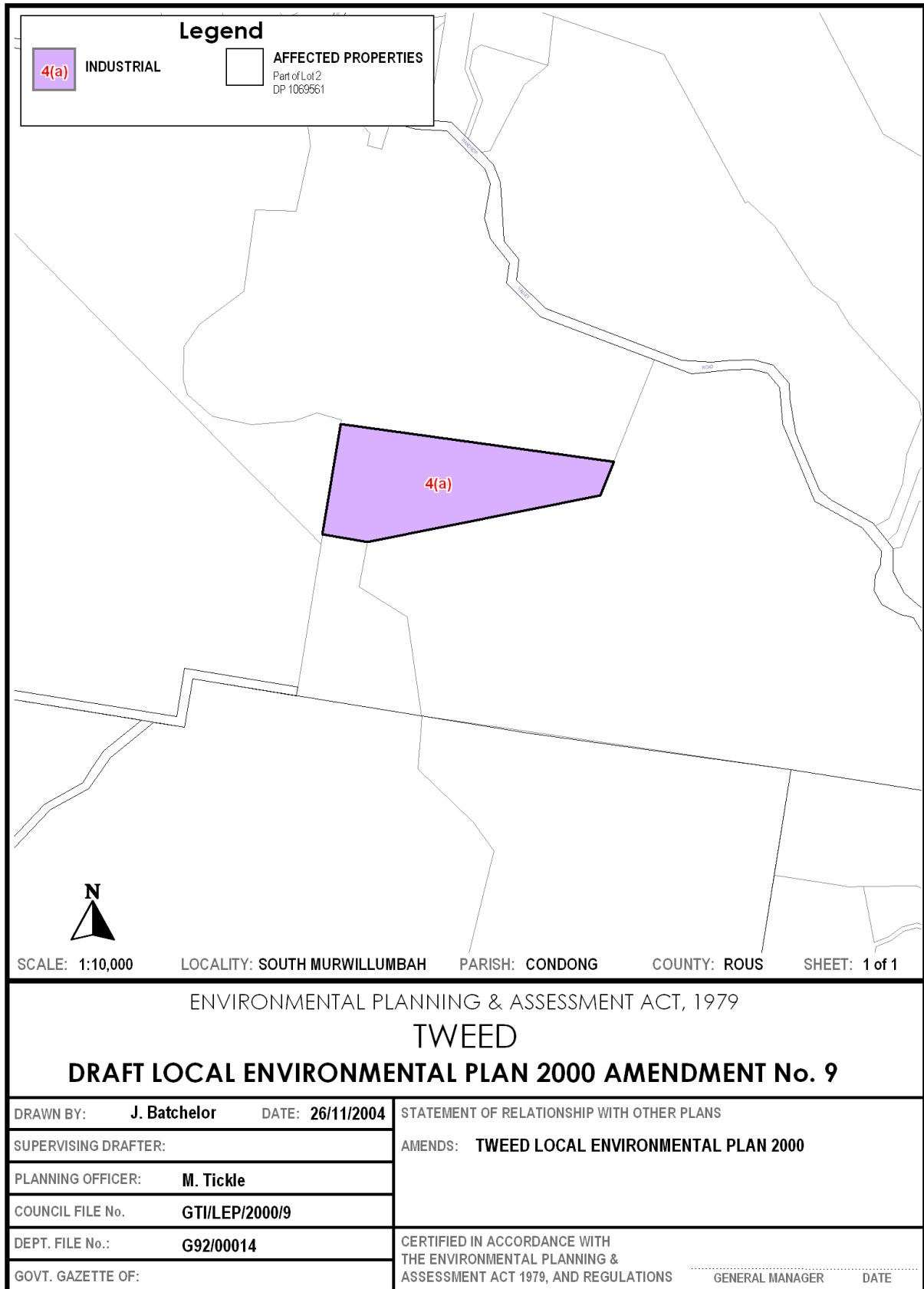
<p>© TWEED SHIRE COUNCIL 2004 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 816 Murwillumbah, NSW, 2484 Tel: (02) 6670 2409 Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i> Draft LEP Amendment No.9 LOCAL ENVIRONMENT PLAN 2000</p>		<p>STRATEGIC PLANNING UNIT Figure 1</p>
<p>File: N:\...7...LEP Amendment No 9.Wor</p>	<p>Author: J.Batchelor</p>	<p>Date: 8/Sept/2004</p>	<p>Scale: 1:10,000</p>
<p>Sheet: 1 of 1</p>			

Public Exhibition and Consultation

The draft LEP Amendment was placed on public exhibition from 8 December 2004 to 21 January 2005. Council resolved to Exhibit the draft plan in accordance with the Best Practice Guideline published by the Department of Urban Affairs and Planning in January 1997 titled *“LEPs and Council Land – Guideline for Councils using delegated powers to prepare LEPs involving land that is or was previously owned or controlled by Council”*.

The draft LEP Amendment, as it was exhibited, is presented in Figure 3.

Figure 3: Draft Local Environmental Plan 2000 Amendment No. 9 (Plan) – As exhibited 8 December 2004 to 21 January 2005.



During the exhibition period one (1) submission was received. Summarised below are the issues raised in this submission;

Consideration of Submission - Planning Issues

- *"The developers have consistently argued that the development of the Industrial Park was on land which was zoned Industrial 4(a).*

The fact that the development site was zoned industrial land for a number of years was an influencing factor for the approval of the development.

This is a huge development comprising approximately 55 hectares, with one entry/exit point surrounded by residential dwellings.

How big do they want this development to become? It is an over development of the site in its current form, with little regard for surrounding residents lifestyle and amenity.

We believe traffic and noise pollution during the construction stages and once the development is fully operational will negatively impact on surrounding residents.

The acoustics report was critical as to the developments ability to operate within acceptable guidelines. Further development would only increase noise levels to the detriment of local residents.

Other concerns exist regarding dust control and visual screening of the site".

Response

The area is isolated in a sparsely populated rural valley that has progressively been developed as an industrial area located within 3 kilometres to the CBD of Murwillumbah. Several rural residential properties are located on the opposite side of the small ridge which isolates this valley. The existing undeveloped industrial zone (approx 45ha) has been in place for approximately 20 years. This LEP Amendment will add a marginal cumulative impact. However this impact was considered as part of the DA for subdivision before this area removed from the approval for subdivision.

These issues were addressed in the DA for industrial subdivision and concluded that there were no adverse findings.

The LEP Amendment proposed to add just less than 10 hectares to the existing industrial estate in Murwillumbah. The existing approval for an industrial subdivision covers approximately 45 hectares. The Industrial Land Investigation that was undertaken in 2000 identified a future demand of 80 hectares that would be required by 2020 to provide employment opportunities in suitable industrial areas in the Shire. The review identified several future sites suitable for rezoning for industrial purposes. Many of these sites have since been rejected for industrial purposes due to environmental constraints along the Tweed Coast.

- *"Council had given guarantees that local residents would be kept fully informed as to the progress of the development and factors relating to this development. There was also agreement that a liaison officer would be appointed to interact between Council, the developers and residents."*

Council has failed in their duties to appoint the liaison officer and residents have been totally excluded from the approval process since the original consultants report was tabled".

Response

As part of the conditions that the proponents were required to meet before they could achieve deferred commencement of the DA was the;

Establishment of a liaison group with representation from the developer, local residents and the auditor, and arrangements for prompt reporting to Council on the outcome all meetings of the group.

This pre-condition was met by the proponents, and is not a matter to be considered by this LEP Amendment.

- *"We believe that a conflict of interest exists between the Council and the developers (council owned the development site) and have serious reservations as to council's involvement in processing the development application".*

Response

Council has remained transparent throughout the entire LEP Amendment, development assessment, sale and transfer processes. The draft LEP Amendment was exhibited in accordance with the best Practice Guidelines published by the Department of Urban Affairs and Planning in January 1997 titled 'LEPs and Council Land – Guidelines for Councils using delegated powers to prepare LEPs involving land that is or was previously owned or controlled by Council. Council no longer owns the subject land. This report recommends that Council not use its delegated powers to prepare a report in accordance with S69 of the EPA Act to the Minister to make the plan.

- *"We have no faith in Tweed Shire Councils ability to act fairly and ethically in their duties when processing this development application and other development applications within the Tweed Shire, we believe this has been a contributing factor resulting in the Commission of Inquiry currently investigating Tweed Shire Council.*

We do not support this rezoning and ask that the rezoning process be halted until the results of the Commission of Inquiry have been made public".

Response

The Commission has delivered its interim findings and its recommendations acted upon.

One other issue was raised in the submission suggesting the submitters have no confidence in Council to make a fair and ethical decision. It is considered that these matters are not planning issues and should not be further considered in this report.

Other Issues

Subsequent to Council endorsing the preparation of this draft LEP Amendment in 2000 there have been two new State Government Policies that relate to this site. These are Ministerial Directions on Farmland Protection and Bushfire Prone Land and are considered below.

Agricultural Land - Interim Protection for Farmland

On 12 January 2004 the Minister for Planning Administration, Diane Beamer, issued a Section 117(2) to prevent good quality agricultural land on the Far North Coast of NSW from being rezoned to urban or rural residential uses. The objectives of the direction are as follows:

- Objective 1: To ensure that the best agricultural land will be available for current and future generations to grow food and fibre;*
- Objective 2: To provide more certainty on the status of the best agricultural land, thereby assisting councils with their local strategic settlement planning.*

The Ministerial Direction will be in force for two years from 12 January 2004. These maps clearly identify the subject lands as "Locally Significant Agricultural Lands". This does not exclude the area from being rezoned to "Urban Purposes".

On 13 August 2004 a set of revised draft Farmland Protection Plans was exhibited by DIPNR. The subject land has been identified as "Regionally Significant". It is important to note that these plans do not supersede the plans that were issued with the Minister's S117(2) Direction. This change does not impose the legal restrictions identified in the revised plan by the Minister's Direction. However, as it is a publicly exhibited draft, consideration will be given to the issues raised in the draft policy proposals.

The land subject to this Amendment is identified as Class 5 which is identified as only being productive as grazing land.

A set of criteria for considering “Regionally Significant Farmland” for future industrial uses is presented in the supporting material to the draft Farmland Protection Plan. The criteria have been addressed below in respect of Amendment No. 9.

- **It would not significantly undermine the integrity of a regionally significant farmland area**

Figure 4 shows the Agricultural Classifications for the site which were identified by NSW Agriculture in 1998. The classification systems differentiated classes 3,4 and 5 as follows:

- **CLASS 3** - *Grazing land or land well suited to pasture improvement. It may be cultivated or cropped in rotation with pasture. Moderate suitability.*
- **CLASS 4** - *Land suitable for grazing but not cultivation. Native or improved pastures established using minimal tillage techniques.*
- **CLASS 5** - *Land suitable for agriculture or at best suited to only light grazing. Agricultural production is very low to zero.*

The amount of land proposed for rezoning is relatively small and is used for cattle grazing. The 1996 Agricultural Classification Maps classify the area as containing Classes 4 and 5 agricultural lands (refer Figure 4 below). Due to its size and limited agricultural potential this land is not considered to have high agricultural potential and would not impinge on or degrade any adjoining regionally significant farmland area.

Figure 4: Agricultural Land Classification Maps, NSW Agriculture, 1998.



- **It would not compromise local or regional agricultural potential by alienating agricultural infrastructure or agricultural transport routes, or decreasing 'critical mass' for any existing agricultural industry**

As discussed the land contains agricultural lands identified as not having a very high agricultural value. The neighbouring property is an active sugar cane farm and is identified in the 1996 Agricultural Classification Maps as Class 3 agricultural lands. The land currently being used for sugar cane cropping is also zoned 1(b2) Agricultural Protection.

Maintaining the integrity of lands used for sugar cane cropping is an important agricultural resource and the viability of the mill depends on a minimum threshold of land for production. It is important to preserve the amount of land currently under production.

The land proposed for rezoning for industrial purposes does not reduce the viability of the adjoining cane lands.

- **It would not create impacts which would compromise the agricultural use of nearby regionally important land**

It is considered that future industrial uses of the site would be an appropriate adjoining use to sugar cane cropping and will not impact on the viability of the adjoining farmland.

- **It would not be located in an area where there was an identified risk of land use conflict near an important enterprise**

The remainder of the adjoining sugar cane crop adjoins the existing Murwillumbah industrial area as well as an airfield. This has not caused a land use conflict in the past according to Council records.

- **It would not involve filling part of a floodplain unless consistent with a floodplain management plan prepared in accordance with the Floodplain Management Manual**

There has been no flood plain management plan conducted for the proposed rezoning. It is considered the amount of land will not have a significant impact on upstream or on adjoining properties.

The approved development approval for an industrial subdivision for the site has a considerable amount of cut and fill to make the area more level and able to be developed. This will bring the entire area out of flood and it has been submitted by the proponents that it will have significant impact on upstream or adjacent properties in terms of depth of inundation and velocities.

- **No viable alternative land is available which is suitable for the proposed industrial use**

There is an increasing demand for industrial land within Tweed Shire but the amount of land available for industrial uses is very limited. In 2000 Council adopted an Industrial Land Investigation Study that reviewed the current supply of industrial land and investigated numerous sites for future industrial development. Council took further investigation on a number of these sites some of which were later eliminated due to further constraints. This site on Wardrop Valley Rd represented a logical extension to the Murwillumbah industrial estate. This site is important to the Tweed Shire because it allows for larger industrial developments where most of the other industrial zones in the Shire are located to close to urban areas for increased scale of development.

Conclusion on Agricultural Status

Given the specific agricultural value of the site and the fact it has a history of no higher use than for grazing, the land should not be constrained due to this issue.

Bushfire Hazards

The Statement of Environmental Effects for the approved subdivision undertook an assessment of the of the potential bushfire hazards for the site. The entire area of the subdivision has a low potential bushfire hazard and a moderate bush fire threat. This assessment was undertaken in 2002 and does not take into consideration the new bush fire prone land assessment carried out between Council and the NSW Rural Fire Services. This assessment requires Council to consult with the Rural Fire Services if there is any land on the subject site that is identified as bush fire prone. There is a small portion of the land that is being considered for rezoning which is identified as bush fire prone. A Ministerial Direction, under S117(2) of the EPA Act, which was signed on 5 July 2002.

Archaeological Assessment

The draft LEP Amendment was forwarded to the Department of Environment and Conservation (DEC) as well as the Tweed Byron Aboriginal Land Council. On 17 January 2005 the Department requested Council ensure that:

“An appropriate level of archaeological assessment has been undertaken, and that the proposal is not likely to impact on areas of cultural significance to the Aboriginal community.”

Clarification was sought on this requirement. Not until 6 June 2005 did the DEC specifically identify that a desktop assessment of existing material along with consultation with the local Aboriginal community would be required.

However, the consultation, which was conducted in accordance with S62 of the EP&A Act with the former National Parks and Wildlife Service in 2000, did not raise any archaeological issues or require any archaeological assessment to be undertaken. A copy of their response is attached.

As already detailed, in 2002 a Development Application was received for the Industrial zoned portion of the land. In considering this application, Council referred the DA to DEC, but their response did not raise any archaeological issues.

This DA proposed a considerable amount of earthworks covering approximately 45ha. Council approved this DA in March 2004. Council granted an approval on 3 March 2004 to undertake the industrial subdivision for the areas that were zoned 4(a) Industrial. All areas which were in a 1(a) Rural zone were not approved for subdivision. However the earthworks over this portion of land were assessed and approved to receive considerable amounts of fill from other portions of the site.

In May 2005 a Part 5 EPA Act application was made by Council's Design Unit for the remediation of acid sulphate soil affected land within part of the land identified for this LEP Amendment. In a Review of Environmental Factors submitted as part of this Part 5 application Council's Senior Environmental Scientist undertook a brief onsite assessment. This review concluded:

"The proposed site is degraded, cleared, filled and previously cultivated and it is unlikely that archaeological artefacts will occur. No digging will be undertaken. This site has no heritage items listed in the Tweed LEP or North Coast REP".

Council is currently preparing a community based heritage study and has consulted several local historical societies as well as the Tweed Byron Aboriginal Land Council that identify specific sites of historical importance. At the current stage of progress of this study all potential sites have been identified but this location does not been considered for registration.

During the exhibition period of this draft LEP Amendment a letter was sent to the Tweed Byron Aboriginal Land Council notifying them of the exhibition. The local Aboriginal community has made no submission or deputation to Council on this matter.

DEC have been advised that the site has a low potential of yielding any archaeological or heritage artefacts and therefore does not warrant an independent archaeological assessment.

Best Practice Guidelines and Exhibition Transparency

Council previously owned all the land that forms the subject site of the draft LEP Amendment. Council undertook to enter into a contract to sell the land to a private developer with a condition of sale that the developers achieve a development approval for an industrial subdivision before the land can be transferred. This development approval was achieved in March this year and the land has subsequently been transferred to private ownership.

As a result of Council's historic involvement in the land it is considered necessary that this draft LEP Amendment will need to be undertaken with all of Council's dealings made clear to the community. It is recommended that the draft LEP Amendment be exhibited in accordance with the Best Practice Guideline published by the Department of Urban Affairs and Planning in January 1997 titled "*LEPs and Council Land – Guideline for Councils using delegated powers to prepare LEPs involving land that is or was previously owned or controlled by Council*".

Demand for Industrial Land

In 2000 an investigation was undertaken by the Strategic Planning Unit which identified that the Tweed currently does not have enough industrial land to cater for the increasing population growth of the Shire. This is becoming evident through higher than average unemployment rate and a high proportion of residents who commute out of the Shire for work. The approved DA for industrial subdivision represents an important contribution to the stock of serviced industrial land within the Shire.

Conclusion

This draft LEP Amendment should not be forwarded to the Minister under delegation because Council was the previous owner of the land and has achieved a monetary gain from its sale. Council should forward all the material on the draft LEP Amendment to the DIPNR with a request that the Director General prepare a report to the Minister.

Also, DIPNR should be requested to resolve the outstanding issue between Council and DEC regarding the requirements of an archaeological assessment.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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

ORIGIN:

Strategic Town Planning

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

SUMMARY OF REPORT:

On 2 February 2005 Council resolved: -

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

DCP 40 Amendment No 4 has been prepared in respect of these additional categories of complying development.

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

1. Tweed LEP 2000, Amendment 21 - Vegetation Management Plan
2. Engineering Services Division Amendments

RECOMMENDATION:

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

REPORT:

On 2 February 2005 Council resolved:

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

DCP 40 Amendment No 4 has been prepared in respect of these additional categories of complying development. The resultant amendments to the LEP and DCP are highlighted with deletions in ~~strike out~~ and additions in black.

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

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

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

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

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

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

2. Engineering Services Division Amendments

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

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

1. A copy of draft Development Control Plan No. 40 - Amendment No. 4.
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6 [PD] Request for Rezoning - Corner of Turnock and Pearl Streets

ORIGIN:

Strategic Town Planning

FILE NO: GT1/LEP/2000/73

SUMMARY OF REPORT:

A request has been received from a Dr James Powers to rezone land situated on the corner of Turnock and Pearl Streets, Kingscliff from 2(b) Medium Density Residential to 3(b) General Business. This proposed rezoning will enable the development of commercial/retail facilities on ground level with residential/tourist accommodation development above. The subject site is considered a significant location from an urban design perspective enabling the site to be developed as a suitable landmark for the main Kingscliff village retail streets.

RECOMMENDATION:

That:-

- 1. Council prepares a draft Local Environmental Plan pursuant to Section 54 of the Environment Planning and Assessment Act 1979 to rezone Lots 1, 2, 3 and 4 DP 381437 from 2(b) Medium Density Residential to 3(b) General Business.**
- 2. The Director-General of the Department of Infrastructure, Planning and Natural Resources be requested to waive the requirement for an Environment Plan Amendment.**

REPORT:

Council last dealt with this item at its Ordinary Meeting held on Wednesday 2 March 2005, where it resolved to “defer the item until a workshop is held on Retail Development Strategy on 27 April 2005”. A copy of the previous Council Report is attached. This workshop was held and it was realised that the Retail Development Strategy primarily concentrates on the broader Shire-wide vision of retail hierarchy development, ie Regional, District, Local Centres. It is not intended to be specific to small-scale development that will have a potential maximum gross floor area of 2,200m² which is considered to be minor in the context of the overall commercial floor space for the whole of Kingscliff district. From a strategic perspective the additional potential commercial space created as a result of rezoning is not significant.

The subject site is considered significant from an urban design perspective due to its location. It is situated on the corners of Turnock Street, Pearl Street and Marine Parade. The site lends itself to the development of a significant urban landmark for the village of Kingscliff. It is considered that a well-designed mixed-use development will achieve a better landmark urban design feature than a solely residential development. A mixed use development with commercial retail uses at ground level will also provide a better interface with the business/commercial shops across the road.

The other significant issue raised at the previous Council Meeting was the issue of height of buildings and storeys. Planning Officers raised the issue of potentially creating additional height provision to enable the development of possibly a 4-5storey building. The applicant, Dr Powers, has advised his intention to retain the development within the existing built environment context of 3 storeys and not to exceed the current Building Height Development Control in the area.

CONCLUSION

It is proposed to rezone Lot 1,2,3 and 4 on DP 381937 to 3(b) General Business. It is considered this rezoning will provide for a mixed-use development that would make better use of a significant location. The rezoning will not change the existing height provisions for the area and hence provide for development that is consistent with the current built character.

It is considered that the proposed rezoning will not be detrimental to the character and amenity of the area and is recommended that a draft Plan be prepared to rezone the subject land to 3(b) General Business.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

1. Report and Action Item from Meeting held 2 March 2005 (DW 1232701)
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7 [PD] Amendment to Section 94 Contribution Plan No 22 - Cycleways

ORIGIN:

Strategic Town Planning

FILE NO: GT1/S94/22

SUMMARY OF REPORT:

At its Ordinary meeting of 6 April 2005, Council resolved to amend and exhibit Section 94 Contribution Plan No.22 – Cycleways (CP22).

CP22 required amending for the following reasons:

- An increase in the cost of constructing the cycleway. The cycleway costs have increased from \$28 to \$47 per metre;
- The estimated population growth for the remaining period of the plan (2005-2020) has been reduced from 2,550 people per year to 2,000 people per year in the light of population projections undertaken recently for the Shire.
- An increase in the following contribution rates:
 - Single residential lot: \$352 (currently \$160)
 - Medium density residential: \$230 (currently \$105)
 - Tourist accommodation: \$136 per bed (currently \$62)

This plan was exhibited between 13 April 2005 and 11 May 2005. There were no responses to draft CP 22.

RECOMMENDATION:

That Council:

- 1. Adopts the amended exhibited Section 94 Contribution Plan No.22 – Cycleways.**
- 2. Gives public notice in the Tweed Link of its decision in accordance with the Environmental Planning and Assessment Regulations 2000, specifying that the amended Section 94 Contribution Plan comes into effect on the date of the notice.**

REPORT:

At its Ordinary meeting of 6 April 2005, Council resolved to amend and exhibit Section 94 Contribution Plan No.22 – Cycleways (CP22).

CP22 required amending for the following reasons:

- An increase in the cost of constructing the cycleway. The cycleway costs have increased from \$28 to \$47 per metre;
- The estimated population growth for the remaining period of the plan (2005-2020) has been reduced from 2,550 people per year to 2,000 people per year in the light of population projections undertaken recently for the Shire.
- An increase in the following contribution rates:
 - Single residential lot: \$352 (currently \$160)
 - Medium density residential: \$230 (currently \$105)
 - Tourist accommodation: \$136 per bed (currently \$62)

This plan was exhibited between 13 April 2005 and 11 May 2005. There were no responses to draft CP 22.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.
