

lot 1 Dp 251297
26 Old Lismore Rd
Murrumbidgee both.

11 APR 2006

L&E COURT

13830



Land and Environment Court
of New South Wales

TWEED SHIRE COUNCIL	
FILE No	DA04/1618 Pt. 4
Doc No	
REC'D	19 APR 2006
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CITATION : Greenview Developments Pty Ltd v Tweed Shire Council
[2006] NSWLEC 131

PARTIES : APPLICANT
Greenview Developments Pty Ltd

RESPONDENT
Tweed Shire Council

FILE NUMBER(S) : 10920 of 2005

CORAM: ~~Hussey C~~

KEY ISSUES: Development Application :- Visual impacts, extent of land
reforming, development staging, endangered flora

LEGISLATION CITED: Tweed Local Environmental Plan 2000
Development Control Plan No. 14
Development Control Plan No. 16 - Subdivision Manual

CASES CITED: Stockland Development Pty Ltd v Manly Council [2004]
NSWLEC 472

DATES OF HEARING: 20-21/03/2006

DATE OF JUDGMENT : 07/04/2006

LEGAL REPRESENTATIVES: APPLICANT
~~Mr C McEwen, barrister~~
Instructed by: Ms M Peatman
Of: Hunt & Hunt

RESPONDENT
~~Dr S Beveling, barrister~~
Instructed by: Mr M Delaney
Of: Stacks/Northern Rivers

**THE LAND AND
ENVIRONMENT COURT
OF NEW SOUTH WALES**

Hussey C

7 April 2006

**10920 of 2005 Greenview Developments Pty Ltd v
Tweed Shire Council**

JUDGMENT

Background

- 1 This appeal was lodged against council's deemed refusal of a development application for a 331 mixed-lot subdivision, comprising 315 residential lots, 8 rural residential lots, 7 public reserve/open space/drainage reserve lots and 1 lot for a shopping centre precinct. The subject land comprises 44.6 ha and is situated in the residential release area of West Murwillumbah.
- 2 For the appeal, a number of issues were identified, but conferencing between the parties reduced the outstanding issues to the suitability of the development in terms of the amount of earthworks involving cut and fill, visual impacts of the proposal, development staged construction and the effect on the endangered flora – Davidsons Plums.

The site

- 3 The site is known as 26 Old Lismore Road, Murwillumbah, and it has a total area of 44.6 ha, comprising the following lots:

	<u>Lot</u>	<u>DP</u>
•	1	251297
•	1	1070242
•	8	1064245
•	10 & 11	864158
•	1	1046935
•	132	1057733
•	201	825699
•	3	1074167

- 4 The site fronts Kyogle Road to the south, Riveroak Drive to the east, Castle Field Drive to the north, and is bisected by Old Lismore Road. It forms a significant component of the "West Murwillumbah Urban Release Area" and it directly connects with previously completed subdivisions in Riveroak Estate and Bellevue Heights Estate.
- 5 The land ranges significantly in elevation from low lying watercourse areas to hilly terrain, with more than 50% of the site having slopes greater than 20%. A considerable part of the land has been cleared for grazing purposes, although sections of remnant vegetation remain. An endangered species the Davidsons Plums (*Davidsonia jersyana*), exist on the site.

Planning controls

- 6 ***Tweed Local Environmental Plan 2000, (TLEP)*** Under this LEP, the land is multi-zoned and comprises mainly: 2(c) Urban Expansion, but also includes parts 1(c) Rural Living, 6(b) Recreation and 1 (b2), Agricultural Protection.
- 7 The minimum site area permissible under the *TLEP* for each zone for the purpose of a dwelling house is identified in following Table 1:

TABLE 1

<u>Zone</u>	<u>Minimum Site Area</u>
2 (c) Urban Expansion	450 sq m.
1 (c) Rural Living	4000 sq m (0.4 ha), if connected to council's reticulated sewerage system.
6 (b) Recreation	Only for caretaker's purposes, unless satisfies TLEP cl 14(3) NB. No stipulated lot size.
1 (b2), Agricultural Protection	40 ha. NB. Smaller lots may be permissible under TLEP cl 20(3).

8 The TLEP contains aims of which the following were identified as relevant in this matter:

- (a) *to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire Council 2000 + Strategic Plan, which was adopted, after extensive community consultation, by council on 17 December 1996, the vision of which is: "The management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced", and*
- (b) *to provide a legal basis for the making of development control plans, which provide more detailed local planning policies and other provisions that provide guidance for future development and land management, ...*

9 The relevant objectives of the TLEP 2 (c) Urban Expansion Zone are:

Primary objectives

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

Secondary objectives

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

10 The relevant objectives of the TLEP 1 (c) Rural Living zone are:

Primary objectives

- *to enable rural residential development in selected areas, possessing particular environmental and servicing attributes, which do not compromise the viability of rural activities on land in the vicinity, do not detract from the quality of the rural and natural environment and do not create unreasonable or uneconomic demands, or both, for the provision or extension of public amenities or services.*
- *to provide rural residential development of a design integration, quality and scale compatible with, and making positive contribution to the character of the rural area in the vicinity.*

Secondary objectives

- *to enable other development that is compatible with the residential development.*

11 The relevant objectives of the TLEP 6 (b) Recreation Zone are:

Primary objective

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

Secondary objective

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

Development Control Plan No. 14 (DCP 14) – Murwillumbah West

12 This DCP came into effect on 26 September 1991 and applies to the subject land. It contains aims and objectives, which include:

- *To implement the Tweed Shire Residential Strategy 1991.*
- *To ensure the orderly and economic development of land, taking into account all relevant physical, social and economic considerations.*
- *To encourage a range of housing opportunities within a relatively low density, high-quality residential environment.*
- *To encourage the efficient use of land to facilitate an economic arrangement of buildings, circulation systems and utilities.*
- *To integrate the release area with the existing urban areas of Murwillumbah.*

13 The Aims and Objectives (environmental protection and landscape) of DCP 14 are:

- *To ensure the recognition and protection of significant landscape features and systems, primarily those relating to topography, watercourses and vegetation.*
- *To ensure opportunities to utilise the positive features of the natural landscape are maximised to create a high quality environment.*
- *To encourage regeneration of natural vegetation and to ensure a comprehensive landscaping and environmental enhancement program forms part of any development plan.*
- *To ensure that development strategies, consider the landscape impact of development, both from external and internal viewpoints.*
- *To provide buffers around existing land uses incompatible with future uses.*

Development Control Plan No. 16 - Subdivision Manual

14 This DCP 16 came into effect on 1 July 2003 and applies to the subject subdivision development. Its Aims and Purposes are:

- (a) *to present council's strategic plan objectives for the development of subdivisions,*
- (b) *to achieve the highest quality and "best practice" of subdivision development in the Shire,*
- (c) *to implement the policies and the provisions of the NSW State Government in terms of seeking to achieve quality of subdivision planning and development,*
- (d) *to provide guidelines and development standards for the development of subdivisions.*

15 Section 4.2.2 deals with *land forming*, whereby proposals to alter natural landform must:

- *not adversely impact other land, persons or public infrastructure,*
- *preserve levels at site boundaries,*
- *preserve significant natural watercourses, riparian vegetation, environmental and topographical features,*
- *preserve the visual character of the landform as viewed from within and outside the land site,*
- *preserve cross boundary drainage conditions,*
- *ensure runoff from upstream or upslope land is not adversely impeded,*
- *ensure there are no adverse geotechnical consequences to the site or the other land,*
- *ensure there are no adverse consequences to public infrastructure,*
- *minimise earthworks.*

- 16 Appendix A of the DCP refers to a number of design specifications of which D2 - *Site Regrading* is relevant in this matter. Section D6.02 states:

Principles For Site Regrading Proposals

1. *Site Regrading and landform changes shall be designed, in accordance with the following principles:*
 - (a) *Site regrading must not adversely impact other land, persons or public infrastructure.*
 - (b) *Pre development levels should be preserved at external boundaries, preferably without the use of boundary retaining walls exceeding 1.2m in height. The application of this principle may be varied in infill subdivisions in flood liable areas where there is general filling to provide flood immunity.*
 - (c) *Natural watercourses, riparian vegetation and significant environmental features should be preserved.*
 - (d) *The visual character of the landform as viewed from both within and outside the land should be preserved.*
 - (e) *Cross boundary drainage conditions shall be preserved ...*
 - (f) *There must be no adverse geotechnical impact or risk caused to other land.*
 - (g) *Earthworks are to be minimized.*
 - (h) *Cut, fill, batters, retaining walls and associated rate are to comply with the specification.*
- 17 Section D 6.05 contains land forming geometric criteria dealing with flat earth platforms, the provision of retaining walls or cut/fill batters on allotment boundaries. Specific reference is also made to the following overall cut/fill provisions:
3. *The proportion of subdivision or development site (plan area) that contains cut or fill areas with finished surface levels that depart from natural surface levels by more than 5 m shall not exceed 10%.*

- 18 This was referred to as the 5m/10% rule.

The evidence

19 Detailed evidence on behalf of the council was presented by:

- Mr I. Lonsdale, senior development assessment planner, Tweed Shire Council (Exhibit 5),
- Mr P. Knight, engineer (Engineering and Operations), Tweed Shire Council (Exhibit 6),
- Ms S Pimm, senior environmental scientist, Tweed Shire Council.

20 For the applicant, detailed evidence was presented by:

- Mr G. Glazebrook, consulting town planner, (Exhibit D),
- Mr R. Player, consulting town planner, (Exhibit F),
- Mr M. Findlater, consulting engineer (Exhibit E),
- Mr B. Donovan, consulting horticulturalist (Exhibit G).
- Mr J. Warren, consulting environmental scientist-ecologist (Exhibit H).

21 The principal contested issue concerns the amount of **land forming** in terms of its non-compliance with the provisions of sections 4.2.2 and D 6 and the resultant environmental impacts. Mr Knight, initially estimated the amount of cut and fill earthworks to be in the order of 720,000 cubic metres. This work includes the filling of natural depressions and cutting hilltops by up to 15 m.

22 In order to deal with the issues, joint conferencing was undertaken by the respective experts. From the joint engineers' conference, there was agreement that the development comprises significant land reforming and the amount of change to the surface levels by more than 5 m was 20.7%. They also agreed that the revised proposal satisfactorily addressed impacts on the adjoining land and catchment drainage.

- 23 Mr Findlater acknowledged the variation from the 5m/10% rule but supported the proposal on the basis that it represents best practice and is site responsive to the existing land topography and generally in accordance with the provisions of DCP 14, in particular the Plan No. DCP 14-3. This plan indicates the future local road network for the Release Area, which requires connection to adjoining properties at specific points. Accordingly, this plan shows a primary road link between the existing intersection at Castle Field Drive (designated A) and Old Lismore Road (designated B), together with an internal road layout – refer to Sketch AB.
- 24 Insofar as Mr Knight considered the hilltop excavation work, involving cutting approximately 15 m near Point A, as first priority and particularly unsatisfactory, Mr Findlater disagreed for a number of reasons, including:
- opportunities to vary the alignment of the primary road A-B has to be considered in conjunction with the associated design Specification D1 which specifies the site distance, vertical curve geometry, grades through intersections and access to properties;
 - the alignment of this link road is constrained by the end conditions imposed by council's existing road system;
 - further constraints are imposed by the Design Specification D1 preference for a maximum grade of 10% (absolute maximum of 16%) for Local Access Roads and an absolute maximum 12% (preferred maximum 8%) for Neighbourhood Connector roads;
 - consideration has to be given to the connectivity requirements in terms of the preferred maximum spacing of roads in the development of 240 m;
 - satisfactory access to properties has to be provided and D1.22 states that access should not exceed 25% and road street grades in excess of 12% should be minimized;
 - suitable overland flow paths should be provided to trapped catchments;
 - ideally cut/fill balance should be achieved to minimise external disamenity and construction costs.

- 25 In order to assess the impact of the various cut and fill proposals, Mr Knight presented his priority plan (Exhibit 13) which identified his main areas of concern.
- 26 However, in response to these concerns raised by Mr Knight, Mr Findlater prepared an alternative road alignment for A-B (Exhibit L), as suggested by Mr Knight. But Mr Findlater says that this makes no significant difference in earthworks, because even though there is less cut in places, there is correspondingly bigger fill and the overall change in surface reforming would be a reduction in the order of approximately 1%. Furthermore, this revised alignment would complicate other local road connections and exacerbate access gradients to some of the proposed new lots.
- 27 Having considered the competing evidence and undertaken a view, it is apparent that council's existing road system provides significant road connection constraints. At Point A, the relatively recent construction of Castle Field Drive, is the obvious connection point for the road link to Old Lismore Road. However, it appears that any road connection will inevitably require significant cutting of the nearby hill to the south, either on the proposed alignment, or the alternative alignment, if a satisfactory transition to the existing road pavement is to be achieved. Whilst the vertical alignment may be raised to a relatively minor extent, this option is limited, if the safe transition to the existing pavement is required, together with safe intersections with the other local roads.
- 28 Notwithstanding this, it is still likely that the horizontal deviation preferred by Mr Knight would result in significant side cutting of the hill and possible need for stabilization/embankment retention. Consequently, the visual impact of this cutting is likely, in my opinion, to be less acceptable than the proposed overall cutting of this hill, to allow the centrally placed road and complimentary side filling and battering.
- 29 In this regard, I note that Mr Knight agreed that balancing of cut and fill on the site was a worthwhile objective. As the proposal achieves this

- objective, I also consider it is a positive environmental aspect of the proposal.
- 30 However, the consideration of the proposal revealed another significant constraint on the land. This constraint concerns, the low-lying nature of Old Lismore Road, which generally traverses through the middle of the site. Because of the low-lying nature of this road, council requires the road reserve to be substantially filled in the order of 5 m, to overcome flooding problems. Consequently, further filling is required outside the road boundaries for the new lots to grade towards the road, so as to avoid undesirable side table-drains or inter-allotment drainage.
- 31 Mr Findlater, estimated the filling works on this road reserve would affect a surface area equivalent to approximately 1% of the site. When the associated filling, adjacent to the road reserve is considered, this would represent work on a surface area of approximately 5% of the site. These estimates were not challenged by Mr Knight. Therefore, if an allowance is made for these essential filling works, occasioned by the low lying nature of the public road, the resultant surface area land forming of the other private subdivision land would be in the order of 15.7% (i.e. 20.7 – 5).
- 32 In addition to the link road A-B, Mr Knight, also expressed dissatisfaction with the road connections to the existing cul-de-sacs to the east, created in the Riveroaks Estate. The view indicated that a reasonable expectation is for the extension of the existing cul-de-sac of Riverbend Way, otherwise the existing, steep topography at this connection, would be practically and visually undesirable in an urban development context. Accordingly, the proposal is for a neat join to the existing pavement, extending at a 5% centre line gradient, which then transitions to the maximum desirable road gradient of 12%, leaving little room to vary road grading.
- 33 Likewise, the overall plan confirms the benefits of extending the existing cul-de-sac at Oakbank Terrace, and it appears to me from the view that this was intended. However, this road alignment requires significant cutting so as to achieve the maximum desirable 12% gradient.

Accordingly, the existing levels in Oakbank Terrace, necessitate additional surface land reforming. A similar situation occurs with the proposed extension of River Oak Drive.

34 Nevertheless Mr Findlater says that D6.02, Pt 2 allows departures from the principles for site regrading, where the impacts of the departures have been:

- *analysed in terms of the impact on other land, persons and the environment (including landscape visual character) and public infrastructure;*
- *impact of changes to natural watercourses, drainage and riparian vegetation;*
- *any compensatory measures;*
- *assessed in terms of impact on affected adjacent landowners;*
- *assessed in terms of departures in the public interest.*

35 In my assessment of the details on this issue, no compelling evidence was presented, which indicated that the aforementioned discretion should not be allowed, apart from the visual character impacts, which I deal with separately. The engineers agreed that the overall internal and external drainage was satisfactory and there will be no adverse impact on adjoining properties. Also, there would be a public interest benefit in providing the filling along Old Lismore Road to address a current flooding problem, which is currently unacceptable for an urban context.

36 I then accept Mr McEwen's submission that some uncertainty surrounds the 5m/10% rule, and therefore it is reasonable to exercise the available discretion in D6.05 in this case. The uncertainty arises from a review of the approach taken in adopting this policy contained in s 4.2.2 of the DCP 16. In this regard, Mr Knight's evidence contained the following summary:

5 June 2002 Council adopted Development Design Specification D6-Site Regrading as an interim policy for subdivision site works. It provided for preservation drainage

systems, land forming geometric criteria, limitations of retaining wall and cutting heights;

4 December 2002 Development Control Plan No 16 - Subdivision Manual and design and construction specifications adopted for exhibition. It included s 4.2.2 land forming criteria and referred to Appendix A, and apparently provided for 8m/20 % surface disturbance, as previously allowed;

17 December 2002 Placed on public exhibition;

Various public consultation;

18 June 2003 Reports to council on submissions, with council approving DCP 16 and associated specifications, including D6 specifying the 5m/10% rule.

- 37 In cross examination, Mr McEwen referred Mr Knight to the technical report to council on the various public submissions. This report referred to submissions on the purpose of arbitrary restrictions in D5.05(4), dealing with maximum departure from natural surface levels, on the basis that the exhibited control provided:

D6.05 (3) The proportion of subdivision or development site (plan area) that contains cut or fill areas with finished surface level that depart from natural surface levels by more than 8 m, shall not exceed 20%

- 38 Mr Knight confirmed his comments to council on the submission as follows:

"The original D6 (Adopted by council in June 2002) required no more than 10% of site to have cut and fill over 5 m. The exhibited version relaxes that requirement. The objective of the condition is to ensure a limited retention on the natural land form, whilst allowing significant level change to accommodate the needs of the proposed land use."

- 39 Accordingly, Mr Knight recommended no change to the exhibited version, i.e. he effectively supported the exhibited 8m/20% rule. But council apparently then adopted, the more restrictive 5m/10% rule without further

public consultation. Insofar as Mr Knight was questioned about the reasons for this more restrictive control, he was unable to provide any details of its basis, and therefore unable to assist with situations where it was appropriate to exercise discretion in the departures from the control, because he now supports the 5 m/10% rule as appropriate in this case.

- 40 Apart from this, it is now apparent that this control is subject to further review. On 7 February 2006 council exhibited draft amendments to DCP 16, DCP 47 and Specification D6, which Mr Knight said "illustrates the landforming policy is undergoing continuing development and fine tuning."
- 41 The proposed amendments to DCP 47 – Cut and Fill on Residential Land includes consideration to lots with slope of 10% or greater or where cut and/or fill exceeds 300 mm. Of particular relevance other proposed amendments to D6 includes:

Modification mass landform limit of no more than 10% of the site to have more than 5 m cut/fill level change, but with some flexibility of up to 15% if there is a demonstrated environmental benefit.

- 42 In summary then, I have carefully considered the 5m/10% control in the DCP and accept that some discretion is available in its application under s 6.02. It seems to me that when the recently identified test of environmental benefit is applied, the proposed subdivision balances cut and fill to minimise external environmental impacts, it provides site regrading to create lots with building areas that minimise the need for extensive retaining walls and batters, it complies with current requirement to raise the levels of Old Lismore Road above flood levels, and it provides satisfactory connections to the existing, adjoining road connections approved by council. In my opinion, it also demonstrates reasonable compliance with the specified easement on the property for a road reserve, which generally accords with Fig. 14.3 in DCP 14 and offers environmental benefits.
- 43 The associated matter of impact on **visual character**, arising out of the land forming was addressed by the respective planners. For this

assessment, they considered the prevailing planning framework and agreed that there is an inconsistency between cl. 4.2.2 and cl. D6.05 to the extent that the former is presented as a performance criteria and the latter as a prescriptive criteria. Accordingly, both Mr Player and Mr Glazebrook were of the view that because of the consistency, the DCP should prevail and as such, the 5m/10% requirement is performance-based. Against this, Mr Lonsdale was of the view that the DCP and associated Design Specifications should be read in conjunction with one another, as a prescriptive criteria.

- 44 The planners also considered the process followed in adopting the 5m/10% rule. Both Mr Player, and Mr Glazebrook considered that the "Totem" principles set out in *Stockland Development Pty Ltd v Manly Council* [2004] NSWLEC 472 were not satisfied, because the adopted land forming criteria was different to that advertised and which public consultation was undertaken. However, Mr Lonsdale was of the view that the public consultation on the concept itself was sufficient to satisfy the principles.
- 45 Notwithstanding these disparate opinions, the provisions on DCP 16 must be considered. This DCP recognises that the topography of the land it covers is likely to involve some land reforming in the release area in order to achieve the desired conversion of this hilly, non-urban land to urban lots, some of which may have minimum areas in the order of 450 sq m. In essence, the landforming criteria provides that where it is proposed to alter natural land form, the proposal "must preserve the visual character of the landform as viewed from within and outside the land site."
- 46 Unfortunately, it appears that no detailed local environmental study was undertaken as part of the release area process, so as to identify actual topographical constraints and provide detailed development/subdivision control plans. It is obvious that the existing topography of the subject land requires significant regrading in order to create satisfactory, smaller residential allotments, as allowed by the LEP, which have acceptable residential amenity.

- 47 Consequently various neighbouring subdivisions have proceeded somewhat independently and provided connection points at their boundaries. The subject development follows this pattern and generally picks up these connection points and links them to the principal connector road through Points A and B. In order then to comply with the relevant engineering guidelines for road gradients, safe intersection spacing, drainage and allotment access, the land regrading is required.
- 48 A detailed visual assessment impact assessment was undertaken as part of the Statement of Environmental Effects. Both Mr Player, and Mr Glazebrook have referred to this assessment and undertaken their own visual impact assessment and agree that the application satisfies the principles of the DCP.
- 49 Insofar as Mr Lonsdale considers the application does not demonstrate sufficient compliance with these principles, he acknowledged that the transformation of the non-urban land to urban allotments will necessitate noticeable land forming and a significant change to the visual character of the area. Accordingly, the Court was taken to a number of viewing locations within and outside the site to assess the visual character. Mr Lonsdale explained his concerns and agreed that the most critical visual impacts were likely to be experienced from the adjoining "Bellevue Heights Estate". But he conceded that the proposed subdivision would allow further housing of a similar nature to the surrounding estates, and that its visual impact would be acceptable, within the context of the release area character. Of some importance, it was noted that proposed development will be sited below the surrounding ridgelines, so that the wider rural vegetative backdrop, outside the release area will be maintained.
- 50 Therefore I am satisfied to rely on the opinions of Mr Player and Mr Glazebrook, together with Mr Lonsdales agreement that the visual character of the area will be preserved to an acceptable standard, considering the inevitable character changes allowed by the planning

controls for the implementation of the release area. Accordingly, I do not consider the application should be refused on this issue.

- 51 The other outstanding issue concerns the impact on the **endangered species**, Davidsons Plums (*Davidsonia jersyana*). A number of these plants were found on the site after detailed investigation by Mr B. O'Donovan, in locations likely to be disturbed by proposed subdivision works. Whilst he considered these plants could be translocated, Ms Pimm and Mr Warren agreed that generally in situ conservation was the preferred option.
- 52 However, after further conferencing, these environmental experts agreed that the subdivision could proceed, subject to conditions of consent requiring the provision and implementation of a satisfactory Davidson's Plum Management Plan. This plan is to conserve the full range of genetic variation encompassed in the plants proposed for removal, re-establish a self-sustaining population and establish appropriate habitat and/or approved habitat condition of translocation receptor sites.
- 53 The resolution of this issue also depends on a developer agreement which also includes periodical monitoring and provides for the applicant to lodge a sum of \$250,000 to be held in trust for the ongoing maintenance of the Bushland Conservation Reserve.
- 54 I accept this agreed position reasonably addresses the issue raised in connection with the endangered species and can therefore be covered by the agreed conditions of consent.

Conclusions

- 55 Having considered the evidence, the submissions and undertaken a view, I am satisfied that this proposed subdivision merits conditional consent. The principal issue concerns the impact on the visual character of the locality arising out of the amount of landforming necessary to convert this non-urban land to residential allotments, in accordance with the current planning controls.


- 56 Insofar as reference was made to a number of initial strategic studies, this resulted in the subject land being released for urban development on the basis that the predominant 2(c) Urban Expansion Zone allows lots with a minimum site area of 450 sq m. Consequently significant infrastructure work, such as safe access roads and drainage works are required to service these new residential allotments, so as to provide an acceptable level of residential amenity.
- 57 I note in Mr Knights statement, annexure B2 contains comments on a review of the land forming requirements. This review states that a slope analysis conducted in the undeveloped part of West Murwillubah urban release area indicated about 60% of this area has more than 20 % slope. The report states that if a 20% slope constraint was imposed, then the potential yield of currently 330 lots would be reduced to 30 lots. However no such maximum slope limitation controls have been adopted to limit development.
- 58 It therefore appears to me that some discretion and balancing is required, if the primary objective for the 2(c) urban expansion land in the LEP, which is *to ensure its optimum utilisation consistent with environmental constraints*, is to be achieved on the subject site. Accordingly, I am persuaded to accept Mr Player, and Mr Glazebrook's opinion that the relevant control in s 4.2.2 of DCP 16 is a performance-based control that allows exceedance of the 5m/10% rule, providing satisfactory justification is made.
- 59 I accept the detailed points made by Mr Findlater as partial justification, because the engineering design substantially complies with all council design controls and results in approximately 50% of the new lots having slopes less than 10% and 50% with slopes greater than 10%. The access to these lots is within acceptable limits and the proposed design minimises substantial high earthwork batters and retaining walls, as required by the controls and provides satisfactory transitions to adjoining properties.

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- 60 Furthermore, I do not consider there was any compelling evidence presented, which indicated that the proposed landforming would have unacceptable impacts on the environment, natural watercourses, any riparian, public infrastructure or the overall amenity of the area. Detailed consideration was given to the impact of the landscape visual character and I am satisfied to rely on the planning expert's opinion that the visual impact of the proposal is acceptable and justified, within the context of the existing, adjoining subdivision developments and the character of the future urban release area.
- 61 Whilst I accept the evidence that there are other subdivision design options, which could achieve a higher degree of compliance with the numerical controls, it is likely they would result in a significant decrease in lot yield, which is not consistent with the population projections for this release area. Interestingly, the proposed subdivision achieves a density of 8 dwellings/ha, which is considerably lower than the projected 15 dwellings/ha. On this measure of the controls, I do not conclude that the landforming in this subdivision results in an overdevelopment of the site.
- 62 Furthermore, in exercising the discretion available within the DCP, I consider some weight should be given to the particular features of this site, which necessitates significant filling along and adjacent to Old Lismore Road, to address potential flooding problems identified by council. This area of filling covers approximately 5% of the surface area that does not comply with the 5m/10% rule. Its exclusion results in approximately 15.7% of the surface area exceeding this rule, which is consistent with the controls currently under review and comfortably within the previously accepted control of 8m/20%, supported by council officers
- 63 For these reasons then, I am satisfied that the relevant controls in the LEP and DCP have been reasonably satisfied to grant conditional consent. I note that there has been considerable negotiation between the parties to resolve outstanding aspect of the conditions, resulting in the agreed conditions in Exhibit 14. As this final set of conditions has incorporated various matters raised during the hearing, including arrangements at the

interface of various stages to minimise environmental disamenity, I accept that these agreed conditions are reasonable to be imposed on this development.

Court orders

- 1 The appeal is upheld.
- 2 Development consent is granted to DA04/1618 for the subdivision of 331 lots at 26 Old Lismore Road, Murwillumbah, subject to the conditions in Annexure A.
- 3 The exhibits may be returned except for Exhibits 3, 4, 7, 8, 9, 13, 14, C and E.



R Hussey
Commissioner of the Court
rjs

**In the Land and
Environment Court
of New South Wales**

No. 10920 of 2005

**Greenview
Developments Pty
Ltd**

Applicant

**Tweed Shire
Council**



Respondent

Order

The Court orders that:

- 1 The appeal is upheld.
- 2 Development consent is granted to DA04/1618 for the subdivision of 331 lots at 26 Old Lismore Road, Murwillumbah, subject to the conditions in Annexure A.
- 3 The exhibits may be returned except for Exhibits 3, 4, 7, 8, 9, 13, 14, C and E.

Ordered: 7 April 2006

By the Court

Susan Dixon
Registrar


Annexure "A"
Conditions of Consent

Greenview Developments Pty Ltd v Tweed Shire Council

DA04/1618

"DEFERRED COMMENCEMENT"

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

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

SCHEDULE "A"

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

A. Remediation of Oakbank Dip Site:

A NSW DEC (EPA) Site Audit Statement (Section B) shall be submitted indicating that the nature and extent of contamination has been appropriately determined, the remedial action plan is appropriate and the site can be made suitable for residential use.

Note: The investigation/assessment and remedial action plan shall include all soils contaminated by the cattle dip activities, that is, located within Lot 25699 and Old Lismore Rd reserve.



SCHEDULE B

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

GENERAL

1. The development shall be completed in accordance with the Documentation and Plans approved by the NSW Land and Environment Court under Appeal No.10920 of 2005, except where varied by the conditions of this consent.

Schedule of Plans

Plans by B & P Surveys:

1. Drawing 01725 Rev A, Sheets 1, 2,3, 4 of 4 dated 10 August 2004;
2. Drawing 01732 – Stage 8 dated 27 August 2004;

Plans by Blueland Engineers:

3. Figure 1.0 Locality and Site Plan dated March 2006;
4. Figure 2.0 Existing Features Plan dated September 2004
5. Figure 3.1 Lot Layout Plan dated November 2005;
6. Figure 3.2 Lot Layout Plan dated November 2005;
7. Figure 4.0 Staging Plan dated 8 March 2006;
8. Figure 5.1 Proposed Finished Surface dated March 2006;
9. Figure 5.2 Proposed Finished Surface dated March 2006;
10. Figure 6.0 Proposed Retaining Wall Typical Sections dated March 2006;
11. Figure 7.1 Proposed Depth Contours dated March 2006;
12. Figure 7.2 Proposed Depth Contours dated March 2006;
13. Figure 7.3 Depth Contours Plan showing Cut and Fill Areas >5m dated March 2006;
14. Figure 7.4 Depth Contour Plan showing Cut and Fill Areas >8m dated November 2005;
15. Figure 8.1 Conceptual Sediment and Erosion Control Plan dated November 2005;
16. Figure 8.2 Conceptual Sediment and Erosion Control Plan dated November 2005
17. Figure 9.0 Existing Stormwater Drainage Patterns dated September 2004;
18. Figure 10.0 Proposed Stormwater Drainage Patterns dated November 2005;
19. Figure 11.0 Conceptual Stormwater Drainage and Water Quality Plan dated November 2005;



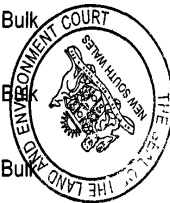
20. Figure 12.0 Sewerage Catchment Plan dated November 2005;
21. Figure 13.0 Conceptual Water Reticulation Plan dated November 2005;
22. Figure 14.0 Internal Road Hierarchy dated November 2005;
23. Figure 15.0 Footpath and Cycleway Locations dated November 2005;
24. Figure 16.1 – Figure 16.8, Figure 16.10 – Figure 16.16 Road Longitudinal Sections dated September 2004;
- 24 (a) Figure 16.9, 16.17 Road Longitudinal Sections dated October 2005;
25. Figure 17.1 Proposed Retaining Wall Locations dated March 2006;
26. Figure 17.2 Proposed Retaining Wall Locations dated March 2006;
27. Figure 18.1 Proposed Retaining Wall Sections Sheet 1 of 4 dated November 2005;
28. Figure 18.2 Proposed Retaining Wall Sections Sheet 2 of 4 dated November 2005
29. Figure 18.3 Proposed Retaining Wall Sections Sheet 3 of 4 dated November 2005;
30. Figure 18.4 Proposed Retaining Wall Sections Sheet 4 of 4 dated November 2005;
31. Figure 20.0 Trunk Drainage Catchment Plan Sheet 1 dated September 2005;
32. Figure 21.0 Trunk Drainage Catchment Plan Sheet 2 dated September 2005;
33. Figure 22.0 Stormwater Longitudinal Sections Sheet 1 of 8 dated June 2005;
34. Figure 23.0 Stormwater Longitudinal Sections Sheet 2 of 8 dated June 2005;
35. Figure 24.0 Stormwater Longitudinal Sections Sheet 3 of 8 dated June 2005;
36. Figure 25.0 Stormwater Longitudinal Sections Sheet 4 of 8 dated June 2005;
37. Figure 26.0 Stormwater Longitudinal Sections Sheet 5 of 8 dated June 2005;
38. Figure 27.0 Stormwater Longitudinal Sections Sheet 6 of 8 dated June 2005;



39. Figure 28.0 Stormwater Longitudinal Sections Sheet 7 of 8 dated June 2005;
40. Figure 29.0 Stormwater Longitudinal Sections Sheet 8 of 8 dated June 2005;
41. Figure 30.0 Drainage Calculation Sheet 1 of 6 dated July 2005;
42. Figure 31.0 Drainage Calculations Sheet 2 of 6 dated July 2005;
43. Figure 32.0 Drainage Calculations Sheet 3 of 6 dated July 2005;
44. Figure 33.0 Drainage Calculations Sheet 4 of 6 dated July 2005;
45. Figure 34.0 Drainage Calculations Sheet 5 of 6 dated July 2005
46. Figure 35.0 Drainage Calculations Sheet 6 of 6 dated July 2005;
47. Figure 36.0 Conceptual Bulk Earthworks Phasing Plan dated 8 March 2006;
48. Figure 37.0 Conceptual Drainage Construction Staging dated March 2006;
49. Figure 38.0 Conceptual Drainage Construction Staging dated March 2006;
50. Figure 39.0 Conceptual Water Main Construction Staging dated March 2006;
51. Figure 8.3 Conceptual Sediment and Erosion Control Plan – Bulk Earthworks Phase 1 March 2006;
52. Figure 8.4 Conceptual Sediment and Erosion Control Plan – Bulk Earthworks Phase 1 March 2006;
53. Figure 8.5 Conceptual Sediment and Erosion Control Plan – Bulk Earthworks Phase 2 March 2006;
54. Figure 8.6 Conceptual Sediment and Erosion Control Plan – Bulk Earthworks Phase 3 March 2006;
55. Figure 8.7 Conceptual Sediment and Erosion Control Plan – Bulk Earthworks Phase 4 March 2006;
56. Figure 8.8 Conceptual Sediment and Erosion Control Plan – Bulk Earthworks Phase 5 March 2006;

2. Remediation of Oakbank Dip Site:

- (a) Remediation of "Oakbank" Dip Site shall be in accordance with the submitted plan - Remediation Plan for Remediation of Contaminated Land prepared by Gilbert & Sutherland Pty Ltd dated



September 2003 and any TSC approved amendment or where varied by the appointed NSW DEC (EPA) Accredited Site Auditor.

- (b) The location of the containment cell shall be to the satisfaction of Tweed Council's General Manager or their delegate. The subject cell shall be located within the residential development under constructed roadway.
 - (c) The location of the containment cell is to be surveyed and recorded to the satisfaction of Tweed Council's General Manager or their delegate.
 - (d) A NSW DEC (EPA) Site Audit Statement (Section B) shall be submitted certifying that the land is suitable for residential use prior to commencement of earthworks.
3. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.
 4. The subdivision is to be carried out in accordance with Development Control Plan No. 16 - Subdivisions Manual, Development Control Plan No. 14 - Murwillumbah West, and Councils adopted Development Design and Construction Specifications, except where varied by conditions within this consent.
 5. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within or adjacent to the subject property.

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

6. Details are to be provided of the earthworks proposed to be undertaken for each stage of the development, and are to clearly address to the satisfaction of Council;
 - (a) The extent of the earthworks, including any "borrow" areas elsewhere within the site.
 - (b) The treatment of the interface between the proposed disturbed and undisturbed areas.
 - (c) All proposed erosion and sediment controls.
 - (d) Existing and proposed upstream and downstream drainage patterns. (Note: earthworks are to be designed to ensure that the



earthworks for each stage do not alter upstream drainage patterns, and provides fully constructed downstream drainage to a legal point of discharge.

- (e) The scenario that no further development occurs beyond the current stage, or that an extended period of time elapses before the next stage commences. In this regard normal erosion and sediment control measures will not be adequate. Where there are disturbed areas outside of the finished stages, permanent drainage works including permanent concrete lining of areas of concentrated runoff will be required.
 - (f) the plan requirements of section D13.03 and in particular subsections (n) (iii), (iv), (v), (vi), (vii), (viii), (ix), (x), (xi), (xii) of Development Design Specification D13 - Engineering Plans (Subdivisions).
7. The applicant is required to submit an Open Space Concept Plan covering all the allotments identified on the approved plans to be dedicated as Public Reserve or Drainage Reserve. The Concept Plan must clearly identify all areas in those Public Reserve allotments intended for use as casual open space. Any shortfall in the provision of the required area for casual open space will necessitate supplementary Section 94 contributions for Casual Open Space.

The following specific matters must also be satisfactorily addressed;

- (a) When calculating the usable area of casual open space, any stormwater infiltration areas and batters are to be excluded.
- (b) It must be clearly identified how much of each of the sites are in cut or fill, or will remain undisturbed, as well as the extent of any batters and finished surface slopes.
- (c) Submission of a Weed Management Plan for all areas remaining undisturbed, including the riparian buffer zones adjoining the wetlands.
- (d) All proposed walking trails, pathways, vehicular maintenance tracks and embellishments such as landscaping, seating or other recreational facilities consistent with the natural environment, are to be clearly indicated.
- (e) The ecological and recreational values of Lot 596, being the proposed Nature reserve, are to be fully addressed.
- (f) Where play equipment is installed a minimum area of 10m around the equipment is to be turfed and the remaining area seeded.
- (g) Where a developer pays Council to acquire and install play equipment, Council will **NOT** install the equipment until a minimum of 20% of the lots in that stage of the development are occupied.



The embellishment shall be completed prior to the issue of a Subdivision Certificate.

- (h) The works carried out by the applicant shall be taken into account in determining s94 contributions.
8. The area of proposed Lot 150 intended for use as a wetland is to be clearly identified and dedicated to Council with the residual of Lot 150 to remain in the ownership of the applicant.
9. Lots 13, 172 to 177 inclusive, 214, 375 and 376 shall be provided with earth mounding (minimum 1m high) and supplementary dense landscaping for the (secondary) frontage to Old Lismore Road. The work is to be contained within the lots, and is to be covered by a suitable Restriction on title, to ensure permanency. Any fencing (unless rural style fencing ie post and rail or open wire) is to be located within the lot behind the earth mound and supplementary dense landscaping.
10. Prior to the issue of a Construction Certificate, a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the works (minimum \$1,000).

The bond may be called up at any time and the funds used to rectify any non-compliance with the conditions of this consent which are not being addressed to the satisfaction of the General Manager or his delegate.

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

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

- (a) Contours and terraces where the height exceeds 1m.
- (b) Cover with topsoil and large rocks/dry stone walls in terraces as necessary.



- (h) 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.
 - (i) 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.
13. All imported fill material shall be from an approved source. Prior to the issue of a construction certificate details of the source of fill, documentary evidence that the fill material is free of any contaminants and haul route shall be submitted to Tweed Shire Council for approval.
14. Submission for approval by the Certifying Authority design detail including surcharge loads for any retaining walls to be erected on the site in accordance with AS 4678, DCP47 and Councils adopted Design and Construction Specifications. Design detail is to be supported by certification of adequacy of design from a suitably qualified structural engineer.

Please note timber retaining walls are not permitted.

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 CA 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 maintained wholly within the subject land. Detailed engineering plans of fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.

16. Notwithstanding any other condition of this consent separate construction certificates for bulk earthworks and civil works may be issued and the carrying out of bulk earthworks may be commenced prior to the issue of a Construction Certificate for civil works where it can be demonstrated all works are compatible.
17. A detailed plan of landscaping is to be submitted and approved by the Certifying Authority prior to the issue of a Construction Certificate.
18. A traffic control plan in accordance with AS1742 and RTA publication "Traffic Control at Work Sites" Version 2 shall be prepared by an RTA accredited person shall be submitted to the Certifying Authority prior to issue of the Construction Certificate. Safe public access shall be provided at all times.



19. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include engineering plans and specifications for the following required works: -
- (a) The provision of kerb and gutter, shoulder seal, and any reconstruction works as deemed necessary, for the full extent of Old Lismore Road fronting the site. This work shall be undertaken in conjunction with the development of adjoining relevant stages of the development, or earlier if possible.
 - (b) Provision of a cycleway along the Old Lismore Road for the full frontage of the site, constructed in conjunction with the required roadworks nominated at (a) above. The cycleway link is to be constructed as per the DCP14 requirement shown in Figure 7.
 - (c) Any required improvements to Old Lismore Road to enhance the safety of cyclists, such as widening, linemarking, signposting, speed reduction etc, are to be separately addressed and resolved with Council, prior to the issue of the relevant construction certificate.
 - (d) The intersection of Riveroak Drive and Kyogle Road is to be upgraded to an urban standard with a protected right turn lane. The length of the turn lane is to be determined by SIDRAA or equivalent software analysis and must be based on a 10 year timeframe (ie - 2015 traffic volumes, not current volumes).

Detailed engineering plans of the intersection upgrade are to include but not be limited to: -

- protected right turn bay
 - street lighting to Australian Standards 'V4' category
 - auxiliary left turn deceleration lane.
- (e) The construction of two (2) slow points on the existing section of Riveroak Drive, in conjunction with the Stage 5 works.
 - (f) This development generates a demand for path paving on the existing adjoining road network as follows;
 - (i) Path paving shall be constructed in Oakbank Terrace, up to Riveroak Drive, as part of the construction of Stage 5.
 - (ii) Path paving shall be constructed in Riverbend Way, up to Oakbank Terrace, as part of the construction of Stage 7.

The above mentioned engineering plan submission must include copies of compliance certificates relied upon and details relevant to but not limited to the following: -



- Road works/furnishings
 - Stormwater drainage
 - Water and sewerage works
 - Sediment and erosion control plans
 - Location of all services/conduits
 - Traffic control plan
 - The applicant shall undertake and be responsible for the costs of all such work as is outlined in this condition but shall be entitled to a set off as allowed pursuant to the Council's Section 94 Developer Contribution Plan
20. Prior to the issue of a **Construction Certificate** the following detail in accordance with Councils adopted Development Design and Construction Specifications shall be submitted to the Certifying Authority for approval.
- (a) copies of compliance certificates relied upon
 - (b) four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:
 - earthworks
 - roadworks/pavement design/furnishings
 - stormwater drainage
 - water supply works
 - sewerage works
 - landscaping works
 - sedimentation and erosion management plans
 - location of all service conduits (water, sewer, Country Energy and Telstra)

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



21.

1. Staging of works

1.1 Definitions

"extended area" means that area within the development site, but, outside the nominated stage area where works including clearing, earthworks, roadworks,

21.1 Bulk Earthworks Stages

- (a) The earthworks shall be carried out in the following sequence (as per Blueland Engineering Figure 36);

Stage 1 – Phases 1, 2 & 3 plus extended area as defined

Stage 2 – Phase 4 plus extended area as defined

Stage 3 – Phase 5

- (b) A separate construction certificate is required for each stage of earthworks.
- (c) A construction certificate for a further stage of bulk earthworks shall not be issued until Council has certified that the bulk earthworks for the preceding stage have been satisfactorily completed.
- (d) The maximum disturbed area (that has not been permanently revegetated) at any time shall not exceed 5ha.

21.2 Subdivision Stages (excluding bulk earthworks)

A separate construction certificate is required for each subdivision stage (Blueland Engineering Figure 4.0). The construction certificate application for each stage must demonstrate that for the nominated stage:

- (a) All drains, waterways, water quality devices and ancillary works downstream of the stage are to be completed (to a lawful point of discharge) to ultimate size and title dedicated.
- (b) internal drains waterways, water quality devices and ancillary works of the nominated stage are to be completed to ultimate size.
- (c) the road network, landforming, drainage system (including downstream discharge paths), water supply and sewerage



systems for the nominated stage (as the stages progress) are viable in their own right in the event that future stages are not constructed.

- (d) the maximum disturbed area (that has not been permanently revegetated) at any time will not exceed 5ha.
 - (e) construction will be controlled (by fencing or other appropriate means) to ensure no works take place outside the stage.
22. Permanent stormwater quality treatment shall be provided in accordance with the following:
- (a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
 - (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils *Development Design Specification D7 - Stormwater Quality*.
 - (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management. Typical water sensitive features include infiltration, maximising permeable/landscaped areas, stormwater retention /detention/reuse, and use of grass swales in preference to hard engineered drainage systems.
 - (d) Specific Requirements to be detailed within the Construction certificate application include:
 - (i) Shake down area along the haul route immediately before the intersection with the road reserve.
23. 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 1999.

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.

24. Erosion and Sediment Control shall be provided in accordance with the following:
- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.
 - (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".
25. Where water is to be drawn from Councils reticulated system, the proponent shall: -
- Make application for the hire of a Tweed Shire Council metered standpipe including Councils nomination of point of extraction.
 - Where a current standpipe approval has been issued application must be made for Councils nomination of a point of extraction specific to the development.
 - Payment of relevant fees in accordance with Councils adopted fees and charges.
26. The Right-of Way configuration for Lots 551, 552, 558 and 559 is to be altered to ensure that through traffic between Mount Ernest Crescent and Road 14 is not possible. This may require the erection of a permanent barrier.
27. Stage 5 works shall include construction of the road link, being the extension of Riveroak Drive to connect with the extension of Castle Field Drive, to enable development of a bus route. This road link can have a temporary rural cross-section, progressively upgraded to full urban standards as corresponding Stages of the estate are developed. The nominated bus route shall be provided with suitable bus stops and shelters.
28. Provision of a cycleway for the full length of Riveroak Drive and along Castlefield Drive, up to the existing section of Castlefield Drive. The works carried out by the applicant shall be taken into account when determining s94 contributions.
29. All roads and residential lots are to have a minimum finished ground level of RL 10.0m AHD.



30. All public reserves shall have a minimum finished ground level of RL 9.0m AHD.
31. All works within Lot 215, being a proposed drainage reserve, shall be designed to complement the works proposed by the adjoining subdivision (re: Council reference DA 04/1591).
32. The Engineering Plans to accompany the Construction Certificate application shall restrict earthworks adjacent to the identified wetlands within the subject site to the following:-
 - (a) A minimum offset of 20.0m must be provided between the boundary of all residential lots and the edge of the identified wetlands.
 - (b) A buffer zone, void of any disturbance must be provided from the edge of the identified wetlands to the existing contour of RL 6.0m, with a minimum width of 10.0m imposed.
 - (c) A 3m wide, all weather maintenance track to allow servicing of the wetlands, must be provided between the buffer zone (defined in point (b) above) and any associated earthworks for the development.
 - (d) Stormwater runoff from any proposed batter adjacent to the wetlands must be captured and treated to remove pollutants in accordance with Council's Development Design Specification D7 requirements, before discharging into the wetlands.
33. Outflow from the existing wetlands are to be maintained at existing levels.
34. Wetlands shall be constructed generally in accordance with plan Figure 10.0 by blueLAND Engineers dated September 2004, and must comply with Council's Development Design Specification D7. Full design details are to be provided with the relevant construction certificate submission, and are to include;
 - (a) A structure at the base of the wetland to allow manipulation of water levels to enable control of macrophytic and insect populations, and to facilitate dredging.

The proposed constructed wetlands will require "protection buffers" These buffers stop the mobilisation of sediments within the wetland when inundated during a Q100 flood event.

35. (Replicated at 38).
36. With regard to the Northern Drainage Scheme and the intention for stormwater runoff to "...be treated by infiltration trenches on level blocks" (Infrastructure Report Item 5.4.1), such a proposal must be verified by percolation testing etc to verify that it is feasible, and that the stormwater



strategy for this catchment is workable. The term "level block" is defined to mean blocks with a slope of less than 5%. Should infiltration be a feasible option, then suitable restrictions on title will need to be created over the relevant lots.

PRIOR TO COMMENCEMENT OF WORK

37. Prior to the Commencement of Work the proponent shall obtain the relevant Permit(s) for works within 40-metres of a water-body from the NSW Department of Natural Resources.
38. The proponent shall locate and identify all existing underground services prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure including areas external to the development site where works are proposed.
39. Prior to commencement of work all actions or prerequisite works required at that stage, as required by other conditions or approved management plans or the like, shall be installed/operated in accordance with those conditions or plans.
40. Where any pumps used for dewatering operations are proposed to be operated on a 24-hour basis, the owners of adjoining premises shall be notified accordingly prior to commencement of such operations.
41. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Certifying Authority and Private Certifier" shall be submitted to Council at least **2 days** prior to work commencing.
42. Written approval for any application under Section 138 of the Roads Act 1993 is required prior to commencing works within the road reserve.
43. Subdivision work in accordance with a development consent must not be commenced until:-
 - (a) a construction certificate for the subdivision work has been issued in accordance with Councils adopted Development Design and Construction Specification C101 by:
 - (i) the consent authority, or
 - (ii) an accredited certifier, and
 - (b) the person having the benefit of the development consent:
 - (i) has appointed a certifying authority,
 - (ii) has appointed a Subdivision Works Accredited Certifier in accordance with Development Control Plan No. 16, Appendix C, and



- (iii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment, and
 - (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the subdivision work.
44. Prior to commencement of work, a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Subdivision Works Accredited Certifier shall be erected and maintained in a prominent position entry to the site in accordance with Councils adopted Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued.
45. The proponent shall provide to the CA copies of Public Risk Liability Insurance to a minimum value of \$10 Million for the period of commencement of works until the completion of the defects liability period.
46. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area where required to the satisfaction of the Certifying Authority.

In addition to these measures the core flute sign provided with the stormwater approval under Section 68 of the Local Government Act is to be clearly displayed on the most prominent position of the sediment fence or erosion control device which promotes awareness of the importance of the erosion and sediment controls provided.

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

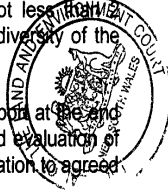
47. The proponent shall notify Councils Engineering & Operations Division of intention to commence drawing water in accordance with the requirements of the approval to draw water.
48. **Prior** to the commencement of works, the applicant shall submit to Council evidence that a Site-Specific Safety Management Plan and Safe Work Methods for the subject site have been prepared in accordance with either:-
- (a) Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3rd Edition, NSW Government, or
 - (b) AS4804 Occupation Health and Safety Management Systems General Guidelines on Principles Systems and Supportive Techniques.
 - (c) WorkCover Regulations 2000



49. The Davidson's Plum Management Plan is to be further revised and submitted to the Council's satisfaction to include newly surveyed plants and the following aims and methods:
- Conserve the full range of genetic variation encompassed in the plants proposed for removal
 - Re-establish a self-sustaining population
 - Establish appropriate habitat and/or improve habitat condition of translocation receptor site(s)

Achieve the above by:

- Prior to any translocation activities, the applicant will ensure a genetic profile for the Davidson's Plums on the site is developed.
- Prior to translocation, the applicant will ensure propagation of material from affected plants (seedlings), to be held as nursery stock as insurance against failure of translocation, and for supplementary planting. Seed is to be collected and propagated from all fruiting plants on the subject site and if insufficient, the adjacent road reserve, and propagated to a minimum four-leaf seedling stage with a minimum of 50 seedlings established. Procedures for tracking nursery stock to ensure appropriate representation in re-established population to be detailed.
- Translocation of affected plants (following ANPC guidelines)
- Re-establishment and/or regeneration of habitat surrounding all Davidson's Plum within translocation receptor site(s) in accordance with the Vegetation Restoration Plan to effect a minimum 10 metre buffer of local native species and minimum 70% canopy cover;
- Undertaking a program of monitoring of the success or otherwise of translocation and propagation/establishment efforts using performance criteria agreed by Council and a scale to record health attributes of translocated plants,
- Undertaking evaluation of monitoring and implementation of revised methods if necessary for a period encompassing not less than two years to ensure preservation of the existing genetic diversity of the species on the site;
- Provision of quarterly reports to Council and a final report at the end of the two-year period, of the results of monitoring and evaluation of translocation efforts and habitat re-establishment in relation to agreed performance criteria.



50. All operations must comply with the flora protection measures detailed in the approved Davidson's Plum Management Plan, except where strengthened by additional consent conditions. In the event that any additional threatened species, populations, ecological communities or their habitats are discovered during operations appropriate Plans of Management for those species must be formulated to the satisfaction of Council. No further site clearing will take place until the Plan(s) of Management is/are approved.
51. A Vegetation Restoration Plan is required from a qualified and experienced Bush Regenerator prior to the commencement of work giving an appraisal of the present condition of the remnant vegetation to be retained on the "Nature Reserve" (hereafter named "Bushland Conservation Reserve") and any other receiving sites for translocated species, and the likely impact of the development on the long-term vigour of the vegetation, including any translocated species. The report shall also detail -
- (a) A site plan (1:100 or 1:200) showing the existing features. All native trees to be located to scale and identified by botanical and common names.
 - (b) Location and description of protection fences.
 - (c) Plan of precise locations for translocation of any threatened species.
 - (d) Plan, species lists and schedule of quantities of proposed native vegetation plantings.
 - (e) Species name and estimated quantities (%) of weed species within the site.
 - (f) Program of works to be undertaken to remove invasive weed species and establish a native canopy and understorey.
 - (g) Program of monitoring of the success or otherwise of habitat restoration efforts using performance criteria agreed by Council.

With regard to point d) above, the report shall also consider future development on any adjoining lot and shall detail where applicable:

- (a) Location of building footprints, underground services and structures in relation to trees.
 - (b) Any proposed alterations to ground levels or drainage.
 - (c) Proposed access should machinery be required.
 - (d) Proposed stockpiling areas.
52. Species to be planted in accordance with the Vegetation Restoration



Plan shall be maintained by the Applicant in a healthy and vigorous condition for a minimum period of two years from the date of commencement of restoration works in accordance with the approved Vegetation Restoration Plan. Prior to the end of this two-year period, any of the aforementioned plant species found to be in a poor condition (damaged, dying or dead) shall be replaced by the Applicant with a tree, shrub or ground cover of the same species.

53. All costs associated with the planning, implementation and monitoring of the Davidson's Plums translocations are to be borne by the applicant for a period of two years. At the end of two years the applicant will dedicate the Bushland Conservation Reserve to Council at no cost to Council and in a condition compliant with performance criteria specified in the Vegetation Restoration Plan.
54. The applicant has offered, and the Council has accepted, the sum of \$250,000 to be held in trust by Council to be applied for the ongoing maintenance of the Bushland Conservation Reserve and rare and threatened species on site, and those rare and threatened species translated from the site to public land.
55. Contribution, irrespective of any other Section 94 contribution, and, totalling \$250,000 is payable by the applicant to the Council for ongoing management of the Bushland Conservation Reserve and rare and threatened species on the site and those rare and threatened species translocated from the site to public land. A bond of \$50,000 is payable prior to commencement of translocation, with the balance payable upon dedication of land to Council.
56. Prior to commencement of works, a Landscape Management Plan must be prepared and approved by Council for the whole development site, which must consider the aims and objectives of the Vegetation Restoration Plan for the Bushland Conservation Reserve.
57. The applicant or developer shall be responsible for the maintenance of the community open space components until Council has released the final plan of subdivision for the final precinct of the development.

DURING CONSTRUCTION

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

Monday to Saturday from 7.00am to 7.00pm

No work to be carried out on Sundays or Public Holidays

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

59. 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.

60. All proposed works to be undertaken are to be carried out in accordance with the conditions of development consent, approved construction certificate, drawings and specifications.
61. During construction, all works required by other conditions or approved management plans or the like shall be installed and operated in accordance with those conditions or plans.
62. All work associated with this approval is to be carried out so as not to impact on the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -
 - Noise, water or air pollution
 - Minimise impact from dust during filling operations and also from construction vehicles
 - No material is removed from the site by wind
63. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited without the written approval of the NSW Rural Fire Service or NSW Fire Brigade. All unwanted vegetation will be chipped and used on site for mulching landscaped areas. Other waste will be conveyed to Council Stotts Creek waste depot. A copy of such approval is to be submitted to Council prior to commencing any burning activities.
64. Regular inspections shall be carried out by the Supervising Engineer of the 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.

65. Appropriate measures are to be put in place during the construction period to prevent the transport of sediment from the site. Should any material be transported onto the road or any spills occur it is to be cleaned up prior to cessation of same days work and/or commencement of any rain event.
66. Construction of single driveway access handles to serve individual lots 151, 303 and 405, and a reciprocal right of carriageway to serve adjoining lots 105/106, 313/400, 360/361, 551/552 and 558/559, in accordance with the provision of DCP16 - Subdivision Manual and Councils Development Design and Construction Specification.
67. Any pumps used for onsite dewatering operations are to be installed on the site in a location that will minimise any noise disturbance to neighbouring residential areas. Such location is to be to the satisfaction of the General Manager or his delegate.
68. Pumps used for dewatering operations are to be electrically operated. Diesel pumps are not to be used unless otherwise approved by Tweed Shire Council.
69. All imported fill material shall be from an approved source. Prior to commencement of filling operations details of the source of fill shall be submitted to the satisfaction of the General Manager of his delegate.

Once the approved haul route has been identified, payment of the Heavy Haulage Contribution calculated in accordance with Section 94 Plan No 4 will be required prior to commencement of works.

70. All lots must be graded to prevent the ponding of surface water and be adequately vegetated to prevent erosion from wind and/or water to the satisfaction of the General Manager or his delegate.
 71. On completion of the filling work, all topsoil to be respread and the site to be grassed and landscaped.
 72. No filling is to be placed hydraulically within twenty metres (20m) of any boundary that adjoins private land that is separately owned. Fill adjacent to these boundaries is to be placed mechanically.
- No filling of any description is to be deposited, or remain deposited, within adjacent properties.

73. Proposed earthworks shall be carried out in accordance with "Guidelines on Earthworks for Commercial and Residential Developments".



74. All battered areas are to be topsoiled and grassed, or other suitable protection provided as soon as filling is placed adjacent to neighbouring properties.
75. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited.
76. 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.
77. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council.
78. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate.
79. Any watercourse crossing is to be in compliance with current NSW Fisheries Policy and Guidelines for Bridges, Roads, Causeways, Culverts and Similar Structures.
80. 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.
81. 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 Tweed Shire Councils adopted Construction and Design Specification, D2.
 - (b) That the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils adopted Design and Construction Specifications, C242-C245, C247, C248 and C255.
 - (c) That site fill areas have been compacted to the specified standard.
 - (d) That supervision of Bulk Earthworks has been to Level 1 and frequency of field density testing has been completed in accordance with Table 8.1 of AS 3798-1996.
82. All proposed road/streets, drainage and associated works within the development shall be designed and constructed in accordance with the



development consent plans **AND** the relevant provision of DCP No. 16 - Subdivisions Manual and Development Design and Construction Specifications, except where varied by the conditions of this consent.

83. During the relevant stages of road construction, reports shall be submitted to the CA by a Registered NATA Geotechnical firm demonstrating.
 - (a) That the pavement layers have been compacted in accordance with Councils adopted Design and Construction Specifications.
 - (b) That pavement testing has been completed in accordance with Table 8.1 of AS 3798 including the provision of a core profile for the full depth of the pavement.
84. Provision of temporary turning areas and associated signage for refuse vehicles at the end of roads which will be extended in subsequent stages. The temporary turning areas shall be constructed with a minimum 150mm pavement (CBR 45) and shall have a right of carriageway registered over the turning area until such time as the road is extended.
85. Pram ramps are to be constructed at road intersections in accordance with Council's Standard Drawing No. SD 014 within all kerb types including roll top kerb.
86. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils adopted Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.
87. The proponent shall comply with all requirements tabled within any approval issued under Section 138 of the Roads Act.
88. 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.
89. The written consent of the registered proprietors of adjoining land, where the said works encroach thereon is to be submitted to Council prior to works commencing.
90. The contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.
91. The applicant shall obtain the written approval of Council to the proposed road/street names. Approved names are to be in accordance with Council's Road Naming Policy adopted on 7 August 1996 and are to be shown on the Plan of Subdivision accompanying the application for a



Subdivision Certificate.

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

92. Inter allotment drainage shall be provided to all lots where roof water for dwellings cannot be conveyed to the street gutter by gravitational means.
93. Drainage Reserve
Dedication of all proposed drainage reserves at no cost to Council.
(a) An accurate plan of each proposed drainage reserve shall be submitted to Council 60 days prior to lodgement of Application for Subdivision Certificate (form 13) to allow the land to be classified.
Failure to comply with this condition may result in delays in the issue of the Subdivision Certificate.
94. All stormwater gully lintels shall have the following notice **cast** into the top of the lintel: **'DUMP NO RUBBISH, FLOWS INTO CREEK'** or similar wording in accordance with Councils adopted Design and Construction Specification.
95. All stormwater discharged from the site including dewatering discharge is to be directed to a sediment pond prior to final discharge into any waterway in accordance with Council adopted Design and Construction Specifications.
96. All water quality control ponds shall be fully fenced in accordance with the requirements of AS1926 for children less than five (5) years of age.
97. Vehicles leaving the premises shall be sufficiently free from dirt, aggregate or other materials such that materials are not transported onto public roads.
98. During construction, a "satisfactory inspection report" is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.
99. All water drawn from Councils reticulated system 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.
100. An accurate plan of the sewage pumping station site shall be submitted to Council 60 days prior to lodgement of the Application for Subdivision



Certificate to allow the land to be classified.

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

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

- 101. All reference to duplex sites on approved plans to be deleted and the applicant to consult with the Council, prior to the issuing of the Subdivision Certificate, the designation of duplex sites on the Plan of Subdivision.
- 102. Prior to issue of a subdivision certificate, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.
- 103. A **certificate of compliance** (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

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

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

Stage 5

Water DSP2: 38 ET @ \$4230	\$160,740
Sewer Murwillumbah: 38 ET @ \$2634	\$100,092

Stage 6

Water DSP2: 28 ET @ \$4230	\$118,440
Sewer Murwillumbah: 28 ET @ \$2634	\$73,752

Stage 7

Water DSP2: 25 ET @ \$4230	\$105,750
Sewer Murwillumbah: 25 ET @ \$2634	\$65,850

Stage 8



Appeal No: 10920 of 2005

Water DSP2: 14 ET @ \$4230 \$59,220

Sewer Murwillumbah:14 ET @ \$2634 \$36,876

Stage 9

Water DSP2: 27 ET @ \$4230 \$114,210

Sewer Murwillumbah:27 ET @ \$2634 \$71,118

Stage 10

Water DSP2: 23 ET @ \$4230 \$97,290

Sewer Murwillumbah:23 ET @ \$2634 \$60,582

Stage 11

Water DSP2: 26 ET @ \$4230 \$109,980

Sewer Murwillumbah:26 ET @ \$2634 \$68,484

Stage 12

Water DSP2: 20 ET @ \$4230 \$84,600

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

Stage 13

Water DSP2: 23 ET @ \$4230 \$97,290

Sewer Murwillumbah:23 ET @ \$2634 \$60,582

Stage 14

Water DSP2: 28 ET @ \$4230 \$118,440

Sewer Murwillumbah:28 ET @ \$2634 \$73,752

Stage 15

Water DSP2: 46 ET @ \$4230 \$194,580

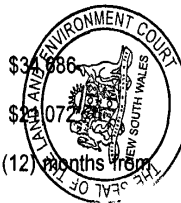
Sewer Murwillumbah:46 ET @ \$2634 \$121,164

Stage 16

Water DSP2: 8.2 ET @ \$4230 \$34,886

Sewer Murwillumbah:8 ET @ \$2634 \$21,072

These charges to remain fixed for a period of twelve (12) months from



the date of this consent and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

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

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

104. Section 94 Contributions

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

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

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

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

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

Stage 5

(a) Tweed Road Contribution Plan: \$73,569

S94 Plan No. 4 (Version 4.0)

Sector9_4

Heavy Haulage Component

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



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

where:

$\text{\$Con TRCP - Heavy}$ 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)

$\text{\$Unit}$ 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): | \$29,640 |
| S94 Plan No. 5 | |
| (c) Street Trees: | \$11,286.00 |
| S94 Plan No. 6 | |
| (d) Shirewide Library Facilities: | \$26,144 |
| S94 Plan No. 11 | |
| (e) Bus Shelters: | \$988 |
| S94 Plan No. 12 | |
| (f) Eviron Cemetery/Crematorium Facilities: | \$4,978 |
| S94 Plan No. 13 | |
| (g) Emergency Facilities (Surf Lifesaving) | \$7,600 |
| S94 Plan No. 16 | |
| (h) Extensions to Council Administration Offices
& Technical Support Facilities | |
| S94 Plan No. 18 | |
| (i) Cycleways | |



- S94 Plan No. 22
- (j) Regional Open Space (Structured) \$57,798
- S94 Plan No. 26
- (k) Regional Open Space (Casual) \$32,490
- S94 Plan No. 26

Stage 6

- (a) Tweed Road Contribution Plan: \$54,209
- S94 Plan No. 4 (Version 4.0)

Sector9_4

Heavy Haulage Component

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

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

where:

$\text{\$Con TRCP - Heavy}$ 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)

$\text{\$Unit}$ 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



(c) Street Trees:	\$8,316.00
S94 Plan No. 6	
(d) Shirewide Library Facilities:	\$19,264
S94 Plan No. 11	
(e) Bus Shelters:	\$728
S94 Plan No. 12	
(f) Eviron Cemetery/Crematorium Facilities:	\$3,668
S94 Plan No. 13	
(g) Emergency Facilities (Surf Lifesaving)	\$5,600
S94 Plan No. 16	
(h) Extensions to Council Administration Offices & Technical Support Facilities	\$35,526.40
S94 Plan No. 18	
(i) Cycleways	\$9,856
S94 Plan No. 22	
(j) Regional Open Space (Structured)	\$42,588
S94 Plan No. 26	
(k) Regional Open Space (Casual)	\$23,940
S94 Plan No. 26	

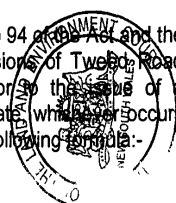
Stage 7

(a) Tweed Road Contribution Plan:	\$48,401
S94 Plan No. 4 (Version 4.0)	

Sector9_4

Heavy Haulage Component

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



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

where:

$\text{\$Con TRCP - Heavy}$ 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)

$\text{\$Unit}$ 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):	\$19,500
S94 Plan No. 5	
(c) Street Trees:	\$7,425.00
S94 Plan No. 6	
(d) Shirewide Library Facilities:	\$17,200
S94 Plan No. 11	
(e) Bus Shelters:	\$650
S94 Plan No. 12	
(f) Eviron Cemetery/Crematorium Facilities:	\$3,275
S94 Plan No. 13	
(g) Emergency Facilities (Surf Lifesaving)	\$5,000
S94 Plan No. 16	
(h) Extensions to Council Administration Offices & Technical Support Facilities	\$3,729.00
S94 Plan No. 18	
(i) Cycleways	\$8,800



S94 Plan No. 22

(j) Regional Open Space (Structured) \$38,025

S94 Plan No. 26

(k) Regional Open Space (Casual) \$21,375

S94 Plan No. 26

Stage 8

(a) Tweed Road Contribution Plan: \$27,104

S94 Plan No. 4 (Version 4.0)

Sector9_4

Heavy Haulage Component

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

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

where:

$\text{\$Con TRCP - Heavy}$ 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)

$\text{\$Unit}$ 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% - Section 6.5

(b) Open Space (Structured): \$10,920

S94 Plan No. 5



(c) Street Trees:	\$4,158.00
S94 Plan No. 6	
(d) Shirewide Library Facilities:	\$9,632
S94 Plan No. 11	
(e) Bus Shelters:	\$364
S94 Plan No. 12	
(f) Eviron Cemetery/Crematorium Facilities:	\$1,834
S94 Plan No. 13	
(g) Emergency Facilities (Surf Lifesaving)	\$2,800
S94 Plan No. 16	
(h) Extensions to Council Administration Offices & Technical Support Facilities	\$17,763.20
S94 Plan No. 18	
(i) Cycleways	\$4,928
S94 Plan No. 22	
(j) Regional Open Space (Structured)	\$21,294
S94 Plan No. 26	
(k) Regional Open Space (Casual)	\$11,970
S94 Plan No. 26	

Stage 9

(a) Tweed Road Contribution Plan:	\$52,273
S94 Plan No. 4 (Version 4.0)	

Sector9_4

Heavy Haulage Component

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



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

where:

$\text{\$Con TRCP - Heavy}$ 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):	\$21,060
S94 Plan No. 5	
(c) Street Trees:	\$8,019.00
S94 Plan No. 6	
(d) Shirewide Library Facilities:	\$18,576
S94 Plan No. 11	
(e) Bus Shelters:	\$702
S94 Plan No. 12	
(f) Eviron Cemetery/Crematorium Facilities:	\$3,537
S94 Plan No. 13	
(g) Emergency Facilities (Surf Lifesaving)	\$5,400
S94 Plan No. 16	
(h) Extensions to Council Administration Offices & Technical Support Facilities	\$57,600
S94 Plan No. 18	
(i) Cycleways	\$9,504



- S94 Plan No. 22
- (j) Regional Open Space (Structured) \$41,067
- S94 Plan No. 26
- (k) Regional Open Space (Casual) \$23,085
- S94 Plan No. 26

Stage 10

- (a) Tweed Road Contribution Plan: \$44,529
- S94 Plan No. 4 (Version 4.0)

Sector9_4

Heavy Haulage Component

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

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

where:

$\text{\$Con TRCP - Heavy}$ 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)

$\text{\$Unit}$ 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 94

- (b) Open Space (Structured):
- S94 Plan No. 5



(c) Street Trees:	\$6,831.00
S94 Plan No. 6	
(d) Shirewide Library Facilities:	\$15,824
S94 Plan No. 11	
(e) Bus Shelters:	\$598
S94 Plan No. 12	
(f) Eviron Cemetery/Crematorium Facilities:	\$3,013
S94 Plan No. 13	
(g) Emergency Facilities (Surf Lifesaving)	\$4,600
S94 Plan No. 16	
(h) Extensions to Council Administration Offices & Technical Support Facilities	\$29,182.40
S94 Plan No. 18	
(i) Cycleways	\$8,096
S94 Plan No. 22	
(j) Regional Open Space (Structured)	\$34,983
S94 Plan No. 26	
(k) Regional Open Space (Casual)	\$19,665
S94 Plan No. 26	

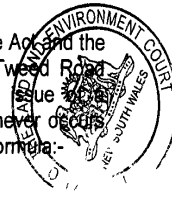
Stage 11

(a) Tweed Road Contribution Plan:	\$50,337
S94 Plan No. 4 (Version 4.0)	

Sector9_4

Heavy Haulage Component

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



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

where:

$\$Con_{TRCP - Heavy}$ 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):	\$20,280
S94 Plan No. 5	
(c) Street Trees:	\$7,722.00
S94 Plan No. 6	
(d) Shirewide Library Facilities:	\$17,888
S94 Plan No. 11	
(e) Bus Shelters:	\$676
S94 Plan No. 12	
(f) Eviron Cemetery/Crematorium Facilities:	\$3,406
S94 Plan No. 13	
(g) Emergency Facilities (Surf Lifesaving)	
S94 Plan No. 16	
(h) Extensions to Council Administration Offices & Technical Support Facilities	
S94 Plan No. 18	
(i) Cycleways	\$9,152



- S94 Plan No. 22
- (j) Regional Open Space (Structured) \$39,546
- S94 Plan No. 26
- (k) Regional Open Space (Casual) \$22,230
- S94 Plan No. 26

Stage 12

- (a) Tweed Road Contribution Plan: \$38,721
- S94 Plan No. 4 (Version 4.0)

Sector 9_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:-

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

where:

$\text{\$Con TRCP - Heavy}$ 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)

$\text{\$Unit}$ 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

- (b) Open Space (Structured):



S94 Plan No. 5	
(c) Street Trees:	\$5,940.00
S94 Plan No. 6	
(d) Shirewide Library Facilities:	\$13,760
S94 Plan No. 11	
(e) Bus Shelters:	\$520
S94 Plan No. 12	
(f) Eviron Cemetery/Crematorium Facilities:	\$2,620
S94 Plan No. 13	
(g) Emergency Facilities (Surf Lifesaving)	\$4,000
S94 Plan No. 16	
(h) Extensions to Council Administration Offices & Technical Support Facilities	\$25,376.00
S94 Plan No. 18	
(i) Cycleways	\$7,040
S94 Plan No. 22	
(j) Regional Open Space (Structured)	\$30,420
S94 Plan No. 26	
(k) Regional Open Space (Casual)	\$17,100
S94 Plan No. 26	

Stage 13

- (a) Tweed Road Contribution Plan:
S94 Plan No. 4 (Version 4.0)

Sector9_4

Heavy Haulage Component

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 4.1 prior to the issue of a



construction certificate or subdivision certificate, whichever occurs first. The contribution shall be based on the following formula:-

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

where:

$\text{\$Con TRCP - Heavy}$ 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)

$\text{\$Unit}$ 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): | \$17,940 |
| S94 Plan No. 5 | |
| (c) Street Trees: | \$6,831.00 |
| S94 Plan No. 6 | |
| (d) Shirewide Library Facilities: | \$15,824 |
| S94 Plan No. 11 | |
| (e) Bus Shelters: | \$598 |
| S94 Plan No. 12 | |
| (f) Eviron Cemetery/Crematorium Facilities: | \$3,013 |
| S94 Plan No. 13 | |
| (g) Emergency Facilities (Surf Lifesaving) | \$4,600 |
| S94 Plan No. 16 | |
| (h) Extensions to Council Administration Offices
& Technical Support Facilities | \$29,192.40 |



S94 Plan No. 18	
(i) Cycleways	\$8,096
S94 Plan No. 22	
(j) Regional Open Space (Structured)	\$34,983
S94 Plan No. 26	
(k) Regional Open Space (Casual)	\$19,665
S94 Plan No. 26	

Stage 14

(a) Tweed Road Contribution Plan:	\$54,209
S94 Plan No. 4 (Version 4.0)	

Sector9_4

Heavy Haulage Component

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

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

where:

$\text{\$Con TRCP - Heavy}$ 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)
- $\text{\$Unit}$ 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):	\$21,840
S94 Plan No. 5	
(c) Street Trees:	\$8,316.00
S94 Plan No. 6	
(d) Shirewide Library Facilities:	\$19,264
S94 Plan No. 11	
(e) Bus Shelters:	\$728
S94 Plan No. 12	
(f) Eviron Cemetery/Crematorium Facilities:	\$3,668
S94 Plan No. 13	
(g) Emergency Facilities (Surf Lifesaving)	\$5,600
S94 Plan No. 16	
(h) Extensions to Council Administration Offices & Technical Support Facilities	\$35,526.40
S94 Plan No. 18	
(i) Cycleways	\$9,856
S94 Plan No. 22	
(j) Regional Open Space (Structured)	\$42,588
S94 Plan No. 26	
(k) Regional Open Space (Casual)	\$23,940
S94 Plan No. 26	

Stage 15

(a) Tweed Road Contribution Plan:	\$89,057
S94 Plan No. 4 (Version 4.0)	

Sector9_4

Heavy Haulage Component

Payment of a contribution pursuant to Section 94 of the Act and the



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

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

where:

$\text{\$Con TRCP - Heavy}$ 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)

$\text{\$Unit}$ 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): | \$35,880 |
| S94 Plan No. 5 | |
| (c) Street Trees: | \$13,662.00 |
| S94 Plan No. 6 | |
| (d) Shirewide Library Facilities: | \$31,648 |
| S94 Plan No. 11 | |
| (e) Bus Shelters: | \$1,196 |
| S94 Plan No. 12 | |
| (f) Eviron Cemetery/Crematorium Facilities: | \$6,826 |
| S94 Plan No. 13 | |
| (g) Emergency Facilities (Surf Lifesaving) | |
| S94 Plan No. 16 | |
| (h) Extensions to Council Administration Offices | |



& Technical Support Facilities	\$58,364.80
S94 Plan No. 18	
(i) Cycleways	\$16,192
S94 Plan No. 22	
(j) Regional Open Space (Structured)	\$69,966
S94 Plan No. 26	
(k) Regional Open Space (Casual)	\$39,330
S94 Plan No. 26	

Stage 16

(a) Tweed Road Contribution Plan:	\$15,488
S94 Plan No. 4 (Version 4.0)	

Sector9_4

Heavy Haulage Component

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

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

where:

$\text{\$Con TRCP - Heavy}$ 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)

$\text{\$Unit}$ 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	\$6,240
(c)	Street Trees: S94 Plan No. 6	\$2,376.00
(d)	Shirewide Library Facilities: S94 Plan No. 11	\$5,504
(e)	Bus Shelters: S94 Plan No. 12	\$208
(f)	Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$1,048
(g)	Emergency Facilities (Surf Lifesaving) S94 Plan No. 16	\$1,600
(h)	Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$10,150.40
(i)	Regional Open Space (Structured) S94 Plan No. 26	\$12,168
(j)	Regional Open Space (Casual) S94 Plan No. 26	\$6,840

Section 94 contributions may still be applicable for Casual Open Space, depending on how the Deferred Commencement provisions of this consent have been satisfied.

105. Section 94 Contributions

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a



Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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.

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:-

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

where:

$\text{\$Con TRCP - Heavy}$ 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)
- $\text{\$Unit}$ 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

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

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

107. A bond shall be lodged prior to the issue of the subdivision certificate to ensure that the landscaping is maintained by the developer for a period



of 6 months from the date of issue of a Subdivision Certificate. The amount of the bond shall be 20% of the estimated cost of the landscaping or \$3000 whichever is the greater.

108. All landscaping requirements shall be completed to the satisfaction of the General Manager or his delegate **PRIOR** to the issue of a Subdivision Certificate.
109. Any damage to property (including pavement damage) is to be rectified to the satisfaction of the General Manager or his delegate **PRIOR** to the issue of a Subdivision Certificate. 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.
110. Prior to the issue of a **Subdivision Certificate**, Works as Executed Plans shall be submitted in accordance with the provisions of DCP16 - Subdivisions Manual and Councils adopted Design and Construction Specification.

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

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

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

111. All retaining walls are to be certified by a suitably qualified geotechnical/structural engineer. The certification is to be submitted with the subdivision certificate application and shall state that the retaining walls have been designed and constructed in accordance with AS4678-2002 Earth Retaining Structures and are structurally sound.

In addition to the above certification, the following is to be included in the Section 88B Instrument to accompany the final plan of subdivision.

- (a) A restriction to user for each lot that has the benefit of a retaining wall that prevents any cut or fill greater than 0.3m in vertical height within a zone adjacent to the wall that is equal to the height of the wall.
- (b) Each lot burdened and or benefited by a Type 1 wall as defined in AS4678-2002 Earth Retaining Structures, shall contain a restriction to user advising the landowner of the need to maintain the wall in accordance with that standard.



Tweed Shire Council is to be nominated as the authority empowered to

release, vary or modify the restrictions.

112. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of this Development Consent have been complied with.
113. The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act including the following:
- (a) Easements for sewer, water supply and drainage over **ALL** services on private property.
 - (b) Direct access to or from Old Lismore Road, for all lots that have a secondary frontage to that road, shall be denied.

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.

114. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council with the application for Subdivision Certificate.
115. Where new state survey marks and/or permanent marks are placed a copy of the locality sketch relating to the marks shall be submitted to Council within three months of registration of the Subdivision Certificate in accordance with the Survey Practices Regulation.
116. Prior to registration of the plan of subdivision, a **Subdivision Certificate** shall be obtained.

The following information must accompany an application:

- (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
- (b) all detail as tabled within DCP16, CL 7.6 and Council's Application for Subdivision Certificate including the attached notes.



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

117. Prior to the application for a **Subdivision Certificate, certification** shall be obtained from Council **OR** an accredited certifier to verify satisfactory completion of the following:-

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

Note:


1. All certification applications must be accompanied by documentary evidence from the developers Subdivision Works Accredited Certifier (SWAC) certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, DCP16 - Subdivision Manual and Councils adopted Design and Construction Specifications.
 2. 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".
118. The six (6) months Defects Liability Period commences upon the registration of the Subdivision Certificate.
119. Prior to the issue of a Subdivision Certificate and also prior to the end of defects liability period, a CCTV inspection of the stormwater pipes and sewerage system including joints and junctions will be required to demonstrate that the standard of the stormwater system is acceptable to Council.

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

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



120. Prior to the release of the subdivision certificate the proponent shall:
- (a) Dedication of the proposed drainage reserve at no cost to Council.
 - (b) Submit an accurate plan of the proposed drainage reserve to Council 60 days prior to lodgement of Application for Subdivision Certificate to allow the land to be classified.
121. Prior to issuing a Subdivision Certificate, reticulated water supply and outfall sewerage reticulation shall be provided to all lots within the subdivision in accordance with DCP16 - Subdivisions Manual, Councils adopted Development Design and Construction Specifications and the Construction Certificate approval.
- Note:** The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act, 2000 to be certified by an Accredited Certifier.
122. The site of the sewage pumping station shall be transferred to Council in fee simple, at no cost to Council within 28 days of the date of registration of the plan of subdivision.
123. The production of written evidence from the local telecommunications supply authority certifying that satisfactory arrangements have been made for the provision of underground telephone supply.
124. Electricity
- (a) The production of written evidence from the local electricity supply authority certifying that reticulation of underground electricity (residential and rural residential) has been completed; and
 - (b) The reticulation to include the provision of fully installed electric street lights to the relevant Australian standard. Such lights to be capable of being energised following a formal request by Council.
125. The cul-de-sac heads of Oakbank Terrace and Riverbend Way are to be partially closed to delete the unnecessary widening at the bulbs, and provide a straight road alignment.


R Hussey
Commissioner of the Court
l/jr

