

## PLANNING COMMITTEE

**P8 [PD-PC] Development Application DA04/1524 for Multi Dwelling Housing Comprising 3 x 3 Bedroom Units With 1.8m High Fence With Fence Height Variation and Demolition at Lot 1 DP 381437, No. 118 Marine Parade, Kingscliff**

### ORIGIN:

**Development Assessment**

**FILE NO: DA04/1524**

### SUMMARY OF REPORT:

An application has been lodged which seeks consent to demolish existing structures and erect a multi dwelling housing development. The proposal is three (3) storeys in height with a fourth storey component. The proposed development consists of three (3) x three (3) bedroom units, a basement car park, car wash bay and a roof top balcony and three pools.

The current design of the development results in the need to realign the sewer main through the property.

As a result of the proposed relocation of the sewerage main, works to the sewer on the subject site, access to and sewer relocation works, including bypass pumping within adjoining lots, Lot 3 DP 381437 (No.39 Pearl Street Kingscliff) and Lot 103 DP 1091112 (No.120 Marine Parade Kingscliff) will be necessary.

Extensive consultation with the applicant and land owner has occurred regarding whether the applicant should obtain the adjoining land owners' consents (Lot 3 DP 381437 and Lot 103 DP 1091112) prior to determining the development application. Council has obtained legal advice in relation to this matter, which recommends that the affected land owner's consents be obtained prior to determining the application with deferred commencement conditions.

Engineering details demonstrating how the integrity of the sewer will be maintained as a result of the realignment have not been submitted. As previously detailed at least two other properties (Lot 3 DP 381437 and Lot 103 DP 1091112) rely on this sewer for adequate outfall service and any change to this sewer as a consequence of the proposed development will impact on these properties.

A State Environmental Planning Policy No. 1 (SEPP No. 1) objection has been submitted regarding the building height development standard. A separate SEPP No. 1 objection has been submitted regarding the overshadowing of the adjacent open space standard. These variations require Council to assume the Director's concurrence in accordance with the North Coast Regional Environmental Plan, 1988.

The application is recommended for approval with Deferred Commencement conditions.

**RECOMMENDATION:**

That : -

1. **The State Environmental Planning Policy No. 1 objections to building heights and overshadowing of the adjacent open space be approved and the concurrence of the Director-General of the Department of Planning be assumed.**
2. **Development Application DA04/1524 for multi dwelling housing comprising of 3 dwellings with 1.8m high fence with fence height variation and demolition at Lot 1 DP 381437, No. 118 Marine Parade, Kingscliff be approved subject to deferred commencement conditions as follows: -**

**"DEFERRED COMMENCEMENT"**

**"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.**

## 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.**

1. The applicant shall submit to Council for approval detailed engineering plans of the following relocation works on the public sewer:
  - a. Relocation of the private sewer connection for Lot 3 DP 381437 (No.39 Pearl Street Kingscliff) from the existing connection point on the sewer main through the subject land, to the existing manhole located in the southern corner of the subject land, to Tweed Shire Council specifications.
  - b. Relocation of the public sewer through the basement level in accordance with the following requirements:
    - (i) Unrestricted access to the sewer main must be available for Council at all times. Access must be available for plant up to 2.4m height;
    - (ii) The sewer must be in an open area, with no enclosed rooms, goods, waste bins, materials, fixed plant or machinery, structures or any thing that may inhibit Council staff or equipment access to the sewer. Resident and visitor carparking is permitted adjacent to the sewer main. Brian Kenny Drawing No.DA:02(F) provides a generally acceptable plan location for the realigned sewer and surrounding structures, except where varied by these conditions;
    - (iii) The sewer must be readily accessible, securely fixed to the basement wall, and protected against the risk of damage from persons and vehicles;
    - (iv) The relocated portion of the main shall be replaced with ductile iron epoxy lined pipe;
    - (v) Each pipe piece penetrating the external basement wall is to extend 600mm from each wall face, be ductile iron epoxy lined, fitted with a centrally mounted puddle flange, and cast into the wall on line level and grade to match the existing sewer;

- (vi) A Council standard sewer manhole shall be installed at all sewer deviations external to the basement. A minimum of two flexible joints is required between an external wall and a manhole. No pipe deviations are permitted within the basement.
  - (vii) At the southern end of the sewer relocation, the new pipe shall be connected to the existing manhole to Council specifications;
  - (viii) At the northern end of the sewer relocation on Lot 103 DP 1091112 (Anglican Church, No.120 Marine Parade Kingscliff), a new manhole shall be constructed to Council specifications. Alternately, a Council standard sewer termination may be constructed with an inspection shaft located downstream. Two flexible joints are required between the manhole/inspection shaft and the external basement wall.
  - (ix) The existing sewer connection for Lot 103 DP 1091112 shall be diverted to the end manhole, or downstream of the termination of the sewer main.
  - (x) No sewer junctions servicing external properties are permitted within the basement.
  - (xi) All private connections to the realigned public sewer must be in accordance with Council's plumbing and BCA requirements, and require inspection by Council's Building Services Unit.
  - (xii) Provide three (3) copies of plan, long section and cross sectional details of the realigned pipe for assessment by Council's Engineering & Operations Division.
  - (xiii) The sewer relocation works must include all necessary measures, such as bypass pumping, to maintain continuous sewerage services for the duration of the works for all properties in the locality serviced by this public sewer.
2. The applicant shall submit to Council written consent of the landowner(s) of Lot 3 DP 381437 (No.39 Pearl Street Kingscliff) and Lot 103 DP 1091112 (No.120 Marine Parade Kingscliff) to access and carry out sewer relocation works, including bypass pumping, on private land.

## **SCHEDULE B**

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

### **GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects and Drawing Nos DA:01, DA:02, DA:03, DA:04, DA:05, DA:06, DA:07, DA:08, DA:09, DA:10, DA:11, DA:12, DA:13 issue D prepared by Brian Kenny and dated 12/9/05 and Sheet Nos. 1 of 2 and 2 of 2, Drawing Number SLI-01-Ver B drawn by NG & dated 14/9/05 and SLI-02-Ver A drawn by NG & dated 15/9/05, except where varied by the conditions of this consent.  
[GEN0005]
2. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within or adjacent to the subject property.  
[GEN0135]
3. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.  
[GEN0045]
4. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.  
[GEN0115]
5. The development shall be completed in accordance with the plans approved by Council and the Statement of Environmental Effects, except where varied by conditions of this consent.  
[GEN0015]
6. Appropriate measures are to be put in place during the construction period to prevent the transport of sediment from the site. Should any material be transported onto the road or any spills occur it is to be cleaned up within one hour of occurrence.  
[GENNS01]
7. The site shall not be dewatered.  
[GENNS02]
8. Acid sulfate soils shall not be exposed or disturbed.  
[GENNS03]
9. All waters that are to be discharged from the site shall have a pH between 6.5 and 8.5 and suspended solids not greater than 50mg/kg. The contractor shall nominate a person responsible for monitoring of the quality of such discharge waters on a daily basis and the results recorded. Such results shall be made available to Council's Environmental Health Officer(s) upon request.  
[GENNS04]

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

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

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

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

Water DSP5:	1.4 ET @ \$4230	\$5,922
Sewer Kingscliff:	2 ET @ \$6152	\$12,304

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

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

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

[PCC0265/PSC0165]

11. Section 94 Contributions

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

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

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

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

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

(a) Tweed Road Contribution Plan: S94 Plan No. 4 (Version 4.0) <b>Sector6_4</b>	\$1,456
(b) West Kingscliff - Drainage: 0.02486 ha @ \$16070 DCP No. 9 S94 Plan No. 7	\$399.50
(c) West Kingscliff - Open Space: DCP No. 9 S94 Plan NO. 7	\$411
(d) Shirewide Library Facilities: S94 Plan No. 11	\$662
(e) Bus Shelters: S94 Plan No. 12	\$22
(f) Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$139
(g) Community Facilities (Tweed Coast - North) S94 Plan No. 15 North Coast	\$984
(h) Emergency Facilities (Surf Lifesaving) S94 Plan No. 16	\$193
(i) Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$1,219.82
(j) Cycleways S94 Plan No. 22	\$338

(k) Regional Open Space (Structured) \$1,461  
S94 Plan No. 26

(l) Regional Open Space (Casual) \$822  
S94 Plan No. 26

12. An application shall be lodged and approved by Tweed Shire Council under Section 68 of the Local Government Act for any water, sewerage or drainage works prior to the issue of a construction certificate. [PCC0215/PSC0175]

13. Where any existing sewer junctions are to be disused on the site, the connection point shall be capped off by Council staff. Applications shall be made to Tweed Shire Council and include the payment of fees in accordance with Councils adopted fees and charges. [PCC1195]

14. A construction certificate application for works that involve any of the following:- [PCC1235]

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

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

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

15. Permanent stormwater quality treatment shall be provided in accordance with the following: [PCC1145]

(a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.

(b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils *Development Design Specification D7 - Stormwater Quality*.

(c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management. Typical water sensitive features include infiltration, maximising permeable/landscaped areas, stormwater retention /detention/reuse, and use of grass swales in preference to hard engineered drainage systems.



- (d) Specific Requirements to be detailed within the Construction certificate application include:
- (i) Shake down area along the haul route immediately before the intersection with the road reserve.
  - (ii) All basement and driveway runoff shall be treated to remove oil and sediment pollutants prior to discharge to an on-site stormwater detention (OSD) system. Permanent treatment devices shall be sized in accordance with Section D7.12 of Development Design Specification D7 - Stormwater Quality, with full engineering details, including maintenance schedules, to be submitted with a s68 Stormwater Application for Council approval.
  - (iii) Roof water does not require treatment prior to discharge to OSD.

[PCC1105]

16. Erosion and Sediment Control shall be provided in accordance with the following:

- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.
- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCC1155]

17. The peak stormwater flow rate that may be discharged from the site to the public realm, in events of intensity up to the ARI 100 year design storm, shall be 200 l/s/ha. OSD devices including discharge control pits (DCP) are to comply with standards in *The Upper Parramatta River Catchment Trust "On-Site Stormwater Detention Handbook, Third Edition, December 1999"* except that permissible site discharge (PSD) and site storage requirements (SSR) in the handbook do not apply to Tweed Shire.

All stormwater must initially be directed to the DCP.

[PCC1165]

18. Engineering details of all proposed sewer relocation works shall be submitted with a Section 68 Local Government Act 1993 application for Council approval prior to the issue of a Construction Certificate. The details of the sewer works accompanying the s68 application must be in accordance with the engineering plans approved by Council in complying with matters set out in Schedule "A".

[PCCNS03]

19. Any works to be carried out within the adjoining road reserve is subject to application and approval being issued by Tweed Shire Council as the road authority.

Application for these works and receipt of approval is to be obtained prior to the issue of a construction certificate for works within the development site.

[PCC0075]

20. **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 Occupation Certificate is issued.

[PCC0275]

21. 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.

[PCC0895]

22. The construction certificate application shall provide details showing how the basement driveway complies with the requirements of AS/NZS 2890.1:2004 and that it is adequately graded to prevent inflows from the Marine Parade kerb and gutter in storm events with intensities up to Q<sub>100</sub> flood event.

[PCCNS04]

23. Appropriate arrangements to the satisfaction of Council's Director of Environment and Community Services shall be provided for the storage and removal of garbage and other waste products. A screened, graded and drained garbage storage area shall be provided within the boundary of the lot

24. All externally mounted artificial lighting is to be shielded to the satisfaction of Council's Director of Environment and Community Services where necessary or required so as to prevent the spill of light creating a nuisance to adjoining residential premises.

[PCCNS01]

25. Prior to issue of the construction certificate, a revised detailed landscaping plan shall be submitted to council to the satisfaction of the Director of Planning and Development and Council's Landscape Architect. The landscaping plan shall provide construction details of the planter boxes, including cross sections illustrating the proposed drainage and watering systems. Agapanthus sp shall not be used in the landscape plan.

**PRIOR TO COMMENCEMENT OF WORK**

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

[PCW0215]

27. Please note that while the proposal, subject to the conditions of approval, may comply with the provisions of the Building Code of Australia for persons with disabilities your attention is drawn to the Disability Discrimination Act which may contain requirements in excess of those under the Building Code of Australia. It is therefore recommended that these provisions be investigated prior to start of works to determine the necessity for them to be incorporated within the design. [PCW0665]
28. The building is to be protected from attack by termites by approved methods in accordance with the provisions of Australian Standard AS 3660.1, and:
- (a) Details of the proposed method to be used are to be submitted to and approved by the Principal Certifying Authority prior to start of works; and
  - (b) Certification of the works performed by the person carrying out the works is to be submitted to the PCA; and
  - (c) A durable notice must be permanently fixed to the building in a prominent location, such as in the electrical meter box indicating:-
    - (i) the method of protection; and
    - (ii) the date of installation of the system; and
    - (iii) where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and
    - (iv) the need to maintain and inspect the system on a regular basis.

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

29. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every twenty (20) persons or part of twenty (20) persons employed at the site. Each toilet provided must be:- [PCW0775]
- (a) a standard flushing toilet connected to a public sewer, or
  - (b) if that is not practicable, an accredited sewage management facility approved by the council
30. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least **2 days** prior to work commencing. [PCW0245]
31. Sewer main, stormwater line or other underground infrastructure within or adjacent to the site is to be accurately located and the Principal Certifying Authority advised of its location and depth prior to start of any building works. [PCW0225]

[PCW0965]

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

[PCW1065]

33. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area where required to the satisfaction of the Principal Certifying Authority.

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

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

[PCW0985]

34. Residential building work:

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

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

- \* in the name and licence number of the principal contractor, and
- \* the name of the insurer by which the work is insured under Part 6 of that Act,

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

- \* the name of the owner-builder, and
- \* if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.

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

[PCW0235]

35. It is a condition of this approval that, if an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made must comply with the following:
- (a) The person must, at the person's own expense:
    - (i) preserve and protect the building from damage; and
    - (ii) if necessary, underpin and support the building in an approved manner.
  - (b) The person must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars to the owner of the proposed work. [PCW0765]
36. Prior to commencement of work all actions or prerequisite works required at that stage, as required by other conditions or approved management plans or the like, shall be installed/operated in accordance with those conditions or plans. [PCW0015]
37. The proponent shall locate and identify all existing underground services prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure including areas external to the development site where works are proposed. [PCW0005]
38. Written approval for any application under Section 138 of the Roads Act 1993 is required prior to commencing works within the road reserve. [PCW0705]
39. Prior to the commencement of building work, a certificate signed by a registered professional engineer is to be submitted to the Principal Certifying Authority to certify that adequate consolidation of foundation material has been achieved to support the proposed structure. [PCW0755]

#### **DURING CONSTRUCTION**

40. The wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of the buildings with direct line of sight to the proposed building. [DUR0245]
41. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited. [DUR0815]
42. Provision to be made for the designation of 1 durable and pervious car wash-down area/s. The area/s must be identified for that specific purpose and be supplied with an adequate water supply for use within the area/s. Any surface run-off from the area must not discharge directly to the stormwater system. [DUR0975]

43. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. All such materials should be chipped on site and used in landscaping unless it is not possible due to size, non suitability of the material or some other limitation, in which case the material will be disposed of at Council's Stotts Creek depot. [DUR1015]
44. Any sarking material shall have a flammability index of not greater than 5. [DUR0515]
45. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover Authority. [DUR0645]
46. Please note that while the proposal, subject to the conditions of approval, may comply with the provisions of the Building Code of Australia for persons with disabilities your attention is drawn to the Disability Discrimination Act which may contain requirements in excess of those under the Building Code of Australia. It is therefore recommended that these provisions be investigated prior to start of works to determine the necessity for them to be incorporated within the design. [DUR1715]
47. The provision of 5 off street car parking spaces including parking for the disabled where applicable. The layout and construction standards to be in accordance with Development Control Plan No. 2 - Parking Controls, the Building Code of Australia and AS 2890. [DUR0085]
48. All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction. [DUR1955]
49. Provision shall be made for the collection of builder's solid waste in accordance with the following requirements:
- (a) A temporary builder's waste chute is to be erected to vertically convey builder's debris to a bulk container.
  - (b) The chute shall be located in a position approved by the Principal Certifying Authority.
  - (c) A canopy shall be provided to the chute outlet and container to reduce the spillage of materials and nuisance caused by dust. [DUR0385]
50. All demolition works are to observe the guidelines set down under the Environment Protection Authority publication "A Renovators Guide to the Dangers of Lead" and the WorkCover guidelines on working with and handling of asbestos. [DUR0655]
51. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council. [DUR0395]

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

[DUR0405]

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

[DUR0415]

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

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

a hoarding or fence must be erected between the work site and the public place in accordance with the WorkCover Authority of NSW Code of Practice and relevant Australian Standards.

Where necessary the provision for lighting in accordance with AS 1158 - Road lighting and provision for vehicular and pedestrian traffic in accordance with AS 1742 shall be provided.

Any such hoarding, fence or awning is to be removed prior to the issue of an occupation certificate/subdivision certificate.

Application shall be made to Tweed Shire Council including associated fees for approval prior to any structure being erected within Councils road reserve.

[DUR0435]

55. The provision of adequate vehicular access in accordance with Council's "Vehicular Access to Property Construction Specification" pamphlet, including the provision of an invert crossing at the kerb and gutter where required and paving of the driveway across the footpath to the front alignment to the satisfaction of the General Manager or his delegate.

Such to specifically include the following:

- (a) 150 millimetres thick reinforced with F72 Mesh for residential development or F82 mesh for Commercial/Industrial Development

Twenty four (24) hours notice is to be given to Council's Engineering & Operations Division before placement of concrete to enable formwork to be inspected. Failure to do so may result in rejection of the works and its reconstruction.

Paving bricks are not acceptable unless laid on a 100mm thick concrete base.

[DUR0065]



56. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made). [DUR0375]
57. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction. [DUR2185]
58. A garbage storage area shall be provided in accordance with Council's "**Code for Storage and Disposal of Garbage and Other Solid Waste**". [DUR2195]
59. The wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of the buildings with direct line of sight to the proposed building. [DUR0245]
60. All new residential dwellings (and extensions comprising over 50% of the original floor area) are to fully comply with Council's Energy Smart Housing Policy (DCP39). In order to comply with DCP39 consideration must be given to the building envelope, orientation, insulation, ventilation, thermal mass and zoning. [DUR0915]
61. Plumbing
- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage. [DUR2495]
62. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position. [DUR2505]
63. **A Sewer manhole** is present on this site. This manhole is not to be covered with soil or other material.
- Should additional fill be proposed in the area of the sewer manhole application shall be made to Council's Engineering & Operations Division for the raising of the manhole. [DUR2655]
64. All work associated with this approval is to be carried out so as not to impact on the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -
- Noise, water or air pollution
  - Minimise impact from dust during filling operations and also from construction vehicles
  - No material is removed from the site by wind
- [DUR1005]
65. Construction site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council: -

Monday to Saturday from 7.00am to 7.00pm

No work to be carried out on Sundays or Public Holidays

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

- [DUR0205]
66. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.
- [DUR2545]
67. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-
- \* 45<sup>0</sup>C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
  - \* 50<sup>0</sup>C in all other classes of buildings.

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

- [DUR2555]
68. Where two (2) or more premises are connected by means of a single water service pipe, individual water meters shall be installed to each premise beyond the single Council water meter (*unless all the premises are occupied by a single household or firm*).
- [DUR2615]
69. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993.
- [DUR2515]
70. All water plumbing pipes concealed in concrete or masonry walls shall be fully lagged.
- [DUR2525]
71. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard.
- [DUR2535]
72. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils adopted Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.
- [DUR1875]
73. Swimming Pools (Building)
- (a) The swimming pool is to be installed and access thereto restricted in accordance with Council's "Code for the Installation of New Swimming Pools" and Australian Standard AS 1926-1986 (Copy of code enclosed).

- (b) Swimming pools shall have suitable means for the drainage and disposal of overflow water.
- (c) The pool filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties. [DUR2075]
74. Backwash from swimming pool is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9. [DUR2085]
75. Rainwater must be disposed of to absorption/distribution trenches, positioned and constructed no closer than 3m to any building and below any effluent disposal area; to provide satisfactory stormwater disposal in accordance with Australian Standard AS/NZS3500.3.2. [DUR2275]
76. (a) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with WorkCover 2000 Regulations.
- (b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property. [DUR0425]
77. Where access for people with disabilities is required to be provided to a building, sanitary facilities for the use of the disabled must also be provided in accordance with the provisions Part F-2 of the Building Code of Australia. [DUR1705]
78. The front boundary fence is not to exceed 1.8m in height, and on the northern boundary is not to exceed 900mm in height for the first 2m back from the front boundary. [DURNS01]
79. 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 an Occupation Certificate. [DUR0995]
80. All landscaping is to comply with the 88B Instrument pertaining to the site. [DUR1055]
81. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:
- (a) internal drainage, prior to slab preparation;
- (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
- (c) external drainage prior to backfilling.
- (d) completion of work and prior to occupation of the building. [DUR2485]

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

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

[DUR1295]

- (a) All required erosion and sedimentation control devices have been installed and are operational.
- (b) Required toilet facilities have been provided on the site.
- (c) A sign has been erected on the site identifying:
- (d) Lot number
- (e) Builder
- (f) Phone number of builder or person responsible for site.

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

That the licensee has complied with the provisions of Section 98B of the Environmental Planning and Assessment Amendment Regulations 2000.

[DURNS02]

84. 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.

[DUR2445]

85. 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.

[DUR0015]

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

[DUR0005]

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

A. Short Term Period - 4 weeks.

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

B. Long term period - the duration.

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

[DUR0215]

88. Minimum notice of 48 hours shall be given to Tweed Shire Council for the capping of any disused sewer junctions. Tweed Shire Council staff in accordance with the application lodged and upon excavation of the service by the developer shall undertake Works.

[DUR0675]

89. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments".

[DUR0785]

90. All fill and cut batters shall be obtained wholly within the subject land.

[DUR0825]

91. The applicant shall undertake a final geotechnical investigation on the subject site when the existing dwelling is removed to establish footing design parameters for the proposed structure.

[DURNS03]

92. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council.

[DUR0985]

93. The proponent must not undertake any work within the public road reserve without giving Council's Engineering & Operations Division forty eight (48) hours notice of proposed commencement. Failure to comply with this condition may result in a stop work notice being issued and/or rejection of the works undertaken.

[DUR1845]

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

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

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

[DUR2375]

95. Vehicles leaving the premises shall be sufficiently free from dirt, aggregate or other materials such that materials are not transported onto public roads.

[DUR2415]

96. 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. [DUR2575]
97. The proponent shall comply with all requirements tabled within any approval issued under Section 68 of the Local Government Act. [DUR2625]

**PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

98. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units). [POC0205]
99. The building is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the building to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards. [POC0225]
100. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate, a final inspection report is to be obtained from Council in relation to the plumbing and drainage works. [POC1045]
101. Portable fire extinguishers containing an extinguishing agent suitable for the risk being protected must be installed in accordance with Australian Standard AS 2444 "Portable Fire Extinguishers - Selection and Location" and Part E1.6 of the Building Code of Australia. [POC0515]
102. In the event that Council is not utilised as the inspection/certifying authority, prior to occupation of the building a Compliance Certificate in the prescribed form is to be submitted to Council from the nominated principal certifying authority, together with the prescribed fee, to certify that all work has been completed in accordance with the approved plans and specifications and conditions of Consent. [POCNS01]
103. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all s68h2 permanent stormwater quality control devices. [POC0985]
104. Works as executed plans of the relocated public sewer shall be provided to the PCA prior to the issue of an Occupation Certificate, for lodgement with Council. These plans shall be prepared in accordance with the requirements of Section D13.15 "Summary WAX Plans" of Council's Development Design Specification D13 - Engineering Plans (Subdivisions). [POCNS03]

105. An easement to drain sewage benefiting Tweed Shire Council shall be created over the relocated sewer main and associated supports within the basement level, in accordance with the following terms. All costs associated with the creation and registration of this easement shall be borne by the developer.

106. **Easement for Drainage of Sewage Within a Building**

1. The body having the benefit of this easement may:
  - (a) drain sewage, sullage and other fluid wastes in pipes or any other sewage infrastructure located in wall or floor cavities or within a building constructed on each lot burdened, but only within the site of this easement, and
  - (b) do anything reasonably necessary for that purpose, including:
    - entering the lot burdened, and
    - taking anything on to the lot burdened, and
    - using any existing pipes or other existing infrastructure, and
    - carrying out works, such as constructing, placing, repairing or maintaining pipes and infrastructure.
2. In exercising those powers, the body having the benefit of this easement must:
  - (a) ensure all work is done properly, and
  - (b) cause as little inconvenience as is practicable to the registered proprietor and any occupier of the lot burdened, and
  - (c) cause as little damage as is practicable to the lot burdened and any improvement on it, and
  - (d) restore the lot burdened as nearly as is practicable to its former condition, and
  - (e) make good any collateral damage but only if such damage is not related to the removal of any obstruction that impedes access to the site of the easement or the pipes and infrastructure located within the easement and where such obstruction is damaged in the course of its removal the owner or occupier of the lot burdened shall indemnify the body having the benefit of this easement against all liability relating to such damage.
3. The registered proprietor of the lot burdened indemnifies the body having the benefit of the easement against the following:

- (a) any negligent installation or construction of pipes or infrastructure within the easement;
  - (b) any damage caused to the pipes or infrastructure through negligent acts, omissions, or accidental acts by any person not authorised by the body having the benefit of the easement or natural disasters (earthquakes, hurricanes, floods) wars, riots or other major upheaval beyond the reasonable control of the body having the benefit of the easement;
  - (c) any damage or injury to adjoining land, property or person arising from the failure of any of the pipes or infrastructure due to the negligent use or misuse of the pipes or infrastructure by the registered proprietor or occupier of the lot burdened or any person who is a servant, workman, tenant, invitee, employee or agent of the registered proprietor or occupier of the lot burdened.
4. Should any part of the pipes or infrastructure within the site of the easement be damaged by the registered proprietor or occupier of the lot burdened or by any person who is a servant, workman, tenant, invitee, employee, or agent of the registered proprietor or occupier of the lot burdened, the body having the benefit of this easement will repair the damage at the cost of the registered proprietor of the lot burdened.
5. In exercising these powers the body having the benefit of this easement is to have full and unimpeded right of vehicular or personal access to the site of the easement at any time;
- (a) for the purposes of this easement, a reference to a body that is entitled to the benefit of this easement includes a reference to any person authorised by such a body,
  - (b) the body entitled to the benefit of this easement has an unrestricted right of vehicular or personal access at all times to pass and repass, with or without vehicles, machinery, implements and other equipment of every kind, over the roadways, ramps and land over which this right of access is created.
6. There will be no development within the site of the easement except with the written consent of the body having the benefit of the easement.
- (a) "development" for the purposes of this easement includes the installation of any pipes or infrastructure for services or utilities or any structural improvements;
  - (b) "structural improvements" for the purposes of this easement includes any form of construction that surrounds, envelopes or integrates the pipes and infrastructure within such construction on a temporary or permanent basis.

[POCNS04]

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REPLACEMENT REPORT



107. Prior to issue of an occupation 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.

[POC0005]

108. Redundant road pavement, kerb and gutter or foot paving including and existing disused vehicular laybacks/driveways or other special provisions shall be reinstated in accordance with Councils adopted Development Design and Construction Specifications.

[POC0755]

#### **USE**

109. All air conditioning units, swimming pool pumps and other plant equipment shall be acoustically treated where required to the satisfaction of Council's Director of Environment and Community Services so as to avoid the creation of intrusive or unreasonable noise to any occupant of a neighbouring or adjacent residential premises.

**REPORT:**

**Applicant:** Planit Consulting  
**Owner:** Mr LM Lazarides  
**Location:** Lot 1 DP 381437, No. 118 Marine Parade, Kingscliff  
**Zoning:** 2(b) Medium Density Residential  
**Cost:** \$1,800,000

**BACKGROUND:**

An application has been lodged which seeks consent to demolish existing structures on-site and erect a multi dwelling housing development. The proposal is three (3) to four (4) storeys in height, contains three (3) x three (3) bedroom units, a basement car park, car wash bay and a roof top balcony and three pools. The application was lodged on 23 November 2004.

The site has an area of 550.10m<sup>2</sup>, and has a 20.24m frontage to Marine Parade. The site ranges from a depth of 26.226m to 28.228m and is generally flat. The subject site contains an existing dwelling house and some vegetation. The submitted Statement of Environmental Effects states the vegetation is not considered to be of any significance.

Immediately adjoining site to the north-west is the Anglican Church (Lot 103 DP 1091112); to the south-east; a residential flat building; to the south-west is a dwelling house (Lot 3 DP 381437); and to the north-east a caravan park/open space area.

The current design of the development results in the need to realign a public sewer within the proposed basement. As a result of works to the sewer on the subject site, access to and sewer relocation works, including bypass pumping within adjoining lots, Lot 3 DP 381437 (No.39 Pearl Street Kingscliff) and Lot 103 DP 1091112 (No.120 Marine Parade Kingscliff) will also be necessary.

Extensive consultation has occurred with the applicant and land owner particularly in relation to whether the applicant should obtain the affected land owner's consent (Lot 3 DP 381437 and Lot 103 DP 1091112) prior to determining the development application. Legal advice has been obtained in relation to this matter and is as follows: -

*"It would be appropriate for the Council to require owner's consent or even approval of a Development Application on the other parcels of land as a prerequisite to this development proceeding, because of the fundamental nature of the sewerage connection and its relevance to the Development Application itself. That is, for the development to be carried out it clearly requires works on other land in different ownership.*

*We do not think that such conditions recognising this would be unreasonable and a deferred commencement condition on that basis, in our view, is a reasonable alternative for the Council to adopt in dealing with this matter".*

Based on the legal advice this report has been prepared on the basis of a deferred commencement consent requiring the owners consent of Lot 3 DP 381437 and Lot 103 DP 1091112, prior to the development consent becoming active.

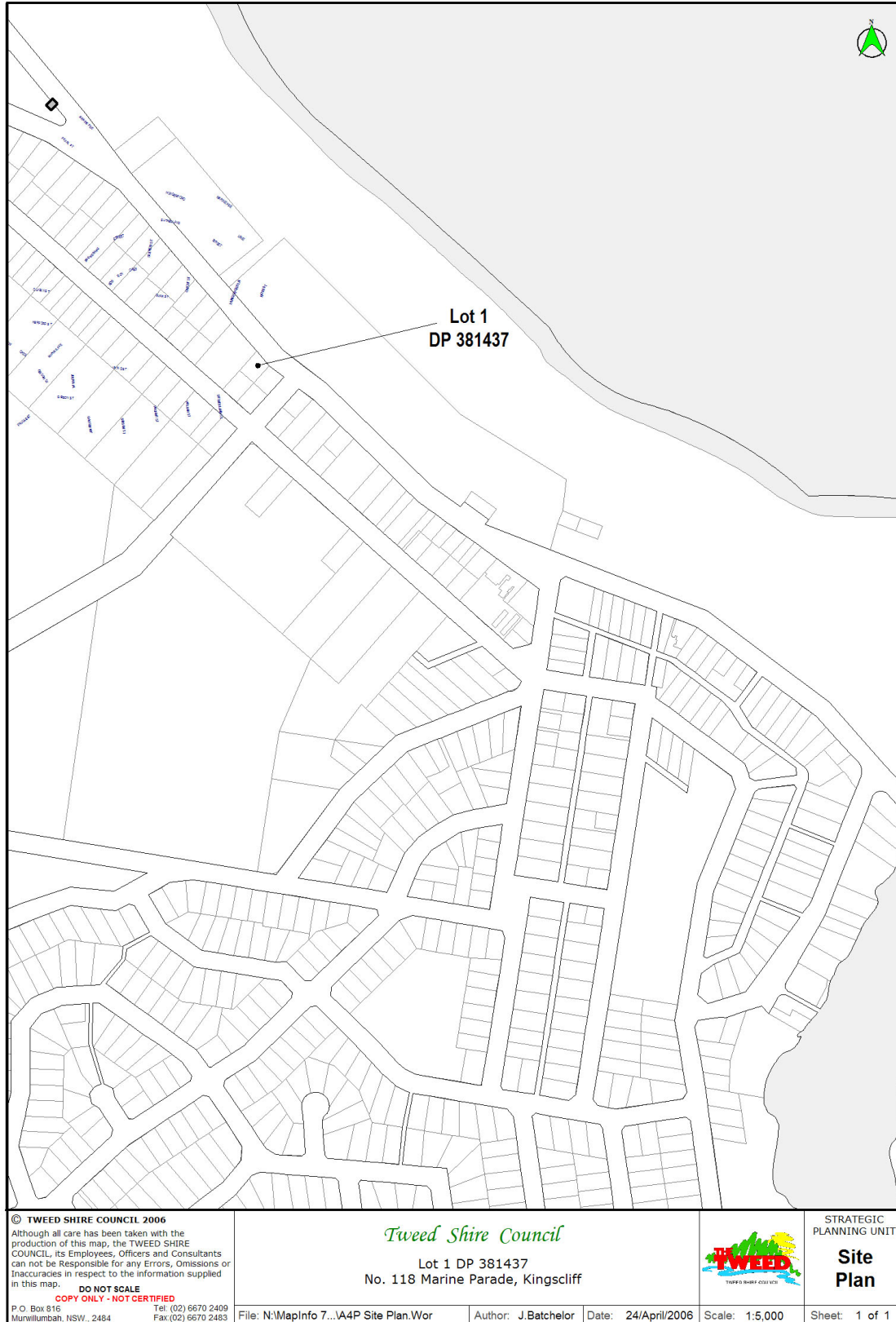
A State Environmental Planning Policy No. 1 objection has been submitted regarding the building height development standard.

A separate SEPP No. 1 objection has been submitted regarding the overshadowing of the adjacent open space standard. These variations require Council to assume the Director's concurrence in accordance with the North Coast Regional Environmental Plan, 1988.

The applicant has requested that the application be assessed with regard to the acceptable solutions and performance criteria in accordance with Clause 2.0 *How This Plan Works* of Development Control Plan No. 6 – Multi Dwelling Housing: which states: *'acceptable solutions are provided as examples of what is considered acceptable to enable the performance criteria to be achieved, but should not be interpreted as an alternative prescriptive form of regulation. They are examples only of what is considered acceptable but they do not preclude other solutions which achieve the desired performance'*.

**TWEED SHIRE COUNCIL MEETING HELD TUESDAY 2 MAY 2006  
REPLACEMENT REPORT**

**SITE DIAGRAM:**



**REPLACEMENT REPORT**

DEVELOPMENT PLANS



**118 marine parade Kingscliff nsw**

DA-P-montage-02 12 september 2005  
ABK Australia Pty Ltd kenny@better.net.au office: 02 66 743 888 mobile: 0414 667 236





TWEED SHIRE COUNCIL MEETING HELD TUESDAY 2 MAY 2006  
**REPLACEMENT REPORT**

**BRIAN KENNY**  
 B.Sc.(Arch) B.Architecture

byron to brisbane  
 concept to construction  
 project

**PROPOSED  
 THREE  
 APARTMENTS**

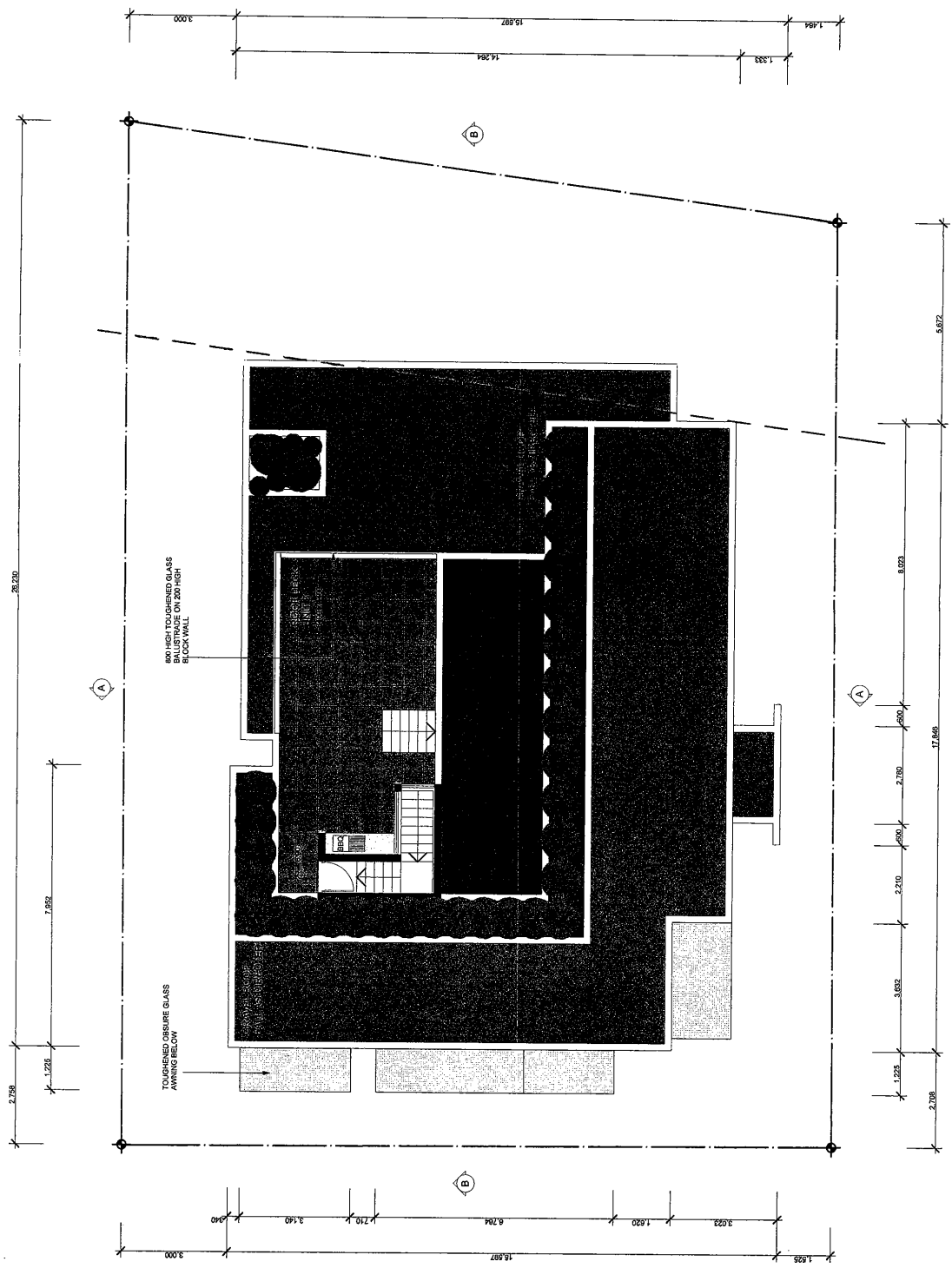
location  
**LOT 1 DP 381437**  
**No. 118**  
**MARINE PARADE**  
**KINGSCLIFF**  
**NEW SOUTH WALES**

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notes  
 Verify all dimensions & levels  
 before commencing work.  
 All structural details to  
 engineers specifications.  
 All work to be in accordance  
 to comply with relevant  
 codes & by-laws

scale  
**1:100**  
 drawing no.  
**DA-06**

Issue	Date
A	08.11.04
B	25.03.05
C	15.04.05
D	12.05.05



**ROOF DECK PLAN**

trading as abk australia p/l acn 111 306 999  
 kingscliff office tel/fax 0266 743 888 bangalow office tel/fax 0266 870 708 po box 1168 kingscliff 2487 nsw  
 kenny@better.net.au

**REPLACEMENT REPORT**























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

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

Tweed Local Environmental Plan 2000

The subject site is zoned 2(b) Medium Density Residential in accordance with the provisions of TLEP 2000. The objectives of the zone are:-

**Primary objective:**

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

**Secondary objectives:**

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

The proposed development is considered to medium density housing as permitted within the zone.

Clause 15 of the TLEP requires Council to be satisfied that the subject land has the benefit of essential services prior to issuing consent. Connection to water, electricity, sewerage and waste collection services are available for the site. Insert Engineering comments here

As previously discussed the proposed basement construction requires relocation of a public sewer, and as a result of works to the sewer on the subject site, access to and sewer relocation works, including bypass pumping within adjoining lots, Lot 3 DP 381437 (No.39 Pearl Street Kingscliff) and Lot 103 DP 1091112 (No.120 Marine Parade Kingscliff) will be necessary.

Extensive consultation with the applicant and landowner have been undertaken to resolve this issue. Legal advice has been sought from Council's solicitors regarding whether the applicant should obtain the land owner's consent of Lot 3 DP 381437 and Lot 103 DP 1091112 prior to determining the development application or whether a condition of consent could satisfy this requirement. The legal advice is referred to in the background section of this report.

Clause 16 of the TLEP requires development to be carried out in accordance with the height limitation plan. The site has an allowable height limit of 3 storeys. The proposed development is 3 to 4 storeys in height. A SEPP No. 1 objection has been lodged against this development standard, which is discussed later in this report.

North Coast Regional Environmental Plan 1988

Clause 32B applies to the proposed development as the proposal will result in the adjacent open space being overshadowed at and before 6.30pm midsummer (daylight saving time). The total area of overshadowing on the adjacent open space as stated in the Statement of Environmental Effects is estimated to be 296m<sup>2</sup>.

State Environmental Planning Policy No. 1 – Development standards (SEPP No. 1) enables Council to assume the Director's concurrence to a variation to the development standard where it is considered that strict adherence is both unnecessary and or unreasonable in the circumstances of the case.

The applicant has lodged a SEPP No.1 objection to this standard, which reads as follows:

- *The extent of the overshadowing at the prescribed time (approx 296m<sup>2</sup>) is considered to be minor in scale, relative to the overall size of the Coastal Reserve;*
- *That area subject to overshadowing is already heavily overshadowed during the summer months by existing vegetation including mature Norfolk Island pines, caravans and other buildings within the park.*
- *The area in question contains the Kingscliff Beach Caravan Park, and as such is not utilised for passive recreation purposes.*
- *The proposed overshadowing in no way precludes the future use or reclassification of the adjacent reserve;*
- *No overshadowing will occur before 3pm in midwinter (please see attached overshadowing plan);*
- *The proposal does not overshadow the beach.*
- *The building has been designed and sited at the rear of the allotment to reduce the level of overshadowing upon the foreshore reserve; and*
- *Given the time frames of the overshadowing expected, no impacts will occur in relation to existing or future landscaping or specific stands of vegetation in the adjacent open space area.*

The deck area, which creates the partial fourth storey, is approximately 8m<sup>2</sup> and is setback 5.4m from the street elevation (NE) and 5.2m from the SE elevation. It is considered that the impact on overshadowing on the adjacent open space as a result of the fourth storey is not significant. It is considered that strict adherence to this standard is unreasonable in this instance and Council can assume its concurrence.

Clause 43 of the NCREP provides guidelines for Council when considering residential development. These controls include density, the environmental constraints on the land and road widths. The density of the proposed development has been maximised without adversely affecting the environmental features of the land. The proposal is also consistent with the allowable building height for the site. Clause 32B is considered to be satisfied.

### State Environmental Planning Policies

#### State Environmental Planning Policy No. 1

As previously discussed, a SEPP No. 1 variation to the 3 storey height limit has been lodged. In accordance with the definition of a storey, the proposed development is considered to consist of a fourth storey component due to the covered deck on the roof level, which is approximately 8m<sup>2</sup>.

SEPP No. 1 enables Council to assume the Director's concurrence to a variation to the development standard where it is considered that strict adherence is both unnecessary and or unreasonable in the circumstances of the case. The applicant's submission to the height limit is as follows:

- *The fourth storey has been sited within the north-western quadrant of the building, therefore limiting what impacts it may generate in terms of overshadowing. In this regard it is submitted the fourth storey does not impact upon adjoining properties at noon and 3pm mid winter with any shadow cast falling upon the building itself (See shadow plans).*
- *The proposed non compliance relates primarily to the staircase providing access to the roof top deck which is sited approximately 5.7 metres from the boundary with the Anglican Church and 7 metres from the nearest residential boundary at the rear, thereby limiting opportunities to overlook the adjoining properties and impacting upon their privacy and amenity.*
- *The roof top deck and pool are orientated to take in distant views of South Pacific Ocean to the north and east and given its sitting within the roof (i.e. setback from street frontage), will be hardly visible from the Marine Parade frontage.*

- *Inclusive of the proposed small fourth storey, the subject development will result in an ultimate building height of only 12.8m (from NGL to ridge capping), while the bulk of the building which complies with the three store height limit has an ultimate building height of 10.4m (from NGL to ridge capping). Consequently the height of the bulk of the building is actually less than that provided by a number of genuine three (3) storey developments approved by Council within the Kingscliff locality.*
- *The proposed fourth storey has an area of only 7.8m<sup>2</sup> and is therefore numerically minor. Accordingly, the proposed 4<sup>th</sup> storey will result in negligible adverse impacts upon the locality.*
- *Similar variations have been supported by Council in recent times with the approval and construction of developments at those places being identified throughout Marine Parade, each of which contain small fourth storey components.*
- *No weakening of the integrity of the building height standard will occur as a result of granting variation in this regard, with the fourth storey a result of providing access to the roof top deck while maintaining the waterproofing qualities of the floor below.*
- *The design of the fourth storey adds to the aesthetics of the building, adding a pronounced inward stepping and vertical gradation to the development as, opposed to one large flat roof.*
- *The proposed variation does not raise any matters of significance relative to state or regional environmental planning.*

The deck is situated so as to minimise overlooking into adjoining developments. The deck area is setback 5.4m from the street (Marine Parade) and 5.2m from the south-east boundary. The scale of the proposal is considered to be consistent with the desired future character of the area in relation to building height and scale. It is considered that strict adherence to this standard is unreasonable in this instance and Council can assume its concurrence.

#### SEPP 71 –Coastal Protection

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

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

On 22 March 2006 Council resolved that:

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

The draft local environmental plan has not been exhibited to date.

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

DCP No. 2 –Site Access and Parking Code

The proposal is consistent with DCP No. 2 as detailed below:

<b>Required</b>	<b>Proposed</b>	<b>Complies</b>
Resident: 1.5 per dwelling = 4.5 car spaces	6 spaces	Satisfactory

DCP No. 6 – Multi Dwelling Housing

As previously stated, the acceptable solutions and performance criteria have been used to assess the development application in accordance with DCP No. 6.

**TWEED SHIRE COUNCIL MEETING HELD TUESDAY 2 MAY 2006  
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<b>Standard</b>	<b>Acceptable Solutions</b>	<b>Proposed</b>	<b>Consistent</b>
FSR	0.5:1	1:1	Refer to assessment below.
<b>Setbacks</b>			
Street	6m	7m	Acceptable
Side	3m	<p><b>Ground Floor</b></p> <p>SE = 1.5m to 7m NW = 1.8m to 5.4m</p> <p><b>First Floor</b></p> <p>SE = 1.5m to 5.7m NW = 2.5m to 6.9m</p> <p><b>Second Floor</b></p> <p>SE = 1.5m to 4.5m. NW = 3m to 4.1m</p> <p><b>Roof Top Deck and Pool</b></p> <p>SE = 8m NW = 4m</p>	Refer to assessment below
Rear	3m	3m. The balconies situated along the south-western elevation encroach into the rear setback by 50% which is acceptable in accordance with DCP No. 6.	Acceptable
Minimum Landscaped Area	30% site area = 165m <sup>2</sup> or 3 large dwelling x 80m <sup>2</sup> = 240m <sup>2</sup> Therefore 240m <sup>2</sup> required	Approximately 210m <sup>2</sup>	Refer to assessment below
Front Fences & Walls	1.2m maximum if solid	1.35m to 2m (solid).	Refer to assessment below
Building Envelope	45° from 3.5m high at the side and rear boundary (excluding eaves and the like)	Some encroachments	Refer to assessment below

**REPLACEMENT REPORT**

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Views, Visual and Acoustic Privacy	<p>Direct views between living area windows of adjoining dwellings should be screened/obscured where:</p> <ul style="list-style-type: none"> <li>ground floor and first floor windows are within a 9m radius from any part of the window of the adjoining dwelling and</li> <li>other windows within a 12m radius.</li> </ul> <p>Direct views from living rooms of dwellings into the principle open space area of another dwelling should be screened/obscured within a 12m radius.</p>	<p>The windows which are evident along the south-east, north-west and south-west elevations have been designed to minimise overlooking into the adjoining development. These windows have been stepped inwards and positioned so as prevent direct views into the adjoining development.</p> <p>Privacy screening has also been implemented on the balconies and windows on the south-west elevation to prevent views from living rooms into the open space areas of adjoining developments.</p>	Acceptable
Minimum Private Open Space	<p>20% of site area (110.02m<sup>2</sup>) with minimum dimension of 3m</p> <p>One part minimum 25m<sup>2</sup> with minimum dimension of 4m directly accessible from a living area</p>	<p>Total area: 255.24m<sup>2</sup></p> <p>Unit 1: 108.05m<sup>2</sup></p> <p>Unit 2: 86.31m<sup>2</sup></p> <p>Unit 3: 60.88m<sup>2</sup>.</p> <p>All units have private open space areas with a minimum dimension of 3m and one part with a minimum area of 25m<sup>2</sup> directly accessible from a living area.</p>	Acceptable

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Daylight & Sunlight	Sunlight to the principle area of ground level private open space of adjacent properties is not to be reduced to less than 2 hours between 9am and 3pm on June 21. Where existing overshadowing by buildings is greater than this, sunlight is not further reduced by more than 20%.	<p>The submitted shadow diagrams demonstrate that the property adjoining the subject site's south-east (Lot 2 DP 381437) will be partly overshadowed at 12 noon and in shadow at 3pm June 21.</p> <p>The submitted shadow diagrams demonstrate that the property to the subject site's south-west (Lot 3 DP 381437) will be in shadow at 9am and partly in shadow at 12 noon in June 21<sup>st</sup>.</p> <p>The submitted shadow diagrams demonstrate that the property to the subject site's north-west (Lot 103 DP 1091112) will not be affected by shadow as a result of the proposal at June 21.</p> <p>The affected properties have at least 2 hours of sunlight to the ground level principle open space between 9am and 3pm on June 21.</p>	Acceptable
Garage percentage of the street	The maximum width of garage fronting the street shall be 6m or 50% of the street frontage whichever is less	Less than 6m	Acceptable
Car wash bay	1 car wash bay for every 10 dwelling units with a minimum of 1 wash area being provided for each multi dwelling housing development of 5 or more units.	1 car wash bay/visitor space provided	Acceptable

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### Floor Space Ratio

The proposed development is likely to have a floor space ratio of 1:1, which is a departure from *DCP No. 6 – Multi-Dwelling Housing*, which requires a 0.5:1 ratio. It is generally accepted that the floor space ratio provision was not intended to apply to medium density development in the 2(b) zone due to its limiting nature. It is noted that many similar developments within the Tweed Shire operate at a similar density ratio. As such the variation being sought is not considered to be a matter requiring serious attention.

The applicant provided the following justification:

*"Having regard to the performance criteria contained within DCP No. 6, the following matters are relevant to our clients request for variance:-*

- 1. Council appears to be applying the 0.5:1 requirement inconsistently to all forms of Multi Dwelling Housing, inclusive of RFB's and Dual Occupancies. Having regard to Council's recent interpretation of the DCP, it appears as though the 0.5:1 FSR requirement is only strictly applicable to Dual Occupancies, with Residential Flat Buildings and the like subject to a loose restriction in the order of 1.1:1 to 1.2:1.*

*As such it is considered that the FSR of 1:1 is considered satisfactory and in accordance with the medium density objectives of the zone".*

It is considered that this is acceptable.

### Side setbacks

The south-eastern setback does not meet the 3m setback provision (acceptable solutions) primarily due to the stairwell. The roof also encroaches into the required side setback. The ground floor will be screened from the adjoining lot to the south due to the erection of a solid wall. The bedroom on the ground floor does not contain windows along this elevation, the only rooms, which contain windows along this elevation, which encroach into the required setback, are bathrooms. The balconies situated along the south-eastern elevation have a 1m high balustrade and privacy screening which will reduce the opportunity of overlooking into the neighbouring property. Balconies can encroach up to 50% into the side and rear setbacks.

The north-western setback increases as the building height increases. There are no windows along the north-western elevation of the building, which encroach into the 3m setback. The areas of encroachment include a living room and bedroom.

The building encroaches into the 3m rear setback from the second floor and up to the roof level, by 300mm. The ground floor and first floors are setback 3m from the rear boundary. The balconies encroach into the setback by a maximum of 1.5m which is permitted in accordance with the acceptable solutions of the DCP No. 6.

The applicant has addressed the performance criteria as follows: -

***Amenity and Character***

*P1. Buildings are sited and are of such length and height that there is no significant loss of amenity to adjacent dwellings and land. This can be achieved through:*

- *Setbacks that are progressively increased as wall heights increase to reduce bulk and overshadowing while maintaining adequate daylight and sunlight;*

*Complies. The building steps back progressively at each of the three floor levels resulting in a different floor plate configuration for each level.*

- *Building siting and height that are related to land form, with minimal cut and fill;*

*Complies. As with most residential flat buildings, the proposal incorporates a basement car park and excavation is limited to this element, with no benching and or filling required or proposed.*

- *Building forms that enable a sharing of views with neighbours;*

*Complies. No views are lost. The existing built form to the west does not capture views to the east (Pacific Ocean). Side setbacks are more than adequate to retain existing views.*

- *Building bulk that is generally distributed to reduce impact on neighbours and on the public street;*

*Complies. As depicted in the plans, the proposal incorporates significant vertical and horizontal articulation, resulting in minimal façade lengths, varied setbacks and inward stepping elevations. Compliance with this requirement is a fundamental component of the design. Council will no doubt acknowledge that the distribution of the building form throughout the development is far more varied than a typical residential flat building.*

- *Building heights similar to those in the public streetscape, with higher buildings sited behind and out of direct view from the street*

*Complies. As shown on the enclosed montages the proposal comprises a three (3) storey height in the main, with a small 4<sup>th</sup> storey component centralized on the roof to create an open terrace/access area. This height is consistent with that exhibited within other recently constructed residential flat buildings in and around the subject site and in the Kingscliff locality.*

- *Boundary walls limited in length and height to minimise the impact on neighbours*

*Complies. The proposal incorporates shortened façade lengths, generous setbacks o Marine Parade and significant inward stepping on each of the side elevations. These combine to limit impacts upon adjacent properties as confirmed by the absence of objections.*

- *Building to the boundary, which maximises privacy for neighbouring dwellings and their private open space*

*Complies. No building is proposed to the boundary with the result that privacy for neighbouring dwellings and their private open space is maintained.*

- *Adequate separation between facing dwellings for privacy*

*Complies. Table 3 on page 20 of DCP 6 lists as an Acceptable Solution separation distances between proposed walls and adjacent habitation windows. A minimum separation of 5.8m is proposed between the proposal and adjacent habitable windows, which is equal to or greater than the distance prescribed by this Acceptable Solution, with the only exception being where the proposed windowless feature wall (centre of the southern façade) sits opposite obscured glass windows. However these windows are to a non habitable room. Accordingly, where the proposal differs from the acceptable solutions, no adverse impacts result.*

### **Daylight and Sunlight**

*P2. Buildings are sited and designed to provide adequate daylight to habitable rooms and winter sunlight to ground level open space*

*Complies. Overshadowing plans submitted indicate that the shadow cast wraps around the rear of the adjacent building to the south. This ensures that the private open space areas contained at the front of the adjacent buildings are free from shadow impact. This is confirmed by comparing the generous front setback of the proposal in comparison to the adjacent building.*

*Overshadowing proposed is consistent with the prescribed acceptable solution. Side and rear setbacks comply with relevant building regulations (BCA) in accordance with the Acceptable Solution.*

*Also the proposed upper level, which is the common denominator in relation to shadow impacts, is generously setback from southern common boundary, with a façade length of only 13.8m. Only 4.0m of this façade length is setback a minimum of 1.5m at this level. Windows located immediately adjacent to the proposed feature wall on the southern façade are limited to obscured glass only. This confirms that no adverse privacy impacts or indeed sunlight loss will occur as a result of the proposed setback.*

*The shadows cast by the building comply with the acceptable solution given that greater than 2 hours sunlight access is afforded to the private open space areas located to the front of the adjacent building, between the hours of 9.00am and 3.00pm daily.*

*The separation between the front of the southern façade (bedroom 1 at levels 1 and 2) and the living rooms of the adjacent dwelling is a minimum of 5.8m, which is as required by the acceptable solution contained within table 3 on page 20 of DCP6.*

### **Comment**

The justification proposed by the applicant is considered to satisfy the performance criteria in this instance.

### Landscaped Area

The proposed landscaping represents a shortfall of 30m<sup>2</sup>. The applicant has provided the following justification of the performance criteria:

- P1. Site design minimises site disturbance and, where possible, preserves existing landscape elements such as rock formations, water courses, and trees.*

*Complies. The site is highly disturbed in its current form and incorporates only one tree of any visual significance. This tree is to be retained in accord with the contents of the performance criteria. There are no rock formations, water courses or the like.*

- P2 Landscaping is geared towards user requirements, taking into account maintenance, exercise opportunities, shade provision and aesthetic quality*

*Complies. The landscaping proposed is functional in its form and aimed at providing internal pockets of privacy, shade and amenity. All planters proposed will be a minimum 1.0m deep, thereby permitting selected trees up to 4.5m in height with shading and aesthetic quality.*

- P3. To the fullest extent possible, appropriate vegetation is used to provide shade to the northerly and westerly elevations of buildings in summer, while allowing sunlight in winter*

*Complies. Refer to enclosed landscape plan and comments above. The location of planter boxes relative to pools and private open space terraces means that open spaces area will be suitable shaded and that adequate separation will exist between the dwellings. Landscaped beds are conveniently located to outdoor use areas and also to increase aesthetic appeal to passers-by and adjacent residents.*

- P4. The landscape design should, as appropriate:*

- Be of an appropriate scale relative to both the street reserve width and the building bulk (Figure 28)*

*Complies. Refer to enclosed montages.*

- Improve privacy and minimise overlooking between dwellings*
- Appropriately account for streetscapes and landscapes of heritage significance*

*Complies. Measures to secure privacy and minimise overlooking include shutters and or feature walls without window openings. The landscaping proposed will assist in this regard, with planter boxes capable of accommodating plants up to 4.0m located in several areas in and around the site.*

- Provide adequate lighting for pedestrian and vehicular safety*

*Complies. Low key domestic lighting will be provided and only in relation to internal manoeuvring.*

- P5. The landscape design specifies the location and species of trees, shrubs and ground cover in a way that:*

- uses vegetation types and landscaping styles that minimise water usage and assist the development to blend in with the streetscape*

*Complies. Refer enclosed landscape plan. All species proposed will be salt and drought tolerant native species. Where more ornamental species are proposed, such plantings will be minimised and limited to privately maintained areas.*

- *should not affect the structure of the proposed buildings and minimises risk of damage to overhead and underground power lines and other services*

*Complies. Refer landscape plan enclosed. Careful attention has been given to ensuring there are no structural conflicts. Landscaping consisting of deep planters will be appropriately drained and maintained.*

- *considers personal safety, by ensuring good visibility along paths and driveways and avoiding shrubby landscaping near thoroughfares;*

*Complies. Refer enclosed montages and plans. A combination of landscaping and lighting is proposed so as to ensure adequate safety and privacy in relation to internal access paths.*

- *contributes to energy efficiency and amenity by providing substantial shade in summer especially to west-facing windows and open car park areas, and admitting winter sunlight to outdoor and indoor living areas (Figure 29);*

*Complies. The appropriate energy efficiency certification has been achieved regardless of landscaping, however, the siting of the proposed beds will assist in minimising adverse northern and western sunlight, with further protection afforded by way of adjacent buildings. Refer enclosed montages and landscape plan.*

- *achieves sightlines for vehicles and pedestrians, especially near street corners and intersections;*

*Complies. Sightlines to the satisfaction of Council officers have been provided.*

- *that uses Australian native vegetation*

*Complies. Landscaping proposed is entirely consistent with native vegetation selections. Refer enclosed landscape plan which in accord with the acceptable solution has been prepared by a qualified landscape architect and certified by him as meeting the performance criteria. Furthermore, all species selected are consistent with the Council's document 'Trees and Shrubs' – a guide for selection in Tweed Shire.*

*P6. Paving is provided to driveways, walkways, entries, outdoor patios and in the vicinity of garbage bin enclosures, letter boxes and clothes lines. Such paving should be:*

- in materials and colours which complement the development and alternative adjoining streetscapes;*
- in non-slip finishes and suitable for use by people with disabilities.*

*Complies. Appropriate paving has been provided as demonstrated on the enclosed landscape plan. This paving will be finished in a manner commensurate with the high architectural quality of the building, using non lip surfaces where appropriate.*

### **Comment**

The justification proposed by the applicant is considered to satisfy the performance criteria in this instance.

### **Front Fences and Walls**

The proposed development incorporates a solid front fence to a maximum height of 1.8m along the Marine Parade frontage.

The applicant has submitted the following justification:

*The proposed development contains elements of the front fence which exceeds a height of 1.2 metres across the front of the property (1.90m) for a distance of approximately 11 metres. A variation is sought to Council's Fence Height Policy for the following reasons.*

- The fence utilises various materials and articulation to ensure it does not impose upon the streetscape.*
- The fence contains a recessed landscape bay adjacent to the pedestrian entrance into the property as is the normal requirements of Council.*
- The fence being adjacent to the front swimming pool is required for safety reasons.*

*In conclusion it is considered the fence is not obtrusive or adversely impacts upon the amenity of the area. Council's support for a fence height variation is respectfully requested in this instance.*



## Comment

Council's Building Surveyor assessed the height variation and recommended that the fence height variation be approved to allow the fence with landscape recess to be constructed to a maximum height of 1.8m along the Marine Parade frontage, as per the plans submitted with the development consent except that the northern side boundary fence is not to exceed 900mm in height for a 2m building line, measured from the front boundary.

## Building Envelope

The proposed development exceeds the building envelope provision as seen on the northeast elevation, northwest elevation, southwest elevation, southeast elevation, Section BB and Section AA. The areas of encroachment can be summarised as follows:

South-east elevation: Through part balcony (first floor), part bedroom number 2 and its balcony (second floor), the roof top structure.

North-east elevation: Through the stairwell, part bedroom number 2 (first floor), part bedroom number 1 and kitchen (second floor), roof, roof top structure.

North-west elevation: Part balcony (first floor), part bedroom 3 and its balcony (second floor), roof and roof top structure.

South-west elevation: Stairwell, part bedroom number 2 and balcony(second floor), part bedroom number 3 (second floor), roof and roof top structure.

The applicant submitted the following justification:

*The proposed development encroaches on the Building Height Plane on the two side elevations and the rear elevations, as indicated in the submitted plans. It is submitted these encroachments will not have an adverse impact upon neighbours in terms of privacy and overshadowing. It is requested Council assess this component of the development against the performance criteria.*

*The objectives of this design element are as follows*

- 01. To ensure that the height, scale and length of new developments is not excessive and relates well to the local context.*
- 02. To encourage design, which creates desirable living conditions and ensures that the amenity of surrounding properties is properly considered.*
- 03. To allow flexibility in the siting of buildings and the provision of side and rear setbacks.*

04. *To allow adequate natural light and ventilation between dwellings.*

*It is considered that the height, scale, bulk and length of the development is not excessive having regards to the 2(b) Medium Density Zoning of the land and surrounds and the type of medium density developments already constructed and recently approved in Kingscliff. Of note the proposal involves substantial articulation along the side and rear elevations avoiding long monotonous walls so readily evident in the residential flat buildings constructed during the 1970's and 80's. It is concluded the proposal is consistent with the objectives of this design element.*

*The Performance Criteria for this element are as follows:*

**Amenity and Character**

**P1. Buildings are sited and are of such length and height that there is no significant loss of amenity to adjacent dwellings and land". This can be achieved through:**

- *Setbacks that are progressively increased as wall heights increase to reduce bulk and overshadowing while maintaining adequate daylight and sunlight;*
- *Building siting and height that are related to form, with minimal cut and fill;*
- *Building forms that enable a sharing of views with neighbours;*
- *Building bulk that is generally distributed to reduce impact on neighbours and on the public street;*
- *Building heights similar to those in the public streetscape, with higher buildings sited behind and out of direct view from the street;*
- *Boundary walls limited in length and height to minimise the impact on neighbours; and*
- *Building to the boundary, which maximises privacy for neighbouring dwellings and their private open space;*
- *Adequate separation between facing dwellings for privacy.*

**Daylight and Sunlight**

**P2. Buildings are sited and designed to provide adequate daylight to habitable rooms and winter sunlight to ground level open space.**

*The proposed development provides for substantial articulation to the side boundaries with setbacks varying from 1.8 to 5.4 metres on the north western boundary, and 1.5 to 7.0 metres of the south eastern boundary. Accordingly the proposal does not present to the side boundaries as one long wall in a three (3) storey configuration.*

*Living areas within the upper levels are orientated to the Ocean and therefore overlook the street as opposed to adjoining neighbours. The third floor which contains a small roof top balcony and pool is also orientated to overlook the ocean. Due to its centralised location, little opportunity exists to overlook adjoining residential properties to the south west, south and south east, while no adverse impacts are anticipated upon the adjoining Anglican Church or its patrons.*

*It is noted that the upper level balconies on the second floor contain aluminium adjustable louvers to limit any impacts upon neighbours in terms of privacy. Similarly, windows on the second floor will also be suitably screened (see notation on plan).*

*In terms of impacts upon neighbouring properties, the development will not result in significant loss of amenity from overshadowing or loss of privacy. (See shadow diagrams). With the shadow cast by the building swinging from the property to the rear to the property to the south during midwinter and will comply with Council's Acceptable solution A6 under Section 3.3.1 of the DCP.*

*It is concluded that although not compliant with the acceptable building height plane solution, the proposed encroachments will not adversely impact upon the amenity of the two (2) adjoining residential properties or the amenity of those attending the adjacent Anglican Church. A variation to the Building Height Plane provisions of DCP 6 is respectfully requested.*

### **Comment**

The justification proposed by the applicant is considered to satisfy the performance criteria in this instance.

#### DCP No. 9 – West Kingscliff

Filling issues are addressed specifically in a later component of this report.

#### DCP No. 39 – Energy Smart Homes

A NatHERS assessment was submitted for the proposed development, which indicated that each unit could achieve a minimum of 3.5 stars.

#### DCP No. 43 – Kingscliff (Coastal)

The subject site is identified as being situated within Precinct 1 – Town Centre of the DCP. An assessment of the proposal in accordance with DCP No. 43 is provided below.

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<b>Acceptable Solutions/Standard</b>	<b>Proposed</b>	<b>Consistent</b>
Building type 3 = 3 storeys	Height ranges from 3 to 4 storeys.	SEPP No. 1 Objection lodged as discussed previously
Setback from street alignment	See DCP No. 6 assessment	Satisfactory
Parking - Underneath building with rear lane access where achieved	Basement car parking	Satisfactory
Verandah Combination of both recessed and protruding verandah elements is preferred. Minimum 2.5m wide verandahs provided for ideally 75% of façade length	Protruding verandahs. The main balconies/verandahs are in excess of 2.5m wide but do not equal 75% of the façade length.	Satisfactory
Building setbacks to be established in accordance with the building height plane and setback requirements of DCP 6 – Multi Dwelling Housing.	Variation sought as discussed in DCP No 6 assessment	Considered to be acceptable
Maximum 1.2m in height and should have regard to the design of any adjoining front fences.	Variation sought as discussed in DCP No. 6 assessment	A fence height variation is sought.

The applicant provided the following:

*“The proposal is considered to be generally consistent with the relevant provisions of DCP No. 43 – Kingscliff. Those elements of the building which do not comply a variation has been sought”.*

**DCP No. 47 – Cut and Fill**

Council’s development engineer has provided the following comments:

*“The applicants have provided a preliminary geotechnical investigation of the subject site. This investigation has identified the following;*

1. *The fill material encountered on site has been placed recently and it is considered to be uncontrolled in accordance with AS 2870 – 1996 ‘Residential Slabs and Footings’ – Construction’.*
2. *Ground water was encountered at a depth of 4.6m which indicates that de-watering should not be required during construction. It is understood that bulk excavations for the basement will be between 2.5m to 3.5m.*

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3. *The base of the excavation be saturated and compacted using a static drum roller and footing trenches be saturated and compacted to rectify an 'soft spots'.*
4. *Earthworks are to be carried out in accordance with AS 3798 - 1996.*

*The submitted report advises that the testing was limited due to restricted access and therefore the recommendations are preliminary only. A comprehensive geotechnical investigation must be completed once the dwelling is removed.*

*Based on the findings of the preliminary geotechnical report and the existence of similar sized structures in the immediate vicinity, it is considered that the geotechnical stability of the site is sufficient to support a structure of this size. A condition of consent has been imposed which requires a final geotechnical report to be submitted once the dwelling has been removed."*

DCP No. 48 – Tweed Coast Building Heights

The applicant has submitted an assessment as per DCP No. 48, which addresses the performance criteria as the proposed development does not meet the acceptable solutions, particularly in relation to the buildings' height as per the assessment table below.

<b>Standard</b>	<b>Acceptable Solutions</b>	<b>Proposed</b>	<b>Consistent</b>
Building Height	The building height measured from finished ground level to the uppermost ceiling or top plate of the highest external wall is 9m  and  The building height from the finished ground level to the highest point on the ridge of the roof and including all ancillary structures, such as, but not limited by, lift overruns, pergolas, satellite dishes, solar heating panels and kitchen exhaust shafts/cowls is 11m	10m          10.9m - 11.5m	Refer to assessment below
Building Setbacks  Front setbacks	Front setbacks are to be within the range plus or minus 25% of existing adjoining and nearby setbacks, provided that in all instances, the setback is a minimum of 6 metres.	6m	Consistent
Side and Rear Setbacks	Minimum 3m	Variation proposed refer to DCP No. 6 assessment	Considered to be acceptable

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Building Envelope	3.5m vertical line up from the property boundary and then at 45 degrees to the maximum height of the building	Variation proposed refer to DCP No. 6 assessment	Considered to be acceptable
Roof Design	Maintain diversity in the design of roofed areas and avoid the construction of a 'monotonous' roofscape. Roofed areas should not adversely impact on neighbouring properties, public streets, and not detract from the existing roofline character.	Predominately flat roof with some articulation. A pool and BBQ area are proposed on the roof deck. As previously discussed in this report, these are positioned so as to minimise overlooking into adjoining developments.	Acceptable

The applicant has provided the following justification to DCP No.48:

*"This DCP was adopted by Council in October of this year" (2004). "In this regard, the resolution stated that although adopted, the provisions and prescriptive requirements contained within the LEP should not be granted full force or reign in the assessment of future applications until such time that a thorough review has been carried out in association with industry representatives. In this context, the following outlines the extent of compliance demonstrated within the attached plans, albeit in a manner that acknowledges that the document does not yet possess considerable weight.*

*The DCP incorporates a requirement that building heights be limited to 11.0m in height from finished ground level to the ridge of the roof and 9.0 metres in height from finished ground level to the underside of the eaves immediately above it. It is understood the DCP is to be reviewed by Council given the impractical nature of the prescribed height limits in trying to achieve variations to height lines and roof designs.*

*Nonetheless as the proposal contains a small fourth storey component it does not strictly comply with the requirements of the DCP. It is noted that the bulk of the building is three (3) storeys only and with a height of 10.4 metres above natural ground level, demonstrates consistency with the prescribed height limit. The fourth storey component in essence contains a staircase to provide access to the roof top deck, which in turn has an undercover area of 7.8m<sup>2</sup> only.*

*A variation is requested to the height requirements contained within the DCP, with particular reference to consistency with the following performance criteria:*

**P1. The likely impacts of new buildings on surrounding developments, particularly with regard to overshadowing, privacy and the obstruction of views are avoided.**

*Comment: The proposed development has minimal impact upon the adjoining properties from overshadowing and loss of views. In particular the submitted shadow diagrams indicate that overshadowing created by the proposal during mid summer will have minimal impact upon adjoining properties, while in midwinter the shadow will move from the property to the west to the property to the south throughout the day. This will ensure the private open space of adjoining properties is not adversely overshadowed for any substantial length of time and complies with the overshadowing requirements under DCP 6. It is important to note that the fourth storey component due to its siting within the northwest quadrant of the property does not substantially add to the overshadowing of this property with shadows cast at midday and 3pm midwinter falling back onto the building itself.*

**P2. Topographical features of the site and surrounding properties such as slope, existing natural vegetation and opportunities for the creation of views and vistas are identified.**

*Comment: The subject site is relatively level as are surrounding properties. The proposal does not restrict the redevelopment potential of surrounding properties in relation to the provision of views to the Pacific Ocean. Little vegetation needs to be removed with the bulk of the site already developed with a two (2) storey residence with open space areas covered in lawn and ornamental species of garden trees and shrubs.*

**P3. The scale of new developments is compatible with and sympathetic to the scale and bulk of existing development and/or the desired future character of the locality.**

*Comment: The proposed development has been specifically designed with a bulk and scale commensurate with the 2(b) medium density zoning of the area and the general provisions under DCP 6 Multi Dwelling Housing and DCP 43 Kingscliff. In terms of compatibility the proposed design and height of the building is consistent with contemporary buildings currently constructed or proposed for the area and is sympathetic with current design trends being employed in the Residential areas of Kingscliff.*

**P4. Buildings are designed and constructed to relate to the existing land shape with minimal cut and fill allowed.**

*Comment: The proposal has been designed with a basement car park. This could have been lowered further into the ground resulting in additional earthworks on site. It is considered however the proposal achieves a suitable balance between providing a functioning basement car park and limiting the height of the building.*

**P5. Grand vistas and views, including heritage or familiar dominant landmarks that are recognised and valued by the community, are not obscured by new development.**

*Comment: The proposal does not impact upon any grand vistas or views of heritage or dominant landmarks that are recognised and valued by the community.*

*In conclusion although the proposal does not strictly comply with the numerical requirements under the DCP, the building clearly satisfies the performance criteria in terms of heights of buildings, satisfying the objectives of DCP No. 48”.*

**Comment**

The additional building height is not considered to significantly contribute in overshadowing on the adjoining lots. The scale of new development is compatible with and sympathetic to the scale and bulk of the desired future character of the locality whilst being sympathetic to surrounding development.

DCP No. 51 – Tweed Coast Strategy

The proposed development is consistent with DCP No. 51.

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

Clause 92(a) Government Coastal Policy

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



Clause 92(b) Applications for Demolition

The proposal requires the demolition of the existing dwelling. A demolition plan has been submitted in conjunction with the Statement of Environmental Effects. Appropriate conditions of consent have also been recommended to control the demolition.

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

Effluent Disposal

As previously discussed, the provision of adequate sewer to the proposed development and in particular the impacts to adjoining property owners is a primary issue with this development application.

The proposed design of the development results in the need to realign the sewer however, engineering details demonstrating how the integrity of the sewer will be maintained have not been submitted.

An assessment of the proposed development identifies that at least two other properties (Lot 3 DP 381437 and Lot 103 DP 1091112) rely on this sewer and any change to this sewer as a consequence of the development will impact on these adjoining properties. As such, Council's Infrastructure Unit have recommended that the consent from the affected property owners be required to allow the carrying out of these works prior to a determination being made. Council's solicitors have advised that a deferred commencement condition is suitable in this instance, which requires the applicant to obtain consent from the adjoining property owners before the operation of the consent.

Overshadowing

The submitted shadow diagrams demonstrate that Lot 2 DP 381437, Lot 3 DP 381437 and Lot 103 DP 1091112, which adjoin the subject site, will be affected by shadow as a result of the proposed development.

The adjoining property to the subject site's south-east, Lot 2 DP 381437 will be overshadowed at 12noon and 3pm June 21. The principal open space areas for the development are balconies, which are situated at the north-western section of the building. At 12 noon approximately 23% of Lot 2 DP 381437 will be in shadow. At 12 noon these balconies are not in shadow. At 3pm approximately 75% of the site will be in shadow including the balconies.

At December 21<sup>st</sup> the shadow plans show approximately 11% of Lot 2 being in shadow. The shadow is generally restricted to Lot 2's North-North-Western section. The balconies will be partially in shadow at this time. The shadow diagrams demonstrate that at 9am and 12noon December 21<sup>st</sup>, Lot 2 will not be affected by shadow as a result of the proposed development.

The property to the subject site's immediate south-west, Lot 3 DP 381437 will be in shadow at 9am and partly in shadow in June 21<sup>st</sup>. The principal open space area for the development is situated in the North-North-East section/rear of the site. At 9am June 21<sup>st</sup> approximately 55% of the site will be in shadow. At 12 noon 11% of Lot 3 will be in shadow. By 3pm the site will be free of shadow as a result of the proposed development.

At December 21<sup>st</sup> the shadow plans show that 26% of Lot 3 will be in shadow at 9am. The shadow is generally restricted to the site's North-North-East. By 12noon, the site is free of shadow. The submitted shadow plans demonstrate that the site will not be affected by shadow at June 21<sup>st</sup>.

The submitted shadow diagrams demonstrate that the property to the subject site's North-North-West, Lot 103 DP 1091112 will be partially over shadowed at 9am December 21<sup>st</sup>; approximately 1.8% of the site will be in shadow at this time. The extent of the overshadowing affecting this property is considered to be acceptable.

As previously discussed in this report a SEPP No. 1 variation has been submitted regarding the allowable building height. It is considered that if the proposal fully complied with the allowable building height limit of 3 storeys in accordance with the TLEP 2000, Lot 2 would be significantly affected by shadow at 3pm June 21<sup>st</sup> and Lot 3 will be significantly affected by shadow at 9am June 21<sup>st</sup>. The predicted overshadowing impact is the result of the allowable building height of the site and the east west orientation of the lots.

It is considered that the extent of overshadowing on the adjoining properties is acceptable in this instance.

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

The proposed development is to be erected on land that is zoned for medium density housing under the Tweed Local Environmental Plan 2000.

The proposed design and configuration of the development is considered to be consistent with the desired land use character and pattern. The suitability of the site for the purposes of the proposed development has been demonstrated by way of general consistency with the relevant Development Control Plans and sections of the Tweed Local Environmental Plan 2000 applying to the site.

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

In accordance with DCP No. 42 – Public Notification Policy the development application was notified for a period of fourteen (14) days. No submissions have been received to date.

**(e) Public interest**

The proposed development is not considered to be contrary to the wider public's interests.

**OPTIONS:**

1. Council support the development application with conditions and assume the Director's concurrence.
2. Council not support the development application and provide reasons for refusal.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

The applicant has the right to appeal in the Land and Environment Court should he/she be dissatisfied with the determination.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The subject land is generally considered to be suitable for the proposed development. The increase in traffic associated with the proposed development can be catered for within the existing road network.

The proposed development is considered to be generally consistent with the applicant development control plans.

As previously discussed a deferred commencement consent is considered to be appropriate in this instance.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

1. Confidential Floor Plans (DW 1382697)

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REPLACEMENT REPORT