



AGENDA

PLANNING COMMITTEE MEETING Tuesday 28 November 2006

Chairman: Ms Lucy Turnbull

**Administrators: Mr Frank Willan
Ms Lucy Turnbull
Mr Max Boyd AM**

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REPORTS THROUGH GENERAL MANAGER

REPORTS FROM DIRECTOR PLANNING & DEVELOPMENT

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

The following are the matters Council is required to take into consideration under Section 79(C)(1) of the Environmental Planning and Assessment Act 1979 in assessing a development application.

MATTERS FOR CONSIDERATION

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

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P1 [PD-PC] Review of Determination of Section 96 Application DA02/1325.01 for an Amendment to Development Consent DA02/1325 for Additions to Dwelling, Carport & Building Line Variation at Lot 83 DP 240965, No. 35 Viking Street, Kingscliff

ORIGIN:

Building Services

FILE NO: DA02/1325 Pt1

SUMMARY OF REPORT:

A Section 96 application was submitted to vary Development Application DA02/1325, for alterations and additions to the Existing Dwelling on Lot 83 DP 240965 No 35 Viking Street, Kingscliff.

The Section 96 application under the Environmental Planning and Assessment Act, 1979 to modify Development Application DA02/1325 was refused by Council's Development Assessment Panel at its meeting on the 24th March 2006, as the applicant did not provide the requested information to enable a proper assessment of the Section 96 application.

As a consequence of the refusal the applicant has lodged a Review of Determination under Section 82A of the Environmental Planning and Assessment Act 1979 in relation to the Amended Development Application and Council's Development Assessment Panel determination dated 24 March 2006. The time provided under Section 97 of the Environmental Planning and Assessment Act 1979 for a Review of Determination is 12 months. Accordingly it is open to the applicant to seek this review. To support their application for review the applicant has lodged amended plans dated 20-03-2006 and 05-10-2006 prepared by Schafer design Pty Ltd.

Following the review and further assessment of Section 96 Application DA02/1325.01 it is recommended that this Review of Determination Application be approved subject to the amendments recommended below.

RECOMMENDATION:

That the Review of Determination of Section 96 Application DA02/1325.01 for additions to dwelling, carport & building line variation at Lot 83 DP 240965 No 35 Viking Street, Kingscliff be approved subject to the following amendments:-

- 1. The addition of the following NEW conditions under the GENERAL heading as follows: -**

- 1A. The development shall be completed in two stages accordance with the Statement of Environmental Effects and Plans prepared by Schafter design Pty Ltd dated 05-10-2006 and 20-03-2006, except where varied by the conditions of this consent.

[GEN0005]

- 1B. Privacy screens are to be provided to a height of 1.8 metres for a length of 2 metres from the wall of the dwelling either side of the third level front deck to the satisfaction of the PCA.

[GENNS01]

REPORT:

Applicant: Mr D Field
Owner: Mr DRC Field & Mrs SM Eke
Location: Lot 83 DP 240965 No. 35 Viking Street, Kingscliff
Zoning: 2(a) Low Density Residential
Cost: \$50,000

BACKGROUND:

Development Application DA02/1325 was approved by Council's Development Assessment Panel on 20th November 2002 for alterations and additions to the dwelling which included a third storey addition and a carport within Council's Building Line.

A Section 96 application was submitted on the 20/10/04 to modify Development Consent DA02/1325, the application proposed internal and external alterations to the approved plans and the inclusion of a small deck at the front of the dwelling to the proposed third level and a deck to the rear of the dwelling at the existing second level.

The plans submitted to council with the section 96 were not dimensioned and insufficient to determine the extent and impact of the modifications.

Correspondence was forwarded to the applicant on the 24th November 2004 requesting

- Four (4) copies of dimensioned architectural and site plans of the proposed amendments.

The requested information was not forthcoming and further correspondence was forwarded to the applicant on the 24th February again requesting the above information.

The applicant advised council verbally and then in writing on the 23rd April 2005 that the requested information was being prepared and should be submitted to Council, mid May. The requested information was not submitted to Council and a report was prepared for Council's Development Assessment Panel on the 24 March 2006 who resolved to refuse the application as the four copies of dimensioned architectural plans as outlined in Council's correspondence dated 24 February 2005 have not been provided in the required fourteen (14) day time frame outlined in this correspondence. A notice of refusal was forwarded to the applicant on the 28th March 2006.

As a consequence of the refusal the applicant has now lodged a Review of Determination under Section 82A of the Environmental Planning and Assessment Act 1979 in relation to the Amended Development Application and Council's Development Assessment Panel determination dated 24 March 2006. The applicant has submitted with the Review of Determination, four (4) copies of dimensioned architectural and site plans of the proposed amendments.

The plans submitted are of a sufficient standard to enable Council to determine the extent and impact of the modifications.

The applicant advises that the plans required by Council had been prepared for some time and were in the hands of the Private Certifier Acting on their behalf, who appears not to have forwarded the plans on to Council as expected by the applicant. Correspondence from the applicant has been reproduced below for Council's Information.

"I am writing to appeal against the determination to refuse my Amendment to Development Consent DA02/1325.01 on lot 83 DP 240965 at 35 Viking Street, Kingscliff.

I request a review of the above determination under Section S82A(3) of the appropriate legislation or policy guidelines.

The reasons for the request for a review are that we were denied procedural fairness by the fact that a third party representing us did not act in an efficient manner causing us to unknowingly default on deadlines and compliances requested of us by Council.

I believe my wife and I have been disadvantaged in this decision through no fault of our own.

I maintain that because we were dealing with TSC through Mark Stapleton and Associates (now called Coastline) we had a crucial correspondence go astray. We had a set of preliminary plans drawn up by our architectural draughtsman Michael Schafer. These were delivered by me to Coastline last year for submission to Council to support earlier rough sketches submitted to give an idea of the types of change we were advocating for the changes to our DA.

It appears obvious now that these plans were never sent by Coastline to Council on our behalf.

Phil Clark sighted these plans during our meeting last week and agreed that they had been received at their time of completion (these plans are dated 13/09/05 and cost me \$1,500.00) then it would have satisfied requirements for this stage in the process and we would not have received the rejection.

The second matter is that we did not receive your correspondence dated 24th February 2005. This was addressed to Coastline at their Banora Point (PO Box 243) we did not receive this correspondence even through Coastline say they have a mail register to say it was sent. Obviously had we received a final warning sent 3-4 months after we thought we had submitted the plans we would have acted.

With hindsight I should have understood the nature of the relationship between ourselves and Coastline. I assumed they would act as our agents or representatives with Council in getting the DA and then subsequently the section 96 through successfully. While they acted in some areas they were very passive in representing our interests and in the case of the non-submitted plans just careless.

I am now following Mr Clark's advice and dealing with TSC directly. I would like all future correspondence sent to our home address at 35 Viking St. We now have a builder (which has been another delay) and look forward to starting the project as soon as possible.

I will write to Mark Stapleton informing him of my decision to proceed from this point without his firm's further assistance.

However things turn out from here I would like to thank Mr Clark for the helpful and professional way he assisted me in trying to find a way through the mess we now find ourselves in."

Council's Development assessment panel approved Development Application DA02/1325 on the 20 November 2002 for alterations and additions to the existing two storey dwelling on the site. The works comprised a double carport up to 2 metres from the front property boundary, internal alterations, enlarging the front deck to the second storey of the dwelling and the construction of a third storey enclosed observatory, resulting in an overall dwelling height of 9 metres.

The amended plans dated 20-03-2006 and 05-10-2006 prepared by Schafer design Pty Ltd, submitted to Council with the Section 82A review request, now propose to amend the original design and construct the works in two stages.

Stage one

Proposes minor internal alterations and the construction of a 3 metre wide and 7.5 metre long deck off the second floor bedrooms at the rear of the dwelling, a change in the roof pitch at the front of the dwelling to a skillion roof, and a change in the shape and size of the second floor front deck.

Stage two

Proposes a double carport up to 2 metres from the front property boundary, the construction of the third storey observatory with a 4 metre by 3.5 metre deck off the observatory at the front of the dwelling.

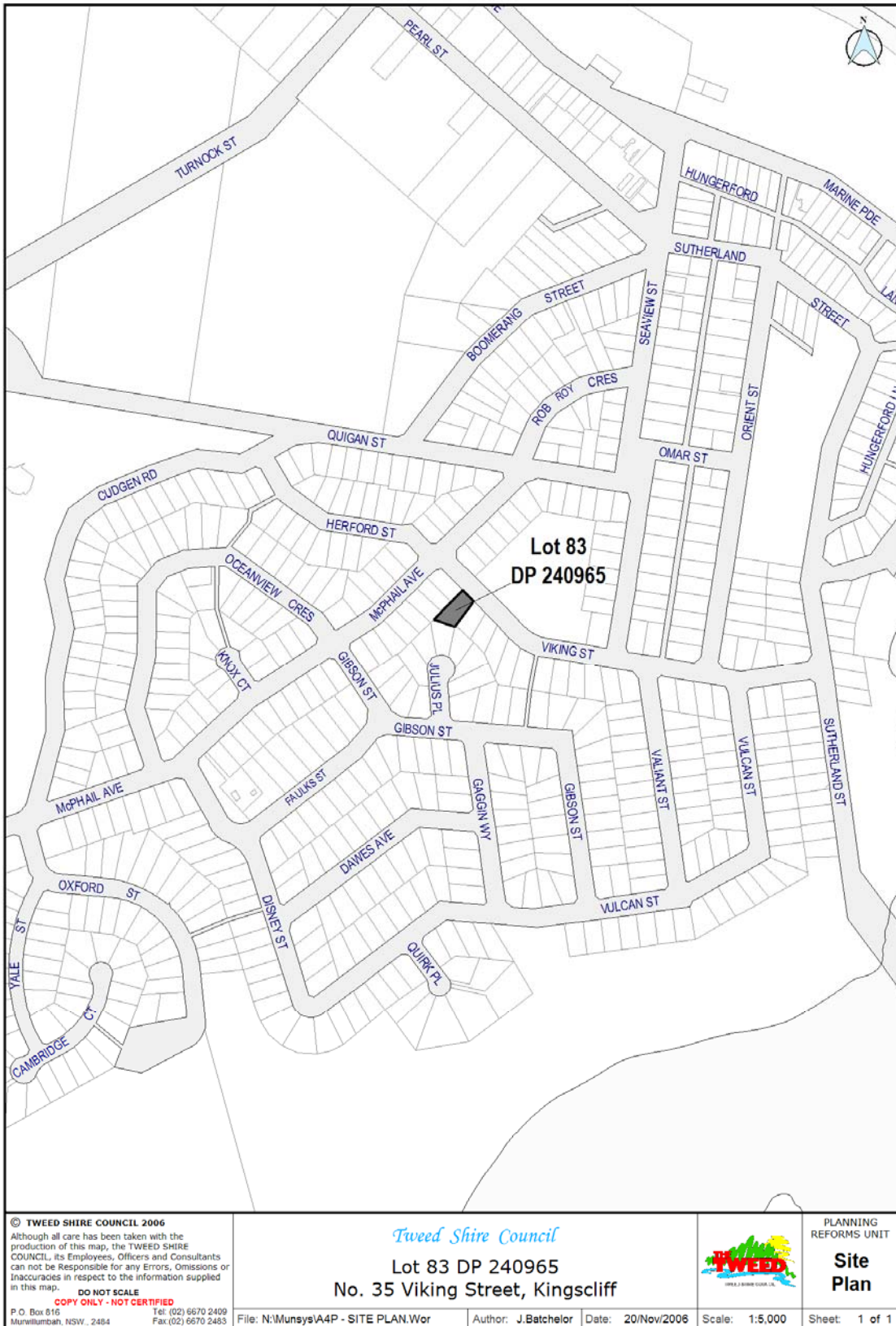
The changes to the original design that area proposed are: -

- A 3 metre wide and 7.5 metres long deck off the second floor bedrooms and an increase in size of the bedrooms opening on to the deck.
- An 11.7 metre squared increase in the size of the third storey observatory and 4 metres by 3.5 metre deck off the observatory at the front of the dwelling.
- A reduction in size and change in shape of the front second storey deck.
- A 150mm increase in ceiling heights at each floor and a change in the roof design will change the overall height of the dwelling from 9 metres to 9.5 metres high.

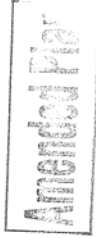
The proposed amendments are generally in keeping with the design and character of the dwelling and the plans originally approved under DA02/1325. The amended plans have

been notified to adjoining property owners and no objections were received to the proposal. The site plan and elevations are contained in the report for Council's information.

SITE DIAGRAM:

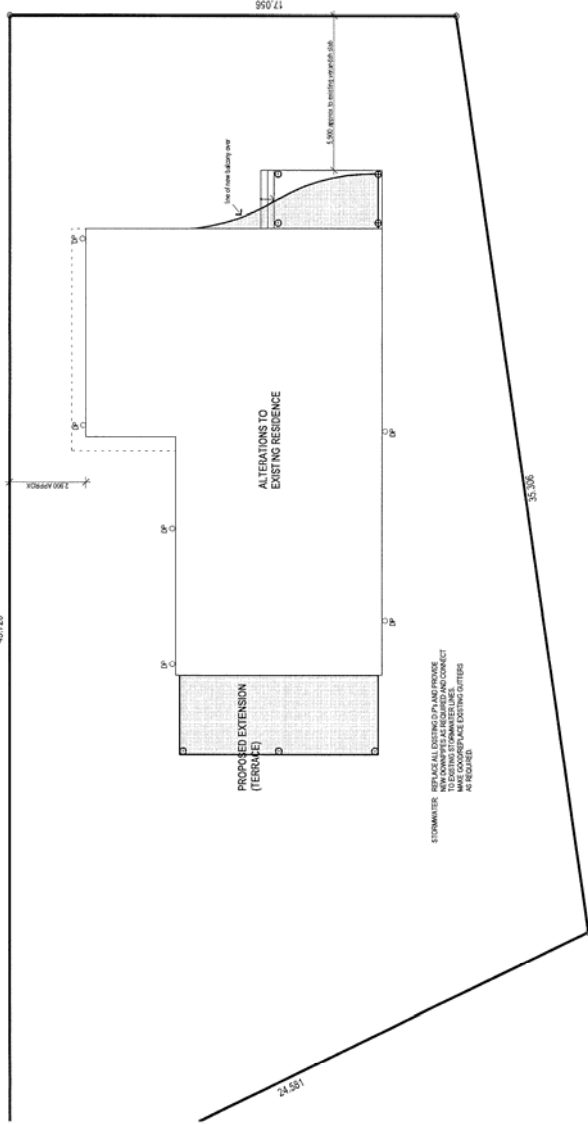


SITE PLAN AND ELEVATION PLANS:



GENERAL NOTES
 THE BUILDER SHALL VERIFY ALL LEVELS AND DIMENSIONS ON SITE PRIOR TO CONSTRUCTION. SHOULD ANY DISCREPANCIES BE FOUND WITHIN THESE DOCUMENTS OR BETWEEN THESE DOCUMENTS AND THE ACTUAL SITE CONDITIONS, THE BUILDER (ENGINEER, SURVEYOR ETC) THEY ARE TO BE REPORTED IMMEDIATELY IN WRITING TO SCHAEFER DESIGN.
 IT IS THE BUILDER'S RESPONSIBILITY TO INSTALL ALL NECESSARY FLASHINGS, WEATHERFILES, DPCS, AND TO MAKE THE WORKS WATERTIGHT.
 ALL WORKS SHALL BE CARRIED OUT IN ACCORDANCE WITH THE LATEST EDITION OF BUILDING CODE OF AUSTRALIA, THE CONDITIONS OF APPROVAL OF THE LOCAL COUNCIL AND REQUIREMENTS OF ANY OTHER RELEVANT AUTHORITY.
 PROVIDE SELF CONTAINED SMOKE ALARMS IN ACCORDANCE WITH B.C.A. ALARMS SHALL BE CONNECTED TO CONSUMER MAINS POWER AND HAVE A STANDBY POWER SUPPLY. LOCATIONS INDICATED MAY VARY AS REQUIRED BY COUNCIL.
 EXHAUST FANS TO TOILETS, BATHROOMS SHALL BE DUCTED TO DISCHARGE TO CEILING SPACE
TERMITE PROTECTION
 PROVIDE FOR TERMITE PROTECTION IN COMPLIANCE WITH AS-3660. THE BUILDING WORKS SHALL BE PROTECTED BY THE INSTALLATION OF TERMITE MESH PHYSICAL BARRIERS TO ALL EXTERIOR WALLS AND FOUNDATIONS. A DURABLE NOTICE MUST BE PERMANENTLY FIRED IN A PROMINENT LOCATION SUCH AS METER BOX OR SIMILAR, INDICATING:
 1. THE METHOD OF PROTECTION.
 2. THE INSTALLATION DATE OF THE SYSTEM.
 3. THE NAME OF THE ENGINEER'S RECOMMENDATIONS FOR THE SCOPE AND FREQUENCY OF FUTURE INSPECTIONS FOR TERMITE ACTIVITY.

VIKING STREET



SITE PLAN
 SCALE 1:100

NOTE: IN SITE SURVEY OR RECORDS HAVE BEEN CARRIED OUT, THE BOUNDARIES SHOWN WITHIN LIMITED INFORMATION SUPPLIED BY THE OWNER. THE ENGINEER'S RECOMMENDATIONS SHALL BE BASED ON THE INFORMATION PROVIDED. THESE ARE NOT TO BE CONSIDERED AS A GUARANTEE OF ACCURACY AND THE ENGINEER'S WORKS SHALL BE BASED ON THE INFORMATION PROVIDED.

THESE DRAWINGS ARE TO BE READ IN CONJUNCTION WITH THE STRUCTURAL DETAILS AS PREPARED BY TWEED COAST CONSULTING ENGINEERS JOB No A3 1730 DRAWINGS 1-10 INCLUSIVE & ANY SUBSEQUENT AMENDMENTS TEL 6674 1176 FAX 6674 1854

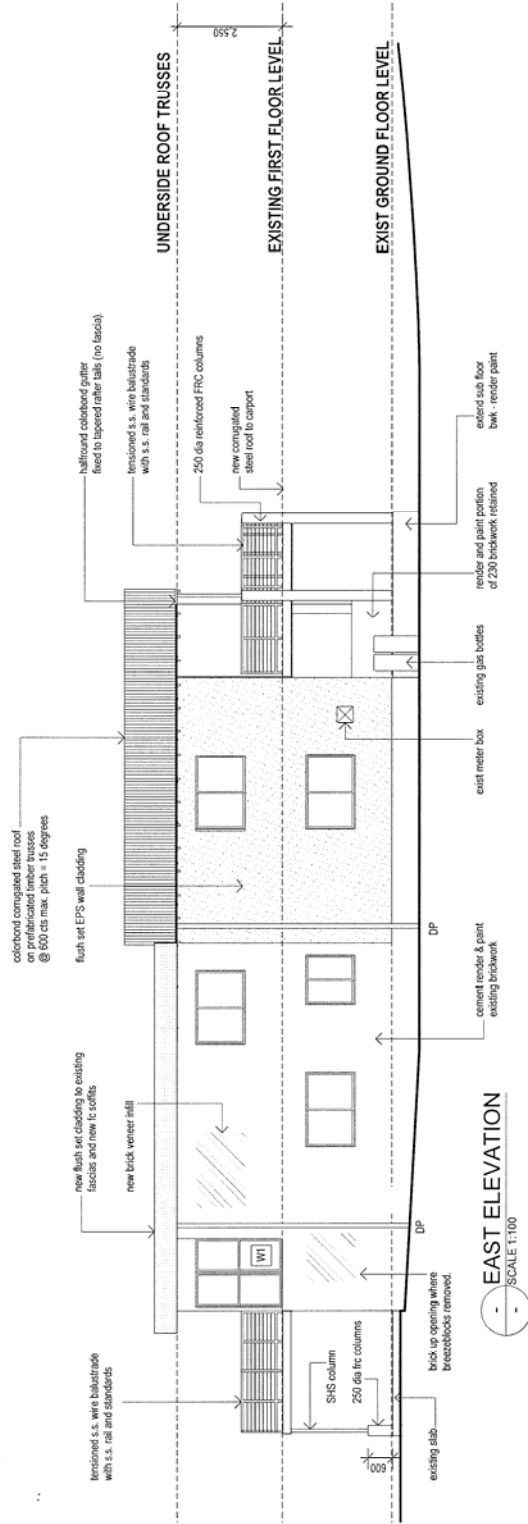
No	Date	Description
A.	06-10-2006	CONSTRUCTION CERT. APPLICATION

STAGE ONE WORKS

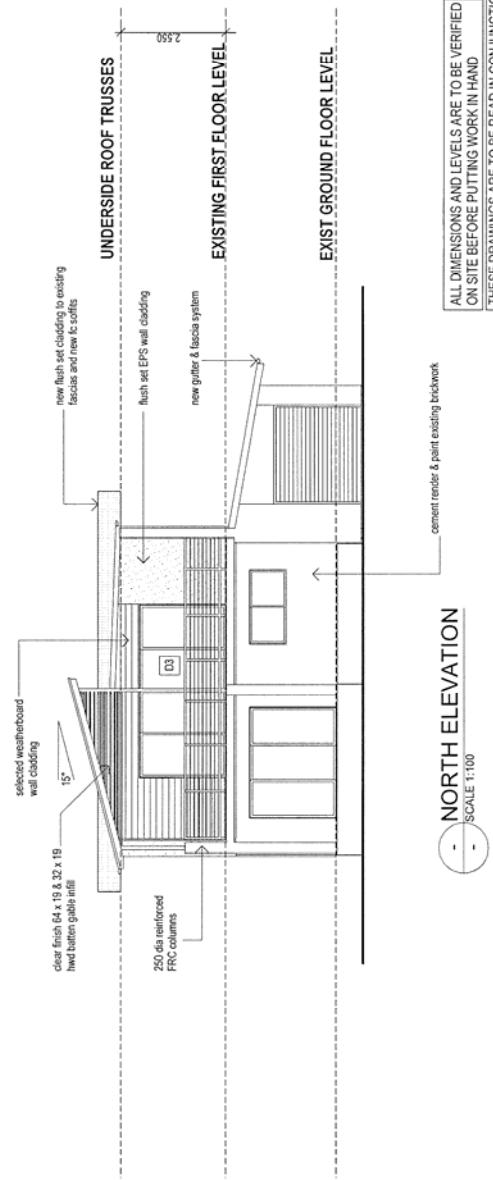
Schaefer design
 Schaefer Design Pty Ltd
 Suite A, 55 Myers Precinct Newcastle NSW 2287
 P.O. Box 1624 Kingscliff NSW 2488
 Tel: (02) 6674 2488
 Fax: (02) 6674 2433
 email: info@schaeferdesign.com.au
 www.schaeferdesign.com.au
 GDS/SLA No: 12599/01

Project: **PROPOSED ALTERATIONS & ADDITIONS TO RESIDENCE AT 35 VIKING STREET KINGSCLIFF, NSW, 2487**

Date	05-10-2006	File No	05203
Drawn	SH, MS	Drawing No	WD 01
Issue		Scale	A



EAST ELEVATION
SCALE 1:100



NORTH ELEVATION
SCALE 1:100

No	Date	CONSTRUCTION CERT. APPLICATION Description
A	05-10-2006	STAGE ONE WORKS

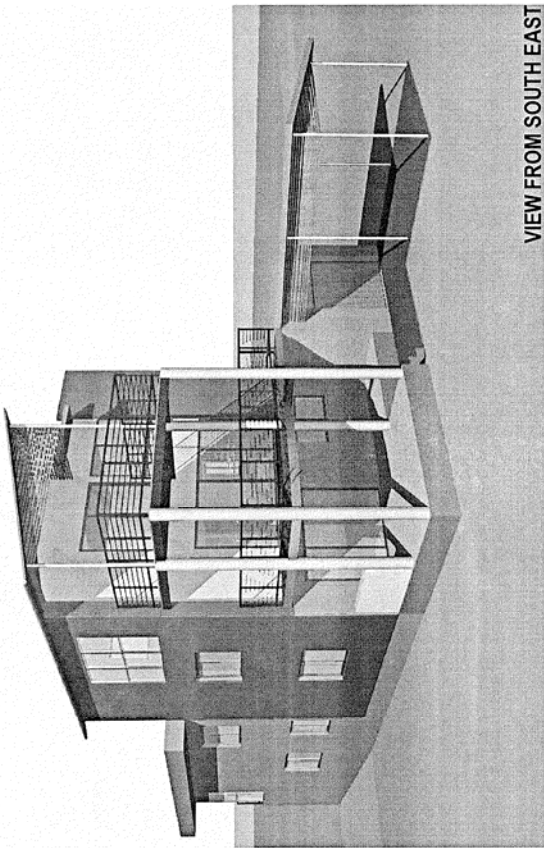
schater design
Schater Design Pty Ltd
Suite 4, 91 Mering Parade Kingscliff N.S.W.
P.O. Box 1834 Kingscliff N.S.W. 2487
Tel: (02) 6574 2488
Fax: (02) 6574 2433
m.s@schaterdesign.com.au
www.schaterdesign.com.au
CRSAL Lic No: 1098901

PROPOSED ALTERATIONS & ADDITIONS TO RESIDENCE AT 15 VIKING STREET KINGSCLIFF, NSW, 2487

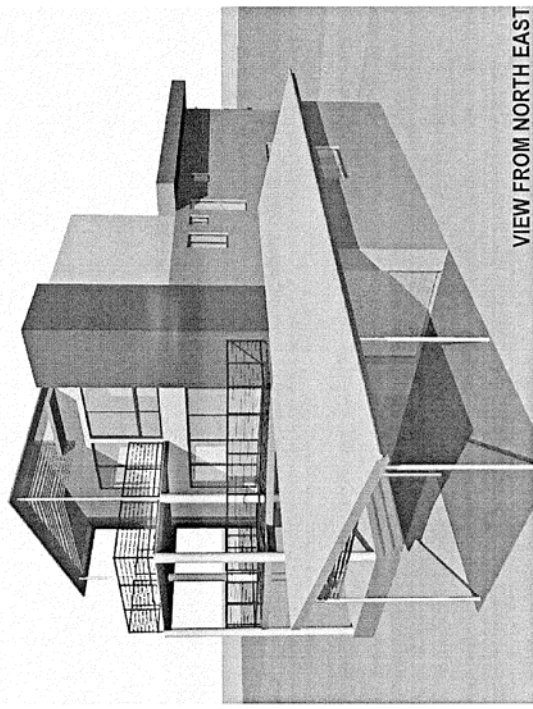
Task	Drawn	Checked
05/03	05-10-2006	WD 04
Drawn No	Issue	
SH, MS	WD 04	A

ALL DIMENSIONS AND LEVELS ARE TO BE VERIFIED ON SITE BEFORE PUTTING WORK IN HAND
THESE DRAWINGS ARE TO BE READ IN CONJUNCTION WITH THE STRUCTURAL DETAILS AS PREPARED BY TWEED COAST CONSULTING ENGINEERS
JOB No A3 1730 DRAWINGS 1-10 INCLUSIVE & ANY SUBSEQUENT AMENDMENTS
TEL 6574 1176 FAX 6574 1854

Amended Plan



VIEW FROM SOUTH EAST



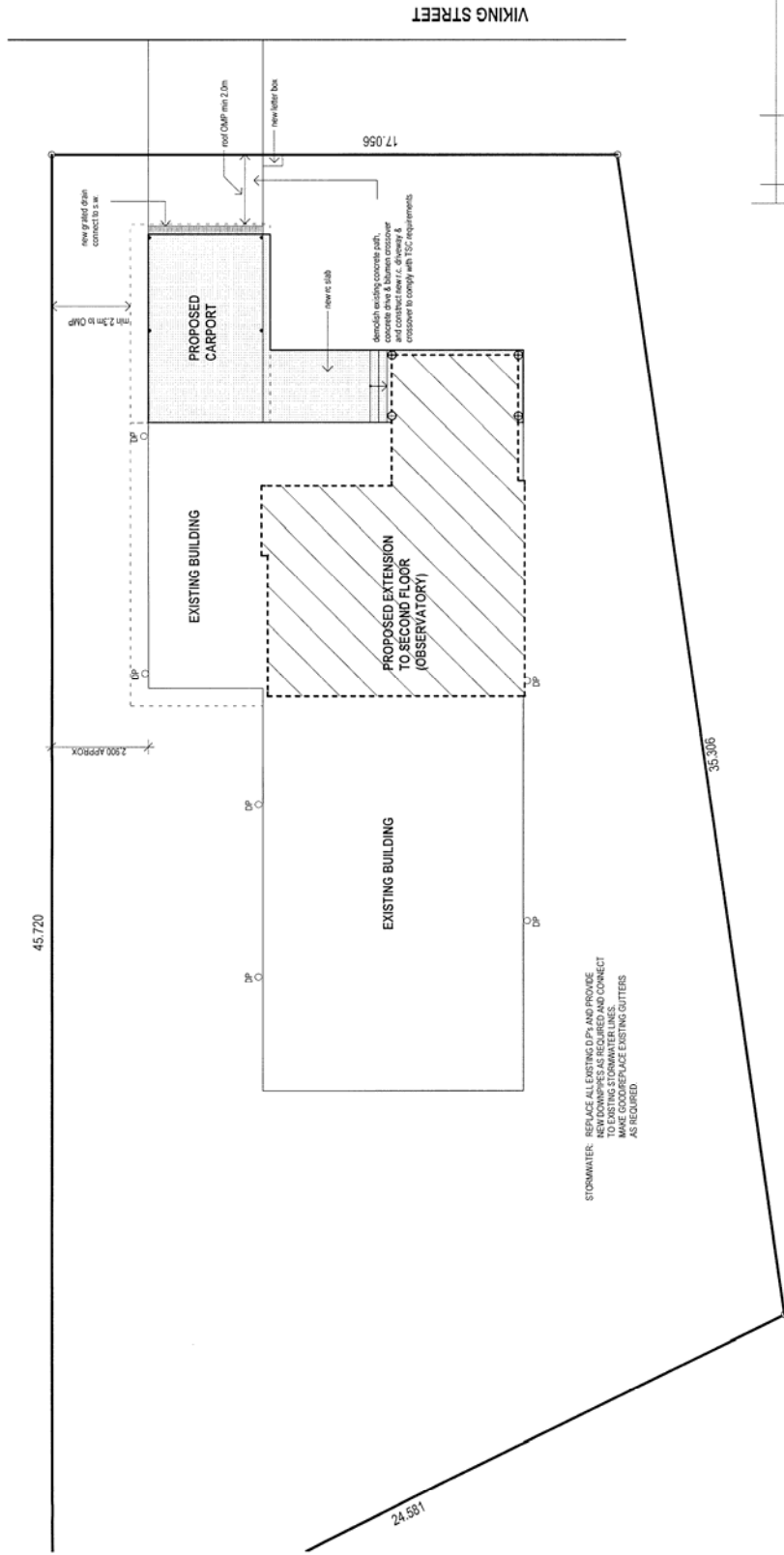
VIEW FROM NORTH EAST

GENERAL NOTES
 THE BUILDER SHALL VERIFY ALL LEVELS AND DIMENSIONS ON SITE PRIOR TO CONSTRUCTION. SHOULD ANY DISCREPANCIES BE FOUND WITHIN THESE DOCUMENTS THE BUILDER SHALL NOTIFY THE ARCHITECT IMMEDIATELY BY TELEPHONE AND BY WRITING. THE ARCHITECT'S RESPONSE SHALL BE IN WRITING AND SHALL BE REPORTED IMMEDIATELY IN WRITING TO SCHAEFER DESIGN.
 IT IS THE BUILDER'S RESPONSIBILITY TO INSTALL ALL NECESSARY FLASHINGS, WEEPHOLES, DPC'S, MEMBRANES ETC AS MAY BE REQUIRED BY THE B.C.A. AND TO MAKE THE WORKS WATERTIGHT.
 ALL WORKS SHALL BE CARRIED OUT IN ACCORDANCE WITH THE LATEST EDITION OF BUILDING CODE OF AUSTRALIA, THE CONDITIONS OF APPROVAL OF THE LOCAL AUTHORITY AND REQUIREMENTS OF ANY OTHER RELEVANT AUTHORITY.
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 EXHAUST FANS TO TOILETS, BATHROOMS SHALL BE DUCTED TO DISCHARGE TO CEILING SPACE

TERMITE PROTECTION
 PROVIDE FOR TERMITE PROTECTION IN COMPLIANCE WITH AS-3660. THE BUILDING WORKS SHALL BE PROTECTED BY THE INSTALLATION OF TERMITE MESH PHYSICAL BARRIERS IN ACCORDANCE WITH MANUFACTURERS DETAILS. THE BARRIERS SHALL BE INSTALLED AT ALL PROMINENT LOCATIONS SUCH AS METER BOX, OR SIMILAR, INDICATING:
 1. THE METHOD OF PROTECTION
 2. THE INSTALLATION DATE OF THE SYSTEM
 3. THE INSTALLERS OR MANUFACTURERS RECOMMENDATIONS FOR THE SCOPE AND FREQUENCY OF FUTURE INSPECTIONS FOR TERMITE ACTIVITY.

B	08-10-2006	CONSTRUCTION CERT. APPLICATION
No	Date	Description
STAGE TWO WORKS		
 Schaefer Design Pty Ltd Suite 4, 97 Marine Parade Kingscliff N.S.W. P.O. Box 1534 Kingscliff N.S.W. 2487 Tel: (01) 6574 2488 Fax: (01) 6574 2483 www.schaeferdesign.com.au mail@schaeferdesign.com.au		
PROJECT PROPOSED ALTERATIONS & ADDITIONS TO RESIDENCE AT 35 VIKING STREET KINGSCLIFF, NSW, 2487		
Task	File No	Chk
Drawn	20-03-2006	05203
Issue	Drawn	05203
SH, MS	WD 01	B

THESE DRAWINGS ARE TO BE READ IN CONJUNCTION WITH THE STRUCTURAL DETAILS AS PREPARED BY TWEED COAST CONSULTING ENGINEERS JOB No A3 1730 DRAWINGS 1-10 INCLUSIVE & ANY SUBSEQUENT AMENDMENTS
 TEL 6574 1176 FAX 6574 1854



STORMWATER: REPLACE ALL EXISTING D.P.'S AND PROVIDE NEW STORMWATER SYSTEMS AND CONNECT TO EXISTING STORMWATER LINES. MAKE GOOD/REPLACE EXISTING GUTTERS AS REQUIRED.

SITE PLAN
SCALE: 1:100



NOTE: NO SITE SURVEY OR SEARCHES HAVE BEEN CARRIED OUT. THE DRAWING IS FOR INFORMATION ONLY AND IS NOT TO BE USED FOR ANY PURPOSES WITHOUT THE PERMISSION OF THE ARCHITECT. PRIOR TO COMMENCEMENT OF SITE WORKS THE BUILDER SHALL OBTAIN ALL NECESSARY PERMITS AND EASEMENTS OR OTHER ENCUMBRANCES THAT MAY AFFECT THE PROPOSED WORKS.

THESE DRAWINGS ARE TO BE READ IN CONJUNCTION WITH THE STRUCTURAL DETAILS AS PREPARED BY TWEED COAST CONSULTING ENGINEERS JOB No A3 1730 DRAWINGS 1-10 INCLUSIVE & ANY SUBSEQUENT AMENDMENTS
TEL 6674 1176 FAX 6674 1854

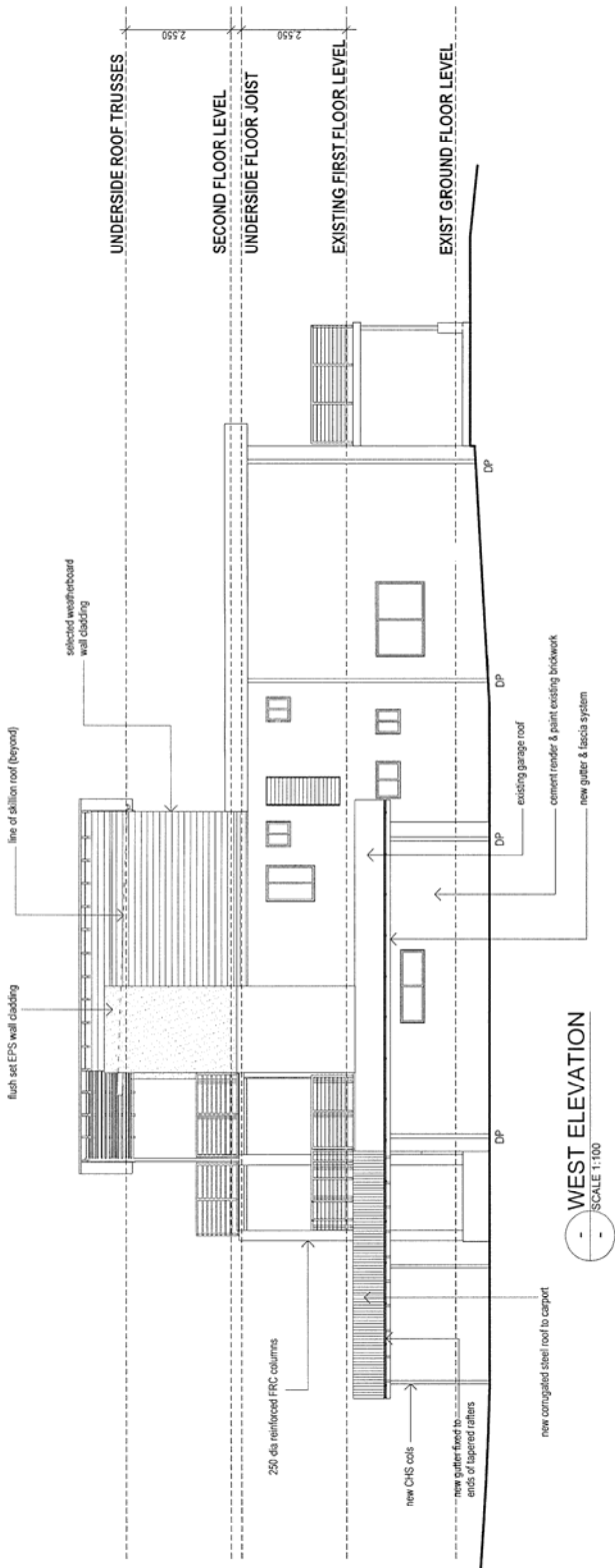
No.	Date	Description
B	08-10-2006	CONSTRUCTION CERT. APPLICATION

STAGE TWO WORKS

Schafel design
Schafel Design Pty Ltd
Suite 4, 92 Malena Parade Kingscliff N.S.W.
P.O. Box 1834 Kingscliff N.S.W. 2487
Tel: (01) 6674 2488
Fax: (01) 6674 2433
email: info@schafel.com.au
www.schafel.com.au

SCHAFEL DESIGN PTY. LTD.
Project: PROPOSED ALTERATIONS & ADDITIONS TO RESIDENCE AT 35 VIKING STREET KINGSCLIFF, NSW, 2487
GDA File No: 1096921

Drawn	20-03-2006	Drawn No	05203	Chk	
SH, MS		Check No	WD 02	Issued	B



No	Date	Description
B	08-10-2006	CONSTRUCTION CERT. APPLICATION

STAGE TWO WORKS

Schaefer design
 Schaefer Design Pty Ltd
 Suite 4, 97 Marine Parade Kingscliff N.S.W.
 P.O. Box 1834 Kingscliff N.S.W. 2487
 Tel: (02) 6674 2488
 Fax: (02) 6674 2433
 email: info@schaeferdesign.com.au
 www.schaeferdesign.com.au
 CRSLA Lic No. 1598601

PROPOSED ALTERATIONS & ADDITIONS TO RESIDENCE AT 35 VIKING STREET KINGSCLIFF, NSW, 2487

Drawn	20-03-2006	CHK	CHK
Checked	SH, MS	Drawn No	052003
Issue	WD 07	Checked No	
		Issue	B

THESE DRAWINGS ARE TO BE READ IN CONJUNCTION WITH THE STRUCTURAL DETAILS AS PREPARED BY TWEED COAST CONSULTING ENGINEERS
 JOB No A3 1730 DRAWINGS 1-10 INCLUSIVE & ANY SUBSEQUENT AMENDMENTS
 TEL 6674 1176 FAX 6674 1854

CONSIDERATIONS UNDER SECTION 82A OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

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

Tweed Local Environmental Plan 2000

Under the Tweed Local Environmental Plan 2000 the additions and alterations to the dwelling is permissible with Development Consent. The subject site is located within the 2(a) low density residential Zone

North Coast Regional Environmental Plan 1988

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

State Environmental Planning Policies

No State Environmental Planning Policies are applicable to the development.

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

No Draft Environmental Planning Instruments affect the development.

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

The amendments to development are consistent with the DCP's applicable at the time of the original approval in 2002

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

There are no matters prescribed by regulation.

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

The main impacts of the development were considered at the time of the original Development Application approval in November 2002. The provision of the additional decks at the front and rear of the dwelling will have an impact on adjoining property, however these impacts are considered minimal as the front deck faces the front street with the nearest adjoining neighbour being 2.5 metres away and the deck at the rear of the dwelling over looks yard with the nearest property boundary being 4.5m away. The amended application was notified to adjoining property owners and Council received no objections to the amended plans. Notwithstanding the above, as the third level front deck is only 3.4 metres from the nearest neighbour it is considered that privacy screens should be required for a distance of approximately 2 from the wall of

the dwelling on of either side of the deck to help reduce the impact of the deck on the privacy of adjoining property owners.

(c) Suitability of the site for the development

The site is suitable for the development.

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

The amended application was notified to adjoining property owners and Council received no submissions.

(e) Public interest

The main issues of public interest were addressed with the initial approval of DA02/1325 and it is considered that the amendments to the proposal will not prejudice the public interest.

OPTIONS:

1. Approve the Review of Determination.
2. Refuse the Review of Determination.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

Having regard to the matters raised in this report it is recommended that this Review of Determination be approved subject to the recommended condition of consent.

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 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).*

Nil.

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P2 [PD-PC] Development Application DA06/0682 for a Recreation Establishment Comprising a Meditation Centre, Accommodation Wings for up to 20 Guests, Administration, Dining & Kitchen Facilities, Bathroom Amenities, Car Parking, Spa & Massage at Lot 93 DP 807666 No. 93 Bonnydoon Road, Uki

ORIGIN:

Development Assessment

FILE NO: DA06/0682 Pt1

SUMMARY OF REPORT:

The application before Council seeks development consent for the establishment of a recreation facility at Lot 92 DP 807666 No. 93 Bonnydoon Road, Uki. The proposed development is a meditation retreat with accommodation for a maximum of 20 guests and associated facilities.

The retreat is proposed to operate on a part time basis, offering six 10-day retreats and twelve 3-day retreats throughout the year.

The development involves the construction of four buildings:

- Single storey, hexagonal shaped meditation centre (~330m²).
- Two storey administration building incorporating reception area, library, laundry, additional bathroom amenities, massage, sauna and spa facilities, kitchen and dining facilities (~155m²).
- 2 x single storey accommodation wings, each comprising 10 separate dormitory style rooms (~255m²).

The subject site is located approximately 3.5 kilometres to the north of Uki, and is surrounded by similar sized rural-living style allotments. Existing structures on the parcel include a single storey dwelling house, in-ground swimming pool and farm shed.

Additional vegetation clearing comprising approximately 350m² is required in order to meet the RFS nominated Asset Protection Areas around the accommodation buildings.

The application was publicly exhibited for a period of two weeks. During that time, 13 submissions were received in opposition to the development. The main issues raised are concerned with traffic generation on Bonnydoon Road, safety of children and other pedestrians on the road, environmental impact, amenity issues and the commercial use of land under a rural zoning. These issues are discussed in greater detail later in this report.

RECOMMENDATION:

That Development Application DA06/0682 for a recreation establishment comprising of meditation centre, accommodation wings for up to twenty guests, administration, dining and kitchen facilities, bathroom amenities, car parking, spa and massage facilities at Lot 93 DP 807666, No. 128 Bonnydoon Road, Uki be approved for the following reasons: -

GENERAL

1. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia. [GEN0115]
2. The development shall be completed in accordance with the Statement of Environmental Effects and Plan No's 1 - 13 prepared by John Robinson Design and Drafting Services and dated February 2006; drawing No. 01956 Rev. B Sheets 1 & 2 prepared by B & P Surveys and dated 3 February 2006, except where varied by the conditions of this consent. [GEN0005]
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. 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]
5. Liaison with the Department of Natural Resources and the Catchment Management Authority regarding any required approvals in accordance with the Native Vegetation Act is to be undertaken by the applicants.

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

6. The developer shall provide 29 parking spaces including parking for the disabled in accordance with DCP2, AS 2890 and Austroads Part 11.

Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate. [PCC0065]

7. 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]

8. **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: \$4,264.00
S94 Plan No. 4 (Version 4.0)
Sector 12 - Rural Inner Zone

[PCC0215]

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

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

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

- (c) **Densely plant with sub-tropical (rainforest) native and exotic species to suit the aspect/micro climate. Emphasis to be on trees and ground covers which require minimal maintenance. Undergrowth should be weed suppressant.**
- (d) **Mulch heavily (minimum 300mm thick) preferably with unwanted growth cleared from the estate and chipped. All unwanted vegetation is to be chipped and retained on the subdivision.** [PCC0455]
- 10. Permanent stormwater quality treatment shall be provided in accordance with the following:**
- (a) **The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.**
- (b) **Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils *Development Design Specification D7 - Stormwater Quality*.**
- (c) **The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management. Typical water sensitive features include infiltration, maximising permeable/landscaped areas, stormwater retention /detention/reuse, and use of grass swales in preference to hard engineered drainage systems.**
- (d) **Specific Requirements to be detailed within the Construction certificate application include:**
- (i) **Roofwater does not require treatment and can be harvested.**
- (ii) **Runoff from all driveway and parking areas is to be directed over grassed swales, for conveyance to a discharge or collection point.** [PCC1105]
- 11. A construction certificate application for works that involve any of the following:-**
- **connection of a private stormwater drain to a public stormwater drain**
 - **installation of stormwater quality control devices**
 - **erosion and sediment control works**

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

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

[PCC1145]

12. 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]

13. A Tweed Shire Council approval to install a Commercial Onsite Sewage Management System shall be required

[PCCNS01]

14. Details of the kitchen exhaust system are to be provided and approved prior to release of the Construction Certificate if required. Such details are to include the location of discharge to the air, capture velocity, size and hood and angle of filters. The system shall comply with AS1668.2 - Ventilation Requirements.

[PCC0735]

15. Where a private certifier is appointed, prior to release of the construction certificate, documentation shall be provided to the satisfaction of Council's General Manager or his delegate detailing the construction of the food premises.

[PCC0745]

16. Detailed drawings showing food preparation & storage area equipment, fittings, and internal finishes are to be submitted to Council for further analysis, comment and approval.

[PCCNS02]

17. A waste management plan including the proposed times and methods of waste collection and removal; the name/s of specific waste collection contractor/s who will service the premises; and plans detailing the location of specified on-site waste collection bins shall be submitted to the General Manager or his delegate for approval.

[PCCNS03]

18. Prior to the issue of a Construction Certificate the following detail in accordance with Councils adopted Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

(a) copies of compliance certificates relied upon

(b) four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:

- earthworks
- roadworks/access:
 - * the existing bitumen driveway including footpath crossing is to be widened to be a maximum of 3 metres wide in accordance with AS 2890.1. This widening shall extend from the front boundary to the designated parking area.
 - * a passing bay shall be provided within the abovementioned section of the access driveway, 20metres long and creating an overall trafficable width of 7 metres at the passing bay.
 - * minor restoration and maintenance work shall be carried out over the driveway to remove all weeds and patch potholes.
 - * a 1 metres wide cleared area id to be provided along both sides of the driveway.
 - * construction of fire trails and any associated works as nominated in the Bushfire Threat Assessment Report.
- stormwater drainage
- landscaping works
- sedimentation and erosion management plans
- location of all service conduits (water, sewer, Country Energy and Telstra)

[PCC0985]

PRIOR TO COMMENCEMENT OF WORK

19. 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]
20. 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.
- [PCW0225]
21. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every fifteen (15) persons or part of fifteen (15) persons employed at the site. Each toilet provided must be:-
- (a) a standard flushing toilet connected to a public sewer, or
 - (b) if that is not practicable, an accredited sewage management facility approved by the council
- [PCW0245]
22. Where prescribed by the provisions of the Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (a) showing the name, address and telephone number of the principal certifying authority for the work, and

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

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

[PCW0255]

23. 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]

24. 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.

[PCW0775]

25. 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]

26. 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]

DURING CONSTRUCTION

27. 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]

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

[DUR0375]

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

[DUR0405]

30. The finished floor level of the building should finish not less than 225mm above finished ground level.

[DUR0445]

31. Access to all buildings for people with disabilities shall be provided and constructed in accordance with the requirements of Section D of the Building Code of Australia. Particular attention is to be given to the deemed-to-satisfy provisions of Part D-3 and their requirement to comply with AS1428.

[DUR1685]

32. Where a building of part of a building is required, under the provisions of Section D of the Building Code of Australia, to be accessible to permit use by people with disabilities, prominently displayed signs and symbols shall be provided to identify accessible routes, areas and facilities. The signage, including Braille or tactile signage, should be installed in accordance with the relevant provisions of the Building Code of Australia and achieve the minimum design requirements provided under AS1428.

[DUR1695]

33. 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]

34. 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]

35. 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]

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

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

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

[DUR2555]

37. The provision of 29 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]

38. 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]

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

[DUR0805]

40. 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]

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

[DUR0995]

42. 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]

43. 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]

44. Provision of a stormwater drainage system in accordance with the approved Construction Certificate.

[DUR2345]

45. 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.

46. 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]

47. All walls in the food preparation and food storage areas shall be of solid construction, easily washable, lightly coloured and tiled to a height of at least 2 metres above floor level, or where not tiled, cement rendered to provide a smooth even finish to ceiling. Note: Stud framed walls will not be acceptable. Intersections of all floors with walls shall be coved to a radius of not less than 25 millimetres.

[DUR1495]

48. All internal fitout is to comply with Australian Standard AS4674 - Design, Construction and Fitout of Food Premises.

[DUR1535]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

49. 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]

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

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

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

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

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

[POC0265]

51. Prior to the occupation of any building and prior to the issue of any occupation certificate a final inspection report is to be obtained from Council to verify the satisfactory installation of all plumbing and drainage and the on-site sewage management facility.

[POC1035]

52. 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]

53. Prior to commencement of operations and on completion of fit out an inspection is to be arranged with Council's Environmental Health Officer for final approval.

[POC0615]

54. The food premises shall provide appropriate notification to the NSW Food Authority prior to commencement of operations.

[POC0625]

55. The premise is to be treated on completion of fit-out and prior to commencement of trading and thereafter on a regular basis by a Licensed Pest Control Operator. A certificate of treatment is to be made available for Council inspection on request.

[POC0635]

56. A Water Supply Management Plan shall be compiled and implemented to the satisfaction of Council's Environment and Health Services Unit. The plan shall include but not be limited to: organisational detail, key responsibility for system monitoring & maintenance, description of system, system operation & maintenance, contingency plan and monitoring.

57. Appropriate certification shall be provided where any *regulated system*, as defined under the provisions of the Public Health Act 1991, has been installed.

58. A Tweed Shire Council approval to install a Commercial Onsite Sewage Management System shall be required.

[POCNS01]

59. The provision of traffic safety and warning signs at appropriate locations along Bonnydoon Road, to the satisfaction of the General Manager or his delegate, and Council's Traffic Engineer.

[POCNS02]

USE

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

[USE0125]

61. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised, notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive noise.

[USE0175]

62. All deliveries to the premises are to occur only within the hours of 8.00am to 5.00pm Monday to Friday, 8.00am to 12.00pm Saturdays and no deliveries on Sundays or public holidays unless otherwise approved by Councils General Manager or his delegate. Urgent or medical related deliveries exempted.

[USE0195]

63. All external artificial lighting shall be shielded where required to the satisfaction of Councils General Manager or his delegate to ensure that the spill of light or glare from such lighting does not create a nuisance to any adjoining or neighbouring premises.

[USE0205]

64. Upon receipt of a noise complaint that Council deems to be reasonable, the operator/owner is to submit to Council a Noise Impact Study (NIS) carried out by a suitably qualified and practicing acoustic consultant. The NIS is to be submitted to the satisfaction of the General Manager or his delegate. It is to include recommendations for noise attenuation. The operator/owner is to implement the recommendations of the NIS within a timeframe specified by Council's authorised officer

[USE0245]

65. The premises shall be operated in accordance with the *Public Health (Swimming Pools and Spa Pools) Regulation 2000* and the current NSW Health Public Swimming Pool and Spa Pool Guidelines.

[USE0985]

66. All wastes shall be collected, stored and disposed to the satisfaction of the General Manager or his delegate. [USE0875]
67. All relevant installations and activities conducted on the premises shall comply with the provisions of the Public Health Act 1001, its Regulations and the NSW Code of Practice for the Control of Legionnaires' Disease 2004. All records shall be provided to Council's Environmental Health Officer upon request.
68. Any premises used for the storage, preparation or sale of food are to comply with the Food Act 1989, its Regulations and the provisions of the Food Standards Code. [USENS01]
69. No intensification of use of the kitchen facilities beyond the provision of meals prepared for guests staying on the premises is permitted without the approval of the General Manager or his delegate. The premises shall not be used solely as a restaurant offering a meal service only.
70. No intensification of use of the retreat beyond the provision of six 10-day and twelve 3-day meditation retreats per year is permitted without the approval of the General Manager or his delegate.
71. No intensification of use of the accommodation wings beyond the provision of sleeping facilities and bathroom amenities for guests staying at the retreat for the purpose of undertaking structured activities on site is permitted without the approval of the General Manager or his delegate.
72. The premises shall not be hired out for private parties, functions, conferences and the like. [USE0855]
73. No more than 20 guests shall be in attendance at the retreat at any one time.
74. A minimum 12 seater shuttle bus shall be made available at all times the retreat is operational for the pick-up and drop-off of guests at major transport nodes in the Shire [USENS02]

GENERAL TERMS OF APPROVAL PERMIT UNDER PART 3A OF THE RIVERS AND FORESHORES IMPROVEMENT ACT 1948

As construction of the foundations of the proposed buildings will involve excavations within 40 metres of a creek, a Part 3A permit under the R & F I Act 1948 will be required for the proposed development. However, as the proposal is unlikely to obstruct or detrimentally affect the flow of the nearby unnamed creek minimal General Terms of Approval are required.

Accordingly, the following General Terms of Approval are provided:

- Erosion and sediment control measures are required to be implemented prior to any works commencing, and must be maintained for as long as necessary after the completion of works to prevent sediment entering the river system. These measures are to be in accordance with councils requirements and follow best management practices as outlined in the NSW Department of Housing's manual - Managing Urban Stormwater: Soils and Construction (1988) (the Blue Book).
- If in the opinion of any reasonable officer of the Department of Natural Resources any work is being carried out in such a manner as it may damage or detrimentally affect the stream, or damage or interfere in any way with any work, the operation on that section of the said stream shall cease forthwith upon written or oral direction of such officer.

Groundwater Impact Assessment

The NSW State Groundwater Quality Protection Policy 1998 is aimed at preventing the degradation of the State's aquifers whereby, each aquifer system is evaluated by its beneficial use. Potential dischargers of effluent are required to establish that their activity will not contaminate the groundwater or impact on groundwater dependent ecosystems. Effluent laden water can impact on local groundwater systems, which in turn has the potential to flow through to local creeks in the area and affect other groundwater users.

The Department does not object to the effluent irrigation system provided it is operated in an ecological sustainable manner, that does not lower the beneficial use of the groundwater resource. In addition the effluent irrigation system should be constructed in accordance with Tweed Shire Council's requirement for onsite sewerage systems.

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

1. Access is to comply with section 4.3.2 Planning for Bushfire Protection 2001.
2. At the commencement of building works and in perpetuity the property around proposed accommodation wing A shall be managed as follows:
 - a) Northeast, southeast and southwest for a distance of 20 metres as an 'Inner Protection Area' and 10 metres as an 'Outer Protection Area'.
 - b) Northwest for a distance of 45 metres as an 'Inner Protection Area' and 15 metres as an 'Outer Protection Area'.
 - c) South for a distance of 20 metres as an 'Inner Protection Area' as outlined within Section 4.2.2 in Planning for Bushfire Protection 2001.

3. At the commencement of building works and in perpetuity the property around proposed Accommodation Wing B shall be managed as follows:
 - a) Northeast, southeast and southwest for a distance of 20 metres as an 'Inner Protection Area' and 10 metres as an 'Outer Protection Area.'
 - b) Northwest for a distance of 45 metres as an 'Inner Protection Area' and 15 metres as an 'Outer Protection Area' as outlined within Section 4.2.2 in Planning for Bushfire Protection 2001.
4. A restriction to the land pursuant to Section 88B of the Conveyancing Act 1919 shall be placed on the relevant lots requiring the provision of the Asset Protection Zones.
5. The proposed buildings are to fully comply with the requirements of Level 1 construction as required by Australian Standard AS3959-1999 'Construction of buildings in bushfire-prone areas'.
6. Roofing shall be gutterless or have leafless guttering and valleys which are to be screened with non-corrosive mesh to prevent the build up of flammable materials.
7. In recognition of no reticulated water supply, the proposed development shall have a minimum of 3kW (5hp) petrol or diesel powered pump and a 30,000 litre (minimum) dedicated water supply tank dedicated solely for fire fighting. A 65mm Storz fitting and lever action ball valve shall be installed in the tank. Suitable access to within 6 metres of the dedicated water supply for a Category 1 heavy bushfire tanker shall also be provided.
8. A 30 metre long x 19mm diameter fire hose and reel should be installed at each building. The hose reel should be supplied, via the petrol / diesel powered pressure pump, from the dedicated fire fighting water supply.
9. A revised Bush Fire Evacuation Plan is to be submitted to the NSW Rural Fire Service - local District Office for approval. The evacuation plan is to detail the following:
 - a) Under what circumstances will the complex be evacuated
 - b) Where will all persons be evacuated to
 - c) Roles and responsibilities of persons co-ordinating the evacuation
 - d) Roles and responsibilities of persons remaining with the complex after evacuation
 - e) A procedure to contact the NSW Rural Fire Service District Office / NSW Fire Brigade and inform them of the evacuation and where they will be evacuated to

10. A Bush Fire Management Plan is to be prepared that addresses the following requirements:
- a) Contact person / department and details
 - b) Schedule & description of works for the construction of Asset Protection Zones and their continued maintenance.
 - c) Management strategies, proposed schedules and description of works of any remnant bushland within the property boundary.
 - d) Details of access through any gate / fire trail system for remnant bushland areas.

This assessment is based upon drawing titled 'Detail and Contour Survey' drawing No. 01956B, Revision B, prepared by B & P Surveys dated 3.2.06 as attached to the letter prepared by Planit Consulting dated 6 September 2006.

REPORT:

Applicant: Slocomb Investments Pty Ltd
Owner: Slocomb Investments Pty Ltd
Location: Lot 93 DP 807666, No. 128 Bonnydoon Road, Uki
Zoning: 1(a) Rural & 7(d) Environmental Protection (Scenic/Escarpment)
Cost: 4495,000

BACKGROUND:

The application before Council seeks development consent for the establishment of a recreation facility at Lot 92 DP 807666 No. 93 Bonnydoon Road, Uki. The proposed development is a meditation, spa and massage retreat with accommodation in bunkhouse style buildings for a maximum of 20 guests. Associated facilities including bathroom amenities, kitchen and dining facilities, administration building, car parking, on-site sewage management and effluent irrigation systems are also proposed. The development offers a largely self-orientated meditation escape.

It is proposed that the retreat would operate on a part time basis, offering six 10-day retreats and twelve 3-day retreats throughout the year. Based on this, the retreat would be open for 96 days throughout the calendar year.

The development involves the erection of the following structures:

- Single storey, hexagonal shaped meditation centre constructed on a concrete slab, with rendered concrete block walls, sheet metal roofing and a covered verandah extending round the perimeter of the building (~330m²).
- Two storey administration building incorporating reception area, library, laundry, additional bathroom amenities and massage, sauna and spa facilities on the ground floor; and kitchen and dining facilities on the first floor. This building would also be constructed on a concrete slab, with rendered concrete block walls and sheet metal skillion roof (~155m²).
- 2 x single storey accommodation wings, each comprising 10 separate dormitory style rooms, with male and female toilet and shower facilities at the end of each building. These wings would be constructed from the same materials as the abovementioned building, with a skillion roof (~255m²).

The subject parcel of land is irregular in shape, with a total area of 21.89 hectares and frontage to a sealed road with kerb and gutter. It is located approximately 3.5 kilometres (by road) to the north of Uki, and is surrounded by similar sized rural-living style allotments. Generally, the areas to the north and west of the subject allotment remain heavily vegetated, have a varied topography with high relief and are renowned for their scenic qualities, which are reflected in the Environmental Protection Scenic/Escarpment and Habitat Protection zonings of the land.

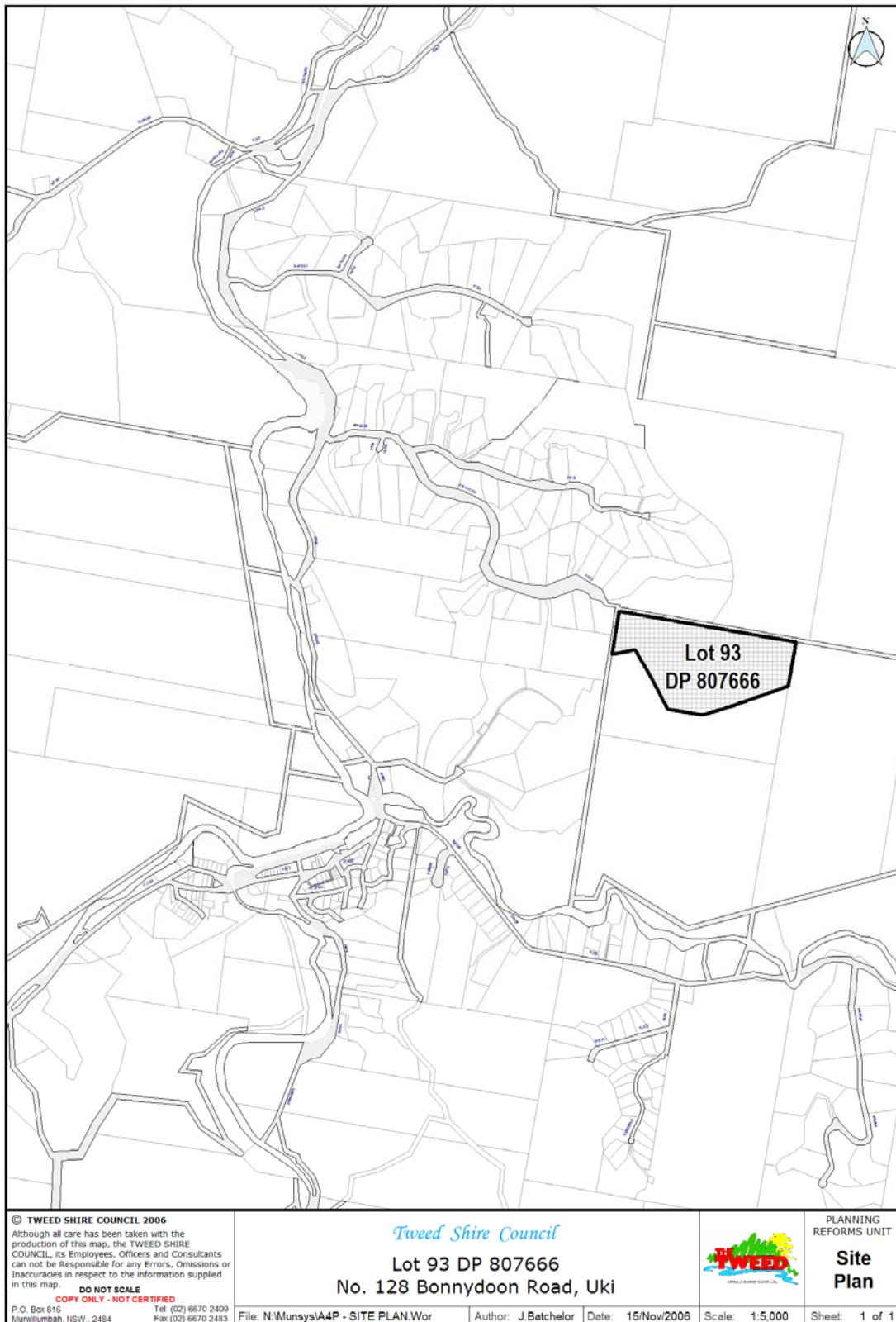
Existing structures on the parcel include a single storey dwelling house, in-ground swimming pool and farm shed. These are situated at the top of a ridge, approximately 200 metres to the south east of the proposed development site. A dam wall has been

constructed over the creek that runs adjacent to the development site. The wall provides structure and support for the unsealed driveway that traverses the creek, which provides vehicular access to the dwelling house from Bonnydoon Road.

The nominated construction site is presently vacant, and Council's aerial photography records show the site as being cleared for at least 6 years. Notwithstanding, further clearing would be required in order to meet the required Asset Protection Areas around the accommodation buildings. A site inspection by Council staff revealed some recent earthworks have occurred at the proposed construction site, presumably to create suitable building platforms. The site is in close proximity to an unnamed creek, which has been dammed upstream to create vehicle access to the dwelling house.

The application was publicly exhibited for a period of two weeks. During that time, 13 submissions were received in opposition to the development. The main issues raised are concerned with traffic generation on Bonnydoon Road, safety of children and other pedestrians on the road, environmental impact, amenity issues and the commercial use of land under a rural zoning. These issues are discussed in greater detail later in this report.

SITE DIAGRAM:



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

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

Tweed Local Environmental Plan 2000

The subject site is located within the 1(a) Rural Zone. The proposed meditation retreat is considered to be a *recreation establishment*, which are defined under TLEP 2000 as *health farms, religious retreat houses, rest homes, youth camps and the like*. Recreation establishments are permissible with consent within the zone.

The primary objective of the 1(a) zone is *to enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilisation purposes and associated development, whilst also protecting the rural character and amenity of the area*.

One of the secondary objectives of the zone is *to enable other types of development that rely on the rural or natural values of the land such as agri- or eco-tourism*.

The proposed development is considered consistent with Clause 8 of TLEP 2000 with relation to the primary zone objective and the applicable secondary zone objective relating to rural development.

The proposed meditation retreat is considered to be consistent with the zone objectives, as it would not compromise the agricultural integrity of the land or the rural character or amenity of the area. Furthermore, the retreat is focussed on, and to a certain extent relies on, enjoyment of the peaceful natural atmosphere associated with the rural area.

Clause 15 of the TLEP requires Council to be satisfied that the subject land has the benefit of essential services prior to issuing consent. The existing dwelling utilises harvested rainwater from roof runoff and sewage is disposed of via on site septic system. Telephone and electricity are currently available to the development site, and appropriate applications for on-site sewage management systems for the proposal have been made. The proposed development would also rely on harvested rainwater from roof runoff. Given the lack of infrastructure available to the area it is considered acceptable for the proposal to rely on these methods of essential services.

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 administration building would be 2 storeys and the other structures would all be one storey. Thus, the proposed building height is consistent with the allowable height limit for the site.

Clause 35 of the TLEP requires an acid sulfate soils management plan be assessed where the proposed development is likely to interfere with acid sulfate soils. The subject site is not identified as having potential acid sulfate soil levels.

Clause 39A of the TLEP 2000 relates to Bushfire Protection and requires all applications for development on land that is bush fire prone to address the provisions of Planning for Bushfire Controls 1996. The subject land contains both category 1 and 2 bushfire prone vegetation and as such a bushfire Threat Assessment was prepared as part of the application. The application was referred to the NSW Rural Fire Service for assessment and they have provided their general terms of approval including the required asset protection zones and clearing to conform to Planning for Bushfire Controls. This is discussed in greater detail later in the report.

North Coast Regional Environmental Plan 1988

Clause 12 of NCREP relates to impacts on agricultural activities and requires Council to consider the likely impacts of the proposed development on the use of adjacent or adjoining agricultural land and whether or not the proposed development would cause a loss of prime crop or pasture land.

Small patches of land on the subject parcel and adjoining parcels have been identified as class 4 agricultural land, which is land suitable for grazing but not cultivation. This class is not considered to be significant agricultural land. Furthermore, no Class 1 or 2 Agricultural lands have been identified in the locality. As such, there is no significant agricultural land located in the vicinity and therefore no anticipated impacts on prime crop or pastureland.

No further clauses of the NCREP are relevant in the assessment of this application. So forth, the proposal is considered consistent with the provisions of the NCREP 1988.

State Environmental Planning Policies

There are no State Environmental Planning Policies that are applicable to this proposal.

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

There are no draft planning instruments that affect this proposal.

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

DCP No. 2 – Site Access and Parking Code

DCP 2 contains Council's provisions for access and parking, with the objective of ensuring the provision of safe, convenient and equitable access to developed

land for pedestrians, vehicles and persons using vehicles, bicycles and public transport.

Under DCP 2, the proposed development is not specifically defined and as such there is no specific parking rate to apply. Although the retreat would not generate the same volume of traffic movements as a tourist development, it is considered that the actual car parking demand would be most similar to Tourist Accommodation given each guest has a separate room and there is potential for each guest to travel to the premises by private vehicle. In that regard, the maximum demand would be 1 car space per unit or bedroom. The rate for Tourist Accommodation is 1 car space per unit and 0.5 per staff member.

13 casual staff positions are identified in the application, however they would be working "on a rotating basis or as required." Given staffing requirements would change on a temporal basis throughout the day and week and some staff members would not be working at all during the times the retreat is actually operating (e.g. gardeners), it is considered reasonable to adopt the 50% utilisation rate for staff members at any one time, as outlined in the Tourist Accommodation parking rates.

Standard	Requirement	Proposed	Complies
Tourist Accommodation	1 per unit = 20 on-site spaces 0.5 per staff = 6.5 Total = 26.5 spaces	29 on-site car spaces	Yes

The following is an extract from the Statement of Environmental Effects included with this application:

"Guests will either be picked up from the Gold Coast Airport or other transport hubs and taken to the retreat by a Mini Bus, or will arrive by private vehicle. Once at the retreat, the guests will be predominately involved in the various classes and exercises, and will not be leaving the site for day trips and the like, as would be expected with a Tourist Facility."

Given the uncertainty of numbers of private vehicles that would be used and also and the ambiguity with respect to the number of staff numbers on site at any one time, it remains unclear as to how many vehicles would actually require parking at the retreat during operational times. As such, the following additional assessment for car parking and traffic generation has been undertaken based on the maximum possible parking demand for the development.

Should the retreat be operating at full capacity, and all guests travelled to the retreat by way of their own private vehicle, there would be 20 guest cars. Allow for at least 7 staff members on site at any one time (as explained above) and reasonable parking requirements would be 27 spaces.

The proposal includes a car parking area capable of supporting up to 29 vehicles with a 6.2 metre aisle. The parking area would be sealed with all

weather, high bearing capacity porous surface in accordance with Section 3.77 of DCP 2.

The proposal complies with the provisions of DCP 2 when based on Tourist Accommodation car parking rate contained within the policy; and it would accommodate more parking spaces than would be required even if the retreat was operating at full capacity, all patrons drove a private vehicle and 50% of staff members were on site at any one time. Furthermore, the applicant anticipates that on most occasions a shuttle bus service would bring at least some guests to the retreat, thereby reducing the number of vehicles that would be visiting the site.

In light of the above, and having given due consideration to the nature of the proposal and its car parking implications, the proposal is considered to satisfy the objectives and provisions of DCP 2. The application was assessed by Council's traffic Engineer who raised no objections on the grounds of parking.

DCP 42 – Public Notification Policy

The proposal was notified in accordance with the requirements of Council's Development Control Plan No. 42 – Public Notification Policy. Thirteen submissions were received. These are discussed in detail below.

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

Clause 92(a) Government Coastal Policy

The land is not subject to the provisions of Coastal Policy.

Clause 92(b) Applications for Demolition

The proposal does not involve the demolition of any buildings or structures.

(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

Traffic & Amenity

The most significant anticipated impact of the meditation centre would be amenity impacts due to traffic generation on Bonnydoon Road. This is a major concern of residents of the street and has been carefully reviewed in this assessment.

The applicant engaged CRG Consulting to prepare a traffic report outlining the impacts of increased traffic on the local road network. The application and report were forwarded to Council's Traffic Engineer for comment and assessment. It was noted that the traffic report excluded staff, which would increase traffic by 16 vehicle trips per day (vpd) for each day the retreat is operating. This would increase the daily traffic to up to 30vpd. Council's DCP

16 Table D7.1.7 states that a 6m wide access street can carry a maximum of 1000vpd and a 7.5m wide access street can carry 3000vpd. The cumulative impact of the proposal would be well below these thresholds.

It was also noted that the intersection of Kyogle Road and Braeside Drive is of a high standard and no upgrading is required as a result of the proposal. In that regard, technically the road network can accommodate traffic from the proposal without affecting efficiency or safety.

The retreat would be unlike normal tourist accommodation as it would not rely on passing trade, instead accommodating only pre-booked guests; and the nature of the retreat being offered is such that guests will generally not leave the site (for day trips etc) during their stay. Furthermore, the applicant anticipates many guests will utilise the shuttle bus service to be provided by the retreat, which will pick up guests from the Gold Coast Airport and other main transport centres, thereby reducing the number of vehicle movements to the site. It is also noted that there will be 269 days of each year when the retreats are not held, during which time the proposal would not generate any additional traffic or impact on the local road network.

The current speed limit on Bonnydoon Road is 50km/h; the road has a pavement width of 7.5 metres and is sealed with kerb and guttering for its entire length. As such, the road is not considered to pose a safety threat provided drivers obey the set speed limit and exercise due common sense.

Given the relatively low volume of traffic (30vpd) generated by the proposal, and the present condition of the road, there are no capacity problems with the proposal. However, clearly there is a potential impact on local amenity, which needs to be considered from a planning perspective. The most obvious potential impact on amenity would be from vehicle noise and/or inappropriate speed on Bonnydoon Road.

Potential excess speed could be addressed by requiring the applicant to construct speed bumps at appropriate locations Bonnydoon Road. However, although this may reduce overall speed it would more than likely facilitate an increase in traffic noise due to vehicles slowing down and accelerating again, thereby creating a greater cumulative impact on the local amenity. As stated above, the present speed limits and condition of the road are acceptable, as such the most appropriate outcome is for conditions of consent to be imposed requiring the installation of additional speed limit signs and warning signs such as Slow Down, Children Crossing, Steep Windy Road etc, at suitable locations along Bonnydoon Road, at the sole cost of the applicant.

In determining whether the proposal unreasonably impacts upon the amenity of the adjoining properties, the intended character of the area must be considered. The area is zoned Rural, not Rural Living (residential) as suggested by many of the residents, and a recreation establishment is a permissible use within the zone. Additionally, the intensity at which the retreat will operate is considered consistent with the rural zoning of the land, is

actually less intense than other permissible land uses, as it would only operate for 96 days in each year.

Having regard to the nature of the proposal, the applicable planning controls for the zone and the desired future form and land uses of the area, it is considered that the proposal does not unreasonably detract from the rural character and amenity of the area, nor restrict the ability of adjoining parcels to maintain a rural lifestyle.

Vegetation Clearing

The development itself is proposed to be located within a cleared area on the subject property. Some additional clearing is required in order to meet the Asset Protection zones enforced by the NSW Rural Fire Service. The additional clearing will be, for the most part, directed at the removal of exotic species including camphor laurels, which are widespread around the development site.

The application, as originally submitted, did not identify specific areas of clearing for asset protection zones. However, a revised bushfire and vegetation assessment was submitted which identified a further 350m² of vegetation to be cleared. This is distributed over four separate areas adjacent to the north eastern, eastern, southern and south western boundaries of the existing cleared area.

Groundwater

The proposal includes the construction and installation of additional on site sewage management systems, designed to cater for peak rates of over 20 people on site. An assessment of the proposed treatment system and disposal method was undertaken by HMC Environmental Consulting, who conclude that minimal levels of environmental impact will occur providing the treated effluent is disposed of via subsurface drip irrigation over a minimum area of 1240m² to be appropriately maintained with turf.

In light of the above recommendations from HMC Consulting, contamination of groundwater considered unlikely, as the treated effluent levels should not reach the water table but be absorbed by appropriately maintained vegetation over the site.

Appropriate conditions of consent regarding on site sewage management have been included.

Impacts of Construction

It is anticipated that it will take 5 to 6 months to construct the meditation centre and associated buildings. As with most developments, some adverse impacts such as noise, reduction in air quality and general decline of amenity in the locality are anticipated during the construction phase. This is unavoidable,

however conditions of consent have been imposed to control construction activities, work hours, builders noise and construction waste to a reasonable level.

Water, Soils, Erosion and Siltation

To minimise the potential for erosion and subsequent water sedimentation during construction and excavation of footings, appropriate sedimentation and erosion control measures at the construction stage will be put in place. Accordingly, suitable conditions of consent requiring such controls have been included.

(c) Suitability of the site for the development

The proposed development is to be erected on land that is zoned primarily for agricultural or natural resource utilisation purposes and associated development, however LEP 2000 does allow for certain types of development that are not compatible with urban areas to be carried out. Developments that rely on the rural or natural values of the land, such as eco-tourism, are also included in the desired types of development for the zone.

The proposed meditation centre is defined as a recreation facility, which is a permissible use within the zone. Furthermore, the proposed use can be aligned with the concept of eco-tourism, as it promotes the natural and scenic values of the property as part of the attraction to the centre.

In light of the above, the suitability of the site for the purposes of the proposed meditation retreat has been demonstrated by way of general consistency with the relevant statutory guidelines applying to the site.

Context and Setting

The subject property is located in a rural setting, north east of the village of Uki. The surrounding area is generally characterised by rural and rural residential allotments of varying sizes and forms, however also provides for a variety of land uses to cater for a range of lifestyles, cultures, businesses and religious beliefs. Such additional land uses include traditional farming activities, bed and breakfast establishments, art galleries, rural tourist facilities, cafes, tea houses and religious retreats.

The proposed meditation retreat would add to the diversity of land uses in the Tweed hinterland, would generate economic growth for the village of Uki, and would provide an alternative nature-based, eco-tourism establishment. It is not considered out of context with the greater Uki district and is considered appropriate given the characteristics of the subject site.

Utilities, Services, Effluent Disposal

As outlined above in relation to Clause 15 TLEP 2000, the existing dwelling utilises rainwater tanks for on-site water supply, telecommunication and electricity services are sufficient and waste is treated via on-site sewage management system.

At present, there is no opportunity for connection to the Shire's centralised sewer system and the provision of such infrastructure is considered unlikely in the near future. Consequently, both the existing dwelling and the proposed development would continue to make use of on-site tank water and reticulated on-site sewage management systems with disposal of effluent via subsurface drip line irrigation.

It is proposed to treat all effluent generated from the accommodation wings and dining building by NSW Health accredited secondary treatment systems eg Aerated Wastewater Treatment System or Biological Filter. An assessment of the site and proposed on-site wastewater treatment and disposal was undertaken by HMC Environmental Consulting Pty Ltd, who recommend 2 x 10 EP NSW or 1 x 20 EP secondary treatment systems be installed that include Aerated Wastewater Treatment Systems or Biological Filters that comply with current minimum legislative requirements. They conclude that these systems are sufficient to attain an acceptable level of environmental impact from the proposed development.

Furthermore, disposal of treated effluent via subsurface drip line irrigation over a minimum 1240m², including diversion mounds or bunding installed upslope to divert overland flow, is recommended as suitable for the site providing the owner installs AAA rated water saving devices to ensure the minimisation of hydraulic loading upon the system. Tank(s) are to be installed so as to receive gravity fed effluent from buildings. Final tank location would depend on the fall available on final cut and fill contours, and the fall available from buildings.

Council's Environmental Health Officer has reviewed the application and is satisfied that the nominated system would be adequate for the development, providing approval to install and operate the system under Section 68 of the Local Government Act is obtained from Council. This requirement will be conditioned accordingly.

It is noted the property owners are responsible for controlling continuing water usage and maintenance of on-site sewage management systems.

Natural Hazards – Bushfire

The subject property lies near the base of the southern slopes of Mount Nullum. The proposed meditation centre and facilities are to be located within a small cleared gully on the western side of the property. A search of Council's aerial photography database has revealed that this small area has been cleared for at least 6 years, however the area is heavily vegetated in all directions upslope

from the development site. Accordingly, the designated building envelopes for the proposed accommodation wings are located within a small pocket of 30 & 100 metre buffer category, however are in close proximity to and surrounded by Category 1 and 2 Bushfire risk vegetation types.

The applicant engaged Planit Consulting Pty Ltd to review the bushfire constraints affecting the subject site. The assessment suggests the main hazard area appears to be the heavily vegetated area to the north of the development site and recommends Asset Protection Zones be cleared and maintained at all elevations to protect the accommodation wings from encroachment of a bushfire. These have been specified having regard to the vegetation classifications surrounding the development site and the minimum recommended APZ outlined in Planning for Bushfire Protection 2001.

The application was referred to the NSW Rural Fire Service for review and they have provided their general terms of agreement. These include requirements for asset protection zones in all directions from both accommodation wings. Specifically, an Inner Protection Zone of 45 metres and Outer Protection Zone of 15 metres are required from both accommodation wings.

It is noted that reticulated water supply is not available to either dwelling; hence all water for fire fighting purposes needs to be retained on site. The RFS GTA's require a minimum 3kW (5hp) petrol or diesel powered pump and a 30,000 litre (minimum) water supply tank dedicated solely for the purpose of fire fighting.

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

In accordance with DCP No. 42 – Public Notification Policy the development application was advertised for a period of fourteen (14) days. During this time 13 (13) submissions were received. These issues raised are outlined and addressed below.

Commercial land use in Residential area

“It is a business on a fairly large scale within a rural residential area”

“A commercial development in a quiet residential area”

“We are quite concerned that such a large commercial development could be contemplated in this rural residential subdivision.”

“this is zoned rural residential, not commercial. To start to turn our rural residential subdivisions into commercial ventures is inappropriate. There has to be a limit to the size and amount of commercial ventures in a subdivision such as this.”

“We bought properties in this green belt area believing the residential zoning applied by Council would be adhered to. In this case it has been bought by an investment company who are in the business of developing.”

“When buying my property I was told this was a residential area. How come now the Council is considering this to be a commercial area?”

“This is a residential area renowned for its peace and tranquillity and I hereby lodge my strongest objection to such a large commercial project being planned.”

“We bought our property with the understanding that our street is zoned residential, not commercial. I am very concerned with the environmental impact this commercial property will have, especially the traffic noise.”

Response:

The subject site and surrounding area is zoned 1(a) Rural, which allows for a range of developments that do not compromise the rural integrity of the area. Recreational establishments are a permissible use within the zone. The area is not zoned rural living, or residential, as suggested by the objectors, nor has the area ever been zoned as such in the past.

The proposal is not considered a large commercial venture with only 20 guests for 96 days in a year, and furthermore it is considered compatible with the rural intent for the land and would not adversely impact on the rural intent of the land.

Land Use

“There is no guarantee that if approved the meditation centre would remain as such and could in time become a more commercially orientated hospitality business for example a restaurant with accommodation. This is only my gut feeling having met the people involved, they are developers”

“The proposal is deliberately worded to give an impression of peaceful tranquillity; however it is in fact a business operation which will require the comings and goings that any business requires. If the business were to be successful what guarantees will Council offer that it will not, in the future, be enlarged and simply become another tourist resort.”

Response:

Council has the power to grant consent to carry out development and accordingly can impose those conditions of consent it deems necessary to control the development and continuing use of the land. Council is approving a permissible use at an intensity considered appropriate given the context and setting of the subject site. Conditions of consent will be imposed restricting operations to six 10-day and twelve 3-day retreats each year; restricting the use of the centre only to meditation retreats in accordance with that proposed; prohibiting the use of the centre for private functions, conferences or parties;

and prohibiting the use of the kitchen facilities for restaurant or commercial purposes other than to provide meals for guests of the retreat.

Traffic Impact Issues

“Significant increase in traffic for local residents on a road where children play as well. I recommend speed bumps from the start of the road to the bottom; and many ‘slow down’ & speed limitation road signs limiting speed to 40km maximum.”

“Bonnydoon Road is the only entry into to the property. Therefore a huge increase in traffic, noise pollution and attraction of people from other areas going in and out (other than local residents).”

“Bonnydoon Road has many blind corners and very steep in a couple of spots. It is almost necessary to accelerate hard in one particular area to climb the hill and then negotiate a hard left hand corner....visitors to the area would have no knowledge to round this corner safely and with either traffic or school children in the blind side of the road there could be a nasty accident.”

“More often than not children are walking on the road, they are able to do so reasonably safely now as the residents are aware of this and there is not a huge traffic flow. The kids also enjoy the road for cycling and skateboarding often setting up jumps and such on a weekend. Because Bonnydoon has many bends in it, it is not rare to come across people on the road quite suddenly.”

“The additional traffic on this (Bonnydoon Road) winding, steep, with many blind corners which does get very slippery when wet would be a major concern to the local residents and their children as families walk daily for exercise or dogs walks and school children walk the road to catch there bus.”

“A basic calculation shows that if all the 20 planned rooms were being used at any one time there would be an extra 20 cars using Bonnydoon Road. Along with these overnight guests there would be additional traffic belonging to day visitors and staff. This would results in an unbelievable amount of traffic coming up and down Bonnydoon Road. This is simply not correct.”

“Bonnydoon Road is quite a twisty road and there are many blind spots. Even such a basic outing such as walking the dog would become hazardous with the added traffic.”

“The volume of additional traffic it would generate, with 20 guests plus staff driving up and down Bonnydoon Road at all hours, will conflict with the residential nature of the area and will place an unwarranted and unanticipated burden on lives of persons living on neighbouring properties.”

"This proposal, if approved, will inevitably create greater traffic flows, initially during the building stage, but also in the long term when visitors drive up and down the road. Unlike the residents these people will have no particular reason to care about the local environment."

"Bonnydoon is a narrow, winding street. As a mother of 3 children I fear for the extra traffic that will be travelling up Bonnydoon Road, and the speed at which this traffic will be travelling. The existing residents know to look out for children ...will strangers?"

"The twenty or so people who might stay at the centre, together with the range of staff required to run and maintain the organisation and grounds, would lead to considerable increase in daily traffic. As a driver and a walker, I am very conscious that Bonnydoon is a potentially dangerous road and a marked increase in traffic could only exacerbate the problem. Certainly pleasure in walking around the area, and appreciation of the natural surroundings, would be diminished."

"Being an area of high ground water, there are some higher springs that feed into roadway in small rainfalls. This creates small creek like affects on Bonnydoon Road. This becomes Hazardous to driving on either left or right sides of the road with safety."

"No line marking or lighting on Bonnydoon Road at present is a concern."

Response:

As discussed previously in this report, traffic impacts have been carefully considered during assessment of this proposal. Council's Traffic Engineer agrees that the existing infrastructure conditions and 50km/h speed restrictions on Braeside Drive and Bonnydoon Road are considered acceptable for providing a safe and efficient local transport network.

Children's Safety

"Yet another concern is with itinerant people coming and going problems such as 'stranger danger' for children becomes a concern."

"I have concern for the children on the estate. There is no footpath for the children and therefore they walk on the road. Most of the land is sloping and the only flat area is the road and children tend to use this for their bikes, ball games and skateboards. People walk on the road for fitness every morning as well. I think any increase in the amount of traffic brought about from the proposed development, will endanger the lives of our precious children."

"Many young children walk up and down Bonnydoon Road each morning and afternoon on their way to and from school. They are able to do so in safety because it is currently a low traffic area. The potential traffic generated by the development is an alarming thought."

“In order for our children to remain fit and healthy they must be able to participate in outdoor activities – walking, bicycling, skateboarding – with no threat to their safety. Whether one lives in a built-up area or a semi-rural area, this is a basic residential requirement whereby we can all lead healthy, active and sociable lives. Such a large number of visiting strangers could bring associated problems resulting in parents no longer wanting their children playing in the street.”

“Bonnydoon Road has a number of bends, which means little or no visible warning for drivers of any pedestrians walking. The locals are aware of this when driving but any new visitors would not be expecting to come upon a child or groups of children when driving around the bend! The road is also used daily for locals to walk their dogs or just to enjoy a leisurely walk amongst the natural environment. The traffic that would be generated by a 20 room accommodation, spa, massage and meditation services, would be catastrophic for the local residents.”

Response:

As stated above, the existing road is considered suitably safe providing drivers, pedestrians and residents exercise due care, common sense and obey the speed limit. It must be recognised that the road exists for the purposes of vehicular access to properties, not for use as a playground. As such, children playing on the road being in danger from vehicles is not a valid reason to hinder development.

It is noted that there is no formed footpath along Bonnydoon Road. However, for the most part pedestrians, including children walking from the bus stop, have the opportunity to exercise due caution and walk on the road verge rather than on the road proper.

Ensuring drivers are well informed of potential changes in road and traffic conditions is a responsibility of Council and as such, warning signs advising drivers that children and pedestrians are walking on the road verge will be required, at the applicant's expense, to be installed along Bonnydoon road.

Amenity Impact Issues

“It will destroy the unique village atmosphere that many of us live here for”

“To get to the proposed development cars have to traverse the steepest part of the road, therefore they are in low gear and it becomes quite noisy at times just with residential cars let alone the added pollution, both noise and fumes, from at least 20 extra cars using Bonnydoon on a regular basis, not to mention services to the development, staff for the development and visitors etc.”

“Extra traffic always means extra noise, especially as indicated by this application that up to 20 guests and possible up to 10 staff or extras to include massage people/Admin/cooking staff/cleaning staff etc. This doesn’t include that extra trucks or traffic created everyday to service the proposal eg courier deliveries, suppliers, laundry etc.”

“This commercial application for 20 rooms would mean a disturbing increase in vehicle traffic by staff and customers using the development, which would put an end to our peaceful home life because of the traffic noise.”

“Construction site noise and location of construction equipment during lengthy construction time for such a large project.”

“Vandalism and break and enter will become a greater risk”

“I have felt safe in my little haven and the idea of such a large turnover of strangers coming into my area is an unsettling thought for me”

Response:

The main issue raised here is noise relating to increased traffic. The anticipated increase in traffic was assessed in a previous section of this report, and impacts from traffic are not deemed unreasonable given the permissible land uses and general characteristics of the area. After construction is complete, the most likely vehicles to be using Bonnydoon Road to access the retreat would be private cars and the shuttle bus. It is highly unlikely that heavy vehicles or vehicles with loud engines would be utilising the road on a regular basis. In that regard, given the relatively low traffic generation and the types of vehicles, the noise from traffic is not considered unreasonable despite the potential impact it may have on neighbours.

As outlined in the previous section, temporary impacts on amenity will occur during the construction phase of the proposal, however appropriate standard conditions have been proposed to control these impacts accordingly.

Vandalism and break and enter are considered low risk impacts. Guests at the retreat are there for a specific purpose and it is unlikely they would leave the retreat to loiter around neighbour’s properties. Furthermore, the proposal would not be increasing ‘passing trade’ type of traffic or bringing the general public to the area.

Environmental Impact Issues

“Loss of vegetation - a visual eyesore from Mount Warning; loss of wildlife corridors”

“I would be very concerned by the clearing of land on this sloping environmentally sensitive land to meet the Rural Fire Authority approval of this development including a boundary line fire break which exposes his property

and house and eventually the proposed development visually to all of us neighbours losing some of our privacy.”

“Habitat for the local animals and birds would be severely affected to an already strained area these include echidnas, wallabies, bandicoots, brush turkeys and many bird species”

“I have seen and cared for many animals injured as a result of traffic in the area of Braeside and Bonnydoon. Any increase in traffic brought about from this development will therefore endanger the vulnerable wildlife in the future. The clearing of land for fire restriction also is a concern for the wildlife.”

“I fear the extra traffic that will be travelling up Bonnydoon Road, and the speed at which it will be travelling. Wildlife also use the street. Wallabies, birds, snakes are often seen on Bonnydoon Road. I fear for their safety as well.”

“With the land clearing associated with the development of this venture and the accompanying increase in people and vehicle traffic, there is little doubt that wildlife habitat would be affected and that some loss of safe corridor access to adjacent protected land areas would result.”

“Wildlife has access to Bonnydoon Road at different point frequently and local knowledge has kept road kill to a minimum. Visitors to Bonnydoon Road has a negative effect on this issue.”

Response:

The clearing to be undertaken is in response to NSW RFS required Asset Protection Zones around the accommodation buildings. The total amount of vegetation to be cleared is approximately 350m², which is not considered excessive given the site characteristics. The impacts of the clearing have been discussed previously and are not considered unacceptable.

One objector suggests that the loss of vegetation associated with the proposal would create a visual eyesore from Mt Warning. The retreat would in fact be situated on the southern slopes of a valley in the foothills of Mount Nullum. As the site is sheltered by the mountainside, it is unlikely the clearing would be visible from Mount Warning at all. Furthermore, the buildings and roofing will be constructed from non-reflective materials so would generally blend in with the landscape.

Concerns for wildlife safety are valid and have been considered accordingly. The proposed clearing would not cause a loss of wildlife corridors as the areas to be cleared are situated along the boundaries of an existing clearing and would not cause fragmentation of the natural bushland or potential habitat. Furthermore, the majority of the area to be cleared is presently dominated by Camphor Laurel, which is an invasive weed as is not considered critical for native species habitat.

With regard to a considerable increase in injured wildlife due to increased traffic, unfortunately there are no planning controls to mitigate this threat. However, it must be re-iterated that the proposal would be generating no more traffic than two dwelling houses, which is not considered a significant increase in traffic.

Ground Water Supply

"I have bore water supply which is already been reduced by other residents putting in bore water holes adjacent to my property. I recommend full water supplies for such a big facility"

"No sewage system therefore polluting the underground water table that many of us drink from"

Response:

This issue was discussed earlier in this report. No bores have been proposed and water for the development will be harvested and collected in tanks from roof runoff.

The proposed on site sewage management system is classified as a Commercial System and is sufficient to treat effluent waste for the proposed development. With appropriate treatment, drip line dispersal and vegetation of drip irrigation areas, there should be no impact on or contamination of groundwater.

Drainage

"Impervious surfaces will create drainage through neighbouring properties creating new channels and flood areas that never existed before."

Response:

The combined roof area of all buildings on the development site would be approximately 950m². This is not considered an excessive increase in the impervious surfaces given the size of the property. Furthermore, a dam wall has been constructed across the natural watercourse that traverses that property and less water has flowed through the creek and into neighbouring properties since construction of it.

Council's Development Engineer has reviewed the application and has raised no objection to the proposed stormwater disposal and drainage arrangement. The topography of the land surrounding the development site is conducive to runoff draining towards the natural watercourse.

Setting a Precedent

“A further concern is for the precedent that such a commercial development might set. Enlargement of the proposed facility down the track, or the development of other business enterprises, is causing considerable disquiet amongst the community.”

“An unacceptable precedent would be set.”

From both the above comments, it is unclear exactly what the unacceptable precedent would be. The use is permissible within the zone and complies with the relevant statutory and non-statutory planning controls. In that regard, there is no unacceptable precedent being set by approving this proposal.

(e) Public interest

The proposed development demonstrates consistency with the relevant planning instruments and Council requirements. The applicant has addressed all relevant issues and sufficient information has been supplied to make a proper assessment of this application. Given that the proposed development would generate employment opportunities; increase eco-tourism awareness of the beauty of the area and supplement the local economy it is considered an appropriate development for the site, would not set an undesirable precedent for future development in the Shire and is considered beneficial to the wider public interest, despite the issues raised in the submissions.

Section 94 Contributions

Contributions under s94 Plan No. 4 – Tweed Road Contributions Plan have been charged over this proposal. See comments from Paul Morgan attached to file DA06/0682 for calculations.

No further contributions are applicable to this proposal.

OPTIONS:

1. Resolve to adopt the recommendation and approve the development application subject to conditions.
2. Resolve to refuse the development application with reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

If the applicant or submitters are dissatisfied with the determination they have a right of appeal in the NSW Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

It is recommended that the proposed meditation centre and associated facilities be approved subject to the attached conditions.

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 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).*

Nil.

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P3 [PD-PC] Development Application DA06/1040 for a Tavern (Tenancy No. 1) at Lot 902 DP 1097490, No. 2-6 Pandanus Parade, Cabarita Beach

ORIGIN:

Development Assessment

FILE NO: DA06/1040 Pt1

SUMMARY OF REPORT:

Council has received a development application for the fitout and use of a tavern (Tenancy No. 1) at Lot 902 DP 1097490 Pandanus Parade Cabarita Beach. The site is commonly referred to as 'The Beach' development.

The proposed tavern is to occupy 682.7m² of licensed floor area situated on the eastern side of the ground floor commercial space. The tavern will comprise one service bar area, separate gaming machine area, bistro and dining area, licensed outdoor seating area, internal connection to the basement car park and will have direct pedestrian access to Pandanus Parade and the coastal beach area.

The subject site is zoned 3(b) General Business under the provisions of Tweed Local Environmental Plan 2000. The proposed tavern is consistent with the objectives of the zone, is a permissible use and generally complies with all relevant planning instruments and non-statutory requirements.

The only area of non-compliance is concerned with the provision of off-street parking. In summary, the proposal was relying on the use of spaces provided in the public car park on Pandanus Parade, however legal advice sought by Council confirmed that the spaces were not available to be used for the development to meet Council's parking requirements. To resolve the issue, section 94 contributions will be charged for the outstanding car spaces in accordance with the existing Contributions plan for public car parking in the Cabarita Beach locality.

The application was advertised for a period of fourteen days from Wednesday 27th September to Thursday 12th October 2006. During this time, five submissions were received – four in support and one objecting to the proposal. These submissions are discussed in greater detail later in this report.

RECOMMENDATION:

That Development Application DA06/1040 for a tavern (Tenancy No. 1) at Lot 902 DP 1097490, No. 2-6 Pandanus Parade Cabarita Beach be approved subject to the following conditions: -

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos WD 01 - WD 08 and LL01 prepared by Ryder Hampton and dated 29 August 2006, except where varied by the conditions of this consent.
[GEN0005]
2. Advertising structures/signs to be the subject of a separate development application, where statutorily required.
[GEN0065]
3. All signage is to be fitted with necessary devices capable of permitting the change in intensity of illumination of the sign in order to regulate glare or other like impacts.
[GEN0075]
4. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.
[GEN0115]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

5. In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 1979 (as amended), a construction certificate for **SUBDIVISION WORKS OR BUILDING WORKS** shall NOT be issued until any long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.
[PCC0285]
6. In accordance with Section 68 of the Local Government Act, 1993, any premises proposing to discharge into Councils sewerage system a waste water other than domestic sewage, shall submit to Council a completed application for a Trade Waste Licence. This application is to be approved by Tweed Shire Council **PRIOR** to the issuing of a Construction Certificate to discharge to Councils sewerage system.
[PCC1255]
7. 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: 21.1256ETs @ \$4598 \$97,136

Sewer: 33.8167 ETs @ \$2863 \$96,817

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

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

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

[PCC0265]

8. A loading bay management plan shall be submitted to Council for approval, which details the operation and logistics of the loading bay area including delivery times, types of vehicles and methods to minimise conflict with other vehicles.

[PCCNS01]

9. **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)
Sector2_4 | \$3,772 |
| (b) Shirewide Car Parking
S94 Plan No. 23 | \$408,570 |

[PCC0215/PSC0175]

PRIOR TO COMMENCEMENT OF WORK

10. 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]

11. 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.
- [PCW0225]
12. Where prescribed by the provisions of the Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the site is prohibited.

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

[PCW0255]

13. 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]
14. Any business or premises proposing to discharge a pollutant discharge greater than or differing from domestic usage is to submit to Council an application for a Trade Waste Licence. This application is to be approved by Council prior to any discharge to sewer being commenced. A trade waste application fee will be applicable in accordance with Councils adopted Fees and Charges.
- [PCW1075]
15. Prior to the commencement of work the Principal Certifying Authority is to be provided with and approve details of the kitchen exhaust system. Such details are to include the location of discharge to the air, capture velocity, size of hood and angle of filters. The system shall comply with Australian Standards SAA 1668 Part 2 Ventilation Requirements.
- [PCW0575]

DURING CONSTRUCTION

16. 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]

17. The proposed Tavern and associated building work is to comply with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made) as applicable to a Class 9b 'Place of Public Entertainment'.

[DUR0375]

18. 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]

19. 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]

20. 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]

21. 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]

22. Access to the building for people with disabilities shall be provided and constructed in accordance with the requirements of Section D of the Building Code of Australia. Particular attention is to be given to the deemed-to-satisfy provisions of Part D-3 and their requirement to comply with AS1428.

[DUR1685]

23. Where a building of part of a building is required, under the provisions of Section D of the Building Code of Australia, to be accessible to permit use by people with disabilities, prominently displayed signs and symbols shall be provided to identify accessible routes, areas and facilities. The signage, including Braille or tactile signage, should be installed in accordance with the relevant provisions of the Building Code of Australia and achieve the minimum design requirements provided under AS1428.

[DUR1695]

24. 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]

25. 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]

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

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

[DUR2485]

27. 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]

- 28. 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]

- 29. 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]

- 30. 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]

- 31. 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]

32. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development. [DUR1025]
33. All walls in the food preparation and food storage areas shall be of solid construction, easily washable, lightly coloured and tiled to a height of at least 2 metres above floor level, or where not tiled, cement rendered to provide a smooth even finish to ceiling. Note: Stud framed walls will not be acceptable. Intersections of all floors with walls shall be coved to a radius of not less than 25 millimetres. [DUR1495]
34. All flooring materials in the food preparation and storage areas are to be impervious, non slip, non abrasive and capable of withstanding heavy duty operation. Where tiling is to be used epoxy grout finished flush with the floor surface is to be used in joints or alternatively all tiles are to be butt joined and free of cracks or crevices. [DUR1505]
35. Windows and doors opening into food preparation and storage areas are to be fully screened in accordance with Council's adopted code for the construction of food premises. [DUR1515]
36. All internal fitout is to comply with Australian Standard AS4674 - Design, Construction and Fitout of Food Premises. [DUR1535]
37. Separate hand washing facilities must be provided with warm water and located in a position where it can be easily accessed by food handlers and be of a size that allows easy and effective hand washing to the satisfaction of the General Manager or his delegate. [DUR1545]
38. A floor waste connected to the drainage system shall be provided within 1.5 metres of the opening of the cool room. [DUR1565]
39. All shelving, benches, fittings and furniture on which appliances and utensils are positioned within the premises must be of durable, smooth, impervious material capable of being easily cleaned. [DUR1605]
40. Separate hand washing facilities must be provided with warm water in a readily accessible position within the work area. [DUR1645]
41. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742.3-2202 (Manual of Uniform Traffic Control Devices). The contractor or

property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

[DUR1795]

42. 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]

43. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials. A screened, graded and drained garbage storage area shall be provided within the boundary.

[DUR2205]

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

[DUR2415]

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

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

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

[DUR2555]

46. The premises where food is handled or prepared for patrons or occupants is to be notified to NSW Health in accordance with the Registration and notification requirements of the Food Standards Code as called into force by the Food Regulation 2001.

[POC0605]

47. Prior to commencement of operations and on completion of fit out an inspection is to be arranged with Council's Environmental Health Officer for final approval.

[POC0615]

48. The premise is to be treated on completion of fit-out and prior to commencement of trading and thereafter on a regular basis by a Licensed Pest Control Operator. A certificate of treatment is to be made available for Council inspection on request.

[POC0635]

49. Cooking gases shall be discharged above the roofline in accordance with AS 1668. Prior to issue of an occupation certificate Council shall be

provided with certification that the cooking gas exhaust system complies with AS 1668.

[POCNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

50. 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]

51. 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]

52. 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]

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

[USE0125]

54. All external artificial lighting shall be shielded where required to the satisfaction of Councils General Manager or his delegate to ensure that the spill of light or glare from such lighting does not create a nuisance to any adjoining or neighbouring premises.

[USE0205]

55. All food handling areas and persons engaged in the preparation and handling of food supplied to patrons or occupants are to comply with the provisions of the Foods Act 1989 and the provisions of the Food Standards Code as called into force by the Food Regulation 2001.

[USE0825]

56. The premises shall be maintained in a clean and tidy manner.

[USE0965]

57. Footpath dining activities shall not be carried out unless a Footpath Dining License Agreement has been approved by Council. Footpath dining activities shall be restricted to the approved footpath dining area and carried out in accordance with Councils adopted Footpath Dining Policy.

[USE1105]

58. Hours of operation of the business are restricted to the following hours:-

- * 7.00am to 12 midnight seven (7) days a week, with the sale of alcohol restricted to 10.00am to midnight seven (7) days a week.
 - * All deliveries and pickups relating to the business are to occur within the approved hours
- [USE0185]
59. All activities shall be conducted within the property boundary and shall not be conducted on the coastal reserve without the prior written approval of Council.
60. Live music shall not be played external to the building. The playing of live music shall cease at midnight.
61. No form of public entertainment is to be carried out on the premises unless approval for a Place of Public Entertainment has been obtained pursuant to the provisions of Section 68 of the Local Government Act 1993.
62. The business shall be operated in accordance with the recommendations of the Noise Impact Assessment Report prepared by VIPAC dated 30 August 2006.
63. Noise levels shall comply with the following:
- L_{a10} noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz - 8kHz inclusive) by more than 5dB between 7.00am and 12.00 midnight at the boundary of any affected residence.
 - L_{a10} noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz - 8kHz inclusive) between 12.00 midnight and 7.00am at the boundary of any affected residence.
 - Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12.00 midnight and 7.00am.
64. The premises shall comply with the requirements of the Liquor Administration Board.
65. All activities associated with the occupancy of the building shall comply with the Protection of the Environment Operations Act 1997.
- [USENS02]

USE

66. The public car park is to be open to enable public access. No gates or doors are to be installed which would prevent access to the public carpark within the approved trading hours.

[USENS01]

67. The tavern is to provide a free shuttle bus service on a pick up and drop off basis. The service is to be available during all trading hours of the tavern. The bus shall have a minimum seating capacity of 12 persons.
[USENS03]
68. A maximum of 15 poker machines shall be installed on the premises. Any increase to this number requires separate development consent.
69. All activities associated with the occupancy of the building are to comply with the Protection of the Environment Operations Act, 1997.
[USE0135]
70. No items or goods are to be stored or displayed outside the confines of the premises.
[USE0445]
71. All loading/unloading to take place within the boundary of the subject property.
[USE0525]
72. The use being restricted to the floor area designated on the approved plan.
[USE0415]

REPORT:

Applicant: Resort Corp Cabarita Pty Ltd
Owner: Resort Corp Cabarita Pty Ltd
Location: Lot 902 DP 1097490 No. 2-6 Pandanus Parade, Cabarita Beach
Zoning: 3(b) General Business
Cost: \$950,000

BACKGROUND:

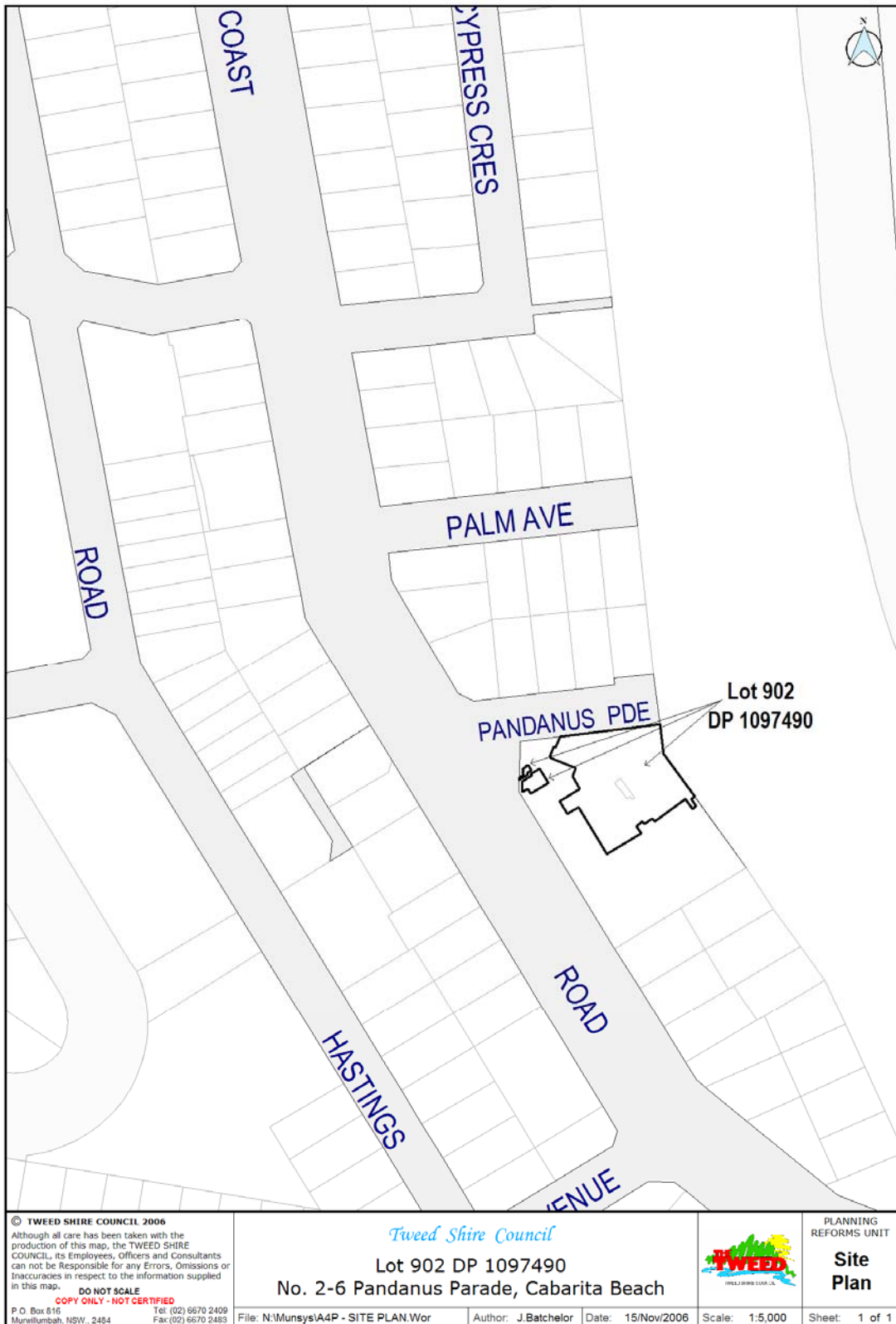
On 5th May 2004 development consent No. 176-04-2003 was granted by the Minister for Planning in relation to the mixed-use (tourist accommodation and commercial) development known as 'The Beach', located at Lots 901 & 902 DP 1097490, No. 2-6 Pandanus Parade Cabarita Beach. The approved development (as modified) comprises a total of 57 tourist accommodation units on the first and second floors, shop and commercial floor space at the ground level and basement car parking. Condition 91 of DA No. 176-04-2003 states that the first use of each tenancy is to be subject to future development application. Thus the application currently before Council proposes the internal fitout and use of a commercial tenancy as a tavern at Lot 902 DP 1097490, No. 2-6 Pandanus Parade Cabarita Beach.

The subject site is located on the southern side of Pandanus Parade in the business area of Cabarita Beach town centre. It has direct street frontage to Tweed Coast Way on its western boundary and is further bounded by residential development to the south comprising two detached dwellings on an elevated headland position. To the east is Crown land foreshore reserve containing dune vegetation, a foreshore walking path and access track to the beach. To the north of the subject site, on the opposite side of Pandanus Parade and adjacent to the new Cabarita Beach Surf Club is a Council owned off-street public car park.

The tavern itself will be located in a ground floor tenancy on the eastern side of The Beach development. Directly to the south of the tavern is the remaining retail, car parking and tourist accommodation uses with The Beach. The tavern will have direct pedestrian access to Pandanus Parade and Cabarita Beach.

Prior to construction of The Beach development, the site was occupied by the Cabarita Hotel. Since demolition of the hotel, the liquor licence has been held in abeyance with the intention of re-establishing the tavern on the same site or a nearby site within Cabarita Beach. Community support for the re-establishment of the hotel has been expressed in the local media and through submissions to Council, with local businesses and the general community indicating a strong preference for the Tavern to be re-established within 'The Beach' development.

SITE DIAGRAM:



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

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

Tweed Local Environmental Plan 2000

The subject site is zoned 3(b) General Business under the provisions of Tweed Local Environmental Plan 2000. The proposed development is described as a hotel, which is defined as *a premises to which a hotelier's licence granted under the Liquor Act 1982 relates*, and is permissible with Council's development consent within the zone.

The relevant zone objectives are as follows:

- to provide business centres in which the community's shopping, business, welfare and social needs can be met.
- to provide business locations within residential area, and to ensure that the scale and type of development is compatible with the character and amenity of the surrounding residential areas.
- to provide for tourist orientated development.

The proposal is considered consistent with the zone objectives since it will enhance and strengthen the existing businesses within the immediate area and cater to the social and recreational demand demonstrated by the community since demolition of the Cabarita Hotel.

The following additional clauses of TLEP 2000 apply to this proposal:

Clause 15 - Essential Services

Clause 15 of the TLEP requires Council to be satisfied that the subject land has the benefit of essential services prior to issuing consent. All essential services are available to the site. An existing water service runs parallel to the western boundary of the site along Tweed Coast Way and another is located on the eastern boundary of the site; the sewer main intersects the site at the both the north western and southern corners; and appropriate stormwater outlets exist to the east of the site. Furthermore, no objections from Council's Environmental Health Officer have been raised regarding the bin storage and collection area situated at the rear of the kitchen area adjacent to the loading bay.

Clause 16 - Height of Building

The aim of Clause 16 is to ensure that the height and scale of development is appropriate to its location, surrounding development and environmental characteristics of the land. The proposed tavern fitout would be wholly

contained within an existing mixed-use building and would not involve any additional floor space or storeys being constructed.

The existing building is 3 storey's, which is consistent with surrounding buildings in the locality and complies with the height restrictions map accompanying TLEP 2000.

Clause 17 - Social Impact Assessment

The objective of Clause 17 of TLEP is to ensure proper consideration of development that may have a significant social or economic impact. The proposed tavern would not have a significant adverse social, economic or visual impact at a regional scale. However, in local terms, there is potential for impact upon the general amenity of the area, predominately by way of increases in traffic and noise. These issues have been suitably addressed in the socio-economic impact assessment accompanying the application, including amelioration measures and a tavern management plan. These are discussed later in this report.

Clause 22 relates to development near designated roads and requires Council to consider the impact of the development on the operational capacity, efficiency and safety of the road and local network; and to ensure that development is not of a type that is sensitive to traffic noise or that would detract from the scenic values of the locality. The Tweed Coast Road is identified as a Council designated road as shown on the map marked "Tweed Local Environmental Plan 2000 – Designated Roads", and the proposal has been assessed with regards to the abovementioned issues. The tavern would not be sensitive to traffic noise during most hours of operation; would not impact on the visual amenity of the area; would not cause disruption of traffic flow nor is it likely to constitute a traffic hazard or materially reduce the capacity or efficiency of the Tweed Coast Way.

Clause 35 of the TLEP requires an acid sulfate soils management plan be submitted where the proposed development is likely to interfere with acid sulfate soils. The subject site is identified as possessing Class 4 acid sulfate soil levels. However, the proposal does not involve any works below the ground surface and as such would not disturb any potential acid sulfate soils. In that regard, development is not constrained by acid sulfate soils and a management plan is not required in this instance.

North Coast Regional Environmental Plan 1988

Clause 32B – Development Control within coastal lands

Clause 32B of the NCREP applies to all land to which the NSW Coastal Policy 1997 applies. The subject site falls within the area governed by the NSW Coastal Policy and as such, when considering development on this land Council shall take into account the provisions of The NSW Coastal Policy 1997; The Coastline Management Manual; The North Coast: Design Guidelines; and shall not grant consent to development that would impede public access to the

foreshore or would cause overshadowing to beaches or adjacent open space before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time). These provisions are generally taken to relate to the construction of new buildings or structures and are generally not concerned with the ongoing use of existing structures, provided no alterations to the outside appearance of the building are proposed.

The tavern is to be located totally within the existing Beach development, which was approved under separate assessment that considered the provisions of the abovementioned policies and guidelines development consent. Council is satisfied that the proposed tavern would not cause unreasonable overshadowing of waterfront open space, nor impede public access to the foreshore area. Hence the proposal is considered consistent with the aims and objectives of the abovementioned documents and Clause 32B.

Clause 33 – Coastal Hazard Areas

Clause 33 of the NCREP relates to development in areas likely to be subject to coastal processes and requires Council to require that disturbed foreshore areas be rehabilitated and that access to the foreshore areas be confined to specific points. The proposed tavern has no direct implications with respect to disturbance of the foreshore. With regard to access points, the existing public access walkway at the end of Pandanus Parade would not be altered in any way and would continue to provide ample access and viewing points for public enjoyment.

Clause 47 Principles for Commercial and Industrial Development

Clause 47 of NCREP refers to the principles Council shall take into account when developing draft local environmental plans relating to commercial or industrial development. It also requires Council to take into account the adequacy of transport services in the locality. The proposed development is not associated with a draft LEP and is not defined as industrial development. The site is located adjacent to Tweed Coast Way, which is a Council designated road and a major collector road for the Tweed Coast, and is easily accessible from the local transport network.

Clause 81 – Development adjacent to the ocean or waterway

The relevant sections of Clause 81 of the NCREP relate to development within 100 metres of a substantial waterway and require Council to be satisfied that foreshore amenity and accessible foreshore open space within the vicinity of the development will not be compromised and that the development is consistent with the principles of any foreshore management plans applying to the area.

Established vegetation, consisting of 5-10 metre high coastal Banksia species, would ensure that the proposed tavern would not detract from the visual

amenity of the coast or adjacent beach. Additionally, ample accessible foreshore open space in the vicinity of the development would remain available for public use as Pandanus Parade culminates with a public access walkway to the beach. There are no foreshore management plans directly applicable to the subject site, and the proposed use is considered consistent with the intentions of this clause with respect to foreshore amenity.

Clause 46 – Commercial and Industrial Development

Clause 46 of the NCREP provides guidelines for Council when considering commercial and industrial development. These controls dictate that Council must take into consideration the location of the proposed development with respect to the adequacy of service by the surrounding transport system and accessibility from urban areas. The subject site has direct frontage to a main arterial road and affords ample opportunity for access to the surrounding transport network.

Overall, the proposal is considered to be consistent with the objectives and provisions of the NCREP.

State Environmental Planning Policies

State Environmental Planning Policy No. 11 – Traffic Generating Developments

The proposed development is listed under Schedule 2 of SEPP 11 and as such was referred to the Local Area Traffic Committee for comment and assessment. The committee reviewed the application and has no issues in regard to traffic safety, subject to Council's planners accepting the proposed car parking arrangement. Car parking has been assessed and is discussed below in the section addressing DCP 2.

State Environmental Planning Policy No. 14 – Coastal Wetlands

This Policy is not applicable as the subject site is not located within the designated coastal wetlands area.

State Environmental Planning Policy No. 26 – Littoral Rainforests

This Policy is not applicable as the subject site is not located within or adjacent to littoral rainforest.

State Environmental Planning Policy No. 71 – Coastal Protection

The subject site is located within the coastal zone (as per the NSW Government Coastal Policy) and as such is subject to the provisions of State Environmental Planning Policy No 71 – Coastal Protection (SEPP 71). Referral to the Department of Natural Resources, however, is not necessary

by virtue of Amendment No. 4, which came into effect on 7 December 2005 and wholly repealed cl.9 (1)(b).

Notwithstanding, the items contained in Clause 8 of SEPP 71 remain a relevant matter for consideration. These items generally relate to the potential impacts of the development on public access to the foreshore, views, overshadowing of the foreshore, existing wildlife corridors, the suitability of the site for the development and measures to reduce other adverse environmental impacts.

Having regard to the fact that the tavern is to be established totally within in an existing building with no additions to the bulk or scale of the building, no further overshadowing of the beach or foreshore would occur. As discussed above, public access will not be impeded and views to or from the foreshore would not be affected. There are no significant wildlife corridors in the vicinity of the site, and the site is considered highly suitable for the proposed tavern seeing as the Cabarita Hotel previously occupied the site.

In light of the above, Council is of the opinion that the tavern is consistent with the matters for consideration under Clause 8 and is a suitable development for the site.

There are no other State Environmental Planning Policies that apply to this application.

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

There are no Draft Environmental Planning Instruments that are relevant to this application.

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

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

DCP 2 contains Council's provisions for access and parking, with the objective of ensuring the provision of safe, convenient and equitable access to developed land for pedestrians, vehicles and persons using vehicles, bicycles and public transport.

The proposed development is defined as a *hotel* under DCP 2. The plan specifies car parking requirements for hotel developments at a rate of 1 space per 3.5m² of licensed area plus 0.5 spaces per staff member. The total licensed floor area of the completed tavern would be 682.7m², which equates to a requirement of 198m² parking spaces for the tavern alone.

The applicant engaged Cardno Eppel Olsen & Partners to prepare a car parking assessment for the site and proposed development. The assessment seeks relaxation of the abovementioned standard. Section 2.2 of DCP 2 states that where a proposal departs from the prescriptive standards of the plan, a detailed Access, Traffic and Parking Impact Study substantiating that the proposal conforms with the principles and objectives of DCP 2 must be

submitted with the proposal. Council may consider such proposals that relax or modify the standards, provided the proposal is consistent with the principles and objectives of this plan.

Council has previously acknowledged that the car parking requirements for hotels as designated under Development Control Plan 2 are not an accurate reflection of actual demand for this use. This is supported by the lesser parking rate applied at the tavern at Salt (Salt Bar) and the recently approved Ivory Hotel within the 'Pier 2' development in Tweed Heads.

Council's traffic engineer has also acknowledged that the current rate for hotel car parking provision in DCP 2 is not appropriate, and has advised use of the rate adopted by Gold Coast City Council, that being 1 space per 10m² and 1 per 3 poker machines. The Local Traffic Committee and Council's Traffic Engineer have agreed that the proposal would be considered satisfactory if the available on site parking spaces provided by the development satisfies parking requirements at the reduced rate.

The following table details the compliance of the proposed development with the car parking requirements contained in DCP 2, adopting the reduced hotel rate of 1 space per 10m² and applying the 20% reduction for ESD principles.

It should be noted that the applicant proposed only 50% of the outdoor balcony floor area be used for car parking calculations, however the entire balcony is licensed so the full area has been used in calculating the required car parking spaces.

Standard	Requirement under DCP 2/GCC rates	Spaces provided	Complies?
Accommodation	59	85	Yes
Other tenancies : Retail	20.7	20.7	Yes
Other tenancies: Restaurant	22.7	22.7	Yes
Tavern	58.61	27.6	No
Total	161.01	156	No

As indicated in the table, the proposal falls short of car spaces as the total required number of car spaces is 161.01, based on Gold Coast City Council rates for tavern developments and Tweed Shire Council DCP 2 rates for the other components of the development.

A total of 156 spaces have been formed on site in accordance with the approved plans for the 'The Beach' development. In theory the development would only fall short 5 spaces, however, the applicant has advised Council that an additional 26 spaces within the basement security car park have been allocated specifically to the tourist accommodation units and as such are not

available for public use. Therefore, the tavern falls short of Council's required car parking by 31 spaces. An additional on street space has been created by the applicants with the organisation of the on street parking. DCP2 permits the net gain to be included in parking requirements. As such the total shortfall for the tavern is 30 spaces.

The application originally proposed that a private covenant held over the adjacent Council car park on Pandanus Parade gave the tavern rights to utilise the 37 spaces on that land for patron parking. Legal advice sought by Council has confirmed that the covenant over the land does still apply, however only to the extent that the land shall remain as *public* car parking and not to the extent that the tavern may include those spaces in order to meet on site car parking requirements.

Section 2.4 of DCP 2 states that where the required number of car spaces for a particular development cannot be met and there is an adopted s94 Contributions Plan covering the supply of public car parking for the locality, Council may consider accepting a cash contribution in lieu of the unsupplied spaces. Contributions eligibility as an alternate to on-site parking provision is not granted as of right but is based on the merits of each application, in accordance with the objectives of DCP 2.

Council has a Section 94 Contributions Plan in place for the future provision of car parking in the Cabarita Beach town centre and contributions can be charged for the 30 space shortfall. It is anticipated the excess parking demand would be absorbed into the existing town centre on-street and public car parks until such time as additional public car parking is constructed.

The on site car parking provision is also supplemented by the proposed operation of a Tavern mini-bus that will offer a shuttle service for patrons of the tavern. It is proposed that the mini-bus will operate on days and hours as determined by the tavern. However, in order to ensure the shuttle service operated at an appropriate level of service, a condition of consent had been included requiring the mini-bus service be available to patrons at all times during the tavern's operating hours.

Development Control Plan No. 5 – Development of Flood Liable Land

The subject site has been identified on Council's GIS system as flood liable land and as such the provisions of DCP 5 apply to the proposal. Section 6.0 applies to the Coastal Villages of the Tweed and contains a clause requiring that:

“Commercial and Industrial development will be required to make adequate provision of flood free storage areas for stock and equipment susceptible to water damage. It is recommended that areas below Council's adopted minimum floor level not be enclosed and that the free flow of waters be permitted at all times.”

As the proposal is for the fitout of a recently constructed building, the existing floor levels are all above Council's minimum adopted floor level and as such flood free storage is not required.

In that regard, the requirements of DCP 5 are considered satisfied and the application appropriate for approval in its current form.

Development Control Plan No. 42 – Public Notification and Public Exhibition Policy

Development Control Plan No. 42 (DCP 42) provides guidelines for the public notification of certain development proposals and Council's responsibilities with respect to community consultation, in accordance with section 79(A) of the Environmental Planning and Assessment Act 1979 and the EP&A Regulations.

For hotel developments on land zoned 3(b) Business DCP 42 requires a letter of notification to be sent to adjoining owners; a letter to be sent to the affected owners; a notification sign to be placed on the development site; and a notice posted in the Tweed Link or local newspaper.

The proposal currently before Council was notified to 175 landowners and occupiers. The application was advertised in the Tweed Link and made available for viewing by the public for a period of 14 days from Wednesday 27th September to Wednesday Thursday 12th October 2006. During that time, four submissions were received in favour of and one in opposition to the proposal. The main issues raised in the objection related to car parking and delivery access. These submissions are discussed in detail later in the report.

Development Control Plan No. 45 – Socio-Economic Impacts of Development

The purpose of Development Control Plan No. 45 – Socio-Economic Impacts of Development (DCP 45) is to set out Council's requirements for Socio-Economic Impact Assessments and to ensure that development applications for certain developments that are likely to have significant social or economic impact are properly considered in accordance with the Section 79C of the EP&A Act.

The applicant has submitted a Socio-Economic Impact Statement identifying the potential impacts of the proposed tavern extensions on nearby sensitive residential and urban areas. Council's Environmental Health Officer has reviewed the report and is satisfied that it has been prepared in accordance with Section 6 of DCP 45, which sets out the points that shall be addressed in such a report.

The findings and recommendations of the Socio-Economic Impact Assessment are discussed in further detail in the following sections regarding likely impacts of the development.

Development Control Plan No. 48 – Tweed Coast Building Heights

The purpose of Development Control Plan No. 48 (DCP 48) is to protect the established and future character of the Tweed Coast through the provision of guidelines on building height, building setbacks and the design and use of rooftops.

The proposed tavern would be wholly contained within an existing building that has development consent. The building is 3 storeys high and complies with the requirements of TLEP 2000 building heights and the provisions set out in DCP 48. The proposal does not seek any variation to the existing building height and no alterations or additions to the built form of 'The Beach' development.

(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 does not involve the demolition of any buildings or structures.

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

The proposed tavern will have both positive and negative impacts on the social and economic fabric of the locality and greater area. The anticipated adverse impacts arising from the proposed development are in relation to noise, increased traffic, car parking demand, socio-economic issues and general impact on the amenity of the area (by virtue of increased vandalism, littering, anti-social and drunken behaviour etc), whilst anticipated positive impacts are predominately related to employment generation, an increase in local economic activity, encouraging use of public space in a prominent central location and facilitate an improved public perception of the locality and the services it can offer.

Mitigation and management of potential adverse impacts arising from the proposed development have been identified in relevant sections of the application including the Tavern Management Plan, Acoustic Report and the Statement of Environmental Effects, and can be summarised as follows:

- Full compliance with all relevant Council instruments, codes and policies;
- Provision of appropriate car parking;
- Provision of facilities to encourage the use of public transport and alternative modes of transport;
- Provision of an area for storage of waste collection bins;
- Compliance with Council's standard construction phase requirements in relation to work hours, noise, dust etc;
- Implementation of the Tavern Management Plan, including:
 - Abiding by the proposed hours of operation;
 - Complying with noise levels prescribed by licence or development consent conditions;
 - Provision of appropriate staff (and security personnel as required) to control patron behaviour;
 - Implementing Responsible Service of Alcohol practices.
- Operation of a tavern mini-bus service to shuttle patrons to and from the premises;
- Implementation of the key recommendations of the specialist consultants reports;
- Limiting the construction (fit-out) period to approximately 3 months.

Further detail on each issue is discussed below.

Noise

The primary concern identified with establishment of a tavern is noise. The proposed tavern is aimed at providing a 'family friendly' venue and is intended to provide a relaxed social atmosphere for locals and visitors to the area alike. As a venue, the tavern will not be promoting amplified live music; rather entertainment will be limited to recorded background music, small live entertainment (i.e. acoustic solo or duo acts) and karaoke. Furthermore, the location on site, layout and orientation of the tavern has been designed to minimise noise impact by facing toward the east, away from residential properties to the south and north. In light of the above, the key noise sources would be voices of patrons in the outdoor dining area; patrons leaving the hotel; plant and machinery; and deliveries and refuse collection.

The Acoustic Report addresses potential operational phase noise impacts and recommends appropriate management mitigation measures to ensure that amenity impacts on surrounding properties are minimised. The report concludes that subject to the recommended controls, noise emissions from the site are predicted to comply with the requirements of the Liquor Administration Board (LAB) noise assessment criteria.

The following general recommendations are provided in the Acoustic Report to facilitate a reduction in noise emissions from the tavern and terrace areas:

- Management and staff must exercise control and supervision of noisy activities including patron behaviour and amplified music levels;
- Limit background or mood music sound pressure levels to 70dB(A) L_{A10} at 3m from the speaker;
- Orientate speakers to minimise noise impact to nearest neighbour;
- Use multiple smaller speakers as opposed to single large speakers;
- Containments of noise in some internal spaces by closing selected glass doors;
- All external tavern doors are to be closed after midnight;
- If required, use noise-limiting devices on amplified sound systems.
- During commissioning of the tavern, compliance testing may be conducted at the nearest residential receivers and compared to the relevant noise criteria in all Octave Band Centre Frequencies (i.e. 31.5Hz to 8kHz inclusive).

Council's Environmental Health Officer has examined the methods and recommendations of the report and has concluded that, based on the assessment undertaken and compliance with the report recommendations and conditions of development consent, no unreasonable noise would emanate from the tavern or impact on nearby residential properties.

Social and Economic Impacts

Given the nature of the proposal, being the re-establishment of the former Cabarita Hotel licence, the social and economic impacts are likely to be very similar to the pre-demolition situation when a hotel operated from the subject site. As such, the magnitude and significance of any adverse impacts on existing community facilities, social networks and the greater public realm will not be substantial.

The key positive socio-economic impacts of the proposal, as summarised in the application and Socio-Economic Impact Assessment, are as follows:

- The proposed re-development will provide a direct investment of \$950,000 into the local construction industry;
- Based on the estimated construction cost, the proposed fitout work, which is likely to be completed within a three month period, is likely to create eight part time jobs. The multiplier effect of this construction work is likely to create an additional eighteen part time jobs making a total of twenty-six part time jobs or approximately seven full time equivalent (FTE) jobs during the construction period.
- It has been estimated that the operation of the tavern will generate a further six FTE jobs within Cabarita Beach.
- In addition indirect benefits are also likely to be created for the local community by way of improved regional image and the efficient provision of recreational and entertainment facilities in line with demonstrated demand and normal market expectations.

The proposed shuttle bus service is also intended to provide a community service in the interests of reducing the incidence of drink driving and facilitating the orderly departure of patrons from the premises and reducing potential loitering within proximity of the town centre.

Council's Environmental Health Officer concurs with the recommendations of the Socio-Economic Assessment provided by the applicant that, providing patron behaviour and staff operations are managed in accordance with the proposed Tavern Management Plan, no unreasonable social or amenity impacts are likely to occur at nearby residential sites.

Generally, it is considered that the proposed tavern will result in net positive social and economic impacts for the local community by providing a centre for social interaction and promoting Cabarita as a destination for day trippers and longer stay tourism. Furthermore, the tavern, in conjunction with nearby major tourist accommodation developments within Cabarita, Casuarina, Salt and Kingscliff, is likely to raise the profile of the greater Tweed Coast as a desirable tourist destination, which will in turn provide follow-on benefits to the region through ancillary services and activities.

Traffic and Parking

The tavern will generate additional traffic to the site. The capability of the site and surrounding road network to accommodate the anticipated level of traffic has been assessed by the Local Traffic Management Committee and is considered adequate.

As discussed in the above section addressing DCP 2, on site car parking is considered sufficient to cater for the expected patron parking demand. Furthermore, the tavern management intends to provide a shuttle bus service, which will operate on demand and provide regular service to surrounding areas. It is anticipated this service would reduce the number of patrons driving to the site and also the incidences of drink driving. A condition of consent requiring the provision of this service has been included.

Hours of Operation

The proposed trading hours of the tavern are 7.00am to 12 midnight seven days a week. The proposal originally sought to provide full service between the hours of 10.00am and midnight seven days per week, with the bistro opening for breakfast and non-alcoholic beverages only from 7.00am seven days per week. However, after consideration of the premises' Hotelier's Licence and section 118 of the Liquor Act 1982, in order for the bistro to be able to provide breakfast to guests and the public from 7.00am, the tavern area in which this service is to be provided must be open from this time. Although there is likely to be little demand for alcohol during the additional 3 morning hours, it is necessary for the development consent and licence to recognise that the tavern is approved to trade in accordance with its Hotelier's Licence from 7.00am.

The proposed amended hours would not alter the actual operation or trading hours of the tavern from what was originally proposed. It will, however, remove the potential for conflict with the provisions of the Liquor Act, which would preclude the service of breakfast without the availability of liquor on the site.

(c) Suitability of the site for the development

The following is an excerpt from the socio-economic assessment that accompanied the proposal:

“The site of ‘The Beach’ was formally occupied by the Cabarita Hotel. When the Cabarita Hotel premises was demolished to make way for the re-development of the site, the liquor and gaming licences were held in abeyance. It has always been the owner’s intent to re-establish the tavern within the new development, or on a nearby site within the Cabarita Town centre.

Community support for the re-establishment of the Tavern has been well documented in the local media with local businesses and the general community expressing the preference for the Tavern to be re-established within ‘The Beach’ development.”

Given the nature of the proposal, being the re-establishment of a tavern on a site formally occupied by a hotel; the absence of such an establishment in the Cabarita locality since demolition of the former hotel; and the evident community support for re-establishment of the tavern, it is concluded that the subject site is ideal for the proposed development.

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

In accordance with Council’s Development Control Plan No. 42. Public Notification Policy, the proposal was notified to nearby and adjoining land owners and residents. The proposal was also advertised in the Tweed Link on September 26th 2006 and made available for public viewing for a period of 2 weeks from Wednesday 27th September to Thursday 12th October 2006.

During that time, four submissions were received in favour and one in opposition to the proposal. The following issues were raised:

Car Parking

Issue

“It would appear ‘The Beach’ Resort does not comply with the prescribed conditions outlined in the consent document that states: The public car park is to be open to enable public access. No gates or doors are to be installed which could prevent access to the public car park within the

approved trading hours. I would point out that there is in fact a gate installed to the entrance to the public car park...and is permanently closed”

Assessment

This is not a relevant issue, as it is not directly related to the current proposal before Council. Notwithstanding, the roller shutter is shown on the approved plans for ‘The Beach’ development. The roller shutter will not prevent access to the basement car parking during the approved trading hours of the non-residential uses within the site. It is intended to provide security to the car park outside those trading hours. Since there are presently no commercial tenancies in operation there is no requirement to provide public access to the basement car park.

Issue

“The car park space allocation that has been represented in the DA application for the Tavern is not consistent with the DIPNR consent for this development...”

Assessment

The allocation of car parks does not have to stay the same over new development applications so long as the provision of parking over the site for the nominated uses still satisfies Council’s required car parking as outlined in Development Control Plan No. 2.

Council has previously acknowledged that the car parking requirements for hotels as designated under Development Control Plan 2 are not an accurate reflection of actual demand for this use. This is supported by the lesser parking rate applied at the tavern at Salt (Salt Bar) and the recently approved Ivory Hotel within the ‘Pier 2’ development in Tweed Heads.

The provision of on site car parking has been discussed previously in this report and is considered acceptable, given the enforcement of relevant s.94 contributions to be paid in lieu of future Council provision of car parking.

Amenity

Issue

“It should be considered that as part of the tavern’s DA approval conditions, if granted, that it be mandatory for the tavern to provide transport for the patrons of the tavern after 8pm in order to prevent the potential problems from occurring.”

Assessment

The Tavern Management Plan submitted with the development application indicated that a courtesy mini bus would be operated by Tavern management to transport patrons within the trade catchment area. This has been enforced through appropriate conditions of consent.

Loading Facilities

Comment

“We believe the loading access ...should be addressed as this has the potential to inhibit access to the available car parking spaces provided for public access”.

Assessment

The existing loading bay was approved under the original consent for The Beach Development. A condition is proposed requiring a management plan to be submitted to Council for approval detailing the operation of the loading bay including hours of operation, types of vehicles and methods to minimise conflict with other vehicles.

(e) Public interest

The proposed development demonstrates consistency with the relevant planning instruments and Council requirements. The applicant has addressed all relevant issues and provided sufficient information to allow a thorough assessment of the application. Given that the proposed tavern would generate significant employment opportunities in the hospitality sector in Cabarita; would enhance the character and atmosphere of the site and surrounding Pandanus Parade; and would provide a venue for relaxation and socialisation in close proximity to the beach and other recreational facilities, it is considered appropriate for the site, would not set an undesirable precedent for future development in the Tweed Shire and is considered beneficial to the wider public interest.

OPTIONS:

1. Resolve to adopt the recommendation and approve the development application subject to conditions.
2. Resolve to refuse the application for specified reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

If the applicants are dissatisfied with the determination, a Right of Appeal exists in the NSW Land and Environment Court.

POLICY IMPLICATIONS:

Council's Traffic Engineer has recommended that the Gold Coast City Council rates for tavern developments be adopted via an amendment to DCP 2, or within the forthcoming consolidated DCP. The proposed reduction in the DCP car parking standard for this tavern is the same as that for recent tavern applications approved by Council.

CONCLUSION:

That Development Application DA06/1040 for a tavern at Lot 902 DP 1097490, No. 2-6 Pandanus Parade Cabarita Beach be approved subject to the attached conditions.

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 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).*

Nil.

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P4 [PD-PC] Development Application DA06/0301 - Upgrade to a 71 Bed Aged Care Facility at Lot 1 DP 805110 No. 1-9 Blundell Boulevard, Tweed Heads South

ORIGIN:

Development Assessment

FILE NO: DA06/0301 Pt1

SUMMARY OF REPORT:

Council is in receipt of an application for an aged care facility on the subject land at Tweed Heads South. The subject land has an approximate area of 8,181m² and is accessed from Blundell Boulevard. The property has three street frontages all to Blundell Boulevard.

The proposed 71 bed aged care facility has been designed in accordance with State Environmental Planning Policy (Seniors Living) 2004. It is proposed to replace part of the structures on site (the existing single storey 45 bed aged care facility) with a new 71 bed aged care facility as the existing development does not accommodate the future needs of the aged residents. Stage 1 will be for 48 single resident rooms with associated ensuites and shared dining, lounge, and sitting rooms. Stage 2 will comprise the provision of a further 23 single resident rooms. The staging of the development will allow existing residents to remain in the existing hostel before they are relocated into the new building after construction.

The proposed facility has a three-storey design with the provision for 16 onsite parking spaces.

During the public exhibition of the proposed development no submissions were received.

Southern Cross Care has requested that Council waive 50% of the applicable S94 and S64 Contributions, which would equate to a discount of \$79,993.25. The reasons for this request are detailed in the report.

The proposed development is considered to meet Council's requirements and conditions of consent (including the requirement to pay the total contributions applicable) are recommended for approval.

RECOMMENDATION:

That: -

- A. Council assumes the Director-General's concurrence to vary Clause 38 of State Environmental Planning Policy (Seniors Living) 2004 as it relates to an 8m height limit in accordance with State Environmental Planning Policy No. 1.
- B. Development Application DA06/0301 to Upgrade to a 71 Bed Aged Care Facility at Lot 1 DP 805110 No. 1-9 Blundell Boulevard, Tweed Heads South be approved subject to the following conditions: -

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos: -

- 720B/DA00b prepared by Tully Architects and dated November 2005
- 720B/DA01 prepared by Tully Architects and dated November 2005
- 720B/DA02 prepared by Tully Architects and dated November 2005
- 720B/DA03 prepared by Tully Architects and dated November 2005
- 720B/DA04b prepared by Tully Architects and dated November 2005
- 720B/DA05b prepared by Tully Architects and dated November 2005
- 720B/DA06 prepared by Tully Architects and dated November 2005
- 720B/DA07 prepared by Tully Architects and dated November 2005
- 720B/DA08 prepared by Tully Architects and dated November 2005
- 720B/DA09 prepared by Tully Architects and dated November 2005
- Landscaping Plan 720B/DA1 prepared Warwick Ralph and dated January 2006 and

State Environmental Planning Policy (Senior Living) 2004 except where varied by the conditions of this consent.

[GEN0005]

2. 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]

3. 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]

4. The facility shall be constructed and operated in compliance with all requirements of the NSW Food Authority.

[GENNS01]

5. In accordance with State Environmental Planning Policy (Seniors Living) 2004, the following restrictions on occupation of senior housing allowed is as follows: -

- (a) seniors or people who have a disability;
- (b) people who live within the same household with seniors or people who have a disability;
- (c) staff employed to assist in the administration of and provision of services to housing provided under this policy

[GENNS02]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

[PCC0945]

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

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

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

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

[PCC1145]

8. In accordance with Section 68 of the Local Government Act, 1993, any premises proposing to discharge into Councils sewerage system a waste water other than domestic sewage, shall submit to Council a completed application for a Trade Waste Licence. This application is to be approved by Tweed Shire Council PRIOR to the issuing of a Construction Certificate to discharge to Councils sewerage system. [PCC1255]
9. In accordance with Section 68 of the Local Government Act, application shall be made to Council for any proposed sewerage drainage system. Detail shall be submitted from a Hydraulics Engineer which include hydraulic drawings, pipe sizes, details of materials, discharge temperatures, fire hose reels and fire hydrants. [PCC1225]
10. 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]
11. All runoff from new roof areas and treated carpark stormwater shall be discharged to an on site stormwater detention system designed to limit peak discharge from the site to the public realm to 200L/s per hectare of development site in storm events of intensity up to the ARI 100 year storm. All stormwater shall be initially directed to a Council standard discharge control pit (DCP) fitted with an orifice plate. Site storage requirements shall be calculated in accordance with storage basin calculations in the Queensland Urban Drainage Manual (QUDM). The use of surface storage in carpark and landscaped areas is encouraged as an alternative to underground tanks.. [PCC1165]

12. Detailed drawings showing all equipment, fittings, finishes (including floors, walls, ceilings and lighting), hydraulic designs (including trade waste), mechanical exhaust ventilation systems, and all areas where food will be received, stored, prepared, cooked and served (including counters) shall be submitted to Council's Environment & Health Unit for analysis, comment and approval prior to the Construction Certificate being issued.

[PCCNS01]

13. 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.

Stage 1

- | | |
|---|-------|
| (a) Tweed Road Contribution Plan: | \$933 |
| S94 Plan No. 4 (Version 4.0) | |
| Sector2_4 | |
| (b) Open Space (Casual): | \$193 |
| S94 Plan No. 5 | |
| (c) Shirewide Library Facilities: | \$794 |
| S94 Plan No. 11 | |
| (d) Eviron Cemetery/Crematorium Facilities: | \$138 |
| S94 Plan No. 13 | |

(e) Emergency Facilities (Surf Lifesaving)	\$207
S94 Plan No. 16	
(f) Extensions to Council Administration Offices & Technical Support Facilities	\$1,463.94
S94 Plan No. 18	
(g) Cycleways	\$407
S94 Plan No. 22	
(h) Regional Open Space (Casual)	\$986
S94 Plan No. 26	
<u>Stage 2</u>	
(a) Tweed Road Contribution Plan:	\$7,151
S94 Plan No. 4 (Version 4.0)	
Sector2_4	
(b) Open Space (Casual):	\$1,477
S94 Plan No. 5	
(c) Shirewide Library Facilities:	\$6,084
S94 Plan No. 11	
(d) Eviron Cemetery/Crematorium Facilities:	\$1,058
S94 Plan No. 13	
(e) Emergency Facilities (Surf Lifesaving)	\$1,586
S94 Plan No. 16	
(f) Extensions to Council Administration Offices & Technical Support Facilities	\$11,223.55
S94 Plan No. 18	
(g) Cycleways	\$3,119
S94 Plan No. 22	
(h) Regional Open Space (Casual)	\$7,563
S94 Plan No. 26	

[PCC0215/PSC0175]

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

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

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

Stage 1

Water DSP4: 1.5 ET @ \$4598	\$6,897
Sewer Banora: 2.25 ET @ \$2863	\$6,442

Stage 2

Water DSP4: 11.5 ET @ \$4598	\$52,877
Sewer Banora: 17.25 ET @ \$2863	\$49,387

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]

15. Details of the kitchen exhaust system are to be provided and approved prior to release of the Construction Certificate if required. Such details are to include the location of discharge to the air, capture velocity, size and hood and angle of filters. The system shall comply with AS1668.2 - Ventilation Requirements.

[PCC0735]

16. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include

engineering plans and specifications for the following required works: -

- (a) A 1.2m wide concrete footpath is to be provided around the entire frontage of the site.
- (b) The proposed driveways are to comply with Tweed Shire Council's Driveway Access to Property Design Specifications.
- (c) To support the proposed pedestrian crossing on Blundell Boulevard, the applicant is to undertake a pedestrian and traffic survey in accordance with the RTA's Interim Guide to Signs and Marking - Pedestrian Crossings to determine if criteria permitting a pedestrian crossing is satisfied.
- (d) The above mentioned engineering plan submission must include copies of compliance certificates relied upon and details relevant to but not limited to the following: -
 - Road works/furnishings
 - Stormwater drainage
 - Water and sewerage works
 - Sediment and erosion control plans
 - Location of all services/conduits
 - Traffic control plan

[PCC0895]

17. Permanent stormwater quality treatment shall be provided in accordance with the following:

- (a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.
- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management. Typical water sensitive features include infiltration, maximising permeable/landscaped areas, stormwater retention /detention/reuse, and use of grass swales in preference to hard engineered drainage systems.

[PCC1105]

PRIOR TO COMMENCEMENT OF WORK

18. 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]

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

[PCW0225]

20. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every fifteen (15) persons or part of fifteen (15) persons employed at the site. Each toilet provided must be:-

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

[PCW0245]

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

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

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

[PCW0255]

22. 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.

[PCW0775]

23. 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]

24. 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]

25. 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]

DURING CONSTRUCTION

26. 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]

27. 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]

28. **All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).**
- [DUR0375]
29. **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]
30. **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]
31. **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]
32. **The finished floor level of the building should finish not less than 225mm above finished ground level.**
- [DUR0445]
33. **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]
34. **A certificate is to be submitted by a Registered Surveyor certifying that all habitable floor areas are constructed above RL 3.10 metres AHD, and certifying the actual finished level of the total site. Certification of those levels by a registered surveyor must be**

submitted to the Principal Certifying Authority prior to proceedings past floor level to ensure that the floor is above flood level.

[DUR1365]

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

[DUR2185]

36. 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]

37. 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]

38. 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]

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

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

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

[DUR2555]

40. 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]
41. All demolition works are to observe the guidelines set down under the Environment Protection Authority publication "A Renovators Guide to the Dangers of Lead" and the WorkCover guidelines on working with and handling of asbestos.
[DUR0655]
42. 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]
43. 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]
44. Pursuant to the provisions of the Disability Discrimination Act, 1992 (Commonwealth) the design of the proposed development shall facilitate access for the disabled in accordance with the relevant provisions of AS1428- Design for Access and Mobility.
[DUR1725]
45. 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]
46. A hose tap shall be provided adjacent to any grease arrester which may be installed for cleaning purposes and shall be fitted with a RPZD for the purpose of back flow prevention.
[DUR2675]
47. 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]

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

[DUR0815]

49. All walls in the food preparation and food storage areas shall be of solid construction, easily washable, lightly coloured and tiled to a height of at least 2 metres above floor level, or where not tiled, cement rendered to provide a smooth even finish to ceiling. Note: Stud framed walls will not be acceptable. Intersections of all floors with walls shall be coved to a radius of not less than 25 millimetres.

[DUR1495]

50. All flooring materials in the food preparation and storage areas are to be impervious, non slip, non abrasive and capable of withstanding heavy duty operation. Where tiling is to be used epoxy grout finished flush with the floor surface is to be used in joints or alternatively all tiles are to be butt joined and free of cracks or crevices.

[DUR1505]

51. Windows and doors opening into food preparation and storage areas are to be fully screened in accordance with Council's adopted code for the construction of food premises.

[DUR1515]

52. All internal fitout is to comply with Australian Standard AS4674 - Design, Construction and Fitout of Food Premises.

[DUR1535]

53. Separate hand washing facilities must be provided with warm water and located in a position where it can be easily accessed by food handlers and be of a size that allows easy and effective hand washing to the satisfaction of the General Manager or his delegate.

[DUR1545]

54. A floor waste connected to the drainage system shall be provided within 1.5 metres of the opening of the cool room.

[DUR1565]

55. For all hairdressing, podiatrist and consulting areas, all shelving, benches, fittings and furniture on which appliances and utensils are positioned must be of durable, smooth, impervious material capable of being easily cleaned.

[DUR1605]

56. For all hairdressing, podiatrist and consulting areas, the walls and floors must be lined, sealed or sheeted with an approved smooth impervious material capable of being easily cleaned.

[DUR1615]

57. For all hairdressing, podiatrist and consulting areas, the walls immediately behind any basin shall be provided with an impervious splashback to a height of 450mm and at least 150mm either side of the basin.

[DUR1625]

58. For all hairdressing, podiatrist and consulting areas, separate hand washing facilities must be provided with warm water in a readily accessible position within the work area.

[DUR1645]

59. A concrete ribbon footpath 1.2 metres wide and 100 millimetres thick is to be constructed on a compacted base along the entire frontage of the site in accordance with Councils adopted Development Design and Construction Specification.

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.

[DUR1735]

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

[DUR1795]

61. 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]

62. Where the kerb is to be removed for driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.
[DUR1905]
63. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials. A screened, graded and drained garbage storage area shall be provided within the boundary.
[DUR2205]
64. Prior to any work commencing, appropriate measures are to be put in place during the construction period to prevent the transport of sediment from the site. Should any material be transported onto the road or any spills occur it is to be cleaned up prior to cessation of same days work and/or commencement of any rain event.
[DUR2405]
65. 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 Council's Engineering and Operations Division to arrange a suitable inspection.
[DUR2445]
66. If a modification of Council's Sewer is required, then an application shall be lodged with Tweed Shire Council under Section 68 of the Local Government Act.
[DURNS01]
67. The temporary kitchen shall be constructed, fitted out, and approved by Council's Environment & Health Unit prior to demolition of the existing commercial kitchen at the site.
[DURNS02]
68. The temporary kitchen shall be used for the preparation of light meals only. Until such time as the new commercial kitchen has been constructed, internally fitted out, and deemed to be in compliance with NSW Food Regulations by Council's Environment & Health Unit, no large-scale food preparation or production is to commence.
[DURNS03]

69. Pre-cooked foods prepared at St Martha's and delivered to St Joseph's in the manner proposed will require endorsement by Council's Environment & Health Unit to ensure compliance with NSW Food Regulations. Particular attention must be made to approved sealed containers, maintaining food at appropriate temperatures, food deemed to be potentially hazardous, and transportation of foods within a vehicle.

[DURNS04]

70. All used cooking utensils, storage equipment, crockery, cutlery and the like is required to be transported in sealed containers from St Joseph's to St Martha's to avoid the possibility of cross-contamination. Containers to be used for such purposes shall be sanitised after each use.

[DURNS05]

71. The internal storage facilities to be used for the keeping of food to be served to residents is to be maintained at correct temperatures (i.e. frozen products at -18°C and fresh foods at 4°C). Thermometers are to be provided for safe monitoring of these foods.

[DURNS06]

72. With respect to the temporary kitchen:

- a. All walls and ceiling must be lined, sealed or sheeted with an approved smooth impervious material capable of being easily cleaned. If these areas are to be painted, a gloss paint must be used.
- b. All flooring materials are to be impervious, non slip, non abrasive and capable of withstanding heavy duty operation.
- c. New fluorescent lights to be installed must be provided with diffusers.
- d. All cabinets, hot water services, or any other fixed equipment, a minimum gap of 150mm is to be provided between the underside of the fixture and any surface. All other equipment is required to be placed on approved casters for easy removal for cleaning purposes.
- e. Adequate measures shall be provided to safeguard all food from fly, dust and other contaminants. Any externally opening doors and windows shall be provided with insect screens. The door to the temporary kitchen shall also be provided with self-closing devices.
- f. Any existing under bench cupboards placed on a hollow plinth are to be made accessible for treatment, including ongoing treatment, during their use by a licensed pest control operator.
- g. Separate hand washing facilities must be provided with warm water and located in a position where it can be easily accessed by food handlers and be of a size that allows easy and effective hand washing to the satisfaction of Council's General Manager or his delegate.

[DURNS07]

73. 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]

74. All works shall be undertaken in accordance with the Assessment of Noise Impacts report for 1-9 Blundell Boulevard, Tweed Heads South prepared by Ron Rumble Pty Ltd dated 18 September 2006 (Reference No: RR/06/5788.Rpt) and acoustic treatment plan prepared by Tully Architects Pty Ltd dated October 2006 (Drawing No: 720B/DA10).

[DURNS09]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

75. 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]

76. 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]

77. Prior to the issue of an occupation certificate,

- (a) Certification of termite protection methods performed by the person carrying out the works is to be submitted to the PCA; and
- (b) 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.

[POC0235]

78. 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]

79. Prior to commencement of operations and on completion of fit out an inspection is to be arranged with Council's Environmental Health Officer for final approval for each stage of the development.

[POC0615]

80. The food premises shall provide appropriate notification to the NSW Food Authority prior to commencement of operations.

[POC0625]

81. 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]

82. Design detail shall be provided to address the flood compatibility of the proposed structure including the following specific matters:

(a) The habitable and operational areas of the building are to be at a level no less than 500mm above the design flood level of RL 2.6m AHD.

(b) The facility should be provided with a back-up power source should electricity supply to the facility be interrupted during flooding emergencies.

(c) The facility may be isolated by road during large flood events requiring residents and staff to shelter within the facility for an extended period of time. Contingency plans for the ongoing care of residents throughout a flood emergency, with regard to staffing, continuous medical, food and water supply, sewerage and waste management, options for re-supply, and options for the evacuation of high care and at risk residents due to medical emergency should be discussed with the NSW State Emergency Service (SES), for inclusion within a Flood Management Plan for the facility.

[PCC0705]

USE

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

[USE0125]

84. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised, notwithstanding this requirement all air conditioning units and other mechanical plant

and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive noise.

[USE0175]

85. All deliveries and servicing of waste are to occur only within the hours of 7am to 6pm Monday to Friday, unless otherwise approved by Councils General Manager or his delegate.

[USE0195]

86. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light creating a nuisance to neighbouring or adjacent premises.

[USE0225]

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

[USE0525]

88. Any premises used for the storage, preparation or sale of food shall comply with the *Food Act 2003* and the Australia New Zealand Food Standards Code.

[USE0835]

89. All mechanical ventilation shall comply with AS1668.2 Ventilation Requirements.

[USE0845]

90. The premises shall be operated in accordance with the *Public Health (Skin Penetration) Regulation 2000* and current NSW Health Skin Penetration Code of Best Practice and Guidelines.

[USE0975]

91. A sharps container shall be provided for the storage of used disposable needles in any skin penetration process. The sharps container shall be collected by an authorised medical waste collection service to the satisfaction of Council's General Manager or his delegate.

[USE1025]

92. Temporary food deliveries are to occur only within the hours of 7am to 6pm Monday to Sunday. Medical related deliveries exempted.

[USENS01]

REPORT:

Applicant: Southern Cross Care NSW & ACT Inc
Owner: Southern Cross Care NSW & ACT Inc
Location: Lot 1 DP 805110, No. 1-9 Blundell Boulevard, Tweed Heads South
Zoning: 2(a) Low Density Residential
Cost: \$8M

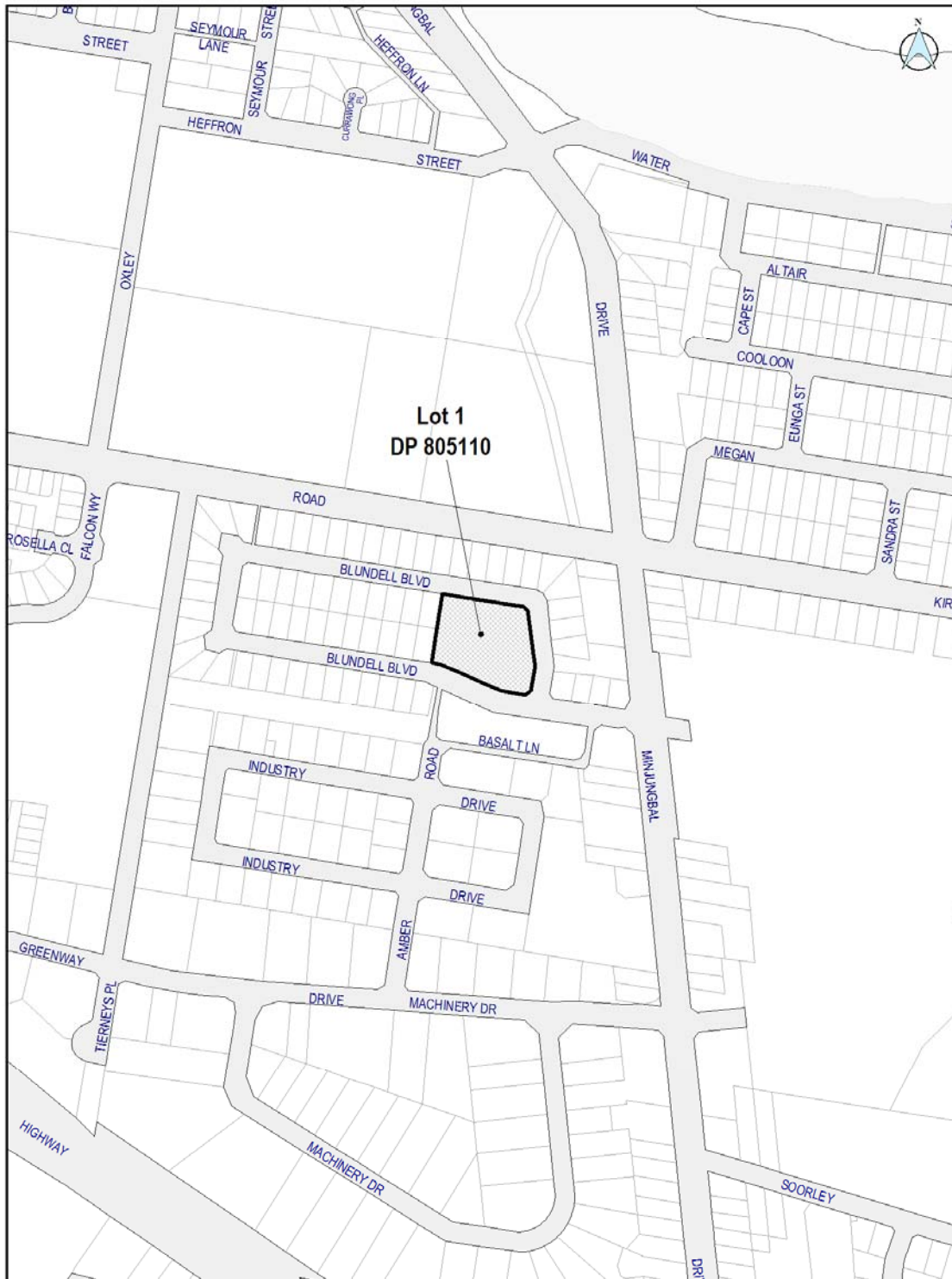
BACKGROUND:


Council is in receipt of a development application for an aged care facility on the subject land. The proposed facility is to be developed in two stages with Stage one containing 48 beds and Stage 2 is to involve the provision of a further 23 beds. This will be in addition to the existing independent living areas that will remain on the western portion of the site.

The proposed development will result in an aged care facility with 71 beds. Food will be prepared in the commercial kitchen and served to residents via the satellite kitchens on each level. There are staff and administration facilities and other ancillary rooms (hairdresser, podiatrist) to meet the needs of the residents.

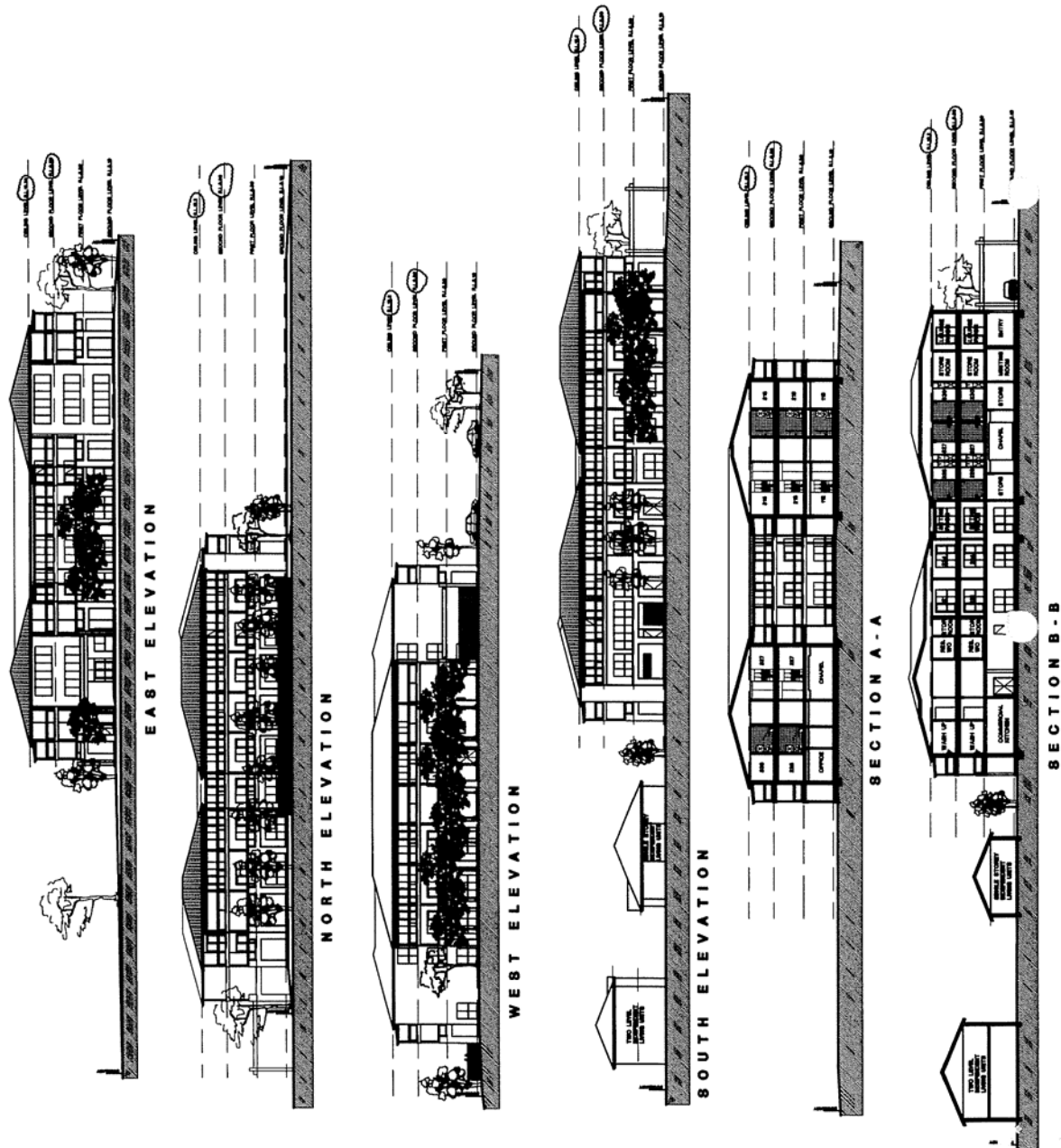
The subject land is zoned for low-density residential development. The large site area of 8,181m² has enabled an alternate use of the site and is permissible with consent in the subject zone.

SITE DIAGRAM:



<p>© TWEED SHIRE COUNCIL 2006 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 616 Murwillumbah, NSW, 2484 Tel: (02) 6670 2409 Fax: (02) 6670 2483</p>	<p style="text-align: center;"><i>Tweed Shire Council</i> Lot 1 DP 805110 No. 1-9 Blundell Boulevard, Tweed Heads South</p>		<p>PLANNING REFORMS UNIT Site Plan</p>
<p>File: N:\Munsys\A4P - SITE PLAN.Wor Author: J.Batchelor Date: 15/Nov/2006</p>		<p>Scale: 1:5,000</p>	<p>Sheet: 1 of 1</p>

ELEVATION PLANS:



NO.	DATE	DESCRIPTION
1	11/06/06	CONCEPT PLAN
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CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

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

Tweed Local Environmental Plan 2000

The subject land is zoned 2(a) Low Density Residential zone under the provisions of the Tweed Local Environmental Plan 2000. The objectives of the zone include:

- *To provide for and maintain a low density residential environment with a predominantly detached housing character and amenity*

The Local Environmental Plan provides a definition for housing for older people or people with disabilities being: -

“Residential accommodation which is used permanently as housing for the accommodation of older people or people with a disability which may consist of a residential care facility, a hostel or a grouping of two or more self contained dwellings or a combination of these but does not include a hospital”.

The proposed use of the subject land as a residential aged care facility is permissible under State Environmental Planning Policy (Senior Living) 2004 which allows Council to set aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in the SEPP.

An assessment of the proposal against the SEPP is detailed in the following report. Based on that assessment use of the subject land for the proposed purpose is permissible with consent.

Clause 15 of the TLEP requires the provision of essential services to be available to the site prior to any consent being granted. Council's Water and Sewer design Engineer has advised that the proposed development is able to be undertaken.

Clause 16 of the TLEP provides a three-storey height limitation over the site. The proposed development complies with the height requirements.

Clause 17 of the TLEP requires a social impact assessment for development types likely to have a significant social impact in the locality. The proposed development is such a development type and as such the applicant has submitted the required Socio-Economic Impact Assessment. Socio-economic impacts of the proposed development are further examined in this report.

Clause 34 of the TLEP provides objectives to minimise future potential flood damage by ensuring only appropriate compatible development occurs on flood

liable land. The subject land has previously been filled to or above the design flood level of 2.6m AHD. Minimum habitable floor level required is 3.1m AHD, to provide 0.5m freeboard above the ARI 100 year flood level. The development proposal complies with this requirement.

The proposed development is three storey's, and as such, emergency accommodation for residents should still be available should floor levels exceed the flood planning level. The facility will need to be prepared for such an emergency where there is a risk that utilities including electricity, telephone and water and sewerage may be interrupted, and that evacuation by road may not be possible. Contingency plans should be discussed with the SES, particularly in regards to high care or at risk patients.

Appropriate conditions of consent have been recommended to ensure compliance with Clause 34.

Clause 35 of the TLEP provides for the management of acid sulfate soils. The subject land is identified as being in a Class 2 area. There is no excavation proposed however there may be some required in the vicinity of the lift wells. This site has been filled to approximately 1.0m during the original construction works for the site. As works most works will occur within this fill level, the quantity of natural soil disturbance is considered negligible and would satisfy Council's ASSMP for Minor Works. Standard conditions of consent have been recommended in this regard.

Clause 39 of the TLEP relates to the remediation of contaminated land. A historic search for uses of the subject land indicated that there have been no dip sites within 200m of the site, and further that topographic maps dated 1974 and 1985 show swampland and the existing premise respectively. This premise has occupied the site since 1978. Due to the age and continuous use of the site as an aged care facility, contamination is not considered a constraint for this development.

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

North Coast Regional Environmental Plan 1988

Clause 43 of the NCREP is applicable. Clause 43 contains provisions relating to residential development. The development has addressed these provisions in relation to maximising the density over the site, not providing excessive road widths and ensuring erosion and sedimentation control measures are adopted. This has been enforced through the recommended conditions of consent.

The proposed development is considered to have satisfied the relevant provisions of the NCREP.

State Environmental Planning Policies

Senior Living 2004

The aims of SEPP are: -

1. *This policy aims to encourage the provision of housing (including residential care facilities) that will: -*
 - a. *increase the supply and diversity of housing that meets the needs of older people or people with a disability;*
 - b. *make efficient use of existing infrastructure and services; and*
 - c. *be of good design*

These aims will be achieved by: -

- a. *setting aside local planning controls that will prevent the development of housing for older people or people with a disability that meets the development standards specified in this policy; and*
- b. *setting out design principles that should be followed to achieve built form that responds to the characteristics of its site and location; and*
- c. *ensuring that applicants provide support services for seniors or people with a disability for developments on land adjoining land zoned primarily for urban purposes.*

This policy applies to Tweed Shire. Following is an assessment of the development against the SEPP:

Clause 19 Development adjoining land zoned primarily for urban purposes

- *A consent authority must not consent to a development application made pursuant to this Chapter to carry out development on land that adjoins land zoned primarily for urban purposes unless the proposed development is for the purpose of one of the following: Hostel or a residential care facility.*

The application seeks approval for a 71 bed Aged Care Facility to replace the existing 45-bed facility. The facility will provide the necessary requirements such as delivered meals, personal care, assistance with housework, on site communal meeting spaces, commercial kitchens to service the hostel with staff available 24 hours per day. Separate services and packages will be available to Residents within the Independent Living Units.

Clause 20 Restrictions on occupation of seniors housing allowed under this Chapter

- (1) *Development allowed by this Chapter may be carried out for the accommodation of the following only:*
- (a) *Seniors or people who have a disability,*
 - (b) *People who live within the same household with seniors or people who have a disability,*
 - (c) *Staff employed to assist in the administration of and provision of services to housing under this Policy.*

The subject application seeks approval for a aged care facility. The majority of people will be seniors that do not necessarily have a disability, however services are made available if required. The facility will be staffed 24 hours per day with staff available if required with seniors.

- (2) *A consent authority must not consent to a development application made pursuant to this Chapter unless a condition is imposed by the consent authority to the effect that only the kinds of people referred to in subclause (1) may occupy any accommodation to which the application relates.*

The recommended conditions of consent will ensure appropriate restrictions are provided.

Clause 21 details provision for use of seniors housing in commercial zones. This is not applicable to this application as the site is not zoned for commercial purposes.

Clause 22 provides special provisions concerning certain land to which this Policy applies. The subject site is not defined as specific within the Local Government Area and therefore this clause does not apply.

Clause 23 allows the subdivision of the land with consent. The application does not seek approval for subdivision therefore this clause does not apply.

Clause 24 details provisions for heritage conservation areas and heritage items. The subject site is not a nominated heritage listed site, with no heritage significant areas or items in the vicinity of the subject site. This clause therefore does not apply.

Clause 25 provides the requirements for location and access to facilities as follows:

- (1) *A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied, by written evidence, that residents of the proposed development will have access that complies with subclause (2) to:*

- (a) Shops, banks and other retail and commercial services that residents may reasonably require, and*
- (b) Community services and recreation facilities, and*
- (c) The practice of a general medical practitioner.*

The subject site is located within walking distance of the Tweed City Shopping Centre, which includes various shops, banks, retail and commercial facilities and medical practitioners. Furthermore recreational open space is available approximately 400m north of the site known as a public park known as Arkinstall Park. Public transport and the Centrelink office are located directly across from the site thus satisfying this clause.

(2) Access complies with this clause if:

- (a) The facilities and services referred to in subclause (1) are located at a distance of not more than 400 metres from the site of the proposed development and the overall average gradient along the distance is no more than 1:14.*

The proposed site is located approximately 150m from facilities and services. The Aged Care Facility is located on a level site, which complies with the required gradients.

- (b) Not applicable to this application.*
- (c) In the case of a proposed development on land in a local government area that is not within the Sydney Statistical Division – there is a transport service available to residents who will occupy the proposed development.*

A transport service is located approximately 100m from the proposed development. The transport system delivers passengers within 20m of relevant facilities and services and is made available during daylight hours 7 days per week. This clause is therefore satisfied.

Clause 26 has requirements for aged care facilities within a mapped bushfire prone land area. This clause is not applicable as the subject site is not bushfire prone.

Clause 27 requires the site to have access to reticulated water system and have adequate facilities for the removal or disposal of sewerage. At present water and sewer are connected to the existing development. Section 64 contributions will be applicable in this instance, however, the applicant has requested a 50% discount due to financial hardship. This is discussed later in this report.

Clause 28 provides that the applicant must provide a site analysis statement with the application. The applicant has provided sufficient site analysis plans and detail within the statement of environmental effects to satisfy this

provision. The site is located within central Tweed Heads South , surrounded by the Tweed City Shopping Centre, Centrelink Office and various residential allotments. The proposed development is located in a position whereby services such as shopping, medical and local transport services are within walking proximity. The site is large in size, and can comfortably accommodate the proposed development. Most existing vegetation will remain in addition to more landscaping to soften and enhance the appearance of the facility. This will result in a more functional seniors living development than what currently exists on the site.

Clause 29 calls upon the urban design guidelines for infill development. The proposed development is a re-design of an existing facility and has had regard to the existing streetscape. The proposed development is considered satisfactory having regard to this document.

Clause 30 provides that residential development must be in accordance with the requirements set within Division 2 of this policy. Assessment of this division is within Clauses 31-37 inclusive.

Cause 31 specifies a number of requirements that must be taken into consideration when assessing a senior facility. They include the need for new development to add to the character and amenity of the area, maintaining neighbourhood amenity and appropriate residential character including setbacks, building form and building heights, appropriate planting and where possible retain existing major trees on the site.

The subject application satisfies all the above-mentioned requirements. The proposal will add and enhance the character and amenity of the area, adding a new architecturally deigned building that supplements the existing neighbourhood character. Where possible, existing trees and planting will be retained for the future proposed landscaped area. At present the site is heavily vegetated along the boundaries of the property, with the objective of the site plan to retain the existing plantings specifically with a large eucalyptus tree being retained on the north-eastern boundary. Setbacks do not fall less than 6m on northern and western boundaries. The proposed eastern setback varies along the street to minimise impact to existing residents.

The proposed design of the building is considered satisfactory having regard to Clause 31.

Clause 32 provides requirements for the retention of visual and acoustic privacy. Council's Environmental Health Officer has reviewed the application in this regard and provided that:

The subject site is surrounded by single storey residential dwellings to the north and east. To the west within the subject site are one and two storey independent living units, with single storey residential dwellings further west of the site. The Centrelink office and associated carpark are located to the south.

The development has been designed with noisier types of activities located to the south facing commercial development. This includes a covered loading dock area, plant room, laundry, with an activities room on the first floor. A plant room will be provided at the south of the site for the hot water systems.

Air conditioning will be installed in all common areas, and individual air conditioners for rooms will be installed as required. Mr McDonald advised on 26-6-06 that the air conditioning system for the main areas would likely be installed within the roof cavity. He also advised that the design of the system will be undertaken by an acoustic consultant to ensure that it does not impact on the subject site and neighbouring dwellings.

Additional information was requested and provided. The following advice was then provided by Council's Environmental Health Officer after reviewing the additional information:

An Assessment of Noise Impacts for 1-9 Blundell Boulevard, Tweed Heads South prepared by Ron Rumble Pty Ltd dated 18 September 2006 (Reference No: RR/06/5788.Rpt) has been submitted.

Potential impacts from this site include noise from plant, vehicles, laundries and kitchens. Plant is generally located within alcoves or plant rooms to minimise noise, however due to proximity to the existing independent living units (ILUs) to the west, these may be impacted.

There are concerns regarding vehicle noise in the vicinity of the loading dock entrance only. Restrictions will apply including the use of small rigid vehicles and vans only associated with kitchen deliveries and an off-site laundry service. Entry to this area will be limited to 7am – 6pm Monday to Friday only.

No large scale laundry facilities are to be provided onsite. An external commercial laundry service will be used with the provision of small laundries within the site available to residents for their own laundry (domestic scale and appliances).

The kitchen is to be located within the SW corner of stage 1 and will be enclosed and air-conditioned. Internal noise from the kitchen is considered incidental. Satellite kitchens are domestic in scale and unlikely to generate significant noise emissions.

Proposed noise mitigation measures include:

- *Installation of a noise barrier at the plant location in the NW corner*
- *Acoustic louvres to plant areas in the SW corner*
- *Specifications for acoustical performance of refrigeration units and kitchen exhaust fans.*
- *Acoustic screen fence between the loading dock and adjoining ILUs.*
- *Curfews on deliveries and waste collection.*

Condition to apply that includes provision of a revised site plan that outlines the locations of the recommended acoustic controls.

Subject to the recommended conditions of consent the proposed development is considered to satisfy Clause 32

Clause 33 relates to provision for solar access and design for climate. The application will require all roof and ceiling spaces to be insulated accordingly. All habitable rooms have large windows and doors and natural ventilation by way of verandas. The development has been designed so that the majority of habitable rooms receive adequate solar access.

Clause 34 details requirements for storm water. Council's Engineers have provided that:

The applicant has proposed to mitigate post-development peak stormwater discharge to the public system by constructing an on site detention (OSD) system. All roof water from the new building and treated runoff from the associated carpark will be directed to this system. Few supporting calculations for the sizing of the proposed OSD storage and discharge controls have been supplied.

It is considered that the proposed OSD system can be modified significantly to more efficiently meet the objectives of mitigating peak flow.

- *The contributing catchment for the calculation of permissible site discharge may be based on the new building and carparking area, and need not be applied to the whole site area of 8181m². Scaling off the submitted plans, a contributing catchment of 2200m² is acceptable, providing a permissible site discharge of 44L/s (200L/s/ha).*
- *Storage volume may be calculated in accordance with storage basin techniques in QUDM (eg. BASHA equation), based on a storm of ARI 100 year intensity over the contributing catchment. Based on preliminary calculations, storage may be reduced from the proposed 400m³ to 95m³. Surface storage within the site landscaping is encouraged as an alternative to underground storage tanks.*
- *A Council standard discharge control pit must be provided. The DCP must be fitted with an orifice plate designed to limit peak outlet flows to 200L/s/ha. All inlet pipes must be directed to the DCP, and not to the storage.*
- *The site has sufficient fall to the receiving public system to allow for the installation of Council standard OSD devices and an altered OSD design should not significantly affect the rest of the development. As such, the above may be incorporated into conditions of consent, with amended design details to be provided by the applicant during the Construction Certificate process.'*

Accordingly appropriate conditions of consent have been recommended.

Clause 35 relates to crime prevention and aims to protect and provide security for the residents living within the proposed development. The development proposes 1500mm high fence provided in the courtyard to the Special Care Cottage and partly along the northern boundary for security and privacy issues. The majority of units have balconies that face a street frontage to facilitate safety in security, and observation of the street. All rooms and entry points will be locked and made secure from any possible security breaches this satisfying Clause 35.

Clause 36 in relation to accessibility aims to facilitate the use of a pedestrian friendly environment for residing residents and visitors to the site. The development provides for a large landscaped courtyard that that will have access to various areas of the complex. The complex itself has adequate access and security points and all entry points can be viewed by individuals at any time.

Clause 37 provides guidelines for waste management. The garbage storage area on the site is accessible by the proposed main access way. Southern Cross Care will be responsible for the waste bins to be delivered to the front street and returned to each dwelling each week. Provision will be made through Tweed Shire Council for garbage collection.

Clause 38 details the development standards for minimum lot sizes and building heights. Clause 38 (1,2,3) states that the proposed development must be on an allotment of at least 1000m² and has a frontage of at least 20m wide at the building line. The proposed site is 8181m² and has a frontage of more than 20m wide. Furthermore clause 38 (4) states that developments must not be more than 8m in height. The proposal seeks a total building height of 11.4m. The application was accompanied with a SEPP 1 variation. The applicant has provided the following reasons for Council to support the SEPP 1:

- *Council has zoned for the property allowing 3 stories;*
- *The facility needs three stories to assure this community service remains on site and upgrades to current standards;*
- *Maintaining residents onsite and staging requirements to minimize impact on the residents, requires Stage 1 to be 3 stories;*
- *3 storey development allows parking to be relocated to the shopping centre frontage.*

SEPP 1 allows for variations where development could, but for any development standard, be carried out under the Act (either with or without the necessity for consent under the Act being obtained therefore) the person intending to carry out that development may make a development application in respect of that development, supported by a written objection that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case, and specifying the grounds of that objection.

In accordance with Council's assumed concurrence delegations the 8m criteria contained within the Senior Living SEPP is considered unreasonable and unnecessary having regard to the overall aesthetics of the building and the compliance with the three storey height limit contained within Tweed LEP 2000.

Division 3 Clauses 39 – 50 relates to hostels and provides the standards concerning access and usability. Council's Building Services Unit has reviewed this application specifically having regard to Clause 40 siting standards for wheelchair access, road access and common areas. To ensure compliance with these requirements and the Building Code of Australia standard conditions of consent are recommended.

Clauses 41 and 42 require pathway lighting for security and lockable central letter boxes. The proposed development will be conditioned accordingly.

Clause 43 provides criteria for private car accommodation. This is not considered applicable to this application. It is anticipated that residents do not require the need for vehicles. The only parking available to the site is for employees and visitors.

Clause 44 requires accessible entry in accordance with AS4299, and AS 1428. A standard condition of consent will require the development to comply with the Seniors Living SEPP thus calling up these specific requirements.

Clause 45 requires all external doors to be keyed alike, as above standard conditions will be imposed.

Clause 46 provides requirements for interior clearances. In accordance with these the internal doors are 1500mm wide, internal corridors are between 2200mm and 2500mm and widths at internal door approaches are no less than 1200mm. Therefore clause 46 is satisfied.

Clause 47 provides requirements for interior design generally. The majority of the rooms are approximately 27m² in floor area. The floor area for where a bed will be situated is 13.5m², which can comfortably accommodate a bed and provide clearance of 1200mm at the foot of the bed. Plans do not show locations of power, TV or telephone connections, however the applicant has indicated these services will be available to each room. A kitchenette and bathroom is located in each of the rooms.

Clause 48 provides requirements for interior design for the bathrooms. In this regard each apartment has a private en-suite. These have been designed without hobs and with appropriate finishes. Floors are slip resistant. Grab rails are provided and Thermostatic Mixing Valves are fitted. The applicant has indicated that the shower complies with AS1428 and can accommodate an adjustable, detachable hand-held shower rose mounted on a slider grab rail. The plans indicate this can be achieved, however Council's Building Unit or Private Certifying Authority at Construction Certificate stage will further assess

this aspect of the application in order to determine compatibility against AS1428. The basin and shower taps are lever type mixers. Basins, wall cabinets and mirrors are provided. There is a light over the mirrors and power and heating (IXL Tastic) is included. Clause 48 is considered satisfied.

Clause 48 provides requirements for interior design for toilets. Each apartment is serviced with a toilet and associate grab rail attached to the wall. The plans indicate that this can be achieved however Council's Building Unit or Certifying Authority at Construction Certificate stage will further assess this aspect of the application in order to determine compatibility against AS1428.

In accordance with Clause 50 regarding surface finishes the balconies and external paved areas will be broomed finish concrete and unglazed tiles provided with a slip-resistant surface.

Clauses 50 – 73 not applicable. (Clauses 74 & 75 Repealed)

Clause 76 states that the consent authority must be satisfied facilities and services are made available when the development is ready for occupation. The site currently accommodates a senior living development constructed many years ago. As a result all facilities and services are currently made available and exist in close proximity to the subject site.

Clause 77 allows a bonus FSR to aged care facilities provided certain standards are satisfied. Tweed Shire controls do not have a FSR for this type of development and therefore no bonus is required. The proposed development has an FSR of 0.71:1, which does not jeopardise the requirements set out within this Clause.

Clauses 79 –81 provides that a consent authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a aged care facility on any of the following grounds:

(a) Building Height: *if all proposed buildings are 8 metres or less in height.*

The proposed development proposes a height of 11.4m within a three storey configuration. This complies with the Tweed LEP 2000 - 3 storey height limit and is considered satisfactory having regard to the streetscape, setbacks, landscaping, overshadowing and overall size of the site. However, despite compliance with Tweed LEP 2000 the application requires a SEPP 1 to the 8m criteria contained within SEPP (Senior Living) 2004. As detailed in the above report the SEPP 1 is supported and therefore there is no need to refuse the application on the grounds of height.

(b) Density and Scale: *if the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less.*

The proposed development has a FSR of 0.71:1, which complies.

(c) Landscaped area: *if a minimum of 25m² of landscaped area per residential care facility bed is provided.*

25m² x 71 bed aged care facility requires 1,775m² for landscaping. Landscaping to the site is provided in accordance with these guidelines.

(d) Parking for residents and visitors: *if certain requirements can be met regarding number of car spaces for visitors and employees and ambulance.*

The site provides for 16 car spaces and an ambulance pick-up bay to the front entry/exit point of the building, thus complying with the SEPP.

Therefore having considered all of the above criteria the proposed development is considered to comply with the State Environmental Planning Policy (Senior Living) 2004.

State Environmental Planning Policy No. 71 – Coastal Protection

The proposed development is not within a sensitive coastal location and will not impact foreshore access. Having regard to Clause 8 the proposed development is considered to comply with SEPP 71.

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

Draft SEPP 1 was exhibited in July 2001 and has not been adopted to date. One proposed change would make developers and councils more accountable. When applicants use SEPP 1, they must provide sufficient evidence that proposed development meets the objectives of the local plan.

The proposed development is considered to have achieved this and thus the SEPP 1 was recommended for approval.

The proposed development does not require further assessment in relation to any Draft Planning Instrument.

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

DCP2 – Site Access and Parking

The development states that 16 car parking spaces are proposed. It is noted that 12 spaces are provided in the car park with entry from the southern boundary of Blundell Blvd. Two (2) of the car parking spaces are undersized and do not comply with the minimum width requirements in DCP 2 or SEPP (Seniors Living) 2004.

DCP 2 – Site Access and Parking Code specifies the following for housing for older / disabled, hostel or residential car facility.

0.5 spaces per bed, 1 ambulance parking space and bicycle parking at a rate of 1 per 10 bedrooms plus 0.5 per staff.

Therefore based on 71 beds the car parking required under DCP 2 is 36 spaces plus an ambulance space.

The application does not comply with car parking requirements specified under DCP 2, however, the SEPP Senior Living 2004 overrides this document and therefore the following is applicable.

The State Environmental Planning Policy (Seniors Living) 2004 specifies that each parking space (not being car parking for employees) must be not less than 6 metres x 3.2 metres or the design of the development must be such as to enable the size of the car parking space to be increased to an area of not less than 6 metres x 3.2 metres. The application complies in terms of the required size of the car parks.

The document also provides the following requirements in terms of car parking under section 79 – Standards that cannot be used to refuse development consent for residential care facilities;

- 1 space per 10 dwellings in the residential care facility (or 1 parking space for each 15 dwellings if the facility provides care only for persons with dementia)
- 1 space per 2 persons to be employed and on duty at any one time
- 1 space suitable for an ambulance.

The application states that a maximum number of staff on site at any one time will be 6. Under these guidelines a total of 10 parking spaces (plus an ambulance bay space) are to be provided. The parking complies with the SEPP (Seniors Living) 2004 policy.

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

The application has been conditioned to ensure compliance with the applicable Regulations.

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

Compatibility with Adjoining Land Uses and Noise

The subject land is zoned for low density residential use, and is located in an area characterised by low density housing. The proposed development is a land use that is considered to be compatible with residential uses. The proposed aged care facility will provide housing for seniors. The facility is to

be provided with its own recreational facilities and is to be located in landscaped grounds with some areas of revegetation.

The proposed development is not considered to be incompatible with the residential uses. Buffers and setbacks are provided to adjoining residences that comply and exceed the permissible setbacks should the site be redeveloped with housing.

The proposed aged care facility will have to be designed to comply with the NSW EPA Noise criteria, this will be demonstrated prior to the release of a construction certificate.

Natural Environment

The subject land does contain some mature vegetation. The application retains most of this mature vegetation but further includes the revegetation of the site in part to provide more appropriate plant community.

Road Environment

Council's Traffic Engineer has recommended standard conditions be imposed on the development to ensure a suitable outcome is achieved for the local road environment.

Socio-Economic Impacts

The applicant has provided a socio-economic impact comment statement supporting the proposed development.

The proposed development will result in approximately 71 people living at the facility. The proposed development provides special needs housing for seniors or those with a disability.

The proposed development is considered likely to result in a minor increase of older people living in the area.

Social interaction can be accommodated onsite by way of organised activities in the recreation areas. The proposed development does not result in any conflicts with the public realm in the locality. The site has the benefit of being in close proximity to a number of services and facilities in Tweed Heads South including, shops, hospitals, medical centres, chemists, schools. These facilities will provide connectivity for the people living in the development with the wider community.

The proposed development has assessed all access requirements in relation to Australian Standards in terms of design and access to bus services. The proposed development is considered to be suitable based on social grounds as it provides additional housing for the older population group.

It will result in direct employment and may also result in economic multiplier effects. There are also the wider benefits to the community in having an aged care facility in the location.

(c) Suitability of the site for the development

The subject site is considered suitable for the proposed development based on its general compliance with all applicable planning controls

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

The proposed development was publicly exhibited for a fortnight during which no submissions by way of objection were received.

(e) Public interest

The provision of aged care facilities within the local community is an important need. The proposed development will upon completion contain 71 beds. The proposed redevelopment does not contain any self care units. The development has been designed to provide amenity to the future residents and spaces that are pleasant to afford leisure and recreation. The proposed development is considered to be of a high standard and would cater for a need within the community.

The subject land has been identified for low density residential use under the Tweed local Environmental Plan 2000. The proposed development is a permissible use within the zone and has been designed in accordance with the State Environmental Planning Policy Senior Living 2004.

The subject land is in a relatively quiet low density precinct. The development has been designed to be situated in a landscaped site with its own privacy.

The proposal is not considered to be in conflict with the general public interest.

Infrastructure Charges

The applicant has submitted that the contributions are too onerous for Southern Cross Care and have requested a 50% reduction to the charges on the following grounds:

- *Southern Cross Care provides a valuable service to the community;*
- *People are admitted on the basis of their care needs and not on an ability to pay;*
- *We have limited funds from our existing residents and no guarantee of incoming bond contributions on new placements;*
- *With limited Government support the financial constraints on our service are severe;*

- *The proposed works (including consultant fees etc) will cost in excess of \$10,000,000. We have very significant financial restrictions;*
- *Council waiving 50% of the charges would be of great assistance.*

The contributions that have been calculated for the proposed development have been charged at the bed rate and only the components that are applicable to aged care facilities are to be levied. The subject land does not have any benefit of contributions as there are existing facilities remaining on site.

The existing facility caters for 45 beds. This will be demolished at the completion of stage 1 which accommodates 48 beds. Therefore prior to issue of Stage 1 the applicable contributions for stage one reflect the three (3) additional beds. Stage 2 comprises a further 23 apartments. Therefore prior to issue of Construction Certificate for Stage 2 the applicant is required to pay the applicable contributions for 23 beds. The current applicable rates are detailed below. Should Council wish to reduce the applicable charges the viability of the S94 Plans may be compromised.

Contribution Plan No:	Stage 1 (3 beds)	Stage 2 (23 beds)
Water DSP 4	\$6,897	\$52,877
Sewer Banora	\$6,442	\$49,387
TRCP Sector 2	\$933	\$7,151
Local Casual Open Space	\$193	\$1,477
Library Facilities	\$794	\$6,084
Eviron Cemetery	\$138	\$1,058
Emergency Facilities	\$207	\$1,586
Council Administration	\$1463.94	\$11,223.55
Cycleways	\$407	\$3,119
Regional Casual Open Space	\$986	\$7,563
TOTALS	\$18,460.94	\$141,525.55
GRAND TOTAL	\$159,986.49	

OPTIONS:

1. Approve the proposed development in accordance with the recommended conditions of consent.
2. Refuse the development application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has a right of appeal in the NSW Land and Environment Court should they be dissatisfied with the determination of the application.

POLICY IMPLICATIONS:

The proposed development does not generate a policy implication for Council.

CONCLUSION:

The proposed development complies with the requirements of SEPP Senior Living 2004 and meets Council's requirements. The applicant has requested a 50% discount to the applicable Section 94 Contributions. However, as detailed above the recommended schedule of conditions including the requirement to pay contributions has been imposed in accordance with the applicable policy only where there is a nexus with the development.

The proposed development is considered to be suitable for the site and has been designed with regard to the neighbourhood amenity. The recommended conditions of consent will enable management of the site during the construction phase and through to the operation of the facility.

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 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).*

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P5 [PD-PC] Development Application DA06/0801 for Internal Refurbishment Works to the Existing Club Comprising of a New Mezzanine Level for a Directors Room & a Projector Room, Reorganisation of Level 3, New Reception & Board Room & External Alterations for a Fire Stair in accordance with BCA provisions at Lot 12 DP 803451, No. 22-38 Powell Street, Tweed Heads

ORIGIN:

Development Assessment

FILE NO: DA06/0801 Pt1

SUMMARY OF REPORT:

The proposed internal refurbishment works and external alterations are consistent with the applicable environmental planning instruments including Tweed Local Environmental Plan 2000, North Coast Regional Environmental Plan 1988 and State Environmental Planning Policy No. 71 – Coastal Protection and are consistent with Development Control Plan No. 2 – Site Access and Parking Code.

No submissions have been received to date regarding the proposal.

RECOMMENDATION:

That Development Application DA06/0801 for an internal refurbishment works to the existing club comprising a new mezzanine level for directors room and projector room, re-organisation of level 3, new reception and board room and external alterations for a fire stair in accordance with BCA provisions at Lot 12 DP 803451, No. 22-38 Powell Street, Tweed Heads be approved subject to the following conditions: -

GENERAL

- 1. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**
[GEN0115]
- 2. Prior to use of the new functions/bingo, entertainment lounge / stage / dance floor and multi-function room located on level 3 an application under Section 68 of the Local Government Act, 1993 to use the areas as a "place of public entertainment" is to be submitted to and approved by Tweed Shire Council.**
[GENNS01]
- 3. The building works shall satisfy the provisions of Part H of the BCA.**
[GENNS02]

4. The building is to be upgraded to comply with the performance requirements EP1.4 and EP2.2, and the deemed to satisfy requirements of NSW H101.16 of the *Building Code of Australia-2006*. Attention is directed to the requirements of Section E1.5 Sprinklers, Part E2 Smoke Hazard Management and NSW H101.16 Storerooms. It is recommended that a fire engineering report containing an alternative solution addressing the above mentioned BCA requirements is submitted to the PCA for assessment and determination prior to issue of the Construction Certificate.

[GENNS03]

5. The development shall be completed in accordance with the Statement of Environmental Effects and Drawing Nos:

- 06.1841 - DA02, Issue 1, prepared by Peddle Thorp Architects and dated July 2006,
- 06.1841 - DA03, Issue 1, prepared by Peddle Thorp Architects and dated July 2006,
- 06.1841 - DA04, Issue 1, prepared by Peddle Thorp Architects and dated July 2006,
- 06.1841 - DA05, Issue 1, prepared by Peddle Thorp Architects and dated July 2006,
- 06.1841 - DA06, Issue 1, prepared by Peddle Thorp Architects and dated July 2006,
- 06.1841 - DA07, Issue 1, prepared by Peddle Thorp Architects and dated July 2006,

except where varied by the conditions of this consent.

[GEN0005]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

6. Details from a Structural Engineer are to be submitted to the Principal Certifying Authority for approval for all structural components, including a certificate of sufficiency of design prior to the determination of a construction certificate.

[PCC0935]

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

[PCC0945]

8. 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.

[PCC1195]

9. In accordance with Section 68 of the Local Government Act, 1993, any premises proposing to discharge into Councils sewerage system a waste water other than domestic sewage, shall submit to Council a completed application for a Trade Waste Licence. This application is to be approved by Tweed Shire Council PRIOR to the issuing of a Construction Certificate to discharge to Councils sewerage system.

[PCC1255]

10. Three copies of detailed hydraulic plans shall be submitted with all trade waste applications which indicate size, type and location of pre-treatment devices. All plumbing and drainage installations to these devices shall comply with AS3500.

[PCC1275]

PRIOR TO COMMENCEMENT OF WORK

11. 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]

- 12. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.
[PCW0225]
- 13. Where prescribed by the provisions of the Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the site is prohibited.

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

[PCW0255]

- 14. 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]
- 15. 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]
- 16. Any business or premises proposing to discharge a pollutant discharge greater than or differing from domestic usage is to submit to Council an application for a Trade Waste Licence. This application is to be approved by Council prior to any discharge to sewer being commenced.

A trade waste application fee will be applicable in accordance with Councils adopted Fees and Charges.

[PCW1075]

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

[PCW1085]

18. **Prior to the commencement of any works on the site all required plumbing and drainage inspection fees are to be submitted to Council.**

[PCW1095]

19. **Detailed drawings showing equipment, shop fittings, the mechanical exhaust ventilation system and internal shop finishes are to be submitted to Council for further analysis, comment and approval prior to the commencement of any internal fitout.**

[PCW0585]

DURING CONSTRUCTION

20. **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]

21. **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]

22. **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]

23. **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]
24. 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]
25. 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]
26. 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]
27. 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 Council's road reserve. [DUR0435]
28. 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]

29. 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
- Dust during building operations
- Removal of material from the site by wind

[DUR1005]

30. Where a building of part of a building is required, under the provisions of Section D of the Building Code of Australia, to be accessible to permit use by people with disabilities, prominently displayed signs and symbols shall be provided to identify accessible routes, areas and facilities. The signage, including Braille or tactile signage, should be installed in accordance with the relevant provisions of the Building Code of Australia and achieve the minimum design requirements provided under AS1428.

[DUR1695]

31. 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]

32. All roofwaters are to be disposed of through properly jointed pipes to the street gutter, inter allotment drainage or to the satisfaction of the Principal Certifying Authority. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZS3500.3.2. Note - All roofwater must be connected to an inter allotment drainage system where applicable.

[DUR2335]

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

- (a) internal drainage;
- (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
- (c) completion of work and prior to occupation of the affected building portion.

[DUR2485]

34. 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]

35. All water plumbing pipes concealed in concrete or masonry walls shall be fully lagged. [DUR2525]
36. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard. [DUR2535]
37. Any premises used for the storage, preparation or sale of food are to comply with the relevant provisions of the Food Act, 1989 and Council's adopted Code for the construction of Food Premises. Details of fittings and equipment are to be submitted to the Principal Certifying Authority prior to installation. [DUR1485]
38. All walls in the food preparation and food storage areas shall be of solid construction, easily washable, lightly coloured and tiled to a height of at least 2 metres above floor level, or where not tiled, cement rendered to provide a smooth even finish to ceiling. Note: Stud framed walls will not be acceptable. Intersections of all floors with walls shall be coved to a radius of not less than 25 millimetres. [DUR1495]
39. All flooring materials in the food preparation and storage areas are to be impervious, non slip, non abrasive and capable of withstanding heavy duty operation. Where tiling is to be used epoxy grout finished flush with the floor surface is to be used in joints or alternatively all tiles are to be butt joined and free of cracks or crevices. [DUR1505]
40. Shop fitters are to liaise with the Principal Certifying Authority prior to fitting out of shop. [DUR1525]
41. All internal fitout is to comply with Australian Standard AS4674 - Design, Construction and Fitout of Food Premises. [DUR1535]
42. Separate hand washing facilities must be provided with warm water and located in a position where it can be easily accessed by food handlers and be of a size that allows easy and effective hand washing to the satisfaction of the General Manager or his delegate. [DUR1545]
43. All shelving, benches, fittings and furniture on which appliances and utensils are positioned within the premises must be of durable, smooth, impervious material capable of being easily cleaned. [DUR1605]

44. The walls immediately behind any basin shall be provided with an impervious splashback to a height of 450mm and at least 150mm either side of the basin.

[DUR1625]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

45. 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]

46. 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]

47. 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]

48. Prior to commencement of operations and on completion of fit out an inspection is to be arranged with Council's Environmental Health Officer for final approval.

[POC0615]

49. The premise is to be treated on completion of fit-out and prior to commencement of trading and thereafter on a regular basis by a Licensed Pest Control Operator. A certificate of treatment is to be made available for Council inspection on request.

[POC0635]

USE

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

[USE0125]

51. Food handling and preparation is to comply with all requirements of NSW Health.

[USE0895]

REPORT:

Applicant: Tweed Heads Bowls Club Ltd - Ken Howell
Owner: Tweed Heads Bowls Club Pty Ltd
Location: Lot 12 DP 803451 No. 22-38 Powell Street, Tweed Heads
Zoning: 6(b) Recreation
Cost: \$2,600,000

BACKGROUND:

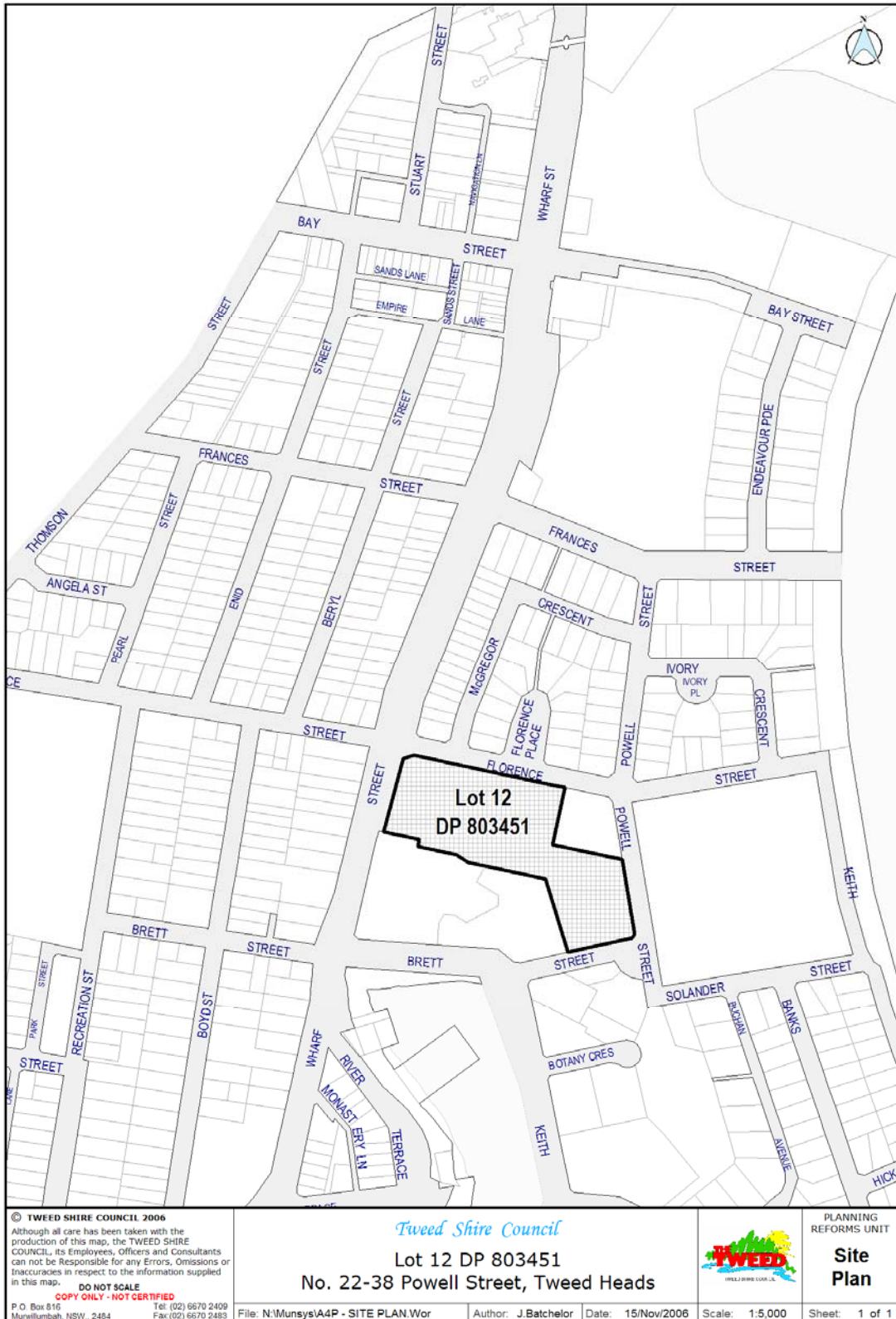
Council's records indicate that consent was granted for a club on the subject site on 5 February 1996. Since this approval, the club has been refurbished and has been subject to various internal alterations. The club is currently known as the 'Tweed Heads Bowls Club'.

The current application seeks consent for alterations to the existing club including:-

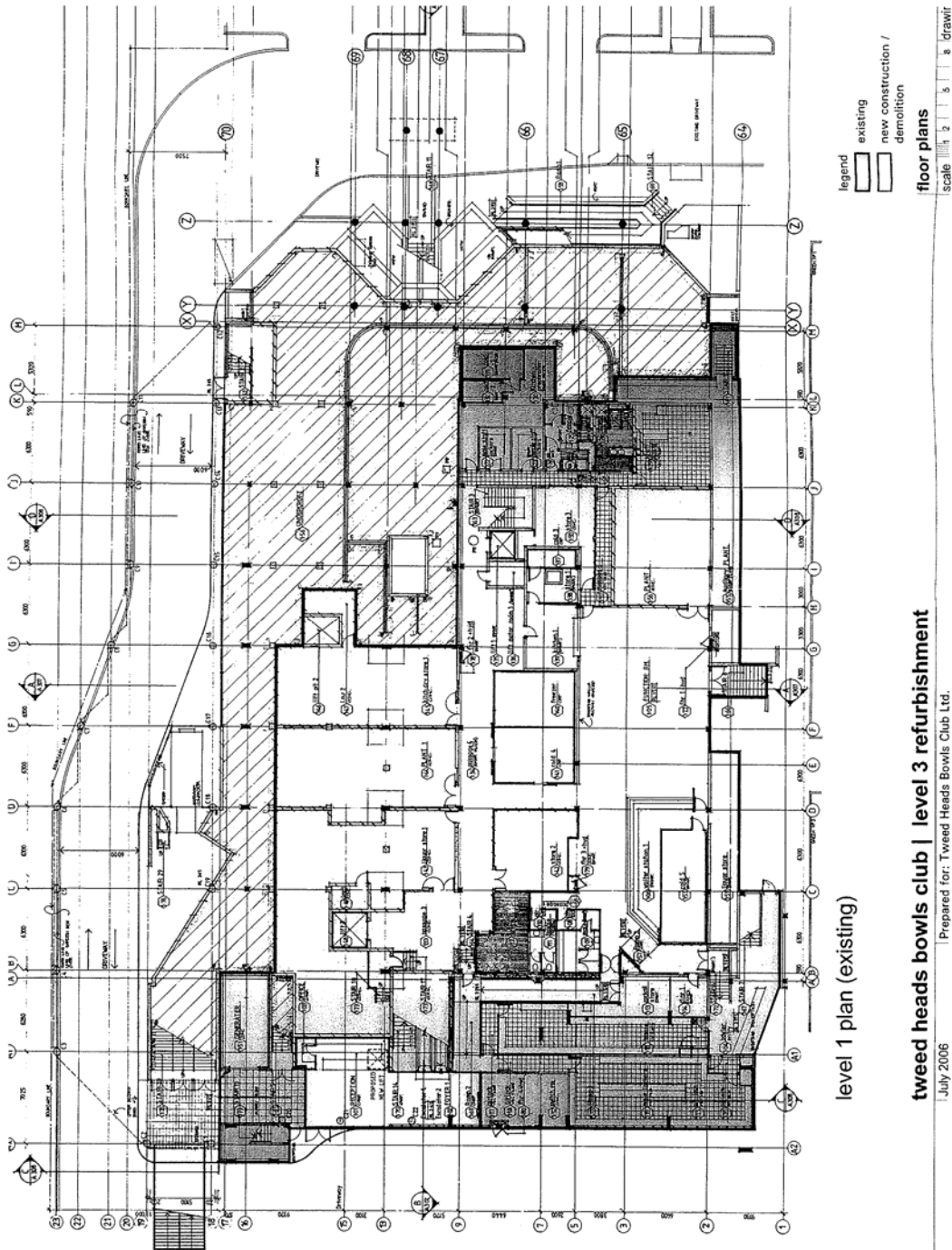
- New mezzanine level comprising of a board room and a projection room
- The reorganisation of Level 3 including the refurbishment of the existing bistro area, relocation and reconfiguration of the auditorium, and the relocation of the gaming area
- An upgrade of the kitchen and new board room on Level 2
- New reception area on Level 1
- External alterations for a fire stair

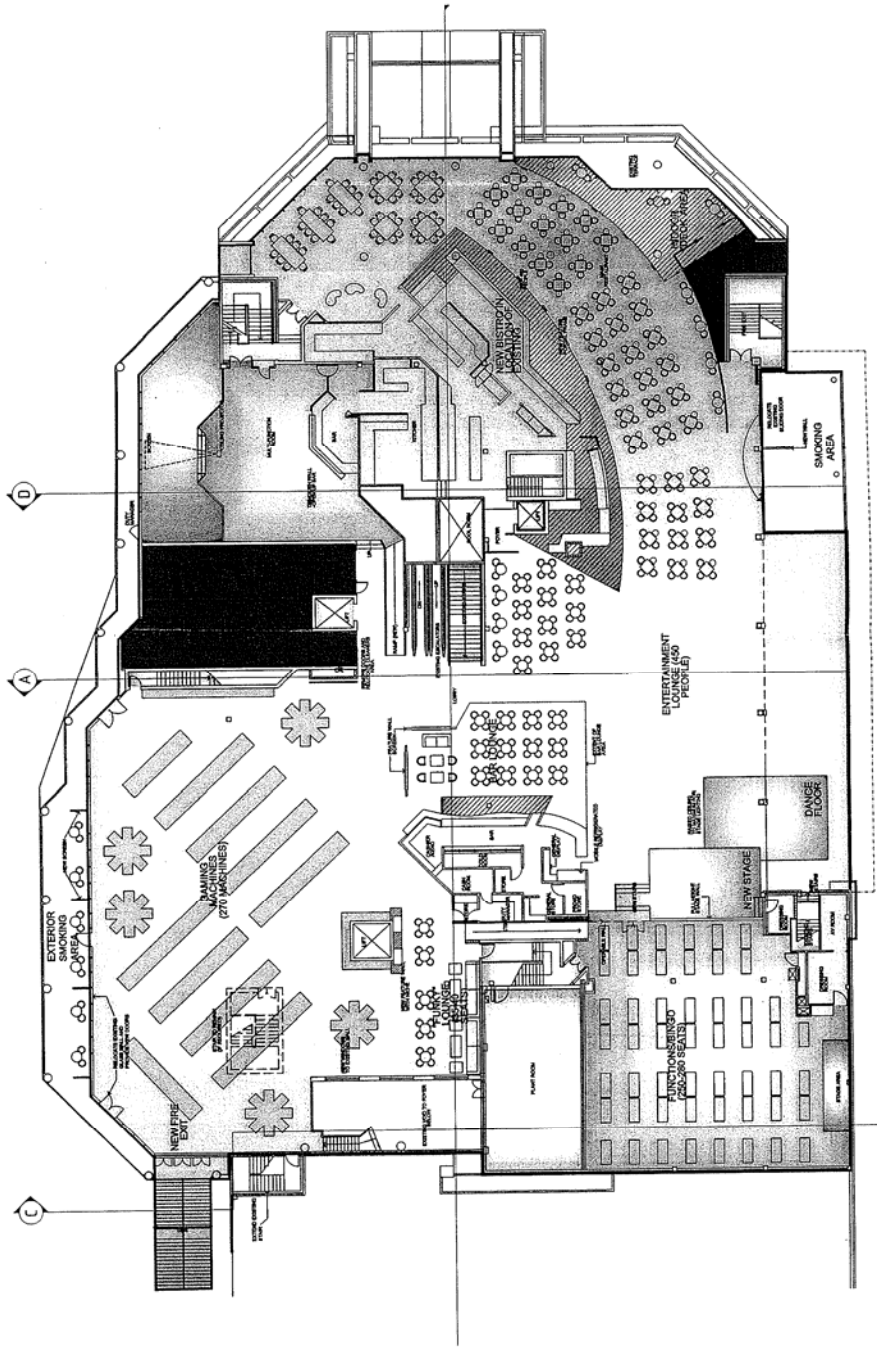
No submissions have been received to date.

SITE DIAGRAM:



DEVELOPMENT PLANS:





level 3 plan (proposed)

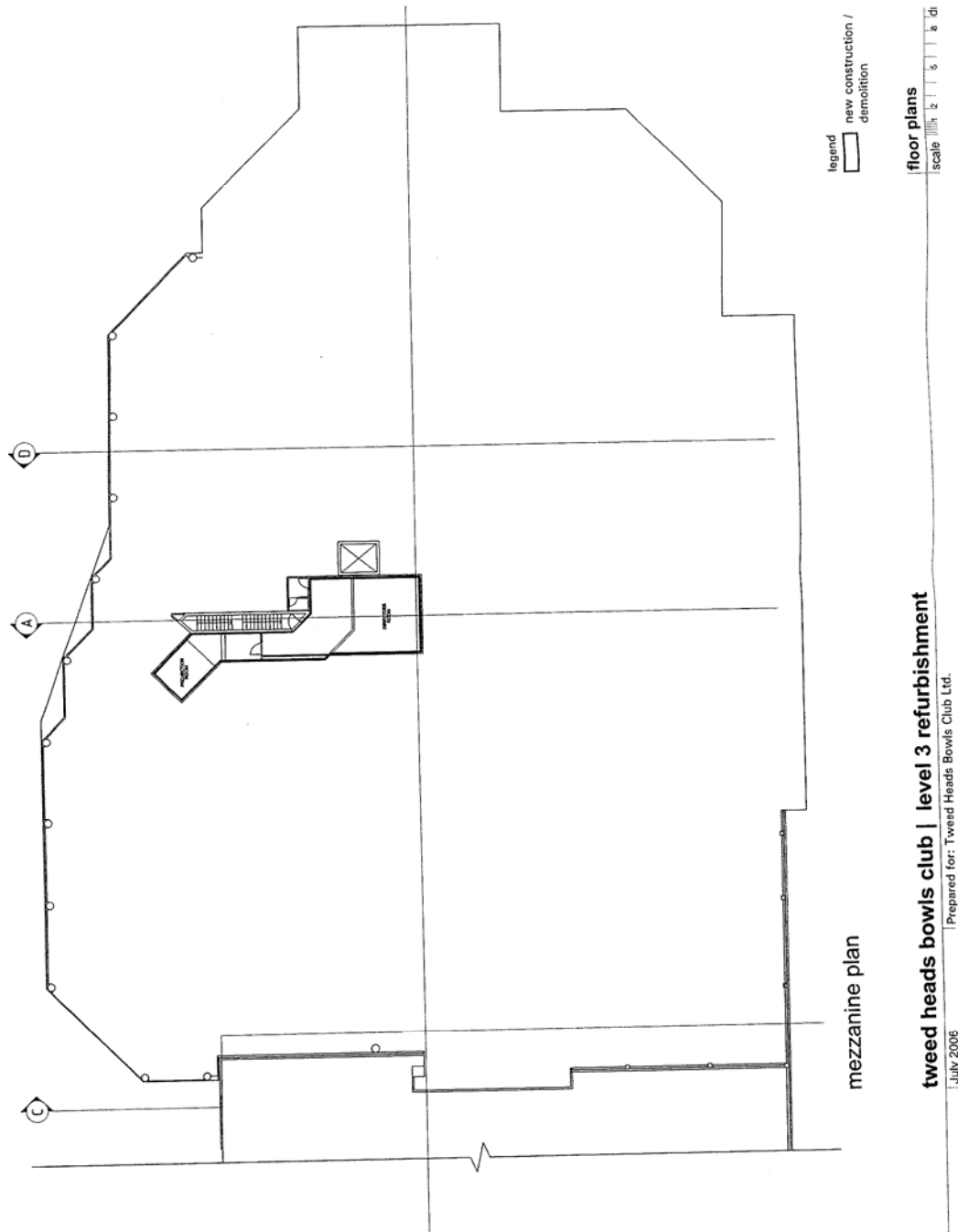
tweed heads bowls club | level 3 refurbishment

July 2006

Prepared for: Tweed Heads Bowls Club Ltd.

floor plans

scale 1:100



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

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

Tweed Local Environmental Plan 2000

The subject site is located within the 6(b) Recreation Zone. Clubs are permissible within the zone with consent.

The primary objective of the 6(b) zone is:

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

The proposed development is considered to be suitable for recreational purposes as permitted by the zone.

Clause 15 of the TLEP requires that Council is satisfied that the subject land has the benefit of essential services prior to issuing consent. All essential services are available to the site.

North Coast Regional Environmental Plan 1988 (NCREP)

Clause 32B of the NCREP applies to the subject site it is affected by the NSW Coastal Policy 1997.

The proposal is consistent with the NSW Coastal Policy 1997, Coastline Management Manual, and the North Coast: Design Guidelines. The proposal will not result in public access to the foreshore being affected nor will it result in beaches or open space being overshadowed.

State Environmental Planning Policies (SEPPs)

SEPP No. 71 – Coastal Protection

The proposed internal works are considered to be consistent with the SEPP, specifically, the proposal is consistent with the aims of the Policy and does not impede on public access to the foreshore, nor will it result in adverse impacts

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

There are no draft instruments, which are applicable to the proposal.

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

DCP No. 2 – Site Access and Parking Code (DCP No. 2)

An assessment as per DCP No. 2 indicates that the proposed refurbishment work and alterations do not result in the need for additional on-site car parking. The proposal generally results in the reconfiguration of existing uses and similar sized rooms within the building.

The additional mezzanine level which comprises of the directors room and the projection room was found to not generate demand for on-site car parking. Including all applicable concessions, the 80.2m² mezzanine floor was found to require 1.1 on-site car spaces. Given that the proposed level accommodates a directors room and projection room only it is considered unlikely that the use of the rooms will generate in additional vehicular movements to the subject site. Council's Traffic and Transport Engineer reviewed the proposal and recommended that the proposal be supported without the requirement of additional on-site car parking or applicable Section 94 – Tweed Road Contribution Plan, in this instance.

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

Clause 94 applies to the proposal as it involves the rebuilding and alteration of an existing building. Council's Building Surveyor has reviewed the development application and advised that the applicant upgrade the building to comply with the performance criteria and deemed to satisfy requirements of the Building Code of Australia. The officer has recommended conditions of consent.

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

There are no further impacts anticipated as a result of the proposal other than those previously in this report.

(c) Suitability of the site for the development

The proposed works are within an approved club and are largely a reorganisation and refurbishment of similar sized rooms, lounge and dining areas. The proposed works are considered to be suitable for the site.

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

Adjoining landowners were notified of the proposal for a period of 14 days. To date no submissions have been received.

(e) Public interest

It is considered that the proposal is not contrary to the public's interests.

OPTIONS:

1. Approve the development application with conditions.
2. Refuse the development application with reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

If the applicants are dissatisfied with Council's decision they may choose to appeal in the Land and Environment Court. If this option is taken by the applicants, Council will incur costs in defending the appeal.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

It is recommended that the proposed development be approved subject to conditions.

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 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).

Nil.

P6 [PD-PC] Development Application DA05/1018 for a Car Repair Station at Lot 101 DP 1051481, No. 110 Minjungbal Drive, Tweed Heads South

ORIGIN:

Development Assessment

FILE NO: DA05/1018 Pt1

SUMMARY OF REPORT:

The current proposal seeks consent to demolish all existing structures on-site and to construct a one (1) to two (2) storey building to be used for the purposes of a car repair station. The car repair station is proposed to have an ancillary office, showroom and ground level car park providing 14 formal car spaces.

The subject site is zoned part 3(c) Commerce and Trade and part 2(b) Medium Density Residential. The current proposal is permissible in the section of the subject site zoned 3 (c) and but is prohibited in the section of the site zoned 2(b) in accordance with the Tweed Local Environmental Plan 2000. The proposal relies on the section of the site zoned 2(b) as enjoying existing use rights. An assessment of the application, relevant sections of the EP&A Act 1979 and Regulations 2000 and Council's records, indicate that the portion of the site in question does have existing use rights.

The proposed development is considered to be consistent with applicable environmental planning policies, development control plans and Council policies.

No submissions have been received in relation to the development application.

RECOMMENDATION:

That Development Application DA05/1018 for a car repair station at Lot 101 DP 1051481, No. 110 Minjungbal Drive Tweed Heads South be approved subject to the following conditions: -

GENERAL

- 1. 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]
- 2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**
[GEN0115]
- 3. The development shall be completed in accordance with the Statement of Environmental Effects and Sheet Nos:**

- **WD01, Rev E, prepared by Glen Peterson Architects and dated 11/08/2005,**
- **WD02, Rev C, prepared by Glen Peterson Architects and dated 11/08/2005,**
- **WD03, Rev D, prepared by Glen Peterson Architects and dated 11/08/2005,**
- **WD03, Rev A, prepared by Glen Peterson Architects and dated 11/08/2005,**

except where varied by the conditions of this consent.

[GEN0005]

4. **Advertising structures/signs are to be the subject of a separate development application, where statutorily required.**
[GEN0065]
5. **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]
6. **The development is to be carried out in accordance with Councils adopted Development Design and Construction Specifications.**
[GEN0125]
7. **All air compressors shall be located within the proposed tenancies or to the satisfaction of Council's Director of Environment and Community Services.**
[GENNS01]
8. **Any drainage grates over vehicular access areas shall be firmly fixed to avoid rattling as a vehicle passes over them.**
[GENNS02]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

9. **The footings and floor slab are to be designed by a practising Structural Engineer after consideration of a soil report from a NATA accredited soil testing laboratory and shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.**
[PCC0945]
10. **Prior to the issue of a construction certificate amended plans shall be submitted to and approved by the Principal Certifying Authority which include the provision of disabled toilet facilities in accordance with the provisions of part F2.4 of the Building Code of Australia (2005)**
[PCCNS01]

11. 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]

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

[PCC0285]

13. A detailed plan of landscaping is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate.

[PCC0585]

14. Design detail shall be provided to address the flood compatibility of the proposed structure including the following specific matters:

- (a) The design flood level of RL 2.65m AHD.
- (b) All building materials used below Council's design flood level must not be susceptible to water damage.
- (c) Subject to the requirements of the local electricity supply authority, all electrical wiring, outlets, switches etc. should, to the maximum extent possible be located above the design flood level. All electrical wiring installed below the design flood level should be suitably treated to withstand continuous submergence in water.
- (d) Define adequate provision for the flood free storage for goods and equipment susceptible to water damage.

[PCC0705]

15. A traffic control plan in accordance with AS1742 and RTA publication "Traffic Control at Work Sites" Version 2 shall be prepared by an RTA accredited person shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate. Safe public access shall be provided at all times.

[PCC0865]

16. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include engineering plans and specifications for the following required works: -

- (a) Construction of vehicular access points in accordance with Council's adopted standards.
- (b) Reinstatement of any disused access points, stormwater discharge points

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

- Road works/furnishings
- Stormwater drainage
- Water and sewerage works
- Sediment and erosion control plans
- Location of all services/conduits
- Traffic control plan

[PCC0895]

17. Prior to the issue of a Construction Certificate the following detail in accordance with Council's adopted Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

- (a) copies of compliance certificates relied upon
- (b) four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:
 - earthworks
 - stormwater drainage
 - water supply works
 - sewerage works
 - landscaping works
 - sedimentation and erosion management plans
 - location of all service conduits (water, sewer, Country Energy and Telstra)

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

[PCC0985]

18. Permanent stormwater quality treatment shall be provided in accordance with the following:

- (a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils *Development Design Specification D7 - Stormwater Quality*.
- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management. Typical water sensitive features include infiltration, maximising permeable/landscaped areas, stormwater retention /detention/reuse, and use of grass swales in preference to hard engineered drainage systems.
- (d) Specific Requirements to be detailed within the Construction certificate application include:
 - (i) The Section 68 stormwater application must specify the size and type of proposed proprietary device as substitute for oil/grit separator (minimum combined capacity 785 litre).

[PCC1105]

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

[PCC1115]

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

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

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

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

[PCC1145]

21. 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]

22. Medium density developments will be required to provide a single bulk water service at the road frontage. Individual metering beyond this point shall be managed by occupants. Application for the bulk metre shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements.

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.

[PCC1185]

23. 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.

[PCC1195]

24. 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.

[PCC1235]

25. 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: \$3,772
S94 Plan No. 4 (Version 4.0)
Sector2_4

[PCC0215/PSC0175]

26. Pursuant to Section 68 of the Local Government Act, 1993 an approved pre-treatment device (eg. Oil/grease traps, separators, etc) shall be installed in accordance with Tweed Shire Councils Trade Waste Policy. Submission of detailed hydraulic plans and specifications indicating size, type, location and drainage installations in accordance with AS 3500 shall be submitted to Council for approval.

[PCC1265]

27. Three copies of detailed hydraulic plans shall be submitted with all trade waste applications which indicate size, type and location of pre-treatment devices. All plumbing and drainage installations to these devices shall comply with AS3500.

[PCC1275]

28. Any carparking floodlighting shall not spill beyond the boundaries of the site. Lighting shall comply with AS 4282 and other relevant Australian Standards. A plan of the lighting shall be approved by the Principal Certifying Authority PRIOR to the issue of a Construction Certificate.

[PCC0055]

29. The developer shall provide 14 on-site car parking spaces including parking for the disabled and bicycle parking in accordance with Development Control Plan No. 2 - Site Access and Parking Code, AS 2890 and Austroads Part 11.

Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.

[PCC0065]

PRIOR TO COMMENCEMENT OF WORK

30. 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]

31. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every fifteen (15) persons or part of fifteen (15) persons employed at the site. Each toilet provided must be:-

- (a) a standard flushing toilet connected to a public sewer, or**

- (b) if that is not practicable, an accredited sewage management facility approved by the council
- [PCW0245]
32. Where prescribed by the provisions of the Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the site is prohibited.

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

[PCW0255]

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. All roof waters are to be disposed of through properly jointed pipes to the street gutter, interallotment drainage or to the satisfaction of the Principal Certifying Authority. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZS3500.3.2. Note All roof water must be connected to an interallotment drainage system where available. A detailed stormwater and drainage plan is to be submitted to and approved by the Principal Certifying Authority prior to commencement of building works.

[PCW1005]

35. An application to connect to Council's sewer or carry out plumbing and drainage works, together with any prescribed fees including inspection

fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.

[PCW1065]

36. 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]

37. Written approval for any application under Section 138 of the Roads Act 1993 is required prior to commencing works within the road reserve.

[PCW0705]

38. 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.

[PCW0965]

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

[PCW1055]

40. Any business or premises proposing to discharge a pollutant discharge greater than or differing from domestic usage is to submit to Council an application for a Trade Waste Licence. This application is to be approved by Council prior to any discharge to sewer being commenced. A trade waste application fee will be applicable in accordance with Councils adopted Fees and Charges.

[PCW1075]

DURING CONSTRUCTION

41. 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]

42. 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]

43. 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]
44. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979. [DUR0405]
45. The finished floor level of the building should finish not less than 225mm above finished ground level. [DUR0445]
46. 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]
47. 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]
48. 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]
49. 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]
50. 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]
51. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position. [DUR2505]
52. 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]
53. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-
- * 43.5⁰C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
 - * 50⁰C in all other classes of buildings.

A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works. [DUR2555]

54. 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]
55. The provision of 14 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 - Site Access and Parking Code, the Building Code of Australia and AS 2890. [DUR0085]
56. 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]

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

[DUR0815]

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

[DUR0995]

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

[DUR1395]

60. Building materials used below Council's minimum floor level of RL 2.65m AHD shall be flood compatible.

[DUR1405]

61. Subject to the requirements of the local electricity authority, all electrical wiring, power outlets, switches, etc, should, to the maximum extent possible be located above the design flood level. All electrical wiring installed below the design flood level shall be provided with earth leakage devices.

[DUR1415]

62. The concrete footpath is to be saw cut and removed to facilitate the construction of the concrete driveway access.

[DUR1745]

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

[DUR1795]

64. The proponent shall comply with all requirements tabled within any approval issued under Section 138 of the Roads Act.

[DUR1885]

65. Where the kerb is to be removed for driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.
[DUR1905]
66. The contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.
[DUR2015]
67. A garbage storage area shall be provided in accordance with Council's "Code for Storage and Disposal of Garbage and Other Solid Waste".
[DUR2195]
68. 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]
69. The proponent shall comply with all requirements tabled within any approval issued under Section 68 of the Local Government Act.
[DUR2625]
70. The proponent shall notify Councils Engineering and Operations Division upon excavation of any disused sewer junction awaiting capping by Council.
[DUR2715]
71. 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]
72. 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]
73. 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]
74. 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]

75. A hose tap shall be provided adjacent to a grease arrester for cleaning purposes and shall be fitted with a RPZD for the purpose of back flow prevention.

[DUR2675]

76. A trade waste agreement will be issued and a permit number allocated once the device has been installed, inspected and Council has received a copy of the Waste Contractor's Service Agreement

[DUR2685]

77. All hazardous and/or dangerous goods shall be handled and stored in a designated area away from stormwater drains. The designated area is to be: -

- (a) Roofed;
- (b) Provided with a sealed floor; and

Bunded so as to hold 110% of the total quantity of goods stored. Bunded area(s) shall not be flood-liaible and shall be provided with pump out facilities.

[DUR1635]

78. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials. A screened, graded and drained garbage storage area shall be provided within the boundary.

[DUR2205]

79. All works shall be undertaken in accordance with the *Preliminary Site Contamination Investigation & Remediation Action Plan* prepared by HMC Environmental Consulting Pty Ltd dated August 2006 (Report No: 2005.87) and additional information also prepared by HMC Environmental Consulting Pty Ltd dated 25 October 2006.

[DURNS01]

80. Any damage caused to public infrastructure (roads, footpaths, road reserve, water and sewer mains, power and telephone services etc) during remediation and construction works shall be repaired and restored to the satisfaction of the Director of Engineering Services prior to any use of the buildings.

[DURNS03]

81. Validation sampling undertaken in accordance with NSW EPA guidelines is to be carried out on the base and sidewalls of the remediation excavation pit. A Validation Report prepared by a qualified environmental consultant shall be submitted to and approved by Council's Director Environment & Community Services prior to any further construction works commencing.

[DURNS02]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

82. 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]

83. 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]

84. 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]

85. 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]

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

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

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

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

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

[POC0265]

87. All landscaping work is to be completed in accordance with the plans prior to any use or occupation of the building.

[POC0475]

88. 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]

89. A 1.8m acoustic barrier constructed in accordance with Sketch No. 1 of the Environmental Noise Impact Assessment prepared by Carter Rytenskild Group (CRG) Traffic & Acoustics Pty Ltd dated 3 July 2006 (crgref: 175 report) shall be installed at the site.

[POCNS01]

90. Immediately following final placement of the storage cell containing contaminated material, a survey must be undertaken by a registered surveyor to accurately record the final position of the storage cell as overlaid on engineering plans or similar. The survey plan(s) must be provided to Council for review, prior to the occupation certificate being issued.

[POCNS02]

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

[USE0515]

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

[USE0525]

USE

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

[USE0445]

94. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light creating a nuisance to neighbouring or adjacent premises.

[USE0225]

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

[USE0125]

96. Hours of operation of the business are restricted to the following hours:
- - * 8.00am to 5.30pm - Mondays to Fridays
 - * 8.00am to 2pm Saturday
 - * No operations are to be carried out on Sundays or Public Holidays
 - * All deliveries and pickups relating to the business are to occur within the approved hours
- [USE0185]
97. All hazardous and/or dangerous goods shall be stored in accordance with requirements of WorkCover NSW.
- [USE1035]
98. All containers, whether or not empty, which contain or once contained potentially contaminated materials, mechanical parts and the like shall be stored to the satisfaction of Council's General Manager or his delegate.
- [USE1045]
99. The disposal of all wash water, oil, grease or other pollutants from the business shall be disposed of to the satisfaction of Council's General Manager or his delegate.
- [USE1055]
100. All waste collection activities shall occur within the property boundary.
- [USE1345]
101. All batteries and any mechanical parts and equipment containing oil, grease and the like are to be stored in a covered and contained area to prevent leakage or spillage outside the workshop floor area.
- [USENS01]
102. All spray painting must be undertaken within a WorkCover NSW approved spray booth that has an exhaust fan and filter. The spray booth must be designed, constructed and maintained in accordance with Australian Standard AS4114.1 and 4114.2.
- [USENS02]
103. Any persons involved with the installation, servicing or decommissioning of vehicle air conditioners shall hold a current licence from the Motor Vehicle Repair Industry Authority and Australian Refrigeration Council.
- [USENS03]
104. The business shall consult the latest version of the NSW Environment Protection Authority's *Solutions to Pollutions Guide for Auto Servicing and Mechanical Repairers*.
105. Hammering of any steel material or the like shall be undertaken inside the tenancies only, and shall be conducted as far away from the roller doors as possible.
- [USENS05]

REPORT:

Applicant: Mr JJ Gibson and Mr KW Bailey
Owner: Mr JJ Gibson, Ms LVA Bailey, Mr KW Bailey and Mrs SA Bailey
Location: Lot 101 DP 1051481 No. 110 Minjungbal Drive, Tweed Heads South
Zoning: Part 3(c) Commerce and Trade and Part 2(b) Medium Density Residential
Cost: \$700,000

BACKGROUND:

Council's records indicate that Lot 1 DP 559208 was developed into Lot 100 and Lot 101 DP 1051481 in August 2003 (subject site is Lot 101). All approvals are linked to Lot 1 DP 559208. Council's records indicate the site has approval for a dwelling, factory and a building for continuing use of a mechanical repair of motor vehicles garage, signage and subdivision.

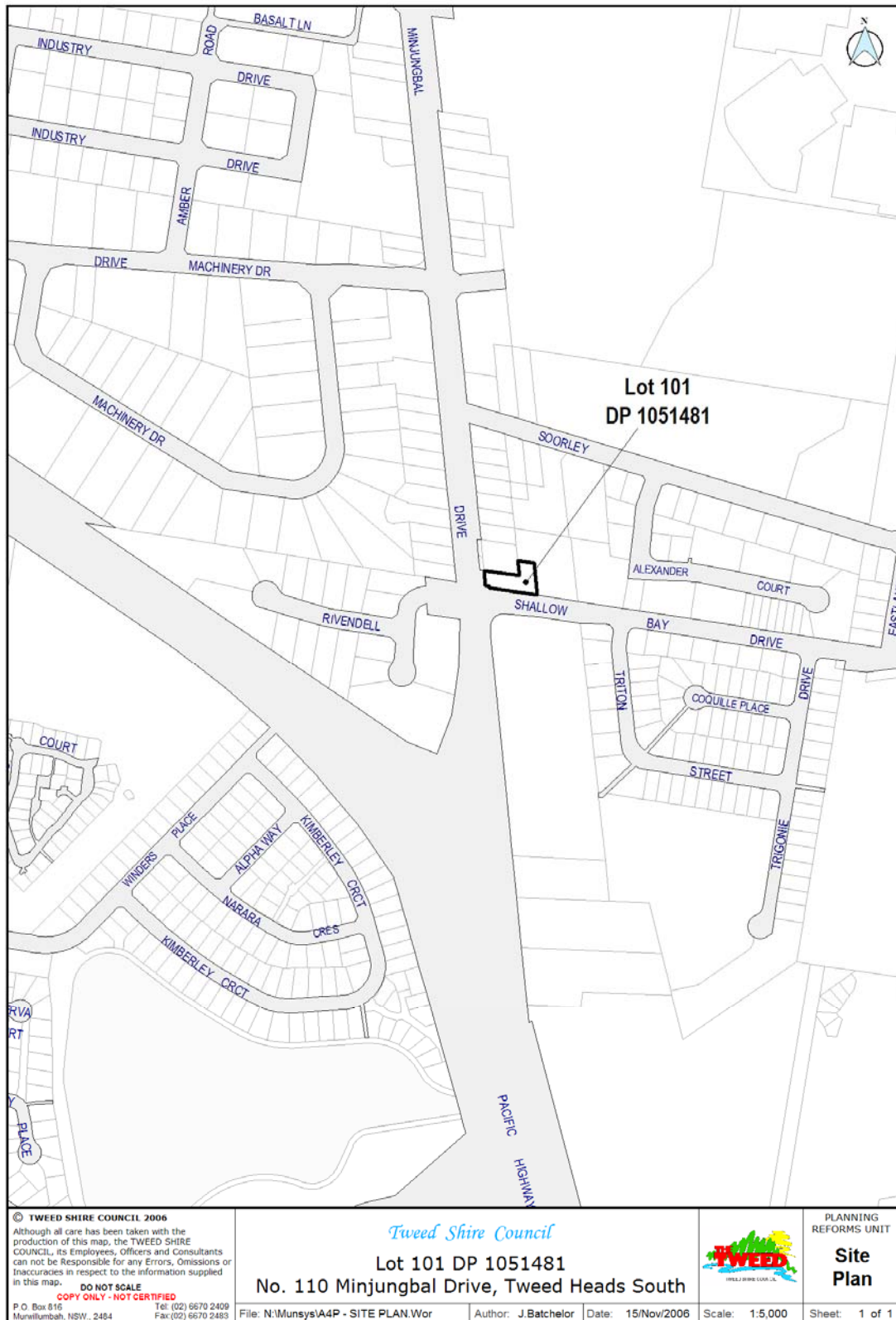
The current proposal seeks consent to demolish all existing structures on-site and to construct a one (1) to two (2) storey building to be used for the purposes of a car repair station. The car repair station is proposed to have an ancillary office, showroom and ground level car park providing 14 formal car spaces.

The subject site is zoned part 3(c) Commerce and Trade and part 2(b) Medium Density Residential. The current proposal is permissible in the section of the subject site zoned 3 (c) and but is prohibited in the section of the site zoned 2(b) in accordance with the Tweed Local Environmental Plan 2000. The proposal relies on the section of the site zoned 2(b) as enjoying existing use rights. An assessment of the application, relevant sections of the EP&A Act 1979 and Regulations 2000 and Council's records, indicate that the portion of the site in question does have existing use rights.

The subject site has frontage to and vehicular access from Minjungbal Drive and Shallow Bay Drive. The site is surrounded by commercial and industrial development and vacant land zoned 2(b).

No submissions have been received in relation to the development application.

SITE DIAGRAM:



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

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

Environmental Planning and Assessment Act 1979 & Regulation 2000

Existing Use Rights

Section 106 of the EP& A Act 1979 is of relevance to the 2(b) zoned part of this site as it defines an existing use as:

“(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

(i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and

(ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse”.

Section 107 (3) of the Act specifies ‘*a use is to be presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months*’.

Under interim development order (IDO) number two (2) the subject site was entirely nominated as ‘2 Village or Township’. A mechanical repair station was permissible with consent within this zone.

The introduction of Tweed Local Environmental Plan 1987 (TLEP 1987) on 29 January 1988 rezoned part of the subject site to 3 (c) Commerce and Trade and part 2(b) Medium Density Residential thus making a car repair permissible within the 3(c) component but prohibited within the 2(b) component.

The use of the shed in the 2(b) component for the purposes of storage directly associated with the mechanical repair station was authorised by Council's issue of BA304/77, which was granted on 7 June 1977 to re-erect a building on the subject site for continuing use of a mechanical repair of motor vehicles (BA304/77). Development consent was again issued on 24 August 1983 for a mechanical repair station (T4/2653). Subsequent building applications for various uses such as a factory and garage were later approved in 1986 and 1988. The applicant has provided that the previous owner operated the subject site as a car repair station from 1987/88 to 2004 before the property was sold in 2004 to its current owners who have continued to operate the business to the present time. This has been substantiated with statutory declarations and taxation records.

Therefore in accordance with the definition, it is considered that this application would benefit from existing use rights on the 2(b) zoned portion of the site. This is evident as development consent was granted for a mechanical repair station prior to the commencement of TLEP 1987.

Clauses 41, 42, 43, 44 and 45 of the Environmental Planning and Assessment Regulations, 2000 provides that an existing use may be enlarged, expanded, intensified, altered, extended, rebuilt or changed to another use that is permissible in the zone, with development consent.

Specifically, clause 44 states:

- (1) *Development consent is required for any rebuilding of a building or work used for an existing use.*
- (2) *The rebuilding:*
 - (a) *must be for the existing use of the building or work and for no other use, and*
 - (b) *must be carried out only on the land on which the building or work was erected or carried out immediately before the relevant date.*

In accordance with the above requirements the rebuilding of the structures to be used as a mechanical repair station is the same use as previously approved. Additionally, the proposed development is situated wholly within the same land parcel to which the original mechanical repair station was located, thus satisfying clause 44.

Based on this evidence, the applicant has provided sufficient information to demonstrate that the use was permissible prior to the

TLEP 1987 coming into force and that the use has not been abandoned, in accordance with Clause 107 (3) of the Act. It is considered that the subject site enjoys existing use rights and therefore satisfies the EP & A Act 1979 and the associated Regulations 2000.

The assessment of the proposed development on the portion of 2(b) zoned land is discussed in the impacts section of this report. The following section relates to the portion of the site zoned 3(c).

North Coast Regional Environmental Plan 1988 (NCREP)

Clause 32B of the NCREP applies to the subject site as it is within the region to which the NSW Coastal Policy 1997 applies.

The proposal is not considered to be inconsistent with the NSW Coastal Policy 1997, Coastline Management Manual, and North Coast: Design Guidelines. The proposal will not result in public access to the foreshore being impeded not will it result in beaches or adjacent open space being overshadowed before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time).

The proposed development is considered to be consistent with the NCREP.

State Environmental Planning Policies (SEPPs)

SEPP No. 55 – Remediation of Land

Clause 7 of SEPP 55 requires that a consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated. Council's Contaminated Land Policy also states that Council shall not approve an application unless it is satisfied on the basis of information available to it under the Policy that contamination has been determined to be below investigation thresholds and do not pose an unacceptable risk for the intended use.

As the site has been used since around 1987 by Tweed Radiators for radiator, windscreen and battery repairs and the proposed works are significant and include the demolition all structures, Council officers required the applicant to prepare and submit a contaminated land assessment for consideration.

The investigations revealed that the site is heavily contaminated with lead, fuel remnants and copper. Council's Environmental Health Officer has advised that a 3m³ delineated area will be excavated and placed in a storage cell beneath the proposed workshop concrete floor. A survey will be undertaken by a registered surveyor to accurately record the final position of the storage cell as overlaid on engineering plans or similar.

Council's Environmental Health Officer further advised that they had no objection to the proposal in this regard subject to conditions of consent.

It is considered that the proposal is consistent with the SEPP.

SEPP No. 71 – Coastal Protection

The site is identified as being affected by the SEPP. The site is not identified as being within 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.

Tweed Local Environmental Plan 2000 (TLEP 2000)

As previously discussed the subject site is zoned partly 2(b) Medium Density Residential zone and partly 3(c) Commerce and Trade zone. A car repair station is prohibited within the 2(b) zone however as demonstrated above, this aspect of the site enjoys existing use rights and is therefore not subject to compliance with the 2(b) zone objectives. The remainder of the site, which is zoned 3(c) allows a car repair station subject to development consent.

The primary objective of the 3(c) zone is as follows:

“To provide for commercial, bulky goods retailing, light industrial and trade activities which do not jeopardise the viability or function of the sub-regional or business centres”.

It is considered that the proposed development is consistent with Clause 8, and the primary zone objective.

Clause 15 of the TLEP 2000 requires Council to be satisfied that the subject land has the benefit of essential services prior to issuing consent. All essential services are available to the site.

Clause 16 of the TLEP 2000 requires development to be carried out in accordance with the height limitation plan. The site has an allowable building limit of three storeys. The proposed development in the 3(c) portion of the site is two storeys. The proposed building height is consistent with the allowable height limit for the site.

Clause 34 of the TLEP 2000 requires the consent authority to ensure that only flood compatible development occurs on flood liable land. Council's Development Engineer has reviewed the proposal with regards to flooding. The officer has advised that the proposal is specifically consistent with Development Control Plan No. 5. It is considered that the proposal is consistent with the matters for consideration in this clause.

Clause 35 of the TLEP 2000 requires an acid sulfate soils management plan be assessed where the proposed development is likely to interfere with acid sulfate soils. The subject site is identified as being land class two (2) Council's Environmental Health Officer has reviewed the proposed development and advised that an acid sulfate soil management plan is not required in this instance.

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

There are no draft EPIs which apply to the proposal.

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

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

An assessment as per DCP No. 2 is provided below:

Standard	Requirement	Proposed
Car repair station	Staff: 1/staff = 5 spaces Customer: 4 spaces/work bay = 16 spaces 21 spaces x 0.8 ESD = 16.8 spaces <i>Total: 16.8 spaces</i>	14 formal car spaces 4 work bays

The above assessment indicates that the work bays will be used as car spaces also. Vehicles visiting the site are unlikely to require long-term use of the formal on-site parking. It is most likely that customers visiting the site will park their car on a short-term basis. Staff would then relocate the vehicle into a work bay in order to carry out work on the vehicle. Further, it should be noted that one employee is expected to work on a part-time basis only.

The proposed office and showroom are considered to be ancillary to the car repair station. It is considered unlikely that the office and showroom will generate additional vehicular movements to that of the car repair station.

Council's Development Engineer reviewed the proposal in accordance with the DCP and recommended that the application be supported subject to conditions of consent.

It is therefore considered that the number of formal car spaces proposed is acceptable in this instance.

Development Control Plan No. 5 – Development of Flood Liable Land

Council's Development Engineer has reviewed the proposal in accordance with the requirements of DCP No. 5. The officer advised that the proposed

development provides adequate area for flood free storage, which is situated well above the design flood level.

(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 dwelling and all ancillary structures on site. Council's Environmental Health Officer and Building Surveyor have assessed the proposal in terms of demolition. Appropriate conditions of consent have been recommended to control demolition activities and will form part of any consent.

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

The Senior Commissioner in the Land and Environment Court in *Fodor Investments v Hornsby Shire Council* [2005] established the following criteria, which arise in the assessment of proposals on land with existing use rights:

1. *How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites? Specifically the relationship of new development to its existing and likely future context is a matter to be considered.*

The proposed development within the 2(b) component (where existing use rights apply) is single storey with associated ground level car parking. The adjoining land to the east is zoned 2(b) and is currently vacant. The proposed car park and development which is situated at its closest point some 7m from the common boundary, will not hinder the further development of adjoining land.

The adjoining development to the north comprises of a commercial car wash facility in a commercial zone. The proposed development is consistent with the nature of the existing commercial development fronting Minjungbal Drive.

2. *What is the relevance of the building in which the existing takes place? Specifically, where the existing building is proposed for demolition, while its bulk is clearly an important consideration,*

there is no automatic entitlement to another building of the same floor space ratio, height of parking provision.

The proposed redevelopment is not an intensification of the existing use but rather a reconstruction to improve the appearance and functionality of the land. The demolition of the existing structures is considered favourable due to their age and lack of streetscape appeal.

3. *What are the impacts on adjoining land?*

There are no adverse impacts envisaged on adjoining properties as a result of this development. Council's Environmental Health Officer has reviewed the proposed development specifically in relation to the potential noise impact. Based on the submitted acoustic report and supporting documentation, the officer concluded that the operation of the car repair station appeared to not exceed the noise level criteria for the site. The officer recommended conditions of consent to ensure noise associated with the use would not affect adjoining properties, which included a restriction on the operation hours of the subject site.

4. *What is the internal amenity? None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.*

As discussed above the proposed development is entirely consistent with the surrounding commercial development and is not considered to be obstructive to the future redevelopment of the residential land.

(c) Suitability of the site for the development

Given the above assessment, it is considered that the proposal is consistent with the applicable Environmental Planning Instruments, DCPs and Council Policies. As such, it is considered that the site is suitable for the proposed development.

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

The development application was advertised for a period of fourteen (14) days. No submissions were received.

(e) Public interest

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

OPTIONS:

1. Resolve to adopt the recommendation and approve the development application subject to conditions.
2. Resolve to refuse the development application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

If the applicant is dissatisfied with Council's decision they may choose to appeal in the Land and Environment Court. If this option is taken by the applicant Council will incur costs in defending the appeal.

POLICY IMPLICATIONS:

Nil

CONCLUSION:

It is recommended that the proposed development be approved subject to the attached conditions.

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 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).*

Nil.

P7 [PD-PC] Development Application DA06/0965 for the Use of Existing Shed for the Purpose of a Bus Depot Storing Two Buses at Lot 1 DP 1026947, Eviron Road, Eviron

ORIGIN:

Development Assessment

FILE NO: DA06/0965 Pt1

SUMMARY OF REPORT:

Council is in receipt of a Development Application to store two (2) buses within an existing rural shed (DA05/0217) for the purpose of a bus depot at Lot 1 DP 1026947, No. 300 Eviron Road, Eviron. The bus will leave the depot at approximately 7.30am and return at approximately 4.30pm each working day through the normal school year of 201 days. In addition, the buses are used for local school charter between school hours, which would be 50% of the school year. The buses do not return to the depot throughout the day.

The existing shed is currently used to house surplus farm equipment with four separate garage doors. The purpose for storing the two buses at the subject site is that the current site where the buses are stored is becoming full and another site is required.

The application was notified for a period of 14 days. During that period one (1) submission in the form of a petition with 19 signatures was received. Details of issues raised within this submission are addressed further in this report.

Whilst the proposed development received one (1) submission in the form of a petition the application is deemed to be an appropriate use for the site.

RECOMMENDATION:

That Development Application DA06/0965 for the use of existing shed for the purpose of a bus depot storing two buses at Lot 1 DP 1026947, Eviron Road Eviron be approved subject to the following conditions: -

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos 1&2 prepared by applicant and dated 24 August 2006, except where varied by the conditions of this consent.

[GEN0005]

2. Proposed advertising structures/signs are to be the subject of a separate development application, where statutorily required.

[GEN0065]

3. Prior to use of the storage sheds as a bus depot an 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. The application shall include engineering plans and specifications for the following required works:-
- (a) The existing access to the storage shed shall be sealed with a 6.0m wide single coat bitumen seal on a 150mm compacted gravel pavement from the edge of the existing pavement in Seven Oaks Drive to the property boundary.
- (b) Permanent erosion measures shall be provided in the table drain immediately upstream and downstream of the culvert headwalls to prevent further scour to the table drain invert and batters. [GENNS01]
4. The buses are to enter and leave the site in a safe manner and in accordance with the applicable speed limit. [GENNS02]

DURING CONSTRUCTION

5. 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]
6. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development. [DUR1025]

USE

7. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust, fumes or the like. [USE0125]
8. All activities associated with the occupancy of the building are to comply with the Protection of the Environment Operations Act, 1997. [USE0135]
9. Activities occurring at the premises must be carried out in a manner that will minimise emissions of dust from the premises. [USE0145]

10. The use of the buses entering and leaving the site are restricted to between the hours of 7am to 5.30pm Mondays to Fridays. The buses are not to operate on the weekends or public holidays.
[USE0185]
11. All external artificial lighting shall be shielded where required to the satisfaction of Councils General Manager or his delegate to ensure that the spill of light or glare from such lighting does not create a nuisance to any adjoining or neighbouring premises.
[USE0205]
12. Provision shall be made for a flood free storage area for stock and other equipment susceptible to water damage.
[USENS01]
13. The provision of fuel or mechanical servicing of the buses or equipment is not permitted.
[USENS02]
14. Approval is given to two (2) buses only for storage purposes within the existing shed.
[USENS03]
15. Buses are to remain within the boundaries of the subject site if not on route for school purposes.
[USENS04]

REPORT:

Applicant: Mr J Singh-Goesel and Mrs B Singh-Goesel
Owner: A G Partridge Pty Ltd
Location: Lot 1 DP 1026947 Eviron Road, Eviron
Zoning: 1(a) Rural and 1(b2) Agricultural Protection
Cost: Nil

BACKGROUND:

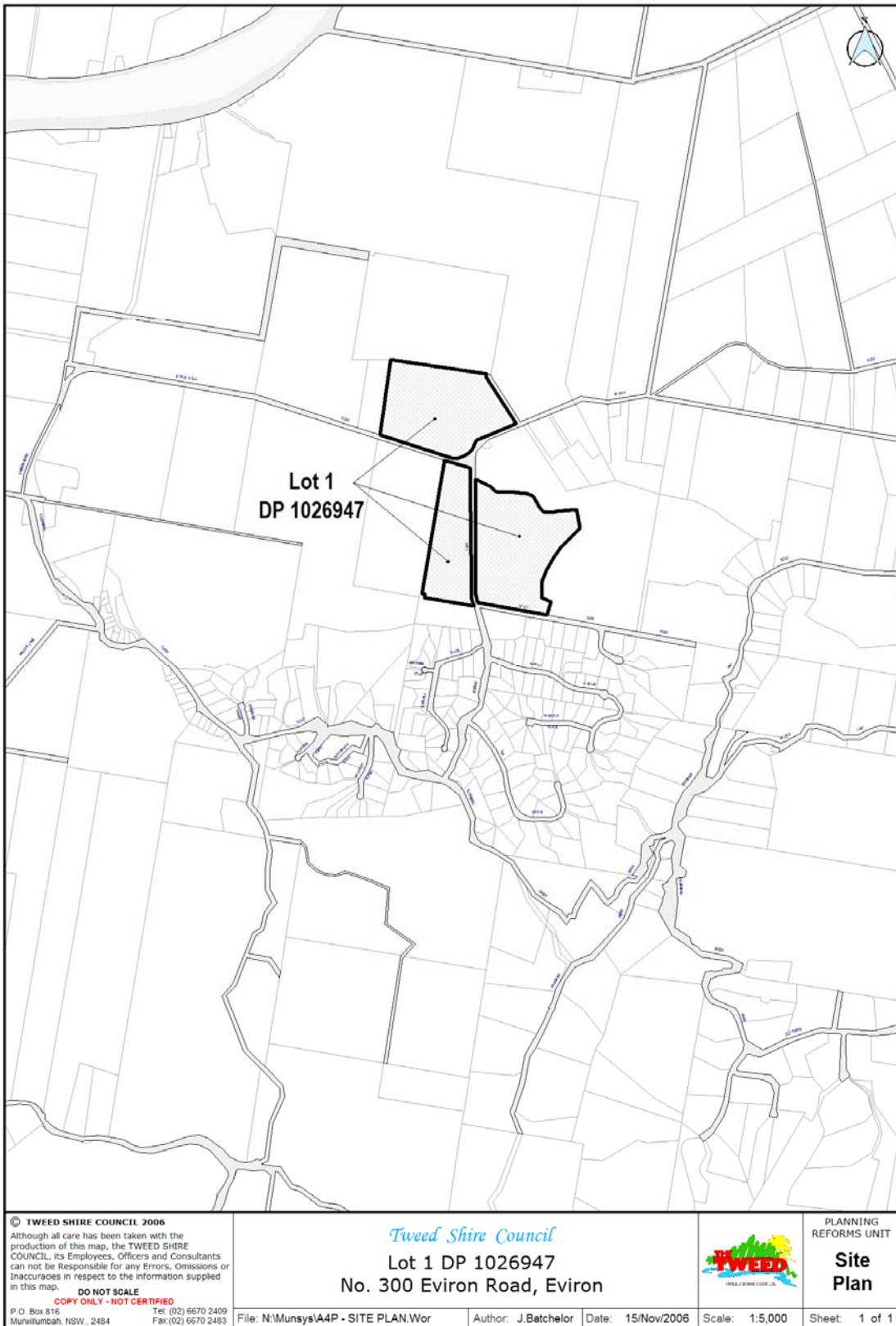
Council is in receipt of a Development Application to store two (2) buses within an existing rural shed (DA05/0217) for the purpose of a bus depot at Lot 1 DP 1026947, No. 300 Eviron Road, Eviron. The bus will leave the depot at approximately 7.30am and return at approximately 4.30pm each working day through the normal school year of 201 days. In addition, the buses are used for local school charter between school hours, which would be 50% of the school year. The buses do not return to the depot throughout the day.

The area of the site, which this application applies, consists of sugarcane and an existing farm shed measuring 288m² on a total land area of 44.01 Hectares. Access to the shed is via Seven Oaks Drive, which is a sealed rural road 3.6m wide two (2) coat bitumen seal pavement on an 8.6m wide formation.

The site adjoins cane land and is situated within an established rural residential subdivision of Eviron.

The proposed bus depot is considered suitable for the location and the site. The applicant has indicated that no mechanical work is proposed. General maintenance however is required with relation to safety of the buses.

SITE DIAGRAM:



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

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

Tweed Local Environmental Plan 2000

The subject land is zoned 1(a) Rural and 1b(2) Agricultural Protection under the Tweed Local Environmental Plan 2000. The proposed development is permissible with consent of Council in the 1(a) zoned parcel, which currently accommodates the shed.

The primary zone objectives for 1(a) are:

- *To enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilisation purposes and associated development.*
- *To protect rural character and amenity.*

The Primary objective for the 1b(2) is:

- *To protect identified prime agricultural land from fragmentation and the economic pressure of competing landuses.*

The subject site has approval for the erection of a farm shed to store farm equipment ancillary to the farm operations of the subject land. The shed is situated on the parcel of land zoned 1(a). The proposal will facilitate use of part of the shed to store two (2) buses. The proposed use is defined as a 'bus depot' under the Tweed LEP and is a permissible use within the 1(a) zoned land. The objective is therefore satisfied.

Clause 15 of the TLEP requires Council to be satisfied all essential services are made available to the site. At present all essential services are available to the site. This proposal will not require the need for additional services to be connected to the site.

Clause 17 of the TLEP requires Council to consider whether a Social Impact Assessment was required as part of this application. For the purpose of this application a Social Impact Assessment is not required, however the applicant has stated there would be a benefit to the local community school children in that the bus service will reduce safety concerns, and allow for children to catch the bus from the depot.

Clause 35 of the TLEP requires Council to consider whether the potential for Acid Sulfate Soil disturbance is likely as a result of this application. The subject site is classed ASS 2. The proposal is for the storage of two buses within an existing shed, which was assessed against the possible impacts of Acid Sulfate Soil within the initial assessment.

Clause 39A requires Council to consider the likely impacts of bushfire as a result of the application. The site is mapped as bushfire prone, however, bushfire requirements are not applicable to this particular development as there is no construction, setup or site disturbance envisaged as part of this proposal. Therefore it is considered that bushfire is not an issue.

North Coast Regional Environmental Plan 1988

Clause 12 of the NCREP requires Council to consider the likely impact of the proposed development on the use of adjoining or adjacent agricultural land and whether or not the development will cause a loss of prime crop or pasture land. For the purpose of this application, the proposal seeks approval for the storage of two buses within an existing farm shed. There will be no negative impacts upon the surrounding agricultural land as a result of this application.

State Environmental Planning Policies

There are no State Environmental Planning Policies applicable to this application.

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

There are no draft Environmental Planning Instruments applicable to this application.

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

Development Control Plan No. 2 – Car Parking

The proposed application is for the storage of two buses within an existing farm shed. In accordance with DCP2 a bus depot requires 1 space per driver + 1 space per 2 on site employees. The application states that there would be only one driver and no employees, therefore the application requires 1 car space for the drivers vehicle. The site can adequately provide for one car space, which satisfies this requirement.

Development Control Plan No. 42 – Public Notification

The subject application was publicly notified for a period of 14 days from Wednesday 20 September 2006 to Wednesday 4 October 2006. During this period one (1) submission in the form of a petition with 19 signatures was received with the issues summarised further within this report.

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

There are no matters prescribed by regulations for this application.

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

Compatibility with Adjoining Land Uses

The subject land is located on a large parcel of Rural Agricultural land, which adjoins a rural residential subdivision of Eviron. The surrounding landuses range from sugarcane harvesting and residential dwellings on acreage allotments.

The proposed bus depot will not impact upon the adjoining landuses. The buses will be solely stored within the existing farm shed with proposed maintenance works and further buses being prohibited and made a condition of consent.

Access and Transport

The application was forwarded to Council's Development Engineers for comment in regard to access provisions to the site and the existing road. Comments received indicated the following:

'Access to the storage shed is from Seven Oaks Drive via an existing pipe culvert over the table drain. This cross over is approximately 8.0m wide with a 4.0m wide sealed surface. The 4.0m wide seal is already showing signs of failure. Furthermore, it is insufficient in width and will require construction to a 6.0m wide single coat seal on a 150mm compacted gravel base.'

'The recently installed pipe culvert is also causing scour of the table drain invert and batters both upstream and downstream. Permanent erosion control will be required within the table drain immediately upstream and downstream of the headwalls.'

It is therefore concluded that the access to the site needs to be upgraded in accordance with Council requirements, which has been made a condition of consent.

With regard to the existing sealed road Council's Traffic Engineer has stated the following:

'Given the small increase of 4 trips per day in traffic generated by the development and that Seven Oaks Road already has an 8.6m wide formation it is not reasonable to require the applicant to widen the sealed pavement by 400mm.'

Given the minor nature of the proposed development it is concluded that the applicant does not need to upgrade the existing sealed road. The road is sealed to 3.6m however, has 8.6m for vehicles to manoeuvre around each

other. Vehicles will only encounter the buses twice in the mornings and twice in the afternoons, provided that both buses are in operation, if not, the bus movement will be less.

Context and Setting

As the shed currently exists the context and setting of such a development has previously been assessed. The buses will be stored within the closed shed and will not impact upon adjoining landowners.

Noise

The application was referred to Council's Environment and Health Unit. Comments received indicated the following:

'Existing dwellings are located immediately adjacent to the proposal. Access to the buses will only be permitted from 7.30am to 4.30pm Monday to Friday. Buses will exit and return to the property a maximum of four times per day. This is not anticipated to have a significant impact upon surrounding dwellings'.

(c) Suitability of the site for the development

The existing farm shed is suitable within the rural context, and the storing of two buses will not create a detrimental impact within the locality as buses will be stored inside the shed at all times.

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

The subject application was publicly notified for a period of 14 days from Wednesday 20 September 2006 to Wednesday 4 October 2006. During this period one (1) submission in the form of a petition was received containing 19 signatures. The issues raised were:

1. Safety as the current road width does not allow for two vehicles to pass at once;
2. The intersection of Seven Oaks Drive with North's Lane is too dangerous;
3. The farm shed has never been used to store farm equipment as approved;
4. Not all of Seven Oaks Drive was notified of the application;
5. Accompanying letter signed by residents whose children catch the J & B buses do not live in Seven Oaks Drive;

6. The 1(a) land zoning does not create for a use of this nature; and
7. Buses are currently being stored at the site.

The submission was forwarded to the applicant for comment. The applicant responded on 9 November 2006. The applicant made five (5) comments in regard to the issues raised within the submission. The applicant responded with the following:

1. *Buses will only travel approximately 250m along Seven Oaks Drive. The blacktop is 2.5m wide with 4m-grassed area on either side allowing enough room for vehicles to pass if required. The driveway is 8.7m wide, which gives easy access to the block. Once the buses are within the boundaries of the property easy manoeuvring can be carried out, having no restriction on traffic or access.*

A current bus service already operates within the street and a garbage truck. One of the objectors has a mobile motor home, which is similar in size to one of my buses. A large bus weighs 16 Tonne GVM. A garbage truck weighs 22.5 Tonne GVM. It does not seem fair that an existing bus and garbage truck can use the street however the storage of two buses is not safe or appropriate.

2. *The shed is not purpose built for a bus depot, rather to store farm equipment. The height of the shed is to allow a cane harvester. Mr Alan Partridge (owner of the property and shed) can access his property at any time along Seven Oaks Drive by adding crossings to his cane farm.*
3. *All signatures on the letter provided by parents have children who travel on my buses. Having the buses at the proposed site would mean children who currently walk the full length of North's Lane could catch the bus at Eviron Road. This will shorten the walk for children by 1.5km.*
4. *When I first approached Council I asked to store my buses only. The only definition the Council could define my proposal as a 'Bus Depot', which is a permissible use within the zone. The site is only to store buses, no mechanical work is proposed.*

Buses will be gone by 7.15am, most walkers' walk after this time. Buses will return at 9.15am. Majority of walkers are at work at this time. The majority of days we have school trips booked and will not return to the depot in the morning.

Buses will leave at 2.15pm and return by 4.30pm in afternoons.

5. *One bus did spend two nights in the shed during school holidays, as it was booked in to have mechanical work at Chinderah, however on arrival we were told to bring the bus back on the Monday.*

The proposed justification by the applicant is considered reasonable. The shed is to be used for the storage of two buses, which is not suitable within a rural residential area. Therefore, the proposed development is considered suitable despite the objections received.

(e) Public interest

The proposal is not considered to be in conflict with the general public interest in the locality. The proposed development adequately reflects the provisions of the controls and the rural locality.

OPTIONS:

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

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

It is not envisaged that any policy implications will arise as a result of this application being approved.

CONCLUSION:

Having regard for the proposed development and controls provided for the site it is considered that conditional consent is warranted.

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 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).

Nil.

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P8 [PD-PC] Section 96 Application DA06/0351.01 for Amendment to Development Consent DA06/0351 for Alterations & Additions to Tweed City Shopping Centre at Lot 1 DP872305 No 38 Minjungbal Dve & Lots 14-17 DP23659 Nos. 34, 36, 38 & 40 Kirkwood Rd, Tweed Heads

ORIGIN:

Development Assessment

FILE NO: DA06/0351 Pt4

SUMMARY OF REPORT:

A Section 96 application has been received for the Tweed City additions development. The proposal involves a reduction in floor area, an increase of 79 car parking spaces, a request to delete the requirement for shade structures and the additional traffic lights, adjustment to contributions and minor rewording of conditions to account for the deletion of the Action supermarket.

RECOMMENDATION:

That Section 96 Application DA06/0351.01 for an amendment to Development Consent DA06/0351 for alterations and additions to Tweed City shopping centre at Lot 1 DP 872305, No. 38 Minjungbal Drive & Lots 14,15,16 & 17 DP23659, Nos. 34, 36, 38 and 40 Kirkwood Road, Tweed Heads South be amended as follows: -

- 1. Amend Condition No. 3 as follows: -**
- 3. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos: -**

DA-0.001D prepared by The Buchan Group and dated 13/11/2006
DA-0.110B prepared by The Buchan Group and dated 21/8/2006
DA-1.000B prepared by The Buchan Group and dated 21/8/2006
DA-1.002B prepared by The Buchan Group and dated 21/8/2006
DA-1.004B prepared by The Buchan Group and dated 21/8/2006
DA-2.000B prepared by The Buchan Group and dated 21/8/2006
DA-2.001B prepared by The Buchan Group and dated 21/8/2006
DA-2.002B prepared by The Buchan Group and dated 21/8/2006
DA-2.004B prepared by The Buchan Group and dated 21/8/2006
DA-2.005B prepared by The Buchan Group and dated 21/8/2006
DA-2.006B prepared by The Buchan Group and dated 21/8/2006
DA-2.007B prepared by The Buchan Group and dated 21/8/2006
DA-2.009B prepared by The Buchan Group and dated 21/8/2006
DA-2.0010B prepared by The Buchan Group and dated 21/8/2006

DA-3.000B prepared by The Buchan Group and dated 21/8/2006
DA-3.001B prepared by The Buchan Group and dated 21/8/2006
DA-3.002B prepared by The Buchan Group and dated 21/8/2006
DA-8.000B prepared by The Buchan Group and dated 21/8/2006
DA-8.001B prepared by The Buchan Group and dated 21/8/2006
DA-8.002B prepared by The Buchan Group and dated 21/8/2006
DA-8.003B prepared by The Buchan Group and dated 21/8/2006
DA-8.004B prepared by The Buchan Group and dated 21/8/2006
DA-8.005B prepared by The Buchan Group and dated 21/8/2006
DA-8.006B prepared by The Buchan Group and dated 21/8/2006

except where varied by the conditions of this consent.

2. Delete Condition No. 12 and replace with Condition No. 12A as follows: -

12A. The proposed alterations and additions are not to reduce the effectiveness of the existing smoke hazard management system contained within the existing portions of the building.

3. Amend Condition No. 15 as follows: -

15. Plans for all proposed food outlet fitouts, including Coles supermarket, shall be provided to Council prior to the construction certificate being issued for the fitout of the uses or use of these outlets whichever occurs first, that include the following:

- (a) Floor plan
- (b) Layout of kitchen showing all equipment
- (c) All internal finish details including floors, wall, ceiling and lighting
- (d) Hydraulic design including the trade waste disposal method
- (e) Mechanical exhaust ventilation as per the requirements of AS1668 Pts 1 & 2 where required
- (f) Servery areas including counters etc

4. Amend Condition No. 16 as follows: -

16. A detailed plan of landscaping is to be submitted and approved by Council prior to the issue of a Construction Certificate.

5. Amend Condition No. 24 as follows: -

24. 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 for Lot 1 DP 872305 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) Sector2_4	\$386,610.
(b) Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$4,502.07

[PCC0215]

6. Amend Condition No. 25 as follows: -

25. 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 for Lot 1 DP 872305 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:	17.26 ET @ \$4598	\$79,361
Sewer:	26.68 ET @ \$2863	\$76,385

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

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

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

7. Delete Condition No. 29.
8. Delete Condition No. 30.
9. Amend Condition No. 43 as follows: -
 43. If the existing fence is to be demolished during the demolition and construction work for the shopping centre, the 3.0m acoustic fence constructed of either masonry, fibre cement, lapped gapless timber or similar shall be constructed in accordance with Appendix 2 Sketch 1 and 2 of the *Environmental Noise Impact Report for the Tweed City Shopping Centre, 54 Minjungbal Dr, Tweed Heads South* prepared by TTM Consulting (GC) Pty Ltd dated 31 August 2006 (ttmref: 31782 report revision B).
10. Amend Condition No. 74 as follows: -
 74. All works shall be carried out in accordance with the *Environmental Noise Impact Report for the Tweed City Shopping Centre, 54 Minjungbal Dr, Tweed Heads South* prepared by TTM Consulting (GC) Pty Ltd dated 31 August 2006 (ttmref: 31782 report revision B) and Environmental Noise Impact Assessment Addendum 1 dated 21 April 2006 (ttmref: Letter 31782) except where varied by these conditions.
11. Amend Condition No. 75 as follows: -
 75. All spaces between the timber palings of the existing timber fence along the southern boundary of the site shall be sealed with no gaps in accordance with the *Environmental Noise Impact Report for the Tweed City Shopping Centre, 54 Minjungbal Dr, Tweed Heads South* prepared by TTM Consulting (GC) Pty Ltd dated 31 August 2006 (ttmref: 31782 report revision B).

12. Amend Condition No. 76 as follows: -

76. A 2.0m fence constructed of masonry, fibre cement, lapped gapless timber or similar shall be constructed in the northern carpark areas as indicated in Appendix A sketch 1 and 2 of the *Environmental Noise Impact Report for the Tweed City Shopping Centre, 54 Minjungbal Dr, Tweed Heads South* prepared by TTM Consulting (GC) Pty Ltd dated 31 August 2006 (ttmref: 31782 report revision B).

13. Amend Condition No. 77 as follows: -

77. The 3.0m acoustic fence constructed of either masonry, fibre cement, lapped gapless timber or similar shall be constructed in accordance with Appendix 2 Sketch 1 and 2 of the *Environmental Noise Impact Report for the Tweed City Shopping Centre, 54 Minjungbal Dr, Tweed Heads South* prepared by TTM Consulting (GC) Pty Ltd dated 31 August 2006 (ttmref: 31782 report revision B).

14. Amend Condition No. 78 as follows: -

78. All works shall comply with the S.P.L.A.T. Landscape Details plans dated October 2006 Drawings numbered 050501- 03 to 09 issue A with Plan number 03 Issue B and the Street Frontage-landscape concept plan numbered 050501 –SK01.

15. Amend Condition No. 107 as follows: -

107. The use of any compactor(s) located with the Coles or other proposed eastern loading bays area(s) shall be restricted to between 8.30am to 6pm Monday to Friday and 10am to 4pm Saturday, Sunday and public holidays. A sign outlining these hours shall be attached to the wall near each compactor to advise all staff of the restricted hours of operation.

16. Amend Condition No. 108 as follows: -

108. The Coles and other proposed eastern loading bay doors shall be kept closed except for when allowing entry of a delivery truck or removal of waste.

17. Addition of the following heading and conditions after Condition No. 110: -

GENERAL TERMS OF APPROVAL FOR A LICENCE UNDER THE WATER ACT 1912

- Before commencing any works or using any existing works for the purpose of Temporary Dewatering for Construction Purposes, an approval under Part 5 of the water Act 1912 must be obtained from

the Department. The application for the approval must contain sufficient information to show that the development is capable of meeting the objectives and outcomes specified in these conditions.

- An approval will only be granted to the occupier of the lands where the works are located, unless otherwise allowed under the Water Act, 1912.
- When the Department grants an approval, it may require any existing approvals held by the applicant relating to the land subject to this consent to be surrendered or to let lapse.
- All works subject to an approval shall be constructed, maintained and operated so as to ensure public safety and prevent possible damage to any public or private property.
- All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry of sediments into any river, lake, waterbody, wetland or groundwater system.
- The destruction of trees or native vegetation shall be restricted to the minimum necessary to complete the works.
- All vegetation clearing must be authorised under the Native Vegetation Act 2003, if applicable.
- The approval to be granted may specify any precautions considered necessary to prevent the pollution of surface water or groundwater by petroleum products or other hazardous materials used in the construction or operation of the works.
- A licence fee calculated in accordance with the Water Act 1912 must be paid before a licence can be granted.
- If and when require by the Department, suitable devices must be installed to accurately measure the quantity of water extracted or diverted by the works.
- All water measuring equipment must be adequately maintained. It must be tested as and when required by the Department to ensure its accuracy.
- Works for construction of bores must be completed within such period as specified by the Department.
- Within 2 months after the works are completed the Department must be provided with an accurate plan of the location of the works and notified of the results of any pumping tests, water analysis and other details as are notified in the approval.
- Officers of the Department or other authorised persons must be allowed full and free access to the works for the purpose of inspection and testing.

REPORT:

Applicant: DB Reef Funds Management Pty Ltd
Owner: SAS Trustee Corporation
Location: Lot 1 DP 872305, No. 38 Minjungbal Drive & Lots 14,15,16 & 17 DP23659, Nos. 34, 36, 38 and 40 Kirkwood Road, Tweed Heads South
Zoning: 3(b) General Business

BACKGROUND:

Development consent was issued on 17 August 2006 for alterations and additions to the Tweed City shopping centre. The proposed modifications and summary Table is provided below -

- The deletion of the 2,800m² Action Supermarket
- The relocation of mini major No.1 (MM1), the usage allocation as Best and Less
- The inclusion of new specialty retail to partially replace Action.
- The relocation of the travelator to the side entrance of the new Coles mall
- The expansion and reconfiguration of the northern basement car park and part of the former Action slab to alter the total on-site car parking from 2,207 spaces to 2,352 spaces
- The reconfiguration of the Kirkwood Road car park and basement car park entry to provide better circulation for buses, cars and trucks and to improve pedestrian amenity.
- A small reconfiguration of the food court shops to improve seating and circulation.

A summary of the proposed modifications floor space and car parking as compared to the originally approved DA 06/0351 the existing centre is provided in Table 1 below.

TABLE 1 - SUMMARY OF PROPOSED MODIFICATION TO FLOOR SPACE AND CAR PARKING			
ELEMENT	EXISTING	DA06/0351	MODIFICATION TO DA06/0351
Floor Area			
Net Lettable Area	42,894m ²	50,568m ²	48,070m ²
Car Parking			
Ground	1252	1077	1199
Basement	715	1130	1153
Total	1967	2207	2352
Indicative Car Parking Ratio			
	4.59 car spaces per 100m ² NLA	4.36 car space per 100m ² NLA	4.90 car spaces per 100m ² NLA

Modifications to the conditions

Condition 3

Condition 3 refers to the approved plans and is required to be amended to reflect the modified plans.

Condition 12

Condition 12 is to be amended to reflect the requirements of the BCA regarding Smoke Hazard Management. In this regard the applicant has requested that Council review the condition on the basis that a fire engineering report has been obtained which identifies that the proposed alterations and additions will not reduce the effectiveness of the smoke hazard management system currently existing within the centre.

Conditions 15, 107 and 108

Conditions 15,107 and 108 refer to the Action supermarket which is now deleted from the proposal as such the conditions will be adjusted accordingly to remove the reference to Action.

Condition 24

Condition 24 relates to s.94 contributions for roads. The reduced floor area results in a reduced contribution which will be amended accordingly.

Condition 25

Condition 25 relates to s.64 contributions for water and sewer which are required to be adjusted due to the reduced retail floor area. Floor area use allocation has also been altered with the new areas designated for retail and food court and no commercial. The applicants wish to have the food court area assessed at the refreshment room rate (water-0.008 ET/m² and sewer 0.013 ET/m²) rather than at the takeaway food rate (water-0.015 ET/m² and sewer-0.024 ET/m²). This has been discussed with Council's Water Unit and the appropriate classification is takeaway/fast food.

Condition 29

Condition 29 requires the installation of traffic signals at the intersection of Minjungbal Drive and the south bound Pacific Highway off ramp. The applicants argue that they are meeting their obligations regarding the traffic network by widening Minjungbal Drive, and paying S.94 contributions. The traffic modelling undertaken by the applicant indicates that that the vehicle trips generated by the proposal are not at a level that requires Tweed City to install traffic lights. It should be noted that signals at this intersection are not contained in council's contributions plan. The condition was imposed at the request of the NSW Roads and Traffic Authority and they have agreed to delete the condition.

Condition 30

Condition 30 requires shade structures to be installed in the car park. The applicant argues that 50% of the onsite parking is underground and structures are likely to interfere with truck and bus manoeuvring. Given the shade structures can provide visual appeal as well as sun protection the applicants have prepared a landscaping plan to improve the streetscape of the centre. A photo montage of the landscaping has also been provided. It is considered that the proposed landscaping is an acceptable alternative to the shade structures and will improve the streetscape in this location and the visual appeal of the centre.

Condition 78 and 16

Condition 78 references the Landscaping intent plans however given the above condition 78 should be amended to reference the latest landscaping plans. Condition 16 requires a detailed landscaping plan to be approved by the Principle Certifying Authority this is now redundant and should read to be approved by Council.

Conditions 43, 74, 75, 76 and 77

Conditions 43, 74, 75, 76 and 77 refer to the acoustic report which has been updated with the amended proposal. The conditions will be amended to refer to the updated report.

Section 96

The proposed modification results in a development that is substantially the same that was approved under DA05/0351. The impacts of the modifications are similar to the original approval.

The applicant has also queried the timing of compliance for condition 28. The condition is within the Prior to Issue of Construction Certificate section of the consent and is as follows: -

That the applicant is to prepare detailed engineering plans for the conversion of the parking (kerb side) lanes on Minjungbal Drive from 200 metres south of Machinery Drive to 100 metres north of Kirkwood Road, including any changes to the existing signal infrastructure. On approval of these plans the works are to be constructed prior to occupation of the building extension at no cost to Tweed Shire Council.

The condition requires only the plans to be submitted prior to issue of the construction certificate. Release of the CC for the building is not contingent upon approval of the engineering plans for the road. The works have to be complete prior to occupation of the new building.

The Department of Natural Resources terms and conditions for dewatering have been included in the amended consent to correct an administrative oversight.

SITE DIAGRAM:



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

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

Tweed Local Environmental Plan 2000

The proposed modifications do not result in the proposal being contrary to the Tweed LEP.

North Coast Regional Environmental Plan 1988

The proposed modifications do not result in the proposal being contrary to the North coast REP.

State Environmental Planning Policies

The proposed modifications do not result in the proposal being contrary to any State Environmental planning Policy.

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

N/A

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

DCP-2 Car parking- Additional car parking has been provided with the modified proposal. 4.9 spaces per 100m². An additional 385 spaces are proposed for the alterations to the shopping centre.

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

The proposal is not contrary to the Coastal Policy. The demolition will be undertaken in accordance with Australian Standard 2601-1991 The Demolition of Structures.

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

The proposed amendments will result in any additional adverse impacts.

(c) Suitability of the site for the development

The site is suitable for the proposal.

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

The amended application was referred to the NSW RTA and the following points were raised by the Authority: -

- The RTA advised that based on the new information provided it would be agreeable to removing the condition requiring the installation of traffic signals at the Tweed Bypass southbound off-ramp and Minjungbal Drive. However, if any further amendment or increase is proposed then the impacts would need to be re-assessed. The amended development application should be conditioned to restrict the retail/commercial GLFA to 4053.90sq.m and the cinema to 4016sq.m (1425 seats) as indicated in Table 4.1 of the Section 96 Application.
- The RTA indicated that they are concerned about the impact that the growth in South Tweed is having on the road infrastructure. Contribution plans need to be reviewed to provided for continual improvements to maintain safety and efficiency. The Tweed Bypass southbound off-ramp will need signalisation to regulate queuing demand and the Machinery Drive signals need additional right-turn capacity. If equitable contribution arrangements are not in place then individual developers will have to fund the improvements.

In relation to the amended internal layout the following comments are also made:

- One of the major deficiencies with this development is the lack of a good circulating internal road system to connect all at grade parking areas. The amended proposal will only compound the problems and discourage traffic from utilising all of the connections to Minjungbal Drive.
- To assist traffic movement through the car park it would be desirable to implement a guidance system that uses signposting and line marking.
- The proposed changes to the Kirkwood Road access for the new underground parking entrance/exit will further exacerbate the at grade internal road network's problems. Legally regulatory controls can not be enforced and the connection needs to be designed so it is self enforcing and safety is maintained.
- The new underground entrance creates a cross junction that conflicts with circulating, entering and exiting traffic. It is very close to Kirkwood Road and will create queuing problems during peak times. The concept needs to be reconsidered.
- The new underground junction of the ramp and car parking aisles need to be reconsidered. Entering traffic will conflict with circulating vehicles and congest the entrance. This creates a hazardous situation.

- Still no details have been provided of the arrangements needed to manage the additional left and right-turning traffic at the Kirkwood Road entrance.
- There is very limited protection for pedestrian movements through the car park areas at grade and underground.
- All marked foot crossings within the car park areas should be deleted as they can not be regulated and will create a liability problem.

Comment

The Statement of Environmental Effects indicates that the proposed floor area of the additions which forms part of the consent. If additional floor area is sought further applications are required and all matters are assessed at that point including traffic. It is not clear that Council can lawfully collect contributions for State controlled roads. Council's Traffic Engineer has undertaken to request the RTA to provide legal advice regarding Section 94 contributions for non Council roads. With regards to the other matters raised it is unlikely the development will have an unacceptable impact on the network and internal circulation of the car park will be functional. The applicants make the following comments regarding these issues: -

RTA Comment Letter 14 November 2006

The RTA advised that based on the new information provided it would be agreeable to removing the condition requiring the installation of traffic signals at the Tweed Bypass southbound off-ramp and Minjungbal Drive. However, if any further amendment or increase is proposed then the impacts would need to be re-assessed. The amended development application should be conditioned to restrict the retail/commercial GLFA to 4053.90sq.m and the cinema to 4016sq.m (1425 seats) as indicated in Table 4.1 of the Section 96 Application.

The RTA indicated that they are concerned about the impact that the growth in South Tweed is having on the road infrastructure. Contribution plans need to be reviewed to provided for continual improvements to maintain safety and efficiency. The Tweed Bypass southbound off-ramp will need signalisation to regulate queuing demand and the Machinery Drive signals need additional right-turn capacity. If equitable contribution arrangements are not in place

DRFM Response

We thank the RTA for accepting the rationale for the deletion of the lights.

We note that any further applications will be the subject of a new assessment and as such a floor space restriction as requested is inconsistent with the planning framework as currently exists for Tweed Shire.

This is a matter between Council and the RTA to resolve and we make no further comment.

RTA Comment Letter 14 November 2006 DRFM Response

then individual developers will have to fund the improvements.

In relation to the amended internal layout the following comments are also made:

RTA Comment Letter 14 November 2006	DRFM Response
<p>One of the major deficiencies with this development is the lack of a good circulating internal road system to connect all at grade parking areas. The amended proposal will only compound the problems and discourage traffic from utilising all of the connections to Minjungbal Drive.</p>	<p>Amendments were made to the development application drawings for the DA 06/0351 approved on 17th August 2006 to accommodate RTA requirements in relation to circulation and access in the carpark. The new access to the new 400 space basement carpark from Kirkwood Road will make it more user friendly to customers and encourage the use of the Kirkwood Road entry, thereby assisting our goal of alleviating traffic at the Minjungbal Drive entrances to the Centre.</p>
<p>To assist traffic movement through the car park it would be desirable to implement a guidance system that uses signposting and line marking.</p>	<p>The carpark is currently line marked and the new areas will be line marked to assist customers in relation to use. A whole of site way finding package will be developed during the first stage of the development.</p>
<p>The proposed changes to the Kirkwood Road access for the new underground parking entrance/exit will further exacerbate the at grade internal road network's problems. Legally regulatory controls can not be enforced and the connection needs to be designed so it is self enforcing and safety is maintained.</p>	<p>DRFM have engaged traffic consultants to advise on the most desirable road and pedestrian network for the Centre within the site constraints. A whole of site way finding package will be developed during the first stage of the development.</p> <p>The new design incorporates the new bus stop location outside the new Coles Mall entry, more effective circulation in the at grade carpark and a separation of circulating traffic moving towards the rear of the Centre. In addition the entry to the new 400 space basement carpark has been made easier for customers to access.</p>

RTA Comment Letter 14 November 2006	DRFM Response
The new underground entrance creates a cross junction that conflicts with circulating, entering and exiting traffic. It is very close to Kirkwood Road and will create queuing problems during peak times. The concept needs to be reconsidered.	We do not agree with this comment. Priorities at the cross junction will be detailed in a manner that minimises the potential for queuing. Access to the basement carpark will be given priority.
The new underground junction of the ramp and car parking aisles need to be reconsidered. Entering traffic will conflict with circulating vehicles and congest the entrance. This creates a hazardous situation.	We do not agree with this comment. Priorities at the cross junction will be detailed in a manner that minimises the potential for queuing. Circulating vehicles will be drawn further into the carpark to access the lift and travelator entry to the Centre thus minimising any perceived conflict.
Still no details have been provided of the arrangements needed to manage the additional left and right-turning traffic at the Kirkwood Road entrance.	DRFM provided comments in relation to this matter during consideration of DA 06/351 approved on 17 th August 2006.
There is very limited protection for pedestrian movements through the car park areas at grade and underground.	The circulation and traffic will be the subject of design development to optimise traffic circulation and pedestrian safety within the site constraints.
All marked foot crossings within the car park areas should be deleted as they can not be regulated and will create a liability problem.	The circulation and traffic will be the subject of design development to optimise traffic circulation and pedestrian safety within the site constraints.

The amended application was exhibited and three submissions were received with two on behalf of Gales Holdings and one from the adjoining Legacy accommodation building. The latter submission was seeking clarification regarding access to the site. The applicants have advised they have contacted the submitters and provided information to resolve the enquiry.

The submissions on behalf of Gales Holdings are reproduced in full: -

"We write on behalf of Rigby Consulting Pty Ltd, which as you are aware, has previously made submissions on behalf of Gales-Kingscliff Pty Ltd in relation to the proposed redevelopment of the Tweed City Shopping Centre (DA06/0351). It also acts on behalf of the Queensland Investment Corporation (QIC) Pty Ltd, the owners of the Robina Town Centre.

Mr Ian Rigby, the principal of Rigby Consulting Pty Ltd, is currently overseas and has been unable to complete the necessary investigations

to prepare submissions on behalf of both Gales-Kingscliff Pty Ltd and QIC. It is however the intention of both Gales-Kingscliff and QIC to lodge submissions with the Council relating to the proposed modification application. In this regard, Gales-Kingscliff Pty Ltd objects to the proposed redevelopment and expansion of the Tweed City Shopping Centre on the following grounds:

- *Adverse economic impacts on Tweed Shire Centres*
- *The extent of adverse impacts on other Tweed Shire Centres has been understated.*
- *The redevelopment ignores the desire of Tweed Shire residents for a District Centre at Chinderah and the resistance to further expansion of the Tweed City Shopping Centre.*
- *A future Tweed Coast District Centre is inevitable and supported by Retail Experts.*
- *The floorspace forecasts in the Tweed Shire Retail Strategy (Sept, 2005) preclude the proposed extensions.*
- *The proposal would only exacerbate serious traffic congestion in the locality.*
- *The public transport service is completely unsatisfactory.*

Rigby Consulting Pty Ltd has also previously advised of QIC's concerns about the redevelopment, should it be proposed that the Action supermarket floorspace be converted to specialty retailing, as is now proposed.

I refer to our letter of 4 October 2006 in relation to the above matter. This further submission should be read in conjunction with that letter.

This submission is prepared with the assistance of Rigby Consulting Pty Ltd (Rigby Consulting) on behalf of Gales-Kingscliff Pty Ltd.

While the nature of the proposed modifications are such that the modified development would not result in a significantly different impact, our clients principal concerns remain what it perceives to be significant shortcomings in the Economic Impact Assessment (EIA) conducted by Urbis JHD. These concerns relate to both the original assessment accompanying DA06/0351 and the Supplementary Assessment (29.08.06) submitted with the Section 96 application. The latter assessment confirming concerns expressed by Rigby Consulting in its submission (25.05.06) in respect of the original application.

It also continues to be clear that Urbis JHD do not claim that the extensions are justifiable on current need, but rather that the entire argument is based on population growth yet to occur. This is contrary to the draft Retail Strategy (Core Economics) which recommends that increases in retail floorspace be contemplated when the need arises, rather than in advance of demand.

Rigby Consulting pointed out in its original submission that the EIA by Urbis JHD did not take account of the approved Flametree Estate Shopping Centre, which in its estimation amounted to an unaccounted for impact of \$30 million; i.e. an error to that extent in the EIA. The response to that submission, prepared by the applicants, claimed that the centre had indeed been taken into account.

This claim by the applicants (as well as several others) was apparently accepted without appraisal or comment by Council Officers and was put forward as purported fact in the report to the Council without verification or substantiation.

However, in the Supplementary Assessment accompanying the current Section 96 application, it is noted that Urbis JHD acknowledge that the Flametree Estate Shopping Centre was not taken into consideration, allegedly because it was subject to appeal. Although, Urbis JHD also acknowledge that the Flametree Estate Shopping Centre was approved in March 2006 – months before it responded to the submission by Rigby Consulting. We note that the Council Administrators were not informed of this in the Council report on the original application.

This we believe raises questions regarding the basis upon which the original decision was made by the Council and confirms in our view that the original decision by the Council was based on a flawed EIA.

The current Supplementary Assessment then deals simplistically and in our view inaccurately, with the potential effects of the Flametree Estate Shopping Centre. It suggests that the potential turnover of the Tweed City centre will merely be reduced by the amount of potential turnover of the Flametree Estate Shopping Centre and that the impact of Tweed City on other centres will consequently be reduced by that amount (first dot point on page 3). This is not only lacks rigour, but will almost certainly not be the case and is misleading. A much more realistic and likely scenario, as put forward in the original submission by Rigby Consulting, is that the turnover of Tweed City will be essentially unaffected by the Flametree Estate Shopping Centre, and the adverse impact of the extensions on other Tweed Shire centres will consequentially be significantly greater (perhaps \$30 million).

The applicant's response to the original submission by Rigby Consulting also claimed that their analysis had anticipated a future (modest) retail centre at Chinderah, but there is no mention of this in the list of prospective centres identified in the Supplementary Assessment.

The Supplementary Assessment also reaffirms, as previously pointed out by Rigby Consulting, that the adverse economic impacts of the extensions will be almost entirely felt in Tweed Shire centres, contrasting with a claim in the Statement of Environmental Effects that most impacts would be on centres outside the Shire. Given the comments above, the impacts on Tweed Shire centres would in fact be potentially much greater.

Finally, as previously raised by Rigby Consulting, we are surprised that the applicant's claims in respect of the economic impacts of the development have not been independently assessed as has recently been the case in other less significant proposals (including a small supermarket development proposed by our client in Kingscliff) for retail development. In view of the significant discrepancies identified above (confirmed by the applicant's own submissions), we suggest that a proper independent evaluation of the economic impacts of the proposal be undertaken to confirm (or otherwise) the assertions made by the applicant.

We trust that the Council will give due consideration to these matters and will take appropriate action to address the issues identified herein prior to determination of the current application. In this regard, we would be pleased to receive any additional advice that the applicant may provide in response to our client's submissions and further, would be happy for our submissions to be provided to any independent consultant engaged by the Council to assess the economic impacts of the proposal.

In any event, we ask that a full copy of this submission be provided to the Administrators prior to their consideration and determination of the application".

COMMENT

The original report to Council provided comment from the applicants to each of the matters raised in the submissions. The report made the following comments regarding the Gales' submission:-

"The submission lodged on behalf of Gales Holding's points at that prevention of escape expenditure will not be as great as identified in the application, the economic report didn't take into account the new supermarket at Flame Tree therefore further impacting on existing outlets, a large number of Tweed Coast residents want a new district centre at Chinderah, need has not been demonstrated for the additional floor area and access is poor.

It is considered that the applicants have provided reasonable responses to the issues raised above which are found in the above table under

Letter 11. It should be also noted that no submissions were received from the existing retail centres in the locality.

Additionally the land at Chinderah is not zoned to permit a district retailing centre. Putting this forward as an alternative site is not reasonable in the context of assessing the application before Council."

APPLICANT'S RESPONSE

The applicants have provided the following response the Gales' submission-

"I refer to the letter dated 11 October 2006, prepared by DGP in relation to the expansion of Tweed City Shopping Centre. A number of issues were raised in the DGP letter, which are addressed below.

This letter should be read in conjunction with previous correspondence prepared by Urbis JHD, as follows:

- 1. A report entitled "Tweed City Shopping Centre - Economic impact Assessment, March 2006", referred to throughout this letter as the March EIA.*
- 2. A supplementary assessment dated 29 August 2006, referred to as the supplementary letter.*

Tweed City Turnover Potential and Impact

The abovementioned letter by DGP indicated that our March EIA did not take into account the proposed Flametree Park development. At the time the March EIA was being prepared, it was considered unlikely that the proposal for Flametree Park would be approved. Therefore the development was not specifically taken into account in our initial analysis. However an allowance was made for non-specific projects, to take account of uncertainties such as Flametree Park.

Subsequent to the March EIA, DB RREEF amended the plans for Tweed City to exclude the Action supermarket from the proposed scheme outlined in the original EIA. As a consequence of this and of the approval of Flametree Park, there will now be one less supermarket at Tweed City, yet one more supermarket elsewhere in the primary trade area. The effect of these changes is as follows:

- The two remaining supermarkets in the centre would be upgraded to provide a better offer and some of Action's business would be transferred to these stores. Therefore, the turnover potential for the individual stores would be marginally higher than assessed in the March EIA, although the combined supermarket turnover potential in the centre would be lower overall, due to the loss of one supermarket and the additional competition.*

- *The turnover potential for the centre overall would change as a result of a change in tenancy mix. This change in mix has come about by changed market circumstances and the anticipated level of retailer demand following retailer briefings. The major difference however is the closure of the Action supermarket.*
- *We have estimated that the Flametree Park supermarket would achieve an average turnover level.*
- *Tweed City would be impacted by the development of Flametree Park*
- *In addition, Flametree Park would also impact other centres in the area, namely the Bi-Lo at Banora Point.*
- *The original application, outlined in the March EIA, sought approval for 50,568 sq.m Gross Leasable Area (GLA). The revised application seeks approval for 48,070 sq.m, as outlined in the supplementary assessment. Therefore the revised application is for a lower floorspace increase.*

The impacts of the above changes are summarised below:

- *With Action out of the centre and a resulting lower supermarket turnover level, the impact of Tweed City on the food component of competing centres would be lower.*
- *With a change in mix, the turnover potential for the remainder of the centre would also be marginally less and therefore the impact of Tweed City on the non-food component of competing centres would be fractionally lower.*
- *Subsequently, the impact of Tweed City on competing centres would be lower for the revised scheme (as outlined in the supplementary letter), compared with the DA scheme outlined in the original March EIA.*

Current and Forecast Need

Our analysis clearly demonstrates that there is an existing need for the proposed expansion to Tweed City. The existing need was demonstrated throughout the March EIA and is summarised by the following:

- *The strong performance of Tweed City and reasonably strong market shares achieved from throughout the trade area demonstrates immediate scope for expansion.*
- *Tweed City is the main higher order centre serving the southern region of the Gold Coast. The telephone survey of residents in the area identified Tweed City as their key centre for both food and non-food shopping in the Shire.*
- *The supermarkets at Tweed City are the closest full-line supermarkets for residents in the southern and western part of the trade area. The centre has a strong convenience offer.*

In addition to satisfying current needs, the proposed expansion would also address the future need for additional retail facilities in the area. The key basis of this need is significant population growth forecast in the area. Therefore the March EIA addressed both current and, to some extent, future need for additional retailing at Tweed City.

Competitive Developments

The March EIA clearly specified the assumptions which have been taken into account in the analysis throughout the report. Due to some uncertainty surrounding the likelihood of certain competitive developments proceeding (i.e. Chinderah, Flametree Park), the report includes both specific assumptions regarding developments (i.e. planned neighbourhood centre at Cobaki Lakes), as well as some non-specific assumptions.

As previously identified, the proposed development of Flametree Park was specifically accounted for in the supplementary assessment, following approval of the development.

With regard to the proposed development at Chinderah, the March EIA had regard for a small retail development within the southern growth area (i.e. including Kingscliff). Whilst we acknowledge that the development of a District Centre at Chinderah is planned, there is no certainty that it will go ahead and no need for a centre of the scale proposed in this location either currently, or within the timeframe of the March EIA report (i.e. to 2010).

Therefore the March EIA report has taken into account either planned, approved or likely centres only within the timeframe of the report (to 2010). Any planned retail developments post-2010 have not been specifically mentioned in the March EIA or supplementary assessment.

Impact Assessment

As discussed above, the supplementary assessment clearly outlined the likely new competitive retail developments in the area. Reflecting the new planned competitive developments (namely Flametree Park), as well as the changes to the Tweed City plans, the impacts presented in the supplementary letter are cumulative. That is, they take into account the effect of all new planned developments (i.e. Flametree Park, Casuarina and Cobaki Lakes) as well as the proposed expansion to Tweed City.

The impact on competitive centres (in both the March EIA and supplementary letter) is based on a standard pro-rata impact approach. This takes into account the current usage of centres. Therefore the impact is greatest on those centres closest to Tweed City and in the

Tweed Shire in particular. To the extent that these centres do not adequately provide for the shopping needs of residents of the Tweed Shire, other centres beyond the region are also regularly used for shopping. To the extent that Tweed City is able to provide for these needs following expansion, a proportion of the spending market will be redirected to Tweed City from these competitive centres. Therefore centres both within and beyond the Tweed Shire will be impacted by the proposed expansion to Tweed City.

I trust the above information provides a reasonable summary of our analysis, in response to the DGP letter of 11 October 2006. If you or any of the Council Officers wish to understand the detailed analysis included in our report, I would be happy to attend Tweed Shire offices to run through our report with you in more detail."

It should be noted that the s.96 reduces the floor area from the approved application and the Action supermarket has been removed altogether. The supplementary report acknowledges there will be an impact on existing traders however this is not discordant with normal retail trading environments and competition. The proponents have identified a demand for additional floor area now which will cater for some of the predicted future population growth as well.

The proposal is consistent with Council's adopted strategy as it is an incremental expansion of an existing retail centre.

(e) Public interest

The modifications are not contrary to the public interest.

OPTIONS:

1. Approve the application as per the recommendation
2. Refuse for specified reasons

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicants have a right of appeal in the NSW Land and Environment Court if they are dissatisfied with the determination.

POLICY IMPLICATIONS:

The proposal is not inconsistent with the Council's Retail Strategy.

CONCLUSION:

The amendments are considered acceptable and well within the scope of s.96 of the EP& A Act.

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 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).*

Nil.

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P9 [PD-PC] Development Application DA06/1055 for a Bottle Shop (Tenancy No. 9) at Lot 902 DP 1097490, No. 2-6 Pandanus Parade, Cabarita Beach

ORIGIN:

Development Assessment

FILE NO: DA06/1055 Pt1

SUMMARY OF REPORT:

An application has been received for a bottle shop in tenancy nine within the "The Beach" building at Cabarita. The floor area of the tenancy is 150m² and 4.8 car parking spaces are required which are provided on site.

RECOMMENDATION:

That Development Application DA06/1055 for a bottle shop (Tenancy No. 9) at Lot 902 DP 1097490, No. 2-6 Pandanus Parade, Cabarita Beach be approved subject to the following conditions: -

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos SP01, WD11, WD12, WD04, WD09, WD05 prepared by Ryder Hampton and dated 4 and 5 September 2006, except where varied by the conditions of this consent.**
[GEN0005]
- 2. The public car park is to be open to enable public access. No gates or doors are to be installed which would prevent access to the public car park within approved trading hours.**
[GENNS01]
- 3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**
[GEN0115]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

- 4. In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 1979 (as amended), a construction certificate for SUBDIVISION WORKS OR BUILDING WORKS shall NOT be issued until any long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.**
[PCC0285]

PRIOR TO COMMENCEMENT OF WORK

5. The erection of a building in accordance with a development consent must not be commenced until:
- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
 - (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - (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]*
6. 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.
- [PCW0225]*
7. Where prescribed by the provisions of the Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003, a sign must

be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

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

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

[PCW0255]

8. 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]

DURING CONSTRUCTION

9. 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]

10. 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]

11. All materials used in the building must comply with the smoke developed and spread of flame indices specified in Specification C1.10 of the Building Code of Australia.

Note: Many materials including some timbers such as western red cedar do not comply and it is the applicants responsibility to ensure that all materials to be used are within the criteria specified.

[DUR1275]

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

(a) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;

(b) completion of work and prior to occupation of the building.

[DUR2485]

13. 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]

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

* 43.5⁰C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and

* 50⁰C in all other classes of buildings.

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

[DUR2555]

15. 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]

16. 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]
- 17. 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]
- 18. 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]
- 19. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.**
- [DUR1025]
- 20. A floor waste connected to the drainage system shall be provided within 1.5 metres of the opening of the cool room.**
- [DUR1565]
- 21. All shelving, benches, fittings and furniture on which appliances and utensils are positioned within the premises must be of durable, smooth, impervious material capable of being easily cleaned.**
- [DUR1605]
- 22. Separate hand washing facilities must be provided with warm water in a readily accessible position within the work area.**
- [DUR1645]
- 23. 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]
- PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**
- 24. 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]

25. 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]

26. Prior to commencement of operations and on completion of fit out an inspection is to be arranged with Council's Environmental Health Officer for final approval.

[POC0615]

27. The premise is to be treated on completion of fit-out and prior to commencement of trading and thereafter on a regular basis by a Licensed Pest Control Operator. A certificate of treatment is to be made available for Council inspection on request.

[POC0635]

USE

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

[USE0125]

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

[USE0135]

30. Hours of operation of the business are restricted to the following hours:

-

* 10am to 10pm - 7 days a week

[USE0185]

31. All external artificial lighting shall be shielded where required to the satisfaction of Councils General Manager or his delegate to ensure that the spill of light or glare from such lighting does not create a nuisance to any adjoining or neighbouring premises.

[USE0205]

32. Any premises used for the storage, preparation or sale of food shall comply with the *Food Act* 2003 and the Australia New Zealand Food Standards Code.

[USE0835]

33. All wastes shall be collected, stored and disposed to the satisfaction of the General Manager or his delegate.

[USE0875]

34. The premises shall be maintained in a clean and tidy manner.

[USE0965]

35. The premise shall not be utilised for the preparation or sale of putrescible foods.

36. Storage and handling of foods shall be restricted to dry, canned or sealed foods only and the storage of putrescible foods is not permissible.

[USENS01]

REPORT:

Applicant: Resort Corp Cabarita Pty Ltd
Owner: Resort Corp Cabarita Pty Ltd
Location: Lot 902 DP 1097490 No. 2-6 Pandanus Parade, Cabarita Beach
Zoning: 3(b) General Business
Cost: \$50,000

BACKGROUND:

“The Beach” development was approved by the Minister for Planning on 4 May 2004. The development consists of 57 tourist accommodation units, retail/ commercial floor area and basement car parking.

Condition 91 of the consent states-

Further Development Application(s) are to be submitted for the first use of the shops and commercial tenancies, such to be approved by Council prior to their use or occupation.

The bottle shop is to be located in one of the western facing tenancies fronting Tweed Coast Road. The proposal includes signage on the façade of the tenancy. The floor area is divided into retail display areas, a cool room and storage areas.

Deliveries are proposed to be made via the existing loading dock with a service access point constructed on the northern internal wall for forklift deliveries.

The proposed hours of operation are 10am to 10pm daily.

Car parking

Condition 28 of the “The Beach” is as follows-

The maximum number of car spaces to be provided for the development shall comply with the table below. Details confirming the parking numbers shall be submitted to the satisfaction of the Certifying Authority prior to the issue of a construction Certificate.

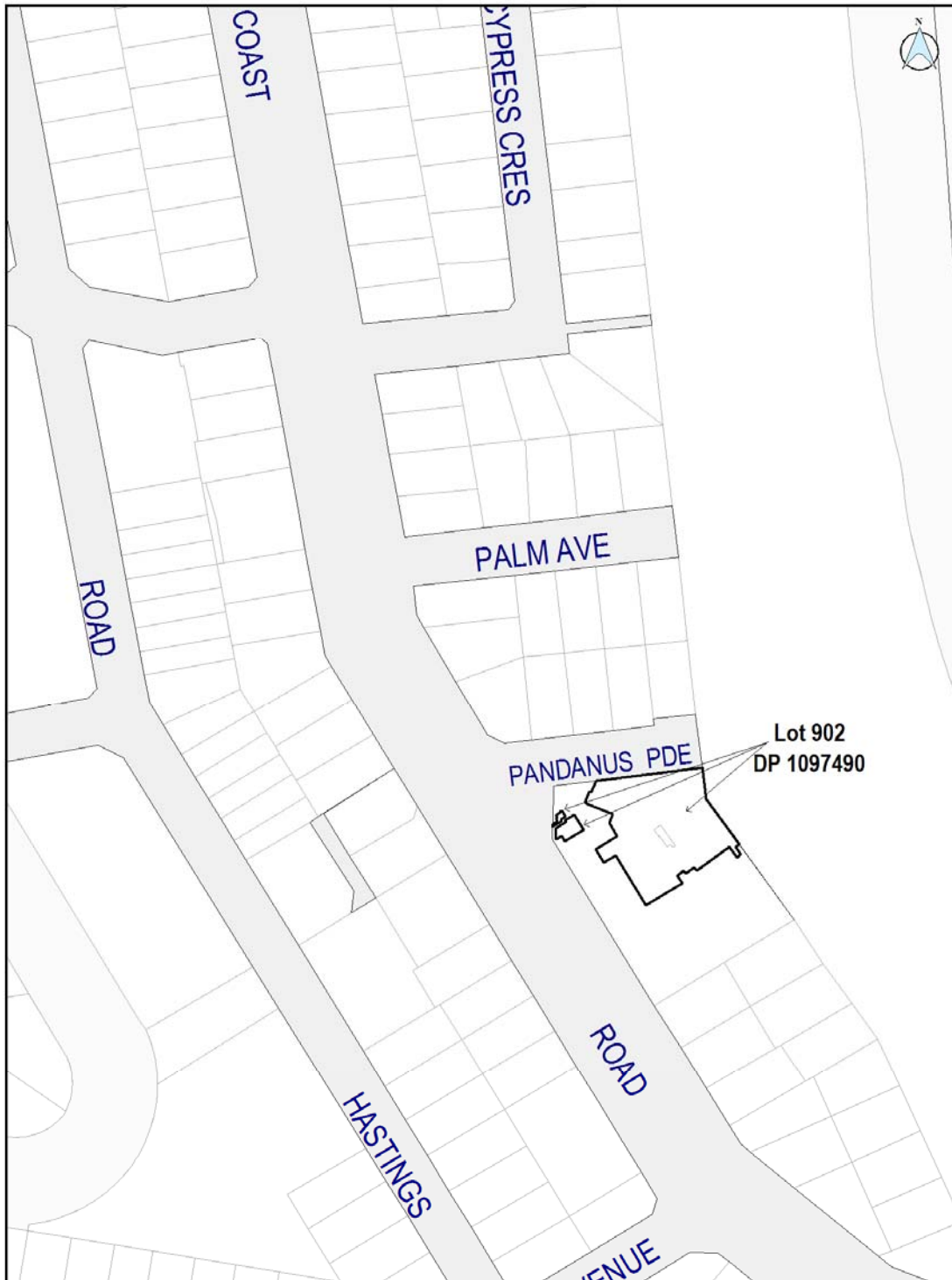
Car parking allocation	Number
<i>Tourist accommodation</i>	<i>85</i>
<i>Retail/commercial car parking spaces</i>	<i>71</i>


The tenancies have 71 spaces available for public use. The bottle shop is required to have 4.8 spaces based on 4 spaces per 100m² with 20% ESD principles discount.

Accordingly sufficient on site car parking is available for the bottle shop.

It should be noted that Council is also considering a development application for tenancy one for a hotel. The car parking assessment for both applications is the same and is based on utilising the Council owned car park in Pandanus Parade to satisfy car parking required for the hotel and the other tenancies. Council's legal advice indicates that the covenant over the car park only requires the site to be used for public parking and does not benefit the "The Beach" site for use of the car park to satisfy parking requirements. A separate report on this agenda discusses the hotel application.

SITE DIAGRAM:



<p>© TWEED SHIRE COUNCIL 2006 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 816 Murwillumbah NSW, 2484 Tel: (02) 6670 2409 Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i> Lot 902 DP 1097490 No. 2-6 Pandanus Parade, Cabarita Beach</p>	 <p>TWEED SHIRE COUNCIL</p>	<p>PLANNING REFORMS UNIT Site Plan Sheet: 1 of 1</p>
<p>File: N:\Munsys\A4P - SITE PLAN.Wor</p>		<p>Author: J.Batchelor Date: 15/Nov/2006</p>	<p>Scale: 1:5,000</p>

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

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

Tweed Local Environmental Plan 2000

The subject land is zoned 3(b) General Business under the provisions of the Tweed LEP 2000. The bottle shop is defined as a shop under the LEP and is a permissible use subject to consent from Council.

The objectives of the 3(b) zone are as follows-

Primary objectives

- * to provide business centres in which the community's shopping, business, welfare and social needs can be met.
- * to provide business locations within residential areas, and to ensure that the scale and type of development is compatible with the character and amenity of the surrounding residential areas.

Secondary objectives

- * to provide for tourist orientated development.
- * to encourage upper floor residential or tourist accommodation.

The proposal is consistent with the objectives of the zone.

The proposal is for the first use of an existing approved building and is not inconsistent with the provisions of the Tweed LEP.

North Coast Regional Environmental Plan 1988

The proposal is for the first use of a existing approved building and is not inconsistent with the provisions of the NC REP.

State Environmental Planning Policies

SEPP-71 Coastal Protection- The site is within the Coastal Zone and the matters contained with clause 8 of the SEPP are required to be considered. The bottle shop is not contrary to the clause 8 matters.

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

N/A

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

DCP-2 Car parking and Access Code- See comments above under car parking.

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

The proposal is not contrary to the Coastal Policy.

Demolition is not proposed.

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

The application has been considered by Council's Environmental Health Officer and the following comments are made-

Noise from plant such as the cool room motor is not likely to cause any amenity impacts due to the location and buffer to any other residential property - conditions to be applied.

The premise is a relatively large resort development and provision for waste storage and collection has been made in the overall design – conditions to be applied.

The plans indicate partition wall construction of timber frame construction. It may be possible to require walls to be of solid construction. However this is not considered necessary in this case due to the nature of food products stored and sold from a bottle shop. There is minimal risk of contamination or food poisoning associated with alcohol. Further, any food items tend to be small packaged items not susceptible to contamination (sweets, crisps, nuts etc). Therefore it is not proposed to require solid wall construction for a bottle shop, but restrictive conditions regarding types of food to be handled and stored will be applied.

The proposed hours of operation are considered appropriate for the location.

(c) Suitability of the site for the development

The site is part of an existing building in central Cabarita Beach/Bogangar and is suitable for the development.

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

The application was not required to be exhibited under Council's Notification Policy.

(e) Public interest

The bottle shop will increase the range of goods available for Cabarita/Bogangar residents, visitors and tourists. The public interest is served by increasing consumer choice.

OPTIONS:

1. Approve the development as per the recommendation.
2. Refuse for specified reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

As indicated previously Council's legal advice states that the covenant restricts what Council can do with the Pandanus Parade public car park land and is not a positive restriction for use by 'The Beach' site.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The bottle shop is a suitable use for this site.

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 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).*

Nil.

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