



AGENDA

PLANNING COMMITTEE MEETING Tuesday 17 October 2006

Chairman: Ms Lucy Turnbull

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

THIS
PAGE
IS
BLANK

THIS
PAGE
IS
BLANK

ITEMS FOR CONSIDERATION OF THE COMMITTEE:

ITEM	PRECIS	PAGE
	REPORTS THROUGH GENERAL MANAGER	5
	REPORTS FROM DIRECTOR PLANNING & DEVELOPMENT	5
P1	[PD-PC] Development Application DA06/0698 for Expansion of the Ivory Tavern and Fitout and Use of a Bait and Tackle Shop at Lot 437 DP 755740, No. 156 Wharf Street, Tweed Heads	7
P2	[PD-PC] Development Application DA06/0271 for Multi Dwelling Housing Comprising Six (6) Town Houses at Lot B DP 385567, No. 40 Dry Dock Road, Tweed Heads South	35
P3	[PD-PC] Development Application DA06/0933 for Road Reconstruction, Stormwater Works and Construction of Parking Bays and Footpaths at Riverside Drive & Tweed River, Tumbulgum	71
P4	[PD-PC] Review of Determination of Development Application DA04/1546 for the Demolition of Existing Dwelling, Filling of Site and Multi Dwelling Housing Development Comprising Six (6) x Three (3) Bedroom Townhouses at Lot 3 DP 1066634, No. 19 Lloyd Street	97
P5	[PD-PC] Development Application DA05/1491 for Change of Use from Motel to Multi-Dwelling Housing for 12 Units within Block No. 3 at Lot 1 DP 541241, No. 49 Tamarind Avenue, Bogangar	129
P6	[PD-PC] Development Application DA05/1464 for Works within Stage 1 of the Concept Plan Including Land Clearing, Bulk Earthworks, Construction of Principal Roads and Other Services at Lots 1 - 18 Section 1 DP 14895, Lots 1 – 18 Section 2 DP 14895, Lots 1	143
P7	[PD-PC] Development Application DA05/0793 for Clearing and Replanting Vegetation at Lot 1971 DP 133919, Ocean Avenue, Kingscliff	197
P8	[PD-PC] Development Application DA05/0775 for Clearing and Replanting of Vegetation and a Cycleway Path and Beach Access at Lot 500 DP 727420 Tweed Coast Road, Casuarina & Lots 4-6; Lots 14-15 Section 1 DP 14895 & Lots 1-8 and 11-12 Section 5 DP 14895, L	217
P9	[PD-PC] Exhibition and Adoption of the Tweed Development Control Plan	237
P10	[PD-PC] Development Application DA06/0358 for a Residential Aged Care Building at Lot 736 DP1072580 No. 1 Mylestom Circle; Lot 605-609 DP 1062587 Nos. 3, 5, 7, 9, 11 Mylestom Circle & Lots 730-735	239

DP 1072580, Nos. 41, 43, 45, 47, 49, 51 Ballina Street, P

P11	[PD-PC] Exhibition of Section 94 Contribution Plan No 28 - Seaside City	303
P12	[PD-PC] Draft Development Control Plan 55 – Seaside City	309
P13	[PD-PC] Murwillumbah Locality Plan, Knox Park Masterplan and Scoping Study - Selection of Consultancy	317

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.

THIS
PAGE
IS
BLANK

THIS
PAGE
IS
BLANK

P1 [PD-PC] Development Application DA06/0698 for Expansion of the Ivory Tavern and Fitout and Use of a Bait and Tackle Shop at Lot 437 DP 755740, No. 156 Wharf Street, Tweed Heads

ORIGIN:

Development Assessment

FILE NO: DA06/0698 Pt1

SUMMARY OF REPORT:

Council has received a development application for expansions of the Ivory Tavern and for the fitout and use of a bait and tackle shop at Lot 437 DP 755740, commonly known as the Pier 2 development on Terranora Terrace, Tweed Heads. The proposed development involves the expansion of the recently approved tavern into the remaining vacant tenancies, resulting in the entire ground floor of the Pier 2 development effectively being used for operation of the Tavern, with the only retail use being the small bait and tackle shop situated adjacent to the north-western entrance of the building.

The subject development has a complex history with numerous development consents and Section 96 amendments approved over the site. The original Pier 2 consent approved six smaller commercial tenancies in addition to the Tavern. This number was subsequently reduced to 2 larger tenancies beyond the Tavern, and has now evolved to the application before Council for extensive expansions of the tavern operations over the remaining floor area.

The extensions to the Tavern include an additional bar service area; male, female and disabled toilet facilities; gaming room; and additional bar lounge and outdoor relaxation areas. The proposed extensions would have a licensed floor area of 500m², resulting in the total licensed floor area of the completed Tavern being 842m². The proposed trading hours are in accordance with the original approved hours, that being 10am to 10pm Sundays through Wednesdays and 10am to 11pm Thursdays through Saturdays.

The proposed extensions are consistent with State Environmental Planning Policy No. 71 – Coastal Protection, the Tweed Local Environmental Plan 2000, Development Control Plan No. 2 – Site Access and Parking Code (DCP No. 2), DCP No. 5 – Development of Flood Liable Land, and are generally consistent with DCP No. 18 – Tweed Heads and DCP No. 45 – Socio-Economic Impacts of Development.

Four (4) submissions have been received to date objecting to the proposed development. The main issue raised in the submissions was the loss of amenity due to noise pollution late at night. The noise level impact assessment used in the development assessment of this application concludes that no unreasonable noise would occur at nearby residential properties and the amenity impact from the proposed expansion of the tavern is not unreasonable given the hours of operation and acoustic measures incorporated into the development

RECOMMENDATION:

That Development Application DA06/0698 for the Expansion of the Ivory Tavern and fitout and use of a bait and tackle shop at Lot 437 DP 755740, No. 156 Wharf Street, Tweed Heads be approved subject to the following conditions: -

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Floor Plan Nos 960 prepared by Ryder Hampton and dated 8 August 2006, except where varied by the conditions of this consent. [GEN0005]
2. Development Consent 0770/2000DA is to be amended to be consistent with the provisions of the Noise Level Impact Assessment report prepared by Craig Hill Acoustics dated 31 August 2006 (Reference: Pier 2 310806/1).
3. Advertising structures/signs to be the subject of a separate development application, where statutorily required. [GEN0065]
4. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia. [GEN0115]
5. The tavern is to provide a free bus on a pick up and drop off basis and is to be available during all trading hours of the hotel. The bus will have a minimum seating capacity of 12 persons.
6. Section 94 Contributions

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan. Use or occupation of the building is not permitted until all contributions have been paid to 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: \$10,423
S94 Plan No. 4 (Version 4.0)
Sector 2 - Tweed Heads South

[GENNS01]

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.

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

Use or occupation of the building is not permitted until all contributions have been paid to Council.

Water: 17.4ET @ \$4598 \$67,591

Sewer: 23.5560 ET @ \$2863 \$67,441

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. 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]

9. 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]

10. Prior to occupation of the building, a post construction noise level report prepared by a qualified acoustic engineer is to be prepared and submitted to Council for consideration. Such report shall address the requirements for establishing suitable operating noise levels for internal amplified music and all plant and equipment so as to prevent the creation of offensive or unreasonable noise levels occurring at adjacent residential properties.

The report shall also give consideration to mechanisms to be included in the design of the amplified music installation to restrict the amplified music to any approved maximum internal level. No internal amplified music shall be played prior to Council approving such a report.

[POCNS01]

11. Signs specifying any approved maximum noise level for internal amplified music are to be prominently displayed in all areas where there are means available to alter any approved level.

[POCNS02]

PRIOR TO COMMENCEMENT OF WORK

12. 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

13. 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]

14. 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]

15. 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]

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

[DUR1495]

17. All flooring materials in the bar 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]
18. 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]
19. 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]
20. Any proposed cooling tower installation must also include details on the proposed means of back flow prevention to the water supply prior to installation.
[DUR2475]
21. Pre-treatment devices must be serviced by a Council approved waste contractor. The applicant will be required to enter into a service agreement with this waste contractor. Pre-treatment device service frequency will be approved by Councils Manager Water.
[DUR2595]
22. Any premises used for the storage, preparation or sale of food shall comply with the relevant provisions of the Food Act 2003, Australian and New Zealand Food Standards Code, and Australian Standard AS 4674 - Design, Construction and Fitout of Food Premises.
23. The burning of builders waste on site by open fire is prohibited.
24. Suitable covering and protection is to be provided to ensure that no material is removed from the site by wind, causing nuisance to neighbouring properties.
25. All work associated with approval is to be carried out so as not to cause a nuisance to residents in the locality from noise, water or air pollution.
26. All plant and equipment as specified in the Noise Level Impact Assessment Report prepared by Craig Hill Acoustics dated 31 August 2006 (Reference: Pier 2 310806/1) is to be mounted on resilient mounts to reduce vibration and the transmission of noise with tonal components.

27. Where plant and equipment is proposed to be provided or is placed different than that used for the basis of the Noise Level Impact Assessment Report prepared by Craig Hill Acoustics dated 31 August 2006 (Reference: Pier 2 310806/1), then such plant and equipment is not to be installed until Council is provided with a Noise Level Impact Assessment from an appropriately qualified Acoustic Engineer which is based upon the manufacturer specified sound pressure level rating for the proposed plant or equipment.
28. If levels of amplified music are proposed other than that which has been allowed for in the Noise Level Impact Assessment Report prepared by Craig Hill Acoustics dated 31 August 2006 (Reference: Pier 2 310806/1), then the recommendations in the report relating to sound shell isolation are to be examined. A report from a qualified Acoustic Engineer is to be provided to Council detailing any sound shell isolation measures proposed for approval prior to installation.

[DURNS01]

USE

29. 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.
30. All activities associated with the occupancy of the building are to comply with the Protection of the Environment Operations Act, 1997.
31. The LA10 noise level emitted from the premises shall not exceed the background noise level (LA90) in any Octave Band centre frequency (31.5 Hz - 8KHz inclusive) by more than 5dB(A) between 7am and 12 midnight, at the boundary of any affected residence. Notwithstanding the above, noise from the premises shall not be audible within any habitable room in any residential premises between the hours of 12 midnight and 7am weekdays and 12 midnight and 8am weekends.

[USE0125]

[USE0135]

[USE0165]

32. Trading hours of the Tavern are restricted to the following: -

- * 10.00am to 10.00pm - Sunday to Wednesday
- * 10.00am to 11.00pm - Thursday to Saturday

Trading Hours of the Bait and Tackle Shop are restricted to the following: -

- * 8.30am to 5.00pm - Monday to Friday
- * 8.00am to 3.00pm - Saturday and Sunday
- * All deliveries and pickups relating to the business are to occur within the approved hours

[USE0185]

33. No items or goods are to be stored or displayed outside the confines of the premises.
34. Owners of buildings served by plant involving the operation of "cooling towers", "evaporative condensers" or "tepid water systems" must submit to Council, half yearly, a report detailing the maintenance, cleansing and chemical treatment of such plant every three (3) months in accordance with Part 6 of the NSW Public Health Act. [USE0445]
35. No amplified music is to be played in any way externally to the building. The use of large-scale amplification systems in any external areas of the building i.e. outside dining and boardwalk areas, is strictly prohibited. [USE0535]
36. All buses and other vehicles engaged in the letting down and picking up of patrons/occupants are required to switch off their engines if they are standing for a period of time greater than two (2) minutes.
37. All deliveries, including the entering and leaving of delivery vehicles, are to occur between the hours of 8.00am and 4.00pm Monday to Friday.
38. A Management Plan shall be prepared that addresses appropriate measures to be taken to ensure that staff and patrons do not cause offensive noise either during the hours of operation of the tavern or following the closing of the tavern. Such Management Plan shall address, but not be limited to the following:
- a) Measures to be taken to ensure that offensive noise is not created by either staff or patrons within the car parking areas.
 - b) Measures to be taken to ensure that staff do not create offensive noise during the course of operations of the tavern e.g. Dumping of bottles into waste bins during the night or early mornings.
- Such Management Plan is to be submitted to Council's Director of Environment and Community Services for consideration.
39. Garbage collection shall be limited to between the hours of 8.00am and 10.00am Monday, Wednesday and Friday in accordance with the Noise Impact Assessment report prepared by Craig Hill Acoustics dated 31 August 2006 (reference: Pier 2 310806/1) or to the satisfaction of Council's Director of Environment and Community Services.
40. All external lighting associated with the tavern building, including the bait and tackle shop, is to be shielded where necessary or required so as to prevent nuisance to any adjacent residential premises.

41. No form of public entertainment is to be carried out on the premises unless an approval for a Place of Public Entertainment has been obtained pursuant to the provisions of Section 68 of the Local Government Act, 1993.
42. No food, with the exception of beverages, shall be stored and/or prepared within the bar area.
43. The bait and tackle shop shall be limited to the sale of pre-packaged food only. No food is to be prepared within this area.
44. The premises shall comply with the requirements of The Liquor Administration Board.
45. All activities associated with the occupancy of the building are to comply with the Protection of the Environment Operations Act, 1997.
[USENS01]
46. The use being restricted to the floor area designated on the approved plan.
[USE0415]
47. All loading/unloading to take place within the boundary of the subject property in the specified loading bay areas.
[USE0525]
48. 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]

REPORT:

Applicant: Ivory Hotel Pty Ltd
Owner: Pier 2 Marina (NSW) Pty Ltd
Location: Lot 437 DP 755740, No. 156 Wharf Street, Tweed Heads
Zoning: 3(d) Waterfront Enterprise
Cost: \$2,000,000

BACKGROUND:

Council has received a development application for the expansion of a tavern fitout at Lot 437 DP 755740, commonly known as the Pier 2 development on Terranora Terrace, Tweed Heads. The application seeks consent for expansion of the recently approved Ivory Hotel operations and fitout into the two remaining vacant tenancies, and for the fitout of a small retail bait and tackle shop situated adjacent to the north-western entrance of the building being. This would be the only retail use operating from Pier 2. Staff and office amenities associated with the Hotel would occupy the first floor areas.

The existing approval for the Ivory Hotel fitout (0770/2000DA) covered a licensed floor area of 342m², not including back of house areas, kitchen, toilets and servery. The proposed extensions cover an area of approximately 500m², excluding the shop, toilets, common entry foyer and office areas, resulting in a total proposed licensed floor area of 842m².

The subject development has a complex history with numerous development applications and amendments being approved over the site. The original Pier 2 consent approved six smaller commercial tenancies in addition to the tavern. This number was subsequently reduced to 2 additional tenancies beyond the tavern, and has now evolved to the application before Council for extensive expansions of the tavern operations.

The subject site boasts a total area of 3,907.75m². It has direct street frontage to Terranora Terrace and Wharf Streets on its western and northern boundaries respectively. The site adjoins Council owned Afex Park to the east and abuts the Terranora Inlet waterway at its south-eastern corner. The site affords panoramic views of the waterway, adjoining marina and across the water to the Anchorage Island residential precinct.

The proposed trading hours of the Tavern are 10.00am to 10.00pm Sunday to Wednesday and 10.00am to 11.00pm Thursday to Saturday, whilst the bait and tackle shop would be restricted to trading between the hours of 8.30am to 5.00pm Monday to Friday and 8.00am to 3.00pm Saturday and Sunday. The proposal originally sought to extend the Tavern trading hours to midnight, Monday to Saturday. However, after consideration and comment by Council's Environmental Health Officer and having regard to the issues raised by objectors, the application was amended to preserve the trading hours approved under the original tavern proposal.

The Tavern will employ upwards of 60 staff on a rostered basis with some permanent and some part time and casual employees.

Historically, the subject site was used as a fishery co-operative and factory, commonly known as the Markwell's site. The factory was abandoned for some years before being demolished in 1999. Council's chief planning instrument identifies the site as one of high importance for waterfront enterprise re-development as it has the potential to become the key physical and visual gateway to Tweed Heads. Consequently, an application for a residential flat building (D96/0450) was refused in 1997.

The overall 'masterplan' for the Pier 2 development (D98/211) was approved in 1998 and detailed the building footprint and design, location and design of car parking, landscaping, the boardwalk and the marina. Since then, site has had a complex development history entailing multiple applications and amendments over varied stages, including:

- D98/0211 Mixed commercial/retail development - former Markwell Pacific site
- D98/211.01 Amendment to D98/0211
- D98/211.02 Amendment to D98/0211.01
- K98/539 Boardwalk, Public Car Park and Additional Commercial Floor Space
- K98/539.01 Amendment to K98/539
- 0685/2000DA Marina Facility
- 770/2000DA Establishment of a Tavern
- 770/2000DA.01 Amendment to 770/2000DA
- DA06/0251 Hire and Drive Pontoon Boat Rental Business

Construction of the Pier 2 development is essentially complete, with the only remaining works being the internal fitout of the building, including fitout for the Ivory Hotel tavern. The proposal currently before Council seeks approval for alterations and additions to the fitout of the Ivory Hotel, as initially approved under Development Application 0700/2000DA. Under the original approval, the tavern was to encompass a floor area of approximately 300m², with a single bar area, kitchen facilities, lounge and dining area and outdoor seating on the boardwalk. The remainder of the building was to be leased out as separate commercial or retail tenancies. The proposal has now been amended to involve expansion of the Ivory Hotel fitout and operations to occupy effectively the entire ground floor area of the Pier 2 development, with a small retail premises to be used as a bait and tackle shop to service the marina.

The application for establishment of a pontoon hire rental business operating from one of the marina berths was put up for Council resolution due to the contentious nature of on site car parking. The proposal was approved pending owners consent which, to date, has still not been submitted.

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 (d) Waterfront Enterprise. The proposed tavern is permissible with consent within the zone.

The primary objective for the 3 (d) zone is to encourage development related to waterfront and marine activities, recreation or tourism. The proposed tavern is considered directly compatible with the primary zone objective and satisfies the provisions of Clause 8 by virtue of its physical and visual links with the adjoining Pier 2 Marina, and the target market of the tavern being tourist-based, and given the Tweed town centre presently lacks an establishment of this nature which primarily targets visitors to the 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. All essential services are available to the site. An existing water service runs adjacent to the northern boundary of the site along Wharf Street; the sewer main running along the sites' frontage to Terranora Terrace is of suitable capacity; and appropriate stormwater outlets exist at the northern end 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 of the TLEP requires development to be carried out in accordance with the height limitation plan, and in that regard the site is restricted by an allowable height limit of 2 storeys. The completed Pier 2 development, within which the proposed tavern will be located, is two storeys in height and thus is consistent with the allowable height limit for the site. No additional buildings or structures are proposed as part of this development.

The objective of Clause 17 of TLEP is to ensure proper consideration of development that may have a significant social or economic impact. The extensions to the tavern would not have a significant adverse social, economic or visual impact at a regional scale. However, in local terms, the proposal may potentially impact upon the amenity of the area by way of traffic impacts, increase in noise and the objectives of the area. Notwithstanding, the applicant has provided an acceptable socio-economic impact assessment including amelioration measures along with a tavern management plan in which these issues are addressed. These are discussed later in this report.

Clause 35 of the TLEP requires an acid sulfate soils management plan be assessed where the proposed development is likely to interfere with acid sulfate soils. The subject site is identified as possessing Class 2 acid sulfate soil levels. Notwithstanding, 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

The North Coast Regional Environmental Plan 1988 (NCREP) provides guidelines for current and future planning and development on the North Coast of New South Wales, and also sets out planning controls for development within the region.

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 Pier 2 building form was approved under separate assessment, which considered the provisions of the abovementioned policies and guidelines. Furthermore, there are no alterations proposed to the built form of the development as part of this proposal.

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 extensions have no direct implications with respect to disturbance of the foreshore. With regard to access points, the boardwalk running the length of the development would provide ample access and viewing points for public enjoyment.

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. Furthermore, the adjacent marina berths provide opportunity for access to the site via the river for recreational boat users.

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. 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.

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

State Environmental Planning Policy No. 11 – Traffic Generating Developments

The proposal required referral to the Local Traffic Committee under the provisions of Schedule 2 of State Environmental Planning Policy No. 11 (SEPP 11). The Traffic Committee reviewed the application and commented as follows: -

“The Development Assessment Unit should ensure that the car parking is adequate for the conversion of the retail tenancies to additional tavern floor space”

Car parking has been assessed and is discussed later in this report. Sufficient spaces are provided on site to fulfil Council requirements for the tavern expansion, and as such the requests of the Traffic Committee and subsequently the provisions of SEPP 11 have been satisfied.

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.

The Pier Two development was designed to facilitate public access to the foreshore and encourage passive appreciation of the scenic qualities of the site through establishment of a public boardwalk and marina and embellishment of adjacent Afex Park. The proposed extensions would not impact upon the intended public access to the boardwalk or public areas of the marina and foreshore.

The proposed tavern extensions would not significantly impact foreshore amenity, views or scenic qualities, wildlife corridors, fish, marine vegetation, habitat, animals or plants. Neither would it cause any increase in overshadowing to the foreshore and would not impact upon coastal processes or be affected by coastal hazards and processes.

Tenancies 1 and 2 of the Pier Two development are currently vacant and the proposed Tavern extension would utilise this space. Having regard to the impressive outlook from the site over the river and marina, its proximity to the Tweed Heads town centre and existing transport networks, and the deficiency of establishments of this nature catering, in particular, to the tourist market in Tweed Heads, it is considered a particularly suitable development for the site.

In light of the above discussion, the tavern extensions are deemed consistent with the matters for consideration under Clause 8 and Clause 14 of SEPP 71.

Clauses 15 and 16 relate to effluent and stormwater disposal and require Council to be satisfied that the methods of disposal will not have a negative effect on the water quality of the Tweed River or estuary. The Pier Two development is fully connected to Council's reticulated water and sewage system and all waste would be collected, treated and disposed of in an appropriate manner.

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

Council has resolved to amend the Tweed Heads building heights within the Tweed Local Environmental Plan 2000 to adopt the building heights as contained in the Tweed Heads Master Plan. The proposed development is consistent with the maximum building height in the Master Plan.

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

Development Control Plan No. 18 – Tweed Heads

The vision statement for Tweed Heads is:

“To project Tweed Heads as a residential and tourist Mecca providing a variety of cultural, recreational and retail experiences, people-friendly streetscapes, attractive buildings and a choice of accommodation in a naturally beautiful environment”

The site is located within the Southern Boat Harbour Precinct, as identified under Development Control Plan No. 18 – Tweed Heads. The objectives for the precinct are to:

- Provide a sequence of complementary marine-related experiences along the foreshore of the Boat Harbour;
- Provide for the continuation and expansion of the commercial fishing fleet;
- Provide opportunities for the controlled expansion of marine-related commercial activities, including recreation and tourist opportunities;
- Provide limited opportunities for the mooring of recreational boats;
- Maximise opportunities for public recreation along the foreshore of the Boat Harbour, including the provision of adequate pedestrian and cyclist linkages;
- Improve vehicular access to and from the adjoining Boat Harbour.
- Enhance the visual quality of the boat Harbour, including views to and from the harbour;
- Provide a visual gateway to Tweed Heads;
- Ensure all publicly accessible areas are safe for users;
- Develop Monastery Hill primarily as a residential area.

The proposed expansion of the tavern is considered consistent with the relevant objectives in that it would provide additional space for public recreation and relaxation on the foreshore, whilst encouraging maximum utilisation and enjoyment of the scenic qualities of the Tweed River estuary. It is considered that the proposed extensions would facilitate use of the site to its full potential and is preferable over commercial tenancies, which would limit the convenience of the public access to the foreshore.

Clause 8.3.1 DCP No. 18 refers specifically to the subject site and states that any future development proposals over the site should build on its natural entryway position to incorporate an icon or a building/structure, which creates an entry statement for the Tweed Heads locality. Such an entry statement should exhibit a maritime theme that relates to the river, the foreshore and boat harbour and incorporates a high standard of landscaping. Any future development proposals for the site should incorporate public toilets, to cater for the increased patronage of this significant site and adjoining the Afex Park.

The proposal before Council is for the expansion of the internal operations and fitout of the premises only, and as such opportunities for incorporation of iconic features to the existing building as viewed from public places are limited. These preferred outcomes were integrated into the original proposal and design of the building and were given due regard at the time of assessment of the building. As such, Council is satisfied that addition of further features as a component of this development is not necessary and the existing building displays sufficient architectural detail and thematic design to satisfy the abovementioned strategic direction.

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

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 842m², which equates to a requirement of 241 parking spaces for the tavern alone. Upwards of 60 staff would be employed, requiring a further 30 spaces, and the retail area, office space and marina generate an additional 19 spaces. Therefore under Council's current requirements, a total of 290 spaces would need to be provided to satisfy the provisions of DCP No. 2.

The applicant has engaged a private traffic consultant to prepare a car parking assessment, which seeks relaxation of this standard. Council's traffic engineer has acknowledged that the current rate in DCP 2 is too high for taverns, 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. Parking would be considered satisfactory if the available on site parking spaces provided by the Pier Two development satisfy parking requirements at the reduced rate.

The following table details the compliance of the proposed development with the on-site car-parking provisions contained in DCP 2, and adopting the reduced hotel rate of 1 space per 10m².

Standard	Proposal	Requirement	Spaces provided	Complies
Hotel (1/10m ² plus 1 per 3 pokies)	842m ² 15 pokies	89.2		
Shop (1/25m ²)	35m ²	1.4		
Office (1/40m ²)	110m ²	2.75		
Marina (0.5 per berth)	29 berths	14.5		
Total		108 (-20% ESD) = 86	98	Yes

As indicated in the table, the required number of car spaces is 108, based on Gold Coast City Council rates for tavern developments and Tweed Shire Council DCP 2 rates for the other components of the development. On application of the ESD and reduced car parking dependence principles of clause 4.11 DCP 2, the required number of car spaces for the site may be reduced to 86. A total of 98 spaces have been formed and line marked on site in accordance with the approved plans for the Pier Two development, and this number is considered to satisfy Council requirements.

In regard to the proposed parking layout the development is considered to comply with AS 2890.2 and the objectives of DCP 2. Car movements and traffic flow within and through the site are also considered acceptable. Given the area constraints over the site and the provision of surplus spaces when calculated using the GCCC rate, the granting of a variation to the DCP 2 requirements is deemed warranted in this instance.

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 proposed development involves extensions to an already approved tavern within the Pier Two Development. The existing licensed floor area of the tavern is 342m², and the application before Council seeks extensions of 375m² of indoor licensed area and 125m² outdoor licensed area, resulting in a total licensed floor area of 842m². *Approval of this application would result in a licensed floor area more than double the size of existing approved floor area. Consequently, the potential capacity of the premises with respect to clientele numbers effectively also doubles. In that regard, the possibility exists for substantially greater socio-economic impacts than those considered as part of the original tavern assessment.*

The applicant has submitted an amended Socio-Economic Impact Statement identifying the revised 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 report are discussed in further detail in the following sections.

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 (d), 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 newspaper.

The proposal currently before Council was notified to 302 landowners and occupiers, encompassing residences up to 450 metres from the subject site; and was also advertised in the Tweed Link. The application was available for viewing by the public for a period of 14 days from Wednesday 12th July to Wednesday 26th July 2006.

During that time, four submissions were received in opposition to the proposal. The main issues raised were loss of amenity due to increased noise late at night and increased traffic issues, littering and drunken behaviour in the area. These submissions are assessed in detail in the report.

(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 hotel would result in both positive and negative impacts on the social and economic fabric of the Tweed. The anticipated adverse impacts are specifically in relation to noise, increased traffic, and general impact on the amenity of the area (by virtue of increased vandalism, littering and public drunken behaviour), whilst anticipated positive impacts are predominately related to employment generation, an increase in local economic activity and encouraging use of public space in a prominent central location. By and large the abovementioned issues were addressed in assessment of the original tavern proposal, however due to the increase in floor area and subsequent potential for increase in a range of impacts, they must now be reconsidered in light of the revised Socio-Economic Impact Statement and Acoustic Report.

Noise

The primary concern identified with the extension of the tavern is noise. The Ivory Hotel is aimed at providing a friendly atmosphere for the purposes of dining and social drinking with background music. As a venue, the tavern will not be promoting amplified live music, rather entertainment will be limited to solo or duo acts. Furthermore, the location on site, layout and orientation of the tavern has been designed to minimise noise impact by facing the open water area, away from residential properties to the north and west.

In light of the above, the predominant noise sources would be voices of patrons drinking and dining in the outdoor boardwalk area; patrons leaving the hotel; plant and machinery; and deliveries and refuse collection.

An Acoustic Report accompanying the proposal examined the possible Intrusive Noise Levels expected to emanate from each of these noise sources at two sensitive residential locations to the east and west of the subject site. Council's Environmental Health Officer has examined the findings of the report and has concluded that, based on the assessment undertaken, it appears that no unreasonable noise would occur at these nearby residential locations.

Appropriate conditions of consent have been applied specifically aimed at ameliorating any further potential noise impacts. These include requirements for a post-construction pre-occupation noise level report to be submitted to Council to establish suitable operating noise levels for internal amplified music; further on site review of plant and equipment at specific intervals post-occupation; the provision of resilient mounts to reduce vibration and the transmission of noise with tonal components; restrictions on hours of operation, refuse collection and delivery times; and appropriate management of patrons leaving the premises.

Social Impacts

Anti-social behaviour cannot be overlooked in the assessment of this proposal, however it must be stressed that the proposal is for extensions to the already approved tavern. Although the extensions would result in an increase in patron numbers, the overall impact of the tavern would not differ greatly from that already approved. The proposed methods of surveillance and management of patron behaviour outlined in the Tavern Management Plan are considered acceptable for a tavern development of this nature.

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 and amenity impacts are likely to occur at nearby residential sites.

In a positive light, the proposed tavern would provide an alternative to the common pub setting in an effort to extend the range of choice for local residents and visitors to the area. The tavern will be unique to the Tweed Heads area, with the nearest similar establishment being the Salt Bar in the Salt development at South Kingscliff.

Economic Impacts

The hotel will employ upwards of 60 staff on a rostered basis. This will provide a noteworthy increase in employment opportunities in the Tweed for hospitality industry workers such as chefs, kitchen hands, wait staff, bar staff, cleaners and security. In addition to employment, the tavern would require fresh produce, seafood and meats to supply the restaurant, thereby providing positive multiplier effects to the local economy.

Traffic and Parking

The tavern extensions will generate additional traffic to the site. Notwithstanding, the one way directional flow of traffic through the site increases the operational efficiency of the car park, and the left turn only ingress from Wharf Street and left turn only egress to Terranora Terrace would ameliorate the risk of accidents as both these roads are quite busy and right hand turns would hinder traffic flow past 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 given the thorough assessment previously undertaken for the Pier Two development.

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 Traffic Impact Assessment submitted with the application maintains that Ivory Hotel Management intends to provide a shuttle bus service, which will operate on demand and provide regular service to the Tweed Heads CBD. 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.

(c) Suitability of the site for the development

The proposal before Council is for the expansion of an already approved land use on the subject site. The extensions would have no effect on the overall operation of the tavern except for an increase in the number of patrons.

With respect to the operation of the Pier Two development site as an entity, the removal of two retail outlets and replacement with the tavern extensions would result in a change of character from mixed use, to predominately a recreational and social gathering place. Given the fickle nature of contemporary specialised retail outlets, especially in unique locations such as this, and the fact that the tenancies are not in an ideal location to draw a large shopping market, it is not unrealistic to anticipate that tenants not benefiting from prosperous returns could change hands regularly, thereby creating a nature of inconsistency and unreliability for the site. Extending the one operation across the entire premises will bring greater stability to both the character and function of the site.

Bearing in mind the intent under DCP 18 for new development on the subject site to “build on it’s natural entryway position to incorporate an icon which creates an entry statement for the Tweed Heads locality”, it is considered a large, easily recognisable social and recreational gathering place is far more suitable for such a prominent site than a mixed use development consisting of a small ‘boutique’ tavern and two small retail or commercial tenancies.

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

In accordance with Council’s Development Control Plan No. 42, the proposal was notified to nearby and adjoining landowners and occupiers, encompassing 302 allotments within a 450 metre radius of the subject site. The proposal was also advertised in the Tweed Link on 11th July 2006 and was available for viewing by the public for a period of 14 days from Wednesday 12th July to Wednesday 26th July 2006.

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

Noise

Comments

“An increase in noise from the activities at the tavern which include noise from the traffic movements, music carrying over the water, people partying and boat noise.”

“We believe that noise will carry across the water from the venue both from music and cars leaving the car park.”

Assessment

These submissions specifically relate to residences located across Terranora Inlet on Anchorage Island. The potential impacts of noise have been discussed in detail previously in this report. Specifically, sound measurements taken at the closest residences considered to be in a 'sensitive' location across the water were considered. The amenity impact from the proposed tavern extensions at these locations is not considered unreasonable.

Internal Design

Comment

"I object to the movement of the bar to the deck as seen on the plan. These changes will affect me by music carrying over the water."

"Section 43 states no amplified sound externally to the building. We notice on the latest plan that the bar is situated at the front of the building facing the deck area. As seating is shown on the plan on the deck area then we would assume that music will be piped to this area."

Assessment

The major concern here is not related to the actual design of the bar area, but again relates to noise carrying over the water to nearby residences. As stated above, noise issues have been assessed and are not considered unacceptable. Furthermore, the condition inherent in the original Ivory Tavern consent that restricts the use of amplified music external to the building will also be imposed in this consent.

Trading Hours

Comments

"I object to the proposed extension of trading hours (from 10am to 10pm) to 10am to midnight....this new proposal will further impinge on my loss of amenity by extending my discomfort to midnight"

"We wish to express our concerns in the opening hours during the week as we were not notified of the extension of these trading hours."

Assessment

The application no longer seeks an extension to trading hours. Trading hours would remain as previously approved, that being 10.00am to 10.00pm Sunday to Wednesday and 10.00am to 11.00pm Thursday to Saturday.

Social Impact Assessment

Comments

“The Social Impact Assessment accompanying the application does not comply with the provisions of Development Control Plan No. 45 as it does not explicitly address alternatives including the ‘do nothing’ option and is considered inadequate in terms of consultation with the community and other key stakeholders. The application should have undertaken broader consultations in preparing the application.”

Assessment

The applicant has provided the following comments with regard to this objection:

“A detailed Social Impact Assessment has been provided for Council’s consideration in accordance with DCP 45. The preparation of the SIA included consultation and discussion with a range of organisations and key stakeholders including NSW Police, Tweed Shire Council staff, Department of Housing and other emergency housing and welfare providers.”

It is acknowledged that the SIA does not address the ‘do nothing’ alternative option, whereby the Pier Two development would have consisted of a tavern, marina and two retail/commercial tenancies. However, given the approval and construction of a large car yard opposite the site, and the consolidation of retail and commercial operations within Tweed Mall, Wharf Street and Bay Street to the north, it is anticipated that use of these tenancies as retail shops would fail to generate significant customers to be successful, ultimately leading to vacant tenancies, inconsistency in the character of services available and an overall underutilisation of the site.

Council staff have reviewed the SIA and it is considered acceptable with respect to the scale of the development and the purposes for which the assessment was required.

Car Parking

Comments

“Unlike most other developments there are no on street parking opportunities in this locality and therefore we question the comparison with like venues used in the Traffic Report to justify an approximate 50% reduction in car parking required under Development Control Plan No.2.”

Assessment

It is acknowledged that there is a lack of on street parking in the immediate vicinity. However, this is seen as a positive aspect of the development because all patron parking will be accommodated on site, which is the intended outcome of new developments. Council requires sufficient on site car parking in order to remove the pressure on surrounding streets and public car parks for patron parking. In principle, accommodating all patron parking on site reduces the distance patrons must walk to reach their vehicles, thereby effectively reducing the occurrence and severity of incidences of vandalism, violence and public disturbance in back streets; and also allows greater monitoring and intervention of potential drunk drivers.

The variations to the parking criteria set out in Development Control Plan No. 2 have been granted on advice and recommendations from Council's Traffic Engineer. Having regard to the traffic and car parking assessment submitted with the application and under the circumstances it is considered acceptable.

Traffic

Comments

"We believe the development will create a dangerous traffic problem with a left hand turn only onto a major road."

Assessment

The application before Council does not propose any modifications to the existing approved car parking layout or the movement of traffic into, out of or through the site. The existing left hand turn egress to Terranora Terrace was assessed by Council's Traffic Engineer and approved under modifications to the overall Pier Two development.

Mixed Retail Development

Issue

"The original tavern was approved as a 'boutique' operation designed to support the marina and compliment the proposed retail tenancies. This will no longer be the case as the tavern will occupy virtually the whole of the ground floor therefore eliminating the mixed retail precinct and as a result members of the public will only visit the area to use the tavern rather than for shopping and recreation. We submit that this will result in significant adverse social and economic effects arising from a tavern of this scale in this location, which displaces potential retail tenancies permanently".

Comment

The potential adverse social and economic impacts have been discussed in the above section and it is considered the total cumulative impacts of the proposal are acceptable.

Notwithstanding that the original approval did not specifically nominate the tenancies as retail tenancies, the supposed displacement of opportunities for retail tenancies is not considered a major impact. The site is not located in proximity to other retail or recreation precincts and as such two retail operations would have been unlikely to generate significant economic growth or attract a large shopper market to the site.

(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 significant employment opportunities in the hospitality sector; is targeting a specialised market which, up until now, has not been specifically targeted in the Tweed Heads area; and would result in an easily recognisable landmark building at a prominent entry point to Tweed Heads, it is considered appropriate for the site, would not set an undesirable precedent for future development in the 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 development 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:

The planning implications expected from granting a variation to the car parking standards with Development Control Plan No. 2 will be the setting of a precedent for future hotel and tavern development in the Tweed Shire to also seek a variation to the DCP for the lower car parking rates.

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.

CONCLUSION:

It is recommended that the proposed extensions to the Ivory Hotel and the fitout and use of one tenancy as a bait and tackle shop 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.

THIS
PAGE
IS
BLANK

THIS
PAGE
IS
BLANK

P2 [PD-PC] Development Application DA06/0271 for Multi Dwelling Housing Comprising Six (6) Town Houses at Lot B DP 385567, No. 40 Dry Dock Road, Tweed Heads South

ORIGIN:

Development Assessment

FILE NO: DA06/0271 Pt1

SUMMARY OF REPORT:

The proposed multi dwelling housing development is consistent with State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development, the Tweed Local Environmental Plan 2000, Development Control Plan No. 2 – Site Access and Parking Code, the provisions of Development Control Plan No 6 – Multi Dwelling Housing and DCP No. 39 – Energy Smart Homes Policy.

The proposal seeks consent to vary Council's Building Line Policy and requires a fence height variation.

One (1) submission has been received to date objecting to the proposed development. The main issues raised in the submission include site suitability, loss of privacy and overshadowing.

RECOMMENDATION:

That: -

- 1. The fence height variation and building line variation be supported.**
- 2. Development Application DA06/0271 for multi dwelling housing comprising six (6) town houses at Lot B DP 385567, No. 40 Dry Dock Road Tweed Heads South 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. The development shall be completed in accordance with the Statement of Environmental Effects and Drawing Nos**
 - SP 2, prepared by Bristow Architects, and dated 20/06/2006,**
 - SP 3, prepared by Bristow Architects, and dated 20/06/2006,**

- SP 4, prepared by Bristow Architects, and dated 20/06/2006,
- SP 5, prepared by Bristow Architects, and dated 20/06/2006, and
- SLI 01 Ver.C, prepared by Planit Consulting and dated June 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]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

5. 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	\$4,378
(b) Open Space (Structured): S94 Plan No. 5	\$2,280
(c) Open Space (Casual): S94 Plan No. 5	\$487
(d) Shirewide Library Facilities: S94 Plan No. 11	\$2,012
(e) Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$409
(f) Community Facilities (Tweed Coast - North) S94 Plan No. 15 North Coast	\$2,460
(g) Emergency Facilities (Surf Lifesaving) S94 Plan No. 16	\$586
(h) Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$3,708.45
(i) Cycleways S94 Plan No. 22	\$1,028
(j) Regional Open Space (Structured) S94 Plan No. 26	\$6,799
(k) Regional Open Space (Casual) S94 Plan No. 26	\$2,499

[PCC0215/PSC0175]

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

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

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

Water DSP4:	5 ET @ \$4598	\$22,990
Sewer Banora:	5 ET @ \$2863	\$14,315

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]

7. All imported fill material shall be from an approved source. Prior to the issue of a construction certificate details of the source of fill, documentary evidence that the fill material is free of any contaminants and haul route shall be submitted to the General Manager of Tweed Shire Council or his delegate for approval.

[PCC0465]

8. 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]

9. Permanent stormwater quality treatment shall be provided in accordance with the following:
- (a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
 - (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.

- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management. Typical water sensitive features include infiltration, maximising permeable/landscaped areas, stormwater retention /detention/reuse, and use of grass swales in preference to hard engineered drainage systems.
- (d) Specific Requirements to be detailed within the Construction certificate application include:
 - (i) Shake down area along the haul route immediately before the intersection with the road reserve.

[PCC1105]

10. Stormwater

- (a) Details of the proposed roof water disposal, including surcharge overland flow paths are to be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. These details shall include likely landscaping within the overland flow paths.

[PCC1135]

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. Building works in the vicinity of Council's existing sewer main are to comply with the following requirements;

- a) All footings are to be located a minimum of 1m horizontally clear of the sewer main, such that the main is outside the zone of influence of all footings. All footings and slabs within the area of influence of the sewer main are to be designed by a practising Structural Engineer. The engineer is to submit a certification to the Principal Certifying Authority that the design of such footings and slabs will ensure that all building loads will be transferred to the foundation material and will not effect or be affected by the sewer main.
- b) Any fencing erected across the sewer main shall be designed and constructed with removable panels.
- c) Any above-ground structures erected over the sewer main shall provide a minimum vertical clearance of 2.4m from finished ground level to the underside of the structure or any associated protrusion.
- d) The car wash bay being constructed over the sewer main shall be provided with non-interlocking permeable paving (paving units to be maximum 600mm sq.).

Any driveway slabs constructed over the sewer main shall be in plain grey concrete *only*. In such instances a keyed and dowelled construction joint is to be provided in the slab, a minimum of 1m from the sewer main. This construction joint does not need to be on both sides of the sewer main or parallel to it, and can be located to align with other adjacent features.

[PCCNS01]

14. Prior to the issue of the construction certificate, amended plans are required: -

- * which set the north-eastern side setback to a minimum of 1.5m, and
- * the north-eastern side decks are to be redesigned so that they are regular in shape. The shade sails must also be redesigned accordingly.

The above is to be submitted to Council and shall be completed to the satisfaction of the Director of Planning and Development.

[PCCNS02]

15. The site is to be filled to a minimum level of RL 2.6m AHD. The fill is to be retained by perimeter structural walls with concrete lined perimeter drainage or other approved treatment. Site filling and associated drainage is to be designed to address drainage on the site as well as existing stormwater flows onto or through the site, and minimizing the impact of filling on local drainage. Detailed engineering plans of fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.

[PCC0675]

PRIOR TO COMMENCEMENT OF WORK

16. 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]

17. 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]

18. Residential building work:

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

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

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

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

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

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

[PCW0235]

19. 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]

20. 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]

21. 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]

22. **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]

23. **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]

24. **It is the responsibility of the contractor to identify and locate all underground utility services prior to commencing works.**

[PCW1165]

25. **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]

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]

27. Prior to commencement of work all actions or prerequisite works required at that stage, as required by other conditions or approved management plans or the like, shall be installed/operated in accordance with those conditions or plans.

[PCW0015]

28. Written approval for any application under Section 138 of the Roads Act 1993 is required prior to commencing works within the road reserve.

[PCW0705]

DURING CONSTRUCTION

29. 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]

30. 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]

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

[DUR0245]

32. 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]

33. 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]

34. 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]

35. 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]
36. The finished floor level of the building should finish not less than 225mm above finished ground level. [DUR0445]
37. The development is to be carried out in accordance with the current BASIX certificate and schedule of commitments approved in relation to this development consent. [DUR0905]
38. 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]
39. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction. [DUR2185]
40. The guttering downpiping and roof waste water disposal system is to be installed and operational before the roofing is installed. [DUR2245]
41. 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]
42. 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]

43. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position. [DUR2505]
44. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993. [DUR2515]
45. All water plumbing pipes concealed in concrete or masonry walls shall be fully lagged. [DUR2525]
46. 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]
47. 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]
48. 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]
49. The structure is to be sited at least one metre horizontally clear of sewer main on site. All footings and slabs within the area of influence of the sewer main are to be designed by a practising Structural Engineer. The engineer is to submit a certification to the Principal Certifying Authority that the design of such footings and slabs will ensure that all building loads will be transferred to the foundation material and will not effect or be affected by the sewer main. [DUR2645]

50. 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]
51. 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]
52. Provision to be made for the designation of 1 durable and pervious car wash-down area/s. The area/s must be identified for that specific purpose and be supplied with an adequate water supply for use within the area/s. Any surface run-off from the area must not discharge directly to the stormwater system.
[DUR0975]
53. 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.
[DUR2205]
54. 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]
55. Vehicles leaving the premises shall be sufficiently free from dirt, aggregate or other materials such that materials are not transported onto public roads.
[DUR2415]

56. No acid sulfate soil shall be disturbed as a result of the development. [DURNS01]
57. The burning off of trees, associated vegetation felled by clearing operations and the like, and builders waste is prohibited. [DURNS02]
58. During construction, all works required by other conditions or approved management plans or the like shall be installed and operated in accordance with those conditions or plans. [DUR0015]
59. The provision of adequate vehicular access in accordance with Council's "Vehicular Access to Property Construction Specification" pamphlet, including the provision of an invert crossing at the kerb and gutter where required and paving of the driveway across the footpath to the front alignment to the satisfaction of the General Manager or his delegate.

Such to specifically include the following:

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

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

Paving bricks are not acceptable unless laid on a 100mm thick concrete base. [DUR0065]

60. 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]
61. 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 to Dry Dock Road 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]

62. 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]

63. 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]

64. 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]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

65. 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]

66. 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]

67. Prior to the issue of a final occupation certificate adequate proof and/or documentation is to be submitted to the Principal Certifying Authority to identify that all commitment on the BASIX "Schedule of Commitments" have been complied with.
[POC0435]
68. 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]
69. Prior to the issue of a final occupation certificate, all conditions of consent are to be met.
[POC1055]
70. All landscaping work is to be completed in accordance with the approved plans prior to any use or occupation of the development.
[POC0475]
71. 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]
72. 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]
73. The existing disused layback is to be removed and replaced with kerb and gutter to match existing, in accordance with Council's adopted Design and Construction Specifications.
[POCNS01]
74. An easement to drain sewage (in accordance with Council's standards: minimum 3m wide) is to be created over the existing sewer main that traverses the site. Furthermore, the owner shall indemnify Council for any and all future damage to the development that may occur, as a result of Council needing to access the sewer main at any time in the future. Documentary evidence of easement creation is to be submitted to Council prior to issue of the Occupation Certificate.
[POCNS02]

USE

75. 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]

76. 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]

77. All externally mounted air conditioning units, water tank pumps and any other associated equipment shall be acoustically treated so as to avoid the creation of intrusive or unreasonable noise to any occupant of neighbouring or adjacent premises.

[USE0235]

REPORT:

Applicant: Coastivity Pty Ltd
Owner: Mr BL Smith and Ms GR Kenway
Location: Lot B DP 385567 No. 40 Dry Dock Road, Tweed Heads South
Zoning: 2(b) Medium Density Residential
Cost: \$1M

BACKGROUND:

Council's records indicate that consent was granted for the demolition of single storey cottage on 20 October 1999 (K99/1422) and for an attached dual occupancy on 17 December 2003 (DA03/1407).

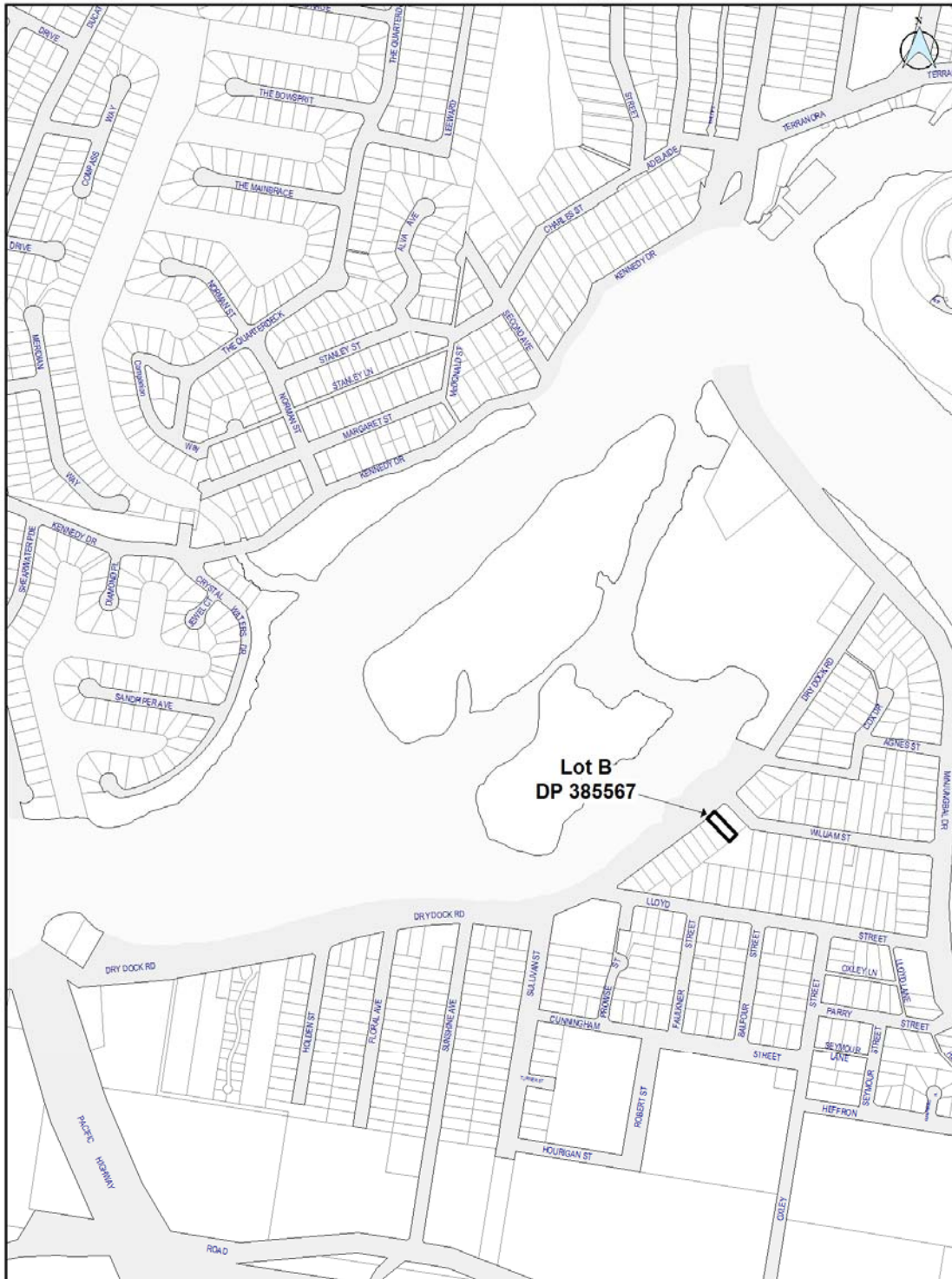
The subject site is constrained as result of the site's dimensions, being 16.4m wide and 50.3m in length and as a result of a sewer main traversing the site. The subject site is surrounded by medium density residential developments.


The site has frontage and access to Dry Dock Road, is vacant and according to the Statement of Environmental Effects is clear of any significant vegetation.

The current application seeks consent to construct a three (3) storey multi dwelling housing development consisting of 6 x 2 bedroom units. On-site car parking is provided within garages on the ground level, which are accessed internally from the proposed driveway. The proposal will provide for some diversity of housing types within the precinct.

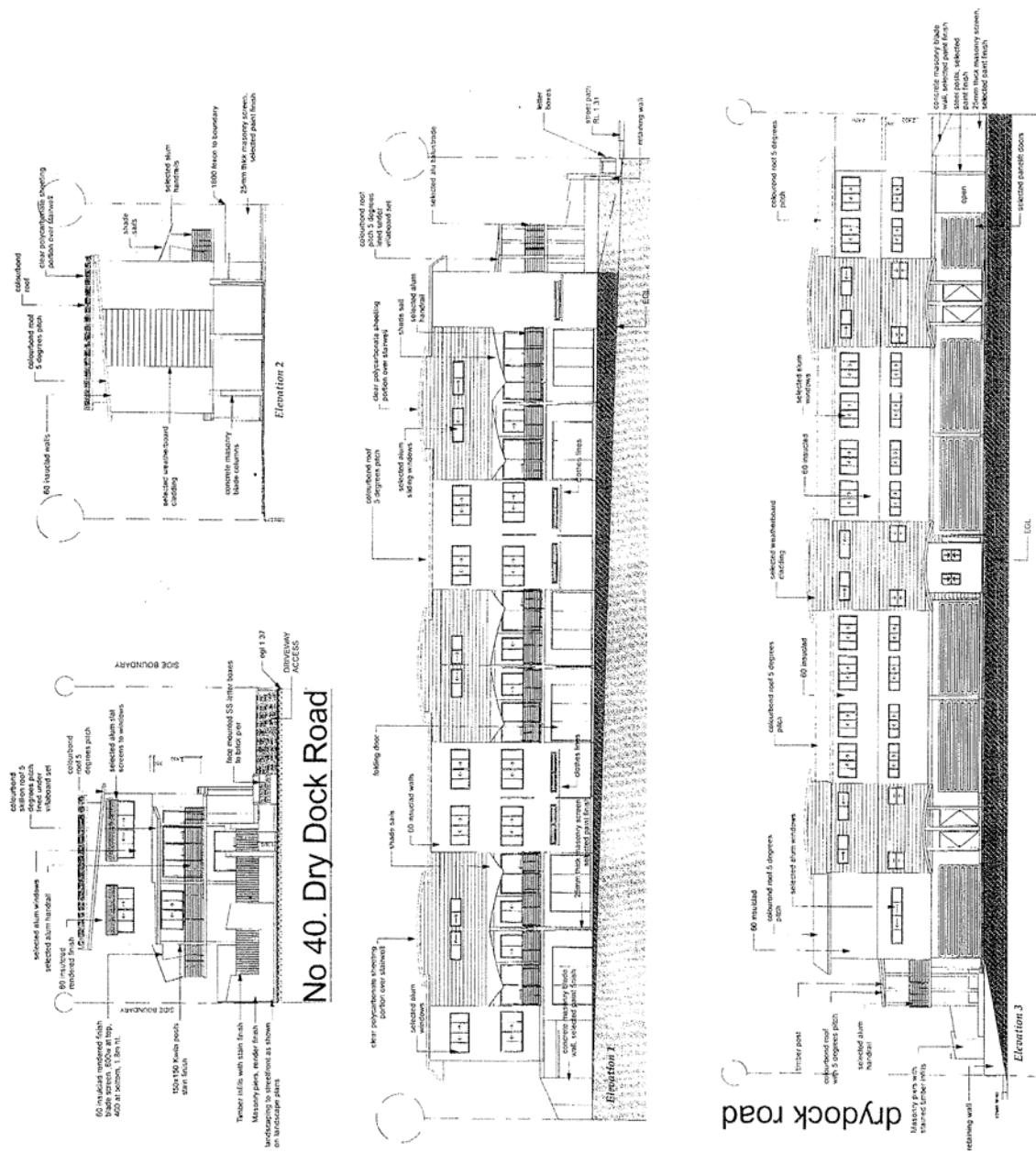
One submission has been received objecting to the proposed development.

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 Murwillumban, NSW, 2484 Tel: (02) 6670 2409 Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i> Lot B DP 385567 No. 40 Dry Dock Road, Tweed Heads South</p>	 TWEED HEADS SHIRE COUNCIL	<p>PLANNING REFORMS UNIT Site Plan</p>	
<p>File: N:\Munsys\A4P - SITE PLAN\Wor</p>	<p>Author: J.Batchelor</p>	<p>Date: 10/Oct/2008</p>	<p>Scale: 1:7,500</p>	<p>Sheet: 1 of 1</p>

ELEVATION PLAN:



elevations

LANDSCAPING PLAN:

LANDSCAPE PLAN

STATEMENT OF LANDSCAPE INTENT

The landscape philosophy for this proposal is to establish a theme which will complement the architecture of the Apartment building and is consistent with the existing landscape character of the area. The landscaping will be consistent with the Tweed Shire Council's Codes and Policies. Plant species are readily available and suitable for the conditions into which they are to be grown on site. The proposed building will:

- (a) maintain and strengthen the subregional character;
- (b) provide an environment for people to live, work, visit and invest in; and
- (c) provide an attractive streetscape that reinforces the function of the street, enhances the amenity of the built form of ground level and enhances the building image. The streetscape design remains consistent with that endorsed by Dry Dock Road and act to reinforce the existing character. Consideration has been given to:
 - (a) taking full advantage of the relatively mild coastal climate;
 - (b) providing a mix of plant materials at street level;
 - (c) creating an informal yet sophisticated style of outdoor recreation and living; and
 - (d) the 'old use of a few varieties of plant material in the planting design.

Due to the arrangement of the dwelling unit's foyer a landscape treatment incorporating landscape and vegetation will be utilised to maintain privacy, a sense of place and permeability. The berthing within the communal and private areas of the dwelling units is proposed to include some mature and mature palm trees (small species) so as to reduce the scale of the landscape and to provide a sense of place and privacy. The use of mature plants and ground coverings will also be incorporated to reduce the level of maintenance within these planting beds and enhance the visual appearance of the development internally.

The selection of plant material (listed below) for the development will be based on the plants ability to perform such practical functions as:

- (a) Creating Privacy and Security;
- (b) Providing shade and shelter from wind;
- (c) Creating a Buffer Zone and Fenced Areas by Providing Shade; and
- (d) Screening Objectionable Views.

The entryway provides a hospitable pedestrian link for both residents and visitors to each dwelling unit. The entry and walkways are to be paved with some landscaping and hardscaping elements around the entry features. The pathways at ground level ensure personal safety of pedestrians and residents by maintaining visual sight lines at entry and exit nodes.

The private courtyards will include unique landscape treatments combining various paving materials, with masonry and railings to provide green setting and to back up the monotonous of the hardscape. The private courtyards will also include small planting beds with a layered planting treatment combining groundcovers, shrubs and palm species to further soften the landscape.

The use of native mature palms or trees situated in the deep planting will effectively break-up the massing and appearance of the building. The use of landscape and hardscape elements will be used to complement the architectural style of the development providing uses of common themes, textures, colours and materials. The location and planting of plant material will maintain access to all utilities and services associated with the site.

The general intent for the landscaping of this proposal is to establish a safe and comfortable environment that is clearly defined and readily accessible by all users. Further to endorse an aesthetic area and to present a robust and permeable landscape.

PLANTING SCHEDULE

Type	No.#	Scientific Name	Common Name	Flower Colour	
Trees	1	Archontophara Cariniflora	Borghese Palm	N/A	
	2	Phoenix palm	Queen Palm	N/A	
	3	Canarium intermedium	Cumeroo Island Cypress	N/A	
	4	Phoenix palm	Fraxino Palm	White	
	5	Phoenix palm	Fraxino Palm	White	
	6	Phoenix palm	Fraxino Palm	White	
Shrubs	7	Rapanea spectabilis	Redwood	Red	
	8	Rapanea spectabilis	Redwood	Red	
	9	Chamaecrista	Redwood	Red	
	10	Chamaecrista	Redwood	Red	
	11	Chamaecrista	Redwood	Red	
	12	Chamaecrista	Redwood	Red	
	13	Chamaecrista	Redwood	Red	
	14	Chamaecrista	Redwood	Red	
	15	Chamaecrista	Redwood	Red	
	16	Chamaecrista	Redwood	Red	
	17	Chamaecrista	Redwood	Red	
	18	Chamaecrista	Redwood	Red	
	Grass/low ground covers	19	Stylidium pectinatum	Native Resembling	White
		20	Stylidium pectinatum	Native Resembling	White
		21	Stylidium pectinatum	Native Resembling	White
		22	Stylidium pectinatum	Native Resembling	White
		23	Stylidium pectinatum	Native Resembling	White
		24	Stylidium pectinatum	Native Resembling	White
25		Stylidium pectinatum	Native Resembling	White	
26		Stylidium pectinatum	Native Resembling	White	
27		Stylidium pectinatum	Native Resembling	White	
28		Stylidium pectinatum	Native Resembling	White	

INDICATIVE IMAGES

SCALE: 1:250 @ A3

PLANNING CONSULTANTS
NSW
JUNE 2006
10/1

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

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

Tweed Local Environmental Plan 2000

The subject site is located within the 2(b) Medium Density Residential Zone. Multi dwelling housing is permissible within the zone with consent.

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

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

The proposed development is considered to be of an appropriate quality and density for the precinct 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.

Clause 16 of the TLEP requires that development be carried out in accordance with the allowable height limit. The subject site has an allowable building height of 3 storeys. The proposed development is consistent with the allowable height limit.

Clause 35 of the TLEP requires that Council consider the presence of acid sulfate soils (ASS) and the likely implications of the disturbance of ASS. The site is identified as being class 2 land. Council’s Environmental Health Officer has reviewed the proposal and advised that the works appear to be limited to the depth of fill. The officer has recommended conditions of consent in relation to the control of ASS.

Clause 34 of the TLEP requires that future potential flood damage by ensuring that only appropriate compatible development occurs on flood liable land. The subject site is identified as being flood affected. Council’s Engineer that the *“1% AEP is predicted to 2.6m AHD over the block with a required floor level of 3.1m AHD. The proposed floor level will be 5.21m AHD and so satisfies DCP 5”*. No objection was raised regarding the proposal.

North Coast Regional Environmental Plan 1988 (NCREP)

Clause 32(b) of the NCREP applies to the subject site as it is affected by the NSW Coastal Policy 1997.

The proposed development is considered to be consistent with the strategic actions and principles of the Coastal Policy. The proposal is consistent with the Coastline Management Manual and the North Coast: Design Guidelines. The proposal will not affect access to the foreshore.

The submitted shadow plans appear to not result in beaches or adjacent open space being overshadowed before 3pm midwinter or 6.30pm midsummer. The SEE states the proposal *“does not result in any overshadowing of foreshore reserves or the like during the evening hours”*.

State Environmental Planning Policies

SEPP No. 65 – Design Quality of Residential Flat Development (SEPP No. 65)

SEPP No. 65 applies to the proposed development as the building is consistent with the definition of a residential flat building being 3 storeys and containing more than 4 self-contained dwellings. The proposal is considered to be consistent with the design quality principles of the SEPP. The proposed bulk and height achieves the scale identified for the desired future character of the area. The development contributes to the character of streetscape and provides internal amenity and outlook. The design of the units enables casual surveillance of private, common and public open space areas. Internal privacy is maintained through the positioning of windows and living room areas.

State Environmental Planning Policy No. 71 – Coastal Protection

The subject site is located within a sensitive coastal location being within 100m above the mean high water mark of the sea, a bay or an estuary and within 100m of land to which SEPP No. 14 – Coastal Wetlands applies. An assessment in accordance with Part 2 Clause 8 Matters for consideration was necessary. Clause 8 of the Policy details sixteen matters for consideration for land within the coastal zone. The site is surrounded by residential development, including dwelling houses and multi dwelling housing. The proposal is consistent with the desired future character of the area.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The applicant has submitted a Basix certificate, which demonstrates that the proposal meets the requirements for sustainability.

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

There are no draft EPIs which apply to the proposal.

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

DCP No. 2 – Site Access and Parking Code

It is considered that the proposed on-site car parking is consistent with DCP No. 2 as detailed below:

Standard	Requirement	Proposed
Multi Dwelling Housing	1.5 spaces per dwelling = 9 spaces	11 spaces & 1 car wash/car space

The applicant was required to amend the development plans to achieve a minimum 1 metre horizontal clearance to the sewer main, which runs through the southern section of the site. As such the car space/car wash bay is required to be informal. The proposed on-site car parking is considered to be appropriate in this instance.

Council's Development Engineer has advised that the existing road network can cope with the extra traffic generated by the proposed development. The vehicular access is proposed on the southern boundary/Dry Dock Road frontage. Council's Development Engineer has advised that the driveway will need to rise at a near maximum gradient to reach the existing/future finished site level and the proposed internal parking is acceptable.

DCP No. 5 – Development of Flood Liable Land

As discussed previously, the subject site is identified as being flood affected. Council's Engineer that the *"1% AEP is predicted to 2.6m AHD over the block with a required floor level of 3.1m AHD. The proposed floor level will be 5.21m AHD and so satisfies DCP 5"*.

DCP No. 6 – Multi Dwelling Housing

The development application has been assessed with regards to the acceptable solutions and the performance criteria in accordance with the DCP. An assessment in accordance with the DCP is provided below:

Standard	Requirement	Proposed	Complies
Floor Space Ratio	0.5:1	0.687:1	Refer to assessment below
Minimum Landscaped Area	30% site area (828.299m ²) = 248.49m ² or 6 large dwelling x 80m ² = 480m ² whichever is greater. Therefore 480m ² required	293.43m ²	Refer to performance criteria assessment below
Front Fences & Walls	1.2m maximum if solid 1.8m if not solid	The front fence is a combination of solid materials (masonry) and timber slats. The masonry sections are 2.5m in height and the timber slat sections of the fence are 2m in height. The proposed fence is of a high quality and clearly defines the private and public domain. The design and materials used enable outlook from buildings to the street for safety and surveillance whilst maintaining a level of privacy for residents.	✓
Building Envelope	45° from 3.5m high at the side and rear boundary (excluding eaves and the like)	Minor encroachments including allowable encroachments, on the side and rear elevations	Refer to performance criteria assessment below
Setbacks	Primary Street frontage, Dry Dock Road – 6m North East side- 3m South West side – 3m Rear– 3m	3.4m to 6m 1m to 3m 6.3m 3m	Refer to performance criteria assessment below

Standard	Requirement	Proposed	Complies
Views, Visual and Acoustic Privacy	<p>Direct views between living area windows of adjoining dwellings should be screened/obscured where ground floor and first floor windows are within a 9m radius from any part of the window of the adjoining dwelling and other windows within a 12m radius.</p> <p>Direct views from living rooms of dwellings into the principle open space area of another dwelling should be screened/obscured within a 12m radius.</p>	<p>The proposed driveway and an adjoining developments' driveway are situated along the south-western side boundary. The distance between the two developments is approximately 10m. It should also be noted that the proposed south-western living room windows are high set to prevent direct views into the adjoining property.</p> <p>The distance between the proposed and existing property to the north-eastern side is approximately 5m. It should be noted that a recommendation has been made regarding increasing the setback from the decks on the north-eastern elevation to increase separation between the two developments.</p>	✓

<p>Minimum Private Open Space</p>	<p>20% of site area (828.299m²) with minimum dimension of 3m = 165.66m² and</p> <p>One part minimum 25m² with minimum dimension of 4m directly accessible from a living area</p>	<p>For the purposes of this assessment the proposed units are numbered left to right</p> <p>Private Open Space Total = 197.77m²</p> <p>Unit 1 = 34.71m² Unit 2 = 30.60m² Unit 3 = 91.80m² Unit 4 = 91.80m² Unit 5 = 91.80m² Unit 6 = 40.66m²</p> <p>The Private Open Space provided does not incorporate one part with a minimum dimension of 25m². The majority of the private open space provided is at the ground floor which is not directly accessible to a living area.</p> <p>Communal Open Space Total = 43.62m²</p>	<p>Refer to performance criteria assessment below</p>
<p>Daylight & Sunlight</p>	<p>Sunlight to the principle area of ground level private open space of adjacent properties is not to be reduced to less than 2 hours between 9am and 3pm on June 21. Where existing overshadowing by buildings is greater than this, sunlight is not further reduced by more than 20%.</p>	<p>The submitted plans demonstrate at 12 noon June 21, the shadow created by the proposal is generally contained within the subject site. An acceptable level of shadow is cast into the adjoining eastern property at this time. By 3pm June 21 the proposed shadow does not impact on adjoining properties.</p>	<p>✓</p>

Floor Space Ratio

It is generally accepted that the acceptable solution of 0.5:1 floor space ratio was not intended to apply to medium density development in the 2(b) zone due to its limiting nature. It is noted that many similar developments within the Tweed Shire operate at a similar density to that proposed. As such the variation being sought is not considered to be a matter requiring serious attention.

The applicant has provided the following submission addressing the landscape area performance criteria:

Landscaped Area

In accordance with the DCP, the design of multi-dwelling housing may achieve the landscape design objectives where:-

P1. The scale of new development is compatible with and sympathetic to the scale and bulk of existing development in the locality, particularly on the perimeter of the development site, or where that locality or development site has some heritage significance or distinctive character.

“Indeed it is evident to the author that almost no medium density developments submitted to Tweed Shire Council within recent times have fully complied with the required quotient of landscaping at the ground level, with the large majority relying upon the inclusion of 1st and 2nd level balconies to demonstrate or even get close to numerical compliance.

It is pertinent to note that the proposal when viewed from adjacent areas is not imposing and that the proposal provides for a significantly greater level of landscaped genuine ‘green’ area than that of the majority of existing medium density developments within the Tweed Heads South locality. Areas have been set aside for deep soil planting within the front setback and individual courtyards. Importantly each unit will have access to a ground level courtyard orientated to the north for open space and gardening purposes.

In terms of built form and character of Tweed Heads South, the locality is synonymous with affordable medium density housing. The proposal in terms of heights, setbacks, bulk and scale is identical to numerous other residential developments in the area and is consistent with the built form and character of Tweed Heads South and satisfies the performance criteria”.

P2. In areas subject to redevelopment, new development is compatible with the desired future character of the locality.

“The proposed development, with particular reference to the provisions of DCP No. 6 is generally consistent with the desired future character of the locality which is predominantly zoned 2(b) Medium Density Residential. In this regard, the proposed numerical landscaped area shortfall is ameliorated via substantial compliance with the other related provisions contained within Tweed LEP 2000 and DCP No. 6, in terms of setbacks, heights and building envelopes.

Reference is also made to the suitable provision of efficient useable balcony areas on the first floor, the articulation afforded each of the structures, and the close proximity of the active recreational facilities within the locality (Dry Dock Road cycling and walking tracks, Arkinstall Park and public reserve in Lloyd Street for example).

It is also submitted that very few applications comply with Council's landscaping requirements, and that the proposed development will in no way set a dangerous precedent. It is also important to remember one of the main aims of this proposal is to provide additional housing stock which while being attractive and functional will be marketed as affordable housing for first homeowners and the like. Pricing for these two bedroom units will be within an affordable range catering to those on average incomes in the Tweed Area".

"This area of Tweed Heads South has long been recognised as a locality for affordable housing with numerous medium density housing unit developments scattered throughout the neighbourhood and in close proximity to shopping, medical and recreational facilities. In the absence of any clear strategic policy direction from Council in relation to affordable housing, this development provides a solution to a growing problem in terms of affordability".

Comment:

The proposed development is considered to be compatible with and sympathetic to the scale and bulk of existing development in the locality.

The applicant has provided the following submission addressing the building envelope performance criteria:

Building Envelope

Amenity and Character

P1. Buildings are sited and are of such length and height that there is no significant loss of amenity to adjacent dwellings and land.

Daylight and Sunlight

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

"The proposed development consists of a three storey building and satisfies the building height plane requirements to the south western boundary. This is particularly important as this ensures the development does not adversely affect the adjoining property in terms of overshadowing during the winter months.

Living areas are generally restricted to the first floor and the ground level courtyards with the second floor to be utilised for sleeping quarters. Consequently opportunities to overlook into adjoining properties are limited, and the development having regard to the level of separation between residential buildings and the zoning of the land is appropriate".

Comment:

The sections of the proposal, which exceed the building envelope provision, consist of sections of the roof and second floor wall. These areas alone do not result in an unreasonable level of overshadowing on adjoining properties.

Street Setback

In accordance with the DCP, the design of multi-dwelling housing may achieve the streetscape, design and front setback objectives where:-

In Established Areas:

P1. The scale and appearance of new development is compatible and sympathetic to existing development in the locality, or desired future character of the locality, particularly on the perimeter of the development site and where that locality or development site has some heritage significance or distinctive character.

The proposed development is consistent with the scale and appearance of the existing development in the locality. The finishes and architectural features of the proposed development result in a contemporary design, which complement the traditional flat developments, which surround the site.

P2. Front setbacks are generally consistent with those of adjoining development, though not necessarily identical. Some variations to minimum setbacks can be considered particularly where such variations are used to create streetscape variety and interest.

The proposed street setback is consistent with that of the adjoining developments'. It is considered that this staggered setback creates interest in the streetscape.

In All Areas:

P8. Provision is made for appropriate street tree planting having regard to the appearance and role of the street, solar access requirements and utility services.

Provision has been made for the provision of landscaping within the front setback. As discussed previously in this report, the proposal is consistent with the Building Sustainability Index SEPP.

P9. Roof reflectivity has minimal impact in the locality.

A condition has been imposed requiring all the wall and roof cladding to have low reflectivity.

North-Eastern Side Setback

The proposed decks situated along the north-eastern elevation encroach into the side setback. The acceptable solutions allow encroachments up to 50% into the setback area, being 1.5m in this instance. The proposed decks are setback a minimum of 1m from the north-eastern boundary which is considered to be unnecessary. The decks are also irregular in shape, particularly the proposed triangular sections. These sections are considered to be unusable.

The applicant was requested to amend these decks to increase the setback from the north-eastern boundary and to redesign the decks using a more regular shape. The applicant submitted further justification stating:

“It is submitted that the decks are useable and although a regular shape could be provided we fail to see what additional advantages are provided in terms of aesthetics or privacy”.

It is suggested that an increased setback from the boundary and therefore an increased setback from the adjoining medium density development is appropriate. Amending the decks so that they are more regular in shape will result in additional useable private open space being available to each unit. As such it is recommended that a condition of consent be imposed requiring the north-eastern decks be setback a minimum of 1.5m from the north-eastern boundary and the decks be redesigned to a more regular shape. The shade sails must be amended accordingly.

Private Open Space

In accordance with the DCP, the design of multi-dwelling housing may achieve the useable open space design objectives where:-

P1. Open space is clearly defined to distinguish between communal and private open space.

The private open space proposed for each unit is clearly distinguished from the communal open space due to the accessibility to each of the decks and ground floor spaces.

P2. Open space areas are of dimensions to suit the projected requirements of the dwelling occupants, and to accommodate some outdoor recreational needs as well as providing space for service functions.

The proposed open space areas on the ground floor are considered to be suitable. As previously stated, the proposed decks along the north-eastern elevation are not considered to be suitable in terms of their design. Amended plans will result in this matter being addressed.

P3. Part of the private open space is capable of serving as an extension of the function of the dwelling for relaxation, dining, entertainment, recreation and children’s play, and is accessible from a main living area of the dwelling.

Some of the private open space provided is directly accessible from the living areas. The private open space provided at the ground level enables sufficient room for entertaining, recreation and children's play areas.

P5. Orientation of the open space helps to achieve comfortable year round use including the provision of shaded areas.

The submitted overshadowing plans show that the proposed private open space areas will receive both shade and full sun throughout the year.

Development Control Plan No. 39 – Energy Smart Homes Policy

As stated previously the applicant has submitted documentation satisfying the SEPP for Basix requirements. The proposal is also consistent with DCP No. 39.

Building Line Variation Policy

As previously stated, the deck situated in the Dry Dock Road frontage encroaches into the 6m front setback. The proposed deck is largely an open structure, the only enclosed section being the roof. The deck creates interest in the northern elevation of the development. The proposed deck is considered to be consistent with the matters within variations to the building line.

Fence Height Variation

As previously discussed, the proposed front fence requires a variation to the height outlined in the acceptable solution of DCP No. 6. The fence is a combination of masonry and timber slats, being a maximum height of 2.5m and 2m respectively. The proposed fence is of a high quality and defines the public and private open space. The design and materials used enable outlook from the building to the street whilst maintaining privacy for residents.

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

Clause 92(a) NSW Coastal Policy 1997

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.

(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

Overshadowing

As discussed previously, the proposed 3 storey development will overshadow adjoining properties. The submitted plans demonstrate at 12 noon June 21, the shadow created by the proposal is generally contained within the subject site. A section of the adjoining property to the site's north-eastern will be overshadowed. This overshadowing is largely restricted to the north-western boundary of the site. By 3pm June 21 the proposed shadow does not impact on adjoining properties.

In determining whether the current application unreasonably impacts upon the amenity of the adjoining properties the intended character of the area must be considered. The area is nominated as a medium density area with a height limit of 3 storeys. The amenity of the adjoining developments and the desired future character of the area must also be considered. Having regard to the applicable planning controls and the desired character of the area it is considered that the proposal does not unreasonably detract from the amenity of the area.

(c) Suitability of the site for the development

The proposed development is to be constructed on land that is zoned for medium density housing as per the TLEP. The proposed design of the development is considered to be consistent with the desired future character of the area whilst being sympathetic to the existing development within the precinct. The suitability of the site has been demonstrated by way of the assessment of the proposal against the applicable environmental planning policies, DCPs and Council policies.

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

The development application was notified for a period of 14 days. To date, one submission has been received. The issues raised in the submission are outlined below.

Issue	Comment	Assessment
Site Suitability	The subject site has been filled previously. Approximately 2/3 of the site was filled with hard fill suitable to build upon. The remainder of the site was filled with soft fill. The suitability of development over the entire site is questioned.	Council's Development Engineer has reviewed the development application. The geotechnical stability of the site was specifically assessed with no issues being raised. This matter does not warrant refusal of the development application.

Privacy	The proposed balconies will intrude on the privacy currently enjoyed by adjoining properties.	This matter has been discussed in detail previously in this report. This matter does not warrant refusal of the development application.
Overshadowing	The proposed 3 storey development will prevent natural light from adjoining developments, particularly those whose private open space/decks are orientated towards the east.	This matter has been discussed in detail previously in this report. This matter does not warrant refusal of the development application.

(e) Public interest

The proposal is considered to be in the public's interest.

OPTIONS:

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

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 multi dwelling housing 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.

THIS
PAGE
THIS
PAGE
IS
IS
BLANK
BLANK

P3 [PD-PC] Development Application DA06/0933 for Road Reconstruction, Stormwater Works and Construction of Parking Bays and Footpaths at Riverside Drive & Tweed River, Tumbulgum

ORIGIN:

Development Assessment

FILE NO: DA06/0933 Pt1

SUMMARY OF REPORT:

Council has received a Development Application for road reconstruction, stormwater works and construction of parking bays and footpaths at Riverside Drive, Tumbulgum. Tweed Shire Council is proposing to undertake the works.

Proposed works will be carried out in conjunction with foreshore improvement works (riverbank revetment and weed control) at Riverside Drive, with entire works forming part of the Tumbulgum Foreshore Development Masterplan. Council has already issued development consent for foreshore improvement works (DA05/0554). Therefore this application covers road reconstruction, stormwater works and construction of parking bays and footpaths only.

Proposed works will be undertaken in two stages being:

- Stage 1: Works from Fawcett Street to Tumbulgum Bridge, Riverside Drive, Tumbulgum; and
- Stage 2: Works from Government Road to Fawcett Street, Riverside Drive, Tumbulgum.

Funding is currently available for Stage 1 of road reconstruction works and revetment works. Stage 2 of road reconstruction works will be completed once further funds are allocated.

The Development Application was notified for a period of fourteen (14) days. During this period a total of five (5) submissions were received. These submissions have been addressed in this report.

Having regard to the matters raised in this report, it is recommended that the Development Application be approved subject to the following conditions.

RECOMMENDATION:

That Development Application DA06/0933 for road reconstruction, stormwater works and construction of parking bays and footpaths Riverside Drive & Tweed River, Tumbulgum be approved subject to the following conditions:

GENERAL

1. Construction site work including the entering and leaving of vehicles is to be restricted to between 7.00 am and 5.00 pm Monday to Saturday and no work on Sundays or public holidays.

[GENNS01]

2. The development shall be completed in accordance with the Statement of Environmental Effects prepared by the Tweed Shire Council Design Unit and dated August 2006 and Drawing Nos WK05067/01 - WK05067/26 prepared by Tweed Shire Council Design Unit and dated January 2006, except where varied by the conditions of this consent.

[GEN0005]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

3. 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/pavement design/furnishings
- stormwater drainage
- water supply works
- sewerage works
- landscaping works
- sedimentation and erosion management plans
- location of all service conduits (water, sewer, Country Energy and Telstra)

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

[PCC0985]

PRIOR TO COMMENCEMENT OF WORK

4. Prior to the commencement of works all the required sediment & erosion control measures are to be installed and operational to the satisfaction of Council's Environment and Health Services Unit.

[PCWNS01]

5. Work in accordance with a development consent must not be commenced until:-

- (a) a construction certificate for the work has been issued in accordance with Councils adopted Development Design and Construction Specification C101 by:
- (i) the consent authority, or
 - (ii) an accredited certifier, and
- (b) the person having the benefit of the development consent:
- (i) has appointed a principal certifying authority, and
 - (ii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment, and
- (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the work.

[PCW0815]

DURING CONSTRUCTION

6. 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]

7. 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]

8. Regular inspections are to be carried out by the site supervisor to ensure that proper sediment & erosion control measures are maintained during construction.

[DURNS01]

GENERAL TERMS OF APPROVAL UNDER SECTION 219 OF THE FISHERIES MANAGEMENT ACT (Permit to (a) set a net... or (b) construct or alter a dam floodgate causeway or weir or (c) otherwise create an obstruction across or within a bay inlet river or creek or across or around a flat)

1. A permit under s198-202 of the Fisheries Management Act 1994 for dredge and reclamation activities be obtained prior to commencement of the works or demonstration to DPI of approval for the specified works from another public authority (other than a local Council).

2. A permit under s205 of the Fisheries Management Act 1994 for harm to marine vegetation (seagrass, mangroves, kelp) be obtained prior to commencement of the works if works are to harm marine vegetation.
3. Environmental safeguards (silt curtains, booms etc.) are to be utilised during construction/installation of the revetment wall to ensure there is no escape of turbid plumes into the aquatic environment. Erosion and sediment controls must be in place prior to commencing, during and after works.
4. Sand, gravel, silt, topsoil or other materials must not be stockpiled within 50 metres of the water unless surrounded by sediment control measures.

REPORT:

Applicant: Tweed Shire Council

Owner: Tweed Shire Council and Department of Land and Water Conservation

Location: Riverside Drive & Tweed River, Tumbulgum

Zoning: N/A

Cost: N/A

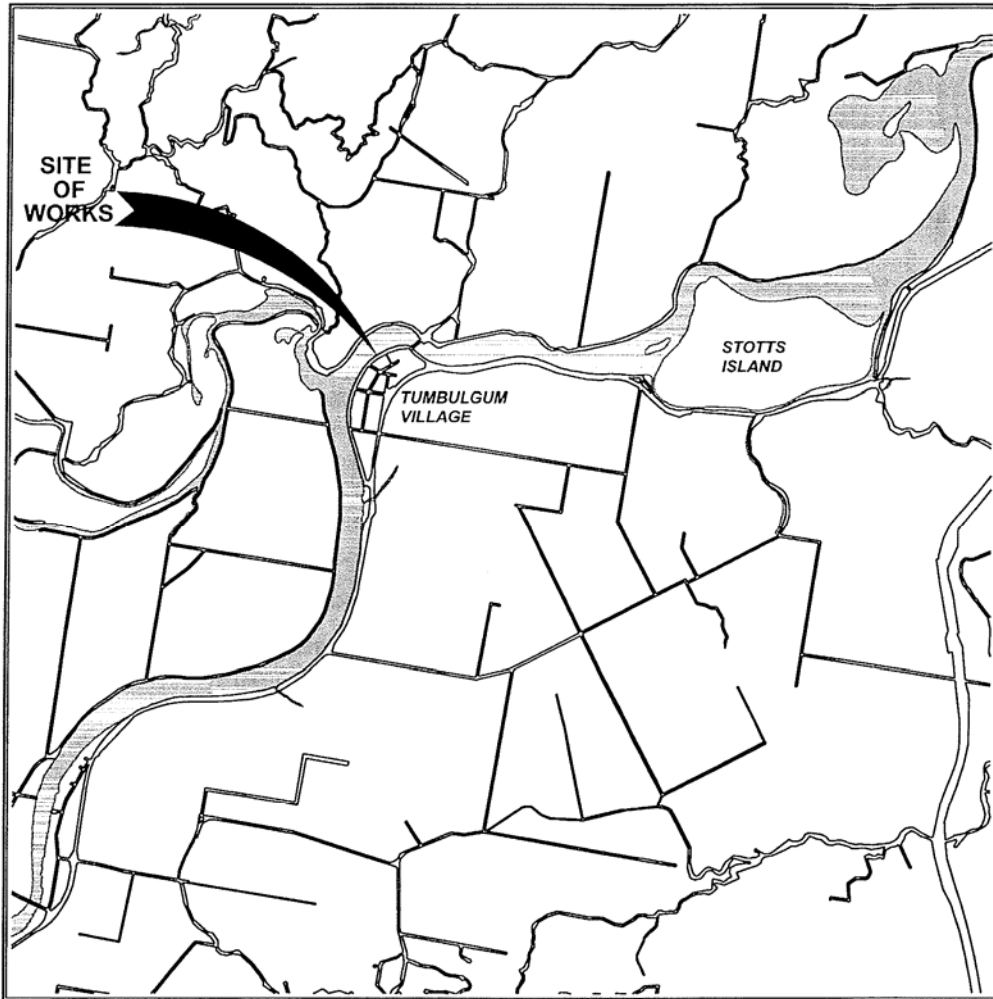
BACKGROUND:

Proposed works will be carried out in conjunction with foreshore improvement works (riverbank revetment and stabilisation and weed control) at Riverside Drive, with these works forming part of the Tumbulgum Foreshore Development Masterplan. Development consent has already been issued by Council for foreshore improvement works (DA05/0554). Therefore this application covers road reconstruction, stormwater works, and construction of parking bays and footpaths only.

The following works are proposed along Riverside Drive, Tumbulgum:

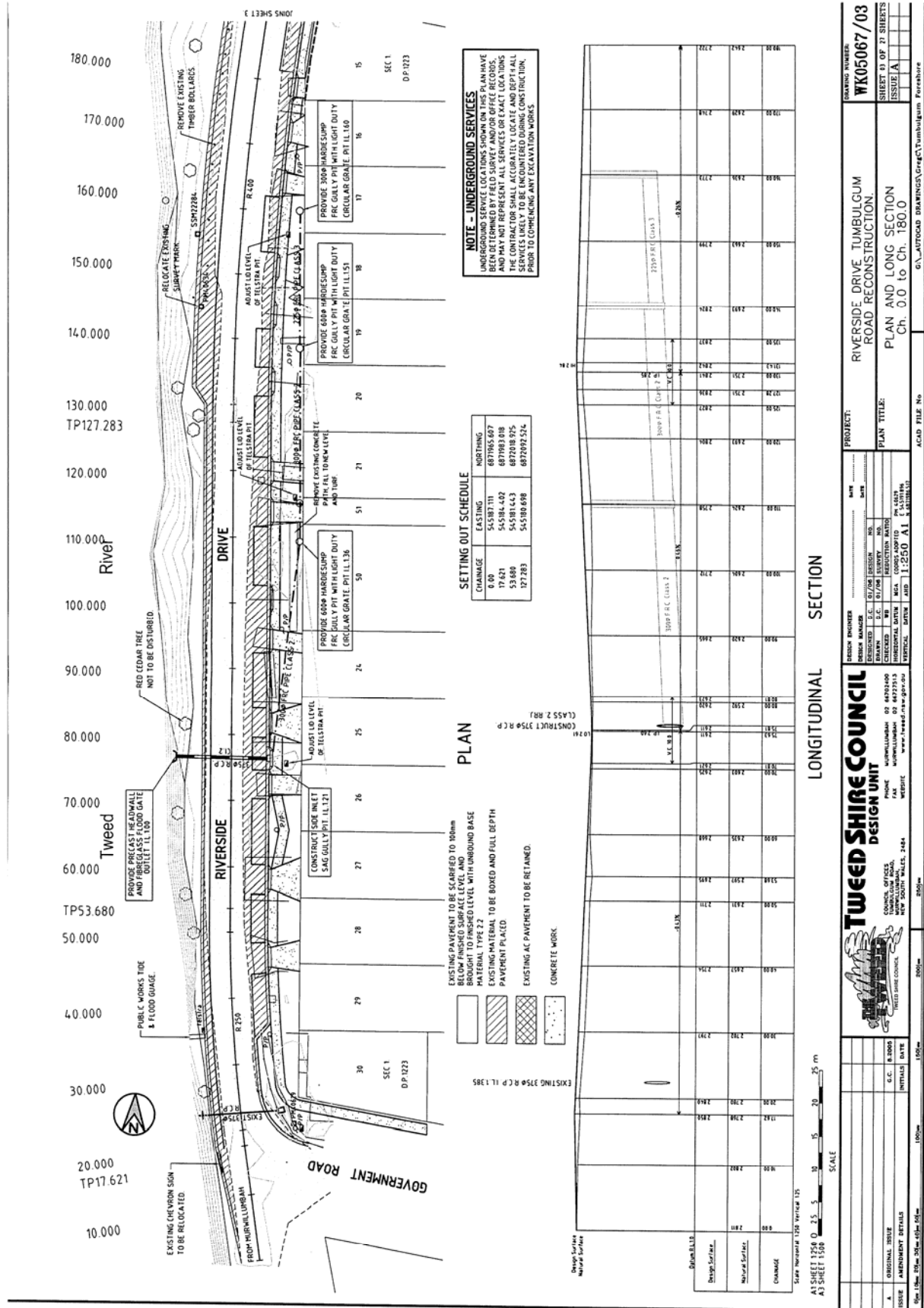
- Reconstruct the existing road pavement. In areas where the existing pavement is satisfactory it will be retained. In areas (as specified on work drawings) the existing pavement will be scarified to 100mm below finished surface levels and brought to finished level with unbound base material. In other areas (as specified on work drawings) the existing pavement will be cut and boxed and the full depth of pavement replaced
- Construct sub-soil drains on road gutters to improve stormwater drainage and construct new stormwater pits
- Install 225mm/300mm diameter stormwater pipe from chainage 75 to chainage 160 (distance of 85m) in the eastern Riverside Drive road reserve, connecting to a 375mm stormwater main, which passes underneath Riverside Drive and empties into the Tweed River. Provide a precast headwall and fibreglass floodgate outlet for this main
- Construct parking bays between chainage 230 and 260 and chainage 410 and 460 and a parking lane alongside much of the existing road
- Construct a concrete footpath and concrete property driveways alongside Riverside Drive between Government Road and Fawcett Street and Grey Street to end of works. Please note that where property acquisitions are required for footpath construction, these works are not included in this development application
- Remove existing timber bollards and replace with recycled plastic bollards and/or traffic barrier fencing to prevent vehicles driving on foreshore parkland areas
- Between chainage 480 and 900, fill isolated low lying areas to prevent pooling and allow surface water runoff to direct to river
- Limited vegetation removal
- Sediment and erosion control measures
- Traffic management.

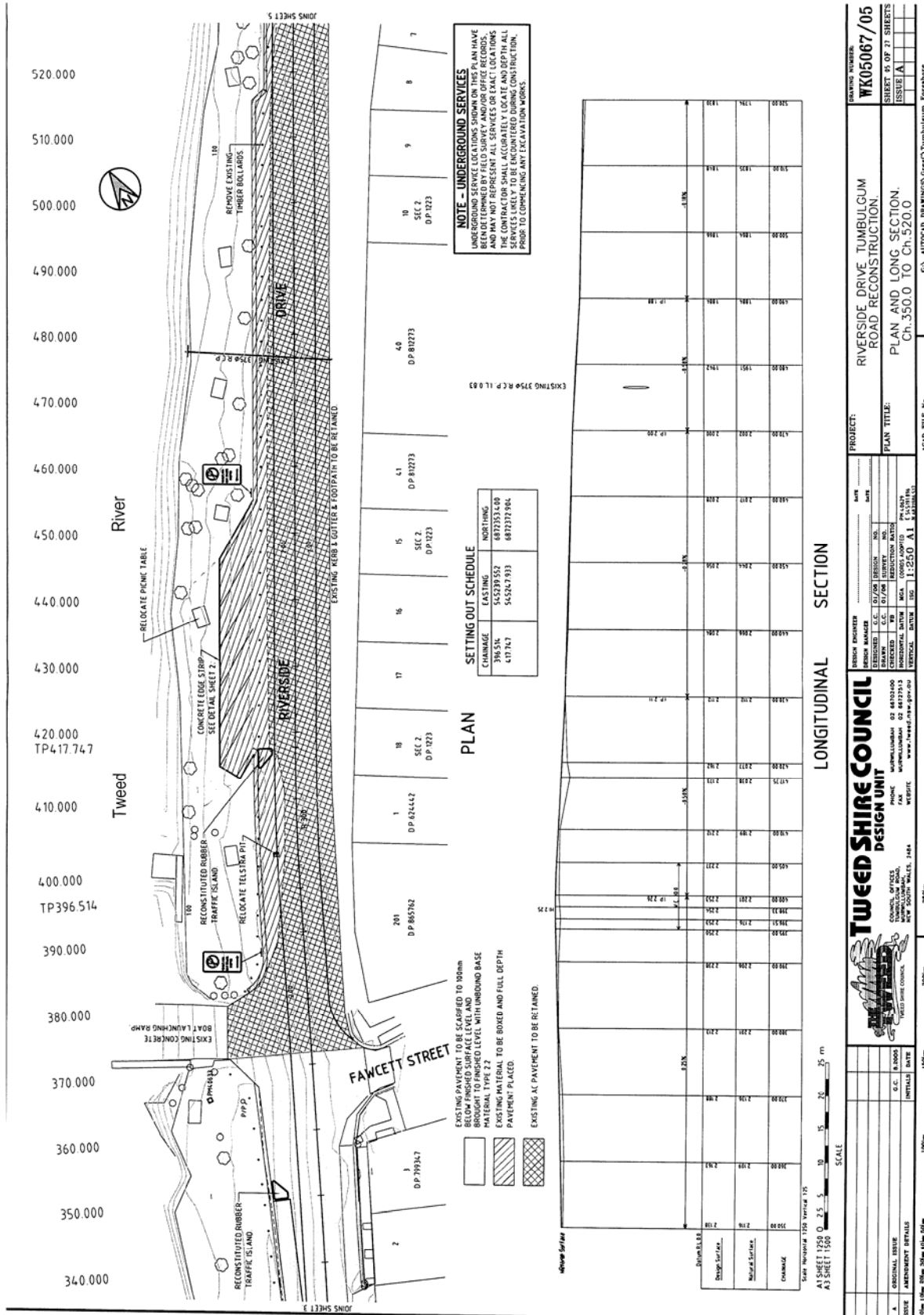
SITE DIAGRAM:

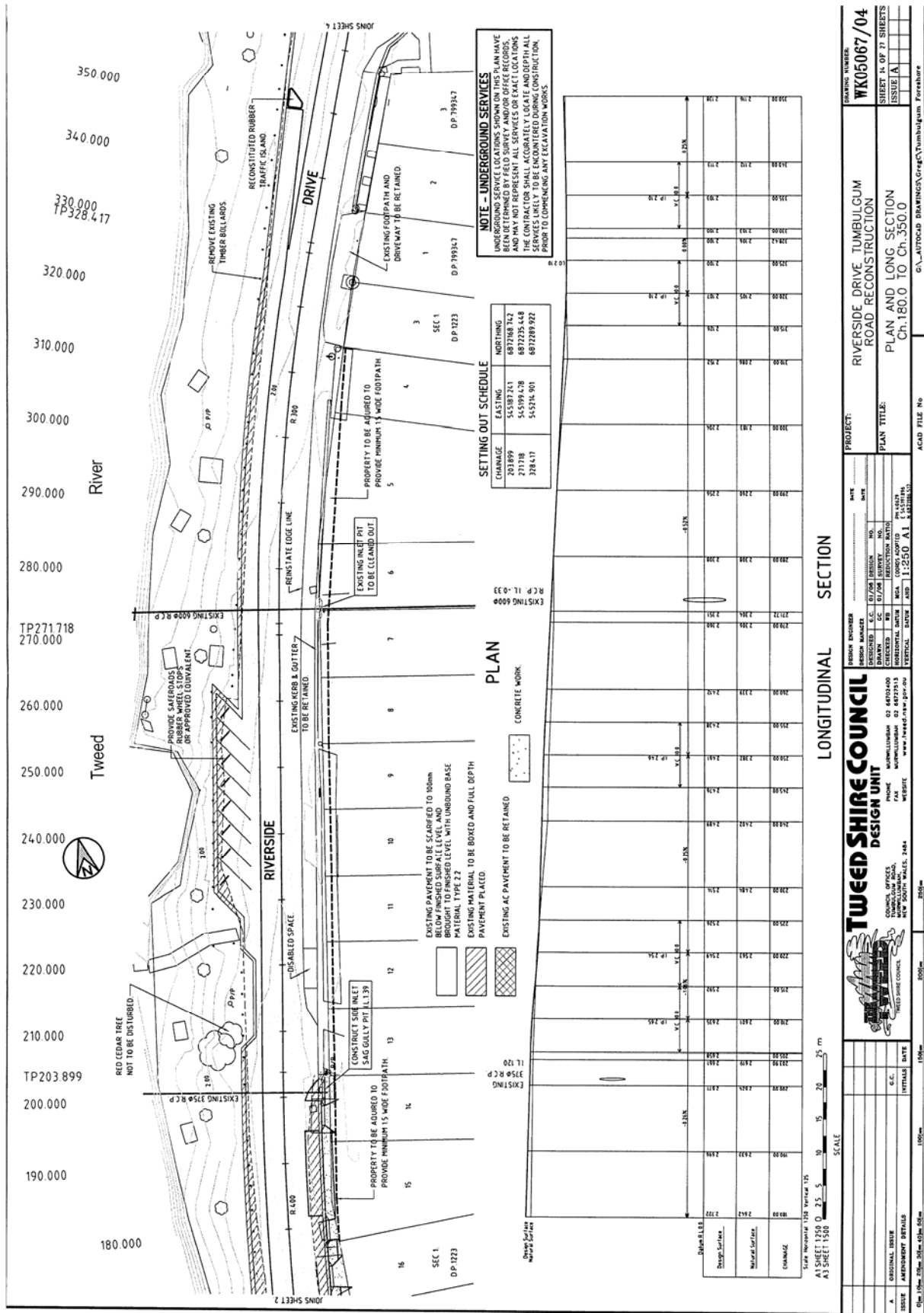


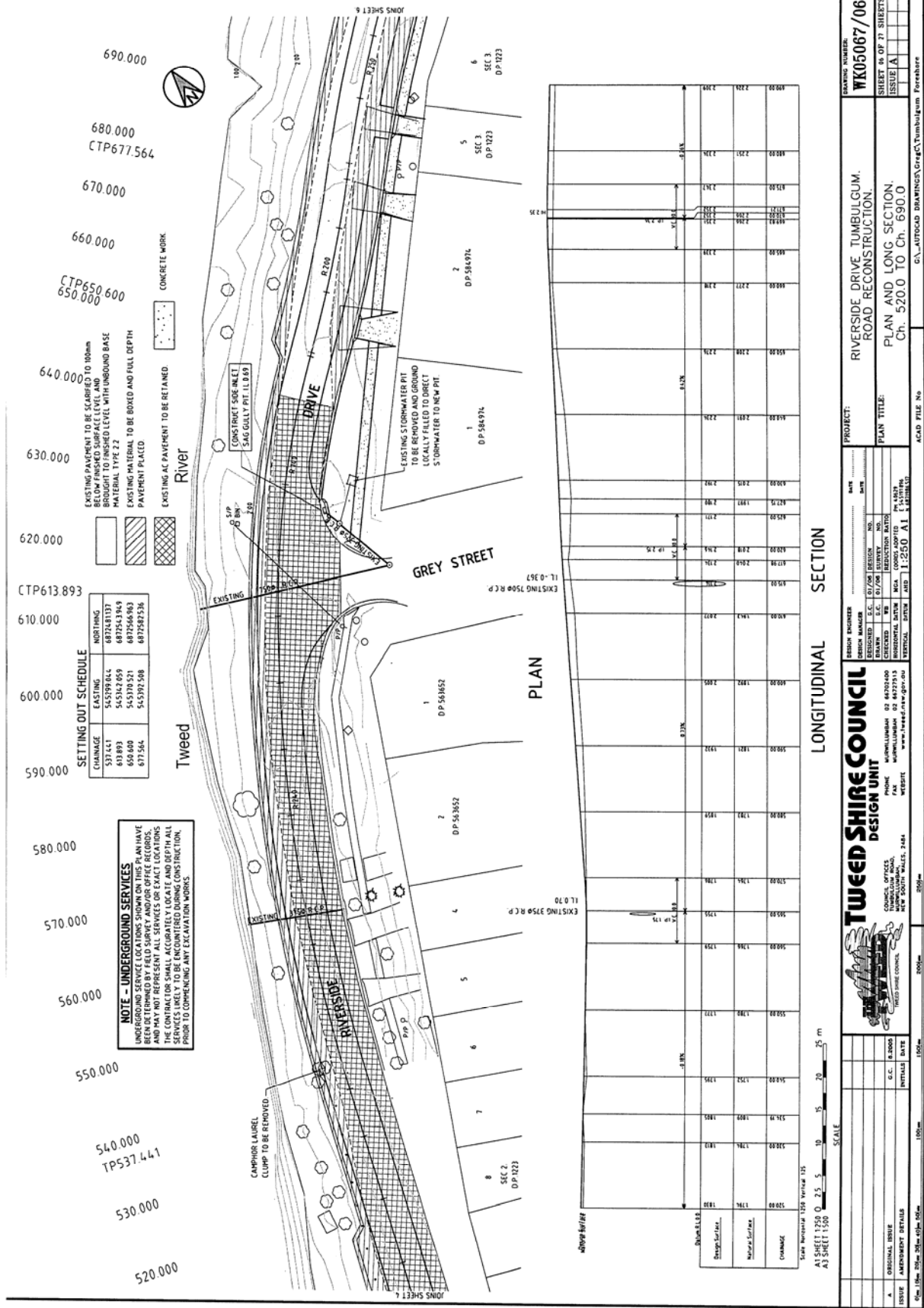
LOCALITY SKETCH

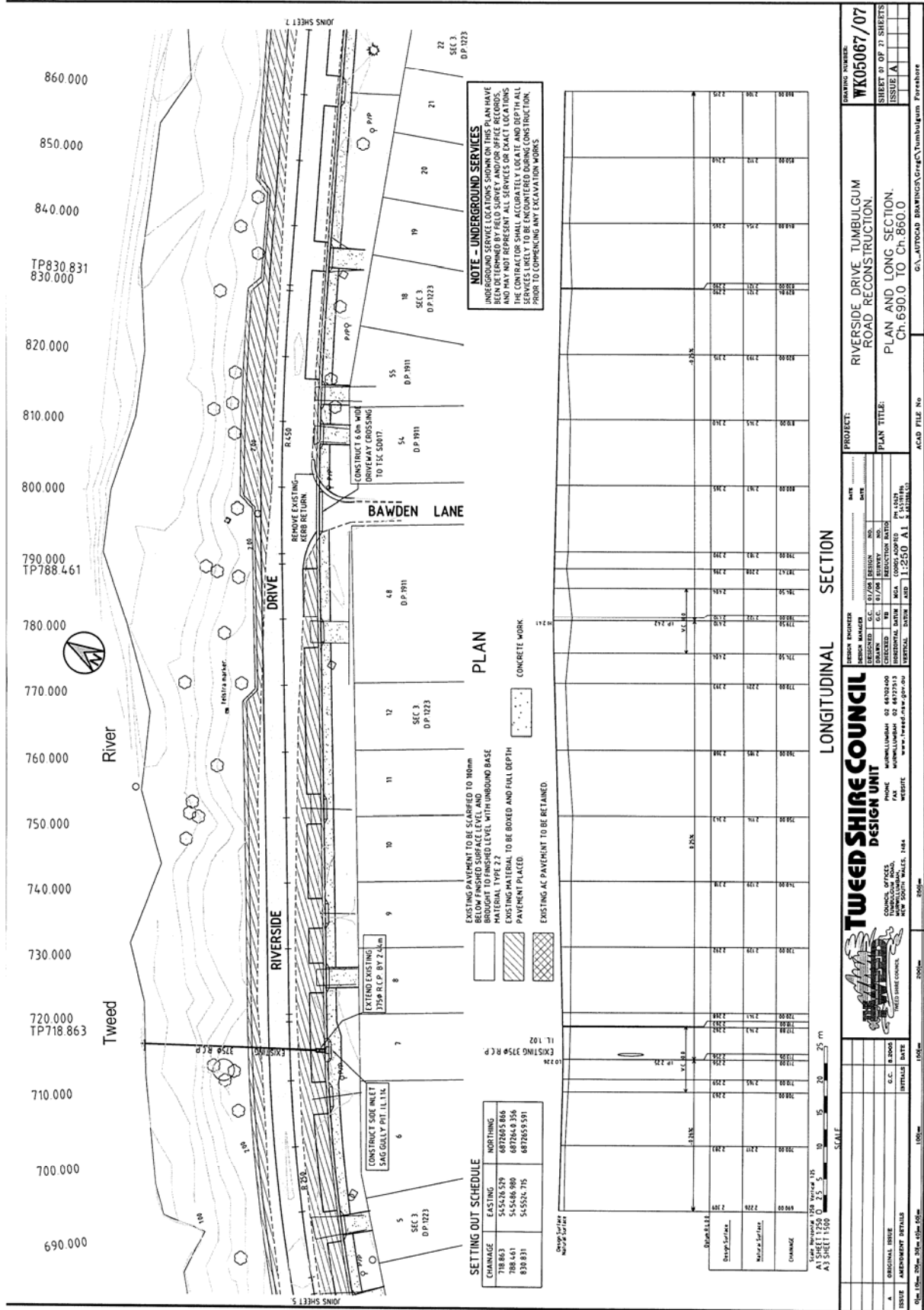
DEVELOPMENT PLANS:

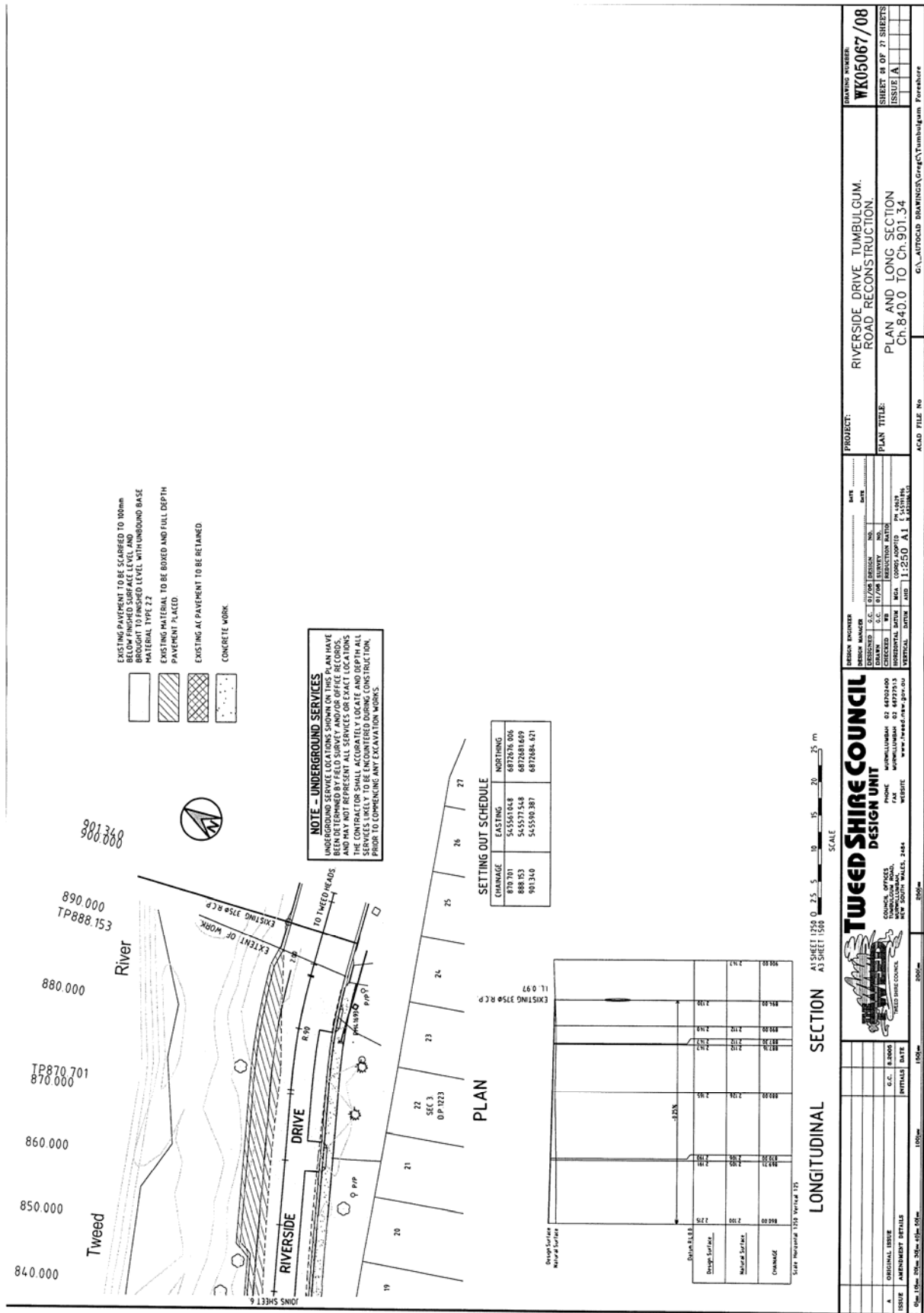












TWEED SHIRE COUNCIL DESIGN UNIT
 COUNCIL OFFICE, 100 RIVER STREET, TWEED HEADS, NSW 2486
 PHONE: (07) 4262 2222 FAX: (07) 4262 2223
 WEBSITE: www.tweed.nsw.gov.au

PROJECT: RIVERSIDE DRIVE TUMBULGUM ROAD RECONSTRUCTION.
PLAN TITLE: PLAN AND LONG SECTION Ch.840.0 TO Ch.901.34

ISSUE A
 DATE: 17/10/06

DRAWING NUMBER: WK05067/08
 SHEET 14 OF 17 SHEETS
 ISSUE A

ACAD FILE No: C:\AUTOCAD DRAWINGS\GPR\Tumbulgum_Plan.doc

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

Clause 13 relates to the development of unzoned land. It requires consideration of the compatibility of the development with development in adjoining zones, and impacts of development on waterways and the natural environment. Riverside Drive and the Tumbulgum foreshore area are located in the uncoloured zone within the Tweed LEP.

The proposed works are adjacent to the 2(d) Village zone. The proposed work is compatible with development permissible in the adjoining zone as it is essentially a continuation of an existing use.

Clause 13(3)(b) requires consideration of the impact of the developments that are below the mean high-water mark of an ocean or an estuary, bay, lake or river. A stormwater outlet is proposed at chainage 80 (see WK05067/03). In response:

- The proposed development will not alienate the use of the waters of the Tweed and Rous Rivers from recreational users. The stormwater pipe will not extend more than 1m from the existing riverbank and is located away from the well-used recreational areas of the Tumbulgum foreshore. It will not alter or prevent recreational access to the Tweed River at this point
- The proposal is consistent with the provisions of the Upper Tweed Estuary Management Plan; and
- The construction management measures proposed will ensure that the proposal will have a minimal impact on aquatic environments. Sediment and erosion control measures will minimise degradation of water quality and aquatic environments. No aquatic habitats will be directly affected by construction of the stormwater outlet. Subsequently, impacts the proposed development may have on the aquatic environments are considered minor.

Clause 31 applies to land that adjoins the mean high-water mark (or bank where there is no mean high-water mark) of a waterbody. The objectives of the clause are; to protect and enhance scenic quality, water quality, aquatic ecosystems, biodiversity and wildlife habitat and corridors and to provide adequate public access to waterways. In response to considerations set out in clause 31(3):

- (a) The development will not have a significant adverse effect on scenic quality, water quality, marine ecosystems, or the biodiversity of the riverine or estuarine area or its function as a wildlife corridor or habitat, and**

Provided construction management measures are adhered to (soil and erosion control, flora and fauna management and risk management), the proposal will not have a significant adverse effect on water quality, marine ecosystems or aquatic biodiversity. Only two large Camphor Laurels will be cleared with all other foreshore vegetation avoided. Consequently, removal of these two trees is not expected to reduce biodiversity in the local area or decrease the riparian areas function as a wildlife corridor or habitat.

In conjunction with foreshore improvement and landscaping works proposed for the Tumbulgum foreshore, the development will have positive impact on the scenic quality for visitors and residents of the village of Tumbulgum.

- (b) Adequate arrangements for public access to and use of foreshore areas have been made in those cases where the consent authority considers that public access to and use of foreshore areas are appropriate and desirable requirements, and**

Vehicular access along the Tweed River bank at Tumbulgum, between Government Road and the Tumbulgum Bridge will be restricted by placement of a traffic barrier fence and/or recycled plastic bollards. However, car parking facilities along Riverside Drive will be increased with an additional parking bay proposed and the existing parking lane increased. Consequently vehicular, not public access to the Tumbulgum foreshore will be restricted.

- (c) The development is compatible with any coastal, estuary or river plan of management adopted by the Council under the Local Government Act 1993 that applies to the land or to land that may be affected by the development, and**

The Upper Tweed Estuary Management Plan (1996) has been adopted by Council. It identifies current impacts, and provides strategies and recommendations for the management of the estuary. The proposal is consistent with actions specified in Section 3.3 in relation to Tumbulgum Foreshore Redevelopment.

(d) It has considered the impact of increased demand from domestic water supply on stream flow.

The proposed works are not expected to result in an increased demand for domestic water supply.

Clause 34 refers to flood liable land and aims to minimise future potential flood damage. Proposed works will improve stormwater drainage along Riverside Drive through the installation of sub-soil drainage, kerb and guttering, several new stormwater pits, a new stormwater pipe between chainage 80 and 160 and road reconstruction. Proposed works are not expected to have a detrimental affect on the drainage of the adjacent land. The proposed works are consistent with DCP5: Development of Flood Liable Land.

Clause 35 requires an assessment of the likely impacts of acid sulfate soils. Council's ASS Planning Map indicates that the site is class 1 land, which applies to any works. Soil samples were taken from two locations along the proposed stormwater pipe at 0.5m intervals down to 2.5m and included a surface level sample. Soils sampled do not exceed action criteria levels and an ASS Management Plan is not required.

Clause 40 ensures development does not adversely affect the heritage significance of heritage items and heritage conservation areas. The portion of the village of Tumbulgum located within the broken dashed line on the zone map in the TLEP is a heritage conservation area. The proposed works are compatible with the existing character of Riverside Drive and the Tumbulgum foreshore, and are not expected to affect the heritage significance of the area. No building structures will be affected and minor structures are proposed. Vegetation removal will be restricted to two mature Camphor Laurels. All other parkland and riparian vegetation will not be cleared and mature and significant trees (Red Cedars and Figs) will be protected.

North Coast Regional Environmental Plan 1988

Clause 15 – Rivers, streams and wetlands

When consenting to developments adjoining or upstream of a river or stream, coastal or inland wetland or fishery habitat area Council is obligated to consider Clause 15. The applicant has provided the following points with respect to this clause.

- (a) *Erosion and sediment control management and risk management measures will ensure no sediment or pollutants are released into the river.*
- (b) *Due to the size and location of the River at this point, and the proximity of wetland areas, an increased local amateur fishery should have little impact on the existing resource at this location.*

- (c) *Proposed revetment works will stabilise eroding sections of riverbank and will assist in protecting existing habitat. Proposed weeding and supplementary planting of endemic riparian vegetation will also assist in restoring depleted riparian areas.*
- (d) *On completion of the works additional open space would be made available to the public.*
- (e) *Mitigation measures including erosion and sediment controls will prevent any release of contaminants to the River during construction.*
- (f) *There are no aquatic reserves dedicated under the Fisheries Managements Act 1994 in the vicinity of the proposed works.*
- (g) *Section 21A of the Soil Conservation Act has been repealed and replaced by the Native Vegetation Conservation Act 1997. It is envisaged that the proposal meets the provisions of this act.*
- (h) *All native vegetation on the foreshore will be retained.*
- (i) *Defined water quality objectives include protection of:*
 - *Aquatic ecosystems;*
 - *Visual amenity;*
 - *Secondary contact recreation; and*
 - *Primary contact recreation.*

The proposal will have minimal impact on the aquatic ecosystem and visual amenity and construction measures will protect against erosion.

The application therefore satisfies Clause 15.

Clause 81 – Development adjacent waterways

Clause 81 requires consideration of the impact of the development within 100m of a waterway or ocean. The following addresses this requirement:

- (a) *The proposal will create additional foreshore open space. Access to the foreshore area will be unrestricted.*
- (b) *No buildings are proposed to be erected as part of the proposal.*
- (c) *The proposal is consistent with the upper Tweed Estuary Management Plan (1996), which identifies impacts and strategies, and provides recommendations for the management of the estuary.*

The proposed will not restrict public access to the site and will provide a benefit to the local community.

State Environmental Planning Policies

State Environmental Planning Policy No. 14 – Coastal Wetlands

The application does not significantly affect SEPP 14 as the proposed site is not within a designated coastal wetland zone and the nearest wetland is located approximately 270m west of the site.

State Environmental Planning Policy No.71 – Coastal Protection

This policy requires development applications for works within sensitive coastal locations to be referred to Department of Planning for comment. As this proposal is within a sensitive coastal location, being within 100m above mean high water mark of the Tweed River, this policy applies.

The application was therefore referred to the Department of Planning on 29 August 2006 under Clause 11(2) of State Environmental Planning Policy (SEPP) No 71 – Coastal Protection. The Department of Planning responded by stating they need not be involved in determination of this application, however, Council is obligated to undertake detailed Clause 8 Assessment in accordance with the SEPP. The following considerations are relevant:

SEPP 71 – Matters for Consideration

- (a) The aims of this Policy set out in Clause 2:
- (b) Existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved
- (c) Opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability
- (d) The suitability of the development given its type, location and design and its relationship with the surrounding area
- (e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore
- (f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities
- (g) measures to conserve animals (within the meaning of the *Threatened Species Conservation Act 1995*) and plants (within the meaning of that Act), and their habitats;
- (h) measures to conserve fish (within the meaning of Part 7A of the *Fisheries Management Act 1994*) and marine vegetation (within the meaning of that Act), and their habitats
- (i) existing wildlife corridors and the impact of development on these corridors,
- (j) the likely impact of coastal process and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards;

- (k) measures to reduce the potential for conflict between land-based and water-based coastal activities;
- (l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals;
- (m) likely impacts of development on the water quality of coastal waterbodies,
- (n) the conservation and preservation of items of heritage, archaeological or historic significance,
- (o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities;
- (p) only in cases in which a development application in relation to proposed development is determined:
 - (i) the cumulative impacts of the proposed development on the environment; and
 - (ii) measures to ensure that water and energy usage by the proposed development is efficient.

Whilst the development aims to reduce inappropriate access to the foreshore of the river the proposed works accommodate numerous alternative access points along the River. It is considered that the proposed development is not in conflict with the provisions of Clause 8 of SEPP71.

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

No draft Environmental Planning Instruments affect the Development Application.

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

Development Control Plan No. 5 – Flood Liable land.

The proposal does not specifically apply to this application, as the works are for rehabilitation and revetment works. It is therefore satisfied that the application satisfies the objectives of DCP 5.

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

Satisfactorily.

(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

Water Quality, Soils, Erosion and Siltation

The applicant has indicated that no soil will be excavated or removed from foreshore; with soil disturbance being confined to shaping or eroded sections of riverbank behind exposed stormwater headwalls and beach areas prior to placement of rock revetments. To minimise the potential impacts, the following sediment and erosion mitigation measures will be undertaken:

- All works occurring below mean high water mark (i.e. installation of stormwater outlet, headwall and floodgate outlet) will be undertaken at low tide where possible;
- A silt curtain will be installed in the river adjacent works involving installation of stormwater outlet, headwall and floodgate outlet (firmly anchored and monitored so as not to interfere with navigation of vessels);
- Construction works are to be managed such that areas outside the scope of the works remain undisturbed as far as possible and vegetation clearing kept to the minimum required;
- Where possible works will be staged so as to reduce the area of exposed surfaces;
- A temporary siltation control fence will be installed prior to the commencement of works along the entire western extent of works and Riverside Drive (as shown in WK05067/23 to 25). The extent of the fence may be adjusted to suit staged construction, providing any exposed areas are turfed before removal of the siltation fence;
- Siltation fencing will be maintained in place until all works are completed and turf is established. Sediment fences will be checked periodically to ensure they remain intact and in place, particularly following wet weather. Any sediment fencing found damaged will be replaced promptly;
- During construction, all stormwater pits shall be protected using hay bale pit surrounds which shall be maintained in place until construction of lintel/grate commences;
- Following completion of lintel/grate, gullies are to be protected using mesh and gravel inlet filter, which shall be maintained in place until all upstream works are completed and established. Required locations of gully grate control devices are indicated in WK05067/23 to 25;
- All batters and reinstatement works adjacent new construction works will be carried out as soon as possible after completion;
- All disturbed areas and batters will be topsoiled and revegetated as soon as practical after reinstatement;
- Stockpiles will be located in cleared flat areas, away from drainage lines and overland flow paths and will be protected from erosion where required by sediment fences;

- Any fuels and chemicals will be located away from drainage lines and within bunded areas;
- Excess soil, ripped bitumen, etc will be transported from the site promptly and not left in stockpiles;
- Following completion of the works, the site will be cleared of all debris, building rubble, spoil and foreign matter and vegetation; and
- Excavation works will not be undertaken during heavy rainfall events.

No significant adverse affects will result from this application.

Noise

Construction hours will be limited to 7:00 am to 5:00 pm Monday to Saturday. No work will be undertaken on Sundays or public holidays and will be a condition of consent to ensure this. It is envisaged that noise will not exceed the limits set by AS2436.

Air Quality

Throughout the duration of the works, air quality is expected to be unaffected. Air quality is expected to be high during the works, however it is anticipated that there will be no long-term impacts upon the air quality.

Traffic

It is anticipated that traffic will not be affected while construction works are underway. Minor traffic disruption may be encountered during delivery of construction materials. The proposal is unlikely to contribute to any overall increase in traffic volumes in the locality.

Flora and Fauna

As most of the foreshore has been previously cleared there is no significant habitat removal, and no endangered or vulnerable flora or fauna species within the construction boundaries.

Weed removal and supplementary planting of endemic riparian vegetation in selected sites will enhance the foreshore as a wildlife corridor and habitat. No mangroves or native riparian vegetation will be removed. The proposed works will not result in the destruction of fauna habitat, or cause deterioration of the existing fauna movement corridor along the foreshore.

Waste Minimisation

Council's GIS system has indicated that there is one (1) cattle dip site within 200m of the proposed site. The dip site is located in Lot 1 DP 574921, being No. 18 Riverside Drive. According to Council's records, the dip site was decommissioned around 1973; approximately 400mm of fill being placed over the site. The proposed works are to be carried out across the opposite side of Riverside Drive and will not affect the old dip site.

Vegetation material will be mulched or if not suitable for mulching, disposed of at the nearest accessible disposal facility. All other waste will be disposed of at the nearest available waste disposal facility.

Social and Economical

The proposed works will provide a number of social and economic benefits. The community, including the Tumbulgum Community Association, have been consulted throughout the process of designing the Tumbulgum Foreshore Masterplan. In response to community feedback and suggestions, the adopted Masterplan incorporated:

- Bollards/fence along Riverside Drive to delineate parking areas and exclude vehicles from the foreshore reserve;
- Kerb and gutter, footpath and resurfacing areas of Riverside Drive; and
- Adequate parking including provision for cars with trailers.

These components have been included in works. As such, works are considered to be in the public interest and provide a positive social benefit to the community and visitors of Tumbulgum.

(c) Suitability of the site for the development

The proposal is consistent with, and works form part of the Tumbulgum Foreshore Master Plan 2005. This Master Plan has been undertaken in consultation with the community, with the design of works guided in part by community feedback. All works included in this development application are to be undertaken within Council owned road reserve and are essentially an improvement of existing stormwater and road infrastructure. Accordingly, the site is considered suitable for the project.

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

The Development Application was notified for a period of fourteen (14) days in accordance with Council's adopted Development Control Plan No. 42 – Public Notification of Development Proposals. During the notification period Council received a total of five (5) submissions.

It should be noted that road reconstruction, stormwater works, construction of parking bays and footpaths proposed under DA06/0933, together with foreshore improvement works at Riverside Drive, form part of the Tumbulgum Foreshore Master Plan. Development consent has already been received from Council for foreshore improvement works (DA05/0554).

The Tumbulgum Foreshore Master Plan was developed with significant input from the local community and the Tumbulgum Community Association. The Design Unit incorporated the majority of suggestions raised by the Community Association in the Master Plan including continuation of bollards to block vehicle access to foreshore areas, rock revetment in areas suffering severe erosion, continuation of kerb and guttering, and a pedestrian footpath on the eastern side of Riverside Drive.

The Design Unit of Council sought public comment on the Master Plan via a feedback form outlining aims and features of the Master Plan, requesting support or non-support of the Master Plan and requesting any comments regarding the Master Plan. Community feedback received in May of 2005 was significantly in favour of the Master Plan and it was therefore adopted by Council.

The following table is a summary of issues raised in submissions made to Council regarding DA06/0933 and a response to them:

Issue:	Response:
1. The location of angle car parking areas will impact on residents and cause safety issues.	Only two angle car parking areas are proposed. One parking area providing eight parking bays is opposite the Tumbulgum Hotel. This area already provides for a degree of angle parking and proposed works will formalise this area only. A second parking area provides for cars with boat trailers (six bays), utilising grassed areas for trailer parking. Whilst it is recognised this area is opposite residential properties, the parking area for cars with boat trailers has been situated in this position as it is close to the existing boat ramp but located away from the other angle parking area to limit traffic congestion.

Issue:	Response:
<p>2. The proposal results in a reduction in foreshore areas and prime, shady picnic spots as a consequence of parking area construction.</p>	<p>Construction of the two car parking areas will involve some loss of grassed foreshore areas, being approximately 60m² for the carpark opposite the Tumbulgum Hotel and approximately 400m² for the car and boat trailer car park. This will impact on local residents who use these locations, however there are still large grassed picnic areas along the Tumbulgum foreshore that will not be affected. No shade trees or riparian vegetation will be removed as a result of the construction of either car park. The proposal attempts to balance an increase in parking capacity whilst not encroaching to a significant degree on foreshore picnic areas.</p>
<p>3. The proposal has a negative impact on the amenity of the foreshore and village atmosphere of Tumbulgum, primarily as a consequence of the construction of parking areas.</p>	<p>It appears the main amenity issue is construction of the car and boat trailer car park occurring opposite residential properties as an informal car parking area already occurs opposite Tumbulgum Hotel and proposed works involves formalisation of this car park only. Currently, vehicles park alongside Riverside Drive in this area so construction of a small car park should not result in a significant reduction in visual amenity. No amenity trees or riparian vegetation will be removed as a result of these works. The need for a Master Plan has come about in part in response to a degradation of the environmental and amenity values of the Tumbulgum foreshore due to intensive usage of the area. Hardening areas and restricting impacts to hardened areas attempts to protect these values whilst maintaining as much as possible a village atmosphere.</p>
<p>4. Parking solutions proposed will have little impact on parking problems.</p>	<p>The proposal attempts to balance an increase in parking capacity servicing the centre of Tumbulgum whilst minimising impact on the Tumbulgum foreshore by preventing vehicles direct access to the river edge. The proposal also attempts not to encroach to a significant degree on foreshore areas through construction of car parking. It was suggested during the consultation period that parking areas be removed from Riverside Drive. Whilst this appears a good solution, it is quite probable that as Riverside Drive and the Tumbulgum foreshore is the focus for recreational activities occurring in Tumbulgum, visitors would continue to park along Riverside Drive.</p>

Issue:	Response:
5. The Tumbulgum foreshore is overused and abused by visitors.	It is beyond Council's control to restrain the increased visitation to the area. However, Council can endeavour to protect the environmental and amenity values of the area and provide facilities for residents and visitors in accordance with the Council approved Tumbulgum Foreshore Master Plan.
6. The proposal disregards urgent needs such as riverbank stabilisation, footpaths, kerb and guttering and speed calming devices.	Riverbank stabilisation, footpaths, kerb and guttering are either included in works proposed in this development application or works proposed under a development consent already received from Council being DA05/0554.

The Development Application was forwarded to the NSW Department of Primary Industries on the 1 September 2006 requesting the Aquatic Habitat Protection Unit (AHPU) to provide comment on the Development Application.

The Department of Primary Industries has reviewed the Development Application, accompanying information and submissions in light of provisions in the Act and the policies that underpin them.

Contingent upon adherence to the following conditions DPI has no objection to the proposed works:

1. A permit under s198-202 of the Fisheries Management Act 1994 for dredge and reclamation activities be obtained prior to commencement of the works or demonstration to DPI of approval for the specified works from another public authority (other than a local Council).
2. A permit under s205 of the Fisheries Management Act 1994 for harm to marine vegetation (seagrass, mangroves, kelp) be obtained prior to commencement of the works if works are to harm marine vegetation.
3. Environmental safeguards (silt curtains, booms etc.) are to be utilised during construction/installation of the revetment wall to ensure there is no escape of turbid plumes into the aquatic environment. Erosion and sediment controls must be in place prior to commencing, during and after works.
4. Sand, gravel, silt, topsoil or other materials must not be stockpiled within 50 metres of the water unless surrounded by sediment control measures.

These have been included as conditions of consent.

(e) Public interest

Having regard to the matters raised in this report it is in the public interest to recommended this Development Application for a conditional approval.

OPTIONS:

1. Approve the Development Application.
2. Refuse the Development Application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

Tweed Shire Council proposes to carry out road reconstruction, stormwater improvement works, parking bay construction and footpath construction at Riverside Drive, Tumbulgum. Proposed works will be carried out in conjunction with foreshore improvement works (riverbank revetment and stabilisation and weed control) at Riverside Drive, with entire works forming part of the Tumbulgum Foreshore Development Masterplan. The proposed development has been assessed in light of Section 79C of the EP&A Act and Council's planning instruments. The proposal is permissible with consent in the uncoloured zone of the TLEP. It complies with the aims and objectives of the TLEP, NCREP, DCPs, NSW Coastal Policy and relevant management plans and as such is recommended for conditional approval.

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.

THIS
PAGE
THIS
PAGE
IS
IS
BLANK
BLANK

P4 [PD-PC] Review of Determination of Development Application DA04/1546 for the Demolition of Existing Dwelling, Filling of Site and Multi Dwelling Housing Development Comprising Six (6) x Three (3) Bedroom Townhouses at Lot 3 DP 1066634, No. 19 Lloyd Stree

ORIGIN:

Development Assessment

FILE NO: DA04/1546 Pt1

SUMMARY OF REPORT:

The applicant submitted a Development Application for the demolition of an existing dwelling, site earthworks including filling and the erection of a multi dwelling housing development at 19 Lloyd Street, Tweed Heads South on 26 November 2004. The multi dwelling housing development would comprise 6 x 3 bedroom dwellings. The Development Application was refused and the applicant was issued with the Notice of Determination on 19 October 2005.

As a consequence of this Council has received a Review of Determination application in accordance with Section 82A of the Environmental Planning and Assessment Act 1979. The engineering concerns which were not addressed by the applicant with the initial application have now been satisfied.

The time provided under Section 97 of the Environmental Planning and Assessment Act 1979 for a Review of Determination is 12 months. This report examines the Review of Determination application and recommends approval of the development subject to the following conditions.

RECOMMENDATION:

That the Review of Determination for Development Application DA04/1546 for the demolition of existing dwelling, filling of site and multi dwelling housing development comprising six (6) x three (3) bedroom townhouses at Lot 3 DP 1066634, No. 19 Lloyd Street, Tweed Heads South be approved subject to the following conditions: -

GENERAL

1. 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]
2. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within or adjacent to the subject property.
[GEN0135]
3. The development shall be completed in accordance with the Statement of Environmental Effects and Drawing Nos. 9703/wd/01A, 9703/wd/02A and 9703/wd/03A prepared by Pat Twohill Designs PTY. LIMITED and all dated March 2004, except where varied by the conditions of this consent.
[GEN0005]
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. All imported fill material shall be from an approved source. Prior to the issue of a construction certificate details of the source of fill, documentary evidence that the fill material is free of any contaminants and haul route shall be submitted to Tweed Shire Council for approval.
[PCC0465]
6. 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:** **\$4,378**
S94 Plan No. 4 (Version 4.0)
Sector2_4

Heavy Haulage Component

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

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

where:

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

and:

Prod. projected demand for extractive material to be hauled to the site over life of project in tonnes

Dist. average haulage distance of product on Shire roads (trip one way)

\\$Unit the unit cost attributed to maintaining a road as set out in Section 6.4 (currently 2.5c per tonne per kilometre)

Admin. Administration component - 5% - see Section 6.5

- (b) **Open Space (Structured):** **\$2,280**
S94 Plan No. 5
- (c) **Open Space (Casual):** **\$487**
S94 Plan No. 5
- (d) **Shirewide Library Facilities:** **\$2,012**
S94 Plan No. 11
- (e) **Eviron Cemetery/Crematorium Facilities:** **\$409**
S94 Plan No. 13

(f) Emergency Facilities (Surf Lifesaving) S94 Plan No. 16	\$586
(g) Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$3,708.45
(h) Cycleways S94 Plan No. 22	\$1,028
(i) Regional Open Space (Structured) S94 Plan No. 26	\$6,799
(j) Regional Open Space (Casual) S94 Plan No. 26	\$2,499

[PCC0215]

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 DSP4: 3.8 ET @ \$4598	\$17,472
Sewer Banora: 5 ET @ \$2863	\$14,315

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]

8. All fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided to ensure minimal impact on adjoining properties. If filling is required, a plan of proposed drainage is to be submitted and approved by the PCA prior to the issue of a construction certificate. Drainage must be installed and operational prior to commencement of any building work.

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

[PCC0485]

9. The site is to be filled to a minimum level of RL 2.65m AHD. The fill is to be retained by perimeter structural walls with concrete lined perimeter drainage or other approved treatment. Site filling and associated drainage is to be designed to address drainage on the site as well as existing stormwater flows onto or through the site, and minimizing the impact of filling on local drainage. Detailed engineering plans of fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.

[PCC0675]

10. 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]

11. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for any works within the road reserve.

[PCC0885]

12. 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]

13. 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) All runoff from impervious driveway and hardstand areas must be treated to remove oil and sediment contaminants prior to discharge to the public realm. All permanent devices must be sized in accordance with Section D7.12 of Council's Development Design Specification D7 - Stormwater Quality. Full engineering details, including maintenance schedules, must be submitted with a Section 68 Stormwater Application for approval prior to the issue of a Construction Certificate.
 - (ii) Roof Water does not require treatment and should be discharged downstream of treatment devices, or the devices must be sized accordingly.
 - (iii) Stormwater discharge controls shall be carried out in accordance with Cozens Regan Williams Prove "Stormwater Management Plan" (dated July 2002), or subsequent amendments approved by Council.

[PCC1105]

14. 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]

15. 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]

16. All retaining walls are to be designed by a suitability qualified Geotechnical / structural engineer in accordance with AS4678 - 2002 - Earth retaining Structures. A report that details compliance with the design provisions of this standard is to accompany the construction certificate drawings.

All retaining structures, batters and associated drainage shall be contained wholly within the subject land, unless otherwise specified in these conditions of consent.

17. The filling is to be retained by perimeter structural walls or batters, with concrete lined perimeter drainage, or other approved treatment, to a design submitted to and approved by the General Manager or delegate prior to the release of the Construction Certificate. Retaining walls shall be designed and constructed according to AS4678-2002 Earth-retaining Structures. These details shall include all measures incorporated into the wall design in the vicinity of Council's sewer line, to protect and facilitate maintenance on this service as required. The filling plan of the site shall address the drainage on the site as well as any existing stormwater flows onto or through the site and the likely impact on stormwater drainage in the locality from the proposed filling.

All retaining walls are to be designed by a suitably qualified Geotechnical / structural engineer in accordance with AS 4678 - 2002 - Earth retaining Structures. A report that details compliance with the design provisions of this standard is to accompany the construction certificate drawings.

18. No retaining walls or similar structures are to be constructed over Council's sewer main.

The proposed retaining wall is to be located to achieve a minimum, clear 1m horizontal buffer between the outer edge of the sewer pipe and any part of the retaining structure.

The retaining structure may straddle the existing sewer main within the property, provided suitable bridging details are provided with the Construction Certificate application and approved by the General Manager or delegate.

19. The placement of paving over the sewer line is to be an interlocking paving system to allow for maintenance.

[PCCNS01]

20. Prior to the issue of a Construction Certificate the applicant is to submit a detailed schedule of colours and materials for approval by the General Manager or his delegate.

[PCCNS02]

PRIOR TO COMMENCEMENT OF WORK

21. 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]

22. 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]

23. 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]

24. Residential building work:

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

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

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

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

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

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

[PCW0235]

25. 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]

26. 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]

27. 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]

28. 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]

29. 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]

30. 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

31. 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]

32. 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]

33. 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]

34. 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]

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

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

[DUR0765]

36. 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]

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

[DUR0815]

38. Provision of an adequate turfed area, or other suitable media, is incorporated and maintained into the proposed landscape of the property for use as a car wash-down area.

[DUR0965]

39. 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]

40. 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]

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

[DUR2195]

42. 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]

43. 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]
44. The burning off of trees, associated vegetation felled by clearing operations, and builder's waste is prohibited.
[DURNS01]
45. 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]
46. All lots must be graded to prevent the ponding of surface water and be adequately vegetated to prevent erosion from wind and/or water to the satisfaction of the General Manager or his delegate.
[DUR0745]
47. On completion of the filling work, all topsoil to be respread and the site to be grassed and landscaped.
[DUR0755]
48. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments".
[DUR0785]
49. The proposed earthworks program shall be monitored by a Registered Geotechnical Testing Consultant to a level 2 standard (minimum) in accordance with AS 3798. A certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798 shall be submitted to the Principal Certifying Authority upon completion.
[DUR0795]
50. All fill and cut batters shall be obtained wholly within the subject land.
[DUR0825]

51. 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]

52. 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]

53. All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction.

[DUR1955]

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

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

This inspection program is to be maintained until works are complete.

[DUR2375]

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

[DUR2415]

56. The structure is to be sited at least one metre horizontally clear of sewer main on site. All footings and slabs within the area of influence of the sewer main are to be designed by a practising Structural Engineer. The engineer is to submit a certification to the Principal Certifying Authority that the design of such footings and slabs will ensure that all building loads will be transferred to the foundation material and will not effect or be affected by the sewer main.

[DUR2645]

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

Such to specifically include the following:

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

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

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

[DUR0065]

58. 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]

59. 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]

60. 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]

61. Excavation

- (a) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with WorkCover 2000 Regulations.
- (b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

[DUR0425]

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

[DUR0445]

- 63. All new residential dwellings (and extensions comprising over 50% of the original floor area) are to fully comply with Councils Energy Smart Housing Policy (DCP39). In order to comply with DCP39 consideration must be given to the building envelope, orientation, insulation, ventilation, thermal mass and zoning.**

[DUR0915]

- 64. 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]

- 65. The guttering downpiping and roof waste water disposal system is to be installed and operational before the roofing is installed.**

[DUR2245]

- 66. 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.
- completion of work and prior to occupation of the building.**

[DUR2485]

67. 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]

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

[DUR2515]

69. 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]

70. 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]

71. A Sewer manhole is present on this site. This manhole is not to be covered with soil or other material.

Should additional fill be proposed in the area of the sewer manhole application shall be made to Council's Engineering & Operations Division for the raising of the manhole.

[DUR2655]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

72. A 3 metre wide easement is to be created over the 150mm line prior to the issue of an occupation certificate.

[POCNS01]

73. 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]

74. A survey certificate signed by a registered surveyor is to be submitted to the PCA at floor stage to certify that the habitable floor level of the building to be at a level of not less than RL 2.95m AHD.

[POC0565]

75. 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]

USE

76. 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]

77. 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]

REPORT:

Applicant: Mr DWM Bolster
Owner: Mr DWM Bolster
Location: Lot 3 DP 1066634, No. 19 Lloyd Street Tweed Heads South
Zoning: 2(b) Medium Density Residential
Cost: \$495,000

BACKGROUND:

Council has received a Review of Determination application in accordance with Section 82A of the Environmental Planning and Assessment Act 1979 in relation to DA04/1546 and Council's determination dated 19 October 2005.

A site inspection on 14 March 2005 revealed that earthworks had commenced, in particular a significant quantity of fill material had been imported to the site unauthorised. The material appeared to include builder's rubble.

On the 23 March 2005 a letter was forwarded to the applicant requesting an explanation for the unlawful works and filling. Having not received a response a second letter dated 4 May 2005 was sent to the applicant.

The applicant responded to this letter on the 5 May 2005, which included among other things a statement that Council's letter of 23 March 2005 was not received.

In addition to the requested explanation for the unlawful works and filling the applicant was advised that if they wished to pursue approval for the works that several areas needed to be addressed, this included:-

1. A site survey plan illustrating natural ground level contours.
2. A site survey plan illustrating present finished ground level contours.
3. Details of the source(s) of origin of all fill material.
4. Soil contamination assessment.
5. Details of present sedimentation and erosion control devices.
6. Engineering certification for any compaction that has occurred.
7. Geo-technical appraisal of all fill material.
8. Cross-sections of the land prior to and post works.

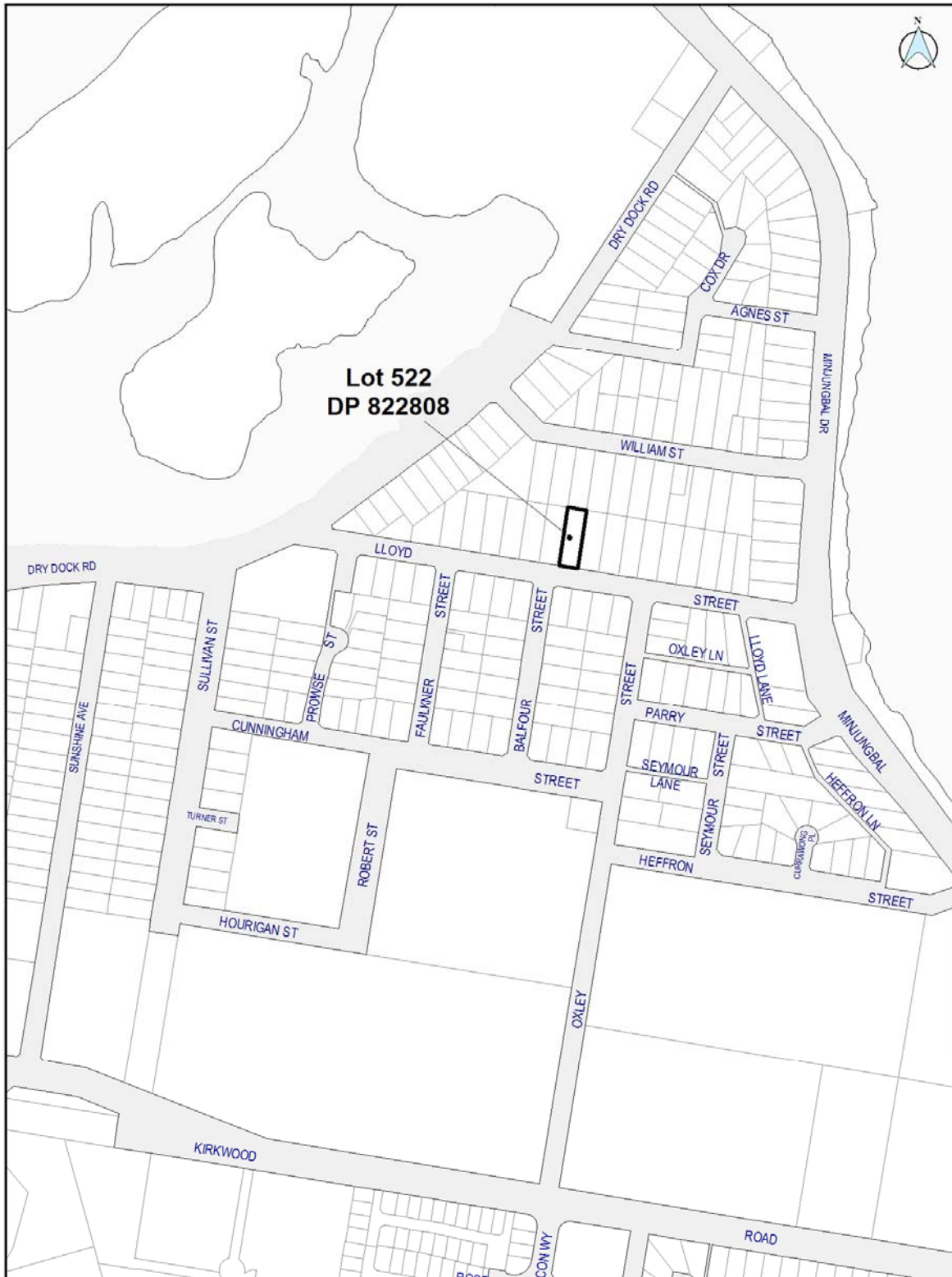
Given the inadequacies of the information supplied by the applicant the Development Application was refused on 19 October 2005 with the following reasons for refusal being attached to the Notice of Determination:

1. Pursuant to Section 79C(1)(b) the likely impacts of the proposed development on both the natural and built environments, and social and economic impacts in the locality through precedence of permitting the unlawful importation and placement of uncontrolled fill are considered likely to be detrimental.

2. Pursuant to Section 79C(1)(b) the uncontrolled fill placed on the site is considered to have a detrimental effect on neighbouring properties by way of erosion and sediment runoff.
3. Pursuant to Section 79C(1)(c) the unauthorised fill is considered unsuitable for the site based on the level of geotechnical detail provided.
4. Pursuant to Section 79C (1)(c) the subject residential site is not considered suitable for the disposal of uncontrolled excavation material.
5. Pursuant to Section 79C(1)(b) the proposed development is not supported by a level of detail that would permit the proper assessment of impacts upon the natural environment, including geotechnical suitability.

As a consequence of the Development Application being refused the applicant has lodged a Review of Determination under Section 82A of the Environmental Planning and Assessment Act 1979 on the 13 December 2005. This report examines the Review of Determination.

SITE DIAGRAM:



© 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

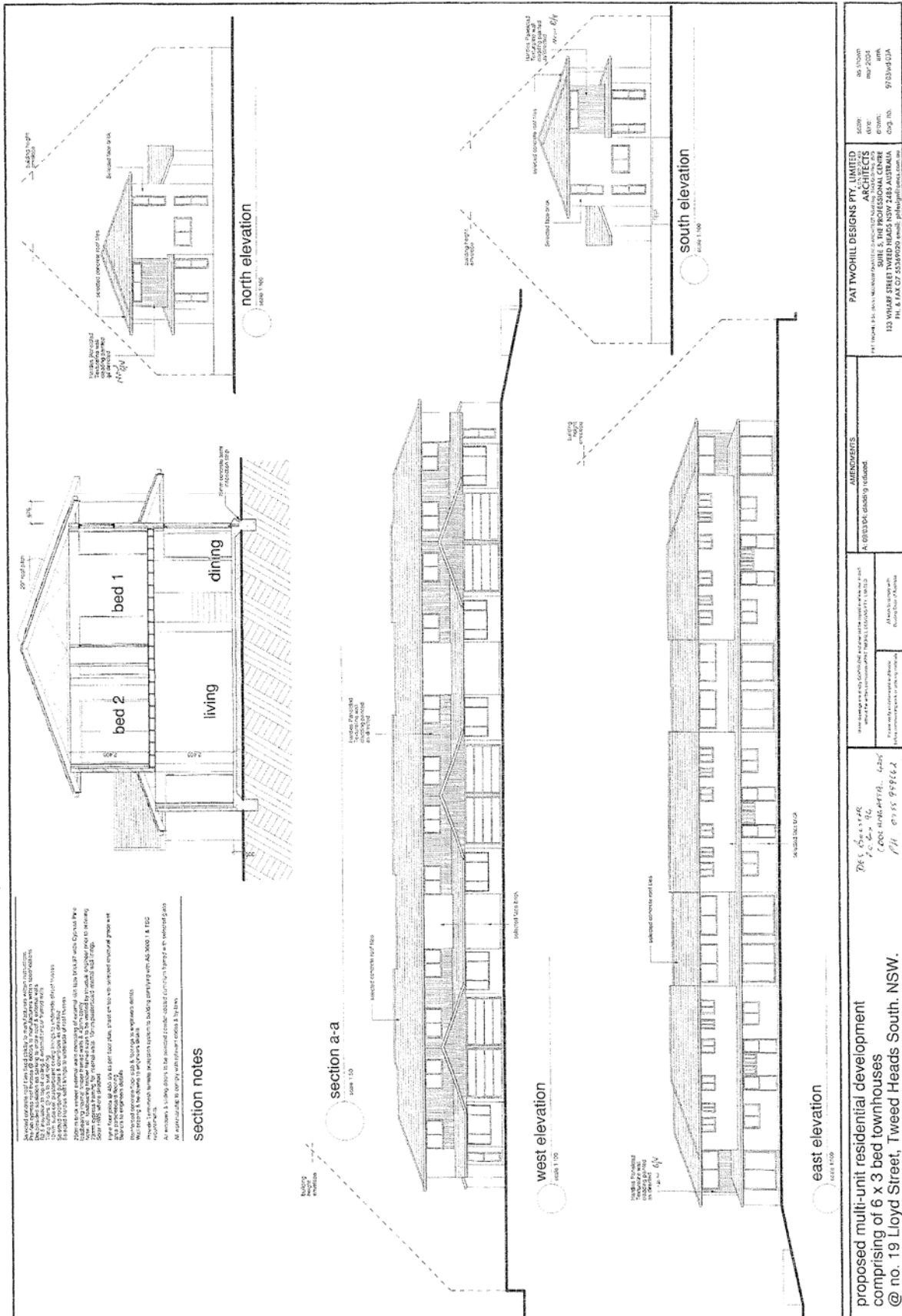
Tweed Shire Council
Lot 3 DP 1066634
No.19 Lloyd Street, Tweed Heads South



PLANNING REFORMS UNIT
Site Plan

File: N:\Munsys\A4P - SITE PLAN Wor Author: J.Batchelor Date: 11/Oct/2006 Scale: 1:5,000 Sheet: 1 of 1

ELEVATION PLAN:



CONSIDERATIONS UNDER SECTIONS 82A & 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(b) Medium Density Residential pursuant to the provisions of Tweed LEP 2000. The development is generally consistent with the architectural themes being employed in the design of this form of medium density development in the locality.

The proposed density of the development is considered an appropriate response to the site characteristics, its context, and is considered to be an orderly and economic use of the land. In this regard the proposed development is considered to be consistent with the 2(b) Residential zone objectives.

Clause 15 - Availability of Essential Services

The subject site is adequately serviced by way of existing stormwater, electricity, sewer and water connections. The proposal is considered to be consistent with the relevant provisions of Clause 15 of TLEP 2000.

Stormwater management has been addressed by the applicant and in combination with Council's Infrastructure Engineer's proposed conditions of consent are deemed satisfactory.

Clause 16 – Height of Buildings

A three-storey height limit applies to the subject site in accordance with Clause 16 of TLEP 2000.

The proposed development requires the filling of the land by approximately 1 metre to achieve the required RL 2.65m and the building is two-storey in height. The proposal is satisfactory.

Clause 35 - Acid Sulfate Soils

The proposed site is identified as Class 2 Acid Sulfate Soils. Due to the natural surface levels and that the site is to be filled over 1 metre to a level of 2.65 metres AHD, footings would only extend 600mm into the fill material and not contact soils potentially containing ASS. As such no ASS Management Plan is required.

A check of the Acid Sulfate Soils planning map for the fill source site 35 Kennedy Drive, Tweed Heads revealed that it is located within class 5 ASS. As the site is slightly elevated, ASS is not considered a constraint, and therefore 19 Lloyd Street would not have been contaminated with material containing ASS. Further filling of the subject site is still required. The proposed development will not exceed below the depth of fill material (over 1m of fill required across the site).

Clause 39 - Remediation of Contaminated Land

The source of the unauthorised fill material (now removed from the site) was from 35 Kennedy Drive, Tweed Heads. After checking Council's records regarding contamination, it was revealed that the Tweed Heads topographic maps dated 1974 and 1985 indicated dwellings and a built-up area respectively. The 1962 aerial photograph shows a dwelling present on the site. Contamination is not considered a constraint for this site and therefore is not considered to have contaminated 19 Lloyd Street. Council's Environment and Health Services Unit raises no objection in relation to land contamination.

North Coast Regional Environmental Plan 1988 (NCREP 1988)

The provisions of the NCREP 1988 are relevant to the proposed development. The proposed development is not in contravention of any of the NCREP provisions and is considered satisfactory.

State Environmental Planning Policy (SEPP) 71 – Residential Development

The proposed development was assessed having regard to Clause 8 of the Policy. In this regard the proposal is considered satisfactory with respect to attaining the Clause 8 matters.

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

None applicable.

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

Development Control Plan No 6. Multi-Dwelling Housing

The design of the proposed development is considered generally in accordance with the objectives of DCP 6. In relation to the acceptable solutions pertaining to streetscape, private open space and overshadowing, the proposal demonstrates an effective design response, ensuring a suitable level of amenity.

TABLE OF COMPLIANCE – MULTI DWELLING HOUSING – RESIDENTIAL 2(b) Zone

DEVELOPMENT PROVISIONS	DCP SOLUTION	PROPOSED DEVELOPMENT	COMPLIANCE (Y/N –See Comment)
Site Analysis (s.3.1.1)	Submission of a detailed site analysis plan	Not provided	Satisfactory in this instance
Site Area	Not stipulated	1214m ²	--
Site Density	0.5:1 Floor space ratio (GFA) (607m ²)	0.36:1 440m ² approx	Yes
Boundary Set Backs (s.3.2.1(A2)):			
Front	6m 3m	Min 6m	Satisfactory
Secondary frontage Side / Rear	3m (min 1.5 balcony)	min 3.4m (east), min 6m (west), min 6.2 (north)	Yes
Building Envelope (s.3.3.1(A1)):	(NGL)		
Max Height	12m	Complies	Yes
Envelope	3.5m @ 45 ⁰		
Streetscape s.3.2.1 (A3)	Elevation Plan Illustrating building height of proposal relative to adjoining properties.	Not provided	Site inspection considered satisfactory
S.3.2.1(A1)	Sketch plan/photo illustrating existing streetscape and discussion of how proposal integrates	Written information only	As above
Landscaping s.3.1.3 (A4)	30% of site or sum of number of dwellings multiplied by ratio in table 2 4 (min 365m ²)	451m ²	Satisfactory

Car Parking	1.5/dwellings (DCP No.2) (9 paces)	9 spaces plus 1 wash down bay	Satisfactory
Private Open Space	20% of site area (242m ²) One part 25m ² One dimension @ 4m Accessible form living area	Each unit has a minimum private courtyard of 20m ² .	The proposed private open space areas are considered on performance satisfactory in terms of size and functionality. It is noted that they are not in compliance with the prescriptive requirements.
Energy Conservation	NatHERS Assessment (DCP No.39)	All units achieve no less than 3.5 Stars	Satisfactory
Shadow diagram (s.3.1.1(A1))	Identification of potential problems / shadow diagrams	Not provided	Having regard to the sun path relative to the neighbouring development the likely overshadowing of the proposal is considered negligible.

Development Control Plan No 2. Site Access and Car Parking

DCP 2 – Site Access and Parking Code specifies a rate of 1.5 car parks for each dwelling for both resident and visitor parking. The application provides 6 one car space garages with three visitor carparks located in the community common areas. A carwash bay and turning bay / area have also been provided. The amount of carparking provided complies with DCP 2. Vehicles can exit in a forward direction onto Lloyd Street.

Development Control Plan No.39 - Energy Efficiency Housing

The following table depicts the Units ABSA ratings:

Standard	Requirement	Proposal	Complies
Unit Energy Rating	3.5 stars minimum	Unit 1: 4.5 Stars. Unit 2: 5 Stars. Unit 3: 5 Stars. Unit 4: 5 Stars. Unit 5: 5 Stars. Unit 6: 4 Stars.	YES

The Development Application was submitted to Council prior to the new BASIX requirements coming into force before 1 October 2005 and as such no BASIX certificates were required to be submitted to Council for assessment.

Development Control Plan No. 42 – Public Notification

The Review of Determination was advertised for a period of fourteen (14) days between Wednesday 11 January and Wednesday 25 January 2006. No submissions were received.

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

NSW Coastal Policy 1997

The subject land is affected by the NSW Coastal Policy 1997. The proposed development is considered consistent with the objectives and strategies of the policy document.

Demolition

The existing dwelling on the site is to be demolished. The applicant as a condition of consent will be required to undertake any demolition work according to the demolition work plan.

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

The proposal is considered unlikely to result in any significant adverse impacts on the existing natural or built environment. The proposed development is generally consistent with the existing and desired future character of the area and it is not considered likely to result in any significant or adverse detrimental impacts in the locality.

The proposal was previously refused due to a large amount of uncontrolled fill being placed on the site. The applicant was issued an order for removal of the unauthorised fill material. Two different types of fill material were deposited on the site and from visual observation the fill appeared to be from two different sources.

Following a recent site inspection it is noted that a large amount of one type of the fill material had been removed. The material that had been removed contained builder's rubble and white clay. Uncontrolled fill material still remaining on the site is a reddish colour and appears to be clean with small amounts of shale / gravel distributed throughout the material.

The applicant previously did not address a number of engineering issues relating to the fill material, retaining walls, sewer reticulation and geotechnical issues associated with the development. Further information on the engineering issues was supplied with the Review of Determination application and Council's Development Assessment Engineer is now satisfied with the proposal.

2.0 Existing Title Restrictions

No existing title restrictions are listed within Council's GIS system. A sewer line is present on the property with no easement over the line.

3.0 Geotechnical / Earthworks

3.1 Uncontrolled Fill

The fill material remaining on site is currently uncontrolled fill, as identified in the geotechnical report provided with the Review of Determination prepared by Border Tech, dated 5 October 2004.

4.0 Source of Material

The source of the fill material remaining on site is from 18 Hill Street, Tweed Heads. A statutory declaration from the contractor supports the source of the fill. Following a recent site inspection on the 20 January 2006 it is noted that a large amount of one type of the fill material had been removed. The material that had been removed contained builder's rubble and white clay.

Uncontrolled fill material still remaining on the site is a reddish colour and appears to be clean with small amounts of shale / gravel distributed throughout the material.

The Review of Determination application states the following in relation to the fill material remaining on site. "It is proposed to properly compact the material. This may require placing the fill on one side of the site to allow layering of the fill on the site to result in a controlled placement of fill. Once the existing dwelling is removed there will be sufficient room to work the fill material. The material would be compacted in 300mm layers, rolled and compacted to achieve the required standard and to satisfy Council's requirements."

5.0 Retaining Walls

Filling of the site is required as per the requirements of DCP 5 – Development of Flood Liable land to an RL 2.65 AHD. Details contained within the application indicate the site is to be filled and retained by a 1.2m high concrete filled block wall to an RL 2.65 AHD.

6.0 Screw Pile Foundations

The applicant has requested that the uncontrolled fill remain on site and not be compacted to the standards required in DCP 16 – subdivisions manual, in particular Development design specification D6 - site regarding. Foundation stability for the proposed townhouses is achieved through the use of screw piles, which pass through the fill material and are driven into the lower sand strata until the design loading capacity is achieved.

7.0 D6 – Site Regrading

Council's requirements for filling as specified in Development Design Specification D6 – Site Regarding, section D6.08 – standard of fill for lots states;

“All work shall be in accordance with AS3798 and supervised to a level 2 standard (minimum) in accordance with Appendix 6, AS3798. Fill is to be placed in layers not exceeding 150mm compacted thickness. All fill is to be compacted to 95% standards maximum dry density.”

The fill remaining on the site is uncontrolled and not in accordance with the above mentioned development design specification. A condition of consent has been included to enable the fill is compacted to a level 2 standard.

8.0 Roads

8.1 Road Network/Access

The proposed development has frontage to Lloyd Street. Lloyd Street is a two way urban street with the provision of upright kerb and gutter. Lloyd Street is a relatively flat street with intersections at both ends, these being Dry Dock Road to the west and Minjungbal Drive to the east.

8.2 Footpaths / Cycleway

An existing footpath runs along the frontage of the property.

9.0 Stormwater Drainage

The subject land is generally flat, grading towards the kerbed Lloyd Street frontage. To meet flooding requirements, the land will be filled and retained by perimeter walls. The land does not appear to be influenced by external catchments, and similar filling has been carried out in the locality for previous unit developments.

Lloyd Street kerb and gutter remains the legal point of discharge for the proposed development. A piped minor drainage system will be installed to convey runoff from roof and hardstand areas to the street drainage. Runoff from major storm events will flow to the street as overland flow.

The submitted stormwater management plan proposes to install a permanent treatment device to remove contaminants from the driveway catchment, as per Council's D7 specification. The SWMP also proposes to install an on site detention (OSD) system to limit peak stormwater discharge to the public realm to 200L/s/ha up to ARI 100 year storm. The detention system will rely on underground and surface storages. Pervious car wash bays will be provided within the site, requiring no further runoff treatment.

Basic erosion and sediment control measures are proposed for the construction phase, in accordance with Council's Code of Practice. For a flat, retained site, these measures are considered adequate.

10. Flooding Comments

The subject land is flood liable, with existing ground levels approximately 1.5m AHD. DCP 5 requires the site to be filled to a minimum level of 2.65m AHD. Minimum habitable floor level is 2.95m AHD. The plans submitted by the applicant conform to both of these design parameters. No basement levels are proposed.

11.0 Services/Utilities

11.1 Water Supply

Reticulated water is to be connected. Headwork's charges apply.

11.2 Sewer

Council's 150mm sewer line transverses through the subject lot, in which filling and a retaining wall are proposed. The construction certificate shall detail measures to insure the integrity of the sewer with provisions for service and maintenance of the line. A number of special conditions relating to sewer have been included within the recommended conditions of consent.

11.3 Electricity / Telecommunication

The provision of these services is supplied to the proposed development.

11.4 Waste (garbage) service

Each unit will have it's own wheelie bin to be stored in a communal area on Lloyd Street. A standard condition will be applied at the Development Consent.

12.0 Environment/Amenity
12.1 Sediment control

Standard sediment erosion measures will apply to the development. Due to neighbouring properties on either side not being filled to the same level, sediment & erosion control will need to be adequately installed and regular inspections performed by the consulting engineer after each rain event.

(c) Suitability of the site for the development

The proposal is similar in nature to nearby developments and therefore is an appropriate development of the site.

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

The Review of Determination was advertised for a period of fourteen (14) days between Wednesday 11 January and Wednesday 25 January 2006. During the advertising period no submissions were received.

(e) Public interest

The proposed development is not contrary to the public interest.

OPTIONS:

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

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

Having regard to the matters raised in this report it considered on merit that the application is suitable for a conditional approval. The proposal is consistent with the intended land use for the medium density precinct that will provide additional housing choice in this locality.

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.

P5 [PD-PC] Development Application DA05/1491 for Change of Use from Motel to Multi-Dwelling Housing for 12 Units within Block No. 3 at Lot 1 DP 541241, No. 49 Tamarind Avenue, Bogangar

ORIGIN:

Development Assessment

FILE NO: DA05/1491 Pt1

SUMMARY OF REPORT:

Council is in receipt of an application for a change of use at 49 Tamarind Avenue, Bogangar. The existing development comprises 47 tourist accommodation units and 1 managers residence in 4 detached buildings, as well as ancillary communal facilities namely, a pool, games room, recreation room, tennis court and open space/barbeque facilities. The proposal seeks to change the approved use of 12 units within Block 3 from tourist accommodation to permanent residential (multi dwelling housing).

The land is zoned 2(e) Residential Tourist under Tweed Local Environmental Plan 2000 and is not affected by any site specific DCPs.

The application attracted 5 public submissions during the prescribed advertising period. However, the zone objectives are considered to be upheld and the relevant criteria of DCP 6 satisfied. Accordingly, the application is recommended for approval.

RECOMMENDATION:

That Development Application DA05/1491 for change of use from motel to multi-dwelling housing for 12 units within Block No. 3 at Lot 1 DP 541241, No. 49 Tamarind Avenue Bogangar be approved subject to the following conditions: -

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan No 14841 D prepared by B & P Surveys and dated 7/11/05, except where varied by the conditions of this consent.**

[GEN0005]

PRIOR TO COMMENCEMENT OF WORK

- 2. The developer shall provide a total of 59 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 Director of Planning & Development prior to commencement of works.

[PCWNS01]

3. 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]

DURING CONSTRUCTION

4. The provision of 59 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]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

5. 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]

6. Provide balustrade protection to the dining room windows of the upper floor units in accordance with current requirements of the Building Code of Australia or provide a permanently fixed security screens in the window openings.

[POCNS01]

7. Provide waterproofing of the laundry alcoves in accordance with Part F of the current Building Code of Australia.

[POCNS02]

8. Provide clothes drying facilities in accordance with current requirements of the Building Code of Australia.

[POCNS03]

9. All balustrade railing is to comply with current requirements of the Building Code of Australia.

[POCNS04]

10. All existing essential fire safety measures are to be certified by a qualified person to the effect that each of the fire safety measures has been assessed and were found to be performing to a standard not less than that to which it was originally designed.

[POC0525]

11. A satisfactory final inspection of the building is to be carried out by Council prior to occupation or use commencing.

[POC0255]

12. Section 94 Contributions

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

An Occupation 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) Sector7a_4	\$8,813
(b) Open Space (Structured): S94 Plan No. 5	\$4,296
(c) Shirewide Library Facilities: S94 Plan No. 11	\$3,060
(d) Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$1,080
(e) Community Facilities (Tweed Coast - South) S94 Plan No. 15 South Coast	\$2,377
(f) Emergency Facilities (Surf Lifesaving) S94 Plan No. 16	\$910
(g) Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$913.54
(h) Cycleways S94 Plan No. 22	\$2,760

- | | |
|---|----------|
| (i) Regional Open Space (Structured)
S94 Plan No. 26 | \$18,251 |
| (j) Regional Open Space (Casual)
S94 Plan No. 26 | \$6,708 |

[POCNS05]

USE

13. 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]

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

[USE0415]

15. All landscaping work is to be completed in accordance with the approved plans prior to any use or occupation of the building.

[USE0735]

REPORT:

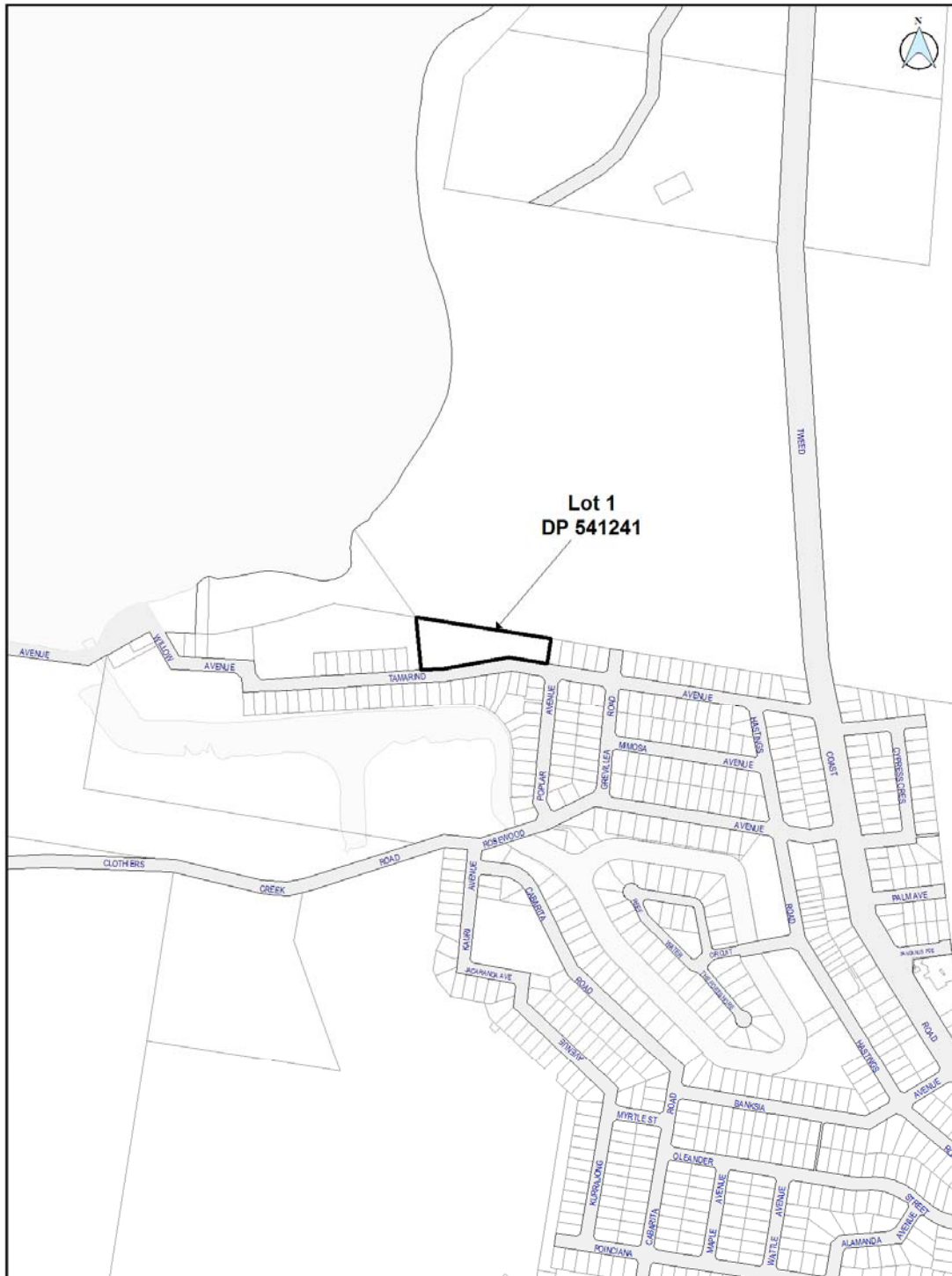
Applicant: B & P Surveys
Owner: John Pernal Pty Ltd
Location: Lot 1 DP 541241 No. 49 Tamarind Avenue, Bogangar
Zoning: 2(e) Residential Tourist
Cost: \$80,000

BACKGROUND:

On 16 December 1998, Council resolved to approve the now constructed motel development (K98/266), incorporating 47 units and a managers residence, at Lot 1 DP 541241. The proposal has been modified previously via Section 96 of the Environmental Planning and Assessment Act 1979, however the modifications sought are largely superficial and are not considered to impact upon the subject application.


The subject site has a land area of 9,491.16m², is of an irregular shape and has frontages to Tamarind Avenue (to the South) and the Cudgen Nature Reserve (to the North). The topography of the land slopes gently to the south and access to the property is through a common driveway, with separate entry and exit points.

SITE DIAGRAM:



© 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 Murrumbidgee, NSW, 2484 TEL: (02) 6670 2409 FAX: (02) 6670 2483

Tweed Shire Council
Lot 1 DP 541241
No. 49 Tamarind Avenue, Bogangar
 File: N:\Munsys\A4P - SITE PLAN.Wor Author: J.Batchelor Date: 10/Oct/2006



PLANNING REFORMS UNIT
Site Plan
 Scale: 1:7,500 Sheet: 1 of 1

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

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

Tweed Local Environmental Plan 2000

The subject land is zoned 2(e) Residential Tourist pursuant to the provisions of Tweed LEP 2000.

The objectives of the 2(e) zone state: -

Primary objective

To encourage the provision of family-oriented tourist accommodation and related facilities and services in association with residential development including tourist facilities such as hotels, motels, refreshment rooms, holiday cabins, camping grounds, caravan parks and compatible commercial services which will provide short-term accommodation and day tourist facilities.

Secondary Objective

To permit other development which has an association with a residential/tourist environment and is unlikely to adversely affect the residential amenity or place demands on services beyond the level reasonably required for residential use.

The proposed development is permissible with development consent within the zone. The maintenance of 3 of the 4 buildings for tourist accommodation use is seen to achieve tourism component of the zone objectives and the proposed use considered to result in the orderly and economic use of the land.

The proposed development is considered to be consistent with the 2(e) Residential Tourist zone objectives and satisfy the provisions of Clause 11.

Clause 17 of the TLEP requires Council to ensure proper consideration of development that may have a significant social or economic impact. The proposal is not seen to have a significant negative social or economic impact, or conflict with the objectives of Clause 17.

North Coast Regional Environmental Plan 1988

The proposed development is not in contravention of any of the NCREP provisions and is considered satisfactory.

State Environmental Planning Policies

State Environmental Planning Policy (SEPP) 71 – Coastal Protection

The proposal has been assessed having regard to clause 8 of the Policy. In this regard the proposal is considered satisfactory with respect to attaining the clause 8 matters.

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

The proposal is not to be adversely affected by any draft EPIs.

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

Development Control Plan No. 2 – Access and Parking Code

Under the original approval (K98/266) 48 vehicle spaces were required to facilitate the 47 units and 1 managers residence, however the application proposed 51. In essence, 12.75 spaces are therefore provided to each of the four buildings.

Under the current provisions of DCP 2, car parking for multi dwelling housing is to be provided at a rate of 1.5 spaces per unit. Accordingly the 12 units subject to this application require the provision of 18 car spaces, or 5.25 more than previously approved. The proposal seeks to increase the number of vehicular spaces to 59, 8 more than previously required, satisfying the car parking requirements of DCP 2.

Development Control Plan No. 6 – Multi Dwelling Housing Code

The following table assesses the proposed development in relation to the acceptable solutions of this DCP:

Standard	Acceptable Solution	Comment
Floor Space Ratio	0.5:1	Not applicable – the proposal does not seek to make any increase in building size. Accordingly the bulk and scale of the proposal has previously been assessed and determined to be appropriate.
Minimum Landscaped Area	Large Dwelling - 80m2 per dwelling	Not applicable – the proposal seeks a minor reduction in land able to be utilised as landscaped area (some of the areas to be utilised for further car spaces are already impervious, and would not be included as landscaped area) to facilitate the additional 8 car spaces to be provided. However, the slight reduction in landscaping is not considered to result in the bulk and scale of the proposal being incompatible or unsympathetic with existing development within the locality.

Setbacks	Primary frontage 6m Side and Rear Setbacks – 3m	The existing development already enjoys a 6 metre setback to Tamarind Avenue and a minimum 4.5m to all other boundaries.
Streetscape	The maximum width of the garages should be 50% of the frontage width.	Existing parking within the development is not provided in garages.
Streetscape	Garages should be setback behind the front façade of the building.	See comment above
Building Envelope	45° from 3.5m high at the side and rear boundary (excluding eaves and the like)	Not applicable – the proposal does not seek to make any increase in building size. In any event, the existing building setbacks employed are considered to allow adequate levels of sunlight, limit overshadowing, adequate levels of privacy and the maintenance of views.
Minimum Private Open Space	20% of site area with minimum dimension of 3m One part min 25m ² with min dimension of 4m	All 12 units enjoy limited private open space, approximately 10m ² via balcony areas or landings for ground floor units. Whilst this amount is private open space is not considered acceptable, the applicant has confirmed that the residents of the 12 subject units will still be entitled to the open areas and amenities of the complex. As discussed earlier, the existing development includes pool, games room, recreation room, tennis court and open space/barbeque facilities. Access to these facilities is considered to satisfy the open space needs of future occupants by providing sufficient facilities for relaxation, entertainment, children’s play and outdoor recreational needs.

Development Control Plan No. 42 – Public Notification

The development application was advertised for a period of two weeks. During this period 5 written submissions were received. A full investigation into the issues raised is contained within section (d) of this report.

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

NSW Coastal Policy

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

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

Context & Setting

The subject land and its immediate surrounds consists of a wide range of land uses and zonings. The subject land is zoned 2(e) Residential Tourist, however the site is bordered by 2(b) Medium Density land and 2(a) Low Density Residential Land, all of which enjoy a 3 storey height restriction. The subject area possesses numerous physical advantages including accessibility to the Cabarita/Bogangar town centre as well as planning incentives including the 2(e) and 2(b) zonings. Accordingly, the locality is likely to be progressively re-developed and is currently experiencing the start of a gentrification process.

Accordingly, the locality is seen to be experiencing a progressive change to the streetscape, context and setting of the area. The proposed development is not considered to detract from this change, nor the desired future outcome of the site and its surrounds.

(c) Suitability of the site for the development

The subject site is considered suitable for the development as proposed.

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

The proposed development was notified to surrounding properties and advertised within the Tweed Link for a period of two weeks. During this period 5 written submissions were received with issues of concern. The main issues raised are discussed within the table below:

Issue	Detail	Response
Precedent	Concern was raised that approving the units use for permanent residential occupation would set a precedent and erode the tourist objectives of the zone.	The proposal is permissible within the zone and is considered to satisfy the zone objectives. Any potential future application/s, would need to demonstrate that that objectives of the zone would be maintained and the application would assessed on it's merits and against Council's relevant controls. Refusal of the application of this issue is not considered warranted.
Safety	Concern was raised as to the safety of future occupants with regard to emergency evacuation	The application has been reviewed by Council's Building Services Unit, who have raised no objection to the proposal subject to the nominated conditions of consent. Refusal of the application of this issue is not considered warranted.
Provision of private open space	Concern was raised that insufficient area had been provided as open space to the units subject to this application.	As discussed earlier, the existing development includes pool, games room, recreation room, tennis court and open space/barbeque facilities, all of which will be available to the future residents of the 12 units. The existing facilities are considered to adequately cater for the future occupants needs. Refusal of the application of this issue is not considered warranted.
Devaluation of surrounding properties		No documentary evidence supporting a contention that the proposal will unreasonably impact upon the capital value of the adjoining properties. Refusal of the application of this issue is not considered warranted.

Issue	Detail	Response
Traffic/On-Street Parking	Concern was raised that the proposal does not provide sufficient levels of parking and that the single entry point is not sufficient to accommodate the developments traffic.	The proposal seeks to increase the number of vehicular spaces from 51 to 59, a number in excess of Council's requirements. Whilst a slight increase in vehicle movements may occur as a result of the proposal, the existing road network and entry/exit points are considered satisfactory for the proposal. Refusal of the application of this issue is not considered warranted.
Amenity	Concern was raised regarding amenity impacts resulting from privacy, noise and garbage collection.	The change of use from tourist accommodation to permanent residential use is not considered to significantly alter existing amenity levels afforded to the locality. Refusal of the application of this issue is not considered warranted.

(e) Public interest

Despite the objections received to this application 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 intended development for the locality.

OPTIONS:

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

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has the right of appeal to the Land and Environment Court if they are dissatisfied with Council's determination of the application.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposal has been investigated and is considered to be suitable to the site; unlikely to cause any significant negative impacts to the surrounding built and natural environment and meets all of Council's applicable requirements within the LEP and relevant DCPs. The application has been assessed by Council's technical officers with no objections being raised subject to the attached conditions of development 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.

THIS
PAGE
THIS
PAGE
IS
IS
BLANK
BLANK