



AGENDA

PLANNING COMMITTEE MEETING 19 DECEMBER 2006

Chairman: Ms Lucy Turnbull

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

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ITEMS FOR CONSIDERATION OF THE COMMITTEE:

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REPORTS THROUGH GENERAL MANAGER

REPORTS FROM DIRECTOR PLANNING & DEVELOPMENT

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

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

MATTERS FOR CONSIDERATION

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

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P1 [PD-PC] Development Application DA06/0099 for a Mixed Use Development Comprising Two Commercial Premises and 4 x 2 Bedroom Units at Lot 9 Section 5 DP 4043, No. 35 Beryl Street, Tweed Heads

ORIGIN:

Development Assessment

FILE NO: DA06/0099 Pt1

SUMMARY OF REPORT:

Council at its meeting of 28 November 2006 resolved to defer the report to the meeting of 19 December 2006.

RECOMMENDATION:

That Development Application DA06/0099 for a mixed use development comprising two commercial premises and four x 2 bedroom units at Lot 9 Section 5 DP 4043, No. 35 Beryl 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 Plan Nos. DA0.00, DA0.01, DA1.01, DA1.02, DA1.03, DA1.04, DA1.05, DA2.01, DA2.02, DA3.01 & DA4.01, prepared by Lightwave Architects and dated December 2005, except where varied by the conditions of this consent.**

[GEN0005]
- 2. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.**

[GEN0045]
- 3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**

[GEN0115]
- 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. 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]

6. 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]

7. Egress from the basement carpark shall comply with either the deemed-to-satisfy provisions of part D1.2 of the Building Code of Australia or a fire engineering report containing an alternate solution which addresses Performance Requirement DP4 in Volume 1 of the Building Code of Australia. Details of one of the above alternatives shall be submitted to and approved by the Principal Certifying Authority prior to the issue of the construction certificate.

[PCCNS01]

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

[PCC1235]

9. Prior to the issue of a construction certificate hydraulics plans of the proposed sewerage drainage system, prepared by a suitably qualified consultant, shall be submitted to and approved by Tweed Shire Council.

[PCCNS02]

10. The developer shall provide ten (10) parking spaces including parking for the disabled, plus a loading bay and provision for bicycle parking in accordance with DCP2, AS 2890 and Austroads Part 11.

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

[PCC0065]

11. Section 94 Contributions

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

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

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

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

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

(a) Tweed Road Contribution Plan: S94 Plan No. 4 (Version 4.0) Sector1_4	\$7,624
(b) Open Space (Structured): S94 Plan No. 5	\$1,260
(c) Open Space (Casual): S94 Plan No. 5	\$269
(d) Shirewide Library Facilities: S94 Plan No. 11	\$1,112
(e) Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$229
(f) Emergency Facilities (Surf Lifesaving) S94 Plan No. 16	\$324
(g) Extensions to Council Administration Offices & Technical Support Facilities	\$2,555.36

S94 Plan No. 18

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| (h) Cycleways
S94 Plan No. 22 | \$568 |
| (i) Regional Open Space (Structured)
S94 Plan No. 26 | \$3,757 |
| (j) Regional Open Space (Casual)
S94 Plan No. 26 | \$1,381 |
| (k) Tweed Heads Master Plan:
S94 Plan No. 27 | \$4,188.00 |

[PCC0215]

12. 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:	2.1344 ET @ \$4598	\$9,814
Sewer Banora:	3.1016 ET @ \$2863	\$8,880

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]

13. 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]

14. The basement car parking is to be protected against the inflow of water to a level of 500mm above the design flood level of RL 2.6m AHD in accordance with DCP5 - Development of Flood Liable Land. A detailed design of the basement stormwater pump out system is to be provided designed for a storm event with a 10 year average return interval (ARI 10) and the consequences of pump failure and the 100 year ARI storm event must be addressed and included with the above details prior to the issue of a Construction Certificate.

[PCC0685]

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

[PCC0865]

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

- (a) Reconstruction of the existing vehicular footpath crossing; and
- (b) Provision of concrete path paving for the full site frontage to extend 2.3m from the property boundary towards the kerb.

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

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

[PCC0895]

17. Prior to the issue of a Construction Certificate the following detail in accordance with 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
 - stormwater drainage
 - water supply works
 - sewerage works
 - landscaping works
 - sedimentation and erosion management plans
 - location of all service conduits (water, sewer, Country Energy and Telstra)

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

[PCC0985]

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

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

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

[PCC1105]

19. Disposal of stormwater by means of infiltration devices shall be carried out in accordance with Section D7.9 of Tweed Shire Councils adopted Development Design and Construction Specification - Stormwater Quality.

[PCC1125]

20. 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.
- (b) All roof water is to be directed towards Beryl Street. No roof stormwater is to be directed towards the rear of the site or adjoining properties without a registered easement first being created over the adjoining property.
- (c) Surcharge overflow from any rubble pits or infiltration area to the street gutter, inter-allotment or public drainage system must occur by visible surface flow, not piped.
- (d) Runoff is to be pre-treated to remove contaminants prior to entry into the infiltration areas (to maximise life of infiltration areas between major cleaning/maintenance overhauls).
- (e) If the site is under strata or community title, the community title plan is to ensure that the infiltration areas are contained within common land that remain the responsibility of the body corporate (to ensure continued collective responsibility for site drainage).
- (f) All rubble pits and infiltration devices are to be designed to allow for cleaning and maintenance overhauls.
- (g) All rubble pits and infiltration devices are to be designed by a suitably qualified Engineer taking into account the proximity of the footings for the proposed/or existing structures on the subject property, and existing or likely structures on adjoining properties.

- (h) Any surcharging/rubble pit system located in the rear yard must only accept stormwater volumes that are equal to or less than the pre-development flows from the relevant portion of the property and will require a level spreader system for dispersal of surcharging stormwater to mimic the original lot's stormwater discharge patten via dispersed sheet flow. [PCC1135]
21. Erosion and Sediment Control shall be provided in accordance with the following:
- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.
- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works". [PCC1155]
22. The peak stormwater flow rate that may be discharged from the site to the public realm, in events of intensity up to the ARI 100 year design storm, shall be 200 l/s/ha. OSD devices including discharge control pits (DCP) are to comply with standards in *The Upper Parramatta River Catchment Trust "On-Site Stormwater Detention Handbook, Third Edition, Revision 2, June 2004"* except that permissible site discharge (PSD) and site storage requirements (SSR) in the handbook do not apply to Tweed Shire.
- All stormwater must initially be directed to the DCP. [PCC1165]
23. The front section of the driveway up to the loading bay will need to be widened to 5.5m (per AS2890.1) to allow two-way traffic movement. [PCCNS03]
24. A detailed plan of landscaping is to be submitted and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. [PCC0585]
- PRIOR TO COMMENCEMENT OF WORK**
25. 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]
26. 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]
27. 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]

28. 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]

29. 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]

30. 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]

31. 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]

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

[PCW1065]

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

- i. The person must, at the person's own expense:
 - a. preserve and protect the building from damage; and
 - b. if necessary, underpin and support the building in an approved manner.

- ii. The person must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars to the owner of the proposed work.
[PCW0080]
34. Where any pumps used for dewatering operations are proposed to be operated on a 24-hour basis, the owners of adjoining premises shall be notified accordingly prior to commencement of such operations.
[PCW0125]
35. Written approval for any application under Section 138 of the Roads Act 1993 is required prior to commencing works within the road reserve.
[PCW0705]
36. The proponent shall provide to the PCA copies of Public Risk Liability Insurance to a minimum value of \$10 Million for the period of commencement of works until the completion of the defects liability period.
[PCW0835]
37. The proponent shall locate and identify all existing underground services prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure including areas external to the development site where works are proposed.
[PCW0005]
38. 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]
39. 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]
40. 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]

41. The roof cladding is to have low reflectivity where it would otherwise cause nuisance to the occupants of the buildings with direct line of sight to the proposed building. [DUR0245]
42. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made). [DUR0375]
43. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council. [DUR0395]
44. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979. [DUR0405]
45. 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]
46. The finished floor level of the building should finish not less than 225mm above finished ground level. [DUR0445]
47. 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]
48. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction. [DUR2185]
49. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:
- (a) internal drainage, prior to slab preparation;

- (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
- (c) external drainage prior to backfilling.
- (d) completion of work and prior to occupation of the building. [DUR2485]
50. Plumbing
- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage. [DUR2495]
51. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position. [DUR2505]
52. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level. [DUR2545]
53. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-
- * 43.5⁰C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
 - * 50⁰C in all other classes of buildings.
- A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works. [DUR2555]
54. 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]
55. 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]
56. 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]
57. 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]
58. Minimum notice of 48 hours shall be given to Tweed Shire Council for the capping of any disused sewer junctions. Tweed Shire Council staff in accordance with the application lodged and upon excavation of the service by the developer shall undertake Works. [DUR0675]
59. Please note that while the proposal, subject to the conditions of approval, may comply with the provisions of the Building Code of Australia for persons with disabilities your attention is drawn to the Disability Discrimination Act which may contain requirements in excess of those under the Building Code of Australia. It is therefore recommended that these provisions be investigated prior to start of works to determine the necessity for them to be incorporated within the design. [DUR1715]
60. 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]

DURING CONSTRUCTION

61. During construction, all works required by other conditions or approved management plans or the like shall be installed and operated in accordance with those conditions or plans. [DUR0015]
62. 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]

63. The driveway is to be constructed 5.5 metres wide at the property boundary and 7.5 metres wide at the kerb line with a uniform taper. This will require reconstruction of the existing footpath crossing.

[DUR0075]

64. 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]

65. Any pumps used for onsite dewatering operations are to be installed on the site in a location that will minimise any noise disturbance to neighbouring residential areas. Such location is to be to the satisfaction of the General Manager or his delegate.

[DUR0225]

66. All pumps used for any onsite dewatering operations shall be acoustically shielded to the satisfaction of the General Manager or his delegate so as to prevent the emission of offensive noise as a result of their operation.

[DUR0235]

67. Pumps used for dewatering operations are to be electrically operated. Diesel pumps are not to be used unless otherwise approved by the General Manager or his delegate. [DUR0255]
68. Provision to be made for the designation of a durable and pervious car wash-down area. The area must be identified for that specific purpose and be supplied with an adequate water supply for use within the area. Any surface run-off from the area must not discharge directly to the stormwater system. In this regard the disabled parking space shall also be utilised as a car wash bay. [DUR0975]
69. 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]
70. 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]
71. Vehicles leaving the premises shall be sufficiently free from dirt, aggregate or other materials such that materials are not transported onto public roads. [DUR2415]
72. All waters that are to be discharged from the site shall have a pH between 6.5 and 8.5 and suspended solids not greater than 50mg/kg. The contractor shall nominate a person responsible for monitoring of the quality of such discharge waters on a daily basis and the results recorded. Such results shall be made available to Council's Environmental Health Officer(s) upon request. [DUR2435]
73. 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]
74. Dewatering of the site shall be carried out in accordance with the Dewatering Management Plan provided within Section 6.0 of the Acid Sulfate Soil & Dewatering Assessment and Management Report for 35 Beryl Street, Tweed Heads prepared by Border-Tech and dated November 2005 (Job No: BT15266). [DURNS01]

75. The names and contact details of person's responsible for the appropriate management of dewatering operations shall be supplied to Council prior to the commencement of dewatering operations.

[DURNS02]

76. A visual inspection of discharge waters for suspended sediments shall be carried out daily with corrective action undertaken immediately as required.

[DURNS03]

77. The burning off of trees, associated vegetation felled by clearing operations and builders waste is prohibited.

[DURNS04]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

78. 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]

79. 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]

80. Prior to the issue of a final occupation certificate, all conditions of consent are to be met.

[POC1055]

81. 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]

82. 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]

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

[USE0125]

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

[USE0175]

85. All 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]

86. **GENERAL TERMS OF APPROVAL UNDER SECTION 10 OF THE WATER ACT 1912 (Licence to construct and use a work and to take and use water if any conserved or obtained by the work and to dispose of the water for the use of occupiers of the land)**

- Before commencing any works or using any existing works for the purpose of Temporary Dewatering for Construction Purposes, an approval under Part 5 of the Water Act 1912 must be obtained from the Department. The application for the approval must contain sufficient information to show that the development is capable of meeting the objectives and outcomes specified in these conditions.
- An approval will only be granted to the occupier of the lands where the works are located, unless otherwise allowed under the Water Act 1912.
- When the Department grants an approval, it may require any existing approvals held by the applicant relating to the land subject to this consent to be surrendered or to let lapse.
- All works subject to an approval shall be constructed, maintained and operated so as to ensure public safety and prevent possible damage to any public or private property.
- All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry of sediments into any river, lake, waterbody, wetland or groundwater system.
- The destruction of trees or native vegetation shall be restricted to the minimum necessary to complete the works.
- All vegetation clearing must be authorised under the Native Vegetation Conservation Act 1997, if applicable.
- The approval to be granted may specify any precautions considered necessary to prevent the pollution of surface water or groundwater by petroleum products or other hazardous materials used in the construction or operation of the works.

- A license fee calculated in accordance with the Water Act 1912 must be paid before a license can be granted.
- If and when required by the Department, suitable devices must be installed to accurately measure the quantity of water extracted or diverted by the works.
- All water measuring equipment must be adequately maintained. It must be tested as and when required by the Department to ensure its accuracy.
- Works for construction of bores must be completed within such period as specified by the Department.
- Within 2 months after the works are completed the Department must be provided with an accurate plan of the location of the works and notified of the results of any pumping tests, water analysis and other details as are notified in the approval.
- Officers of the Department or other authorised persons must be allowed full and free access to the works for the purpose of inspection and testing.
- Water shall not be pumped from the works for any purpose other than dewatering for construction purposes.
- The use of water shall be conditional on no tailwater drainage being discharged into or onto -
 - any adjoining public or crown road
 - any crown land
 - any river, creek or watercourse
 - any groundwater aquifer
 - any area of native vegetation
 - any wetlands
- The work shall be managed in accordance with the constraints set out in the "Acid Sulfate Soil and Dewatering Assessment and Management" document produced by Border-Tech dated November 2005 for the site, presented as Appendix D in the "Statement of Environmental Effects" produced by Planit Consulting dated January 2006.
- The volume of groundwater extracted as authorised must not exceed 5 megalitres.
- The Department has the right to vary the volumetric allocation or the rate at which the allocation is taken in order to prevent the overuse of an aquifer.
- The licence shall lapse within six (6) months of the date of issue of the licence.

REPORT:

Applicant: Kenvic Homes
Owner: Mr KE Jamieson and Mrs VI Jamieson
Location: Lot 9 Section 5 DP 4043, No. 35 Beryl Street, Tweed Heads
Zoning: 3(b) General Business
Cost: \$1,200,000

BACKGROUND:

The section of Beryl Street where the subject site is located is nominated in the Tweed Heads Masterplan as possessing special character value – primarily for its distinctive mix of older style, two (2) storey timber cottages, all of a similar architectural appearance and all sited near to the Beryl Street frontage.

Photos of the area are provided as an addendum to this report.

To ensure preservation of this area, the Masterplan recommends the establishment of a 'Special Character Zone' on Beryl Street with the principal objective of reducing building heights along the street frontage and ensuring the character, scale and built form of the area is preserved.

As the subject site is geographically at the centre of the most valuable character buildings in the street, any redevelopment will have a critical role in determining the special character qualities of the whole area.

Regrettably, the existing dwelling on the subject site was approved for demolition on 11 January 2006 (DA05/1519). Council's Building Services Unit have acknowledged the decision to grant consent for demolition was an oversight, advising that they were not aware of the special character identification given to the site.

Given the existing building now has approval to be demolished, the critical issue becomes determining whether the design of the proposed redevelopment is sympathetic to the character of the area. In this respect, both Council's Strategic Planner (Urban Design) and the Project Co-ordinator of the Tweed Heads Masterplan have provided comment indicating that the current design fails in this sense.

When looking at these design and character area issues, the question of how much weight Council is required to give to the Masterplan is also pertinent. It is understood that the Masterplan may be required to undergo a substantial review in the New Year. Should this occur, the role of the document in the assessment process may alter. At present, the Masterplan has been adopted by Council and endorsed by the Minister for Planning but has not yet been translated into any formal amendment to the LEP or DCP.

Despite the uncertainty regarding the future the Masterplan and its lack of statutory weight, it is considered the concepts underpinning the Masterplan are largely well-founded and worthy of review when looking at the subject application.

Issues related to the Masterplan need to be further looked at in the context of the current statutory controls for the subject site and in particular in relation to building heights. As discussed later in this report, the subject land is currently designated for twelve (12) storey development. In contrast, the Masterplan identifies a 2/4 storey height limit for the site (the first 20 metres from the property boundary designated for two (2) stories and the area behind identified for four (4)). Whilst twelve (12) storeys may not be achievable given the available land area, the issue of compatibility with the low-rise, special character area surrounding the development and the recommendations of the Masterplan needs to be looked at with this in mind. Should Council elect to refuse the current three (3) storey proposal on the grounds of building height, non-compatibility with surrounding development and conflict with the recommendations of the Masterplan, there remains a possibility for the applicant to propose a taller, even less-sympathetic building, still within the current statutory building height controls applicable to the site.

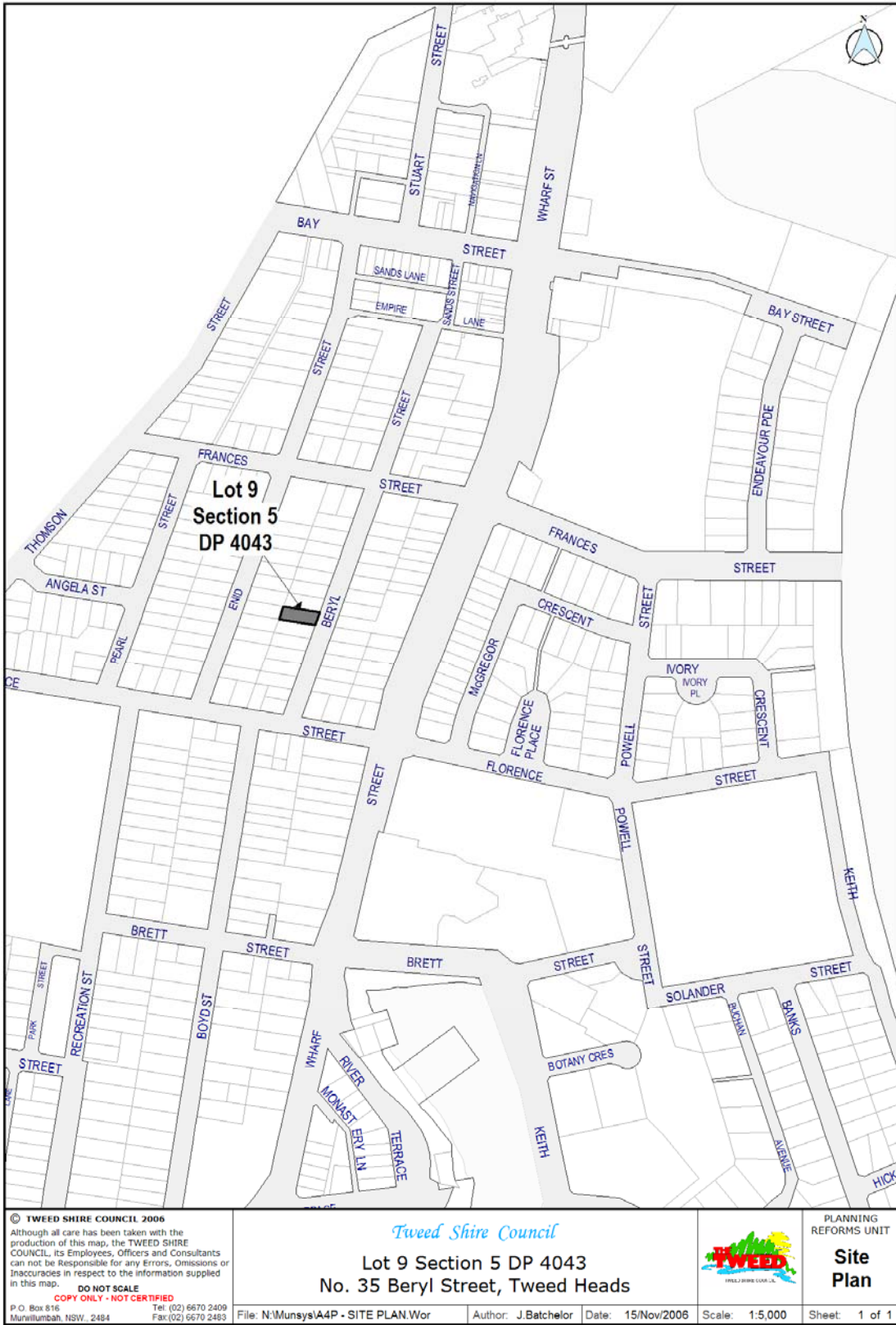
All the above issues are addressed further within the body of the report. It is noted that whilst the recommendation is for approval, the merit of the proposal is largely dependent on the emphasis Council places on the heritage/special character value of the area and the recommendations of the Tweed Heads Masterplan.

The subject site has a primary frontage to Beryl Street, is regular in shape, and has an area of approximately 597m². The land is generally flat with a slight crossfall from east to west, ranging in height from approximately 4.51m AHD to 3.93m AHD.

The site is surrounded adjoined to the north and south by single dwelling houses with those adjoining along Beryl Street identified in the Tweed Heads Masterplan as having a distinctive style and character.

Little existing vegetation is evident on site with existing ornamental plantings scattered throughout the property. In terms of existing improvements, the site possesses an existing dwelling house. As established, Council has previously granted development consent for the demolition of this dwelling.

SITE DIAGRAM:



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Tweed Shire Council
Lot 9 Section 5 DP 4043
No. 35 Beryl Street, Tweed Heads
 File: N:\Munsys\A4P - SITE PLAN.Wor Author: J.Batchelor Date: 15/Nov/2006

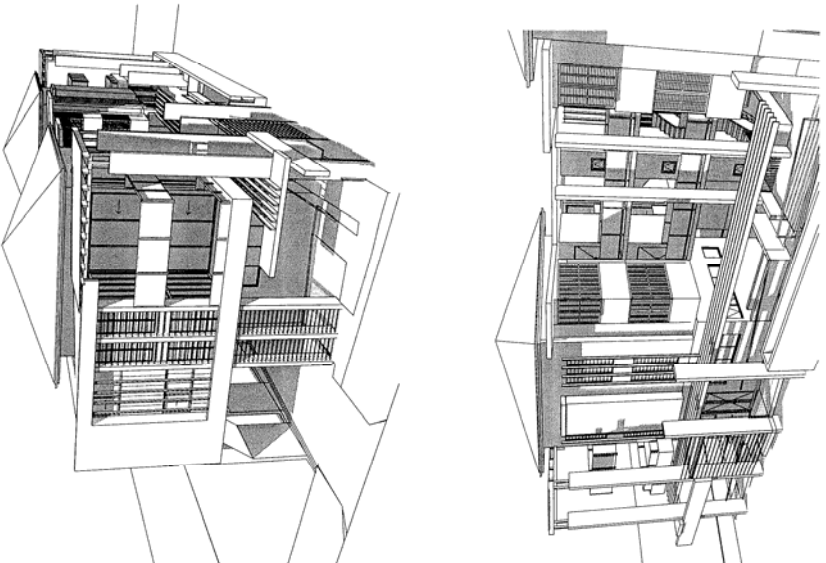


PLANNING REFORMS UNIT
Site Plan
 Scale: 1:5,000 Sheet: 1 of 1

DEVELOPMENT PLANS:

PO BOX 1029 KINGLIFF NEW SOUTH WALES 2287 www.lightwave.com.au
P: 07 5509 9929

Beryl Street Mixed Use
35 Beryl St
Tweed Heads



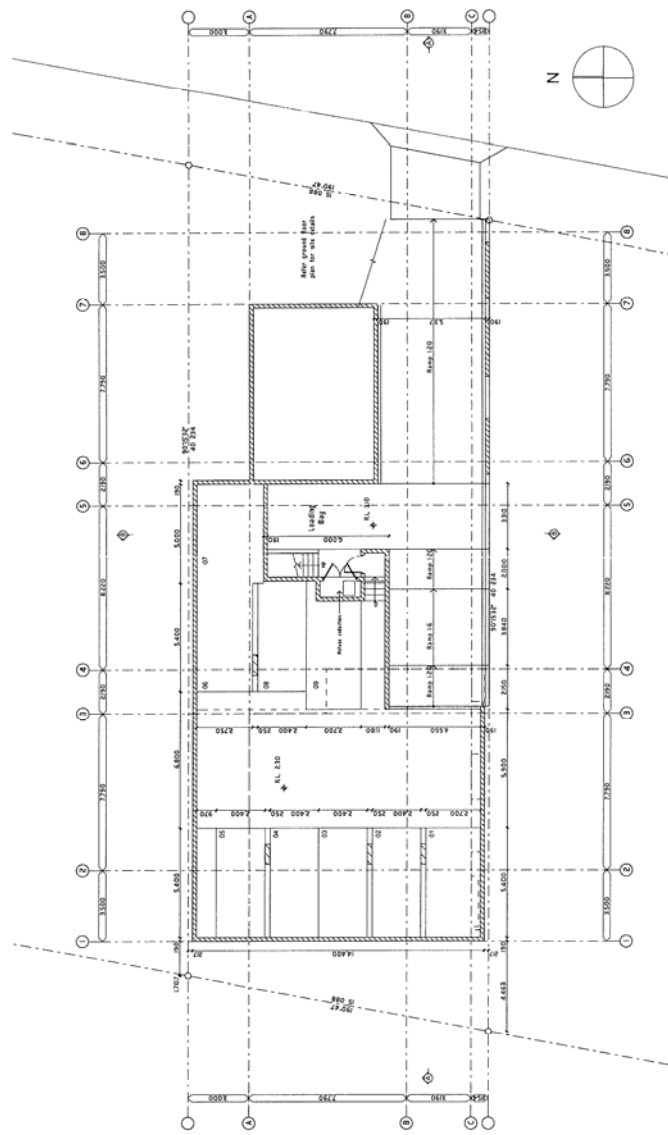
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CLIENT Jamieson Developments

TITLE APPLICATION FOR DEVELOPMENT APPROVAL
Cover Page

Beryl Street Mixed Use

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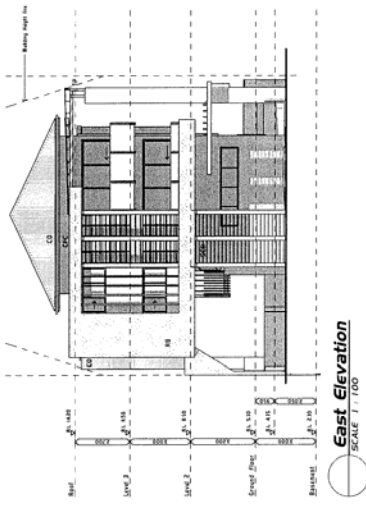
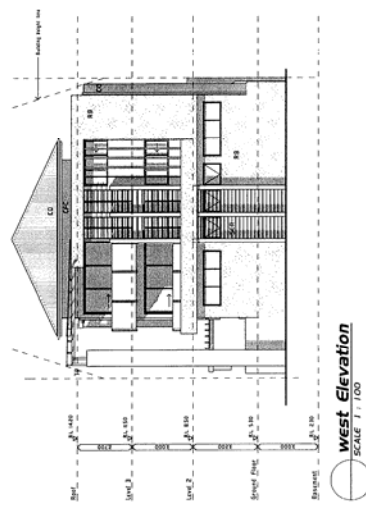
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 Lightwave

Beryl Street Mixed Use
 APPLICATION FOR DEVELOPMENT APPROVAL
 Basement Plan
 CLIENT Jamieson Developments

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PO BOX 909 KINGHORN NSW 2487 WWW.LIGHTWAVE.COM.AU

- Legend**
- CO - Commercial/Community Use
 - RE - Residential Medium Density
 - RI - Residential Medium Density (Rural)
 - SP - Street Frontage
 - ST - Street Frontage
 - ST - Street Frontage
 - ST - Street Frontage
 - ST - Street Frontage



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1200 @ A3

Beryl Street Mixed Use

APPLICATION FOR DEVELOPMENT APPROVAL

East & West Elevations

Jamieson Developments

CLIENT

P10 602 8059 Kingcliff NSW 2487 www.lightwave.com.au

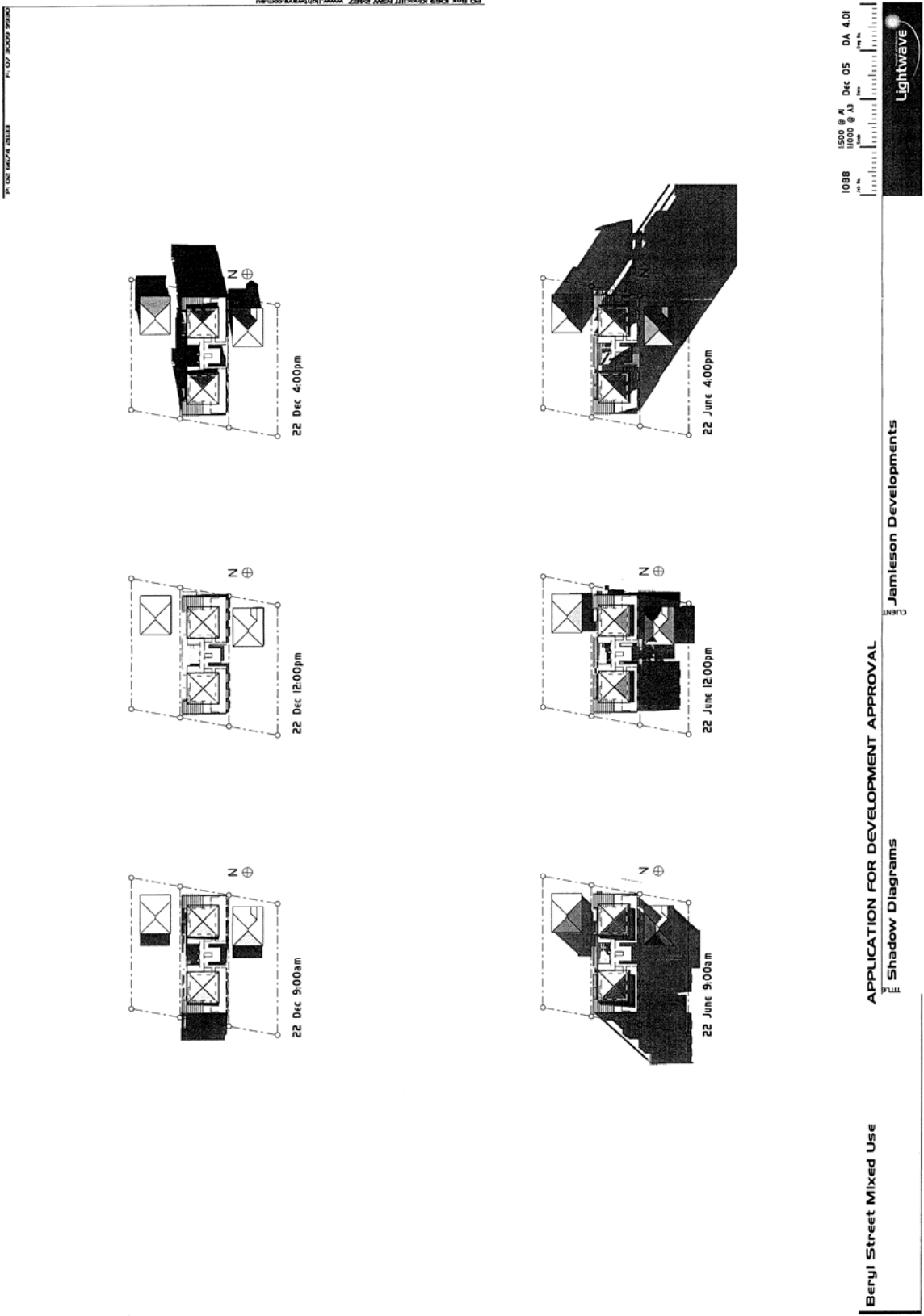
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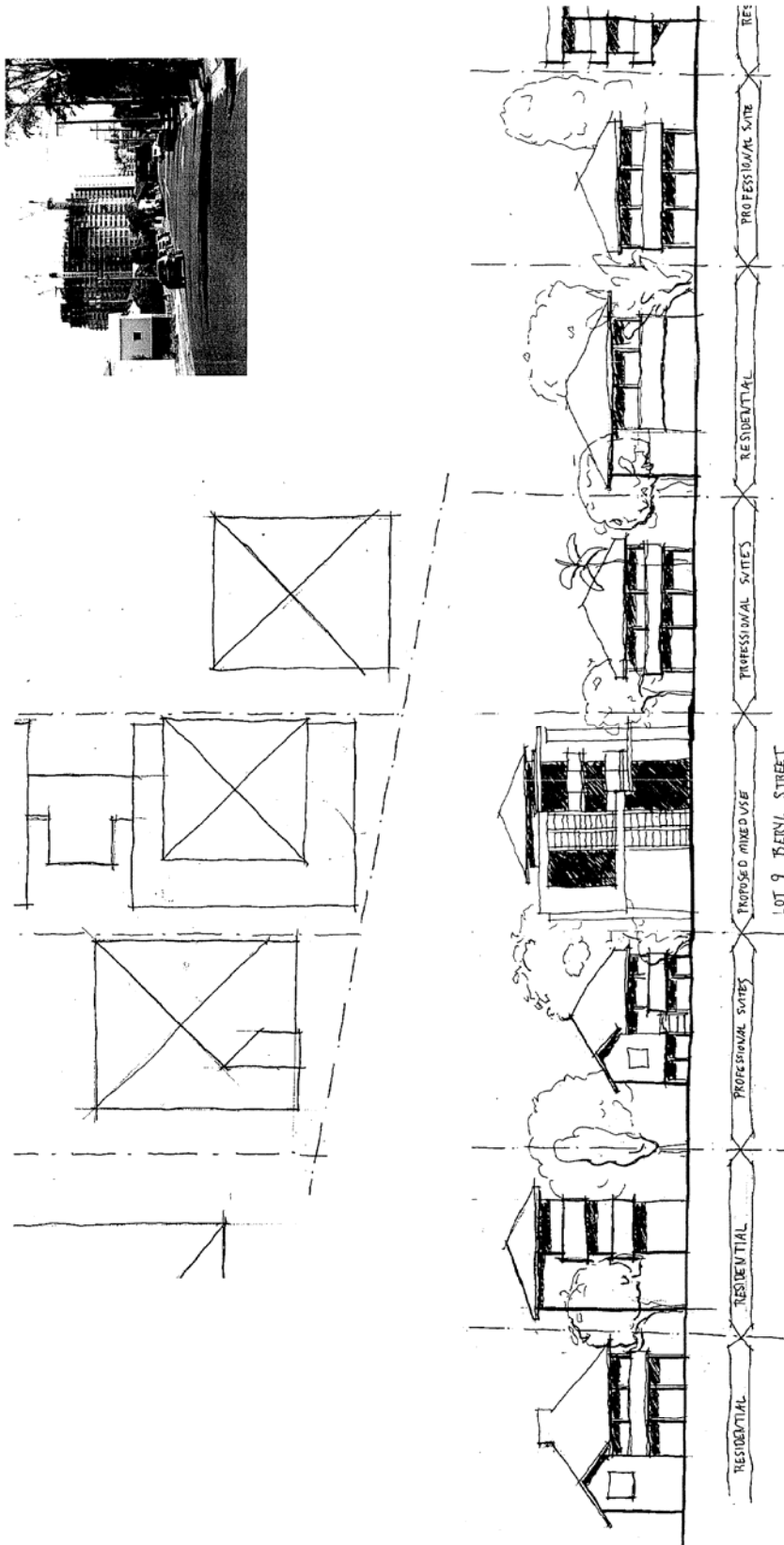
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Beryl Street Mixed Use

CLIENT Jamieson Developments

APPLICATION FOR DEVELOPMENT APPROVAL
Sections A & B





Streetscape
Beryl Street Mixed Use
 Jamieson Developments
 APPLICATION FOR
 DEVELOPMENT APPROVAL
 LOT 9 ON DP4043

JOB NO. 1088
 PAGE NO. P08



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

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

Tweed Local Environmental Plan 2000

The subject land is zoned 3(b) General Business under the Tweed Local Environmental Plan 2000. The proposed mixed-use development is permissible with consent in the subject zone.

The proposal is generally consistent with the relevant zone objectives and specific requirements of the LEP pertaining to:-

- Clause 15 – Availability of Essential Services;
- Clause 16 – Height of Buildings;
- Clause 17 – Social Impact Assessment; and
- Clause 35 – Acid Sulfate Soils.

The proposal does however exceed the prescribed floor space ratio of 1:1 identified in Clause 50 (by a margin of 0.13:1) and a SEPP No.1 Objection has been lodged in this regard.

State Environmental Planning Policy No.1 – Development Standards

Pursuant to the provisions of SEPP No.1, the applicant is seeking a variation to the provisions of Clause 50 of the LEP which reads:-

Clause 50 – Floor space ratios in Zones 3(a) and 3(b) at Tweed Heads

(1) Objective

- *to control by floor space ratio the intensity of retail uses in Zone 3(a) (the Sub-regional Business zone) and certain part of Zone 3(b) (the General Business zone), and encourage the consolidation of lots.*

(2) This clause applies to land within Zones 3(a) and 3(b) at Tweed Heads

(3) Buildings proposed to be erected on land to which this clause applies must not exceed the floor space ratios (FSR's) in the following Table:

Floor space ratios			
Column 1	Column 2	Column 3	Column 4
Zone	Maximum FSR for sites ² less than 2,000m	Maximum FSR for sites ² 2,000m or more, without bonuses	Maximum FSR ² for sites 2,000m or more, with bonuses
3 (a)	2:1	2:1	4:1
3 (b)	1:1, including not more than 0.25:1 for retail or refreshment rooms	1:1, including not more than 0.25:1 for retail or refreshment rooms	2:1

(3) *Buildings proposed to be erected on land to which this clause applies must not exceed the floor space ratios (FSR's) in the following Table:*

(4) *In order to achieve the maximum floor space ratio contained in Column 4 of the Table, a development must provide bonuses as specified in Development Control Plan No 18—Tweed Heads, as in force on the appointed day.*

The proposed development has a floor space ratio of 1.13:1 which exceeds the prescribed floor space ratio of 1:1 as identified above. In this regard, the property has an area of 597m² whilst the building itself will have a gross floor area of 677m² and will exceed the prescribed FSR by 80m².

The applicant has included the following points in support of the proposed departure from the development standard:-

- *The increase will not result in any significant additional bulk or scale of the final development;*
- *Considering that the current LEP has a maximum height limit in this area of 12 storeys, it is reasonable to expect larger building in the area. The proposal will be of a relatively small scale having regard to the development potential of the site;*
- *The additional 80m² of floor area will not detract from the rejuvenation of the 3(a) or 3(b) zoned areas of Tweed Heads.*

Having regard to the twelve (12) storey height limit currently applicable to the subject land and in light of the submission prepared by the applicant, it is considered that a variation to the FSR be supported in this instance.

The level of variation is minor in nature amounting to approximately 80m² of floor area and will not adversely impact of the amenity of the area or the future redevelopment and revitalisation of the Tweed Heads CBD.

State Environmental Planning Policy No.65 – Residential Flat Buildings

Clause 30 of SEPP No.65 requires the consent authority to consider each of the ten (10) design quality principles when determining a development application for a residential flat building.

In this regard, the applicant has provided a comprehensive assessment of the proposal against the relevant design quality principles.

A summary of the applicant's assessment is provided below:-

Design Principle 1 – Context

- *Proposal addresses the street, manipulating the different floor plan levels, providing balconies and overlooking opportunities to activate this interface;*
- *The fundamental objective of the proposal is to revitalise the Tweed Heads Town Centre by way of suitable design and the creation of an attractive defined character while having regard to the special character precinct identified by the Masterplan.*

Design Principle 2 – Scale

- *The site currently has a height limit of 12 storeys under Tweed LEP 2000. The proposal is for a three (3) storey building which is in keeping with the scale of existing buildings in the immediate area.*

Design Principle 3 – Built Form

- *The proposal has been designed so as to be broken into a number of smaller elements. For example, the proposal comprises what could be described as two (2) separate building linked by a walkway. A pitched colourbond roof is proposed which is consistent with the general “border theme” adopted by older cottages in the area.*

Design Principle 4 – Density

- *The density demonstrated incorporates desired uses and in no way corresponds to an overdevelopment of the site.*

Design Principle 5 – Environmental Issues

- *The credentials of the proposal in this regard are demonstrated within the attached NatHERS documentation and the simple design basics (such as orientation) exhibited within the attached plans.*

Design Principle 6 – Landscaping

- *The attached plans feature significant detail in accordance with the desired future character of the area.*

Design Principle 7 – Amenity

- *Each of the apartments has been designed so as to maximise available sunlight, space and ventilation. In this regard, each dwelling opens out onto sufficient open space balcony areas accessed from living areas.*
- *All apartments have been designed and positioned to ensure visual and acoustic privacy for the residents.*
- *Public areas are landscaped and open with access to sunlight and shade as required.*

Design Principle 8 – Safety and Security

- *The building and landscape design will adopt CPTED (Crime Prevention through Environmental Design) principles.*

Design Principle 9 – Social Dimensions

- *The proposed development will contribute to the revitalisation of the area consistent with the Masterplan while providing some commercial opportunities generating employment in the area within easy walking distance of local residents.*

Design Principle 10 – Aesthetics

- *The proposal has been designed and sited so as to address the adjacent streetscape. The proposal has been designed to promote a high level of visual interest and appeal.*

Assessment

In light of the assessment provided by the applicant, the proposed development is considered to satisfactorily achieve the majority of design principles in the Policy.

Design Principles relating to Scale, Built Form, Density, Environmental Issues, Amenity, Safety and Security, Social Dimensions and Aesthetics are all considered suitably addressed.

However, the performance of the proposal against the principles Context, Scale, Built Form and Aesthetics is considered less convincing.

The concern with each these design principles is again related to the question of compatibility with the existing streetscape and the identified special character/heritage value of the area.

While there are elements of the design that have clearly been included to assist in achieving better integration (such as the pitched colourbond roof), it could be argued that general appearance of the proposal fails to pay suitable regard to the existing built form.

One aspect of particular concern with the design is the failure of the proposed development to effectively address the Beryl Street frontage. The subject land is zoned for commercial uses at ground level, a land-use that benefits from an active and visually interesting streetscape.

The proposed driveway and handicapped car park adjacent to the street frontage fails to achieve any such activation and may also be seen to compromise the integrity of the existing streetscape provided by the older style cottages in the vicinity.

State Environmental Planning Policy No.71 – Coastal Protection

The subject site is within the Coastal Zone and is affected by the provisions of SEPP No.71. In this regard, the proposal does not exceed 13m in height, is not in a sensitive coastal location and does not contain any land uses which trigger the Minister as the consent authority. The application is considered satisfactory with respect to the matters outlined in Clause 8.

North Coast Regional Environmental Plan 1988

The proposed development is consistent with the provisions of the REP relating to:-

- Clause 32B – Coastal Lands;
- NSW Coastal Policy;
- Coastline Management Manual;
- North Coast Design Guidelines;
- Overshadowing;
- Clause 33 – Coastal Lands;
- Clause 51 – Tall Buildings; and
- Clause 81 – Development Adjacent to the Ocean or a Waterway.

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

Draft LEP Amendment No.64

Draft LEP No.64 seeks to update the building height controls to reflect the recommendations of the Tweed Heads Masterplan.

Due to certain errors/inconsistencies being identified between the exhibited version of the amendment and the intended version, the draft amendment has been put on hold pending further review.

Advice from Council's Planning Reform Unit suggests that the draft amendment will require re-exhibition once the anomalies are corrected.

Irrespective, the subject site and Beryl Street area falls outside the area nominated for change under the previously exhibited version of the draft LEP.

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

Development Control Plan No.2 – Car Parking Code

The proposed development incorporates a total of ten (10) car parking spaces including the disabled space at street level and the tandem space.

The following table outlines the requirements of the development pursuant to DCP No.2:-

DCP 2 Analysis		
Development Type	Generation Rate	Total Requirement
Residential Units	4 units @1.5 spaces per dwelling	6 spaces
Office	30% of 1 space per 40m ² (as per Clause 4.8)	2 spaces
Delivery/Service vehicle parking	1 space per 200m ² office space	1 space
Bicycle Parking	1 space per 100m ² of office space	2 bays
Total Required		8 car parking spaces 1 loading bay 2 bicycle bays
Total Provided		8 car parking spaces + 1 tandem space 1 loading bay 2 bicycle bays

Based on the assessment outlined above, the proposed development satisfies the car parking requirement of DCP No.2.

Development Control Plan No.18 – Tweed Heads

Under the provisions of DCP 18 the subject site is identified within the 'Southern Precinct'. The objectives of this Precinct include:-

- *Cater for businesses that reinforce the local economy;*
- *Provide for tourism support businesses that reinforce the local economy;*
- *Reinforce the commercial role of Wharf Street;*

- *Provide development incentives that result in a high standard for mixed use commercial and residential development;*
- *Encourage a local building aesthetic that responds favourably to the sub-tropical climate, retains important view corridors and reflects the maritime location and history of the locality.*

The proposal is consistent with the objectives as it provides for a high quality mixed-use development that will cater for local businesses.

For the southern precinct, a height limit of three (3) storeys is prescribed for sites less than 2000m². The proposed has a site area of 597m² and a maximum height of three (3) storeys and is therefore consistent with this provision.

The following table identifies the proposed developments' compliance with all other relevant provisions of DCP No.18:-

REQUIREMENT	COMMENT
<p>Section 9.3 - Building Envelopes</p>	<p>The proposed building exhibits substantial encroachments into the 72° building envelope applicable to development in business zones that adjoin residential zones. The envelope provided on the plans by the applicant is considered drawn incorrectly as it provides for an 8 metres podium level which is not proposed as part of the current application. In the context of the objectives behind the building envelope requirement the proposal is considered reasonable as it will not result in any adverse impacts on adjoining properties, is only three (3) stories in height and provides for articulation along both the vertical and horizontal plane.</p>
<p>Clause 10 – Commercial Facades</p> <ul style="list-style-type: none"> <li data-bbox="325 898 528 934">• Facades <li data-bbox="325 1301 647 1337">• Design Elements 	<p>The proposal fails to provide a commercial premise with immediate frontage to Beryl Street at ground level. Instead, the proposed commercial tenancy is setback behind a handicapped car park. The applicant has defended this aspect of the design on the basis that the proposed commercial tenancies will likely provide for offices and not shops – thereby reducing the advantages of having the tenancy right on the street frontage.</p> <p>This Clause refers to the provision of active ‘shop fronts’. It is considered that a commercial use as opposed to a shop may be more appropriate in this locality. Given the existing variation in land uses and setbacks in the immediate vicinity, it is unlikely that a continuity of shop fronts with awning would be achievable in the locality.</p>

<p>Clause 11 - Residential Design Guidelines</p>	
<ul style="list-style-type: none"> • Building Mass 	<p>The design of the proposed building mass achieves the objectives of the building mass provisions by articulating external walls and the inclusion of balconies such that continuous unbroken lengths do not exceed 15m.</p>
<ul style="list-style-type: none"> • Energy Efficiency 	<p>A NatHERS Certificate has been supplied with the application demonstrating that each proposed unit achieves or exceeds the minimum 3.5 star rating.</p>
<ul style="list-style-type: none"> • Wind Mitigation 	<p>The proposed building is considered unlikely to create any adverse wind effects at ground level.</p>
<ul style="list-style-type: none"> • Overshadowing 	<p>Whilst the proposed development will result in a considerable amount of overshadowing over the property to the south, the twelve (12) storey height limit currently applicable to the subject site suggests that a certain degree of overshadowing is inevitable. No objections were received on the grounds of overshadowing and on balance, the shadow impacts are considered reasonable – particularly given the height controls applicable to the site.</p>
<ul style="list-style-type: none"> • Rooflines 	<p>The proposed roof design provides a visually interesting skyline and is considered to be consistent with the objectives of this provision. Pitched colourbond roofs are proposed to assist in maintaining the existing character of the area.</p>
<ul style="list-style-type: none"> • Privacy 	<p>The proposed building is not considered likely to present a significant risk of overlooking. The proposed balconies are offset and oriented in different directions to mitigate any potential adverse privacy issues internally. In terms of adjoining development, appropriate screening could be incorporated into the design to provide privacy screening of rear unit balconies.</p>
<ul style="list-style-type: none"> • Security Surveillance 	<p>and Street level casual surveillance is achieved by designing the units to address the street</p>

<ul style="list-style-type: none"> • Material and Colours • Access, Car Parking and Car Wash bays • Open Space and Balconies 	<p>frontages. Security measures will be implemented to limit access to basement car parks, lift foyers and open space areas. In addition, security lighting will be provided within the grounds together with intercom access to screen and admit guests to the building.</p> <p>Materials and colours for the proposed development will generally be of a non-reflective nature and are generally sympathetic to the heritage character of the street.</p> <p>A basement car park is to be provided as part of the proposed development. The car park is sufficient in meeting the relevant generation rates outlined in DCP 2. With regard to a car wash bay, Council's Development Engineer has recommended the handicapped car space proposed at ground level be amended to provide for wash down facilities. Suitable conditions to apply. The car parking arrangements are generally considered to be satisfactory.</p> <p>The proposed building comprises four (4) large units as defined by the DCP. Accordingly the proposal is required to provide a total of 100m² of landscaped open space.</p> <p>The proposal incorporates approximately 70m² of deep soil landscaping and at ground level with planter boxes and other non-deep soil landscaping also provided. In addition, approximately 88m² is provided as useable private open space (in the form of a balcony), attached to the main living area of each dwelling.</p> <p>Accordingly it is submitted that the proposal exceeds the landscaped open space requirements of the DCP.</p>
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It is considered that the proposed development is generally consistent with the provisions of DCP 18 and the desired outcomes for the 'Southern Precinct'. The proposal generally complies with all development controls of the DCP as detailed above and is unlikely to result in any significant adverse impacts.

Development Control Plan No.39 - Energy Smart Homes Policy

The applicant has undertaken a NatHERS assessment of the proposed development pursuant to the provisions of the DCP. The assessment indicates that each of the units achieves or exceeds the minimum requirement of 3.5 stars.

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

NSW Coastal Policy 1997

The proposed development is consistent with all relevant strategic objectives of the 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 and Setting

Given its prominent location in Beryl Street relative to the surrounding cottages, the proposed development is likely to have a significant impact on the local streetscape and the future preservation of the area.

Comments from Council's Strategic Planner (Urban Design) concur:-

"As the site is at the centre of the most valuable character buildings in the street, the removal of one of these buildings will compromise the special character qualities of the whole area. This group of buildings gives a perspective and proportion to the streetscape that is reinforced through repetition and harmony and provides a character anchor to the whole of the area. The subsequent impact that a new building amongst the group will be considerable. It is therefore essential that any infill development that occurs must be of a high quality and be designed with respect for its context, fit well and support the adjoining building in a character sense as well as in bulk and scale."

While the applicant maintains that the proposed design incorporates elements in the design that are intended to integrate the development with the existing cottages, the three (3) storey height, use of rendered masonry and fibro cement and strong modernist influence in the façade is not considered to reflect the lightweight simplicity of the cottages surrounding it.

The presentation to the street at ground level comprising a car space across the face of the building, concrete car entry and a ramp, further reduces the visual qualities of the streetscape.

While the impacts on the streetscape are a concern, the extent to which they compromise the merits of the application depends on the value that is placed on the existing streetscape and its preservation.

Other potential impacts relating to overshadowing (of the property to the south), privacy and overlooking are considered to be within reasonable limits.

(c) Suitability of the site for the development

The suitability of the site is again linked to the questions of whether the existing streetscape is considered worthy of retention and whether the proposed development is of a suitable design.

Comments from the Project Co-ordinator of the Tweed Heads Masterplan provided the following points in this regard:-

- *“The proposed 3 storey replacement building fronting Beryl Street would detract from the existing (border-style) cottages and dominate the streetscape. The Heritage Office recommends a maximum of 2 storeys for new cottages and buildings within the 20m curtilage area to ensure that new development would not dominate the existing cottages.*
- *Beryl Street has an intimate feel due mainly to the predominantly 2 storey cottages located on the property frontage and despite the range of architecture styles currently represented on the street there is a feel of uniformity of predominant styles, materials, façade elements and pedestrian scale which gives the street its character. Clearly the proposed Beryl Street mixed use 3 storey development does not interpret these elements and does not contribute to the character of the area as recommended by the Masterplan and the Heritage Office.*
- *In all character areas new buildings are encouraged to locate on the property frontage to be consistent with existing buildings and the streetscape. Taller buildings are usually permitted only if they are not visible from the street frontage and do not affect the amenities of the surrounding residential properties.*
- *Beryl Street elevation is a particular concern in terms of height, ground level, setbacks, architecture elements, treatments, design and materials. If the existing building must be demolished the Beryl Street elevation of the new development should be designed to comply with the new guidelines to maintain and enhance the existing and identifiable character of Beryl Street.”*

There are no natural constraints affecting the site such as bushfire or flooding. The proposal will require dewatering to provide for the basement car park with the Department of Natural Resources raising no objection subject to General Terms of Approval.

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

The application was advertised for thirty (30) days in accordance with Council's Notification Policy. During this period, one submission was received. A copy of the submission was forwarded to the applicant with the applicant subsequently advising that no response would be provided as the issues raised did not warrant further discussion. Despite no response being provided by the applicant, the issues raised in the submission are addressed below:-

Issue: When Council approved demolition of the existing character building, was it aware of the recommended 'Special Character' zoning of Beryl Street nominated in the Tweed Heads Masterplan?

Comment: Council's Building Services Unit approved the demolition of the existing dwelling on-site on 11 January 2006. The relevant officers have since acknowledged that the decision was an unfortunate oversight. There is no opportunity for Council to retract the decision to approve the demolition.

Issue: The 'Special Character' provides a two (2) storey height limit for the front of the blocks with four (4) stories at the rear. The application to construct a modern three (3) storey building with very little set-back will break up the current streetscape and undermine the future preservation of the special character zone.

Comment: The subject land is identified for twelve (12) storey development under Clause 16 of the Local Environmental Plan. The building height recommendations of the Masterplan have not yet been implemented as part of an LEP Amendment. The proposed three (3) storey structure is not considered unreasonable in the context of the current building height limit applicable to the site and given the presence of other three (3) storey development in the vicinity. Given these factors, enforcement of the two (2) storey height limit proposed under the Masterplan is considered unreasonable at the current time. The issue of compatibility with the existing streetscape has been discussed above with the various concerns acknowledged.

Issue: The applicant states that the colourbond pitched roof is sympathetic to the recommendations of the Masterplan. The roof will be barely visible from the street with building frontage inappropriate for the street.

Comment: The pitched colourbond roof is considered consistent with the roof style on the adjoining character buildings. The three (3) storey height reduces the opportunity for the roof to be viewed from the street however, when viewed in elevation or from a greater distance, the pitched roof is considered to provide an important addition to the proposal.

Issue: The proposed development exceeds the required FSR under DCP No.18.

Comment: As discussed, the proposed development incorporates a minor variation to the 1:1 floor space ratio specified under the DCP. The applicant has lodged a SEPP No.1 Objection in this regard, which is reviewed earlier in this report. Given the minor nature of the variation and the arguments presented with the SEPP No.1, a variation is considered acceptable in this instance.

(e) Public interest

With the exception of concerns relating to the preservation of the identified special character area along Beryl Street, the proposed development is not considered to significantly compromise the public interest.

Options:

1. Approve the application in accordance with the recommendation.
2. Refuse the application for the following reasons:-
 - Pursuant to Section 79C(1)(e), the proposed development, in unnecessarily compromising the integrity of the Tweed Heads Masterplan, is not considered to be in the public interest.
 - Pursuant to Section 79C(1)(a)(i) the proposed development is inconsistent with certain design principles identified in State Environmental Planning Policy No.65 – Design of Residential Flat Buildings pertaining to Context, Scale, Built Form and Aesthetics.
 - Pursuant to Section 79C (1)(a)(i), the proposed development does not comply with the Floor Space Ratios identified in Clause 50 of the Tweed Local Environmental Plan 2000.
 - Pursuant to Section 79C(1)(c) and in light of the ‘Special Character Zone’ identified in the Tweed Heads Masterplan, the subject site is not considered suitable in accommodating the proposed development.
 - Pursuant to Section 79(1)(b) the proposed development is considered likely to have an adverse impact on the existing streetscape and character of the area as identified in the Tweed Heads Masterplan.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the application be refused, the applicant has the right of appeal in the Land and Environment Court. Appeal rights also apply to any conditions of approval.

POLICY IMPLICATIONS:

Approval of the application may undermine the recommendations of the Tweed Heads Masterplan.

CONCLUSION:

The proposed development has been subject to significant review against the recommendations of the Tweed Heads Masterplan and the special character designation identified for the Beryl Street area. Council's Strategic Planner (Urban Design) and the Project Co-ordinator of the Tweed Heads Masterplan have both reviewed the proposed and raised serious concern with regard to how effectively the proposed design integrates with the existing streetscape and the associated impacts it may have on the character of the wider area.

All these issues and comments need to be weighed up against the current statutory framework. At three (3) stories, the proposal is well below the twelve (12) storey height limit currently applicable to the site, the design is predominantly compliant with the other planning controls applicable to mixed-use development and the proposal will contribute to revitalisation of the Tweed Heads CBD.

On balance, it is considered that given the uncertainty surrounding the future of the Tweed Heads Masterplan, its current lack of statutory weight and uncertainty about the 'real' character value of Beryl Street and the cottages therein (the subject properties are not identified in draft LEP Amendment No. 76 as a significant heritage site, the proposal 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.

P2 [PD-PC] Development Application DA06/0681 for the Erection of a Detached Dual Occupancy at Lot 8 DP 1070242, No. 8 Saddle Way, Murwillumbah

ORIGIN:

Development Assessment

FILE NO: DA06/0681 Pt1

SUMMARY OF REPORT:

Council has received a Development Application for the erection of a detached dual occupancy at No. 8 Saddle Way, Murwillumbah.

The proposed development was notified for a period of fourteen days between Wednesday 12 July 2006 and Wednesday 26 July 2006. During the notification period a total of three submissions were received. These have been considered further in this report.

After consideration of the proposed development it is recommended that the Development Application be approved conditionally as it meets with Council's codes and policies for dual occupancy developments.

RECOMMENDATION:

That Development Application DA06/0681 for the erection of a detached dual occupancy at Lot 8 DP 1070242, No. 8 Saddle Way, Murwillumbah be approved subject to the following conditions: -

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Drawing Nos 702/06 Sheets 1 - 3 of 4 prepared by Trevor White - Building Design and dated 7-06-06 and Drawing No 702/06A Sheet 4 of 4 prepared by Trevor White - Building Design and dated 7-06-06, except where varied by the conditions of this consent.

[GEN0005]

2. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.

[GEN0045]

3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.

[GEN0115]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

(a) Vehicular access in accordance with Council's adopted standards.

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

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

[PCC0895]

5. 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]

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: S94 Plan No. 4 (Version 4.0)	\$1,936
Sector9_4	
(b) Open Space (Structured): S94 Plan No. 5	\$240
(c) Open Space (Casual): S94 Plan No. 5	\$51
(d) Shirewide Library Facilities: S94 Plan No. 11	\$212
(e) Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$49
(f) Emergency Facilities (Surf Lifesaving) S94 Plan No. 16	\$62
(g) Extensions to Council Administration Offices & Technical Support Facilities	\$390.28
S94 Plan No. 18	
(h) Cycleways S94 Plan No. 22	\$108
(i) Regional Open Space (Structured) S94 Plan No. 26	\$715
(j) Regional Open Space (Casual) S94 Plan No. 26	\$263

[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 DSP2:	1 ET @ \$4598	\$4,598
Sewer Murwillumbah:	1 ET @ \$2863	\$2,863

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]

PRIOR TO COMMENCEMENT OF WORK

8. 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]

9. 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]

10. 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]

11. 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]

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

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

[PCW0255]

13. 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]

14. 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]

15. 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]

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

[PCW1065]

DURING CONSTRUCTION

17. 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]

18. 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]

19. 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]

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

[DUR0405]

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

[DUR0445]

22. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Councils adopted Design and Construction Specifications, DCP16 and DCP47 to the satisfaction of the Principal Certifying Authority.
Please note timber retaining walls are not permitted.

[DUR0835]

23. 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]

24. All roofwaters are to be disposed of through properly jointed pipes to the street gutter, inter allotment drainage or to the satisfaction of the Principal Certifying Authority. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZS3500.3.2. Note - All roofwater must be connected to an inter allotment drainage system where applicable. [DUR2335]
25. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction: [DUR2485]
- (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.
26. **Plumbing** [DUR2495]
- (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.
27. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position. [DUR2505]
28. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard. [DUR2535]
29. 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]
30. 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]

31. 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]

32. 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

33. 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]

34. 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]

35. Prior to occupation of the building the property street number is to be clearly identified on the site by way of painted numbering on the street gutter within 1 metre of the access point to the property.
The street number is to be on a white reflective background professional painted in black numbers 100mm high.

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

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

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

[POC0265]

36. 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

37. All externally mounted air conditioning units, swimming pool pumps, water tank pumps and any other mechanical plant and 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: C Edmed
Owner: Mr CT Edmed
Location: Lot 8 DP 1070242, No. 8 Saddle Way Murwillumbah
Zoning: 2(c) Urban Expansion
Cost: \$325000.00

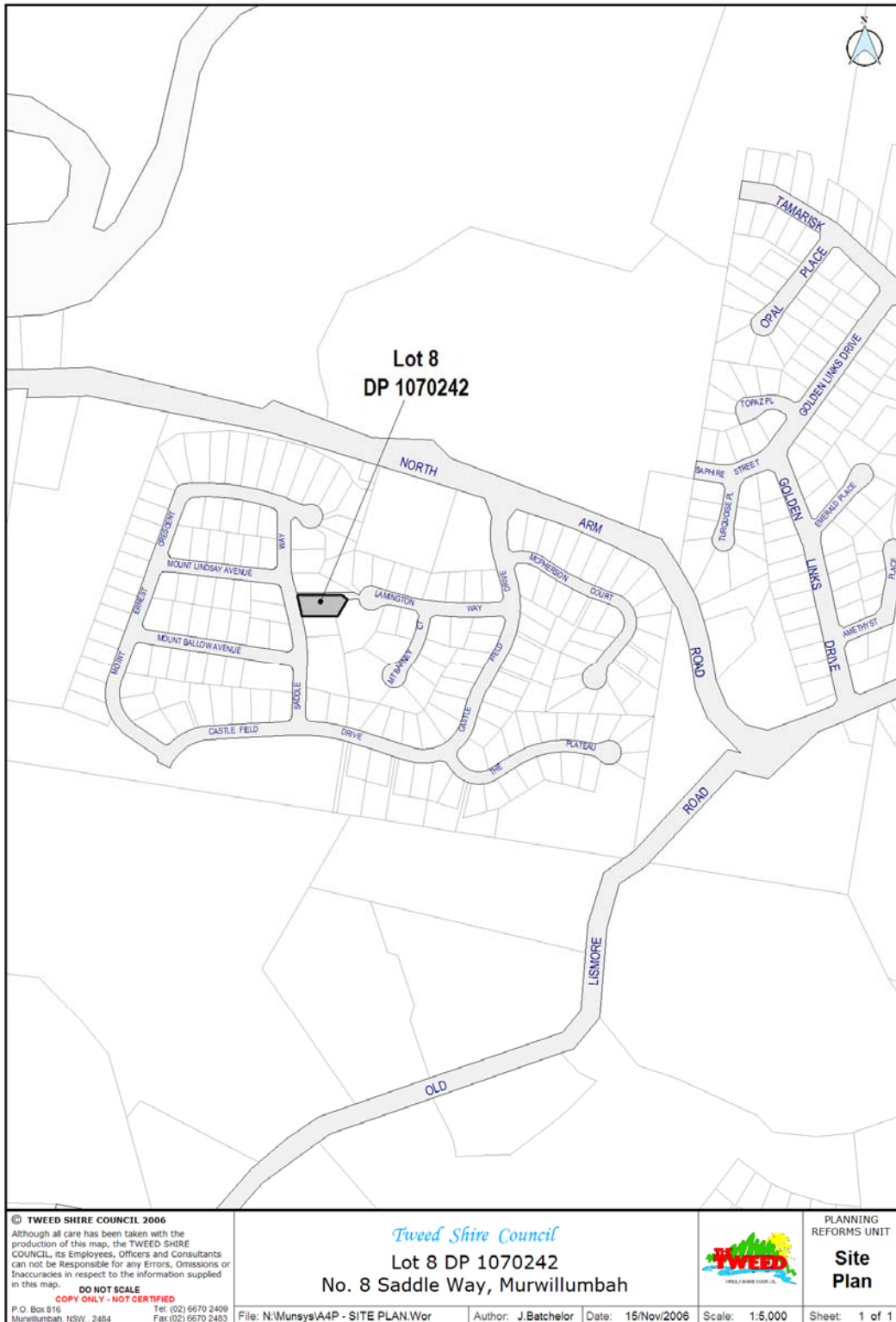
BACKGROUND:

Council has received a Development Application for a detached dual occupancy at No 8 Saddle Way Murwillumbah. The proposal consists of two, three bedroom two storey detached dwelling units. During the notification period Council received three submissions that have been addressed further on in this report. The block is currently a vacant block that was approved as part of the Bellevue Estate. It is recommended that the Development Application be conditionally approved.

The land is elongated east west & slopes gently to the north, however a steep bank on the south allows the development to 'nestle' into the site.

The subdivision was approved under S94/0053 for a 93 lot residential subdivision as a staged development. The block has a total area of 1052 square metres and meets with the minimum allotment area for a dual occupancy within the 2(C) Urban Expansion Zone.

SITE DIAGRAM:



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

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

Tweed Local Environmental Plan 2000

The subject land is zoned 2(c) Urban Expansion under the Tweed Local Environmental Plan 2000. The proposed development is permissible with the consent of Council. The proposed development is consistent with the primary objective of the zone.

The following Clauses of the Tweed Local Environmental Plan 2000 are relevant to the proposal:

Clause 15 of the TLEP requires Council to ensure adequacy of services prior to determining the development application. All essential services are currently provided to the subject site.

Clause 16 of the TLEP requires Council to ensure that the height and scale of development is appropriate to the site and the surrounding built and natural environment. Under the TLEP Height of Buildings Map the site is identified within the 3-storey height of restriction. The proposal comprises a two-storey building and therefore complies with the provision of clause 16.

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 considered likely to generate any significant social or economic impacts. Further assessment is not considered warranted.

State Environmental Planning Policies

No State Environmental Planning Policies are applicable to the Development Application.

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

No Draft Environmental Planning Instruments are applicable to the Development Application.

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

Development Control Plan No. 2 – Access and Parking Code

The following table details the compliance of the proposed development with the on-site car-parking provisions contained in DCP 2:

Standard	Requirement	Proposal	Satisfactory
On Site Car Parking	2 spaces per dwelling	4 spaces in total	YES

The proposed development proposes 4 onsite parking spaces in the form of two double garages. Furthermore, both driveway areas provide the possibility of providing additional onsite parking spaces in a stacked parking arrangement.

In regard to the proposed parking layout the development is considered to comply with DCP 2.

Development Control Plan No.6 – Multi Dwelling Housing

The following table assess the proposed development in relation to the provisions of the DCP:

Standard	Requirement	Proposal	Complies
Floor Space Ratio	0.5:1 (526m ²)	0.43:1 (453.62m ²)	YES
Minimum Landscaped Area	30% site area (315.6m ²)	Approximately 32% site area (336.64m ²)	YES
Setbacks from street boundary	Primary frontage 6m	>6m to main wall	YES
Setbacks	900mm in accordance with BCA	>900mm	YES
Streetscape	The maximum width of the garages should be 50% of the frontage width.	Provision not applicable as garages are addressing side boundary.	YES
Streetscape	Garages should be setback behind the front façade of the building.	The garages are setback behind the front façade of the building.	YES
Building Envelope	45° from 3.5m high at the side and rear boundary (excluding eaves and the like)	Generally Complies	YES
<u>Minimum Private Open Space</u>	20% of site area (210.4m ² = 105.2m ² per dwelling) with minimum dimension of 3m	Unit 1 = 125 m ² Unit 2 = 135 m ²	YES
	One part min 25m ² with min dimension of 4m	>25m ² & min. dimension of 4m	YES

Streetscape

The overall objective of Section 3.2.1 Streetscape is to ensure that new development enhances and makes a positive contribution to the character of existing streetscapes or desired future character of the area. The proposed detached dual occupancy is designed to cater for the topography of the land and to limit the effect of bulk and scale from the streetscape. The subject lot is considered to comply with all applicable streetscape, setback and building appearance requirements detailed within DCP 6.

The subject application includes a detailed landscaping plan, incorporating extensive amounts of landscaping, particularly along Saddle Way. The proposed landscaping is seen to significantly soften the appearance of the development from the Saddle Way streetscape.

Summary

In all aspects the proposed multi dwelling housing development is considered to have adequately considered and addressed the objectives and acceptable solutions contained within DCP 6.

Development Control Plan No.39 – Energy Efficient Housing/BASIX Requirements

The applicant has submitted a BASIX Certificate that confirms that the proposed development will meet the NSW Government's requirements for sustainability. The table below demonstrates the compliance of the Units under the BASIX Certification.

Water (Target 40):	59 for Unit 1	59 for Unit 2
Thermal Comfort (Target Pass):	Pass for Unit 1	Pass for Unit 2
Energy (Target 25):	50 for Unit 1	50 for Unit 2

The proposal is therefore considered to satisfy the requirements of DCP 39.

Development Control Plan No.42 – Public Notification Policy

The Development Application was notified to surrounding properties for a period of two weeks. During this period three written submissions were received on the proposed development. The main issues raised within the submissions included character, privacy issues, overdevelopment of the site and traffic issues. The issues raised are addressed further later on in this report.

Development Control Plan No. 44 - Dual Occupancy Development

Development Control Plan No. 44 is applicable to the Development Application. The block is 1052 square metres in size and meets with the minimum land area of 900 metres squared for a dual occupancy development. The building orientation and orientation of private open space has been designed to have limited effects on surrounding properties. Adequate vehicular access and parking is also proposed for the development. The proposed development is compliant with the provisions set out within Development Control Plan No. 44.

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

Council's Building Services Unit has reviewed the application and recommended conditions of consent to ensure compliance.

(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 site and surrounding allotments are currently zoned 2(c) Urban Expansion under the TLEP 2000, with the area primarily expressing a detached residential development character. Whilst development is primarily of a detached nature, a number of differing lots sizes and building forms are present within the immediate vicinity.

The majority of lots along Saddle Way are generally of a regular shape and are relatively similar in terms of lot layout and size, however some are larger, deeper lots.

Whilst the area does not to date present an established context and setting as it is a recently approved subdivision, a number of recently approved dwellings in the vicinity has initiated the start of a progressive change to the streetscape, context and setting of the area. The proposed dual occupancy is considered to enhance this progressive change and make a positive contribution to the context and setting of the site and its surrounds.

The density of the development is one unit per 526m² of site area, which given the physical constraints of the site is appropriate. The land is elongated east west & slopes gently to the north, however a steep bank on the south allows the development to 'nestle' into the site.

The proposed development presents well to the street. The garages are tucked away behind unit 1 to avoid the blandness of large expanses of garage doors. The combination of different building materials & earth tone colours will provide interest from the street, as well as front landscaping proposed.

(c) Suitability of the site for the development

Suitability of the Lot for Dual Occupancy Development

The subject site has a land area of 1052m². Surrounding land comprises primarily of single dwellings, with variant building heights between 1 and 2 storeys and architectural styles within the vicinity. Council's GIS system indicates that the lot is not bushfire prone and does not have any other significant environmental constraints.

The site is considered suitable for dual occupancy development with the land possessing limited hazards and limitations in terms of lot size, shape, layout and surrounding development.

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

The Development Application was notified for a period of 14 days from Wednesday 12 July 2006 to Wednesday 26 July 2006. During the submission period a total of three submissions were received. The issues raised in the submissions have been considered below:

Issue:	Response:
8 Saddle Way not being designated for duplex development	The allotment meets with Council's required size for a duplex allotment. The designed duplex has taken into consideration of privacy issues associated with the development. All living areas in the proposed development are located on the north side, the south side faces No 6 Saddle Way. The upper level of Unit 2 that is directly north of the patio & presumably the living area of No 6 Saddle Way is 1.6 metres below the floor level of No 6. Saddle Way Any reduction in views by No 6 Saddle Way, given the above difference would have to be expected in a residential situation.
The occupation of the dual occupancy	Council cannot take into account the occupation of the dwellings.
Overshadowing onto Lot 9 and privacy issues	No overshadowing will occur on Lot 9 and it is reasonable to presume that the living areas of any building constructed on Lot 9 would be on the northern/view side. This being the case, privacy issues would be insignificant.

Proposed cladding being hardiplank	There is no hardiplank proposed as cladding for the development.
Compatibility of the proposed development	Having consideration of the existing development within the Bellevue Estate it is considered that the proposed development is compatible with the streetscape and likely proposed residential character of the area.
Traffic Issues	Council's Development Assessment Engineer has indicated that the proposed development is not likely to have an adverse effect upon the local road network and that no traffic issues arise from the proposal.

(e) Public interest

Although the proposal received three submissions during the two-week notification period, the proposed development is not considered to undermine the general public interest in the locality, and is considered to have a wider public interest by providing a variety of housing options in the locality.

OPTIONS:

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

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be dissatisfied with Council's determination they have a right of appeal to the NSW Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposal has been thoroughly assessed 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 TLEP and relevant DCP's. The application has been assessed by Council's Technical Officers, with no objections being raised subject to the attached conditions of development consent. The proposed dual occupancy is therefore recommended for 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.

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P3 [PD-PC] Development Application DA06/0398 for a Tennis Court at Lot 801 DP 1090130, No. 1-25 Bells Boulevard, Kingscliff

ORIGIN:

Development Assessment

FILE NO: DA06/0398 Pt1

SUMMARY OF REPORT:

A development application has been received for a tennis court to be constructed at the existing Peppers resort, SALT, South Kingscliff.

The development application was publicly notified and a number of submissions have been received objecting to the proposal on, among others, noise disturbance.

The assessment of the application has given due consideration to the issues raised in the submissions. It is concluded that the application be supported subject to conditions.

RECOMMENDATION:

That Development Application DA06/0398 for a tennis court at Lot 801 DP 1090130, No. 1-25 Bells Boulevard Kingscliff 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 Plan Nos PP 304 and LP 204 prepared by EDAW Gillespies and dated December 2005, except where varied by the conditions of this consent.** [GEN0005]
- 3. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within or adjacent to the subject property.** [GEN0135]
- 4. No lighting of the tennis court is approved by this application.**
- 5. No commercial or competition play of tennis is permitted by this consent.**

6. The boundary fencing proposed by the application is to have a total height no greater than 2.0 metres.

[GENNS01]

PRIOR TO COMMENCEMENT OF WORK

7. The erection of a building in accordance with a development consent must not be commenced until:

- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
- (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
- (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]

8. 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]

9. 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]

DURING CONSTRUCTION

10. 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]

11. 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]

12. 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]

13. Landscaping of the site shall be carried out in accordance with the approved landscape and planting plans, prepared by EDAW Gillespies and dated December 2005. Proposed larger trees are to consist of semi-matured plantings greater than 1.0 metre in height.

[DUR1045]

14. Except as varied by the conditions of this consent, the tennis court is to be developed in an order that will achieve compliance with the recommendations of the acoustic assessment prepared by Ron Rumble Pty Ltd for Peppers Resort at Salt dated July 2006.

[DURNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

15. 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]

16. All landscaping work, including adequate vegetation screening of the tennis court from adjoining residences, is to be carried out to the satisfaction of the General Manager, or their delegate, prior to the issue of an occupation certificate.

[POC0475]

USE

17. 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]

18. Use of the tennis court is restricted to the following hours: -

- * 7.00am to 7.00pm - Mondays to Fridays
- * 9.00am to 7.00pm - Saturdays and Sundays

[USE0185]

19. Except as varied by the conditions of this consent, the development shall be carried out in accordance with the recommendations of the acoustic assessment prepared by Ron Rumble Pty Ltd for Peppers Resort at Salt dated July 2006.

[USE0305]

20. The tennis court is to be used by resort guests only.

21. No more than five (5) people are permitted on the tennis court at any one time.

22. The tennis court is to be used for recreational tennis purposes only. No use of the court for functions or any other use is permitted.

[USENS01]

REPORT:

Applicant: South Kingscliff Developments Pty Ltd
Owner: The Owners Strata Plan 76024
Location: Lot 801 DP 1090130 No. 1-25 Bells Boulevarde, Kingscliff
Zoning: 2(f) Tourism
Cost: \$50,000

BACKGROUND:

Council is in receipt of an application seeking development approval for a tennis court at the Peppers resort, SALT, South Kingscliff.

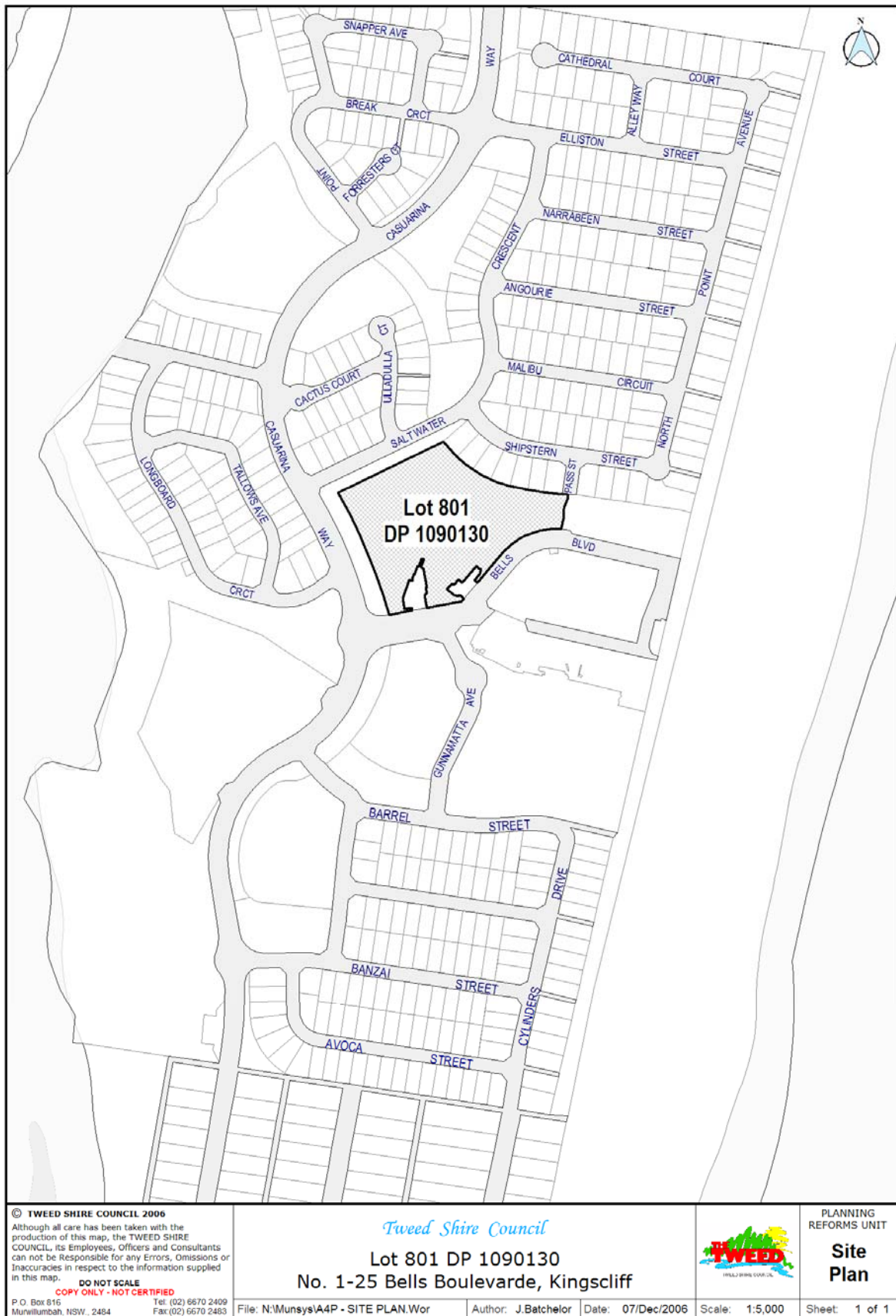
The proposed tennis court is approximately 60m² and will be surrounded by a 3.6 metre high perimeter fence. The surface of the court will be concrete covered in artificial grass and sand. The application proposes no lighting of the court and would cater to resort guests only. Additional works sought by the application include a new fence on the property boundary, comprising a retaining wall and timber screen fencing, and landscaping and tree planting.

That part of Peppers resort proposed to cater to the development is located between Bells Boulevarde and Shipstern Street. The proposed tennis court will be located between two parts of the existing three-storey resort building to the south and west, and residential dwellings to the north.

The main issue in relation to the development application is noise and the potential impacts it could place on the amenity of adjoining residential allotments. The application was notified and placed on public exhibition, a total of four submissions were received. The issue of noise and detail of the submissions received is addressed within this report.

Peppers resort was approved on 13 May 2004, the Department of Planning were the consent authority. Subsequent Council planning approvals at the site include health spa (DA04/1425) and restaurant (DA05/0999).

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 development site is zoned 2(f) Tourism under the provisions of the Tweed LEP 2000. The application seeks a tennis court ancillary to a tourist resort, permissible with consent in the zone. The development is consistent with the zone objectives, which provide for uses ancillary to high quality tourist development.

North Coast Regional Environmental Plan 1988

Clause 32B of the plan applies as the development site is located within the area covered by the NSW Coastal Policy 1997. The proposed tennis court will not cause overshadowing of any beaches or adjacent open space and will not impede public access to the foreshore. Consideration of the development has taken into account the NSW Coastal Policy 1997, the Coastline Management Manual, as well as the North Coast: Design Guidelines.

The proposed development is satisfactory with the provisions of the North Coast Regional Environmental Plan 1988.

State Environmental Planning Policy No. 71 – Coastal Protection

The development site is within the area defined as the coastal zone and SEPP 71 applies, however referral to the Department of Planning was not required. Nevertheless the proposed tennis court has been considered against the provisions of the policy and is consistent with the Clause 2 'Aims' and satisfactory with regard to the Clause 8 'Matters for consideration'.

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

There is no draft Environmental Planning Instruments known to be in existence that would have any bearing on neither the assessment of this application nor recommendation of this report.

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

There are no DCPs relevant to the development proposal or site.

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

In accordance with cl. 92(1)(a)(ii) the development application has been considered against the provisions of the NSW Coastal Policy, and is satisfactory.

(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

Noise

The proposed court will be located between resort units and dwelling houses. The most northern point of fencing for the court would be located approximately 3.0 meters from the southern boundaries of the closest adjoining residential allotments. The impact of noise on these residences as a result of the development has been considered as part of the assessment process.

It is realised that the characteristics of tennis noise can be intrusive however it is considered the court could function appropriately with proper management and attenuation mechanisms in place. A noise report conducted on behalf of the applicant recommends placing restrictions on the times the court is available for use and also by incorporating a method of noise attenuation.

From a development assessment perspective the resort provides to visitors facilities that ordinarily can only be afforded when away from home. The Tweed Tourism zone respects this function, providing for ancillary development including pools, saunas, spas, restaurants as well as tennis courts. It is considered the Peppers business is capable of managing such facilities so as not to cause detrimental impacts to surrounding land uses. In this regard and taking into consideration the opportunities presented by the site, additional conditions of consent are proposed, including limiting hours of operation, the amount of people using the court, as well as both built and natural attenuation measures.

Having consideration to the characteristics of the land use and opportunities for proper management to be incorporated, the tennis court is supported.

(c) Suitability of the site for the development

As detailed above noise has been identified as possibly presenting adverse impacts. Given noise attenuation measures are proposed as well as proper management procedures, that part of the site is suitable to cater to the development.

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

The application was notified to surrounding dwelling and resort unit owners and placed on public exhibition for a period of 14 days from Wednesday 17 May 2006 to Wednesday 31 May 2006. During this period three (3) submissions were received. Copies of the noise report submitted in support of the application were also made available to those people that made submissions, which included residents within Shipstern Street only. No additional submissions were received in response to the noise report. Additionally however was a submission received on the 15 November 2006, also by residents of Shipstern Street.

The following comments are provided in relation to the main issues outlined in the four (4) submissions:

Issue Peppers resort already generates noise impacts on surrounding residents, including functions, which are held within the pool area. A tennis court would increase the amount of noise being generated from the resort.

Comment The original application for the resort was determined by the NSW Department of Planning. Conditions relating to noise control and the pool area were included within that consent. The authority responsible for compliance with such conditions remains unclear. Correspondence is continuing between Council and the Department. This is an unfortunate situation for those being impacted upon however the present application presents an opportunity for appropriate safeguards to be put in place that the resort business will need to comply with.

It is considered the tennis court can be properly managed to ensure adverse impacts are minimised. The resort has a capacity to provide to guests recreational facilities commonly enjoyed while on holiday. Additional noise is a manageable aspect of the development and is not considered a reason for refusing the application.

In addition it should be noted that the whole of SALT was, from its inception, always intended and designed for an integrated residential and tourist area and consequently varying degrees of land-use conflict and interaction is inevitable.

Issue The U shape of buildings around the proposed site will enhance an echoing of noise and increase the noise levels generated.

- Comment** The noise report submitted by the applicant suggested surrounding buildings had the potential to increase the intrusiveness of noise generated. Conditions of consent will require noise attenuation measures being incorporated, in accordance with advice provided by the acoustic consultant.
- Issue** Plans submitted with the application show a solid fence and wire mesh only, which will not reduce noise impacts from tennis being played.
- Comment** The development application indicates a new boundary fence, comprising a block wall and timber fencing above. This will provide a level of visual privacy from the resort confines. Noise attenuation measures have been identified; the adopted method is envisaged to reduce the impact of noise.
- Issue** The development will cause impacts to the surrounding area. The tennis court will have a detrimental effect on the amenity of lifestyle for residents in Shipstern Street.
- Comment** The tennis court is proposed as an ancillary feature to the resort. Mechanisms are proposed to ensure proper management of the court prevails and impacts to the surrounding amenity do not occur.
- Issue** Works already carried out on the site envisioned a tennis court being developed, however was not proposed as part of the original development application for the resort. The proposed development is inconsistent with the master plan for the SALT locality.
- Comment** It cannot be ascertained whether services were put in place with the intent of developing a tennis court. In any case the development is permissible with consent under the provisions of the Tweed Local Environmental Plan 2000 and the application has been assessed by the DAU, having consideration of relevant state and local policy provisions. There warrants no reason to refuse the application.
- In addition, it should be noted that master plans, not unlike an LEP or DCP, are open to varying degrees of amendment.
- Issue** Daylight hours vary significantly between summer and winter. This could mean operation of the tennis court 7 days a week, 12 hours a day. The proponent should be made to specify exactly what operational hours are proposed.

- Comment** The applicant has specified the court would be restricted to use between daylight hours commencing 7am Monday to Saturday and 8am Sunday.
- In the interest of managing local amenity impacts, it is recommended restricting use between the hours 7am and 7pm Monday to Friday and 9am to 7pm Saturday and Sunday. Conditions are proposed to this effect.
- Issue** There is concern that owners of units within the resort were not notified of the application.
- Comment** Notification letters were posted to all owners of units within the Peppers resort. No submissions were received from these people.
- Issue** Alternative sites should be explored for the location of a tennis court. The Outrigger resort has two (2) existing tennis courts. Peppers visitors could use those courts.
- Comment** It is considered appropriate safeguards can be put in place to avoid adverse impacts. The site is suitable for the development and does not warrant exploration of an alternate location.
- Issue** There is only a powder-coated fence between residential property boundaries and the resort. This fence will not aid to reduce any noise generated by the tennis court.
- Comment** The application proposes a new fence on the subject property boundary. While reduction of noise may not be as effective at this receptor point, recommended noise attenuation measures elsewhere, including at the source, will aid to reduce adverse impacts, to a level that is not considered unreasonable in the context of the area's tourist oriented use.
- Issue** There is concern the proposed tennis court will be used as an additional function area by the resort.
- Comment** Conditions of consent are proposed which will restrict use of the court to recreational tennis only.
- Issue** The development will cause a loss of views of the ocean.

- Comment** It has been indicated that the tennis court will block a corridor that provides views of the ocean. The court is proposed directly north of an existing three-storey resort building and is not positioned to encroach past the east-west elevation of that building. In this regard it is difficult to ascertain how view loss would occur.
- The author of the submission does not indicate from what point views will be lost or the extent of the impact, which does not allow for a type of view analysis to be performed. Development on the subject and surrounding sites would suggest views of the ocean, from properties in Shipstern Street, would not easily be obtained across the Peppers site, particular as the existing resort buildings are three storeys. This is not considered a reason for refusal.
- Issue** The tennis court will be an ugly sight, impacting on the visual privacy of adjoining residences.
- Comment** Landscaping plans submitted in support of the application indicate tree planting between the tennis court and residential properties. Telephone communication with the landscape consultant indicates the proposed species grow to between 7.0m and 8.0m in height and 2.0 and 3.0 metres in width. A new fence proposed on the property fence will also aid to visually protect adjoining properties from the tourist land use. Conditions of consent are proposed to ensure satisfactory landscaping is carried out; this includes requiring semi mature trees to be used in the first instance.
- Issue** The development will greatly reduce the value of adjoining property.
- Comment** There is unsatisfactory evidence to suggest an additional recreational facility within an adjoining tourist resort would lead to a decrease in property values of an adjacent allotment.
- Issue** Peppers now propose additional development, a conference centre, on lots 34 and 35 (DP 1066506) in Shipstern Street.
- Comment** Council is not in receipt of a development application over these allotments.
- Issue** People traffic and noise will greatly impact on the living areas located at the rear of adjoining residential properties.

Comment As indicated throughout this report, the development proposes additional measures to ensure impacts associated with pedestrian movement and noise are reduced at the site. Conditions to this effect are recommended to ensure these mechanisms occur.

(e) Public interest

Given there are limited guiding controls relating to the development type, the application has been assessed in terms of its merits, which includes providing an additional ancillary function to a consistent land use type. Whilst the submissions received in objection are acknowledged, proposed safeguards will ensure the development is satisfactory, and conditioned accordingly.

OPTIONS:

1. Approve the application subject to the consent conditions provided in this report.
2. Refuse the application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The application has been assessed in accordance with and considered against all relevant legislation, regulations, policies and codes.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The application has been considered against applicable legislation and planning instruments, including the Tweed Local Environmental Plan 2000. A number of submissions have been received objecting to the proposal and while the content within these submissions is acknowledged, the application is considered to be consistent with the desired planning outcome for a resort building, within a tourism area. The application is recommended for approval, subject to conditions.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

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P4 [PD-PC] Development Application DA06/0282 for a Child Care Centre at Lot 12 DP 830659, Chinderah Road, Chinderah

ORIGIN:

Development Assessment

FILE NO: DA06/0282 Pt1

SUMMARY OF REPORT:

Council is receipt of a Development Application seeking approval for a 180 placement childcare centre proposed over two stages.

The subject site is zoned 2(a) Low Density Residential and is currently vacant. The site is generally level and is considered to be flood prone, subsequently, approval is sought to fill the site to the design flood level.

The application was advertised and notified to adjoining neighbours who were given 14 days to make a submission on the proposal. During this period Council received six objections including representation from the Roads and Traffic Authority.

Despite these objections the application is recommended for conditional approval as the application is considered to comply with the requirements of Council's Policies and zone objectives.

RECOMMENDATION:

That Development Application DA06/0282 for a Child Care Centre at Lot 12 DP 830659, Chinderah Road, Chinderah be approved subject to the following conditions: -

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos:**
 - G2402 Sheets 1-7 prepared by Gavin Duffie and dated 1/3/2006**
 - Plan Nos. P.15.2 prepared by Cozen Regan Williams Prove Drawing Nos.**
 - (a) SK1 Erosion and Sediment Control Plan dated 01/06 Issue A**
 - (b) SK2 Stormwater Management Plan dated 01/06 Issue A**
 - (c) SK3 Bulk Earthworks Plan dated 01/06 Issue A**
 - (d) SK4 Bulk Earthworks Sections dated 20/7/2006 Issue A**
 - (e) SK5 Water & Sewer Reticulation Layout dated 24/7/2006 Issue A**
- except where varied by the conditions of this consent.**

[GEN0005]

2. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.

[GEN0045]
3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.

[GEN0115]
4. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within or adjacent to the subject property.

[GEN0135]
5. Prior to commencement of work pursuant to this consent, a Construction Certificate shall be obtained for the following civil works:
 - a) Extension of water and sewerage infrastructure to service the development.

[GENNS01]
6. The premise shall be constructed and operated in accordance with the Acoustic Report, Craig Hill & Associates, 16 January 2006 (including requirements for shielding of air conditioners, provision of laminated glass, carpeting external balconies). Prior to issue of an occupation certificate or use of the centre Council shall be provided with a statement from a suitably qualified person which confirms that the centre has been constructed in accordance with the recommendations and requirements of the Acoustic Report.

[GENNS02]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

[PCC1115]
8. **Section 94 Contributions**
Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

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

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

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

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

Stage 1

(a) Tweed Road Contribution Plan: \$36,568
 S94 Plan No. 4 (Version 4.0)

Sector6_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)

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

Admin. Administration component - 5% - see Section 6.5

Stage 2

(a) Tweed Road Contribution Plan: \$37,296
 S94 Plan No. 4 (Version 4.0)

Sector6_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:

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

and:

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

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

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

Admin. Administration component - 5% - see Section 6.5

[PCC0215/PSC0175]

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

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

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

Stage 1

Water DSP5: 58.2 ET @ \$4598 \$267,604

Sewer Kingscliff: 9.7 ET @ \$6688 \$64,874

Stage 2

Water DSP5: 58.2 ET @ \$4598 \$267,604

Sewer Kingscliff: 9.7 ET @ \$6688 \$64,874

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]

10. The developer shall provide 44 parking spaces including parking for the disabled in accordance with DCP2, AS 2890 and Austroads Part 11. A mini bus parking area and bicycle parking for at least 7 bikes, are also required to be provided.

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

The entire parking area shall be constructed as part of the Stage 1 works.

[PCC0065]

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

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

- (a) Contours and terraces where the height exceeds 1m.
- (b) Cover with topsoil and large rocks/dry stone walls in terraces as necessary.
- (c) Densely plant with sub-tropical (rainforest) native and exotic species to suit the aspect/micro climate. Emphasis to be on trees and ground covers which require minimal maintenance. Undergrowth should be weed suppressant.
- (d) Mulch heavily (minimum 300mm thick) preferably with unwanted growth cleared from the estate and chipped. All unwanted vegetation is to be chipped and retained on the subdivision.

[PCC0455]

12. 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 or his delegate for approval.

[PCC0465]

13. Submission for approval by the Principal Certifying Authority design detail including surcharge loads for any retaining walls to be erected on the site in accordance with AS 4678, DCP47 and Councils adopted Design and Construction Specifications. Design detail is to be supported by certification of adequacy of design from a suitably qualified structural engineer.

Please note timber retaining walls are not permitted.

[PCC0475]

14. a) 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.

- b) Maximum batter slope shall be 1:2 (vertical:horizontal)
- c) Filling shall be minimized in the "Play Ground and Activities Area", to provide a smooth level transition between the filled building pads of the two buildings and existing levels in the Ozone Street Road Reserve to the south. Stormwater runoff from this area may discharge to the Ozone Street Road Reserve, and need not be graded or otherwise diverted to the Chinderah Road Reserve to the east. Batter height on the Ozone Street Road Reserve boundary should not exceed 300mm, to account for local variability in existing ground levels. This batter height limit does not apply in the 6m wide setback areas around "Stage 2" building.
- d) All site filling and bulk earthworks shall be completed as part of the Stage 1 works.

[PCC0485]

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

[PCC0585]

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

- (a) The floor area of both buildings shall be at a level no less than the design flood level of RL 3.3m AHD.
- (b) All building materials used below Council's design flood level must not be susceptible to water damage.
- (c) Subject to the requirements of the local electricity supply authority, all electrical wiring, outlets, switches etc. should, to the maximum extent possible be located above the design flood level. All electrical wiring installed below the design flood level should to suitably treated to withstand continuous submergence in water.

[PCC0705]

17. 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]

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

- a) The access driveway to Chinderah Road requires roadworks to manage ingress and egress movements in accordance with Austroads Guide to Traffic Generating Developments Part 5. Such work to include;
 - i) Widening of the pavement on the northern side of Chinderah Road to provide a right turn bay (for entry into the site) and overtaking lane for southbound through traffic, plus provision for southbound egress.
 - ii) Left turn deceleration lane on the western side of Chinderah Road for northbound traffic entering the site.
- b) Further to the above requirements, construction of kerb and guttering and shoulder seal is required for the full frontage of the site to Chinderah Road, plus splays. This work shall include all ancillary stormwater drainage works, footpath area works and adjustments to services where necessary.
- c) Provision of all ancillary linemarking and signposting, as well as "No Standing" signage, for both sides of the road in the vicinity of the development.
- d) The roadworks requirements are encouraged to be designed utilising Water Sensitive Urban Design principles and Council's relevant standard road cross-sections, in lieu of standard kerb and gutter works.
- e) Construction of a vehicular footpath crossing 6m wide at the property boundary and splaying out to 8m wide at the kerb, with a uniform taper.
- f) Provision of concrete path paving for the full frontage of the site.

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

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

Note: The above requirements for road and ancillary works can alternatively be included as part of the Construction Certificate application to Council for water and sewerage works.

[PCC0895]

19. 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
- 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]

20. 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]

21. 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]

22. 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]

PRIOR TO COMMENCEMENT OF WORK

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. 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]
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. Please note that while the proposal, subject to the conditions of approval, may comply with the provisions of the Building Code of Australia for persons with disabilities your attention is drawn to the Disability Discrimination Act which may contain requirements in excess of those under the Building Code of Australia. It is therefore recommended that these provisions be investigated prior to start of works to determine the necessity for them to be incorporated within the design.
- [PCW0665]

28. The building is to be protected from attack by termites by approved methods in accordance with the provisions of Australian Standard AS 3660.1, and:
- (a) Details of the proposed method to be used are to be submitted to and approved by the Principal Certifying Authority prior to start of works; and
 - (b) Certification of the works performed by the person carrying out the works is to be submitted to the PCA; and
 - (c) A durable notice must be permanently fixed to the building in a prominent location, such as in the electrical meter box indicating:-
 - (i) the method of protection; and
 - (ii) the date of installation of the system; and
 - (iii) where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and
 - (iv) the need to maintain and inspect the system on a regular basis.

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

[PCW0775]

29. 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]

30. 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]

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

[PCW0705]

32. 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]
33. All imported fill material shall be from an approved source. Prior to commencement of filling operations details of the source of fill shall be submitted to the satisfaction of the General Manager of his delegate. Once the approved haul route has been identified, payment of the Heavy Haulage Contribution calculated in accordance with Section 94 Plan No 4 will be required prior to commencement of works

[PCWNS01]

DURING CONSTRUCTION

34. 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]

35. 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]

36. 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]

37. 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]

38. 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]

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

[DUR0445]

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

[DUR0815]

41. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Councils adopted Design and Construction Specifications, DCP16 and DCP47 to the satisfaction of the Principal Certifying Authority.
Please note timber retaining walls are not permitted.
- [DUR0835]
42. All materials used in the building must comply with the smoke developed and spread of flame indices specified in Specification C1.10 of the Building Code of Australia.
Note: Many materials including some timbers such as western red cedar do not comply and it is the applicants responsibility to ensure that all materials to be used are within the criteria specified.
- [DUR1275]
43. Building materials used below Council's adopted design flood level of RL 3.3m AHD shall be flood compatible.
- [DUR1405]
44. Access to the building for people with disabilities shall be provided and constructed in accordance with the requirements of Section D of the Building Code of Australia. Particular attention is to be given to the deemed-to-satisfy provisions of Part D-3 and their requirement to comply with AS1428.
- [DUR1685]
45. Where a building of part of a building is required, under the provisions of Section D of the Building Code of Australia, to be accessible to permit use by people with disabilities, prominently displayed signs and symbols shall be provided to identify accessible routes, areas and facilities. The signage, including Braille or tactile signage, should be installed in accordance with the relevant provisions of the Building Code of Australia and achieve the minimum design requirements provided under AS1428.
- [DUR1695]
46. Where access for people with disabilities is required to be provided to a building, sanitary facilities for the use of the disabled must also be provided in accordance with the provisions Part F-2 of the Building Code of Australia.
- [DUR1705]
47. Please note that while the proposal, subject to the conditions of approval, may comply with the provisions of the Building Code of Australia for persons with disabilities your attention is drawn to the Disability Discrimination Act which may contain requirements in excess of those under the Building Code of Australia. It is therefore recommended that these provisions be investigated prior to start of works to determine the necessity for them to be incorporated within the design.
- [DUR1715]

48. A garbage storage area shall be provided in accordance with Council's "Code for Storage and Disposal of Garbage and Other Solid Waste".
[DUR2195]
49. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:
- (a) internal drainage, prior to slab preparation;
 - (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
 - (c) external drainage prior to backfilling.
 - (d) completion of work and prior to occupation of the building.
[DUR2485]
50. **Plumbing**
- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
 - (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.
[DUR2495]
51. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position.
[DUR2505]
52. 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]
53. 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]
54. 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]
55. 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]
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56. 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]
57. All fill and cut batters shall be contained wholly within the subject land. [DUR0825]
58. 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]
59. 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]
60. 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]
61. Subject to the requirements of the local electricity authority, all electrical wiring, power outlets, switches, etc, should, to the maximum extent possible be located above the design flood level. All electrical wiring installed below the design flood level shall be provided with earth leakage devices. [DUR1415]
62. 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 Chinderah 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]
63. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742.3-2202 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works. [DUR1795]

64. Before the commencement of the relevant stages of road construction, reports shall be submitted to Council from a Registered NATA Consultant demonstrating.
- (a) That the pavement has been designed and constructed in accordance with Tweed Shire Councils adopted Construction and Design Specification, D2.
 - (b) That the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils adopted Design and Construction Specifications, C242-C245, C247, C248 and C255.
- [DUR1805]
65. During the relevant stages of road construction, reports shall be submitted to the PCA by a Registered NATA Geotechnical firm demonstrating.
- (a) That the pavement layers have been compacted in accordance with Councils adopted Design and Construction Specifications.
 - (b) That pavement testing has been completed in accordance with Table 8.1 of AS 3798 including the provision of a core profile for the full depth of the pavement.
- [DUR1825]
66. The footpath area is to be graded to the kerb and turfed for the full frontage of the site, exclusive of any other path paving or infrastructure requirements.
- [DUR1865]
67. 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]
68. All stormwater gully lintels shall have the following notice cast into the top of the lintel: 'DUMP NO RUBBISH, FLOWS INTO CREEK' or similar wording in accordance with Councils adopted Design and Construction Specification.
- [DUR2355]
69. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction. Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.
- This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.
- [DUR2375]

70. 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]
71. Construction of water and sewerage infrastructure in Chinderah Road shall be carried out in accordance with the requirements of DCP 16, including all nominated testing procedures. [DURNS01]
72. 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]
73. 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]
74. 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]
75. 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]
76. 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]
77. Vehicles leaving the premises shall be sufficiently free from dirt, aggregate or other materials such that materials are not transported onto public roads. [DUR2415]

78. All works shall be completed in accordance with Council's adopted Acid Sulfate Soil Management Plan for Minor Works.

[DURNS02]

79. All waters that are to be discharged from the site shall have a pH between 6.5 and 8.5 and suspended solids not greater than 50 mg/kg. The contractor shall nominate a person responsible for monitoring of the quality of such discharge waters on a daily basis and the results recorded. Such results shall be made available to Council's Environmental Health Officer(s) upon request.

[DURNS03]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

80. 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]

81. The building is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the building to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.

[POC0225]

82. 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]

83. Prior to occupation of the building the property street number is to be clearly identified on the site by way of painted numbering on the street gutter within 1 metre of the access point to the property. The street number is to be on a white reflective background professional painted in black numbers 100mm high.

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

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

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

- [POC0265]
84. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate, a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.

- [POC1045]
85. Work as executed plans are to be provided to Council in accordance with Councils adopted Development Design and Construction Specification.

The plans shall be endorsed by a registered surveyor and must verify;

- a) The finished floor level of the building(s).
- b) Completion of the extension of public infrastructure water and sewerage systems.
- c) All road and public infrastructure stormwater works.

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

- [POC0765]
86. 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]
87. Prior to the issue of a final occupation certificate, all conditions of consent are to be met.

- [POC1055]
88. Prior to the issue of an Occupation Certificate or Interim Occupation Certificate and also prior to the end of the defects liability period, a CCTV inspection of all public infrastructure sewerage and stormwater pipes including joints and junctions will be required to demonstrate that the standard of the infrastructure works is acceptable to Council. Any defects identified by the inspection are to be repaired in accordance with Councils adopted Development Design and Construction Specification.

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

- [POCNS01]
89. Prior to issuing a an Occupation Certificate or an Interim Occupation Certificate, reticulated water supply and outfall sewerage reticulation shall be provided to the site in accordance with the relevant requirements of DCP16 - Subdivisions Manual, Councils adopted Development Design and Construction Specifications and the Construction Certificate approval.

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

[POCNS02]

90. The production of written evidence from the local telecommunications supply authority certifying that satisfactory arrangements have been made for the provision of underground telephone supply.

[POCNS03]

91. Electricity

- (a) The production of written evidence from the local electricity supply authority certifying that reticulation of underground electricity (residential and rural residential) has been completed; and
- (b) The reticulation to include the provision of fully installed electric street lights to the relevant Australian standard. Such lights to be capable of being energised following a formal request by Council.

[POCNS04]

USE

92. 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]

93. 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]

94. Hours of operation of the business are restricted to the following hours: -
- * 6.30am to 6.30pm - Mondays to Fridays
 - * No operations are to be carried out on Sundays or Public Holidays
 - * All deliveries and pickups relating to the business are to occur within the approved hours

[USE0185]

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

[USE0205]

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

[USE0965]

97. All car park lighting shall not be permitted to spill beyond the boundaries of the site.

98. All activities within the centre shall be "managed activities" as indicated in the Acoustic Report, Craig Hill & Associates, 16 January 2006, such that they do not unreasonably impact the amenity of any other premise. Noise from outdoor play areas shall be managed in accordance with the "Noise Management Plan" dated 3 November 2006 (Craig Hill Acoustics).

[USENS01]

99. Noise from the premise shall not be permitted to unreasonably impact the amenity of any premise.

[USENS02]

100. Children shall only be permitted to access or play in the outdoor activity areas between the hours of 8.30am and 4.30pm.

[USENS03]

101. Kitchen areas shall be used for staff meals only and shall not be used for preparation of food for the children.

[USENS04]

REPORT:

Applicant: Redback Enterprises
Owner: Redback Enterprises Pty Ltd
Location: Lot 12 DP 830659 Chinderah Road, Chinderah
Zoning: 2(a) Low Density residential
Cost: \$990,000

BACKGROUND:

The subject site is legally described as Lot 12 DP 830659 and is located in Chinderah Road Chinderah. The land is low lying and will require the importation of fill to achieve a RL of 3.0m resulting in the ultimate importation of no more than 1.5m in fill across the site.

As part of this development it is also proposed to extend the sewer line to accommodate the development, and strata the site at a future time. In this regard Council's Development Engineer raised no objection to the Strata as the amended plan now fully includes the car parking area within common property.

The surrounding properties are primarily zoned 2(a) low density residential with some 4(a) industrial land further from the site. The adjacent allotment to the north accommodates a caravan park containing approximately 30 sites. While to the south the site is adjoined by the unconstructed road reserve of Ozone Street. Opposite the site is the Chinderah Scout Association, which is located on land zoned for Community Purposes.

This application proposes the establishment of a child care centre that will ultimately accommodate 180 children. The proposal will be developed in two stages. Each stage involves a separate stand-alone building that will cater for a total of 90 children each. Each building will have its own reception, offices, staff room and kitchen totalling 581.3m² each. Each building will be able to accommodate 48 pre-school age children, 32 toddlers, and 10 babies.

The proposal will have a total of 44 onsite parking spaces, which are all proposed as part of Stage 1.

A maximum of 14 staff are proposed with each stage incorporating no more than seven staff members.

The applicant proposes that the child care centre will operate between the hours of 6.30am and 6.30pm.

The proposed development was notified to surrounding properties and submissions could be received within a period of two weeks. During this period 6 written submissions were received with issues of concern in regards to traffic, noise, safety and lawfulness. Despite these objections the application is considered to warrant conditional approval.

SITE DIAGRAM:



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

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

Clause 11 - The subject land is zoned 2(a) – Low Density Residential under the provisions of the Tweed Local Environmental Plan 2000. The objectives of the 2(a) zone includes:

- *To provide for and maintain a low density residential environment with a predominantly detached housing character and amenity;*
- *To allow some diversity of housing types provided it achieves good urban design outcomes and the density, scale, and height is compatible with the primary objective;*
- *To allow for non-residential development that is domestically based, or services the local needs of the community, and does not detract from the primary objective of the zone*

The proposal is defined as a 'childcare centre' under the TLEP 2000 and permissible with development consent in the 2(a) zone. The proposal is considered consistent with the aims and objectives of the 2(a) zone and is seen to satisfy the provisions of Clause 11.

Clause 15 of the TLEP requires Council to ensure adequacy of services prior to determining the application.

The site is not serviced by Council's water mains, which ends at the front of the adjoining property, approximately 74m away from the northern corner of the site. However, the main can be extended to service the site. Standard Sec.64 charges will apply, with no initial credit applicable.

The site is not currently serviced by Council's sewer main infrastructure, which ends at the front of the adjoining property, approximately 74m away from the northern corner of the subject site. The invert level at this manhole has been checked and is 3.1m below ground level. A gravity sewer line extension from this manhole will be able to service the site, as indicated by the reticulation plan provided after the first request for further information. A construction certificate will be required for this work, with inspections and testing to be carried out as per DCP16 requirements. Works As Executed plans also required. Standard Sec.64 charges apply, with no initial credit applicable.

Connection to telecommunications would be readily available, even though the site itself would not currently be connected, as it adjoins a long established residential area and there is existing infrastructure in the street frontage.

A garbage collection service, and mail delivery service is also available to the area.

Appropriate conditions of consent are recommended to ensure the sewer and water is extended. Therefore, all essential services will be available to the subject site.

Clause 16 of the TLEP requires Council to ensure that the height and scale of development is appropriate to the site and the surrounding built and natural environment. The subject land has a height limitation of 3 storeys with the proposal comprising of a single storey. The proposal is therefore considered to comply with the provision of clause 16.

Clause 22 of the TLEP requires Council to protect and improve the capacity, efficiency and safety of designated roads. Chinderah Road is a Council Designated Road. The proposal is considered generally in accordance with the provisions of Clause 22 and has been reviewed by Council's Traffic and Transport Engineer, and Council's Development Engineer. Based on consideration of all this input the application is considered appropriate having regard to its potential impacts on Chinderah Road and its capacity to act as a Designated Road. Clause 22 is considered satisfied.

Clause 34 of the Tweed LEP 2000 requires Council to minimise future potential flood damage. Council Infrastructure Engineer has reviewed the proposal and provided the following comments:

The land is currently vacant and lightly vegetated, with existing ground levels between RL1.4 and RL1.8m AHD. The design flood level for the subject land is RL 3.3m AHD, and as such, the site is flood liable and the provisions of DCP5 apply. According to the Tweed Valley Flood Study 2005, main flood flows in the vicinity of the site travel parallel to the motorway south of Ozone Street. Low velocity flood flows also traverse the site towards the north, at less than 0.05m/s.

As the proposal is non-residential, Council's Infrastructure Engineer reconsidered his initial requirement for the floor level to have 0.5m freeboard, and has accepted a floor level of RL 3.3m AHD.

Appropriate conditions of consent have been recommended.

Clause 35 - The site is affected by Class 3 Acid Sulfate Soils. Council's Environment & Health Unit advises that the submitted ASS Management Plan for minor works is satisfactory and appropriate conditions of consent have been applied.

Clause 47 of the TLEP requires Council to ensure advertisers' messages and images are conveyed whilst, complementing and conforming to the character of the locality, does not adversely affect the locality in terms of appearance, size, illumination, overshadowing or proliferation of signs, and does not detract from the scenic qualities of the area of Tweed. The proposal does not involve any signs and therefore all signage will need to be subject to a separate application.

North Coast Regional Environmental Plan 1988

Clause 32B of NCREP applies as the subject land is located within the NSW Coastal Policy. The proposal is unlikely to create any overshadowing to beaches or waterfront open space or impede public access to the foreshore area, nor does the proposal contradict the strategic aims and objectives of The New South Wales Coast Government Policy, The Coastline Management Manual and, The North Coast: Design Guidelines.

State Environmental Planning Policies

State Environmental Planning Policy No. 11 Traffic Generating Development

On advice from the RTA the proposed child care centre is defined as an education establishment for the purposes of SEPP11.

Subsequently the application was forwarded to the Regional Traffic Committee in accordance with Schedule 1 (i) of SEPP 11, which catches the subject application as detailed below;

- (i) *Educational Establishments accommodating 50 or more students or the enlargement or extension of existing educational establishments to accommodate an additional 50 or more students.*

The Regional Traffic Committee met on 18 May 2006 and discussed the project. No objection was raised provided Council addressed the following points:

- *Provision for safely managing right and left turning traffic into and out of the development;*
- *Demonstration that this development will not have an adverse impact on the peak time operation of Chinderah Road round about;*
- *The car park can not be dedicated to a single centre and must allow common use;*
- *Adequate off street parking is provided to cater for the peak expected arrival times; and*
- *Adequate off street servicing of the development.*

Council's Traffic and Transport Engineer advised that

“The site should be provided with safe access as Chinderah Road will become busier in terms of traffic.

It is requested that the following condition be included on any approval:

1. *The applicant is to construct upgrading of Chinderah Road at the driveway access to include widening for right turning vehicles into the development and a left turn lane into the site, such upgrading to be completed prior to use of the centre.*

Prior to construction, detailed engineering plans are to be submitted and approved by Council for the upgrading works in compliance with Austroads Guide to Traffic Generating Developments Part 5 and relevant Council standards. The plans are to include:

- a) *Widening of the pavement on the northern side of Chinderah Road to enable through traffic to pass vehicles turning right onto the site;*
- b) *Left turn lane on the southern side of Chinderah Road into the site.”*

Council’s Traffic and Transport Engineer further provided that

“Chinderah Road has adequate capacity to absorb traffic generated by the development... “

All other RTA requirements have been addressed through amended plans and conditions of consent.

State Environmental Planning Policy No. 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

There are no draft EPIs of significance to this proposal.

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

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

The car parking requirements for childcare facilities are based on the number of children and staff attending the centre. The proposal involves 180 children and 14 staff members. With a requirement of 1 space per 10 children and 0.5 spaces per staff, the parking requirement under DCP 2 is **25** spaces. The proposed development also requires 1 delivery space, bringing the total parking requirement to **26** spaces (without any applicable reductions being applied). In addition, DCP 2 requires seven (7) bicycle spaces to be provided. The proposed development incorporates a total of **44** off-street vehicle spaces, with adequate room for bicycle parking.

Council's Development Engineer raised no objection to the onsite parking provided it was all constructed within Stage 1. An appropriate condition of consent has been recommended.

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

Council's Infrastructure Engineer has noted that the subject site is flood liable. DCP 5 specifies the design flood level as RL 3.3m. Ground floor levels of the buildings are proposed at RL 3.3m. The development is for a commercial purpose, with DCP 5 requiring building materials and electricity supply to be flood compatible. Appropriate conditions of consent have been applied in this regard.

Development Control Plan No. 26 – Childcare Centres

DCP 26 contains specific controls for Child Care Centres, particularly within residential zones. The criteria of DCP 26 and the applicants response is discussed as follows:

2.1 Residential Areas

- (a) *In residential zones Council shall strongly favour the location of child care centres adjacent to non-residential uses such as retailing uses (neighbourhood shopping centres), schools, community facilities and the like.'*

The site is located in the vicinity of detached housing and immediately adjoins a caravan park containing 30 sites. It is opposite non-residential uses comprising a Scout Hall. It appears from the assessment undertaken that with appropriate design characteristics in place a childcare facility could be an adequate land use for the site.

The DCP states:

- (b) *The development of child care centres on "infill" sites within low density residential areas shall not be favoured unless:*

- (i) *The lot has a minimum area of 800m², a 3.0 metre perimeter landscape buffer with adjacent properties and a minimum 1.8 metre high intervening fence. If the proposed building and play areas comprising the Child Care Centre are 10 metres or more from any adjacent dwelling, then the 3.0 metre landscape buffer and 1.8 metre high fence is not required. Some landscaping and fencing will still be required, however, each application will be treated on its own merits;*
- (ii) *The applicant can demonstrate that noise emanating from the use of the child care centre will not be detrimental to the amenity of adjacent residents;*
- (iii) *Car parking is provided in such locations that will minimise disturbance to adjacent neighbours by the frequent arrival and departure of cars; and*
- (iv) *The overall traffic impact to the immediate neighbourhood is not detrimental to the amenity.*

The site has an area of 6292m² and includes a minimum 3-metre setback to all boundaries, which can accommodate landscaping and fencing on residential boundaries.

Council's Environment and Health Unit have reviewed the proposal and provided the following comments regarding amenity and DCP 26:

Part 2.1 of the DCP stipulates certain minimum considerations or requirements for the child care centres. In my assessment, the application initially proposed certain variations to those minimum requirements without reasonable justification.

*Part 2.1(b)(i) requires a minimum 1.8m high fence on the boundary - submission complies. This part also requires a 3.0m wide perimeter landscape buffer. To achieve this requirement it may have been necessary to modify the location of one building. Given that noise sources need to be managed and various construction elements are required to manage noise (and the fact that the adjacent premise is a caravan park where residents are likely to be sensitive - note possible child drop offs occurring at 6.30am and 6.30pm) the placement of a 3.0m wide vegetative buffer may be advisable (to improve visual amenity and the perception of noise exposure). The Acoustic Report proposes to 'manage' activities rather than provide the buffer. **The applicant's specific comment (and acoustic consultant support if necessary) is sought to justify this variation from the DCP. A variation to the DCP buffer requirement may not be advisable in this case.***

*Part 2.1(b)(iii) requires carparking to be provided 'in such locations that will minimise disturbances to adjacent neighbours'. It is noted that the car parking is immediately adjacent to the boundary and the adjacent dwelling (caravan park office/dwelling). **Part 6.5 of the Acoustic Report does not justify this proposal. Note the comment above that the Acoustic Consultant is to provide further comment. This is necessary to justify the variation to DCP 26 requirements, if they are approved.***

The following amendments have been made by the applicant in response to the above.

Plans have been amended - one building moved 1m to facilitate provision of a 3m wide boundary landscape buffer as per DCP 26. Also, the car park layout has been modified to relocate the drop-off area furthest from the adjacent caravan park site. The acoustic report also originally required an acoustic fence and certain building elements to reduce noise impacts.

Further, an 'Activities Management Plan' was submitted which basically indicates the time when children will be permitted outside. The Plan does not include provision for contingencies, direct supervision, contact details or any other aspect of site management which may be necessary to ensure impact on local amenity. On the positive site, the Plan does restrict children play activities external to the building to 8.30am to 4.30pm (a condition can be applied regarding this restriction).

The applicant also advised, with respect to car parking noise that the 'acoustic consultant cannot confirm or deny that the levels from the car park will comply with the relevant criteria'.

I have subsequently contact the acoustic consultant, Craig Hill, directly and discussed the development. He has provided further comment - refer to the attached information dated 3 November 2006. It indicates that noise from the car park will be 'within recommended levels'. It also indicates that noise from the outdoor play area will be 'within recommended levels'. A 'Noise Management Plan' has also been provided which includes basic details of additional management measures.

No objection, subject to conditions.

Based on the above assessment the proposed development is considered to comply with the provisions of DCP 26.

Development Control Plan No. 42 – Public Notification

The proposed development was notified for a period of 14 days, during which six submissions were received. These are discussed later in 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 administration, training and playgroup facility 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**

Noise Impact

Council's Environmental Health Officer has reviewed the application and provided the following comments:

An Acoustic Report has been provided (Craig Hill & Associates, January 2006). The report considers potential impacts of the proposed centre on adjoining premises and potential impacts of road traffic noise on the centre.

The centre is proposed to be operated between the hours 6.30am to 6.30pm Monday to Friday. These seem reasonable hours for the location.

With respect to the potential for the centre to impact other premises, the report indicates that subject to certain conditions, 'noise from managed activities would be within the required criteria'.

The applicant was requested to advise what is meant by the term 'managed activities' and confirm their intention to achieve same.

Further, the statement under Part 6.5 regarding car park noise is very brief and initially failed to indicate that noise levels will comply.

*With respect to the potential for road traffic noise from the freeway to impact the centre, the report indicates that subject to certain conditions, noise levels will be within 'acceptable maximum standard requirements'.
Conditions to be applied*

With respect to managed activities, the applicant now advises managed activities refers to managed external play times. These will generally include co-ordinated outdoor activities within the play area or on the external balconies. Managed activities are different from general open play activities where children's activities are unsupervised.

I have discussed this with the applicant and he advised that it is the applicants intention that relevant activities will be conducted or managed accordingly. It is my opinion having regard for the comments in the Acoustic Report, that appropriate management of play activities is required to prevent unreasonable impacts on the adjacent premise. Therefore the applicant is requested to submit a specific management plan for all relevant play areas, which details measures proposed to manage play activities. Compliance with this management plan will be a condition of consent.

Based on the recommended conditions of consent noise from the proposed development is considered to be capable of management within acceptable levels.

Contributions

The proposed development is considered to generate Section 64 and Section 94 Contribution fees in relation to Water, Sewer, Council Administration and TRCP. These fees have been calculated giving 1ET credit for the land parcel only which has been credited to Stage 1.

(c) Suitability of the site for the development

Allotment Drainage

The site is flatly graded with the southeastern corner being the lowest spot on the site. Existing ground levels range between RL 1.4m to RL 1.8m AHD which is marginally below the level of Chinderah Road, being at approx. RL 1.7 to RL 1.9m AHD.

Council's Infrastructure Engineer has provided comments as follows;

"The proposed stormwater system relies on piped stormwater services to convey roof and hardstand carpark runoff to an open drain in Chinderah Road. At the time of inspection, the roadway verge was overgrown and there was little evidence that an adequate stormwater service exists along this frontage to cater for the development. Discharge to the open drain within Ozone Street road reserve would therefore be preferred."

The subsequent submission of an amended stormwater plan prompted the following response from Council's Infrastructure Engineer;

“The piped roof and carpark drainage systems shown in the engineering plans are generally supported, and may discharge to either the Chinderah Road or Ozone Street road reserves”

The proposal to pipe all roofwater and car park runoff to the eastern boundary and openly discharge in the direction of the Chinderah Road table drain, will not work due to the required road and K & G works along this frontage. These roadworks will probably include stormwater drainage works, thus enabling a direct connection to Council infrastructure.

It is considered that stormwater requirements can be satisfactorily addressed by way of conditions of consent, instead of requesting further amended plans.

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

The application was advertised and notified to adjoining neighbours who were given 14 days to make a submission on the proposal. During this period Council received six objections including representation from the Roads and Traffic Authority. The issues raised are detailed below:

ISSUE	ASSESSMENT
<i>This would have to be the worst corner/roundabout in the Tweed because of the number of near misses and accidents. To place children in this location would be dangerous.</i>	<p>An application is sought for a childcare facility catering for babies, toddlers and pre-school age. Children will not be arriving at the site unaccompanied but rather will need to be signed and signed out for at time of departure.</p> <p>Subject to the recommended conditions of consent to improve site access, the site is considered capable of accommodating the traffic associated with the development in a safe manner.</p>
<i>Chinderah Road is busy and dangerous.</i>	<p>As detailed above subject to the recommended conditions of consent to improve site access, the site is considered capable of accommodating the traffic associated with the development in a safe manner.</p> <p>This objection does not warrant amendment or refusal of the application.</p>

<p><i>You will have people leaving the site going over double lines, and creating greater congestion on the round-a-bout.</i></p>	<p>Council's Traffic and Transport Engineer has provided conditions of consent to ensure that the following works occur to</p> <ul style="list-style-type: none">a) widening of the pavement on the northern side of Chinderah Road to provide a right turn bay (for entry into the site) and overtaking lane for southbound through traffic, plus provision for southbound egress; andb) left turn deceleration lane on the western side of Chinderah Road for northbound traffic entering the site. <p>Subject to the recommended conditions of consent the site is considered capable of accommodating the traffic associated with the development in a safe manner.</p>
<p><i>The back of Ozone Street is unformed and contains an open drain that is full of mosquitos, snakes and mice. This is not a suitable location for children from a health perspective.</i></p>	<p>The issue of vermin (snakes and mice) as well as mosquitoes was discussed with Council's Entomologist. He has responded to similar notifications at the adjacent caravan park in the recent past. He advised that the site is seasonally subject to mosquitoes however the risk of spread of disease would be no greater than any other area. He also mentioned that diseases such as Ross River Fever do not tend to impact children, and are more prevalent in the adult population.</p> <p>Furthermore, the subject site will be filled and will have retaining walls and batters to support the filled envelope. With fencing, landscaping and supervision the proposed site is considered suitable as a place of education for early childhood.</p> <p>This objection does not warrant amendment or refusal of the application.</p>

<p><i>You would have to re-zone the land for this development and this would not be supported by the community.</i></p>	<p>The subject site is currently zoned 2(a) Low Density Residential. In this zone a child care centre is permissible with consent subject to compliance with the zone objectives. As detailed in the above report the application is considered to be capable of conditional consent as it is considered a suitable location. No re-zoning is required given the flexibility within the existing zone.</p> <p>This objection does not warrant amendment or refusal of the application.</p>
<p><i>It is our understanding that the land has no pre-existing development rights for business as the land is zoned low density residential.</i></p>	<p>As detailed above the 2(a) zone permits childcare centres without the need for a pre-existing development rights for business.</p> <p>Subject to the recommended conditions of consent the site is considered capable of accommodating the development in a safe manner.</p>
<p><i>We are concerned about the safety issues involved in locating a child care centre this close to the Pacific Highway and on a major collector road. Road traffic noise and the impact of a possible Service Centre being placed on adjoining and need to be considered. The proposed development is located very close to a major round-a-bout and it also appear as if this development does not provide for adequate off-street parking which will encourage additional on street parking.</i></p>	<p>Council's Traffic and Transport Engineer has reviewed the submission received from the RTA and has specially provided that the site parking, access and standard of Chinderah Road is suitable for the proposed development subject to the recommended conditions of consent.</p> <p>Specifically Council Traffic and transport Engineer provided that Chinderah Road has adequate capacity to absorb traffic generated by the development.</p> <p>Subject to the recommended conditions of consent the site is considered capable of accommodating the development in a safe manner.</p> <p>This objection does not warrant amendment or refusal of the application.</p>

<i>A childcare centre would not be compatible with the adjoining caravan park which mainly caters for over fifty and elderly retirees. A childcare centre would impact on their health through noise and an increase in traffic.</i>	<p>As detailed in the above report Council's Environmental Health Officer has reviewed the application specifically in regard to noise and the appropriateness of the development and its potential impact on adjoining properties.</p> <p>Based on the recommended conditions of consent regarding noise and acoustic treatment the proposed development is considered acceptable.</p>
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Despite these objections the application is recommended for conditional approval as the application is considered to comply with the requirements of Council's Policies and zone objectives.

(e) Public interest

The proposed development is generally considered to reflect the provisions of all applicable development control plans and intended development for the locality. It will provide a much needed service to the local community and should be supported.

OPTIONS:

1. Approve the application in accordance with the recommendations
2. Refuse the application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be unsatisfied with the determination of Council they have a right of appeal to the NSW Land & Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

An amended version of the proposed development has been able to achieve acceptable access and traffic provisions for the local road network. Therefore, approval for proposed childcare centre should be supported.

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 DA04/0099.06 for an amendment to Development Consent DA04/0099 for childcare facility at Lot 110 DP 728119, Carraboi Terrace Tyalgum

ORIGIN:

Development Assessment

FILE NO: DA04/0099 Pt1

SUMMARY OF REPORT:

On 3 December 2004, conditional consent was granted for the abovementioned proposal.

By the way of application under Section 96 of the Environmental Planning and Assessment Act 1979, the applicant has requested an amendment of the consent as granted to reflect a number of proposed changes, as detailed below:

- *Relocation of ramp within Play Area 1*
- *Reposition fence 1 - 1.5m closer to the eastern boundary*
- *Create a partially enclosed area under the building for play use during rain periods*
- *Install a folding door between two playrooms (internal)*
- *Remove one car space (9 to 8), shift car parking 1 metre towards the eastern boundary and reduce the dimensions of the front garden bed.*
- *Move drainage on western boundary to the east by 2 metres.*
- *The provision of a 3m (wide) x 10m (long) x 2.4m (high) shed and a 3m (wide) x 3m (long) x 2.4m (high) shed located along the northern boundary of the 2 play areas.*
- *Repositioning of approved water tanks*
- *Inclusion of a 250-gallon drinking water tank within Play Area 1.*

The Section 96 also provides further detail as to the 'fit out' of the play areas, as follows:

- *2 x Shade Sails*
- *1 x Sand Pit*
- *Cement paved area on the western side of the play area*
- *Approx 140m² of soft fall area*
- *Fort/Climbing structure (if funds are available)*
- *Cement path (bike use)*
- *Swing and slide*
- *Garden area*

And further ancillary amendments:

- *Pool fence along western boundary*
- *Place 'stopping blocks' within each car space*
- *Place gravel pathway between car park and the building*
- *Provision of an access gate between the two play areas*

The proposed amendment of the Development Consent is not seen to create any significant environmental impacts.

RECOMMENDATION:

That Development Application DA04/0099.06 for an amendment to Development Consent DA04/0099 for childcare facility at Lot 110 DP 728119, be approved, and the development consent modified as follows:

1. Condition No.1, which currently reads;

- 1. The development shall be completed in accordance with the Statement of Environmental Effects prepared by Chillingham & Tyalgum Community Preschool Inc. and the approved development plans, as prepared by E. P. Hopkins (Architect) dated October 2003, except where varied by these conditions.***

Is to be DELETED and a NEW Condition 1.1 be INSERTED to read:

- 1.1. The development shall be completed in accordance with the Statement of Environmental Effects prepared by Chillingham & Tyalgum Community Preschool Inc. and Plan titled Site Plan, Floor Plan, Sub Floor Plan (as amended in red) , as prepared Chillingham & Tyalgum Community Preschool dated 8/12/06, except where varied by these conditions.***

2. A NEW Condition 10A be INSERTED to read:

- 10A. The maintenance access track is not permitted within the vegetative buffer area to the north of the land parcel unless it can be adequately demonstrated within the landscaping plan that the vegetative screen will not be compromised. This detail is to be provided prior to the issue of a Construction Certificate.***

3. Condition No. 40, which currently reads;

- 40. Adequate landscaping shall be undertaken to the northern boundary of the land to the satisfaction of Council's Director Environment and Community Services so as to minimise the visual impact to the adjoining residence.***

Is to be DELETED and a NEW Condition 40.1 be INSERTED to read:

- 40.1 Adequate landscaping shall be undertaken to the northern boundary of the land to the satisfaction of Council's Director Environment and Community Services and the Director of Planning & Development so as to minimise the visual impact to the adjoining residence.
4. A NEW Condition 45A be INSERTED to read;
- 45A. The timber screen fence erected around the perimeter of the Play Areas shall be of solid construction, butt jointed or overlapped, ensuring no gaps are evident.
5. A NEW Condition 45B be INSERTED to read;
- 45B. The doors and walls or the outside storage shed, adjoining the play areas, shall be wooden, or other suitable material, to the satisfaction of the Environment & Health Services Unit, and so constructed to minimise the potential of sound nuisance generated by children banging on the surface.
6. A NEW Condition 45C be INSERTED to read;
- 45C. A Drinking Water Management Plan shall be compiled and implemented to the satisfaction of the Environment and Health Services Unit.
7. A NEW Condition 45D be INSERTED to read;
- 45D. A locked gate, 1.5m in height, is to be provided at the entrance of the maintenance access as shown on the approved Site Plan in red. Appropriate signage is also to be fitted to the gate to ensure the maintenance track is not used for purposes other than detailed by the applicant within it's letter to Council dated 20 November 2006.
8. A NEW Condition 54A be INSERTED to read;
- 54A. In the event that untreated or untested water is supplied a warning sign shall be displayed at all fixtures. Such signs shall state the source of raw water and method of treatment, if any.
9. A NEW Condition 54B be INSERTED to read;
- 54B. Any roof catchment water supply utilised for drinking water shall be fitted with a first flush device.
10. A NEW Condition 54C is to be INSERTED to read;
- 54C The maintenance access is not used for purposes other than detailed by the applicant within it's letter to Council dated 20 November 2006.

REPORT:

Applicant: Chillingham & Tyalgum Community Preschool Inc
Owner: Tweed Shire Council
Location: Lot 110 DP 728119, Carraboi Terrace Tyalgum
Zoning: Uncoloured
Cost: N/A

BACKGROUND:

On 3 December 2004, conditional consent was granted for the abovementioned proposal.

By the way of application under Section 96 of the Environmental Planning and Assessment Act 1979, the applicant has requested an amendment of the consent as granted to reflect a number of proposed changes, as detailed below:

- *Relocation of ramp within Play Area 1* – Relevant standards require a 1:14 gradient for ramps, which couldn't be met under the ramps original location. The amended location provides the required gradient, whilst not absorbing a greater amount of the play area.
- *Reposition fence 1 - 1.5m closer to the eastern boundary* – The repositioning of the fence is encompass the relocated ramp within the fenced play area.
- *Create a partially enclosed area under the building to use during rain periods* –The area to be utilized will comprise 2 'slab's', with the undercroft of the building will be screened with hardwood batten screens and batten gates.
- *Install a folding door between two playrooms* – This modification is sought to the internal layout of the building to better create a clear division between the internal playrooms.
- *Remove one car space (9 to 8), shift car parking 1 metre towards the eastern boundary/ reduce garden bed by 1.5* – Upon commencing work on the carpark area, it was recognized that the dimensions do not allow for the approved 9 spaces. In addition, it is proposed to shift the car park (along with the drainage along the western boundary) towards the east to enable the retention of an existing tree stump located on the western boundary of the property, which has been utilized by migrating Rosella birds for a number of years.
- *Move drainage on western boundary to the east by 2 metres* – As discussed above, this amendment is proposed to enable the retention of an existing tree stump located on the western boundary of the property.

- *The provision of a 3m (wide) x 10m (long) x 2.4m (high) shed and a 3m (wide) x 3m (long) x 2.4m (high) shed located along the northern boundary of the 2 play areas. – The sheds are to be utilized for the storage of various play and learning items.*
- *Repositioning of approved water tanks – Water tanks were originally located on both the southeastern and southwestern sides of the buildings. The proposal seeks to locate both tanks to the northwestern side of the building.*
- *Inclusion of a 250-gallon drinking water tank within Play Area 1.*

The Section 96 also provides further detail as to the 'fit out' of the play areas, as follows:

Play Area 1

- *2 x Shade Sails*
- *1 x Sand Pit*
- *Cement Paved area on the western side of the play area*
- *Approx 140m² of soft fall area*
- *Fort/Climbing structure (if funds are available)*

Play Area 2

- *Cement path (bike use)*
- *Swing and slide*
- *Garden area*

And further ancillary amendments:

- *Pool fence along western boundary*
- *Place 'stopping blocks' within each car space*
- *Place gravel pathway between car park and the building*
- *Access gate between the two play areas*

The application also discusses a 'maintenance access', however it is noted that the access is to be grassed and no physical works are proposed to facilitate such. Accordingly, the provision of the maintenance access is not considered to specifically require approval, however, a condition will be imposed to ensure that the access is not utilised by customers or for uses other than general maintenance of the site.

The proposed amendment of the Development Consent is not seen to create any significant environmental impacts.

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 land is identified as un-zoned land under the Tweed LEP. Clause 13(3)(a) provides a matter for consideration that Council must consider, it states:

- (a) whether the proposed development is compatible with development permissible in the adjoining zone and the character and use of existing development in the vicinity, and ...*

It was determined under the original approval that the adjoining lands are zoned 'Residential' 2(d) Village and Rural 1(a) in which a 'Childcare Centre', is a permissible land use in both zones. The Section 96 does not seek to alter the landuse proposed and as such no concerns are raised in relation to the permissibility of the proposal, nor it's compliance and consistency with the Tweed LEP 2000.

North Coast Regional Environmental Plan 1988

The proposed amendments are not inconsistent with North Coast REP 1988.

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

There are no draft EPI's that relate to or that have any significance in the assessment and determination of this application.

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

Development Control Plan No.2 - Access and Parking Code

In accordance with Table 4.9E of DCP No.2, the proposal is required to provide a minimum of 4 car spaces. The proposal seeks to reduce the total number of car spaces from 9 to 8 and as such still far exceeds the requirements of Council's DCP.

Development Control Plan No.26 - Childcare Centres

DCP No.26 is a shire wide plan that provides guidelines for childcare centres in residential areas. The proposed modifications are not seen to alter or compromise the proposals compliance with requirements of DCP 26.

Development Control Plan No. 42 Public Notification Policy

The application was publicly notified for a period of two weeks. Whilst no submissions were received during the prescribed period, two submissions were received at a later date, one of which included a petition containing 29 signatories. The issues raised in the submissions are addressed later in this report.

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

The development application has been prepared and assessed in accordance with all relevant provisions, and is considered satisfactory.

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

The proposed amendments sought are considered to be of scale that will not significantly impact on the built and natural environment, socially or economically in the locality. Whilst the application seeks a number of amendments, the majority of the amendments are in relation to the 'fit out' of the approved play areas.

Of the remaining amendments, the amendments sought are largely to improve the efficiency and functionality of the development, as opposed to generating new or increased impacts upon the environment.

The proposal does not introduce additional operating hours, nor an increase in the number of enrolments, and whilst the proposal will remove 1 car space, the proposal is still in excess of the DCP requirements and no objection has been raised by Council's Traffic and Transport Engineer.

Accordingly, the proposed modifications are not seen to generate any significant impacts upon the built or natural environment.

(c) Suitability of the site for the development

The site is considered suitable for the development as proposed.

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

The application was publicly notified for a period of two weeks, ultimately two submissions were received, one of which included a petition containing 29 signatories. The issues raised in the submissions are discussed as follows;

Privacy – Concern has been raised in relation to the level of privacy afforded to the adjoining property to the northeast, and that this maybe worsened with the Section 96 application. Further, the submission requests the applicant provide a full length boundary fence, of solid construction, accompanied by appropriate landscaping and 1.8 – 2 metres in height.

In this regard, it is noted that the proposal includes the provision of a 1.8m high timber screen fence around the play areas, which as a result of their positioning on a generally higher lay of the land, is likely to result in an increased level of privacy as opposed to 1.8m boundary fence. In addition, Condition No. 40 of the issued development consent states:

40. Adequate landscaping shall be undertaken to the northern boundary of the land to the satisfaction of Council's Director Environment and Community Services so as to minimise the visual impact to the adjoining residence.

Accordingly, landscaping is already required to be provided along the northern boundary. In any event, this condition is recommended to be modified to include approval from both the Director of Environment and Community Services and the Director of Planning and Development.

Refusal of this application is not considered warranted on this issue.

Noise – The submissions received raise concern that the proposal does not include an objective noise impact assessment, where noise impacts would be potentially exacerbated by this application.

The application has been reviewed by Council's Environment and Health Unit, whom have raised no objection to the proposal, subject to the conditions included within the recommendation of this report and the maintenance of previous consent conditions.

In light of the above, the preparation of a noise impact assessment is considered unnecessary and refusal of the application on this issue not warranted.

Drainage – Concern has been raised that the overland flow of drainage proposed within the Section 96 is incomplete along the north and eastern boundaries, lacked a legal point of discharge and would impact upon adjoining properties. In this regard, it is noted that the submitted Section 96 Application does not detail any alterations to drainage other than along the western boundary of the property. Within the assessment of the original DA, the following findings were detailed:

Due to the slope of the land stormwater cannot be disposed of to Carraboi Terrace. All site runoff will instead be conveyed through the site via grassed swales to shallow surface depressions leading to the unformed road reserve, Hobwee Street. Council's Infrastructure Engineer has reviewed the proposal and raises no objection subject to conditions of approval.

In addition, Condition No. 9 of the development consent details as follows:

9. *Stormwater Discharge*
 - i. *The legal point of discharge of stormwater for the site is the unformed road reserve to the north of the site.*
 - ii. *No stormwater discharge is permitted across the northern boundary of the site onto Lot 59 DP 755748, and measures such as earth banks shall be provided as necessary to prevent overland flows onto that property.*

This condition is not proposed to be amended under the subject application, in addition the submitted plans have been reviewed by Council's Infrastructure Engineer with no concerns raised to the proposal or it's ability to comply with this condition. In light of the above, refusal of the application or any additional conditions is not considered warranted on this issue.

Buffer Area/ Maintenance Entrance – Concern is raised that the development seeks to encroach into the nominal buffer area (by way of the proposed prefabricated sheds and maintenance access), defeating it's purpose and exacerbating impacts upon the adjoining property.

In relation to the need of the proposed sheds and maintenance access, the applicant has provided the following detail:

'We anticipate that the 'maintenance' entrance will have minimal use once the Preschool is operating. Uses include:

- *Transport of bark for soft fall, required approximately once every 1 – 2 years (note – if we secure funds to purchase rubber soft fall this will not be required).*
- *One-off installations, eg. Water tanks, playground equipment. Any work not complete prior to opening (due to funding restrictions) will be undertaken as soon as possible after the Preschool opens.*
- *General maintenance. Parents undertake approximately 4 maintenance days per year. Where necessary transport of mulch for landscaping or other maintenance activities may see the entrance used during those times.*

As you can see, the entrance will see minimal use. The necessity for an access at this end of the site is due to the nature of the site and recognition that access is difficult from the car park side due to fencing requirements for the playground.

The sheds are to be utilized for the storage of various play and learning items.'

Accordingly, it is not the intent for noise generating land activities to encroach into the buffer area, rather to provide the development with a greater level of functionality. To ensure this outcome new conditions of consent has been included within the recommendation of this report as follows:

- a. Restricting the use of the maintenance entrance to that described by the applicant,
- b. A locked gate near the entrance of the maintenance access be erected to ensure the maintenance track is not used for purposes other than detailed by the applicant and,
- c. The maintenance access track is not permitted within the vegetative buffer area to the north of the land parcel unless it can be adequately demonstrated within the landscaping plan that the vegetative screen along the northern boundary will not be compromised.

The imposition of these conditions is considered appropriate and is seen to mitigate any adverse impacts generated by the provision of the maintenance access and sheds within the nominated landscape buffer area. Accordingly, refusal of the application on this issue is not considered warranted.

Traffic – Concern was raised regarding the apparent lack of informative/transparent traffic analysis, road upgrading requirements and vehicle manoeuvring, particularly in light of the number of children residing within the immediate vicinity. A request was also made for the preparation of a full independent traffic & pedestrian impact assessment.

In this regard it is reminded that the only modification sought in this regard within the application is the loss of 1 car space, which as previously discussed still provides compliance with Council's car parking code.

In relation to the ability for spaces 1 and 2 to maneuver within the subject site, this matter has been discussed and reviewed by Council's Traffic Engineer, who has raised no concerns to the current proposal, particularly in light of these spaces being surplus to the amount required by DCP 2. In addition, it is also worth noting that a similar maneuvering area was approved within the original application.

No changes to the road sealing requirements are sought under this Section 96 Application. Accordingly, refusal of the application on this issue is not considered warranted.

Other functions - Concern has been raised that whilst the original consent restricts the hours of operation from 7:30am to 5pm Monday to Friday, and the maximum number of children to 20, that the development may be used to accommodate other functions such as meetings or social gatherings. The submitted objection also requests an explicit condition of consent prohibiting these uses. Whilst this request could be met, it is not considered appropriate to place largely unnecessary conditions of consent upon an applicant. In this regard, the proposal does not seek to hold functions for social gatherings and as such, these landuses will not be approved within any consent issued. In this instance, Council would be including a condition of consent which is would firstly be difficult to define and therefore 'police' and secondly is based upon a perception which seems to have been made without any evidence. In light of the above, it is not considered appropriate to include a condition of consent specifically prohibiting meetings and social gatherings during or after the approved hours of operation.

(e) Public interest

Having regard to the matters discussed in this report it is concluded that impact upon the public interest from the amendments sought is minimal, if any at all. The proposed preschool will provide a valuable community asset, benefiting many young local families and the amendments proposed are considered to better able the childcare centre to operate efficiently and effectively.

Considerations Under Section 96 Of The Environmental Planning And Assessment Act 1979

Minimal Environmental Impact

The subject Section 96 application has been submitted to alter and provide further detail on a range of aspects, as discussed earlier within this report.

As has been discussed, the majority of the application provides detail of the 'fit out' of the approved play areas as well as minor adjustments to placement of gates and ramps to comply with relevant requirements. None of the amendments sought are seen to result in a non-compliance with relevant provisions of the Tweed LEP 2000, nor DCPs or other applicable policies and regulations.

In light of the above, the amendments sought are not seen to create any significant environmental impacts.

Substantially the same Development

The subject Section 96 application does not seek to make any amendments that would result in the final development being materially different. No significant additional environmental impacts are considered to be generated as a result of the amendments. The proposal is therefore considered substantially the same development as was detailed within the original development consent.

Notification & Consideration of Submissions

The application was publicly notified for a period of two weeks. The issues raised in the submissions are addressed within Section (d) of this report.

OPTIONS:

1. Approve the Section 96 amendment in accordance with the recommendation of this report.
2. Refuse the application

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be dissatisfied with the determination, avenues are available through the NSW Land and Environment Court for a merit based appeal. Financial implications would be incurred in any legal proceedings

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed amendments have been investigated and are 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. Council's technical officers have assessed the application with no objections being raised subject to the recommendation of this report being upheld. The proposed Section 96 amendment is therefore considered to warrant 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.
