

P7 [PD-PC] Section 96 Applications DA02/1422.42 & DA02/1423.13 for Amendment to Development Consents DA02/1422 & DA02/1423 for a 473 Lot Subdivision & Tourist Resort (Outrigger) at Lot 194, 301, 312 DP755701; Lot 490 DP47021; Lot 500 DP727420, Tweed Coast R

ORIGIN:

Development Assessment

FILE NO: DA02/1422 Pt 45 & DA02/1423 Pt 10

SUMMARY OF REPORT:

The Salt subdivision and Outrigger Resort were approved in 2003 and have now been completed. Both approvals included conditions requiring payment of contributions in accordance with S94 of the Act. The required contributions have been paid. The proponents are seeking a refund of some of the contributions due to works constructed as part of the subdivision.

In addition to the above the applicants are seeking to correct an over payment for the contribution for structured open space.

RECOMMENDATION:

That : -

A. Section 96 Application DA02/1422.42 for amendment to Development Consent DA02/1422 for a 473 lot subdivision at Lot 194, 301, 312 DP 755701; Lot 490 DP 47021 & Lot 500 DP 727420, Tweed Coast Road, Kingscliff be approved subject to the following amendments: -

1. Insert the following wording in Condition No. 95(b) after Stage 8: -

"A written request for a refund of the contribution for street trees may be made to Council. The refund will be made available on the basis that the street trees are in an acceptable condition to Council following an inspection by the relevant Council Officer less an administration and inspection fee. Inspections will be carried out for each stage of the subdivision following completion of dwelling construction or in accordance with other suitable arrangements made with Council."

2. Delete Condition 95(d).

3. Delete Stage 1A(1), 1(A)(2), 1A(3) and amend 1A(4) to \$150 in Condition 95(g).
 4. Delete Condition 95 (i).
 5. Condition 96 be amended to read: -
 96. A contribution of \$830,351 (as agreed by letter dated 15th April 2003) shall be paid as a contribution towards the provision of active open space on the basis of \$1531.80 per residential lot and \$1001.55 per medium density unit. The contribution may be paid on a pro rata basis based on the number of lots released in each stage. Any variation to the number of residential lots or medium density units from the original approval number 02/1422 will result in a pro rata variation to the contribution.
- B. Section 96 Application DA02/1423.13 for amendment to Development Consent DA02/1423 for a tourist resort (Outrigger) at Lot 194, 301, 312 DP 755701 Tweed Coast Road, Kingscliff be approved subject to the following amendments: -
1. Amend Condition 21(d) to read \$2828.
- C. The following refunds be made to South Kingscliff Development Pty Ltd for contributions: -
- | | |
|---|-------------|
| S94 Plan No. 12 Bus Shelters | \$9,916 |
| S94 Plan No.16 Emergency Facilities (Surf Lifesaving) | \$44,400 |
| S94 Plan No.22 Cycleways | \$85,400 |
| Structured Open Space | \$99,782.70 |

REPORT:

Applicant: South Kingscliff Developments Pty Ltd
Owner: South Kingscliff Developments Pty Ltd, Tweed Shire Council and Department of Lands
Location: Lot 194, 301, 312 DP 755701; Lot 490 DP 47021; Lot 500 DP 727420, ;
Tweed Coast Road Casuarina
Zoning: 2(f) Tourism
Cost: Nil

BACKGROUND:

The Salt subdivision was levied contributions amongst others for street trees, bus shelters, surf lifesaving facilities and cycleways. The Outrigger Resort was levied contributions among others for surf lifesaving facilities and cycleways. The proponents are seeking a refund of these contributions as they claim that these facilities have been constructed as part of the subdivision works. With regards to structured open space the agreed amount was negotiated and included as a condition of consent however overpayments have been made by the applicants at the release of each stage due to a miscalculation.

The following is summary of the relevant contributions levied and comment regarding the refunds sought by the applicant.

Street Trees

Subdivision paid \$18,744, requesting full refund.

Comment

The contribution plan requires two trees per allotment. Contributions are favoured over the developer planting the trees due to damage during the construction phase of subsequent dwellings. However in this instance the trees were planted as part of the subdivision. A refund for trees should be deferred until dwellings have been constructed with an inspection carried out by Council to assess the status of the trees. For efficiency reasons the inspections should at least be undertaken in accordance with the subdivision stages. A lot by lot or street by street process would not be efficient. An administration and inspection fee will be deducted from the refund. The relevant condition is proposed to be amended to enable the above process to be undertaken.

Bus Shelters

Subdivision paid \$9,916, requesting full refund.

Comment

The contribution plan requires four bus shelters for a subdivision of the size and population of Salt. The proponents have constructed six. A full refund and deletion of the condition is acceptable for bus shelters.

Cycleways

Subdivision paid \$68,512, requesting full refund
Outrigger paid \$19,716, requesting full refund
Peppers paid \$21,452, requesting full refund

Comment

The applicants have provided the costings for the cycleways as follows: -

Western cycleway-1.35 km = \$270,000
Eastern cycleway-1.22km = \$244,000
East/west cycleway-700m = \$140,000

The applicants have incorrectly assumed that the contribution plan for cycleways includes the western and east/west cycleway. The only cycleway provided for in the plan is the eastern cycleway. The other cycleways were constructed as part of DCP-16 Subdivision Manual requirements.

The above costings exceed the linear metre cost in the cycleway plan. The cost in the plan is \$70 per metre which equates to a total of \$85,400.

On this basis a full refund (\$68,512) for the subdivision and partial refund (\$16,888) for the Outrigger is appropriate. Amendment to the relevant conditions is proposed.

Surf Lifesaving Facilities

Subdivision paid-\$116,370, requesting full refund
Outrigger-\$59,466, requesting full refund
Peppers-\$35,500, requesting full refund

The plan under which the above contributions were levied nominated the following facilities for the contributions-

- Cudgen Headland, Cabarita Beach, and Fingal Headland SLSC facilities upgrade.
- Proposed new emergency facilities at Pottsville
- Proposed new emergency facilities at Kingscliff South
- New surf club house at Cabarita

The request for a refund is based on the premise that Salt constructed a surf facility building that is equipped and running costs are met by the resort owners for ten years. These arrangements were a requirement of the development consent for the Salt

development. The surf facility building and land has been dedicated to Council and is leased to the Salt Developments Pty. Ltd.

The surf facility at Salt was constructed for the Salt development and is privately operated and funded. Contributions were not levied for this facility or the equipment. The lifeguards are privately contracted by the resort operators. The Salt surf facility does not replace the requirement to pay contributions for the Surf Lifesaving facilities along the Tweed Coast.

The contributions levied for surf lifesaving are used for all the items nominated in the plan as the facilities can be used by all residents and tourists.

The plan nominated a demountable storage and vehicle shed for Kingscliff South Surf lifesaving costed at \$44,400. Equipment was costed at \$105,600.

The current plan nominates emergency facilities for the Salt Surf Lifesaving Club costed at \$59,055. The plan was amended to exclude the demountable shed given the formation of the Club within the Outrigger building.

It is considered reasonable that the demountable shed cost be refunded given this item has been deleted from the current plan due to the provision of the Salt Surf Club within the Outrigger building.

Structured Open Space

Condition 96 of the Salt consent is as follows-

A contribution of \$830,351 (as agreed by letter dated 15th April 2003) shall be paid as a contribution towards the provision of active open space. The contribution may be paid on a pro rata basis based on the number of lots released in each stage. Any variation to the number of residential lots or medium density units from the original approval number 02/1422 will result in a pro rata variation to the contribution.

The 15 April 2003 letter includes the following calculation-

410 lots x \$1531.80 = \$628,038
202 medium density units x \$1001 55 = \$202,313.10
Total = \$830,351.10

The applicants have paid the contribution at each subdivision certificate stage based on the total contribution divided by the number of lots in each stage which equates to a per lot contribution of \$1785.70 which has resulted in an overpayment for each stage except stages 1A4, 7B3 and 8. The oversight was picked up prior to payment of these stages.

The overpayment equation is as follows-

Paid 393 lots x 1785.70 = \$701,780.10
Required to pay 393 lots x 1531.80 = \$601,997.40
Total overpayment \$99,782.7

The applicants are seeking to have condition 96 amended to clarify the contributions and a refund of the overpayment.

CONSIDERATIONS UNDER SECTION 96 & 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

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

Tweed Local Environmental Plan 2000

The proposed amendment has no impact on environmental planning instruments.

North Coast Regional Environmental Plan 1988

As above

State Environmental Planning Policies

As above

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

N/A

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

N/A

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

N/A

(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 amendments reflect the appropriate situation regarding contributions for the Salt development.

(c) Suitability of the site for the development

N/A

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

the application was not required to be advertised.

(e) Public interest

The works carried out by Salt and the contributions levied reflect the required level of works and contributions required by Council's plans.

OPTIONS:

1. Approve the applications as per the recommendation.
2. Refuse the applications for specified reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicants has a right of appeal in the Land and Environment Court if they are dissatisfied with the determination.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

Contributions levied under S.94 of the EP&A Act are required to be reasonable. The amendments to the consent are considered reasonable and appropriate given the works carried out by the developers for these specified items.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

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P8 [PD-PC] Development Application DA05/1126 for a Mixed Use Commercial and Residential Development Comprising 3 Commercial Tenancies and 11 x 2 bedroom units at Lot 8 Section 2 DP 2379; Lot 2 DP 205411, No. 151 Wharf Street Tweed Heads

ORIGIN:

Development Assessment

FILE NO: DA05/1126 Pt1

SUMMARY OF REPORT:

Council is in receipt of a development application for the construction of a 6 storey mixed-use commercial and residential building comprising 11 apartments (2 on each floor with 1 at ground/podium level), 3 commercial tenancies (all at ground/podium level), 19 basement car parking spaces, a car wash bay, associated site works and landscaping. Each of the proposed units provides for two (2) bedrooms, two (2) bathrooms, a balcony and associated living and dining areas. An elevator is also to be incorporated.

The application is generally compliant with the relevant planning controls. The issues of most significance are:-

- variation is sought to the 3 storey building height restriction (on development sites less than 2000m² in area) as outlined in Section 4.3.2 of DCP 18;
- remediation works required to address contaminated soil identified within the site;
- potential noise impacts from high traffic volume along Wharf Street and adjoining car yard; and
- contents of a letter of objection received during the notification period.

Each of these matters is addressed within the body of the report.

RECOMMENDATION:

That Development Application DA05/1126 for a mixed use commercial and residential development comprising 3 commercial tenancies and 11 x 2 bedroom units at Lot 8 Section 2 DP 2379; Lot 2 DP 205411, No. 151 Wharf Street Tweed Heads be approved subject to the following conditions: -

GENERAL

1. **The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos TP02(C), TP03(C), TP04(C), TP05(C) and TP06(B) prepared by R.H Frankland & Associates and dated 26/05/06, except where varied by the conditions of this consent.**

[GEN0005]

2. The proposed future commercial use must be the subject of a separate development consent.
[GEN0035]
3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.
[GEN0115]
4. The visitor/customer car parks must be accessible to the public at all times.
[GENNS01]
5. The access driveway is to exhibit parking signs as per Australian Standard AS2890 to indicate customer parking is available in the basement.
[GENNS02]
6. All works shall be undertaken in accordance with the Detailed Site Contamination Investigation for 151 Wharf Street, Tweed Heads prepared by Precise Environmental Pty Ltd dated 12 May 2006 (Job No. PE37.06) and Supplementary Soil Investigation Report for 151 Wharf Street, Tweed Heads prepared by Precise Environmental Pty Ltd dated 28 July 2006 (Ref: PE3706.SSR).

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

7. The developer shall provide twenty (20) parking spaces including parking for the disabled in accordance with DCP2, AS 2890 and Austroads Part 11 and a dedicated loading bay.
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]
8. Any works to be carried out within the adjoining road reserve is subject to application and approval being issued by Tweed Shire Council as the road authority.
Application for these works and receipt of approval is to be obtained prior to the issue of a construction certificate for works within the development site.
[PCC0075]
9. 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) Sector 1_4	\$13,899
(b) Open Space (Structured): S94 Plan No. 5	\$4,050
(c) Open Space (Casual): S94 Plan No. 5	\$865
(d) Shirewide Library Facilities: S94 Plan No. 11	\$3,574
(e) Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$728
(f) Emergency Facilities (Surf Lifesaving) S94 Plan No. 16	\$1,041
(g) Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$7,346.35
(h) Cycleways S94 Plan No. 22	\$1,826
(i) Regional Open Space (Structured) S94 Plan No. 26	\$12,076
(j) Regional Open Space (Casual) S94 Plan No. 26	\$4,439

[PCC0215]

10. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.
Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

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

Water:	5.0852 ET @ \$4598	\$23,382
Sewer:	6.9778 ET @ \$2863	\$19,977

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

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

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

[PCC0265]

11. Design detail shall be provided to address the flood compatibility of the proposed structure including the following specific matters:
- (a) The habitable area of the building is to be at a level no less than 300mm above the design flood level of RL 2.6m 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]

12. 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) provision of a full width concrete footpath for the full frontage of the site;

- (b) provision of a concrete vehicular access in accordance with Council 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]

13. 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]

14. 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]

15. 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]

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

[PCC1155]

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

All stormwater must initially be directed to the DCP.

[PCC1165]

PRIOR TO COMMENCEMENT OF WORK

18. 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]

19. 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]

20. 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:
 - (d) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (i) 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
 - (e) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (f) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (g) notified the principal certifying authority of any such appointment, and
 - (h) 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]
21. 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]
22. 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]
23. 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]
24. 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]

25. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area where required to the satisfaction of the Principal Certifying Authority.
In addition to these measures the core flute sign provided with the stormwater approval under Section 68 of the Local Government Act is to be clearly displayed on the most prominent position of the sediment fence or erosion control device which promotes awareness of the importance of the erosion and sediment controls provided.

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

- [PCW0985]
26. 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]

27. Any business or premises proposing to discharge a pollutant discharge greater than or differing from domestic usage is to submit to Council an application for a Trade Waste Licence. This application is to be approved by Council prior to any discharge to sewer being commenced. A trade waste application fee will be applicable in accordance with Councils adopted Fees and Charges.

[PCW1075]

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

[PCW1085]

DURING CONSTRUCTION

29. 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]

30. Construction site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council: - Monday to Saturday from 7.00am to 7.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

31. 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]

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

[DUR2415]

33. All waters that are to be discharged from the site shall 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]

34. Any proposed cooling tower installation must also include details on the proposed means of back flow prevention to the water supply prior to installation.

[DUR2475]

35. 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]

36. 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]

37. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position.

[DUR2505]

38. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993. [DUR2515]
39. 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]
40. 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]
41. 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]

42. 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]
43. The proponent shall comply with all requirements tabled within any approval issued under Section 68 of the Local Government Act. [DUR2625]
44. The structure is to be sited at least one metre horizontally clear of sewer main on site. All footings and slabs within the area of influence of the sewer main are to be designed by a practising Structural Engineer. The engineer is to submit a certification to the Principal Certifying Authority that the design of such footings and slabs will ensure that all building loads will be transferred to the foundation material and will not effect or be affected by the sewer main. [DUR2645]
45. 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]

46. No retaining walls or similar structures are to be constructed over or within the zone of influence of Council's sewer main. [DUR2705]
47. The proponent shall notify Council's Engineering and Operations Division upon excavation of any disused sewer junction awaiting capping by Council. [DUR2715]
48. The management of acid sulfate soil shall be carried out in accordance with the Acid Sulfate Soils & Dewatering Assessment for 151 Wharf St, Tweed Heads prepared by Border-Tech dated September 2005 (Job No: BT14098), "Section 6.1 - Acid Sulfate Soils Management Plan". [DURNS01]
49. Dewatering of the site shall be carried out in accordance with the Acid Sulfate Soils & Dewatering Assessment for 151 Wharf St, Tweed Heads prepared by Border-Tech dated September 2005 (Job No: BT14098), "Section 7.6 - Dewatering Management Plan". [DURNS02]
50. The burning off of trees, associated vegetation felled by clearing operations, and builder's waste is prohibited. [DURNS03]
51. On completion of on-site remediation works and prior to any other works commencing on the site, a Validation Report prepared by a suitably qualified consultant shall be submitted to Council for review and approval. The Validation Report shall confirm that the site has been remediated and made suitable for the intended use. [DURNS04]
52. Approval of Council's Director of Environment & Community Services Waste Services Coordinator must be obtained prior to the disposal of any contaminated material at any Council landfill site. [DURNS05]
53. 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]
54. Pumps used for dewatering operations are to be electrically operated. Diesel pumps are not to be used unless otherwise approved by Tweed Shire Council. [DUR0255]
55. Practical measures to the satisfaction of the General Manager or his delegate are to be taken to acoustically shield all pumps used for dewatering operations to minimise any noise disturbance to neighbouring or adjacent premises. [DUR0265]
56. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made). [DUR0375]

57. Provision shall be made for the collection of builder's solid waste in accordance with the following requirements:
- (a) A temporary builder's waste chute is to be erected to vertically convey builder's debris to a bulk container.
 - (b) The chute shall be located in a position approved by the Principal Certifying Authority.
 - (c) A canopy shall be provided to the chute outlet and container to reduce the spillage of materials and nuisance caused by dust.

[DUR0385]

58. 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]

59. 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]

60. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with WorkCover 2000 Regulations.

- (a) 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]

61. If the work involved in the erection or demolition of a building:
- (a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or

- (b) building involves the enclosure of a public place,

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

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

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

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

[DUR0435]

62. 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]
63. 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]
64. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments".
[DUR0785]
65. The proposed earthworks program shall be monitored by a Registered Geotechnical Testing Consultant to a level 1 standard in accordance with AS 3798. A certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798 shall be submitted to the Principal Certifying Authority upon completion.
[DUR0795]
66. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited.
[DUR0815]
67. Provision to be made for the designation of 1 durable and pervious car wash-down area/s. The area/s must be identified for that specific purpose and be supplied with an adequate water supply for use within the area/s. Any surface run-off from the area must not discharge directly to the stormwater system.
[DUR0975]
68. 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]
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. 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]

71. 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]
72. Building materials used below Council's minimum floor level of RL 2.95m AHD shall be flood compatible. [DUR1405]
73. 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]
74. 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]
75. A full width reinforced concrete footpath is to be constructed along the entire road frontage of the development from the property line to the back of the existing kerb in accordance with Councils adopted Development Design and Construction Specification. [DUR1755]
76. 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]
77. 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]
78. The proponent shall comply with all requirements tabled within any approval issued under Section 138 of the Roads Act. [DUR1885]
79. Tweed Shire Council shall be given a minimum 24 hours notice to carry out the following compulsory inspections in accordance with Appendix D, DCP16 - Subdivisions Manual based on the rates contained in Council's current Fees and Charges:-

Roadworks

- (a) Pre-construction commencement erosion and sedimentation control measures
- (b) Pathways, footways, bikeways - formwork/reinforcement
- (c) Final inspections

Water Reticulation, Sewer Reticulation, Drainage

- (a) Manholes/pits
- (b) Permanent erosion and sedimentation control measures
- (c) Final inspection

Council's role is limited to the above mandatory inspections and does **NOT** include supervision of the works, which is the responsibility of the Developers Supervising Consulting Engineer.

The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

[DUR1895]

80. The contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.

[DUR2015]

81. The works are to be completed in accordance with Councils Development Control Plans and Design & Construction Specifications, including variations to the approved drawings as may be required due to insufficient detail shown on the drawings or to ensure that Council policy and/or good engineering practices are achieved.

[DUR2025]

82. 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]

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

[DUR2195]

84. 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]

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

[POC0755]

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 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]
88. Prior to the issue of a final occupation certificate, all conditions of consent are to be met. [POC1055]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

89. 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]
90. 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]
91. 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]
92. 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]
93. 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.

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

[USE0225]

[USE0735]

REPORT:

Applicant: Mr J Seovic
Owner: Seovic Holdings Pty Ltd
Location: Lot 8 Section 2 DP 2379; Lot 2 DP 205411, No. 151 Wharf Street Tweed Heads
Zoning: 3(b) General Business
Cost: \$2340000

BACKGROUND:

Development application DA05/1126 was lodged on 27 September 2005. The application proposes the erection of a 6 storey mixed-use commercial and residential development comprising 3 commercial tenancies and 11 x two bedroom units.

Vehicular access to the proposed development is provided from Wharf Street to a basement car park catering for 19 cars and a car wash bay. Bicycle parking, storage areas and a lift lobby are also provided at the basement level.

The podium level provides for a commercial tenancy along the Wharf Street frontage with 2 other commercial tenancies stepped in toward the centre of the site. The commercial tenancies will all be on a podium level and will be situated amongst planter gardens and paved courtyard areas.

The remainder of the podium level (ground floor) contains a 2 bedroom residential unit, entry lobby for the apartments above and a communal recreational area with a BBQ shelter. Beyond the podium at the rear of the allotment is an open space area (turf and landscaping) accessible via stairs at the rear of the podium level.

The floor plan of apartment from Level 2 to 6 provides for 2 x 2 bedroom apartments, each with an integrated indoor and outdoor living area oriented to provide potential views to the north and east over the Southern Boat Harbour, with the units fronting Wharf Street also capturing views to Terranora Inlet to the south. Bedrooms have been located to achieve maximum separation from Wharf Street and associated traffic noise.

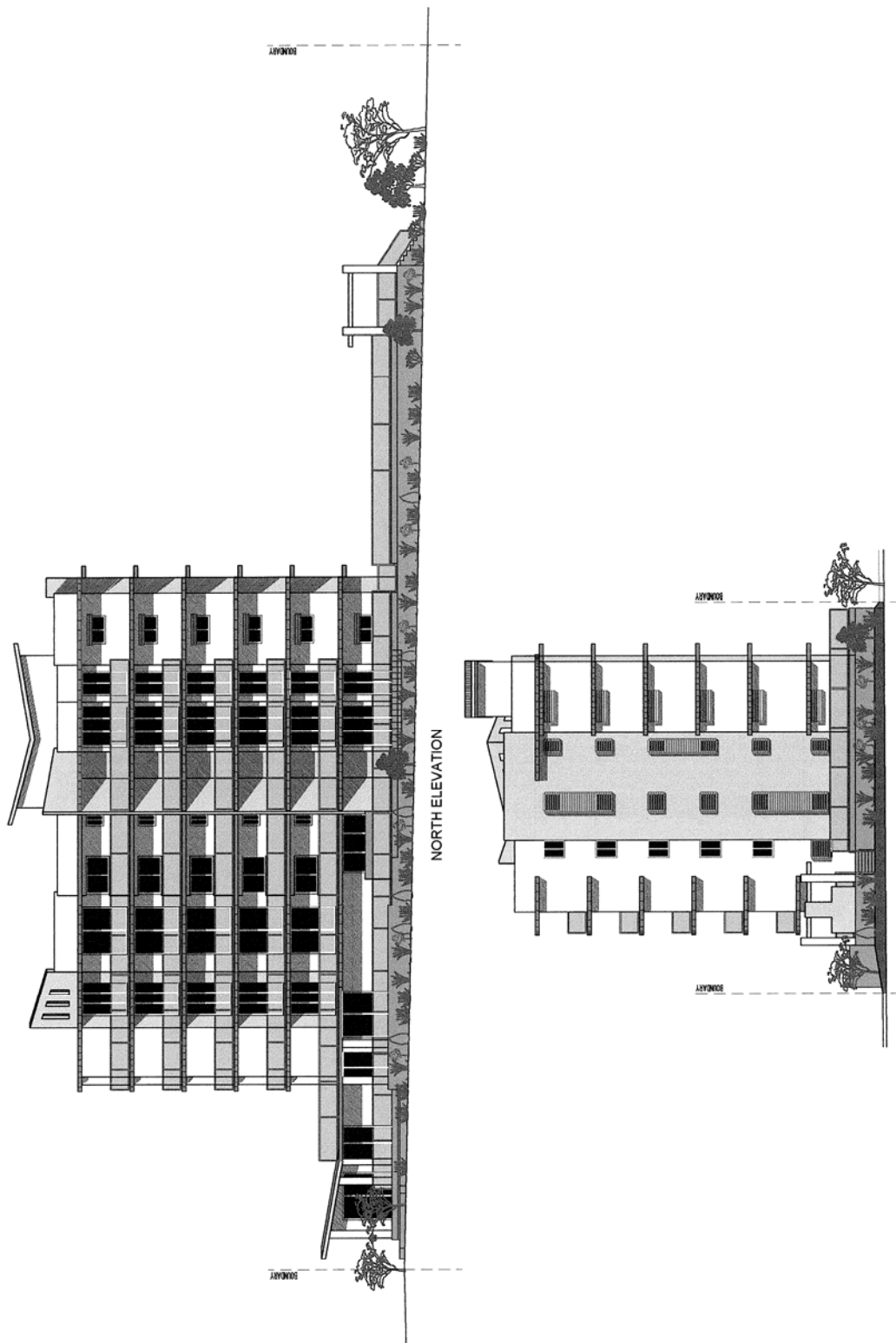
Pursuant to Section 91 of the *Environmental Planning and Assessment Act*, 1979, the application is identified as Integrated Development requiring a dewatering license under Part 5 of the *Water Act*, 1912. The Department of Infrastructure, Planning and Natural Resources has reviewed the proposal and provided general terms of approval in this regard.

SITE DIAGRAM:

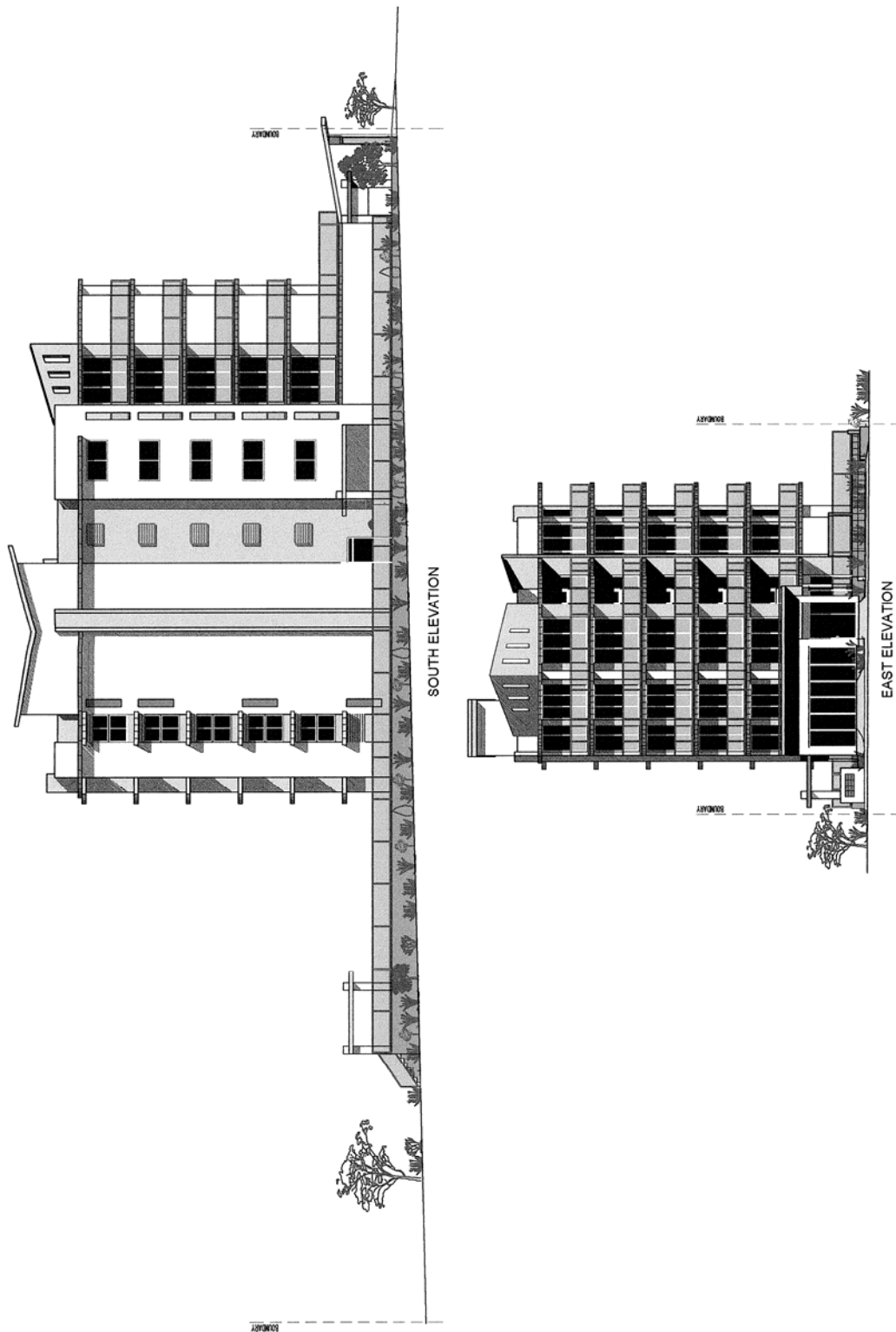


<p>© TWEED SHIRE COUNCIL 2006 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 816 Murrumbidgee, NSW, 2484 Tel: (02) 6670 2409 Fax: (02) 6670 2483</p>	<p style="text-align: center;"><i>Tweed Shire Council</i> Lot 2 DP 205411 & Lot 8 Sec 2 DP 2379 Wharf Street Tweed Heads</p>		<p>STRATEGIC PLANNING UNIT Site Plan</p>
<p>File: N:\MapInfo 7...I4P Site Plan.Wor</p>	<p>Author: C.Davis</p>	<p>Date: 7/Aug/2006</p>	<p>Scale: 1:5,000 Sheet: 1 of 1</p>

ELEVATION PLANS:



PROPOSED MULTI-UNIT DEVELOPMENT
AT 151 WHARF STREET, TWEED HEADS
FOR SEOVIC HOLDINGS P/L



PROPOSED MULTI-UNIT DEVELOPMENT
AT 151 WHARF STREET, TWEED HEADS
FOR SEVIC HOLDINGS P/L

THE SITE:

The subject site comprises 2 allotments located approximately 500m to the south of the Tweed Heads CBD and is positioned to capture potential views over the Southern Boat Harbour, Terranora Inlet and Razorback ridge. Surrounding development includes a mix of medium density residential development and commercial land uses such as the recently constructed Von Bibra car sales yard.

The site has an eastern frontage of 20.165m to Wharf Street and a depth of 61.46m – providing a total site area of 1244.3m².

The site is relatively level, with the surface levels providing a gentle cross fall from the eastern Wharf Street frontage (at RL 4.0m AHD) down to the western (rear) boundary at approximately RL 2.65m AHD.

The site is presently vacant and is devoid of any significant vegetation. Several trees are evident adjacent to the southern boundary of the site with this vegetation being the remains of a domestic style garden that existed at the rear of the old 'Miners Hut' retail premises that occupied the site until its demolition approximately 5 years ago.

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

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

Tweed Local Environmental Plan 2000

The subject land is zoned 3(b) General Business under the provisions of the LEP.

The objectives of the 3(b) zone are as follows:-

Primary objectives

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

Secondary objectives

- *to provide for tourist orientated development.*
- *to encourage upper floor residential or tourist accommodation.*

Multi-dwelling housing is prohibited in the 3(b) zone unless it complies with the provisions of Clause 51B which states in part:-

- (4) *Multi-dwelling housing on land to which this clause applies must be attached to shops, commercial premises, or other non-residential development on the same site.*
- (5) *If multi-dwelling housing is located at ground level or within 2.4 metres of ground level, a dwelling or car park area must not front any commercial street listed in Schedule 8.*

Wharf Street is a street listed in Schedule 8.

The proposed development is consistent with the zone objectives and the provisions of Clause 51B as it provides for suitably designed ground floor commercial development that incorporates shop frontage to Wharf Street and achieves suitable separation between the commercial premises and the ground floor residential unit. There is no car parking proposed along the Wharf street frontage.

Clause 15 – Availability of Essential Services

The subject site has an existing connection to all essential services with adequate capacity available to accommodate the proposed development.

Clause 16 – Height of Buildings

The proposed development is 6 storeys in height and is compliant with the 6 storey height restriction over the subject land.

Clause 22 – Designated Roads

Wharf Street is identified as a designated road and as such the proposal is subject to the provisions of Clause 22. The proposed development is unlikely to affect the capacity or efficiency of Wharf Street or cause any unreasonable traffic impacts. Council's Development Engineer has reviewed the application and raised no concerns. As such, the proposal is considered satisfactory with regard to Clause 22.

Clause 35 – Acid Sulfate Soils

The applicant has provided an Acid Sulfate Soil Management Plan to deal with any Acid Sulfate Soils that may be disturbed during construction. Council's Environment and Health Officer has reviewed the supporting information and raised no objection, subject to relevant conditions of consent.

Clause 50 – Floor Space Ratio's in Zones 3(a) and 3(b) at Tweed Heads

The site is located on land to which this clause applied. The table within Clause 50 specifies that the maximum Floor Space Ratio for the site in the 3(b) zone with an area less than 2000m² is 1:1. The proposed development

incorporates an FSR of 1:1 and as such, complies with the requirements of this Clause.

State Environmental Planning Policy – State Significant Development (2005)

Schedule 2(1) to the Policy specifies that development over 13.0m in height and located in a 'Sensitive Coastal Location' is considered to be State Significant Development. The subject land is not identified as a 'Sensitive Coastal Location' and therefore, despite being over 13.0m in height, is not classified state significant by virtue of the SEPP.

In any case, as the application requires concurrence from the Director General of the Department of Planning under Clause 51 of the North Coast Regional Environmental Plan, the provisions of Schedule 2(1) of the SEPP do not apply.

State Environmental Planning Policy No.55 – Remediation of Land

Following site investigation works, the subject site was been identified as possessing certain contaminants and as such, required the preparation of a Remediation Action Plan.

Council's Environment and Health Unit have been involved in assessment of this Plan and after several requests for additional information, have indicated that they are satisfied with the proposed arrangements – subject to certain conditions of consent. Based on the advice of Council's Environment and Health Officer, the proposal is considered consistent with the provisions of SEPP No.55.

State Environmental Planning Policy No.65 – Residential Flat Buildings

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

In this regard, the applicant has provided a comprehensive assessment of the proposal against the relevant design quality principles. It is considered that the design of the proposed development exhibits suitable regard for these principles and demonstrates satisfactory practice in urban design. The modern appearance of the building is in keeping with the evolving character of the area.

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. With regard to the matters outlined in Clause 8 the proposal is considered satisfactory and is generally in accordance with the objectives of the Policy.

North Coast Regional Environmental Plan 1988

The proposed building exceeds 14m in height and is subject to the provisions of Clause 51 of the NCREP. Clause 51 states:-

- (2) *The council shall not, without the concurrence of the Director, grant consent to a development application for the erection of a building over 14 metres in height.*

The proposed development incorporates a maximum height of approximately 22m however will not overshadow any beach or waterfront open space. Council has delegation to assume the concurrence of the Director of the Department of Infrastructure, Planning and Natural Resources as there is no SEPP No.1 objection associated with the application. The development is consistent with the relevant provisions of Clause 51 and the other relevant considerations under the NCREP 1988.

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

There are no draft environmental planning instruments applicable to the proposed development.

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

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

According to the provisions of DCP 2, multi-dwelling housing generates a car-parking requirement of 1.5 on-site car parking spaces per unit with 25% to be accessible as visitor parking.

The proposed development incorporates 11 residential units and therefore requires 16.5 spaces, with 4 to be designated for visitor parking.

In terms of the commercial component, DCP 2 identifies a car parking generation rate of 1 space per 40m² of gross floor area – with a 20% concession available for staff and customer parking under the provisions of Section 4.11.

The proposal incorporates 121.3m² of commercial floor space and after applying the 20% concession results in a car parking requirement of 2.4 spaces.

In total, the proposed development provides for 19 spaces and a dedicated car wash bay within a basement car park. Of the 19 spaces proposed, 4 are to be nominated for visitor parking, 3 for the commercial premises and 12 for the 11 residential units. An intercom system is to be required via a condition of consent to ensure access to both the visitor and commercial spaces is available.

Council's Development Engineer has also indicated that the proposed access driveway, ramp gradients, car space and circulations aisle dimensions are satisfactory and comply with the relevant Australian Standard.

The application meets both the numerical requirements and other design considerations and is therefore considered to be satisfactory with respect to the provisions of the DCP.

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 an appropriate mix of commercial floor space and residential apartments that reinforces the commercial role of Wharf Street.

Clause 4.3.2, which aims to encourage consolidation of lots and to achieve this purpose, states that a height restriction of 3 storeys applies to sites with an area of less than 2000m². The proposed has a site area of 1244.3m² and does not comply with the 3-storey height limit nominated under the Clause.

The applicant has submitted that a variation to the height restriction is warranted for the following reasons:-

- *It is not possible to amalgamate the subject site with the site to the north, as it contains an existing multi-dwelling housing development. Similarly, the land to the south contains the recently constructed Von Bibra car sales yard. No desirable outcome would be achieved by amalgamation of the site with land to the west, as this would result in a long, narrow allotment, which would not encourage a desirable building form.*
- *Adjoining landowners have been approached regarding the possibility of selling their property with no successful outcome (letter provided as Appendix K to application).*

- *Development in excess of three storeys exists in close proximity to the site, ensuring that the proposed development will not be out of character with other development in the area or with the streetscape.*
- *The building, as proposed is compact in form with generous setbacks and extensive open areas around the building footprint. Limiting the building height to 3 storeys would result in a shorter building with a larger footprint, and hence, less open space and reduced setbacks to all boundaries.*
- *A three-storey walk up style residential building is more likely to be out-of-character with recently approved and anticipated developments in the locality, and would be more inconsistent with the objectives of the 'Southern Precinct', as stated in the Development Control Plan.*
- *The building complies with the required floor space ratio of 1:1 for sites less than 2000m² and as such, does not represent an overly bulky development of the site.*
- *The building does not cause unacceptable shadow impacts as a result of the proposed increase in height. Land to the south is occupied by a car sales yard, which does not rely on access to sunlight. Land to the south west would be affected by short term shadow on winter mornings, however, this is considered to fall within acceptable limits given the duration of the shadow, the zoning of the affected property and as only yard areas (and ancillary building), not dwellings, are affected.*
- *Limiting development of the site to three storeys would not allow development to capitalise on water views available from the site, hence reducing residential amenity.*

Having regard to the nature of surrounding development and in light of the issues raised above, a variation to the height restriction under the DCP is considered suitable in this instance.

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

REQUIREMENT	COMMENT
Section 2.4.3 - View Corridors	Figure 2.4 of the Development Control Plan identifies a view corridor between Razorback Hill and the Southern Boat Harbour. The proposed building is within the identified view corridor, however is narrow at its western and eastern facades and hence will not create a 'wall effect' or fully obscure any of the features identified in the DCP.
Section 9.3 - Building Envelopes	The proposed building generally complies with the building envelope control over the site (business zones), apart from a small section of the lift overrun. The impact of this intrusion into the building envelope is considered to be negligible.
Section 4.3.1 - Preferred Development	The proposal provides a mixed-use development with commercial frontage to Wharf Street as specified by this clause. Amalgamation of the subject land with adjoining allotments is not achievable given the nature of the adjoining land uses.
<p>Clause 10 – Commercial Facades</p> <ul style="list-style-type: none"> ▪ Facades ▪ Design Elements 	<p>The proposal provides commercial premises with frontage to Wharf Street.</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 ▪ Energy Efficiency 	<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> <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>

REQUIREMENT	COMMENT
<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>As demonstrated in the shadow diagrams submitted with the application, the proposed development will not result in any unreasonable impacts on the surrounding residential uses. The proposal will primarily affect the car sales yard to the south of the site. On balance, the shadow impacts are considered negligible.</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.</p>
<ul style="list-style-type: none"> ▪ Privacy 	<p>The proposed building is not considered likely to present a significant risk of overlooking. The setbacks provided ensure appropriate separation distances and mitigate any potential adverse privacy issues in relation to both existing and likely future development.</p>
<ul style="list-style-type: none"> ▪ Security and Surveillance 	<p>Street level casual surveillance is achieved by designing the units to address the street 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>
<ul style="list-style-type: none"> ▪ Material and Colours 	<p>Materials proposed include a combination of rendered concrete, aluminium, steel, timber and glass. Certain materials have been used to highlight the articulation of the building and create interest in the façade.</p>
<ul style="list-style-type: none"> ▪ Access, Car Parking and Car Wash bays 	<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. A dedicated car wash down area is also proposed within the basement. The car parking arrangements are generally considered to be satisfactory.</p>

REQUIREMENT	COMMENT
<ul style="list-style-type: none"> ▪ Open Space and Balconies 	<p>The proposed building comprises 11 large units as defined by the DCP. Accordingly the proposal is required to provide a total of 275m² of landscaped open space.</p> <p>The proposal incorporates approximately 795.6m² of open space is proposed at ground and podium level. In addition, approximately 270m² is provided as 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>

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 fully complies with the development controls of the DCP relating to floor space ratios, building mass, energy efficiency, wind mitigation, overshadowing, roof lines, privacy, security, access, car parking, open space and is unlikely to result in any adverse impact in terms of view corridors. A minor variation to the building envelope provisions for the lift overrun and a variation to the specified 3 storey height limit have been suitably justified.

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

There are no significant detrimental impacts envisaged as a result of the proposed development. The proposal is generally consistent with the desired future character of the area and is satisfactory with regard to the relevant planning controls pertaining to mixed-use development.

In terms of potential noise impacts, it is noted that the subject site adjoins the Von Bibra car yard to the south. Workshops associated with the car yard however, front Boyd Street and are separated from the subject site by existing commercial and residential development. Road noise associated with Wharf Street has been considered by Council's Environment and Health Officer and found to be within reasonable limits. In this regard it is noted that as there are no traffic lights near the subject land and as such there will be no additional noise generated from the stopping and starting of vehicles. Given the elongated nature of the subject site, the extent of separation to the car yard workshop and the use of balconies on each level, it is considered that suitable protection is provided against any potential noise impacts.

The nature of adjoining development (including a car yard to the south and existing 3 storey unit building to the north) is such, that impacts relating to overshadowing or loss of privacy are unlikely to present a significant issue.

(c) Suitability of the site for the development

The subject site is considered suitable in accommodating the proposed mixed-use development. The provision of commercial tenancies at the ground floor (podium) level is in keeping with Council's strategic objectives for the area as it provides for an active street frontage and will assist in revitalising the commercial vitality of the area. The subject site is in close proximity to a number of local service nodes including the university, hospital, civic centre, shopping precinct and commercial activities.

Issues relating to remediation works and acid sulfate soil have been addressed to the satisfaction of Council's Environment and Health Unit and there are no natural hazards relating to bushfire or flooding affecting the subject land.

The application was referred to the Department of Natural Resources in relation to the need for dewatering. Out of the referral process, the Department provided Council with General Terms of Approval associated with a license to dewater.

The suitability of the site for the purposes of the proposed development has been further demonstrated by way of general consistency with the relevant statutory and non-statutory guidelines applying to the site.

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

The application was advertised for 30 days in accordance with Council's Notification Policy. During this period, one (1) submission was received. The submission objects to the proposal on the following grounds:-

Issue: The proposal does not meet the 3 storey height restriction outlined in Section 4.3.2 of DCP 18.

Comment: Whilst the application relates to an allotment under 2000m² in size (and therefore requires a variation to the provisions of DCP 18), it remains compliant with the statutory height restriction under Clause 16 of the Local Environmental Plan. The concept of lot consolidation is considered to have significant merit, however is not considered achievable in the circumstances of the case. The applicant has previously approached the neighbouring landowners with a view to increasing the parcel of land available to redevelopment without success. A copy of a letter from a real estate agent in this regard is provided with the application as Annexure K. The opportunities for consolidation are further limited due to the nature of the surrounding development and in particular, the recently constructed Von Bibra car yard to the north. Based on the justification provided by the applicant (reviewed within the DCP 18 Section of this report), it is considered that a variation to the guidelines of the DCP is acceptable in this instance.

Issue: The proposed development will result in an increased traffic hazard.

Several amendments to the design of the driveway entrance have been required during the assessment of the application. The amendments seek to improve sight triangles and visibility for vehicles leaving the development. Council's Traffic engineer has reviewed the application with respect to traffic issues and raised no objection.

Issue: The proposed development is out of character with the height of existing development in the locality and represents an overdevelopment of the site.

The proposed development is generally in compliance with all the relevant planning controls applicable to development of this nature. The subject site has been earmarked in Council's policies for high-density mixed-use development. The proposal represents a realisation of the desired character of the area and is not considered to be an overdevelopment of the site. It is anticipated that future redevelopment of a similar scale will occur over neighbouring allotments in the short to medium term.

(e) Public interest

Subject to conditions of consent, the proposed development is considered to be consistent with the public interest and suitable for approval. It is considered likely that similar redevelopment will occur in the subject locality in the near future.

OPTIONS:

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

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the application be refused, the applicant has the right to appeal in the Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed development provides for high density mixed-use development in an area that provides for a wide range of services. The nature of the development is consistent with the strategic objectives for the area contained within Council's planning documents.

Having considered all aspects of the proposed development, it is considered that on balance, the proposed six (6) storey mixed-use development is suitable for conditional approval. The applicant has satisfactorily addressed all relevant matters and the proposal is predominantly compliant with all relevant planning controls.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

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P9 [PD-PC] S96(1A) Application DA05/0195.01 for Amendment to Development Consent DA05/0195 for a 6 Storey Res'l Flat Building Comprising 12 Units & Two Levels of Underground Carparking at Lot C DP406494; Lot 1 DP350710, No. 2 & 4 Boundary Lane, Tweed Heads

ORIGIN:

Development Assessment

FILE NO: DA05/0195 Pt2

SUMMARY OF REPORT:

Council is in receipt of a S96 Application to modify DA 05/0195. The original consent approved the construction of a six storey residential flat building comprising of 9 x 3 bedroom (plus study) units and 3 x 2 bedroom units with two basement car parking levels providing on site parking for 31 vehicles.

The proposed S96 seeks to split the approved apartment on level 4 into two apartments. On the approved plans the apartment on level 4 occupied 475m² of internal and balcony space. The proposed S96 would divide this same space into two apartments of 255 m² and 220m².

To accommodate the additional unit the pool and balcony areas have been deleted and partially replaced with internal floor area and partially replaced with balcony space. In addition the amended plans show alterations to level five with new balcony space to cover the additional floor area on level four.

The amendment is a change in density and therefore this report assesses this impact having regard to the six objections received to date. The objections are based on loss of privacy, increased noise, increased traffic, lack of parking, the geographic instability of the site and the inappropriate zoning of the site.

This S96 Application is not an opportunity to re-visit the whole application but rather a specific amendment that must be considered on its merits.

Having regard to the issues associated with an additional unit within this development the proposed modification is considered to warrant conditional approval.

RECOMMENDATION:

That Section 96 Application DA05/0195.01 for amendment to Development Consent DA05/0195 for 6 storey a residential flat building comprising of 12 units and two levels of underground carparking at Lot C DP 406494; Lot 1 DP 350710, No. 2 Boundary Lane Tweed Heads No. 4 Boundary Lane Tweed Heads be approved subject to the following amendments: -

1. Change the description of the development to read:

“A RESIDENTIAL FLAT BUILDING 6 STOREYS COMPRISING OF 13 UNITS AND TWO LEVELS OF UNDERGROUND CARPARKING AT LOT C DP 406494 & LOT 1 DP 350710, NO. 2 BOUNDARY LANE TWEED HEADS & NO. 4 BOUNDARY LANE TWEED HEADS”

2. Delete Condition 1 and replace with Condition 1A that reads as follows:

1A. The development shall be completed in accordance with the Statement of Environmental Effects (as amended April 2006) and Plans as follows:

- **Drawing Number A01 Issue A prepared by Sean Gartner Architects and dated 22/02/2005 as approved by DA05/0195;**
- **Drawing Number A02 Issue B prepared by Sean Gartner Architects and dated 20/03/2006 as approved by DA05/0195.01;**
- **Drawing Number A03 Issue A prepared by Sean Gartner Architects and dated 22/02/2005 as approved by DA05/0195;**
- **Drawing Number A04 Issue B prepared by Sean Gartner Architects and dated 20/03/2006 as approved by DA05/0195.01;**
- **Drawing Number A05 Issue B prepared by Sean Gartner Architects and dated 20/03/2006 as approved by DA05/0195.01;**
- **Drawing Number A06 Issue B prepared by Sean Gartner Architects and dated 20/03/2006 as approved by DA05/0195.01; and**
- **Drawing Number A07 Issue B prepared by Sean Gartner Architects and dated 20/03/2006 as approved by DA05/0195.01.**

except where varied by these conditions.

[GEN0010]

3. Delete Condition 9 and replace with Condition 9A that reads as follows:

9A 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 the date of this S96 consent only 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	\$7,470
b.	Open Space (Structured): S94 Plan No. 5	\$5,070
c.	Open Space (Casual): S94 Plan No. 5	\$1,083
d.	Shirewide Library Facilities: S94 Plan No. 11	\$4,474
e.	Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$908
f.	Emergency Facilities (Surf Lifesaving) S94 Plan No. 16	\$1,303
g.	Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$8,246.44
h.	Cycleways S94 Plan No. 22	\$2,286
i.	Regional Open Space (Structured) S94 Plan No. 26	\$15,118
j.	Regional Open Space (Casual) S94 Plan No. 26	\$5,557

- k. Tweed Heads Master Plan: **\$13,611.00**
S94 Plan No. 27

[PCC0215/PSC0175]

4. Delete Condition 10 and replace with Condition 10A that reads as follows:

10A. 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: 6.2 ET @ \$4598	\$28,508
Sewer Banora: 10.25 ET @ \$2863	\$29,346

These charges are valid for the date of the S96 consent only and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

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

[PCC0070/PSC0004]

REPORT:

Applicant: Gartner Travato Architects
Owner: Point-D Pty Ltd and Kosalin Pty Ltd
Location: Lot C DP 406494; Lot 1 DP 350710, No. 2 & 4 Boundary Lane Tweed Heads
Zoning: 2(b) Medium Density Residential

BACKGROUND:

At the Planning Committee Meeting of 20 July 2005 the original application for a six-storey unit development was considered.

At this meeting the Committee reviewed the officers report, which detailed the nature of the development and the reasons for objection from fifteen adjoining owners.

Based on consideration of all the issues the Planning Committee resolved to approve the application subject to minor amendments to the conditions of consent. The original reports and final conditions of consent are **attached** under separate cover.

The proposed amendment seeks to convert the single unit within level 4 to two (2) units. On the approved plans the apartment on level 4 occupied 475m² of internal and balcony space. The proposal is to divide this same space into two apartments of 255 m² and 220m².

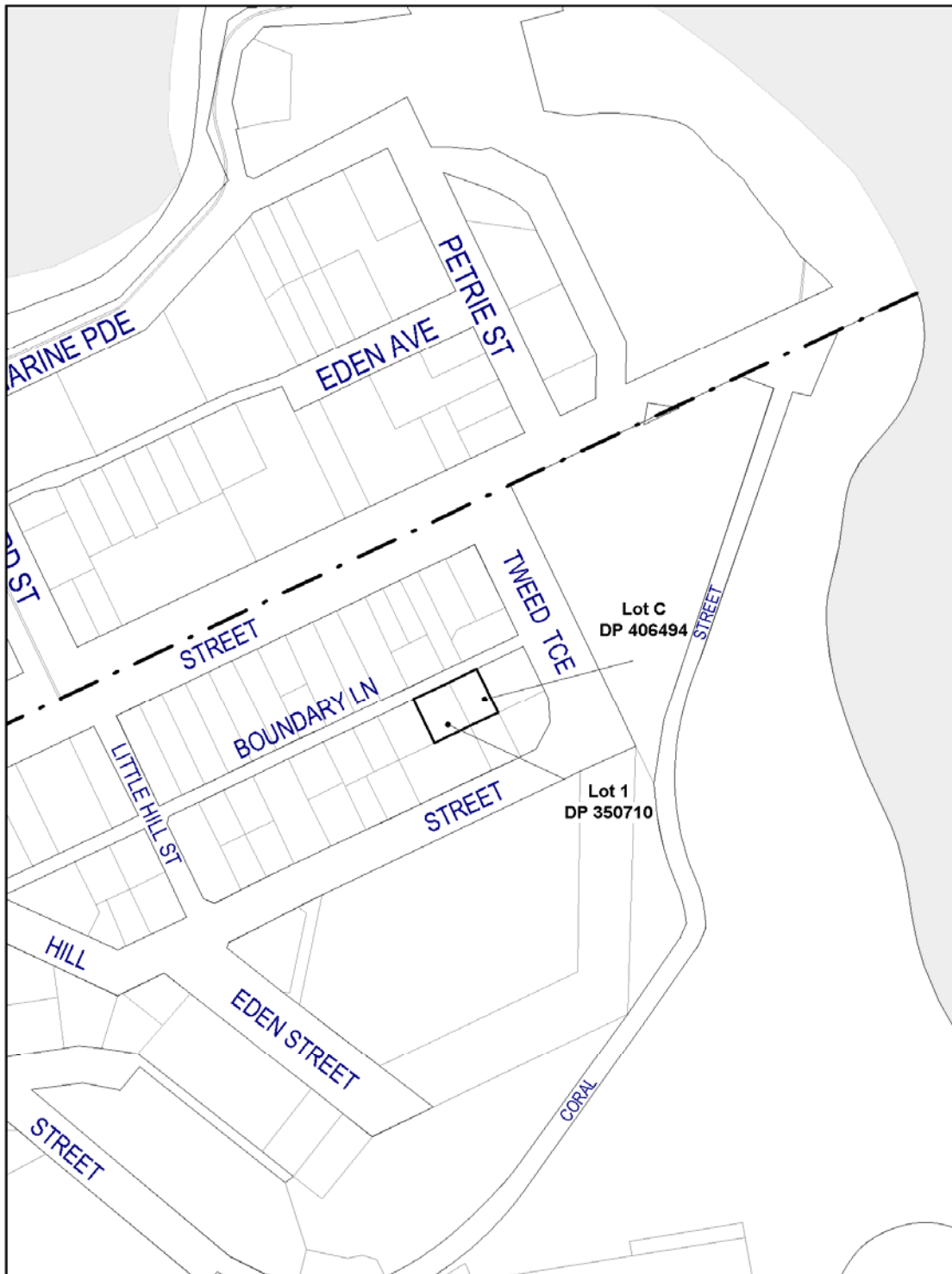
The applicant has submitted that this amendment will not change the height of the building, the building footprint, the building envelope, the building floor area, the extent of excavation or the number of onsite parking spaces.

However, to accommodate the additional unit the plans indicate that on level 4 the pool has been deleted and replaced with internal floor area and balcony space. The setbacks from the main external wall of the building will therefore be reduced from 6m down to 4m for a length of 20m. This will affect the south-eastern elevation.

In addition the amended plans show alterations to level five with new balcony space to cover the additional floor area on level four.

The amendment is a change in density that will alter the setbacks and therefore amenity to adjoining neighbours. This report assesses this impact having regard to the six objections received to date.

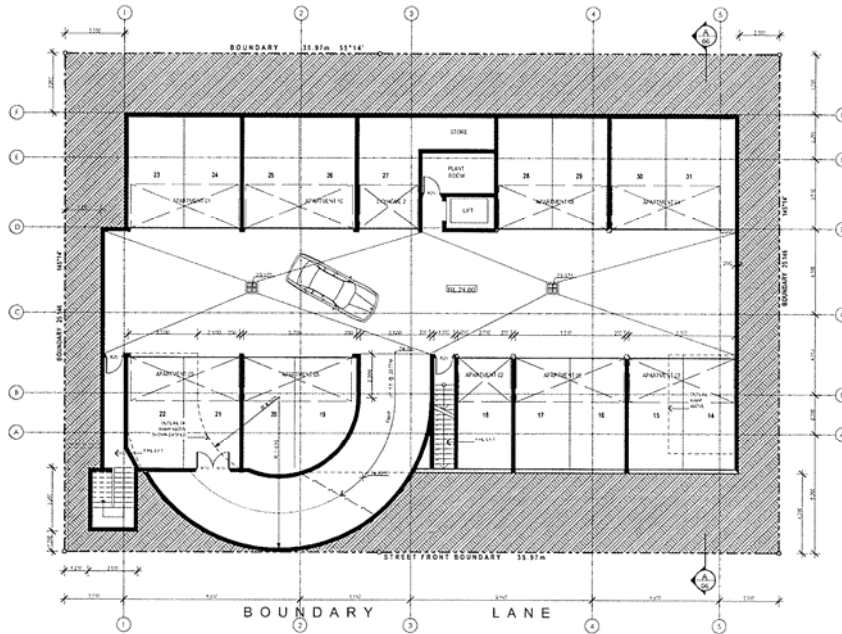
SITE DIAGRAM:



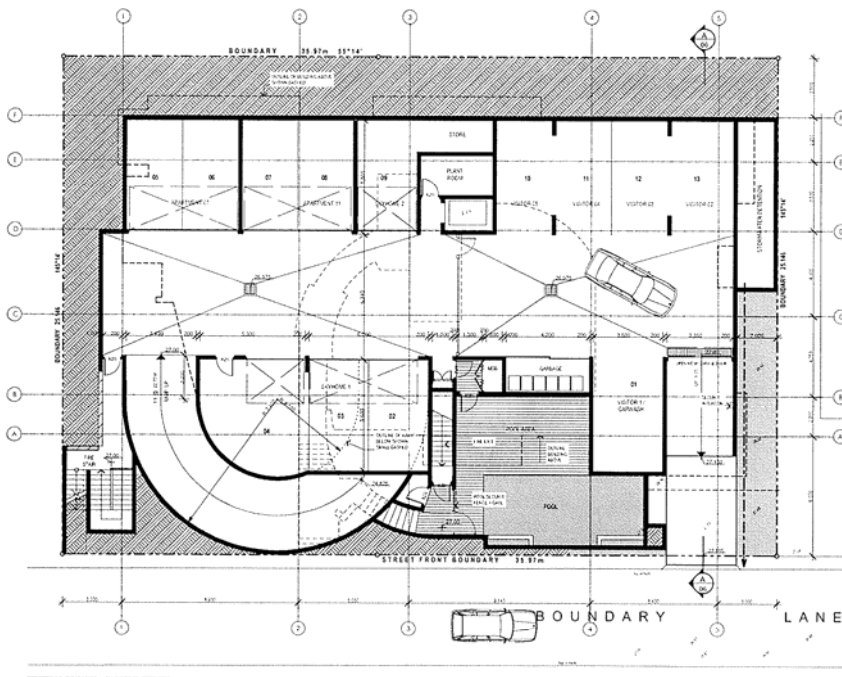
<p>© TWEED SHIRE COUNCIL 2005 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 816 Murwillumbah, NSW, 2484 Tel: (02) 6670 2409 Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i> Lot C DP 406494 and Lot 1 DP 350710 Boundary Lane, Tweed Heads</p>		<p>STRATEGIC PLANNING UNIT Figure 1 Sheet: 1 of 1</p>
<p>File: N:\MapInfo 7...A4P Site Plan.Wor</p>		<p>Author: C.Davis</p>	<p>Date: 12/July/2005</p>
<p>Scale: 1:7,500</p>		<p>Scale: 1:7,500</p>	

S96 DEVELOPMENT PLANS:

(Amendments are shown with a cloud like outline, however colour A3 plans will also be tabled at the meeting for Administrators)

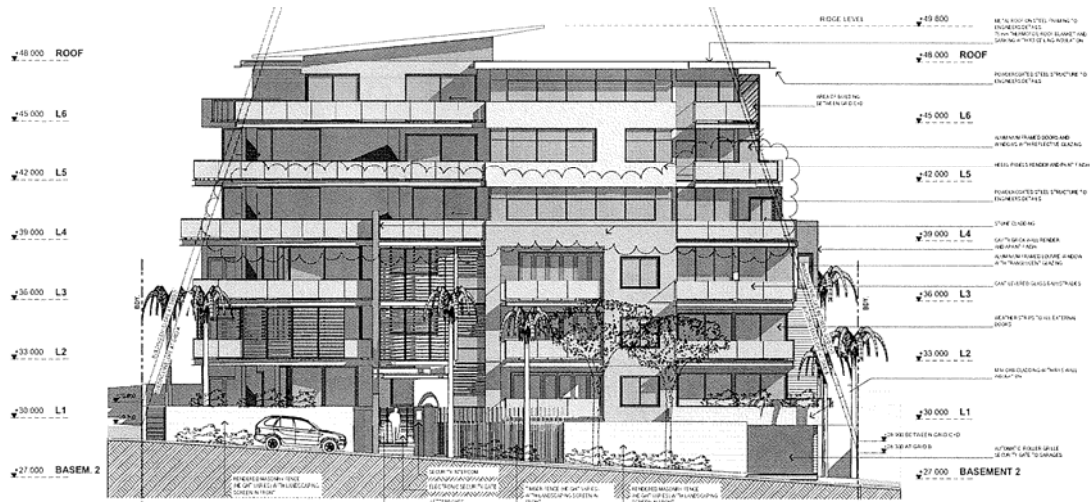


BASEMENT 1 - RL24,000



BASEMENT 2 - RL27,000

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NO.	DATE	DESCRIPTION															
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NORTH-WEST ELEVATION

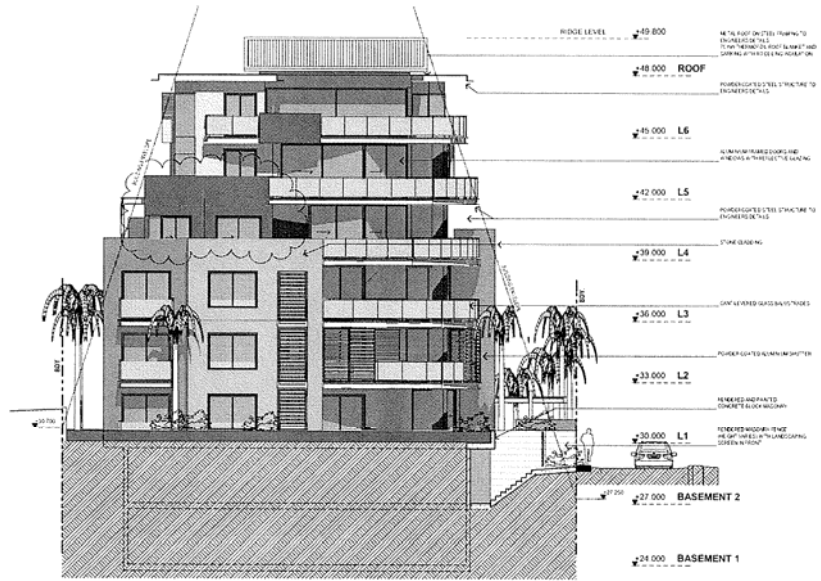


SOUTH-EAST ELEVATION



SOUTH-WEST ELEVATION

		SEAN GARTNER ARCHITECTS 7-4 BOUNDARY LANE, TWEED HEADS NSW 2486 TEL: 07 5532 1111 FAX: 07 5532 1112 WWW: SEANGARTNERARCHITECTS.COM.AU	NEW APARTMENTS 7-4 BOUNDARY LANE, TWEED HEADS PROJECT NO: 0430 DATE: 15/08/06 DRAWN BY: A-06 CHECKED BY: B
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NORTH-EAST ELEVATION



SECTION A-A

		SEAN GARTNER ARCHITECTS		NEW APARTMENTS 2 & BOUNDARY LANE, TWEED HEADS		Date: 15/08/2006	
		ELEVATION NE - SECTION A-A		Drawing No: A-07		Rev: B	

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

General Assessment

The original assessment involved a detailed analysis of the proposal against the following documents:

- State Environmental Planning Policy No. 71 – Coastal Protection;
- State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development;
- North Coast Regional Environmental Plan;
- Tweed Local Environmental Plan 2000;
- Tweed Heads Town Centre Master Plan;
- Development Control Plan No. 2 – Onsite Parking;
- Development Control Plan No. 18 – Tweed Heads;
- Development Control Plan No. 39 – Energy Efficient Housing; and
- Development Control Plan No. 47 – Cut & Fill

The proposed amendments to the building to accommodate one additional unit will not change the overall height of the building or the footprint of the building. It will however decrease the setbacks to the south-eastern boundary at level 4 and increase the amount of balcony space at level 5. These changes will change the south-eastern elevation and thus potentially alter the privacy of those adjoining residences. The changes will also increase traffic using Boundary Lane and increase the required onsite parking spaces.

The proposed amendments have been assessed against the above policy documents and against the provisions within Section 79C of the Environmental Planning & Assessment Act 1979. In this regard the following is provided:

In accordance with SEPP 65 the applicant (Sean Gartner a qualified designer and registered architect) has signed a design verification statement that states that he has had regard to the design quality principles set out in SEPP 65 Design Quality of Residential Flat Development, Council's Development Control Plans and the Tweed Heads Master Plan.

On review of the amended plans it is agreed that the proposed amendments continue to achieve compliance with the design quality principles in SEPP 65, the requirements within DCP 18 – Tweed Heads, and the Tweed Heads Master Plan. Specifically in regard urban design principles, the extent of balcony area per unit, and the building height plane.

The reduced setback at level 4 and the additional balcony area at level five are considered reasonable as the privacy implications are minimal. In regards to the increased loss of privacy from one additional unit this has to be balanced against the approved floor plan. The approved plan showed a pool and entertainment area, while the proposed amendment shows bedrooms and small narrow balconies.

The balcony space is minimal and unsuitable as an entertainment area and the areas are utilised by bedrooms and not main living areas, again reducing the potential privacy implications for the adjoining owners. It could be argued that the privacy implications will be reduced, as a result of the proposed amendments.

In regard to traffic generation and the capacity of Boundary Lane to cater for the additional unit, Council's Traffic & Transport Engineer has advised that the capacity of Boundary Lane is in excess of any potential traffic generation from both the existing and any future development that requires access off the laneway.

The proposed amendment also achieves compliance with DCP No. 2 in regard to onsite parking. Each unit requires 1.5 spaces with 25% of that parking available to visitors. The original development (12 units) required 18 onsite spaces with 4.5 spaces for visitors. The application originally complied with this criteria as the two tier basement contains thirty one (31) unconstrained spaces. Of these 31 spaces five (5) of them were marked for visitor use.

The introduction of an additional unit would mean that the development needs 19.5 on site spaces with 4.8 spaces available for visitors.

The amended plans show the basement comprising 31 spaces with five (5) visitor spaces accessible via a security intercom where visitors can be "buzzed in" by the residents.

This is acceptable subject to a condition of consent confirming the need for a minimum of five visitor spaces that are clearly signposted accordingly and shown on any strata plan as common property areas.

The proposed amendment therefore still achieves compliance with DCP No. 2 – Onsite Parking.

The proposed amendments are considered to result in substantially the same development as that originally approved by Council. The addition of one unit is not considered unreasonable as privacy implications are similar to if not reduced as a result of the amended plans, the road network capacity can accommodate the additional unit and onsite parking is provided to Council's requirements.

Minimal Environmental Impact

Section 96(1A) of the Act provides that a consent authority may, on application being made by the applicant modify the consent if it is satisfied that the proposed modification is of minimal environmental impact.

The proposed amendments to the building to accommodate one additional unit will have the following impacts:

- Additional traffic in Boundary Lane;
- Additional onsite parking demand; and
- Increased privacy concerns primarily to the south east.

As detailed above the onsite parking and traffic concerns expressed by adjoining residences are not substantiated. The application has 11 on site car parking spaces in excess of that required for the development. Furthermore, Council's Traffic & Transport Engineer has provided that the capacity of Boundary Lane is in excess of any potential traffic generation from both the existing and any future development that requires access off the laneway.

In regards to the increased loss of privacy from one additional unit this has to be balanced against the approved floor plan. The approved plan showed a pool and entertainment area, while the proposed amendment shows bedrooms and a small narrow balcony. It could be argued that the privacy implications will be reduced.

Therefore, the proposed amendment is considered to be of minimal environmental impact and can be considered as a S96 Amendment.

Substantially the Same Development

Section 96(1A) of the Act provides that a consent authority may, on application being made by the applicant modify the consent if it is satisfied that the proposed modification is substantially the same development as the development for which consent was originally sought.

The division of level 4 into two units will result in a development that is substantially the same development to that originally approved by Council. The overall height and general appearance of the building will remain unchanged. Therefore this matter can be considered under S96.

Advertising and Consideration of Submissions

Section 96(1A) of the Act provides that a consent authority may, on application being made by the applicant modify the consent if it is satisfied that the proposed modification has been notified as required by Regulations of a DCP, and any submission received has been considered.

The S96 application was re-advertised and adjoining neighbors and original objectors personally notified of the proposed amendments. The application was on public exhibition between 14 June 2006 and 28 June 2006. During this period Council received six objections to the proposed modification. The following table details the nature of these objections:

OBJECTION	IMPACT ASSESSMENT
<i>The site sits on bedrock and its removal could affect the stability of nearby residences.</i>	The proposed amendments do not affect the already approved excavation and therefore this S96 Assessment cannot re-visit this issue.
<i>During construction trade vehicles will disrupt traffic and it will not be possible to provide safe access.</i>	<p>This was an issue with the original application and one that the administrators requested additional conditions to ensure adequate safety and access. In this regard Council's Engineering & Operations Division provided that</p> <p>(a) Boundary Lane currently has 3 speed humps that act as traffic calming devices. Council's Technical Officer does not recommend further speed humps or raised platforms in a residential laneway due to potential noise and amenity issues. However, Boundary Lane in itself is considered to restrict speed due to its width, one way nature and grade. It should be further noted that there is no accident record in this laneway.</p> <p>(b) In regard to the capacity of Boundary Lane, Council's Traffic and Transport Engineer has provided that based on the capacity of a two (2) lane two (2) way road which can carry 16,000 vehicles per day, a one way carriage could potentially carry 8,000 vehicles per day. However, this would be with unrestricted flow and would have no regard for amenity. To allow for the number of driveways this figure should be reduced by 50% to 4,000 vehicles per day for the capacity of the lane (this equates to 400 vehicles in the peak hour). What this demonstrates is that the capacity of Boundary Lane is in excess of any potential traffic generation from both the existing and any future development that requires access off the laneway. Any future application relying on access off Boundary Lane will need to be assessed on its individual merits having regard to the geometry of the laneway.</p> <p>Based on this advice no additional conditions are proposed in relation to traffic calming or road capacity studies.</p> <p>The proposed amendments do not affect the need for construction equipment and therefore this S96 Assessment cannot re-visit this issue.</p>
<i>Access to the lane is limited as it is a narrow lane – the laneway should be widened and the developer should donate land to accommodate this.</i>	As detailed above Boundary Lane has the capacity to cater for the proposed development from an engineering perspective. Therefore, the concept of widening Boundary Lane is not justified specifically for this S96 Application.
<i>There is insufficient parking.</i>	The original proposed development provided 13 more on site car spaces than that required by DCP No. 2. Subsequently, the proposed s96 application would require an additional 2 spaces thus leaving the site with eleven (11) on site car spaces in excess of that required by DCP No. 2.

OBJECTION	IMPACT ASSESSMENT
<p><i>Privacy</i></p> <p><i>There would be extra people living and overlooking my rear balconies. One unit is bad enough but two units is unacceptable. Privacy is a big concern</i></p> <p><i>The developers have objected to other applications in the locality on the grounds of privacy for their units – yet another unit overlooking the land is unacceptable.</i></p>	<p>As detailed in the above report, privacy in high-density areas does become compromised.</p> <p>The proposed amendments increase balcony space to the south-eastern elevation and increase the number of bedrooms facing south. However, the balconies are narrow and only provide interest to the façade rather than an entertaining area. Furthermore, the addition of bedrooms rather than living areas will ensure privacy implications are minimised as much as possible.</p> <p>The proposed amendments are not considered unreasonable and therefore are recommended for conditional consent.</p>
<p><i>This development is only 2m not 3m the whole length of my rear boundary. This has already been pushed to the limits as far as privacy is concerned.</i></p>	<p>This objection relates the setback at ground level, which was approved as part of the original development application.</p> <p>The proposed amendments affect levels 4 and 5 and result in no part of the building (at these levels) being closer than 4m from the south-eastern boundary.</p> <p>This objection does not warrant refusal or amendment to the proposed S96 Application.</p>
<p><i>Noise will carry and reduce our amenity. The multiplication effect of noise will be immense.</i></p>	<p>Council's Environmental Health Officer reviewed the proposal and recommended appropriate conditions regarding noise generation. One additional unit would <u>not</u> create an unacceptable noise level that would warrant refusal of this S96 Application.</p>
<p><i>This building will block natural current of the wind and affect the amenity of neighbours.</i></p>	<p>The proposed S96 Application does not increase the height or footprint of the building and therefore this objection is not specific to the proposed amendments and cannot be further considered.</p>
<p><i>The density is too high</i></p>	<p>The proposal to construct a 6 storey residential flat building on two parcels of land (with a total area of 904m²) is considered to be high-density development as permitted by the zone. The application satisfies Council's Policies and is considered suitable for the changing nature of the area.</p>

The creation of documents such as The Tweed Heads Town Centre Master plan and DCP 18 have provided the framework for developments in the Tweed Heads area. These plans were exhibited to the general public and once adopted are considered to be documents that represent the interest of the public to ensure development standards are maintained.

The proposed development and its amendments have been designed having regard to the objectives and design outcomes listed in the relevant documents.

OPTIONS:

1. Approve the S96 application as per the recommendation.
2. Refuse the S96 application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be dissatisfied with the determination by Council the applicant would have a right to appeal the decision in the NSW Land & Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

A S96 Application is not an opportunity to re-visit the whole application but rather a specific amendment that must be considered on its merits. Having regard to the issues associated with increasing the number of units within this development the proposed modification is considered to warrant conditional approval. The proposed amendments are considered to result in substantially the same development as that originally approved by Council and therefore the proposed amendments are recommended for conditional consent.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Planning Committee Report 20 July 2005 (DW 1232826)
 2. Council Meeting Report 3 August 2005 (DW 1240290)
 3. Determination Notice (DW 1270137)
 4. Confidential Floor Plans x 3 (Amendments to Level 4 & 5 are shown with a cloud like outline) (DW 1439565; 1439566; 1439567)
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P10 [PD-PC] Section 96(1A) Application DA04/1528.03 for Amendment to Development Consent DA04/1528.03 for a Residential Subdivision (MOD 76-6-2006 modifying DIPNR DA 243-10-2004) at Lot 242 & 243 DP 1082837, No. 159 Overall Drive, Pottsville

ORIGIN:

Development Assessment

FILE NO: DA04/1528 Pt3

SUMMARY OF REPORT:

A Section 96 modification has been lodged with the Department of Planning seeking an amendment to an approved residential subdivision. The subdivision will form the final stages of the Black Rocks Estate (Stages 13 & 14).

Pursuant to State Environmental Planning Policy No. 71 Coastal Protection, the Minister was the consent authority for the original application and is the consent authority for this Section 96 modification application.

The Section 96 modification has been referred to Council for comment.

The proposed amendments relate to four conditions of consent (imposed by the Department of Planning); as follows;

1. Amend condition B6 (b)(i) to enable the cycleway to be built at the bottom of the batter as opposed to the top of the batter as conditioned;
2. Amend condition B9(g) to enable the cycleway to be built at the bottom of the batter as opposed to the top of the batter as conditioned;
3. Amend condition G2 which requires a three monthly report addressing compliance with the relevant conditions of consent. The applicant seeks clarification that such reports are only needed until the subdivision certificate is issued;
4. Amend condition H2 which requires clarification of the phrase "development area";

Council need only respond to the Department of Planning in relation to amendments one (1) and two (2) above, as these were conditions derived from Council's recommendations. The remaining two amendments affect conditions imposed by the Department of Planning itself and the NSW Rural Fire Service. Therefore the Department of Planning as the consent authority will determine the S96 application in regard to amendments three (3) and four (4) above.

Subsequently, the following report reviews Council's previous decision in relation to the best location for the cycleway and recommends that conditions B6 (b)(i), and B9(g) remain as per the original conditions of consent and the Department of Planning be advised accordingly.

RECOMMENDATION:

That a copy of this report be sent to the Department of Planning for consideration as part of their report to the Minister.

REPORT:

Applicant: Black Rocks Estate Pty Limited
Owner: Black Rocks Estate Pty Limited and Tweed Shire Council
Location: Lot 242 DP 1082837 No. 159 Overall Drive, Lot 243 DP 1082837 Overall Drive & Lot 183 DP 1034824, Overall Drive Pottsville
Zoning: Part 2(a) Low Density Residential, 7(d) Environmental Protection (Scenic/Escarpment), 7(l) Environmental Protection (Habitat), and 7(a) Environmental Protection (Wetland and Littoral Rainforests)

BACKGROUND:

The original Council Report (attached under separate cover) details the extensive history to development of this site.

DCP 16 - Subdivision Manual and Tweed Shire Council's Estuary Management Plan, specifies the need for a 50m riparian buffer along Mooball Creek. The original subdivision was granted a variation in this regard to allow a batter and the cycleway to occupy approximately 16m of the 50m riparian zone. This variation was site specific and related to the previous arrangements made with Council that were documented within a Deed of Agreement. However, to ensure the 12m batter and the remaining 34m of the setback to Mooball Creek was available as a true riparian zone Council recommended to the Department of Planning that the footpath be located immediately adjoining the residential blocks to create a distinct delineation between public and private land. This will ensure the batter will be seen by residents as public land rather than being consumed by individual landowners.

This S96 specifically seeks to alter the conditions relating to the location of the cycleway to allow the cycleway to be built at the bottom of the batter. This would require the amendment to conditions, B6 (b)(i) and B9(g) which currently read as follows;

Condition B6(b)(i)

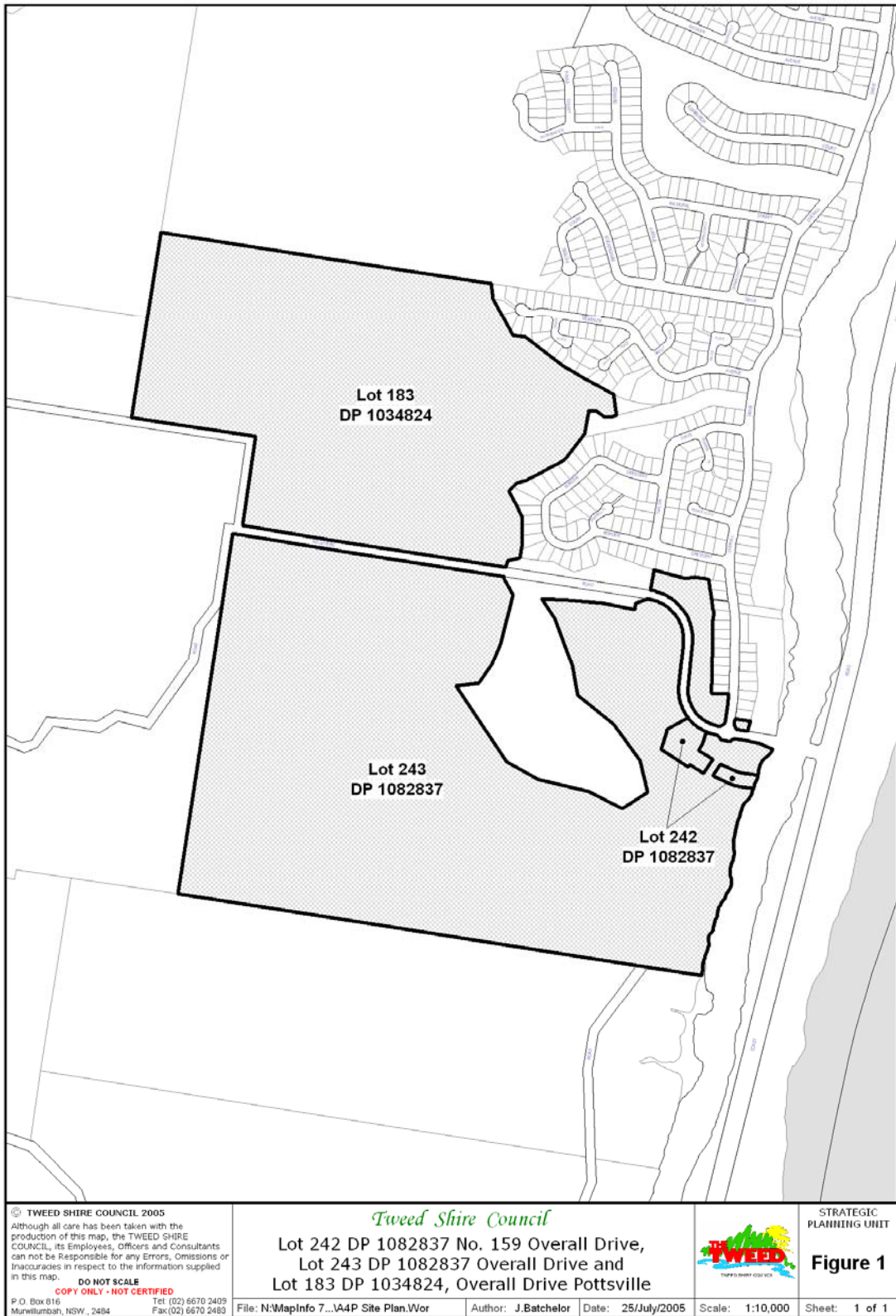
"The engineering plans and specifications to accompany the construction certificate application shall provide for;

- i) The cycleway is to be located on top of the batter adjoining proposed residential allotments."*

Condition B9(g) contains similar terms as follows:

"The cycleway is be provided on the top of the batter."

SITE DIAGRAM:



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

The applicant has put forward the following justification for the proposed variations:

- *The existing cycleway/walkway constructed at the toe of the batter for all lots (with frontage to Mooball Creek) in previous stages north of the Black Rocks Bridge was constructed in accordance with the then requirements of Tweed Shire Council. This location for the cycleway/ walkway does not affect the privacy of existing lot owners and to date there have been no known security or amenity issues.*
- *Locating the cycleway/walkway at the top of the batter will adversely impact on the privacy and amenity of the rear yards of the abutting properties and may also give rise to security risks to those properties.*
- *Delineation of the property boundaries between the private lots and the public land (foreshore reserve) at the top of the batter can be achieved by the installation (by the developer) of an appropriate fence at the subdivision stage. In this regard the developer is prepared to construct an open type fence (details of which are to be approved by Tweed Shire Council) on the common boundary of the residential lots and the Mooball Creek foreshore buffer boundary to provide a defined boundary whilst still achieving surveillance of the cycleway/walkway and foreshore areas.*
- *The proposed cycleway/walkway is a relatively minor structure which would have negligible impacts on the foreshore area if it is located at the toe of the batter, based on operational experience in adjoining stages to the north. However to discourage informal use of the foreshore area (by pedestrians and cyclists) the applicant is prepare to erect a low post and rail fence on the eastern side of the walkway and erect appropriate signage.*

The proposed amendments to the cycleway conditions were referred to Council's Development Engineer who provided the following comments;

The proposal of the cycleway along the base of the batter is not supported due to the following reasons;

1. **The original consent for Stages 13 & 14 of the Black Rocks estate had a concession in regards to the width of the riparian buffer between the proposed subdivision and Mooball Creek. DCP 16 – Subdivision Manual, Section 4.2.3 requires a 50m riparian buffer along major streams such as Mooball Creek.**
2. **During discussions for the original development approval the Director of Engineering Services specified at a meeting held 27 June 2005 with the applicant and Council Officers, that the cycleway be placed on top of the batter to improve safety and amenity.**

3. The cycleway placed on the top of the batter will permit native vegetation to revegetate up to the batter and along the slopes of the batter. If the cycleway was placed along the base of the batter facing Mooball Creek the width of the riparian buffer is further reduced and comprised.
4. Discussion was held with the Acting Director Engineering & Operations and the Infrastructure Engineer on 25 July 2006 in regards to placing the cycleway along the base of the batter. The Acting Director Engineering & Operations did not support the S96, agreeing with Director of Engineering Services comments that the cycleway improves safety, amenity and provides a greater width for the riparian buffer if placed along the top of the batter.

Minimal Environmental Impact

Section 96(1A) of the Act provides that a consent authority may, on application being made by the applicant modify the consent if it is satisfied that the proposed modification is of minimal environmental impact.

The proposed amendment to the cycleway location will impact on available space for a riparian zone. Should the amendment proceed as per the applicants request the batter, which occupies approximately 12m, could not be used as part of the riparian zone as it would need ongoing maintenance (mowing) by Tweed Shire Council.

However, if the conditions are retained as per the original consent the 1:4 batter could be re-vegetated as a riparian zone which once established as a natural area would not require ongoing maintenance.

Therefore, the proposed amendment is not considered to be of minimal environmental impact and should be refused.

Substantially the Same Development

Section 96(1A) of the Act provides that a consent authority may, on application being made by the applicant modify the consent if it is satisfied that the proposed modification is substantially the same development as the development for which consent was originally sought.

The location of the cycleway will **not** result in a development that is substantially different, and therefore this matter can be considered under S96.

Advertising and Consideration of Submissions

Section 96(1A) of the Act provides that a consent authority may, on application being made by the applicant modify the consent if it is satisfied that the proposed modification has been notified as required by Regulations of a DCP, and any submission received has been considered.

The Department of Planning, as the consent authority, is responsible for any notification requirements, and the subsequent considerations of any submissions received.

OPTIONS:

1. Advise the Department of Planning that Council does not support the proposed amendments in regard to the cycleway location.
2. Advise the Department of Planning that Council supports the proposed amendments in regard to the cycleway location.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The issues raised in this report are to be forwarded to the Director General of the Department of Planning to be considered as part of their report to the Minister.

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).*

1. Original Council Report DA04/1528 (DW 1240256)
 2. Department Determination DA04/1528 (DW 1332169)
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P11 [PD-PC] Development Application DA06/0180 for a Retail Complex Comprising Supermarket & Seven (7) Speciality Shops at Lot 1, 2, 3, 4 DP4279; Lot 18 DP962878; Lot 1 DP443232; Lot 17 DP965658; Lot 1 DP437562; Lot 1 DP183770, No. 230 Tweed Valley Way, South

ORIGIN:

Development Assessment

FILE NO: DA06/0180 Pt1

SUMMARY OF REPORT:

Council is in receipt of Development Application comprising a supermarket and seven (7) speciality shops. The subject site is located within the 3(c) Commerce & Trade zone, where a shop is only permissible if the applicant can demonstrate compliance with Clause 8(2) of the Tweed LEP 2000.

On review of the application the applicant has failed to demonstrate compliance with Clause 8(2) and has not been able to demonstrate that the subject site is suitable for the proposed development.

Therefore the application is recommended for refusal.

RECOMMENDATION:

That Development Application DA06/0180 for a retail complex comprising supermarket and seven (7) speciality shops at Lot 1, 2, 3 & 4 DP 4279; Lot 18 DP 962878; Lot 1 DP 443232; Lot 17 DP 965658; Lot 1 DP 437562; Lot 1 DP 183770, No. 230 Tweed Valley Way South Murwillumbah be refused for the following reasons: -

- a. The application does not comply with the 3(c) Commerce & Trade zone objectives (within Tweed LEP 2000), as approval of a shopping centre outside the central business district would jeopardise the viability and function of the Murwillumbah business centre.**
- b. The application has failed to satisfy Clause 8(2) of the Tweed LEP 2000 specifically Clause 8(2) (b) & (d).**
- c. The application does not provide a suitable economic analysis to support locating the proposed development outside the Murwillumbah business centre. The development will directly compete with other retail developments within the business centre and therefore could potentially jeopardise their viability.**

- d. The application fails to satisfy Clause 22 of the Tweed LEP 2000 relating to development near designated roads as the design inadequacies both onsite and off site could result in disruption to traffic flow on Tweed Valley Way.
- e. The application is not considered satisfactory with regard to parking and access. Specifically the provision of the bus bay is contrary to the requirements of local traffic committee, the provision of parking is not in accordance with DCP No2; and the provision of a loading bay facility is not in accordance with DCP No2 and AS 2890; and
- f. The application is not considered to be based on good urban design principles.

REPORT:

Applicant: Roadnet Pty Ltd
Owner: Mr WB Campbell
Location: Lots 1, 2, 3 & 4 DP 4279, Lot 18 DP 962878, Lot 1 DP 443232, Lot 17 DP 965658, Lot 1 DP 437562 & Lot 1 DP 183770 No. 230 Tweed Valley Way, South Murwillumbah
Zoning: 3(c) Commerce and Trade
Cost: \$3,186,600

BACKGROUND:

The subject site colloquially known as the “Norco Site” has a detailed history.

The land was formerly occupied by the Norco milk and butter factory, which operated on the site for approximately 100 years, until its closure in 1996. The Norco rural store continued to operate in an existing separate building situated on the eastern boundary whilst the remaining buildings were only utilised as storage areas since the factory closed.

More recently Council approved a development application (0119/2002DA) for a mixed-use development comprising bulky goods retailing, refreshment rooms and cultural display centre. The proposal was to redevelop the site in two (2) stages to establish a mixed-use retail development that had regard to the historic building on the site.

Council also determined an application for the first use of the approved fruit and vegetable outlet for the sale of fresh & packaged food, within stage 1 of the development.

There were a number of existing buildings and structures on site, which included:-

- the Norco rural store;
- chemical storage and staff facilities building;
- petroleum fuel dispensers (three), associated canopy and bowsers;
- the old Norco milk and butter factory building;
- cooling towers;
- existing rail platform; and an old concrete slab that was formerly supported petroleum fuel dispensers.

However, it has come to Council’s attention that the existing buildings, which formed an integral part of the proposal, have been demolished, allegedly on the weekend of 10 & 11 June 2006.

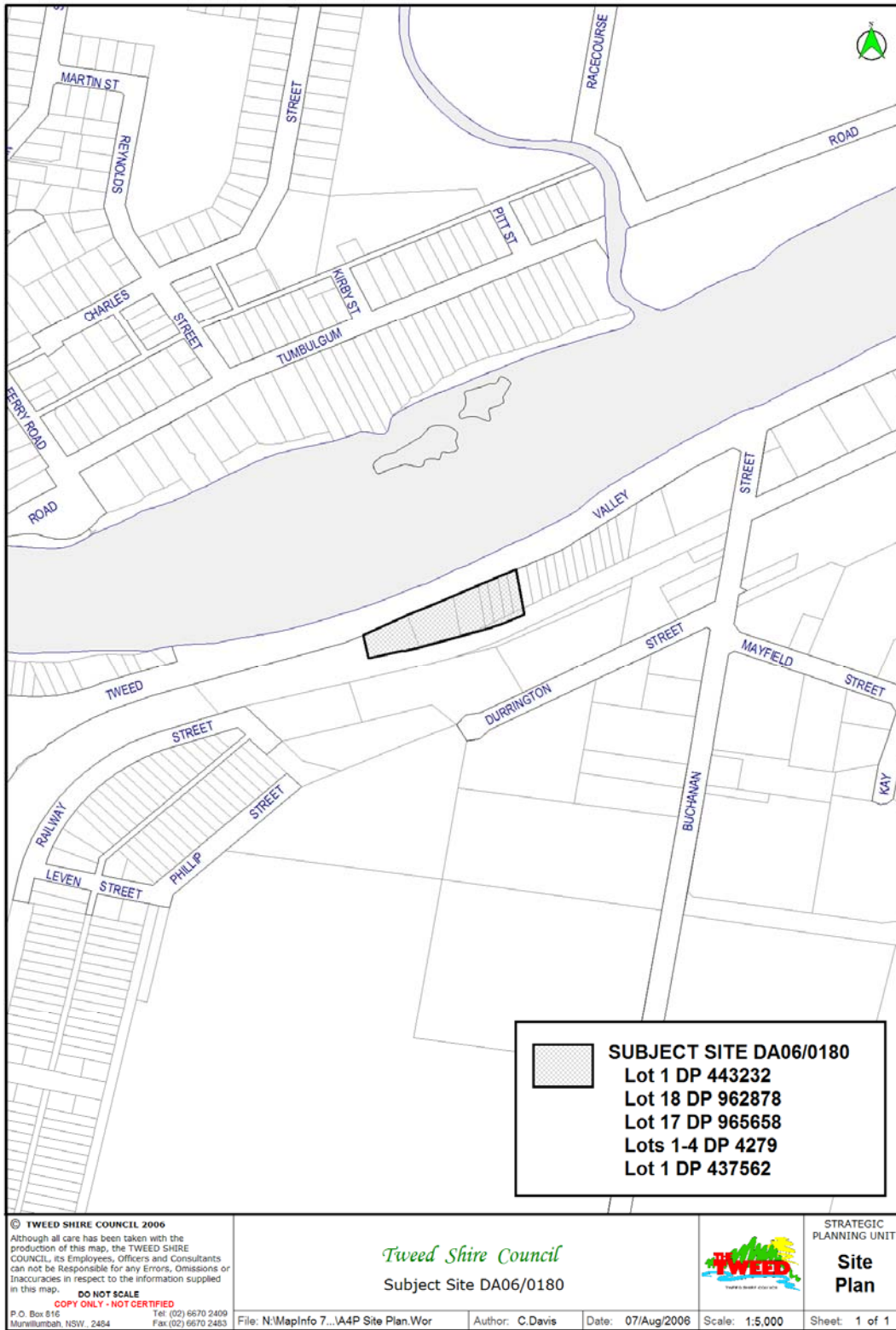
Council did not authorise approval of the demolition and is pursuing the unauthorised works from a compliance perspective.

The relevance of the demolition is that development application 0119/2002DA relied on the existing buildings to form a significant component of the approved development. Their demolition has materially affected the consent by rendering it inoperative.

Notwithstanding, the subject application now seeks consent for a supermarket-based shopping centre (1712m² plus 150m² of mezzanine office space) with seven speciality shops varying in size from 50m² to 190m² for a total floor area of 675m². The development provides for an off street car park of 96 spaces as well as two loading bays in the main dock area and a separate loading bay and waste disposal area near the proposed bottle shop.

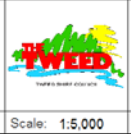
The subject site is zoned 3(c), which is a nominated commerce and trade zone. In this zone a shop is only considered permissible development if the application can satisfy the provisions contained within Clause 8(2) of the Tweed LEP 2000. This assessment is detailed in the report and concludes that Clause 8(2) is not considered satisfied.

SITE DIAGRAM:



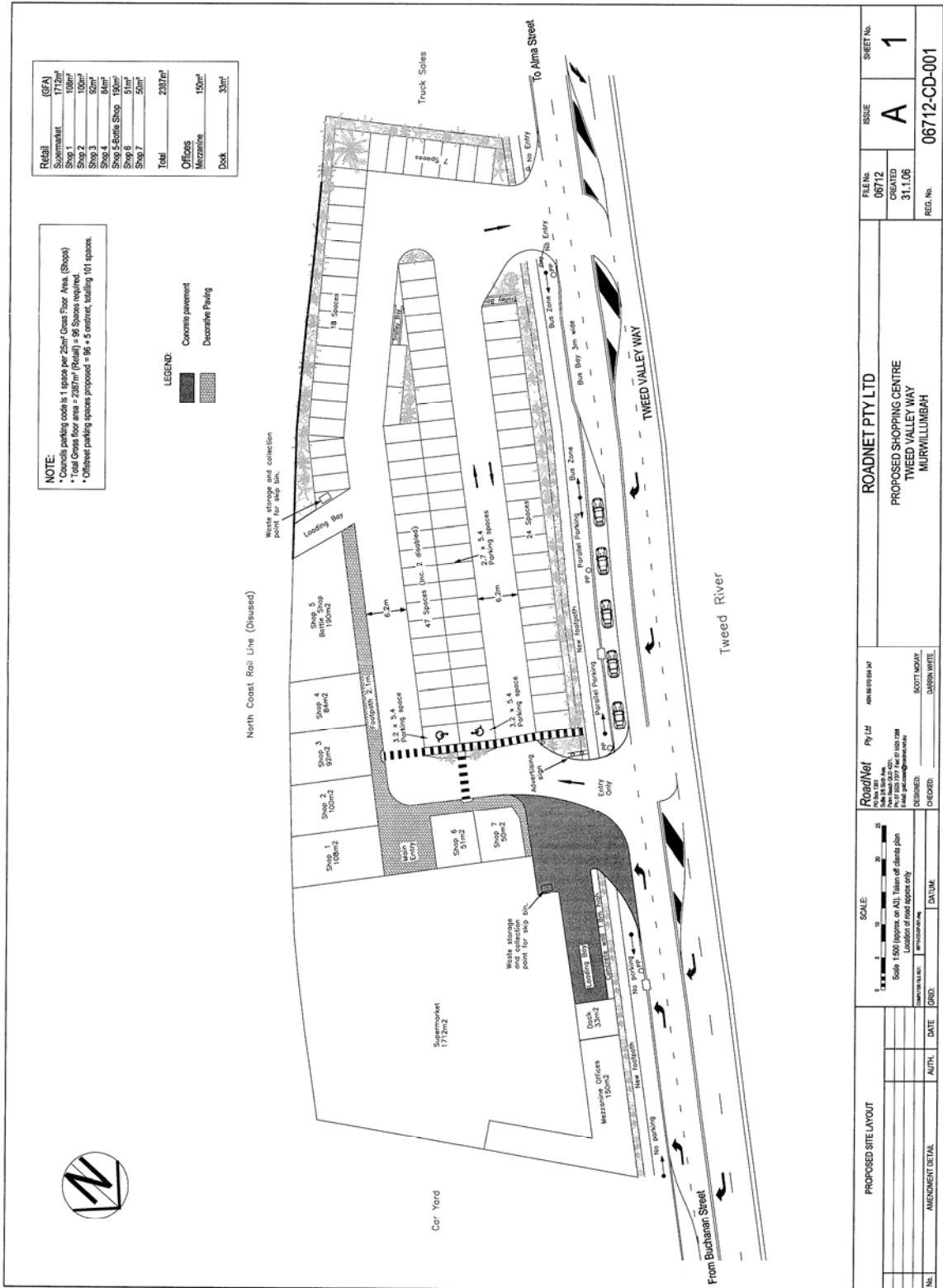
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 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map.
DO NOT SCALE
COPY ONLY - NOT CERTIFIED
 P.O. Box 816
 Murwillumbah, NSW 2484
 Tel: (02) 6670 2409
 Fax: (02) 6670 2483

Tweed Shire Council
 Subject Site DA06/0180
 File: N:\MapInfo 7...IA4P Site Plan.Wor Author: C.Davis Date: 07/Aug/2006 Scale: 1:5,000 Sheet: 1 of 1

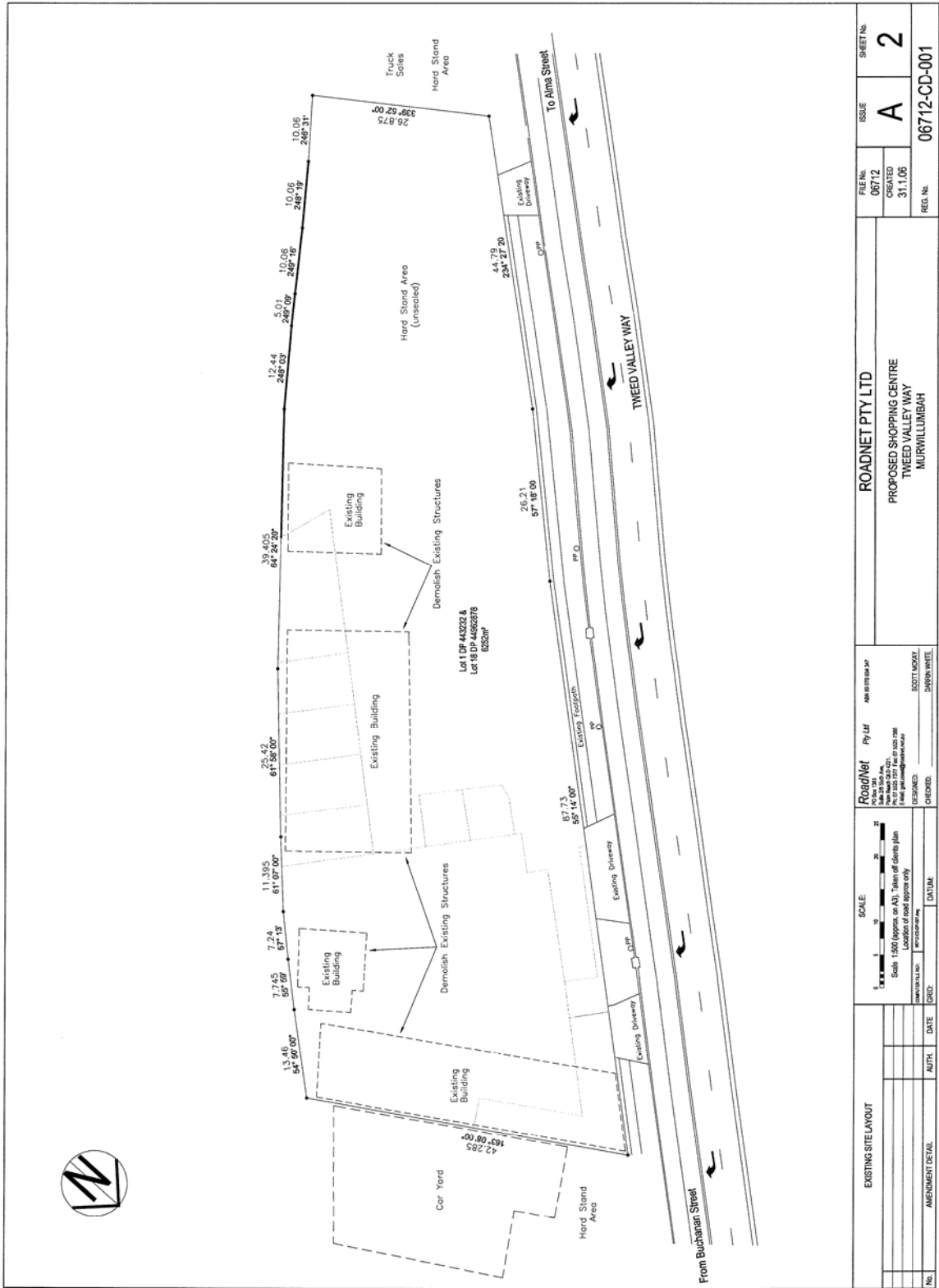


STRATEGIC PLANNING UNIT
Site Plan

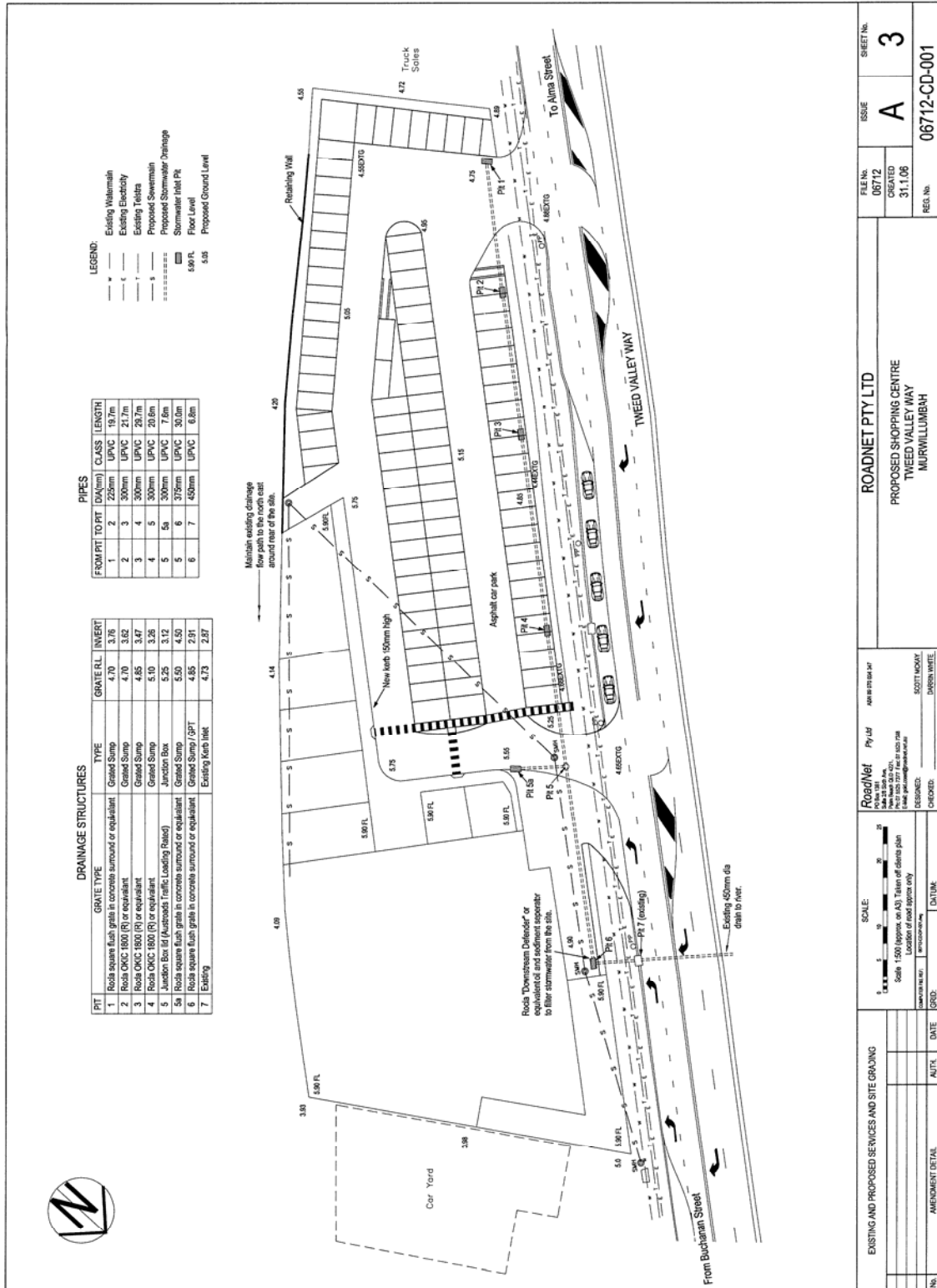
DEVELOPMENT PLANS:



ROADNET PTY LTD		FILE No.	06712	ISSUE	A	SHEET No.	1
PROPOSED SHOPPING CENTRE TWEED VALLEY WAY MURWILLUMBAH		CREATED	31.1.06				
		REG. No.	06712-CD-001				
RoadNet Pty Ltd 10/11-12/13, Tweed Valley Way, Murwillumbah NSW 2484 Phone: 06712 3333 Fax: 06712 3333 Email: info@roadnet.com.au		APPLICANT		ROADNET PTY LTD			
DESIGNED		CHECKED		SCOTT HICKS			
DRAWN		DATE		15/08/06			
AMENDMENT DETAIL		DATE					



EXISTING SITE LAYOUT		ROADNET PTY LTD		FILE NO.	ISSUE	SHEET NO.
		PROPOSED SHOPPING CENTRE		06712	A	2
		TWEED VALLEY WAY		CREATED		
		MURWILLUMBAH		31.1.06		
				REG. NO.	06712-CD-001	
		RoadNet Pty Ltd		MURWILLUMBAH		
		Scale 1:1500 (approx. on A3). Terrain of clients plan.		SCOTT MCKAY		
		Location of road sign only.		DARRIN WITTE		
		DRAWN BY: MURWILLUMBAH		CHECKED:		
		DATE:		DATE:		
		AUTH:		DATE:		
		DATE:		DATE:		



LEGEND:

- - - Existing Mainline
- - - Existing Electricity
- - - Existing Telebits
- - - Proposed Sewermain
- - - Proposed Stormwater Drainage
- Stormwater Inlet Pit
- Floor Level
- 5.90 FL
- 5.95 Proposed Ground Level

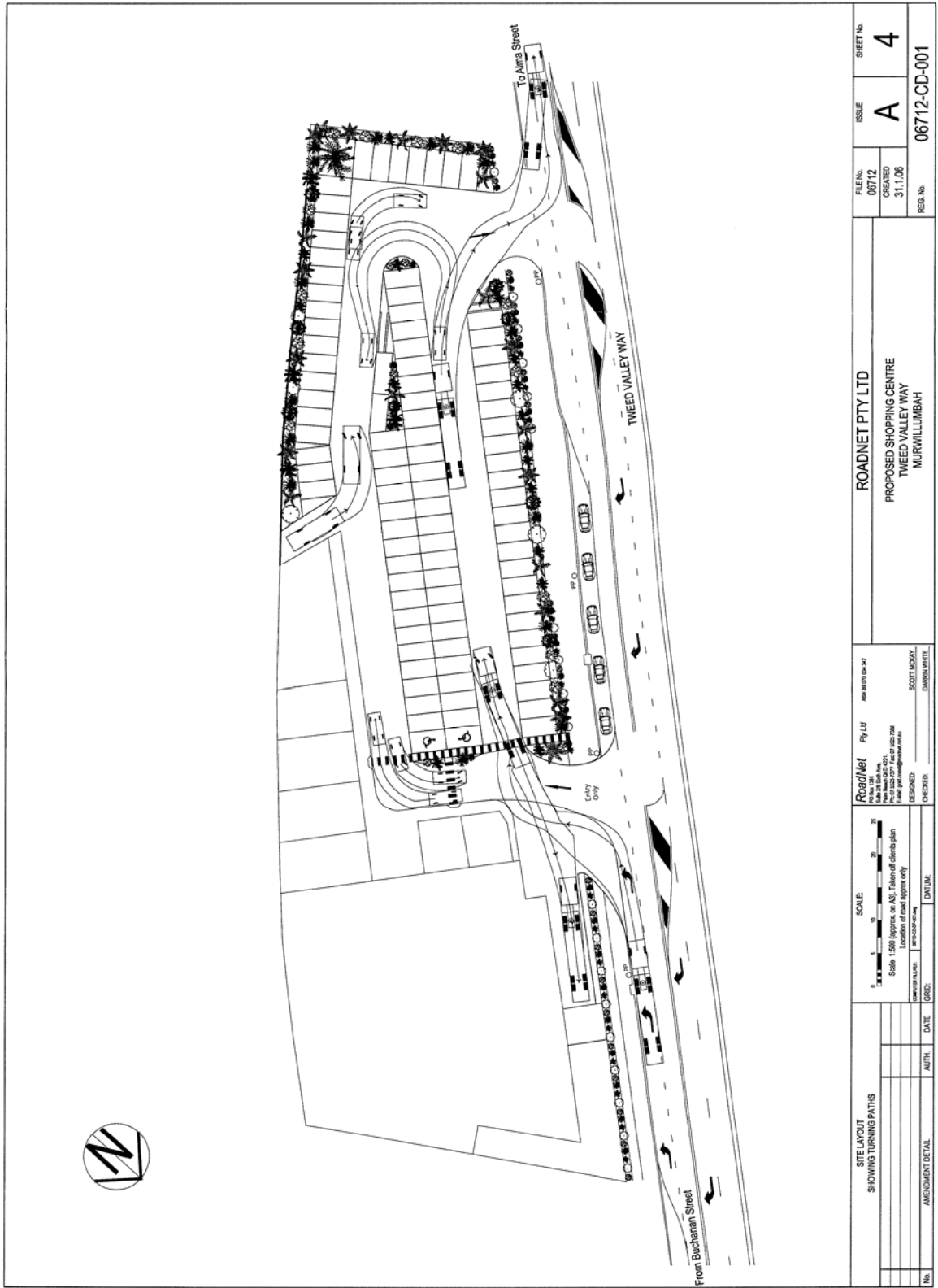
PIPES

FROM PRT	TO PRT	DIA(mm)	CLASS	LENGTH
1	2	225mm	UPVC	19.7m
2	3	300mm	UPVC	21.7m
3	4	300mm	UPVC	29.7m
4	5	300mm	UPVC	20.6m
5	5a	300mm	UPVC	7.6m
5	6	375mm	UPVC	30.0m
6	7	450mm	UPVC	6.8m

DRAINAGE STRUCTURES

PIT	GRAVE TYPE	TYPE	GRAVE RL	INVERT
1	Rocta square flush grate in concrete surround or equivalent	Graded Sump	4.70	3.76
2	Rocta OKC 1800 (R) or equivalent	Graded Sump	4.70	3.62
3	Rocta OKC 1800 (R) or equivalent	Graded Sump	4.85	3.47
4	Rocta OKC 1800 (R) or equivalent	Graded Sump	5.10	3.26
5	Junction Box (Autroads Traffic Loading Raised)	Junction Box	5.25	3.12
5a	Rocta square flush grate in concrete surround or equivalent	Graded Sump / QPT	5.50	4.50
6	Rocta square flush grate in concrete surround or equivalent	Graded Sump / QPT	4.85	2.91
7	Existing	Existing Kerb Inlet	4.73	2.87

<p>EXISTING AND PROPOSED SERVICES AND SITE GRADING</p>	<p>Scale:</p> <p>1:500 (Overall) or 1:100 (Detailed)</p> <p>1:500 (Overall) or 1:100 (Detailed)</p> <p>Location of each structure only</p>	<p>Checkers:</p> <p>DESIGNED: SCOTT MOODY</p> <p>CHECKED: DAMIR WHITE</p>
<p>ROADNET PTY LTD</p> <p>PROPOSED SHOPPING CENTRE</p> <p>TWEED VALLEY WAY</p> <p>MURRILLUMBAH</p>		<p>Issue:</p> <p>FILE NO: 06712</p> <p>CREATED: 31.1.06</p> <p>ISSUE: A</p> <p>REG. NO: 06712-CD-001</p> <p>SHEET NO: 3</p>



FILE No. 06712 CASED 31.1.06		ISSUE A	SHEET No. 4
ROADNET PTY LTD PROPOSED SHOPPING CENTRE TWEED VALLEY WAY MURWILLUMBAH		REG. No. 06712-CD-001	
RoadNet Pty Ltd 100/102/104/106 Main St, Ballina NSW Ph: 02 252 277 Fax: 02 252 278 Email: info@roadnet.com.au		2004/01/04/07 SCOTT MCKAY DESIGNER	
SCALE: 1:500 (approx. or A3). Taken off site plan. Location of road signs only		DATE: _____ DWTUM: _____	
AUTH: _____ DATE: _____		AMENDMENT DETAIL: _____	
No.			

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

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

Tweed Local Environmental Plan 2000

The subject site is located within the 3(c) Commerce & Trade Zone pursuant to the provisions of TLEP 2000.

The zone objectives are as follows:

Primary objective

- *To provide for commercial, bulky goods retailing, light industrial and trade activities which do not jeopardise the viability or function of the sub-regional or business centres.*

Secondary objectives

- *To provide for those retailing activities which are not suited to, or desirable in, the other business zones or which serve the needs of the other businesses in the zone.*
- *To allow for other development that is compatible with the primary function of the zone.*

The proposed development is best defined as a shop under the Tweed LEP 2000. A shop of this nature would normally be best suited to the 3(b) Business zone, however, this application seeks approval for a shop in the 3(c) zone which is only permissible if the proposed development can satisfy Clause 8(2).

Clause 8(2) of Tweed Local Environmental Plan 2000, specifies that:

- (2) *The consent authority may grant consent to development specified in Item 3 of the Table to clause 11 only if the applicant demonstrates to the satisfaction of the consent authority that:*
 - (a) *the development is necessary for any one of the following reasons:*
 - (i) *it needs to be in the locality in which it is proposed to be carried out due to the nature, function or service catchment of the development,*
 - (ii) *it meets an identified urgent community need,*
 - (iii) *it comprises a major employment generator, and*
 - (b) *there is no other appropriate site on which the development is permitted with consent development (other than as advertised development) in reasonable proximity, and*

- (c) the development will be generally consistent with the scale and character of existing and future lawful development in the immediate area, and*
- (d) the development would be consistent with the aims of this plan and at least one of the objectives of the zone within which it is proposed to be located.*

The applicant originally provided a brief assessment against Clause 8(2) that was later enhanced with the lodgement of Economic Need & Impact Assessment (**attached** under separate cover) for the proposed Shopping Centre. This report, amongst other things, reviewed alternative sites in the allowable 3(b) zoning. The applicants report claims that all suitable sites are occupied with buildings, with no significant vacancies. The applicant also advises that he has attempted to purchase several sites within the allocated 3(b) zoning within Murwillumbah but the asking prices made the proposed development economically unfeasible for the following reasons:

- High entry property prices and current construction costs would result in uneconomical returns on a completed development such as the proposed;*
- Above industry standard rental rates would be necessary to justify high entry costs. These may be unsustainable, as rents would be considerably higher than those of surrounding retail premises.*

This applicant's proposal was forwarded to Council's Economic Planner for review. The following comments in regard to Clause 8(2) were received on 24 March 2006:

"I have reviewed the DA for a 1,712 M2 supermarket and 675 M2 of speciality retailing in seven (7) individual shops.

The DA claims that the site is too small for bulky goods retailing. This is not considered to be the case. Other successful retail enterprises are operating within close proximity of the site. These include farm supplies, car dealership and service stations.

It is also claimed in the DA that the requirements of Clause 8(2) are satisfied because it will meet an urgent community need and it will be a major employment generator. It is granted that the supermarket will generate competition, which could increase amenity, and it would increase employment. However Clause 8(2)(b)& (d) have not been satisfied. These have been addressed below;

8(2)(b) *There are other areas within the Business Centre of Murwillumbah where the development can suitably be located. Specifically, these areas are within a 3(b) zone. The objectives of this zone are more suited to chore based supermarket retailing. This is in keeping with the findings of the Retail Strategy and Council resolution of 16 Nov 2005 which both support the CBD remain as the main shopping centre precinct of Murwillumbah.*

8(2)(d) *It is considered that the proposed development is not consistent with any of the 3(c) zone objectives. The development will directly compete with other retail developments within the Business Centre and therefore could potentially jeopardise their viability. The DA does not provide a suitable economic analysis to support this claim. As discussed previously the development is suited to the Murwillumbah Business Centre.*

Having regard for the above comments it is considered that the proposed development completely contradicts the primary objective of the zone as approval of a shopping centre outside the CBD would jeopardise the viability and function of the Murwillumbah business centre.

In addition the application has failed to satisfy Clause 8(2) (b) & (d) as detailed above.

These arguments contribute to the recommendation for refusal.

Clause 15 Availability of Essential Services of TLEP 2000 requires adequate services to be available for the proposed development. Centralised water, sewer and drainage services service the subject site, no constraints are envisaged in this regard.

Clause 16 Height of Buildings requires compliance with the three-storey statutory height limit that is applicable to the site. The proposed development satisfies Clause 16

Clause 17 Social Impact Assessment requires Council to consider the potential social and economic impact that a development will have. This proposal would directly compete with other retail developments within the Murwillumbah business centre and therefore could potentially jeopardise their viability. The DA does not provide a suitable economic analysis to support this development.

Clause 22 Development Near Designated Roads requires the consent authority to have regard to a number of matters. The following two points are relevant to the proposal:

The consent authority may grant consent to development on land to which this clause applies only if it is satisfied that:

- (a) The development (because of its nature, appearance, cumulative effect or illumination, or the intensity or the volume or type of traffic likely to be generated, or for another similar reason) is unlikely to constitute a traffic hazard or materially reduce the capacity or efficiency of the designated road, and*
- (b) The location, standard and design of access points, and onsite traffic movement and parking arrangements, would ensure that through traffic movement on the designated road is not impeded.*

The application was reported to the Local Traffic Committee and was reviewed by both Council's Traffic & Transport Engineer and Council's Development Engineer.

Council's Development Engineer has recommended that the application should be refused on the following grounds:

- The provision of the bus bay is contrary to the requirements of local traffic committee;
- The provision of parking not in accordance with DCP No2; and
- The provision of a loading bay facility is not in accordance with DCP No2 and AS 2890

These inadequacies onsite and off site could result in disruption to traffic flow on Tweed Valley Way and therefore the application fails to satisfy Clause 22 of Council LEP.

Clause 34 Flooding requires Council to minimise future potential flood damage. If approval were granted to this proposal a condition of consent would be required to ensure flood free storage is available.

Clause 35 Acid Sulphate Soils, the subject site is identified as possessing Class 4 Acid Sulfate Soils on Council's ASS Planning Maps. The proposed development will not result in the carrying out of works greater than 2m below the ground surface, nor will the shopping centre result in the lowering of the water table by more than 2 metres below the natural surface.

North Coast Regional Environmental Plan 1988

Clause 47 of REP 1988 relates to plan preparation for commercial development. The proposal is considered to be consistent with the provisions of the North Coast Regional Environmental Plan 1988.

State Environmental Planning Policies

SEPP 11 – Traffic Generating Development

An assessment of the subject application has been undertaken in accordance with the provisions of State Environmental Planning Policy No. 11 (SEPP 11) – Traffic Generating Developments. In accordance with the SEPP the proposed development requires referral to Council's Local Traffic Committee as development listed in Schedule 2 (c) as follows:

“The erection of a building for the purpose of shops and commercial premises where the gross floor area of the building is or exceeds 1000m² or the enlargement or extension of a building used for the purposes of shops and commercial premises where the gross floor area of that enlargement or extension is or exceeds 1000m²”

The proposed gross floor area (GFA) of the complex is approximately 2537m² with 96 on-site parking spaces.

The application was therefore referred to the Committee to provide comment on, access to the site, the impact that the proposed centre will have on the road network; and the proposed provisions for service vehicles.

The Local Traffic Committee reviewed the application on 16 March 2006 and provided the following comments:

- *Relocate bus zone to the approach side of the development.*
- *Reversing vehicles at the loading bay should not be near pedestrian activity.*
- *Loading impacts on entry to site and has a potential for pedestrian conflict.*
- *Potential conflict for right turn traffic to turn into the southern exit.*
- *No pedestrian links, including disabled, through the car park to the shopping area.*
- *Consideration of a taxi drop off / pick up area adjacent to the shops.*

These comments contribute to the recommendation for refusal.

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

There are no Draft Environmental Planning Instruments applicable to this application.

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

Development Control Plan No. 2 – Car Parking

The following table details the non-compliance of the proposed development with the on site car parking provisions contained in DCP 2. It should be noted that the car parking rates have been worked out by dividing each individual use contained within the centre.

The proposed development does not support ESD principals and actually encourages dependency on the motor vehicle and therefore the 20% discount has been applied.

Table 1 – Car Parking Rates in accordance with DCP 2

<u>Use</u>	<u>GFA</u>	<u>DCP 2 Classification</u>	<u>Staff Requirement</u>	<u>Customer Requirement</u>
Supermarket	1895m ²	Item C19 Retail	0.5 spaces per 100m ² = 9.475	3.5 spaces per 100m ² = 66.325
Shop 1	108m ²	Item C19 Retail	0.5 spaces per 100m ² = 0.54	3.5 spaces per 100m ² = 3.78
Shop 2	100m ²	Item C19 Retail	0.5 spaces per 100m ² = 0.5	3.5 spaces per 100m ² = 3.5
Shop 3	92m ²	Item C19 Retail	0.5 spaces per 100m ² = 0.46	3.5 spaces per 100m ² = 3.22
Shop 4	84m ²	Item C19 Retail	0.5 spaces per 100m ² = 0.42	3.5 spaces per 100m ² = 2.87
Shop 5 Bottle-shop	190m ²	Item C4 Retail	0.5 spaces per 100m ² = 0.95	3.5 spaces per 100m ² = 6.65
Shop 6	51m ²	Item C19 Retail	0.5 spaces per 100m ² = 0.255	3.5 spaces per 100m ² = 1.785
Shop 7	50m ²	Item C19 Retail	0.5 spaces per 100m ² = 0.25	3.5 spaces per 100m ² = 3.78

Total Staff Spaces Required = 12.85

Total Customer Spaces Required = 91.91

Grand Total of On-Site Car Spaces Required = 104.76

The applicant has provided 96 on site parking spaces and a bus drop off zone on Tweed Valley Way.

The bus drop off zone is not in a suitable location and the development is short 9 on site parking spaces.

These deficiencies contribute to the reasons for refusal.

Development Control Plan No. 5 – Flood Liable Land

The subject site is identified as flood prone pursuant to the provisions of DCP No.5. In this regard, DCP No.5 identifies the sites 1% flood event at 5.9m AHD. Commercial development is not subject to this criterion, however, the applicant has confirmed that the land could be filled and finished floor levels could be 0.3m above the 1% flood event. The DCP requires commercial development to be capable of providing flood free storage. If approval were to be granted condition of consent could be imposed to mitigate flooding.

Development Control Plan No. 45 – Socio Economic Impact Assessment

Having regard to the provisions of DCP No.45, a detailed social impact assessment technically required for a retail development exceeding 1500m².

The applicant has provided the Economic Need & Impact Assessment prepared by Foresight Partners.

Council's Economic Planner reviewed this document and provided the following:

"I have reviewed the Economic Need and Impact Assessment (Foresight Partners, June 2006) report submitted by the proponents of the proposed shopping centre on Tweed Valley Way, South Murwillumbah.

The proponents economic report has been prepared in response to comments made in a memo (24 March 2006 DW: 1366158) to you regarding the economic impacts of the proposed shopping centre.

It is noted that my comments made in the 24 March memo were forwarded to the proponents. In particular it was identified that the DA was divergent to Council's resolution (16 Nov 2005) to maintain and enhance the retail centre of Murwillumbah.

This DA was lodged after Council had considered the Tweed Retail Strategy and resolved a set of guiding points for retail development. The proponents have supposed that the existing approval and the proposed development should not be considered on the same basis as Council had made also its position on the Murwillumbah retail centre clear prior to the DA being lodged.

The economic impact report identifies that there will be limited impact on demand and therefore limited negative impact on amenity. The Tweed Retail Development Strategy has already acknowledged the outstanding retail demand in Murwillumbah and that there is immediate potential for a second supermarket. However, this immediate demand does not identify that the 3(c) Commerce and Trade zone is an appropriate zone for the proposed development. It is maintained that there are areas suitable for development within the Business Centre of Murwillumbah.

As my previous memo recommended this DA should not be supported because it does not comply with LEP Clause 8(2), Tweed Retail Strategy (November 2005) and Council's resolution of 16 November 2006."

The above comments contribute to the reason's for refusal.

Draft Retail Strategy

The strategy states that:

"Murwillumbah serves the local residents with supermarket and convenience retail, as well as higher order needs such as homewares and employment uses, such as regional and local office-based businesses. This town also serves the shopping needs of outer lying rural areas.

The Shire is largely 'in balance' any change will be driven by incremental increases in population and expenditure or evolving retail concepts that have the capacity to a population catchment in the order of 20,000 to 22,000 people. This may include a second major supermarket in Murwillumbah.

Retain and reinforce the Murwillumbah CBD as the main shopping centre precinct to serve the Rural West area of the Shire. (P.18)"

Council's Economic Planner has provided the following comments regarding the Draft Retail Strategy

"The Strategy does identify that there is demand for a second supermarket in Murwillumbah. But does recommend reinforcing the existing CBD."

Furthermore, at the Council meeting of 16 November 2005 the Council resolved to:

Maintain and wherever possible enhance the special appeal of the retail centre of Murwillumbah and those village centres of similar style.

The Retail Strategy and the Council Resolution of 16 Nov 2006 support the strengthening of the Murwillumbah CBD. The site is not part of the Murwillumbah Business Centre and is zoned accordingly.

These arguments form part of the recommendation for refusal.

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

There are no additional matters prescribed by the Regulations that are considered to apply.

(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

Bulk Scale & Design

Council's Strategic Planner has commented on urban design and provided the following comments:

"This development in my opinion does not provide a positive outcome for Murwillumbah on urban design grounds.

The development as proposed does not meet the requirements of good urban centre design, as it is not:

- *pedestrian friendly or accessible,*
- *street activating,*
- *of a good visual quality,*
- *providing a mix of uses,*
- *at a human scale,*
- *designed well for climate,*
- *providing places for social interaction,*
- *reducing the impact of car parking to the streetscape*
- *Is not contiguous with the town centre of Murwillumbah and therefore does not provide for a compact urban centre for Murwillumbah*

Due to the reasons above, in my opinion the development should be refused.

Traffic/Access

The proposed development fails to satisfy numerous Council requirements and Australian Standards and also fails to obtain concurrence from Council's Local Traffic Committee and Council's Development Engineer. The application in its current form cannot be supported on traffic grounds alone.

Flora & Fauna

The subject site is absent of any significant vegetation.

Social & Economic

As detailed above the application does not provide a suitable economic analysis to support locating the proposed development outside the Murwillumbah business centre. The development will directly compete with other retail developments within the business centre and therefore could potentially jeopardise their viability.

(c) Suitability of the site for the development

The site is within 40m of the Tweed River, however the applicant did not nominate the development as Integrated Development for works within 40m of a waterway. If Council wanted to approve this application the Department of Natural Resources (previously Department of Land and Water Conservation) under the Rivers & Foreshores Improvement Act 1948 would need to issue a 3A prior to commencement of any site works.

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

The proposal was originally advertised and notified for a period of 14 days from 15 March 2006 to 29 March 2006. During this period one objection was received. However, in July 2006 Council received a second objection to the proposed development. The following details the nature of the objections:

- *The proposal conflicts with the zone objectives in terms of the intended type of retail. The establishment of a retail supermarket and other speciality shops has the potential to undermine the long term viability of the Murwillumbah's recognised central business district;*
- *The application has not demonstrated that this proposal meets the requirements of Clause 8(2) of Tweed LEP 2000;*
- *The application encourages a continued reliance on private vehicles to travel to the centre and a reduction in the opportunity for shared shopping visits;*
- *The application relies on data that shows a leakage of customers to Tweed Heads. This is unavoidable to a certain degree as some people work in Tweed Heads or alternatively people seek other services in Tweed Heads that are not available in Murwillumbah such as bulky goods outlets;*

- *The application further relies on the Draft Retail Strategy that suggests Murwillumbah may be able to support a second major supermarket in the future. Appropriate re-development sites exist within the CBD that could then act as a driver to town centre re-vitalisation;*
- *It would threaten the viability of the existing established retail centre within the Murwillumbah CBD;*
- *Murwillumbah does not need a second shopping centre;*
- *Approval of another IGA store would hurt the existing businesses in the CBD.*

These objections have contributed to the reasons for refusal as per the recommendation.

(e) Public interest

This application is not considered to be in the public interest. Approval of this development would undermine the importance of the central business district, create a dangerous precedent for Clause 8(2) of the Tweed LEP 2000 and not result in a good planning outcome. For these reasons the application is recommended for refusal.

OPTIONS:

1. Refuse this application
2. Approve this application

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be dissatisfied with the determination by Council the applicant has a right to appeal to the NSW Land & Environment Court.

POLICY IMPLICATIONS:

Should this application be approved it will set a dangerous precedent for interpretation of Clause 8(2) of the Tweed LEP 2000, and additionally any approval for a shop outside the central business district (as controlled by the zoning of the land in accordance with Tweed LEP 2000) would compromise the integrity of Council's Retail Strategy.

CONCLUSION:

The proposal before Council is not considered to be a satisfactory use for the site. The site constraints and zoning of the land make it imperative that whatever development occurs on the site will create an attractive design that will function efficiently and obviously be economically successful. The proposed design does not address these constraints effectively despite Council's requests for further information. The proposed use and design is not considered satisfactory thus warranting refusal of the application.

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).

1. Economic Need & Impact Assessment prepared by Foresight Partners (DW 1440072)
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P12 [PD-PC] Development Application DA04/0943 for a 4 Lot Subdivision at Lot 2 DP 231879, No. 21 James Road, Tweed Heads South

ORIGIN:

Development Assessment

FILE NO: DA04/0943 Pt1

SUMMARY OF REPORT:

Council received DA04/0943 in August 2004. The application seeks approval for a 4 lot subdivision. The site is bushfire prone and therefore the application is classified as Integrated Development and requires an approval from the NSW Rural Fire Service in accordance with Section 100B of the Rural Fires Act 1997.

Council cannot determine the subject application without the NSW Rural Fire Service issuing a Bush Fire Safety Authority.

Contrary to the NSW Planning for Bushfire Protection Guidelines 2001 the application proposes an Asset Protection Zone (APZ) on Council owned land.

The NSW Rural Fire Service has therefore specified that without an approved Plan of Management or alternatively a covenant under Section 88B of the Conveyancing Act 1919 that allows for APZ maintenance they will NOT issue a Bush Fire Safety Authority.

The above options are not viable, as easements over community land cannot be created without a corresponding plan of management that has provision for maintenance for an APZ. The subject site is covered by a generic plan of management that focuses on bushland protection and not clearing for asset protection zones. Therefore the burden of maintenance to Council for the proposed asset protection zone is unreasonable and warrants refusal of the proposed subdivision.

In addition the merits of this application warrant refusal for the reasons detailed in the report.

RECOMMENDATION:

That Development Application DA04/0943 for a 4 lot subdivision at Lot 2 DP 231879, No. 21 James Road, Tweed Heads South be refused for the following reasons: -

- 1. The NSW Rural Fire Service is not prepared to grant a Bush Fire Safety Authority as the application does not comply with the Planning for Bushfire Protection Guidelines 2001 as:**

- a) The development cannot provide for the required Asset Protection Zones within the lot boundaries; and
 - b) The proposed Asset Protection Zones are non-complying. The Rural Fire Service does not support the vegetation assessment as outlined in the report by Bushfire Safe (Aust) Pty Ltd dated 13 September 2005.
2. To comply with the Planning for Bushfire Protection Guidelines 2001 the proposal requires clearing within a SEPP 14 wetland (as interpreted by reference to draft guidelines from the Department of Infrastructure, Planning & Natural Resources entitled "Interpreting SEPP 14 (Coastal Wetland) boundaries in the field"). As the proposal is on Council owned land approval requirements would place an onerous burden on Council at a conservation cost and without greater public benefit.
 3. To comply with the Planning for Bushfire Protection Guidelines 2001 the proposal requires clearing of part of two Endangered Ecological Communities, placing an onerous approval burden on Council at a conservation cost and without public benefit.
 4. The applicant's assessment of the vegetation community as Heath (Scrub) is not concurred with and as such the proposed development would require higher asset protection standards than have been submitted and result in further clearing and remnant degradation.
 5. The subdivision is not considered to be consistent with the environmental constraints of the site and is not considered to result in a good planning outcome.

REPORT:

Applicant: McLauchlan Surveying Pty Ltd
Owner: Mr & Mrs NL & LD French, & Mr & Ms TR & BL Mansfield-French
Location: Lot 2 DP 231879, No. 21 James Road Tweed Heads South
Zoning: 2(c) Urban Expansion
Cost: \$400

BACKGROUND:

In August 2004 Council received DA04/0943. The application seeks consent for a 4 lot residential "infill" subdivision, with an asset protection zone on Council's adjoining land.

James Rd is within a low lying area that generally accommodates single dwelling housing, and a caravan park (that has access off Kirkwood Road). The proposed subdivision site is between existing residences, with a Council reserve adjoining the site to the south and east. This reserve is partially mapped as a SEPP 14 wetland.

The subject site currently accommodates one dwelling a large metal shed and a workers shed. These structures are proposed for retention within new lot 4 which would have an area of 1240m². The other proposed allotments (lots 1-3 inclusive) would have areas of 611m², 600m², and 622m² respectively.

However, due to the front 6m setback (as per Council's Building Line Policy), and the partial 19m APZ within the subject allotments, each new lot would only have 11.6m in depth and a variable width of between 16.7m and 24m in width in which any new owner would be able to build a dwelling.

In addition the site is flood liable and would need to be filled to RL 2.65m AHD to comply with DCP No. 5 Flood Liable Land.

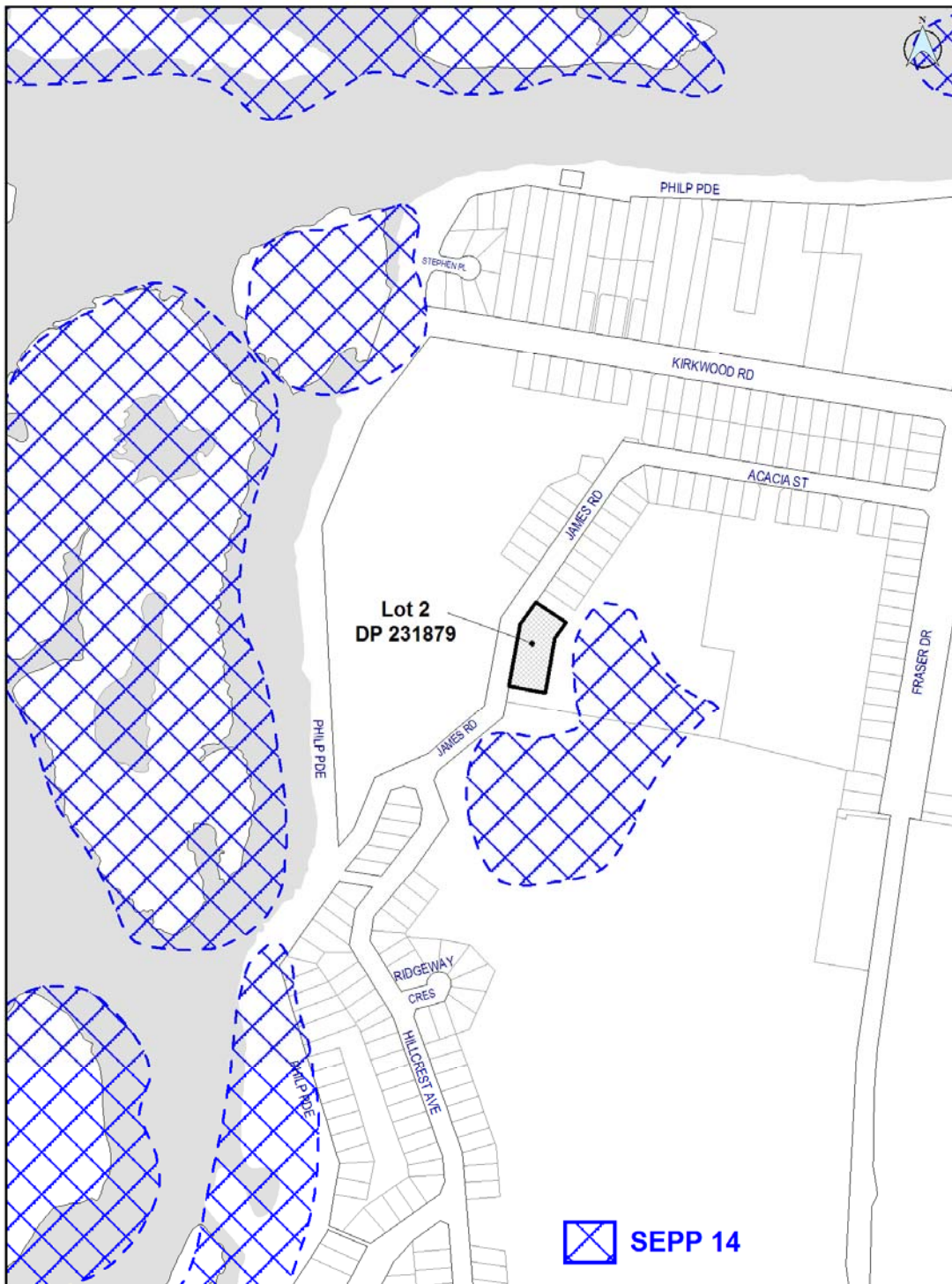
The site is also within the 20-25 ANEF Contour for Coolangatta Airport and if approval were granted to this subdivision conditions would need to be applied alerting future land owners that dwelling construction would need to comply with Australian Standard 2021-1994.


The site is within a nominated bushfire hazard area and is therefore classified as Integrated Development in accordance with Section 91 of the Environmental Planning & Assessment Act 1979. Subdivisions creating a new building envelope require an approval from the NSW Rural Fire Service in accordance with Section 100B of the Rural Fires Act 1997.

Since August 2004 Council has been in regular contact with the NSW Rural Fire Service, and the applicant in an attempt to resolve the outstanding bush fire safety authority, however, correspondence from NSW Rural Fire Service dated as recently as 2 February 2006 indicates that the application as proposed can not be supported as the proposed APZ's are non complying with the Planning for Bushfire Protection Guidelines 2001.

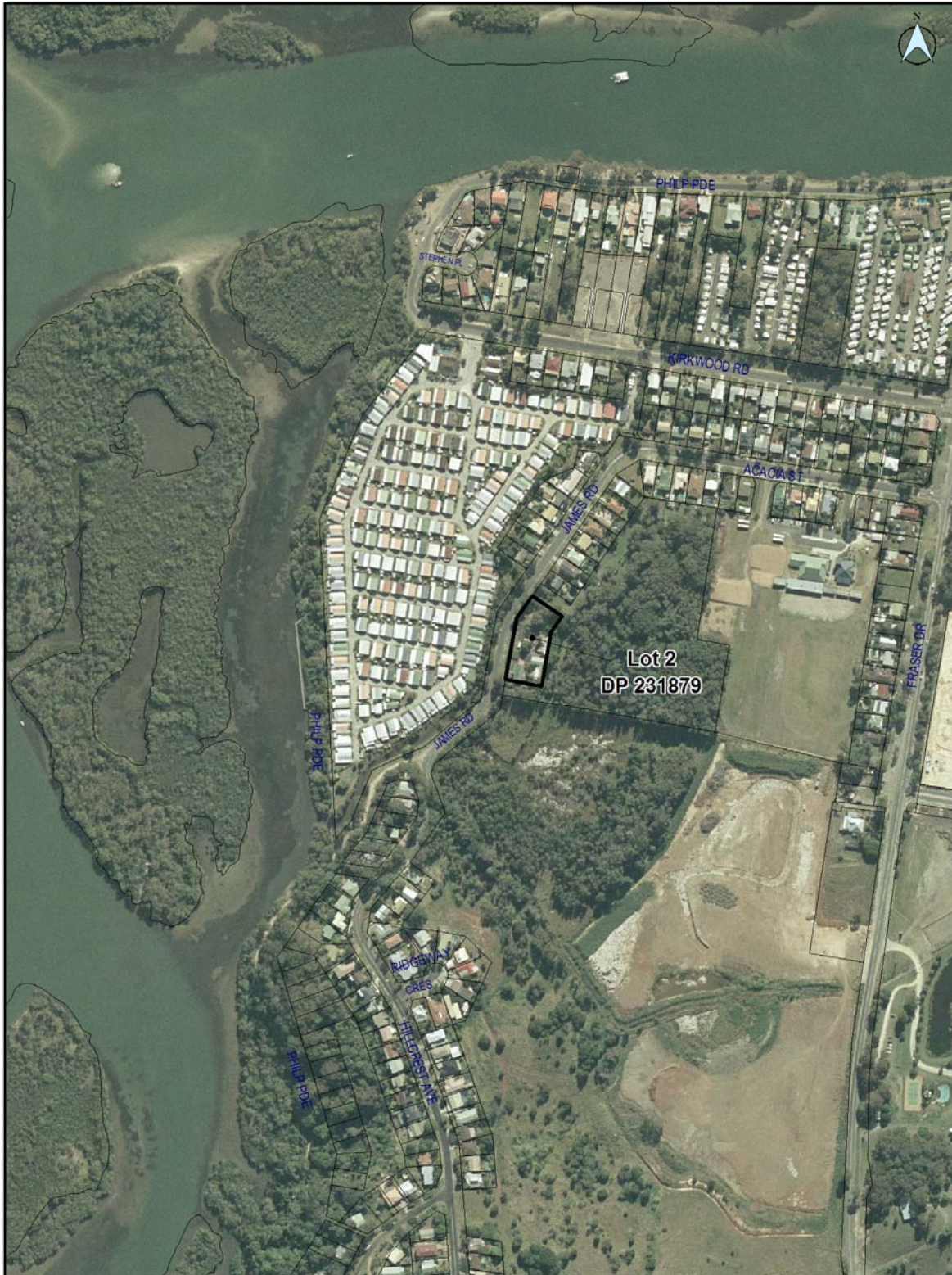
Over the past two years the applicant has produced numerous Bushfire Risk Management Plans in an attempt to convince both Council and the NSW RFS that this proposal is reasonable, however, for the reasons detailed in the following report the proposed subdivision is not based on good planning principles and therefore refusal is recommended.

SITE DIAGRAM:



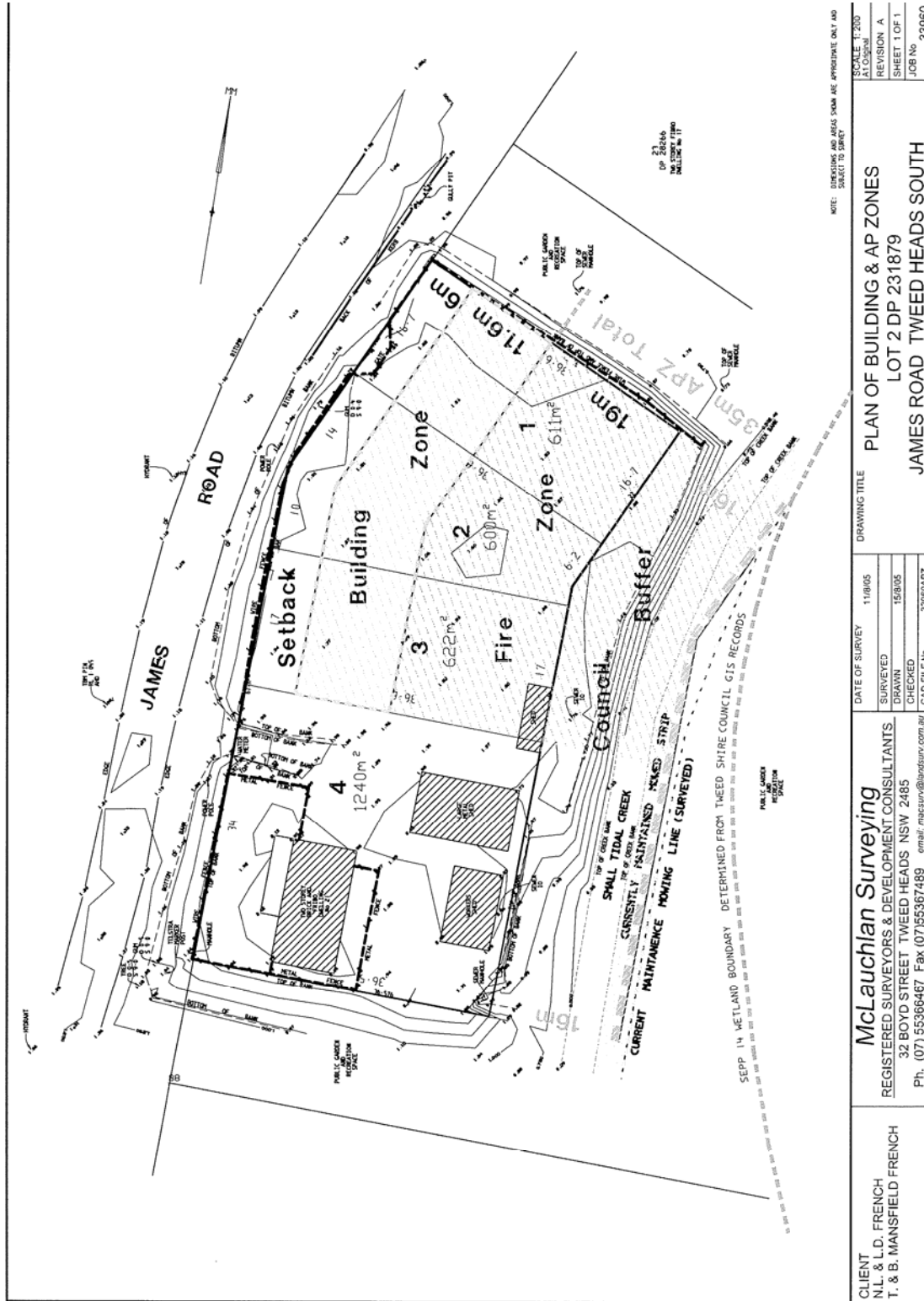
<p>© TWEED SHIRE COUNCIL 2006 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be responsible for any errors, omissions or inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 816 Murrumbidgee NSW, 2484 Tel: (02) 6670 2409 Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i> Lot 2 DP 231879 21 James Road, Tweed Heads South</p>		<p>PLANNING REFORMS UNIT Site Plan</p>
	<p>File: N:\Munsys\A4P - SITE PLAN.Wor Author: J.Batchelor Date: 27/July/2006 Scale: 1:5,000 Sheet: 1 of 1</p>		

Aerial Photo

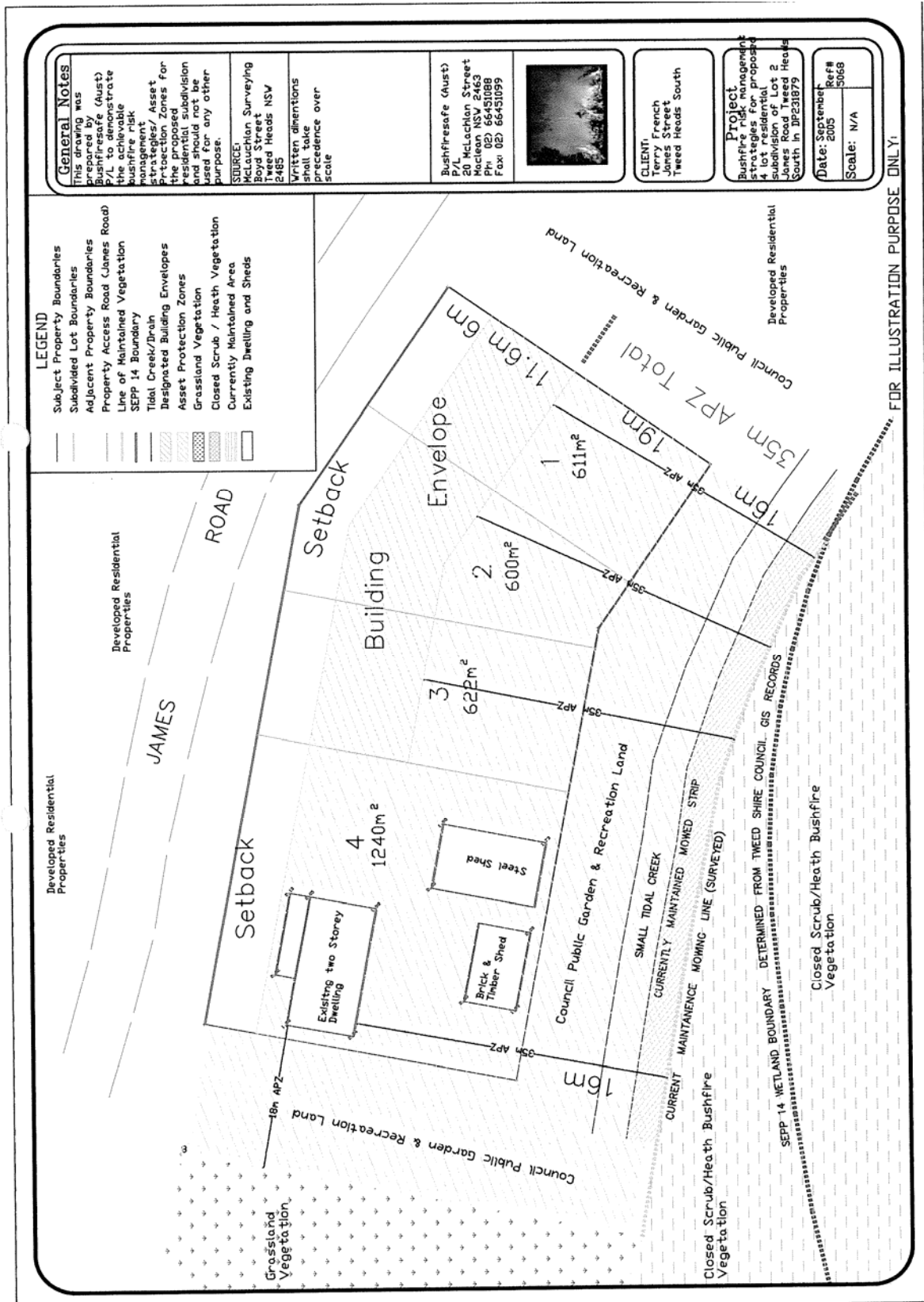


<p>© TWEED SHIRE COUNCIL 2006 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 816 Murwillumbah NSW 2484 Tel: (02) 6670 2409 Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i> Lot 2 DP 231879 21 James Road, Tweed Heads South</p>	 <p>TWEED SHIRE COUNCIL</p>	<p>PLANNING REFORMS UNIT Aerial Photo June 2004</p>
<p>File: N:\Munsys\A4P - AERIAL PHOTO.Wor Author: J.Batchelor Date: 27/July/2006</p>		<p>Scale: 1:5,000</p>	<p>Sheet: 1 of 1</p>

SUBDIVISION LAYOUT PLAN:



PLAN OF BUILDING & ASSET PROTECTION ZONES:



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) Residential Urban Expansion pursuant to the provisions of the Tweed LEP 2000.

Item 2 of the zoning table provides that the following development is permissible only with consent:

- *Dwelling houses if each is on an allotment of at least 450m².*

The primary objective of the 2(c) zone is to *identify land for urban expansion (which will comprise mainly residential development focussed on multi-use neighbourhood centres) and to ensure its optimum utilisation consistent with environmental constraints and the need to minimise residential landtake.*

One of the secondary objectives is to *ensure that sensitive environmental areas within and outside the zone are protected from any adverse impacts of development.*

Whilst the proposed development comprises the creation of three additional allotments all being greater than 450m² in size, the subdivision is not considered to be consistent with the environmental constraints of the site and approval would result in a poor planning outcome.

Therefore the proposed development is considered contrary to the zone objectives.

Clause 15 requires the provision of essential services. All services are available to the area.

Clause 32 aims to prevent certain noise sensitive developments from occurring in proximity to Coolangatta Airport and its flight paths. The site is within the 20-25 ANEF Contour for Coolangatta Airport and if approval were granted to this subdivision conditions would need to be applied alerting future land owners that dwelling construction would need to comply with Australian Standard 2021-1994.

Clause 34 aims to minimise future potential flood damage by ensuring that only appropriate compatible development occurs on flood liable land. The site would need to be filled to RL 2.65m AHD if Council were considering approving the application.

Clause 35 requires consideration of Acid Sulfate Soils. The proposed development requires the importation of fill and would therefore not expose acid sulfate soils.

Clause 39 requires the remediation of contaminated land. The applicant prepared a Preliminary Contaminated Land Assessment which concludes that on the basis of the investigation and the statistical analysis performed that the site can be considered uncontaminated.

Clause 39A – Bushfire Protection

This clause aims at minimising bushfire risk to built assets and people and to reduce bushfire threat to ecological assets and environmental assets. Further to this clause Council cannot determine the subject application without the NSW Rural Fire Service issuing a Bush Fire Safety Authority.

Contrary to the Planning for Bushfire Protection Guidelines 2001 this application seeks approval for a 16m Asset Protection Zone (APZ) within adjoining Council owned land.

The application was lodged with an accompanying Bushfire Assessment, and Bushfire Risk Management Plan dated 7 July 2004. This application and the Bushfire Risk Management Plan were then referred to the NSW Rural Fire Service in accordance with the integrated provisions of the Act. Following is a brief summary of the correspondence between the applicant, Council and the NSW Rural Fire Service:

- 12 August 2004 original application and Bushfire Risk Management Plan dated 7 July 2004 referred to NSW Rural Fire Service;
- 25 September 2004 NSW RFS responded to Council stating that *“proposed Lot 1 is incapable of supporting a dwelling footprint when appropriate Asset Protection Zones are applied”*;
- 21 October 2004 the applicant submits an amended Bushfire Risk Management Plan dated 15 October 2004 that relies on additional Council land for asset protection zones based on the applicants assessment of the SEPP 14 mapped area;
- 28 October 2004 amended Bushfire Risk Management Plan dated 15 October 2004 referred to NSW Rural Fire Service;
- 25 February 2005 NSW Rural Fire Service respond to Council stating;
“The Rural Fire Service will only accept APZs on adjoining managed lands (ie Council Park) provided an approved Plan of Management has been forwarded from Council that satisfies the requirements for the APZs to the South and East of the proposed subdivision plan.

Alternatively you may wish to liaise with Council in establishing the necessary easements under Section 88B of the Conveyancing Act 1919.

Until such time as the above information is provided the RFS is not prepared to grant a Bushfire Safety Authority for the proposed development.”

- March 2005 Council's Open Space officer reviewed the applicants proposal and provided the following comments:

“Recreational Services Unit does not support the proposal, which requires Council to maintain an Asset Protection Zone (APZ) on community land around the 4 proposed lots. Considerations in reaching this conclusion include:

- a) The proposal is for mown parkland to form the APZ. As previously stated (my email 21 March 05), the area does not meet the criteria for a managed park and RSU have no plans to develop such a park.*
 - b) No alternative proposal (fireline, reduced fuel loads etc) has been received. However, given the additional matters listed below, it is unlikely that such alternatives would be supported.*
 - c) Council is not required to provide APZ's for new subdivisions. The RFS & NSW Planning state APZ's for new developments should be within the boundaries of the development unless 'the most unusual circumstances apply'. Council could provide the APZ on community land, however in this case the only beneficiaries would be the owners of the 4 proposed lots.*
 - d) Community Land adjoining a neighbouring residential development is currently mown. However, that development was approved under old legislation and has no relevance to this application.*
 - e) The land is covered by TSC's generic 'Plan of Management - Urban, Rural & Modified Parks (1995)'. This makes provision for maintenance work such as firelines, but gives no guidance on maintenance of firelines or APZ's for new subdivisions.*
 - f) There is a SEPP 14 wetland mapped in this area, although the SEPP 14 boundary needs onsite confirmation. It is likely that clearing for an APZ would impact on the wetland, meaning a DA is required. No guarantee can be given that such an application would be approved.*
 - g) I cannot identify anywhere in the Local Government Act (1993) provision for creating an easement (or similar) on community land for an APZ.*
- 17 June 2005 Tweed Shire Council received a “Bushfire Hazard Advice” from the local RFS in relation to a complaint received regarding Lot X in DP 28390 (the Council owned reserve to the east of the subject site). The notice specified that Tweed Shire Council was to undertake the following works:

- *Increase distance of asset protection zone to at least 25 metres surrounding the dwellings at 3, 5 , and 21 James Rd. Continue to maintain existing APZ surrounding dwellings in James Rd and Acacia Street to comply with RFS document "Guidelines for Asset protection Zones"*
- *On the eastern aspect of 21 James Rd, extend APZ by removing weed and long grass. To protect the adjoining SEPP 14 Wetland, this is to extend to the edge of the weed buffer or 25 metres from the base of the dwelling (whichever comes first). On the southern aspect of 21 James Rd, remove piles of accumulated vegetation and extend APZ to boundary or 25 metres (whichever comes first). On this aspect note that boundary may not be the actual fence"*
- 31 August 2005 Council responded to the applicant regarding the above matter as follows:

Council is taking this instruction seriously and will be sure to undertake the necessary works and obtain any consent as is required. However, upon review of the dwelling at 21 James Road it appears that the required 25m APZ will predominantly fall within the subject property itself with only small encroachments onto the adjoining Community Land. Council as a matter of ongoing maintenance for hazard reduction will manage this area of encroachment.

If the required 35m APZ for the proposed new dwellings was the same as the required maintenance of 25m for the existing dwellings then Council would not be accepting any additional APZ responsibility. However, this issue of maintenance is considered separate to that of the current request for Council to take responsibility for an APZ as required for the proposed subdivision.

Subsequently, Council at this time cannot support an APZ for the proposed new subdivision on Community Land. Therefore the subject application cannot be recommended for approval.

- 22 September 2005 Council receives another amended "Bushfire Risk Management Plan" dated 13 September 2005 which is forwarded to the NSW RFS
- 29 November 2005 NSW RFS respond as follows:
Based upon an assessment of the plans and documentation received for the proposal, the NSW Rural Fire Service is NOT prepared to grant a Bush Fire Safety Authority on the following grounds.

1. *Proposed Asset Protection Zones were non-complying. The Rural Fire Service does not support the vegetation assessment as outlined in the report by Bushfire Safe (Aust) Pty Ltd dated the 13 September 2005. The Rural Fire Service has carried out an inspection of the site and this confirms that the vegetation is predominately Group 1 vegetation due to the presence of Melaleuca forest approximately 20m to the East of the subject site. As such the Asset Protection Zone requirements of 'Planning for Bushfire Protection 2001' are 40m for the proposed development.*

Additionally, discussions with Tweed Shire Council indicate that the land adjacent to the subject site (although it is designated as a public garden and recreation space) is not currently or intended to be managed by Council in any form that could be considered to satisfy the requirements of an Asset Protection Zone.

Notwithstanding the above, the Rural Fire Service is aware of the current management of a portion of the land located to the east of the subject site as part of a current Section 66 Notice that has been served on Tweed Shire Council. This notice requires the management of 25m of land measured from the edge of the existing dwelling towards the East. It should be noted that the width of this managed area is a variable distance based on the setback from the existing dwelling located on the site. The location of the proposed development closer to the hazard will not result in this managed area being widened and as such, the proposed development will not achieve the required Asset Protection Zones as outlined in 'Planning for Bushfire Protection 2001'.

- The applicant responded to the NSW RFS with further information regarding the vegetation classification dated 6 January 2006 which was forwarded to NSW RFS.
- NSW RFS made their final response on 2 February 2006 stating:
 1. *The vegetation assessment undertaken during a site inspection by the district representative of the Rural Fire Service provided evidence demonstrating that the majority of vegetation affecting the site was Category 1 forest. This assessment is related to vegetation structure and fuel loads.*

It is the Rural Fire Service's position that the district officer undertaking the assessment is fully qualified to identify vegetation types and subsequently a site inspection by a representative from Head Office is not deemed necessary.

2. *The development cannot provide for the required Asset Protection Zones within the lot boundaries. The Rural Fire Service will only accept the creation of Asset Protection Zones on adjoining land in the event that the land is covered by an approved Plan of Management or alternatively a covenant under Section 88B of the Conveyancing Act 1919 that allow for Asset Protection Zone maintenance.*

The Rural Fire Service has no legislative power to compel government bodies or private land owners to agree to the creation of Asset Protection Zones on their land for the benefit of adjoining landholders. If the area proposed for an APZ is not covered by the mechanisms described above there can be no level of confidence that maintenance will occur and the safety of future occupants of the development may be compromised.

Considering that the development does not comply with the requirements as set out in Planning for Bushfire Protection 2001, the original determination from the Rural Fire Service dated 29 November 2005 is still applicable to the development.

For the reason detailed above the proposed asset protection zone is unreasonable and warrants refusal of the proposed subdivision.

North Coast Regional Environmental Plan 1988

The relevant provisions of the NCREP to the proposed development are as follows:-

Clause 32(b) Coastal Lands

The proposed development does not contravene the provisions of the Plan, or the plans specified therein, in particular it does not overshadow beaches or adjacent open space or impede public access to the foreshore.

Clause 43 - Development Control - Residential Development

This clause provides that Council shall not grant consent to development for residential purposes unless it has considered a number of matters, including the environmental features of the land. In this instance the nomination of the site as bushfire prone land does not allow for the proposed new lots to have sufficient room for asset protection zones.

State Environmental Planning Policies

SEPP 14 – Coastal Wetlands

The subject site is not a mapped SEPP 14 area, however, the community land to the east of the site is a mapped wetland.

Council's Senior Environmental Scientist has inspected the site and provided the following comments:

In relation to the proposal for a four-lot subdivision at Lot 2 DP 231879, 21 James Road, Tweed Heads South I recommend refusal of the application on ecological grounds and offer comments and reasons below. Following meetings and discussions with other Council officers and the Rural Fire Service I understand that the provisions of the Rural Fires Act cannot be satisfied without substantial clearing of the wetland vegetation on the Public Reserve DP 28390, immediately behind the proposed subdivision and land owned and managed by Council.

SEPP 14 wetland issues

The Public Reserve contains a mapped SEPP 14 wetland as well as unmapped wetland vegetation. Draft guidelines from the Department of Infrastructure, Planning & Natural Resources entitled "Interpreting SEPP 14 (Coastal Wetland) boundaries in the field" state that "Paper maps with a scale of 1:25,000, gazetted as part of the Policy, define SEPP14 boundaries, but these cannot be applied to many field situations with these confidence limits" (i.e. 10-20m required where SEPP14 occurs in close proximity to urban development). "Therefore field interpretation of the mapped boundary needs to be made and .it would be preferable for councils to have a greater role in making these decisions."

These Guidelines "consider that an on-ground boundary line interpreted from the maps is most appropriately regarded as a zone of variation, extending 25m to each side of a reasonably interpreted centre line." Application of the guidelines using the field criteria of Vegetation Type, Position on Slope, and Recent Inundation history indicates that the actual SEPP 14 wetland boundary therefore extends well westward of the current mapped line, i.e some 12 to 23 metres closer to the subject lot, hence clearing of this magnitude within a SEPP14 wetland would be required.

Whatever the original purpose of dedication it is clear that the public reserve now has an important conservation function. Clearing within a SEPP14 wetland becomes designated development and requires an EIS and the concurrence of the Department of Planning. Such requirements place an onerous burden on Council when the benefit is for private development, no quantitative analysis of total trees and species to be removed in this area has been provided and clearing on edges leads to further remnant degradation such that viability could be threatened.

Endangered Ecological Communities

The SEPP 14 wetlands contains two plant communities that have recently been listed as Endangered Ecological Communities (EEC's) under the Threatened Species Conservation Act. These are Swamp Sclerophyll Forest on Coastal Floodplains and Swamp Oak Floodplain Forest. The Scientific Committee Final Determination on these communities make it clear that vegetation of these types is considered to be included in the EEC's even if degraded due to weed encroachment. Clearing of Endangered Ecological Communities requires a Species Impact Statement and the concurrence of the Director General of DEC. Again, such requirements place an onerous burden on Council at a conservation cost and without public benefit.

2004 TPO

The wetland vegetation is also mapped under Tweed Council's 2004 Tree Preservation Order. Although this matter could be dealt with as part of the Development Application process, it is further evidence of the conservation significance of the site.

Bushfire Vegetation Category

The Bushfire Risk Management Plan (as amended) submitted with the DA assessed the dominant bushfire vegetation category in the Public Reserve as Group 2 Heath (scrub). To be categorised as Heath or scrub requires either shrubs no greater than 2m in height or canopy cover no greater than 30%. Neither of these are applicable at this site unless only the understorey is considered. Having undertaken a site assessment and having regard to the vegetation community assigned to this site in the Tweed Vegetation Management Strategy 2004, I disagree with this assessment of vegetation category and consider the vegetation structure is most similar to No. 3 or No. 5 in Figure A2.2 of "Planning for Bushfire Protection", thus being Group 1 vegetation and requiring higher asset protection standards than have been submitted.

Inconsistencies between Bushfire and Flora/Fauna reports

The 8-part test submitted as additional information for the DA states that "The (fauna) survey did not include anabat echolocation call surveys or trapping and mist netting because no undisturbed natural habitat is proposed to be disturbed by the development". However the Bushfire Risk Management Plan states "the developer... proposes to create a community park and garden area adjacent to the eastern boundary within Council's designated (Public Reserve) which will substantially modify the existing vegetation." Either the fauna survey underestimated potential impacts or discounted the value of the remnant. In any case the diversity of bird species (26) recorded in a short time during daylight is indicative of the habitat value of the site and, despite weed encroachment, should not be underestimated.

Summary and Recommendations:

I recommend refusal of the application for a four lot subdivision on Lot 2 DP 231879, 21 James Road, Tweed Heads South and give the following reasons:

- 1. To comply with bushfire safety provisions, the proposal requires clearing between 12 and 23 metres width by some 85m length within a SEPP 14 wetland (as interpreted by reference to draft guidelines from the Department of Infrastructure, Planning & Natural Resources entitled "Interpreting SEPP 14 (Coastal Wetland) boundaries in the field"). As the proposal is on Council-owned land approval requirements would place an onerous burden on Council at a conservation cost and without greater public benefit.*
- 2. To comply with bushfire safety provisions, the proposal requires clearing of part of two Endangered Ecological Communities, once again placing an onerous approval burden on Council at a conservation cost and without public benefit.*
- 3. I disagree with the assessment of the vegetation community as Heath (Scrub) and consider that it constitutes in the most part Group 1 vegetation under "Planning for Bushfire Protection" guidelines. As such it would necessitate higher asset protection standards than have been submitted and result in further clearing and remnant degradation.*

The above assessment by Council's Senior Environmental Scientist contributes to the reasons for refusal detailed within the recommendation

SEPP No.71 – Coastal Protection

The provisions of this SEPP affect the subject land. In this regard, the site is identified as a sensitive coastal location (as it is within 100m of land to which State Environmental Planning Policy No. 14 applies) and requires a master plan for subdivision in such a zone.

The applicant has provided correspondence from DIPNR dated 31 May 2004 that states:

“...it is considered that a master plan is not warranted in this instance. Therefore pursuant to Clause 18(2) of SEPP 71, the need for a master plan has been waived.

We note that four of the proposed lots are to be filled with a retaining wall completely surrounding the lots. Concern is raised about the extent of this fill and its impact on the coastal location. For this reason the Department has raised the issue of filling the land and urged Council to address consideration contained within Clause 8 of SEPP 71.”

The issues of fill have been discussed in this report.

In relation to Clause 8 matters for consideration it is considered that the most relevant provision is:

The matters for consideration are the following:

- (p) only in cases in which a development application in relation to proposed development is determined:
 - (i) the cumulative impacts of the proposed development on the environment,**

In this regard the proposal to maintain an asset protection zone on adjoining SEPP 14 land may reduce the viability of the land for conservation purposes.

However, in all other regards the proposed development could generally satisfy Clause 8.

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

There are no draft environmental planning instruments that would have any bearing on the assessment or determination of the subject development application.

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

DCP No.5 – Development of Flood Liable Land.

As the subject land is flood liable, the proposed development is subject to the requirements of DCP5 – Development of Flood Liable Land. DCP5 states that all land is to be filled to a minimum level of the design flood where an additional allotment is created by subdivision.

Accordingly, the applicant proposes to fill all land on the additional allotments (Lots 1, 2 & 3), to achieve the adopted design flood level for of RL 2.6m AHD. Retaining walls will be constructed along the boundaries of the new lots to contain the fill,.

No flood related works are intended for Lot 4 in the development proposal as it would be unreasonable to fill around the existing dwelling.

DIPNR had raised concerns with the extent of proposed fill and requested that Council undertake thorough investigations to ensure the proposed fill would not impact on the coastal location.

Council's Development Engineer is satisfied that fill on this site could be conditioned to comply with Council's provisions, as the proposed filling is considered necessary for residential development and is considered consistent with the other approvals in the immediate vicinity for filling works.

DCP 16 – Subdivision Manual

Council's Development Engineer has undertaken an engineering assessment in line with the guidelines contained within DCP 16. Based on engineering grounds alone the proposed subdivision could have conditions of consent applied to ensure compliance with Council's engineering requirements.

However, DCP 16 has many other non-engineering design guidelines based on trying to achieve the highest quality and "best practice" of subdivision development in the Shire. The proposed development does not comply with these non-engineering provisions.

DCP 16 also reinforces that asset protection zones are to be placed wholly within the subdivision they are intended to protect (as per the Planning for Bushfire Protection Guidelines).

The proposed development is not considered to satisfy the objectives of DCP 16.

Development Control Plan No. 47 – Cut & Fill

The proposed fill exceeds the allowable 1m of fill, however, as discussed above this fill is required to facilitate residential development in land zoned for that purpose. Stormwater Management Plans and Erosion and Sediment Control Plans have been lodged and could be considered satisfactory to mitigate the potential impacts.

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

The NSW Coastal Policy 1997 applies to the proposed development. The proposed development is not contrary to the strategic actions and principles of this policy document.

(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

As detailed above by Council's Senior Environmental Scientist the potential environmental impact is considered unreasonable. Use of adjoining wetlands for asset protection zones is an unnecessary burden for Council.

(c) Suitability of the site for the development

For the reasons detailed in the above report the subject site is not considered suitable for the proposed four lot subdivision and should therefore be refused.

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

The application was notified to adjoining landowners for 14 days between 18 August 2004 and 1 September 2004. During this period Council did not receive any objections or letters of support.

However, since this time it is understood that the applicant has gained signatures from residents in the street in the form of a petition stating that the hazardous area (to the rear of the site) should be cleaned and maintained to the required APZ standard. In this regard Council will meet its obligation in relation to the existing residences.

(e) Public interest

The proposed development for subdivision is not considered to be in the general public interest. To increase the density of development in a nominated bushfire prone area without sufficient asset protection zones would be negligent. Therefore the application is recommended for refusal

OPTIONS:

1. Refuse the application for subdivision.
2. Should Council want to approve this application it is recommended that first legal opinion is sought on how to legally create a Plan of Management or alternatively a covenant under Section 88B of the Conveyancing Act 1919 that allows for APZ maintenance given the site specifications.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be unsatisfied with this decision there is a right of appeal to the NSW Land & Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

Due to the site constraints the proposed 4 lot subdivision is not considered suitable. To increase the density within this area, without sufficient asset protection zones would be negligent. The environmental significance of the adjoining land is high and warrants protection not further degradation to accommodate more allotments.

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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P13 [PD-PC] Development Application DA06/0228 for an Extension to Supermarket and New Retail Space at Lot 1 DP 848125, No. 59-71 Darlington Drive Banora Point

ORIGIN:

Development Assessment

FILE NO: DA06/0228 Pt1

SUMMARY OF REPORT:

Council is receipt an application for the extension of the existing Bi-lo supermarket and a new retail shop at 59-71 Darlington Drive Banora Point, commonly referred to as the Banora Point Shopping Centre.

The proposed supermarket and retail shop extension incorporates the same area previously approved under Development Application No. D96/203. Development Consent No D96/203 approved works in two stages. Stage one included the utilisation of the area subject to this application for a garden centre, with stage two converting the area as an extension to the existing Bi-lo supermarket.

Therefore, the subject area has previously obtained consent to be used as an extension to the supermarket, with the subject application seeking to include a retail shop component.

RECOMMENDATION:

That Development Application DA06/0228 for an extension to supermarket and new retail space at Lot 1 DP 848125, No. 59-71 Darlington Drive Banora Point 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 SD-01B, SD-02A prepared by ML Design and dated 2/03/2006, 21/02/2006, except where varied by the conditions of this consent.**
[GEN0005]
- 3. Advertising structures/signs to be the subject of a separate development application, where statutorily required.**
[GEN0065]

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. Detailed drawings showing equipment, shop fittings, shelving and internal finishes relative to the supermarket extension are to be submitted to Council's Environmental & Health Services Unit for further analysis, comment and approval prior to the commencement of any internal fit out.

[PCCNS01]

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)
Sector2_4 | \$51,982 |
| (b) Extensions to Council Administration Offices
& Technical Support Facilities
S94 Plan No. 18 | \$299.18 |

[PCC0215/PSC0175]

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

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

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

Water DSP4: 1.02 ET @ \$4598 \$4,690
Sewer Banora: 1.53 ET @ \$2863 \$4,380

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]

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. 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]
11. 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]

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

[PCW1165]

13. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational to the satisfaction of the principle certifying authority.

[PCWNS01]

DURING CONSTRUCTION

14. 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]

15. 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]

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

[DUR0245]

17. 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]

18. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.

[DUR0395]

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

[DUR0405]

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

[DUR0415]

21. 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]

22. 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]

23. The additional rainwater drains must be connected to the existing rainwater disposal system; to provide satisfactory stormwater disposal in accordance with Australian Standard AS/NZS3500.3.2.

[DUR2255]

24. Fire hose reels shall be installed in accordance with the provisions of Part E1.4 of the Building Code of Australia and comply with Australian Standard AS1221 and AS2441.

However, they shall not be installed until the PCA has been furnished with a certificate, signed by a Hydraulics Engineer stating that the design and proposed manner of installation complies with the relevant standards.

[DUR1255]

25. Fire hydrants must be installed in accordance with the provisions of Part E1.3 of the Building Code of Australia and the installation must comply with Australian Standard AS2419.1 except where superseded by the provisions of the Building Code of Australia.

However, they shall not be installed until the PCA has been furnished with a certificate, signed by a Hydraulics Engineer stating that the design and proposed manner of installation complies with the relevant standards.

[DUR1265]

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

[DUR1295]

27. Emergency lighting to comply with Part E4.2 of the Building Code of Australia shall be provided. Details of the system to be used and a certificate from the electrical engineer to certify that the system will comply with all relevant requirements of Part E4.4 of the Building Code of Australia and AS 2293.1 are to be submitted to the PCA prior to installation.

[DUR1305]

28. 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]

29. 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]

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

[DUR2415]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

31. 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]

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

[POC1055]

33. 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]

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

[POC0615]

USE

35. 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]

36. 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]

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

- * 6.00am to 9.00pm - Mondays to Fridays
- * 6.00am to 6.00pm - Saturdays
- * 8.00am to 6.00pm Sundays and Public Holidays
- * 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]

38. All deliveries to the premises are to occur only within the hours of 8.30am to 5.30pm Monday to Saturday and No deliveries to occur on Sundays, unless otherwise approved by Councils General Manager or his delegate. Urgent or medical related deliveries exempted.

[USE0195]

39. 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]

40. Any vehicles that remain on site for periods in excess of two (2) minutes are required to switch off their engines, this includes all delivery and service vehicles.

[USE0255]

41. The servicing of waste facilities shall be limited to between the hours of 7.00am to 7.00pm Monday to Saturday and 8.00am to 6.00pm Sunday and Public Holidays.

[USE0285]

REPORT:

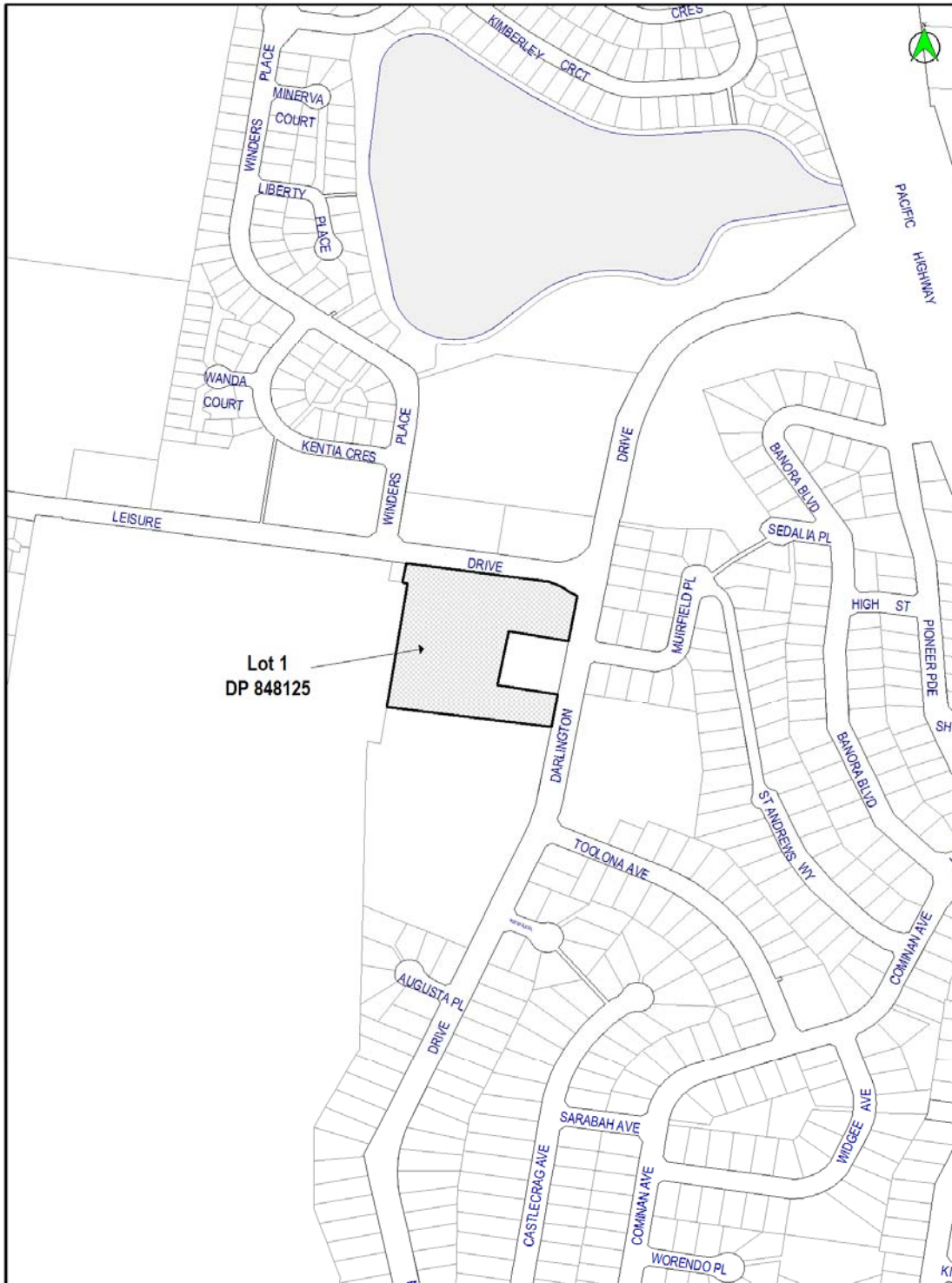
Applicant: YI Fong International Pty Ltd
Owner: YI Fong International Pty Ltd
Location: Lot 1 DP 848125 No. 59-71 Darlington Drive, Banora Point
Zoning: 2(c) Urban Expansion
Cost: \$1,000,000

BACKGROUND:

The subject site has had numerous approvals with the most relevant being the approval of neighbourhood shopping centre under Development Application No. 92/174 and approval of extensions to the Banora Point Shopping Centre under Development Application No. D96/0203.

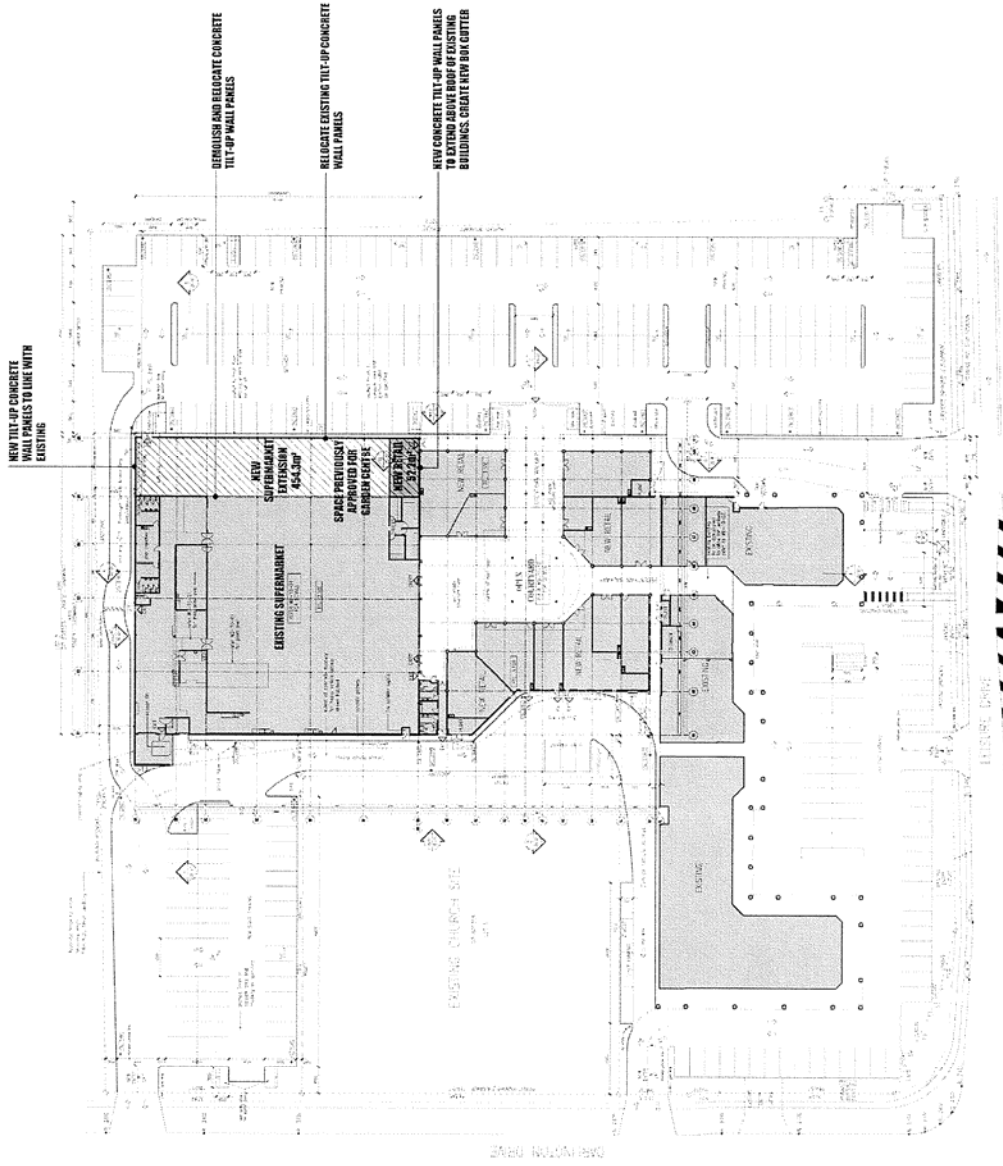
Part of the approved extensions under DA No. D96/203 provided for 510m² of floor area to be used in stage 1 as a garden centre, this area was then to be used as additional floor area to the existing supermarket in stage 2.

SITE DIAGRAM:



<p>© TWEED SHIRE COUNCIL 2006 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 916 Murwillumbah NSW 2484 Tel: (02) 6670 2409 Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i> Lot 1 DP 848125 59-71 Darlington Drive, Banora Point</p>		<p>STRATEGIC PLANNING UNIT Site Plan File: N:\MapInfo 7... \A4P Site Plan.Wor Author: C.Davis Date: 26/July/2006 Scale: 1:5,000 Sheet: 1 of 1</p>
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ELEVATIONS



Banora Shopping Village Extensions

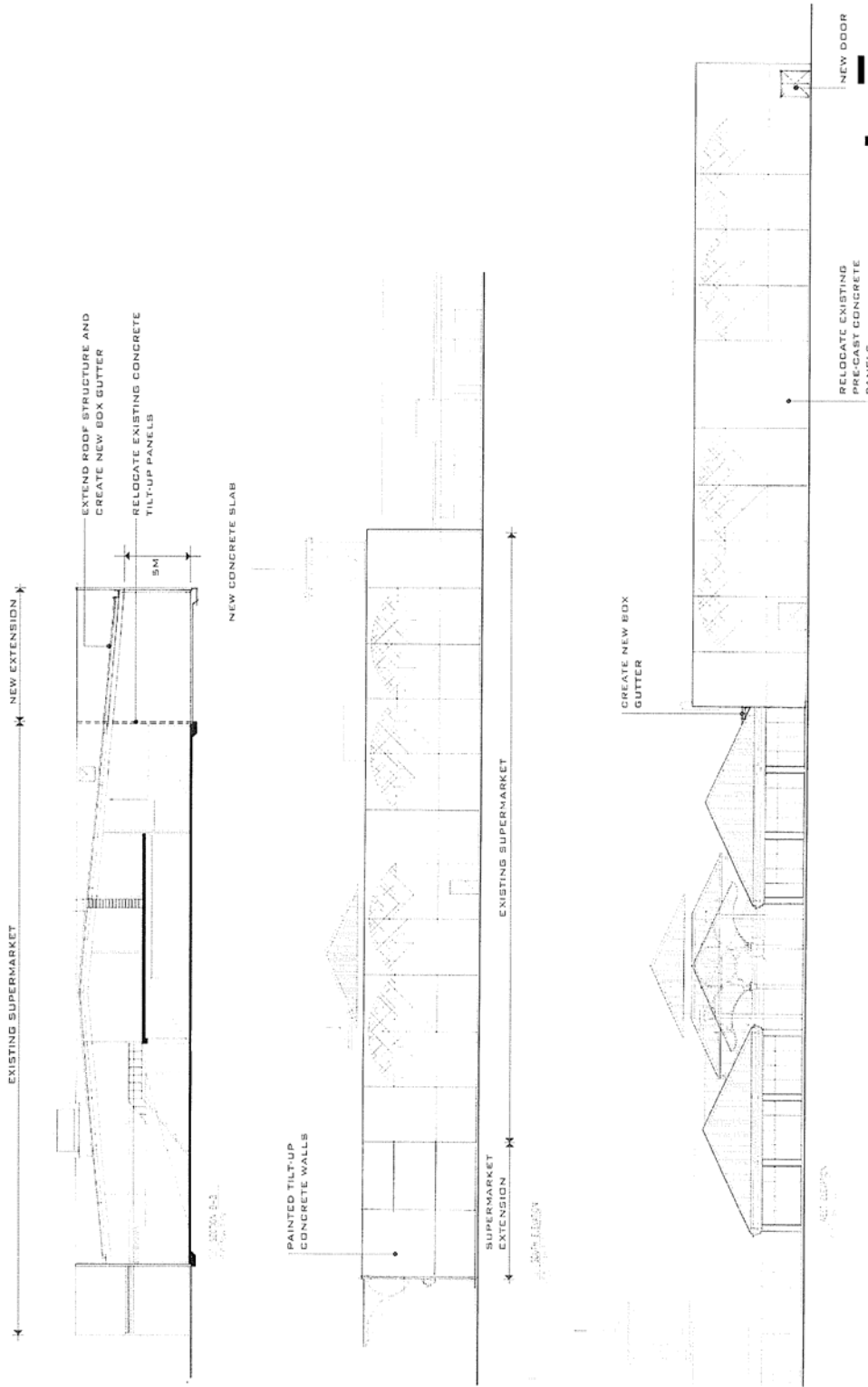
Banora Projects Pty Ltd



SD-01B SCALE: 1:500 @ A2

JOB NO: 4393-01-A 2/03/2006

Site Plan



Banora Shopping Village Extensions

Banora Projects Pty Ltd

Section + Elevations

JOB NO : 4393-01-A 21/02/2006 SD-02A SCALE: 1:200 @ A2

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

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

Tweed Local Environmental Plan 2000

The subject site is zoned 2(c) Urban Expansion in accordance with the provisions of the Tweed Local Environmental Plan 2000 (Tweed LEP 2000). The objectives of the zone are:-

Primary objectives

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

Secondary objectives

- * *to allow associated non-residential development which meets the recreation, shopping, commercial, employment and social needs of future residents.*
- * *to ensure that sensitive environmental areas within and outside the zone are protected from any adverse impacts of development.*
- * *to enable planning flexibility to achieve the other objectives of the zone by providing detailed guidelines through development control plans.*

The proposed extension to the supermarket and retail shop is permissible with consent and is not considered to contravene the objectives of the zone.

Clause 15 – Essential Services

The subject property is serviced by water supply and facilities for the removal or disposal of sewage and drainage, power and telecommunications are available. The proposal is consistent with the provisions of this clause.

Clause 16 – Building Heights

The objectives of clause 16 are to ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land.

The proposed extension is located within a three (3) storey height restricted area. The proposal does not seek to increase the existing height of the shopping complex. The building height is 8.9 metres, which is considered to be two storeys under the definition of a storey within the Tweed LEP 2000.

The proposal is considered to comply with the provisions of Clause 16.

Clause 17 – Social Impact Assessment

Having regard to the provisions of DCP No. 45 clause 5.1, a detailed social impact assessment is not required, and the proposal is not considered to generate any significant social or economic impacts.

Clause 32 – Aircraft noise

The subject site is affected by the 20-25 contour as identified on the 2020 Australian Noise Exposure Forecast (ANEF) map for Coolangatta Airport. The application was referred to Council's Environment and Health Services Unit, which raised no concerns.

Clause 32 is considered satisfied.

Clause 35 – Acid Sulphate Soils

The site is affected by class 2 acid sulphate soils as identified on Council's GIS mapping system. A condition is to be added to the consent stating that all excavated material is to be managed in accordance with Council's acid sulphate soil management plan for minor works.

North Coast Regional Environmental Plan 1988

Clause 32B Development control—coastal lands

The proposed development is considered not to contravene the objectives of Clause 32B by creating any significant adverse effects to the public access to the foreshore, create overshadowing to beaches, waterfront open space before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time).

Clause considered satisfied.

State Environmental Planning Policies

State Environmental Planning Policy No. 71 – Coastal Protection

The site is located within the area to which the policy applies. The proposed development is not within 100m below the mean high water mark of the sea, a bay or an estuary. The proposal is considered not to adversely affect the access to and along the coastal foreshore, limit overshadowing of foreshore areas and that the type, bulk, scale and size of the development is appropriate within the SEPP 71 zone.

Clause considered satisfied.

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

There is no draft Environmental Planning policy applicable to this application.

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

Development Control Plan 2 – Site Access and Parking Code

The original extension under development application No. 96/203 included an area of approximately 510m² to be used in two stages. Stage 1 proposed to use the area as a garden centre with stage 2 utilising the area as an extension to the shopping centre.

The subject area had an applied car-parking rate of 6.2-car space per 100 square metres of floor area, giving the area 33 car spaces.

The proposed use being a supermarket and retail shop have an applied car parking rate of 4 car spaces per 100 square metres of floor area, requiring 20 car spaces, for the subject area.

The proposed development is considered to satisfy the provisions of development control plan No. 2.

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

CLAUSE 92 (1)(a) Government Coastal Policy

The proposed site is located within the Government Coastal Policy. The proposed development is considered not to contravene the objectives contained within the coastal policy.

CLAUSE 94 Building to be upgraded

The application was referred to Council's Building Services Unit. Conditions of consent have been recommended to ensure the application meets Council's requirements.

(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 development is considered not to generate any significant environmental impacts on either the natural or built environment nor create social and economic impacts within the locality.

As discussed previously within this report, Development Application No. D96/0203, approved the extension to the Banora Point shopping centre, which incorporated the subject area being 510m² for a retail premise. This application seeks to allocate approximately 52.2m² for the use of a retail shop with the remaining floor area to be used as an extension to the existing Bi-lo Supermarket.

The proposal does not seek any additional Gross Floor Area (GFA) nor a more intensive land use, consequently, no additional car parking is required and no additional traffic is generated.

The proposed additions are to utilise the existing external wall by simply relocating the existing wall to the proposed location, therefore, keeping a similar appearance to what is currently experienced.

The proposed development is within the existing approved foot print and is therefore considered not to generate any additional noise or adverse impacts on the locality.

A positive social impact is expected within the locality by providing a wider range of retail premises, also by providing additional short and long term employment.

(c) Suitability of the site for the development

The subject site is considered suitable for the proposed development.

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

Public Submissions Comment

The application was not required to be notified as such no public comments were required or received regarding the application.

Public Authority Submission Comment

No public authority comments were required or received regarding the application.

(e) Public interest

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

OPTIONS:

1. Approve the application in accordance with the recommendations within this report.
2. Refuse the application and provide recommendations for refusal.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposal has been assessed against all relevant plans and policies and is considered suitable for the site and is not likely to create any significant adverse impacts on either the built or natural environments within the locality.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.
