

P14 [PD-PC] Development Application DA06/0205 for 11 Industrial Units at Lot 21 DP 774059; Lot 24 DP 838868, No. 7 Hayley Place & No. 31 Lundberg Drive South Murwillumbah

ORIGIN:

Development Assessment

FILE NO: DA06/0205

SUMMARY OF REPORT:

Council is receipt of an application to construct an industrial complex comprising eleven (11) factory/industrial units varying in size (unit 5 contains a mezzanine level), with forty-nine (49) on site car parking spaces. The proposal also involves the demolition of an existing shed on Lot 24 DP 838868. The units are proposed within two buildings to be constructed upon a concrete slab, with landscaping proposed within the setbacks to Lundberg Drive, Haley Place and the rear boundary of the site. The development proposal also includes a new Pylon Sign located at the front entrance of the property from Lundberg Drive to provide advertising for each of the eleven (11) units.

RECOMMENDATION:

That Development Application DA06/0205 for 11 industrial units at Lot 21 DP 774059; Lot 24 DP 838868, No. 7 Hayley Place & No. 31 Lundberg Drive South Murwillumbah be approved subject to the following conditions: -

GENERAL

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

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

[GEN0115]
- 3. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos 501-1A, 2A, 4A, 5A, 7A, 04260TH-02, 04260, and Figure 1.0 to 6.0 prepared by Bob Hancock Design, Stewart McIntyre & Associates Consulting Surveyors, and Blueland Engineers and dated November 2005, 3-10-2005, 4-8-2004 and February 2006, except where varied by the conditions of this consent.**

[GEN0005]

4. Regular inspections are to be carried out by the site supervisor to ensure that proper sediment & erosion control measures are maintained during construction. [GENNS01]
5. All works must be in accordance with the Engineering Report (blueLAND engineers, February 2006) submitted to Council. [GENNS01]
6. The grass swale must be constructed in accordance with the NSW EPA Guideline for Managing Urban Stormwater - Treatment Techniques (November 1997). [GENNS01]
7. The grass swale must be adequately maintained to the satisfaction of Council's Environment & Health Services Unit. [GENNS01]
8. The stormwater outlet to Condong Creek must be designed and constructed to ensure the ongoing stability of the creek bank. [GENNS01]
9. The development shall be completed in accordance with the plans approved by Council and the Statement of Environmental Effects, except where varied by conditions of this consent. [GEN0015]
10. 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]
11. Non-reflective roof materials for any building shall be used. [GENNS02]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

12. All fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided to ensure minimal impact on adjoining properties. If filling is required, a plan of proposed drainage is to be submitted and approved by the PCA prior to the issue of a construction certificate. Drainage must be installed and operational prior to commencement of any building work.
All fill and cut batters shall be maintained wholly within the subject land. Detailed engineering plans of fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval. [PCC0485]
13. Permanent stormwater quality treatment shall be provided in accordance with the following:
 - (a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.

- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.
- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management. Typical water sensitive features include infiltration, maximising permeable/landscaped areas, stormwater retention /detention/reuse, and use of grass swales in preference to hard engineered drainage systems.
- (d) Specific Requirements to be detailed within the Construction certificate application include:
 - (i) Shake down area along the haul route immediately before the intersection with the road reserve.

[PCC1105]

14. Stormwater

- (a) Details of the proposed roof water disposal, including surcharge overland flow paths are to be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. These details shall include likely landscaping within the overland flow paths.
- (b) All roof water shall be discharged to infiltration pits located wholly within the subject allotment.
- (c) The infiltration rate for sizing infiltration devices shall be 3m per day:
 - As a minimum requirement, infiltration devices are to be sized to accommodate the ARI 3 month storm (deemed to be 40% of the ARI one year event) over a range of storm durations from 5 minutes to 24 hours and infiltrate this storm within a 24 hour period, before surcharging occurs.
- (d) Surcharge overflow from the infiltration area to the street gutter, inter-allotment or public drainage system must occur by visible surface flow, not piped.
- (e) Runoff is to be pre-treated to remove contaminants prior to entry into the infiltration areas (to maximise life of infiltration areas between major cleaning/maintenance overhauls).
- (f) If the site is under strata or community title, the community title plan is to ensure that the infiltration areas are contained within common land that remain the responsibility of the body corporate (to ensure continued collective responsibility for site drainage).
- (g) All infiltration devices are to be designed to allow for cleaning and maintenance overhauls.
- (h) All infiltration devices are to be designed by a suitably qualified Engineer taking into account the proximity of the footings for the proposed/or existing structures on the subject property, and existing or likely structures on adjoining properties.
- (i) All infiltration devices are to be located clear of stormwater or sewer easements.

[PCC1135]

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

All stormwater must initially be directed to the DCP.

[PCC1165]

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

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

Water DSP2:	1.931 ET @ \$4598	\$8,879
Sewer Murwillumbah:	2.331 ET @ \$2863	\$6,674

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]

19. **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: \$44,982
S94 Plan No. 4 (Version 4.0)

Sector10_4

Heavy Haulage Component

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

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

where:

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

and:

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

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

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

Admin. Administration component - 5% - see Section 6.5

(b) Extensions to Council Administration Offices & Technical Support Facilities \$245.39

S94 Plan No. 18

[PCC0215/PSC0175]

20. 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.

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.

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where:

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

and:

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

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

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

Admin. Administration component - 5% - see Section 6.5

[PCC0225]

PRIOR TO COMMENCEMENT OF WORK

21. 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]

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

[PCW0225]

23. 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]

24. 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]

25. 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]

26. The building is to be protected from attack by termites by approved methods in accordance with the provisions of Australian Standard AS 3660.1, and:

- (a) Details of the proposed method to be used are to be submitted to and approved by the Principal Certifying Authority prior to start of works; and
- (b) Certification of the works performed by the person carrying out the works is to be submitted to the PCA; and
- (c) A durable notice must be permanently fixed to the building in a prominent location, such as in the electrical meter box indicating:-
 - (i) the method of protection; and

- (ii) the date of installation of the system; and
- (iii) where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and
- (iv) the need to maintain and inspect the system on a regular basis.

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

[PCW0775]

27. 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]

28. All roof waters are to be disposed of through properly jointed pipes to the street gutter, interallotment drainage or to the satisfaction of the Principal Certifying Authority. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZS3500.3.2. Note All roof water must be connected to an interallotment drainage system where available. A detailed stormwater and drainage plan is to be submitted to and approved by the Principal Certifying Authority prior to commencement of building works.

[PCW1005]

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

[PCW1065]

30. 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]

31. All imported fill material shall be from an approved source. Prior to filling operations details of the source of fill shall be submitted to the satisfaction of Council's DECS.

[PCWNS01]

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

[PCW0015]

33. The proponent shall locate and identify all existing underground services prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure including areas external to the development site where works are proposed.

[PCW0005]

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

[PCW1165]

DURING CONSTRUCTION

35. 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]

36. 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]

37. 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]

38. 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]

39. 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]

40. The finished floor level of the building should finish not less than 225mm above finished ground level.
[DUR0445]
41. Building materials used below Council's minimum floor level of RL 6m AHD shall be flood compatible.
[DUR1405]
42. 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]
43. 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]
44. Where a building or part of a building is required, under the provisions of Section D of the Building Code of Australia, to be accessible to permit use by people with disabilities, prominently displayed signs and symbols shall be provided to identify accessible routes, areas and facilities. The signage, including Braille or tactile signage, should be installed in accordance with the relevant provisions of the Building Code of Australia and achieve the minimum design requirements provided under AS1428.
[DUR1695]
45. Where access for people with disabilities is required to be provided to a building, sanitary facilities for the use of the disabled must also be provided in accordance with the provisions Part F-2 of the Building Code of Australia.
[DUR1705]
46. A garbage storage area shall be provided in accordance with Council's "Code for Storage and Disposal of Garbage and Other Solid Waste".
[DUR2195]
47. 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]

48. 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]

- 49. 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]

- 50. 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]

- 51. 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]

- 52. 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]

- 53. 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]

- 54. Erosion and sediment control devices should be installed to the satisfaction of Council's DECS and maintained throughout the duration of construction.**

[DURNS01]

- 55. 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]
56. **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]
57. **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]
58. **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]
59. **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]
60. **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]
61. **Vehicles leaving the premises shall be sufficiently free from dirt, aggregate or other materials such that materials are not transported onto public roads.**
- [DUR2415]

62. During construction, a "satisfactory inspection report" is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection. [DUR2445]
63. 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]
64. The provision of adequate vehicular access in accordance with Council's "Vehicular Access to Property Construction Specification" pamphlet, including the provision of an invert crossing at the kerb and gutter where required and paving of the driveway across the footpath to the front alignment to the satisfaction of the General Manager or his delegate.
Such to specifically include the following:
- (a) 200 millimetres thick reinforced with F82 mesh for Commercial/Industrial Development
- Twenty four (24) hours notice is to be given to Council's Engineering & Operations Division before placement of concrete to enable formwork to be inspected. Failure to do so may result in rejection of the works and its reconstruction.
- Paving bricks are not acceptable unless laid on a 100mm thick concrete base.
65. The driveway is to be constructed 7 metres wide at the property boundary and 13 metres wide at the kerb line with a uniform taper. [DUR0065]
[DUR0075]
66. The provision of 49 off street car parking spaces including parking for the disabled where applicable. The layout and construction standards to be in accordance with Development Control Plan No. 2 - Parking Controls, the Building Code of Australia and AS 2890. [DUR0085]
67. 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]
68. Landscaping of the site shall be carried out in accordance with the submitted/approved landscaping plans. [DUR1045]
69. The site is to be filled to a minimum of RL 5.25 AHD. The filling is to be retained by perimeter structural walls with concrete lined perimeter drainage, or other approved treatment, in accordance with the approved construction certificate. [DUR1425]

70. 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]
71. The proponent must not undertake any work within the public road reserve without giving Council's Engineering & Operations Division forty eight (48) hours notice of proposed commencement. Failure to comply with this condition may result in a stop work notice being issued and/or rejection of the works undertaken. [DUR1845]
72. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils adopted Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings. [DUR1875]
73. Where the kerb is to be removed for driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb must be sawcut on each side of the work to enable a neat and tidy joint to be constructed. [DUR1905]
74. All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction. [DUR1955]
75. 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]
76. All stormwater discharged from the site including dewatering discharge is to be directed to a sediment pond prior to final discharge into any waterway in accordance with Council adopted Design and Construction Specifications. [DUR2365]

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

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

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

[DUR2375]

78. The proponent shall comply with all requirements tabled within any approval issued under Section 68 of the Local Government Act.

[DUR2625]

79. All surface water collected from hard stand parking areas to be directed to Council approved pre-treatment facilities before discharge to approved discharge locations. Stormwater from covered or enclosed carpark areas shall not be discharged to the public sewer unless approved treatment facilities have been provided. Details are to be submitted to and approved by Tweed Shire Council prior to installation

[DUR2735]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

80. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0205]

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

[POC0225]

82. The lots are to be consolidated into one (1) lot under one (1) title. The plan of consolidation shall be registered with the Lands Titles Office prior to issue of an occupation certificate.

[POC0855]

83. 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]

84. 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]

85. **Submission to the Principle Certifying Authority, Certification for the stability of any retaining structures in excess of 1.2m erected on the site by a suitably qualified structural engineer.**

[POC0815]

USE

86. **A person must not commence a change of building use for the whole or any part of an existing building unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).**

[USE0395]

87. **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]

88. **All activities associated with the occupancy of the building are to comply with the Protection of the Environment Operations Act, 1997.**

[USE0135]

89. **Activities occurring at the premises must be carried out in a manner that will minimise emissions of dust from the premises.**

[USE0145]

90. **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]

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

[USE0205]

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

[PSCNS01]

93. **The production of written evidence from the local electricity supply authority certifying that the reticulation of overhead electricity (rural subdivisions) has been completed.**

[PSCNS02]

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

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

[PSCNS03]

- 95. The access to Lundberg Drive shall be designed to allow for "B" Double Vehicles 25 metres in length with a turning speed of 5 KM/HR to 15 KM/HR in accordance with Austroads Design Vehicles and Turning Path Templates.**

[PSCNS04]

REPORT:

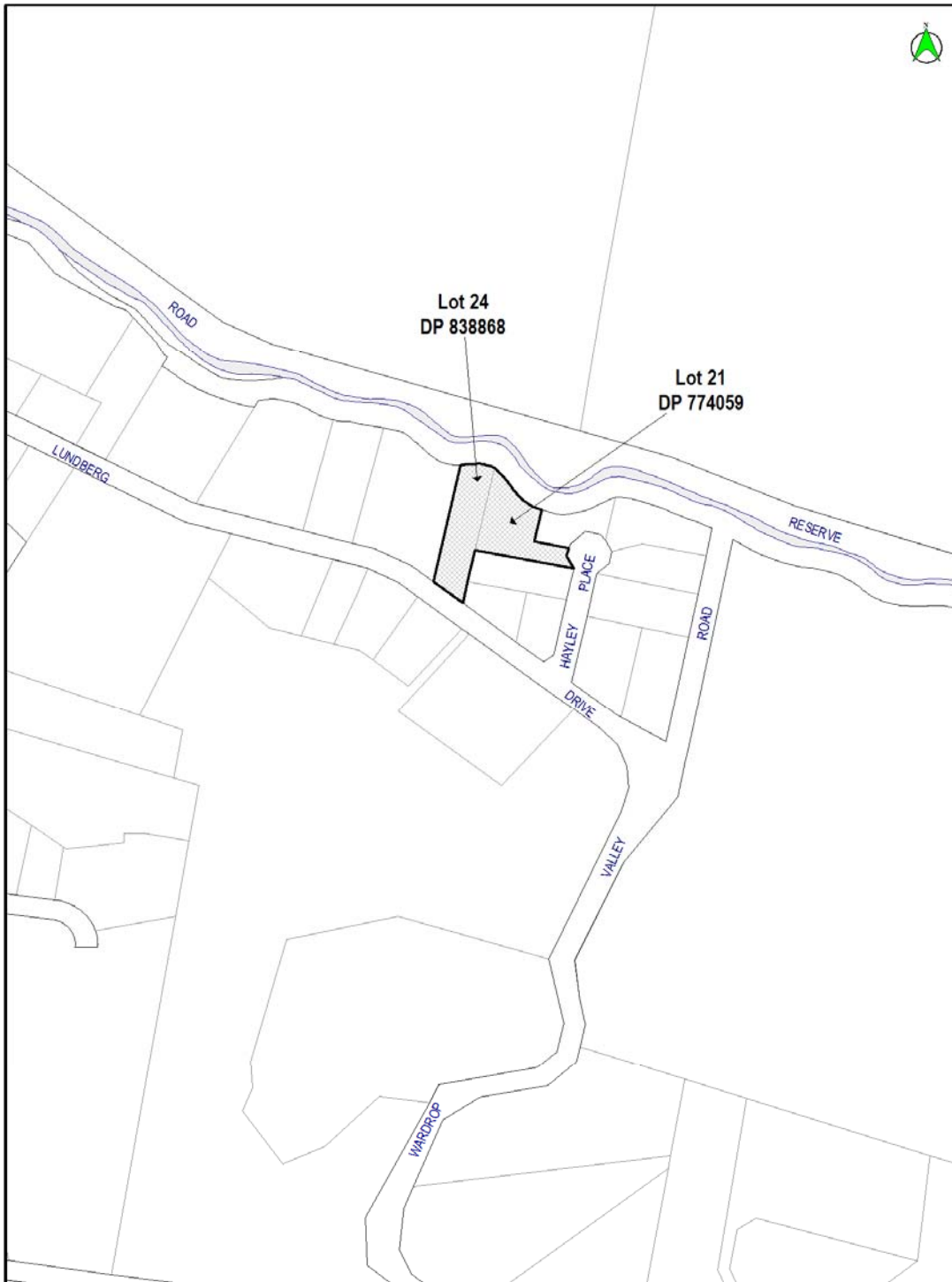
Applicant: Lightweight 2000 Pty Ltd
Owner: Mr PC Coram, Mrs RM Coram, Mrs LR McCullough, Mr RFG McCullough and Mr DFG McCullough
Location: Lot 21 DP 774059; Lot 24 DP 838868 No. 7 Hayley Place & No. 31 Lundberg Drive South Murwillumbah
Zoning: 4(a) Industrial
Cost: \$2,500,000.00


BACKGROUND:

The subject site consists of two lots being Lot 21 DP 774059; Lot 24 DP 838868 with Lot 24 having an abandoned water main running adjacent to the eastern boundary. Investigations revealed that no easement existed regarding the abandoned water main therefore no conditions restricting the proposed development are to be added to the consent.

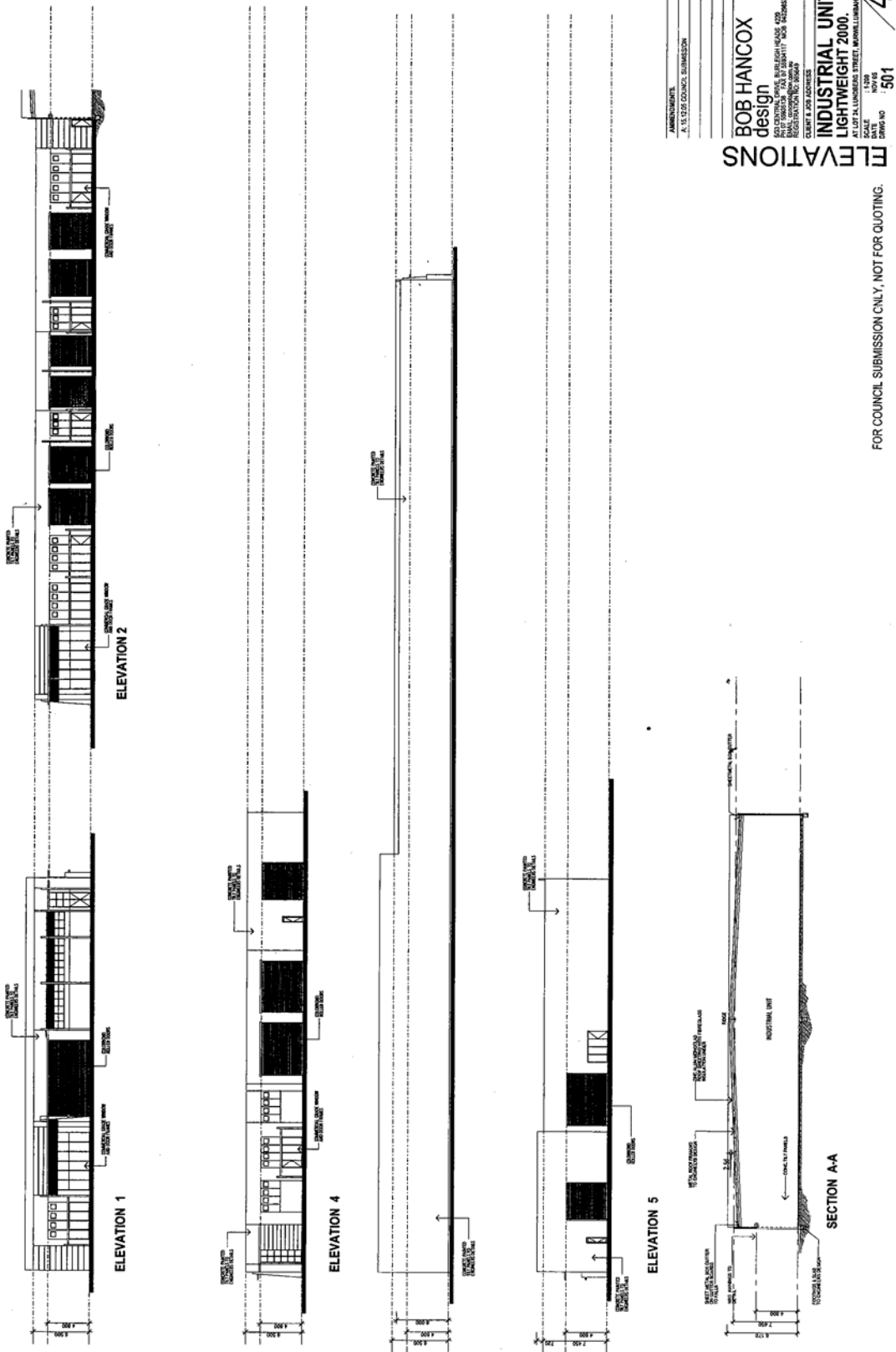
The subject site has pertained several uses mostly relating to the use of the existing shed for storage purposes such as bulky goods for landscape supplies and a hydroponic nursery. The existing shed is proposed to be demolished as part of this application.

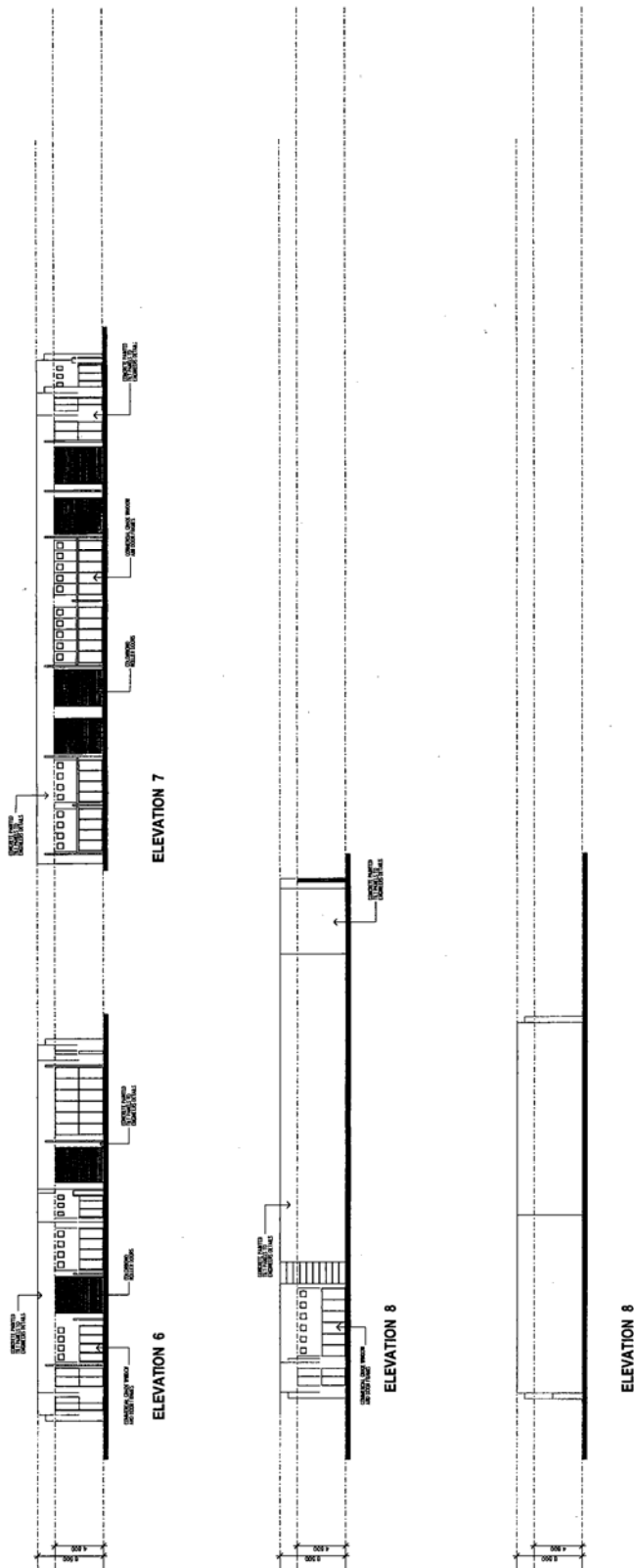
SITE DIAGRAM:



<p>© TWEED SHIRE COUNCIL 2006 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 816 Murwillumbah, NSW, 2484 Tel: (02) 6670 2409 Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i> Lot 21 DP 774059 Hayley Court and Lot 24 DP 838868 Lundberg Drive, South Murwillumbah</p>		<p>STRATEGIC PLANNING UNIT Site Plan File: N:\MapInfo 7...VA4P Site Plan.Wor Author: J.Batchelor Date: 18/July/2006 Scale: 1:5,000 Sheet: 1 of 1</p>
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ELEVATIONS:





TWEED SHIRE COUNCIL SUBMISSION
 PROJECT NO. 2006/011
 DATE: 15 AUGUST 2006
 DRAWING NO. 501

BOB HANCOX
 design
 ARCHITECT
 11/11/06
 5A

INDUSTRIAL UNITS
LIGHTWEIGHT 2000
 SCALE: 1:500
 DATE: NOV 04
 SHEET NO: 501

FOR COUNCIL SUBMISSION ONLY, NOT FOR QUOTING.

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 4(a) Industrial in accordance with the provisions of the Tweed LEP 2000. The objectives of the 4(a) zone are:-

Primary objectives

- *to provide land primarily for industrial development.*
- *to facilitate economic activity and employment generation.*

Secondary objective

- *to allow non-industrial development which either provides a direct service to industrial activities and their work force, or which, due to its type, nature or scale, is inappropriate to be located in another zone.*

The proposed development is considered consistent with the zone objectives.

Clause 15 of the Tweed LEP 2000 requires Council to be satisfied that the subject land has the benefit of essential services prior to issuing the consent. The subject property is serviced with water, sewer, stormwater, power and telecommunications. A stormwater management plan has been provided.

Clause 16 of the Tweed LEP 2000 requires development be carried out in accordance with the height limitation plan. The site has an allowable height limit of three (3) storeys. The proposed development has a maximum height of 8.170 metres with the majority of the building height being 6.5 metres. It is considered that the proposal complies with objectives of the clause.

Clause 34 of the Tweed LEP 2000 requires that only appropriate and compatible development occurs on flood liable land. The subject site is flood liable, however Council Infrastructure & Planning Engineer and Development Assessment Engineer have assessed the application stating that development has proposed to fill the site to 5.25m AHD, with all materials suitable for periodic inundation or above the design flood level. The proposal is considered consistent with adopted flood height for industrial development in the area.

Clause 35 of the Tweed LEP 2000 requires the management of the disturbance of acid sulphate soils, to minimise impacts on water quality, ecosystems, infrastructure and agricultural and urban activities. The subject site is identified as containing Class 3 acid sulphate soils, which applies to works below the natural ground level. No excavations are proposed below the depth of 1 metre, and it is considered unlikely that acid sulphate soils will be exposed. The proposal is considered consistent with this clause.

Clause 39A – Bushfire Protection

The subject site is affected by bushfire as identified by the Bushfire Prone Land Map dated February 2004. The proposed development is to be generally constructed of non-flammable materials to avoid or mitigate the threat from bushfires in addition to the installation of suitable fire hoses and hydrants required under the Building Code of Australia. The proposal is considered consistent with this clause.

Clause 47 of the Tweed LEP 2000 requires that advertising signs:

- (a) conveys advertisers' messages and images while complementing and conforming to both the building on which it is displayed and the character of the locality, and
- (b) does not adversely affect the locality in terms of appearance, size, illumination or overshadowing or in any other way, and
- (c) does not lead to visual clutter through the proliferation of signs, and
- (d) does not detract from the rural character or scenic qualities of the area of Tweed.

The proposed business identification sign has a maximum height of 7.7metres, which includes the provision for each of the eleven (11) units. The sign is located at the front entrance to the property of Lundberg Drive. The proposed sign is considered consistent with the objectives of the clause.

North Coast Regional Environmental Plan 1988

It is considered the proposed development is consistent with the provisions contained within the North Coast REP 1988.

State Environmental Planning Policies

SEPP 64 – Advertising and Signage

The proposed business identification sign is considered to comply with the aims, objectives and the assessment criteria (schedule 1) of SEPP 64, as the sign is compatible with the desired amenity and visual character of an area and is of high quality design and finish.

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

There is no draft Local Environmental Plan (LEP) applicable to this application.

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

Development Control Plan 2 – Site Access and Parking Code

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

Required	Proposed	Complies
1 staff parking space per 100m ² GFA = 43.3 staff parking spaces. The provision for all loading/unloading on site with no reversing on public roads.	49 staff parking spaces. A centralised loading bay is designated on site.	Yes

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

The subject site is identified as being flood liable. The development proposes to fill and level the site to a height of 5.2 metres AHD, which is consistent with the adopted flood height for the area under DCP No.5. The proposal is considered to comply with DCP No. 5.

Development Control Plan 15 - Advertising Sign Code

The proposed business identification pole sign is consistent with the objectives of the plan as the sign is less than 15 metres in height and contains an area less than 44 square metres. The proposed sign is 7.7metres in height with an area of 37square metres. The proposed sign provides a co-ordinated approach to the multiple occupancy of activities on the site, whilst providing a high standard of signage quality that both compliments and is compatible with the character of the proposed building and the area.

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

Clause 92 (1) Government Coastal Policy

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

Clause 92 (2) Applications for demolition

The proposed requires the demolition of the existing shed on Lot 24 DP 838868. A demolition plan has been submitted in conjunction with the Statement of Environmental Effects. Council's Building Services Unit has assessed the application and has imposed appropriate conditions to the consent.

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

The proposed eleven (11) unit industrial development is considered suitable to the subject site and is unlikely to result in any significant adverse impacts to the surrounding natural and built environment or result in adverse social or economic impacts in the locality.

The proposed development provides two access driveways, with the entrance driveway proposed via Lundberg Drive and the exit driveway of Hayley Place. The existing road network is considered sufficient to cater for the impact on traffic movements generated by the proposed development.

Surrounding land uses are similar industrial uses to the proposal, being mini storage sheds, housing manufacturer and a factory for bus manufacturing.

(c) Suitability of the site for the development

The proposed industrial development is to be erected on land zoned 4 (a) Industrial under the Tweed Local Environmental Plan 2000.

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

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

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

(e) Public interest

The proposal has been thoroughly assessed and is considered suitable for the site and is not likely to create any significant adverse impacts on either the built or natural environments in the locality.

OPTIONS:

1. Council to support the development application with conditions.
2. Council to refuse the development application and provide reasons for refusal.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The subject land is generally considered suitable for the proposed development and is not likely to create any significant adverse impacts on either the built or natural environments in the locality. The increase in traffic associated with the proposed development can be catered for within the existing road network.

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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P15 [PD-PC] Development Application DA05/1225 for the Establishment of a Pet Boarding Facility, including a Manager's Dwelling (Catering for Cats Only) at Lot 1 DP 855444 Binalong Court, Upper Burringbar

ORIGIN:

Development Assessment

FILE NO: DA05/1225 Pt1

SUMMARY OF REPORT:

Council has received a Development Application for the establishment of a pet boarding facility, including a manager's dwelling catering for cats only. The pet boarding establishment would be managed and operated by the owners/occupiers of the property.

The Development Application was reported to Council previous Meeting of 25 July 2006 and it was resolved that the Development Application be deferred so that issues and concerns raised by objectors at the meeting can be addressed by Council officers.

The following addresses issues raised by the objectors at the Council Meeting of 25 July 2006 to the proposed Development Application.

1. Conditions of consent

Following a review of the conditions it is considered that condition 53 should be modified to ensure consistency with the requirements of the NSW Rural Fire Service.

2. Site distance concerns

Objectors to the proposal have advised that the available site distance along Upper Burringbar Road west of Binalong Court is 82 to 85 metres. This distance was determined by measurements taken on site by the objectors.

Council received a Detail & Level Survey from Consulting Surveyors B & P Surveys which nominates the available site distance as 90m west of the Binalong Court intersection.

At this stage only the advice provided to Council by the registered Surveyors will be accepted.

The Approach Sight Distance required at this intersection assuming that the 85% speed is 70km/h is 85.0m. On the advice provided by the registered surveyors it is concluded that adequate site distance is available. If the distance measured by the objector is accepted then the Approach Sight Distance requirement is still satisfied if 85m is adopted. If it was proven that the available sight was only 82m the applicant would be requested to carry out works such as line of sight clearing or minor earthworks within the road reserve to achieve the necessary distance. Therefore, notwithstanding the sight distance advice from the objectors it is concluded that satisfactory Approach Sight Distance can be attained at this intersection.

3. Overland flow and surface water discharge

The pet boarding facility building is sited on an elevated spur. Small gullies are located either side of the building. During periods of heavy rain these gullies would be inundated with overland flow from the upstream catchments however the floor level of the building will have sufficient free board so that flooding of the building will not occur. Therefore, it is concluded that the dwelling will be flood free during a large storm event. The construction of the facility will have no adverse impacts on localised flood levels.

The applicant has submitted a Soil and Water Management Plan dated January 2006 for the construction and operation stage of the proposed facility. The Management Plan specifically considers the conceptual stormwater quality management of the development of the existing site.

The total site area is 2.01 Ha. Stormwater currently drains to an adjacent property consisting of an open paddock. This runoff drains towards Burringbar Creek approximately 2-3 km downstream. The proposed development will increase impervious area by approximately 1%. Calculations indicate no onsite storage is required due to increased runoff.

The proposed drainage scheme will route potential sediment and oil loaded flows from the proposed access way to the existing natural flow path. Treatment of storm runoff from the access way is proposed by means of flowing over a considerable length of grass swale drains acting as a filter as specified in Tweed Shire Council's Design Specification D7. Runoff along the access way shall be diverted to grassland swale drains. Excess runoff from the access way will drain overland to Burringbar Creek. Grass swale drains filter oil and silt and is the proposed measure recommended to treat stormwater prior to discharge to the natural watercourse.

Runoff from the driveway and car park area will drain to the proposed culvert crossing located at the access way low point. This runoff will then flow over the proposed grass swale drain discharging treated water into the adjacent property open paddock area ultimately flowing to Burringbar Creek.

The treatment measures for the proposed development are in compliance with the Tweed Urban Stormwater Quality Management Plan, April 2000.

4. Vehicular Access

The applicants have indicated that the maximum slope of the driveway will be 1 in 6 or 9.5°. The long section provided indicates that slopes will not exceed a grade of 1 in 10 or 5.7°.

A review of the existing contours shows that access grades as nominated by the applicant are achievable for access into the property.

The Rural Fire Service have imposed a requirement that access shall comply with Section 4.3.2, Planning for Bushfire Protection 2001. It is considered that the proposed access could be constructed to satisfy the requirements of this document.

It will be the applicants responsibility to ensure that their Construction Certificate Application complies with this document however to provide guidance, condition 53 has been modified to require the construction of the private gravel driveway to 4.0m wide gravel standard.

5. The keeping of other domestic animals on the property

The keeping of other domestic animals on the subject property is permissible subject to the owners of the property being compliant with the Companion Animals Act 1998 and Local Government Act 1993. This has been included as a recommended condition of consent.

6. NSW Rural Fire Service requirements

The objectors raised concern over the conflicting requirements of the NSW Rural Fire Service and the recommended condition of consent for a native buffer plantation along the subject property and the neighbouring property Lot 2 DP 596443.

Condition Number 5 recommended from the NSW Rural Fire Service is:

5. On the eastern, western and northern aspects, the property around the dwelling to a distance of 20 metres or the boundary if less, shall be maintained as an 'Inner Protection Area' (IPA) as outlined within section 4.2.2 in Planning for Bushfire Protection 2001.

On the southern aspect, the property around the dwelling to a distance of 30 metres, shall be maintained as an 'Inner Protection Area' (IPA), as outlined within section 4.2.2 in Planning for Bushfire Protection 2001.

The required buffer strip of planting is to occur on the eastern aspect of the facility. The setback of the proposed facility from the eastern aspect of the property boundary is 40 metres and as such 20 metres width of planting can still occur and as such a native buffer strip can be planted. The NSW Rural Fire Service have also indicated that under the Planning for Bushfire Protection Guidelines plantings can still occur within protection zones.

7. Conclusion

It is concluded that there are no merit based issues that would require the refusal of this Development Application and as such it is recommended that the Development Application be approved subject to the recommended conditions of consent.

The Development Application was notified for a period of fourteen (14) days in which several submissions were received that have been considered further in this report. The main issues of concern of the proposal include, threat to wildlife, noise and odour impacts, effluent disposal, access and traffic, stormwater impacts and operational impacts and issues.

After an assessment of all the submissions and issues raised and assessment of the Development Application it is recommended that the proposal be approved subject to stringent conditions of consent. It is also recommended that the consent be limited to an operating period of two (2) years from the date of the Final Occupation Certificate issued for the building, after which time any extension will require an approval under a Section 96 Application. This will provide Council with an opportunity to further assess the level of acceptability of the development.

The assessment of the proposal against the relevant planning instruments has not identified any areas of non-compliance that would warrant refusal of the proposal. The application is therefore recommended for conditional approval.

RECOMMENDATION:

That Development Application DA05/1225 for the establishment of a pet boarding facility, including a manager's dwelling (catering for cats only) at Lot 1 DP 855444, Binalong Court Upper Burringbar be approved subject to the following conditions: -

GENERAL

- 1. All walls within the animal keeping areas shall be of solid construction to the satisfaction of the Director of Environment and Community Services. Solid construction shall be masonry and shall not include timber frame or cavity construction. Wall surfaces shall be smooth and impervious.**
- 2. Prior to the occupation of the Building the existing cabin/dwelling (approved under DA03/1438 by Council on 12 March 2004) is to be decommissioned and rendered uninhabitable by the removal of the kitchen sink, cooking facilities and laundry facilities.** [GENNS01]
- 3. The garage approved under DA02/1896 determined by Council on 13 December 2002 must not be used for human habitation or occupation.**

4. Laundry facilities are to be provided to the Pet Boarding Facility/Managers Residence Building in accordance with Part 3.8.3 of the Building Code of Australia Volume II.
5. Cats shall be kept within the enclosed boarding area at all times and shall not be permitted to roam. [GENNS02]
6. All internal surfaces within the cat boarding area shall be impervious, solid, washable materials.
7. Not more than 52 cats shall be boarded or kept at the premise at any time.
8. All solid waste from pens, including manure, soiled litter and soiled bedding, shall be removed from pens on a daily basis. This material shall be stored and disposed to the satisfaction of the DECS and shall not be directed to the OSSMF. Waste materials shall be disposed of off site by way of an approved waste collection and disposal service not less than once per week unless an alternative has been approved in writing by the DECS.
9. Wastes shall be stored in a suitable container with a tight fitting lid and suitably bagged prior to placement in the bin.
10. Composting of waste materials on the site is not permissible without the prior inspection and approval of the proposed composting site/activities by Council's EHO. Composting shall not be permitted to impact the amenity of any premise.
11. The cleaning of cattery pens shall be through a steam cleaning or other approved procedure which enables hygienic pen areas without generating large volumes of waste water.
12. Offensive noise shall not be caused or permitted to be emitted from the premise. Noise shall not be audible within any habitable premise between 9pm and 7am (night), and shall not exceed background levels by more than 5dB(A) between 7am and 9pm (day).
13. All animal foods shall be stored in a dry and healthy state, free from vermin. The premise, including animal sleeping areas, shall be maintained in a healthy condition and free from vermin and odour.
14. The pet boarding facility shall be constructed and operated in accordance with the Animal Welfare Code of Practice No. 5, Care and Management of Dogs and Cats in Boarding Establishments (NSW Agriculture, October 1996).
15. The on-site sewerage management system is not to be utilised for treatment or disposal of cat faecal matter or urine.

16. The windows and louvers to the cattery shall be capable of being closed and shall be effective in preventing the escape of odours from the cattery. These windows and louvers shall be kept closed where directed in writing by Council. The cattery shall not be permitted to impact the amenity of any premise by way of odour.
17. The premises shall not be used for the keeping of dogs nor shall it be used for any other dog related services such as dog grooming, boarding or dog washing.
18. A hand basin provided with warm water shall be provided within the cat boarding work area.
19. The pick up and drop off of cats shall be restricted to 8.30am to 4.30pm Monday to Saturday and 3.00pm to 5.00pm on Sundays and Public Holidays.
[GENNS03]
20. This consent is limited to a period of two (2) years from the date of the Final Occupation Certificate of the building. If the development is to go beyond this period a Section 96 Application will need to be lodged at least two (2) months prior to the expiry of the consent.
[GENNS04]
21. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.
[GEN0045]
22. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.
[GEN0115]
23. Any proposed advertising structures/signs are subject to a separate development application and approval from Council, where statutorily required.
[GEN0065]

24. The development shall be completed in accordance with the Statement of Environmental Effects, Drawing Number 1512/05 prepared by Ian Webb Building Design and dated October 2005, Plan No 03 4945 Sheets 01, 02, 03, 04 and 06 prepared by John Robinson Design & Drafting Services and dated January 2004 and correspondence and documentation received by Council dated 6 February 2006 (Document No. 1341097), correspondence received by Council dated 22 December 2005 (Document No. 1320980), correspondence received by Council dated 28 November 2005 (Document No. 1313989) and the submitted Soil and Water Management Plan dated January 2006, except where varied by the conditions of this consent.

[GEN0005]

25. The keeping (including the micro-chipping and registration) of other domestic animals on the property shall be done so in accordance with the Companion Animals Act 1998 and Local Government Act 1993.

[GENNS05]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

26. Prior to the issue of a Construction Certificate, Council shall be provided with a detailed drawing or section which illustrates "solid wall construction".

[PCCNS01]

27. Any carparking floodlighting shall not spill beyond the boundaries of the site. Lighting shall comply with AS 4282 and other relevant Australian Standards. A plan of the lighting shall be approved by the Principal Certifying Authority PRIOR to the issue of a Construction Certificate.

[PCC0055]

28. 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: \$1,255
S94 Plan No. 4 (Version 4.0)
Sector11_4

[PCC0215]

29. 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]

30. 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]

31. Details of the intended method of water storage are to be submitted to the Principal Certifying Authority for approval. Please note that the minimum storage capacity required shall be 20,000 litres.

[PCC1215]

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

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

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

[PCW0255]

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

[PCW0705]

PRIOR TO COMMENCEMENT OF WORK

34. 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]

35. 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]

36. Residential building work:

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

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

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

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

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

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

[PCW0235]

37. 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]

38. The building is to be protected from attack by termites by approved methods in accordance with the provisions of Australian Standard AS 3660.1, and:

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

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

[PCW0775]

39. 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]

40. All roof waters are to be disposed of through properly jointed pipes to the street gutter, interallotment drainage or to the satisfaction of the Principal Certifying Authority. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZS3500.3.2. Note All roof water must be connected to an interallotment drainage system where available. A detailed stormwater and drainage plan is to be submitted to and approved by the Principal Certifying Authority prior to commencement of building works.

[PCW1005]

41. 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]

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

[PCW1095]

DURING CONSTRUCTION

43. 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]

44. 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]

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

[DUR0415]

46. All work associated with this approval is to be carried out so as not to impact on the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -

- Noise, water or air pollution
- Minimise impact from dust during filling operations and also from construction vehicles
- No material is removed from the site by wind

[DUR1005]

47. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. All such materials should be chipped on site and used in landscaping unless it is not possible due to size, non suitability of the material or some other limitation, in which case the material will be disposed of at Council's Stotts Creek depot. [DUR1015]
48. 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]
49. 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]
50. Vehicles leaving the premises shall be sufficiently free from dirt, aggregate or other materials such that materials are not transported onto public roads. [DUR2415]
51. 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]

52. The On-site Sewage Management System shall be installed in accordance with an Approval to Install an On-site Sewage Management System under Section 68 of the Local Government Act 1993. [DUR2775]
53. Provision of adequate vehicular access in accordance with Council's "Access to Property" pamphlet, including the following specific work
- (a) Bitumen sealing of access from the road carriageway to the property boundary of the lot. The access shall be 4.0m in width.
 - (b) Provision of 375mm minimum diameter pipe culvert crossings, including precast headwalls, in accordance with Councils adopted Development Design and Construction Specifications.

- The proposed driveway within the allotment shall be constructed to a 4.0m wide gravel standard. [DUR0045]
54. The provision of 5 off street car parking spaces including parking for the disabled where applicable. The layout and construction standards to be in accordance with Development Control Plan No. 2 - Parking Controls, the Building Code of Australia and AS 2890. [DUR0085]
55. All proposed building pads are to be filled to a minimum 300mm above the Q100 design flood level, including provision for any localised overland flow. [DUR1375]
56. The proponent must not undertake any work within the public road reserve without giving Council's Engineering & Operations Division forty eight (48) hours notice of proposed commencement. Failure to comply with this condition may result in a stop work notice being issued and/or rejection of the works undertaken. [DUR1845]
57. The proponent shall comply with all requirements tabled within any approval issued under Section 138 of the Roads Act. [DUR1885]
58. 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]
59. The wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of the buildings with direct line of sight to the proposed building. [DUR0245]
60. All 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]
61. 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]
62. 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]

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

[DUR0445]

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

Please note timber retaining walls are not permitted.

[DUR0835]

65. The development is to be carried out in accordance with the current BASIX certificate and schedule of commitments approved in relation to this development consent.

[DUR0905]

66. 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]

67. No portion of the structure may be erected over any existing sullage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains.

[DUR1945]

68. 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]

69. 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]

70. 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]

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

[DUR2515]

- 72. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard.**

[DUR2535]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

- 73. It is a condition of an approval to install, construct or alter a sewage management facility that the facility is not used (or used as altered) until the Council has given the applicant for approval notice in writing that it is satisfied that the facility has been installed, constructed or altered in substantial accordance with the approval.**

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

[POC1025]

- 74. 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]

- 75. 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]

76. Prior to the issue of a final occupation certificate adequate proof and/or documentation is to be submitted to the Principal Certifying Authority to identify that all commitment on the BASIX "Schedule of Commitments" have been complied with.

[POC0435]

77. Portable fire extinguishers containing an extinguishing agent suitable for the risk being protected must be installed in accordance with Australian Standard AS 2444 "Portable Fire Extinguishers - Selection and Location" and Part E1.6 of the Building Code of Australia.

[POC0515]

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

[POC1035]

79. A native buffer strip consisting of fast growing plant species shall be planted along the property boundary adjoining Lot 2 DP 596443 prior to the commencement of building works for natural screening purposes. A landscaping plan depicting the plant species and planting area must be submitted to Council for approval by the General Manager or his delegate prior to the issue of a Construction Certificate for the building.

[POCNS01]

USE

80. 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]

81. All activities associated with the occupancy of the building are to comply with the Protection of the Environment Operations Act, 1997.

[USE0135]

82. Except as may be expressly provided in the approval, the approval holder must comply with section 120 of the Protection of the Environment Operations Act 1997 prohibiting the pollution of waters.

[USE0155]

83. 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]
84. All external artificial lighting shall be shielded where required to the satisfaction of Councils General Manager or his delegate to ensure that the spill of light or glare from such lighting does not create a nuisance to any adjoining or neighbouring premises. [USE0205]
85. All wastes shall be collected, stored and disposed to the satisfaction of the General Manager or his delegate. [USE0875]
86. The premises shall be maintained in a clean and tidy manner. [USE0965]
87. A person must not commence a change of building use for the whole or any part of an existing building unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units). [USE0395]

CONDITIONS IN ACCORDANCE WITH SECTION 79BA OF THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979 FROM THE NSW RURAL FIRE SERVICE

1. Construction shall comply with AS3959 - 1999 level 1 'Construction of Buildings in bushfire prone areas'.
2. The structure shall incorporate gutterless roofing or leafless guttering to prevent the build up of flammable material.
3. In recognition that no reticulated water supply exists, a 10,000 litre dedicated water supply tank shall be provided and a minimum of 3kW (5hp) petrol or diesel powered pump. A 65mm storz fitting and ball or gate valve shall be installed in the tank.
4. Access shall comply with section 4.3.2 Planning for Bushfire Protection 2001.

5. On the eastern, western and northern aspects, the property around the dwelling to a distance of 20 metres or the boundary if less, shall be maintained as an 'Inner Protection Area' (IPA) as outlined within section 4.2.2 in Planning for Bushfire Protection 2001.

On the southern aspect, the property around the dwelling to a distance of 30 metres, shall be maintained as an 'Inner Protection Area' (IPA), as outlined within section 4.2.2 in Planning for Bushfire Protection 2001.

REPORT:

Applicant: Ms A Risk and Mr G Locke
Owner: Mr GC Locke
Location: Lot 1 DP 855444 Binalong Court, Upper Burringbar
Zoning: 1(a) Rural
Cost: \$200,000

BACKGROUND:

Council has received a Development Application for a proposed pet boarding facility, including a manager's residence catering for cats only at Lot 1 DP 855444 Binalong Court, Upper Burringbar. The location of the proposal is illustrated under the Site Diagram and the property contains an area of 2.011 hectares. The land has a 212.305 metre frontage to Binalong Court and access to the site is from Binalong Court.

The site is undulating rising from the eastern boundary towards the north western boundary. The development site itself is located on relatively level land. The lower portion of the property has been predominantly cleared. Medium timber cover exists along the north western portion of the site.

A review of Council's records and previously approved Development Applications indicate that the following approvals have been issued over the subject land:

- DA02/1896 Garage. Was approved under delegated authority on the 13 December 2002 subject to standard conditions of consent.
- DA03/1438 Erection of a Cabin. Was approved under delegated authority on 12 March 2004 subject to standard conditions of consent.
- DA04/0503 Dwelling. Was approved under delegated authority on 4 August 2004 subject to standard conditions of consent.

Under the Tweed Local Environmental Plan 2000 within the 1(a) Rural Zone only one dwelling is permitted on the same allotment unless in an attached format. Council's Building Services Unit issued Development Consent DA03/1438 on 12 March 2004 for the erection of a cabin (dwelling) and later issued Development Consent DA04/0503 for the erection of a dwelling house on 4 August 2004. The cabin has been constructed however Development Consent DA04/0503 has not been acted upon and as such the dwelling has not been erected.

The subject Development Application is utilising the same building footprint that was approved under DA04/0503. Under the present application the courtyard area of DA04/0503 has now been changed to include cattery pens and the living area has been changed to represent a manager's dwelling, reception area, store and workshop area.

In order to avoid any inconsistencies with the Tweed Local Environmental Plan 2000 it is proposed, by conditions of consent, to seek the surrender of Development Consent DA04/0503 for the approved but not yet constructed dwelling and the decommissioning of the cabin to a non-habitable use, as part of any approval for the cattery. In this regard, it is proposed delaying the decommissioning of the cabin until the occupation stage of the cattery to allow residence on-site during construction of the cattery and attached manager's residence if approved.

There are currently no boarding facilities for cats within the locality. The closest facilities are at Clothiers Creek and Dulguigan to the north and Alstonville and Lismore to the south.

The owners of the facility if approved will have to be mindful of their obligations under the Companion Animals Act 1998, the Local Government Act 1993 and their compliance with any conditions of consent issued under the Environmental Planning & Assessment Act, 1979 in the Notice of Determination. Council will be able to monitor the facilities operations and ensure compliance with any conditions of consent and the relevant Acts.

SITE DIAGRAM:



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Tweed Shire Council
 Lot 1 DP 855444
 Binalong Court, Upper Burringbar



STRATEGIC
 PLANNING UNIT
**Site
 Plan**

File: N:\MapInfo 7...IA4P Site Plan.Wor Author: J.Batchelor Date: 27/June/2006 Scale: 1:15,000 Sheet: 1 of 1

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

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

Tweed Local Environmental Plan 2000

The subject site is zoned 1(a) Rural under the Tweed Local Environmental Plan 2000 and the proposed use is defined as an 'animal establishment' and is permissible with consent.

The objectives of the 1(a) Zone are:

Primary Objectives:

- To enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilisation purposes and associated development.
- To protect rural character and amenity.

Secondary Objective:

- To enable other types of development that rely on the rural or natural values of the land such as agri and eco-tourism.
- To provide for development that is not suitable in or near urban areas.
- To prevent the unnecessary fragmentation of development of land which may be needed for long-term urban expansion.
- To provide non-urban breaks between settlements to give a physical and community identity to each settlement.

Clause 15 of the Tweed LEP 2000

Clause 15 of the Tweed LEP 2000 relates to the availability of essential services to the proposed development. Water would be supplied by roof water collection tanks. Effluent disposal and waste are addressed later on in this report.

Clause 39A of the Tweed LEP 2000

The proposed development is located in a bushfire prone area as identified on Council's GIS System. As such the Development Application was referred to the NSW Rural Fire Service in accordance with Section 79BA of the Environmental Planning & Assessment Act 1979. Based upon an assessment of the plans and documentation received for the proposal, the NSW Rural Fire Service, in respect to bush fire matters, provided the advice that the development should have the following conditions that have been included as recommended conditions of consent:

1. Construction shall comply with AS3959 - 1999 level 1 'Construction of Buildings in bushfire prone areas'.
2. The structure shall incorporate gutterless roofing or leafless guttering to prevent the build up of flammable material.
3. In recognition that no reticulated water supply exists, a 10,000 litre dedicated water supply tank shall be provided and a minimum of 3kW (5hp) petrol or diesel powered pump. A 65mm storz fitting and ball or gate valve shall be installed in the tank.
4. Access shall comply with section 4.3.2 Planning for Bushfire Protection 2001.
5. On the eastern, western and northern aspects, the property around the dwelling to a distance of 20 metres or the boundary if less, shall be maintained as an 'Inner Protection Area' (IPA) as outlined within section 4.2.2 in Planning for Bushfire Protection 2001.

On the southern aspect, the property around the dwelling to a distance of 30 metres, shall be maintained as an 'Inner Protection Area' (IPA), as outlined within section 4.2.2 in Planning for Bushfire Protection 2001.

North Coast Regional Environmental Plan 1988

Clause 12 of the North Coast Regional Environmental Plan 1988 is applicable to the Development Application. Clause 12 requires Council to consider the potential impact of development on agricultural activities and whether the development will cause a loss of prime agricultural land. In this regard the following assessment has been made:

- The site is classified as Class 4 and 5 by NSW Agriculture and as such is not prime crop or pasture land.
- The adjoining land to the west and north is used for rural living purposes and the land to the east and south is used for grazing and rural living purposes.
- The type of development proposed would not be sensitive to the agricultural pursuits, which are undertaken in the locality.
- The development would not adversely affect surrounding agricultural land.

State Environmental Planning Policies

No State Environmental Planning Policies are applicable to the proposed development.

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

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

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

The following Development Control Plan is applicable to the Development Application.

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

The applicant is proposing the provision of five (5) additional car parking spaces. The DCP does not provide any specific off-street carparking provisions for animal establishments. An analysis of comparative rates for other developments has revealed that this number of car parks should adequately service the proposed development. For example, a small shopping centre has a rate of 1 car park per 17 vpd. In this development five (5) spaces will be provided for 26 vpd.

The applicant will be required to construct the car parks to a bitumen sealed standard. Tweed Road Contributions Plan No. 4 is also applicable to the proposed development. Further information on access and traffic is provided further on in this report.

Development Control Plan No. 15 – Advertising Signs Code

The Development Application does not propose the erection of any signage within the subject land. As such, any consent will be conditioned that separate approval is obtained for any proposed signage.

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

Satisfactory.

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

Noise and Odour

Noise generated by the proposed cattery was a concern that was raised in several submissions. Council's Environment and Health Services Unit has considered the potential noise impacts on adjoining property owners. To alleviate any potential noise issues the applicant has advised that 'The windows shown on the plan would be fixed. The louvers shown on the plan would be capable of being opened. This would only occur during favourable climatic conditions. The louvers would be fitted with crim-mesh screens.' Council's Environment and Health Services Unit has recommended conditions of consent to limit any potential noise and odour impacts. The Unit has recommended a condition that 'Offensive noise shall not be caused or permitted to be emitted from the premise. Noise shall not be audible within any habitable premise between 9pm and 7am (night), and shall not exceed background levels by more than 5dB(A) between 7am and 9pm (day).' Council's Environment and Health Services Unit will periodically monitor noise and odour from the cattery during times of operation of the facility.

Effluent Disposal and Waste Treatment

It is proposed to collect and dispose of cat faeces, solid litter and bedding as solid waste. The manure is to be removed from the pens at least once daily in accordance with the Animal Welfare Code of Practice No. 5 "The care and management of cats in animal boarding establishments" by NSW Agriculture.

It is proposed to use off-site disposal of the animal manure, soiled litter and bedding via a commercial garbage collection service of minimum 1 x 240L wheelie bin collected weekly. It is essential that all solid waste from the cattery is stored in a suitable container with a tight fitting lid, and bagged prior to placement in the bin. As such a condition has been placed on the consent recommending this. The applicants propose to utilise the services of a Waste Contractor to remove the solid waste from the site on a weekly basis.

To improve the sustainability of the cattery operations, it is proposed in time to install a proprietary worm farm capable of digesting the solid waste products on-site. The solid waste is to be digested on-site by worm action. The worms are to be used in a proprietary application using a minimum of two raised beds fitted with lids. The castings and leachate from the worm beds are proposed to then be applied to the land.

The commercial collection of the solid waste is proposed to be suspended when the worm farms are operating efficiently and effectively without odour. A number of operational considerations need to be implemented and addressed, to achieve maximum efficiency of the worm farm and enable digestion of the typically high nitrogen content and salts of the cat faeces. A recommended condition of consent is that prior to ceasing the commercial garbage collection of the cattery waste, an inspection by a Council Environmental Health Officer be carried out to assess the operational status of the worm farm. The condition recommended is "Composting of waste materials on the site is not permissible without the prior inspection and approval of the proposed composting site/activities by Council's Environmental Health Officer."

In summary no waste produced from the proposed cattery facility will be treated on-site by the on-site sewerage management facility. All waste from the cattery will be trapped in a suitable container with a tight fitting lid and removed weekly by a garbage collection service. The commercial collection of the solid waste will be suspended only when the worm farms and composting are operating efficiently and effectively without odour after approval by Council's Environment and Health Services Unit.

(c) Suitability of the site for the development

Context and Setting

In the context of local visual amenity, the proposal would have minimal impact. No major earthworks or modifications to the landscape are necessary to implement the proposal. The proposal would be compatible with the visual character and amenity of the locality. The usage of the facility for a pet boarding establishment catering for cats only will need to be fully compliant with the recommended conditions of consent to ensure that the facility has limited impacts on adjoining properties. Given that the facility is to house cats only, the physical separation distances to other dwellings appear to be adequate to prevent any unreasonable amenity impacts.

Due to the nature of the use and limiting the facility to cats only, there should be limited noise impacts associated with the proposed development. Certain conditions of consent will be imposed concerning noise to ensure that no adverse impacts will be caused. The construction materials proposed would further mitigate any noise impacts on surrounding properties.

Dwelling Buffer

Concern was raised about the proposal to have the Managers Residence directly connected to the cattery building and the proposed development's buffer distance from nearby adjoining properties. This has been researched with the Department of Primary Industries and NSW Health. The Department of Primary Industries and NSW Health advised that they do not have any policy requirements in this regard. Given the cleaning and waste disposal requirements for the cattery, it is not considered likely that there would be health implications of having the dwelling directly attached to the cattery.

BASIX Certification

The applicant has lodged the required BASIX Certification to demonstrate that the Manager's Residence component of the building will meet with the NSW government's requirements for sustainability. The building received a rating of 46 for Water (target being 40), a pass for thermal comfort and a rating of 33 for energy (target being 25).

Traffic Access

Council's Engineering Development Assessment Department has assessed the proposal. Before a final determination was to be provided the applicant was requested to submit additional information relating to traffic matters. These being:

1. Provide to Council the available sight distance at the intersection of Upper Burringbar Road and Binalong Court.
2. Provide to Council the centreline longitudinal grade of Binalong Court from the intersection of Upper Burringbar Road to the access point of the proposed development.

The applicant has provided the additional information relating to the longitudinal grade of Binalong Court and the available sight distance at the intersection of Upper Burringbar Road and Binalong Court. A review of this information shows that the maximum grade of 19.6% and the available sight distance of 90m complies with adopted standards and is therefore supported.

The applicants were requested to provide a long section for Binalong Court. This long section was provided on Drawing No. 01942 D and shows that the maximum grade for Binalong Court does not exceed 19.6 %.

The subdivision creating Binalong Court was approved under DA S92/121 and therefore the requirements of the old DCP No. 16 applied. Section 6.4.9 of the old DCP No. 16 requires road grades to be in accordance with table 6.3. Table 6.3 nominates the desirable maximum grade for a rural estate at 16% and the absolute maximum at 20%.

Section 6.4.9 also allows for: -

“Grades up to the absolute maximum will be permitted only where no reasonable alternative demonstrably exists and limited to 100m sections.”

The additional information provided by the applicant shows the vertical alignment of Binalong Court to be satisfactory.

The proposed access to the subject property off Binalong Court is located clear of any intersection. The intersection of Binalong Court and Upper Burringbar Road was constructed under an approved Council subdivision and it is assumed that the sight distances are compliant with Council's minimum standard. A visual inspection of the intersection appears to show that adequate sight distance is available. Notwithstanding this, the applicants could be requested to provide the available sight distance at this intersection.

The applicants were requested to provide details of the available sight distance at the intersection of Upper Burringbar Road and Binalong Court. This information was provided on Drawing No. 01942 D and shows that the minimum sight distance to the west of Binalong Court is 90m.

Sight distance criteria for rural roads is found in Austroads Part 5 – “Intersections at Grade”. Currently Upper Burringbar Road has a speed sign environment which is “D” restricted. In other words motorists must drive to suit the conditions.

After discussions with the Traffic and Transport Engineer it has been concluded that the 85% speed for this section of road is 70km/h. Applying table 5.3 the intersection sight distance with a reaction time of 2.0 seconds is 140m. The intersection sight distance is the desirable sight distance that should be provided if possible.

Approach Sight Distance is the minimum requirement to provide the driver of a vehicle adequate distance to observe the roadway layout and to provide sufficient time to react and stop if necessary. Applying table 5.1 and assuming that the 85% speed is 70km/h the approach sight distance is 85.0m (2.0 second reaction time).

It is reasonable to apply the Approach Sight Distance in this situation and therefore the available distance of 90m provides sufficient distance for a motorist to react and stop.

A four (4) metre wide gravel driveway provides access from Binalong Court to the subject property. This access will require upgrading to a 3.0m wide, 2 coat bitumen seal on a minimum 150mm depth road base from the edge of the existing sealed pavement in Binalong Court to the car parking area adjacent the proposed dwelling.

Sight distance for this access complies with the requirements of the Design Specifications.

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

The Development Application was notified for a period of fourteen (14) days between Wednesday 2 November 2005 and Wednesday 16 November 2005 in accordance with Council's Development Control Plan No 42 – Public Notification Policy. During the notification period a total of five (5) submissions were received. After the submission period concluded Council received a further two (2) submissions and a submission in the form of a petition against the proposal.

The main issues raised in the submissions received are outline below and a response to them is then considered.

Issue	Impact	Comment
<p>1. Threat to wildlife A number of submissions raised concern that the establishment of a pet boarding facility would cause a threat to the wildlife and the possibility of cats escaping.</p>	<ul style="list-style-type: none"> • The cats will be kept in a domestic cattery and will not be feral and will require full vaccination certificates and will be fully enclosed 24 hours a day. A recommended condition of consent is that cats shall be kept within the enclosed boarding area at all times and shall not be permitted to roam. • Double (4 to the outside) doors and solid pane windows limit any possibility for the cats to escape and damage local flora and fauna. 	<p>Refusal of the Development Application or modification on this matter is not considered warranted.</p>
<p>2. Noise Impacts A number of submissions raised concern over the excessive noise likely to be generated by the facility.</p>	<ul style="list-style-type: none"> • It has been demonstrated that cats do not make excessive noise when measured in decibels. When coupled with a rendered besser brick construction with double glazed solid panes of glass for each enclosure it is unlikely that noise above that of the surrounding rural area would be generated. Council's Environment and Health Service's Unit has considered the proposal and the likely noise impacts, and has recommended conditions for the development consent. 	<p>Refusal of the Development Application on this matter is not considered warranted.</p>

Issue	Impact	Comment
<p>3. Odour Impacts A number of submissions raised concern over potential odour problems the facility may generate as a result cause a loss in amenity.</p>	<ul style="list-style-type: none"> • There are new ways to dispose of cat effluent other than the traditional practices. Dolomite and organic based kitty litters have long surpassed clay litters with their ability to absorb any odours and when regularly cleaned (twice a day in a domestic cattery). Modern catteries have limited odours, smells or scents. The units are cleaned each day and kitty trays are cleared twice daily. Council's Environment and Health Service's Unit has considered the proposal and the likely odour impacts, and has recommended conditions for the development consent. 	<p>Refusal of the Development Application on this matter is not considered warranted.</p>
<p>4. Effluent Disposal A number of submissions raised concern over effluent disposal and the disposal of cat waste.</p>	<ul style="list-style-type: none"> • The approved on site sewerage treatment system currently on the property will not receive 'cat waste'. A condition of consent stating that 'The on-site sewerage management system is not to be utilised for treatment or disposal of cat faecal matter or urine' has been recommended. • The current system will only accommodate the waste generated by the Managers Residence and any 'visitor waste'. • The proposed cattery facility would utilise the services of a Waste Contractor to remove all solid waste from the cattery. This service would be on a weekly basis. A specifically labelled container would be provided by the waste collection service for this purpose. Effluent and Waste Treatment is further considered previously in this report. 	<p>Refusal of the Development Application on this matter is not considered warranted.</p>

Issue	Impact	Comment
<p>5. Access and Traffic A number of submissions raised concern of the proposed access to the subject site and potential traffic problems that have been addressed earlier on in this report.</p>	<ul style="list-style-type: none"> See Traffic Access under suitability of the site for the development. 	<p>Refusal of the Development Application on this matter is not considered warranted.</p>
<p>6. Rural Character and Amenity</p>	<ul style="list-style-type: none"> Some submissions received raised issues of the proposed facility adversely affecting the quiet rural amenity of the area. The Zoning of the land is 1(a) Rural under the Tweed Local Environmental Plan 2000 and the proposal is defined as an 'animal establishment' that is permissible with development consent. It has been demonstrated that the applicant has addressed the main issues and as such the proposal does not warrant refusal on the basis that it will adversely affect the rural character of the area. A two (2) year operational period allows Council the opportunity to assess the operational details of the cattery and determine whether or not the facility should cease operation or continue. As such protection is given to the immediate property owners to ensure the facility is fully compliant with any conditions imposed on the development consent. 	<p>Refusal of the Development Application on this matter is not considered warranted.</p>

Issue	Impact	Comment
<p>7. Number of Cats and Operational Details</p> <p>Some submissions received raised concern over the number of cats likely to be boarded and the expansion of the facility to cater for dogs and other dog related business activities.</p>	<ul style="list-style-type: none"> • There are 26 cat enclosures proposed and 3 holding cages, a reception/office area, storage room, workshop area and associated Managers Residence. • The cattery is able to accommodate 26 different client's cats. Occasionally two cats from the same client may stay in the one enclosure. So therefore, if all units were at capacity with the same client cats, there could be two in every enclosure, a maximum of 52. It has been indicated that this is unlikely with the projected peak period only seeing about 26-36 cats at any one time. A condition of consent has been recommend that 'Not more than 52 cats shall be boarded or kept at the premises at any time.' • The facility would only be open to customers to drop off and pick up their cats from 8.30am to 4.30pm, Monday to Saturday and 3.00pm to 5.00pm on Sundays. A condition of consent has been imposed stating that 'The pick up and drop off of pets shall be restricted to 8.30am to 4.30pm Monday to Saturday and 3.00pm to 5.00pm on Sundays and Public Holidays. • The proposed facility is to cater for cats only and the proposal will definitely not cater for the boarding, washing or grooming of dogs and as such a condition of consent will be imposed on the development consent stating this. 	<p>Refusal of the Development Application on this matter is not considered warranted.</p>
<p>8. Property Values</p>	<ul style="list-style-type: none"> • Some submissions raised concern of the possible loss of 	<p>Refusal of the Development</p>

Issue	Impact	Comment
	amenity caused by the facility and as such a loss in property values. It is speculation to say that a proposal such as this will cause an adverse effect on Real Estate prices for adjacent lots and as such Council cannot consider this.	Application on this matter is not considered warranted.

(e) Public interest

Having consideration to the matters raised in this report it can only be concluded that on a merit assessment the proposed development is not contrary to the public interest.

OPTIONS:

1. Approve the application subject to appropriate conditions.
2. Refuse the application with appropriate reasons for refusal.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should Council Resolve to approve the application in line with Option No.1 there will be no direct impact upon Council's budget or forward estimates. Should Council resolve not to approve the application legal costs will be incurred should the applicant appeal the decision in the NSW Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The development has attracted public objection, as discussed, but it is considered that the reasons for objection do not warrant refusal or modification of the application. Any consent will be conditioned to ensure that the facility is operated properly so that nearby residents and the amenity of the area is not adversely affected. It is also recommended that the consent be limited to an operating period of two (2) years from the date of the Final Occupation Certificate issued for the building, after which time any extension will require an approval under a Section 96 Application. This will provide Council with an opportunity to further assess the level of acceptability of the development. The ongoing use of the facility beyond two (2) years of the date of the Final Occupation Certificate for the building will also be dependant upon the facilities operation and compliance with the conditions of consent issued.

The proposal has been thoroughly investigated and is considered to be suitable to the site. It is unlikely to cause any significant negative impacts to the surrounding built and natural environment and meets all of Council's applicable requirements within the Tweed Local Environmental Plan 2000 and relevant Development Control Plans. The proposal is therefore considered to warrant conditional approval.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

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P16 [PD-PC] Development Application DA06/0376 for the Erection of a Barn/Shed for the Purpose of Storage and Warehousing of Stock Feed for Wholesale Selling to Retail Outlets at Lot 1 DP 614101, No. 783 Piggabeen Road, Piggabeen

ORIGIN:

Development Assessment

FILE NO: DA06/0376 Pt1

SUMMARY OF REPORT:

Council has received a Development Application for the erection of a barn/shed for the purpose of storage and warehousing of stock feed for wholesale selling to retail outlets at Lot 1 DP 614101, No. 783 Piggabeen Road Piggabeen. The application proposes to construct an 11m x 7m colourbond 'Barn' type shed and associated driveway, parking and loading/unloading area on the subject property.

The Development Application was notified for a period of fourteen (14) days during such time five (5) submissions were received that have been considered further on in this report.

Having regard to the matters raised in this report it is considered that the Development Application should be approved subject to conditions of consent.

RECOMMENDATION:

That Development Application DA06/0376 for the erection of a barn/shed for the purpose of storage and warehousing of stock feed for wholesale selling to retail outlets at Lot 1 DP 614101, No. 783 Piggabeen Road Piggabeen 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. Advertising structures/signs to be the subject of a separate development application, where statutorily required.** [GEN0065]
- 3. The development shall be completed in accordance with the Statement of Environmental Effects and Site Plan dated 12 July 2006 prepared by Fiona Stewart and Plan No 3122-104-1 prepared by HTABA Pty Ltd and dated 2/8/01, Job Number 00045 Drawing Numbers 1-4 prepared by Des Newport Consulting Engineers Pty Ltd and dated March 2000 and Front Portal Plan dated April 2006, except where varied by the conditions of this consent.** [GEN0005]

4. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee. [GEN0045]
5. The largest vehicle used to access the site shall not be any greater than 12 metres in length. [GENNS01]
6. The proposed development is to be used primarily for warehousing and wholesale selling of rural products to other retail outlets. [GENNS02]
7. The barn/shed is to be setback at least 10 metres from the front property boundary. [GENNS03]
8. The barn/shed is to be adequately screened by the planting of native species between the front of the barn/shed and the front property boundary. [GENNS04]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

9. The developer shall provide 2 parking spaces including parking for the disabled in accordance with DCP2, AS 2890 and Austroads Part 11.

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

10. 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. [PCC0065]

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.

11. Prior to the issue of a Construction Certificate the following detail in accordance with Councils adopted Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval. [PCC0075]

(a) copies of compliance certificates relied upon

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

- earthworks
- roadworks/pavement design/driveway
- location of all service conduits (Country Energy and Telstra)

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

- [PCC0985]
12. **Prior to the issue of a Construction Certificate, the applicant shall submit to Council a properly detailed and dimensioned drawn to scale plan of the car parking area and driveway.**
- [PCCNS01]
13. **Section 94 Contributions**

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

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

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

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

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

- (a) **Tweed Road Contribution Plan: \$676
S94 Plan No. 4 (Version 4.0)
Sector4_4**

[PCC0215/PSC0175]

PRIOR TO COMMENCEMENT OF WORK

14. **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-building, 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.
15. 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. [PCW0215]
16. 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. [PCW0225]

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.

17. The proponent shall locate and identify all existing underground services prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure including areas external to the development site where works are proposed. [PCW0985]

[PCW0005]

18. Provision of adequate vehicular access in accordance with Council's "Access to Property" pamphlet, including the following specific work
- (a) Bitumen sealing of both accesses from the road carriageway to the property boundary.
 - (b) Provision of 375mm minimum diameter pipe culvert crossings, including precast headwalls, to each lot in accordance with Councils adopted Development Design and Construction Specifications.
- [DUR0045]
19. The provision of 2 off street car parking spaces including parking for the disabled where applicable. The layout and construction standards to be in accordance with Development Control Plan No. 2 - Parking Controls, the Building Code of Australia and AS 2890.
- [DUR0085]
20. 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]
21. 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) Excavation of subgrade
- (c) Final inspection
- (d) Off Maintenance 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]
22. 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]
23. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

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

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

[DUR2375]

24. 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]

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

[DURNS01]

26. Any domestic water supply roof collection system is to be fitted with a first flush device.

[DURNS02]

DURING CONSTRUCTION

27. Construction site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council: -

Monday to Saturday from 7.00am to 7.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

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

[DUR0245]

29. 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]

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

[DUR0405]

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

[DUR2185]

32. 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]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

33. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0205]

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

[POC1055]

USE

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

[USE0525]

36. All vehicular entry and existing of the subject property is to be in a forward direction.

[USENS01]

37. 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]

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

-

- * 9.00am to 5.30pm - Mondays to Fridays
- * 8.30am to 12.30pm - Saturdays
- * 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]

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. All wastes shall be collected, stored and disposed to the satisfaction of the General Manager or his delegate.

[USE0875]

41. A regular treatment regime shall be implemented at the site for the control of vermin.

[USENS02]

REPORT:

Applicant: Ms F Stewart and Mr D Armstrong
Owner: Ms F Stewart
Location: Lot 1 DP 614101 No. 783 Piggabeen Road, Piggabeen
Zoning: 1(a) Rural
Cost: \$25,000

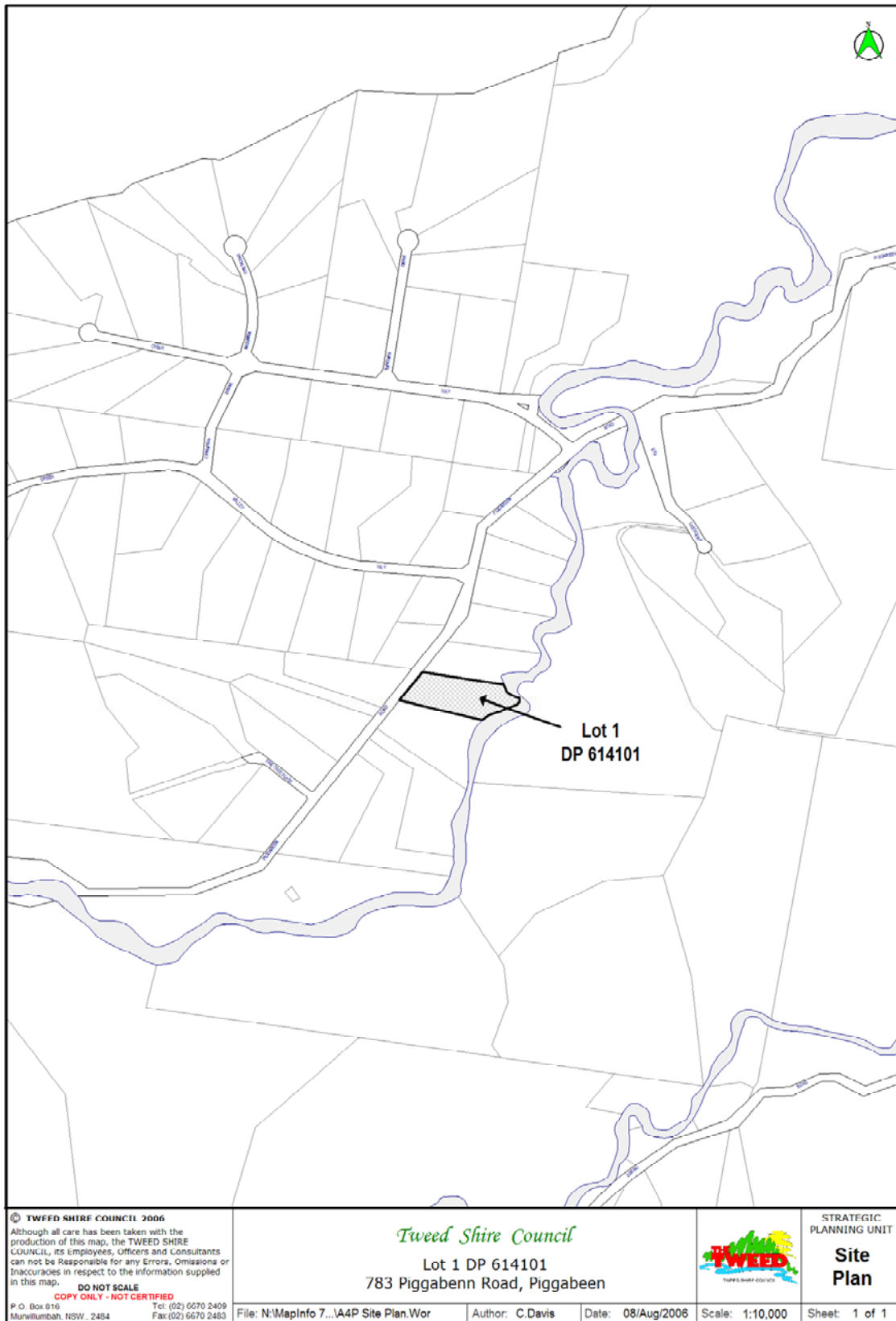
BACKGROUND:

Council has received a Development Application for the erection of a barn/shed for the purposes of warehousing of stock feeds for retail selling at other retail outlets. The land has an area of 1.628 hectares with frontage to Piggabeen Road. The site is presently occupied by a dwelling house located centrally within the site.

The purpose of the barn/shed is for stock feed warehousing and storage for sale to other retail outlets for selling. The applicants intend to run a business that is rural in nature, unobtrusive and small in size that will not disturb the peace or destroy the ambience of the locality.

Having had regard to the submissions raised and the assessment of the proposal against the relevant codes and policies the Development Application is recommended for approval subject to conditions of consent.

SITE DIAGRAM:



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

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

Tweed Local Environmental Plan 2000

The subject site is zoned 1(a) Rural under the Tweed Local Environmental Plan 2000 and the proposed use is defined as an 'warehouse' and is permissible with consent. The proposal is seen to complement the existing rural character and amenity of the area. Similar buildings are already located within the locality. The development also complies with the secondary objectives of the zone.

Clause 39A of the Tweed LEP 2000

The property is partly located in a bushfire prone area as identified on Council's GIS System. As the Development Application was not for residential purposes the NSW Rural Fire Service had no concerns over the proposal and specified that no conditions for the development consent were recommended in accordance with Section 79BA of the Environmental Planning & Assessment Act 1979.

North Coast Regional Environmental Plan 1988

Clause 12 of the North Coast Regional Environmental Plan 1988 is applicable to the Development Application. Clause 12 requires Council to consider the potential impact of development on agricultural activities and whether the development will cause a loss of prime agricultural land. In this regard the following assessment has been made:

- The site is not classified as prime crop or pasture land.
- The adjoining land is used for rural living purposes and for grazing.
- The type of development proposed would not be sensitive to the agricultural pursuits, which are undertaken in the locality.
- The development would not adversely affect surrounding agricultural land.

State Environmental Planning Policies

No State Environmental Planning Policies are applicable to the proposed development.

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

No provisions of any Draft Environmental Planning Instruments apply to the Development Application.

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

The Development Application is affected by Development Control Plan No 2 Site Access and Car Parking. The site has provision for a suitable loading and unloading area and car parking that will be constructed of compacted road base. The driveway entry will be constructed of Asphalt covering 300ml compacted road base over 7.2 metre length drainage pipe with concrete head walls at either end. The largest delivery vehicle is 12 metres in length that will access the site for deliveries. This has been recommended as a condition of consent that the largest vehicle to access to the site is to be no more than 12 metres in length.

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

Satisfactory.

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

Noise and Dust

Noise generated by the proposed development was raised in several submissions. Council's Environment and Health Services Unit has considered the potential noise impacts on adjoining property owners. To alleviate any potential noise issues a condition will be recommended that the facility is to only operate between 9am and 5.30pm Monday to Friday and 8.30am to 12.30pm Saturday only. All delivers and pickups relating to the business are to occur within these approved hours. Council's Environment and Health Services Unit has recommended other conditions of consent to limit any potential noise and odour impacts.

The applicants will not utilise machinery that emanates excessive noise. Dust would be present with hay and the stock feed, however being inside an enclosed building there would be minimal dust escaping and causing a nuisance. The immediate neighbours have stated their acceptance of the barn/shed knowing its intended use.

Impact on wildlife

The proposed development requires the removal of six (6) gumtrees and some undergrowth from the site in the location of the shed footprint and driveway access. A submission was received that indicated there could be an impact on wildlife and especially koalas. It has been demonstrated by a suitably qualified person that the proposal will not create an adverse impact upon any known koalas on the subject site. As such State Environmental Planning Policy No 44 is not applicable to the proposed development.

(c) Suitability of the site for the development

Context and Setting

In the context of local visual amenity, the proposal would have minimal impact. The only earthworks or clearing required to the landscape are those necessary for a cleared site for the proposed barn/shed location. The proposal would be compatible with the visual character and amenity of the locality. The usage of the facility will need to be fully compliant with the recommended conditions of consent to ensure that the facility has limited impacts on adjoining properties. Given the facility and its intended use, the physical separation distances to other dwellings appear to be adequate to prevent any unreasonable amenity impacts. No submissions have been received from the two nearby neighbouring property owners. Several other business undertakings are carried out within the locality.

Traffic Access

Council's Development Assessment Engineer has assessed the proposal. Currently access to the dwelling house is an unsealed gravel track from Piggabeen Road to the property boundary and would be required to be upgraded to comply with Council's Access to property guidelines.

The proposed new access to the barn/shed is a 7.2 metre wide driveway and would also be subject to a Section 138 Application and approval from Council that would need to comply with Council's Access to Property guidelines. Piggabeen Road will be able to accommodate any traffic movements and vehicles proposed to utilise the development.

The proposed access/car parking is located within the property of Lot 1 in DP 614101. Prior to the issue of the Construction Certificate a properly dimensioned plan indicating all proposed works to be constructed is to be supplied to Council.

As indicated on the plan supplied all traffic will enter and exist the property in a forward direction and manoeuvre within the property before existing. Adequate site distance is available to the driveway not to cause any significant concern. Having regard to vehicles entering and leaving in a forward direction this shall significantly reduce the risk of any potential accidents and increase pedestrian safety, which was raised as a concern in some submissions. The proposed access to the subject property off Piggabeen Road is located clear of any intersection.

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

The Development Application was notified for a period of fourteen (14) days between Wednesday 31 May 2006 and Thursday 15 June 2006. During the notification process a total of five (5) submissions were received. The issues raised in the submissions are considered below:

The main issues raised in the submissions received are outline below and a response to them is then considered.

Issue	Impact	Comment
<p>1. Inappropriate Landuse Some submissions raised concern over the inappropriate nature of the proposal.</p>	<ul style="list-style-type: none"> • The proposal is for wholesale and warehousing of rural stock feeds and supplies. • It is submitted that a rural supply facility is in keeping with the rural nature of the area and locality. 	<p>Refusal of the Development Application or modification on this matter is not considered warranted.</p>
<p>2. Noise Impacts Some submissions raised concern over the excessive noise likely to be generated by the facility.</p>	<ul style="list-style-type: none"> • The proposal does not propose to operate machinery and as such no noise will emanate from the shed and no excessive noise will be generated by the proposal. 	<p>Refusal of the Development Application on this matter is not considered warranted.</p>
<p>3. Dust Impacts A submission raised concern over potential dust problems the facility may generate and as a result cause a loss in amenity.</p>	<ul style="list-style-type: none"> • Dust will be present at the site however limited by the shed itself minimal dust is expected to emanate from the shed. Council's Environment and Health Service's Unit has considered the proposal and the likely dust impacts, and has recommended conditions for the development consent. 	<p>Refusal of the Development Application on this matter is not considered warranted.</p>

Issue	Impact	Comment
<p>4. Vermin A number of submissions raised concern over potential vermin problems.</p>	<ul style="list-style-type: none"> • All available measures will be taken to reduce the number of vermin that may be attracted to a warehouse of this nature. A vermin inhibitor strip will be fitted to the surrounding walls/floors of the structure. This strip is to prevent the entrance of vermin to the shed. Traps will be utilized were necessary and a cat is already residing on the premises. It is worth noting that on almost every property stock feed is stored in sheds and therefore the potential problem of vermin is one that most rural properties in the area already deal with. 	<p>Refusal of the Development Application on this matter is not considered warranted.</p>
<p>5. Access and Traffic Some submissions raised concern of the proposed access to the subject site and potential traffic problems that have been addressed earlier on in this report.</p>	<ul style="list-style-type: none"> • See Traffic Access under suitability of the site for the development. 	<p>Refusal of the Development Application on this matter is not considered warranted.</p>

Issue	Impact	Comment
<p>6. Rural Character and Amenity</p>	<ul style="list-style-type: none"> Some submissions received raised issues of the proposed facility adversely affecting the quiet rural amenity of the area. The Zoning of the land is 1(a) Rural under the Tweed Local Environmental Plan 2000 and the proposal is defined as a 'warehouse' that is permissible with development consent. It has been demonstrated that the applicant has addressed the main issues and as such the proposal does not warrant refusal on the basis that it will adversely affect the rural character of the area. 	<p>Refusal of the Development Application on this matter is not considered warranted.</p>
<p>7. Aesthetic Impact Some submissions received raised concern over the amenity impact of the proposal.</p>	<ul style="list-style-type: none"> The issue of the appearance of the shed has been addressed by the careful selection of the design of the shed to take into account the existing streetscape and appearance of the development from Piggabeen Road. The barn/shed will be setback 10 metres from the front property boundary and native plant species will be planted in front of the barn/shed to provide a native buffer. 	<p>Refusal of the Development Application on this matter is not considered warranted.</p>
<p>8. Property Values</p>	<ul style="list-style-type: none"> Some submissions raised concern of the possible loss of amenity caused by the facility and as such a loss in property values. It is speculation to say that a proposal such as this will cause an adverse effect on Real Estate prices for adjacent lots and as such Council cannot consider this. 	<p>Refusal of the Development Application on this matter is not considered warranted.</p>

(e) Public interest

Having consideration to the matters raised in this report it can be concluded that on a merit assessment the proposed development is not contrary to the public interest.

OPTIONS:

1. Approve the Development Application with the recommended conditions of consent.
2. Refuse the Development Application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should Council Resolve to approve the application in line with Option No.1 there will be no direct impact upon Council's budget or forward estimates. Should Council resolve not to approve the application legal costs will be incurred should the applicant appeal the decision in the NSW Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The development has attracted some public objection, as discussed, but it is considered that the reasons for objection do not warrant refusal or modification of the application. Any consent will be conditioned to ensure that the facility is operated properly so that nearby residents and the amenity of the area is not adversely affected.

The proposal has been thoroughly investigated and is considered to be suitable to the site. It is unlikely to cause any significant negative impacts to the surrounding built and natural environment and meets all of Council's applicable requirements within the Tweed Local Environmental Plan 2000 and other relevant codes. The proposal is therefore considered to warrant conditional approval.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

P17 [PD-PC] Development Application DA04/1652 for 6 Residential Units With Building Line Variation at Lot 3 Section 8 DP 758571, No. 264 Marine Parade, Kingscliff

ORIGIN:

Development Assessment

FILE NO: DA04/1652 Pt1

SUMMARY OF REPORT:

Council is in receipt of a Development Application for the demolition of an existing dwelling and construction of a residential flat building comprising six (6), three (3) bedroom units. The proposed building is three (3) storeys and provides for basement car parking with vehicular access off Kingscliff Lane. The existing site improvements include an existing brick double storey building and associated outbuildings, which are proposed to be demolished.

The main issue with the Development Application is the lack of landscaping and dominant front wall fence along the front boundary facing Marine Parade. This report includes a design amendment option to mitigate potential impacts on the streetscape so as to permit a more favourable planning outcome.

The proposed residential flat building is essentially in keeping with other previously approved residential flat buildings in the locality.

RECOMMENDATION:

That Development Application DA04/1652 for a 6 residential units with building line variation at Lot 3 Section 8 DP 758571, No. 264 Marine Parade Kingscliff be approved subject to the following conditions: -

- A. The deletion of all hard stand (non-pervious) areas including the pool and associated structures within the 6 metre front setback in favour of soft landscaping, which may include an entry statement is to be provided, details of which are to be provided prior to the issue of a Construction Certificate for approval by the General Manager or his delegate.**
- B. GENERAL**
 - 1. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of new driveway access (or modification of access).**

Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.

[GEN0045]

2. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within or adjacent to the subject property.
3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.
4. The site shall not be dewatered.
5. All wastes shall be collected, stored and disposed to the satisfaction of DECS. A screened, graded and drained garbage storage area shall be provided within the boundary of the site. Wastes shall be presented at the kerb in a Council approved wheelie bin for collection.
6. Acid sulfate soils shall not be exposed or disturbed.
7. The use of EXTERNAL ground anchors, sheet piling or any other like method that extends beyond the property boundary is not permitted or approved by this consent, except where the written permission to carry out such works and the details of works have been submitted and approved with the Construction Certificate. Any such works proposed in Council's road reserve shall require the submission and approval of a separate s.138 application, which is to be accompanied with all necessary engineering detail to the satisfaction of Council's Director of Engineering and Operations.
8. The development shall be completed in accordance with the Statement of Environmental Effects and Drawing No DA:01 prepared by Brian Kenny and dated 13 June 2006 and Drawing Nos DA:02 - DA:12 prepared by Brian Kenny and dated 14 February 2005, except where varied by the conditions of this consent.

[GEN0135]

[GEN0115]

[GENNS01]

[GENNS02]

[GENNS03]

[GEN0005]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

9. 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]

10. 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) Sector6_4	\$4,732.00
(b) Open Space (Structured): S94 Plan No. 5	\$2,280.00
(c) Open Space (Casual): S94 Plan No. 5	\$487.00
(d) West Kingscliff - Drainage: 0.06 ha @ \$16070 DCP No. 9 S94 Plan No. 7	\$964.20
(e) Shirewide Library Facilities: S94 Plan No. 11	\$2,012.00
(f) Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$409.00
(g) Community Facilities (Tweed Coast - North) S94 Plan No. 15 North Coast	\$2,952.00
(h) Emergency Facilities (Surf Lifesaving) S94 Plan No. 16	\$586.00
(i) Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$3,708.45
(j) Cycleways S94 Plan No. 22	\$1,028.00

(k) Regional Open Space (Structured) \$6,799.00
S94 Plan No. 26

(l) Regional Open Space (Casual) \$2,499.00
S94 Plan No. 26

[PCC0215]

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

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

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

Water DSP5: 3.8 ET @ \$4598 \$17,472
Sewer Kingscliff: 5 ET @ \$6688 \$33,440

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]

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

Please note timber retaining walls are not permitted.

[PCC0475]

13. A detailed plan of landscaping is to be submitted and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate.
14. The basement car parking is to be protected against the inflow of water from Kingscliff Lane, by grading the driveway to rise to a level of 170mm above the invert of the existing kerb and gutter, prior to grading down to the basement level. A detailed design of the basement stormwater pump out system is to be provided and designed for a storm event with a 10 year average return interval (ARI 10). The consequences of pump failure and the 100 year ARI storm event must be addressed and included with the above details prior to the issue of a Construction Certificate. [PCC0585]
15. 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: - [PCC0685]
- a) Construction of concrete path paving for the full frontage of the site to Marine Parade. The existing grassed footpath area "rolls over" into the site and does not conform with Council's standard footpath crossfall. The footpath area will need to be filled and regraded accordingly, and merged smoothly with existing adjoining path paving. Any existing services within the footpath area will need to be raised to the new level.

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
16. Details from a Structural Engineer are to be submitted to the Principal Certifying Authority for approval for all retaining walls, further acknowledging that any retaining walls for the OSD system must be waterproofed and be designed to hold back significant volumes of water, including a certificate of sufficiency of design prior to the determination of a construction certificate. [PCC0895]
17. 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. [PCC0935]

[PCC0945]

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

- (a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.**
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils *Development Design Specification D7 - Stormwater Quality*.**
- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management. Typical water sensitive features include infiltration, maximizing permeable/landscaped areas, stormwater retention /detention/reuse, and use of grass swales in preference to hard engineered drainage systems.**
- (d) Specific Requirements to be detailed within the Construction Certificate Application include:**
 - (i) Shake down area along the haul route immediately before the intersection with the road reserve.**
 - (ii) The On-site Stormwater Detention (OSD) proposal requires modification to ensure the system will function adequately. The following amendments are to be incorporated within the plans submitted with the application for a Construction Certificate;**
 - 1. Provision must be made for a relief overland stormwater flowpath from the OSD storage area and Discharge Control Pit (DCP), for storm events exceeding the 1 in 100 year event.**
 - 2. The top water level of the OSD storage area will need to be raised to allow the DCP to function, and provide free discharge to Kingscliff Lane.**
 - 3. The OSD outlet pipe is to be enlarged to 225mm diameter.**
 - 4. Provide a grated conversion pit at the end of the above line, at the western boundary of the site, with a 200 mm x 100mm galvanized RHS outlet discharging to the kerb.**

[PCC1105]

19. 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]

20. 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]

21. 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]

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

[PCC1235]

23. Prior to the issue of a Construction Certificate, a Demolition Works Plan must be submitted to Council for the demolition of the existing building.

[PCCNS01]

24. Prior to the issue of a Construction Certificate and any demolition of structures onsite a Demolition Works Plan must be submitted to Council for approval.

[PCCNS02]

PRIOR TO COMMENCEMENT OF WORK

25. The proponent shall locate and identify all existing underground services prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure including areas external to the development site where works are proposed.

[PCW0005]

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

[PCW0225]

27. Written approval for any application under Section 138 of the Roads Act 1993 is required prior to commencing works within the road reserve.
28. 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. [PCW0705]

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.

29. The erection of a building in accordance with a development consent must not be commenced until: [PCW0985]
- (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]

30. Residential building work:

- (a) Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
- * in the name and licence number of the principal contractor, and
 - * the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
- * the name of the owner-builder, and
 - * if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.
- (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

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

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

[PCW0245]

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

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

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

[PCW0255]

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

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

[PCW0775]

34. 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]

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

[PCW1065]

36. Prior to the commencement of works sedimentation and erosion control measures shall be installed to the satisfaction of the DECS.

[PCWNS01]

DURING CONSTRUCTION

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

Such to specifically include the following:

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

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

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

38. Construction site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council: - [DUR0065]

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.

39. 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: [DUR0205]

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.

40. Provision to be made for the designation of a durable and pervious car wash-down area. The area must be identified for that specific purpose and be supplied with an adequate water supply for use within the area. Any surface run-off from the area must not discharge directly to the stormwater system. [DUR0215]

41. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate. [DUR0975]

[DUR0995]

42. All work associated with this approval is to be carried out so as not to impact on the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -

- Noise, water or air pollution
- Minimise impact from dust during filling operations and also from construction vehicles
- No material is removed from the site by wind

[DUR1005]

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

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

[DUR1735]

44. 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]

45. The footpath area is to be graded to the kerb and turfed for the full frontage of the site.

[DUR1865]

46. 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]

47. Where the kerb is to be removed for driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.

[DUR1905]

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

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

- This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated. [DUR2375]
49. 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]
50. During construction, a "satisfactory inspection report" is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection. [DUR2445]
51. Please note that while the proposal, subject to the conditions of approval, may comply with the provisions of the Building Code of Australia for persons with disabilities your attention is drawn to the Disability Discrimination Act which may contain requirements in excess of those under the Building Code of Australia. It is therefore recommended that these provisions be investigated prior to start of works to determine the necessity for them to be incorporated within the design. [DUR1715]
52. The wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of the buildings with direct line of sight to the proposed building. [DUR0245]
53. 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]
54. 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]
55. 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]
56. 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]

57. 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]

58. 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]

59. 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]

60. All demolition works are to observe the guidelines set down under the Environment Protection Authority publication "A Renovators Guide to the Dangers of Lead" and the WorkCover guidelines on working with and handling of asbestos.

[DUR0655]

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

[DUR0815]

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

[DUR0915]

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

[DUR1955]

64. A certificate from a suitably qualified practicing structural engineer shall be submitted to Council and the Principle Certifying Authority within seven (7) days of the site being excavated certifying the adequacy of the sheet piling or other retaining method used to support adjoining properties. [DUR1965]
65. **Swimming Pools (Building)**
- (a) The swimming pool is to be installed and access thereto restricted in accordance with Council's "Code for the Installation of New Swimming Pools" and Australian Standard AS 1926-1986 (Copy of code enclosed).
 - (b) Swimming pools shall have suitable means for the drainage and disposal of overflow water.
 - (c) The pool filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties. [DUR2075]
66. Backwash from swimming pool is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9. [DUR2085]
67. 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]
68. A garbage storage area shall be provided in accordance with Council's "Code for Storage and Disposal of Garbage and Other Solid Waste". [DUR2195]
69. 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]
70. **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]
71. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position. [DUR2505]
72. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993. [DUR2515]
73. All water plumbing pipes concealed in concrete or masonry walls shall be fully lagged. [DUR2525]

74. 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]
75. 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]
76. 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]

77. 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]
78. 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]

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

Please note timber retaining walls are not permitted. [DUR0835]

80. Provision of an adequate turfed area, or other suitable media, is incorporated and maintained into the proposed landscape of the property for use as a car wash-down area. [DUR0965]

81. All surface water collected from hard stand parking areas to be directed to Council approved pre-treatment facilities before discharge to approved discharge locations. Stormwater from covered or enclosed carpark areas shall not be discharged to the public sewer unless approved treatment facilities have been provided. Details are to be submitted to and approved by Tweed Shire Council prior to installation

[DUR2735]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

82. 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]

83. 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]

84. 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]

85. 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]

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

[POC1045]

USE

87. Use of the swimming pool, lighting or plant on the site shall not be permitted to impact the amenity of any premise.

[USENS01]

88. 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]

89. All activities associated with the occupancy of the building are to comply with the Protection of the Environment Operations Act, 1997.

[USE0135]

REPORT:

Applicant: Portfolio Projects (Holdings) Pty Ltd
Owner: Mr JV Casperson
Location: Lot 3 Section 8 DP 758571 No. 264 Marine Parade, Kingscliff
Zoning: 2(b) Medium Density Residential
Cost: \$2,500,000

BACKGROUND:

Council is in receipt of a Development Application for the demolition of an existing dwelling and construction of a residential flat building comprising six (6), three (3) bedroom units. The proposed building is three (3) storeys and provides for basement car parking with vehicular access off Kingscliff Lane.

The subject site is regular in shape, has a site area of approximately 847.30^m² and is located in between two existing residential flat buildings along Marine Parade and is opposite the parkland and the beach.

The existing dwelling on the site will be demolished to accommodate the new development. Pre-demolition testing taken under the slab of the existing dwelling did not reveal any contaminated material in the soil below.

The proposed development is to be constructed largely of brick and colour bond roofing. All units have large private balcony areas accessible from the main living area that is fronting Marine Parade. The upper level units have access to a private roof deck area.

The design of the proposed building is predominantly compliant with Council's controls, however variations are sought in relation to landscaping, side setback provisions, the building height plane and overshadowing of the foreshore land. An assessment of each of these issues is addressed in the report.

The proposed building style is considered compatible with other approved residential flat buildings in the locality. As discussed in this report the issues raised by the proposed development are not considered to give rise to a refusal of the Development Application.

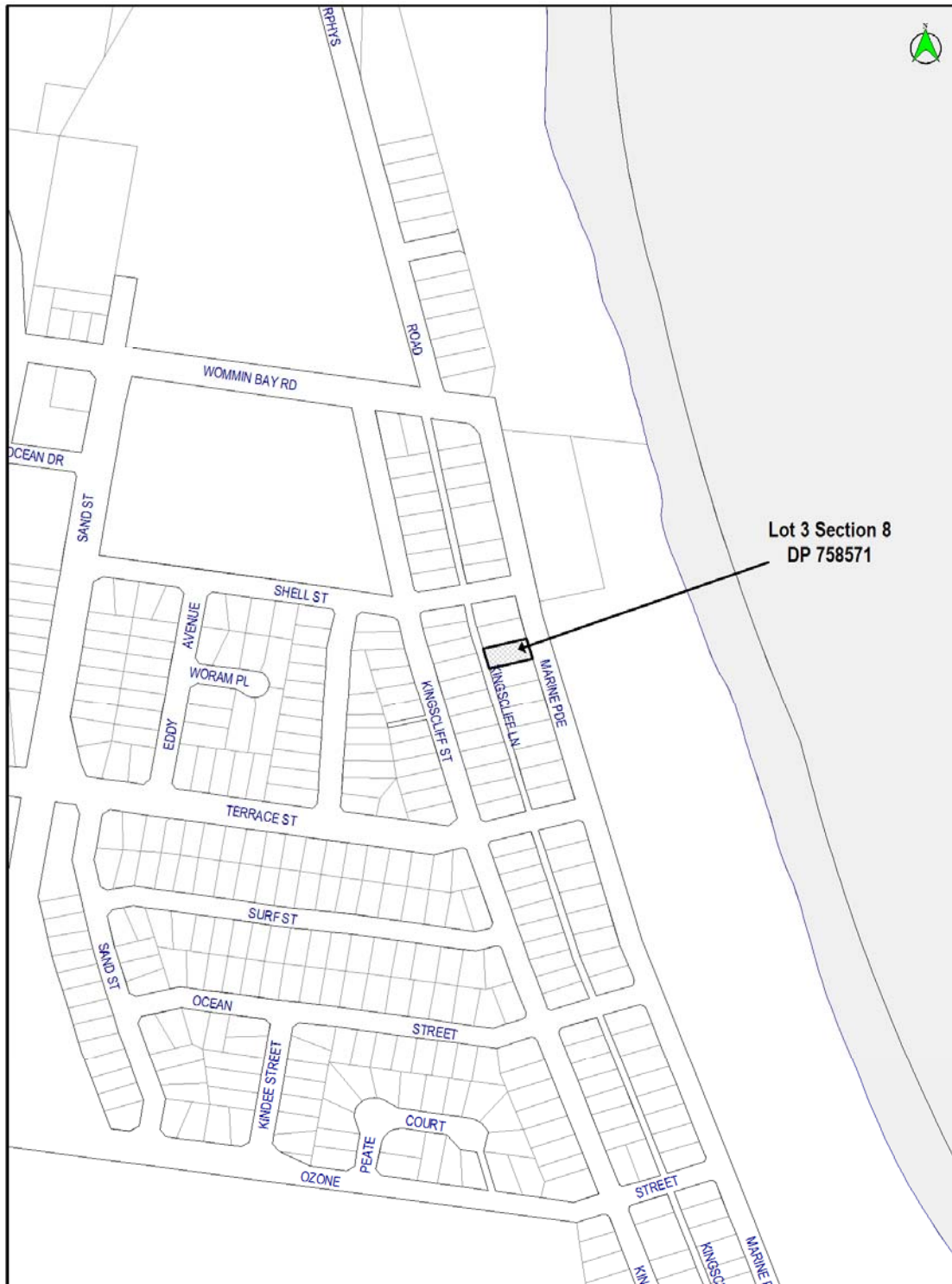
Main Issue

The main issue with this proposal is the lack of landscaped area and the dominant front wall addressing Marine Parade. With respect to the subject application it is noted that the impervious area is significant, largely because of the extent of basement area, decking, the pool and like surfaces. As such it was advised to the applicant that if they wished they should review the proposal in its original form and address this issue. It was advised to the applicant that one option to improve this aspect of the development was by the deletion of structures within the 6-metre front setback in favour of soft landscaping.

The visual and amenity impact arising from the construction of the proposal in its original form would likely to have been significant in relation to the proposed front 6 metre setback. There was no attempt in the original submitted application planning documentation to identify the potential for adverse impacts and consequently no ameliorative design measures were originally contemplated for the front 6 metre setback. This is further addressed later on in this report, however may be overcome by a condition of consent that requires a design modification in the following way: -

1. The deletion of all hard stand (non-pervious) areas including the pool and associated structures within the 6 metre setback in favour of soft landscaping, which may include an entry statement is to be provided, details of which are to be provided prior to the issue of a Construction Certificate for approval by the General Manager or his delegate.

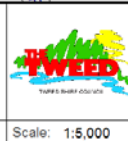
SITE DIAGRAM:



Lot 3 Section 8
DP 758571

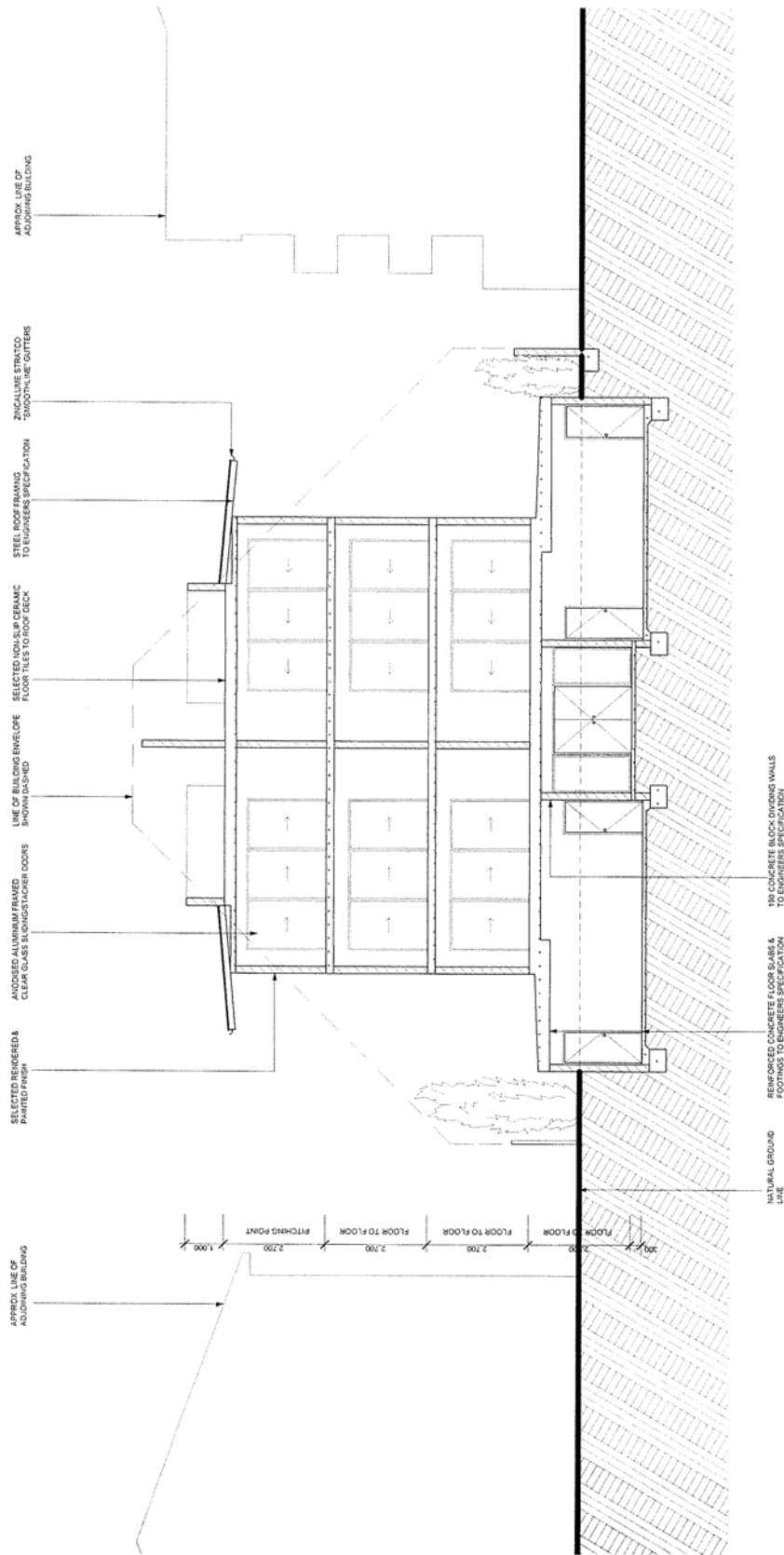
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Tweed Shire Council
Lot 3 Section 8 DP 758571
264 Marine Parade, Kingscliff
File: N:\MapInfo 7...A4P Site Plan.Wor Author: C.Davis Date: 08/Aug/2006

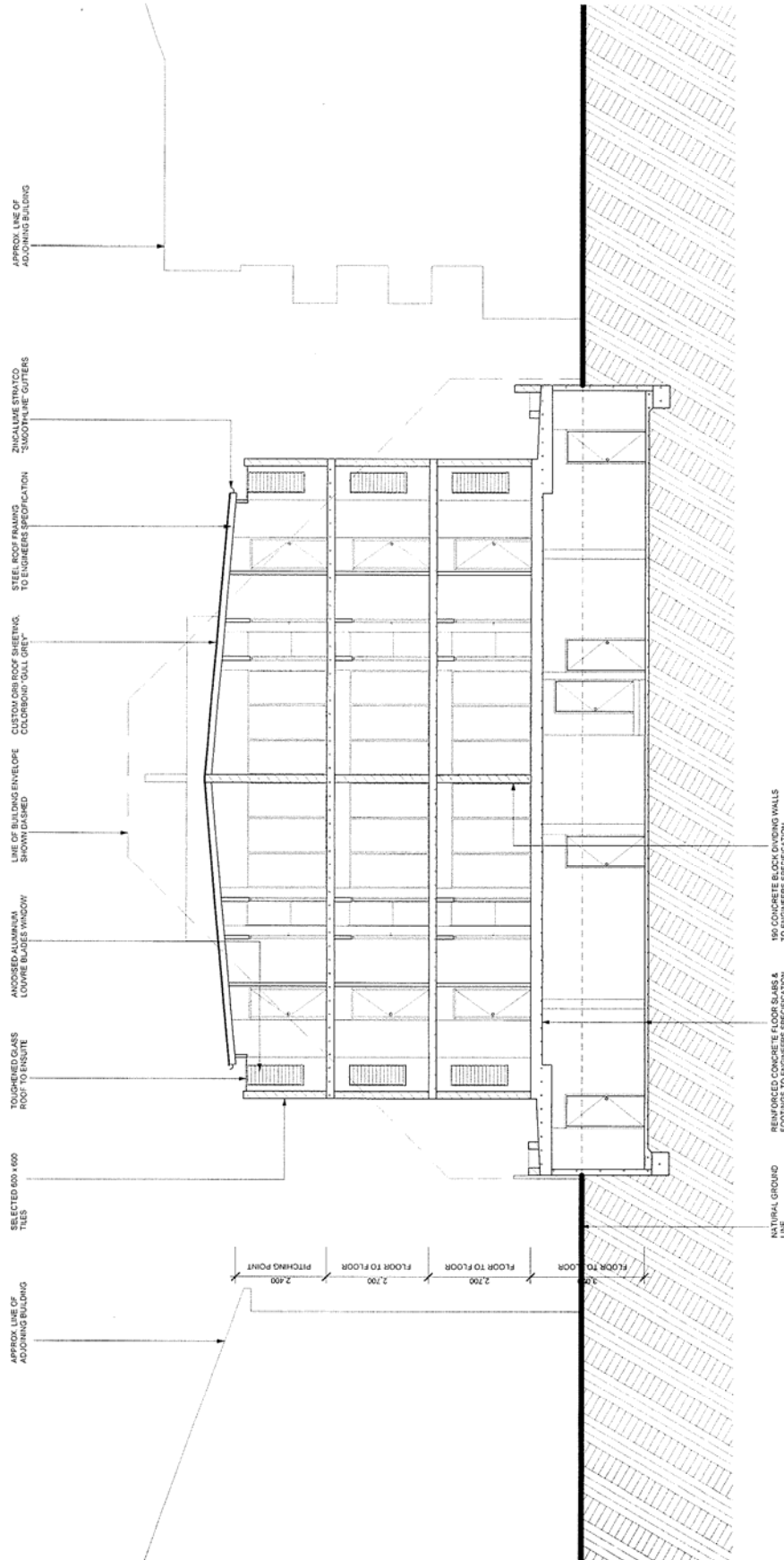


STRATEGIC PLANNING UNIT
Site Plan
Scale: 1:5,000 Sheet: 1 of 1

ELEVATION PLANS:

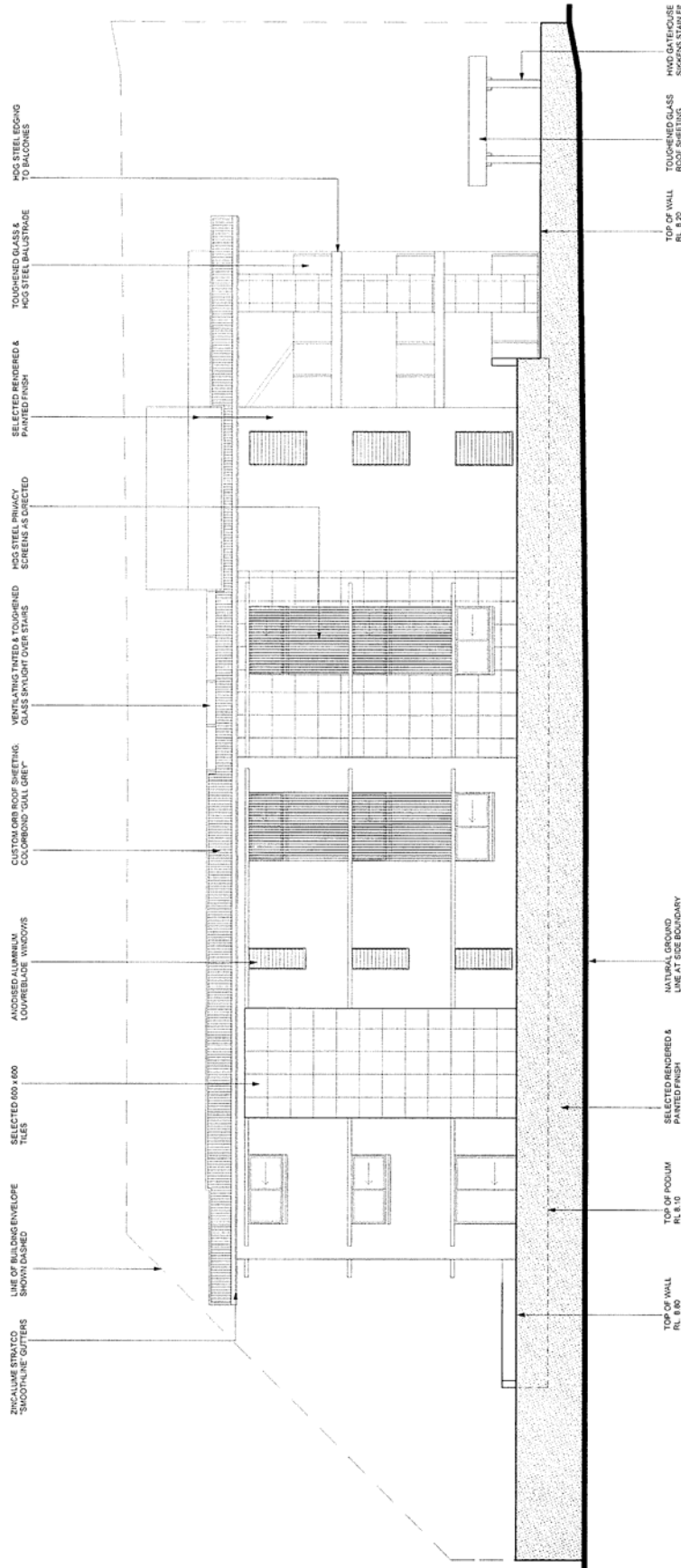


BRIAN KENNY B.Sc (Arch) B. Architecture byron bay to brisbane concept to construction		office 0266 743 888 mobile 0414 687 236 po box 1166 86 marine parade kingstcliff 2487		COPYRIGHT All work on this drawing is the exclusive property of BRIAN KENNY B.Sc (Arch) B. Architecture and may not be used, altered or reproduced in any way without written permission		NOTES Verify all dimensions and levels before commencing work. All structural details to engineer's specifications. All materials and workmanship to comply with relevant codes and by-laws		date 14-12-04 14-02-05 scale 1:100 drawing no. DA.12		SECTION BB	
						project		location			
						PROPOSED		NO. 264			
						6 RESIDENTIAL		MARINE PARADE			
						UNITS		KINGSCLIFF NSW			



SECTION AA

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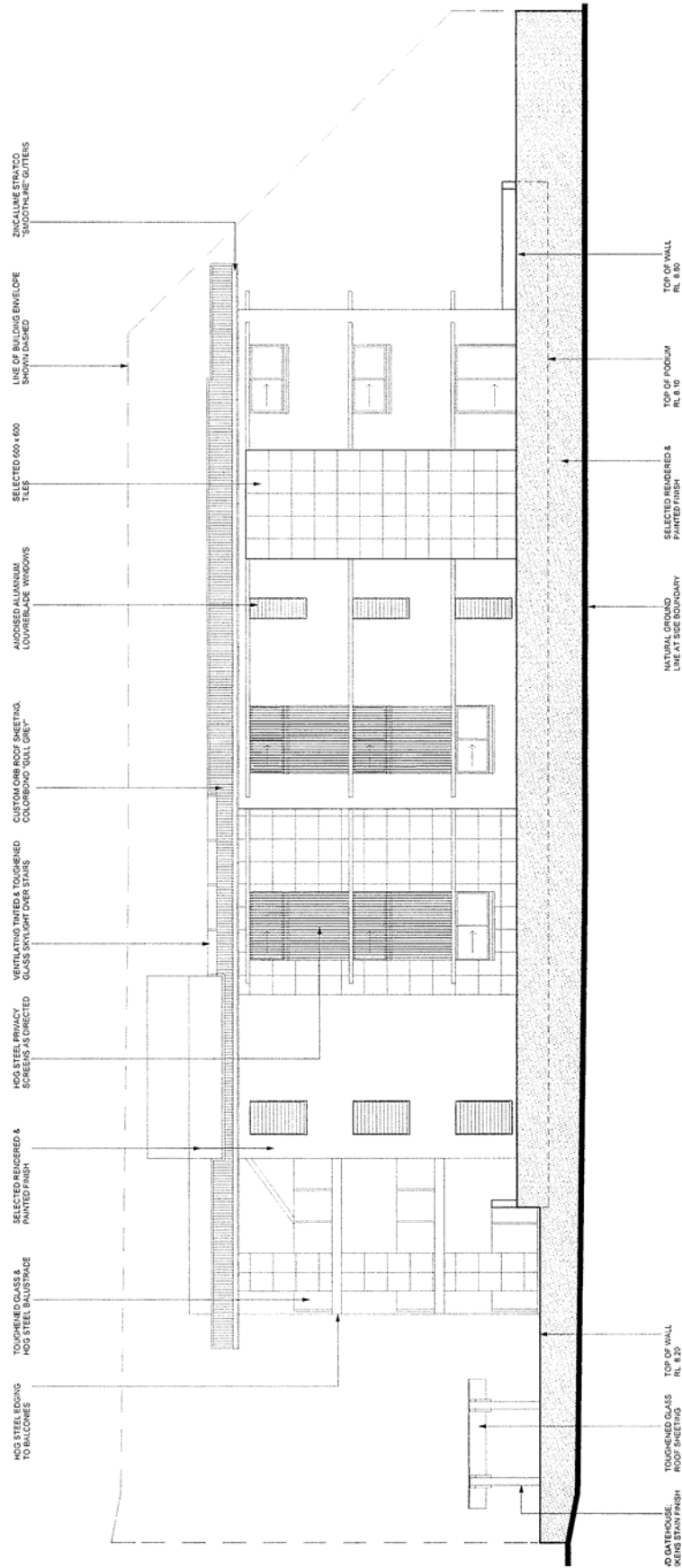
SOUTH EAST ELEVATION

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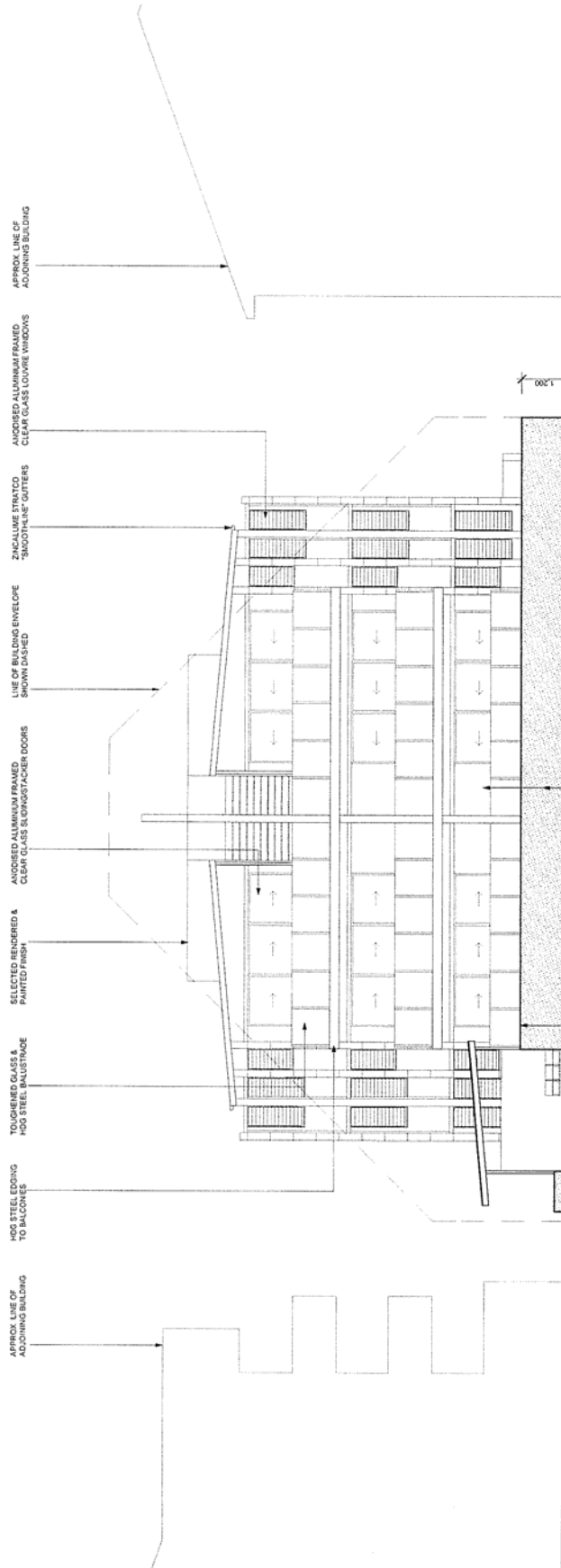
SOUTH WEST ELEVATION

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NORTH WEST ELEVATION

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NORTH EAST ELEVATION

project	location
PROPOSED	NO. 264
6 RESIDENTIAL	MARINE PARADE
UNITS	KINGSCLIFF NSW

date	44:42:04 14:02:05
scale	1:100
drawing no.	DA:07

NOTES
Verify all dimensions and levels before commencing work. All structural details to engineer's specifications. All materials and workmanship to comply with relevant codes and by-laws.

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	kingsscliff 2487

BRIAN KENNY
B.Sc (Arch) B. Architecture
byron bay to brisbane
concept to construction

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(b) Medium Density Residential pursuant to the provisions of Tweed LEP 2000.

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

Primary objective

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

Secondary objectives

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

The proposed residential flat building is considered to have been designed in accord with best practice urban design principles. The development is generally consistent with the modern architectural themes being employed in the design of apartment buildings within Kingscliff.

The development is contemporary by design and is consistent with the newly constructed and future desired apartment buildings for Kingscliff. It is generally accepted that the locality is undergoing a rapid change in the standard and quality of housing being constructed, which is consistent with the notion of gentrification. The proposed development is considered likely to contribute to the increasing high quality stock of dwellings on offer in the area and will assist in guiding future development in the immediate vicinity.

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

Clause 15 of the TLEP requires Council to be satisfied that the subject land has the benefit of essential services prior to issuing consent. The subject land has the benefit of services and is considered able to support the proposed development.

Clause 16 of the TLEP requires development to be undertaken in accordance with a building height plan. This is a three storey development in a three storey height limitation area and therefore in accordance with this Clause.

Clause 35 of the TLEP relates to the management of Acid Sulfate Soils. The subject site is not identified as containing the same.

Clause 39 of the TLEP requires Council to ensure that contaminated land is adequately remediated prior to development occurring. Pre- demolition testing taken under the slab of the existing dwelling did not reveal any contaminated material in the soil below and the site is suitable for the proposed development.

The proposed development is generally consistent with the requirements of the TLEP.

North Coast Regional Environmental Plan 1988 (NCREP 1988)

Clause 32B of NCREP 1988 provides that the Council shall not consent to the carrying out of development on urban land at Kingscliff if carrying out the development would result in beaches and adjacent open space being overshadowed before 3pm midwinter or 6.30pm midsummer. The undertaking of the development will cast shadow of the part of the foreshore land that is in front of this development and pursuant to SEPP 1 the applicant has submitted an objection in this regard. From the proposal it is noted that overshadowing will occur at and before 6.30pm midsummer (DST) whilst no overshadowing will occur before 3pm midsummer. The length of overshadowing at the prescribed time is considered to be minor in scale relative to the overall size of the subject open space (approx. 125x1.4km) and the area affected is not utilised for any recreational purposes. It is therefore considered that the overshadowing will not have any major adverse impacts on the use and enjoyment of the foreshore land.

Clause 43 of NCREP 1988 provides that the consent authority shall consider among other things density, environmental constraints, and road widths.

The proposed density is considered to be a reasonable response to the existing land use character of the area and will not result in the creation of any adverse physical impacts upon the locality. The existing road widths are not excessive for the function of the proposal.

The proposal is considered to be consistent with the relevant provision of Clause 43 of NCREP 1988.

SEPP No. 1 – Development Standards

The proposed development will result in the overshadowing of a portion of the adjacent foreshore open space. The applicant's submission in this regard is considered appropriate and reasonable.

SEPP No.65 - Residential Flat Buildings

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

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

SEPP No.71 - Coastal Protection

Pursuant to the provision of the Policy the application was referred to the Department of Planning on 12 April 2005. The Department subsequently advised of there being no need for involvement by the Director General. The proposal has been assessed having regard to clause 8 of the Policy. In this regard the proposal is considered satisfactory with respect to attaining the clause 8 matters.

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

No draft Environmental Planning Instruments are applicable with the proposed development.

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

Development Control Plan No.2 – Car Parking and Access

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 six-unit development incorporates a basement car park for eight vehicles that are in tandem and one visitor car park. A total nine spaces are provided and therefore the proposal complies with the requirements of this plan.

The subject site was inspected on a number of occasions at different times of the day, including Saturday and Sunday, and it was noted that on each occasion on-street parking was readily available. This is of particular note because it is generally accepted that developments comprising basement car parking utilise roadside parking via their visitors because of its ease of access rather than the allocated spaces within the designated parking area. As indicated, neither on nor off street car parking is perceived as an impediment to the development.

The proposed car parking arrangement is considered satisfactory with regard to the requirements of DCP 2.

Development Control Plan No.6 – Multi Dwelling Housing

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

DEVELOPMENT PROVISION	REQUIREMENT	PROPOSAL	COMPLIANCE	COMMENT
Site Area	Not specified	809.8m	N/A	-
Floor Space Ratio	0.5:1 (423.65m ²)	0.95:1 (841.59.3m ²)	NO	The proposed FSR is comparable to other medium density developments in the vicinity and is considered reasonable in the 2(b) zone.
Landscaped Area	480m ²	457.1m ²	NO*	The proposed landscaped area of 457.1m ² fails to satisfy the acceptable solution - see detailed assessment below.
Streetscape Streetscape	6.0m to primary street frontage. 3.0m setback to side boundaries	1.5m to Gatehouse. 2.1m setback	NO* NO*	The proposal encroaches into the side setbacks for approximately 5% of the boundary length on each level - see detailed assessment below.
Building Envelope	45° from 3.5m high at the side and rear boundary	Proposed building encroaches into envelope on side elevation.	NO	Moderate encroachment on the upper level along the side elevation - see detailed assessment below.

DEVELOPMENT PROVISION	REQUIREMENT	PROPOSAL	COMPLIANCE	COMMENT
Private Open Space	One part 25m ² with a minimum dimension of 3m	Each unit has a balcony of sufficient size.	YES	Satisfactory.

Despite exhibiting predominantly good urban design characteristics, the proposed development does not comply with three (3) of the acceptable solutions contained in DCP 6, relating to building height plane, landscaping and side setbacks.

Non-compliance of Building Height Plane

Whilst the proposed building fits within the building height plane on the side elevations, a minor encroachment is apparent on the front and rear elevation of the second floor of the building that basically consist of bathroom and ensuites. The extent of the encroachment is considered to be relatively insignificant considering the scale of the building and making it comply with the requirements could potentially reduce the functionality of these areas. The applicant has submitted detailed assessment against the relevant Performance Criteria in support of the variation.

In the submission the following points are raised in support of the variation:

- the encroachment into the building height plane is relatively minor;
- scale and height of the building is reduced through the articulation of all elevations, variations in the materials proposed, and the type of roof form adopted;
- given the minor nature of the encroachment, compliance with the building height plane provisions would make no substantial difference to the amenity of surrounding residents;

Having regard to the minor nature of the proposed encroachment into the building envelope and the above consideration, it is considered that a variation to the acceptable solution is acceptable in this case. Also the bulk of the proposed building is considered acceptable and is further offset by the articulation in the building and the slender low-pitched roof.

The applicant has responded effectively to each of the relevant performance criteria relating to Building and Siting Design. In this regard, it is considered that the intent of the policy has been upheld in the proposed development despite a departure from the acceptable solution itself.

Non-compliance of Side Setbacks

The development generally complies with the required setback provisions except for minor encroachments at the northern and southern side setbacks (rather than 3m setback, it is only 2.1m set back) and the open gatehouse (12m²) that is 1.5m from the front boundary instead of 6m. The applicant is seeking variation in these regards.

Building Services Unit has considered the building line variation for the open gatehouse structure and recommended approval on the basis that the gatehouse is very small, will not have any adverse impacts on the streetscape and complies with Council's building line policy for open structure.

In relation to the side setbacks, it is noted that there is a minor encroachment to the northern and southern sides that consists of bathroom ensuites of all the units. No windows are provided at this side of the bathroom that could potentially create any privacy issues to the adjoining units. Also it does not add or create the incidence of overshadowing or building bulk and strict enforcement of the 3m setbacks could potentially reduce the functionality of these areas.

It is considered that the variation being sought is satisfactory and the encroachment is not prominent when viewed from the street. Given the factors discussed above, it is considered that the proposed side setback variation is not unreasonable and should be supported in this instance.

Non-compliance of Landscaping

According to the provisions of DCP 6, the proposed development is to provide 80m² of landscaped area per unit. The proposed six (6) unit development incorporates a total landscaped area of 456.1m² and therefore possesses a shortfall of 23.9m².

The landscaping is proposed along the side and rear of the building and the areas provide for native planting. The plantings are intended to assist in providing visual and acoustic privacy from adjoining developments.

The applicants were advised of the lack of "real" landscaping and that the impervious area was significant, largely because of the extent of the basement area, decking, pool and like surfaces. It was advised that one option to improve this aspect of the development could be the deletion of structures within the 6-metre front setback in favour of soft landscaping.

The applicants responded to this with a modified proposal which is Drawing Number DA:01 dated 13 June 2006. As such the revised plan deletes the paved BBQ area and includes an additional grassed and landscaped area instead. Furthermore the revised plan shows increased deep planting around the perimeter of the site, especially at the frontage. The applicant believed that this modification recognized Council's concern, but still allowed for a reduced size pool to be incorporated into the design of the proposal. In the applicant's submission they indicated that given the location of the site on Marine Parade

there is an expectation for a certain level of amenity within the site and therefore request that the pool be retained. It was submitted that an active recreation area including a pool is far more likely to be utilized than a grassed area by the residents as there is ample parkland across the road but there is no nearby convenient pool. The applicant also noted that whilst the amount of impervious surfaces is relatively high, a significant amount of time and effort has been undertaken to demonstrate to Council's Engineers that stormwater can still be adequately dealt with on site.

The development could be substantially improved from a streetscape and amenity point of view by the deletion of all hard stand (non-pervious) areas including the pool and associated structures within the 6 metre front setback in favour of soft landscaping, which may include an entry statement, which has been included as an option of approving the Development Application.

Development Control Plan No.39 - Energy Efficiency Housing

Coastline has undertaken an ASBA assessment and advised that the proposed development achieves the required rating subject to the following:

- Use of light coloured walls and roof.
- Provision of R1.5 Anticon under the roof sheeting.
- Provision of R3 Insulation underneath the roof, deck slab and the second floor.

The following table depicts the Units ABSA ratings:

Standard	Requirement	Proposal	Complies
Unit Energy Rating	3.5 stars minimum	Grd Nth: 5 Stars, Grd Sth: 4 Stars, 1st Nth: 5 Stars, 1st Sth: 4 Stars, 2nd Nth: 4 Stars, 2nd Sth: 3.5 Stars	YES

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

Development Control Plan No. 42 – Public Notification

The Development Application was notified for a period of fourteen (14) days between Wednesday 2 February 2005 and Wednesday 16 February 2005. During this period two (2) written submissions were received which have been considered further in this report.

Development Control Plan No. 43 - Kingscliff

The subject land is located within the Kingscliff North Precinct. The objectives outlined in the DCP indicate that the area is to contain primarily residential development. Marine Parade is intended to accommodate medium density housing with distinctive building aesthetic, which reflects the coastal location and improves the streetscape quality.

The DCP contains a number of design guidelines too in regards to building type, heights and setback requirements.

In relation to building types, the areas along Marine Parade are intended to provide for Type 3 Residential Buildings (3 storey) with basement parking and access via rear lane where practical.

The subject proposal provides for Type 3 Residential Building with basement parking and access via Kingscliff Lane. It is a 3-storey development and does not fully comply with the required setbacks. However looking at the proposal in general and as discussed earlier, it is considered that this building is appropriate to the site, the design provides an interesting and modern contribution to the streetscape and therefore is reasonable in terms of this plan.

DCP No.48 – Tweed Coast Building Heights

This plan provides the guidelines on building height, setback design and use of rooftops. The undertaking of residential development in this locality is limited to three storey and maintain the internal and external height of 9m and 11m respectively.

The proposal complies with the number of storeys and external height, however the internal height is 9.5m from the finished ground level to the uppermost ceiling and therefore it exceeds the internal height by 500mm. Looking at the proposal generally it is noted that this variation is due to the nature of the roof. Any compliance in this regard would eventually require lowering of the basement level by half a metre or adjustment to the actual floors and thus increasing the gradient of the driveway or loss of functionality of the living areas. As the building is in compliance with the external height requirement, has low pitched and is of modern appearance, it is therefore considered that strict compliance in this instance is not warranted. Also the height of the proposed building is lower than the adjoining building and the design is consistent with the built form along the Marine Parade.

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

NSW Coastal Policy 1997

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

Demolition

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

Bushfire Hazard

The subject site is identified as bush fire prone according to Council's GIS. The proposed development was referred to the NSW Rural Fire Service for consideration. Based upon an assessment of the plans and documentation received for the proposal, the NSW Rural Fire Service raised no concerns or special consideration in relation to bushfire matters for the proposed development.

(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

Visual Impacts – The proposed development is of a modern design and the building will enhance the streetscape of the area as well as contribute positively to the quality and identity of the area.

Privacy – The proposed development is not considered to impact upon the privacy of the adjoining residents, as the main living areas are located towards Marine Parade and foreshore land.

Bulk, Scale and Design – The proposed development is of modern design and exhibits variation and articulation. As a result of this the bulk of the building is effectively distributed and exhibits a contemporary look.

Shadow Impacts – The proposed development will cast a shadow over the foreshore land, however the impact of the projected shadows has been demonstrated not to be significant to warrant concern or refusal of the Development Application.

(c) Suitability of the site for the development

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

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

The Development Application was publicly notified for a period of fourteen (14) days effective from 2 February 2005 to 16 February 2005 and a result of this two submissions were received.

One submission related to noise, working hours, the building of a retaining wall at the boundary of the two properties and the builder requiring to have building insurance to cover for any damages. The issue of noise and working hours will be a condition of consent. The building contractor is required by law to have insurance cover for protection against any such claims. The submission didn't have any formal objection rather just clarification on the abovementioned issues.

The other submission objected to the building line variation because it prevents the undertaking of landscaping and as such affecting the character and amenity of the area. Council's Building Services Unit considered the building line variation for the open gatehouse structure and fence and recommended approval on the basis that the gatehouse is very small, will not have any adverse impacts on the streetscape and complies with Council's building line policy for an open structure. Landscaping has been considered earlier on in this report. The submissions received do not warrant refusal of the proposed development.

(e) Public interest

The issues raised, as a result of this proposal is not considered to be in conflict with the interest of the general public. The development generally reflects the provisions of the appropriate plans and the site is suitable for this kind of development.

OPTIONS:

1. Approve the Development Application in accordance with the conditions of consent and by nominating the below mentioned design amendment to be incorporated, as a condition of consent.
 - a. The deletion of all hard stand (non-pervious) areas including the pool and associated structures within the 6 metre front setback in favour of soft landscaping, which may include an entry statement is to be provided, details of which are to be provided prior to the issue of a Construction Certificate for approval by the General Manager or his delegate.
2. Approve the Development Application as submitted and in its current form.
3. Refuse the Development Application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposal is consistent with the intended land use for the medium density precinct that will provide additional housing choice in this locality and therefore is considered appropriate development of the site and in accordance with the public interest.

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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P18 [PD-PC] Review of Determination of Development Application DA05/1298 for a Fence Height Variation at Lot 1 SP 72960, No. 1/18 McGregor Crescent Tweed Heads

ORIGIN:

Development Assessment

FILE NO: DA05/1298 Pt1

SUMMARY OF REPORT:

A Development Application was submitted to vary the fence height at the above premises to approve a 600mm high timber lattice extension on top of an existing 1.5 metre high rendered block fence adjacent to part of the northern property boundary and driveway entrance of the subject premises. The Development Application was refused at Council's Meeting of 28 February 2006 and it was resolved that the person(s) responsible for the illegal fence structure located at Lot 1 SP 72960, No 1/18 McGregor Crescent, Tweed Heads, be required to remove the fence.

As a consequence of this the applicant has lodged a Review of Determination under Section 82 A of the Environmental Planning and Assessment Act 1979 in relation to this Development Application and Council's determination dated 28 February 2006. The time provided under Section 97 of the Environmental Planning and Assessment Act 1979 for a Review of Determination is 12 months. Accordingly it is open to the applicant to seek this review.

Following the review and further assessment of the Development Application it is recommended that this Review of Determination Application be approved subject to the condition recommended below.

RECOMMENDATION:

That the Review of Determination of Development Application DA05/1298 for a fence height variation at Lot 1 SP 72960, No. 1/18 McGregor Crescent Tweed Heads be approved subject to the following conditions: -

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Ground Floor Plan prepared by Forgan Smith Architects (QLD) PTY. LTD. and dated 28 October 2005 and Photograph C dated 28 October 2005, except where varied by the conditions of this consent.**

[GEN0005]

REPORT:

Applicant: Mr M Basa and RH Basa
Owner: Mr M Basa and RH Basa
Location: Lot 1 SP 72960, No. 1/18 McGregor Crescent Tweed Heads
Zoning: 2(b) Medium Density Residential
Cost: \$1000.00

BACKGROUND:

An application has been submitted to vary the fence height at the abovementioned premises to approve a 600mm high timber lattice extension on top of an existing 1.5 metre high rendered block fence adjacent to part of the northern property boundary and driveway entrance. The subject allotment contains an existing multi storey residential building that was constructed under Development Consent DA03/0446.

The unit, which is subject of this Review of Determination, is located on the ground floor and is at a level of 1.2 metres above the adjoining property, No 16 McGregor Crescent. As part of the unit development a rendered block fence was constructed along part of the northern boundary adjacent to No. 16 McGregor Crescent and the driveway entrance to the building.

The existing block fence, on the applicant's courtyard level is approximately 1.2 metres high which does not provide adequate privacy between the two properties. As a measure of increasing the privacy between the two premises a 600mm high timber lattice panel has been erected on top of the existing rendered block fence and has been painted in the same colour as the block fence. This application relates to these works.

The owners corporation as well as the Developer of the units have given written consent for the lodgement of the original Development Application and for the timber lattice to remain.

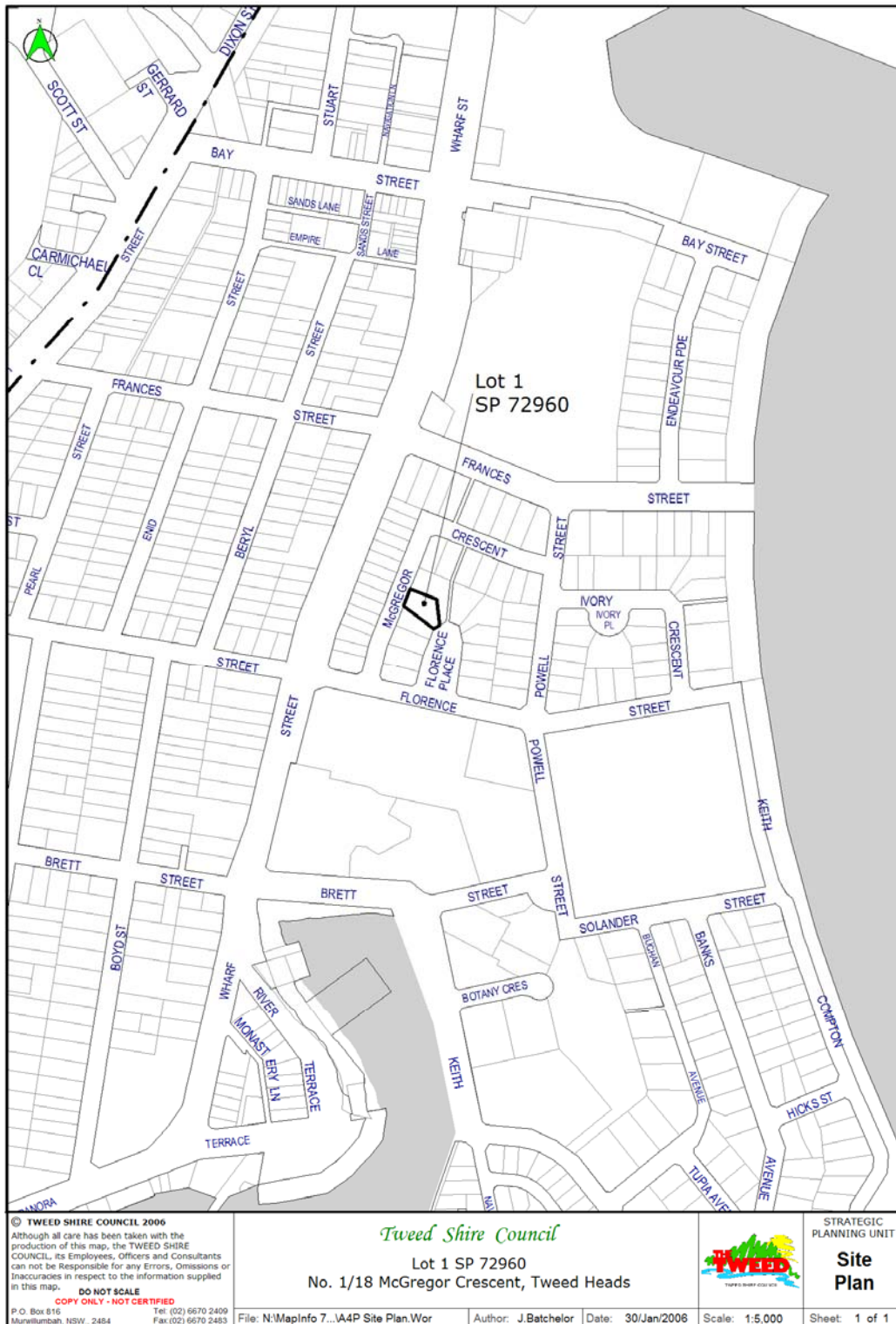
Council's fencing policy states that:-

1. 'Fencing behind the six (6) metre building line may be a maximum of 2000mm. Fencing in excess of 2000mm will require approval by Council. And
2. 'The fencing is to be constructed of brick, stone, masonry block or other such material as is approved by the Director Environment and Community Services'.

The matter was referred to the Director of Environment and Community Services who advised that in accordance with the above policy was unable to determine the increase in height of the fence as it exceeded 2000mm and therefore the matter must be referred to Council for determination.

Council's Building Services Unit raised no objection to the original Development Application and indicated that the works already carried out would not require a Building Certificate or Construction Certificate. The Building Services Unit recommended that the original Development Application be approved subject to a standard condition of consent.

SITE DIAGRAM:



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

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

Tweed Local Environmental Plan 2000

Under the Tweed Local Environmental Plan 2000 a fence is permissible with Development Consent. The subject site is located within the 2(b) Medium Density Zone.

North Coast Regional Environmental Plan 1988

Not Applicable.

State Environmental Planning Policies

No State Environmental Planning Policies are applicable to the development.

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

No Draft Environmental Planning Instruments affect the development.

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

No Development Control Plans are applicable to the development.

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

Satisfactory.

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

The completed fence is behind the six (6) metre building alignment, is aesthetically pleasing and does not detract from the streetscape. As the fence is sited on the southern side of No 16 McGregor Crescent there is no additional impact from overshadowing to the neighbouring premise.

(c) Suitability of the site for the development

The site is suitable for the development.

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

The original Development Application was notified for a period of fourteen (14) days between Wednesday 16 November 2005 and Wednesday 30 November 2005. One (1) submission was received from the adjoining property owner of No 16 McGregor Crescent.

The objections raised includes:

"1. The extension would look inappropriate for the area, as there is already in existence a 1.8 metre fence."

Response: The fence as erected provides additional screening and additional privacy, between the two properties. As discussed above there will be no additional shadowing impact.

"2. Aesthetically it is not pleasing to the area."

Response: The fence extension as erected is aesthetically pleasing from the streetscape and neighbouring property. The fence does not detract from the building design.

"3. The proprietor of 16 McGregor Crescent is unable to see inside Unit 1 and therefore Unit 1 still has privacy."

Response: The fence as erected provides additional screening and privacy between the two premises that is encouraged to promote more usable private open space.

"4. If the extension of the fence was granted, it would not be consistent with the rest of the fenced area."

Response: The fence being painted the same colour, although not being of the same building material, does not look substantially different, nor is it offensive.

"6. The latticework is higher than the dividing wall, which is contrary to what the applicant states in the Application."

Response: This Development Application seeks approval for the fence extension, consequently the above issues have been considered.

"7. The applicant has already constructed the extension of the fence without the approval of Council and the proprietor of 16 McGregor Crescent, thereby contravening the provisions of the regulations."

Response: This application seeks to remediate the non-compliance.

“8. *The extension of the fence is not in accordance with the fencing policy of Greenbank pursuant to the Environmental Planning and Assessment Act 2000.*”

Response: The Greenbank Policy seeks to limit the height and construction material of fencing. This application comprises a variation in built height and material. The variation is considered acceptable.

“9. *The extension of the fence has not been built in accordance with the fencing policy of the Greenbank area under the Tweed Shire Council’s Policy E2.4 Building Applications – Notification.*”

Response: As per 8 above.

“10. *The applicants height is incorrect in that it should be taken from the lowest part of the fence inside natural ground and not on the concrete patio and therefore is in contravention of the fencing policy of the Greenbank area.*”

Response: The height of the fence has been determined and assessed from natural ground level.

(e) Public interest

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

OPTIONS:

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

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Photographs of the fence as constructed and before the fence was constructed. (DW 1348934)
-

P19 [PD-PC] Development Application DA05/0824 for Multi Dwelling Housing Comprising Four (4) Units at Lot 4 Section 2 DP 7309, No. 26 Seaview Street, Kingscliff

ORIGIN:

Development Assessment

FILE NO: DA05/0824 Pt1

SUMMARY OF REPORT:

Council is in receipt of an application for Multi-Dwelling Housing at 26 Seaview Street, Kingscliff. The development comprises 4 units within a 2 storey built form. The subject land is zoned 2(b) Medium density residential under Tweed Local Environmental Plan 2000.

The application incorporates minor non-compliances with the Acceptable Solutions offered within DCP 6; in addition, the application attracted public submissions from 5 parties, the issues raised are addressed later within this report. The objectives of DCP 6 are considered to be complied with and the application is recommended for approval, having regard to the medium-density land-use controls in this area.

RECOMMENDATION:

That Development Application DA05/0824 for multi dwelling housing comprising four (4) units at Lot 4 Section 2 DP 7309, No. 26 Seaview Street Kingscliff 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 DA:01 - DA:09 Issue E, prepared by Brian Kenny and dated 07/04/2006, except where varied by the conditions of this consent.**
[GEN0005]
- 2. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.**
[GEN0045]
- 3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**
[GEN0115]

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

[GEN0135]

5. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of Council's Director of Environment and community Services where necessary or required so as to prevent the spill of light creating a nuisance to neighbouring or adjacent premises.

[GENNS01]

6. The use of EXTERNAL ground anchors, sheet piling or any other like method that extends beyond the property boundary is not permitted or approved by this consent, except where the written permission to carry out such works and the details of works have been submitted and approved with the Construction Certificate.

[GENNS02]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

7. 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)
Sector6_4 | \$2,548 |
| (b) West Kingscliff - Drainage:
0.077 ha @ \$16070
DCP No. 9 S94 Plan No. 7 | \$1,237.39 |

(c) Shirewide Library Facilities: S94 Plan No. 11	\$1,112
(d) Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$229
(e) Community Facilities (Tweed Coast - North) S94 Plan No. 15 North Coast	\$1,476
(f) Emergency Facilities (Surf Lifesaving) S94 Plan No. 16	\$324
(g) Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$2,049.37
(h) Cycleways S94 Plan No. 22	\$568
(i) Regional Open Space (Structured) S94 Plan No. 26	\$3,756
(j) Regional Open Space (Casual) S94 Plan No. 26	\$1,381

[PCC0215]

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

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

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

Water DSP5:	2.2 ET @ \$4598	\$10,116
Sewer Kingscliff:	3 ET @ \$6688	\$20,064

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]

- 9. A detailed plan of landscaping is to be submitted and approved by the General Manager or his delegate prior to the issue of a Construction Certificate.**

The submitted landscaping plan is to include a variety of species, plant maturity and height with the overall objective of ensuring that the development is softened, privacy levels are maintained or increased and that views afforded from the southern property are not unnecessarily obstructed.

[PCC0585]

- 10. The proponent shall submit plans and specifications with an application for construction certificate for the following roadworks with associated subsurface overland flow and piped stormwater drainage structures designed in accordance with Councils adopted Design and Construction specifications.**

- (a) Construction of kerb & gutter along the entire site frontage of Orient Lane.**

[PCC0875]

- 11. Permanent stormwater quality treatment shall be provided in accordance with the following:**

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

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

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

- (d) Specific Requirements to be detailed within the Construction certificate application include:
- (i) Runoff from driveway and basement car park areas must be treated to remove oil and sediment pollutants prior to discharge to the public realm. Permanent treatment devices must be sized in accordance with Section D7.12 of Council's Development Design Specification D7 - Stormwater Quality. Full engineering details of all treatment devices, including maintenance schedules, must be submitted with a S68 Stormwater Application for approval prior to the issue of a Construction Certificate.
 - (ii) The dedicated car wash bays must be constructed of pervious materials.
- [PCC1105]
12. 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]

13. 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]

14. 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]

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

[PCC1195]

16. All pipe drainage off site is to be to Seaview Street, with connection via to the existing kerb and gutter. No discharge is allowed onto neighbouring properties or Orient Lane, with the exception of the proposed car wash bay which may grade to the road reserve of Orient Lane.

[PCCNS01]

17. Driveway entrances must be graded to ensure Q100 stormwater runoff from Orient Lane does not enter the basement car park.

[PCCNS01]

18. Construction Certificate drawings shall make provisions for the regrading of the subject site in accordance with Council's Development Control Plan 47 "Cut and Fill on residential Land " or to the satisfaction of the Director Engineering and Operations Division.

[PCCNS01]

19. Any retaining wall in excess of 1.2m shall be designed by a suitably qualified geotechnical / structural engineer in accordance with AS4678 - 2002 - Earth Retaining Structures. A report detailing compliance with the design provisions of this standard shall accompany the Construction Certificate drawings.

[PCCNS01]

20. Prior to the issuing of a Construction Certificate, a full geotechnical assessment of the site is to be carried out and a report submitted to Council for approval. The report must include recommendations relating to site stability, suitability, proposed on-site excavation works including temporary and permanent retention methods proposed for the protection of adjacent structures, foundation design parameters, construction theories, as well as any other geotechnical matters of relevance relating to the proposed development.

[PCCNS01]

21. Ground anchors to retain sacrificial sheet piling (as required) will not be allowed within Council property without prior approval for installation by the Director Engineering and Operations Division and removal on completion or substantial financial compensation. Council will only allow ground anchors with neighbouring private property if consent by the owners of the property to be burdened is obtained prior to installation.

[PCCNS01]

PRIOR TO COMMENCEMENT OF WORK

22. The proponent shall locate and identify all existing underground services prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure including areas external to the development site where works are proposed.

[PCW0005]

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

- (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

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

[PCW0225]

25. Residential building work:

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

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

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

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

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

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

[PCW0235]

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

- (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]

27. 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]

28. 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]

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

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

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

[PCW0985]

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

[PCW1065]

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

[PCW1075]

DURING CONSTRUCTION

32. 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]

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

Such to specifically include the following:

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

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

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

[DUR0065]

34. The provision of 10 off street car parking spaces including parking for the disabled where applicable. The layout and construction standards to be in accordance with Development Control Plan No. 2 - Parking Controls, the Building Code of Australia, AS 2890 and the parking layout plan submitted.

[DUR0085]

35. 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]

36. 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]
37. 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]
38. 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]
39. 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]
40. 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]
- (a) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with WorkCover 2000 Regulations.
 - (b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.
- [DUR0425]

41. 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]

42. 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]

43. Removal

- (a) All deteriorated and defective materials are to be replaced by sound materials.
- (b) The building is to be painted internally and externally.
- (c) The building is to be set up and completed in a tradesman like manner and to Council's satisfaction.
- (d) The building is not to be occupied until all work is completed and Council's approval to occupy has been granted.
- (e) Details covering the date and time of removal and route to be travelled are to be submitted to Council's Engineering Division prior to commencing work.

[DUR0665]

44. All imported fill material shall be from an approved source. Prior to commencement of filling operations details of the source of fill shall be submitted to the satisfaction of the General Manager of his delegate.

Once the approved haul route has been identified, payment of the Heavy Haulage Contribution calculated in accordance with Section 94 Plan No 4 will be required prior to commencement of works.

[DUR0725]

45. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited. [DUR0815]
46. 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]
47. 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]
48. 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]
49. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. All such materials should be chipped on site and used in landscaping unless it is not possible due to size, non suitability of the material or some other limitation, in which case the material will be disposed of at Council's Stotts Creek depot. [DUR1015]
50. Landscaping of the site shall be carried out in accordance with the submitted/approved landscaping plans. [DUR1045]
51. 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]
52. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils adopted Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings. [DUR1875]

53. Swimming Pools (Building)

- (a) The swimming pool is to be installed and access thereto restricted in accordance with Council's "Code for the Installation of New Swimming Pools" and Australian Standard AS 1926-1986 (Copy of code enclosed).
- (b) Swimming pools shall have suitable means for the drainage and disposal of overflow water.
- (c) The pool filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.

[DUR2075]

54. Backwash from swimming pool is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9.

[DUR2085]

55. 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]

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

[DUR2195]

57. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction. Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

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

[DUR2375]

58. 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]

59. 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]
60. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position. [DUR2505]
61. All water plumbing pipes concealed in concrete or masonry walls shall be fully lagged. [DUR2525]
62. 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]
63. 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]
64. 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:-
- * 45⁰C 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]
65. 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]
66. Appropriate measures are to be 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 by prior to cessation of same days work and/or commencement of any rain event. [DURNS01]

67. Erosion and sediment control measures shall be installed and maintained to the satisfaction of Council's Director of Environment and Community Services throughout the duration of construction.

[DURNS01]

68. An engineers certificate of structural adequacy is to be submitted to Council and the Principal Certifying Authority within 7 days of the site being excavated certifying the structural adequacy of the sheet piling or other methods used to support adjoining properties.

[DURNS02]

69. The proponent shall submit to Council at each stage of construction a surveyors certificate specifying the RL levels for the basement/ground floor, and each and every subsequent floor and roof height level within one (1) week of the construction component being completed.

[DURNS03]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

70. 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]

71. 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]

72. 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]

73. 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]

74. Prior to the issue of an occupation certificate, a "satisfactory inspection report" issued by Council must be produced for s68h2 permanent stormwater quality control devices. This inspection report must be obtained from Council prior to backfilling of any of the s68h2 approved devices.

[POCNS01]

USE

75. 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]

76. 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]

77. A person must not commence a change of building use for the whole or any part of an existing building unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[USE0395]

78. The premises shall be suitably identified by Unit No. (where appropriate) and Street Number displayed in a prominent position on the facade of the building facing the primary street frontage, and is to be of sufficient size to be clearly identifiable from the street.

[USE0435]

79. Swimming Pools (Building)

- (a) It is the responsibility of the pool owner to ensure that the pool fencing continues to provide the level of protection required regardless of and in response to any activity or construction on the adjoining premises. Due regard must be given to the affect that landscaping will have on the future effectiveness of the security fencing. (Section 7 Swimming Pool Act 1992).
- (b) The resuscitation poster must be permanently displayed in close proximity to the swimming pool. (Section 17 Swimming Pool Act 1992).

REPORT:

Applicant: Jeanleighmac Developments Pty Ltd
Owner: Mr G Bismire, DM Househam, WC Engwirda and Jeanleighmac Pty Ltd
Location: Lot 4 Section 2 DP 7309 No. 26 Seaview Street, Kingscliff
Zoning: 2(b) Medium Density Residential
Cost: \$1,100,000

BACKGROUND:

Council is in receipt of an application for Multi Dwelling Housing, comprising 4 x 3 bedroom units at 26 Seaview Street, Kingscliff. Each unit includes lounge, dining, kitchen, master bedroom with ensuite, additional 2 bedrooms and bathroom, balconies and retreat areas. The building is 2 stories in height per the definition offered within the Tweed LEP 2000, and involves a 10-space basement car park to facilitate the development, which is accessed from Orient Lane.

The subject land already has an existing approval for 4 units (DA03/0832) which was approved by Council's Development Assessment Panel at it's meeting of Wednesday 24 September 2003. The approved building involved non-compliances to the 'Acceptable Solutions' relating to Floor Space Ratio (FSR), encroachments into the building envelope, setback provisions along the northern and southern boundaries and potential privacy/overlooking issues. However, the proposal was considered to satisfy the performance criteria and the objectives of DCP 6 and was approved as such, with conditions of consent. By way of background, the previous approval involved an FSR of 0.81:1, included side setback encroachments to 1.5m for approximately 7.8metres over two storeys on both northern and southern elevation and included a split roof deck at an RL of 30.9 on the southern side of the lot and RL 31.2 on the northern side of the lot. The previous approval also included a lift overrun to a height of 32.2m RL. Further aspects of this approval are discussed further in this report.

It is pertinent to note that should this application be refused, the previous consent may still be acted upon. In this regard the Development Assessment Unit is of the view that although the merits of each proposal are similar the present application is the preferred option.

The proposal has evolved in several aspects since it's lodgement. The main areas of evolution have been the removal of a building line variation to the primary setback, a reduction in FSR, an increase in landscaped area, larger areas of compliance with the acceptable solutions within DCP 6 and an increase in building height. Accordingly, many of the issues raised within the submissions have now been reflected in the amended design.

During the submission period, 5 submissions were made and several individuals have lodged further submissions throughout the assessment of the application. The concerns raised have been addressed within Section (d) of this report.

Despite the submissions received, the objectives of DCP 6 are considered to be met and the application is recommended for approval having regard to the medium-density land-use controls in this area.

The subject site fronts Seaview Street to the west and Orient Lane to the east. The locality is characterised by a mixture of housing forms. The area is presently undergoing redevelopment involving the demolition of many older houses, and the erection of large single dwellings or multi-dwelling developments.

The land has an area of 948.5m² with elevations ranging from RL 22.5m AHD at Seaview Street and RL26.25m AHD at Orient Lane. Existing site improvements include a single storey brick residence and retaining wall that are proposed to be demolished.

The subject site is bound to the north by a single storey residence and a two storey dwelling to the south.

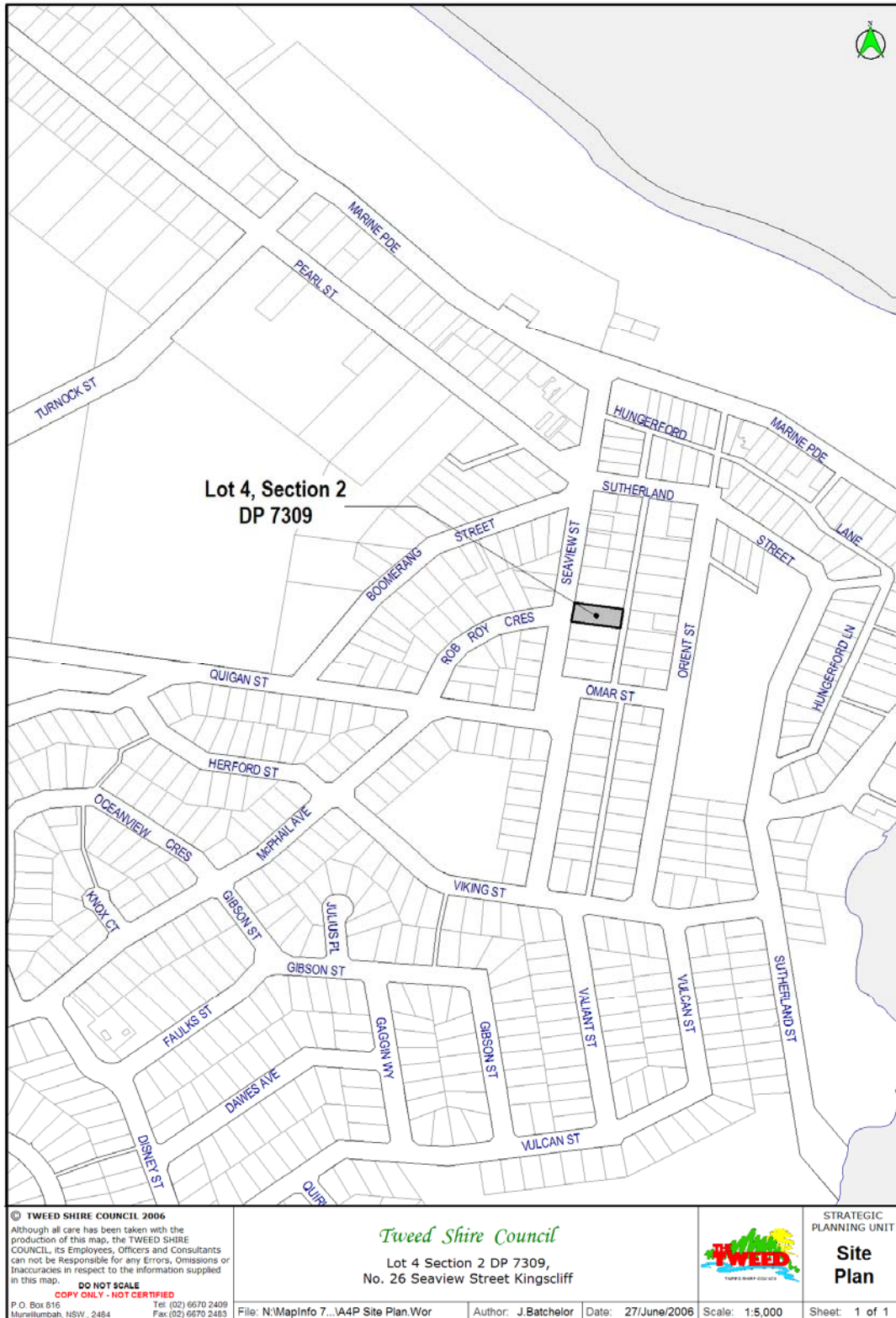
Adjoining Property to the North

Development Consent DA04/0482 was approved on 5 November 2004 for 2 x 2-storey buildings, resulting in a total of 4 units. The approved development included areas of non-compliance with the acceptable solutions relating to FSR, setbacks, building height plane, streetscape and private open space however the development satisfied the performance criteria within DCP 6. A search of Council's records reveal Section 138 and Section 68 approvals have been issued, however a Construction Certificate has not been issued.

Adjoining Property to the South

Development Consent DA02/2061 was approved on 9 July 2003 for a single two-storey residence over the southern property. The approved dwelling was permitted to encroach the 6metre building line in two instances, firstly a pool cited 1m from the primary frontage and secondly, a second storey deck area, projecting to a distance of 3.5metres from the primary frontage. The southern dwelling is setback 1 metre from both northern and southern boundaries at ground level, before 'stepping in' at a second storey level. The approval also included a roof-top terrace. This consent has been acted upon and the dwelling is constructed.

SITE DIAGRAM:



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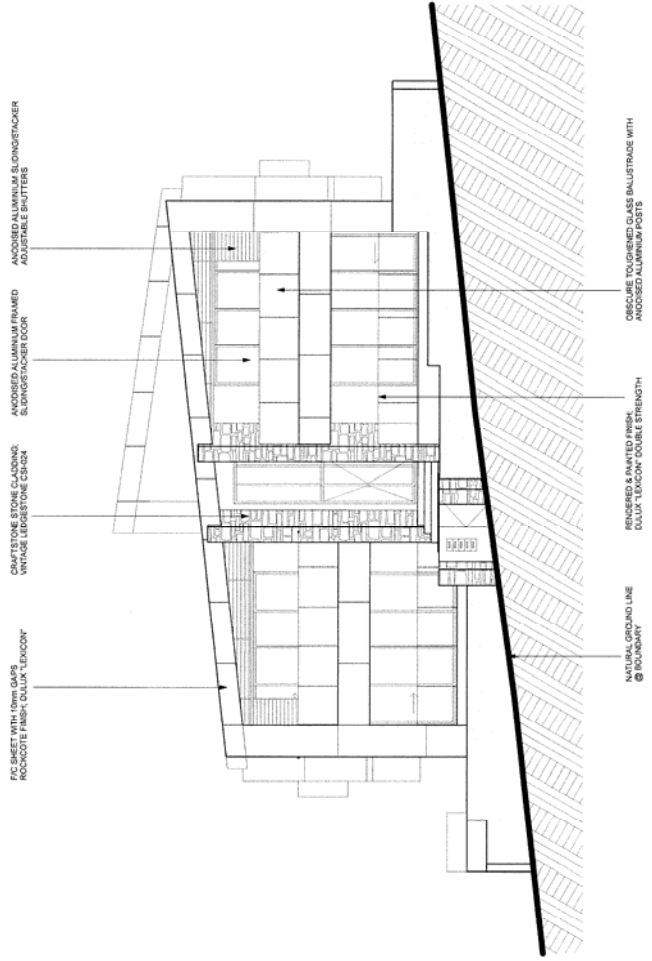
Tweed Shire Council
 Lot 4 Section 2 DP 7309,
 No. 26 Seaview Street Kingscliff
 File: N:\MapInfo 7...A4P Site Plan.Wor Author: J.Batchelor Date: 27/June/2006 Scale: 1:5,000



STRATEGIC PLANNING UNIT
Site Plan
 Sheet: 1 of 1

ELEVATION PLANS

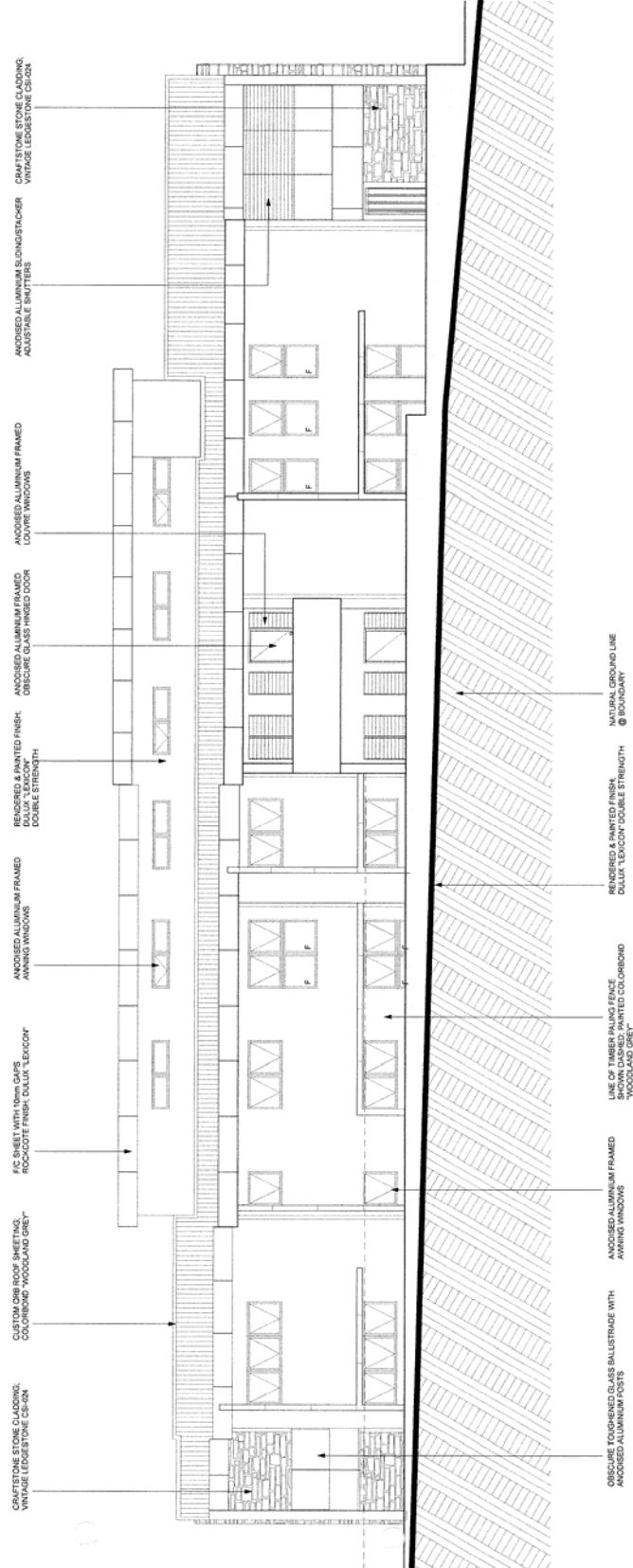
BRIAN KENNY B.Sc.(Arch) B.Architecture	project PROPOSED 4 RESIDENTIAL UNITS	location LOT 4 DP 7309 No. 26 SEAVIEW STREET KINGSCLIFF NEW SOUTH WALES	copyright All work on this drawing is the exclusive property of the architect and shall not & may not be used, altered or reproduced in any way without written permission	notes Verify all dimensions & levels before construction. All structural details to engineers specifications. All materials & workmanship to be in accordance with codes & by-laws	scale 1:100 drawing no. DA:06	issue A B C D E	date 07.12.05 12.12.05 16.12.05 06.03.06 07.04.06	issue	date	issue	date
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WEST ELEVATION

trading as abb australia pt/ acn 111 306 999 kingscliff office tel/fax 0266 743 898 bangalow office tel/fax 0266 870 708 po box 1166 kingscliff 2487 nsw kenny@heltor.net.au

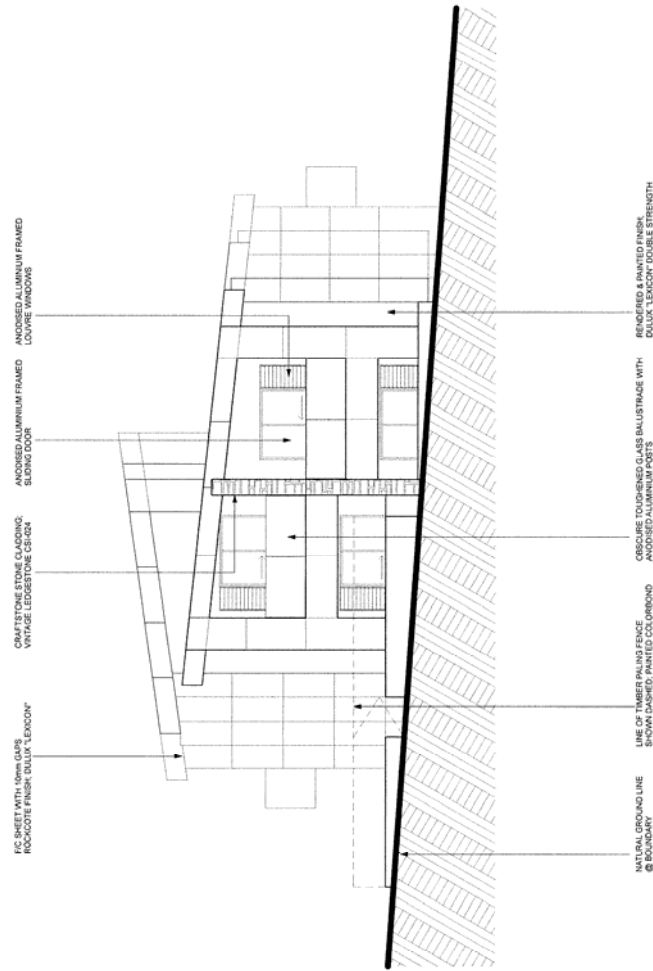
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byron to brisbane concept to construction	PROPOSED 4 RESIDENTIAL UNITS	LOT 4 DP 7309 No. 26 SEAVIEW STREET KINGSCLIFF NEW SOUTH WALES	All work on this drawing is the exclusive property of Kingscliff Pty Ltd. & may not be used, altered or reproduced in any way without written permission.	Verify all dimensions & levels before construction. All structural details to engineers specifications. All materials & workmanship to be specified in relevant codes & by-laws.	1:100 drawing no. DA:07	A B C D E	07/12/05 12/12/05 16/12/05 06/03/06 07/04/06		



NORTH ELEVATION

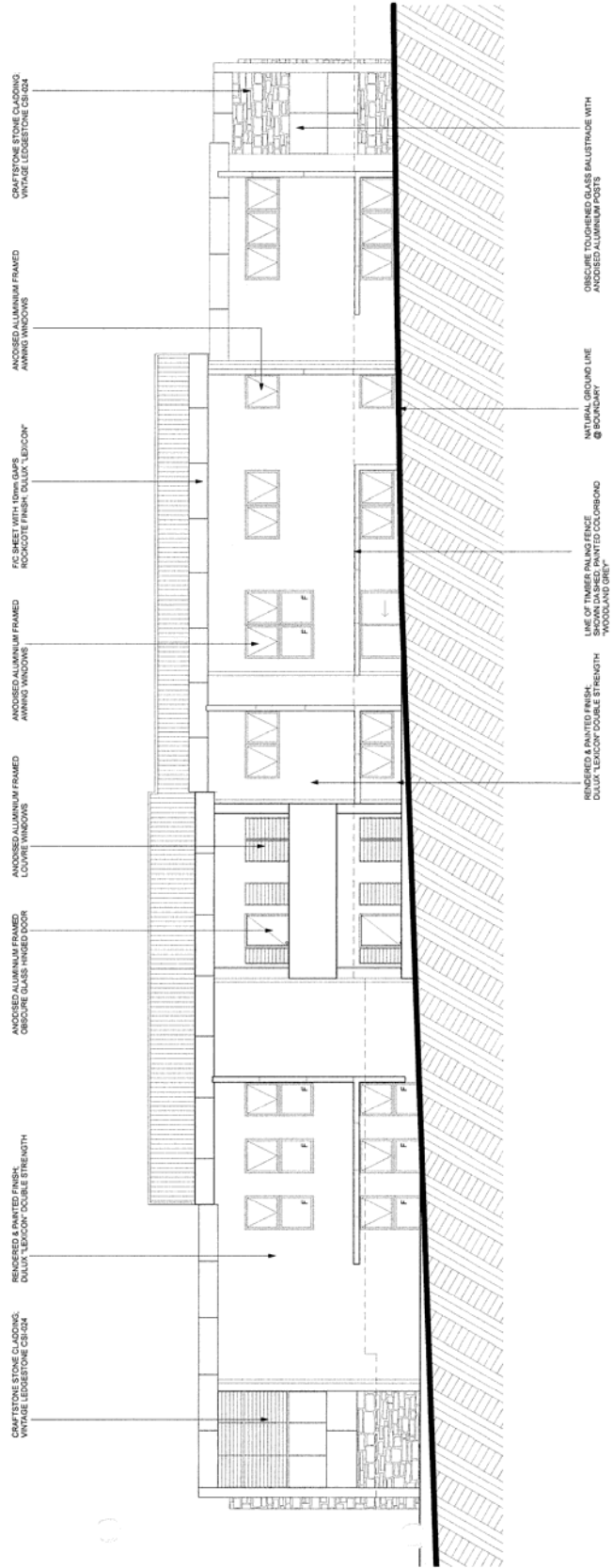
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 kenny@better.net.au

project	location	copyright	notes	scale	issue	date	issue	date	issue	date
BRIAN KENNY B.Sc. (Arch) B Architecture	LOT 4 DP 7309 No. 26 SEAVIEW STREET KINGSCLIFF NEW SOUTH WALES	All work on this drawing is the property of BKB Architects Pty. Ltd. & may not be used, altered or reproduced in any way without written permission	Verify all dimensions & levels before commencing work. All structural details to engineers specifications. All work to comply with relevant codes & by-laws	1:100 drawing no. DA:08	A	07.12.05				
byron to slidebase					B	12.12.05				
concept to construction					C	16.12.05				
					D	06.03.06				
					E	07.04.06				



EAST ELEVATION

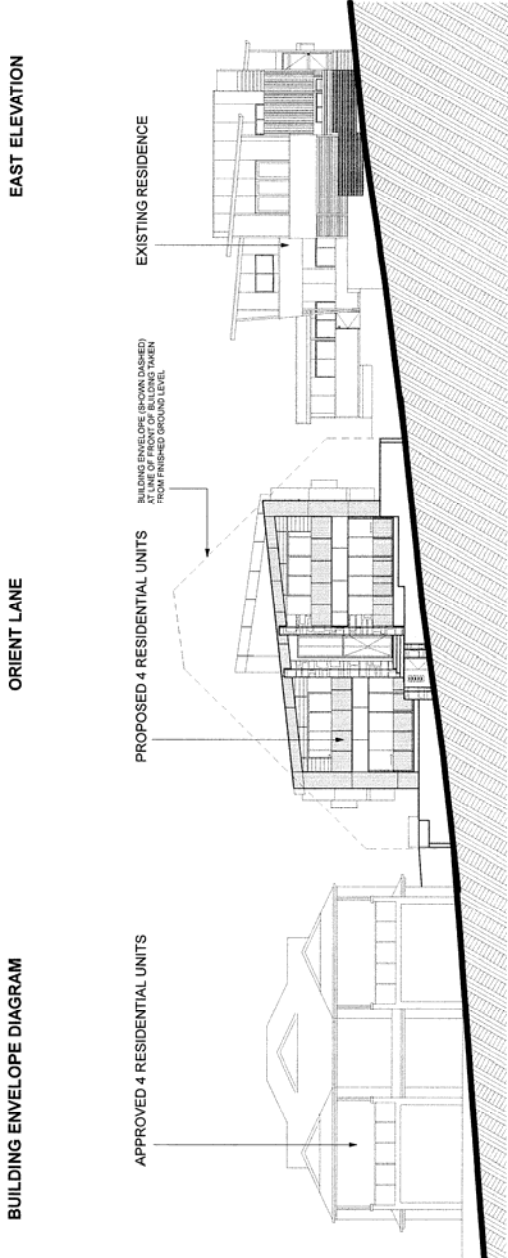
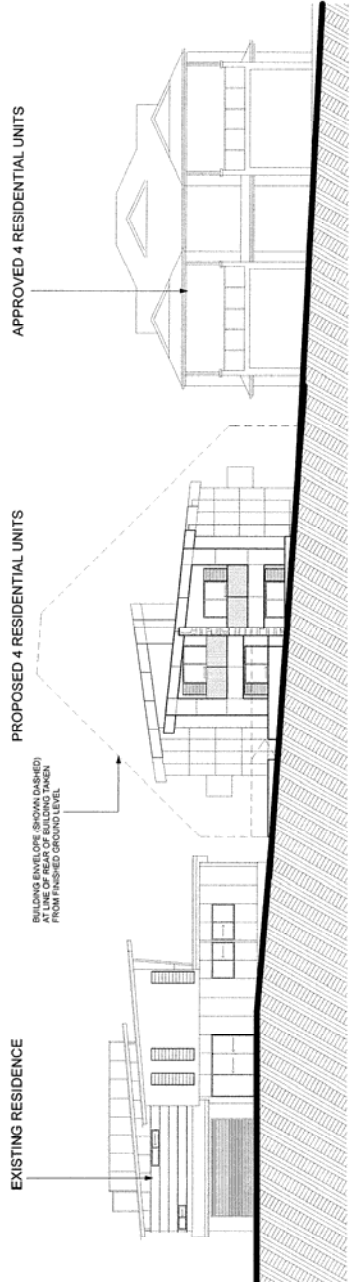
BRIAN KENNY B.Sc.(Arch) B.Architecture	project	location	copyright	notes	scale	issue	date	issue	date	issue	date
byron to brisbane concept to construction	PROPOSED 4 RESIDENTIAL UNITS	LOT 4 DP 7309 No. 26 SEAVIEW STREET KINGSCLIFF NEW SOUTH WALES	All work on this drawing is the exclusive property of the architect and shall not & may not be used, altered or reproduced in any way without written permission	Verify all dimensions & levels before commencing work. All structural details to engineers specifications. All materials & workmanship to be in accordance with relevant codes & by-laws	1:100 drawing no. DA:09	A B C D E	07.12.05 12.12.05 16.12.05 05.03.06 07.04.06				



SOUTH ELEVATION

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BRIAN KENNY B.Sc.(Arch) B.Architecture	project PROPOSED 4 RESIDENTIAL UNITS	location LOT 4 DP 7309 No. 26 SEAVIEW STREET KINGSCLIFF NEW SOUTH WALES	copyright All work on this drawing is the exclusive property of B.Kenny & Associates Pty Ltd & must be used, copied or reproduced in any way without written permission	notes Verify all dimensions & levels before commencing work. All structural details to engineers specifications. All materials & workmanship to conform with relevant codes & by-laws.	scale 1:200 drawing no. DA:11	issue A B C D E	date 07.12.05 12.12.05 16.12.05 06.03.06 07.04.06	issue	date	issue	date
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BUILDING ENVELOPE DIAGRAM

SEAVIEW STREET

WEST ELEVATION

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

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

Tweed Local Environmental Plan 2000

The subject land is zoned 2(b) Medium Density Residential pursuant to the provisions of Tweed LEP 2000.

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

"Primary objective

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

The proposed development is considered to have been designed in accord with best practice urban design principles. The development is architecturally modern and will positively contribute to the emerging built character of the locality.

The proposed density of the development is considered an appropriate response to the site characteristics, and is considered to be an orderly and economic use of the land, particularly in considering the restricted two-storey height limit that applies to the land.

The proposed development is considered to be consistent with the 2(b) Residential zone objectives.

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

Clause 16 of the TLEP requires Council to ensure that the height and scale of development is appropriate to the site and the surrounding built and natural environment. The subject land has a height limitation of 2 stories with the proposal comprising of 2 stories as defined within the Tweed LEP 2000. The proposal therefore complies with the provision of clause 16.

North Coast Regional Environmental Plan 1988

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

State Environmental Planning Policies

State Environmental Planning Policy (SEPP) 71 – Coastal Protection

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

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

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

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

Development Control Plan No. 2 – Access and Parking Code

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

Standard	Requirement	Proposal	Satisfactory
On Site Car Parking	1.5 spaces per dwelling, (6 spaces)	10 spaces in total, (2 visitor spaces)	YES

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

Development Control Plan No. 6 – Multi Dwelling Housing

The following comments are offered in assessment of the proposed development in relation to the provisions of this DCP:

Section 3.1.3 Site Density

Objective – To ensure that the building bulk of new development is compatible with the existing and desired future character of the locality.

Acceptable Solution –

A1 All multi dwelling housing development is to comply with a maximum floor space ration of 0.5:1.

A4 The minimum landscaped area to be provided for multi dwelling housing is 30% of the site area, or 80m² per unit which ever is the greater (320m²)

The proposal involves 712.7m² of GFA, equating to a FSR of 0.75:1. However, it is generally accepted that the 0.5:1 ratio is not suited to residential flat design, nor the 2(b) Medium Density zone, which projects the desired and future character of the area. The 0.75:1 ratio proposed is significantly lower than the 1:1 - 1.35:1 generally associated with other unit development in the Kingscliff area. The building in terms of bulk is an appropriate design response to this site.

The proposal involves approximately 196.5m² of vegetation and landscaping (including deep soil zones) and approximately 60m² of above podium landscaping to complement a further 187.2m² of pool and open-air recreation facilities. The landscaped area proposed incorporates functional areas within the front, side and rear setback to each of the dwellings, as well as areas around the perimeter of the site, however, it should be noted that within the submitted plans, larger plantings are indicated within the south-eastern corner of the site. The functionality of these plantings ultimately being used or their suitability is questionable as they are positioned on top of the podium level, as indicated by the dotted line on drawing no. DA:01. Nonetheless, whilst the amount of landscaping proposed is numerically deficient, the proposal is considered to provide suitable landscaped area for the use and enjoyment of its future occupants. A condition of consent has been included requiring approval (by Council) of a full landscape plan prior to the issue of a construction certificate to ensure landscaping treatment is appropriate.

Section 3.2.1 Streetscape, Building appearance and Front Setbacks

Objectives – In developed areas, to ensure that new development enhances and makes a positive contribution to the character of existing streetscapes or desired future character of the area.

To encourage the creation of attractive, well designed residential development.

To allow flexibility in design and use of materials while encouraging high architectural standards

Acceptable Solution –

A2 Setbacks from the street boundary measured to the outer most point of the building, shall be as follows:

6.0m – all forms of multi-dwelling housing except those permissible in commercial zones.

3.0m – from a secondary frontage where multi-dwelling housing is proposed on corner sites or allotments that have two street frontages.

- A5 *The maximum width of garages or carports facing the street should be 6m or 50% of the frontage width, whichever is the less. Carports and garages should be set back behind the front façade of the building.*

The proposal includes a minimum 6-metre setback to Seaview Street and a minimum of 3 metres to Orient Lane.

The proposal is considered largely consistent with the existing and desired streetscape of the area. The development involves a two-storey height, consistent with both the height provisions of the land, the aims of the medium density zone and adjoining properties. The buildings design, roof form and materials of construction will complement adjoining properties and positively contribute to the Seaview Street streetscape. Accordingly, the proposal is seen to comply with both the acceptable solutions and the overarching objectives.

3.2.2 Fencing and Walls

Objectives – To ensure that front and side fences and walls provide privacy, security, and noise attenuation without having a detrimental upon the streetscape, adjacent buildings and traffic safety.

Acceptable Solutions

A1 *Front fences and walls, for other than corner lots, should be no more than 1.2m if solid.*

A4 *Front fences and walls should be designed to use similar or compatible materials to that used in attractive buildings in the locality.*

The proposal predominately involves front fencing at a height of 1.2m, with increases in fence height, to accommodate the provisions of pools within the front setback by raising the fence height to a maximum 1.5m. In relation to the objectives to the DCP, the following is noted:

The proposal is compliant with the acceptable solutions detailed within Section 3.2.2, with the exception of 3 areas, being the two pool areas and the letterbox/feature area. The proposal includes a 1m setback from the primary boundary to the front fencing, allowing the opportunity for landscaping within this setback to soften the appearance of the fencing and the development as a whole. In this regard, a condition of consent has been included requiring Council approval of a full landscaping plan prior to the issue of a construction certificate. Further, the condition requires the applicant to investigate and include a variety of species, plant maturity and height within this setback to ensure that the development is softened, privacy levels are increased and that views afforded from the southern property are not unnecessarily obstructed.

Vehicular access is obtained from Orient Lane and as such fence height will not be permitted as it impacts upon required sight triangles or sight lines.

In light of the above, the proposal is considered to be consistent with the intent and objectives of Section 3.2.2 and should be supported in its current form.

3.3 Design Element – building Siting and Design

3.3.1 Building Envelope and Siting

Objectives – To ensure that the height, scale and length of new developments is not excessive and relates well to the local context

To encourage design which creates desirable living conditions and ensures desirable living conditions and ensures that the amenity of surrounding properties is properly considered.

Acceptable Solutions

A1 Buildings are sited within a building envelope determined by the following method. Planes are projected at 45 degrees from a height of 3.5m above finished ground level at the side and rear boundary, to a maximum height of 12m or three storeys in accordance with Tweed Local Environmental Plan 2000, whichever is the lesser.

A2 Allowable encroachments to envelope

Provided the distance to the boundary is not less than 1m, fascias, gutters, downpipes, eaves up to 0.6m, masonry chimneys, flues, pipes, domestic fuel tanks, cooling or heating appliances or other services may encroach beyond the building envelope.

A3(b)(For side and rear boundary setbacks) A minimum of three (3) metre setback from side and rear boundaries. Where car parking is to be provided under the building by way of an excavated basement area and the walls extend beyond the external walls of the main building and project more than 500mm above finished ground level, the minimum of three (3) metres will apply from side and rear boundaries.

The proposal displays compliance with the prescribed building envelope throughout the design, apart from a small section on the northern side, as viewed from the Seaview Street elevation. The area of encroachment comprises of structure only (no living areas) and is largely a result of the thick architectural lines the building has adopted in its façade treatment. In acknowledgement of acceptable solution A2, it is noted that the area of encroachment is in the order of 600mm and whilst not providing a 'service' for the building, it is considered reasonable.

It is noted that the submitted Seaview Street elevation displays a false impression of non-compliance with the building envelope requirements towards the rear of the development. This impression is largely created by the distinct southeast to northwest slope throughout the site, however when viewing the development in a section, compliance with the building envelope provisions is demonstrated.

The building design involves a minimum 3m-side setback to the main wall of the building with second storey balconies encroaching to 2 metres on both north and southern setbacks (Complies, 1.5m setback for second storey balconies allowed under Section 3.3.3 A2).

3.3.3 Useable Open Space

Objective - To ensure that the open space provided for a dwelling is useable and meets user requirements for privacy, safety, access, outdoor activities and landscaping.

To locate open spaces to take account of outlook, natural features of the site and neighbouring buildings or public open space.

Acceptable Solution

A1. Private open space for the dwelling comprising:

(a) For Multi dwelling housing in residential zones:

- total minimum area of 20% of the site area (or average site area per dwelling for integrated housing developments), with a minimum dimension of 3m;*
- one part with an area of 25 m² with a minimum dimension of 4m and directly accessible from a living area of the dwelling;*

The proposal involves a total of 240m² of private open space through pool, podium and decked areas, satisfying the numerical 20% requirement. Whilst the proposal involves the required percentage of private open space, a significant portion of that provided is located at ground level, with second storey units relying upon two decked areas each, 1 positioned at the western end of the building, projecting towards the primary frontage, measuring approximately 20m² and the second positioned at the eastern end of the dwelling, accessed from the master bedrooms, measuring approximately 10m². The proposal involves a third balcony area which is accessed off the laundry, however given it's positioning and size it is not considered that the area is functional for either active or passive open space and as such has not been included in Council's assessment.

Whilst the private open space proposed fails to meet the numerical requirements for the second storey units, it is considered that the design of the proposal has adequately achieved the likely needs for its future residents. As stated earlier, the main deck area is positioned at the western end of the building, taking advantage of the north-western and northern views. The primary area is accessed off an expansive open plan Lounge, Dining and Kitchen area, which is considered to be the principal entertaining area. The balcony at the eastern end of the development is likely to be utilised for passive open space as it is accessed solely off the master bedroom. Internally, the proposal involves a 'Retreat' area, offering an alternate area for recreation.

In light of the internal layout and features of the proposal, the private open space needs to future occupants are seen to have been met by the proposals present design.

Development Control Plan No.43 - Kingscliff

The subject site is in the Kingscliff Hill Precinct and is identified as having Type 5 Buildings. The objectives of the Kingscliff Hill Precinct are to:

- Develop the Kingscliff Hill medium density zone as an attractive residential area, with buildings that respect the slope of the land and allow for the retention of views;
- Encourage development to take advantage of available views and climatic effects;
- Ensure that development on visually prominent sites is relatively unobtrusive; and
- Preserve the traditional character of existing laneways.

In this regard, the proposal is considered to appropriately respect the slope of the land, is in-keeping with the coastal building theme emerging within the immediate locality and is largely un-obtrusive. In this regard, the building height and citing has provided maximum opportunity for the retention of views to adjoining properties. Further, the proposal is considered to satisfy the zone objectives and will make a positive contribution to the Seaview Street streetscape. The proposal satisfies the provisions of DCP43.

Development Control Plan No. 48 – Tweed Coast Building Heights

DCP 48 prescribes, as an overarching objective for building height that, new development should minimise the visual and physical impact and apparent bulk that it has on adjoining development and public streets and spaces. In addition, new development should also equitably share identified important view corridors and provide a positive contribution to the streetscape.

Within the Building Height component of DCP 48, an acceptable solution is offered for 2 storey residential development, prescribing that should the building be a maximum height of 8 metres to it's highest point (ridge point of the roof) that the proposal will met the objectives established. The DCP also details a height to the top plate of the building, however, in this instance it is the buildings height and bulk that is in question and accordingly the top plate provision is considered largely irrelevant in this instance.

The applicant has provided the following comment in relation to the height provisions of DCP 48:

"We have marked by way of blue asterix (roof plan) the highest ridge cap point on the development and note that it is set at 33.1m AHD. As this is the highest point on the building we have calculated the ground level immediately below this point and note that it is set at 24.7m AD, a difference of 8.4m. The latter being the highest point of the building, approximately 400mm greater than that prescribed within DCP 48. We note however that the 25.1m contour level kicks in only approximately 8m further in from that point marked with the blue asterix (roof plan), demonstrating that strict non compliance is relevant for a distance of 8m only and to a decreasing vertical maximum of 400mm only. This scenario is further clearly demonstrated within that drawing marked Section AA and attached. This section, taken at the point where the building is at its maximum height, also depicts the maximum extrusion of the development in relation to the FGL to top plate requirements of the DCP. In this regard, it is clear that the proposal demonstrated consistency with these requirements at the very worst point, and overwhelming consistency as the building stretches further back towards the Orient Lane frontage.

We also not that the front roof section adjacent to Seaview Street and stretching inwards for the first 14m of the site represents a maximum height above FGL of 30.3m, whilst the ground below this represents a maximum heights of 23.5m AHD, a difference of 7.8m. Accordingly, this section, which is of greater consequence to the adjacent neighbours in terms of view loss than the higher roof pitch to the rear, is completely complaint with DCP 48, even at its highest point.

With reference to the small and almost negligible area where the building is above the 8m height requirement, we make the following comments:-

1. *This component of the room form is located approximately 14m in from the Seaview Street frontage and is therefore located further to the east of the parallel with the private open space balcony of the adjacent neighbours (to the south and elevated above site). The latter is particularly important as the amended plans also show a reduction in height of the forward roof form so as to appease the concerns of the adjacent neighbour. The balcony area of the neighbours relative to the first minor instance of non compliance with DCP 48 is shown within the attached shadow plan and again referenced with a blue asterix.*
2. *The primary views of the adjacent neighbour are directed down Seaview Street towards the north. These will remain unaffected, ensuring that the neighbour retains an acceptable level of view enjoyment. It is unreasonable for the neighbour to hold an expectation that they will have unimpeded view lines completely across the northern horizon.*
3. *The provisions of DCP 48 have been adopted by Council in a manner that permits flexibility and does not allow for a strict perspective interpretation in all instances. This is clear with reference to the attached resolution of Council dated October 2004. This resolution is not superseded by any further contemporary resolution and therefore should this matter proceed to court, the ability of Council to strictly enforce the prescriptive requirements in a hard and fast manner are indeed very questionable.*
4. *The minor non compliance point depicted in the plans is fixed by way of the lift overrun and therefore cannot be lowered in any form. Notwithstanding, the plans depict the fact that the highest point is limited to a point further to the west of the neighbours balcony and limited in respect of variation sought to an almost negligible distance.*
5. *The prescriptive requirement is obviously an attempt to limit unacceptable bulk and scale, of which the proposal cannot claim to breach. In this regard, further evidence of the latter can be found in the fact that the proposal neither compromises acceptable overshadowing requirements (which would be a reflection of excessive height), nor does it result in unacceptable view disruptions. Of course these matters are closely linked to the performance requirements underpinning the prescriptive control and which have been previously addressed in detail.*

We are of the very strong opinion that the proposal demonstrates more than satisfactory consistency with the intent of the 8m height restriction and that there are no grounds for refusal or variation. Accordingly, we would expect that Council will support the proposal as submitted in terms of requirements of DCP 48."

The above comments are noted and largely concurred with, however Point 4 is considered to warrant further discussion.

Discussions with the proposals architect have revealed that there is the ability to 'sink' the whole building further into the site, allowing strict provision with the acceptable solutions of DCP 48 to be achieved. The Development Assessment Unit (DAU) feels however that the proposal meets the performance criteria established within DCP 48 in its current form and accordingly is satisfied with the design currently presented.

It is again re-iterated that the area of non-compliance is at maximum 400mm in additional height and decreases with the climb of the site, for a distance of 8 metres. The additional 400mm will be largely imperceptible to adjoining landowners and is not positioned within a realistic view corridor. The area of non-compliance is also setback 14 metres from the primary frontage, the proposed height between the 14m setback and the primary boundary (a key area of objection regarding view loss) is wholly compliant with Council's acceptable solutions for height and building siting (building envelope provisions). In addition, it is recognised that the submitted Seaview Street elevation gives a false impression that the building height is 9.5m, however this impression is created by the distinct southeast to northwest slope throughout the site, when referring to the existing contours of the land immediately below the building it is acknowledged that the maximum building height is in the order of 8.4m at it's worst point.

Development Control Plan No. 51 – Tweed Coast Strategy

Satisfactory

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

NSW Coastal Policy

The proposed site is located within the area covered by the Government Coastal Policy. With regard to the objectives of this policy the proposal is identified as satisfactory.

Demolition

The subject application does not include the demolition of the existing structures on site as Council has already issued approval for demolition under DA03/0626.

(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

Views

The subject site and a number of adjoining properties currently enjoy vistas of the Pacific Ocean to the north and northwest. Accordingly, properties to the south are primarily affected.

In light of the southern adjoining lot layout and positioning, it is considered to be the property most affected by the proposal. With the current dwelling size and siting on the subject land, No 28 Seaview Street enjoys ocean and Cook Island vistas from primary living and entertaining areas as well as a roof-top terrace, however under the current proposal, a significant proportion of the northern views enjoyed will be eradicated.

In the case of (*Tenacity Consulting Pty Limited v Warringah Council*) [2004], Senior Commissioner Roseth pronounced that in assessing view sharing or view loss, the reasonableness of the proposal that is causing the impact must be assessed. In this regard, the proposal has been cited on the subject land in accordance with Council's Building Line Policy and setbacks to main walls specified within applicable DCPs. In addition, the proposal complies with the prescribed building envelope and prescribed building height for 2 storey residential units (within DCP 48) for the first 14 metres of the property.

In this regard it should be noted that the loss of views is largely created from the orientation of the subject and surrounding lots in an east-west fashion and the adjoining landowner has been fortunate in many regards to have had the benefit of an underdeveloped site for a period of time. It should also be noted that the development on No. 28 Seaview Street enjoys several concessions from Council, particularly the provision of second floor deck, which projects to within 3.5m of the primary boundary, allowing the opportunity for some northern views to be retained. However, any development constructed from the building line, in a two-storey format would minimise the northerly views enjoyed from No. 28 Seaview Street. North-westerly views will remain unaffected.

In light of the orientation of the subject lots and the height restrictions over the land, the expectation to retain the majority of the northerly views currently afforded from primary living areas of No. 28 Seaview Street, particularly to the north, is considered unrealistic. However, 28 Seaview Street does enjoy the benefit of a roof top terrace, which in comparison to the maximum RL of the proposal, will retain a higher RL (architectural plans submitted for No. 28 Seaview Street appear to include some inaccuracies in RLs, however Council has undertaken a full assessment based on the information provided within a number of DAs lodged over both No. 26 and 28 Seaview Street), allowing the maintenance of some of the northerly views currently enjoyed by it's residents.

In assessing the reasonableness of the proposed application it has been determined that the building satisfies the intent for the character of the area, while significantly complying with the height restrictions and satisfying Council that the application has had adequate regard for the amenity of adjoining property in terms of shadow, privacy and general amenity. Therefore it is considered the issue of loss of views does not warrant refusal of the application.

(c) Suitability of the site for the development

Suitability of the Lot/ Natural Hazards

A search of Council's GIS system displayed that the site contains limited natural hazards and environmental constraints.

The subject site has a land area of 949m² and is of regular shape. The land is slightly sloping, from a high of 26.25m AHD metres at Orient Lane down to 22.45m AHD at Seaview Street. The site is not identified as Bushfire Prone under the Bushfire Prone Land Map dated February 2004, is not identified as flood prone and is not affected by any Tree Preservation Orders.

Surrounding development is predominately in a medium density form, however a single dwelling house is located immediately to the south of the subject land.

In consideration of the limited site constraints, existing uses within the vicinity, the proposal is not considered to adversely affect or create any additional hazards and is considered a suitable use in relation to the subject land.

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

As discussed earlier, during the submission period, submissions from five parties were received. The common theme amongst the submissions received related to the proposed building line variation. Upon receipt of the submissions and discussions with Council's technical officers, the proposal was subsequently amended and no longer includes a building-line variation, mitigating a number of the concerns raised.

Additional concerns raised are discussed in the table below:

Issue	Impact	Comment
<p>Non-compliance with acceptable solutions detailed within applicable DCPs.</p>	<p>It is reminded that the acceptable solutions offered in DCP 6 and 48 are not rules, nor are they Development Standards, they are merely examples of ways to achieve the overall objective established. Both DCPs are framed to allow flexibility in building form and design, where the applicant is free to provide an assessment against the performance criteria, acceptable solutions, or a combination of both. As was discussed previously within this report, the DAU considers that the proposal meets the objectives formed within DCP 6 and 48, in addition, the majority of acceptable solutions have been met within the final design.</p>	<p>Refusal of the application on this matter is not considered warranted.</p>
<p>Loss of Views</p>	<p>Discussed elsewhere in this report, however, in summary, the proposal is acknowledged to detract from the Northern views offered to 28 Seaview Street, however this is largely due to the east-west subdivision layout of the land, as opposed to poor building design. North-western views are unaffected.</p>	<p>Refusal of the application on this matter is not considered warranted.</p>

Overshadowing	The applicant has submitted shadow diagrams, displaying compliance with the requirements of DCP 6	Refusal of the application on this matter is not considered warranted.
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(e) Public interest

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

OPTIONS:

1. Approve the application in accordance with the recommendation and conditions of consent.
2. Inform the applicant to provide amended plans displaying holistic compliance with DCP 48 – Tweed Coast Building Heights, Section 2.2 A1.
3. Refuse the application and provide applicable reasons for refusal.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Photomontage Coloured Plan (DW 1416378)
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