



# **AGENDA**

## **PLANNING COMMITTEE MEETING Tuesday 17 October 2006**

**Chairman: Ms Lucy Turnbull**

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

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## REPORTS THROUGH GENERAL MANAGER

### REPORTS FROM DIRECTOR PLANNING & DEVELOPMENT

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

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

#### MATTERS FOR CONSIDERATION

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

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

**ORIGIN:**

**Development Assessment**

**FILE NO: DA06/0698 Pt1**

**SUMMARY OF REPORT:**

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

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

The extensions to the Tavern include an additional bar service area; male, female and disabled toilet facilities; gaming room; and additional bar lounge and outdoor relaxation areas. The proposed extensions would have a licensed floor area of 500m<sup>2</sup>, resulting in the total licensed floor area of the completed Tavern being 842m<sup>2</sup>. The proposed trading hours are in accordance with the original approved hours, that being 10am to 10pm Sundays through Wednesdays and 10am to 11pm Thursdays through Saturdays.

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

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

**RECOMMENDATION:**

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

**GENERAL**

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

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan. Use or occupation of the building is not permitted until all contributions have been paid to Council.

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

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

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



- (a) Tweed Road Contribution Plan: \$10,423  
S94 Plan No. 4 (Version 4.0)  
**Sector 2 - Tweed Heads South**

[GENNS01]

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

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

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

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

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

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

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

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

[PCC0265]

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

[POC0615]

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

[POC0635]

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

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

[POCNS01]

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

[POCNS02]

#### **PRIOR TO COMMENCEMENT OF WORK**

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

[PCW1075]

#### **DURING CONSTRUCTION**

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

**Monday to Saturday from 7.00am to 7.00pm**

**No work to be carried out on Sundays or Public Holidays**

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

[DUR0205]

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

[DUR0395]

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

[DUR0415]

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

[DUR1495]

17. All flooring materials in the bar areas are to be impervious, non slip, non abrasive and capable of withstanding heavy duty operation. Where tiling is to be used epoxy grout finished flush with the floor surface is to be used in joints or alternatively all tiles are to be butt joined and free of cracks or crevices.  
[DUR1505]
18. Separate hand washing facilities must be provided with warm water and located in a position where it can be easily accessed by food handlers and be of a size that allows easy and effective hand washing to the satisfaction of the General Manager or his delegate.  
[DUR1545]
19. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction.  
[DUR2185]
20. Any proposed cooling tower installation must also include details on the proposed means of back flow prevention to the water supply prior to installation.  
[DUR2475]
21. Pre-treatment devices must be serviced by a Council approved waste contractor. The applicant will be required to enter into a service agreement with this waste contractor. Pre-treatment device service frequency will be approved by Councils Manager Water.  
[DUR2595]
22. Any premises used for the storage, preparation or sale of food shall comply with the relevant provisions of the Food Act 2003, Australian and New Zealand Food Standards Code, and Australian Standard AS 4674 - Design, Construction and Fitout of Food Premises.
23. The burning of builders waste on site by open fire is prohibited.
24. Suitable covering and protection is to be provided to ensure that no material is removed from the site by wind, causing nuisance to neighbouring properties.
25. All work associated with approval is to be carried out so as not to cause a nuisance to residents in the locality from noise, water or air pollution.
26. All plant and equipment as specified in the Noise Level Impact Assessment Report prepared by Craig Hill Acoustics dated 31 August 2006 (Reference: Pier 2 310806/1) is to be mounted on resilient mounts to reduce vibration and the transmission of noise with tonal components.

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

[DURNS01]

#### USE

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

[USE0125]

[USE0135]

[USE0165]

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

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

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

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

[USE0185]

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

41. No form of public entertainment is to be carried out on the premises unless an approval for a Place of Public Entertainment has been obtained pursuant to the provisions of Section 68 of the Local Government Act, 1993.
42. No food, with the exception of beverages, shall be stored and/or prepared within the bar area.
43. The bait and tackle shop shall be limited to the sale of pre-packaged food only. No food is to be prepared within this area.
44. The premises shall comply with the requirements of The Liquor Administration Board.
45. All activities associated with the occupancy of the building are to comply with the Protection of the Environment Operations Act, 1997.  
[USENS01]
46. The use being restricted to the floor area designated on the approved plan.  
[USE0415]
47. All loading/unloading to take place within the boundary of the subject property in the specified loading bay areas.  
[USE0525]
48. All food handling areas and persons engaged in the preparation and handling of food supplied to patrons or occupants are to comply with the provisions of the Foods Act 1989 and the provisions of the Food Standards Code as called into force by the Food Regulation 2001.  
[USE0825]

**REPORT:**

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

**BACKGROUND:**

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

The existing approval for the Ivory Hotel fitout (0770/2000DA) covered a licensed floor area of 342m<sup>2</sup>, not including back of house areas, kitchen, toilets and servery. The proposed extensions cover an area of approximately 500m<sup>2</sup>, excluding the shop, toilets, common entry foyer and office areas, resulting in a total proposed licensed floor area of 842m<sup>2</sup>.

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

The subject site boasts a total area of 3,907.75m<sup>2</sup>. It has direct street frontage to Terranora Terrace and Wharf Streets on its western and northern boundaries respectively. The site adjoins Council owned Afex Park to the east and abuts the Terranora Inlet waterway at its south-eastern corner. The site affords panoramic views of the waterway, adjoining marina and across the water to the Anchorage Island residential precinct.

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

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

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

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

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

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

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



**SITE DIAGRAM:**



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

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

Tweed Local Environmental Plan 2000

The subject site is zoned 3 (d) Waterfront Enterprise. The proposed tavern is permissible with consent within the zone.

The primary objective for the 3 (d) zone is to encourage development related to waterfront and marine activities, recreation or tourism. The proposed tavern is considered directly compatible with the primary zone objective and satisfies the provisions of Clause 8 by virtue of its physical and visual links with the adjoining Pier 2 Marina, and the target market of the tavern being tourist-based, and given the Tweed town centre presently lacks an establishment of this nature which primarily targets visitors to the area.

Clause 15 of the TLEP requires Council to be satisfied that the subject land has the benefit of essential services prior to issuing consent. All essential services are available to the site. An existing water service runs adjacent to the northern boundary of the site along Wharf Street; the sewer main running along the sites' frontage to Terranora Terrace is of suitable capacity; and appropriate stormwater outlets exist at the northern end of the site. Furthermore, no objections from Council's Environmental Health Officer have been raised regarding the bin storage and collection area situated at the rear of the kitchen area adjacent to the loading bay.

Clause 16 of the TLEP requires development to be carried out in accordance with the height limitation plan, and in that regard the site is restricted by an allowable height limit of 2 storeys. The completed Pier 2 development, within which the proposed tavern will be located, is two storeys in height and thus is consistent with the allowable height limit for the site. No additional buildings or structures are proposed as part of this development.

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

Clause 35 of the TLEP requires an acid sulfate soils management plan be assessed where the proposed development is likely to interfere with acid sulfate soils. The subject site is identified as possessing Class 2 acid sulfate soil levels. Notwithstanding, the proposal does not involve any works below the ground surface and as such would not disturb any potential acid sulfate soils. In that regard, development is not constrained by acid sulfate soils and a management plan is not required in this instance.

#### North Coast Regional Environmental Plan 1988

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

Clause 32B of the NCREP applies to all land to which the NSW Coastal Policy 1997 applies. The subject site falls within the area governed by the NSW Coastal Policy and as such, when considering development on this land Council shall take into account the provisions of The NSW Coastal Policy 1997; The Coastline Management Manual; The North Coast: Design Guidelines; and shall not grant consent to development that would impede public access to the foreshore or would cause overshadowing to beaches or adjacent open space before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time). These provisions are generally taken to relate to the construction of new buildings or structures and are generally not concerned with the ongoing use of existing structures, provided no alterations to the outside appearance of the building are proposed. The Pier 2 building form was approved under separate assessment, which considered the provisions of the abovementioned policies and guidelines. Furthermore, there are no alterations proposed to the built form of the development as part of this proposal.

Clause 33 of the NCREP relates to development in areas likely to be subject to coastal processes and requires Council to require that disturbed foreshore areas be rehabilitated and that access to the foreshore areas be confined to specific points. The proposed tavern extensions have no direct implications with respect to disturbance of the foreshore. With regard to access points, the boardwalk running the length of the development would provide ample access and viewing points for public enjoyment.

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

The relevant sections of Clause 81 of the NCREP relate to development within 100 metres of a substantial waterway and require Council to be satisfied that foreshore amenity and accessible foreshore open space within the vicinity of the development will not be compromised and that the development is consistent with the principles of any foreshore management plans applying to the area. There are no foreshore management plans directly applicable to the subject site, and the proposed use is considered consistent with the intentions of this clause with respect to foreshore amenity.

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

State Environmental Planning Policy No. 11 – Traffic Generating Developments

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

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

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

State Environmental Planning Policy No. 71 – Coastal Protection

The subject site is located within the coastal zone (as per the NSW Government Coastal Policy) and as such is subject to the provisions of State Environmental Planning Policy No 71 – Coastal Protection (SEPP 71). Referral to the Department of Natural Resources, however, is not necessary by virtue of Amendment No. 4, which came into effect on 7 December 2005 and wholly repealed cl.9(1)(b).

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

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

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

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

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

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

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

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

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

Development Control Plan No. 18 – Tweed Heads

The vision statement for Tweed Heads is:

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

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

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

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

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

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

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

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

The proposed development is defined as a hotel under DCP 2. The plan specifies car parking requirements for hotel developments at a rate of 1 space per 3.5m<sup>2</sup> of licensed area plus 0.5 spaces per staff member. The total licensed floor area of the completed tavern would be 842m<sup>2</sup>, which equates to a requirement of 241 parking spaces for the tavern alone. Upwards of 60 staff would be employed, requiring a further 30 spaces, and the retail area, office space and marina generate an additional 19 spaces. Therefore under Council's current requirements, a total of 290 spaces would need to be provided to satisfy the provisions of DCP No. 2.

The applicant has engaged a private traffic consultant to prepare a car parking assessment, which seeks relaxation of this standard. Council's traffic engineer has acknowledged that the current rate in DCP 2 is too high for taverns, and has advised use of the rate adopted by Gold Coast City Council, that being 1 space per 10m<sup>2</sup> and 1 per 3 poker machines. Parking would be considered satisfactory if the available on site parking spaces provided by the Pier Two development satisfy parking requirements at the reduced rate.

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

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

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

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

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

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

The proposed development involves extensions to an already approved tavern within the Pier Two Development. The existing licensed floor area of the tavern is 342m<sup>2</sup>, and the application before Council seeks extensions of 375m<sup>2</sup> of indoor licensed area and 125m<sup>2</sup> outdoor licensed area, resulting in a total licensed floor area of 842m<sup>2</sup>. *Approval of this application would result in a licensed floor area more than double the size of existing approved floor area. Consequently, the potential capacity of the premises with respect to clientele numbers effectively also doubles. In that regard, the possibility exists for substantially greater socio-economic impacts than those considered as part of the original tavern assessment.*

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

The findings and recommendations of the report are discussed in further detail in the following sections.

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

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



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

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

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

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

Clause 92(a) Government Coastal Policy

The land is identified under the Coastal Policy. The site is not affected by the Coastal Erosion Zones, is unlikely to be affected by the coastal processes, will not overshadow foreshore reserves and does not restrict public access to the coast. Therefore the proposed development is not in conflict with the policies and strategies contained within the coastal policy.

Clause 92(b) Applications for Demolition

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

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

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

### Noise

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

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

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

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

### Social Impacts

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

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

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

#### Economic Impacts

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

#### Traffic and Parking

*The tavern extensions will generate additional traffic to the site. Notwithstanding, the one way directional flow of traffic through the site increases the operational efficiency of the car park, and the left turn only ingress from Wharf Street and left turn only egress to Terranora Terrace would ameliorate the risk of accidents as both these roads are quite busy and right hand turns would hinder traffic flow past the site. The capability of the site and surrounding road network to accommodate the anticipated level of traffic has been assessed by the Local Traffic Management Committee and is considered adequate given the thorough assessment previously undertaken for the Pier Two development.*

*As discussed in the above section addressing DCP 2, on site car parking is considered sufficient to cater for the expected patron parking demand. Furthermore, the Traffic Impact Assessment submitted with the application maintains that Ivory Hotel Management intends to provide a shuttle bus service, which will operate on demand and provide regular service to the Tweed Heads CBD. It is anticipated this service would reduce the number of patrons driving to the site and also the incidences of drink driving. A condition of consent requiring the provision of this service has been included.*

#### **(c) Suitability of the site for the development**

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

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

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

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

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

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

Noise

Comments

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

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

### Assessment

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

### Internal Design

### Comment

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

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

### Assessment

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

### Trading Hours

### Comments

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

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

### Assessment

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

### Social Impact Assessment

### Comments

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

### Assessment

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

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

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

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

### Car Parking

### Comments

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

### Assessment

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

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

Traffic

### Comments

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

### Assessment

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

Mixed Retail Development

### Issue

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

Comment

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

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

**(e) Public interest**

The proposed development demonstrates consistency with the relevant planning instruments and Council requirements. The applicant has addressed all relevant issues and sufficient information has been supplied to make a proper assessment of this application. Given that the proposed development would generate significant employment opportunities in the hospitality sector; is targeting a specialised market which, up until now, has not been specifically targeted in the Tweed Heads area; and would result in an easily recognisable landmark building at a prominent entry point to Tweed Heads, it is considered appropriate for the site, would not set an undesirable precedent for future development in the Shire and is considered beneficial to the wider public interest.

**OPTIONS:**

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

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

**POLICY IMPLICATIONS:**

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

Council's Traffic Engineer has recommended that the Gold Coast City Council rates for tavern developments be adopted via an amendment to DCP 2, or within the forthcoming consolidated DCP.



**CONCLUSION:**

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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

**ORIGIN:**

**Development Assessment**

**FILE NO: DA06/0271 Pt1**

**SUMMARY OF REPORT:**

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

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

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

**RECOMMENDATION:**

**That: -**

- 1. The fence height variation and building line variation be supported.**
- 2. Development Application DA06/0271 for multi dwelling housing comprising six (6) town houses at Lot B DP 385567, No. 40 Dry Dock Road Tweed Heads South be approved subject to the following conditions: -**

**GENERAL**

- 1. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**  
[GEN0115]
- 2. The development shall be completed in accordance with the Statement of Environmental Effects and Drawing Nos**
  - SP 2, prepared by Bristow Architects, and dated 20/06/2006,**
  - SP 3, prepared by Bristow Architects, and dated 20/06/2006,**

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

except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0045]

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

[GEN0135]

#### **PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

##### **5. Section 94 Contributions**

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

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

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

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

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

(a) Tweed Road Contribution Plan: S94 Plan No. 4 (Version 4.0) Sector2_4	\$4,378
(b) Open Space (Structured): S94 Plan No. 5	\$2,280
(c) Open Space (Casual): S94 Plan No. 5	\$487
(d) Shirewide Library Facilities: S94 Plan No. 11	\$2,012
(e) Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$409
(f) Community Facilities (Tweed Coast - North) S94 Plan No. 15 North Coast	\$2,460
(g) Emergency Facilities (Surf Lifesaving) S94 Plan No. 16	\$586
(h) Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$3,708.45
(i) Cycleways S94 Plan No. 22	\$1,028
(j) Regional Open Space (Structured) S94 Plan No. 26	\$6,799
(k) Regional Open Space (Casual) S94 Plan No. 26	\$2,499

[PCC0215/PSC0175]

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

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

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

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

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

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

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

[PCC0265/PSC0165]

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

[PCC0465]

8. Any works to be carried out within the adjoining road reserve is subject to application and approval being issued by Tweed Shire Council as the road authority.

Application for these works and receipt of approval is to be obtained prior to the issue of a construction certificate for works within the development site.

[PCC0075]

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

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

[PCC1105]

**10. Stormwater**

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

[PCC1135]

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

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

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

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

[PCC1145]

**12. Erosion and Sediment Control shall be provided in accordance with the following:**

- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.

- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCC1155]

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

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

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

[PCCNS01]

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

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



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

[PCCNS02]

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

[PCC0675]

#### **PRIOR TO COMMENCEMENT OF WORK**

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

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

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

[PCW0215]

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

[PCW0225]

18. Residential building work:

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

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

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

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

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

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

[PCW0235]

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

- (a) a standard flushing toilet connected to a public sewer, or

- (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

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

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

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

[PCW0255]

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

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

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

[PCW0775]

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

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

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

[PCW0985]

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

[PCW1065]

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

[PCW1165]

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

[PCW1005]

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

[PCW0005]

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

[PCW0015]

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

[PCW0705]

#### **DURING CONSTRUCTION**

29. All proposed works to be undertaken are to be carried out in accordance with the conditions of development consent, approved construction certificate, drawings and specifications.

[DUR0005]

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

**Monday to Saturday from 7.00am to 7.00pm**

**No work to be carried out on Sundays or Public Holidays**

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

[DUR0205]

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

[DUR0245]

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

[DUR0375]

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

[DUR0395]

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

[DUR0405]

35. It is the responsibility of the applicant to restrict public access to the building site, building works or materials or equipment on the site when building work is not in progress or the site is otherwise unoccupied in accordance with WorkCover 2000 Regulations. [DUR0415]
36. The finished floor level of the building should finish not less than 225mm above finished ground level. [DUR0445]
37. The development is to be carried out in accordance with the current BASIX certificate and schedule of commitments approved in relation to this development consent. [DUR0905]
38. All work associated with this approval is to be carried out so as not to impact on the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -
- Noise, water or air pollution
  - Minimise impact from dust during filling operations and also from construction vehicles
  - No material is removed from the site by wind
- [DUR1005]
39. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction. [DUR2185]
40. The guttering downpiping and roof waste water disposal system is to be installed and operational before the roofing is installed. [DUR2245]
41. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:
- (a) internal drainage, prior to slab preparation;
  - (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
  - (c) external drainage prior to backfilling.
  - (d) completion of work and prior to occupation of the building. [DUR2485]
42. Plumbing
- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
  - (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage. [DUR2495]

43. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position. [DUR2505]
44. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993. [DUR2515]
45. All water plumbing pipes concealed in concrete or masonry walls shall be fully lagged. [DUR2525]
46. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level. [DUR2545]
47. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-
- \* 43.5<sup>0</sup>C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
  - \* 50<sup>0</sup>C in all other classes of buildings.
- A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works. [DUR2555]
48. Where two (2) or more premises are connected by means of a single water service pipe, individual water meters shall be installed to each premise beyond the single Council water meter (*unless all the premises are occupied by a single household or firm*). [DUR2615]
49. The structure is to be sited at least one metre horizontally clear of sewer main on site. All footings and slabs within the area of influence of the sewer main are to be designed by a practising Structural Engineer. The engineer is to submit a certification to the Principal Certifying Authority that the design of such footings and slabs will ensure that all building loads will be transferred to the foundation material and will not effect or be affected by the sewer main. [DUR2645]

50. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard. [DUR2535]
51. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:
- A. Short Term Period - 4 weeks.  
L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.
- B. Long term period - the duration.  
L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence. [DUR0215]
52. Provision to be made for the designation of 1 durable and pervious car wash-down area/s. The area/s must be identified for that specific purpose and be supplied with an adequate water supply for use within the area/s. Any surface run-off from the area must not discharge directly to the stormwater system. [DUR0975]
53. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials. [DUR2205]
54. Appropriate measures are to be put in place during the construction period to prevent the transport of sediment from the site. Should any material be transported onto the road or any spills occur it is to be cleaned up prior to cessation of same days work and/or commencement of any rain event. [DUR2405]
55. Vehicles leaving the premises shall be sufficiently free from dirt, aggregate or other materials such that materials are not transported onto public roads. [DUR2415]



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

Such to specifically include the following:

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

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

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

60. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate. [DUR0995]
61. A concrete ribbon footpath 1.2 metres wide and 100 millimetres thick is to be constructed on a compacted base along the entire frontage of the site to Dry Dock Road in accordance with Councils adopted Development Design and Construction Specification.

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

[DUR1735]

62. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils adopted Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[DUR1875]

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

[DUR1905]

64. During construction, a "satisfactory inspection report" is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.

[DUR2445]

#### **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

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

[POC0205]

66. Prior to the issue of an occupation certificate: -

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

[POC0235]

67. Prior to the issue of a final occupation certificate adequate proof and/or documentation is to be submitted to the Principal Certifying Authority to identify that all commitment on the BASIX "Schedule of Commitments" have been complied with.  
[POC0435]
68. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate, a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.  
[POC1045]
69. Prior to the issue of a final occupation certificate, all conditions of consent are to be met.  
[POC1055]
70. All landscaping work is to be completed in accordance with the approved plans prior to any use or occupation of the development.  
[POC0475]
71. Prior to issue of an occupation certificate, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.  
[POC0005]
72. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all s68h2 permanent stormwater quality control devices.  
[POC0985]
73. The existing disused layback is to be removed and replaced with kerb and gutter to match existing, in accordance with Council's adopted Design and Construction Specifications.  
[POCNS01]
74. An easement to drain sewage (in accordance with Council's standards: minimum 3m wide) is to be created over the existing sewer main that traverses the site. Furthermore, the owner shall indemnify Council for any and all future damage to the development that may occur, as a result of Council needing to access the sewer main at any time in the future. Documentary evidence of easement creation is to be submitted to Council prior to issue of the Occupation Certificate.  
[POCNS02]

**USE**

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

[USE0175]

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

[USE0225]

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

[USE0235]

**REPORT:**

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

**BACKGROUND:**

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

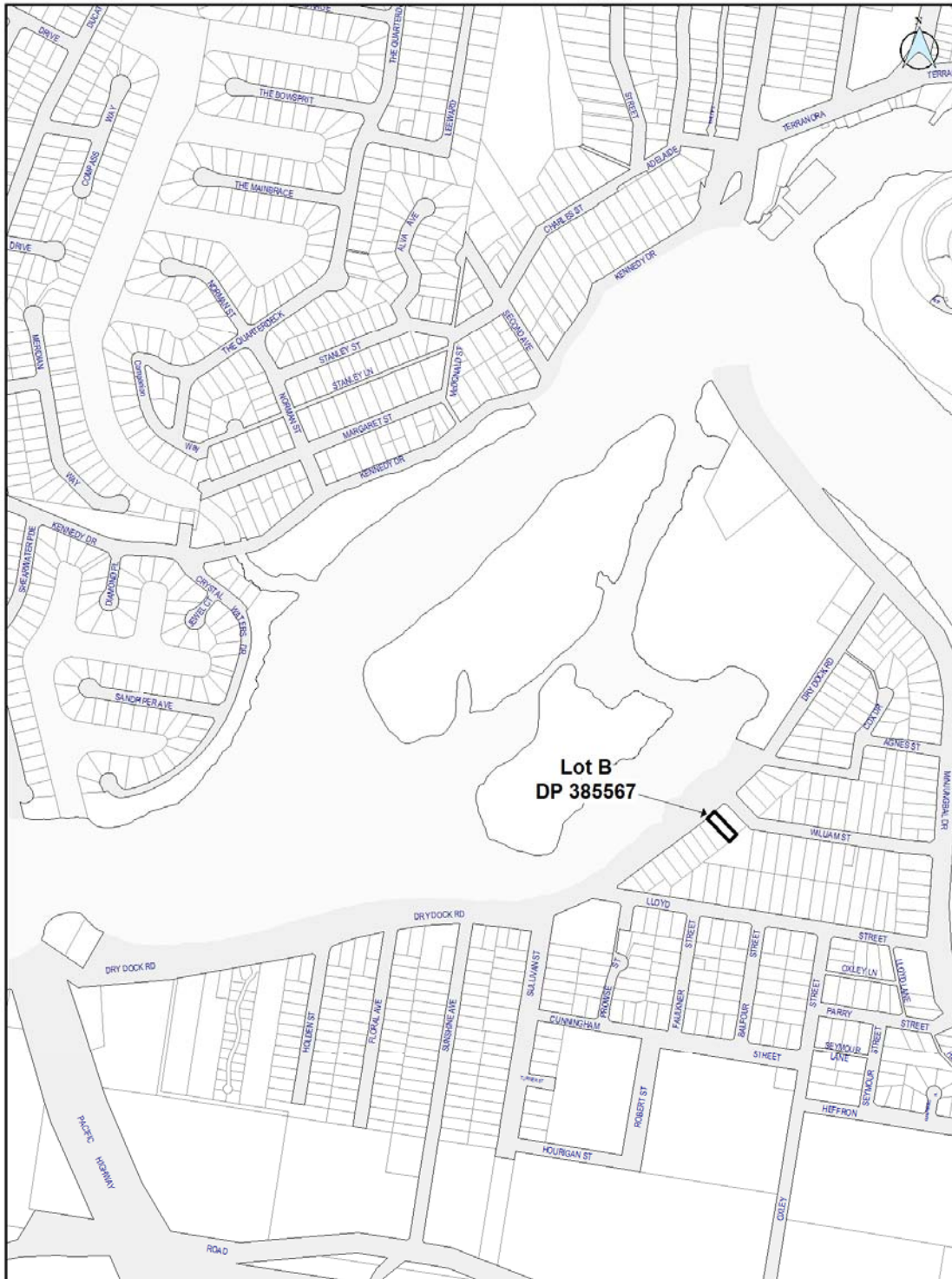
The subject site is constrained as result of the site's dimensions, being 16.4m wide and 50.3m in length and as a result of a sewer main traversing the site. The subject site is surrounded by medium density residential developments.


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

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

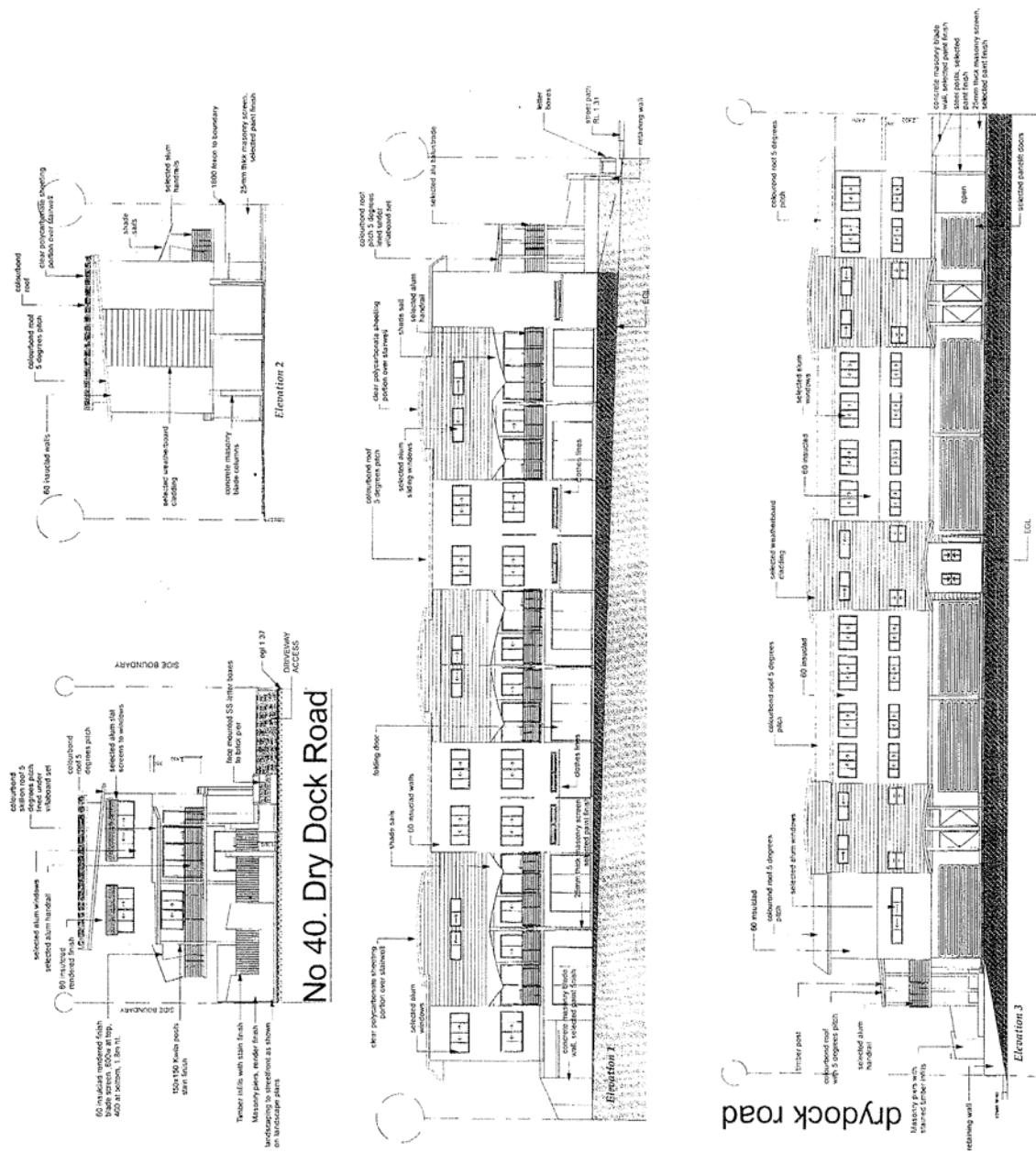
One submission has been received objecting to the proposed development.

**SITE DIAGRAM:**



<p>© TWEED SHIRE COUNCIL 2006                  Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map.  <b>DO NOT SCALE</b>  <b>COPY ONLY - NOT CERTIFIED</b>                  P.O. Box 616                  Murwillumban, NSW, 2484                  Tel: (02) 6670 2409                  Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i>  <b>Lot B DP 385567</b>  <b>No. 40 Dry Dock Road, Tweed Heads South</b></p>	 TWEED HEADS SHIRE COUNCIL	<p>PLANNING REFORMS UNIT  <b>Site Plan</b></p>	
<p>File: N:\Munsys\A4P - SITE PLAN\Wor</p>	<p>Author: J.Batchelor</p>	<p>Date: 10/Oct/2008</p>	<p>Scale: 1:7,500</p>	<p>Sheet: 1 of 1</p>

**ELEVATION PLAN:**



elevations

**LANDSCAPING PLAN:**

### LANDSCAPE PLAN

### STATEMENT OF LANDSCAPE INTENT

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

- maintain and strengthen the subregional character;
- provide an attractive streetscape that reinforces the function of the street, enhances the amenity of the built form at ground level and enhances the building image. The streetscape design remains consistent with that endorsed by Dry Dock Road and act to reinforce the existing character. Consideration has been given to:
  - taking full advantage of the site's natural and existing elements;
  - providing a high quality and sophisticated style of outdoor recreation and living; and
  - the 'hard use' of a few varieties of plant material in the planting design.

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

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

- Creating Privacy and Security;
- Providing a sense of enclosure and screening;
- Creating a sense of enclosure and screening by Providing Shade; and
- Screening Objectionable Views.

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

The private courtyards will include unique landscape treatments combining various paving materials, with mondo grass in some areas, to provide green setting and to break up the monotony of the hardscape. The private courtyards will also include small planting beds with a layered planting treatment combining groundcovers, shrubs and palm species to further soften the landscape.

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

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

### PLANTING SCHEDULE

Type	No.	Scientific Name	Common Name	Flower Colour
Trees	1	Archontophoenix Cunninghamhamiana	Borghese Palm	N/A
	2	Phoenix palm	Queen Palm	N/A
	3	Chorizanthe cymosa	Common Palm	N/A
	4	Phoenix palm	Queen Palm	N/A
	5	Phoenix palm	Queen Palm	N/A
	6	Phoenix palm	Queen Palm	N/A
Shrubs	7	Agave attenuata	Century Plant	Red/Orange/Yellow
	8	Agave attenuata	Century Plant	Red/Orange/Yellow
	9	Agave attenuata	Century Plant	Red/Orange/Yellow
	10	Agave attenuata	Century Plant	Red/Orange/Yellow
	11	Agave attenuata	Century Plant	Red/Orange/Yellow
	12	Agave attenuata	Century Plant	Red/Orange/Yellow
	13	Agave attenuata	Century Plant	Red/Orange/Yellow
	14	Agave attenuata	Century Plant	Red/Orange/Yellow
	15	Agave attenuata	Century Plant	Red/Orange/Yellow
	16	Agave attenuata	Century Plant	Red/Orange/Yellow
	17	Agave attenuata	Century Plant	Red/Orange/Yellow
	18	Agave attenuata	Century Plant	Red/Orange/Yellow
	19	Agave attenuata	Century Plant	Red/Orange/Yellow
	20	Agave attenuata	Century Plant	Red/Orange/Yellow
	21	Agave attenuata	Century Plant	Red/Orange/Yellow
22	Agave attenuata	Century Plant	Red/Orange/Yellow	
23	Agave attenuata	Century Plant	Red/Orange/Yellow	
24	Agave attenuata	Century Plant	Red/Orange/Yellow	
25	Agave attenuata	Century Plant	Red/Orange/Yellow	
26	Agave attenuata	Century Plant	Red/Orange/Yellow	
27	Agave attenuata	Century Plant	Red/Orange/Yellow	
28	Agave attenuata	Century Plant	Red/Orange/Yellow	

### INDICATIVE IMAGES

Scale 1:250 @ A3

NSW COLLECTIVE CONSULTANTS

June 2006

10/1

Scale 1:250 @ A3

NSW COLLECTIVE CONSULTANTS

June 2006

10/1



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

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

Tweed Local Environmental Plan 2000

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

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

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

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

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

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

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

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

North Coast Regional Environmental Plan 1988 (NCREP)

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

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

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

#### State Environmental Planning Policies

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

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

#### State Environmental Planning Policy No. 71 – Coastal Protection

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

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

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

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

There are no draft EPIs which apply to the proposal.

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

DCP No. 2 – Site Access and Parking Code

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

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

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

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

DCP No. 5 – Development of Flood Liable Land

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

DCP No. 6 – Multi Dwelling Housing

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

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

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

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

Floor Space Ratio

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

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

Landscaped Area

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

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

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

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

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

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

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

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

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

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

**Comment:**

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

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

**Building Envelope**

***Amenity and Character***

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

***Daylight and Sunlight***

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

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

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



**Comment:**

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

**Street Setback**

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

***In Established Areas:***

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

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

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

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

***In All Areas:***

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

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

***P9. Roof reflectivity has minimal impact in the locality.***

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

### North-Eastern Side Setback

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

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

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

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

### Private Open Space

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

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

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

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

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

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

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

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

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

Development Control Plan No. 39 – Energy Smart Homes Policy

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

Building Line Variation Policy

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

Fence Height Variation

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

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

Clause 92(a) NSW Coastal Policy 1997

The land is identified under the Coastal Policy. The site is not affected by the Coastal Erosion Zones, is unlikely to be affected by the coastal processes, will not overshadow foreshore reserves and does not restrict public access to the coast. Therefore the proposed development is not in conflict with the policies and strategies contained within the coastal policy.

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

Overshadowing

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

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

**(c) Suitability of the site for the development**

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

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

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

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

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

**(e) Public interest**

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

**OPTIONS:**

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

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

It is recommended that the proposed multi dwelling housing development be approved subject to the attached conditions.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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

**ORIGIN:**

**Development Assessment**

**FILE NO: DA06/0933 Pt1**

**SUMMARY OF REPORT:**

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

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

Proposed works will be undertaken in two stages being:

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

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

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

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

**RECOMMENDATION:**

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

**GENERAL**

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

[GENNS01]

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

[GEN0005]

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

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

(a) copies of compliance certificates relied upon

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

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

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

[PCC0985]

**PRIOR TO COMMENCEMENT OF WORK**

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

[PCWNS01]

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



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

[PCW0815]

#### **DURING CONSTRUCTION**

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

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

[DUR1005]

7. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.

[DUR1025]

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

[DURNS01]

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

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

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

**REPORT:**

**Applicant:** Tweed Shire Council

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

**Location:** Riverside Drive & Tweed River, Tumbulgum

**Zoning:** N/A

**Cost:** N/A

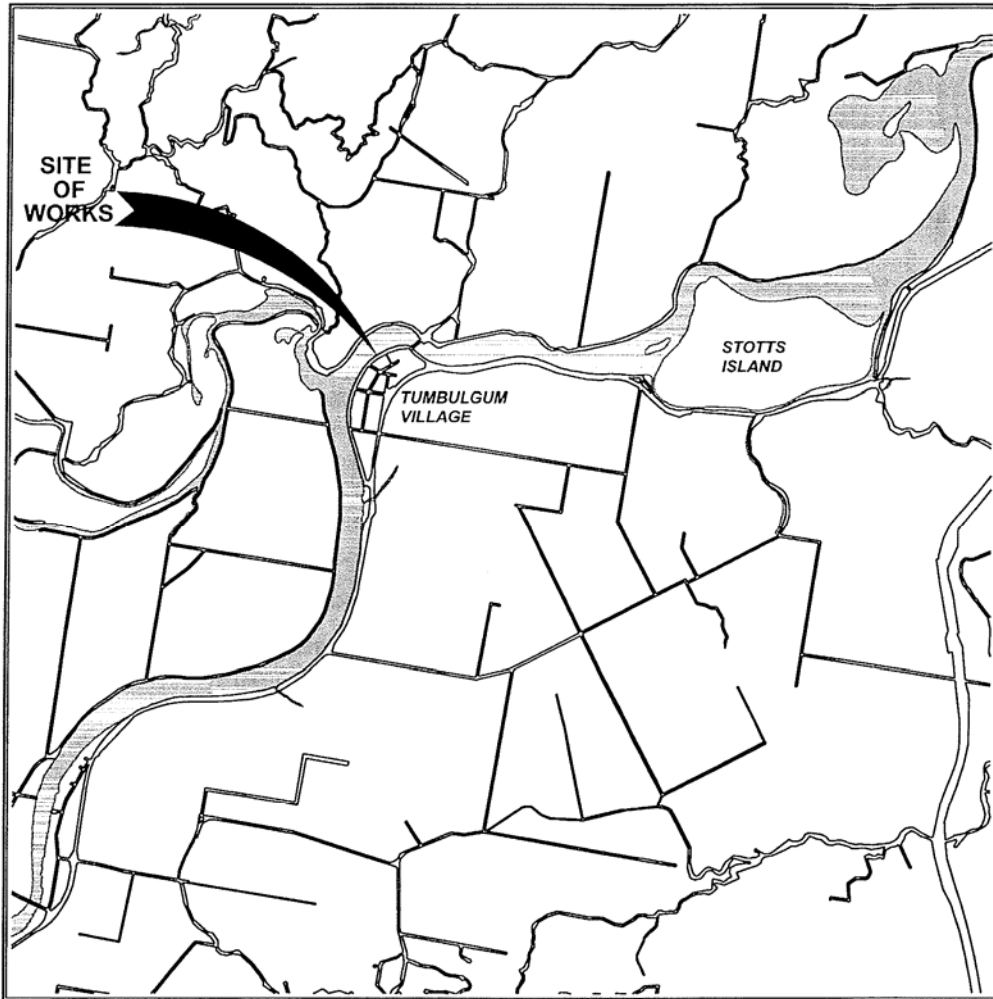
**BACKGROUND:**

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

The following works are proposed along Riverside Drive, Tumbulgum:

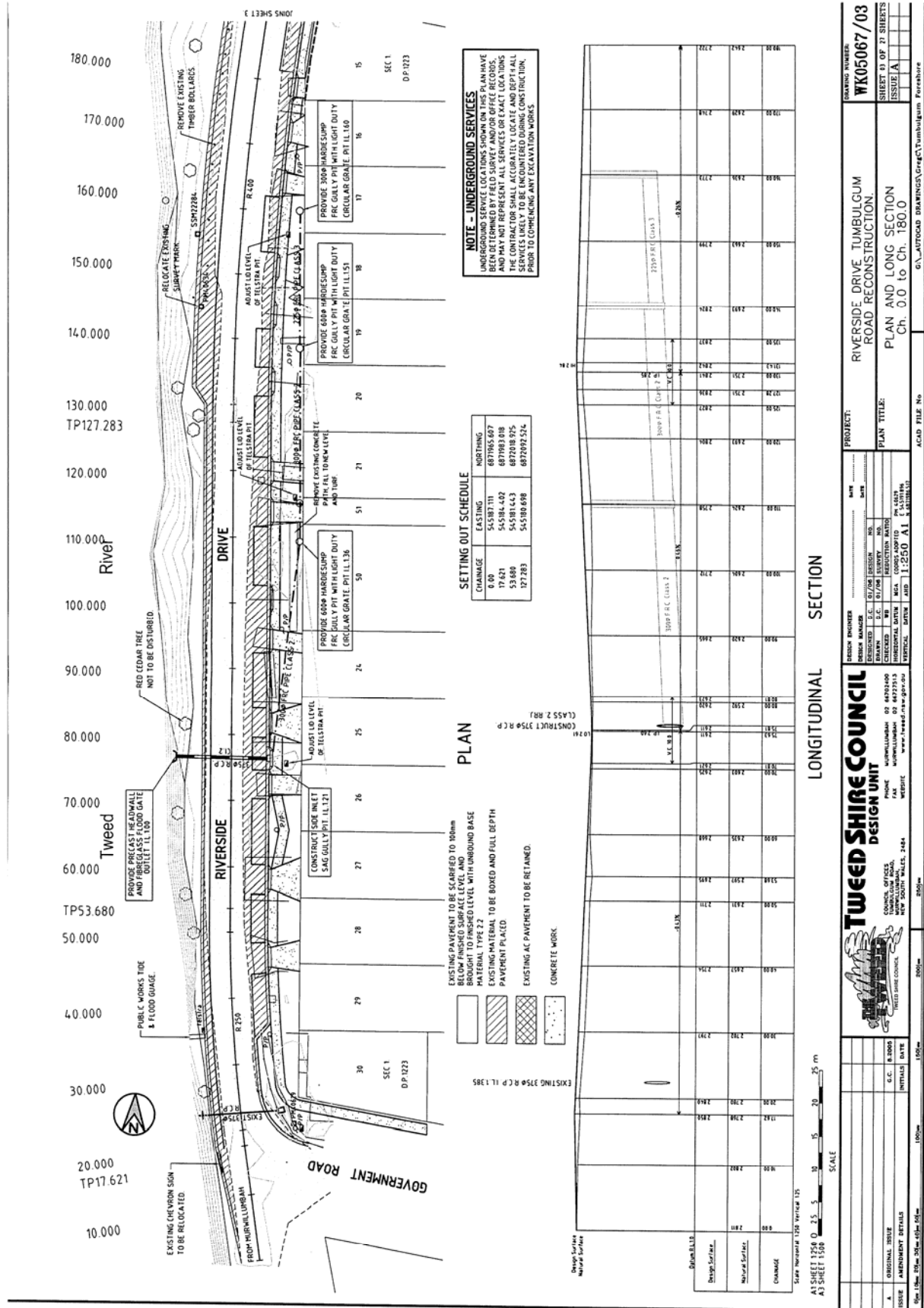
- Reconstruct the existing road pavement. In areas where the existing pavement is satisfactory it will be retained. In areas (as specified on work drawings) the existing pavement will be scarified to 100mm below finished surface levels and brought to finished level with unbound base material. In other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

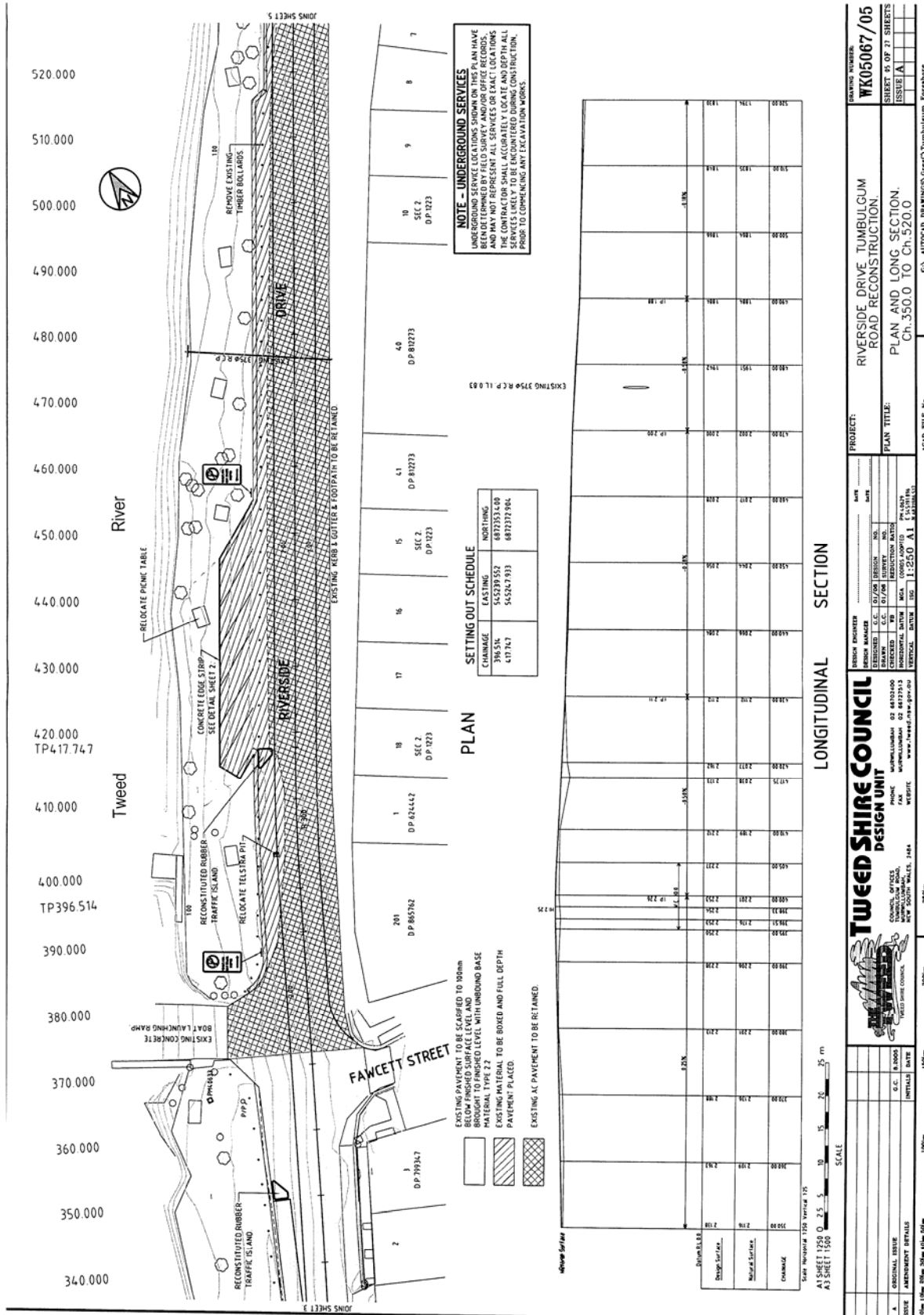
**SITE DIAGRAM:**

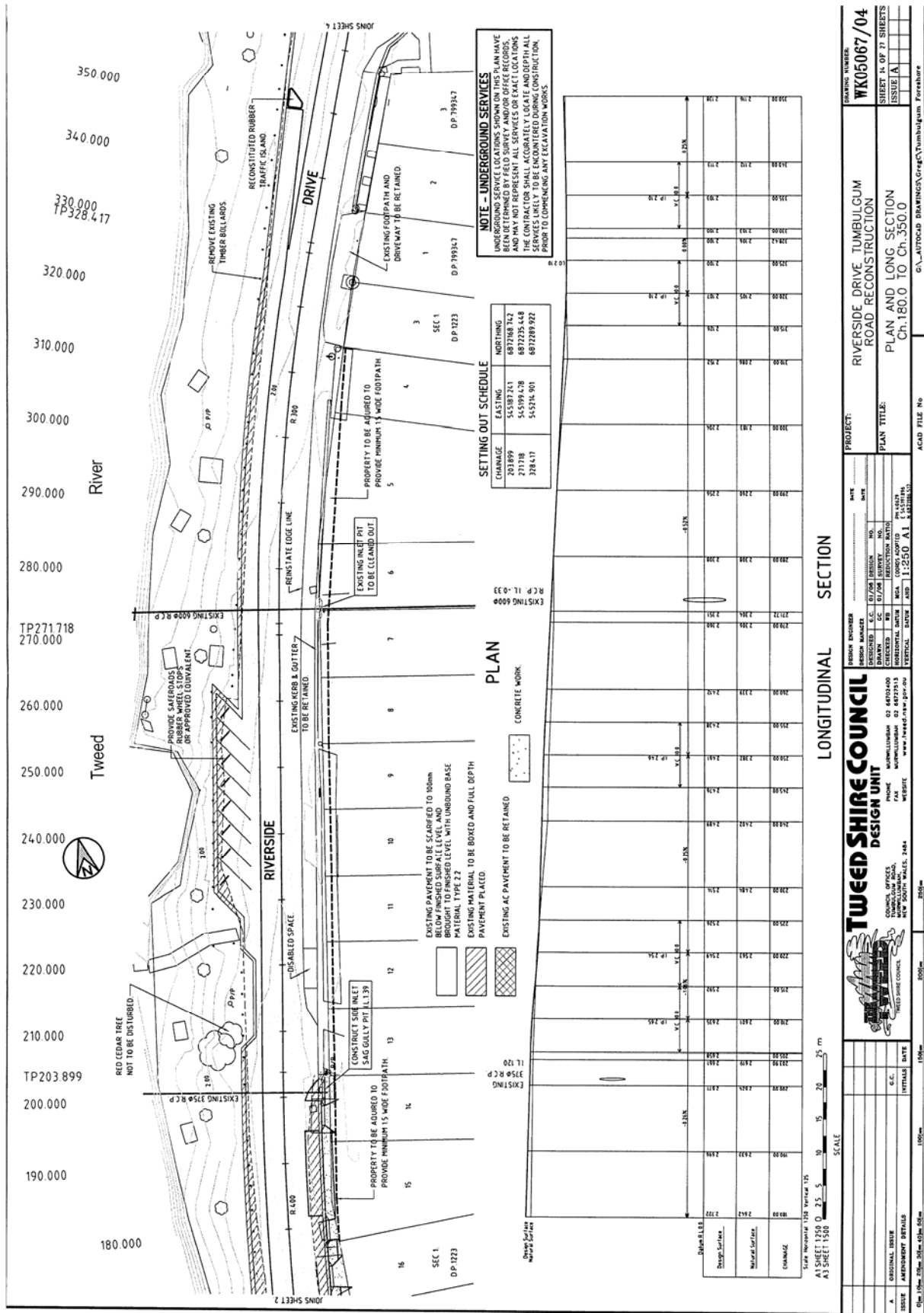


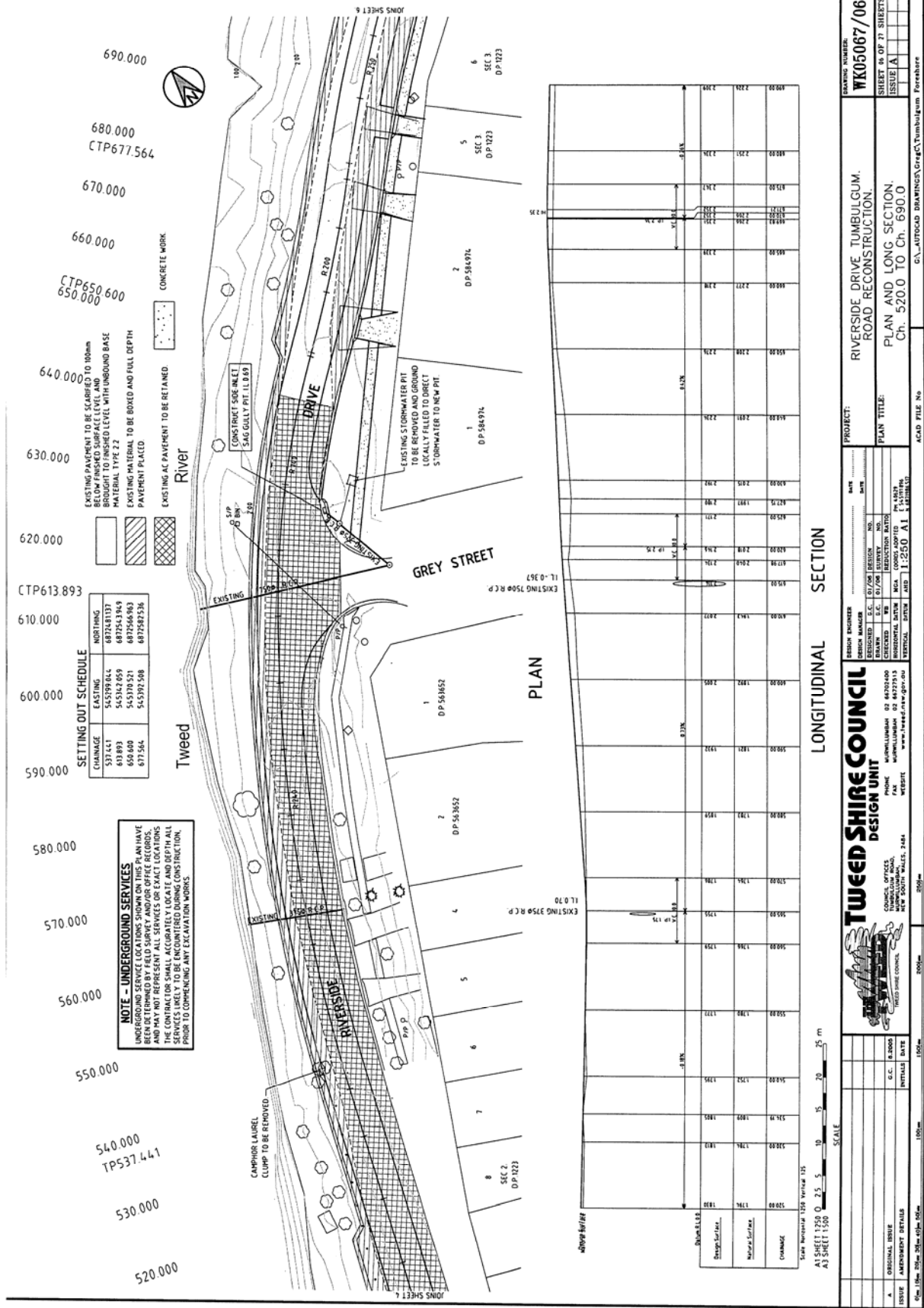
**LOCALITY SKETCH**

**DEVELOPMENT PLANS:**

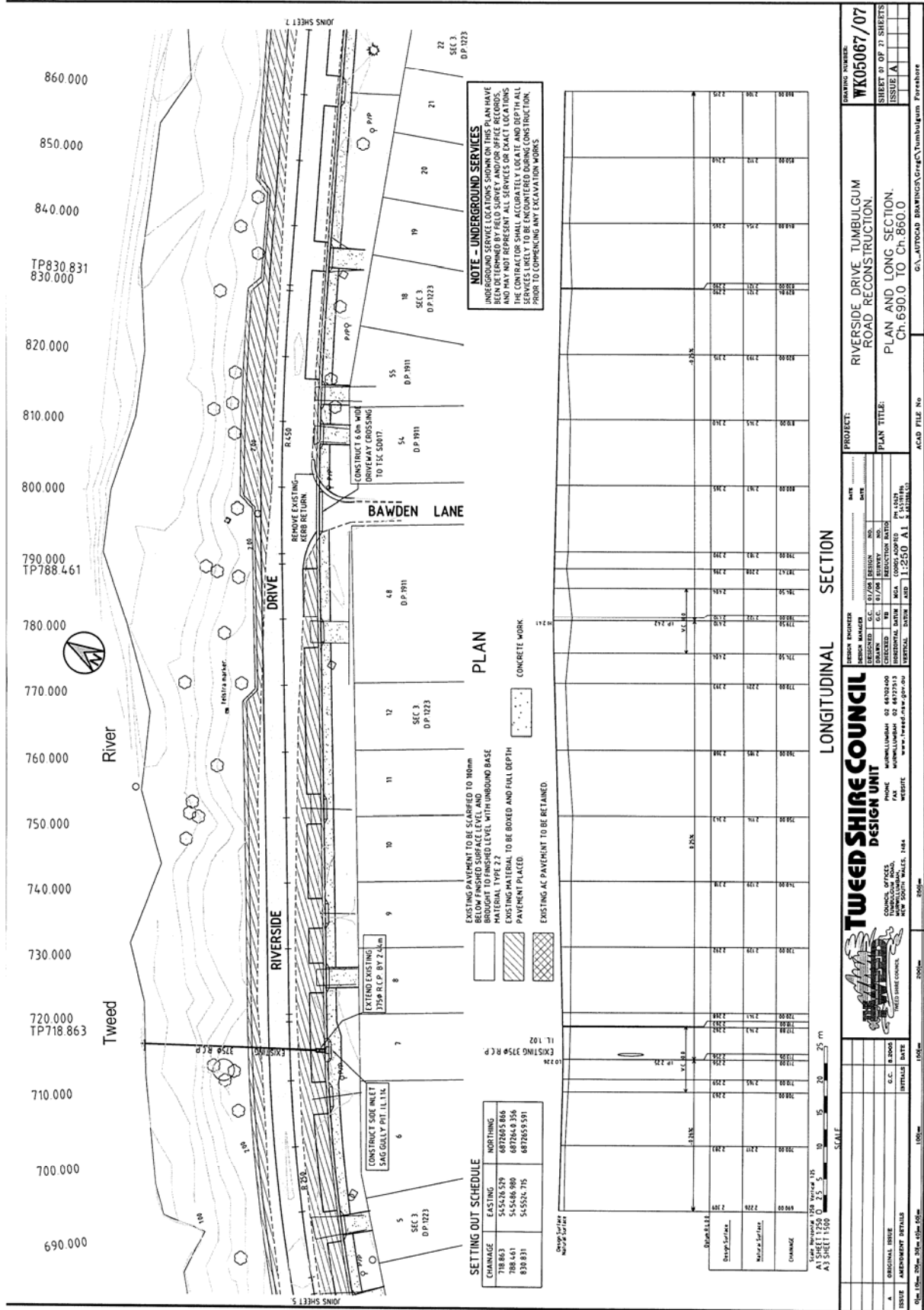


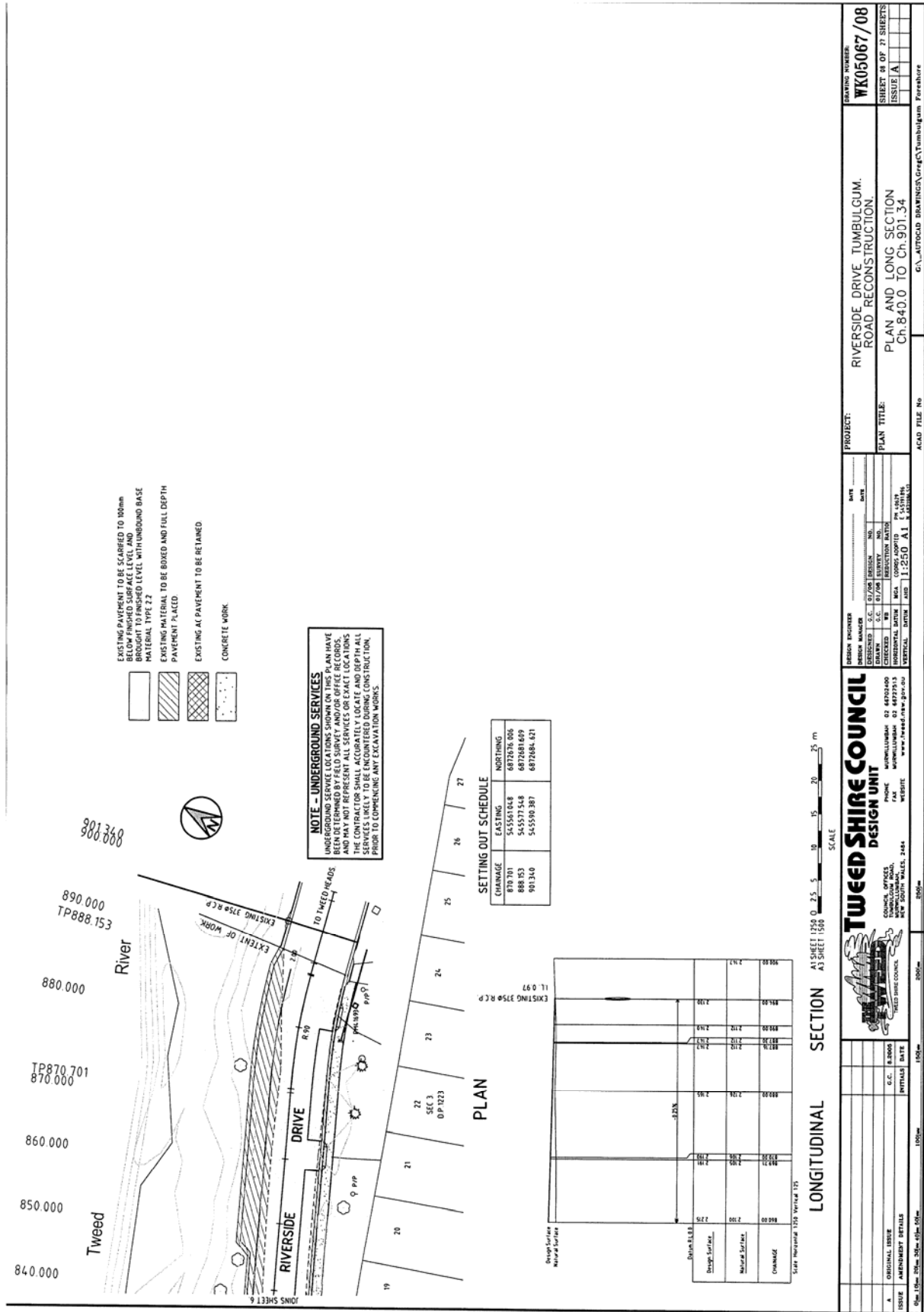












**TWEED SHIRE COUNCIL DESIGN UNIT**  
 COUNCIL OFFICE, 100 RIVERSIDE DRIVE, TWEED HEADS, NSW 2486  
 PHONE: (07) 4262 2222 FAX: (07) 4262 2223  
 WEBSITE: www.tweed.nsw.gov.au

**DESIGN NUMBER:** WK05067/08  
**PROJECT:** RIVERSIDE DRIVE TUMBULGUM ROAD RECONSTRUCTION.  
**PLAN TITLE:** PLAN AND LONG SECTION Ch.840.0 TO Ch.901.34  
**ACAD FILE No:** C:\AUTOCAD DRAWINGS\GRA\TUMBULGUM\_Foreshore

**DESIGNER:** DATE: \_\_\_\_\_  
**CHECKED:** DATE: \_\_\_\_\_  
**APPROVED:** DATE: \_\_\_\_\_

**ISSUE AMENDMENT DETAILS**

ISSUE	AMENDMENT DETAILS	DATE
A	ORIGINAL ISSUE	G.C. 8.2006
B	AMENDMENT DETAILS	(INITIALS)

**ISSUE A**

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

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

Tweed Local Environmental Plan 2000

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

North Coast Regional Environmental Plan 1988

**Clause 15 – Rivers, streams and wetlands**

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

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

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

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

The application therefore satisfies Clause 15.

### **Clause 81 – Development adjacent waterways**

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

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

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

### State Environmental Planning Policies

#### **State Environmental Planning Policy No. 14 – Coastal Wetlands**

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

### **State Environmental Planning Policy No.71 – Coastal Protection**

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

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

#### **SEPP 71 – Matters for Consideration**

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

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

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

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

No draft Environmental Planning Instruments affect the Development Application.

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

**Development Control Plan No. 5 – Flood Liable land.**

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

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

Satisfactorily.



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

**Water Quality, Soils, Erosion and Siltation**

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

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

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

No significant adverse affects will result from this application.

### **Noise**

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

### **Air Quality**

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

### **Traffic**

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

### **Flora and Fauna**

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

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

### **Waste Minimisation**

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

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

### **Social and Economical**

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

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

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

### **(c) Suitability of the site for the development**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

These have been included as conditions of consent.

**(e) Public interest**

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

**OPTIONS:**

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

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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

**ORIGIN:**

**Development Assessment**

**FILE NO: DA04/1546 Pt1**

**SUMMARY OF REPORT:**

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

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

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

**RECOMMENDATION:**

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

**GENERAL**

1. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.  
[GEN0045]
2. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within or adjacent to the subject property.  
[GEN0135]
3. The development shall be completed in accordance with the Statement of Environmental Effects and Drawing Nos. 9703/wd/01A, 9703/wd/02A and 9703/wd/03A prepared by Pat Twohill Designs PTY. LIMITED and all dated March 2004, except where varied by the conditions of this consent.  
[GEN0005]
4. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.  
[GEN0115]

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

5. All imported fill material shall be from an approved source. Prior to the issue of a construction certificate details of the source of fill, documentary evidence that the fill material is free of any contaminants and haul route shall be submitted to Tweed Shire Council for approval.  
[PCC0465]
6. Section 94 Contributions

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

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

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

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

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

- (a) Tweed Road Contribution Plan: \$4,378  
S94 Plan No. 4 (Version 4.0)  
Sector2\_4

**Heavy Haulage Component**

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

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

where:

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

and:

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

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

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

**Admin.** Administration component - 5% - see Section 6.5

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

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

[PCC0215]

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

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

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

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

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

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

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

[PCC0265]

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

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

[PCC0485]

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

[PCC0675]

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

[PCC0865]

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

[PCC0885]

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

[PCC0945]

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

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

- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.
- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management. Typical water sensitive features include infiltration, maximising permeable/landscaped areas, stormwater retention /detention/reuse, and use of grass swales in preference to hard engineered drainage systems.
- (d) Specific Requirements to be detailed within the Construction certificate application include:
- (i) All runoff from impervious driveway and hardstand areas must be treated to remove oil and sediment contaminants prior to discharge to the public realm. All permanent devices must be sized in accordance with Section D7.12 of Council's Development Design Specification D7 - Stormwater Quality. Full engineering details, including maintenance schedules, must be submitted with a Section 68 Stormwater Application for approval prior to the issue of a Construction Certificate.
- (ii) Roof Water does not require treatment and should be discharged downstream of treatment devices, or the devices must be sized accordingly.
- (iii) Stormwater discharge controls shall be carried out in accordance with Cozens Regan Williams Prove "Stormwater Management Plan" (dated July 2002), or subsequent amendments approved by Council.
- [PCC1105]
14. A construction certificate application for works that involve any of the following:-
- connection of a private stormwater drain to a public stormwater drain
  - installation of stormwater quality control devices
  - erosion and sediment control works

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

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

[PCC1145]

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

[PCC1155]

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

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

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

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

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

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

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

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

[PCCNS01]

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

[PCCNS02]

#### **PRIOR TO COMMENCEMENT OF WORK**

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

[PCW0005]

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

[PCW0225]

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

(a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and

(b) the person having the benefit of the development consent has:

(i) appointed a principal certifying authority for the building work, and

(ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and

(c) the principal certifying authority has, no later than 2 days before the building work commences:

(i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and

(ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and



- (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
- (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
  - (ii) notified the principal certifying authority of any such appointment, and
  - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

24. Residential building work:

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

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

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

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

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

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

[PCW0235]

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

- (a) a standard flushing toilet connected to a public sewer, or

- (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

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

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

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

[PCW0255]

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

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

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

[PCW0775]

28. Sewer main, stormwater line or other underground infrastructure within or adjacent to the site is to be accurately located and the Principal Certifying Authority advised of its location and depth prior to start of any building works.

[PCW0965]

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

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

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

[PCW0985]

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

[PCW1065]

#### **DURING CONSTRUCTION**

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

**Monday to Saturday from 7.00am to 7.00pm**

**No work to be carried out on Sundays or Public Holidays**

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

[DUR0205]

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

[DUR0395]

33. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover Authority.

[DUR0645]

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

[DUR0655]

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

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

[DUR0765]

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

[DUR0805]

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

[DUR0815]

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

[DUR0965]

39. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council.

[DUR0985]

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

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

[DUR1005]

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

[DUR2195]

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

[DUR2205]

43. Appropriate measures are to be put in place during the construction period to prevent the transport of sediment from the site. Should any material be transported onto the road or any spills occur it is to be cleaned up prior to cessation of same days work and/or commencement of any rain event.  
[DUR2405]
44. The burning off of trees, associated vegetation felled by clearing operations, and builder's waste is prohibited.  
[DURNS01]
45. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:
- A. Short Term Period - 4 weeks.  
L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.
- B. Long term period - the duration.  
L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.  
[DUR0215]
46. All lots must be graded to prevent the ponding of surface water and be adequately vegetated to prevent erosion from wind and/or water to the satisfaction of the General Manager or his delegate.  
[DUR0745]
47. On completion of the filling work, all topsoil to be respread and the site to be grassed and landscaped.  
[DUR0755]
48. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments".  
[DUR0785]
49. The proposed earthworks program shall be monitored by a Registered Geotechnical Testing Consultant to a level 2 standard (minimum) in accordance with AS 3798. A certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798 shall be submitted to the Principal Certifying Authority upon completion.  
[DUR0795]
50. All fill and cut batters shall be obtained wholly within the subject land.  
[DUR0825]

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

[DUR0995]

52. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils adopted Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[DUR1875]

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

[DUR1955]

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

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

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

[DUR2375]

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

[DUR2415]

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

[DUR2645]

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

Such to specifically include the following:

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

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

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

[DUR0065]

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

[DUR0375]

59. Provision shall be made for the collection of builder's solid waste in accordance with the following requirements:

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

[DUR0385]

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

[DUR0405]

**61. Excavation**

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

[DUR0425]

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

[DUR0445]

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

[DUR0915]

- 64. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. All such materials should be chipped on site and used in landscaping unless it is not possible due to size, non suitability of the material or some other limitation, in which case the material will be disposed of at Council's Stotts Creek depot.**

[DUR1015]

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

[DUR2245]

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

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

[DUR2485]

**67. Plumbing**

- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.

[DUR2495]

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

[DUR2515]



69. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.

[DUR2545]

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

- \* 43.5<sup>0</sup>C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
- \* 50<sup>0</sup>C in all other classes of buildings.

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

[DUR2555]

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

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

[DUR2655]

#### **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

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

[POCNS01]

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

[POC0205]

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

[POC0565]

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

[POC1045]

**USE**

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

[USE0225]

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

[USE0125]

**REPORT:**

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

**BACKGROUND:**

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

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

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

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

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

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

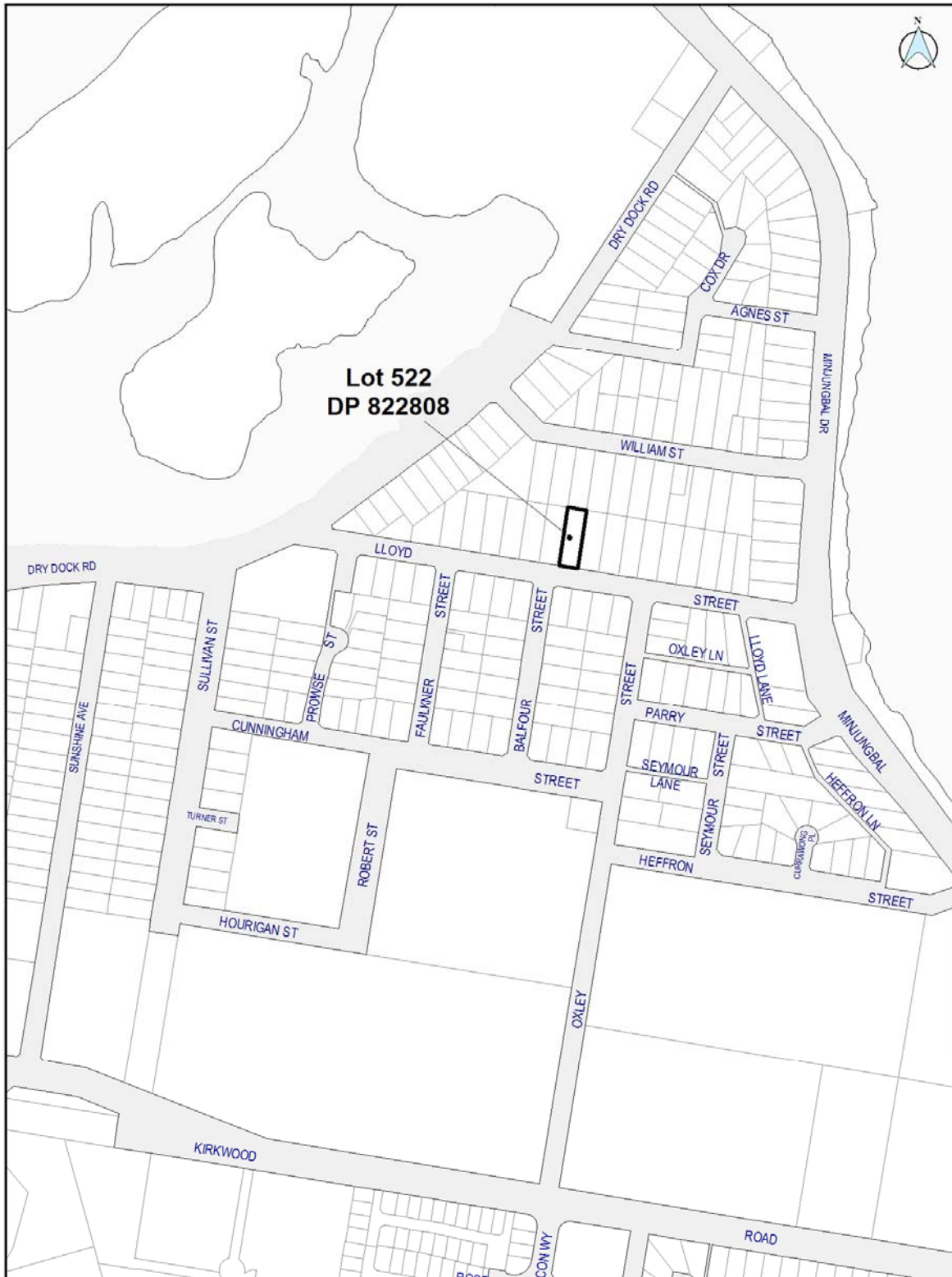
Given the inadequacies of the information supplied by the applicant the Development Application was refused on 19 October 2005 with the following reasons for refusal being attached to the Notice of Determination:

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

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

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

**SITE DIAGRAM:**



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 Fax: (02) 6670 2483

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



PLANNING REFORMS UNIT  
**Site Plan**

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



**CONSIDERATIONS UNDER SECTIONS 82A & 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**

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

Tweed Local Environmental Plan 2000

The subject land is zoned 2(b) Medium Density Residential pursuant to the provisions of Tweed LEP 2000. The development is generally consistent with the architectural themes being employed in the design of this form of medium density development in the locality.

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

Clause 15 - Availability of Essential Services

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

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

Clause 16 – Height of Buildings

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

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

Clause 35 - Acid Sulfate Soils

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

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

Clause 39 - Remediation of Contaminated Land

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

North Coast Regional Environmental Plan 1988 (NCREP 1988)

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

State Environmental Planning Policy (SEPP) 71 – Residential Development

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

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

None applicable.

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

**Development Control Plan No 6. Multi-Dwelling Housing**

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



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

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

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

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

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

**Development Control Plan No.39 - Energy Efficiency Housing**

The following table depicts the Units ABSA ratings:

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

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

**Development Control Plan No. 42 – Public Notification**

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

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

**NSW Coastal Policy 1997**

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

**Demolition**

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

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

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

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

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

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

## **2.0 Existing Title Restrictions**

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

## **3.0 Geotechnical / Earthworks**

### **3.1 Uncontrolled Fill**

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

## **4.0 Source of Material**

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

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

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

## **5.0 Retaining Walls**

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

## **6.0 Screw Pile Foundations**

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

## **7.0 D6 – Site Regrading**

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

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

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

## **8.0 Roads**

### **8.1 Road Network/Access**

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

### **8.2 Footpaths / Cycleway**

An existing footpath runs along the frontage of the property.

## **9.0 Stormwater Drainage**

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

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

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

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

## **10. Flooding Comments**

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

## **11.0 Services/Utilities**

### **11.1 Water Supply**

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

### **11.2 Sewer**

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

### **11.3 Electricity / Telecommunication**

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

### **11.4 Waste (garbage) service**

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

**12.0 Environment/Amenity**  
**12.1 Sediment control**

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

**(c) Suitability of the site for the development**

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

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

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

**(e) Public interest**

The proposed development is not contrary to the public interest.

**OPTIONS:**

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

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://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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**P5 [PD-PC] Development Application DA05/1491 for Change of Use from Motel to Multi-Dwelling Housing for 12 Units within Block No. 3 at Lot 1 DP 541241, No. 49 Tamarind Avenue, Bogangar**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA05/1491 Pt1**

**SUMMARY OF REPORT:**

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

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

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

**RECOMMENDATION:**

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

**GENERAL**

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

[GEN0005]

**PRIOR TO COMMENCEMENT OF WORK**

- 2. The developer shall provide a total of 59 parking spaces including parking for the disabled in accordance with DCP2, AS 2890 and Austroads Part 11.**

Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to and approved by the Director of Planning & Development prior to commencement of works.

[PCWNS01]

3. Where two (2) or more premises are connected by means of a single water service pipe, individual water meters shall be installed to each premise beyond the single Council water meter (*unless all the premises are occupied by a single household or firm*).

[DUR2615]

#### **DURING CONSTRUCTION**

4. The provision of 59 off street car parking spaces including parking for the disabled where applicable. The layout and construction standards to be in accordance with Development Control Plan No. 2 - Parking Controls, the Building Code of Australia and AS 2890.

[DUR0085]

#### **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

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

[POC0205]

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

[POCNS01]

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

[POCNS02]

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

[POCNS03]

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

[POCNS04]

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

[POC0525]

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

[POC0255]

## 12. Section 94 Contributions

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

An Occupation Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

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

(a) Tweed Road Contribution Plan: S94 Plan No. 4 (Version 4.0) Sector7a_4	\$8,813
(b) Open Space (Structured): S94 Plan No. 5	\$4,296
(c) Shirewide Library Facilities: S94 Plan No. 11	\$3,060
(d) Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$1,080
(e) Community Facilities (Tweed Coast - South) S94 Plan No. 15 South Coast	\$2,377
(f) Emergency Facilities (Surf Lifesaving) S94 Plan No. 16	\$910
(g) Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$913.54
(h) Cycleways S94 Plan No. 22	\$2,760

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

[POCNS05]

**USE**

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

[USE0125]

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

[USE0415]

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

[USE0735]

**REPORT:**

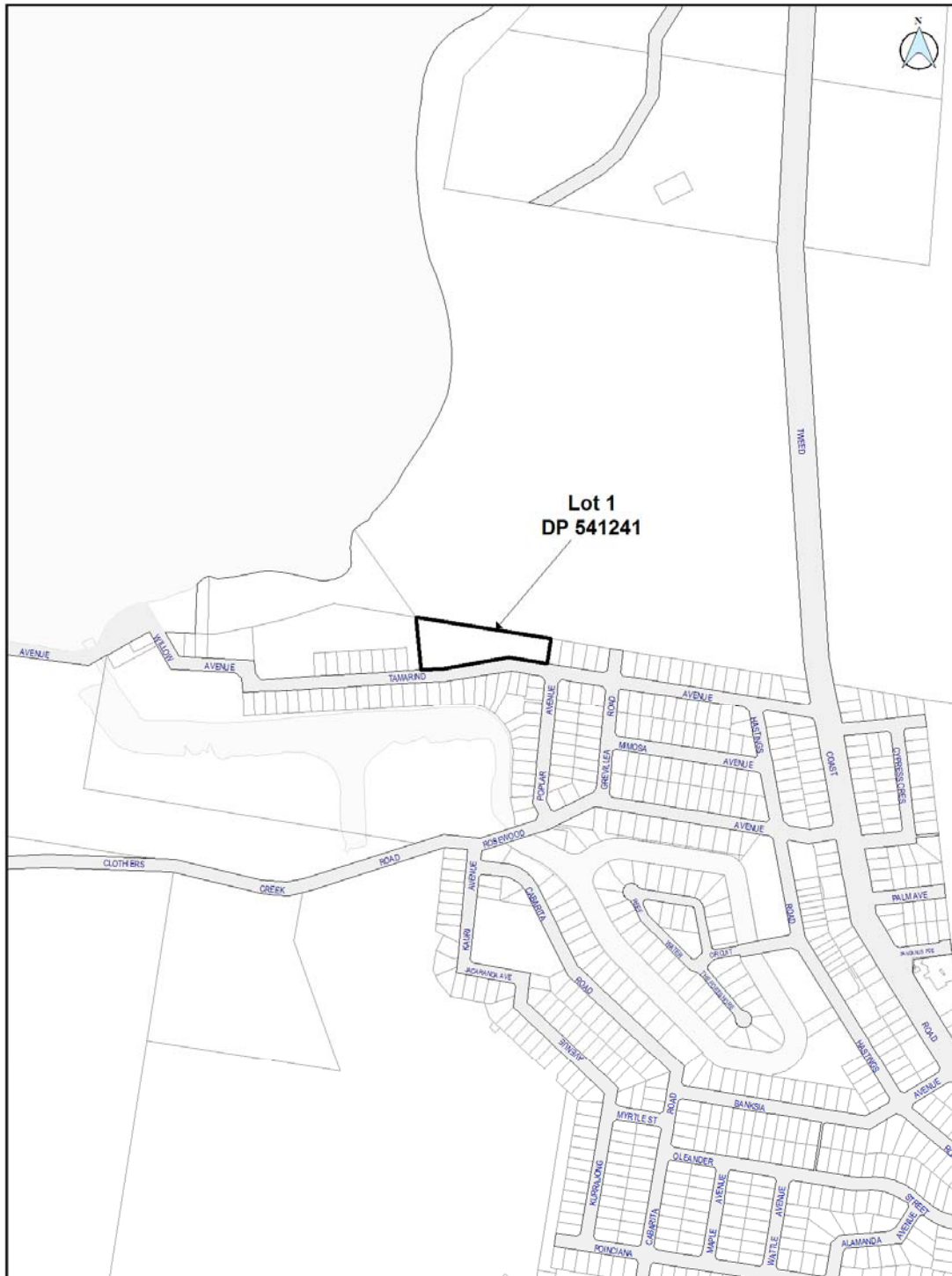
**Applicant:** B & P Surveys  
**Owner:** John Pernal Pty Ltd  
**Location:** Lot 1 DP 541241 No. 49 Tamarind Avenue, Bogangar  
**Zoning:** 2(e) Residential Tourist  
**Cost:** \$80,000

**BACKGROUND:**

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


The subject site has a land area of 9,491.16m<sup>2</sup>, is of an irregular shape and has frontages to Tamarind Avenue (to the South) and the Cudgen Nature Reserve (to the North). The topography of the land slopes gently to the south and access to the property is through a common driveway, with separate entry and exit points.

**SITE DIAGRAM:**



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



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

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

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

Tweed Local Environmental Plan 2000

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

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

**Primary objective**

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

**Secondary Objective**

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

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

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

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

North Coast Regional Environmental Plan 1988

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

State Environmental Planning Policies

State Environmental Planning Policy (SEPP) 71 – Coastal Protection

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

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

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

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

Development Control Plan No. 2 – Access and Parking Code

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

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

Development Control Plan No. 6 – Multi Dwelling Housing Code

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

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



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

Development Control Plan No. 42 – Public Notification

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

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

**NSW Coastal Policy**

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

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

Context & Setting

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

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

**(c) Suitability of the site for the development**

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

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

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

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

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

**(e) Public interest**

Despite the objections received to this application the proposal is not considered to be in conflict with the general public interest in the locality. The proposed development adequately reflects the provisions of the controls and the intended development for the locality.

**OPTIONS:**

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

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://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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**P6 [PD-PC] Development Application DA05/1464 for Works within Stage 1 of the Concept Plan Including Land Clearing, Bulk Earthworks, Construction of Principal Roads and Other Services at Lots 1 - 18 Section 1 DP 14895, Lots 1 – 18 Section 2 DP 14895, Lots 1**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA05/1464 Pt4**

**SUMMARY OF REPORT:**

A development application has been received for earthworks and infrastructure works for the land known as Seaside City. The application also includes a concept plan for future development of the land. Two other concurrent development applications relating to Seaside City are on this agenda for consideration involving the land to the west (lot 1971) of the existing lots and the land to the east (lot 500) of the existing lots. A draft DCP for Seaside City is also on this agenda for adoption. A draft S.94 contributions plan and draft Planning Agreement have also been prepared.

The application has been submitted by the major landowner Richtech Pty. Ltd (85%). however the other owners (15%) have given owners consent for earthworks to be carried out on their land to enable landforming to be undertaken efficiently.

The applicants have lodged Class1 Appeals for deemed refusals for all three applications with the NSW Land and Environment Court.

Earthworks are for standard engineering purposes based on a cut and fill balance exercise and not for the purposes of increasing ground levels for building heights and views.

The draft DCP contains a plan for the site which nominates land uses and development standards. The development application includes a concept plan containing similar items. Two plans covering similar controls is not appropriate. The DCP plan is more comprehensive than the proposed concept plan and is recommended to replace the concept plan in the DA. A condition is proposed to facilitate this and the applicants have agreed to this course of action.

Eighty-seven submissions have been received for the development with seventy-eight of these objecting to the opening of the northern She Oak Lane cul-de-sac in Casuarina to link with the southern east west road in Seaside City.

Opening of the cu-de-sac is not recommended for approval. A condition is proposed deleting this from the development.

Works are proposed within Council's road reserves as such the recommendation includes the issuing of owners consent by Council.

**RECOMMENDATION:**

**That: -**

- A. Council grants owners consent to the Stage 1 works proposed in the development application.**
- B. That upon written notification that Appeal No. 10217 of 2006 has been withdrawn Development Application DA05/1464 for Works within Stage 1 of the Concept Plan Including Land Clearing, Bulk Earthworks, Construction of Principal Roads and Other Services at Lots 1 - 18 Section 1 DP 14895, Lots 1 – 18 Section 2 DP 14895, Lots 1 – 16 Section 6 DP 14895, Lorna Street, Lots 1 – 36 Section 3 DP 14895, Lots 1 – 18 Section 4 DP 14895, Lots 1 - 16 Section 5 DP 14895, Lots 2 – 32 Section 7 DP 14895 & Lots 1 – 16 Section 8 DP 14895, Catherine Street & Lots 19 – 36 Section 2 DP 14895, Lot 17 - 32 Section 6 DP 14895 & Lots 1 Section 7 DP 14895, Carne Street, Kingscliff, Lot 1971 DP 133919 Ocean Avenue, Kingscliff and various unnamed roads and laneways be approved subject to the following conditions: -**

**GENERAL**

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Drawing Nos. 2967/03/03-210K, 211A, 212E, 213C, 214, 215H, 216D, 217C, 220A, 221C, 222C, 223C, 225B, 226B, 230, 233 prepared by Cardno MBK and dated 23 December 2004, except where varied by the conditions of this consent.**

[GEN0005]
- 2. All dangerous goods, fuels and chemicals shall be stored in a secure area and shall not be permitted to flow or percolate to any watercourse, groundwater or drain.**
- 3. All works shall comply with the Acid Sulfate Soils Management Plan, Cardno, December 2005.**
- 4. All works shall comply with the Erosion & Sediment Control Plan, Cardno, December 2005.**
- 5. Noise from the proposed works shall not be permitted to impact the amenity of any residential premise.**



6. Prior to the commencement of works a report considering road noise from Casuarina Way shall be submitted to Council. The report shall compare road traffic noise projections to the NSW EPA Environmental Criteria for Road Traffic Noise and indicate areas which will receive noise levels above relevant criteria.
7. The site shall not be dewatered.
8. Following clearing works and prior to earthworks or commencement of construction works surface radiation monitoring is to be undertaken for the entire Seaside City site including Lot 500 DP 747420 and Lot 1971 DP 133919. The draft Seaside City Radiation report dated June 2006 is to be amended to include the results of the surface monitoring and the final report submitted to Council (including proposals for continuous monitoring during bulk earthworks and remediation plans, if applicable) for approval by the General Manager or his delegate. All works shall comply with the approved plan. Additionally, a post earth works surface radiation survey shall be completed and a validation statement provided to Council to the satisfaction of the General Manager or his delegate, prior to issue of a Construction Certificate or commencement of construction works, which (provides details of radiation monitoring on the site) establishes that surface radiation levels are below relevant NSW Health Action Levels and the site is suitable for the proposed use.
9. All works shall comply with the approved Water Quality Monitoring Program, Cardno, December 2005 and baseline values shall be agreed in writing with the Director of Environment and Community Services prior to the commencement of construction.
10. Runoff from the site shall not be permitted to flow or percolate from the site where the pH is outside the range 6.5 - 8.5 or SS exceeds 50mg/L.
11. The concept plan submitted with the application is not approved. The concept plan is to be replaced with the plan titled Building Controls Accommodation Area and the associated Built Form Controls Table contained in DCP No.55 Seaside City.
12. The opening of the northern She Oak Lane cul-de-sac is not approved.
13. This consent does not include approval for clearing or earthworks within any land zoned 7(f) Environmental Protection (Coastal Lands).

14. A dilapidation report detailing the current structural condition of the adjoining and adjacent buildings, infrastructure and roads is to be prepared and endorsed by a qualified structural engineer. The report is to be submitted to Council prior to commencement of works.

A second dilapidation report is to be prepared by a suitably qualified person at the completion of the works to ascertain if any structural damage has occurred to the adjoining and adjacent buildings, infrastructure and roads. The report is to be compared with the first report and recommend a course of action to carry out repairs if required. The report is to be submitted to Council.

[GENNS01]

15. 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]

16. 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]

17. The works are to be carried out in accordance with Development Control Plan No. 16 - Subdivisions Manual and Councils adopted Development Design and Construction Specifications.

[GEN0125]

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

[PCC0285]

19. Prior to the issue of the Construction Certificate the applicant shall obtain written permission from non Richtech Pty Ltd property owners to authorise filling works inside these properties.

20. The Construction Certificate shall include detailed engineering plans clearly identifying the finished surface levels for the proposed Seaside City Development. The finished surface levels shown within the Construction Certificate shall be generally in accordance with Drawing No. 2967/03/03-215 H, 216D and 220A prepared by Cardno MBK.

In the event that permission from Non Richtech Pty Ltd land owners is not obtained for filling, earthworks associated with the road construction shall be carried out in accordance with Drawing No. 2967/03/03-230 and 231. The retaining wall shall be a reinforced concrete block wall and shall be located 50mm from the property boundary. The footing maybe located wholly inside the road reserve. Retaining walls constructed from timber or rock will not be permissible.

21. Trunk stormwater drainage shall be constructed generally in accordance with drawing Nos. 2967/03/03-215H, 220A and 221C.

The overland flow channel and underground R.C.B.C shall be extended west from Casuarina Way to the infiltration basin. This drainage system shall have a cross section similar to that shown on section 1, drawing 2967/03/03-221C. The open channel shall be located entirely within public land with provisions made for satisfactory maintenance access. The dedication of any private land necessary to comply with this requirement shall be free of cost to Council

Hydraulic sizing for the infiltration basin nominated on drawing 2967/03/03 -221C shall also be provided.

22. The construction certificate application shall show how the second 225mm diameter rising main under Cudgen Creek will be installed. In addition, the plans must show how a third pump in the regional pump station located in SALT will be installed and detail the upgrading of the impellers in the other two pumps. These works will then be required to be constructed in accordance with the approved Construction Certificate.
23. The traffic turning head and carparks on the east end of the southern road is to be redesigned and removed from the 7(f) Environmental Protection (Coastal Lands) zone. Amended plans are to be submitted to Council for approval by the General Manager or is delegate prior to release of the construction certificate.

[PCCNS01]

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

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

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

[PCC0455]

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

[PCC0465]

26. 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]

27. 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]

28. Notwithstanding any other condition of this consent separate construction certificates for bulk earthworks and civil works may be issued and the carrying out of bulk earthworks may be commenced prior to the issue of a Construction Certificate for civil works where it can be demonstrated all works are compatible.

[PCC0495]

29. A detailed plan of landscaping is to be submitted and approved by Council prior to the issue of a Construction Certificate.

[PCC0585]

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

[PCC0865]

31. The proponent shall submit plans and specifications with an application for a 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 Ocean Avenue between Casuarina Way (chainage 0.0) and Lorna Street (Chainage 300.00) shall be generally in accordance with Drawing No. 2967/03/03 -210K, 211A, 214, 215H and 216D.

(b) The construction of Casuarina Way shall be generally in accordance with Drawing No.'s 2967/03/03 - 210K, 214 and 216D.

(c) Construction of Lorna Street shall be generally in accordance with Drawing No.'s 2967/03/03 - 210K, 212E, 213C, 214 and 216D. The drainage of Lorna Street shall be as follows;

(d) Underground road drainage and overland flow in Lorna Street shall be designed to drain in a northerly direction only to the open channel located at chainage 700. The intersection of Ocean Avenue and Lorna Street shall be designed to allow free passage of overland flow along Lorna Street in a northerly direction. No road drainage (underground or overland flow) shall be directed in a westerly direction down Ocean Avenue.

- (e) The construction certificate shall show how the low points located in Lorna Street at chainage 160 and 260 will be satisfactorily drained.
- (f) A concrete footpath minimum 1.2m wide and 100 millimetres thick shall be constructed on a compacted base along the entire frontage (both sides) of Lorna Street and Ocean Avenue in accordance with Council's adopted Design and Construction Specification.
- (g) The underground drainage system at the intersection of Carne Street and Ocean Avenue shall be designed to cater for the Q<sub>100</sub> storm event.
- (h) A concrete cycleway to the west of the development within lot 1971 DP 133919 linking the existing cycleways in SALT and Casuarina.
- (i) A concrete cycleway to the east of Lorna Street linking the coastal cycleways in SALT and Casuarina.

[PCC0875]

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

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

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

[PCC0985]

33. 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]

34. 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]

35. 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]
36. Where water is to be drawn from Councils reticulated system, the proponent shall: -
- Make application for the hire of a Tweed Shire Council metered standpipe including Councils nomination of point of extraction.
  - Where a current standpipe approval has been issued application must be made for Councils nomination of a point of extraction specific to the development.
  - Payment of relevant fees in accordance with Councils adopted fees and charges.

[PCC1205]

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

37. Prior to the issue of a construction certificate, the applicant shall submit to Council evidence that a Site-Specific Safety Management Plan and Safe Work Methods for the subject site have been prepared in accordance with either:-
- (a) Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3<sup>rd</sup> Edition, NSW Government, or
  - (b) AS4804 Occupation Health and Safety Management Systems - General Guidelines on Principles Systems and Supporting Techniques.
  - (c) WorkCover Regulations 2000

[PCC0015]



38. The beachside car parking including parking for the disabled is to be in accordance with DCP2, AS 2890 and Austroads Part 11.

Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate. The designer shall ensure that on street car parking will not conflict or compromise access to residential driveways.

[PCC0065]

39. 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]

40. Prior to the issue of a Construction Certificate, a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the works (minimum \$1,000).

The bond may be called up at any time and the funds used to rectify any non-compliance with the conditions of this consent which are not being addressed to the satisfaction of the General Manager or his delegate.

The bond will be refunded, if not expended, when the final Subdivision/Occupation Certificate is issued.

[PCC0275]

#### **PRIOR TO COMMENCEMENT OF WORK**

41. 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]

42. 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.

[PCW0985]

43. 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]

44. 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]

45. Subdivision work in accordance with a development consent must not be commenced until:-

(a) a construction certificate for the subdivision work has been issued in accordance with Councils adopted Development Design and Construction Specification C101 by:

- (i) the consent authority, or
- (ii) an accredited certifier, and

(b) the person having the benefit of the development consent:

- (i) has appointed a principal certifying authority,
- (ii) has appointed a Subdivision Works Accredited Certifier in accordance with Development Control Plan No. 16, Appendix C, and
- (iii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment, and

(c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the subdivision work.

[PCW0815]

46. Prior to commencement of work, a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Subdivision Works Accredited Certifier shall be erected and maintained in a prominent position entry to the site in accordance with Councils adopted Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued.  
[PCW0825]
47. The proponent shall provide to the PCA copies of Public Risk Liability Insurance to a minimum value of \$10 Million for the period of commencement of works until the completion of the defects liability period.  
[PCW0835]
48. 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]
49. A Construction Management Plan shall be submitted to Council for approval prior to the commencement of works. The plan shall be to the satisfaction of the Director of Environment and Community Services and shall address all relevant issues including noise, erosion control, security, dust, hours of operation, fuel and chemical storage, waste and complaints handling etc. All works shall comply with the approved Plan.
50. The carparking proposed for the southern side of the southern east west road indicated on the plan 2967/03/03-225 Rv B is to be relocated to the northern side of the road. An amended plan is to be submitted to Council for approval by the General Manager or his delegate prior to commencement of work.
51. Prior to commencement of work an audit of the *Banksia integrifolia* trees is to be undertaken on the site. The *Banksia integrifolias* are to be replaced at a rate of one for one within the final landscaped areas of the site, Lot 1971 DP133919 and lot 500 DP727420 as part of the revegetation plans for those sites. An additional 30% to the removed *Banksias integrifolias* consisting of local indigenous native species is to be planted in the same areas. A schedule of species is to be submitted to Council for approval by the General Manager or his delegate prior to planting. Management of the replacement plantings to be undertaken in the same manner for the vegetation plans approved for lots 1971 (DA 05/0793) and 500 (DA 05/0775).  
[PCWNS01]

**DURING CONSTRUCTION**

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

**Monday to Friday from 7.00am to 7.00pm**

**Saturday 7.00am to 12.00pm**

**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]

53. 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]

54. 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]

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

[DUR0805]

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

[DUR0815]

57. 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]

58. 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]
59. 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]
60. 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]
61. 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]
62. 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]
63. 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]

- 64. Appropriate measures are to be put in place during the construction period to prevent the transport of sediment from the site. Should any material be transported onto the road or any spills occur it is to be cleaned up prior to cessation of same days work and/or commencement of any rain event.**

[DUR2405]

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

[DUR2415]

- 66. 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]

- 67. 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]

- 68. 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]

69. 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 or 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.

The approved haul route for the transportation of filling to the site is via Old Bogangar Road and Casuarina Way.

[DUR0725]

70. All lots must be graded to prevent the ponding of surface water and be adequately vegetated to prevent erosion from wind and/or water to the satisfaction of the General Manager or his delegate.

[DUR0745]

71. On completion of the filling work, all topsoil to be respread and the site to be grassed and landscaped.

[DUR0755]

72. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments".

[DUR0785]

73. The proposed earthworks program shall be monitored by a Registered Geotechnical Testing Consultant to a level 1 standard in accordance with AS 3798. A certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798 shall be submitted to the Principal Certifying Authority upon completion.

[DUR0795]

74. All fill and cut batters shall be obtained wholly within the subject land.

[DUR0825]

75. All retaining walls proposed are to be constructed in accordance with the construction Certificate approval issued by the Principal Certifying Authority.

[DUR0845]

76. 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.

[DUR0865]

77. 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]

78. Landscaping of the site shall be carried out in accordance with the approved landscaping plans.

[DUR1045]

79. A concrete ribbon footpath minimum of 1.2 metres wide and 100 millimetres thick is to be constructed on a compacted base along the entire frontage of Lorna Street and Ocean Avenue (both sides) 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]

80. Before the commencement of the relevant stages of road construction, reports shall be submitted to Council from a Registered NATA Consultant demonstrating.

- (a) That the pavement has been designed and constructed in accordance with Tweed Shire Councils adopted Construction and Design Specification, D2.
- (b) That the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils adopted Design and Construction Specifications, C242-C245, C247, C248 and C255.
- (c) That site fill areas have been compacted to the specified standard.
- (d) That supervision of Bulk Earthworks has been to Level 1 and frequency of field density testing has been completed in accordance with Table 8.1 of AS 3798-1996.

[DUR1805]



81. All proposed road/streets, drainage and associated works within the development shall be designed and constructed in accordance with the development consent plans AND the relevant provision of DCP No. 16 - Subdivisions Manual and Development Design and Construction Specifications, except where varied by the conditions of this consent.  
[DUR1815]
82. During the relevant stages of road construction, reports shall be submitted to the PCA by a Registered NATA Geotechnical firm demonstrating.
- (a) That the pavement layers have been compacted in accordance with Councils adopted Design and Construction Specifications.
- (b) That pavement testing has been completed in accordance with Table 8.1 of AS 3798 including the provision of a core profile for the full depth of the pavement.  
[DUR1825]
83. Provision of temporary turning areas and associated signage for refuse vehicles at the end of roads which will be extended in subsequent stages. The temporary turning areas shall be constructed with a minimum 150mm pavement (CBR 45) and shall have a right of carriageway registered over the turning area until such time as the road is extended.  
[DUR1835]
84. 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]
85. Pram ramps are to be constructed at road intersections in accordance with Council's Standard Drawing No. SD 014 within all kerb types including roll top kerb.  
[DUR1855]
86. The footpath area is to be graded to the kerb and turfed for the full frontage of the site.  
[DUR1865]
87. 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]

88. The proponent shall comply with all requirements tabled within any approval issued under Section 138 of the Roads Act.
89. 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:-

[DUR1885]

**Roadworks**

- (a) Pre-construction commencement erosion and sedimentation control measures
- (b) Completion of earthworks
- (c) Excavation of subgrade
- (d) Pavement - sub-base
- (e) Pavement - pre kerb
- (f) Pavement - pre seal
- (g) Pathways, footways, bikeways - formwork/reinforcement
- (h) Final inspections - on maintenance
- (i) Off Maintenance inspection

**Water Reticulation, Sewer Reticulation, Drainage**

- (a) Excavation
- (b) Bedding
- (c) Laying/jointing
- (d) Manholes/pits
- (e) Backfilling
- (f) Permanent erosion and sedimentation control measures
- (g) Drainage channels
- (h) Final inspection - on maintenance
- (i) Off maintenance

**Sewer Pump Station**

- (a) Excavation
- (b) Formwork/reinforcement
- (c) Hydraulics
- (d) Mechanical/electrical
- (e) Commissioning - on maintenance
- (f) Off maintenance

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]

90. 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]

91. The written consent of the registered proprietors of adjoining land, where the said works encroach thereon is to be submitted to Council prior to works commencing.

[DUR2005]

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

[DUR2015]

93. 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]

94. Drainage Reserve

(a) Dedication of the proposed drainage reserve at no cost to Council.

(b) An accurate plan of the proposed drainage reserve shall be submitted to Council 60 days prior to lodgement of Application for Subdivision Certificate (form 13) to allow the land to be classified.

Failure to comply with this condition may result in delays in the issue of the Subdivision Certificate.

[DUR2295]

95. 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. Drainage must be installed and operational prior to commencement of any building work.

[DUR2325]

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

[DUR2345]

97. All stormwater gully lintels shall have the following notice cast into the top of the lintel: 'DUMP NO RUBBISH, FLOWS INTO CREEK' or similar wording in accordance with Councils adopted Design and Construction Specification.

[DUR2355]

98. All water drawn from Councils reticulated system shall be via a Tweed Shire Council metered standpipe. The location of the hydrant shall be nominated by Tweed Shire Council and all water shall be only used for the purposes nominated by the applicant for the duration of the construction activities.

[DUR2575]

99. An accurate plan of the sewage pumping station site shall be submitted to Council 60 days prior to lodgement of the Application for Subdivision Certificate to allow the land to be classified.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.

[DUR2635]

100. The works proposed in DA 05/0775 and DA 05/0793 are to be undertaken in conjunction with the works proposed in this consent (DA 05/1464). Final approval for the works in DA05/1464 will not be issued unless the works proposed in DA05/0775 and DA 05/0793 have progressed to a satisfactory level as determined by the General Manger or his delegate.

101. A minimum of 223 on street carparking spaces are to be provided for beach access east of and including Carne Street.

[DURNS01]

#### USE

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

[USE0145]

103. 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]

104. 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]

**PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE**

**105. Prior to issue of a subdivision 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.**

[PSC0005]

**106. Prior to the issue of a Subdivision Certificate a defect liability bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.**

The bond shall be based on 5% of the value of the works (minimum \$1,000) which will be held by Council for a period of 6 months from the date on which the Subdivision Certificate is issued. It is the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.

[PSC0215]

**107. Prior to the issue of a Subdivision Certificate, a maintenance bond equal to 25% of the contract value of the footpath construction works shall be lodged for a period of 3 years or until 80% of the lots fronting paved footpaths are built on.**

Alternatively, the developer may elect to pay a cash contribution to the value of the footpath construction works plus 25% in lieu of construction and Council will construct the footpath when the subdivision is substantially built out. The cost of these works shall be validated by a schedule of rates.

[PSC0225]

**108. A bond shall be lodged prior to the issue of the subdivision certificate to ensure that the landscaping is maintained by the developer for a period of 6 months from the date of issue of a Subdivision Certificate. The amount of the bond shall be 20% of the estimated cost of the landscaping or \$3000 whichever is the greater.**

[PSC0235]

**109. All landscaping requirements shall be completed to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate.**

[PSC0485]

**110. Any damage to property (including pavement damage) is to be rectified to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate. 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.**

[PSC0725]

111. Prior to the issue of a Subdivision Certificate, Works as Executed Plans shall be submitted in accordance with the provisions of DCP16 - Subdivisions Manual and Councils adopted Design and Construction Specification.

The plans are to be endorsed by a Registered Surveyor OR a Consulting Engineer Certifying that:

- (a) all drainage lines, sewer lines and structures are wholly contained within the drainage easement created by the subdivision;
- (b) the plans accurately reflect the Work as Executed.

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

[PSC0735]

112. All retaining walls are to be certified by a suitably qualified geotechnical/structural engineer. The certification is to be submitted with the subdivision certificate application and shall state that the retaining walls have been designed and constructed in accordance with AS4678-2002 Earth Retaining Structures and are structurally sound.

In addition to the above certification, the following is to be included in the Section 88B Instrument to accompany the final plan of subdivision.

- (a) A restriction to user for each lot that has the benefit of a retaining wall that prevents any cut or fill greater than 0.3m in vertical height within a zone adjacent to the wall that is equal to the height of the wall.
- (b) Each lot burdened and or benefited by a Type 1 wall as defined in AS4678-2002 Earth Retaining Structures, shall contain a restriction to user advising the landowner of the need to maintain the wall in accordance with that standard.

Tweed Shire Council is to be nominated as the authority empowered to release, vary or modify the restrictions.

[PSC0785]

113. A Subdivision Certificate will not be issued by the General Manager until such time as all relevant conditions of this Development Consent have been complied with.

[PSC0825]

**114. The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act including the following:**

- (a) Easements for sewer, water supply and drainage over ALL services on private property.**
- (b) All roof water drainage is to be discharged to infiltration trenches/devices located on each contributing allotment.**

**Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating the right of carriageway/easement to drain water shall make provision for maintenance of the right of carriageway/easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis.**

**Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of Council.**

[PSC0835]

**115. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council with the application for Subdivision Certificate.**

[PSC0855]

**116. Where new state survey marks and/or permanent marks are placed a copy of the locality sketch relating to the marks shall be submitted to Council within three months of registration of the Subdivision Certificate in accordance with the Survey Practices Regulation.**

[PSC0865]

**117. Prior to registration of the plan of subdivision, a Subdivision Certificate shall be obtained.**

**The following information must accompany an application:**

- (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.**
- (b) all detail as tabled within DCP16, CL 7.6 and Councils Application for Subdivision Certificate including the attached notes.**

**Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.**

[PSC0885]

**118. The following restrictions apply to dog and cat ownership and control on all residential lots:-**

- (a) Owners of dogs within the development shall have their yards fenced so as to securely contain a maximum of one (1) dog per allotment and the ownership of cats within the development shall be restricted to one de-sexed cat per allotment and such cats shall be restrained within the house or a secure night cage between the hours of 6.00pm and 6.00am.**
- (b) No dog shall be registered without the construction of a dog-proof compound which must be approved by Council and the relevant fee paid by the applicant.**
- (c) No owner can retrieve a dog that has been impounded unless they can demonstrate to Council they have a secure compound.**

**These ownership and control requirements shall be reinforced by a Restrictions as to User under Section 88B of the Conveyancing Act, 1919-1964.**

**A Section 88B Instrument creating the restriction as to user shall contain a provision enabling the restriction to be revoked, varied or modified only with the consent of Council.**

[PSC0905]

**119. Prior to the application for a Subdivision Certificate a Compliance Certificate or Certificates shall be obtained from Council OR an accredited certifier for the following:-**

- (a) Compliance Certificate - Roads**
- (b) Compliance Certificate - Water Reticulation**
- (c) Compliance Certificate - Sewerage Reticulation**
- (d) Compliance Certificate - Sewerage Pump Station**
- (e) Compliance Certificate - Drainage**



**Note:**

1. All compliance certificate applications must be accompanied by documentary evidence from the developers Subdivision Works Accredited Certifier (SWAC) certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, DCP16 - Subdivision Manual and Councils adopted Design and Construction Specifications.
2. 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".

[PSC0915]

120. The six (6) months Defects Liability Period commences upon the registration of the Subdivision Certificate.

[PSC0925]

121. Your attention is invited to conditions of Development Consent DA05/1464. Compliance with the conditions of the development consent and the construction certificate is required prior to the issue of a subdivision certificate.

[PSC0935]

122. Prior to the issue of a Subdivision Certificate and also prior to the end of defects liability period, a CCTV inspection of the stormwater pipes and sewerage system including joints and junctions will be required to demonstrate that the standard of the stormwater system is acceptable to Council.

Any defects identified by the inspection are to be repaired in accordance with Councils adopted Development Design and Construction Specification.

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

[PSC1065]

123. Prior to the release of the subdivision certificate the proponent shall:

- (a) Dedication of the proposed drainage reserve at no cost to Council.
- (b) Submit an accurate plan of the proposed drainage reserve to Council 60 days prior to lodgement of Application for Subdivision Certificate to allow the land to be classified.

[PSC1075]

124. Prior to issuing a Subdivision Certificate, reticulated water supply and outfall sewerage reticulation shall be provided to all lots within the subdivision in accordance with DCP16 - Subdivisions Manual, Councils adopted Development Design and Construction Specifications and the Construction Certificate approval.

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

[PSC1115]

125. The site of the sewage pumping station shall be transferred to Council in fee simple, at no cost to Council within 28 days of the date of registration of the plan of subdivision.

[PSC1125]

126. 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.

[PSC1165]

127. Electricity

(a) The production of written evidence from the local electricity supply authority certifying that reticulation of underground electricity (residential and rural residential) has been completed; and

(b) The reticulation to include the provision of fully installed electric street lights to the relevant Australian standard. Such lights to be capable of being energised following a formal request by Council.

[PSC1185]

128. A subdivision certificate application shall be lodged with Council for the creation of any new road reserves or drainage reserves.

129. Land for passive open space indicated on the plan titled Passive Open Space contained in DCP-55 Seaside City is to be dedicated to Council at no cost prior to release of the subdivision certificate for road widening. In this regard Lot 1 Section 5 DP 14895 and the adjoining road reserve is to be embellished at no cost to Council. The plans detailing embellishment are to be submitted to Council for approval by the General Manager or his delegate prior to release of the subdivision certificate for road widening.

130. A restriction under the provisions of Section 88B of the Conveyancing Act is to be placed on the title of Lots 1 to 9 Section 8 DP14895 and Lots 17 and 18 Section 4 DP14895 indicating that part of the lots as indicated on plan 296703-VMP01 Rv 4 contained in DA 05/ 0793 are located within the 50m Cudgen Creek buffer area and no works, swimming pools or structures except fences are to be placed within this buffer area. A draft copy of the instrument is to be submitted to Council at least one month prior to lodgement of the subdivision certificate application for road widening.

#### **GENERAL TERMS OF APPROVAL**

#### **PERMIT UNDER PART 3A OF THE RIVERS AND FORESHORES IMPROVEMENT ACT 1948**

1. Erosion and sediment control measures are required to be implemented prior to any works commencing, and must be maintained for as long as necessary after the completion of works, to prevent sediment and dirty water entering Cudgen Creek.
2. Provision of stormwater quality treatment measures (in accordance with the Soil and Stormwater Management Plan) to ensure retention of pollutants and no detrimental water quality impacts downstream.
3. Excavated material may contain potential acid sulfate soils and shall be tested. If present then appropriate management measures shall be employed to control any acid sulfate soil impacts in accordance with the ASMACC Manual.
4. Excavation operations shall be conducted so as not to damage or cause erosion of the adjoining riverbank of Cudgen Creek.
5. Excavation operations and construction activities shall be conducted with minimal impact on riparian vegetation.

**REPORT:**

**Applicant:** Richtech Pty Ltd

**Owner:** Richtech Pty Ltd; Steven Blair, Leanne Connor, Michael Connor, Anthony Creswick, Zelma Creswick, Cudgen Superannuation Services Pty Ltd, Richard D'Apice, William D'Apice, Domlis Pty Ltd, Frizelle (Wholesale) Pty Ltd, Henry Gill, Rodney Gill, Gormell Pty Ltd, Harwood Willows Pty Ltd, Intact Group Australia-Asia Pty Ltd, Josip Jutrisa, Mira Jutrisa, Paula McKenzie-Blair, Noela Nunan, Maree Sandifort-Westhoff, Timothy Sandifort-Westhoff, A St George, Dudley St George, Terence Staines, Tunfall Pty Ltd & Keith Wright

**Location:** Lots 1 - 18 Section 1 DP 14895, Lots 1 – 18 Section 2 DP 14895, Lots 1 – 16 Section 6 DP 14895, Lorna Street, Lots 1 – 36 Section 3 DP 14895, Lots 1 – 18 Section 4 DP 14895, Lots 1 - 16 Section 5 DP 14895, Lots 2 – 32 Section 7 DP 14895 & Lots 1 – 16 Section 8 DP 14895, Catherine Street & Lots 19 – 36 Section 2 DP 14895, Lot 17 - 32 Section 6 DP 14895 & Lots 1 Section 7 DP 14895, Carne Street, Kingscliff, Lot 1971 DP 133919 Ocean Avenue, Kingscliff and various unnamed roads and laneways

**Zoning:** 2(e) Residential Tourist, 7(f) Environmental Protection (Coastal Lands) and 7(l) Environmental Protection (Habitat)

**Cost:** \$6,685,000

**BACKGROUND:**

Seaside City consists of a subdivision comprising 204 lots which were created in 1927. The land was sand mined throughout the 1960's, 70's and 80's.

Ownership of the land is divided between Richtech who own 85% of the existing lots and various individual owners who hold the remaining 15%.

There are 205 existing lots (including Lot 1971), 174 owned by Richtech and 31 lots owned by others.

The original application did not include the non Richtech land however discussions have taken place with the other land owners and they have provided owners consent to carry out earthworks on their land.

**Proposed Development**

The key elements of the proposal are as follows-

- Clearing of vegetation
- Cut and fill earthworks
- Dedication of land for public open space

- Construction of the western cycleway within lot 1971
- Widening and improvements to Casuarina Way
- Widening and construction of Ocean Avenue including 90 deg on street parking
- Construction of Lorna Street including on street beachside parking
- Construction of the southern east west road including 90 deg on street beachside parking
- Stormwater infrastructure including major east west overland flow path and infiltration basin in lot 1971.
- Water mains in Casuarina Way, Ocean Avenue and Lorna Street
- Sewer mains in Casuarina Way, Ocean Avenue, Lorna Street and the northern central east west laneway including a rising main and pump station.

### **Concept Plan**

The concept plan designates land uses and development standards for those uses. Adjustment to existing roads involving widening of laneways is also included in the plan. Open space is also nominated in the plan. These aspects are included in the draft DCP with modifications.

The concept plan nominates a village centre, tourist accommodation areas, medium and low density areas. The objective of the concept plan is to provide a strategy plan for future development which is also the objective of the DCP. The applicants have agreed to have the DA concept plan substituted with the equivalent DCP plan.

### **Key Issues**

#### **Lot 1971**

A separate application has been lodged for the vegetation management of Lot 1971 which is proposed to be dedicated to Council. Part of Lot 1971 is used for compensatory habitat for the blossom bat which was part of the conditions for the Casuarina development. A vegetation management plan forms part of the application including bushfire management. The western cycleway is proposed to be located within this lot to the rear of the existing lots on the western side of Casuarina Way. Conditions are proposed regarding dedication and timing of the works to link the proposals together. A separate agenda item further describes the proposal for Lot 1971.

## **Lot 500**

A separate application has been submitted for vegetation management, cycleway construction and bushfire management for Lot 500. This lot is the coastal reserve and adjoins Seaside City to the east. Lot 500 is Crown Land managed by Council. The Department of Lands have granted owners consent for the development application. A 20 metre wide asset protection zone has been negotiated with the NSW Rural Fire Service, Council and the Department of Lands. This zone is located 10m either side of the boundary between lot 500 and the eastern Seaside lots. The proposed cycleway is located within the 10m area in lot 500. The separate agenda item further describes the proposal for Lot 500.

## **Cul de-sac**

The application plans include linking the northern cul-de-sac in She Oak Lane in Casuarina with the proposed southern east west road in Seaside City. 78 public submissions have been received opposing this change to the road network. The purpose of the opening is to provide connectivity between the neighbourhoods and permeability through local streets. The theory of these aspects is sound and should be encouraged.

The Engineering & Operations Division advise that whilst the connection's effectiveness may initially be restricted due to the southern cul-de-sac on She Oak Lane, this cul-de-sac could also be connected into Kamala Crescent at a future date, improving the road network effectiveness. Similarly by also connecting the Beech Lane cul-de-sac into Kamala Crescent (again at a future date), a permeable and connective road network providing an alternative north-south road linking the northern precinct of Casuarina to the shopping centre in Seaside City.

It should be noted that the original development consent provided the connectivity discussed above and was later converted to a series of cul-de-sacs by Section 96 applications.

However, given the number of public submissions objecting to the connection of She Oak Lane to Seaside City and the immediate limited benefit of this connection, a condition is proposed deleting this aspect of the proposal.

It should be noted that the connection of the She Oak Lane cul-de-sacs and the northern Beech Lane cul-de-sac could still be pursued at a later date to improve the connectivity and permeability of the local road network.

## **Open space dedication**

Open space is to be dedicated in accordance with the DCP plan. Dedication is required prior to final approval of the works. Embellishment will occur in accordance with the DCP and Planning Agreement. Passive open space is to be provided on site and in Lot 1971. S.94 contributions will be levied against future development for structured open space.

### **7(f) zone**

The land to the east of Lorna Street is partly zoned 7(f) Environmental Protection (Coastal Lands). Nineteen of the thirty-four lots are owned by people other than Richtech Ltd Pty. The works involve earthworks and clearing on these lots from Lorna Street to the eastern 7(f) zone boundary. The filling will be battered down to the zone boundary. The separate application for the Lot 500 works includes clearing of the 10m strip within the private property only on the Richtech land. Separate applications for the 10m within the land owned by others will be required to be lodged to undertake this work on their land. These works will result in part of the land remaining vegetated however any further clearing work can be considered via future applications.

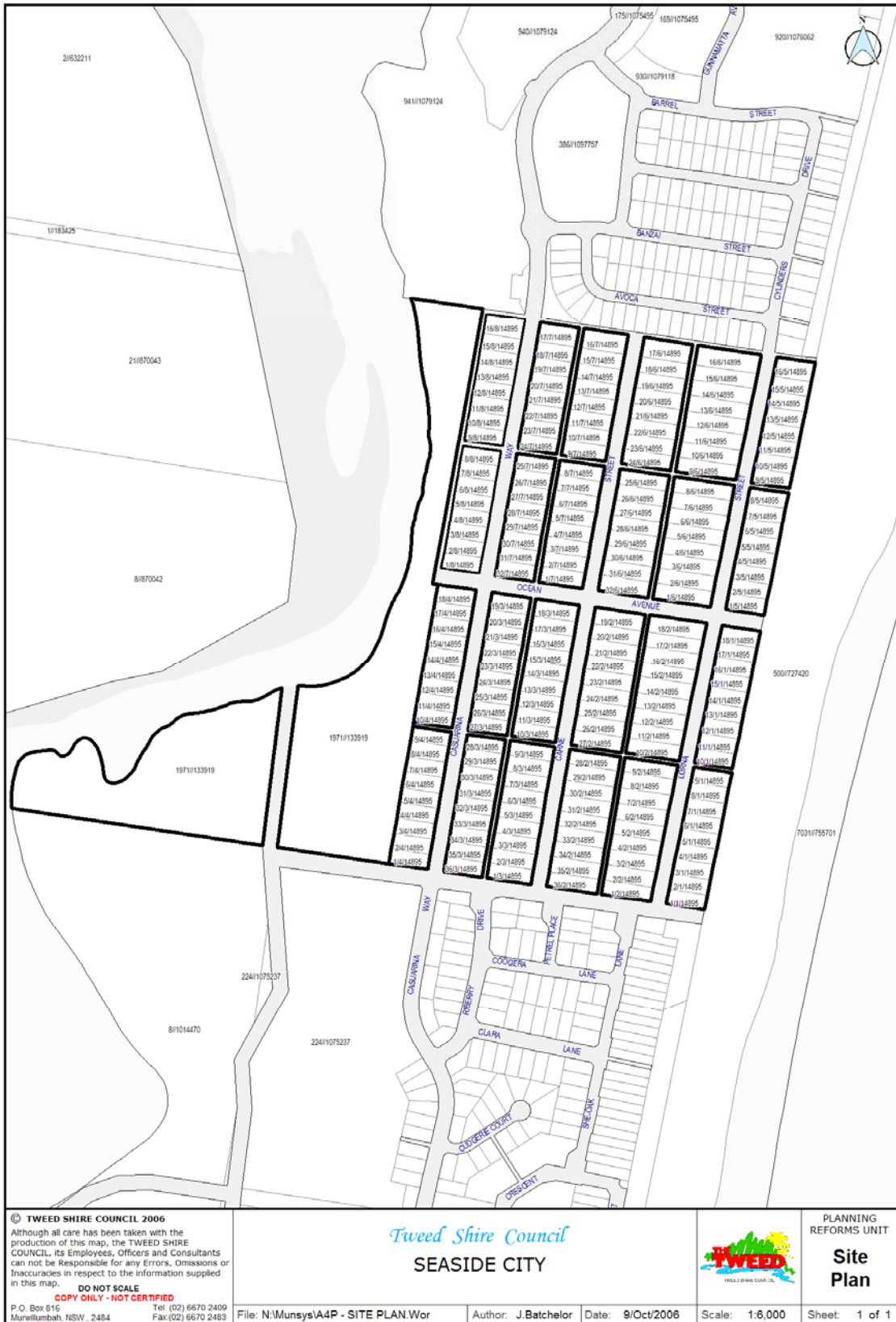
### **Other owners and funding of works**

The other owners of various lots on the east and west side of Lorna Street have agreed to the proposal which involves works on their land. A section 94 plan has been prepared identifying the costs of the works that benefit their land. These contributions will be levied on development applications lodged for the relevant lots. A planning agreement has been prepared to enable the cost of the works to be proportionally reimbursed to the major landowners from the benefiting landowners.

### **Owners consent**

The proposal includes works within Council's road reserves. Accordingly Council is required to issue owners consent for these works. The recommendation makes provision for this to occur.

**SITE DIAGRAM:**





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

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

Tweed Local Environmental Plan 2000

The subject land is zoned 2(e) Residential Tourist, 7(l) Environmental Protection (Habitat) and 7(f) Environmental Protection (Coastal Lands) under the provisions of the Tweed LEP 2000. The works are not proposed to be undertaken on the land zoned 7(f). A small part of the western part of Lot 1971 is zoned 2(f). This is an anomaly and can be rectified in the Shirewide LEP process.

Earthworks and infrastructure provision is permitted with consent from Council.

The objectives of the 2(e) zone are as follows: -

**Primary objective**

- \* to encourage the provision of family-oriented tourist accommodation and related facilities and services in association with residential development including a variety of forms of low and medium density housing and associated tourist facilities such as hotels, motels, refreshment rooms, holiday cabins, camping grounds, caravan parks and compatible commercial services which will provide short-term accommodation and day tourist facilities.

**Secondary objective**

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

The objectives of the 7(l) zone are as follows: -

**Primary objectives**

- \* to protect areas or features which have been identified as being of particular habitat significance.
- \* to preserve the diversity of habitats for flora and fauna.
- \* to protect and enhance land that acts as a wildlife corridor.

### **Secondary objectives**

- \* to protect areas of scenic value.
- \* to allow for other development that is compatible with the primary function of the zone.

The proposal is not inconsistent with the objectives of the zones.

The stormwater detention basin is located within Lot 1971 which is zoned 7(l). The basin is permissible in the zone subject to satisfying Clause 8(2) of the TLEP 2000. Clause 8(2) is satisfied as the proposed location is the optimum location for the basin.

### **Clause 15 Essential Services**

The development involves the provision of essential services. Water and sewer will be connected to the existing mains supply.

### **Clause 16 Height of buildings**

The building height for the site is 3 storeys under the Tweed LEP. The application originally included a SEPP-1 objection with the Concept Plan for the height limit however this has been removed from the application and the three storey height limit remains in place for the site.

### **Clause 19 subdivision**

The proposal involves widening Casuarina Way, Ocean Avenue and some of the laneways. Development consent is not required for a subdivision for the purposes of widening a public road.

### **Clause 35 Acid Sulfate Soils**

The subject site is categorised as Class 4 for acid sulfate soils. Works 2 meters below ground level or works that would lower the watertable beyond 2 metres below the natural surface are required to be managed for acid sulfate soils. Works below two metres is limited to the stormwater detention basin. The proposal will not lower the water table. An acid sulfate soils management plan has been submitted and is satisfactory.

### **Clause 39 Remediation of contaminated land**

Depth monitoring for radiation has taken place on the site. The monitoring has not revealed any radiation contamination. In addition to this a condition has been imposed requiring surface monitoring for radiation contamination to be undertaken following clearing works but prior to any earthworks. Post earthworks validation is also required to be undertaken.

### **Clause 39A bushfire protection**

The subject site is bushfire prone. Clearing of the site is proposed which will remove the hazard. The development applications for the adjoining land to the east and west incorporate bushfire hazard management to enable dwelling houses to be built on the fringes of the estate. Conditions are to be imposed requiring the hazard management work to be undertaken simultaneously with the stage 1 works.

### **Clause 53C - Seaside City**

- (1) This clause applies to land known as Seaside City as shown edged heavy black and coloured on the map marked "Tweed Local Environmental Plan 2000 (Amendment No 3)".
- (2) This clause aims:
  - (a) to ensure that development of the land to which this clause applies is undertaken within an appropriate planning framework, and
  - (b) to ensure that relevant environmental issues are considered before consent is granted to development of the land, and
  - (c) to facilitate the development of the land having regard to the subdivision and ownership patterns of the land.
- (3) Despite the Table to clause 11, development for the purposes of a dwelling or a dual occupancy may be carried out with consent on land to which this clause applies.
- (4) Development must not be carried out on land to which this clause applies unless a development control plan has been prepared for the land.

**Note.** See clause 39 in relation to the issue of contaminated land.

- (5) The development control plan referred to in subclause (4) must address the following matters:
  - (a) proposed land uses, including the proposed location of areas to be left in their natural state, tourist facilities, residential uses, commercial premises, recreation facilities and community buildings,
  - (b) proposed infrastructure,
  - (c) principles relating to the design of proposed development, including the concept of 'sense of place', the character of proposed development and the layout of proposed lots,
  - (d) the provision of an environmental buffer (in which no development is to occur except as provided in paragraphs (e) and (f)) to ensure the protection of any part of the following land that adjoins, or is within, land to which this clause applies:

- (i) land to which State Environmental Planning Policy No 14—Coastal Wetlands (SEPP 14) applies, or
- (ii) Cudgen Creek,
- (e) the rehabilitation of land within the environmental buffer referred to in paragraph (d), including by the planting of coastal banksia and other species of plants,
- (f) the provision of recreational cycle and pedestrian networks on the land, incorporating dual use pedestrian and cycle paths, including any such path within the environmental buffer referred to in paragraph (d) (other than any path located less than 25 metres from the boundaries of Cudgen Creek),
- (g) the management of traffic issues relating to development of the land to which this clause applies, including:
  - (i) proposed road corridors and road connections to adjoining land, and
  - (ii) the provision of public car parking spaces within Zone 2 (e), and
  - (iii) indicative public transport routes,
- (h) the management of stormwater run-off resulting from development of the land to which this clause applies, including measures that are consistent with the *Tweed Urban Stormwater Quality Management Plan*, to minimise any adverse effects from stormwater run-off on any of the following:
  - (i) Cudgen Creek,
  - (ii) land to which SEPP 14 applies,
  - (iii) Crown Reserve 1001008 (comprising Lot 500, DP 727420),excluding the provision of any stormwater detention ponds or pollution traps within the environmental buffer referred to in paragraph (d),
  - (i) the impact of land form on requirements for trunk drainage,
  - (j) the management of any soil erosion and sedimentation resulting from the development of the land to which this clause applies,
  - (k) the management of any acid sulfate soils on the land to which this clause applies,
  - (l) the management of any bush fire issues relating to the land (including development of the land) to which this clause applies,
  - (m) the management of any adverse impact of development on the land to which this clause applies on Crown Reserve 1001008 (comprising Lot 500, DP 727420),
  - (n) access to the coastal foreshore,
  - (o) measures to avoid any adverse impact of development on the land to which this clause applies on nesting or hatching of threatened species of turtles on land that adjoins the land to which this clause applies and on the Queensland blossom bat.

The Development Control Plan is being prepared. The 3 development applications cater for the matters raised in Clause 53C of the TLEP 2000.

North Coast Regional Environmental Plan 1988

**Clause 32B of the REP states-**

- (1) This clause applies to land within the region to which the NSW Coastal Policy 1997 applies.
- (2) In determining an application for consent to carry out development on such land, the Council must take into account:
  - (a) the NSW Coastal Policy 1997,
  - (b) the Coastline Management Manual, and
  - (c) the North Coast: Design Guidelines.
- (3) The Council must not consent to the carrying out of development which would impede public access to the foreshore.
- (4) The Council must not consent to the carrying out of development:
  - (a) on urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out the development would result in beaches or adjacent open space being overshadowed before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time), or
  - (b) elsewhere in the region, if carrying out the development would result in beaches or waterfront open space being overshadowed before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time)

The proposed development is not inconsistent with the above clause or the mentioned documents. The design of future buildings on the eastern lots will have to have regard for the above shadow requirements.

Buildings are not proposed eastward of the 7(f) zone line other than cantilevered structures. Ground level structures facilitating public access and recreation are proposed in the coastal protection area.

Public access to the foreshore will be enhanced with the construction of the missing link of the cycleway between Salt and Casuarina and formal access paths to the beach from Lorna Street.

The draft DCP has referenced the North Coast Design Guidelines and any future development is required to consider this document.

State Environmental Planning Policies

**SEPP55 Remediation of Land**

See comments above regarding radiation.

**SEPP71 Coastal Protection**

**The aims of the SEPP are as follows-**

- a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and
- (b) to protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and
- (c) to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and
- (d) to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and
- (e) to ensure that the visual amenity of the coast is protected, and
- (f) to protect and preserve beach environments and beach amenity, and
- (g) to protect and preserve native coastal vegetation, and
- (h) to protect and preserve the marine environment of New South Wales, and
- (i) to protect and preserve rock platforms, and
- (j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the [Protection of the Environment Administration Act 1991](#)), and
- (k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and
- (l) to encourage a strategic approach to coastal management.

**Clause 8 of the SEPP requires the following matters to be considered -**

- (a) the aims of this Policy set out in clause 2,
- (b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,
- (c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,
- (d) the suitability of development given its type, location and design and its relationship with the surrounding area,
- (e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,
- (f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,
- (g) measures to conserve animals (within the meaning of the [Threatened Species Conservation Act 1995](#)) and plants (within the meaning of that Act), and their habitats,
- (h) measures to conserve fish (within the meaning of Part 7A of the [Fisheries Management Act 1994](#)) and marine vegetation (within the meaning of that Part), and their habitats
- (i) existing wildlife corridors and the impact of development on these corridors,
- (j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,
- (k) measures to reduce the potential for conflict between land-based and water-based coastal activities,
- (l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,

- (m) likely impacts of development on the water quality of coastal waterbodies,
- (n) the conservation and preservation of items of heritage, archaeological or historic significance,
- (o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,
- (p) only in cases in which a development application in relation to proposed development is determined:
  - (i) the cumulative impacts of the proposed development on the environment, and
  - (ii) measures to ensure that water and energy usage by the proposed development is efficient.

The proposed development is not inconsistent with the aims of the Policy nor the matters for consideration. The accompanying applications involve vegetation rehabilitation and enhancement of beach access. Stormwater is proposed to be managed through detention and infiltration. Replacement habitat planting is also proposed.

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

N/A

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

**DCP-2 Site Access and Parking** - The proposal involves on street parking for beachside public parking. Council's policy is 300 spaces per kilometre of Coast. The required beachside spaces for Seaside City is 223. The spaces provided in Carne Street and eastward of Carne Street are counted as beachside parking given their proximity to the beach.

**DCP-16 Subdivision Manual** – Whilst subdivision is not proposed the DCP is applicable regarding the provision of infrastructure, road construction and landforming. The proposal is consistent with the DCP requirements.

**DCP-47 Cut and Fill on Residential Land** – The DCP applies given the earthworks exceed 900mm of cut/fill however in this case the works are proposed for broad scale landforming rather than individual allotment works. The earthworks involve a cut and fill balance operation to provide a standard platform for infrastructure and future construction.



**DCP-51 Tweed Coast Strategy** – The proposal is not inconsistent with the Strategy as infrastructure, environmental protection, public access, compact development and a neighbourhood centre are all proposed as part of the development applications or facilitated in the site specific DCP.

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

**NSW Coastal Policy**

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

**Cut/fill**

Up to 2.5 metres of cut and fill is proposed to be undertaken across the site. The former sand mining activity resulted in the land with hills and valleys that are not suitable for development. The land is not proposed to be filled beyond what is necessary for engineering purposes. A balancing of cut to fill is proposed with no importation of fill.

The earthworks are not proposed to be undertaken within the land zoned 7(f). Fill on the on the eastern blocks will involve grading the fill down to the 7(f) zone boundary.

**Clearing**

The site will be cleared excluding the land between the 7(f) zone boundary and the western edge of the 10m bushfire zone within the eastern lots. In this regard the application for the eastern cycleway, dune revegetation and bushfire zone only includes lot 500 and the Richtech land (DA05/0775). Separate applications will be required to clear the 10 m zone on the non Richtech land and for all of the land between the 7(f) zone boundary and the 10m zone.

A section 5A test has been undertaken and the development is unlikely to have a significant impact on threatened species. Adjoining developments have undertaken compensatory and replacement planting of the coastal banksias which are an important food source for the common blossom bat. Conditions requiring a similar replacement scheme are proposed however given the large number of banksias that have been planted at Salt a diversity of species should be planted to avoid a monoculture developing (the replacement rate at Salt was 1 for 1 plus 30%). Bat monitoring at the adjoining Salt development over the last three years has revealed low numbers of the blossom bat visiting the site. The results don't present a conclusive reason why the numbers are low.

### **Stormwater**

Stormwater is proposed to be collected via a piped underground system and overland flow paths to a detention basin located in the north west of the site within Lot 1971.

### **Carparking**

Public on street parking is proposed which includes beachside parking. The parking within the southern east west road is located on the southern side of the road. Objections have been received from adjoining owners regarding the proximity of the carparks to their dwellings and the impact on amenity. Placing the carpark close to existing dwellings is likely to adversely affect the amenity of the residents. A condition is proposed to mirror reverse the carpark to the northern side of the road. With the carparks in place development of the north side lots can incorporate mitigation measures into the design of future dwellings such as fencing and orientation.

The plans indicate a turning head on the eastern end of the southern east west road within the 7(f) zone. A condition is proposed requiring this to be redesigned so that the turning area is located to the west of the 7(f) zone.

### **Construction management**

The earthworks, clearing and roadworks will have a short term adverse impact on the adjoining residents during construction. A condition is proposed requiring a construction management plan to be submitted for approval prior to release of construction certificates. The management plan is to include provisions for noise, dust, dilapidation reports before and after construction for existing dwellings and a complaints handling process

### **Traffic noise**

Noise from traffic travelling along Casuarina Way has potential to impact on future dwellings adjacent to the road. A noise report is required to be submitted that considers the NSW EPA Environmental Criteria for Road Traffic Noise.

### **Engineering Assessment**

#### **Geotechnical/Earthworks**

The proposal is a balance cut to fill over lots under the ownership of Richtech Pty Ltd and non Richtech owners. In essence, the applicants propose to cut the western portion of the subject land and fill the eastern portion of the site.

The finished levels range from RL 10.0m AHD at the south-western corner of the site grading down to the north to RL 5.0m AHD near the eastern section of Ocean Avenue. From Ocean Avenue the finished levels then grades back up toward the SALT development. The northern boundary of the site adjacent to SALT has a proposed finished level ranging between RL 7 and RL 6.5.

The landforming plans eliminate the low point created at Ocean Avenue and grades the finished surface levels to the drainage corridor at chainage 700. The finished surface levels shown on the earthworks plans are satisfactory subject to the applicant obtaining permission from non Richtech owners to fill into their properties.

## **Roads**

### **Road Network / Horizontal Alignment**

The road network proposed by the applicant is as follows-

- Increase the road reserve of Ocean Avenue from 20m to 40m by combining lots 1 & 32 section 7 and lots 1 & 32 section 8 on the north side of Ocean Avenue between Casuarina Way and Lorna Street.
- Construct Ocean Avenue with two 6.0m wide pavements divided by a 5.0m wide central aisle and 90<sup>0</sup> kerb side parking.
- The construction of a roundabout at the intersection of Carne and Ocean Streets.

### **Road Vertical alignment**

The long sections provided indicate that the vertical alignment is satisfactory.

### **Road typical cross sections**

The applicants have now submitted drawings 2967/03/03-216D and 230 showing the finished cross section for Casuarina Way, Ocean Avenue and Lorna Street. These drawings address the two situations that may arise when the applicants seek permission from the non Richtech owners to fill inside their property. The cross sections satisfy Council's requirements.

### **Intersections**

The applicant will be required to show in the Construction Certificate that the roundabout is compliant with Austroads standards and can be "fitted" within the available road reserve.

The applicants propose to remove the existing (four) traffic calming devices along Casuarina Way. With recent development in Casuarina Beach and SALT, Casuarina Way now functions as a Neighbourhood Collector and possibly a Distributor Road. Given the road hierarchy of Casuarina Way it is appropriate that these traffic calming devices be removed.

The applicants show a roundabout at the intersection of Ocean Avenue and Carne Street, T- intersections at Casuarina Way/Ocean Avenue and Ocean Avenue/Lorna Street and the provision of a service lane to the east of Casuarina Way. This proposal is considered satisfactory.

### **Bus routes/Shelters**

The application does not address the provision of public transport along Casuarina Way. An appropriate condition will be imposed requiring the provision of a bus stop and shelter along this section of Casuarina Way.

### **Footpaths / Cycleway**

The footpath and cycleway network should connect the coastal foreshore and riparian areas with residential and commercial areas. In general, the following footpaths/cycleways will be required.

- Construction of a coastal cycleway within lot 500 linking the coastal cycleways in SALT and Casuarina Beach
- Construction of a cycleway to the west of the development within the riparian zone (1971 DP 133919) linking the existing cycleways in SALT and a future Casuarina cycleway to the south.
- Construction of links between the eastern coastal cycleway and the western riparian cycleway.
- Footpaths and pedestrian crossing points are to be provided along roads within the development generally in accordance with the Development Design Specification D1, Road Design Manual.

These requirements are consistent with the draft DCP for Seaside City.

Appropriate conditions of consent have been prepared and included in the recommendation.

### **Traffic Generation**

Cardno Eppell Olsen has prepared a *Traffic Impact Assessment*. This assessment estimates the daily traffic volumes as follows:

- 800vpd on the northern internal road;
- 750vpd on the southern internal road;
- 2600vpd on Ocean Avenue;
- 10,500vpd on Casuarina Way north of Ocean Avenue;
- 12,500vpd on Casuarina Way south of Ocean Avenue

The daily two way traffic volumes for the residential streets are less than 3000vpd and therefore the Environmental Capacity of these streets will not be exceeded.

### **Parking**

The proposed car parking is supported however when detailed design is undertaken care should be taken to ensure that the car parks do not conflict with future driveway access points. Conflicts between on street car parking and driveways became a major issue at SALT and consequently the designers must be diligent to ensure that the problem does not occur again.

Carparking along the southern boundary is to be relocated to the north side of the south road.

The applicant has submitted revised drawings 210K, 214, 225A and 226A showing the car parking provisions for the development.

### **Pedestrians**

See footpath section above.

### **Stormwater Drainage**

#### **Allotment drainage / IAD**

An appropriate condition of consent has been proposed to address this matter.

#### **Road Drainage network**

Conditions have been proposed to address the following;

- Underground road drainage and overland flow in Lorna Street shall be designed to drain in a northerly direction only to the open channel located at chainage 700.No road drainage(underground or overland flow) shall be directed in a westerly direction down Ocean Avenue.
- The construction certificate shall show how the low points located in Lorna Street at chainage 160 and 260 will be satisfactorily drained.

#### **Trunk Drainage / Downstream Discharge**

The bulk earthworks creates a low point along Ocean Avenue and located at approximately chainage 700. The low point at Ocean Avenue is unacceptable because of the flooding risk to the commercial precinct.

The applicants were advised of this concern and have subsequently amended their bulk earthworks plan so that the finished ground level grades from the south at a constant rate to a drainage corridor coincident with the open space alignment on the northern quarter of the site at approximately chainage 700. The northern quarter of the site still drains in a southerly direction to this open space alignment.

This constant grade will significantly reduce the likelihood of flooding along Ocean Avenue and is therefore supported. There is still a requirement to drain the  $Q_{100}$  flows across the Ocean Avenue intersection however this matter could be addressed with more detailed design.

The longitudinal gradient of the open space corridor will be about 1 in 200. The applicants are proposing a 1200mm diameter pipe or a 1800 x 600 RCBC to carry the  $Q_5$  flows. In addition, the HEC-RAS analysis shows that a trapezoidal cross-section with a bed width of 8 to 10 meters is required to carry the  $Q_{100}$  overland flow along this open space corridor. No objection is raised to the applicants revised trunk drainage scheme.

Drawing 221C does not provide a typical cross section of the open channel west of Casuarina Way. To address this a condition of consent will be imposed as follows;

- The overland flow channel and underground R.C.B.C shall be extended from Casuarina Way to the infiltration basin. This drainage system shall have a cross section similar to that shown on section 1, drawing 2967/03/03-221C.

## **Stormwater Quality Management**

### **Construction Phase**

The applicants have provided an *erosion and sediment control plan* (ESCP). This plan has been prepared generally in accordance with Aus-spec D7.

It is accepted that the site is subject to low erosion risk due to the relatively flat grades and the high infiltration capabilities of the sand.

To prevent the loss of soil during the construction phase the applicant proposes the use of control devices such as temporary sedimentation ponds, sediment filter fencing, perimeter bunds, catch drains and shake down devices.

All these control devices are standard methods employed on most construction sites and are considered satisfactory.

## **Operational Phase**

The applicants have prepared a Stormwater Quality Management Plan (SQMP) for the operational phase of the development. The SQMP is identical to that used in Casuarina and SALT with the principal elements being:

- Direct roof-water infiltration into infiltration pits from individual houses and buildings.
- Proprietary Gross Pollutant Traps to treat stormwater runoff from hardstand area's.
- Direct infiltration of runoff from roadways and other hardstand area's to infiltration basins located within the open space network.

Infiltration pits will be designed to accept roof water for the 3 month rainfall event.

In general, the SQMP is considered satisfactory given its effective use at both SALT and Casuarina.

The applicants have shown the location of the infiltration basin and provided a typical cross section through the basin. It is considered that this is satisfactory subject to the extension of the drainage system as required above.

## **Services/Utilities**

### **Water Supply**

The applicants have noted under section 3 of the Infrastructure report that the existing 450mm diameter main in Casuarina Way has sufficient capacity to supply the development. Furthermore, they advise that construction of 150mm diameter mains within the final road network will provide supply to the existing allotments.

The applicants have now provided a conceptual layout for water reticulation which is satisfactory.

### **Effluent disposal**

The applicants have concluded that any additional development approvals on Seaside City or lot 490 will trigger the following works:

- Installation of the second 225mm diameter rising main pipe under Cudgen Creek.
- Installation of a third pump in the regional pump station located in SALT and the upgrading of the impellers in the other two pumps.

The applicants have submitted a revised sewer reticulation plan which locates the pump station clear of the open channel and shows how reticulated sewer will be provided to allotments. This plan is considered satisfactory.

### **Electricity**

Country Energy has an overhead bulk service along Casuarina Way. It is assumed that adequate supply can be provided from this bulk service in Casuarina Way.

### **Environment/Amenity**

#### **Sediment control**

Appropriate conditions of consent can be imposed to manage sediment control. In addition, the ESCP discussed above will satisfactorily control sediments during the construction phase.

#### **Natural Hazards**

#### **Flooding**

The subject property will range in elevation from RL 10m AHD to RL 5.0m AHD. These levels are well above the design Q<sub>100</sub> flood level of RL 2.6m AHD for the locality.

### **(c) Suitability of the site for the development**

The land has been subdivided into town sized allotments since 1927 purposes. Seaside City is located between the Salt and Casuarina tourist residential estates. The works are proposed within the existing lot layout. The site is suitable for the proposal.

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

The application was exhibited in accordance with Council's notification DCP. Eighty-seven objections were received. Seventy-eight of these objected to the opening of the cul-de-sac at the northern end of She Oak Lane. This matter was discussed previously in the key issues section. A condition is proposed deleting this part of the proposal.

The matters raised in the balance of the submissions are summarised below with comments following-

- Clearing of lot 500 shouldn't be carried out, clearing should be on private lots.
- Intrusion into the creek buffer area.
- Carpark and beach shouldn't be counted as open space.
- Height should be 3 storeys with two storeys for houses



- Beach parking as per policy
- Sewer capacity
- Open space as per DCP –16
- Northern Lane should be open space link way not road.
- Level of land should be the same as Salt.
- Height should be 9.5 m and 3 storeys for houses
- Road transition from Salt
- Privacy and shadow from Salt in the north east corner
- Buffer zone 50m to the creek
- Public parking on north east/west road
- Fill height not the same as Salt
- No construction within the 50m creek buffer and not within the 100 year erosion line
- Traffic through Kingscliff
- Cudgen Creek Bridge

### **Comment**

The common aspects of the submissions relate to height, lot 500, the creek buffer, filling and open space. The height of future development is restricted to three storeys. The DCP makes provision for 2 and 3 storey development. The finished level of the land will not be the same as Salt. Filling is to be undertaken to level out the site.

A 50 metre buffer to the creek is proposed. Part of some of the lots on the western side of Casuarina Way are within the buffer. Development will not be permitted in this area. Part of the cycleway is within the buffer this is considered acceptable.

Revegetation is proposed for lot 500 with a 10m asset protection zone for bushfire located on the eastern side adjoining the eastern lots in Seaside City. The cycleway is proposed within this 10m strip. See previous comments regarding open space and carparking.

The laneway on the northern side is proposed to be widened to enable vehicular access. This will be a standard residential street and will facilitate permeability within the estate and on street parking.

Open space is required to be provided in accordance with Council's standard of 2.83 ha per 1000 persons. The passive open space component is being provided on site within the estate and the balance located on the creek side within lot 1971. A viewing platform and non motorised boat launching facility are proposed. Credit above the area utilised by these activities is being applied given the value to the community of such facilities. The beach, carparks and outdoor eating areas have not been included in the open space calculation. The structured open space component will be levied through contributions when population generating development applications are submitted.

The road transition from Salt (Cylinders Drive) to the north east corner of Seaside City is considered acceptable. The change in grade does not justify filling the land. The southern most lot within Salt and the northern most lot in Seaside City are separated by a 6m wide laneway. Additionally a 10m easement for bushfire protection exists on the Salt lot preventing construction on the southern side of the lot. Design of future dwellings can cater for privacy and solar access issues.

### **Government Authorities**

#### **Department of Natural Resources**

The Department has issued their terms and conditions for a Part 3A Permit under the Rivers and Foreshores Improvement Act for works within 40 m of the creek. They have also advised that if dewatering is undertaken a licence will be required.

#### **Department of Environment and Conservation**

The application was referred to the Department and they advised that no comments would be made.

#### **NSW Fisheries**

Fisheries comments will be discussed on DA 05/0793.

#### **NSW Rural Fire Service**

The management plan for Lot 1971 provides for a asset protection zone within lot 1971. The zone varies in width depending on the distance from the creek and the rehabilitation works. The RFS have advised that the proposed asset protection zones are suitable for dwelling house construction however if the design of siting of the buildings require a larger APZ then this will be required at the application stage for the building. This is discussed further in DA05/0793. The asset protection zone for the east side is discussed in DA05/0775.

### **(e) Public interest**

Seaside City is one of the last significant land parcels to be developed South of Kingscliff. It is bordered by urban development and natural assets. It is in the public interest to develop this land sensibly and efficiently. It is considered that the proposal balances the provision of urban infrastructure, environmental protection and public access and provides a framework for future development that is consistent with government and community expectations.

**OPTIONS:**

1. Approve the application as recommended and the applicant withdraws the Appeals.
2. Seek a Court Order to approve the development.

Council will incur unnecessary legal expenses if Consent Orders are sought. The optimum position is for Council to deal with the application and determine it on the basis that the Appeal is withdrawn.

3. Refuse the application.

There are no justifiable planning reasons to refuse the application.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Council will incur legal expenses as a result of the Appeal. These costs will be minimised if the recommendation is adopted.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

Approval of the application will facilitate the initial important aspects of development for Seaside City site. Approval of this application, the two accompanying applications and adoption of the DCP will provide for a balanced development with good planning outcomes and a high standard of urban design.

**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](http://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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**P7 [PD-PC] Development Application DA05/0793 for Clearing and Replanting Vegetation at Lot 1971 DP 133919, Ocean Avenue, Kingscliff**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA05/0793 Pt2**

**SUMMARY OF REPORT:**

A development application has been submitted to undertake vegetation management for the purposes of rehabilitation and bushfire protection. The application accompanies the application for infrastructure works within the Seaside City estate. A management plan has been prepared for the site which will be the responsibility of the proponent for five years.

The site has been divided into management units including a unit for a cycleway and a bushfire asset protection zone.

Lot 1971 is proposed to be dedicated to Council. The work is required to be carried out in conjunction with the infrastructure and landforming works on the adjacent land.

**RECOMMENDATION:**

**That upon written notification that Appeal No. 10216 of 2006 has been withdrawn Development Application DA05/0793 for clearing and replanting vegetation at Lot 1971 DP 133919, Ocean Avenue, Kingscliff be approved subject to the following conditions: -**

**GENERAL**

- 1. This consent shall be completed in accordance with the Vegetation Management Plan - Western Boundary dated 27 June 2006 prepared by Cardno except where varied by the conditions of this consent.** [GEN0005]
- 2. A restriction under the provisions of Section 88B of the Conveyancing Act is to be placed on the title of Lots 1 to 9 Section 8 DP14895 and Lots 17 and 18 Section 4 DP14895 indicating that part of the lots as indicated on plan 296703-VMP01 Rv 4 contained in DA 05/ 0793 are located within the 50m Cudgen Creek buffer area and no works, swimming pools or structures except fences are to be placed within this buffer area.**
- 3. Prior to completion of the five year maintenance period coastal tea tree (*Leptospermum laevigatum*) is to be removed completely from Lot 1971 DP133919.**

4. The maintenance period is to be five years from the date of planting works commencing.
5. The reports required by Section 10 of the Vegetation Management Plan are to be prepared by an independent suitably qualified and experienced environmental scientist/ecologist. The environmental scientist/ecologist is to be approved by the General Manager or his delegate.
6. Separate development applications are to be submitted to Council for the viewing platforms and creek access facility within one month of commencement of work.
7. All dangerous goods, fuels and chemicals shall be stored in a secure area and shall not be permitted to flow or percolate to any watercourse or drain.
8. Acid sulfate soils shall not be exposed or disturbed. The approved works shall not include earthworks, except as strictly necessary for approved vegetation clearing and replanting.
9. Existing vegetation shall not be removed, lopped or damaged, except as strictly necessary to complete the proposed works.
10. Runoff from the site shall not be permitted to flow or percolate to the Creek when pH is outside the range 6.5-8.5 or SS exceed 50mg/L.
11. Following clearing works and prior to earthworks or commencement of construction works surface radiation monitoring is to be undertaken for the entire Seaside City site including Lot 500 DP 747420 and Lot 1971 DP 133919. The draft Seaside City Radiation report dated June 2006 is to be amended to include the results of the surface monitoring and the final report submitted to Council (including proposals for continuous monitoring during bulk earthworks and remediation plans, if applicable) for approval by the General Manager or his delegate. All works shall comply with the approved plan. Additionally, a post earth works surface radiation survey shall be completed and a validation statement provided to Council to the satisfaction of the General Manager or his delegate, prior to issue of a Construction Certificate or commencement of construction works, which (provides details of radiation monitoring on the site) establishes that surface radiation levels are below relevant NSW Health Action Levels and the site is suitable for the proposed use.
12. Lot 1971 DP 133919 is to be dedicated to Council at full cost to the applicant within one month of completion of the planting works. In this regard the land is to be classified as operational following completion of the dedication.

[GENNS01]

**PRIOR TO COMMENCEMENT OF WORK**

13. Prior to commencement of work all native vegetation that is not proposed to be removed is to be identified and clearly marked.
14. Prior to commencement of work liaison with the Department of Natural Resources is to be undertaken regarding any approvals required under the Native Vegetation Act.
15. Prior to commencement of work consultation with the Tweed Byron Local Aboriginal Land Council and the local Aboriginal community is to be undertaken regarding the presence of any heritage sites within the site. Additionally a search of the Department of Environment and Conservation's Aboriginal Heritage Information Management System (AHIMS) is to be undertaken. If the consultation or AHIMS reveals any sites requiring protection a report from a suitably qualified and experienced person is to be prepared and submitted to Council and the Department of Environment and Conservation for approval (in Council's case by the General Manger or his delegate) detailing mitigation and management of the site (s).

[PCWNS01]

16. 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]

17. 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.

[PCW0985]

**DURING CONSTRUCTION**

18. All vegetation that is identified for retention is to be protected during vegetation removal works.

19. The works proposed in DA 05/0793 are to be undertaken in conjunction with the works proposed in DA 05/1464 and DA05/0775. Final approval for the works in DA05/1464 will not be issued unless the works proposed in DA05/0775 and DA 05/0793 have progressed to a satisfactory level as determined by the General Manager or his delegate.
20. All vegetation clearance works are to be supervised by a suitably qualified and experienced environmental scientist/ecologist.
21. All sedimentation and erosion control measures shall be installed and maintained to the satisfaction of the Director of Environment and Community Services.
- [DURNS01]
22. 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]
23. 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]
24. 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]
25. 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]
26. 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]



27. Where potential or actual Acid Sulfate Soils are disturbed as a result of on-site excavation works, all such disturbed soils are to be managed in strict compliance with the Acid Sulphate Soil Management Plan for minor works.

[DUR1075]

28. 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]

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

[DUR2415]

**USE**

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

[USE0125]

**REPORT:**

**Applicant:** Cardno MBK Pty Ltd  
**Owner:** Richtech Pty Ltd  
**Location:** Lot 1971 DP 133919 Ocean Avenue, Kingscliff  
**Zoning:** Part 7(a) Environmental Protection (Wetlands and Littoral Rainforests) and Part 7(l) Environmental Protection (Habitat)  
**Cost:** \$200,000

**BACKGROUND:**

The application is one of three that has been submitted to carry out work at the Seaside City site. This application proposes vegetation management on the lot between Cudgen Creek and the subdivided lots within the estate. The aims of the proposal are protection of biodiversity, enhancement of biodiversity and bushfire protection for future dwellings.

**Proposal**

Clearing

**Vegetation Management Unit 1 (VMU 1)**

VMU 1 is the bushfire asset protection zone (APZ). Clearing involves removal of environmental weeds and reducing bushfire fuel loads to less than 5t/ha. Environmental weeds consist of Coast Tea-tree, Bitou bush and Lantana.

**VMU 2**

VMU 2 is one of two biodiversity enhancement zones between the APZ and the creek protection area. Clearing involves removal of all Bitou Bush and Mile-a-Minute, removal of immature Coast Tea-Tree, pruning of mature Coast Tea-Tree that forms part of a closed canopy layer to remove all lower branches to a height of at least three metres above ground surface level and removal of dead trees.

**VMU 3**

VMU 3 is located in the southern area of the site between the APZ and the biodiversity protection area. Bitou bush and Coast Tea trees are to be removed.

**VMU 4 and 5**

VMU 4 and 5 are the units closest to the creek and no clearing is proposed in these zones.

## **Replanting**

Planting is proposed in VMU 1, 2 and 3. Trees and groundcovers are proposed in VMU 1 to maintain the unit as an APZ. Planting in VMU 2 is designed to re-establish the unit as a littoral rainforest community. Planting in VMU 3 is aimed at eventual re-establishment of a Banksia Dry Sclerophyll Open Forest to Shrubland community.

Planting rates and species schedules are detailed in the Management Plan.

## **Bushfire**

VMU 1 is designed to be an asset protection zone. The zone varies in width depending on the distance from Cudgen Creek. The APZ is 10m wide near the creek, 20m wide at the southern end and 40m wide at the northern end that incorporates the detention basin. If development of the adjoining lots require a larger APZ this will be required to be incorporated into the lots. Additional APZ areas within Lot 1971 will not be permitted given the proposed vegetation management in the Cudgen Creek riparian zone and the maintenance burden for Council.

## **Cycleway**

The cycleway path is located within the VMU 1. It is proposed to link up with the existing path to the north in Salt and make provision for linking to the future cycleway to the south in Casuarina.

## **50m Buffer**

The Tweed Coast Estuary Management Plan nominates a buffer distance of 50m should be maintained along Cudgen Creek. The plan proposes a buffer consisting of an inner 20m core riparian zone and a 30m outer riparian zone. Part of the APZ and the cycleway is located within the outer zone. The proposed Creek access and viewing platform are located within the core zone. These items are considered acceptable as they are low key and low impact recreational uses. The buffer zone extends into the rear of ten of the existing Seaside lots. A condition requiring a restriction as to use be placed on the title of each of these lots is proposed in DA05/1464. Walking trails based on the existing tracks are also proposed within the site.

## **Compensatory habitat**

The compensatory habitat area developed for the Casuarina development within lot 1971 is located in VMU1 and 5. Additional plantings are proposed in VMU 3 to enhance this area. Weed control is proposed for VMU 5.

## **Rear lane**

A laneway currently exists at the rear of the existing lots and is not proposed to be constructed for access. The cycleway will be located in this area.

## **Viewing platform and Boat launching ramp**

These two items are subject to separate approval and form part of the passive open space required for the anticipated population of Seaside City.

### **Stormwater Detention Basin**

The detention basin is a key infrastructure item for management of stormwater for the estate.

**SITE DIAGRAM:**



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**DO NOT SCALE**  
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 P.O. Box 616  
 Murwillumbah, NSW, 2484  
 Tel: (02) 6670 2409  
 Fax: (02) 6670 2483

*Tweed Shire Council*  
**Lot 1971 DP 133919**  
**Ocean Avenue, Kingscliff**  
 File: N:\Munsys\A4P - SITE PLAN Wor Author: J Batchelor Date: 19/Sept/2006 Scale: 1:6,000 Sheet: 1 of 1

PLANNING REFORMS UNIT  
  
**Site Plan**

**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 rezoning of the land to 7(l) Habitat was gazetted on 29 September 2006. The development is permissible in the zone subject to consent from Council. Clause 53 C of the LEP requires rehabilitation of the subject land. The proposed development complies with this requirement.

**Clause 25- Development in Zone 7 (a) Environmental Protection (Wetlands and Littoral Rainforests) and on adjacent land**

Clause 25 in part states as follows-

- 3) Consent must not be granted to the carrying out of development on land within Zone 7 (a) or on land adjacent to land within Zone 7 (a) unless the consent authority has taken into consideration:
  - (a) the likely effects of the development on the flora and fauna found in the wetlands or littoral rainforest, and
  - (b) the potential for disturbance of native flora and fauna as a result of intrusion by humans and domestic and feral animals, increased fire risk, rubbish dumping, weed invasion and vegetation clearing, and
  - (c) a plan of management showing how any adverse effects arising from the development can be mitigated, and
  - (d) the likely effects of the development on the water table, and
  - (e) the effect on the wetlands or littoral rainforest of any proposed clearing, draining, excavating or filling.
- (4) The consent authority must not grant consent to development (other than development for the purpose of agriculture or a home business) on land within Zone 7 (a) or on land adjacent to land within Zone 7 (a) without taking into consideration any representations made by NSW Fisheries or the Department of Environment and Conservation in respect of the development.

A small part of lot 1971 is zoned 7(a). It is not proposed to undertake clearing in this area only weed control. It is considered that the matters for consideration are satisfied and the impact on the land zoned 7(a) will not be detrimental. See submissions section below regarding consultation with the DEC and NSW Fisheries.

**Clause 28- Development in Zone 7 (I) Environmental Protection (Habitat) and on adjacent land**

Clause 28 of the LEP states in part-

- 3) The consent authority must not grant consent to development (other than for the purpose of agriculture, a dwelling house or a home business) on land within Zone 7 (I) without having regard to any representations made by NSW Fisheries and the National Parks and Wildlife Service.
- 4) The consent authority must not grant consent to development on or adjacent to land within Zone 7 (I) unless it has taken into consideration:
  - (a) the likely effects of the development on the flora and fauna found in the locality, and
  - (b) the potential for disturbance of native flora and fauna as a result of intrusion by humans and domestic and feral animals, increased fire risk, rubbish dumping, weed invasion and vegetation clearing, and
  - (c) a plan of management showing how any adverse effects arising from the development are to be mitigated.

Clause 28 is satisfied by preparation of the vegetation management plan, consultation with the Fisheries and DEC. The proposal is unlikely to have a significant impact on threatened species.

**Clause 31 Development adjoining waterbodies**

Clause 31 of the LEP states -

1) Objectives

- \* to protect and enhance scenic quality, water quality, aquatic ecosystems, bio-diversity and wildlife habitat and corridors.
  - \* to provide adequate public access to waterways.
  - \* to minimise the impact on development from known biting midge and mosquito breeding areas.
- (2) This clause applies to land that adjoins the mean high-water mark (or the bank where there is no mean high-water mark) of a waterbody.

- (3) Consent must not be granted to development on land to which this clause applies, within such distance as is determined by the consent authority of the mean high-water mark or, where there is no mean high-water mark, the top of the bank or shore of a stream, creek, river, lagoon or lake unless it is satisfied that:
- (a) the development will not have a significant adverse effect on scenic quality, water quality, marine ecosystems, or the bio-diversity of the riverine or estuarine area or its function as a wildlife corridor or habitat, and
  - (b) adequate arrangements for public access to and use of foreshore areas have been made in those cases where the consent authority considers that public access to and use of foreshore areas are appropriate and desirable requirements, and
  - (c) the development is compatible with any coastal, estuary or river plan of management adopted by the Council under the [Local Government Act 1993](#) that applies to the land or to land that may be affected by the development, and
  - (d) the development addresses the impact of increased demand from domestic water supply on stream flow.
  - (e) the development addresses the likely impact of biting midge and mosquitoes on residents and tourists and the measures to be used to ameliorate the identified impact.
- (4) The consent authority may require as a condition of consent to any development that the following be carried out:
- (a) the rehabilitation of land adjoining the waterbed to create a vegetated riparian zone or wetland,
  - (b) works to stabilise the bank or shoreline of a waterbed.
- (5) In determining a distance for the purposes of this clause, the consent authority shall have regard to:
- (a) the preservation of the scenic quality of foreshores, and
  - (b) minimising the risk of pollution of waterways, and
  - (c) the protection of foreshore ecosystems, and
  - (d) the intended or planned use for the foreshore.



Clause 31 is satisfied as the development is for rehabilitation of the riparian area and a management plan has been prepared. A buffer is proposed in accordance with the Tweed Coast Estuary Management Plan and public access is facilitated by the bicycle track, boat launching ramp and viewing platform.

### **Clause 35 Acid Sulfate Soils**

The site is a Class 4 acid sulfate area and works 2 meters below ground level require management. Works are not proposed at this depth however a management plan has been prepared for DA05/1464 which can be utilised for this site as necessary.

### **Clause 39 Contamination**

#### North Coast Regional Environmental Plan 1988

The relevant provisions of the REP are as follows-

#### **15 Development control-wetlands or fishery habitats**

The council shall not consent to an application to carry out development for any purpose within, adjoining or upstream of a river or stream, coastal or inland wetland or fishery habitat area or within the drainage catchment of a river or stream, coastal or inland wetland or fishery habitat area unless it has considered the following matters:

- (a) the need to maintain or improve the quality or quantity of flows of water to the wetland or habitat,
- (b) the need to conserve the existing amateur and commercial fisheries,
- (c) any loss of habitat which will or is likely to be caused by the carrying out of the development,
- (d) whether an adequate public foreshore reserve is available and whether there is adequate public access to that reserve,
- (e) whether the development would result in pollution of the wetland or estuary and any measures to eliminate pollution,
- (f) the proximity of aquatic reserves dedicated under the [Fisheries Management Act 1994](#) and the effect the development will have on these reserves,
- (g) whether the watercourse is an area of protected land as defined in section 21AB of the [Soil Conservation Act 1938](#) and any measures to prevent soil erosion, and

- (h) the need to ensure that native vegetation surrounding the wetland or fishery habitat area is conserved, and
- (i) the recommendations of any environmental audit or water quality study prepared by the Department of Water Resources or the Environment Protection Authority and relating to the river, stream, wetland, area or catchment.

The proposal involves rehabilitation of the vegetation in close proximity to the Creek. It is unlikely that the proposal will have any significant impact on fish habitat. The proposal is not inconsistent with the Management Plan for Cudgen Creek.

#### **29A Development control-natural areas and water catchment**

- (1) The council must not grant consent for the clearing of natural vegetation in environmental protection, scenic protection or escarpment preservation zones unless it is satisfied that:
  - (a) the wildlife habitat will not be significantly disturbed by the proposed development, and
  - (b) the scenery will not be adversely affected by the proposed development, and
  - (c) an erosion and sediment control plan will be implemented which will successfully contain on the site any erosion or sediment caused by the proposed development.
- (2) In this clause, ***clearing of natural vegetation*** means:
  - (a) the removal of the majority of the vegetation, ground cover, topsoil or flora (other than noxious weeds, or trees which are dead, dangerous, exotic or propagated for horticultural purposes) within an area in excess of 1 hectare, or
  - (b) the reduction of the canopy or the population of any one tree species in excess of 20 per cent within an area in excess of 1 hectare,  
  
but does not include such removal or reduction:
  - (c) within 3 metres of the boundary of land in different ownership or occupation for constructing or maintaining a fence, or
  - (d) within 0.5 metre of the common boundary of land in different ownership or occupation to allow a registered surveyor to survey the boundary.

The development is proposal to improve habitat with weed removal and management and planting of native vegetation as such the scenery is likely to be improved in this location as a result. An erosion and sedimentation plan is required to be implemented.

**32B Development control-coastal lands**

- (1) This clause applies to land within the region to which the NSW Coastal Policy 1997 applies.
- (2) In determining an application for consent to carry out development on such land, the council must take into account:
  - (a) the NSW Coastal Policy 1997,
  - (b) the Coastline Management Manual, and
  - (c) the North Coast: Design Guidelines.
- (3) The council must not consent to the carrying out of development which would impede public access to the foreshore.
- (4)The council must not consent to the carrying out of development:
  - (a) on urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out the development would result in beaches or adjacent open space being overshadowed before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time), or
  - (b) elsewhere in the region, if carrying out the development would result in beaches or waterfront open space being overshadowed before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time).

The matters in the above documents are considered to be satisfied. Public access will not be impeded. Public access will be controlled to minimise adverse impacts to the riparian zone.

**81 Development control-development adjacent to the ocean or a waterway**

- (1) The council shall not consent to a development application for development on land within 100 metres of the ocean or any substantial waterway unless it is satisfied that:
  - (a) there is a sufficient foreshore open space which is accessible and open to the public within the vicinity of the proposed development,

- (b) buildings to be erected as part of the development will not detract from the amenity of the waterway, and
  - (c) the development is consistent with the principles of any foreshore management plan applying to the area.
- (2) Nothing in subclause (1) affects privately owned rural land where the development is for the purpose of agriculture.

The above matters have been satisfied with provision of access and the cycleway and proposed buffer area.

State Environmental Planning Policies

**SEPP-71- Coastal Protection-** Council is required to consider the matters raised clause 8 of the Policy. The matters are considered to be satisfied.

**SEPP-14- Coastal Wetlands** – A small part of the site is affected by SEPP-14 Wetlands. It is not proposed to remove vegetation within tis area.

**SEPP-55- Remediation of Land-** See comments under Clause 39 of the LEP

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

N/A

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

N/A

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

Coastal Policy

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

The proposal involves removal of vegetation close the Cudgen Creek . Whilst this involves removal of undesirable species care is required to minimise the impact upon trees to be retained and erosion and sedimentation. The management plan makes provision for how the selective clearing is to be undertaken. An example of this is provided below for VMU 2-

1. Established Coastal Banksia, Black She oak and Coast Tea-tree are to be identified and clearly marked in the field prior to the commencement of vegetation clearance works.
2. Mechanical clearance of vegetation is to be restricted to areas outside of the canopy spread of mature trees identified for retention.

3. Mechanical clearance of vegetation is to be restricted in areas close to the high bank of Cudgen Creek
4. Weed species located within the canopy spread of trees identified for retention or close to the high bank of Cudgen Creek are to be cleared using manual clearance techniques.

Conditions are proposed to require protection of native vegetation and erosion and sedimentation control during works.

Maintenance of the of the vegetation is required to be undertaken for five years by the proponent.

**(c) Suitability of the site for the development**

The site is located between the creek and the existing lots in Seaside City. Management of the site is a key aspect for development of Seaside City.

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

The application was exhibited in accordance with Council's Policy. Exhibition was undertaken jointly with the DA05/1464 and DA05/775. Matters raised in the submissions related to protection of the Creek and maintaining a buffer. These matters have been discussed previously in this report and DA05/1464. Bank stability was also raised. Council's Environmental Scientist and Waterways Engineer have inspected the creek bank at this location and advise that erosion is occurring at a slow rate. It is concluded that the optimum management of this area is to establish and maintain a buffer, undertake vegetation management and control access to the Creek at this location. These measures are being undertaken as part of the Seaside development.

**Department of Natural Resources**

The Department advised that the application is not integrated and a Part 3A approval under the Rivers and Foreshores Improvement Act is not required. The Department raised the Native Vegetation Act as an issue but later advised that the Act didn't apply because of the urban zoning. Given the recent gazettal of the environmental protection zone for lot 1971 approval may be required under the Native Vegetation Act. A condition is to be imposed requiring consultation with the Department on this matter.

**NSW Rural Fire Service**

The RFS provided Council with general advice regarding bushfire management. Council has negotiated the asset protection zone within lot 1971 however it should be noted that this is the minimum for a APZ and if future developments require a larger APZ it will be required to be provided within the private lots.

### **Department of Environment and Conservation**

The Department provided an unsigned submission which stated that the application was deficient in the extent of clearing and vegetation retention and the impact on bank erosion. It should be noted that the DEC commented on the initial version of the management plan which subsequently was amended. The DEC whilst acknowledging the site had been sand mined recommend that an Aboriginal heritage assessment should still be undertaken. Given the limited amount of work to be undertaken regarding earthworks it is considered that a condition requiring consultation with the Local Land Council and a search of the Aboriginal Heritage Information Management System is considered appropriate in this instance.

### **Department of Primary Industries (NSW Fisheries)**

The Department have advised that the 50m buffer has not been achieved and required plantings within the buffer have not been achieved. The Department has recognised that the need for APZs and has therefore recommended that the buffer be 100m wide consisting of 50m vegetated and 50m underscrubbed/grassed. This recommendation is clearly not feasible as a 100m buffer would consume most of the lots on the western side of Casuarina Way and a large portion of Casuarina Way. The negotiations with the applicants have resulted in an increased density of plantings in the buffer zone. It is also considered that an appropriate balance is established between the buffer zone and passive recreational uses. Accordingly construction of the rear laneway has been removed from the proposal, the APZ has been reduced at it's closet point to the Creek and VMU 2 has been increased. The DPI also advised that they did not support the application until finalisation of the LEP, this has now occurred.

#### **(e) Public interest**

It is considered that the public interest is satisfied by balancing vegetation management, passive recreation, bushfire management and dedication of the land to Council.

#### **OPTIONS:**

1. Approve the application as recommended.
2. Refuse for specified reasons.

#### **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Council will incur further legal expenses if the matter proceeds to an Appeal.

#### **POLICY IMPLICATIONS:**

Much of the discussions have revolved around the appropriate level of vegetation and APZ management under Council control. Consideration should be given to formulation of a Policy for both these issues for future applications throughout the Shire.

**CONCLUSION:**

It is considered that the proposal balances competing demands and enables an appropriate level of development to be undertaken at this location.

**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](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

Nil.

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**P8 [PD-PC] Development Application DA05/0775 for Clearing and Replanting of Vegetation and a Cycleway Path and Beach Access at Lot 500 DP 727420 Tweed Coast Road, Casuarina & Lots 4-6; Lots 14-15 Section 1 DP 14895 & Lots 1-8 and 11-12 Section 5 DP 14895, L**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA05/0775 Pt2**

**SUMMARY OF REPORT:**

The application is one of three submitted by Richtech Pty Ltd for development at the site known as Seaside City. All three applications have been appealed in the NSW Land and Environment Court. This application is for vegetation management of the part of lot 500 that fronts the estate and the cycleway within lot 500. Clearing for bush fire management purposes is also proposed within the land owned by Richtech Pty Ltd.

**RECOMMENDATION:**

**That upon written notification that Appeal No. 10215 of 2006 has been withdrawn Development Application DA05/0775 for clearing and replanting of vegetation, cycleway and beach access at Lot 500 DP 727420 Tweed Coast Road, Casuarina & Lots 4-6; Lots 14-15 Section 1 DP 14895 & Lots 1-8 and 11-12 Section 5 DP 14895, Lorna Street, Kingscliff be approved subject to the following conditions: -**

**GENERAL**

- 1. This consent shall be completed in accordance with the Vegetation Management Plan - Eastern Boundary dated 17 August 2006 prepared by Cardno except where varied by the conditions of this consent.** [GEN0005]
- 2. The maintenance period is to be five years from the date of planting works commencing.**
- 3. The reports required by Section 9.1 of the Vegetation Management Plan are to be prepared by an independent suitably qualified and experienced environmental scientist/ecologist. The environmental scientist/ecologist is to be approved by the General Manager or his delegate.**

4. The Vegetation Management Plan is to be amended to expand, diversify and increase the density of the tree species proposed for Vegetation Management Unit 1 and 2. The updated species list is to be submitted to Council for approval prior to commencement of planting by the General Manager or his delegate and the Department of Lands. In this regard the shrub list is to be removed for VMU 1 and replaced with *Banksia integrifolia*.
5. The following ground cover species are to be removed from Vegetation Management Unit 2 list- *Sporobolus virginicus*, *Zoysia macrantha*, *Spinifex sericeus*, *Stephania japonica* and *Ipomoea pes-caprae*.
6. *Juncus usitatatus* and *Scaevola calendulacea* are to be removed from all planting lists.
7. The Vegetation Management Plan is to be amended to include a schedule of works and performance requirements for weed removal similar to the Salt Lot 500 and 7(f) Management Plan.
8. The Vegetation Management Plan is to be amended to include a growth rate standard for planted trees of 1.5m after five years, an 80% survival rate for groundcovers shrubs and trees and 80% cumulative cover at the end of the five year maintenance period.
9. The Vegetation Management Plan is to be amended to include an additional three monitoring plots within VMU 2 is to be included and plots are to be chosen at random within each VMU.
10. The Vegetation Management Plan is to be amended to include further detail selective clearing work practices for VMU 1 and VMU 2 similar to that set out in section 5.1.2.
11. All dangerous goods, fuels and chemicals shall be stored in a secure area and shall not be permitted to flow or percolate to any watercourse.
12. Acid sulfate soils shall not be exposed or disturbed. The approved works shall not include earthworks, except as strictly necessary for approved vegetation clearing and replanting and works contained in the management plan.
13. Existing vegetation shall not be removed, lopped or damaged, except as strictly necessary to complete the proposed works.

14. Following clearing works and prior to earthworks or commencement of construction works surface radiation monitoring is to be undertaken for the entire Seaside City site including Lot 500 DP 747420 and Lot 1971 DP 133919. The draft Seaside City Radiation report dated June 2006 is to be amended to include the results of the surface monitoring and the final report submitted to Council (including proposals for continuous monitoring during bulk earthworks and remediation plans, if applicable) for approval by the General Manager or his delegate. All works shall comply with the approved plan. Additionally, a post earth works surface radiation survey shall be completed and a validation statement provided to Council to the satisfaction of the General Manager or his delegate, prior to issue of a Construction Certificate or commencement of construction works, which (provides details of radiation monitoring on the site) establishes that surface radiation levels are below relevant NSW Health Action Levels and the site is suitable for the proposed use.

[GENNS01]

**PRIOR TO COMMENCEMENT OF WORK**

15. Prior to commencement of work all native vegetation that is not proposed to be removed is to be identified and clearly marked.
16. Prior to commencement of work liaison with the Department of Natural Resources is to be undertaken regarding any approvals required under the Native Vegetation Act.
17. The cycleway path alignment is to be marked prior to works commencing.
18. The Vegetation Management Plan is to be amended in accordance with the requirements of this consent. The amended plan is to be submitted to Council for approval by the General Manager or his delegate and the Department of Lands prior to commencement of works.

[PCWNS01]

19. 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]

20. 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.

[PCW0985]

#### **DURING CONSTRUCTION**

21. All vegetation that is identified for retention is to be protected during vegetation removal works.

22. The works proposed in DA 05/0793 are to be undertaken in conjunction with the works proposed in DA 05/1464 and DA05/0775. Final approval for the works in DA05/1464 will not be issued unless the works proposed in DA05/0775 and DA 05/0793 have progressed to a satisfactory level as determined by the General Manager or his delegate.

23. All vegetation clearance works are to be supervised by a suitably qualified and experienced environmental scientist/ecologist.

24. A post and rail fence similar to the fence constructed in the adjoining estates is to be constructed along the full length of the boundary between the eastern lots of Seaside City and Lot 500 DP 727420.

25. All sedimentation and erosion control measures shall be installed and maintained to the satisfaction of the Director of Environment and Community Services.

[DURNS01]

26. 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]

27. 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]

28. 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]

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

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

[DUR1005]

30. 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]

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

[DUR2415]

#### **USE**

33. If any unlawful clearing occurs within Lot 500 DP727420 a visual barrier is to be erected in accordance with Section 9.1 of the Vegetation Management Plan.

[USENS01]

34. 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]

#### **DEPARTMENT OF PLANNING CONCURRENCE CONDITIONS**

- Any works on land on the private lots zoned 7(f) adjacent to Lot 500 shall be undertaken in accordance with the management requirements set out in the Management Plan for VMU 3.
- The alignment of the cycleway shall be designed by survey so it is located in an alignment that will limit the need to remove mature native vegetation species. This alignment should be marked out prior to any vegetation clearing occurring on the land.
- The boundary between VMU 2 and VMU 3 shall be marked out on the ground prior to any clearing taking place to avoid accidental clearing on VMU 2.

**REPORT:**

**Applicant:** Cardno MBK Pty Ltd  
**Owner:** Tweed Shire Council & Richtech Pty Ltd  
**Location:** Lot 500 DP 727420 Tweed Coast Road, Casuarina & Lots 4-6; Lots 14-15 Section 1 DP 14895 & Lots 1-8 and 11-12 Section 5 DP 14895, Lorna Street, Kingscliff  
**Zoning:** 7(f) Environmental Protection (Coastal Lands)  
**Cost:** \$170,000

**BACKGROUND:**

The application accompanies two other applications for development at Seaside City (DA05/1464 and DA05/0793).

Lot 500 is a Coastal Reserve owned by the Crown and managed by Council. The Department of Lands have issued owners consent for the application. The Department of Lands have agreed that a 10 metre strip in Lot 500 can be utilised by the landowners with frontage to Lot 500 for asset protection from bushfires.

The management plan makes provision for a further 10m strip for asset protection within the land to the east of Lorna Street. Separate applications for clearing this strip within the allotments not owned by Richtech will be required. This application does not cover all the landowners with ocean frontage only the Richtech land.

**Proposal**

**Vegetation**

The proposal involves removal of weeds and planting of native vegetation within lot 500. A vegetation management plan has been prepared for the proposal.

The site has been divided into two Biodiversity and Protection Units and one Asset Protection Unit.

The Management Plan describes the Units as follows-

The Biodiversity and Protection Units are comprised of areas of native vegetation and environmental and exotic weed species that are located to the east of the defined Asset Protection VMU. The general objective of management for these VMUs is to protect and enhance their biodiversity value and dune stabilisation functions via a combination of:

- retention of existing native vegetation
- the removal of existing infestations of environmental weeds
- in-situ mulching of dead vegetative material to reduce the potential for erosion
- the implementation of a supplementary planting program to increase the floristic diversity and structural complexity of the vegetation

- maintenance of weed control and planting works

The Asset Protection Unit is comprised of a mixture of native plant species and environmental weed species that are located within the defined 10m wide asset protection zone. The general objectives of management for this VMU are to:

- remove existing infestation of weeds species
- reduce permanently fuel loads to a level that allows the vegetation to be classified as Group 3 vegetation
- in accordance with the provisions of Table A2.4 of “Planning for Bushfire Protection”, enable a minimum separation distance of 20m to be established and maintained between densely vegetated areas and any buildings. This 20m separation distance consists of a 10m wide Asset Protection zone within the western most sector of Lot 500 and a 10m wide Asset Protection Zone within the eastern extent of residential allotments adjoining Lot 500.

### **Bushfire**

A 20 m wide asset protection zone is proposed with 10m of the zone either side of the boundary between lot 500 and the privately owned lots within the Seaside estate.

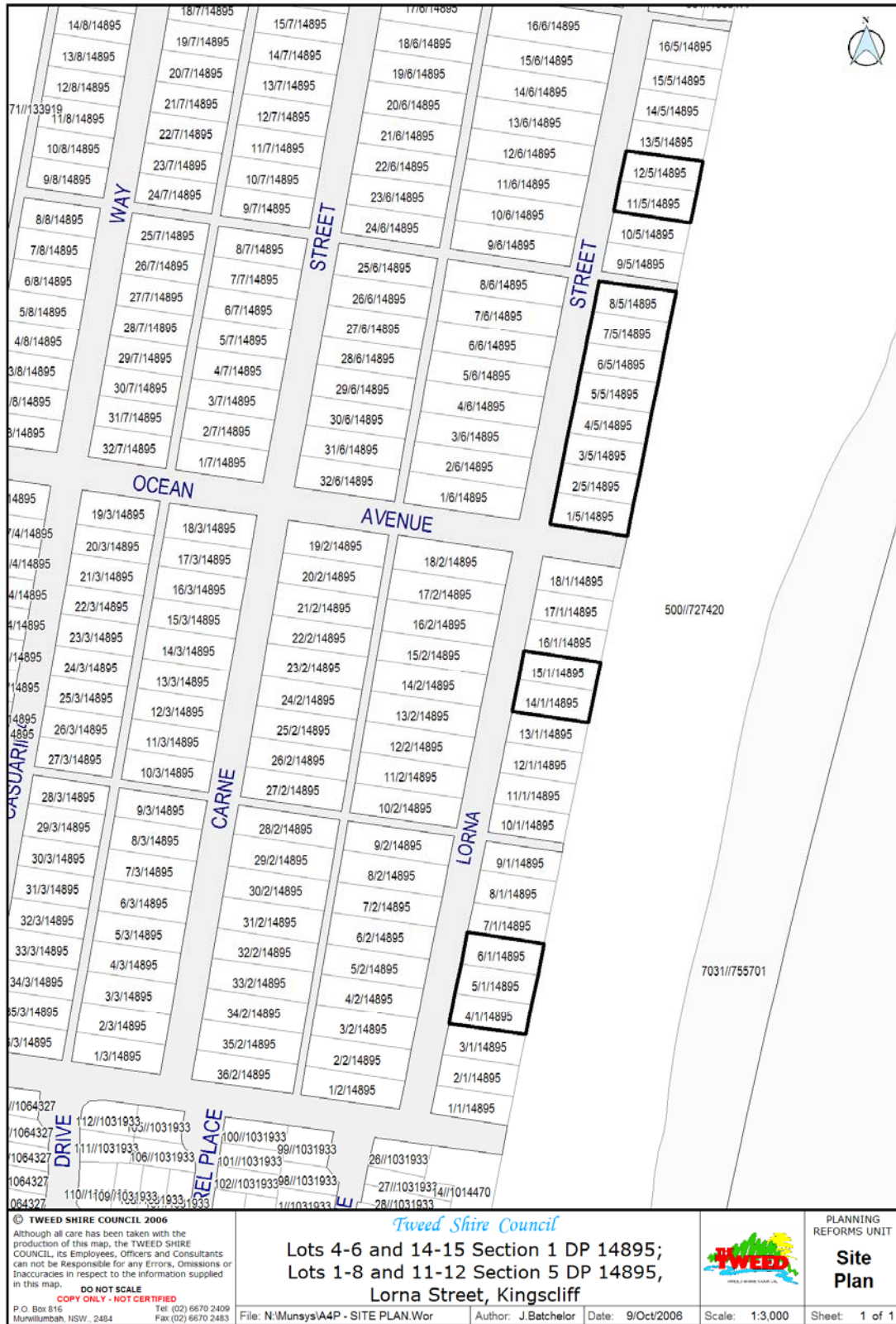
### **Cycleway**

Construction of the missing part of the coastal cycleway is proposed between Salt and Casuarina. The cycleway proposed is to the same standard as the adjoining estates and is located on Lot 500.

### **Beach access**


Access to the beach is proposed to be formalised with four paths from the existing Lorna Street laneways to the beach. Fencing to protect the dune vegetation is also proposed.

**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.  <b>DO NOT SCALE</b>  <b>COPY ONLY - NOT CERTIFIED</b>                  P.O. Box 616 Murwillumbah, NSW, 2484 Tel: (02) 6670 2409 Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i>                  Lot 500 DP 727420                  Tweed Coast Road, Casuarina</p>		<p>PLANNING REFORMS UNIT  <b>Site Plan</b></p>		
	File: N:\Munsys\A4P - SITE PLAN.Wor	Author: J.Batchelor	Date: 9/Oct/2006	Scale: 1:22,000	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 land is zoned 7(f) Environmental Protection (Coastal Lands) under the provisions of the Tweed LEP. The development is permissible with consent from Council.

The objectives of the zone are as follows-

**Primary objectives**

- \* to identify land susceptible to coastal erosion and protect it from inappropriate development.
- \* to protect and enhance the scenic and environmental values of the land.

**Secondary objective**

- \* to allow for other development that is compatible with the primary function of the zone.

The proposed development is compatible with the objectives of then zone.

**Clause 27** is of the LEP is as follows: -

(1) Objectives

- to protect land that may be susceptible to coastal erosion processes from inappropriate development.
- to establish concurrence criteria.

(2) In deciding whether to grant consent to development in Zone 7 (f), the consent authority must consider:

- (a) the provisions of any plan of management adopted by the Council under the [Local Government Act 1993](#) that is applicable to the land, and
- (b) the impact of the development on the behaviour of the sea, or an arm of the sea, or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse, and

- (c) the impact of the development on any beach or dune or the bed, bank, shoreline, foreshore, margin or flood plain of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse, and
  - (d) the impact of the development on the landscape or scenic quality of the locality, and
  - (e) the impact of the development on any native vegetation.
- (3) Development (other than that included in Item 1 for Zone 7 (f) in the Table to clause 11) must not be carried out within Zone 7 (f) except with the concurrence of the Director.
- (4) In determining whether to grant concurrence, the Director must take into consideration the likelihood of the proposed development:
- (a) adversely affecting the behaviour, or being adversely affected by the behaviour, of the sea or an arm of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse, and
  - (b) adversely affecting any beach or dune or the bed, bank, shoreline, foreshore, margin or flood plain of the sea or any bay, inlet, lagoon, lake, body of water, stream or watercourse, and
  - (c) adversely affecting the landscape or scenic quality of the locality

The proposed development is aimed improving the native vegetation in the dunal area of lot 500. Some native vegetation (wattle) is proposed to be removed to improve the conditions for other species to grow. There is no proposal for earthworks within the dunes. The 20m strip proposed as an asset protection zone will involve removal of native vegetation. The cycleway will be located within the 10 m strip within lot 500.

### **Concurrence**

The application was referred to the Department of Planning for concurrence. Concurrence subject to conditions has been received.

### **North Coast Regional Environmental Plan 1988**

The relevant provisions of the REP are as follows-

#### **29A Development control—natural areas and water catchment**

- (1) The council must not grant consent for the clearing of natural vegetation in environmental protection, scenic protection or escarpment preservation zones unless it is satisfied that:

- (a) the wildlife habitat will not be significantly disturbed by the proposed development, and
- (b) the scenery will not be adversely affected by the proposed development, and
- (c) an erosion and sediment control plan will be implemented which will successfully contain on the site any erosion or sediment caused by the proposed development.

The aim of the proposal is to improve the habitat area. The proposal is not likely to have a significant impact on threatened species. The scenery in this location will be altered by establishment of the cycleway and APZ however improvements to the vegetation and public access provides a balance to development. An erosion and sedimentation control plan is required to be implemented.

**32B Development control—coastal lands**

- (1) This clause applies to land within the region to which the NSW Coastal Policy 1997 applies.
- (2) In determining an application for consent to carry out development on such land, the council must take into account:
  - (a) the NSW Coastal Policy 1997,
  - (b) the Coastline Management Manual, and
  - (c) the North Coast: Design Guidelines.
- (3) The council must not consent to the carrying out of development which would impede public access to the foreshore.
- (4) The council must not consent to the carrying out of development:
  - (a) on urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out the development would result in beaches or adjacent open space being overshadowed before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time), or
  - (b) elsewhere in the region, if carrying out the development would result in beaches or waterfront open space being overshadowed before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time).

The above documents are satisfied and public access to the foreshore is being increased and managed as result of the proposal. The only structures proposed are the cycleway and boardwalks to the beach.

### **33 Development control—coastal hazard areas**

Before granting consent to development on land affected or likely to be affected by coastal processes, the council shall:

- (a) take into account the Coastline Management Manual,
- (b) require as a condition of development consent that disturbed foreshore areas be rehabilitated, and
- (c) require as a condition of development consent that access across foredune areas be confined to specified points.

The cycleway and beach access points are suitable developments in this location. The application is for rehabilitation and confining public access to specified points.

The following is an extract from the Coastline Management Manual-

#### **(d) Dune Revegetation**

The major objective of any dune revegetation program should be to provide sufficient plant cover to protect against wind erosion. Species native to the coastal dune system have adapted to survive the hostile environment of drifting sand, strong winds, salt spray and infertile soils, and provide long term stability to the system.

A successful revegetation program will also provide other benefits to the coastal system including increased protection for landward areas and amenities, improved habitat for native fauna, particularly birds, and enhanced beach amenity.

#### **(e) Dune Protection**

The provision of dune protection is necessary where land use pressures will, in the absence of protection measures, cause damage to the dune landform or vegetation. A combination of dune fencing, formalised accessways and signposting is normally used to protect the dune system. An active community awareness program will complement these measures.

Fences preserve both revegetated and naturally vegetated areas by protecting them from uncontrolled pedestrian and vehicle traffic. Formalised accessways allow pedestrians and vehicles access to dunes in a manner which protects both the dune and adjoining vegetation; they are fenced to direct and confine the movement of the traffic; and the dune surface is generally protected by materials such as board and chain mats to prevent sand blowing from the accessway and to provide traction for traffic.

#### **(f) Dune Maintenance**

Both rehabilitated and natural dune areas require long term maintenance (maintenance in perpetuity), to ensure that vegetation and structures such as fences and accessways retain their function, and to protect the initial investment of funds in management works.

Deterioration of rehabilitation works may be caused naturally by the action of the wind, waves and moving sand. Vandalism may increase the rate of deterioration of works.

Maintenance of dune management works includes the following aspects:

- continuation of public awareness campaigns;
- repairs to fences, accessways and signs;
- replanting of areas where plants have failed to establish or have died because of disease, insect attack, fire or moisture stress;
- planting of secondary and tertiary vegetation in suitable areas;
- control of weeds such as bitou bush and lantana;
- application of fertiliser when required; and
- fire control.

Consistent and adequate maintenance of rehabilitation works will contribute to the aesthetic appeal and amenity of the beach area. Regular maintenance will also reduce the need for major restoration at a later date, thereby reducing the cost of subsequent works.

It is considered that the proposal is consistent with the above measures and objectives.

#### **81 Development control—development adjacent to the ocean or a waterway**

- (1) The council shall not consent to a development application for development on land within 100 metres of the ocean or any substantial waterway unless it is satisfied that:

- (a) there is a sufficient foreshore open space which is accessible and open to the public within the vicinity of the proposed development,
  - (b) buildings to be erected as part of the development will not detract from the amenity of the waterway, and
  - (c) the development is consistent with the principles of any foreshore management plan applying to the area.
- (2) Nothing in subclause (1) affects privately owned rural land where the development is for the purpose of agriculture.

The above clause is satisfied as a result of the proposal.

#### State Environmental Planning Policies

**SEPP-71 Coastal Protection**-The matters for consideration under the SEPP are as follows-

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

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

The proposed development is consistent with the above matters where relevant.

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

N/A

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

N/A

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

NSW Coastal Policy

The provisions of the Coastal Policy are satisfied with improvement to public access to the beach and rehabilitation of dune vegetation.



**(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**

Native vegetation is proposed to be removed as part of the application along with planting and rehabilitation of the dunal area. The proposal will result in additional public access to the area with the extension of the cycleway and formalisation of beach access. The potential adverse impacts of vegetation removal and increased usage of the dune area are offset by the rehabilitation program, improved passive recreational opportunities and managed beach access.

**(c) Suitability of the site for the development**

The site is suitable for the development and compliments existing development north and south of the site.

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

The application was exhibited in accordance with Council's Policy and two submissions were received.

The first submission states that as the clearing within lot 500 is for bushfire protection the bushfire protection clearing should only occur on the privately owned lots and not the Crown Land.

This is a reasonable point however the proposal also includes completing the coastal cycleway for the full frontage of Seaside City (715m approx.) which is to be located within lot 500. The APZ has dual purpose of a cycleway/recreation corridor and an APZ (10m wide). The balance of the APZ is to be located within the private lots. It should also be also noted that the Environmental Protection zoning of the site primarily relates to coastal hazard management not habitat value.

The second submission has undertaken a detailed review of the Management Plan and made suggestions for amendments. The submission was referred to the Lands Department and conditions are proposed to incorporate the suggestions into the Management Plan.

**Department of Lands**

The DoL has provided feedback regarding the submissions which will be included in the proposed conditions. The Department have advised that a license will be required to be issued by the Department for the works to be carried out.

## **Department of Natural Resources**

The Department has made the following comments regarding the proposal-

- 4.1.2 Selective Clearing and 4.2.2 Selective Clearing

The clearer presentation of a section detailing work practices to be followed as per 5.1.2 is suggested.

- 5.1.2 Selective Clearing

The removal of mature native vegetation is not supported.

It is suggested that a better approach would be to design the alignment of the cycleway based on a survey of the location of mature native vegetation species. This would enable retention of these trees while improving the current indicative cycleway design to one that maximises both horizontal and vertical variation thus enhancing visual appeal.

In addition it is suggested that the final cycleway alignment should be marked prior to any vegetation clearance works in a similar manner as that proposed for the beach access points (refer 4.1.2).

## **7. Weed Management**

Aerial application of Glyphosate, with appropriate work practices detailed, should be included and discussed as a weed removal technique. This option would be preferable to DNR than the proposed mechanical removal method in VMU 3.

### **Comment**

A condition will be imposed requiring selective clearing work practices to be further detailed for VMU 1 and 2

A condition will be imposed requiring the cycleway alignment to be marked prior to works commencing. Whilst the management plan states that native vegetation will be minimised and established she-oak outside the cycleway alignment will be marked some mature vegetation will be removed not only for the cycleway but also for bushfire management.

A condition will be imposed regarding weed management as outlined above.

### **(e) Public interest**

It is within the public interest to rehabilitate the dune area, complete the cycleway and undertake bushfire management.

**OPTIONS:**

1. Approve the application as recommended.
2. Refuse the application for specified reasons.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

If the application proceeds to an Appeal Council will incur further legal expenses.

**POLICY IMPLICATIONS:**

Much of the discussions have revolved around the appropriate level of vegetation and APZ management under Council control. Consideration should be given to formulation of a Policy for both these issues for future applications throughout the Shire.

**CONCLUSION:**

It is considered that the proposal balances competing demands and enables an appropriate level of development to be undertaken at this location.

**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](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

Nil.

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**P9 [PD-PC] Exhibition and Adoption of the Tweed Development Control Plan**

**ORIGIN:**

**Development Assessment**

**FILE NO: GT1/LEP/2000/87**

**SUMMARY OF REPORT:**

At its Ordinary meeting of 5 September 2006, Council resolved to adopt the exhibited consolidated Tweed Development Control Plan (TDCP) and to bring this plan into effect. A clause under Environmental Planning and Assessment Regulation 2000 states that *council must give public notice of its decision (to adopt) in a local newspaper within 28 days after the decision is made*, and stipulating when the plan comes into effect.

No notice has been placed in the Tweed Link as Council has been amending Tweed LEP 2000 (Amendment No. 87) to reflect some of changes brought about by the new TDCP. Council was advised at the Council meeting of 26 September that before the TDCP could be brought into effect there was a requirement to amend and gazette Amendment No.87.

To further progress Amendment No.87, the Department of Planning requires an adoption date for TDCP. As the above 28 day notice has now passed, a resolution is required to give Council a new date of adoption for TDCP to comply with the above Regulation.

The new adoption date will be notified in the Tweed Link with the statement that the TDCP will only come into effect upon gazettal of Amendment No.87.

**RECOMMENDATION:**

**That Council: -**

- 1. Adopts the exhibited Consolidated Tweed Development Control Plan.**
- 2. Gives public notice in the Tweed Link of its decision to adopt Tweed Development Control Plan in accordance with the Environmental Planning and Assessment Regulations 2000, specifying that the Tweed Development Control Plan comes into effect on the date of the gazettal of the Tweed Local Environmental Plan No. 87.**

**REPORT:**

As per summary of report.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**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](http://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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**P10 [PD-PC] Development Application DA06/0358 for a Residential Aged Care Building at Lot 736 DP1072580 No. 1 Mylestom Circle; Lot 605-609 DP 1062587 Nos. 3, 5, 7, 9, 11 Mylestom Circle & Lots 730-735 DP 1072580, Nos. 41, 43, 45, 47, 49, 51 Ballina Street, P**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA06/0358 Pt3**

**SUMMARY OF REPORT:**

A development application has been received for a 150 bed aged care residential facility within the Seabreeze Estate at Pottsville. The application has been submitted under the provisions of State Environmental Planning Policy – Seniors Living. The facility caters for dementia, low and high care residents.

During the assessment of the application the proponents advised that they wished to pursue collection storage and recycling of all roof water runoff, stormwater runoff and effluent. This also involves not connecting to Council's water and sewer mains supply.

This aspect of the proposal is not supported and the recommendation requires connection to the mains supply for both water and sewerage. The information provided to support the alternate system has not demonstrated that the risks associated with the system are within acceptable limits. Additionally given the nature of the development without conclusive technical information supporting the alternate system it is considered appropriate that the development utilise the existing water and sewer infrastructure mains supply.

Seventy objections have been received to the development.

**RECOMMENDATION:**

**That Development Application DA06/0358 for a residential aged care building at Lot 736 DP 1072580 No. 1 Mylestom Circle; Lots 605-609 DP 1062587 Nos. 3, 5, 7, 9, 11 Mylestom Circle & Lots 730-735 DP 1072580, Nos. 41, 43, 45, 47, 49, 51 Ballina Street, Pottsville 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 DA05-DA19 Project No. IA 0106 prepared by Ilium Projects and dated March 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.

The application shall include detailed engineering plans and specifications relevant to but not limited to the following works: -

- (a) Road surfacing, including whole of life costing (minimum 40 years), manufacturer's specifications for performance, wear, maintenance and safety, and compliance with relevant Council Specifications and Australian Standards.
- (b) Driveway details, in compliance with Council's Driveway Access to Property Design Specification.
- (c) Concrete ribbon footpath alignment and construction details
- (d) Stormwater drainage, including modifications to existing stormwater infrastructure (kerb and guttering, piped infrastructure including inlet pits, overland flow paths).
- (e) Erosion and Sediment Control Plans
- (f) Location of all services/conduits
- (g) Traffic Control Plan
- (h) Stormwater harvesting and raingarden design, including modifications to verge levels, landscaping details (species lists, mature heights, verge locations), irrigation systems (including public and occupational health and safety issues relating to treated effluent use), ongoing maintenance requirements, protection of existing services, and pedestrian and disabled accesses. The proposed raingardens in the road verge must meet the following the following minimum standards:
  - (i) No level change within 500mm of the edge of concrete ribbon footpath.
  - (ii) Maximum batter gradient of 1:4 (vertical:horizontal)



- (iii) Kerb stormwater may be collected for internal reuse via reverse-grade kerb adaptors to Council standards. Alternately, piped connections from existing kerb inlet pits and/or stormwater junction pits in the road reserve to internal reuse systems may be approved subject to detailed design.
  - (iv) Level pedestrian accesses must be provided over/through raingarden areas at intervals of no less than 15m, meeting disabled access requirements.
  - (v) Fruiting trees are not permitted.
  - (vi) Street tree alignment must meet Development Design Specification D1 - Road Design criteria. Plantings at intersections, driveway cross overs and pedestrian accesses must not exceed 300mm in height to maintain vehicle sight distances.
  - (vii) To ensure adequate levels of maintenance for all privately installed facilities in the road reserve, it may be necessary for the applicant to enter into a lease agreement with Council for the use of Council's road reserves (transferable to subsequent owners).
- (i) The following works are not permitted:
- (ii) Changes to intersection geometry (all frontages).
  - (ii) Changes in road pavement width and kerb alignment (all frontages).
  - (iii) Level or alignment alterations to the Ballina Street cycleway.
  - (iv) Construction of raingardens in Ballina Street.
  - (v) Installation of castellated or other forms of non-continuous kerbing (all frontages).
- [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. The facility is only to be occupied by people aged 55 years or more and people with a disability as defined by the Seniors Living SEPP.

6. A bus with a minimum seating capacity of 20 is to be provided for occupants of the facility. The bus is to be available for daily (minimum) transportation of residents to facilities required by clause 25 of the Seniors Living SEPP.

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

7. Prior to the issue of a Construction Certificate a Construction Management Plan shall be submitted to the satisfaction of the Director of Environment and Community Services. All works shall comply with the approved plan.

8. Prior to the issue of a Construction Certificate, approval shall be obtained for the proposed plumbing and drainage installation works. A minimum of three sets of hydraulic drawings are to be submitted, designed in accordance with the provisions of AS/NZS3500:2003, together with any prescribed fees including inspection fees.

[PCCNS01]

9. Any carparking floodlighting shall not spill beyond the boundaries of the site. Lighting shall comply with AS 4282 and other relevant Australian Standards.

[PCC0055]

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

[PCC0745]

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

[PCC1255]

12. 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]
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. 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
  - other stormwater 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.

The s68 Stormwater Application must be accompanied by a detailed Stormwater Management Plan (SWMP) and Erosion and Sediment Control Plan (ESCP) prepared in accordance with Development Design Specification D7 - Stormwater Quality. The SWMP must provide engineering details of the following:

- (a) All piped connections to the public stormwater network, including all intake points for stormwater harvesting, and all discharge points.
- (b) All overland flow paths, sized to accommodate the ARI 100 year storm flow, including details of landscaping within flowpaths.
- (c) Upstream treatment measures for all stormwater runoff, other than uncontaminated roof runoff, prior to discharge to the public system. This includes effluent reuse in landscaping irrigation systems.
- (d) All proposed alterations to public stormwater infrastructure, including kerb and guttering.

[PCC1145]

15. 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.

[PCC1185]

16. 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]

17. Where water is to be drawn from Councils reticulated system, the proponent shall: -

- Make application for the hire of a Tweed Shire Council metered standpipe including Councils nomination of point of extraction.
- Where a current standpipe approval has been issued application must be made for Councils nomination of a point of extraction specific to the development.
- Payment of relevant fees in accordance with Councils adopted fees and charges.

[PCC1205]

18. In accordance with Section 68 of the Local Government Act, application shall be made to Council for any proposed sewerage drainage system. Detail shall include hydraulic drawings, pipe sizes, details of materials and discharge temperatures. [PCC1225]
19. 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]
20. Pursuant to Section 68 of the Local Government Act, 1993 an approved pre-treatment device (eg. Oil/grease traps, separators, etc) shall be installed in accordance with Tweed Shire Councils Trade Waste Policy. Submission of detailed hydraulic plans and specifications indicating size, type, location and drainage installations in accordance with AS 3500 shall be submitted to Council for approval. [PCC1265]
21. Three copies of detailed hydraulic plans shall be submitted with all trade waste applications which indicate size, type and location of pre-treatment devices. All plumbing and drainage installations to these devices shall comply with AS3500. [PCC1275]
22. 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:	63 ETs @ \$4598	\$289,674
Sewer:	100.5 ETs @ \$2863	\$287,732

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

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

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

[PCC0265]

### 23. Section 94 Contributions

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

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

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

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

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

(a) Tweed Road Contribution Plan: S94 Plan No. 4 (Version 4.0) Sector 8a_4	\$69,091
LCA3 - Koala Beach/Leisure Gardens	\$19,809
(b) Shirewide Library Facilities: S94 Plan No. 11	\$31,373
(c) Bus Shelters: S94 Plan No. 12	\$1,186
(d) Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$5,326
(e) Community Facilities (Tweed Coast) (South Coast) S94 Plan No. 15	\$22,192
(f) Emergency Facilities (Surf Lifesaving) S94 Plan No. 16	\$9,140

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| <b>(g) Extensions to Council Administration Offices<br/>&amp; Technical Support Facilities<br/>S94 Plan No. 18</b> | <b>\$57,971.47</b> |
| <b>(h) Cycleways<br/>S94 Plan No. 22</b>   | <b>\$3,233</b>     |
| <b>(i) Regional Open Space (Casual)<br/>S94 Plan No. 26</b>  | <b>\$39,082</b>    |

[PCC0215]

**PRIOR TO COMMENCEMENT OF WORK**

**24. 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]

25. 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]

26. 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]

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.

[PCW0985]



30. Prior to the commencement of work the Principal Certifying Authority is to be provided with and approve details of the kitchen exhaust system. Such details are to include the location of discharge to the air, capture velocity, size of hood and angle of filters. The system shall comply with Australian Standards SAA 1668 Part 2 Ventilation Requirements. [PCW0575]
31. 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]
32. The proponent shall notify Councils Engineering & Operations Division of intention to commence drawing water in accordance with the requirements of the approval to draw water. [PCW1045]
33. Sewer main within site is to be accurately located and the Principal Certifying Authority advised of its location and depth prior to start of any building works. [PCW1055]
34. 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]
35. 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]
36. Prior to commencement of building works provide hydraulic drawings on the proposed sewer drainage systems including pipe sizes, details of materials and discharge temperatures. [PCW1085]
37. Prior to the commencement of any works on the site all required plumbing and drainage inspection fees are to be submitted to Council. [PCW1095]
38. It is the responsibility of the contractor to identify and locate all underground utility services prior to commencing works. [PCW1165]

39. Landscaping is to be provided at the rate of 25m<sup>2</sup> per bed. In this regard additional landscaping area is to be provided within the site along the Evans and Valla Street frontages. An amended landscaping plan is to be submitted to Council for approval by the General Manager or his delegate prior to issue of the Construction Certificate.

**DURING CONSTRUCTION**

40. All construction traffic is to enter and depart the site via the western roundabout on Pottsville Road.
41. Acid sulfate soils shall not be exposed or disturbed.
42. All works shall comply with the Erosion and Sediment Control Plan (Cardno Engineering, February 2006).
43. The public sewer upstream of and including MH 1/40 on lot 735 is to be abandoned and capped off with a standard junction on the down stream side of this MH.
44. The public sewer upstream of and including MH 5/31 on lot 605 is to be abandoned and capped off with a standard junction on the down stream side of this MH.
45. The individual water service connections to the existing 12 lots are to be removed and capped of at the respective water main.
46. 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]

47. 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]

48. 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]

49. 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]
50. The finished floor level of the building should finish not less than 225mm above finished ground level. [DUR0445]
51. All fill and cut batters shall be obtained wholly within the subject land. [DUR0825]
52. 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]
53. All materials used in the building must comply with the smoke developed and spread of flame indices specified in Specification C1.10 of the Building Code of Australia.
- Note: Many materials including some timbers such as western red cedar do not comply and it is the applicants responsibility to ensure that all materials to be used are within the criteria specified. [DUR1275]
54. 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]
55. Where a building of part of a building is required, under the provisions of Section D of the Building Code of Australia, to be accessible to permit use by people with disabilities, prominently displayed signs and symbols shall be provided to identify accessible routes, areas and facilities. The signage, including Braille or tactile signage, should be installed in accordance with the relevant provisions of the Building Code of Australia and achieve the minimum design requirements provided under AS1428. [DUR1695]

56. 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]
57. 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]
58. A garbage storage area shall be provided in accordance with Council's "Code for Storage and Disposal of Garbage and Other Solid Waste".  
[DUR2195]
59. 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]
60. 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]
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:-**

- \* 43.5<sup>0</sup>C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and**
- \* 50<sup>0</sup>C 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. Car parking spaces for people with disabilities shall be provided and constructed in accordance with the provisions of Section D of the Building Code of Australia. Particular attention is to be given to the deemed-to-satisfy provisions of Part D-3.5 of the Building Code of Australia and it's requirement to comply with AS2890.1.**

[DUR0095]

**66. 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]

**67. 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]

**68. Excavation**

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

[DUR0425]

69. 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]

70. 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]

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

[DUR2515]

72. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:

A. Short Term Period - 4 weeks.

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

B. Long term period - the duration.

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0215]

73. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited. [DUR0815]
74. 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]
75. 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]
76. 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]
77. All walls in the food preparation and food storage areas shall be of solid construction, easily washable, lightly coloured and tiled to a height of at least 2 metres above floor level, or where not tiled, cement rendered to provide a smooth even finish to ceiling. Note: Stud framed walls will not be acceptable. Intersections of all floors with walls shall be covered to a radius of not less than 25 millimetres. [DUR1495]
78. All flooring materials in the food preparation and storage areas are to be impervious, non slip, non abrasive and capable of withstanding heavy duty operation. Where tiling is to be used epoxy grout finished flush with the floor surface is to be used in joints or alternatively all tiles are to be butt joined and free of cracks or crevices. [DUR1505]
79. Windows and doors opening into food preparation and storage areas are to be fully screened in accordance with Council's adopted code for the construction of food premises. [DUR1515]
80. Shop fitters are to liaise with the Principal Certifying Authority prior to fitting out of shop. [DUR1525]
81. Separate hand washing facilities must be provided in all food preparation areas with warm water and located in a position where it can be easily accessed by food handlers and be of a size that allows easy and effective hand washing to the satisfaction of the General Manager or his delegate. [DUR1545]

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

[DUR1565]

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

[DUR1625]

84. 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]

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

[DUR2205]

86. Hazardous or industrial waste must be stored and disposed of in a manner to minimise its impact on the environment including appropriate segregation for storage and separate disposal a waste transporter licensed by the EPA.

[DUR2215]

87. 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]

88. 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]



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

[DUR2415]

90. The site shall not be dewatered, unless written approval to carry out dewatering operations is received from the General Manager or his delegate.

[DUR2425]

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

[DUR2435]

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

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

[DUR1735]

93. 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]

94. Pram ramps are to be constructed at road intersections in accordance with Council's Standard Drawing No. SD 014 within all kerb types including roll top kerb.

[DUR1855]

95. 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]

96. All water drawn from Councils reticulated system shall be via a Tweed Shire Council metered standpipe. The location of the hydrant shall be nominated by Tweed Shire Council and all water shall be only used for the purposes nominated by the applicant for the duration of the construction activities.

[DUR2575]

#### **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

97. All works shall be completed in accordance with the recommendation of the Environmental Noise Impact Assessment (Jay Carter Acoustic Consultant, April 2006). Prior to occupation or use of the building a compliance certificate from a suitably qualified person shall be provided to Council which confirms compliance with requirements for the acoustic wall and acoustic treatment of building facades.

98. 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]

99. 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]

100. 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]

101. 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]
102. 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]
103. Prior to the issue of a final occupation certificate, all conditions of consent are to be met. [POC1055]
104. A noise management plan shall be prepared and submitted to Tweed Shire Council for consideration and approval which details how noise from plant and equipment will be managed and controlled, so as to prevent the generation or emission of intrusive noise. Such management plan shall be submitted and approved prior to the issue of the occupation certificate [POC0125]
105. Prior to commencement of operations and on completion of fit out an inspection is to be arranged with Council's Environmental Health Officer for final approval. [POC0615]
106. The food premises shall provide appropriate notification to the NSW Food Authority prior to commencement of operations. [POC0625]
107. The premise is to be treated on completion of fit-out and prior to commencement of trading and thereafter on a regular basis by a Licensed Pest Control Operator. A certificate of treatment is to be made available for Council inspection on request. [POC0635]
108. 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]

#### **USE**

109. Construction and operation of all food preparation areas shall comply with the Food Act, 1989 and AS4674, 2004.
110. Waste storage and collection shall not be permitted to impact local amenity by way of odour, drainage or noise. The acoustic barrier/fence shall be closed when waste/recyclable collection is taking place and also when deliveries occur.

111. Deliveries and garbage collection shall be restricted to the following hours:
1. 7am to 6pm Monday to Saturday, and
  2. 7am to 4pm on Sundays and public holidays; and
  3. Vehicles shall not wait at the road with motors running prior to 7am
112. The water supply system shall comply with AS3666.1 and AS3666.2.
113. Roof water stored on site for re-use may only be used for laundry washing, irrigation and water features. The water shall not be used for any other purpose unless the prior written approval of Council has been obtained.
114. At each point where a tap stand exists (which receives water from on site roof water storage tank) a sign shall be provided and maintained to the satisfaction of the Director of Environment and Community Services which states - "Recycled Water, Avoid Contact, DO NOT DRINK".
115. All activities shall comply with the requirements of the NSW Food Authority.
116. 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]
117. All activities associated with the occupancy of the building are to comply with the Protection of the Environment Operations Act, 1997.  
[USE0135]
118. The LA10 noise level emitted from the premises shall not exceed the background noise level (LA90) in any Octave Band centre frequency (31.5 Hz - 8KHz inclusive) by more than 5dB(A) between 7am and 12 midnight, at the boundary of any affected residence. Notwithstanding the above, noise from the premises shall not be audible within any habitable room in any residential premises between the hours of 12 midnight and 7am weekdays and 12 midnight and 8am weekends.  
[USE0165]
119. 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]
120. All loading/unloading to take place within the boundary of the subject property.  
[USE0525]

121. All food handling areas and persons engaged in the preparation and handling of food supplied to patrons or occupants are to comply with the provisions of the Foods Act 1989 and the provisions of the Food Standards Code as called into force by the Food Regulation 2001. [USE0825]
122. All mechanical ventilation shall comply with AS1668.2 Ventilation Requirements. [USE0845]
123. A food safety program in accordance with HACCP requirements is to be implemented in the conduct and operation of the food preparation area. Advice regarding this can be obtained from the NSW Food Authority. [USE0885]
124. Any area to be used for the purpose of hairdressing shall comply with the requirements of the Local Government (orders) Regulation 1999 and where necessary the Public Health (Skin Penetration) Regulation 2000. [USE0945]
125. The premises shall be maintained in a clean and tidy manner. [USE0965]
126. The premises shall be operated in accordance with the *Public Health (Skin Penetration) Regulation 2000* and current NSW Health Skin Penetration Code of Best Practice and Guidelines. [USE0975]
127. Clinical wastes shall be separated from the general waste stream and disposed via Council's approved clinical waste collection and disposal service. [USE0995]
128. All hazardous and/or dangerous goods shall be stored in accordance with requirements of WorkCover NSW. [USE1035]
129. All waste collection activities shall occur within the property boundary. [USE1345]

**REPORT:**

**Applicant:** Pacific Renaissance Corporation Pty Ltd c/ Darren Gibson Planning  
**Owner:** Metricon Qld Pty Ltd, Harbord Holdings Pty Ltd and Larata Pty Ltd  
**Location:** Lot 736 DP 1072580 No. 1 Mylestom Circle; Lots 605-609 DP 1062587  
Nos. 3, 5, 7, 9, 11 Mylestom Circle & Lots 730-735 DP 1072580, Nos. 41,  
43, 45, 47, 49, 51 Ballina Street, Pottsville  
**Zoning:** 2(c) Urban Expansion  
**Cost:** \$9,500,000

**BACKGROUND:**

The subject site is located within the initial stages of the Seabreeze Estate. Approximately half of the estate is completed with residential dwellings occupied. Further stages are currently under construction.

**The Proposal**

The building is to be constructed over twelve existing lots. The site has four street frontages being Ballina, Evans and Valla Streets and Mylestom Circle. The main entrance and car park is to be via Ballina Street and the service entrance is to be off Mylestom Circle.

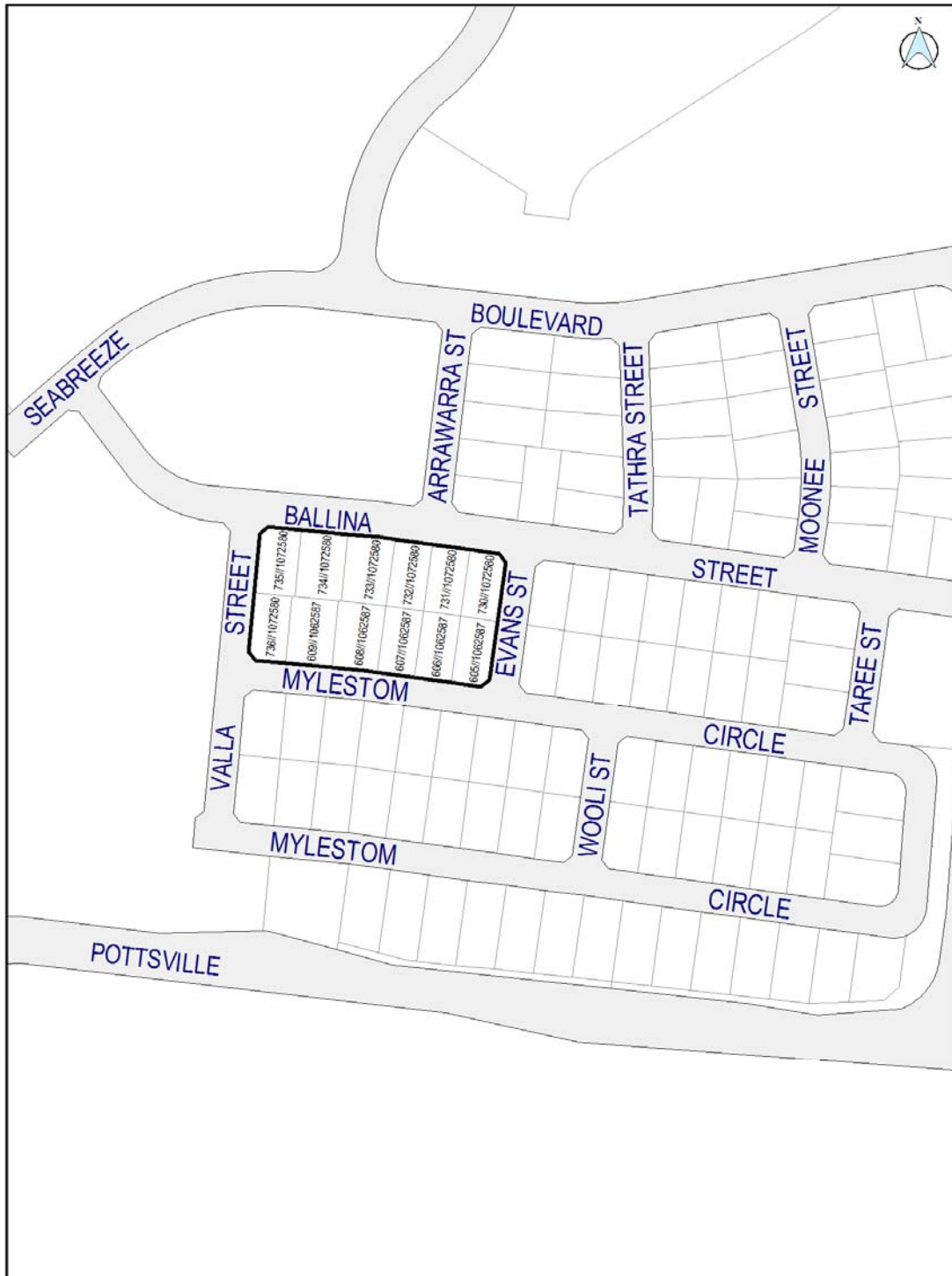
The building is a split level design consisting of two storeys with a small area of three storeys within the centre of the building near the lift.

The mix of care levels is as follows-

Dementia	36 beds	Ground floor lower level
Low care	74 beds	Second floor level lower level and first floor upper level
High care	40 beds	Second floor upper level

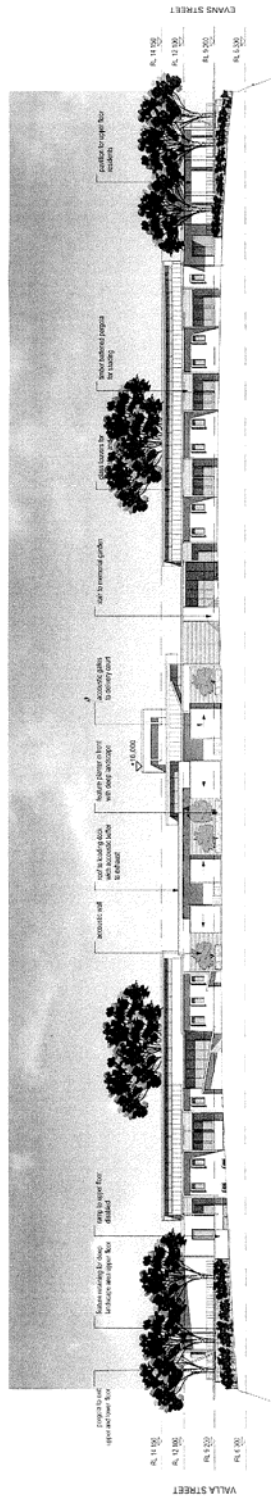
The application indicates that up to thirty-two staff will be on duty at any one time.

**SITE DIAGRAM:**

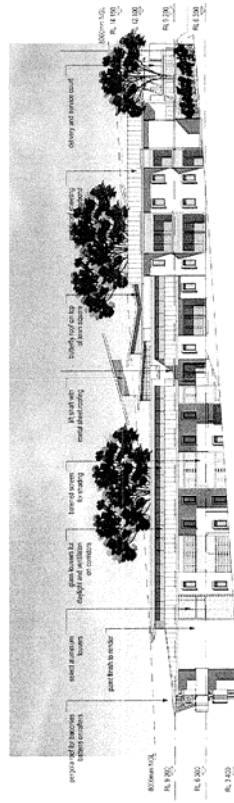


<p>© TWEED SHIRE COUNCIL 2006                  Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map.  <b>DO NOT SCALE</b>                  COPY ONLY - NOT CERTIFIED                  P.O. Box 816                  Murwillumbah, NSW, 2484</p>	<p style="text-align: center;"><i>Tweed Shire Council</i>                  Lots 605-609 DP1062587 &amp; Lot 736 DP1072580                  No's 1,3,5,7,9 &amp; 11 Mylestom Circle;                  Lots 730-735 DP1072580, No's 41,43,45,47,49 &amp; 51                  Ballina Street; Pottsville</p>		<p>PLANNING REFORMS UNIT   <b>Site Plan</b>                   File: N:\Munsys\A4P - SITE PLAN.Wor Author: J.Batchelor Date: 11/Oct/2006 Scale: 1:7,500 Sheet: 1 of 1</p>
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**ELEVATION PLANS:**



SOUTH Elevation



WEST Elevation

<p><b>ilium Projects</b> Angelo Pennazza Architects &amp; Planners © Copyright Ilium Enterprises Pty Ltd.</p>	<p><b>The Oasis of Seabreeze</b></p>	<p>Elevations South &amp; West March 2006 1:400 @ A3 Drawing No. DA14 Project No. IA.0106</p>
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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 site is zoned 2c Urban expansion under the provisions of the Tweed LEP 2000. The development is permissible with consent from Council in the 2c zone.

The objectives of the zone are as follows-

**Primary objectives**

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

**Secondary objectives**

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

The proposal is an urban use and the uses in the zone in this location will remain mainly residential as result of the development. The development is not inconsistent with the zone objectives.

**15 Availability of essential services**

(1) Objectives

- \* to ensure that development does not occur without adequate measures to protect the environment and the community's health.
- \* to ensure that development occurs in a coordinated and efficient manner.

- (2) Consent must not be granted to the carrying out of development on any land unless:
  - (a) a water supply and facilities for the removal or disposal of sewage and drainage are available for that land, or
  - (b) arrangements satisfactory to the consent authority have been made for the provision of that supply and those facilities.

See water and sewer section under Seniors Living section for comment.

### **16 Height of buildings**

The building height requirement for the site is three storeys. The building is predominantly two storeys in height with a small area in the centre of the building three storeys.

### **17 Social impact assessment**

The application includes a socio-economic impact assessment. The development will provide a positive social impact for the Tweed given the demographics of the region. Local employment opportunities will also benefit during construction and throughout the life of the development.

### **35 Acid sulfate soils**

The site is designated as Class 2 acid sulfate soils. The proposal as recommended does not require further management of ASS however if deeper excavations are undertaken for tanks a management plan is required.

### North Coast Regional Environmental Plan 1988

The relevant provisions of the REP are as follows-

### **32B Development control—coastal lands**

- (1) This clause applies to land within the region to which the NSW Coastal Policy 1997 applies.
- (2) In determining an application for consent to carry out development on such land, the council must take into account:
  - (a) the NSW Coastal Policy 1997,
  - (b) the Coastline Management Manual, and
  - (c) the North Coast: Design Guidelines.

The proposal is not inconsistent with the above documents.

### **43 Development control—residential development**

- (1) The council shall not grant consent to development for residential purposes unless:
  - (a) it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land,
  - (b) it is satisfied that the proposed road widths are not excessive for the function of the road,
  - (c) it is satisfied that, where development involves the long term residential use of caravan parks, the normal criteria for the location of dwellings such as access to services and physical suitability of land have been met,
  - (d) it is satisfied that the road network has been designed so as to encourage the use of public transport and minimise the use of private motor vehicles, and
  - (e) it is satisfied that site erosion will be minimised in accordance with sedimentation and erosion management plans.

The proposal is a form of residential development that does not contravene the above provisions.

### State Environmental Planning Policies

#### **State Environmental Planning Policy No 71—Coastal Protection**

#### **8 Matters for consideration**

The matters for consideration contained in clause 8 of the SEPP are satisfied.

#### **State Environmental Planning Policy (Seniors Living)**

##### **Aims of Policy**

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

(2) These aims will be achieved by:

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

#### **4 Land to which Policy applies**

(1) This Policy applies to land within New South Wales:

- (a) that is zoned primarily for urban purposes or that adjoins land zoned primarily for urban purposes, and
- (b) on which development for the purpose of any of the following is permitted:
  - (i) dwelling-houses,
  - (ii) residential flat buildings,
  - (iii) hospitals,
  - (iv) development of a kind identified in respect of land zoned as special uses, including (but not limited to) churches, convents, educational establishments, schools and seminaries.

The 2c zoning is an urban zoning and the uses listed in (b) (i) to (iv) above are permitted in the zone.

#### **8 Seniors**

In this Policy, *seniors* are people aged 55 years or more.

#### **9 People with a disability**

In this Policy, *people with a disability* are people of any age who, as a result of an intellectual, physical, psychiatric or sensory impairment, either permanently or for an extended period, have substantially limited opportunities to enjoy a full or active life.

A condition is to be imposed requiring occupation of the development to comply with clauses 8 and 9.

### **11 Residential care facilities**

In this Policy, a *residential care facility* is residential accommodation for seniors or people with a disability that includes:

- (a) meals and cleaning services, and
- (b) personal care or nursing care, or both, and
- (c) appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care,

not being a dwelling, hostel, hospital or psychiatric facility.

The proposal is a residential care facility and is required to comply with the standards in the policy for such facilities.

### **20 Restrictions on occupation of seniors housing allowed under this Chapter**

- (1) Development allowed by this Chapter may be carried out for the accommodation of the following only:
  - (a) seniors or people who have a disability,
  - (b) people who live within the same household with seniors or people who have a disability,
  - (c) staff employed to assist in the administration of and provision of services to housing provided under this Policy.
- (2) A consent authority must not consent to a development application made pursuant to this Chapter unless a condition is imposed by the consent authority to the effect that only the kinds of people referred to in subclause (1) may occupy any accommodation to which the application relates.
- (3) Subclause (2) does not limit the kinds of conditions that may be imposed on a development consent, or allow conditions to be imposed on a development consent otherwise than in accordance with the Act.

See above comments regarding conditions for occupation.

## **25 Location and access to facilities**

- (1) A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied, by written evidence, that residents of the proposed development will have access that complies with subclause (2) to:
  - (a) shops, banks and other retail and commercial services that residents may reasonably require, and
  - (b) community services and recreation facilities, and
  - (c) the practice of a general medical practitioner.
  
- (2) Access complies with this clause if:
  - (c) in the case of a proposed development on land in a local government area that is not within the Sydney Statistical Division—there is a transport service available to the residents who will occupy the proposed development:
    - (i) that is located at a distance of not more than 400 metres from the site of the proposed development, and
    - (ii) that will take those residents to a place that is located at a distance of not more than 400 metres from the relevant facilities or services, and
    - (iii) that is available both to and from the proposed development during daylight hours at least once each day from Monday to Friday (both days inclusive).

The site does not comply with the above requirements however the proposal includes provision of a mini bus to transport occupants directly to the services and facilities stated above and to bus stops. The clause is satisfied by provision of the private bus service. A condition will be imposed requiring the bus to be provided.

Additionally the application states that the following in house services are proposed-

- Fulltime nursing care, including back to base nurse call facility
- All meals everyday
- All laundry needs
- All cleaning and maintenance

- Common recreation areas
- Visiting medical practitioner, hairdresser and therapists, and
- Common library, sitting rooms, kiosk, dining areas, community hall, activities room and hobby shed.

A condition will be imposed requiring the above items to be provided.

### **27 Water and sewer**

- (1) A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied, by written evidence, that the housing will be connected to a reticulated water system and have adequate facilities for the removal or disposal of sewage.
- (2) If the water and sewerage services referred to in subclause (1) will be provided by a person other than the consent authority, the consent authority must consider the suitability of the site with regard to the availability of reticulated water and sewerage infrastructure. In locations where reticulated services cannot be made available, the consent authority must satisfy all relevant regulators that the provision of water and sewerage infrastructure, including environmental and operational considerations, are satisfactory for the proposed development.

The application proposes to not connect to Council's water and sewerage systems. The proponents have not demonstrated that the systems that they are proposing are satisfactory or that the ongoing maintenance and operation of on site facilities can be carried out without health risks to the aged persons in the premises.

### **Council's Environment and Community Services Department make the following comments-**

The proposal is for a residential care building of 150 rooms and associated services including hairdresser, doctor, kiosk, administration, food preparation, meeting rooms etc.

The major issue associated with this development is the proposal not to connect the facility to the existing reticulated sewer and water system. It is proposed to install on site sewerage treatment and disposal and an onsite water collection system, both from the roof and from stormwater harvested from surrounding streets and onsite garden areas to provide water for all purposes.



While it is conceded that technically it is possible to provide on site sewerage treatment and disposal and on site collection and treatment of water to a level that would satisfy the current standards and guidelines this proposal, involving up to 150 persons many of whom would be frail aged on numerous forms of medication and would comprise one of the most vulnerable sections of our community. The on proposed on site water supply and sewerage recycling systems have not been implemented elsewhere in Australia where reticulated water and sewer are available.

While no detail of the types of treatment plants to be used has been provided, their continued operation to produce treated effluent and water to meet the required standards and guidelines will depend on ongoing management as will issues associated with equipment failure. While no advice concerning this has been provided, such should be addressed in management plans.

As well, insufficient information has been provided in relation to waste management (it is proposed not to use Council's solid waste disposal system), location of water and effluent storage tanks and possible acid sulphate soil issues. Also the proposed water sampling program proposed is considered inadequate for such a new proposal.

It is considered that should Council give approval to this new concept and frail aged persons residing with the complex have health issues which are as a result of failure of the sewerage or water supply treatment process then Council may have some liability for approval of the facility given the available reticulated sewer and water system.

Accordingly, due to the large number of frail aged members of the community who may reside within the proposed facility and their possible vulnerability should this unproven proposal fail it is recommended that this development should only be approved if it is connected to Council's reticulated water and sewer system.

### **30 Design of residential development**

A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2.

#### **Division 2 Design principles**

### **31 Neighbourhood amenity and streetscape**

The proposed development should:

- (a) recognise the desirable elements of the location's current character (or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area, and
- (b) retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items that are identified in a local environmental plan, and
- (c) maintain reasonable neighbourhood amenity and appropriate residential character by:
  - (i) providing building setbacks to reduce bulk and overshadowing, and
  - (ii) using building form and siting that relates to the site's land form, and
  - (iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, and
  - (iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and
- (d) be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line, and
- (e) embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, and
- (f) retain, wherever reasonable, major existing trees, and
- (g) be designed so that no building is constructed in a riparian zone.

The building is a relatively large complex however it is located so that it does not directly adjoin other residential lots. The site has four street frontages which mitigates the impact of the building. Building lines are consistent with existing residential development with some encroachments on the Mylestom Circle frontage. Building frontages are articulated with courtyards and landscaping. Additional landscaping along the Evans and Valla Street frontages is required. See landscaping section for further comment.

### **32 Visual and acoustic privacy**

The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by:

- (a) appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and

- (b) ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.

As stated above the building does not directly adjoin other development accordingly visual and acoustic privacy of nearby residents will not be detrimentally affected a noise report has been prepared and makes recommendations for acoustic treatments of the building. A condition will be imposed requiring compliance with the recommendations.

### **33 Solar access and design for climate**

The proposed development should:

- (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and
- (b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.

**Note.** AMCORD: A National Resource Document for Residential Development, 1995, may be referred to in establishing adequate solar access and dwelling orientation appropriate to the climatic conditions.

The building design has considered solar access and climate design adequately with orientation to the north, split level design and internal courtyards.

### **34 Stormwater**

The proposed development should:

- (a) control and minimise the disturbance and impacts of stormwater runoff on adjoining properties and receiving waters by, for example, finishing driveway surfaces with semi-pervious material, minimising the width of paths and minimising paved areas, and
- (b) include, where practical, on-site stormwater detention or re-use for second quality water uses.

A stormwater management plan has been submitted with the application. The plan proposes collection of roofwater in a tank for reuse purposes and treatment of other runoff with oil/grit separators.

### **35 Crime prevention**

The proposed development should provide personal property security for residents and visitors and encourage crime prevention by:

- (a) site planning that allows, from inside each dwelling, general observation of the street, the site and the approaches to the dwelling's entry, and
- (b) where shared entries are required, providing shared entries that serve a small number of dwellings and that are able to be locked, and
- (c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.

The design of the building minimises opportunities for crime.

### **36 Accessibility**

The proposed development should:

- (a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and
- (b) provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.

The street footway network will be able to be accessed from the site and onsite car parking is proposed.

### **37 Waste management**

The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.

Conditions regarding solid waste removal are proposed.

## **Part 4 Development standards to be complied with**

### **Division 1 General**

### **38 Development standards—minimum sizes and building height**

#### **(1) General**

A consent authority must not consent to a development application made pursuant to this Chapter unless the proposed development complies with the standards specified in this clause.

**(2) Site size**

The size of the site must be at least 1,000 square metres.

The site has area of 8,417m<sup>2</sup>.

**(3) Site frontage**

The site frontage must be at least 20 metres wide measured at the building line.

The site is 120m wide.

**(4) Height in zones where residential flat buildings are not permitted**

If the development is proposed in a residential zone where residential flat buildings are not permitted:

- (a) the height of all buildings in the proposed development must be 8 metres or less, and
- (b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and

**Note.** The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.

- (c) a building located in the rear 25% area of the site must not exceed 1 storey in height.

Not applicable as residential flats are permitted in the zone.

**78 Inter-relationship of Part with design principles in Part 3**

Nothing in this Part permits the granting of consent to a development application made pursuant to this Chapter if the consent authority is satisfied that the proposed development does not demonstrate that adequate regard has been given to the principles set out in Division 2 of Part 3.

**Note.** It is considered possible to achieve good design and achieve density ratios set out in Division 2. Good design is critical to meriting these density ratios.

## **Division 2 Residential care facilities**

### **79 Standards that cannot be used to refuse development consent for residential care facilities**

A consent authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a residential care facility on any of the following grounds:

- (a) **building height:** if all proposed buildings are 8 metres or less in height, or
- (b) **density and scale:** if the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less,
- (c) **landscaped area:** if a minimum of 25 square metres of landscaped area per residential care facility bed is provided,
- (d) **parking for residents and visitors:** if at least the following is provided:
  - (i) 1 parking space for each 10 dwellings in the residential care facility (or 1 parking space for each 15 dwellings if the facility provides care only for persons with dementia), and
  - (ii) 1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time, and
  - (iii) 1 parking space suitable for an ambulance.

**Height** is defined in the SEPP as follows-

**height** in relation to a building, means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point.

The proposed buildings are six metres in height calculated in accordance with the above definition.

The **FSR** of the proposal is 0.89:1.

### **Landscaping**

The proposal is required to have 3750m<sup>2</sup> of landscaping. 3429m<sup>2</sup> is proposed. The landscaping is deficient by 321m<sup>2</sup>. The applicants have provided the following information to support the variation-

The intent of the landscaped area provisions is threefold, namely:

1. To address the interface between the development and adjoining properties and/or the streetscape.
2. To provide amenity and recreation opportunities for residents.
3. To soften the built environment.

The landscaping scheme satisfies the above aims as: -

- An actual provision of 3429m<sup>2</sup> which equates to 22.86m<sup>2</sup> per bed, but significantly, 40% of the site area.
- Appropriate and attractive perimeter fencing for security.
- Perimeter plantings along all street frontages, including deep plantings (trees and large shrubs) to soften the appearance of the buildings and to provide visual buffering to adjoining properties.
- Planter beds, feature walls gardens and textured paving to help break up car parking, building entry and service areas.
- Differently themed internal courtyards including facilities such as pool and memorial garden as well as seating and other recreation opportunities to meet the needs of residents.
- A network of pathways linking both internal and external common areas for walking
- A purpose built hobby shed for craft activities and social gathering particularly for men.

The applicants also point out that the FSR requirement of 1:1 conflicts with the standard for landscaping and have quoted the following from the Department of Planning's guidelines-

*"To encourage the provision of housing of this kind the policy facilitates development at a floor space ratio (fsr) of 1:1, but requires that design principles are taken into account as a major consideration.*

*A potential conflict arises in relation to landscaping. The redevelopment of many existing residential care facilities or even new residential care facilities in established areas will be on sites that would not allow much land to be set aside for landscaping while achieving a 1:1 fsr. The most important external issues for these sites are the impacts on streetscape and neighbours. High amenity for residents can be achieved within the building without meeting a high landscape standard, the clause 70 landscape standard of 25m<sup>2</sup> per bed, ie a standard that cannot be used to refuse consent, is not a minimum standard per se, that must be met. It is possible and reasonable for consent to be given to facilities that have less than 25m<sup>2</sup> per bed landscaped area if they take other issues such as streetscape and impact on neighbours into account."*

It is considered that the above statements in the guidelines are directed at established residential areas undergoing redevelopment as opposed to new estates. The site is large (8,417m<sup>2</sup>) enough to meet the standard and does not have any limiting characteristics to meeting the landscaping standard. Streetscaping is a key factor for the success of this development and it is considered that the development would benefit from additional landscaping areas along the Evans and Valla Street frontages. A condition is proposed to require compliance with the landscaping standard and that the additional areas be located within the site along the Evans and Valla street frontages.

### **Car parking**

Thirty-one car parking spaces are required plus one for an ambulance. Thirty-two spaces are proposed. A space for the mini bus is also proposed. Fifteen spaces are to be designed for people with a disability.

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

N/A

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

**DCP 2 -Site Access and parking** - the provisions of the DCP are satisfied.

**DCP 6 -Multi Dwelling Housing** applies however the relevant standards and performance criteria are covered in the SEPP and have generally been satisfied.

**DCP 38- Seabreeze Estate** the provisions of the DCP mainly relate to the broad development of the subdivision. The proposal does not contravene any requirements of the DCP.

**DCP 39- Energy Smart Homes** a condition will be imposed requiring an energy rating of 3.5 stars to be achieved.



**DCP 45- Socio-Economic Impact Assessment.** The provisions of the DCP have been satisfied. An impact assessment report has identified potential positive and negative impacts. On balance the impact of the development is likely to be positive.

**DCP 47-Cut and Fill on Residential Land.** Excavations are proposed to provide a suitable building platform for the building. The proposed works are considered acceptable for this site.

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

The proposal is not contrary to the NSW Coastal Policy.

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

**Fence Height Variation**

The applicant has requested a fence height variation. The proposed fencing is outlined as follows: -

*"Perimeter fencing to a height of 1.8m would be constructed primarily of rendered and painted masonry walls, with recessed colorbond mini-orb infill panels (refer Plan No. DA15, Appendix B). The walls would be setback from the boundary (300mm) and infill panels would be recessed between 600-900mm to allow planting in front (refer also DA08 and DA09, Appendix B).*

*While the fencing panels would not have openings, security issues would be addressed via casual surveillance of the street from the second floor levels of the building, which overlook the respective street frontages.*

*The fencing would integrate with feature retaining structures at the corners of Mylestom Circle and Valla Street and Mylestom Circle and Evans Street.*

*Fencing would increase to 2.90m in height for a distance of approximately 19 metres adjacent to the service area along the Mylestom Circle frontage. The fencing would provide an acoustic screen.*

*This section of fence would comprise fixed walls and retractable gates serving the service bay area.*

*The gates would be a solid colorbond mini-orb panel.*

*The fixed wall section would be set back from the boundary by approximately 1.0 metre and be finished with a feature stone face. A low garden bed to a height of approximately 1.0 metre would sit at the base of the wall between it and the property boundary. Planting would help reduce the apparent height and soften the appearance of the wall."*

The proposed fencing is considered appropriate for the development and the site. The fence height variation is supported.

### **Traffic/construction traffic**

A traffic assessment has been undertaken which estimates the development will generate 150 vehicle trips per day compared to 108 trips per day if dwellings were constructed on the twelve lots. The 108 trips are derived from the Roads and Traffic Guidelines of 9 trips per dwelling. Council's rate for dwellings is 6.5 trips which equates to 78 trips for 12 dwellings. Council's rate for the facility is 2 trips per bed which equates to 300 trips per day. The proposal is likely to generate more trips than if the site was developed for standard housing however the road network is been designed to cater for the expected traffic generation.

The application that construction traffic will be able to avoid existing residential development by accessing Pottsville Road via the new access point to the new stages of the Seabreeze Estate. A condition will be imposed requiring all construction traffic to exit and enter the site via this route only.

### **Environmental Health Comments**

**Description:** Proposed residential aged care building – 150 units. The development also includes associated infrastructure and services - hairdresser, doctor, kiosk and administration facilities such as laundries, meeting rooms, dining rooms and a kitchen.

### **Carwash**

There does not appear to be any car wash facility proposed. Whilst the units are not self contained and residents would not be expected to have their own vehicles, there is a significant number of staff etc required for the facility. It is deemed reasonable to require the provision of at least one pervious vehicle wash down area (to provide an option of vehicle washing at a development of this scale) – condition to be applied.

### **Construction/Skin Penetration**

The application makes mention of several activities and rooms which may involve skin penetration (nursing, doctor's, therapists rooms etc). Conditions are to be applied regarding cleanliness and compliance with the Skin Penetration Guidelines.

## **Noise**

An Environmental Noise Impact Assessment (Jay Carter Acoustic Consultant, April 2006) has been submitted. The report considers road traffic noise on Ballina Street and noise from on-site activities impacting on residents.

With respect to mechanical plant the report indicates that design and location is yet to be completed. However noise levels should be required to meet the noise criteria identified in this report. A condition will be applied that prior to the issue of the CC an acoustic report assessing potential plant noise (and any necessary amelioration measures) is to be completed and presented to Council.

The report indicates that increased traffic on Ballina Street will increase road traffic noise level by 0.3dB. The report recommends that acoustic treatments be made to several building facades/elements along Ballina Street. A condition is to be applied.

The report identifies potential noise intrusion from several activities (waste collection, delivery trucks etc) within the service area adjacent to Mylestom Circle and recommends erection of an automatic acoustic barrier gate along Mylestom Circle. A condition is to be applied regarding these requirements.

The report recommends that delivery hours be limited to 7am to 6pm and no trucks to park on the road prior to 7am. Condition to be applied, **however it is recommended that deliveries and garbage collection on Saturdays, Sundays and public holidays be limited to 7am to 4pm.**

The report recommends that a Construction Management Plan be observed during construction.

An E & SCP has been submitted (Cardno Engineering, February 2006), including basic water quality discharge objectives. Conditions are to be applied.

## **Construction Management Plan**

Given the size of the proposal, building works have the potential to impact amenity. A condition will be imposed requiring the submission of a construction management plan prior to issue of the CC.

## **Acid Sulfate Soils**

Refer to Appendix E of the SEE. Cardno Engineering indicates that the level of excavation will not exceed the previous level of filling. Further, a copy of the ASS investigation approved with the subdivision is provided and it indicates that the site is marginally outside the ASS management areas identified at that time. No further action required.

### **Contaminated Land**

Part 3.3.2 of the SEE notes that contaminated lands considerations were made at the time of subdivision.

### **Recycled Water**

Part 6 of the SEE, Part 4 of the SWMP and the Hydraulic Services report indicate roof water will be recycled (200,000L tank) for laundry, irrigation and water features.

Provided the water is only used for the purposes specified, then potential risk to public health was not identified. Conditions are to be applied.

### **Hairdresser**

A condition is to be applied regarding construction and cleanliness of this area.

### **Waste**

Recyclables will be separated from the waste stream. Recyclables and wastes should be collected from wheelie and bulk bins in the service yard. Appendix M indicates that solo Waste have reviewed the service area for access.

A condition is to be included about clinical waste disposal. Condition also to be applied requiring the acoustic barrier/fence to be closed when the garbage vehicle loads or unloads containers or materials.

### **Engineering Assessment**

#### **Existing Title Restrictions**

The plan of subdivision and 88B instrument for DP 1062587 contains a 3m wide easement for sewer and the drainage of water. This easement is located throughout the centre of the subject site. The 88B also contains the usual developer imposed conditions relating to house construction standards.

The plan of subdivision and 88B instrument for DP 1072580 contains a 3m wide easement for sewer. The sewer easement is located to the north of the allotments. Also a number of developer imposed conditions are contained within the 88B instrument.

## **Geotechnical / Earthworks**

The site falls approximately 5.3m from the south (Mylestom Circle) to the north (Ballina Street), with site levels ranging from approximately RL 8.6 to RL 3.30. The land grades gently towards the shorter street frontages of Valla and Evans Streets. The site generally falls from South to North at grades between 6.5% to 8.5%.

The site has been previously filled with the subdivision works to a level 1 certification under AS3789 – Guidelines for earthworks for Commercial and Residential developments.

The earthworks for the proposed development are dictated by the two different slab levels for the proposed building. The lowest slab level of the building is indicated at approximately RL 3.4. The upper level slab is indicated at approximately RL 6.4. A 3m high retaining wall is required between the two separate building pad levels. The application also states that the maximum cut is 2.8m, with the maximum depth of fill being 0.4m. An excess of 9,650 cu.m of cut is available and requires removal from the site.

No geotechnical assessment has been provided with the application due to the site being previously filled with the Seabreeze subdivision.

## **Roads**

### **Road Network / Horizontal Alignment**

Ballina Street is a two way urban collector street. Valla and Evans Street are local urban streets. Mylestom Circle is also a local street. All streets have roll top kerb and gutter and the pavement material is in good condition.

### **Road Vertical alignment**

The road alignment for each of the existing roads surrounding the proposed site is relatively flat.

### **Access and proposed surrounding road network proposal**

The application states the following in terms of access arrangements; Two access cross over points would be provided in Ballina Street for inward and outward vehicle movement.

General vehicular access is proposed from Ballina Street. Separate entry and exit drives would be located centrally along the Ballina Street frontage and complement one-way vehicle circulation aisle, serving the car park and entry areas.

A separate service vehicle access arrangement is proposed from Mylestom Circle. Similarly separate entry and exit driveway crossovers would service one-way circulation aisle on site.

Security and screen gates would be installed at the entry and exit to the service area and would generally be open during normal business hours.

Formalised pedestrian access would be available via Valla, Evans and Ballina Streets.

**(c) Suitability of the site for the development**

The site is vacant cleared residential land and is suitable for the development.

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

A large number of submissions have been received objecting to the development. The main issue raised in the submissions was that the residents were advised by the selling agents of the land that the aged care facility was proposed on a site further to north of the subject site. There is no argument that this may have been the case however it is not a relevant consideration for the assessment and determination of the development application. Additionally the State Policy is specifically designed to permit aged care facilities in residential areas.

Another area of concern was the covenants placed on the properties in an 88B Instrument for dwelling construction. The Tweed LEP 2000 specifically overrides 88B Instruments.

Other matters raised such as traffic, amenity and noise have been discussed throughout this report and conditions imposed where appropriate.

**(e) Public interest**

Provision of accessible aged housing and care serves the public interest.

**OPTIONS:**

1. Approve the application as recommended
2. Approve the application with the alternate conditions for non connection to Council's water and sewer system. The alternate conditions for water, sewer and contributions arrangements as follows-

### **Environment Health conditions for non connection to town water and sewer**

GEN0075, PCC0055, PCC0735, PCC0745, PCW0255, PCW0985 (first para), DUR0205, DUR0215, DUR0395, DUR0415, DUR0805, DUR0815, DUR0915, DUR0975 (one), DUR1005, DUR1025, DUR1495, DUR1505, DUR1515, DUR1535, DUR1545 (...provided in all food preparation areas with...), DUR1565, DUR1795, DUR2075, DUR2135, DUR2185, DUR2205, DUR2215, DUR2375 (first para), DUR2405, DUR2415, DUR2435 (first sentence), DUR2555, DUR2595, DUR2685, POC0605, POC0615, USE0125, USE0135, USE0155, USE0175, USE0205, USE0265, USE0525, USE0825, USE0895, USE0945, USE0955, USE0965, USE0975, USE0985, USE0995, USE1035, DUR1625 (..basin in the hairdresser shall..)

- Waste storage and collection shall not be permitted to impact local amenity by way of odour, drainage or noise. The acoustic barrier/fence shall be closed when waste/recyclable collection is taking place and also when deliveries occur.
- DUR1625 (..basin in the hairdresser shall..)
- All works shall be completed in accordance with the recommendation of the Environmental Noise Impact Assessment (Jay Carter Acoustic Consultant, April 2006). Prior to occupation or use of the building a compliance certificate from a suitably qualified person shall be provided to Council which confirms compliance with requirements for the acoustic wall and acoustic treatment of building facades.
- Deliveries and garbage collection shall be restricted to the following hours:
  1. 7am to 6pm Monday to Saturday, and
  2. 7am to 4pm on Sundays and public holidays.
  3. Vehicles shall not wait at the road with motors running prior to 7am.
- All works shall comply with the Erosion and Sediment Control Plan (Cardno Engineering, February 2006).
- Prior to the issue of a CC a Construction management Plan shall be submitted to the satisfaction of the DECS. All works shall comply with the approved plan.
- At each fixture where recycled waste water is discharged or directed a sign shall be provided and maintained to the satisfaction of the DECS which states – “Recycled Water, Avoid Contact, DO NOT DRINK”.
- All activities shall comply with the requirements of the NSW Food Authority.
- Prior to issue of the CC Council shall be provided with an Acid Sulfate Soils Investigation and Management Plan (if applicable) to the satisfaction of the DECS. The plan shall also address management of dewatering, if applicable. All works shall comply with that approved management plan.
- Prior to issue of the CC Council shall be provided with a Solid Waste Management Plan to the satisfaction of the DECS. All works shall comply with that approved management plan. The Plan shall address the following:
  1. General assessment and description of all aspects of the waste stream (solid wastes, recyclables, sewage sludge, clinical wastes, pharmaceutical wastes, green wastes etc)

2. Number and size of storage bins
  3. Volume considerations and storage locations
  4. Transport issues (and consideration of any waste transporters' licenses under the POEO Act, 1997).
  5. Location where any wastes are proposed to be transported and treated (and any separate approval requirements, such as DA for the receiving premise).
  6. Separation and disposal of non recyclable materials (plastics etc)
  7. Collection points, noise and vehicle access
  8. Green waste recycling points within the subject site (and associated issues such as leachate and odour). If recycling on site is required, then a report assessing potential odour impacts may be required.
- The potable water supply shall comply with AS3666.1 and AS 3666.2.
  - Prior to issue of the CC Council shall be provided with a Potable Water Supply Management Plan to the satisfaction of the DECS. The potable water supply and Management Plan shall comply with the Draft NSW Health Guidelines for the Management of Private Water Supplies. Construction and operation of the water supply shall comply with that approved management plan.
  - Construction and operation of the onsite recycled water system shall comply with the document Management of Private Decentralised Recycled Water Systems, Department of Energy, Utilities and Sustainability, March 2006 (Draft).
  - Prior to the issue of a CC the applicant shall lodge a Section 68 application to install an on-site sewage management system, pay the appropriate fee and be issued with an approval to install. The application shall be accompanied by an on-site sewage design report and site assessment, including but not limited to:
    1. Plans and specifications detailing the location and type of on-site sewage management system(s) proposed for the development (including holding tanks);
    2. Wastewater treatment methods, (the report shall comment on expected salinity accumulation and how this will be ameliorated);
    3. Expected effluent quality after treatment and prior to irrigation or discharge to Council stormwater system;
    4. Size and locations of any effluent land application areas;
    5. Design irrigation rate, LTAR;
    6. Locations of any effluent discharge points;
    7. Detailed management plan of the treatment system servicing and maintenance program eg. Expected frequency of servicing and primary tank de-sludging;



8. Detailed management plan of the irrigation system maintenance program;
9. Details of an effluent quality monitoring program from a suitably qualified person with expertise in viruses and pathogens to the satisfaction of the Director of Environment and Community Services.

### **Engineering comments and conditions for partial connection**

#### **1. Road Works**

The applicant has provided few engineering details of proposed works in the road reserves adjoining the development site (Ballina, Valla and Evans Streets and Mylestom Circle). To date the applicant's proposed alterations to and uses of the road reserves include:

- Resurfacing of the adjoining road carriageways with a lighter coloured, more reflective surface treatment to lower ambient temperatures in the locality.
- Replacement of kerb and guttering along all site frontages with castellated kerb, and construction of a swale and subsurface drainage system within the road verges, to harvest stormwater runoff for reuse within the development.
- Planting of "raingardens" within this swale system, to provide fruit and nut trees, and vegetables for residents.
- Extensive street tree planting to shade the development and adjacent road surface to lower ambient temperatures.
- Installation of a treated effluent irrigation system for the raingardens.
- Construction of kerb blisters at Valla-Mylestom and Evans-Mylestom intersections to slow turning vehicles.

As all of the proposed works are variations to Council's standard road design, the potential impacts on pedestrian, cyclist and vehicular movement and safety must be considered. The maintenance responsibilities and on-going costs for non-standard items should also be considered.

The applicant refers to studies confirming the temperature benefits of reflective, light coloured road surfacing, but has not specified the kind of treatment proposed and the compliance of such treatments with safety standards and engineering requirements for wear and maintenance. Council would be responsible for the upkeep and repair of the road surface, so whole of life costs should be considered as part of a separate s138 Application.

Ballina Street is a higher order access street than the other streets fronting the development site, with a cycleway and public water main along the site frontage. As such, no changes to alignment, width or level of carriageway, verges, cycleway or kerb are permitted. To preserve road standards, no verge widening is permitted on the remaining road frontages or intersections.

The proposed alteration to the public stormwater system and the road verges along the remaining site frontages presents potential hazards to footpath pedestrians, vehicles parking alongside castellated kerb, and passengers negotiating the kerb/verge area between parked vehicles and the footpath. The scaled cross sections submitted by Patterson Britton are not acceptable from a public safety perspective. The verge must remain level for a minimum of 500mm from the edge of footpath, with a maximum batter grade for the swale cross section of 1:4 (vertical:horizontal). This significantly reduces the cross sectional area of the proposed stormwater swales. Further, castellated kerbs are known to damage car tyres during parking manoeuvres. Reverse-grade kerb adaptors are an acceptable alternative to direct kerb flows towards the development. As verge widening is not permitted, these required alterations may make the swale design impractical for stormwater harvesting. Subject to detailed engineering design, harvesting directly from kerb inlet pits and/or stormwater manholes/junction pits may be more practical. The applicant must submit detailed engineering plans of all proposed stormwater harvesting works with a separate s138 application.

"Raingardens" within the road verges present maintenance and safety issues. Council's Recreation Services Unit discourages fruiting trees in road reserves as fallen fruit fouls footpaths and parked cars, blocks stormwater inlets, and poses slip/trip hazards to pedestrians. There are safety hazards associated with residents or maintenance personnel working on these gardens adjacent to moving traffic. Ongoing maintenance of the raingardens and the proposed irrigation systems would be the responsibility of the developer, however this is difficult to ensure in the long term. To resolve this, it may be necessary for the developer to enter into a lease with Council for use of the road reserve. The location of street trees must meet Development Design Specification D1 - Road Design criteria, and plantings must maintain vehicle sight distances and not impact on services in the road reserve. The applicant must submit detailed engineering plans of all verge works with a separate s138 application.

#### Conditions of Consent

DUR1735; DUR1845; DUR1855; DUR1875;

GEN0045 (Amended)

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.

The application shall include detailed engineering plans and specifications relevant to but not limited to the following works: -

- (a) Road surfacing, including whole of life costing (minimum 40 years), manufacturer's specifications for performance, wear, maintenance and safety, and compliance with relevant Council Specifications and Australian Standards.
- (b) Driveway details, in compliance with Council's Driveway Access to Property Design Specification.
- (c) Concrete ribbon footpath alignment and construction details
- (d) Stormwater drainage, including modifications to existing stormwater infrastructure (kerb and guttering, piped infrastructure including inlet pits, overland flow paths).
- (e) Erosion and Sediment Control Plans
- (f) Location of all services/conduits
- (g) Traffic Control Plan
- (h) Stormwater harvesting and raingarden design, including modifications to verge levels, landscaping details (species lists, mature heights, verge locations), irrigation systems (including public and occupational health and safety issues relating to treated effluent use), ongoing maintenance requirements, protection of existing services, and pedestrian and disabled accesses. The proposed raingardens in the road verge must meet the following the following minimum standards:
  - (i) No level change within 500mm of the edge of concrete ribbon footpath.
  - (ii) Maximum batter gradient of 1:4 (vertical:horizontal)
  - (iii) Kerb stormwater may be collected for internal reuse via reverse-grade kerb adaptors to Council standards. Alternately, piped connections from existing kerb inlet pits and/or stormwater junction pits in the road reserve to internal reuse systems may be approved subject to detailed design.
  - (iv) Level pedestrian accesses must be provided over/through raingarden areas at intervals of no less than 15m, meeting disabled access requirements.
  - (v) Fruiting trees are not permitted.
  - (vi) Street tree alignment must meet Development Design Specification D1 - Road Design criteria. Plantings at intersections, driveway cross overs and pedestrian accesses must not exceed 300mm in height to maintain vehicle sight distances.

- (vii) To ensure adequate levels of maintenance for all privately installed facilities in the road reserve, it may be necessary for the applicant to enter into a lease agreement with Council for the use of Council's road reserves (transferable to subsequent owners).

The following works are not permitted:

- (i) Changes to intersection geometry (all frontages).
- (ii) Changes in road pavement width and kerb alignment (all frontages).
- (iii) Level or alignment alterations to the Ballina Street cycleway.
- (iv) Construction of raingardens in Ballina Street.
- (v) Installation of castellated or other forms of non-continuous kerbing (all frontages).

The applicants have provided the following argument regarding fruit trees within the road reserve: -

*"This submission offers a condition of approval for the fruit trees in the verge surrounding the Seabreeze Aged Care site at Pottsville, and supporting information.*

**Condition: Raingardens and fruit trees**

*That the applicant may trial the planting of fruit trees within the existing street verge in order to determine whether the applicant's proposed maintenance and harvesting programme is feasible and causes no detrimental impacts upon the local amenity or use of the streets. Should the Council in its complete discretion determine that the fruit trees have a detrimental impact then the council may in writing direct the applicant at any time to remove the trees within 14 days notice at its cost and replace them with decorative trees and failing compliance with any such direction the Council may remove the trees and replace them with decorative trees at the applicant's cost.*

*The fruit trees will be planted as shown in drawings by Patterson Britton dated **[please note – amended drawings are being provided shortly]**, entitled Alternative Raingarden Sections, and Raingarden Plan.*

**Explanation**

*The use of fruit trees instead of decorative trees raises issues to do with maintenance, health and trafficability by pedestrians and bicyclists. Both types of trees may drop leaves and branches. Fruit trees may produce fruit falling onto the footpath. In this project there is little likelihood that the fruit from the trees will provide a public nuisance or interfere with trafficability for the following reasons:*

1. *The applicant has initiated the proposal for fruit trees to meet its goals of achieving sustainable use of water, energy and transport. By producing food for the site at the site the project is best able to achieve this goal; the growing, transporting and waste of food requires over 43% of the energy and water resources which the project will require to sustain it and its residents – this initiative creates efficiencies which will significantly reduce that figure.*
2. *There will be a full time maintenance and gardening employee at the project who will be directed to maintain and harvest the trees and to inspect and maintain the street verge daily.*
3. *The applicant has a commercial and corporate vision of providing an active and interesting and fulfilling environment for the residents which will include involving them in the harvesting of the fruit and the gardening of the edible plants - studies clearly demonstrate that gardening increases the physical and mental health of those who engage in it, and specifically aged persons.*
4. *The street verges surrounding this site are expected to receive more gardening and maintenance attention than any other part of the street verges of Pottsville due to the management of the Seabreeze Aged Care project.*
5. *Other similar plantings have proven successful and gained strong support from local residents who share in the harvesting of the fruit and maintenance, and the plantings have also improved public safety due to the overlooking and more active use of the street."*

## **2. Road Contributions**

The following comments relate to a fax dated 19 September 2006 from Darren Gibson, and the S94 Contribution Plans No 4 – TRCP and No 22 – Cycleways.

### **CP No 22 – Cycleways**

All 'cycleways' in TSC are shared use facilities where pedestrians and cyclists share the pathway. Obviously this use includes aged or disabled persons using personal motorised transport (gophers) regularly seen on the TSC cycleway/footpath network. It is noted that the footpath and cycleway network within the estate and back to the Pottsville CBD is complete (except for 2 footpaths adjacent to the site which should be a consent condition) and it is not expected that residents of this proposal would travel further than the CBD.

Whilst the above fax does not put forward any arguments other than a general statement requiring an exemption, further consideration is warranted. A 2.5 metre wide cycleway/walkway exists on the site's frontage to Ballina St and a 1-2 metre wide path exists in Valla Street. A consent condition requiring a path in Mylestom Circle will enable residents with access to Mylestom Circle appropriate access to the existing footpath network. The subdivision is connected to the Pottsville CBD via a cycleway/walkway.

As CP22 lists a contribution rate of \$135.58 per person, a contribution would be payable of \$14,913.80 excluding the 37 dementia residents. It is considered for this type of development, which consists entirely of aged care units, the full rate should not be payable. As the applicant has not provided any detail of how to justify a reduction, it is noted that given the age of residents; vehicle transport or scooters using the walkways are more probable. The RTA traffic generation rates range from the TSC rate to 50% lower. The same range applied to use of the shared cycleway/walkway system would result in a 50% reduction. A contribution of \$7,456.90 less a credit for the 12 lots the development occupies, of \$4,224.00, reduces the CP22 contribution to \$3,232.90. This contribution is recommended for incorporation into the relevant Conditions of Consent.

#### **CP No 4 TRCP**

The abovementioned fax lists the following reasons for claiming an exemption:

1. We further submit that because of the nature of the facility and the age and health status of the likely residents (age 75+, 36 dementia care beds), there is a tenuous nexus between this development and the demand on a number of the remaining services and amenities for which charges would be sought, or alternatively, that the manner in which those charges are calculated is inappropriate, including TRCP (contribution plan 4).
2. Further, the applicant asserts that it is providing material public benefits of equal value (both qualitatively and quantitatively) to those sought by the Council. Those public benefits have been set out in prior correspondence to the Council (Mobbs, 24.07.09, 27.09.06) and include:
3. Street improvement works – including footpaths, road pavement, street tree planting and water quality treatment, including ongoing maintenance of these works in perpetuity.
4. Reduction in car usage and traffic generation through provision of on-site transport services, including mini bus and car share facility.
5. The extensive monitoring of usage patterns and performance outcomes and the publication of data to better inform public policy. The value of Section 94 contributions sought by the Council would be in the order of \$300,000.00.

6. The value of works proposed by the applicant is at least \$300,000.00, plus ongoing annual payments not otherwise available under Section 94 for the car share facility and maintenance of the road and footpath areas.

Responses are made to the claims in the same order.

1. The statement made is not substantiated. The Contribution Plan uses traffic generation rates based on "types of developments" and are based on surveys of such developments. Table 7.1 Trip Generation Rates by Land Use sets out the adopted traffic generation for this type of development which was publicly exhibited and adopted. The rate is also consistent with the RTA rate. The applicant has not provided any information or data to justify that lower rates should apply.

The TRCP provides an applicant with the opportunity to submit a properly prepared Traffic Report that clearly demonstrates any claims made that the adopted TRCP rates are not applicable for the particular development.

- 2&3. The work proposed does not provide any benefit whatsoever to the Tweed Distributor Road Network which is what contributions under TRCP 4 fund. The TRCP contains a schedule of works and Council allows credits for construction of TRCP Projects, however, the proposed works are local, are not required by Council, are works the developer wants to undertake to enhance his development, and are not a project contained in the Schedule of Works in the TRCP 4.
4. A car share facility does not automatically correlate to a reduction in traffic generation. Car sharing is a method used to minimise car ownership and maximising the use of vehicles provided. Availability of car sharing may actually increase traffic as it provides easy access to a vehicle that may not have existed with private individual ownership. Car sharing potentially reduces traffic generation if it incorporates car pooling. The application does not contain sufficient detail to demonstrate a reduction in traffic generation of 20% as claimed and will only be funded for 3 years.

Similarly it is not demonstrated that a mini bus reduces the traffic generation rates adopted in the TRCP.

As stated above the TRCP allows applicants to argue for variations to the traffic generation rates subject to justification via a Traffic Import Study, which has not been submitted to date.

5. The monitoring suggested over a 3 to 5 year period may be used by the applicant to support a S96 application in the future demonstrating a lower traffic generation rate than that specified in the TRCP, and such data would be considered at that time.

6. There are no ongoing annual payments that relate to the TRCP No 4. Maintenance of roads is undertaken by the Council and maintenance of the footpath, in excess of mowing, is only required because the applicant wants to utilise the road reserve for vegetation to enhance the development.

The TRCP No 4 Contribution for the development is as follows, and is recommended for incorporation into the relevant Conditions of Consent:-

150 Beds

Table 7.1 Category 2.1 (b) - 2 trips/occupant

- trips = 300 - (12 x 6.5) existing credits  
= 222 trips/day

40% employment discount applies to standard trips but not local area works.

Contribution Rate = \$494.00 + 5% main plan  
= \$85.00 + 5% local area plan

TRCP = (222 x \$494.00 x 1.05 x 0.6) + (222 x 85 x 1.05)  
= \$69090.94 + \$19813.50  
= \$88904.34

### **3. Stormwater Works**

The applicant has not provided a Stormwater Management Plan for the development. The development proposal impacts on the local stormwater network in the following ways:

- Significant increase in impervious area for the development site, and related increase in stormwater runoff from roof, car parking/driveway and paved landscaping areas.
- Potential oil and sediment contamination of car parking/driveway runoff.
- Potential erosion and sediment contamination of runoff during construction.
- Alteration to public stormwater infrastructure within road reserves to facilitate stormwater harvesting for potable usage by the development.
- Discharge of private stormwater, including treated effluent overflows, to the public system.

The site is currently well serviced by public drainage infrastructure, which has been sized for ultimate development of the site, so capacity to accept discharge from the development is not a concern. Detail of the connection of the private drainage system(s) to the public infrastructure must be supplied with a separate s68 Stormwater Application.



All stormwater discharged to the public system (including recycled effluent runoff from irrigation systems) must be treated in accordance with Development Design Specification D7, to achieve the water quality objectives of the referenced Tweed Urban Stormwater Quality Management Plan. Detail of treatment measures must be provided with a Stormwater Management Plan with the s68 Stormwater Application.

The site grades towards Ballina Street, and appropriate measures will be required to ensure that contaminated construction runoff will not enter the public stormwater system. Standard measures, as prescribed by Council's Code of Practice for Soil and Water Management on Construction Works (D7 - Annexure A), are considered adequate for the site, and a detailed Erosion and Sediment Control Plan is required with the s68 Stormwater Application.

The applicant intends to alter verge levels and kerbing in the adjoining road reserves in order to harvest public stormwater for potable reuse within the development site. Few details of this system have been provided, however it is understood that the construction of swales, raingardens and subsurface drainage behind a castellated kerb would divert stormwater towards a large underground tank within the development. As discussed in the Roads Section above, this proposal presents various potential hazards to pedestrians, vehicles and maintenance staff. The harvesting of stormwater from the road reserves is encouraged, however it may be more practical to source this water from existing kerb inlets or junction pits. The applicant must provide additional engineering detail of the stormwater harvesting proposal, including all associated works in the road reserve, with a separate s68 application.

#### Conditions of Consent

PCC1105; PCC1155; PCW0985; DUR2445; POC0985

PCC1145 (amended)

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
- other stormwater 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.

The s68 Stormwater Application must be accompanied by a detailed Stormwater Management Plan (SWMP) and Erosion and Sediment Control Plan (ESCP) prepared in accordance with Development Design Specification D7 - Stormwater Quality. The SWMP must provide engineering details of the following:

- (a) piped connections to the public stormwater network, including all intake points for stormwater harvesting, and all discharge points.
- (b) All overland flow paths, sized to accommodate the ARI 100 year storm flow, including details of landscaping within flowpaths.
- (c) Upstream treatment measures for all stormwater runoff, other than uncontaminated roof runoff, prior to discharge to the public system. This includes effluent reuse in landscaping irrigation systems.
- (d) All proposed alterations to public stormwater infrastructure, including kerb and guttering.

#### **4. Water and Sewerage Contributions**

The existing site comprises of 12 residential lots, which as part of the land development process have provided the equivalent of 12 ETs in Section 64 Contributions.

For a 150 bed facility the following Section 64 charges apply:

- 1. Sec 64 Water charge =  $0.5\text{ET}/\text{bed} * 150 * \$4598 = \$344,850$
- 2. Sec 64 Sewerage charge =  $0.75\text{ET}/\text{bed} * 150 * \$2863 = \$322,087.50$

Note: 12 ET were paid by land developer and therefore a reduction detailed below is applicable:

- (a) Water  $12\text{ET} * \$4598 = \$55,176$
- (b) Sewerage  $12\text{ET} * \$2863 = \$34,356$

Loadings for a 150 bed facility:

- 1. Water ET Load =  $0.5\text{ET}/\text{bed} * 150 = 75\text{ET}$ . This represents  $75\text{ET} * 0.1\text{L}/\text{s}/\text{ET} = 7.5 \text{L}/\text{s}$ . Noting minimum fire flow for this type of development will be 15 L/s and this flow may be required from more than one location simultaneously.
- 2. Sewerage ET Load =  $0.75\text{ET}/\text{bed} * 150 = 112.5\text{ET}$ . This represents  $112.5\text{ET} * 3.2\text{EP} * 240\text{L}/\text{EP}/\text{Day} = 86,400 \text{L}/\text{Day} (1\text{L}/\text{s})$ .

#### **4.1 Water Supply**

The developer has indicated that conventional water supply connection will not be required.

However it appears that fire fighting requirements will need to be met by a connection to Council Water Supply.

The site is ringed by a combination of 150mm and 200mm diameter water mains and there are 6 hydrants provided as part of the land development adjacent to the site. It is considered the infrastructure provided for the creation of the 12 residential lots is adequate to meet council obligations for the proposed developments fire fighting requirements and that no further Section 64 water charges will be required upfront as part of this development Application.

Section 64 water charges equivalent to 63ET are not required until an application is made for connection by this or future owners. A Deed of Agreement that allows Council to lodge a caveat that applies to current and future owners of the property is required. The Deed will describe how and why this potential debt exists and when it becomes a real debt to be recovered, i.e. upon application for connection, and that the applicable charges at the time of connection will apply.

There is a some risk these moneys will never be recovered as this will then be an operational nursing home facility, with frail aged people in care, therefore Council could not politically refuse water and sewerage service even if moneys we not forth coming.

The sprinkler system connection will be to Council Standards SD 327 and a quotation will be provided upon application in accordance with Council's Fees and Charges. Note the Sprinkler System is un-metered.

The hydrant and or hose reel system connection will be to Council Standards SD 323 (with out the domestic connection) and separate to the Sprinkler connection. A quotation will be provided upon application in accordance with Council's Fees and Charges. Note the Hydrant connection includes a low flow metered bypass.

Consumption through the low flow metered bypass on the hydrant connection will be charged in accordance with Council's Fees and Charges.

If the hydrant connection is found to be used for other than legitimate fire fighting use all remaining Section 64 charges will be levied accordingly and a domestic connection will need to be applied for by the property owner at that time.

#### **4.2 Sewerage**

The developer has indicated that conventional sewerage connection will not be required.

The 12 lots are serviced by two sewer lines within the properties. These lines will have to be abandoned and capped off adjacent to where they enter the properties at MHs 1/40 and 5/31.

The 12 lots will be required to be consolidated as the individual lots can no longer be serviced as a result of this development.

Given there are two locations available to connect to Council's sewer and the site has contributed 12ETs as part of the land development process, it would seem reasonable to require the proposed development to connect to the public sewer to provide an emergency overflow in case of failure of their proposed on site sewerage treatment system. This would be far preferable than an overflow going to storm water.

This connection will need to be limited to a maximum flow of  $12\text{ET} * 240\text{L/EP/Day} * 3.2\text{EP/ET} = 9,216 \text{ L/Day} (0.106 \text{ L/s})$ . To limit this flow, a flow restriction device will be required. Such a device will be problematic if solids are discharged, therefore only an overflow of effluent can be discharged. This device will be located directly adjacent to the high level overflow from the on-site sewerage management system. This connection will need to meet sanitary drainage requirement and in particular venting and the provision of a overflow relief gully.

Section 64 sewerage charges equivalent to 100.5 ET are not required until an application is made for connection by this or future owners. A Deed of Agreement that allows Council to lodge a caveat that applies to current and future owners of the property is required. The Deed will describe how and why this potential debt exists and when it becomes a real debt to be recovered, i.e. upon application for connection, and that the applicable charges at the time of connection will apply.

There is a some risk these monies will never be recovered as this will then be an operational nursing home facility, with frail aged people in care, therefore Council could not politically refuse water and sewerage service even if monies were not forth coming.

Sewer volumetric and strength charges as per Councils Fees and charges will apply from the date of connection.

If sewer discharges are found to be in excess of flows detailed all remaining Section 64 charges will be levied accordingly.

#### Conditions of Consent

1. The 12 lots are to be consolidated
2. The public sewer Upstream of and including MH 1/40 on lot 735 is to be abandoned and capped off with a standard junction on the down stream side of this MH.
3. The public sewer Upstream of and including MH 5/31 on lot 605 is to be abandoned and capped off with a standard junction on the down stream side of this MH.
4. The individual water service connections to the existing 12 lots are to be removed and capped of at the respective water main.
5. Annual Water access charges will apply
6. Annual Sewerage access charges will apply.
7. All fees and charges associated with a future water connection application will apply at the time of such application.
8. All fees and charges associated with a future sewerage connection application will apply at the time of such application.

9. Water Usage charges will only apply from the time of connection.
10. Sewerage usage and Trade waste charges will only apply from time of connection.
11. GEN0135
12. If a Water or Sewer Connection is required now or in future PCC1185, PCC1195, PCC1205, PCC1235, PCC12255, PCC1265, PC1275
13. PCW0005
14. If a Water or Sewer Connection is required now or in future PCW1045, PCW1055, PCW1065, PCW1075, PCW1085, PCW1095, PCW1105
15. PCW1165
16. DUR2575
17. POC1025
18. Sec 64 DSP Charges:
  - a. No refund of existing 12 ET Contribution by Land Developer for water and sewerage.
  - b. Water Supply:
    - i. If a fire Sprinkler and or Hydrant and Hose reel connection is required, no further Section 64 water charges will be required upfront as part of this development Application. Section 64 water charges equivalent to 63ET are not required until an application is made for connection by this or future owners. A Deed of Agreement that allows Council to lodge a caveat that applies to current and future owners of the property is required. The Deed will describe how and why this potential debt exists and when it becomes a real debt to be recovered, i.e. upon application for connection, and that the applicable charges at the time of connection will apply.
    - ii. The sprinkler system connection will be to Council Standards SD 327 and a quotation will be provided upon application in accordance with Council's Fees and Charges. Note the Sprinkler System is un-metered.
    - iii. The hydrant and or hose reel system connection will be to Council Standards SD 323 (with out the domestic connection) and separate to the Sprinkler connection in Point ii above. A quotation will be provided upon application in accordance with Council's Fees and Charges. Note the Hydrant connection includes a low flow metered bypass.
    - iv. Consumption through the low flow metered bypass on the hydrant connection will be charged in accordance with Council's Fees and Charges.
    - v. If the hydrant connection is found to be used for other than legitimate fire fighting use all remaining Section 64 charges will be levied accordingly and a domestic connection will need to be applied for by the property owner at that time.

- c. Sewerage:
- i. A single sewerage connection is required to either Location detailed in Point 1 or 2 above and limit & monitor flow to a maximum of  $12 * 240\text{L/EP/Day} * 3.2\text{EP/ET} = 9,216 \text{ L/Day}$  (0.106 L/s). Section 64 sewerage charges equivalent to 100.5ET are not required until time an application is made for connection by this or future owners. A Deed of Agreement that allows Council to lodge a caveat that applies to current and future owners of the property is required. The Deed will describe how and why this potential debt exists and when it becomes a real debt to be recovered, i.e. upon application for connection, and that the applicable charges at the time of connection will apply.
  - ii. Sewer volumetric and strength charges as per Councils Fees and charges will apply from date of connection in i. above.
  - iii. If sewer discharges are found to be in excess of flows detailed in point i. above all remaining Section 64 charges will be levied accordingly.
3. Refuse the application for specified reasons.

#### **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

#### **POLICY IMPLICATIONS:**

The process this application has taken regarding the alternate servicing proposal has been less than desirable. Large information gaps exist and uncertainty regarding the detail of the proposal has prevailed.

If Council wishes to encourage similar on site/internal systems a policy should be developed covering Council's expectations and requirements for applications, s.94 and s.64 discounting, preferred and non preferred developments.

#### **CONCLUSION:**

The development will add to the social infrastructure of the Tweed and is located in the southern area of the Shire that needs such facilities.

#### **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](http://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. For Administrators Only - Perspective Plans of the Development
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**P11 [PD-PC] Exhibition of Section 94 Contribution Plan No 28 - Seaside City**

**ORIGIN:**

**Development Assessment**

**FILE NO: GT1/S94/28**

**SUMMARY OF REPORT:**

At its Ordinary meeting of 4 July 2006, Council resolved to exhibit draft Section 94 Contribution Plan No 28 – Seaside City (CP28) and a draft Planning Agreement for Seaside City.

The aim of this new plan is to enable the levying of contributions for the provision of public infrastructure to be provided relating to the Seaside City that will benefit residents in Seaside City and to meet the increase in demand for open space arising from subsequent development of the existing lots. The draft Planning Agreement is a reflection of CP28 and also describes the operative provisions associated with the levying of contributions for the provision of the public facilities and infrastructure associated with Seaside City.

The contribution plan and planning agreement were exhibited between 14 September 2006 and 12 October 2006. There were two public submissions and comments relating to these submissions are in the body of this report.

**RECOMMENDATION:**

**That:**

- 1. Council adopts the amended exhibited Section 94 Contribution Plan No 28 – Seaside City.**
- 2. Council adopts the exhibited Planning Agreement for Seaside City.**
- 3. Council gives public notice in the Tweed Link of its decision in accordance with the Environmental Planning and Assessment Regulations 2000, specifying that that Section 94 Contribution Plan No 28 – Seaside City comes into effect on the date of the notice.**
- 4. Council gives public notice in the Tweed Link of the Planning Agreement.**

5. **Negotiations be commenced with the Kings Forest developers in relation to the provision of regional structured open space facilities in the locality.**



## **REPORT:**

At its Ordinary meeting of 4 July 2006, Council resolved to exhibit draft Section 94 Contribution Plan No 28 – Seaside City (CP28) and draft Planning Agreement for Seaside City.

The aim of this new plan is to enable the levying of contributions for the provision of public infrastructure to be provided relating to the Seaside City that will benefit residents in Seaside City and to meet the increase in demand for open space arising from subsequent development of the existing lots. The draft Planning Agreement is a reflection of CP28 and also describes the operative provisions associated with the levying of contributions for the provision of the public facilities and infrastructure associated with Seaside City.

The contribution plan and planning agreement were exhibited between 14 September 2006 and 12 October 2006. There were two public submissions and comments relating to these submissions are set out below:

### **Submission 1:**

- 1. The owner of Kings Forest Estate, Project 28 Pty Ltd, has not been consulted in relation to the Draft Development Control Plan and Draft Section 94 Plan**

#### **Comment**

The proposed area required for the structured open space (1.49ha) is a relatively small area to cater for an estimated population of 2,000 at Seaside City. As it is not possible to locate the structured open space in the Seaside City site, alternative sites were considered. The site at West Kingscliff is already accommodating structured open space for the SALT development, and it represents a more confined area where it may be difficult to accommodate further structured open space. The area of Council's former waste disposal site at the end of Depot Road which has been remediated would form an ideal location for structured open space for both Kings Forest and Seaside City.

The submission states that representatives are prepared to meet with Council officers with a view to resolving the open space issue. It is recommended that Council enter into discussions with Project 28 Pty Ltd to determine the feasibility of locating the structured open space within the concept plan for Kings Forest or on Council's remediated waste disposal site at the end of Depot Road.

- 2. Council is aware that the rezoning of the Kings Forest site is imminent and that Project28 Pty Ltd are well advanced in the preparation of a concept plan which will involve the spatial allocation of land uses including structured open space. No provision has been made in the concept plan for additional areas required from sites outside of the Kings Forest Project**

### Comment

Land valuations have been included in the draft plan to compensate the owner of Kings Forest for any loss of land for the structured open space if this can be negotiated in the Kings Forest land area. It is proposed that Council enter into discussions with Project 28 Pty Ltd to determine the feasibility of locating the structured open space at Kings Forest or on Council's former waste disposal area at the end of Depot Road.

- 3. Council currently owns the former night soil depot site on Depot Road adjacent to the Kings Forest Project and it is intended that the site will be used as structured open space playing fields for Kings Forest. However the Section 94 Plan and draft Development Control Plan do not include a plan showing the location of the proposed 1.49ha of structured open space required for Seaside City and we therefore submit that the draft Development Control Plan No. 55 and draft Section 94 Plan are unsatisfactory because they lack certainty and finality**

### Comment

The use of the former night soil depot site on Depot Road for structured and passive open space for Kings Forest is still under investigation and offers one possible site for both Kings Forest and Seaside City residents. The use of this land for structured open space associated with Kings Forest development will need to be negotiated with Council. There is no uncertainty in using the contributions from Seaside City development to develop structured open space on this land.

The draft Section 94 plan will be subject to change over the next twelve to eighteen months as the real costs for the various infrastructure works and land values become known. Following discussions with Project 28 Pty Ltd it will be possible to more accurately determine the preferred location of the structured open space in this locality. This information can then be included in the plan and a more accurate land valuation obtained.

### **Submission 2:**

#### **1. Review of Plan:**

- It is unclear how Council intends to bill for the contribution plan;**
- The contribution rates should apply only to the land applying at the time of dedication of the land to Council;**
- The document appears to prescribe alterations to the contribution rate based on valuations after the land has been acquired;**
- The developer should not benefit or suffer loss from this based on a future determined valuation of land in question and a CPI increase would be more appropriate;**

- **If the active recreation areas outside the estate are completed prior to a landholder's development approval being issued the land value component should also cease to increase or decrease according to valuation.**

**Comment**

As the subdivision of Seaside City has already occurred, the plan states that levies will be paid as a condition of development consent for any subsequent development, or future subdivision.

The revaluation of any land to take account of the increase in the value of the land will only occur while the land is still in private ownership and at the time of dedication. Council does not continue to revalue the land once ownership passes to Council.

It is proposed to review the land values of the passive open space by a valuer immediately following the completion of the infrastructure works. Using CPI as a basis for valuing the land will not reflect the real increase in the value of land. As an example, in the adjoining estate of Casuarina, the value of the land almost doubled in value over a few months.

- 2. Timing of Contributions: Are subsequent occupants/owners of premises/buildings to continue to pay at these rates?**

**Comment**

Subsequent owners or occupiers of developed lots do not pay any contributions unless further subdivision occurs on their parcel of land.

- 3. Richtech's responsibilities and right to compensation will cease once the infrastructure is developed, paid for and maintained for that period. The section 94 plan needs to reflect this, and also needs to contain a mechanism for its own cessation of existence. Ongoing Council requirements for provision or maintenance of infrastructure outside the parameters of this plan need to be documented elsewhere**

**Comment**

The major developer is undertaking all of the infrastructure to develop the land and in doing so will incur major costs associated with the provision of this infrastructure. The funds collected by Council from the individual land owners for the works undertaken, or for land dedicated, by the major developer will be paid to the developer by Council at mutually agreed time. Council will not be reimbursing Richtech or its successor other than for the funds that it receives as contributions under the plan. Once all funds have been collected and reimbursed according to the plan, then the plan is closed.

Council's responsibilities concerning ongoing maintenance are covered in Council's normal budgetary process and detailed in maintenance schedules.

- 4. Construction of Casuarina Way: Current landholders were not a party to any previous agreement or DCP relating to other developments and had no part in the consultation process. Consequently this levy rate should be reduced by \$1,200,000.**

**Comment**

The construction of Casuarina Way by Richtech is of direct benefit to the landowners of Seaside City as it facilitates the future development of Seaside City. Therefore the cost of \$1,200,000 has been included in the S94 plan.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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Nil.

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**P12 [PD-PC] Draft Development Control Plan 55 – Seaside City**

**ORIGIN:**

**Development Assessment**

**FILE NO: GT1/DCP/55 Pt1**

**SUMMARY OF REPORT:**

Draft Development Control Plan No. 55 for Seaside City was placed on public exhibition for a period of five (5) weeks between the 5<sup>th</sup> September 2006 and the 10<sup>th</sup> October 2006. The main issues raised in the submissions to the draft DCP were the proposed opening of She Oak Lane in Casuarina to Seaside City and the maximum height of buildings in Lorna Street.

**RECOMMENDATION:**

**That: -**

- 1. Council adopts Draft Development Control Plan No. 55 – Seaside City as amended.**
- 2. Council begin negotiations with the owners of lots at the south-eastern end of Lorna Street for the exchange of four (4) metres of land in Lorna Street for the same amount of land to the east of their properties.**
- 3. This Development Control Plan be included in the Consolidated Development Control Plan.**

**REPORT:**

**BACKGROUND:**

Draft Development Control Plan No. 55 (DCP 55) – Seaside City was placed on public exhibition for a period of five (5) weeks between the 5<sup>th</sup> September 2006 and 10<sup>th</sup> October 2006. A copy of the draft DCP No. 55 as amended to reflect the recommendations of this report is provided as Attachment 1 to this report.

The purpose of this report is to summarise and provide commentary on the submissions received during the exhibition period and recommend whether any amendments need to be made to the draft DCP prior to adoption by Council. A summary of submissions and comments are attached as Appendix A to this report.

**Background**

The Draft Development Control Plan 55 – Seaside City is in response to the pressure for the development of an area to the south of Kingscliff between the developments of SALT and Casuarina. The area was originally subdivided in the 1920's and the proposed development of the site is based on the existing lot layout with adjustments to road widths to allow for better access.

The properties are predominantly in one ownership. The major owner has lodged a first stage development application for the site which includes the major road works and bulk earthworks for the estate as a whole and also includes an overall concept plan for the estate.

A development control plan was necessary to ensure that the future development of the site achieved good planning outcomes with a high standard of urban design. Negotiations with Richtech Pty Ltd representatives and with the individual owners have been held in relation to the draft DCP.

The draft Development Control Plan No 55 – Seaside City has been prepared on the principles of a walkable coastal community based around an active mixed-use village centre. The development of the site will result in a mix of tourist and permanent residential accommodation of mainly medium density with the more intense development in the village centre. This will provide for a viable centre to cater for future resident needs and the needs of tourists. Height and density increasing towards the Village Centre is proposed to reinforce the sense of place in the village centre.

## **Accommodation Types**

### Coastal Housing

The development bordering the environmental areas to the east and west of site is proposed to be of low density and a maximum of two storeys. Two storey low density development has also been nominated for the lots bordering the existing Casuarina estate to the south. This is to ensure that like development faces like. The same requirements were not repeated to the north of the estate the boundary with SALT as there is a slight rise in landform in this area and the majority of the SALT allotments on this boundary back onto Seaside city. It also ensures that lower density development is in areas outside of the 400m easy walking radius to the Village Centre. This form of development has been described as 'Coastal Housing' in the DCP.

Due to the constraints from the coastal erosion line on the available area for building in the southern nine (9) lots on the eastern side of Lorna Street, the setback requirements have been relaxed and it is recommended in the DCP that a transfer of land be sought between Council and the individual property owners for four (4) metres of the width of Lorna Street.

### Coastal Multi-Dwelling Housing

The lots between the 400m and 300m radius from the Village Centre are designated for multi-unit development but their form is to be as that of a large house two (2) storeys in height. This will provide a transition between the low-density area and the denser areas surrounding the Village Centre.

### Coastal Units

This type of development is to be found within the 300m radius of the Village Centre and accommodates permanent residents and tourists. It transition towards the centre with greater density and a height increase to 3 storeys.

### Tourist Accommodation Area

Surrounding the village centre and adjacent to the main thoroughfare into Seaside City is an accommodation area that is for tourists only. Due to the activity of the main street and village Centre it is considered appropriate that no permanent residents are located in this area.

### Village Centre

As this is a mixed-use village Centre located close to the beach and at the centre of activity for Seaside City it is considered appropriate that the upper floors of this area provide accommodation for tourists.

### **Mixed-Use Village Centre**

The predicted population including tourists is estimated at 2000. The form of the centre is of a fine-grained main street without domination of the street by large-scale premises. This should ensure a well-activated public realm to the central area.

### **Public Space**

The public realm of the development includes five (5) areas that have been provided to satisfy the casual open space needs of an increase in population due to planned increases in density within the existing subdivision. These areas provide a for spectrum uses and reflect the future needs of the local community and the quality of the surrounding environment. A larger park to the south of the estate will provide a robust area able to cater for small and large groups and events in the area and the casual use of the immediate residents. A smaller park to the north of the estate will be provide more for the immediate population surrounding it.

Adjacent to the main beach access is an urban space for an extension of the Village Centre. This is a robust space which will act as the town or village square for the community and forms an important part of establishing an identity to this new community.

Adjoining Cudgen Creek are two spaces, one with a path access and a platform but no creek access due to its location on an eroding embankment to the creek. The other is located to provide access from to the creek but also from the creek to the land as the creek is used by watercraft especially canoes. This area is amongst an important environmental area and has been provided in recognition that access to the creek is better if well managed and not is allowed to occur randomly along its full length.

### **Access Framework**

The grid pattern street system within Seaside City provides for pedestrian and cycle access and with the widening of the central north-south lanes and some of the cross lanes it will be well connected for all forms of transport. Connected streets mean that traffic can move easily through the area.

The movement through the South Kingscliff area in the future will require continually returning to Casuarina Way as cul-de-sacs dominate the existing Casuarina Beach estate. There is linkage to SALT with the continuation of Lorna Street though between Lorna Street and Casuarina Way SALT turns its back on Seaside City and provides no through access for 300m.

Three cul-de-sacs in Casuarina front the east-west street at the southern edge of Seaside City. One opening was shown in the plans in the DCP though there was no discussion on opening these streets in the document. There has been considerable opposition to the opening of these cul-de-sacs by the residents in them.



## **Drafting Anomaly**

A drafting anomaly was identified in the title of figure 14 on page 36 of the DCP where 'Minimum Height' is supposed to read 'Maximum Height' this has been changed in the attached Draft DCP.

The drafting of the boundary to the DCP in figure 1 page 9 required adjustment to ensure that the east/west road at the southern edge of the estate is included in the DCP boundary.

## **Submissions**

Issues raised included: -

### East of Lorna Street

Objections were received to the restriction on height for coastal dwellings on the eastern side of Lorna Street to two (2) storey and 9m to the ridgeline and 7m to ceiling/top plate. The height to buildings restrictions on the east side of Lorna Street is in recognition of their location on the beach front and the need to reduce building bulk and scale to allow some visual access above. The height requirements in the Draft DCP are already a variation to the Development Control Plan 48 – Building Heights that restricts heights of two (2) storey residential to 8m ridgeline and 6m ceiling/top plate height. There is no need therefore to make a variation to heights. If these dwellings were to be increased to three (3) storeys this would be at variance with the adjoining foreshore development in Casuarina and SALT.

There are four mixed-use lots to the east side of Lorna Street and each side of Ocean Avenue that are part of the Village Centre. There is a submission to increase the allowable storeys on these lots from two to three storey. The reasons for the height requirements are similar to those for the rest of the area to the east of Lorna Street. As development on these sites is to be mixed-use commercial they are proposed with a maximum ridge height of 10m and ceiling height of 8m.

Concern has been received to the design style requirements of the Draft DCP and the area of land on lots 1 to 9 on the east side of Lorna Street due to the restricted development area left on each site due to the encroachment of the 7(f) zone. To increase the area available for development of these lots the Draft DCP includes a number of relaxations on setback requirements. In combination with a proposed land-swap of 4m from the foreshore edge of these lots to the Lorna Street frontage the relaxations provide a building footprint that will enable a single dwelling on Lots 1-9 of the eastern side of Lorna Street.

### Building Heights

A number of submissions have been received to vary the ridge height of two (2) storey residential buildings in the development adjacent to Casuarina to 10.5m and to remove the requirement for ceiling height. As stated above the heights for two (2) storey residential buildings has already been varied by 1m in the Draft DCP and further variation to 2.5m above the height nominated in DCP 48 – Height of Buildings is not supported.

The submission further pointed to the fact that buildings away from the oceanfront in Casuarina were allowed a third storey attic space restricted to 36m<sup>2</sup>. This would make the building height for this type of development of 11m ridgeline and 9m ceilings. This may be worth considering for all two (2) storey developments to west of Lorna Street and adjacent to Casuarina. In the SALT development the dwelling sites adjacent to Seaside City allow for two (2) storey development only. However due to the slope of the land up into SALT it may be justifiable to allow an attic space to be available in the two (2) storey development on this boundary on the lots west of Lorna Street.

### Carparking Adjacent Casuarina

A group of objections were received regarding the proposed nose-in carparking along the east-west street between Casuarina and Seaside City. The concerns were for the level of carparking in this area, lighting of the area, the need for buffering to existing houses and the ability to access safely past the vehicles. This level of parking is needed to satisfy Councils requirements for public parking for beach access. This amount of parking in this location may have an adverse impact on the adjacent housing. In view of this the area shown in the plan can be changed to parallel parking and the same parking relocated as parallel parking to the adjoining street.

### Opening of She-Oak Lane to Seaside City

There has been considerable objection to the opening of She-Oak Lane to Seaside City. The lanes were made into cul-de-sacs when this stage of Casuarina was developed. The proposal to open this lane would only provide connectivity if all the cul-de-sacs facing Seaside City were opened and the cul-de-sacs within the Casuarina estate were opened.

The objections state that properties in the cul-de-sacs were closed when purchased and therefore there is an expectation of this continuing with the quietness and safety for children in cul-de-sacs, and the resultant impact on the intersection of Riberry Lane and Casuarina Way if it was opened to a street grid of Seaside City.

The proposed opening of She-Oak Lane is also addressed in the road construction development application submitted by Richtech Pty Ltd. The opening of She-Oak Lane would only benefit the residents who reside there by providing better access to the Seaside City village area and SALT. It is considered unlikely that traffic from Seaside City will access into She-Oak Lane as there is a further cul-de-sac at the end of She-Oak Lane. There is minimal benefit to traffic from Seaside city exiting through the residential streets to the intersection of Riberry Lane and Casuarina Way. The volumes of traffic in Seaside City will not generate a need for 'rat running' particularly as there is a straight access route to Casuarina Way. In view of the limited benefits of opening only She-Oak Lane and the strong objection of the residents who reside there, the issue of connectivity and permeability needs to be addressed separately to this Development Control Plan. The proposed opening of She-Oak Lane has been deleted from the Development Control Plan.

The Engineering & Operations Division advise that whilst the connection's effectiveness may initially be restricted due to the southern cul-de-sac on She Oak Lane, this cul-de-sac could also be connected into Kamala Crescent at a future date, improving the road network effectiveness. Similarly by also connecting the Beech Lane cul-de-sac into Kamala Crescent (again at a future date), a permeable and connective road network providing an alternative north-south road linking the northern precinct of Casuarina to the shopping centre in Seaside City.

It should be noted that the original development consent provided the connectivity discussed above and was later converted to a series of cul-de-sacs by Section 96 applications.

However, given the number of public submissions objecting to the connection of She Oak Lane to Seaside City and the immediate limited benefit of this connection, its inclusion in the DCP is not considered necessary.

It should be noted that the connection of the She Oak Lane cul-de-sacs and the northern Beech Lane cul-de-sac could still be pursued at a later date to improve the connectivity and permeability of the local road network.

#### FSR Coastal Dwelling

An objection was received as to the need for 0.5:1 Floor Space Ratio (FSR) for coastal dwellings as it is not a requirement elsewhere in the Shire. It is considered appropriate that this standard be removed from the DCP and the draft DCP has been amended in accordance with this recommendation.

#### **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

The cost of developing the site is to be borne by the major landholder. A Contribution Plan and a planning agreement are proposed to recoup the relevant cost of this from other landowners in the estate.

## **POLICY IMPLICATIONS:**

The approval of this document will result in a Development Control Plan for the development of Seaside City. On implementation of the consolidated Development Control Plan for the Tweed Shire this Plan will become a section of the overall document.

## **CONCLUSION:**

The Development Control Plan No. 55 for Seaside City provides for good planning outcomes with a high standard of urban design. The main issues raised by objectors to the DCP relate to the proposed 2 storey height limit along the oceanfront and the proposed opening of She-Oak Lane to provide some connectivity with the Casuarina Estate. All of the beachfront development in SALT and Casuarina Estate is restricted to 2 storeys. A concession has been granted to the oceanfront landowners in Seaside City in that all of their land may be utilised for development calculations even through all of the lots are constrained from the 7(f) erosion line. It is considered that the bulk and scale of development from this concession does not warrant any further concession in relation to 3 storey development particularly as the oceanfront development in SALT and Casuarina is restricted to 2 storey development. Further, an additional 1 metre in height has been included in the DCP over that applicable to the SALT and Casuarina Estates to allow more flexibility in roof forms and ceiling heights. Given these concessions it is considered that the proposed 2 storey limit to the oceanfront lots should be maintained contrary to the submissions made by these landowners.

The proposal to open She-Oak Lane is the most controversial issue and given that all of the cul-de-sacs both within the Casuarina Estate and adjacent to Seaside City would need to be opened to provide connectivity and permeability this is a traffic issue which needs to be determined separately to this DCP. The recommendation is to delete this provision from the DCP and the DCP has been amended accordingly.

## **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](http://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. Assessment of Submissions (DW 1477217)
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**P13 [PD-PC] Murwillumbah Locality Plan, Knox Park Masterplan and Scoping Study - Selection of Consultancy**

**ORIGIN:**

**Strategic Town Planning**

**FILE NO: GT1/DCP/56 Pt1**

**SUMMARY OF REPORT:**

Council invited the following companies to Tender for the Murwillumbah Town Centre Project:

- Architectus
- JBA Urban Planning Consultants Pty Ltd
- PMM Group
- Urbis JHD
- Humphreys Reynolds Perkins Planning Consultants
- Deicke Richards
- Place Planning & Design
- Aspect Studios Pty Ltd

Of these, only Architectus and Urbis JHD made formal written submissions to undertake the Project. Both submissions demonstrated each Company's abilities to undertake the Project. A more detailed assessment of these Tenders is provided within the report.

After assessing the Tenders received it is recommended that Council engage Architectus to undertake the Murwillumbah Town Centre Project.

**RECOMMENDATION:**

**That Council engages the services of Architectus to undertake the Murwillumbah Town Centre Project in accordance with their Tender document and Council's Project Brief for the amount of \$80,000 (excluding GST).**

**REPORT:**

As per Summary.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Reference Confidential Attachment

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

**Confidential Attachment:** Supplementary Confidential Information (DW

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