



# **AGENDA**

## **PLANNING COMMITTEE MEETING 19 DECEMBER 2006**

**Chairman: Ms Lucy Turnbull**

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

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## ITEMS FOR CONSIDERATION OF THE COMMITTEE:

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## REPORTS THROUGH GENERAL MANAGER

### REPORTS FROM DIRECTOR PLANNING & DEVELOPMENT

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

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

#### MATTERS FOR CONSIDERATION

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

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

**ORIGIN:**

**Development Assessment**

**FILE NO: DA06/0099 Pt1**

**SUMMARY OF REPORT:**

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

**RECOMMENDATION:**

**That Development Application DA06/0099 for a mixed use development comprising two commercial premises and four x 2 bedroom units at Lot 9 Section 5 DP 4043, No. 35 Beryl Street Tweed Heads be approved subject to the following conditions: -**

**GENERAL**

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos. DA0.00, DA0.01, DA1.01, DA1.02, DA1.03, DA1.04, DA1.05, DA2.01, DA2.02, DA3.01 & DA4.01, prepared by Lightwave Architects and dated December 2005, except where varied by the conditions of this consent.**

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

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

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

[GEN0135]

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

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

[PCC0945]

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

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

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

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

[PCC1145]

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

[PCCNS01]

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

[PCC1235]

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

[PCCNS02]

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



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

[PCC0065]

#### 11. Section 94 Contributions

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

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

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

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

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

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

**S94 Plan No. 18**

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

[PCC0215]

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

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

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

Water DSP4:	2.1344 ET @ \$4598	\$9,814
Sewer Banora:	3.1016 ET @ \$2863	\$8,880

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

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

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

[PCC0265]

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

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

[PCC0485]

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

[PCC0685]

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

[PCC0865]

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

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

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

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

[PCC0895]

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

- (a) copies of compliance certificates relied upon
- (b) four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:
  - earthworks
  - stormwater drainage
  - water supply works
  - sewerage works
  - landscaping works
  - sedimentation and erosion management plans
  - location of all service conduits (water, sewer, Country Energy and Telstra)

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

[PCC0985]

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

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

- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management. Typical water sensitive features include infiltration, maximising permeable/landscaped areas, stormwater retention /detention/reuse, and use of grass swales in preference to hard engineered drainage systems. [PCC1105]
19. Disposal of stormwater by means of infiltration devices shall be carried out in accordance with Section D7.9 of Tweed Shire Councils adopted Development Design and Construction Specification - Stormwater Quality. [PCC1125]
20. Stormwater
- (a) Details of the proposed roof water disposal, including surcharge overland flow paths are to be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. These details shall include likely landscaping within the overland flow paths.
- (b) All roof water is to be directed towards Beryl Street. No roof stormwater is to be directed towards the rear of the site or adjoining properties without a registered easement first being created over the adjoining property.
- (c) Surcharge overflow from any rubble pits or infiltration area to the street gutter, inter-allotment or public drainage system must occur by visible surface flow, not piped.
- (d) Runoff is to be pre-treated to remove contaminants prior to entry into the infiltration areas (to maximise life of infiltration areas between major cleaning/maintenance overhauls).
- (e) If the site is under strata or community title, the community title plan is to ensure that the infiltration areas are contained within common land that remain the responsibility of the body corporate (to ensure continued collective responsibility for site drainage).
- (f) All rubble pits and infiltration devices are to be designed to allow for cleaning and maintenance overhauls.
- (g) All rubble pits and infiltration devices are to be designed by a suitably qualified Engineer taking into account the proximity of the footings for the proposed/or existing structures on the subject property, and existing or likely structures on adjoining properties.

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

- (b) the person having the benefit of the development consent has:
    - (i) appointed a principal certifying authority for the building work, and
    - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
  - (c) the principal certifying authority has, no later than 2 days before the building work commences:
    - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
    - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
  - (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
    - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
    - (ii) notified the principal certifying authority of any such appointment, and
    - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.
- [PCW0215]
26. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.
- [PCW0225]
27. Residential building work:
- (a) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

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

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

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

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

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

[PCW0235]

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

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

[PCW0245]

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

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



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

[PCW0255]

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

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

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

[PCW0985]

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

[PCW1005]

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

[PCW1065]

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

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

- ii. The person must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars to the owner of the proposed work.  
[PCW0080]
34. Where any pumps used for dewatering operations are proposed to be operated on a 24-hour basis, the owners of adjoining premises shall be notified accordingly prior to commencement of such operations.  
[PCW0125]
35. Written approval for any application under Section 138 of the Roads Act 1993 is required prior to commencing works within the road reserve.  
[PCW0705]
36. The proponent shall provide to the PCA copies of Public Risk Liability Insurance to a minimum value of \$10 Million for the period of commencement of works until the completion of the defects liability period.  
[PCW0835]
37. The proponent shall locate and identify all existing underground services prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure including areas external to the development site where works are proposed.  
[PCW0005]
38. Prior to commencement of work all actions or prerequisite works required at that stage, as required by other conditions or approved management plans or the like, shall be installed/operated in accordance with those conditions or plans.  
[PCW0015]
39. All proposed works to be undertaken are to be carried out in accordance with the conditions of development consent, approved construction certificate, drawings and specifications.  
[DUR0005]
40. Construction site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council: -
- Monday to Saturday from 7.00am to 7.00pm**
- No work to be carried out on Sundays or Public Holidays**
- The proponent is responsible to instruct and control subcontractors regarding hours of work.  
[DUR0205]

41. The roof cladding is to have low reflectivity where it would otherwise cause nuisance to the occupants of the buildings with direct line of sight to the proposed building. [DUR0245]
42. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made). [DUR0375]
43. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council. [DUR0395]
44. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979. [DUR0405]
45. It is the responsibility of the applicant to restrict public access to the building site, building works or materials or equipment on the site when building work is not in progress or the site is otherwise unoccupied in accordance with WorkCover 2000 Regulations. [DUR0415]
46. The finished floor level of the building should finish not less than 225mm above finished ground level. [DUR0445]
47. All work associated with this approval is to be carried out so as not to impact on the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -
- Noise, water or air pollution
  - Minimise impact from dust during filling operations and also from construction vehicles
  - No material is removed from the site by wind
- [DUR1005]
48. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction. [DUR2185]
49. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:
- (a) internal drainage, prior to slab preparation;

- (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
- (c) external drainage prior to backfilling.
- (d) completion of work and prior to occupation of the building. [DUR2485]
50. Plumbing
- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage. [DUR2495]
51. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position. [DUR2505]
52. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level. [DUR2545]
53. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-
- \* 43.5<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]
54. Where two (2) or more premises are connected by means of a single water service pipe, individual water meters shall be installed to each premise beyond the single Council water meter (*unless all the premises are occupied by a single household or firm*). [DUR2615]
55. Excavation
- (a) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with WorkCover 2000 Regulations.

- (b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property. [DUR0425]
56. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover Authority. [DUR0645]
57. All demolition works are to observe the guidelines set down under the Environment Protection Authority publication "A Renovators Guide to the Dangers of Lead" and the WorkCover guidelines on working with and handling of asbestos. [DUR0655]
58. Minimum notice of 48 hours shall be given to Tweed Shire Council for the capping of any disused sewer junctions. Tweed Shire Council staff in accordance with the application lodged and upon excavation of the service by the developer shall undertake Works. [DUR0675]
59. Please note that while the proposal, subject to the conditions of approval, may comply with the provisions of the Building Code of Australia for persons with disabilities your attention is drawn to the Disability Discrimination Act which may contain requirements in excess of those under the Building Code of Australia. It is therefore recommended that these provisions be investigated prior to start of works to determine the necessity for them to be incorporated within the design. [DUR1715]
60. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard. [DUR2535]

#### **DURING CONSTRUCTION**

61. During construction, all works required by other conditions or approved management plans or the like shall be installed and operated in accordance with those conditions or plans. [DUR0015]
62. The provision of adequate vehicular access in accordance with Council's "Vehicular Access to Property Construction Specification" pamphlet, including the provision of an invert crossing at the kerb and gutter where required and paving of the driveway across the footpath to the front alignment to the satisfaction of the General Manager or his delegate.

Such to specifically include the following:

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

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

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

[DUR0065]

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

[DUR0075]

64. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:

A. Short Term Period - 4 weeks.

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

B. Long term period - the duration.

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0215]

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

[DUR0225]

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

[DUR0235]

67. Pumps used for dewatering operations are to be electrically operated. Diesel pumps are not to be used unless otherwise approved by the General Manager or his delegate. [DUR0255]
68. Provision to be made for the designation of a durable and pervious car wash-down area. The area must be identified for that specific purpose and be supplied with an adequate water supply for use within the area. Any surface run-off from the area must not discharge directly to the stormwater system. In this regard the disabled parking space shall also be utilised as a car wash bay. [DUR0975]
69. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate. [DUR0995]
70. Appropriate measures are to be put in place during the construction period to prevent the transport of sediment from the site. Should any material be transported onto the road or any spills occur it is to be cleaned up prior to cessation of same days work and/or commencement of any rain event. [DUR2405]
71. Vehicles leaving the premises shall be sufficiently free from dirt, aggregate or other materials such that materials are not transported onto public roads. [DUR2415]
72. All waters that are to be discharged from the site shall have a pH between 6.5 and 8.5 and suspended solids not greater than 50mg/kg. The contractor shall nominate a person responsible for monitoring of the quality of such discharge waters on a daily basis and the results recorded. Such results shall be made available to Council's Environmental Health Officer(s) upon request. [DUR2435]
73. During construction, a "satisfactory inspection report" is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection. [DUR2445]
74. Dewatering of the site shall be carried out in accordance with the Dewatering Management Plan provided within Section 6.0 of the Acid Sulfate Soil & Dewatering Assessment and Management Report for 35 Beryl Street, Tweed Heads prepared by Border-Tech and dated November 2005 (Job No: BT15266). [DURNS01]

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

[DURNS02]

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

[DURNS03]

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

[DURNS04]

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

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

[POC0205]

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

[POC1045]

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

[POC1055]

81. Prior to issue of an occupation certificate, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[POC0005]

82. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all s68h2 permanent stormwater quality control devices.

[POC0985]

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

[USE0125]



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

[USE0175]

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

[USE0225]

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

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

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

**REPORT:**

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

**BACKGROUND:**

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

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

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

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

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

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

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

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

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

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


The subject site has a primary frontage to Beryl Street, is regular in shape, and has an area of approximately 597m<sup>2</sup>. The land is generally flat with a slight crossfall from east to west, ranging in height from approximately 4.51m AHD to 3.93m AHD.

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

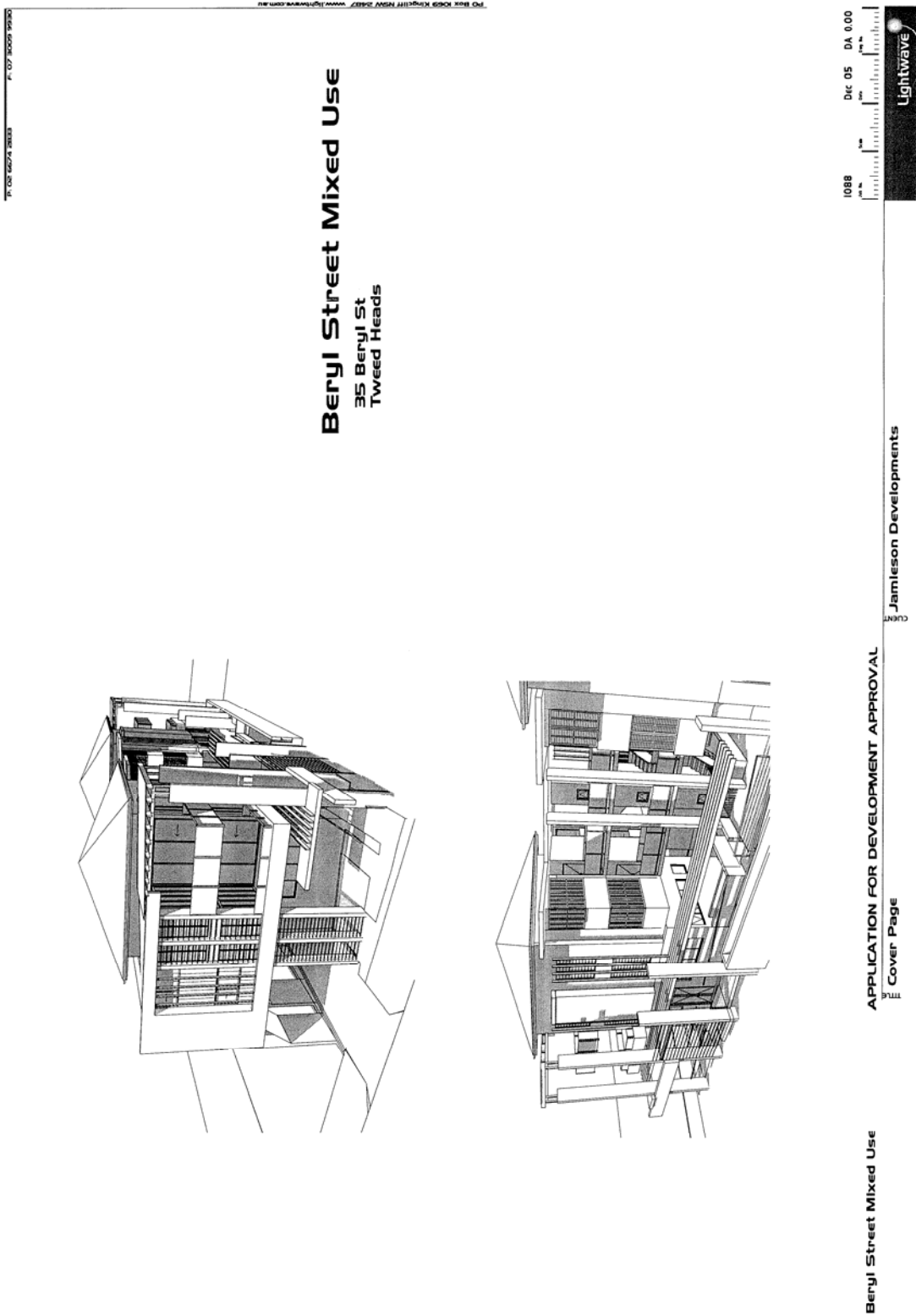
Little existing vegetation is evident on site with existing ornamental plantings scattered throughout the property. In terms of existing improvements, the site possesses an existing dwelling house. As established, Council has previously granted development consent for the demolition of this dwelling.

**SITE DIAGRAM:**

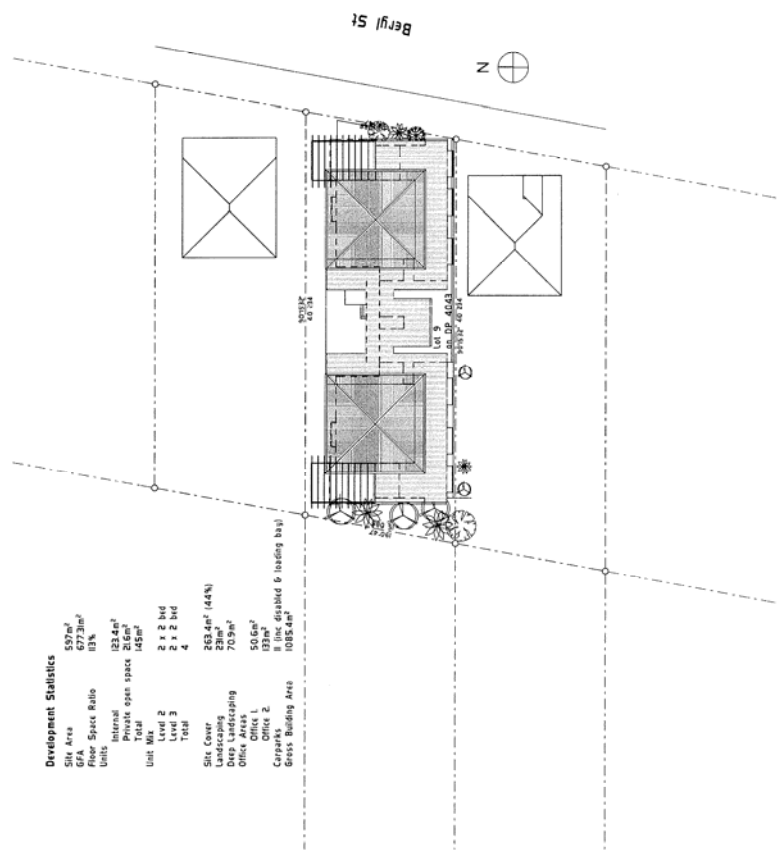


<p>© TWEED SHIRE COUNCIL 2006                  Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map.  <b>DO NOT SCALE</b>                  COPY ONLY - NOT CERTIFIED                  P.O. Box 816 Murwillumbah, NSW, 2484 Tel: (02) 6670 2409 Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i>  <b>Lot 9 Section 5 DP 4043</b>                  No. 35 Beryl Street, Tweed Heads</p>		<p>PLANNING REFORMS UNIT  <b>Site Plan</b>                  Sheet: 1 of 1</p>
<p>File: N:\Munsys\A4P - SITE PLAN.Wor</p>		<p>Author: J.Batchelor Date: 15/Nov/2006 Scale: 1:5,000</p>	

DEVELOPMENT PLANS:



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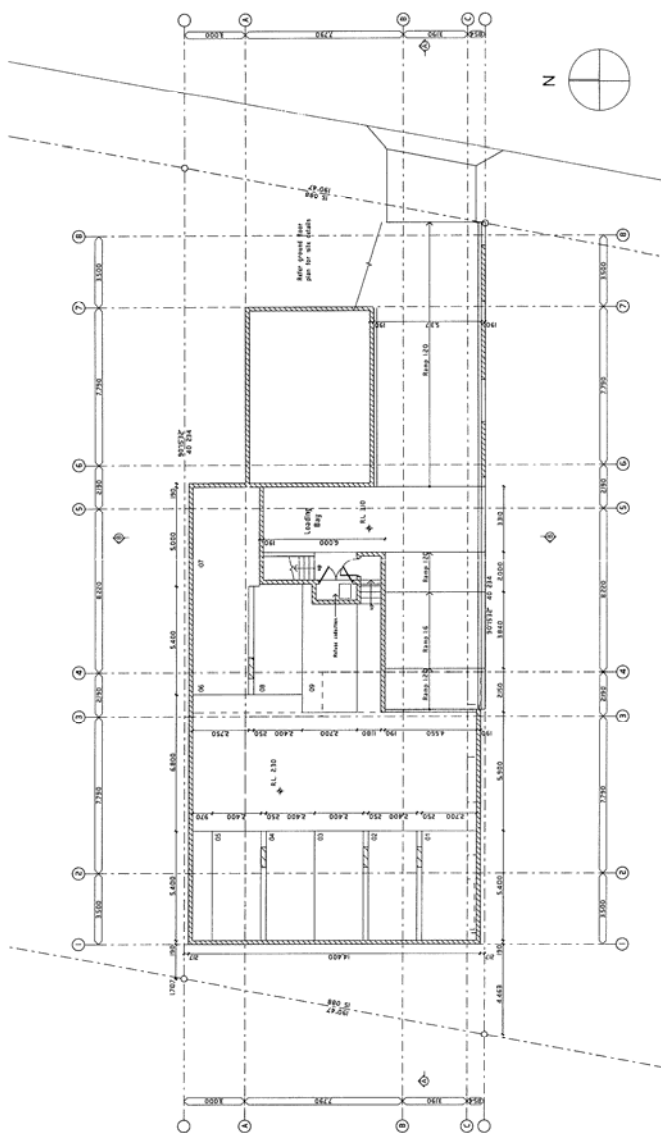
**Development Statistics**

Site Area	597m <sup>2</sup>
Floor Space Ratio	0.31%
Units	12
Internal open space	124m <sup>2</sup>
Total	145m <sup>2</sup>
Unit Mix	2 x 2 bed
	2 x 2 bed
	4
Site Cover	262.4m <sup>2</sup> (44%)
Landscaping	23m <sup>2</sup>
Deep Landscaping	70.9m <sup>2</sup>
Office Area	50.6m <sup>2</sup>
Office 1	13m <sup>2</sup>
Office 2	13m <sup>2</sup>
Carparks	11 (inc disabled & loading bay)
Gross Building Area	1085.4m <sup>2</sup>

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 1400 @ A3  
 Lightwave

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

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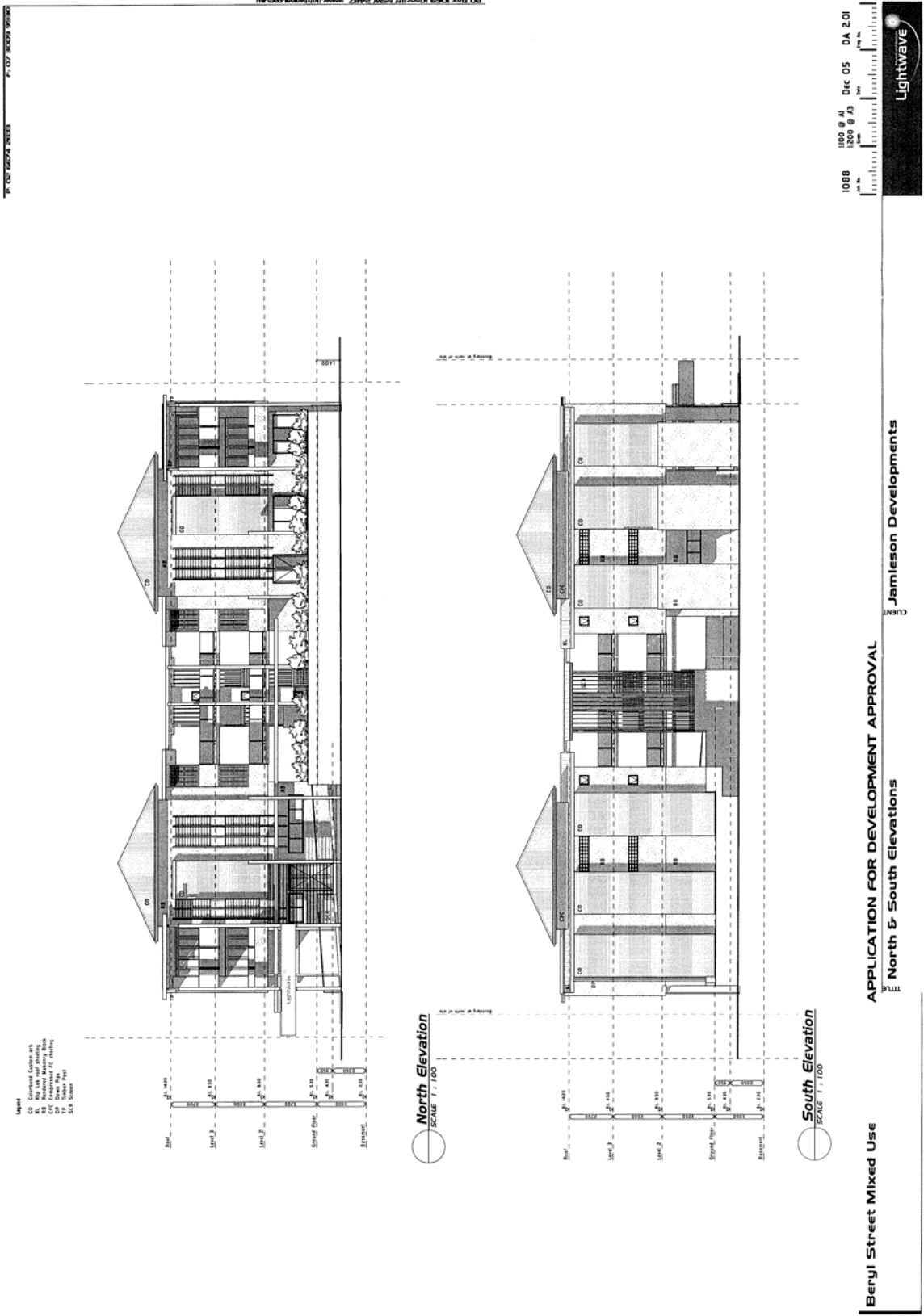
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APPLICATION FOR DEVELOPMENT APPROVAL  
Basement Plan  
CLIENT Jamieson Developments

Beryl Street Mixed Use

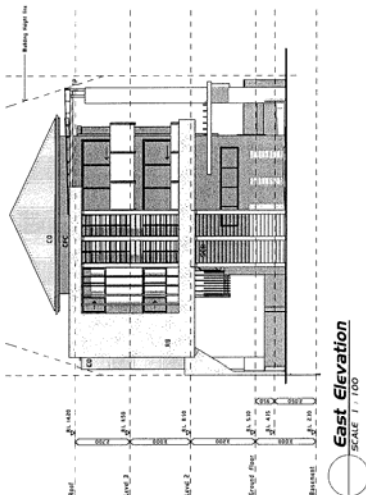




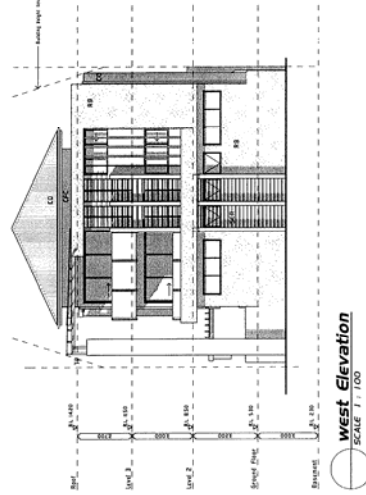
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**Legend**  
CO - Commercial Centre Use  
R1 - Residential Medium Density  
R2 - Residential Medium Density  
R3 - Residential Medium Density  
R4 - Residential Medium Density  
R5 - Residential Medium Density  
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R99 - Residential Medium Density  
R100 - Residential Medium Density



**East Elevation**  
SCALE 1:100



**West Elevation**  
SCALE 1:100

Beryl Street Mixed Use

APPLICATION FOR DEVELOPMENT APPROVAL  
East & West Elevations

Jamieson Developments  
CLIENT

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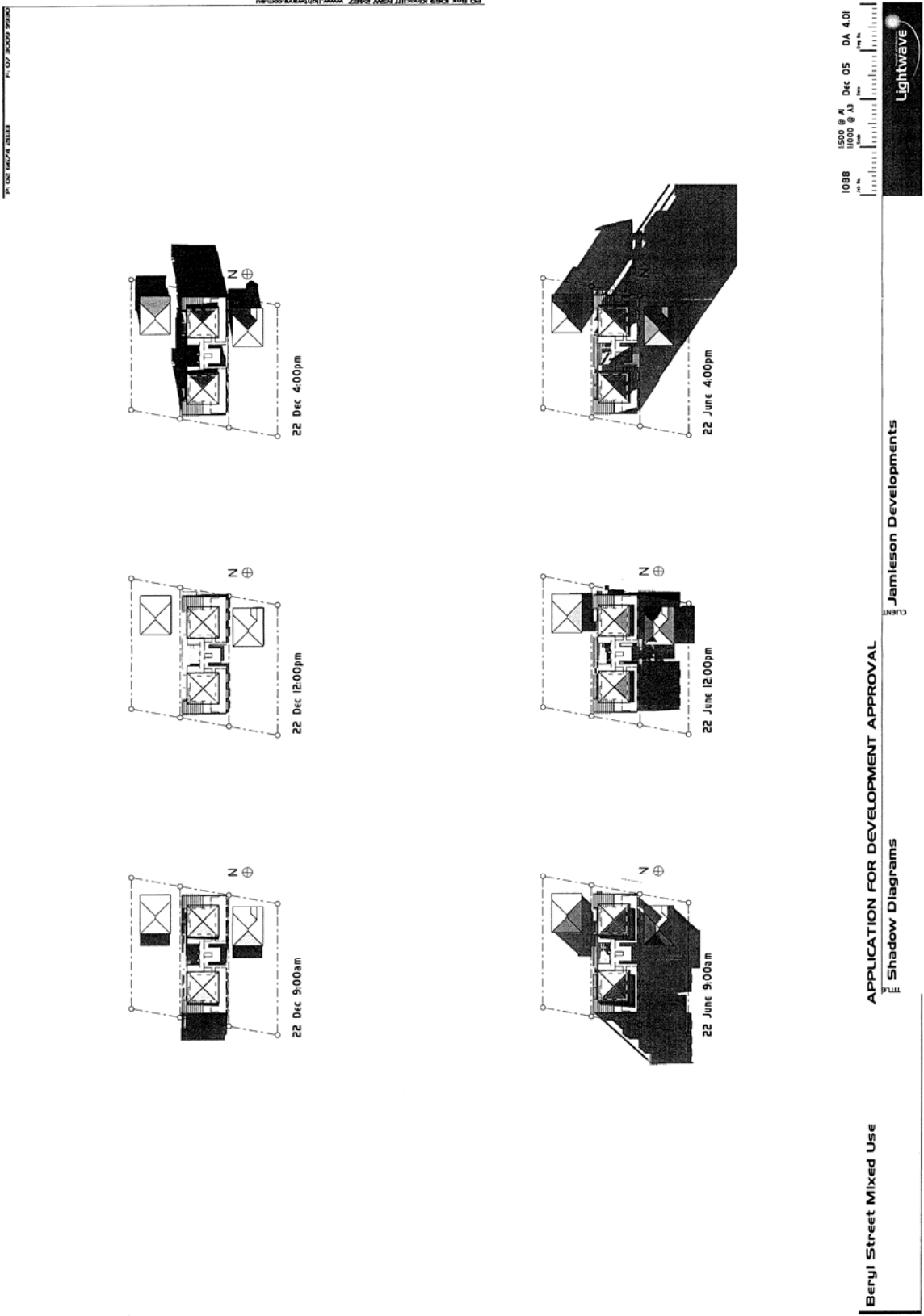
CLIENT  
**Jamieson Developments**

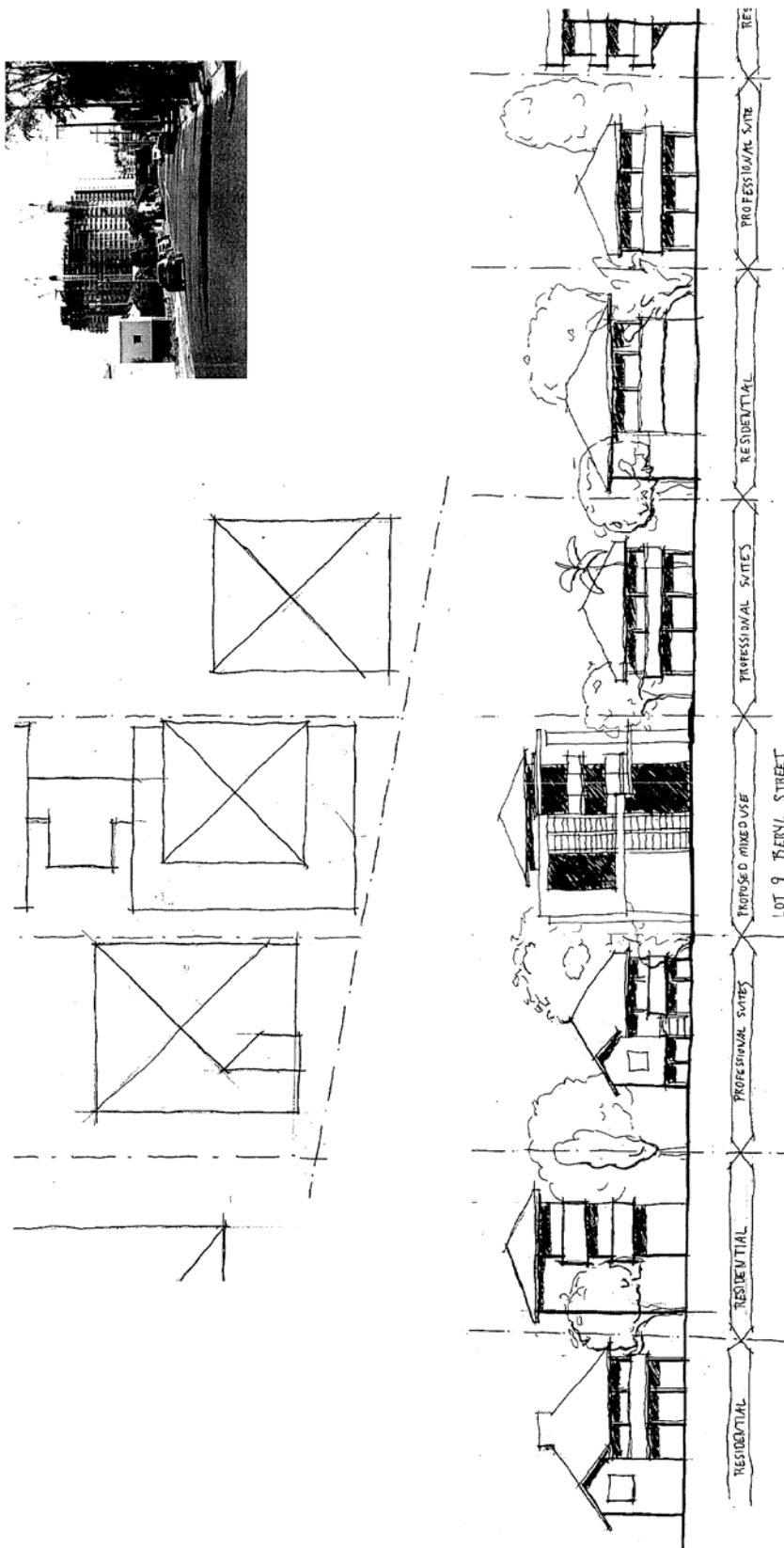
**Beryl Street Mixed Use**

**APPLICATION FOR DEVELOPMENT APPROVAL**  
**Sections A & B**

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P10 602 0059 10883 P10 602 0059 10883





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

JOB NO. 1088  
 PAGE NO. P08



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

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

Tweed Local Environmental Plan 2000

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

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

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

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

State Environmental Planning Policy No.1 – Development Standards

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

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

***(1) Objective***

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

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

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

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

- (3) *Buildings proposed to be erected on land to which this clause applies must not exceed the floor space ratios (FSR's) in the following Table:*
- (4) *In order to achieve the maximum floor space ratio contained in Column 4 of the Table, a development must provide bonuses as specified in Development Control Plan No 18—Tweed Heads, as in force on the appointed day.*

The proposed development has a floor space ratio of 1.13:1 which exceeds the prescribed floor space ratio of 1:1 as identified above. In this regard, the property has an area of 597m<sup>2</sup> whilst the building itself will have a gross floor area of 677m<sup>2</sup> and will exceed the prescribed FSR by 80m<sup>2</sup>.

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

- *The increase will not result in any significant additional bulk or scale of the final development;*
- *Considering that the current LEP has a maximum height limit in this area of 12 storeys, it is reasonable to expect larger building in the area. The proposal will be of a relatively small scale having regard to the development potential of the site;*
- *The additional 80m<sup>2</sup> of floor area will not detract from the rejuvenation of the 3(a) or 3(b) zoned areas of Tweed Heads.*

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

The level of variation is minor in nature amounting to approximately 80m<sup>2</sup> of floor area and will not adversely impact of the amenity of the area or the future redevelopment and revitalisation of the Tweed Heads CBD.

### State Environmental Planning Policy No.65 – Residential Flat Buildings

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

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

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

#### **Design Principle 1 – Context**

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

#### **Design Principle 2 – Scale**

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

#### **Design Principle 3 – Built Form**

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

#### **Design Principle 4 – Density**

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

#### **Design Principle 5 – Environmental Issues**

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

#### **Design Principle 6 – Landscaping**

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



### **Design Principle 7 – Amenity**

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

### **Design Principle 8 – Safety and Security**

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

### **Design Principle 9 – Social Dimensions**

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

### **Design Principle 10 – Aesthetics**

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

### Assessment

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

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

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

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

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

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

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

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

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

#### North Coast Regional Environmental Plan 1988

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

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

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

#### Draft LEP Amendment No.64

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

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

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

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

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

Development Control Plan No.2 – Car Parking Code

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

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

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

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

Development Control Plan No.18 – Tweed Heads

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

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

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

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

For the southern precinct, a height limit of three (3) storeys is prescribed for sites less than 2000m<sup>2</sup>. The proposed has a site area of 597m<sup>2</sup> and a maximum height of three (3) storeys and is therefore consistent with this provision.

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

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

<p>Clause 11 - Residential Design Guidelines</p> <ul style="list-style-type: none"> <li>• Building Mass</li> <li>• Energy Efficiency</li> <li>• Wind Mitigation</li> <li>• Overshadowing</li> <li>• Rooflines</li> <li>• Privacy</li> <li>• Security and Surveillance</li> </ul>	<p>The design of the proposed building mass achieves the objectives of the building mass provisions by articulating external walls and the inclusion of balconies such that continuous unbroken lengths do not exceed 15m.</p> <p>A NatHERS Certificate has been supplied with the application demonstrating that each proposed unit achieves or exceeds the minimum 3.5 star rating.</p> <p>The proposed building is considered unlikely to create any adverse wind effects at ground level.</p> <p>Whilst the proposed development will result in a considerable amount of overshadowing over the property to the south, the twelve (12) storey height limit currently applicable to the subject site suggests that a certain degree of overshadowing is inevitable. No objections were received on the grounds of overshadowing and on balance, the shadow impacts are considered reasonable – particularly given the height controls applicable to the site.</p> <p>The proposed roof design provides a visually interesting skyline and is considered to be consistent with the objectives of this provision. Pitched colourbond roofs are proposed to assist in maintaining the existing character of the area.</p> <p>The proposed building is not considered likely to present a significant risk of overlooking. The proposed balconies are offset and oriented in different directions to mitigate any potential adverse privacy issues internally. In terms of adjoining development, appropriate screening could be incorporated into the design to provide privacy screening of rear unit balconies.</p> <p>Street level casual surveillance is achieved by designing the units to address the street</p>
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<ul style="list-style-type: none"> <li>• Material and Colours</li> <li>• Access, Car Parking and Car Wash bays</li> <li>• Open Space and Balconies</li> </ul>	<p>frontages. Security measures will be implemented to limit access to basement car parks, lift foyers and open space areas. In addition, security lighting will be provided within the grounds together with intercom access to screen and admit guests to the building.</p> <p>Materials and colours for the proposed development will generally be of a non-reflective nature and are generally sympathetic to the heritage character of the street.</p> <p>A basement car park is to be provided as part of the proposed development. The car park is sufficient in meeting the relevant generation rates outlined in DCP 2. With regard to a car wash bay, Council's Development Engineer has recommended the handicapped car space proposed at ground level be amended to provide for wash down facilities. Suitable conditions to apply. The car parking arrangements are generally considered to be satisfactory.</p> <p>The proposed building comprises four (4) large units as defined by the DCP. Accordingly the proposal is required to provide a total of 100m<sup>2</sup> of landscaped open space.</p> <p>The proposal incorporates approximately 70m<sup>2</sup> of deep soil landscaping and at ground level with planter boxes and other non-deep soil landscaping also provided. In addition, approximately 88m<sup>2</sup> is provided as provided as useable private open space (in the form of a balcony), attached to the main living area of each dwelling.</p> <p>Accordingly it is submitted that the proposal exceeds the landscaped open space requirements of the DCP.</p>
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It is considered that the proposed development is generally consistent with the provisions of DCP 18 and the desired outcomes for the 'Southern Precinct'. The proposal generally complies with all development controls of the DCP as detailed above and is unlikely to result in any significant adverse impacts.

Development Control Plan No.39 - Energy Smart Homes Policy

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

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

NSW Coastal Policy 1997

The proposed development is consistent with all relevant strategic objectives of the Policy.

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

Context and Setting

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(e) Public interest**

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

**Options:**

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

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

**POLICY IMPLICATIONS:**

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

**CONCLUSION:**

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

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

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](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 DA06/0681 for the Erection of a Detached Dual Occupancy at Lot 8 DP 1070242, No. 8 Saddle Way, Murwillumbah**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA06/0681 Pt1**

**SUMMARY OF REPORT:**

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

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

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

**RECOMMENDATION:**

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

**GENERAL**

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

[GEN0005]

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

[GEN0045]

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

[GEN0115]

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

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

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

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

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

[PCC0895]

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

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

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

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

[PCC1145]

6. **Section 94 Contributions**

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

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

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

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

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

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

[PCC0215]

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

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

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

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

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

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

[PCC0265]

**PRIOR TO COMMENCEMENT OF WORK**

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

[PCW0215]



9. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing. [PCW0225]
10. Residential building work:
- (a) Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
- \* in the name and licence number of the principal contractor, and
  - \* the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
- \* the name of the owner-builder, and
  - \* if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.
- (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information. [PCW0235]
11. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every fifteen (15) persons or part of fifteen (15) persons employed at the site. Each toilet provided must be:-
- (a) a standard flushing toilet connected to a public sewer, or
- (b) if that is not practicable, an accredited sewage management facility approved by the council [PCW0245]
12. Where prescribed by the provisions of the Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the site is prohibited.

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

[PCW0255]

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

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

[PCW0775]

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

[PCW0965]

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

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

[PCW0985]

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

[PCW1065]

**DURING CONSTRUCTION**

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

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

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

[DUR0375]

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

[DUR0395]

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

[DUR0405]

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

[DUR0445]

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

[DUR0835]

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

[DUR0905]

24. All roofwaters are to be disposed of through properly jointed pipes to the street gutter, inter allotment drainage or to the satisfaction of the Principal Certifying Authority. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZS3500.3.2. Note - All roofwater must be connected to an inter allotment drainage system where applicable. [DUR2335]
25. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction: [DUR2335]
- (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]
26. **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]
27. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position. [DUR2505]
28. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard. [DUR2535]
29. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level. [DUR2545]
30. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-
- \* 43.5<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]

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

[DUR2615]

32. A Sewer manhole is present on this site. This manhole is not to be covered with soil or other material.  
Should additional fill be proposed in the area of the sewer manhole application shall be made to Council's Engineering & Operations Division for the raising of the manhole.

[DUR2655]

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

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

[POC0205]

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

[POC0235]

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

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

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

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

[POC0265]

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

[POC1045]

**USE**

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

[USE0235]

**REPORT:**

**Applicant:** C Edmed  
**Owner:** Mr CT Edmed  
**Location:** Lot 8 DP 1070242, No. 8 Saddle Way Murwillumbah  
**Zoning:** 2(c) Urban Expansion  
**Cost:** \$325000.00

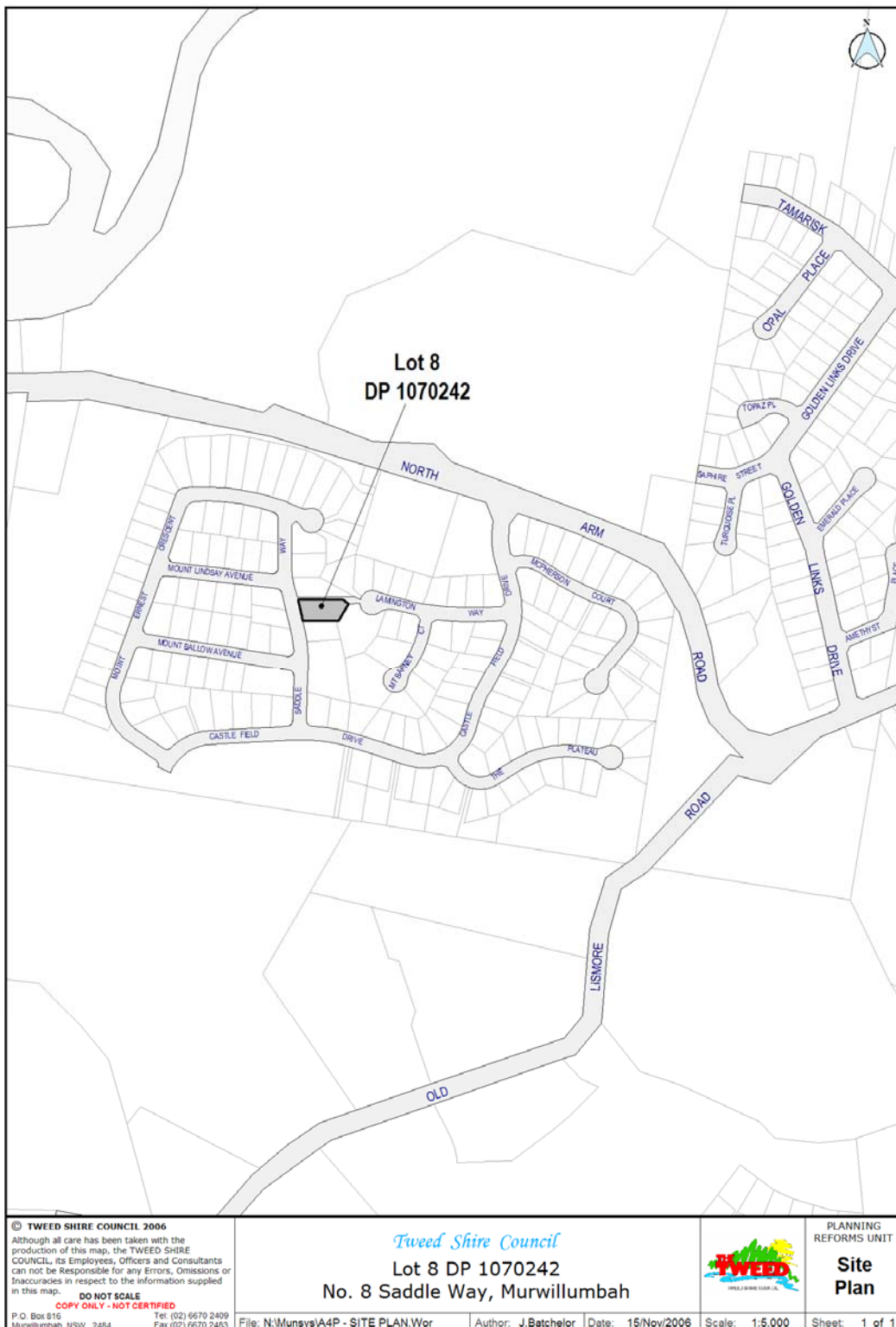
**BACKGROUND:**

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

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

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

**SITE DIAGRAM:**





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

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

**Tweed Local Environmental Plan 2000**

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

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

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

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

**Clause 17** of the TLEP requires Council to ensure proper consideration of development that may have a significant social or economic impact. The proposal is not considered likely to generate any significant social or economic impacts. Further assessment is not considered warranted.

**State Environmental Planning Policies**

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

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

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

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

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

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

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

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

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

### **Development Control Plan No.6 – Multi Dwelling Housing**

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

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

### Streetscape

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

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

### Summary

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

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

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

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

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

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

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

**Development Control Plan No. 44 - Dual Occupancy Development**

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

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

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

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

**Context & Setting**

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

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

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

The density of the development is one unit per 526m<sup>2</sup> of site area, which given the physical constraints of the site is appropriate. The land is elongated east west & slopes gently to the north, however a steep bank on the south allows the development to 'nestle' into the site.

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

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

Suitability of the Lot for Dual Occupancy Development

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

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

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

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

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

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

**(e) Public interest**

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

**OPTIONS:**

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

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The proposal has been thoroughly assessed and is considered to be suitable to the site, unlikely to cause any significant negative impacts to the surrounding built and natural environment and meets all of Council's applicable requirements within the TLEP and relevant DCP's. The application has been assessed by Council's Technical Officers, with no objections being raised subject to the attached conditions of development consent. The proposed dual occupancy is therefore recommended for approval.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](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 DA06/0398 for a Tennis Court at Lot 801 DP 1090130, No. 1-25 Bells Boulevard, Kingscliff**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA06/0398 Pt1**

**SUMMARY OF REPORT:**

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

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

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

**RECOMMENDATION:**

**That Development Application DA06/0398 for a tennis court at Lot 801 DP 1090130, No. 1-25 Bells Boulevard Kingscliff be approved subject to the following conditions: -**

**GENERAL**

- 1. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.** [GEN0115]
- 2. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos PP 304 and LP 204 prepared by EDAW Gillespies and dated December 2005, except where varied by the conditions of this consent.** [GEN0005]
- 3. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within or adjacent to the subject property.** [GEN0135]
- 4. No lighting of the tennis court is approved by this application.**
- 5. No commercial or competition play of tennis is permitted by this consent.**

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

[GENNS01]

**PRIOR TO COMMENCEMENT OF WORK**

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

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

[PCW0215]

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

[PCW0225]

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

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

[PCW0255]

#### **DURING CONSTRUCTION**

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

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

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

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

[DUR0205]

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

[DUR0375]

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

[DUR0405]

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

[DUR1045]

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

[DURNS01]

**PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

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

[POC0205]

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

[POC0475]

**USE**

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

[USE0125]

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

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

[USE0185]

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

[USE0305]

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

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

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

[USENS01]

**REPORT:**

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

**BACKGROUND:**

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

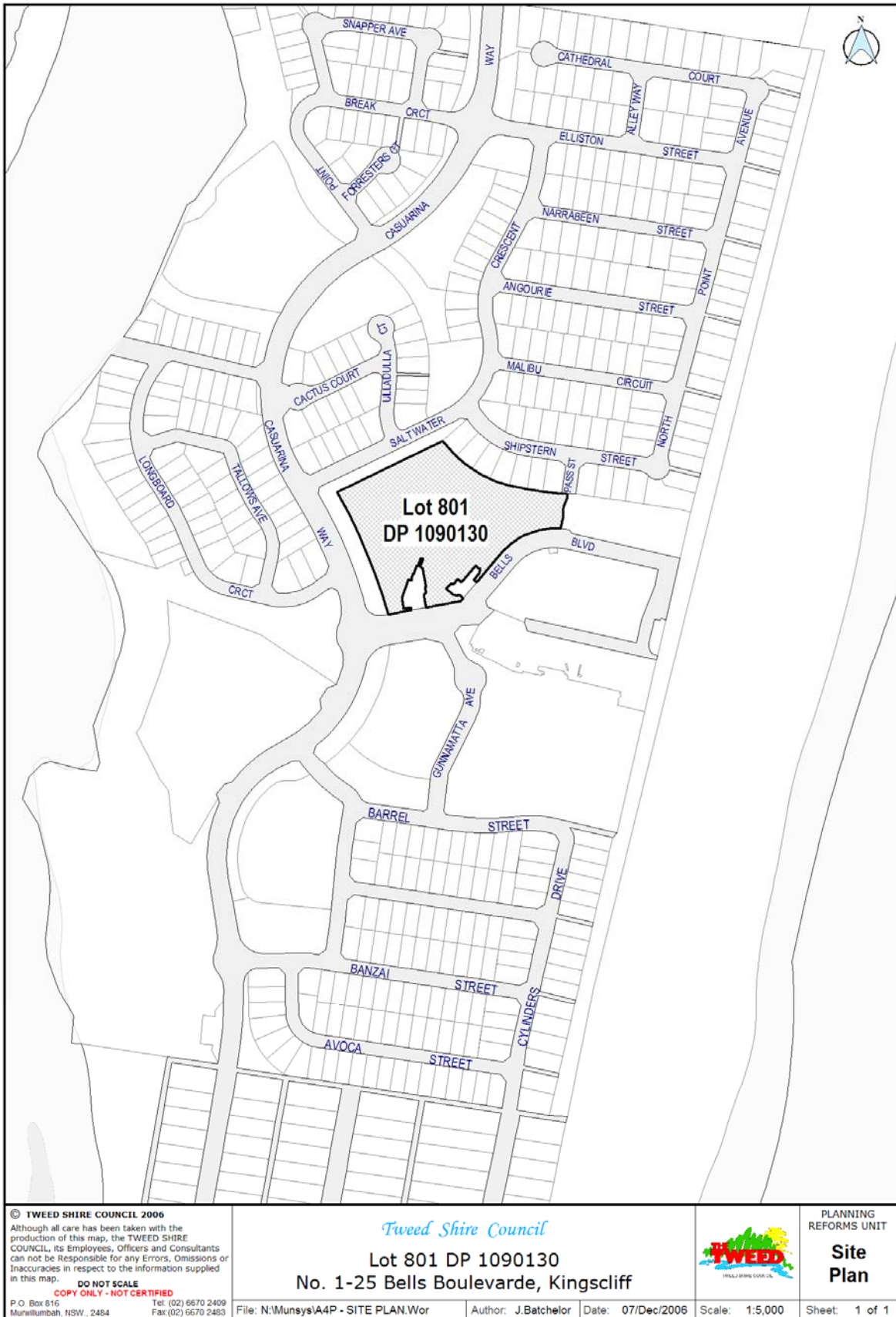
The proposed tennis court is approximately 60m<sup>2</sup> and will be surrounded by a 3.6 metre high perimeter fence. The surface of the court will be concrete covered in artificial grass and sand. The application proposes no lighting of the court and would cater to resort guests only. Additional works sought by the application include a new fence on the property boundary, comprising a retaining wall and timber screen fencing, and landscaping and tree planting.


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

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

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

**SITE DIAGRAM:**



<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 816                  Murwillumbah, NSW, 2484                  Tel: (02) 6670 2409                  Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i></p> <p><b>Lot 801 DP 1090130</b>  <b>No. 1-25 Bells Boulevard, Kingscliff</b></p>	<p>PLANNING REFORMS UNIT</p>  <p><b>Site Plan</b></p> <p>File: N:\Munsys\A4P - SITE PLAN.Wor Author: J.Batchelor Date: 07/Dec/2006 Scale: 1:5,000 Sheet: 1 of 1</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 development site is zoned 2(f) Tourism under the provisions of the Tweed LEP 2000. The application seeks a tennis court ancillary to a tourist resort, permissible with consent in the zone. The development is consistent with the zone objectives, which provide for uses ancillary to high quality tourist development.

North Coast Regional Environmental Plan 1988

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

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

State Environmental Planning Policy No. 71 – Coastal Protection

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

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

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

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

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

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

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

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

Noise

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(e) Public interest**

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

**OPTIONS:**

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

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](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] Development Application DA06/0282 for a Child Care Centre at Lot 12 DP 830659, Chinderah Road, Chinderah**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA06/0282 Pt1**

**SUMMARY OF REPORT:**

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

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

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

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

**RECOMMENDATION:**

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

**GENERAL**

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

[GEN0005]

2. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.  
[GEN0045]
3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.  
[GEN0115]
4. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within or adjacent to the subject property.  
[GEN0135]
5. Prior to commencement of work pursuant to this consent, a Construction Certificate shall be obtained for the following civil works:
  - a) Extension of water and sewerage infrastructure to service the development.  
[GENNS01]
6. The premise shall be constructed and operated in accordance with the Acoustic Report, Craig Hill & Associates, 16 January 2006 (including requirements for shielding of air conditioners, provision of laminated glass, carpeting external balconies). Prior to issue of an occupation certificate or use of the centre Council shall be provided with a statement from a suitably qualified person which confirms that the centre has been constructed in accordance with the recommendations and requirements of the Acoustic Report.  
[GENNS02]

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

7. All roof waters are to be disposed of through properly jointed pipes to the street gutter, inter-allotment drainage, or elsewhere if so directed in the conditions of consent. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZ3500.3.2. Note: A detailed stormwater and drainage plan is to be submitted to and approved by the PCA prior to commencement of building works.  
[PCC1115]
8. **Section 94 Contributions**  
Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

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

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

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

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

**Stage 1**

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

Sector6\_4

Heavy Haulage Component

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

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

where:

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

and:

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

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

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

Admin. Administration component - 5% - see Section 6.5

**Stage 2**

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

Sector6\_4

Heavy Haulage Component

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

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

where:

**\$Con** <sub>TRCP - Heavy</sub> heavy haulage contribution

and:

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

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

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

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

[PCC0215/PSC0175]

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

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

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

**Stage 1**

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

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

**Stage 2**

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

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

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

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

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

[PCC0265/PSC0165]

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

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

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

[PCC0065]

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

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

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

[PCC0455]

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

[PCC0465]

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

Please note timber retaining walls are not permitted.

[PCC0475]

14. a) All fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided to ensure minimal impact on adjoining properties. If filling is required, a plan of proposed drainage is to be submitted and approved by the PCA prior to the issue of a construction certificate. Drainage must be installed and operational prior to commencement of any building work.  
All fill and cut batters shall be maintained wholly within the subject land. Detailed engineering plans of fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.
- b) Maximum batter slope shall be 1:2 (vertical:horizontal)
- c) Filling shall be minimized in the "Play Ground and Activities Area", to provide a smooth level transition between the filled building pads of the two buildings and existing levels in the Ozone Street Road Reserve to the south. Stormwater runoff from this area may discharge to the Ozone Street Road Reserve, and need not be graded or otherwise diverted to the Chinderah Road Reserve to the east. Batter height on the Ozone Street Road Reserve boundary should not exceed 300mm, to account for local variability in existing ground levels. This batter height limit does not apply in the 6m wide setback areas around "Stage 2" building.
- d) All site filling and bulk earthworks shall be completed as part of the Stage 1 works.

[PCC0485]

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

[PCC0585]

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

[PCC0705]

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

[PCC0865]

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

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

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

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

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

[PCC0895]

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

(a) copies of compliance certificates relied upon

(b) four (4) copies of detailed engineering plans and specifications.

The detailed plans shall include but are not limited to the following:

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

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

[PCC0985]

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

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

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

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

(d) Specific Requirements to be detailed within the Construction certificate application include:

(i) Shake down area along the haul route immediately before the intersection with the road reserve.

[PCC1105]



21. A construction certificate application for works that involve any of the following:-
- connection of a private stormwater drain to a public stormwater drain
  - installation of stormwater quality control devices
  - erosion and sediment control works

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

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

[PCC1145]

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

[PCC1155]

**PRIOR TO COMMENCEMENT OF WORK**

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

- (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
- (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
  - (ii) notified the principal certifying authority of any such appointment, and
  - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.
- [PCW0215]
24. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.
- [PCW0225]
25. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every fifteen (15) persons or part of fifteen (15) persons employed at the site. Each toilet provided must be:-
- (a) a standard flushing toilet connected to a public sewer, or
  - (b) if that is not practicable, an accredited sewage management facility approved by the council
- [PCW0245]
26. Where prescribed by the provisions of the Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
  - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (c) stating that unauthorised entry to the site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- [PCW0255]
27. Please note that while the proposal, subject to the conditions of approval, may comply with the provisions of the Building Code of Australia for persons with disabilities your attention is drawn to the Disability Discrimination Act which may contain requirements in excess of those under the Building Code of Australia. It is therefore recommended that these provisions be investigated prior to start of works to determine the necessity for them to be incorporated within the design.
- [PCW0665]

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

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

[PCW0775]

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

[PCW1065]

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

[PCW0005]

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

[PCW0705]

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

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

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

- [PCW0985]
33. All imported fill material shall be from an approved source. Prior to commencement of filling operations details of the source of fill shall be submitted to the satisfaction of the General Manager of his delegate. Once the approved haul route has been identified, payment of the Heavy Haulage Contribution calculated in accordance with Section 94 Plan No 4 will be required prior to commencement of works

[PCWNS01]

#### **DURING CONSTRUCTION**

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

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

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

[DUR0205]

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

[DUR0375]

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

[DUR0395]

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

[DUR0405]

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

[DUR0415]

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

[DUR0445]

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

[DUR0815]

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

48. A garbage storage area shall be provided in accordance with Council's "Code for Storage and Disposal of Garbage and Other Solid Waste".  
[DUR2195]
49. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:
- (a) internal drainage, prior to slab preparation;
  - (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
  - (c) external drainage prior to backfilling.
  - (d) completion of work and prior to occupation of the building.  
[DUR2485]
50. **Plumbing**
- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
  - (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.  
[DUR2495]
51. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position.  
[DUR2505]
52. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard.  
[DUR2535]
53. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.  
[DUR2545]
54. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-
- \* 43.5<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]
55. Where two (2) or more premises are connected by means of a single water service pipe, individual water meters shall be installed to each premise beyond the single Council water meter (*unless all the premises are occupied by a single household or firm*).  
[DUR2615]
-

56. All proposed works to be undertaken are to be carried out in accordance with the conditions of development consent, approved construction certificate, drawings and specifications. [DUR0005]
57. All fill and cut batters shall be contained wholly within the subject land. [DUR0825]
58. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council. [DUR0985]
59. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate. [DUR0995]
60. All work associated with this approval is to be carried out so as not to impact on the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -
- Noise, water or air pollution
  - Minimise impact from dust during filling operations and also from construction vehicles
  - No material is removed from the site by wind
- [DUR1005]
61. Subject to the requirements of the local electricity authority, all electrical wiring, power outlets, switches, etc, should, to the maximum extent possible be located above the design flood level. All electrical wiring installed below the design flood level shall be provided with earth leakage devices. [DUR1415]
62. A concrete ribbon footpath 1.2 metres wide and 100 millimetres thick is to be constructed on a compacted base along the entire frontage of the site to Chinderah Road in accordance with Councils adopted Development Design and Construction Specification. Twenty four (24) hours notice is to be given to Council's Engineering & Operations Division before placement of concrete to enable formwork to be inspected. Failure to do so may result in rejection of the works and its reconstruction. [DUR1735]
63. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742.3-2202 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works. [DUR1795]

64. Before the commencement of the relevant stages of road construction, reports shall be submitted to Council from a Registered NATA Consultant demonstrating.
- (a) That the pavement has been designed and constructed in accordance with Tweed Shire Councils adopted Construction and Design Specification, D2.
  - (b) That the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils adopted Design and Construction Specifications, C242-C245, C247, C248 and C255.
- [DUR1805]
65. During the relevant stages of road construction, reports shall be submitted to the PCA by a Registered NATA Geotechnical firm demonstrating.
- (a) That the pavement layers have been compacted in accordance with Councils adopted Design and Construction Specifications.
  - (b) That pavement testing has been completed in accordance with Table 8.1 of AS 3798 including the provision of a core profile for the full depth of the pavement.
- [DUR1825]
66. The footpath area is to be graded to the kerb and turfed for the full frontage of the site, exclusive of any other path paving or infrastructure requirements.
- [DUR1865]
67. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils adopted Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.
- [DUR1875]
68. All stormwater gully lintels shall have the following notice cast into the top of the lintel: 'DUMP NO RUBBISH, FLOWS INTO CREEK' or similar wording in accordance with Councils adopted Design and Construction Specification.
- [DUR2355]
69. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction. Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.
- This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.
- [DUR2375]



70. During construction, a "satisfactory inspection report" is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection. [DUR2445]
71. Construction of water and sewerage infrastructure in Chinderah Road shall be carried out in accordance with the requirements of DCP 16, including all nominated testing procedures. [DURNS01]
72. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:
- A. Short Term Period - 4 weeks.
- L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.
- B. Long term period - the duration.
- L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence. [DUR0215]
73. All battered areas are to be topsoiled and grassed, or other suitable protection provided as soon as filling is placed adjacent to neighbouring properties. [DUR0805]
74. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development. [DUR1025]
75. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction. [DUR2185]
76. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials. A screened, graded and drained garbage storage area shall be provided within the boundary. [DUR2205]
77. Vehicles leaving the premises shall be sufficiently free from dirt, aggregate or other materials such that materials are not transported onto public roads. [DUR2415]

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

[DURNS02]

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

[DURNS03]

**PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

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

[POC0205]

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

[POC0225]

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

[POC0235]

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

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

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

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

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

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

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

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

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

- [POC0765]
86. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all s68h2 permanent stormwater quality control devices.

- [POC0985]
87. Prior to the issue of a final occupation certificate, all conditions of consent are to be met.

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

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

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

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

[POCNS02]

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

[POCNS03]

91. Electricity

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

[POCNS04]

**USE**

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

[USE0125]

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

[USE0175]

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

[USE0185]

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

[USE0205]

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

[USE0965]

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

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

[USENS01]

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

[USENS02]

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

[USENS03]

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

[USENS04]

**REPORT:**

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

**BACKGROUND:**

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

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

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

This application proposes the establishment of a child care centre that will ultimately accommodate 180 children. The proposal will be developed in two stages. Each stage involves a separate stand-alone building that will cater for a total of 90 children each. Each building will have its own reception, offices, staff room and kitchen totalling 581.3m<sup>2</sup> each. Each building will be able to accommodate 48 pre-school age children, 32 toddlers, and 10 babies.

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

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

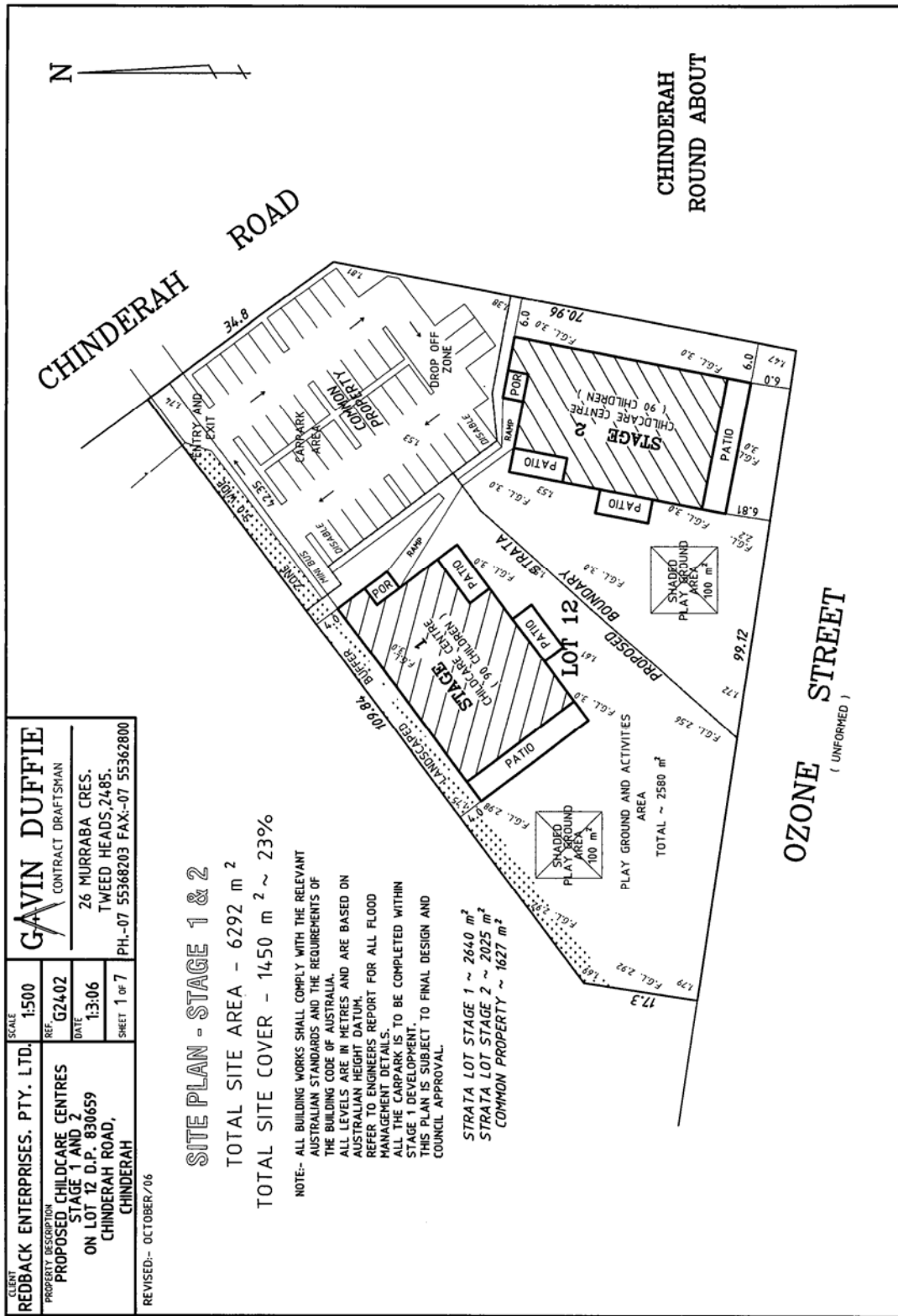
The applicant proposes that the child care centre will operate between the hours of 6.30am and 6.30pm.

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

**SITE DIAGRAM:**



**SITE LAYOUT PLAN:**





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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Appropriate conditions of consent have been recommended.

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

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

North Coast Regional Environmental Plan 1988

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

State Environmental Planning Policies

State Environmental Planning Policy No. 11 Traffic Generating Development

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

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

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

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

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

Council's Traffic and Transport Engineer advised that

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

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

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

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

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

Council’s Traffic and Transport Engineer further provided that

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

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

State Environmental Planning Policy No. 71 – Coastal Protection

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

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

There are no draft EPIs of significance to this proposal.

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

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

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

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

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

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

Development Control Plan No. 26 – Childcare Centres

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

*2.1 Residential Areas*

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

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

The DCP states:

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

- (i) *The lot has a minimum area of 800m<sup>2</sup>, a 3.0 metre perimeter landscape buffer with adjacent properties and a minimum 1.8 metre high intervening fence. If the proposed building and play areas comprising the Child Care Centre are 10 metres or more from any adjacent dwelling, then the 3.0 metre landscape buffer and 1.8 metre high fence is not required. Some landscaping and fencing will still be required, however, each application will be treated on its own merits;*
- (ii) *The applicant can demonstrate that noise emanating from the use of the child care centre will not be detrimental to the amenity of adjacent residents;*
- (iii) *Car parking is provided in such locations that will minimise disturbance to adjacent neighbours by the frequent arrival and departure of cars; and*
- (iv) *The overall traffic impact to the immediate neighbourhood is not detrimental to the amenity.*

The site has an area of 6292m<sup>2</sup> and includes a minimum 3-metre setback to all boundaries, which can accommodate landscaping and fencing on residential boundaries.

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

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

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

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

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

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

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

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

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

*No objection, subject to conditions.*

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

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

The proposed development was notified for a period of 14 days, during which six submissions were received. These are discussed later in this report.

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

**NSW Coastal Policy**

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

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

Noise Impact

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

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

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

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

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

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

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



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

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

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

#### Contributions

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

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

#### Allotment Drainage

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

Council's Infrastructure Engineer has provided comments as follows;

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

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

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

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

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

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

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

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

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

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

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

**(e) Public interest**

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

**OPTIONS:**

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

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](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 DA04/0099.06 for an amendment to Development Consent DA04/0099 for childcare facility at Lot 110 DP 728119, Carraboi Terrace Tyalgum**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA04/0099 Pt1**

**SUMMARY OF REPORT:**

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

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

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

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

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

And further ancillary amendments:

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

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

**RECOMMENDATION:**

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

**1. Condition No.1, which currently reads;**

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

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

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

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

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

**3. Condition No. 40, which currently reads;**

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

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



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

**REPORT:**

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

**BACKGROUND:**

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

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

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

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

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

Play Area 1

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

Play Area 2

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

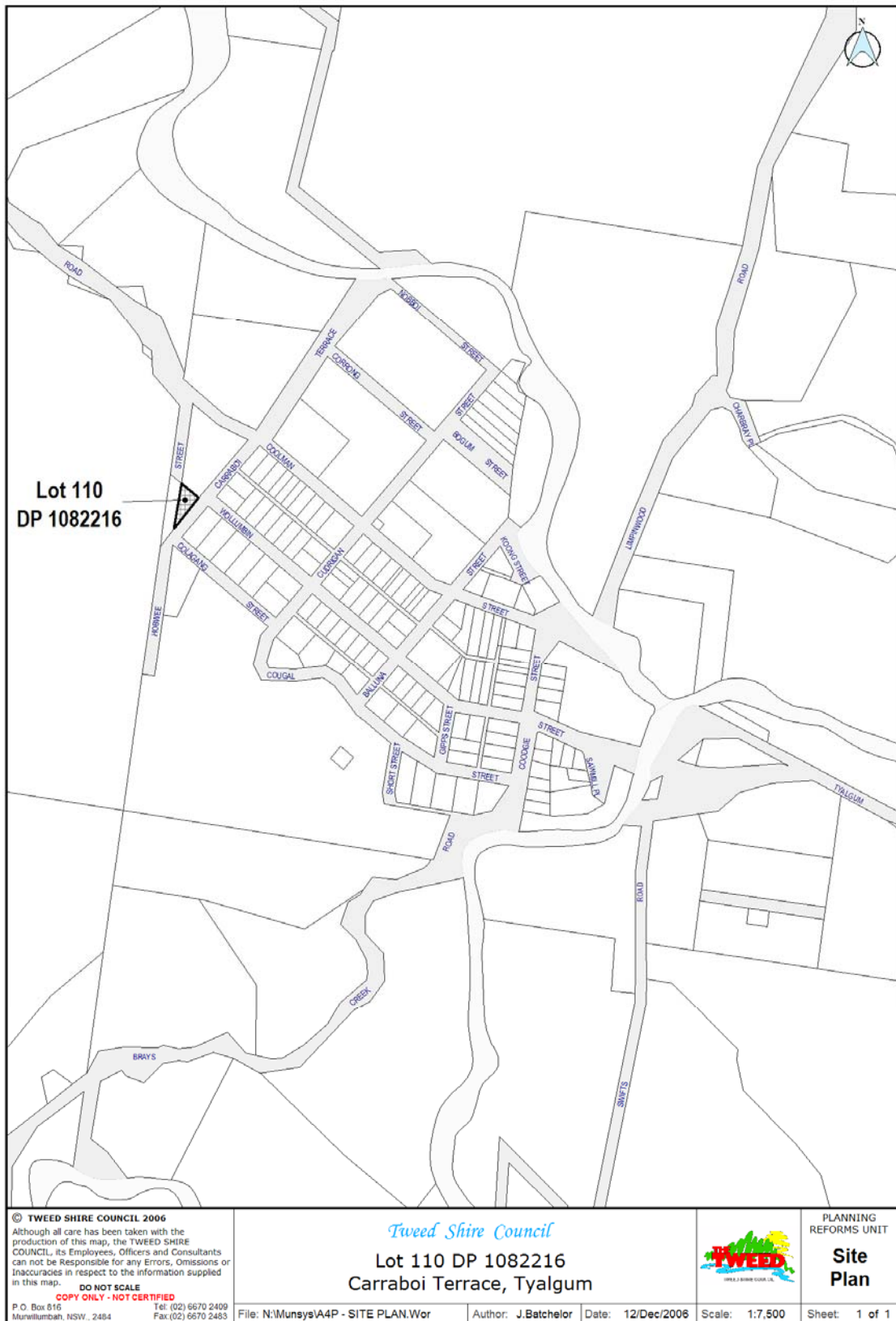
And further ancillary amendments:

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

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

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

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

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

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

North Coast Regional Environmental Plan 1988

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

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

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

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

Development Control Plan No.2 - Access and Parking Code

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

Development Control Plan No.26 - Childcare Centres

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

Development Control Plan No. 42 Public Notification Policy

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

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

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

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

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

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

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

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

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

The site is considered suitable for the development as proposed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

**(e) Public interest**

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

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

### Minimal Environmental Impact

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

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

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

### Substantially the same Development

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

### Notification & Consideration of Submissions

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

### **OPTIONS:**

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

### **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

### **POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The proposed amendments have been investigated and are considered to be suitable to the site; unlikely to cause any significant negative impacts to the surrounding built and natural environment and meets all of Council's applicable requirements within the LEP and relevant DCPs. Council's technical officers have assessed the application with no objections being raised subject to the recommendation of this report being upheld. The proposed Section 96 amendment is therefore considered to warrant approval.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](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] Section 96 Application D96/0519.04 for an Amendment to Development Consent D96/0519 for an Integrated Tourist Resort at Lot 5 DP 789875 No. 191-217 Cobaki Road, Cobaki; Lot 5 DP 822786 Marana Street; Lot 31 DP 850230, Conmurra Avenue, Bilambil**

**ORIGIN:**

**Development Assessment**

**FILE NO: PF3300/25 Pt5**

**SUMMARY OF REPORT:**

Council is in receipt of a S96 Application, which seeks approval to amend Condition 72 of D96/0519 (as amended).

D96/0519 approved the redevelopment of the former Terranora Lakes Country Club and establishment of an integrated, international standard Tourist Resort comprising 960 accommodation units and associated services and facilities, including Golf Course, Sports Centre, Village Square and Environmental Centre.

The current amendment is sought to withhold consent for Stage 3 through to Stage 7 until such time as the Cobaki Parkway and its connection to Piggabeen Road and the Tugun Bypass has been constructed. The consent currently restricts Stages 4 through to Stage 7, however, withholding Stage 3 through to Stage 7 will free up traffic capacity within the Kennedy Drive Catchment to allow the same developer to proceed with DA05/1351, which seeks approval for a 76-lot subdivision on an adjoining block of land.

Key issues for assessment include traffic and transport considerations and the validity of D96/0519. These issues have been satisfactorily addressed and on balance, the proposal is considered suitable for conditional approval.

**RECOMMENDATION:**

**That Section 96 Application D96/0519.04 for an amendment to Development Consent D96/0519 (as amended) for an integrated tourist resort at Lot 5 DP 789875 No. 191-217 Cobaki Road; Cobaki; Lot 5 DP 822786 Marana Street; Lot 31 DP 850230, Conmurra Avenue, Bilambil be approved subject to the following amendments: -**

**Delete Condition 72 and replace it with Condition 72A which reads as follows:**

**72A. The commencement of Stage 3 of the development is prohibited until the Cobaki Parkway and its connection to Piggabeen Road and the Tugun Bypass has been constructed.**

**REPORT:**

**Applicant:** Terranora Group Management Pty Ltd  
**Owner:** Terranora Group Management Pty Ltd  
**Location:** Lot 5 DP 789875 No. 191-217 Cobaki Road; Cobaki; Lot 5 DP 822786 Marana Street; Lot 31 DP 850230, Conmurra Avenue, Bilambil  
**Zoning:** Part 1(a) Rural, Part 2(c) Urban Expansion, Part 7(d) Environmental Protection, & Part 6(b) Recreation  
**Cost:** \$74 Million

**BACKGROUND:**

At the Ordinary Meeting of Tweed Shire Council on 2 July 1997 an assessment report was considered on a proposed redevelopment of the former Terranora Lakes Country Club and establishment of an integrated, international standard Tourist Resort comprising 960 accommodation units and associated services and facilities, including Golf Course, Sports Centre, Village Square and Environmental Centre.

Following consideration of the report Council voted to approve the application subject to conditions of consent. The formal determination notice was sent to the applicant on 7 July 1997.

On 7 July 1999 Council considered an amendment to this consent to extend the validity of the consent for a further 12 months as permitted by the Legislation and amend the payment of contributions to reflect the proposed extension. Council supported this amendment thus extending the validity of the consent till 7 July 2000.

On 11 May 2001 Council received a second amendment to D96/0519 (0059/2001S96). This amendment sought to make several changes to the layout and staging of the proposal. However, initially Council had to consider the validity of the consent.

Council at its Extra Ordinary Meeting considered a Confidential Report (now also attached under the Confidential Agenda) on Wednesday 27 June 2001, regarding whether the consent lapsed on 7 July 2000.

The Council resolved

That :-

1. Council accepts the advice of Mr Peter Graham QC dated 13 June 2001 and on that basis, acknowledges that development consent 96/519 for an Integrated Tourist Resort at Lot 5 DP 822786, Lot 31 DP 850230 Marana Street and Part Lot 5 DP 789875 Cobaki Road, Bilambil Heights has commenced and remains in force.

2. The Acting Director Development Services be requested to deal with the current application to modify development consent 96/519 under Section 96 of the Environmental Planning & Assessment Act, 1979 (as amended) as a matter of priority, with a view to reporting the application to Council for determination at its meeting of 18 July 2001.

Subsequently, on 1 August 2001 Council approved 0059/2001S96 subject to several amendments to the consent. The development was then proposed based on the following staging:

**Stage 1**

- Use existing golf course-minor reconfiguration of some greens, fairways and tee boxes
- Upgrade existing sewer treatment plant
- Community title subdivision to create Community Scheme
- Temporary Golf Club House/Pro Shop at Marana Street
- Temporary carpark at entry to site at Marana Street
- Hotel building comprising sports and spa facility, 74 hotel units and pools
- Demolition of existing TLCC building
- 3 lawn tennis courts

**Stage 2**

- 38 units – 3 & 4 bedroom villas
- Associated facilities including pool and lounge area
- Minor reconfiguration of golf course – some greens, fairways and tee boxes
- Extension of water reservoir

**Stage 3**

- New golf holes 1 - 18
- Construct new sewer treatment plant and decommission existing STP
- Balance of tennis courts
- Golf Club House
- Spine Road for Access
- 11 President buildings – 88 units – 2 bedroom
- 2 Ambassador buildings – 8 units – 3 bedroom
- 4 Residence – 4 units – 4 bedroom
- Total 100 units

# NOTE: Stages 4 – 7 not to proceed until completion of Cobaki Parkway.

**Stage 4**

- Golf holes 19 - 27
- Village Square, Restaurants, Convention Centre
- 400 hotel units
- Reception & main carpark facility
- Back of house
- Permanent access from Cobaki Road

- 13 President buildings – 104 units – 2 bedroom
- Childrens play area
- Arts and craft centre
- Environmental Centre and first walking tracks

**Stage 5**

- 18 President buildings – 144 units – 2 bedroom

**Stage 6**

- 5 President buildings – 40 units – 2 bedroom
- Golf academy
- Driving range

**Stage 7**

- 5 President buildings – 40 units – 2 bedroom
- Golf academy
- Driving range

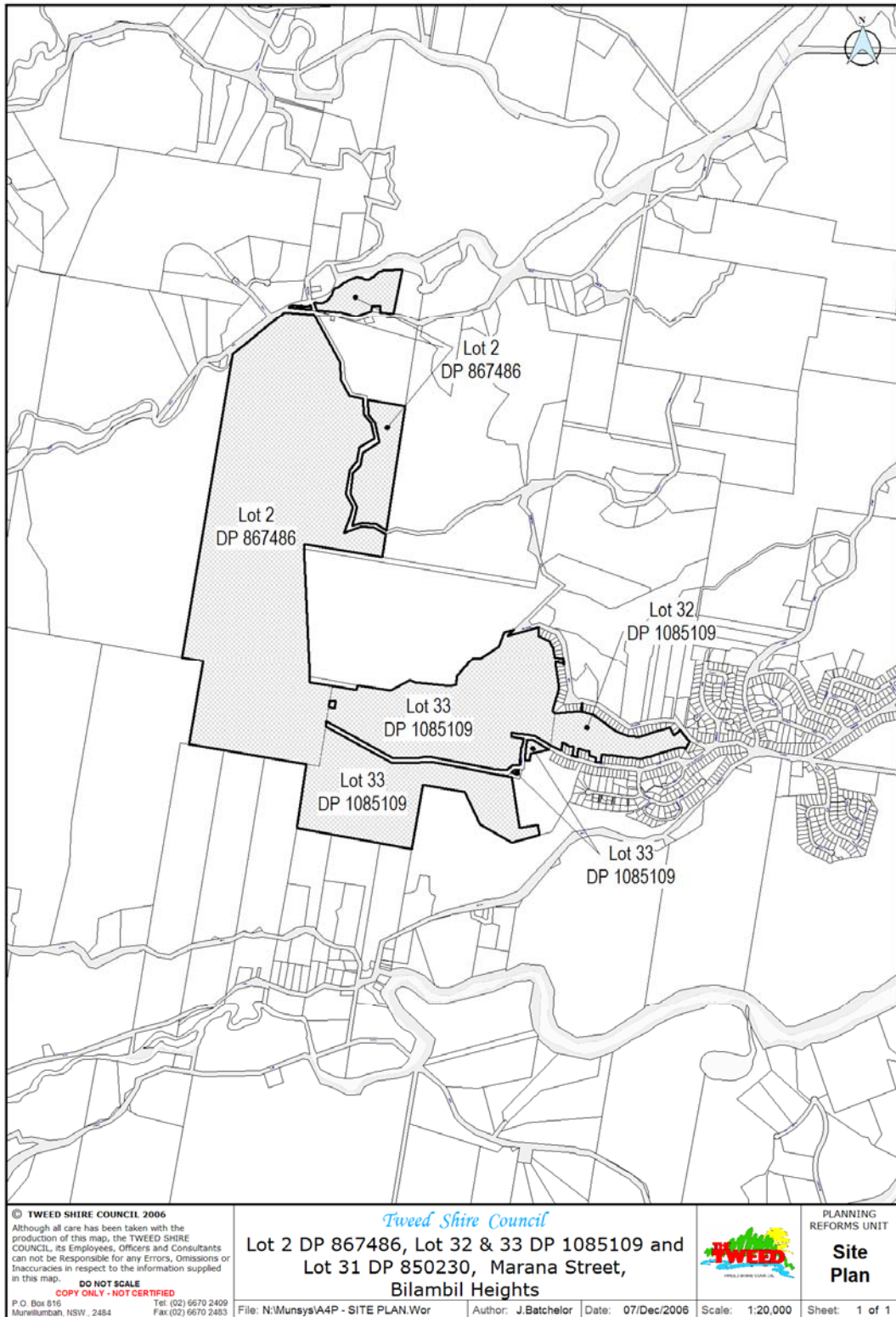
One particular amendment to the consent was the addition of Conditions 72, which reads as follows:

72. The commencement of Stage 4 of the development is prohibited until the Cobaki Parkway and its connection to Piggabeen Road and the Tugan bypass has been constructed.

It is this condition that the current S96 now seeks to modify by amending Stage 4 to read Stage 3 in order to free up vehicle movements to facilitate DA05/1351 for a 76-lot subdivision on adjoining block of land.



**SITE DIAGRAM:**



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

S96 of the Act specifies that on application being made by the applicant a consent authority can modify the development consent only if it is satisfied that the proposed modified development is substantially the same as the approved development and that all relevant consultations and submissions have been undertaken.

Having regard for this criteria the applicant has provided that having regard to the administrative nature of the changes it is submitted that modification of the consent as proposed clearly comes within the scope of Section 96 (1A) of the Act and is for substantially the same development.

The above comments are concurred with.

The S96 Amendment was forwarded to Council's Traffic & Transport Engineer who provided the following comments regarding the amendment to hold off Stage 3;

*I have reviewed the consultant's submission in regard to the capacity issues on Kennedy Drive.*

*The submitted Traffic Report by 'Skildtraffic' proposes to amend the Terranora Resort consent to 'free up' capacity in the road network allocated to that development.*

*I have no objection to the proposed modification of Condition 72 of that consent prohibiting Stage 3, which generates 404.5 vehicle trips per day, from being constructed until the Cobaki Parkway and Bilambil connector roads are constructed.*

*The Resort consent must be modified prior to issuing any approval for the above subdivision.*

*The intersection of Scenic Drive and McAllisters Road is planned to be upgraded under the TRCP No. 4.*

Based on this advice of acceptability it is concluded that the amendment will still result in substantially the same development as that originally approved and can therefore be dealt with via S96 (1A) of the Act.

In considering an application to modify a development consent Council must have regard to Section 79C of the Act. Having regard to all applicable matters the S96 can be conditionally amended.

**Submissions**

The S96 Application was advertised and notified to nearby residents between 7 June 2006 and 22 June 2006. During this period Council received two (2) written objections to the proposed amendments.

The issues raised in the objections to these modifications are detailed as follows:

<b>ISSUE</b>	<b>ASSESSMENT</b>
<p><i>Council has ignored previous submissions by a number of ratepayers that were not properly informed by Council that it was its intention to re-zone the land in question from open space to residential. The matter of whether the re-zoning was carried out correctly should be dealt with before any consideration should be given to the development application or its subsequent amendments</i></p>	<p>The LEP Amendment to re-zone the land was undertaken in accordance with the provisions of the Environmental Planning &amp; Assessment Act 1979. Accordingly the amendment was gazetted and forms part of the Tweed LEP 2000. The subject S96 Amendment is considered capable of consideration and is not reliant upon any challenge to the validity of the re-zoning.</p> <p>This objection does not warrant further amendment or refusal of the proposed S96 Application.</p>
<p><i>The Bilambil heights area is already overloaded from a traffic and safety perspective. The DA Modification in question does not offer relief instead it offers the additional traffic load as envisaged by DA05/1351, a 76 lot development to the currently overloaded and dangerous traffic situation.</i></p>	<p>The Kennedy Drive Catchment Area is nearing capacity based on Council's previous studies. However, included in this count is provision for the redevelopment of the former Terranora Lakes Country Club. As this development has not proceeded to date there is effectively a spare capacity provided condition 72 is amended as sought.</p> <p>Council's Traffic &amp; Transport Engineer has provided that the proposed amendment would sufficiently free up 404.5 vehicle trips to enable DA05/1351 to be considered on its merits.</p> <p>This objection is not considered to warrant further amendment or refusal of the proposed S96 Application.</p>

**OPTIONS:**

1. Approve the S96 Application in accordance with the recommended conditions of consent.
2. Refuse the S96 Application.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be dissatisfied with the determination of these applications they have a right to make an appeal to the Land & Environment Court.

Should the objectors be dissatisfied with the statutory assessment of these applications they have a right to make an appeal in accordance with Section 123 of the Environmental Planning & Assessment Act 1979.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The proposed amendment has been assessed on its merits and has been assessed in the context of the variation only, as this is not an opportunity to re-visit the original determination.

Having assessed the S96 Application against the current applicable controls, the application is considered to warrant conditional approval.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](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. Development Consent D96/0519 (as amended 3/08/2001). (DW 1509298)
  2. Confidential Council Report from Council's Extra Ordinary Meeting (now also attached under Confidential Agenda) on Wednesday 27 June 2001, regarding whether the consent lapsed on 7 July 2000.. (DW 1509324)
-

**P7 [PD-PC] Development Application DA05/1351 for a 76 Lot Subdivision at Lot 32 DP 1085109, Marana Street, Bilambil Heights**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA05/1351 Pt4**

**SUMMARY OF REPORT:**

In November 2005 Council received a Development Application for a proposed 76 lot subdivision on the subject site. The application was advertised and notified to adjoining landowners and received 310 objections to the proposed application. These objections comprised 33 individual letters of objection, and 277 signatories over four different petitions.

The objections are primarily based on stormwater and drainage issues, traffic capacity, the loss of open space (golf course), and loss of amenity and natural flora and fauna.

Despite these objections the following report concludes that the site is zoned for residential purposes and that as all outstanding issues have been addressed in accordance with Council's Policies the proposed subdivision is recommended for conditional approval with a deferred commencement condition pertaining to drainage and water supply.

**RECOMMENDATION:**

**That:**

- A. Council's Traffic and Transport Engineer provide an options report for Kennedy Drive Catchment given that existing figures indicate that Kennedy Drive is nearing capacity.**
- B Development Application DA05/1351 for a 76 lot subdivision at Lot 32 DP 1085109, Marana Street Bilambil Heights be approved subject to the following conditions: -**

**"DEFERRED COMMENCEMENT"**

**This consent shall not operate until the applicant satisfies the consent authority by producing satisfactory evidence relating to the matters set out in Schedule "A". Such evidence is to be provided within one year of the date of notification.**

Upon the consent authority being satisfied as to compliance with the matters set out in Schedule "A". The consent shall become operative and take effect from the date of notification under Section 67 of the Environmental Planning and Assessment Regulations subject to the conditions set out in Schedule "B".

**SCHEDULE "A"**

**Conditions imposed pursuant to Section 80(3) of the Environmental Planning and Assessment Act, 1979 and Section 67 of the Regulations as amended.**

- A. The submission of documentary evidence demonstrating that the easement for drainage within Lot 1444 DP 31968 has been registered at the Land and Property Information Division of the Department of Lands.
- B. The applicant shall submit a Water Reticulation Strategy ("the plan") that complies with the design criteria nominated in Council's letter dated 11 October 2006 and also addresses the following matters:
  - (a) The plan must show the location and dimensions of the new allotment for the proposed high level reservoir.
  - (b) The plan must identify the alignment of the right of carriageway (ROC) providing access to the new high level reservoir.
  - (c) The plan must show the location and dimensions of the new allotment for the low level reservoir adjacent to the proposed 76 lot subdivision.
  - (d) The plan must indicate that the applicant will construct the all weather vehicular access to the high level reservoir within the ROC.
  - (e) The plan must indicate that the 250mm diameter water main servicing the high level reservoir will be constructed by Council.
  - (f) The 450mm diameter water main servicing the low level reservoir will be constructed by the applicant. Council will pay the marginal cost difference. Option B as shown on drawing SK5F prepared by Terranova Consulting Pty Ltd and dated 8/06 is the preferred route for this water main.

Payment by Council for the high level reservoir site will be based on the Valuer General's valuation for the allotment.

This Water Reticulation Strategy shall be approved by Council before Schedule B becomes operable.

**SCHEDULE B**

**NOTE: THIS PART OF THE CONSENT WILL NOT BECOME OPERABLE UNTIL COUNCIL ADVISES THAT THE MATTERS CONTAINED IN SCHEDULE A ARE SATISFIED.**

**GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos 8715-12 prepared by Michel Group Services and dated 26/8/2005, except where varied by the conditions of this consent.  
[GEN0005]
2. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.  
[GEN0045]
3. The subdivision is to be carried out in accordance with Development Control Plan No. 16 - Subdivisions Manual and Councils adopted Development Design and Construction Specifications.  
[GEN0125]
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 development shall be carried out in accordance with the amelioration measures as outlined in Section 6 of the Flora and Fauna Assessment prepared by James Warren & Associates Pty Ltd dated September 2005.  
[GENNS01]

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

6. Prior to the issue of a construction certificate, the applicant shall modify condition No. 72 of development consent 96/519 so that stage 3 of this proposed development cannot proceed until the construction of Cobaki Parkway linking Cobaki Road and Boyd Street is complete.  
[PCCNS01]

7. 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]
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. 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]
10. In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 1979 (as amended), a construction certificate for SUBDIVISION WORKS OR BUILDING 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]
11. Where earthworks result in the creation of embankments and/or cuttings greater than 1m high and/or slopes within allotments 17° or steeper, such slopes shall be densely planted in accordance with a detailed landscaping plan. Such plan to accompany the Construction Certificate application.  
Such plans shall generally incorporate the following and preferably be prepared by a landscape architect:



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

[PCC0455]

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

[PCC0465]

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

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

[PCC0485]

14. 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]

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

[PCC0585]

16. 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]

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

**URBAN ROAD**

- (a) Construction of roads 1 and 2 within the proposed development generally in accordance with Drawing No. 1355/05/SK1D prepared by Terranova Consulting Pty Ltd and dated 8/06.
- (b) Construction of a kerb and gutter and associated pavement widening from the face of the new kerb to the edge of the existing bitumen, for the full frontage of proposed Lots 4, 5 and 6 fronting Marana Street.

**INTERSECTIONS**

- (a) Construction of an intersection at the intersection of Marana Street and proposed Road 1 in accordance with AUSTRROADS Pt 5 "Intersections at Grade" giving particular attention to sight distance and approach/departure tapers.

[PCC0875]

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

- (a) Construction of kerb and gutter and associated pavement widening within Marana Street.

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

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

[PCC0895]

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

- (a) copies of compliance certificates relied upon

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

- earthworks
- 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]

20. **Waste material (soil, concrete, timber, masonry, steel and the like) generated by the development shall be disposed of in accordance with a Waste Management Plan which shall be submitted to and approved by the Principal Certifying Authority PRIOR to the issue of a construction certificate.**  
**The Plan shall specify how the waste is to be treated and/or where the waste is to be disposed of.**

[PCC1065]

21. **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) Stormwater treatment measures shall be provided in accordance with Development Design Specification D7 - Stormwater Quality to remove oil, sediment and nutrient pollutants from road runoff within the subdivision. Water sensitive urban design (WSUD) measures such as swales and biofiltration may be used subject to satisfactory engineering design based on land slope, geotechnical conditions, and Council's stormwater quality objectives. All proprietary treatment devices must be sized in accordance with Clause D7.12. Full engineering details of the stormwater treatment train, including maintenance schedules, shall to be submitted with a separate s68 Stormwater Application, for approval prior to the issue of a Construction Certificate for the subdivision works.

[PCC1105]

22. 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]

23. 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]

24. 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]

25. Where water is to be drawn form 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]

26. **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]

**PRIOR TO COMMENCEMENT OF WORK**

27. **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]

28. **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]

29. **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]

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

[PCW0705]

31. **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]

32. 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]

33. 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]

34. 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]

35. Prior to the commencement of work on the stormwater system a site inspection is to be arranged with the Principal Certifying Authority to discuss site drainage.

[PCW0995]

36. 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]

37. 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]

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

[PCW1165]

**DURING CONSTRUCTION**

39. All proposed works to be undertaken are to be carried out in accordance with the conditions of development consent, approved construction certificate, drawings and specifications. [DUR0005]
40. 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]
41. Construction of the right of carriageway serving both the low level and high level reservoirs to a 3.5m wide bitumen sealed standard, in accordance with the provision of DCP16 - Subdivision Manual and Councils Development Design and Construction Specification. [DUR0055]
42. 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  
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]
43. Construction site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council: -  
Monday to Saturday from 7.00am to 7.00pm  
  
No work to be carried out on Sundays or Public Holidays  
  
The proponent is responsible to instruct and control subcontractors regarding hours of work. [DUR0205]
44. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:

**A. Short Term Period - 4 weeks.**

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

**B. Long term period - the duration.**

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0215]

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

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

The haul route for the transportation of filling to the site shall be approved by Council prior to the commencement of filling operations.

[DUR0725]

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 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]

50. 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]



51. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited. [DUR0815]
52. All fill and cut batters shall be obtained wholly within the subject land. [DUR0825]
53. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Councils adopted Design and Construction Specifications, DCP16 and DCP47 to the satisfaction of the Principal Certifying Authority. Please note timber retaining walls are not permitted. [DUR0835]
54. All retaining walls proposed are to be constructed in accordance with the construction Certificate approval issued by the Principal Certifying Authority. [DUR0845]
55. 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]
56. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council. [DUR0985]
57. 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. [DUR0995]
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. Landscaping of the site shall be carried out in accordance with the submitted/approved landscaping plans.

[DUR1045]

62. A concrete ribbon footpath 1.2 metres wide and 100 millimetres thick is to be constructed on a compacted base along the entire frontage of the site to Marana Sreet in accordance with Councils adopted Development Design and Construction Specification. Twenty four (24) hours notice is to be given to Council's Engineering & Operations Division before placement of concrete to enable formwork to be inspected. Failure to do so may result in rejection of the works and its reconstruction.

[DUR1735]

63. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742.3-2202 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

[DUR1795]

64. Before the commencement of the relevant stages of road construction, reports shall be submitted to Council from a Registered NATA Consultant demonstrating.
- (a) That the pavement has been designed and constructed in accordance with Tweed Shire Councils adopted Construction and Design Specification, D2.
  - (b) That the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils adopted Design and Construction Specifications, C242-C245, C247, C248 and C255.

- (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]

65. 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]

66. 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]

67. 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]

68. 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]

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

[DUR1865]

70. 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]

71. The proponent shall comply with all requirements tabled within any approval issued under Section 138 of the Roads Act.

[DUR1885]

72. Tweed Shire Council shall be given a minimum 24 hours notice to carry out the following compulsory inspections in accordance with Appendix D, DCP16 - Subdivisions Manual based on the rates contained in Council's current Fees and Charges:-

Roadworks

- (a) Pre-construction commencement erosion and sedimentation control measures
- (b) 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

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]

73. 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]

74. 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]

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

[DUR2025]

76. The applicant shall obtain the written approval of Council to the proposed road/street names. Approved names are to be in accordance with Council's Road Naming Policy adopted on 7 August 1996 and are to be shown on the Plan of Subdivision accompanying the application for a Subdivision Certificate. To avoid confusion resulting from duplication of private driveway/accessway name and public road/street names, the applicant shall submit to Council for approval the proposed name(s) of any private driveway/accessways.
- [DUR2035]
77. Inter allotment drainage shall be provided to all lots where roof water for dwellings cannot be conveyed to the street gutter by gravitational means.
- [DUR2285]
78. All stormwater from roofed and paved areas are to be connected directly into road drainage pits where available kerb and gutter or inter allotment drainage line where provided. All drainage systems shall comply with AS 3500.
- [DUR2305]
79. 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]
80. 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]
81. All stormwater discharged from the site including dewatering discharge is to be directed to a sediment pond prior to final discharge into any waterway in accordance with Council adopted Design and Construction Specifications.
- [DUR2365]
82. 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]

83. Internal stormwater lines are to be connected directly into road drainage pits if available along the frontage of the site.

[DUR2395]

84. Prior to any works commencing, appropriate measures are to be put in place 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]

85. 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]

86. 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]

87. No filling is to 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]

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

[DUR2415]

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

[DURNS01]

#### **PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE**

90. 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]

91. 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]

92. 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]

93. 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]

94. 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]

95. 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]

96. 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]

97. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of this Development Consent have been complied with.

[PSC0825]

98. 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) No building or buildings shall be erected on each lot burdened unless a 10,000L rainwater storage tank is installed providing 5,000L capacity for water reuse and 5,000L for peak stormwater flow mitigation where a slow release pipe outlet is to be installed at a depth equivalent to 5,000L from the top of the tank.

Water collected in the rainwater tank is to be used for toilet flushing, outdoor water use, including the watering of gardens, lawns and washing of motor vehicles. If the water is used for drinking purposes then a first flush bypass device must be installed.

The water tank must be mosquito proof and fitted with screens and access hatches to prevent the entry of children, animals or sediment.

Tanks must comply with Council's Rainwater Tank Policy and the NSW Department of Planning BASIX requirements.

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]

99. 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]



**100. 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]

**101. 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]

**102. 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 - 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]

**103. The six (6) months Defects Liability Period commences upon the registration of the Subdivision Certificate.**

[PSC0925]

**104. Compliance with the conditions of the development consent and the construction certificate is required prior to the issue of a subdivision certificate.**

[PSC0935]

- 105. 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]

- 106. 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]

- 107. 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]

**108. 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]

- 109. 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.**

**A Subdivision Certificate shall NOT be issued unless the Certifying Authority is satisfied provisions pursuant to Section 109J of the EP&A Act, 1979 have been complied with and the Certifying Authority has sighted Councils contributions sheet and 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:	Stage 1	5 lots @ \$10,864	\$54,320
	Stage 2	69 lots @ \$10,864	\$749,616
Sewer:	Stage 1	5 lots @ \$2863	\$14,315
	Stage 2	69 lots @ \$2863	\$197,547

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.

[PSC0165]

**110. Section 94 Contributions**

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

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979, a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

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

**Stage 1**

(a) Tweed Road Contribution Plan: \$21,965  
S94 Plan No. 4 (Version 4.0)

Sector 4 - Bilambil Heights

(b) Open Space (Structured): S94 Plan No. 5	\$3,900
(c) Street Trees: S94 Plan No. 6	\$1,485
(d) Shirewide Library Facilities: S94 Plan No. 11	\$3,440
(e) Bus Shelters: S94 Plan No. 12	\$130
(f) Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$655
(g) Emergency Facilities (Surf Lifesaving) S94 Plan No. 16	\$1,000
(h) Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$6,344
(i) Cycleways S94 Plan No. 22	\$1,760
(j) Regional Open Space (Structured) S94 Plan No. 26	\$11,635
(k) Regional Open Space (Casual) S94 Plan No. 26	\$4,275

**Stage 2**

(a) Tweed Road Contribution Plan: S94 Plan No. 4 (Version 4.0)  Sector 4 - Bilambil Heights	\$303,119
(b) Open Space (Structured): S94 Plan No. 5	\$53,820
(c) Street Trees: S94 Plan No. 6	\$20,493
(d) Shirewide Library Facilities: S94 Plan No. 11	\$47,472
(e) Bus Shelters: S94 Plan No. 12	\$1,794
(f) Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$9,039
(g) Emergency Facilities (Surf Lifesaving) S94 Plan No. 16	\$13,800

(h) Extensions to Council Administration Offices & Technical Support Facilities	\$87,547.20
S94 Plan No. 18	
(i) Cycleways	\$24,288
S94 Plan No. 22	
(j) Regional Open Space (Structured)	\$160,563
S94 Plan No. 26	
(k) Regional Open Space (Casual)	\$58,995
S94 Plan No. 26	

[PSC0175]

**GENERAL TERMS OF APPROVAL UNDER SECTION 100B OF THE RURAL FIRES ACT 1997**

1. A restriction as to user shall be placed on all lots within each stage of the subdivision that the lots cannot be released for sale until they are hazard reduced so that all proposed lots have the vegetation managed as an "Outer Protection Area" (OPA) as outlined within Section 4.2.2 in Planning for Bushfire Protection, 2001. The restriction to user shall also require that the land be maintained as an OPA until development occurs.
2. As staging of the development is proposed it is advised that each stage is to be provided with an APZ in accordance with "Planning for Bushfire Protection, 2001" and a temporary turning circle until the next stage is developed. In particular as the area to the west contains vegetation and will be developed at a later date, the proposed lots adjoining this area to the west shall be provided with an Asset Protection Zone appropriate to the vegetation and slope as outlined within "Planning for Bushfire Protection 2001".
3. Hydrants shall be located and installed as per AS2419, so that any proposed dwelling is not located greater than 90 metres from the nearest hydrant. Locations of fire hydrants are to be delineated by blue pavement markers offset 100mm from the centre of the road. The direction of offset shall indicate on which side of the road the hydrant is located.
4. The proposed public access road shall have a minimum pavement width of 8m and services should be located outside of parking reserves to ensure accessibility to reticulated water for fire suppression. All provisions for public access roads, other than where modified by the above provisions, detailed within Section 4.3.1 of "Planning for Bushfire Protection 2001" shall be complied with.

**REPORT:**

**Applicant:** Terranora Group Management Pty Ltd  
**Owner:** Terranora Group Management Pty Ltd  
**Location:** Lot 32 DP 1085109 Marana Street, Bilambil Heights  
**Zoning:** Part 2(a) Low Density Residential & Part 2(c) Urban Expansion  
**Cost:** Nil

**BACKGROUND:**

In November 2005 Council received a Development Application for a proposed 76 lot subdivision on the subject site. The site has a total land area of approximately 6.959ha and has limited frontages to Marana and McAllister's Road. The site presently contains three golf course holes being part of the Terranora Lakes Country Club Golf Course.

The site slopes generally from the south to the north with the topography reflecting the existing golf course layout on the site. Levels at the site range from RL 161m to RL 145m AHD at the McAllister's Road frontage.

The area is characterised by predominantly detached dwelling houses excluding the Terranora Resort complex and golf club house. The site is substantially cleared of trees as a result of ongoing golf maintenance.

The proposed subdivision will create 76 lots in total comprising 75 residential lots with areas ranging from 601m<sup>2</sup> to 976m<sup>2</sup>. The majority of the lots will have frontage to and access from the new internal road network. Lots 4,5 & 6 will have frontage to and access from Marana Street while Lots 1, 2 & 3 will have frontage to and access from McAllister's Road.

Proposed lot 39 is intended to be dedicated as a public reserve and will be substantially embellished and landscaped. Consequently, monetary contributions for S94 Plan No. 5 Casual Open Space will not be required.

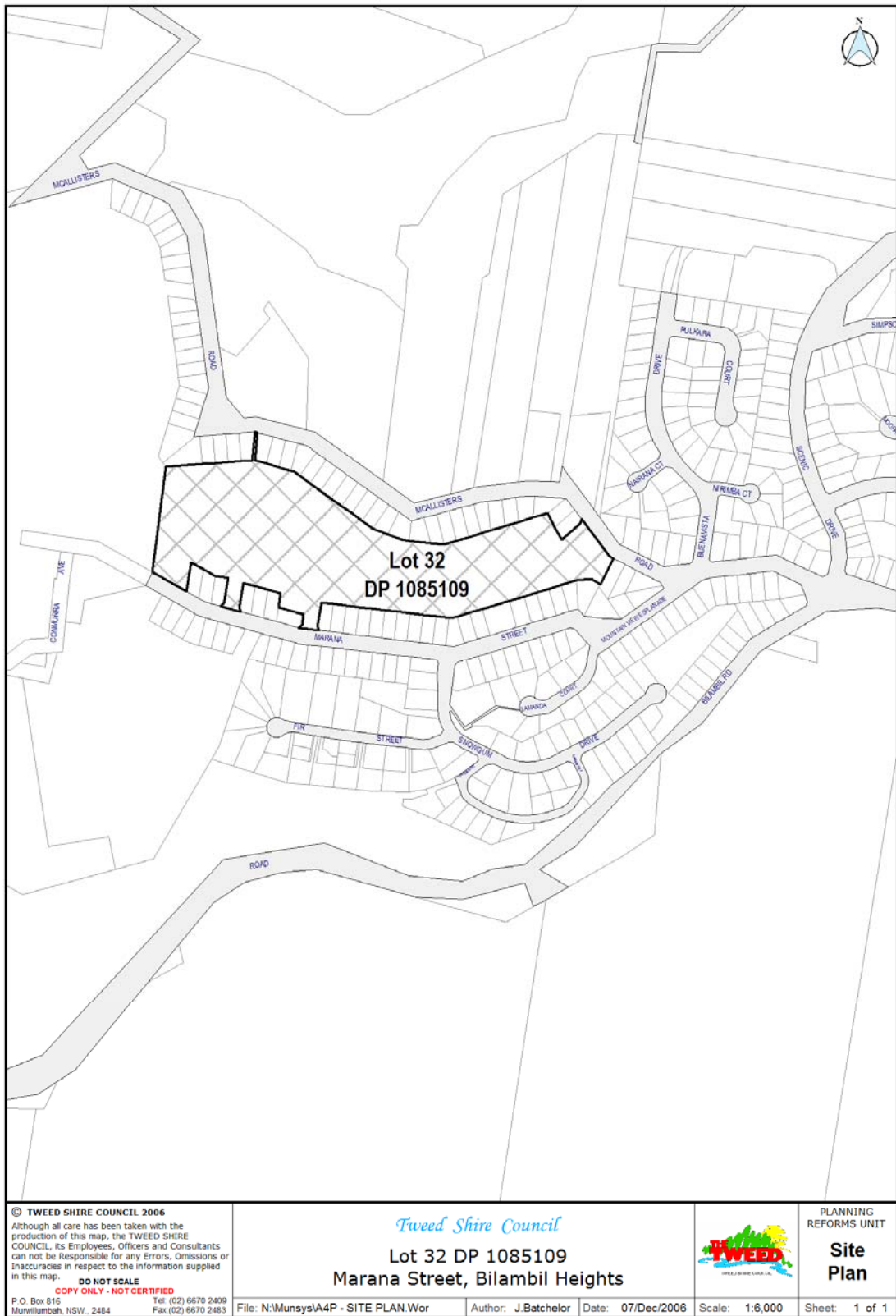
The application as submitted failed to adequately address many issues relating to drainage, water supply and contamination. However further information has been submitted and based on this additional information which includes the acquisition of land for drainage and the nomination of a new reservoir site Council's Technical Officer's now recommends conditional approval.

During the notification period Council received hundreds of submissions opposed to the development. These objections comprised 33 individual letters of objection, and 277 signatories over four different petitions.

The nature of the objections were primarily based on stormwater and drainage issues, traffic capacity, the loss of open space (golf course), and loss of amenity and natural flora and fauna.

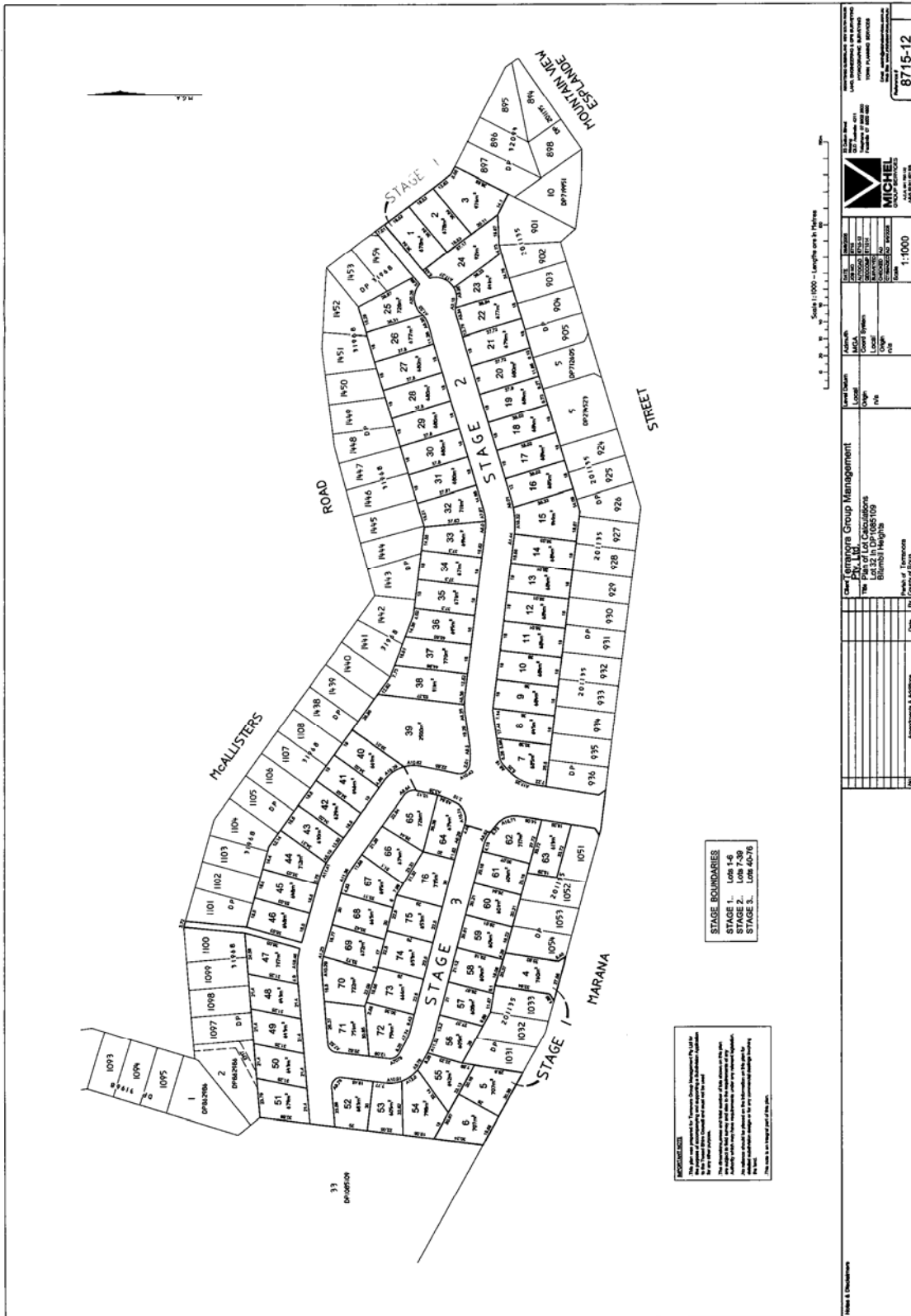
Despite these objections the following report concludes that the site is zoned for residential purposes and that as all outstanding issues have been addressed in accordance with Council's Policies the proposed subdivision is recommended for conditional approval with a deferred commencement condition pertaining to drainage and water supply.

**SITE DIAGRAM:**





**SUBDIVISION LAYOUT 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 subject site is located partially within the 2(a) Low Density residential zone and partially within the 2 (c) Urban Expansion zone pursuant to the provisions of the Tweed LEP 2000.

Subdivision in both zones is permissible with consent subject to a minimum allotment size of 450m<sup>2</sup>.

The proposed development is consistent with these standards.

The primary objective of the 2(a) zone is as follows:

*“To provide for a and maintain a low density residential environment with a predominantly detached housing character and amenity.”*

The primary objective of the 2 (c) zone is as follows:

*‘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.’*

The proposed subdivision creates 76 urban residential lots in accordance with the requirements of the 2(a) and 2(c) zoned land.

The proposed allotments vary in size but are all capable of accommodating detached dwelling houses at a similar density to those existing within the locality. It is evident that the proposed density is consistent with that of surrounding urban lands and is a satisfactory response to the constraints of the land.

The development is consistent with the zone objectives by optimising the use of the 2(a) and 2(c) zoned component of the site while remaining consistent with the existing subdivision pattern in the area.

Clause 15 of TLEP 2000 refers to the provision of services. In this regard the application was referred to Council’s Water Supply and Sewerage Engineer and Council’s Development Engineer who provided that:

- *The existing water reticulation system does not have sufficient capacity to cater for the proposed 76 lot subdivision.*

- *Concern is also raised regarding the Peak Instantaneous Flow in the existing 150 diameter water main and the ability of the system to cater for fire fighting flows.*
- *The W & SDE has advised that Council needs to secure two sites for the future construction of reservoirs. One site is needed adjacent to the existing Terranora Country Club reservoir. The other site is required within the proposed development site.*
- *Given the issues relating to water supply it is recommended that negotiations be entered into between the proponent and Council in an attempt to resolve these matters before appropriate conditions can be imposed.*

The proposed development should only be permitted if the issues of adequacy of storage and peak and fire flows in the reservoir main can be adequately addressed.

The applicant was advised of these issues and subsequently provided Council with an options report "Bilambil Heights Provision of Additional Site to Augment the Storage Capacity at the Snowgum Crescent Reservoir Bilambil Heights Alternative Option".

Based upon the above report and supporting information Council is now satisfied that storage and peak flows can be addressed by conditions of consent with the following deferred commencement condition:

*The applicant shall submit a Water Reticulation Strategy ("the plan") that complies with the design criteria nominated in Council's letter dated 11 October 2006 and also addresses the following matters;*

- (a) The plan must show the location and dimensions of the new allotment for the proposed high level reservoir.*
- (b) The plan must identify the alignment of the right of carriageway (ROC) providing access to the new high level reservoir.*
- (c) The plan must show the location and dimensions of the new allotment for the low level reservoir adjacent to the proposed 76 lot subdivision.*
- (d) The plan must indicate that the applicant will construct the all weather vehicular access to the high level reservoir within the ROC.*
- (e) The plan must indicate that the 250mm diameter water main servicing the high level reservoir will be constructed by Council.*

- (f) *The 450mm diameter water main servicing the low level reservoir will be constructed by the applicant. Council will pay the marginal cost difference. Option B as shown on drawing SK5F prepared by Terranova Consulting Pty Ltd and dated 8/06 is the preferred route for this water main.*

*Payment by Council for the high level reservoir site will be based on the Valuer General's valuation for the allotment.*

*This Water Reticulation Strategy shall be approved by Council before Schedule B becomes operable.*

In regards to the other services Council's Water Supply and Sewerage Engineer and Council's Development Engineer provided the following comments

*Sewerage System.*

*The trunk sewer that would receive sewage from this proposed development was modelled using SewerCad and the 'as constructed' levels from the original sewerage construction scheme. Analysis was carried out assuming a steady state peak wet weather flow (PWWF) throughout the system.*

*Flows were estimated using the PWD method and updated from the most recent revision of the flow model for the Banora Point Sewerage Strategy Study. Recent revisions of the model had allowed for 67ETs on the subject land added to Line V. This also allowed for 50ET on the northern side of McAllisters Road to be connected at MH-V/8 via pressure sewer systems. The flow model provided flows at various points along the trunk sewer system. These were entered into SewerCad as "Known Flows".*

*This conservative approach indicated that there were three reaches of sewer where the existing PWWF exceeded the theoretical full capacity of the pipe:*

- 1. MH-A/38 – MH-A/37 DN300 on 0.03% grade Exceeds full capacity by 20.9L/s*
- 2. MH-A/66 – MH-A/65 DN150 on 0.32% grade Exceeds full capacity by 4.8L/s*
- 3. MH-A/68 – MH-A/67 DN150 on 0.32% grade Exceeds full capacity by 5.1L/s*

*With the additional 75ET connected, these become 26.9L/s, 5.0L/s & 5.3L/s respectively.*

*The profile plots show that the line between MH-A/69 and MH-A/65 including sections 2 and 3 above, is flowing under head at PWWF for both cases. The section 1 above does not appear to actual flow under head, due to the short isolated nature of this one flat section of the DN300 portion of trunk sewer.*

*It would seem that it may be possible to not upgrade Section 1 at this stage, but it would preclude any further significant development being connected to this sewer without significant upgrading.*

*Sections 2 & 3 apparently run under head but not to the point of surcharge. This section is upstream of the junction with Line V in which SPS2035 McAllisters Road, the previously approved 50ETs by pressure sewer and the bulk of this proposed development join Line A. The additional connections to this section is only 3ETs and does not exacerbate the condition significantly.*

*A check of wet well capacity at SPS2038 found that the existing well operating over the current range is capable of coping with pumps designed to match the estimated PWWF. Storage available at this pump station is limited by the relatively steep terrain. At ADWF there is 1hour and 14 minutes available from the pump stop level for the estimated flow from currently approved and existing development. The addition of 75ETs reduces this to 1 hour and 10 minutes. Additional storage would be available given that there are four other pump stations that cascade into this station. In a power failure each one would also be affected. In the event of a local failure or planned outage, they could be turned off to maximise the storage available. Storage does however remain a concern in this area, particularly given the proximity of Terranora Lake.*

*The existing pumps are around 20 years old. Given that the rising main was replaced recently using OPVC pipes, the pumps should operate at a higher flow rate and lower head than the original duty point of 72.2L/s @ 15.4m head. The new duty point is estimated to be about 83L/s at 13m head. This is adequate for the existing case but just slightly below the duty flow for the addition of the proposed development. Given the age of the pumps, it is likely that they are due for replacement at which time, an incrementally larger pump could be selected.*

*It would appear that this development could be accepted within the existing system without causing surcharging of the trunk sewer system. It does however rely on the margin of safety in extreme conditions being reduced.*

### Energy

*The applicant will consult with Country Energy to determine their requirements for electrical supply to the subdivision.*

Telecommunication

*The applicant will consult with Telstra to determine their requirements for electrical supply to the subdivision.*

Waste (garbage) Service

*Council currently operates a garbage collection service in this location and has capacity to service this development.*

Emergency Services

*Emergency Services will be able to gain satisfactory access to the proposed development.*

Mail Services

*Australia Post will provide a service to the proposed development.*

The proposal is considered to be consistent with the provisions of Clause 15 of Tweed LEP 2000.

Clause 17 of Tweed LEP 2000 refers to Social Impact Assessment. Having regard to the provisions of DCP No.45, a detailed social impact assessment is required, as the proposed subdivision comprises more than 50 allotments. The applicant has subsequently provided a detailed Socio-Economic Impact Statement.

A review of the applicants Socio Economic report has concluded that the development may have some minor negative impacts during construction. However, in overall terms the socio economic impact of the development is considered to be beneficial. The local areas services are considered sufficient to cater for the proposed development.

Clause 22 relates to development near designated roads. The development site has frontage to McAllister's Road, which is a Council Designated Road. Only lots 1, 2 & 3 have access from McAllister's Road as it was not possible or desirable to have these allotments accessed from Marana Street.

Clause 22 provides that Council must be satisfied that:

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

- (c) *the development, or proposed access to it, will not prejudice any future improvements to, or realignment of, the designated road, and*
- (d) *where the land is in Zone 1(a), 5(a), 7(a), 7(d), 7(f), or 7(l), the development is of a type that necessitates a location in proximity to the designated road for reasons other than only commercial advantage, and*
- (e) *the development is of a type that is not sensitive to traffic noise or, if it is, it is located or adequate measures are included to ameliorate any potential noise impact, and*
- (f) *the development would not detract from the scenic values of the locality, particularly from the point of view of road users, and*
- (g) *where practicable, access to the land is provided by a road other than the designated road, and*
- (h) *in respect of any application for commercial or retail development near the Pacific Highway in Zone 1 (a), 7 (a), 7 (d), 7 (f) or 7 (l), the development:*
  - (i) *would not compromise the Highway's function as the North Coast's primary inter- and intra-regional road traffic route, and*
  - (ii) *would not contribute to the need to expend public money on the Highway to overcome the effects of ribbon development, and*
  - (iii) *would not compromise highway safety and efficiency, and*
  - (iv) *would not cause or contribute to the shifting of the retail/commercial foci of any town from the town centre to a highway-orientated site.*

In this regard Council's Traffic and Transport Engineer, and Development Engineer have reviewed the application and provided that subject to the imposition of the recommended conditions of consent the application is suitable on traffic grounds specifically having regard to it's impact on McAllister's Road.

Having regard to the scenic values of the locality, particularly from the point of view of road users the proposed development replaces part of an existing golf course and therefore some change to the existing outlook is unavoidable. However, this change will not impact on the safety or efficiency of McAllister's road and it capacity to act as a designated road.

Clause 22 is considered to be satisfied.

Clause 35 of the Tweed LEP 2000 refers to Acid Sulfate Soils. In this regard, the land is not classed as being affected by Acid Sulfate Soils on Council's ASS Planning Maps.

Clause 39 of the Tweed LEP provides that contaminated land should be adequately remediated prior to development occurring in accordance with the provisions of SEPP 55 – Remediation of Land.

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

*A Stage 1 Preliminary Site Investigation for Marana St, Bilambil Heights prepared by Gilbert & Sutherland Pty Ltd dated August 2005 (GJ0425.RD4.doc) has been submitted. The 1962 aerial photograph and anecdotal evidence indicated that the site was most likely part of a dairy operation at this time. There is the possibility there may have been some cropping on the site at some stage, previous to the development of the golf course, which historical investigations have not been able to identify. It was therefore recommended by Gilbert & Sutherland in the stage 1 report that a stage 2 detailed site investigation be prepared that included soil testing.*

*A Stage 2 Site Investigation for Marana St, Bilambil Heights prepared by Gilbert & Sutherland Pty Ltd dated January 2006 (Document: GJ0425.CA2.RAA2D.doc) has now been submitted. Further site history has been gathered and a sampling program undertaken. Results of the additional site history found that the site had operated as a dairy farm prior to development as a golf resort. It has been stated that the dairy farm did not include cattle dipping or milking onsite and no cropping took place on the site.*

*Analytical results found that no contaminant concentrations exceeded either the environmental or health based industry guidelines. Low concentrations (also below the guidelines) of dieldrin were identified on the golf course greens. It is suggested that this is as a direct result of the application of chemicals applied to the golf course during routine maintenance.*

*It was however noted that the samples were only obtained from a depth of between 0.05 and 0.15m below surface level. As per the NSW EPA Contaminated Sites Sampling Design Guidelines, to establish the vertical extent of the contamination within a detailed investigation, samples should be collected from two or more different depths at each sampling location, at the surface (between 0 and 0.15m below the surface) and at depth or at a number of different depths. Additional sampling is therefore required to determine the extent of possible contaminant penetration that may impact on the site's future use.*

*The decommissioned "Charles" cattle dip site is located approximately 50m north of the nearest section of the subject site. It is located approximately 25m downhill and to the north of the subject site and is not considered a risk to the future occupants of this development.*

*Subsequently the applicant is required to provide additional sampling at depth as outlined in section 3.2 Sampling pattern for detailed investigations of the NSW EPA Contaminated Sites Sampling Design Guidelines shall be obtained from the site and tested to establish the vertical extend of possible contamination of the site that may impact on the site's future use.*

This information was received and subsequently Council's Environmental Health Officer has provided that:



*Additional sampling for organochlorine pesticides (including dieldrin) prepared by Gilbert & Sutherland Pty Ltd dated 30 June 2006 has been provided. Samples were obtained from the same three (3) areas within the golf course greens that exhibited elevated levels of dieldrin in the Stage 2 Site Investigation dated January 2006. It is noted that although the samples were elevated the Stage 2 report, none exceeded Health Investigation Levels for residential development.*

*The samples within the golf course greens were taken at depths of 0 – 0.15mm, 0.3 – 0.5mm, and 0.9 – 1.0mm, and three (3) boreholes additional boreholes were sampled directly down gradient of each of these greens to depths of 0 – 0.15mm and 0.3 – 0.5mm. Laboratory testing however was only carried out on the green samples at 0.3 – 0.5mm and the down gradient samples at 0 – 0.15mm.*

*With the exception of BHDG2 and BHDG3, all sampling results were below limit of reporting. Both BHDG2 and BHDG3 contained a dieldrin level of 0.09mg/kg, well below the residential health investigation level of 10mg/kg.*

*It is therefore agreed with the consultant that low levels organochlorine pesticide concentrations previously detected in surface soils are limited to the upper soil profile and are below health investigation levels, making the subject site suitable for the proposed use.*

Therefore Clause 39 of the Tweed LEP 2000 is considered to have been adequately addressed subject to imposition of the recommended conditions of consent.

Clause 39A of the Tweed LEP 2000 provides that bushfire risk to built assets and people is to be reduced wherever possible. The proposed development is categorised as Integrated Development requiring a Bush Fire Safety Authority under section 100B of the Rural Fires Act 1997. The application was subsequently referred to the Rural Fire Service who has provided General Terms of Approval for the development. These form part of the recommendation for approval.

Clause 54 of the Tweed LEP 2000 protects the subject site with a Tree Preservation Order. Notwithstanding this protection, development consent can be issued for tree removal to accommodate a permissible development. The loss of trees is inevitable to accommodate this development, however, the applicants Flora and Fauna Assessment concludes that this loss is of mostly exotic species. Flora and Fauna impacts are further discussed under the heading of Section 5A

The proposed development is considered to be consistent with the relevant provisions of Tweed Local Environmental Plan 2000.

North Coast Regional Environmental Plan 1988

Clause 43 of NCREP provides as follows:-

**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 proposed density is considered to be a reasonable response to the existing land use character of the area and will not result in the creation of any adverse physical impacts upon the locality. Furthermore, subject to compliance with the recommended conditions of consent the proposed roads and road widths are acceptable to cater for the development. A detailed sedimentation and erosion control plan will be applied in relation to the construction.

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

Clause 66 of the NCREP 1988 requires Council to consider the adequacy of community and welfare services available, prior to granting consent to a development application for the subdivision of land for residential purposes. It is considered that the existing community and welfare services are capable of catering for the additional allotments proposed.

The proposal is considered to be consistent with the provisions of the North Coast Regional Environmental Plan 1988.

State Environmental Planning Policies

State Environmental Planning Policy No: 11 – Traffic Generating Developments (SEPP 11)

The proposed development requires referral to Council's Traffic Committee in accordance with Schedule 2 of the Policy.

The application was subsequently referred to the Local Traffic Committee meeting of 15 December 2005.

*The Road Safety Officer noted that even though there is not a crash history at the intersection of Simpson Drive, Scenic Drive, McAllisters Road and Bilambil Road the sight distance exiting McAllisters Road of vehicles approaching from Bilambil Road is less than desirable. Black Spot funding has been applied for at this intersection including road safety audit and as yet funding has not been granted. The increased traffic as a result of the development would most likely lead to more crashes at this intersection.*

Council's Traffic and Transport Engineer and Development Engineer have reviewed these comments and ensured that the necessary road upgrades are either listed within Tweed Road Contribution Plan, or are conditioned for this developer to undertake as part of their development.

SEPP44 – Koala Habitat Protection

Assessment of the habitat has indicated that there is no core koala habitat present and subsequently there is no requirement to prepare a plan of management. Flora and Fauna impacts are further discussed under the heading of Section 5A

SEPP55 – Remediation of Land

As detailed in the above report it is considered that the application is capable of conditional consent based on an Interim Audit Advice from an accredited Site Auditor.

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

The proposed development does not require any specific assessment in relation to any draft environmental planning instruments.

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

**Development Control Plan No.16 – Subdivision Manual**

The proposed development is considered to be generally consistent with the relevant provisions of DCP No. 16, however, Council's Development Engineer has identified several areas of small non compliance and subsequently conditions of consent have been adopted to address these non compliances.

Council's Development Engineer, Traffic and Transport Engineer and Infrastructure Engineer have assessed the following aspects of the proposal having regard to DCP 16;

Geotechnical / Earthworks

A geotechnical report has been prepared for the subject site and the findings of this report are summarised as follows:

The subsurface profile encountered in the boreholes consisted generally of the following:-

- Surface very stiff slightly gravely clays
- Upper level clayey gravels, locally present as gravely silty clays
- Hard clays with some weathered basalt material, present as boulders in the north of site

Groundwater was not encountered in any of the boreholes during testing.

It is anticipated that excavations will consist of "bulk cuts" of up to 2m and the expected maximum retained height of 3.2m. In general, where ground slopes are less than 9 degrees, cuts and fills up to 1.5m may be considered. On moderately sloping areas of between 9 to 15 degrees, it is recommended that cuts and fills not exceed 1.0m. Fill batters should be no steeper than 1V:2H.

Where slopes exceed 15 degrees no cutting or filling should be carried out.

Based on the conditions noted on site and details supplied by Terranova Consulting Pty Ltd, it is considered that stability conditions would not be adversely affected by the proposed cut and fills in this area, provided site specific investigations are carried out for the founding conditions of the boulder retention structures, the retention structures are designed as structural retention structures and the boulder retention structures are certified on completion of construction as being structurally adequate for the loads placed upon them.

The applicants have demonstrated that the site is geotechnically stable and have now demonstrated that the intent of D6 has been complied with.

### Road Network /Horizontal Alignment

The horizontal alignment of the proposed new road network is considered satisfactory.

The construction of kerb and gutter and pavement widening in Marana Street on an approved alignment will be required along the frontages of proposed lots 4, 5 and 6.

### Road Network /Vertical Alignment

The vertical alignment of the proposed new road network is considered satisfactory.

### Road Typical Cross Section

The typical cross sections nominated by the applicant comply with the requirements of Table D.1.7 of the Development Design Specifications – D1.

### Intersections

The applicants propose access to the site via a new 7.5m wide pavement within a 20.0m road reserve. This new road intersects with Marana Street. At the point of intersection Marana Street is a centrally constructed 8.0m wide, two (2) coat seal pavement with no kerb and gutter.

Sight distance to the east is satisfactory however sight distance to the west is impeded by a private garden that is located on the public road reserve. This garden will require removal so that adequate sight distance is achieved.

The applicant will be required to construct kerb and gutter in Marana Street to a distance of 15.0m past the Marana Street tangent point. In addition, a 1 in 20 taper will be required to tie back into the existing pavement.

### Bus Routes

Marana Street is an existing bus route. All lots are within 400m of Marana Street.

### Footpaths & Cycleways

Table D.1.7 of the Development Design Specifications requires the provision of a concrete footpath along one side of the access street. The applicants have not address this requirement in their application. However, appropriate conditions of consent have been applied

### Traffic

The Traffic and Transport Engineer (T&TE) has expressed considerable concern regarding the impact that this subdivision will have on the existing distributor road network.

In August 2001, Council resolved under resolution 71 to restrict traffic volumes on Kennedy Drive at the Cobaki Bridge to 22,000 vehicles per day by limiting development west of the bridge. Council determined in 1997 that the available traffic capacity on Kennedy Drive was 1200 vehicles/day.

The applicants Traffic Report argues that previous traffic generated by the now closed Terranora Lakes Country Club was 1500 vehicles per day over 10 years ago and that this proposal has existing use rights to generate traffic to this level.

The applicants Traffic Report shows that the development will generate 675 vehicle trips per day. Assuming 70% of the traffic generated travels via Scenic Drive there will be 473 vehicle trips across Cobaki Bridge.

Council's records show that only 192 vehicle trips per day remain to be allocated to the proposed development.

Therefore, the traffic generated by the development exceeds the remaining spare capacity of 192 vehicle trips per day by 295.5 trips per day.

In addition, the traffic report states that the TRCP rate of 6.5 trips per day should apply as opposed to the RTA rate of 9 trips per day. The applicants claim that the site is isolated and therefore the 6.5 trips per day should apply. The TRCP states that developments should use the RTA rates unless a local survey shows that a rate of 6.5 trips per day can be used. No local survey has been undertaken.

Council's Traffic & Transport Engineer initially concluded that this development is premature because the supporting distributor road network needed to service the area has not been constructed. When the network servicing this site is connected to Queensland via the proposed Cobaki Parkway and Scenic Drive diversion and McAllisters Road upgrade, the development would be supported on traffic grounds.

Given the above advice, the applicant was presented with Council's preliminary recommendations:

1. That the development be refused, or
2. That the development be restricted to 29 lots until the proposed Cobaki Parkway, Scenic Drive diversion and McAllisters Road upgrade is complete, or

3. The applicants surrender the existing resort consent which would then provide sufficient capacity on Kennedy Drive to allow the development to proceed, or
4. Withdraw the application until the Cobaki Parkway and Scenic Drive diversion connections are constructed.

The applicant subsequently chose Option 3 and formally lodged an amendment to D96/0519. Condition 72 of consent D96/0519 restricts stages 4-7 to be developed after the Cobaki Parkway is constructed.

The applicants have submitted that condition 72 be amended so that stage 3 also be restricted until Cobaki Parkway is constructed. Stage 3 of consent 96/519 generates 404.5 vehicles per day. The additional traffic generated by the 76 lot subdivision is 487.5 vehicles per day.

Therefore this development still needs 83 vehicle trips to be taken from the remaining capacity of Kennedy Drive Catchment. This will leave the Kennedy Drive Catchment with 109 vehicle trips remaining.

The Traffic and Transport Engineer has reviewed this proposal and agrees that it will free up sufficient spare capacity on Kennedy Drive to allow the 76 lot subdivision to proceed.

Should Council approve D96/0519.04 then this application is considered satisfactory regarding traffic capacity.

#### Stormwater Drainage

Council's Infrastructure and Planning Engineer has provided the following comments:

*The subject land is a recently subdivided eastern portion of the Terranora Lakes Country Club. The land currently contains three golf course holes with no significant impervious areas. The land is bound to the north by a strip of existing residential dwellings fronting McAllisters Road, and to the south, a similar strip of existing dwellings fronting Marana St. The land has limited, fragmented direct frontage to both roads.*

*The land grades primarily north and east towards McAllisters Rd, with a smaller catchment grading to Marana St in the south western corner. Because of the strip residential development, much of the existing runoff from the site is conveyed overland through private residential land.*

*The Gilbert & Sutherland Stormwater Management Plan contains a plan (GJ0425.1.6) of existing drainage catchments across the subject land, as follows:*

Catchment 1 – large western catchment serviced by a drainage easement through Lot 2 DP 862986 containing a Council stormwater pipe, and an overland flow path between Lots 1100 and 1101 DP 31968, both discharging to McAllisters Rd. A piped system downstream of the easement conveys flows under McAllisters Rd, discharging to an open drainage system through agricultural land, and eventually natural watercourses to the north. Stormwater from the overland flow path must travel longitudinally along McAllisters Rd kerb and gutter to this piped system. (Public system referred to in SWMP as Legal Point of Discharge LPD1)

Catchment 2 – small catchment draining to its two separate Marana St frontages. The western access point is serviced by public drainage and kerb and gutter. (Referred to in SWMP as LPD3)

Catchment 3 – large natural depression through the centre of the subdivision site with no lawful stormwater discharge point. Currently discharges via overland flow and minor interallotment systems through adjoining private land to a piped inlet in McAllisters Rd. This pipe conveys stormwater under McAllisters Rd, discharging to an open drainage system through agricultural land, and eventually natural watercourses to the north.

Catchment 4 - No lawful discharge point, runoff flows north east to McAllisters Rd through private land.

Catchment 5 - grades eastward to its McAllisters Rd frontage. Flows are conveyed under the street by a culvert where stormwater is then picked up by piped system through the Buena Vista Dr area. (Referred to in SWMP as LDP2)

The agricultural land on the northern side of McAllisters Rd is the subject of a large residential subdivision proposal, which includes detailed stormwater management controls, including overland flow paths, water quality control devices, and drainage easements to connect the subdivision to downstream natural watercourses (lawful point of discharge), in accordance with DCP16.

The stormwater management plan for the site does not include any assessment of the capacity of the existing discharge points (either piped or overland flow) from the site under existing flow conditions.

*Drainage Proposal - Discharge Management*



*While the proposed subdivision drainage system intends to utilise the same stormwater discharge points as the pre-development case, the contributing catchments will be significantly altered. Runoff from those catchments without a lawful discharge point (Catchments 3 and 4) will be diverted to one of the existing LDP's via piped and overland public and interallotment drainage systems, as the applicant has apparently been unable to obtain drainage easements through downstream residential allotments to service these existing catchments. The contributing catchments at each LDP will therefore be larger, with a larger coefficient of runoff, so the applicant has proposed a stormwater detention/retention system to mitigate these increased flows.*

*To achieve this change to the natural catchments, significant fill earthworks, including the construction of rock walls and earth batters, will be required through the middle of the subject land. The extent of these works is not addressed in the application, and contour diagrams are unclear with illegible levels. The applicant will need to demonstrate compliance with Development Design Specification D6.*

*The subdivision drainage system relies on the assumption that each dwelling in the subdivision will ultimately have their roof connected to a 7500L rainwater tank, and this rainwater tank will be configured for reuse, and that 2000L will be available for storage during storms. Such requirements will have to be included in all land titles in order to ensure future implementation.*

*In order to further restrict outflows from the subdivision site to pre-development levels, oversized drainage pipes (2.4m diameter) will be incorporated into the public system. All piped street and interallotment systems will discharge to these pipes, and grated inlet pits will capture and discharge overland street flows to the storage pipes. Outlet pipes of various sizes and levels were then included to limit peak discharge to predevelopment flows for a range of storm intensities. This system was modelled and the results and proposed configuration of the stormwater system included in the SWMP. According to the modelling report, the 15 minute duration storm was found to be the critical duration event for design of each catchment, however results for longer duration events (1 hour, 6 hour, 12 hour and 24 hour) also need to be provided to demonstrate that the systems will still operate effectively.*

*The stormwater detention system will become part of the public drainage system to be handed over to Council at the completion of the subdivision. The applicant has not addressed issues such as maintenance and access for this system, which may present Council with future liabilities rather than assets.*

*The performance of the existing discharge points will need to be properly assessed, both under current conditions and for the post-development case, as while peak discharge rates will be mitigated by the detention system, discharge volumes will still be significantly increased. This assessment must include the creation of connecting easements downstream of McAllisters Rd so that the subdivision can discharge to a natural watercourse (lawful point of discharge as required by DCP16). These flow paths must be compatible with future landuse and development options for the land north of McAllisters Rd.*

#### *Drainage Proposal - Stormwater Quality*

*Development Design Specification D7 requires a stormwater treatment wetland for subdivisions larger than 50 lots. The applicant argues that the site actually consists of a number of smaller catchments less than 5ha, so will provide permanent quality control devices in the discharge pipe systems rather than a wetland. Considering the local topography and site constraints, this is a reasonable argument, provided Council's stormwater quality objectives are still met.*

*To complement these downstream devices a bio-retention swale will be created along the southern footpath of Road No.2 to treat runoff from the road surface and convey it to LPD2. It is considered that this device conflicts with the geotechnical requirements for the site, which recommend that any drainage swales be suitably graded and lined to prevent ponding and ingress of stormwater into the clayey subsoil strata. Construction of this kind will reduce the effectiveness of the swale drain in filtering pollutants.*

*No stormwater quality modelling has been provided to demonstrate that nutrient pollutants can be removed from the post-development flows without a treatment wetland.*

#### *Erosion & Sediment Control*

*The applicant has included an erosion and sediment control plan for the subdivision works, including soil loss assessment. It is difficult to assess the suitability of these plans without a proper understanding of the proposed earthworks for the subdivision.*

*The site plan proposes to install two large silt fence structures at two of the overland flow outlets from the site, in lieu of the required sedimentation ponds. A note on the plan states that ponds were not suitable due to the geotechnical hazard of storing water in ponds. Due to this consideration, the proposed controls are acceptable. The applicant must adopt Council's Code of Practice for the design, installation and maintenance of these control structures.*

*Based on the above assessment it was evident that the initial stormwater details provided by the applicant were not sufficient to adequately assess the potential impacts of the proposed subdivision on adjoining residences and downstream drainage systems. The applicant was subsequently required to provide additional information to address Stormwater Drainage as follows:*

- 1. A detailed earthworks plan for the proposed subdivision, clearly showing areas of cut and fill, and existing and finished levels. This plan must be accompanied by an assessment of the earthworks plans to demonstrate compliance with Council's Development Design Specification D6 – Site Regrading.*
- 2. Additional modelling results of the proposed stormwater detention system, considering storm durations of 1 hour, 6 hours, 12 hours and 24 hours, to demonstrate the system's adequacy in limiting post-development flows to calculated pre-development flows.*
- 3. Additional design detail of the stormwater detention system, to demonstrate future access for maintenance or renewal.*
- 4. Assessment of downstream public drainage infrastructure under existing pre-development flow rates and runoff volumes, and the proposed post-development runoff volumes. This must include all piped and overland flow paths (including any landscaping or other obstructions to flow) leaving the site, kerb capacity for any longitudinal road flows, piped road crossings and receiving drainage networks.*
- 5. The written consent of affected landholders to create easement(s) to drain stormwater through their land on the northern side of McAllisters Road to natural watercourse(s) and construct all piped and/or open drainage systems necessary to accommodate the ARI 100 year flows from the contributing catchment. Easement(s) and conveyance systems must be configured to follow natural drainage paths.*
- 6. An amended stormwater quality control proposal, demonstrating compliance with Council's stormwater quality control objectives, and the geotechnical constraints of the subject land.*
- 7. Adoption of Council's Code of Practice for Soil and Water Management on Construction Works (Annexure A of Development Design Specification D7 – Stormwater Quality), and any additional measures proposed to control construction phase runoff during earthworks described in (1).*

Council's Planning and Infrastructure Engineer provided the following assessment of the additional information:

Stormwater Management Issues

As detailed in my previous memo, dated 17/05/06, stormwater management issues present a significant constraint on the proposed residential subdivision. This is mainly due to the absence of a lawful point of discharge for the central portion of the site, due to prevailing topography and the existing strip of residential development along McAllisters Road, downstream of the development site.

The applicant has been previously advised to commence negotiations with downstream landholder(s) for the creation of a drainage easement to allow orderly development of the residential zoned land. These negotiations have apparently failed, and in a letter dated 15/09/06, the applicant formally requested Council's assistance in obtaining this easement.

This matter was reported to Council on 26/09/06, where it was resolved that:

1. Council approves entering into negotiations with the owner of Lot 1444 in DP 31968 for the creation of an Easement to Drain Water 3 wide for the benefit of Council, or should negotiations fail to reach agreement, the acquisition of the Easement under the provisions of the Land Acquisition (Just Terms Compensation) Act 1991 for the purposes of the Roads Act, 1993 and the making of the necessary application to the Minister and/or Governor;
2. All costs associated with 1 above are to be met by the owner of Lot 32 DP 1085109; and
3. All necessary documentation be executed under the common seal of Council.

As the above process will take some time to complete, the applicant has requested a "deferred commencement" consent, based on an Amended Stormwater Management Plan (Gilbert & Sutherland, August 2006). This is considered appropriate given the above Council resolution. It should be noted that the applicant initially requested creation of an easement for drainage and sewerage, however following discussions with Council's Acting Director Engineering and Operations, the sewerage component was withdrawn.

Drainage Proposal - Stormwater Quantity

Given the future creation of a lawful point of discharge for the central catchment, as required by Council, no further mitigation of stormwater quantity in that catchment will be required. Flows will be able to negotiate existing downstream residences to an existing culvert on McAllisters Road. From this structure, flows will be directed towards natural watercourses to the north of the site, through agricultural land (which has also been the subject of a residential subdivision proposal).

*The remaining subdivision catchments discharge to existing piped drainage infrastructure to the east, west and south of the site. The amended stormwater management plan provides detail of retention devices necessary to limit peak discharges from each catchment to pre-development levels. Storage will be provided by large reinforced concrete box culverts buried within the road reserves. The design of this system includes an assumption of rainwater tanks with permanent runoff storage on each residential allotment, which needs to be applied to land titles.*

*It is considered that the applicant has adequately addressed stormwater quantity issues for the subdivision by limiting impacts on downstream drainage infrastructure, and may be conditionally approved.*

#### Drainage Proposal - Stormwater Quality

*The applicant has not addressed previous comments made in relation to the treatment of subdivision stormwater (road runoff). For geotechnical reasons, the applicant has requested a variation to D7 requirements for a constructed wetland, and instead proposed a "bioinfiltration swale" along one of the roadways (Road 2). Given the geotechnical concerns, this may not be a suitable approach to the treatment of road runoff. The stormwater management plan does not address stormwater treatment for Road 1.*

*Given that the individual catchments within the subdivision are less than 50 lots (a "small" subdivision in D7), it is considered reasonable to permit a variation to the wetland requirement of D7, subject to a suitably designed alternative system to treat all road runoff from the subdivision. This may be achieved via proprietary treatment devices, swales and biofiltration (subject to geotechnical compatibility). This may be properly addressed with a s68 Stormwater Application prior to the issue of a Construction Certificate.*

Having regard to the above assessment the application is considered capable of conditional consent based on the applicants amended plans detailing stormwater management.

#### Flooding

The subject site is not subject to flooding. However, careful consideration must be given to impacts of overland flow on existing downstream properties. Council is already aware of downstream properties being effected by overland flow discharging from the golf course.

The construction of the road network, underground drainage system and the provision of drainage swales (cut off drains) along the downstream northern boundary of lot 32 will significantly improve the current drainage problem. In addition, Inter allotment drainage (IAD's) will be installed along this northern boundary to cater for discharge from the roof and hardstand areas of the proposed dwellings.

### Landscaping

Landscaping of the development shall be required in accordance with Councils adopted Development Design and Construction Specifications.

Section 11.3 of DCP No.16 requires the provision of open space at a rate of 2.83ha per 1000 head of population, 60% of which will be structured and 40% casual. The casual component has been provided onsite by way of a park 2500m<sup>2</sup>. Therefore no monetary contribution will be required for S.94 Plan No.5 Casual.

### Site Suitability

Each of the proposed allotments is considered capable of suitably accommodating a building envelope of 10m x 15m in accordance with the relevant provisions of DCP No.16.

### Overall

Based on a thorough assessment of all the issues it is considered that the application is capable of achieving compliance with DCP 16 subject to the imposition of conditions of consent as recommended.

### **Development Control Plan No.39 – Energy Smart Homes Policy**

Development Control Plan No.39 provides for relevant principles relating to the siting and orientation of residential allotments. In this regard, the proposed subdivision reflects the physical and ecological constraints of the site. The majority of allotments are oriented in a general north south direction. And therefore careful consideration will need to be had when individuals are designing dwellings for the allotments to ensure solar connectors face within 30° east and 20° west of true north. Compliance is achievable.

Accordingly, the proposal is considered to be generally consistent with the relevant provisions of DCP No.39.

### **Development Control Plan No.44 – Dual Occupancy**

The proposed development incorporates the identification of three dual occupancy allotments. These are Lots 3, 24 & 38.

DCP 44 requires nominated dual occupancy sites to be of sufficient size to provide flexible building envelope. This will usually mean:

- an area of not less than 900m<sup>2</sup>;
- is not a battleaxe allotment;
- regular square or rectangular shape with no large circular arc frontages to public roads;
- building orientation;

- orientation of private open space;
- provision of adequate vehicular access and parking; and
- satisfactory visual and aural privacy to adjoining lots.

The location of the lot should have

- access to existing and likely public transport routes;
- access to parks and other public open space facilities; and
- access to other services and facilities (eg, shopping facilities, clubs and the like).

The proposed dual occupancy allotments will generally allow for a design to satisfy these requirements. However any future buildings will obviously be subject to the lodgement of a further Development Application that will need to be assessed on its merits and against the applicable planning instruments at that time.

### **Development Control Plan No.45 – Socio Economic Impact Assessment**

DCP 45 details the type and size of development for which a Socio-Economic Impact Assessment (SEIA) is required. The scale of the development in this case triggers the need for a SEIA.

A review of the applicants Socio Economic report has concluded that the development may have some minor negative impacts during construction. However, in overall terms the socio economic impact of the development is considered to be beneficial. The local areas services are considered sufficient to cater for the proposed development.

### **Development Control Plan No.47 – Cut & Fill**

DCP 47 has a savings provision attached to Version 1.2 as follows:

*Applications submitted up to six (6) months after the date that Version 1.2 of this plan became operational may be considered in accordance with Version 1.1 of this plan.*

Therefore the following comments relate more to the requirements as nominated with Design Specification D6 in DCP 16 Subdivision Manual.

The required earthworks may disturb and affect the stability of the site. A slope stability and Geotechnical assessment of the site was undertaken by Maiden Geotechnics. The report appended to the application identifies three zones based on topography advising little evidence of land-slip has occurred based on aerial photography. The author identifies concern for long term slope instability following the development of the site and recommends pre-emptive measures to be incorporated into the development process to provide acceptable risk of slope instability. The contributing factors raising this concern are tabled as, steep topography, loosely consolidated colluvium deposits and ground water seepage.

It is recommended that conditions of consent table the concerns raised and require the provision of site specific Geotechnical Assessment of all residential lots created prior to the release of a subdivision certificate. In addition a geotechnical assessment be provided prior to the construction of any retaining wall or structure on the land.

Additionally, Stormwater Management Plans and Erosion and Sediment Control Plans have been lodged and are considered satisfactory to mitigate the potential impacts.

Based on this information appropriate conditions of consent are recommended.

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

The proposed development has been assessed against all relevant matters as prescribed by the regulations and is considered to warrant conditional consent.

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

Section 5A of the Environmental Planning & Assessment Act 1979

In accordance with the provisions of the Act the applicant has submitted a Flora and Fauna Assessment

The assessment revealed one threatened species being the small leaved tamarind (*Diploglottis campbellii*). The applicant report details that these are planted trees with an unknown provenance and have little ecological significance or conservation value due to the highly modified nature of the site.

The applicants reports goes on to provide that the site represents poor habitat for fauna, and is likely to support a limited range of urban adapted birds.

The applicant identified two threatened mammal species:

- Koala – from old scratchings present on several grey gums; and
- Grey Headed Flying Fox;

While the site represents poor Koala habitat, it is possible that Koalas may utilise the site occasionally as forage and resting habitat while dispersing throughout the locality. Impacts on Koalas from the development are considered relatively low, given the urban context of the site.

The Grey Headed Flying Fox forage widely and impacts from the proposed development are therefore considered to be negligible.



Based on the above findings the impact of the proposed development would be unlikely to result in the local extinction of any of these species and therefore a Species Impact Statement is not considered necessary.

The above report has addressed all issues pertaining to the potential impacts of the development. Subject to the recommended conditions of consent the application is considered to warrant Council's support.

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

The proposed site has been zoned for urban expansion purposes for many years. The proposed subdivision pattern addresses the site constraints while utilising the 2(c) and 2(a) land. Approval of this subdivision will release needed urban land and allow a variety of housing types to be constructed.

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

The Development Application was advertised for a period of 14 days from 30 November 2005 to 14 December 2005. During this period Council received 33 individual letters of objection, and 277 signatories over four different petitions all opposing the development. The grounds for objection are summarised in the following table:

<u>TOPIC</u>	<u>ISSUE</u>	<u>ASSESSMENT</u>
<p><u>Traffic</u></p>	<ul style="list-style-type: none"> <li>• <i>Traffic on Scenic Drive is already congested and the access to Cobaki Bridge is very difficult and becoming dangerous.</i></li> <li>• <i>The roads and their condition is an extremely important fact. Council should not approve this development with appropriate infrastructure.</i></li> <li>• <i>Increasing commercial traffic and multiple occupancies is making this area busier everyday.</i></li> <li>• <i>The intersection of Scenic Drive Bilambil Road and Simpson's Drive is inadequate and dangerous and needs upgrading</i></li> <li>• <i>Access off Marana Street is dangerous and narrow. With the internal Roads being too narrow.</i></li> <li>• <i>All other developers are banned from developing in Bilambil due to traffic problems. Why is this one allowed to proceed?</i></li> </ul>	<p>As detailed in the above report, the proposed development has been through a thorough assessment in regards to traffic.</p> <p>As the applicant has amended D96/0519 this has freed up the available trips remaining within the Kennedy Drive Catchment.</p> <p>In addition Council has recommended conditions of consent to ensure the surrounding road network is capable of accommodating the development</p> <p>Therefore, subject to the recommended conditions of consent the proposed development is considered acceptable on traffic grounds.</p> <p>These issues are not considered to warrant refusal of the application.</p>

<p><u>Amenity</u></p>	<p><i>It is a beautiful area that should never have been re-zoned residential. The lot sizes are small and not in keeping with the generally larger lots in Bilambil. Loss of views to the north and north east. This development will change the semi rural element of the existing area. Absence of a green belt will cause this area to turn into another Banora Point.</i></p>	<p>The proposed site has been zoned for urban expansion purposes for many years.</p> <p>The proposed subdivision pattern addresses the site constraints while utilising the 2(c) and 2(a) land.</p> <p>Approval of this subdivision will release needed urban land and allow a variety of housing types to be constructed.</p> <p>The application for subdivision will not in itself block any views, however, future applications for dwellings across the site will impact on the current amenity of adjoining residences. This will need to be assessed on its merits at time of lodgement of each new house application, having regard to the intended nature of the site for residential purposes.</p> <p>These issues are not considered to warrant refusal of the application.</p>
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<p><u>Drainage</u></p>	<p><i>A major drainage problem has existed since the developer has removed trees. Where will flooding water go and what arrangements are proposed for the extra sewerage outflow? The subject land should be considered as being constrained by the prevailing unsatisfactory conditions on nearby land. The increase in impervious surfaces, roads, roofs driveways will decrease the amount of surface available for absorption, thus making management post construction difficult. Our insurance company will not cover us from any water damage caused by runoff from these properties. We would like a written assurance that any damage caused by inadequate drainage will be compensated by Tweed Shire Council. Global warming will result in more events like June 2005 and therefore we should plan for them to avoid stormwater problems.</i></p>	<p>As detailed in the above report, the proposed development has been through a thorough assessment in regards to drainage.</p> <p>Council is acquiring a piece of land to improve drainage issues and this will improve the existing situation for nearby residents.</p> <p>In addition Council has recommended conditions of consent to ensure the development is capable of diverting all overland flow to an approved location without impacting on adjoining land.</p> <p>Therefore, subject to the recommended conditions of consent the proposed development is considered acceptable on drainage grounds.</p> <p>These issues are not considered to warrant refusal of the application.</p>
<p><u>Flora &amp; Fauna</u></p>	<p><i>It is a sanctuary for bird and animal life and provides much needed open space for families and children. Dogs and cats should be banned in the area to protect Koala's and</i></p>	<p>The applicant has submitted a detailed flora and fauna report</p> <p>Based on these findings the impact of the proposed development would be unlikely to result in the local extinction of any threatened species and therefore a</p>

	<p><i>other wildlife. How was the existing vegetation cleared without this application being approved first.</i></p>	<p>Species Impact Statement is not considered necessary.</p> <p>The application will be conditioned to comply with the Flora and Fauna Report Recommendations, however, this does not include restricting cats and dogs.</p> <p>The removal of trees prior to this development proceeding is a matter of compliance, which the applicant claims was part of routine golf maintenance. Council's Compliance Officer is still pursuing this.</p> <p>These issues are not considered to warrant refusal of the application.</p>
<p><u>Lack of Community Recreational Facilities</u></p>	<p><i>Many people enjoy the beauty of the golf course The parkland provision stated in the Development Application does not sufficiently provide amenities for local youth and families</i></p>	<p>Section 11.3 of DCP No.16 requires the provision of open space at a rate of 2.83ha per 1000 head of population, 60% of which will be structured and 40% casual. The casual component has been provided onsite by way of a park 2500m<sup>2</sup>. Therefore no monetary contribution will be required for S.94 Plan No.5 Casual.</p> <p>Council's plans will need to be reviewed to ensure Bilambil Heights will have sufficient amenities and open space as the release area is utilised.</p> <p>These issues are not considered to warrant refusal of the application.</p>
<p><u>Cumulative Impact</u></p>	<p><i>The Bilambil Heights area is nominated for more urban land release. If this DA proceeds and others follows all of the identified problems will escalate. One of the internal</i></p>	<p>The lack of a cul-de-sac does not give any right to further development, but rather facilitates the proposed subdivision pattern.</p> <p>Furthermore, each application needs to be assessed on its merits, however, further release of urban land in this area is</p>

	<i>roads does not end in a cul-de-sac and does not lead into a residential zoned area. Any increase in number of residents will make the distributor roads worse for all users.</i>	likely to be restricted until after the construction of the Cobaki Parkway and Tugan Bypass.
<u>Pollution</u>	<i>Risk of erosion and stormwater damage during construction. Quality of run off water during construction due to contamination and natural acidity. Use of herbicides and pesticides of the golf greens and fairways is acknowledged however, consideration should be given for organochlorides.</i>	Council's Environmental health Officer has reviewed the application specifically in regard to potential contamination and pollution.  Based on the recommended conditions of consent the application is considered capable of approval.
<u>Orderly Development</u>	<i>This subdivision is premature and should be part of a Master Plan. Zonings should be reviewed. The history of the site and the way in which it was zoned is questionable. There is no need for this amount of land release</i>	The proposed site has been zoned for urban expansion purposes for many years.  The zoning was approved by The Minister and considered lawful.  The proposed subdivision pattern addresses the site constraints while utilising the 2(c) and 2(a) land.  Approval of this subdivision will release needed urban land and allow a variety of housing types to be constructed.  These issues are not considered to warrant refusal of the application.

<p><u>Inadequacies in documentation</u></p>	<p><i>In some instances Council is relying on 20-year-old date. The information provided by the applicant is misleading. Having to pay for a copy of the documentation and having only 14 days to comment is inadequate.</i></p>	<p>Since initial lodgement Council has requested and subsequently received additional information from the applicant.</p> <p>Having regard to this information and Council's Professional Technical Officers this application is now considered suitable for approval.</p>
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**(e) Public interest**

The application has generated interest from many residents concerned about traffic, drainage and the general appropriateness of the development for the site. These objections must be considered having regard to the planning context of the site. The site has been zoned for residential purposes for many years and to facilitate development in this zone it is necessary to alter stormwater drainage and reduce the size of the existing golf course. The proposed development is considered to be an appropriate development for the site having regard to the zoning and the level of compliance achieved against Council's Planning Controls.

**OPTIONS:**

1. Approve the Development Application in accordance with the recommendation.
2. Refuse the Development Application.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be dissatisfied with the outcome they have a right of appeal to the NSW Land and Environment Court.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The proposed application warrants conditional approval. The principal issues of traffic congestion, drainage and general amenity have all been assessed. Individually and combined these issues do not warrant refusal.

The concerns regarding the change to the visual character arising out of the reduction in size of the golf course do not warrant refusal. The visual character of the subdivision will be acceptable, within the context of a new release area.

Based on the relevant performance criteria all applicable planning instruments have been satisfied and therefore the proposed development warrants 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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**P8 [PD-PC] Section 96 Application DA05/0308.01 for Amendment to Development Consent DA05/0308 for Staged Residential Subdivision (3 Stages) Comprising 89 Single Dwelling Lots, 7 Duplex Blocks, 1 Drainage Reserve, 1 Residue Lot & 2 Public Reserves at Lot 13**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA05/0308 Pt4**

**SUMMARY OF REPORT:**

At the Council Meeting held on 4 July 2006 the Administrators resolved to:

*Delegate authority to the Director of Planning & Development to approve Development Application DA05/0308 subject to the applicant withdrawing Appeal Number 11048 in the NSW Land & Environment Court and subject to certain conditions of consent being imposed on any consent.*

Subsequently the applicant withdrew the Appeal and Council issued deferred development consent for the proposed subdivision on 17 July 2006.

The applicant is now requesting that Council amend certain conditions of the consent to facilitate administrative convenience, clarify certain aspects of the consent, and to allow alternative staging. The proposed changes would generally ensure an efficient construction period.

Whilst most of the proposed changes are supported there are some conditions that are considered necessary and appropriate and therefore are not recommended for amendment or deletion. Accordingly, the S96 application is recommended for conditional approval as per the recommendation.

**RECOMMENDATION:**

**That Section 96 Application DA05/0308.01 for Amendment to Development Consent DA05/0308 for Staged Residential Subdivision (3 Stages) Comprising 89 Single Dwelling Lots, 7 Duplex Blocks, 1 Drainage Reserve, 1 Residue Lot & 2 Public Reserves at Lot 13 DP 793985; Lot B DP 368706; Lot 1 DP 392245, Barnby Street, Murwillumbah be amended as follows: -**

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

**1A. The development shall be completed in accordance with the Statement of Environmental Effects and the following Plan Nos: -**

- Drawing Number 7214/6/1 DA Figure 3 Revision H prepared by Cardno MBK and dated 19 September 2006;
- Drawing Number 7214/6/1 DA Figure 4 Revision E prepared by Cardno MBK and dated May 2006;
- Drawing Number 7214/06/1 DA Figure 10 Revision B prepared by Cardno MBK and dated August 2004;
- Drawing Number 7214/06 DA Figure 13 Revision B prepared by Cardno MBK and dated January 2005;
- Drawing Number 7214/06 DA Figure 14 Revision A prepared by Cardno MBK and dated November 2003;
- Drawing Number 7214/06/01 DA Figure 17 Revision B prepared by Cardno MBK and dated January 2005;
- Drawing Number 7214/06 DA Figure 18 Revision B prepared by Cardno MBK and dated August 2004;

except where varied by the conditions of this consent.

[GEN0005]

Delete Condition 22 and replace with Condition 22A that reads as follows:

**22A. Construction of the connection road linking Joshua Street to Road 2, as part of the Stage 1 works. The proposal to construct this link to a rural road standard in accordance with the requirements of DCP16, and to have this section of road created as a dedicated temporary road, is acceptable as a temporary measure (until further development and/or a rezoning occurs over the residual portion of the site), however this is a permanent link and is required for immediate and permanent use by the public. This section of road must be designed to cater use as a bus route, make provision for a cycleway, and must also provide traffic control devices to ensure traffic speeds reflect the 50 kph speed limit.**

[PCCNS01]

Delete Condition 23 and replace with Condition 23A that reads as follows:

**23A. The Subdivision Certificate for Stage 3 (Phase 2) will not be issued until satisfactory arrangements have been made with Council regarding construction of the new road connection between Francis Street and Road 2, generally as shown on Plan 7214/6/1-DA FIG 3. This condition will be deemed to be satisfied upon payment by the applicant to Council of 50% of the construction cost of the above-mentioned road connection. Construction costs shall be fully itemised and based on engineering design plans for a two lane rural road standard of construction. The road shall be designed for use as a bus route, with provisions for a cycleway and traffic control devices to ensure traffic speeds reflect the 50 kph speed limit**

[PCCNS01]

Delete Condition 25 and replace with Condition 25A that reads as follows:

**25A. A bus route through the site shall be established as part of the Stage 1 works. The engineering plans will need to demonstrate that buses can negotiate all relevant intersections along the designated bus route”**

[PCCNS01]

**Delete Condition 30 and replace with Condition 30A that reads as follows:**

**30A. The section of Road 3 shown as Temporary Public Road shall be fully constructed to urban road standards and dedicated as public road, up to the intersection with Road 2, as part of the Stage 3 works.**

[PCCNS01]

**Delete Condition 31**

**Delete Condition 32 and replace with Condition 32A that reads as follows:**

**32A. All roads and lots are to be filled to a minimum of RL 5.1m AHD. This is exclusive of roads created as “Temporary public Road”, however such roads will need to be raised to the minimum level of RL 5.1m AHD prior to them being dedicated as public road.”**

[PCCNS01]

**Delete Condition 34 and replace with Condition 34A that reads as follows:**

**34A. The removal and subsequent reconstruction of access driveways to house numbers 45 and 49 Barnby Street as follows: -**

- (a) Provision of a new concrete driveway to Number 45 generally as per Plan 7214/06.**
- (b) Provision of a new concrete driveway to Number 49 to come off Road 4, in the vicinity of chainage 40 or relocated to the south of the existing access point on Barnby Street**
- (c) Access to both above-mentioned dwellings shall be maintained at all times, even during the construction phase.**

[PCCNS01]

**Delete Condition 37 and replace with Condition 37A that reads as follows:**

**37A. The sediment pond(s) for Stage 1 and/or a bulk earthworks approval, may be located within the proposed Drainage Reserve area. This is on the proviso that prior to completion of the relevant works, an additional sediment pond(s) shall be constructed so as to ensure adequate treatment of construction site runoff prior to discharge to receiving waters.**

[PCCNS01]

**Delete the first Condition 49 and replace with Condition 49A that reads as follows:**

**49A. Prior to issue of a Construction Certificate the applicant is to provide evidence to Council that Lot 229 can achieve a 20m Inner Protection Area while still accommodating a dual occupancy. Failure to satisfy this condition will result in Lot 229 not being a nominated dual occupancy allotment.**

[PCCNS02]

**Delete the first Condition 75 and replace with Condition 75A that reads as follows:**

**75A. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. All such materials should be either;**

- a) 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, or**
- b) Milling of tree logs is permissible, provided that the mill is only a temporary mill used during the relevant stage of construction, and that the mill is only used for timber won from the development site. Should the activity be deemed a noise nuisance, as determined by the Environment & health Services Unit, the activity will cease immediately until rectified.**

[DUR1015]

**Delete the first Condition 103 and replace with Condition 103A that reads as follows:**

**103A. Implementation of the Stormwater Management Plan by Gilbert and Sutherland dated October 2004 and/or including any amendments subsequently approved by Council.**

[DURNS01]

**Delete Conditions 105 & 106 and replace with the following new conditions 105A and 106A as follows:**

**105A 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 Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.**

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

**Stage 1**

Water DSP2: 25.4 ET @ \$4230	\$107,442
Sewer Murwillumbah: 26 ET @ \$2634	\$68,484

**Stage 2**

Water DSP2: 36 ET @ \$4230	\$152,280
Sewer Murwillumbah: 36 ET @ \$2634	\$94,824

**Stage 3**

Water DSP2: 31 ET @ \$4230	\$131,130
Sewer Murwillumbah: 31 ET @ \$2634	\$81,654

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]

**106A Section 94 Contributions**

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

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

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

**Stage 1**

a.	<b>Tweed Road Contribution Plan:</b>	<b>\$56,145</b>
	<b>S94 Plan No. 4 (Version 4.0)</b>	
	<b>Sector9_4</b>	
b.	<b>Open Space (Structured):</b>	<b>\$20,280</b>
	<b>S94 Plan No. 5</b>	
c.	<b>Street Trees:</b>	<b>\$7,722.00</b>
	<b>S94 Plan No. 6</b>	
d.	<b>Shirewide Library Facilities:</b>	<b>\$17,888</b>
	<b>S94 Plan No. 11</b>	
e.	<b>Bus Shelters:</b>	<b>\$676</b>
	<b>S94 Plan No. 12</b>	
f.	<b>Eviron Cemetery/Crematorium Facilities:</b>	<b>\$3,406</b>
	<b>S94 Plan No. 13</b>	
g.	<b>Emergency Facilities (Surf Lifesaving)</b>	<b>\$5,200</b>
	<b>S94 Plan No. 16</b>	
h.	<b>Extensions to Council Administration Offices &amp; Technical Support Facilities</b>	<b>\$32,988.80</b>
	<b>S94 Plan No. 18</b>	
i.	<b>Cycleways</b>	<b>\$9,152</b>
	<b>S94 Plan No. 22</b>	
j.	<b>Regional Open Space (Structured)</b>	<b>\$60,502</b>
	<b>S94 Plan No. 26</b>	
k.	<b>Regional Open Space (Casual)</b>	<b>\$22,230</b>
	<b>S94 Plan No. 26</b>	

**Stage 2**

- |    |  |                    |
|----|--|--------------------|
| a. | <b>Tweed Road Contribution Plan:</b>   | <b>\$69,697</b>    |
|    | <b>S94 Plan No. 4 (Version 4.0)</b>  |                    |
|    | <b>Sector9_4</b>   |                    |
| b. | <b>Open Space (Structured):</b>  | <b>\$28,080</b>    |
|    | <b>S94 Plan No. 5</b>  |                    |
| c. | <b>Street Trees:</b>   | <b>\$10,692.00</b> |
|    | <b>S94 Plan No. 6</b>  |                    |
| d. | <b>Shirewide Library Facilities:</b>   | <b>\$24,768</b>    |
|    | <b>S94 Plan No. 11</b>   |                    |
| e. | <b>Bus Shelters:</b>   | <b>\$936</b>       |
|    | <b>S94 Plan No. 12</b>   |                    |
| f. | <b>Eviron Cemetery/Crematorium Facilities:</b>   | <b>\$4,716</b>     |
|    | <b>S94 Plan No. 13</b>   |                    |
| g. | <b>Emergency Facilities (Surf Lifesaving)</b>  | <b>\$7,200</b>     |
|    | <b>S94 Plan No. 16</b>   |                    |
| h. | <b>Extensions to Council Administration Offices<br/>&amp; Technical Support Facilities</b> | <b>\$45,676.80</b> |
|    | <b>S94 Plan No. 18</b>   |                    |
| i. | <b>Cycleways</b>   | <b>\$12,672</b>    |
|    | <b>S94 Plan No. 22</b>   |                    |
| j. | <b>Regional Open Space (Structured)</b>  | <b>\$83,772</b>    |
|    | <b>S94 Plan No. 26</b>   |                    |
| k. | <b>Regional Open Space (Casual)</b>  | <b>\$30,780</b>    |
|    | <b>S94 Plan No. 26</b>   |                    |

**Stage 3**

- |    |                                      |                 |
|----|--------------------------------------|-----------------|
| a. | <b>Tweed Road Contribution Plan:</b> | <b>\$60,017</b> |
|    | <b>S94 Plan No. 4 (Version 4.0)</b>  |                 |
|    | <b>Sector9_4</b>                     |                 |
| b. | <b>Open Space (Structured):</b>      | <b>\$24,180</b> |
-

	<b>S94 Plan No. 5</b>	
c.	<b>Street Trees:</b>	<b>\$9,207.00</b>
	<b>S94 Plan No. 6</b>	
d.	<b>Shirewide Library Facilities:</b>	<b>\$21,328</b>
	<b>S94 Plan No. 11</b>	
e.	<b>Bus Shelters:</b>	<b>\$806</b>
	<b>S94 Plan No. 12</b>	
f.	<b>Eviron Cemetery/Crematorium Facilities:</b>	<b>\$4,061</b>
	<b>S94 Plan No. 13</b>	
g.	<b>Emergency Facilities (Surf Lifesaving)</b>	<b>\$6,200</b>
	<b>S94 Plan No. 16</b>	
h.	<b>Extensions to Council Administration Offices &amp; Technical Support Facilities</b>	<b>\$39,332.80</b>
	<b>S94 Plan No. 18</b>	
i.	<b>Cycleways</b>	<b>\$10,912</b>
	<b>S94 Plan No. 22</b>	
j.	<b>Regional Open Space (Structured)</b>	<b>\$72,137</b>
	<b>S94 Plan No. 26</b>	
k.	<b>Regional Open Space (Casual)</b>	<b>\$26,505</b>
	<b>S94 Plan No. 26</b>	

[PCC0215/PSC0175]



**REPORT:**

**Applicant:** Metricon Qld Pty Ltd  
**Owner:** Barnby Developments Pty Ltd  
**Location:** Lot 13 DP 793985; Lot B DP 368706; Lot 1 DP 392245, Barnby Street Murwillumbah  
**Zoning:** 2(c) Urban Expansion  
**Cost:** \$6,000,000

**BACKGROUND:**

Council issued deferred development consent for the proposed subdivision at Barnby Street, Murwillumbah on 17 July 2006.

The applicant is now requesting that Council amend certain conditions of the consent to facilitate an efficient construction period.

The proposed amendments relate to the following conditions:

- Condition 22:

22. *Construction of the connection road linking Joshua Street to Road 2, as part of the Stage 1 works. The proposal to construct this link to a rural road standard in accordance with the requirements of DCP16, and to have this section of road covered by a Right of Way, is acceptable as a temporary measure (until further development and/or a rezoning occurs over the residual portion of the site), however this is a permanent link and is required for immediate and permanent use by the public. This section of road must be designed to cater use as a bus route, make provision for a cycleway, and must also provide traffic control devices to ensure traffic speeds reflect the 50 kph speed limit.*

[PCCNS01]

It is now proposed to create the connection road (Joshua Street to Road 2) as a temporary road rather than a right of way.

- Condition 23:

23. *The Construction Certificate for Stage 3 (Phase 2) will not be issued until satisfactory arrangements have been made with Council regarding construction of the new road connection between Francis Street and Road 2, generally as shown on Plan 7214/6/1-DA FIG 3.*

*This condition will be deemed to be satisfied upon payment by the applicant to Council of 50% of the construction cost of the above-mentioned road connection. Construction costs shall be fully itemised and based on engineering design plans for a two lane rural road standard of construction. The road shall be designed for use as a bus route, with provisions for a cycleway and traffic control devices to ensure traffic speeds reflect the 50 kph speed limit*

[PCCNS01]

The construction of internal roads will facilitate the Francis Street connection as part of Stage 1.

- Condition 25:

25. *A bus route through the site shall be established as part of the Stage 1 works. To facilitate this, the following matters must be satisfactorily addressed:*

- (a) Road 1 is to have the carriageway widened to 9.0m, from Road 2 to Road 4.*
- (b) Road 4 is to have the carriageway widened to 9.0m.*
- (c) The intersection of Road 4 with the northern section of Road 1 is to be prioritised, by the provision of an arced alignment. The southern section of Road 1 shall be arced around to intersect perpendicularly with the mid-point of the prioritised arc. Road 4 and Road 1 (chainage 00 to 270) are to be merged to form one continuous longitudinal section. Some pavement widening may be required around this bend.*
- (d) In conjunction with the preceding requirement, an access driveway location for Lot 103, compliant with AS2890, will need to be demonstrated.*
- (e) The engineering plans will need to demonstrate that buses can negotiate all relevant intersections within the estate.*

[PCCNS01]

It is now proposed to create the bus route as Stage 1 however the proposed connection road (Joshua Street to Francis Street) will now become the designated bus route.

- Condition 30:

30. *The section of Road 3 shown as Right-of-Way shall be fully constructed to urban road standards and dedicated accordingly, up to the intersection with Road 2, as part of the Stage 2 works.*

[PCCNS01]

It is now proposed to create this as part of Stage 3 with the words temporary road replaced with right of way.

- Condition 31:

31. *The Stage 3 construction of Road 5 will require the provision of a temporary sealed turning bulb area, covered by a Right-of-Carriageway.*  
[PCCNS01]

It is requested that this be deleted as it is provided for in 81.

- Condition 32:

32. *All roads and lots are to be filled to a minimum of RL 5.1m AHD*  
[PCCNS01]

It is now proposed to exclude the road across the 1(b) land from this condition to allow alternative solutions to be considered on merit.

- Condition 34:

34. *The removal and subsequent reconstruction of access driveways to house numbers 45 and 49 Barnby Street as follows: -*
  - (a) *Provision of a new concrete driveway to Number 45 generally as per Plan 7214/06.*
  - (b) *Provision of a new concrete driveway to Number 49 to come off Road 4, in the vicinity of chainage 40.*
  - (c) *Access to both above-mentioned dwellings shall be maintained at all times, even during the construction phase.*  
[PCCNS01]

It is now proposed to allow an alternative solution such as relocation to the south of the existing access point on Barnby Street.

- Condition 37:

37. *Any temporary sediment ponds required during the construction phase of the development shall be located clear of the proposed Drainage Reserve.*  
[PCCNS01]

Due to topography the applicant is seeking permission to utilise the proposed drainage reserve for the sediment pond during construction.

- Condition 43:

43. *Public reserve (riverbank)*

- (a) *Prior to issue of a Construction Certificate for Stage 1, a vegetation regeneration plan for the public reserve (riverbank is to be prepared and submitted to Council for approval by the Manager, Recreation Services. The plan shall incorporate the amelioration measures of the Flora & Fauna Assessment Plan prepared by James Warren and Associates dated March 2005, and must allow for up to three years maintenance. The plan shall be implemented as part of Stage 1 works.*
- (b) *Access to the public reserve (riverbank) must be provided for maintenance and potential recreation use.*

[PCCNS01]

The applicant is requesting the deletion of the requirement by Stage 1.

- Condition 49:

49. *Prior to issue of a Construction Certificate the applicant is to provide evidence to Council that Lot 117 can achieve a 20m Inner Protection Area while still accommodating a dual occupancy. Failure to satisfy this condition will result in Lot 117 not being a nominated dual occupancy allotment.*

[PCCNS02]

Lot 117 becomes lot 229 in the new staging plan and this condition needs to be amended accordingly.

- Condition 75:

75. *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]

The applicant is requesting that this condition be amended to permit the milling of trees on site.

- Condition 103:

103. *Implementation of the Stormwater Management Plan by Gilbert and Sutherland dated October 2004.*

[DURNS01]

The applicant is requesting that this condition be amended to permit any subsequent amendments approved by Council.

- Condition 105 & 106:

105. 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 Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

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

Stage 1

Water DSP2:	41.4 ET @ \$4598	\$190,357
Sewer Murwillumbah:	42 ET @ \$2863	\$120,246

Stage 2

Water DSP2:	23 ET @ \$4598	\$105,754
Sewer Murwillumbah:	23 ET @ \$2863	\$65,849

Stage 3

Water DSP2:	28 ET @ \$4598	\$128,744
Sewer Murwillumbah:	28 ET @ \$2863	\$80,164

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]

106. Section 94 Contributions

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

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

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

Stage 1

(a) Tweed Road Contribution Plan: S94 Plan No. 4 (Version 4.0)	\$81,313
Sector9_4	
(b) Open Space (Structured): S94 Plan No. 5	\$32,760
(c) Street Trees: S94 Plan No. 6	\$12,474.00
(d) Shirewide Library Facilities: S94 Plan No. 11	\$28,896
(e) Bus Shelters: S94 Plan No. 12	\$1,092
(f) Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$5,502
(g) Emergency Facilities (Surf Lifesaving) S94 Plan No. 16	\$8,400
(h) Extensions to Council Administration Offices & Technical Support Facilities  S94 Plan No. 18	\$53,289.60
(i) Cycleways S94 Plan No. 22	\$14,784

(j) Regional Open Space (Structured)  
S94 Plan No. 26 \$97,734

(k) Regional Open Space (Casual)  
S94 Plan No. 26 \$35,910

Stage 2

(a) Tweed Road Contribution Plan:  
S94 Plan No. 4 (Version 4.0) \$44,529  
Sector9\_4

(b) Open Space (Structured):  
S94 Plan No. 5 \$17,940

(c) Street Trees:  
S94 Plan No. 6 \$6,831.00

(d) Shirewide Library Facilities:  
S94 Plan No. 11 \$15,824

(e) Bus Shelters:  
S94 Plan No. 12 \$598

(f) Eviron Cemetery/Crematorium Facilities:  
S94 Plan No. 13 \$3,013

(g) Emergency Facilities (Surf Lifesaving)  
S94 Plan No. 16 \$4,600

(h) Extensions to Council Administration Offices  
& Technical Support Facilities \$29,182.40  
S94 Plan No. 18

(i) Cycleways  
S94 Plan No. 22 \$8,096

(j) Regional Open Space (Structured)  
S94 Plan No. 26 \$53,521

(k) Regional Open Space (Casual)  
S94 Plan No. 26 \$19,665

Stage 3

(a) Tweed Road Contribution Plan:  
S94 Plan No. 4 (Version 4.0) \$54,209  
Sector9\_4

(b) Open Space (Structured):  
S94 Plan No. 5 \$21,840

(c) Street Trees:  
S94 Plan No. 6 \$8,316.00

(d) Shirewide Library Facilities: S94 Plan No. 11	\$19,264
(e) Bus Shelters: S94 Plan No. 12	\$728
(f) Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$3,668
(g) Emergency Facilities (Surf Lifesaving) S94 Plan No. 16	\$5,600
(h) Extensions to Council Administration Offices & Technical Support Facilities  S94 Plan No. 18	\$35,526.40
(i) Cycleways S94 Plan No. 22	\$9,856
(j) Regional Open Space (Structured) S94 Plan No. 26	\$65,156
(k) Regional Open Space (Casual) S94 Plan No. 26	\$23,940

[PCC0215/PSC0175]

107. Section 94 Contributions

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

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

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

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

Heavy Haulage Component

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



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

where:

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

and:

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

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

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

Admin. Administration component - 5% - see Section 6.5

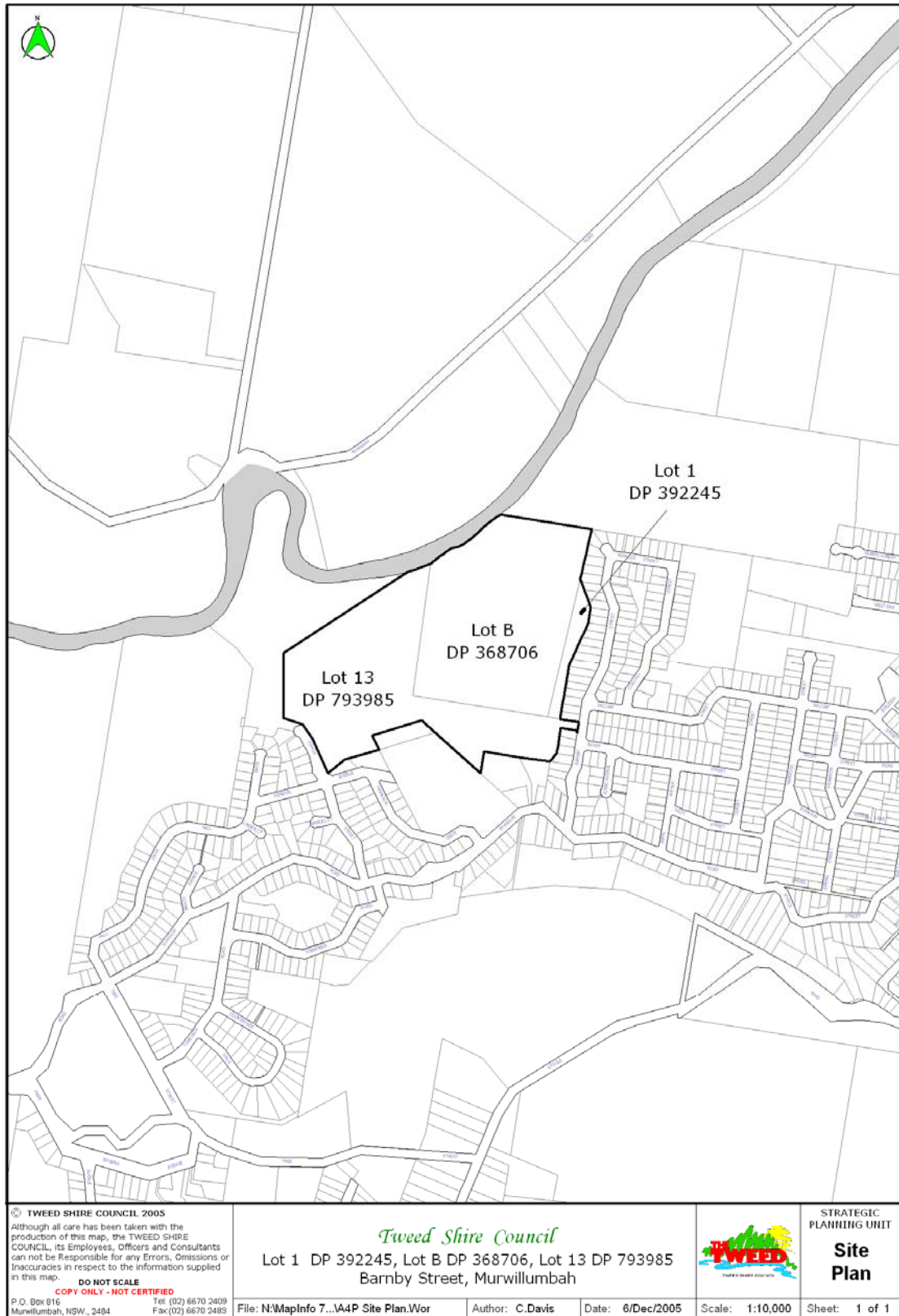
[PSC0185]

The applicant has requested that the above contributions be amended to reflect the new staging plan.

In addition to the above changes the applicant further wrote to Council on 1 November 2006 and requesting one additional amendment that seeks approval for the extension of Road 5 to an intersection with Road 2 (as shown on the applicants plan).

Whilst most of the proposed changes are supported for amendment there are some conditions that are not recommended for change as they are considered necessary and appropriate. Therefore the S96 application is recommended for conditional approval as per the recommendation.

**SITE DIAGRAM:**



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

S96 of the Act specifies that on application being made by the applicant a consent authority can modify the development consent only if it is satisfied that the proposed modified development is substantially the same as the approved development and that all relevant consultations and submissions have been undertaken.

Having regard for this criteria the applicant has provided that the proposed variations result in substantially the same development on the basis that:

- *The proposed modifications essentially relate to administrative convenience, clarity, and practical implementation. They do not create issues of new or more intense environmental impacts than those already considered and consented to;*
- *The nature of the proposed modifications are such that the key elements of the design, layout and diversity of the subdivision as approved remain unaltered.*
- *There have been no modifications to the consent preceding this application.*
- *Having regard to the foregoing it is submitted that the application satisfies the pertinent considerations required by Section 96(1A) of the EP & A Act 1979.*

The S96 Amendment was forwarded to Council's Development Engineer who provided the following comments regarding the amendments;

*Much of the applicant's submission is based on the external (to this subdivision) road works by Council to construct the road link to Francis Street, from the north-eastern corner of the site. Council's Director of Engineering Services has confirmed that the road construction program for this road has been brought forward, but still no guarantees can be given for the timing of this work.*

*Nevertheless Council will be prompting this road link to be constructed sooner than later, and since it will be approximately 12 months (at least) before any residents are likely to actually live in this estate, it is reasonable to adopt the stance that the full road link will be completed by the time it is required by residents.*

*In a worse case scenario, if the road link is not completed, the furthest any resident will need to walk to a bus (on Byangum Road) is approximately 550m, which is reasonable for short term pedestrian travel.*

*The applicant's proposal is generally supported, however two of the proposed amendments are refused as tabled below;*

*Condition 22: To be modified by altering the second sentence as follows: delete "covered by a Right of Way" and replace with "created as a dedicated "temporary road"".*

Condition 23: No concerns are raised with the applicant's proposal for modification, as this benefits Council by bringing forward the requirement to have the design and funding (applicant's share) of the road link to Stage 1 instead of Stage 3.

This condition is to be modified by altering the first sentence as follows: delete "Construction Certificate for Stage 3 (Phase 2)" and replace with "Subdivision Certificate for Stage 1".

This condition must also be removed from the "PCC" section of the consent and moved to the "PSC" section.

Condition 25: To be modified by deleting everything after the first sentence, and adding a second sentence: "The engineering plans will need to demonstrate that buses can negotiate all relevant intersections along the designated bus route".

Condition 30: The applicant seeks to create a short section of Road 3 as "temporary road", however as this short section of road has minimal flexibility for relocation or realignment, it is unnecessarily cumbersome to create it as a "temporary road" only to have it dedicated as a public road soon thereafter. The applicant's request is denied but the condition still needs to be amended and clarified.

The condition is to be amended to read "The section of Road 3 shown as Temporary Public Road shall be fully constructed to urban road standards and dedicated as public road, up to the intersection with Road 2, as part of the Stage 3 works".

Condition 31: No objections to deletion of this condition.

Condition 32: Council's Director of Engineering Services has previously consented to the option of having the temporary public road constructed at a level below flood level, but the road must be raised to be above the flood level prior to it being dedicated public road. In this regard the applicant's proposal is acceptable. Condition 32 is to be amended by adding a second sentence: "This is exclusive of roads created as "Temporary public Road", however such roads will need to be raised to the minimum level of RL 5.1m AHD prior to them being dedicated as public road."

Condition 34: No objections to the proposed amendment. Item (b) is to be amended by adding "...or relocated to the south of the existing access point on Barnby Street."

Condition 37: *No objections to deleting this condition and replacing it with a similar condition (slightly reworded from the applicant's proposal) as follows: " The sediment pond(s) for Stage 1 and/or a bulk earthworks approval, may be located within the proposed Drainage Reserve area. This is on the proviso that prior to completion of the relevant works, an additional sediment pond(s) shall be constructed so as to ensure adequate treatment of construction site runoff prior to discharge to receiving waters."*

Condition 43: *This proposal for amendment is denied, as the condition is considered appropriate and necessary.*

Condition 49: *There are two Condition 49's. The amendment refers to the first one. This condition should be renumbered as 47A and the lot number references within the condition should be changed from "117" to "229".*

Condition 75: *No objections in principle. The condition shall be amended as follows:*

- "The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. All such materials should be either;*
- c) 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, or*
  - d) Milling of tree logs is permissible, provided that the mill is only a temporary mill used during the relevant stage of construction, and that the mill is only used for timber won from the development site. "*

Condition 103: *No objections to the proposed amendment. This condition can be modified by adding "...and/or including any amendments subsequently approved by Council."*

Conditions 105 & 106: *Contributions are to be modified to reflect the altered staging plan.*

The proposed new staging plan results in the following breakdown which has the following breakdown:

- Stage 1 – 29 allotments (two proposed duplex blocks)  
This equates to 26 general ET's (due to credit), 25.4 ET for water, & 188.5 daily trips for TRCP
- Stage 2 – 36 allotments (two proposed duplex blocks)  
This equates to 36 general ET's & 234 daily trips for TRCP
- Stage 3 – 31 allotments (three proposed duplex blocks)  
This equates to 31 general ET's & 201.5 daily trips for TRCP

However, please note duplex blocks are charged at a single lot rate until such time as they are developed for dual occupancy purposes.

*The extra inclusion of a further amendment, per JG's letter of 1.11.06, is recommended for **refusal**. This proposal is for the extension of Road 5 to join up with Road 2. Any formal approval of this section of road would be pre-emptive of a favourable rezoning application – for which no indication of timing has been provided. The road extension is not necessary for the current subdivision to function.*

The above comments have been utilised and adapted for the recommendation.

The S96 Amendment was also forwarded to Council's Environmental Health Officer who provided the following comments regarding the amendments;

*No objections are raised except for the proposed amendment to conditions 75 due to potential impacts of noise nuisance it is therefore recommended that the condition be modified to stipulate:*

*"The milling of tree logs on-site is permitted. Should the activity be deemed a noise nuisance, as determined by the Environmental Health Service Unit of Tweed Shire Council, the activity will cease immediately until rectified."*

The above comments have been utilised and adapted for the recommendation.

Based on this advice of acceptability it is concluded that the proposed amendments could be considered to be substantially the same development.

The proposed modifications would result in substantially the same development as that originally approved and can therefore be dealt with via S96 (1A) of the Act.

In considering an application to modify a development consent Council must have regard to Section 79 of the Act. There are no additional matters of relevance that have not been addressed by way of condition of consent as originally determined for DA05/06308.

Therefore, the proposed amendments are considered satisfactory based on the original consent and the provisions within all appropriate instruments including Tweed LEP 2000.

### **Submissions**

The S96 application was advertised between 8 November 2006 and 22 November 2006 in accordance with S96. This involved an ad in the Tweed Link, notification to nearby residents and notification to those people who originally objected to the application. During this period Council received one (1) written objection.

The issues raised in the objections to these modifications are detailed as follows:

<b>Issue</b>	<b>Assessment</b>
<p><i>The request to put forward the construction of link 2 to a much earlier stage creates a degraded environment for the affected streets as the link merely shifts the vehicle emissions, pollution, dust and noise from Byangum Road to two quiet backstreets without any amelioration measures.</i></p>	<p>Appropriate conditions of consent were recommended in the original application to mitigate potential negative impacts. These are unavoidable during construction and are to be managed within the confines of the consent.</p> <p>This objection does not warrant further amendment or refusal of the application.</p>
<p><i>A less damaging alternative is offered in the Veitech Lister Traffic Study For Murwillumbah via Option 6. The effective reduction of the impacts of the heavier traffic that Option 6 offers should be implemented by reprioritizing link 3 so that it is constructed concurrently with Link 2, or at least very soon after.</i></p>	<p>Based on consideration of all available options and consideration of the public submissions Council resolved as follows: -</p> <p><i>“the following road construction projects be incorporated into a draft amendment of the Tweed Road Contribution Plan:</i></p> <ol style="list-style-type: none"> <li><i>1. Option 2 - West End Street connection to Barnby Street.</i></li> <li><i>2. Option 3 - Cane Road Extension from Queensland Road to the proposed Barnby Street Subdivision.”</i></li> </ol> <p>The results of the traffic modelling show that the subdivision traffic can be absorbed into the local road network subject to Option 2 &amp; 3 being added to the TRCP. The benefits of these Options is that they actually decrease traffic on Byangum Road, William Street, Tumbulgum Road and the CBD. The negative impacts are the increases on Joshua Street and to a lesser extent West End Street.</p> <p>The ultimate traffic levels on all these roads are manageable.</p> <p>This objection does not warrant further amendment or refusal of the application.</p>

All of the above issues have been considered as part of the assessment of this Section 96 Application. The issues are not considered to warrant further amendment or refusal and subsequently the current S96 application is recommended for conditional consent.

**OPTIONS:**

1. Approve the S96 Application in accordance with the recommended changes to the consent.

2. Refuse the S96 Application.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be dissatisfied with the determination of this application they have a right to make an appeal to the Land & Environment Court.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

Each proposed amendment has been assessed on its merits and has been assessed in the context of the variation only, as this is not an opportunity to re-visit the original determination.

Having assessed the S96 Application against the applicable controls, the application is considered to warrant conditional approval.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](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] Section 96 Application T4/2470.07 for Amendment to Development Consent T4/2470 for the Erection of 40 Townhouses at Lot 1 DP 781638, Seaview Road, Banora Point**

**ORIGIN:**

**Development Assessment**

**FILE NO: PF4960/130 Pt4**

**SUMMARY OF REPORT:**

Council is in receipt of a S96(AA) Application that seeks approval for alterations to the approved plans for a “forty unit townhouse development” at Lot 1 in DP 781638, Seaview Road, Banora Point.

The NSW Land & Environment Court approved permit Number T4/2470 for the erection of forty townhouses on 10 December 1984 with a subsequent amendment being approved by Council in November 1987.

Some minor site works, and survey work has been done in relation to this approval and Council has acknowledged commencement of the development, however, the main buildings have not been built. Subsequently, the amendments proposed will not require demolition but rather the construction of an amended development.

The proposed amendments seek the consent to modified to reflect the new plans that make minor changes to;

- the location of the structures to better suit topography and minimise earthworks;
- the layout of units closest to river to ensure a 30m setback is maintained in regards to the new mean high water mark
- the layout of units 35-40 so that they are further down the slope to achieve a greater separation to adjoining residential properties.

The following report assesses each element of the proposed amendments having regard to S96 of the Act. The report concludes that the amendments will result in substantially the same development as that approved and that all relevant consultations and submissions have been undertaken. The results of such consultations do not warrant refusal of this application.

**RECOMMENDATION:**

That Section 96 Application T4/2470.07 for amendment to Development Consent T4/2470 for the erection of 40 townhouses at Lot 1 DP 781638, Seaview Road, Banora Point be approved subject to the following amendments to T4/2470 as originally issued by the Court: -

1. Create a new condition 1A (to appear before condition 1) to read as follows:

- 1A. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos:

- 0024 WD.01 prepared by Peter Hollamby Architect and dated May 2006 and
- 0024 SK.02 through to 0024 SK.23 prepared by Peter Hollamby and dated March 2006,

except where varied by the conditions of this consent.

[GEN0005

2. Delete condition 7 regarding headwork's charges and replace with a new condition 7A to read as follows:

- 7A. 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: 35 ET @ \$4598	\$160,930
Sewer Banora: 35 ET @ \$2863	\$100,205

**NOTE:** Only 35 ET's have been charged as the applicant has already paid for Units 1-5 inclusive.

These charges are valid for the date of issue of this S96 Amendments 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]

- 3. Delete condition 9 regarding the need for a Building Application and replace with a new condition 9A to read as follows:**

**9A. 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.**

- **copies of compliance certificates relied upon**
- **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]

**REPORT:**

**Applicant:** Sea Cove Developments  
**Owner:** Villa DE Fabula Antiques Pty Limited  
**Location:** Lot 1 DP 781638 Seaview Road, Banora Point  
**Zoning:** 2(a) Low Density Residential  
**Cost:** \$15M

**BACKGROUND:**

At the Ordinary Meeting of Tweed Shire Council on 4 May 1983 an assessment report was considered on the proposed forty-unit townhouse development. Following consideration of the planning report (which recommended approval) Council voted to refuse the application subject to fourteen reasons for refusal.

The applicant appealed this decision and subsequently received development consent from the NSW Land & Environment Court (permit Number T4/2470) for the erection of forty townhouses on 10 December 1984.

In accordance with the statutory controls in force at this time the consent would have lapsed on 10 December 1986. However, in June 1986 the applicant requested a two-year extension. The request for an extension was reported to Council on 16 July 1986 who resolved that Development Consent No. T4/2470 be extended for 12 months in accordance with the Act. Thus extending the validity of the consent till 10 December 1987.

In September 1987 the applicant lodged an amendment to the consent with Council. The proposed amendments involved changes to the internal road system, and flow on changes to the location of the units as a result of the redesigned internal road system. Council reviewed these amendments and approved the application in November 1987, thus resulting in two new conditions of consent. At this time it did not appear that Council had the authority to amend a Court issued consent, and therefore the applicant is now seeking amendments to the original consent as issued by the Court not the amended plans that Council considered in 1987.

On 7 December 1987 the applicant paid for Block One (Units 1-5) Water and Sewerage Headwork's Charges as follows:

Water \$850.00 per unit (excl. the first) x 4 =	\$3400
Sewer \$685.00 per unit (excl. the first) x 4 =	\$2740
<b>TOTAL</b>	<b>= \$6140 (Receipt Number 18210)</b>

On 8 December 1987 Council approved Building Application 1056/87B which granted approval for works to commence on Block One (Units 1-5).

A review of Council's files indicates that commencement of works occurred prior to 10 December 1987. This is evident from an objection dated 6/12/1987, which states "As construction work has started on the Town House Project I believe the objection to any blasting to be urgent".

In addition, a Coffey & Partners Pty Ltd report (16/12/1988) on the sites stability indicates that site earthworks occurred late 1987 to early 1988 including three batters and a cut and fill platform as an extension of Fairway Drive.

In June 1995 Council formally acknowledged commencement as follows:

*"Development Consent T4/2470 for the erection of 40 townhouses on the above mentioned property was granted on 10 December 1984. Since that date, site works have commenced and are in a partially completed state, thus the development consent is still valid"*

Furthermore the applicant (via B&P Surveys) has provided documentation to prove that survey work was carried out on 2 -14 July 1987, 23 September 1987, 28 - 29 September 1987, 27 November 1987, 2 December 1987, 7 – 8 December 1987 and 10 December 1987. In addition to field survey the applicant produced photographs taken on 21 March 1988 showing extensive site works. The applicant indicates that the extent of the earthworks carried out on the site would have taken some time to complete and the works, as indicated in their file notes had commenced prior to 10 December 1987.

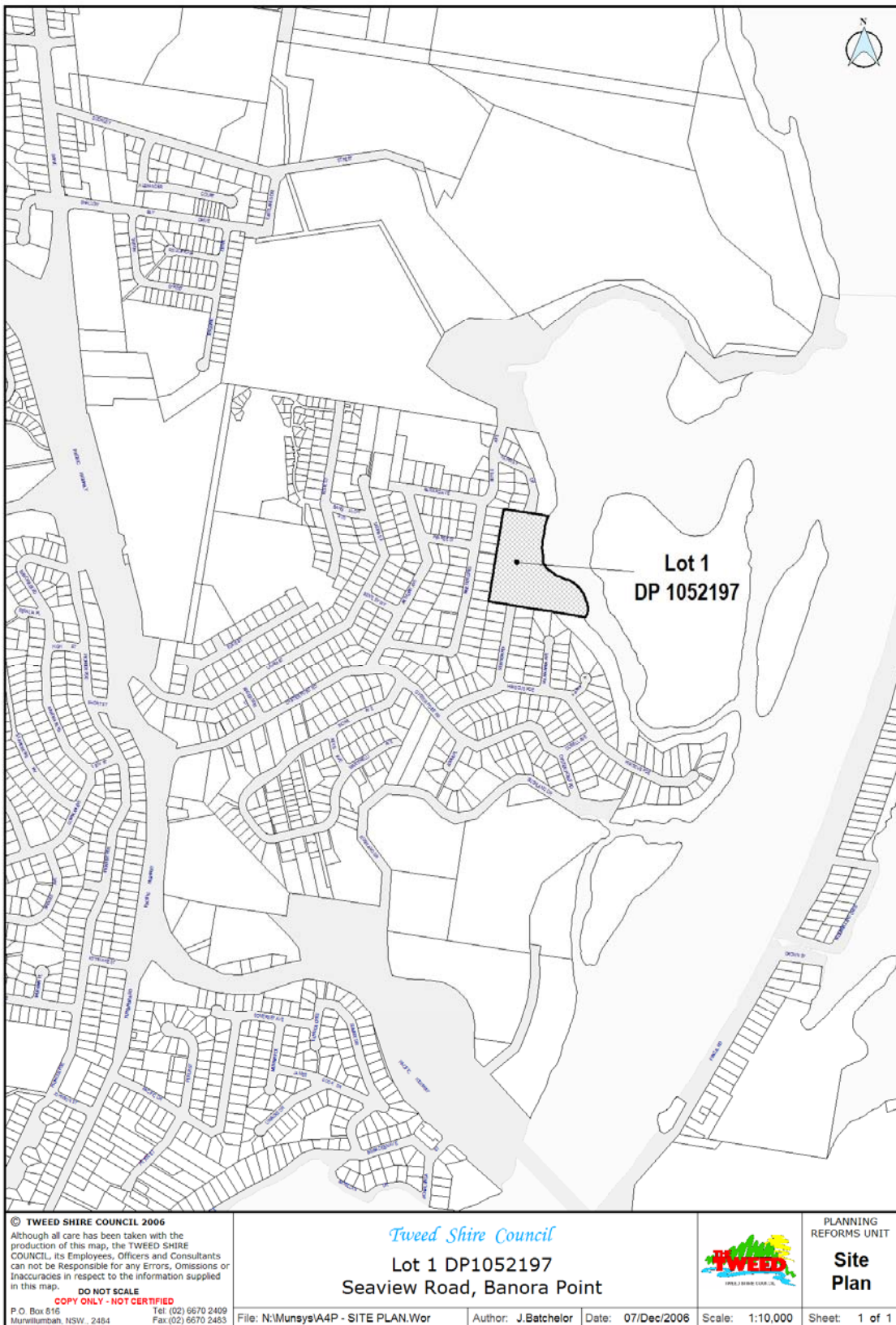
Therefore based on this evidence commencement is considered to have occurred thus keeping the consent alive.

The applicant lodged an amendment to the original application (T2/2470.01) under S96(2) of the Act in March 2006. This application was later withdrawn and replaced with the current S96, which seeks the same amendments, but the applicant has now correctly lodged the application as a Section 96(AA), which allows Council to consent to S96 Applications despite the original approval being granted by the Court.

The S96(AA) Application now seeks the following amendments:

- minor relocation of the structures to better suit topography and minimise earthworks;
- minor relocation of the units closest to river to ensure a 30m setback is maintained in regards to the new mean high water mark
- minor relocation to the layout of units 35-40 so that they are further down the slope to achieve a greater separation to adjoining residential properties.

**SITE DIAGRAM:**



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

S96 of the Act specifies that on application being made by the applicant a consent authority can modify the development consent only if it is satisfied that the proposed modified development is substantially the same as the approved development and that all relevant consultations and submissions have been undertaken.

Having regard for this criteria the applicant has provided that the proposed variations result in substantially the same development on the basis that:

- *The development remains as multi dwelling housing;*
- *The bulk, scale and height of the development remains the same as that approved;*
- *The proposed amendments do not raise any environmental issues which have not already been investigated with the previous assessment of the proposal;*
- *Alterations to the layout of the townhouses have not materially changed the concept or altered the visual appearance of the development when viewed from the adjoining streets or the public domain;*
- *The changes to the layout of the buildings and internal road network are modest and are essentially the same as those originally approved; and*
- *The proposal remains as a mix of two and three bedroom townhouses and villas.*

The above comments are concurred with.

The S96 Amendment was forwarded to Council's Development Engineer who provided the following comments regarding the amendments;

*Construction Certificate application CC 06/0478 had been lodged tabling all civil works in accordance with the development format tabled within this application. It may be inappropriate to approve the construction certificate prior to the Section 96 application as the two proposals do differ. However should the additional detail requested in June 06 have been lodged and supported, any concerns for this application would have been addressed.*

*It is therefore recommended that the Section 96 application be approved subject to an additional condition being imposed requiring the lodgement of a Construction Certificate application for all civil works on the site.*

The S96 Amendment was also forwarded to Council's Environmental Health Officer who provided the following comments regarding the amendments;

*Waste is the only issue raised for this application for amendment. Waste collection areas are noted on the plans at both the Seaview Rd and Fairway Dr entrances however the road system appears to have varied from what was previously approved. Further information requested.*

***Recommendations:***

*Prior to determination, the following information is requested:*

1. *Details of the types of bins are proposed (bulk or wheelie).*
2. *If bulk bins are proposed, what provisions have been made for recycling?*
3. *Written confirmation from Solo Resource Recovery is required stating that the waste bin areas positioned at the Seaview Rd and Fairway Dr entrances are appropriate for collection of wastes.*

This additional information was received and considered appropriate to enable the S96 to be conditionally amended.

Based on this advice of acceptability it is concluded that the proposed amendments could be considered to be substantially the same development as the end result is a townhouse development consisting of 40 units.

The proposed modifications would result in substantially the same development as that originally approved and can therefore be dealt with via S96 (AA) of the Act.

In considering an application to modify a development consent Council must have regard to Section 79 of the Act. The matters of relevance are addressed as follows:

Tweed Local Environmental Plan 2000

The subject site is zoned 2(a) Low Density Residential under the provisions of the plan. Development for the purposes of multi dwelling housing is permissible with consent. The existing consent was approved under IDO 2 and has continuing use rights as commencement occurred prior to the consent lapsing.

Clause 16 of the Plan provides that a maximum height of three storeys applies in this locality. The existing approved plan comprises part two and part three storey buildings, thus complying with the plan.

In all other regards the proposed amendments are considered satisfactory based on the original consent and the provisions within Tweed LEP 2000.

DCP No. 2 – Site Access & Parking Code

Under the provisions of this plan multi dwelling housing requires 1.5 spaces per unit with 25% of this to be available for visitor parking. Subsequently a unit development with forty (40) units would require 60 spaces.

The plans show double garages and seven visitor spaces. Subsequently the proposed modified plans comply with DCP No. 2.



### DCP 6 – Multi-Dwelling Housing

Whilst the application was approved prior to this DCP being adopted the application is generally consistent with this plan.

#### General Site Suitability

Based on the validity of the existing consent the proposed amendments are considered minor and capable of consideration under S96. The amendments do not alter the nature of the development and presents Council with an opportunity to impose extra conditions of consent to ensure the site is managed effectively given the sites constraints.

#### Submissions

As detailed in the above report T4/2470.07 was the second S96 lodged for the same amendments. The notification of T4/2470.01 originally occurred between 26 April 2006 and 10 May 2006. During this period Council received two objections to the proposed development.

The second S96 Application (T4/2470.07) was re-advertised between 16 August 2006 and 30 August 2006 in accordance with S96AA. This involved an ad in the Tweed Link, notification to nearby residents and notification to those people who originally objected to the application. During this period Council received one (1) written objection (with an attached objection from a local planning consultancy firm on the objectors behalf).

The issues raised in the objections to these modifications are detailed as follows:

<b>Issue</b>	<b>Assessment</b>
<i>The original consent is not valid</i>	As detailed in the above report under the heading Background the Council has acknowledged commencement.
<i>BA1056/87B and CC0578/2000 do not validate the consent</i>	As detailed in the above report under the heading Background the Council has acknowledged commencement and does not rely on the BA or CC but rather physical commencement and survey work.
<i>79C Matters need to be considered and Council must decide whether if as a matter of discretion it ought be exercised in favour of modifying the development.</i>	The above report has been assessed having regard to S79 of the Act and determines that on merit the proposed amendments are so minor that Council can consider them substantially the same development.

<p><i>The impacts on the environment have not been sufficiently detailed by way of this S96 and can not be explained in the context of the amendments.</i></p>	<p>The S96 seeks minor amendments to the layout and positioning of the proposed buildings consistent with the original approval. The detailed assessment regarding site stability and stormwater disposal is being addressed by way of Construction Certificates for the Civil Works and Building Works. These have been lodged with Council and are awaiting determination of this application and additional information from the applicant to address the geotechnical and stormwater related issues that accompany this site. However, it should be noted that these issues are considered capable of being resolved and therefore Council can approve these minor amendments while the details are further established as part of the Construction Certificate process.</p> <p>Due to the age of this consent, the applicant must utilise Council as the Certifying Authority and therefore Council can impose additional conditions on the Construction Certificates rather than this consent.</p> <p>Appropriate conditions of consent are recommended to ensure Construction Certificates are required.</p>
<p><i>The site is not suitable for the development specifically in regard to the geotechnical hazards.</i></p>	<p>As detailed above, these issued are being pursued as part of the Construction Certificate Applications.</p> <p>Appropriate conditions of consent are recommended to ensure Construction Certificates are required.</p>
<p><i>The application is not in the public interest.</i></p>	<p>The application was notified to all original objectors and the current adjoining neighbours in addition to a notice being placed in the Tweed Link. Council received two objections during this period. Despite these objections the application is not considered to be contrary to the greater public interest.</p> <p>This objection does not warrant further amendment or refusal of the application.</p>
<p><i>Tweed LEP 2000 zones the subject site 2(a) Low Density and this development is not consistent with that. The development fails any objective test of all the above Council requirements.</i></p>	<p>The existing consent was approved under IDO 2 and has continuing use rights as commencement occurred prior to the consent lapsing. Compliance with the 2(a) zone objectives is not essential to approving this minor S96 amendment.</p> <p>This objection does not warrant further amendment or refusal of the application.</p>
<p><i>The proposed development fails to meet the requirements of DCP 47 in relation to Cut &amp; Fill</i></p>	<p>DCP 47 was recently introduced to restrict excessive cut and fill. These standards cannot be applied to the commenced Court approved development. The amendments sought do not intensify the extent of cut and fill but rather reduce it through the amended locations of the townhouses.</p> <p>This objection does not warrant further amendment or refusal of the application.</p>

All of the above issues have been considered as part of the assessment of this Section 96 Application. The issues are not considered to warrant further amendment or refusal and subsequently the current S96 application is recommended for conditional consent.

**OPTIONS:**

1. Approve the S96 Application in accordance with the recommended additional conditions of consent.
2. Refuse the S96 Application.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be dissatisfied with the determination of this application they have a right to make an appeal to the Land & Environment Court.

Furthermore, in accordance with Section 96AA(4) of the Environmental Planning and Assessment Act, 1979 a person who made a submission in respect of the application for modification and who is dissatisfied with the determination of the application by the consent authority may, in accordance with rules of court, apply to the Court for leave to appeal against the determination within 28 days after the date on which notice of the determination was given to the person and the Court may grant or refuse leave to appeal.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

Each proposed amendment has been assessed on its merits and has been assessed in the context of the variation only, as this is not an opportunity to re-visit the original determination.

Having assessed the S96 Application against the applicable controls, the application is considered to warrant conditional approval.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](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. Development Consent T4/2470 as approved by Court. DW 1506141
  1. Development Consent T4/2470 as amended November 1987. DW 1506155
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**P10 [PD-PC] Cabarita Beach/Bogangar Locality Plan and Pandanus Parade Master Plan**

**ORIGIN:**

**Strategic Town Planning**

**FILE NO: GT1/DCP/50 Pt2**

**SUMMARY OF REPORT:**

On 21 September 2005 Council resolved to prepare the Cabarita Beach/Bogangar Locality Plan and the Pandanus Parade Precinct Master Plan.

On 1 February 2006 Council engaged City Plan Services to prepare the above documents. Preparation of the documents has now been completed to a draft level.

The draft documents must now be publicly exhibited to gauge the community's level of support for the identified outcomes. The purpose of this report is to obtain Council approval for the exhibition of the draft documents.

**RECOMMENDATION:**

**That Council;**

- 1. Pursuant to Clause 18 of the Environmental Planning and Assessment Regulation 2000, exhibits the draft Cabarita Beach/Bogangar Locality Plan as prepared by City Plan Services for a period of no less than 90 days.**
- 2. Exhibits the two (2) identified draft Master Plan options for Pandanus Parade prepared by City Plan Services for a period of no less than 90 days.**

## **REPORT:**

### **Introduction**

On 21 September 2005 Council resolved to prepare a Development Control Plan (Locality Plan) for the whole of the Cabarita Beach / Bogangar village and a Precinct Plan (Master Plan) for the Pandanus Parade Precinct.

On 1 February 2006 Council engaged City Plan Services to prepare the above Locality and Master Plans. Preparation of the documents has now been completed to a draft level. Before finalising the project the draft documents must be publicly exhibited to gauge the community's level of support for the identified outcomes.

The purpose of this report is to obtain Council support to enable exhibition of the draft documents.

### **Background**

Preparation of a 'whole of village' strategy (Locality Plan) for Cabarita Beach / Bogangar is the second stage of establishing a detailed planning framework for the area. The first stage identified planning controls for the central business district, and resulted in the adoption of Development Control Plan No 50 (DCP 50).

DCP 50 does not include planning provisions for the Pandanus Parade Precinct due to the sensitive nature of the area, hence, Council's resolution to prepare a Master Plan specifically for Pandanus Parade.

The purpose of establishing a detailed planning framework for the whole of Cabarita Beach and Bogangar is to provide the community with the appropriate planning tools for managing the area's growth and development.

### **Preparation of the draft Locality Plan and Master Plan**

A number of representatives from the various community groups in the Cabarita Beach / Bogangar area have provided Council with a great level of assistance and support during the preparation of the draft documents. Special mention should go to the following groups who have ensured that the prepared documents consider the many diversities of the locality:

- The Cabarita Beach Bogangar Residents Association
- The Cabarita Beach Business Association
- The Cabarita Beach Surf Life Saving Club
- The Friends of Cudgen Nature Reserve
- The Tweed Coast Raiders Junior Rugby League Club

City Plan Services, representatives of Council and the various community groups, over the previous months have met on a number of occasions to identify key issues affecting the village and surrounding area; and have worked to identify solutions to resolve the key issues and plan for the village's future.

Whilst it cannot be said that all of those who have worked on preparing the draft plans are supportive of each of the identified outcomes it is considered unlikely that consensus would be achieved due to the range of interests the members of the group represent. Nevertheless support for each of the identified outcomes is present to some degree.

Before finalising the draft plans it is considered important that the broader public are able to comment on the identified outcomes. It is essential that they are given this opportunity to ensure that the process is transparent and that the identified outcomes are supported by the majority of people who live, work and socialise in the village, not just those who have helped to prepare the draft documents.

### **Public Exhibition**

Should Council resolve to exhibit the draft Locality Plan for Cabarita Beach / Bogangar and the Pandanus Parade Master Plan, a copy of each and the accompanying exhibition material including the background reports prepared by City Plan Services will be placed on public exhibition at the following locations:

- Murwillumbah Civic Centre from 8.00am to 4.30pm weekdays.
- Tweed Heads Civic Centre from 8.00am to 4.30pm weekdays.
- Kingscliff Library from 10.00am to 5.00pm Tuesday-Friday and 9.00am to 12 noon Saturday.
- Cabarita Beach / Bogangar News Agency & Post Office from 6.30am to 5.30pm weekdays and 6.30am to 4.00pm Saturday and Sunday.
- Tweed Shire Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au)

Due to the implications that adoption of the identified outcomes will have on the Cabarita Beach / Bogangar village and community, and the time of year at present with respect to the exhibition of Council documents the exhibition period will be extended to 90 days.

During the exhibition period it is also proposed to hold at least one public forum. Representatives from City Plan Services have advised that they will be available to attend and present at this forum on the behalf of Council.

It is also envisaged that a survey, which would ask respondents to answer questions regarding the proposed identified outcomes, would be undertaken via the tweed link and/or other media such as the internet.

### **CONCLUSION:**

It is recommended that Council exhibit the draft Cabarita Beach / Bogangar Locality Plan and the two (2) identified draft Master Plan options for the Pandanus Parade Precinct for a period of no less than 90-days.

### **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).*

Draft Locality Plan for Cabarita Beach/Bogangar and Draft Master Plan for Pandanus Parade will be made available prior to the meeting.

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**P11 [PD-PC] Review of Determination of Development Application DA04/1024 for Multi Dwelling Housing Comprising Four Dwellings at Lot 1 DP 1058988, No. 70 Adelaide Street, Tweed Heads**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA04/1024 Pt2**

**SUMMARY OF REPORT:**

Council originally received a development application for six (6) residential units on the subject site, in which Council's Development Assessment Unit recommended approval in December 2005. However, a determination of the proposed development was deferred, with Council's Administrators ultimately resolving to refuse the proposal in February 2006.

Council is now in receipt of a Review of Determination for DA04/1024, which seeks to have Council reconsider its determination for the proposed development. In this regard a number of amendments have been carried out in order to ameliorate Council's concerns as previously identified.

The proposed development is for four (4) detached dwellings, one of which incorporates a part two and three storey building. The site is zoned 2(a) Low Density Residential and has a height limit of two storeys. The amended application is accompanied with a SEPP 1 objection and attracted three public submissions

As was the case with the original proposal, Council's Development Assessment Unit concludes that the amended development as proposed is considered satisfactory for approval and as such the SEPP 1 objection should be supported.

However, the review of the amended proposal also incorporated an assessment of the development against the issues raised by the ten reasons for refusal originally recommended by the Administrators.

**RECOMMENDATION:**

**That:**

- A. State Environmental Planning Policy No. 1 objections to Clause 16 of the Tweed Local Environmental Plan 2000 regarding the height of the building be supported and the concurrence of the Director-General of the Department of Planning be assumed for the following reasons: -**
- The development presents predominantly as two storey to Adelaide Street;**

- The building retains as far as practical, view sharing with neighbouring properties;
- The density of the building is compatible with the existing urban environment;
- The development attains the objectives of the Residential 2(a) land use zoning under the Tweed Local Environmental Plan 2000; and
- The development achieves the relevant performance objectives of Development Control Plan No. 6 - Multi-Dwelling Housing and Development Control Plan No. 18 - Tweed Heads.

- B. Review of Determination of Development Application DA04/1024 for multi dwelling housing comprising four dwellings at Lot 1 DP 1058988, No. 70 Adelaide Street, Tweed Heads be approved subject to the following conditions: -

**"DEFERRED COMMENCEMENT"**

**This consent shall not operate** until the applicant satisfies the consent authority by producing satisfactory evidence relating to the matters set out in Schedule "A". Such evidence is to be provided within twelve (12) months of the date of notification.

Upon the consent authority being satisfied as to compliance with the matters set out in Schedule "A". The consent shall become operative and take effect from the date of notification under Section 67 of the Environmental Planning and Assessment Regulations subject to the conditions set out in Schedule "B".

**SCHEDULE "A"**

**Conditions imposed pursuant to Section 80(3) of the Environmental Planning and Assessment Act, 1979 and Section 67 of the Regulations as amended.**

- A. All remediation works shall be carried out in accordance with the *Site Remediation & Validation - Removal of Lead-Impacted Soil prepared by HMC Environmental Services dated April 2005 (Report No. 2003.53b)* or to the written satisfaction of a NSW EPA Accredited Site Auditor.

On completion of remediation works and prior to any other works commencing on the site, a Validation Report prepared by a suitably qualified consultant shall be submitted to a NSW EPA Accredited Site Auditor for review prior to a Site Audit Statement being issued. A copy of the report must be made available to Council at this time.

On completion of remediation works and validation testing, and prior to any other works commencing on the site, a Site Audit Statement shall be prepared by a NSW EPA Accredited Site Auditor confirming that the site has been remediated and made suitable for the intended use. A copy of the statement must be made available to Council at this time.

**SCHEDULE B**

**NOTE: THIS PART OF THE CONSENT WILL NOT BECOME OPERABLE UNTIL COUNCIL ADVISES THAT THE MATTERS CONTAINED IN SCHEDULE A ARE SATISFIED.**

**GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos:

- 20Ade04 - Site 01 (Issue a) '*Site Plan*' prepared by Will Collins Design and dated 11 April 2006;
- 20Ade04 - Site 02 (Issue a) prepared by Will Collins Design and dated 11 April 2006;
- 20Ade04 - Site 03 (Issue a) '*Driveway Section*' prepared by Will Collins Design and dated 11 April 2006;
- 20Ade04 - Site 04 (Issue a) '*Sth West Site Elevation*' prepared by Will Collins Design and dated 11 April 2006;
- 20Ade04 - Site 01 '*Lot 1 Ground Floor Plan*' prepared by Will Collins Design and dated 1 June 2005;
- 20Ade04 - Site 02 '*Lot 1 First Floor Plan*' prepared by Will Collins Design and dated 1 June 2005;
- 20Ade04 - Site 03 '*Lot 1 Second Floor Plan*' prepared by Will Collins Design and dated 1 June 2005;
- 20Ade04 - Site 04 '*Lot 1 Elevations 1 & 2*' prepared by Will Collins Design and dated 1 June 2005;
- 20Ade04 - Site 05 '*Lot 1 Elevations 3 & 4*' prepared by Will Collins Design and dated 1 June 2005;
- 20Ade04 – Lots 2&3 (Issue 01a) '*Lots 2 & 3 Ground Floor Plan*' prepared by Will Collins Design and dated 11 April 2006;
- 20Ade04 – Lots 2&3 (Issue 02a) '*Lots 2 & 3 First Floor Plan*' prepared by Will Collins Design and dated 11 April 2006;
- 20Ade04 – Lots 2&3 (Issue 03a) '*Lots 2 & 3 Elevations 1 & 2*' prepared by Will Collins Design and dated 11 April 2006;
- 20Ade04 – Lots 2&3 (Issue 04a) '*Lots 2 & 3 Elevations 3 & 4*' prepared by Will Collins Design and dated 11 April 2006;
- 20Ade04 – Lot 4 (Issue 01a) '*Lot 4 Ground & Lower Floor Plan*' prepared by Will Collins Design and dated 10 March 2006;
- 20Ade04 – Lot 4 (Issue 02a) '*Lot 4 Elevations 1 & 4*' prepared by Will Collins Design and dated 10 March 2006;
- 20Ade04 – Lot 4 (Issue 03a) '*Lot 4 Elevation 2*' prepared by Will Collins Design and dated 10 March 2006;

- **SLI\_01\_Ver.C (Sheet 1 of 1) 'Landscape Plan' prepared by Planit Consulting and dated May 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.**
3. **The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**
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.**

[GEN0045]

[GEN0115]

[GEN0135]

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

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

[PCC0055]

#### **6. Section 94 Contributions**

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

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

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

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

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

(a) Tweed Road Contribution Plan: S94 Plan No. 4 (Version 4.0) Sector1_4	\$1,803
(b) Open Space (Structured): S94 Plan No. 5	\$1,260
(c) Open Space (Casual): S94 Plan No. 5	\$269
(d) Shirewide Library Facilities: S94 Plan No. 11	\$1,112
(e) Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$229
(f) Emergency Facilities (Surf Lifesaving) S94 Plan No. 16	\$324
(g) Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$2,049.37
(h) Cycleways S94 Plan No. 22	\$568
(i) Regional Open Space (Structured) S94 Plan No. 26	\$3,757
(j) Regional Open Space (Casual) S94 Plan No. 26	\$1,381

[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: 2.2 ET @ \$4598 \$10,116**

**Sewer Tweed Heads: 3 ET @ \$6688 \$20,064**

**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 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 Occupation Certificate is issued.**

[PCC0275]

- 9. 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]

- 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. 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]

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) Runoff from driveway, exposed car parking and hardstand landscaping areas must be treated to remove oil and sediment pollutants prior to discharge to the public realm. Permanent treatment devices must be sized in accordance with Section D7.12 of Council's Development Design Specification D7 - Stormwater Quality. Full engineering details of all treatment devices, including maintenance schedules, must be submitted with a s68 Stormwater Application for approval prior to the issue of a Construction Certificate.
    - (ii) A dedicated combined car wash bay/visitor space must be constructed of durable permeable material, or be graded to direct runoff to grassed filter strips or pervious landscaping.

[PCC1105]

13. 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]

14. 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]
15. An application shall be lodged and approved by Tweed Shire Council under Section 68 of the Local Government Act for any water, sewerage or drainage works prior to the issue of a construction certificate.
- [PCC1195]
16.
    - a) All stormwater shall be discharged from the development via connection into the existing field inlet located in the south-western corner of the site.
    - b) A block and mortar wall shall be constructed along the vicinity of the southern boundary of the site to prevent overland flow from the site from entering into neighbouring Lot 2 DP1058988. A freeboard of no less than 300mm shall be provided.
  17.
    - a) Construction Certificate drawings shall make provisions for the regrading of the subject site in accordance with Council's Development Control Plan 47 "Cut and Fill on residential Land " or to the satisfaction of the Director Engineering and Operations Division.
    - b) The retaining wall proposed along the south western boundary shall be located a minimum offset of 500mm from the property boundary, with appropriately sized drainage contained along the top of the retaining wall and a maximum height of 3.0m.
    - c) All other retaining walls shall be in accordance with the provisions of Council's Development Control Plan 47 "Cut and Fill on Residential Land", whereby any retaining wall greater than 900mm in height shall have a minimum offset of 900mm from the property boundary, with a maximum height of 2.5m.



18. All retaining walls in excess of 1.2m are to be designed by a suitably 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.
19. Prior to the issuing of a Construction Certificate, a full geotechnical assessment of the site is to be carried out and a report submitted to Council for approval. The report must include recommendations relating to site stability and suitability, proposed on-site excavation works including temporary and permanent retention methods proposed for the protection of adjacent structures, foundation design parameters, construction theories, as well as any other geotechnical matters of relevance relating to the proposed development.
20. Ground anchors to retain sacrificial sheet piling (as required) will not be allowed within Council property without prior approval for installation by the Director Engineering and Operations Division and removal on completion or substantial financial compensation. Council will only allow ground anchors with neighbouring private property if consent by the owners of the property to be burdened is obtained prior to installation.
21. Engineering Plans and specifications to accompany the Construction Certificate application shall provide for a stormwater drainage network that:
  - i. *Incorporates the provisions of the approved Section 68 Application (SWD03/0623) associated with Development Application DA03/0303.*
  - ii. *The driveway shall be shaped to ensure safe conveyance of overland flow through the site. A block wall, minimum height 600mm shall be constructed along the northern edge of the driveway.*

**PRIOR TO COMMENCEMENT OF WORK**

22. The proponent shall locate and identify all existing underground services prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure including areas external to the development site where works are proposed.
23. The erection of a building in accordance with a development consent must not be commenced until:

[PCW0005]

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

[PCW0215]

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

[PCW0225]

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

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

[PCW0235]

26. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every twenty (20) persons or part of twenty (20) persons employed at the site. Each toilet provided must be:-
- (a) a standard flushing toilet connected to a public sewer, or
  - (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

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

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

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

[PCW0255]

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

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

[PCW0775]

29. 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. 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]

31. 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**

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

[DUR0005]

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

Such to specifically include the following:

- (a) 150 millimetres thick reinforced with F72 Mesh for residential development,

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

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

[DUR0065]

34. The provision of eight (8) off street car parking spaces including parking for the disabled where applicable. A minimum of two (2) unburdened spaces shall be marked as visitor spaces and maintained accordingly. One of the visitor spaces shall be a combined car wash bay and must be marked and maintained accordingly. 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]

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

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

36. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:

A. Short Term Period - 4 weeks.

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

B. Long term period - the duration.

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0215]

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

[DUR0245]

38. 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]

39. 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]

40. 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]

41. The finished floor level of the building should finish not less than 225mm above finished ground level. [DUR0445]
42. 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]
43. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited. [DUR0815]
44. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Councils adopted Design and Construction Specifications, DCP16 and DCP47 to the satisfaction of the Principal Certifying Authority. Please note timber retaining walls are not permitted. [DUR0835]
45. All new residential dwellings are to fully comply with Councils Energy Smart Housing Policy (DCP39). [DUR0915]
46. Provision to be made for the designation of one (1) durable and pervious car wash-down area. The area must be identified for that specific purpose and be supplied with an adequate water supply for use within the area. Any surface run-off from the area must not discharge directly to the stormwater system. [DUR0975]
47. 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]
48. All work associated with this approval is to be carried out so as not to impact on the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -
- Noise, water or air pollution
  - Minimise impact from dust during filling operations and also from construction vehicles
  - No material is removed from the site by wind

[DUR1005]

49. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited without the written approval of the NSW Rural Fire Service or NSW Fire Brigade. A copy of such approval is to be submitted to Council prior to commencing any burning activities.

[DUR1015]

50. Landscaping of the site shall be carried out in accordance with the approved landscaping plans.

[DUR1045]

51. 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 Adelaide Street 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]

52. 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]

53. 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]

54. 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 any use or occupation of the buildings.

[DUR1875]

55. The proponent shall comply with all requirements tabled within any approval issued under Section 138 of the Roads Act.

[DUR1885]

56. 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]



57. 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]

58. 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]

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

[DUR2195]

60. 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]

61. 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]

62. 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]

63. 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]

64. 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]

65. **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]

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

[DUR2505]

67. 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]

68. 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:-

- \* 45<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]

69. 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]

70. 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]

71. No retaining walls or similar structures are to be constructed over or within the zone of influence of Council's sewer main. [DUR2705]
72. The burning off of trees, associated vegetation felled by clearing operations, and building waste is prohibited. [DURNS01]
73. Lot 2 shall be fully rehabilitated to its original condition upon completion of the works associated with the installation of the sewer infrastructure within the existing easement for services within Lot 2, at the expense of the owner of Lot 1. [DURNS02]

**PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

74. 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]
75. 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]
76. All landscaping work is to be completed in accordance with the approved plans prior to any use or occupation of the building. [POC0475]
77. Redundant road pavement, kerb and gutter or foot paving including and existing disused vehicular laybacks/driveways or other special provisions shall be reinstated in accordance with Councils adopted Development Design and Construction Specifications. [POC0755]
78. 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]
79. Prior to the issue of an occupation certificate, documentary evidence must be provided to Council to confirm registration of the amendment of the existing 88B instrument for DP1058988 to include reference to sewer infrastructure within Lot 2, benefiting Lot 1. The 88B instrument is also to be amended to nominate Tweed Shire Council as the sole benefiting authority empowered to release, vary or modify the easement. [POCNS02]

**USE**

80. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust, fumes or the like. [USE0125]
81. All 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]
82. 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]
83. The use being restricted to the floor area designated on the approved plan. [USE0415]
84. The premises shall be suitably identified by Unit No. (where appropriate) and Street Number displayed in a prominent position on the facade of the building facing the primary street frontage, and is to be of sufficient size to be clearly identifiable from the street. [USE0435]
85. All landscaping work is to be maintained in general accordance with the approved landscape plan. [USE0735]
86. Appropriate arrangements to the satisfaction of Council's Director of Environment and Community Services shall be provided for the storage and removal of garbage and other waste products. [USENS01]

**REPORT:**

**Applicant:** Shavasan Pty Ltd  
**Owner:** Shavasan Pty Ltd  
**Location:** Lot 1 DP 1058988 No. 70 Adelaide Street, Tweed Heads  
**Zoning:** 2(a) Low Density Residential  
**Cost:** \$1,400,000

**BACKGROUND:**

Council is in receipt of a Review of Determination for DA04/1024, which originally sought approval for the erection of a part 2 and 3 storey multi dwelling housing development comprising of 4 detached dwellings and a duplex building, giving a total of 6 units. The subject site is quite irregular in shape, having a distinct "L" shape. Access is provided from Adelaide Street, with the site falling quite steeply from the road frontage towards the rear of the site.

Council's Development Assessment Unit recommended approval of the original proposal in December 2005. However, a determination of the proposed development was deferred, with Council's Administrators ultimately resolving to refuse the proposal on 14 February 2006 for the following reasons: -

1. It is not considered that the circumstances of the proposed development warrant support of the State Environmental Planning Policy objection to the two storey height limit.
2. The proposed development is contrary to the 2(a) Low Density Residential zone objectives contained within Clause 11 of Tweed local Environmental Plan 2000. The proposed development is considered to be out of character with the surrounding built environment.
3. The density of the development is not consistent with the intent of Clause 51A(2)(b) of the Tweed Local Environmental Plan 2000 in that the subject site is not within an acceptable 300 metres walking distance of a Business Centre.
4. The proposed development is contrary to the two (2) storey building height restrictions contained within Clause 16 of Tweed local Environmental Plan 2000.
5. The proposed development is contrary to Clause 8 - Consent Considerations of the Tweed Local Environmental Plan 2000.
6. The proposed development is contrary to State Environmental Planning Policy No. 71 - Coastal Protection, specifically the following matter for consideration:
  - d) *the suitability of development given its type, location, and design and its relationship with the surrounding area.*

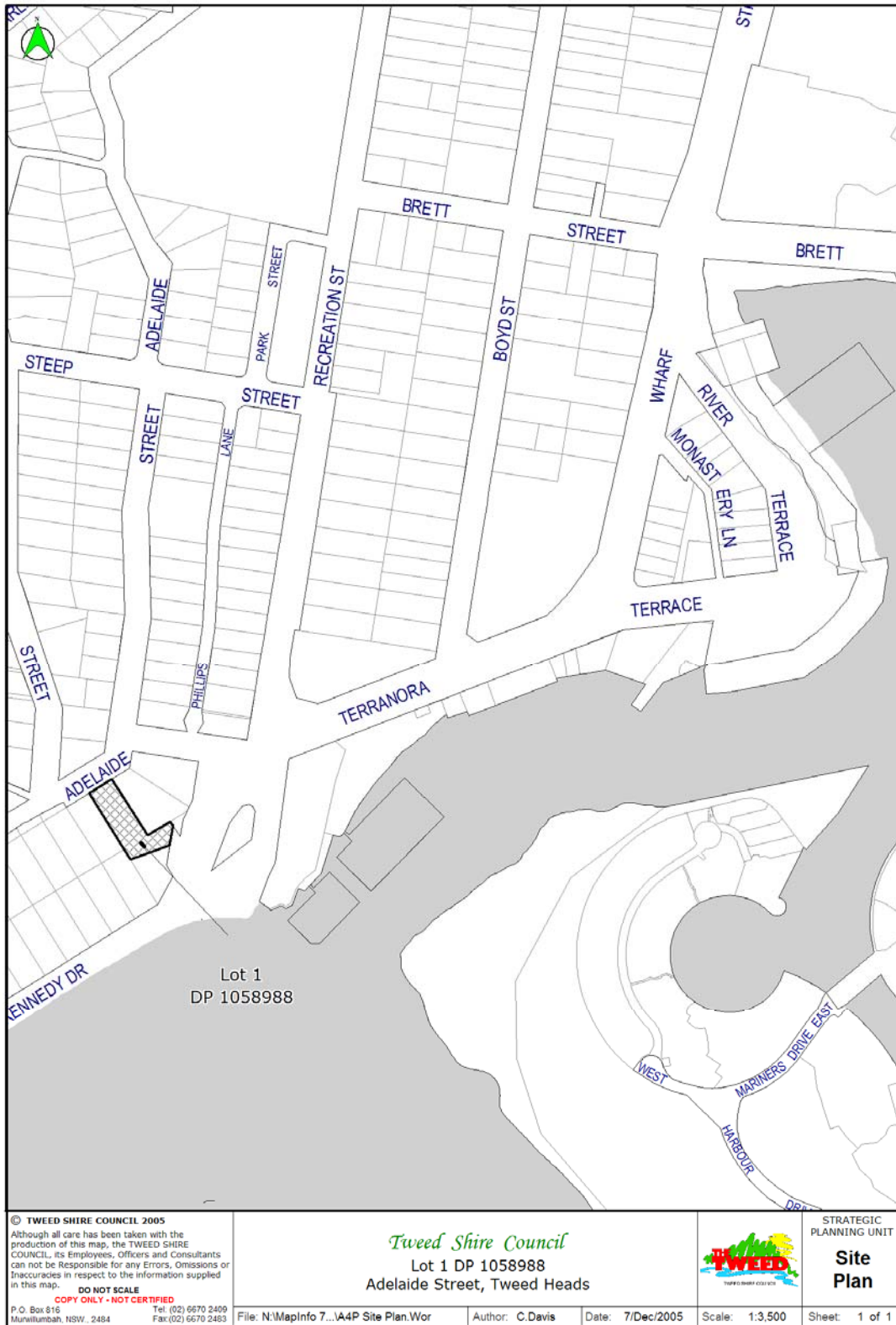
7. The proposed development is contrary to Development Control Plan No. 6 - Multi Dwelling Housing, Part 3 -Design Elements in that the proposed development does not comply with the acceptable standards or satisfy the performance criteria for: minimum private open space provisions; building envelope provisions; or, minimum setback requirements.
8. The proposed development is contrary to Development Control Plan No. 47 - Cut and Fill on Residential Land, in that the top of the proposed retaining wall is less than the minimum setback of 900mm from the property boundary.
9. The proposed development is considered to be unsatisfactory in terms of traffic issues relating to vehicles entering and exiting the subject site onto Adelaide Street.
10. The proposed development is not considered to be in the public interest.

The Review of Determination was formally re-advertised and re-notified to the adjoining landowners and to those who originally objected to the proposed development. The re-advertisement resulted in Council receiving a total of three written submissions objecting to the proposal.

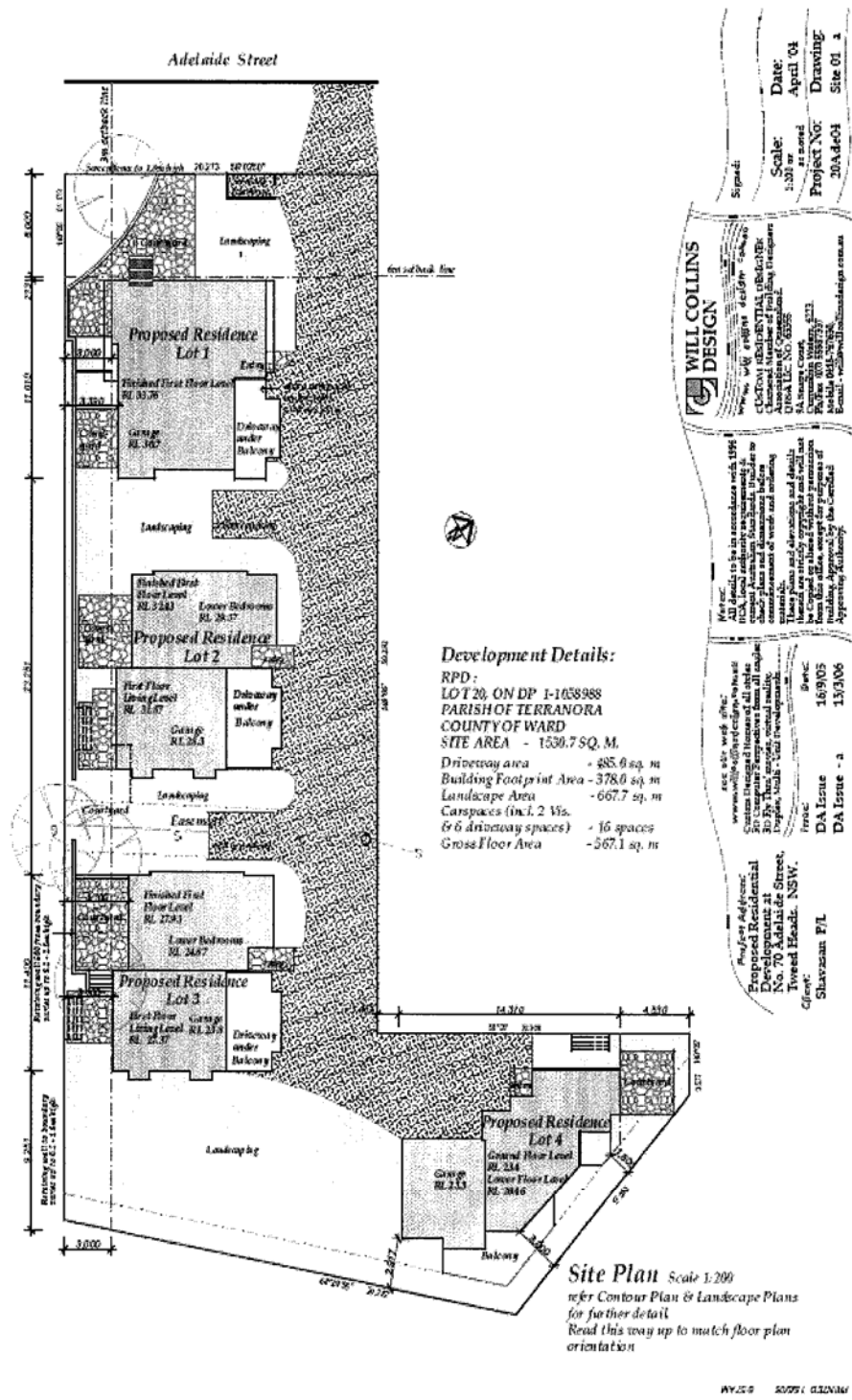
Since the original determination of the application the applicant has provided an amended proposal in response to the reasons for refusal, in order to substantiate why the application should be approved. The applicant has advised of the following amendments having been made to the proposed development, in support of the request for reconsideration:

- *The proposed design has been amended resulting in a smaller scale of development – down from 6 x 3 bedroom dwellings to 4 x 3 bedroom dwellings;*
- *The Building Footprint has decreased from 440m<sup>2</sup> to 350m<sup>2</sup>;*
- *Landscaped areas have increased from 630.7m<sup>2</sup> to 710.0m<sup>2</sup>; and*
- *The Gross Floor Area has reduced from 761m<sup>2</sup> to 567.1m<sup>2</sup>.*

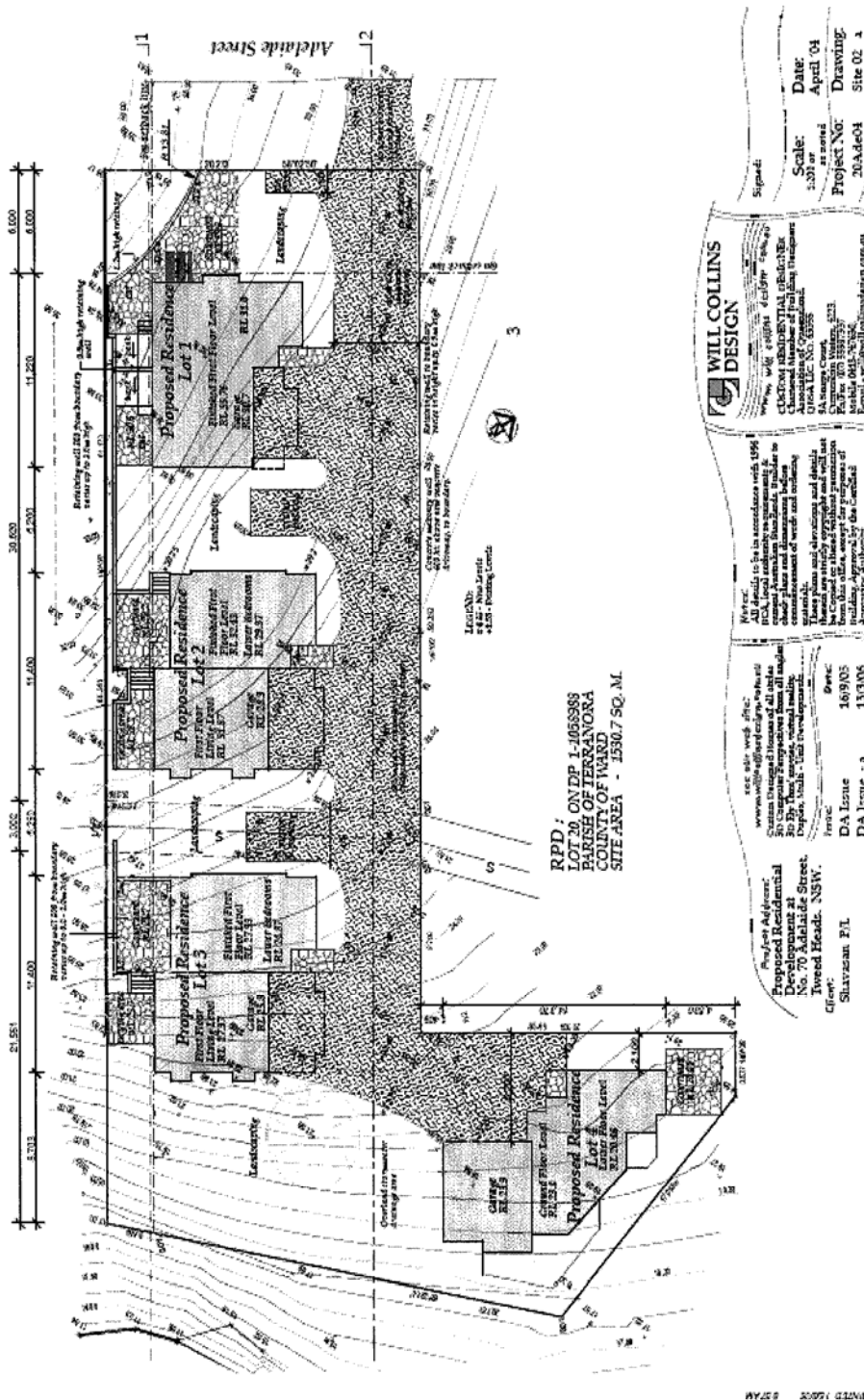
**SITE DIAGRAM:**

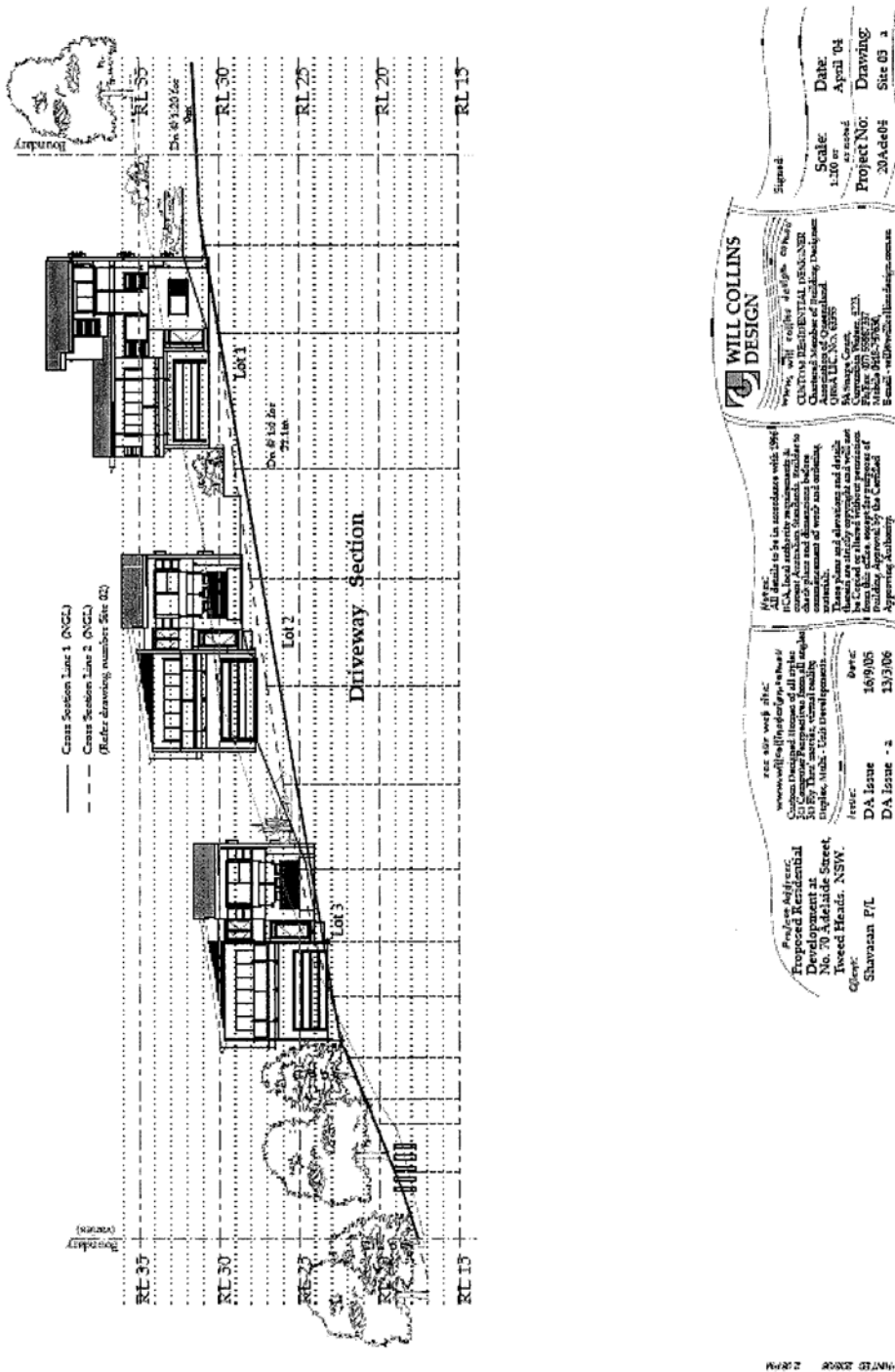


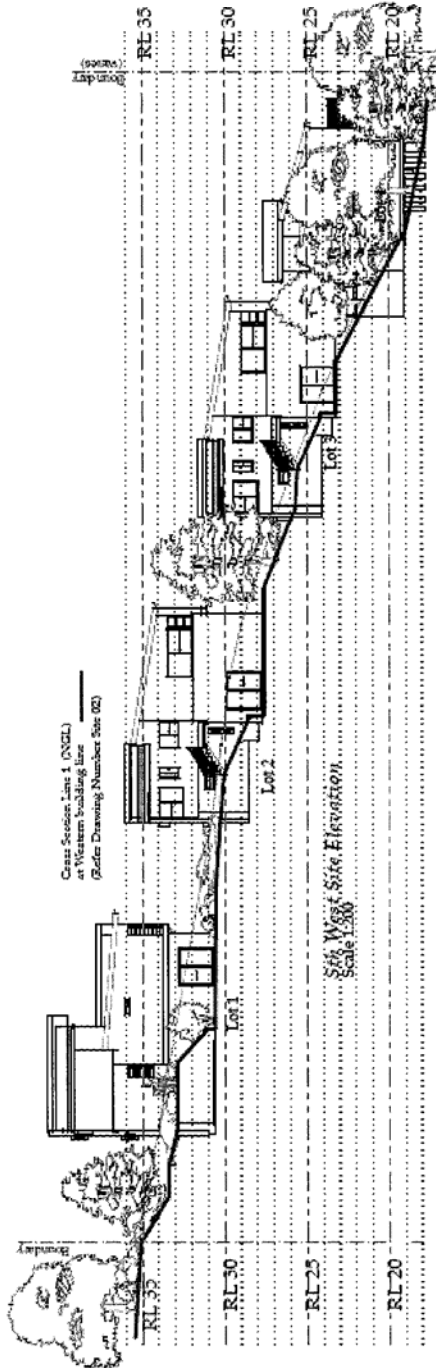
**PROPOSED DEVELOPMENT PLANS:**











**WILL COLLINS DESIGN**

www.willcollinsdesign.com.au  
 Phone: 07 5530 5527  
 Fax: 07 5530 5528  
 Email: will@willcollinsdesign.com.au

**Project Information:**  
 Project No: 20Ad04/01  
 Drawing: Site 04 - a

**Scale:**  
 1:300 or as indicated

**Date:**  
 April '04

**Notes:**  
 All details to be in accordance with 1997 Building Code of Australia. All work to be in accordance with the Australian Standards. Similar to the original plans and dimensions before any alteration or modification.  
 These plans are to be used for the purposes of a Development Application only. They are not to be used for any other purpose without the written approval of the Author.

**Project Location:**  
 70 Adelaide Street, Tweed Heads, NSW  
 Shavanoan PT

**Issue:**  
 DA Issue 16/9/05  
 DA Issue 13/3/06

**Project Address:**  
 70 Adelaide Street, Tweed Heads, NSW  
 Shavanoan PT

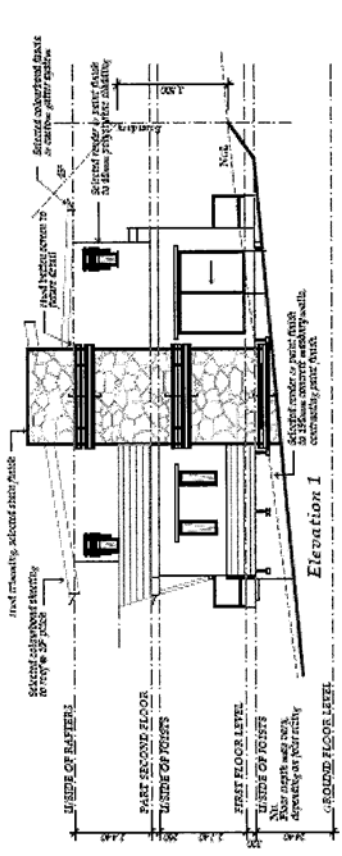
**Project Address:**  
 Proposed Residential  
 Development at  
 No. 70 Adelaide Street,  
 Tweed Heads, NSW.  
 Client:  
 Charman P/L

**DA Issue Date:**  
 18/05

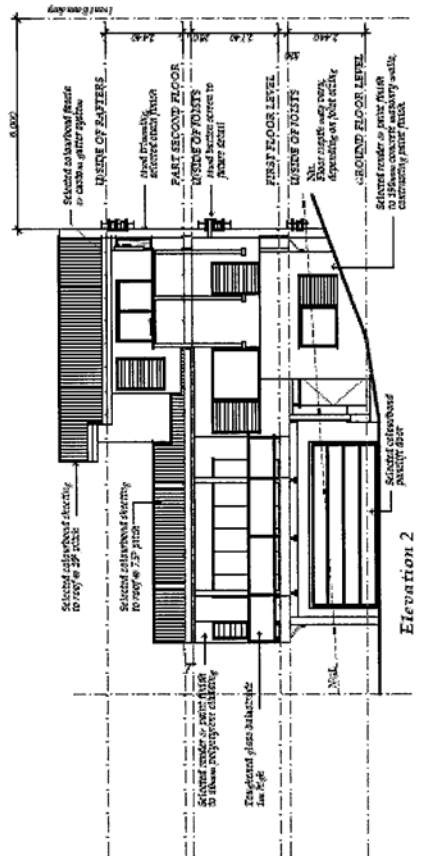
**Notes:**  
 1. This is to be read in conjunction with 184  
 RCA Local authority requirements 4.  
 2. All work must be done in accordance with  
 the requirements of the Building Act 1993  
 and the Building Regulation 2006.  
 3. The design and construction must comply  
 with the requirements of the Building Act 1993  
 and the Building Regulation 2006.  
 4. The design must be approved by the Council  
 before any construction commences.  
 5. The design must be approved by the Council  
 before any construction commences.  
 6. The design must be approved by the Council  
 before any construction commences.

**WILL COLLINS DESIGN**  
 1/100 WILSON STREET, TWEED HEADS, NSW 2486  
 PH: (07) 9636 1111  
 FAX: (07) 9636 1112  
 WWW.WILLCOLLINSDESIGN.COM.AU

**Date:**  
 April 04  
**Project No:**  
 20AAe04  
**Drawing:**  
 Site 04



Lot 1



PRINTED 16/05 11:31AM



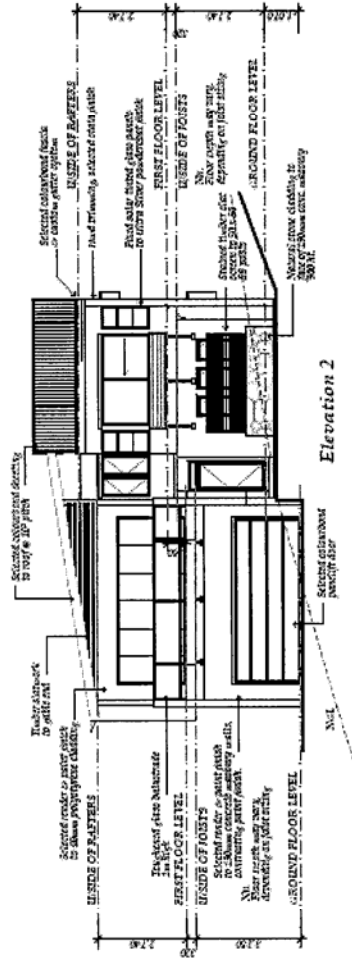
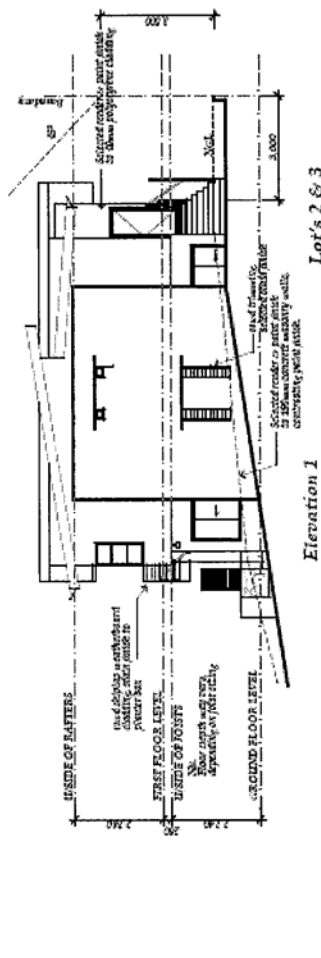
Project Address:  
Proposed Residential  
Development at  
No. 19 Redfern Street,  
Tweed Heads, NSW.  
Client:  
Shaymaan P/L

DA Issue 27/8/05  
DA Issue 4 10.3.06

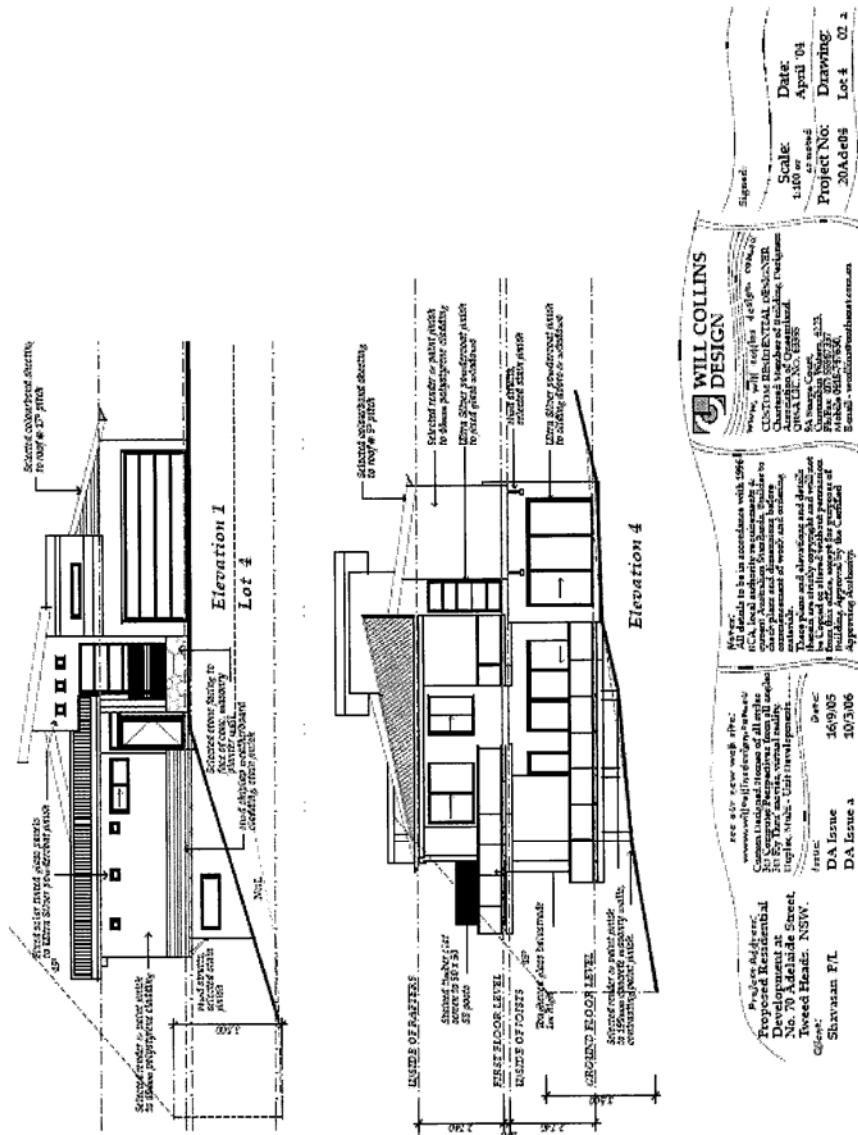
All details to be in accordance with 1996  
NCA. Local authority requirements to  
be observed. All work to be done to  
satisfy the requirements of the  
comprehension of water and retaining  
works.  
These plans and elevations and details  
have been prepared in accordance with  
the provisions of the Building Act 1993  
and the Building Regulation 2006  
from this office, except for the purpose of  
obtaining a Certificate of  
Approval, Authority  
under the work of  
www.willcollinsdesign.com.au  
Custom Designed Images of all rooms  
to be shown in the drawings  
3D Fly Through, Virtual Reality,  
Drapery, Visual - Unit Development.

**WILL COLLINS  
DESIGN**  
www.willcollinsdesign.com.au  
COURT HOUSE, 100 RIVER STREET,  
TWEED HEADS, NSW 2486  
Australia  
Phone: 07 5556737  
Fax: 07 5556737  
Email: willcollinsdesign@willcollins.com.au

Scale: 1:50  
Date: April '04  
Project No: 20Ade04  
Drawing: Lot 4 05







**WILL COLLINS DESIGN**  
 Will Collins Design  
 48/50a  
 CUSTOM RESIDENTIAL DESIGNER  
 Chartered Member of Institute of Architects  
 Qld A.I.C. No. 4285  
 54 George Street  
 Brisbane QLD 4000  
 Phone 07 3252 7777  
 Fax 07 3252 7777  
 Email: willcollinsdesign.com.au

Project No: 20Ade08  
 Drawing: Lot 4 02.2

Scale: 1:100  
 Date: April '04

Project No: 20Ade08  
 Drawing: Lot 4 02.2

DA Issue 1  
 16/9/05  
 10/3/06

DA Issue 2  
 16/9/05  
 10/3/06

DA Issue 3  
 16/9/05  
 10/3/06

DA Issue 4  
 16/9/05  
 10/3/06

DA Issue 5  
 16/9/05  
 10/3/06

DA Issue 6  
 16/9/05  
 10/3/06

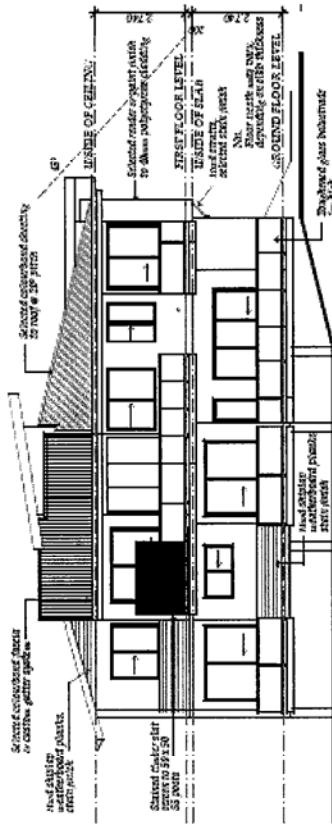
DA Issue 7  
 16/9/05  
 10/3/06

DA Issue 8  
 16/9/05  
 10/3/06

DA Issue 9  
 16/9/05  
 10/3/06

DA Issue 10  
 16/9/05  
 10/3/06





Elevation 2  
Lot 4

see web page www.willcollinsdesign.com.au  
 www.willcollinsdesign.com.au  
 Proposed Residential Development at No. 70 Adelaide Street, Tweed Heads, NSW.  
 Client: Shavozan F/L  
 DA Issue 16/9/05  
 DA Issue 10/3/06

**WILL COLLINS DESIGN**  
 15/16/17/18/19/20/21/22/23/24/25/26/27/28/29/30/31/32/33/34/35/36/37/38/39/40/41/42/43/44/45/46/47/48/49/50/51/52/53/54/55/56/57/58/59/60/61/62/63/64/65/66/67/68/69/70/71/72/73/74/75/76/77/78/79/80/81/82/83/84/85/86/87/88/89/90/91/92/93/94/95/96/97/98/99/100/101/102/103/104/105/106/107/108/109/110/111/112/113/114/115/116/117/118/119/120/121/122/123/124/125/126/127/128/129/130/131/132/133/134/135/136/137/138/139/140/141/142/143/144/145/146/147/148/149/150/151/152/153/154/155/156/157/158/159/160/161/162/163/164/165/166/167/168/169/170/171/172/173/174/175/176/177/178/179/180/181/182/183/184/185/186/187/188/189/190/191/192/193/194/195/196/197/198/199/200/201/202/203/204/205/206/207/208/209/210/211/212/213/214/215/216/217/218/219/220/221/222/223/224/225/226/227/228/229/230/231/232/233/234/235/236/237/238/239/240/241/242/243/244/245/246/247/248/249/250/251/252/253/254/255/256/257/258/259/260/261/262/263/264/265/266/267/268/269/270/271/272/273/274/275/276/277/278/279/280/281/282/283/284/285/286/287/288/289/290/291/292/293/294/295/296/297/298/299/300/301/302/303/304/305/306/307/308/309/310/311/312/313/314/315/316/317/318/319/320/321/322/323/324/325/326/327/328/329/330/331/332/333/334/335/336/337/338/339/340/341/342/343/344/345/346/347/348/349/350/351/352/353/354/355/356/357/358/359/360/361/362/363/364/365/366/367/368/369/370/371/372/373/374/375/376/377/378/379/380/381/382/383/384/385/386/387/388/389/390/391/392/393/394/395/396/397/398/399/400/401/402/403/404/405/406/407/408/409/410/411/412/413/414/415/416/417/418/419/420/421/422/423/424/425/426/427/428/429/430/431/432/433/434/435/436/437/438/439/440/441/442/443/444/445/446/447/448/449/450/451/452/453/454/455/456/457/458/459/460/461/462/463/464/465/466/467/468/469/470/471/472/473/474/475/476/477/478/479/480/481/482/483/484/485/486/487/488/489/490/491/492/493/494/495/496/497/498/499/500/501/502/503/504/505/506/507/508/509/510/511/512/513/514/515/516/517/518/519/520/521/522/523/524/525/526/527/528/529/530/531/532/533/534/535/536/537/538/539/540/541/542/543/544/545/546/547/548/549/550/551/552/553/554/555/556/557/558/559/560/561/562/563/564/565/566/567/568/569/570/571/572/573/574/575/576/577/578/579/580/581/582/583/584/585/586/587/588/589/590/591/592/593/594/595/596/597/598/599/600/601/602/603/604/605/606/607/608/609/610/611/612/613/614/615/616/617/618/619/620/621/622/623/624/625/626/627/628/629/630/631/632/633/634/635/636/637/638/639/640/641/642/643/644/645/646/647/648/649/650/651/652/653/654/655/656/657/658/659/660/661/662/663/664/665/666/667/668/669/670/671/672/673/674/675/676/677/678/679/680/681/682/683/684/685/686/687/688/689/690/691/692/693/694/695/696/697/698/699/700/701/702/703/704/705/706/707/708/709/710/711/712/713/714/715/716/717/718/719/720/721/722/723/724/725/726/727/728/729/730/731/732/733/734/735/736/737/738/739/740/741/742/743/744/745/746/747/748/749/750/751/752/753/754/755/756/757/758/759/760/761/762/763/764/765/766/767/768/769/770/771/772/773/774/775/776/777/778/779/780/781/782/783/784/785/786/787/788/789/790/791/792/793/794/795/796/797/798/799/800/801/802/803/804/805/806/807/808/809/810/811/812/813/814/815/816/817/818/819/820/821/822/823/824/825/826/827/828/829/830/831/832/833/834/835/836/837/838/839/840/841/842/843/844/845/846/847/848/849/850/851/852/853/854/855/856/857/858/859/860/861/862/863/864/865/866/867/868/869/870/871/872/873/874/875/876/877/878/879/880/881/882/883/884/885/886/887/888/889/890/891/892/893/894/895/896/897/898/899/900/901/902/903/904/905/906/907/908/909/910/911/912/913/914/915/916/917/918/919/920/921/922/923/924/925/926/927/928/929/930/931/932/933/934/935/936/937/938/939/940/941/942/943/944/945/946/947/948/949/950/951/952/953/954/955/956/957/958/959/960/961/962/963/964/965/966/967/968/969/970/971/972/973/974/975/976/977/978/979/980/981/982/983/984/985/986/987/988/989/990/991/992/993/994/995/996/997/998/999/1000/1001/1002/1003/1004/1005/1006/1007/1008/1009/1010/1011/1012/1013/1014/1015/1016/1017/1018/1019/1020/1021/1022/1023/1024/1025/1026/1027/1028/1029/1030/1031/1032/1033/1034/1035/1036/1037/1038/1039/1040/1041/1042/1043/1044/1045/1046/1047/1048/1049/1050/1051/1052/1053/1054/1055/1056/1057/1058/1059/1060/1061/1062/1063/1064/1065/1066/1067/1068/1069/1070/1071/1072/1073/1074/1075/1076/1077/1078/1079/1080/1081/1082/1083/1084/1085/1086/1087/1088/1089/1090/1091/1092/1093/1094/1095/1096/1097/1098/1099/1100/1101/1102/1103/1104/1105/1106/1107/1108/1109/1110/1111/1112/1113/1114/1115/1116/1117/1118/1119/1120/1121/1122/1123/1124/1125/1126/1127/1128/1129/1130/1131/1132/1133/1134/1135/1136/1137/1138/1139/1140/1141/1142/1143/1144/1145/1146/1147/1148/1149/1150/1151/1152/1153/1154/1155/1156/1157/1158/1159/1160/1161/1162/1163/1164/1165/1166/1167/1168/1169/1170/1171/1172/1173/1174/1175/1176/1177/1178/1179/1180/1181/1182/1183/1184/1185/1186/1187/1188/1189/1190/1191/1192/1193/1194/1195/1196/1197/1198/1199/1200/1201/1202/1203/1204/1205/1206/1207/1208/1209/1210/1211/1212/1213/1214/1215/1216/1217/1218/1219/1220/1221/1222/1223/1224/1225/1226/1227/1228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## **SUBMISSION UNDER SECTION 82A REVIEW OF DETERMINATION:**

The original proposal was recommended for approval by Council's Development Assessment Unit despite there being several non-compliances with Council policies. The amended proposal is also considered satisfactory. The amended design has reduced the number of dwellings by 2 residential units, the overall impact of the proposed development is considered to be less than that originally proposed, and is therefore recommended for approval.

The reduction of the number of dwellings results in a more appropriate site density for the 2(a) zoned land, despite the site being located within 300m of the Tweed Heads Business Centre, which allows a significant increase in density. The amended building design also results in an increase in available landscaped area. The amended design has been assessed by all relevant internal Council Units, with no additional issues raised.

In addition to the above comment, the amended development proposal has also been assessed with regard to the matters raised by the ten reasons for refusal associated with the original proposal, as resolved by Council's Administrators. The following is a summary of the applicant's response and Council's comments to each point of refusal.

- 1. It is not considered that the circumstances of the proposed development warrant support of the State Environmental Planning Policy objection to the two storey height limit.**

The applicant has provided the following comment in response to the first reason for refusal:

*'The proposed development comprises four two storey residential units, however proposed unit 1 contains a small three storey element which amounts to approximately 30m<sup>2</sup> in area. A SEPP No. 1 Objection is attached for Council's consideration. This element of the building is to be utilised as a media room / rumpus area, a small bathroom and the entry foyer. This area of the building is predominantly below natural ground level and will generally appear as a two storey building. Having regard to the topography of the land, minimal impacts upon the streetscape and the small area of non compliance it is submitted a variation is justified in this instance.'*

**Comment:** The original assessment by Council's Development Assessment Unit found the 3 storey element to be acceptable in that it was considered that Unit 1 would predominantly appear as a 2 storey dwelling from the street frontage. The amended proposal has not been amended and remains as part 2 and 3 storeys, the original recommendation that the SEPP 1 Objection be supported remains unchanged.

However, it should be noted that as this component of the proposed development has not been amended in any way, the amended application has not necessarily provided sufficient argument to change the first reason for refusal. In which case, it could be argued that reason for refusal No. 1 still stands and the SEPP 1 Objection to the two storey height limit is not supported.

2. **The proposed development is contrary to the 2(a) Low Density Residential zone objectives contained within Clause 11 of Tweed local Environmental Plan 2000. The proposed development is considered to be out of character with the surrounding built environment.**

The applicant has provided the following comment in response to the second reason for refusal:

*'The proposed development originally contained six residential units at a density of 1 dwelling per 255m<sup>2</sup> of site area. Although compliant with the zoning provisions relating to medium density housing and the development standard under Clause 51A, Council viewed the proposal as being out of character with the surrounding built environment. Accordingly, the proposal has now been amended and includes only 4 units at a density of 1 dwelling per 382.5m<sup>2</sup>. Importantly the subject site is located within 300metres of a business centre, whilst land just to the north of the site in Charles, Adelaide and Recreation Street is also zoned 2(b) Medium Density.*

*In terms of design each unit contains substantial garden and courtyard areas for private open space and general landscaping purposes which ensures the proposed development remains consistent with the objectives for the zone and the surrounding residential character of the Razorback Precinct.'*

**Comment:** As the applicant has submitted, the amended proposal results in a reduced number of residential units (from 6 to only 4 dwellings), with the site density reducing to 1 dwelling per 382.5m<sup>2</sup>. Although this figure is still above the maximum site density of 1 dwelling per 450m<sup>2</sup> for land zoned as 2(a) Low Density Residential, the amended proposal is considered to be consistent with the zone objectives, as noted in the assessment of the original proposal.

The applicant has noted that the subject land is located within 300m of a Business Centre in addition to being located south of land zoned as 2(b) Medium Density Residential. The assessment of the original proposal determined that the subject site was located within 300m of the Tweed Heads Business Centre, with Council's Development Assessment Unit satisfied that the development complies with Clause 51A of the Tweed LEP 2000, allowing the increase in site density within the 2(a) zone.

Whilst the site is located within a 300m radius of the Tweed Heads Business Centre, allowing an increase in site density to that of 1 dwelling per 250m<sup>2</sup> of site area, the point of issue raised is that the proposed development is considered to be contrary to the zone objectives within Clause 11 of the Tweed LEP 2000, in that the development is considered to be out of character with the surrounding low density built environment.

Although the immediate surrounding area is largely comprised of single residential allotments, the proposed amended development is not considered to be out of character in this environment. As the detached dwellings are to be stepped down the slope of the subject site, the impact of the development is considered to be acceptable in terms of visual amenity.

Given the above assessment, it is recommended that proposed amendments to the design of the development meet the requirements of Clause 11 and as such, the second reason for refusal no longer applies to the application.

**3. The density of the development is not consistent with the intent of Clause 51A(2)(b) of the Tweed Local Environmental Plan 2000 in that the subject site is not within an acceptable 300 metres walking distance of a Business Centre.**

The applicant has provided the following comment in response to the third reason for refusal:

*'The subject site has an area of 1530.7m<sup>2</sup> and the proposal originally contained a compliant density of 1 dwelling per 255m<sup>2</sup> of site area. Furthermore 20 metres to the north of the site a pedestrian thoroughfare has been constructed through First Avenue. This provides direct access to the business areas to the east of the site on Terranora Terrace, Recreation Street, Boyd Street and Wharf Street.*

*It is noted the walkway consists of series of steps as the path traverses down from Adelaide Street to Recreation Street. It is considered that such a pathway is definitely unsuitable should this means of access was relied upon for an aged care facility or similar. However the thoroughfare is not un-walkable and is only a short distance of approximately 75 metres to Terranora Terrace and into the local business area.*

*It is also noted Council has also approved similar dual occupancies on Kingscliff Hill pursuant to the density provisions under this clause. This includes DA05/1178 at Rob Roy Crescent and DA02/1361 at 16 Quiggan Street. Both of these sites are on steep land, but once again pedestrian access via the various roadways and pedestrian footpaths ensures access to the local shopping areas. We fail to see any differences between the proposed development and these other properties in terms of topography other than the Adelaide Street site is substantially closer to the local shopping area.*

*If Council's only concern was that the site was more than 300 metres from the local shopping area by vehicle, this appears to be contrary to the intent of Council's general aims and policies on reducing car dependence as the site is within close walking distance down the pedestrian walkway through First Avenue*

*Notwithstanding our views on this matter and that the original proposal clearly complied with the provisions of Clause 51A(2)(b) the development has been amended to provide for only four units with a density of 1 dwelling per 382.5m<sup>2</sup>. It is submitted the proposal as amended clearly satisfies the provisions of Clause 51A of the Tweed LEP 2000.'*

**Comment:** As noted above, the subject site is located within 300m of the Tweed Heads Business Centre. In this instance, the direct distance between the Business Centre and the site is in the order of approximately 150m (refer to attached coloured aerial photo). It is acknowledged that this type of measurement (“as the crow flies”) has been accepted in previous applications, and this interpretation of Clause 51A was been used by Council’s Development Assessment Unit in the assessment of the original development application. Although, it is noted that Council’s Administrators have highlighted an issue with this interpretation, the amended proposal is considered to satisfy the provisions of Clause 51A. Therefore, the proposed increase in density for the amended design is considered to be acceptable.

The original intent of Clause 51A was to allow an increase in site density to land zoned 2(a) within an “acceptable” walking distance from the Business Centre as well as lower car dependency in these areas. This acceptable distance was determined to be 300m.

When looking at the available walking options from the subject site to the Business Centre, it is acknowledged that there is an existing pedestrian path running through the First Avenue road reserve (which is unformed and heavily vegetated). The use of this pathway results in a walking distance of approximately 220m, being measured from the subject site down through the reserve and along Recreation Street to the Business Centre. It should be noted that the topography of the area results in the pathway running down a steep slope from Adelaide Street towards Terranora Terrace. The pathway consists of a set of steep concrete steps at the top of the reserve, with the remainder of the path being grassed. As such, the proposed use of this existing pathway may not be an acceptable walking option for some residents.

Other options involve pedestrians walking along the somewhat narrow roadside (as there is no existing footpath) of Adelaide Street and then Steep Street to the nearest boundary of the Business Centre, which has been calculated as approximately 430m in distance. It should be noted that the only business capable of offering (limited) everyday household needs is the existing “Scott’s Market Basket” premises on the corner of Recreation Street and Terranora Terrace. If a resident of the proposed development wanted to use the abovementioned route to this location, it would involve a total walking distance of approximately 590m, which is almost double the maximum walking distance nominated in Clause 51A(2).

As noted above, Council’s Development Assessment Unit is satisfied that the subject site is located within 300m of the Tweed Heads Business Centre and the higher site density is acceptable. However, if the Administrator’s interpretation is that the site is **not** within an acceptable walking distance the third reason for refusal still applies, with Clause 51A(2)(b) not being applicable to the proposal. This in turn would result in the amended proposal having a higher site density than that allowable for the 2(a) zone.

**4. The proposed development is contrary to the two (2) storey building height restrictions contained within Clause 16 of Tweed local Environmental Plan 2000.**

The applicant has provided the following comment in response to the fourth reason for refusal:

*'As discussed above a small component of Unit 1 exceeds the statutory height limit of two storeys and a variation has been sought pursuant to SEPP No. 1 Development Standards. It is considered that the proposed variation being sought is minor, does not establish a precedent, nor compromise Council's planning controls*

*Furthermore Unit No. 1 presents to the street as a single storey building, will not adversely impact upon neighbours views to the Coast or the Tweed River, or result in significant overshadowing or overlooking.*

*It is submitted the proposal is not out of character with the area, having regard to the built environment, and therefore remains consistent with the objectives of this clause.'*

**Comment:** As noted above in Item No.1, the proposed development does have a relatively small element of 3 storey development within Unit 1, which exceeds the 2 storey height limit applicable to the subject site.

Similarly, as with the original assessment by Council's Development Assessment Unit, the amended proposal is considered to be acceptable, with Unit 1 largely appearing as a 2 storey dwelling from the street frontage. The proposal is considered to comply with objectives of Clause 16, in that the height and scale of the development is appropriate to its location and surrounding environment. This has also resulted in the recommendation of support for the applicant's SEPP 1 Objection to this standard.

However, it should be noted that as this component of the proposed development has not been amended it could be argued that the fourth reason for refusal still applies, in that the proposed development is contrary to the 2 storey height restrictions contained within Clause 16 of the Tweed LEP.

**5. The proposed development is contrary to Clause 8 - Consent Considerations of the Tweed Local Environmental Plan 2000.**

The applicant has provided the following comment in response to the fifth reason for refusal:

*'Having regard to the matters contained within this Section 82A Application it is submitted that the proposal with a reduction in the number of dwellings to four units is no longer contrary to the consent considerations of Tweed Local Environmental Plan 2000.'*

**Comment:** As noted previously in this report, the proposed development has been designed around the principle of having a site density greater than that ordinarily permitted within the 2(a) zone. Although the amended proposal has reduced the number of units from 6 to that of only 4 dwellings (resulting in a reduced site density), the development is still above the maximum site density for the 2(a) zone, i.e. 1 dwelling per 450m<sup>2</sup>.

The comments provided by Council's Development Assessment Unit under Points 2 and 3 conclude that the amended proposal is considered satisfactory in terms of site density, as the use of Clause 51A applies to the subject site, allowing a higher density rate for multi dwelling housing development within the 2(a) zone. In addition, the amended design has reduced the number of units to that of four. As such, it is considered that the amended proposal is acceptable, in relation to Clause 8.

If the Administrators support the use of Clause 51A (to increase the site density to that of 1 dwelling per 250m<sup>2</sup>) for the proposed development, it is recommended that the fifth reason for refusal no longer applies to the application. However, if the Administrator's determine that Clause 51A is not applicable to the proposal, there is argument that the reason for refusal still applies, in that the proposed development is contrary to Clause 8 of the Tweed LEP 2000.

**6. The proposed development is contrary to State Environmental Planning Policy No. 71 - Coastal Protection, specifically the following matter for consideration:**

**d) *the suitability of development given its type, location, and design and its relationship with the surrounding area.***

The applicant has provided the following comment in response to the sixth reason for refusal:

*'The subject site is located within the Coastal Zone and as such the provisions of the State Environmental Planning Policy No. 71 Coastal Protection are applicable. The proposal as amended is not inconsistent with the provisions of the SEPP and in particular it is submitted the reduction in the number of dwellings to four units and the increase in density from 1 dwelling per 255m<sup>2</sup> to 1 dwelling per 382.5m<sup>2</sup> ensures the proposal is not out of character with the surrounding built environment and likely future character of the area having regards to the applicable zoning and density provisions for the Razorback Hill Precinct.'*

**Comment:** As the applicant has submitted, the amended proposal results in a reduced number of residential units (from 6 to only 4 dwellings), with the site density reducing to 1 dwelling per 382.5m<sup>2</sup>. Although this figure is still above the maximum site density for land zoned as 2(a) Low Density Residential, the amended proposal is considered to adequately satisfy the SEPP 71 matters for consideration, as noted in the assessment of the original proposal. Specifically, the amended design is considered compatible with the intent for the development of the locality.

Although the immediate surrounding area is largely comprised of single residential allotments, the proposed amended development is not considered to be out of character in this environment. Rather than having one large development, the applicant has attempted to suitably integrate the development by way of proposing detached dwellings stepping down the slope of the subject site. The reduction of units has also improved the amenity of the proposal from that originally recommended for approval by Council's Development Assessment Unit.

Given the above assessment, it is recommended that proposed amendments to the design of the development satisfy the matters of consideration under SEPP 71 and as such, the sixth reason for refusal no longer applies to the application.

- 7. The proposed development is contrary to Development Control Plan No. 6 - Multi Dwelling Housing, Part 3 - Design Elements in that the proposed development does not comply with the acceptable standards or satisfy the performance criteria for: minimum private open space provisions; building envelope provisions; or, minimum setback requirements.**

The applicant has provided the following comment in response to the sixth reason for refusal:

*'The proposed development as amended clearly satisfies the provisions of DCP No. 6 Multi Dwelling Housing and the following comments are made with reference to Private Open Space, setbacks, and Building Envelopes.*

<i>Requirements</i>	<i>Proposed</i>	<i>Complies</i>
<i>Density: 1:250m<sup>2</sup></i>	<i>1 residential unit / 382.5m<sup>2</sup></i>	<i>Yes</i>
<i>Floor Space Ratio: 0.5:1.0</i>	<i>0.37:1.0</i>	<i>Yes</i>
<i>Landscape Area: 320m<sup>2</sup></i>	<i>710m<sup>2</sup></i>	<i>Yes</i>
<i>Site Coverage: No Requirements</i>	<i>Building Footprint – 350m<sup>2</sup></i>	<i>DCP 6 has no specific requirements however in terms of density, floor space ratio and landscaped area, the site coverage is considered satisfactory.</i>
<i>Private Open Space: 25m<sup>2</sup> per unit with 4 metre dimensions  20% of Site Area = 306m<sup>2</sup></i>	<i>Unit 1: 167m<sup>2</sup> Unit 2: 130m<sup>2</sup> Unit 3: 160m<sup>2</sup> Unit 4: 115m<sup>2</sup>  <b>Total: 572m<sup>2</sup></b></i>	<i>Yes – Complies with Minimum area and dimension requirements per unit and the site as a whole.</i>
<i>Car Parking: 6 spaces with 25% for visitors</i>	<i>8 Garaged Spaces plus 2 visitor spaces</i>	<i>Yes</i>
<i>Setbacks: Front Setback – 6 metres</i>	<i>6 Metres</i>	<i>Yes</i>
<i>Setbacks: Side and Rear – 6 metres</i>	<i>3 Metres. It is noted Unit No. 4 encroaches into this setback.</i>	<i>Units 1, 2 and 3 comply. A variation is sought for Unit No. 4</i>



<p><i>Building Height Envelope – Planes are projected at 45 degrees from a height of 3.5m above finished ground level</i></p>	<p><i>Unit 1 Complies, however elements of Units 2, 3 and 4 are partially encroach into the Building Height Plane.</i></p>	<p><i>The proposal demonstrates general compliance with Council's BHP requirement. The house sited on Lot 4 does exhibit some level of encroachment into the Building Height Plane. Elements of Units 2 and 3 also partially encroach into the Building Height Plane. These are also of a minor nature and Council are requested to assess these elements of the development against the performance criteria.</i></p>
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**Comment:** In terms of Private Open Space, the reduction of the number of units and decrease in building footprints has resulted in the acceptable standards for minimum private open space requirements being achieved by the amended proposal. With regard to side setbacks, the proposed variation for Unit 4 only is considered to be acceptable. As noted in the original assessment by Council's Development Assessment Unit, the amended proposal is considered to be satisfactory in terms of the performance criteria for the siting and design of the building and the potential impact to the adjoining residence to the north.

Upon assessment, the Building Envelope encroachments pertaining to Units 2 and 3 (as indicated on Elevation 3 for Units 2 & 3) are considered to be minor and indeed allowable encroachments under the acceptable solution provisions of DCP 6, in that they only incorporate the eaves on the southern side of each unit. This minor encroachment is not considered to result in any adverse impact in terms of overshadowing or overlooking.

Unit 4 also incorporates a degree of Building Envelope encroachment (refer to Elevation 4 of Unit 4) with regard to the upper level balconies and roof. The applicant has submitted that... *'Dwelling No. 4 encroaches into the building height envelope adjacent to the south eastern boundary, which is in effect part of the Terranora Terrace Road Reserve. No impacts are evident on adjoining residential properties from this encroachment in terms of view loss, overshadowing, loss of privacy or residential amenity.'* In light of the relative minor nature of the encroachment involved with Unit 4, the proposed variation is supported, in terms of the proposal being considered to satisfy the performance criteria in this regard.

Given the above assessment, it is recommended that proposed amendments to the design of the development are considered to comply with the acceptable standards or satisfy the performance criteria for: minimum private open space provisions; building envelope provisions; and, minimum setback requirements and therefore satisfy Development Control Plan No. 6 - Multi Dwelling Housing, Part 3 - Design Elements. As such, the seventh reason for refusal no longer applies to the application.

- 8. The proposed development is contrary to Development Control Plan No. 47 - Cut and Fill on Residential Land, in that the top of the proposed retaining wall is less than the minimum setback of 900mm from the property boundary.**

The applicant has provided the following comment in response to the eighth reason for refusal:

*'The proposal includes a retaining wall which extends down the southern boundary varying in height from 0.2 metre to a maximum height of 3.0 metres. The retaining wall has been designed by a structural engineer having regard to geotechnical issues applicable to the site. The wall is to be sited 500mm from the boundary and includes appropriate drainage mechanism to intercept overland flow from the adjoining property and to ensure the wall remains structurally sound. Council's requirements where such walls exceed 1 metre in height, DCP 47 requires the walls to be setback a minimum of 900mm from the boundary.'*

*Discussions have been held with Council's Director Planning and Development, whereby it was agreed that the proposed 500mm setback is acceptable. The 500mm setback will still allow access to the proposed spoon drain at the top of the retaining wall as well as access to the property boundary for the adjoining property. If the retaining wall were setback the required 900mm, the amenity of the rear courtyards would be further impacted upon in terms of usability. A variation is sought in regard to the retaining walls and it is submitted that the variation is warranted in this instance, having regard to the topography of the site, the design detail previously submitted to Council, and our discussions to date with Council's Senior Staff.'*

**Comment:** Council's Development Assessment Engineer assessed the amended proposal and provided the following comments in terms of proposed earthworks:

*'As previously stated in the original assessment the cut and fill earthworks does not comply with DCP 47 due to the following;*

*The applicant has provided the following comment in the review of determination to address the refusal reason associated with cut and fill;*

*The proposal includes a retaining wall to a maximum height of 3 metres, situated 500mm from the boundary.*

*Under DCP 47 where retaining walls are greater than 1m in height, the wall is to be set back 900mm from the boundary. The review of determination has asked for a variation to be sought from the standard 900mm from the boundary, reducing to 500mm. Therefore the application has not changed in regards to cut and fill arrangements.'*

It is acknowledged that Council's Director Planning and Development agreed that the proposed 500mm setback for the 3m high retaining wall on the southern side boundary was acceptable for the original proposal. As noted by the applicant, if the 900mm setback for the retaining wall were to be enforced, the rear courtyards of Units 1, 2 and 3 would be adversely impacted upon in terms of usability. Therefore, Council's Development Assessment Unit considers that the variation requested for the amended proposal is acceptable and should be supported.

Despite this, the applicant has made no adjustments to the amended development in terms of proposed earthworks in order to address the requirements of DCP 47 - Cut and Fill on Residential Land. As such, Council's Administrators may still consider that the eighth reason for refusal applies, in that the top of the proposed retaining wall is less than the minimum setback of 900mm from the property boundary and greater than the maximum allowable retaining wall height of 2.5m.

**9. The proposed development is considered to be unsatisfactory in terms of traffic issues relating to vehicles entering and exiting the subject site onto Adelaide Street.**

The applicant has provided the following comment in response to the ninth reason for refusal:

*'The proposed development has been designed to comply with Council's requirements in terms of access and egress to the site. All vehicles are able to enter and leave in a forward direction and with the reduction on the number of units now proposed no constraints are evident in this regard. Furthermore internal driveways have been designed to comply with Council's requirements in terms of gradients and detailed engineering plans have been previously submitted for Council assessment demonstrating this. In this regard the following was reported to Council:*

*Access to the site has been raised as an issue by surrounding residents. Council's Traffic and Transport Engineer has assessed the proposed development with no objections, noting the objections on traffic grounds. Council's engineer provided the following comment:*

- *Adelaide Street would carry less than 1000 vehicles per day (based on Charles Street with 550vpd) and is therefore well within the road capacity. Vehicle speed at the location is low (observed) due to the geometry but sight distance to the driveway is adequate (40 metres from Charles Street).*
- *The development will generate an additional 33 vehicle trips per day which is relatively low and can be easily catered for on the surrounding road network which is under.'*

**Comment:** Council's Development Assessment Engineer assessed the amended proposal and provided the following comments in terms of traffic issues:

*'The multi dwelling housing application for four units is located on Adelaide Street. Adelaide Street is an existing older urban residential street with kerb and gutter located on both sides. Kerb and gutter on the development side, stops just after the subject site on the corner. The pavement width in Adelaide Street is approximately 7.2 metres. The geometry of Adelaide Street where entry for the proposed development is located on a tight horizontal curve sweeping away from the site and Adelaide Street also has a steep gradient of approximately 14.5%. The geometry of Adelaide Street, where the proposed development is located is not ideal for multi dwelling units.*

Previous Traffic Assessment

*Previously the application was assessed on the amount of traffic generated by the development. The horizontal and vertical geometry of Adelaide Street and site distance requirements were not addressed.*

Access & Manoeuvring

*Manoeuvrability from the development access point onto Adelaide Street is not considered ideal, due to the entry / exit point being located on a tight corner on a steep street.*

Intersections

*The proposed development entry point is located approximately 40 meters downhill from the intersection of Charles and Adelaide Street. Turning right into Charles Street is a tight manoeuvre, due to the geometry of the intersection.*

Site Distance

*Site distance for the proposed development has not been addressed, in previous engineering assessment. Site distance from the entry point on Adelaide Street is as follows;*

*Turning left from the site uphill to the Charles & Adelaide intersection, site distance is approximately 40 metres. Ausroads 'Intersections at Grade' standards indicates that this is in accordance with the requirements for approach site distance. Site distance right from the development down Adelaide Street is adequate.*

Footpaths / Cycleway

*No footpath is located on either side of Adelaide Street and the construction of a footpath along the same side of the proposed development is not physically possible to site constraints.*

Traffic Generation

*Council's Traffic & Transport Engineer provided comment on the original application relating to traffic generation, stating " I have reviewed the above DA and do not have any concerns regarding traffic generation."*

*Adelaide Street may be adequate in terms of traffic generation, although the additional traffic movements caused by the development entry and exit point onto a steep street located on a tight corner is not considered ideal.*

Parking

*The applicant has provided 6 car parking spaces with 2 of the spaces available for visitor parking. These requirements comply with Council's current DCP 2 – Site Access and Parking Code.*

*Concerns are raised for any additional off street car parking created by the development. Off Street car parking is considered unsuitable along the same side where the proposed development is located as the road shoulder drops away steeply, making the situation unsafe for parked cars.'*

Whilst it is acknowledged that the existing road geometry of Adelaide Street is not *ideal* for the proposed development, Council's Traffic and Transport Engineer advised that the local road network is capable of catering for the traffic generated by the original proposal. It can then be assumed that the same will apply for the amended proposal, given that the amendments involve a reduction of dwellings on the subject site. In this regard, Council's Development Assessment Unit considers that the amended proposal is satisfactory in terms of traffic issues and as such, the seventh reason for refusal should no longer apply to the application.

**10. The proposed development is not considered to be in the public interest.**

The applicant has provided the following comment in response to the tenth reason for refusal:

*'It is submitted that with the reduction in the number of dwelling from six to four the proposal clearly satisfies Council's density controls for the area and although minor variation is sought in relation to the height of the development, the proposal is not an overdevelopment of the site, nor does it establish a dangerous precedent, having regard to its proximity to the local shopping and business areas. It is considered that the proposed development will not prejudice the public interest and is suitable for approval.'*

**Comment:** As noted previously in this report, the proposed development has been designed around the principle of having a site density greater than that ordinarily permitted within the 2(a) zone, as is permitted for multi dwelling housing under the provisions of Clause 51A of the Tweed LEP 2000. In addition, the applicant has further reduced the number of units to 4 dwellings. This results in a site density that is much lower than that permissible under Clause 51A, therefore, the amended design is not considered to be an overdevelopment of the subject site.

As with the original proposal, despite there being several written objections received for this Review of Determination, Council's Development Assessment Unit considers that the amended proposal is not in conflict with the general public interest in the locality, with the development adequately reflecting the provisions of the controls and intended development for the locality.

If the Administrators support the use of Clause 51A (to increase the site density to that of 1 dwelling per 250m<sup>2</sup>) for the proposed development, it is recommended that the tenth reason for refusal no longer applies to the application. However, if the Administrator's determine that Clause 51A is not applicable to the proposal, there is argument that the proposal is an overdevelopment of the subject site in which case the reason for refusal still applies.

**Legal Point of Discharge for Sewer Disposal**

Upon written confirmation that the adjoining owner of 68 Adelaide Street (Lot 2 DP 780214) had withdrawn consent for the creation of an easement for the drainage of water and sewer from the subject site, the applicant was requested to propose an alternative solution for the discharge of sewer for the proposed dwellings below the existing sewer line traversing the subject site.

The applicant subsequently proposed to provide piped infrastructure via the existing easement for services through the downstream property (Lot 2 DP1058988) of the subject site to Kennedy Drive. This easement is currently being utilised for the drainage of stormwater and does not benefit Council. The applicant was requested to: obtain consent from the property owners of Lot 2 for the construction of the sewer infrastructure; obtain permission to amend the current 3.5m wide easement to include sewer and make Tweed Shire Council the benefiting authority; and demonstrate that the proposed sewer infrastructure can be accommodated within the easement for stormwater and utilities.

Council’s Development Assessment Engineer has assessed the amended sewer disposal proposal with no objections, subject to conditions of consent. This would include a condition that Lot 2 shall be fully rehabilitated to its original condition upon completion of the works associated with the installation of the sewer infrastructure, at the expense of the owner of Lot 1.

**Submissions**

The Review of Determination was formally re-advertised and re-notified to the adjoining landowners and to those who originally objected to the proposed development. The re-advertisement resulted in Council receiving a total of three submissions objecting to the proposal.

The grounds for objection are discussed in the table below.

<b>OBJECTION</b>	<b>IMPACT ASSESSMENT</b>
<i>Height – non-compliance with Cl 16 of TLEP due to 3 storeys in height.</i>	The amended proposal remains the same in this regard, in that the design of Unit 1 remains unchanged and contains a component of 3 storeys. The applicant has provided a SEPP 1 objection to the development standard in relation to the 3 storeys for Unit 1. However, as the proposal would not appear as a three storey from the road frontage, the non-compliance with Clause 16 is considered to be acceptable in this instance.
<i>Views – reduction of views to the north due to proposed 3 storey building (Unit 1).</i>	The proposed development has been designed to step down the slope. Due to the topography of the area, the proposed development is not expected to have an adverse impact upon neighbour’s views to the east and south. View sharing will exist.
<i>Claims that the existing 2 storey dwelling on the opposite corner of Adelaide St is 3 storeys in order to justify the 3 storey component of Unit 1.</i>	Although the dwelling opposite the subject site is essentially a two storey dwelling, under the definition of a storey, it may well have a small element of 3 storeys if the area under the deck is more than 1.5m above the natural ground level.

<b>OBJECTION</b>	<b>IMPACT ASSESSMENT</b>
<i>Site access – conflict with dual property driveway opposite, garbage collection. Hazardous blind access for all vehicles. Poor horizontal and vertical geometry. Lack of adequate assessment of local traffic environment &amp; development impacts</i>	As noted in this report, Council Traffic and Transport Engineer recommended approval for the original proposal. Council's Development Assessment Engineer has assessed the amended proposal in terms of road geometry, sight lines and parking provisions. It was noted that although the existing road conditions are not ideal, they comply with the relevant standards. As such, the proposed development is considered to be acceptable in terms of traffic issues.
<i>Non compliance with TLEP 2000 – proposal is out of character with surrounding built environment.</i>	Although it is acknowledged that the proposed development has a higher site density than those single residential allotments surrounding the subject site, the proposed density is considered to be acceptable in accordance with Clause 51A of the Tweed LEP 2000. This clause permits a higher site density for multi dwelling housing development for land zoned 2(a) if the subject site is located within 300m of a designated Business Centre.
<i>Objection to the applicant's claim that the land to the north of the site zoned 2(b) is likely to developed for similar purposes.</i>	This is an appropriate assumption made by the applicant, given the zone objectives for land zoned 2(b) Medium Density Residential. Although the 2(b) land in question may only have single dwellings on them at the moment, it is not unreasonable to expect these allotments to be developed at some stage in the future.
<i>Objection to use of Clause 51A, i.e. site within 300m of a business centre.</i>	This issue was dealt with in some detail within the bulk of this report, whereby it was acknowledged that although the existing pedestrian pathway is not ideal, it does exist. Despite this, Council's view on determining this distance is in a straight line, radiating out from the boundary of the business centre, in which case the subject site is well within the 300m requirement for Clause 51A to apply.
<i>Questioning use of Scott's Market Basket as a Business Centre.</i>	The limited use of Scott's Market Basket in terms of providing everyday household needs was noted in this report. However, the gazetted Tweed Heads Business Centre includes this business and as such must be included in the assessment of the proposed development.
<i>The extent of cut &amp; fill required to create level sites, particularly Units 3 &amp; 4.</i>	The proposed extent of cut and fill has been assessed by Council officers and is considered to be acceptable in terms compliance with the provisions of DCP 47 – Cut and Fill on Residential Land, subject to conditions of consent.
<i>Concern regarding rainwater runoff during heavy rain, effectiveness of earth bund &amp; potential stormwater runoff impact upon traffic in Kennedy Drive</i>	The proposed stormwater drainage solutions for the subject site were assessed in great detail as part of the assessment for the original proposal. The amended design has not made any changes to the stormwater drainage, therefore it is considered to be acceptable in terms of compliance with Council standards in this regard, subject to conditions of consent
<i>Not in Public Interest – potential traffic / pedestrian accidents.</i>	As noted above, the existing road conditions are not considered to be ideal for the proposed development. Despite this, the proposal is considered to comply with all relevant road / traffic standards.
<i>Traffic issues in terms of narrowness of Street and sight lines.</i>	Council's Development Assessment Engineer has provided comment in this regard, whereby it is acknowledged that the width and alignment of the existing road network is not ideal. However, the subject site does have adequate sight lines to allow traffic to access the subject site.
<i>Concern over number of storeys within Unit 4 &amp; loss of views to Boyd's Bay.</i>	Unit 4 is considered to be only two storeys in height. In terms of view loss, the previous assessment did not raise this as an issue that warrants refusal. Although there will some degree of view loss to all surrounding residences, the proposed development is considered acceptable in terms of view sharing.

**OPTIONS:**

1. Approve the application in accordance with the recommendations of Council's Development Assessment Unit.
2. Refuse the application and confirm the previous reasons for refusal.
3. Defer the application and provide reason for doing so.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be dissatisfied with the decision for the Review of Determination the applicant may determine to lodge an appeal with the Land & Environment Court.

**POLICY IMPLICATIONS:**

Support for the SEPP 1 objection on the proposed format of the development is not considered likely to have adverse policy implications.

**CONCLUSION:**

The arguments presented by the applicant for the S82A Review of Determination are considered sufficient to warrant approval of this application. The merit assessment of the applicable issues relating specifically to height limits, site density, building envelope, setbacks, privacy, and loss of views are not considered to be unsustainable or result in an over development of the site. Therefore, the SEPP 1 objection should be supported and the amended application approved, subject to conditions of consent.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](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. Coloured Aerial Photo - indicating the distance to the Tweed Heads Business Centre (with reference to Clause 51A of the TLEP2000). (DW 1510644)
  2. Coloured A3 Landscape Plan. (DW 1510662)
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**P12 [PD-PC] Draft Tweed Local Environmental Plan 2000, Amendment No 81**

**ORIGIN:**

**Development Assessment**

**FILE NO: GT1/LEP/2000/81 Pt1**

**SUMMARY OF REPORT:**

At its meeting of 6 July 2005 Council resolved, pursuant to Section 54 of the Environmental Planning and Assessment Act 1979, to amend the Tweed Local Environmental Plan 2000 to restrict the height of buildings south of Cudgera Creek at Hastings Point to 2 storeys (currently 3 storeys).

However, as part of Council's upcoming Local Environmental Plan 2007, all building height controls within the Shire are to be reviewed. Having regard to the response from the Department of Planning and the current Planning Reform agenda it is considered that to actively pursue an individual LEP Amendment to specific sites is not an option in this instance when a wider strategic assessment is to be undertaken almost simultaneously.

**RECOMMENDATION:**

**That Council abandons the pursuance of Tweed Local Environmental Plan 2000, Amendment No 81 - Heights of Buildings, Hastings Point.**

**REPORT:**

At its meeting of 6 July 2005, Council considered DA04/0517, that sought approval for the erection of a 3-storey development incorporating 5 units at No 75 Tweed Coast Road. At this meeting it was resolved firstly to refuse the application, and secondly, that pursuant to Section 54 of the Environmental Planning and Assessment Act 1979, a draft Amendment be made to the Tweed Local Environmental Plan 2000 to restrict the height of buildings south of Cudgera Creek at Hastings Point to 2 storeys (currently 3 storeys). Following a request by the applicant to review Council's decision on the development application DA04/0517 was approved by Council at a meeting on 2 May 2006.

Subsequently, documentation was prepared and provided to the NSW Department of Planning (DoP) requesting the DoP provide Council with delegations to:

- (a) Issue a certificate pursuant to Section 65 of the Act to enable the exhibition of the draft Plan; and
- (b) Report on the matter directly to the Minister for Planning pursuant to Section 69 of the Act.

A copy of the response received from DoP is attached, concluding that delegations shall not be issued and that any such review of building heights should encompass the entire Tweed LGA coastal strip to give a strategic context for heights at Hastings Point.

Discussion with Council's Planning Reform Unit has indicated that a review of all building height controls throughout the Shire are proposed to be undertaken within 'Phase 2' of the upcoming Tweed LEP 2007 (target date for exhibition March 2008).

In light of the DoP's advices, a review of the building height controls for Hastings Point alone is not considered possible. Further, it is considered largely unnecessary to further pursue this specific amendment to individual sites and review the entire Tweed Coastline when a Shirewide review is planned within the immediate future. Accordingly, it is recommended that Council resolve to abandon pursuance of LEP Amendment No 81 – Heights of Buildings, Hastings Point.



NSW GOVERNMENT  
Department of Planning

Contact John Finlay  
Phone (02) 6640 2074  
Fax (02) 6640 2134  
Email John.Finlay@planning.nsw.gov.au

Mr M Rayner  
Acting General Manager  
Tweed Shire Council  
PO Box 816  
MURWILLUMBAH NSW 2484

HEIGHTS OF BUILDINGS  
HASTINGS POINT

Our ref GRA6323882-1

Your ref

TWEED SHIRE COUNCIL  
TITLE No GT1/LEP/2000/81 PT.1  
PROJECT No [ ]  
DATE 16 FEB 2006  
ASSIGNED TO DAVISIC  
PROCESSED  STAGE

81 PT.1

Rel Doc: 1356510

Dear Mr Rayner

**Re: Section 54(4) Notification – Draft Amendment 81 to Tweed LEP 2000**

I am writing in response to Council's letter dated 6 March 2006 advising, pursuant to section 54 of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'), of the Council's decision to prepare a draft local environmental plan ('LEP') to restrict the height of buildings south of Cudgera Creek, Hastings Point

You will be aware that an instrument of delegation in respect of my LEP making functions was executed on 16 February 2006 ('delegation') Use of the delegation in respect of a draft LEP is conditional on receipt by Council of a Written Authorisation to Exercise Delegation ('Authorisation')

I have determined that an Authorisation will not be issued in this instance and therefore the Council will not be able to exercise any functions under the delegation in respect of the draft LEP referred to above

I have also determined that there is no need for an environmental study to be prepared in respect of the draft LEP Therefore sections 57 and 61 of the EP&A Act do not apply to the draft LEP However the Council is requested to provide a review of the heights for the entire Tweed LGA coastal strip to give a strategic context for heights at Hastings Point, when seeking a s 65 certificate to exhibit the draft LEP

It would be appropriate to consult with the Department of Environment and Conservation under s 62 of the Act in preparing this draft LEP

Should you have any queries in regard to this matter please contact the Regional Office of the Department

Yours sincerely

*SHaddad*

Sam Haddad  
Director General

30.3.2006

**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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**P13 [PD-PC] Tree Clearing - Lot 1 DP 390311; Lot 5 DP5 82299; Lot 2 DP 582300; Lots 1 & 2 DP 611556; Lots 3, 8, 19, 22, 31, 33 & 35 DP 755714; Lot 121 DP 134446, Parish Kunghur,; Lot 3 DP 771335, Parishes Kunghur and Gooninbar and Lot 2 DP 771335 Parish Goon**

**ORIGIN:**

**Director**

**SUMMARY OF REPORT:**

Council has received complaints about extensive clearing of land at 'Mebbin Springs' Kyogle Road, Kunghur. The clearing work has been investigated. The tree clearing was approved for a timber plantation by the Department of Natural Resources. The complainants have been advising accordingly.

**RECOMMENDATION:**

**That Council notes the approval which has been granted by the Department of Natural Resources for a timber plantation at Kunghur.**

**REPORT:**

Council has received advice that a timber plantation was approved by the Department of Natural Resources for approximately 580 hectares of land in an area adjacent to the proposed Nightcap Village at Kunghur. The authorised plantation area includes approximately 60 hectares of retained native vegetation that will be managed for biodiversity conservation under the provisions of the Plantation and Reafforestation Act 1999.

The area approved for a timber plantation has been cleared and eucalypts planted.

The complainant has been given a copy of the approval for the timber plantation and advised to contact the Department of Natural Resources in relation to the concerns raised about the clearing work.



NSW DEPARTMENT OF NATURAL RESOURCES

**Authorisation for timber plantation**  
 issued under the *Plantations and Reafforestation Act 1999*

Registered number GR0604P

**Plantation application**

Applicant name(s) **FEA Plantations Ltd.**  
 Postal address **PO Box 6153 SOUTH LISMORE NSW 2480**  
 Property address **"Mebbin Springs" Kyogle Road KUNGHUR NSW 2484**  
 Land and area under application **Lot 1 DP390311; Lot 5 DP582299; Lot 2 DP582300; Lots 1 & 2 DP611556; Lots 3, 8, 19, 22, 31, 32, 33, & 35 DP755714; Lot 121 DP134446, Parish Kungurur; Lot 3 DP771335, Parishes Kungurur and Gooninbar and Lot 2 DP771335 Parish Gooninbar, County Rous**

**Authorisation**

Class of plantation **Timber plantation**  
 Made on (date) **The date of the signature below.**  
 Authorisation  granted in accordance with the Code and the attached Plantation Plan  
 granted in accordance with the Code and subject to conditions described in Attachment 1 and the attached Plantation Plan  
 Refused See Attachment 2  
 Authorisation to operate from **The date of the signature below**  
 Duration **The authorisation of a plantation remains in force unless it is cancelled by the Minister in accordance with this Act**

**Right of appeal** If you are dissatisfied with this decision, under section 24 of the Plantation and Reafforestation Act 1999 you have the right to appeal to the Land and Environment Court within 28 days after which you receive this notice

Signed **on behalf of the consent authority**  
 Signature   
 Name **John Ball  
 Senior Natural Resource Officer - Plantations**  
**by delegation from the Hon. Ian Macdonald  
 Minister for Natural Resources**  
 Date **3<sup>rd</sup> March 2006**

3<sup>rd</sup> March 2006

The General Manager  
Tweed Shire Council  
PO Box 816  
MURWILLUMBAH NSW 2484

Dear Sir:

Link to LNs  
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30195  
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Department of Natural Resources

LN: 10478  
TWEED SHIRE COUNCIL  
FILE NO 20430 PT.1  
DOCUMENT ID  
REC'D - 7 MAR 2006  
ASSIGNED TO SMITH, G.  
HARD COPY  IMAGE

**RE: Determination of application for authorisation of plantation areas under the Plantation and Reafforestation Act 1999**

In accordance with Section 12 (3) of the above Act, the Department of Natural Resources is required to notify the relevant Council of any local government area within which an authorisation for a timber plantation has been granted. Attached is a copy of an authorisation that has been granted over land within your LGA. This authorisation relates to land at Kunghur.

The authorised plantation area of GR0604 is approximately 580 hectares which includes about 60 hectares of retained native vegetation that will be managed for biodiversity conservation under the provisions of the Plantation and Reafforestation Act and Code. It is proposed to establish the area to eucalypt plantation.

For further information please contact the undersigned on 0266 402071.

Yours faithfully,

John Ball  
Senior Natural Resources Officer - Plantations  
Dept. of Natural Resources  
GRAFTON 2460

Department of Natural Resources  
(76 Victoria Street), Locked Bag 10, Grafton NSW 2460  
Telephone. (02) 6640 2071



**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).*

1. Plantation Plan - GR0604P (DW 1357011)
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**P14 [EC-PC] Unauthorised Works at Lot 15, 18 DP 755685; Lot 17, 18 DP 252179, Dulguigan Road, North Tumbulgum - Vasco Pty Ltd**

**ORIGIN:**

**Building Services**

**FILE NO: DA05/1049**

**SUMMARY OF REPORT:**

This matter was reported to Council meeting held 28 November 2006 where it was resolved as follows;

- “1. Notes this report and delegates to the General Manager to consider any submission regarding the Notice of Intention to Issue an Order and determine the action to be taken in relation to the proposed Orders.*
- 2. Requests a further report be presented regarding further legal action to be taken if the applicant fails to comply with Orders issued.”*

The owner has provided a submission, which generally argues that the excess fill was placed on the unnamed road reserve in order to provide long term stability of the ground by preloading the substrata underlying the access road. This is also the case for the house site on the advice from their geotechnical engineers.

A copy of the geotechnical report has been received which only addresses the house site. The geotechnical report did not investigate the unnamed road reserve. The details of the geotechnical report confirm the applicant's submission in regard to the house site, but not for the unnamed road reserve.

A Section 138 application of the Roads Act 1993 has now been received for the works on the unnamed road reserve. This application has been approved which allows the construction of the road over the unnamed road reserve to be 100mm deep gravel 3.6m wide. This is now in accordance with the development approval.

It is considered that the owner's submission is reasonably justified and the owner should be given approximately 60 days to rectify the works over the unnamed road reserve and 9 months for the house pad.

**RECOMMENDATION:**

**That Council:-**

- 1. Issue the Order to remove all the fill material from the unnamed road reserve within 60 days. Following which construction of the road in the unnamed road reserve is to be undertaken in strict accordance with the approved Section 138 application under the Roads Act 1993.**
- 2. Issue the Order to reduce the size of the filled house pad area. In accordance with development consent DA05/1049 by 19 September 2007.**
- 3. Should the owner fail to satisfactorily undertake recommendations 1 or 2 above then legal action be commenced.**

**REPORT:**

**Owner:** Vasco Pty Ltd

**Location:** Lot 15, 18 DP 755685; Lot 17, 18 DP 252179, Dulguigan Road North Tumbulgum

**BACKGROUND**

This matter was reported to Council meeting held 28 November 2006.

Conditional development consent DA05/1049 for the construction of a dwelling was granted 26 October 2005 at the abovementioned property.

The construction works on the vehicular access road and the house pad had commenced but was not in accordance with the consent.

A Notice of Intention to Issue an Order was served and the matter was reported to Council where it was resolved that;

- “1. Notes this report and delegates to the General Manager to consider any submission regarding the Notice of Intention to Issue an Order and determine the action to be taken in relation to the proposed Orders.*
- 2. Requests a further report be presented regarding further legal action to be taken if the applicant fails to comply with Orders issued.”*

A submission from the owner has now been received which is reproduced below.

*“I respond to your letter of 14 November 2006 regrading the removal of fill from the unnamed road reserve and the reduction in size of the building pad.*

*Excess fill material was placed on the unnamed road reserve in order to provide long-term stability of the ground by preloading the substrata underlying the access road. The geotechnical soil investigation for the area indicated very soft clay soils subject to large amounts of settlement across the block. By placing excess fill on the area the desired result is to initiate and fast track the expected settlement of the substrate to a small section of the road reserve to be used for permanent access to the block. The finished depth of the gravel will be in accordance with the DA conditions being no more that 100mm above surface level. Drainage pipes have been installed to prevent water pooling during this preloading operation.*

*Due to an oversight the required section 138 Notice was not lodged prior to works commencing, but this has now been rectified.*

*The construction of the house pad has been split into a two stage operation on advice from our geotechnical engineers who have determined that if the pad was to be constructed in one operation, the result would be that the substrata would be overloaded and there would be a high risk of shear failure to the underlying soil layers which would permanently destroy what little load bearing capacity exists.*

*The building pad has been redesigned to be constructed in two stages, with stage 1 being approximately 2 metres above ground level, and stage two a further 2 metres of fill on top. Stage 1 is to be monitored for settlement by our surveyor and geotechnical engineer for a period of approximately nine months until the compaction of the substrata is deemed satisfactory for the stage 2 operation to commence. The expected settlement of the pad is approx 1.3m.*

*We have brought the total amount of fill on site to complete Stages 1 & 2 pad filling operations, with the intent to preload the area around the pad for long term stability. Once satisfactory settlement has taken place, this fill will be placed on top of the Stage 1 pad to the correct level and dimensions as per the development approval.*

*We will remove the excess fill from the unnamed road reserve as required, but see no reason why the Stage 2 pad material should be removed from site, when it is required to be reinstated at a later date.”*

A copy of the geotechnical report has been received, which confirms the applicant's submission in regard to the house pad. However the geotechnical report did not investigate the unnamed road reserve.

Under the circumstances as the road works are in the same vicinity as the house pad the substrata is likely to be the same. So pre-loading over the unnamed road reserve appears to be consistent with the construction of the house pad, which is considered reasonable. In addition it is a temporary measure and the applicant has advised of their willingness to remove the fill and reinstate it in accordance with the development approval.

A Section 138 application of the Roads Act 1993 has also now been received and has been approved. The approval allows the road over the unnamed road reserve to be constructed with 100mm deep gravel and 3.6m wide.

The proposed orders were:

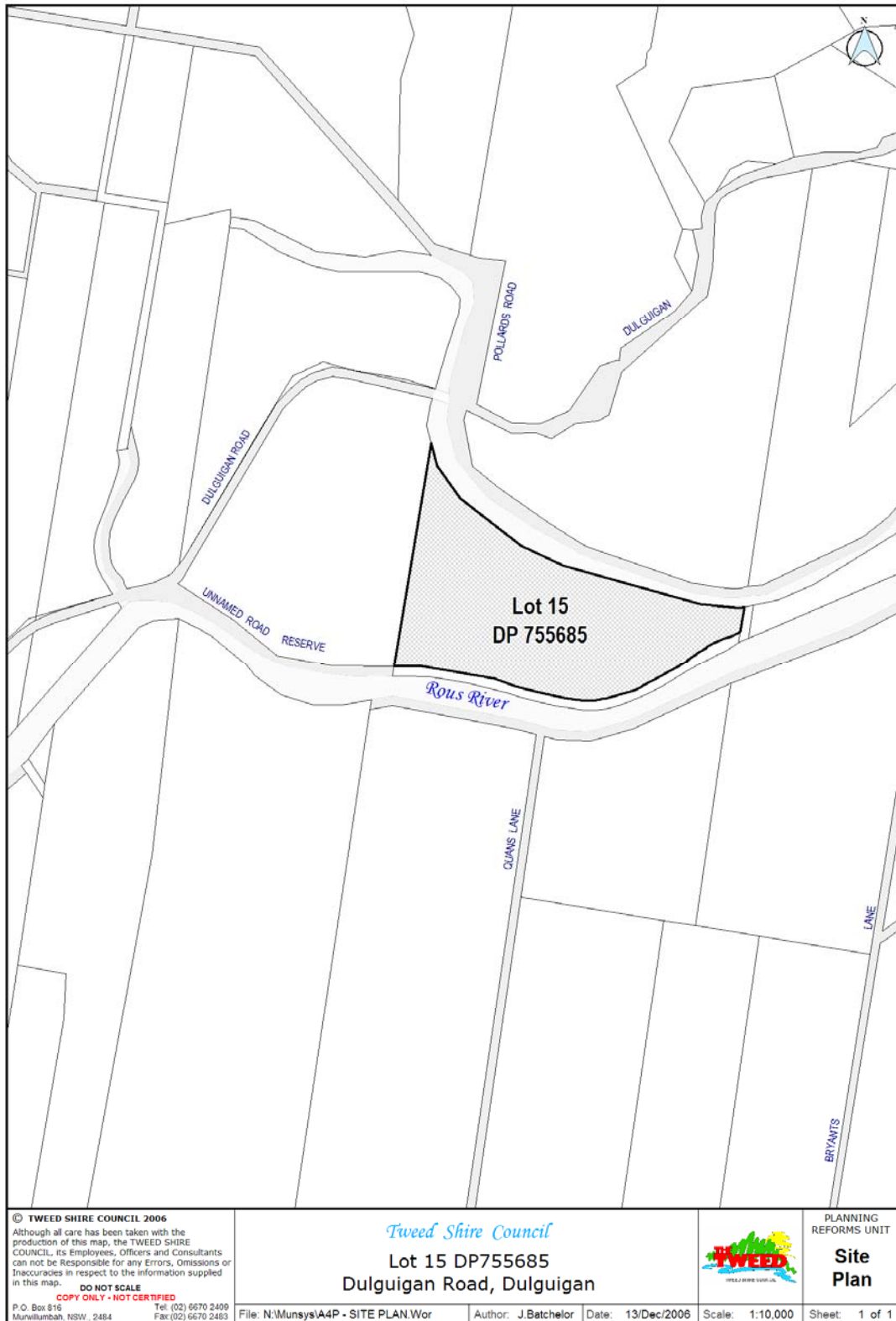
1. To remove all the fill material from the unnamed road reserve.
2. Reduce the size of the filled house pad area in accordance with consent notice DA05/1049.

The issue of the order is deemed necessary because:-

1. Approval from Council under Section 138 of the Roads Act 1993 has not been obtained for works on a public road.

2. The area of the existing fill for the house pad exceeds the area approved by consent notice DA05/1049.

**SITE DIAGRAM**





## CONCLUSION

It is considered that the owner has reasonably justified the unauthorised works in their submission, which is supported by the geotechnical report. The applicant has also advised of their willingness to comply.

Therefore the owner could be given 60 days to rectify the works over the unnamed road reserve in accordance with the section 138 approval of the Roads Act, 1993 i.e. 100mm gravel 3.6m wide.

In addition the owner could be given 9 months to rectify the house pad to allow for the pre-loading to settle the site.

## UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

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