



AGENDA

PLANNING COMMITTEE MEETING Tuesday 26 September 2006

Chairman: Ms Lucy Turnbull

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

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REPORTS THROUGH GENERAL MANAGER

REPORTS FROM DIRECTOR PLANNING & DEVELOPMENT

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

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

MATTERS FOR CONSIDERATION

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

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P1 [PD-PC] Development Application DA05/1452 for Alterations & Additions to Club at Lot 2 DP 881169, Gollan Drive, Tweed Heads West

ORIGIN:

Development Assessment

FILE NO: DA05/1452

SUMMARY OF REPORT:

The subject Development Application seeks consent for alterations and additions to the existing Seagulls Club at Tweed Heads West.

The alterations and additions are primarily proposed to improve the functionality and efficiency of the building. However, the club is also obligated to satisfy the requirements of the NSW Government's new Smoke Free Environment Act 2000, which specifies that all smoking within enclosed areas of the Club will be prohibited from July 2007.

Therefore to achieve compliance with the above a key element of the alterations is the extension of outdoor terraced areas, which will also take advantage of the significant water views enjoyed by the site. Furthermore internal reconfigurations will result in the ground floor level catering for gaming and lounge bar functions while the first floor will cater for dining and functions. The only part of the proposal that will add to the gross floor area (GFA) is the new toilet facilities to be located to the south of the new café area. This increase to GFA is in the order of 20m².

The works have an estimated cost of \$7 million with works to be staged in accordance with the applicants staging plan (received 15 September 2006).

The application was lodged in December 2005 however since this time Council has been awaiting additional information in the form of a noise report. This was provided in May 2006, however determination has been put on hold at the applicant's request to enable lodgement of amended plans.

Amended plans have been received (dated 15 September 2006) and the application can now be determined.

The proposed alterations raise management issues regarding noise and onsite parking concerns in relation to compliance with DCP No. 2. Having reviewed the application on its merits and considered the two objections received during the submission period these issues are considered capable of being managed by way of conditions of consent that require the implementation of a noise management plan and the sealing of the existing overflow grassed parking area. The proposed alterations are considered to warrant conditional approval.

RECOMMENDATION:

That Development Application DA05/1452 for alterations & additions to club at Lot 2 DP 881169, Gollan Drive Tweed Heads West 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:

- Job No. 11176 DA 1.01 Revision C - Ground Floor, prepared by Paynter Dixon Architects and dated 16/08/2006,
- Job No. 11176 DA 1.02 Revision C - First Floor Plan prepared by Paynter Dixon Architects and dated 15/08/2006; and
- Job No. 11176 DA 2.01 Revision A - Elevations prepared by Paynter Dixon Architects and dated 01/12/2005,

And the Staging Plan No's:

- Job No. 11176 DA 1.00A Site Plan;
 - Job No. 11176 DA 1.01B Ground Floor Plan; and
 - Job No. 11176 DA 1.02C First Floor Plan;
- 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. Advertising structures/signs to be the subject of a separate development application, where statutorily required.

[GEN0065]

4. All works shall be carried out in accordance with the recommendations of the Environmental Noise Impact Report for Seagulls Club, Tweed Heads West prepared by Jay Carter Acoustical Consultant dated 30 January 2006 (Report Reference: 125 Report) and acoustic advice from Jay Carter dated 3 May 2006.

[GENNS01]

5. An acoustic enclosure for the rooftop plant arrangement shall be designed and installed in accordance with the acoustic advice from Jay Carter, Acoustical Consultant dated 3 May 2006 prior to the use of such plant and equipment.

[GENNS02]

6. The premises is to be treated on completion of fitout and prior to the commencement of trading and thereafter on a regular basis by a licensed pest control operator. A certificate of treatment is to be made available for Council inspection upon request.

[GENNS03]

7. Prior to the commencement of operations and on completion of fitout, an inspection is to be arranged with Council's Environmental Health Officer for final approval.

[GENNS04]

8. 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

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

[PCC0055]

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

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

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

Water DSP3: 2 ET @ \$10864	\$21,728
Sewer Banora: 2 ET @ \$2863	\$5,726

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]

11. 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]

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

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

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

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

[PCC1145]

13. A noise management plan shall be prepared and submitted to Council's General Manager or his delegate for consideration and approval prior to a construction certificate being issued that details how noise from the use of the external areas will be managed and controlled so as to prevent the generation or emission of intrusive noise upon neighbouring and adjacent premises. The plan shall include but not limited to the management of patrons, restricted hours of use and the like for these areas.

[PCCNS01]

14. Council's Environmental Health Officer shall be provided with plans drawn to a scale of 1:50 for assessment, detailing the following in regards to any proposed food area within the site prior to a construction certificate being issued:

- a. Layout of food preparation areas showing all equipment
- b. All internal finish details including floors, walls, ceilings and lighting
- c. Hydraulic design in particular method of disposal of trade waste
- d. Mechanical exhaust ventilation as per the requirements of AS1668 Pts 1 & 2 where required
- e. Servery areas including counters etc.

[PCCNS02]

15. Prior to issue of a Construction Certificate for Stage 3 the applicant is to submit to Tweed Shire Council's General Manager or his delegate a car parking layout plan that details a weather proof seal and formal spaces marked out within the existing overflow grass parking area. This sealed area is to comprise 135 spaces to achieve total on site parking requirements as specified within DCP No. 2.

[PCCNS03]

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0215]

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

[PCW0225]

18. 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]

19. 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]

20. Prior to the commencement of any works below 1.0m of the current surface level, an Acid Sulfate Soils Management Plan to the satisfaction of Council's Director of Environment & Community Services shall be provided and implemented at the site.

[PCWNS01]

DURING CONSTRUCTION

21. 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]

22. 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]

23. 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]

24. 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]
25. 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]
26. 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]
27. Pursuant to the provisions of the Disability Discrimination Act, 1992 (Commonwealth) the design of the proposed development shall facilitate access for the disabled in accordance with the relevant provisions of AS1428- Design for Access and Mobility.
[DUR1725]
28. 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]
29. 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]
30. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993.
[DUR2515]
31. 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]

32. The south eastern end of the corridor on the ground floor which services the administration offices is to be provided with a -/60/30 self closing or automatic closing fire door. This door is to be provided to provide and maintain similar fire separation to that provided by the existing sliding fire door at the base of the stairway leading up to the gaming area. [DURNS01]
33. By the completion of Stage 3 the site is to accommodate a minimum of 715 off street car parking spaces including parking for the disabled where applicable. The layout and construction standards to be in accordance with Development Control Plan No. 2 - Parking Controls, the Building Code of Australia and AS 2890. [DUR0085]
34. All demolition works are to observe the guidelines set down under the Environment Protection Authority publication "A Renovators Guide to the Dangers of Lead" and the WorkCover guidelines on working with and handling of asbestos. [DUR0655]
35. 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]
36. All flooring materials in the food preparation and storage areas are to be impervious, non slip, non abrasive and capable of withstanding heavy duty operation. Where tiling is to be used epoxy grout finished flush with the floor surface is to be used in joints or alternatively all tiles are to be butt joined and free of cracks or crevices. [DUR1505]
37. All internal fitout is to comply with Australian Standard AS4674 - Design, Construction and Fitout of Food Premises. [DUR1535]
38. Separate hand washing facilities must be provided with warm water and located in a position where it can be easily accessed by food handlers and be of a size that allows easy and effective hand washing to the satisfaction of the General Manager or his delegate. [DUR1545]
39. A floor waste connected to the drainage system shall be provided within 1.5 metres of the opening of the cool room. [DUR1565]

40. All shelving, benches, fittings and furniture on which appliances and utensils are positioned within the premises must be of durable, smooth, impervious material capable of being easily cleaned.

[DUR1605]

41. 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]

42. 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]

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

- * 43.5⁰C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
- * 50⁰C in all other classes of buildings.

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

[DUR2555]

44. Acoustic barriers as outlined in Figure No. 2": Proposed Building Layout - Ground Level" in the Environmental Noise Impact Report for Seagulls Club, Tweed Heads West prepared by Jay Carter Acoustical Consultant dated 30 January 2006 (Report Reference: 125 Report) shall be installed at the site prior to the use of the refurbished areas

[DURNS02]

45. Where works shall extend below 1.0m and/or if groundwater is encountered during any works on the site, all works shall cease and a Dewatering Management Plan that considers acid sulfate soil to the satisfaction of Council's Director of Environment & Community Services shall be prepared and implemented at the site.

[DURNS03]

46. Works shall be carried out in accordance with the Report on Geotechnical Investigation for the proposed extensions to Seagulls Club, Gollan Drive, Tweed Heads prepared by Douglas Partners Pty Ltd dated 28 February 2006 (Project No: 33805).

[DURNS04]

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

[POC1055]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

48. 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]

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

[POC0525]

50. 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

51. 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]

52. 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]

53. Any premises used for the storage, preparation or sale of food shall comply with the *Food Act 2003* and the Australia New Zealand Food Standards Code.

[USE0835]

54. All mechanical ventilation shall comply with AS1668.2 Ventilation Requirements.

[USE0845]

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

[USE0875]

56. The proposed rooftop plant shall be set on low speed after 12.00am (midnight) when in use.

[USENS01]

57. Until such time that the water cooling tower is removed from the site, the tower and associated equipment shall be operated and maintained in accordance with AS3666: 1-3 and the *NSW Code of Practice for the Control of Legionnaires' Disease*, June 2004, 2nd edition. Council shall be notified of the removal of the water cooling tower from the site.

[USENS02]

58. Prior to use of Stage 3 the overflow grassed parking area is to be constructed in accordance with the Council approved plan as required by this consent.

[USENS03]

GENERAL TERMS OF APPROVAL

PERMIT UNDER PART 3A OF THE RIVERS AND FORESHORES IMPROVEMENT ACT 1948

1. Erosion and sediment control measures shall be employed for the duration of construction works to minimise silts and sediments from entering the Terranora Broadwater.
2. Any excavated material containing potential acid sulfate soils shall be managed in accordance with ASMACC Guidelines (1998).
3. Excavation operations shall be conducted so as not to damage or cause erosion of the adjoining riverbank and to ensure minimal impact on existing riparian vegetation.

REPORT:

Applicant: Paynter Dixon Constructions Pty Ltd
Owner: North Sydney Leagues Club Limited
Location: Lot 2 DP 881169, Gollan Drive Tweed Heads West
Zoning: 6(b) Recreation
Cost: \$7 million

BACKGROUND:

The subject land is described as Lot 2 DP 881169 Gollan Drive, Tweed Heads West and is located approximately 1km west of the Pacific Highway (Kennedy Drive interchange).

The site presently contains the substantial Seagulls Leagues Club building. Bituminised car parking areas providing a total of 582 car parking spaces are located around the club building. The grassed area adjacent to the northern boundary has approval for 232 car parking spaces. This grassed area is used for “over flow” car parking in association with major events at the club.

Vehicular access to the site is primarily via the main driveway at the north-eastern part of the site from Gollan Drive. A secondary driveway also accessing Gollan Drive is located to the southern side of the building.

The area surrounding the club comprises a mixture of remnant bushland, the Terranora Broadwater and low density residential housing.

The existing Seagulls Club was constructed in several stages with the last major addition constructed in 1983.

The applicant has provided the following table, which has a brief floor-by-floor summary of the proposed alterations:

TABLE 1 – DEVELOPMENT SUMMARY	
LEVEL	DESCRIPTION
Car Park	Reconfiguration of car parking area to the south-east (net increase).
Ground Level	Extension of outdoor terrace to south of existing lounge area. Construction of new smokers terrace to the north of the new gaming area. Demolition of various internal partition walls. Relocation and fit out of reception area at eastern entry. Fit out of new café and toilet facilities. Relocation and fit out of bar adjacent to outdoor terrace. Fit out of new gaming area in former bistro area. Fit out of new change booths and service corridor. Installation of new lift adjacent to gaming area staircase.
First Floor	Demolition of various internal partition walls and bars. Raise floor level of former gaming area to match surrounding floor levels. Fit out of new lounge area in former gaming area. Fit out of new restaurant and bar in former southern entertainment lounge area. Fit out of function area and new toilets in former northern lounge bar and restaurant area. Installation of new lift lobby adjacent to eastern staircase.
Second Floor	No Change

The amendments received on 18 August 2006 amend the location of the gaming areas closer to the outdoor terrace areas.

The amendments received on 15 September 2006 incorporates small external terraces on the northern and southern side of the 1st floor and the introduction of a staged works plan as follows:

Stage 1

- Ground floor gaming lounge extension;
- Ground floor northern outdoor gaming and external terrace;
- Ground floor partial building of the southern outdoor gaming and external terrace area; and
- First floor new buffet restaurant, servery, kitchen and goods lift;

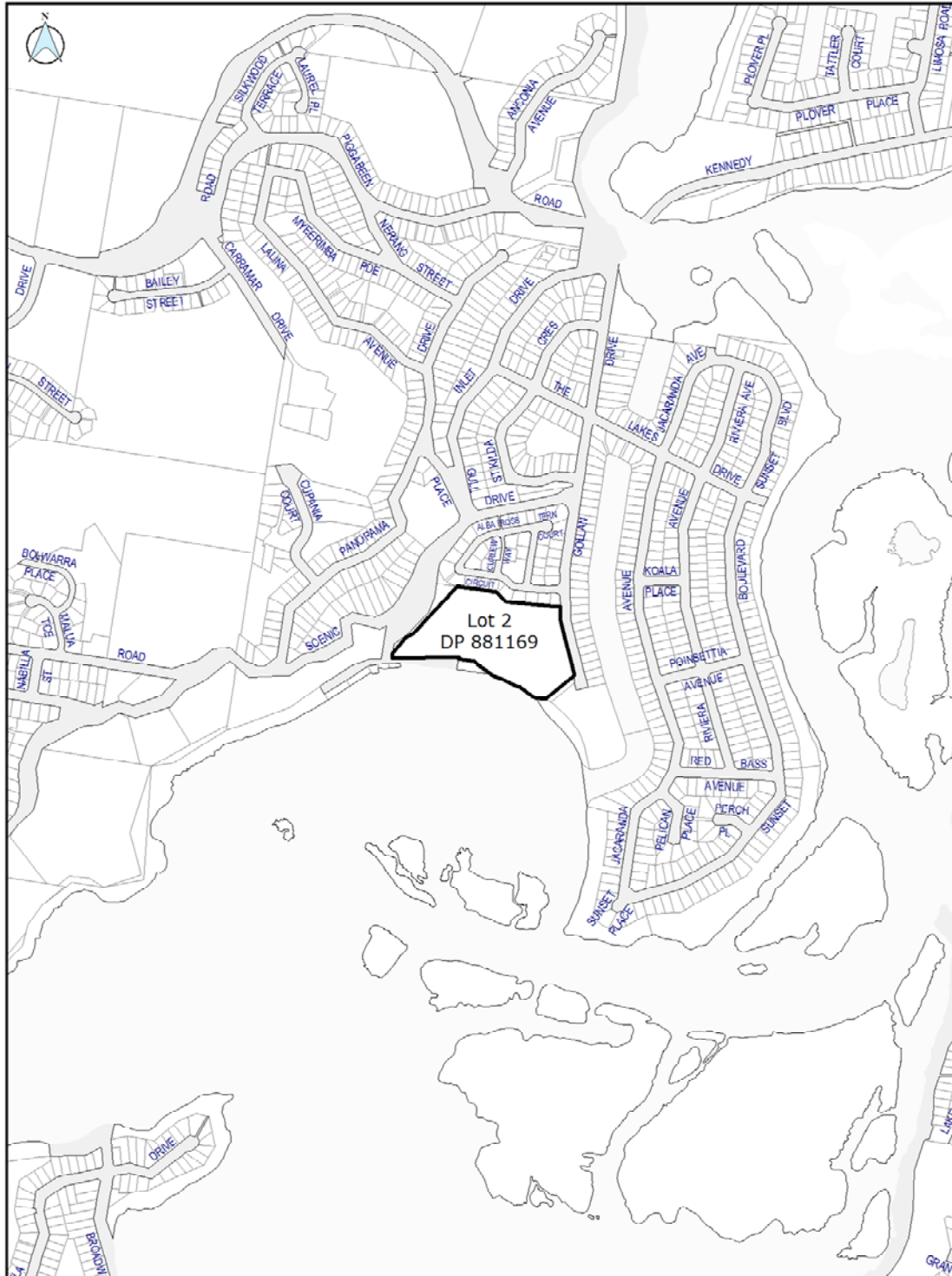
Stage 2

- Ground floor new passenger lift;
- Ground floor lounge bar upgrade and partial building of the southern external terrace area;
- Ground floor refurbishment of existing toilets; and
- First floor new function rooms, new male and female toilets and refurbished lounge and bar servery.

Stage 3

- Ground floor new bistro dining, servery, bar servery and lounge facilities
- Ground floor new male and female toilets, southern alfresco dining terrace area;
- Ground floor extension of 135 sealed car spaces to existing park; and
- First floor new external terrace to the Buffet restaurant.

SITE DIAGRAM:



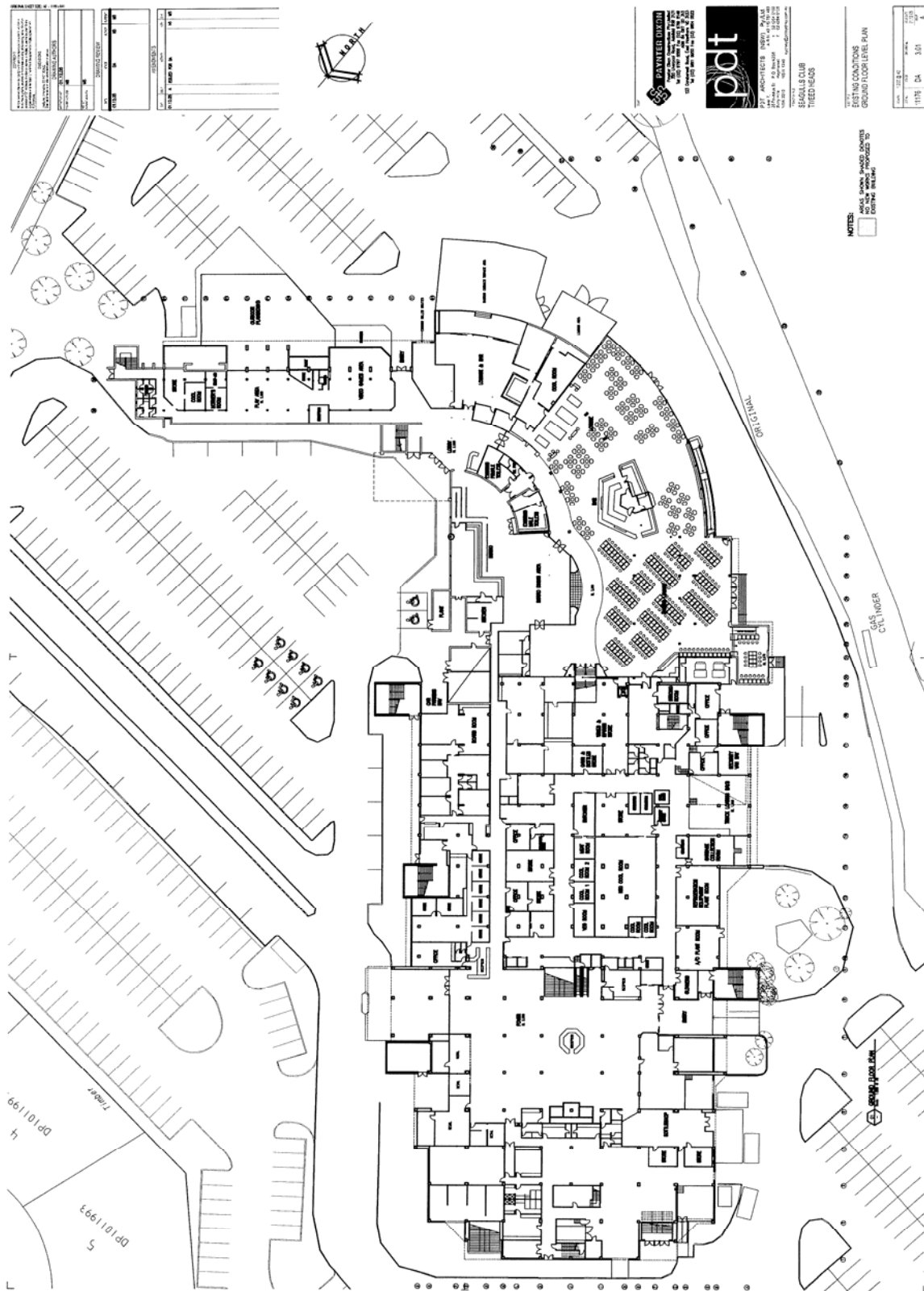
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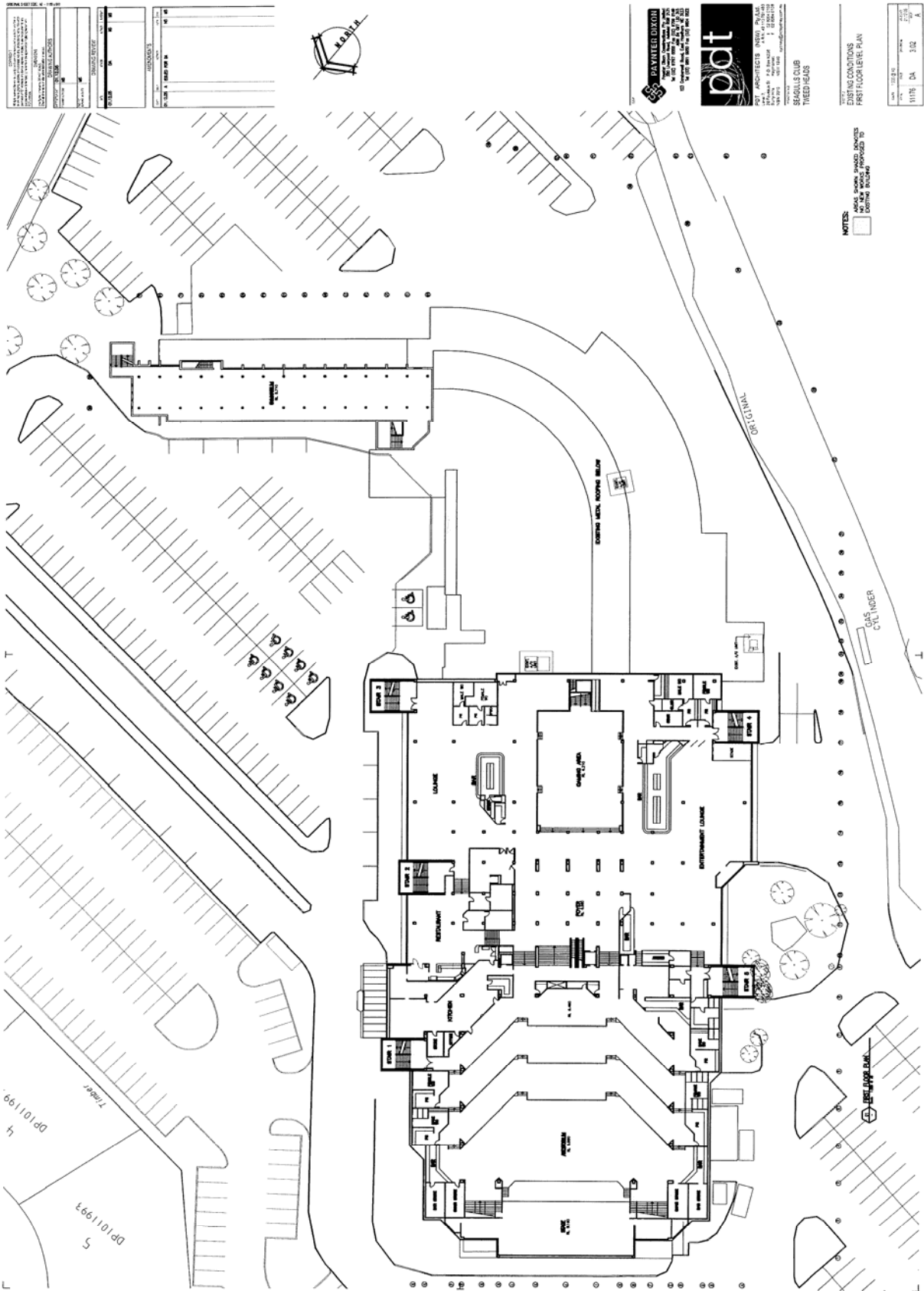
Tweed Shire Council
Lot 2 DP 881169
Gollan Drive, Tweed Heads West
 File: N:\Munsys\A4P - SITE PLAN.Wor Author: J.Batchelor Date: 19/Sept/2006 Scale: 1:10,000 Sheet: 1 of 1

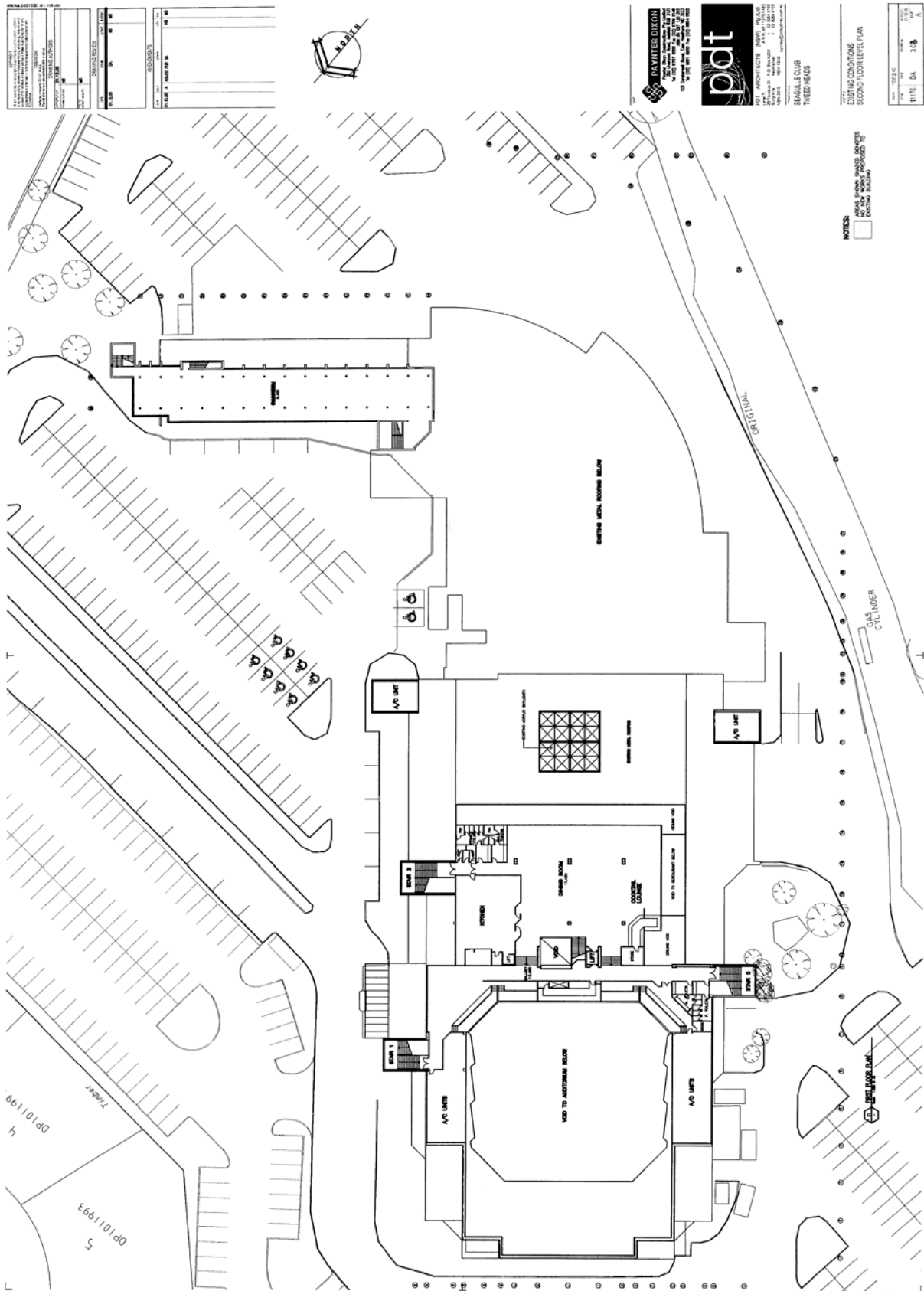


PLANNING REFORMS UNIT
Site Plan

EXISTING CLUB LAYOUT:







PROJECT NO.	11/19/06
DATE	11/19/06
PROJECT NAME	11/19/06
CLIENT	11/19/06
ARCHITECT	11/19/06
ENGINEER	11/19/06
PLANNING	11/19/06
CONTRACTOR	11/19/06
OWNER	11/19/06
DESIGNER	11/19/06
DRAWN BY	11/19/06
CHECKED BY	11/19/06
SCALE	11/19/06
PROJECT NO.	11/19/06
DATE	11/19/06
PROJECT NAME	11/19/06
CLIENT	11/19/06
ARCHITECT	11/19/06
ENGINEER	11/19/06
PLANNING	11/19/06
CONTRACTOR	11/19/06
OWNER	11/19/06
DESIGNER	11/19/06
DRAWN BY	11/19/06
CHECKED BY	11/19/06
SCALE	11/19/06

PAYNTER DIXON
 ARCHITECTS
 11/19/06

pot
 POT ARCHITECTS
 11/19/06

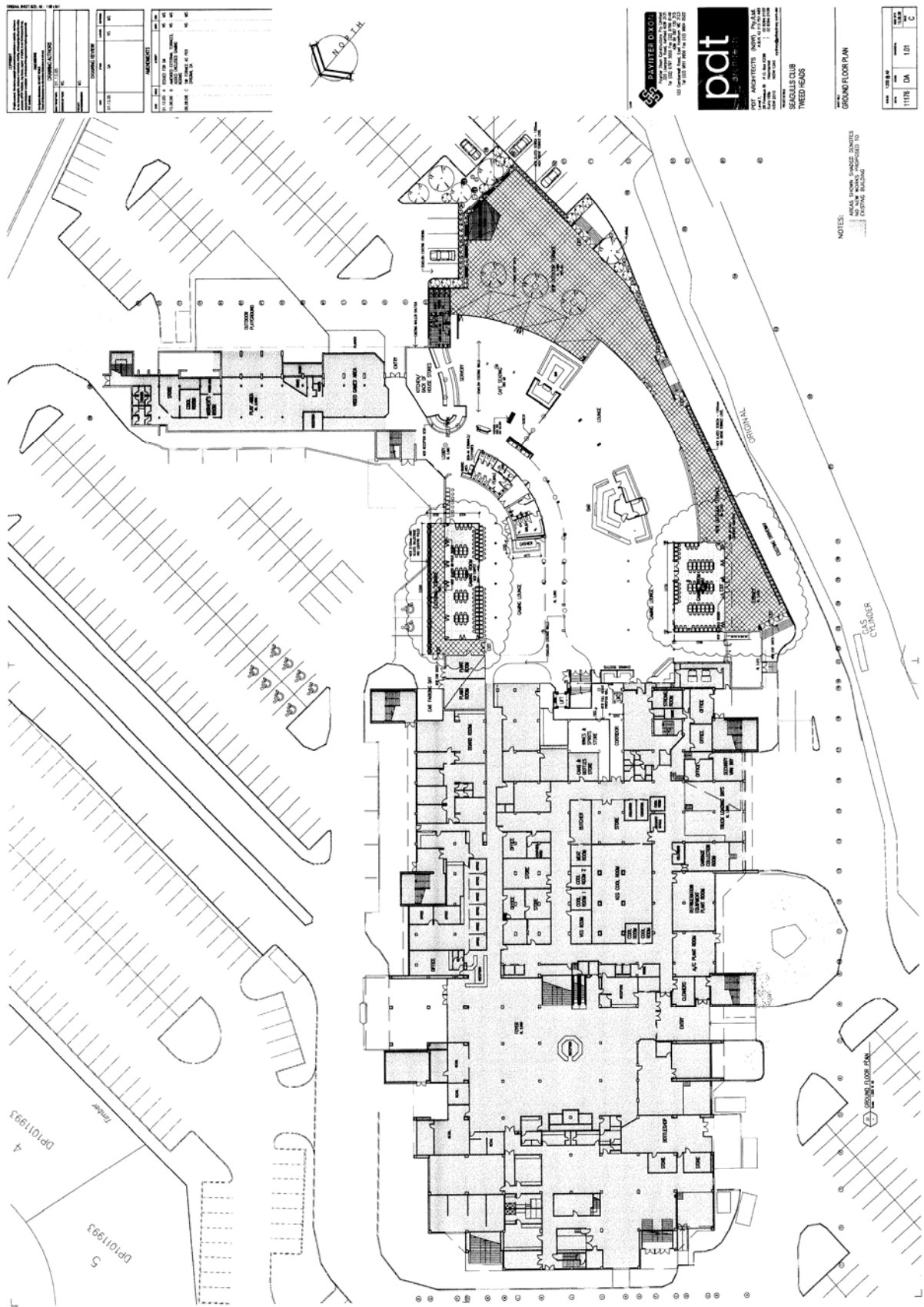
11/19/06

NOTES:
 1. MAKE SURE UNITS ARE PROTECTED TO EXISTING FLOORING

EXISTING CONDITIONS
 SECOND FLOOR LEVEL PLAN

11/19/06 DA 3.03 A

PROPOSED CLUB LAYOUT:



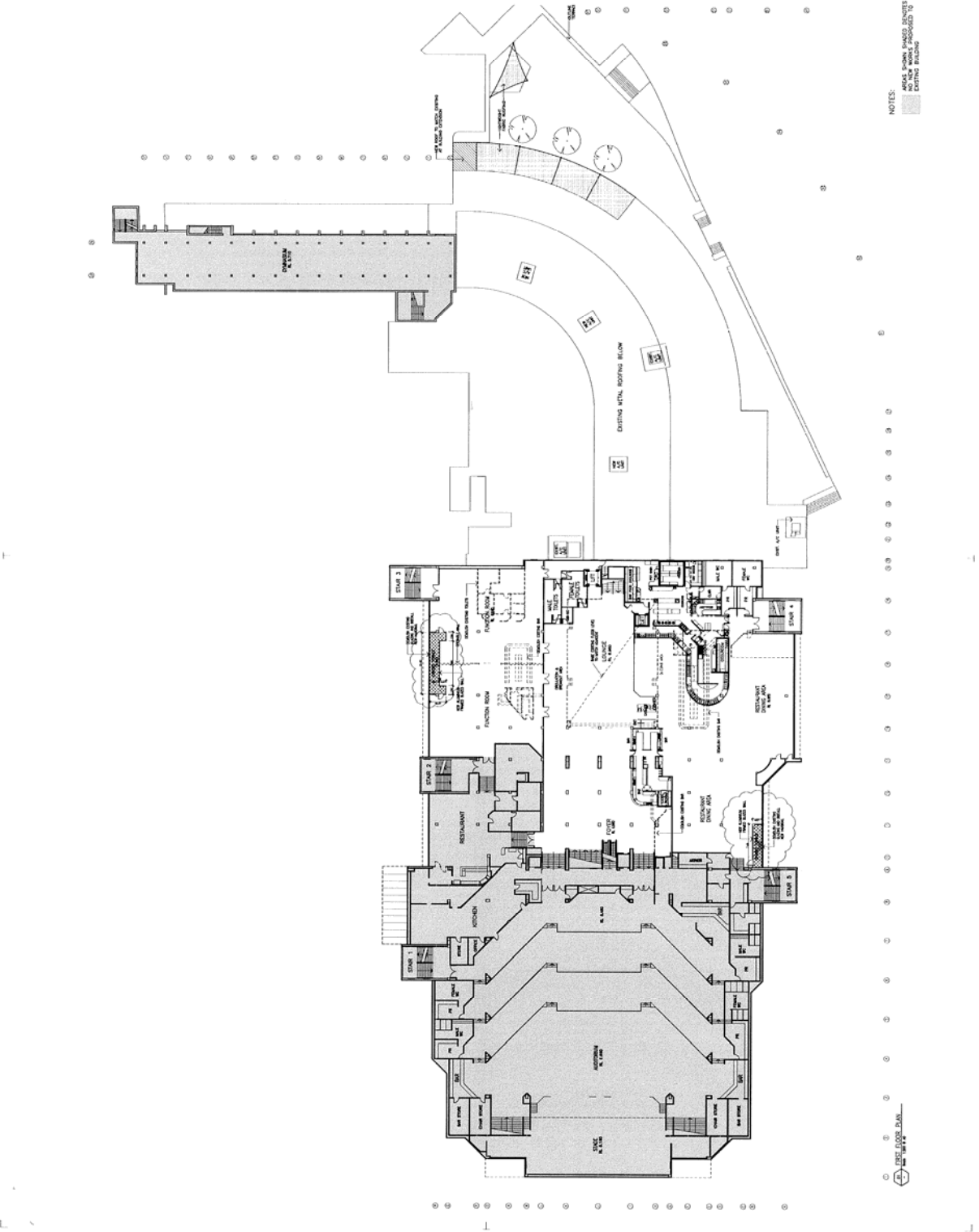
PROJECT INFORMATION	
PROJECT NO:	11178
PROJECT NAME:	SEAGULLS CLUB
CLIENT:	SEAGULLS CLUB
DATE:	11/17/06
SCALE:	AS SHOWN
APPROVED:	
DATE:	11/17/06
BY:	[Signature]
FOR:	SEAGULLS CLUB
PROJECT NO:	11178
PROJECT NAME:	SEAGULLS CLUB
CLIENT:	SEAGULLS CLUB
DATE:	11/17/06
SCALE:	AS SHOWN



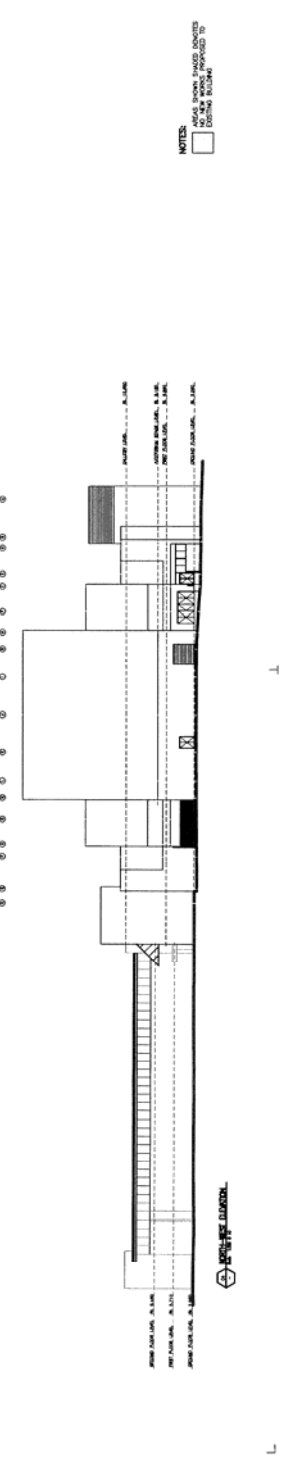
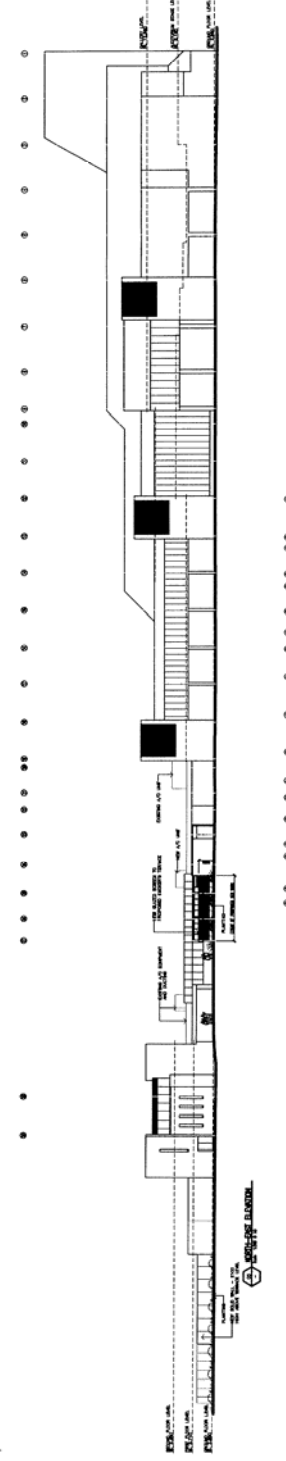
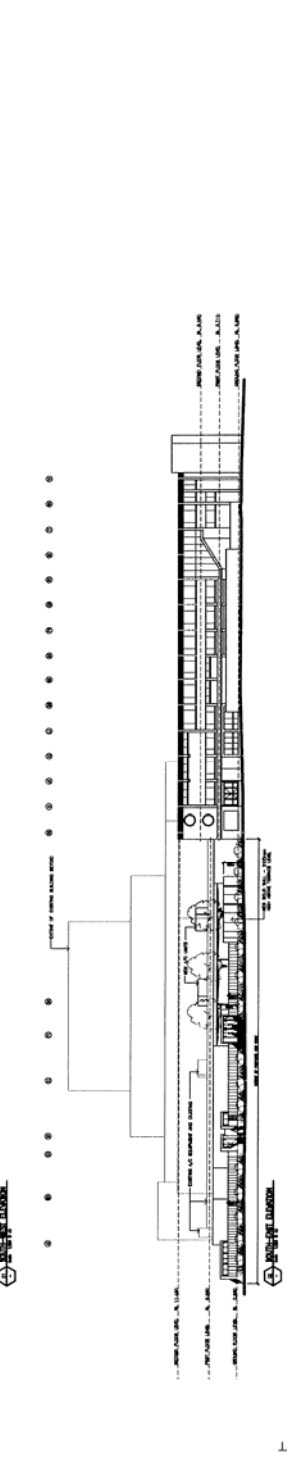
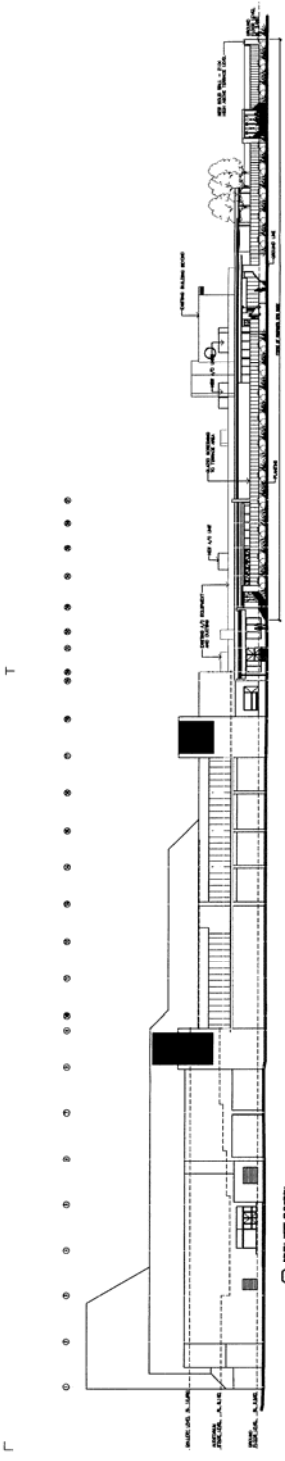
SEAGULLS CLUB
TWEED HEADS

ptd architects
PTD ARCHITECTS (NSW) PTY.LTD.
10/100 RIVERVIEW DRIVE, SUITE 201
TWEED HEADS NSW 2486
TEL: 07 2623 4400 FAX: 07 2623 4401
WWW.PTDARCHITECTS.COM.AU

PROJECT	
PROJECT NO:	11178
PROJECT NAME:	SEAGULLS CLUB
DATE:	11/17/06
SCALE:	AS SHOWN



PROJECT NO.	11018 DA
DATE	20/09/06
PROJECT NAME	11018 DA
PROJECT LOCATION	11018 DA
PROJECT DESCRIPTION	11018 DA
PROJECT STATUS	11018 DA
PROJECT OWNER	11018 DA
PROJECT CONTACT	11018 DA
PROJECT ADDRESS	11018 DA
PROJECT CITY	11018 DA
PROJECT STATE	11018 DA
PROJECT POSTCODE	11018 DA
PROJECT COUNTRY	11018 DA



ENVIRONMENTAL DESIGN
 11018 DA
 20/09/06
 11018 DA

pdt
 PROJECT NO. 11018 DA
 DATE 20/09/06
 PROJECT NAME 11018 DA
 PROJECT LOCATION 11018 DA
 PROJECT DESCRIPTION 11018 DA
 PROJECT STATUS 11018 DA
 PROJECT OWNER 11018 DA
 PROJECT CONTACT 11018 DA
 PROJECT ADDRESS 11018 DA
 PROJECT CITY 11018 DA
 PROJECT STATE 11018 DA
 PROJECT POSTCODE 11018 DA
 PROJECT COUNTRY 11018 DA

NOTES:
 DIMENSIONS SHOWN IN PAGES REFERRED TO
 DIMENSIONS SHOWN IN THIS DRAWING

ELEVATIONS

11018 DA 2/0

PROPOSED STAGING PLAN:

PROJECT NO.	11175
DATE	11/11/05
PROJECT NAME	SEAQUALS CLUB
CLIENT	SEAQUALS CLUB
DESIGNER	PATRIK BIRKBECK ARCHITECTS
SCALE	1:100
DATE	11/11/05
PROJECT NO.	11175
DATE	11/11/05
PROJECT NAME	SEAQUALS CLUB
CLIENT	SEAQUALS CLUB
DESIGNER	PATRIK BIRKBECK ARCHITECTS
SCALE	1:100
DATE	11/11/05

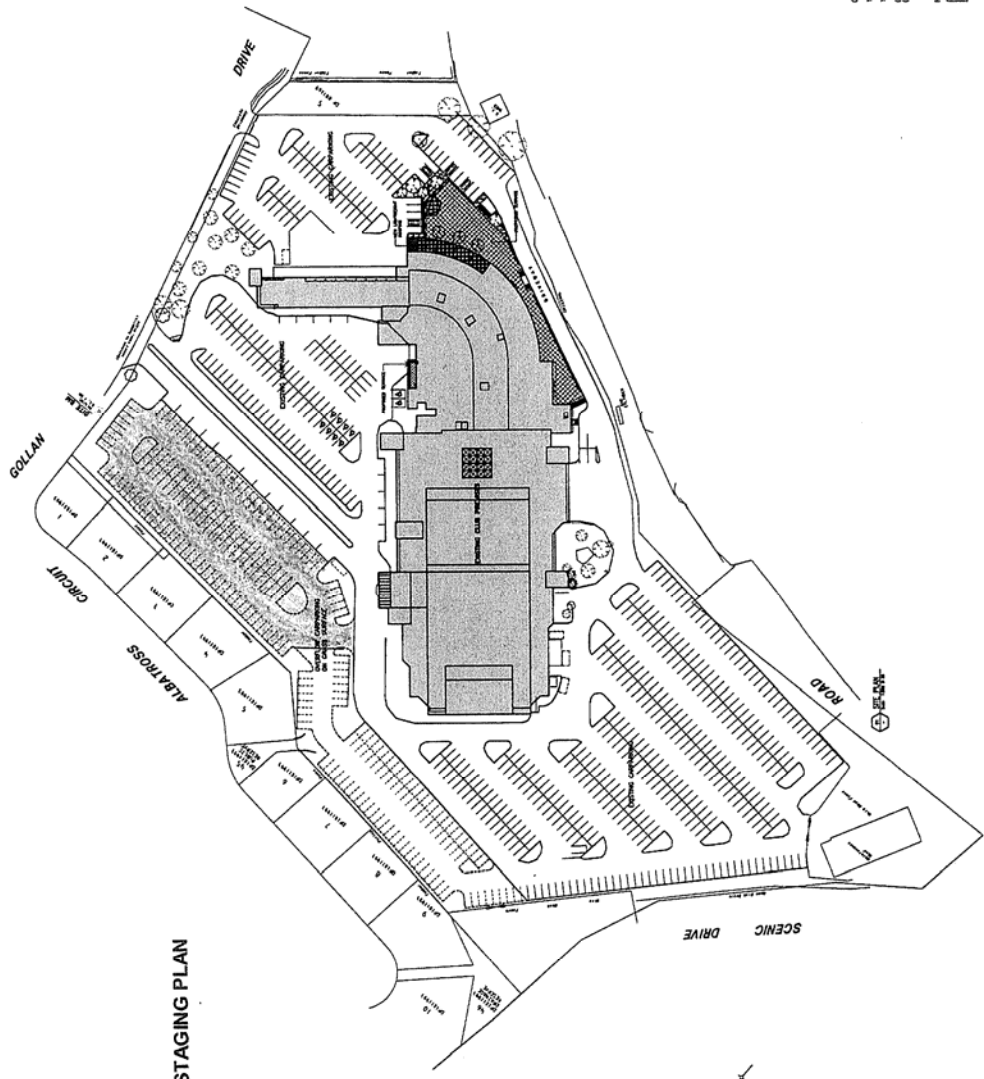


PATRIK BIRKBECK ARCHITECTS
 11/11/05
 SEAQUALS CLUB
 TWEED HEADS

pbt
 PATRIK BIRKBECK ARCHITECTS
 11/11/05
 SEAQUALS CLUB
 TWEED HEADS

NOTES:
 1. ALL WORK TO BE COMPLETED BY 11/11/05
 2. EXISTING BUILDING

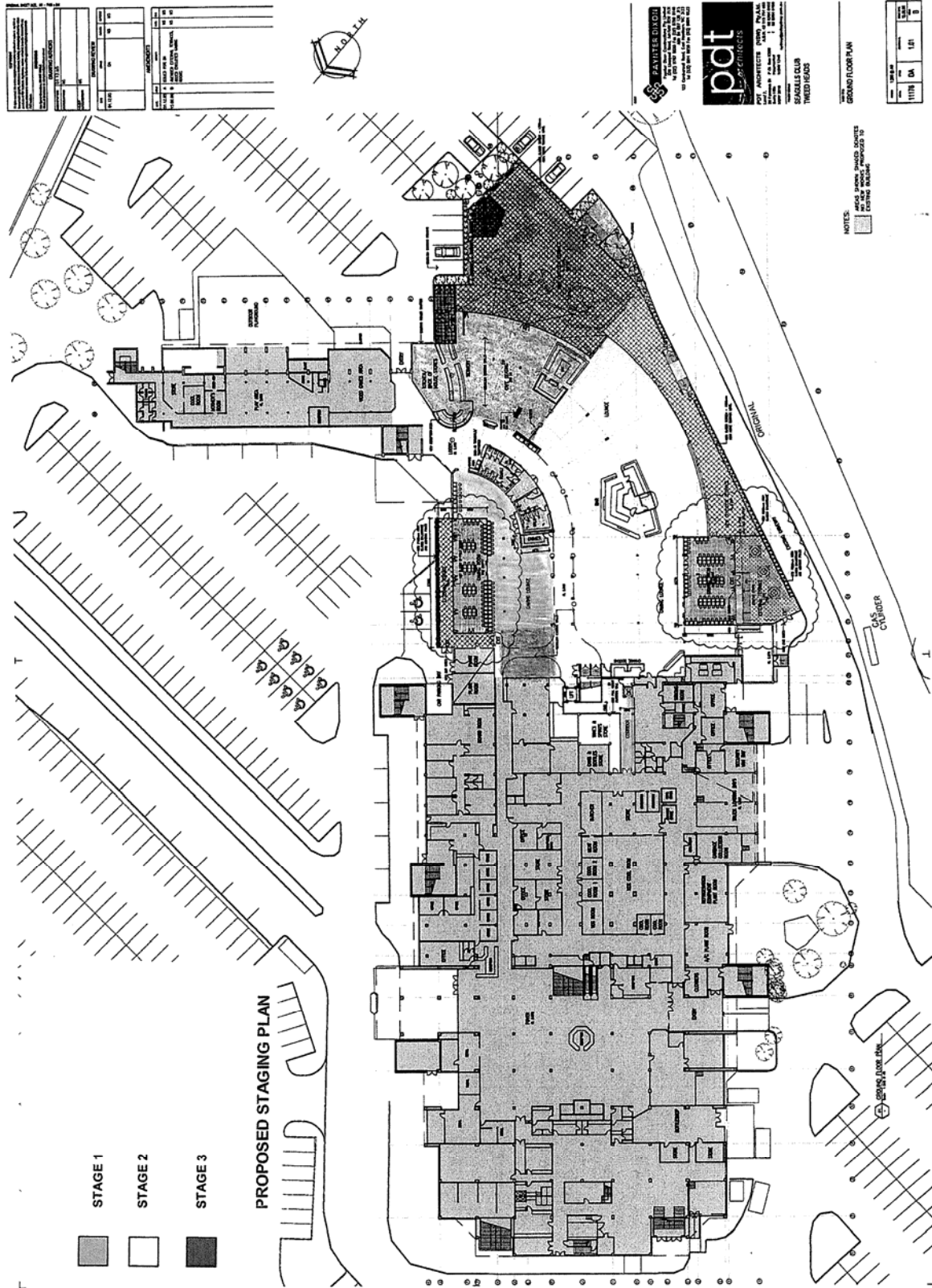
CAPPAIRING CALCULATIONS:
 TOTAL CAPPAIRING REQUIRED = 713
 TOTAL CAPPAIRING PROVIDED = 611
 (CONCRETE SPACES = 221)



PROPOSED STAGING PLAN

STAGE 1
 STAGE 2
 STAGE 3

Legend: Grey square for Stage 1, White square for Stage 2, Black square for Stage 3.



PROJECT INFORMATION PROJECT NO: 2006/0001 PROJECT NAME: SEAGULLS CLUB TWEED HEADS CLIENT: TWEED SHIRE COUNCIL DATE: 26 SEP 2006	
DESIGNER INFORMATION ARCHITECT: pdt ARCHITECTS ADDRESS: 11/111 RIVERVIEW DRIVE, TWEED HEADS NSW 2486 PHONE: (07) 5532 1111 FAX: (07) 5532 1112 EMAIL: info@pdt.com.au WEBSITE: www.pdt.com.au	
REVISIONS NO. DATE DESCRIPTION 01 26 SEP 2006 INITIAL DESIGN	
APPROVALS DESIGNER: [Signature] ARCHITECT: [Signature] CLIENT: [Signature]	

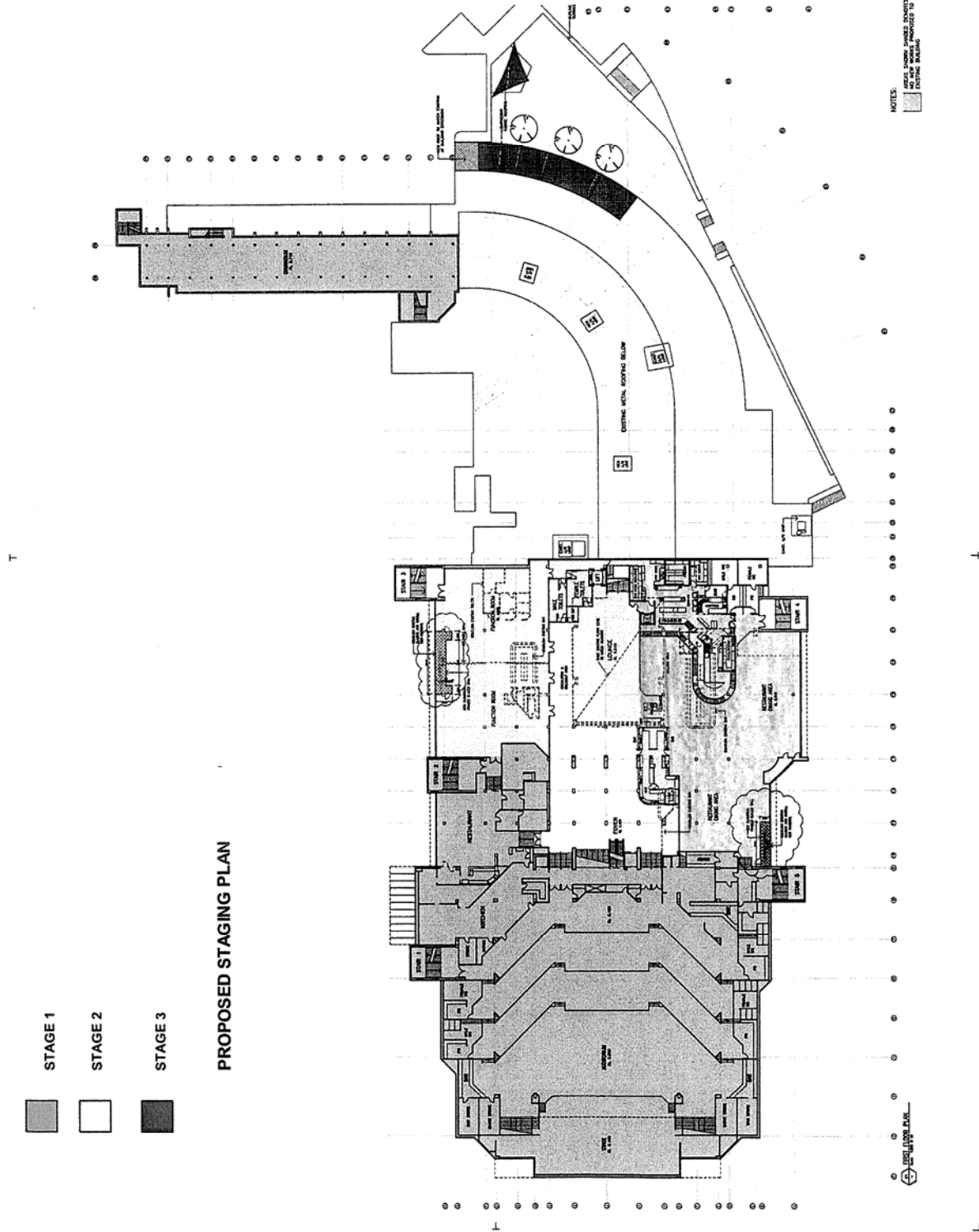


SEAGULLS CLUB TWEED HEADS

pdt
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PROJECT INFORMATION PROJECT NO: 2006/0001 PROJECT NAME: SEAGULLS CLUB TWEED HEADS CLIENT: TWEED SHIRE COUNCIL DATE: 26 SEP 2006	
DESIGNER INFORMATION ARCHITECT: pdt ARCHITECTS ADDRESS: 11/111 RIVERVIEW DRIVE, TWEED HEADS NSW 2486 PHONE: (07) 5532 1111 FAX: (07) 5532 1112 EMAIL: info@pdt.com.au WEBSITE: www.pdt.com.au	
REVISIONS NO. DATE DESCRIPTION 01 26 SEP 2006 INITIAL DESIGN	
APPROVALS DESIGNER: [Signature] ARCHITECT: [Signature] CLIENT: [Signature]	



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 6(b) Recreation under the Tweed Local Environmental Plan 2000. The primary objective is to:

- *Designate land, whether in public or private ownership, which is or may be used primarily for recreational purposes.*

The secondary objective is to:

- *Allow for other development that is compatible with the primary function of the zone.*

The proposed alterations to an existing club are permissible with consent in the 6(b) zone, with the proposal being considered to be consistent with the zone objectives.

Clause 15 of the LEP requires essential services to be available to the site prior to consent being granted for the development. The subject land has the essential services.

Clause 17 of the LEP requires social impact assessments for development where it is considered that the development may result in a social impact.

The threshold trigger under the guidelines of Development Control Plan No.45 for the preparation of a Social Impact Assessment (SIA) report for a "Club" is the provision of 1,000m² of GFA.

Since the proposed alterations and additions to the Seagulls Club comprises mostly internal refurbishing of the existing floor space and the addition of outdoor terraces, these works contribute only 20m² increase in GFA.

Accordingly it is considered that the proposed development is unlikely to create any adverse social or economic impact and a Social Impact Assessment is not necessary for this application.

In terms of direct economic impacts, the estimated cost of the development is \$7 million and it is anticipated that approximately 25 fulltime equivalent employment positions will be generated during the construction period of approximately 14 months.

Clause 34 of the LEP refers to flooding. Although the subject site is flood liable, the proposed development does not involve any new structures but

rather reconfiguration of the existing building. In the event of a flood the premises has sufficient flood free storage areas.

Clause 35 of the LEP requires acid sulfate soils management in relation to development where such is likely to be impacted upon. The subject site is classified as Class 2 ASS. The proposed works fall outside the scope of Council's Acid Sulfate Soils Management Plan for Minor Works. The applicant was therefore requested to provide Council with a site-specific acid sulfate soil investigation in accordance with the ASSMAC Guidelines

Accordingly the applicant submitted a report on Geotechnical Investigation for the proposed extensions to Seagulls Club, Gollan Drive, Tweed Heads prepared by Douglas Partners Pty Ltd dated 28 February 2006 (Project No: 33805)

Filling of unknown compaction was encountered in both boreholes and included loose silty sand over pavement gravel (buried former carpark), overlaying loose to medium dense silty sand to 1.1m – 1.5m depth. Free groundwater was encountered at 1.3m in both boreholes during drilling. Preliminary field screening and tests for ASS were carried out within the site at 0.25m intervals to 4m depths in each borehole.

It has been advised that the excavation works for this site are likely not to exceed 1m in depth. The applicant has also noted this in correspondence dated 3 April 2006:

Our Structural Engineer has advised the design of any new footings or external decking – required for the proposed development, will have sufficient bearing capacity within a maximum of 1.0m depth.

It has been noted however that excavation works below 1.0m, although unlikely, have not been ruled out.

Regarding the sampling results, a pH_F below 4 indicates that oxidation has occurred in the past and that actual ASS is present. Results below 4 were not present in the samples obtained. A pH_{FOX} of below 3, plus a pH_{FOX} reading at least one pH unit below pH_F , plus a strong reaction with peroxide, strongly indicates the presence of PASS. None of the samples above 1.5m in borehole 1 and 2.0m in borehole 2 showed such a reaction. Providing all works do not exceed 1.0m within this location, ASS is not likely to be encountered.

It is anticipated that no more than 1000 tonnes of soil is to be disturbed by excavations for footings or service trenches at the site. Where excavation is deeper than 1.0m, the net acidity indicate that the soils shall be managed under an ASSMP with lime neutralisation.

Suitable conditions of consent have been drafted and form part of the recommendation for approval.

Clause 39A of the LEP refers to Bushfire Prone Land. The western portion of the subject site is identified as being bushfire prone. As such, the proposed development was forwarded to the Local Branch of the Rural Fire Services for comment. The RFS provided the following comments:

Based upon an assessment of the plans and documentation received for the proposal, the NSW Rural Fire Service raises no concerns or special consideration in relation to bushfire matters for the proposed development.

North Coast Regional Environmental Plan 1988

Clause 15 of the NCREP applies to land adjoining a waterway. As the proposed development primarily incorporates the reconfiguration of the existing gross floor area, the Club will not impact upon the local rivers, streams and wetlands. The proposal is considered to comply with the relevant provisions of Clause 15 of the NCREP 1988.

In accordance with Clause 32B of the NCREP, the proposal is considered to be generally consistent with the relevant provisions of the NSW Coast Government Policy and the Coastline Management Manual.

The proposal does not incorporate any physical restriction of access to a foreshore area or detrimental impacts upon the coastal character and amenity of the site. Nor does the development create any additional overshadowing to any area of beach or waterfront open space. Accordingly, the proposal fully complies with this clause of the REP.

Clause 81 of the NCREP applies to development within 100m of the ocean or other substantial waterway. As noted above, the proposed reconfiguration of internal space is not expected to impact upon the adjacent waterway. Therefore, the proposal is considered to comply with the relevant provisions of Clause 81 of the NCREP 1988.

State Environmental Planning Policies

State Environmental Planning Policy No. 71 – Coastal Protection

Although the subject site is partly located within a sensitive coastal location, being land within 100m of the water's edge of a coastal lake, referral to the Department of Planning was not required for the proposed development.

Clause 8 of the Policy details sixteen matters for consideration for land within the coastal zone. The application is considered to adequately satisfy the matters for consideration. Specifically the proposed development is considered compatible with the intent for the development of the locality.

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

The draft planning instruments that have been advertised do not contain provisions that affect the proposed development. No further assessment is required.

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

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

Below is an extract from the applicant's submission detailing the car-parking breakdown:

TABLE 3 – DCP NO.2 CAR PARKING REQUIREMENTS						
CLUB ELEMENT	PARKING UNIT	DCP NO.2 RATE		DCP NO.2 REQUIREMENT		Total (Incl reduction on ESD principle)
		CUSTOMER	STAFF	CUSTOMER	STAFF	
Lounge Area	1,063m ²	1 space /7m ²	-	151.86	-	121.49
Indoor Dining Area	1,241m ²	1 space /7m ²	-	177.29	-	141.83
Outdoor Dining Area	932m ²	1 space /7m ²	-	133.14	-	106.51
Gaming Area	1,097m ²	1 space /7m ²	-	156.71	-	125.37
Auditorium Area	1,299m ²	1 space /15m ²	-	86.60	-	69.28
Function Area	576m ²	1 space /7m ²	-	82.29	-	65.83
Shops	424m ²	3.5 spaces /100m ²	-	14.84	-	11.87
Gymnasium	850m ²	6 space /100m ²	-	51.00	-	40.80
Staff	130 (max)	-	0.3 spaces / staff	-	39	31.20
TOTALS				853.73	39	714.18

The current club relies upon 582 formed car spaces and a grassed overflow parking area, which can accommodate approximately 232 spaces. The applicant's submission indicates that this club after refurbishment would require a total of 714 spaces.

On this basis it is likely that at least 132 spaces within the grassed areas would need to be constructed with weather proof seal and formal spaces marked out.

The applicant originally provided that:

It is certainly the experience of the senior management of the Club, that the existing bitumen car parking spaces easily account for the normal

day to day operation of the Club. We have been informed that it is only on a limited number of occasions per year such as a high profile concert that the grass "over flow" car parking area is utilised. This observation is confirmed in the letter attached.

Considering the benefits that the "green space" adjacent to the northern boundary provides to the area in terms of visual amenity, reduced surface water runoff and improvements to stormwater quality, it is considered unnecessary to alter the existing car parking arrangements.

The existing car parking arrangements also comply with Council's requirements in terms of driveway access, gradients, circulation aisle and end aisle extension dimensions.

However, once car parking was raised with the applicant as an issue the following response was received:

"The possibility that Seagulls will have to extend the existing sealed car park, as a condition of consent has been discussed with our client.

Our client agrees in principle to addressing the car park issue despite the recommendations set out in the Statement of Environmental Effects submission December 2005 on the following proviso:

We refer to the attached marked up plan 11176 DA 1.00A and wish to express the following:

It is acknowledged that Seagulls has 582 formed spaces with 232 as "overflow parking" on grassed area - a total of 814 car spaces.

With the current number of 582 formed car spaces, the Club would need to seal an extra 133 spaces. The plan indicates a proposed 135 car spaces that is proposed to be sealed at the completion of the building program.

The required number of 715 formed car spaces would be exceeded by 2 – 717 total. The Club would therefore maintain a grassed area as indicated"

It is therefore recommended that the following conditions of consent be imposed:

1. Prior to issue of a Construction Certificate for Stage 3 the applicant is to submit to Tweed Shire Council's General Manager or his delegate a car parking layout plan that details a weather proof seal and formal spaces marked out within the existing overflow grass parking area. This sealed area is to comprise 135 spaces to achieve total on site parking requirements as specified within DCP No. 2.

2. Prior to use of Stage 3 part of the overflow grassed parking area is to be constructed in accordance with the approved Plan required by this consent.

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

The ground level of the existing club premises is at RL 2.96, which complies with the controls. Accordingly the proposed building fully complies with the controls stated in DCP No.5.

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

Council's Building Surveyor has reviewed the application specifically having regard to Clause 94 of the Environmental Planning & Assessment Regulation 2000 and recommended appropriate conditions of consent for building egress.

NSW Coastal Policy

The subject land is within the coastal policy area. The proposed development is consistent with the objectives strategies and actions 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

Integrated Development

The subject site is located within 40m of the Terranora Broadwater. The proposed new terrace requires minor excavation for footings.

Accordingly a Part 3A approval may be required under the Rivers and Foreshores Improvement Act. On this basis the proposed development was lodged as integrated development.

The Department of Natural resources provided the following comments:

In regards to the subject development proposal a 3A Permit will be required for the minor excavations associated with the additions and alterations to the Club.

A 3A Permit would be subject to the following GTAs

- *Erosion and sediment control measures shall be employed for the duration of construction works to minimise silts and sediments from entering the Terranora Broadwater;*
- *Any excavated material containing potential acid sulfate soils shall be managed in accordance with ASMACC Guidelines (1998).*

- *Excavation operations shall be conducted so as not to damage or cause erosion of the adjoining riverbank and to ensure minimal impact on existing riparian vegetation.*

Following development approval the applicant should contact the Department's Alstonville office to obtain a 3A permit prior to commencement of works.

The above has been included in the recommendation as General Terms of Approval.

Noise & Hours of Operation

An increase of external terrace areas and the installation of new rooftop plant and equipment could result in increased noise levels that may impact on adjoining residential developments.

To the north of the site is the integrated housing development known as "The New Seagulls Estate". That estate is buffered by a 3m wide landscape screen and an acoustic fence which is positioned at the top of the fill batter. Further to the north is the Panorama Shopping Village and other low density residential uses.

To the east of the site on the opposite side of Gollan Drive are a number of one and two storey dwellings with frontage to a canal. Further to the east on the opposite side of the canal are other detached dwellings accessed from Lakes Drive.

To the south-east of the site is the residential development known as "Seagulls Shores". The remainder of the southern boundary is adjacent to the public foreshore reserve and the Terranora Broadwater.

To the west of the site is the alignment of Scenic Drive, which rises steeply to the south. Further to the west are a number of dwellings on the high land overlooking the club and the Broadwater.

Council's Environmental Health Officer has reviewed the application specifically in regard to general noise and provided the following comments:

An Environmental Noise Impact Report for the proposed extensions to the Seagulls Club, Tweed Heads West prepared by Jay Carter Acoustical Consultant dated 30 January 2006 (Report No – 125 Report) has been submitted.

It was noted that the "urban" classification was used within this report. As per the NSW EPA Industrial Noise Policy, "suburban" is considered an area that has local traffic with characteristically intermittent traffic flows or with some limited commerce or industry. The consultant advises that the area should be classified as urban as the club is a commercial use,

however he also advises the background levels recorded are typical of an area that has no significant road traffic nearby. This more appropriately falls into the suburban classification. A review of the results however indicate that the suburban classification would not significantly alter the results and proposed noise attenuation devices proposed.

A noise logger was located on the northern boundary of the nearest residential premises to the subject site. From the results of the report, the residents closest to the site at Seagull Shores will be most affected by the children's play area, shaded terrace and southern facing terrace. The residents closest to the site along Albatross Cct and Gollan Dr will be most affected by the northern facing terrace. Some residents may be affected along Scenic Dr from people using the western most part of the southern terrace.

Several 2.1 metre barriers above the terrace level have been recommended as per Figure 2 – Proposed Building Layout Ground Level. The barriers must be constructed of a material having a surface mass greater than 11kg/m² and be free of holes or gaps. Condition to apply.

The acoustic consultant states that the site is an existing use and no new noise sources are being introduced into the area. This is not considered correct. There will be an increase in the number of patrons utilising external areas of the club. The regulation of noise from the site will therefore be dependant upon the effective management of patrons and restricted usage of these facilities. As such, a noise management plan is requested prior to the issue of a construction certificate.

Furthermore, Council's Environmental Health Officer has reviewed the application specifically in regard to roof top plant and provided the following comments:

Works will include the replacement of some existing roof structure and plant equipment, most of which has become inefficient and at the end of its useful life.

An Acoustic Report for Seagulls Club, Tweed Heads has been prepared by Paynter Dixon Constructions Pty Ltd, which incorporates a review of the proposed works by Jay Carter Acoustical Consultant dated 3 May 2006. Note Jay Carter provided the original comments for the club alterations and additions dated 30 January 2006.

It is noted that an acoustic enclosure is required for the proposed rooftop plant arrangement to allow full load operation of the five (5) Australian Pacific Air-conditioning S80 units until midnight. With all 5 units operating, the enclosure will need to provide a minimum 12 dB reduction to achieve the required noise level criteria of 43 dB. I contacted Jay Carter on 15-5-06. He advised that although the enclosure should

achieve the after midnight criteria of 38 dB, not all units are likely to be running after this hour. He did request that the proposed plant be placed on low speed after midnight and that a condition should apply on the consent.

Water Cooling Tower – Contact was made with Rodney Imber of Paynter Dixon Constructions Pty Ltd on 15-5-06 in reference to the removal and replacement of the old water cooling tower with the new split system packaged units. Until such time that the water cooling tower is removed from the site, the tower and associated equipment shall be operated and maintained in accordance with AS3666: 1-3 and the NSW Code of Practice for the Control of Legionnaires' Disease, June 2004.

No objection to the development subject to the recommended conditions of consent.

The application has been recommended for approval subject to compliance with a submitted noise management plan.

The applicant has recently submitted a management plan based on the North Sydney Leagues Club, however a more specific management plan is needed that references the acoustic report and its recommendations. The submitted management plan does not restrict hours of use on the external terrace areas but rather relies on management of this space as it is imperative that the Club complies with the Smoke Free Environment Act 2000.

Therefore the following condition is included in the recommendation:

A noise management plan shall be prepared and submitted to Council for consideration and approval prior to a construction certificate for Stage 1 being issued that details how noise from the use of the external areas will be managed and controlled so as to prevent the generation or emission of intrusive noise upon neighbouring and adjacent premises. The plan shall include but not limited to the management of patrons, restricted hours of use and the like for these areas.

Visual Impact - Terraces

The proposed works are considered to improve the appearance of the club and utilise the available views of the Terranora Broadwater. As the extensions are generally to the ground level there are no negative impacts envisaged.

Existing Use of the Car Park for Weekend Markets

Council recently approved DA05/1134, which sought approval for weekend markets on the existing sealed car-parking area at the rear (south west) of the Club building. The upgrading of the grassed parking area as part of this DA was not considered necessary as the market was only held once a week and the consent was recommended based on a time limit of 12 months. However, the report on this matter acknowledged that this issue would need to be

readdressed in the event that the applicant made an application to Council continue / extend the operations of the markets prior to the extinguishment of the limited development consent.

Based on the car parking requirements for the club itself and the additional traffic generation from the markets it is recommended that this DA require a condition of consent to seal the grassed over flow car parking area.

Increased Facilities/Contributions

The proposed alterations incorporate additional floor area to accommodate new male and female toilets and therefore this additional facility needs to be charged the appropriate S64 Contribution (water & sewer) in accordance with the current fees and charges.

No other contributions are considered applicable to this application for the alterations.

Food Safety

Council's Environment and Health Unit have provided the following comment in this regard:

Various food preparation and serving areas are to be either relocated or installed at the site. Although general layout of the internal areas have been submitted, it is required that Council's Environmental Health Officers be provided with plans for assessment with regards to any proposed food area prior to the issue of a construction certificate. Conditions to apply.

(c) Suitability of the site for the development

The club itself has been operational for many years and provides a valuable service to the community. Provided noise can be managed appropriately having regard to the residential nature of the surrounding areas the club is considered to be a suitable ongoing use of the land.

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

The proposed development was advertised for 14 days in accordance with the requirements of the Environmental Planning and Assessment Act 1979. The application attracted two objections from residents to the south east that focussed on a noise concern emanating from the Outdoor Terrace previously known as "The Shed".

Concern was expressed that the outdoor terrace areas (which extend to the location of "The Shed") will operate the same hours of the club itself and as "The Shed" is currently only operational during weekends this additional terraced area will create an additional noise burden during the week.

In this regard Council's Environmental Health Officer has reviewed the Application in regard to noise and provided the following comments:

The acoustic consultant states that the site is an existing use and no new noise sources are being introduced into the area. This is not considered correct. There will be an increase in the number of patrons utilising external areas of the club. The regulation of noise from the site will therefore be dependant upon the effective management of patrons and restricted usage of these facilities. As such, a noise management plan is requested prior to the issue of a construction certificate.

The following condition would therefore be imposed on any consent issued:

A noise management plan shall be prepared and submitted to Council's General Manager or his delegate for consideration and approval prior to a construction certificate being issued that details how noise from the use of the external areas will be managed and controlled so as to prevent the generation or emission of intrusive noise upon neighbouring and adjacent premises. The plan shall include but not be limited to the management of patrons, restricted hours of use and the like for these areas.

Therefore subject to the imposition of the above condition (and others) the objections received do not appear to warrant refusal of the application.

(e) Public interest

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

OPTIONS:

1. Approve the alterations and additions in accordance with the recommended conditions of consent
2. Refuse the application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

Having reviewed the application on its merits and considered the two objections received during the submission period the issues raised are considered capable of being managed by way of conditions of consent that require the implementation of a noise management plan and the weather proof sealing of the existing overflow grassed parking area. Based on such conditions the proposed alterations are considered to warrant conditional approval.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

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P2 [PD-PC] Section 96 Application DA04/1528.03 for a 76 Lot Residential Subdivision (MOD 76-6-2006 Modifying DIPNR DA 243-10-2004) at Lot 242, 243 DP 1082837, No. 159 Overall Drive, Pottsville

ORIGIN:

Development Assessment

FILE NO: DA04/1528 Pt3

SUMMARY OF REPORT:

At the Planning Meeting of 15 August 2006 the Committee recommended that this item be deferred pending further information.

Council's Acting Director Engineering & Operations met with the applicant and reviewed alternative locations for the proposed cycleway.

Based on these discussions the conditions relating to the cycleway are now recommended to the Department of Planning as follows.

RECOMMENDATION:

That the Department of Planning be advised that it is Council's recommendation to amend Conditions B6 (b) (i) and B9 (g) to reflect:

- 1. The following design standard for the cycleway for those allotments adjoining the Mooball Creek Riparian Buffer:**

A 1.2 metre high retaining wall is to be constructed on the lot boundary with the structure being contained on private land. From the base of the retaining wall the fill batter is to slope down at a constant grade of 1:4 for a horizontal distance of 4.0 metres. At this point the fill embankment is to be reduced to a grade of 1:40 (2.5%) for 4.0 metres on which a 2.5 metre wide concrete cycleway is to be centrally constructed in accordance with Council Standards. From this point, being 8.0 metres from the property boundary, the fill batter is to revert to a grade of 1:4 until the embankment intersects with the natural ground level. This section of the embankment is to be revegetated in accordance with a vegetation management plan to be submitted and approved by Council prior to planting being undertaken."

- 2. The following design standard for the cycleway for those allotments adjoining the southern boundary of the subdivision:**

A 1.2 metre high retaining wall is to be constructed on the lot boundary with the structure being contained on private land. From the base of the retaining wall the fill batter is to slope down at a constant grade of 1:4 until it is 0.4m higher than natural ground level. At this point the fill embankment is to be reduced to a grade of 1:40 (2.5%) for 4.0 metres on which a 2.5 metre wide concrete cycleway is to be centrally constructed in accordance with Council Standards. From the southern edge of the 4m cycleway platform, the embankment is to revert to a grade of 1:4 until the embankment intersects with the natural ground level.

The transition from the standard specified in (1) to that specified in (2) can commence from the southeast most corner of the proposed allotments but must comply with the design standards specified in DCP16.

These conditions

- minimise the fill footprint on the riparian zone and provide a clear definition between the public and private realm;
- ensure the retaining wall is located on private property and not become a maintenance and safety issue for Council.

REPORT:

Applicant: Black Rocks Estate Pty Limited
Owner: Black Rocks Estate Pty Limited and Tweed Shire Council
Location: Lot 242 & 243 in DP 1082837, No. 159 Overall Drive Pottsville.
Zoning: Part 2(a) Low Density Residential, 7(d) Environmental Protection (Scenic/Escarpment), 7(l) Environmental Protection (Habitat), and 7(a) Environmental Protection (Wetland and Littoral Rainforests)
Cost: Not applicable

BACKGROUND:

The applicant has sought a S96 amendment of conditions B6(b)(i) and B9(g) which require a cycleway to be constructed at the top of the fill batter adjoining proposed residential allotments. The proposed amendment seeks to relocate the cycleway to the bottom of the batter which along the east of the site, would penetrate further into the riparian zone and be closer to Mooball Creek

The Acting Director Engineering & Operations did not support the amendment as he considered allowing fill batters in the riparian zone had already partly compromised its environmental value and shifting the cycleway closer to the creek would further encroach and compromise the riparian zone. Shifting of the cycleway would also facilitate "colonising" of public space on the batter by adjoining landowners.

After discussions with the Acting Director Engineering & Operations, the applicant submitted a revised amendment which consisted provided

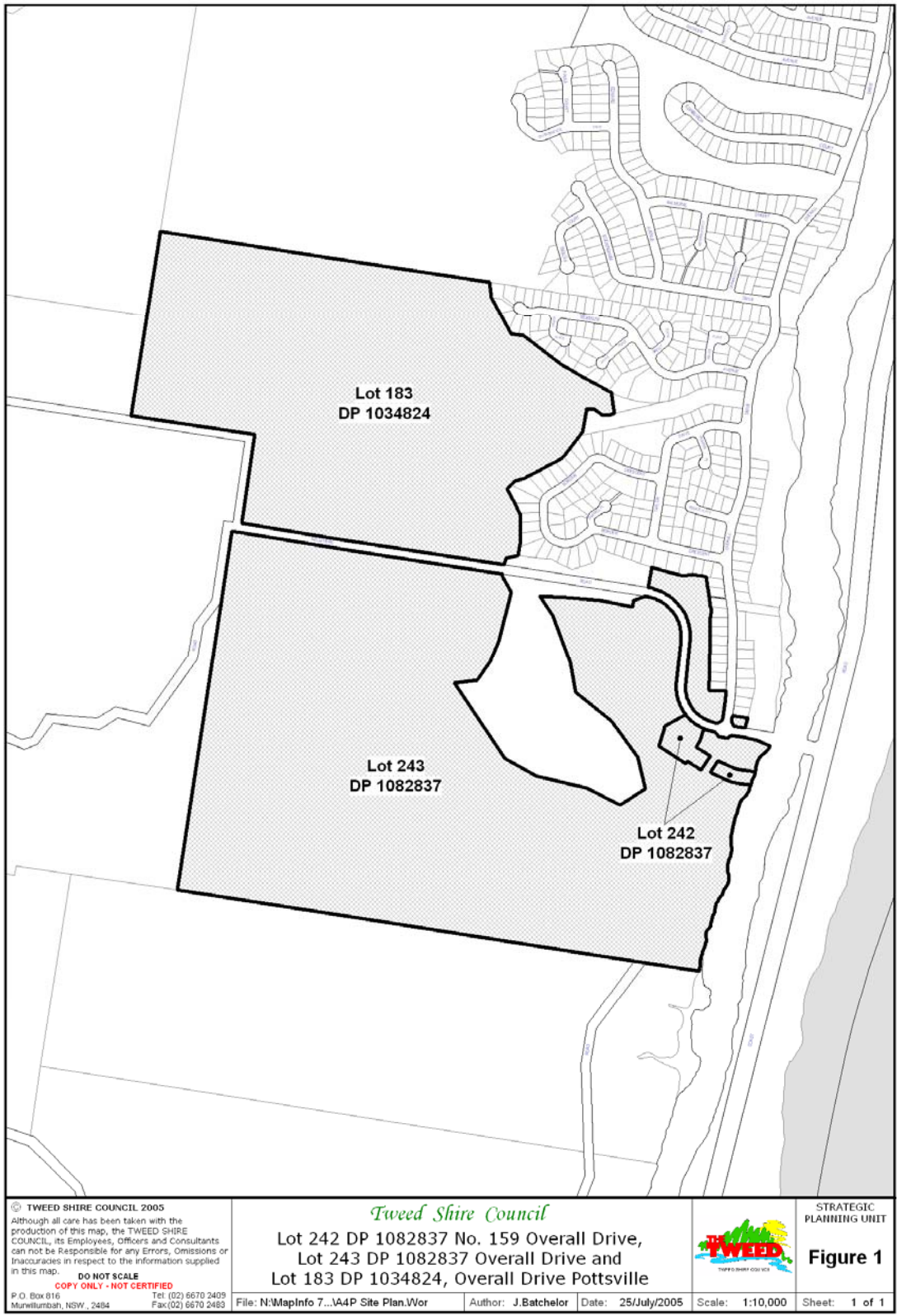
- (a) On east of site in Mooball Creek Riparian Zone:
A 1.2 metre high retaining wall is to be constructed on the lot boundary with the structure being contained on private land. From the base of the retaining wall the fill batter is to slope down at a constant grade of 1:4 for a horizontal distance of 4.0 metres. At this point the fill embankment is to be reduced to a grade of 1:40 (2.5%) for 4.0 metres on which a 2.5 metre wide concrete cycleway is to be centrally constructed in accordance with Council Standards. From this point, being 8.0 metres from the property boundary, the fill batter is to revert to a grade of 1:4 until the embankment intersects with the natural ground level.

- (b) On the south of the site in Asset Protection Zone adjacent to Drain
A 1.2 metre high retaining wall is to be constructed on the lot boundary with the structure being contained on private land. From the base of the retaining wall the fill batter is to slope down at a constant grade of 1:4 until it is 0.4m higher than natural ground level . At this point the fill embankment is to be reduced to a grade of 1:40 (2.5%) for 4.0 metres on which a 2.5 metre wide concrete cycleway is to be centrally constructed in accordance with Council Standards. From the southern edge of the 4m cycleway platform, the embankment is to revert to a grade of 1:4 until the embankment intersects with the natural ground level.

The Acting Director Engineering & Operations considers the revised amendment to be satisfactory because:

- The fill footprint on the Mooball Creek riparian zone is reduced and facilitates an increase in the area of riparian vegetation
- There is a clear delineation between private and public land
- Locating the retaining wall on private land ensures Council has no maintenance liability for the structure.
- Permitting the cycleway to a longer distance from private land on the south of the site is acceptable as this is only a bushfire asset protection zone and is not in the Mooball Creek riparian zone.

SITE DIAGRAM:



OPTIONS:

1. Advise the Department of Planning of Council's Recommendation.
2. Allow the Department of Planning to determine the S96 application without comment from Council.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Planning Report 15 August 2006 (DW 1440609)
 2. Planning Report 3 August 2005 (DW 1240256)
-

P3 [PD-PC] Consolidation of the Development Control Plans - Amendment to the Local Environmental Plan 2000

ORIGIN:

Development Assessment

FILE NO: GT1/DCP/2006

SUMMARY OF REPORT:

Council resolved on 5 September 2006 to adopt the exhibited consolidated Development Control Plan and to bring this plan into effect. Before this new DCP can come into effect there is a requirement to amend Tweed LEP 2000. The amendments to the LEP are only minor and relate to:

- A change in name from 'development control plans' to 'Tweed Development Control Plan';
- A date change for DCP 40 – Exempt and Complying Development;
- Changing the name of DCP 5 – Development of Flood Liable Land, DCP 15 – Advertising Signs Code, DCP 40, and Development Control Plan No 18 – Tweed Heads to their new Section names as proposed under the consolidated DCP.

It is proposed that Council prepare an LEP Amendment in accordance with Section 73A of the EP&A Act which allows certain types of minor amendments to be made to the LEP without requiring the usual procedures associated with the preparation of an amended LEP (particularly public exhibition and consultation). This Council report sets out the issues that are to be addressed to comply with a Section 73A amendment.

RECOMMENDATION:

That Council:

1. **Resolves to inform the Department of Planning that it intends to prepare a draft Local Environmental Plan to amend Tweed Local Environmental Plan 2000, in accordance with Section 73A of the Environmental Planning and Assessment Act 1979, as follows:**
 - **Amend the date for DCP 40 – Exempt and Complying Development to that of the adopted consolidated DCP;**
 - **Amend the following references:**
 - **DCP 5 – Development of Flood Liable Land to Section A3 – Development of Flood Liable Land;**

- DCP 15 to Section A4 – Advertising Signs Code;
- DCP 40 Exempt and Complying Development to Section A10 – Exempt and Complying Development;
- Development Control Plan No 18 – Tweed Heads to Section B2 – Tweed Heads;
- ‘development control plans’ to ‘Tweed Development Control Plan’;

REPORT:

Council recently exhibited a draft Tweed Shire Development Control Plan which is a consolidation of all the current DCPs. This was undertaken to meet the State Government planning reforms where it proposed that only one DCP can apply to the same land. However before this new DCP can come into effect there is a requirement to amend Tweed LEP 2000. Council resolved on 5 September 2006 to adopt the exhibited consolidated Development Control Plan and to bring this plan into effect.

It is proposed that Council prepare an LEP Amendment in accordance with a newly introduced Section 73A of the EP&A Act which allows certain types of minor amendments to be made to the LEP without requiring the usual procedures associated with the preparation of an amended LEP (particularly public exhibition and consultation). These minor amendments may include correcting obvious errors in the LEP or to address matters that are of a consequential, transitional, machinery or other minor nature.

In using Section 73A, Council does not have to comply with the normal requirements such as formal notification to the Director General of the Department of Planning and the public exhibition of the draft LEP under Section 65 of the EP&A Act.

The amendments to the LEP are only minor and these, and the justification for proceeding with Section 73A, are outlined below.

The Requirement for the LEP Amendment

In changing from a number of DCPs to one consolidated DCP means that the Tweed LEP 2000 requires amending as there are references in the LEP that are inconsistent with the new consolidated DCP.

These inconsistencies are as follows:

- Tweed LEP refers to 'development control plans' not 'Tweed Development Control Plan';
- The date for DCP 40 – Exempt and Complying Development in the current LEP will be different to that of the adopted consolidated DCP;
- Tweed LEP refers to a number of DCPs that will now require a name change to correspond to the names in the consolidated DCP.

Proposed amendments

Based on the above inconsistencies, the following changes are proposed:

- Amend the date for DCP 40 – Exempt and Complying Development to that of the adopted consolidated DCP;
- Amend the following references:
 - DCP 5 – Development of Flood Liable Land to Section A3 – Development of Flood Liable Land;

- DCP 15 to Section A4 – Advertising Signs Code;
- DCP 40 Exempt and Complying Development to Section A10 – Exempt and Complying Development;
- Development Control Plan No.18 – Tweed Heads to Section B2 – Tweed Heads;
- ‘Development control plans’ to ‘Tweed Development Control Plan’.

Justification for Using Section 73A

The Department of Planning Circular of 12 July 2006 outlines the types of amendments that might be permitted using Section 73A. While each case will be judged on its merits, the most important consequences of an amendment being made in accordance with Section 73A are that:

- there is no need for exhibition of the draft instrument; and
- the amendment will not have any material effect ‘on-the-ground’.

Both these reasons apply to this particular LEP. The draft consolidated DCP has been exhibited and the proposed Amendment to the LEP merely reflects some of these changes. To follow the requirement to advertise, consult and undertake a full LEP process that normally takes at least six to twelve months for changes that will have no effect on either the LEP or the consolidated DCP is considered a waste of time and resources. The Planning Circular uses the example of the date change for a DCP containing exempt and complying provision as an example where Section 73A could apply. The other examples in this Amendment are also ‘consequential amendments’.

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 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.

P4 [PD-PC] Section 96 Application D88/0640.01 for an Amendment to Development Consent D88/0640 for the Establishment of a Tourist Resort at Lot 1 DP 779817; Lot 1 DP 408972, No. 440 Wooyung Road, Wooyung

ORIGIN:

Development Assessment

FILE NO: PF5980/200

SUMMARY OF REPORT:

The preliminary point of law hearing for the Wooyung Resort S.96 proposal was heard on 7 August 2006. Council's position was that the consent had lapsed as there had not been physical commencement and therefore a valid consent did not exist to amend. The Court found in favour of the applicant and determined that the consent was activated by survey work carried out within the required timeframe.

The purpose of this report is to advise Council of the outcome of the point of law hearing and to set a course of action for consideration of the S.96 application to amend the consent which is before the Land and Environment Court as a Class 1 deemed refusal Appeal.

The applicants have made an offer regarding additional conditions to be applied to the amended consent. Council's legal advisers are considering this offer and will advise Council as soon as possible.

The amended application should be publicly exhibited given the scale of the development, the location, the length of time elapsed since consent was granted and the interpretation by the Courts of the law regarding physical commencement.

The call over for the Appeal is being held on 26 September 2006.

RECOMMENDATION:

That: -

- 1. The applicants be advised Council will place the application on public exhibition and refer it to relevant Government Agencies for comment.**
- 2. Council formally requests the Minister for Planning to review the legislation relating to commencement and lapsing of development consents given the current interpretation by the Courts of these procedures.**

REPORT:

Applicant: JMS Capital Pty Ltd
Owner: JMS Capital Pty Ltd
Location: Lot 1 DP 779817, Lot 1 DP 408972 No. 440 Wooyung Road, Wooyung
Zoning: 1(a) Rural & 7(a) Environmental Protection (Wetland and Littoral Rainforests)
Cost: Not applicable

BACKGROUND:

A S.96 amended application was lodged to stage the works for the resort development. A Class 1 Appeal for a deemed refusal was lodged with the NSW Land and Environment Court. Council resolved on 22 March 2006 the following-

That Council defends the Appeal on this Section 96 Application D88/0640.01 for an amendment to Development Consent D88/0640 for the establishment of a tourist resort at Lot 1 DP 779817; Lot 1 DP 408972, No 440 Wooyung Road, Wooyung on the basis that the consent has lapsed.

The Development

Development consent was issued on 22 December 1988 for the construction of a tourist resort. The site is 82.25 ha in area and has approximately 800m frontage adjacent to the ocean. The development is described as follows-

"1. *The creation of three islands which will contain the core of the development, ie. the accommodation units, administrative and central facilities. Initially, it is proposed to develop only two of the islands with the third, while being constructed as part of Stage 1, being the subject of a further application for its development. It is proposed to construct 300 accommodation units utilising three basic building types, vis. single level bure duplex, two level terrace building and a three level terrace building. The unit total is made up as follows:*

*Single level bure duplex units – 62
One bedroom terrace units – 152
Two bedroom terrace units – 86
Total – 300 units.*

2. *The other main building components are comprised of:*

a. *Administration building (Island No. 1) being a two level building containing ground and lower ground floor levels with a total floor area of approximately 3651m². The building contains administration, lounge/reception, tavern, bar, restaurant, shops, convention room amenities, etc.*

- b. *Central facilities (Island No. 2) a complex of four single level buildings containing a total floor area of 342m² and comprised of office/reception, shop, lounge, recreation areas, snack bar, laundry, amenities, etc.*
- c. *Country Club (Site Mainland) a two level building containing ground and lower ground floor levels with a total floor area of approximately 1655m² and comprised of reception lounge, bar areas, restaurant and amenities.*
- d. *General Recreational Facilities: a nine hole golf course, arbour and village green, tennis courts, swimming pools, kiosk and surf lifesaving club facility.*
- e. *Car Parking (Northwest Mainland area of the site): It is proposed to provide car parking for a total of 625 vehicles and six buses. The parking is comprised as follows:*

<i>Coaches Guests</i>	<i>6 spaces</i>
<i>Staff</i>	<i>155 spaces</i>
<i>Visitors</i>	<i>30 spaces</i>
<i>Visitors</i>	<i>70 spaces</i>
<i>Overflow Car Park</i>	<i>370 spaces</i>
<i>Total</i>	<i>631 spaces"</i>

The islands were proposed to be constructed within a fifteen hectare (approx.) lake. It was proposed to extract 1.3 million cubic metres of material from the site to construct the three islands. The site is not serviced by town water or a reticulated sewerage system. The approved plans include a helipad. The site has potential significant environmental constraints such as acid sulfate soils, groundwater, flooding, coastal processes, riparian zones, native vegetation, littoral rainforests bushfire and threatened species. The site adjoins the Wooyung Nature Reserve. The original application and consent approval do not address all of the issues given the historical nature of the proposal. For example, acid sulfate soil wasn't a known constraint at the time but now has major implications for development of the subject site.

Proposed amendment

The applicants seek to have the consent amended in the following manner-

"Condition 30 of the consent is in the following terms:

"This approval only covers Stage 1 of the proposal."

Council is requested to modify this Condition to enable the development to be carried out in two substages as follows:

Substage 1A - Excavation of the lake and construction of the three islands;

Substage 1B - Construction of all buildings, car parking, infrastructure and other ancillary components comprised in the development consent.

The intention of the modification is to enable the substantial earthworks involved to be carried out as a first stage given the need to achieve appropriate levels of compaction and landforms prior to constructing buildings and other infrastructure on each of the islands."

Commencement

A copy of the judgment is attached.

The court has found that the consent issued in 1988 is valid and the s.96 application can be assessed on merit. The court found that the work carried out within the required timeframe met the criteria for physical commencement established by the NSW Court of Appeal.

Principle 1

The Court found that the work relied on to establish commencement was building, engineering or construction work. In this instance the only work carried out was survey work. The Court of Appeal has previously confirmed that survey work constitutes engineering work and therefore couldn't be considered commencement of the development.

Principle 2

The Court found that the work related to the approved development. The Court did not accept Council's argument that the limited amount of survey work undertaken for the consolidation plan was not significant enough to physically commence the development nor the argument that the other survey work was a repeat of work already undertaken prior to development consent being issued.

Principle 3

The Court found that the work was physically commenced on the land to which the consent applied. It was determined that the work was enough to activate the consent.

It is evident that this case sets a precedent for determination of validity of consents relating to physical commencement not only in the Tweed but for the State. One of the difficult aspects for consent authorities and the public to come to terms with is that there is no evidence of physical work relating to the consent on the site given the passage of time and the work undertaken to enact the consent will need to be undertaken again to carry out the development.

OPTIONS:

1. Public exhibition, referral to Government Agencies and additional information

Exhibition of the amended application is considered appropriate given the circumstances of the proposal relating to the development itself and the judicial review decision. Whilst

the application at hand is an amended proposal Council is still required to assess the application against the S.79C heads of consideration. In this regard acid sulfate soils information should be required to be submitted and an update of the assessment of impacts relating to flooding, groundwater, bushfire, onsite effluent management, contaminated land, threatened species, aboriginal archaeology and native vegetation.

It should be noted that many of these items are required to be further addressed as additional approvals are required from State Government Agencies.

The applicants have offered to accept conditions regarding some of these matters. Council's solicitors are providing advice regarding the appropriateness of this course of action for the amended application. It should be noted that there are statutory limitations to the imposition of additional conditions on amended consents.

2. Enter into consent orders for the amended application.

This option is not preferred at this stage given the above matters in Option 1 and the likelihood that interested third parties will wish to raise these issues with the Court at any Orders hearing.

3. Refuse the S.96 amended application.

As this matter is before the Court, Council is not the determining authority and refusal would result in a date being set for litigation on merit issues. This is not the preferred option as Council is not in a position to make an informed decision. It should also be noted that a valid consent exists and the application at hand is an amendment to that consent. The development could still potentially proceed without the amendment.

4. Appeal

An appeal may only be made on an error of law however grounds for an appeal are not self evident. Council's legal advisors have not raised any appealable matters. It should also be noted that it was the Court of Appeal that set the parameters for the current interpretation of commencement.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Council would incur legal expenses as a result of the Appeal.

POLICY IMPLICATIONS:

A formal request to the Minister for Planning should be made requesting a review of the legislation relating to lapsing of consents in light of the recent NSW Court of Appeal and NSW Land and Environment Court decisions.

CONCLUSION:

Council is likely to be faced with further similar situations regarding old consents given the current relaxed interpretation of physical commencement by the Courts.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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1. Judgment- JMS Capital Pty Limited v Tweed Shire Council (2006) NSWLEC 535. (DW 1454430)
-

P5 [EO-PC] SC06/0032 Road Widening - Lot 2 DP 777844, Coast Road, Bogangar

ORIGIN:

Development Assessment

FILE NO: DA1190/1210

SUMMARY OF REPORT:

Council approved a development application for the construction of a new primary school accommodating 432 students being Development Application 0340/2002DA. Council issued development consent subject to conditions dated 22 January 2003.

The applicant has now lodged a subdivision certificate application seeking Council consent to dedicate road widening to Council incorporating customer parking and associated walkways.

The application for the development of the new school did not refer to any road widening or dedication of associated infrastructure to Council.

RECOMMENDATION:

That Council refuses the subject subdivision certificate application for the following reasons:-

- 1. The current situation where the customer car parking and other supporting infrastructure is located on the Bogangar Primary School property is considered best practice as the Department of Education retains control over this infrastructure.**
- 2. The development application for the construction of the school made no reference to the current proposal to dedicate the customer car parking and supporting infrastructure as public road.**
- 3. The retention of the customer car parking and supporting infrastructure within the school property reflects the recommendations of the Parliamentary Joint Standing Committee into Road Safety's Staysafe Report No. 53 in that it allows the Department of Education to actively manage and control this infrastructure to maintain adequate levels of safety for school children. Council would not be able to provide this level of safety management.**

4. The proposal inequitably transfers the legitimate liability of the Department of Education, in terms of maintenance, to another Authority.

REPORT:

Applicant: NSW Department of Commerce
Owner: Minister for Education – Asset Management Directorate
Location: Lot 2 DP 777844 – Coast Road Bogangar
Zoning: 5 (a) Special Uses (school)
Cost: Not applicable

PROPOSAL

To subdivide off part of Department of Education site used for bus pick up and transfer to Council as public road.

BACKGROUND:

Tweed Shire Council issued development consents for the construction of Bogangar Primary School, 0340/2002DA on 22 January 2003.

The application required the provision of bus bays, car parking, concrete footpaths, traffic control devices and other associated infrastructure.

The works have been carried out in accordance with the conditions of development consent. Reference to the proposed dedication of road widening or assets into Council ownership was not identified within the application submitted to Council or reflected within the conditions of approval.

At the time of seeking development consent for the construction of the school, a number of discussions occurred between Council staff and representatives of the Department of Public Works and Services regarding the associated traffic arrangements.

It had always been Councils preferred option that all traffic movements should occur within the subject school site and not on Councils road reserve. However, there had always been a reluctance from the Department of Public Works and Services to do this even though the Crown owns ample land to provide such infrastructure on site. Councils Director, Engineering and Operations Division agreed to the current design following a number of revisions and options for the parent pickup set down area and traffic control measures.

SITE DIAGRAM:



Need for Development Consent

Consideration for the dedication of road widening associated with this development type is identified within TLEP 2000, Clause 19 (4) tabled as follows:-

“Consent is not required for a subdivision effected for the purposes of widening a public road, creating an allotment for use by a public utility undertaking, or as a public reserve or the like, notwithstanding that an allotment created by the subdivision may not comply with the minimum lot size applicable to the zone in which the land is situated”.

Therefore no development consent is required for the proposed subdivision.

Need for Traffic Facilities at New School Developments

A major concern for Council has been the constant reluctance of the Department of Education to comply with Councils Policies and Standards such as DCP 2.

DCP 2 requires the developer to provide adequate parking and service facilities required by that development within the site where care, control and Maintenance remain with the developer.

Council's concern regarding this issue is clearly supported in the recommendations of “Staysafe Report 53 – Traffic Control and Safety in the Vicinity of Schools, Part 1: Major Recommendations and Summary” dated July 2001.

Recommendation 12.2 That as local Councils are the planning consent authority, issues relating to road safety associated with school sites should meet the same conditions of consent as other service providers.

Further supporting the retention of the bus bays and parent pick up areas on Department of Education Land is Recommendation 8.2, which states:

Recommendation 8.2 The Department of Education should, on greenfield sites, provide traffic facilities on site, and with separation of traffic function.

Councils position is further strengthened by Recommendations 9.1 and 9.3 which state:

Recommendation 9.1 The Department of Urban Affairs and Planning introduce guidelines (or regulations) to compel the Department of Education to provide traffic facilities associated with it's site services, as are all other service providers.

Recommendation 9.3 That in the designation of proposed Department of Education sites: that the land area to be acquired or developed for the Department of Education must include provision for on site traffic control facilities associated with the school's operations (including student travel)

Analysis of Subdivision Proposal

Clearly the Parliamentary Staysafe Committee supports Councils position that the Department of Education should be treated in the same manner as other developers and provide their supporting infrastructure being bus bays and parent pick up /set down areas on site and not on public roads.

It should also be noted Council does not accept control of such infrastructure for private schools and should not do so with state schools as the responsibility for maintenance and liability by accepting such is transferred to the shires ratepayers through Council.

For these reasons the Departments request should be refused.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The Environmental Planning & Assessment Act, Clause 109D Certifying authorities states,

(d) a subdivision certificate may be issued:

(iii) In the case of subdivision carried out by or on behalf of the Crown or a prescribed person, by the Crown or prescribed person or by any person acting on behalf of the Crown or prescribed person,

Should Council refuse the application, the matter may be referred to the Minister for Planning by the applicant for resolution or agreement or alternatively, the Minister may appoint a prescribed person to issue a subdivision certificate.

The Minister of Planning may choose to issue the Subdivision Certificate dedicating the subject land as road reserve. However in such an event Council should add the subject section of proposed road to its list of Public Road NOT maintained by Council as is the case with many public roads. In this instance all maintenance would need to be undertaken by the Department of Education.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The provision of bus set down and car parking / set down areas at school sites is required to ensure the safe interaction between children and traffic.

Council has continually requested the Department of Education to provide car parking and bus pick up/set down on site as this infrastructure is only required as a result of the construction of schools. All recently approved private schools comply with Council's policy in this regard and state schools should also comply. This position is clearly supported by the NSW Joint Standing Committee on Road Safety in its report "Staysafe 53 - Traffic Control & Safety in the Vicinity of Schools" quoted earlier in this report.

The Departments proposal to subdivide off customer car parking and dedicate to Council appears to be an attempt by the Department to cost shift their legitimate responsibilities on to Council and should be resisted.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

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P6 [EO-PC] SC06/0031 Road Widening - Lot 9 DP 1082139, Eucalyptus Drive, Banora Point

ORIGIN:

Development Assessment

FILE NO: DA02/1058

SUMMARY OF REPORT:

Council received a development application for the construction of a new Junior High School accommodating 1050 students being Development Application DA02/1058. Council issued development consent subject to conditions dated 3 December 2002.

The applicant has now lodged a subdivision certificate application seeking Council consent to dedicate road widening to Council incorporating bus set down / pick up areas, customer parking and associated walkways.

The application for the development of the new school did not refer to any road widening or dedication of associated infrastructure to Council.

RECOMMENDATION:

That Council refuses the subject subdivision certificate application for the following reasons:-

- 1. The current situation where the bus bays and other supporting infrastructure is located on the Banora Point High School property is considered best practice as the Department of Education retains control over this infrastructure.**
- 2. The development application for the construction of the school made no reference to the current proposal to dedicate the bus bays and supporting infrastructure as public road.**
- 3. The retention of the bus bays and supporting infrastructure within the school property reflects the recommendations of the Parliamentary Joint Standing Committee into Road Safety's Staysafe Report No. 53 in that it allows the Department of Education to actively manage and control this infrastructure to maintain adequate levels of safety for school children. Council would not be able to provide this level of safety management.**
- 4. The proposal inequitably transfers the legitimate liability of the Department of Education, in terms of maintenance, to another Authority.**

REPORT:

Applicant: NSW Department of Commerce
Owner: Minister for Education – Asset Management Directorate
Location: Lot 9 DP 1082139 Eucalyptus Drive, Banora Point
Zoning: 5(a) Special Uses (School)
Cost: Not applicable

PROPOSAL

To subdivide off part of Department of Education site used for bus pick up and transfer to Council as public road.

BACKGROUND:

Tweed Shire Council issued development consents for the construction of Banora Point Junior High School, DA 02/1058 on 27 June 2002.

The application required the provision of bus bays, car parking, concrete footpaths, traffic control devices and other associated infrastructure.

The works have been carried out in accordance with the conditions of development consent. Reference to the dedication of road widening or assets into Council ownership had not been identified within the applications submitted to Council or reflected within the consent notice issued.

SITE DIAGRAM:



Need for Development Consent

Consideration for the dedication of road widening associated with this development type is identified within TLEP 2000, Clause 19 (4) tabled as follows:-

“Consent is not required for a subdivision effected for the purposes of widening a public road, creating an allotment for use by a public utility undertaking, or as a public reserve or the like, notwithstanding that an allotment created by the subdivision may not comply with the minimum lot size applicable to the zone in which the land is situated”.

Therefore no development consent is required for the proposed subdivision.

Conditions of Consent for development application DA02/1058 (construction of the high school)

Conditions 40 (f) and (g) of DA02/1058 read:-

- (f) *On site formalised carparking with a minimum 100 spaces comprising 75 for staff and 25 for visitors.*
- (g) *An onsite bus set down/pickup zone to accommodate a peak accumulation of 5 buses is to be provided. Additional "layover" space for up to 3 buses is to be provided within the Primary School bus bay opposite."*

The condition clearly states the bus set down/pickup area is to be constructed 'on site'. This condition was accepted by the applicant as is required for State Government Developments. It is therefore surprising the NSW Department of Commerce now want to hand over the bus bay to Council.

Need for Traffic Facilities at New School Development

A major concern for Council has been the constant reluctance of the Department of Education to comply with Councils Policies and Standards such as DCP 2. This has been a Statewide problem which was part of an investigation by the NSW Parliamentary Joint Standing Committee on Road Safety.

DCP 2 requires the developer to provide adequate parking and service facilities required by that development within the site where care, control and Maintenance remain with the developer.

Council's concern regarding this issue is clearly supported in the recommendations of the Parliamentary Committee's "Staysafe Report 53 – Traffic Control and Safety in the Vicinity of Schools, Part 1: Major Recommendations and Summary" dated July 2001.

Recommendation 12.2 That as local Councils are the planning consent authority, issues relating to road safety associated with school sites should meet the same conditions of consent as other service providers.

Further supporting the retention of the bus bays and parent pick up areas on Department of Education Land is Recommendation 8.2, which states:

Recommendation 8.2 The Department of Education should, on greenfield sites, provide traffic facilities on site, and with separation of traffic function.

Councils position is further strengthened by Recommendations 9.1 and 9.3 which state:

Recommendation 9.1 The Department of Urban Affairs and Planning introduce guidelines (or regulations) to compel the Department of Education to provide traffic facilities associated with it's site services, as are all other service providers.

Recommendation 9.3 That in the designation of proposed Department of Education sites: that the land area to be acquired or developed for the Department of Education must include provision for on site traffic control facilities associated with the school's operations (including student travel)

Analysis of Subdivision Proposal

Clearly the Parliamentary Committee supports Councils position that the Department of Education should be treated in the same manner as other developers and provide their supporting infrastructure being bus bays and parent pick up /set down areas on site and not on public roads.

It should also be noted Council does not accept control of such infrastructure for private schools and should not do so with state schools as the responsibility for maintenance and liability by accepting such as public road is transferred to the shires ratepayers through Council.

For these reasons the Departments request should be refused.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The Environmental Planning & Assessment Act, Clause 109D Certifying authorities states,

(d) *a subdivision certificate may be issued:*

(iii) *In the case of subdivision carried out by or on behalf of the Crown or a prescribed person, by the Crown or prescribed person or by any person acting on behalf of the Crown or prescribed person,*

Should Council refuse the application, the matter may be referred to the Minister for Planning by the applicant for resolution or agreement or alternatively, the Minister may appoint a prescribed person to issue a subdivision certificate.

The Minister of Planning may choose to issue the Subdivision Certificate dedicating the subject land as road reserve. However in such an event Council should add the subject section of proposed road to its list of Public Road NOT maintained by Council as is the case with many public roads. In this instance all maintenance would need to be undertaken by the Department of Education.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The provision of bus set down and car parking / set down areas at school sites is required to ensure the safe interaction between children and traffic.

Council has continually requested the Department of Education to provide car parking and bus pick up/set down on site as this infrastructure is only required as a result of the construction of schools. All recently approved private schools comply with Council's policy in this regard and state schools should also comply. This position is clearly supported by the NSW Joint Standing Committee on Road Safety in its report "Staysafe 53 - Traffic Control & Safety in the Vicinity of Schools" quoted earlier in this report.

The Departments proposal to subdivide off the bus bay and dedicate to Council appears to be an attempt by the Department to cost shift their legitimate responsibilities on to Council and should be resisted.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.
