



# **AGENDA**

## **Part 2**

# **PLANNING COMMITTEE MEETING**

## **Tuesday 13 November 2007**

**Chairman: Mr Max Boyd AM**

**Administrators: Mr Max Boyd AM**  
**Mr Garry Payne AM**



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**ITEMS FOR CONSIDERATION OF THE COMMITTEE:**

<b>ITEM</b>	<b>PRECIS</b>	<b>PAGE</b>
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<b>REPORTS FROM DIRECTOR PLANNING &amp; REGULATION</b>		
<b>P1</b>	<b>[PR-PC] Development Application DA06/1332 for an Animal Establishment for Greyhounds at Lot 3 DP 701833, No. 3808 Kyogle Road, Mount Burrell</b>	See Part 1
<b>P2</b>	<b>[PR-PC] Development Application DA07/0530 for a Viewing Deck &amp; Foreshore Improvements at Lot 7010 DP 1055324, Pandanus Parade, Cabarita Beach</b>	See Part 1
<b>P3</b>	<b>[PR-PC] Development Application DA07/0547 for a Three (3) Storey Commercial Building Including Café at Lot 11 DP 21242; Lot 1 DP 397057; Lot 1 DP 781718, No. 38-42 Pearl Street, Kingscliff</b>	See Part 1
<b>P4</b>	<b>[PR-PC] Development Application DA07/0232 for Factory Units at Lot 666 DP 1094312, No. 57-61 Ourimbah Road, Tweed Heads</b>	See Part 1
<b>P5</b>	<b>[PR-PC] Development Application DA07/0484 for a 3 Storey Multi-Dwelling Housing Development Comprising 20 Units (16 x Two Bedroom Units and 4 x Three Bedroom Units) at Lot 172 DP 1031933, Kamala Crescent, Casuarina</b>	117
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**P5 [PR-PC] Development Application DA07/0484 for a 3 Storey Multi-Dwelling Housing Development Comprising 20 Units (16 x Two Bedroom Units and 4 x Three Bedroom Units) at Lot 172 DP 1031933, Kamala Crescent, Casuarina**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA07/0484 Pt2**

**SUMMARY OF REPORT:**

Council is in receipt of an application for a 3 storey residential apartment building comprised of 20 units (16 x two bedroom units and 4 x three bedroom units) at Lot 172 DP 1031933, Kamala Crescent Casuarina.

The main issues associated with the application are in relation to building envelope and setback requirements. Notwithstanding, it is considered that the proposal is compatible with the existing built form demonstrated in Kamala Crescent and consistent with the zone objectives.

Council received a total of 31 submissions during the advertising period (one of which was anonymous). The main issues raised by the submitters related to solar access, overshadowing, privacy, density, building envelope and height.

The applicant amended the proposal in response to the Council Information Request, reducing encroachments outside the building envelope and reducing the overall height so it was compliant with Council's DCP. It is considered that the proposal has been designed to reduce overlooking and mitigate impacts on privacy through the use of limited balconies at the rear and orientation towards Kamala Crescent. Overall, it is considered that the proposed height, density and building bulk is appropriate with regard to the intention of the 2 (e) zone, existing 3 storey height limit, the DCP and the existing character of Kamala Crescent.

The proposal is recommended for approval, subject to conditions.

**RECOMMENDATION:**

**That Development Application DA07/0484 for a 3 storey multi-dwelling housing comprised of 20 units (16 x two bedroom units and 4 x three bedroom units) at Lot 172 DP 1031933, Kamala Crescent Casuarina be approved subject to the following conditions: -**

**GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects and the plans prepared by Arkhefield outlined in the following table (except where plans are modified in red) and except where varied by the conditions of this consent. The Floor plans for each unit in Drawing No. 201-00, 201-01 & 201-02 referred to in the table below shall be superseded by the separate floor plans indicated in drawing numbers 550-00, 550-01 & 550-02.

Plan Title	Drawing no.	Revision
Montage Perspective	000-03	A
Setback Analysis	000-5	D
LB - Basement	200-00	F
L0 – Ground Floor	201-00	G
L1 – First Floor	201-01	F
L2 – Second Floor	201-02	F
North – E & South -E	300-00	E
South-W & North W	300-01	E
Kamala Crescent Street Elevation	300-02	F
Section A	400-00	E
Section B	400-01	E
Unit type 2b,3a & 3b	550-00	E
Unit type 2a and 2c	550-01	D
Unit type 2e	550-02	A
Site Analysis (prepared by planit		
Reference Sheet	000-02	C
Sun Shadow Diagrams	000-04	C

[GEN0005]

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

[GEN0115]

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

[GEN0135]

4. The development is to be carried out in accordance with Councils Development Design and Construction Specifications.

[GEN0265]

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

5. The developer shall provide the following minimum number of off street car parking spaces:

- 32 dedicated residence car spaces; and
- 5 visitor (including parking for the disabled) in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code.

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

Dedicated car spaces no. 23 & 24 and 30 & 31 must be grouped together and dedicated to an individual unit respectively.

The proposed security roller door must be located, such that the required visitor car parks can be accessed before the roller-door.

[PCC0065]

6. 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, be accompanied by the required attachments and prescribed fee.

Receipt of approval is to be obtained prior to the issue of a construction certificate for works within the development site.

[PCC0075]

7. **Section 94 Contributions**

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

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

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

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

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



(a) Tweed Road Contribution Plan: S94 Plan No. 4 Sector 7c_4	\$62,062
(b) Shirewide Library Facilities: S94 Plan No. 11	\$8,312
(c) Bus Shelters: S94 Plan No. 12	\$294
(d) Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$1,669
(e) Emergency Facilities (Surf Lifesaving) S94 Plan No. 16	\$2,420
(f) Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$24,113.36
(g) Kings Beach Open Space S94 Plan No. 19	\$18,636
(h) Kings Beach Community Facilities S94 Plan No. 19	\$17,434
(i) Cycleways S94 Plan No. 22	\$4,248
(j) Regional Open Space (Structured) S94 Plan No. 26	\$28,092
(k) Regional Open Space (Casual) S94 Plan No. 26	\$10,325

[PCC0215]

**8. Section 94 Contributions**

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

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

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





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

**Heavy Haulage Component**

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

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

where:

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

and:

- Prod.** projected demand for extractive material to be hauled to the site over life of project in tonnes
- Dist.** average haulage distance of product on Shire roads (trip one way)
- \\$Unit** the unit cost attributed to maintaining a road as set out in Section 6.4 (currently 2.5c per tonne per kilometre)
- Admin.** Administration component - 5% - see Section 6.5 (2500m<sup>2</sup> of extracted material are anticipated).

[PCC0225]

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

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

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

<b>Water:</b>	<b>11.6 ETs @ \$9997</b>	<b>\$115,965</b>
<b>Sewer:</b>	<b>15 ETs @ \$4804</b>	<b>\$72,060</b>

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

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



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

[PCC0265]

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

[PCC0285]

11. All earthworks shall be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system. The construction of any retaining wall or cut/fill batter must at no time result in additional ponding occurring within neighbouring properties.

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

[PCC0485]

12. Council will not permit ground anchors (to retain sacrificial sheet piling for basement excavations) within Council or private property, without prior consent from the property owner being obtained. If the land owner is Council, approval is required from the General Manager or his delegate, and the anchors are required to be removed upon completion of the works, unless a compensation amount is negotiated with Council.

[PCC0955]

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

- (a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils *Development Design Specification D7 - Stormwater Quality*.
- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management. Typical water sensitive features include infiltration, maximizing permeable/landscaped areas, stormwater retention /detention/reuse, and use of grass swales in preference to hard engineered drainage systems.

- (d) **Specific Requirements to be detailed within the Construction certificate application include:**
- (i) **Shake down area shall be installed prior to any earthworks being undertaken.**
  - (ii) **The basement oil / grit arrestor shall be sized in accordance with Section D7.12 of Council's Development Design Specification D7 - Stormwater Quality.**
  - (iii) **Runoff from the basement car wash bay must be bunded and treated to remove oil and sediment prior to discharge. Discharge shall be into the sewer system if levels allow. This will require a Tweed Shire Council Trade Waste Application to be submitted, prior to approval of the Construction Certificate.**

[PCC1105]

#### 14. Stormwater

- (a) **Details of the proposed roof water disposal, including surcharge overland flow paths are to be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. These details shall include likely landscaping within the overland flow paths.**
- (b) **All roof water shall be discharged to infiltration pits located wholly within the subject allotment.**
- (c) **Irrespective of any BASIX requirements for rainwater storage and reuse, any overflow from installed rainwater tanks must be discharged via pipe connection into the infiltration pit/s as required above.**
- (d) **The infiltration rate for sizing infiltration devices shall be 3m per day:**
- (e) **As a minimum requirement, infiltration devices are to be sized to accommodate the ARI 3 month storm (deemed to be 40% of the ARI one year event) over a range of storm durations from 5 minutes to 24 hours and infiltrate this storm within a 24 hour period, before surcharging occurs.**
- (f) **Surcharge overflow from the infiltration area to the street gutter, inter-allotment or public drainage system must occur by visible surface flow, not piped. No surcharge flow is allowed onto neighboring private property.**
- (g) **The legal point of discharge for the site is via overland flow only to Kmala Crescent. Nminated overland flow paths need to be shown and maintained.**
- (h) **Runoff **OTHER THAN ROOF WATER** to remove contaminants prior to entry into the infiltration areas (to aximize life of infiltration areas between major cleaning/maintenance overhauls).**



- (i) If the site is under strata or community title, the community title plan is to ensure that the infiltration areas are contained within common land that remain the responsibility of the body corporate (to ensure continued collective responsibility for site drainage).
  - (j) All infiltration devices are to be designed to allow for cleaning and maintenance overhauls. The infiltration pit/s must be accessible to appropriate machinery for maintenance.
  - (k) All infiltration devices are to be designed by a suitably qualified Engineer taking into account the proximity of the footings for the proposed/or existing structures on the subject property, and existing or likely structures on adjoining properties.
  - (l) All infiltration devices are to be located clear of stormwater or sewer easements. All infiltration devices are to be clear of any vegetated landscaped areas (excluding grass only areas).
- [PCC1135]
15. Erosion and Sediment Control shall be provided in accordance with the following:
- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.
  - (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".
- [PCC1155]
16. An application shall be lodged and approved by Tweed Shire Council under Section 68 of the Local Government Act for any water, sewerage or drainage works (including connection of a private stormwater drain to a public stormwater drain, installation of stormwater quality devices or erosion and sediment control works) prior to the issue of a construction certificate.
- [PCC1195]
17. The applicant shall submit a detailed Landscaped Plan depicting proposed number of species and pot sizes, generally in accordance with the submitted 'Statement of Landscape Intent', Sheet 1-3, prepared by Planit Consulting dated March 2007. The Landscape Plan shall include the following amendments:
- use *Casuarina littoralis* instead of *Casuarina equisetifolia*,
  - use *Alectron Coriaceus* instead of *Pittosporum* sp.
  - use *Cyperus trinekosis* instead of *Ophiopogon japonica*.

The Landscape Plan shall be in accordance with the relevant Section 88B instrument and shall be submitted and approved by Council's Delegate prior to issue of the Construction Certificate.

[PCCNS01]

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

18. The proponent shall accurately locate and identify any existing sewer main, stormwater line or other underground infrastructure within or adjacent to the site and the Principal Certifying Authority advised of its location and depth prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure prior to start of any works.

[PCW0005]

19. 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]



20. 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]

21. Residential building work:

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

[PCW0235]

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

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

[PCW0245]

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

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and



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

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

[PCW0255]

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

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

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

[PCW0775]

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

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

This sign is to remain in position for the duration of the project.

[PCW0985]



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

[PCW1065]

#### **DURING CONSTRUCTION**

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

[DUR0005]

28. 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]

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

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

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

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

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

[DUR0215]

30. 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]

31. 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]



32. 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]
33. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Occupational Health and Safety Regulation 2001.  
[DUR0415]
34. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments".  
[DUR0795]
35. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house or building is strictly prohibited.  
[DUR0815]
36. The development is to be carried out in accordance with the current BASIX certificate and schedule of commitments approved in relation to this development consent.  
[DUR0905]
37. The nominated car wash bay must be identified for that specific purpose and be supplied with an adequate water supply for use. On-site car washing shall not occur in any location other than the nominated car wash bay.  
[DUR0975]
38. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate.  
[DUR0985]
39. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Occupation Certificate.  
[DUR0995]
40. All work associated with this approval is to be carried out so as not to impact on neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -
- Noise, water or air pollution
  - Minimise impact from dust during filling operations and also from construction vehicles



- **No material is removed from the site by wind**  
[DUR1005]
- 41. **All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.**  
[DUR1025]
- 42. **Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.**  
[DUR1795]
- 43. **The proponent must not undertake any work within the public road reserve without giving Council's Engineering & Operations Division forty eight (48) hours notice of proposed commencement. Failure to comply with this condition may result in a stop work notice being issued and/or rejection of the works undertaken.**  
[DUR1845]
- 44. **Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Design and Construction Specifications prior to any use or occupation of the buildings.**
- 45. **The existing street landscaping, including bollards shall be maintained or equivalent re-established, as required to undertake the approved works, along the frontage of the site.**  
[DUR1875]
- 46. **The proponent shall comply with all requirements tabled within any approval issued under Section 138 of the Roads Act.**  
[DUR1885]
- 47. **Where the kerb is to be removed for driveway laybacks, stormwater connections or any other reason, the kerb must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.**  
[DUR1905]
- 48. **Swimming Pools (Building)**
  - (a) **The swimming pool is to be installed and access thereto restricted in accordance with Council's "Code for the Installation of New Swimming Pools" and Australian Standard AS 1926-1986 (Copy of code enclosed).**
  - (b) **Swimming pools shall have suitable means for the drainage and disposal of overflow water.**
  - (c) **The pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.**  
[DUR2075]



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

[DUR2085]

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

[DUR2195]

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

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

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

[DUR2375]

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

[DUR2445]

54. 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]

55. 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]

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

[DUR2505]

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

[DUR2515]



58. All water plumbing pipes concealed in concrete or masonry walls shall be fully lagged.

[DUR2525]

59. 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]

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

[DUR2545]

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

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

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

[DUR2555]

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

[DUR2615]

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

The provision of adequate vehicular access shall be in accordance with Council's "Access to Property" pamphlet. the access shall provide the required 2m x 2m 'site triangle' envelope in accordance with Council's "Driveway Access To Property - Part 1 - Design Specification".

[DUR2625]

64. Dewatering activities are not permitted without prior approval from Council's General Manager or Delegate.

[DURNS04]

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



**Sediment and erosion controls must be installed and maintained in accordance with the Erosion & Sediment Control Plan prepared by Blueland Engineers April 2007.**

[DURNS05]

**PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

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

[POC0005]

- 67. 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]

- 68. Prior to occupation of the building the property street number is to be clearly identified on the site by way of painted numbering on the street gutter within 1 metre of the access point to the property.**

**The street number is to be on a white reflective background professional painted in black numbers 100mm high.**

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

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

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

[POC0265]

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

[POC0435]

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

[POC0985]

- 71. 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]



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

[POC1055]

**USE**

- 73. 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, odours or the like.**

[USE0125]

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

[USE0175]

- 75. 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 or glare creating a nuisance to neighbouring or adjacent premises.**

[USE0225]



**REPORT:**

**Applicant:** Mr T Lewis  
**Owner:** Kings Beach (No 2) Pty Ltd  
**Location:** Lot 172 DP 1031933 Kamala Crescent, Casuarina  
**Zoning:** 2(e) Residential Tourist  
**Cost:** \$5,200,000

**BACKGROUND:**


The subject site was created as part of Casuarina Beach subdivision (northern precinct). This subdivision was approved in accordance with Council's DCP section B5 – Casuarina Beach.



**SITE DIAGRAM:**



**Lot 172  
DP 1031933**

<p>© TWEED SHIRE COUNCIL 2007 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be responsible for any errors, omissions or inaccuracies in respect to the information supplied in this map. <b>DO NOT SCALE</b> <b>COPY ONLY - NOT CERTIFIED</b> P.O. Box 616 Murumbidgee NSW, 2484 Tel: (02) 8970 2429 Fax: (02) 8970 2488</p>	<p><i>Tweed Shire Council</i> <b>Lot 172 DP 1031933</b> <b>Kamala Crescent, Casuarina</b></p>		<p>PLANNING REFORMS UNIT <b>Site Plan</b></p>
<p>File: N:\mnsys\A4P - SITE PLAN\Wor</p>		<p>Author: J. Batchelor Date: 05/Nov/2007 Scale: 1:5,000</p>	<p>Sheet: 1 of 1</p>











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

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

**Tweed Local Environmental Plan 2000**

The subject site is located in the Residential Tourist Zone 2 (e) and multi-dwelling housing is allowed only with consent (item 2).

Zone 2 (e) Residential Tourist

The primary objective of this zone is to:

*“to encourage the provision of family-oriented tourist accommodation and related facilities and services in association with residential development including a variety of forms of low and medium density housing and associated tourist facilities such as hotels, motels, refreshment rooms, holiday cabins, camping grounds, caravan parks and compatible commercial services which will provide short-term accommodation and day tourist facilities.”*

The secondary objective of this zone is to:

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

Medium density residential accommodation is contemplated by the zone objectives. The proposal is consistent in this regard.

Clause 15 – Availability of Essential Services

The site has access to telecommunication, energy, sewer and water services. Conditions are imposed in relation to connection.

Clause 16 - Height of Buildings

The building consists of 3 storeys.

It is noted that the basement protrudes above the ground, however the distance between finished ground level and the floor above is approximately 1.2 metres, therefore the basement is not counted as a storey.

The proposal complies with the 3 storey height limit applicable to the site.



### Clause 17 – Social Impact Assessment

Section A13 – Socio-Economic Impact Assessment of Council's DCP requires a Socio-economic Impact assessment where more than 50 units are proposed within multi-dwelling housing.

It is not considered that the proposal is of sufficient scale or size to warrant a Socio-Economic Impact Assessment.

### Clause 34 – Flooding

Given the site has been previously filled above the flood level and is consistent with clause 34.

### Clause 35 – Acid Sulfate Soils

The site is identified as Class 4 Acid Sulfate Soils (ASS) which applies to any works below 2 metres. The proposal incorporates the construction of a basement car park with excavation works only required to a level of 1.8 metres below the ground surface level (RL +8.40m).

The site is highly disturbed due to previous land forming activities undertaken during subdivision.

With regard to the above, Council's Environmental Health Officer does not consider ASS to be a constraint.

### Clause 54 – Tree Preservation Order

The site is subject of a Tree Preservation Order 1990, however vegetation has been cleared as part of previous subdivision approvals and associated works.

### **North Coast Regional Environmental Plan 1988**

Clause 32B requires that the consent authority have regard to the NSW Coastal Policy 1997, the Coastline Management Manual and the North Coast: Design Guidelines.

The proposal is consistent with the abovementioned documents. It does not impede public access to the foreshore and does not result in overshadowing of beaches or adjacent open space.

Clause 43 requires that consent is not granted for residential purposes unless the density of dwellings is maximised without adversely affecting the environmental features of the site. Given that road layout, connections and clearing has previously occurred as part of subdivision approval, the proposal does not compromise clause 43.

## **State Environmental Planning Policies**

### SEPP No. 55 – Remediation of Land

The vacant site is located in an existing residential subdivision. Environmental Health Officers have confirmed that contamination issues were considered at the time of subdivision and contamination is unlikely to be a constraint.

### SEPP No. 65 – Design Quality of Residential Flat Buildings

The SEPP sets out 9 principles for design quality. These principles are addressed below:

- The proposal is generally consistent with the scale and bulk of surrounding development, which includes a mix of 2 and 3 storey dwellings in an urban / coastal environment.
- The built form is appropriate for its purpose.
- Orientation maximises breezes and views and the building footprint reduces impacts on surrounding residents.
- The density is consistent with surrounding density as identified below.
- A Basix certificate was lodged with the proposal demonstrating it achieves the required ESD level.
- A landscape intent has been submitted which includes a building entry statement, screen planting adjacent to the bin storage area, adjoining properties and adjacent to the pool. Landscaping at the rear allows for breezes and views in and out of the building, whilst providing for some screening.
- The proposal allows for sufficient amenity to future residents through provision of balconies for each unit and provision for cross ventilation.
- The proposal allows for overlooking of communal open space, while maintaining privacy through a permeable fence incorporating landscaped elements. Privacy of adjoining properties is preserved through distance, orientation and privacy screening.
- The proposal includes a mix of 2 and 3 bedrooms contributing to an increase in dwelling diversity.
- The proposal includes a variety of materials and colours contributing to a satisfactory quality, including blockwork render, ply cladding, timber and louvre screens and metal sheeting. Colours are of natural tones blending with the surrounding environment.
- A design review panel is not currently utilised by Council.

SEPP No. 71 – Coastal Protection

The proposal is within the Coastal Zone but does not require referral to the Department of Planning. The matters for consideration under clause 8 are relevant to the proposal.

The proposed development will not restrict public access or impact on views to the foreshore given its location from the water and surrounding height of development. The site is suitable for multi-dwelling development and is consistent with the zone objectives in this regard. It will not result in any impacts on water quality or fauna or flora given it has been previously cleared and filled. Standard conditions are proposed in relation to sediment and erosion control.

It is considered that the proposal is consistent with the matters under clause 8.

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

There are no relevant Draft Environmental Planning Instruments.

**(a) (iii) Development Control Plan (DCP)**

**A1 – Multi-Dwelling Housing and Tourist Accommodation**

An assessment has been undertaken against Section A1 of Council’s DCP and where alternative solutions are proposed they are below.

Site Planning and Design

*Site Density - Floor Space Ratio*

<b>Performance Criteria</b>	<b>Acceptable Solution</b>	<b>Proposed</b>
P1. The scale of new development is compatible with and sympathetic to the scale and bulk of existing development in the locality.	A1. Maximum floor space ratio of 0.5: 1.	The gross floor area is estimated at approximately 2,353m <sup>2</sup> and the site area is approximately 2,307m <sup>2</sup> .  The proposed floor space ratio is approximately 0.98:1.  Refer discussion Below

In justifying the proposed alternative, the applicant has argued that Council more commonly applies a floor space ratio of 1:1 to medium density sites.

This argument is accepted and it is noted that surrounding medium density approvals have floor space ratios in the order of 0.8:1. Bulk and scale are discussed in greater detail under ‘Building Envelope and Siting’.

*Site Density - Landscaped Open Space*

Performance Criteria	Acceptable Solution	Proposed
P2. New development is compatible with the desired future character of the locality.	A4. The minimum landscaped area required is 30% of site area (711.60m <sup>2</sup> ), or 60m <sup>2</sup> / small dwelling and 80m <sup>2</sup> / large dwelling = (1,480m <sup>2</sup> ) which ever is the greater.	Proposed landscape area is approximately 1270m <sup>2</sup> .  Refer discussion below.

There is a shortfall in provision of landscape of approximately 210m<sup>2</sup>.

In justifying the shortfall, the applicant has argued that the proposal complies with the Performance Criteria (P1 and P2 above) as follows:

- The proposal is consistent with the medium density intent identified on the original master plan approved for the site and confirmed by way of covenants attached to the land.
- The proposal will not result in any impacts in relation to overlooking and overshadowing.
- The shortfall in landscaped area does not result in a bulky or imposing building. The flat lines, reduced roof dominance and significant vertical and horizontal articulation ensure that the building remains interesting. The proposal affords generous setbacks to both the frontage and adjoining residents.

Further to the applicant's arguments, it is noted that development on Kamala Crescent is comprised of medium density multi-dwelling development at a height of 2 - 3 storeys. In particular, 3 storey multi-dwelling apartments (known as 'Drifters') are located opposite the site on Kamala Crescent (at Lot 177 and Lot 178 DP 1031933). These apartments are comprised of two buildings of mirrored design. 'Drifters' contributes to a distinctive medium density, multi-storey urban character within Kamala Crescent due to the following characteristics:

- Each Drifters building is comprised of approximately 41 dwellings;
- Buildings are 3 storeys with an estimated height of approximately 10.8 metres; and
- Whilst the shape of Lots 177 and 178 are generally curved, the total building length adjoining Kamala Crescent is estimated at 100 metres (for each building).

It is considered that the proposed building is consistent with the existing character of Kamala Crescent, particularly in regards to bulk and scale. It has a height similar to that of buildings located across the road and has a length of approximately 60 metres as viewed from Kamala Crescent. This is comparable, if not less than the existing scale and bulk displayed by Drifters apartments.



Whilst dwellings to the south (at the rear of the site) are also in the 2 (e) Medium Density Zone and have a 3 storey height limit, they display a detached, smaller scale character at 1 – 2 storeys. Notwithstanding, the design of the proposed building is sympathetic to dwellings at the rear (as discussed further in this report).

In summary, the proposal meets the Performance Criteria relating to floor space ratio and landscaping. The building is compatible with the character of Kamala Crescent.

### A1.2.2 Design Element – Streetscape

#### *Streetscape, Building Appearance and Front Setbacks Fencing and Walls*

Performance Criteria	Acceptable Solution	Proposed
P1. The design sets out the role of proposed front fences. P2. Front fences and walls: <ul style="list-style-type: none"> <li>• Enable outlook for surveillance;</li> <li>• Provide visual interest to the streetscape;</li> <li>• Are constructed of compatible materials; and</li> <li>• Are compatible with facilities in the street frontage area.</li> </ul> P4. Front fences and walls enable, the creation of private open space between the building and the street (where necessary and acceptable).	A1. Front fences should be no more than 1.2m if solid.	Elements in the front fence are greater than 1.2m. Refer discussion below.

Whilst the proposed fence is partially greater than 1.2m in height (where adjacent to the public walkway and adjoining the proposed pool) it is considered that the front fence demonstrates desired elements outlined in the Performance Criteria above. The fence elements greater than 1.2 metres in height are partially permeable allowing for outlook, whilst providing for some screening to the pool proposed between the street and the building (through landscaping).

Furthermore, the fencing adjoining the street includes a variety of materials including timber battens and masonry piers. The proposed fence is considered to comply with the Performance Criteria above.

A1.2.3 – Design Element – Building Design and Siting

*Building Envelope and Siting*

Performance Criteria	Acceptable Solution	Proposed
<p>P1. Buildings are sited and are of such length and height that there is no significant loss of amenity to adjacent dwellings and land. This can be achieved through:</p> <ul style="list-style-type: none"> <li>• Setbacks that are progressively increased vertically to reduce bulk and overshadowing while maintaining adequate daylight and sunlight;</li> <li>• Building forms that enable a sharing of views;</li> <li>• Building bulk that is generally distributed to reduce impact on neighbours and on the public street;</li> <li>• Building heights similar to those in the public streetscape, with higher buildings sited behind and out of direct view from the street; and</li> <li>• Boundary walls limited in length and height to minimise the impact on neighbours.</li> </ul>	<p>A1. Buildings are sited within a specified building envelope</p> <p>Setbacks</p> <p>A3. A minimum of three (3) metre setback from side and rear boundaries</p>	<p>Alternatives proposed in relation to side setback and building envelope.</p>

*Building Envelope*

The proposal does not comply with the defined building envelope. A portion of unit 210 on the north-western side of the building protrudes from the building envelope, as does the stair and lift well on the south-western side of the site. The entrance ramp and lobby on the ground floor are located on the south-eastern boundary within the 3m setback area.

In justifying the non-compliance, the applicant has argued that no overlooking or shadow impacts are attributed to these encroachments. The applicant also argues that:

- The proposed height, scale, bulk and length of the development is not excessive having regard to the 2 (e) zone, the identification of the site within a medium density precinct of the Casuarina Beach Master Plan and the type of medium density development in the surrounds.
- The proposal includes substantial articulation and material variation along all elevations to avoid long monotonous walls; and
- The design of the building is such that there are no encroachments into the height plane to Kamala Crescent frontage.

It is considered that the proposed minor departure from the building envelope is acceptable as it is consistent with the Performance Criteria above and will not result in significant loss of amenity to adjacent dwellings. In particular:

- The design reduces direct overlooking through the orientation of balconies and screening. Whilst minor balconies are proposed at the rear, these are to allow for access to sunlight and breezes.
- The impacts of shadow are acceptable given adjoining dwellings to the south and south-west will have access to sun between 12-2pm on the winter solstice allowing for at least 2 hours of sunlight to primary ground level open space areas.
- The height of building is similar to that of existing buildings in Kamala Crescent.

#### *Setbacks*

The encroachment into the side boundary setback area is considered acceptable in this instance given the ramp has a tapered height up to 1.8 metres and the wall of the entrance lobby on the boundary is limited to 5 metres in length and one storey in height. The reduced setback is generally limited to the ground floor as the first and second levels are located between 2 and 3 metres from the side boundary.

The reduced setback to the south-eastern side boundary is not likely to impact on the amenity of adjoining dwellings given a public footpath (5 m in width) is located between the subject boundary and the adjacent property. The real distance between the wall of the proposed building and the building on the adjacent property is approximately 12 metres.

Views, Visual and Acoustic Privacy

Performance Criteria	Acceptable Solution	Proposed
<p><b>View Sharing</b> P1. Views should not be substantially affected where it is possible to design for the sharing of views.</p>	<p>A2. Direct views between living area windows of adjoining dwellings should be screened or obscured where windows are within 9m radius from any part of the window of the adjoining dwelling (or 12 m above first level) (privacy sensitive zone).</p>	<p>All adjacent dwellings are located dwellings at least 12 metres from the proposed building, except for one dwelling situated to the west of the site which is located approximately 5 metres from proposed building. Refer Discussion below.</p>
<p>P3. The privacy of buildings and outdoor spaces is protected.</p> <p>P4. Direct overlooking of main internal living areas and private open spaces of other dwellings is minimised by building layout, location and design of windows and balconies, screening devices and landscape or by remoteness.</p>	<p>A3. Direct views from living rooms of dwellings into the principal area of private open space of other adjoining dwellings should be screened or obscured within a privacy sensitive zone.</p> <p>Direct views may be screened by: 1.8m side fences or walls, screening that has a maximum area of 25% openings and or screen planting.</p>	<p>Refer Discussion below.</p>

It is considered that the proposal adequately addresses the privacy and overlooking Performance Criteria. Whilst the closest dwelling at the rear is approximately 5 metres from the north-western wall of the proposed building, there are no view lines to private open space as privacy screening is incorporated into the architecture of the western elevation and window sizes are limited. All living space areas are orientated away from adjoining properties and onto Kamala Crescent.

Minor balconies are proposed on the southern elevation, with screening of the rear access corridor to protect properties to the rear.

Ground level privacy at the rear is protected through proposed landscaping and 1.8 metre fencing.

Open Space

Performance Criteria	Acceptable Solution	Proposed
<p><b>For Private Open Space</b>            P1. Open space is clearly defined to distinguish between communal and private open space.            P2. Open space areas are of dimensions to suit the projected requirements of the dwelling occupants, and to accommodate some outdoor recreational needs as well as providing space for service functions.            P3. Part of the private open space is accessible from a main living area of the dwelling and capable allowing for relaxation, dining, entertainment, recreation and children's play (etc.).            P4. Open space is located to take advantage of outlook, natural features of the site and take account of the impact of adjoining dwellings on privacy and overshadowing.            P5. Orientation to ensure good solar access and provision of shaded areas.</p>	<p>A1. Private open space for the multi dwelling housing requires minimum area of 20% of the site area (474.4m<sup>2</sup>), with a minimum dimension of 3m and with one part with an area of 25 m<sup>2</sup> and a minimum dimension of 4m.</p>	<p>The total area of balconies provided for each unit is estimated at approximately 570m<sup>2</sup>.</p> <p>Refer discussion below on dimensions.</p>

Whilst the total area of balconies proposed for the development exceeds the required amount for private open space, alternatives are proposed in relation to dimensions. Not all dwellings have an area of 25m<sup>2</sup> in one locality or have a minimum dimension of 4 metres.

Notwithstanding, it is noted that the proposed balconies have dimensions that allow for entertaining areas. Type 2c apartments have an area of 17m<sup>2</sup> with a minimum dimension of 3.9metres. It is considered that the proposal complies with the intent of the Performance Criteria above, particularly given the area of communal open space area provided. In particular, it is noted that:

- Open space areas are accessible from the main living areas;
- Primary balconies are orientated towards Kamala Crescent, protecting privacy of dwellings to the rear.
- Primary balconies are located on the northern side allowing for favourable solar access.
- Communal open space areas are embellished to maximise usability (through the use of landscaping and incorporation of a pool and decking).

## **A2 – Site Access and Parking**

The amended plans include 16 x two bedroom units and 4 x three bedroom units. Car parking requirements equate to 37 spaces, calculated as follows:

- 1.5 spaces / each 2 bedroom unit (24)
- 2 spaces / each 3 bedroom units (8)
- 1 visitor space / 4 units (5)

The total number of car parking spaces required is 37. The proposal complies in this regard.

A single car wash is proposed (although section A1 of Council's DCP requires 2). Notwithstanding, Council Officers consider that the provision of one car wash bay is sufficient in this instance.

## **A9 – Energy Smart Homes**

The applicant has submitted a BASIX certificate which demonstrates targets for water, energy and thermal comfort are met.

## **B5 – Casuarina Beach**

Section B5 of the DCP is mostly relevant to Greenfield subdivision development and was applied at the subdivision stage.

Notwithstanding, clause 2 (d) requires walls to be at least 900mm from side boundaries and eaves to be setback 675mm from side boundaries. As identified previously, the proposed entry lobby and ramp are located on south-eastern boundary.

As discussed above, the encroachment into the side boundary setback area is considered acceptable given the public footpath located between the site boundary and adjacent property.

## **B9 – Tweed Coast Building Heights**

### *Section B18.2.2 – Building Height*

An alternative is proposed in relation to building height requirement for 3 storey residential development. It is required that the distance from finished ground level to the uppermost ceiling or top plate of the highest external wall is 9 metres. This distance is proposed to be approximately 9.8 metres.

This alternative is considered acceptable given the building complies with the required maximum height for the building as a whole, specified in A2 (the distance measured from the finished ground level to the highest point on the ridge of the roof). This distance relates to the real height of the building as perceived externally.

### *Section B18.2.3 – Building Setbacks*

A2 requires a setback of 3 metres from the side boundary and that buildings are located within a specified building envelope. As addressed above, encroachment in relation to the side setback and building envelope are considered acceptable, with regard to the related Performance Criteria.

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

As identified above, the proposal is consistent with the Government Coastal Policy.

The proposal does not require demolition of a building and does not result in a change of use or alterations to an existing building.

**(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**

Access, Transport and Traffic

The site has been nominated as a Tourist Facility site and therefore the surrounding roads have been sized to cater for such development. The development will generate an increase in traffic, but the existing road infrastructure is of adequate width to contain such an increase. No upgrade of Kamala Crescent is required.

A single car wash bay is proposed in the basement, in accordance with Council Officer's request. Although Council's Consolidated DCP requires a car wash bay for every 10 units, Council's Engineer is satisfied that the provision of one car wash bay is sufficient in this instance.

The basement allows for appropriate manoeuvring, however a condition is recommended to ensure that the 2m x 2 m triangle driveway envelope is provided at the boundary of the basement access ramp.

Stormwater

An Amended Stormwater Management Plan (SWMP) was submitted, prepared by BlueLAND Engineering. The Amended SWMP references On Site Detention, however Council's Engineer has recommended that conditions are imposed to ensure OSD units are located outside of landscaped areas (excluding grass only) such that plant root systems will not interfere with the integrity of the units. Further, any overflow of the rainwater tanks must be discharged into the infiltration pit/s.

An oil / grit separator is required for stormwater quality and is proposed to treat any basement stormwater runoff. Conditions in regards to Council's relevant standards will be imposed in this regard.



### Erosion and Sediment Control

A 'Soil and Water Management Plan' has been prepared by BlueLAND Engineering, in lieu of an Erosion and Sediment Control Plan, which Council's Engineer considers acceptable.

### Dewatering

Dewatering is not required as it is anticipated that groundwater exists some 7 metres below surface levels. Excavations are in the order of 1.8metres.

### Soils

Contamination is not likely to be an issue for the site as this matter was considered at the time of subdivision.

Surface and depth radiation monitoring for the site was completed at the time of subdivision. The level of radiation was considered satisfactory for the intended use.

The site is class 4 ASS which applies to any works below 2 metres. The proposal incorporates a basement car park to the depth of 1.8m below ground surface level. The site is highly disturbed due to previous land forming activities undertaken during the subdivision and ASS are not considered to be a constraint.

### Waste

A screened and landscaped refuse storage area is proposed and the location and size of the refuse area is considered to be adequate by Council's Environmental Health Officer.

### Flora and Fauna

The site has been previously cleared and filled as part of the previously approved subdivision.

### Site Design / Internal Design

#### *Bulk / Scale*

As identified above, the bulk and scale of the building is within the order (if not consistent) with existing development on Kamala Crescent.

The proposal includes a variety of materials including blockwork render, face blockwork, ply cladding, timber screening louvre screen and metal sheet. Furthermore, significant areas of glazing are proposed on the street elevation, providing for an active front. Overall, it is considered that the design allows for significant articulation and passive surveillance.



The colour scheme proposed consists of un-obtrusive colours including 'off-white' and earthy greys and are satisfactory in this regard.

#### *Overshadowing*

The applicant has submitted shadow diagrams which demonstrate that the impact of shadow on adjoining properties will be acceptable. Dwellings to the south-west are generally out of the shade between 12pm and 4pm on the winter solstice (21 June).

#### *Overlooking / Privacy*

As identified previously above, the design limits overlooking and impacts on privacy primarily through the orientation of balconies. Screens, landscaping and fencing are also proposed to mitigate potential privacy concerns.

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

With regard to the character of medium density development existing in Kamala Crescent and the intent of the 2 (e) Residential Tourist zone, which contemplates a "medium density", the site is considered suitable for the development.

Furthermore, the site is of sufficient size to ensure that amenity of adjoining dwellings is maintained and future residents of the building have sufficient solar access and open space / landscaped areas.

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

In response to advertising, Council received a total of 31 submissions during the advertising period (one of which was anonymous). An additional submission was received outside the advertising period by an objector who had previously lodged a submission.

The issues raised by submitters are summarised below, followed by Council Officers comments in italics:

#### Solar Access / Overshadowing

There is concern that private open space areas will experience loss of solar access due to overshadowing.

*It is noted that the properties to the rear experience some shadow during the morning, however submitted shadow diagrams indicate that they are generally out of shadow from 12noon onwards on the Winter Solstice 21 June. This is considered an acceptable impact, allowing for over 2 hours after the middle of the day.*

### Privacy / Overlooking

There is concern that the access corridor and balconies will have direct views into private open space areas of adjoining dwellings.

*It is noted that the applicant has included large areas of louvre screen along the corridor proposed at the rear to reduce the impact of overlooking. The corridor is proposed for only part of the length of the second storey. The balconies proposed at the rear are limited in size and designed so that they allow for breezes as opposed to living space. It is considered that the design limits the impact of overlooking to an acceptable level.*

### Density

There is concern that the density proposed is inappropriate as the site is not at the core of Kamala Crescent.

*It is considered that the density of the site is consistent with that of the surrounding multi-dwelling housing. The applicant has submitted an analysis of density and found that density is in the range of 1 dwelling per 112m<sup>2</sup> to 1 dwelling per 221m<sup>2</sup>. The proposed density is 118.6m<sup>2</sup>, within the existing range.*

### Car Parking

There is concern that the proposal will place pressure on the limited parking in Casuarina.

*The proposal meets Council's car parking requirements within the basement.*

### Basement Level

There is concern that the basement level protrudes 1.2metres from the proposed finished ground level as this increases the impacts on privacy and amenity (noise).

*Council's DCP allows basements to protrude above ground for up to 1.5 metres, after which they are counted as a storey.*

### Breeze

There is concern that breezes from the north-east will be limited.

*Any 3 storey building proposed at the site may alter current breezes experienced by surrounding residents given the site is currently vacant. However, given that the proposal is compliant with the intent of the zone and the maximum height limit for the site, potential impacts on breeze is not considered sufficient grounds for refusal.*

### Floor Space Ratio / Building Envelope

There is concern that the proposed floor space ratio (0.9:1) exceeds the acceptable solution (0.5:1). There is a concern that the building is too bulky for the surrounding character

*The proposed floor space ratio is compatible with that of surrounding development. The building length and height is also compatible with existing buildings located in Kamala Crescent.*

### Height

There is concern that the building is too high. The original proposal, whilst complying with the 3 storey height limit identified by the LEP, the actual overall height exceeded the 11m limit specified in the Consolidated DCP.

*Whilst an alternative solution is sought in relation to upper ceiling height, the proposal has been amended by reducing the height to comply with the overall external height limit identified by the DCP (discussed above in B9 Tweed Coast Strategy*

### Front Fence

There is concern that the proposed fence exceeds 1.2 metres.

*Those elements exceeding 1.2 metres in height are permeable. The proposed fence is considered acceptable with regard to its landscape elements and materials.*

### Private Open Space and Landscaped Open Space

There is objection that not all units have 25m<sup>2</sup> private open space. There is also concern that the communal recreational area does not provide sufficient area for residents to recreate.

*Whilst not all dwellings have balconies of 25m<sup>2</sup>, each balcony is sufficient depth and size to allow for usability. The proposed communal open space area is considered acceptable as it allows for both a bbq facility and a pool. It is noted that Council's DCP does not specify a minimum area for communal open space areas. With regard to the location of the site within close proximity to the beach, the areas of private open space and communal open space are considered acceptable.*

### Architectural Intent

There is concern that the proposal has straight lines and does not respond to the beachside aesthetics.



*The proposed building is considered to be well articulated and designed to maximise solar access and achieve cross ventilation. A variety of materials are proposed and colours are unobtrusive and compatible with the surrounding environment.*

**(e) Public interest**

The proposal is not considered contrary to any public interest.

**OPTIONS:**

1. Approve the proposal subject to conditions.
2. Defer the proposal and delegate determination to the Director of Planning and Regulation.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

The applicant has a right of appeal in the NSW Land and Environment Court should they be dissatisfied with the determination of the application.

**POLICY IMPLICATIONS:**

The proposed development has been assessed on its merits and does not generate a policy implication for Council.

**CONCLUSION:**

Council has received an application for a three storey apartment building comprised of 20 units.

The proposal is compatible with the zone objectives and the maximum height limit.

Whilst there are alternatives to the acceptable solutions in the DCP in relation to setbacks, landscaped open space and building envelope requirements, the proposal is considered to be consistent with the associated performance criteria as it displays a building form consistent to that in the streetscape.

Furthermore, the proposal has been designed to limit impacts on dwellings at the rear through orientation of balconies and use of landscaping, screening and fencing to reduce impacts on privacy.

The Council received 31 submissions in response to the development. It is considered that the matters raised by submitters have been adequately addressed in the application, with regard to Councils LEP and DCP.



**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**P6 [PR-PC] Development Application DA07/0805 for Construction of Cudgen Creek Pedestrian/Cycle Boardwalk Between Clough Way and Marine Parade and Pedestrian/Cycle Path Between Cudgen Creek and Moss Street, Kingscliff**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA07/0805 Pt1**

**SUMMARY OF REPORT:**

Council has received a development application from the Tweed Shire Council Design Unit for a shared pedestrian and cycleway boardwalk and path along Cudgen Creek foreshore between Clough Lane and Marine Parade, and thence along Marine Parade at Kingscliff.

Construction of this section of boardwalk and path will complete one of the few missing sections of a pedestrian/cycleway access along the Tweed Coast from Pottsville to the Queensland Border. The project is identified as a priority in a number of adopted Council documents, including the Tweed Coast Estuaries Management Plan for Cudgen, Cudgera and Mooball Creeks. It has been included in topics the subject of significant community consultation, subsequently being identified as the preferred option. The project is funded from Section 94 developer contributions with matching funding from the State Government under the Coastline Cycleways program and funds are available in the current budget.

The proposal attracted six public submissions, with two being in favour of the project and four from adjacent residents being against. The issues raised in submissions have been addressed within this report and it is considered that any local adverse impacts are able to be addressed via consent conditions and that the proposal would provide significant public benefit.

The proposed boardwalk will be constructed from timber with an overall length of 230 metres and width of 3.3 metres. An existing 60m section from Clough Lane will be widened to 3 metres to accommodate bicycles, while the remainder will be newly constructed and connect to a new slab-on-ground concrete footpath at the southern end of Marine Parade.

Footings for the boardwalk would be constructed into the rock substrate or cored to bedrock in the case of overlying sands. A 30 metre section of existing revetment wall is proposed to be reinstated and the boardwalk constructed over the top of this wall.





The boardwalk superstructure would be located a minimum of 300 mm clear of existing property boundaries. Any existing permitted access pathways to the creek and pontoons will not be severed as part of this proposal. Balustrade would be provided on both sides of the boardwalk as a safety measure.

There is sufficient space available for a works compound for the storage of materials at either end of the project.

Works are proposed for the Council-owned road reserve in Marine Parade and Crown land waterway in Cudgen Creek administered by the Department of Lands. Owner's consent and a short-term licence for construction of the boardwalk have been issued by the Department of Lands and the boardwalk is proposed to be added to Council's ongoing licence covering structures within waterways. This licence places the onus upon Council for maintenance and public liability.

The main issues for consideration are:

- Potential impacts on flora and fauna and on the waterway itself;
- Safety issues including potential flooding impacts, potential conflict between pedestrian and cyclist use and any potential impacts upon adjacent residents;
- Visual impacts in an area of high amenity;
- Potential noise impacts upon adjacent residents;
- Ensuring work occurs entirely on public land where private properties run to Mean High Water Mark

#### **RECOMMENDATION:**

**That Development Application DA07/0805 for construction of Cudgen Creek pedestrian/cycle boardwalk between Clough Way and Marine Parade and pedestrian/cycle path between Cudgen Creek and Moss Street, Kingscliff be approved subject to the following conditions: -**

#### **GENERAL**

1. **The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos WT000051/01 to 07 prepared by Tweed Shire Council and dated 02.05.07, except where varied by the conditions of this consent.**

[GEN0005]

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

[GEN0115]

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

[GEN0135]

4. **Advisory safety signage in pictorial and word format shall be installed in appropriate locations for maximum visibility in accordance with RTA Technical Direction TDT 2001/07 Level 2 Behavioural Messages. Signage is to include advisory signs for pedestrians and cyclists to ‘keep left’; ‘ring cycle bell when approaching pedestrians from behind’; ‘move off the path when stopped’ and ‘control your dog’. Centre linemarking shall be provided in accordance AustRoads Standards Australia Part 14 - Guide to Traffic Engineering Practice “Bicycles”.**

[GENNS01]

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

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

[PCC0285]

**PRIOR TO COMMENCEMENT OF WORK**

6. **The proponent shall accurately locate and identify any existing sewer main, stormwater line or other underground infrastructure within or adjacent to the site and the Principal Certifying Authority advised of its location and depth prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure prior to start of any works.**

[PCW0005]

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



- (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
    - (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
      - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
      - (ii) notified the principal certifying authority of any such appointment, and
      - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.
- [PCW0215]
8. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.
- [PCW0225]
9. Where prescribed by the provisions of the Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
  - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (c) stating that unauthorised entry to the site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

[PCW0255]

#### **DURING CONSTRUCTION**

10. Construction site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council: -
- Monday to Saturday from 7.00am to 5.00pm**
- No work to be carried out on Sundays or Public Holidays**
- The proponent is responsible to instruct and control subcontractors regarding hours of work.

[DUR0205]

11. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).  
[DUR0375]
12. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.  
[DUR0405]
13. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Occupational Health and Safety Regulation 2001.  
[DUR0415]
14. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate.  
[DUR0985]
15. All work associated with this approval is to be carried out so as not to impact on neighbourhood, adjacent premises or 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]
16. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.  
[DUR1025]
17. All works shall be carried out in accordance with Councils Acid Sulfate Soils Management Plan for Minor Works. A signed copy of this Management Plan shall be submitted to Council prior to the commencement of works.  
[DUR1075]
18. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils adopted Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.  
[DUR1875]



19. A pre-construction inspection shall be undertaken by Council's Environmental Scientist, Project Engineer and the contractor to identify final pier locations, to avoid impacts wherever possible on existing vegetation.

[DURNS01]

20. Regular inspections are to be carried out by the site supervisor to ensure that proper sediment & erosion control measures are maintained during construction in accordance with the Erosion & Sediment Control Plan WT000051/07.

[DURNS02]

**PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

21. 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]

22. On completion of work a certificate signed by a practising structural engineer is to be submitted to the Principal Certifying Authority to certify the structural adequacy of the structure.

{POC0805}

**REPORT:**

**Applicant:** Tweed Shire Council  
**Owner:** Tweed Shire Council  
**Location:** Cudgen Creek Boardwalk Between Clough Way and Marine Parade and Cycleway Between Cudgen Creek and Moss Street, Kingscliff  
**Zoning:** Uncoloured  
**Cost:** \$450,000

**BACKGROUND:**

Council's Section 94 Contributions Plan has long identified the creation of cycleways / walkways along the coast as a priority. Over time, this has resulted in an almost continuous, reasonably flat path available to the public for most of the Shire's length, from Pottsville through to the Queensland border. Missing links at Seaside City and across Cudgen Creek at Kingscliff will be completed within the next year, however, there remains one section to be constructed along the foreshore of Cudgen Creek between Clough Lane and the boat ramp on Marine Parade, thence along Marine Parade to Moss Street.

A section of boardwalk has been constructed from the Coastguard boat shed in Ed Parker Rotary Park to about 60m west of Clough Way. Pedestrian/cycle access to Marine Parade is then via Clough Way and Moss Street. There remains no general public foreshore access from this point through to the Kingscliff boat ramp at the southern end of Marine Parade and the current connection via Clough Lane and Moss Street contains a steep grade and narrow footpath shared by both pedestrians and cyclists.

The construction of this section of boardwalk has been identified as a priority in both the 1997 (WBM) and 2005 (Australian Wetlands) adopted versions of the *Tweed Coast Estuaries Management Plan for Cudgen, Cudgera and Mooball Creeks* in order to improve public access along the foreshore. Both plans involved extensive community consultation to assist in determining community values, issues and appropriate management actions.

Further consultation with Kingscliff residents occurred in 2004 to determine the preferred option for pedestrian and cycle access across and along the creek. At this time two main options were exhibited, being;

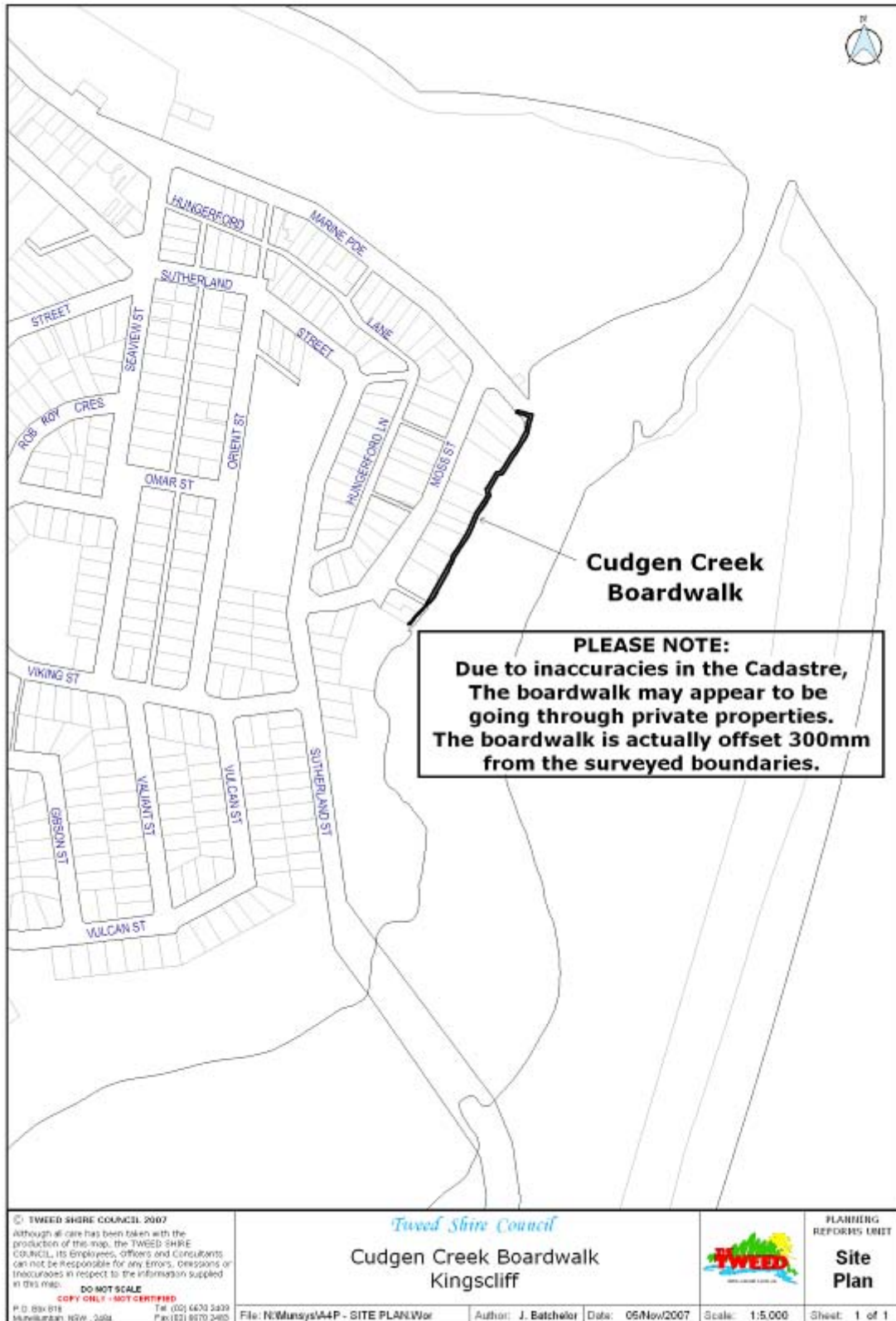
1. A separate shared pedestrian/cycle bridge crossing Cudgen Creek at the end of Marine Parade, with the path then continuing along Sutherland Point to rejoin the existing path south of the current traffic bridge;
2. A shared pedestrian/cycle path and boardwalk along the northern side of Cudgen Creek foreshore and construction of a pedestrian/cycle bridge in the location of the current traffic bridge.



Compilation of submissions and comments from public meetings showed a clear community preference for the latter option. The proposal subject of this report is part of the chosen option and will link with the existing section of boardwalk.



**SITE DIAGRAM:**





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

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

Tweed Local Environmental Plan 2000

The proposed development is defined as an *environmental facility* under the Tweed Local Environmental Plan, which is described as:

a structure or work which provides for:

- a) *nature study or display facilities such as walking, boardwalks, observation decks, bird hides or the like, or*
- b) environmental management and restoration facilities such as bush restoration, swamp restoration, erosion and runoff prevention works, dune restoration or the like.

*Clause 11 – Zoning / Clause 13 – Development of uncoloured land*

The subject site is on uncoloured land on the zoning map. As such there are no specific zoning provisions applicable to this parcel of land. Notwithstanding, *Clause 13* relates to development of uncoloured land and sets out objectives for the appropriate development of such land, ensuring that it is compatible with surrounding land uses and zones and further ensuring that development of certain waterways takes account of environmental impacts and other users of the waters.

In accordance with those objectives, assessment of the proposed boardwalk shall consider the following:

- a) Whether the boardwalk is compatible with development permissible in the adjoining zone and the character and use of existing development in the vicinity, and
- b) Whether or not the boardwalk would alienate the use of the waters of the creek from recreational users or from commercial fishing, and, if so, whether there is sufficient area in the locality for those uses to mitigate the adverse effect of the proposed development on those uses, and
- c) The provisions of any coastal, estuary or river plan of management in force from time to time that applies to the unzoned land or land in the vicinity, and
- d) Any impacts the boardwalk (and/or its construction) may have on the natural environment

Land adjoining the subject site on the northern side is zoned 2(b) Medium Density Residential, on which environmental facilities are allowed without consent, whilst the eastern end of the cycleway abuts land zoned 6(a) Open space, which also allows a boardwalk without consent. It should be noted here that the potential presence of acid sulphate soils requires development consent in this instance. Adjoining land use includes residential unit developments and public parkland. Given the boardwalk is a facility available for public recreational use that will allow for movement along and to the creek whilst maintaining existing gates to private land, it is considered appropriate for the site and a suitable development considering existing development in the vicinity.

There are no commercial fisheries operating in Cudgen Creek in the vicinity of the proposed boardwalk or in Cudgen Lake, meaning there is no requirement to consider commercial vessels in this area. The Department of Maritime services have made the following comments on the proposal:

- The area for proposed development does not impede any fairway or channel;
- The area for proposed development will extend into navigable waters;
- The area for proposed development is not used for commercial traffic and other vessel traffic density is low; and
- The NSW Maritime has no navigational objections to the proposed boardwalk on Cudgen Creek.

The provisions of the Tweed Coast Estuaries Management Plan 2004-2008 have been considered and the proposal is in accordance with the Cudgen Creek Estuary Management Plan in its aim to provide pedestrian access along Cudgen Creek.

The potential impacts of the boardwalk and its construction on the natural environment have been identified and measures to minimise and/or mitigate such impacts are specifically discussed later in this report. Some impact on the natural environment may occur from shading of vegetation at various locations along the bank. Direct impact to vegetation can mostly be avoided due to the flexibility in the final location of pier sets. Where boardwalk widening occurs, existing piers will remain in-situ to limit disturbance to the bed of the creek.

#### *Clause 31*

Clause 31 applies to all land adjoining the mean high water mark. The relevant provisions for this proposal relate to the impact of the development on the scenic qualities, water qualities, aquatic ecosystems, bio-diversity and wildlife habitat and corridors. A table listing potential impacts and mitigation measures for each has been prepared that addresses the impacts of the bridge (and construction) and identifies measures to reduce and ameliorate any identified impacts.



### *Clause 33*

Clause 33 applies to development on land affected by coastal processes. The proposal is consistent with this clause, as the proposed boardwalk is considered to have negligible impact on the dynamics of the creek bed.

### *Clause 34*

The objective of clause 34 is to minimise future potential flood damage and adverse effects of flooding on the community. Flooding of the pedestrian footbridge is a possibility, however would only occur in extreme circumstances with a combination of both river flooding and high ocean surge conditions. The proposal is not considered to result in any significant change to flood flow patterns.

### *Clause 35*

Clause 35 relates to all land identified as containing potential acid sulfate soils and requires an assessment of the likely impacts of acid sulfate soils. The area of proposed works is identified as having potential Class 1 acid sulfate soils within Cudgen Creek waterway, however, the proposal is not expected to impact on acid sulfate soils as pier sets will be constructed into rock located at the foot of the banks along the estuary. All pier sets along the toe of bank will be tidally influenced and therefore oxidisation of potential ASS is unlikely to occur. As the amount of soils likely to be removed from site is less than 10 tonnes, soils can be managed in accordance with Council's Acid Sulfate Soils Management Plan for Minor Work.

### North Coast Regional Environmental Plan 1988

The provisions of the North Coast Regional Environmental Policy are a relevant matter for consideration in the assessment of this proposal.

### *Clause 15*

The relevant provisions of Clause 15 require consideration of the potential impacts of the proposed development upon local waterways and wetlands, the adjacent estuary foreshore and river water quality; and any anticipated loss of habitat, pollution or native vegetation disturbance.

Some short-term impacts on the creek are anticipated in terms of sediment disturbance, habitat disturbance and reduced water quality. However, Council is satisfied that the measures proposed to reduce, and avoid where possible, adverse impacts on the waterway and foreshore are satisfactory given the short term nature of the anticipated disturbances. Such measures are discussed in greater detail under separate heading in later sections of this report.

In terms of vegetation disturbance, no threatened species are likely to be impacted as a result of the proposal. Notwithstanding, a small area of saltwater couch exists adjacent to the proposed development site. Flexibility in final pier location will avoid impacts on this species. Potential risks to the aquatic environment include sedimentation, pollution from concrete works, and vegetation shading. Measures proposed to avoid detrimental impacts are addressed under separate heading in later sections of this report.

#### *Clause 32B*

The provisions of Clause 32B specify that all development within the region to which the NSW Coastal Policy 1997 applies must consider the provisions of that policy, the Coastline Management Manual and the North Coast: Design Guidelines. Given the design and nature of the boardwalk, it is considered Council is satisfied that the proposal would not cause significant overshadowing of waterfront open space, nor impede public access to the foreshore area. On the contrary, the pedestrian footbridge and cycleway would increase public access to both the southern and northern open space and recreation foreshore areas. Hence the proposal is considered consistent with the aims and objectives of the abovementioned documents and Clause 32B.

#### *Clause 81*

Clause 81 refers to all land within 100 metres of the ocean or a substantial waterway and requires Council to be satisfied that sufficient accessible foreshore open space will be available and that the development will not detract from the amenity of the waterway. Provision of a pedestrian pathway and cycleway will provide the final link to existing access along the Cudgen Creek foreshore, improving access to areas of public foreshore reserve upstream and downstream of the proposal.

This clause also requires Council to be satisfied that the proposal is consistent with any foreshore plan of management applying to the area. The proposal is consistent with the Cudgen, Cudgera and Mooball Estuary Management Plan 1997 and the reviewed plan (June 2004), as discussed under separate heading later in this report.

#### State Environmental Planning Policies

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

The subject site falls within the coastal zone as identified under SEPP 71 and as such the provisions of the policy are a relevant matter for consideration. As the proposal is within a sensitive coastal location, and also involves work below the mean high water mark, the application was referred to the Department of Planning for comment under the provisions of SEPP 71.

Furthermore, the items contained in Clause 8 of the policy are also a relevant matter for consideration. These items relate to the potential impacts of the development on public access to the foreshore, views, overshadowing of the foreshore, existing wildlife corridors, the suitability of the site for the development and measures to reduce other adverse environmental impacts. Having regard to the nature of the proposal, the measures proposed to reduce environmental impact; and the increase in public access to the foreshore that will be facilitated as a result of the new boardwalk, Council is of the opinion that it is consistent with the matters for consideration under Clause 8 and is a suitable development for the site.

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

There are currently no Draft Environmental Planning Instruments that are relevant matters for consideration in the assessment of this proposal.

**(a) (iii) Development Control Plan (DCP)**

*Development Control Plan Section A3 – Development of Flood Liable Land*

Flooding in the locality is only expected as a result of interactions between river flooding and large ocean surge conditions, and tends to be governed by the bathymetry of the Cudgen Creek mouth. Certification as to the structural integrity of the boardwalk considering its position in a dynamic environment has been conditioned.

*Development Control Plan Section B16 - Kingscliff*

The subject site falls within the area covered by Development Control Plan Section B16 Kingscliff. The proposal is consistent with the intent and vision of the plan, whereby “additions to the cycleway/pedestrian network will reinforce Kingscliff’s image as a pedestrian friendly town.”

*Development Control Plan No. 51 – Tweed Coast Strategy (DCP 51)*

The provisions of Development Control Plan No. 51 (DCP 51) are a relevant matter for consideration in the assessment of this proposal. The overall objective of the plan is to create a safe, pleasant and efficient urban environment in a practical and financially effective manner, whilst ensuring that due consideration is given to all relevant physical, social and economic factors affecting the land.

Specifically, the proposed bridge upgrade is consistent with the intent to provide pedestrian and cycleway linkages between towns and natural areas for recreation purposes, and to maintain the high level of north-south access between Kingscliff and South Kingscliff (SALT and Casuarina) provided by Casuarina Way.

The proposal is considered consistent with the provisions of the remaining Shirewide DCPs.



**(a) (iv) Other relevant Management Plans or Policies***Estuary Management Plan - Cudgen, Cudgera and Mooball Creeks*

The Estuary Management Plan identifies public issues regarding the three Tweed Coast creeks, and recommends action strategies in response to these issues. The proposal is consistent with the plan, where the proposal to extend the remaining two-thirds of the pedestrian boardwalk/cycleway between Ed Parker Rotary Park and Marine Parade is clearly identified as an action to be completed.

*Coastal Zone Plan of Management*

The Coastal Zone Plan of Management completed in 1995 (for Crown Lands (TSC and DLWC)) broadly outlines a management framework for the coastal zone. A particular goal of the Plan recognises the need to manage the Tweed coastal zone in a way that maximises sustainable use, promotes biodiversity and minimises environmental damage. The management issues identified as relevant to Kingscliff include vehicle access, vegetation management and facility development and enhancement. The proposed boardwalk will offer direct benefits to the residents and visitors of Kingscliff through improved facilities providing easier and safer access to the Creek and foreshore.

*Tweed Coast Reserve Plan of Management for Crown Lands*

The Tweed Coast Reserve Plan of Management for Crown Lands (DLWC 1997) identifies key issues affecting the different management precincts along the Tweed Coast. The plan identifies access to recreational settings within the coastal zone as insufficient to meet existing and projected demand; and also states that there is an express demand for linkages between recreational areas and townships along the coast. The proposed pedestrian boardwalk and cycleway will assist in addressing the first identified issue by providing improved access to the Cudgen Creek foreshore, which is a very popular recreational setting on the Tweed Coast.

**(a) (iv) Any Matters Prescribed by the Regulations***NSW Coastal Policy*

The proposed site is located within the area covered by the Government Coastal Policy, and has been assessed with regard to the objectives of this policy. The Government Coastal Policy contains a strategic approach to help, amongst other goals, protect, rehabilitate and improve the natural environment covered by the Coastal Policy.

The potential implications of the proposed development are considered negligible given its minor nature with regards to impact on the natural environment. In light of the above, it is considered that the proposed boardwalk is consistent with the objectives of the Government Coastal Policy.



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

*Sedimentation and Water Quality*

The proposal has the potential to impact on water quality through disturbance of sediments during placement of piers, concreting of piers, and runoff intercepting disturbed soil during construction. Disturbance of sediments can result in smothering of seagrasses and cause difficulty in feeding for other organisms.

Some reduction in water quality is unavoidable during the construction phase. Notwithstanding, the application of best practice measures to minimise (and prevent where able) siltation will be incorporated. Such measures include use of sediment curtains in the creek; limiting the necessity for excavating pier through relocation of piers over rock; leaving redundant piers in-situ to minimise creek bed disturbance and storage of fuels and chemicals away from drainage lines and within bunded areas.

Furthermore, the construction phase will incorporate an extensive application of best practice measures to prevent erosion and the loss of sediment from the work site during construction. Such controls will include siting of stockpiles away from drainage lines and minimising vegetation clearing and site disturbance. Council is satisfied that the implementation of these measures will ensure the minimum possible impact upon the creek and surrounding natural environment during construction. After construction is complete, the ongoing operation and use of the boardwalk will have minimal impact.

*Acid Sulfate Soils*

In accordance with the Tweed Heads Acid Sulfate Soil (ASS) Planning Map, the following ASS classes are identified at the subject site:

- All soil within the bed of Cudgen Creek, below Mean High Water Mark (MHWM), is mapped as Class 1 ASS, to which the planning instrument applies to any works;
- ASS are not mapped for works above the MHWM.

Proposed excavation works will be limited to vegetation and surface layer clearing, constructing pier sets into rock surfaces, constructing a new section of revetment wall 30 metres in length, constructing a level base for a concrete pathway on top of bank and establishing a footing below MHWM for the toe of the rock revetment.

Most of the soil material to be removed from the site will be the surface layer, and any sediment and/or silt collected from sediment controls. The existing piles will be cut off at bed level and the new piles will be placed using a boring technique that does not require excavation. All pier sets along the toe of bank will be tidally influenced and therefore oxidisation of potential ASS is unlikely to occur

Any excess soils removed through reshaping of the existing bank would be removed from site. These soils are expected to be fill although would be treated as Potential ASS and managed in accordance with Council's Acid Sulfate Soils Management Plan for Minor Works (attached as Appendix 2 to the Statement of Environmental Effects) as the amount of soils likely to be removed from site would be less than 10 tonne.

Given the absence of excavation in the creek bed, and the minimal amount proposed for the banks, it is considered that the proposed works constitute minor works and are unlikely to result in the oxidation of acid sulfate soils.

#### *Noise*

As with any construction activities, some increase in noise above background levels will occur during construction. However, it is likely the increase will be within acceptable limits due to the short-term nature of the works and the need to utilise small machinery in order to access the site.

Standard procedures will apply in an effort to minimise the impact of construction noise, including restricting construction hours and vehicle movements to working hours, and no work to be undertaken on Sundays or Public Holidays.

The installation of a timber boardwalk with associated cycle traffic has the potential to increase noise levels at adjacent residences during its operation. Measures to mitigate noise include the use of larger sized decking timber reinforced with approximately 22,000 screws to tighten and strengthen the superstructure and specified highest quality materials to minimise maintenance and maximise design life. In addition the boardwalk is not intended to be lit, apart from low security lighting, to dissuade use after dark.

#### *Traffic*

During construction of the boardwalk, impacts to traffic along Moss Street will be managed as per Tweed Shire Council Standards and the RTA Traffic Control at Worksites Manual. This impact is considered to be minor and short term.

### *Fauna & Flora*

Vegetation primarily occurring on banks and along the foot of the bank of Cudgen Creek is dominated by introduced herbaceous and woody weeds. Weed growth is associated with planted gardens along property boundaries and in high nutrient zones adjacent stormwater outlet and seepage areas. Subsequently, the ecology of the area has been disturbed and has moderate to low conservation values.

Some shading of vegetation would occur as a result of the boardwalk. However, the majority of the boardwalk is proposed to be constructed on rock substrate and shading is not considered to be a significant issue in this instance.

Recreational activities along the foreshore area including swimming, snorkelling, and boating is likely limiting the use of rock outcrops as perching and breeding substrate for threatened oystercatchers. Due to proximity to residences and lack of isolation, impacts of night light, noise, predators, and human disturbances would also be limiting the potential for breeding at the site for these birds.

Although Saltwater Couch is present in small patches on some sections of the boardwalk alignment, this species is not considered to represent "Coastal Saltmarsh in the NSW North Coast, Sydney Basin and South East Corner bioregions". Nonetheless, there is some flexibility in the final placement of pier sets and a pre-construction inspection will be undertaken between Council's Design Unit Environmental Scientist, the project engineer and the successful contractor to identify and avoid saltwater couch where possible.

No threatened species or communities are considered to be impacted and subsequently a Species Impact Statement is not considered warranted for this proposal.

No Commonwealth threatened flora species or communities are considered to occur at the site. A referral under the Environment Protection and Biodiversity Conservation Act 1999 is not considered warranted for this proposal.

### *Archaeology & Heritage*

Generally, all coastal sites (particularly headlands and estuaries) are likely to be significant to the local Aboriginal people in terms of fishing, food gathering and possible anthropology/mythology. Under the NSW National Parks & Wildlife Service Act 1974, it is an offence for a person to knowingly destroy, deface or damage a relic or Aboriginal place without obtaining the consent of the Director General. If materials are found which are believed to be Aboriginal cultural remains, the works at or adjacent to the material must stop and the NSW NPWS must be notified immediately. They will then advise the appropriate course of action.

Historically, the site has been extensively modified by sand mining activities, and also through fill material for the bridge and road approaches, the dynamic nature of the creek bed and flow, commercial and recreational fishing activities, and the ongoing recreational use by residents and visitors to the area. As such, it is unlikely that archaeological sites or relics would exist in their original context.

A field inspection and site assessment undertaken for the approved traffic bridge some 500 metres upstream found no Aboriginal sites or relics during the assessment. Consultation with the Tweed Byron Local Aboriginal Land Council and review of historical data from their internal database, the Bindjulong Mapping Program of sites and Aboriginal places, established that there were no areas of cultural and/or archaeological significance in the area that would be impacted.

#### *Social & Economical*

The total construction of the boardwalk and cycleway is estimated to cost \$450,000. Money is available in the current budget to construct the boardwalk and cycleway, and a substantial portion of the cost has been received as developer contributions in the area.

The proposal has been highlighted within both the 1997 and the revised 2005 Estuary Management Plan for Cudgen Creek. Consultation with the community and state government has been sought as part of this process. The community was in favour of passive recreation and linking the communities to the south via a safe pedestrian access is identified as a community need in a number of Council documents.

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

Extensive community consultation was undertaken in relation to the location of the bridge and thence the associated pedestrian/cycleway path and boardwalk, particularly seeking comment on whether the bridge should be located downstream, at the end of Marine Parade, or in the proposed location of the existing bridge and thus whether the associated path should follow the northern or southern shore of Cudgen Creek. Results of the community consultation were clearly in favour of the existing location. One third of the boardwalk has already been constructed and funding has been allocated for the remainder.

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

Five public submissions relating to the proposal were received within the exhibition period. A sixth submission received after exhibition has also been considered. Issues and response are summarised in Table 1 below.



### Comment Summary

- The boardwalk poses a significant barrier to the creek from properties without a pontoon and for other creek users.
- The respondent would like to see stairs provided to gain access to the Creek from Clough Way and at other points along the boardwalk.
  
- The respondent notes that as a resident living adjacent the boardwalk, that they are aware of the increasing popularity of this recreational facility and support the proposal.
- The plans accompanying the proposal appear to depict works to be undertaken within the property belonging to our client. No consent to do so has been granted and as such, the application is invalid.
  
- The proposal provides inadequate detail to ascertain the impacts of same on the existing pontoon associated our Client's land.
  
- The proposal fails to properly address or even acknowledge potential construction impacts, use of our clients land during construction or adverse amenity impacts associated with dust generation, operational noise, adverse visual impacts and the like.

### Response

- Existing legal access to pontoons will be maintained as part of the proposal
- Eventually 2 of the existing pontoons will become public assets allowing all residents and users of the boardwalk to access the water via the pontoons.
- Stairs are provided at approximately Chainage 155. The existing section of boardwalk upstream of Clough Way will not be modified and therefore not impacting on any existing access.
  
- Noted
  
- The proposed boardwalk would be located 300mm (min) clear of existing property boundaries (refer annotation within Drawing WT000051/03). The respondent is likely referring to two small sections of revetment at Chainage 140.000 and Chainage 170.000. The zone of revetment works is indicative only. No works will be undertaken on private land without prior owners consent.
- The boardwalk will match neatly to existing jetty landing with child proof gate to both jetty and property provided to maintain access (refer annotation on Sheet WT000051/03). Pontoon amendments are described in further detail on Sheet WT000051/04)
- Section 5.0 of the Statement of Environmental Effects (SEE) describes likely construction impacts of the proposal. Due to the type of works being primarily construction of a boardwalk in the tidal zone, dust was not identified as an issue. Revetment works may generate dust and standard mitigation measures such as watering exposed soils would be implemented (refer Section 11.1 of the SEE). Operation noise would be managed through set hours of operation. Plant and machinery are required to be services and compliant with noise and emission standards (refer Section 11.1of the SEE).
  
- All permissions, permits, approvals, including owners consent to access land, would be sought prior to construction of the proposal.





### Comment Summary

- The respondent is in opposition to a shared pedestrian and cycleway due to safety concerns for pedestrians being struck by with cyclists.
  
- The respondent enthusiastically supports the proposal to extend the Cudgen Creek Boardwalk to the southern end of Marine Parade citing the growing numbers of pedestrians and bicyclists is proof of the boardwalk's value as a recreational asset.
- Safety concerns, including boardwalk width, signage, insurance, existing child-proof gates to be reused
- Maintenance and landscaping, including ongoing noise levels.
- Costs, potential damage to private pontoons, responsibility for same.

### Response

- The proposal is consistent with the design criteria for:
  - shared recreation pedestrian / cycleway to be a minimum of 3.0 outlined within Section 6.6.1 of AustRoads Standards Australia Part 14 - Guide to Traffic Engineering Practice "Bicycles"; and
  - a minimum of 3 m for dual use (two-way bicycles and pedestrians) outlined within Table 9.13 (A) of AS 5100.1-2004 Australian Standard Bridge Design Part 1: Scope and general principles.
  
- Noted
  
- The cycleway-boardwalk will be 3 metres wide which will provide ample room for both pedestrians and cyclists.
  
- The boardwalk will be constructed wholly within the public area with rails and wires installed on both sides for safety.
  
- Where property access exists along the foreshore safety gates should still be maintained and normal precautions taken when accessing the boardwalk or platform areas.
  
- Once completed the structure will become part of Councils regular maintenance regime.
  
- If plantings exist within the property they will not be removed but if overhanging the public area may need to be pruned.
  
- Concrete decking planks are being considered for use which will minimise any associated noise problems.
  
- All costing for the project will be met by Council, Department of Planning and the Coastal Estuary Committee.
  
- Existing narrow sections of boardwalk will be widened utilising as much as possible existing timber members and supports.
  
- Pontoons and ramps will be maintained in accordance with the design plans with no damage expected during construction.



**Comment Summary****Response**

- Signage for the existing cycleway on Moss Street will be removed and the path returning to a pedestrian only corridor.
- Foreshore boardwalk is proposed as part of the NSW Coastal cycleway and links Pottsville to Coolangatta. It also bypasses existing pedestrian/cyclist conflict in Moss Street and Clough Lane where the path is narrow and many on street obstructions exist.

**(e) Public interest**

The proposed replacement bridge over Cudgen Creek demonstrates consistency with the relevant planning instruments and Council requirements. The applicant has addressed all relevant issues and sufficient information has been supplied to make a proper assessment of this application. Given that the proposed boardwalk would facilitate greater public access to and along the foreshore of Cudgen Creek through safer and more efficient pedestrian and cycle access; and would decrease the incidence of potential conflict along Moss Street caused by the existing narrow footpath, it is considered appropriate for the site. This proposal will not set an undesirable precedent for future development in the Shire and is considered beneficial to the wider public interest.

**OPTIONS:**

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

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Funds are available and have been allocated in the current budget. If the applicant is dissatisfied with the determination, a Right of Appeal exists in the NSW Land and Environment Court.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

That Development Application DA07/0805 for a Boardwalk Between Clough Way and Marine Parade and Cycleway Between Cudgen Creek and Moss Street, Kingscliff be approved subject to the attached conditions



PLANNING COMMITTEE MEETING DATE: TUESDAY 13 NOVEMBER 2007

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**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**P7 [PR-PC] Bogangar/Cabarita Beach Locality Plan**

**ORIGIN:**

**Planning Reforms**

**FILE NO: GT1/DCP/50**

**SUMMARY OF REPORT:**

On 21 September 2005 Council resolved to prepare a Development Control Plan (Locality Plan) for the whole of the Cabarita Beach/Bogangar Village and a Precinct Plan (Master Plan) for the Pandanus Parade Precinct.

On 1 February 2006 Council engaged City Plan Services to prepare the above Plans on the behalf of Council. In preparing the draft Plans the Consultants were assisted by a Steering Committee comprising representatives of the local community and included a variety of people from the following organisations:

- The Cabarita Beach Bogangar Residents Association
- The Cabarita Beach Business Association
- The Cabarita Beach Surf Life Saving Club
- The Friends of Cudgen Nature Reserve
- The Tweed Coast Raiders Junior Rugby League Club

Preparation of the draft documents is now finalised and they have been exhibited in accordance with the Environmental Planning and Assessment Regulation 2000 from 24 January 2007 to 27 April 2007.

In response to the exhibition forty-seven (47) submissions were received from the general public. A detailed summary of the issues identified in each submission is attached to this report.

In general, the submissions received demonstrate that the community support the outcomes identified in the draft Plans except for those identified for the Pandanus Parade Precinct.

Since the exhibition of the draft Plans considerable work has been undertaken to resolve the community's issues with the identified outcomes for Pandanus Parade, which has resulted in the development of an alternative solution to that recommended by the Consultants. The details of which are attached to this report.

Adoption of the Locality Plan/Development Control Plan and the identified alternative for the Pandanus Parade Precinct will ensure that the Bogangar/Cabarita Beach Village grows and develops consistent with the goals and expectations of the local community.



**RECOMMENDATION:**

**That:**

- 1. Council adopts draft Section B19 of the Tweed Shire Development Control Plan – Bogangar/Cabarita Beach locality Plan as attached to this Report and notes that it will not come into effect until Stage 1 of the Local Environmental Plan (LEP) Review is gazetted.**
- 2. Council resolves to implement the recommendations of the Bogangar/Cabarita Beach Locality Plan in the Stage 2 review of Tweed Local Environmental Plan 2007.**
- 3. The members of the Steering Committee be advised of Council's decision and thanked for their input into the preparation of the above Locality Plan.**

## **REPORT:**

### **Introduction**

On 21 September 2005 Council resolved to prepare a Development Control Plan (Locality Plan) for the whole of the Cabarita Beach/Bogangar village and a Precinct Plan (Master Plan) for the Pandanus Parade Precinct.

On 1 February 2006 Council engaged City Plan Services (the Consultants) to prepare the above Plans on the behalf of Council. Preparation of the draft documents is now finalised and have been exhibited in accordance with the Environmental Planning and Assessment Regulation 2000 from 24 January 2007 to 27 April 2007.

The purpose of this report is to summarise the preparation of the draft Plans and any submissions that have been received in response to the exhibition of the draft documents.

### **Background**

Preparation of a 'whole of village' strategy (Locality Plan) for Cabarita Beach/Bogangar is the second stage of establishing a detailed planning framework for the area. The first stage identified planning controls for the central business district, and resulted in the adoption of Development Control Plan No 50 (DCP 50), or Section B19 of the Tweed Development Control Plan as it is referred to today.

At the time of adoption of DCP 50 the identified planning provisions for the Pandanus Parade Precinct were not endorsed by Council due to a number of unresolved issues for the area. These predominantly related to what the area should be used for in the future, whether the area should be developed or whether it should largely remain unchanged.

The purpose of establishing a detailed planning framework for the whole of Cabarita Beach and Bogangar is to provide the community with the appropriate planning tools for managing the area's growth and development over the next 25-30 years.

The purpose of preparing a Master Plan for the Pandanus Parade Precinct is to establish a vision of how the precinct is to look, feel and function in the future.

### **Preparation of the Draft Plans**

The draft plans were prepared with the assistance of a Steering Committee comprising representatives of the local community and included a variety of people from the following organisations:

- The Cabarita Beach Bogangar Residents Association
- The Cabarita Beach Business Association
- The Cabarita Beach Surf Life Saving Club
- The Friends of Cudgen Nature Reserve
- The Tweed Coast Raiders Junior Rugby League Club



The purpose of the Steering Committee was to provide a conduit between Council, the Consultants, and the broader Bogangar/Cabarita Beach community. The Steering Committee served to be the voice of the community in the earlier stages of the project and assisted the Consultants with identifying the issues relevant to the Village and what outcomes the community hoped to be achieved. The Steering Committee also provided feedback to the Consultants during the development of the draft strategies for the area.

### **Exhibition**

The draft Plans were placed on public exhibition in accordance with the Environmental Planning and Assessment Regulation 2000 from 24 January 2007 to 27 April 2007 at the following locations:

- Murwillumbah Civic Centre from 8.00am to 4.30pm weekdays.
- Tweed Heads Civic Centre from 8.00am to 4.30pm weekdays.
- Kingscliff Library from 10.00am to 5.00pm Tuesday-Friday and 9.00am to 12 noon Saturday.
- Cabarita Beach/Bogangar News Agency & Post Office from 6.30am to 5.30pm weekdays and 6.30am to 4.00pm Saturday and Sunday.
- Tweed Shire Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au)

A general public meeting to convey the key features of the draft Plans was held 20 March 2007 at the Tweed Coast Baptist Community Centre. The meeting was well attended by people belonging to the Cabarita Beach Bogangar Residents Association; however, it was unclear how many representatives of the other organisations from within the area were in attendance.

### **Summary of Submissions**

In response to the exhibition of the draft Plans forty-seven (47) submissions were received from the general public. A detailed summary of the issues identified in each submission is attached to this report.

In analysing the submissions a number of recurring themes or key issues could be identified. A summary of these key issues is provided below:

***Issue:* The pedestrianisation of Pandanus Parade & provision of sufficient car-parking within the Master Plan area.**

Pedestrianisation of Pandanus Parade and/or a lack of car-parking within the Master Plan area is considered to be prejudicial to those who are less mobile (elderly, disabled, parents with young children); a quasi-privatisation of a prominent public space; a benefit only to the businesses and/or owners of units in 'The Beach' resort and would result in a reduction in the level of safety afforded to pedestrians particularly during times of an emergency.

**Response:**

Presently people who swim/recreate at Cabarita Beach are encouraged to park their vehicles in Pandanus Parade and/or the adjoining public car-park. Due to the limited number of spaces people can at times not find a space, particularly during peak events like nipper days during summer.

As a result people who drive into this area have to reverse out, often causing potential traffic hazards with other vehicles and pedestrians coming into the area. It is anticipated that this undesirable situation will worsen as the population of the Tweed Coast grows.

To avoid perpetuating this issue the draft Master Plan proposed to re-orientate the available parking in the area so that traffic moved more fluently but at a slower speed.

The proposed pedestrianisation of Pandanus Parade is not a privatisation of public space. The purpose of making the area more pedestrian friendly is to remove conflict between non-compatible users and encourage people to walk around the community in a safe and comfortable environment.

**Issue: The development of land east of the Tweed Coast Road.**

Considering that little is known about the effects of climate change (rising sea-levels, increased severity of weather events etc) it is perceived that the development of land east of the Coast Road should be undertaken cautiously, particularly on land that is affected by coastal erosion processes identified in Council's Coastline Management Plan.

**Response:**

Council's Coastline Management Plan does not prohibit the development of land on the eastern side of the Tweed Coast Road. The management plan does; however, identify additional planning provisions that must be satisfied should any development be proposed on land that could be potentially affected by coastal erosion and/or other hazard events.

The draft Plan is consistent with the provisions identified in the Coastline Management Plan for Cabarita Beach.

**Issue: Building height provisions on land zoned 2(b) Medium Density Residential.**

The reduction of building heights from 3 to 2 storeys on land zoned 2(b) medium density residential (land bounded by Cooley St, Hastings Rd and Tweed Coast Rd) is considered inappropriate as a 2 storey height limit would not enable medium density development that is of the highest standard or enable the density of such development to be obtained.

**Response:**

The identification of a two (2) storey height limit for land zoned medium density residential was an error/oversight in the preparation of the draft Plans.





The construction of attractive and functional medium density development is reliant on a sufficient developable area and a building height that enables the inclusion of infrastructure that is generally associated with medium density development i.e. private open space, car-parking etc.

The draft Locality Plan has been amended to reflect a three (3) storey height limit for all land zoned 2(b) Medium Density Residential within the subject area.

**Issue: Feasibility of the identified options for the Master Plan area.**

Implementation of either option for the Master Plan area would require the purchase of the Reid's property. Given the cost of property directly adjacent the beach, it is considered unfeasible that Council would ever have the resources to undertake such a venture; and should a developer show interest in the land it is considered unlikely that they would recognise a return on their investment given that many people within the community are opposed to the development of land in this area.

In addition the implementation of the identified solutions will require the resolution of the covenants held over a number of the allotments owned by Council. Without the provision of incentives to the holders of the covenants it is considered unlikely that the town square/village green option could be achieved.

**Response:**

Implementation of the identified outcomes for the Pandanus Parade Precinct is reliant on a number of external factors including those identified above.

In recognition of this the draft Master Plan included a staging plan that demonstrated the implementation of the identified outcomes could be undertaken independently of each other.

The development of a compromise solution that does not include the privately owned land within the precinct has also been identified for Council consideration.

Nevertheless, implementation of any outcome for the Pandanus Parade Precinct that resulted in a change from what presently exists (public car-park) would require negotiation with the identified stakeholders in the area.

**Issue: Impact of the proposed solutions for the Pandanus Parade Precinct on the Reid family.**

Mixed opinion is evident with regard to the identified solutions for the Master Plan area. Removal of the existing detached residence within the precinct is considered inappropriate particularly if the family who own it do not wish to sell and/or redevelop their land. A number of submissions suggest that the proposed solutions should have included an option whereby the Reid's property was left untouched.

Conversely other submissions suggest that the purchase or not of the Reid family's home should not be considered in the deliberations of deciding which of the options to implement. All of the identified outcomes require that a staged approach is taken meaning the Reid family can live or stay living in the precinct until such time that they want to move.

***Response:***

Implementation of the outcomes identified in the draft Master Plan would require that Council hold formal discussions with the adjoining private landowners before developing the detailed design of the area.

In recognition that the adjoining private landowners may not want to sell or develop their land consistent with the identified options for the Precinct the draft Plans show that part implementation of the options can be undertaken and still provide a net benefit to the community.

***Issue: Treatment of the foreshore vegetation.***

It has been identified that the Village's best asset is the beach; however, due to the present nature of the foreshore area it is only possible to see it from a limited number of locations. It is considered that the careful treatment of the vegetation (treatment that did not diminish the stability of the dunes) enabling an increased number of opportunities to see the beach would considerably help towards improving the attractiveness of the village and as a consequence improve the viability of local businesses.

***Response:***

Limited treatment of the dunal foreshore vegetation to enable views through to the beach is possible, but is likely to be restricted to the area adjacent the Cabarita Beach Surf Life Saving Club. This is due to the ecological qualities that the dunal vegetation provides to the foreshore balanced against the need for improved surveillance of the beach for safety.

The treatment of foreshore vegetation in other areas of the Village is unlikely to be supported by the Department of Lands, who are the recognised custodians of the foreshore, and/or Council who have rejected the treatment of foreshore vegetation in other areas of the Tweed Coast.

***Issue: Construction of a multi-level car-park on Hastings Road.***

Mixed opinion is evident with regard to the need for a multi-level car-park on Hastings Road and is generally not supported if residents would be required to pay to park their vehicles there.



***Response:***

In view of the anticipated population growth of the Tweed Coast and the attractiveness of Cabarita Beach as perhaps the safest swimming beach along the coast the pressure for additional car-parking within the Village should be unquestionable in the future. Luckily, enough forethought in the past has ensured that sufficient car-park sites have been secured to accommodate any future need for car-parking.

A well patronised multi-level car-park with direct pedestrian access to the Tweed Coast Road will resolve many of the traffic issues affecting the Village and foster the growth of local businesses by increasing the level of impulse shopping by encouraging people to walk around the Village.

The topography of the land between the Tweed Coast Road and Hastings Road lends itself naturally to the construction of a multi-level car-park. Ultimately the design of the multi-level car-park will determine how well it is supported by the community.

Payment for the use of the car-park in the future is a separate issue and should not influence Council's decision at this stage. Further debate by Council is needed prior to the implementation of such a scheme and would generally not apply solely to Cabarita Beach and Bogangar but to the Tweed Shire as a whole.

***Issue: Affordable Housing.***

Significant development to the north (Casuarina Beach and SALT) is pushing the cost of Council rates beyond the means of many long-term residents in the Village. The draft Plan does not address the provision of subsidised housing.

***Response:***

The provision of subsidised housing is a complicated issue particularly when it comes to how subsidised housing is to be managed over the long-term. Council does not have the resources to ensure the provision and maintenance of affordable housing on its own and generally it is considered that all three tiers of Government (Federal, State and Local) share some responsibility for addressing the issue.

Whilst the Locality Plan establishes a detailed planning framework for the next 25-30 years for the Village, it has not been possible to identify appropriate mechanisms that address the provision of affordable housing within the Village.

Council is presently working on the preparation of an affordable housing strategy that addresses the provision of subsidised housing across the whole of the Tweed Shire. It is considered that the Locality Plan will be consistent with any future planning provisions adopted to address this issue.

**Issue: Provision of additional retail development.**

It has been identified that the erection of additional retail space without first undertaking a retail study for the Village is inappropriate. It is considered that additional retail development may be to the detriment of existing businesses or alternatively should some retail spaces remain empty for an extended period this would be to the detriment of the Village.

**Response:**

A retail strategy for the whole of the Tweed Shire has been prepared. It is considered that this strategy is sufficient for the purposes of planning for future retail development within the Bogangar/Cabarita Beach area.

Some business premises may currently be vacant; however, it is assumed that once other public infrastructure work, i.e. improvements to Pandanus Parade and the Tweed Coast Road, is carried out within the town the attractiveness of the Village to local business will greatly reduce the number of vacant tenancies.

**Issue: Street-scaping of designated roads.**

It is considered imperative that the main street (Tweed Coast Road) is improved/upgraded by the identified outcomes in the draft Locality Plan as it will greatly influence and encourage people to stop in the Village as opposed to passing through it and make the area safer for pedestrians.

In addition, the identified improvements for Sandalwood Drive and Cabarita Road would improve the amenity of the area for local residents particularly if pedestrian pathways are incorporated.

**Response:**

The proposed improvements to the streetscape of Tweed Coast Road and the other identified roadways throughout the Village will achieve the desirable outcomes mentioned. By adopting the Locality Plan Council is committed to providing these outcomes in a timely and efficient manner so that the sustainability of the Village is fostered.

**Issue: Provision of town infrastructure (water supply) & the management of natural disasters (peak weather events, bushfire etc).**

Consideration of Council's future ability to ensure the provision of water to the community and/or Council's ability to manage the impact of natural disasters has not been adequately addressed by the draft Plans.



***Response:***

The Tweed Shire is well placed to supply town infrastructure to the current and expected population living in the region. The Clarrie Hall Dam is capable of supplying enough water for an approximate 120, 000 people. The present population of the Tweed Shire, in round figures, is 80, 000.

Whilst the Locality Plan does not specifically address/identify how a natural disaster would be managed in Cabarita Beach/Bogangar, Council does have a number of disaster management plans for various types of disasters should one ever occur within the Tweed.

***Issue:***    **The feasibility of a service lane between Palm Avenue and Cypress Crescent.**

It is considered unlikely that the implementation of a service lane between Palm Avenue and Cypress Crescent will ever be recognised. The implementation of the lane will be reliant on the redevelopment of the affected land parcels fronting the Tweed Coast Road. Forcing landowners to provide some of their land to create the laneway removes a large incentive to redevelop.

***Response:***

To improve the safety and amenity of the Village, particularly for pedestrians the Tweed Coast Road needs to become a more person friendly environment. It is generally considered that limiting the level/frequency of time that large vehicles, like service and delivery vehicles, spend in main street areas greatly improves and enhances the qualities of that street.

Whilst it is acknowledged that the implementation of a service lane between Palm Avenue and Cypress Crescent could potentially be difficult the long-term benefits to the community of implementing the lane justifies that it be pursued.

To encourage the redevelopment of the land fronting the Tweed Coast Road between Palm Avenue and Cypress Crescent, the Locality Plan recommends that the land be rezoned for commercial purposes, which is considered to provide significant financial benefits to the owners of the land should it be built upon.

***Issue:***    **The identified vision for the Pandanus Parade Precinct.**

Since the exhibition of the draft Plans Council has received additional correspondence from the Cabarita Beach Bogangar Residents Association on the behalf of a number of different interest groups within the area.

This additional correspondence related specifically to the Pandanus Parade Precinct and the identified vision for the area as a part of the Master Plan. Generally the correspondence reinforced the importance of the Pandanus Parade Precinct in the growth and development of the Village.

The correspondence identified that the preferred solutions for the Pandanus Parade area, as identified by the Consultants, were strongly opposed by the local community and that Council should abandon pursuing these. The correspondence also identified an alternative solution that the Association reported as having the support of the local community.

**Response:**

In preparing this report a review of the identified alternative solution and the Consultant's preferred option was undertaken, which resulted in the identification of a compromise option. A summary of all three options is attached to this report and lists the advantages/disadvantages of each.

On 24 October 2007 an extra-ordinary meeting of the steering committee was held to discuss the three options. At the meeting the key features of each option was presented and the advantages/disadvantages discussed.

Those present at the meeting were requested, prior to giving Council a formal response with regard to their preferred outcome for the area, to discuss the identified options with the members of their respective organisations. Attached to this report is a copy of the responses received from each organisation identifying their preferred outcome for the Pandanus Parade Precinct.

**Recommendation/Conclusions**

In general, the submissions received demonstrate that the community support the outcomes identified in the draft Plans except for those identified for the Pandanus Parade Precinct; hence, the identification of the alternative proposals for this area following the exhibition period.

Consequently, four distinct options present for the finalisation of this project. They include:

1. Not to proceed with the implementation of the Locality Plan for Bogangar/Cabarita Beach (Section B19 - Tweed Shire DCP).
2. Adopt the Locality Plan as prepared by City Plan Services.
3. Adopt the Locality Plan as prepared by City Plan Services subject to an amendment of the identified vision for the Pandanus Parade Precinct. The revised vision being consistent with the outcomes identified by the Bogangar/Cabarita Beach Residents Association.
4. Adopt the Locality Plan as prepared by City Plan Services subject to an amendment of the identified vision for the Pandanus Parade Precinct. The revised vision being consistent with the outcomes identified in the compromise solution prepared by Council.



It is therefore, recommended that Council:

1. Adopts draft Section B19 (Option 4) of the Tweed Shire Development Control Plan – Bogangar/Cabarita Beach locality Plan as attached to this Report.
2. Resolves to implement the recommendations of the Bogangar/Cabarita Beach Locality Plan in the Stage 2 review of Tweed Local Environmental Plan 2007.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Implementation of the Bogangar/Cabarita Beach Locality Plan is subject to future resolutions by Council with regard to the budget.

**POLICY IMPLICATIONS:**

Implementation of the Bogangar/Cabarita Beach Locality Plan will require that Tweed Local Environmental Plan 2000 is amended.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. Detailed submission summary (exhibition period 24/01/07-27/04/07) (DW 1700899).
  2. Summary of options for the Pandanus Parade Precinct (DW 1701207).
  3. Steering Committee submissions regarding the preferred option for the Pandanus Parade Precinct (DW 1701222 (Cabarita Beach Business Association), DW 1696946 (Tweed Coast Raiders), DW 1695745 (Cabarita Beach/Bogangar Residents Association Inc), DW 1700716 (Cabarita Beach Surf Life Saving Club).
  4. Section B19 Tweed Shire Development Control Plan – Bogangar/Cabarita Beach Locality Plan as amended for adoption (DW 1701141).
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