



AGENDA

PLANNING COMMITTEE MEETING Tuesday 27 March 2007

Chairman: Mr Max Boyd AM

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

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REPORTS THROUGH GENERAL MANAGER

REPORTS FROM DIRECTOR PLANNING & DEVELOPMENT

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

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

MATTERS FOR CONSIDERATION

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

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P1 [PD-PC] Development Application DA06/0847 for a 3 Lot Subdivision at Lot 22 DP 617126, No. 26-30 Wollumbin Street, Tyalgum

ORIGIN:

Development Assessment Unit

FILE NO: DA06/0847 Pt1

SUMMARY OF REPORT:

The abovementioned application was previously reported to Council's meeting of 13 February 2007, where Council resolved:

"that Development Application DA06/0847 for a 5 lot subdivision at Lot 22 DP 617126 No 26-30 Wollumbin Street, Tyalgum be deferred to allow further consultation between the applicant and Council officers."

As a result of further consultation with the applicant, the proposal has undergone a number of changes, as discussed below:

1. The proposal has been reduced from 5 lots to 3 lots.
2. All lots now involve flood free access.
3. The existing sewer line is no longer proposed to be relocated.

As a result of these amendments, the proposal is considered to be suitable for approval with conditions of development consent.

RECOMMENDATION:

That Development Application DA06/0847 for a 3 lot subdivision at Lot 22 DP 617126, No. 26-30 Wollumbin Street, Tyalgum be approved subject to the following conditions: -

GENERAL

1. **The development shall be completed in accordance with the Statement of Environmental Effects and Plan titled 'Amended Subdivision Plan', prepared by C Lonergan and dated 16/02/07, except where varied by the conditions of this consent.**

[GEN0005]

2. The subdivision is to be carried out in accordance with Development Control Plan No. 16 - Subdivisions Manual and Councils adopted Development Design and Construction Specifications.

[GEN0125]

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]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

4. Prior to the issue of a Construction Certificate, a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the works (minimum \$1,000).

The bond may be called up at any time and the funds used to rectify any non-compliance with the conditions of this consent which are not being addressed to the satisfaction of the General Manager or his delegate.

The bond will be refunded, if not expended, when the final Subdivision/Occupation Certificate is issued.

[PCC0275]

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]

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

[PCC0465]

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

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

[PCC0485]

8. The site of each building envelope is to be filled to a minimum level of RL 55.8m AHD. Site filling and associated drainage is to be designed to address drainage on the site as well as existing stormwater flows onto or through the site, and minimizing the impact of filling on local drainage. Detailed engineering plans of fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.

[PCC0675]

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

[PCC0865]

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

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

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

[PCC0985]

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

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

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

[PCC1145]

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

[PCC1155]

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

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

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

[PCW0985]

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0005]

15. Subdivision work in accordance with a development consent must not be commenced until:-
- (a) a construction certificate for the subdivision work has been issued in accordance with Councils adopted Development Design and Construction Specification C101 by:
 - (i) the consent authority, or
 - (ii) an accredited certifier, and

- (b) the person having the benefit of the development consent:
 - (i) has appointed a principal certifying authority,
 - (ii) has appointed a Subdivision Works Accredited Certifier in accordance with Development Control Plan No. 16, Appendix C, and
 - (iii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment, and
- (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the subdivision work.

[PCW0815]

16. Prior to commencement of work, a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Subdivision Works Accredited Certifier shall be erected and maintained in a prominent position entry to the site in accordance with Councils adopted Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued.

[PCW0825]

17. The proponent shall provide to the PCA copies of Public Risk Liability Insurance to a minimum value of \$10 Million for the period of commencement of works until the completion of the defects liability period.

[PCW0835]

DURING CONSTRUCTION

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

[DUR0005]

19. 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]

20. 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]
21. 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]
22. All lots must be graded to prevent the ponding of surface water and be adequately vegetated to prevent erosion from wind and/or water to the satisfaction of the General Manager or his delegate.
- [DUR0745]
23. On completion of the filling work, all topsoil to be respread and the site to be grassed and landscaped.
- [DUR0755]
24. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited.
- [DUR0815]
25. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council.
- [DUR0985]
26. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate.
- [DUR0995]
27. All work associated with this approval is to be carried out so as not to impact on the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -
- Noise, water or air pollution
 - Minimise impact from dust during filling operations and also from construction vehicles
 - No material is removed from the site by wind
- [DUR1005]

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

[DUR1015]

29. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742.3-2202 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

[DUR1795]

30. 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]

31. Tweed Shire Council shall be given a minimum 24 hours notice to carry out the following compulsory inspections in accordance with Appendix D, DCP16 - Subdivisions Manual based on the rates contained in Council's current Fees and Charges:-

Water Reticulation, Sewer Reticulation, Drainage

- (a) Excavation
- (b) Bedding
- (c) Laying/jointing
- (d) Manholes/pits
- (e) Backfilling
- (f) Permanent erosion and sedimentation control measures
- (g) Drainage channels
- (h) Final inspection - on maintenance
- (i) Off maintenance

Council's role is limited to the above mandatory inspections and does **NOT** include supervision of the works, which is the responsibility of the Developers Supervising Consulting Engineer.

The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

[DUR1895]

32. Inter allotment drainage shall be provided to all lots where roof water for dwellings cannot be conveyed to the street gutter by gravitational means.

[DUR2285]

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

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

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

[DUR2375]

34. Erosion and sediment control measures must be installed to the satisfaction of Council's Environment and Health Services Unit and maintained throughout the duration of construction.

[DURNS01]

35. The burning off of trees, associated vegetation felled by clearing operations, and builder's waste is prohibited.

[DURNS01]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

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

[PSC0005]

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

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

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

Water DSP8:	2 ET @ \$10870	\$21,740
Sewer Tyalgum:	2 ET @ \$6688	\$13,376

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

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

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

[PSC0165]

38. Section 94 Contributions

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

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

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

(a) Tweed Road Contribution Plan:	\$21,648
S94 Plan No. 4 (Version 4.0)	
Sector13_4	
(b) Open Space (Structured):	\$1,560
S94 Plan No. 5	
(c) Open Space (Casual):	\$334
S94 Plan No. 5	
(d) Street Trees:	\$297
S94 Plan No. 6	
(e) Shirewide Library Facilities:	\$1,376
S94 Plan No. 11	
(f) Eviron Cemetery/Crematorium Facilities:	\$262
S94 Plan No. 13	

(g) Emergency Facilities (Surf Lifesaving)	\$400
S94 Plan No. 16	
(h) Extensions to Council Administration Offices & Technical Support Facilities	\$2,537.60
S94 Plan No. 18	
(i) Regional Open Space (Structured)	\$4,654
S94 Plan No. 26	
(j) Regional Open Space (Casual)	\$1,710
S94 Plan No. 26	

[PSC0175]

39. Section 94 Contributions

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

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

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

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

Heavy Haulage Component

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

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

where:

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

and:

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

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

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

Admin. Administration component - 5% - see Section 6.5

[PSC0185]

40. Prior to the issue of a Subdivision Certificate a defect liability bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.

The bond shall be based on 5% of the value of the works (minimum \$1,000) which will be held by Council for a period of 6 months from the date on which the Subdivision Certificate is issued. It is the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.

[PSC0215]

41. Prior to the issue of a Subdivision Certificate, Works as Executed Plans shall be submitted in accordance with the provisions of DCP16 - Subdivisions Manual and Councils adopted Design and Construction Specification.

The plans are to be endorsed by a Registered Surveyor OR a Consulting Engineer Certifying that:

- (a) all drainage lines, sewer lines and structures are wholly contained within the drainage easement created by the subdivision;
- (b) the plans accurately reflect the Work as Executed.

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

[PSC0735]

42. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of this Development Consent have been complied with.

[PSC0825]

43. The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act including the following:

- (a) Easements for sewer, water supply and drainage over ALL services on private property.
- (b) Restriction on the erection of any new dwelling identifying any habitable floor area shall be above 56.3m AHD. All residential buildings shall comply with the requirements of DCP 5
- (c) Restriction on the design of any new dwelling to incorporate the following architectural theme:
 - A. *Form - Buildings should adopt roof forms that are steep pitched and either gable or hipped.*
 - B. *Scale - New buildings should observe the general eave and roof height design of surrounding buildings.*

- C. Verandas - Verandas are an important element in the vista across the area, and their inclusion is encouraged.**
- D. Materials - Timber buildings with metal roofs are encouraged as this conforms with the design characteristics of the area.**

Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating the right of carriageway/easement to drain water shall make provision for maintenance of the right of carriageway/easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis.

Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of Council.

The proponent shall note that the existing easement to drain water traversing the site is to be maintained. Council shall not accept the dedication of a drainage reserve.

[PSC0835]

- 44. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council with the application for Subdivision Certificate.**

[PSC0855]

- 45. Where new state survey marks and/or permanent marks are placed a copy of the locality sketch relating to the marks shall be submitted to Council within three months of registration of the Subdivision Certificate in accordance with the Survey Practices Regulation.**

[PSC0865]

- 46. Prior to registration of the plan of subdivision, a Subdivision Certificate shall be obtained.**

The following information must accompany an application:

- (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.**
- (b) all detail as tabled within DCP16, CL 7.6 and Councils Application for Subdivision Certificate including the attached notes.**

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.

[PSC0885]

- 47. Prior to the application for a Subdivision Certificate a Compliance Certificate or Certificates shall be obtained from Council OR an accredited certifier for the following:-**

- (a) Compliance Certificate - Roads
 - (b) Compliance Certificate - Water Reticulation
 - (c) Compliance Certificate - Sewerage Reticulation
 - (d) Compliance Certificate - Sewerage Pump Station
- Compliance Certificate - Drainage

Note:

1. All compliance certificate applications must be accompanied by documentary evidence from the developers Subdivision Works Accredited Certifier (SWAC) certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, DCP16 - Subdivision Manual and Councils adopted Design and Construction Specifications.
2. The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

[PSC0915]

48. The six (6) months Defects Liability Period commences upon the registration of the Subdivision Certificate.

[PSC0925]

49. Prior to issuing a Subdivision Certificate, reticulated water supply and outfall sewerage reticulation shall be provided to all lots within the subdivision in accordance with DCP16 - Subdivisions Manual, Councils adopted Development Design and Construction Specifications and the Construction Certificate approval.

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

[PSC1115]

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

[PSC1165]

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

[PSC1175]

52. Prior to the issue of a Subdivision Certificate a landscaping plan is to be submitted to the satisfaction of Tweed Shire Council's General Manager or their delegate. The submitted landscaping plan is to include the removal of all noxious weeds and serious environmental weeds occurring within the drainage easement, and the replanting of this area with locally occurring native species. The submitted landscaping plan is also to include any proposed street planting. Any street plantings should include native species which are commonly found within the Tyalgum locality. The positioning of any such trees should have regard for likely future road improvement works.

In addition, the approved landscaping works are to be carried out to the satisfaction of the General Manager or their delegate, prior to the issue of a Subdivision Certificate. An inspection of the landscape works by a delegate of the General Manager is to be arranged and undertaken prior to the issue of a Subdivision Certificate.

[PSCNS01]

REPORT:

Applicant: Chris Lonergan Town Planner
Owner: Tweed Shire Council
Location: Lot 22 DP 617126 No. 26-30 Wollumbin Street, Tyalgum
Zoning: 2(d) Village
Cost: Nil

BACKGROUND:

The abovementioned application was previously reported to Council's meeting of 13 February 2007, where Council resolved:

"that Development Application DA06/0847 for a 5 lot subdivision at Lot 22 DP 617126 No 26-30 Wollumbin Street, Tyalgum be deferred to allow further consultation between the applicant and Council officers."

As a result of further consultation with the applicant, the proposal has undergone a number of changes, as discussed below:

1. The proposal has been reduced from 5 lots to 3 lots in the following format:

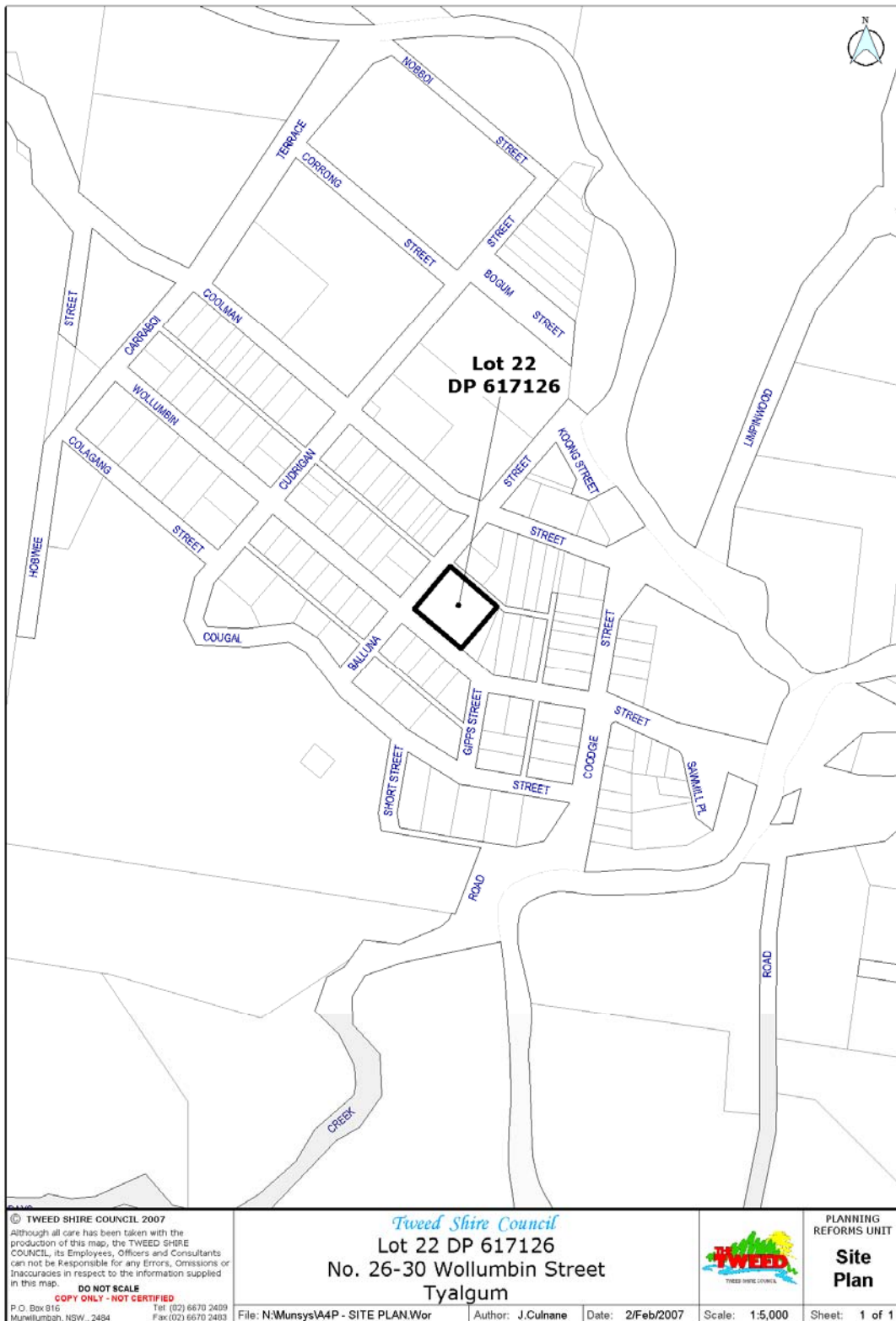
Lot 1 now comprises 2,238.46m² of area in a regular shape and fronts Wollumbin Street and Balluna Street (access gained from Wollumbin Street). The site is heavily constrained, by way of a 7m wide drainage easement (proposed), which comprises approximately 391m² of the lot. In addition an existing sewer line traverses the proposed lot, skewing the prescribed building envelope as viewed from the Wollumbin Street streetscape.

Lot 2 and 3 now comprise 908.27m² of land area each and front both Wollumbin Street at the front of the block and an unnamed laneway to the rear (access gained from Wollumbin Street). Both Lots 2 and 3 involve 15.05m frontages and are 60.35m in depth and involve regularly positioned building envelopes.

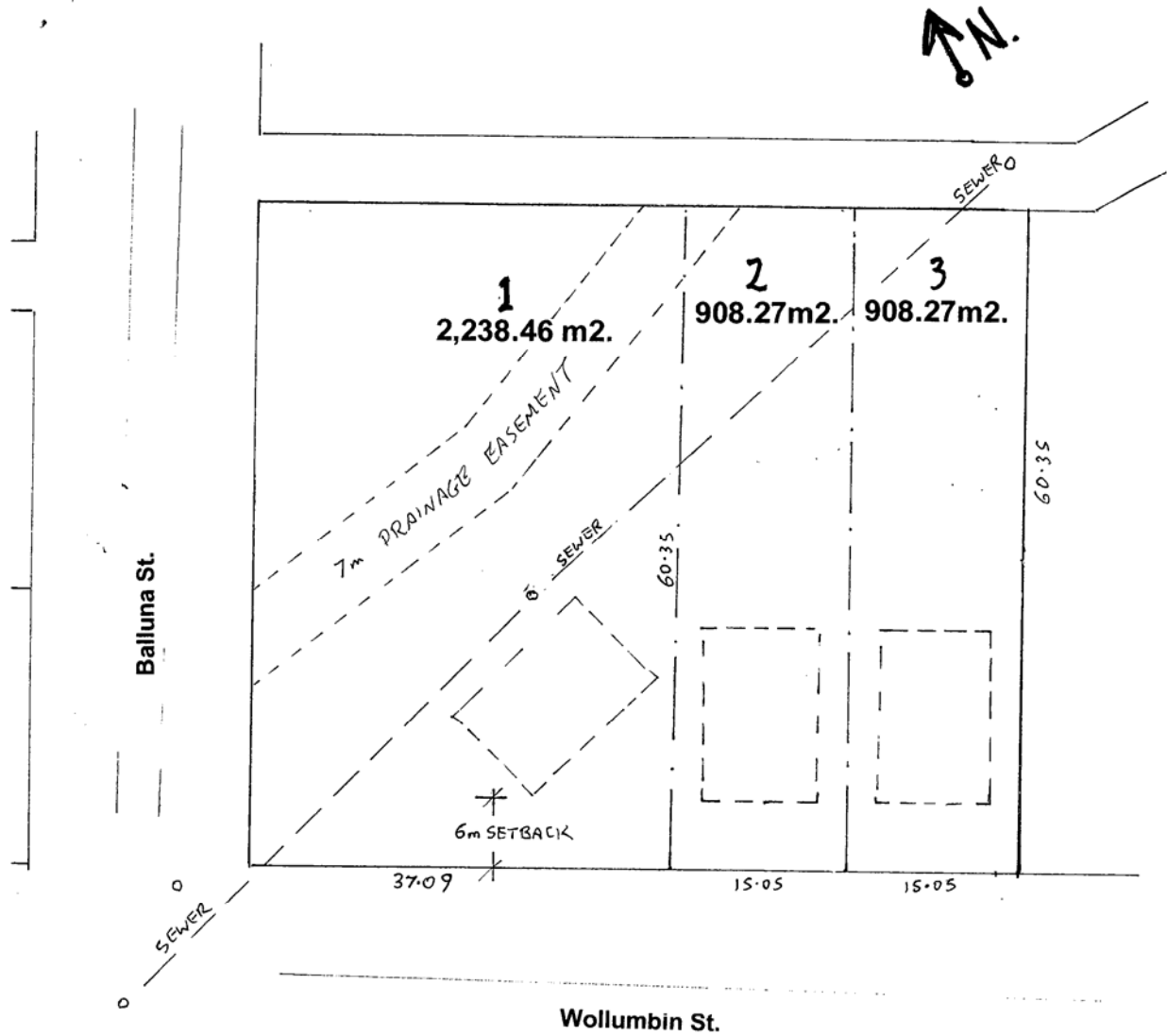
2. All lots now involve flood free access and the majority of the prescribed building envelopes are located above flood level. Each building envelope will involve a small level of fill to ensure all three building envelopes meet highest recorded flood level of 55.8m AHD, satisfying the requirements of DCP 5 and 16. The proposal has been reviewed by Council's assessing Development Engineers and Director of Engineering and Operations as satisfactory.
3. The existing sewer line is no longer proposed to be relocated. Under the original proposal the existing sewer line was to be relocated to follow the sites drainage easement. As discussed earlier, the maintenance of the location of the sewer line results in the building envelope of proposed Lot 1 being skewed as viewed from the Wollumbin Street streetscape.

As a result of these amendments, the proposal is considered to be suitable for approval with conditions of development consent.

SITE DIAGRAM:



PROPOSED SUBDIVISION LAYOUT



Amended SUBDIVISION PLAN
3 Lot Subdivision
Lot 22 D.P. 617126 Cnr Balluna & Wollumbin Sts Tyalgum.
Scale 1:500 Drawn C. Lonergan. 16/2/07. P1

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

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

Tweed Local Environmental Plan 2000

The subject land is zoned 2(d) village under the Tweed LEP 2000. The primary objective of the 2(d) zone is as follows:

"to provide for residential development and a full range of services and facilities traditionally associated with a rural village which is of a design and scale that makes a positive contribution to the character of the village."

The proposed subdivision is permissible within the zone and meets the minimum lot size requirements specified. As discussed within the previous report considered by Council, some concern has been raised regarding the proposals contribution to the character of the area. In light of the reduction in lots from 5 to 3, this matter is less prominent and that with appropriate Section 88B requirements, the character of the locality can be retained.

Clause 15 of TLEP requires arrangement satisfactory to the consent authority in relation to essential services. The subject land has access to essential services.

North Coast Regional Environmental Plan 1988

Satisfactory

State Environmental Planning Policies

SEPP No. 44 - Koala Habitat

The proposal has been assessed against the provisions of SEPP 44 and is considered satisfactory.

SEPP No. 55 – Remediation of Land

Detail has been provided regarding the lands previous uses, concluding that no potentially contaminating activities have been undertaken. In addition, no cattle dips are located within immediate proximity of the site. The requirements of SEPP 55 are therefore considered satisfied.

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

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

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

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

DCP 5 provides Council's guidelines for development of flood liable land. For the purposes of this policy, the requirements for Tyalgum are contained within 'Section 9.0 The Rural Villages and the Clarrie Hall Dam Catchment'.

As discussed in the previous report, DCP 5 prescribes a highest recorded flood level of 55.8m AHD, which, as confirmed by Council's assessing Infrastructure Engineers, is to be utilised as the adopted as the design flood level.

Under the amended subdivision layout all 3 building envelopes enjoy flood free access and the building envelopes are partially located above the design flood level. Council's assessing Development Engineer has confirmed that as a condition of consent the portions of the building envelope below 55.8m AHD will be required to be filled to the design flood level, satisfying the requirements of DCP 5.

Development Control Plan No. 16 – Subdivision Manual

The proposal has been assessed against the requirements of DCP 16 as satisfactory.

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

Satisfactory

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

Context and Setting

As discussed previously, in light of the distinctive features possessed by the Tyalgum village, the lack of residential design guidelines for the area, the original proposal's irregular lot layout and lot sizes, concerns were raised that the subdivision did not adequately contribute to the context and setting of the area.

After consideration of the recent amendments reducing the subdivision of the lot from 5 to 3 lots and the subdivision pattern now adopted, the proposal is considered able to foster future dwellings that positively contribute to the context and setting of the locality.

The following design criteria was provided by the applicant to encourage appropriate future development.

- A. *Form – Buildings should adopt roof forms that are steep pitched and either gable or hipped.*
- B. *Scale – New buildings should observe the general eave and roof height design of surrounding buildings.*
- C. *Verandas – Verandas are an important element in the vista across the area, and their inclusion is encouraged.*
- D. *Materials – Timber buildings with metal roofs are encouraged as this conforms with the design characteristics of the area.*

It is considered appropriate to include the above guidelines on the future Section 88B instrument and a draft condition has been included as such.

In light of the above, the proposal is considered to appropriately uphold the context and setting of the locality in its current form.

(c) Suitability of the site for the development

Suitability of the site for subdivision

The subject site provides for a residential allotment within an established rural village. The site is serviced by all essential services as comprises an infill development within the Tyalgum locality.

The site is largely constrained by the presence of a 7m wide drainage reserve (accounting for approximately 391m² of the lot) and an existing sewer line traversing the site. The majority of the site is located below Council's adopted flood level, further limiting the capacity of the land and placement or building footprint of any future development.

The subject land is not identified as Bushfire Prone, nor is it seen to provide for any threatened species including koala habitat.

In light of the above, the proposed development of the site into 3 lots is considered to be an appropriate response to the constraints of the site and the characteristics of the area. Accordingly, the subject sites are considered suitable for the development as proposed.

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

The proposal was notified to adjoining landowners for a period of 14 days, during which, 1 submission was received from the Tyalgum District Community Association (TDCA). The submission, whilst raising no objection to the subject proposal, requested that all future dwelling applications over the land be referred to the TDCA 'Built Environment Project Team' for review. The submission also requests that TDCA be consulted on all future DAs affecting the Tyalgum area.

Comment: Any future application for a dwelling house/s on the subject land would be assessed against Council's Public Notification Policy – DCP 42. Should any future proposal meet the requirements of the DCP, public notification would be undertaken, as per the policy. However, in absence of a development application, assurance of notification for all proposals cannot be guaranteed.

(e) Public interest

The proposal is not considered to conflict with the public interest.

OPTIONS:

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

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has the right to appeal the determination in the NSW Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

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P2 [PD-PC] Development Application DA06/1323 for Two Sheds for Farm Storing Maintenance and Tea Tree Processing at Lot 1 DP 129741, Pacific Highway West, Chinderah

ORIGIN:

Development Assessment Unit

FILE NO: DA06/1323 Pt1

SUMMARY OF REPORT:

Council has been served with a Class 1 Appeal (deemed refusal) for DA06/1323 that seeks consent for two sheds for farm storing maintenance and tea tree processing at Lot 1 DP 129741, Pacific Highway West, Chinderah.

Council's Infrastructure Engineer has reviewed the Development Application and concluded "With regard to the above assessment, the development does not meet the controls imposed on high flow areas of the floodplain in Part 2 of the Tweed Valley Floodplain Risk Management Study and Plan. The Study and Plan were developed in accordance with the NSW Floodplain Development Manual 2005, with the concurrence of Council's Floodplain Management Committee, and have been adopted by Council. As such, the development application is not supported in its current location."

A Class 1 Appeal (deemed refusal) has been lodged in respect of this development application.

RECOMMENDATION:

That Solicitors be engaged to act on Council's behalf and defend Appeal Number 10092 of 2007 in the Land Environment Court.

REPORT:

Applicant: Mr P Bolster and Mrs P Bolster
Owner: Mr PA Bolster and Mrs PC Bolster
Location: Lot 1 DP 129741, Pacific Highway West, Chinderah
Zoning: 1(b2) Agricultural Protection
Cost: \$245,000

BACKGROUND:

Tweed Shire Council is in receipt of a Development Application for Two Sheds for Farm Storage Maintenance & Tea Tree Processing at 9441 Tweed Valley Way, Chinderah (Lot 1 in DP 129741).

Council has been considering and reviewing the Development Application since 15 November 2006. Council's Building Services Unit and Environment and Health Services Unit have reviewed the Development Application and provided comment and recommended standard conditions of consent for a development of this nature.

Council's Development Assessment Engineer and Council's Infrastructure Engineer have provided comment on the Development Application. They have both identified concerns with the application regarding the suitability of the site having regard to Council's adopted Tweed Valley Floodplain Risk Management Plan 2005 particularly Part 2 Planning controls for High Flow Areas.

As detailed within the Engineering Report from Council's Infrastructure Engineer the site is predominantly mapped as a velocity flow area (shown as RED), which requires the limitation of the allowable fill for any development to be no more than 300mm. A small velocity flow area (shown as BLUE) is also located within the subject property.

The applicant's proposal is seeking 3.3m of fill, that is, 3m greater than that allowed by the Tweed Valley Floodplain Risk Management Plan 2005.

In an attempt to negotiate this matter Council advised the applicant that should the development be relocated to be contained entirely within the low flow area (shown as BLUE) then the provisions of Council's Tweed Valley Floodplain Risk Management Plan 2005 will be complied with.

The applicant responded to Council's suggestion by stating that relocation of the proposed sheds would be too costly given that the site had already been planted with Tea Tree Plantations.

Council's Infrastructure Engineer has concluded that, "With regard to the above assessment, the development does not meet the controls imposed on high flow areas of the floodplain by Part 2 of the Tweed Valley Floodplain Risk Management Study and Plan. The Study and Plan were developed in accordance with the NSW Floodplain Development Manual 2005, with the concurrence of Council's Floodplain Management Committee, and have been adopted by Council. As such, the development application is not supported in its current location with the extent of fill proposed."

Based on this advice Council's planning staff would be recommending the Development Application be refused.

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

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

The Development Application was advertised for a period of fourteen days between Wednesday 29 November 2006 and Wednesday 13 December 2006. During the advertising period no submissions were received.

(e) Public interest

It is in the public's interest that Council defend the Class 1 Appeal and engage Solicitors to take preliminary action to defend the Appeal.

OPTIONS:

1. Instruct Solicitors to defend Appeal Number 10092 of 2007 in the Land Environment Court.
2. Request a 79C Assessment with the view to approve the Development Application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Council will incur its own legal costs in relation to the subject Appeal.

POLICY IMPLICATIONS:

Any policy implications will be reported to Council upon the complete assessment of the development application, and determination by the NSW Land and Environment Court.

CONCLUSION:

It is recommended that Council engages its Solicitors to act on Council's behalf for the deemed refusal of DA06/1323 in the NSW Land & Environment Court Matter No. 10092 of 2007.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

P3 [PD-PC] Development Application DA06/1262 for the Demolition of Five (5) Existing Dwellings and Erection of a Residential Care Facility (120 Bed Nursing Facility) at Lot 79, 80, 86, 87, 88 DP 237806, No. 3-5 Powell Street & No. 7-9 Florence Place, Tweed

ORIGIN:

Development Assessment

FILE NO: DA06/1262 Pt3

SUMMARY OF REPORT:

The development application involves the demolition of five (5) existing dwellings over five (5) lots and the construction of a predominantly five (5) storey residential aged care facility comprising one hundred and twenty (120) beds. The facility seeks to cater for one hundred and twenty (120) residents with an approximate ratio of 50% high care and 50% low care. The high care residents will mostly be wheelchair or bed bound. Nurses will be on-site 24 hours a day with doctors arriving to the site when required. A maximum of 25 staff members are proposed to work within the facility at any one time. The subject land has an area of 3932.7m² and has three (3) vehicle access points from both Florence Place (2 access points) and Powell Street (1 access point).

The development proposes 30 on site car parking spaces which meets the requirements of the Seniors Living SEPP 2004, however is significantly less than the total number of spaces required by Council's Development Control Plan No. 2 being 73 spaces. The SEPP, however, overrides the requirements of the DCP.

The proposal seeks a building line variation for the proposed Porte-Cochere, and a fence height variation for the fences fronting Florence Place and Powell Street. A small gated structure is proposed to integrate in the Powell Street fence line with an approximate height of 2.4metres.

The rear portion of No. 7 Powell Street is predominately overshadowed during mid winter between the hours of 9.00am to 3.00pm. The area is undergoing a transitional phase with established detached dwellings being replaced with multi-storey medium to high-density developments. The application proposes a 5-storey building within a 6-storey height restricted area. The development exceeds the setback requirements thereby assisting in reducing the impact on adjoining properties.

RECOMMENDATION:

That Development Application DA06/1262 for the demolition of five (5) existing dwellings and erection of a residential aged care facility (120 bed nursing facility) at Lot 79, 80, 86, 87, 88 DP 237806, No. 3-5 Powell Street & No. 7-9 Florence Place, Tweed Heads be approved subject to the following conditions: -

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and the Plans tabled below,

Plan Numbers	Prepared by	Dated
500-L-01 to 500-L-15 inclusive	Butler and Webb	06.02.07
1217-1.01 and 1217-2.01	Gary J. Garnett and Associates Pty Ltd Architects	01.02.07
1217-2.02 to 1217-2.04 inclusive	Gary J. Garnett and Associates Pty Ltd Architects	02.02.07
1217-4.01 to 1217-4.04 inclusive	Gary J. Garnett and Associates Pty Ltd Architects	02.02.07
1217-5.01	Gary J. Garnett and Associates Pty Ltd Architects	02.02.07
1217-3.05	Gary J. Garnett and Associates Pty Ltd Architects	12.02.07
1 to 5 inclusive	Gary J. Garnett and Associates Pty Ltd Architects	October 2006
Demolition Plan	Planit Consulting Pty Ltd	February 2007

(as amended in Red), 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. All waters pumped from the site in the de-watering process are to be treated with an effective deodoriser to the satisfaction of Council's Director of Environment and Community Services to neutralise any offensive odours. The point of discharge shall also be approved by Council's Director of Environment and Community Services prior to installation and shall include a water-sampling outlet.

[GENNS01]

5. All works shall be carried out in accordance with the Preliminary Acid Sulfate Soil Investigation & Dewatering Management Plan for Florence Place & Powell St, Tweed Heads prepared by HMC Environmental Consulting Pty Ltd dated October 2006 (Report No: 2006.152A).

[GENNS01]

6. All works shall be undertaken in accordance with the requirements of NSW Health and the NSW Food Authority.

[GENNS01]

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

[GEN0045]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

8. Pursuant to Section 68 of the Local Government Act, 1993 an approved pre-treatment device (eg. Oil/grease traps, separators, etc) shall be installed in accordance with Tweed Shire Councils Trade Waste Policy. Submission of detailed hydraulic plans and specifications indicating size, type, location and drainage installations in accordance with AS 3500 shall be submitted to Council for approval.

[PCC1265]

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

[PCC0465]

10. Waste material (soil, concrete, timber, masonry, steel and the like) generated by the development shall be disposed of in accordance with a Waste Management Plan which shall be submitted to and approved by the Principal Certifying Authority PRIOR to the issue of a construction certificate.

The Plan shall specify how the waste is to be treated and/or where the waste is to be disposed of.

[PCC1065]

11. Prior to the Construction Certificate being issued, a noise assessment report from a suitably qualified acoustic consultant shall be prepared and submitted for consideration and approval by Council's Director of Environment and Community Services in respect to noise likely to be generated by the activities associated with the proposed development. Such report shall also address specific noise impacts associated with reversing beepers in operation and propose necessary noise mitigation measures as appropriate to ensure that offensive or unreasonable noise is not created. The assessment shall include any recommended noise amelioration measures to be carried out by the applicant.

[PCCNS01]

12. 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:	\$42,305
S94 Plan No. 4 (Version 4.0)	
Sector1_4	
(b) Open Space (Structured):	\$32,136
S94 Plan No. 5	
(c) Open Space (Casual):	\$6,780
S94 Plan No. 5	
(d) Shirewide Library Facilities:	\$28,304
S94 Plan No. 11	
(e) Bus Shelters:	\$1,070
S94 Plan No. 12	
(f) Eviron Cemetery/Crematorium Facilities:	\$4,864
S94 Plan No. 13	

(g) Emergency Facilities (Surf Lifesaving) S94 Plan No. 16	\$8,247
(h) Extensions to Council Administration Offices & Technical Support Facilities	\$52,213.66
(i) S94 Plan No. 18 Cycleways	\$14,511
(j) S94 Plan No. 22 Regional Open Space (Structured)	\$95,733
(k) S94 Plan No. 26 Regional Open Space (Casual)	\$34,713
(l) S94 Plan No. 26 Tweed Heads Master Plan: S94 Plan No. 27	\$43,086.14

[PCC0215/PSC0175]

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

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

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

Water DSP4: 56.4 ET @ \$4598 \$259,327

Sewer Banora: 87.2 ET @ \$2863 \$249,654

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

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

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

[PCC0265/PSC0165]

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

[PCC0675]

15. Design detail shall be provided to address the flood compatibility of the proposed structure including the following specific matters:
- (a) The habitable area of the building is to be at a level no less than 500mm above the design flood level of RL 2.6m AHD.
 - (b) All building materials used below Council's design flood level must not be susceptible to water damage.
 - (c) Subject to the requirements of the local electricity supply authority, all electrical wiring, outlets, switches etc. should, to the maximum extent possible be located above the design flood level. All electrical wiring installed below the design flood level should to suitably treated to withstand continuous submergence in water.

[PCC0705]

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

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

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

[PCC1145]

17. 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]
18. Permanent stormwater quality treatment shall be provided in accordance with the following:
- (a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils *Development Design Specification D7 - Stormwater Quality*.
- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management. Typical water sensitive features include infiltration, maximising permeable/landscaped areas, stormwater retention /detention/reuse, and use of grass swales in preference to hard engineered drainage systems.
- (d) All stormwater runoff from carparking and driveway catchments in events up to the ARI 3 month storm (deemed to be 40% of the ARI 1 year event) must be treated for oil, sediment and nutrient pollutants prior to discharge to the public realm or a stormwater reuse system. Permanent stormwater treatment devices must be sized in accordance with Section D7.12 of *Development Design Specification D7 - Stormwater Quality*, with full engineering details, including maintenance schedules to be submitted with a s68 Stormwater Application for approval prior to the issue of a Construction Certificate.
- (e) Roof water does not require quality treatment and should be discharged downstream of treatment devices, to minimise capacity requirements of these devices.
- [PCC1105]
19. An Emergency Management Plan must be prepared and submitted to Council for approval prior to the issue of a Construction Certificate. The Plan must address how the development will operate to provide continuous services to all occupants who shelter within the facility during a major flood event. This must include provision of food, potable water, medical services, waste management, power via backup generators, and staffing.
- [PCCNS02]

20. Prior to the issue of a Construction Certificate a plan is to be submitted for consideration and approved by Council's Director of Environment and Community Services with regard to the proposed areas to be used to receive, store, prepare, cook, sell and/or serve food. The plan is to detail the mechanical exhaust ventilation as per the requirements of AS 1668 Pts 1 & 2 where required.

[PCCNS03]

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

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

[PCC0485]

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

- (a) Construction of vehicular footpath crossings.
- (b) Removal of redundant vehicular footpath crossings and subsequent restoration.
- (c) The downstream gully pit nearest to the development site in the Florence Place kerb and gutter shall be upgraded to comply with Tweed Shire Council Standard Drawing No S.D.104 "Standard Gully Pit - Barrier Kerb", to enable the partial discharge of stormwater from the development to the Florence Place drainage system, in general accordance with the Stormwater Management, Earthworks and Services Assessment by Blueland Engineers dated October 2006. Upgrade works shall be supervised by Council, with all costs borne by the developer.

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

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

[PCC0895]

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

[PCC1235]

PRIOR TO COMMENCEMENT OF WORK

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

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

[PCW0215]

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

[PCW0225]

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

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

[PCW0245]

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

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

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

[PCW0255]

28. Please note that while the proposal, subject to the conditions of approval, may comply with the provisions of the Building Code of Australia for persons with disabilities your attention is drawn to the Disability Discrimination Act which may contain requirements in excess of those under the Building Code of Australia. It is therefore recommended that these provisions be investigated prior to start of works to determine the necessity for them to be incorporated within the design.

[PCW0665]

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

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

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

[PCW0985]

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

[PCW1005]

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

[PCW1075]

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

[PCW1165]

33. Where any pumps used for dewatering operations are proposed to be operated on a 24-hour basis, the owners of adjoining premises shall be notified accordingly prior to commencement of such operations.

[PCW0125]

34. An Approval to Install a Waste Treatment Device shall be obtained prior to the commencement of the installation of the facility.

[PCW1105]

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

[PCW0005]

36. Installation of suitable perimeter drainage systems in accordance with Tweed Shire Councils adopted Design and Construction Specifications. The drainage system is to be installed and functioning prior to the placement of any fill mechanically or hydraulically.

[PCW0975]

DURING CONSTRUCTION

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

[DUR0005]

38. 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]

39. 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]

40. 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]

41. 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]

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

[DUR0415]

43. Excavation

(a) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with WorkCover 2000 Regulations.

(b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

[DUR0425]

44. If the work involved in the erection or demolition of a building:

(a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or

(b) building involves the enclosure of a public place,

a hoarding or fence must be erected between the work site and the public place in accordance with the WorkCover Authority of NSW Code of Practice and relevant Australian Standards.

Where necessary the provision for lighting in accordance with AS 1158 - Road lighting and provision for vehicular and pedestrian traffic in accordance with AS 1742 shall be provided.

Any such hoarding, fence or awning is to be removed prior to the issue of an occupation certificate/subdivision certificate.

Application shall be made to Tweed Shire Council including associated fees for approval prior to any structure being erected within Councils road reserve.

[DUR0435]

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

[DUR0645]

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

[DUR0655]

47. Minimum notice of 48 hours shall be given to Tweed Shire Council for the capping of any disused sewer junctions. Tweed Shire Council staff in accordance with the application lodged and upon excavation of the service by the developer shall undertake Works.

[DUR0675]

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

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

[DUR1005]

49. 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]

50. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction and demolition.
- [DUR2185]
51. 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]
52. 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]
53. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position.
- [DUR2505]
54. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993.
- [DUR2515]
55. All water plumbing pipes concealed in concrete or masonry walls shall be fully lagged.
- [DUR2525]
56. 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]
57. 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]
58. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-

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

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

[DUR2555]

59. 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]

60. All pumps used for onsite dewatering operations shall be installed on the site in a location that will minimise any noise disturbance to neighbouring or adjacent premises, and be acoustically shielded to the satisfaction of the General Manager or his delegate so as to prevent the emission of offensive noise as a result of their operation.

[DUR0235]

61. Pumps used for dewatering operations are to be electrically operated. Diesel pumps are not to be used unless otherwise approved by the General Manager of his delegate.

[DUR0255]

62. Provision to be made for the designation of one (1) durable and pervious car wash-down area. The area must be identified for that specific purpose and be supplied with an adequate water supply for use within the area/s. Any surface run-off from the area must not discharge directly to the stormwater system.

[DUR0975]

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

[DUR1015]

64. All shelving, benches, fittings and furniture on which appliances and utensils are positioned within the consulting room and hairdresser room must be of durable, smooth, impervious material capable of being easily cleaned.
[DUR1605]
65. The walls and floors of the consulting room and hairdresser room must be lined, sealed or sheeted with an approved smooth impervious material capable of being easily cleaned.
[DUR1615]
66. The walls immediately behind any basin within the consulting room and hairdresser room shall be provided with an impervious splashback to a height of 450mm and at least 150mm either side of the basin.
[DUR1625]
67. Separate hand washing facilities must be provided with warm water in a readily accessible position within the work area of the consulting room and hairdresser room.
[DUR1645]
68. A garbage storage area shall be provided in accordance with Council's "Code for Storage and Disposal of Garbage and Other Solid Waste".
[DUR2195]
69. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials. A screened, graded and drained garbage storage area shall be provided within the boundary.
[DUR2205]
70. Prior to any works commencing, appropriate measures are to be put in place to prevent the transport of sediment from the site. Should any material be transported onto the road or any spills occur it is to be cleaned up prior to cessation of same days work and/or commencement of any rain event.
[DUR2405]
71. Vehicles leaving the premises shall be sufficiently free from dirt, aggregate or other materials such that materials are not transported onto public roads.
[DUR2415]
72. All waters that are to be discharged from the site shall have a pH between 6.5 and 8.5 and suspended solids not greater than 50mg/kg. The contractor shall nominate a person responsible for monitoring of the quality of such discharge waters on a daily basis and the results recorded. Such results shall be made available to Council's Environmental Health Officer(s) upon request.
[DUR2435]

73. Pre-treatment devices must be serviced by a Council approved waste contractor. The applicant will be required to enter into a service agreement with this waste contractor. Pre-treatment device service frequency will be approved by Councils Manager Water.

[DUR2595]

74. A hose tap shall be provided adjacent to a grease arrester for cleaning purposes and shall be fitted with a RPZD for the purpose of back flow prevention.

[DUR2675]

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

[DUR0995]

76. The concrete footpath is to be saw cut and removed to facilitate the construction of the concrete driveway access.

[DUR1745]

77. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742.3-2202 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

[DUR1795]

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

[DUR1905]

79. 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]

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

Such to specifically include the following:

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

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

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

[DUR0065]

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

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

[DUR0765]

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

[DUR0985]

83. A survey certificate signed by a registered surveyor is to be submitted to the Principal Certifying Authority at floor stage to certify that the habitable floor level of the building to be at a level of not less than RL 3.1m AHD.

[DUR1445]

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

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

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

[DUR2375]

85. Landscaping of the site shall be carried out in accordance with the submitted/approved landscaping plans.

[DUR1045]

86. The provision of thirty (30) off street car parking spaces including parking for the disabled where applicable and one (1) ambulance bay. The layout and construction standards to be in accordance with Development Control Plan No. 2 - Parking Controls, the Building Code of Australia and AS 2890.

[DUR0085]

87. A trade waste agreement will be issued and a permit number allocated once the device has been installed, inspected and Council has received a copy of the Waste Contractor's Service Agreement

[DUR2685]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

88. 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]

89. 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.

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]

90. 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]

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

[POC1055]

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

[POC0225]

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

[POC0635]

94. Prior to occupation of the building, a post construction noise level report prepared by a qualified acoustic consultant is to be prepared and submitted to Council's Director of Environment and Community Services for consideration and approval. Such report shall address the requirements for establishing suitable operating noise levels for all plant and associated equipment so as to prevent the creation of offensive or unreasonable noise levels occurring at neighbouring and/or adjacent properties.

[POCNS01]

95. 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]

96. All existing disused vehicular laybacks/driveways shall be removed and the areas reinstated to match adjoining works in accordance with Councils adopted Development Design and Construction Specifications. This will involve reinstatement of kerb and gutter, concrete path paving and turf as required.

[POC0755]

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

[POC0855]

98. The 4m wide driveway fronting Florence Place is to be clearly signposted as "Entry Only".

[POCNS02]

99. A survey certificate signed by a registered surveyor shall be submitted to the PCA to verify that;

- (a) All habitable floor levels of the building are at or above RL 3.1m AHD.
- (b) All finished ground levels are at or above RL 2.6m AHD.

[POCNS03]

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

[POC0475]

USE

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

[USE0125]

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

[USE0175]

103. 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]

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

[USE0235]

105. Any vehicles that remain on site for periods in excess of two (2) minutes are required to switch off their engines.

[USE0255]

106. Delivery of goods to the premises shall be restricted to between the hours of 7am to 5pm Monday to Friday only. Medical related deliveries exempted.

[USE0275]

107. The servicing of waste facilities shall be limited to between the hours of 8am to 5pm Monday to Saturday only.

[USE0285]

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

[USE0525]

109. Any premises used for the storage, preparation or sale of food are to comply with the Food Act 2003, FSANZ Food Safety Standards 3.2.1, 3.2.2 and 3.2.3 and AS 4674 Design, Construction and Fit-out of Food Premises.

[USE0835]

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

[USE0845]

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

[USE0875]

112. The premises shall be operated in accordance with the *Public Health (Skin Penetration) Regulation 2000* and current NSW Health Skin Penetration Code of Best Practice and Guidelines.

[USE0975]

113. Clinical wastes shall be separated from the general waste stream and disposed via Council's approved clinical waste collection and disposal service.

[USE0995]

114. A sharps container shall be provided for the storage of used disposable needles in any skin penetration process. The sharps container shall be collected by an authorised medical waste collection service to the satisfaction of Council's General Manager or his delegate.

[USE1025]

115. All waste collection activities shall occur within the property boundary.

[USE1345]

116. The approved hairdressing salon is to contain not more than two washing basins.

[USENS01]

117. Approval is granted for the construction for not more than one hundred and twenty (120) room aged care facility to accommodate not more than one hundred and twenty (120) residents. A maximum of 25 staff members are permitted to be working within the facility at any one time.

[USENS02]

118. Use and occupation of the building is to be carried out in accordance with the residential care facility provisions of SEPP - Seniors Living.

[USENS03]

GENERAL TERMS OF APPROVAL UNDER SECTION 116 OF THE WATER ACT 1912 (Licence to commence sinking a bore to enlarge, deepen or alter a bore)

- Before commencing any works or using any existing works for the purpose of Temporary Dewatering for Construction Purposes, an approval under Part 5 of the Water Act 1912 must be obtained from the Department. The application for the approval must contain sufficient information to show that the development is capable of meeting the objectives and outcomes specified in these conditions.
- An approval will only be granted to the occupier of the lands where the works are located, unless otherwise allowed under the Water Act 1912.
- When the Department grants an approval, it may require any existing approvals held by the applicant relating to the land subject to this consent to be surrendered or to let lapse.
- All works subject to an approval shall be constructed, maintained and operated so as to ensure public safety and prevent possible damage to any public or private property.

- All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry of sediments into any river, lake, waterbody, wetland or groundwater system.
- The destruction of trees or native vegetation shall be restricted to the minimum necessary to complete the works.
- All vegetation clearing must be authorised under the Native Vegetation Conservation Act 1997, if applicable.
- The approval to be granted may specify any precautions considered necessary to prevent the pollution of surface water or groundwater by petroleum products or other hazardous materials used in the construction or operation of the works.
- A license fee calculated in accordance with the Water Act 1912 must be paid before a license can be granted.
- If and when required by the Department, suitable devices must be installed to accurately measure the quantity of water extracted or diverted by the works.
- All water measuring equipment must be adequately maintained. It must be tested as and when required by the Department to ensure its accuracy.
- Works for construction of bores must be completed within such period as specified by the Department.
- Within 2 months after the works are completed the Department must be provided with an accurate plan of the location of the works and notified of the results of any pumping tests, water analysis and other details as are notified in the approval.
- Officers of the Department or other authorised persons must be allowed full and free access to the works for the purpose of inspection and testing.
- Water shall not be pumped from the works for any purpose other than dewatering for construction purposes.
- The use of water shall be conditional on no tailwater drainage being discharged into or onto -
 - any adjoining public or crown road
 - any crown land
 - any river, creek or watercourse
 - any groundwater aquifer
 - any area of native vegetation
 - any wetlands

- The work shall be managed in accordance with the constraints set out in the "Preliminary Acid Sulfate Soil Investigation and Dewatering Management Plan" produced by HMC Environmental Consulting dated October 2006 Report No.2006.152A presented as Appendix F of the Statement of Environmental Effects for the proposed development.
- The volume of groundwater extracted as authorised must not exceed 5 megalitres.
- The Department has the right to vary the volumetric allocation or the rate at which the allocation is taken in order to prevent the overuse of an aquifer.
- The licence shall lapse within three (3) months of the date of issue of the licence.

REPORT:

Applicant: Domain Aged Care

Owner: Mrs ML Waind, Mr GR Filewood, Mrs PR Filewood, Mr S Lynch, Mr D MacLennan, Mrs IE MacLennan, Mr DK Martain and Mrs JM Martain

Location: Lot 79, 80, 86, 87, 88 DP 237806, No. 3-5 Powell Street & No. 7-9 Florence Place, Tweed Heads

Zoning: 2(b) Medium Density Residential

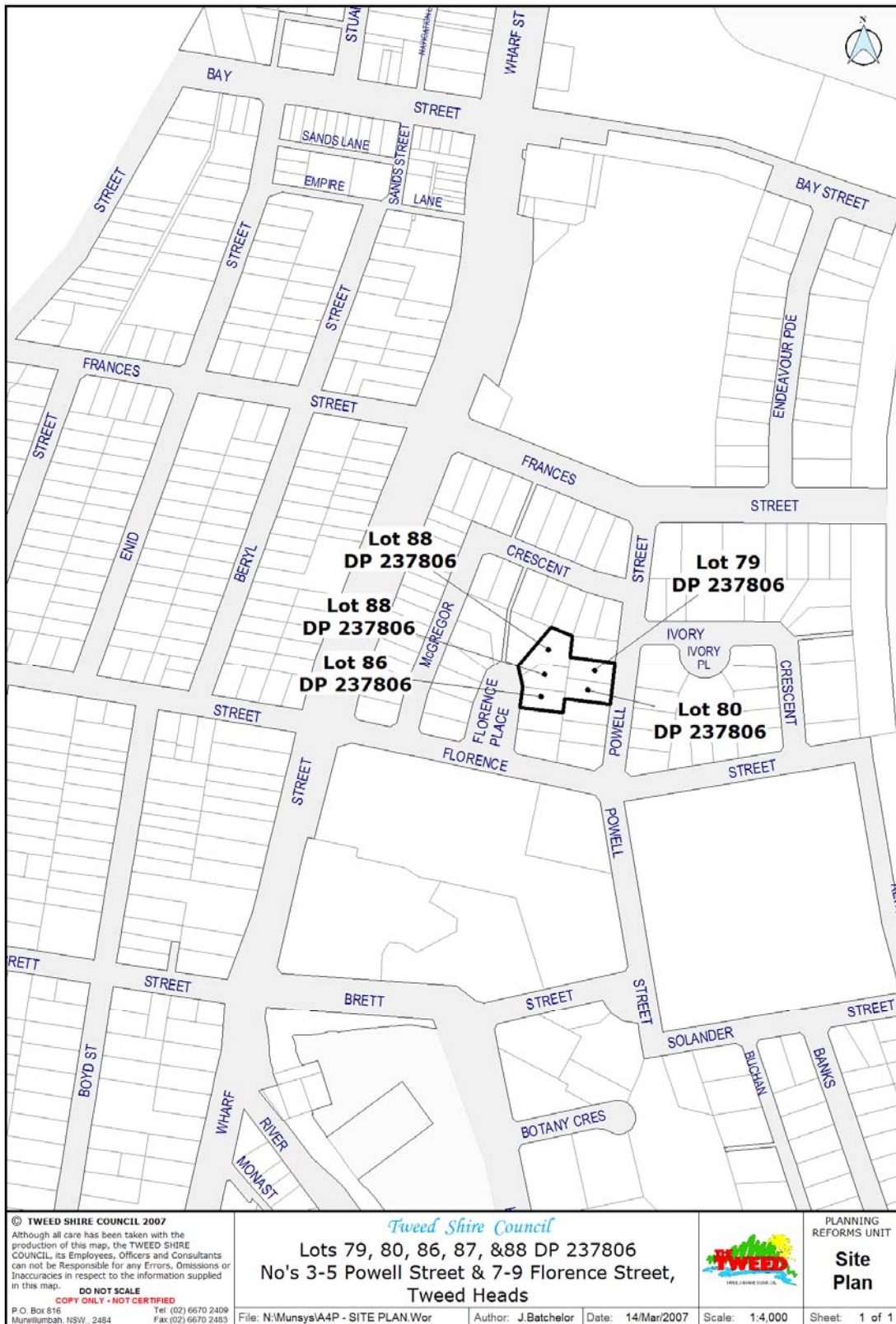
Cost: \$16,000,000

BACKGROUND:

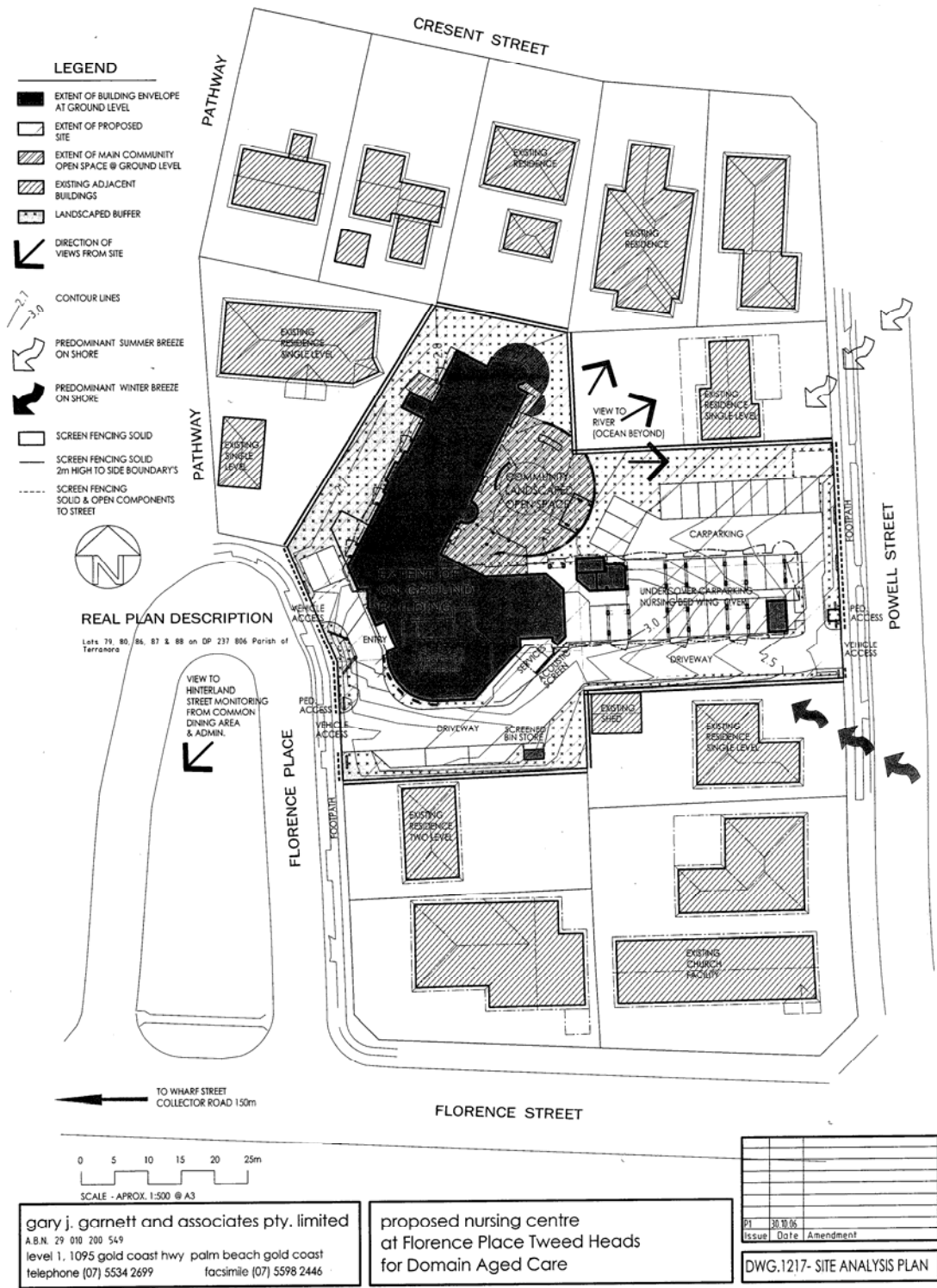
An application has been received seeking approval for the construction of a five (5)-storey residential aged care facility comprising one hundred and twenty (120) beds.

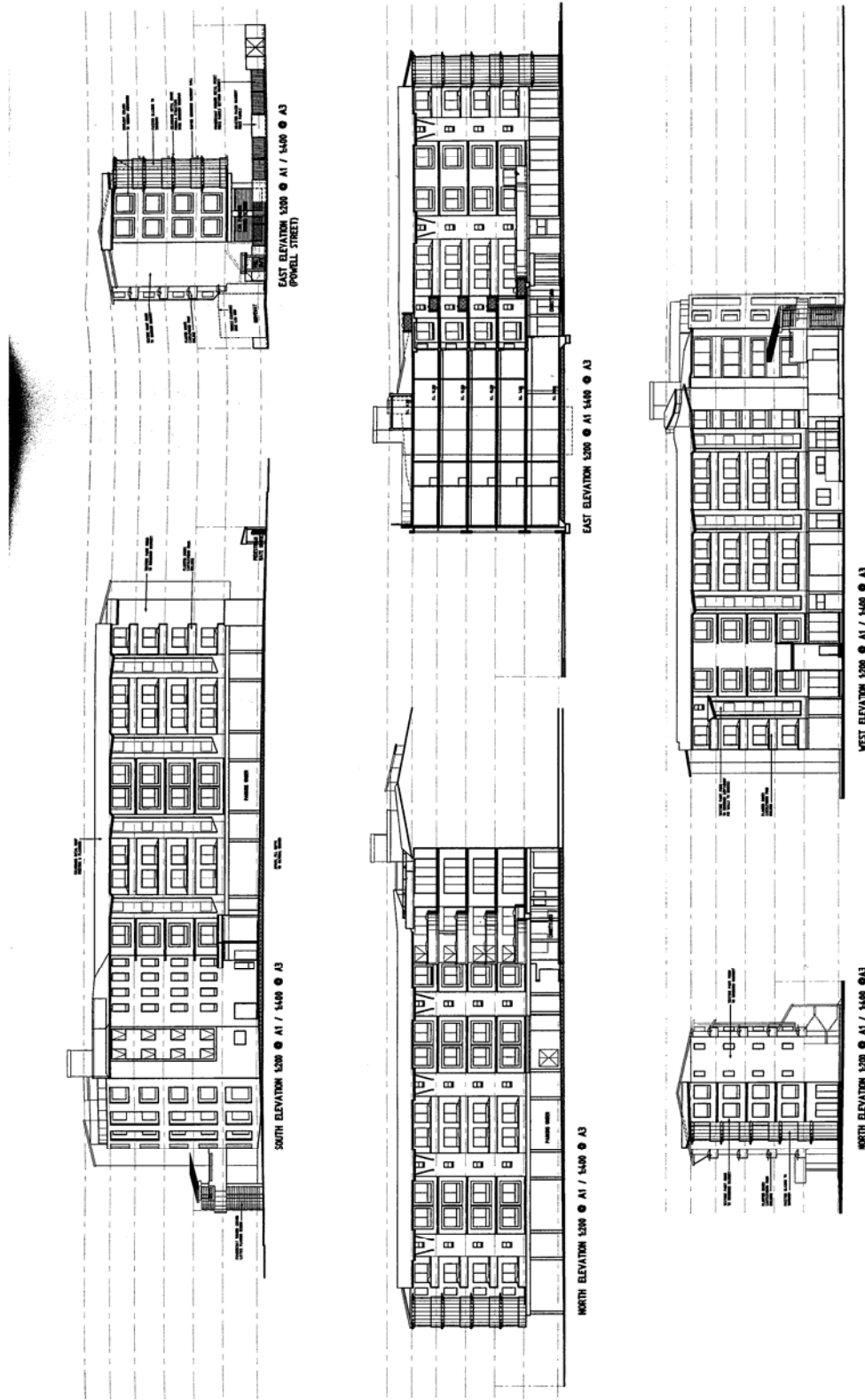
The subject site(s) are located in the centre of Tweed Heads in close proximity to the Tweed Heads Hospital, Tweed Heads Bowls Club and Tweed Centro Shopping Centre. The sites are described as Lots 79, 80, 86, 87, 88 DP 237806 being No. 7-9 Florence Place and No. 3-5 Powell Street. The five (5) lots currently contain five (5) dwellings and the development application also proposes the demolition of them.

SITE DIAGRAM:



SITE & ELEVATION PLANS





REVISED proposed nursing centre at Florence Place Tweed Heads	CLIENT domain aged care	gary j. garnett and associates pty. limited, architects c.r.o.i.o. copyright gary j. garnett and associates 2006 A.S.N. 07 01 20 20 48 telephone (07) 5534 2699 fax (07) 5598 2446 1/1095 gold coast highway palm beach gold coast	DRAWING NUMBER TWEED-SK-1.07	DATE: 11/03/07 DRAWN BY: J. GARNETT CHECKED BY: J. GARNETT PROJECT: FLORENCE PLACE CLIENT: DOMAIN AGED CARE SCALE: 1:100
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CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

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

Tweed Local Environmental Plan 2000

The proposed development is located within the 2(b) Medium Density Residential Zone, in accordance with the provisions of Tweed LEP 2000. The objectives of the zones are:-

Primary objective

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

Secondary objectives

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

The proposal is consistent with the objectives of the zone, as the subject site is located within proximity to the sub regional centre of Tweed Heads.

Clause 15 of the Tweed LEP 2000 requires Council to be satisfied that essential services are available to the site(s) or satisfactory arrangements have been made for the provision of those services. The subject site(s) are serviced by water, power and telecommunications and facilities for stormwater, sewage and drainage are available.

It has been mentioned within the submitted SEE that it is likely that the electricity would require upgrading to cater for the increased loading associated with the proposed facility. A small pad-mounted sub-station has been allowed for adjacent to Powell Street.

The proposal is consistent with the provisions of this clause.

Clause 16 of the Tweed LEP 2000 requires Council to ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land. The height limit for the subject site is 6-storeys. The proposed development's height and scale complies with the objectives of this clause.

Clause 17 of the Tweed LEP 2000

The proposal is considered to create a significant social or economical impact as such a Socio-Economic Impact Assessment has been provided by the applicant and assessed under section (a) (iii) DCP 45 – Socio Economic Impact Assessment, of this report.

The proposal is considered to comply with the objectives of this clause.

Clause 34 of the Tweed LEP 2000 requires Council to minimise future potential flood damage by ensuring only appropriate compatible development occurs on flood liable land. The subject sites have a current ground level ranging from 2.3m AHD to 2.7m AHD, with the designed flood level being 2.6m AHD. DCP 5 requires filling of the site to 2.6m AHD with a minimum floor level requirement of 3.1m AHD. It is unlikely that the filling would result in any significant drainage impacts on adjoining land. The proposal is considered to comply with the objectives of this clause.

Clause 35 of the Tweed LEP 2000 requires Council to ensure disturbance of Acid Sulphate Soils be managed accordingly to minimise impacts on water quality, ecosystems, infrastructure and agricultural and urban activities.

The subject site(s) are affected by Class 2 ASS, as such a preliminary soil assessment is required. An assessment of the site setting, soil borelogs and soil tests indicate that no ASS are likely to be present within 4.5metres below the ground surface. As such an ASS management plan is not required as works are proposed to a maximum of 4 metres below the ground surface. The proposal is considered to comply with the objectives of this clause.

Clause 35 of the Tweed LEP 2000 requires Council to ensure that contaminated land is adequately remediated prior to development occurring. Three (3) of the five (5) dwellings consist of concrete slab on ground construction which could mean the possibility of underslab contamination. Soil sampling indicates that contamination is below the level of detection. The proposal is considered to comply with the objectives of this clause.

North Coast Regional Environmental Plan 1988

Clause 32B Development control—coastal lands

The proposal is considered not to negate the objectives of the following policies;

- (a) the NSW Coastal Policy 1997,
- (b) the Coastline Management Manual, and
- (c) the North Coast: Design Guidelines.

The proposed development is considered not to contravene the objectives of Clause 32B and will not create any significant adverse effects to the public access to the foreshore, overshadowing to beaches or waterfront open space land before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time).

Clause 43 – Residential development

This clause is considered to be satisfied for the following considerations;

- i) The proposed density of the development is generally in accordance with all relevant policies.
- ii) The proposal is located within a well-established residential area and the existing road network is considered adequate for the proposal.
- iii) The proposed site is located within walking distances to many services such as Tweed Heads Hospital, Tweed Heads Bowls Club and Tweed Centro Shopping Centre. The SEE states that transport services are available in accordance with the provisions of the seniors living 2004 SEPP.
- ivi) A sediment and erosion control management concept plan has been provided.

Clause 51 Development control – Director’s concurrence for tall buildings

This clause applies to the proposal as the building is greater than 14metres, however, the consent authority can assume the Director’s concurrence subsequent to Circular D8 issued 17 March 1989 by the Department of Urban Affairs and Planning, as Council has a policy which specially controls buildings over 14 metres.

State Environmental Planning Policies

State Environmental Planning Policy (Seniors Living) 2004

Aims of the Policy:

- (1) *This Policy aims to encourage the provision of housing (including residential care facilities) that will:*
 - (a) *increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and*
 - (b) *make efficient use of existing infrastructure and services, and*
 - (c) *be of good design.*

(2) These aims will be achieved by:

- (a) setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in this Policy, and*
- (b) setting out design principles that should be followed to achieve built form that responds to the characteristics of its site and form, and*
- (c) ensuring that applicants provide support services for seniors or people with a disability for developments on land adjoining land zoned primarily for urban purposes.*

This policy applies to the application, with the proposal defined as a "residential care facility" for the purpose of this policy, which is defined as follows:

11 Residential care facilities

In this Policy, a "residential care facility" is residential accommodation for seniors or people with a disability that includes:

- (a) meals and cleaning services, and*
- (b) personal care or nursing care, or both, and*
- (c) appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care, not being a dwelling, hostel, hospital or psychiatric facility.*

The applicable Clause's are listed and assessed below.

Part 2 – Site-related requirements

Clause 25 Location and access to facilities

- (1) A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied, by written evidence, that residents of the proposed development will have access that complies with sub-clause (2) to:*
 - (a) shops, banks and other retail and commercial services that residents may reasonably require, and*
 - (b) community services and recreation facilities, and*
 - (c) the practice of a general medical practitioner.*

The proposal is located within 400metres to the services and facilities referred to in sub-clause (1), namely Tweed Centro Shopping Centre, Tweed Heads Hospital, Tweed Heads CBD, Tweed Heads Bowles Club, Tweed Heads Civic Centre and Library.

(2) Access complies with this clause if:

- (a) the facilities and services referred to in subclause (1) are located at a distance of not more than 400 metres from the site of the proposed development and the overall average gradient along the distance is no more than 1:14.*

The proposed site is located within 400 metres of the facilities and services referred to in sub-clause (1) with the site and surrounding area being relatively level providing an average gradient that complies with the standard.

(b) Not applicable

- (c) in the case of a proposed development on land in a local government area that is not within the Sydney Statistical Division-- there is a transport service available to the residents who will occupy the proposed development:*

- (i) that is located at a distance of not more than 400 metres from the site of the proposed development, and*
- (ii) that will take those residents to a place that is located at a distance of not more than 400 metres from the relevant facilities or services, and*
- (iii) that is available both to and from the proposed development during daylight hours at least once each day from Monday to Friday (both days inclusive).*

A bus stop is located approximately 60metres from the subject site which will take residents to such facilities and services as the Tweed Centro Shopping Centre and Tweed Heads CBD at least once a day (Monday to Friday) during daylight hours.

This Clause is satisfied.

27 Water and sewer

- (1) A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied, by written evidence, that the housing will be connected to a reticulated water system and have adequate facilities for the removal or disposal of sewage.*

The proposed development is located within the established urban area of Tweed Heads. The site is serviced by reticulated water and sewerage that contain sufficient capacity to meet the demand of the proposed development.

This Clause is satisfied.

(2) Not applicable

Part 3 – Design requirements

Division 1 – General

Clause 28 Site analysis

Clause 28 requires that the applicant must provide a site analysis statement with the application addressing the following points; site dimensions, topography, services, existing vegetation, micro climates, location of buildings and other structures, views to and from the site and overshadowing by neighbouring structures. The applicant has provided sufficient site analysis plans and detail within the statement of environmental effects to satisfy this provision.

The site is a large irregular shaped parcel, which contains two road frontages being Florence Place (37.79m approx.) and Powell Street (36.57m approx.). The total area of the site is approximately 3932.7m². The site is generally flat with little variation. Site levels vary between RL 2.3metres AHD and RL2.7metres AHD. All relevant services are available to the site being; water, sewer, power and telecommunications. A mains gas supply is available in Powell Street.

Existing vegetation of the site generally comprise of small trees, shrubs and lawn with no significant vegetation located on the site. The majority of open space is located to the north of the site with summer winds predominantly coming from the northeast and winter winds predominantly from the southeast. The applicant provided a detailed plan (appendix B of SEE plan No. 37888) identifying the location of the abovementioned features.

The five sites consist of single storey dwellings and associated buildings (sheds and garages). No items of heritage or archaeological significance are present on the site. Pedestrian and vehicle access is available to site. The site and surrounding area is generally level, with the existing dwellings currently not enjoying any significant views.

The site would be visible from Razorback Ridge precinct as identified within DCP 18. The proposed development is considered not to negate the aims and objectives of DCP 18 as the proposal is considered not to dominate the landscape a further details assessment of DCP 18 is provided later in this report under section (a)(iii) Development Control Plans (DCP's). The site is adjoined to the north by single storey residential dwellings. No significant overshadowing is considered likely to occur from the existing adjoining properties.

(4) *The following information about the surrounds of a site is to be identified in a site analysis:*

- (a) *Neighbouring buildings:*
- (b) *Privacy:*
- (c) *Walls built to the site's boundary:*
- (d) *Difference in levels between the site and adjacent properties at their boundaries*
- (e) *Views and solar access enjoyed by neighbouring properties*
- (g) *Street frontage features:*
- (h) *The built form and character of adjacent development (including buildings opposite on both sides of the street(s) fronted):*
- (i) *Heritage features of surrounding locality and landscape*
- (j) *Direction and distance to local facilities:*
- (k) *Public open space:*
- (l) *Adjoining bushland or environmentally sensitive land*
- (m) *Sources of nuisance:*

Existing development surrounding the site is made up of single and two-storey residential detached housing. The proposal provides more than the required setbacks to the site boundaries to ensure an acceptable level of privacy on adjoining properties is retained. There are no buildings proposed built on the site's boundaries.

There is not a significant difference in levels between the subject site and surrounding properties, as such there are no significant views currently obtained by the surrounding sites. There is no significant vegetation on the adjoining properties.

The site is serviced by 90° kerb and gutter along each of the road frontages. A concrete footpath extends along the full frontage of the site linking into the local footpath network. Water, sewer, power and telecommunication services are available on both road frontages.

The built form and character of the adjacent development consists of older style brick and tile residential dwellings of one (1) and two (2) stories in height. Due to the zoning and height restriction of six (6) stories within the area a number of residential flat buildings are taking form surrounding the area. There is limited front fencing provided by any of the surrounding sites with garden style/landscaping of a minimal standard.

There are no heritage features in the surrounding locality. The proposal is located within 400metres to services and facilities namely Tweed Centro Shopping Centre, Tweed Heads Hospital, Tweed Heads CBD, Tweed Heads Bowles Club, Tweed Heads Civic Centre and Library. Public open space is provided in the form of the foreshore adjacent to the Tweed River within 300metres west of the subject site. Also a park is located on the corner of Florence and Recreation Streets within 500metres to the east of the subject site. There is no bushland or environmentally sensitive land adjoining the subject site. There are no sources of nuisance of significance that may affect the proposed development.

Clause 31 Neighbourhood amenity and streetscape

This clause is considered satisfied as the proposal identifies the desirable elements of the locality, whilst contributing to the quality and identity of the area. The proposal complies with the setback, building heights requirements to assist in reducing the bulk and overshadowing of the proposal. The proposal includes attractive fencing and landscaping to help maintain neighbourhood amenity.

The type of fencing proposed along Powell Street is generally 1.65m high consisting of powder coated aluminium "loop-top" open fence panels (fixed to square powder coated aluminium posts). Two solid Masonry sheet panels (approx. two metres in length) are proposed to be equally spaced along the frontage of Powell Street in addition to a "openable" solid panel with a height of 1.8m (approx. length 4.5 metres) located at the northern end to provide visual screening to the pad mounted transformer.

Fencing along the Florence Place consists of the same materials to that of Powell Street. The stone masonry walls also occur for a distance of approximately 8.0m adjacent to the Porte-Cochere and would spray at an angle of 45° from the boundary back to meet the columns of the Porte-Cochere.

Side fencing would be generally 2.0m high lapped and capped, and would step down over the final 6 metres towards each street frontage matching the height of the front fencing of 1.65m.

Clause 32 Visual and acoustic privacy

Requires that the proposed development consider the visual and acoustic privacy of surrounding development by appropriate location of windows, balconies, screening devices and landscaping.

The following privacy measures are proposed to assist in mitigating potential issues;

- No balconies to individual rooms are proposed
- The use of planter boxes adjacent to resident's windows for screening
- The building is setback from side boundaries
- Fencing and landscaping along side boundaries to provide screening

A Noise Impact Assessment was submitted with the application, which concluded that the proposal would not generate any significant adverse noise impacts on adjoining residents provided the following measures were implemented;

- Enclosure of loading area
- Screening by boundary fences
- The location of plant and equipment so as not to be in direct line with adjoining properties, and

- Absorbent shields on noise generating equipment

The application was referred to Council's Environmental Health Unit for assessment and provided the following comments.

"Construction will be limited to 7am to 6pm Monday to Saturday.

Deliveries will be restricted to 7am to 5pm Monday to Friday only, and generally include 1 regular and 1 refrigerated vehicle only per day. The consultant has advised that the loading dock will need to be enclosed to eliminate any line of site to the residence at 10 Florence Place. All delivery and waste vehicles will enter via Powell St and exit via Florence Place.

It is noted that the use of shielding from the surrounds, rooflines and attenuators may be required for this site and that all units are to be mounted on resilient mounts to reduce vibration.

As the bulk of plant and equipment has not yet been finalised, the acoustic assessment does not adequately assess potential noise from these sources at this time. It is however considered feasible that such systems can be acoustically treated or managed to minimise potential noise impacts to neighbouring and adjacent premises.

It is therefore required that a further acoustic assessment be carried out for this site prior to issuing the construction certificate that will allow a more detailed assessment based on the specific systems to be installed at that site.

Conditions to apply."

This clause is considered satisfied.

Clause 33 Solar access and design for climate

The site most affected by overshadowing from the proposed development is No. 7 Powell Street (a single storey detached dwelling) with all other surrounding sites experiencing good solar access. The owners of No. 7 Powell Street submitted an objection to the loss of the northern winter sun. The subject site would begin to experience overshadowing from the proposal at 9.00am mid winter, which would cover half the site and the garage and covered walkway of the dwelling. The shadowing would continue to cover the remainder of the site and by 1.30pm the majority of the site would be covered. By 3.00pm the entire site and majority of the dwelling would be overshadowed.

The rear portion of No. 7 Powell Street is predominately overshadowed during mid winter between the hours of 9.00am to 3.00pm. The area is undergoing a transitional phase with established detached dwellings being replaced with multi-storey medium to high-density developments. The application proposes a 5-storey building within a 6-storey height restricted area, being one storey less than permissible. The development exceeds the setback requirements thereby assisting in reducing the impact on adjoining properties.

The building has been designed to provide maximum opportunity of solar access to it's main living areas and open spaces areas. The building has been sited to provide access to light and ventilation for natural ventilation, solar heating and lighting, which also assists in reduced energy use. This clause is considered satisfied.

Clause 34 Stormwater

The application was referred to Council engineers in which the following comments were made.

"The site, once consolidated, will fall towards the south-eastern corner of the site, to Powell Street. No inter-allotment drainage line is required.

According to the applicant's stormwater management plan, the proposed development will not significantly increase stormwater discharges from the site, due to comparative pre and post development impervious areas. The accuracy of this claim is doubtful, and it is considered that any proposal that concentrates large stormwater discharges to the public system compared with the multiple dispersed discharges from the existing five dwelling sites must properly consider impacts on downstream infrastructure.

The development site has kerbed frontages to Florence Place and Powell Street, which grade towards a trunk drainage system in Florence Street. East of Powell Street, this pipe has a 1050mm diameter, so should have adequate capacity to accept any increased flows from the subject development.

According to the applicant's consultant engineer, sewer lines along the site boundaries prevent piped connection of site drainage to underground infrastructure, and discharge to kerb is the only practical option. This assumption is also questionable, however if kerb inlet pits in Florence Street are adequate, increased kerb flows could be catered for.

From inspection, the existing inlets at the Powell St/Florence St intersection are grated gully pits, of an adequate standard. It would therefore be acceptable to discharge a portion of the site runoff to Powell Street without flow mitigation. The existing inlets at the Florence Pl/Florence St intersection are only lintel type structures, with limited inlet capacity. As such, the developer should be required to upgrade the nearest inlet pit to Council's current standard before unmitigated stormwater flows can be discharged to kerb.

The proposed internal drainage system caters for both roof and carpark/driveway stormwater, directing it all towards a 10KL storage/reuse tank. The applicant intends to use this water for onsite irrigation. Given the size of the piped catchment, this storage is expected to surcharge in relatively small storms, and the tank will have very little draw down demand during prolonged wet periods, when irrigation of landscaping is not necessary. As such, the proposed system cannot be considered to be a reliable onsite detention device to mitigate peak flows, but is encouraged in terms of reducing potable water demand.

The configuration of the internal drainage system means that when the storage tank is full, surcharges will occur at various points within the site carpark and driveway, and disperse towards the street frontages. A Humeceptor is located at one such point to try and provide treatment of runoff, however it is unclear how this would operate effectively. Modification of the system is recommended to separate the "clean" roof catchments and the treatable carpark/hardstand catchments. Roof water could be diverted to the storage, with a controlled surcharge to the public realm. Carpark runoff must be directed through an appropriately sized treatment device (such as a Humeceptor) prior to controlled discharge to the kerb or to the reuse system."

This clause is considered satisfied.

Clause 35 Crime prevention

The development proposes 2.0metre high perimeter fencing on the side boundaries combined with frontage fencing consisting of 1.65m high "loop-top" open fence panels and small sections of solid masonry panels. The building is to be staffed and managed twenty-four (24) hrs a day seven (7) days a week. Each room consist of at least one (1) large window and balconies to enable causal surveillance of the entire site. The site is proposed to be well lit, particularly in car parking areas, pedestrian circulation paths, recreation areas and service area.

This clause is considered satisfied.

Clause 36 Accessibility

The development has been design to provide for both vehicle and pedestrian access to and from the site from both Powell Street and Florence Place. Short and long-term parking is conveniently accessible from either street accesses, including an area from short-term set-down and pick-ups. All parking is at ground level with flat grade access to building entry points.

The site is connected to safe pedestrian links via existing local footpath network to transport services and local facilities.

This clause is considered satisfied.

Clause 37 Waste Management

Section 4.6 of the applicant's Statement of Environmental Effects states that the domestic waste generated within the facility would be collected by cleaning staff and separated into recyclable and non-recyclable materials. Waste collection servicing would occur 2-3 times per week during normal business hours. Access to the site and garbage bin storage areas are accessible by the collection vehicles.

Any medical waste is to be removed and disposed of by a specialist medical waste contractor.

This clause is considered satisfied.

Part 4 – Development standards to be complied with

Clause 38 Development standards – minimum sizes and building height

- 1) *General. A consent authority must not consent to a development application made pursuant to this Chapter unless the proposed development complies with the standards specified in this clause.*
- 2) *Site size. The size of the site must be at least 1,000 square metres.*
- 3) *Site frontage. The site frontage must be at least 20 metres wide measured at the building line.*

The site is a large irregular shaped parcel, which contains two road frontages being Florence Place (37.79m approx.) and Powell Street (36.57m approx.). The total area of the site is approximately 3932.7m².

The site is zoned 2 (b) medium density housing in which residential flat buildings are permissible with consent, with the site being affected by a six (6)-storey height limit.

Part 7 – Development standards that cannot be used as grounds to refuse consent

Division 2 – Residential care facilities

Clause 79 – Standards that cannot be used to refuse development consent for residential care facilities

(a) Building Height: if all proposed buildings are 8 metres or less in height.

The proposed development is greater than 8 metres, with a 5-storey configuration. This complies with the 6-storey height restriction that applies to the subject site and is considered satisfactory having regard to the streetscape, setbacks, landscaping, overshadowing and overall size of the site.

(b) Density and Scale: if the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less.

The proposed development proposes a FSR of 1.64:1, this is considered satisfactory in this instance considering the planning objectives of the locality, being 'high density housing'.

(c) Landscaped area: if a minimum of 25m² of landscaped area per residential care facility bed is provided.

The application proposes 120 beds this equates to 3,000m² (25m²x120) of landscaped area. The application proposes 2078m² of landscaped area, this is considered satisfactory due to the following;

1. The provision of a large north facing ground level courtyard, large north facing communal terraces/balconies on each level of the proposed building and roof top terrace area.
2. The total ground level open space of 1,406m² equates to approximately 36% of the site area, this exceeds the development standard outlined within Development Control Plan No. 6 Multi-dwelling housing clause 3.1.3 being 30% minimum landscape area.
3. The residents of the proposed development are both low and high care including dementia respite care and wheel chair and bed bound residents. The percentage of high care residence is expected to be 50%. It is recognised that residents particularly those high care with dementia have different open space/recreation needs than low care residents. It is expected that high care residents have restricted mobility and would spend little if any time utilising outdoor recreation and open space areas. Balconies or paved terraces are considered to be a more valuable source of open space due to given health status or restricted mobility where residents could be comfortable wheeled either in a bed or chair.

- (d) **Parking for residents and visitors:** *if certain requirements can be meet regarding number of car spaces for visitors and employees and ambulance.*

The proposal is required to provide the following;

1 space/10 dwellings = 12

1 space/2employees = 13

1 ambulance space =1

The site provides for 30 car spaces and an ambulance pick-up bay adjacent to the front entry/exit point of the building, thus complying with the SEPP.

The proposed development complies with the State Environmental Planning Policy (Senior Living) 2004.

State Environmental Planning Policy No 55--Remediation of Land.

Object of this Policy

- (1) *The object of this Policy is to provide for a Statewide planning approach to the remediation of contaminated land.*
- (2) *In particular, this Policy aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment:*
 - (a) *by specifying when consent is required, and when it is not required, for a remediation work, and*
 - (b) *by specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular, and*
 - (c) *by requiring that a remediation work meet certain standards and notification requirements.*

The subject sites are currently used for residential purposes and have been for some decades. Three of the five dwellings have concrete slab on ground construction that could give rise to possibility of under-slab contamination associated with spraying of pesticides.

Soil tests were undertaken by HMC Environmental Consulting Pty Ltd to determine whether under-slab contamination exists.

The results indicate that any residual pesticides are below the level of detection.

State Environmental Planning Policy No. 71 – Coastal Protection

The site is located within the area to which the policy applies. The proposed development is not within 100m below the mean high water mark of the sea, a bay or an estuary being a 'significant coastal development'. In addition the development is not within 100 metres above the mean high water mark of the sea, a bay or an estuary being sensitive coastal location.

The proposal has been assessed against clause 8, matters for consideration. And it is considered not to adversely affect the access to and along the coastal foreshore, limit overshadowing of foreshore areas and that the type, bulk, scale and size of the development is appropriate within the SEPP 71 zone.

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

There are no provisions of any Draft Environmental Planning Instruments applicable to this application.

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

Development Control Plan 2 – Site Access and Parking Code

The number of spaces required is specified for this type of development is specified in table 4.9A item A7, which is provided below;

Dwellings (Staff)	Type	Requirement
120	0.5 spaces per bedroom (resident visitor)	60
25	0.5 spaces per staff	12.5
Total		72.5 (73)

However, the application is required to be assessed against the Seniors Living 2004 SEPP and not the DCP. The following table lists the requirement under Section 79 (d) of the SEPP.

Dwellings (Staff)	Type	Required
120	i) 1 space/10 bedrooms (visitor/ resident parking)	12
(25)	ii) 1 space per 2 staff parking	12.5
	iii) 1 space Ambulance	1
Total		26

The development proposes thirty-(30) on-site car spaces, plus one (1) ambulance car space and one (1) car-washing bay both of which are adjacent to the pedestrian access near the courtyard entry to the facility.

A condition has been imposed to restrict the number of bedrooms to a maximum of 120 and a maximum of 120 residents and not more than 25 staff to be working within the facility at any one time.

Access and egress to the site is proposed via both Florence Place and Powell Street at a level grade.

The proposal falls considerably short of the standards required under Council's DCP, being 73 (72.5) spaces, however, the proposal complies with the standards outlined within the SEPP which states;

'A consent authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a residential care facility on any of the following grounds:

- (d) parking for residents and visitors: if at least the following is provided:*
 - (i) 1 parking space for each 10 dwellings in the residential care facility (or 1 parking space for each 15 dwellings if the facility provides care only for persons with dementia), and*
 - (ii) 1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time, and*
 - (iii) 1 parking space suitable for an ambulance.*

The car parking proposed is more than this minimum requirement and the SEPP overrules Councils requirements.

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

Section 3.1 of DCP no. 5 requires that design flood level be at the level of the next highest flood level contour or 2.6m AHD which ever is higher.

The subject site is located within the 2.4 Flood level contour, therefore the flood level for the site is 2.6m AHD with adopted minimum floor level for residential development being 3.1m AHD.

The ground level is proposed at 3.2m AHD, complying with DCP No. 5.

Development Control Plan 18 – Tweed Heads

The subject site is located within the area to which the policy applies. The site is located within the 4B 'Tweed River Precinct' in which section 6.0 High Density Residential Precincts and Section 9.0, 10.0 and 11.0 apply to the proposal.

Section 6.2 Objectives

The precinct contains a mix of development types incorporating older style dwelling houses and modern high-rise apartments. The area is under going a transitional phase from the older detached dwellings to multi storey residential flat buildings.

The proposal is considered to comply with the objective outlined within Section 6.2, as the proposal is high density providing a low and high care residential aged care facility, facilitating an increase in population in the sub-regional centre of Tweed Heads and providing for an alternative form of accommodation (housing variety).

Section 6.3.1 Streetscapes and Landscaping

The application was referred to Council's Landscape Architect for comment on the submitted landscaping plan.

Council's Landscape Architect provided the following comments;

"The plans were of a high standard that clearly illustrate the design and construction intent. Whilst the species range that has been identified in the plans is acceptable, some species could be replaced with native alternatives."

The landscaping plan will be included within the consent conditions to ensure the submitted details can be enforced.

Section 9.0 Building Envelopes

The Building envelope is to ensure that building setbacks to property boundaries increase relative to any increase in building height and to minimise the visual and physical impact and bulk of tall buildings.

The proposal is considered to comply with the setback requirements outlined within the DCP.

Section 11.0 Residential Design

The applicant provided comments on the following design criteria, which are accepted.

Building Mass

Facades are 'broken' by a combination of fin walls, setback variations, window openings, planter boxes and variations in colours and materials. The Florence Place façade is broken by a roofed balcony and porte-cochere projecting horizontally from the face of the building. Despite the length of some walls the development would exhibit a satisfactory external appearance.

Energy Efficiency and Daylight access

The north-south and east-west orientation of the building wings provides maximum opportunity for direct solar access to the resident's rooms. Due to the shape of the site however, there will be some south facing rooms. (To ameliorate this) Common 'sun room' and extensive outdoor terrace areas have been provided at each floor of the building to provide access to sunlight for those residents that don't directly receive light into individual rooms. Each resident room would have large windows to provide light and ventilation.

Wind mitigation and overshadowing

The lack of tall structures in the vicinity of the site reduces the likely impact of the 'canyon' effect and therefore adverse induced wind conditions in the public realm at ground level. Specific measures have been proposed, including the introduction of vertical fin walls along the facades of the building, as well as horizontal elements such as sun hoods and planter boxes to prevent 'down drafting' along the face of the building.

The building does not create any overshadowing of public reserves.

Roof lines

The main roof line would be a low pitched hip and gable roof contrasted with a skillion roofing over either end of the building, the lift over-run and stairwell. The roof line would meet the objective of providing visual interest.

Privacy

Some loss to neighbouring properties will naturally occur in areas of redevelopment where taller buildings adjoin single storey residential dwellings.

The proposed development provides the following migrating measures;

- The proposal does not provide balconies to individual rooms;
- Placement of planter boxes outside resident's windows;
- The building provides generous setbacks from boundaries;
- Perimeter fencing of to 2.0metres in height;
- Professionally designed landscaping that provides screening.

Security and surveillance

The development proposes the following measures;

- Fencing and landscaping that clearly delineates public and private areas.
- Windows, sitting rooms, balconies provide casual surveillance of the site and surrounding streets.
- The main entrance is orientated to the public street (Florence Place).

- The site's car parking areas, pedestrian paths, service and recreation areas are well lit to enhance visibility of those areas.

Materials and colours

The development does not propose expansive glassed areas that would create issues such as energy efficiency and reflections.

The building is proposed as a concrete structure with textured masonry external finishes including painted concrete render. Other external finishes include powder-coated aluminium windows and door frames and colourbond steel roofing.

Colours have not been specified however the perspective image supplied (Appendix C of the SEE) depicts colour schemes which are consistent with the DCP being light shades of cream, sandstone and brown.

Access, parking and Car wash areas

The proposal has been assessed against Council's access and car parking code DCP No. 2 and the Seniors Living 2004 SEPP in section (a) (iii) of this report.

The proposed development exceeds the requirements contained within the SEPP but does not meet the requirements contained within Council's DCP.

The provision of one car washing bay is provided adjacent to the ambulance bay.

Open space and balconies

The provision of open space/recreation areas has been assessed against the Seniors Living 2004 SEPP.

The development does not meet the requirements contained within the SEPP however, consideration was given to the nature of the development being for high care residents who have reduced open space/recreation needs than other low care or independent residents. This is due to the health status and restricted mobility of high care residents.

The development proposes approximately 2078m² of open space, which includes 1406m² at ground level, north facing communal balconies at each level, a roof top terrace and a roofed balcony above the Porte-Cochere. This amount of open space is considered satisfactory.

Development Control Plan 42 Public Notification Policy

The development was advertised for a period of 30 days and notified to all surrounding properties within the vicinity. During this period nine (9) submissions were received which are addressed later in this report under section (d) *Any submissions made in accordance with the Act or Regulations.*

Development Control Plan 45 – Social Economic Impact Assessment

This policy requires development subject to the Seniors Living SEPP 2004, proposing 20 or more units, provide a Socio-economic Impact Assessment (SEIA) (Statement) (section 5.1 DCP 45).

The development proposes 120 bedrooms, as such the policy applies to the development in particular section 6.0 which identifies what is to be included in a SEIA.

A SEIA was submitted and is summarised below;

'Tweed Shire's population includes a much higher proportion of older people (55) than the demographic average for the North Coast and NSW.

There is a high demand for residential care housing...this facility would complement ... and provide further choice of housing.

The site enjoys an excellent proximity to a range of services and facilities, including medical, service and recreation.

The development would make a significant contribution to the economy in:

- *Capital construction expenditure (\$16 million)*
- *Recurrent annual expenditure (wages, salaries, services etc.) \$4.5 million*
- *Full time equivalent jobs approximately 60-65*

The proposed development is considered to address the purpose of this plan by providing a positive social and economic impact on the locality.

Tweed Heads Master Plan

The subject site is identified within the plan as 'Riverside High Density Residential' precinct.

The proposal is considered to be consistent with the master plan objectives. The proposal is less than six (6) storeys in height and will not impact on the pedestrian pathways or open space along the river.

Fence height variation

The development proposes fencing along the Powell Street frontage at a height generally 1.65m in height consisting generally of powder coated aluminium 'loop-top' open fence panels. Two (2) solid masonry sheet-fencing panels are equally spaced within the fence line with the intention to provide variation and visual interest.

A small roofed gatehouse structure located to the north of the vehicle access (drive way) is proposed to be integrated into the fence line. The structure is approximately 2.40m in height and provides a designated pedestrian access to the site from Powell Street.

A solid "openable" panel 1.8m in height is located at the northern end of the Powell Street, which is to provide visual screening of the pad-mounted transformer required for the development.

Fencing along the Florence Place comprises a combination of stone-faced masonry walls and powder coated aluminium 'loop-top' open fence panels at a height of 1.65m. The location of the stone-faced masonry walls are on the northern and southern sides of the two vehicle entrances, and in front of the main entrance attached to the Porte-Cochere (roof over entry) at a 45° angle for a length of 8metres.

The side boundary fencing is generally 2metres in height, gradually stepping down in height to 1.65m from the building line to match the height of the front fencing.

The proposed variation in fencing materials and colours, combined with the detailed landscaping are considered to contribute positively to the streetscape whilst clearly identifying the boundary of the site and public areas.

The application was advertised and notified to all surrounding properties. The proposed roofed gatehouse structure is considered to meet the intent of this policy.

The fence height variation is supported.

Building Line Variation

The development proposes a Porte-Cochere entry extending over the driveway in front of the main entrance to the building adjacent to the Florence Place.

The Porte-Cochere will stand 3.0m from the Florence Place boundary, and has a roofed balcony over to provide additional open space for residents. This area is accessible from level one.

The following justification has been proposed by the applicant;

- The encroachment of the Porte-Cochere seeks to improve the amenity of visitors and residents though the provision of a covered pedestrian entrance and roofed balcony for additional recreational/open space.
- The proposed structure provides an articulated and interesting façade, assisting in reducing or softening the appearance of the aged care facility.
- The location of the structure would not lead to adverse amenity impacts to neighbouring properties through overshadowing or privacy.
- The Porte-Cochere is an open structure that complies with Council's Building Line Policy.

The building line variation is supported.

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

CLAUSE 92 (1) Government Coastal Policy

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

CLAUSE 92 (2) Application for Demolition

The application proposes the demolition of five (5) existing dwellings a demolition plan was submitted and assessed by Council's Building Services Unit. The Unit raised no issues subject to conditions of consent.

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

Noise

This issue was raised and addressed previously in this report. The application was referred to Council's Environmental Health Unit in which appropriate conditions have been recommended and added to the consent conditions.

Lighting

The application proposes lighting of the open space and car parking areas. *Lighting, including security lighting, may impact upon neighbouring and or adjacent premises.*

Appropriate conditions have been recommended to mitigate any impacts from the lighting.

Visual

The proposal will not impact on key views and vistas in the locality.

The development is considerably taller than the adjoining property owners, however the development is less than the height restriction of 6 storeys and is consistent with the height of recently constructed residential buildings in the area.

The area is undergoing a transition from older single and two storey detached residential dwellings to high density multi-storey residential flat buildings. The proposal is consistent with the desired future character of residential development in the locality.

The proposal provides articulation and variation in the façade, combined with appropriate colour schemes and a detailed landscaping to assist in reducing any visual impacts of the development.

A detailed landscaping plan was submitted and referred to Council's landscape architect. The landscaping plan was considered to be a of a high standard that assisted in screening and softening the appearance of the development.

The development is considered to achieve the desired visual standard.

Shadowing

Assessed previously in this report under *SEPP Seniors Living 2004, Clause 33 Solar access and design for climate*.

(c) Suitability of the site for the development

The subject site is considered suitable for the subject site, see assessment under *SEPP Seniors Living 2004, Clause 25 Location and access to facilities*.

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

Public Submission Comment

The application was advertised from the 22nd November 2006 to 22nd December 2006 and notified to all surrounding properties within the vicinity.

A total of nine (9) submissions were received which are assessed below;

Issue	Assessment
The proposal does not comply with the 2 (b) Medium density zone, as the proposal is 'high density'.	This issue has been addressed within the body of the report, with the proposed aged care facility considered to comply with the primary and secondary objectives of the zone as the subject site is 'in proximity' to the Tweed Heads sub-regional centre.
Parking and Traffic	This issue has been addressed within the body of the report, the proposal complies with the development standards contained within Seniors Living SEPP 2004.
<i>Noise of 'reversing alarms would be turned off' to reduce noise is considered dangerous and would not conform to OH and S Act.</i>	The application was referred to Council's Environmental and Health Unit, in which this form ameliorative measure is considered inappropriate due to safety concerns. Addressed by way of condition.
<i>General operational noise.</i>	As above.
Loss of northern (winter) sun.	This issue has been addressed within the body of the report.
Loss of privacy.	This issue has been addressed within the body of the report.
Night lighting	Addressed by way of condition.
Dust and debris during construction	Standard conditions to apply to ameliorate the potential impact of dust and debris on adjoining properties.
Fencing	This issue has been addressed within the body of the report.
Wind	This issue has been addressed within the body of the report.
Smells from 'soiled laundry and garbage'.	Domestic waste within the facility would be collected by cleaning staff, with waste collection servicing to occur 2-3 times per week.
Open space parkland within Florence Place to be made into a car park.	The subject area has not been lodged as part of this application.

Public Authority Submission Comment

Department of Natural Resource

The application is integrated development with the Department of Natural Resource (DNR) for a licence for the purpose of temporary dewatering for construction purposes.

The DNR issued a licence under Part 5 of the Water Act 1912, for the purposes specified above, for a period of three (3) months with conditions. The volume allocated is five (5) megalitres for the period of the licence.

The condition statement provided by DNR is to be added to the consent.

(e) Public interest

The proposed demolition and construction of an aged care facility is considered not to generate any significant adverse impacts on the natural or built environments. The proposal is in the public interest as it increases the available aged accommodation which is important for the ageing population of the Tweed.

OPTIONS:

1. Approve as per the recommendation.
2. Refuse for specified reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed demolition and construction of an aged care facility is recommended for approval subject to the attached conditions.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

P4 [PD-PC] Section 96 Application DA04/1440.01 - Amendment to Development Consent DA04/1440 for an Aged Care Facility Comprising a Part Three (3) & Four (4) Storey Building Containing Forty One (41) x Two (2) Bedroom Units, Common Living, Dining, Recreation

ORIGIN:

Development Assessment

FILE NO: DA04/1440 Pt2

SUMMARY OF REPORT:

Council has received an application under Section 96 of the Environmental Planning and Assessment Act 1979, seeking amendments to development consent DA04/1440 to reflect a number changes to the building design of Stage 2 of the Oceanview Assisted Living development, a seniors living facility located on the corner of the Pacific Highway and Terranora Road, Banora Point. The proposed modifications are as follows:

- Reduction in floor area by 456m²;
- Reduction in width (north-south) and overall height of the building;
- Deletion of the central atrium and clerestory roof involving a redesign of the central circulation corridor and consequent changes to the floor plan layout;
- Substantial increase in the building setback from the western boundary and provision of landscaped courtyard between the building and the boundary;
- Alteration of unit mix from 41 x 2 bedroom units, to 15 x 2 bedroom units and 32 x 1 bedroom units, resulting in an overall reduction of 20 beds.
- Introduction of lounge area and tea/coffee making facilities at each floor of the building in accordance with condition 7 of development consent DA05/1408;
- Minor changes to façade setbacks, including increased setback from the Pacific Highway

The proposed modifications do not raise any new issues with respect to the applicable Environmental Planning Instruments, however they do reduce the requirements for on site car parking, principally as a result of the reduction in the size of the large majority of units from 2-bedroom to 1-bedroom units. No changes are proposed to the existing on site car parking arrangements and as such the development retains its compliance with Development Control plan No. 2 – Site Access and Car Parking Code.

Three submissions were received objecting to the proposed modification, however the issues raised, for the most part, are concerned with planning issues addressed under the original proposal or issues that are not related to the proposed modifications.

The proposed amendments sought are considered to be of scale that will not significantly impact on the built and natural environment, or social or economic fabric of the locality. The modifications to the layout, unit configuration and numbers, gross floor area, building height and external appearance are such that the overall nature, appearance and functionality of the development remain the same.

RECOMMENDATION:

That Section 96 Application DA04/1440.01 for an amendment to Development Consent DA04/1440 for an aged care facility comprising a part three (3) and four (4) storey building containing forty one (41) x two (2) bedroom units, common living, dining, recreation and service areas and demolition of existing fruit stall and associated site land filling and retaining structures at Lot 1 DP 624403 Pacific Highway, Banora Point & Lot 1 DP 543412 No. 2-4 Terranora Road, Banora Point be modified as follows:

- 1. Delete Condition No. 1 and insert new Condition No. 1A to read as follows:**

- 1A. The development shall be completed in accordance with development Plans Nos MPS 1918 SK-01/B to 1918 SK-13/B, prepared by MPS Architects, dated January 2007, and all supporting documentation, except where varied by these conditions.**

- 2. Delete Condition No. 12 and insert new Condition No. 12A to read as follows: -**

12A. Section 94 Contributions

- (i) 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.

- a. **Tweed Road Contribution Plan:** **\$30,442**
S94 Plan No. 4 (Version 4.0)
Sector2_4

Heavy Haulage Component

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

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

where:

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

and:

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

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

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

Admin. Administration component - 5% - see Section 6.5

- b. **Open Space (Structured):** **\$23,968**
S94 Plan No. 5
- c. **Open Space (Casual):** **\$5,123**
S94 Plan No. 5
- d. **Shirewide Library Facilities:** **\$21,151**
S94 Plan No. 11
- e. **Eviron Cemetery/Crematorium Facilities:** **\$4,230**
S94 Plan No. 13
- f. **Emergency Facilities (Surf Lifesaving)** **\$6,157**
S94 Plan No. 16
- g. **Extensions to Council Administration Offices & Technical Support Facilities** **\$38,988.45**
S94 Plan No. 18

j.	Cycleways S94 Plan No. 22	\$10,810
k.	Regional Open Space (Structured) S94 Plan No. 26	\$71,484
l.	Regional Open Space (Casual) S94 Plan No. 26	\$26,273

[PCC0050/PSC0005]

3. Delete Condition No. 13 and insert new Condition No. 13A to read as follows: -

13A. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

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

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

Water DSP4:	22.625 ET @ \$4598	\$104,030
Sewer Banora:	28,57 ET @ \$2863	\$81,796

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.

[PCC0070/PSC0004]

REPORT:

Applicant: Petrac Group
Owner: Ovst Pty Ltd and The Owners of Strata Plans 62608, 74321 & 77197
Location: Lot 1 DP 624403 Pacific Highway, Banora Point & Lot 1 DP 543412 No. 2-4 Terranora Road, Banora Point
Zoning: 2(a) Low Density Residential & 2(e) Residential Tourist
Cost: \$8,830,000

BACKGROUND:

On 3 December 2004, conditional consent was granted under development consent DA04/1440 for Stage 2 of the Oceanview Assisted Living development, a seniors living facility located on the corner of the Pacific Highway and Terranora Road, Banora Point.

The site has a complex history with number of development consents and building approvals. These are detailed as follows:

- Building application 1129/69B for a Motel;
- Development application T4/2577 for the Banora Point Motor Inn;
- Development consent 0967/2000DA for alterations and additions to an existing motel comprising additional 12 x 4 bedroom units, public use of existing restaurant and associated parking and landscaping;
- Strata subdivision application P00/0012;
- Development consent DA02/0495 for use of the existing buildings as aged care housing, and construction of additional units (Stage 1) to total 97 dwellings;
- Development consent DA03/1645 for the construction of a two-storey car park containing 48 car spaces;
- Development consent DA04/1440 for Stage 2 aged care facility comprising a part 3 and part 4 storey building containing 41 x 2 bedroom units, common living, dining, recreation and service areas and demolition of existing fruit stall and associated site land filling and retaining structures;
- Development consent DA05/1408 for alterations and additions to an existing supported senior living facility;

By way of application under Section 96 of the Environmental Planning and Assessment Act 1979, the applicant has now requested an amendment to development consent DA04/1440, as granted, to reflect a number of proposed changes to the building design of Stage 2, as detailed below:

- Reduction in floor area by 456m²;
- Reduction in width (north-south) and overall height of the building;
- Deletion of the central atrium and clerestory roof involving a redesign of the central circulation corridor and consequent changes to the floor plan layout;
- Substantial increase in the building setback from the western boundary and provision of landscaped courtyard between the building and the boundary;

- Alteration of unit mix from 41 x 2 bedroom units, to 15 x 2 bedroom units and 32 x 1 bedroom units, resulting in an overall reduction of 20 beds.
- Introduction of lounge area and tea/coffee making facilities at each floor of the building in accordance with condition 7 of development consent DA05/1408;
- Minor changes to façade setbacks, including increased setback from the Pacific Highway

The original development was approved over two allotments of land located within the existing urban area of Banora Point. As a condition of consent in DA04/1440, the two lots are to be amalgamated prior to occupation of the completed Stage 2 buildings. The proposed modifications do not alter this configuration.

Lot 1 DP 624403 is an irregular shaped allotment bounded by the Pacific Highway to the north, Terranora Terrace to the west, residential properties to the south and adjoins Lot 1 DP 543412 to the east. Lot 1 DP 624403 has an area of approximately 7874m² and currently contains the completed and fully operational Stages 1A, 1B and 1C of the Oceanview Assisted Living development, including 2 storey accommodation buildings comprising 40 units, a separate community facilities building and a 2-level car parking facility.

Lot 1 DP 543412 is a regular shaped allotment with an area of approximately 735m² and an 18.45 metre frontage to the Pacific Highway on its northern boundary. This site currently contains a fruit and vegetable stall and adjoins No. 24 Somerset Avenue to the south and No. 20 Somerset Avenue to the east.

Subsequent development approval (DA05/1408) for the expansion of the community facilities building (Stage 3) on Lot 1 DP 624403 had the effect of modifying the Stage 2 building by removing the large kitchen and dining facilities and significantly reducing the common lounge areas, thus allowing for the current design of Stage 2 building to be amended to achieve greater amenity for both residents of the facility and adjoining dwellings.

The proposed amendments are not seen to create any significant adverse environmental, social or economic impacts.

SITE DIAGRAM:



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

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

Tweed Local Environmental Plan 2000

The proposed modifications raise no new or additional issues in relation to the Tweed LEP. The following is a brief assessment against the relevant provisions.

The land is zoned 2(e) Residential Tourist and 2(a) Low Density residential. Aged care facilities are permitted in each zone.

Clause 15 of the TLEP requires Council to be satisfied that the subject land has the benefit of essential services prior to issuing consent. The site is presently connected to mains electricity and telecommunication services and Council's reticulated water and sewer system. The proposed modifications would not add any significant further demand upon the existing infrastructure.

Clause 16 of the TLEP requires development to be carried out in accordance with the height limitation plan. The proposed modifications involve a minor reduction in overall building height, though the number of storeys within the building will remain the same as that already approved.

Clause 17 of the TLEP does not specify a particular trigger threshold for the submission of a Social Impact Assessment other than if a consent authority considers a development is likely to have a significant social or economic impact on the locality or in the Tweed. Given the minor nature of the proposed modifications in the overall planning context, in this instance, a social impact is not warranted.

Clause 22 aims to ensure that development does not impact the efficiency, capacity or safety of designated roads or detract from the scenic qualities of the Tweed; and to reduce the potential impact of traffic noise on nearby development. The subject site is located adjacent to the Pacific Highway, which is identified as a designated road. Traffic impacts were assessed in the original application and considered acceptable. The proposed modifications will not result in any increase in traffic movements or impact on the use of the road. The proposed reduction in number of beds will actually result in less vehicles entering and leaving the premises and using the Pacific Highway.

North Coast Regional Environmental Plan 1988

The proposed modifications raise no new or additional issues in relation to the North Coast Regional Environmental Plan.

State Environmental Planning Policies

The original application was not assessed under the Seniors Living SEPP as the proposal did not specifically fall within a nominated category of development. However, in the absence of any Council controls for aged care facilities, the proposal was designed generally in accordance with the provisions of the SEPP. The proposed modifications do not alter the general compliance with State Environmental Planning Policy (Seniors Living) requirements.

Given the reduction in bed numbers, the amendments will effectively reduce traffic movements in and out of the site and therefore no issues arise with respect to State Environmental Planning Policy No. 11 – Traffic Generating Developments.

The proposed modifications raise no new issues in relation to State Environmental Planning Policy No. 71 Coastal Protection.

There are no other State Environmental Planning Policies that require further consideration in the assessment of this proposal.

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

There are no draft Environmental Planning Instruments that require consideration with respect to the proposed modifications.

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

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

Though the site has frontage to the Pacific Highway, vehicular access to the seniors living facility is gained from Terranora Road. No alteration is proposed in relation to vehicular access to the buildings or site.

An assessment of on site car parking for the original proposal determined that a total of 54 spaces were required to comply with DCP 2. Essentially, stages 1A, 1B and 1C of the development generated car parking at a rate of 1 space per 5 dwellings. Stage 2 provided 1 space per 2-bedroom unit. As such a total 49 spaces were required with an additional 1 space per 2 staff members.

The proposed modifications alter the requirements for on site parking, principally as a result of the reduction in the size of the large majority of units from 2-bedroom to 1-bedroom units.

Under DCP 2, developments involving housing for older people or people with disabilities generate on site car parking at the following rate:

- 0.5 spaces per bedroom plus 0.5 spaces per staff member on site

The proposed amendments reduce the total number of beds on site by 20 to 102 beds; meaning 51 spaces are required for resident and visitor car parks. The applicant anticipates no more than 10 staff members will be on site at any one time, generating the need for 5 staff parks. Therefore, with the proposed modifications, a total of 56 on site car parking spaces are required.

At present, there are 57 on site car spaces incorporated into all stages of the development, thus complying with DCP 2.

Although the original development proposal was not assessed under SEPP (Seniors Living), it is acknowledged that the on site car parking retains its compliance with the car parking provisions contained within the SEPP.

Development Control Plan No.42 – Public Notification Policy

The proposal was notified to nearby and adjoining land owners and residents and made available for public viewing for a period of two weeks in accordance with the provisions of DCP 42. Three submissions were received in objection to the proposal. These are discussed in greater detail later in the following section headed “Public Submissions”.

There are no additional Development Control Plans that require further consideration in the assessment of this proposal.

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

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

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

The proposed amendments sought are considered to be of scale that will not significantly impact on the built and natural environment, or social or economic fabric of the locality. The modifications to the layout, unit configuration and numbers, gross floor area, building height and external appearance are such that the overall nature, appearance and functionality of the development remain the same.

The proposed amendments will result in a general reduction in the overall bulk and scale of the building, thereby nominally reducing the visual impact of the development as viewed from the Pacific Highway and from the residences to the south. Removal of the central atrium area will reduce building height by 1.2 metres in the centre of the building and 0.2 metres towards the corners; and will also result in a significant reduction in the building footprint and increased setbacks from the southern and northern property boundaries. It is anticipated these modifications will also decrease the loss of northern ocean and panoramic views from the adjoining dwellings to the south.

The increased setbacks from the southern boundary will have positive impacts on the general amenity and privacy of those dwellings adjoining the development to the south. Units 13C, 12D and 11C on the first floor (and those immediately above on the second and third floors) will be setback almost 10 metres whilst the balcony of Unit 14D1, 29D1 and 45D1 will be 7.7 metres from the boundary. This is a noteworthy increase when compared to the original approved design, in which the southern setback was between 3 and 4 metres for the entire length of the building. The result of this increase in setback will be less intrusion on the amenity of the residents to the south through increased distance between their dwellings and the proposed buildings, and also will improve the privacy and amenity of residents occupying the abovementioned units as they will now overlook an outdoor landscaped courtyard and recreation area rather than directly into the adjoining property's rear yards. Privacy screens as originally approved will be retained at first and second floor levels of the building at the south-eastern and north-western corners of the building.

Although removal of the central atrium will have positive effects on the general amenity of the surrounding environment, it will result in somewhat reduced ambience for the residents of the facility. The original design incorporated the central atrium in an effort to establish an 'indoor/outdoor' feel for residents within the building, creating a sheltered space for passive recreation and a more interactive interior atmosphere than simply entry doors to individual units leading off a single enclosed corridor. Notwithstanding, the proponents have circumvented the loss of recreational space with an outdoor landscaped area within the extra space created along the southern boundary. This area will link up with existing and originally proposed outdoor space to allow a full outdoor walking circuit around the establishment. Current residents of the facility, who would like to be able to take a walk around the property, have raised the existing lack of connectivity of outdoor space as an issue and the proposed modifications now address this issue.

(c) Suitability of the site for the development

The proposed modifications will not significantly alter the overall appearance of the development, nor the operation of the facility or the approved use of the site. As such, the site is considered suitable for the modifications as proposed.

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

The application was notified to adjoining and nearby residents and landowners for a period of two weeks from Wednesday 21st February 2007 to Wednesday 7th March 2007. During this time, three submissions were received in objection to the proposal. The issues raised in the submissions are discussed as follows:

- *"The new application (although somewhat better than the previous one) is still a leviathan structure totally unsuitable for the area.*

This is real proof of what we have been saying all along. No application should ever have been considered for a retirement home on the side of a hill overlooking the Pacific Highway."

Comment: Assessment of Section 96 modification applications does not provide the opportunity to-revisit the original development or address issues outside those modifications proposed. The modifications must be assessed in the context of the original approved development, not as a new proposed development. The suitability of the site for the facility was assessed under DA02/0495 and was considered acceptable.

- *"All wildlife will disappear"*

Comment: It is unclear how the objector has come to this conclusion given the site is void of vegetation, already has approval for complete redevelopment. This is not considered a valid objection.

- *"In the last 2 years, despite constant advertising on the radio and in the media they have now sold about 12 of 39 units available, of which 6 were sold previous to 2005. This means 6 of the 33 units available have been sold."*

The commercial value, marketing and sales of the units are not a relevant planning concern and are in no way related to the proposed modifications.

- *"My concern is the extra traffic entering Terranora Road from the traffic lights when a driver suddenly, without any indicators, slows down and then comes to a stop at the gates of the Aged Care Facility. I have had to brake my car suddenly to avoid a tail to nose collision and no doubt there are many others who have experienced the same thing. Surely OVOST group could make allowances for this by moving the gate back several metres."*

"Traffic conditions have changed in the last 2 years. The morning traffic is horrendous and any further problems which would be created by the approval of this application could have grave consequences."

"Sexton Hill is a time bomb and Council does not need to exacerbate the problems."

Comment: Assessment of Section 96 modification applications does not provide the opportunity to-revisit the original development or address issues outside those modifications proposed. The modifications must be assessed in the context of the original approved development, not as a new proposed development.

Traffic and access arrangements were previously assessed in DA02/0495, which proposed additional units over the site. The assessment report for that application it was noted: "Council's Traffic and Transport Engineer advises that sight distances from the site exceed the minimum standard and that Terranora Road has adequate capacity to cater for the anticipated traffic increase."

Furthermore, the proposed modifications will reduce the number of beds in the facility, thereby effectively reducing the number of vehicles relying on Sexton Hill and also the number of vehicle movements in and out of the site.

- *"The height of the building of 4 storeys is outside Council's zoning requirements."*

Comment: Assessment of Section 96 modification applications does not provide the opportunity to-revisit the original development or address issues outside those modifications proposed. The modifications must be assessed in the context of the original approved development, not as a new proposed development. The four-storey component of the building was assessed under DA04/1440, whereby the following comments were made: "There is a mechanism that permits this to occur, where it is demonstrated that the standard is unreasonable or unnecessary." The building height issue was addressed under SEPP 1 in that report and was considered acceptable.

(e) Public interest

Having regard to the matters discussed in this report it is concluded that impact upon the public interest from the amendments sought is minimal, if any at all. The proposed modifications will not alter the original development's 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.

The aged care facility will provide a valuable community asset, providing an alternative form of affordable housing for older residents, and the proposed amendments would result in an overall increase in amenity for all concerned parties. As such, the proposed amendments are considered appropriate for the site, would not set an undesirable precedent for future development in the Shire and are considered beneficial to the wider public interest.

CONSIDERATIONS UNDER SECTION 96 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Minimal Environmental Impact

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

The proposed modifications would not cause any environmental impacts further to those that would have occurred under the original development consent.

Substantially the same Development

The subject Section 96 application does not seek to make any amendments that would result in the final development being significantly different. While there are modifications to layout, unit numbers and configuration and gross floor area, and minor modifications to building height and external appearance, these changes are not of a nature that the overall essence of the development is changed. The building will retain a similar scale and appearance as that currently approved, is sited in the same position and retains the same access arrangements. The day-to-day operation and functionality of the facility will also remain the same as originally approved. The proposal is therefore considered substantially the same development as was detailed within the original development consent.

Notification & Consideration of Submissions

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

OPTIONS:

1. Resolve to approve the Section 96 modifications with the recommended conditions of consent.
2. Resolve to refuse the development for stated reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicants be dissatisfied with the determination they have a right to make an appeal to the Land & Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

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

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

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P5 [PD-PC] Section 149 Certificates - State and Regional Classified Agricultural Land

ORIGIN:

Development Assessment

SUMMARY OF REPORT:

At a Council meeting of 25 July 2006 it was resolved: -

"That Council staff be requested to bring forward a report which addresses the desirability of including details regarding the constraints which apply to all agricultural land classified as being of State or Regional significance on all Section 149 Certificates relevant to these lands".

Advice on this issue was sought from Abbott Tout Lawyers and this advice is attached to this agenda.

In summary the advice is that there is no legal requirement to include Section 117 Ministerial Directions on a Section 149(2) certificate or Section 149(5) certificate. Notwithstanding this the advice is that Council may make a policy decision to include the information on the Section 149(2) certificate provided procedures can accurately capture, interpret and provide the information.

As the information is a layer on Council's mapping system this request can be satisfied and given the potential implications of the Section 117 Direction the information should be provided.

RECOMMENDATION:

That a notation be included on Section 149(2) Certificates indicating if land is Farmland of State or Regional Significance as identified on the map referred to in Section 117(2) Direction No. 14 dated 30 September 2005.

REPORT:

As per summary.

OPTIONS:

1. Include the information on Section 149(2) certificates.
2. Not include the information on Section 149(2) certificates.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Provided a procedure is set in place to adequately capture, interpret and provided the information regarding Farmland of State or Regional Significance Council's legal liability will be minimised.

POLICY IMPLICATIONS:

Provided there is a clear policy decision on what additional information is to be included on Section 149 certificates beyond that information that is required by legislation there will be no adverse policy implications.

CONCLUSION:

Given the potential significance of the classification of land under the Section 117(2) Direction there is a benefit in including the information on a Section 149(2) certificate.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Copy of advice from Abbott Tout Lawyers (DW 1500873)
-

P6 [PD-PC] Request for Rezoning of Land at Cudgen from Part 1(a) Rural, Part 1(b) Agricultural Protection and Part 7(a) Environmental Protection to 2(c) Urban Expansion

ORIGIN:

Strategic Town Planning

FILE NO: DA1460/925

SUMMARY OF REPORT:

A request has been received from Planning Workshop Australia on behalf of the Kingscliff Land Company Pty Ltd to rezone land in Cudgen from part 1(a) Rural, part 1(b) Agricultural Protection and part 7(a) Environmental Protection to 2(c) Urban Expansion. The planning report submitted to support their rezoning request is appended.

The proposed site is subject to various State and regional planning controls including:

- The Far North Coast Strategy;
- North Coast Regional Environmental Plan;
- S117 Direction No 14 - Farmland of State and Regional Significance on the NSW Far North Coast.

The rezoning of the subject site from its existing predominantly 1(b) Agricultural Protection Zone to 2(c) Urban Expansion is inconsistent with these regional Strategies. Preliminary verbal discussions with the Department of Planning representatives have concluded that they would not support the rezoning application. Further, Council is about to commence a review of its Residential Urban Land Release Strategy and as such, consideration of this rezoning request would pre-empt the findings of this Strategy.

As this rezoning request is considered inconsistent with various State and regional planning studies it is recommended this request for rezoning not be supported at this point in time.

RECOMMENDATION:

That Council does not proceed with the request for rezoning Lot 1 DP 592182, Lot 1 DP 616751, Lots 101 and 102 DP 866795, Lot 330 DP 755701, Lot 13 DP 868620, Lots 1 and 2 DP 632211, Lot 14 DP 871062, Lot 1 DP 183425, Lot 18 DP 870050 and Lot 1 DP 312920, Tweed Coast Road and Cudgen Road, Cudgen from part 1(a) Rural, part 1(b) Agricultural Protection and part 7(a) Environmental Protection to 2(c) Urban Expansion.

REPORT:

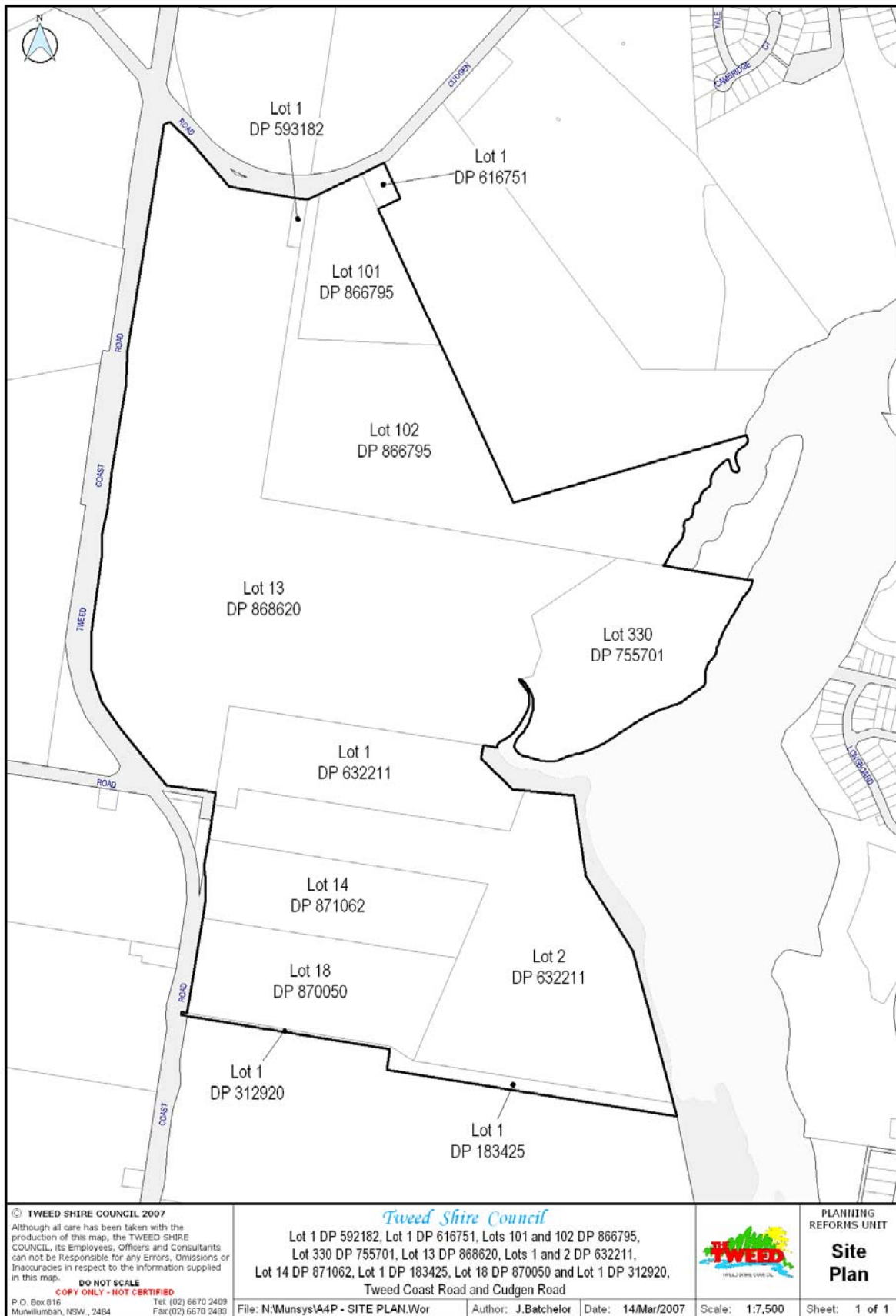
Council has received a request from Planning Workshop Australia on behalf of the Kingscliff Land Company Pty Ltd to rezone Lot 1 DP 592182, Lot 1 DP 616751, Lots 101 and 102 DP 866795, Lot 330 DP 755701, Lot 13 DP 868620, Lots 1 and 2 DP 632211, Lot 14 DP 871062, Lot 1 DP 183425, Lot 18 DP 870050 and Lot 1 DP 312920, Tweed Coast Road and Cudgen Road, Cudgen from part 1(a) Rural, part 1(b) Agricultural Protection and part 7(a) Environmental Protection to 2(c) Urban Expansion. The planning report submitted to support the rezoning request is appended. The site subject of the rezoning request is illustrated as Figure 1.

The proposed site is subject to various State and regional planning controls including:

- The Far North Coast Strategy;
- North Coast Regional Environmental Plan;
- S117 Direction No 14 - Farmland of State and Regional Significance on the NSW Far North Coast.

The rezoning of the subject site from its existing predominantly 1(b) Agricultural Protection Zone to 2(c) Urban Expansion is inconsistent with these regional Strategies. Preliminary verbal discussions with the Department of Planning representatives have concluded that they would not support the rezoning application. Further, Council is about to commence a review of its Residential Urban Land Release Strategy and as such, consideration of this rezoning request would pre-empt the findings of this Strategy.

Given the Department of Planning's unwillingness to support this rezoning, and given the inconsistencies of the proposed rezoning with the State and regional plans listed above, it is recommended Council does not proceed with the rezoning request.



LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Planning Report from Planning Workshop Australia (DW 1514491)
-

P7 [PD-PC] Section 96 Application DA03/1796.01 for an Amendment to Development Consent DA03/1796 for Aircraft Hangars at Lot 17 DP 712954, Quarry Road, South Murwillumbah

ORIGIN:

Development Assessment

FILE NO: DA03/1796 Pt1

SUMMARY OF REPORT:

Council is in receipt of a Section 96 application to amend conditions relating to the construction of 24 aircraft hangars at the Murwillumbah Airfield – approved under Development Consent DA03/1796 on 30 May 2004.

The Section 96 application seeks to change certain operational conditions imposed on the original consent which compromise the commercial viability of the project.

Whilst the project is fundamentally a Council initiative – managed by Council’s Business and Economic Development Unit, the changes sought in the Section 96 application have not been supported by Council’s Environment & Health Unit. Significant delays have occurred as a result of this difference.

Given the amount of time that has elapsed since lodgement of the application and the apparent stalemate that has now been reached, the application is reported to Council for consideration and determination.

RECOMMENDATION:

That the Section 96 application be deferred until such time as a Plan of Management is prepared and adopted by Council for the Murwillumbah Airport. If the Plan of Management caters for a potential increase in air traffic which is acceptable to Council then the Section 96 application could be considered on this basis.

REPORT:

Applicant: Mr R Richards
Owner: Tweed Shire Council
Location: Lot 17 DP 712954 Quarry Road, South Murwillumbah
Zoning: 5(a) Aerodrome
Cost: Nil

BACKGROUND:

A brief summary/timeline of the history of the project, including the current Section 96 application before Council is provided below:-

5 December 2003

DA lodged for 24 aircraft hangars in 2 stages. The DA was lodged by Rhys Richards on behalf of a group of private aircraft owners, who were selected as preferred respondents to Council's Expressions of Interest for the construction of hangars within the Bob Whittle Airfield – Murwillumbah. Under the terms of the agreement, the consortium would erect hangars at their cost, on tenure of a 20 year lease from Council.

6 May 2004

EMT resolves to require any lease conditions be for non-commercial use of the hangars, impose a restriction on the hours of operation and request the airfield management committee to report on the impacts of operation of the airfield on the community.

26 May 2004

Report put to the Development Assessment Panel recommending approval of the application subject to conditions.

- The report acknowledges that the applicant advises in the DA that the proposal will only generate less than one additional flight per day.
- The Environment and Health Unit advises *“that the impacts of any subsequent increase in aircraft activity upon the residents within the flight path are considered negligible.”*
- The Environment and Health Unit also note that *“any further proposal to the airfield that would directly or indirectly increase flight numbers must have regard to the Australian Standard 2021 – 2000 Acoustics: Aircraft Noise Intrusion.”*

31 May 2004

DA approved.

10 August 2004

Airfield Committee resolve to lodge a Section 96 application to modify certain conditions of consent.

1 February 2005

Section 96 Application lodged.

Changes sought include:-

- Removal of Condition No.6(e) which requires stormwater drainage to be discharged into Council's sewerage system and prevents the storage of any fuels/chemicals/etc within the hangar building;
- Removal of Condition No.36 which restricts the use of the hangers to the storage of private aircraft only; and
- Removal of Condition No.40 which restricts the use of the airfield to daylight hours.

7 February 2005

Section 96 application reviewed by ATM - referred to Council's Building Services Unit and Environment & Health Unit for comment.

18 March 2006

Response on Section 96 application received from Environment & Health. Comments indicate that the changes sought to Condition Nos.6(e) and 36 are not supported. No objection raised to removal of Condition No.40.

July 2006

Update on Section 96 application sought by Council's Business Undertakings Unit. Advice provided by Council's Development Assessment Unit indicates the subject application is pending refusal on the basis of Comments from Environment & Health Unit. Withdrawal of application considered likely.

22 August 2006

Memo sent from Council's Business Undertakings Unit to Council's Environment & Health Unit requesting clarification on future requirements of operations of the airfield.

10 October 2006

Memo sent from Council's Business Undertakings Unit to Council's Environment & Health Unit requesting response to previous memo.

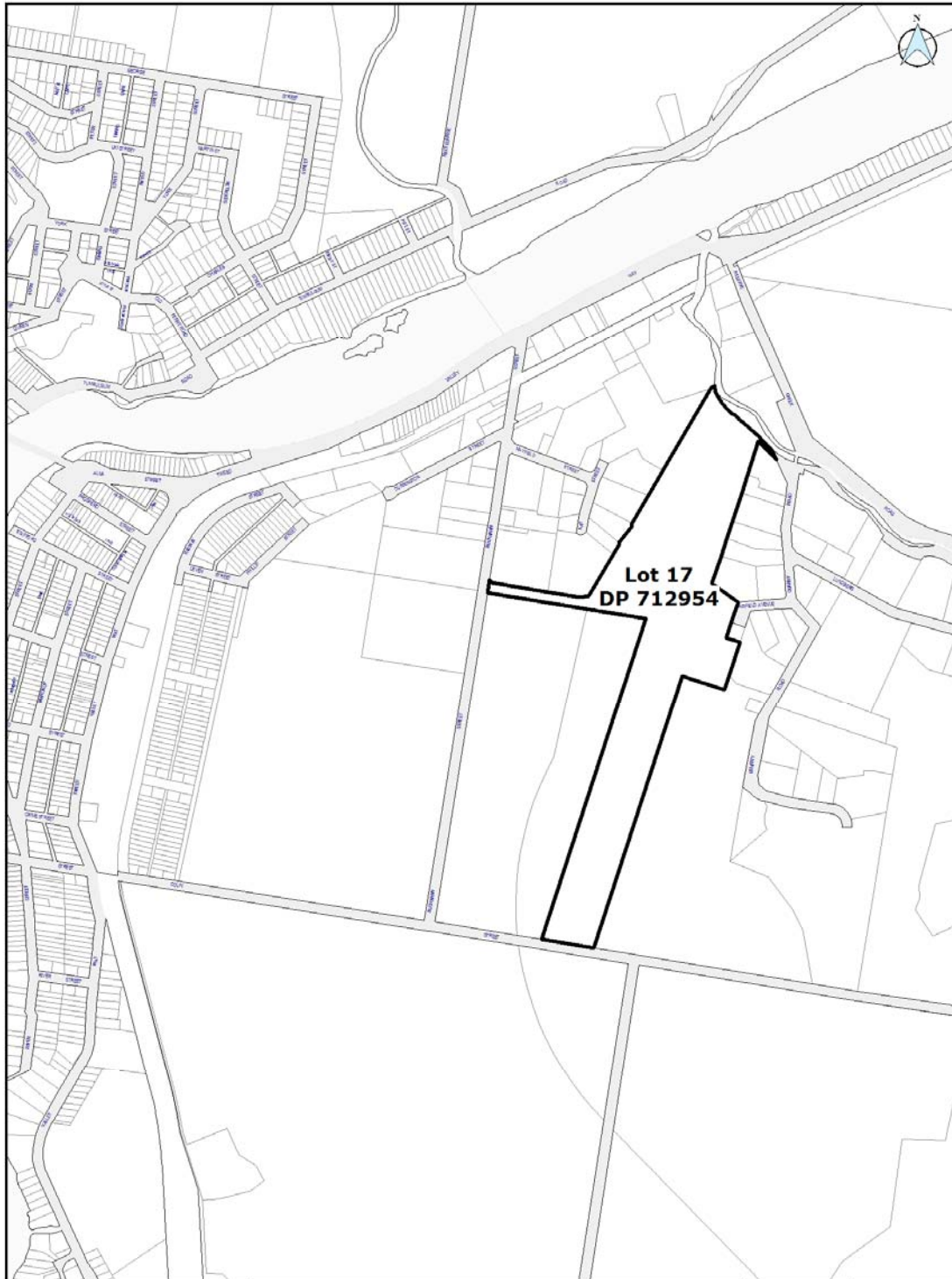
7 December 2006


Memo sent from Council's Environment & Health Unit to Council's Business Undertakings Unit indicating that the previous comments (indicating that the changes sought in the Section 96 are not supported) remain valid.

28 February 2007

Memo sent from Council's Business Undertakings Unit to Council's General Manager requesting Council determine the Section 96 application.

SITE DIAGRAM:



<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. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 816 Murwillumbah NSW, 2484 Tel: (02) 6670 2409 Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i> Lot 17 DP712954 Quarry Road, South Murwillumbah</p>	 TWEED SHIRE COUNCIL WWW.TWEEDSHIRE.COUNCIL.NSW.GOV.AU	<p>PLANNING REFORMS UNIT Site Plan Sheet: 1 of 1</p>
<p>File: N:\Munsys\A4P - SITE PLAN.Wor</p>		<p>Author: J.Batchelor Date: 28/Feb/2007</p>	<p>Scale: 1:10,000</p>

ASSESSMENT:

The following discussion outlines the specific terms of the existing conditions, the terms/changes being sought by the applicant (including their justification) and the response from Council's Environment & Health Unit.

Condition No. 6(e)(i) reads:-

- 'i) *All runoff generated from undercover hangar areas shall be collected by an internal hangar drainage system, treated to remove oil and sediment pollutants and discharged to Council's sewer network as trade waste, requiring a Trade Waste Application to Council. No discharge of internal hangar runoff is permitted to the external hardstand drainage and swale system. The hangar buildings shall not be used to store fuels, oils or chemicals, and only minor wash down and minor maintenance activities are permitted.'*

The applicant is seeking the deletion of this condition on the following grounds:-

- "i) *The storage of fuel in aircraft hangars is not allowed under CASA (Civil Aviation Safety Authority) rules unless the facility is specifically approved by them.*
- ii) *Condition No.38 of Development Consent DA03/1796 doesn't permit storage of hazardous or dangerous goods within the hangars.*
- iii) *The existing hangars do not have this facility and the intent, purpose and ultimate use of the new hangar development is exactly the same as the existing hangar development and the hard stand area of the existing development.*
- iv) *The applicant will comply with Tweed Shire Councils Engineering Department requirements for stormwater control management to the hard stand areas."*

Council's Environment & Health Unit have provided the following comments in relation to the proposed amendments:-

"This was not a condition previously recommended by the Environment & Health Unit.

However, the Environment & Health Unit does not support the deletion of the condition. Should the Engineering Operations Division consider that a pre-treatment device is not warranted the Environment & Health Unit will support modification to ensure that internal floors are graded to drain to a collection sump and not be able to drain to the external of the building."

Condition No.36 reads:-

- '36. *The hangars are to be used for the storage of private aircraft only and not to be used for the storage of commercial aircraft or utilised as a base to operate a commercial aircraft enterprise.'*

The applicant is seeking the re-wording of this condition to:-

"36. The hangars are to be use for the storage of aircraft."

The justification provided by the applicant for the proposed change is reproduced below:-

"A number of aircraft owners have their aircraft registered in the "Charter Category" as opposed to "Private Category" and in some cases are used for commercial operations that may well start from Murwillumbah Airfield. The writer would be affected in this way for example. These owners would effectively be eliminated from being able to store their aircraft on site with the current wording. Support for this variation has been attained from the Murwillumbah Bob Whittle Airfield Committee, confirmation of which can be obtained through Mr. Richard Adams of Council's Business Undertakings Unit."

Council's Environment & Health Unit have provided the following comments in relation to the proposed amendments:-

"Previous comments regarding noise impact have been considered. An estimation of 10 flights per day has been nominated as the potential usage rates of the airfield. The ability to house commercial craft is likely to increase this potential and previous Environmental & Health Unit comment reflected this, "... considered that any future proposals that would directly increase flight numbers, or indirectly, through the provision of services will require the consideration of the Standard, that is, AS2021, due to the potential impacts on surrounding residents..." A preliminary desk-top analysis utilising Appendix D of the subject Standard indicated a significant increase in adverse noise impact issues may occur should flights increase to greater than 20 flights per day. This application is for the construction of additional hangars and therefore it is not possible to impose a condition to restrict the use of the airfield, only to consider the potential to increase air traffic and therefore noise impact on surrounding residences.

It is therefore considered that the housing of commercial aircraft, other than private, will have a potential to contribute to the increase in the number of flights.

Personal communication with the Department of Environment and Conservation (Grafton Office) indicate that any future complaints regarding noise nuisance would be referred to Tweed Shire Council.

At this stage the variation of Condition 36 is not supported."

It is understood that this condition is critical to the viability of the hangar project. Restricting the use of the hangars to private aircraft only significantly reduces the number of potential tenants eligible to use the facility.

In addition to the justification reproduced above, the applicant has provided supporting information claiming that allowing commercial aircraft to use the hangars will not increase the amount of air traffic through the airfield.

The concerns of the Environment & Health Unit are based on the concern that without such a condition, Council will have no recourse, should the additional hangers lead to an increase in air traffic/noise impacts for adjoining residents.

The question of how significant a risk Council considers this and how to best approach the situation, remains unresolved.

Condition No.40 reads:-

'40. Usage of the airfield is strictly limited to daylight flying.'

The applicant is seeking the deletion of this condition on the following grounds:-

"We respectfully request that Item 40 be withdrawn from the Notice of Determination as it is not relevant to this consent for the following reasons:-

- a. It is understood by the writer and all participating aircraft owners in this group what Murwillumbah Airfield does not have lighting and therefore under the Civil Aviation Safety Authority's legislation, it is not legal to be operated to or from during the hours between last and first light (as calculated by their relevant tables. Therefore, it is not required and not a relevant item to be included in the consent for construction of aircraft hangars for the storage of aircraft on the airfield; and*
- b. There is no guarantee that the airfield will remain unlit in the future. Should the airfield become available for night operations, it is unreasonable that the members associated with the construction of the hangars should be the only people eliminated from night operations because of Item 40 in this notice of determination."*

Council's Environment & Health Unit have provided the following comments in response to the proposed change:-

"This was not a condition previously recommended by the Environment & Health Unit.

Note: It is considered that flight operations will be a significant contributing factor in the calculation of adverse noise impact issues as the subject Standard refers to 1 night flight = 4 day flights. (It is assumed that the installation of lighting to accommodate night flights would require further development approval due to the installation of lights and magnification of existing use)."

It is acknowledged that any proposal to install lighting at the Murwillumbah Airfield would indeed require development consent and be subject to an assessment under Section 79(C) of the EP&A Act. Any such assessment would require consideration of potential noise impacts that may arise from an increase in the usage of the airfield.

Given the requirement for a new development application, Council's Development Assessment Unit can see no significant issue in removing Condition No.40 as requested.

In addition to the changes discussed above, the applicant is seeking a minor change to the layout of the proposed hangars, requesting a larger hanger be withdrawn and replaced by two (2) smaller hangars. No objection is raised to this component of the application.

CONSIDERATIONS UNDER SECTION 96(1A) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

Minimal Environmental Impact

With the exception of potential noise impacts associated with additional flights that may result from the additional hangar capacity, the proposed modifications are not considered likely to result in any significant environmental impacts.

Issues relating to the use of the airfield and any potential increase in flights are difficult to assess at this stage. The applicant has provided information to Council estimating that the additional hangars will result in approximately 25 extra plane movements per month. Despite this claim, Council's Environment & Health Unit have expressed concern that should the consent be amended in the terms sought, there exists the potential for the operations of the airfield to exceed this amount and generate unreasonable impacts on adjoining residents.

As discussed above, the existing condition restricting the use of the hangars to private aircraft only (Condition No.36) is particularly critical in this respect.

Given the reluctance of the Environment & Health Unit to accept any amendment to this condition, it is now up to Council to decide how to approach the issue. In this regard, if Council foresee the inclusion of commercial operators into the new hangars as creating a significant impact, it may be necessary to undertake some further public consultation on the matter. Alternatively, if it is considered that the use of the airfield can be managed as part of a Management Plan (or similar), it may be appropriate to remove those operational conditions currently impeding the project.

Substantially the Same Development

The physical nature of the development will not significantly be modified by the proposed changes. The amended proposal will comprise 25 hangars in predominantly the same configuration as that approved. The applicant maintains that the changes sought to the operational conditions will not significantly affect the number of flight movements to/from the airfield.

The proposal is considered to be substantially the same development.

Notification

The amendment did not require notification under Council's Notification Policy.

OPTIONS:

1. Approve the Section 96 application in the terms sought by the applicant.
2. Approve the Section 96 application in the terms sought by the applicant with the exception of Condition No.36 restricting the use of the hangars to private aircraft.
3. Refuse the Section 96 application.
4. Defer the Section 96 application until such time as a Plan of Management is prepared and adopted by Council for the Murwillumbah Airport.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The amendments sought under the Section 96 application may have the potential to increase air traffic to/from the Murwillumbah airfield. However, managing the number of flights and the type of operators that use the airfield is considered an issue that may be better dealt with as part of a Management Plan for the facility and not as part of consent conditions for the proposed hangars.

The advice from Council's Environment & Health Unit conflicts with the claims of the applicant that the proposed hangars will not lead to a significant increase in air traffic.

Given the amount of time that has elapsed since the application was originally lodged and the apparent lack of progress in resolving the situation, a decision on the matter is now considered urgent.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.
