



AGENDA

PLANNING COMMITTEE MEETING

Tuesday 19 June 2007

Chairman: Mr Max Boyd AM

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



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ITEMS FOR CONSIDERATION OF THE COMMITTEE:

ITEM	PRECIS	PAGE
REPORTS FROM DIRECTOR PLANNING & REGULATION		
P1	[PR-PC] Development Application DA06/1469 for a Proposed Boundary Alteration and Erection of a Dual Occupancy at Lot 6, 7 Section 26 DP 8950, No. 44 Riverview Street Murwillumbah	See Planing Agenda (1)
P2	[PR-PC] Development Application DA06/0225 for a Motorcycle Riding Facility at Lot 503 DP 1000612, No. 11 Donalyn Court, Duranbah	See Planing Agenda (1)
P3	[PR-PC] Development Application DA06/1315 for the Erection of a Golf Pro-Shop Buggy Storage Shed and Pedestrian Bridge at Lot 2 DP 1040576, Leisure Drive Banora Point	See Planing Agenda (1)
P4	[PR-PC] Land and Environment Court Appeal - DA03/1038 6 Lot Subdivision at Lot 121 DP 755701 Chinderah Bay Drive, Chinderah	111
P5	[PR-PC] Development Application DA06/0627 for a Staged Development for a Rural Land Sharing Community Comprising 14 Dwellings at Lot 1 DP 783885; Lot 6 DP 614304, Cobaki Road Cobaki	113
P6	[PR-PC] Development Application DA07/0022 for Multi-Dwelling Housing Comprising 7 Units at Lot 9 DP 14141, No 21 Tweed Coast Road, Hastings Point	159



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P4 [PR-PC] Land and Environment Court Appeal - DA03/1038 6 Lot Subdivision at Lot 121 DP 755701 Chinderah Bay Drive, Chinderah

ORIGIN:

Development Assessment

FILE NO: DA03/1038 Pt3

SUMMARY OF REPORT:

On 18 January 2005 Council granted consent to a 6 lot subdivision at Lot 121 DP 755701 Chinderah Bay Drive, Chinderah. On 8 March 2006, a Construction Certificate was issued for the subdivision. On 2 November 2006, Mr Robert Corowa lodged an appeal in the Land and Environment Court seeking among other things, a declaration that both the Development Consent and Construction Certificate were invalid.

The first respondent in the case was Geographe Point Pty Ltd, the owners of the land and the second respondent was Tweed Shire Council. The matter was heard before Justice Jago on 13 March 2007 and the Appeal was dismissed with costs to be argued at a later date.

The question of costs was considered by Justice Jago on 23 May 2007 where he ordered that the applicant, Mr Corowa pay the respondents' costs of the proceedings (including with respect of the hearing on costs) as agreed or assessed.

Council's Solicitors have advised that they are finalising the cost amount and when available will arrange a meeting with Mr Corowa to seek recovery of those costs.

RECOMMENDATION:

That the report be received and noted.



REPORT:

As per summary

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Costs recovered in this matter will reduce Council's Legal Budget.

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.

P5 [PR-PC] Development Application DA06/0627 for a Staged Development for a Rural Land Sharing Community Comprising 14 Dwellings at Lot 1 DP 783885; Lot 6 DP 614304, Cobaki Road Cobaki

ORIGIN:

Development Assessment

FILE NO: DA06/0627 Pt1

SUMMARY OF REPORT:

The abovementioned application was previously reported at Council's meeting of 29 May 2007, where it was resolved that:

Development Application DA06/0627 for a staged development for a rural land sharing community comprising 14 dwellings at Lot 1 DP 783885; Lot 6 DP614304 Cobaki Road, Cobaki be deferred for further consideration.

Since Council's previous meeting, clarification has been provided to Council's Administrators, by way of internal memorandum, on many of the issues raised by objectors to the application at the last Planning Committee meeting. A number of additional conditions have been included in the recommendation to address these issues. The attachment to this report outlines the clarification given to Administrators.

The original report is reproduced below.

RECOMMENDATION:

That Development Application DA06/0627 for a staged development for a rural land sharing community comprising 14 dwellings at Lot 1 DP 783885 & Lot 6 DP 614304 Cobaki Road, Cobaki be approved subject to the following conditions: -

"DEFERRED COMMENCEMENT"

This consent shall not operate until the applicant satisfies the consent authority by producing satisfactory evidence relating to the matters set out in Schedule "A". Such evidence is to be provided within 12 months of the date of notification.

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



SCHEDULE "A"

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

1. Lot 1 DP783885 and Lot 6 DP 614304 are to be consolidated into one (1) lot under one (1) title. The plan of consolidation shall be registered with Lands Titles Office and documentary evidence of such, is to be submitted to Tweed Shire Council for its acknowledgement.

SCHEDULE B

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

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos COB2005-05, COB2005-06 & COB1005-07 prepared by Stewart McIntyre & Associates and dated 11/08/06 & 12/08/06, in accordance with the following staging plan:

Stage 1 (HIA 1, 2 & 3)

- Construction of dwellings (and ancillary infrastructure, i.e. OSSM, water tanks etc.) on HIAs 1, 2 & 3 (subject to individual development consent)
- Revegetation areas - critical parts of areas B, C & G, full length of the creek (Cobaki Creek), however initially to a depth of 5 - 10 metres.
- The internal access roads servicing proposed HIA sites 1, 2 & 3 shall be constructed and maintained accordingly to achieve a minimum standard of road as required by the approved construction certificate.
- All internal roads constructed in Stage 1 are to be clearly sign posted with properties clearly identified.

Stage 2 (HIA 10, 11 & 12)

- Construction of dwellings (and ancillary infrastructure, i.e. OSSM, water tanks etc.) on HIAs 10, 11 & 12 (subject to individual development consent)
- Revegetation areas - majority of areas D & E, additional Areas F and parts C & G.
- The internal access roads servicing proposed HIA sites 10, 11 & 12 shall be constructed and maintained accordingly to achieve a minimum standard of road as required by the approved construction certificate.
- All internal roads constructed in Stage 2 are to be clearly sign posted with properties clearly identified.

Stage 3 (HIA 4, 5, 6, 7, 8 & 9)

- Construction of dwellings (and ancillary infrastructure, i.e. OSSM, water tanks etc.) on HIAs 4, 5, 6, 7, 8 & 9 (subject to individual development consent)
- Revegetation areas - Areas F and parts C & G

Stage 4 (HIA 13 & 14)

- Construction of dwellings (and ancillary infrastructure, i.e. OSSM, water tanks etc.) on HIAs 13 & 14 (subject to individual development consent)
- Revegetation areas - revegetation areas A & B, completion of other areas.
- The internal access roads servicing proposed HIA sites 13 & 14 shall be constructed and maintained accordingly to achieve a minimum standard of road as required by the approved construction certificate.
- All internal roads constructed in Stage 4 are to be clearly sign posted with properties clearly identified.

except where varied by the conditions of this consent.

[GEN0005]

2. The proposed future dwellings and structures must be the subject of a separate development consent.

[GEN0035]

3. The development is to be carried out in accordance with the requirements of State Environmental Planning Policy No. 15 - Rural Landsharing Communities.

[GENNS01]

4. Separate legal rights to parts of the land title must not be created through any form of subdivision or other means such as agreements, dealings, company shares, trusts or time-sharing arrangements.
5. Each Home Improvement Area is to have a maximum of one (1) dog. Each Home Improvement Area is to be fully fenced to a suitable standard to contain the dog within the Home Improvement Area.
6. A boundary fence is to be provided around the site to such a standard to withstand occasional interference by adjoining cattle.
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]



8. 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.
[GENN0135]
9. A roof catchment water supply source shall be provided for domestic purposes where a Council reticulated water supply is unavailable. Any domestic water supply roof collection system is to be fitted with a first flush device. Minimum storage tank capacity shall reflect the dry seasonal periods experienced with the locality and shall be separate to any fire fighting requirements stipulated by the NSW Rural Fire Services.
[GENNS02]
10. Revegetation areas will be monitored and maintained monthly for the first 12 months (establishment period) and quarterly thereafter by the appointed contractor in conjunction with ongoing weed management works as described within Section 4.2.1 of the submitted Vegetation Management Plan.
[GENNS03]
11. Active searches throughout all rehabilitation areas for the weed species listed within the North Coast Environmental Weed Survey 2000 (refer Attachment 4) should be undertaken monthly for the first 12 months (from commencement) (establishment period) and quarterly thereafter by a suitably qualified professional appointed by the owner and/or successors in title to ensure such species are appropriately controlled.
[GENNS04]
12. Access shall comply with section 4.3.2 Planning for Bushfire Protection 2001.
13. All future dwelling development applications will be required to be assessed in accordance with Section 79BA of the Environmental Planning and Assessment Act, 1979.
[GENNS05]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

14. Prior to the issue of a Construction Certificate for each stage of the development, a landscaping plan is to be submitted and approved by Tweed Shire Council's General Manager or his delegate. The submitted landscaping plan is to include a variety of mature species that are positioned and utilised to provide visual screening to adjoining properties and their residences.
15. The initial revegetation works described in the application and the landscape plan referred to in Condition 13 shall be implemented by a suitably qualified professional appointed by the owner/successors in title to Council's satisfaction prior to the issue of a Construction Certificate.
16. **Section 94 Contributions**
Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.



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

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

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

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

Stage 1

(a) Tweed Road Contribution Plan: S94 Plan No. 4 (Version 4.0) Sector4_4	\$8,786
(b) Open Space (Structured): S94 Plan No. 5	\$1,560
(c) Open Space (Casual): S94 Plan No. 5	\$334
(d) Shirewide Library Facilities: S94 Plan No. 11	\$1,376
(e) Bus Shelters: S94 Plan No. 12	\$52
(f) Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$262
(g) Emergency Facilities (Surf Lifesaving) S94 Plan No. 16	\$400
(h) Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$3,993.60
(i) Regional Open Space (Structured) S94 Plan No. 26	\$4,654
(j) Regional Open Space (Casual) S94 Plan No. 26	\$1,710



Stage 2

(a) Tweed Road Contribution Plan: S94 Plan No. 4 (Version 4.0) Sector4_4	\$13,179
(b) Open Space (Structured): S94 Plan No. 5	\$2,340
(c) Open Space (Casual): S94 Plan No. 5	\$501
(d) Shirewide Library Facilities: S94 Plan No. 11	\$2,064
(e) Bus Shelters: S94 Plan No. 12	\$78
(f) Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$393
(g) Emergency Facilities (Surf Lifesaving) S94 Plan No. 16	\$600
(h) Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$5,990.40
(i) Regional Open Space (Structured) S94 Plan No. 26	\$6,981
(j) Regional Open Space (Casual) S94 Plan No. 26	\$2,565

Stage 3

(a) Tweed Road Contribution Plan: S94 Plan No. 4 (Version 4.0) Sector4_4	\$26,358
(b) Open Space (Structured): S94 Plan No. 5	\$4,680
(c) Open Space (Casual): S94 Plan No. 5	\$1,002
(d) Shirewide Library Facilities: S94 Plan No. 11	\$4,128
(e) Bus Shelters: S94 Plan No. 12	\$156



(f) Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$786
(g) Emergency Facilities (Surf Lifesaving) S94 Plan No. 16	\$1,200
(h) Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$11,980.80
(i) Regional Open Space (Structured) S94 Plan No. 26	\$13,962
(j) Regional Open Space (Casual) S94 Plan No. 26	\$5,130

Stage 4

(a) Tweed Road Contribution Plan: S94 Plan No. 4 (Version 4.0) Sector4_4	\$8,786
(b) Open Space (Structured): S94 Plan No. 5	\$1,560
(c) Open Space (Casual): S94 Plan No. 5	\$334
(d) Shirewide Library Facilities: S94 Plan No. 11	\$1,376
(e) Bus Shelters: S94 Plan No. 12	\$52
(f) Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$262
(g) Emergency Facilities (Surf Lifesaving) S94 Plan No. 16	\$400
(h) Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$3,993.60
(i) Regional Open Space (Structured) S94 Plan No. 26	\$4,654
(j) Regional Open Space (Casual) S94 Plan No. 26	\$1,710

17. Where earthworks result in the creation of embankments and/or cuttings greater than 1m high and/or slopes within allotments 17⁰ or steeper, such slopes shall be densely planted in accordance with a detailed landscaping plan. Such plan to accompany the Construction Certificate application.

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

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

[PCC0455]

18. Submission for approval by the Principal Certifying Authority design detail including surcharge loads for any retaining walls to be erected on the site in accordance with AS 4678, Tweed Shire Council Development Control Plan Part A14 - Cut and Fill on Residential Land and Councils Development Design and Construction Specifications. Design detail is to be supported by certification of adequacy of design from a suitably qualified structural engineer.

Please note timber retaining walls are not permitted.

[PCC0475]

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

- (a) vehicular access from the public road

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]

20. Permanent stormwater quality treatment shall be provided in accordance with the following:
- (a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
 - (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils *Development Design Specification D7 - Stormwater Quality*.
 - (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management. Typical water sensitive features include infiltration, maximising permeable/landscaped areas, stormwater retention /detention/reuse, and use of grass swales in preference to hard engineered drainage systems.
 - (d) Specific Requirements to be detailed within the Construction certificate application include:
 - (i) Shake down area along the haul route immediately before the intersection with the road reserve.

[PCC1105]

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

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

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

[PCC1145]

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



Quality and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCC1155]

23. Prior to the issue of a construction certificate for any stage of development the proponent shall submit plans and specifications relative to all stages of the development for access roads and associated stormwater drainage designed in accordance with Planning NSW publication "Planning for Bushfire Protection" and Tweed Shire Council Development Design and Construction Specifications. The application shall be accompanied by a certificate from a suitably qualified engineer certifying the design meets the standards tabled within the above documents.

PROPERTY ACCESS ROADS

- (a) Construction of a gravel pavement (min depth 200mm) on a 6m wide formation comprising a trafficable width of 4.0m and 1m wide shoulders clear of bushes and long grass shall be provided to all internal access roads.
- (b) Construction of passing bays at a maximum interval of 200m. Where sight distance is limited additional passing bays shall be provide to ensure vehicles are not required to reverse. Passing bays shall be a minimum 20m long and 3m wide providing a total trafficable pavement of 7m.
- (c) The capacity of road surfaces and bridges shall be sufficient to carry fully loaded firefighting vehicles of approximately 28 tonnes or 9 tonnes per axle.
- (d) A minimum vertical clearance of 6m to any overhanging obstructions, including tree branches shall be provided.
- (e) Curves shall be kept to a minimum to allow for rapid access and escape. The minimum inner radius shall be 6m and distance between inner and outer curves shall be 6m.
- (f) Maximum grades shall not exceed 21% for residential access. Any access greater than 15% shall be bitumen sealed. Where access roads are solely provided for bushfire fighting purposes the maximum grade shall not exceed 26.8% and preferably be not more than 17.6%.
- (g) Where dwellings are cited greater than 200m from the public road network, an alternative emergency egress road shall be provided.
- (h) Additional fire trails shall be provided to isolated dwellings or groups of dwellings.
- (i) A fire trail from Access Road 1, dwelling site 12 to Access Road 3 at dwelling site 13 to provide alternative egress for serviced dwelling sites

- (j) A fire trail from Access Road 2, dwelling site 2 to Access Road 1 to provide alternative egress for serviced dwelling sites. [PCCNS01]
24. Weed management works are an on-going requirement however a minimal presence of weed species on the site must be achieved prior to the issue of a Construction Certificate. [PCCNS03]
25. Prior to the issue of ANY Construction Certificate, the final proposed Management Plan is to be submitted to Tweed Shire Council for approval. Approval is to be obtained from the General Manager or their delegate. [PCCNS03]

PRIOR TO COMMENCEMENT OF WORK

26. 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]
27. An Approval to Install a Waste Treatment Device shall be obtained prior to the commencement of the installation of the facility. [PCW1105]
28. Prior to the commencement of works and/or the issue of a Construction Certificate for Stage 2 works, acknowledgement from Tweed Shire Council is to be obtained stating that spare traffic capacity is available within the Kennedy Drive Catchment OR the Cobaki Parkway link is to be constructed and operational.
29. Prior to the commencement of works and/or the issue of a Construction Certificate for Stage 3 works, acknowledgement from Tweed Shire Council is to be obtained stating that spare traffic capacity is available within the Kennedy Drive Catchment OR the Cobaki Parkway link is to be constructed and operational.
30. Prior to the commencement of works and/or the issue of a Construction Certificate for Stage 4 works, acknowledgement from Tweed Shire Council is to be obtained stating that spare traffic capacity is available within the Kennedy Drive Catchment OR the Cobaki Parkway link is to be constructed and operational.

DURING CONSTRUCTION



31. During construction, all works required by other conditions or approved management plans or the like shall be installed and operated in accordance with those conditions or plans. [DUR0015]
32. Provision of adequate vehicular access in accordance with Council's "Access to Property" pamphlet, including the following specific work
- (a) Bitumen sealing of accesses from the road carriageway to the property boundary of each proposed lot.
 - (b) Provision of 375mm minimum diameter pipe culvert crossings, including precast headwalls, to each lot in accordance with Councils adopted Development Design and Construction Specifications. [DUR0045]
33. 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]
34. Bushfire asset protection zones are to be maintained around the house site at all times to the satisfaction of the NSW Rural Fire Service. [DUR0575]
35. Access to the property is to be provided in accordance with Chapter 4.3.2 of Planning for Bushfire Protection 2001. [DUR0585]
36. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments". [DUR0785]
37. The proposed earthworks program shall be monitored by a Registered Geotechnical Testing Consultant to a level 1 standard in accordance with AS 3798. A certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798 shall be submitted to the Principal Certifying Authority upon completion. [DUR0795]
38. Any watercourse crossing is to be in compliance with current NSW Fisheries Policy and Guidelines for Bridges, Roads, Causeways, Culverts and Similar Structures. [DUR1205]
39. 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]

40. 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]

41. Stage 1

Construction of Access roads, fire trails and associated drainage servicing house sites 1 to 3.

Stage 2

Construction of Access roads, fire trails and associated drainage servicing house sites 10 to 12.

Stage 3

Construction of Access roads, fire trails and associated drainage servicing house sites 4 to 9.

Stage 4

Construction of Access roads, fire trails and associated drainage servicing house sites 13 and 14.

[DURNS01]

42. 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]



43. 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]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

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

[POC0005]

45. Work as executed plans are to be provided to Council in accordance with Councils adopted Development Design and Construction Specification.

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

[POC0765]

46. 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]

USE

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

[USE0845]

48. The proponent shall make adequate provision for the management and maintenance of all matters raised within the approved management plan as specified in clause 10 of SEPP 15 at all times.

[USENS01]

49. Upon completion of each stage of development the proponent shall provide a certificate from a suitably qualified engineer certifying all works required for access and stormwater management required by this consent have been undertaken in accordance with the standards specified.

[USENS02]

REPORT:

Applicant: Button Partnership
Owner: Mr SC McIntyre, Ms AM McIntyre, Mr AW Steer, Ms JV McIntyre and Button & Button Pty Ltd
Location: Lot 1 DP 783885 & Lot 6 DP 614304 Cobaki Road, Cobaki
Zoning: 1(a) Rural
Cost: \$500,000

BACKGROUND:

Council is in receipt of an application for a Rural Landsharing Community, comprising 14 Home Improvement Areas on a 50.74ha parcel of land, comprising 2 properties, situated at 290 Cobaki Road, Cobaki. The subject land along with the immediate area is zoned 1(a) Rural under the Tweed LEP 2000 and is predominately utilised for low intensive agriculture, particularly cattle grazing and rural living.

The subject lands currently has one dwelling entitlement by virtue of a Council approved subdivision that created Lots 3, 4, 5 and 6 in DP 614304. It appears as though Lot 1 DP 783885 was created in 1988 without Council approval and accordingly is not viewed to possess a dwelling entitlement. However, as the application has been made under SEPP 15, whether the lot possess an entitlement does not impact upon the assessment, only the amount of Section 94 Contributions.

Under the provisions of Clause 11(2) of SEPP 15 there is only a certain number of dwellings permissible relative to the area of land subject to the application. The formula is detailed below:

$$\begin{aligned} &4 + \frac{(A - 10)}{4} \text{ where } A = \text{the area of land subject of the application} \\ &= 4 + \frac{(50.74 - 10)}{4} \\ &= 4 + 10.185 \\ &= 14.185 \text{ (rounded down as per SEPP 15)} \\ &= 14 \text{ potential Home Improvement Areas based on land area} \end{aligned}$$

The application seeks consent for a rural land sharing development comprising of 14 HIA's ranging in size from 2500m² to 4800m². The remaining site area (approximately 92% or 46.44ha) remains as common property areas and will comprise re-vegetation areas and open space. These areas will be accessible to everyone within the scheme.

It is proposed that a company structure be established with 14 shareholders and all decisions made in relation to the property would be made by the registered proprietors.

Details of each proposed dwelling (including size, building design etc) will be submitted for development consent on an individual HIA basis, however the submitted plans nominate specific building and effluent disposal envelopes.



The application is proposed in four stages. The following is a recommended condition of consent to ensure the application is staged appropriately:

Stage 1 (HIA 1, 2 & 3)

- Construction of dwellings (and ancillary infrastructure, i.e. OSSM, water tanks etc.) on HIAs 1,2 & 3 (subject to individual development consent)
- Revegetation areas – critical parts of areas B, C & G, full length of the creek (Cobaki Creek), however initially to a depth of 5 – 10 meters.
- The internal access roads servicing proposed HIA sites 1, 2 & 3 shall be constructed and maintained accordingly to achieve a minimum standard of road as required by the approved construction certificate.
- All internal roads constructed in Stage 1 are to be clearly sign posted with properties clearly identified.

Stage 2 (HIA 10, 11 & 12)

- Construction of dwellings (and ancillary infrastructure, i.e. OSSM, water tanks etc.) on HIAs 10, 11 & 12 (subject to individual development consent)
- Revegetation areas – majority of areas D & E, additional Areas F and parts C & G.
- The internal access roads servicing proposed HIA sites 10, 11 & 12 shall be constructed and maintained accordingly to achieve a minimum standard of road as required by the approved construction certificate.
- All internal roads constructed in Stage 2 are to be clearly sign posted with properties clearly identified.

The applicant has indicated the construction of a community building as part of Stage 2 works, however no plans, use or construction details have yet been submitted. Accordingly, any future proposed community building will be subject to a separate development application.

Stage 3 (HIA 4, 5, 6, 7, 8 & 9)

- Construction of dwellings (and ancillary infrastructure, i.e. OSSM, water tanks etc.) on HIAs 4, 5, 6, 7, 8 & 9 (subject to individual development consent)
- Revegetation areas – Areas F and parts C & G

Stage 4 (HIA 13 & 14)

- Construction of dwellings (and ancillary infrastructure, i.e. OSSM, water tanks etc.) on HIAs 13 & 14 (subject to individual development consent)

- Revegetation areas – revegetation areas A & B, completion of other areas.
- The internal access roads servicing proposed HIA sites 13 & 14 shall be constructed and maintained accordingly to achieve a minimum standard of road as required by the approved construction certificate.
- All internal roads constructed in Stage 4 are to be clearly sign posted with properties clearly identified.

Clause 12 of SEPP 15 further provides that Subdivision is prohibited and subsequently the following condition of consent is recommended;

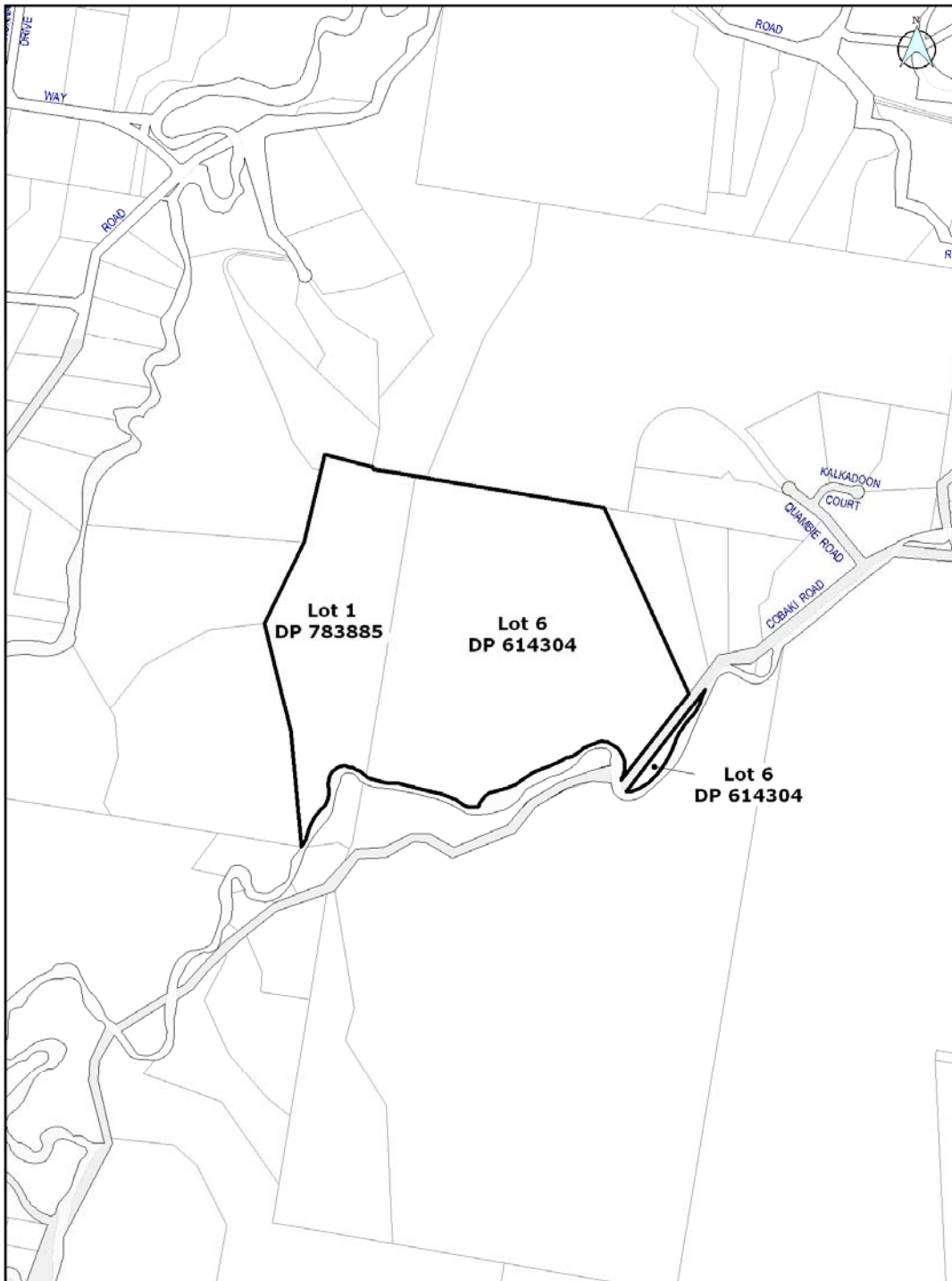
Subdivision of the development, including strata subdivision, is not permitted.

The Owners consider that a SEPP 15 Rural Land Sharing Communities concept is ideally suited to their property and their commitment to environmentally sensitive and sustainable land use practices.

The application is recommended for conditional approval.

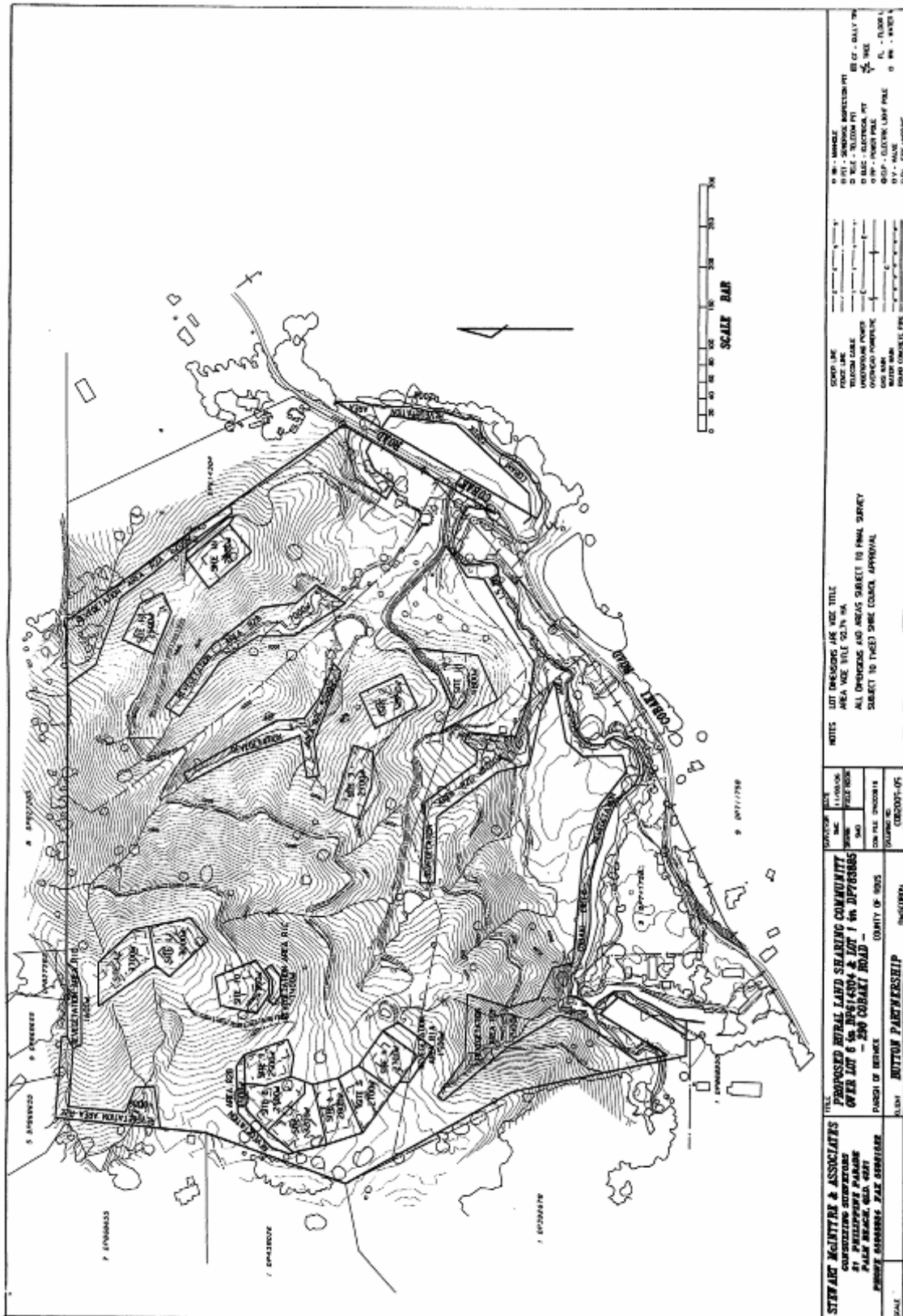


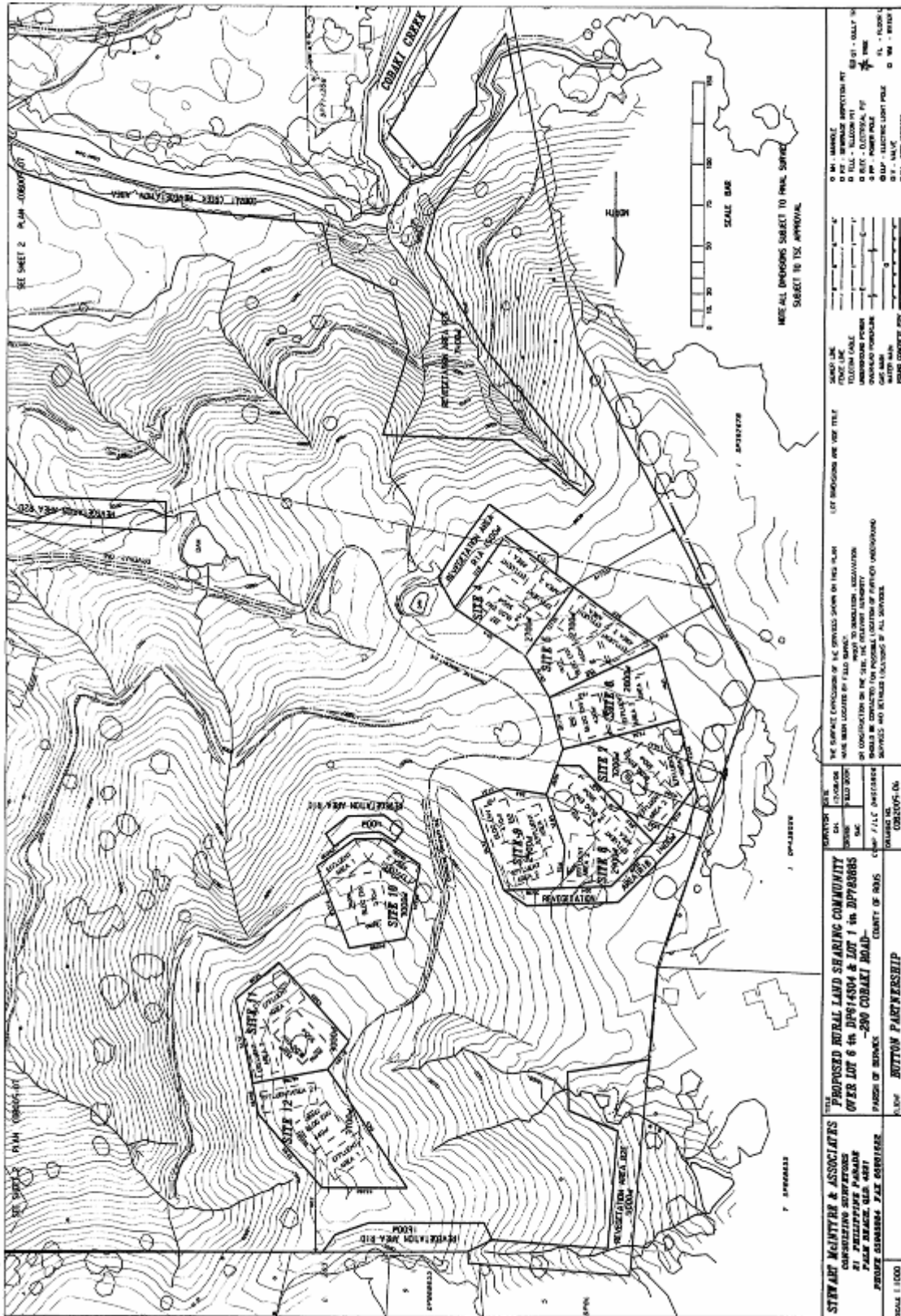
SITE DIAGRAM:



<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 Murumbidgee, NSW, 2484 Tel: (02) 6670 2409 Fax: (02) 6670 2403</p>	<p><i>Tweed Shire Council</i> Lot 1 DP 783885 & Lot 6 DP 614304 No. 290 Cobaki Road; Cobaki</p>		<p>PLANNING REFORMS UNIT Site Plan</p>
<p>File: N:\Munsys\A4P - SITE PLAN.Wor Author: J. Batchelor Date: 18/May/2007</p>		<p>Scale: 1:10,000</p>	<p>Sheet: 1 of 1</p>

DEVELOPMENT PLANS:









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

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

Tweed Local Environmental Plan 2000

Clause 11 – Zone Objectives

The subject land is zoned 1(a) Rural under the provisions of the Tweed Local Environmental Plan (TLEP) 2000.

A Rural Landsharing Community is permissible in accordance with SEPP 15 despite any provision in an environmental planning instrument concerned with the use of land for the purposes only of a dwelling or dwellings in rural or non urban zones.

Notwithstanding the development's permissibility in accordance with SEPP 15 it is still considered necessary to assess the application against the objectives of the 1(a) zone and the relevant provisions of the Tweed LEP as follows:

The objectives of the 1(a) rural zone are:

Primary Objectives

To enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilisation purposes and associated development.

To protect rural character and amenity.

Secondary Objective

To enable other types of development that rely on the rural or natural values of the land such as agri- and eco-tourism.

To provide for development that is not suitable in or near urban areas.

To prevent the unnecessary fragmentation or development of land which may be needed for long-term urban expansion.

To provide non-urban break between settlements to give a physical and community identity to each settlement.

The proposed rural land sharing community is seen to satisfy the objectives of the zone. In this regard the following comments are made:

- The proposal is considered to be ecologically sustainable and with the extensive revegetation areas proposed will provide a significant opportunity to improve and contribute to the natural features of the land
- The proposal seeks 14 HIAs over 50.74ha of land, resulting in a yield of 1 HIA per 3.624 ha. A search of land areas within the immediate vicinity (200 metres from the perimeter of the subject site) revealed a range in lot sizes between 0.7ha to 114.9ha, with most lots comprising approximately 2 – 3ha in size. Further than immediate parcels, a rural living themed subdivision involving approximately 76 lots (average lot size of approximately 2 – 3ha) is located approximately 700m northwest of the subject land and significant portions of land located 650m southeast are currently zoned 2(c) Urban Expansion under the Tweed LEP 2000. In light of the above, it is considered that the density proposed is not out of character with the current context and setting of this area, and is not seen to detract from the existing character or amenity.
- The proposed land use is not considered suitable on urban lands, nor is it permissible under the SEPP
- The proposal does not result in the fragmentation of land.

Furthermore, the development must also satisfy the provisions of Clause 8(1) of TLEP 2000:

Clause 8 Consent Considerations

The consent authority may not grant consent to development (other than development specified in Item 3 of the table to Clause 11) only if:

- a) It is satisfied that the development is consistent with the primary objective of the zone within which it is located, and*
- b) It has considered those other aims and objectives of this plan that are relevant to the development, and*
- c) It is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of the Tweed as a whole.*

The proposed rural landsharing community satisfies Clause 8 of TLEP 2000.

Clause 15 – Availability of Essential Services

In accordance with Clause 15, the proposed rural landsharing community must have adequate provision for essential services. The proposals compliance with Clause 15 is detailed as follows;



Water Supply:

The proposed dwelling sites are to be serviced by rainwater tanks. The development applications for individual dwelling houses will include specific details on the design and citing of water storage tanks.

On-site Sewage Management:

The proposal is to be serviced via on-site effluent disposal. Council's Environment and Health Unit have reviewed the proposal as satisfactory, subject to conditions of consent.

Electricity:

Mains power is provided to the boundary of the property. Appropriate conditions are to apply

Telecommunications:

Underground telecommunication cabling is available to the site

Having regard to Clause 15 of the Tweed LEP 2000 the proposed services are considered satisfactory.

Clause 31 – Development Adjoining Waterbodies

The subject site contains a portion of Cobaki Creek, however, all HIAs are located well away from the creek (minimum setback of approximately 100 metres).

The application has been assessed against the provisions contained within Clause 31 that focus on protecting and enhancing scenic quality, water quality, aquatic ecosystems, biodiversity and wildlife habitat corridors.

The development will not adversely impact upon the scenic quality, water quality, habitat values or marine/riverline ecology but rather improve scenic quality through the proposed revegetation areas.

These comments substantiate compliance with the provisions of Clause 31.

Clause 39A – Bushfire Protection

The subject land is identified as bushfire prone as per the Bushfire Prone Land Map dated February 2004. The NSW Rural Fire Service have reviewed the proposal and has recommended the following conditions of consent;

Access shall comply with section 4.3.2 Planning for Bushfire Protection 2001.

All future dwelling applications will be required to be assessed in accordance with Section 79BA of the Environmental Planning and Assessment Act 1979.

Accordingly, Clause 39A is considered satisfied.

North Coast Regional Environmental Plan 1988

Clause 12 requires that consideration must be given to the likely impact from the proposed development on the use of the adjoining or adjacent agricultural land and whether the development will cause loss of prime agricultural land or loss of prime crop or pasture land.

The subject land is not identified as prime crop or pasture land and has historically been used for cattle grazing. The significance of the land is reflected in Council's zoning of the land as 1(a) as opposed to 1(b) Agricultural Protection. It should be noted that the subject land does involve some 'significant non-contiguous farmland', following the line of Cobaki Creek, however no HIAs are located within this area, nor are any works proposed which would detract or impact upon this land.

It is considered the position and orientation of the HIAs and building envelopes will not significantly impede surrounding rural activities currently typical of the area. HIA 7 and 14 involve the closest building envelopes to the property boundary, with a minimum setback of 30 metres. Potential for landuse conflict does exist, particularly in these areas, however the proposal does comply with Council's nominated buffers for grazing land (30 metres) and it is also worth noting that the building envelopes nominated are significant in size (380m² and 450m² respectively) and allow for further setbacks through building design.

Subject to appropriate conditions of consent, the development is not considered to adversely affect or be affected by surrounding agricultural land.

State Environmental Planning Policies

SEPP 15 applies to the Tweed Shire Council Local Government Area as it is listed in Schedule 1 of the Policy.

SEPP 15 aims to provide the following:

(a) *to encourage and facilitate the development of rural landsharing communities committed to environmentally sensitive and sustainable land use practices, and thus*

(b) *to enable:*

- (i) *people to collectively own a single allotment of land and use it as their principal place of residence, and*
- (ii) *the erection of multiple dwellings on the allotment and the sharing of facilities and resources to collectively manage the allotment, and*
- (iii) *the pooling of resources, particularly where low incomes are involved, to economically develop a wide range of communal rural*

living opportunities, including the construction of low cost buildings, and

(c) to facilitate development, preferably in a clustered style:

- (i) in a manner that both protects the environment and does not create a demand for the unreasonable or uneconomic provision of public amenities or public services by the State or Commonwealth governments, a council or other public authorities, and*
- (ii) in a manner that does not involve subdivision, strata title or any other form of separate land title, and in a manner that does not involve separate legal rights to parts of the land through other means such as agreements, dealings, company shares, trusts or time-sharing arrangements, and*
- (iii) to create opportunities for an increase in the rural population in areas that are suffering or are likely to suffer from a decline in services due to rural population loss, and*

(d) to repeal State Environmental Planning Policy No 42--Multiple Occupancy of Rural Land (Repeal).

The proposals compliance with the aims of SEPP 15 are discussed later in this report.

In addition, SEPP 15 provides a list of pre-request requirements which must be satisfied prior to the application being valid to the subject site. These requirements are as follows:

- (a) the land comprises a single allotment not subdivided under the Conveyancing Act 1919 or the Strata Schemes (Freehold Development) Act 1973, and*
- (b) the land has an area of not less than 10 hectares, and*
- (c) the height of any building on the land does not exceed 8 metres, and*
- (d) not more than 25 per cent of the land consists of prime crop and pasture land, and*
- (e) the part of the land on which any dwelling is to be situated is not prime crop and pasture land, and*
- (f) the part of the land on which any structure or work is to be situated is not land that is a wildlife refuge, wildlife corridor or wildlife management area and development and management of the rural landsharing community does not adversely affect any area identified as a wildlife refuge, wildlife corridor or wildlife management area, and*
- (g) the development is not carried out for the purposes of a motel, hotel, caravan park or any other type of holiday, tourist or weekend residential*

accommodation, except where development for such purposes is permissible under the provisions of another environmental planning instrument in the zone, and

- (h) the part of the land on which any structure is to be situated does not have a slope in excess of 18 degrees, or has been determined not to be prone to mass movement, and*
- (i) the aims of this Policy are met.*

In this regard the following comments are made.

- (a) The development application has been lodged over 2 land parcels and is therefore not in compliance with the SEPPs requirement. However, the opportunity exists to issue a 'Deferred Commencement' approval, which required the 2 subject parcels to be amalgamated prior to the activation of the development consent, ensuring that once the consent is active, the requirements of the SEPP have been met.
- (b) the land area is greater than 10 hectares.
- (c) No buildings are proposed within the subject application, however appropriate conditions of consent have been drafted to ensure this requirement is upheld.
- (d) The land is not identified as prime crop and pasture land.
- (e) As above
- (f) The subject lands are not identified as a wildlife corridor, refuge or management area.
- (g) The proposal does not seek any tourism purposes or activities.
- (h) The topography of the land is not greater than 18 degrees within the designated building envelopes.
- (i) The applicant has provided the following detail to demonstrate compliance with the aims of SEPP 15;

The proposed Rural Landsharing Community is committed to environmentally sensitive design through the creation of numerous revegetation areas throughout the property.

The proposal will have the opportunity of sharing facilities and resources through the community building.

The Rural Landsharing Community provides the opportunities for the community to purchase low cost housing in the Tweed Shire. The proposed development does not involve subdivision or strata title.

It is agreed that the proposed revegetation areas will have a positive contribution to the local environment and its sustainability. In addition, it is seen that proposal adequately allows people to collectively own a single allotment of land and use it as their principal place of residence, and erect multiple dwellings on the allotment and the sharing of facilities and resources to collectively manage the allotment, particularly the undertaking and management of the revegetation areas (although it is re-iterated that the proposal, whilst 'flagging' a community building, does not seek approval of any communal structure).

Concerns have been raised regarding the proposals ability to provide the construction of low cost buildings. In this regard, neither the applicant nor objectors have been able to provide any documentary evidence demonstrating compliance or non-compliance with this sub clause. It is acknowledged that the proposed revegetation is likely to be of considerable cost, which, it is assumed, will be largely funded by the purchase price of future occupiers of the land, possibly resulting in an inflated cost for future occupiers. However, it should also be acknowledged that the submitted management plan does not contain any specific building design requirements which would result in an inflated development cost. In addition, bank loans and insurance are often difficult to obtain for dwellings within a rural landsharing community as the land is not wholly owned by a singular party, accordingly, the cost of purchasing a HIA is traditionally greatly reduced when compared to a rural parcel with similar characteristics (lot size, locations etc).

In light of the above, whilst documentary evidence has not been supplied demonstrating the ability of the proposal to provide low cost housing, and the reality that it is ultimately a combination of the landowner and market value/forces to determine the price of each HIA, nothing within the submitted application by way of building requirements or environmental constraints that is seen to result in low cost or affordable housing and construction not being achieved. Accordingly, the aims of the SEPP are considered to be met.

SEPP 15 also details the following matters for consideration:

- (a) *the means proposed for establishing land ownership, dwelling occupancy rights, environmental and community management to ensure the aims and objectives of this Policy are met,*
- (b) *the area or areas proposed for erection of buildings, including any proposals for the clustering of buildings,*
- (c) *the area or areas proposed for community use (other than areas for residential accommodation and home improvement areas),*
- (d) *the need for any proposed development for community use that is ancillary to the use of the land,*

- (e) *the availability and standard of public road access to the land,*
- (f) *the availability of a water supply to the land for domestic, agricultural and fire fighting purposes and, where a proposed water supply is from a river, creek, dam or other waterway, the effect upon other users of that water supply,*
- (g) *if required by the applicant, the availability of electricity and telephone services,*
- (h) *the availability of community facilities and services to meet the needs of the occupants of the land,*
- (i) *whether adequate provision has been made for waste disposal from the land,*
- (j) *the impact on the vegetation cover of the land and any measures proposed for environmental protection, site rehabilitation or reforestation,*
- (k) *whether the land is subject to a risk of flooding, bush fires, landslip or erosion or whether there are areas with actual or potential acid sulfate soils and, if so, the adequacy of any measures proposed to protect occupants, buildings, internal access roads, service installations, and land adjoining the development from any such hazard,*
- (l) *the visual impact of the proposed development on the landscape,*
- (m) *the effect of the proposed development on the present and potential use, including agricultural use, of the land and of lands in the vicinity, including the need for separation and buffers to avoid land use conflicts,*
- (n) *whether resources of coal, sand, gravel, petroleum or other mineral or extractive deposits will be sterilised by the proposed development,*
- (o) *the effect of the proposed development on the quality of the water resources in the vicinity,*
- (p) *any land claims by local Aborigines and the presence of any known Aboriginal relics and sites,*
- (q) *the impact of the proposed development on any heritage item, relic or site, or on their curtilages,*
- (r) *whether the land has been identified by the council as being required for future urban or rural residential expansion,*

- (s) *whether the development would benefit an existing village centre suffering from a declining population base or a decreasing use of the services provided in that centre.*

This report addresses all of the above issues, as they are considered relevant. Based on this assessment the application is considered satisfactory having regard to these matters of consideration.

Furthermore, Council cannot consent to an application made in pursuance of clause 7 unless it has taken into consideration a site analysis that:

- (a) *contains information about the site and its surrounds as described in Schedule 3, and*
- (b) *is accompanied by a written statement explaining how the design of the proposed development has regard to the site analysis.*

The applicants Statement of Environmental Effects, Site Analysis, and Environmental Management Plan are all considered satisfactory having regard to the Policy.

State Environmental Planning Policy No. 55 – Remediation of Land

The site is not considered to be contaminated land.

(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 (DCPs)

Council's assessing officers have had regard for the following sections of the Tweed Development Control Plan and recommended appropriate conditions of consent accordingly:

- Section A2 - Parking;
- Section A3 – Development of Flood Liable Land; and
- Section A5 – Subdivision Manual (regarding internal access standards, provision of essential services etc.)

(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

Threatened Species

Section 5A of the Act sets out matters which must be considered in determining whether or not there is likely to be a significant effect on threatened species, populations, ecological communities, or their habitats.

The siting of all HIA's and community open spaces is to occur within existing cleared sections.

Traffic Capacity/ Kennedy Drive Catchment

As Council has previously been advised, in August 2001, Council resolved under resolution 71 to restrict traffic volumes on Kennedy Drive at the Cobaki Bridge to 22,000 vehicles per day by limiting development west of the bridge. Council determined in 1997 that the available traffic capacity on Kennedy Drive was 1200 vehicles/day.

Post determination of DA05/1351, which approved a 76 lot subdivision at Bilambil Heights it was established that 109 trips remained within the catchment. The proposal presently before Council is considered to generate a total traffic amount of 84.5 trips, resulting in a remaining 24.5 trips within the catchment.

However, Council's DAU has traditionally employed a 'first in, first served' basis for the allocation of trips within the Kennedy Drive catchment. In this regard it is noted that an application for the construction of a three (3) storey terrace development comprising twenty-one (21) units and car parking for 32 vehicles at 18-20 Cupania Court, Tweed Heads West ([DA05/1147](#)) remains undetermined within the catchment (which would generate approximately 75.4 trips).

Accordingly, should the traditional approach be upheld, should DA05/1147 be approved, the remaining trips left within the Kennedy Drive catchment would not be sufficient to approve the subject application holistically.

In light of the above, Council's assessing Traffic and Transport Engineer has provided appropriate conditions of consent restricting the commencement of Stages 2, 3 & 4 until such time that it is acknowledged that spare traffic capacity is available within the Kennedy Drive Catchment to cater for each stage.

With the inclusion of these conditions, it is considered that this matter is adequately satisfied and no other traffic concerns are raised.

(c) Suitability of the site for the development

Suitability of the Lot/ Natural Hazards

The subject lands have a site area of 50.74ha and is of irregular shape. The land is undulating, however all HIA are located on appropriate slopes. The site is identified as Bushfire Prone under the Bushfire Prone Land Map dated

February 2004, and is identified as flood prone. However both of these constraints have been overcome through the appropriate placement of HIAs and appropriate conditions of development consent.

Development along Cobaki Road is predominately of a rural living character, with several properties engaged in agricultural pursuits.

In consideration of the limited site constraints, existing uses and desired character of the locality, the proposal is not considered to adversely affect or create any additional hazards and is considered a suitable use in relation to the subject land.

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

During the prescribed notification period, a total of 30 public submissions were received. The following table details the concerns raised, response received from the applicant and final comment.

Issue	Response by Applicant	Comment
Lowering of land values	Reduction of property values is not foreseen as an impact of this development and is not considered a relevant basis for objection. The proposed sharing community will be development and managed in accordance with Council's requirements and the provisions of the adopted management plan. This will ensure only high quality well planned development is allowed.	Void of any evidence demonstrating that the proposal having a direct, significant impact to the land value of any adjoining properties. Refusal of the application on this basis is not considered warranted.
Road Capacity	The development is for the establishment of a 14 dwelling Rural Share Community. Upon completion under Tweed Shire Council's Section 94 Tweed Road Contribution Plan the development is considered to produce 84.5 additional trips a day. It is important to note that the development is staged and this additional traffic will progressively come online over the life of the development.	As previously detailed earlier within this report, sufficient traffic capacity is currently available within the Kennedy Drive Traffic Catchment area. Nonetheless, appropriate conditions of consent have been included to ensure that prior to the commencement of each stage of the development, further acknowledged that spare traffic capacity is available within the Kennedy Drive Catchment

Issue	Response by Applicant	Comment
	<p>The development will be required to contribute funds to road infrastructure as is standard practice. This will over time bring improvement to surrounding road networks. Currently the road system is considered to have adequate capacity to service the development.</p>	<p>is required. Refusal of the application on this basis is not considered warranted.</p>
<p>Impacts to local flora and fauna</p>	<p>As demonstrated by the site photos the subject property is largely grassed pastures with sparse clusters and scattered individual native trees. The area adjacent to Cobaki creek has more dense vegetation which is populated with a mixture of native and weed species. In various locations across the site there are small farm dams that serve to provide water for the cattle.</p> <p>The proposed layout has been arranged based on the features of the land, including its topography and the location of high quality healthy vegetation. These design measures coupled with revegetation initiatives outlined within the prepared Vegetation Management Plan (VMP) provides increased numbers of trees. The development will also undertake restoration of areas that have been degraded over time. This will positively impact on the surround flora and fauna with progressive improvements as the development stages progress.</p>	<p>The proposal has been assessed against Section 5A of the EP &A Act 1979 as satisfactory. The proposal is seen to improve the environmental value of the property. Refusal of the application on this basis is not considered warranted.</p>

Issue	Response by Applicant	Comment
<p>Impacts to adjacent farming activities</p>	<p>The creation of Rural Sharing Communities is aimed at ensuring the ability of the subject and surrounding sites to maintain rural farming activities. As such buffers and setbacks have been implemented to ensure all rural activities on adjoining lots can continue with no impact.</p> <p>A revised layout of the proposed building envelopes sees sites 4 to 9 setback off the boundaries of Lot 1 on DP438026 and Lot 1 on DP392678. These setbacks coupled with areas of planting provide sufficient buffer areas. All other sites remain in their current proposed locations with vegetation provided as buffers. It is considered that all lots are now sited sufficiently to allow adjacent rural activities to continue.</p>	<p>The inclusion of buffer areas between the HIAs and common boundary lines (minimum of 30 metres) as well as requirements within the submitted Rural Landsharing Constitution – Management Plan requiring fencing of HIAs is seen to mitigate any significant impacts to adjacent farming activities. Refusal of the application on this basis is not considered warranted.</p>
<p>Maintenance of unoccupied land</p>	<p>The purpose for the creation of Rural Land Sharing Communities is to ensure adequate levels of people and funds to ensure unoccupied common land is up kept to the highest possible standard. The proposals management plan ensures that all fences, internal roads, vegetation and site environmental values are maintained free of cost to Council.</p> <p>The proposal will also provide tailored recycling and waste management procedures, will enforce requirements regarding both type and</p>	<p>As has been detailed, it is the responsibility of the land owners to maintain all areas of the property to a suitable standard, as is the case for all residential properties within the Tweed Shire. Maintenance issues have also been included with the management plan for the development. Refusal of the application based on this issue is not considered warranted.</p>



Issue	Response by Applicant	Comment
	<p>control of domestic and live stock animals; and will implement requirements for housing design and environmental features. These measures will ensure the property is developed and maintained to the highest possible standard. It is noted that the majority of the common land will be continued to be use for the grazing of cattle and other livestock.</p>	
Flood mitigation	<p>As is a common occurrence within the area, flood events regularly cut the roadways in and out of the community. Objections stating that the presence of development will impact flood events by prolonging there impact is unfounded.</p> <p>All proposed dwelling parcels are situated on land elevated above the flood levels as required by Council regulations. An emergency evacuation plan will be prepared in conjunction with the SES to provide coordinated and streamlined evacuation or flood protection measures.</p>	Refusal of the application based on this issue is not considered warranted.
Water resource capacity	<p>The preliminary intent of the development is to rely on rainwater tanks for potable water supply to the dwellings. Detailed and finalised information on the size and locations of these tanks outside that detailed within the submitted management plan are currently unknown and will be handled as part of each individual dwellings design and approval stage.</p>	Council is satisfied that the proposal has made adequate arrangements for the provision of water to each HIA. Refusal of the application on this basis is not considered warranted.



Issue	Response by Applicant	Comment
<p>Sewer capacity and design (septic and it's potential impacts)</p>	<p>The proposal sees each of the proposed 14 house sites include areas assigned for effluent disposal through a septic style system. Objections have been raised on the potential pollution issues to surrounding water systems should these types of systems be used.</p> <p>It is considered that the proposed effluent removal is adequate to ensure all environmental requirements. It should also be noted that all systems will be constructed in accordance with council requirements and will be based on current best practice principles for effluent treatment.</p>	<p>Council's Environment & Health Unit have reviewed the proposal and subject to the attached conditions of consent, raise no objection to the proposal. Refusal of the application on this basis is not considered warranted.</p>
<p>Compliance with Rural 1(a) zoning</p>	<p>The subject site is zoned 1 (a) Rural pursuant to the Tweed Local Environmental Plan 2000. The received submissions expressed concerns regarding the proposals compliance with the intent of the Rural 1 (a) zone and fears that the proposal was in fact just to exploit a loop hole to gain approval for a residential subdivision.</p> <p>The proposal is not for a residential subdivision and the existing site will remain titled and registered under the existing Lot and Plan number. The proposal sees the nomination of building envelopes not the subdivision of residential blocks.</p> <p>Under the Tweed Local Environmental Plan 2000 it is</p>	<p>This matter has been discussed extensively earlier in this report concluding that refusal of the application on this basis is not considered warranted.</p>

Issue	Response by Applicant	Comment
	<p>stated that the objectives of the 1 (a) Rural zone are:</p> <p>Primary objectives <i>to enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilisation purposes and associated development.</i> <i>to protect rural character and amenity.</i></p> <p>Secondary objectives <i>to enable other types of development that rely on the rural or natural values of the land such as agri- and eco-tourism.</i> <i>to provide for development that is not suitable in or near urban areas.</i> <i>to prevent the unnecessary fragmentation or development of land which may be needed for long-term urban expansion.</i> <i>to provide non-urban breaks between settlements to give a physical and community identity to each settlement.</i></p> <p>The proposal is in keeping with the above objectives, with the proposal meeting primary objective 1 and 2 and secondary objective 2 and 3. The proposal sees the development of ecologically friendly housing stock which will be required to be designed to ensure rural amenity. The proposal also provides an alternative form of land use not suitable to heavily developed urban areas and prevents the unnecessary fragmentation of</p>	



Issue	Response by Applicant	Comment
	<p>the site. It is also noted the bulk of the common land will be continued to be used for grazing of livestock.</p> <p>It is also important to note that overall the development is in accordance with State Environmental Planning Policy No. 15 – Rural Land Sharing Communities which is the overriding planning policy for the proposal.</p>	
Rates Payment	All rates payments will be in accordance requirements of State Environment Planning Policy No. 15 – Rural Landsharing Communities.	Refusal of the application on this basis is not considered warranted.
Success of land sharing arrangements	<p>Although it is acknowledge that land sharing communities have often failed in the past, this has been due to inadequate planning requirements and management systems to ensure success. The proposed sharing community will be developed and managed under new State Planning and Development Policies and in regard to Local Planning Requirements.</p> <p>This will ensure only high quality well planned development is allowed and removes many of the development and management issues of share communities which often resulted in retro fitting to meet requirements with little or no financial base to undertake on going maintenance.</p>	The application is required to be assessed against the provisions of the Environmental Planning and Assessment Act 1979, as this report has detailed. Refusal of the application on this basis is not considered warranted.



Issue	Response by Applicant	Comment
Remnant vegetation retention	<p>The vegetation on the site consists of predominantly sparse clusters and individual native trees. The area adjacent to Cobaki creek has more dense vegetation which is populated with a mixture of native and weed species. The proposal has been designed to ensure that house parcels are located with regard to this existing vegetation.</p> <p>As outlined within development application and the preliminary Vegetation Management Plan revegetation and regeneration activities are proposed. These activities will be removing vegetation that is classed as a weed species, removal of species not classed as environmental weeds will need approval and will be contained with the final approved Vegetation Management Plan.</p>	The application has been reviewed by appropriate specialist officers within Council as satisfactory. Refusal of the application on this basis is not considered warranted.
Site drainage	Stormwater runoff to the surrounding creeks will not be impacted as part of the application. Measures are being implemented to provide higher quality runoff into the creeks. This is being achieved through the revegetation and regeneration of areas in and around the creeks and the overland flow areas which carry runoff from the site. All stormwater will be disposed of in accordance with Council's requirements.	Council's Development Engineers have reviewed the proposal and have raised no objection to the proposal subject to attached conditions of consent. Refusal of the application on this basis is not considered warranted.



Issue	Response by Applicant	Comment
Provision of additional community facilities	The proposal does not include a 'Community Facility' for the surrounding area but a 'Common Building' for the residents of the site to undertake meeting and organisation activities for the maintenance of the site. Potential exists for this to be used for the greater community with Councils approval and the wishes of the local community.	As discussed previously within this report, any Community Building will be subject to a separate DA. Refusal of the application on this basis is not considered warranted.
Buffers	<p>A revised layout of the proposed building envelopes sees sites 4 to 9 setback off the boundaries of Lot 1 on DP438026 and Lot 1 on DP392678. These areas are further buffered through the proposed revegetation. All other sites remain in there current proposed locations with vegetation provided as buffers. It is considered that all lots are now sited sufficiently to ensure no impacts to adjoining neighbours.</p> <p>Within the proposed Rural Land sharing Constitution Management Plan housing sites 2, 7,8,9,12 & 14 are to be limited to predominately a single storey in accordance with the management plan. Additional planting is to be stipulated within the Vegetation Management Plan to provide additional buffers for dwellings in visually prominent areas.</p>	The proposal is considered to incorporate sufficient buffers to adjoining lands to mitigate significant impacts. This regard the smallest buffer from the defined building envelope to an adjoining boundary is 30 metres, satisfying Council's requirements for appropriate buffers to grazing land. Refusal of the application on this basis is not considered warranted.
Bushfire	All development will be in accordance with bushfire requirements and has been referred to the Rural Fire Brigade for comment. In this regard the property is	The proposal has been reviewed by the NSW Rural Fire Service, whom have raised no objection subject to the attached conditions of consent. Refusal of the



Issue	Response by Applicant	Comment
	<p>primarily covered with pasture and does not present a risk in terms of bushfire.</p>	<p>application on this basis is not considered warranted.</p>
<p>Domestic dog control and ability to continue wild dog eradication measures</p>	<p>The Draft outline of Rural Land Sharing Constitution Management Plan indicates control measure for domestic dogs and animals stating:</p> <p>Restriction and guideline for all domestic and commercial animals allowed on the property. The following measures are proposed.</p> <p><i>Individual shareholders are to have a maximum of 1 medium size dog (up to 20kg) per home parcel. Other small animals such as fish or birds are allowed if wholly contained within the home parcel</i></p> <p><i>No cats permitted</i></p> <p><i>No breed of dog is permitted that may cause intentional damage to any native animals or livestock within or adjoining the property</i></p> <p><i>Animals to be grazed on common land are generally to be cows, especially crossbreeds which are suitable for the area. All such animals are to be correctly cared for and the guidelines of the relevant Statutory Authorities adopted</i></p> <p><i>Grazing of other animals such as horses is permitted subject to the approval of the committee</i></p> <p><i>Poison control of pest animals will be carried out as necessary in accordance with the directions of the Rural Protection Board</i></p> <p>As demonstrated all</p>	<p>Refusal of the application on this basis is not considered warranted.</p>



Issue	Response by Applicant	Comment
	<p>reasonable measure are being implemented to ensure that domestic animals present within the site are controlled and breeds are kept to those that will not intentionally cause damage to live stock or the surrounding flora or fauna.</p> <p>The ability to poison pest animals in accordance with Rural Protection Board requirements will not be changed as part of the development. As demonstrated above all pest animal control measures as required by the Rural Protection Board is stipulated to continue within the sites Rural Land Sharing Constitution.</p>	
Proposed revegetation	All revegetation activities will be undertaken in accordance with procedures as established within the approved Vegetation Management Plan and in accordance with the stages of development. Species will be selected based on the areas native species with quantities to be established with in the Vegetation Management Plan.	Refusal of the application on this basis is not considered warranted.

In addition to the public submissions, Council was in receipt of several submissions for public authorities, which are discussed as follows;

NSW Rural Fire Service

The proposal was referred to the NSW RFS as the subject land is identified as Bushfire Prone, as per the Bushfire Prone Land Map dated February 2004. The NSW RFS provided the following conditions to be included as part of any approval issued:

1. *Access shall comply with Section 4.3.2 Planning for Bushfire Protection 2001.*

2. *All future dwelling development applications will be required to be assessed in accordance with Section 79BA of the Environmental Planning and Assessment Act 1979.*

Both of the above conditions have been incorporated into the conditions of consent formulated within this report.

Department of Primary Industries

The NSW Department of Primary Industries submitted a co-ordinated submission regarding the application. Comments from each component of NSW DPI are discussed as follows:

General

NSW Fisheries – The Aquatic Habitat Protection Unit raised no objection to the proposed development and support the proposed riparian rehabilitation works. However the AHPU also wished to advised that the road and driveway layout should include minimal watercourse crossings and any dredge or reclamation works associated with the construction, repair of crossings triggers permit requirements under s198-202 of the Fisheries Management Act 1994.

Comment: The proposal seeks to utilise an existing access to the site, which crosses Cobaki Creek, and fails to detail any other ‘works’ that trigger the need for a permit under s198-202 or 205 of the Fisheries Management Act 1994. An appropriate condition of consent has been included to ensure that should any works be proposed that would necessitate any separate permit that those permits required are obtained prior to commencement of those works.

Mineral & Extractive Resource – Concern has been raised regarding the proposals ability to impact upon the ability of the nearby Mudge’s Quarry to reach it’s development potential. Particular concern has been raised that an increase in residents in the locality increases the risk of objections to quarry traffic along Cobaki Road.

In response the applicant has provided the following detail;

The proposed development will not lead to the potential sterilisation of mineral and extractive deposits in the area. In particular the DPI is concerned that the proposal will have an adverse impact upon Mudge's Quarry. In this regard the closest dwelling site as identified within the proposal is located approximately two kilometres from the quarry (as measured in a straight line).

Development Control Plan No. 16 – Subdivisions Manual includes recommended buffers from quarries. In this regard Council's attention is drawn to the extract from the DCP below. The proposal therefore complies with the buffer requirements for subdivisions with no component of the site within either the primary or secondary buffers.

Finally, it is considered that this is not a valid objection or issue which would prevent the development from proceeding as it is based on the suggestion that Mudge's Quarry will seek approval to expand.

Comment: The abovementioned comments are noted. Whilst it is agreed that the existing quarry has development rights, the application is located outside the prescribed buffer zones and is not considered to contain any elements which specifically place undue pressure upon the quarry, other than an increase in density which isn't normally allowed for within the 1(a) Rural zone. In addition, the existing road network is capable of catering for the proposal, and whilst will contribute to additional use of the carriageway, it is not considered appropriate to refuse the application based upon the possibility to the quarry expanding or potential submissions.

Agricultural Issues – The NSW DPI has expressed a view that dwellings located 30 – 50 metres from rural land used for grazing or passive land uses to be minimal setback arrangement so as to provide rural lifestyle amenity and to preserve the rights of adjoining landholders to use and maintain their land.

Comment: The subject proposal involves a minimum building envelope setback of 30 metres from an adjoining property boundary and is considered to satisfy Council's prescribed setback requirements. Whilst it is acknowledged that in many instances a larger setback may be desirable, the citing of the HIAs has been made in regards to the topographical features of the site and the slope requirements of the SEPP. Accordingly, the amendment of the proposal to relocate many of the HIAs to increase setbacks to adjoining lands is not considered feasible, certainly without reducing the number of HIAs proposed. In this regard it is considered that the merits of the proposal do not warrant the reduction in the number of HIAs when considered against the agricultural viability of the site and locality (the site is not identified as prime agricultural land), as well as the established context and setting of the locality, which is predominately void of intensive agriculture and the number of dwellings are present within the area which do not include setbacks as large as the proposal.

(e) Public interest

Despite the objections in relation to the application, the proposed development is not considered to be contrary to the public interest. It will provide a rural landsharing community within an environmental friendly manner. Subject to conditions of consent the application is considered reasonable and appropriate for the locality.

OPTIONS:

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

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has a right of appeal to the Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposal has been thoroughly investigated and is considered to be suitable to the site; unlikely to cause any significant negative impacts to the surrounding built and natural environment and meets all of Council's applicable requirements within the TLEP and relevant DCPs. The proposal is recommended for approval.

UNDER SEPARATE COVER/FURTHER INFORMATION:

To view any "non confidential" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au 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. Memo to Council Administrators on issues raised (DW1617943).
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P6 [PR-PC] Development Application DA07/0022 for Multi-Dwelling Housing Comprising 7 Units at Lot 9 DP 14141, No 21 Tweed Coast Road, Hastings Point

ORIGIN:

Development Assessment

FILE NO: DA07/0022 Pt2

SUMMARY OF REPORT:

Council is in receipt of an application for a 3-storey multi-dwelling housing development at 21 Tweed Coast Road, Hastings Point.

Notice has been received of a Class 1 Appeal before the NSW Land and Environment Court on the basis of a deemed refusal by Council. Council's Solicitors have been engaged to assist in the appeal, with the first 'call-over' set for 2 July 2007.

The application initially proposed a 3-storey residential flat building, but, after considerable consultation with Council Planning Officers the proposal was substantially modified to a townhouse styled development comprised of three separate building components of two and three bedroom townhouse / units of three storeys. The amended proposal represents a good planning and design outcome for the site and locality generally.

The application complies with Council's current planning controls and policies and is recommended for approval.

RECOMMENDATION:

That: -

- A. The State Environmental Planning Policy No. 1 objections to Clause 32B of North Coast Regional Environmental Plan 1988 regarding the overshadowing of the adjoining reserve be supported and the concurrence of the Director-General of the Department of Planning be assumed**
- B. Development Application DA07/0022 for multi dwelling housing comprising 7 units at Lot 9 DP 14141, No. 21 Tweed Coast Road Hastings Point be approved subject to the following conditions and the applicant be requested to withdraw the Appeal: -**

GENERAL

- 1. The development shall be completed in accordance with the**



Statement of Environmental Effects and Plan Nos 06158 - sheet Nos TP01 Rev B, TP02 Rev B & TP03 Rev C, prepared by R.H. Franklin & Associates and dated 04/04/07, 04/04/07 & 05/04/07 respectively, except where varied by the conditions of this consent.

[GEN0005]

2. **The use of crushing plant machinery, mechanical screening or mechanical blending of materials is subject to separate development application.**

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

[GEN0115]
4. **Construction shall comply with AS3959 - 1999 level 2 'Construction of Buildings in bushfire prone areas'. Construction of the western facade shall comply with AS3959 - 1999 level 1 'Construction of Buildings in bushfire prone areas'.**

[GENNS02]
5. **As the units have been assessed under 79BA for residential purposes and not 100B for Special Protection Development (tourist facility) the building/s shall not be used as a tourist facility.**

[GENNS02]
6. **All fencing shall not be constructed from brushwood or treated pine materials.**

[GENNS02]
7. **Roller doors, tilt-a-doors and the like shall be sealed to prevent the entry of embers into the structure.**

[GENNS02]
8. **The entire property shall be managed as an 'Inner Protection Area' as outlined within section 4.2.2 in Planning for Bushfire Protection 2001.**

[GENNS02]
9. **Access shall comply with section 4.3.2 Planning for Bushfire Protection 2001**

[GENNS02]
10. **Reticulated water supply shall comply with AS2419. Locations of fire hydrants are to be delineated by blue pavement markers in the centre of the road.**

[GENNS02]
11. **All works shall comply with the Erosion and Sediment Control Plan (Cozens, Regan, Williams Prove, November 2006).**

[GENNS01]
12. **The development is to be carried out in accordance with Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual and Councils adopted Development Design and Construction Specifications.**

[GEN0125]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

13. 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]

14. The bin storage area for each unit is to be appropriately screened. Details of the screening method proposed are to be submitted to Council for approval by the General Manager or their delegate prior to the issue of a construction certificate

[PCCNS02]

15. A river bank and riparian vegetation management plan is to be submitted to the satisfaction of the Waterways and Coast Coordinator of Council prior to the issue of a construction certificate. The plan is to contain the following;

- a) River bank works are to be designed in accordance with the Tweed River Estuary Bank Management Plan, 1998.
- b) Riparian rehabilitation works to use endemic species only.
- c) The submitted plan must detail the species used, planting density, and locations upon the bank and provide some typical cross-sections to scale of the proposed riverbank revetment works.

[PCCNS01]

16. **Prior to Issue of Construction Certificate**

- a) The site is to be filled to a minimum level of RL 2.4m AHD, where the building footprint is located. The fill level of 2.4m AHD is to grade down to the riparian vegetation area located at the rear of the property. 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 filing on local drainage. Detailed engineering plans of fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.



- b) Details of proposed filling/regarding earthworks in the rear yard shall be submitted with the construction certificate application. Finished levels in this area shall match into building pad levels, levels of adjoining land, and levels of the riparian zone, without adverse impact on stormwater management in the area. Retaining walls and batters in excess of 1m in height are not permitted, in accordance with DCP No.47.

[PCCNS01]

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. 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

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.

Where Council is requested to issue a construction certificate for civil works associated with this consent, the abovementioned works can be incorporated as part of the cc application, to enable one single approval to be issued. Separate approval under section 68 of the LG Act will then NOT be required.

[PCC1145]

19. Stormwater
- (a) Details of the proposed roof water disposal, including surcharge overland flow paths are to be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. These details shall include likely landscaping within the overland flow paths.
- (b) All roof water shall be discharged to infiltration pits located wholly within the subject allotment.
- (c) The infiltration rate for sizing infiltration devices shall be 3m per day:

- * As a minimum requirement, infiltration devices are to be sized to accommodate the ARI 3 month storm (deemed to be 40% of the ARI one year event) over a range of storm durations from 5 minutes to 24 hours and infiltrate this storm within a 24 hour period, before surcharging occurs.
- (d) Surchage overflow from the infiltration area to the street gutter, inter-allotment or public drainage system must occur by visible surface flow, not piped.
- (e) Runoff is to be pre-treated to remove contaminants prior to entry into the infiltration areas (to maximise life of infiltration areas between major cleaning/maintenance overhauls).
- (f) If the site is under strata or community title, the community title plan is to ensure that the infiltration areas are contained within common land that remain the responsibility of the body corporate (to ensure continued collective responsibility for site drainage).
- (g) All infiltration devices are to be designed to allow for cleaning and maintenance overhauls.
- (h) All infiltration devices are to be designed by a suitably qualified Engineer taking into account the proximity of the footings for the proposed/or existing structures on the subject property, and existing or likely structures on adjoining properties.
- (i) All infiltration devices are to be located clear of stormwater or sewer easements.

[PCC1135]

20. Permanent stormwater quality treatment shall be provided in accordance with the following:
- (a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
 - (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils *Development Design Specification D7 - Stormwater Quality*.
 - (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management. Typical water sensitive features include infiltration, maximising permeable/landscaped areas, stormwater retention /detention/reuse, and use of grass swales in preference to hard engineered drainage systems.
 - (d) Specific Requirements to be detailed within the Construction certificate application include:
 - 1. All driveway runoff shall be treated to remove gross pollutants, oil and sediment contaminants prior to discharge to the stormwater infiltration system.

2. Roof water does not require treatment prior to discharge to the stormwater infiltration system.

[PCC1105]

21. 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) kerb and gutter and associated road widening is to be constructed along the full frontage of the site on Young Street.
- b) 1.2m wide concrete footpath is to be constructed along the full frontage of the site on Young Street.

The kerb & gutter, associated road widening and 1.2m wide concrete footpath are to be designed and constructed in accordance with Tweed Shire Council's adopted Development Design and Construction Specifications.

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]

22. 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]

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

[PCC0585]

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

[PCC0465]

25. 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 DSP6:	4 ET @ \$4598	\$18,392
Sewer Hastings Point:	5.25 ET @ \$2863	\$15,031

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]

26. Section 94 Contributions

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

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

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

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

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



(a) Tweed Road Contribution Plan: S94 Plan No. 4 (Version 4.0)	\$10,784
Sector8a_4	
(b) Open Space (Structured): S94 Plan No. 5	\$2,790
(c) Open Space (Casual): S94 Plan No. 5	\$596
(d) Shirewide Library Facilities: S94 Plan No. 11	\$2,462
(e) Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$499
(f) Community Facilities (Tweed Coast - South) S94 Plan No. 15	\$3,504
South Coast	
(g) Emergency Facilities (Surf Lifesaving) S94 Plan No. 16	\$717
(h) Extensions to Council Administration Offices & Technical Support Facilities	\$7,141.75
S94 Plan No. 18	
(i) Cycleways S94 Plan No. 22	\$1,258
(j) Regional Open Space (Structured) S94 Plan No. 26	\$8,315
(k) Regional Open Space (Casual) S94 Plan No. 26	\$3,058

[PCC0215]

27. The developer shall provide 12 parking spaces including parking for the disabled in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code. Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.

[PCC0065]

28. Any car parking floodlighting shall not spill beyond the boundaries of the site.

[PCC0055]

PRIOR TO COMMENCEMENT OF WORK

29. 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]
30. 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]
31. Residential building work:
- (a) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - * in the name and licence number of the principal contractor, and
 - * the name of the insurer by which the work is insured under Part 6 of that Act,



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

[PCW0235]

32. 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]

33. 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]

34. The building is to be protected from attack by termites by approved methods in accordance with the provisions of Australian Standard AS 3660.1, and:
- (a) Details of the proposed method to be used are to be submitted to and approved by the Principal Certifying Authority prior to start of works; and
 - (b) Certification of the works performed by the person carrying out the works is to be submitted to the PCA; and

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

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

[PCW0775]

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

[PCW0985]

36. Sewer main within site is to be accurately located and the Principal Certifying Authority advised of its location and depth prior to start of any building works.

[PCW1055]

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

[PCW1065]

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

[PCW0005]

DURING CONSTRUCTION

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]



40. 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]
41. 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]
42. 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]
43. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Occupational Health and Safety Regulation 2001.
[DUR0415]
44. 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 NSW, Occupational Health and Safety Regulation 2001.
[DUR0645]
45. 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]
46. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan, Part A5 - Subdivision Manual and Development Control Plan, Part A14 - Cut and Fill on Residential Land to the satisfaction of the Principal Certifying Authority. Please note timber retaining walls are not permitted.
[DUR0835]
47. All work associated with this approval is to be carried out so as not to impact on neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -
- Noise, water or air pollution

- **Minimise impact from dust during filling operations and also from construction vehicles**
- **No material is removed from the site by wind**

[DUR1005]

48. Building materials used below Council's minimum floor level of RL 2.7m AHD shall be flood compatible.

[DUR1405]

49. Subject to the requirements of the local electricity authority, all electrical wiring, power outlets, switches, etc, should, to the maximum extent possible be located above the design flood level. All electrical wiring installed below the design flood level shall be provided with earth leakage devices.

[DUR1415]

50. 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]

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

[DUR2195]

52. 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]

53. 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]

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

[DUR2505]

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

[DUR2515]



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. 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]

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

[DUR2615]

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

[DUR2645]

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

[DUR2655]

61. Acid sulfate soils shall not be exposed or disturbed. The maximum depth of excavation, except for placement of service pipes, shall be 1 metre.

[DURNS01]

62. 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. All asbestos sheeting material shall be disposed to an approved landfill facility.

[DURNS01]

- 63. No retaining walls or similar structures are to be constructed over or within the zone of influence of Council's sewer main.**

[DUR2705]

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

[DUR2445]

- 65. 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.**

[DUR2435]

- 66. The site shall not be dewatered, unless written approval to carry out dewatering operations is received from the Tweed Shire Council General Manager or his delegate.**

[DUR2425]

- 67. Appropriate measures are to be put in place during the construction and/or demolition period to prevent the transport of sediment from the site. Should any material be transported onto the road or any spills occur it is to be cleaned up prior to cessation of same days work and/or commencement of any rain event.**

[DUR2405]

- 68. 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.**

[DUR2375]

- 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. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction.**

[DUR2185]

- 71. No portion of the structure may be erected over any existing sillage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains.**

[DUR1945]

- 72. 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]

73. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.
[DUR1795]
74. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.
[DUR1025]
75. The 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]
76. 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]
77. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate.
[DUR0985]
78. Provision to be made for the designation of 2 durable and pervious car wash-down areas. The areas must be identified for that specific purpose and be supplied with an adequate water supply for use within the areas. Any surface run-off from the area must not discharge directly to the stormwater system.
[DUR0975]
79. All new residential dwellings (and extensions comprising over 50% of the original floor area) are to fully comply with Tweed Shire Council Development Control Plan, Part A9 - Energy Smart Housing Policy. In order to comply with the Policy consideration must be given to the building envelope, orientation, insulation, ventilation, thermal mass and zoning.
[DUR0915]
80. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited.
[DUR0815]
81. 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]

82. The provision of 12 off street car parking spaces including parking for the disabled where applicable. The layout and construction standards to be in accordance with Tweed Shire Council Development Control Plan, Part A2 - Site Access and Parking Code.

[DUR0085]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

83. 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]

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

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

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

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

[POC0265]



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

[POC0435]

86. 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]

87. 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) A 3 metre wide easement for the existing sewer main, located at the rear of the property is to be created, burdening the subject lot and benefiting Tweed Shire Council. The easement is to be registered with the Land Titles Office prior to the issue of a occupation certificate.

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.

[POCNS01]

88. All works specified in the River bank and Riparian vegetation management plan are to be completed to the satisfaction of the General Manager or his delegate prior to the issue of an occupation certificate.

[POCNS01]

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

[POC0985]

USE

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

[USE0965]

91. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit,



mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.

[USE0175]

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

[USENS01]



REPORT:

Applicant: Planit Consulting Pty Ltd
Owner: Ms LP Wiseman & Mr J Bortoli
Location: Lot 9 DP 14141, No. 21 Tweed Coast Road Hastings Point
Zoning: 2(b) Medium Density Residential
Cost: \$1,000,000

BACKGROUND:

Council is in receipt of an application for a 3-storey multi-dwelling housing development at 21 Tweed Coast Road, Hastings Point.

Notice has been received of a Class 1 Appeal before the NSW Land and Environment Court on the basis of a deemed refusal by Council. Council's Solicitors have been engaged to assist in the Appeal, with the first 'call-over' set for 2 July 2007.

The application as received and exhibited comprised a residential flat building with two levels of residential over ground level garaging. The design attracted public comment and was generally viewed by our Planning Officers as uncharacteristic of the building designs emerging in the locality and providing by design unnecessary amenity impacts. However, after considerable consultation the applicant has resubmitted an amended design that embodies the advice provided. Notably, the design has changed from a residential flat building to a townhouse styled design, resulting in a mix of attached and detached buildings that improve the visual permeability of the design, that is, view corridors are maintained between the buildings opposed to a continuous unbroken façade as originally proposed. The amended design is characteristic of the emerging design styles in the locality, possesses far greater levels of amenity and will generally provide an attractive contribution to the local built environment of Hastings Point.

As a background note it is relevant to qualify the reference to the amended design as a townhouse 'style' development because townhouses by design have a vertical internal layout, that is, the dwellings are side by side not on top of each other as would be the case with other horizontal building types. Buildings 1 and 3 which are located at either end of the site comprise two units in a horizontal arrangement, but, in accordance with *State Environmental Planning Policy 65 – Residential Flat Development*, they are not defined as a residential flat building as that would require a minimum of 4 units in a building. Strictly speaking Building 1 and 3 represent a design akin to a dual occupancy, however given that there are several buildings on site and each with the general appearance of a townhouse it is appropriate to consider them as such. If the buildings were defined as either a dual occupancy or alternatively as an integrated development the building setback requirements would reduce significantly. The design typically represents a townhouse development. Notwithstanding this the development is defined as a "multi-dwelling house" under Council's LEP.

The development site has an area of 1315m², is of a regular shape with frontages to Tweed Coast Road and Young Street. The site is zoned 2(b) Medium Density Residential under Tweed LEP 2000, with a permissible building height of 3 storeys.

The amended design complies with the present height restriction and represents a good design response for the site.

Building Characteristics

As mentioned, the application was originally submitted as a residential flat building that comprised of 6 x 3 bedroom units over ground level garaging.

In response to the public submissions and concerns held by our Planning Officers the application was amended to include 3 individual buildings, which consist of:

Units 1 & 2 – these units comprise building no.1 located at the eastern end (Tweed Coast Road) of the site. Each unit has 3 bedrooms and Car parking and garaging is provided at ground level, with the garaging and access located at the rear of the dwellings. The building is within the permitted three 3 storey height limit and the open space is provided via private balconies and a ground level shared area off the northern elevation.

Units 3, 4 & 5 - these units comprise building no.2 located in the centre of the site. Each unit has 2 bedrooms and car parking and garaging is similar to that of building no.1, except that the garages front Young Street in away not dissimilar to an ordinary dwelling house. Each of these units has a rumpus room and open space is provided via a private courtyard at ground level.

Units 6 & 7 – these units comprise building no.3 located at the western end of the site. They are of a similar format and layout to Units 1 & 2 (building no.1).

The amended design has significantly improved all aspects of the development both internally and externally, in particular, the redesign and location of the access driveways off Young Street, which originally joined off Tweed Coast Road, has provided a far better access solution and has minimised potential traffic hazards on the Coast Road.

Public Notification

The advertising of the proposal attracted 30 submissions and a petition containing approximately 620 signatories, predominately regarding the building height controls of Hastings Point. The issues raised within the submissions are discussed further within Section (d) of this report.

SITE DIAGRAM:



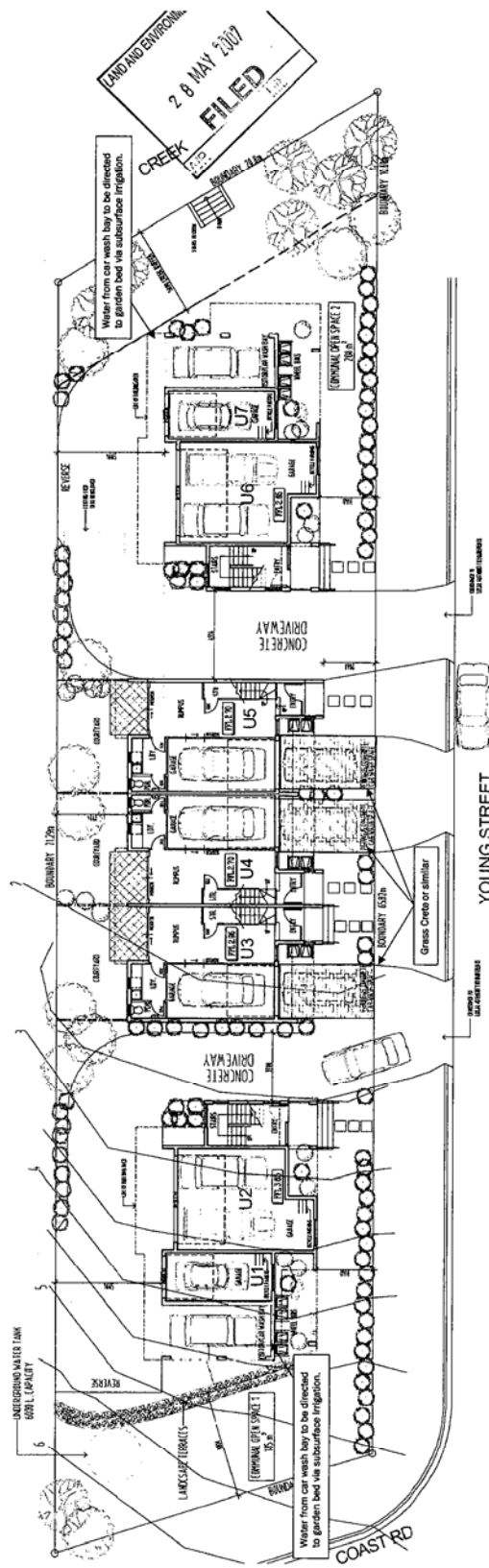
<p>© TWEED SHIRE COUNCIL 2007 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 816 Maree/ntoh, nsw, 2484 Tel (02) 9570 2458 Fax (02) 6672 2893</p>	<p style="text-align: center;"><i>Tweed Shire Council</i> Lot 9 DP 14141 No. 21 Tweed Coast Road, Hastings Point</p>		<p>PLANNING REFORMS UNIT Site Plan Sheet: 1 of 1</p>
<p>File: N:\Munks\A4P - SITE PLAN\War Author: J.Batchelor Date: 18May/2007 Scale: 1:10,000</p>		<p>Sheet: 1 of 1</p>	



The subject land has an area of 1315m², comprising a 18.67m frontage to Tweed Coast Road and a 65.82m frontage to Young Street. The subject land falls from a high of 6m AHD in the north-eastern corner, to 2m AHD at the southern end of the site.



SITE PLAN



Car Wash Bay Plan
April 2007

R.P.D.
LOT 9 DP141411
SITE AREA - 1315m²
SITE COVER - 478.5m² / 36.3 % OF SITE AREA
REQUIRED LANDSCAPE - 80m²/unit = 560m²
PROVIDED LANDSCAPE - 565m²

PROPOSED HOME UNIT'S DEVELOPMENT		TP01 B	06/58																
Car Wash Bay Young St, Hastings Point																			
SITE PLAN/GROUND FLOOR PLAN																			
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NO.	DATE	BY	REVISION																
<p>FRANKLAND & ASSOCIATES 100/104 COAST ROAD, HASTINGS POINT, QUEENSLAND 4870 TEL: 07 5442 1111 FAX: 07 5442 1112 WWW.FRANKLAND.COM.AU</p>																			

ELEVATIONS

LAND AND ENVIRONMENT COURT
 28 MAY 2007
FILED

SOUTH ELEVATION scale 1:100

WEST ELEVATION (COAST RD) scale 1:100

EAST ELEVATION scale 1:100

NORTH ELEVATION (YOUNG ST) scale 1:100

NO.	DATE	BY	REVISION

R-H FRANKLAND & ASSOCIATES
 ARCHITECTS
 15/16 COAST ROAD, YOUNG ST, HASTINGS POINT
 NSW 2570

PROPOSED HOME UNITS DEVELOPMENT
 FOR COAST ROAD, YOUNG ST, HASTINGS POINT
 AND PMA DEVELOPMENTS
 ARCHITECTURAL ELEVATIONS

NO.	DATE	BY	REVISION

NO.	DATE	BY	REVISION



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(b) Medium Density Residential pursuant to the provisions of Tweed LEP 2000.

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

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.

The proposed development is permissible with development consent within the zone. The proposed density of the development is considered an appropriate response to the site characteristics, its context, and is considered to result in the orderly and economic use of the land.

The proposed development is consistent with the zone objectives and satisfies the provisions of Clause 11.

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

Clause 16 of the TLEP requires Council to ensure that the height and scale of development is appropriate to the site and the surrounding built and natural environment. The subject land has a height limitation of 3 stories with the proposal comprising of 3 stories. Concern was raised with respect to the scale and general design of the building, however, these initial concerns were removed with the amended proposal. The proposal complies with the provision of clause 16.

Clause 34 of the TLEP requires Council to minimise future flood damage by ensuring that only appropriate compatible development occurs on flood liable land. The proposal has been reviewed by Council's assessing Development Engineer and Infrastructure and Planning Officer, whom have confirmed that whilst the proposal is located on flood prone land, adequate design measures have been incorporated to ensure habitable floor levels are above the design floor level. Accordingly, the proposal is seen to meet the objectives of clause 34.

Clause 39A of the TLEP requires Council to minimise bushfire risk to built assets and people. The proposal as been reviewed by the NSW Rural Fire

Service, concluding that no objections were raised subject to the conditions of consent attached.

North Coast Regional Environmental Plan 1988

The proposal includes a non-compliance with the prescriptive overshadowing requirements within Clause 32B of the NCREP. The applicant has lodged a SEPP 1 Objection in this regard, which is discussed later in this report, concluding that the proposal is satisfactory in its present design. The proposal is considered to satisfy all other relevant provisions contained within the NCREP 1988.

State Environmental Planning Policies

State Environmental Planning Policy (SEPP) 1 – Development Standards

The application includes a SEPP 1 objection to the requirements of Clause 32b of the North Coast REP 1988. The applicant has provided the following detail in response to the prescriptive requirements;

The proposed development partially overshadows part of the foreshore reserve at 7 pm Mid Summer to the east of the site. This shadow extends past the road reserve and into the foreshore reserve for a distance of approximately 8 metres assuming a road reserve width of 20 metres. It is contended that the overshadowing created by the proposed development will not fall upon 'open space' as identified in Clause 32B of the NCREP 1988, and has no impact upon the beach or similar areas of useable open space. In this regard, shadows created by the proposal will fall upon vegetation within the reserve. It is noted that the NCREP 1988 does not define open space, however upon adoption of a practical stance, open space is more closely aligned to open recreational parkland and foreshore areas such as the beach as opposed to dense bushland and the like.

It is also noted that the development will partially overshadow the adjacent Cudgera Creek during the morning hours which is zoned 6(a) Public Open Space. As such and for reasons of abundant caution, this proposal is accompanied by a SEPP 1 variation as follows:-

Clause 32(b) of the NCREP 1988 states, inter alia:-

- (1) This clause applies to land within the region to which the NSW Coastal Policy 1997 applies.*
- (2) In determining an application for consent to carry out development on such land, the council must take into account:*
 - (a) the NSW Coastal Policy 1997,*
 - (b) the Coastline Management Manual, and*
 - (c) the North Coast: Design Guidelines.*

- (3) *The council must not consent to the carrying out of development, which would impede public access to the foreshore.*
- (4) *The council must not consent to the carrying out of development:*
 - (a) *on urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out the development would result in beaches or adjacent open space being overshadowed before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time), or*
 - (b) *elsewhere in the region, if carrying out the development would result in beaches or waterfront open space being overshadowed before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time).*

Whilst the proposed development is generally consistent with intent of this clause, it does result in the overshadowing of the reserve immediately across the road from the site during the evening, and part of Cudgera Creek during the morning hours. The section of reserve opposite the site to the east is heavily vegetated and is in part SEPP 26 Littoral Rainforest. In this regard, the attached overshadowing plans indicate that some overshadowing will occur at 7.00pm midsummer (EDST), whilst no overshadowing will occur during (midwinter).

The expected shadow cast will be in the order of approximately 90m² in area only and as such will not adversely impact upon the enjoyment or use of the beach or recreation areas. Significantly the overshadowing created by this development will never reach the beach which is located a further 100 metres to the east but will fall wholly within and upon the vegetation within foreshore reserve.

In terms of the morning overshadowing the development will in part shadow the creek as demonstrated in the Sun Shadow Plans. At 9 am midwinter this is estimated as having an area of approximately 80 m² whilst in mid summer the overshadowing is reduced to approximately 36 m². This will fall into the adjacent waterway during both mid summer and midwinter as opposed to on land which is designated as public open space.

*State Environmental Planning Policy No.1 – Development Standards, provides a mechanism by which Council can consent to a variation to a development standard where it is considered **unreasonable** or **unjustified** to request strict adherence to the standard or where the granting of such a variance will not result in the compromising of the objects of the Act.*

The objective of the standard contained within Clause 32(b) is related to the protection of the recreational integrity of foreshore open space areas

and the need to restrict adverse impacts upon same by the erection of buildings in close proximity.

It is contended that the proposal is consistent with the abovementioned objective and that the integrity of Clause 32(b) would not be impacted upon via the approval of the structure. In this regard, the following matters are considered relevant to assessing the merits of the proposed departure from the development standard:-

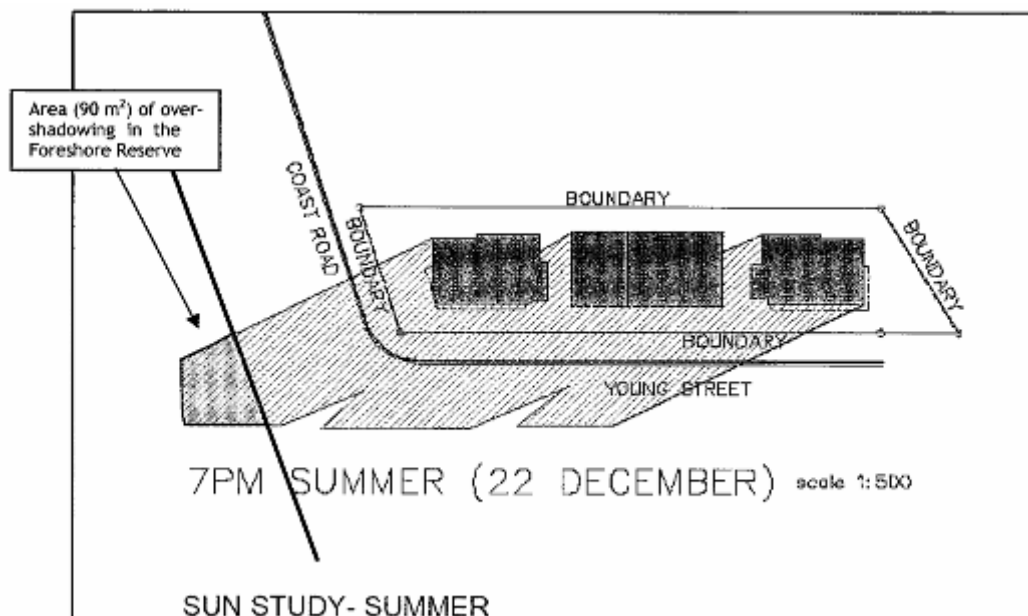
- The extent of overshadowing at the prescribed time (approx 90 sq.m - 7 pm midsummer, 80 sq.m 9 am midwinter and 36 sq.m – 9 am midsummer) is considered to be minor in scale, relative to the overall size of Cudgera Creek to the west of the site the Coastal Reserve to the east of the site;
- That area subject to overshadowing during the morning periods is in part overshadowed pre-dominantly by Riparian Vegetation and additional plantings proposed adjacent to the creek will provide further shading of the creek
- The overshadowing of the creek in no way impacts upon the useability or function of the waterway.
- The overshadowing of the creek will not impact upon active recreational space such as parkland areas.
- That area subject to overshadowing in the evening is heavily vegetated and the overshadowing will not extend into active recreational areas such as parkland or the beach.
- The proposed overshadowing of both the creek and the reserve opposite the site in no way precludes the future use or reclassification of these parcels of land;
- No overshadowing of the reserve to the east will occur before 3pm in midwinter (please see attached overshadowing plan);
- The proposal does not overshadow the beach to the east.
- The building has been designed and sited on the allotment to provide substantial setbacks to the rear boundary and Cudgera Creek to ameliorate visual impacts upon this waterway and to enable further rehabilitation of the river bank by way of additional plantings of native species.
- Given the time frames of overshadowing expected, the development will not overshadow waterfront open space and arguably no variation is necessary.

In the light of the foregoing analysis it is concluded that compliance with the development standard is both unreasonable and unnecessary. Furthermore, as the proposed development demonstrates consistency with the intent and objective of the development standard, the granting of a variance in this instance would not prejudice the future integrity of that standard nor impact upon the amenity of the locality.

It is also further noted that table 3 of the NSW Coastal Policy 1997 provides for comments under the heading of 'Design and Locational Principles for Consideration in LEPs, DCPs and Development Control'. In this regard and with reference to the overshadowing standard within NCREP 1988, the policy states, Inter alia:

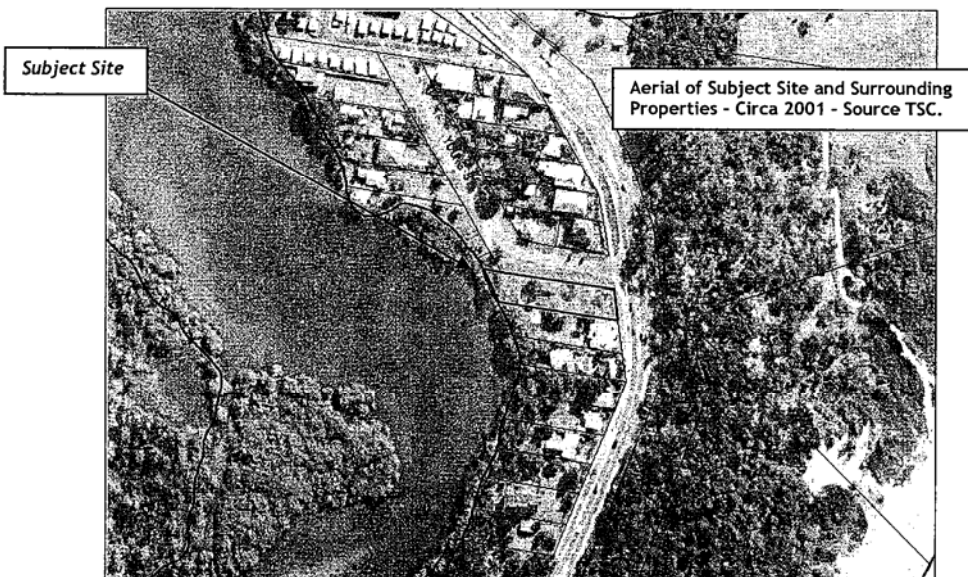
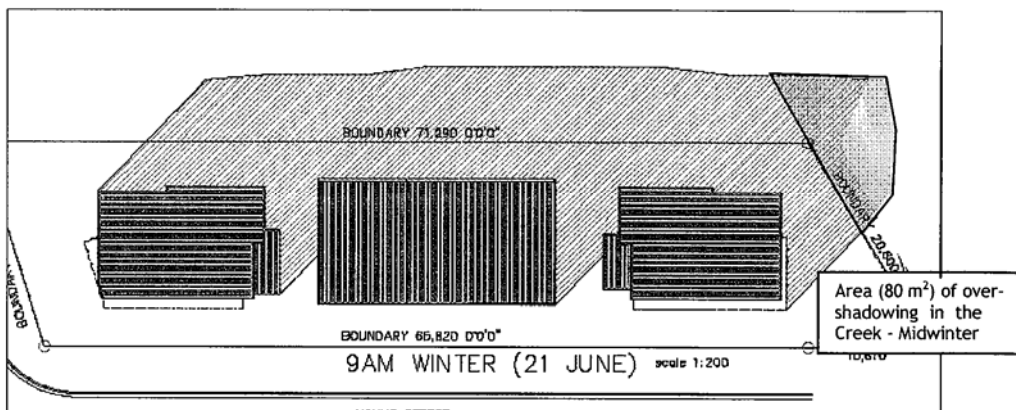
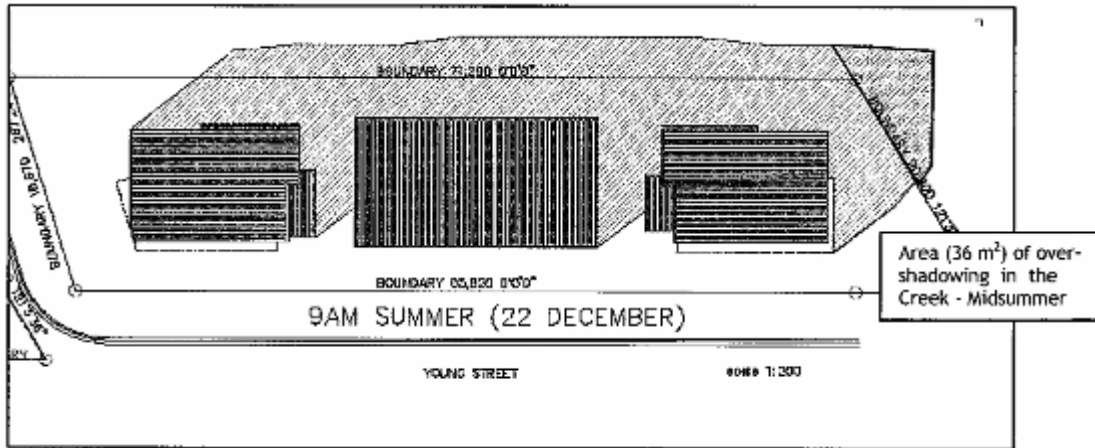
'The suggested standard in this principle may be difficult to apply in highly urbanised environments. An LEP or DCP which is tailored to local conditions and which has the overriding objective of minimising overshadowing may be required in these situations'

In this circumstance, the subject environment is indeed urbanised, with the proposal representing an infill development of an existing residential allotment. Further, the proposal is consistent with the current overriding objectives of the Tweed LEP in that medium density development consistent with Council's desired density is proposed.



Given the locational characteristics of the area, its evolution as an urbanised centre, the fact that the sun sets at 7.42 pm mid summer (source: Geoscience Australia) with the level of twilight far less than what is received in more southern climates, and the scale and nature of the reserve opposite, strict compliance with the standard in the evening period is considered both unjustifiable and unnecessary.

In terms of the morning overshadowing Council's attention is drawn to the aerial photo below whereby it is clearly obvious that this shadow will fall into the waterway itself which is in part overshadowed by adjacent vegetation.





Again the scale of overshadowing is minor and will in no way impact upon the Creek or its ability to be used for recreational purposes and strict compliance with the standard in the morning period is considered unnecessary and unwarranted, and a variation is justified in this instance.

Having regard to the objects of the Act (as listed under section 5), it is also submitted that the proposal will not compromise their attainment, with particular reference to the management and preservation of valuable community assets and the continued use and enjoyment of public foreshore areas and waterfront open space.

Council's support in assuming the concurrence of the Director in this instance is respectfully requested.

It is generally agreed that the impact of overshadowing will be limited to a reasonable amount based on the nature of the development, the context of the existing planning regime and the purpose of the Plan, which are satisfied by this proposal. In this instance the State Environmental Planning Policy No. 1 objection to Clause 32B of North Coast Regional Environmental Plan 1988 regarding the overshadowing of the adjoining reserve should be supported and the concurrence of the Director-General of the Department of Planning be assumed.

State Environmental Planning Policy (SEPP) 26 – Littoral Rainforest

The subject land is located approximately 42m from land mapped as SEPP 26 Littoral Rainforest. This land does not require assessment against SEPP 26 or concurrence as the parcel is defined a 'Residential Land'.

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development

Clause 30 of SEPP No. 65 requires the consent authority to consider each of the ten (10) design quality principles when determining a development application for a residential flat building. Whilst this SEPP is not considered to strictly apply to the development, an assessment against the relevant criteria has been undertaken nonetheless.

In this regard, the applicant has provided a comprehensive assessment of the proposal against the relevant design quality principles. It is considered that the design of the proposed development exhibits suitable regard for these principles and demonstrates good practice in urban design. The contemporary coastal architecture of the development is representative of the emerging and somewhat distinct style of multi-dwelling housing in the coastal area of the Tweed. The integrity of the quiet, peaceful and natural environmental attributes that characterise Hastings Point are not compromised by this development.

State Environmental Planning Policy (SEPP) 71 – Coastal Protection

The proposal has been assessed to be in accordance with clause 8 of the Policy.

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

The proposal is not adversely affected by any draft EPIs. It should be noted that a previous resolution aimed at reducing the permissible building height in the locality was not pursued by Council, and had never made it to a public exhibition stage. It is of no relevance to the assessment of the present application.

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

Tweed Development Control Plan

Section A1 – Multi-Dwelling Housing

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

Standard	Acceptable Solution	Proposal	Complies
Floor Space Ratio	0.5:1 (657.5m ²)	0.64:1 (848m ²)	NO*
Minimum Landscaped Area	Large Dwelling - 80m ² per dwelling (560m ²)	Approximately 480m ²	NO*
Setbacks	Primary frontage 6m Side and Rear Setbacks 3m	See Comment Below	NO*
Streetscape	The maximum width of the garages should be 50% of the frontage width.	Garages comprise less than 50% of the frontage width	YES
Streetscape	Garages should be setback behind the front façade of the building.	Satisfactory	YES
Building Envelope	45° from 3.5m high at the side and rear boundary (excluding eaves and the like)	The proposal involves only the encroachment of eaves and the like into the building height plane, which is permitted under the DCP	YES



Standard	Acceptable Solution	Proposal	Complies
Minimum Private Open Space	20% of the site (263m ²), with a minimum dimension of 3m	Greater than 263m ²	YES
	One part min 25m ² with min dimension of 4m	With the exception of Unit 1 & 6, the proposal affords a minimum of 25m ² per unit in the form of both ground level yard and balcony areas.	NO*

NO* - See Assessment Below

Floor Space Ratio

The prescribed 0.5:1 ratio is not suited to the orderly and economic use of 2(b) Medium Density zoned land. The proposal involves a floor space ratio of 0.64:1, which is substantially lower than the average 1:1 - 1.35:1 generally associated with other multi dwelling housing developments in the 2(b) zone.

As a guide, reference may be made to the draft Residential and Tourist Development Code (draft DCP 6) which was publicly exhibited for 3 months between November 2006 to March 2007, as it proposes an FSR of 0.8:1 for townhouse development. This proposed ratio received no public criticism during the extended public consultation period. The proposed development is significantly below the draft provision also.

In light of the above, the proposal satisfies the site density objectives provided in s. 3.1.3 of DCP 6.

Landscaping

The proposal involves approximately 450m² of traditional vegetation and landscaping (deep soil zones), additional permeable area is provided via a grasscrete driveway to each of the townhouses; units 3, 4 & 5.

The landscaped areas incorporate functional areas within the front, side and rear setback of the units, as well as areas around the perimeter of the site. Although the numeric figure is slightly lower than the acceptable solution provided in the DCP it meets the objectives of the Plan by providing adequate contribution to the appearance of the site, water infiltration, and occupier enjoyment and privacy. A condition of consent has been proposed that requires the approval (by Council) of a full landscape plan prior to the issue of a construction certificate to ensure the final detail of the landscaping is appropriate.

Setbacks

The main building itself is setback a minimum of 6 metres from the primary frontage, 5 metres from the rear boundary and 3 metres or greater from the secondary frontage and side boundary, with minor exception to the 2nd and 3rd storey balcony areas servicing Units 1 & 2, which project into the 6metre building line by 500mm. Given the benefits of encouraging the proposed amended design this encroachment will have negligible impact in contrast to the former proposal. The impact will be largely imperceptible and of no adverse consequence to the buildings amenity.

The entry statements to each townhouse unit 3, 4 & 5 project into the secondary setback by 200mm, resulting in a reduced (secondary) setback of 2.8metres. This encroachment is a result of design elements incorporated to enhance the appearance of the development and is negligible in terms of adverse impact.

The above encroachments do not give rise to inconsistency with Council's planning or policy controls and are acceptable based on the positive attributes of the amended design.

Private Open Space

As referred to earlier, with minor exception to units 1 and 6 all the units provide private open space areas above that required in the DCP. Units 1 & 6 have sacrificed a small area of balcony private open space in order to facilitate more useable internal living space. Nonetheless, the balconies will provide adequate opens space area to service the unit, which meets the objectives of the DCP.

Section A2 – Access & Car parking

The following table details the compliance of the proposed development with the relevant on-site car-parking provisions:

Standard	Requirement	Proposal	Complies
On Site Car Parking	Apartment Units - 2 spaces per unit, (8 spaces) Townhouse Units – 1 garage space and 1 additional space within the driveway (6 spaces)	14 spaces in total (12 which comply)	NO*

*See comment below

At the time of lodgement of the application, Council had not adopted the consolidated DCP or associated changes to the car parking requirements for multi-dwelling housing. The application is required to be assessed in accordance with the DCP in force at the time of its lodgement, as well as, having due regard to the 'new' DCP. In this regard, the intent and justification

of any additional or amended requirements under the changed planning scheme would need to be considered. The recently adopted car parking controls modified the provision ratio of car parking from 1.5 spaces per unit to 1 space per 1 bedroom unit, 1.5 spaces per 2 bedroom unit and 2 space for 3 of more bedroom units.

The modification came about principally because apartment buildings, in particular those with basement parking, were not seen to be providing adequate car parking for visitors, which led to an increase in on-street parking to the detriment of neighbours. This was due primarily because the majority of approved apartment buildings comprised three bedroom units and despite the visitor parking stipulations of the strata plans these spaces were being utilised by the occupants of the units. In fact, there have been several occasions where strata application inspections by Council Officers have revealed this to be true. In addition, there have been occurrences where access to the visitor car parks have been obstructed, most notably because the visitor parks have not been adequately separated from residential parks which are often gated. This issue is presently being investigated in the draft Residential and Tourist Code.

The proposed development provides all parking at ground level. It incorporates a sufficient number of visitor parks on-site and is capable of providing some on-street parking if required, without impact to either the road efficiency or the local residential community. As such, the provisions of the relevant DCP (DCP No.2 Car Parking and Access Code) are sufficient to meet the needs of the proposed development. While the modifications to the new DCP appear to be well founded the reason for their alteration is based on a premise which is largely un-associated with the building type in the present application.

Section A3 – Development of Flood Liable Land

The proposal requires a small amount of fill at the rear of the site to raise the level of the land to the design flood level of 2.4m AHD. All finished floor levels are located at or above the required floor level for residential development (2.7m AHD) and the provisions of Section A3 are satisfied.

Section B18 – Tweed Coast Building Heights

Section B18 prescribes, as an overarching objective for building height that, new development should minimise the visual and physical impact and apparent bulk that it has on adjoining development and public streets and spaces.

Within the Building Height component of Section B18, an acceptable solution is offered for 3 storey residential development, prescribing that a building has a maximum height of 9 metres to the uppermost ceiling (as measured from finished ground level) and 11 metres to its highest point (ridge point of the roof). The proposal complies with these numerical requirements. Other design elements referenced within Section B18, (i.e. building envelope and

setback requirements) have been discussed previously in this report, concluding that the design submitted obtains the objectives and performance criteria of the Plan.

The development complies with the DCP.

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

NSW Coastal Policy

The proposed development satisfies the provisions of Policy.

Demolition

The proposal requires the demolition of an existing shed. The applicant has submitted a demolition plan, and appropriate conditions of consent have been proposed for any 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

Context & Setting / Building Height Restrictions

The maintenance of the established context and setting of the Hastings Point locality has been a prominent issue throughout the assessment of the subject application. In this regard, Council has been in receipt of a significant number of public submissions, particularly identifying the desire for a 2 storey height restriction throughout Hastings Point.

Council resolved not to pursue draft Tweed Local Environmental Plan 2000, Amendment No. 81 - Height of Buildings (Hastings Point) at this time on the basis of the Department of Planning's advice that a more strategic approach is required. This advice was changed in late March 2007, however due to the time factor in dealing with this amendment separately, it will be addressed in the new Tweed LEP. The present building height restriction has been in place for a considerable period of time and the statutory planning framework does not make allowance for statutory plan alterations without proper justification for doing so.

On the basis of the community concern over the present building height controls, the land owners of 2(b) zoned land in Hastings Point were asked to participate in a survey with the aim of gauging their support for the reduction in building height. However the terms of the survey do not reflect the concerns and views represented by other members of the local community.

It appears that the issue is one of maintaining the quiet, peaceful and natural amenity presently maintained by the low density urban development pattern and natural environment. A reduction in building height alone will necessarily achieve this position. There are single dwelling houses in other areas of the

coast, the design of which would substantially alter the existing street character in Hastings Point, approved by Council.

The proposed development provides a density commensurate with the existing local area, it is an attractive design that will maintain far higher levels of amenity than that of an alternative building design that may otherwise be permissible on the site, as evidenced by the original design.

(c) Suitability of the site for the development

The subject land has a number of natural constraints, particularly flooding, bushfire and proximity to SEPP 14 and 26 mapped areas. However, the submitted building design has had appropriate regard to these constraints and is considered suitable for the site as proposed.

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

The advertising of the proposal attracted 30 submissions and a petition containing approximately 620 signatories, predominately regarding the building height controls of Hastings Point. This matter has been discussed extensively earlier in this report, concluding that the current proposal must be assessed in accordance with the current controls, which allow for a three storey building height.

In addition, a number of objections have been received detailing concern that the proposal was not in keeping with the character of Hastings Point, applicable planning controls and the Tweed Local Environmental Plan 2000. These items have been discussed extensively within this report. The amended proposal complies with Council's current controls as well as providing an appropriate design response which is considered to positively contribute to the locality whilst meeting Council's desired planning outcomes, as established within applicable sections of the DCP and the Tweed LEP 2000.

Concerns have also been raised in relation to loss of views, seabreezes and overshadowing, as well as increased traffic and overshadowing. The following comments are offered in these areas:

Loss of Views and Seabreezes, Overshadowing - The subject site and a number of adjoining properties currently enjoy vistas towards the ocean/creek to the north. Property to the south would bear the most impact, however it should be noted that the primary view corridors of these premises are unrestricted to the east and west. It is the secondary view corridor to the north which would be impeded, but, as with many older underdeveloped urban areas it is a benefit that cannot be maintained in most instances of redevelopment.

The proposed development is not unreasonable by design and context and based on the orientation of the site and that of the adjoining land does not represent an unreasonable impact on the adjoining land. The NSW Land and Environment Court has considered the issue of view loss at great length. The

Tenacity Consulting Pty Limited v Warringah Council [2004] Court decision, established a test to be applied. The proposed development has been considered against the principles outlined in this case with the conclusion that the proposal is justified and reasonable.

Additional Traffic - The additional traffic generated by the proposal has been assessed as satisfactory, as has the amended vehicular access, which details access from Young Street as opposed to Tweed Coast Road. Refusal of the application on this basis is not considered warranted.

(e) Public interest

The application provides a good planning and design outcome for the site and locality despite a significant number of objections being received to the height of the development.

OPTIONS:

1. Council approves the amended application subject to the conditions attached to this report and requests the applicant to withdraw the Appeal.
2. Council does not support the application with appropriate reasons. As an Appeal has already been lodged, Council would need to engage a qualified town Planning consultant to assist in the defence of this Appeal.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should this matter proceed to an Appeal substantial costs may be incurred in defending Council's determination.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposal has been thoroughly investigated and is considered to be suitable to the site; unlikely to cause any significant negative impacts to the surrounding built and natural environment and meets all of Council's applicable requirements within the TLEP and relevant DCPs. The proposal is recommended for approval.



PLANNING COMMITTEE MEETING DATE: TUESDAY 19 JUNE 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.



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