



# **AGENDA**

## **PLANNING COMMITTEE MEETING Tuesday 17 April 2007**

**Chairman: Mr Max Boyd AM**

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

THIS  
PAGE  
THIS  
PAGE  
IS  
IS  
BLANK  
BLANK

## ITEMS FOR CONSIDERATION OF THE COMMITTEE:

ITEM	PRECIS	PAGE
	REPORTS THROUGH GENERAL MANAGER	5
	REPORTS FROM DIRECTOR PLANNING & DEVELOPMENT	5
P1	[PD-PC] Development Application DA06/0976 for a Residential Flat Building Comprising Six (6) Residential Units and Demolition of Existing Structure at Lot 22 DP 23659, No. 24 Kirkwood Road, Tweed Heads South	7
P2	[PD-PC] Development Application DA06/1013 for the Demolition of Existing Structures and the Erection of a Residential Building Comprising 6 x 3 Bedroom Units & Swimming Pool at Lot B DP 361922, No. 46 Pearl Street, Kingscliff	39
P3	[PD-PC] Development Application DA05/1462 for Additions to Pottsville Tavern at Lot 171 DP 629328, No. 28-40, Overall Drive, Pottsville	69
P4	[PD-PC] Section 96 Application D90/0436.04 for an Amendment to Development Consent D90/436 for the Erection of a Tavern and Nine (9) Shops at Lot 171 DP 629328, No. 28-40 Overall Drive, Pottsville	93
P5	[PD-PC] Section 96 Application DA06/0348.01 for an Amendment to Development Consent DA06/0348 for Construction of a 3 Storey Commercial & Retail Development at Lot 2 DP 573057; Lot 1 DP 657258, No. 11 & 13 Pearl Street, Kingscliff	101
P6	[PD-PC] Development Application DA06/1275 for Manufacturing Sheds, Depot, Office and Storage at Lot 201 DP 1002166, Pottsville Road, Sleepy Hollow	111

THIS  
PAGE  
IS  
BLANK

THIS  
PAGE  
IS  
BLANK

## REPORTS THROUGH GENERAL MANAGER

### REPORTS FROM DIRECTOR PLANNING & DEVELOPMENT

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

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

#### MATTERS FOR CONSIDERATION

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

THIS  
PAGE  
IS  
BLANK

THIS  
PAGE  
IS  
BLANK

**P1 [PD-PC] Development Application DA06/0976 for a Residential Flat Building Comprising Six (6) Residential Units and Demolition of Existing Structure at Lot 22 DP 23659, No. 24 Kirkwood Road, Tweed Heads South**

**ORIGIN:**

**Development Assessment Unit**

**FILE NO: DA06/0976 Pt1**

**SUMMARY OF REPORT:**

Council is in receipt of a development application for the demolition of an existing dwelling and the erection of a residential flat building comprising six (6) residential units at No. 24 Kirkwood Road, South Tweed Heads. The proposal comprises 6 units in a 3-storey built form.

The proposed development was advertised and notified to surrounding properties for a period of 30 days. During this period 1 written submission was received, which included approximately 14 signatories. The issues raised within the submissions included loss of privacy and overlooking.

The issues raised in the public submissions have been assessed in this report. It is concluded that the issues raised do not warrant the amendment or refusal of the application. This report finds the proposal on merit is satisfactory and as such is recommended for approval.

**RECOMMENDATION:**

**That Development Application DA06/0976 for a residential flat building comprising six (6) residential units and demolition of existing structure at Lot 22 DP 23659, No. 24 Kirkwood Road, Tweed Heads South be approved subject to the following conditions: -**

**GENERAL**

**1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos DA1.01, DA1.02, DA1.03, DA2.01 Issue D prepared by Lightwave and dated 21/02/07, except where varied by the conditions of this consent.**

[GEN0005]

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

[GEN0115]

3. 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 within the public road reserve including (but not limited to) the construction or removal of driveway accesses or footpaths, the installation of site hoarding fences or sheet pile ground anchors. 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]
4. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within or adjacent to the subject property.

[GEN0135]
5. Council will not permit ground anchors (to retain sacrificial sheet piling for basement excavations) within Council or private property, without prior consent from the property owner being obtained. If the landowner is Council, approval is required from the Director of Engineering and Operations. The anchors are required to be removed upon completion of the works, unless a substantial compensation amount is negotiated with Council.

[GENNS01]
6. The entire property shall be managed as an 'Inner Protection Area' as outlined within Planning for Bushfire Protection 2006.

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

[GENNS02]
8. Construction shall comply with AS3959 - 1999 level 1 'Construction of Buildings in bushfire prone areas'.

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

[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 fencing is to be positioned and constructed to comply with AS2890 (Part 1) - Section 3.2.4.



**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

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

[PCC0945]

13. The basement carpark shall be provided with a system of ventilation in accordance with the provisions of part F4.11 of the Building Code of Australia. Details of the ventilation system shall be submitted to the Principal Certifying Authority prior to the issue of a construction certificate.

[PCCNS01]

14. The developer shall provide 9 parking spaces two of which are to be made accessible to visitors and shown on any strata plan as common property including parking for the disabled in accordance with Development Control Plan 2 - "*Site Access and Parking Code*", as well as provisions for one Car Wash Bay.

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

[PCC0065]

15. **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 authorized 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: | \$4,378 |
| S94 Plan No. 4 (Version 4.0)      |         |
| Sector2_4                         |         |

(b) Open Space (Structured): S94 Plan No. 5	\$2,280
(c) Open Space (Casual): S94 Plan No. 5	\$487
(d) Shirewide Library Facilities: S94 Plan No. 11	\$2,012
(e) Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$409
(f) Emergency Facilities (Surf Lifesaving) S94 Plan No. 16	\$586
(g) Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$3,708.45
(h) Cycleways S94 Plan No. 22	\$1,028
(i) Regional Open Space (Structured) S94 Plan No. 26	\$6,799
(j) Regional Open Space (Casual) S94 Plan No. 26	\$2,499

[PCC0215]

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

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

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

Water DSP4:	3.8 ET @ \$4598	\$17,472
Sewer Banora:	5 ET @ \$2863	\$14,315

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]

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

[PCC0285]

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

[PCC0465]

19. All fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided to ensure minimal impact on adjoining properties. The construction of any retaining wall structure or fill batters must at no time result in additional ponding occurring within neighbouring properties.

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

[PCC0485]

20. The basement car parking is to be protected against the inflow of water to a level of 500mm above the design flood level of RL 2.6m AHD in accordance with DCP5 - *Development of Flood Liable Land*. This immunity shall be provided at all accesses including external stairs to the basement car park.

The pump system shall be designed for a storm event with a 10 year average return interval (ARI 10) and shall have failsafe measures in place such that property (on site and adjacent) is protected against pump failure. Consequences of the 100 year ARI storm event must also be addressed. Details of the basement stormwater pump-out system shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate.

Installed pumps must be designed and installed in accordance with Section 9 of AS/NZS 3500.3.2.1998 "*Natural Plumbing and Drainage - Part 3.2 : Stormwater Drainage - Acceptable Solutions*"

[PCC0685]

21. Permanent stormwater quality treatment shall be provided in accordance with the following:
- (a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
  - (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the *Tweed Urban Stormwater Quality Management Plan* and Councils *Development Design Specification D7 - Stormwater Quality*.
  - (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management. Typical water sensitive features include infiltration, maximising permeable/landscaped areas, stormwater retention /detention/reuse, and use of grass swales in preference to hard engineered drainage systems.
  - (d) Specific Requirements to be detailed within the Construction certificate application include:
    - (i) Shake down area shall be installed prior to any earthworks being undertaken
    - (ii) The basement oil/grit arrestor shall be sized in accordance with Section D7.12 of Councils *Development Design Specification D7 - Stormwater Quality*.

The exposed car wash bay shall be constructed of permeable material or be provided with appropriate facilities such that runoff from these areas are treated to remove oil and sediment prior to discharge into the stormwater system.

[PCC1105]

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. An application shall be lodged and approved by Tweed Shire Council under Section 68 of the Local Government Act for any water, sewerage or drainage works (including the connection of a private stormwater drain to a public stormwater drain, the installation of stormwater quality control devices and erosion and sediment control works) prior to the issue of a construction certificate.
- [PCC1195]
24. The legal point of discharge for piped stormwater from the site is via direct connection into the kerbside inlet pit within Kirkwood Road. Full engineering details of this connection shall be submitted with a s68 Stormwater Application for approval, prior to the issue of a Construction Certificate.
- [PCCNS02]
25. Prior to issue of Construction Certificate the applicant is to submit to Council's General Manager or his delegate a list of the finished building materials and colours (including colour product photo images) for approval.
- [PCC0175]
26. 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]

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

27. 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]*
28. 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]*
29. 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]*
30. 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]*
31. 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]

32. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational to the satisfaction of the Principal Certifying Authority.

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

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

[PCW0985]

33. 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]

34. It is the responsibility of the contractor to locate and identify all existing services prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure including areas external to the development site where works are proposed.

Any proposed relocation of services to construct the basement car park shall be to the satisfaction of the associated authority and asset owner.

[PCW0005]

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

[PCW0125]

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

[PCW0705]

37. Prior to start of building works provide a certificate of adequacy of design, signed by a practising Structural Engineer on any proposed retaining wall in excess of 1.2m in height. The certificate must also address any loads or possible loads on the wall from structures adjacent to the wall and be supported by Geotechnical assessment of the founding material.

[PCW0745]

#### **DURING CONSTRUCTION**

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

[DUR2185]

39. 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]

#### **40. 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]

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

[DUR2505]

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

[DUR2545]



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

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

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

[DUR2555]

44. 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]

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

[DUR0645]

46. 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]

47. 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]

48. 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]

49. 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]

50. 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]

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

[DUR0415]

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

[DUR0445]

53. 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]

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

[DUR0005]

55. The provision of adequate vehicular access in accordance with Council's "Vehicular Access to Property Construction Specification" pamphlet, including the provision of an invert crossing at the kerb and gutter to the satisfaction of the General Manager or his delegate.

Such to specifically include the following:

- (a) 150 millimetres thick reinforced with SL72 mesh, (unless modified by the approved Section 138 Application)
- (b) Minimum Sight Lines for pedestrian safety at the property boundary, in accordance with Council's "Driveway Access To Property - Design Specification - Part 1 July 2004".

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

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

[DUR0065]

56. The driveway is to be constructed 6.0 metres wide at the property boundary and 9.0 metres wide at the kerb line with a uniform taper. [DUR0075]
57. The provision of 9 off street car parking spaces including parking for the disabled where applicable. The layout and construction standards to be in accordance with Development Control Plan No. 2 - *Site Access and Parking Code*. In accordance with DCP2, 2 of the car spaces are to be marked and allocated as visitor spaces. [DUR0085]
58. 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]
59. All pumps used for any onsite dewatering operations shall be acoustically shielded to the satisfaction of the General Manager or his delegate so as to prevent the emission of offensive noise as a result of their operation. [DUR0235]
60. All demolition works are to observe the guidelines set down under the Environment Protection Authority publication "A Renovators Guide to the Dangers of Lead" and the WorkCover guidelines on working with and handling of asbestos. [DUR0655]
61. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments". [DUR0785]
62. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited. [DUR0815]

63. Provision of an adequate turfed area, or other suitable media, is incorporated and maintained into the proposed landscape of the property for use as a car wash-down area.

[DUR0965]

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

[DUR0985]

65. 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 an Occupation Certificate.

[DUR0995]

66. The habitable floor area of the building is to be at a level not less than RL 3.1 m AHD.

[DUR1435]

67. A concrete ribbon footpath 1.2 meters wide (including standard pram ramps at all road intersections) shall be provided on a compacted base along the entire frontage of the site in accordance with Councils adopted Development Design and Construction Specification and Standard Drawing S.D. 013. This may require the reconstruction of the existing footpath along the frontage of the site, such that it complies with Council's standards.

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

[DUR1735]

68. 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]

69. The proponent must not undertake any work within the public road reserve without giving Council's Engineering & Operations Division forty eight (48) hours notice of proposed commencement. Failure to comply with this condition may result in a stop work notice being issued and/or rejection of the works undertaken.

[DUR1845]

70. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils adopted Design and Construction Specifications prior to any use or occupation of the building.

[DUR1875]

71. The proponent shall comply with all requirements tabled within any approval issued under Section 138 of the Roads Act.

[DUR1885]

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

[DUR1905]

73. All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction. Certification to be provided to the PCA prior to the issue of an Occupation Certificate.

[DUR1955]

74. A certificate from a suitably qualified practicing structural engineer shall be submitted to Council and the Principle Certifying Authority within seven (7) days of the site being excavated certifying the adequacy of the sheet piling or other retaining method used to support adjoining properties.

[DUR1965]

75. 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]

76. 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.

77. 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]

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

[DUR2405]

79. Vehicles leaving the premises shall be sufficiently free from dirt, aggregate or other materials such that materials are not transported onto public roads.

[DUR2415]

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

[DUR2435]

81. 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]

82. All works shall be carried out in accordance with the Preliminary Acid Sulfate Soil Investigation & Management Plan and Dewatering Management Plan for the subject site prepared by HMC Environmental Consulting Pty Ltd dated September 2006 (Report No: 2006.99B).

[DURNS01]

83. The burning off of trees, associated vegetation felled by clearing operations, and the building waste is prohibited.

[DURNS01]

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

84. 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]

85. 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]

86. 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]

87. 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

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

[USE0125]

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

[USE0225]

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

[USE0235]

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

[USE0875]

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

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

- All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry of sediments into any river, lake, waterbody, wetland or groundwater system.
- The destruction of trees or native vegetation shall be restricted to the minimum necessary to complete the works.
- All vegetation clearing must be authorised under the Native Vegetation Conservation Act 1997, if applicable.
- The approval to be granted may specify any precautions considered necessary to prevent the pollution of surface water or groundwater by petroleum products or other hazardous materials used in the construction or operation of the works.
- A license fee calculated in accordance with the Water Act 1912 must be paid before a license can be granted.
- If and when required by the Department, suitable devices must be installed to accurately measure the quantity of water extracted or diverted by the works.
- All water measuring equipment must be adequately maintained. It must be tested as and when required by the Department to ensure its accuracy.
- Works for construction of bores must be completed within such period as specified by the Department.
- Within 2 months after the works are completed the Department must be provided with an accurate plan of the location of the works and notified of the results of any pumping tests, water analysis and other details as are notified in the approval.
- Officers of the Department or other authorised persons must be allowed full and free access to the works for the purpose of inspection and testing.
- Water shall not be pumped from the works for any purpose other than dewatering for construction purposes.
- The use of water shall be conditional on no tailwater drainage being discharged into or onto -
  - any adjoining public or crown road
  - any crown land
  - any river, creek or watercourse
  - any groundwater aquifer
  - any area of native vegetation
  - any wetlands
- The work shall be managed in accordance with the constraints set out in the "Preliminary Acid Sulfate Soil Assessment & Management Plan, and Dewatering Management Plan" produced by HMC Environmental Consulting dated September 2006 Report No.2006.99B as presented for the proposed development.
- The volume of groundwater extracted as authorised must not exceed 5 megalitres.



- The Department has the right to vary the volumetric allocation or the rate at which the allocation is taken in order to prevent the overuse of an aquifer.
- The licence shall lapse within six (6) months of the date of issue of the licence.

**REPORT:**

**Applicant:** Undara Investments Pty Ltd  
**Owner:** Undara Investments Pty Ltd  
**Location:** Lot 22 DP 23659 No. 24 Kirkwood Road, Tweed Heads South  
**Zoning:** 2(b) Medium Density Residential  
**Cost:** \$1,845,000

**BACKGROUND:**

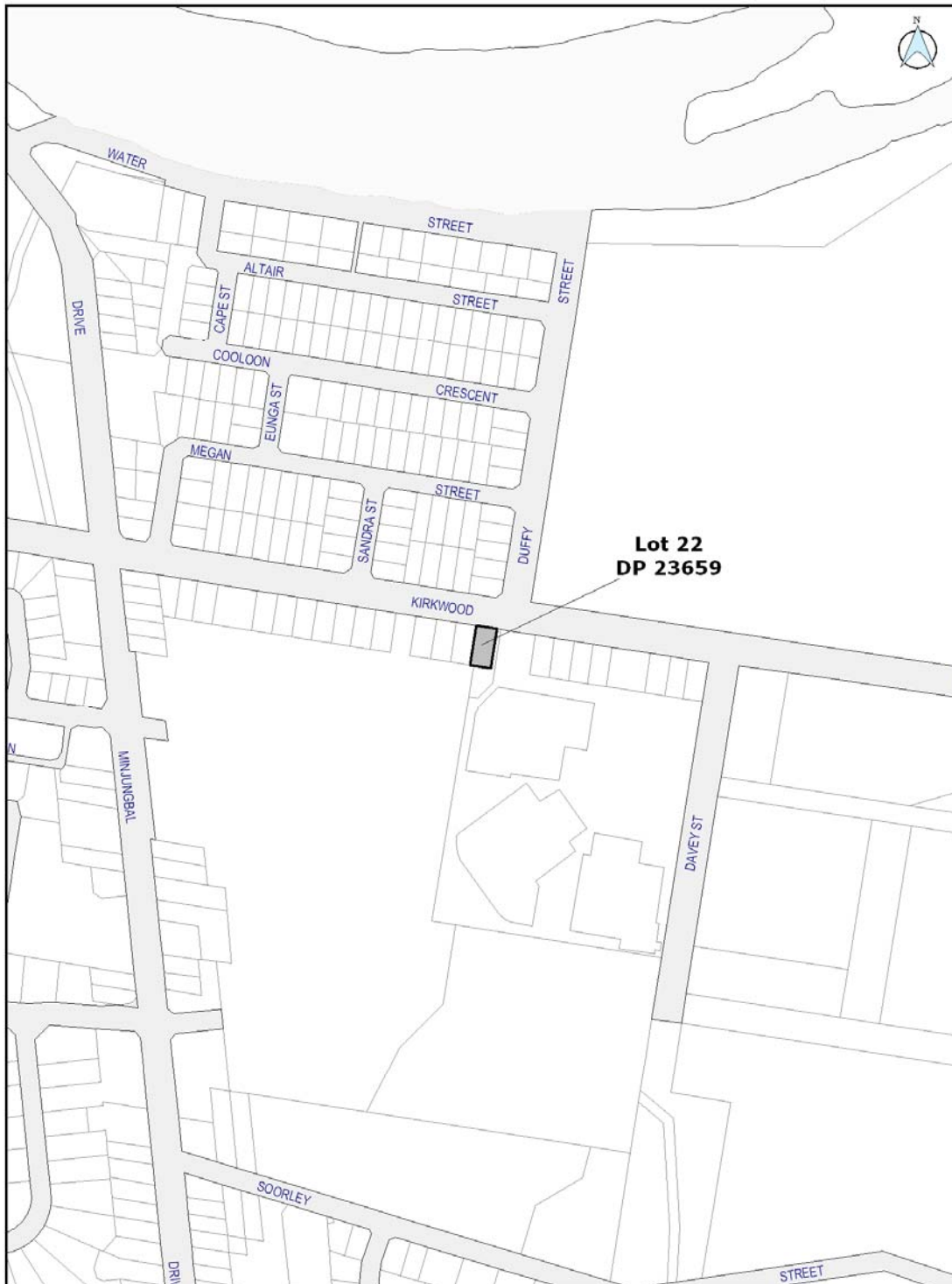
Council is in receipt of a development application for the demolition of an existing dwelling house and the erection of a 3-storey multi dwelling housing development, comprising 6 x 2 bedroom units (5 of which include a study), at 24 Kirkwood Street, South Tweed Heads.


The proposed development involves the excavation of a basement car park, accommodating 9 vehicular spaces.

Ground, first and second levels essentially involve the same floor plan, each with 2 bedrooms, a study and open plan living areas that include an adjoining balcony projecting from the north-eastern elevation.

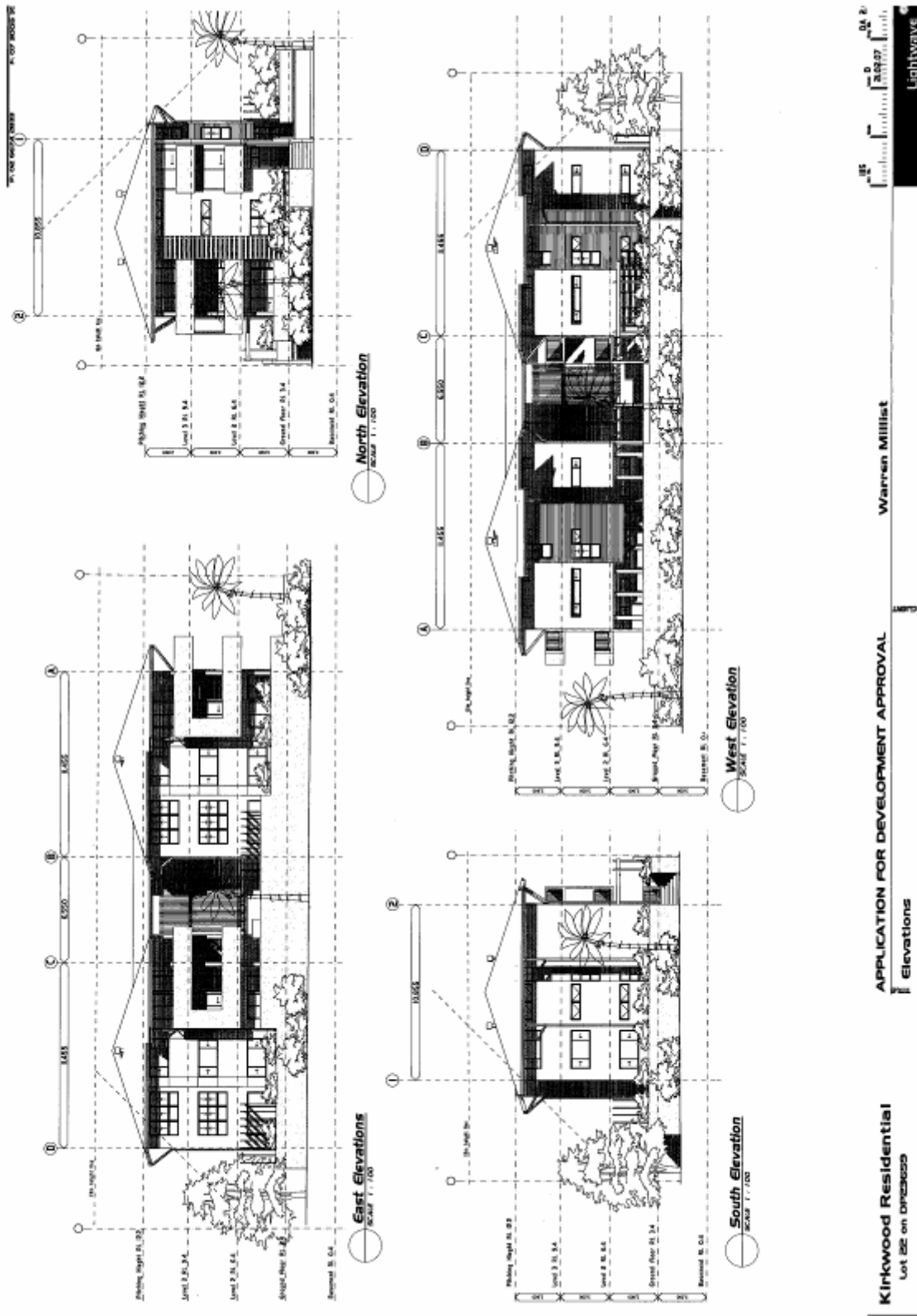
The subject land has an area of 809.38m<sup>2</sup>, comprising a 20.117m frontage to Kirkwood Road and a 40.234m lot depth. The local area comprises a measured transition from established low density housing to medium density development, which takes advantage of the proximity of commercial services and existing infrastructure.

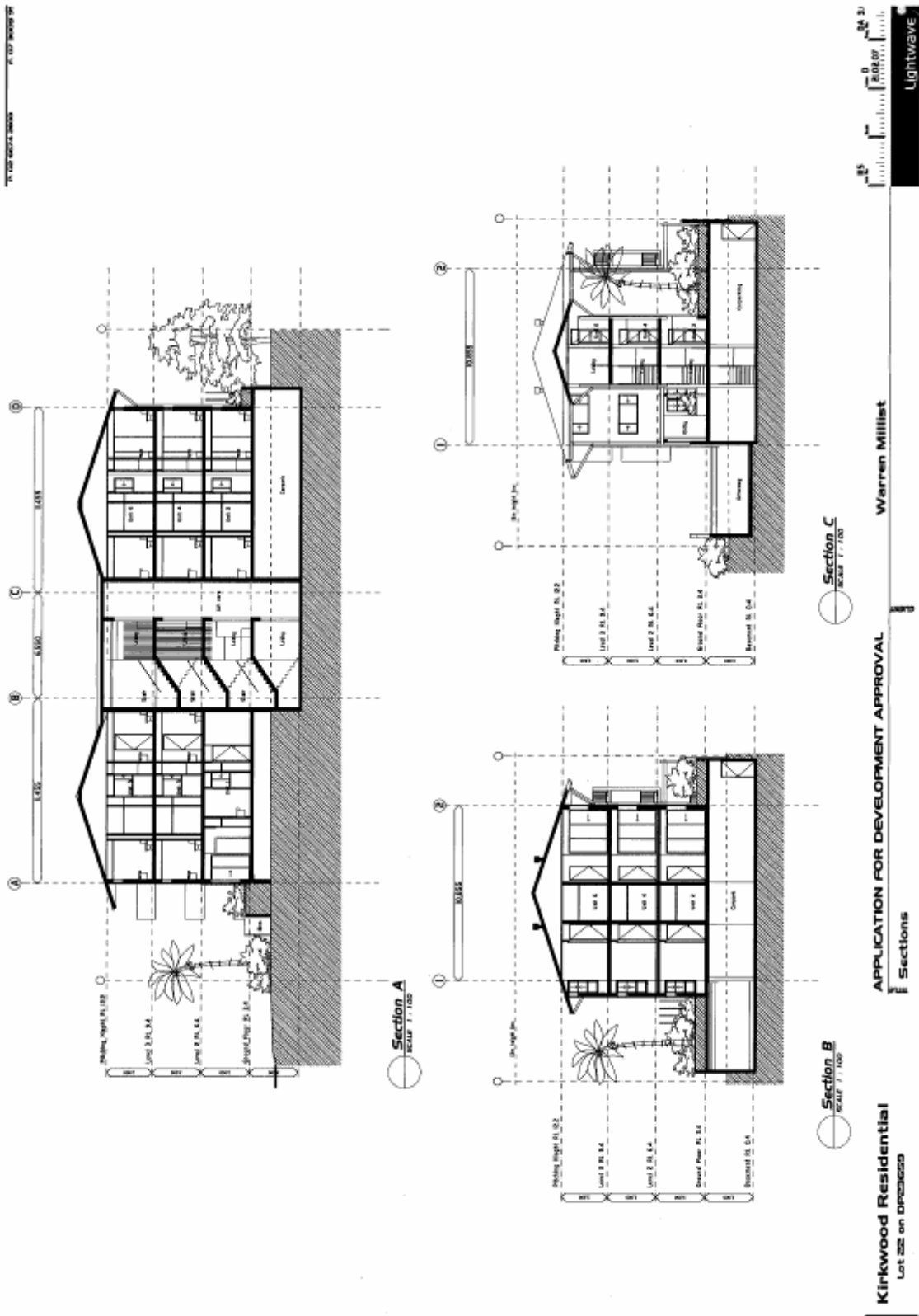
**SITE DIAGRAM:**



<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.  <b>DO NOT SCALE</b>  <b>COPY ONLY - NOT CERTIFIED</b>                  P.O. Box 816                  Murrumbidgee, NSW, 2484                  Tel: (02) 6670 2409                  Fax: (02) 6670 2493</p>	<p><i>Tweed Shire Council</i>  <b>Lot 22 DP 23659,</b>  <b>No. 24 Kirkwood Road, Tweed Heads</b></p>		<p>PLANNING REFORMS UNIT  <b>Site Plan</b>                  Sheet: 1 of 1</p>
<p>File: N:\Munsys\A4P - SITE PLAN.Wor Author: J.Batchelor Date: 4/Apr/2007 Scale: 1:5,000</p>			

**ELEVATIONS:**





**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 considered to be consistent with the 2(b) Residential zone objectives and satisfy 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 as defined within the Tweed LEP 2000. The proposal therefore 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 and the basement car park is not susceptible to flood inundation. Accordingly, the proposal is seen to meet the objectives of clause 34.

**Clause 35** of the TLEP requires Council to manage the disturbance of acid sulphate soils. The application includes a preliminary ASS investigation and

management plan, which Council's assessing Environment and Health Officer has reviewed as satisfactory. Clause 35 is accordingly satisfied.

**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

Satisfactory

State Environmental Planning Policies

State Environmental Planning Policy (SEPP) 65 – Residential Flat Buildings

Clause 30 of SEPP 65 requires the consent authority to consider each of the 10 design quality principles when determining a development application for a residential flat building.

In this regard, the applicant has provided a comprehensive assessment of the proposal against the relevant design quality principles. It is considered that the design of the proposed development exhibits suitable regard for these principles and demonstrates good practice in urban design. The modern coastal appearance of the building is in keeping with the evolving character of the area.

State Environmental Planning Policy (SEPP) 71 – Coastal Protection

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

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

The proposal is not adversely affected by any draft EPIs.

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

Development Control Plan No. 2 – Access and Parking Code

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

<b>Standard</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Complies</b>
On Site Car Parking	1.5 spaces per dwelling, (9 spaces)	9 spaces in total	YES

It is noted that whilst the proposal complies with the numerical requirements of DCP 2, the submitted plans do not detail the use of any car spaces for visitor use. Accordingly a condition of consent has been included requiring 2 (25% of the 9 spaces) of the car spaces be allocated and marked for visitor use.

Development Control Plan No. 6 – Multi Dwelling Housing

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

<b>Standard</b>	<b>Acceptable Solution</b>	<b>Proposal</b>	<b>Complies</b>
Floor Space Ratio	0.5:1 (404.69m <sup>2</sup> )	0.84:1 (686m <sup>2</sup> )	NO*
Minimum Landscaped Area	Small Dwelling - 60m <sup>2</sup> , Large Dwelling - 80m <sup>2</sup> per dwelling (460m <sup>2</sup> )	See comment below	NO*
Setbacks	Primary frontage 6m Side and Rear Setbacks 3m	6m to primary frontage 3m side setback to the main wall of the building	YES
Streetscape	The maximum width of the garages should be 50% of the frontage width.	Parking provided via a basement carpark	YES
Streetscape	Garages should be setback behind the front façade of the building.	Parking provided via a basement carpark	YES
Building Envelope	45° from 3.5m high at the side and rear boundary (excluding eaves and the like)	See Comment Below	NO*
Minimum Private Open Space	20% of the site (161.87m <sup>2</sup> ), with a minimum dimension of 3m	Greater than 162m <sup>2</sup>	YES
	One part min 25m <sup>2</sup> with min dimension of 4m	Minimum of 25m <sup>2</sup> per unit in the form of balcony areas	YES

NO\* - See Assessment Below

Floor Space Ratio

The proposal involves a floor space ratio of 0.84:1 which is in keeping with the average 1:1 - 1.35:1 generally associated with other multi dwelling housing developments in the 2(b) zone.

Landscaping

The proposal involves approximately 130m<sup>2</sup> of traditional vegetation and landscaping (deep soil zones) and approximately 114m<sup>2</sup> of above podium landscaping to complement open-air recreation facilities.



The landscaped area proposed incorporates functional areas within the front, side and rear setback to each of the dwellings, as well as areas around the perimeter of the site.

Whilst the amount of landscaping proposed is numerically deficient, the proposal is considered to provide suitable landscaped area for the use and enjoyment of its future occupants. A condition of consent has been included requiring approval (by Council) of a full landscape plan prior to the issue of a construction certificate to ensure landscaping treatment is appropriate.

#### Building Envelope and Siting

Having regard to the relevant performance criteria, the applicant has provided the following justification

##### **3.3.1 Building Envelope and Siting**

*The proposed development encroaches on the Building Height Plane on the two side elevations and the rear elevation as indicated in the submitted plans. The building also encroaches into the 3 metre setback on the eastern elevation, with upper level balconies setback 2 metres from the neighbouring property. It is submitted these encroachments will not have an adverse impact upon neighbours in terms of privacy and overshadowing.*

*The objectives of this design element are as follows*

- 01. To ensure that the height, scale and length of new developments is not excessive and relates well to the local context.**
- 02. To encourage design, which creates desirable living conditions and ensures that the amenity of surrounding properties is properly considered.**
- 03. To allow flexibility in the siting of buildings and the provision of side and rear setbacks.**
- 04. To allow adequate natural light and ventilation between dwellings.**

*It is considered the height, scale, bulk and length of the development is not excessive having regards to the 2(b) Medium Density Zoning of the land and surrounding area, the type of medium density developments already constructed and recently approved in Tweed Heads South, and the applicable three storey height limit.*

*Of note the proposal involves substantial articulation along the side elevations avoiding long monotonous walls so readily evident in the residential flat buildings constructed during the 1970's and 80's. In particular the setbacks to the western boundary vary from 9.8 metres to 5.1 metres while on the southern boundary the building has been sited a respectable 4.5 metres from the adjacent property. In terms of the*

*eastern boundary, the building is setback 3 metres with part of the balconies on the upper level units setback 2 metres. These balconies overlook an internal road to a community title town house development to the south and have no impact upon the neighbours amenity.*

*The design of the building has been sited in this manner, so that encroachments into the building height plane are predominantly upon the eastern side of the building which overlook an internal access road and the battleaxe handle of the neighbouring residential properties. This also provides for suitable spatial separation to the residence to the west, far exceeding the mandatory 3 metre setback, thus protecting the amenity of the nearest adjoining residence. It is concluded the proposal is consistent with the objectives of this design element.*

*The Performance Criteria for this element are as follows:*

### **Amenity and Character**

**P1. Buildings are sited and are of such length and height that there is no significant loss of amenity to adjacent dwellings and land.**

### **Daylight and Sunlight**

**P2 Buildings are sited and designed to provide adequate daylight to habitable rooms and winter sunlight to ground level open space.**

*The proposed encroachment to the two side and rear boundaries is primarily a direct result of the overall height of the building. To limit the impact of the development, the building has been offset to the east in terms of siting to provide increased spatial separation to the western boundary and the nearest residence. Hence the development will not generate significant impacts upon the neighbours residential amenity and predominantly overlooks the battleaxe handle and internal access road on the eastern side.*

*Significantly, the living areas and main balconies are also located upon the eastern side of the building, thereby limiting the opportunities to overlook adjoining properties. Shadow diagrams have been prepared for the development for mid winter and mid summer. It is clear that during midwinter the development will not significantly affect the property to the south, and is consistent with Council's Acceptable Solution A6 under Section 3.3.1 of the DCP.*

*In terms of private open space, the main upper level balconies which encroach into the side setback on the eastern boundary are generally orientated to maximise solar access, natural light, sea breezes and*

*predominantly overlook the battleaxe handle and neighbouring internal road with the next residence in Kirkwood Road some thirty metres away.*

*In terms of the setback to the rear boundary substantial separation is provided to the dwelling to the rear and no adverse impacts are anticipated. It is considered this level of separation is acceptable in a medium density precinct and will not adversely detract from the amenity of the residents of the adjoining dwellings.*

*It is concluded the proposal although not compliant with the acceptable building height plane solution or setback requirements satisfies both the objectives and the performance criteria under pinning Section 3.3.1 of DCP 6 with no adverse impacts anticipated upon adjacent properties. It is submitted the proposed development complies with Section 3.3.1 – Building Envelope and Siting*

The above points are noted and the essence of the established controls met. The development as a whole exhibits high levels of articulation when viewed from Kirkwood Road, masking the bulk and scale of the proposal. The siting of the proposal is not considered to lead to a significant loss of amenity to adjacent dwellings or land, complemented by the internal design of the proposal minimising potential overlooking to dwellings to the south. Accordingly, the proposal is considered satisfactory.

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

NSW Coastal Policy

The proposed development is not in conflict with the strategic goals objectives of this policy.

Demolition

The proposal requires the demolition an existing dwelling. The applicant has submitted a demolition plan, and appropriate conditions of consent have been recommended to control demolition activities.

**(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**

Fence Height

The proposal involves an area of non-compliance with Council's Fence Height Policy. The proposed front fence is 1.8m in height, involves 13.8 metres of length within the building line and incorporates a varied setback to the primary boundary to allow for required sightlines and visual interest. The proposed fence is designed to provide privacy and security to the development as a whole, but primarily to the northern ground floor unit private open space area. Landscaping bays are located in front of the proposed fence in 2 areas to

soften it's appearance and provided additional visual interest. The fence is to be finished with a texture render. An indicative coloured elevation of the development has been submitted by the applicant and is attached for Council's reference.

The proposed front fencing is to meet the performance criteria and ultimately the objectives established within Section 3.2.2 of DCP 6 and not detract from Council's Fence Height Policy. The proposal is considered to warrant approval in its current form.

#### Building Line

The main building itself is setback a minimum of 6 metres from the boundary, however a portion of the roof (1.5m metre encroachment) and 2<sup>nd</sup> and 3<sup>rd</sup> storey balcony areas (maximum 2m encroachment) projects within the 6m building line. Council's Building Line Policy allows for a reduced building line where the area of encroachment is primarily open and does not involve enclosing walls.

It is contended that the balcony areas in question are open structures, designed to provide addition levels of amenity and private open space, and as such are permissible.

The position of the building footprint in consideration with the width of the Kirkwood Road road reserve allows the safe and convenience circulation of pedestrians and parking vehicles on the road reserve. In addition, the balcony areas are not considered to raise any overlooking and overshadowing concerns, and a mixture of building materials and landscaping is seen to create a positive contribution to the Kirkwood Road streetscape. Accordingly, the proposal is considered to comply with the relevant building line requirements.

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

#### Suitability of the Lot/ Natural Hazards

The subject site has a land area of 809.38m<sup>2</sup> and is of regular shape. The land is predominately flat. 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 building design.

Development along Kirkwood Road is currently undergoing a gradual transition from established dwelling houses to medium density housing, providing a variety of architectural form and housing options.

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 30-day advertising period 1 submission was received, which contained approximately 14 signatories.

The submission raised two points of concern, firstly the effects of overshadowing to the dwelling located to the south of the subject land, and secondly potential overlooking and loss of privacy to the same property. The following comments are made in relation the concerns raised.

Overshadowing – The applicant has submitted shadow diagrams for the proposal, demonstrating no overshadowing to the property to the south on the prescribed December 22 (at 9am, 12pm and 3pm), however overshadowing is present on the prescribed June 21 (at 9am, 12pm and 3pm). In this regard it is noted that the proposal demonstrates compliance with Acceptable Solution A6 under Section 3.3.1 of DCP 6 as it relates to overshadowing. Refusal of the application on this matter is not considered appropriate.

Overlooking/Loss of privacy - The proposed development has the potential to impact on the privacy of the adjoining properties, however particularly to the south. The rear units are positioned to the south of the subject land and due to it's siting on the lot in reference to adjoining properties is the most likely to generate privacy and overlooking concerns.

With the proposal involving landscaping and fencing at ground level, loss of privacy and overlooking concerns are not considered to be significant at the ground floor level.

At the second and third storey levels the proposal involves Bedroom 2, a bathroom and the kitchen, as viewed from the southern elevation of the units.

As the areas most likely to generate overlooking and privacy concerns are not considered to be entertaining or main living areas, the key concern areas are not considered high traffic areas and would not create an unreasonable level of use, or overlooking.

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

**(e) Public interest**

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

**OPTIONS:**

1. Approve the 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 considered to warrant approval.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. Indicative colour elevation (DW 1573645)
-

**P2 [PD-PC] Development Application DA06/1013 for the Demolition of Existing Structures and the Erection of a Residential Building Comprising 6 x 3 Bedroom Units & Swimming Pool at Lot B DP 361922, No. 46 Pearl Street, Kingscliff**

**ORIGIN:**

**Development Assessment Unit**

**FILE NO: DA06/1013 Pt1**

**SUMMARY OF REPORT:**

Council is in receipt of an application for Multi-Dwelling Housing at 46 Pearl Street, Kingscliff. The development comprises the erection of a 3-storey development consisting of 6 x 3 bedroom units, basement car park, swimming pool and landscaping.

The subject site has a land area of 809.9m<sup>2</sup>, is of a regular shape and possesses frontage to Pearl Street, Kingscliff. An older style dwelling is already present on the site, its demolition is proposed within this application.

The land is zoned 2(b) Medium density residential under Tweed Local Environmental Plan 2000 and is located on the fringe of Kingscliff's commercial hub.

The application incorporates minor non-compliances with the Acceptable Solutions offered within DCP 6 relating to FSR, setbacks, landscaping and building envelope requirements. The objectives of DCP 6 however are seen to be complied with and the application is recommended for approval, having regard to the medium-density land-use controls in this area.

**RECOMMENDATION:**

**That Development Application DA06/1013 for the demolition of existing structures and the erection of a residential building comprising 6 x 3 bedroom units & swimming pool at Lot B DP 361922, No. 46 Pearl Street Kingscliff be approved subject to the following conditions: -**

**GENERAL**

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos: -**
  - \* 4903/DA/01; 4903/DA/02 & 4903/DA/04 prepared by Pat Twohill Architects and dated 31/8/06**

- \* **Stormwater Management Plan Issue B dated 21/3/2007 prepared by Cozens Regan Williams Prove**
- except where varied by the conditions of this consent.**
- [GEN0005]
2. **Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.**
- [GEN0045]
3. **The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**
- [GEN0115]
4. **Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within or adjacent to the subject property.**
- [GEN0135]
5. **Construction shall comply with AS3959 - 1999 level 1 'Construction of Buildings in bushfire prone areas'.**
- [GENNS01]
6. **Roller doors, tilt-a-doors and the like shall be sealed to prevent the entry of embers into the structure.**
- [GENNS01]
7. **The entire property shall be managed as an 'Inner Protection Area' as outlined within Section 4.2.2 in Planning for Bushfire Protection 2001.**
- [GENNS01]
8. **All fencing shall be constructed from non-combustible materials.**
- [GENNS01]
9. **A 1.8 metre high radiant heat shield made of non-combustible materials shall be constructed along the full length of the south-western boundary adjacent to the hazard. A pedestrian access gate is to be provided along this boundary. Where steel cladding material is used; all posts and rails will be constructed from steel. The bottom of the fence is to be in direct contact with the finished ground level or plinth.**
- [GENNS01]
10. **Council will not permit ground anchors (to retain sacrificial sheet piling for basement excavations) within Council or private property, without prior consent from the property owner being obtained. If the landowner is Council, approval is required from the Director of Engineering and Operations. The anchors are required to be removed upon completion of the works, unless a substantial compensation amount is negotiated with Council.**



**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

11. 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]

12. **Section 94 Contributions**

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

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

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

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

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

- |   |            |
|---|------------|
| (a) Tweed Road Contribution Plan:           | \$4,732    |
| S94 Plan No. 4 (Version 4.0)                |            |
| Sector6_4                                   |            |
| (b) West Kingscliff - Drainage:             |            |
| 0.05752 ha @ \$32708                        | \$1,881.36 |
| DCP No. 9 S94 Plan No. 7                    |            |
| (c) West Kingscliff - Open Space:           | \$7,599    |
| DCP No. 9 S94 Plan No. 7                    |            |
| (d) Shirewide Library Facilities:           | \$2,012    |
| S94 Plan No. 11                             |            |
| (e) Eviron Cemetery/Crematorium Facilities: | \$409      |
| S94 Plan No. 13                             |            |

(f) Community Facilities (Tweed Coast - North)	\$2,460
S94 Plan No. 15	
North Coast	
(g) Emergency Facilities (Surf Lifesaving)	\$586
S94 Plan No. 16	
(h) Extensions to Council Administration Offices & Technical Support Facilities	\$3,708.45
S94 Plan No. 18	
(i) Cycleways	\$1,028
S94 Plan No. 22	
(j) Regional Open Space (Structured)	\$6,799
S94 Plan No. 26	
(k) Regional Open Space (Casual)	\$2,499
S94 Plan No. 26	

[PCC0215]

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

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

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

Water DSP5:	3.8 ET @ \$4598	\$17,472
Sewer Kingscliff:	5 ET @ \$6688	\$33,440

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]

14. 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]

15. 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) Stormwater disposal from the site shall incorporate tank storage, on-site stormwater detention (OSD), as well as infiltration facilities, generally in accordance with the Stormwater Management Plan (Issue B) dated 21/3/2007 by Cozens Regan Williams Prove.

[PCC1105]

16. Disposal of stormwater by means of infiltration devices shall be carried out in accordance with Section D7.9 of Tweed Shire Councils adopted *Development Design and Construction Specification - Stormwater Quality*.

[PCC1125]

17. 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]

18. Erosion and Sediment Control shall be provided in accordance with the following:

(a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.

(b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCC1155]

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

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

[PCW0005]

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

[PCW0965]

21. 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]
22. 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]
23. 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]
24. 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]
25. Please note that while the proposal, subject to the conditions of approval, may comply with the provisions of the Building Code of Australia for persons with disabilities your attention is drawn to the

Disability Discrimination Act which may contain requirements in excess of those under the Building Code of Australia. It is therefore recommended that these provisions be investigated prior to start of works to determine the necessity for them to be incorporated within the design.

[PCW0665]

26. It is a condition of this approval that, if an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made must comply with the following:
- (a) The person must, at the person's own expense:
    - (i) preserve and protect the building from damage; and
    - (ii) if necessary, underpin and support the building in an approved manner.
  - (b) The person must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars to the owner of the proposed work.

[PCW0765]

27. 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]

28. 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]

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

[PCW1065]

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

[PCW0125]

#### **DURING CONSTRUCTION**

31. 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]

32. 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]

33. 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]

34. 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]

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

[DUR0415]

36. If the work involved in the erection or demolition of a building:
- (a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or
  - (b) building involves the enclosure of a public place,
- a hoarding or fence must be erected between the work site and the public place in accordance with the WorkCover Authority of NSW Code of Practice and relevant Australian Standards.

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

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

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

[DUR0435]

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

[DUR0645]

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

[DUR0655]

39. 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]

40. 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]



41. 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]

42. A certificate from a suitably qualified practicing structural engineer shall be submitted to Council and the Principle Certifying Authority within seven (7) days of the site being excavated certifying the adequacy of the sheet piling or other retaining method used to support adjoining properties.

[DUR1965]

43. **Swimming Pools (Building)**

- (a) The swimming pool is to be installed and access thereto restricted in accordance with Council's "Code for the Installation of New Swimming Pools" and Australian Standard AS 1926-1986 (Copy of code enclosed).
- (b) Swimming pools shall have suitable means for the drainage and disposal of overflow water.
- (c) The pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.

[DUR2075]

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

[DUR2085]

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

[DUR2195]

46. 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]

47. **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]
48. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position. [DUR2505]
49. All water plumbing pipes concealed in concrete or masonry walls shall be fully lagged. [DUR2525]
50. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level. [DUR2545]
51. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-
- \* 43.5<sup>0</sup>C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
  - \* 50<sup>0</sup>C in all other classes of buildings.
- A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works. [DUR2555]
52. 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]
53. The provision of 9 (3 of which are to be marked and allocated as Visitor spaces) off street car parking spaces including parking for the disabled where applicable. The layout and construction standards to be in accordance with Development Control Plan No. 2 - Parking Controls, the Building Code of Australia and AS 2890. [DUR0085]
54. 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]
55. Any pumps used for onsite dewatering operations are to be installed on the site in a location that will minimise any noise disturbance to neighbouring residential areas. Such location is to be to the satisfaction of the General Manager or his delegate.
- [DUR0225]
56. All pumps used for any onsite dewatering operations shall be acoustically shielded to the satisfaction of the General Manager or his delegate so as to prevent the emission of offensive noise as a result of their operation.
- [DUR0235]
57. Pumps used for dewatering operations are to be electrically operated. Diesel pumps are not to be used unless otherwise approved by Tweed Shire Council.
- [DUR0255]
58. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited.
- [DUR0815]
59. All new residential dwellings (and extensions comprising over 50% of the original floor area) are to fully comply with Councils Energy Smart Housing Policy (DCP39). In order to comply with DCP39 consideration must be given to the building envelope, orientation, insulation, ventilation, thermal mass and zoning.
- [DUR0915]
60. Provision to be made for the designation of 1 durable and pervious car wash-down area/s. The area/s must be identified for that specific purpose and be supplied with an adequate water supply for use within the area/s. Any surface run-off from the area must not discharge directly to the stormwater system.
- [DUR0975]
61. 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]
62. 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]

63. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742.3-2202 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.  
[DUR1795]
64. 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]
65. 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]
66. 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]
67. Appropriate measures are to be put in place during the construction period to prevent the transport of sediment from the site. Should any material be transported onto the road or any spills occur it is to be cleaned up prior to cessation of same days work and/or commencement of any rain event.  
[DUR2405]
68. Vehicles leaving the premises shall be sufficiently free from dirt, aggregate or other materials such that materials are not transported onto public roads.  
[DUR2415]
69. The site shall not be dewatered, unless written approval to carry out dewatering operations is received from the General Manager or his delegate.  
[DUR2425]
70. 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]
71. Acid sulfate soils shall not be exposed or disturbed.  
[DURNS01]
72. 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]

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

Such to specifically include the following:

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

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

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

[DUR0065]

74. 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]

75. 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]

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

76. 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]

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

[POC0225]

78. 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]

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

[POC1045]

80. Prior to the issue of 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]

81. An easement to drain sewage is to be created over the existing sewer main traversing the rear of the site. Council's standards require a minimum easement width of 3 metres.

Documentary evidence of the easement creation is to be submitted to Council prior to the issue of an Occupation Certificate or Interim Occupation Certificate.

## USE

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

[USE0235]

83. **Swimming Pools (Building)**

- (a) It is the responsibility of the pool owner to ensure that the pool fencing continues to provide the level of protection required regardless of and in response to any activity or construction on the adjoining premises. Due regard must be given to the affect that landscaping will have on the future effectiveness of the security fencing. (Section 7 Swimming Pool Act 1992).
- (b) The resuscitation poster must be permanently displayed in close proximity to the swimming pool. (Section 17 Swimming Pool Act 1992).

[USE1295]

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

[USE0125]

85. All activities associated with the occupancy of the building are to comply with the Protection of the Environment Operations Act, 1997.

[USE0135]

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

[USE0175]

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

[USE0205]

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

[USE0965]

89. Use of the on site water tank shall be restricted to car washing and landscape watering unless otherwise approved in writing by the Director of Environment and Community Services, and this water shall not be utilised for any potable purpose. The water tank shall be maintained in a clean and healthy state and shall not be permitted to cause any odour or amenity impacts.

[USENS01]

**REPORT:**

**Applicant:** Baronside Pty Limited  
**Owner:** Baronside Pty Limited  
**Location:** Lot B DP 361922 No. 46 Pearl Street, Kingscliff  
**Zoning:** 2(b) Medium Density Residential  
**Cost:** \$1,200,000

**BACKGROUND:**

Council is in receipt of an application for Multi Dwelling Housing, comprising 6 x 3 bedroom units at 46 Pearl Street, Kingscliff. Each unit includes living room, dining, kitchen, master bedroom with ensuite, additional 2 bedrooms and bathroom. In addition, Units 5 & 6 are designed over 2 levels, with bedrooms 2 & 3, decking and bathroom facilities located at the second storey and main bedroom, ensuite, living, dining and kitchen located at the third storey.

The building is 3 stories in height per the definition offered within the Tweed LEP 2000, and involves a 9-space (plus 1 car wash bay) basement car park to facilitate the development.

The subject land currently contains an existing dwelling house, which is to be demolished under this application. The subject land is otherwise void of any significant improvements or vegetation.

During the submission period, no submissions were made.

The subject land possesses a land area of 809.9m<sup>2</sup>, is of regular shape and is generally flat, with a gentle 1m fall across the site. Surrounding development is predominately being redeveloped in keeping with a more modern coastal theme, for filling the desired medium density character of the area.

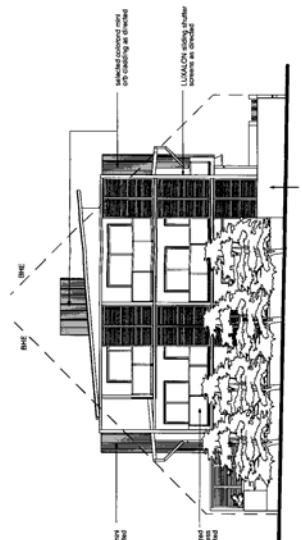


**SITE DIAGRAM:**

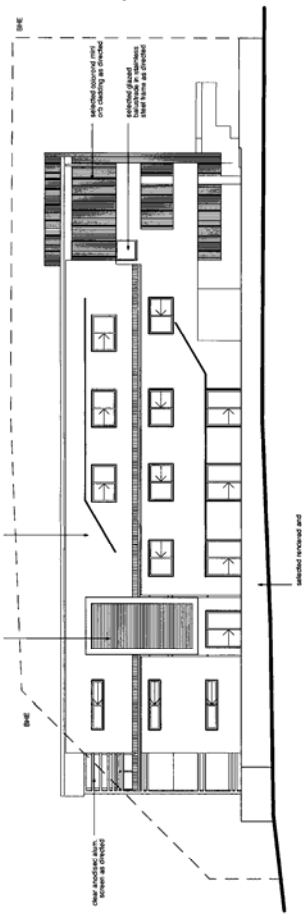


**ELEVATION PLANS:**

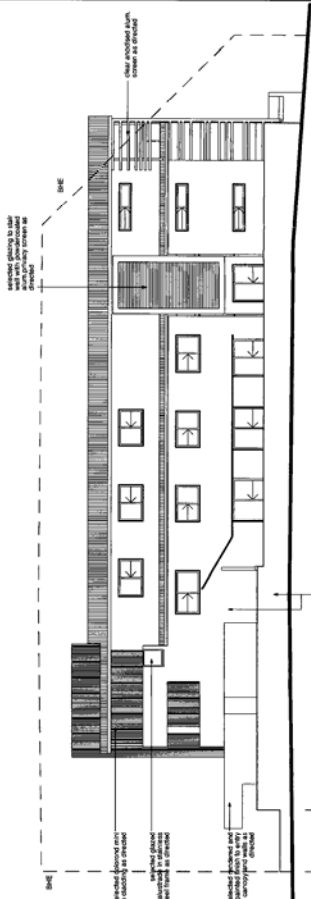
**PAT TOWHILL DESIGNS PTY. LIMITED**  
 ARCHITECTS  
 174 HEADING HILL ROAD, SUITE 10  
 TWEED HEADS NSW 2486  
 PH + FAX 07 5528 2920  
 EMAIL mail@pattowhills.com.au



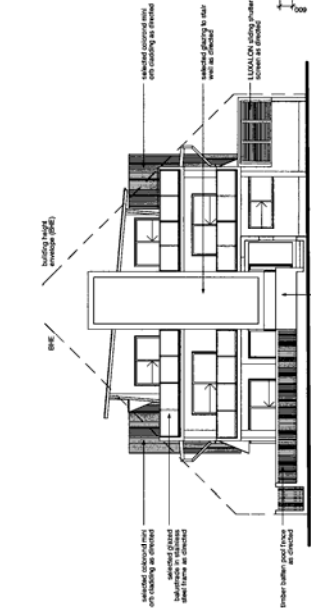
South-West Elevation  
 SCALE 1:100



South-East Elevation  
 SCALE 1:100



North-West Elevation  
 SCALE 1:100



North-East Elevation  
 SCALE 1:100

PLEASE SEE DRAWINGS FOR NOTES AND DIMENSIONS AND SPECIFICATIONS.

DATE	DESCRIPTION

These drawings are prepared to the satisfaction of the relevant building authorities. The client agrees to the design and construction of the building in accordance with the drawings and specifications and is responsible for the building. The client is advised that the building is to be constructed in accordance with the drawings and specifications and is responsible for the building.

DESIGNER: AS SHOWN  
 DRAWN: 31/8/06  
 CHECKED: A.M.K./P.A.T./D.P.G.T.  
 ARCHITECT: P.A.T.  
 ENG. NO.: 4903/DA/04

**CLIENT:**  
 Baronside  
**PROJECT:**  
 Proposed Multi-Unit  
 No. 46 Pearl Street  
 Kingscliff  
 NSW

**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 considered to be consistent with the 2(b) Residential zone objectives and satisfy 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 as defined within the Tweed LEP 2000. The proposal therefore complies with the provision of clause 16.

North Coast Regional Environmental Plan 1988

Satisfactory

State Environmental Planning Policies

State Environmental Planning Policy (SEPP) 65 – Residential Flat Buildings

Clause 30 of SEPP 65 requires the consent authority to consider each of the 10 design quality principles when determining a development application for a residential flat building.

In this regard, the applicant has provided a comprehensive assessment of the proposal against the relevant design quality principles. It is considered that the design of the proposed development exhibits suitable regard for these principles and demonstrates good practice in urban design. The modern coastal appearance of the building is in keeping with the evolving character of the area.

State Environmental Planning Policy (SEPP) 71 – Coastal Protection

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

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

The proposal is not adversely affected by any draft EPIs.

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

Development Control Plan No. 2 – Access and Parking Code

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

<b>Standard</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Complies</b>
On Site Car Parking	1.5 spaces per dwelling, 25% of these spaces for visitors (9 spaces)	9 spaces (3 of which are visitor spaces)	YES

Development Control Plan No. 6 – Multi Dwelling Housing

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

<b>Standard</b>	<b>Acceptable Solution</b>	<b>Proposal</b>	<b>Complies</b>
Floor Space Ratio	0.5:1 (404.95m <sup>2</sup> )	0.98:1 (796m <sup>2</sup> )	NO*
Minimum Landscaped Area	Large Dwelling - 80m <sup>2</sup> per dwelling (480m <sup>2</sup> )	See comment below	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.	Parking provided via a basement carpark	YES
Streetscape	Garages should be setback behind the front façade of the building.	Parking provided via a basement carpark	YES

Building Envelope	45° from 3.5m high at the side and rear boundary (excluding eaves and the like)	See comment below	NO*
Minimum Private Open Space	20% of the site (161.8m <sup>2</sup> ), with a minimum dimension of 3m	Greater than 161.8m <sup>2</sup>	YES
	One part min 25m <sup>2</sup> with min dimension of 4m	See Comment Below	NO*

NO\* - See Assessment Below

### Floor Space Ratio

It is generally accepted that 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 0.98:1, which is in keeping with the average 1:1 - 1.35:1 generally associated with other multi dwelling housing developments in the 2(b) zone.

Of note, Council's planning staff are in the process of amending DCP 6 to provide for appropriate FSR requirements within the 2(b) Medium Density zone.

In light of the above, the proposal is considered to satisfy the site density objectives established within Section 3.1.3 of DCP 6.

### Landscaping

According to the acceptable solutions contained within DCP 6, the proposed development is required to provide for 80m<sup>2</sup> of landscaped area per unit or 30% of the site, whichever is the greater. The proposal involves approximately 84.54m<sup>2</sup> of deep soil zones and approximately 65.9m<sup>2</sup> of soft landscaping (through the provision of planter boxes), complimented by podium, pool and open-air recreation facilities.

The applicant has provided the following justification of the proposal against the relevant performance criteria;

*'The proposed medium density building located within a 2(b) medium density residential zone which is progressively being redeveloped with 3 storey medium density residential buildings. The proposed building is consistent with built form and character of the recently completed building immediately to the west. The landscaped area, side setbacks and front building line of the proposal is similar to other existing and likely new buildings in the locality.*

*Typically residential flat building developments in the 2(b) Zone achieve a FSR of up to 1.2:1. The subject proposal would yield a FSR of only*

*0.98:1, accordingly the proposed development is well within the 'normal' density regularly approved within the 2(b) Zone. The front, side and rear setbacks of the proposed building either comply or exceed the requirements of the applicable planning controls. The building comprises deep shaded balconies, varied building materials, an interested roof form and will provide a deep planting area at the rear of the site. Accordingly the proposed structure will sit comfortably with the desired future character of the area, in accordance with the zoning and planning controls, which apply to the site.'*

The abovementioned comments are largely concurred.

The landscaped area proposed incorporates functional areas within the front (including a swimming pool), side and rear setback of the building. The landscape intent displayed is considered to appropriately maintain internal privacy levels and offers general visual softening of the development when viewed from adjoining lands.

Whilst the amount of landscaping proposed is numerically deficient, the proposal is considered to provide suitable landscaped area for the use and enjoyment of its future occupants. A condition of consent has been included requiring approval (by Council) of a full landscape plan prior to the issue of a construction certificate to ensure landscaping treatment is appropriate with regard to the bulk and scale of the proposal, existing development and the desired future character of the area. It is considered that the landscaped areas provided are of a suitable size and standard to warrant approval against the performance criteria.

### Setbacks

Both Council's Building Line Policy and DCP 6 require a 6m setback to the primary frontage of a residential lot, in this instance Pearl Street. The proposal involves 3 minor elements of encroachment within the 6m building line, namely a 400mm eave overhang of the roof over the top floor balcony, blade wall extensions (600mm) surrounding the front entry stairs and a masonry entry canopy. The following submission has been provided by the applicant as a formal request for a building line variation for these elements of the building.

*The objectives of Council's Building Line Policy include:*

- To achieve an attractive and reasonably landscaped streetscape;*
- To provide for safe and convenient circulation of pedestrians and parking of vehicles;*
- To control the extent to which buildings overlook, overshadow and affect adjoining properties.*

*It is submitted that a building line variation is consistent with the objectives of the policy for the following reasons:*

- *The structures within the front building line are predominantly open and are relatively minor in scale;*
- *The proposed blade wall extensions which frame the entry stair case and the entry canopy form an integral component of the building design;*
- *The proposed eave overhang at the upper level improves the appearance of the building;*
- *The proposed open structures will not affect the compliant provision of car parking behind the front building line;*
- *The proposed open structures will not affect the provision of appropriate landscaping within the front building line.*
- *Due to the orientation of the site and the location of the proposed structures within the front building line, it is unlikely that any additional adverse shadow, privacy or amenity impacts will be created to adjoining properties.*

The above points are noted and largely concurred. The elements of encroachment are not considered to detract from the objectives that the Building Line Policy aims to achieve. In light of the above, the proposal is considered to warrant approval in its current form.

#### Building Envelope and Siting

The proposals setback to both the northern and southern boundaries and 3 storey built form has resulted in an encroachment into the building height envelope on the northern and southern elevations. Having regard to the relevant performance criteria, the applicant has provided the following justification:

*“The proposed building incorporates some minor encroachments into the building envelope. These areas comprise parts of eave overhang and the top part of ‘floating’ staircases located towards the rear of the building.*

*Notwithstanding the non-compliance, it is submitted that the minor areas of encroachment will not result in adverse shadow or privacy impacts on adjoining properties.”*

The above points are noted and the essence of the established controls met. The development as a whole exhibits high levels of articulation when viewed from Pearl Street, masking the bulk and scale of the proposal. The siting of the proposal is not considered to lead to a significant loss of amenity to adjacent dwellings or land and is in fact generous with the increasing of side setbacks to internal living areas as the building increases in height, complemented by the internal design of the proposal minimising potential overlooking to dwellings to the south. Accordingly, the proposal is considered satisfactory.

Private Open Space

The subject application is considered generally consistent with the open space provisions detailed within DCP 6, excluding Section 3.3.3, acceptable solution A1. Whilst the proposal provides the required percentage of private open space across the site, the private open space provided for Units 3 & 4 fall short of the numerical size requirements (15m<sup>2</sup> each as opposed to the required 25m<sup>2</sup>)

Whilst the private open space proposed fails to meet the numerical requirements for the Units 3 & 4, it is considered that the design of the proposal has adequately achieved the likely needs for it's future residents. The primary deck areas provided are positioned at the north-eastern end of the building, directly accessed off an expansive open plan Living, Meals and Kitchen area, increasing the functionality of the entertaining area.

In light of the internal layout and features of the proposal and the accessibility of the adjoining public reserve for physical recreation, the private open space needs to future occupants are seen to have been met and the proposal appropriate in it's current form.

Development Control Plan No.9 – West Kingscliff

Satisfactory

Development Control Plan No.43 – Kingscliff

Satisfactory

Development Control Plan No. 48 – Tweed Coast Building Heights

DCP 48 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 DCP 48, an acceptable solution is offered for 3 storey residential development, prescribing that should the building be a maximum height of 9 metres to the uppermost ceiling (as measured from finished ground level) and 11 metres to it's highest point (ridge point of the roof).

The proposal incorporates a height from finished ground level to the uppermost ceiling of approximately 10m, and a highest point of the roof ridge of 10.3m. The applicant provides the following comments in relation to the provisions of DCP 48:



*The proposal generally complies with the top plate height control of 9m and fully complies with the overall height control of 11m. The over height control is considered to be the most relevant control relating to the external scale and appearance of the building.*

*The proposal is also considered to be consistent with the stated performance criteria in so far as the proposed building is consistent with the scale and bulk of existing developments and desired future character (to 11m) within the area, minimal cut and fill is required, and that the proposal does not intercept any significant view corridor across the site.*

The abovementioned comments are noted and concurred. The proposal is viewed as compliant with the other provisions detailed within DCP 48, apart from the building envelope requirements, which have been discussed as satisfactory previously within this report.

DCP 48 is accordingly considered to be satisfied.

Development control Plan No. 51 – Tweed Coast Strategy

Satisfactory

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

NSW Coastal Policy

The proposed development is not in conflict with the strategic goals objectives of this policy.

Demolition

The proposal requires the demolition an existing dwelling. The applicant has submitted a demolition plan, and appropriate conditions of consent have been recommended to control demolition activities.

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

The proposal is not considered to generate any significant impacts upon the built or natural environment.

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

Suitability of the Lot/ Natural Hazards

A search of Council's GIS system displayed that the site contains limited natural hazards and environmental constraints.

The subject site has a land area of 809.9m<sup>2</sup> and is of regular shape. The land is slightly sloping, from a high of 5.0m AHD metres at Pearl Street down to 4.0m AHD at rear of the lot. The site is identified as Bushfire Prone under the Bushfire Prone Land Map dated February 2004 however adequate design measures have been employed to mitigate the hazard. The property is also not affected by any Tree Preservation Orders or seen to possess any threatened species.

Surrounding development is predominately in a medium density form.

In consideration of the limited site constraints, existing uses within the vicinity, 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**

The proposal was advertised and notified for a period of 14 days, during which no submissions were received.

**(e) Public interest**

The proposed development adequately reflects the provisions of the controls and the intended development for the locality and as such is not considered contrary to the public's interest.

**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.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

---

THIS  
PAGE  
IS  
BLANK

THIS  
PAGE  
IS  
BLANK

**P3 [PD-PC] Development Application DA05/1462 for Additions to Pottsville Tavern at Lot 171 DP 629328, No. 28-40, Overall Drive, Pottsville**

**ORIGIN:**

**Development Assessment Unit**

**FILE NO: DA05/1462 Pt1**

**SUMMARY OF REPORT:**

Council's records indicate that consent was granted for the construction of a tavern and nine (9) shops on 21 January 1991 (Development Consent No. 90/436).

The current application seeks consent to construct two separate additions to the tavern to enable the provision of a smoking area in accordance with the licensing requirements. The proposed development results in an additional floor area of 238m<sup>2</sup>.

The applicant requires a car parking variation.

Five (5) submissions have been received.

**RECOMMENDATION:**

**That Development Application DA05/1462 for additions to Pottsville Tavern at Lot 171 DP 629328, No. 28-40 Overall Drive, Pottsville be approved subject to the following conditions: -**

**GENERAL**

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

[GEN0115]

**2. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos:**

- \* Sheet 1 of 4, prepared by Suncoast Homes & Realty and dated 23/10/2005**
- \* Sheet 2 of 4, prepared by Suncoast Homes & Realty and dated 23/10/2005**
- \* Sheet 4 of 4, prepared by Suncoast Homes & Realty and dated 23/10/2005**
- \* Sheet 2 of 3, prepared by Suncoast Homes & Realty and dated 23/10/2005**

- \* Sheet 3 of 3, prepared by Suncoast Homes & Realty and dated 24/10/2005
  - \* 10194 Revision A, prepared by CRG Traffic and Acoustic Consultants and dated 06/11/2006,
- except where varied by the conditions of this consent.

[GEN0005]

3. Advertising structures/signs to be the subject of a separate development application, where statutorily required.

[GEN0065]

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

[GEN0125]

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

[GEN0135]

#### **PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

6. The developer shall provide 110 public parking spaces including parking for the disabled in accordance with Development Control Plan No. 2, AS 2890 and Austroads Part 11 in accordance with Plan No. 10194 dated 6/11/06 drawn by CRG Traffic and Acoustic Consultants.

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]

7. Section 94 Contributions

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

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

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

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

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

- (a) Tweed Road Contribution Plan: \$50,985  
S94 Plan No. 4 (Version 4.0)  
Sector8a\_4

[PCC0215/PSC0175]

8. 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:	7.14 ET @ \$4598	\$32,830
Sewer Hastings Point:	11.42 ET @ \$2863	\$32,695

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

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

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

[PCC0265/PSC0165]

9. 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]

10. 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]

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

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

[PCC1105]

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

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

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

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

[PCC1145]

13. Erosion and Sediment Control shall be provided in accordance with the following:

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

[PCC1155]

**PRIOR TO COMMENCEMENT OF WORK**

14. 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]*
15. 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]*
16. 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]

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

[PCW1005]

18. 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]

19. 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]

#### **DURING CONSTRUCTION**

20. 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]

21. 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]

22. 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]
23. Doors forming exits, paths of travel to exits and parts of exits shall comply with the relevant provisions of D2.19 and D2.20 of the Building Code of Australia.  
[DUR1315]
24. Access to the building for people with disabilities shall be provided and constructed in accordance with the requirements of Section D of the Building Code of Australia. Particular attention is to be given to the deemed-to-satisfy provisions of Part D-3 and their requirement to comply with AS1428.  
[DUR1685]
25. 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]
26. It is the responsibility of the applicant to restrict public access to the building site, building works or materials or equipment on the site when building work is not in progress or the site is otherwise unoccupied in accordance with WorkCover 2000 Regulations.  
[DUR0415]
27. All work associated with this approval is to be carried out so as not to impact on the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -
- Noise, water or air pollution
  - Minimise impact from dust during filling operations and also from construction vehicles
  - No material is removed from the site by wind
- [DUR1005]

28. 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]

29. 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]

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

[DUR0815]

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

[DUR1045]

32. 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]

33. 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 Council's Engineering and Operations Division to arrange a suitable inspection.

[DUR2445]

34. A Sewer manhole is present on this site. This manhole is not to be covered with soil or other material.

Should additional fill be proposed in the area of the sewer manhole application shall be made to Council's Engineering & Operations Division for the raising of the manhole.

[DUR2655]

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

35. 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]

36. All existing essential fire safety measures are to be certified by a qualified person to the effect that each of the fire safety measures has been assessed and were found to be performing to a standard not less than that to which it was originally designed.  
[POC0525]
37. 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]
38. All landscaping work is to be completed in accordance with the approved plans prior to any use or occupation of the building.  
[POC0475]
39. 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]
40. Prior to the issue of any occupation certificate a detailed landscaping and fencing plan for the Royal Drive frontage shall be submitted to Council and completed to the satisfaction of the Director of Planning and Development.

#### USE

41. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust, fumes or the like.  
[USE0125]
42. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light creating a nuisance to neighbouring or adjacent premises.  
[USE0225]
43. The premises shall be maintained in a clean and tidy manner.  
[USE0965]
44. Amplified and/or live music shall not be played external to the building.  
[USENS01]
45. All activities in the 'beer garden' areas shall cease at 10pm.  
[USENS02]
46. Noise levels shall not exceed background LA90 levels at any receiving premise by more than 5dB(A) between the hours of 10am to 12 midnight and shall not exceed the background LA90 levels between the hours of 12 midnight and 10am. Notwithstanding the above noise from the development shall not be audible within any residential premises between the hours of 12 midnight and 10am.  
[USENS03]

**REPORT:**

**Applicant:** Suncoast Homes and Realty Pty Ltd  
**Owner:** Beachside Court Pty Limited  
**Location:** Lot 171 DP 629328 No. 28-40 Overall Drive, Pottsville  
**Zoning:** 3(b) General Business  
**Cost:** \$8,000

**BACKGROUND:**

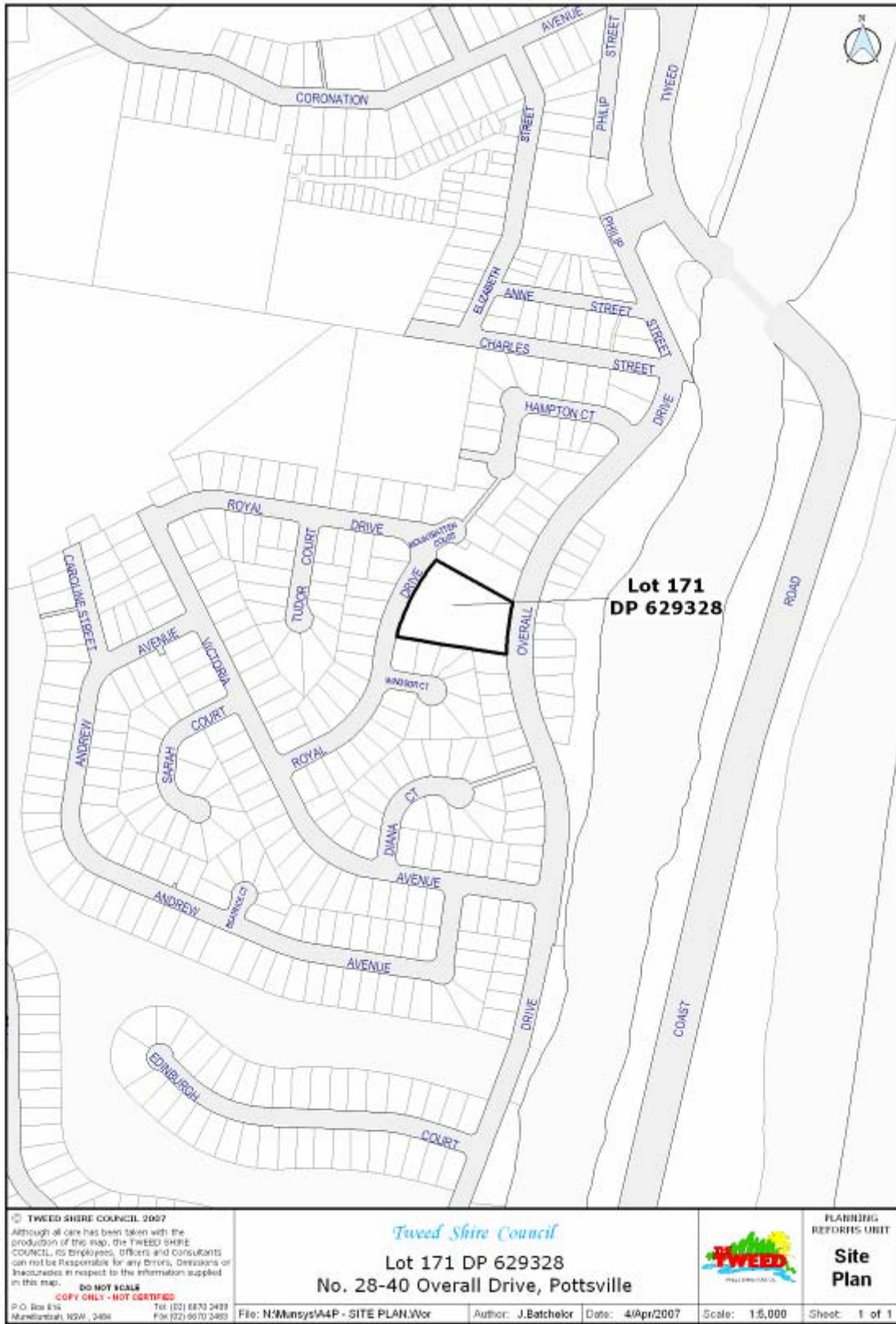
Council's records indicate that consent was granted for the construction of a tavern and nine (9) shops on 21 January 1991 (Development Consent No. 90/436). Since this approval, a variety of applications have been lodged for additions, alterations and uses of the development.

The current application seeks consent to construct two separate additions to the tavern to enable the provision of a smoking area in accordance with the licensing requirements. The application involves the conversion of the existing children's play area (149m<sup>2</sup>) and the construction of an 89m<sup>2</sup> addition is to be situated adjacent to the eastern elevation.

The applicant requires a car parking variation as there is no additional area for car parking.

Five (5) submissions have been received.

**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 on this map.  <b>DO NOT SCALE</b>                  COPY ONLY - NOT CERTIFIED                  P.O. Box 814                  Murumbidgee, NSW, 2486                  Tel: (02) 6670 2489                  Fax: (02) 6670 2483</p>	<p style="text-align: center;"><i>Tweed Shire Council</i>  <b>Lot 171 DP 629328</b>                  No. 28-40 Overall Drive, Pottsville</p>		<p>PLANNING REPORTS UNIT  <b>Site Plan</b></p>
<p>File: N:\Munsys\A4P - SITE PLAN.Wor    Author: J.Batchelor    Date: 4/Apr/2007</p>		<p>Scale: 1:5,000</p>	<p>Sheet: 1 of 1</p>

**DEVELOPMENT PLANS:**

**SECTION A A** Refer Engineer for details

**VIEW 1**

**VIEW 2**

**VIEW 3**

**SECTION A A**

CHS Duragal frame covering - soil material roof pitch 15 deg.

ss tie wire

3000

R.C. FLOOR

Existing Tavern roof

1800

**PROPOSED POTTSVILLE TAVEN  
COURT YARD EXTENSION for -  
SUNCOAST HOMES Pty Ltd.  
LOT 171 OVERALL DRIVE.  
POTTSVILLE**

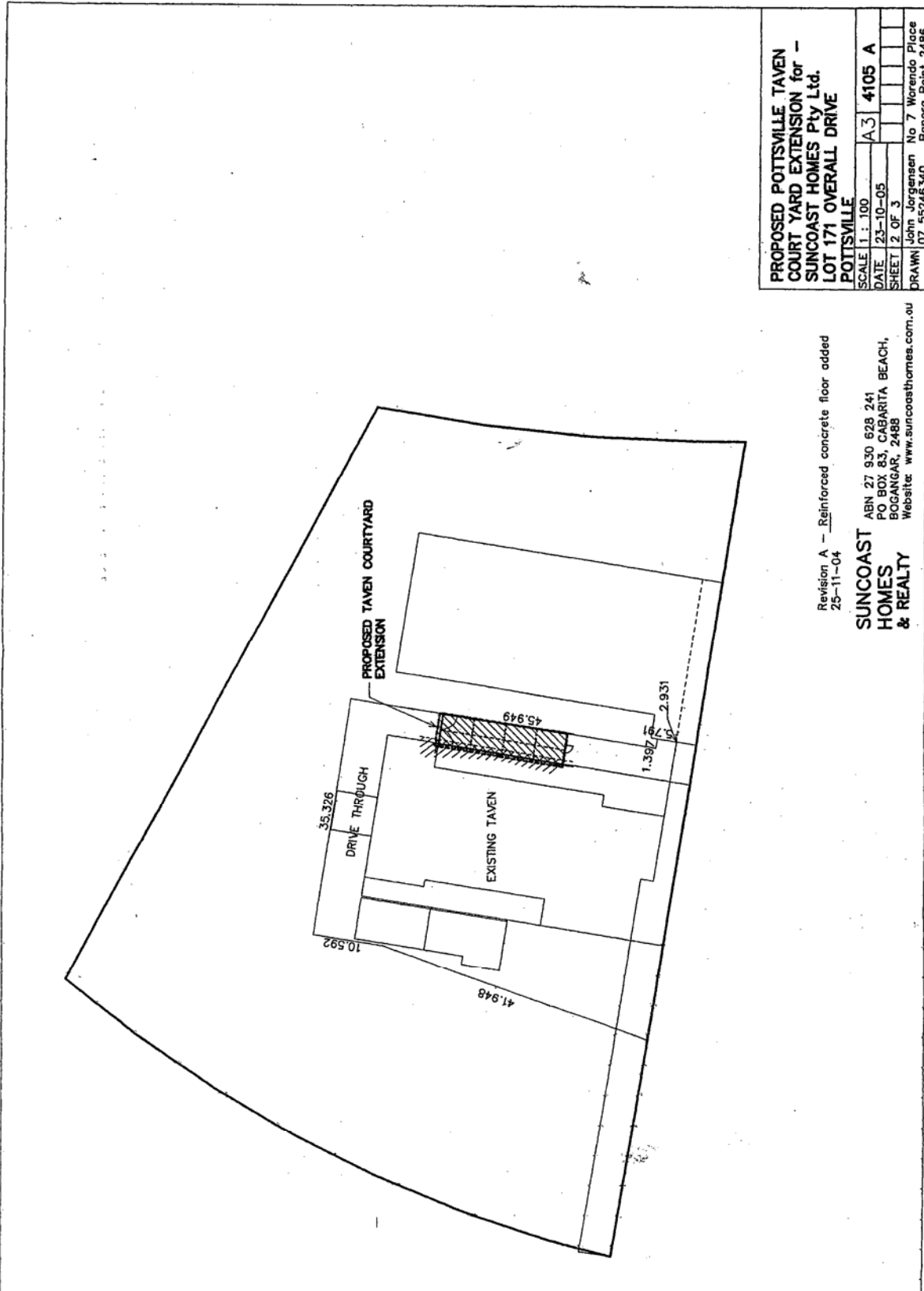
SCALE	1 : 100	A3	4105 A
DATE	24-10-05		
SHEET	3 OF 3		
DRAWN	John Jorgensen	No 7 Waranda Place	Banara Point 2486
	07 55246340		

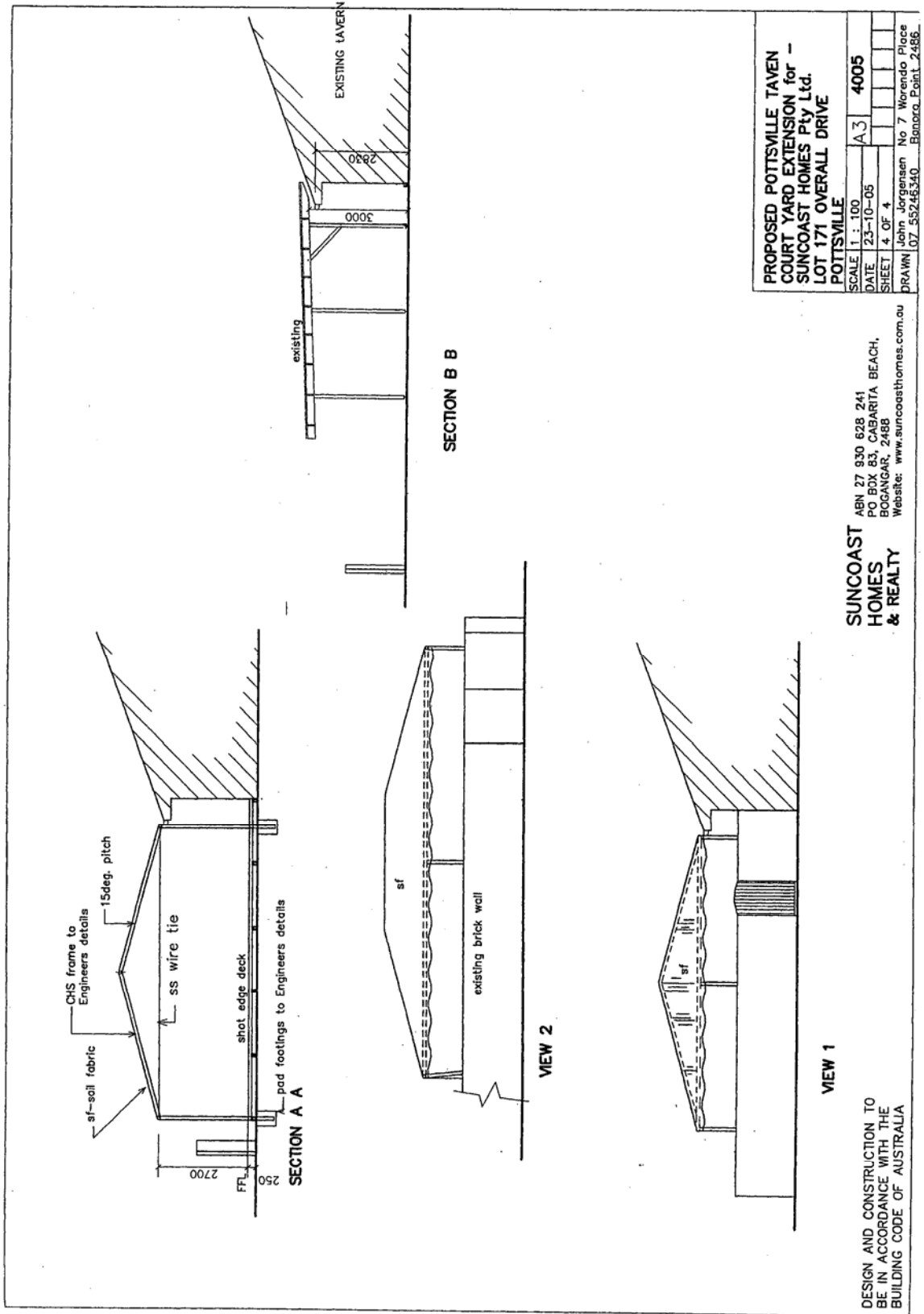
Revision A - R.C. Floor added 25-11-04

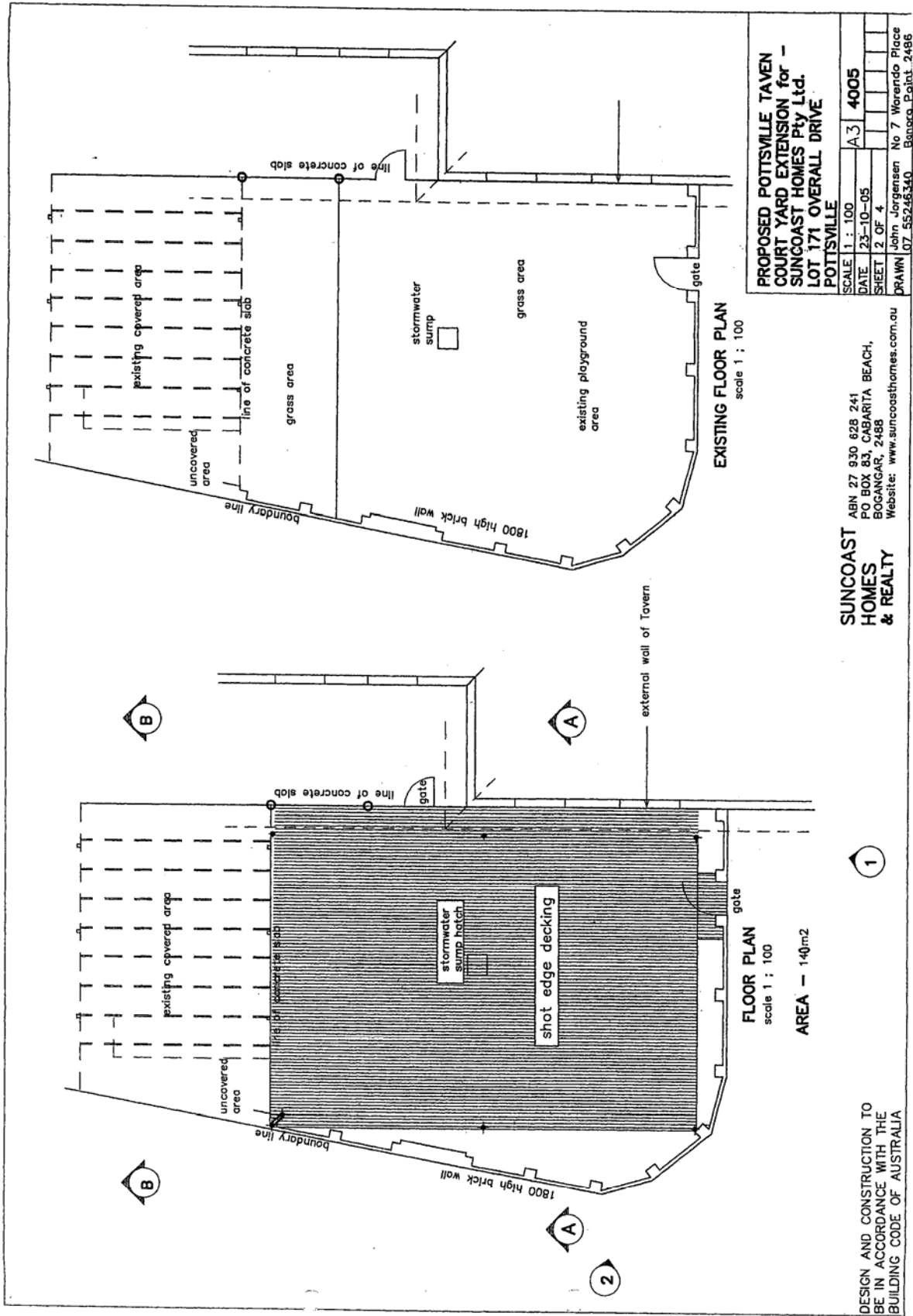
**SUNCOAST HOMES & REALTY**  
 ABN 27 930 628 241  
 PO BOX 83, CABARITA BEACH,  
 BOGANGAR, 2488  
 Website: www.suncoasthomes.com.au

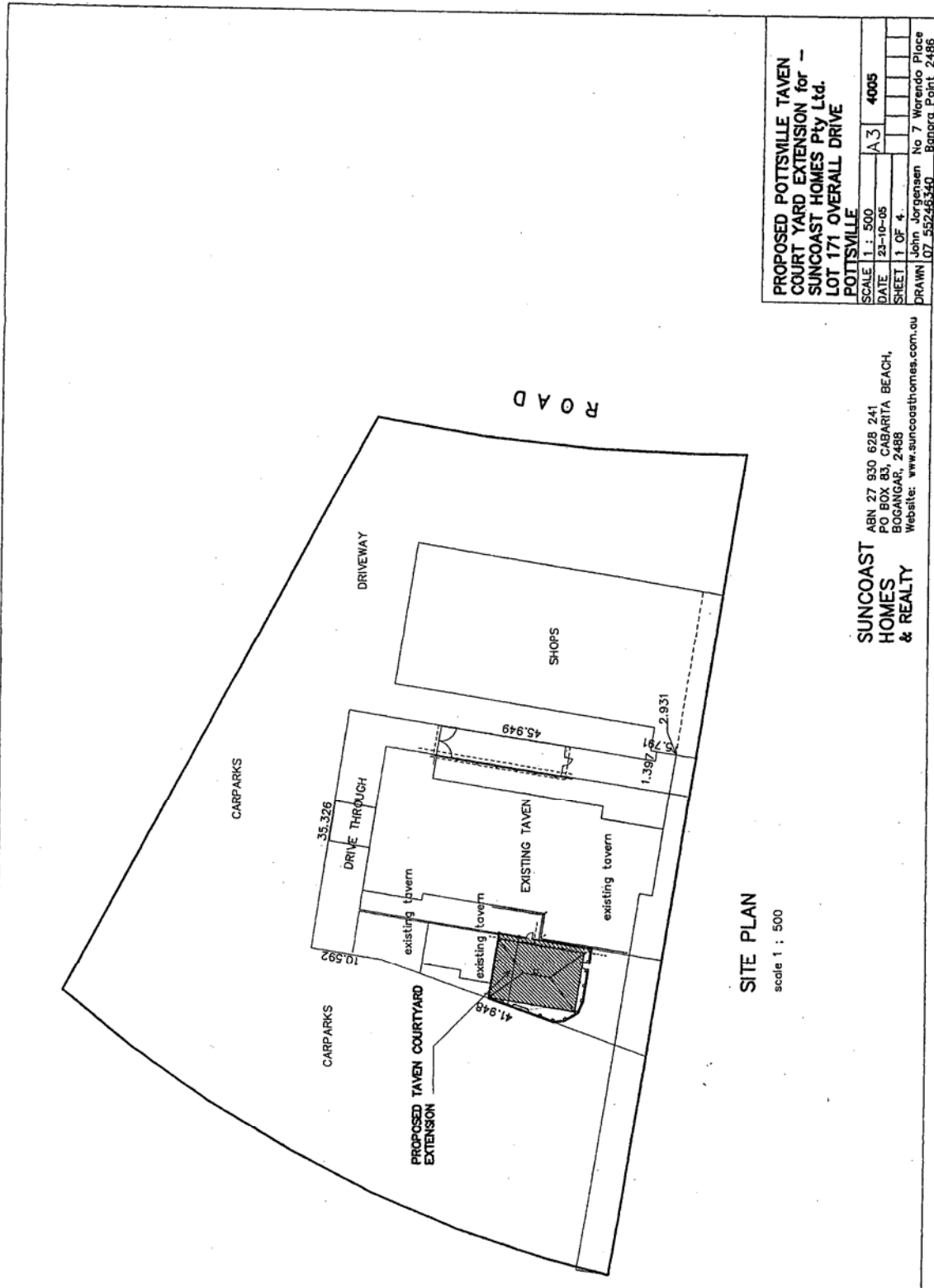
DESIGN AND CONSTRUCTION TO BE IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA











PROPOSED POTTSVILLE TAVERN  
 COURT YARD EXTENSION for -  
 SUNCOAST HOMES Pty Ltd.  
 LOT 171 OVERALL DRIVE  
 POTTSVILLE

SCALE	1 : 500	A3	4005
DATE	23-10-05		
SHEET	1 OF 4		
DRAWN	John Jorgensen	No 7 Warrendo Place	
	07 55245340	Banora Point 2486	

SUNCOAST  
 HOMES  
 & REALTY

ABN 27 930 628 241  
 PO BOX 83, CABARITA BEACH,  
 BOGANGAR, 2488  
 Website: [www.suncoasthomes.com.au](http://www.suncoasthomes.com.au)

SITE PLAN  
 scale 1 : 500

**OVERALL DRIVE**

**ROYAL DRIVE**

**SHOPS**

**TAVERN**

**DOUBLE GARAGE**

**DRIVE THRU BOTTLE SHOP**

**BIKES STORAGE**

**BIKE PARKING**

**BIKE PARKING**

**LOADING BAY**

**TOILET BLOCK**

**PAPER GARDEN**

1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200

**TOTAL PARKING = 110 + DOUBLE GARAGE**

Scale: 0 to 20 (metres) 1:250 (metres)

**CRG**  
CARBONLIFE VERMOREL GROUP  
TRAFFIC AND ENVIRONMENTAL CONSULTANTS

**PROPOSED CAR PARKING LAYOUT**

DATE: 14/10/06  
DRAWN BY: C. PERRY  
CHECKED BY: J. MORGAN  
DATE: 6/11/06  
DRAWN BY: J. MORGAN  
CHECKED BY: C. PERRY  
DATE: 6/11/06

REV	DATE	DESCRIPTION
A	Original Issue	

**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 (TLEP)

The subject site is zoned 3(b) General Business. The applicable primary zone objective includes the provision of business locations within residential areas, and to ensure the scale and type of development is compatible with the character and amenity of the surrounding residential areas.

Clause 15 of the TLEP requires Council to be satisfied that the subject land has the benefit of essential services prior to issuing consent. All essential services are available to the site.

Clause 16 of the TLEP requires development to be carried out in accordance with the height limitation plan. The proposed development is consistent with the allowable height limit of 2 storeys.

Clause 35 of the TLEP requires an acid sulfate soils management plan be assessed where the proposed development is likely to interfere with acid sulfate soils (ASS). The subject site is identified as being class three (3) land. Council's Environmental Health Officer has reviewed the proposed development and did not raise an issue regarding the ASS.

North Coast Regional Environmental Plan 1988 (NCREP)

**Clause 32B - coastal lands**

The land is identified as being affected by the Coastal Policy. The proposal is not inconsistent with the Coastline Management Manual or the North Coast Design Guidelines. The site is not affected by the Coastal Erosion Zones, is unlikely to be affected by the coastal processes, will not overshadow foreshore reserves and does not restrict public access to the coast. Therefore the proposed development is not in conflict with the policies and strategies contained within the coastal policy.

State Environmental Planning Policies (SEPPs)

**SEPP No. 71 – Coastal Protection**

Part of the site is mapped as being within a sensitive coastal location. The Department of Planning advised Council could determine this application after consideration of the matters outlined in SEPP No. 71.

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

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

There are no draft EPIs which apply to the proposal.

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

DCP No. 2 – Site Access and Parking Code

As discussed previously consent was granted for the construction of a tavern and nine (9) shops on 21 January 1991. The applicant was required to provide 103 on-site car spaces as a condition of development consent. Council's Development Engineer has undertaken an inspection of the site and advised 101 on-site car spaces are provided.

The current proposal results in 136 on-site car spaces being required as per DCP No. 2 which is detailed below:

<b>Standard</b>	<b>Proposed</b>
Development Consent No. 90/436 = 103 on-site car spaces	-
<i>Hotel</i> (238m <sup>2</sup> additional floor area)  1/3.5m <sup>2</sup> licensed floor area = 68 car spaces  68 x 0.80 ESD reduction = 54.4 car spaces  54.4 x 0.60 as per table 4.8  = 32.64 spaces	110 spaces
Total: 135.64 spaces	Total: 110 spaces

The applicant submitted a traffic assessment including a car parking survey, which found at peak times approximately 50% of all car parking spaces are utilised, therefore there is an oversupply of car parking provided on-site. The assessment concluded the proposed extensions are considered to be relatively minor in nature and will not significantly increase the parking generation.

Several inspections of the site were undertaken by the assessing officer, during which a considerable number of on-site car spaces were vacant.

It is also noted the additional floor area is likely to be used by existing patrons.

Since exhibition, the applicant has submitted an amended car parking plan, resulting in a reconfiguration of the car park to accommodate 110 on-site car spaces. Council's Development Engineer has reviewed the proposal and advised the on-site car parking is consistent with DCP No. 2.

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

Clause 92(a) Government Coastal Policy

The land is identified under the Coastal Policy. The site is not affected by the Coastal Erosion Zones, is unlikely to be affected by the coastal processes, will not overshadow foreshore reserves and does not restrict public access to the coast. Therefore the proposed development is not in conflict with the policies and strategies contained within the coastal policy.

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

Traffic

Council's Transport and Traffic Engineer has reviewed the proposal and raised no issue with traffic associated with the current proposal.

Noise

Council's Environmental Health officer has reviewed the proposal and raised no objection to the extensions. The officer recommended a condition requiring activities within the beer garden areas cease at 10pm.

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

It is considered the site is suitable for the proposed development given the car parking assessment and minimal anticipated environmental impacts.

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

The proposed modification was notified for a period of 14 days. To date five (5) submissions have been received. A summary of the issues raised in the submissions is provided below.



Issue	Comment	Assessment
Car parking Impact	There are already parking problems associated with the tavern. Additions to the tavern will only exacerbate the problem.	This matter has been addressed in the car parking assessment section of the report. The information submitted concluded sufficient on-site car parking is available.  This matter does not warrant refusal of the development application.
	<i>The request not to provide additional car parking may well result in patrons being forced to park in nearby residential streets in particular Royal Drive. This will further impact on the peace and quiet of residents already being affected.</i>	This matter has been addressed in the car parking assessment section of the report. The information submitted concluded sufficient on-site car parking is available.  This matter does not warrant refusal of the development application.
Car Parking Relaxation	There are 101 car parks on-site. The development consent in 1994 stated a requirement for 103. The owner has been in breach of this condition unless approval has been given for the deletion of two car spaces associated with the drive through bottle shop.	This matter has been addressed in the car parking assessment section of the report.  This matter does not warrant refusal of the development application.
Increased Traffic	The additions to the tavern will result in an increase in traffic and vandalism.	The traffic impact has been addressed in the car parking assessment of this report. The statement regarding increased vandalism is not an appropriate matter for consideration in the assessment of this application.  This matter does not warrant refusal of the development application.
Noise Impact	The change of use and alteration of the children's play area will have an increased noise impact on residents in Royal Drive and Windsor Court. Windsor Court dwellings are approximately 10m from the proposed change of use.	This matter has been addressed in the impacts section of this report. The assessment undertaken by Council's Environmental Health officer raised no concern regarding the use of the children's play area provided a condition of consent is imposed requiring activities within the beer garden areas cease at 10pm. This condition has been recommended in any development consent.  This matter does not warrant refusal of the development application.

Issue	Comment	Assessment
Car Parking Survey	It is considered the sampling taken for the car parking survey should have continued past 6.45pm to ascertain the peak trading hours for the tavern and shops had indeed passed.	Council's Development Engineer has reviewed the proposal and raised no issue regarding the sampling undertaken. The car parking assessment within this report outlines the rationale for supporting the current proposal.  This matter does not warrant refusal of the development application.
	The likely increased population in the new Pottsville estates such as Koala Beach is likely to result in additional patrons visiting the site. Therefore a further reduction to the car parking requirement would be premature.	This matter has been addressed in the car parking assessment section of the report. The information submitted concluded sufficient on-site car parking is available.  This matter does not warrant refusal of the development application.
Suitability of the Site	The community would be better served if the owners were encouraged to relocate their operation to a more acceptable site that would ensure fewer disturbances.	This issue has been noted.  This matter does not warrant refusal of the development application.

**(e) Public interest**

The applicant has provided Council with sufficient information in which to determine the development application. It is considered that the proposed development is not contrary to the wider public's interests, despite the issues raised in the submissions.

**OPTIONS:**

1. The application be approved with conditions.
2. The application be refused with reasons.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

If the applicants are dissatisfied with Council's decision they may choose to appeal in the Land and Environment Court. If the applicant takes this option, Council will incur costs in defending the appeal.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

It is recommended that the proposed development be approved subject to the attached conditions.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

---

THIS  
PAGE  
IS  
BLANK

THIS  
PAGE  
IS  
BLANK

**P4 [PD-PC] Section 96 Application D90/0436.04 for an Amendment to Development Consent D90/436 for the Erection of a Tavern and Nine (9) Shops at Lot 171 DP 629328, No. 28-40 Overall Drive, Pottsville**

**ORIGIN:**

**Development Assessment Unit**

**FILE NO: PF3975/145 Pt6**

**SUMMARY OF REPORT:**

The current development application seeks consent to increase the current trading hours of the tavern from 10am to 10pm to:

- Monday to Thursday and Sunday - 10am to 10pm
- Friday, Saturday and public holidays - 10am to 12 midnight

A petition in favour of the proposal and forty-five (45) individual submissions objecting to the proposal have been received to date.

**RECOMMENDATION:**

**That Section 96 application D90/0436.04 for an amendment to Development Consent D90/0436 for the erection of a tavern and nine (9) shops at Lot 171 DP 629328 No. 28-40 Overall Drive, Pottsville be refused for the following reasons: -**

- 1. In accordance with Section 79C of the Environmental Planning and Assessment Act 1979, the proposed extension of the trading hours is likely to impact upon the amenity of the community.**
- 2. The proposed extension to the trading hours are not consistent with the primary objectives of the 3(b) General Business zone as amending the trading hours would not be compatible with the character and amenity of the surrounding residential areas.**
- 3. The proposed trading hours are not considered to be in the public's interest.**

**REPORT:**

**Applicant:** Realty Pty Ltd and Suncoast Homes  
**Owner:** Beachside Court Pty Limited  
**Location:** Lot 171 DP 629328 No. 28-40 Overall Drive, Pottsville  
**Zoning:** 3(b) General Business  
**Cost:** Nil

**BACKGROUND:**

Council's records indicate that consent was granted for the construction of a tavern and nine (9) shops on 21 January 1991 (Development Consent No. 90/436). The hours of operation of the tavern were restricted to 10am to 10pm to assist in the protection of the existing amenity of the area.

There was a previous application to increase the hours of operation of the tavern to:

- Monday to Saturday - 8am to 11pm
- Sunday – 10am to 10pm
- Christmas Day and Good Friday – 12noon to 10pm

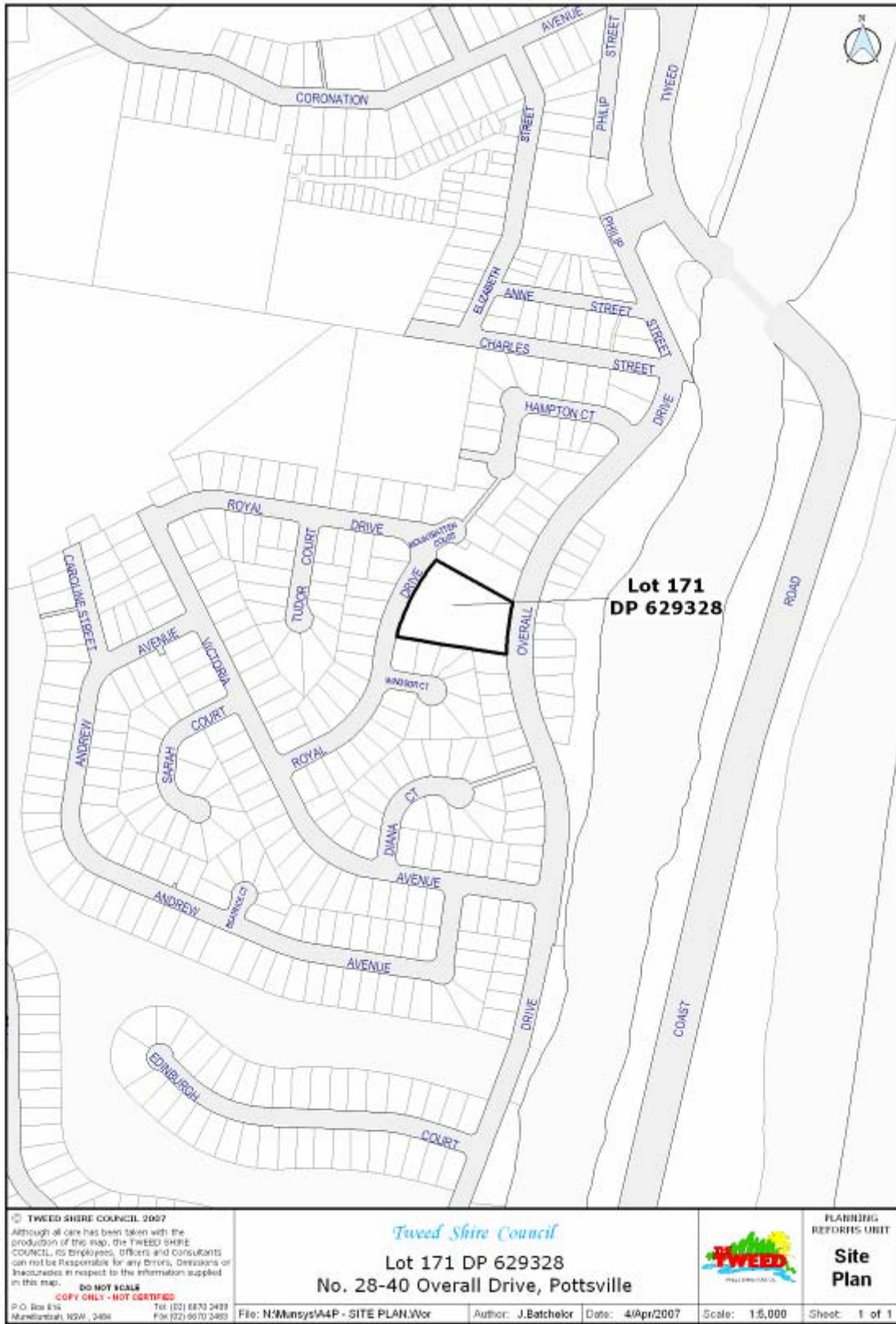
The application was refused by Council on 19 December 2001. The proposal was found to result in an increase in adverse impacts on the surrounding residents.

The current development application seeks consent to increase the current trading hours to:

Monday to Thursday and Sunday - 10am to 10pm  
Friday, Saturday and public holidays - 10am to 12 midnight

The subject site is situated within an established residential area.

**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 on this map.  <b>DO NOT SCALE</b>                  COPY ONLY - NOT CERTIFIED                  P.O. Box 814                  Murumbidgee NSW, 2486                  Tel: (02) 6670 2489                  Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i>  <b>Lot 171 DP 629328</b>                  No. 28-40 Overall Drive, Pottsville</p>		<p>PLANNING REPORTS UNIT  <b>Site Plan</b></p>
<p>File: N:\Munsys\A4P - SITE PLAN.Wor    Author: J.Batchelor    Date: 4/Apr/2007</p>		<p>Scale: 1:5,000</p>	<p>Sheet: 1 of 1</p>

**CONSIDERATIONS UNDER SECTION 79C AND SECTION 96 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**

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

Tweed Local Environmental Plan 2000 (TLEP)

The subject site is zoned 3(b) General Business. The applicable primary zone objective includes the provision of business locations within residential areas, and to ensure the scale and type of development is compatible with the character and amenity of the surrounding residential areas.

The proposed extension of the hours of operation has the potential to result in an increase in adverse impacts on the amenity of the surrounding residential properties. As such it is not considered to be consistent with the objective of the zone.

North Coast Regional Environmental Plan 1988 (NCREP)

There are no specific clauses of the NCREP, which are applicable to the proposal.

State Environmental Planning Policies (SEPPs)

State Environmental Planning Policy No. 71 – Coastal Protection

The subject site is partly situated within a sensitive coastal location. Clause 8 of the policy details sixteen matters for consideration for land situated within the coastal zone. The application is considered to adequately satisfy the matters for consideration.

**Minimal Environmental Impact**

Section 96(1A) of the EP&A Act 1979 provides that a consent authority may, on application being made by the applicant modify the consent if it is satisfied that the proposed modification is of minimal environmental impact.

As the proposed amendments relate to conditions of consent, the proposal is not considered to result in environmental impacts.

**Substantially the Same Development**

Section 96(1A) of the EP&A Act provides that a consent authority may, on application being made by the applicant modify the consent if it is satisfied that the proposed modification is substantially the same development as the development for which consent was originally sought.



The subject conditions were imposed on the development consent to reinforce the manner in which the development was to be used. By amending condition number 10, the site may be used later than 10pm. This is contrary to the interests of the community as discussed later in this report. The proposal is substantially the same development.

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

There are no draft EPIs which apply to the proposal.

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

There are no DCPs, which apply to the proposal.

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

Clause 92(a) Government Coastal Policy

The land is identified under the Coastal Policy. The site is not affected by the Coastal Erosion Zones, is unlikely to be affected by the coastal processes, will not overshadow foreshore reserves and does not restrict public access to the coast. Therefore the proposed development is not in conflict with the policies and strategies contained within the coastal policy.

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

Noise

Council's Environmental Health Officer has reviewed the proposal and supporting Environmental Noise Impact Assessment. The officer has raised concern regarding the potential for increased community disturbances by noise and activities of patrons leaving the premises at a later time. The Environmental Noise Impact Assessment concluded noise from vehicles in the car park are expected to be 55dB(A). The assessing Environmental Health Officer advised the 13dB(A) difference between background and car park noise has the potential to impact residents.

The officer further advised that the proposed management measures for noise including the construction of a 2.6m high skillion roof noise barrier, are indicative of the potential for car park noise which will affect residents. The Environmental Health Unit has recommended the application not be recommended for approval.

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

The proposed extension of trading hours is not considered to be suitable given the likely increased community disturbances by noise and activities of patrons leaving the premises.

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

The proposed modification was advertised and notified. To date, forty-five (45) submissions opposed to the increase in trading hours and a petition of support with 376 signatures have been received. It is noted there are duplicate signatures of several persons in the petition. A summary of the issues raised in the submissions is provided below.

<b>Issue</b>	<b>Comment</b>	<b>Assessment</b>
Impacts associated with increased trading hours	The increased trading hours will result in further disturbance to the community as a result of increased noise from patrons and associated vehicles.	As discussed in this report, the assessment of the proposed trading hours has found the proposal is likely to result in increased community disturbances by noise and activities of patrons. These reasons for objection have contributed to the recommendation for refusal.
	The increased trading hours will result in increased rowdy behaviour, aggressive language, violent disputes, vandalism and traffic being experienced later in the night.	As discussed in this report, the assessment of the proposed trading hours has found the proposal is likely to result in increased community disturbances by noise and activities of patrons. These reasons for objection have contributed to the recommendation for refusal.
Petition of support	A petition with 376 signatures was submitted indicating support for the extended trading hours.	The petition is acknowledged, however the signatures are primarily from people outside of the vicinity. This petition does not warrant approval of the application.

**(e) Public interest**

It is considered the proposal is not in the interests of the community.

**OPTIONS:**

1. The application be refused with reasons.
2. The application be approved with conditions.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

If the applicants are dissatisfied with Council's decision they may choose to appeal in the NSW Land and Environment Court. If this option is taken by the applicant, the Council will incur costs in defending the appeal.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The proposed extension of trading hours is not suitable given the likely increased community disturbances by noise and activities of patrons leaving the premises.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

---

THIS  
PAGE  
IS  
BLANK

THIS  
PAGE  
IS  
BLANK

**P5 [PD-PC] Section 96 Application DA06/0348.01 for an Amendment to Development Consent DA06/0348 for Construction of a 3 Storey Commercial & Retail Development at Lot 2 DP 573057; Lot 1 DP 657258, No. 11 & 13 Pearl Street, Kingscliff**

**ORIGIN:**

**Development Assessment Unit**

**FILE NO: DA06/0348 Pt2**

**SUMMARY OF REPORT:**

Council is in receipt of an application to amend a development consent that was granted by Council in June 2006 for the construction of a 3 storey commercial and retail development in Pearl Street, Kingscliff. The applicant is seeking to modify the development consent in relation to the use of the upper level roof top for the purposes of a day spa operation (weather permitting).

The day spa operation is proposed to service existing tourist accommodation facilities in the surrounding area. The proposal is to offer massage and body treatments (facials etc) and a tanning salon, weather permitting, operating five days a week between the hours of 8.00am and 6.00pm. The proposal is expected to occupy a total of 182sqm of rooftop area.

One submission was received against the proposed roof top use.

The proposed modifications raises issues in relation to building height, privacy, effluent disposal, waste service and car parking. Accordingly the following report addresses the issues and reasons for recommending refusal of the proposed amendment.

**RECOMMENDATION:**

**That Section 96 Application DA06/0348.01 for an amendment to Development Consent DA06/0348 for construction of a 3 storey commercial and retail development at Lot 2 DP 573057; Lot 1 DP 657258, No. 11 & 13 Pearl Street, Kingscliff be refused for the following reasons: -**

- 1. The proposed modification is not considered to be substantially the same development as originally approved;**
- 2. The proposed roof top activity is an inappropriate use of the land, which has potential building height, privacy and car parking issues; and**
- 3. The proposed modification is not considered to be in the public interest.**

**REPORT:**

**Applicant:** Kingscliff Central Pty Ltd  
**Owner:** Kingscliff Central Pty Ltd  
**Location:** Lot 2 DP 573057 & Lot 1 DP 657258 No. 11 & 13 Pearl Street, Kingscliff  
**Zoning:** 3(b) General Business  
**Cost:** Nil

**BACKGROUND:**

Development Consent was granted in June 2006 for the construction of a 3 storey commercial and retail development in Pearl Street, Kingscliff. The approved (but yet to be constructed) development incorporates: 2 levels of basement car parking; 11 retail/commercial tenancies on the Ground Floor; 2 levels of offices (11 premises on each floor); and a roof terrace. Access to the roof is via stairs or lift.

The proposed modification to Development Consent DA06/0348 relates to the amendment of Condition 1, largely with regard to amended plans incorporating the proposed new use of the roof terrace. The proposal is to establish a small day spa operation to service existing tourist accommodation facilities in the surrounding area. The proposal is to offer massage and body treatments (facials etc) and a tanning salon, weather permitting, operating five days a week between the hours of 8.00am and 6.00pm. The proposal is expected to occupy a total of 182sqm of roof top area.

All materials used for the proposal will be weatherproof and movable, with screens being laid down at the completion of the days trading in an effort to ensure that no permanent structures are proposed over and above the approved height of the building. A small reception area is also proposed, with patrons being offered coffee and cakes from a portable kitchenette facility. Other equipment associated with the proposed roof top use includes massage tables, banana lounges and chairs, all of which are to be stored on the roof or in the basement when not in use.

The application to modify Development Consent DA06/0348 also incorporates a number of other minor amendments, relating to compliance with the Building Code of Australia, detailed structural investigations and review of marketability. Although not clearly stated by the applicant, the additional modifications have been noted as:

**Lower Basement** Amendments include the reconfiguration of bicycle storage areas; provision of an amenities area (M); reduced storage areas; minor change to parking layout; deletion of access area to sewer main; and an additional stairwell.

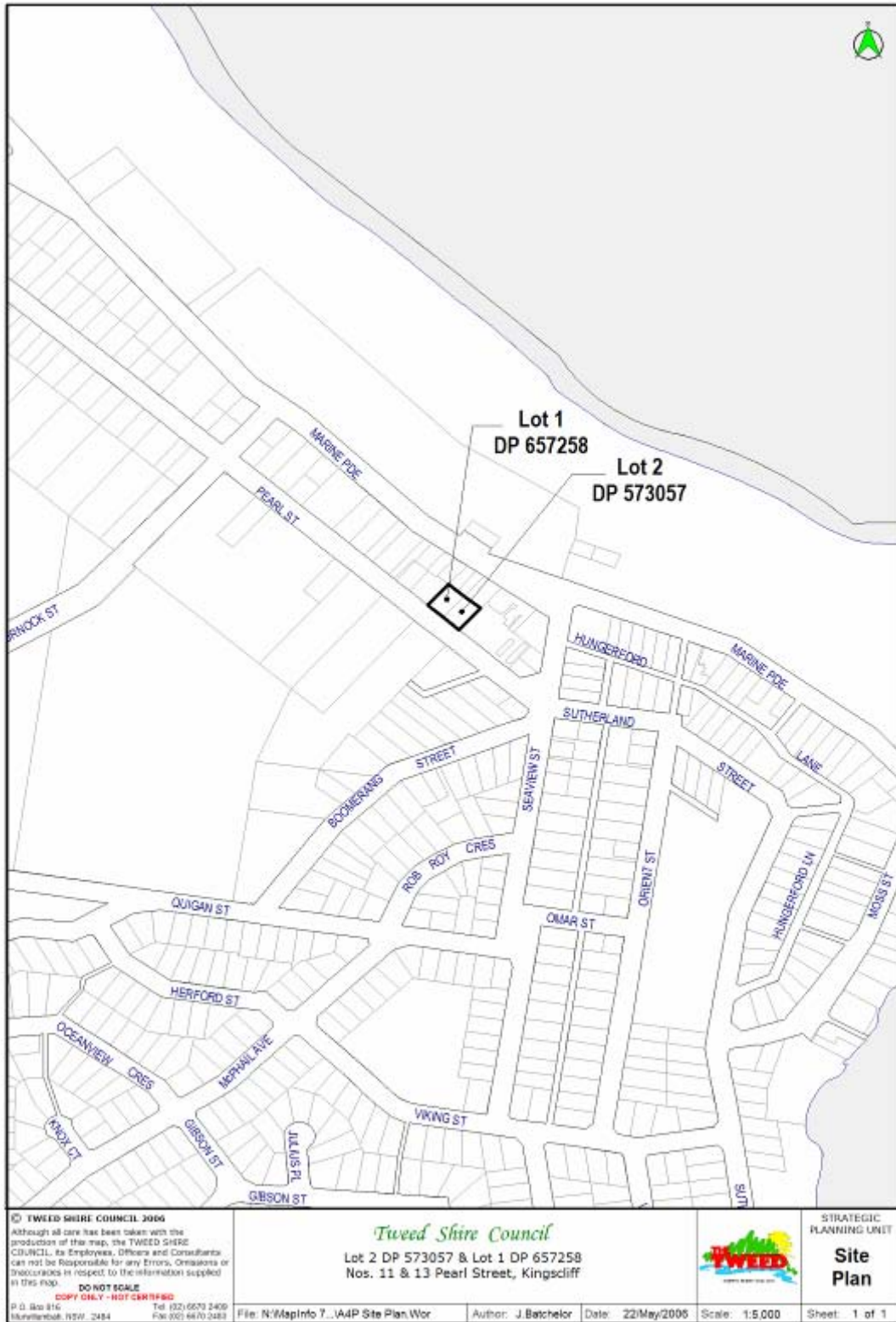
**Basement Level** Amendments include the reconfiguration of bicycle storage areas; realignment of the vehicular access ramp; provision of an amenities area (F); removal of all but a minor component of storage area; deletion of loading area; and an additional stairwell.

Ground Floor	Amended amenities layout; additional stairwell; and deletion of access to sewer main. The plan also indicates a reduced floor area layout, however, comparison to the approved plan cannot determine how this was achieved as insufficient dimensions are provided.
First Floor	Additional stairwell; amended amenities layout / location; amended layout and floor area of each tenancy.
Second Floor	Additional stairwell; amended amenities layout / location; amended layout and floor area of each tenancy.
Roof Terrace	Additional stairwell; provision of a cooling tower and enclosure.

The proposed modifications originally included the formalisation of an opening within the wall of each basement level, in order to provide access to the adjoining parcel fronting Marine Parade (Lot 1 DP572057). Upon advice from Council that this element of the application would not be supported, the applicant amended the proposed modifications (excluding the car parking crossover element from the proposal) to only include the amendments noted above.

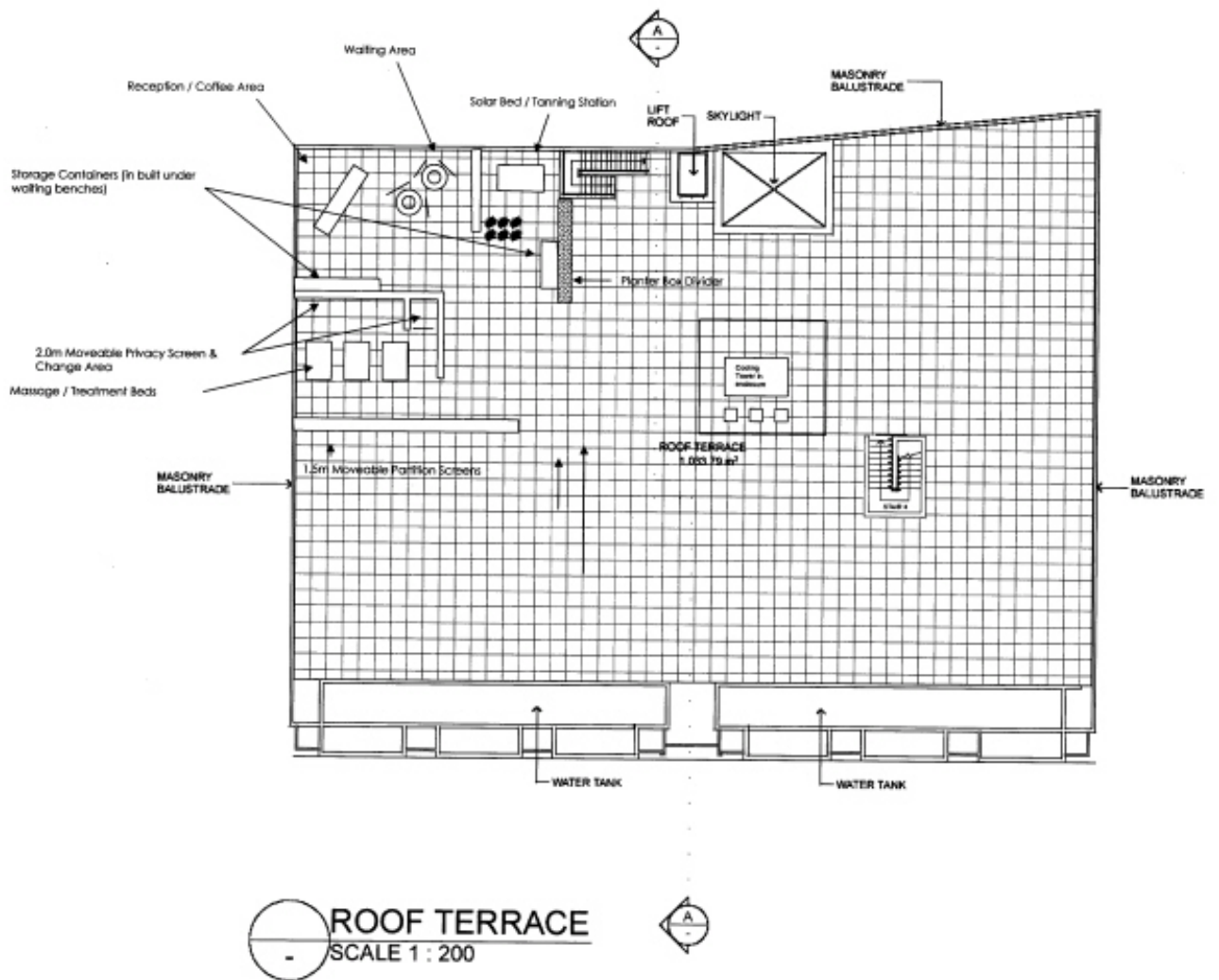
Although there are no apparent changes to the exterior or overall height of the building, the proposed modification to the conditions of consent is not considered to be acceptable, as discussed in detail below.

**SITE DIAGRAM:**





**PROPOSED ROOF PLAN:**



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

**Substantially the Same Development**

Section 96 (1A) of the Act states that in order to grant consent, the consent authority must consider the following:

- '(a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:*
  - (i) the regulations, if the regulations so require and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations.'*

The applicant has addressed the issue by way of calling upon test court cases whereby it was determined that 'threshold requirements' should be applied in order to establish that a proposed modification is 'substantially the same' as that originally approved. The applicant has noted the following:

*'Following on from the tests in these cases and based on numerous Land and Environment Court decisions, it is apparent that the following key principles apply:*

- The comparison is undertaken at a general level rather than between detail;*
- The question is whether the development as a whole is essentially or materially similar to the original development;*
- If the impacts of the modifications are minor, the modified development is more likely to be essentially or materially the same development;*
- It is relevant to consider the magnitude of any physical changes to the development and any changes to the use of the land;*
- The extent of any impacts arising from the modifications are matters for consideration on the merits of the application;*
- The development as modified must be essentially the same or have the same essence as the approved development and the variations must not radically transform or alter the approved development.*

*Having regard to the proposed amendments, and the key principles discussed above, it is submitted that the threshold question is satisfied on the basis that:*

- The Development remains as a Commercial Retail Building;*

- *The bulk, scale and height of the development remains essentially the same as that approved;*
- *The proposed amendments do not raise any significant environmental issues which have not already been investigated with the previous assessment of the proposal;*
- *The proposed roof top use will not materially change the concept or alter the visual appearance of the development when viewed from adjoining streets or the public domain; and*
- *The building will remain essentially the same as originally approved.*

*It follows from the above that the proposal comes within the scope of Section 96 (1a) of the Act and is substantially the same development.'*

Comment:

As detailed below, the proposed modifications are considered to impact upon the surrounding environment with regard to building height limits, privacy / overlooking issues and carparking matters.

In terms of being the same development as the development for which the consent was originally granted, the proposal does not meet this criteria. If the proposed activity had been included in the original development, it is unlikely that Council would have supported such a roof top use. Therefore, it is not considered that the proposed modifications are the same as that originally approved under Development Consent DA06/0348.

With regard notification, the proposed modifications were notified to all immediately surrounding properties for a period of two weeks. Although Council's Development Control Plan No. 42 – Public Notification Policy did not require any notification in this instance, it was considered appropriate given the proposed new use of the roof top area. As noted later in this report, 1 submission was received against the proposal.

Having considered all of the provisions of Section 96(1A) as noted above, the proposed modification is not considered to be substantially the same development and is not supported.

## **Likely Environmental Impact**

### Height Limit

The proposed rooftop activity does not make reference to any shade structures for the clients using the day spa facilities. Given the climate of the locality, it is considered that some sort of shade provisions is a necessity, especially in the summer months. If the applicant were to erect a shade structure (even temporary structures), this would constitute a fourth storey within an area having a three-storey height limit, under the provisions of the Tweed LEP 2000.

Development Control Plan No. 43 – Kingscliff nominates a preferred building height of two storeys in the locality of the subject site, with one and three storey developments permitted. A fourth story would not comply with the provisions of DCP 43. In effect, if

Council were to approve such a development, it could be interpreted that we were supporting the use of such shade structures in this instance, and therefore a fourth storey. To do so may set an undesirable precedent for the Kingscliff locality, with respect to the current 3 storey height limit. As such, the proposed roof top use of the subject building as a day spa operation is not supported.

### Car Parking

Under the provisions of Council's Development Control Plan No. 2 – Site Access and Parking, the approved development (DA06/0348) was required to provide a minimum of 49 car spaces. The applicant has noted that a total of **58** car spaces and one shared loading bay is proposed within the basement car parks. It is also noted that a separate development application (DA06/1170) granted approval for the change of use of one of the ground floor commercial premises to a doctor's surgery (Tenancy 5) in March 2007. The change of use application resulted in a total of 51 spaces being required, leaving a credit of 7 spaces allocated to the site.

The proposed roof top use nominates an area of 182sqm (approximately 13m x 14m). When assessed against the requirements of DCP 2, the proposal increases the total car parking requirements to 52.3 (say **53** spaces). This leaves a total of 5 credit spaces.

Whilst the proposal does meet the provisions of DCP 2, concern is raised with regard to the potential increased use of the roof terrace space. Given the portability of the furniture and partition screens associated with the proposed day spa operation, and the inability of Council to police the area being used (apart from a condition of consent), there is potential for the proponent to have uncontrolled use of additional floor area for the proposed activity. The proposed roof top plan nominates an area of 1033.79sqm. Even if half of the rooftop area is used (say 530sqm), the total car parking requirements increases to **63** spaces. This scenario exhausts all credit spaces and would require the applicant to pay contributions for 5 additional spaces (@ \$20,000 per space). As such, the proposed roof top use of the subject building as a day spa operation is not supported.

Council's Development Assessment Engineer has assessed the proposed development and raised concern with the...*'deletion of the loading bay area and placement of a structural column in the area, restricting any future ability for service vehicles to access the area without impacting upon the flow of other vehicles'*. As such, the proposed development cannot be supported in its current state, in terms of loading bay / carparking arrangement.

### Privacy/Overlooking

Although it is acknowledged that the proposed roof top use is unlikely to be visible from the street, it is noted that the day spa operation would be visible from Kingscliff Hill and possibly from some of the existing 3<sup>rd</sup> storey units in the adjoining property to the south. Given the large open area of the roof area, there are potential issues in relation to privacy impact and overlooking of surrounding properties as a direct result of the proposed use of the roof terrace. As such, the proposed use of this area for the purposes of a day spa operation is not supported.

### Effluent Disposal

Council's Development Assessment Engineer has assessed the proposed development and raised concern with the realignment of the sewer main traversing the site, with the proposal failing to...*'provide an access chamber at any point in change of direction or demonstrate the main can be integrated into the proposed development'*. As such, the proposed development cannot be supported in its current state, in terms of effluent disposal.

### Waste (Garbage) Service

Council's Development Assessment Engineer has assessed the proposed development and raised concern with amendments made to the layout of the storage areas within the basement. The amendments have raised concern...*'for the ability to store waste bins and the proposed tractor which had been identified to tow bins to the street level for collection'*. As such, the proposed development cannot be supported in its current state, in terms of garbage disposal.

### Food Preparation

Council's Environment & Health Unit has assessed the proposed development in terms of food preparation, with no objections. The proposal includes a portable espresso cart / kitchen for sale of coffee and cakes. The unit also includes a hand basin and appears to have a dishwasher. It was noted that...*'the food preparation (pre-prepared cakes and biscuits etc) do not present any great risk of contamination, provided food is stored correctly'*.

### Skin Penetration

Concern was initially raised by Council's Environment & Health Unit with regard to whether the proposed development included skin penetration procedures at the day spa. The applicant has since advised that the proposed development did not incorporate any form of body piercing. No further concerns have been raised in this regard.

## **Consideration of Submissions**

The proposed modifications were notified to surrounding properties for a period of two weeks, during which time one (1) submission was received.

It appears that the author of the objection has fears that the proposed roof top use will be some form of "massage parlour" rather than day spa and tanning salon as stated throughout the development application, which will impact and compromise their...*'privacy and freedom and ability to enjoy some degree of peace and dignity'*.

### Comment

It is difficult to determine the level of impact that such a use may have on nearby existing or future developments. Although the proposed roof top activity incorporates the use of screening to minimise any potential issues in this regard, the issue of privacy and overlooking is of concern and contributes to the proposed modification being considered as an inappropriate use of the land.

**Public interest**

Given the issues raised by the proposed roof top activity in relation to environmental impact, it is not considered to be in the public interest to recommend approval of the proposed modification to Development Consent DA06/0348.

**OPTIONS:**

1. To refuse the application in accordance with the recommended reasons.
2. To approve the application with conditions.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

The applicant has a right of appeal if dissatisfied with the determination.

**POLICY IMPLICATIONS:**

The proposed variation to Council's standards may lead to future policy implications.

**CONCLUSION:**

The proposed modification to amend Development Consent DA04/0261 is not considered to be substantially the same development as originally approved. The proposed roof top activity is considered to be an inappropriate use of the site and is not considered to be in the public interest. Therefore, the proposed amendment to Condition 1 should not be supported and is subsequently recommended for refusal.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

---

**P6 [PD-PC] Development Application DA06/1275 for Manufacturing Sheds, Depot, Office and Storage at Lot 201 DP 1002166, Pottsville Road, Sleepy Hollow**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA06/1275 Pt1**

**SUMMARY OF REPORT:**

Council is in receipt of a Development Application for utilisation of the subject site and its existing buildings for the purposes of manufacturing sheds, depot, office and storage.

The business, which specialises in the design and fabrication of sugar cane harvesting and transportation bins and cattle feed mixing equipment, is best defined as "light industry" and "depot" in accordance with Tweed LEP 2000. To enable "light industry" to be permissible the provisions of Clause 8(2) of Tweed LEP 2000 must be satisfied.

The proposed development has issues regarding permissibility, contamination, and suitability for the site given the rural character of the area.

The proposed development attracted thirteen individual objections (including one from the Environmental Defenders Office). The objections were focused on the suitability of the site given its rural character and its impact given the proximity to other dwellings.

Having regard to the objections received and an assessment against Clause 8(2) of the Tweed LEP 2000 the proposed business is not considered suitable for the location and therefore the proposed development is recommended for refusal.

**RECOMMENDATION:**

**That Development Application DA06/1275 for a manufacturing sheds, depot, office and storage at Lot 201 DP 1002166, Pottsville Road Sleepy Hollow be refused for the following reasons: -**

- 1. Pursuant to Section 5 Objects of the Environmental Planning & Assessment Act 1979 (as amended), the proposed development can not be determined to satisfy sub section (a)(ii), the orderly and economic use and development of the land.**

**It is Council's view that the proposal has the ability to impact upon external properties; accordingly the proposal is not identified as satisfying the Objects of the Environmental Planning & Assessment Act 1979.**

2. In accordance with Section 79C(1)(a)(i) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be compliant with Tweed LEP 2000.

It is Council's view that the proposed development does not satisfy the provisions contained within Clause 8(2) of the Tweed LEP 2000.

3. Pursuant to Section 79C (1) (c) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed site is not considered suitable for the proposed development.

It is Council's view that use of rural land for the purposes of a light industry development is considered unacceptable for the site.

4. In accordance with Section 79C (1) (e) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be in the public's interest.

It is Council's view that it is in the broader general public interest to enforce the standards contained within the Tweed LEP 2000 specifically as it relates to the objectives of the 1(a) rural zone.



**REPORT:**

**Applicant:** Mr J McLean and Ms A McLean  
**Owner:** Roads & Traffic Authority of NSW  
**Location:** Lot 201 DP 1002166, Pottsville Road, Sleepy Hollow  
**Zoning:** 1(a) Rural  
**Cost:** \$40,000

**BACKGROUND:**

The Subject Site

The subject land is described as Lot 201 DP 1002166 Pottsville–Mooball Road, Sleepy Hollow and has a total area of 2.821 hectares.

The land “straddles” Pottsville–Mooball Road, with a large triangular shaped parcel of land of approximately 2.811 hectares occurring on the western side of Pottsville-Mooball Road and a small irregular shaped parcel of approximately 100m<sup>2</sup> located on the eastern side of Pottsville-Mooball Road

The development would occur wholly on the larger parcel of land on the western side of Pottsville-Mooball Road.

The land has frontage to Pottsville-Mooball Road of approximately 390m and the Pacific Highway of approximately 362m. With vehicular access from Pottsville Mooball Road only.

Current improvements include two (2) galvanized iron sheds an attached cavity brick office building and associated amenities, located on a large fill pad area. Vehicular access to the site exists from Pottsville-Mooball Road. A car parking area exists to the east of the existing sheds. The site is fenced. Power and reticulated water are available to the site.

The site is located in an area generally characterised as rural, although it is immediately adjoined by the Pacific Highway to the west and Pottsville-Mooball Road to the east.

Adjoining land to the south is vacant rural land currently utilised for grazing.

There are eight dwelling houses (and/or rural workers dwellings) within a 300m radius of the subject site.

The Proposed Development

Council is in receipt of a Development Application for utilisation of the subject site and its existing buildings for the purposes of manufacturing sheds, depot, office and storage. The applicant has indicated that the proposed use would replace a business that previously operated within Byron Shire.

The development has two main components:

1. The manufacturing of agricultural equipment business specialises in the design and fabrication of sugar cane harvesting and transportation bins and cattle feed mixing equipment (defined as “light industry” and is a Clause 8(2) matter under Tweed LEP 2000);
2. The depot component would provide secure storage of plant and machinery, including earthmoving, construction and agricultural equipment. Maintenance of this equipment would also be carried out (defined as “depot” and is permissible in the rural zone).

The proposed development is staged with Stage 1 utilising the existing buildings (with minor alterations) and Stage 2 involving further upgrades of site facilities.

It is acknowledged that such use would involve electrical machinery that can constitute a noise source for adjoining residences.

#### Site History

The site is zoned rural 1(a) and has a known development history as follows:

- On 31 May 1982 Council approved T4/1762 to enable use of the site for the establishment of a truck depot and vehicle maintenance area. Such a use (depot) is a permissible land use in the 1(a) zone;
- In 1999 the ABI Group leased the land from the RTA for the purpose of a roadwork’s construction depot to facilitate construction of the Pacific Highway;

The current applicant is now occupying the site to store all the equipment associated with the business. However, following noise complaints Council Officers inspected the premises and discovered that manufacturing works on a cane bin had commenced prior to the determination of this Development Application. Subsequently a \$600 Penalty Infringement Notice (PIN) was issued on 26 March 2007, with the applicant advised that work is to cease immediately.

Should the application be refused in accordance with the recommendation Council would need to pursue the validity of use of the site for storage given that the applicant has occupied the site.

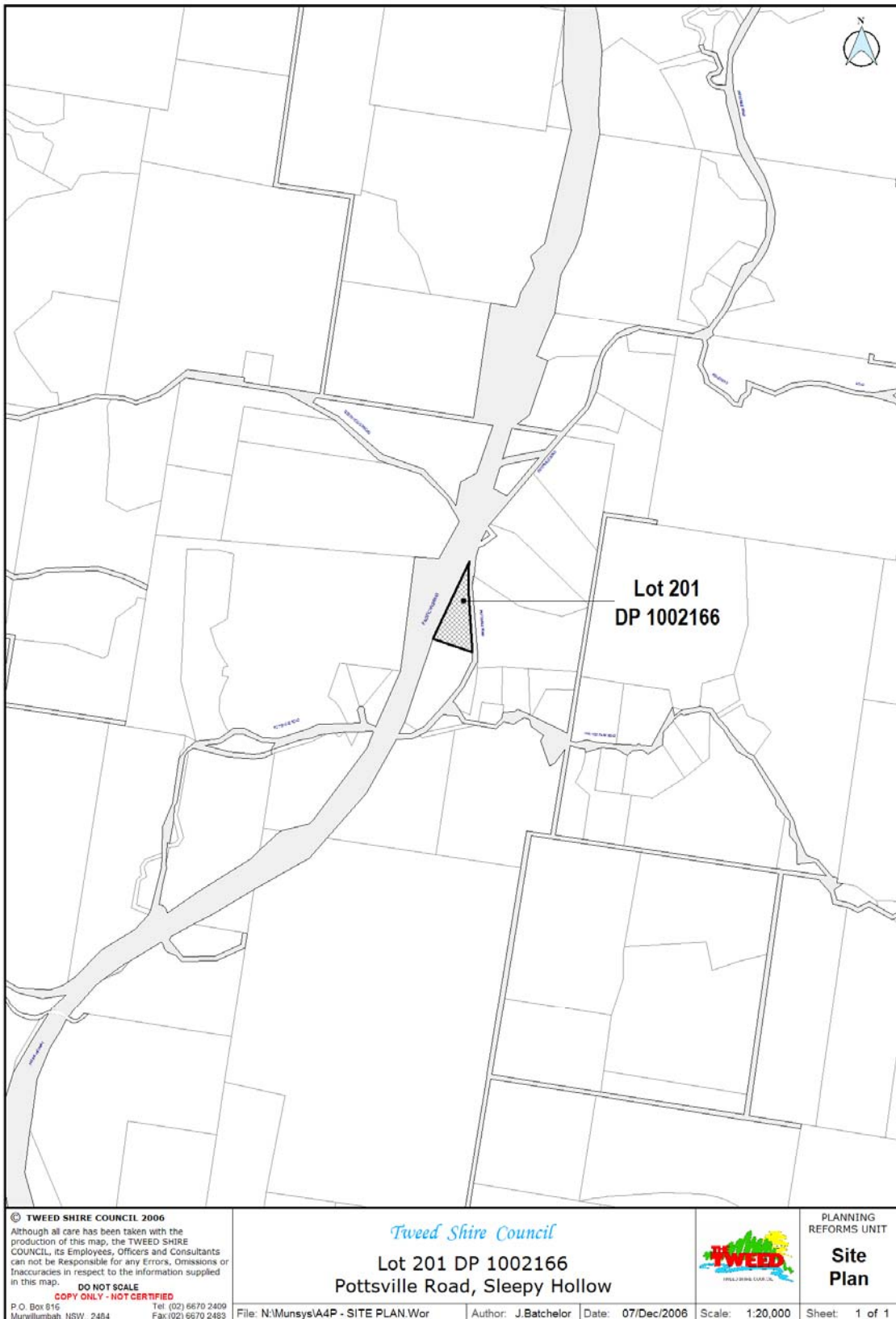
#### Public Submissions

The proposed development attracted thirteen individual objections following exhibition of the application. The objections were focused on the suitability of the site given its rural character and its proximity to other dwellings.

Conclusion

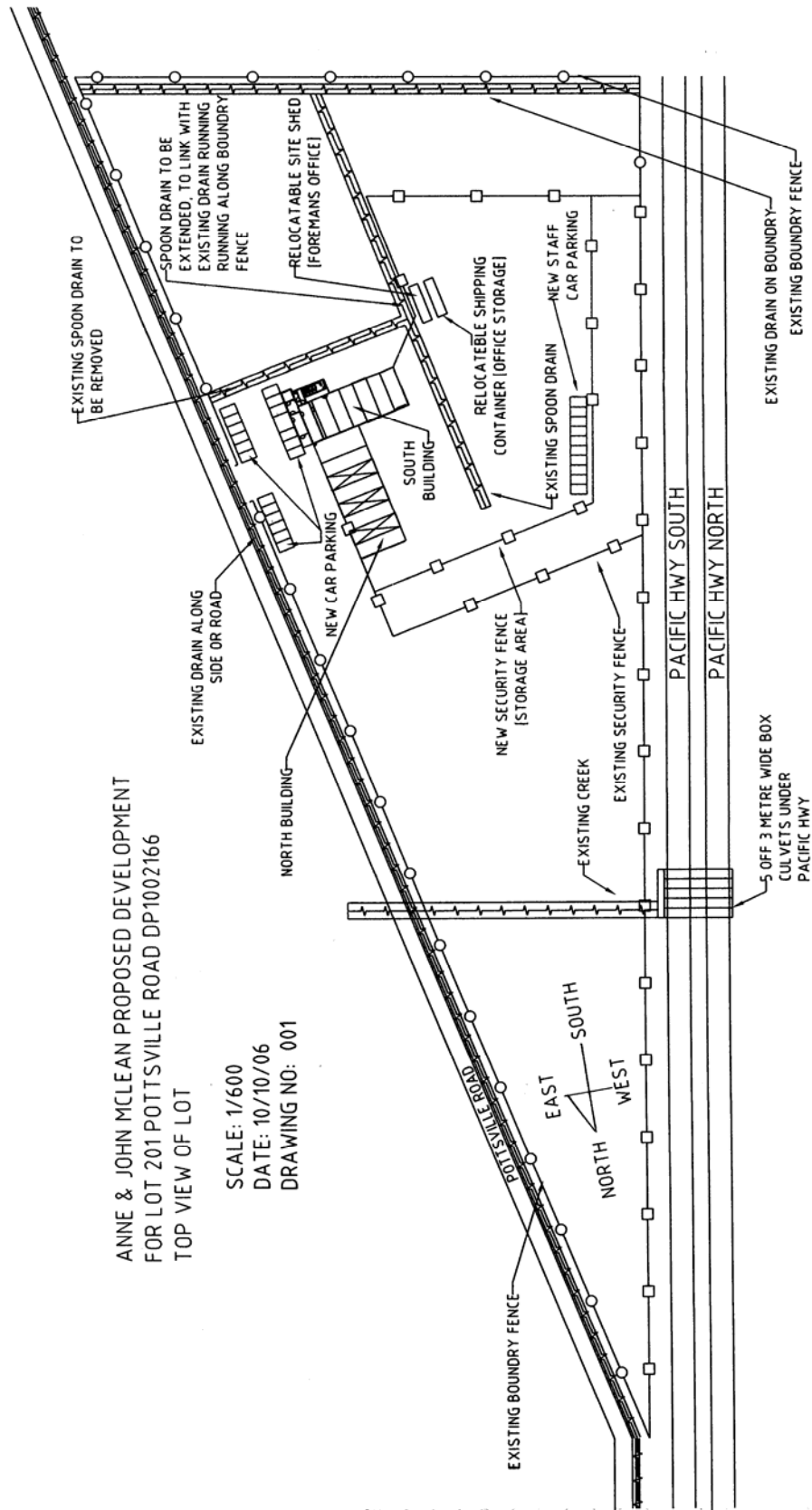
Having regard to the site's characteristics, the site history, the objections received following notification and an assessment against Clause 8(2) of the Tweed LEP 2000 the proposed business is not considered suitable for the location and therefore the proposed development is recommended for refusal.

**SITE DIAGRAM:**



**DEVELOPMENT PLAN:**

1/4



ANNE & JOHN MCLEAN PROPOSED DEVELOPMENT  
 FOR LOT 201 POTTSSVILLE ROAD DP1002166  
 TOP VIEW OF LOT  
 SCALE: 1/600  
 DATE: 10/10/06  
 DRAWING NO: 001

**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 8 & 11 of the Tweed LEP 2000 detail the permissibility of developments.

The land is zoned Rural 1(a) under the provisions of the Clause 11 of Tweed LEP 2000. The objectives of the Rural 1(a) zone are as follows:

Primary Objectives

- *To enable the ecologically sustainable development of land that is suitable primarily for agricultural and natural resource utilization purposes and associated development.*
- *To protect rural character and amenity.*

Secondary Objectives

- *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 breaks between settlements to give a physical and community identity to each settlement.*

For the purposes of the Tweed LEP 2000, the proposed storage and maintenance of machinery and equipment would be defined as a “depot”. A depot is permissible with consent in the Rural 1(a) zone.

The manufacturing of agricultural equipment is best defined as “light industry” and is a Clause 8(2) matter under Tweed LEP 2000.

Clause 8(2) states that:

- (2) *The consent authority may grant consent to development specified in Item 3 of the Table to clause 11 only if the applicant demonstrates to the satisfaction of the consent authority that:*

(a) *the development is necessary for any **one** of the following reasons:*

- (i) *it needs to be in the locality in which it is proposed to be carried out due to the nature, function or service catchment of the development,*
- (ii) *it meets an identified urgent community need,*

- (iii) *it comprises a major employment generator, **and***
- (b) *there is no other appropriate site on which the development is permitted with consent development (other than as advertised development) in reasonable proximity, **and***
- (c) *the development will be generally consistent with the scale and character of existing and future lawful development in the immediate area, **and***
- (d) *the development would be consistent with the aims of this plan and at least one of the objectives of the zone within which it is proposed to be located.*

The applicant has addressed Clause 8(2) as follows:

Clause 8 (2)(a)

*The proposed agricultural equipment manufacturing business satisfies sub-clause (i) for the following reasons:*

1. *The use is part of a diversified small business, which also includes a “depot” for the storage and maintenance of plant, machinery and equipment. The “depot” is permissible with consent in the 1(a) zone and is also proposed as part of this application.*

*The nature and function of the business is such that the two (2) separate land uses are intrinsically linked due to the reliance on,*

- *The efficient and effective use of capital expensive equipment and machinery, which for prohibitive cost reasons, could not be replicated at separate sites for each land use activity.*
- *The shared need for large land areas for storage purposes.*
- *A shared market catchment.*
- *The efficient sharing of multi-skilled labour resources.*

*Further, the diversification of the business allows it to respond to the increasingly vulnerable and cyclical nature of the regional rural and agricultural economy. That is, the viability of the agricultural equipment manufacturing activity is directly related to the ability of the other business activity (depot) to sustain it, its staff and resources during periods of economic “downturn”.*

2. *While cane bins are sold into areas such as Ballina, Kyogle and Grafton Shires, the use principally services a catchment from the Tweed Border to the southern Byron Shire. In this regard, the locality is central to the*

*service catchment and in particular, this site is well located in terms of access to major road transport infrastructure. The business operator has attempted to identify sites in the locality for a number of years, out of need to improve accessibility to all areas of the service catchment and to reduce road transport costs arising from the receipt and delivery of goods, materials and products.*

*The use is also considered to satisfy sub-clause (iii) for the following reasons.*

- 1. The development is a major employment generator in terms of the total employment created through the manufacture and sale of cane transport bins.*

*While the development would itself initially employ six (6) employees (full time equivalent) the development indirectly generates and sustains a large number of the jobs in local and regional sugar industry, which relies exclusively on cane bins for the harvesting and transport of cane. The applicant estimates that its market share of the new cane bin market in Tweed Shire is approximately 50%. It is currently also developing a new specification to handle "green cane" proposed for use in the production of electricity at the Condong Sugar Mill co-generation project. The Tweed Economic Development Corporation advises that the Tweed Sugar Cane Industry directly employs approximately 280 people, including farm labour, transport and milling (Tom Senti, TEDC, 20.10.06, pers comm). At approximately 50% market share, the development contributes significantly to the generation of approximately 140 jobs.*

Council Assessment:

These comments are not entirely concurred with. The applicant is relying upon the depot and the light industry use being intrinsic and states that this site suits the businesses needs. Whilst this may be true this does not exclude other sites where a depot and light industry could be undertaken together.

In addition whilst the business has a wide catchment area the subject site is not the only option, as industrial estates in Murwillumbah would also be considered capable of accommodating the applicants catchment area.

The applicant claims that indirectly this business contributes significantly to 140 jobs. This statement has not been substantiated and is not considered to satisfy Clause 8(2)(a)(iii)

The applicant's arguments for satisfying Clause 8(2) (a) are not considered sufficient.



*Clause 8(2)(b)*

*There is no other appropriate site on which the development is permitted with consent (other than as advertised development) in reasonable proximity.*

*There is no other appropriate site within at least 10 kilometres radius on which the development would be permitted (other than advertised development). While the development would be permitted on land zoned 2(d) Village zone at Mooball and Burringbar, there is no available land of sufficient size, nor adequately removed from existing residential development, that would be suitable.*

*Similarly, areas of land zoned 2(c) Urban Expansion zone at Pottsville and surrounding areas are essentially residential estates to which various Development Control Plans and Strategies apply that would preclude this type of development. Moreover and in any event, the amenity impacts of a development of this nature would be unsuitable in these areas.*

*The Council has identified the need for industrial land in the southern parts of the Shire at Pottsville; however, at this stage the rezoning and development of Industrial land at Pottsville is some years away.*

*Assessment of areas beyond approximately 10 kilometres radius of the subject site is not considered "reasonable proximity" to the site, particularly given the locational attributes and centrality of the site in the context of its service catchment.*

Council Assessment:

These comments are not entirely concurred with. The applicant is only relying upon a 10km radius for consideration. The business was previously operating from Byron Shire, to service from the northern parts of the Tweed border down to the southern parts of Byron Shire. To restrict a search to a 10km radius is misleading, as the industrial estates within Murwillumbah are 17km from the site and would be capable of accommodating this catchment.

Whilst industrial land is required in the southern parts of the Shire this alone is not justification for the utilisation of rural land that is within the proximity of eight dwelling houses.

The applicant's arguments for satisfying Clause 8(2) (b) are not considered sufficient.

Clause 8(2)(c)

*The development will be generally consistent with the scale and character of existing and future lawful development in the immediate area.*

*The development would essentially rely on existing site improvements including existing workshop buildings, subject to minor alterations and*

*additions. The size, design and appearance of these buildings is compatible with agricultural and rural buildings in the immediate area and nearby locality (refer Photoplate 5).*

*The site until recently has been utilised as an RTA depot and has been used for open storage of plant, machinery and road construction materials. In this regard, the development would not significantly alter the existing built character of the locality.*

*The land also immediately adjoins the dual carriageway Pacific Highway, which includes an open truck and car parking rest area, less than 100 metres distance away, directly to the west of the site (refer Photoplate 6).*

*The land is also located in close proximity (<500m) to other uses of a semi-rural nature, including 'Rainforest Secrets' (formally Pioneer Plantation), as well as the former Sleepy Hollow Golf Course Club House building.*

Council Assessment:

These comments are not entirely concurred with. The applicant is relying upon the Pacific Highway and other farm buildings to justify a proposed industrial use.

The site has historically been used as a depot and this component of the application is considered acceptable, however, it is the manufacturing process that is considered unsuitable for the rural location.

The character of this area is not considered suitable to accommodate the proposed light industry use.

The applicant's arguments for satisfying Clause 8(2) (c) are not considered sufficient.

Clause 8(2)(d)

*The development would be consistent with the aims of this plan and at least one of the objectives of the zone within which it is proposed to be located.*

*The development would be consistent with the aims of the TLEP 2000. In particular the development would:*

- (i) Make beneficial use of existing infrastructure and developed land rather than undeveloped or vacant land and in so doing, avoids conflict with environmental and residential amenity values of other land.*
- (ii) Positively contribute to sustainable economic development of the Shire through an integral role in the Tweed Sugar Cane Industry as well as the future supply of "green power" at the Condong Sugar Mill.*

*The development would meet the following objectives of the Rural 1(a) zone:*

- *“to enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilization purposes and associated development” (our emphasis).*
- *“To protect rural character and amenity” in so far as the development would utilise land and infrastructure that already exists and has been utilised for similar purposes in the recent past, rather than other undeveloped rural or agricultural land. Further, due to the recent use of the land for similar purposes, the use would be consistent with expectations of amenity in the locality”.*
- *“to prevent the unnecessary fragmentation or development of land, which may be needed for long-term urban expansion”.*

Council Assessment:

These comments are not entirely concurred with. The applicant is implying that this site would operate in an ancillary fashion to the rural pursuits for adjoining lands.

The manufacturing of cane bins is a separate and independent operation to that of cane production. There is nothing preventing this business from successfully operating within an approved industrial estate as has been demonstrated by its previous location within Byron Bay Industrial Estate.

Furthermore, the proposed development is not considered to protect the rural character and amenity but rather further hinder the residents in the immediate vicinity who have already been impacted by the Pacific Highway. This has been demonstrated by the complaints received to date about commencement without consent and the thirteen submissions opposing the development.

The applicant's arguments for satisfying Clause 8(2) (d) are not considered sufficient.

Clause 8(2) has not been adequately satisfied and therefore the proposed development is recommended for refusal.

Clause 15 of the TLEP requires Council to be satisfied that the subject land has the benefit of essential services prior to issuing consent. Suitable services are available to the site, and conditions can be imposed should Council determine to approve the development.

Clause 16 of the TLEP requires development to be undertaken in accordance with a building height plan, which identifies the site as being limited to three storeys. The existing buildings comply with this criterion.

Clause 22 of the Tweed LEP 2000 relates to development near designated roads.

The Pottsville-Mooball Road is a Council designated road. It is proposed that the development site would be accessed via the existing driveway access from Pottsville-Mooball Road.

The applicant has addressed the matters for consideration under sub-clause (4), as follows:

- *The development would (due to its similar nature to the recent prior use of the site as an RTA depot) generate a similar type of traffic, including employee motor vehicles, large rigid trucks and earthmoving equipment, however, the volume of traffic would be expected to lower than peak movements associated with the prior use (average of 1 reticulated vehicle per week and 1-2 small delivery vans per day).*
- *The location and design of the access is pre-existing and is suitable for the intended use. The access comprises a piped culvert crossing approximately 11.5 metres wide at the boundary, splaying to approximately 34 metres wide at the edge of the existing road pavement in Pottsville-Mooball Road. A car parking area exists to the south of the driveway entry (refer plans, Appendix A), however, vehicles entering the site can bypass the car park area via an internal road leading to the western side of the site.*

*Some road shoulder widening on the southbound lane of Pottsville-Mooball Road may be required. On this basis, but in any event, having regard to the low traffic volume, width of the driveway access, the ready availability of off street parking and on-site circulation and manoeuvrability, the development would not adversely impact on through traffic on Pottsville-Mooball Road.*

- *There are no improvements, road widening or upgrading works proposed on Pottsville-Mooball road in the vicinity of the site (Paul Morgan, TSC, 23.10.06, per comm.). In any event, the buildings are located a minimum of 20 metres from Pottsville-Mooball Road and would allow any possible future widening to occur. The site area and layout are such that the existing access and car parking area could be relocated in the future if necessary.*
- *The nature of the development and the type of traffic likely to be generated necessitates access to a high standard road, rather than lower standard roads or local access roads with a quiet rural amenity.*
- *The development would not be sensitive to road traffic noise.*

- *The development would have a visual amenity consistent with the long term use of the site as an RTA works depot. Perimeter tree planting and rehabilitation by the RTA in the Pacific Highway corridor adjacent to the site provides a visual screen from areas to the west of the site. Similarly, existing perimeter vegetation on the Pottsville-Mooball Road frontage provides a screen from areas to the east. Proposed further perimeter tree planting along the Pottsville-Mooball Road frontage, landscape gardens in front (east) of the office building and shed, as well as repair and maintenance of the existing buildings, would in fact improve the visual amenity of the site.*
- *No other practical access is available.*
- *The development is not for commercial or retail development.*

#### Council Assessment

These comments are generally concurred with however, the site will clearly be utilised for commercial gain. Further Council's Development Engineer has provided that site access is suitable provided that the applicant provides the minimum Basic Right Turn BAR treatment for a right turn movement from Pottsville-Mooball Road into the development in accordance with figure 6.37 of Austroads 2005, Intersections at Grade.

Clause 24 of the Tweed LEP 2000 specifies setback controls from designated roads for land in the Rural 1(a) zone.

The required setbacks in this instance would be 30 metres for the "depot" and 50 metres for the agricultural equipment manufacturing (light industry).

The development would not achieve these setbacks.

The applicant has lodged a SEPP 1 Objection to this standard as follows:

*This objection is prepared in respect of the standard contained in Clause 24 (3) of the Tweed LEP 2000, relating to setbacks from Designated Roads. The specific provision(s) to which this objection relates is the minimum setbacks for development in the Rural 1(A) zone as follows:*

- *Industries: 50 metres (including Light Industries)*
- *Anything else: 30 metres (including depot)*

*The objective of the Standard is as follows:*

- *To control development along designated roads.*

*The underlying aims of the objective are to:*

- (i) *Ensure that the long-term efficiency, safety and capacity of designated roads are not adversely impacted by development.*

- (ii) *Prevent or reduce the potential impact of traffic noise on development adjacent to designated roads.*

*In this case, it is proposed that the nearest building associated with the development would be setback a minimum of approximately 24 metres from Pottsville-Mooball Road.*

*In the circumstances of this case, the proposed setbacks would be satisfactory and compliance with the Standards contained in Clause 24(3) of the LEP are unreasonable and unnecessary for the following reasons.*

- 1. The development would utilise existing buildings on the site, with minor alterations and additions to permanent buildings located no closer to Pottsville-Mooball Road.*
- 2. The Tweed Shire Council advises that having regard to the current capacity of the road, the existing low traffic volumes utilising this section of the road, the good horizontal and vertical alignment of the road in the vicinity of the site and the forecast growth in traffic likely to use the road in the medium term, there are no plans to upgrade the road by way of realignment or widening of the road reserve and little likelihood that this would be necessary for the foreseeable future (Mr Paul Morgan, TSC, 23.10.06 pers comm.). Even in the event that upgrading were required in the future, a significant increase in the capacity of the road could be achieved by formation and pavement widening in the order of six (6) to eight (8) metres, with a concomitant increase in the road reserve of the same order. The proposed development would not impede or prevent future upgrading/widening of the road.*
- 3. The immediate past use of the site was as an RTA works depot. The proposed use is essentially the same or similar in character and would generate similar types of traffic, but at lower volumes than the RTA depot during its peak use throughout the construction of the Chinderah-Yelgun Pacific Highway upgrade.*

*The development would be within the reasonable expectations in the locality for traffic generation from the site.*

- 4. The nominal capacity of the road is up to 2000 vehicles per day (vpd) (class D road). Recent Tweed Shire Council traffic count data (25.05.05) indicates an AADT volume of 1077 vpd in the vicinity of the site. The development would be expected to generate in the order of 16 vpd (AADT) and therefore be well within the capacity of the road.*

*Furthermore, the proposed access to the site complies with Council's rural access to property construction requirements, provides satisfactory width dimensions for heavy vehicle access and meets Austroads sight*

*distance requirements. The development would be unlikely to compromise traffic safety and efficiency.*

5. *The development is not of a type that would be sensitive to road traffic noise.*

*Having regard to foregoing, the proposed setbacks would be satisfactory and no good planning purpose would be served by strict adherence to the standards contained in Clause 24(3).*

#### Council Assessment

The above comments are generally concurred with and therefore the standard is considered unreasonable and unnecessary from a traffic perspective and subsequently the SEPP 1 is supported.

Clause 34 of the TLEP relates to flood prone land. The objective of this clause is to minimise future potential flood damage by ensuring that only appropriate compatible development occurs on flood liable land and to minimise any adverse effect of flooding on the community.

Council's Development Engineer has provided that:

*"The applicant indicates that the site will be affected by overbank flooding of a local un-named creek that passes through the northern part of the site. They advise that after local enquiry and assessment of debris marks associated with the major flooding event that occurred in the area in June 2005 that flooding only affected the "lowest lying" unfilled parts of the subject property and did not affect the buildings on the site.*

*This assessment is accepted and it is noted that the local flooding event in 2005 was estimated to be approximately equal to a 1 in 100 year flood event. In this regard it is considered that the development buildings will enjoy adequate immunity from flooding.*

*DCP 5 requires commercial and industrial developments on flood liable land in rural areas to make adequate provision of flood free storage areas for stock and equipment susceptible to water damage.*

*A condition will be imposed so that the development complies with the requirements of DCP 5 prior to the issue of the occupation certificate."*

The proposed development is considered capable of meeting the provisions of Clause 34 subject to conditions being imposed should Council determine to approve the application.

Clause 35 of the TLEP requires the applicant determine if Acid Sulfate Soils are present on the site and provide a management plan if that is the case.

The site is affected by Acid Sulfate Soils, however, suitable conditions of consent can be provided should Council determine to approve the application.

**Clause 39 of the TLEP relates to the remediation of contaminated land. In this regard Council's Environmental Health Officer has provided that should this application be approved it would first "need to have a statement from an accredited contamination site auditor which indicates that the site is suitable for the intended use."**

North Coast Regional Environmental Plan 1988

The following Clauses of the NCREP are relevant and are addressed below.

Clause 12 – Impact on Agricultural Activities

The site has been extensively modified by filling with gravel and the construction of sheds and associated buildings. The recent history of the use of the site is not for agricultural activities. In any event, the land is of marginal agricultural value, comprising of poorly drained low flats, extensive gravel fill and elevated rocky and vegetated land.

Adjoining and surrounding land is utilized for grazing purposes.

The development would not lead to a loss of prime crop and pasture land, or adversely impact upon nearby agricultural activities.

State Environmental Planning Policies

SEPP 55 Remediation of Land

The Tweed Council has been notified of a proposed Category 2 remediation under the provisions of the SEPP.

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

*"Previous investigations into this site have detected arsenic contamination of soils. Council was notified in October of a proposal to remediate the site. Remediation works are not the subject of this application. These works have been commenced, but are yet to be completed and validated.*

*SEPP55 provides as follows:*

**7 Contamination and remediation to be considered in determining development application**



- (1) *A consent authority must not consent to the carrying out of any development on land unless:*
- (a) *it has considered whether the land is contaminated, and*
  - (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
  - (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

*The SEE indicates that an EPA accredited auditor will monitor the remediation works and certify that the site is suitable for the proposed development. The information submitted appears to satisfy SEPP 55 Clause 7c. It has been verbally suggested that an auditor may not be engaged. It is recommended that Council require the site to be certified by an accredited auditor. The applicant is requested to:*

- *Confirm that an EPA accredited auditor will be certifying the remediation works at the site, and*
- *Advise whether they wish a deferred commencement condition to be applied with respect to this matter, or whether the accreditation of the site will be provided prior to determination of the application?*

Based on this advice the applicant was asked for additional information. Council's Environmental Health Officer has reviewed the additional information and provided that:

*"Several documents have now been received, including*

- *A Remediation Action Plan and Site Validation for Proposed Industrial Site at Lot 201 DP 1002166 Pottsville Rd Sleepy Hollow, February 2007.*
- *Two letters from Coffey Geotechnics to Barry McLean dated 10 January 2007 and 22 February 2007.*

*The letter dated 10 January 2007 specifically states that the Coffey documents do not constitute a Site Audit from an accredited contaminated site audit.*

*The letter dated 22 February states the site is suitable for industrial use, but further states 'Coffee considered it essential that the Site Management Plan (SMP) is incorporated into the operational management of the site. Given the large volume of fill to the site other*

*contamination may be encountered. It is considered prudent that the SMP therefore includes a range of contaminants, rather than just arsenic. Both on site staff and contractors visiting the site need to be aware of the SMP and risks involves particularly, with excavation within the site'.*

*I have met with the Director of Environment & Community Services and discussed these comments. The applicant is requested to provide a statement from an accredited contamination site auditor which indicates that the site is suitable for the intended use."*

Based on the above comments from Council's Environmental Health officer should Council determine to approve this application the above additional information request would need to be satisfied first or alternatively a deferred commencement condition be imposed. Given the potential for unauthorised works to occur as a result of the business waiting to start it would be highly recommended that this matter be satisfied prior to final determination.

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

Draft SEPP (Application of Development Standards) 2004 was exhibited between 10/05/2004 and 16/06/2004. Currently SEPP 1 provides local councils with flexibility in applying development standards. The Department, in consultation with councils and the community has undertaken a comprehensive review of how SEPP 1 has been used over the past 20 years. This review has led to a new draft policy that provides clearer and tighter criteria that development applicants must meet if they wish to vary from a development standard. The aim is to have the flexibility to achieve better planning outcomes.

The Draft has not progressed further and is not considered to have any determining weight in relation to this matter.

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

Development Control Plan No. 2 –Parking

Off-street car parking shall be in accordance with DCP No. 2 for light industry calculated at a rate of 1 space/100m<sup>2</sup>. The estimated GLA is 380m<sup>2</sup> and therefore the required number of car parks is 4.

The applicants have also submitted that the site may from time to time operate as a depot. Under DCP 2, 10% of the site must be allocated for parking, access lanes, unloading and loading. The applicants argue that only the compound area of 14000m<sup>2</sup> should be used as the development area. This is a reasonable argument and therefore 1400m<sup>2</sup> should be allocated for parking, access, unloading and loading.

The proposed new car parking as shown on drawing No. 001 dated 10/10/06 could satisfactorily address parking requirements for the development.

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

DCP 5 requires commercial and industrial developments on flood liable land in rural areas to make adequate provision of flood free storage areas for stock and equipment susceptible to water damage.

As such, the proposed development is considered capable of compliance with DCP 5, subject to conditions of consent that would be applied should Council determine to approve this application.

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

There are no additional matters that affect this application.

**(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**

Visual Impacts

Filling with gravel and the construction of sheds and associated buildings has extensively modified the subject site. In addition the use of this site for storage of machinery and work parts and tools is considered unsightly.

Should Council wish to determine this application the applicant should be responsible for screening the site from both the Pacific Highway and the Pottsville Mooball Road with mature vegetation.

Noise

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

*"The SEE suggests that the development would not adversely impact the amenity of the area and is not dissimilar to the previous RTA depot. The hours of operation are proposed to be:*

- *7am to 6pm Monday to Friday and 7am to 5pm Saturday, with no work on Sundays and public holidays.*

*The report recommends the implementation of a management plan for the site.*

*The assessing planner advises that so far there is one written complaint and many verbal enquiries. She also understands that a public petition is being organised.*

*In my experience the development has potential to impact local amenity. Whilst the freeway is adjacent, the district is generally a quiet rural area. Whilst the site was previously used for an RTA depot residents may have been more tolerant of those activities because they were for a limited time and they were for the provision of public infrastructure.*

*The applicant is requested to provide a noise impact assessment from a suitably qualified person for consideration.*

*It is noted that the SEE indicates that the storage of plant and machinery will be limited to 25. Condition to be applied. Given the proposed operating hours lighting is unlikely to impact amenity. Condition to be applied.*

*The SEE indicates that tree planting will be carried out along the Pottsville/Mooball Road frontage to reduce visual impacts. No plans or details have been provided. Suggest plans etc are obtained and conditions be applied given that prospect of objections.”*

As per the request for additional information the applicant supplied an amended Noise Impact Assessment. Council's Environmental Health Officer has reviewed the revised assessment proposal and provided the following comments:

*“A Noise Level Impact Assessment, Craig Hill Acoustics, December 2006 has now been received. Several questions were raised with Craig Hill by Email and responses provided Having considered those comments the report is considered satisfactory and conditions can be applied. Please note the last comment from Craig Hill Acoustics – ‘I would imagine Council would require a compliance test on completion accompanied by a Noise Management Plan to ensure no noise nuisance occurs’.*

*The following conditions are recommended:*

- The premise shall be designed, constructed and operated in accordance with the Noise Level Impact Assessment, Craig Hill Acoustics, December 2006.*
- All manufacturing and maintenance activities to be conducted within the buildings. The north building shall be used for manufacturing and the south building shall be used for maintenance of agricultural equipment.*
- Prior to the commencement of any maintenance or manufacturing processes those attenuation measures identified in the approved Noise Level Impact Assessment shall be completed to the satisfaction of Director Environment & Community Services. Prior to commencement of maintenance or manufacturing a compliance test shall be conducted by a suitably qualified person and a*

*compliance report provided to Council. That report shall also be accompanied by a Noise Management Plan for the premise.*

- *Hours of Operation shall be 7am to 6pm Monday to Friday and 7am to 5pm Saturday, with no work on Sundays and public holidays.*
- *Deliveries shall be restricted to 7am to 5pm Monday to Friday."*

Should Council determine to approve this application the above conditions would need to be imposed on any consent.

### Drainage

Council's Development Engineer has provided the following:

*"An existing gully/un-named creek is located to the north of the subject development. Overland flow from the site is discharged to this gully via several spoon drains that traverse the subject land and the table drain in Pottsville-Mooball Road.*

*The applicant proposes to undertake a minor modification to the north-south spoon drain by extending it in a southerly direction to intersect with the spoon drain running parallel to the southern fence line. The modification is minor in nature and will assist by diverting stormwater away from the existing southern building and proposed car park area.*

*Roof water presently discharges to the natural surface and then drains via surface drains to the table drain in Pottsville-Mooball Road. A condition will be required to pipe this roof water so that it discharges to the spoon drain."*

Should Council determine to approve this application suitable conditions of consent can be provided.

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

For the reasons detailed in the above report the proposed rural site is not considered suitable for an industrial type development.

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

The development application was advertised and notified to surrounding properties for a period of two weeks, closing on 29 November 2006. During this period thirteen written submissions were received (including one from the Environmental Defenders Office). The issues raised in the submissions are addressed in the following table.

<b>Issue</b>	<b>Comment</b>	<b>Assessment</b>
<u>Site Suitability</u>	<i>Relocate them now to a heavy industrial area not in the scenic coastal Tweed Valley</i>	<p>The above report addresses site suitability and concludes that the site is not suitable for the proposed development.</p> <p>These objections form part of the reasons for refusal.</p>
	<i>They should be in industrial areas like the one planned for 3km from Pottsville</i>	
	<i>The business was previously in an industrial park why relocate it to a nice rural area.</i>	
	<i>We moved into a rural area for peace and quiet ad although we expect progress we do not want to be sitting in the middle of an industrial estate.</i>	
	<i>It is out of character with the rural locality.</i>	
	<i>The site is located within a major flood path and should not be used for commercial and or industrial purposes.</i>	
<u>Noise</u>	<i>The noise levels of electrical grinding for eleven hours a day is above acceptable levels in this rural area</i>	<p>The applicant has submitted several Noise Impact Assessments, which have all been reviewed by Council's Environmental Health Officer. Based on those reports it is possible for the site to have acoustic attenuation to reduce the impact on neighbours.</p> <p>However, given the large site area there appears to be the opportunity for work to be undertaken outside any attenuated buildings and therefore concern in regard to noise is still expressed.</p> <p>One of the reasons for refusal is that the proposal has the ability to impact upon external properties.</p>
	<i>Using machinery which is of the highest noise value in a non industrial area is unacceptable</i>	
	<i>Use of angle grinders , power hacksaws, redial drills, milling machines, lathes, electrical presses etc is unacceptable for a rural location/</i>	
<u>Traffic</u>	<i>The amount of heavy vehicles on this road is dangerous</i>	<p>Council's Development Engineer has reviewed the proposed access and road network and has indicated that from an Engineering perspective the proposed development could be facilitated subject to minor alterations to allow for a specific turning bay outside the site.</p> <p>However, from an amenity perspective the impact of this development on the adjoining residences is considered unreasonable.</p> <p>Therefore, one of the reasons for refusal is that the proposal has the ability to impact upon external properties.</p>
	<i>Heavy vehicle traffic creates problems for safety for children waiting for the school bus.</i>	
	<i>The DA is misleading as there is no direct access to the Pacific Highway and Pottsville Mooball Road would need to be used as the only access.</i>	
	<i>The extra traffic (25 vehicles) is unacceptable for the rural locality.</i>	

<b>Issue</b>	<b>Comment</b>	<b>Assessment</b>
<u>Aboriginal Relics</u>	<i>There are aboriginal sites of historic interest along this section of coastline – the Tweed would do well to preserve it for the future of the country</i>	There are no known items of significance on the subject site.  Notwithstanding should Council determine to approve this application standard conditions of consent would need to be imposed to ensure that if any artefact was discovered site works are to cease immediately.
<u>Precedent</u>	<i>If one of these activities is allowed to operate it will set a precedence for further industrial operations</i>	The proposed development could potentially set an unwarranted precedent for utilisation of rural land for industrial purposes.
	<i>The applicant claims the use is permissible due to the precedent of the site but in the past it has just been a one man nursery operation and then temporarily used by the RTA.</i>	Therefore one of the reasons for refusal is that it is in the general public interest to enforce the standards contained within the Tweed LEP 2000 specifically as it relates to the objectives of the 1(a) rural zone.
<u>Permissibility</u>	<i>The proposed business sounds more like a factory and industrial activity than a rural one.</i>	These objections form part of the reasons for recommending refusal of this application.
	<i>The proposal is to develop an industrial facility on rural zoned land.</i>	Specifically the proposed development does not satisfy the provisions contained within Clause 8(2) of the Tweed LEP 2000.
	<i>There is a non-compliance with the zone objectives.</i>	
	<i>The application does not adequately satisfy Clause 8(2)</i>	
<u>Contamination</u>	<i>The site is contaminated with arsenic</i>	Council's Environmental Health Officer has reviewed the applicant's statements in this regard and concluded that prior to any approval being granted this application would first "need to have a statement from an accredited contamination site auditor which indicates that the site is suitable for the intended use."
<u>False Information</u>	<i>The DA is misleading and incorrectly states the facts</i>	The application as submitted has been assessed against Council's records.  The DA as submitted has sufficient detail to enable a determination, however, based on this assessment the application is recommended for refusal.
	<i>The applicants Clause 8(2) Assessment are breathtaking nonsense.</i>	Council's assessment has detailed the inadequacies with the applicants Clause 8(2) Assessment that forms the basis for the reasons for refusal.

<b>Issue</b>	<b>Comment</b>	<b>Assessment</b>
<u>Setbacks</u>	<i>The buildings do not comply with the setback criteria as detailed within tweed LEP 2000.</i>	This aspect of the development has been assessed against SEPP1 and is considered acceptable on merit. Therefore this aspect does not form part of the reasons for refusal.
<u>Amenity</u>	<i>We are both shift workers who need sleep during the day. Use of the site for industrial purposes would interfere with the noise levels in the area and require sound treatments to my house.</i>	The potential for this development to impact on adjoining properties forms one of the reasons for refusal.
<u>Property Values</u>	<i>This development would de-value my property</i>	This is not a matter for consideration under Section 79C of the Environmental Planning & Assessment Act 1979.

**(e) Public interest**

The issues raised within the submissions are considered valid and contribute to the reasons for refusal. The proposed development could potentially set an unwarranted precedent for utilisation of rural land for industrial purposes and therefore it is in the public interest for this application to be refused.

**OPTIONS:**

1. Refuse this application in accordance with the recommendation for refusal;
2.
  - i) Determine to approve this development in principal; and
  - ii) Request the applicant to provide a statement from an accredited contamination site auditor, which indicates that the site is suitable for the intended use; and
  - iii) Delegate the authority to approve the application to the Director of Planning & Development subject to suitable conditions of consent.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be unhappy with the determination they have the right to appeal the decision in the NSW Land & Environment Court.

**POLICY IMPLICATIONS:**

The proposed development could potentially set an unwarranted precedent for utilisation of rural land for industrial purposes.



**CONCLUSION:**

Having regard to the objections received following notification, an assessment against Clause 8(2) of the Tweed LEP 2000, the rural character of the area, and the proximity of the development to residential properties the proposed use is not considered suitable for the location and therefore the proposed development is recommended for refusal.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

---

THIS  
PAGE  
IS  
BLANK

THIS  
PAGE  
IS  
BLANK