



AGENDA

PLANNING COMMITTEE MEETING

Tuesday 19 June 2007

Chairman: Mr Max Boyd AM

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



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REPORTS FROM DIRECTOR PLANNING & REGULATION

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

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

MATTERS FOR CONSIDERATION

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



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P1 [PR-PC] Development Application DA06/1469 for a Proposed Boundary Alteration and Erection of a Dual Occupancy at Lot 6, 7 Section 26 DP 8950, No. 44 Riverview Street Murwillumbah

ORIGIN:

Development Assessment

FILE NO: DA06/1469 Pt1

SUMMARY OF REPORT:

Council is in receipt of an application for a boundary alteration and a dual occupancy at 44 Riverview Street, Murwillumbah.

The boundary adjustment between the two allotments proposes to move the common boundary from an east-west orientation to a north-south orientation, with proposed Lot 2 having a battle-axe configuration allowing dual access to Riverview Street and Nullum Lane.

Proposed Lot 1 has an existing single storey brick dwelling located upon it. The building component of the application consists of two detached two storey dual occupancy dwellings located upon proposed Lot 2. The design of the buildings has been guided by a need to be sympathetic to the heritage values of the existing dwelling, as well as site constraints such as being flood liable land. Each new dwelling consists of a ground floor double garage, laundry and entry; as well as 3 x first floor bedrooms, living / dining area and veranda.

The land is zoned 2(b) Medium Density Residential under Tweed Local Environmental Plan 2000 and is identified under the Draft Murwillumbah Locality Plan and the Draft Tweed LEP2007 as a Medium Density Residential precinct.

The application proposes minor encroachments into the building envelope with minor overshadowing to adjacent properties to the south, and has raised privacy concerns for residents. However, despite these issues the application is recommended for approval having regard to the medium-density land-use controls in this area.

The application attracted 4 public submissions.

RECOMMENDATION:

That Development Application DA06/1469 for a proposed boundary alteration and erection of a dual occupancy at Lot 6 & 7 Section 26 DP 8950, No. 44 Riverview Street Murwillumbah 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 1534/06 – 01 and 02 (as amended in red) prepared by Ian Webb Building Design and dated December 2006, as well as the Plan of Proposed Subdivision (Dwg 2646BA/2) prepared by N.C. White & Associates and dated 30 April 2007, 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. The subdivision is to be carried out in accordance with Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual and Councils adopted Development Design and Construction Specifications.
[GEN0125]
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. The proposed demolition of the existing timber garage and outhouse on the subject site is not covered by this approval and is subject to separate development consent.
[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

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

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

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

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



| | |
|--|----------|
| (a) Tweed Road Contribution Plan: S94 Plan No. 4 (Version 4.0) | \$1,936 |
| Sector9_4 | |
| (b) Open Space (Structured): S94 Plan No. 5 | \$240 |
| (c) Open Space (Casual): S94 Plan No. 5 | \$51 |
| (d) Shirewide Library Facilities: S94 Plan No. 11 | \$212 |
| (e) Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13 | \$49 |
| (f) Emergency Facilities (Surf Lifesaving) S94 Plan No. 16 | \$62 |
| (g) Extensions to Council Administration Offices & Technical Support Facilities | \$614.22 |
| S94 Plan No. 18 | |
| (h) Cycleways S94 Plan No. 22 | \$108 |
| (i) Regional Open Space (Structured) S94 Plan No. 26 | \$715 |
| (j) Regional Open Space (Casual) S94 Plan No. 26 | \$263 |

[PCC0215]

7. 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 DSP2: | 1 ET @ \$4598 | \$4,598 |
| Sewer Murwillumbah: | 1 ET @ \$2863 | \$2,863 |



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

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

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

[PCC0265]

8. 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]

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

(a) Vehicular access to Riverview Street and Nullum Lane.

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

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

[PCC0895]

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

(a) copies of compliance certificates relied upon

(b) four (4) copies of detailed engineering plans and specifications.

The detailed plans shall include but are not limited to the following:

- earthworks
- roadworks/furnishings
- stormwater drainage
- water supply works

- sewerage works
- landscaping works
- sedimentation and erosion management plans
- location of all service conduits (water, sewer, Country Energy and Telstra)

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

[PCC0985]

11. 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. Stormwater

- (a) Details of the proposed roof water disposal, including surcharge overland flow paths are to be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. These details shall include likely landscaping within the overland flow paths.
- (b) All roof water shall be discharged to infiltration pits located wholly within the subject allotment.
- (c) The infiltration rate for sizing infiltration devices shall be 3m per day:
 - * As a minimum requirement, infiltration devices are to be sized to accommodate the ARI 3 month storm (deemed to be 40% of the ARI one year event) over a range of storm durations from 5 minutes to 24 hours and infiltrate this storm within a 24 hour period, before surcharging occurs.
- (d) Surcharge overflow from the infiltration area to the street gutter, inter-allotment or public drainage system must occur by visible surface flow, not piped.

- (e) Runoff is to be pre-treated to remove contaminants prior to entry into the infiltration areas (to maximise life of infiltration areas between major cleaning/maintenance overhauls).
- (f) If the site is under strata or community title, the community title plan is to ensure that the infiltration areas are contained within common land that remain the responsibility of the body corporate (to ensure continued collective responsibility for site drainage).
- (g) All infiltration devices are to be designed to allow for cleaning and maintenance overhauls.
- (h) All infiltration devices are to be designed by a suitably qualified Engineer taking into account the proximity of the footings for the proposed/or existing structures on the subject property, and existing or likely structures on adjoining properties.
- (i) All infiltration devices are to be located clear of stormwater or sewer easements.

[PCC1135]

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

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

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

[PCC1145]

14. 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

15. The proponent shall accurately locate and identify any existing sewer main, stormwater line or other underground infrastructure within or adjacent to the site and the Principal Certifying Authority advised of its

location and depth prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure prior to start of any works.

[PCW0005]

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

[PCW0215]

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

[PCW0225]

18. Residential building work:

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



- (ii) in the case of work to be done by an owner-builder:
 - * the name of the owner-builder, and
 - * if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.
 - (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.
- [PCW0235]
19. 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]
20. 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]
21. 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]

22. Civil work in accordance with a development consent must not be commenced until:-

- (a) a construction certificate for the civil work has been issued in accordance with Councils adopted Development Design and Construction Specification C101 by:
 - (i) the consent authority, or
 - (ii) an accredited certifier, and
- (b) the person having the benefit of the development consent:
 - (i) has appointed a principal certifying authority,
 - (ii) has appointed a Subdivision Works Accredited Certifier (SWAC) in accordance with the Building Professionals Board Accreditation Scheme. As a minimum the SWAC shall possess accreditation in the following categories:

B1: Accredited Certifier – Subdivision certificate

C3: Accredited Certifier – Stormwater Management and facilities design compliance

C4: Accredited Certifier – Stormwater management facilities construction compliance

C5: Subdivision works and building works (location of works as constructed) compliance

C6: Accredited Certifier – Subdivision road and drainage construction compliance

The SWAC shall provide documentary evidence to Council demonstrating current accreditation with the Building Professionals Board prior to approval and issue of any Construction Certificate, and

- (iii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment,
- (iv) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Subdivision Works Accredited Certifier is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued, and



- (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the civil work. [PCW0815]
23. 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. This sign is to remain in position for the duration of the project. [PCW0985]
24. An application to connect to Council's sewer or carry out plumbing and drainage works, together with any prescribed fees including inspection fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site. [PCW1065]

DURING CONSTRUCTION

25. Building materials used below Council's minimum floor level of RL 7.5m AHD shall be flood compatible. [DUR1405]
26. All proposed works are to be carried out in accordance with the conditions of development consent, approved construction certificate, drawings and specifications. [DUR0005]
27. 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]
28. 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]
29. 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]
30. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment

on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Occupational Health and Safety Regulation 2001.

[DUR0415]

31. The development is to be carried out in accordance with the current BASIX certificate and schedule of commitments approved in relation to this development consent.

[DUR0905]

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

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

[DUR1005]

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

[DUR1045]

34. A certificate is to be submitted by a Registered Surveyor certifying that all habitable floor areas are constructed above 7.5metres AHD, and certifying the actual finished level of the total site. Certification of those levels by a registered surveyor must be submitted to the Principal Certifying Authority prior to proceedings past floor level to ensure that the floor is above flood level.

[DUR1365]

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

[DUR1415]

36. The habitable floor area of the building is to be at a level not less than RL 7.5m AHD.

[DUR1435]

37. 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]

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

[DUR1885]



39. No portion of the structure may be erected over any existing sullage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains. [DUR1945]
40. The works are to be completed in accordance with Tweed Shire Councils Development Control Plan, Part A5 - Subdivision Manual and Design & Construction Specifications, including variations to the approved drawings as may be required due to insufficient detail shown on the drawings or to ensure that Council policy and/or good engineering practices are achieved. [DUR2025]
41. Inter allotment drainage shall be provided to all lots where roof water for dwellings cannot be conveyed to the street gutter by gravitational means. [DUR2285]
42. 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]
43. 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]
44. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position. [DUR2505]
45. 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]
46. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-
- * 43.5⁰C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
 - * 50⁰C in all other classes of buildings.

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

[DUR2555]

47. House drainage lines affected by the proposal are to be relocated to Council's satisfaction. Prior to the relocation of any plumbing and drainage lines, a plumbing permit and the relevant plumbing permit fee is to be submitted to Council. Inspection of drainage works prior to covering is required

[DUR2565]

48. 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]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

49. During construction a "satisfactory inspection report" is required to be issued by Council for all works under Section 138 of the Roads Act, prior to backfilling. The proponent shall liaise with Council's Engineering and Operations Division to arrange a suitable inspection.

[POC0045]

50. 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]

51. 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]

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

[POC0435]

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

[POC0475]



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

[POC1045]

USE

55. 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 offensive, or intrusive noise to any occupant of neighbouring or adjacent premises.

[USE0235]

56. The premises shall be suitably identified by Unit No. (where appropriate) and Street Number displayed in a prominent position on the facade of the building facing the primary street frontage, and is to be of sufficient size to be clearly identifiable from the street.

[USE0435]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

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

[PSC0005]

58. Prior to the issue of a Subdivision Certificate a defect liability bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council. The bond shall be based on 5% of the value of the works (minimum \$1,000) which will be held by Council for a period of 6 months from the date on which the Subdivision Certificate is issued. It is the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.

[PSC0215]

59. Any damage to property (including pavement damage) is to be rectified to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate. 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.

[PSC0725]

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

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

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

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

[PSC0735]

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

[PSC0825]

- 62. The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:**
- (a) Easements for sewer, water supply and drainage over ALL services on private property.**
 - (b) Right of Way over proposed Lot 2 in favour of proposed Lot 1. Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating the right of carriageway/easement to drain water shall make provision for maintenance of the right of carriageway/easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis.**

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

[PSC0835]

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

[PSC0855]

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

[PSC0865]

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

The following information must accompany an application:

- (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.**
- (b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 7.6 and Councils Application for Subdivision Certificate including the attached notes.**



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

[PSC0885]

- 66. Prior to the application for a Subdivision Certificate a Compliance Certificate or Certificates shall be obtained from Council OR an accredited certifier for the following:-**
- (a) Compliance Certificate - Roads**
 - (b) Compliance Certificate - Water Reticulation**
 - (c) Compliance Certificate - Sewerage Reticulation**
 - (d) Compliance Certificate - Sewerage Pump Station**
 - (e) Compliance Certificate - Drainage**

Note:

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

[PSC0915]

- 67. The six (6) months Defects Liability Period commences upon the registration of the Plan of Subdivision.**

[PSC0925]

- 68. Prior to the issue of a Subdivision Certificate and also prior to the end of defects liability period, a CCTV inspection of the stormwater pipes and sewerage system including joints and junctions will be required to demonstrate that the standard of the stormwater system is acceptable to Council.**

Any defects identified by the inspection are to be repaired in accordance with Councils adopted Development Design and Construction Specification.

All costs associated with the CCTV inspection and repairs shall be borne by the applicants.

[PSC1065]

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

The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act , 2000 to



be certified by an Accredited Certifier.

[PSC1115]

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

[PSC1165]

71. Electricity

- (a) The production of written evidence from the local electricity supply authority certifying that reticulation of underground electricity (residential and rural residential) has been completed; and**

[PSC1185]



REPORT:

Applicant: The Piggery Pty Ltd
Owner: Mr NJ McCloy
Location: Lots 6 & 7 Section 26 DP 8950, No. 44 Riverview Street Murwillumbah
Zoning: 2(b) Medium Density Residential
Cost: \$307,000

BACKGROUND:

Council is in receipt of a development application that seeks approval for a boundary adjustment between the two subject sites and the construction of a detached dual occupancy development.

The two adjoining allotments currently have their common boundary running in an east-west orientation, providing both allotments with approximately 10m wide frontages to Riverview Street to the west and Nullum Lane to the east. The original application proposed to reposition the common boundary so that it was in a north-south orientation, leaving proposed Lot 1 with sole frontage to Riverview Street and proposed Lot 2 with sole frontage to Nullum Lane.

There is an existing single storey dwelling house located over both allotments. The boundary adjustment has been lodged with Council in an effort to allow the development of proposed Lot 2, by way of a detached dual occupancy development, whilst having regard for the existing dwelling.

After discussions with Council officers, the applicant has since amended that application so that proposed Lot 2 has a battle-axe frontage to Riverview Street as well as frontage to Nullum Lane. The existing dwelling located upon proposed Lot 1 will still enjoy frontage Riverview Street and will benefit from an easement across Lot 2, providing them with dual access to Nullum Lane.

The two allotments involved with the application are described as Lots 6 & 7 Section 26 DP8950, No. 44 Riverview Street, Murwillumbah. The total site area is 1042.62m². The development site is rectangular in shape, with a depth of approximately 51.8m and an approximate width of 20.1m. Both sites slope gently from Riverview Street down towards Nullum Lane. Existing site improvements comprise the single storey brick dwelling and separate timber garage. Vegetation on either site is limited to lawns and several scattered trees.

The immediate locality surrounding the subject sites is essentially residential in character, with a mixture of older unit developments as well as single dwellings. The properties adjoining the northern and southern boundaries consist of detached dwelling houses. On the western side of Riverview Street is a primary school.

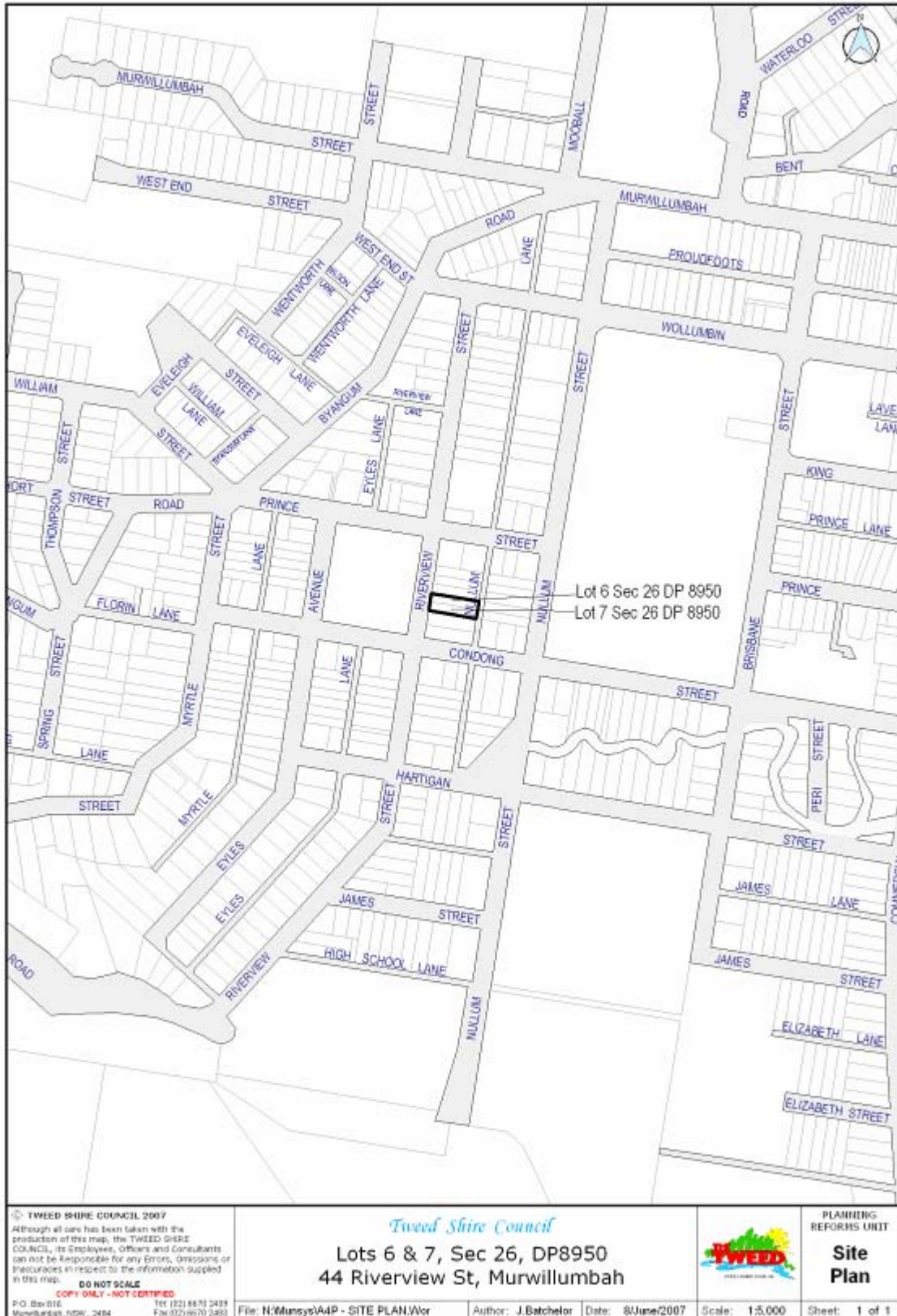
The amended subdivision plan results in proposed Lot 1 having a site area of 394m² and proposed Lot 2 a site area of 648m². The building component of the application consists of two detached two storey dual occupancy dwellings located upon proposed Lot 2. The



design of the buildings has been guided by a need to be sympathetic to the heritage values of the existing dwelling, as well as site constraints such as being flood liable land. Each new dwelling consists of: a ground floor double garage, laundry and entry; as well as 3 x first floor bedrooms, living / dining area and veranda. In addition, the proposal incorporates a carport to be constructed upon proposed Lot 1, between the existing dwelling and unit 2, but setback from the battleaxe handle driveway of proposed Lot 2.



SITE DIAGRAM:



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Fax (02) 6670 2430

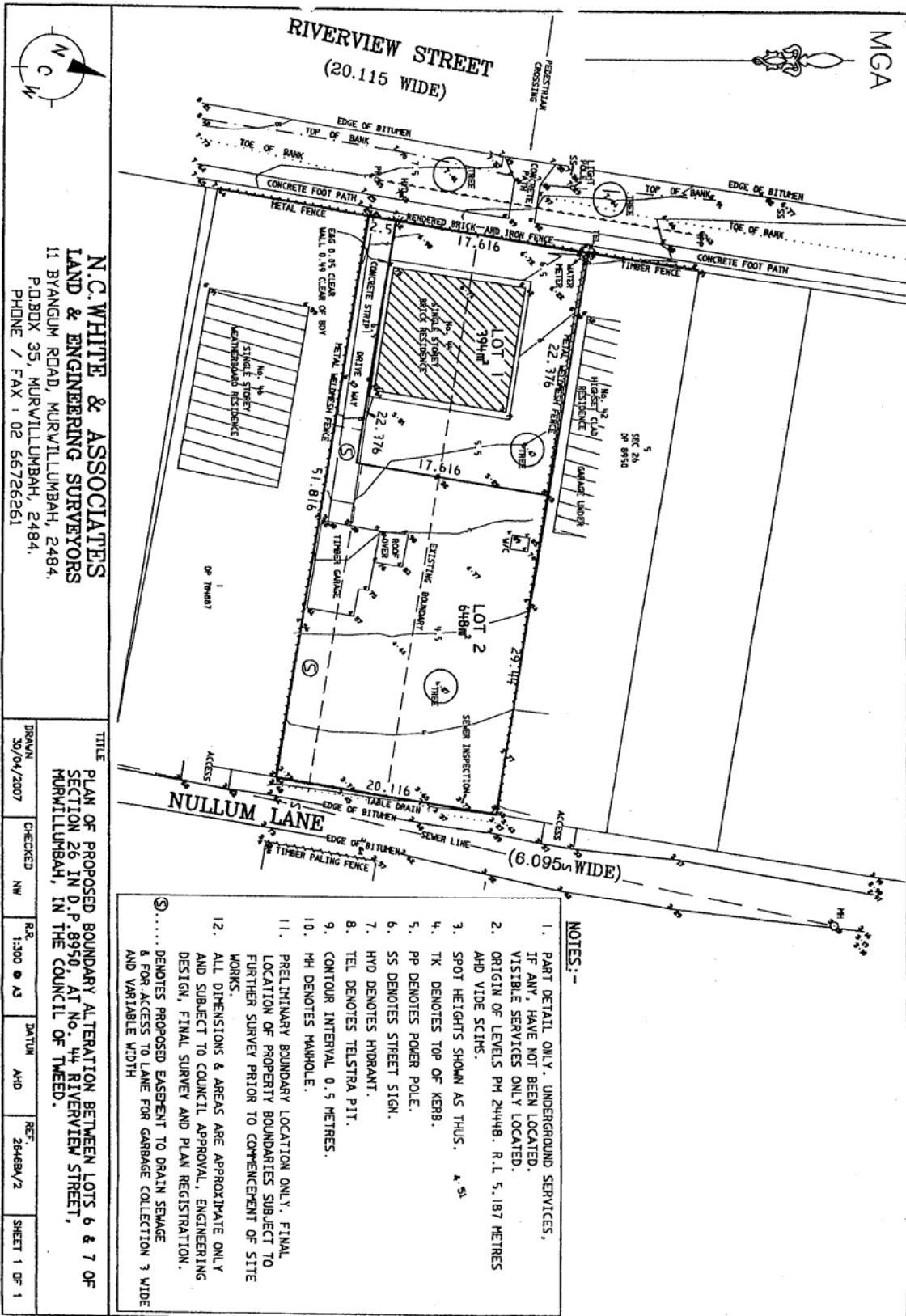
Tweed Shire Council
Lots 6 & 7, Sec 26, DP8950
44 Riverview St, Murwillumbah

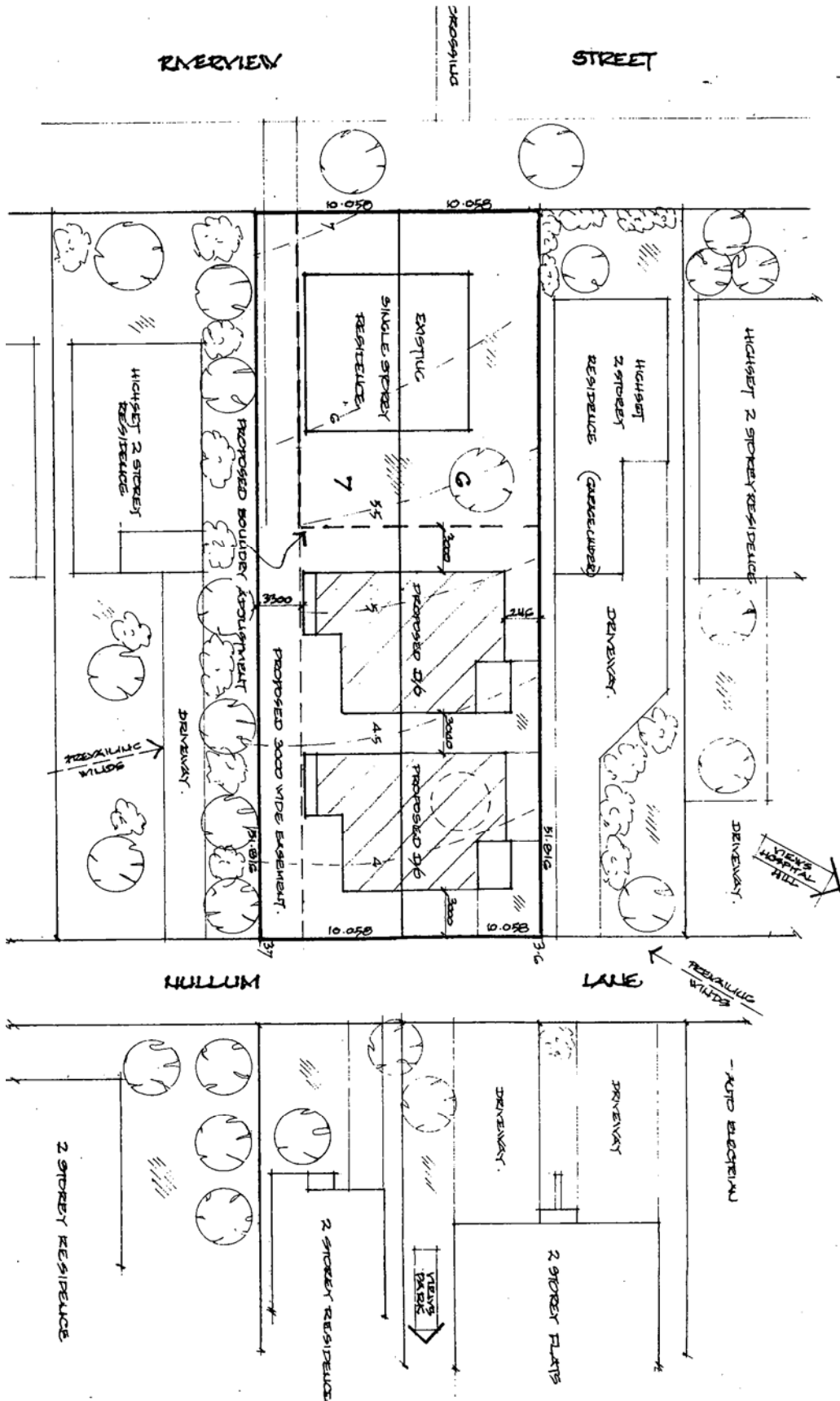


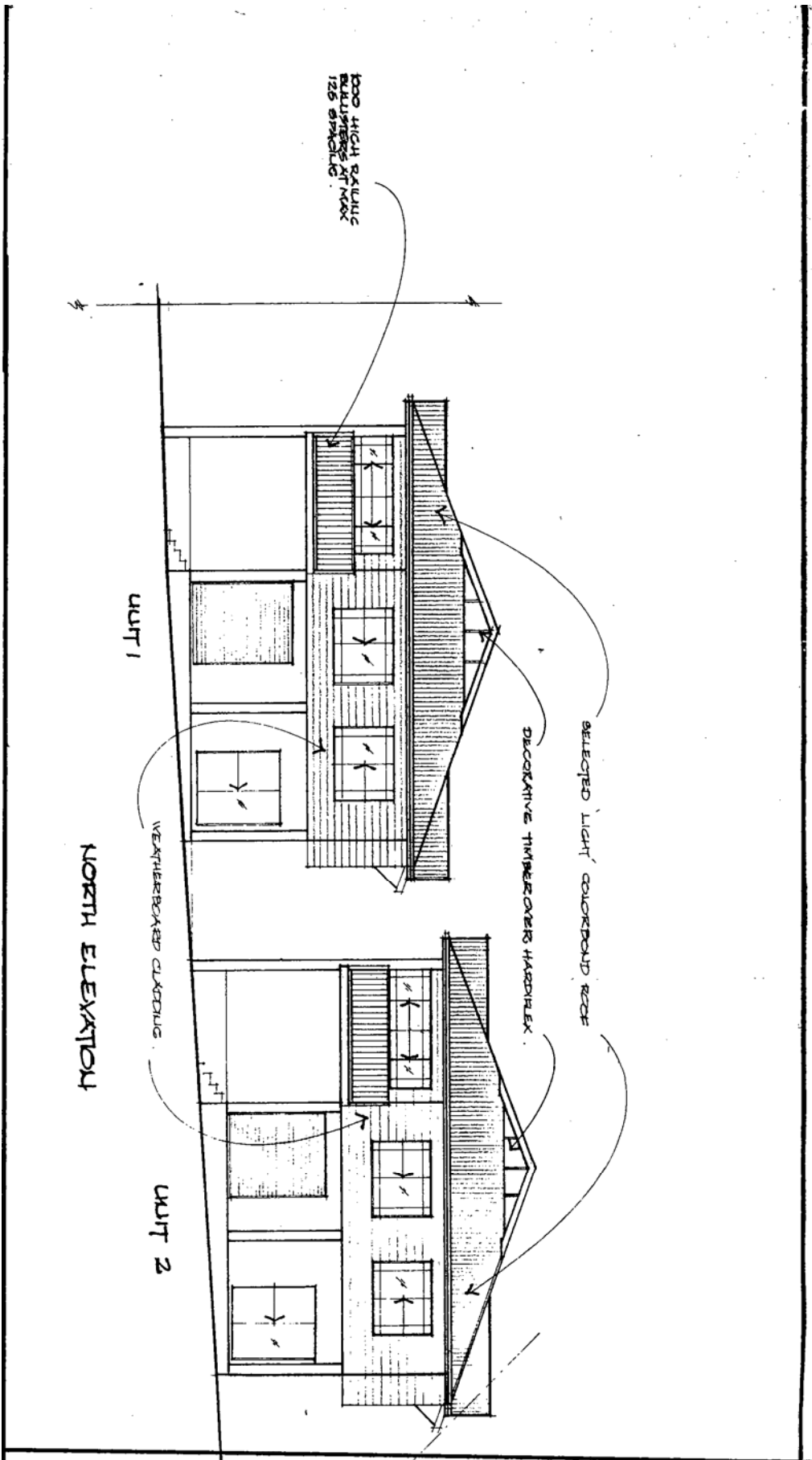
PLANNING REFORMS UNIT
Site Plan

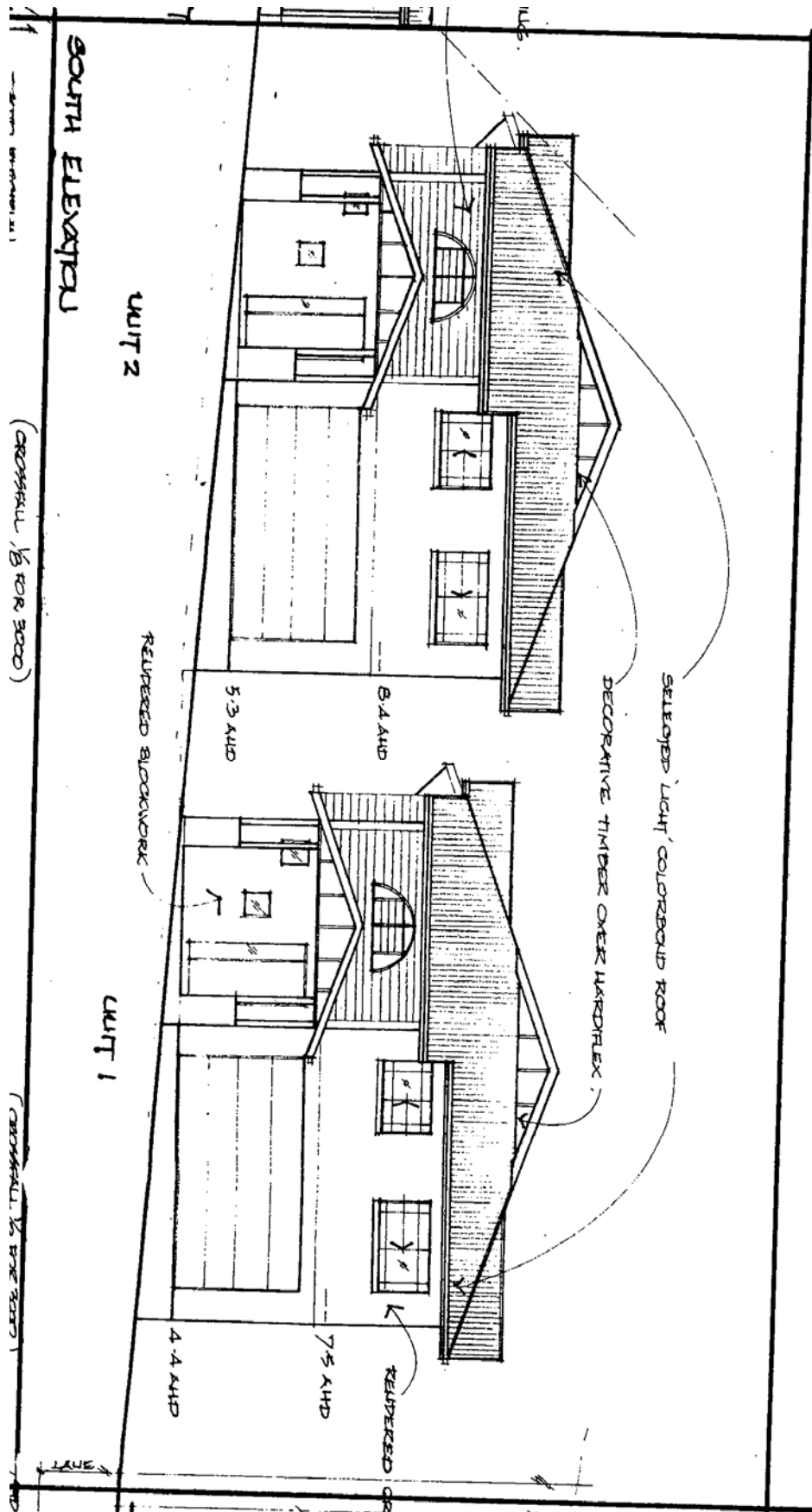
File: N:\Munsys\A4P - SITE PLAN\Wor Author: J.Batchelor Date: 8/June/2007 Scale: 1:5,000 Sheet: 1 of 1

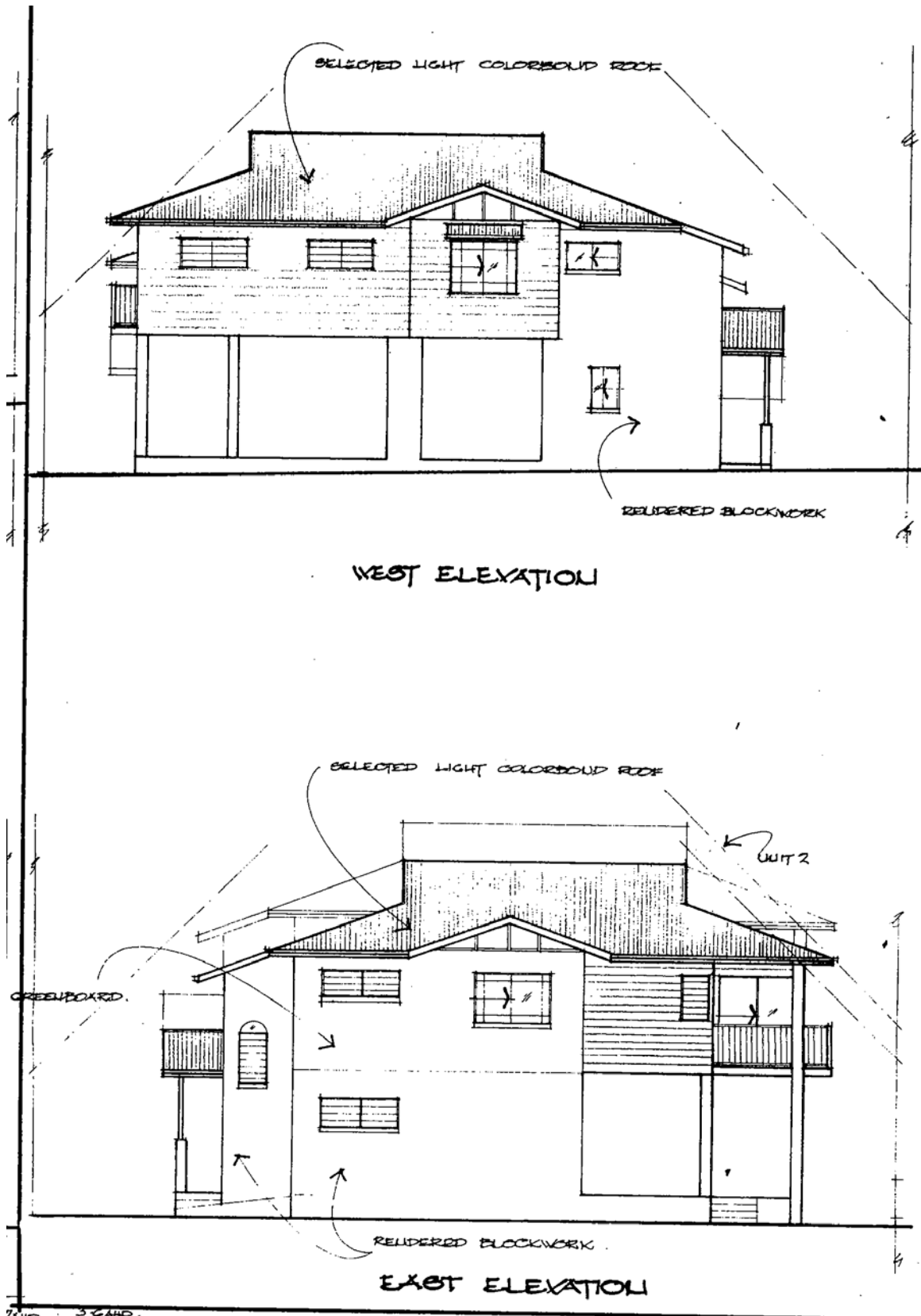
SITE PLAN AND ELEVATIONS





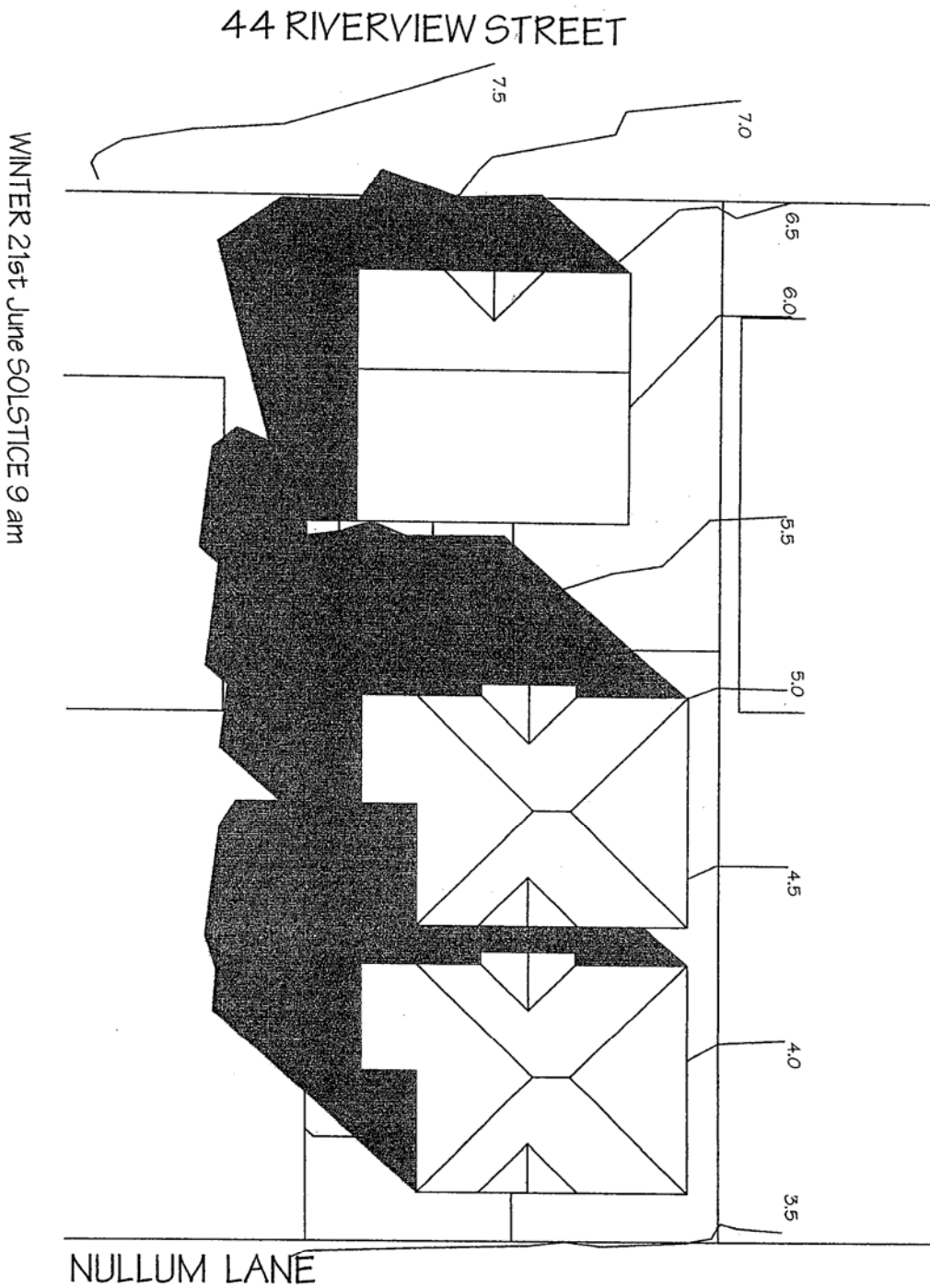




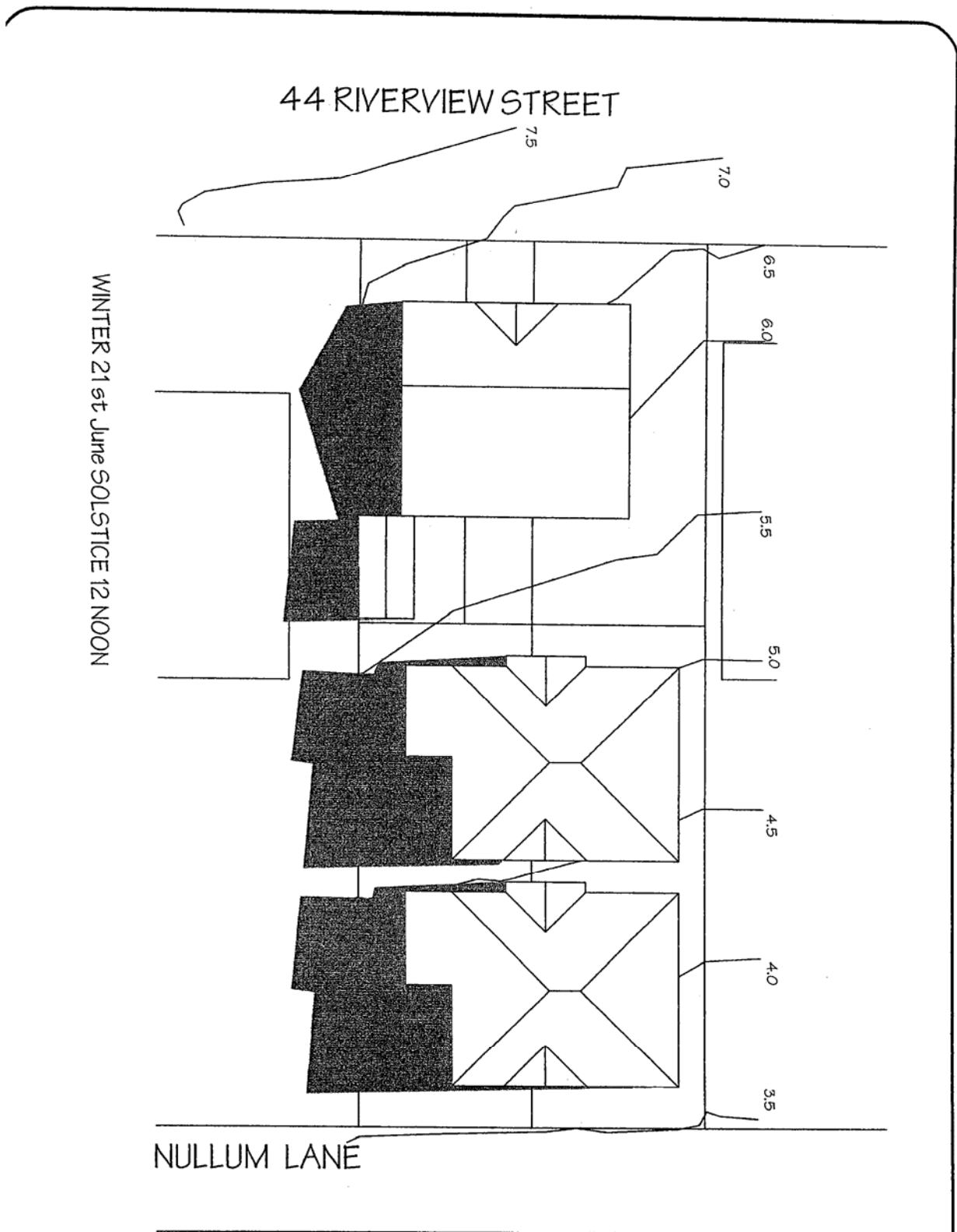



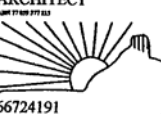


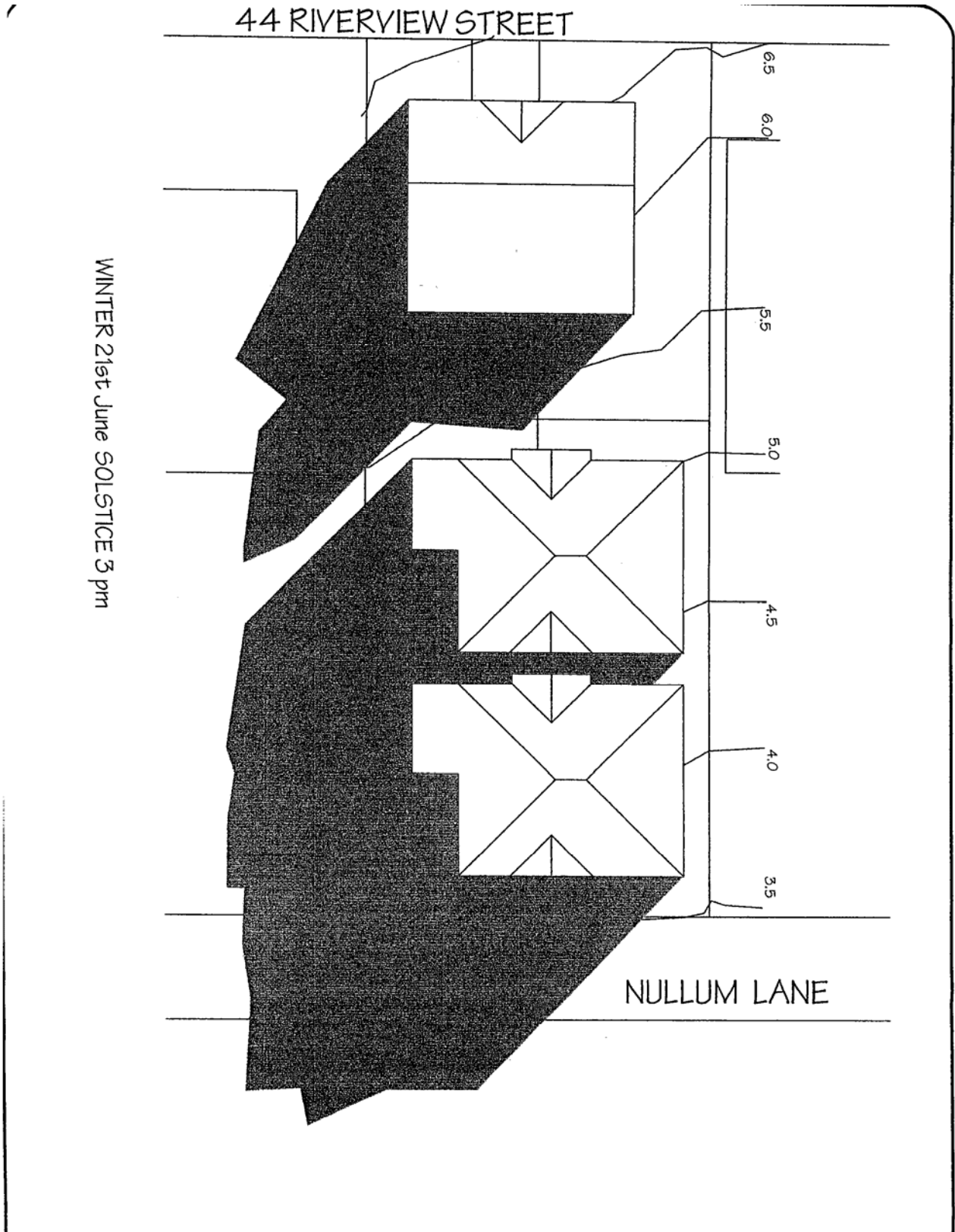
SHADOW DIAGRAMS



| | | | | | | |
|--|--------------------------------------|--|----------------|--|------------|---|
| JOB No 470207 DRAWING No 1 OF 6 | 44 RIVERVIEW STREET | | SCALE 1:200 | | AMENDMENTS | GARY W FIDLER ARCHITECT <small>PLAN 19 00 07 00</small> 66724191 |
| | FOR JIM YOUNG THE PIGGERY PTY LTD | | | | | |



| | | | | |
|--|--|--|------------|--|
| JOB No 470207 DRAWING No 2 OF 6 | 44 RIVERVIEW STREET FOR JIM YOUNG THE PIGGERY PTY LTD | SCALE 1:200  | AMENDMENTS | GARY W FIDLER ARCHITECT <small>ASHTON PTY LTD</small>  66724191 |
|--|--|--|------------|--|



| | | | | | | |
|--|--------------------------------------|--|----------------|--|------------|--|
| JOB No 470207 DRAWING No 3 OF 6 | 44 RIVERVIEW STREET | | SCALE 1:200 | | AMENDMENTS | GARY W FIDLER ARCHITECT ABRVT 17 628 971 512 66724191 |
| | FOR JIM YOUNG THE PIGGERY PTY LTD | | | | | |

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 under the Tweed Local Environmental Plan 2000. The primary objective is to:

- *Provide for and encourage development for the purpose of medium density housing that achieves good urban design outcomes..*

A secondary objective is to:

- *To discourage the under-utilization of land for residential purposes.*

The proposed development is Permissible with Consent in the 2(b) zone, with the proposal being considered to be consistent with the zone objectives.

Clause 15 of the LEP requires essential services to be available to the site prior to consent being granted for the development. Being within an established residential area, the subject land has all essential services available.

Clause 16 of the LEP refers to height of buildings, with the subject site having a maximum building height limit of 3 stories. The proposed development complies with Clause 16.

Clause 17 of the LEP requires social impact assessments for multi dwelling housing development when more than 50 units are proposed. As the application incorporates only 2 dwellings, a Social Impact Assessment is not required. Potential impacts arising from the proposal are considered in detail later in this report.

Clause 34 of the LEP refers to flooding. Although the subject site is flood liable, the proposed development has been designed to meet Council requirements in this regard. Flooding issues are discussed in greater detail later in this report.

(a) (ii) The Provisions of any Draft Environmental Planning InstrumentsDraft LEP Amendment No. 76 (Heritage Study)

Amendment No. 76 incorporates an amendment to Schedule 2 'Heritage Items' of the Tweed LEP 2000, to update the list of items in the LEP as significant to the physical and cultural heritage of the Tweed Shire. The draft amendment was placed on exhibition from 31 January 2007 to 14 March 2007. The existing dwelling on the subject site was included in the list of items on exhibition. Council's Planning Reforms Unit is currently assessing all of the submissions received in relation to the heritage items. It was noted that

the owners of the subject site submitted a letter of objection to the existing dwelling being placed on the draft heritage item list. It is not known at this stage as to whether or not the existing dwelling will ultimately be placed upon the Schedule 2 Heritage Items list.

The applicant and their planning consultant met with Council's Development Assessment Panel prior to the lodgement of this development application. It was at this meeting that Council officers noted that the draft LEP Amendment No 76 was to be placed on exhibition and advised the applicant that they...*'should have regard to the draft document and any new buildings will need to be designed in sympathy with the existing dwelling house'*.

The applicant has provided a Heritage Assessment Overview of the proposed development, prepared by Gary W Fidler (Conservation Architect), which concludes that...*'it is considered that the proposal is sympathetic and doesn't detract from the heritage values of the existing building and will meet the requirements of any possible future listing of the existing building if that eventuates'*.

Draft Tweed LEP 2007

The Draft LEP 2007 nominates the subject site as zone R3 Medium Density Residential, with a building height of 13.6m and a maximum Floor Space Ratio of 2.0:1. The proposed development meets these provisions of the Draft LEP.

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

Consolidated Development Control Plan

Part A1 – Multi-Dwelling Housing & Tourist Accommodation

The following table details the compliance of the proposed development with the applicable residential design elements contained within Part A1:

| Standard | Requirement | Variation/complies |
|------------------------|---|---|
| Floor Space Ratio | 0.5:1 (324m ²) | The floor space ratio is 0.41:1 (276m ²). Therefore the proposal complies. |
| Landscaped Area | 30% site area (194.4 m ²) | The proposed development provides approximately 198m ² of landscaped area (31% site area) and therefore complies. |
| Setbacks from boundary | Main Street frontage 6m Secondary street frontage 3m | The battle-axe shape of proposed Lot 2 results in both new dwellings being well setback from the Riverview Street frontage. Complies. Unit 1 of the proposed dual occupancy is sited a minimum of 3m from the Nullum Lane frontage. Complies |

| Standard | Requirement | Variation/complies |
|--------------------|--|--|
| | 900mm from side | Both dwellings comply with this requirement |
| Streetscape | The maximum width of the garages should be 50% of the frontage width. | The garage components of the dual occupancy dwellings do not front Riverview Street or Nullum Lane. Therefore, the proposal is considered to comply. |
| Streetscape | Garages should be setback behind the front façade of the building. | The proposal is considered satisfactory in this regard. |
| Building Envelope | 45° from 3.5m high at the boundary | There are minor encroachments of the Building Envelope. Refer to assessment below |
| Private Open Space | 20% of site area (130m ² = 65m ² per dwelling) with minimum dimension of 3m One part 25m ² with min dimension of 4m directly accessible from living area | The proposed development is considered to meet the minimum private open space requirements. Each unit incorporates in excess of 25m ² at ground level, as well as a deck off the main living area on the upper level. |
| Car Wash Areas | One car wash area per 10 dwelling units | The original proposal did comply. The amended proposal does meet this requirement. Refer to assessment below. |

Building Envelope

The encroachments appear to be mainly minor encroachments of the roof eaves on the eastern and western boundaries. They are largely a result of the need for the development to be raised to a level above the design flood level for this locality.

The applicant has noted that the proposed development substantially complies with the building envelope provisions and that...*'encroachments are generally consistent with A2 and are of no planning consequence'*.

As noted above, Clause A2 - *Allowable encroachments to envelope* has provision for encroachment of eaves up to 0.6m. Although the proposed development encroaches the envelope by up to 1m in some instances, this is considered acceptable as they do not result in any significant impact upon the surrounding properties, such as overshadowing.



Car Wash Areas

As noted above, the original proposal did incorporate a formal car wash area adjacent to the entrance/garage of Unit 2. However, this area is required to be kept clear as a Right of Way for proposed Lot 1. Although there have been no other formal car wash areas nominated by the applicant, there is opportunity for the residents of the proposed dual occupancy to wash their vehicles on the turfed areas adjacent to each unit. It is not considered necessary to nominate a defined car wash bay area and a variation to this component of the DCP is considered acceptable in this instance.

Summary

In all other aspects, the proposed multi dwelling housing development is considered to have adequately considered and addressed the objectives and acceptable solutions contained within Part A1 of the Consolidated DCP.

Part A2 – Site Access & Parking Code

Council’s Consolidated Development Control Plan came into effect on 12 April 2007, with Part A2 of the DCP being applicable for car parking requirements. The following table details the requirements for the proposed development under DCP Part A2.

| Standard | Requirement | Complies/variation |
|---------------------|--|--|
| On site Car Parking | 2 spaces per 2 or more bed = 4 spaces plus provision of driveway parking of another vehicle Total required = 5 spaces | The amended development provides a double garage for each unit. Proposal does not meet provisions for additional driveway parking Refer assessment below. |

As the proposed development was lodged with Council on 22 December 2006, 4 months prior to DCP Part A2 coming into effect, the parking provisions applicable on the day of lodgement have been applied to this application. DCP 2 requires a total of 3 spaces, inclusive of visitor spaces.

The proposed development, with a total of 4 car spaces complies with the former DCP 2 (subject to the recommended conditions of consent). It should be noted that under today’s requirements of DCP Part A2, the proposed development would not meet minimum requirements, with the new DCP requiring an additional driveway parking space. As noted elsewhere in this report, the applicant has amended their proposal to meet Council’s requirements in terms of sole access off the laneway. The amended design is considered to be an acceptable solution and meets Council’s subdivision provisions. However, the Right of Way over the driveway of proposed Lot 2 does not allow for any additional parking. It is noted that there is sufficient room for vehicles to be parked on the turfed area adjacent to each unit, if additional visitor parking is required.

As discussed above, the application has been assessed under the parking provisions in force at the time of lodgement. Therefore, the proposed 4 garaged spaces and a variation to the requirements of DCP Part A2 is considered to be acceptable in this instance.

Part A3 – Development of Flood Liable Land

The subject site is flood liable, with Council's DCP providing for a design flood level of 7.0m AHD and a minimum floor level of 7.5m AHD. Minutes from Council's Development Assessment Panel meeting held on 26 October 2006 state the following with respect to flooding issues:

'The provisions of the DCP will need to be addressed in any development application. This DCP would normally require the land to be filled to the design flood level. In this particular instance this would not be practical and the application will need to request a variation to this requirement. For this to be supported there will need to be at least pedestrian access to flood free land from the dual occupancy development.'

The applicant has request such a variation to the DCP with respect to filling of land. The original application provided the pedestrian access for occupants of the dual occupancy. However, as the amended proposal incorporates a battle axe block for proposed Lot 2, providing an escape route for tenants to higher land on Riverview Street, the right of footway is no longer required.

Clause A3.8.3 of the DCP limits in the amount of area to be totally enclosed. Providing that the enclosed space does not significantly restrict flood flows, an area of 50m² is allowed to enclose the laundry, stairway entry and double garage space. The ground level enclosed area for the proposed development has been calculated as being approximately 52.7m² for each unit.

Council's Development Assessment Engineer has assessed the proposal, with no objections to the proposed variations to the DCP in terms of filling and enclosed areas, subject to conditions of consent.

Part A5 – Subdivision Manual

The original design, having sole access for proposed Lot 2 off the rear laneway was not supported by Council's Development Assessment Engineer, as it did not meet the provisions of Council's Subdivision Manual and it was considered that an undesirable principle would be set if the application was supported in that form. The laneway, being only 6m wide with a 3.5m pavement, does not meet the minimum road standards for an access street. On meeting with the applicant, several design options were discussed in terms of compliance with the DCP. The applicant subsequently amended the proposal to incorporate a battle axe allotment for proposed Lot 2. This would allow the residents of the dual occupancy access to the site off Riverview Street, as well as Nullum Lane.

Council's Development Assessment Engineer has assessed the amended proposal with no objections, noting that the design meets the criteria set down

in the Subdivision Manual. A condition of consent has been applied requiring a Right of Way over Lot 2, providing the residents of Lot 1 dual access as well.

Part A11 – Public Notification of Development Proposals

The development application was advertised for a period of two weeks closing on 1 February 2007. During this period there were four written submissions received. The issues raised by the submissions are detailed later in this report.

Part A14 – Cut and Fill on Residential Land

The applicant has addressed the issue of Cut and Fill and has submitted a Site Water Management Plan in support of the proposed development. Council's Development Assessment Engineer has applied appropriate conditions of consent in this regard.

Draft Murwillumbah Locality Plan

The subject site is located within the study area of the draft Murwillumbah Locality Plan. It is envisaged that the draft Plan will be reported to Council at the next Planning Committee meeting and if approved, will be placed on public exhibition in the coming months.

The draft Locality Plan nominates the subject site and surrounding area as 2 – 3 storey medium density residential. The proposed development is not inconsistent with the provisions of the draft Locality Plan.

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

There are no matters considered applicable to the proposed development.

(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

Overlooking / Privacy

Adjoining neighbours to the proposed development have raised overlooking / privacy issues as potential impacts from the development. The height of the proposed dual occupancy has occurred as a result of flooding constraints in the locality. As such, the majority of dwellings in the area are high-set two storey dwellings.

The two adjoining properties have their dwellings located in the western portion of their allotments, fronting Riverview Street. The proposed dual occupancy is located in the eastern portion of proposed Lot 2, fronting Nullum Lane. Therefore, any potential overlooking / privacy impacts are not expected to be significant.

Overshadowing

The applicant has provided Shadow Diagrams for the proposed development at 9.00am, 12.00 noon and 3.00pm in June and December. The diagrams indicate that the existing dwelling to the south is shadowed by the existing 'heritage' dwelling on proposed Lot 1 at about 12.30pm. The diagrams demonstrate that midwinter shadows will have minimal impact upon the dwelling on the adjoining allotment to the south. Although there is some degree of overshadowing of the rear back yard of this property, it is well within the requirements of Council's DCP requirements in this regard. The applicant's architect has noted that the surrounding buildings are essentially two storeys as is the proposed building and that...*'it is unlikely that the shadows would reach the sill level of adjoining properties, being the area where the living space begins'*.

Access/Traffic Generation

The amended proposal allows dual access for both allotments. As Riverview Street is a Designated Road, the option of a second access point is encouraged under Council's Subdivision Manual. Similarly, the battle axe handle of proposed Lot 2 allows a second access point for the dual occupancy development. Sole access off the narrow laneway at the rear of the site would not have been supported by Council's Development Assessment Engineer. As such the amended application was lodged with Council. In terms of traffic generation, Council's Traffic & Transport Engineer has assessed the proposal, noting that the laneway is capable of accommodating any additional traffic load generated by the proposed development.

Heritage

As noted above, the existing dwelling has been placed on the draft heritage item list. Although it has not yet been determined whether the dwelling will remain on the list, the applicant has designed the proposed dual occupancy so that the heritage values are not impacted upon.

The applicant has provided a Heritage Assessment Overview of the proposed development, prepared by Gary W Fidler (Conservation Architect), which concludes that...*'it is considered that the proposal is sympathetic and doesn't detract from the heritage values of the existing building and will meet the requirements of any possible future listing of the existing building if that eventuates'*.

Loss of Views

Whilst it is acknowledged that some degree of available views may be lost as a result of the proposed development, the separation and siting of the detached dual occupancy is considered to be acceptable in providing a certain degree of view sharing within the medium density precinct.

(c) Suitability of the site for the development

Flooding

As noted above, the subject site is flood liable. Council has acknowledged that filling the site would not be practical in this instance. As such, the

proposed development has been designed so that the habitable floor area is above the design flood level, resulting in 2 high-set detached dwellings.

It is considered that the proposed development generally meets the design requirements for dual occupancy development, as provided under Section A1 of the Consolidated DCP. The proposed development is not considered to be an over development of the site, as demonstrated by the compliance with the landscaped area and private open space provisions of the DCP. Given the zoning and height limits over the site, potentially a unit development could be proposed on the same site. With this in mind, the proposed dual occupancy is considered to be an appropriate alternative development of the site, in keeping with the existing streetscape. As such, the site is generally considered to be suitable for the proposed development.

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

The proposed development was advertised for 14 days in accordance with the requirements of the Environmental Planning and Assessment Act 1979. Four submissions by way of objection were received.

The following table addressed the issues raised in the submissions.

| OBJECTION | IMPACT ASSESSMENT |
|---|--|
| <i>Overlooking / privacy issues for adjoining residents due to height and proximity of proposal</i> | The proposed dual occupancy dwellings are well separated from the existing dwellings, which are high-set on adjoining allotments. The height of the proposed development is a result of flooding constraints on the site. The proposed dwellings are of similar height to the majority of surrounding dwellings. The proposal does not warrant refusal on this issue. |
| <i>Impact to heritage values of existing dwelling, especially when viewed from the laneway</i> | Although the existing dwelling has been placed on the draft Heritage Item list, it is still under review and it is not yet known as to whether the dwelling will remain as a heritage item. It appears that the main heritage features of the building relate to the front entry way, rather the rear of the dwelling. The applicant has provided a report from a conservation architect, which concludes that the... <i>'proposal is sympathetic and doesn't detract from the heritage values of the existing building'</i> . The proposal does not warrant refusal on this issue. |
| <i>Removal of heritage 'out house' at the rear of the existing dwelling'</i> | The applicant has confirmed that the existing toilet is proposed to be removed and in this regard Mr Gary Fidler (Conservation Architect) advises that in his opinion the structure has minimal heritage value and its retention is not essential. |
| <i>Traffic / safety issues from use of Nullum lane as sole access to the site.</i> | It should be noted that this issue was raised prior to the amended plans being lodged by the applicant. Council's Traffic & Transport Engineer and Development assessment Engineer have assessed the proposed development, noting that Nullum Lane is capable of accommodating the additional vehicle movements per day. The amended layout results in dual use of Riverview Street and Nullum Lane for both allotments, which is Council's preferred option. It is acknowledged that the laneway is a shared use area, with low traffic speeds. Although the laneway does not provide a footpath, the lower vehicle speeds should still allow pedestrian use without conflict. It is noted that surrounding main roads do have footpaths, allowing safe pedestrian access to the broader surrounding area. The proposal does not warrant refusal on this issue. |

| OBJECTION | IMPACT ASSESSMENT |
|---|---|
| <i>Loss of views</i> | The issue of loss of views has been taken into consideration in the assessment of this proposal. Although there will be some degree of view loss to the adjoining residences, the proposed development is considered acceptable in terms of view sharing. The proposal does not warrant refusal on this issue. |
| <i>Proposed boundary adjustment & dual occupancy not suitable for the subject site</i> | The subject site is zoned 2(b) Medium Density Residential, whereby unit development is usually encouraged in order to meet the objectives and densities of the zone. The proposed development complies with the maximum Building Height of 3 storeys. The site is located within the medium density residential precinct of the draft Murwillumbah Locality Plan. The proposal does not warrant refusal on this issue. |
| <i>Noise impact from additional vehicles along driveway and laneway</i> | It is expected that vehicles utilising the driveway would be travelling at low speeds and not creating unwarranted noise levels. Similarly, the speed levels of vehicles within the laneway are not expected to be high, with the noise levels correspondingly not excessive, especially in comparison to the vehicles travelling on Riverview Street. The proposal does not warrant refusal on this issue. |
| <i>Overshadowing of adjoining property to south during winter & loss of cool summer breezes</i> | The applicant has provided Shadow Diagrams for the proposed development, which indicate that although there is some degree of overshadowing of the adjoining property to the south, it is well within the requirements of Council's DCP requirements in this regard. In terms of loss of breezes, the high set design and separation of the proposed dual occupancy is not expected to significantly reduce through breezes. The proposal does not warrant refusal on this issue. |

(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 proposed development in accordance with the recommended conditions.
2. Refuse the development application and provide reasons for refusal.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has the right of appeal to the Land and Environment Court should they be dissatisfied with the determination.

POLICY IMPLICATIONS:

Nil.



CONCLUSION:

The proposed development generally complies with the design requirements applicable to the development. Having regard for all of the matters relevant to the proposal it is considered that the proposal warrants conditional consent.

A number of the conditions are imposed to ensure the development does not adversely impact on the locality during construction.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

P2 [PR-PC] Development Application DA06/0225 for a Motorcycle Riding Facility at Lot 503 DP 1000612, No. 11 Donalyn Court, Duranbah

ORIGIN:

Development Assessment

FILE NO: DA06/0225 Pt4

SUMMARY OF REPORT:

Council is in receipt of a Development Application seeking approval for a recreation area for motor cycle riders (dirt bike track), at Duranbah. The facility would comprise of three (3) motorcycle tracks, office, registration and first aid station, kiosk, toilet facilities, formal on-site car parking for fifty-two (52) cars and picnic areas. The applicant proposes to employ four (4) staff and to operate Friday, Saturday Sunday Monday and most public holidays.

The application was lodged with Council on 8 March 2006. Since its lodgement the primary concern with this application has been its potential impact on the amenity of adjoining properties as a result of noise emanating from the proposed facility. In an attempt to mitigate the potential impacts the applicant has amended their application by changing the location of the tracks and has submitted two noise impact assessments.

To ensure the potential impact of noise was appropriately considered the application has been reviewed by Council's Environmental Health Officer and two independent noise consultants on behalf of Council.

Upon review of the acoustic assessments and submissions, the proposed development is not considered suitable for the site given the potential noise impact on adjoining properties. The noise mitigation measures are not considered suitable and therefore the application is recommended for refusal.

In addition to potential noise impacts the proposed development is considered unsuitable due to the amount of cut and fill, creating visual impacts as viewed from adjoining properties and roads including the Pacific Highway, and the inadequate information regarding engineering matters.

The application was publicly advertised and notified to adjoining residents within a 2km radius. Those persons who lodged a submission were notified of the amended acoustic information for revised comments. To date Council has received 403 submissions regarding the proposal. Approximately 40% of these support the application while the other 60% oppose the development.

It is acknowledged that these types of facilities are needed to meet a community need, however it is imperative that these facilities are appropriately located. Having regard to



all of the submissions and the development as a whole, it is concluded that the subject site is not suitable for the proposed development.

RECOMMENDATION:

That Development Application DA06/0225 for a motorcycle riding facility at Lot 503 DP 1000612, No. 11 Donalyn Court, Duranbah be refused for the following reasons: -

- 1. In accordance with Section 79C(ai) of the Environmental Planning and Assessment Act 1979, the development does not comply with the Tweed Local Environmental Plan 2000 specifically having regard to Clause 4 Aims of the Plan, Clause 8 Consent Considerations, Clause 11 The Zones 1(a) and Clause 22 Development Near Designated Roads.**
- 2. In accordance with Section 79C(ai) of the Environmental Planning and Assessment Act 1979, the development is not permissible within the section of the site zoned 1(b2) Agricultural Protection and is not consistent with Clause 8(2) of the Tweed Local Environmental Plan 2000.**
- 3. In accordance with Section 79C(b) of the Environmental Planning and Assessment Act 1979, the development will have an unacceptable impact on the amenity of the area specifically as a result of noise generated by the proposal.**
- 4. In accordance with Section 79C(b) of the Environmental Planning and Assessment Act 1979, the impact of cut and fill on site cannot be established as insufficient engineering detail has been provided.**
- 5. In accordance with Section 79C(b) of the Environmental Planning and Assessment Act 1979, the development will be visually detrimental to the landscape as extensive cut and fill is necessary.**
- 6. In accordance with Section 79C(b) of the Environmental Planning and Assessment Act 1979, the development will have an unacceptable impact on the safety of motorists particularly on the Pacific Highway.**

REPORT:

Applicant: Dirty Bikes Pty Ltd
Owner: Mrs ME Gilliland and Mr JR Gilliland
Location: Lot 503 DP 1000612, No. 11 Donalyn Court, Duranbah
Zoning: 1(a) Rural
Cost: \$90,000.00

BACKGROUND:The Subject Site & Locality

The subject site has a total area of 32.14ha and has frontage to the Pacific Highway and Donalyn Court, Duranbah. However, vehicular access is only available via Donalyn Court off Eviron Road.

The subject site is presently occupied by a dwelling house and its associated buildings and a dam. The site slopes specifically in the northern and eastern sections of the allotment. This area of the site is visible from various adjoining properties and roads.

The site contains vegetation communities in the form of sclerophyll open forest dominated by Blackbutt, and sclerophyll open forest dominated by Brush Box in the east.

The site is zoned part 1(a) Rural and part 1(b2) Agricultural Protection in accordance with the Tweed Local Environmental Plan 2000.

The surrounding locality comprises:

- The Pacific Highway
- Council's records indicate there are four (4) dwelling houses within 500m of the subject site.
- The Tweed Valley Cemetery approximately 350m north of the subject site; and
- An old quarry approximately 150m west of the subject site (on the opposite side of the Pacific Highway).

The Proposed Development

The application currently before Council seeks consent for a recreation area for the purposes of a dirt bike track. The proposal includes;

- three (3) motorcycle tracks
- office
- registration and first aid station
- kiosk
- toilet facilities
- formal on-site car parking for fifty-two (52) cars and
- picnic areas



To facilitate this development the site would need extensive earthworks to create the tracks and specifically would require vegetation clearing within proposed track one. This would involve the removal of Camphor Laurel.

The applicant proposes to operate every Friday, Saturday, Sunday, Monday and public holidays excluding Christmas Day, Boxing Day and Good Friday. As a result of the amended acoustic report the revised hours of operation are:

Friday, Saturday & Monday - 9.00am – 6.00pm
Sunday & Public Holidays - 10.00am – 6.00pm

Four (4) staff are proposed to be employed in conjunction with the use.

Primary Issues for Consideration

Noise:

The development application was accompanied with a noise impact assessment prepared by Craig Hill Acoustics. This assessment was evaluated by an independent acoustic engineer, Vipac Acoustical Engineers on Council's behalf. The engineer made a number of recommendations, including additional noise logging be undertaken. As a result of the independent review, the applicant was requested to review the noise impact assessment.

The applicant submitted a revised noise impact assessment prepared by James Heddle Pty Ltd. The assessment resulted in a revised layout of the tracks. The assessment concludes satisfactory noise levels are achievable if motorcycle exhausts are not directly acoustically viewable from the receiver location. To achieve this, a number of mitigation measures are required including barrier shielding. According to the report noise would not be audible from the Tweed Valley Cemetery.

An acoustic engineer, Heggies Pty Ltd, reviewed the noise assessment prepared by Heddle Pty Ltd. The engineer advised that whilst the development application has satisfactorily addressed the necessary requirements for an acoustic assessment, the location of the barrier locations and dimensions would need to be confirmed and post construction monitoring would need to be undertaken to determine the effectiveness or otherwise of the hay bales as a noise mitigation measure or whether a barrier with more noise attenuation is required.

The assessments prepared by James Heddle Pty Ltd and Heggies Pty Ltd were reviewed by Council's Environmental Health Officer. The Officer advised Heddle's assessment is based on noise computer modelling and observations which are not considered sufficient to determine the potential noise impact upon nearby residences. The officer advised noise issues should be addressed prior to the determination of the development application and should not be reliant on conditions of consent. Post construction noise monitoring may demonstrate the desired noise goals have not been achieved. The officer further advised noise levels from the proposed Motorcycle Facility could have a significant impact upon Council's Tweed Valley Cemetery and surrounding residential dwellings.

The ambiguity in determining the appropriateness of the proposed mitigation measures forms the basis for this refusal.

Visual Implications

The tracks in part, will be visible from adjoining properties and roads including the Pacific Highway. It is unlikely landscaping will adequately screen the tracks given their location and the topography of the site.

The proposed development would be unsympathetic to the existing visual character of the area and therefore this forms one of the reasons for refusal.

Safety

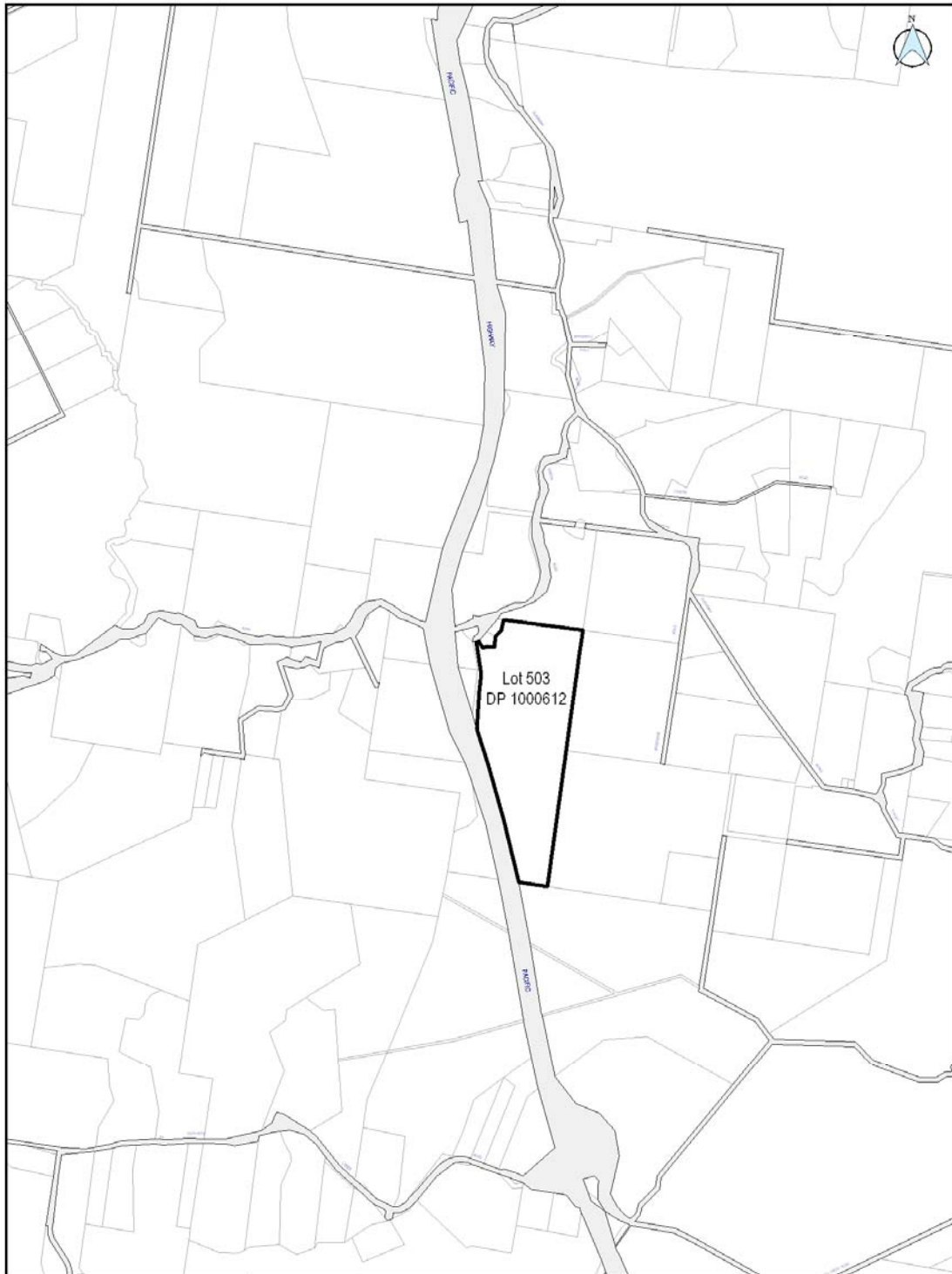
As discussed, parts of the tracks will be visible from the Highway. The activities associated with the operation of the tracks have the potential to adversely impact on Highway safety by causing unnecessary distraction to Highway motorists. This impact has also been raised as an issue by the NSW RTA.

Public Interest

To date Council has received 403 submissions relating to the proposal. Approximately 40% support the development and the remaining 60% oppose the development. It is acknowledged that these types of facilities are needed however it is essential such facilities are developed in suitable locations adjoining compatible land uses. Having regards to the issues raised in the submissions, the potential negative impacts on the immediate locality deems the site unsuitable.

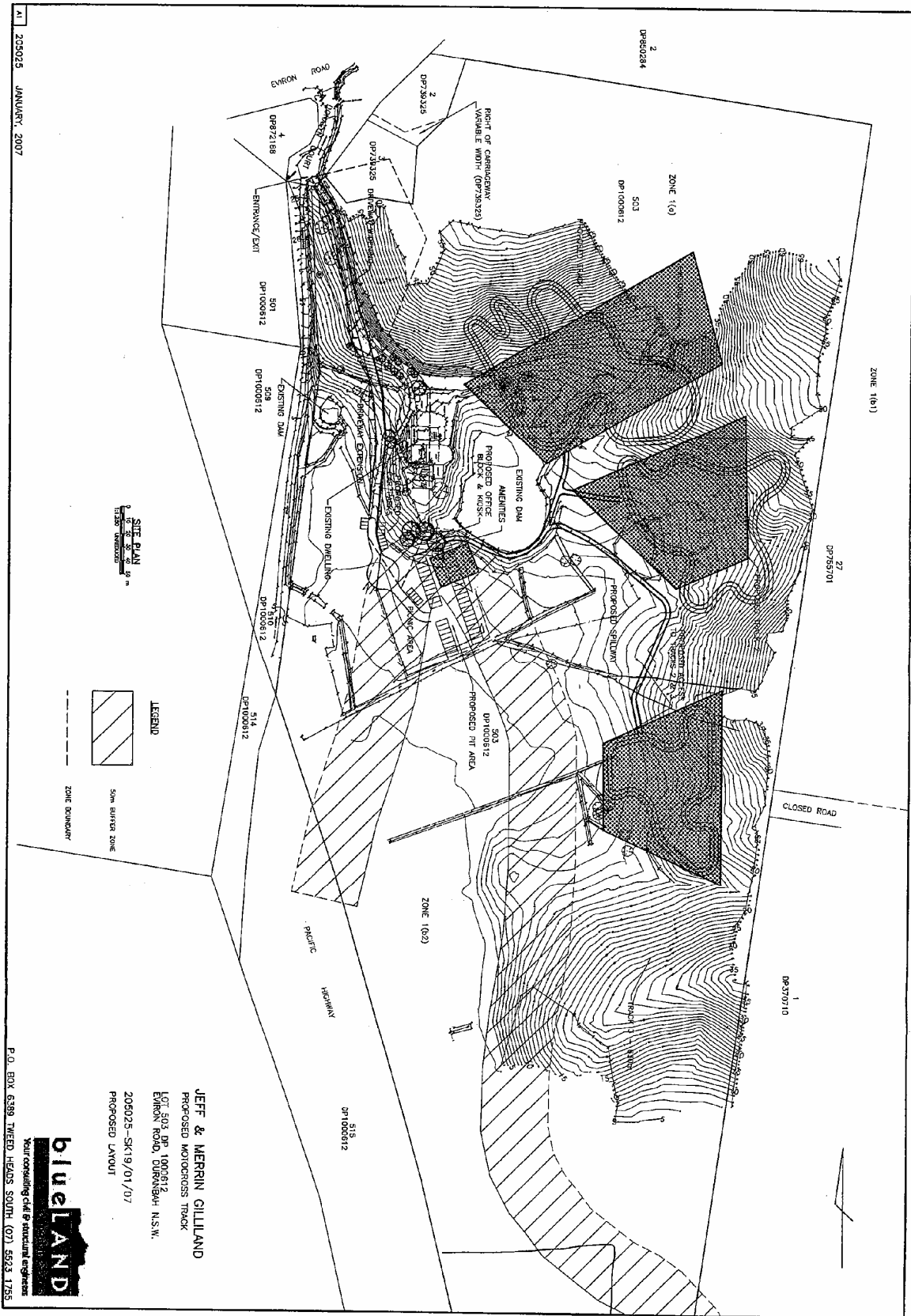


SITE DIAGRAM:



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| <p>© TWEED SHIRE COUNCIL 2007 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 816 Murwillumbah, NSW, 2484 Tel (02) 6670 2409 Fax (02) 6670 2493</p> | <p><i>Tweed Shire Council</i> Lot 503 DP 1000612 No. 11 Donalyn Court, Duranbah</p> |  <p>1996 TWEED SHIRE COUNCIL, N.S.W.</p> | <p>PLANNING REFORMS UNIT Site Plan Sheet: 1 of 1</p> |
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DEVELOPMENT PLAN - TRACK LAYOUT





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)

Clause 4 – Aims of this Plan

The aims of this plan are:

.....(b) *to provide a legal basis for the making of a development control plan that contains more detailed local planning policies and other provisions that provide guidance for future development and land management, such as provisions recommending the following:*

- (i) *that some or all development should be restricted to certain land within a zone,*
- (ii) *that specific development requirements should apply to certain land in a zone or to a certain type of development,*
- (iii) *that certain types or forms of development or activities should be encouraged by the provision of appropriate incentives, and*

.....(d) *to encourage sustainable economic development of the area of Tweed compatible with the area's environmental and residential amenity qualities.*

The proposed development is not considered to satisfy b or d above. Part of the development relies upon Clause 8(2) for permissibility. Clause 8(2) in this instance cannot be satisfied. The proposed development is not sympathetic to the areas unique natural characteristics or its residential amenity qualities.

The development does not comply with the aims of this plan.

Clause 5 requires careful evaluation to avoid serious or irreversible damage to the environment. The development as proposed could be conditioned to avoid sensitive vegetation areas, however, this would require constant monitoring.

Clause 8 specifies that all developments need be assessed having regard to Clause 8(1). This requires compliance with the zone objectives, aims of the plan, and the possible cumulative impact of a development. Each of these matters are assessed individually within this report.

The proposed "recreation area" is an item 3 matter within the portion of the site zoned 1(b2) Agricultural Protection. The car parking and picnic areas of the development are positioned within the 1(b2) portion of the site. Clause

8(2) is duplicated below. The applicants comments and Council's assessment of each matter are provided below.

8(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*

Applicants Comment:

1. *'A small portion of land in the 1(b2) zone will be used, it is in the flexible zone boundary which the statement of environmental effects addresses through clause 14 of the LEP. This land is part of a fill that occurred when the freeway was built. It is now unusable for any viable agricultural pursuit due to the nature of the fill which consists of gravel and clay.*
2. *The need to be in the locality is addressed in the DA by the impact studies ie. Noise assessment, traffic movements, earthworks, drainage, resource recovery, on site sewage management, habitat assessment, landscaping etc.*
3. *It meets an urgent community need due to there being no facility in the shire for our youth and adults to have somewhere to ride legally and in a safe environment. Note this will be an alcohol free facility.*
4. *It will employ local staff to run the facility eg. Office, track officials, canteen and grounds staff.*

Council Assessment

These comments are not entirely concurred with.

Claims that the land is unsuitable for agricultural pursuits are not justified as the site is presently being used for grazing purposes.

Whilst the development would be one of a kind within in the Tweed LGA the subject site must be assessed on its merits and based on the contents of this report the site is not considered suitable.

The employment of 4 people for the business is not considered to constitute major employment.

The development is not considered to satisfy Clause 8(2)(a).



- (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*

Applicants Comment:

As the DA shows this location has the perfect terrain for noise shielding and visual privacy.

Council Assessment

These comments are not entirely concurred with.

The proposed development is defined as a “recreation area”. A recreation area is permissible with consent in the 1(a) zone. Tweed Shire Council has extensive amounts of 1(a) zoned land. The suitability of possible sites must be undertaken in accordance with the Merit Considerations of Section 79C of the EP&A Act 1979.

The applicant has not demonstrated the consideration of any alternative sites. The merit assessment of this site warrants refusal for the reasons detailed in this report.

The development is not considered to satisfy Clause 8(2)(b).

- (c) *the development will be generally consistent with the scale and character of existing and future lawful development in the immediate area, and*

Applicants Comment:

The DA is consistent with zoning and will not effect future development on nearby adjoining properties.

Council Assessment

A dirt bike track facility is not consistent with the rural residential character of the area and will have a detrimental impact on the locality.

The development is not considered to satisfy Clause 8(2)(c).

- (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.*

Applicants Comment:

The DA is consistent with the aims of the LEP as to provide development that is not suitable in or near urban areas’.

Council Assessment

As detailed within this report the application is not considered to be consistent with Clause 4, 8 or 11 of the Tweed LEP 2000.

The development is not considered to satisfy Clause 8(2)(d).

Clause 11 relates to the zones of the Tweed LEP 2000. The subject site is zoned part 1(a) Rural and part 1(b2) Agricultural Protection. The proposed motorbike facility is best defined as a "recreation area". The development primarily occurs within the 1(a) zoned part of the site, however, the formal car parking and picnic area is located within the 1(b2) zone. A recreation area is permissible with consent in the 1(a) zone and is an item 3 matter within the 1(b2) zone requiring consideration of clause 8(2) of the Tweed LEP 2000 as detailed above.

The primary zone objectives of the 1(a) zone relates to ecologically sustainable development of the land that is suitable primarily for agricultural or natural resource utilisation purposes and associated development; and to protect rural character and amenity. The applicable secondary objective, provides for development that is not suitable in or near urban areas.

The primary zone objective of the 1(b2) zone relates to the protection of identified prime agricultural land from fragmentation and the economic pressure of competing land uses. The secondary objective relates to the provision of other development that is compatible with agricultural activities.

The proposed motorbike facility is not considered to be consistent with the primary objectives of the 1(a) zone as the development would not protect the rural character and amenity. The secondary objective provides for development that is not suitable in or near urban areas, this development would specifically satisfy this secondary objective but at the expense of the primary zone objective.

Clause 14 of the TLEP allows flexibility where detailed investigation of a site and its surrounds indicates that a land use allowed on the other side of a zone boundary would enable more logical and appropriate development of the site.

The applicant has requested Council utilise this Clause rather than Clause 8(2) for that part of the development occurring within the 1(b2) zone. This is not possible as Clause 14 requires developments to be prohibited before it is able to be used. A recreation area is not prohibited in the 1(b2) zone but rather permissible subject to compliance with Clause 8(2). Therefore Clause 14 does not apply.

Clause 15 requires Council to be satisfied the subject site has the benefit of essential services prior to issuing consent. Water and electricity are available to the site. Council's Environmental Health Officer has reviewed the



development application and advised the proposed waste management plan is satisfactory. Any waste oil will be disposed of at Stotts Creek Landfill Facility. Council's Waste management Coordinator has advised this is acceptable. Council's Environmental Health Officer has advised the proposed on-site sewage management system design and effluent land disposal area is adequate for the proposed development.

Clause 16 requires development to be carried out in accordance with the height of buildings map. The proposed development is consistent with the 3 storey limit.

Clause 22 applies to land that has frontage or access to a designated road. This clause is applicable as the site has frontage to the Pacific Highway.

The clause requires that the following applicable matters must be satisfied before any approval can be issued:

- (a) the development (because of its nature, appearance, cumulative effect or illumination, or the intensity or the volume or type of traffic likely to be generated, or for another similar reason) is unlikely to constitute a traffic hazard or materially reduce the capacity or efficiency of the designated road, and
- (b) The location, standard and design of access points, and on-site traffic movement and parking arrangements, would ensure that through traffic movement on the designated road is not impeded, and
- (c) the development, or proposed access to it, will not prejudice any future improvements to, or realignment of, the designated road, and
- (d) where the land is in Zone 1(a), 5(a), 7(a), 7(d), 7(f), or 7(l), the development is of a type that necessitates a location in proximity to the designated road for reasons other than only commercial advantage, and
- (e) The development is of a type that is not sensitive to traffic noise or, if it is, it is located or adequate measures are included to ameliorate any potential noise impact, and
- (f) the development would not detract from the scenic values of the locality, particularly from the point of view of road users, and
- (g) where practicable, access to the land is provided by a road other than the designated road, and
- (h) in respect of any application for commercial or retail development near the Pacific Highway in Zone 1 (a), 7 (a), 7 (d), 7 (f) or 7 (l), the development:

- (iii) would not compromise highway safety and efficiency.

The application was referred to the NSW Roads and Traffic Authority (RTA) for comment. The RTA advised it could not support the proposal until suitable screening of onsite activities from the Pacific Highway traffic is included in the development of the site. The RTA considers onsite activities will adversely impact on Highway safety by causing unnecessary distraction to Highway motorists, unless suitable screening is provided. The RTA advised the relocation of the tracks to the hillsides overlooking the Highway may preclude vegetation as a suitable means of site screening.

Based on the assessment undertaken by the RTA and Council the proposed application is not considered to satisfy Clause 22.

Clause 24 of the TLEP controls the setback of development along designated roads. The clause requires development within the 1(a) and 1(b) zones to be setback 30m from the Pacific Highway. The development on the subject site is consistent with this clause.

Clause 35 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 land class two (2). Council's Environmental Health Officer has reviewed the proposed development and accompanying Acid Sulfate Soil Management Plan and did not object to the proposal regarding the interference with ASS.

Clause 39A relates to minimising bushfire risk and requires Council to take into consideration a number of matters during its assessment of an application. The site is identified as being bushfire prone and as such the local NSW Rural Fire Service (RFS) were consulted. The RFS did not object to the proposal with regards to bushfire matters subject to several conditions of consent. It is not considered the proposal would have a significant adverse effect on the implementation of strategies for bushfire control, the risk to human life, the ability of emergency personnel to effectively control major bushfires.

Clause 47 relates to advertising signage in the rural zones. Signage in these areas must relate to the principle use of the site and direct the travelling public to the subject site. The dimensions and overall size of the signage are to be reasonable to direct the travelling public. The applicant proposes to erect a 1.2m x 1.0m sign identifying the business, hours of operation and contact details. The sign is proposed to be situated at the entry point to the site. Should the application be approved, further information regarding the signage would be required.

North Coast Regional Environmental Plan 1988

Clause 12 of the plan requires consideration of the impact of development on adjoining or adjacent agricultural land. The application was referred to the Department of Primary Industries (DPI) for comment who advised due to the mix of agricultural land classes involved and limited areas

of what may be considered better quality agricultural land, the proposal is not likely to cause an unacceptable loss of agricultural land resources. The DPI advised the amended track design raised no notable or significant agricultural or fisheries issues.

Far North Coast Regional Strategy

The strategy provides a guide to achieve sustainable development of land across the far North Coast. The aims of the strategy includes the identification and protection of important environmental assets, landscape and cultural values and natural resources. The proposed development would result in a change to the natural landscape and would be visually prominent. This visual intrusion on the natural landscape in this locality is considered unacceptable.

State Environmental Planning Policies (SEPPs)

SEPP No 11—Traffic Generating Developments

As the proposal could accommodate 50 or more motor vehicles on-site, it was referred to the Local Traffic Committee (LTC) for consideration in accordance with Schedule 2 of the SEPP.

The committee raised the following issues:

- *52 car parks appear to be inadequate as it is unclear if the same 80 riders remain all day.*
- *The method of determining the trip generation needs to be explained in greater detail, e.g there may only be 80 riders on the track at one time but there are another 80 waiting.*
- *The intersection of Duranbah Road and Environ Road needs to be assessed for peak hour performance.*
- *The activity needs to be screened from the Highway to prevent highway driver distraction.*
- *Concern of dust generation impact on Highway safety.*
- *Any signs to the site should not be facing Highway traffic.*

Further to the above comments Council's Development Engineer has reviewed the proposal and recommended the application be refused as a result of insufficient information relating to earthworks. The officer has raised concern that should the tabled traffic movements in James Heddle Pty Ltd's assessment, of 80 vehicles per hour be accurate, the road network would not be able to accept the additional traffic nor would the facility be capable of complying with the requirement to limit each track to 12 motorcycles. The officer notes this rate is significantly greater than the trips outlined in the SEE which states a total of 217 traffic movements per day may be expected.

The concerns raised by the Local Traffic Committees and Council's Development Engineer contribute to the reasons for refusal.

State Environmental Planning Policy No 44—Koala Habitat Protection

The SEPP applies to the subject site as it has an area greater than 1 hectare. The SEPP requires the consent authority to establish whether or not the land is a potential koala habitat. The applicant provided an eight-part test of significance and core koala habitat identification, prepared by Ecograph. The assessment found the development area does not contain preferred koala food trees as listed in Schedule 2 of the SEPP. The assessment concludes that the development footprint does not contain potential or core koala habitat.

Council's Environmental Scientist reviewed Ecograph's assessment and advised koala feed trees, secondary koala habitat and an area of Swamp Sclerophyll Forest occurs outside the proposed development footprint and will not be impacted.

No further assessment is considered necessary in accordance with SEPP 44.

Section 5A Environmental Planning and Assessment Act 1979 - Threatened Species

The applicant's flora and fauna assessment, prepared by Ecograph advises the site does not contain any threatened species. The investigations examined the probability of regional threatened species at the site in relation to the proposal and the likelihood of any impacts. The assessment concludes:

- *The proposed development is not expected to influence the viability of any of these threatened species due to the abundance of similar vegetation and habitat features in the region and the ability of the bird and bat species to disperse to such habitat.*
- *Except for cleared areas, the proposed development site supports very minor quantities of important habitat features, several mature hollow bearing trees and a small remnant of Blackbutt dominated vegetation. Furthermore, these habitat features are not expected to be impacted by the development.*

The subject site contains endangered ecological communities and some threatened fauna. However, the development footprint does not affect these areas of significance. Council's Environmental Scientist has reviewed the development application and advised there should be no significant ecological impact from the proposal subject to suitable conditions.

The construction of Track 1 would result in the removal of Camphor Laurel. Should the application be approved, suitable conditions would be required regarding clearing activities and track construction and maintenance. The large fig (*Ficus macrophylla*) situated within Track 2 must be retained and protected. Should the application be approved, suitable conditions would be necessary to protect the tree from damage during construction and from ongoing track use.

The development will not result in the clearing of native vegetation.



The officer supports the findings of the Ecograph which details indirect impacts to threatened species are unlikely due to the nocturnal foraging habitat of most threatened species, lack of on-site roosting habitat and potential alternative habitat on the lower floodplain sections of the subject site for the Black-necked Stork. The Assessment of Significance (7 part test) was amended to include the Grey-headed Flying Fox. On the basis of the species nocturnal nature, analysis of foraging and potential roosting habitat on the property and Assessment of Significance, the development is not expected to influence the viability of this species (or the Black Flying Fox).

Therefore having regard to Section 5A the proposed development is not considered to warrant a Species Impact Statement.

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

Draft Tweed LEP 2000 (Amendment 21) is a shire wide LEP that affects the subject site. Draft Tweed LEP 2000 (Amendment 21) was exhibited from 8 December 2004 to 25 March 2005.

The Draft proposes to re-zone the subject site to part 1(a) Rural, part 1(a1) Rural (Steep Land/ Escarpment) and part 1(b2) Agricultural Protection. The Draft LEP is likely to be implemented into Tweed LEP 2007 within the next few months. However, the proposed changes only recognise the steep nature of the site and restrict development on this type of land.

As detailed in this report the subject site is not considered suitable for the proposed development due to the possible negative impacts arising from the earthworks and proposed nature of the use.

(a) (iii) Tweed Shire Development Control Plan (DCP)

Section A2 - Site Access and Parking

The development application was lodged prior to the gazettal of the Tweed Shire Development Control Plan (TSDCP) as such based on a merit the figures used in the previous plan, DCP No. 2 have been used in the assessment of the application.

The requirements for a motor track in DCP No. 2 and the TSDCP are similar, the only difference being DCP No. 2 enables a reduction in customer and staff parking.

Council's Development Engineer has reviewed the proposal and provided the assessment below.

| Standard | Required | Proposed |
|-------------|--|--|
| Motor Track | Deliver, service vehicle: 1 space Staff: 0.5/staff = 2 spaces Customer parking: 1/5 participant and spectator capacity = 16 for participant 19 spaces x .08ESD = 15.2 spaces Total: 15.2 spaces | 52 spaces No details given regarding spectator numbers. |

The officer raised concern regarding the provision for parking for participants and spectators. The submitted engineering assessment identifies 37 spaces for car/trailer combinations within a pit area and 15 spaces for spectators. The officer recommended the formal pit area be increased to 40, the 15 spectator spaces identified within the application be provided and an informal overflow parking area be provided for a minimum of 25 vehicles. The applicant has subsequently amended the car parking layout in accordance with Council's requirements. Should the application be approved a condition requiring bicycle parking to be provided.

The existing bitumen sealed access road services the site. The applicant proposes to upgrade this road to cater for the additional traffic generated by the proposed development. The engineer raised no objection to this in principle however, requested details of the existing and finished surface levels for all earthworks. It is noted such detail was not provided.

Section A4 – Advertising Signs

The applicant has not provided details of any signage. A 1.2m x 1.0m sign is proposed at the entry to the facility. The sign would identify the business, hours of operation and contact details. Further details would be required of the applicant should the application be approved.

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

There are no matters prescribed by the regulations, which are applicable.

(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

The development application was accompanied with a noise impact assessment, prepared by Craig Hill Acoustics. The assessment was evaluated by Vipac Acoustical Engineers on Council's behalf. The engineer made a number of recommendations, including additional noise logging be

undertaken. As a result of the evaluation, the applicant was requested to review the noise impact assessment.

The applicant submitted a revised noise impact assessment prepared by James Heddle Pty Ltd and a revised layout of the tracks.

According to this assessment, satisfactory noise levels are achievable at all receiver locations if motorcycle exhausts are not directly acoustically viewable from the receiver location. The receiver locations referred to in the assessment are nearby properties; R1 (Lot 3 DP 739325, Eviron Road), R2 (10 Donalyn Court), R3 (8 Donalyn Court), R4 (7 Donalyn Court), R5 (751 Eviron Road) and R6 (52 Reardons Road).

According to Heddle's assessment satisfactory noise levels are achievable if motorcycle exhausts are not directly acoustically viewable from the receiver location. To achieve this, a number of mitigation measures are required including barrier shielding.

The assessment states in order to comply with the maximum noise level requirement, barrier shielding to the most exposed residence, R2 will be required. A barrier of a height of 1.25m or greater in the zones of Track 2, test and track access routes acoustically viewable from R2 are proposed. The engineer recommends hay bales as a suitable noise barrier.

Heddle's assessment states noise levels would be satisfactory from the residences on the western side of the Pacific Highway (751 and 726 Eviron Road) provided the exhaust pipe outlets are shielded and a total of 36 trail bikes are used at once.

The assessment advises trail bikes were not audible from the noise monitoring locations within the cemetery grounds.

The recommendations of the noise impact assessment are:-

1. *'Adopt the revised track zones to maximise available acoustic shielding provided by the terrain.*
2. *Screen trail bikes at all locations on the site viewable from receivers. This means to residential locations to the northwest and west where they have direct line of sight to the facility.*
3. *Screening to consist of soft barriers on the residential receiver side of the track (northwest or west of the track) where the trail bike exhaust may otherwise be visible to the receiver. Barriers to consist of hay bales a minimum of 1.25m in height. The precise location details for these are dependent on the preferred track layout within the designated zones.*
4. *Trail bike numbers to be limited to 12 per track unless minimum noise levels are lowered to be below 130dBA at 500mm (trail bikes used in modelling).*
5. *Vehicle access to the site not to exceed 80 vehicle movements per hour.*

6. *Bikes to be tested in accordance with the procedure given in Section 5.7.2.1 of the Manual of Motorcycle Sport 2006, Motorcycling Australia' 'except that bikes to be throttled to maximum throttle position instantaneously at least three times. Bikes exceeding a maximum level of 130 dBA to be excluded'.*

Heddle's noise impact assessment was reviewed by an independent acoustic engineer, Heggies Pty Ltd on Council's behalf. The engineer advised:-

- *The use of natural topography as acoustic shielding appears to be most effective form of noise mitigation available to the proposal. This is effective in most instances, particularly at the adjacent cemetery.*
- *Based on a limit of 12 motorcycles per track and the source levels of each bike being limited 130dBA at 500mm (107dBA at 7.5m), a satisfactory noise level is likely to be achieved. Compulsory testing of each motorcycle on site prior to access approval is an appropriate method for policing this requirement.*
- *We would recommend that confirmation of 'barrier' locations and dimensions be confirmed during the detailed design of the project or as an addendum to the development application and post construction monitoring be undertaken to determine the effectiveness (or otherwise) of the hay bales as a noise mitigation measure or whether something more appropriate is required.*

The assessment's prepared by James Heddle Pty Ltd and Heggies Pty Ltd were reviewed by Council's Environmental Health officer. The officer advised the Heddle's assessment refers to a "Trail Bike Assessment Tool" undertaken by Local Government Authorities in Queensland which recommends a site is suitable for trail bikes if a minimum distance of 300m is maintained to noise sensitive receivers. The assessment states the proposal complies with this requirement. However, council's records indicate four (4) dwellings are located within 300m of proposed Track 1.

The officer advised Heddle's assessment is based on noise computer modelling and observations which are not considered sufficient to determine the potential noise impact upon nearby residences.

In response to the advice prepared by Heggies Pty Ltd the officer advised noise issues should be addressed prior to the determination of the development application and should not be reliant on conditions of consent. Post construction noise monitoring may demonstrate the desired noise goals have not been achieved. Council would then be in a situation where development approval has been granted to a facility that can not effectively achieve desired noise goals.

The officer concludes it is anticipated that the noise levels from the proposed Motorcycle Facility will have a significant impact upon Council's Tweed Valley Cemetery and surrounding residential dwellings.

Assessment:

The use of hale bales is not considered to be an appropriate noise mitigation measure. Hay bales are subject to decay and deteriorate when in contact with moisture. Hay bales would also be insufficient as a noise barrier if damaged by impact from motorcycles. The noise assessment submitted does not nominate the dimensions of the noise barriers required, nor does it specify where the hay bales should be situated to ensure compliance. Ongoing monitoring and review indicates the unsuitable nature of the site. Based on this conclusion the proposed development would have unacceptable amenity implications for the area and is therefore recommended for refusal.

Dust

To manage dust associated with the tracks, the applicant has proposed an underground sprinkler system. The system is proposed to be situated on the outer edge of each track and will cover the entire area of the riding tracks. The applicant states a two behind water tank will also be available used as an auxiliary unit in case of irrigation failure. The applicant proposes to water the tracks and facility as required suppressing dust.

It is not considered watering the tracks would be effective in controlling dust from the site. Recent site inspections to other similar facilities demonstrates that due to the constant movement of the soil by the bikes watering is only effective for a very short period of time. The applicant has not demonstrated that the site could accommodate the amount of water required to constantly water the site. Given the proximity of the site to dwelling houses the potential for dust nuisance is unacceptable.

Traffic

The noise assessment states vehicular access to the site will not exceed 80 vehicle movements per hour. Given the operation hours proposed within the noise impact assessment prepared by James Heddle Pty Ltd this equates to 2,800 trips (Friday to Monday inclusive). This is significantly greater than the trips outlined in the Statement of Environmental Effects (SEE) which states a total of 217 traffic movements per day may be expected. Council's Development Engineer has raised concern that should the tabled traffic movements of 80 vehicles per hour be accurate, the road network would not be able to accept the additional traffic nor would the facility be capable of complying with the requirement to limit each track to 12 motorcycles.

These concerns contribute to the reason for refusal.

Visual

Parts of the bike tracks and activities associated with the use of the tracks will be visible from the Pacific Highway, surrounding roads and residences. The landscaping proposed along the boundary adjacent to the highway will not adequately screen the tracks given the location of the tracks and the

topography of the site. The tracks will result in cut and fill which is not sympathetic to the surrounding visual character of the area.

These concerns contribute to the reason for refusal.

Safety

As discussed above parts of the tracks will be visible from the Highway. The activities associated with the operation of the tracks will adversely impact on Highway safety by causing unnecessary distraction to Highway motorists. As discussed previously in this report, this visual impact has also been raised as an issue by the NSW RTA.

According to Heddle's assessment the development would operate until 6.00pm Friday to Monday. Operating until such time, particularly in winter would result in the need for lighting such as that used in sporting fields. Lights would be visible from the Pacific Highway and would represent a further distraction to motorists. Such a distraction would compromise the safety of motorists. However, the application does not request development approval for any lighting.

Insufficient Information

Consideration must be had to the amount of earthworks necessary to facilitate the construction of the tracks and associated structures.

Additional information was requested from the applicant on 11 April 2006 and 15 March 2007 regarding design details of all earthworks to be undertaken on the site. On 30 April 2007 the applicant submitted information in response to Council's request. The information was incomplete as details regarding the existing and finished surface levels and plan, longitudinal and cross sectional detail of each motorcycle track, parking or picnic areas were not submitted. As such Council's Development Engineer was unable to determine the impacts associated with cut and fill.

(c) Suitability of the site for the development

The need for constant monitoring of the site to ensure acceptable noise levels indicates there will be impacts and these impacts are considered unacceptable.

The site is not considered to be suitable for the site.

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

The development application was originally advertised and placed on public exhibition for a period of 14 days. As a result of this exhibition, 230 submissions were received, 122 in support and 108 opposed to the proposal. The issues raised in the submissions and the assessment of these issues are as follows:



| Issue | Comment | Assessment |
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| Description | The 'facility' description of the development is misleading as it will be used for a competition track. | The proposal does not seek consent for events. Should approval be granted conditions would be imposed to restrict professional competitions. |
| Insufficient Information | The applicant has provided insufficient information regarding the operation of the facility including how they will monitor bike noise once bikes are on the track, and what sorts of numbers would be anticipated at events as opposed to normal days of operation. | The applicant has amended the proposal since exhibition. A number of noise mitigation strategies have been proposed. Noise impacts are discussed in the impacts section of this report. Due to the need for constant monitoring and the ambiguity concerning noise mitigation measures the proposal is recommended for refusal. |
| Notification | The notification of the proposal was not extensive enough. The period in which the proposal was available included numerous public holidays and was unfair. | The proposed development was notified for a period of fourteen (14) days exclusive of public holidays to landowners within a two (2) kilometre radius of the subject site. The proposal was also advertised in the Tweed Link. It is noted the Tweed Link is circulated throughout the Tweed Shire. This objection does not contribute to the reasons for refusal. |
| Site Suitability | A motorcycle riding facility is inappropriate in a rural-residential area within close proximity to residential development. It will jeopardise the peaceful and quiet lifestyle enjoyed by the residents of this area. | This matter has been addressed previously in this report. It is considered the subject site is not suitable for the proposed development. The development would have an unacceptable impact on the locality. This matter warrants refusal of the development application. |

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| Permissibility | It is inappropriate and inconsiderate to place a motorcycle riding facility near a cemetery. The noise from the facility will affect funeral services and those wishing to pay their respects to the deceased. | The noise impact assessment prepared by James Heddle Pty Ltd states trail bikes would not be audible from the cemetery grounds, however Council's Environmental Health Officer disagrees with this statement. |
| | Bike riders within the immediate vicinity of the subject site have been restricted by Council as to the hours in which they can ride bikes. By placing limits on the amount of time people can ride Council is accepting that the noise made by bikes is invasive and annoying. | It is acknowledged the operation of the proposed facility will result in noise impacts as detailed in the impacts section of this report. |
| | This type of development is not permitted on land zoned agricultural protection as per the Tweed Local Environmental Plan. The development should not be allowed within this area of the site. | The proposed use is defined as a recreational area as per the Tweed Local Environmental Plan 2000, and is a permissible land use within the 1(a) zone. The use requires additional consideration in the 1(b2) zone as detailed previously in this report. |
| | The development does not comply with the objectives of the applicable zones. | The assessment of the objectives of the zones as previously discussed within this report indicates the development is inconsistent with the objectives |
| Noise Impacts | This kind of sport creates extreme, aggravating and invasive noise pollution above other traffic in the area. Due to the local topography this noise carries in the valley for approximately five (5) to ten (10) kilometres. This is not suitable in a residential area. | These matters have been addressed in the impacts section of this report. The operation of the proposed facility will result in unacceptable noise impacts. These matters warrants refusal of the development application. |
| | The increasing noise from the use of the Highway and from the motorbike park will make it unbearable to live nearby. | |
| | Highway traffic is at its loudest at 6pm. If the development is approved, for four (4) days a week, there will be no reprieve from vehicular noise. | |



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| | <p>The noise generated by the proposal will have a negative affect the quality of life of affected residents.</p> | |
| | <p>The area acts as an amphitheatre, the sound from the highway goes up and over and carries through the area. The noise from the bike track will do the same.</p> | |
| Impacts | <p>The established businesses in the local area which rely on the current peaceful and quite environment will be affected as a result of the noise and increased road traffic associated with the motorbike track.</p> | |
| | <p>There is potential for excess vehicles spilling out onto Donalyn Court, which is not equipped to safely handle street parking and increased traffic.</p> | <p>The subject site could accommodate excess vehicles on-site. As discussed in the report, Council's Development Engineer has advised the capacity of the roads is such that they can cope with the additional traffic.</p> |
| | <p>Watering the tracks daily to controlling dust is a ridiculous solution. No amount of watering will be able to prevent dust. Dust will affect land owners and motorists on the Highway.</p> | <p>This matter has been previously addressed within the impacts section of the report. Watering the tracks is not considered to be an appropriate mitigation measure.</p> |
| | <p>The quality of life of residents will be jeopardised if the track becomes operational.</p> | <p>The impact on the residential amenity of the locality has been considered in the impacts section of this report.</p> <p>This matter warrants refusal of the development application.</p> |
| | <p>The bikes will scar the land and cause erosion.</p> | <p>This matter has been previously addressed in the impacts section of this report. The assessment concludes the impact on the landscape is undesirable.</p> <p>This matter warrants refusal of the development application.</p> |

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| | <p>People will start arriving to the site before 8am to use the tracks, conduct noise testing and tuning up their motorbikes.</p> | <p>The development application is being recommended for refusal, however should the application be approved the use of the facility would be restricted to specific hours.</p> |
| | <p>The tracks will be in direct view from our home.</p> | <p>The development would be partially visible from one dwelling house located within a 500m radius to the subject site.</p> |
| | <p>The tracks and riders will be visible from the Highway and will cause a distraction to motorists on the Highway.</p> | <p>The tracks will be visible from the Pacific Highway and would represent a traffic hazard.</p> |
| | <p>The development application has not adequately addressed the social impact of the proposal on the local community and the shire. Visitors to the facility are likely to be from outside the shire, therefore there is likely to be little economical benefit for the shire.</p> | <p>The impacts of the proposed development on the locality have been considered previously in this report. The economic implications of the proposal have not been discussed.</p> |
| <p>Noise Assessment</p> | <p>The noise tests carried out by the applicant were very selective and not taken under competition conditions. They were not a true reflection of the noise likely to be generated.</p> | <p>The noise impact assessment prepared by Craig Hill Acoustics which was placed on public exhibition has been superseded by James Hedde Pty Ltd's assessment. This matter is discussed in the impacts section of the report</p> |
| | <p>The benchmark noise levels used are based on industrial noise policy. The benchmarks should relate to residential or rural noise policy.</p> | |
| | <p>The dBA levels as stated in the Noise Impact Study range from 75-110dBA. The same study states later bikes on the tracks will not exceed 100dBA. These figures are substantially greater than the figures quoted by the RTA to residents regarding highway noise levels, which was stated to be 60.5dBA with an expected rise to 62dBA by 2012. To therefore suggest that the noise generated by the bikes would not create any more disturbance that that already</p> | |



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| | <p>created by the highway would appear grossly incorrect.</p> | |
| | <p>The noise testing done by the applicant was based on 10 bikes, the noise level from 10 bikes is no where near the noise expected from 80 bikes.</p> | |
| | <p>The noise assessment does not consider the use of a loud speaker system. This should be addressed.</p> | <p>The applicant does not propose to use a speaker system.</p> |
| Environmental Issues | <p>Environmental issues such as land degradation and pollution including dust should be a major consideration.</p> | <p>These matters have been previously considered in the impacts section of report. The assessment concludes the proposal would have an unacceptable impact on the locality.</p> |
| | <p>During a flood it will be impossible to contain all sediments and nutrients from the tracks within the subject site. They will eventually end up the Cudgen Lake and Creek systems.</p> | <p>Council's records do not indicate the subject site as being flood effected.</p> |
| | <p>The area has an abundant variety of wildlife and even the RTA had to make provision for fauna crossing close to the subject site.</p> | <p>This matter has been addressed previously in the environmental planning instruments section of this report. Council's Environmental Scientist reviewed the proposed proposed development and raised no concern regarding the impact on the identified fauna.</p> |
| Support for the proposal | <p>The motorbike park will be great place for those who ride bikes, as it will be within safe and controlled environment.</p> | <p>It is acknowledged a recreation area would provide riders with a safe and controlled environment.</p> |
| | <p>We need a track in this area. The closest tracks are situated at Reedy Creek, Casino or Gatton.</p> | <p>It is acknowledged there is no such recreational area within the shire.</p> |
| | <p>A facility in this area will stop people riding illegally especially in National Parks.</p> | <p>It is acknowledged such a reaction area would enable people to ride within an approved facility.</p> |
| | <p>The facility will help to get kids off the streets and perhaps encourage young drivers to release their need for speed in a safe environment rather than on the roads.</p> | <p>It is acknowledged a recreation area would provide an alternative venue to ride.</p> |

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| | The tracks will limit the damage done to the environment as it would be confined to one site. | It is acknowledged environmental damage may be restricted to one area should such a development be approved. |
| Increased Traffic | The development will increase traffic levels on already dangerous and narrow winding roads. There is potential for an increase in road accidents. | The information provided by the applicant indicates the proposed development would increase vehicular movements to and from the site. |
| | The proposal will result in alcohol related events occurring at all hours resulting in loud partying. Policing issues will result regarding the development. | The SEE states alcohol will be prohibited on-site. Issues associated with alcohol consumption are the responsibility of the police. |
| | The roads may be categorised by Council as being able to hold the proposed increase in traffic volume, however the roads in the area struggle to hold the existing volume of traffic. | These matters are noted. Council's Development Engineer has reviewed the proposal and raised no concern regarding the roads capacity to cater for the traffic movements detailed in the SEE. |
| | Duranbah Road carries a high volume of traffic due to regular funeral service and traffic being redirected as a result of accidents or flooding along the Pacific Highway. The road cannot cope with an additional 850 vehicles. | |
| Impact on property value | The development will have a significant negative impact on property values. | Loss of property value cannot be considered in the assessment of a development application in accordance with the Environmental Planning and Assessment Act 1979. |
| Parking | The proposed car parking is inadequate for the number of riders permitted. | This matter has been addressed in the car parking assessment in the DCP section of this report. The plans have been amended since the original exhibition period. |
| | Car parking may spill out from the subject site into the cemetery. | The application does not propose the use of any other property for car parking purposes. |

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| Access | How will people enter the subject site, will they use Lot 510 which is a right of carriage way? If this is the case will all those benefited by the carriage way be liable for inquired persons within the lot? | The applicant proposes to use the existing driveway entry point into the subject site which is accessed via Donalyn Court. |
| Operational Issues | If someone illegally enters my property and inquires themselves I am liable. Opening a motorcycle track will increase the likelihood of this occurring. | Should the development application be approved, consent would be granted to the use of the subject site only. |
| | The hours which the facility will be used by motorbike riders will be difficult to control. | Should the development application be approved, the conditions of the consent will be restricted to specific operating times. |
| | The potential for the growth of the facility must be considered. The applicant has advised the facility is likely to expand to include events and camping facilities. | The development application can only be assessed on the provided. The SEE does not seek consent for events and camping. |
| | The applicant has not addressed the how the consumption of alcohol will be managed. | The applicant advised the proposal would not involve alcohol consumption on the premises. Should consent be granted for the proposal, a prohibition on alcohol would be necessary. Any issues arising as a result of the consumption of alcohol are the responsibility of the NSW Police. |
| | Riders may leave the subject site and ride within the cemetery grounds on nearby private properties. A lot of properties within the area are not gated and there are already problems with unauthorised entry and joy riding. | Should the application be approved, consent would only be given to the use of part of the subject site for motorcycle riding. |

The applicant provided the comments in response to the pertinent issues raised in the submissions:-

Noise Impact

The noise impact assessment prepared by Craig Hill Acoustics has modelled the proposed development, and based on forecasts, provides a noise management strategy for the development. The noise assessment is based on a worse case scenario. The proposed noise management strategy includes a commitment for ongoing monitoring and action to provide a reasonable level of certainty that acceptable impacts would be achieved.

Increased Traffic

The traffic assessment undertaken by Blueland Engineers Pty Ltd details the existing traffic volume along Eviron Road and demonstrates that the additional traffic generated by the proposal would be well below the design threshold and would consequently be acceptable.

Impact on Local Amenity

It has been alleged in many of the public submissions that the proposal would result in the desecration of graves by riders in the Tweed Valley Cemetery. This allegation is completely without foundation and is absurd.

Motorcycles would mostly be transported to the site by trailer, although a small number of bikes which are registered, and roadworthy may be ridden on public roads to the site. There is no foundation to the suggestion that this would result in 'joy riding' on public roads.

If anything it is probable that the provision of an off road riding facility, such as proposed, would indeed reduce the incidence of irresponsible road behaviour by bike riders.

Our assessment of the proposal and submissions indicates that local amenity issues are generally limited to traffic and noise considerations. Assessments have been undertaken in respect of those issues and reports accompanying the statement of environmental effects proposed viable management measures.

The Proposal

A general misunderstanding of the proposal is evident in many objections relating to social behaviours expected to be on the increase in the locality from visitors to the site. The proposal would not involve alcohol consumption on the premises, or consequent drunken hooligan type behaviours, fighting or violence. The facility would be a family based recreational activity, and would not include any form of on-site accommodation or club venue. Our client has previously clarified those matters and accordingly seeks that the proposal be determined on its merits.

As a result of the above submissions received and as a consequence of a review undertaken by Heggies Pty Ltd, the applicant was requested to review the noise impact assessment. A further noise impact assessment was undertaken by the applicant, which resulted in an amended design of the tracks.

Those who lodged submissions to the initial proposal were consulted and provided with the amended track layout and recommendations of the revised acoustic assessment. As a result of this correspondence, 173 submissions were received, 53 in support and 120 opposed to the proposal. The residents nominated as noise receivers within James Heddle Pty Ltd's assessment, objected to the proposed development (with the exception of one resident) as have other residents within close proximity to the site. Those advising of their

support for the proposal, with the exception of one resident, do not reside within close proximity to the site.

The issues raised in the submissions are as follows:

| Issue | Comment | Assessment |
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| The site is not suitable for the proposed bike track | Even with mitigation measures and a lower number of bikes, it will generate a lot of noise. | It is acknowledged the use of the bike tracks with limited bike numbers and mitigation measures will still result in noise being generated. The assessment indicates the effectiveness of these measures may not be satisfactory. |
| | The times in which the bike track will operate will be when families are visiting the nearby cemetery and park. The cemetery will no longer be within a peaceful environment. | The assessment undertaken within this report identifies the proposed mitigation measures may not be satisfactory. According to the assessment prepared by James Heddle Pty Ltd, noise associated with the facility would not be audible from the cemetery. Council's Environmental Health officer disagrees with Heddle's assessment. |
| | The extra 800 vehicles per week will be using the local roads which already have their fair share of traffic accidents. | This issue has been discussed within this report in the impacts section of this report. Council's Development Engineer has raised concern regarding the number of vehicular movements referred to in Heddle's assessment as they are significantly greater than those referred to in the Statement of Environmental Effects. |
| | The bike track would be better suited in the middle of nowhere where none would be affected. | As detailed in this report, the assessment of the development indicates it is not suitable for the proposed site. |
| | A dirt bike facility for Tweed's rural land is inconsistent with the vision of environmentally and socially sensitive sustainable agriculture. | |
| | The proposal is not consistent with the zone. It is incompatible with other rural pursuits. | |

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| | <p>It is inappropriate to have motorcycle tracks so close to the botanical gardens and cemetery.</p> | <p>This matter has been previously addressed throughout this report. The assessment indicates the proposed development is not suitable for the subject site.</p> <p>This matter warrants refusal of the development application.</p> |
| Impacts | <p>The bike track will result in the devaluation of property values.</p> | <p>Loss of property value cannot be considered in the assessment of a development application in accordance with the Environmental Planning and Assessment Act 1979.</p> |
| | <p>The use of the tracks will result in residents' health being negatively affected as a result of dust and noise.</p> | <p>The impacts of the proposal are discussed in the impacts section of this report. The assessment indicates the development is not suitable on the subject site as the impacts generated are unacceptable.</p> <p>This matter warrants refusal of the development application.</p> |
| | <p>The intermittent noise of 80 plus motor bikes motors screaming at variable pitches will be very invasive and stressful not only to residents and wildlife.</p> | |
| | <p>This bike track will devastate the tranquillity of the area and impact lifestyle and quality of life.</p> | |
| | <p>Eviron Road cannot cope with additional traffic. Cane and gravel trucks already use the road.</p> | <p>This issue has been discussed within this report in the impacts section of this report. Council's Development Engineer has raised concern regarding the number of vehicular movements referred to in Heddle's assessment as they are significantly greater than those referred to in the Statement of Environmental Effects.</p> |
| | <p>The commercial facility will only benefit one family and the remaining residents must endure the negative impacts.</p> | <p>The likely impacts of the proposal are discussed in the impacts section of this report. The assessment indicates the</p> |



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| | <p>This is unfair.</p> | <p>development is not suitable on the subject site due to the potential impacts.</p> |
| | <p>The Pacific Highway has already significantly reduced the quiet rural atmosphere. This proposal will further reduce the atmosphere.</p> | <p>The noise impacts associated with the proposal have been addressed in the impacts section of this report. It is considered the impact of noise on surrounding residences would be unacceptable.</p> <p>This matter warrants refusal of the development application.</p> |
| Management of the facility | <p>How will Council monitor or ensure that the maximum number of vehicles to the site to be no greater than 80, the tracks will be used by a maximum of 12 bikes per track or that bikes will not exceed 130 dBA?</p> | <p>It is not appropriate to condition the proposed development when the impacts of the proposal may be unsatisfactory.</p> <p>This matter warrants refusal of the development application</p> |
| | <p>No consideration has been given for people waiting to use the track, activity of people generally on the site, the use of a speaker system or people tuning or revving their bikes.</p> | <p>The applicant has not provided information regarding where persons would wait prior to the site opening. The applicant has advised persons wishing to use the tracks would be required to book in advance. According to the noise impacts assessment prepared by Heddle Pty Ltd, general use of the site was a consideration. The applicant does not proposed to use a speaker system.</p> |
| | <p>The revised information states vehicle access to this site should not exceed 80 vehicle movements per hour. This will mean an additional 640 vehicles using Environ Road. The increased traffic flow on Environ Road will be horrendous, this is a narrow rural road network. What speed limit is going to be tolerated in this area to prevent fatal accidents from occurring?</p> | <p>Council's Development Engineer has raised concern regarding the number of vehicular movements referred to in Heddle's assessment as they are significantly greater than those referred to in the Statement of Environmental Effects. Matters regarding the allowable speed limit on roads is the responsibility of the NSW Roads and Traffic Authority.</p> |

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| | <p>There does not appear to be sufficient on-site car parking for the number of people anticipated to visit the site. How will Council ensure that people do not park within the cemetery grounds or private property?</p> | <p>This matter has been discussed previously in the impacts section of this report. Council's Development Engineer has raised concern regarding the accuracy of the traffic movements referred to in Heddle's assessment. The proposed development does not incorporate the use of surrounding land for the purposes of car parking.</p> |
| | <p>What would stop alcohol being consumed on the property? How would Council monitor this?</p> | <p>The applicant has advised in response to the submissions detailed previously, the proposal would not involve alcohol consumption on the premises. Should consent be granted for the proposal, a prohibition on alcohol would be necessary. Any issues arising as a result of the consumption of alcohol are the responsibility of the NSW Police.</p> |
| | <p>Evidence from the Reedy Creek facility (southern Gold Coast) suggests noise associated with the use of motorbikes can be heard up to 6km from the site. Therefore given we are situated 100m from the proposed development site, it is likely we will be affected by noise associated with the operation of the facility.</p> | <p>Noise impacts have been discussed in the impacts section of this report. Council's Environmental Health Officer anticipated the noise levels from the proposed Motorcycle Facility will have a significant impact upon Council's Tweed Valley Cemetery and surrounding residential dwellings.</p> |
| | <p>It will be impossible to contain the sediments and nutrients washed off the bike tracks within the property boundaries. These will find their way into the Cudgen Lake and creek systems.</p> | <p>Council's Development Engineer was unable to determine the extent of sediment and erosion control necessary for the site as details regarding the extent of cut and fill were not provided.</p> |
| | <p>If the development is approved, they should only be able to operate for one weekend a month and entry to the site must be booked in advance.</p> | <p>The development application is recommended for refusal. Should the application be approved reduced hours than those proposed by the applicant should be considered.</p> |
| Noise Assessment | <p>Noise impacts cannot be suitably assessed by computer modelling.</p> | <p>This matter has been addressed previously within the impacts section of this report. Council's</p> |

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| | | Environmental Health Officer advised computer modelling and observations are not considered sufficient to determine the potential noise impact. |
| Support for the facility | There is no such facility within the Shire. It is a great family sport | It is acknowledged there are no Council approved motorcycle riding facilities within the Tweed Shire. |
| | The facility will keep riders from riding on the streets and out of the National Parks | It is acknowledged such a facility would provide an approved place in which to ride. |
| | The facility will have a positive impact on the local economy. | It is acknowledged such a facility may be beneficial to the local economy. |
| | The facility will provide a safe place for people to ride as they will be supervised. | It is acknowledged such a facility would result in the supervision of riders. |

The applicant did not provide comments in relation to the matters raised in the above submissions.

(e) Public interest

The need for constant monitoring of the site to ensure acceptable noise levels means that there will be impacts which have the potential to be unacceptable.

The proposed recreation area is not considered to be in the public's interest.

OPTIONS:

1. Refuse the development application with reasons as recommended.
2. Approve the development application with conditions.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has the right to appeal in the Land and Environment Court should he/she be dissatisfied with the determination.

POLICY IMPLICATIONS:

There will be no policy implications arising from the application.

CONCLUSION:

Recreation facilities such as that proposed are needed within the Tweed Shire. It is imperative that these facilities are situated within proximity to compatible land uses. Having regard to the applicable environmental planning instruments, the Tweed

Development Control Plan and the matters raised in the submissions, it is considered that the subject site is not suitable for the proposed development. The proposed development would have unacceptable amenity implications for the area and is therefore 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 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. James Heddle Pty Ltd – Noise Impact Assessment and Design Review (DW 1521277).
 2. Heggies Pty Ltd – Review – Acoustics Motorcycle Riding Facility (DW No. 1610857).
 3. Applicant's submission which includes a review of the Acoustic Impact Assessment undertaken by CRG Traffic and Acoustical Consultants (DW No. 1596081).
 4. The Environmental Health Officer's comments dated 6 June 2007 (DW 1616036).
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P3 [PR-PC] Development Application DA06/1315 for the Erection of a Golf Pro-Shop Buggy Storage Shed and Pedestrian Bridge at Lot 2 DP 1040576, Leisure Drive Banora Point

ORIGIN:

Development Assessment

FILE NO: DA06/1315 Pt2

SUMMARY OF REPORT:

Council has received a development application for 24 golf buggy storage sheds, a golf pro shop including buggy storage and a pedestrian bridge at the existing Banora Point golf course.

The main issues associated with the proposal are the potential for loss of neighbouring residential amenity and visual impacts from the storage sheds proposed adjacent to the western boundary. It is considered that these impacts can be satisfactorily mitigated through conditions requiring setbacks of the golf buggy storage sheds, landscaping and re-orientation of the storage sheds so roller doors are facing away from adjoining residents.

Council received a total of 25 objections to the proposal (5 of which were received outside the public notification period). The main issues raised by submitters were concerns in relation to visual impacts, loss of views (across the golf course), increased noise and flooding impacts. It is considered that the recommended conditions can adequately address these concerns.

Council also received 108 letters of support for the proposal, mostly from golf club members seeking to utilise the proposed facilities.

On balance, it is considered that the proposed development is appropriate for the site and compatible with the objectives of LEP, provided conditions are imposed as recommended.

RECOMMENDATION:

That Development Application DA06/1315 for the erection of a golf pro-shop, 24 buggy storage sheds and pedestrian bridge at Lot 2 DP 1040576, Leisure Drive Banora Point be approved subject to the following conditions: -

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and plans listed in the table below, except as varied by the conditions of this consent and amendments in red.**



| Title | Plan No. | Sheet | Author | Date |
|---|----------|--------|--------------|--------|
| Site Plan | G2458 | 1 of 2 | Gavin Duffie | 4/8/06 |
| Floor Plan, Elevation and Section (Buggy Sheds) | G2458 | 2 of 2 | Gavin Duffie | 4/8/06 |
| Site Plan (existing lake) | G2455 | 1 of 8 | Gavin Duffie | 4/8/06 |
| Floor Plan (Pro-Shop) | G2455 | 2 of 8 | Gavin Duffie | |
| Foundation Plan | G2455 | 3 of 8 | Gavin Duffie | 4/8/06 |
| Northern and Eastern Elevation | G2455 | 4 of 8 | Gavin Duffie | 4/8/06 |
| Southern and Western Elevation | G2455 | 5 of 8 | Gavin Duffie | 4/8/06 |
| Section A-A | G2455 | 6 of 8 | Gavin Duffie | 4/8/06 |

[GEN0005]

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

[GEN0115]

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

[GEN0135]

4. Colours and materials of the golf pro-shop shall be consistent with and complementary to the adjacent, existing club. The golf buggy storage sheds shall be earthy in colour and comprised of unobtrusive tones. Wall and roof cladding shall be non-reflective to limit nuisance caused to the occupants of buildings with direct line of sight to the proposed buildings.

[GENNS03]

5. The developer shall ensure that only electrically powered golf buggies are stored and operated within and from buggy storage sheds labelled 1 to 16 on the Site Plan (prepared by Gavin Duffie, plan number G2458, sheet 1 of 2, dated 4/8/06).

[GENNS01]

6. The developer shall install a boom gate across the existing bitumen maintenance track off Leisure Drive, located in the north-western corner of the property. The gate shall be provided within the subject property and shall restrict the use of the maintenance track to maintenance vehicles only.

The maintenance track may not be used as vehicular access by the patrons of the golf buggy sheds.

[GENNS02]

7. The golf buggy storage sheds numbered 1 to 24 on the Site Plan (prepared by Gavin Duffie, plan number G2458, sheet 1 of 2, dated 4/8/06) shall be re-orientated so that their roller doors generally face east, away from the adjoining residents.

[GENNS04]

8. The golf buggy sheds numbered 1 to 24 on the Site Plan (prepared by Gavin Duffie, plan number G2458, Sheet 1 of 2, dated 4/8/06) shall be setback a minimum of 2 metres from the maintenance track (labelled 'bitumen track' on the said plan) allowing for increased distance between the adjoining residential development and the sheds and to also allow for landscaping between the maintenance track and the sheds.

[GENNS05]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

9. 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]

10. 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) Extensions to Council Administration Offices & Technical Support Facilities | \$399.36 |
|--|----------|

S94 Plan No. 18

[PCC0215]

11. 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: | 1.8 ET @ \$4598 | \$8276.40 |
| Sewer: | 0.3 ET @ \$2863 | \$858.90 |

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

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

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

[PCC0265]

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

[PCC0465]

13. Permanent stormwater quality treatment shall be provided by incorporating water sensitive design principles in accordance with Council's Development Design Specification D7 - Stormwater Quality. A stormwater management plan (SWMP) shall be submitted with the Construction Certificate Application. The SWMP shall be prepared in accordance with Section D7.07 of Councils Development Design Specification D7 - Stormwater Quality

[PCC1105]

14. 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]

15. 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]
16. The development is to comply with the provisions of Section A3 of Council's consolidated Tweed Development Control Plan.
The buggy sheds labelled 1-24 on the Site Plan (prepared by Gavin Duffie on plan number G2458, Sheet 1 of 2, dated 4/8/06) shall be constructed with a finished floor level not less than Council's Adopted Design Flood Level (being 2.6m AHD).
The pro-shop and adjacent buggy storage area shall be constructed with a finished floor level of RL3.3m and 3.2m AHD respectively, as indicated on the Floor Plan (prepared by Gavin Duffie, on plan number G2455 - Sheet 2 of 8, dated 4/8/06).
- [PCCNS02]
17. The developer shall lodge a landscaping plan which provides for screen planting between the maintenance track and golf buggy sheds no.1 to 24. Landscaping should include proposed fencing details and a range of appropriate species at varying heights, providing for:
- visual softening, as viewed from the west; and
 - variation to the horizontal roof line of the sheds.
- The landscape plan shall be prepared by a suitably qualified landscape architect and approved by the Director of Planning and Regulation prior to issue of the Construction Certificate.
- [PCCNS03]
18. A construction certificate shall not be issued for golf buggy sheds labelled 1 to 16 on the Site Plan (prepared by Gavin Duffie, plan number G2458, sheet 1 of 2, dated 4/8/06) until the applicant has submitted documentary evidence to the satisfaction of the Director of Planning and Regulation, which indicates that easement for water supply (created under DP731994) has been effectively released by way of abandonment.
- [PCCNS01]
19. 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. Applications for consent under Section 138 must be submitted on Council's standard application form, be accompanied by the required attachments and prescribed fee.
Receipt of approval is to be obtained prior to the issue of a construction certificate for works within the development site.

[PCC0075]

PRIOR TO COMMENCEMENT OF WORK

20. 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
 - (a) 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]
21. 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]
22. 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.
- This sign is to remain in position for the duration of the project.
- [PCW0985]
23. Prior to commencement of work all actions or prerequisite works required at that stage, as required by other conditions or approved management plans or the like, shall be installed/operated in accordance with those conditions or plans.

[PCW0015]

DURING CONSTRUCTION

24. 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]

25. 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]

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

[DUR0815]

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

[DUR1875]

28. The works are to be completed in accordance with Tweed Shire Councils Development Control Plan, Part A5 - Subdivision Manual and Design & Construction Specifications, including variations to the approved drawings as may be required due to insufficient detail shown on the drawings or to ensure that Council policy and/or good engineering practices are achieved.

[DUR2025]

29. 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]

30. 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]

31. All work and operations of the use associated with this approval, shall be carried out so as not to impact on neighbourhood amenity, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -

- Noise, water or air pollution
- dust during filling operations and also from construction vehicles

No material shall be removed from the site by wind

[DUR1005]

32. 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]



33. The additional rainwater drains must be connected to the existing rainwater disposal system; to provide satisfactory stormwater disposal in accordance with Australian Standard AS/NZS3500.3.2.

[DUR2255]

34. The external wall and openings of the existing club house, where adjacent to the proposed Pro Shop & Buggy Storage building, shall be upgraded where necessary to comply with the provisions of part C3.4 of the Building Code of Australia.

[DURNS01]

35. 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]

36. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Occupational Health and Safety Regulation 2001.

[DUR0415]

37. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard.

[DUR2535]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

38. 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]

REPORT:

Applicant: Twin Towns Services Club Ltd
Owner: Twin Towns Service Club Ltd
Location: Lot 2 DP 1040576, Leisure Drive Banora Point
Zoning: 6(b) Recreation
Cost: \$646,000.00

BACKGROUND:

The site is currently used as a golf course and has operated as such for over 20 years.

The 24 golf buggy storage sheds are proposed adjacent to an area currently used as a practice driving range.

The site has a significant history in terms of development, allowing for the establishment of the golf course and associated recreational facilities including: tennis courts, swimming pools, club house, pedestrian bridge, constructed lake, gazebo and existing pro-shop.

The Proposal

Each component of the proposal is described below.

A pedestrian foot bridge is proposed across the existing lake from the gazebo to the southern bank. It has a length of approximately 30 metres. The existing foot-bridge is not proposed to be removed.

The new pro-shop is proposed 4 metres to the south of the existing clubhouse. It includes a shop (associated with the golf club), display area, teaching area and golf buggy storage area for 10 buggies and golf buggy parking area for 7 buggies. The new pro-shop has an area of approximately 112.4m², the associated golf buggy storage has an area of approximately 170m².

The existing pro-shop located on the island in the constructed lake, is likely to be removed and replaced in the future, however at this stage that part of the premises vacated by the pro-shop is to remain vacant until such time as the island complex is re-developed. A development application will be submitted to Council for any future use.

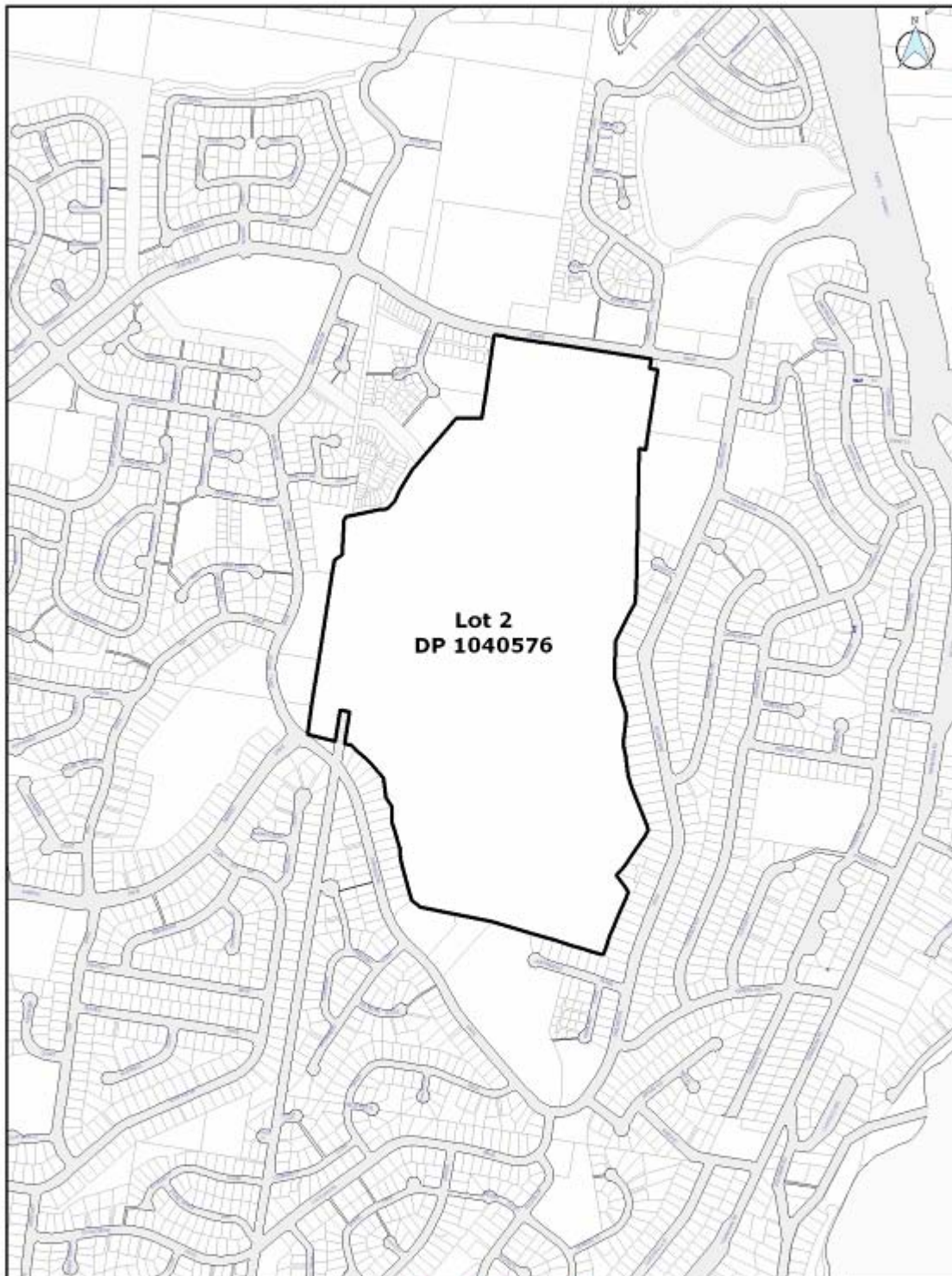
A total of 24 golf buggy storage sheds are proposed along the western boundary, adjacent to adjoining residential development.


The golf buggy storage sheds each have an area of 25m² and can hold up to 5 buggies each. The sheds are proposed to be constructed of colourbond sheet cladding. Roller doors are located on the western side of the sheds, facing the on-site maintenance track located adjacent to residential development. The sheds have a minimum roof pitch (6.5 degrees) and a height of approximately 2.5 metres. Each shed is approximately 2.6m wide and 9.45m in length.



The golf buggy storage sheds are proposed on the outside of the existing chainwire fence.

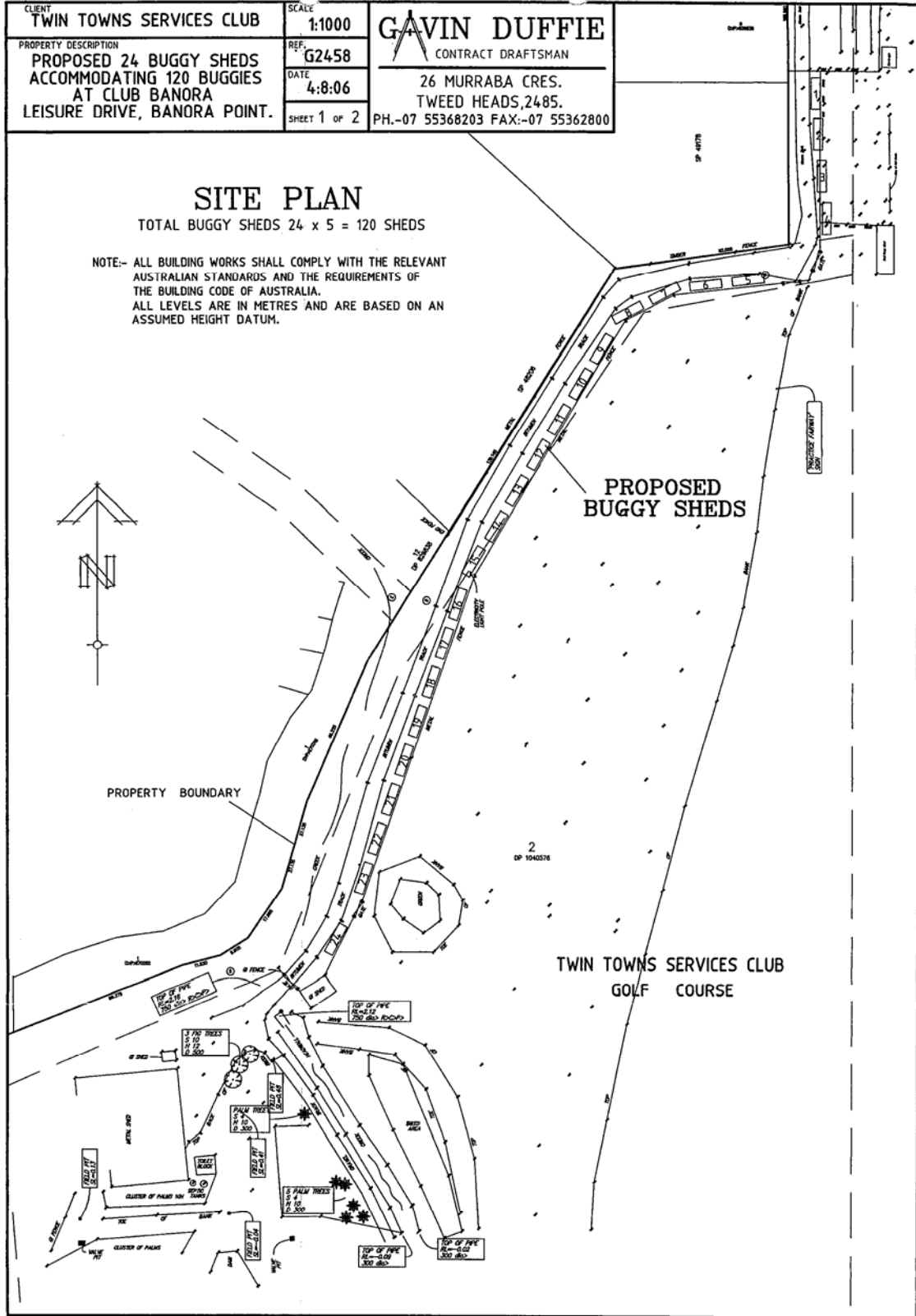
SITE DIAGRAM:



| | | | |
|---|--|---|--|
| <p>© TWEED SHIRE COUNCIL 2007 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be responsible for any errors, omissions or inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED</p> | <p><i>Tweed Shire Council</i> Lot 2 DP 1040576 Leisure Drive, Banora Point</p> |  | <p>PLANNING REFORMS UNIT Site Plan</p> |
| <p>P.O. Box 016 Murwillumbah NSW 2484</p> | <p>File: N:\Munsys\A4P - SITE PLAN\Wor</p> | <p>Author: J.Batchelor</p> | <p>Date: 8/June/2007</p> |
| <p>Tel: (02) 8673 2497 Fax: (02) 6670 2499</p> | <p>Scale: 1:10,000</p> | <p>Sheet: 1 of 1</p> | |

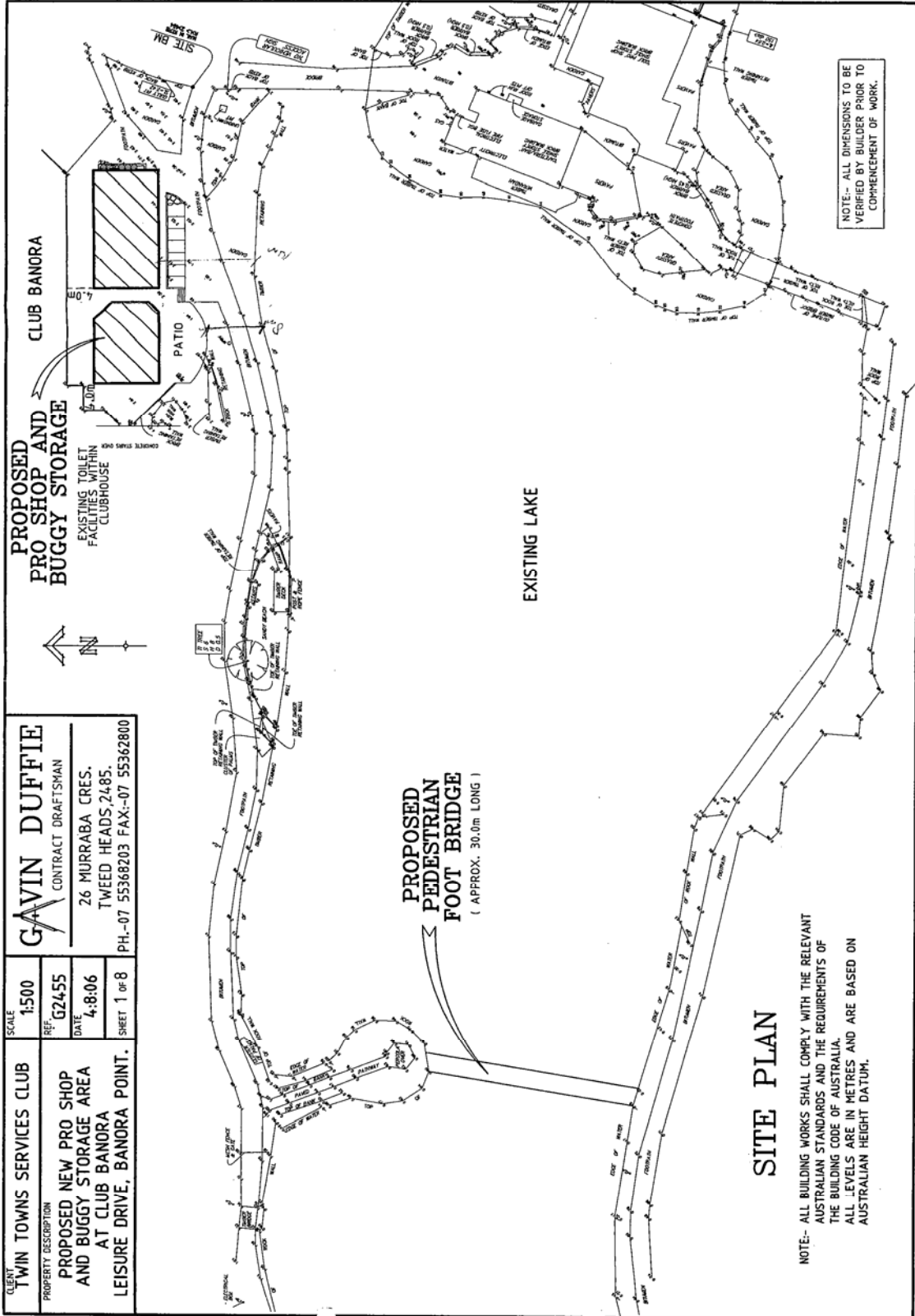


SITE PLAN - 24 BUGGY STORAGE SHEDS

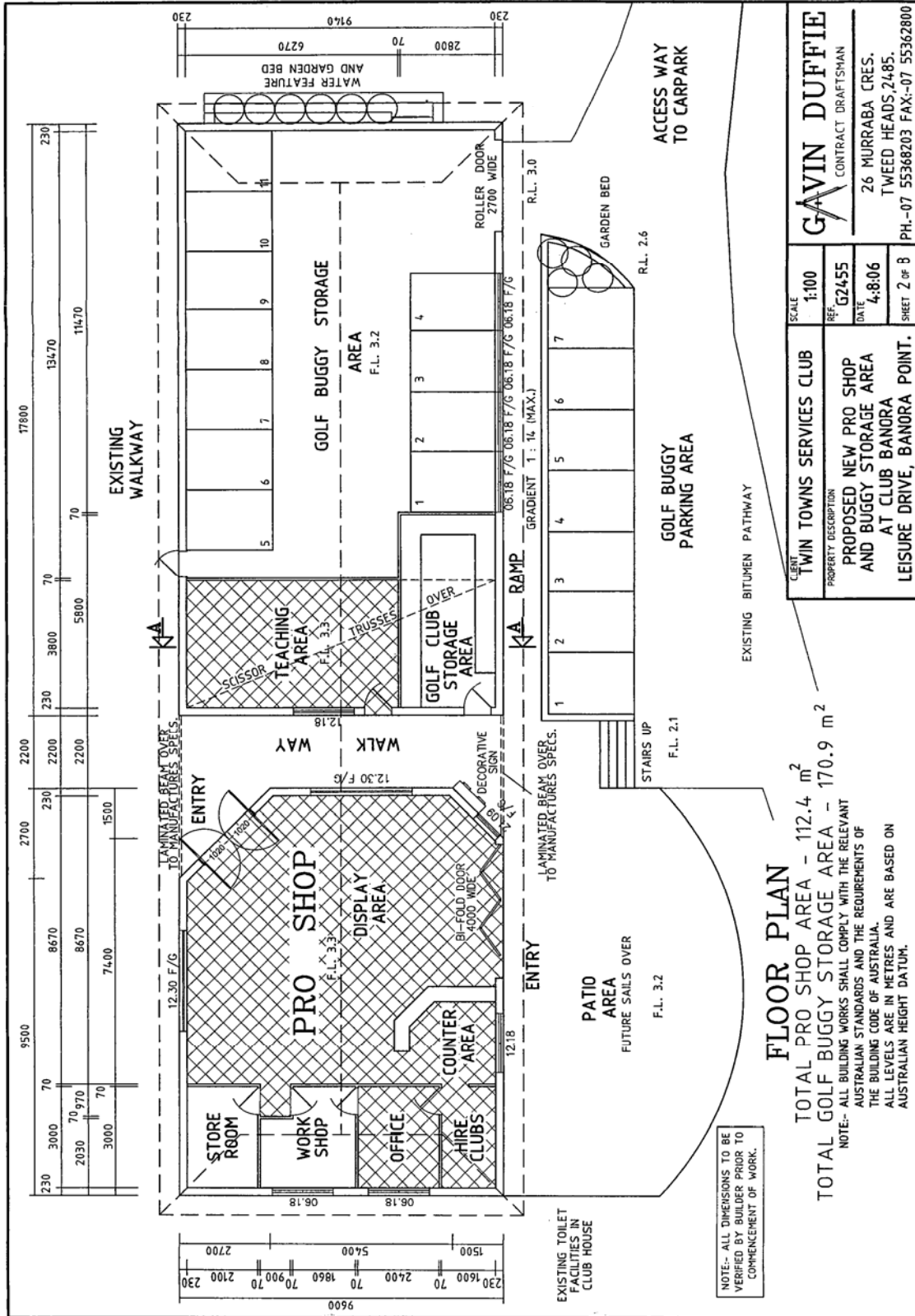




SITE PLAN - LAKE & PRO-SHOP



FLOOR PLAN - PRO-SHOP





ELEVATIONS

NORTHERN ELEVATION

EASTERN ELEVATION

| | |
|---|---|
| <p>CLIENT TWIN TOWNS SERVICES CLUB</p> <p>PROPERTY DESCRIPTION PROPOSED NEW PRO SHOP AND BUGGY STORAGE AREA AT CLUB BANORA LEISURE DRIVE, BANORA POINT.</p> | <p>SCALE 1:100</p> <p>REF. G2455</p> <p>DATE 4-8-06</p> <p>SHEET 4 OF 8</p> |
| <p>GAVIN DUFFIE CONTRACT DRAFTSMAN</p> <p>26 MURRABA CRES. TWEED HEADS, 2485. PH. -07 55368203 FAX. -07 55362800</p> | |

SOUTHERN ELEVATION

WESTERN ELEVATION

| | | |
|---|---|---|
| <p>CLIENT: TWIN TOWNS SERVICES CLUB</p> <p>PROPERTY DESCRIPTION: PROPOSED NEW PRO SHOP AND BUGGY STORAGE AREA AT CLUB BANORA LEISURE DRIVE, BANORA POINT.</p> | <p>SCALE: 1:100</p> <p>REF: G2455</p> <p>DATE: 4-8-06</p> <p>SHEET 5 OF 8</p> | <p>GAVIN DUFFIE CONTRACT DRAFTSMAN</p> <p>26 MURRABA CRES. TWEED HEADS 2485. PH.-07 55368203 FAX-07 55362800</p> |
|---|---|---|



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

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

Tweed Local Environmental Plan 2000

The subject land is zoned 6(b) – Recreation. The proposed golf buggy storage sheds, pedestrian bridge and golf pro shop are considered ancillary to the existing club and recreation areas, which are allowed only with Consent (Item 2).

The objectives of the 6(b) zone are as follows:

Primary Objective

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

Secondary Objective

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

The proposed golf buggy storage sheds, pedestrian bridge and pro-shop are complementary to the primary recreational purpose of the zone and consistent with the zone objectives.

Clause 15 Availability of Essential Services

All essential services are currently available to the site.

Clause 16 Height of Buildings

In accordance with the Tweed LEP, the maximum building height permissible at the site is 3 storeys.

The proposed golf buggy storage sheds do not exceed 1 storey in height.

The proposed golf pro-shop contains only 1 level but is calculated as 2 storeys (given the space between the floor and the ceiling exceeds 5 metres).

The proposed buildings and structures do not exceed the maximum height limit.

Clause 17 Social Impact Assessment

Clause 17 requires consideration of a socio-economic impact statement where the consent authority considers that a proposal will have a significant social or economic impact in the locality or local government area.

In this instance, the buggy storage sheds, pro-shop and pedestrian bridge are proposed on private land in association with the existing on-site golf course and club. The development will not result in increased demand on communal or recreational facilities and a socio-economic impact study is not considered necessary.

The applicant has submitted a socio-economic checklist which indicates impacts will be positive or neutral.

Clause 31 Development Adjoining Waterbodies

Clause 31 applies to land that adjoins the mean high-water mark of a waterbody.

The pedestrian bridge is proposed over an existing lake on the southern side of the club.

The intent of Clause 31 is to ensure that the scenic quality, water quality and associated wildlife habitat is protected and enhanced. It is also intended to provide public access to waterways (where appropriate) and minimise impact from biting midges and mosquito breeding areas.

The existing habitat quality of the lake is limited given it has been constructed and is highly disturbed (through the existing pedestrian bridge and adjoining golfing activities).

Access to the lake by people other than those using the golf course or club, is not considered appropriate given it is within private land has not been designed for alternative uses. The proposal does not result in any new waterbodies or breeding areas for midge and mosquitoes.

It is considered that the proposed development is consistent with the objectives of Clause 31 in this regard.

Clause 32 Aircraft Noise

The subject site is located within the 20 – 25 ANEF contours.

Council's Environmental Health Officer has indicated that reference to AS 2021-2000 Table 2.1, commercial type buildings (including the pro-shop) are acceptable within this zone.

Clause 34 Flooding



The site is flood prone, however the Statement of Environmental Effect notes that the site has been filled.

It is proposed to impose conditions that require floor levels of the golf buggy storage sheds and the pro-shop to be constructed at or above Council's Adopted Design Flood Level (being 2.6m AHD).

The proposal will be conditioned to comply with Clause 34 in this regard.

Clause 35 Acid Sulfate Soils

The subject site is categorised as Class 2 acid sulfate soils.

Works below the ground surface and works by which the watertable is likely to be lowered requires soil assessment and management (unless the land has been lawfully filled and proposed works do not extend beneath the depth of the fill.)

In terms of the pedestrian bridge, construction involves concrete pylons and concrete slab at either end of the bridge. The concrete slab would be constructed on land that had previously been filled. The pylons would be pile driven into position. It is considered that potential acid sulphate soils would not be exposed to the air and an acid sulphate soils management plan is therefore not required.

Council's Environmental Health Officer is satisfied that Clause 35 is satisfied.

Clause 39 Remediation of Contaminated Land

Council's Environmental Health Officer has indicated that the site was previously forested and used as grazing land (prior to 1979).

It is considered that prior uses would not give rise to issues under the provisions of Clause 7 SEPP 55 and the development activities do not increase sensitivity.

North Coast Regional Environmental Plan

Clause 32B applies to land within the region to which the *NSW Coastal Policy 1997* applies. Council must take into account: the *NSW Coastal Policy 1997*; the *Coastline Management Manual*; the *North Coast: Design Guidelines*; impacts on public access to the foreshore and overshadowing of beaches or adjacent open space.

Subject to conditions (particularly in relation to erosion and sediment control and treatment of stormwater and runoff), it is considered that proposed development is unlikely to have any significant impact on water quality and will comply with the *NSW Coastal Policy 1997*.

The subject site is not adjacent to a beach, headland or waterfront open space and does not impede access to the foreshore. Overshadowing of the beach or foreshore will not be an issue given the site is a sufficient distance from the foreshore and does not include any additional height.

The proposal is consistent with the intent of Clause 32B of the North Coast Regional Environmental Plan.

State Environmental Planning Policies

SEPP 55 – Remediation of Land

As identified above, previous uses of the land are not likely to result in contaminated lands and remediation is not required.

SEPP 71 – Coastal Protection

The subject site is located within the Coastal Zone and matters under Clause 8 require consideration. These matters include provision of access to coastal foreshores, suitability of the development, overshadowing of the coastal foreshore, loss of views from a public place to the coastal foreshore, scenic qualities, impact on wildlife and habitats, heritage, coastal processes / hazards and water quality.

The proposed development is consistent with the aims of SEPP 71 and clause 8 given:

- It is not located adjacent to any coastal foreshores and will not result in any overshadowing, loss of views from public places to the coastal foreshore or prevent access to coastal foreshores;
- Conditions are proposed in relation to sediment and erosion to limit impacts on water quality; and
- The site is highly disturbed and unlikely to result in loss of habitat.

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

There are no Draft Environmental Planning provisions that relate to this application.

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

Section A2 – Site Access and Parking Code

The proposed golf pro-shop (which is ancillary to the on-site golf course and club) will result in increased gross floor area of approximately 112.4m².

It is considered that additional car parking is not required for the golf pro-shop for the following reasons:

- The pro-shop is ancillary to the 'club' and 'golf course' and rates for these uses are calculated on the basis of lounge / dining area, staff and increased golfing areas. The proposal does not include these elements.
- The proposed pro-shop is relocating from another locality on-site and is unlikely to attract visitors to the site in isolation.

Similarly, additional car parking spaces are not required for the golf buggy storage sheds as they are ancillary and are intended for existing golf club members.

Notwithstanding, it is noted that the applicant had originally proposed a new car park area (for 20 spaces), however the proposal was amended to remove the car park (via applicant's correspondence dated 2 May 2007).

The proposed car parking area was removed due to concerns it would result in increased use of the maintenance track and secondary access from Leisure Drive. This matter is discussed in further detail below.

Section A3 – Development of Flood Liable Land

As identified above, the site is flood prone. The Statement of Environmental Effects notes that the site has been filled.

Conditions are imposed to ensure that the flood level of the storage sheds and the pro-shop are constructed at an RL above Council's Adopted Design Flood Level (being 2.6m AHD).

Subject to conditions, the proposal is consistent with Section A3.

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

NSW Coastal Policy 1997

The proposal is not contrary to the Coastal Policy.

Demolition

The proposal does not include any demolition.

Fire Safety and Alteration to Existing Buildings

The proposal does not include a change of use of an existing building or any alterations to existing buildings.

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

Access, Transport and Traffic

The applicant originally proposed for access to the golf buggy sheds (and proposed car park) via the adjoining maintenance track, which has direct access from Leisure Drive (separate to the main access to Club Banora).

As identified above, the proposed car park was removed. It is proposed to limit access to the storage sheds via the main driveway and existing car park.

Conditions are imposed to ensure a boom gate is located at the access to the maintenance track, to limit access to service vehicles as originally intended.

The proposed works may result in a minor increase in traffic, however Leisure Drive is capable of accepting this additional loading. Council's Engineer is satisfied with the proposal adequately addresses car parking, traffic and transport, subject to recommended conditions.

Visual Amenity

The buggy sheds proposed near the western boundary are approximately 7 to 20 metres from the adjacent residential property boundaries. Courtyards and balconies of adjoining residences currently enjoy an outlook across the golf course.

There is concern that the proposed golf buggy sheds may have visual impact as follows:

- Impact upon views across the golf course, from adjoining residences;
- Visual impacts from the design of the sheds themselves given they are basic colourbond sheds with limited articulation and variation.

With regard to these concerns, an Information Request (dated 20 December 2007) was forwarded to the applicant, requesting:

- a visual analysis that identifies most affected views;
- identification of opportunities to reduce the impact on views through re-orientation of the sheds and amendments to the plan; and
- details on proposed landscaping, colours and materials designed to soften the visual impact of the sheds.

Views / Outlook

In response to the issue of views, the applicant provided a visual analysis.

The visual analysis identifies that residential properties at most risk of impacts on views are those within SP49178 and SP48206 (adjoining sheds 1 – 14). It is also noted that a timber paling fence of varying height has been constructed on the boundary of SP49178. The visual analysis includes a photomontage, depicting the approximate size, location and character of the sheds.

The applicant has made reference to the Land and Environment Court case of *Tenacity Consulting v Waringah* (2004) NSWLEC 140, which establishes Principles of View Sharing – Impact on Neighbours.

The principles have been considered and the applicant concludes that:

1. the views are not of a high quality (not of water or icons);
2. the views are from the rear or side boundary of adjoining residents and will be affected from courtyard and living areas;
3. the impact is considered minor given the views are not high quality and partial views will be retained; and
4. The proposal is consistent with the planning controls and the nature of development and re-orientation or re-design is not possible given the existing road and chainwire fence.

Design amendments were not proposed, however the applicant suggested that a timber paling boundary fence could be erected to screen the sheds from view.

In assessment of the above, particularly in relation to point 4, it is considered that an increased setback (to allow for landscaping) between the sheds and the adjoining residents (particularly those adjacent to sheds 1 to 14) should be provided. This will assist in reducing the impact on the views of neighbours.

Design of Sheds

With regard to limiting the visual impacts of the sheds themselves, it is considered that landscaping should be provided to soften the edge of the sheds and to break-up the horizontal roof line. Landscaping should consist of a variety of species and be located between the maintenance track and the sheds. An area of 2 metres would be required to establish such landscaping.

Conditions are proposed in this regard and will require re-location of the existing chainwire fence.

Noise

In considering noise, Council's Health and Environmental Officer has recommended a condition ensuring golf buggies utilising sheds 1 – 16 are electrically operated.

The proposed golf buggy sheds are designed so that their roller doors face the adjoining residents. To further limit potential impacts on adjoining residential amenity, a condition is recommended to ensure that the buggy shed roller doors are located away from residents.

Easement for Watersupply

Sheds 1 – 16 are proposed over an existing easement for water supply, which the applicant claims is no longer used. The applicant intends releasing the

easement by way of 'abandonment', pursuant to s49 of the Real Properties Act 1900. This matter is yet to be finalised.

A condition is therefore recommended which ensures that a construction certificate for sheds 1 – 16 is not issued until the applicant has submitted evidence demonstrating the subject easement is released.

(c) Suitability of the site for the development

Surrounding Land Uses

It is considered that the proposed land use is appropriate for the site given it is ancillary to the existing golf course.

Notwithstanding, given the land is adjoined by residential dwellings, conditions are recommended to ensure that impacts on adjoining residential amenity and views are limited (refer discussion above).

Natural Hazards

Whilst the site is flood prone, it is not constrained given it has previously been filled. Conditions are imposed to ensure compliance with Section A3 – Flood Liable Land.

The proposed development does not require the removal of any significant flora or fauna. The site is currently highly disturbed and has limited habitat value.

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

Public Submissions

Council received a total of 20 objections during the public advertising period. An additional 5 letters were received outside this period, along with 110 letters of support (also received outside the public advertising period).

The main points raised in the objections are summarised below, followed by Officer's comments in italics.

Impact on Views and Breeze

Objection is raised in relation to the proposed buggy storage sheds as they will impact upon views of adjoining residents.

This issue has been addressed above and conditions are imposed to reduce the impacts on views and improve the visual quality of the sheds through incorporation of setbacks and landscaping.

Vandals

There is concern that the sheds will be subject to vandalism and graffiti.

The proposed landscaping will limit the risk of vandalism and graffiti, however it is considered that existing casual surveillance from adjoining residential courtyards and balconies will significantly reduce the potential for vandalism and graffiti.

Noise and Residential Amenity

There is concern that the noise generated from use of the buggy sheds (particularly the roller doors) will impact upon existing residential amenity.

Council's Environmental Health Officer does not consider noise to be a significant concern (subject to a condition ensuring golf buggies utilising sheds 1 to 16 are electrically operated).

Notwithstanding, to address concerns in relation to impacts on residential amenity, a condition is imposed requiring re-orientation of the sheds so that the doors are facing away from residents.

Traffic / Access Road

Submitters note that the maintenance track is commonly used by walkers and there is concern that it will become congested through the use of golfers accessing their buggies and buggies themselves.

Conditions are imposed to reduce the use of the maintenance track by requiring that golfers park in the main car park. Re-orientation of the sheds will also discourage use of the maintenance track.

Flooding

There is concern that the area floods and the buggy sheds will increase runoff and result in loss of flood storage.

Conditions are imposed to ensure that the proposal is built above Council's Adopted Design Flood Level.

Whilst it is noted that localised pooling of water may occur on site during extreme storm events, it is considered that there is sufficient flood storage in the locality. The majority of the surrounding area has already been filled to design flood levels.

Car Parking

There is concern that the proposed car parking is insufficient (this comment relates to 20 car parking spaces originally proposed).

As identified above, the proposed car parking spaces were removed from the application. Notwithstanding, it is considered that the proposal does not generate any new car parking requirements as it is ancillary to the golf course and club. Further, the proposal is unlikely to attract visitors to the site in their own right. The removal of the proposed car parking area will alleviate residents concerns with regard to increased traffic on the maintenance track.

Advertising / Notification

Objectors raised concern that notification and advertising was not undertaken in accordance with clause 65 of the EP&A Act as it did not specifically identify the number of sheds proposed.

In response to this concern, Council Officers provided written correspondence to adjoining and affected landholders (dated 8 January 2007) clarifying the components of the application. Further, the advertising period was increased by an additional 14 days.

Insufficient information

It is considered that the application did not include sufficient information, namely: an acoustic report, adequate view impact analysis, a landscape plan, management plan (outlining operating hours and maintenance requirements etc) and a safety and security plan.

Council's information request letter dated 20 December 2006, requested a view impact analysis and details on landscaping. It is not considered that a noise report was required for the proposal, given that roller doors proposed are not dissimilar to garage doors used in residential development. It is not considered that a safety and security plan is required given adjoining residential balconies and courtyards provide for appropriate casual surveillance.

Operating Hours

There is concern that the hours of operation (including activities occurring outside standard business hours) will be excessive and impact on adjoining residential amenity.

Operation of the proposed facilities would be consistent with the golf course / club, although golfers would most likely access the golf buggy sheds 15 mins prior to the earliest tee off-time (7.00am Mon-Friday and 6.30am Saturday and Sunday). As identified above, it is not considered that the noise impacts would be any greater than adjoining residential development within an existing residential area, however conditions are proposed to ensure roller doors are located away from residents to reduce the impacts of activity on amenity.



Stormwater Management / Contaminates

There is concern that stormwater has not been sufficiently addressed in the application, with regard to the tap proposed at each shed for wash-down. There is also concern that potential pollutants are not sufficiently treated.

It is proposed that run-off from washdown will discharge to grass swales and grassland of the driving range and drain over the golf course. This outcome is acceptable and no special treatments are warranted. Standard conditions are proposed to ensure that proposed water sensitive treatment is enforced.

Public Amenities

There is concern that the applicant has not provided toilets for golfers who will be accessing the storage sheds.

This is not considered a relevant issue given there are toilets at the club and golfers accessing the storage sheds would presumably be able to drive their buggy to the club if required.

Public Authority Submissions

The Department of Water and Energy were provided with a copy of the application as Council Officer's were of the view that a licence to intercept the water table was required by the Department of Water and Energy (formally Department of Natural Resources).

The Department has indicated that given the subject waterbody is constructed, no licence is required.

(e) Public interest

The proposal is compliant with the intent of the zone and the relevant regional and local policy documents.

The proposal is not considered to be contrary to any public, government or community interests.

OPTIONS:

1. Approve the proposed development in accordance with the recommended conditions of consent.
2. Refuse the application, with reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

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

CONCLUSION:

The proposed development is consistent with the objectives of the 6 (b) Zone and is compatible with relevant planning instruments.

Whilst the development is suitable for the site and consistent with on-site uses, conditions are recommended to limit potential impacts on adjoining residential amenity and address concerns raised by submitters.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.



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

ORIGIN:

Development Assessment

FILE NO: DA03/1038 Pt3

SUMMARY OF REPORT:

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

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

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

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

RECOMMENDATION:

That the report be received and noted.



REPORT:

As per summary

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

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

ORIGIN:

Development Assessment

FILE NO: DA06/0627 Pt1

SUMMARY OF REPORT:

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

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

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

The original report is reproduced below.

RECOMMENDATION:

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

"DEFERRED COMMENCEMENT"

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

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



SCHEDULE "A"

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

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

SCHEDULE B

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

GENERAL

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

Stage 1 (HIA 1, 2 & 3)

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

Stage 2 (HIA 10, 11 & 12)

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

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

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

Stage 4 (HIA 13 & 14)

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

except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0035]

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

[GENNS01]

4. Separate legal rights to parts of the land title must not be created through any form of subdivision or other means such as agreements, dealings, company shares, trusts or time-sharing arrangements.
5. Each Home Improvement Area is to have a maximum of one (1) dog. Each Home Improvement Area is to be fully fenced to a suitable standard to contain the dog within the Home Improvement Area.
6. A boundary fence is to be provided around the site to such a standard to withstand occasional interference by adjoining cattle.
7. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.

[GEN0045]



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

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

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

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

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

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

Stage 1

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



Stage 2

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

Stage 3

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



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

Stage 4

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

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

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

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

[PCC0455]

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

Please note timber retaining walls are not permitted.

[PCC0475]

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

- (a) vehicular access from the public road

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

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

[PCC0895]

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

[PCC1105]

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

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

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

[PCC1145]

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



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

[PCC1155]

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

PROPERTY ACCESS ROADS

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

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

PRIOR TO COMMENCEMENT OF WORK

26. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area where required to the satisfaction of the Principal Certifying Authority.
- In addition to these measures the core flute sign provided with the stormwater approval under Section 68 of the Local Government Act is to be clearly displayed on the most prominent position of the sediment fence or erosion control device which promotes awareness of the importance of the erosion and sediment controls provided.
- Please note that this sign is to remain in position for the duration of the project. [PCW0985]
27. An Approval to Install a Waste Treatment Device shall be obtained prior to the commencement of the installation of the facility. [PCW1105]
28. Prior to the commencement of works and/or the issue of a Construction Certificate for Stage 2 works, acknowledgement from Tweed Shire Council is to be obtained stating that spare traffic capacity is available within the Kennedy Drive Catchment OR the Cobaki Parkway link is to be constructed and operational.
29. Prior to the commencement of works and/or the issue of a Construction Certificate for Stage 3 works, acknowledgement from Tweed Shire Council is to be obtained stating that spare traffic capacity is available within the Kennedy Drive Catchment OR the Cobaki Parkway link is to be constructed and operational.
30. Prior to the commencement of works and/or the issue of a Construction Certificate for Stage 4 works, acknowledgement from Tweed Shire Council is to be obtained stating that spare traffic capacity is available within the Kennedy Drive Catchment OR the Cobaki Parkway link is to be constructed and operational.

DURING CONSTRUCTION



31. During construction, all works required by other conditions or approved management plans or the like shall be installed and operated in accordance with those conditions or plans. [DUR0015]
32. Provision of adequate vehicular access in accordance with Council's "Access to Property" pamphlet, including the following specific work
- (a) Bitumen sealing of accesses from the road carriageway to the property boundary of each proposed lot.
 - (b) Provision of 375mm minimum diameter pipe culvert crossings, including precast headwalls, to each lot in accordance with Councils adopted Development Design and Construction Specifications. [DUR0045]
33. Construction site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council: -
Monday to Saturday from 7.00am to 7.00pm
No work to be carried out on Sundays or Public Holidays
The proponent is responsible to instruct and control subcontractors regarding hours of work. [DUR0205]
34. Bushfire asset protection zones are to be maintained around the house site at all times to the satisfaction of the NSW Rural Fire Service. [DUR0575]
35. Access to the property is to be provided in accordance with Chapter 4.3.2 of Planning for Bushfire Protection 2001. [DUR0585]
36. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments". [DUR0785]
37. The proposed earthworks program shall be monitored by a Registered Geotechnical Testing Consultant to a level 1 standard in accordance with AS 3798. A certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798 shall be submitted to the Principal Certifying Authority upon completion. [DUR0795]
38. Any watercourse crossing is to be in compliance with current NSW Fisheries Policy and Guidelines for Bridges, Roads, Causeways, Culverts and Similar Structures. [DUR1205]
39. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742.3-2202 (Manual of Uniform Traffic Control Devices). The contractor or

property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

[DUR1795]

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

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

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

[DUR2375]

41. Stage 1

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

Stage 2

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

Stage 3

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

Stage 4

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

[DURNS01]

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

- A. Short Term Period - 4 weeks.

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

- B. Long term period - the duration.

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

[DUR0215]



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

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

[DUR1005]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

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

[POC0005]

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

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

[POC0765]

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

[POC0855]

USE

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

[USE0845]

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

[USENS01]

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

[USENS02]

REPORT:

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

BACKGROUND:

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

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

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

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

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

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

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



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

Stage 1 (HIA 1, 2 & 3)

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

Stage 2 (HIA 10, 11 & 12)

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

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

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

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

Stage 4 (HIA 13 & 14)

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

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

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

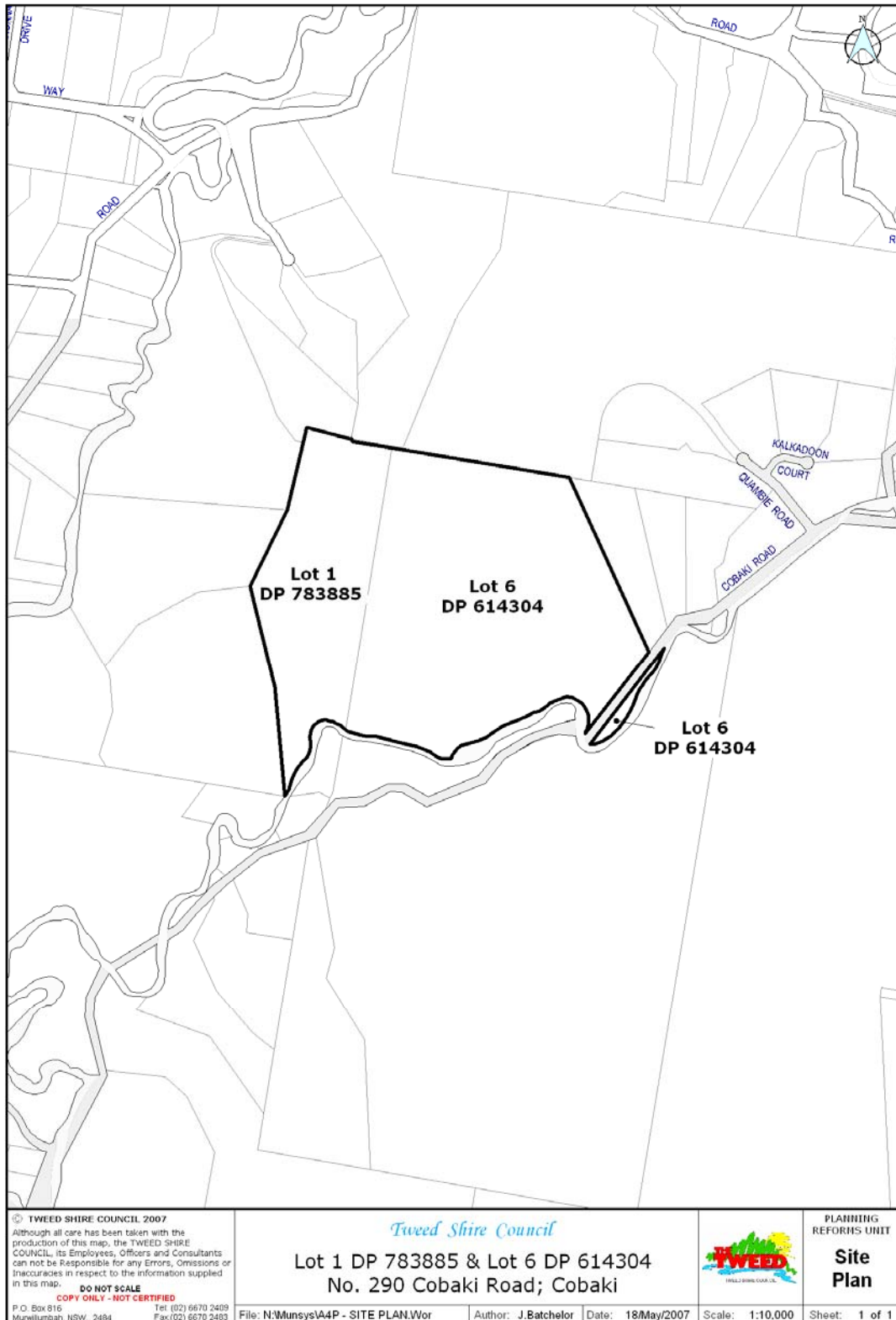
Subdivision of the development, including strata subdivision, is not permitted.

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

The application is recommended for conditional approval.

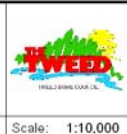


SITE DIAGRAM:



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Tweed Shire Council
Lot 1 DP 783885 & Lot 6 DP 614304
No. 290 Cobaki Road; Cobaki
File: N:\Munsys\A4P - SITE PLAN.Wor Author: J.Batchelor Date: 18/May/2007



PLANNING REFORMS UNIT
Site Plan
Scale: 1:10,000 Sheet: 1 of 1



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

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

Tweed Local Environmental Plan 2000

Clause 11 – Zone Objectives

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

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

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

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

Primary Objectives

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

To protect rural character and amenity.

Secondary Objective

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

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

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

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

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

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

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

Clause 8 Consent Considerations

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

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

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

Clause 15 – Availability of Essential Services

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



Water Supply:

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

On-site Sewage Management:

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

Electricity:

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

Telecommunications:

Underground telecommunication cabling is available to the site

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

Clause 31 – Development Adjoining Waterbodies

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

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

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

These comments substantiate compliance with the provisions of Clause 31.

Clause 39A – Bushfire Protection

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

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

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

Accordingly, Clause 39A is considered satisfied.

North Coast Regional Environmental Plan 1988

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

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

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

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

State Environmental Planning Policies

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

SEPP 15 aims to provide the following:

- (a) *to encourage and facilitate the development of rural landsharing communities committed to environmentally sensitive and sustainable land use practices, and thus*
- (b) *to enable:*
 - (i) *people to collectively own a single allotment of land and use it as their principal place of residence, and*
 - (ii) *the erection of multiple dwellings on the allotment and the sharing of facilities and resources to collectively manage the allotment, and*
 - (iii) *the pooling of resources, particularly where low incomes are involved, to economically develop a wide range of communal rural*

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

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

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

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

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

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

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

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

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

In this regard the following comments are made.

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

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

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

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

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

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

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

SEPP 15 also details the following matters for consideration:

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

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

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

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

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

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

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

State Environmental Planning Policy No. 55 – Remediation of Land

The site is not considered to be contaminated land.

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

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

(a) (iii) Development Control Plans (DCPs)

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

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

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

Satisfactory

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

Threatened Species

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

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

Traffic Capacity/ Kennedy Drive Catchment

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

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

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

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

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

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

(c) Suitability of the site for the development

Suitability of the Lot/ Natural Hazards

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

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

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

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

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

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

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

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



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

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



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

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



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



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

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



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



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

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

NSW Rural Fire Service

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

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

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

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

Department of Primary Industries

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

General

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

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

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

In response the applicant has provided the following detail;

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

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

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

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

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

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

(e) Public interest

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

OPTIONS:

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

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Memo to Council Administrators on issues raised (DW1617943).
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P6 [PR-PC] Development Application DA07/0022 for Multi-Dwelling Housing Comprising 7 Units at Lot 9 DP 14141, No 21 Tweed Coast Road, Hastings Point

ORIGIN:

Development Assessment

FILE NO: DA07/0022 Pt2

SUMMARY OF REPORT:

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

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

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

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

RECOMMENDATION:

That: -

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

GENERAL

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



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

[GEN0005]

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

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

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

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

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

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

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

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

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

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

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

[GEN0125]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

[PCC0285]

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

[PCCNS02]

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

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

[PCCNS01]

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

- a) The site is to be filled to a minimum level of RL 2.4m AHD, where the building footprint is located. The fill level of 2.4m AHD is to grade down to the riparian vegetation area located at the rear of the property. The fill is to be retained by perimeter structural walls with concrete lined perimeter drainage or other approved treatment. Site filling and associated drainage is to be designed to address drainage on the site as well as existing stormwater flows onto or through the site, and minimizing the impact of filing on local drainage. Detailed engineering plans of fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.



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

[PCCNS01]

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

[PCC1155]

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

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

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

[PCC1145]

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

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

[PCC1135]

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

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

[PCC1105]

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

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

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

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

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

[PCC0895]

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

[PCC0865]

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

[PCC0585]

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

[PCC0465]

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall



NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

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

| | | |
|------------------------------|-------------------------|-----------------|
| Water DSP6: | 4 ET @ \$4598 | \$18,392 |
| Sewer Hastings Point: | 5.25 ET @ \$2863 | \$15,031 |

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

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

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

[PCC0265]

26. Section 94 Contributions

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

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

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

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

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



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

[PCC0215]

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

[PCC0065]

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

[PCC0055]

PRIOR TO COMMENCEMENT OF WORK

29. The erection of a building in accordance with a development consent must not be commenced until:
- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
 - (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - (c) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.
- [PCW0215]
30. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.
- [PCW0225]
31. Residential building work:
- (a) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - * in the name and licence number of the principal contractor, and
 - * the name of the insurer by which the work is insured under Part 6 of that Act,



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

[PCW0235]

32. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every fifteen (15) persons or part of fifteen (15) persons employed at the site. Each toilet provided must be:-
- (a) a standard flushing toilet connected to a public sewer, or
 - (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

33. Where prescribed by the provisions of the Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the site is prohibited.

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

[PCW0255]

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

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

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

[PCW0775]

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

[PCW0985]

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

[PCW1055]

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

[PCW1065]

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

[PCW0005]

DURING CONSTRUCTION

38. Construction site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council: -

Monday to Saturday from 7.00am to 7.00pm

No work to be carried out on Sundays or Public Holidays

The proponent is responsible to instruct and control subcontractors regarding hours of work.

[DUR0205]



40. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).
[DUR0375]
41. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.
[DUR0395]
42. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.
[DUR0405]
43. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Occupational Health and Safety Regulation 2001.
[DUR0415]
44. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover NSW, Occupational Health and Safety Regulation 2001.
[DUR0645]
45. Minimum notice of 48 hours shall be given to Tweed Shire Council for the capping of any disused sewer junctions. Tweed Shire Council staff in accordance with the application lodged and upon excavation of the service by the developer shall undertake Works.
[DUR0675]
46. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan, Part A5 - Subdivision Manual and Development Control Plan, Part A14 - Cut and Fill on Residential Land to the satisfaction of the Principal Certifying Authority. Please note timber retaining walls are not permitted.
[DUR0835]
47. All work associated with this approval is to be carried out so as not to impact on neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -
- Noise, water or air pollution

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

[DUR1005]

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

[DUR1405]

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

[DUR1415]

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

[DUR1875]

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

[DUR2195]

52. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:

- (a) internal drainage, prior to slab preparation;
- (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
- (c) external drainage prior to backfilling.
- (d) completion of work and prior to occupation of the building.

[DUR2485]

53. Plumbing

- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.

[DUR2495]

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

[DUR2505]

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

[DUR2515]



56. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard.

[DUR2535]

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

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

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

[DUR2555]

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

[DUR2615]

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

[DUR2645]

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

[DUR2655]

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

[DURNS01]

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

working with and handling of asbestos. All asbestos sheeting material shall be disposed to an approved landfill facility.

[DURNS01]

- 63. No retaining walls or similar structures are to be constructed over or within the zone of influence of Council's sewer main.**
- [DUR2705]
- 64. During construction, a "satisfactory inspection report" is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.**
- [DUR2445]
- 65. All waters that are to be discharged from the site shall have a pH between 6.5 and 8.5 and suspended solids not greater than 50mg/kg.**
- [DUR2435]
- 66. The site shall not be dewatered, unless written approval to carry out dewatering operations is received from the Tweed Shire Council General Manager or his delegate.**
- [DUR2425]
- 67. Appropriate measures are to be put in place during the construction and/or demolition period to prevent the transport of sediment from the site. Should any material be transported onto the road or any spills occur it is to be cleaned up prior to cessation of same days work and/or commencement of any rain event.**
- [DUR2405]
- 68. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.**
- [DUR2375]
- 69. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials. A screened, graded and drained garbage storage area shall be provided within the boundary.**
- [DUR2205]
- 70. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction.**
- [DUR2185]
- 71. No portion of the structure may be erected over any existing sillage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains.**
- [DUR1945]
- 72. Where the kerb is to be removed for driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.**

[DUR1905]



73. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works. [DUR1795]
74. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development. [DUR1025]
75. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. All such materials should be chipped on site and used in landscaping unless it is not possible due to size, non suitability of the material or some other limitation, in which case the material will be disposed of at Council's Stotts Creek depot. [DUR1015]
76. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate. [DUR0995]
77. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate. [DUR0985]
78. Provision to be made for the designation of 2 durable and pervious car wash-down areas. The areas must be identified for that specific purpose and be supplied with an adequate water supply for use within the areas. Any surface run-off from the area must not discharge directly to the stormwater system. [DUR0975]
79. All new residential dwellings (and extensions comprising over 50% of the original floor area) are to fully comply with Tweed Shire Council Development Control Plan, Part A9 - Energy Smart Housing Policy. In order to comply with the Policy consideration must be given to the building envelope, orientation, insulation, ventilation, thermal mass and zoning. [DUR0915]
80. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited. [DUR0815]
81. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the

neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:

A. Short Term Period - 4 weeks.

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

B. Long term period - the duration.

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

[DUR0215]

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

[DUR0085]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

- 83. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).**

[POC0205]

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

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

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

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

[POC0265]



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

[POC0435]

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

[POC1045]

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

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

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

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

[POCNS01]

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

[POCNS01]

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

[POC0985]

USE

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

[USE0965]

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



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

[USE0175]

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

[USENS01]



REPORT:

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

BACKGROUND:

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

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

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

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

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

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

Building Characteristics

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

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

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

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

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

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

Public Notification

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



SITE DIAGRAM:



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COPY ONLY - NOT CERTIFIED
 P.O. Box 816 Tel: (02) 9570 2458
 Murrumbidgee, NSW 2484 Fax: (02) 6672 2893

Tweed Shire Council
Lot 9 DP 14141
No. 21 Tweed Coast Road, Hastings Point
 File: N:\Munks\A4P - SITE PLAN\War Author: J.Batchelor Date: 18May2007



PLANNING REFORMS UNIT
Site Plan
 Scale: 1:10,000 Sheet: 1 of 1



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

ELEVATIONS

LAND AND ENVIRONMENT COURT
 28 MAY 2007
FILED

SOUTH ELEVATION scale 1:100

WEST ELEVATION (COAST RD) scale 1:100

EAST ELEVATION scale 1:100

NORTH ELEVATION (YOUNG ST) scale 1:100

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

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

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

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

Tweed Local Environmental Plan 2000

The subject land is zoned 2(b) Medium Density Residential pursuant to the provisions of Tweed LEP 2000.

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

Primary objective

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

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

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

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

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

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

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

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

North Coast Regional Environmental Plan 1988

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

State Environmental Planning Policies

State Environmental Planning Policy (SEPP) 1 – Development Standards

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

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

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

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

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

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

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

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

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

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

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

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

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

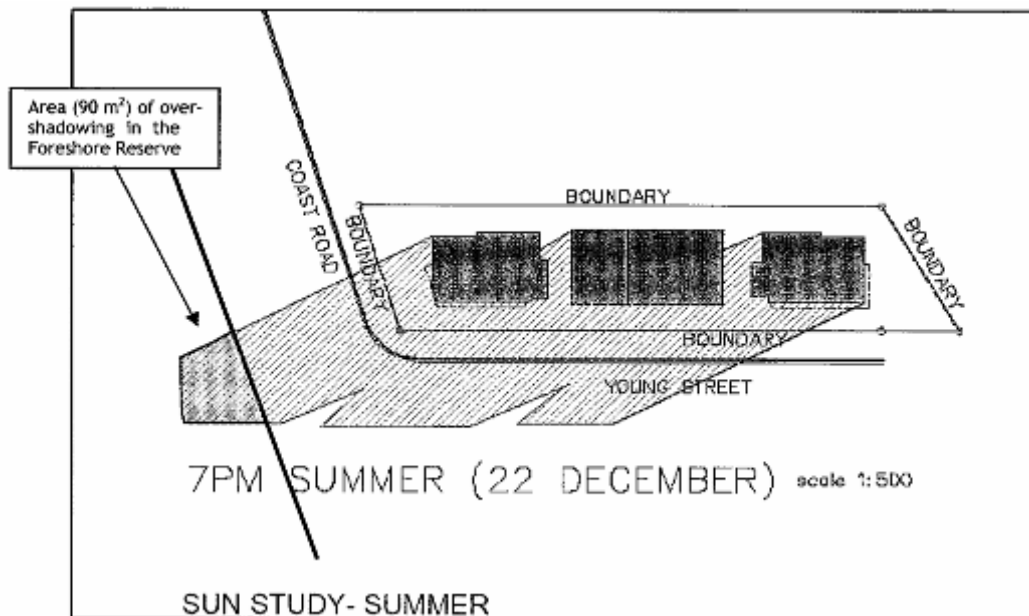
- The extent of overshadowing at the prescribed time (approx 90 sq.m - 7 pm midsummer, 80 sq.m 9 am midwinter and 36 sq.m – 9 am midsummer) is considered to be minor in scale, relative to the overall size of Cudgera Creek to the west of the site the Coastal Reserve to the east of the site;
- That area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

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

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

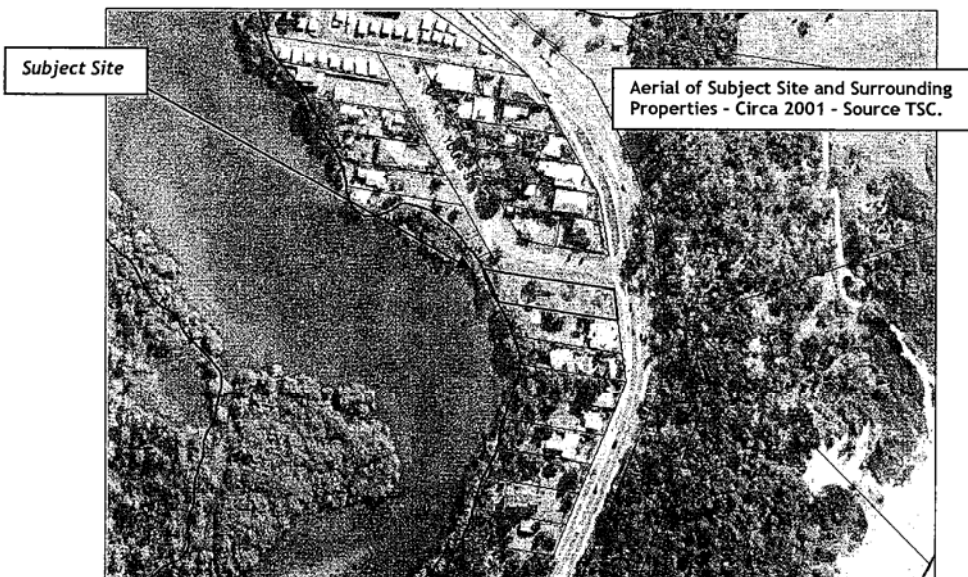
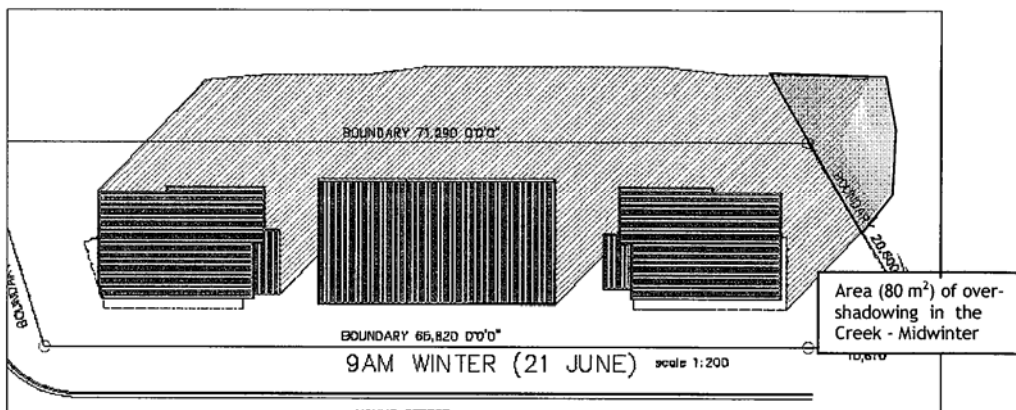
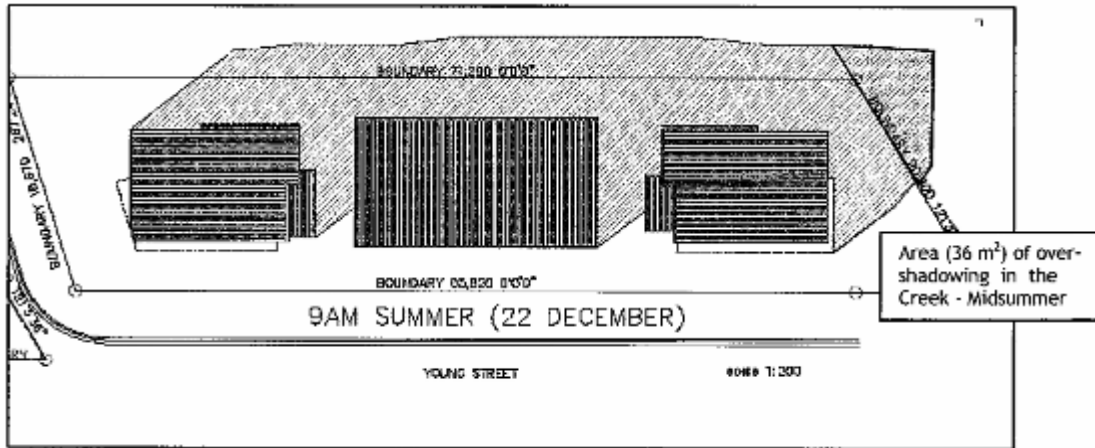
'The suggested standard in this principle may be difficult to apply in highly urbanised environments. An LEP or DCP which is tailored to local conditions and which has the overriding objective of minimising overshadowing may be required in these situations'

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



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

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





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

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

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

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

State Environmental Planning Policy (SEPP) 26 – Littoral Rainforest

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

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

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

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

State Environmental Planning Policy (SEPP) 71 – Coastal Protection

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

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

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

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

Tweed Development Control Plan

Section A1 – Multi-Dwelling Housing

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

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

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

NO* - See Assessment Below

Floor Space Ratio

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

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

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

Landscaping

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

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

Setbacks

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

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

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

Private Open Space

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

Section A2 – Access & Car parking

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

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

*See comment below

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

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

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

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

Section A3 – Development of Flood Liable Land

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

Section B18 – Tweed Coast Building Heights

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

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

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

The development complies with the DCP.

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

NSW Coastal Policy

The proposed development satisfies the provisions of Policy.

Demolition

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

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

Context & Setting / Building Height Restrictions

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

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

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

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

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

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

(c) Suitability of the site for the development

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

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

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

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

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

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

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

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

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

(e) Public interest

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

OPTIONS:

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

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

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



PLANNING COMMITTEE MEETING DATE: TUESDAY 19 JUNE 2007

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.



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