



TWEED SHIRE COUNCIL

# **AGENDA**

## **PLANNING COMMITTEE MEETING**

### **Tuesday 23 October 2007**

**Chairman: Mr Max Boyd AM**

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



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## ITEMS FOR CONSIDERATION OF THE COMMITTEE:

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## REPORTS THROUGH GENERAL MANAGER

### 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 DA07/0246 – Construction of a Sewer Pump Station (SPS 4035) at the Intersection of Elrond Drive and Turnock Street, Kingscliff**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA07/0246 Pt1**

**SUMMARY OF REPORT:**

Council is in receipt of a development application that seeks consent to construct a sewer pump station (SPS 4035) within the road reserve at the intersection of Elrond Drive and Turnock Streets, Kingscliff. The proposal forms a critical part of the new Sewerage Scheme to address servicing needs associated with population growth. Given that Council is the proponent for this development the application has been independently assessed by Planning Consultant, Kate Singleton.

Development Application DA07/0246 for the construction of a new sewer pump station (SPS 4035) was lodged on 12 March 2007. The application proposed the construction of a new sewer pump station within the Turnock Street Road Reserve, on the road verge, and on approximately 200m<sup>2</sup> of land beyond the toe of the road batter.

Following concerns raised associated with the proposed filling of the land to construct the sewer pump station, an amended application was submitted to Council on 7 September 2007. The revised location of the sewer pump station, approximately 15 metres from the originally proposed site, is located on the road stub and fill batter at the intersection of Elrond Drive and Turnock Street. The revised proposal does not require the filling of land.

The proposed works include the construction of an underground well which requires a bore licence in accordance with Part 5 of the Water Act 1912, and the proposed development therefore constitutes Integrated Development in accordance with the provisions of Section 91(1) of the Environmental Planning and Assessment Act, 1979. The application was referred to the Department of Natural Resources (now the Department of Water and Energy) and general Terms of Approval have been issued by the Department.

The original and amended applications were notified and advertised and no submissions were received in response to either exhibition.

An ecological assessment incorporating a 7-Part test in accordance with Section 5A of the Environmental Planning and Assessment Act, 1979, was carried out for the development as originally proposed and also for the amended proposal. Council's



Senior Ecologist / Conservation Planner has provided an assessment of the proposal and amended proposal, and concludes that there will be insignificant impacts on the natural environment from this proposal providing the proposed mitigation measures are adhered to.

Potential adverse impacts of the proposed development are able to be adequately addressed via recommended conditions of consent.

**RECOMMENDATION:**

**That Development Application DA07/0246 for a sewer pump station at Turnock Street, Kingscliff, be approved subject to the following conditions:-**

**GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects (and Addendum to the Statement of Environmental Effects dated 7 September 2007) and Plan Nos:
  - Drawing No. WT06030/21 Sheet 1 of 16 Sheets Issue A prepared by Tweed Shire Council Design Unit and dated August 2007
  - Drawing No. WT06030/22 Sheet 2 of 16 Sheets Issue A prepared by Tweed Shire Council Design Unit and dated September 2007
  - Drawing No. WT06030/23 Sheet 3 of 16 Sheets Issue A prepared by Tweed Shire Council Design Unit and dated September 2007
  - Drawing No. WT06030/24 Sheet 4 of 16 Sheets Issue A prepared by Tweed Shire Council Design Unit and dated September 2007
  - Drawing No. WT06030/25 Sheet 5 of 16 Sheets Issue A prepared by Tweed Shire Council Design Unit and dated September 2007
  - Drawing No. WT06030/26 Sheet 6 of 16 Sheets Issue A prepared by Tweed Shire Council Design Unit and dated September 2007
  - Drawing No. WT06030/27 Sheet 7 of 16 Sheets Issue A prepared by Tweed Shire Council Design Unit and dated September 2007
  - Drawing No. WT06030/30 Sheet 10 of 16 Sheets Issue A prepared by Tweed Shire Council Design Unit and dated September 2007
  - Drawing No. WT06030/36 Sheet 16 of 16 Sheets Issue A prepared by Tweed Shire Council Design Unit and dated September 2007

except where varied by the conditions of this consent.
2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.

[GEN0115]

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

3. 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]

4. Submission of an amended Site and Traffic Management Plan to the satisfaction of the General Manager or his delegate to reflect the revised location of the Sewerage Pumping Station.

**PRIOR TO COMMENCEMENT OF WORK**

5. 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]



6. **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]

7. **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]

#### **DURING CONSTRUCTION**

8. **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]

9. **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]

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

[DUR0225]

11. **All waters pumped from the site in the dewatering process are to be treated with an effective deodoriser to the satisfaction of Councils General Manager or his delegate to neutralise any offensive odours. The point of discharge shall be approved by Councils General Manager or his delegate prior to installation and shall include a water sampling outlet.**

[DUR0235]

12. Pumps used for dewatering operations are to be electrically operated. Diesel pumps are not to be used unless otherwise approved by the Tweed Shire Council General Manager or his delegate.

[DUR0255]

13. 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]

14. 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]

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

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

[DUR1005]

16. 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]

17. Hazardous or industrial waste must be stored and disposed of in a manner to minimise its impact on the environment including appropriate segregation for storage and separate disposal by a waste transporter licensed by the Department of Environment & Conservation.

[DUR2215]

18. 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]

19. 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]

20. 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.
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The contractor shall nominate a person responsible for monitoring of the quality of such discharge waters on a daily basis and the results recorded. Such results shall be made available to Council's Environmental Health Officer(s) upon request.

[DUR2435]

21. Sediment and erosion control measures shall be placed and maintained to the satisfaction of the General Manager.
22. Fuels and chemicals shall be stored in a bunded area and not permitted to flow or percolate to any watercourse.
23. Vegetation shall not be lopped or removed except as strictly necessary to complete the proposed works.
24. All excavated materials shall be managed in accordance with the Acid Sulfate Soil Management Plan, Sewer Pumping Station 4035, Turnock Street, Kingscliff, March 2007.
25. Disturbances of in situ soils shall be restricted to those materials strictly necessary to construct the proposed facilities.

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

26. 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]

27. The proposed development is to be carried out strictly in accordance with the proposed 'mitigation measures' provided in the Addendum to the Statement of Environmental Effects dated 7 September 2007.

#### **GENERAL TERMS OF APPROVAL FOR A LICENSE UNDER THE WATER ACT 1912**

##### **General Conditions (all approvals)**

The purposes of these conditions are to:

- Define certain terms used in other conditions
- Specify the need to obtain a license, permit or authority before commencing any works
- Specify that, in most cases an approval will only be issued to the occupier of the lands where the works are to be located (as required by the Water Act)
- Require existing approvals to be cancelled or let lapse when a license is issued (if applicable)
- Require the safe construction and operation of all works
- Require the use of appropriate soil conservation measures
- Limit vegetation destruction or removal to the minimum necessary
- Require the separate authorisation of clearing under the NVC Act

- **Allow conditions to be imposed for management of fuel (petroleum)**

**In the following conditions relating to an approval under the Water Act 1912;**

**‘the department’ means the department administering the Water Act 1912;**

**‘approval’ means a license, permit, authority or approval under that Act;**

**‘river’ has the same meaning as in Section 5 of the Water Act 1912;**

**‘work’ means any structure, earthwork, plant or equipment authorised under the approval to be granted, as defined in Section 5 and 105 of the Water Act 1912;**

**‘controlled work’ means any earthwork, embankment or levee as defined in Section 165 of the Water Act 1912**

**Before commencing any works or using any existing works for the purpose of dewatering an approval under Part V of the Water Act 1912 must be obtained from the department. The application for the approval must contain sufficient information to show that the development is capable of meeting the objectives and outcomes specified in these conditions.**

**An approval will only be granted to the occupier of the lands where the works are located, unless otherwise allowed under the Water Act 1912.**

**When the department grants an approval, it may require any existing approvals held by the applicant relating to the land subject to this consent to be surrendered or let lapse.**

**All works subject to an approval shall be constructed, maintained and operated so as to ensure public safety and prevent possible damage to any public or private property.**

**All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry or sediments into any river, lake, waterbody, wetland or groundwater system.**

**The destruction of trees or native vegetation shall be restricted to the minimum necessary to complete the works.**

**All vegetation clearing must be authorised under the Native Vegetation Conservation Act 1997, if applicable.**

**The approval to be granted may specify any precautions considered necessary to prevent the pollution of surface water or groundwater by petroleum products or other hazardous materials used in the construction or operation of the works.**

**A license fee calculated in accordance with the Water Act 1912 must be paid before a license can be granted.**

#### **Conditions of water use (including irrigation)**

**The purpose of these conditions are to:**

- **Allow the department to obtain an accurate measure of water use where necessary**
  - **Specify the purpose(s) for which the water may be used**
-



- Specify conditions to protect water quality and the environment
- Specify the maximum rate that water may be taken from the water source
- Specify the limitations of when water may be taken from the water source
- Ensure proper management of tailwater drainage
- Ensure accessions to groundwater systems are restricted

If and when required by the department, suitable devices must be installed to accurately measure the quality of water extraction or diverted by the works.

All water measuring equipment must be adequately maintained. It must be tested as and when required by the department to ensure its accuracy.

The water extracted under the approval to be granted shall be used for the purpose of dewatering and for no other purpose. A proposed change in purpose will require a replacement license to be issued.

#### Conditions for bores and wells

*See also 'general conditions' and 'conditions for water use'*

The purpose of these conditions are to:

- Set a limited period bore construction
- Require the bore to be properly completed and sealed
- Require certain information to be provided on completion of the work, including a location plan
- Allow DNR access for inspection and testing
- Specify procedures if saline or polluted water found
- Specify a volumetric allocation for the works purpose
- Allow DNR to alter the allocation at any time

Works for construction of bore must be completed with such period as specified by the department.

Within two months after the works are completed the department must be provided with an accurate plan of the location of the works and notified of the results of any pumping tests, water analysis and other details as are specified in the approval.

Officers of the department or other authorised persons must be allowed full and free access to the works for the purpose of inspection and testing.

Any water extracted by the works must not be discharged into any watercourse or groundwater if it would pollute that water.

The department has the right to vary the volumetric allocation or the rate at which the allocation is taken in order to prevent the overuse of an aquifer.

- (1) THE LICENSEE MUST ALLOW AUTHORISED OFFICERS OF THE DEPARTMENT OF WATER AND ENERGY, AND ITS AUTHORISED



**AGENTS REASONABLE ACCESS TO THE LICENSED WORKS WITH VEHICLES AND EQUIPMENT AT ANY TIME FOR THE PURPOSES OF:**

- **INSPECTING THE SAID WORK**
  - **TAKING SAMPLES OF ANY WATER OR MATERIAL IN THE WORK AND TESTING THE SAMPLES.**
- (2) **THE LICENSEE SHALL WITHIN 2 WEEKS OF BEING NOTIFIED INSTALL TO THE SATISFACTION OF THE DEPARTMENT OF INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES IN RESPECT OF LOCATION, TYPE AND CONSTRUCTION AN APPLIANCE(S) TO MEASURE THE QUANTITY OF WATER EXTRACTED FROM THE WORKS. THE APPLIANCE(S) TO CONSIST OF EITHER A MEASURING WEIR OR WEIRS WITH AUTOMATIC RECORDER, OR METER OR METER(S) OF MEASUREMENT AS MAY BE APPROVED BY THE DEPARTMENT OF INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES. THE APPLIANCE(S) SHALL BE MAINTAINED IN GOOD WORKING ORDER AND CONDITION. A RECORD OF ALL WATER EXTRACTED FROM THE WORKS SHALL BE KEPT AND SUPPLIED TO THE DEPARTMENT OF INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES UPON REQUEST. THE LICENSEE WHEN REQUESTED MUST SUPPLY A TEST CERTIFICATE AS TO THE ACCURACY OF THE APPLIANCE(S) FURNISHED EITHER BY THE MANUFACTURER OR BY SOME PERSON DULY QUALIFIED.**
- (3) **THE AUTHORISED WORK SHALL NOT BE USED FOR THE DISCHARGE OF POLLUTED WATER INTO A RIVER OR LAKE OTHERWISE THAN IN ACCORDANCE WITH THE CONDITIONS OF A LICENCE GRANTED UNDER THE PROTECTION OF THE ENVIRONMENT OPERATIONS ACT 1997. A COPY OF THE LICENCE TO DISCHARGE IS TO BE PROVIDED TO THE DEPARTMENT OF INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES.**
- (4) **THE TERM OF THIS LICENCE SHALL BE TWELVE (12) MONTHS.**
- (5) **THE VOLUME OF GROUNDWATER EXTRACTED FROM THE WORK AUTHORISED BY THIS LICENCE SHALL NOT EXCEED 1 MEGALITRES FOR THE TERM OF THE LICENCE.**
- (6) **THE AUTHORISED WORK SHALL NOT BE USED FOR THE DISCHARGE OF WATER UNLESS THE PH OF THE WATER IS BETWEEN 6.5 AND 8.5, OR THE WATER HAS BEEN TREATED TO BRING THE PH TO A LEVEL BETWEEN 6.5 AND 8.5 PRIOR TO DISCHARGE, OR THE WATER IS DISCHARGED THROUGH THE COUNCIL'S SEWERAGE TREATMENT SYSTEM.**
- (7) **THE LICENSEE SHALL TEST THE PH OF ANY WATER EXTRACTED FROM THE WORK PRIOR TO THE COMMENCEMENT OF DISCHARGE AND AT LEAST TWICE DAILY THEREAFTER AND RECORD THE DATE, TIME AND RESULT OF EACH TEST IN THE SITE LOG. A COPY OF THE RECORDS OF THE PH TESTING IS TO BE RETURNED WITH THE FORM 'AG'.**
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- (8) THE WORKS SHALL BE MANAGED IN ACCORDANCE WITH THE CONSTRAINTS OF THE ASS MANAGEMENT PLAN DATED MARCH 2007 PREPARED BY TWEED SHIRE COUNCIL.**



**REPORT:**

**Applicant:** Tweed Shire Council  
**Owner:** Tweed Shire Council  
**Location:** Road Reserve Intersection of Elrond Drive and Turnock Street, Kingscliff  
**Zoning:** Uncoloured Road Reserve  
**Cost:** \$650,000

**BACKGROUND:**

Council is in receipt of a development application that seeks consent to construct a sewer pumping station (SPS 4035) within the road reserve at the intersection of Elrond Drive and Turnock Streets, Kingscliff.

The proposal forms a critical part of the new Sewerage Scheme to address servicing needs associated with population growth.

Development Application DA07/0246 for the construction of a new sewer pump station (SPS 4035) was lodged on 12 March 2007. The application proposed the construction of a new sewer pump station within the Turnock Street Road Reserve, on the road verge, and on approximately 200m<sup>2</sup> of land beyond the toe of the road batter.

The proposed works include the construction of an underground well which requires a bore licence in accordance with Part 5 of the Water Act 1912, and the proposed development therefore constitutes Integrated Development in accordance with the provisions of Section 91(1) of the Environmental Planning and Assessment Act, 1979. The approval authority for a licence to commence sinking a bore and to enlarge, deepen or alter a bore, is the Department of Environment and Climate Change,

The application was referred to the Department of Natural Resources (now the Department of Environment and Climate Change) and General Terms of Approval have been issued by the Department.

The application was notified and advertised for a period of 30 days from 4 April to 7 May 2007. No submissions were received in response to the public exhibition of the development application.

Following concerns raised associated with the proposed filling of the land to construct the sewer pump station, an amended application was submitted to Council on 7 September 2007. The revised location of the sewer pump station, approximately 15 metres from the originally proposed site, is located on the road stub and fill batter at the intersection of Elrond Drive and Turnock Street. The revised proposal does not require the filling of land.

Notwithstanding the relatively minor variation to the application, the amended application was again advertised and notified and no submissions were received in response to this exhibition.



## The Proposal

The proposed works include:

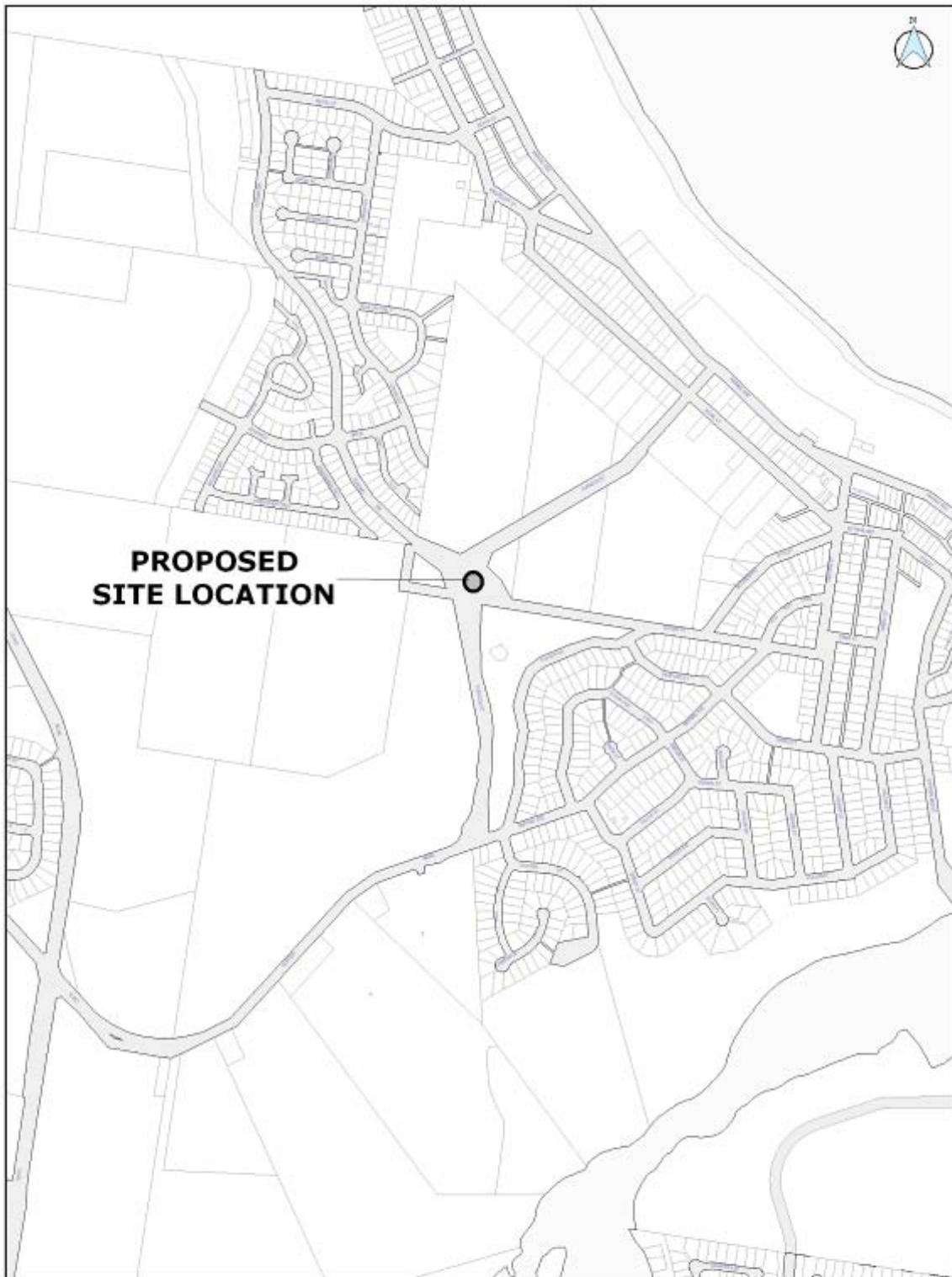
- Construction of a new sewer pumping station approximately 6.7 metres deep with a 1000mm thick concrete plug to prevent the sewer pumping station from rising out of the ground;
- Construction of a new control building incorporating an electrical switch box; and
- Connection to the sewer network.

The underground well component of the proposal will be located below the water table. The method for construction is a 'case on sinking method' with the well formed in-situ and excavated from within. The case is sunk to the correct depths and then a wet mix of concrete is poured to form a binding layer for the floor of the well. Groundwater within the well will be treated prior to being discharged into the stormwater.

The amended proposal is sited entirely within the road reserve at the intersection of Elrond Drive and Turnock Street and will be constructed on the road verge. Works do not extend beyond the toe of the existing road batter. The proposal will involve the clearing of minor road verge vegetation consisting of planted screening trees and introduced weeds. The proposal will not disturb or remove remnant vegetation.

It is proposed to construct the sewerage pumping station over a period of 26 weeks.

**SITE DIAGRAM:**



<p>© TWEED SHIRE COUNCIL, 2007          Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be responsible for any errors, omissions or inaccuracies in respect to the information supplied in this map.  <b>DO NOT SCALE</b>          COPY ONLY - NOT CERTIFIED          P.O. Box 816 Tel: (02) 6678 2409          Murumbidgee, NSW, 2484 Fax: (02) 6670 2489</p>	<p><i>Tweed Shire Council</i>  <b>ELROND DRIVE AND TURNOCK STREET,          KINGSCLIFF</b></p>		<p>PLANNING REFORMS UNIT  <b>Site Plan</b>          Sheet: 1 of 1</p>
<p>File: N:\Wunsys\A4P - SITE PLAN.Wor Author: J. Batchelor Date: 16/Oct/2007 Scale: 1:10,000</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 site on which the construction of the sewerage pumping station is proposed is 'unzoned' under Tweed Local Environmental Plan 2000 (the LEP).

- Clause 13 – Uncoloured Land on the Zone Map

Clause 13 of the LEP contains provisions regarding uncoloured land on the zone map. The objectives of Clause 13 are:

- *to enable the control of development on unzoned land.*
- *to ensure that development of unzoned land is compatible with surrounding development and zones.*
- *to ensure that development of certain waters takes account of environmental impacts and other users of the waters.*

Subclause (2) requires development consent for development on unzoned land, with certain exceptions including development listed in Schedule 5 of the LEP. Schedule 5 of the LEP lists the carrying out of public utility undertakings, including sewerage supply works. However, the proposed development also involves the construction of a building which is not permitted without development consent in accordance with the provisions of Schedule 5 and subclause (2). Development consent is also required for the works in accordance with Clause 35 of the LEP relating to Acid Sulfate Soils.

Subclause 3 requires the consent authority to consider certain issues in deciding whether to grant consent to development on unzoned land, including the following:

- (a) *whether the proposed development is compatible with development permissible in the adjoining zone and the character and use of existing development in the vicinity,*

The site on which the sewerage pumping station is proposed to be located consists of road reserve. Land surrounding the subject site is zoned 2(c) Urban Expansion and 5(a) Special Uses - Community Facilities. The proposed sewerage pump station is compatible with development permissible in the adjoining zones. The primary objective of the 2(c) Urban Expansion zone is to identify land for urban expansion and to ensure its optimum utilisation consistent with environmental constraints and the need to minimise residential landtake. A wide range of uses are permissible with development consent in the 2(c) Urban Expansion zone. The secondary zone objectives

include protecting sensitive environmental areas within and outside the zone from any adverse impacts of development.

The primary objective of the 5(a) Special Uses zone is to identify land which is developed or is proposed to be developed, generally by public bodies, for community facilities and services, roads, railways, utilities and similar things. Public utility undertakings and utility installations are permissible with development consent in the 5(a) Special Uses zone.

The proposed sewerage pump station is compatible with development permissible in the adjoining zones and the use of existing development in the vicinity. The nearest residence is located approximately 200 metres from the subject site and management measures are proposed to minimise potential impacts of the proposal such as odour.

- Clause 34 – Flooding

The objectives of Clause 34 are:

- *to minimise future potential flood damage by ensuring that only appropriate compatible development occurs on flood liable land.*
- *to minimise the adverse effect of flooding on the community.*

Subclause (2) states that where, in the consent authority's opinion, land is likely to be subject to flooding it must not grant consent to development on that land unless it has considered the following:

- (a) the extent and nature of the flooding hazard affecting the land, and*
- (b) whether or not the development would increase the risk or severity of flooding of other land in the vicinity, and*
- (c) whether the risk or severity of flooding affecting the development could be reasonably mitigated, and*
- (d) the impact of the development on emergency services, and*
- (e) the provisions of Tweed Development Control Plan No 5—Development of Flood Liable Land and any other relevant development control plan.*

The site is identified as subject to inundation in a 1 in 100 year flood event. As outlined above, the development application as originally proposed included the filling of approximately 200m<sup>2</sup> of land in association with the sewerage pump station. The proposal has been relocated to remove this requirement for filling. The control building has been designed above the 1 in 100 year flood level and the pump-chamber will be flood proof.

The proposed development is not likely to increase the risk or severity of flooding of other land in the vicinity, and the risk or severity of flooding affecting the development can reasonably be mitigated. The proposed development is generally consistent with the provisions of Tweed Development Control Plan No. 5 – Development of Flood Liable Land, and the sewer pumping station is not likely to impact on emergency services.

▪ Clause 35 – Acid Sulfate Soils

The subject site is identified as Class 2 lands in accordance with the “Acid Sulfate Soil Planning Map”. Clause 35(3) requires development consent for any works below the ground surface, or any works by which the water table is likely to be lowered, on land identified as Class 2 land.

Subclause (4) requires the consent authority to consider the following matters prior to granting development consent for works specified in subclause (3):

- (a) *a preliminary soil assessment to ascertain the presence or absence of acid sulfate soils within the area of proposed works, unless the applicant agrees that acid sulfate soils are present within the area of proposed works, and*
- (b) *where the preliminary soil assessment ascertains (or the applicant agrees) that acid sulfate soils are present, the adequacy of an acid sulfate soils management plan prepared in accordance with guidelines, as amended from time to time, published by the Environment Protection Authority, and*
- (c) *the likelihood of the proposed development resulting in the oxidation of acid sulfate soils and discharge of acid water from the area of the proposed works, and*
- (d) *any comments received from any relevant public authority the Council may consult with in respect of the application.*

The proposed development involves earthworks including general surface leveling and excavation of footings, and excavation of material from within the well casing. A Geotechnical Investigation Report accompanies the development application. The amended location of the sewer pumping station is approximately 15 metres from the Acid Sulfate Soils borehole assessment undertaken to accompany the development application. The applicant submits that given the proximity of the amended siting of the works to the initial borehole assessment, the assessment remains relevant to the amended proposal.

The Geotechnical Investigation Report indicates that soil in the locality is predominantly fine sand and Potential Acid Sulfate Soils (PASS) are present within the study area. The pH of soils and their acid generating capacity varied throughout the soil profile. The laboratory analysis confirms that ASS are likely to be encountered during excavation works.

An Acid Sulfate Soils Management Plan (ASSMP) has been prepared and submitted with the development application. The ASSMP proposes management of ASS by liming and minimising disturbance. Dewatering is also required. The ASSMP proposes to store, test and treat this water prior to discharge to stormwater. Council’s Environmental Health Officer advises that the ASSMP is adequate, subject to appropriate conditions of development consent.



The issues of potential oxidation of ASS and discharge of acid water from the area of the proposed works are dealt with adequately in the Geotechnical Investigation Report and the ASSMP.

The conditions provided by Council's Environmental Health Officers will be included as conditions of development consent if the application is approved.

- Clause 39 – Remediation of Contaminated Land

Clause 39 states that State Environmental Planning Policy No. 55 – Remediation of Land applies to land to which the plan applies.

Council's Environmental Health Officer advises that there is no cattle dip site within 200 metres and a condition is recommended restricting unnecessary excavation or disturbance of materials.

- Clause 39A Bushfire Protection

The objective of Clause 39A is:

- *to minimise bushfire risk to built assets and people and to reduce bushfire threat to ecological assets and environmental assets.*

Subclause (2) requires the consent authority to take the following matters into account in determining whether to grant consent to development in areas that are likely to be affected bushfire:

- (a) *whether the development is likely to have a significant adverse effect on the implementation of any strategies for bushfire control and fuel management adopted by the Bushfire Control Office established by the Council for the area, and*
- (b) *whether a significant threat to the lives of residents, visitors or emergency services personnel may be created or increased as a result of the development (including any threat created or increased by the access arrangements to and from the development), and*
- (c) *whether the increased demand for emergency services during bushfire events that is created by the development would lead to a significant decrease in the ability of the emergency services to effectively control major bushfires, and*
- (d) *the adequacy of measures proposed to avoid or mitigate the threat from bushfires including:*
  - (i) *the siting of the development, and*
  - (ii) *the design of structures and the materials used, and*
  - (iii) *the importance of fuel-free and fuel-reduced areas, and*
  - (iv) *landscaping and fire control aids such as roads, reserves, access arrangements and on-site water supplies, and*
- (e) *the environmental and visual impacts of the clearing of vegetation for bushfire hazard reduction.*

In considering the above matters, subclause (3) requires the consent authority to have regard for the provisions of the document entitled *Planning for Bushfire Protection* (prepared by Planning & Environment Services, NSW Rural Fire Service in co-operation with the then Department of Urban and Transport Planning, and dated December 2001), and to be satisfied that those provisions are, as much as is possible, complied with.

The amended application included the submission of a Bushfire Risk Assessment. The area surrounding the proposed construction site is identified as “other bushland management” in the Tweed Bush Fire Risk Management Plan 2001.

The fire risk is concluded to be low in the Bushfire Risk Assessment. The proposed sewerage pump station is not likely to affect the implementation of any strategies for bushfire control and fuel management adopted by the Bushfire Control Office established by the Council for the area. The proposed development will not create or increase a significant threat to the lives of residents, visitors, or emergency services personnel.

The proposed sewerage pump station is not considered likely to result in a significant impact on demand for, or provision of, emergency services in the locality.

The siting and design of the development and proposed maintenance measures are considered adequate to avoid or mitigate the threat from bushfires. The clearing of vegetation for bushfire hazard reduction is not likely to result in significant environmental or visual impacts.

#### North Coast Regional Environmental Plan 1988:

The following provisions of the North Coast Regional Environmental Plan are relevant to Council's consideration of the development application:

- Clause 15 Development control—wetlands or fishery habitats

Clause 15 states that the council shall not consent to an application to carry out development for any purpose within, adjoining or upstream of a river or stream, coastal or inland wetland or fishery habitat area or within the drainage catchment of a river or stream, coastal or inland wetland or fishery habitat area unless it has considered the following matters:

- (a) *the need to maintain or improve the quality or quantity of flows of water to the wetland or habitat,*
- (b) *the need to conserve the existing amateur and commercial fisheries,*
- (c) *any loss of habitat which will or is likely to be caused by the carrying out of the development,*
- (d) *whether an adequate public foreshore reserve is available and whether there is adequate public access to that reserve,*
- (e) *whether the development would result in pollution of the wetland or estuary and any measures to eliminate pollution,*



- (f) *the proximity of aquatic reserves dedicated under the Fisheries Management Act 1994 and the effect the development will have on these reserves,*
- (g) *whether the watercourse is an area of protected land as defined in section 21AB of the Soil Conservation Act 1938 and any measures to prevent soil erosion, and*
- (h) *the need to ensure that native vegetation surrounding the wetland or fishery habitat area is conserved, and*
- (i) *the recommendations of any environmental audit or water quality study prepared by the Department of Water Resources or the Environment Protection Authority and relating to the river, stream, wetland, area or catchment.*

The subject site is located near a constructed drainage channel that extends to the Tweed River at Chinderah. Measures proposed to minimise potential impacts of the development in this regard include water quality measures, erosion and sedimentation controls, and management of potential acid sulfate soils. Adherence to the recommended mitigation measures during the construction phase of the development is likely to ensure that no loss of habitat will be caused by the carrying out of the development, and that no pollution of the wetland or estuary results from the proposal.

- Clause 32B Development control—coastal lands

Clause 32B applies to land within the region to which the NSW Coastal Policy 1997 applies and requires:

- (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).*

The proposed development is considered to be generally consistent with the provisions of the NSW Coastal Policy 1997, the Coastline Management Manual, and the North Coast: Design Guidelines. The sewerage pump station will not impede access to the foreshore or result in any overshadowing impacts on beaches or adjacent open space.

#### State Environmental Planning Policies

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*State Environmental Planning Policy No. 44 – Koala Habitat Protection (SEPP 44)*

The Statement of Environmental Effects (SEE) submitted with the development application includes an ecological assessment. The SEE concludes that the proposed development site does not fall within the criteria for classification as core koala habitat or secondary koala habitat, and that there is no evidence of a resident population of koalas present. There are no historical records on the NSW NPWS fauna records database.

Council's Senior Ecologist / Conservation Planner has reviewed the material submitted with the development application. Although it is noted that there are numerous koala records for the area from the 1990s, it is agreed that the habitat is marginal at best and it is unlikely that the area supports an extant (let alone viable) koala population.

*State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)*

Council's Environmental Health Officer advises that there is no cattle dip site within 200 metres and a condition is recommended restricting unnecessary excavation or disturbance of materials.

*State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71)*

SEPP 71 applies to land within the 'coastal zone' which is defined as having the same meaning as in the *Coastal Protection Act 1979*. The subject land is located within the coastal zone and the provisions of SEPP 71 therefore apply to the proposed development.

Clause 7(b) requires the matters in clause 8 to be taken into account by a consent authority when it determines a development application to carry out development on land to which the policy applies.

Clause 8 provides the following matters for consideration:

- (a) the aims of this Policy set out in clause 2,
- (b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,
- (c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,
- (d) the suitability of the development given its type, location and design and its relationship with the surrounding area,
- (e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,
- (f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,

- (g) measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,
- (h) measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats,
- (i) existing wildlife corridors and the impact of development on these corridors,
- (j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,
- (k) measures to reduce the potential for conflict between land-based and water-based coastal activities,
- (l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,
- (m) likely impacts of development on the water quality of coastal waterbodies,
- (n) the conservation and preservation of items of heritage, archaeological or historic significance,
- (o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,
- (p) only in cases in which a development application in relation to proposed development is determined:
  - (i) the cumulative impacts of the proposed development on the environment, and
  - (ii) measures to ensure that water and energy usage by the proposed development is efficient.

The proposed development is consistent with the aims of SEPP 71. The visual amenity of the coast will not be adversely affected by the proposed development. Significant impacts on native coastal vegetation are not likely to result from the proposal. The type, bulk, scale and size of the development is an appropriate response to the location.

The proposed development is a suitable response to the site and the locality. Proposed management measures are considered to adequately address potential impacts on the water quality of coastal waterbodies.

Part 4 of SEPP 71 contains provisions relating to development control, including the following:

- Clause 14 – Public Access

A consent authority must not consent to an application to carry out development on land to which this Policy applies if, in the opinion of the consent authority, the development will, or is likely to, result in the impeding or diminishing, to any extent, of the physical, land-based right of access of the public to or along the coastal foreshore.



The proposed development will not impede or diminish access arrangements for the general public to the foreshore.

▪ Clause 16 – Stormwater

The consent authority must not grant consent to a development application to carry out development on land to which this Policy applies if the consent authority is of the opinion that the development will, or is likely to, discharge untreated stormwater into the sea, a beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or onto a rock platform.

The discharge of untreated stormwater into the sea, a beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, is not likely to result from the development.

Environmental Planning and Assessment Act, 1979

As detailed earlier in this report, the proposed development constitutes Integrated Development in accordance with the provisions of Section 91(1) of the Environmental Planning and Assessment Act, 1979.

The proposed works include the construction of an underground well which requires a bore licence in accordance with Part 5 of the Water Act 1912. The approval authority for a licence to commence sinking a bore and to enlarge, deepen or alter a bore, is the Department of Environment and Climate Change,

The application was referred to the Department of Natural Resources (now the Department of Water and Energy) and General Terms of Approval have been issued by the Department and will be incorporated into any consent.

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

Draft Tweed Local Environmental Plan 2007

Draft Local Environmental Plan (Amendment No. 21) relates to Vegetation Management and has been publicly exhibited. The Draft LEP proposes additional environmental protection zoning of certain lands at Kingscliff, including the land to the immediate east of the subject site which is proposed to be zoned 7(a) significant Natural Areas / Wildlife Habitat in accordance with the provisions of the draft plan. The proposed development is not inconsistent with the provisions of the draft plan.

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

Consolidated Development Control Plan

The proposed sewerage pumping station is consistent with the provisions of the Consolidated DCP including Part A3 – Development of Flood Liable Land, and Part B4 – West Kingscliff.

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

NSW Coastal Policy

The proposed development is consistent with the objectives and strategic actions of the NSW Coastal Policy 1997.

Bushfire

The amended proposal and SEE address the issue of bushfire hazard. The subject site is recognised as Bushfire Prone Land. The Bushfire Risk Assessment concludes that the fire risk to or from the proposed development is low. Management measures proposed include a maintenance regime involving regular mowing of turfed areas, and pruning of any overhanging vegetation as required.

**(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**

Flora & Fauna

An ecological assessment incorporating a 7-Part test in accordance with Section 5A of the Environmental Planning and Assessment Act, 1979, was carried out for the development as originally proposed and also for the amended proposal.

The following extract is provided from the summary of impacts and mitigation measures in the SEE:

*'Habitats adjacent to the road reserve range from modified environment due to past changes in hydrology, tree clearing, and ongoing slashing of vegetation, to highly significant threatened species habitats in the broader area. In the footprint of works however, the vegetation and topography has been highly modified and the works are expected to have little impact on flora and fauna at the site.'*

*Vegetation to be cleared only occurs on road verge and batters. This vegetation is dominated by Macaranga trees which were likely planted as screening vegetation following road construction.*

*The threatened ecological community Swamp Sclerophyll Forest is not considered to occur in the development footprint due to this past, and ongoing regime of disturbance. No trees or shrubs associated with this community will be cleared as part of these works. The design has been modified to clearly avoid disturbance to adjacent low-lying native vegetation through positioning the proposal on the road stub.*

*Due to the modified nature of the habitats present at the site, the limited disturbance footprint, and the short-term nature of the works, no threatened species are considered to be impacted from the proposal...Nonetheless, environmental controls are required to manage any potential direct and indirect impacts such as mobilisation of sediments, erosion, water quality, and potential impacts of ASS, encroaching on buffers between this site and more significant habitats in the area.*

*Of the threatened species returned from database searches, none are considered to rely on the habitats within the proposal footprint for any major component of their life cycle requirement, such that the limited disturbance and modification of the site would not place any locally viable populations at risk of extinction. A Section 5A significance assessment under the EP&A Act found that the project would not have a significant impact on the Wallum Froglet and subsequently, an SIS would not be required'.*

Council's Senior Ecologist / Conservation Planner has assessed the proposal and amended proposal, and provided comments including the following:

*'The revised proposal is located entirely within the road stub and existing fill batter at the intersection of Elrond Drive and Turnock St. Unlike the original proposal the new proposal does not require the filling of land...It appears that the development footprint will only result in the removal of a few small Macaranga (Macaranga tanaris) trees (<10 years old) which were planted on the existing fill batter when the road was constructed.*

*In general, the SEE is comprehensive and covers the relevant issues in sufficient detail to enable an informed evaluation leading to the conclusion that the proposal is not likely to result in any adverse impacts on the natural environment.*

*Based on the amended DA and site inspection, it is concluded that there will be insignificant impacts on the natural environment from this proposal providing the proposed mitigation measures are adhered to'.*

An appropriate condition of consent is recommended to ensure that the mitigation measures provided in the Addendum to the SEE dated 7 September 2007 are implemented.

### Noise

The construction of the sewerage pumping station will result in short-term impacts on the locality in terms of noise. Given the separation of the proposal from surrounding residences, the proposed construction hours (7.00am to 7.00pm Monday to Saturday), and proposed compliance with the limits prescribed by AS2436, the increase in noise will be within acceptable limits and is not likely to result in significant impacts on surrounding residents.



### Dust

Conditions of consent are considered adequate to address the potential impacts of dust resulting from construction and construction vehicles.

### Odour

The proposed sewerage pumping station has been designed to incorporate management measures to minimise the potential emission of odours, including a 7.2 metre vent stack with activated carbon filters. Conditions of consent are considered adequate to address potential impacts in relation to odour.

### Water Quality / Erosion and Sedimentation

Sedimentation and erosion controls are proposed to minimise potential impacts in this regard. Appropriate conditions of consent are recommended to address runoff and sedimentation.

### Visual Impact

The siting and design of the proposed development ensure that it is appropriately screened from existing surrounding development. The proposal is not considered likely to result in significant adverse impacts on the visual amenity of the area.

### Traffic

The SEE states that the revised proposal is not considered to pose impacts on traffic movements at the site. A service lane is provided for Council maintenance vehicles to access the sewerage pumping station and the road stub has sufficient provision for turnaround and egress from the site.

### Aboriginal Archaeology

The site of the proposed development has been disturbed and the proposed development is not considered likely to result in impacts on any items of significance in this regard.

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

The revised scheme is considered to be suitably located.

As detailed in this report, Potential Acid Sulfate Soils (PASS) are present within the study area. An Acid Sulfate Soils Management Plan (ASSMP) has been prepared and submitted with the development application. The ASSMP proposes management of ASS by liming and minimising disturbance. Dewatering is also required. The ASSMP proposes to store, test and treat this water prior to discharge to stormwater. Council's Environmental Health



Officer advises that the ASSMP is adequate, subject to appropriate conditions of development consent.

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

The application was notified and advertised for a period of 30 days from 4 April to 7 May 2007. No submissions were received in response to the public exhibition of the development application.

Following concerns raised associated with the proposed filling of the land to construct the sewer pump station an amended application was submitted to Council on 7 September 2007. Notwithstanding the relatively minor variation to the application the amended application was again advertised and notified and no submissions were received in response to this exhibition.

**(e) Public Interest**

The proposed Sewer Pump Station is a key component of the Kingscliff Sewerage Scheme and is considered to be in the public interest.

**OPTIONS:**

1. Approve the proposed development in accordance with the recommended conditions.
2. Refuse the proposed development.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The proposed works forms a critical part of the new sewerage scheme to address servicing needs associated with population growth. The proposed development, as amended, is appropriately sited to minimise potential adverse impacts on the existing natural and built environment. An Acid Sulfate Soils Management Plan (ASSMP) has been prepared and submitted with the development application and is considered adequate, subject to appropriate conditions of development consent.

Council's Senior Ecologist / Conservation Planner has provided an assessment of the proposal and amended proposal, and concludes that there will be insignificant impacts on the natural environment from this proposal providing the proposed mitigation measures are adhered to.





It is concluded that potential adverse impacts of the proposed development are able to be adequately addressed via recommended conditions of consent.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**P2 [PR-PC] Development Application DA06/1240 for a Retail Development & Vet Surgery at Lot 360 DP 755701; Lot 168 DP 1048222, No. 4 Coronation Avenue & No. 18 Elizabeth Street, Pottsville**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA06/1240 Pt1**

**SUMMARY OF REPORT:**

Council is in receipt of a Development Application for 4 Coronation Avenue and 18 Elizabeth Street, Pottsville. The proposal seeks consent to undertake the construction of a one storey commercial development comprising seven commercial tenancies on Lot 360 (fronting Coronation Avenue) and a separate two storey building in the western portion of Lot 168 (fronting Elizabeth Street), incorporating a new veterinary clinic.

The issues of most significance to the application relate to the following matters:

- Remediation of Lot 360 with respect to the existing underground fuel storage tanks prior to the issue of a construction certificate and commencement of works for the new commercial development;
- The proposed new commercial development has been designed to primarily front Coronation Avenue with car parking at the rear of Lot 360. Vehicle access to Lot 360 would be via a new driveway through Lot 168, off the Phillip Street frontage. It is proposed to provide 5 new on-street car spaces along Phillip Street. The use of some on-street parking has been included in the proposal in order to meet minimum car parking requirements;
- The impact to the streetscape is important within Pottsville Village. The Pottsville Village Strategy recognises that the area has a mixed architectural style and comments that the continuation of such variety is encouraged. Therefore based on the plans (which include an internal pedestrian access and an activated street frontage) the proposed development is considered capable of conditional consent; and
- Two submissions were received during the notification period. The issues raised have been detailed within the following report.

The proposed development is considered to demonstrate substantial compliance with the relevant policy and statutory requirements outlined within Council's controls for commercial development within Pottsville. Therefore the application is recommended for conditional approval.



**RECOMMENDATION:**

**That Development Application DA06/1240 for a retail development & vet surgery at Lot 360 DP 755701; Lot 168 DP 1048222, No. 4 Coronation Avenue & No. 18 Elizabeth Street Pottsville be approved subject to the following conditions: -**

**GENERAL**

**1. The development shall be completed in accordance with the Statement of Environmental Effects and the following plans:**

- **Dwg P500-SK01 (Rev I) prepared by Glen Petersen Architect and dated 30 July 2007;**
- **Dwg P500-SK02 (Rev F) prepared by Glen Petersen Architect and dated 30 July 2007;**
- **Dwg P500-SK03 (Rev E) prepared by Glen Petersen Architect as submitted 13 June 2007;**
- **Dwg P500-SK04 (Rev D) prepared by Glen Petersen Architect as submitted 13 June 2007;**
- **Dwg P500-SK06 (Rev G) prepared by Glen Petersen Architect and dated 25 July 2007;**
- **Dwg P500-SK07 (Rev F) prepared by Glen Petersen Architect as submitted 13 June 2007;**
- **Dwg P500-SK08 (Rev E) prepared by Glen Petersen Architect as submitted 13 June 2007;**
- **Dwg P500-SK09 (Rev A) prepared by Glen Petersen Architect and dated 30 July 2007;**

**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. Submission of a further Development Application(s) for the first use of the seven (7) retail shops on Lot 360, such to be approved by Council prior to their use or occupation.**

[[GEN0055]

**4. Advertising structures/signs to be the subject of a separate development application (where statutorily required).**

[[GEN0065]

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

[[GEN0115]

6. 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]

7. The proposed demolition of existing structures on Lot 360 and the part demolition of the existing shopping complex on Lot 168 is not included in this development consent and must be the subject of a separate approval from Council.

8. The use of three of the five additional parking spaces within the Phillip Street road reserve results in two spaces remaining for public benefit. The two remaining spaces are not considered to be in credit to subject site and cannot be used in any future change of use application requiring additional parking provisions.

[[GENNS01]

9. The developed is to staged in the following manner:

**STAGE 1**

- Renovations of the existing Phillip Street commercial building and car park layout (Lot 168), to allow the proposed new driveway access to the rear of Lot 360; and
- Construction of a new two storey veterinary clinic fronting Elizabeth Street (Lot 168) and associated car parking reconfiguration.

**STAGE 2**

- Construction of a new one storey building incorporating seven new retail tenancies fronting Coronation Avenue (Lot 360), with an awning over the existing footpath and pedestrian arcade through to Phillip Street;
- Construction of a car parking area to the rear of Lot 360 comprising 12 on site parking spaces, one loading bay, and a waste disposal area;
- Reconfiguration of the existing carparking arrangement along Phillip Street, with four parallel car spaces to be replaced with 9 ninety degree car spaces.

[[GENNS02]

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

10. Any car parking floodlighting shall not spill beyond the boundaries of the site. Lighting shall comply with AS 4282 and other relevant Australian Standards. A plan of the lighting shall be approved by the Principal Certifying Authority PRIOR to the issue of a Construction Certificate.

[[PCC0055]

11. The developer shall provide the following parking spaces (in accordance with Drawing No P500-SK01 (Rev I) prepared by Glen Peterson Architect) including parking for the disabled in accordance with Tweed Shire



**Council Development Control Plan Part A2 - Site Access and Parking Code:**

**Lot 168**

**8 on-site parking spaces at Elizabeth Street entrance**

**5 on-site parking spaces at Phillip Street road frontage**

**Lot 360**

**12 on-site parking spaces**

**1 on-site loading bay**

**Phillip Street Road Reserve**

**4 existing parallel spaces to be replaced with 9 new ninety degree parking spaces**

**(net increase of 5 parking spaces)**

**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]]

**12. Section 94 Contributions**

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

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

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

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

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

**Stage 1**

<b>(a) Tweed Road Contribution Plan:</b>	<b>\$54,157</b>
<b>S94 Plan No. 4 (Version 4.0)</b>	
<b>Sector8a_4</b>	



- (b) Extensions to Council Administration Offices & Technical Support Facilities \$399.36  
S94 Plan No. 18

**Stage 2**

- (a) Tweed Road Contribution Plan: \$58,429  
S94 Plan No. 4 (Version 4.0)  
Sector8a\_4

**Heavy Haulage Component**

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

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

where:

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

and:

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

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

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

**Admin.** Administration component - 5% - see Section 6.5

- (b) Extensions to Council Administration Offices & Technical Support Facilities \$2,795.72  
S94 Plan No. 18

[[PCC0215]]

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

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



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

**Stage 1**

Water DSP6:	0.8 ET @ \$9997	\$7,998
Pottsville/Burringbar Water Levy:	0.8 ET @ \$1800	\$1,440
Sewer Hastings Point:	1.2 ET @ \$4804	\$5,765

**Stage 2**

Water DSP6:	0.836 ET @ \$9997	\$8,357
Pottsville/Burringbar Water Levy:	0.836 ET @ \$1800	\$1,505
Sewer Hastings Point:	1.254 ET @ \$4804	\$6,024

**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]]

14. 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]]

15. 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]]

16. 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]]

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



- (a) Construction of a full width concrete footpath for the full frontage of the site in Coronation Avenue.
- (b) Reconstruction of the parking and footpath layout at the site frontage in Philip Street to provide access to Lot 360 and maintain 5 on-street parking spaces. The detail shall be in accordance with Drawing No P500-SK02 (Rev F) prepared by Glen Peterson Architect.
- (c) Reconstruction of the parallel parking in Philip Street to provide a net increase in parking of 5 spaces. The detail shall be in accordance with Drawing No P500-SK01 (Rev I) prepared by Glen Peterson Architect.

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]

18. Prior to the issue of a construction certificate, documentary evidence of creation of the required stormwater easement over Lot 168 DP 1048222 in favour of Lot 360 DP 755701, creation of ROW over Lot 168 DP 1048222 in favour of Lot 360 DP 755701 and ROW over Lot 168 DP 1048222 in favour of Lot 359 DP 755701 shall be submitted to Tweed Shire Council.

[[PCC1095]

19. 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]

20. 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]

21. 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]

22. The peak stormwater flow rate that may be discharged from the site to the public realm, in events of intensity up to the ARI 100 year design storm, shall be 200 l/s/ha. This can be achieved by On site stormwater detention (OSD) utilising above and or below ground storage. OSD devices including discharge control pits (DCP) are to comply with standards in the current version of *The Upper Parramatta River Catchment Trust "On-Site Stormwater Detention Handbook"* except that permissible site discharge (PSD) and site storage requirements (SSR) in the handbook do not apply to Tweed Shire.

All stormwater must initially be directed to the DCP. Details are to be submitted with the construction certificate application.

[[PCC1165]

23. Medium density/integrated developments will be required to provide a single bulk water service at the road frontage. Individual metering

beyond this point shall be managed by occupants. Application for the bulk metre shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements.

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.

[[PCC1185]

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

[[PCC1235]

25. In accordance with Section 68 of the Local Government Act, 1993, any premises proposing to discharge into Councils sewerage system a waste water other than domestic sewage, shall submit to Council a completed application for a Trade Waste Licence. This application is to be approved by the General Manager or his delegate PRIOR to the issuing of a Construction Certificate to discharge to Councils sewerage system.

[[PCC1255]

26. Prior to the issue of a construction certificate Council shall be provided with a Construction Management Plan to the satisfaction of the Director Planning and Regulation.

[[PCCNS01]

27. Prior to the issue of a construction certificate, a Remediation Action Plan (RAP) shall be submitted to the satisfaction of the General Manager or his delegate. The RAP shall include (but not be limited to):

- (i) Details of site investigation sampling regime and nominated analysis;
- (ii) Analytical results;
- (iii) Validation methodology and analytical results,

in accordance with the Guidelines for Service Station Sites (NSW EPA 1994). Any variations from the Guidelines shall be validated. A statement shall be included whether the site is suitable for the intended use.

Where prior activities and services have encroached on the adjoining road reserve the applicant shall liaise with Tweed Shire Council to include that area within the sampling regime and detailed within the RAP, including the requirement for any remediation measures.

[[PCCNS02]

28. The construction of any premises for the use of ionising radiation apparatus shall comply with the Radiation Control Act 1990 and Radiation Guideline 6 – Registration requirements and industry best practice for ionising radiation apparatus using diagnostic imaging Part 4
-



– Veterinary Science as administered by the Department Environment & Climate Change (DECC).

[[PCCNS03]

**PRIOR TO COMMENCEMENT OF WORK**

29. 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]

30. 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]

31. 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]

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

[[PCW0665]

35. 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]

36. 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]

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

[[PCW1075]

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

[[PCW1105]

#### **DURING CONSTRUCTION**

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

[[DUR0005]

41. 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]

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 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]

44. 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]

45. 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]

46. 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]

47. If the work involved in the erection of a building:
- (a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or
  - (b) building involves the enclosure of a public place,





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

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

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

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

[[DUR0435]

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

[[DUR0815]

49. 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]

50. 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]

51. 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]

52. 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]

53. All shelving, benches, fittings and furniture within the veterinary clinic on which appliances and utensils are positioned within the premises must be of durable, smooth, impervious material capable of being easily cleaned.

[[DUR1605]



54. All hazardous and/or dangerous goods shall be handled and stored in a designated area away from stormwater drains. The designated area is to be: -
- (a) Roofed;
  - (b) Provided with a sealed floor; and
- Bunded so as to hold 110% of the total quantity of goods stored. Bunded area(s) shall not be flood-liaible and shall be provided with pump out facilities.
- [[DUR1635]]
55. Any air-handling system, hot or warm water system or water-cooling system and any other regulated system in the veterinary clinic, as defined in Part 4, Section 43 of the Public Health Act, shall be installed in accordance with the requirements of Part 2, Clauses 6, 7 and 8 of the Public Health (Microbial Control) Regulation 2000.
- [[DUR1645]]
56. Access to the building for people with disabilities shall be provided and constructed in accordance with the requirements of Section D of the Building Code of Australia. Particular attention is to be given to the deemed-to-satisfy provisions of Part D-3 and their requirement to comply with AS1428.
- [[DUR1685]]
57. Where a building or part of a building is required, under the provisions of Section D of the Building Code of Australia, to be accessible to permit use by people with disabilities, prominently displayed signs and symbols shall be provided to identify accessible routes, areas and facilities. The signage, including Braille or tactile signage, should be installed in accordance with the relevant provisions of the Building Code of Australia and achieve the minimum design requirements provided under AS1428.
- [[DUR1695]]
58. Where access for people with disabilities is required to be provided to a building, sanitary facilities for the use of the disabled must also be provided in accordance with the provisions Part F-2 of the Building Code of Australia.
- [[DUR1705]]
59. 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]]
60. The proponent must not undertake any work within the public road reserve without giving Council's Engineering & Operations Division forty eight (48) hours notice of proposed commencement. Failure to comply



with this condition may result in a stop work notice being issued and/or rejection of the works undertaken.

[[DUR1845]

61. 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]

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

[[DUR1885]

63. 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]

64. During construction, a "satisfactory inspection report" is required to be issued by Council for all works required under Section 138 of the Roads Act 1993. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.

[[DUR1925]

65. 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]

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

[[DUR2195]

67. 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]

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 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]

70. 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]]
71. 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]]
72. 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]]
73. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position.  
[[DUR2505]]
74. All water plumbing pipes concealed in concrete or masonry walls shall be fully lagged.  
[[DUR2525]]
75. 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]]
76. 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]]
77. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-
- \* 43.5<sup>0</sup>C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
  - \* 50<sup>0</sup>C in all other classes of buildings.
-



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

[[DUR2555]

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

[[DUR2595]

- 79. 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]

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

[[DUR2675]

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

[[DUR2685]

- 82. The maximum depth of excavation for building works or placement of services shall not exceed 1 metre without the prior written approval of the General Manager or his delegate. Acid sulfate soils shall not be exposed or disturbed.**

- 83. No dewatering is permitted without the prior written approval of the General Manager or his delegate.**

- 84. Internal walls which form part of any proposed food outlets shall be of solid wall construction, as per AS4674.**

[[DURNS01]

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

- 85. 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]

- 86. Prior to the issue of an Occupation 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 approved under Section 138 of the Roads Act (minimum \$1,000.00) which will be held by Council for a period of 6 months from the date on which the Occupation 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.**

[[POC0165]

87. 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]

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

[[POC0225]

89. Prior to commencement of operations and on completion of fit out an inspection is to be arranged with Council's Environmental Health Officer for final approval.

[[POC0615]

90. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all works required under Section 138 of the Roads Act 1993.

[[POC0745]

91. 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]

92. 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]

93. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council prior to the issue of an Occupation Certificate.

[[POCNS01]

## USE

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

[[USE0125]

95. 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]



96. Hours of operation of the businesses are restricted to the following hours: -

**Lot 360 - Retail Shops**

\* 7am to 7pm - Mondays to Sundays

**Lot 168 – Veterinary Surgery**

\* 7am to 5pm – Monday to Friday

\* 7am to 12 noon - Saturdays

[[USE0185]]

97. All deliveries or collection of waste relating to the retail premises on Lot 360 are to occur only within the hours 7am to 9am & 5pm to 7pm Monday to Friday and 7am to 9am Saturdays, unless otherwise approved by Council's General Manager or his delegate, to ensure service vehicles do not reverse in areas of normal customer pedestrian or vehicular traffic. Urgent or medical related deliveries exempted.

[[USE0195]]

98. The use being restricted to the floor area designated on the approved plan.

[[USE0415]]

99. No items or goods are to be stored or displayed outside the confines of the premises.

[[USE0445]]

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

[[USE0525]]

101. Any premises used for the storage, preparation or sale of food shall comply with the *Food Act 2003* and Food Safety Standards.

[[USE0835]]

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

[[USE0875]]

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

[[USE0965]]

104. Clinical wastes shall be separated from the general waste stream and disposed via Council's approved clinical waste collection and disposal service. Suitable arrangements shall be made for the collection and disposal of clinical wastes to the satisfaction of the General Manager or his delegate.

[[USE0995]]

105. A maximum of 10-15 small domestic animals will be housed at any one time and animals shall not be permitted to unreasonably impact local amenity by way of noise, odour or for any other reason.



**106. Animals treated at the veterinary practice shall be restricted to 'small animals' such as cats, dogs, rabbits, ferrets etc and shall not include larger animals such as cattle and horses.**

**107. The LA10 noise level emitted from any activity shall not exceed the background noise level (LA90) by more than 5dBA at the boundary of the effected residence between 7am and 7pm. Notwithstanding the above, noise shall not be audible within any habitable room in any premises between the hours 7pm to 7am.**

[[USENS01]

**108. The operation of any premises for the use of ionising radiation apparatus shall comply with the Radiation Control Act 1990 and Radiation Guideline 6 – Registration requirements and industry best practice for ionising radiation apparatus using diagnostic imaging Part 4 – Veterinary Science as administered by the Department Environment & Climate Change (DECC).**

[[USENS02]





**REPORT:**

**Applicant:** Planit Consulting  
**Owner:** Mrs SD Daley, Mr BC Daley and Mr VW Frost  
**Location:** Lot 360 DP 755701; Lot 168 DP 1048222, No. 4 Coronation Avenue & No. 18 Elizabeth Street Pottsville  
**Zoning:** 3(b) General Business  
**Cost:** \$999,975

**BACKGROUND:**

The site is located within the coastal village of Pottsville. Surrounding development in the immediate area is characterised by a mixture of shops and residential development.

The subject development site comprises two allotments in an 'L' shaped configuration resulting in the site having three street frontages and a total area of 2240.83m<sup>2</sup>. Lot 360 has direct frontage to Coronation Avenue to the north. Built improvements on this allotment include several small sheds and an existing shop, currently being utilised as a bait and tackle shop. Prior to the bait and tackle shop, the premises was utilised as a metal work shop as well as a small petrol station. Little vegetation exists on Lot 360, apart from several trees at the rear of the site. Lot 168 incorporates an existing commercial development, fronting both Phillip Street to the east and Elizabeth Street to the west. This shopping complex was approved approximately 5 years ago and incorporates five commercial premises, including a café, takeaway food shop and existing veterinary clinic, all of which front Phillip Street.

The proposal seeks consent to undertake the construction of a one storey commercial development comprising seven commercial tenancies on Lot 360 (fronting Coronation Avenue) and a separate two storey building in the western portion of Lot 168 (fronting Elizabeth Street), incorporating a new veterinary clinic. The proposed development has been designed to primarily front Coronation Avenue with car parking at the rear of Lot 360. Vehicle access to Lot 360 would be via a new driveway through Lot 168, off the Phillip Street frontage. Pedestrian access has been provided through the site via an arcade through the proposed new commercial development.

In order to facilitate the vehicle access to the rear of Lot 360, the proposed development incorporates the partial demolition of the existing building on Lot 168, which incorporates the existing veterinary clinic. It is proposed to relocate the veterinary clinic to the new purpose built two storey building on Lot 168, fronting Elizabeth Street. The demolition of part of the existing building on Lot 168 and the existing structures on Lot 360 has not been incorporated with this development application. A separate application is to be submitted to Council in this regard.

In summary, the proposed staged development incorporates the following components:

**STAGE 1**

- Renovations of the existing Phillip Street commercial building and car park layout, to allow the proposed new driveway access to the rear of Lot 360; and

- Construction of a new two storey veterinary clinic fronting Elizabeth Street and associated car parking reconfiguration.

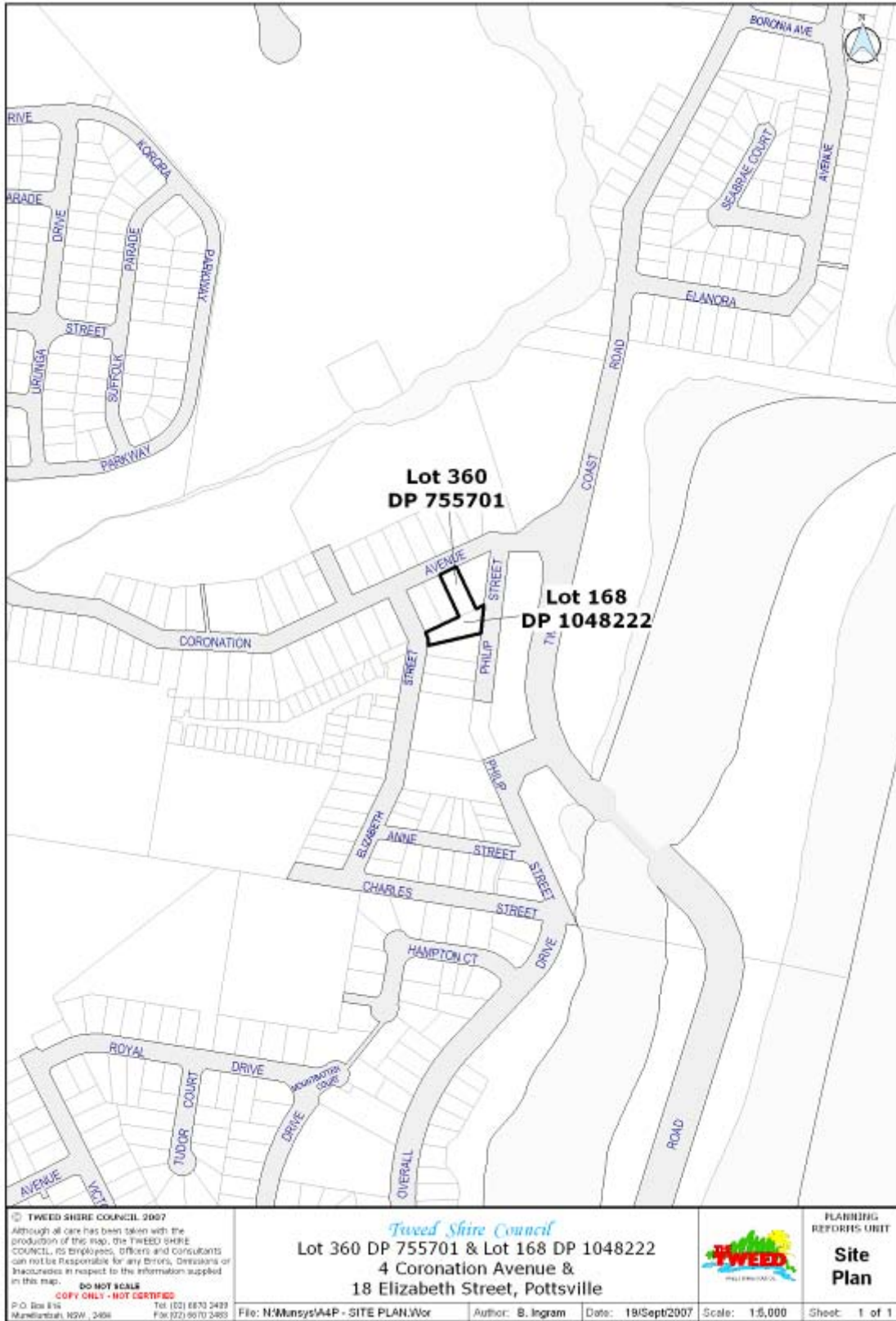
## **STAGE 2**

- Construction of a new one storey building incorporating seven new retail tenancies fronting Coronation Avenue, with an awning over the existing footpath and pedestrian arcade through to Phillip Street;
- Construction of a car parking area to the rear comprising 12 on site parking spaces, one loading bay, and a waste disposal area;

Reconfiguration of the existing carparking arrangement along Phillip Street, with four parallel car spaces to be replaced with 9 ninety degree car spaces.

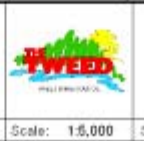


**SITE DIAGRAM:**



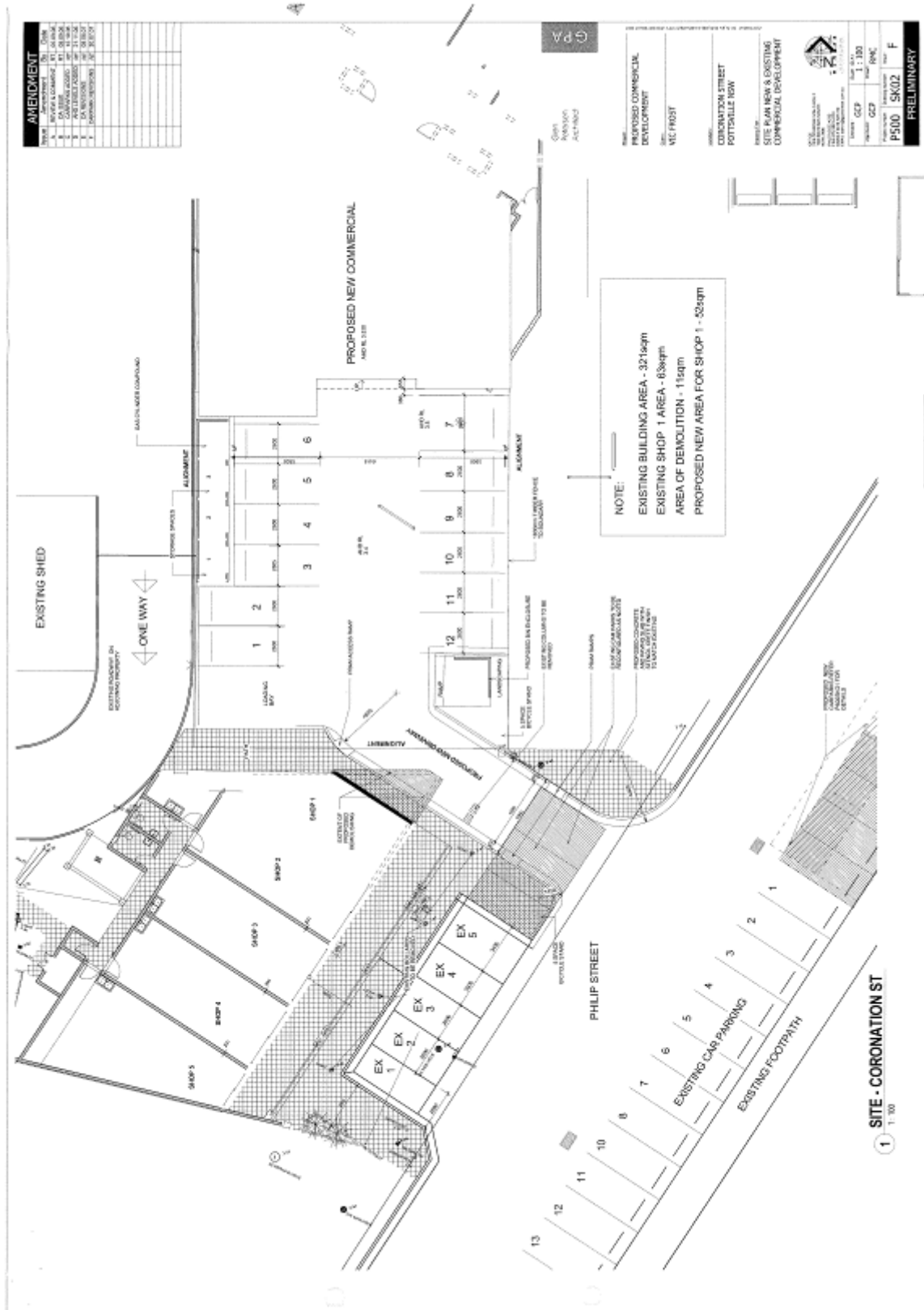
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*Tweed Shire Council*  
**Lot 360 DP 755701 & Lot 168 DP 1048222**  
 4 Coronation Avenue &  
 18 Elizabeth Street, Pottsville



PLANNING REPORTS UNIT  
**Site Plan**  
 File: N:\Munsys\A4P - SITE PLAN.Wor Author: B. Ingram Date: 19/Sept/2007 Scale: 1:5,000 Sheet: 1 of 1





### AMENDMENT

Item	Amendment	By	Date
1	REVISION	PLANNING	10/2007
2	REVISION	PLANNING	10/2007
3	REVISION	PLANNING	10/2007
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100	REVISION	PLANNING	10/2007

Client: **PROPOSED COMMERCIAL DEVELOPMENT**

Architect: **W.C. PRIST**

Address: **ELIZABETH STREET POTTSVILLE NSW**

Project No: **FLOOR PLANS**

Scale: **1:100**

Version: **G**

Project No: **P500 / SK05**

**PRELIMINARY**

Architect: **GPA**

Address: **ELIZABETH STREET POTTSVILLE NSW**

Project No: **FLOOR PLANS**

Scale: **1:100**

Version: **G**

Project No: **P500 / SK05**

**PRELIMINARY**

**1 FIRST FLOOR PLAN**  
1:100

**1 LOWER FLOOR PLAN**  
1:100

PAGE 61



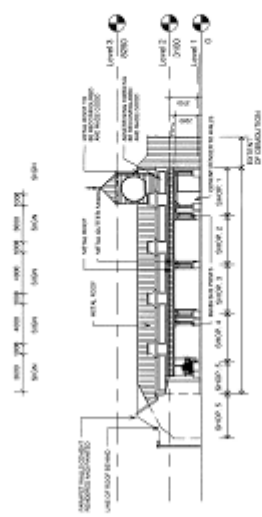




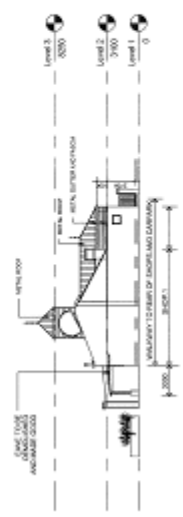




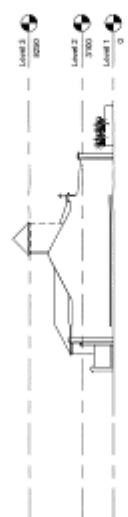
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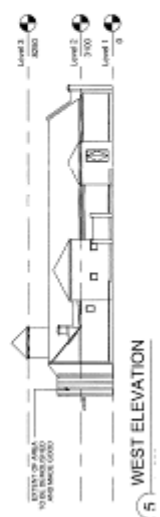
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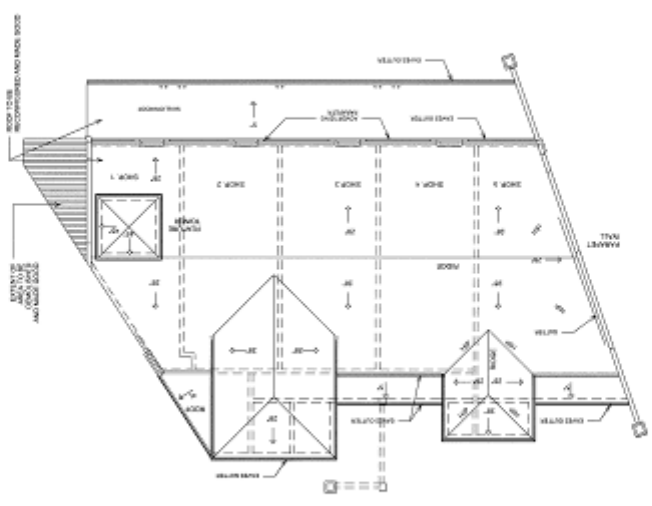
3 NORTH ELEVATION  
1:100



4 SOUTH ELEVATION  
1:100



5 WEST ELEVATION  
1:100



1 REVISED ROOF PLAN  
1:100

Client: **PROPOSED SHOPPING CENTRE**  
 Address: **PER VIC FROST**  
 Location: **LOT 108 PHILIP STREET PORTERELLE**  
 Project: **REVISOR ROOF PLAN AND ELEVATIONS**  
 Date: **P500 SK09 A**



## 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 3(b) General Business. The proposed development will provide additional retail opportunities for businesses to establish in Pottsville and to cater for the communities day to day shopping and business needs. It is considered that the proposed development is consistent with the objectives of the zone and the objectives within Clause 8 of the Tweed LEP 2000.

#### **Clause 15 – Availability of Essential Services**

Existing infrastructure including water, sewer and stormwater services are available to the subject site along Coronation Avenue and Phillip Street, with adequate capacity to accommodate the proposed development.

#### **Clause 16 – Height of Buildings**

A two storey height limit applies to the subject site. The proposed development comprises both single and two storey development, which complies with the height limits adopted for Pottsville.

#### **Clause 17 – Social Impact Assessment**

The proposed development will provide additional retail opportunities for businesses to establish in Pottsville and to cater for the communities day to day shopping and business needs. It is considered that the proposed development does not require a formal Social Impact Assessment due to the scale of the proposed development.

#### **Clause 22, 23 & 24 – Designated Road Access & Setbacks**

Coronation Avenue is a Council designated road and is therefore subject to the assessment criteria contained within these clauses. Council's Development Engineer has reviewed the proposed development and has raised no objection to the development, given that vehicle access to the new development on Lot 360 obtains access from Phillip Street. In addition, due to the commercial zoning of the land, no setback is required from the designated road.

#### **Clause 34 – Flooding**

Council's GIS indicates that the design flood level (Q100 flood) for the site is 2.4m AHD. Commercial development does not have a minimum freeboard requirement, but the proposed finished floor level for the development of 3.55m AHD puts it well above minimum habitable floor level. As such, there is no requirement to provide additional flood free storage in the development, or specify flood free materials.

**Clause 35 – Acid Sulphate Soils**

The subject site is identified as containing Class 3 Acid Sulphate Soils on Council's Planning Maps. The applicant has submitted a Preliminary Acid Sulfate Soils Assessment and Dewatering Management Plan prepared by HMC and dated June 2006. The Management Plan states that soil testing indicates ASS will not be disturbed, with the maximum depth of excavation proposed to be 1m. The report also indicates that the site will not require dewatering. Council's Environment and Health Officer has raised no objection to this aspect of the proposal subject to the recommended conditions of consent.

**Clause 39 – Remediation of Contaminated Land**

Site history includes the use of Lot 360 as a service station. The underground storage tank (UST) still exists on the site and is positioned under the existing building. The applicant has undertaken a preliminary Site History Investigation (HMC, August 2006), with both soil and groundwater sampling having been undertaken. The report concludes that...*'samples did not detect any contaminants of concern above threshold values for the protection of health and the environment'*. The report also incorporates recommendations with regard the removal of the UST and associated remediation works. Council's Environment & Health Unit has assessed the proposed development and recommended appropriate conditions of consent, including the requirement of a Remediation Action Plan to be submitted to the satisfaction of Council prior to the issue of a Construction Certificate.

**Clause 47 – Advertising Signs**

The proposed development does not incorporate any signage. It is concluded that the individual shop tenancies will apply for signage approval with the required first use applications within the commercial component of this development. As such, a recommended condition of consent requiring separate development for signage (where statutorily required) has been applied.

**North Coast Regional Environmental Plan 1988**

The proposed development is consistent with the objectives of the NCREP in particular, Clause 47 pertaining to commercial development. In regards to Clause 47 the commercial development is consistent with the provision of the clause, as it will provide the town with a greater level of commercial services.

**State Environmental Planning Policies*****State Environmental Planning Policy No. 55 – Remediation of Land***

The applicant has undertaken a preliminary Site History Investigation (HMC, June 2006), with both soil and groundwater sampling having been undertaken. The report also incorporates recommendations with regard the removal of the

UST and associated remediation works. Council's Environment & Health Unit has assessed the proposed development and recommended appropriate conditions of consent, including the requirement of a Remediation Action Plan to be submitted to the satisfaction of Council prior to the issue of a Construction Certificate.

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

The subject site is located within the Coastal Zone and as such the provision of the SEPP apply to this development. In this regard, the proposed does not overshadow the foreshore open space or restrict public access to the beach or creek. The site is also well landward of any defined Coastal Erosion Zones and is highly unlikely to be affected by Coastal Processes. The proposal does not affect marine habitats, wildlife corridors or the scenic qualities of the coast. Effluent and waste water will be discharged to Council's sewer, while stormwater will be appropriately treated and detained prior to discharge to the stormwater system.

It is considered that the proposal is consistent with the objectives of the policy and is satisfactory with regard to the matters listed.

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

There are no draft EPI's applicable to the proposed commercial development.

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

Development Control Plan A2 – Site Access and Parking Code

According to the provisions of the DCP the following parking rates apply;

**Table 1 – Car Parking Rates for Lot 168 (Phillip Street)**

<u>Use</u>	<u>GFA</u>	<u>DCP A2 Classification</u>	<u>Staff Requirement (less 20% ESD)</u>	<u>Customer (less 20% ESD)</u>
3 x Existing Shops	146m <sup>2</sup>	Item C18 Shop Retail (DCP 2)	0.5 spaces per 100m <sup>2</sup> = <b>0.584</b>	3.5 spaces per 100m <sup>2</sup> = <b>4.088</b>
Existing Cafe (Refreshment Room)	38m <sup>2</sup> dining area + 1 staff	Item D15 Refreshment Room (DCP 2)	0.5 space per staff = <b>0.4</b>	1 space per 7m <sup>2</sup> dining area = <b>4.3429</b>
Existing Real Estate	68m <sup>2</sup>	Item G6 Real Estate Agency (DCP 2)	1 space per 40m <sup>2</sup> = <b>1.36</b>	Included in staff
Shop 6 (Vet)	201.54m <sup>2</sup> (1 consulting room)	Item H6 Veterinary Centre (DCP A2)	2 spaces per consulting room = <b>1.6</b>	3 spaces per consulting room = <b>2.4</b>

Total Parking Spaces Required = 14.7749

**Table 2 – Car Parking Rates for Lot 360 (Coronation Avenue)**

<u>Use</u>	<u>GFA</u>	<u>DCP A2 Classification</u>	<u>Staff Requirement (less 20% ESD)</u>	<u>Customer (less 20% ESD)</u>
Shop 1 (Shop)	59.9m <sup>2</sup>	Item C18 Shop Retail (DCP A2)	1 space per 100m <sup>2</sup> = <b>0.4792</b>	4.4 spaces per 100m <sup>2</sup> = <b>2.1085</b>
Shop 2 (Shop)	66.09m <sup>2</sup>	Item C18 Shop Retail (DCP A2)	1 space per 100m <sup>2</sup> = <b>0.5287</b>	4.4 spaces per 100m <sup>2</sup> = <b>2.3264</b>
Shop 3 (Shop)	50.54m <sup>2</sup>	Item C18 Shop Retail (DCP A2)	1 space per 100m <sup>2</sup> = <b>0.4043</b>	4.4 spaces per 100m <sup>2</sup> = <b>1.779</b>
Shop 4 (Shop)	52.33m <sup>2</sup>	Item C18 Shop Retail (DCP A2)	1 space per 100m <sup>2</sup> = <b>0.4186</b>	4.4 spaces per 100m <sup>2</sup> = <b>1.842</b>
Shop 5 (Shop)	59.6m <sup>2</sup>	Item C18 Shop Retail (DCP A2)	1 space per 100m <sup>2</sup> = <b>0.4768</b>	4.4 spaces per 100m <sup>2</sup> = <b>2.0979</b>
Shop 6 (Shop)	57.65m <sup>2</sup>	Item C18 Shop Retail (DCP A2)	1 space per 100m <sup>2</sup> = <b>0.4612</b>	4.4 spaces per 100m <sup>2</sup> = <b>2.0293</b>
Shop 7 (Shop)	71.9m <sup>2</sup>	Item C18 Shop Retail (DCP A2)	1 space per 100m <sup>2</sup> = <b>0.5752</b>	4.4 spaces per 100m <sup>2</sup> = <b>2.5309</b>

Total Parking Spaces Required = 18.058

**Grand Total of On-Site Car Spaces Required = 32.8329**

The above calculations have been based on the current parking provisions under the consolidated DCP A2 being applied to all of the new components of the overall development. The existing premises within Lot 168 have been calculated at the previous parking requirements (under the former DCP 2).

Given that this development application was lodged October 2006, and the consolidated DCP did not come into effect until April 2007, it is arguable that the parking provisions for the entire development should be based on the former DCP 2 requirements. If this was the case, the Grand Total of On-Site car spaces is reduced to **28.1512** spaces.

The proposed development incorporates several areas of car parking. These being: 12 car spaces at the rear of the new commercial development on Lot 360; 8 car spaces at the Elizabeth Street frontage of Lot 168; and 5 car spaces at the Phillip Street frontage of Lot 168. This results in a total of **25 on-site parking spaces**.

In order to meet the minimum car parking requirement, the applicant has proposed to provide 9 new spaces on the eastern side of Phillip Street. When taking into account the loss of 4 existing horizontal spaces in this location the net increase in on-street parking is 5 spaces. It should be noted that Clause A2.4.4 of DCPA2 permits the use of on-street parking in some circumstances. The use of three (3) of the on-street spaces by the applicant allows the proposed development to meet the required parking provisions of 28 spaces.

The applicant has provided a Traffic Assessment report (Carter Rytenschild Group, October 2006) which supports the use of the on-street parking in Phillip Street, with no unacceptable traffic implications on the local road network resulting from the proposal. Council's Traffic Engineer has assessed



the proposed development, noting that the use of the on-street parking is only acceptable if a net increase in parking is obtained and results in a public benefit.

Although the proposal falls short in meeting the minimum parking provisions under the current DCP, it is considered reasonable to assess the application under the former DCP 2 provisions. In which case, the minimum parking requirements of 28 spaces have been met, using three of the additional on-street parking spaces along Phillip Street. As such, the amount of car parking proposed is considered sufficient to serve the development and attain general compliance with the provisions of the DCP.

Any future change of use application on the subject site will not be able to claim credit for the two additional spaces provided by the applicant within the Phillip Street road reserve. This is considered to be an appropriate trade-off to allow the proposal to meet parking requirements and provide a public benefit. A condition of consent has been applied in this regard.

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

The design flood level (Q100 flood) for the site is 2.4m AHD. Commercial development does not have a minimum freeboard requirement, but the proposed finished floor level for the development of 3.53m AHD. As such, there is no requirement to provide additional flood free storage in the development, or specify flood free materials. The proposal is considered to comply with the requirements of the DCP.

#### Development Control Plan No.15 – Advertising Signs

The proposed development does not incorporate any signage. It is concluded that the individual shop tenancies will apply for signage approval with the required first use applications within the commercial component of this development. As such, a recommended condition of consent requiring separate development for signage (where statutorily required) has been applied.

#### Pottsville Strategy

In October 1998 Council adopted the Pottsville Village Strategy, which provides general guidelines for future development in Pottsville. The strategy has identified three (3) options for commercial development within Pottsville including:-

Option 1 – Dispersal of New Activities and Facilities. This would see the residential estates of Black Rocks, Koala Beach and Sea Breeze develop their own commercial business centre.

Option 2 – Containment of New Activities and Facilities. This would encourage the growth of the traditional heart of the Pottsville Village, with existing commercially zoned sites redeveloped for retail and commercial development.



Option 3 – Provide a New Focus for Facilities and Activities. This option would see a site master planned for a new village centre.

Of the three (3) options, Option 2 was considered to be the more favoured and it is considered that the proposed redevelopment of the subject site is consistent with the strategy. Under Section 4.4 a number of development guidelines have been drafted and although not formally included in a development control plan, have been referenced by submissions as compliance criteria.

In this regard, the building is restricted to a single storey, contains a mix of commercial and retail development, and incorporates awnings over the footpath to encourage active street frontages. The location of the parking to the rear has enabled an active street frontage, with an arcade through the proposed new commercial development providing effective pedestrian options throughout the site.

It is considered that the proposed development is not out of character with the changing village atmosphere of Pottsville and is consistent with the guidelines and objectives contained within the strategy.

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

Coastal Policy

The subject site is located within the Coastal Zone and as such the provisions of the Coastal Policy apply to the site. The proposed development is consistent with the objectives of the Coastal Policy.

Demolition Works

The demolition of part of the existing building on Lot 168 and the existing structures on Lot 360 has not been incorporated with this development application. A separate application is to be submitted to Council in this regard. Appropriate conditions have been recommended with regard contamination issues to be addressed at this stage.

**(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**

**Contamination**

Site history includes the use of Lot 360 as a service station. The underground storage tank (UST) still exists on the site and is positioned under the existing building. The applicant has provided a Preliminary Site History Investigation report (HMC, August 2006), with both soil and groundwater sampling having been undertaken. The report concludes that...*'samples did not detect any contaminants of concern above threshold values for the protection of health and the environment'*. The report also incorporates recommendations with regard the removal of the UST and associated remediation works. Council's



Environment & Health Unit has assessed the proposed development and recommended appropriate conditions of consent, including the requirement of a Remediation Action Plan to be submitted to the satisfaction of Council prior to the issue of a Construction Certificate.

### **Noise**

A Noise Impact Assessment report (Craig Hill, 1 May 2007) concludes that no unreasonable noise is expected to occur at nearby sensitive residents. Council's Environment & Health Unit has assessed the proposed development, noting that the report satisfactorily indicates that: *noise from animals, deliveries, car parking and car movements will be within relevant limits; a waste compactor is not required – waste is to be collected between 7am and 5pm; noise from air conditioning will be within relevant limits.* Appropriate conditions of consent have been applied with regard noise issues, including restrictions on operating hours.

### **Radiation**

The proposed new veterinary surgery includes the use of an x-ray. Council's Environment & Health Unit has assessed the proposed development and recommended appropriate conditions of consent with regard the construction and operation of any ionising radiation apparatus, in accordance with the relevant guidelines.

### **Access & Traffic**

The applicant has provided a Traffic Assessment report (Carter Rytenchild Group, October 2006) which assessed the overall impact of the proposed development upon the local road network. The report concludes that the use of three of the on-street parking spaces in Phillip Street will not have unacceptable traffic implications. Council's Traffic Engineer has assessed the proposed development, noting that the use of the on-street parking is only acceptable if a net increase in parking is obtained and results in a public benefit. The proposed development has been amended to result in a net increase in parking spaces, providing 5 additional car spaces in Phillip Street for general public use.

Any future change of use application on the subject site will not be able to claim credit for the two additional spaces provided by the applicant within the Phillip Street road reserve. This is considered to be an appropriate trade-off to allow the proposal to meet parking requirements and provide a public benefit. A condition of consent has been applied in this regard.

### **Stormwater Management**

Council's Infrastructure Engineer has assessed the proposed development with regard stormwater and erosion & sediment control matters, noting that the stormwater catchment from lot 360 is proposed to be discharged to the existing stormwater device on Lot 168. Council's Infrastructure Engineer is satisfied that the existing system is capable of catering for the increased runoff. Appropriate conditions of consent have been applied in this regard.

**Construction**

Minor impacts associated with the construction of the development are anticipated, however will be of a short duration. Suitable conditions of consent are proposed to address issues relating to hours of work, construction noise, builders waste and erosion and sediment controls.

**Food Premises**

The original application incorporated a restaurant within one of the 7 new premises proposed on Lot 360. The applicant has since provided amended plans and written notification that the new premises do not include a refreshment room. As such, all assessment (including parking requirements and contribution calculations) have been based on the 7 new premises being 'shops' as identified by the applicant. A condition of consent has been applied requiring separate development consent for the first use of each new premise.

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

The subject site is within the centre of the Pottsville Village and has been utilised for commercial uses for a number of years. An existing 2 storey residence adjoins the eastern boundary of Lot 360, whilst existing residential unit development is located to the south and west of Lot 168. The site is adjoined by commercial development to the west (bottle shop) and a number of commercial and retail premises (real estate agents, general store, hardware shop, butcher, bakery and chemist) across Coronation Avenue to the north. A Council Reserve is located to the east (across Phillip Street), which is used as general open space and the Pottsville Markets on the 1<sup>st</sup> and 3<sup>rd</sup> Sunday of each month. The redevelopment of the site to incorporate shops and commercial tenancies accords with the zoning of this land.

The site is capable of receiving deliveries and waste removal. Commercial waste collection is offered by several private sector businesses. The applicant has provided written confirmation from an approved waste contractor that that waste collection is possible with the plans depicting a suitable waste storage and collection area on the site. A site plan has also been provided with turning path overlay indicating that a medium rigid vehicle is capable of manoeuvring into and from the proposed loading bay at the rear of the commercial premises on Lot 360.

In summary, the site is considered suitable in accommodating the proposed development.

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

The application was an exhibition for two (2) weeks commencing Wednesday 22 November 2006. During this period two (2) written submissions were received.



Issue	Comment	Assessment
Pottsville Village Strategy	The submission generally supported the application with the exception of the building façade. Pottsville Village Strategy guidelines for streetscape have not been addressed. The modern type façade is not in keeping with the intention of the strategy which supports awnings similar to the Rundles Corner building and the shops already existing on the development site.	As noted in the report, the design of the proposed development has been assessed against the relevant criteria of the Pottsville Village Strategy. In this regard, the building is restricted to a single storey, contains a mix of commercial and retail development, and incorporates awnings over the footpath to encourage active street frontages. It is considered that the proposed development is not out of character with the village atmosphere of Pottsville and is consistent with the guidelines contained within the strategy.
On-street Parking	The submission generally supported the application with the exception of the proposed on-street parking allocation. The proposed plans do not accurately show the existing parking configuration on Phillip Street. Some parking should be left for caravan parking. Nose in ninety degree parking is not advisable directly opposite the proposed entry/exit point of the development. On-street parking should not be used for spaces not supplied on site.	Council's Traffic Engineer and Development Assessment Engineer have thoroughly assessed the proposed development with regard traffic and parking matters. The existing parallel spaces in Phillip Street are intended for caravan parking. In any event, adequate caravan parking is available on the eastern side of Tweed Coast Road (opposite the Sports Oval and north of the caravan park). The conversion of 4 parallel spaces into 9 ninety degree spaces is considered to be acceptable and in accordance with the relevant standards for road design. As noted in the report, Council's DCP allows the use of on-street parking in some circumstances.
Visual Amenity	The proposed development is not sympathetic to the existing village character. The Pottsville Village Strategy identifies key visual elements that give Pottsville its village character. Clearly the proposed design is modern and not in keeping with the country village appeal. A DCP needs to be prepared for the Pottsville locality, incorporating specific design controls to ensure that future development does not destroy the village character.	As noted above, It is considered that the proposed development is not out of character with the village atmosphere of Pottsville and is consistent with the guidelines contained within the strategy. It should be noted that a draft locality plan for Pottsville is currently being prepared. However, the locality plan is not complete, has not been endorsed by Council and has not been placed on exhibition yet. Therefore, Council is unable to assess the proposed development against any guidelines or criteria which may be within the locality plan.

**(e) Public interest**Pottsville Strategy

In October 1998 Council adopted the Pottsville Village Strategy, which provides general guidelines for future development in Pottsville. The strategy has identified three (3) options for commercial development within Pottsville including:-

Option 1 – Dispersal of New Activities and Facilities. This would see the residential estates of Black Rocks, Koala Beach and Sea Breeze develop their own commercial business centre.

Option 2 – Containment of New Activities and Facilities. This would encourage the growth of the traditional heart of the Pottsville Village, with existing commercially zoned sites redeveloped for retail and commercial development.

Option 3 – Provide a New Focus for Facilities and Activities. This option would see a site master planned for a new village centre.

Of the three (3) options, Option 2 was considered to be the more favoured and it is considered that the proposed redevelopment of the subject site is consistent with the strategy.

Under Section 4.4 a number of development guidelines have been drafted and although not formally included in a development control plan, have been considered in the design of the proposed development. In this regard, the building is restricted to a single storey, contains a mix of commercial and retail development, and incorporates awnings over the footpath to encourage active street frontages. It is considered that the proposed development is not out of character with the village atmosphere of Pottsville and is consistent with the guidelines contained within the strategy.

In general, it is considered that the proposed development will not prejudice or compromise the public interest.

**OPTIONS:**

1. Approve the application subject to the recommended conditions of consent.
2. Refuse the application.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be unsatisfied with Council's determination an appeal may be lodged with the NSW Land & Environment Court.

**POLICY IMPLICATIONS:**

Nil.



**CONCLUSION:**

The proposed development is considered to demonstrate substantial compliance with the relevant policy and statutory requirements outlined within Council's controls for commercial development within Pottsville.

No impacts are anticipated on either the built or natural environment or the amenity of the locality. Services to the subject site are available and the land is free of any constraints relating to natural hazards.

The application is recommended for conditional approval.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**P3 [PR-PC] Section 96 Application DA02/1147.04 for an Amendment to Development Consent DA02/1147 for the Demolition of Warehouse, Construction of Commercial & Residential Premises at Lot 9 DP 17554, Sands Street, Tweed Heads**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA02/1147 Pt3**

**SUMMARY OF REPORT:**

Council is in receipt of an application to amend a development consent that was granted by Council in December 2002 for the demolition of a warehouse and construction of commercial and 11 unit residential premises in Sands Street, Tweed Heads. A subsequent amendment (DA02/1147.03) was granted approval in July 2006, increasing the residential component to 12 units, with some minor external modifications

The applicant is now seeking to increase the residential component of the development by one additional floor level, which results in three additional residential units to the previously approved 12 units. The proposed additions increase the overall height of the development from five storeys to six.

The original application was recommended for refusal by Council's Development Assessment Unit, but was subsequently approved by Council. Reasons for recommending refusal were related to the proposal's non-compliance with Development Control Plan No. 2 – Site Access and Parking Code; Development Control Plan No. 18 – Tweed Heads; as well non-compliance with the Floor Space Ratio provisions of the Tweed LEP 2000.

The applicant has incorporated a stacked car parking arrangement in an effort to meet the provisions of DCP A2. The proposed modifications are accompanied by a SEPP 1 objection in relation to non-compliance with Floor Space Ratio provisions under the Tweed LEP 2000.

This report concludes that the amended development as proposed is satisfactory for approval and as such the SEPP 1 objection should be supported.

**RECOMMENDATION:**

**That: -**

- A. State Environmental Planning Policy No. 1 objections to Clause 50 of the Tweed Local Environmental Plan 2000 regarding floor space ratio**

provisions be supported and the concurrence of the Director-General of the Department of Planning be assumed for the following reasons: -

- The proposed development complies with the aims, objectives and provisions of the Tweed Heads Masterplan;
  - The proposed development is consistent with the Clause 16 objective of LEP 2000:

“to ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land”.
  - The proposed amendments are considered to be acceptable in terms of public interest.
- B. Application DA02/1147.04 for an Amendment to Development Consent DA02/1147 for the Demolition of Warehouse, Construction of Commercial & Residential Premises at Lot 9 DP 17554, Sands Street, Tweed Heads be amended as follows: -
1. Condition 1A be deleted and replaced with Condition 1B as follows:
    - 1B. The development shall be completed in accordance with the Statement of Environmental Effects and Dwg’s:
      - DA2D02 (Rev B) – Ground Floor Plan, prepared by KKA and dated August 2007
      - DA2D03 (Rev B) – First Floor Plan, prepared by KKA and dated August 2007
      - DA2D04 (Rev B) – Second Floor Plan, prepared by KKA and dated August 2007
      - DA2D05 (Rev B) – Third Floor Plan, prepared by KKA and dated August 2007
      - DA2D06 (Rev B) – Fourth Floor Plan, prepared by KKA and dated August 2007
      - DA2D06A (Rev A) – Penthouse Floor Plan, prepared by KKA and dated May 2007
      - DA2D07 (Rev A) – Roof Plan, prepared by KKA and dated August 2007
      - DA2D08 (Rev B) – West & North Elevations, prepared by KKA and dated August 2007
      - DA2D09 (Rev A) – South & East Elevations, prepared by KKA and dated January 2007,

except where varied by these conditions.’
  2. The following new GEN condition is to be ADDED:
    - # The development is to be carried out in accordance with Councils Development Design and Construction Specifications.





[GEN0265]

- 3. Condition 9A is to be deleted and replaced with Condition 9B as follows:

**9B. Section 94 Contributions**

- (i) Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

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

These charges are valid for the date of issue of Section 96 application DA02/1147.04 only 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: **\$28,334**  
S94 Plan No. 4 (Version 4.0)  
(Sector1\_4 Tweed Heads)

**Heavy Haulage Component**

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

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

where:

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

and:

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

**Dist.** average haulage distance of product on Shire roads

(trip one way)



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

**Admin.** Administration component - 5% - see Section 6.5

**b. Open Space (Structured):** **\$7,651**  
S94 Plan No. 5

**c. Open Space (Casual):** **\$1,636**  
S94 Plan No. 5

**d. Shirewide Library Facilities:** **\$6,750**  
S94 Plan No. 11

**e. Eviron Cemetery/Crematorium Facilities:** **\$1,354**  
S94 Plan No. 13

**f. Emergency Facilities (Surf Lifesaving)** **\$2,066**  
S94 Plan No. 16

**g. Extensions to Council Administration Offices  
& Technical Support Facilities** **\$22,134.93**  
S94 Plan No. 18

**h. Cycleways** **\$3,460**  
S94 Plan No. 22

**i. Shirewide Car Parking** **\$34,980**  
S94 Plan No. 23

**k. Regional Open Space (Structured)** **\$22,799**  
S94 Plan No. 26

**l. Regional Open Space (Casual)** **\$8,368**  
S94 Plan No. 26

**m. Tweed Heads Master Plan:** **\$4,188.00**  
S94 Plan No. 27.'

**4. Condition No. 10A be deleted and replaced with Condition No. 10B as follows:**

**10B. 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 79H of the Environmental Planning and Assessment Regulations, 1994, 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:

<u>Water DSP4:</u>	<u>8.915 ET @ \$9997</u>	<u>\$89,123</u>
<u>Sewer Tweed Heads:</u>	<u>10.085 ET @ \$4804</u>	<u>\$48,448</u>

These charges are valid for the date of issue of Section 96 application DA02/1147.04 only 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.

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.'

5. The following new PCC condition is to be ADDED:

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

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

[PCC0075]

6. The following new PCC condition is to be ADDED:

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

[PCC0285]

7. The following new PCC condition is to be ADDED:

- # An application shall be lodged and approved by Tweed Shire Council under Section 68 of the Local Government Act for any water, sewerage or drainage works (including connection of a private stormwater drain to a public stormwater drain,



installation of stormwater quality control devices or erosion and sediment control works) prior to the issue of a construction certificate.

[PCC1195]

8. The following new PCW condition is to be ADDED:

- # 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]

9. Condition No. 42A is to be deleted and replaced with Condition No. 42B as follows:

42B. The provision of the following off street car parking spaces (including parking for the disabled) where applicable.

- 3 stacker parks dedicated to each of the 3 bedroom units,
- 5 stacker parks, with each being dedicated to a 2 bedroom unit,
- 7 normal car parks, with each being dedicated to a remaining unit,
- 4 visitor spaces, with one space being dedicated as a car wash bay / visitor space and another space being dedicated as a delivery / visitor space.

The layout and construction standards to be in accordance with Tweed Shire Council Development Control Plan, Part A2 - Site Access and Parking Code.

10. The following new DUR condition is to be ADDED:

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

[DUR0005]

11. The following new DUR condition is to be ADDED:

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

[DUR0815]

12. The following new DUR condition is to be ADDED:

- # The nominated car wash bay must be identified for that specific purpose and be supplied with an adequate water supply for use.

[DUR0975]

**13. The following new DUR condition is to be ADDED:**

- # 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]

**14. The following new DUR condition is to be ADDED:**

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

[DUR0995]

**15. The following new DUR condition is to be ADDED:**

- # 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]

**16. The following new DUR condition is to be ADDED:**

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

[DUR1885]

**17. The following new DUR condition is to be ADDED:**

- # 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]

**18. The following new DUR condition is to be ADDED:**

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

[DUR2625]

**19. The following new POC condition is to be ADDED:**

- # 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]



**20. The following new POC condition is to be ADDED:**

- # 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]

**21. The following new POC condition is to be ADDED:**

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

[POC1055]

**REPORT:**

**Applicant:** Kim Kennedy & Associates  
**Owner:** T H E Home Company Pty Ltd  
**Location:** Lot 9 DP 17554, Sands Street, Tweed Heads  
**Zoning:** 3(a) Sub Regional Business  
**Cost:** Nil

**BACKGROUND:**

Development Consent for the demolition of a warehouse and construction of commercial and 11 unit residential premises was approved 5 December 2002. An application to modify the consent gained approval on 28 July 2006.

The original application was recommended for refusal by Council's Development Assessment Unit, but was subsequently approved by Council. Reasons for refusal included the proposal's non-compliance with Development Control Plan No. 2 – Site Access and Parking Code, DCP No. 18 – Tweed Heads, as well non-compliance with the Floor Space Ratio provisions of the Tweed LEP 2000.

The proposed amendments (involving 2 additional units) to Development Consent (DA02/1147.03) were not considered to comply with the requirements for on-site parking for residential and commercial development under Development Control Plan A2 – Site Access and Parking Code, and the applicant was advised that the application would not be supported. Accordingly, the applicant further amended the design of the proposal so that only one (1) additional residential unit was proposed. This was considered to be acceptable and the amendments were approved accordingly on 28 July 2006.

The applicant is now seeking to increase the residential component of the development by one floor level, which results in three additional residential units to the previously approved 12 units. The proposed additions increase the overall height of the development from five storeys to six (19.91m in height). Prior to formal lodgement, the application was sent back to the applicant as it was considered that the proposed amendments triggered Schedule 2 Clause 1(g)(ii) of the *Major Projects State Environmental Planning Policy* (MP SEPP), with the Minister having to decide whether the Major Projects SEPP applied.

The Department of Planning then provided correspondence to Council which stated that considering...*'Council has already granted consent to a 5 storey building on the site, it is open to Council to determine that the additional 1 storey proposed, can be dealt with under s96 of the Act'*.

Following discussions with the Department of Planning, it was accepted that the proposed amendments could be dealt with as a s96 application rather than a new development application, providing that sufficient carparking provisions for the overall development can be provided on-site.





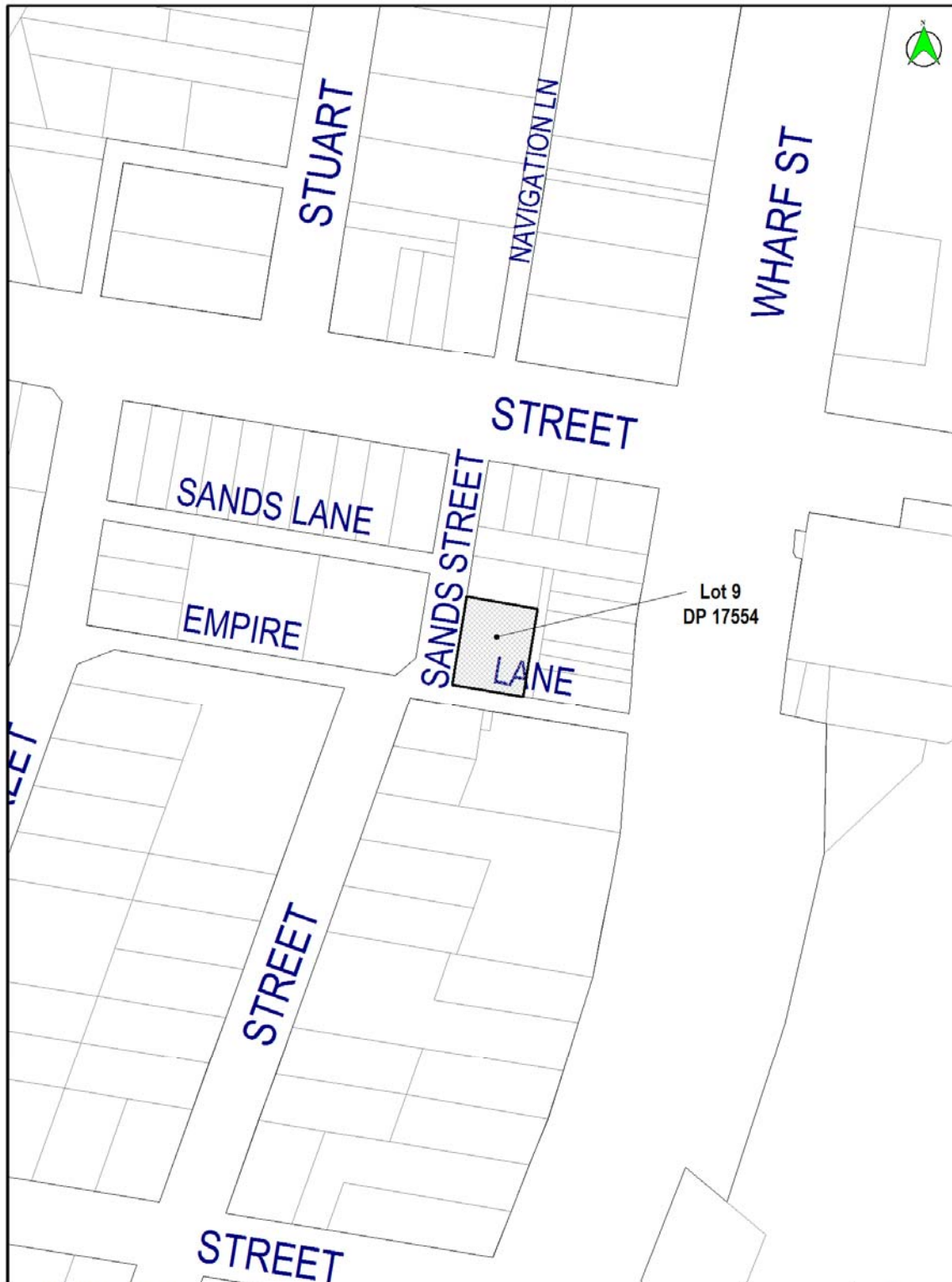
### **Proposed Development**

The proposed modification comprises an additional storey by essentially duplicating Level 3 of the approved development, to provide a 6 storey rather than 5 storey building. The amendments result in the residential unit component increasing from 12 to 15 units.

As a result of the increased units, the height of the ground floor level has also been increased by approximately 350mm to allow for sufficient ceiling height in the basement car park to fit car stackers. This amendment would result in the proposed modifications meeting Council car parking requirements.

A SEPP 1 Objection accompanies the application, with respect to the proposed development exceeding the allowable Floor Space Ratio for the subject site.

**SITE DIAGRAM:**



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 Murwillumbah, NSW, 2484  
 Tel: (02) 6670 2409  
 Fax: (02) 6670 2483

*Tweed Shire Council*  
 Lot 9 DP17554  
 Sands Street, Tweed Heads



STRATEGIC  
 PLANNING UNIT  
**Site  
 Plan**

File: N:\MapInfo 7...A4P Site Plan.Wor Author: J.Batchelor Date: 19/April/2006 Scale: 1:1,500 Sheet: 1 of 1







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

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

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

### **Substantially the Same Development**

The proposed modifications generally relate to the originally approved 5 storey development being increased to a 6 storey building. The amendments incorporate an increase from 12 residential units to 15 units, which represents an overall increase of only 20%. The additional units are essentially a duplication of a middle storey and would not result in any significant changes to overall appearance of the building including roof design. In terms of court decisions on this type of modification, if the essential or material nature remains the same and the alterations do not involve in any radical transformation, then the proposal can be taken to be substantially same development, as is the case with the proposed amendments to the original approval under Development Consent DA02/1147.

### **Likely Environmental Impact**

#### Building Height

The previously approved development has a building height of 5 storeys. The proposed modifications results in the development being increased by one storey. This increase in height is considered to be satisfactory, given the subject site has a building height limit of 50m AHD, pursuant to the provisions of the Tweed LEP 2000.

#### Car Parking Provisions

This assessment has largely dealt with the car parking impact, resulting from the proposed amendments. The proposed modifications result in three (3) additional units, creating a total of fifteen (15) residential units within the development. Under Development Control Plan A2 – Site Access and Parking Code, 15 residential units generate the need for **22** spaces, as well as **4** visitor parking spaces. The commercial

component of the development requires 2 additional spaces. DCP A2 also requires a further 2 spaces; one for delivery purposes and a second for a car wash bay. This results in a total of **30** spaces being required (see table below). The proposed development provides **19** on-site spaces.

Use	Requirement under DCP A2	Proposed Development
Residential Dwellings (15 Units)	1 per 1 bedroom unit = 4 1.5 per 2 bed unit = 12 2 per 3 bedroom unit = 6  1 visitor space per 4 units = 3.75  Total required = 25.75 (say 26 spaces)	Whilst the development only provides 19 spaces in total, 8 spaces incorporate stackers, which essentially provide 2 spaces in 1. This arrangement potentially provides 26 spaces on site.  See comments below.
Commercial Premises (2 premises totalling 71sqm in floor area)	Staff Parking = 1 per 40m <sup>2</sup> x 80% = 1.42 spaces  Customer Parking is included in staff parking  Total required = 1.42 (say 2) spaces	The ground floor car-parking layout does not provide for customer parking provisions.  See comments below.
Delivery Space Car Wash Bay	1 space  1 space	The development proposes 1 combined visitor/car wash bay space and 1 combined visitor/ delivery space.  See comments below.
<b>Total</b>	<b>30 spaces</b>	<b>26 spaces</b>

As noted above, the proposed modifications result in a total of 26 residential spaces (including visitor spaces). The applicant has provided a detailed traffic / parking assessment based on RTA Guidelines, Census analysis and a survey of similar type developments in the locality. The assessment concluded that the car parking rates for the Tweed CBD should be much lower than Council's DCP A2 rates, which would result in the development providing sufficient on-site parking. Council officers do not accept the findings of the traffic assessment provided by the applicant, concluding that the parking requirements under DCP A2 are to be applied.

#### Stacked Parking Arrangement

The applicant has proposed a stacked parking arrangement in 8 of the securitised parking spaces within the ground floor car park. The stackers incorporate a mechanical / hydraulic system which lifts a vehicle up, allowing a second vehicle to park in the area below it. Council officers are not opposed to such an arrangement, providing that each stacked car park is nominated to one unit only. Appropriate conditions of consent have been recommended in this regard.

In considering the stacked car spaces, three are to be dedicated to the 3-bedroom units and the remaining 5 stacked spaces are to be dedicated to five of the eight x 2-bedroom



units. This arrangement would leave 1 standard car parking space each for the three remaining 2-bedroom units and the three 1-bedroom units.

The four visitor spaces required under DCP A2 are proposed within the ground floor car park, outside the previously approved securitised gate.

#### Delivery Bay / Car Wash Bay

The proposed development incorporates a combined visitor space / delivery bay and combined visitor space / car wash bay. The applicant's argument that two separate spaces for car wash bay and delivery bay provisions are excessive for the proposed development is acknowledged. Given that the commercial component of the development is quite small and unlikely to require a designated delivery space and several car washing facilities are located in the local area, the proposed combined visitor space / delivery bay and combined visitor space / car wash bay is considered to be acceptable in this instance. This would reduce the required car spaces to **28**.

#### Cash Contributions

As the subject site is located within the Tweed Heads CBD area nominated within DCP A2, there is an opportunity for the applicant to pay a cash contribution (pursuant to the provisions of Section 94 Plan No 23 – Off-Site Parking) in lieu of supplying the two spaces required for customer and staff parking, in relation to the commercial component of the development.

This would further reduce the on-site car parking requirements to that of **26** spaces, which can be provided on-site by the development. Therefore, it is recommended that the applicant be required to pay cash contributions (pursuant to the provisions of Section 94 Plan No 23 – Off-Site Parking) in lieu of supplying the two spaces required for customer and staff parking, in relation to the commercial component of the development.

Based on the above assessment and given that the proposed layout is similar to that already approved for the original application, it is considered reasonable to accept the proposed car parking arrangement as being satisfactory for the purposes of DCP A2 provisions.

#### Clause 50 of TLEP 2000 – Multi Floor Space Ratio in Zone 3(a)

The size of the subject site (621.05m<sup>2</sup>) results in the development being limited to a maximum Floor Space Ratio of 2:1. The proposed amendments exceed the maximum, therefore the applicant has submitted a SEPP 1 Objection, as discussed later in this report.

#### Clause 51B of TLEP 2000 – Multi Dwelling Housing in Zone 3(a)

The proposed amendments meet the provisions of Clause 51B in that the residential component is attached to ground floor commercial premises on the same site.



### Conclusion

As detailed above, the proposed modifications are considered to be satisfactory in terms of compliance with the provisions of DCP A2. With regard to the overall proposed modifications, they are considered to be acceptable in that they result in little change to the appearance of the proposal originally approved, with little or no impact resulting on the surrounding environment.

### **State Environmental Planning Policy No. 1 – Development Standards**

As noted above, a SEPP 1 Objection has been made in relation to the proposed amendments resulting in the development exceeding the allowable Floor Space Ratio (FSR) for the subject site, pursuant to Clause 50 of the Tweed Local Environmental Plan 2000.

Clause 50 specifies a maximum FSR of 2:1 for sites less than 2000m<sup>2</sup>. Council's GIS nominates the subject site as being only 621.05m<sup>2</sup> in area, therefore the maximum FSR of 2:1 applies.

The applicant has submitted the following in support of the SEPP 1 objection:

- *The provisions of the Tweed Heads Masterplan apply to the site.*
- *The FSR development standard of LEP 2000 of 2:1 is unnecessary in the particular circumstances of the site where LEP 2000 otherwise allows an FSR of 4:1 and the Tweed Heads Masterplan provides an FSR of 3:1.*
- *The proposed development complies with the aims and objectives of LEP 2000.*
- *The proposed development complies with the aims, objectives and provisions of the Tweed Heads Masterplan.*
- *The variation would provide a more sustainable and economic use of the prime site and would be consistent with the Clause 16 objective of LEP 2000:*
  - “to ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land”.*
- *The variation would be consistent with Section 43 of the North Coast Regional Environmental Plan provides:*
  - “the Council shall not grant consent to development for residential purposes unless:*
    - (a) it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land”.*

### Comment

It is acknowledged that the Tweed Heads Masterplan indicates a building height of 10 storeys, with an FSR of 3:1. However it is not yet known to what degree the Masterplan will be implemented into the LEP. The Department of Planning is currently involved with

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Council with regard a new Locality Plan for Tweed Heads, whereby it is envisaged that increased density for mixed use development will be encouraged.

The Tweed LEP 2000 FSR of 4:1 relates to sites over 2000m<sup>2</sup> with bonuses. Given that the proposed developed incorporates the entire site, the proposed development does not with the bonus provisions in terms of public benefit.

The FSR limitations have been imposed to encourage consolidation of small lots, to allow development to maximise the intended density for the area. Based on the provisions of DCP B2 – Tweed Heads, the maximum building height of 50m AHD cannot be achieved by sites having an area less than 2000m<sup>2</sup>. Development of this nature are also limited to a building height of 3 storeys under the DCP.

It should be noted that the original application for this site was supported by Council in December 2002, despite the development not meeting all relevant criteria in relation to FSR requirements. As such, the approval of the original development cannot be changed. Therefore, it is not considered that there would be any public benefit in not supporting the SEPP 1 Objection accompanying the proposed amendments. The increase in floor area is approximately 370m<sup>2</sup> (resulting in an FSR of 2.9:1), which provides an increased density for the site. In light of the above comments, the proposed increase in overall floor area is considered to be acceptable in these circumstances.

In conclusion, it is considered that the development is of a scale and design that complements the locality without undue or unnecessary impact and that strict compliance with the FSR of 2:1 is both unreasonable and unnecessary in the circumstances of this case. The Development Assessment Unit recommends that the concurrence of the Minister administering the Environmental Planning and assessment Act, 1979 be assumed in this instance.

### **Contributions**

Current Council contribution rates have been applied for the additional three (3) residential units. These fees have been added to the original fees, noting that the rates and indeed contribution plans have been amended since the original fees were calculated. As noted above, the contributions will also incorporate cash contributions (pursuant to the provisions of Section 94 Plan No 23 – Off-Site Parking) in lieu of supplying the two spaces required for the commercial component of the development

### **Consideration of Submissions**

The proposed modifications were advertised for a period of 14 days, with no objections being received.

### **Public interest**

The proposed modifications to Development Consent DA02/1147 are considered to be acceptable in terms of public interest. Given the majority of the required car parking provisions are to be provided on-site, with the applicant being required to pay cash contributions in lieu of the two car spaces for the commercial component of the development, the proposed modifications are not considered to result in a negative impact upon the existing public car parking provisions in the surrounding area.

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**OPTIONS:**

1. Approve the proposed modifications that result in three additional units, giving a total of fifteen (15) residential units, subject to the recommended amendments to Development Consent DA02/1147.
2. Refuse the application, leaving the applicant with the existing approval for a mixed-use development incorporating only twelve (12) residential units.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

Having regard for all of the issues raised by the proposed amendments to the previously approved mixed-use development, the proposed modifications are considered to be acceptable. As noted above, a detailed assessment has been conducted with regard to the car parking impacts as a result of the three additional residential units. Therefore, the SEPP 1 objection should be supported and the application approved, subject to the recommended amendments to Development Consent DA02/1147.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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