



AGENDA

PLANNING COMMITTEE MEETING

Tuesday 31 July 2007

Chairman: Mr Max Boyd AM

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



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REPORTS THROUGH GENERAL MANAGER

REPORTS FROM DIRECTOR PLANNING & REGULATION

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

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

MATTERS FOR CONSIDERATION

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



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P1 [PR-PC] Development Application DA06/0946 for a Mixed Development Comprising Two (2) x Three (3) Bedroom Units, Two (2) x Two (2) Bedroom Units and Commercial Premises at Lot 3 DP 520276, No. 20 Marine Parade Kingscliff

ORIGIN:

Development Assessment

FILE NO: DA06/0946 Pt2

SUMMARY OF REPORT:

Council has received an application seeking approval for a mixed used development comprising four residential units (2 x 2 bedrooms units and 2 x 3 bedroom units) and a commercial premise of 190m² in area on the subject allotment Marine Parade.

The subject site contains a site area of approximately 347.8m² and is zoned 3(b) general business under the Tweed Local Environmental Plan 2000. The site is currently occupied by a three (3) storey mixed use building with the ground floor being commercial floor space and two levels of residential. This building is proposed to be demolished as part of a separate application.

The site is the most southern 3(b) zoned lot within the Kingscliff CBD with 2(b) zoned land situated to the south and east. Marine Parade fronts the site to the north east with an unformed laneway to the south east. The proposal seeks to formalise the laneway for vehicle access to the site with the removal of the existing stairway and construction of new pedestrian stairs linking Marine Parade with Hungerford Lane.

The main issues associated with the application are:-

- A small area (approximately 84m²) of the proposed building is technically a fourth storey
- Minor encroachments/non-compliance to the building height and building setback envelope for acceptable solutions
- Amenity
- Replacement of the existing stairway
- View loss

Each of these matters are addressed within the body of this report.



RECOMMENDATION:

That: -

- A. State Environmental Planning Policy No.1 - Development standards objection to Clause 16 – Building Height of the Tweed Local Environmental Plan 2000. The variation to the development standard be supported and concurrence of the Director-General of the Department of Planning be assumed for the following reasons:-**
- The proposal is approximately 26m in length, the extent of the fourth storey component is 6.4m in length.
 - The location of the fourth storey component is situated within the centre of the development, limiting the potential impacts such as overshadowing and view loss.
 - The technical fourth storey component is directly related to the slope of the site and is considered not to adversely impact on the surrounding natural or built environments.
- B. State Environmental Planning Policy No.1 - Development standards objection to Clause 32B of the North Coast Regional Environmental Plan 1988. The variation to the development standard be supported and concurrence of the Director-General of the Department of Planning be assumed for the following reasons:-**
- The area affected currently contains two very large fig trees.
 - No overshadowing will occur during winter.
 - The shadow cast will not adversely impact on the enjoyment or use of the beach or recreation areas. The shadow at any stage does not reach the beach.
 - The development is cut into Kingscliff Hill which is located behind the development, as such the adjoining open space land currently experiences overshadowing from the Hill without any input from the built development.
- C. Development Application DA06/0946 for a mixed development comprising two (2) x three (3) bedroom units, two (2) x two (2) bedroom units and commercial premises at Lot 3 DP 520276, No. 20 Marine Parade Kingscliff be approved-**

**GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects and the Plans listed in the table below except where varied by the conditions of this consent.

Plan Numbers	Drawn By	Dated
DA 0.00 B (RFI 1)	Lightwave	06.03.07
DA 0.01 B (RFI 1)	Lightwave	06.03.07
DA 1.01 D (RFI 3)	Lightwave	27.06.07
DA 1.02 D (RFI 3)	Lightwave	27.06.07
DA 1.03 D (RFI 3)	Lightwave	27.06.07
DA 1.04 D (RFI 3)	Lightwave	27.06.07
DA 1.05 D (RFI 3)	Lightwave	27.06.07
DA 1.06 D (RFI 3)	Lightwave	27.06.07
DA 2.01 D	Lightwave	13.07.07
DA 2.02 D	Lightwave	13.07.07
DA 2.03 D	Lightwave	13.07.07
DA 2.04 D	Lightwave	13.07.07
DA 3.01 D	Lightwave	13.07.07
DA 3.02 B (RFI 1)	Lightwave	06.03.07
CPO209 sheet 1 of 3	SB	SEPT 2006
CPO209 sheet 2 of 3	SB	SEPT 2006
CPO209 sheet 3 of 3	SB	SEPT 2006

[GEN0005]

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

[GEN0045]

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

[GEN0115]

4. All signage is to be fitted with necessary devices capable of permitting the change in intensity of illumination of the sign in order to regulate glare or other like impacts.

[GEN0075]

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

[GEN0135]

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

[GEN0065]

7. The development shall be completed in accordance with the plans approved by Council and the Statement of Environmental Effects, except where varied by conditions of this consent.

[GEN0015]



8. **Submission of a further Development Application(s) for the first use of the commercial tenancy component of the development, such to be approved by Council prior to its use or occupation. Any use which requires a delivery vehicle is to be prohibited.**

[GEN0055]

9. **The subject building is to be no greater in height then RL17.4metres AHD.**

[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

10. **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]

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

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

are to be the subject of a Section 68 application.

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]

12. **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) **Reconstruction of the concrete footpath (full width) along the Marine Parade frontage**

(b) Construction of the driveway cross over from Marine Parade Relocation and construction of the stairs within the unnamed lane linking Marine Parade to Hungerford Lane. Provisions must be made to preserve the integrity of the existing stormwater line and sewer pipe that traverses the lane way.

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]

- 13. 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]

- 14. The developer shall provide 8 parking spaces in accordance with DCP2, AS 2890 and Austroads Part 11 for the residential component.**

A contribution shall be made in lieu of providing the 4 car parking spaces necessary for the commercial tenancy in accordance with Council's Section 94 plan No. 23.

[PCC0065]

- 15. Prior to the issue of a Construction Certificate, Council shall be provided with a construction management plan to the satisfaction of the Director of Planning and Regulation. All works shall comply with the approved plan.**

[PCCNS01]

- 16. Prior to the issue of a Construction Certificate detailed engineering design plans for the lane construction including the retaining walls and stairway shown on the Application Plans are to be submitted and approved by Council.**

The following should be noted:-

- **The plans are to be prepared and certified by a qualified structural/civil engineer.**
- **The detailed engineering plans and design calculations are to be submitted to Council for approval by the Director of Engineering Operations before construction commences.**



- If “ground anchors” are required to support the wall adjacent to the northern boundary of Lot 1 DP 781722 (18 Marine Parade) then the written consent of the owner agreeing to the registration of an easement for support being registered on the title of the property affected and details supplied to Council with the above design.
- A security bond of \$15,000.00 is to be paid to Council to cover any repair work required for the first 12 months after construction. At the end of the 12 months the bond will be returned less any expenses for the repair work.

[PCCNS02]

17. Details of a system that alerts residents and visitors when the lift is in use and the car park is full is to be submitted prior to the issue of a Construction Certificate to Council for approval by the General Manager or delegate.

[PCCNS03]

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

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

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

Water DSP5:	2.054 ET @ \$9997	\$20,534
Sewer Kingscliff:	2.881 ET @ \$4804	\$13,840

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

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

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

[PCC0265/PSC0165]



19. Section 94 Contributions

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

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

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

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

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

(a) Tweed Road Contribution Plan: S94 Plan No. 4 (Version 4.0) Sector6_4	\$15,061
(b) Open Space (Structured): S94 Plan No. 5	\$1,260
(c) Open Space (Casual): S94 Plan No. 5	\$269
(d) West Kingscliff – Open Space: DCP No. 9 S94 Plan No. 7	\$4,200
(e) Shirewide Library Facilities: S94 Plan No. 11	\$1,112
(f) Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$229
(g) Community Facilities (Tweed Coast - North) S94 Plan No. 15 North Coast	\$1,476
(h) Emergency Facilities (Surf Lifesaving) S94 Plan No. 16	\$324



(i) Extensions to Council Administration Offices & Technical Support Facilities	\$3,225.23
S94 Plan No. 18	
(j) Cycleways	\$568
S94 Plan No. 22	
(k) Shirewide Car Parking	\$80,000
S94 Plan No. 23	
(l) Regional Open Space (Structured)	\$3,757
S94 Plan No. 26	
(m) Regional Open Space (Casual)	\$1,381
S94 Plan No. 26	

[PCC0215/PSC0175]

20. The roof of the building within the proposed development is to be constructed of non-reflective materials, and shall not be light in colour.

[PCCNS04]

21. Private infrastructure such as the bio-infiltration planter beds and CRS Humers Humeceptor and the like, are to be located within the subject lot.

[PCCNS04]

22. A schedule of building materials are to be approved by Council prior to the issue of a Construction Certificate. The building materials are to have a low reflectivity rating, to ensure minimal adverse impact on adjoining properties.

[PCCNS05]

PRIOR TO COMMENCEMENT OF WORK

23. 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-building, 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]

24. 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]

25. Residential building work:
- (a) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - in the name and licence number of the principal contractor, and
 - the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - the name of the owner-builder, and
 - if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.
 - (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]



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

[PCW0245]

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

[PCW0765]

28. 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]

29. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area where required to the satisfaction of the Principal Certifying Authority.
[PCW0985]
30. 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]
31. Any business or premises proposing to discharge a pollutant discharge greater than or differing from domestic usage is to submit to Council an application for a Trade Waste Licence. This application is to be approved by 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]
32. Sewer main, stormwater line or other underground infrastructure within or adjacent to the site is to be accurately located and the Principal Certifying Authority advised of its location and depth prior to start of any building works. The integrity of the 450mm diameter storm water pipe and sewer that traverses the unnamed laneway shall be maintained. If necessary the existing 450 diameter storm water pipe shall be relocated to prevent conflict with the construction of the stairs.
[PCWNS03]
33. An S68 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.
[PCWNS03]
34. The proponent shall notify Councils Engineering & Operations Division of intention to commence drawing water in accordance with the requirements of the approval to draw water.
[PCW1045]
35. Prior to the commencement of building works and after the existing structure has been demolished a comprehensive Geotechnical Report shall be lodged with Council. This report must clearly identify that the proposed earthworks and associated retaining structures will not have any adverse impact of the adjoining residences or existing public infrastructure.
[PCWNS01]
36. All earthworks and excavation works associated with the proposed development shall be undertaken in accordance with the Geotechnical Report prepared by Soil Surveys Engineering Pty Ltd and dated August 2006.
[PCWNS02]
-



37. 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]

DURING CONSTRUCTION

38. Construction site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council: -
Monday to Saturday from 7.00am to 7.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

39. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).

[DUR0375]

40. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.

[DUR0395]

41. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.

[DUR0405]

42. It is the responsibility of the applicant to restrict public access to the 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]

43. Excavation

- (a) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with WorkCover 2000 Regulations.
- (b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

[DUR0425]

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

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

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

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

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

[DUR0435]

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

[DUR0905]

46. 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]



47. 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]
48. 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. [DUR1715]
49. 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]
50. 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]
51. 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]
52. A certificate from a suitably qualified practicing structural engineer shall be submitted to Council and the Principle Certifying Authority within seven (7) days of the site being excavated certifying the adequacy of the sheet piling or other retaining method used to support adjoining properties. [DUR1965]
53. **Swimming Pools (Building)**
- (a) The swimming pool is to be installed and access thereto restricted in accordance with Council's "Code for the Installation of New Swimming Pools" and Australian Standard AS 1926-1986 (Copy of code enclosed).
 - (b) Swimming pools shall have suitable means for the drainage and disposal of overflow water.

(c) The pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.

[DUR2075]

54. The spa pool is to be installed and access thereto restricted in accordance with Council's "Code for the Installation of New Swimming Pools" and Australian Standard AS1926-1986 (Copy of code enclosed).

[DUR2115]

55. 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]

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

[DUR2195]

57. 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]

58. 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]

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

[DUR2505]

60. All water plumbing pipes concealed in concrete or masonry walls shall be fully lagged.

[DUR2525]

61. 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]

62. 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]



63. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-
- * 43.5⁰C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
 - * 50⁰C in all other classes of buildings.

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

[DUR2555]

64. 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]

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

[DUR2645]

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

[DUR2625]

67. All water drawn from Councils reticulated system shall be via a Tweed Shire Council metered standpipe. The location of the hydrant shall be nominated by Tweed Shire Council and all water shall be only used for the purposes nominated by the applicant for the duration of the construction activities.

[DUR2575]

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

[DUR2425]

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

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

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

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

[DURNS01]

70. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments" and the Geotechnical Report prepared by Soil Surveys Engineering. Pty Ltd and dated August 2006.

[DURNS02]

71. All fill and cut batters shall be obtained wholly within the subject land.

[DURNS02]

72. The written consent of the registered proprietors of adjoining land, where the said works encroach thereon is to be submitted to Council prior to works commencing.

[DURNS02]

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

[DURNS02]

74. 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]

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

[DUR0005]



76. 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]
77. Minimum notice of 48 hours shall be given to Tweed Shire Council for the capping of any disused sewer junctions. Tweed Shire Council staff in accordance with the application lodged and upon excavation of the service by the developer shall undertake Works.
[DUR0675]
78. 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]
79. 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]
80. The works are to be completed in accordance with Tweed Shire Councils Development Control Plan, Part A5 - Subdivision Manual and Design & Construction Specifications, including variations to the approved drawings as may be required due to insufficient detail shown on the drawings or to ensure that Council policy and/or good engineering practices are achieved.
[DUR2025]
81. The contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.
[DUR2015]
82. All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction. Certification from a suitably qualified engineer experienced in structures is to be provided to the PCA prior to the issue of an Occupation Certificate.
[DUR1955]
83. No portion of the structure may be erected over any existing sillage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains.
[DUR1945]
84. 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]

85. The proponent shall comply with all requirements tabled within any approval issued under Section 138 of the Roads Act. [DUR1885]
86. 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]
87. 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 Occupation Certificate. [DUR0995]
88. 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]
89. All retaining walls proposed are to be constructed in accordance with the construction Certificate approval issued by the Principal Certifying Authority. [DUR0845]
90. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited. [DUR0815]
91. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments".
- The earthworks shall be monitored by a Registered Geotechnical Testing Consultant to a level 1 standard in accordance with AS 3798. A certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798 shall be submitted to the Principal Certifying Authority upon completion. [DUR0795]
92. No retaining walls or similar structures are to be constructed over or within the zone of influence of Council's sewer main. [DUR2705]
93. All new residential dwellings (and extensions comprising over 50% of the original floor area) are to fully comply with Tweed Shire Council Development Control Plan, Part A9 - Energy Smart Housing Policy. In order to comply with the Policy consideration must be given to the building envelope, orientation, insulation, ventilation, thermal mass and zoning. [DUR0915]
94. 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]
-



95. Backwash from swimming and spa pools is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9. [DUR2085]
96. All waters that are to be discharged from the site shall have a pH between 6.5 and 8.5 and suspended solids not greater than 50mg/kg. [DUR2435]
97. Acid sulphate soils shall not be exposed or disturbed. [DURNS03]
98. Swimming pools and spa pools shall be maintained in a clean and healthy state at all times. [DURNS03]
99. Vehicles leaving the premises shall be sufficiently free from dirt, aggregate or other materials such that materials are not transported onto public roads. [DURNS03]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

100. 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]
101. 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]
102. Work as executed plans are to be provided to Council in accordance with Councils Development Design Specification, D13 and a CCTV inspection of the stormwater pipes and sewerage system to be dedicated to Council as public infrastructure including joints and junctions demonstrate that the standard of the system is acceptable to Council.
- Note: Where works are carried out by Council on behalf of the developer it is the responsibility of the DEVELOPER to prepare and submit works-as-executed plans. [POC0765]
103. 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]
104. Removal of disused laybacks. [POCNS01]

105. A name for the subject unformed laneway to be submitted and approved by Council and lane name signs on posts to be installed at both ends of the lane.

[POCNS01]

106. Repairs any damage to road and verge.

[POCNS01]

107. Three (3) bicycle spaces are to be provided within the site.

[POCNS01]

USE

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

[USE0875]

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

[USE0445]

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

[USE0225]

111. 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]

112. 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]

113. The rainwater storage tank shall be periodically inspected for sediment build up, and shall be cleaned accordingly. Use of water stored in the rain water storage tank shall be restricted to landscape irrigation and car washing only. Storage and use of this water shall not be permitted to unreasonably impact the amenity of any premise. The water shall not be used for portable purposes.

[USENS01]

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

[USENS02]



REPORT:

Applicant: Moduplex Pty Ltd
Owner: Muduplex Corporation Pty Ltd
Location: Lot 3 DP 520276, No. 20 Marine Parade Kingscliff
Zoning: 3(b) – General Business
Cost: \$2,129,000.00

BACKGROUND:

Council is in receipt of a development application for a mixed-use development comprising four residential units and a commercial tenancy.

The proposed development incorporates the following elements:-

Commercial Component

- 1 tenancy of 190m² located on the Ground floor

Residential Units

- 2 x 2 bedroom units located on the 1st floor
- 2 x 3 bedroom units located on the 2nd floor

Storeys

- Generally three (3) storeys plus basement car parking
- Fourth storey element through the centre of the building (due to the topography of the land)

Car parking

- Eight (8) spaces are provided on site these are proposed to be utilised by the residential component of the development (see Section (a) (iii) of this report for car parking assessment).

The site is currently occupied by a 3 storey single residential dwelling containing some commercial floor space on the ground floor, this building is proposed to be demolished as part of a separate application.

The site incorporates a site area of approximately 347.8m² with frontage to Marine Parade. An unformed laneway is located to the south east of the site. A set of stairs are located within this unformed laneway providing pedestrian access from Hungerford Lane through to Marine Parade. The existing stairs are proposed to be replaced with new stairs with the formation of the laneway to provide vehicle access to the development and pedestrian access to the new stairs.

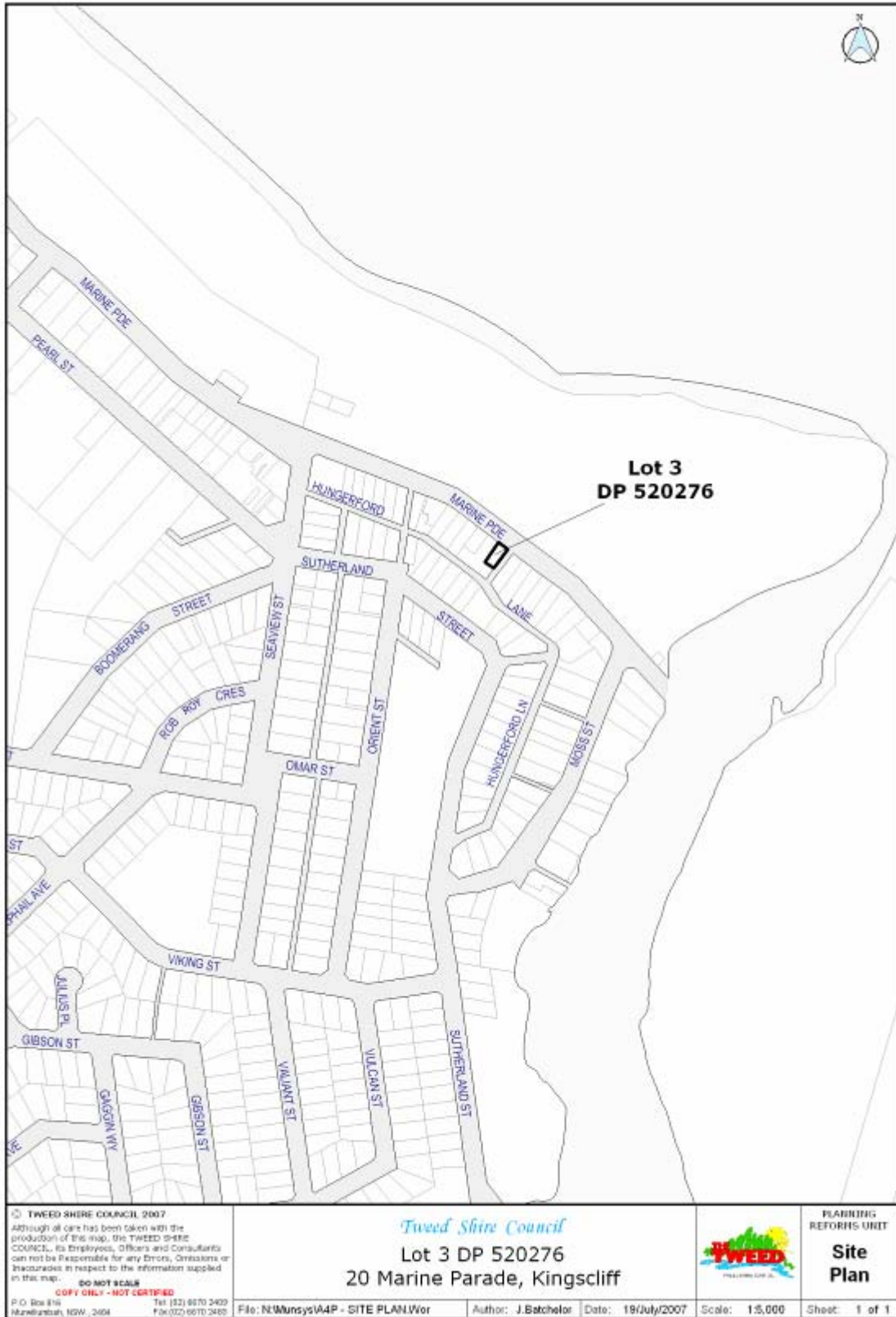
The levels of the site drop significantly from the south down to Marine Parade. Residential dwellings are located to the south and south west of the site with commercial buildings located to the north west, with 6 (a) open space to the north of the site. It is pertinent to note that the dwelling to the south west is wholly located within the 3(b) zone with both the closest residential dwellings being elevated in relation to the subject site.



The application was lodged with Council on the 21 August 2006. A preliminary assessment of the proposal identified unsupportable variations to development standards such as building height, building envelope. Amended plans were submitted on the 1 May 2007, requiring the application to be re-advertised for a period of 14 days. However, a car parking shortfall for the residential component of the proposal required a second amendment identifying the required amount of car spaces. These plans were lodged on the 13 July 2007.

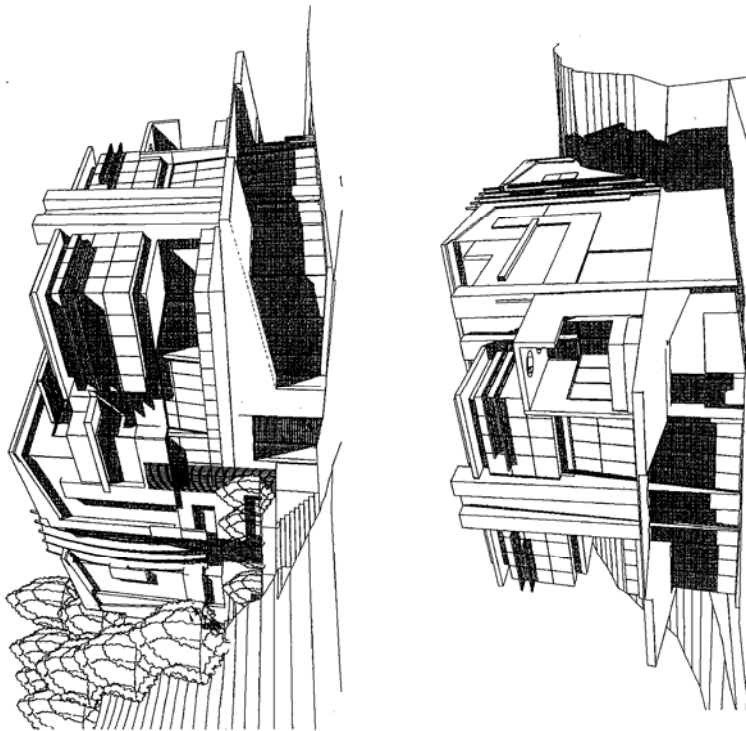


SITE DIAGRAM:



ELEVATIONS:

P. 02 6674 2838 F. 07 3009 5930



Drawing List

- DA0.00 Cover Page
- DA0.01 Site Plan
- DAL01 Basement Plan
- DAL02 Ground Floor Plan
- DAL03 Level 1 Floor Plan
- DAL04 Level 2 Floor Plan
- DAL05 Level 3 Floor Plan
- DAL06 Roof Plan
- DA2.01 North-East Elevation
- DA2.02 South-East Elevation
- DA2.03 South-West Elevation
- DA2.04 North-West Elevation
- DA3.01 Section A
- DA3.02 Section B

Job No. 1098 B (RFI 1) Scale 1:100
 Date 06.03.07
 DA 0.00
 DWG No.

Lightwave

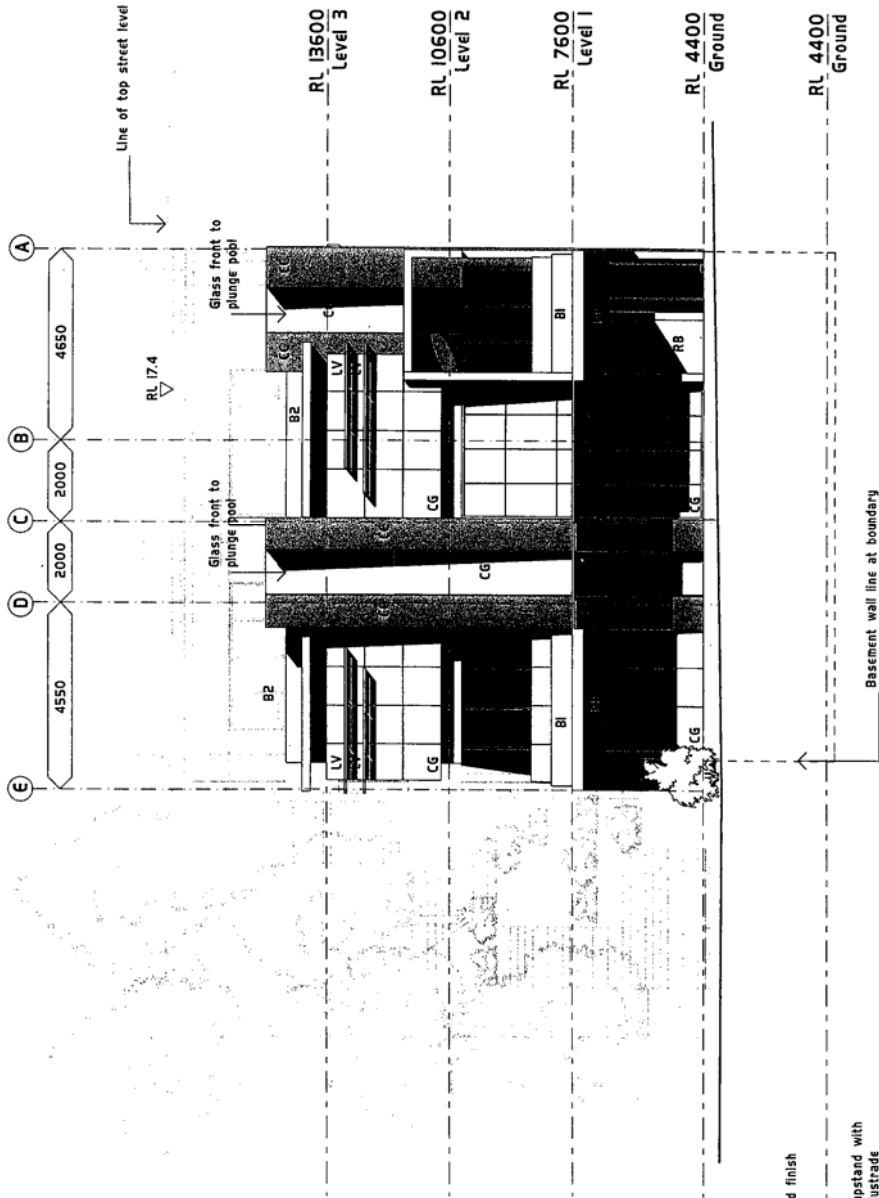
APPLICATION FOR DEVELOPMENT APPROVAL
 E Cover Page
 CLIENT Moduplex Pty. Ltd.

20 Marine Parade

LOT 3 on RPS20276



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Job No. 1098 D
 Scale 1:100
 Issue 13.07.07
 DA 2.01
 DWG No.

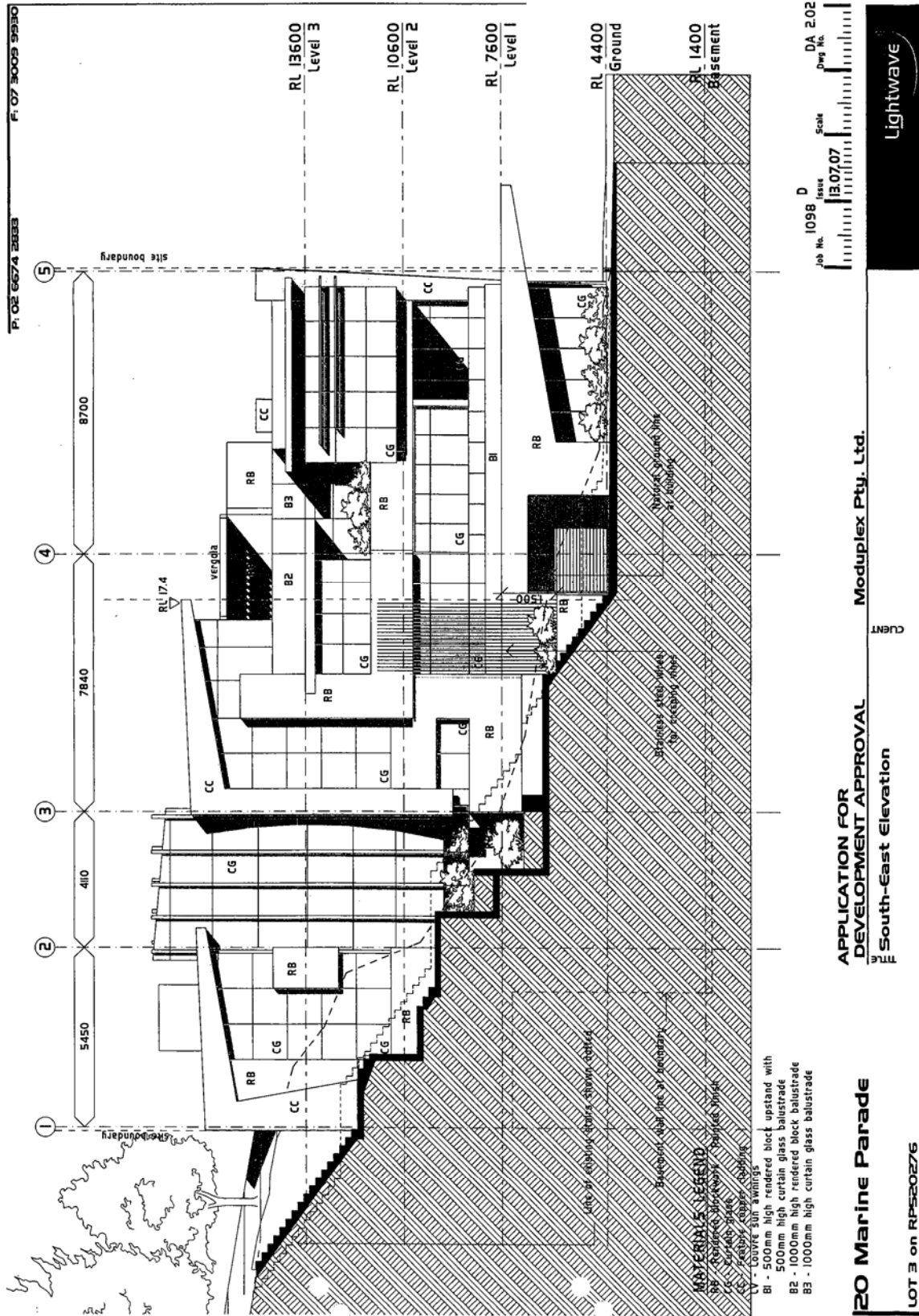


MATERIALS LEGEND

- RB - Rendered blockwork - Painted finish
- CG - Curtain glass
- CC - Feature copper cladding
- LV - Louvre sun awnings
- B1 - 500mm high rendered block upstand with 500mm high curtain glass balustrade
- B2 - 1000mm high rendered block balustrade
- B3 - 1000mm high curtain glass balustrade

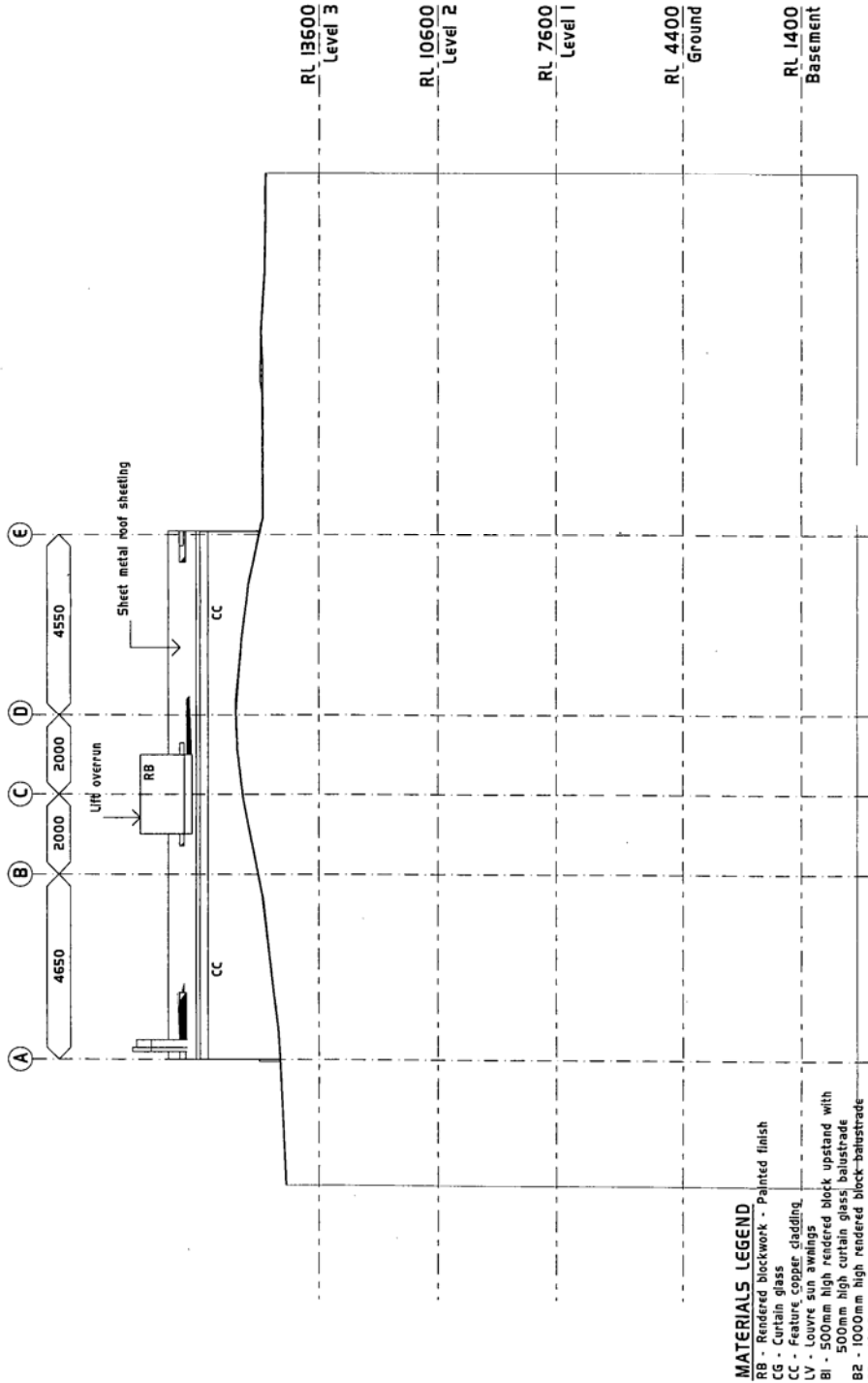
20 Marine Parade
 LOT 3 on RP520276

APPLICATION FOR DEVELOPMENT APPROVAL
 North-East Elevation
 CLIENT Moduplex Pty. Ltd.





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MATERIALS LEGEND
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 CG - Curtain glass
 CC - Feature copper cladding
 LV - Louvre sun awnings
 B1 - 500mm high rendered block upstand with 500mm high curtain glass balustrade
 B2 - 1000mm high rendered block balustrade
 B3 - 1000mm high curtain glass balustrade

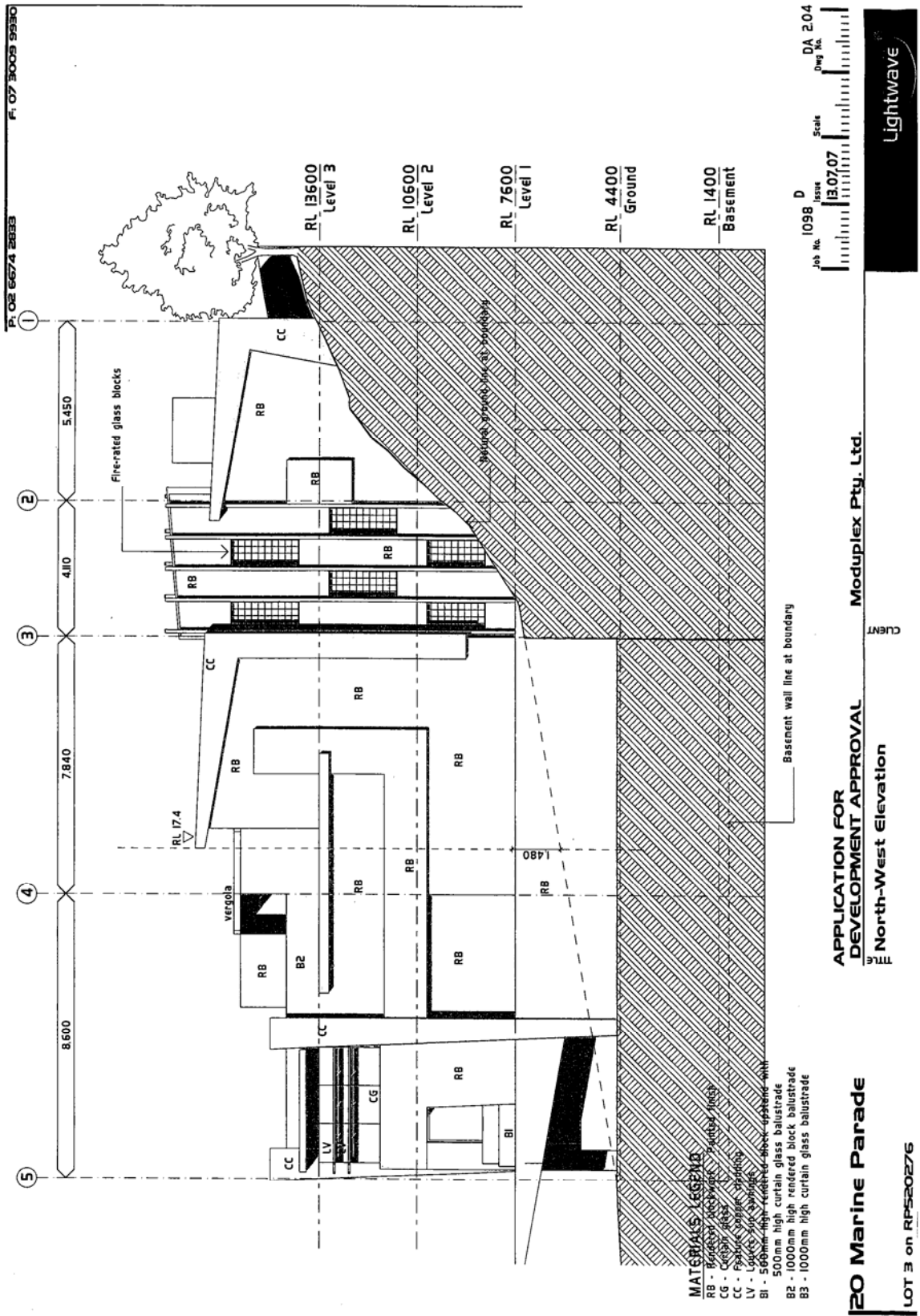
Job No. 1098
 Scale 1:30.07
 DA 2.03
 Draw No.

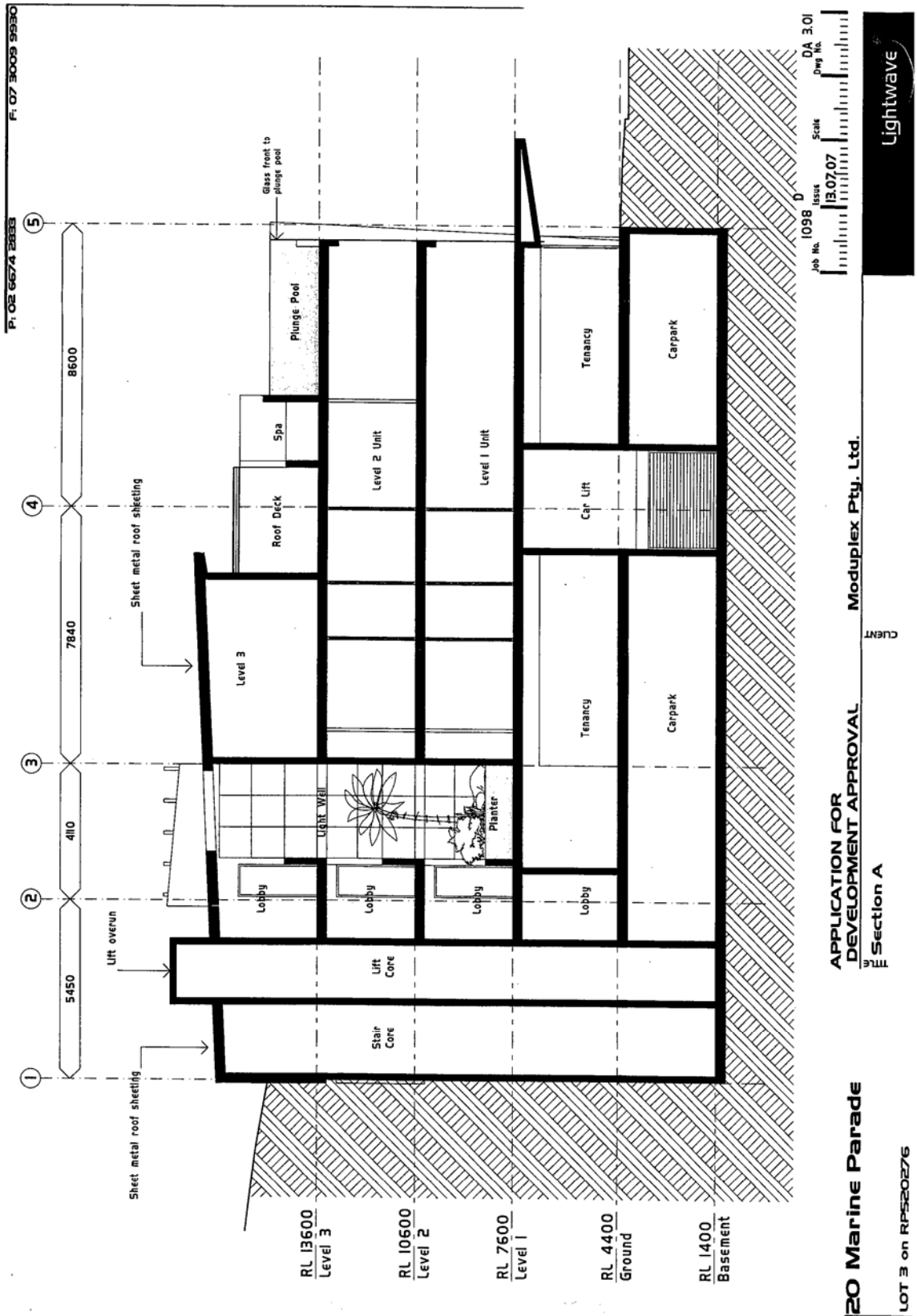


APPLICATION FOR DEVELOPMENT APPROVAL
 of South-West Elevation
 CLIENT Moduplex Pty. Ltd.

20 Marine Parade

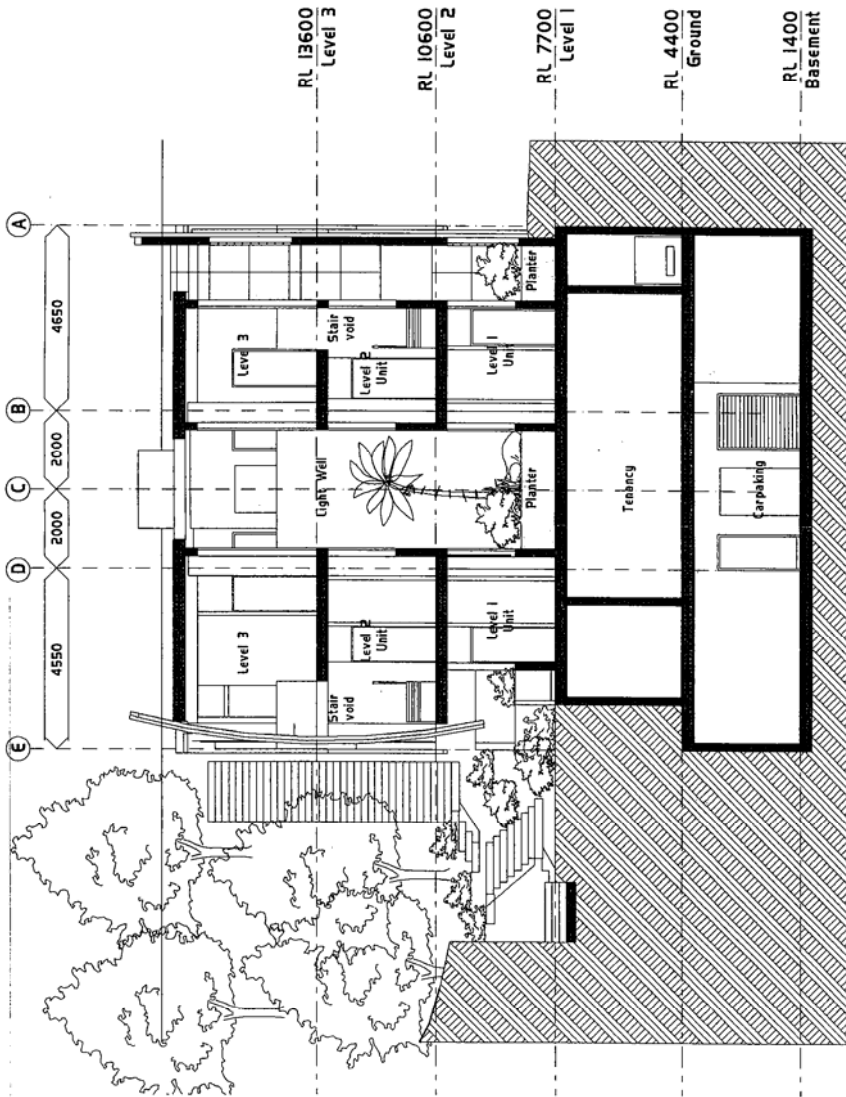
LOT 3 on RP520276



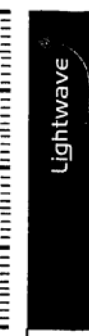




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Job No. 1098 B (RF 1) DA 3.02
 Date 10.03.07
 Page No. 1



APPLICATION FOR DEVELOPMENT APPROVAL
 Section B
 CLIENT: Moduplex Pty. Ltd.

20 Marine Parade
 LOT 3 on RP520276



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 site is zoned 3(b) General Business in accordance with the provisions of the Tweed Local Environmental Plan 2000 (Tweed LEP 2000). The objectives of the zone are as follows:-

Primary objectives

- *to provide business centres in which the community's shopping, business, welfare and social needs can be met.*
- *to provide business locations within residential areas, and to ensure that the scale and type of development is compatible with the character and amenity of the surrounding residential areas.*

Secondary objectives

- *to provide for tourist orientated development.*
- *to encourage upper floor residential or tourist accommodation.*

The proposal is defined as commercial premise and multi dwelling housing and is considered to meet the objectives of the zone by encouraging upper floor residential accommodation with a ground floor commercial premise. The commercial premise component of the proposal is permissible with consent. Multi dwelling housing is prohibited unless it is development that is subject to Clause 51B. Clause 51B is discussed below.

Clause 51B Multi-dwelling housing in zones 3(a) and 3(b)

(1) Objective

the objective of this clause is to allow multi-dwelling housing on land zoned 3(a) or 3(b), but only if it meets certain criteria to ensure the development of the land does not undermine its commercial use and the objectives of those zones.

(2) This clause applies to land within Zone 3(a) or 3(b).

(3) Despite the Table to clause 11, a person may, with the consent of the Council, carry out development on land to which this clause applies for the purpose of multi-dwelling housing, subject to subclauses (4) and (5).

(4) Multi-dwelling housing on land to which this clause applies must be attached to shops, commercial premises, or other non-residential development on the same site.

(5) If multi-dwelling housing is located at ground level or within 2.4 metres of ground level, a dwelling or car park area must not front any commercial street listed in Schedule 8.

The proposal is a mixed use development comprising multi-dwelling housing and a commercial tenancy area of approximately 190m². Therefore the multi dwelling housing component is attached to a commercial premise satisfying sub clause 4 above.

The development does not propose multi dwelling housing at or within 2.4m of ground level, in addition a dwelling or car park area is not proposed to front Marine Parade (being a commercial street listed within Schedule 8) satisfying sub clause 5 above.

The development is considered to meet the objectives of the zone.

Clause 15 – Availability of essential services

The site is located within an established area. The site is adequately serviced by stormwater, electricity, sewer and water connections.

The proposal is considered consistent with the clause.

Clause 16 Building Heights

The objective of this clause is to ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land.

A three (3) storey height limit applies the subject site. The proposal is mostly a three (3) storey building with a small section of the building being four (4) storeys in height. The small element of 4 storey occurs in the centre of the development due to the steep slope of the land. The building will present to the street as a three (3) storey building. The development is considered to be consistent with the objectives of the clause as the proposal is appropriate to its location and is of similar height to surrounding developments.

A State Environmental Planning Policy No. 1 – Development Standards, is required when a variation to a ‘statutory’ development standard is proposed. The variation sought is to Clause 16 heights of buildings development standard. This is discussed later in this report, under State Environmental Planning Policies.

Clause 35 Acid sulphate soils

The subject site is not affected by acid sulphate soils as identified on Council’s Acid Sulphate Soils Planning Maps. The application was referred to Council’s Environmental and Health Services Unit, to which no objections were raised regarding Acid Sulphate Soils.

Clause 39 – Remediation of contaminated land

The application was referred to Council’s Environmental and Health Services Unit, to which no objections were raised regarding contaminated land.

The proposal is consistent with the provisions of this clause.

North Coast Regional Environmental Plan 1988

Clause 32B states inter alia:-

- (1) *This clause applies to land within the region to which the NSW Coastal Policy 1997 applies.*
- (2) *In determining an application for consent to carry out development on such land, the council must take into account:*
 - (a) *the NSW Coastal Policy 1997,*
 - (b) *the Coastline Management Manual, and*
 - (c) *the North Coast: Design Guidelines.*
- (3) *The council must not consent to the carrying out of development which would impede public access to the foreshore.*
- (4) *The council must not consent to the carrying out of development:*
 - (a) *on urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out the development would result in beaches or adjacent open space being overshadowed before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time), or*
 - (b) *elsewhere in the region, if carrying out the development would result in beaches or waterfront open space being overshadowed before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time).*

The proposal is generally consistent with the intent of this clause, however, the development does result in the overshadowing of Council zoned 6(a) open space land across the road to the north.

It is pertinent to note the following;

1. The approximate area of overshadowing by the proposal is 240m².
2. The area affected currently contains two very large fig trees.
3. No overshadowing will occur during winter.
4. The shadow caused will not adversely impact on the enjoyment or use of the beach or recreation areas. The shadow at any stage does not reach the beach.
5. The development is cut into Kingscliff Hill which is located behind the development, as such the adjoining open space land currently experiences overshadowing from the Hill without any input from the built development.

The objective of the standard contained within Clause 32B is to protect the foreshore open space areas against adverse impacts from development within close proximity to those areas.

The SEPP 1 variation is supported in this instance as the proposal is considered to be consistent with the objectives of Clause 32B and the integrity of the clause would remain if the development is supported. Furthermore, compliance with the development standard is both unreasonable and unnecessary in this instance particularly given the locational characteristic as being a highly urbanised area and the large scale of the open space areas adjacent to the site. The proposal is of a consistent height and scale to that recently approved and with surrounding developments.

Clause 43 – Residential development

The densities of the development have been maximised without adversely affecting the environmental features of the land. The development is located within an existing and established area. A sedimentation and erosion management plan has been submitted, an appropriate condition has been placed on the consent to ensure the development is completed in accordance with the submitted management plan.

Clause 47 – Principles for Commercial and Industrial Development

The proposal occurs within an existing commercial zone 3(b). Services are available to the site and the subject site is located within the existing local and regional road networks. The proposal is therefore considered to comply with the objectives of clause 47 of the NCREP.

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

This clause applies to buildings over 14metres in height. The proposal has a maximum height of 13metres.

State Environmental Planning Policies

State Environmental Planning Policy No. 1 – Development Standard

State Environmental Planning Policy No. 1 – Development standards (SEPP No. 1) provides a mechanism by which a variation to 'statutory' development standards can be assessed. SEPP No. 1 enables flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary.

As the proposal partly exceeds the allowable height limit, a SEPP No. 1 application has been lodged and the relevant sections read as follows:

3 Aims, objectives etc

This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.

6 Making of applications

Where development could, but for any development standard, be carried out under the Act (either with or without the necessity for consent under the Act being obtained therefore) the person intending to carry out that development may make a development application in respect of that development, supported by a written objection that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case, and specifying the grounds of that objection.

7 Consent may be granted

Where the consent authority is satisfied that the objection is well founded and is also of the opinion that granting of consent to that development application is consistent with the aims of this Policy as set out in clause 3, it may, with the concurrence of the Director, grant consent to that development application notwithstanding the development standard the subject of the objection referred to in clause 6.

The 'statutory' development standard to which the SEPP No. 1 applies to is Clause 16 Height of Buildings (Tweed LEP 2000) which states inter alia;

(1) Objective

- to ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land.

(2) *Consent must not be granted to the erection of a building which exceeds the maximum height or number of storeys indicated on the Height of Buildings map in respect of the land to which the application relates.*

Council's definition of a storey states, inter alia:-

storey means:

- (a) *the space between two floors, or*
(b) *the space between a floor and any ceiling or roof immediately above it, or*

- (c) *foundation areas, garages, workshops, storerooms and the like, excluding access paths to basement areas, where the height between the finished ground level and the top of the floor immediately above them exceeds 1.5 metres in height.*

A storey which exceeds 4.5 metres for residential buildings is counted as two storeys.

A storey which exceeds 5 metres for commercial buildings is counted as two storeys.

For the purpose of counting the number of storeys in a building, the number is to be the maximum number of storeys of the building which may be intersected by the same vertical line, not being a line which passes through any wall of the building.

Council's definition of finished ground level, in relation to land states, inter alia:-

finished ground level, in relation to land

means the following (and, if more than one of the following paragraphs applies in relation to the land, whichever is the highest):

- (a) *the natural ground level of the land that was the level of the land at the appointed day, or the level of the land after such earthworks (excluding any basement excavations) as are consented to by the consent authority, whichever is the lower,*
- (b) *the level of the land approved by the consent authority as the finished ground level of the land prior to the commencement of Tweed Local Environmental Plan 2000 (Amendment No 46),*
- (c) *if the land is within an area identified by the Council as flood liable land, the level of the land after filling the land in accordance with the consent authority to the adopted design flood level under Tweed Development Control Plan No 5 - Development of Flood Liable Land, as adopted by the Council on 6 March 1996.*

Extent of Statutory Variation Sought

The proposed development is approximately 26m long and incorporates a 4 storey component of 6.4m solid roof line (8.9m including the fixed louvered vergola).(see plan/drawing No. 2.04, 2.02 and 1.06).

The two fixed louvered vergolas' are open structures each measuring 2.5m in length by 3.5m in width, each generate an area of 8.75m². The vergolas' are located on the third floor deck off the main living areas for units 3 and 4.

Objective of the standard

The underlying object or purpose of the standard is 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 development is located within the 3(b) zones (general business) in which surrounding developments have approximately 100% site coverage with buildings extending from boundary to boundary with a varying height of between 12 and 13 metres.

The proposed development is considered to be consistent in terms of the desired height and scale and with surrounding development as the proposed development has an approximate site coverage of 100% and a maximum height of 13metres.

The areas of the fourth storey component are (being solid roof areas and fixed louvered vergola) located within the centre of the development therefore limiting what impacts maybe generate in terms of overshadowing or view loss.

The elevation most visible is the south eastern elevation. This non-compliance is considered to be further reduced due to the location of the 3metre wide unformed road reserve providing a formal separation from any potential future developments. This road reserve is to be utilised as both the access to the subject site and a pedestrian access between Marine Parade and Hungerford Lane.

Views

The two most affected properties relating to views are street numbers 22 and 18 Marine Parade, Kingscliff. Both these properties gain access from Hungerford lane with neither dwelling being situated directly behind the proposal. The development has a solid roof line of a height of 17.4m AHD. Property numbers 22 and 18 have balcony levels of 17.3 and 17.2m AHD respectively, with a standing eye sight of 18.9 and 18.8 m AHD respectively. It is considered due the location of dwellings in respect to the proposal and the height of the dwelling due to the topography of the land that these properties will retain reasonable existing levels of views (see plan/drawing No. 2.01).

Summary

The subject development is predominantly three storeys only in height and is generally consistent with Council's planning controls in relation to height under Tweed LEP 2000.

The proposal is consistent with the objectives of Clause 16 as the height and scale of the development is appropriate to its location, surrounding development and topography.

The proposal presents as a three (3) storey development when viewed from Marine Parade with a lay person unlikely to be able to determine whether the proposal is four (4) storeys in part.

The proposal includes substantial vertical articulation as the building steps down the site. Recently approved and constructed buildings within the surrounding locality of Kingscliff are of similar height. The proposal is consistent with the character of the locality. Number 60-74 Marine Parade and number 32-34 Marine Parade both have approval and are constructed with a height of 13m.

The technical fourth storey component is directly related to the slope of the land and does not adversely impact on the surrounding residents by way of overshadowing, loss of sea views, privacy or amenity.

The fourth storey component comprises an area of only approximately 84m² (solid roof, excluding the fix louvered vergola) within the centre of the building. The proposed 4th storey will result in negligible adverse impacts upon the locality.

It is concluded that the variation sought under SEPP No. 1 warrants support.

State Environmental Planning Policy No. 65 – Residential Flat Buildings

This Policy applies to development including the erection of a new residential flat building. In accordance with a residential flat building means a building that comprises or includes:

- (a) 3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and
- (b) 4 or more self-contained dwellings (whether or not the building includes uses for other purposes, such as shops).

The proposal is consistent with the definition of a residential flat building as it is three storeys in height and contains 4 self-contained dwellings.

Clause 30 requires that in determining a development application, the consent authority to take into consideration the design quality principles contained within Part 2 of the SEPP.

It is pertinent to note that the design quality principles are not design solutions; they are a guide to achieving good design and the means of evaluating the merit of proposed solutions.

Principle 1: Context

The precinct is undergoing a transitional phase with low density older styled single dwelling houses being replaced with medium density modern multi-dwelling and multi-use developments. As such the character of the area is a mixture of the both low and medium density residential housing with the commercial tenancies fronting Marine Parade.

The proposed development is consistent with the desired future character of the area as detailed in Council's Development Control Plans. The proposal is considered to contribute to the quality and identity of the area.

Principle 2: Scale

The proposed development is considered consistent and appropriate in terms with the desired bulk, scale and height for the area and recently constructed surrounding buildings. The building's height does not exceed 13 metres at any point, the building has also been designed, suppressed (basement car park) and cut into hill at the rear providing a satisfactory level of vertical articulation to reduce the potential impact of building height and scale.

Principle 3: Built Form

The development clearly defines the public domain and makes a positive contribution to the street and locality. Future residents of the proposal will enjoy internal amenity and have views to the north of the beach and open space areas. The proposal will not detract from the character and amenity of adjoining properties nor will the proposal result in a loss of or domination of public and private views within the area.

Principle 4: Density

The development is considered to achieve appropriate densities consistent with the desired future density of the area. The proposal consists of four (4) residential unit and one (1) commercial tenancy. The development's density is sustainable in terms of infrastructure, public transport community facilities and environmental quality.

Principle 5: Resource, energy and water efficiency

The development is considered to maximise the available solar energy and natural ventilation through orientation and design. A BASIX for each dwelling has been supplied demonstrating compliance with Council's energy efficiency requirements.

Principle 6: Landscape

The proposal incorporates the landscaping with the built form through a central and northern and southern light wells with planters. All balconies are located off main living areas which are orientated to the north east for maximum solar access and views of open spaces, ocean and beaches.

Principle 7: Amenity

The proposed development has been designed providing a functional living environment. The proposal provides sufficient resident parking, open space through private balconies located off main living areas orientated to the north east for maximum solar access, natural light, sea breezes views of open spaces, ocean and beaches.

In determining whether the current application unreasonably impacts upon the amenity of the adjoining properties the desired future character of the area must be considered. The area is nominated as a medium density area with a height limit of 3 storeys. Having regard to the applicable planning controls and the desired future urban form of the area it is considered that the proposal does not unreasonably detract from the amenity of the area, nor restrict the amenity of adjoining parcels in terms of view loss.

Principle 8: Safety and security

The proposal has been designed to enable causal surveillance of Marine Parade and the unformed road to the south. Appropriate lighting will be installed for security purposes within the unformed road, unit entry and car parking areas.

Principle 9: Social dimensions

The proposed development provides a mixture of unit configurations being 2x2 bedroom units and 2x3 bedroom units. The site is situated within close proximity to public open space areas; a shopping precinct; recreational facilities and professional services.

Principle 10: Aesthetics

The design and variety of materials used in the building's façade are consistent with the desired future character of the area. The contemporary design of the development will make a positive contribution to the streetscape.

State Environmental Planning Policy No. 71 – Coastal Protection

The provisions of SEPP No.71 affect the subject site. The subject site is not identified as being a sensitive coastal location (land within 100m above mean high water mark) nor a significant coastal development (development within 100m below mean high water mark). The development is considered to be consistent with Part 2 Clause 8 Matters for consideration as the proposal is considered not to adversely affect the access to and along the coastal foreshore, fish and marine vegetation and their estuarine habitats, limit overshadowing of foreshore areas and that the type, bulk, scale and size of the development is appropriate within the SEPP 71 zone.

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

There are no draft environmental planning instruments, which affect the development application.

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

Section A2 of Council's consolidated DCP – Site Access and Parking Code (adopted by Council on the 12 April 2007)

Standard	Requirement	Proposed	Compli
Multi Dwelling Housing	1.5 spaces per 2 bedroom unit $(2 \text{ units} \times 1.5) = 3$ 2 spaces per 3 or more bedroom unit $(2 \text{ units} \times 2) = 4$ Plus 1 space per 4 units for visitor parking = 1 Total = 8	8 on-site car spaces no visitor parking space.	Yes
Commercial Premise	1 per 40m ² $190\text{m}^2/40\text{m}^2 = 4.75$ (20% ESD reduction) = 3.8 spaces Total = 4 Overall Total 12	Zero (0) proposed spaces	No*

The application provides for 8 onsite parking spaces, that creates a shortfall of four (4) spaces for the commercial component.

The applicant has offered payment of a monetary contribution for the 4 spaces, in accordance with the car-parking contribution plan.

The 30% reduction in the CBD (subject to certain conditions) is not supported due to shortage of public parking areas and on street parking.

The proposal seeks to obtain access through the construction of the unformed laneway located adjacent to the subject site.

Section A1 of Council's consolidated Development Control Plan – Multi Dwelling Housing

The application has been assessed against the relevant provisions contained within this policy relating to multi dwelling housing within commercial areas and is listed below.

- 3.2.1 *Streetscape, building appearance and front setbacks*
In commercial areas, no setback requirements for the first 9 metres, thereafter to conform to the requirements for multi dwelling being 6 metres and 3 metres from a secondary frontage.

The proposal provides a zero setback to the front, side and rear boundaries, which is desirable within commercial zones. The front elevation has a height of 10.4metres however, the non-compliance of 1.4metres consists of terrace balcony and plunge pool. The northern elevation is considered to be highly articulated, in addition the southern elevation has the benefit of the laneway to provide separation from adjoining development. The northern elevation will abut any future redevelopment of the adjoining property. The encroachments are considered relatively minor and do not significantly add to the scale of the proposal. The development is consistent with and makes a positive contribution to the desired future character of the area.

The variation to the acceptable solutions standards are supported as the objective and performance criteria are achieved.

- 3.3.3 Usable open space
An area accessible from the main living areas with a minimum area of 10m² and a minimum dimension of 2 metres.

The development proposes accessible balconies located off main living areas of all dwellings facing northeast that comply with the minimum standards outlined within the acceptable solutions.

Section B16 of Council's consolidated Development Control Plan - Kingscliff

The site is located within Precinct 1 - Town Centre Precinct, the objectives and strategic policy regarding commercial redevelopment is addressed below.

- *'encourage consolidation and redevelopment of existing commercial land'.*

Comment:

The proposal involves redevelopment of the existing commercial site through the demolition of the existing mixed-use development and the construction of a mixed-use development with a larger commercial area.

- *'stimulating the town centre environment through the development of mixed commercial and residential developments'.*

Comment:

The proposal seeks approval for the construction of a mixed-use development with a commercial component at ground level.



- *'safe convenient pedestrian access and create linkages between beachfront, commercial and residential areas'.*

Comment:

The existing pedestrian access between Marine Parade and Hungerford lane will be upgraded with the construction of a new footpath and stairs. The driveway will be located to the south of the existing building with access being provided via the existing unformed laneway. Vehicles will now be able to enter and exist the site in a forward direction.

- *'public car parking areas are not to be provided between the footpath and new commercial developments. New buildings are to be built up to the footpath to enhance pedestrian amenity. New developments will incorporate innovative design themes, high quality finishes, discrete car parking areas and well landscaped parking and service areas. The number of vehicle entry points to a development site are to be kept to a minimum'.*

Comment:

The building has a zero setback to the front boundary adjacent to the footpath. Parking areas are located within the basement to the rear of the premises and will not be visible from the street. The buildings design is innovative and modern with high quality finishes in keeping with the desired future character of the locality.

The proposal is considered to comply with the building type guidelines (Clause 8.2) for three (3) storey commercial residential buildings (type 1 building) and building design (Clause 8.1) being:- building mass, facades, rooflines, verandahs, materials and colours, landscaping.

Section A14 of Council's consolidated Development Control Plan – cut and fill on residential land

The application was lodged with Council on the 21 August 2006. Council adopted amendments to this policy (version 1.2) on the 26 April 2006, which is subject to a savings provision (Clause 1.2.3) of six (6) months. Accordingly the amended provisions do not apply to this application.

Council's Major subdivision co-ordinator provided the following comments;

The application seeks to undertake additional extensive excavation works within the subject allotment to allow for the construction of the building. The subject site is steep and is bound by residential properties to the rear.

The applicant has submitted amended plans following consultation with Council. These amendments include details for a proposed car lift facility to overcome driveway gradient issues, amendments to the location of the stairs within the laneway to reduce excavation and a concept plan to realign the stormwater line that traverses the laneway to minimise conflict with the new stairs.

A preliminary Geotechnical Report has been prepared by Soil Surveys Engineering Pty Ltd. This report investigates various construction options that maybe employed to retain and support the excavation works. These options include;

1. Batter to safe angle
2. Sheet Piles
3. Post and Panel
4. Panel system
5. Contiguous Piers

Soil Surveys Engineering Pty Ltd has advised that Post and Panel, Panel System or Contiguous Piers are the recommended options for retaining the excavation works given the site limitations.

These recommendations have been made given the preliminary site investigations undertaken.

It is acknowledged that a further comprehensive geotechnical investigation should be undertaken once the existing structure is demolished and the site is cleared.

This comprehensive investigation must recommend the method to retain the excavation works. In addition, this report must determine that the proposed excavation works will not have any adverse impacts on the adjoining residences or existing public infrastructure

A condition of consent will be drafted requiring the excavation works to be undertaken in accordance with the Geotechnical report prepared by Soil Survey Engineering Pty Ltd dated August 2006 and that a further comprehensive geotechnical report be prepared after removal of the existing dwelling.

In relation to foundations, the Geotechnical Engineers have recommended "deep foundations"

"Given the subsurface encountered in past investigations completed in this area of Kingscliff, it is recommended that a deep foundation system be adopted for the proposed development at the above site."



Manoeuvring

The proposed access complies with AS 2890.1 and construction of the access driveway will be in accordance with Council's Access to Property Policy.

The applicants propose the installation of a car lift to transport vehicles to and from the basement car park. This proposal will address any problems that may arise from non compliant gradients and flood water ingress.

In addition, the applicants have modified the car park layout. Swept path movements for a single car using vehicle turning templates show that a vehicle can satisfactorily manoeuvre within the modified basement car park.

Section B18 of Council's consolidated Development Control Plan - Tweed Coast Building Heights

This policy is set out to provide guidelines on building height, building setbacks, design and use of rooftops, protect the Region's public amenity by enhancing its diverse and unique built environment through qualitative urban design, provide the community with a pre-determined maximum height in relation to a building.

This is achieved through providing objectives and performance criteria with examples to achieve the objectives and performance criteria called acceptable solutions.

The proposal exhibits certain non-compliances with reference to acceptable solutions relating to building height and building setbacks. The proposal development is considered to satisfactory comply with the relevant performance criteria in each instance.

Clause 2.2 – Building Heights

This policy provides acceptable solutions for a 3 storey mixed development set at 10metres from the finished ground level to the upper most ceiling or top plate of the highest external wall and the maximum height of a building from the finished ground level to the highest point on the roof is at 12 metres.

The proposal exceeds these acceptable solutions by 1metre for a length of 6.4metres as viewed from the north-western elevation and as viewed from the south eastern elevation.

The applicant provided an analysis of the relevant performance criteria.

P1. The likely impacts of new buildings on surrounding development, particularly with regard to overshadowing, privacy and the obstruction of views are avoided.

Comment: The proposal has been designed to respect neighbourly views. In this regard no unreasonable loss of views will occur in relation to surrounding properties. The orientation of the allotment and the elevation differences with adjoining properties (the southern properties are much higher than the subject lot) ensure that no overshadowing impacts will occur. Privacy is maintained for surrounding properties and the subject development.

P2. Topographical features of the site and surrounding properties such as slope, existing natural vegetation and opportunities for the creation of views and vistas are identified.

Comment: The proposal has been designed with respect to the topography of the land, and steps down the property from the rear to Marine Parade. Little vegetation exists on the site.

P3. The scale of new development is compatible with and sympathetic to the scale and bulk of existing development and/or the desired future character of the locality.

Comment: The scale and height is compatible with and sympathetic to the desired future character of the locality. The development has been specifically designed to step down the property in respect to the topography of the site.

It is pertinent to note that the encroachment on the north western elevation will not be seen by the future redevelopment of the adjacent allotment.

P4. Buildings are designed and constructed to relate to the existing land shape with minimal cut and fill allowed.

Comment: The majority of the site has been excavated away due to previous developments. The proposal requires additional excavation, however, the benefits demonstrated are reduced overall height leading to a reduction in overshadowing and the retaining of current views.

P5. Grand vistas and views, including heritage or familiar dominant landmarks that are recognised and valued by the community, are not obscured by new development.

Comment: The proposal does not impact upon any grand vistas or views or heritage or dominant landmarks.

Clause 2.3 Building Setbacks

Buildings setbacks are established by projecting an 8 metre vertical line up from the property boundary and then at 45 degrees to the maximum height of the building.



The proposal exhibits minor encroachments into the building envelope on the north western and south eastern elevations however substantial encroachments are demonstrated on the north east elevations.

The applicant provided the following assessment against the performance criteria contained within the clause:-

P1. New development is compatible and sympathetic to the scale and bulk of existing development and/or the desired future character of the locality.

Comment: The proposal consists of high quality design and contemporary built form is consistent with the desired future character of the area.

P2. The streetscape reflects the functions and characteristics of the street type and which supports or establishes a sense of place and street identity.

Comment: The proposal is consistent with the function of the street by containing continuous commercial frontage and consistent with the building type 1 contained within this policy, which requires that building be brought forward to the street for the first 3 levels. The side elevations demonstrate high quality architecture and variation.

P3 Building setbacks are related to the height of individual buildings and the width of the street, in such a way to ensure pedestrians do not feel buildings are overbearing.

Comment: The unformed laneway is better described as pedestrian access strip between Hungerford Lane and Marine Parade and vehicle access to the proposed development. The scale of development is consistent with other (recent) mixed use buildings in the commercial area to the north west of the site. The proposal will not be overbearing to pedestrians.

P4. Residents feel an adequate sense of visual and acoustic privacy when using rooms fronting the street and/or adjoining properties.

Comment: The proposal provides a high level of privacy to residents occupying the building. The residential units are located on the first floor and above with no adjoining developments overlooking private open space areas.

P5 Direct overlooking of main internal living areas and private open space of other dwellings is minimised by building layout, the location and design of windows and balconies or by screening devices and landscaping.

Comment: The proposal has been designed and orientated to over look the park and ocean, as such the proposal does not over look adjoining residential properties.

The non-compliance with the acceptable solution relating to building envelope is supported given the architectural merit of the proposal, the absence of any adverse impacts on adjoining properties and the development complying with the objectives and performance criteria contained within the clause.

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

Satisfactory.

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

There are no significant detrimental impacts envisaged on the natural or built environments as a result of the proposed development.

The location of the site adjoins existing commercial development to the north west with the location of an unformed laneway to the south east providing separation from the residential zoned lane. No residentially zoned properties are likely to be affected by the proposal.

The bulk and scale of the proposal is consistent with the existing and desired future character of the area.

(c) Suitability of the site for the development

The subject site is considered suitable for the proposed development. The site is located within an established, yet evolving mixed use precinct. The site is fully serviced and not significantly constrained by adjoining development or the natural features of the land.

The proposal is consistent with the zone objectives with the proposal considered to make a positive contribution to the streetscape and is in keeping with the desired future character of the area.

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

The application was advertised twice both for a period of 14 days in accordance with Council's Notification Policy. The first advertising period was Wednesday 6 September to Wednesday 20 September 2006. The second advertising period was Wednesday 16 May 2007 to Wednesday 30 May 2007. During these periods multiple submissions were received. The issues raised in those submissions are tabled below:-



Issue	Assessment
Over development of the site	Addressed previously in report
Four storey development	Addressed previously in report
The permanent removal of the existing stairs	The stairs are proposed to be replaced with new stairs to be utilised by the public
The privatisation of the stairs	The new stairs will remain for use by the public
Parking lack of onsite spaces and surrounding area	Addressed previously in report
Traffic	The application was referred to Council's Traffic and Transport engineer no objections were raised.
Safety of pedestrians	The application was referred to Council's Traffic and Transport engineer no objections were raised.
Subsidence and excavation works	Addressed previously in report
Loss of views	Addressed previously in report
Use of the unformed laneway for private access	Addressed previously in report
Maintenance of stairs and access driveway	Addressed previously in report
Loss of access of the stairs during construction	Two other pedestrian access are available for the public to use to gain access to and from Marine Parade namely Sutherland Lane and Seaview Street with a third being an unnamed lane through to Moss Street from Hungerford Lane.
Variations to setback requirements	Addressed previously in report
Proposal not in keeping with the predominantly residential area	The proposal is located within zone 3(b) general business zone, accordingly the area is predominantly mixed use consisting of ground floor commercial with upper floor being residential.
Materials used on the eastern and western elevation will reflect light and heat into adjoining residential property and buildings	Condition A schedule of building materials are to be approved by Council prior to the issue of a Construction Certificate. The building materials are to have a low reflectivity rating, to ensure minimal adverse impact on adjoining properties.
Use of the commercial premise – ventilation outlet maybe located on roof	Any use of the commercial premise will require separate approval from Council. With potential impacts/issues addressed through the development assessment process.
Overshadowing of the foreshore	Addressed previously in report
Non-compliance to building height	Addressed previously in report

Will the roofing material reflect sunlight	Condition "Roofs of all buildings within the proposed development are to be constructed of non-reflective materials, and shall not be light in colour".
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(e) Public interest

The proposed development is considered to be in the public's interest.

OPTIONS:

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

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposal is considered suitable for the subject site, is considered not to create any significant adverse impacts on the natural or built environments and is generally compliant with all applicable development standards.

The subject 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 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 DA07/0457 for Demolition of an Existing Building and the Erection of a McDonald's Restaurant at Lot 1 DP 543048; Lot 1 DP 781505; Lot 723 DP 820649; Minjungbal Drive Tweed Heads South

ORIGIN:

Development Assessment

FILE NO: DA07/0457 Pt1

SUMMARY OF REPORT:

Council has received a Development Application for the demolition of the existing single storey commercial building and the erection of a refreshment room (McDonald's Restaurant) and associated signage at the corner of Parry Street and Minjungbal Drive.

The Development Application received public objection during the advertising period, which is discussed later in this report. The main issues raised were traffic, the operation of the restaurant 24 hours 7 days a week, pedestrian safety, proximity to adjoining residential areas, noise impacts, anti-social behaviour and potential odour emissions which have been addressed further on in this report.

After an assessment of the Development Application and all the submissions and issues raised it is recommended that a condition be imposed on the Consent which limits the operation of the Restaurant 24 hours trading, 7 days a week for a period of 12 months from the Occupation Certificate date of issue and continuation of 24 hour trading beyond this period will require the submission and approval of a Section 96 Application. This will provide Council with an opportunity to further assess the level of acceptability of the development and the 24 hour trading of the Restaurant.

A Socio-Economic Impact Assessment (SEIA) has been submitted with the Development Application that has considered the proposed development within the context of the Tweed Shire Council's SEIA guidelines and has taken into account the perspectives of the local community respondents, Council and key stakeholders.

Having assessed the main issues associated with the Development Application it is recommended that the Development Application be approved subject to conditions.

RECOMMENDATION:

That Development Application DA07/0457 for a McDonald's Restaurant at Lot 1 DP 543048; Lot 1 DP 781505; Lot 723 DP 820649; Minjungbal Drive Tweed Heads South be approved subject to the following conditions: -

GENERAL

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

- Plan Nos Site Plan Drawing No DA-04 prepared by Hamilton Hayes Henderson Architects and dated 17 April 2007
 - Floor Plan Drawing No. DA-05 prepared by Hamilton Hayes Henderson Architects and dated 18 April 2007;
 - Drive-Thru and Front Elevations Drawing No. DA-06 prepared by Hamilton Hayes Henderson Architects and dated 18 April 2007;
 - Elevation Plan Drawing No DA-07 prepared by Hamilton Hayes Henderson Architects and dated 19 April 2007;
 - Roof Top Plant and Equipment Drawing No DA-08 prepared by Hamilton Hayes Henderson Architects and dated 22 June 2007;
 - Photomontage Drawing No DA-09 prepared by Hamilton Hayes Henderson Architects and dated 25 June 2007;
 - Revised Stormwater Management Plan Drawing No DA-19 prepared by Richmond + Ross PTY LIMITED and dated June 2007;
 - Revised Stormwater Management Plan/Proposed Sewer Realignment Drawing No DA-20 prepared by Richmond + Ross PTY LIMITED and dated 18 April 2007;
 - Sediment Erosion Control Plan Drawing No DA-21 prepared by Richmond + Ross PTY LIMITED and dated 18 April 2007;
 - Landscaping Drawing Nos CP-01 - CP-02 (B) Project No 07076 prepared by Gamble McKinnon Green and dated 27 April 2007;
- except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0115]

3. All signage is to be fitted with necessary devices capable of permitting the change in intensity of illumination of the sign in order to regulate glare or other like impacts.

[GEN0075]

4. All internal fitout is to comply with the Food Act 2003, Australia New Zealand Food Authority's Food Safety Standards, and Australian Standard AS4674 Design, Construction and Fit-out of Food Premises.

[GENNS01]

5. A chartered professional structural engineer's "Certificate of Adequacy" certifying the ability of the existing blockwork fencing to be retained is to be submitted with the construction certificate application to the PCA and a copy provided to Tweed Shire Council. The chartered professional structural engineer is to supervise the repair and modification works to the existing blockwork fencing.

[GENNS02]

6. The development shall comply with the Detailed Noise Assessment for Proposed McDonald's Restaurant, Parry Street and Minjungbal Drive, Tweed Heads South prepared by Max Winders & Associates dated 9 July 2007 (Ref: L28307/PAK/07-074) and memorandum prepared by Paul King of Max Winders & Associates dated 14 July 2007 except where varied by the conditions of consent.
[GENNS03]
7. Only 110 total seats are to be provided within the dining areas of the Restaurant.
[GENNS04]
8. The entry/exit treatment at Minjungbal Drive is to be amended to cater for drive through over-queuing vehicles and pedestrians to the satisfaction of Council's Director of Engineering and Operations.
9. A traffic (splitter) island is to be installed at the Parry Street and Minjungbal Drive intersection on the Parry Street leg to provide delineation to the satisfaction of Council's Director of Engineering and Operations.
10. The provision for 5 bicycle spaces on site is required.
11. The main Pylon Sign is to be a maximum height of 10 metres above ground level.
[GENNS05]
12. The development is to be carried out in accordance with Councils Development Design and Construction Specifications.
[GEN0265]
13. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within or adjacent to the subject property.
[GEN0135]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

14. Pursuant to Section 68 of the Local Government Act, 1993 an approved pre-treatment device (eg. Oil/grease traps, separators, etc) shall be installed in accordance with Tweed Shire Councils Trade Waste Policy. Submission of detailed hydraulic plans and specifications indicating size, type, location and drainage installations in accordance with AS 3500 shall be submitted to Council for approval.
[PCC1265]
15. In accordance with Section 68 of the Local Government Act, 1993, any premises proposing to discharge into Councils sewerage system any 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]
16. 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]



17. 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 prior to the issue of a construction certificate. Works shall include, but are not limited to the following:
- The connection of a private stormwater drain to a public stormwater drain,
 - The installation of stormwater quality control devices,
 - Erosion and sediment control works,
 - Relocation of sewer main such that the sewer main is centrally contained within a 3m easement, clear of any permanent structures.
 - Connection of development to Council's water supply and reticulated sewer.
- [PCC1195]
18. All roof waters are to be disposed of through properly jointed pipes to the street gutter, inter-allotment drainage, or elsewhere if so directed in the conditions of consent. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZ3500.3.2. Note: A detailed stormwater and drainage plan is to be submitted to and approved by the PCA prior to commencement of building works.
- [PCC1115]
19. The footings and floor slab are to be designed by a practising Structural Engineer after consideration of a soil report from a NATA accredited soil testing laboratory and shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.
- [PCC0945]
20. All imported fill material shall be from an approved source. Prior to the issue of a construction certificate details of the source of fill, description of material, proposed use of material, documentary evidence that the fill material is free of any contaminants and haul route shall be submitted to Tweed Shire Council for approval.
- [PCC0465]
21. Prior to the Construction Certificate being issued, a Site Management Plan for the ongoing use and management of the site shall be prepared and submitted to the satisfaction of Council's General Manager or delegate. The Plan shall include management of mechanical plant and associated equipment (particularly where noise levels can be altered), hours and management of the Playland area, proposed site security including management of patrons and antisocial behaviour, monitoring and management of litter, and general site management. The approved Site Management Plan shall be kept onsite and implemented upon commencement of restaurant operations.
- [PCCNS01]
22. Prior to the Construction Certificate being issued, plans for the food outlet drawn to a scale of 1:50 shall be provided for assessment and approval by Council's General Manager or delegate, and shall include the following:

- a. Floor plan
 - b. Detailed layout of kitchen and café (including elevation plans) showing all equipment
 - c. All internal finish details including floors, wall, ceiling and lighting
 - d. Hydraulic design in particular method of disposal of trade waste
 - e. Mechanical exhaust ventilation as per the requirements of AS1668 Pts 1 & 2 where required
 - f. Servery areas including counters etc.
- [PCCNS02]
23. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council. Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

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

Water DSP4:	9.15 ET @ \$9997	\$91,473
Sewer Banora:	16.44 ET @ \$4804	\$78,978

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

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

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

[PCC0265]



24. Section 94 Contributions

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

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

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

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

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

- | | |
|--|-----------|
| (a) Tweed Road Contribution Plan:
S94 Plan No. 4 (Version 4.0) | \$252,236 |
| Sector2_4 | |
| (b) Extensions to Council Administration Offices
& Technical Support Facilities | \$276.96 |
| S94 Plan No. 18 | |

[PCC0215]

25. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for any works within the road reserve.

[PCC0885]

26. 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]

27. 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.

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]

28. 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]

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

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

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

[PCC0275]

30. 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]



31. 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*. Note - Infiltration pits are not accepted by Council as a form of stormwater treatment.
 - (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management. Typical water sensitive features include infiltration, maximising permeable/landscaped areas, stormwater retention /detention/reuse, and use of grass swales in preference to hard engineered drainage systems.
 - (d) Specific Requirements to be detailed within the Construction certificate application include:
 - (i) The installation of a shake down area at the entrance to the site (as required).

[PCC1105]

PRIOR TO COMMENCEMENT OF WORK

32. 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]

33. 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]

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

[PCW0965]

35. Prior to commencement of building works a stormwater drainage plan is to be submitted to and approved by the Principal Certifying Authority.

[PCW0955]

36. 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]

37. 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]

38. 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]

39. 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]

40. 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]
41. 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]
42. Prior to the commencement of works, the applicant shall ensure that a Site-Specific Safety Management Plan and Safe Work Methods for the subject site have been prepared and put in place in accordance with either:-
- (a) Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3rd Edition, NSW Government, or
 - (b) AS4804 Occupation Health and Safety Management Systems - General Guidelines on Principles Systems and Supporting Techniques.
 - (c) WorkCover Regulations 2000
- [PCW0025]
43. 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]
44. An Approval to Install a Waste Treatment Device shall be obtained prior to the commencement of the installation of the facility.
- [PCW1105]

DURING CONSTRUCTION

45. The proponent shall notify Councils Engineering and Operations Division upon excavation of any disused sewer junction awaiting capping by Council. [DUR2715]
46. 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]
47. 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]
48. A Sewer manhole is present on this site. This manhole is not to be covered with soil or other material.
Should additional fill be proposed in the area of the sewer manhole application shall be made to Council's Engineering & Operations Division for the raising of the manhole. [DUR2655]
49. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-
* 43.5⁰C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
* 50⁰C in all other classes of buildings.
A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works. [DUR2555]
50. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level. [DUR2545]
51. 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]
52. All water plumbing pipes concealed in concrete or masonry walls shall be fully lagged. [DUR2525]
-



53. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993. [DUR2515]
54. 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]
55. 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 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]
56. All roofwaters are to be disposed of through properly jointed pipes to the street gutter, inter allotment drainage or to the satisfaction of the Principal Certifying Authority. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZS3500.3.2. Note - All roofwater must be connected to an inter allotment drainage system where applicable. [DUR2335]
57. 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]
58. 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 Development Design and Construction Specifications prior to any use or occupation of the buildings. [DUR1875]
59. 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. [DUR1715]
60. 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]
-

61. 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]

62. 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]

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

[DUR0675]

64. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover NSW, Occupational Health and Safety Regulation 2001.

[DUR0645]

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

[DUR0445]

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

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

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

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



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

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

[DUR0435]

67. Excavation

- (a) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with WorkCover 2000 Regulations.**
- (b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.**

[DUR0425]

68. 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]

69. 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]

70. 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]

**71. 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]

72. Car parking spaces for people with disabilities shall be provided and constructed in accordance with the provisions of Section D of the Building Code of Australia. Particular attention is to be given to the deemed-to-satisfy provisions of Part D-3.5 of the Building Code of Australia and its requirement to comply with AS2890.1.

[DUR0095]

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

[DUR0005]

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

[DUR2645]

75. 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]

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

[DUR0815]



77. All works shall be carried out in accordance with the Acid Sulfate Soil Investigation and Management Plan as detailed in Section 7.6 of the Geotechnical Investigation for Proposed McDonald's Restaurant Cnr. Minjungbal Drive and Parry Street, Tweed Heads South prepared by Geotest Engineering Services Pty Ltd dated 22/1/07 (Job No: G075/11641) or to the satisfaction of Council's General Manager or delegate.
- [DUR1065]
78. All walls in the food preparation and food storage areas shall be of solid construction, easily washable, lightly coloured and tiled to a height of at least 2 metres above floor level, or where not tiled, cement rendered to provide a smooth even finish to ceiling. Note: Stud framed walls will not be acceptable. Intersections of all floors with walls shall be coved to a radius of not less than 25 millimetres.
- [DUR1495]
79. All flooring materials in the food preparation and storage areas are to be impervious, non slip, non abrasive and capable of withstanding heavy duty operation. Where tiling is to be used epoxy grout finished flush with the floor surface is to be used in joints or alternatively all tiles are to be butt joined and free of cracks or crevices.
- [DUR1505]
80. Windows and doors opening into food handling, preparation and storage areas shall be pest proofed in accordance with the provisions of Food Safety Standard 3.2.3.
- [DUR1515]
81. Separate hand washing facilities must be provided with warm water and located in a position where it can be easily accessed by food handlers and be of a size that allows easy and effective hand washing to the satisfaction of the General Manager or his delegate.
- [DUR1545]
82. A floor waste connected to the drainage system shall be provided within 1.5 metres of the opening of the cool room.
- [DUR1565]
83. 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]
84. 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]
85. 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/L. 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]



86. The site shall not be dewatered, unless written approval to carry out dewatering operations is received from the Tweed Shire Council General Manager or his delegate.
[DUR2425]
87. 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]
88. 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]
89. A concrete ribbon footpath 1.2 metres wide and 100 millimetres thick is to be constructed on a compacted base along the entire frontage of the site to Parry Street in accordance with Councils Development Design and Construction Specifications.
Twenty four (24) hours notice is to be given to Council's Engineering & Operations Division before placement of concrete to enable formwork to be inspected.
[DUR1735]
90. 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]
91. Stormwater and sewer infrastructure are present on this site. Should additional fill be proposed in the area of existing manholes upon the subject site, then application shall be made to Council's Engineering & Operations Division for the raising of the manholes.
These manholes are not to be covered with soil or other material.
[DURNS01]
92. The proponent shall comply with all requirements tabled within any approval issued under Section 68 of the Local Government Act.
[DUR2625]
93. 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]



94. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction. Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

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

[DUR2375]

95. The contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.

[DUR2015]

96. 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]

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

[DUR1885]

98. The finished floor level of the building is to be at a level not less than RL 2.60m AHD.

[DUR1435]

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

[DUR0005]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

100. Certification by a chartered professional structural engineer in respect of the structural adequacy of the existing blockwork fencing after repairs and modification works have been completed is to be submitted to the PCA and a copy provided to Tweed Shire Council prior to the issue of an interim/occupation certificate.

[POCNS01]

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

[POC1055]

102. 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]

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

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

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

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

- [POC0265]
104. 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]
105. 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]
106. 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]
107. The food premises shall provide appropriate notification to the NSW Food Authority prior to commencement of operations.
- [POC0625]
108. The premise is to be treated on completion of fit-out and prior to commencement of trading and thereafter on a regular basis by a Licensed Pest Control Operator. A certificate of treatment is to be made available for Council inspection on request.
- [POC0635]
109. Traffic calming devices are to be installed on Heffron Lane to the satisfaction of Council's Director of Engineering and Operations prior to the issue of an Occupation Certificate.
- [POCNS02]
110. Redundant road pavement, kerb and gutter or foot paving including any existing disused vehicular laybacks/driveways or other special provisions shall be removed and the area reinstated to match adjoining works in accordance with Councils Development Design and Construction Specifications.
- [POC0755]



111. Prior to the issue of an Occupation Certificate, documentary evidence shall be provided to Council to confirm the location of Council's stormwater infrastructure within the subject site, relative to the existing easement for services 2m wide, as created by DP 820649. If the existing stormwater infrastructure is not entirely contained within said easement, then further documentary evidence shall be provided to Council to confirm the registration of a minimum 3m wide easement for drainage of water, centrally located over said stormwater infrastructure within the subject property. This easement shall be created in favour of Council.
No permanent structures are permitted within these easements.

[POCNS04]

112. Prior to the issue of an Occupation Certificate, documentary evidence shall be provided to Council to confirm the registration of a minimum 3m wide easement for drainage of sewer, centrally located over all reticulated sewer within the subject property. The easement shall be created in favour of Council.
No permanent structures are permitted within this easement.

[POCNS03]

113. 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]

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

[POC0855]

115. 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]

116. 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]

117. 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]

USE

118. 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]



119. All deliveries to the premises are limited to between the hours of 7am to 6pm Monday to Saturday and 8am to 6pm Sunday and public holidays unless otherwise approved by Councils General Manager or delegate. [USE0195]
120. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises. [USE0225]
121. All externally mounted mechanical plant and equipment shall be acoustically treated so as to avoid the creation of offensive, or intrusive noise to any occupant of neighbouring or adjacent premises. [USE0235]
122. The servicing of waste facilities shall be limited to between the hours of 7am to 6pm Monday to Saturday and 8am to 6pm Sunday and public holidays unless otherwise approved by Council's General Manager or delegate. [USE0285]
123. A Post Construction Noise Impact Assessment report from a suitably qualified acoustic consultant shall be prepared and submitted for consideration and approval by Council's General Manager or delegate in respect to noise generated by plant, equipment and activities associated with the restaurant.
The assessment report shall consider the Detailed Noise Assessment for Proposed McDonald's Restaurant, Parry Street and Minjungbal Drive, Tweed Heads South prepared by Max Winders & Associates dated 9 July 2007 (Ref: L28307/PAK/07-074) and memorandum prepared by Paul King of Max Winders & Associates dated 14 July 2007 and include any recommended noise amelioration measures to be carried out by the applicant. The report shall be submitted within a period not exceeding 60 days of the date of operation of the restaurant.

The applicant shall carry out any such recommendations as provided within the noise assessment report to the satisfaction of the General Manager or delegate within 30 days from the date of the acoustic assessment, provided that the General Manager or delegate may extend the time period for the carrying out of any recommended acoustic treatment to a date which may be determined by the General Manager or delegate.
124. All loading/unloading to take place within the designated service vehicle bay within the subject property as referenced in Section 2.3.4 of the Detailed Noise Assessment Proposed McDonalds Restaurant, Parry Street and Minjungbal Drive, Tweed Heads South prepared by Max Winders & Associates dated 9 July 2007 (Reference: 28307/PAK/07-074). [USE0295] [USE0525]
125. Any premises used for the storage, preparation or sale of food shall comply with the *Food Act 2003* and Food Safety Standards. [USE0835]
126. All mechanical ventilation shall comply with AS1668.2 Ventilation Requirements. [USE0845]



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

[USE0875]

128. The use of the Playland facility shall be limited to between the hours of 8am to 10pm daily or to the satisfaction of Council's General Manager or delegate.

[USENS01]

129. All landscaping work is to be completed in accordance and maintained to a satisfactory level with the Landscaping Drawing Nos CP-01 - CP-02 (B) Project No 07076 prepared by Gamble McKinnon Green and dated 27 April 2007 prior to any occupation and during the use of the building.

[USE0735]

130. No items or goods are to be stored or displayed outside the confines of the site.

[USE0445]

131. The McDonald's Restaurant is permitted to trade 24 hours a day, seven days a week for a period of 12 months from the Occupation Certificate date of issue. Continuation of 24 hour trade beyond this period will require the submission and approval of a Section 96 Application to amend the Consent. This Section 96 Application is to be lodged 2 months prior to the expiration of the 12 month period. Should this 12 month period elapse without the 24 hour trade being extend by the aforementioned Section 96 Application, the trading hours for the restaurant shall be limited to between the hours of 5am and 12am (midnight), seven days a week.

[USENS01]

132. CCTV surveillance is to be installed to monitor customer movements during the operation of the Restaurant.

[USENS02]

REPORT:

Applicant: McDonald's Australia Limited
Owner: Transit Management Pty Ltd
Location: Lot 1 DP 543048; Lot 1 DP 781505; Lot 723 DP 820649; Minjungbal Drive Tweed Heads South
Zoning: 3(c) Commerce and Trade
Cost: \$1,628,000.00

BACKGROUND:

Council has received a Development Application for the demolition of the existing single storey commercial building and the erection of a refreshment room at the abovementioned site.

The proposed site for the Development is the old Von Bibra Affordable Cars sales yard. The site was used as a car sales yard for a number of years and has only been discontinued recently to facilitate assessment of this current Development Application.

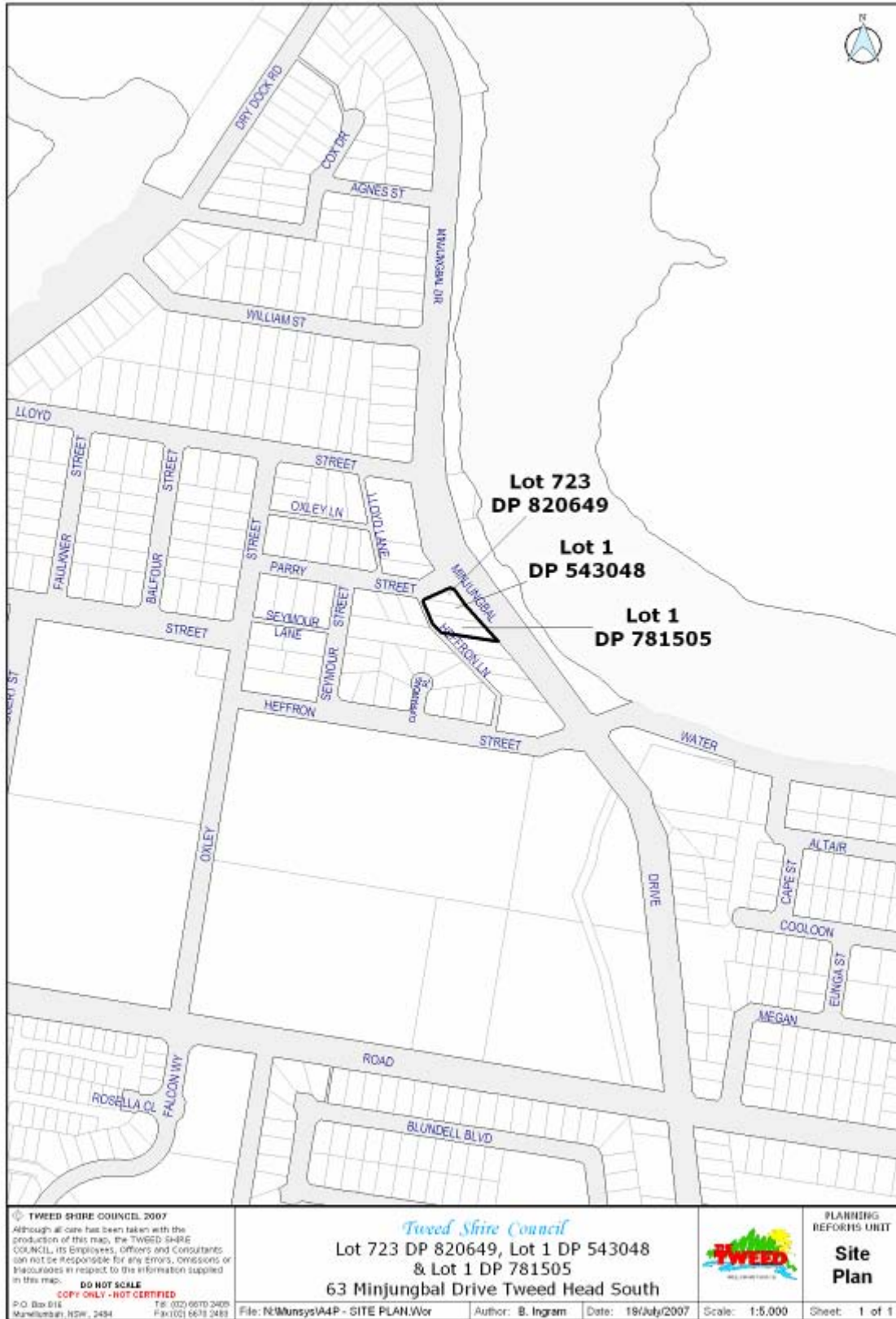
The development is proposed as a family restaurant and McCafe with adjoining children's 'playland' and terraced dining area. A drive-through ordering area is also proposed to the western boundary of the site. The interior gross floor area of the building covers approximately 360 metres squared with a terrace area covering approximately 45 metres squared. The total dining area is 159 metres squared including the terrace area. It is proposed that the Restaurant have 70 internal dining room seats and 40 external dining seats in the terrace area. It is proposed that the Restaurant operate on a 24 hour / 7 days a week basis. Vehicular access to the site is available via two crossovers, one to Minjungbal Drive and one to Parry Street. On-site parking is provided with 32 spaces, including one disabled parking space. The submitted documentation indicates that sufficient space has been allocated for parking and vehicular manoeuvring.

The new building is located in a similar position to the existing structure on site and will have a similar building footprint. A 12 metre high pylon sign is proposed to the Minjungbal Drive frontage with other, assorted signage located on and adjacent to the Restaurant building. Attractive, complementary landscaping is proposed to both street frontages.

The applicant has stated that considerable research has been undertaken to identify the site as being the most compliant with Council's codes and policies in the locality. The site currently incorporates 3 lots and encompasses a total site area of 2417m². Currently a blockwork wall of approximately 2.8m height exists along the full extent of the southwest boundary of the site.



SITE DIAGRAM:



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.
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Tweed Shire Council
 Lot 723 DP 820649, Lot 1 DP 543048
 & Lot 1 DP 781505
 63 Minjungbal Drive Tweed Head South



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

CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**(a) (i) The provisions of any environmental planning instrument****Tweed Local Environmental Plan 2000**

The proposed McDonald's Restaurant is defined under the Tweed Local Environmental Plan as a 'Refreshment Room'. A refreshment room is defined as "a restaurant, café, tea room, eating house or the like".

Clause 11: Under the Tweed Local Environmental Plan 2000 the subject site is zoned 3(c) Commerce and Trade. The proposed development falls under Item 2 and is therefore permissible with Development Consent of Council pursuant to Clause 11 of the Local Environmental Plan 2000.

The 3(c) Commerce and Trade Zone objectives are:

Primary Objective:

- *To provide for commercial, bulky goods retailing, light industrial and trade actives which do not jeopardise the viability or function of the sub-regional or business centres.*

Secondary Objectives:

- *To provide for those retailing activities which are not suited to, or desirable in, the other business zones or which serve the needs of the other businesses in the zone.*
- *To allow for other development that is compatible with the primary function of the zone.*

The proposed development fulfils the objectives of the zone as it represents a development proposal compatible with the primary function of the zone. The nature of the proposed McDonald's restaurant sits well with the other 3(c) commercial / light industrial land uses fronting Minjungbal Drive primarily on the basis that the nature of the proposed and existing uses will not conflict. The predicted traffic volumes, hours of operation and number of visitors associated with the McDonald's restaurant will not cause an unacceptable impact upon the current commercial enterprises immediately to the south of the site. The location of the site at the intersection of Minjungbal Drive and Parry Street further assists in traffic management, providing two crossover points, one to Minjungbal Drive and one to Parry Street, thereby enabling a balance of the ingress and egress volumes to the site.

The proposed development is to provide a facility that serves local needs and its design and location is such that this can be achieved without detracting from the character or amenity of the area.



Clause 17 of the TLEP requires Council to ensure proper consideration of development that may have a significant social or economic impact. The proposal is not considered likely to generate any significant social or economic impacts. The applicant has lodged a Socio-Economic Impact Assessment. This is later discussed in this report.

Clause 22 of the TLEP requires Council to considered development near designated roads. The objectives of Clause 22 is to protect and improve the capacity, efficiency and safety of designated roads and to prevent development on designated roads that would detract from the scenic attractiveness of the area of Tweed.

The RTA was referred the Development Application under Clause 22 of the Tweed Local Environmental Plan for comment and review. The RTA responded with the following:

“The Roads and Traffic Authority (RTA) has no objection to the proposed McDonalds development on the corner of Minjungbal Drive and Parry Street. The proposal would not adversely impact on the Pacific Highway or the operation of Minjungbal Drive.

However, this proposal may have implications for the operation of the local road network in the vicinity of the site. This would include the operation of the unnamed lane connecting Parry Street and Heferon Street, and the proximity of the entry to the site from Parry Street to the Minjungbal Drive intersection.

It is suggested this development proposal be forwarded to Council's development committee for consideration of these issues.”

As such the Development Application was referred and reported to the Development Traffic Advisory Group. This is reported later on in this report.

Clause 35 of the TLEP seeks to manage the effects of disturbance to acids sulphate soils. Investigations have identified the presence of Class 2 acid sulphate soils. A Geotechnical Investigation prepared for the site by Geotest Engineering Services Pty Ltd dated 22 January 2007 has been submitted to Council. Sampling has been carried out in general accordance with ASSMAC Guidelines (1988). It is apparent from the report that soils below 1 metre of the existing surface level contain PASS. Were works extend beyond 1 metre, liming will be required. It is proposed that excavation works are to extend only deep enough to connect to local services. This is expected in the area of 1-1.5 metres below the surface. As such PASS may be encountered and conditions have been recommended for the consent.

North Coast Regional Environmental Plan 1988

Clause 32B of NCREP applies as the subject land is located within the NSW Coastal Policy. The proposal will not create any overshadowing of beaches or waterfront open space or impede public access to the foreshore area, nor does the proposal contradict the strategic aims and objectives of The New South Wales Coast Government Policy, The Coastline Management Manual or, The North Coast: Design Guidelines.

State Environmental Planning Policies

State Environmental Planning Policy No 11.

The proposal for a McDonald's Restaurant is a schedule 2 development under SEPP 11 requiring assessment by the RTA and as such the proposal was referred to the RTA. Council received advice back from the RTA stating the Minjungbal Drive is a Regional Road under the care and control of the Tweed Shire Council. As such Council is the Road Authority for this road as well as the Consent Authority for the development application and consequently the application was not considered integrated development. The RTA advised though, the development triggers referral under State Environmental Planning Policy No. 11 which are Schedule 2 developments requiring comment by Council's Development Committee. As such the RTA requested the Development Application to be referred to the Council Development Committee for discussion. At Council's Development Traffic Advisory Group meeting of 19 July 2007 the Development Application was discussed. This is discussed later on in the report.

State Environmental Planning Policy No 33.

The proposal does not constitute hazardous or offensive development and as such is compliant with SEPP 33.

State Environmental Planning Policy No 55.

A contaminated lands search information request performed revealed that a hoist and two pumps were present at the subject site at some stage that may have previously been used in association with a service station, vehicular repair station or similar. As such a Stage 1 Environmental Site Assessment for the site was prepared by Geo Environmental Consultants Pty Ltd dated February 2007 has been submitted to Council for assessment. The assessment appears to have been prepared in accordance with the NSW Department of Conservation's (DEC) Contaminated Sites – Guidelines for Assessing Service Station Sites. Sampling was undertaken across the site in 6 locations however an additional two boreholes were sampled in the location of the identified hoist and pumps once the contaminated lands search were undertaken. No samples taken exceed health investigation levels for commercial and industrial sites. The report advises there is no evidence of underground storage tanks from the investigation and it is noted that fill ranges from 0.4 metres (southern end) to 0.9 metres (northern end) in depth under the concrete slab. It has been demonstrated and concluded that the site is suitable for the proposed development and that no contamination risks exist.

State Environmental Planning Policy No 64.

The Development Application also includes signage and as such State Environmental Planning Policy No 64 – Advertising and Signage is applicable to the Development Application. Having reviewed the proposed signage and SEPP it is submitted that the proposed signage associated with the McDonald's Restaurant is consistent with both the objectives of SEPP 64 and the assessment criteria provided in Schedule 1.

The table below is an overview of the signage proposed.

Reference	Description	Location
S1	Pylon sign, 12.0m O/A height, 3.6 x 3.6 m head.	In the north eastern corner of the site, adjacent to Minjungbal Drive.
S2A	Wall sign, 5.25 x 0.61m high, wording "McDonalds".	North eastern façade
S3A	A wall sign, 1.35 x 1.15m high wording "M" logo on 2.0m x 1.4m high non-illuminated fascia	On the façade at the end of the north eastern walkway entry point.
S3B	A wall sign, 1.35 x 1.15m high wording "M" logo on 2.0m x 1.4m high non-illuminated fascia	On the northern façade at the northern entry point to the building.
S4	Wall sign, 1.98 x 0.92m high, wording "McCafe".	On the face of the north eastern corner of the building .

S5	Wall sign, 1.20 x 0.56m high, wording "McCafe".	On the Eastern façade of the building.
S6	Height clearance gantry.	Above the drive thru queue in the eastern portion of the site.
S7A	Rotating presell translite	On the northern side of the drive thru queue in the eastern portion of the site.
S7B, S7C	Rotating menu board	Along the drive thru queue.
S8A	Directional sign, 0.7 x 2.3m high, double sided. Wording "Welcome / Thankyou".	Adjacent to the exit from the site on the Eastern boundary.
S8B	Directional sign, 0.7 x 2.3m high, double sided. Wording "Welcome / Thankyou".	Adjacent to the exit from the site on the Northern boundary.
S8F	Directional sign 0.7 x 2.3m high, single sided. Wording: "Drive Thru".	Located at the entry to the drive thru in the eastern portion of the site.
S9A	Speed sign (10km/hr). As specified.	
S9B	Speed sign (10km/hr). As specified.	
S9C	Stop sign as specified	
S9D	Stop sign as specified	
S9E	Stop sign as specified	
S9F	Pedestrian Crossing sign as specified (double sided)	
S9G	Accessible parking as specified	
S9H	No pedestrian access sign as specified.	
S9J	No pedestrian access sign as specified.	
S9K	Bike rack as specified (double side where shown)	
S10	Wording "Order here"	Above the drive thru queue on the western side of the site
S11	Wording "Pay here"	Above the drive thru queue on the western side of the site
S12	Flagpoles and banner	Adjacent to the Eastern boundary in the southern portion of the site.

The above list of signage falls into three categories: operational, wall and pylon signage. The operational signage is a standard package of signs located throughout the landscape curtilage that includes directional signs, safety signs and those relating to the drive-through.

The wall signage is a refined package of lettering located on the proposed building to identify the use, including 'McDonalds' and 'M' in both yellow and white.



The main pylon sign features a sign based upon a standard symbol that will identify the site to passers-by. One directional sign is proposed at each street frontage.

An assessment against Schedule 1 Assessment Criteria of SEPP 64 is provided below.

Schedule 1 Assessment Criteria	Impact Statement
<p>1 Character of the area</p> <ul style="list-style-type: none"> • Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located? • Is the proposal consistent with a particular theme for outdoor advertising in the area or locality? 	<p>While no specific theme for outdoor advertising exists within the locality, the proposal does not adversely affect the existing character of the area. Given the site and adjacent allotments have housed commercial / retail uses for many years, all of which include a number of advertising devices to the main street frontage of Minjungbal Drive, it is submitted that the proposal will see a continuation of this local retail theme.</p>
<p>2 Special areas</p> <ul style="list-style-type: none"> • Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas? 	<p>On the eastern side of Munjungbal Drive – opposite the site – is the Ukerebagh Nature Reserve. Though that portion of the Reserve immediately opposite the site is not extensively utilised by the public, this area represents an important public resource and link to the greater Reserve area. Notwithstanding, it should also be acknowledged that this linear parkland has frontage to the busy Minjungbal Drive (formerly the Pacific Highway). It may be argued that part of the reasoning behind the lack of patronage to the park is because of the perceived low amenity that already exists in the area given traffic volumes and noise.</p> <p>The signage proposed as part of the McDonald's restaurant is not of a scale nor in a number that will adversely affect the existing amenity associated with this parkland. In fact, and as represented in the social planning assessment that supports this application, the proposed signage will play a fundamental role in attracting people to the restaurant and, as a result, increase the likelihood of park patronage. Increased patronage will have a positive impact upon the amenity of the parkland area.</p>

<p>3 Views and vistas</p> <ul style="list-style-type: none"> • Does the proposal obscure or compromise important views? • Does the proposal dominate the skyline and reduce the quality of vistas? • Does the proposal respect the viewing rights of other advertisers? 	<p>The proposed pylon (pole) sign is intended (obviously) to advertise the location of the restaurant. While it is important to ensure that this signage is in a prominent position on site, it is submitted that the proposed 12m height is not at a scale that will obscure nor compromise important views.</p> <p>The local vistas are dominated by the mature trees located in the Ukerebagh Nature Reserve. Many of the species evident well exceed 12m in height. Given the height and number of these trees, it is reasonable to argue that the single, proposed McDonald's pole sign will not have an overall detrimental impact upon the views and skyline of the area.</p>
<p>4 Streetscape, setting or landscape</p> <ul style="list-style-type: none"> • Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape? • Does the proposal contribute to the visual interest of the streetscape, setting or landscape? • Does the proposal reduce clutter by rationalising and simplifying existing advertising? • Does the proposal screen unsightliness? • Does the proposal protrude above buildings, structures or tree canopies in the area or locality? 	<p>As discussed above, the proposed pole sign is of an appropriate scale for the streetscape and landscape as it does not protrude above tree canopies not does it overwhelm the existing visual character of the locality.</p>
<p>5 Site and building</p> <ul style="list-style-type: none"> • Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located? • Does the proposal respect important features of the site or building, or both? • Does the proposal show innovation and imagination in its relationship to the site or building, or both? 	<p>While there do not exist any specifically important features or characteristics on site, the proposed signage is designed specifically to be compatible with the scale and nature of the proposed restaurant.</p>



<p>6 Associated devices and logos with advertisements and advertising structures</p> <ul style="list-style-type: none">• Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	<p>No safety devices, platforms, lighting devices or logos are required to be designed in conjunction with that proposed. All signage will be monitored and managed in accordance with the required standards.</p>
<p>7 Illumination</p> <ul style="list-style-type: none">• Would illumination result in unacceptable glare?• Would illumination affect safety for pedestrians, vehicles or aircraft?• Would illumination detract from the amenity of any residence or other form of accommodation?• Can the intensity of the illumination be adjusted, if necessary?• Is the illumination subject to a curfew?	<p>It is submitted that the proposed illuminated signs will not result in unacceptable glare. the nearest residential area is to the west of the site, while the main, pole sign is proposed to the Minjungbal Drive (eastern) frontage of the site. It is submitted that adequate physical distance will exist between this sign and the nearest residence.</p>

All proposed signage has been assessed under State Environmental Planning Policy No 64 demonstrating general compliance with SEPP 64. The main issue that arises with the signage proposed is the height of the 12 metre pylon sign. An assessment of signs along Minjungbal Drive indicates that the proposed 12 metre high sign would be one of the highest along Minjungbal Drive if approved. It is considered appropriate to limit the height of the sign to 10 metres to keep it consistent with other recent approvals of signage and existing signage in the locality and to ensure that the proposal creates a positive impact on the streetscape. Given the level nature of the road approaches to the proposed site it is not required that the height of the Pylon Sign be 12 metres as it will still be clearly visible and achieve its purpose at a height no greater than 10 metres. The Fast Food outlets further south along Minjungbal Drive have received approval for Pylon Signs that are at a height no higher than 10 metres above ground level and as such it is considered satisfactory that a restriction be placed on the proposed McDonald's Pylon Sign to be no greater than 10 metres high above ground level.

State Environmental Planning Policy No 71.

The subject land is affected by SEPP 71 – Coastal Protection. The proposal will not impede public access to the foreshore, cause overshadowing to the foreshore or make any significant negative impacts that may conflict with the criteria contained in clause 2 and 8 of SEPP 71. The proposal complies with the provisions of SEPP 71.

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

No draft Environmental Planning Instruments are applicable to the Development Application.

(a) (iii) **Tweed Shire Development Control Plan 2007**

The following sections of the Tweed Shire Development Control Plan 2007 are applicable to the Development Application:

A2. Site Access and Parking Code

The Development Application was referred to Council's Traffic Engineer who referred the Development Application to the Development Traffic Advisory Group (DTAG). The DTAG assessed the proposal and the following comments were provided from Council's Traffic Engineer:

"3. Proposed McDonalds Restaurant - Corner Minjungbal Drive and Parry Street, Tweed Heads South DA07/0457; Development Applications General

A development application has been received for a McDonald's Restaurant at the corner of Parry Street and Minjungbal Drive, South Tweed Heads.

The application triggers State Environmental Planning Policy No. 11 (Traffic Generating Developments) as it is a development identified in Schedule 2 – 'drive-in takeaway food outlets'; thus requiring RTA and Police Department (Traffic Branch) concurrence prior to Council determination.

A traffic report by Viney Traffic Engineering Pty Ltd dated 2 May 2007 was submitted with the development application. The proposal and traffic report can be summarised as follows:-

- One entry/exit with left in/left out only to Minjungbal Drive, approximately 60 metres from the Parry Street intersection. Expect 34 left out and 70 left in vehicle movements at peak hour (pm).*
- One entry/exit with left and right turns to Parry Street, 18 metres from the Minjungbal Drive intersection. Expect 47 left out, 34 right out and 45 right in vehicle movements at peak hour (pm).*
- The proposal will marginally increase right turn traffic flows from the north and from the west at the Minjungbal Drive/ Heffron Street/Water Street traffic signals but this flow would be recorded outside of the critical school peak at this intersection and would have minimal impact on overall operation.*

- *The U-turn restrictions imposed on intersections to the north and south of the site will result in some circulation using either Seymour Street or the laneway (Heffron Lane) between Parry Street and Heffron Street.*
- *Additional usage of the laneway (Heffron Lane) would not be desirable because of the presence of sharp bends with poor sight distance. It would be desirable to operate the laneway as a one-way connection from Parry Street to Heffron Street.*
- *Internal parking layout for 32 cars complies with AS/NZS 2890.1:2004.*
- *There is a shortfall of off street parking when the RTA's Guide to Traffic Generating Developments is used (guidelines recommend 37 carparking spaces be provided compared with 32 carparking spaces shown on the proposal plan). 7 on-street spaces can be accommodated on the Minjungbal Drive frontage (parking lane).*

Other comments:-

- *One way traffic flow is undesirable for any street or lane.*
- *Southbound motorists on Minjungbal Drive will be tempted to do unlawful U-turns at the Heffron Street/Minjungbal Drive signalised intersection.*
- *Speed humps along Heffron Lane may be a consideration.*
- *Existing traffic volumes for Heffron Street – ADT of 1,886, Minjungbal Drive – ADT of 21,910; Parry Street and Heffron Lane – no data available, expect ADT less than 3,000 for Parry Street and less than 300 for Heffron Lane.*

The Development Traffic Advisory Group noted that consideration should be given to:-

1. *Removing the left out egress onto Minjungbal Drive.*
2. *Installing traffic calming devices on Heffron Lane to deter this lane from being used by McDonalds patrons.*
3. *Installing a centre median at the intersection of Parry Street and Minjungbal Drive on the Parry Street leg to provide delineation."*

Council's Traffic and Transport Engineer and Development Assessment Officer have considered the recommendations above.

Item 1 from the abovementioned consideration cannot be imposed as a condition of consent as it will prohibit the service vehicles, for example trucks, from entering the site and leaving the site in a forward direction. The left exit onto Minjungbal Drive is necessary to facilitate a forward entry and exist of service vehicles from the site. There was also concerned raised over the potential over-queuing of vehicles from the drive through onto Minjungbal Drive so to eliminate that problem from occurring the following condition has been recommended which ensure that vehicles entering the site endeavouring to utilise the drive through service area and when it is at capacity they can park safely on the site without queuing out onto Minjungbal Drive:

1. The entry/exit treatment at Minjungbal Drive is to be amended to cater for drive through over-queuing vehicles and pedestrians to the satisfaction of Council's Director of Engineering and Operations.

Items 2 and 3 have been included as recommended conditions of consent to read as follows:

1. Traffic calming devices are to be installed on Heffron Lane to the satisfaction of Council's Director of Engineering and Operations prior to the issue of an Occupation Certificate.
2. A traffic (splitter) island is to be installed at the Parry Street and Minjungbal Drive intersection on the Parry Street leg to provide delineation to the satisfaction of Council's Director of Engineering and Operations.

The proposed development is also affected by certain parking rates under Section A2 – Site Access and Parking Code. The proposed development proposes a total of 32 car parking spaces including one disabled car parking space, a 'drive thru' facility for up to 9 vehicles and a waiting bay. The total dining area of the Restaurant is 159 metres squared which includes the indoor dining area and the terrace area. The Restaurant proposes to have a total of 110 seats, that being made up of 70 internal dining seats and 40 external dining seats in the terrace area.

Under the Section A2 – Site Access and Parking Code a Fast Food outlet requires 1 car park space every 4 seats plus queuing area for 6 cars where drive thru is provided, 1 car park space per staff at peak operating times, 1 Heavy Rigid Vehicle parking space and 2 bicycle parking per 100 metres squared GFA up to 100 metres squared and thereafter at 1 bicycle parking per 200 metres squared GFA. Applying the other Fast Food outlet rate which is based on a total GFA of 1 per staff plus 12 per 100 metres squared GFA was not used as it includes components of the building such as cooking areas, storage and refrigeration and freezer areas and the like that do not necessarily generate the need for off street car spaces. A condition of consent has been imposed that a maximum number of only 110 seats be installed in the Restaurant in accordance with the following calculations.



As such a total of 110 seats divide by 4, plus 10 staff car parking is required totalling 38 car parking spaces. Applying a 20% reduction in accordance with the Code the proposed development requires a total of 30 car parking spaces and as 32 are provided the proposal complies with the car parking rates of the Code. Provision has also been made for a Heavy Rigid Vehicle to use a loading bay at the southern end of the building with site entry from Parry Street and egress to Minjungbal Drive. The proposal requires that provision be made for a total of 5 bicycle parking and as such this has been made as a condition of consent.

The proposal could also be assessed as a "Refreshment Room". Under this rate 1 space is required per staff at peak operating times and 1 space per 7 metres squared of dining room area. Under these calculations the proposal would require 159 divide by 7, plus 10 staff car parking totalling 32 car parking spaces being required. In providing 32 off street car spaces the proposal would also comply with this requirement.

Notwithstanding the above, there are a number of other factors that further reduce demand for off street car spaces. These include on street car spaces along Minjungbal Drive, the 'drive-thru' facility and the likelihood that not all employees will require an off street car space.

The traffic report by Viney Traffic Engineering dated 2 May, 2007 indicates that the wide kerb lane at Minjungbal Drive could safely accommodate seven (7) on street car spaces without affecting the operation of this road and therefore provides an acceptable overflow parking area. While it is recognized that on street car spaces are not for the exclusive use of any one business in this locality and calculation of on site car spaces it is not unreasonable that a number of these car spaces will be used by patrons of the proposed development.

A maximum number of 10 persons are expected to be employed at the proposed refreshment room at any one time. Based on information collected from similar sized stores approximately 42% of employees are under the age of 17 years and ineligible for a drivers license in NSW. In addition, it is expected that a number of staff will use public transport (bus routes 601, 602 and 605) or are likely to be driven too and from the establishment. On this basis it is unlikely that each employee will require a car space.

For convenience a significant proportion of customers will use the 'drive-thru' facility which provides a high turn over service and a queuing capacity of up to nine cars and one holding bay. This facility will reduce demand for off street car spaces during peak times.

Under the Fast Food outlet rate under the Development Control Plan: Section A2 – Site Access and Parking Code the proposal fully complies with the required number of off street car spaces as 30 car spaces are required and 32 are provided. Other factors such as availability of 7 on-street car spaces, the ‘drive thru’ facility, and the likelihood that not all employees will require an off street car space further reduces the demand for car spaces during peak periods. On balance and in consideration of these matters the proposed development provides a sufficient number of off street car spaces.

A3. Development of Flood Liable Land

Part 3 of the consolidated DCP provides directions for design in flood liable areas. The proposed restaurant will be designed to comply with the floor level required for flooding in this locality. Similarly, the design of the restaurant will conform with the requirements for development outlined in parts A3.3.2 and A3.3.4 of the DCP. The site is located on land with a natural RL of approximately 2.2m. This is below Council’s nominated Design Flood Level being 2.6m in this area. Therefore the site is flood prone. For commercial developments, Section A3 of Council’s consolidated DCP does not require the site to be filled above the Design Flood Level. The site only needs to drain to the street, which it currently does. It is proposed to have the building at RL 2.605 (i.e. just above the Design Flood Level) thus eliminating the need to provide flood free storage. The proposal is compliant with A3 of the Plan.

A4. Advertising Signs Code

As detailed earlier the Development Application also proposes signage as part of its application. The Applicant has submitted an assessment against SEPP 64.

The proposed signage associated with the Development Application has been designed in accordance with the principles and objectives of Part A4 Advertising Signs Code.

The section on SEPP 64 of this report provides an overview of those signs proposed. The area of the proposed signs does not exceed the maximum allowable areas as calculated under Part A4.2.4 of the DCP.

The applicant has indicated that specific care has been taken to ensure their signage is of a scale, proportion and number that is consistent with the localities their restaurants are located. This is reflected in the signage proposed within this current application for the Tweed Heads South site and its compliance with the aims provided in Part A4.3.2 of the DCP.

Also submitted with the Development Application was a completed Advertising Structures and Signs Checklist. This checklist provides an overview of the proposal’s compliance with the relevant aims for signage on site and raised no issues against the plan. The only issue raised with the proposed signage is that of the 12 metre high Pylon Sign.



A13. Socio-Economic Impact Assessment

The Development Application was submitted with a completed Socio – Economic Impact Assessment Report. Council's Social Planner has assessed the report and provided the following comments:

"The SEIA comprehensively assesses the social and economic issues, and includes a DCP 45 assessment and my comments. The conclusions of the SEIA cover the issues raised and make some appropriate recommendations that should be translated into conditions to ensure they are implemented."

The Socio-Economic Impact Assessment (SEIA) has considered the proposed development within the context of Tweed Shire Council's SEIA guidelines and has taken into account the perspectives of the local community respondents, Council and key stakeholders. This assessment has found that there are a number of potential social and economic benefits that can be harnessed from the development. However there are also some areas for concern. Limited feedback was received from the local community letterbox drop therefore it was not possible to ascertain the full range of opinion from local residents. A number of mitigation and management measures have been proposed to mitigate against potential negative impacts that may arise and these have been included as conditions of consent.

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

NSW Coastal Policy

The proposed site is located within the area covered by the Government Coastal Policy, and has been assessed with regard to the objectives of this policy. The Government Coastal Policy contains a strategic approach to help, amongst other goals, protect, rehabilitate and improve the natural environment covered by the Coastal Policy. The proposed restaurant complies with the objectives of the Government Coastal Policy.

Demolition of the Existing Building

Clause 92(b) of the Environmental Planning & Assessment Regulation 2000 is applicable to the proposal. Council's Building Services Unit has reviewed the proposal and recommended appropriate conditions be imposed in relation to the proposed demolition works. The existing building contains a slab on ground however it is constructed of brick with some glass walls and a tin roof. No pre-demolition testing is considered necessary due to the products used in construction.

The Building Code of Australia

The Classification of the building under the Building Code of Australia is Class 6 & 10b.

(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

Aesthetics, Bulk and Scale

The development is located on a major road within Tweed Shire in a prominent location. The appearance of the building is critical. The bulk and scale of the building is appropriate for that of a commercial building. A 3D coloured photomontage plan of the building and associated works has been submitted to Council. A large existing 2.8 metre high block wall exists on the site that on the photomontage is bare. However the Landscaping Plan submitted indicates that vine trellises with dense climbers to screen the walls will be planted to create a more desirable appearance from the street.

The applicant states that extensive investigation and research has gone into the proposed layout of the site and it is considered satisfactory as the proposal achieves a visually pleasing building design while maintaining traffic safety by having increased sight lines by not placing the building abutting the corner of the site. The design and location of the building and landscaping incorporates CPTED (crime prevention through environmental design) principles to ensure there is adequate opportunity for casual surveillance of car parking areas, access and the drive through facility and there are no entrapment areas.

Noise

A Noise Assessment Report submitted with the Development Application was prepared by Max Winders & Associates dated 30 April 2007. This report was assessed by Council's Environment and Health Services Unit and considered to be inadequate. The proposed restaurant intends to trade 24 hours per day 7 days per week however the onsite noise assessment has not been undertaken during evening and night periods. Background noise has been known to reduce in this location due to the reduction of vehicular traffic noise along Minjungbal Drive and from the reduction of activities being undertaken from neighbouring commercial/light industrial businesses. As such Council requested that a new detailed noise assessment to be submitted to the satisfaction of Council.

A new detailed Noise Assessment has been received by Council. A further discussion with the consultant on 13 July 2007 resulted in a memorandum dated 14 July 2007 being submitted to Council in addition to the report.

The main sources of noise associated with the development include the following:

- Plant and equipment noise (air conditioning, refrigeration, cooking and exhaust fans)
- Traffic Noise (parking, drive thru, waste and delivery vehicles)
- Drive thru remote order point



- General site usage
- 24 hour 7 day operation (may trade less depending on patron attendance).

It is noted that the residential units located to the west and south of the subject site are most affected by noise emission. Additional noise measurements were taken by Max Winders & Associates on 28/29 June 2007, with average background noise levels determined – day 55.2 dB(A), evening 50.1 dB(A), and night 39.4 dB(A).

A summary of the measured noise results in comparison with the Department of Environment and Climate Change (DECC)'s Industrial Noise Policy is outlined below:

	L _{A90}	L _{Aeq}	INP Intrusive (urban)	INP Amenity (acceptable)	INP Amenity (modification)	Adopted Levels
Day	55	61	60	60	52	50
Evening	50	58	55	50	48	48
Night	39	50	44	45	40	40

Adopted noise levels for this site are considered conservative. As the development is proposed to operate on a 24 hour 7 day basis, noise sources would be required to comply with night time criteria (eg fixed plant and equipment), or be limited to day time operation only (eg deliveries).

Refrigeration and air conditioning and refrigeration plant, kitchen and toilet exhaust fans, and associated equipment will be installed on the roof of the building behind parapets. Standard equipment types have been outlined. It is noted that some equipment will have a varying speed setting, which may need to be managed during the night periods.

The consultant from Max Winders & Associates revealed that sleep disturbance levels were based on the Queensland Environmental Protection (Noise) Policy 1997 and the World Health Organisation "Guidelines for Community Noise 1999. The consultant stated that the development will comply with the guidelines for noise external to sleeping areas, and noted that noise levels in the vicinity actually exceed these guideline levels at present without the restaurant operating, concluding that noise events from the development will be generally undetectable.

Service delivery vehicles will access the designated service bay near the drive-thru lane, and may exhibit noise from the vehicles themselves, refrigeration units, reversing beepers, and general unloading/pickup. Max Winders & Associates recommends placing restrictions on the hours in which these vehicles are operating at the site.

Details of the remote order point for the drive thru were provided in the memorandum provided by the consultant dated 14 July 2007. The volume of the speakers can be altered depending on the level of traffic noise experienced, however the barrier and distance attenuation appear sufficient to comply with night time adopted noise levels.

External patron noise will be generated from use of external terrace dining areas and the Playland area to the north of the building. Noise generated from the play area may be higher than adopted night time levels, and as such, Max Winders & Associates recommends placing restrictions on the hours in which these areas are used (day/evening use only) and as such a condition has been recommended which limits the use of the Playland to between the hours of 8am to 10pm daily or to the satisfaction of the General Manager or his delegate.

The existing Fast Food outlets along Minjungbal Drive have the following approved trading hours:

Hungry Jacks South Tweed Heads

Sundays – Wednesdays 6am – 10.30pm

Thursdays 6am – 11pm

Fridays and Saturdays 6am – 12am

Hungry Jacks Tweed Heads

Sunday – Thursdays 7am – 10pm

Fridays – Saturdays 7am – 11pm

KFC South Tweed Heads

10am – 10pm 7 days a week

It appears that conservative maximum noise levels have been adopted for the site, particularly in relation to night time operation, and as such, noise mitigation measures have been incorporated into the design and operation of the site to comply with these levels. Due to the proximity to neighbouring residential premises, it is important to confirm that these levels are actually being met on the site. Conditions have been recommended that require a post construction noise assessment and report, and an ongoing Site Management Plan to be prepared that is used in the operation of the site. The existing masonry fence along the south and west boundary will need to be renovated and retained to a height of 2.8m to provide further noise mitigating measures. As such it is considered that the proposal to operate 24 hours a day 7 days a week will not have an adverse and undue amenity effect on surrounding residents.

Landscaping

A landscape plan has been prepared by Gamble McKinnon Green providing a schedule of indicative species and pot sizes. The Landscaping Plans were reviewed by Council's Landscape Architects who advised that suitable plant species were proposed to ensure the site would be visually pleasing from both Minjungbal Drive and Parry Street.

The following design principles are central to the proposed Landscaping Plan for the site;

- The use of signature native species of canopy trees appropriate to the site's interfaces and within the car park area;
- Planting densities to respond to the need for screening relating to the sensitivity of the site's interfaces;
- Use of low maintenance and drought tolerant native species appropriate to local conditions;
- Planting to maintain clear sightlines from the main vehicle approaches and exists;
- Create and maintain safe pedestrian movement through the car park by use of raised pedestrian pathways and clean stem medium sized canopy trees within the car park.
- A Vine trellis with dense climbers is proposed on the existing block wall of the site to properly create a more visual pleasing wall from the streetscape.

A condition has been recommended to ensure that the landscaping be carried out and maintained in accordance with the plans to ensure that the site is development and remains visually pleasing from the streetscape.

Safety, Security and Surveillance

The areas of the site within which pedestrians will move include the car park. Clear sightlines will be created and maintained within the car park and the public forecourt. The landscaping will ensure clean trunk, canopy trees will maintain those sightlines and passage surveillance of the car park area. Lighting will be provided by pole mounted area lighting within the car park to ensure visibility after nightfall, while the public forecourt area will be appropriately lit both on the building elevation and from within. The development was referred to the Local area police command where they provided comment, which is discussed later on in this report.

The proposal has potential to impact on adjoining residential properties by way of light spill. In this regard the applicant has proposed on the submitted plans to maintain the existing 2.8 metre existing block wall to screen noise and lighting from cars. Additionally, a landscaped buffer will be provided on the site in between the wall and site.

Council's Environment and Health Unit has reviewed the proposal and have advised that the application is considered suitable for approval subject to restrictions regarding the operation of the Restaurant.

Water Supply and Effluent Disposal

Council's 100mm dia main exists along both Minjungbal Drive and Parry Street. The existing car sales yard would have been connected to this main. If an upgrade is required, this will be addressed under a Section 68 Application.

Council will require an easement to be created over the sewer main within the subject property to a depth equivalent to at least twice the depth of the sewer to the finished surface level (with a minimum easement width of 3.0m). The easement is to be centrally located over the sewer main. Council will not allow any structures upon the subject site to be located within this easement (excluding the existing 2.8m boundary block wall). The applicant has provided documentation to Council to indicate a relocated sewer main clear of any encroachment.

Stormwater Drainage

Site drainage has been addressed within the submitted Storm Water Management Plan (SWMP). This will be further assessed during a Construction Certificate and Section 68 Application assessment process. Council's GIS indicates that stormwater infrastructure bisects the site, north of the existing Lot 1 DP 543048, Lot 723 DP 820649 boundary.

A kerbside inlet exists along Minjungbal Drive near the intersection of Minjungbal Drive and Parry Street. The point could provide the site with a legal point of discharge, however the submitted SWMP has nominated to connect into an existing manhole (that has been identified within the property near the intersection of Minjungbal Drive and Parry Street).

The submitted SWMP has nominated a CDS unit and infiltration pits for stormwater quality. It shall be conditioned that infiltration pits are not accepted as treatment devices. This can be assessed further during the Construction Certificate and Section 68 Application assessment process.

Waste Disposal

A soild waste storage area is to be provided to the west of the loading dock. The Statement of Environmental Effects states that a Waste Management Plan will be prepared by the applicant upon the request of Council. This has been requested prior to the any Construction Certificate is issued to ensure correct waste procedures can be carried out on site from the proposed development.



Groundwater

A Geotechnical Investigation for the proposed McDonald's Restaurant prepared by Geotest Engineering Services Pty Ltd dated 22 January 2007 has been submitted with the Development Application. It is noted that groundwater is present between 1.7 and 1.9 metres below the existing surface level. It is not anticipated that groundwater will be intercepted during construction works however due to groundwater fluctuation, general conditions will be recommended for the consent.

(c) Suitability of the site for the development

Surrounding Land uses

Immediately abutting the site to the south are commercial premises including a Glass Shop and a Take-Away Shop and the Park Reserve between the site and the Tweed River. Kerbside parking exists abutting the park in Minjungbal Drive.

To the north across Parry Street is further commercial development and to the west of the site is Heffron Lane and then residential development.

The site is considered to be suitable for the proposed development as it is in accordance with is the zoning provisions and objectives. As mentioned earlier, the property has access to all essential services, has good street access and is generally in keeping with the intention of the character of the area. The land is not flood or bushfire prone.

The site has been used for a number of years as a used car sales yard and it is considered that the proposed McDonald's Restaurant to be suitable for the site. The proposed development will not alter the character of the site. The built form elements are similar to those presently located surrounding the site. The proposed development will not have an impact on the visual amenity of the site or character of the area. The site is of a size and shape that can adequately accommodate the proposed development. It is well located in terms of both the road network and adjacent land uses to provide the facilities envisaged.

Immediately adjoining the site are a number of commercial premises to the south and residential apartment buildings to the west. Land use in the vicinity of the site is predominantly residential however the site forms part of a commercial centre located on the western site of Minjungbal Drive. A range of retail outlets, food premises, personal services, medical services and other facilities are located along the commercial strip.

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

Given that the majority of the submissions during the advertising period raised concerns about noise and the operation of the Restaurant 24 hours a day, Council recommended in correspondence dated 20 June 2007 that McDonald's Restaurant amend the submitted Development Application to operate only between the hours of 6am and 12am, seven days a week. The applicant responded to the request by Council as follows:

"It is recognised that some local residents may hold the view that 24 hour operation will adversely affect the amenity of the area in terms of noise from customers and operational issues. However, it should be noted that compared to peak periods the number of customers visiting the site late at night reduces considerably minimising potential noise disturbance of nearby residential land uses. As indicated in the noise report by Max Winders & Associates dated 9 July, 2007 a number of noise control measures are in place to ensure the proposal complies with acceptable noise criteria as identified in the NSW Industrial Noise Policy. These measures include:

- *a 2.8m high masonry barrier along the western boundary to Parry Lane;*
- *kitchen and toilet exhaust fans along with the air conditioning and refrigeration plant will be located within an acoustically screened recessed well and located on the roof behind parapets to satisfy acoustical requirements;*
- *limitation of hours of service vehicles (refrigerated 7am to 6pm), non-refrigerated (7am to 10pm); and*
- *limiting the use of the outdoor play land to day/evening period only.*

In addition to the above, it is understood that during the evening period volume levels of speakers used in association with the "drive thru" facility may be reduced consistent with the reduction in background noise levels. The majority of these operational issues may be conditioned to ensure noise levels fall within acceptable environmental limits.

Recognising that the development will generate additional traffic on local streets this is generally limited to southbound traffic accessing Minjungbal Drive. Northbound traffic is expected to access Minjungbal Drive directly via Parry Street or Minjungbal Drive and is not likely to use the local street network. Further the noise report by Max Winders and Associates dated 9 July, 2007 indicates that "the existing amenity of existing residential uses is significantly affected by the noise of traffic on Minjungbal Drive, to such an extent that noise generated by the McDonalds will typically fall within current ambient noise levels". On this basis it is accepted that traffic generation through local streets is not likely to have a detrimental impact upon the amenity of nearby residential properties."



Noise and the operation of the Restaurant 24 hours a day, seven days a week has been comprehensively addressed earlier on in this report, and it is considered that subject to conditions being imposed below the proposal will not have an adverse impact on the amenity of the locality and Council will be able to monitor the acceptability of the development.

The special conditions in relation to noise recommended to be included as conditions of consent include the following:

- The development shall comply with the Detailed Noise Assessment for Proposed McDonald's Restaurant, Parry Street and Minjungbal Drive, Tweed Heads South prepared by Max Winders & Associates dated 9 July 2007 (Ref: L28307/PAK/07-074) and memorandum prepared by Paul King of Max Winders & Associates dated 14 July 2007 except where varied by the conditions of consent.
- Prior to the Construction Certificate being issued, a Site Management Plan for the ongoing use and management of the site shall be prepared and submitted to the satisfaction of Council's General Manager or delegate. The Plan shall include management of mechanical plant and associated equipment (particularly where noise levels can be altered), hours and management of the Playland area, proposed site security including management of patrons and antisocial behaviour, monitoring and management of litter, and general site management.

The approved Site Management Plan shall kept onsite and implemented upon commencement of restaurant operations.

- A Post Construction Noise Impact Assessment report from a suitably qualified acoustic consultant shall be prepared and submitted for consideration and approval by Council's General Manager or delegate in respect to noise generated by plant, equipment and activities associated with the restaurant.

The assessment report shall consider the Detailed Noise Assessment for Proposed McDonald's Restaurant, Parry Street and Minjungbal Drive, Tweed Heads South prepared by Max Winders & Associates dated 9 July 2007 (Ref: L28307/PAK/07-074) and memorandum prepared by Paul King of Max Winders & Associates dated 14 July 2007 and include any recommended noise amelioration measures to be carried out by the applicant. The report shall be submitted within a period not exceeding 60 days of the date of operation of the restaurant.

The applicant shall carry out any such recommendations as provided within the noise assessment report to the satisfaction of the General Manager or delegate within 30 days from the date of the acoustic assessment, provided that the General Manager or delegate may extend the time period for the carrying out of any recommended acoustic treatment to a date which may be determined by the General Manager or delegate.

Also, by limiting the period of 24 hours trading for a period of 12 months from the date of the issue of an Occupation Certificate will also provide Council with the opportunity to further assess the operation of the facility trading 24 hours a day, seven days a week.

The Development Application was advertised in accordance with Council's Tweed Consolidated Plan for a period of fourteen days between Wednesday 30 May 2007 and Thursday 14 June 2007. During the advertising period a total of eleven (11) submissions and a petition signed by 194 concerned residents and business' of Tweed Heads South objecting to the construction and operation of a McDonalds 24 hr Restaurant.

An assessment of the other major issues raised in the submissions is provided below:

Issues Raised:	Comment:
<p><i>"The proposal to have the traffic exit the site onto Parry Street and to use Parry Lane as the means of access to Minjungbal/Hefron Street intersection is unacceptable"</i></p> <p><i>"Peak vehicle movements will be 230 per hour. Based upon the information contained in the application vehicle movements in Parry Lane will increase from one to two per hour to 115 per hour during peak periods."</i></p> <p><i>"Increase in vehicle usage in Parry Lane resulting in increases in noise and distraction from headlights."</i></p>	<p>This concern assumes that Parry Lane is the only means of access to the Hefron Street signalised intersection. It should be noted that Seymour Street and Oxley Street are the main local streets that link to the Hefron St/Minjungbal Drive signalised intersection for southbound traffic. On this basis and given the constrained geometry including narrowness, sharp bends and poor sight distances it is unlikely that all vehicles exiting the site in a southbound direction will use Parry Lane. While it is accepted that some vehicles may use Parry Lane it is likely to be well below 115 vehicles per hour during peak times. In this circumstance appropriate traffic calming devices in Parry Lane will be a recommended condition of consent discouraging customer vehicle use of Parry Lane.</p> <p>While recognising an increase in traffic movements on local streets the noise report by Max Winders & Associates dated 9 July, 2007 indicates that the</p>



	<p>“overall increase will not result in traffic flow rates per hour that would cause exceedance of generally accepted traffic noise planning criteria at residences due to the overall flow rates being far less than 300 movements per hour.</p> <p>It is accepted that the number of vehicles likely to use Parry Lane outside of peak trading (after 9pm) will be relatively low. Given the infrequent use of the rear laneway at this time distraction from headlights and noise from vehicles is likely to be minimal.</p>
<p><i>“The impact on and possible congestion of north bound traffic flowing out of the Main of Tweed Heads South and Tweed City, with the proposed drive through entry exit off/onto Minjungbal Drive and also the entry /exit’s close vicinity to 2 separate intersections.”</i></p>	<p>The traffic report by Viney Traffic Engineering dated 2 May 2007 raises no concern in relation to traffic generation and its impacts on the efficiency and function of the local road network or Minjungbal Drive. For example, the traffic report indicates that “the assumed site egress flow can be absorbed comfortably in the northbound traffic flow at both the site egress and at Parry Street”. The Development Traffic Advisory Group reviewed the proposal and recommended suggestions and conditions, which has been addressed earlier in this report.</p>
<p><i>“Adverse impacts on the high volume of pedestrians and elderly residents that frequently use the pathway. Increased traffic accessing the restaurant will endanger pathway users, especially elderly pedestrians and children.”</i></p>	<p>Access points, vehicle movement areas and landscaping are designed and located to provide sufficient sight lines of pathways along the frontage of the site. The traffic report by Viney Traffic Engineering submitted with the application concludes that there are acceptable sight distances for traffic egressing at this point. This provides drivers the opportunity to easily view pedestrians using the pathway and ensures a safe environment for pedestrians.</p>

<p><i>“Loss of parking spaces along Minjungbal Drive due to restaurant patrons using this space to park their vehicles. This is a major concern as this area seems to fall into the area designated as a turning lane for the drive through”.</i></p>	<p>The majority of customers will use car spaces provided on site which are conveniently located close to the main entrance of the proposed restaurant. In addition, the proposed “drive through” facility will assist in reducing the demand for on street and off street car spaces. On this basis it is unlikely that customers would significantly reduce availability of on street car spaces.</p> <p>To ensure adequate vehicular access to the site a driveway cross-over is proposed along the Minjungbal Drive road frontage. The access is required to ensure refuse collection and delivery vehicles can enter and exit the site in a safe manner and to ensure service vehicles can enter and leave the site in a forward direction.</p>
<p><i>“Quality of life for local residents will be negatively impacted resulting from an increase in loitering, graffiti, vandalism and disturbances by patrons using the restaurant 24 hours a day. Tighter security is required for all surrounding homes and businesses.</i></p> <p><i>... people cutting through private property and an increase in litter resulting from the opening of the McDonald’s Restaurant.”</i></p>	<p>While anti social behaviour is a serious concern 24 hour trading in itself does not cause this problem. There is no alcohol consumed on the premises and on this basis it is unreasonable to suggest that the premises requires ongoing security for surrounding homes and businesses. Behavioural matters are best dealt with by the local police and McDonalds will seek to ensure all reasonable measures are undertaken to minimise opportunity for loitering, graffiti and vandalism. For example, the design and location of the building and landscaping incorporates CPTED (crime prevention through environmental design) principles to ensure there is adequate opportunity for casual surveillance of car parking areas, access and the drive through facility and there are no entrapment areas. As a standard feature of many commercial establishments and restaurants security cameras will be installed as a means of monitoring the premises, and is likely to deter unruly behaviour. This has been recommended as a condition of consent that CCTV surveillance cameras be installed to monitor</p>

	customer movements during the operation of the Restaurant. Adequate rubbish disposal facilities are provided to minimise littering of the site and local area.
<i>“Residents are concerned that the establishment of this restaurant will lead to a decrease in the value of properties in close proximity to the development.”</i>	The applicant has submitted that based on other store locations there is no evidence to suggest that the value of property is likely to decrease as a result of the proposed development.
<i>“There will be 3 McDonald’s restaurants within 3.5km with “Tweed City”, Minjungbal Drive and “Tweed Central”.”</i>	The McDonalds stores at Tweed City and Tweed Central predominantly service customers within existing shopping centres. Importantly, the commercial viability of this proposal is not a valid planning consideration but a matter for the applicant to consider.
<i>“Smells generated by the restaurant will be offensive to nearby residents”</i>	It is worthwhile to note that McDonald’s restaurants use electric cookers which reduce cooking fumes compared to conventional gas cookers. Suitable recommended conditions of approval will ensure mechanical ventilation will comply with Australian Standard AS1668 and ensure emissions are within acceptable environmental limits.
<i>“That Heffron Lane be considered and designated one way from Parry Street to Heffron Street and sign posted local traffic only.”</i>	The Development Application was reviewed by the Development Advisory Group Meeting who advised that one way traffic flow is undesirable for any street or lane. Installing a ‘local resident traffic only’ sign for Heffron Lane is undesirable as it is not a recognised sign as in accordance with AS 1742 Traffic Control Devices.

The Development Application was referred to the Crime Management Unit of the Tweed/Byron Local Area Command for comment and any recommended necessary conditions of consent. Council received a response from the NSW Police Service Force as follows:

“Police have identified a number of areas of concerns;

1) Traffic

The development is situated on the western side of Minjungbal Drive and the intersection of Parry Street will probably created conflict with current traffic/pedestrian flow unless adequate signage is erected. Tweed River High School, Tweed Head South Primary,

South Tweed Heads Community Centre, Tweed Heads indoor pool and a proposed Skateboard facility are all situated in the immediate area of the development and generate a large amount of pedestrian traffic.

- *Minjungbal Drive is 4 lanes wide with a breakdown lane. North and South bound lanes are separated by a grass verge. Presently, there are no provisions for safe pedestrian movements across Minjungbal Drive. The nearest controlled crossing is located at the intersection of Heffron St and Minjungbal Drive 250 metres away. The Statement of Environmental Effects has identified that the proposed development will increase patronage of the park directly opposite the development - thereby increasing pedestrian movements across Minjungbal Drive.*
 - *It is anticipated that south bound traffic may attempt an illegal U-turn to access the development- (currently all traffic lights in the Tweed Heads area have a 'no u-turn' sign clearly displayed. These signs are solely for the benefit of Queensland motorists who are permitted at some intersections controlled by traffic control signals to perform a U turn.)*
 - *South bound traffic leaving the development may attempt a U turn at the intersection of Lloyd and Minjungbal Drive, currently controlled by 'No U Turn' sign.*
 - *Traffic travelling south will be only be able to access the site by the following means*
 - *Illegal U turn at intersection of Minjungbal Drive and Heffron Streets*
 - *Left turn into Water Street, then U turn and re-enter Minjungbal Drive to enter the development*
 - *Right turn from Minjungbal Drive into Heffron Street, through a school zone turning right into Seymour Street and then right into Parry Street.*
 - *Tweed River High School, Tweed Head South Primary, South Tweed Heads Community Centre, Tweed Heads indoor pool and a proposed Skateboard facility are all located on Heffron Street, the only available route for traffic to use to travel south along Minjungbal Drive.*
 - *The traffic report has identified this only as a marginal increase and outside the critical school period.*
 - *Immediately behind the development to the west is Heffron Lane which runs between Parry Street and Heffron Street. This lane way is narrow with a dog leg which clearly restricts vision. The lane way is currently used as access way to a*
-

block of units and access to the rear of the current developments – Glass factory, Take Away food shop and second hand car dealer. Due to the low traffic movement at this stage, there are no control measures in place. Traffic control measures are required to ensure there is no conflict with vehicles. It is anticipated that this lane way may be also used by pedestrian.

- *There is no provision for bus/truck parking on site.*
- *Overflow of vehicles using the drive through facility in peak times backing and blocking the Minjungbal Drive entrance to the development.*

2) 24 hour / 7 day a week operation.

Police have concerns regarding the 24 hour operation. Presently, only a number of service stations operating 24 hour /7 days a week basis. Coolangatta has a number of retailers operating on a 24/7 basis and this has created a number of anti social problems with the congregating of youth and others. One of the venues employs a security guard to counter the anti social behavioural issues. It is anticipated that if this development is permitted to operated 24 hours a day it will have a dramatic impact on the immediate community and policing resources. There is a real concern that there will be an increase in anti-social behaviour in and around the site. It will be a meeting point for young people from the entire district during periods of darkness.

RECOMMENDATIONS:

Police recommend that if the McDonald's Restaurant is located at this proposed site the following points be considered;

Police have considered the development application and made a number of observations which should be considered. Police are strongly against 24 hour operation, due to the anti social behaviour that will occur as a result of the attraction to 'hang out'.

- *That consideration is given to reducing the operating hours from 24 hours to 5am – 12Mn.*
- *That Heffron Lane be considered and designated one way from Parry Street to Heffron Street – local traffic only.*
- *That clear signage is erected to advise south bound motorists how to enter and depart the site.*
- *That CCTV surveillance be installed to monitor customer movements*
- *That due consideration be given to pedestrian movements across Minjungbal Drive*

- *That provision be made for a bike rack as specified in the site plan signage schedule.”*

This response from the NSW Police Service Force has been considered by Council Officers and the relevant conditions have been imposed on the Development Consent. A concern that the proposed 24 hour operation of the McDonald's Restaurant may create problems with the congregation of youth and others, including antisocial behaviour can be mitigated as it is anticipated that Management of the proposed development would be aware of such issues and appropriately resourced to actively manage the site and deter this type of behaviour. Details of management will be requested as part of the Site Management Plan to mitigate the any adverse effects. Other 24 hour trading restaurants operate in South-East Queensland and it is submitted from the applicant that adequate site management can alleviate any anti-social behaviour of patrons congregating at the restaurant. By Council imposing a condition on the consent restricting the 24 hour trading for a period of 12 months it will allow Council to further assess the suitability of the 24 hour trading and consider its' acceptability. At such time Council can reduce the trading hours if it is deemed necessary. Council has imposed conditions that CCTV surveillance cameras be installed to monitor customer movements and also a condition that the provision be made for a bike rack. The aforementioned considerations provided from the NSW Police Services relating to traffic issues and pedestrian movements has been referred to the Development Traffic Advisory Group which is addressed earlier in this report.

(e) Public interest

The development has been assessed and is considered to comply with the relevant provisions of the State Environmental Planning Policies, Regional Environmental Plans, Council's Tweed Local Environmental Plan 2000 and Council's consolidated DCP. The proposed refreshment room is consistent with the objectives of Zone 3(c) Commerce and Trade and is allowed with the consent of Council. Noise and traffic studies submitted with the application indicate that potential impacts associated with noise, 24 hour trading and traffic are within acceptable environmental limits of the *NSW Industrial Noise Policy*. As indicated through out this report a number of steps may be undertaken and reasonable conditions may be applied to the development consent to minimise potential adverse impacts upon the amenity of nearby residential land uses. These include reduction of outdoor speaker volumes during night time periods, limiting the hours of service vehicles and child outdoor play areas and including appropriate traffic calming devises along Heffron Lane discouraging vehicles using Heffron Lane to access Minjungbal Drive. On balance and in consideration of the above matters the proposal is not considered to be contrary the public interest.

OPTIONS:

1. Approve this Development Application subject to conditions of Consent.
-



2. Refuse this Development Application subject to reasons for refusal.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should Council resolve to approve the Development Application in accordance with Option No.1 there will be no direct impact upon Council's budget or forward estimates. Should Council resolve not to approve the Development Application legal costs will be incurred should the applicant appeal the decision in the NSW Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The site and proposed land use has been extensively investigated by the applicant and it is supported that the site is an appropriate location for the proposal. The design and location of the building and landscaping incorporates Crime Prevention Through Environmental Design (CPTED) principles to ensure there is adequate opportunity for casual surveillance of car parking areas, access and the drive through facility.

Given the extensive level of detail provided and requested by Council it is concluded that the proposed development will not have an adverse effect upon the locality. Proper management of the site will ensure that any potential impacts on adjoining land uses will be mitigated. Further to this it is recommended that a condition of consent be imposed that limits the operation of the Restaurant's 24 hours trading, 7 days a week for a period of 12 months from the Occupation Certificate date of issue and continuation of 24 hour trading beyond this period will require the submission and approval of a Section 96 Application. This will provide Council with an opportunity to further assess the level of acceptability of the development and the 24 hour trading of the Restaurant.

Having considered the main issues addressed in this report it is recommended that the Development Application not be contrary to the public interest and as such be approved subject to recommended conditions of development 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 or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).

Nil.

P3 [PR-PC] Development Application DA07/0358 for Dwelling Additions & Alterations at Lot 100 DP 229328, No. 37 Elanora Avenue Pottsville

ORIGIN:

Building & Environmental Health

FILE NO: DA07/0358 Pt1

SUMMARY OF REPORT:

Council is in receipt of an application to construct alterations and additions to an existing dwelling in Elanora Avenue, Pottsville. The resultant structure will be three (3) storeys in an area zoned for a maximum of two (2) storey construction.

The applicant has sought, under SEPP No.1, consideration for relaxation of the development standards in regard to building height.

RECOMMENDATION:

That: -

- A. State Environmental Planning Policy No. 1 objection to Clause 16 of Tweed Local Environmental Plan 2000 regarding the height of the building and clause 32b of the north Coast Regional Plan for shadowing the foreshore be supported and the concurrence of the Director-General of the Department of Planning be assumed; and**
- B. Development Application DA07/0358 for a dwelling additions & alterations at Lot 100 DP 229328, No. 37 Elanora Avenue Pottsville be approved subject to the following conditions: -**

GENERAL

- 1. The development shall be completed in accordance with the plans approved by Council and the Statement of Environmental Effects, except where varied by conditions of this consent.**
[GEN0015]
- 2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**
[GEN0115]
- 3. At the commencement of building works and in perpetuity the entire property shall be managed as an 'Inner Protection Area' as outlined within Planning for Bush Fire Protection 2006 and the Service's document 'Standards for asset protection zones'.**



4. **Water, electricity and gas are to comply with Section (4.1.3 / 4.2.3) of Planning for Bush Fire Protection 2006.**
5. **New construction proposed for the existing dwelling shall comply with Australian Standard AS3959-1999 'Construction of buildings in Bush Fire-prone areas' Level 3.**
6. **All Class 10 structures as defined per the Building Code of Australia 2006 attached to or within 10 metres of the habitable building shall be constructed from non combustible materials.**
7. **Roofing shall be gutterless or have leafless guttering and valleys which are to be screened with non corrosive mesh to prevent the build up of flammable material. Any materials used shall have a Flammability Index no greater than 5.**
8. **There is to be no exposed timber on the proposed structure.**
9. **All glazing towards the east shall be fire rated glass or toughened glass with non-combustible shutters to be installed on all windows directly exposed to the bushfire hazard.**
10. **All future fencing shall be constructed from non-combustible materials.**
11. **Roller doors, tilt-a-doors and the like shall be sealed to prevent the entry of embers into the structure.**
12. **The existing dwelling that is not being modified is required to be upgraded to improve ember protection by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen. This includes any sub floor areas where applicable and eaves.**
13. **Landscaping to the site is to comply with the principles of Appendix 5 of Planning for Bush Fire Protection 2006**
14. **As the dwelling has been assessed under 79BA for residential purposes and not 100B for Special Protection Development (tourist facility) the building shall not be used as a tourist facility.**
[GENNS01]
15. **All roof waters are to be disposed of through properly jointed pipes to the street gutter, inter-allotment drainage, or elsewhere if so directed in the conditions of consent. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZ3500.3.2. Note: A detailed stormwater and drainage plan is to be submitted to and approved by the PCA prior to commencement of building works.**
[PCC1115]

PRIOR TO COMMENCEMENT OF WORK

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



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

[PCW0235]

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

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

[PCW0245]

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

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

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

[PCW0255]

21. 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]
22. An application to connect to Council's sewer or carry out plumbing and drainage works, together with any prescribed fees including inspection fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.

[PCW1065]

DURING CONSTRUCTION

23. 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]

24. The wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of the buildings with direct line of sight to the proposed building.

[DUR0245]

25. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).

[DUR0375]

26. 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]

27. 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]

28. 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]

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

[DUR0445]

- 30. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan, Part A5 - Subdivision Manual and Development Control Plan, Part A14 - Cut and Fill on Residential Land to the satisfaction of the Principal Certifying Authority.
Please note timber retaining walls are not permitted.**

[DUR0835]

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

[DUR0905]

- 33. 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]

- 34. 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]

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

[DUR1945]

36. All roofwaters are to be disposed of through properly jointed pipes to the street gutter, inter allotment drainage or to the satisfaction of the Principal Certifying Authority. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZS3500.3.2. Note - All roofwater must be connected to an inter allotment drainage system where applicable. [DUR2335]
37. 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]
38. 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]
39. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993. [DUR2515]
40. 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]
41. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-
- * 43.5⁰C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
 - * 50⁰C in all other classes of buildings.

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

[DUR2555]



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

[DUR2565]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

43. 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]

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

[POC1045]

USE

45. The building is to be used for single dwelling purposes only.

[USE0505]

46. Bushfire asset protection zones are to be maintained around the house site at all times to the satisfaction of the NSW Rural Fire Service.

[USE0575]

REPORT:

Applicant: Mr N Dwivedi
Owner: Mr N Dwivedi
Location: Lot 100 DP 229328, No. 37 Elanora Avenue Pottsville
Zoning: 2(a) Low Density Residential
Cost: \$150,000

BACKGROUND:

An application has been received to carry out alterations and additions to the existing dwelling located on the subject property. The property is situated on the eastern side of Elanora Avenue and backs on to the coastal dune of Pottsville beach, with direct beach access.

The proposal seeks to carry out substantial alterations and additions to the dwelling comprising an additional story to the existing dwelling containing 3 bedrooms and two bathrooms, enlarging the ground floor area of the dwelling to include a family room and deck and the construction of a single storey addition to the front of the dwelling containing a double garage, bathroom/ laundry and formal entry to the dwelling.

The proposal is by definition a three (3) storey dwelling. The land and village of Pottsville has a two (2) storey height limit. The existing dwelling is technically two storeys with the upper level containing all living areas of the dwelling and the sub floor area used as a garage.

Due to the slope of the site the sub floor area of the dwelling is partly below ground level, and on eastern, southern and northern sides of the dwelling is generally less than 1.5 metres out of the ground and could be considered as single storey. The proposed additions on the western side show the dwelling as being three stories.

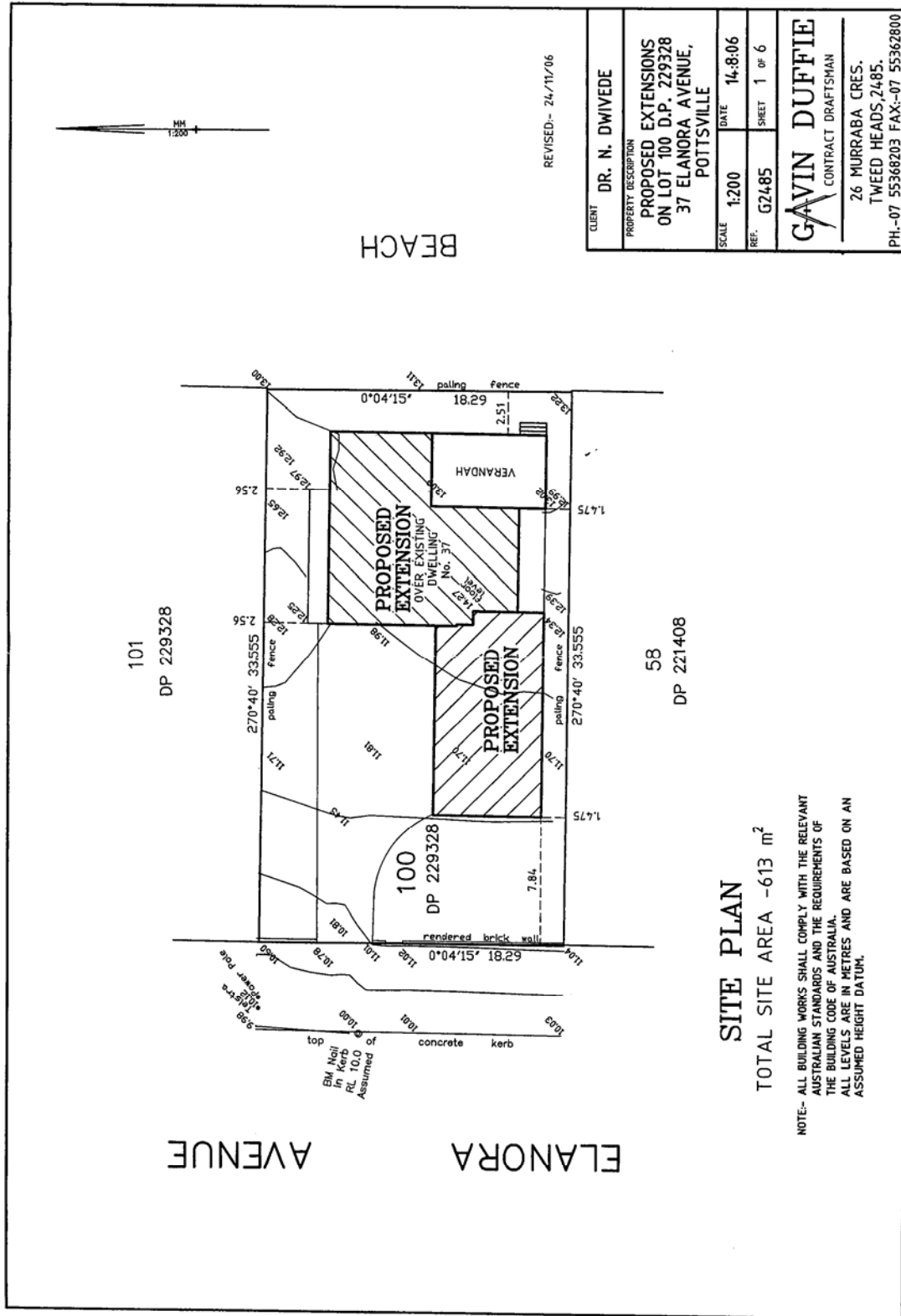
The applicant contends that this standard is unreasonable and unnecessary under the circumstances and has submitted a SEPP No.1 objection, which will be discussed further in this report.



SITE DIAGRAM:



SITE PLAN:



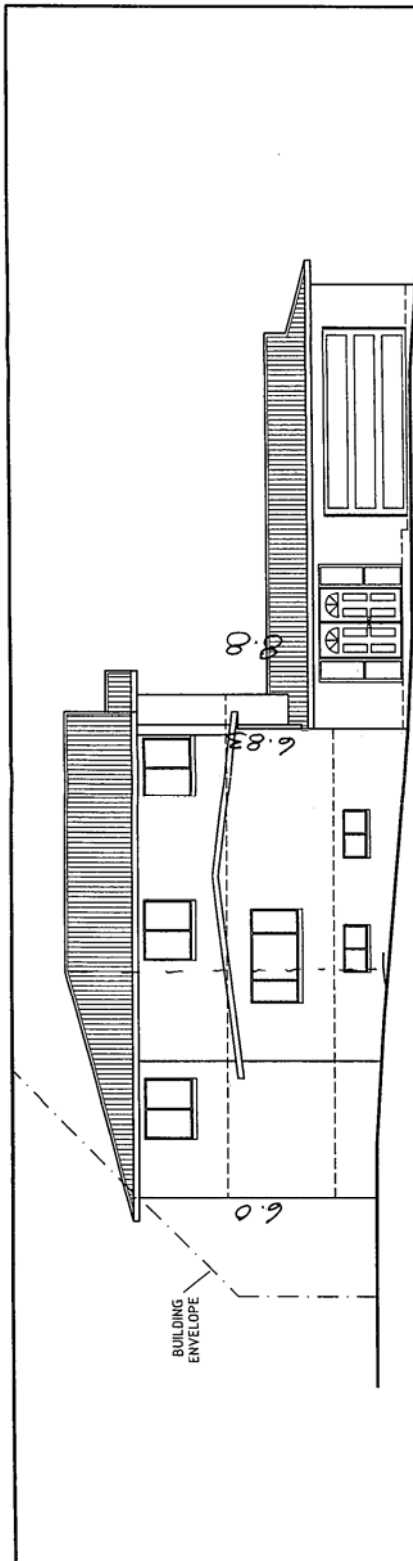


ELEVATIONS:

SOUTHERN ELEVATION

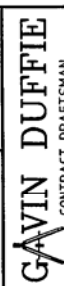
WESTERN ELEVATION

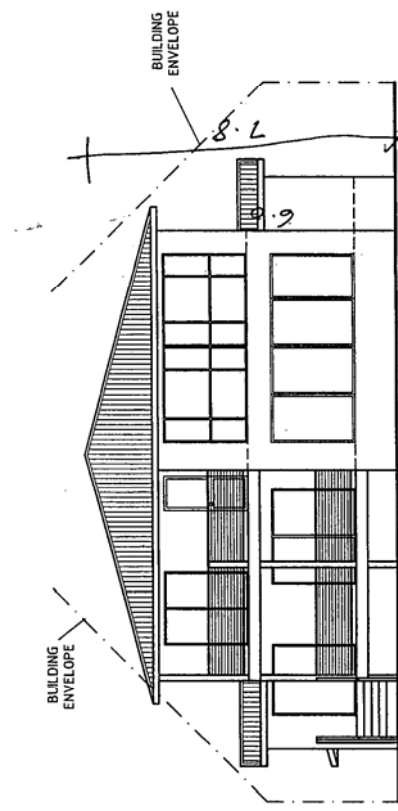
CLIENT	DR. N. DWIVEDE		
PROPERTY DESCRIPTION	PROPOSED EXTENSIONS ON LOT 100 D.P. 229328 37 ELANORA AVENUE, POTTSVILLE		
SCALE	1:100	DATE	14.8.06
REF.	G2485	SHEET	6 OF 6
GAVIN DUFFIE		CONTRACT DRAFTSMAN	
		26 MURRABA CRES. TWEED HEADS, 2485. PH. - 07 55368203 FAX. - 07 55362800	



NORTHERN ELEVATION

REVISED-- 10/11/06

CLIENT	DR. N. DWIVEDE		
PROPERTY DESCRIPTION	PROPOSED EXTENSIONS ON LOT 100 D.P. 229328 37 ELANORA AVENUE, POTTSVILLE		
SCALE	DATE	1:100 14-8-06	
REF.	SHEET	G2485 5 OF 6	
 GAVIN DUFFIE <small>CONTRACT DRAFTSMAN</small>			
26 MURRABA CRES. TWEED HEADS 2485. PH.-07 55368203 FAX--07 55362800			



EASTERN ELEVATION



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

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

Tweed Local Environmental Plan 2000

The subject land is zoned 2(a) Low Density Residential under the provisions of the TLEP 2000. Dwellings are permissible in this zone subject to the consent from Council.

Clause 16 – Heights of Buildings.

The subject land and the village of Pottsville are affected by a two (2) storey height limit. The proposal is for a three (3) storey dwelling and subsequently does not comply.

In this regard the applicant has submitted a SEPP No.1 objection contending that this development standard is unreasonable and unnecessary under the circumstances, which will be discussed below.

Generally the dwelling is largely two (2) storeys and would appear to be seen as a two (2) storey dwelling when viewed from the northern, eastern and southern sides of the property.

North Coast Regional Environmental Plan 1988

None

State Environmental Planning Policies

SEPP No.1 – Development Standards

Two (2) SEPP No.1 objections have been submitted.

The first objects to the development standard provided by clause 16 of the TLEP 200, which restricts development at the site to two (2) storeys. The dwelling is three (3) storeys in height by definition.

The second SEPP No.1 objection contends that the development standard provided by Clause 32B(4) of the North Coast Environmental Plan 1988 (NCREP 1988), which prohibits overshadowing of foreshore coastal reserve at the times of 3pm midwinter and 7pm midsummer to be unreasonable. The building will overshadow the coastal dune to the east at both of these times.

As discussed above the applicant has prepared and submitted a SEPP No.1 objection contending that the development standard provided by clause 16 of the TLEP 2000 is unreasonable and unnecessary under the circumstances. Clause 16 restricts development at the site and the village of Pottsville to two (2) storeys. The dwelling is three (3) storeys in height.

The applicant's Consultant in his submission has made the following statement.

"Having regard to the definition of the term "storey " under the Tweed LEP, the proposed development would partly exceed two (2) storey's. This occurs where the two (2) levels of habitable floor area sit over the existing ground level garage and storage area. The height of the garage/store would exceed 1.5 metres above the finished ground level over a distance of approximately 1.5 metres on the northern elevation and 3.2 metres on the southern elevation and would therefore constitute a "storey"

The objective of the standard is found at Clause 16(1) of the LEP and is stated as:

"(1) To ensure that the height and scale of the development is appropriate to its location, surrounding development and the environment characteristics of the land"

The following matters are relevant to assessing the merits of the variation of the development standard.

1. Notwithstanding the technical breach of the two (2) storey height limit, the development would still meet the acceptable solution of 8.0 metres, for a total height of two (2) storey residential building under the provision of Development Control Plan No. 48 - Tweed Coast Building Heights.
2. The development would generally be well inside the building envelope control contained in DCP 48 with only minor intrusions for eaves at the top floor of the building.
3. The height and scale of the proposed development is consistent with existing adjoining and nearby developments (refer Figures 1, 2 and 3) and recently approved development (refer Figure 4), which exhibit very similar design elements (including subfloor areas up to 2.0 metres in height- refer Figure 5 and 6), floor levels and maximum buildings heights. (NOTE these figures can be viewed in the SEPP 1 objection prepared by DGP Darren Gibson Planning attached to the file).
4. The development would not result in unreasonable shadowing impact to the neighbouring dwellings, in particular, the dwelling to the south, which would enjoy at least 3 hours of direct solar access to the dwelling and yard min-winter. (Refer Attachment 1). The reduction of the subfloor storage area by 400mm (so as to avoid being described as a storey) would not result in any significant improvements to shadow impacts.

5. That part of the development exceeding two (2) storeys is setback in excess of 18 metres from the road frontage and the building is partially screened at street level by a recently constructed 1.8 metre high solid masonry fence on the front property boundary. The building would not adversely dominate the local streetscape.

In relation to the above submission it is considered that the matters raised appear valid and reasonable.

The existing streetscape on the eastern sided of Elanora contains a mixture of dwelling design including other two storey dwellings with a similar appearance when viewed from Elanora Avenue.

The proposed dwelling will largely comply with the two (2) storey height limit and when viewed externally from three sides of the dwelling will appear to be seen as a two (2) storey building.

The variation sought for the building mainly covers the western side of the dwelling which gives the appearance of a three storey dwelling. The western wall of the dwelling will be set back approximately 18 metres from the front boundary of the property (Elanora Avenue) and with the proposed single storey garage addition on this side of the building will help to reduce the three (3) storey appearance of the dwelling from Elanora Avenue.

Therefore it is considered that under the circumstances discussed above the SEPP No.1 objection contending that the two storey height limit provided by clause 16 of the TLEP 2000 to be unreasonable and unnecessary is justified and the variation should be supported.

As discussed above the applicant has also submitted a second SEPP No.1 objection contending that the development standard provided by clause 32B of the NCREP 1988 is also unreasonable and unnecessary under the circumstances. Clause 32B of the NCREP 1988 prohibits overshadowing of foreshore coastal reserves at the relevant times of 3pm midwinter and 7.00pm midsummer. The submitted shadow plans demonstrate that the building will overshadow the dune to the east at both of these times.

The applicant contends that compliance with this standard is unreasonable for the following reasons

- *The development would not overshadow the beach or its immediate recreation environs, which are located approximately 100m to the east.*
- *The beach front open space immediately adjoining the site has limited public access and is only used for occasional access by foot, to the beach to the east. These activities would not be affected by the shadow impacts. It is not used by the public for recreational purposes and is unlikely to be used as such given , the limited access available to the area and the location of that access(not near the site).*

- *The open space affected by shadowing is already shadowed by the existing buildings on site, the adjoining buildings of similar height and scale and the Norfolk Island Palm trees that occur along and adjacent to the this stretch of reserve.*

In view of the above and an inspection of the property it is considered that the amount of overshadowing will not likely be significant to create any adverse impacts on the public's enjoyment of the foreshore.

For the reasons provided by the applicant and as Council has granted many other approvals for dwellings along the Tweed Coast, which also overshadow the foreshore open space it is considered that the variation is minor and is reasonable and should be supported.

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

None

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

A14 – Cut and Fill on Residential Land

The proposal involves some minor Cut and Fill works for the garage and formal entrance area at the front of the dwelling.

In this regard the proposed cut and fill is reasonable and is generally consistent with the provisions of this plan.

B18 – Tweed Coast Building Heights

The proposed building is only by definition to be three (3) storeys, which is a minor component of the building. It is accepted that the building is largely two (2) storeys and as such when considering the provisions of DCP section B18 the building should be regarded as two (2) storeys.

The DCP provides that for two (2) storey residential buildings the maximum height from finished ground level to the top of the roof is to be 8m and to the uppermost ceiling or top plate of the highest external wall to be 6m.

The design of the dwelling is generally consistent with these requirements, however due to the slope of the site, the height of the dwelling on its western side, which faces Elanora Avenue will be outside these prescriptive requirements. Notwithstanding these requirements the dwelling is set towards the back of the property and with the single storey portion of the dwelling being at the front helps reduces the impact of bulk and scale of the dwelling on the streetscape views and grand vistas will generally not be obscured. The adjoining buildings will still have significant views to the east.

In regard to the building envelope the building is generally consistent with the building envelope with only minor encroachments outside the building envelope of eaves of the dwelling along the southern side and eastern boundaries.

In regard to overshadowing the submitted shadow plans demonstrate that during summer, particularly mid summer shadowing from the building over the adjoining property to the south is minimal.

In winter shadowing over the adjoining property to the south will be more significant. In this regard the property to the south will gain reasonable solar access during the early hours of the day, which will diminish and by late afternoon (3.00pm) the site (dwelling) to the south will be largely overshadowed. However, it is still considered that the property to the south, particularly the living areas of the dwelling will still enjoy good and reasonable solar access throughout the winter days.

There are several similar sized existing dwellings to the south of this property on the eastern side of Elanora Avenue and it is considered that Council has set a precedent for large and high buildings in the locality,

Therefore, as the height of the proposed building is similar to other approved dwellings, particularly on the adjoining lots to the south then the amount of overshadowing is not likely to be any more significant than that created by the existing dwellings and buildings.

The building has a similar height and setback to the buildings on the adjoining lots. The proposed building is of a high architectural standard and strict compliance with the building envelope and height controls would not result in any material benefit in terms of amenity, shadow, privacy or character of the area.

Therefore under the circumstances as discussed above it is considered that the variations to the height and building envelope provisions of this DCP are supported and the use of the performance standards of the DCP to vary these provisions are reasonable and warranted.

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

None

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

The proposal is not likely to create any significant adverse impacts on both the natural or built environments of the locality.

The proposal will involve some minor excavations, mainly for the garage area, which will be suitably protected by appropriate erosion and sedimentation control measures. No clearing of significant vegetation likely.

The design, scale and appearance of the building have been discussed throughout this report. It is considered that the design, scale and appearance of the building is generally consistent with the established and desired built form and character of the coastal village and also promotes a positive contribution to the streetscape.

The development of the Elanora Avenue Pottsville over the recent years has involved gentrification with replacement or substantial renovation of existing houses with more upmarket developments. The proposal is consistent with this and is as such is not likely to have any detrimental impacts on the built environment of Pottsville

(c) Suitability of the site for the development

It is considered that the site is suitable for the proposed development. The property is located within an established residential area and the proposal is for alterations and additions to the existing dwelling on the subject property.

The design of the dwelling will be in keeping with the character and style of many of the redeveloped dwellings in the area.

The property is outside the coastal erosion zone for the area and therefore no special requirements need to be imposed on the application in this regard.

The property is located within a Bushfire prone area as nominated on Council Bush fire hazard map. As a result the application was referred to the NSW Rural Fire Service and the recommendations for the RFS have been included in the conditions attached to this report.

The building has been suitably sited and complies with minimum side setbacks requirements. The site is not identified as having acid sulphate soil potential on the acid sulphate soils planning maps. The site is reasonably elevated.

There are no other identified prohibitive risk factors.

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

The application was notified to surrounding property owners and no submissions have been received regarding the application

(e) Public interest

The development will not prejudice the public interest.

OPTIONS:

1. Approve application as submitted subject to conditions.
2. Refuse application stating reasoning.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has the right of appeal through the NSW Land and Environment Court.



POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposal is generally consistent with all Council policy and the development of the site is consistent with the established, desired and future built form and character of the locality. It is envisaged that like the site the remainder of the eastern side of Elanora Avenue will in the future progressively involve gentrification and the replacement of existing houses with more upmarket developments to obtain sought after coastal views and direct beach access.

In regard to the SEPP No.1 submissions to vary the development standards provided by clause 32B(4) of the NCREP 1988 and clause 16 of the TLEP 2000 these are considered to reasonable under the circumstances discussed in the report as the variations are minor and should be supported.

Having regard to the above assessment it is considered that the proposal is suitable to the site and is suitable 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 or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).

Nil.

P4 [PR-PC] Development Application DA07/0122 for Livestock Grazing at Lot 1 DP 1075645, Tweed Coast Road Chinderah

ORIGIN:

Development Assessment

FILE NO: DA07/0122 Pt1

SUMMARY OF REPORT:

Council is in receipt of a Development Application seeking approval to conduct livestock grazing on the subject land. It is proposed that both cattle (30-50 head of cattle) and horses (number not specified) would be grazed on the land on a commercial basis.

The site is zoned 5(a) Special Uses – Sewerage Treatment/Turf Farm. In that zone agriculture would only be permissible with consent if the proposed agricultural use *is compatible with adjacent uses and with uses allowed (with or without consent) in adjacent zones*.

The subject site is also affected by SEPP 71 which provides that:

A provision of an environmental planning instrument that allows development within a zone to be consented to as if it were in a neighbouring zone, or a similar provision, **has no effect**.

Therefore this report concludes that whilst use of the land for agriculture is not undesirable in the short term the current legal framework does not allow the development to proceed.

RECOMMENDATION:

That Development Application DA07/0122 for livestock grazing at Lot 1 DP 1075645, Tweed Coast Road Chinderah be refused as the proposed development is prohibited.



REPORT:

Applicant: Gales-Kingscliff Pty Ltd
Owner: Gales-Kingscliff Pty Ltd
Location: Lot 1 DP 1075645, Tweed Coast Road, Chinderah
Zoning: 5(a) Special Uses
Cost: \$5,000.00

BACKGROUND:

Council is in receipt of a Development Application seeking approval to conduct livestock grazing on the subject land. It is proposed that both cattle (30-50 head of cattle) and horses (number not specified) would be grazed on the land on a commercial basis.

The applicant has provided that boundary fencing (post and wire) would be in place prior to the commencement of grazing activities.

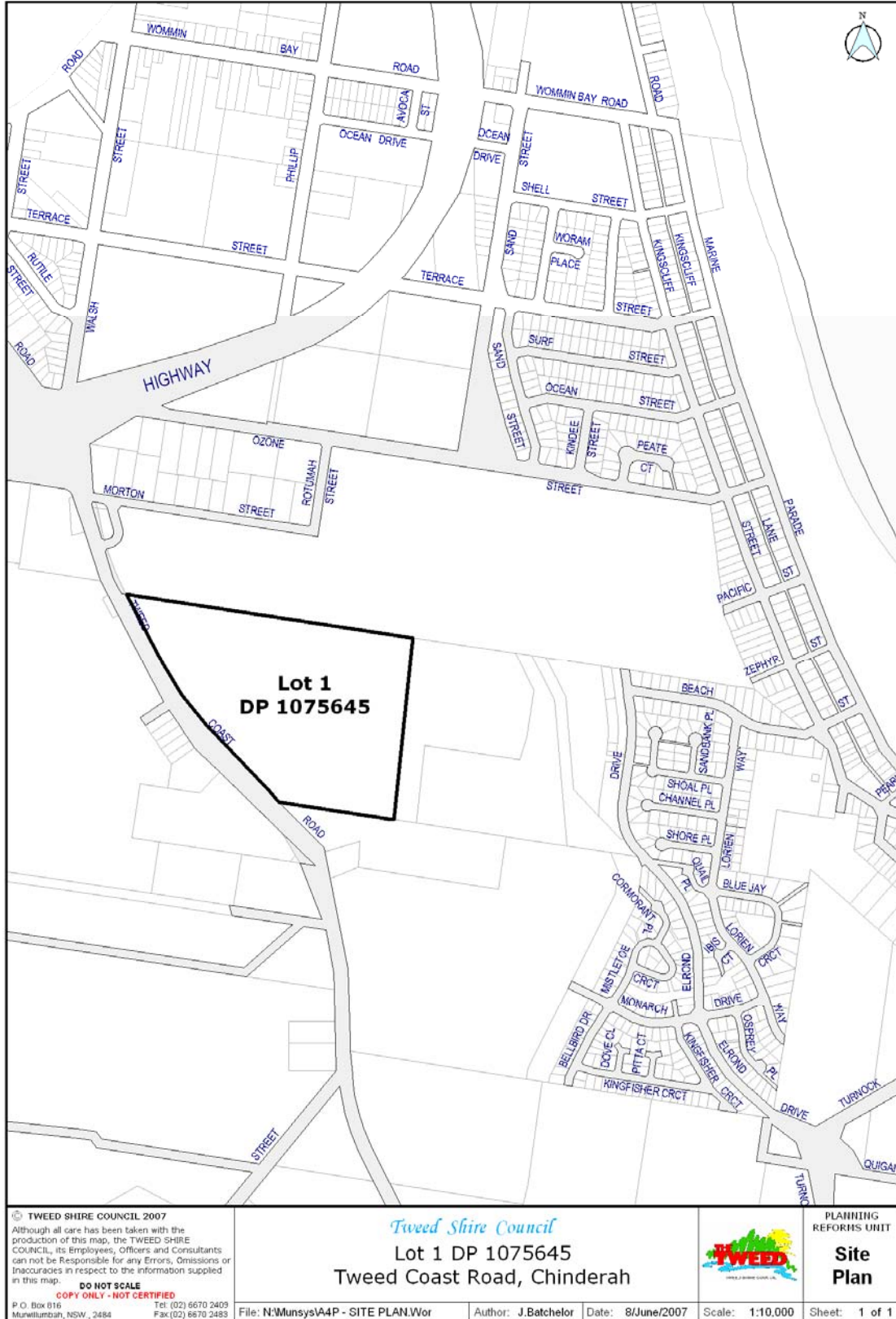
The land was formerly part of a larger holding owned by Tweed Shire Council containing the Kingscliff Sewerage Treatment Plant, although this part of the site was not used for any purpose associated with the treatment works. In the late 1990's the Council cleared the land for a commercial turf farm. The turf farm did not eventuate.

The land was subject to Tweed Local Environmental Plan No. 14 which had the effect of re-zoning the land from the 5(a) Special Uses Zone to the 4(a) Industrial Zone under the Tweed LEP 2000. In a recent decision of the NSW Court of Appeal (CA 40900/05), the Tweed Local Environmental Plan 14 was declared a nullity and consequently, the land use zone reverts back to the 5(a) Special Uses Zone under the Tweed LEP 2000.

The site has an area of approximately 18.18ha and a 530 metre frontage to Tweed Coast Road. The site is generally cleared of native vegetation and for the most part is dominated by a mixture of exotic pasture grasses which appears to have been regularly slashed. There is a significant strip of Swamp Oak vegetation along the north and western boundaries.

This report considers the permissibility of the proposed agricultural use and the sites suitability for the proposed use of the land.

SITE DIAGRAM:



AERIAL PHOTOGRAPH



<p>© TWEED SHIRE COUNCIL 2007 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants, can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 614 Tel: 072 6670 2425 Murumbidgee NSW, 2434 Fax 072 6673 2483</p>	<p><i>Tweed Shire Council</i> Lot 1 DP 1075645 Tweed Coast Road, Chinderah</p>		<p>PLANNING REFORMS UNIT Aerial Photo</p>
<p>File: N:\Munsy\A4P - SITE PLAN.Wor Author: J.Batchelor Date: 8/June/2007 Scale: 1:10,000 Sheet: 1 of 1</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

Clause 11 – The Zones

The site is zoned 5(a) Special Uses – Sewerage Treatment/Turf Farm.

The zone objectives are:

Primary objective

- *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.*

Secondary objective

- *to provide flexibility in the development of the land, particularly if it is not yet or is no longer required for the relevant special use.*

The Clause states that:

Item 2 allowed only with consent:

- *any use which is compatible with adjacent uses and with uses allowed (with or without consent) in adjacent zones*

Therefore, agriculture would only be permissible with consent if the proposed agricultural use is compatible with adjacent uses.

However, the subject site is also affected by Clause 13 of SEPP 71 Coastal Protection which provides that:

*A provision of an environmental planning instrument that allows development within a zone to be consented to as if it were in a neighbouring zone, or a similar provision, **has no effect** (emphasis added).*

Based on the above Clause of SEPP 71 the proposed development is not capable of approval by way of Item 2 of Clause 11 Zone 5(a).

This matter was considered by the applicant. The applicant subsequently sought comments from Tim Robertson SC who advised that:

“In my opinion it is clearly not such a provision.

Clause 14 of the LEP is such a provision.

In zone 5, uses are permissible not because they are (or as if they were) permissible in an adjoining zone. They are permissible if they are compatible with such uses. Compatibility does not require the use to be the same, but rather requires the 5 use and the neighbouring use to be mutually tolerant and able to co-exist. In fact the uses may be utterly different – e.g. a research laboratory and race course – but one is not incompatible with the other. In truth, any use is permissible in the 5 zone so long as the special use is premature or exhausted, subject only to the test of compatibility. It may be a use, which is prohibited in all adjoining zones, but will be permissible in the 5 zone, so long as it is compatible with the uses in the adjoining zones, which are permissible, with or without consent. This is the antithesis of the SEPP 71 provision”

Council sought its own opinion on this matter and based on that advice the above comments are not concurred with. Council’s advice argues that the zoning provision is a “similar provision” so as to be caught by Clause 13 of SEPP 71. Furthermore, it is considered that the above analysis by Mr Robertson is confined to the interpretation of the LEP provisions rather than the SEPP.

Clause 13 states that a provision that allows development within a zone to be consented to as if it were in a neighbouring zone, or similar provision, **has no effect**.

The phrase “or a similar provision” was included to encompass situations where development is permissible because it is permissible in adjoining zones, or because it is “compatible” with development in adjoining zones, or because it is “in keeping” with development in adjoining zones.

Where suitability of development may in other areas be referenced by what is suitable in surrounding areas, SEPP 71 specifically precludes such an approach in the Coastal Protection Area. In this instance the provisions of the SEPP prevails over the LEP to the extent of the inconsistency.

Therefore it is considered that Clause 13 of SEPP 71 prevails over the 5(a) zone provision which states that “*any use which is compatible with adjacent uses and with uses allowed (with or without consent) in adjacent zones*”

On this basis the application is recommended for refusal.

Clause 22 – Designated Roads

Tweed Coast Road is a Council Designated Road. Accordingly Clause 22 applies to the extent that matters as Clause 22(4) must be considered. The application is not considered to need the concurrence of the RTA as per Clause 22 (3) as the site adjoins a Council Designated Road only not a Proposed Classified Road as mapped. The matters for consideration at Clause 22(4) are as follows:

- (4) *The consent authority may grant consent to development on land to which this clause applies only if it is satisfied that:*
- (a) *the development (because of its nature, appearance, cumulative effect or illumination, or the intensity or the volume or type of traffic likely to be generated, or for another similar reason) is unlikely to constitute a traffic hazard or materially reduce the capacity or efficiency of the designated road, and*
 - (b) *the location, standard and design of access points, and on-site traffic movement and parking arrangements, would ensure that through traffic movement on the designated road is not impeded, and*
 - (c) *the development, or proposed access to it, will not prejudice any future improvements to, or realignment of, the designated road, and*
 - (d) *where the land is in Zone 1(a), 5(a), 7(a), 7(d), 7(f), or 7(l), the development is of a type that necessitates a location in proximity to the designated road for reasons other than only commercial advantage, and*
 - (e) *the development is of a type that is not sensitive to traffic noise or, if it is, it is located or adequate measures are included to ameliorate any potential noise impact, and*
 - (f) *the development would not detract from the scenic values of the locality, particularly from the point of view of road users, and*
 - (g) *where practicable, access to the land is provided by a road other than the designated road, and*
 - (h) *in respect of any application for commercial or retail development near the Pacific Highway in Zone 1 (a), 7 (a), 7 (d), 7 (f) or 7 (l), the development:*
 - (i) *would not compromise the Highway's function as the North Coast's primary inter- and intra-regional road traffic route, and*
 - (ii) *would not contribute to the need to expend public money on the Highway to overcome the effects of ribbon development, and*
 - (iii) *would not compromise highway safety and efficiency, and*
 - (iv) *would not cause or contribute to the shifting of the retail/commercial foci of any town from the town centre to a highway-orientated site.*

The proposed interim use of the land for agriculture while the ultimate use of the land is being determined would be considered appropriate based on a time limited consent should the use be determined permissible.

Having regard to Clause 22 (4) the temporary use of the site for agriculture is considered reasonable.

Clause 34 – Flooding

The land is subject to flooding, however, the proposed use is considered compatible and would not be unreasonably affected by flooding.

Clause 35 – Acid Sulphate Soils

The land is subject to acid sulphate soils, however, no excavation or disturbance below ground surface is proposed.

North Coast Regional Environmental Plan 1988

Having regard to Clauses 15 and 32B the proposed development for livestock grazing is considered to not contravene the objectives of this Plan.

State Environmental Planning Policies

As detailed above the subject site falls within the Coastal Protection Area and therefore Clauses 8 and 13 of the SEPP specifically apply.

The relevant Clause 8 matters relate to ecological issues and subsequently Council's Senior Ecologist/Conservation Planner has reviewed the application and undertaken a site inspection to conclude as follows:

- 1. The site is substantially cleared of native vegetation and for the most part is dominated by a mixture of exotic pasture grasses and appears to have been regularly slashed.*
- 2. There is a significant strip of Swamp Oak (*Casuarina glauca*) vegetation that follows the property boundary along the north and western boundaries (see attached aerial photo). This vegetation is consistent with the description of Swamp Oak Floodplain Forest of the NSW North Coast, Sydney Basin and Southeast Corner bioregions which is listed as Endangered under the Threatened Species Conservation Act 1995.*
- 3. To protect this vegetation from damage it is recommended that cattle be excluded by the provision of fencing.*

Appropriate conditions of consent could be recommended in this regard should the use be deemed permissible.

Clause 13 states that a provision that allows development within a zone to be consented to as if it were in a neighbouring zone, or similar provision, **has no effect**.

Therefore it is considered that Clause 13 of SEPP 71 prevails over the 5(a) zone provision which states that “*any use which is compatible with adjacent uses and with uses allowed (with or without consent) in adjacent zones*”

On this basis the application is recommended for refusal.

The application is not considered consistent with SEPP 71 and is subsequently recommended for refusal.

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

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

The Draft proposes to re-zone the subject site to 4(a) Industrial

Council is required to consider draft LEP's when dealing with development applications. Judicial review has found that determinative weight is only given to a draft LEP if the making of the plan is certain and imminent. Finalisation of draft LEP No.21 in relation to this site is neither certain or imminent given the recent Court decision regarding Amendment No. 14.

The Draft LEP generally is likely to be implemented into Tweed LEP 2007. However, any proposed changes to the zoning to the subject site will only be considered after further studies are undertaken.

Therefore neither Draft LEP No. 21 nor Draft LEP 14 is not considered to affect the assessment of this application as its implementation for this site is not certain or imminent.

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

Tweed Consolidated DCP as adopted 12 April 2007

Section B4 – West Kingscliff

This section nominates the subject site for use of the sewerage treatment plant (STP) and obviously pre-dates Council's decision to relocate the STP. The use of the subject site for grazing purposes is considered a suitable temporary land use should the use be determined permissible.

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

The site is located within the Coastal zone. The proposal does not contravene the provisions of the Coastal Policy.

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

The key impact relates to threatened species. The proposed development has been assessed by Council's Senior Ecologist/Conservation Planner who has recommended fencing to ensure the livestock is kept out of the Swamp Oak Floodplain Forest. Appropriate conditions can be recommended should the use be deemed permissible.

There are no other significant adverse impacts.



(c) Suitability of the site for the development

The site would generally be considered suitable for temporary agriculture should the use be deemed permissible.

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

The application was notified to adjoining neighbours – no submissions were received.

(e) Public interest

It is considered in the public's interest to uphold the provisions of all planning legislation and therefore the application is recommended for refusal.

OPTIONS:

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

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant lodge an appeal in the NSW Land & Environment Court costs will be incurred as a result.

POLICY IMPLICATIONS:

The policy implications associated with this development relate to the interpretation of Clause 13 of SEPP 71 and its relationship to the wording contained within the Tweed LEP 2000 5(a) zone provisions.

CONCLUSION:

The key issue for the determination of this application relates to permissibility. Based on the contents of the above report it is recommended that approval can not lawfully be given and subsequently the application is recommended for refusal, on this basis only.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

P5 [PR-PC] Section 96 Application DA04/0313.01 for Amendment to Development Consent DA04/0313 for Temporary Hotel at Lot A DP 374174, No. 76 Marine Parade, Kingscliff

ORIGIN:

Development Assessment

FILE NO: DA04/0313 Pt1

SUMMARY OF REPORT:

In April 2005 Council approved a development application for a temporary hotel and bottle shop (maximum 18 months) at 76 Marine Parade, Kingscliff (the BP Service Station on the corner of Marine Parade and Seaview Street). The temporary facility was considered necessary to enable the Grand Pacific Hotel to continue trading while the construction of a resort development is undertaken on the existing Kingscliff Hotel site at 100 Marine Parade, Kingscliff.

The temporary use of 76 Marine Parade for a hotel was approved subject to conditions of consent limiting the time of occupation (to 18 months total) and the time period for commencement of the use (being two years from April 2005) .

This S96 application seeks to extend the time period for commencement until 2012. This is not possible as legislation limits extensions to one year only. Therefore a one year extension is recommended in accordance with Section 95A of the Environmental Planning & Assessment Act 1979.

RECOMMENDATION:

That Section 96 Application DA04/0313.01 for an amendment to development consent DA04/0313 for temporary hotel at Lot A DP 374174, No. 76 Marine Parade Kingscliff be approved subject to the following amendments: -

Delete Condition 2 which reads as follows:

2. This consent lapses two (2) years from the date of this consent.

Insert new Condition 2A which reads as follows:

2A. This consent lapses three (3) years from the date of this consent.



Amend the end of the consent to read as follows:

The application was determined on:	20 April 2005
The consent to operate from:	22 April 2005
The consent to lapse on 22 April 2008 unless commenced prior to that date.	
Building Code of Australia Building Classification:	9b - Assembly Buildings

REPORT:

Applicant: Estate of G Mavor
Owner: Estate of G Mavor
Location: Lot A DP 374174, No. 76 Marine Parade Kingscliff
Zoning: 3(b) General Business
Cost: Nil

BACKGROUND:

In August 2003 Council approved the re-development of the existing Grand Pacific Hotel at 100 Marine Parade, Kingscliff. The development application (DA02/1599) approved a resort development containing retail shops, hotel accommodation, motel accommodation containing 9 suites, a restaurant, footpath dining & 38 tourist accommodation units.

The works programme for the re-development would not have enabled the hotel to continue operating during the 12-18 month construction period and therefore the Licensee pursued alternatives to continue a significantly reduced level of trade in the commercial area of Kingscliff.

DA04/0313 subsequently proposed to establish a temporary hotel and a bottle shop in an existing service station building at 76 Marine Parade, Kingscliff. The service station is two storeys high, however, only the ground floor was proposed to be occupied by the proposed development.

In April 2005 Council approved DA04/0313 for a temporary hotel and bottle shop (maximum 18 months) at 76 Marine Parade, Kingscliff (the BP Service Station on the corner of Marine Parade and Seaview Street) to enable the Grand Pacific Hotel to continue trading while the construction of a resort development is undertaken on the existing Kingscliff Hotel site at 100 Marine Parade, Kingscliff.

The temporary use of 76 Marine Parade for a hotel was approved subject to the following conditions:

2. *This consent lapses two (2) years from the date of this consent.*
3. *The use of the site for a temporary hotel is permitted for 18 months only.*

The current S96 application seeks to extend the time period for commencement until 2012.

Section 95A of The Environmental Planning & Assessment Act states:

95A Extension of lapsing period for 1 year

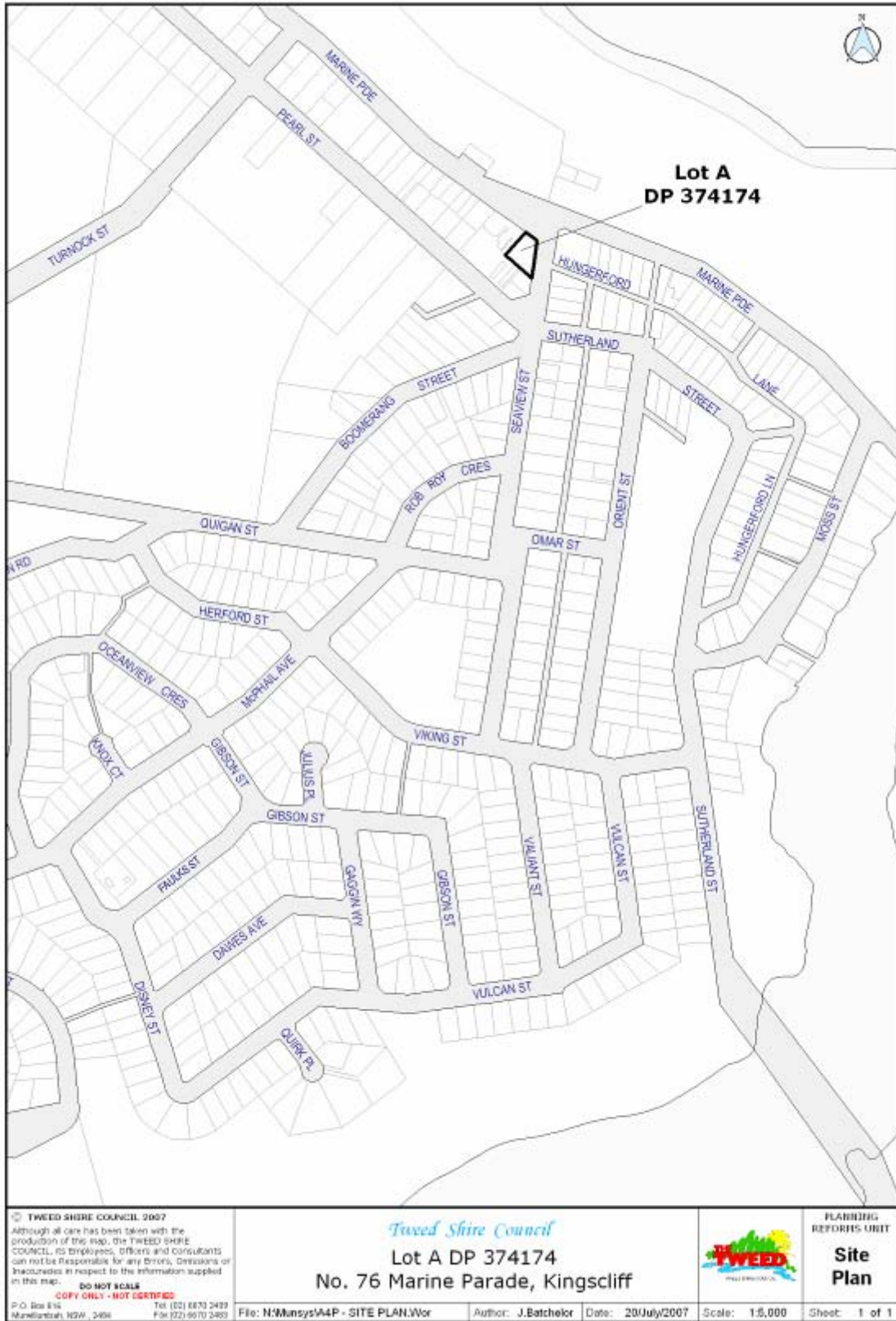
- (1) *If, in granting a development consent, the consent authority reduces the period after which the consent lapses to less than 5 years, the applicant or any other person entitled to act on the consent may apply to the consent authority, before the period expires, for an extension of 1 year.*



- (2) *The consent authority may grant the extension if satisfied that the applicant has shown good cause.*

Therefore, whilst the application seeks consent for an extension until 2012, based on the above provision Council can only grant a one year extension. This will require an amendment to condition 2 of the consent to reflect three years and will result in the consent lapsing on 22 April 2008.

SITE DIAGRAM:





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

Minimal Environmental Impact

The proposed timeframe extension is not considered to result in any additional environmental impacts.

Council's Development Engineer has reviewed the proposed time extension and has raised no objections (having regard to parking) provided the ultimate time for the temporary use does not exceed 18 months as per the original application. The proposed extension of time relates to the commencement date and not the 18 month duration time for the use.

The proposal amendment is not considered to raise any additional environmental impacts.

Substantially the Same Development

The proposed activity is not being modified by the changes. The development will still be temporary in nature and the site is still subject to all the original conditions of consent. The extension of time means that the Kingscliff Hotel License can utilise this temporarily site for 18 months only provided they relocate before 22 April 2008 rather than 22 April 2007 as per the original consent.

It is not considered that a 12 month extension changes the nature of the development and as such the proposed modifications are considered to be acceptable.

Concurrence or Integrated Authority Consultation

The Act provides for consultation with state government authorities in the event that conditions to be amended are those imposed by or of interest to such agencies.

None of the conditions of consent are proposed to be removed and as such formal consultation in relation to the proposed amendment is not required.

Advertising and Consideration of Submissions

Tweed Consolidated DCP Section A11 specifies that Section 96(2) Applications are to be notified/advertised however this not necessary if the height, external configuration, or facade remains the same.

This application is a Section 96(1)(a) application and therefore did not require notification or advertising.

Notwithstanding it should be noted that the original application was advertised and notified for a fourteen-day period. During the original application Council received twelve (12) written submissions objecting to the original proposal. The objections did raise the following point:

Issue	Concern Raised	Assessment
Temporary Development	The term temporary is not defined and could extend up to five years.	The recommended conditions of consent will be restricting the occupation of the building to 18 months and the validity of the consent to a maximum term of 2 years. Any change to these conditions will require re-consideration by Council. This objection is not considered grounds for refusal.

In accordance with the previous assessment of this “temporary” issue the matter is being reported back to Council for consideration.

The proposed extension till April 2008 is not considered a major extension and only gives the hotel nine (9) months to relocate to this temporary facility.

Given the minor nature of the allowable extension under the Act the request for an extension is recommended for approval.

OPTIONS:

1. Approve the S96 Application in accordance with the recommendation
2. Refuse the S96 Application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The recommended extension of commencement to April 2008 is considered to warrant conditional consent. The use remains strictly temporary nature and subject to strict compliance with the original recommended conditions of consent the proposed development is considered acceptable.



PLANNING COMMITTEE MEETING DATE: TUESDAY 31 JULY 2007

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

P6 [PR-PC] Development Application DA02/1685.15 for an Amendment to Development Consent DA02/1685 for a 56 Lot Subdivision and Bulk Earthworks in 8 Stages at Lot 10 DP 258122 Lundberg Drive Lot 1 DP 232745 Lot 2 DP 591194 Lot 1 DP 846151 & Lot 1 DP 1051874,

ORIGIN:

Development Assessment

FILE NO: DA02/1685 Pt15

SUMMARY OF REPORT:

A Section 96 amended application has been received to add twenty lots to the industrial subdivision. There are currently forty-nine industrial lots approved. The proposal increases the number of lots to sixty-nine. The original approval involved forty-two lots. It is proposed to amend the layout by creating smaller lots. No additional land is involved in the amendment.

It is also proposed to delete condition 2 which requires deletion of the southern lots. The condition is now redundant as the zoning was amended from rural to industrial. Conditions 81 and 82 relate to contributions and would need to be updated to reflect the number of lots if approved.

The key issue of the assessment is the proposed smaller lot sizes and their suitability to maintain an adequate supply of industrial lots for major industrial uses in the future.

RECOMMENDATION:

That Development Application DA02/1685.15 for an amendment to Development Consent DA02/1685 for a 56 lot subdivision and bulk earthworks in 8 stages at Lot 10 DP 258122 Lundberg Dr Lot 1 DP 232745 Lot 2 DP 591194 Lot 1 DP 846151 & Lot 1 DP 1051874, 92 & 144 Wardrop Valley Road South Murwillumbah & Lot 2 DP 1051874 Fernvale Road Fernvale be refused for the following reasons: -

- 1. It has not been adequately demonstrated that the proposed amendments will not have minimal environmental impact as required by Section 96(1A) of the Environmental Planning & Assessment Act.**
- 2. It has not been demonstrated that the proposed amendments will not adversely affect the ability of the industrial estate to attract major economic and employment industrial uses.**



3. **Any analysis of the supply of existing small industrial and commercial trade lots in the locality has not been undertaken to justify additional small lots in the estate.**

REPORT:**Applicant:** Mr J Dickinson & Mr L Dickinson**Owner:** Tweed Shire Council, Ms CS Dickinson, Ms D Dickinson, Mr LJ Dickinson and Mr WJ Dickinson**Location:** Lot 10 DP 258122 Lundberg Dr Lot 1 DP 232745 Lot 2 DP 591194 Lot 1 DP 846151 & Lot 1 DP 1051874, 92 & 144 Wardrop Valley Road South Murwillumbah & Lot 2 DP 1051874 Fernvale Road Fernvale**Zoning:** 4(a) Industrial**BACKGROUND:****DA02/1685 was granted approval on 11/03/2004, which proposed the following:-**

The creation of a total of 46 industrial lots and four “service” lots within the industrial subdivision; and 6 residue rural lots in the adjoining area.

DA02/1685.03 was granted approval on 03/12/2004 which proposed the following:-

A Section 96 application was received for the industrial land subdivision at Wardrop Valley Road, South Murwillumbah. Information to satisfy the deferred items of the consent had also been submitted. The report addressed the deferred matters and the s.96 amended application. Schedule A contained the deferred commencement conditions and Schedule B contained the conditions that will apply when the consent becomes operational. A deferred commencement consent was issued on 11 March 2004 for a 56 lot industrial subdivision. Seven items were required to be satisfied prior to the consent becoming operational. The consent became operational from 6 December 2004.

DA02/1685.08 was granted approval on 23/08/2005.

An amended application was received to modify condition 45 of the consent for the Wardrop Valley road industrial subdivision. Condition 45 prevents spoil material from being removed from the site. Council is proposing to undertake acid scold remediation works on the land adjoining the subdivision site. A Part V assessment has been carried (PTV 05/0011) for the remediation works.

The remediation involves covering the scald area with topsoil. It was proposed to source the topsoil from the subdivision site where earthworks have commenced.

Condition 45 currently reads as-

No soil, sand, gravel, clay or other material shall be disposed of off the site.

The condition was amended to read as follows-

Other than the placement of topsoil on the acid sulfate scald on Lot 1 DP 1069561 no soil, sand, gravel, clay or other material shall be disposed of off site unless written authorisation is provided from the Tweed Shire Council.



DA02/1685.12 was granted approval on 28/07/2006.

The application sought approval for the re-subdivision of four (4) approved lots being Lot 10, 15, 16 and 18 into ten (10) Lots being 108, 107, 106, 109, 110, 101, 102, 103, 104 and 105. The proposed subdivision of the four lots was required to provide for the market demand to accommodate smaller scale industrial developments. The proposal does not increase the size of the approved subdivision, therefore there is no additional earthworks or civil works required and no additional load on the road network or other infrastructure within the locality.

DA02/1685.13 was granted approval on 17/11/2006

The s.96 application involved the following-

- *Extension of the internal proposed access road within the industrial subdivision to access Council's land*
- *Adjusting the boundary between the Council land and the Dickenson land to add 1700m² approx. to the Dickenson land in compensation for the access road.*
- *Adjusting the boundaries proposed lots 32, 33 and 45 to accommodate the proposed access road.*
- *Creation of one additional lot.*
- *Cut and fill works to provide suitable landforming for the excised land and transitions to the Council land.*
- *Relocation of the sewer pump station lot.*
- *The application also includes a request to amend condition 45A so that excess spoil material can be utilised in Council's Acid Sulfate Soils Management Strategy. Currently material cannot be taken off site other than onto Lot 1 DP1069561 (owned by Council) to ameliorate an acid scald. The application states that 30,000m³ of material will be available. The request is reasonable provided it is used for the acid soils management program.*

45. DELETED

45A. Deleted

45B *Other than the placement of topsoil on the acid sulfate scald on Lot 1 DP 1069561 and **excavated material to be used for Council's Acid Sulfate Soils Management Strategy as approved by the General Manager or his delegate** no soil, sand, gravel, clay or other material shall be disposed of off site.*

The Proposal

An application under section 96 of the EP&A Act 1979 has been received requesting an amendment to condition(s) 1, 2, 81 and 82 of development consent No. DA02/1685.

The application seeks to create an additional 20 lots the following table 1.0 summaries the proposed new lots;

TABLE 1.0	
PROPOSED	
Lot 37 -0.66ha	Lot 221 -0.23 ha Lot 222 -0.22 ha Lot 223 -0.22 ha
Lot 36 -0.66ha	Lot 218 -0.22 ha Lot 219 -0.22 ha Lot 220 -0.23 ha
Lot 24 -0.99ha	Lot 224 -0.27 ha Lot 225 -0.3 ha Lot 226 -0.426 ha
Lot 30 -1.05	Lot 201 -0.46 ha Lot 202 -0.58 ha
Lot 29 -1.0ha	Lot 227 -0.5 ha Lot 228 -0.48 ha
Lot 27 -0.83ha	Lot 203 -0.23 ha Lot 204 -0.22 ha Lot 205 -0.21 ha Lot 206 -0.2 ha
Lot 34 -0.91ha	Lot 207 -0.2 ha Lot 208 -0.29 ha Lot 209 -0.4 ha
Lot 44 -0.88ha	Lot 213 -0.2 ha Lot 214 -0.21 ha Lot 215 -0.22 ha Lot 216 -0.23 ha
Lot 35 -0.79ha	Lot 210 -0.33 ha Lot 211 -0.28 ha Lot 212 -0.2 ha
Lot 47 Lot 48 Lot 49 Lots deleted from consent by condition 2. To be reinstated	Lot 47 -1.0 ha Lot 48 -0.97 ha Lot 49 -0.94 ha
Net Total	20

Condition 1 refers to the approved plans, given the proposal seeks to modify a referenced plan the condition is required to reflect the new plan numbers.

Condition 2 refers to lots 47 to 50 to be deleted from the subdivision. These lots were identified as being within 1(a) zoned land. The subject area has been re-zoned to 4(a) Industrial. Therefore the applicant seeks to utilise these lots by removing the condition that prohibits their creation.

Condition 81 refers to section 64 contributions, the proposal seeks to create additional lots which will incur additional contribution amounts.



Condition 82 refers to section 94 contributions, the proposal seeks to create additional lots which will incur additional contribution amounts.

Key Issue

The application was referred to the Tweed Economic Development Corporation for comment. The Board made the following comments-

The Board of TEDC suggests the preferred option would see the lots remain as per the original consent and subsequent modified consent of 17th November 2006, as it is seen as essential that the development maintains the diversity of lots, and therefore the capacity to attract a diversity of uses, and in particular maintain the capacity to deliver major economic input, by attraction of major industrial users. A further option could be to consider approval of some additional lots in the size of range of 3,000 to 4,000 square metres.

The submission went on to say that that it has based its comments on similar sized industrial estates in South East Queensland where minimum lot sizes are in the range suggested above.

Council wrote to the applicants advising them of the above and that it was considered that the proposed small lots will have an adverse impact on the economic capability of the estate to be developed for major industrial uses.

In response the applicants have submitted that 11.8% of the site will be used for lots less than 2700m² and that 21 of the 68 lots will be less than 2700m² in area which represents 30% of the lots. The significance of the applicant's use of the lot size of 2700m² is not known.

The number of lots proposed at less than 3000m² the minimum lot size suggested by TEDC is 27 which represents 40% of the lots.

The applicants submit that-

The configuration of allotments achieves the TEDC objective of maintaining the diversity of lot sizes, particularly given that based on market enquiries and organisations ready to enter into contracts, even the current 68 lot layout does not include enough lots (ie. Less than 3000m²) to satisfy demand, mainly from owner occupiers who want factories of 500-700m² of gross floor area with surrounding site fenced for storage purposes (eg. boat builders).

In relation to maintaining diversity, it should be noted that there are no lots in Stage Five to Twelve in the currently approved plan of the 17 November 2006 below 0.4 hectares and in fact only one lot of 0.46 hectares and one lot of 0.62 hectares and two lots at 0.68 hectares. All the remaining lots are approximately on hectare plus. We submit, that the current approved layout does not provide sufficient "diversity" to meet actual market demand and to achieve the objective identified by the Board of the TEDC.

The assessment of the diversity of lots should not be confined to the development site. The existing industrial area and the commerce trade area in Murwillumbah should be examined to determine if a suitable supply of small lots is available. In the absence of such a study, the comments by TEDC and the need to attract major employment generating uses, the amendment is not recommended for approval.

The primary objectives of the 4(a) zone are

- To provide land primarily for industrial development
- To facilitate economic activity and employment generation.

Clause 8 of the LEP states that Council may grant consent to development only (amongst other things) if –

- It is satisfied that the development is consistent with the primary objective of the zone within which it is located

Whilst it could not be argued that the proposed amendments will not generate economic activity and employment, maintaining the larger lots is likely to enhance the prospects of economic and employment generation more so than the proposed small lots in the medium term.

Section 96 of the EP&A Act.

Council is required to determine if a proposed modification of a consent will result in the development being substantially the same as originally approved. It could be argued that an additional twenty-seven lots (amendments must be compared with the original approval) is not substantially the same development. In this instance no additional land is being used for the additional lots as the amendments involve reconfiguring the existing approved lots. The essence of the development remains the same as originally approved as an industrial subdivision.

Council is also required to be satisfied that the modification will have minimal environmental impact. The proposed amendments will not have an adverse impact on the physical environment however reducing the attractiveness of the estate for major industries due to the smaller lots could have a significant impact on economic and employment growth. The original application and report to Council balanced the adverse social and economic impacts against the positive impacts of the proposal including the following statement-

- *Potential 920 jobs in subsequent industries located on the industrial estate, with resultant economic benefits in the order of \$50 million, based on the November 2000 Gold Coast Airport Enterprise Park Feasibility Study.*

The amended application doesn't contain any analysis of the impact of the proposed smaller lots on the above statement.

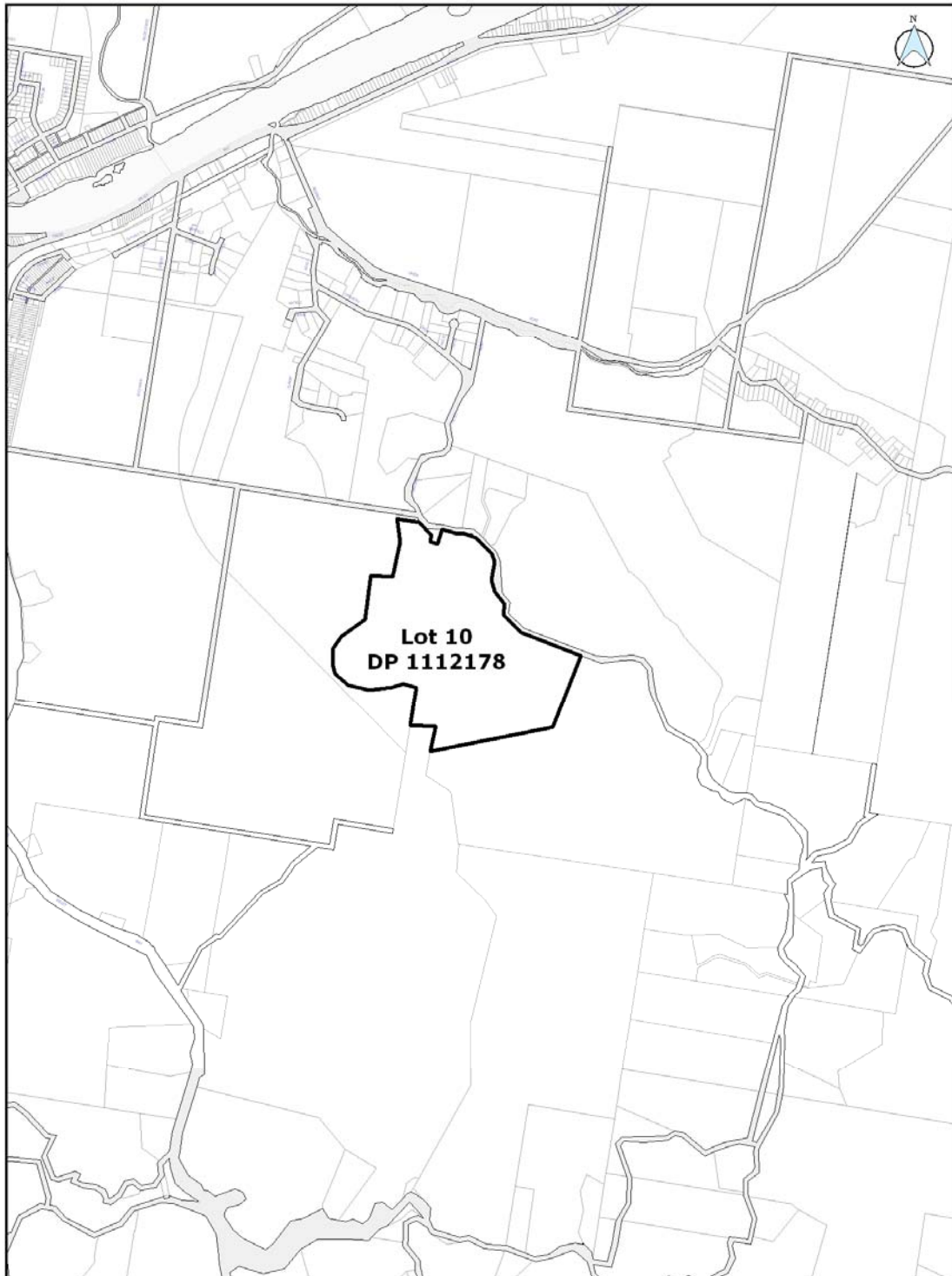



As the applicants point out in their supporting information judicial review of S.96 applications has determined that when comparing the approved development and the modifications-

The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).

The circumstances in which the development was granted included realizing the benefits that could accrue to the Tweed with a major economic and employment generating industrial estate. As pointed out by TEDC the proposed amendments are likely to diminish this objective. Accordingly without any substantial economic analysis to demonstrate that the proposed amendments will not reduce the effectiveness of the estate to attract major industrial development Council cannot be satisfied that the proposed amendment will have a minimal impact on the estate.

SITE DIAGRAM:



<p>© TWEED SHIRE COUNCIL 2007 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE P.O. Box 916 Tel: (02) 6670 2409 Murwillumbah, NSW, 2484 Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i> Lot 10 dp 1112178 Wardrop Valley Road, South Murwillumbah</p>		<p>PLANNING REFORMS UNIT Site Plan</p>
<p>File: N:\Munsys\A4P - SITE PLAN.Wor Author: J.Batchelor Date: 19/July/2007</p>		<p>Scale: 1:20,000</p>	<p>Sheet: 1 of 1</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 proposed development is permissible with consent under the provisions of the Tweed LEP 2000. See comments above regarding the objectives of the zone.

North Coast Regional Environmental Plan 1988

The proposed amendments are not contrary to the objectives of the zone.

State Environmental Planning Policies

The proposed amendments are no contrary to any SEPP.

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

N/A

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

The proposed amendments are not contrary to Development Control Plan A5 Subdivision Manual.

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

The site is not within the coastal zone.

(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

See comments above regarding impacts.

(c) Suitability of the site for the development

The site is suitable for the development.

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

The application was exhibited and two objections were received from the Murwillumbah Pistol Club.

The main concern of the pistol club is that Lot 10 DP 258122 has been included in the subdivision as part of this application. Lot 10 is the site of the pistol club and owned by Council. Lot 10 has always been part of the development as works were required on lot 10 to assist the pistol club operations. The land has not been sold to the industrial estate developers nor is there any proposed subdivision of lot 10.

The other issues raised are the impact on club activities, extra blocks will attract more traffic and pollution and a fresh development application should be lodged not an amendment. The submissions also raises the issue of their lease arrangements with Council.

Comment

Additional blocks may or may not attract more traffic and pollution as it depends on the use of the lots large or small. Assessment of future applications will consider traffic and pollution impacts.

See comments above regarding Section 96.

The Pistol club lease arrangements are not matter for this assessment.

(e) Public interest

The public interest will not be served if the proposed amendments reduce the estate's ability to attract major employment and economic generating developments.

OPTIONS:

1. Approve the modifications and amend the appropriate conditions.
2. Refuse the amendments as per the recommendation.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicants have a right of appeal in the NSW Land and Environment Court if they are dissatisfied with the determination.

POLICY IMPLICATIONS:

Nil.



CONCLUSION:

The application has not demonstrated that the substitution of the small lots for large lots will not adversely affect the economic benefits of the larger industrial lots.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

P7 [PR-PC] Development Application DA06/0682.05 for an Amendment to Development Consent DA06/0682 for Recreation Establishment Comprised of a Meditation Centre, Accommodation Wings for Up to Twenty guests, Administration, Dining and Kitchen Facilities, Bath

ORIGIN:

Development Assessment

FILE NO: DA06/0682 Pt2

SUMMARY OF REPORT:

Council has received a section 96 application to amend an approved development consent for a recreational establishment (meditation centre and associated accommodation and facilities) at 128 Bonnydoon Road, Uki (Lot 93 DP807666).

There are three components to the proposed modification as follows:

1. Increase in the number of meditation retreat events per year, but with less number of operational days overall.
2. Provision for individual ensuites in each bedroom within the accommodation blocks (as apposed to shared bathrooms and toilets); and
3. Creation of an awning over the entrance to the administration building.

The section 96 modification has been referred to Council's Environmental Health Officer for assessment in relation treatment of effluent and to Council's Traffic Engineer in relation to potential traffic impacts.

Council's Traffic Engineer has noted that whilst the number of proposed retreat events has increased by one per year, there is a net decrease in traffic generation from the development (when averaged over a twelve month period), as the total number of retreat days has been decreased.

Furthermore, Council's Environmental Health Officer has indicated the on-site sewage treatment and disposal method previously approved for the meditation retreat is sufficient for treatment of effluent from the additional bathrooms proposed in the accommodation buildings and will not significantly increase the hydraulic loading.

With regard to the above, the proposed amendments are considered relatively minor and are unlikely to result in any unacceptable impacts on traffic and the environment.

Whilst the submitters have raised concerns in relation to impacts on amenity from traffic generated by the proposal, this matter was considered with the original proposal and conditions were imposed to address these concerns. Given the minor nature of the modifications, it is not considered impacts on amenity will be increased in this regard.



RECOMMENDATION:

That:-

- A. Development Application DA06/0682.05 for an amendment to development consent DA06/0682 for recreation establishment comprising of meditation centre, accommodation wings for up to twenty guests, administration, dining and kitchen facilities, bathroom amenities, car parking, spa and massage facilities at Lot 93 DP 807666, No. 128 Bonnydoon Road Uki be approved subject to the following conditions: -

- Condition No 2 which currently reads:

The development shall be completed in accordance with the Statement of Environmental Effects and the Plan No's 1 - 13 prepared by John Robinson Design and Drafting Services and dated February 2006; drawing No. 01956 Rev. B Sheets 1 & 2 prepared by B & P Surveys and dated 3 February 2006, except where varied by the conditions of this consent.

Shall be deleted and a new Condition 2A to be inserted as follows:

2A *The development shall be completed in accordance with the Statement of Environmental Effects and the following plans, except where varied by the conditions of this consent.*

- *Plan No's 1 – 5, 7- 8, 10, 12 & 13, dated February 2006 2007 prepared by John Robinson Design and Drafting Services;*
- *Plan No 09A, dated May 2007 prepared by John Robinson Design and Drafting Services;*
- *Plan No 6, received 9 July 2007, titled 'Reception Side Entry Way Amendment', prepared by John Robinson Design and Drafting Services; and drawing No. 01956 Rev. B Sheets 1 & 2 prepared by B & P Surveys and dated 3 February 2006.*

- Condition 19 which currently reads:

19. *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-building, 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.*

Shall be deleted and condition 19A shall be inserted as follows:

19A. The erection of a building or any modifications to 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-building, 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.*

- **Condition 70 which currently reads:**

No intensification of use of the retreat beyond the provision of six 10-day and twelve 3-day meditation retreats per year is permitted without the approval of the General Manager or his delegate.

Shall be deleted and a new condition 70A to be inserted which reads:

70A *No intensification of use of the retreat beyond the provision of; four 10 day retreats, six 5 day retreat; two 3 day retreats, and seven 2 day retreats are permitted without the approval of the General Manager or his delegate.*

- B** **The Terms of Restriction on Use referred to in the 88E instrument be amended to reflect the modifications, prior to the commencement of the use.**

REPORT:

Applicant: Slocomb Investments Pty Ltd
Owner: Slocomb Investments Pty Ltd
Location: Lo 93 DP 807666, No. 128 Bonnydoon Road Uki
Zoning: 1(a) Rural and 7(d) Environmental Protection

BACKGROUND:

Council at its meeting of 28 November 2006, resolved to approve a development application for a recreational establishment comprised of a meditation centre, accommodation wings for up to 20 guests, administration, dining, kitchen facilities, bathroom amenities, car parking, spa and massage facilities at the abovementioned address.

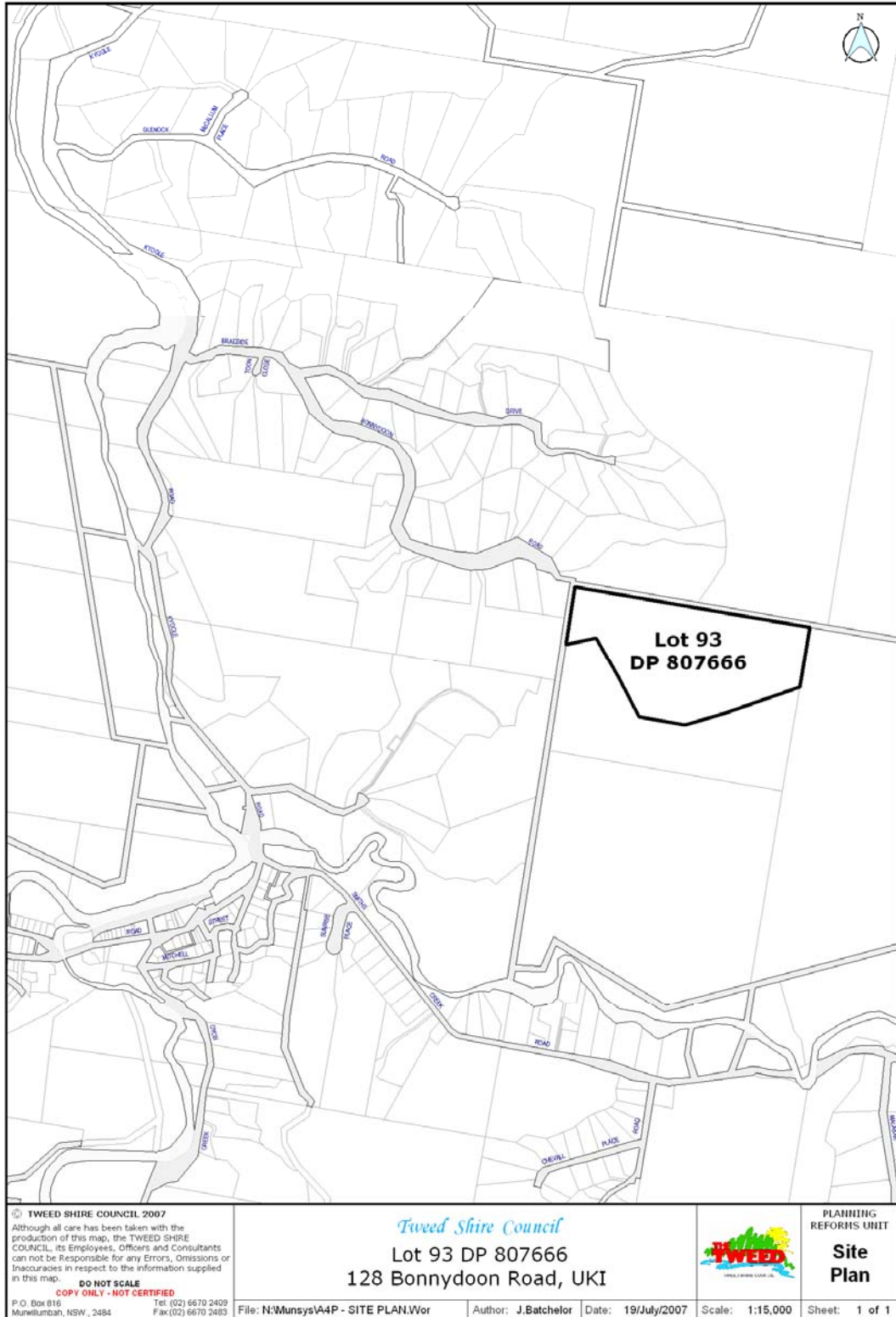
The Development Consent imposes conditions on the use, limiting:

- The use of kitchen facilities' for guests only;
- The use of the accommodation wings for sleeping facilities' and bathroom amenities for guests; and
- Provision of six 10- day and twelve 3-day retreats per year.

The Development Consent also limits the number of guests in attendance to 20, at any one time and does not allow for the premises to be used for private parties, functions, conferences and the like.



SITE DIAGRAM:



PROPOSAL:

The following modifications are requested through the subject section 96 modification.

Condition 70 - Retreats

Condition 70 currently reads as follow:

No intensification of use of the retreat beyond the provision of six 10-day and twelve 3-day meditation retreats per year is permitted without the approval of the General Manager or his delegate.

The existing conditions allows for use of the site as a retreat, for a total of 96 days per year

The applicant is seeking to modify this condition to allow for the following shorter-stay retreats.

- Four x 10- day retreats;
- Six x 5- day retreats;
- Two x 3- -day retreats; and
- Seven x 2- -day retreats.

This will result in use of the site as a retreat for a total of 90 days.

It is noted that in determining the original application, Council resolved that the uses be limited through a Section 88 Covenant as follows:

"The Development Application DA06/0682 be limited to the uses in the present application and that Council be satisfied either through notification on terms satisfactory to Council on the Section 149 Certificate for the property and/or through entering into a Section 88B covenant to be entered into prior to the issuing of a Construction Certificate."

Council has provided a 13RPa form and attached terms of restrictions for the applicant to proceed with an 88E covenant to the Lands Title Office. These terms include the frequency and length of retreat stays outlined in condition 70. Should Council resolve to approve the proposed modification, the terms of restrictions will need to be amended.

Condition 2 – Amended Floor Plan Accommodation Units

The applicant has requested that accommodation Blocks A and B are amended internally to allow for individual toilet and shower facilities within each room.

The existing Development Consent approves floor plans for block A and B (referenced in Condition 2) which allows for 10 rooms in each block with shared female and male toilets (comprised of 4 toilets, and 4 showers in each block).



Whilst the proposed modification will result in additional bathroom facilities in each block, the footprint of each accommodation block is not proposed to be expanded.

Condition 2 – Extended Awning Over Administration Building

The applicant has proposed an extension to the administration building, comprised of an awning over the entrance to the building. The amendments will require modification to elevation plans referred to in Condition 2.

The extended awning is proposed to protrude 3 metres from the existing roof structure, for a length of 5 metres.

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 original proposal was considered to be compliant with the objectives of the Rural 1(a) zone and related clauses.

The proposed amendments to the administration and the accommodation buildings do not impact on the approved height of the proposal, which was compliant with Clause 16 of the LEP.

Clause 15 of the Tweed Local Environmental Plan (TLEP) requires that Council is satisfied that the subject land has sufficient services, including disposal of sewage and drainage.

Council's Environmental Health Officer has reviewed the proposed modification and confirmed that the approved on-site sewage management system is sufficient for the proposed amendments and does not require modification.

North Coast Regional Environmental Plan 1988

Clause 12 of the North Coast Regional Environmental Plan is relevant to the application as it relates to potential for loss of prime crop or pasture land.

The original assessment did not anticipate impacts on prime crop or pasture land and the proposed modification does not include increased building envelopes and will not create additional impacts.

State Environmental Planning Policies

There are no State environmental Planning Policies that are applicable to the modification.

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

There are no draft planning instruments that affect the proposal.

(a) (iii) Consolidated Development Control Plan (DCP)Section A2 – Site Access and Parking Code

The proposed modification does not increase demand for car parking as no additional accommodation, staff or gross floor area is proposed.



Section A11 – Public Notification of Development Proposals

The section 96 (1a) modification was notified and Council received a total of 9 submissions and one petition with 45 signatures.

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

Clause 92(a) Government Coastal Policy

The land is not subject to the provisions of the Coastal Policy.

Clause 92(b) Applications for Demolition

The proposed modification does not involve the demolition of any buildings or structures.

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

Traffic and Amenity

The proposed modifications allow for an additional retreat event per annum but a less amount of operational days per year.

The proposed modification was referred to Council’s Traffic engineer, who provided the following comments.

The proposed amendment to the original DA alters the traffic generation as follows:

Previously approved trip generation:

Total number of ‘retreats’	= 18 (96 days total)
Customers: 13 weeks x 50 trips/week	= 700 trips per year
Staff 8 x2 x 96 days	= 1,536 trips/year
AADT = (1536 + 700) / 365	= 6.2 vpd

Proposed amended trip generation:

Total number of ‘retreats’	= 19 (90 days total)
Customers: 12 weeks x 50 trips/week	= 650 trips per year
Staff: 8 x2 x 90 days	= 1,440 trips/year
AADT = (1,440 + 650) / 365	= 5.7 vpd

*Therefore, even though the number of retreats has increased by one, there is a net decrease in traffic generation from the development **when averaged over a twelve month period** as the total number of retreat days has been decreased.*

*Even if we assume the worst scenario of traffic generation (i.e. one customer per vehicle which would be very unlikely), we obtain 20 customer vehicle trips (inbound only) plus one return excursion per customer per day (say 40 vehicle trips) plus 16 staff vehicle trips (inbound and outbound) plus 2 service vehicle trips = 78 vpd **on any given 'worst' day**. This worst scenario would have been the same for the original development application. Table D1.11 of "Tweed Shire Development Specification D1 - Road Design" states that a Class C rural road can typically carry up to 1,000vpd. The cumulative impact of the proposal together with pre-development traffic volume is well below this threshold. Even if we consider the additional retreat per year as purely **adding** additional customer generated traffic to that previously accepted, the increase in traffic is trivial (40 customer trips plus 4 service vehicle trips over a whole year).*

The applicant's description of the trips generated by the proposal being similar to that of a residential dwelling is not relevant.

The traffic problem as perceived by the residents is possibly one of more frequent traffic noise and increased safety risk from a slight increase in traffic volume. These factors would have been considered from a planning perspective at the time of the original application.

As the proposed amendment provides typically the same order of trips generated as the original proposal, the S. 96 amendment should be accepted in terms of traffic impact. Condition 70 provides a limit to traffic generation from the development and should be retained in amended form to suit the S. 96 amendment.

On balance, and with regard to the points below, it is considered that the proposed modifications will not have an unacceptable impact on traffic and associated amenity:

- Council's Traffic Engineer has concluded that the traffic generated by the proposed amendment is within the same order of trips as the original proposal.
- Impacts perceived by the residents due to noise and safety risk were considered during the original assessment and it was concluded that the recreational establishment will be consistent with the intended amenity and character of the Rural zone.
- Condition 59 of the original approval requires provision of traffic safety and warning signs at appropriate locations along Bonnydoon Road. This condition was imposed to address submitters concerns and reduce potential impact on amenity through vehicle noise and or inappropriate speed on Bonnydoon Road. This condition will remain unchanged.



Effluent Disposal

The proposed modifications include the provision of additional bathrooms and toilets in each accommodation block. The proposal has been assessed by Council's Environmental Health Officer (EHO) who considers that the modifications will not increase the hydraulic loading to the on-site sewage management system.

The on-site management system has been approved through a Section 68 Approval and Council's EHO has advised that approved system is sufficient for the additional facilities proposed.

(c) Suitability of the site for the development

The site was found to be suitable and consistent with the relevant statutory guidelines in the original assessment.

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

Council received 13 submissions during the public notification of the original application. Issues raised by submitters related to land use, traffic impact, children safety, amenity, environmental impacts, ground water supply, drainage and precedent. These matters were assessed in the original report to Council.

As stated above, the proposed section 96 modification was notified and Council received 9 submissions as well as a petition.

It is noted that many submitters raised issues which were considered during assessment of the original application, such as land use, precedent and environmental impacts. These matters are noted but have not been addressed here as they were considered as part of the original assessment and do not relate to the proposed modifications.

Traffic

Submitters raise concerns with impacts of increased traffic from the proposed modification.

Comment

As identified above, the proposed amendments to the number of retreats per year will result in:

- less number of operational days each year;
- one additional retreat per year;
- a net decrease in traffic generation when averaged over twelve months; and
- traffic generation which is well below the volume capacity of a Class C rural road.

It is noted that the Notification letters issued by Council incorrectly advised residents that the modifications would result in an increase from 9 approved retreat events to 19 per year. The approval actually allows for 18 retreat events per year, resulting in an increase of one event. The modification is therefore considered to be relatively minor and traffic generated will be within the same order of trips (slightly less) than the approved development. The modification is therefore considered acceptable as it will not result in any additional traffic impacts.

Residential Amenity – Road Safety and Traffic Noise

Submissions raise concerns with safety for residents due to increased traffic as well as noise generated from increased use of Bonnydoon Road.

Comment

Impacts upon residential amenity were assessed as part of the original application. It was considered that the proposal was consistent with the intended character of the rural area in which the property is located. It was also noted that recreational establishments are permissible by the Rural 1(a) zoning and contemplated as an acceptable land use.

The increased scale of operation proposed by the section 96 modification is minor and will result in one additional retreat per year. Existing conditions imposed on the use are considered sufficient to alleviate concerns about safety and amenity.

Increased Amenities

There is concern that the inclusion of en-suites in the accommodation units indicates the intention of the developer is for an “upmarket tourist resort” as opposed to basic needs of the meditation retreat.

There are concerns that the increased number of bathrooms will require greater water and production of effluent.

Comment

It is not considered that the provision of bathrooms in each room will result in a larger scale development. The building footprint of the accommodation block will not be increasing and the use will not be intensified by the increased number of bathrooms. The existing Development Consent limits the scale and use of the development.

Council’s Environmental Health Officer is satisfied that the approved on-site effluent disposal system can cater for the increased facilities.



(e) Public interest

The proposed development was considered to demonstrate consistency with the relevant planning instruments and Council requirements when originally considered. The proposed amendments do not result in any non compliance and does not result in significant changes to the nature and intensity of the approved recreational establishment.

OPTIONS:

1. Approve the s96 application in accordance with the recommended conditions of consent.
2. Refuse the s96 application for stated reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicants be dissatisfied with the determination, they have a right to appeal to the NSW Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The section 96 modifications are considered relatively minor and will not result in any increased traffic impacts.

The proposed amendments have been assessed on their merits and within the context of the variation only. The section 96 modification is not an opportunity to re-visit the original determination.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

