

TITLE: [PR-PC] Class 1 Appeal 08/10628 - Development Application DA06/0946 for a Mixed Development Comprising 2 x 2 Bedroom Units, 2 x 3 Bedroom Units and Commercial Premises at Lot 3 DP 520276, No. 20 Marine Parade, Kingscliff

ORIGIN:

Development Assessment

FILE NO: DA06/0946 Pt4

SUMMARY OF REPORT:

Council has received a Class One Appeal for DA06/0946. The development application was for the demolition/replacement of the existing 3 storey single residential dwelling which contained some commercial floor space on the ground floor, with a three storey development containing; four residential units, one commercial unit and associated carparking.

The call over for the Appeal is scheduled for 28 July 2008. Council's solicitors require instructions.

RECOMMENDATION:

That Council defends the Class One Appeal and engages consultants to act as Council's expert witness.

REPORT:**BACKGROUND:**

The application was recommended for approval at both Council meetings of 31 July 2007 and 22 April 2008 and refused by Council.

Critical Dates/Application History

Date	Action
18 August 2006	DA submitted to Council.
6 September 2006 to 20 September 2006	Public advertising period. Submissions were received.
16 May 2007 to 30 May 2007	Re-advertising period of application due to changes. Submissions were received.
31 July 2007	DA submitted to Council for determination. Council resolved to refuse the application.
20 December 2007	An amended application is lodged with Council for a Section 82A Review of determination.
23 January 2008 to 7 February 2008	Advertising period of the Section 82A Review of Determination.
22 April 2008	S82A Review submitted to Council for determination. Council resolved to reaffirm the determination for refusal at the meeting on 31 July 2007.
27 June 2008	Class One Appeal 08/10628 lodged with Council.

Council's reasons for refusal are as follows:-

1. The proposal is for a four (4) storey development in an area where the Tweed LEP restricts development to 3 storeys and the submission put forward by the applicant to approve a SEPP 1 variation to permit this development is not supported.
2. The application has a carparking shortfall for the commercial component of the proposed development.
3. The proposed development has a bulk and scale which is not supported.
4. The proposed development will cast a shadow onto public foreshore land and the extent of the impact is not supported in this instance.
5. The height of the proposed development exceeds the provisions of the Tweed Shire Development Control Plan Section B18 - Tweed Coast Building Heights.

OPTIONS:

1. Defend the Class One Appeal and engage consultants to act as Council's expert witness. The application was recommended for approval and refused by Council.

As such it is inappropriate for staff to act as expert witnesses in this Appeal. Planning consultants will need to be engaged to defend the refusal.

2. Negotiate consent orders. Negotiation of consent orders would involve the NSW Land and Environment Court considering the application following agreement between the applicant and Council. The objectors would have an opportunity to be heard by the Court.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Council will incur legal costs and costs for consultants

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.
