

ADDENDUM REPORT

REPORTS THROUGH GENERAL MANAGER

REPORTS FROM DIRECTOR PLANNING & REGULATION

aP17 [PR-PC] Development Application DA07/0022 for Multi Dwelling Housing Comprising 7 Units at Lot 9 DP 14141, No. 21 Tweed Coast Road, Hastings Point

ORIGIN:

Development Assessment

FILE NO: DA07/0022 Pt5

SUMMARY OF REPORT:

On 18 November 2008 Council resolved to refuse this Development Application and seek legal assistance to remediate the site.

Council has received a Class 1 Appeal from the applicant challenging Council's refusal of this DA.

This report seeks a resolution from Council to defend the appeal.

RECOMMENDATION:

That Council's solicitors be engaged to defend the applicant's appeal on DA07/0022 at Lot 9 DP 14141, No. 21 Tweed Coast Road, Hastings Point.

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Applicant: Planit Consulting
Owner: Ms LP Wiseman and Mr J Bortoli
Location: Lot 9 DP 14141, No. 21 Tweed Coast Road, Hastings Point
Zoning: 2(b) Medium Density Residential
Cost: \$1,100,000

BACKGROUND:

Council received DA07/0022 in January 2007. The application sought approval for a 3-storey 6 unit multi-dwelling housing development at 21 Tweed Coast Road, Hastings Point (on the corner of Tweed Coast Road & Young Street).

At the time of the original assessment the amended proposal was considered to represent a good planning and design outcome for the site and locality generally. Subsequently Council approved the Development Application in June 2007 subject to conditions of consent.

The Development Application was challenged in the NSW Land & Environment Court by Hastings Point Progress Association Incorporated. Judge Pain determined that Council failed to adequately consider cumulative impact which was a statutory requirement of Clause 8 of the Tweed LEP 2000. The consent was determined void and of no effect.

The applicant then requested that Council re-assess the Development Application and make a determination on the proposal.

On 18 November 2008 Council resolved that:

- A. *Development Application DA07/0022 for multi dwelling housing comprising 7 units at Lot 9 DP 14141, No. 21 Tweed Coast Road Hastings Point be refused for the following reasons: -*
 1. *The application is not considered to be consistent with Section 79C 1(a) of the Environmental Planning & Assessment Act 1979 as it does not satisfy the following applicable planning instruments:*
 - a. *The Tweed LEP 2000 including Clause 4 Aims of the Plan, Clause 5 Ecologically Sustainable Development, Clause 8 Consent Considerations, Clause 11 The Zones, Clause 16 Height, and Clause 31 Development Adjoining Waterbodies;*
 - b. *The North Coast Regional Environmental Plan including Clause 15 Development Control Wetlands or Fisheries and Clause 32B Development Control – Coastal Lands;*
 - c. *Clause 8 of State Environmental Planning Policy No. 71 – Coastal Protection.*

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- d. *Tweed Development Control Plan Section A1 Residential & Tourist Development Code, & Section A2 Site Access & Parking Code.*
2. *The application is not considered to be consistent with Section 79C 1(b) of the Environmental Planning & Assessment Act 1979 as it would have a negative impact on both the natural and built environment.*
 3. *The application is not considered to be consistent with Section 79C 1(c) of the Environmental Planning & Assessment Act 1979 as the proposed development has not responded to the sites constraints, the sites ecological significance or the future desired character of Hastings Point.*
 4. *The application is not considered to be consistent with Section 79C 1(e) of the Environmental Planning & Assessment Act 1979 as the proposed development is not considered in the public interest.*
- B. *Council engages legal representation to achieve site remediation (which would include the removal of any building footings and re-vegetation of the site to its original state. Such remediation will not include relocation of the sewer line but will include the applicant submitting works as executed drawings, video footage of the line (testing), and dedication of the easement for the sewer line.*

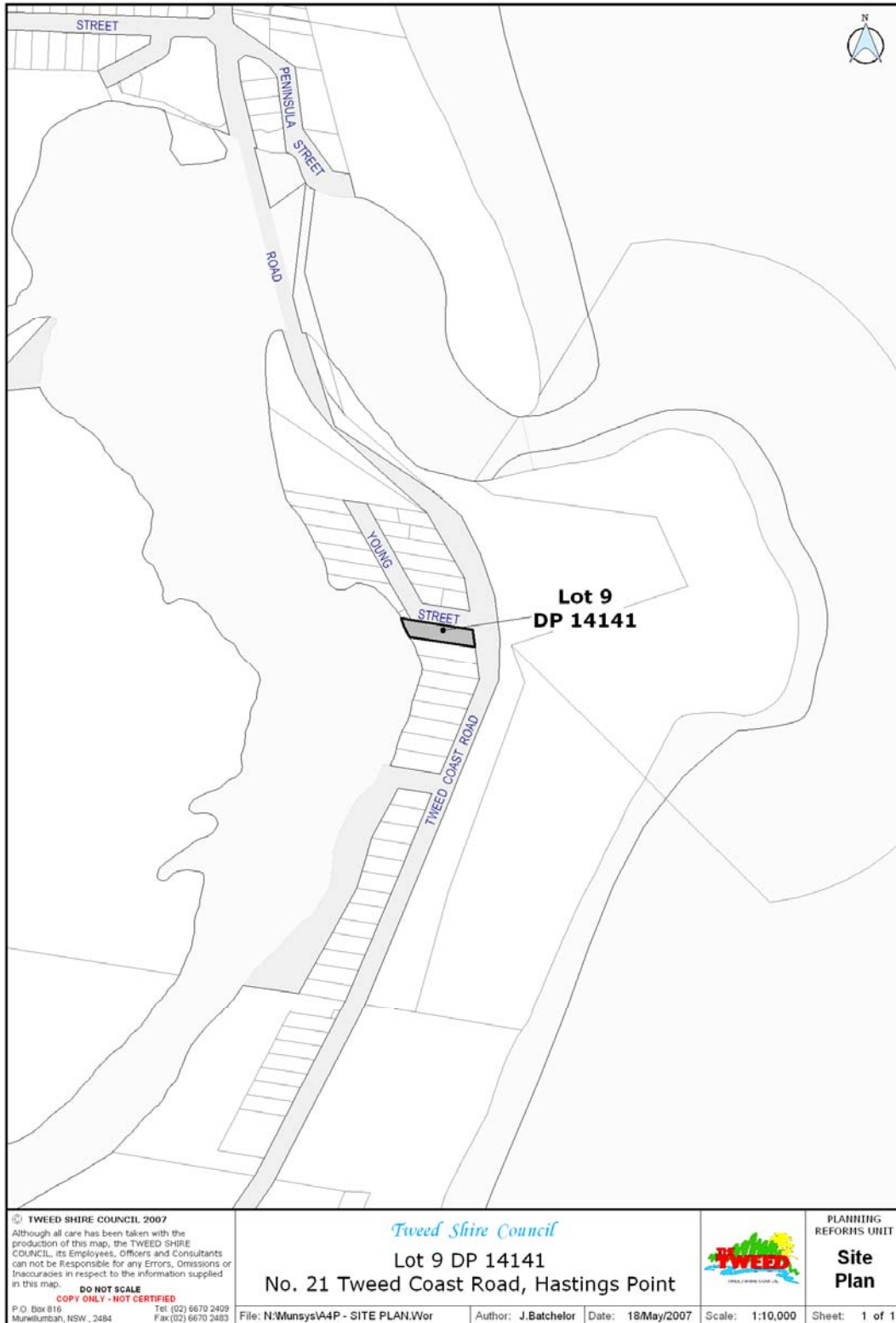
The applicant has now lodged a Class 1 Appeal challenging Council's refusal of this application.

It is recommended that Council's solicitors be engaged to defend this appeal.

Should the Council resolve to defend this appeal, the site remediation (as resolved in "B" above) will be left until such time as the Class 1 Appeal is determined.

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SITE DIAGRAM:



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OPTIONS:

1. That Council actively defend the Appeal;
2. That Council not defend the Appeal (this could potentially mean the Court overturning Council's original determination and conditions of consent being ordered);
3. Rescind the refusal of 18 November 2008 and reconsider DA07/0022.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Council will incur legal costs should the appeal continue.

POLICY IMPLICATIONS:

The outcome of the appeal may have policy implications.

CONCLUSION:

The merits of DA07/0022 have been assessed and debated at length. This consideration resulted in refusal of the DA. The applicant's challenge of this DA does not change the previous assessment, and accordingly Council should defend the appeal.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Council Report Item P2 of the Planning Committee meeting held 18/11/2008 - DA07/0022 (DW 1949758)
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