



AGENDA

PLANNING COMMITTEE MEETING

Tuesday 12 February 2008

Chairman: Mr Max Boyd AM

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



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ITEMS FOR CONSIDERATION OF THE COMMITTEE:

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REPORTS THROUGH GENERAL MANAGER

REPORTS FROM DIRECTOR PLANNING & REGULATION

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

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

MATTERS FOR CONSIDERATION

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



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P1 [EO-PC] S94 Developer Infrastructure Contributions Proposed Changes by NSW Government

ORIGIN:

Director Engineering & Operations

SUMMARY OF REPORT:

Section 94 Contributions are the means by which Councils levy development to finance the infrastructure necessary to support population growth created by development. It is a "user pays" system that avoids burdening existing residents and ratepayers with the costs of supporting development and associated future populations. S94 was introduced in 1980.

Tweed Shire collected \$10.5M last financial year and this compares with around \$30M collected in General Fund rates.

The NSW Department of Planning (DOP) circular of November 2007 announced major changes to the Section 94 system. It proposes to only allow contributions for local infrastructure that services the individual development or subdivision and to no longer allow contributions for regional or shire wide facilities that service a wider area.

Under the current s94 system, Councils may collect for these wider used facilities provided the developer contributions are only used for that portion of the facility to be used by new development. The NSW Department has strict guidelines on how this apportionment is calculated. Council presently has shire wide contribution plans for arterial roads, regional sporting facilities, regional open space, libraries, cemeteries and the like to collect a total of \$260M from development that will be ineligible under the proposed changes.

Projects that will be deleted if the changes proceed will include the Kirkwood Road interchange and service roads to Kennedy Drive, Boyd Street Interchange, duplication of the Tweed Coast Road, Murwillumbah northern bypass, Arkinstall Park Regional Sports Facility, Upgrading of coastal reserves, additional surf life saving facilities.

Council's rates are pegged and in any case it is unrealistic to consider raising rates by the amount necessary to make up for the loss of Section 94 revenue. A possible outcome of the proposed Section 94 changes is that all urban expansion in Tweed may need to be curtailed as Council will not be able to supply the arterial road network and other facilities needed to support the new population.

The NSW Department of Planning has been advised of the difficulties the proposed changes will cause in Tweed Shire.



RECOMMENDATION:

That due to the adverse impacts of the proposals in NSW Department of Planning Circular PS 07-018 on Local Governments ability to finance and provide the infrastructure necessary to service planned population growth and the long term financial viability of Councils in high growth areas:-

The Minister for Planning be requested to defer implementation of the proposals until there is an inquiry and full consultation with local government to determine the likely impacts on Local Government finances and ability to fund necessary growth related infrastructure and that if appropriate the inquiry make recommendations that would minimise adverse impacts

REPORT:

1. Proposed Changes to Developer Contributions System

Changes to the developer contributions system announced by the NSW Government identify the following Tweed Shire Council Contribution Plans as being no longer eligible under the new system.

Section 94 Plan	Scope
4. Roads	shire wide arterial road network
5. Shire Wide Open Space	shire wide but excludes specified urban release areas
11. Library Facilities	shire wide regional facilities
13. Regional Eviron Cemetery	shire wide lawn cemetery facility
15. Community Facilities - Tweed Coast	Tweed Coast
16. Emergency Facilities - Surf Life Saving	shire wide
18. Council Admin Office & Support Facilities	shire wide
22. Cycleways	shire wide urban areas
26. Shirewide Regional Open Space & Sporting Facilities	shire wide, includes Arkinstall Park, Murwillumbah Regional Pool, Jack Evans Boatharbour

1.1 NSW Premier's Press Release - 12 October 2007

"Mr lemma said the new regime would cut state and local government infrastructure contributions by 30 to 40 per cent, providing a saving of at least \$25,000 per lot in the Western Sydney Growth Centres....."

In addition to slashing levies, the changes also include:

- *Reducing the type of projects funded through State and local government infrastructure levies;*
- *Infrastructure provided by councils to be delivered in a more timely way – typically within seven years – and must directly service new release areas;*
- *The creation of an Urban Improvement Fund to hold State Government and developer contributions for infrastructure in new land release areas;*
- *The new levies framework to be progressively applied throughout the State – including ‘brownfield’ areas – based on local and regional assessments of core infrastructure needs;*
- *State projects in new land release ‘greenfield’ areas – including roads – to be put out to competitive tender."*

1.2 NSW Treasury Briefing Paper - 12 October 2007

"Local levies are recovering costs that are more appropriately funded through council rates or special council levies

*.....
When combined, local and state levies should fall by between 30-40 percent in the Growth Centres".....*

1.3 NSW Department of Planning Circular

A NSW Department of Planning Circular PS 07-018 issued 6 November 2007 advised the following changes:

- State contributions applying to greenfield areas identified in Regional or Subregional areas will fund 75% of attributable State infrastructure costs.
- Local (Council) Contribution Plans may fund 100% of local roads, local bus infrastructure, local parks that service a development site or precinct, drainage and water management expenses, land and facilities for local community infrastructure that services a development site or precinct, land for other community infrastructure and recreation facilities.
- All other costs can no longer be recovered through local contributions
- The Minister will issue new guidelines. Councils will continue to prepare new s94 (94A) plans, but they must be endorsed by the Ministers delegate
- for new greenfield areas a single contribution combining State & Local infrastructure charges will be set on a developable area basis and collected at two stages on a "developable area basis":
 - 25% of state & local infrastructure costs at time land is first sold following rezoning or DA consent (called a Rezoning Infrastructure Contribution - RIC)
 - 75% on release of subdivision/occupancy certificate (called a Serviced Infrastructure Contribution - SIC)
- The NSW government may consider collecting & holding s94 (s94A) funds for greenfield development outside Sydney growth centres on a case by case basis
- New system will apply to s94 (94A) contributions in existing urban and greenfield areas
- Planning agreements must be consistent with new framework
- Plans made before 12 November 2007 will continue as if changes announced had not been made

1.4 Letter Director General NSW Department of Planning 21 January 2008

The Director General, Mr Sam Haddad advises the Department of Planning has established a working group to bring changes into effect and advises he will give proper consideration to Tweed's needs. He further advises that the implementation timetable has not yet been determined and that whilst it is not the Department's position to redress the Government's decision, the Department is working to achieve a balance and appropriate outcome for all stakeholders. He further advises that the status of Council's existing contributions has yet to be decided. See attachment.

1.5 Objectives of the Proposed Changes

1.5.1 Reduce Types of Projects that can be funded by Developer Contributions

The Department of Planning Circular says that future s94 plans will fund:

"100% of the following local infrastructure costs:

- *local roads*
 - *local bus infrastructure*
 - *local parks that service a development site or precinct*
 - *drainage and water management expenses*
 - *land and facilities for local community infrastructure that services a development site or precinct*
 - *land for other community infrastructure and recreation facilities.*
-

All other costs, such as facilities benefiting existing communities, can no longer be recovered through local contributions"

and this sentiment is echoed in the Treasury Briefing Paper.

The above list of eligible infrastructure excludes shire wide regional infrastructure needed to service planned new populations. In Tweed Shire this would exclude existing contributions plans for Arterial Roads (CP4), Shire Wide Open Space (CP5), Regional Libraries (CP11), Regional cemetery (CP13), Community Facilities - Tweed Coast (CP15), Emergency Facilities - Surf Life Saving (CP16), Council Admin Office & Support Facilities (CP18), Shire Wide Cycleways Network (CP22) and Regional Open Space & Sporting Facilities (CP26).

The proposed changes would be successful in eliminating projects that have shire wide or regional benefits. However, proposed legislative changes to make shire wide or regional contribution plans, that legitimately provide necessary infrastructure for the future planned population, ineligible would undermine the orderly planning and provision of infrastructure for growth areas. Councils would be unable to finance the infrastructure through the pegged rating system and it would be inequitable to do so. It also undermines Council's long term financial planning, particularly where loans have been obtained or facilities provided ahead of time on the assumption that future contributions would pay them off.

Recovery of costs for facilities benefiting existing local communities through s94 contributions is already unlawful under s94 of the Act. It is an established principle in drafting s94 plans that if a proposed facility will benefit both existing and future populations, then the costs are apportioned and the contributions may only be applied to that proportion of the facility that benefits the future population. The statement in the departmental documents is either ill informed or it suggests that Councils have been unlawfully using s94 of the Act.

It would be regrettable if such critical changes to the contributions system were based on a misunderstanding of the existing provisions of s94 or a simple need for better auditing of contributions plans and enforcement of existing provisions of s94.

1.5.2 Reduce Housing Land Costs

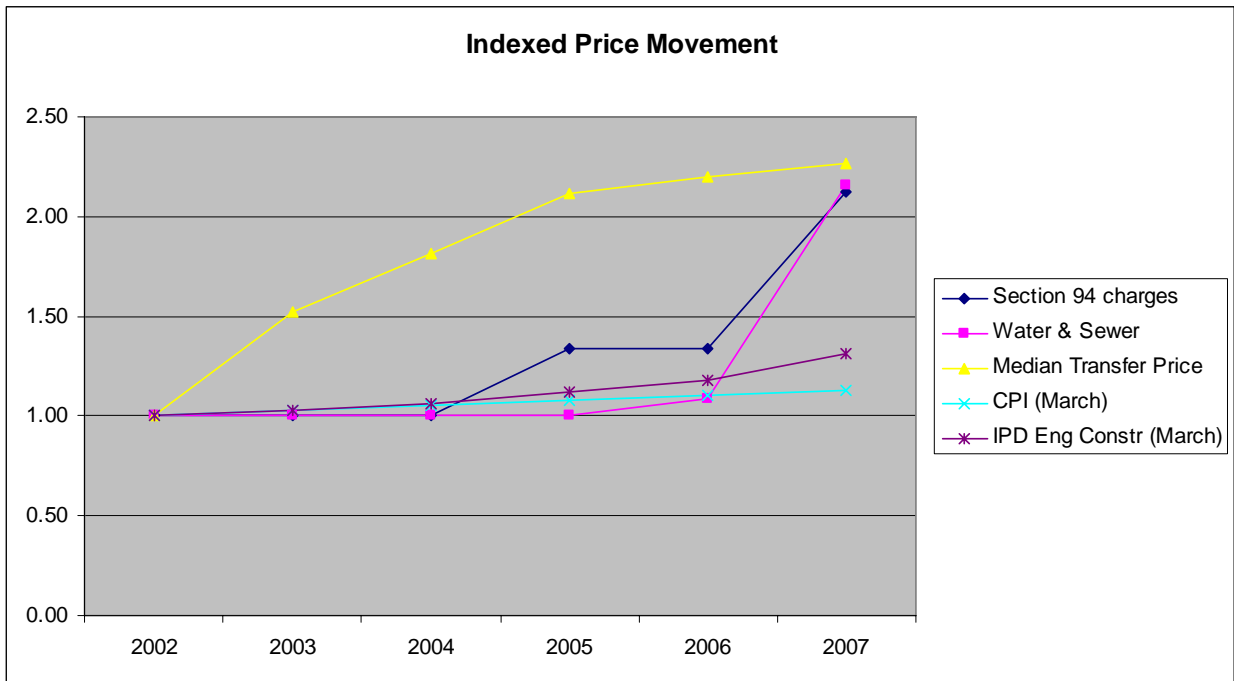
Whilst Council contributions are a significant input cost to developers, the price of housing land to consumers is set by the market and not developer cost inputs. The Tweed Shire housing land market is a small part of the South East Queensland market, and prices are generally determined by how the land product supplied interacts with the demand in the South East Queensland market.

The cost of developer contributions has risen significantly in past years, mainly due to large increases in the cost of civil engineering contract construction caused by high demand for labour, plant and materials in the booming SEQ infrastructure industry.

In general contributions costs are only keeping pace with construction costs and market prices for housing land.

It is acknowledged that if development costs, which include s94 contributions, are excessive, then the developer of "greenfields" land may choose to defer or abandon development. There is no evidence that contribution costs are causing this to occur in Tweed Shire.

The following is an example of the movement of land prices and Council contribution costs at the "Seabreeze" estate west of Pottsville in Tweed Shire.



In 2002 the average (transfer) price of land in this estate was \$95,500 and the cost of s94 contributions was \$7,017. In 2007 the price of land was \$216,250 and cost of s94 contributions \$14,886. In the same period s64 water & sewer contributions rose from \$6,864 to \$14,801. In summary the price of land has more than doubled and the amount of Council contributions has risen at a similar rate. More details are appended at the end of this report.

The Circular and Treasury briefing have not explained how projected contribution savings would be passed on to purchasers. It can be expected that developers will charge what the market will pay. There is also the issue that if in fact developers reduce land prices by \$28k (see Treasury Paper) then owners of houses adjacent are likely to have their properties reduced by the same amount, which will compound current debt servicing problems associated with interest rate rises.

It is also noted that the State Infrastructure charges "will apply to development sites across the State where rezonings or levies have not been finalised" (Planning Circular PS 07-018). This appears to mean that developers of Cobaki , Kings Forest , West Kingscliff etc where zonings are still under review may be liable to pay the state infrastructure charge of \$23k. Imposition of a new state contribution would increase total contributions significantly and be contrary to the Government's objective of reducing housing development costs. As an example at Kings Forest current Council contributions are \$23,754. Under the proposed changes Council contributions would be reduced to

\$16,228, but with new state charges of \$23,000 the combined total may be \$39,228, a substantial total increase and contrary to the Government's objective of reducing housing development costs.

1.5.3 Expend Contributions in Seven Years

It is an objective of the Government's changes to ensure infrastructure is delivered in a more timely manner - typically 7 years.

Unfortunately timing and staging of land releases is outside Council's control and therefore both the need for infrastructure and collection of all necessary contributions can also be delayed. Unlike Sydney, where large land releases are quickly sold, land releases in regional growth areas are generally staged in small releases and completion can take many years. This means progressive contributions must be accumulated, sometimes for a long time, until sufficient is available to construct larger projects. Councils can shorten the period by borrowing, but this entails risk as the future contribution cash flow may not materialise as predicted.

2. S94 Contributions Plans at Risk in Tweed Shire

Plans likely to be ineligible under proposed changes are shaded.

Section 94 Plan	Scope	06/07 Contrib \$'000	Works Outstanding \$'000	Comments
1. Banora Point West/ Tweed Heads South - Open Space	local	171	-652	
2. Tweed Heads South - Drainage	local	0	212	
4. Roads	shire wide	4,724	184,069	linked to joint Council/RTA Lower Tweed & Pacific Highway Traffic Master Plan. \$6.45M recently paid to Qld Main Roads for overpass of Tugun Bypass on assumption of future contributions from Cobaki Lakes
5. Shire Wide Open Space	shire wide but excludes urban release areas	440	876	
6. Street Trees	shire wide	81	480	
7. West Kingscliff -	local	59	609	



Section 94 Plan	Scope	06/07 Contrib \$'000	Works Outstanding \$'000	Comments
drainage, open space, community facilities, footpath/cycleways				
10. Cobaki Lakes	local	0	0	
11. Library Facilities	shire wide	438	9,883	services debt of 1.9M
12. Bus Shelters	shire wide		136	
13. Eviron Cemetery	shire wide	85	1,746	services debt of \$0.94M
15. Community Facilities - Tweed Coast	Tweed Coast	220	236	
16. Emergency Facilities - Surf Life Saving	shire wide	192	608	
18. Council Admin Office & Support Facilities	shire wide	2,176	15,753	services debt of \$5.38M
19. Casuarina Beach/Kings Forest - open space, community facilities, foot/cycleways	local	201	8,305	
22. Cycleways	shire wide urban areas	240	2,978	
23. Offsite Parking	CBD areas	381	1,212	
25. SALT	local	-99	155	
26. Shirewide Regional Open Space	shire wide	1,113	46,003	services debt of \$2.2M with part assistance of CP18 & 23
27. Tweed Heads Master Plan - Local Open Space, Streetscaping	local	53	2,239	
28. Seaside City	local			
Totals		10,475	282,516	

Tweed Shire Strategic Plans of 1973, 1984, 2000+ (adopted 1996) and the Far North Coast Regional Strategy (adopted 2006) all proposed significant urban growth for the Shire. At present the shire population is 80,000 and is expected to grow by around 40,000 over the next 20 years.

The 2000+ Strategic Plan was accompanied by the "Tweed Development Program" which outlined a capital infrastructure plan for water supply, sewerage, distributor roads, open space/recreation and community facilities with a time horizon of around 2030.

Tweed Shire's suite of s94 plans have been targeted to finance the infrastructure necessary to facilitate this projected urban growth.

3. Impacts of Proposed Changes on Tweed Shire Council

3.1 Impacts on Long Term Strategic Landuse and Infrastructure Planning

Strategic Landuse and Infrastructure Planning in Tweed Shire has been in progress and the planning has been progressively implemented since the first Strategic Plan in the early 1970s.

The suite of s94 Plans and s64 Water & Sewerage Developer Servicing Plans have been developed to deliver capital infrastructure works estimated to cost in excess of a billion dollars to facilitate further development that includes:

- Cobaki Lakes
- Kings Forest
- West Kingscliff
- Bilambil Heights
- West Murwillumbah
- Greater Pottsville (Seabreeze, Dunloe Park)
- Employment land at Murwillumbah
- Redevelopment of Tweed Heads

For greenfield development, the majority of contributions are incrementally payable at release of subdivision plan. Whilst some infrastructure provision can be staged to align with or lag this cash flow, other infrastructure must be provided ahead of land release (particularly water, sewerage).

Where infrastructure is needed prior to land release, Council takes on the risk of raising loans to be paid off by future contributions. Where infrastructure can wait, contributions can be accumulated until there is sufficient capital available to commit to construction.

There are major risks for Council which include:

- Council cannot control the rate of release of subdivision lots and receipt of associated contributions.
- the timing of infrastructure construction and necessary contribution cash flows must be estimated based on best available information.
- Staged release of development is subject to constant change outside Council control.
- where loans are raised, future contribution cash flows may be less than estimated and insufficient to service infrastructure debt repayments.
- forward estimates of infrastructure costs in contribution plans become dated and contribution amounts and cash flow are often insufficient to deliver actual costs.
- infrastructure items are often large and expensive, requiring extensive lead times for planning & environmental approvals. Expenditure of this nature is lumpy and difficult to align with contribution cash flow.
- large infrastructure projects such as water treatment plants (eg Bray Park commenced 2007 costing \$80M) are required ahead of development and require hefty loan finance ahead of contribution cash flow.

- State Government may change the contribution system after Council has already borrowed for major projects and land releases.

Nevertheless for planned urban growth to take place, Council has taken on these risks and projects are timed and staged as much as possible to align with contribution cash flows and to minimise risk.

Council has developed its infrastructure strategies and associated contribution plans in accordance with the legislative framework established by the NSW Government since 1980. Whilst continuous reform is a necessity in any industry, significant changes to this framework, as now proposed, increase uncertainty and associated risk and may induce Council to now undertake a more cautious approach to urban growth. This would create the opposite effect on development, to which the State Government appears to be trying to encourage, through reduced contribution charges.

Tweed Shire Council however is in somewhat of a bind. It has only last year committed contractually to the \$80M Bray Park Water Treatment Plant (to serve an additional 40,000 population) and requires urban development and associated contributions to service the plant's debt financing. Urban growth with the proposed s94 changes may lead to the establishment of new urban areas without adequate community and regional infrastructure. This in turn will place pressure on the existing rate base to make up the shortfall in community and regional infrastructure for both the existing and future populations. This is not practical in a rate pegged financial environment.

There is a need for changes such as now proposed to s94 to be considered in a holistic manner by State policy makers. Such changes may have significant impacts on the financial viability of high growth Councils, particularly those multipurpose Councils that have made large investments in water & sewerage infrastructure.

A widely focused government inquiry to analyse the impacts of the proposed s94 changes, the current review of Water Supply Authorities and the impacts of both these measures on the financial viability of affected Councils would now seem appropriate. Such an inquiry could ensure that narrow focused policy decisions do not have unintended consequences on the financial viability of multipurpose Councils in high growth areas. Such an inquiry could also ensure planned urban growth in NSW is not put at risk by the inability or risk aversion of Councils to undertake loan borrowing to provide the infrastructure.

3.2 Shire Wide Contribution Plans Excluded by Proposals

The NSW Government proposes:

- Local parks and open space that service a development site or precinct may be recovered through contribution levies but council-or district wide facilities can no longer be recovered through contributions and must be funded through rates as all residents benefit.
- Land and facilities for Local community infrastructure that service a development site or precinct may be recovered through contribution levies but council-or district wide facilities can no longer be recovered through contributions and must be funded through rates as all residents benefit.

This proposal presents significant difficulties for Tweed Shire Council.

Council has a number of Contribution Plans that finance shire wide facilities and it is considered that these plans are fully compliant with the nexus provisions of the Act.

It is agreed that most of these shire wide facilities benefit both existing and future populations, however there is an equitable mechanism used to apportion costs to each population segment. This mechanism is detailed in the NSW Department of Infrastructure Planning and Natural Resources, Development Practice Note July 2006 titled "Determining rates for different types of development" under the section "How is existing demand treated". See attachment.

"In many instances, a council will be augmenting new facilities or providing new facilities, a proportion of which may cater to the demands of the existing population.

This is quite acceptable, however, in these cases, a suitable apportionment will need to be used to make allowance for this demand and to ensure that future development is only paying its fair and reasonable share"

It is considered that this apportioning process has worked well for providing regional standard, shire wide community and sporting facilities in an equitable manner and that by combining both existing and future population needs there are considerable efficiencies in the number of facilities provided and economies of scale. The proposed removal of shire wide facilities from eligibility in contributions plans will have adverse impacts on both existing and future populations.

It is submitted therefore that the proposed removal of shire wide facilities from contribution plans, as proposed in the NSW Department of Planning Circular PS 07-018, should not proceed.

3.3 Impacts on Individual Tweed Shire Contribution Plans **CP4. Roads (Shire Wide Arterial/Distributor)**

This plan finances augmentation of the arterial road network to accommodate the traffic generated by future population and urban growth.

The total expenditure in the network exceeds \$300M, but part of this has been apportioned to the existing population.

A key element of the plan is the incorporation of the "Lower Tweed and Pacific Highway Master Plan" which was a joint product of the Roads & Traffic Authority of NSW (RTA) and Tweed Shire Council. The Master Plan optimises the arterial network (RTA and Council roads) in the Lower Tweed Region and apportions costs of services roads, bridges and interchanges between the two agencies.

It is doubtful whether this plan would be eligible under the proposed changes. There are outstanding planned works of \$184M to be funded by contributions and a commitment to jointly fund works with the RTA at an estimated cost of \$26M.

The Government's transitional arrangements are not finalised at this stage and it is not known if this plan could be deemed an "existing plan" to continue indefinitely under the new arrangements.



If this Plan is to be deleted many greenfield subdivisions could not proceed as road infrastructure would not be capable of absorbing the extra traffic generated (e.g. Kings Forest where the Tweed Coast Road will need widening to 4 lanes to cater for Kings Forest Traffic).

Areas such as Tweed Heads South that are identified for redevelopment by the Department of Planning, could not proceed without the Kirkwood Road link, interchange and service roads to Kennedy Drive, which were to be funded by this contribution plan.

Council has paid the Queensland Department of Main Roads \$6.45M for construction of the Boyd Street Overpass over the Tugun Bypass in anticipation of this being recovered from developer contributions from a number of developers involved in the Cobaki Lakes and Bilambil Heights greenfield developments. If CP4 is deleted this advance payment will not be recovered.

CP11. Library Facilities

This plan proposes augmentation of library facilities (buildings and book stock) to service additional demand from future population. The facilities would be provided by Tweed Shire Council and managed by the joint Councils Tweed Richmond Regional Library Service.

This plan would be ineligible under the proposed changes. There are outstanding planned works of \$9.9M and an existing debt of \$1.9M.

The Government's transitional arrangements are not finalised at this stage and it is not known if this plan could be deemed an "existing plan" to continue indefinitely under the new arrangements.

CP13. Eviron Regional Cemetery

This is the lawn cemetery established for the whole of Tweed Shire.

This plan would be ineligible under the proposed changes. There are outstanding planned works of \$1.75M and an existing debt of \$0.94M.

The Governments transitional arrangements are not finalised at this stage and it is not known if this plan could be deemed an "existing plan" to continue indefinitely under the new arrangements.

CP16. Emergency Facilities - Surf Life Saving

This is a shire wide plan established to provide surf lifesaving facilities on the coast to service the needs of future population.

This plan would be ineligible under the proposed changes. There are outstanding planned works of \$0.6M.

The Governments transitional arrangements are not finalised at this stage and it is not known if this plan could be deemed an "existing plan" to continue indefinitely under the new arrangements

CP18. Council Admin Office & Support Facilities

Council's administration buildings and depots are sufficient to service the existing population, however these facilities require augmentation to service the planned future population.

This plan would be ineligible under the proposed changes. There are outstanding planned works of \$15.7M and an existing debt of \$5.4M.

The Governments transitional arrangements are not finalised at this stage and it is not known if this plan could be deemed an "existing plan" to continue indefinitely under the new arrangements.

CP26. Shirewide Regional Open Space

This plan provides the higher level regional open space, recreational and sporting facilities that are needed by the growing population and associated need to support higher level facilities.

Facilities proposed include:

- Arkinstall Park Regional Sporting Centre \$16.5M (see appended plan)
- Murwillumbah Regional Pool Complex, Total Cost \$16M, committed to contract August 2007, apportioned cost to CP26 \$3.4, remainder financed by existing population.
- Regional hockey complex \$2.9M
- Regional softball & soccer complex \$2M
- Coastal foreshore embellishment \$2.1M
- Regional botanic gardens \$2M
- Tweed Heads Master Plan Implementation - Jack Evans Boat Harbour section \$7.9M - Project in partnership with NSW Dept of Lands and Dept of Planning

This plan would be ineligible under the proposed changes. There are outstanding planned works of \$46M and an existing debt of \$2.2M (partly shared with CP18 & 23).

The Governments transitional arrangements are not finalised at this stage and it is not known if this plan could be deemed an "existing plan" to continue indefinitely under the new arrangements.

4. Conclusion

The changes proposed to the developer contributions system may cost Tweed Shire Council hundreds of millions of dollars in forgone contributions. This could have significant adverse impacts on the financial viability of Council and its ability to provide the infrastructure necessary for the significant urban growth that has been planned over the next 20 to 30 years.

The proposed changes appear to be a reaction to Western Sydney issues and may be based on a misunderstanding of how contribution funds are apportioned for council wide projects that benefit both existing and future populations. Notwithstanding the assertions in the Department of Planning Circular, current Contribution Plans must not fund the infrastructure needed for the existing population.



The proposals do not appear to take account of the circumstances of high growth regional multipurpose (including water & sewerage) Councils that have taken considerable financial risk to debt service infrastructure for future population growth.

Tweed Shire Council may need to suspend its current high population growth strategy as under these new contributions proposals, it will be unable to fund and provide the necessary infrastructure to service the proposed growth areas.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

See body of report.

POLICY IMPLICATIONS:

See body of report.

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. Movements in land price and S94 Contributions at Seabreeze Estate, West Pottsville (DW 1753287).
 2. Plan of CP26 Works at Arkinstall Park (DW 1753267).
 3. NSW Government Department of Planning's Planning Circular PS 07-018 dated 6 November 2007 (DW 1700686).
 4. NSW Government Department of Planning Letter dated 21 January 2008 (DW 1749363).
 5. Development Contributions - Practice Note - Determining rates for different types of development - Department of Infrastructure Planning and Natural Resources - Issued July 2005 (DW 1753624).
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P2 [PR-PC] Development Application DA07/0529 for Multi-Dwelling Housing Comprising 20 Units in a Three (3) Storey Configuration at Lot 1 DP 717669, No. 79-83 Tweed Coast Road, Hastings Point

ORIGIN:

Development Assessment

FILE NO: DA07/0529 Pt1

SUMMARY OF REPORT:

Council is in receipt of a development application for a three storey multi dwelling housing development, comprising of 20 units with basement car parking at 79-83 Tweed Coast Road, Hastings Point.

A deemed refusal appeal has been lodged with the Land and Environment Court. The call over is on 18 February 2008.

The subject area is undergoing transition as infill development occurs, from relatively low density featuring a variety of housing stock, to more dense multi-storey residential flat development.

Fourteen (14) submissions were received during the advertising period. The objectors raised concerns with height, bulk, scale, parking, shadows, amenity, environmental and social impacts, character of locality and stormwater concerns. These issues are addressed in the report.

On 21 August 2007 Council resolved to defer the assessment and determination of development applications at Hastings Point and to engage Ruker and Associates Urban Design to assess the height and density provisions of the current Local Environmental Plan for this locality.

The Consultants have not completed the review and as this application is now being considered by the Land and Environment Court Council needs to determine its position in relation to the application.

On the basis of Council's current Local Environment Plan provisions and Development Control Plans the development is recommended for approval subject to conditions.

RECOMMENDATION:

That: -

- A. State Environmental Planning Policy No. 1 objection to Clause 32B(4)(b) of the North Coast Regional Environmental Plan regarding overshadowing be supported and the concurrence of the Director-General of the Department of Planning be assumed.**

- B. Development Application DA07/0529 for multi-dwelling housing comprising 20 units in a three (3) storey configuration at Lot 1 DP 717669, No. 79-83 Tweed Coast Road Hastings Point 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;**

- **TP01 Rev C dated 24 November 2007 -Site Plan & Level 1 Plan**
- **TP02 Rev C dated 24 November 2007 - Basement Plan**
- **TP03 Rev A dated 23 April 2007 - Level 2 Plan**
- **TP04 Rev A dated 23 April 2007 - Level 3 Plan**
- **TP05 Rev A dated 23 April 2007 - Rooftop Plan**
- **TP06 Rev A dated 23 April 2007 - Elevations**

prepared by R.H. Frankland & Associates, 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. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within or adjacent to the subject property.**

[GEN0135]

- 4. The development is to be carried out in accordance with Councils Development Design and Construction Specifications.**

[GEN0265]

- 5. The front fence is to have a total maximum height of 1.5m, the solid wall height can be up to 1.2m. Above the solid wall the fence is to have a minimum openness ratio of 60%.**

[GENNS01]

- 6. No shade structures or roofing is to be erected on the rooftop terrace.**

[GENNS02]

7. Frosted glass balustrading is to be utilised on the balconies facing the northern boundary and one metre wide planter boxes along these balcony edges are also to be incorporated to minimise privacy impacts onto the adjoining property

[GENNS03]

8. The colours and materials utilised in this development are to be sympathetic with its natural surrounds.

[GENNS04]

9. Demolition of the existing structures requires the submission and approval of a separate development application.

[GENNS05]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

10. The developer shall provide the following parking facilities including parking for the disabled (as required) in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code.

- A minimum of 32 car parking spaces for residents,
- A minimum of 5 visitor car spaces with unrestricted access,
- A minimum of 2 car wash bays,
- Storage for a minimum of 40 bicycles.

Note – Council will only accept tandem car parks if each pair of tandem spaces is allocated to an individual unit.

Full design detail of the proposed parking and maneuvering areas shall be submitted to and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate.

The access and basement car park must be designed accordingly to provide sufficient height clearance to allow appropriate vehicles to access the basement stormwater treatment device.

[PCC0065]

11. **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:	\$51,815
S94 Plan No. 4 (Version 4.0)	
Sector8a_4	
(b) Open Space (Structured):	\$6,630
S94 Plan No. 5	
(c) Open Space (Casual):	\$1,417
S94 Plan No. 5	
(d) Shirewide Library Facilities:	\$5,850
S94 Plan No. 11	
(e) Bus Shelters:	\$208
S94 Plan No. 12	
(f) Eviron Cemetery/Crematorium Facilities:	\$1,170
S94 Plan No. 13	
(g) Community Facilities (Tweed Coast - South)	\$7,592
S94 Plan No. 15	
South Coast	
(h) Emergency Facilities (Surf Lifesaving)	\$1,703
S94 Plan No. 16	
(i) Extensions to Council Administration Offices & Technical Support Facilities	\$16,971.60
S94 Plan No. 18	
(j) Cycleways	\$2,990
S94 Plan No. 22	
(k) Regional Open Space (Structured)	\$19,772
S94 Plan No. 26	
(l) Regional Open Space (Casual)	\$7,267
S94 Plan No. 26	

[PCC0215]

12. Section 94 Contributions

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

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

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.

Heavy Haulage Component

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

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

where:

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

and:

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

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

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

Admin. Administration component - 5% - see Section 6.5

[PCC0225]

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

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

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

Water DSP6:	9.8 ET @ \$9997	\$97,971
Sewer Hastings Point:	12.25ET @ \$4804	\$49,241

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]

14. 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 Occupation Certificate is issued.

[PCC0275]

15. 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]

16. All fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided. The construction of any retaining wall or cut/fill batter must at no time result in additional ponding occurring within neighbouring properties.

All earthworks shall be contained wholly within the subject land. Detailed engineering plans of cut/fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.

[PCC0485]

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

[PCC0585]

18. 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 and 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]

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

- (a) Provision of a vehicular access in accordance with Council's "Access to Property" pamphlet, consolidated Tweed DCP and Development Design and Construction Specifications

The access shall provide the required 2m x 2m "sight triangle" envelope.

- (b) Construction of vertical face kerb and gutter along the full frontage of the site to Tweed Coast Road on an alignment approved by Council. The works shall also incorporate an indented bus bay at the existing shelter location. Detailed engineering drawings for these works including any shoulder widening required shall be submitted for approval by the Director Engineering & Operations prior to issue of a Construction Certificate.

The Applicant may make application to Council to make payment in the form of a contribution towards the road works in lieu of undertaking the works at the time the development. The applicant shall provide Council with detailed drawings and supporting costings with any such application.

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

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

[PCC0895]

20. Council will not permit ground anchors (to retain sacrificial sheet piling for basement excavations) within Council or private property, without prior consent from the property owner being obtained. If the land owner is Council, approval is required from the General Manager or his delegate, and the anchors are required to be removed upon completion of the works, unless a compensation amount is negotiated with Council.

[PCC0955]

21. Permanent stormwater quality treatment shall be provided in accordance with the following:
- (a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
 - (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.
 - (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management. Typical water sensitive features include infiltration, maximising permeable/landscaped areas, stormwater retention /detention/reuse, and use of grass swales in preference to hard engineered drainage systems.
 - (d) Specific Requirements to be detailed within the Construction certificate application include:
 - (i) Shake down area shall be installed prior to any earthworks being undertaken.
 - (ii) The basement oil/grit arrestor shall be sized in accordance with Section D7.12 of Councils Development Design Specification D7 - Stormwater Quality.
 - (iii) The exposed car wash bays shall be constructed of permeable material.

[PCC1105]

22. Stormwater

- (a) Details of the proposed roof water disposal, including surcharge overland flow paths are to be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. These details shall include likely landscaping within the overland flow paths.
- (b) All roof water shall be discharged to infiltration pits located wholly within the subject allotment.
- (c) The infiltration rate for sizing infiltration devices shall be 3m per day:
 - * As a minimum requirement, infiltration devices are to be sized to accommodate the ARI 3 month storm (deemed to be 40% of the ARI one year event) over a range of storm durations from 5 minutes to 24 hours and infiltrate this storm within a 24 hour period, before surcharging occurs.
- (d) Surcharge overflow from the infiltration area to the street gutter, inter-allotment or public drainage system must occur by visible surface flow, not piped.
- (e) Runoff other than roof water to remove contaminants prior to entry into the infiltration areas (to maximise life of infiltration areas between major cleaning/maintenance overhauls).
- (f) If the site is under strata or community title, the community title plan is to ensure that the infiltration areas are contained within common land that remain the responsibility of the body corporate (to ensure continued collective responsibility for site drainage).
- (g) All infiltration devices are to be designed to allow for cleaning and maintenance overhauls.
- (h) All infiltration devices are to be designed by a suitably qualified Engineer taking into account the proximity of the footings for the proposed/or existing structures on the subject property, and existing or likely structures on adjoining properties.
- (i) All infiltration devices are to be located clear of stormwater or sewer easements.

[PCC1135]

23. 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]

24. Medium density/integrated developments will be required to provide a single bulk water service at the road frontage. Individual metering beyond this point shall be managed by occupants. Application for the bulk metre shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements.

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

[PCC1185]

25. An application shall be lodged and approved by Tweed Shire Council under Section 68 of the Local Government Act for any water, sewerage or drainage works (including the connection of a private stormwater drain to a public stormwater drain, the installation of stormwater quality control devices and erosion and sediment control works) prior to the issue of a construction certificate.

[PCC1195]

26. Prior to issue of a construction certificate the applicant is required to prepare and submit a Remediation Action Plan to manage the contaminants as identified by the Pre-Demolition Underslab Soil Contamination Investigation prepared by HMC Environmental PTY LTD Report No. 2007.048A dated September 2007.

[PCCNS01]

PRIOR TO COMMENCEMENT OF WORK

27. 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]

28. 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]

29. 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]

30. 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]

31. 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]

32. 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]

33. Prior to start of building works provide a certificate of adequacy of design, signed by a practising Structural Engineer on any proposed retaining wall in excess of 1.2m in height. The certificate must also address any loads or possible loads on the wall from structures adjacent to the wall and be supported by Geotechnical assessment of the founding material.

[PCW0745]

34. 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]

35. The building is to be protected from attack by termites by approved methods in accordance with the provisions of Australian Standard AS 3660.1, and:

- (a) Details of the proposed method to be used are to be submitted to and approved by the Principal Certifying Authority prior to start of works; and
- (b) Certification of the works performed by the person carrying out the works is to be submitted to the PCA; and
- (c) A durable notice must be permanently fixed to the building in a prominent location, such as in the electrical meter box indicating:-
- (i) the method of protection; and
 - (ii) the date of installation of the system; and
 - (iii) where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and
 - (iv) the need to maintain and inspect the system on a regular basis.

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

[PCW0775]

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

In addition to these measures the core flute sign provided with the stormwater approval under Section 68 of the Local Government Act is to be clearly displayed on the most prominent position of the sediment fence or erosion control device which promotes awareness of the importance of the erosion and sediment controls provided.

This sign is to remain in position for the duration of the project.

[PCW0985]

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

[PCW1065]

DURING CONSTRUCTION

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

[DUR0005]

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

Monday to Saturday from 7.00am to 7.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

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

[DUR0375]

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

[DUR0395]

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

[DUR0405]

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

[DUR0415]

44. 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]

45. All works shall comply with the Pre-Demolition Soil Contamination Investigation and Remediation Management Plan. Sub-slab contaminated material shall not be placed in or below the groundwater table. Upon completion of sub-slab remediation (placement) works on site, Council shall be provided with a post remediation validation report to the satisfaction of the General Manager or his delegate. Construction works shall not commence until this report is reviewed and approved by the General Manager or his delegate.

[DUR0685]

46. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments".

[DUR0795]

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

[DUR0815]

48. 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]

49. Provision to be made for the designation of 2 durable and pervious car wash-down area/s. The area/s must be identified for that specific purpose and be supplied with an adequate water supply for use within the area/s. Any surface run-off from the area must not discharge directly to the stormwater system.

[DUR0975]

50. 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]

51. 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]

52. 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]

53. The concrete footpath is to be saw cut and removed to facilitate the construction of the concrete driveway access.

[DUR1745]

54. 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]

55. 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]

56. 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 building.

[DUR1875]

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

[DUR1925]

58. 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]

59. 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]

60. **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]

61. Backwash from swimming pool is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9.

[DUR2085]

62. 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]

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

[DUR2195]

64. 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]

65. 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]

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

[DUR2425]

67. 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]

68. 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]

69. 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]

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

[DUR2505]

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

[DUR2515]

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

[DUR2525]

73. 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]

74. 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]

75. 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]

76. 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]

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

[DUR2625]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

78. 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]

79. 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]

80. 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]

81. 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]

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

[POC0435]

83. 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]

84. 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 adopted Development Design and Construction Specifications.

[POC0755]

85. 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]

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

[POC1045]

USE

87. 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]

88. All externally mounted air conditioning units, swimming pool pumps, water tank pumps and any other mechanical plant and equipment shall be acoustically treated so as to avoid the creation of offensive, or intrusive noise to any occupant of neighbouring or adjacent premises.

[USE0235]

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

[USE0875]

NSW RURAL FIRE SERVICE CONDITIONS

1. 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 Management Protection 2006 and the Service’s document ‘Standards for asset protection zones’
2. Water, electricity and gas are to comply with Section (4.1.3 and 4.2.3 of Planning for Bush Fire Protection 2006.
3. Where the rear of the structure is greater than 70m from the nearest hydrant, a new hydrant/s is required to be installed as per AS2419.1 – 2005 ‘Fire Hydrant Installations’. Locations of fire hydrants are to be delineated by blue pavement markers offset 100mm from the centre of the road. The direction of offset shall indicate on which side of the road the hydrant is located.

4. **Construction shall comply with AS3959-1999 'Construction of buildings in Bush Fire Prone Areas' Level 1.**
5. **Roofing shall be gutter less or have leafless guttering and valley to prevent the building up of flammable material. Any materials used shall have a Flammability Index no greater than 5.**
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 comply with AS3959-1999 'Construction of buildings in Bush Fire Prone Areas' Level 1.**
7. **All Class 10 structures as defined per the Building Code of Australia 2006 attached to or within 10 metres of the eastern side of the habitable building shall comply with AS3959-1999 'Construction of buildings in Bush Fire Prone Areas' Level 2.**
8. **No brushwood or treated pine fencing shall be used.**
9. **Roller doors tilt a doors and the like shall be sealed to prevent the entry of embers into the structure.**
10. **Landscaping to the site is to comply with the principles of Appendix 5 of Planning for Bush Fire Protection 2006.**
11. **As the units have been assessed under 79BA for residential purposes and not 100B for Special Protection Development 9tourist facility) the building/s shall not be used as a tourist facility.**

REPORT:

Applicant: Salan Pty Ltd
Owner: Mr AP McIntosh and Mrs SM McIntosh
Location: Lot 1 DP 717669 No. 79-83 Tweed Coast Road, Hastings Point
Zoning: 2(b) Medium Density Residential
Cost: \$4,000,000

BACKGROUND:The Subject Site

The site is described as Lot 1 in DP 717669, being No. 79-83 Tweed Coast Road, Hastings Point. The site incorporates an area of 2379sqm and has a frontage to Tweed Coast Road of 49.815m. The site is generally level with heights varying across the property, with a maximum RL of 6m AHD. There are six (6) 2 bedroom units and one (1) 3 bedroom unit in two buildings on the site.

The site is situated at the southern most end of Hastings Point Village and is adjoined by residentially zoned land and by Crown Reserves, which backs onto the Cudgera Creek Estuary.

Surrounding development consists of a mixture of residential development, comprising single dwellings, residential flat buildings and holiday units. Land to the south consists of an existing caravan park and camping ground, with a marine research facility, yet it is to be noted that this site has approval for a Seniors Living Development.

The Proposed Development

Council is in receipt of a Development Application seeking consent for the construction of a three (3) storey residential flat building comprising twenty (20) dwellings, with a basement level car park. The proposal consists of 1 x one bed unit, 15 x two bed units and 4 x three bed units, with a total 39 car parking spaces. A separate development application will be lodged by the applicant for demolition of existing structures.

History

- Development Application (DA07/0529) was lodged with Council on 25 May 2007.
- On 21 August 2007 a report was put up to Council to advise that the Draft Residential and Tourist Code (Section A1 of the Tweed Development Control Plan) has been reviewed and amendments made in light of the submissions received. In regards to this development application clauses 3 and 4 are applicable. The Council resolved:

"1. Council resolves to publicly exhibit the draft Residential and Tourist Code (Section A1 of the Tweed Development Control Plan) for a period of 60 days.

2. *Where a public submission received raises an issue that would result in a major change in the draft Plan that a public workshop be convened to address the issue prior to the reporting of the Plan to Council.*
3. *Council engages Ruker & Associates Urban Design to assess the height and density provisions in the current Local Environmental Plan for Hastings Point to provide a report to inform the consultants GHD who are undertaking the overall review of the urban land release strategy for the new Tweed Local Environmental Plan.*
4. *Council defers the assessment and determination of development applications for Hastings Point which have already been submitted but not determined or are submitted for determination after this date until the report from Ruker & Associates Urban Design is finalised for Council's consideration."*

The applicant was advised on this resolution on 28 August 2007.

In accordance with Part 3 of the 21 August, 2007, resolution Ruker and Associates were engaged to carry out the review of the land south of the Hastings Point bridge (area covered by the previous resolution in relation to Amendment No. 81 to Tweed Local Environmental Plan 2000). The first design workshop was undertaken on 2 December, 2007 between the Consultants, Council staff, landowners and representatives of the Hastings Point Residents Group and Progress Association.

It was agreed at that meeting to hold a further workshop in the new year to discuss the draft proposal prepared by the Consultants.

The estimated timeframe for the completion of the review is as follows: -

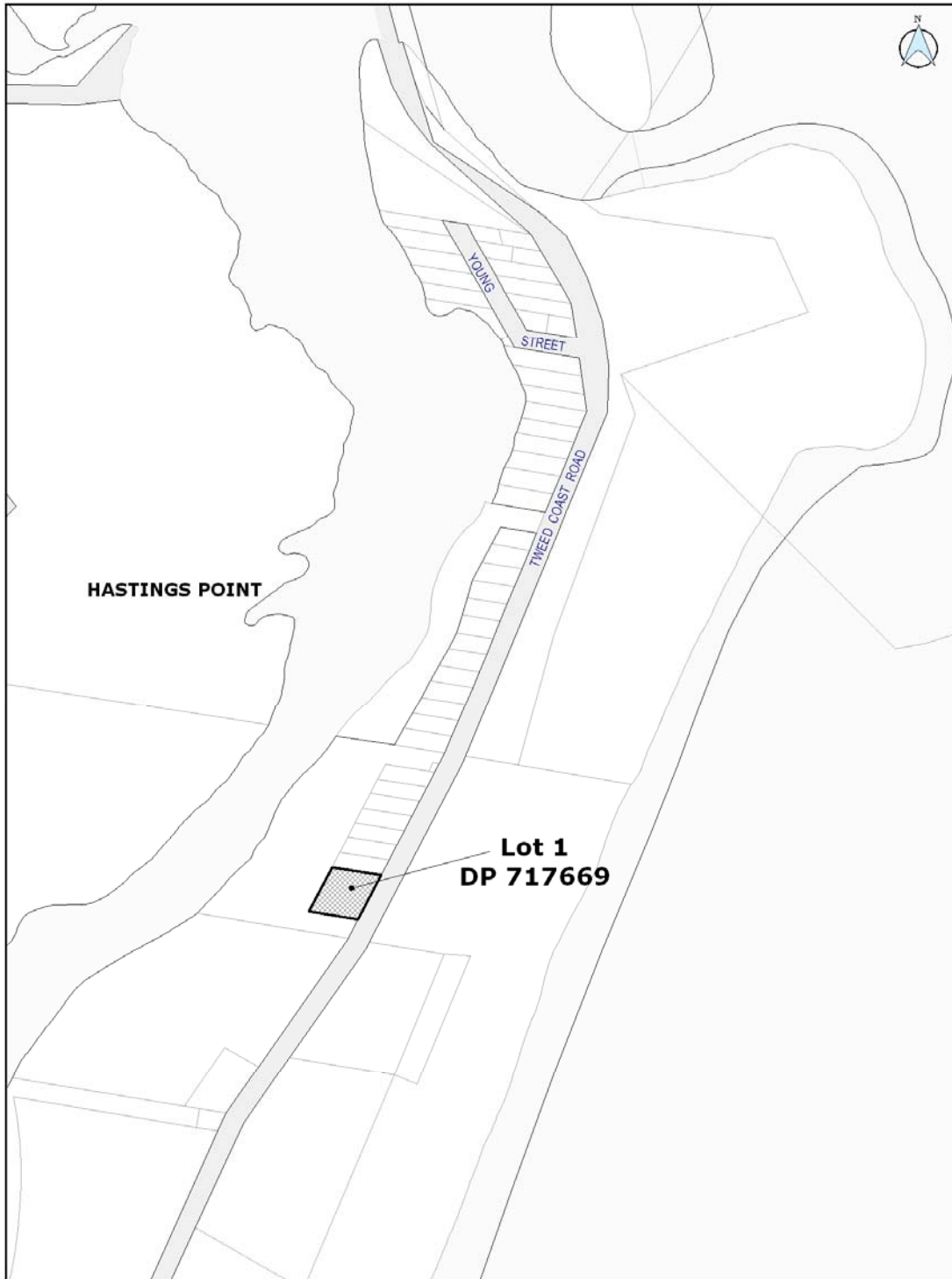
- Second stakeholder meeting in mid-late February;
- Draft strategy completed by Consultants Mid March;
- Report to Council and public exhibition during the month of April;
- Review of submissions and report to Council by the end of May.


On 19 December 2007, a deemed refusal appeal was lodged in the Land and Environment Court in relation to this development application.

Given the above timeframe for the above review Council's legal representatives for the appeal in the Land and Environment Court were instructed to seek an adjournment of the matter until at least the end of April 2008. This submission was considered by the Court in a telephone call over on 21 January 2008. The applicant opposed the lengthy adjournment but did not oppose a 2 week adjournment to allow Council to file a Statement of Facts and Contentions.

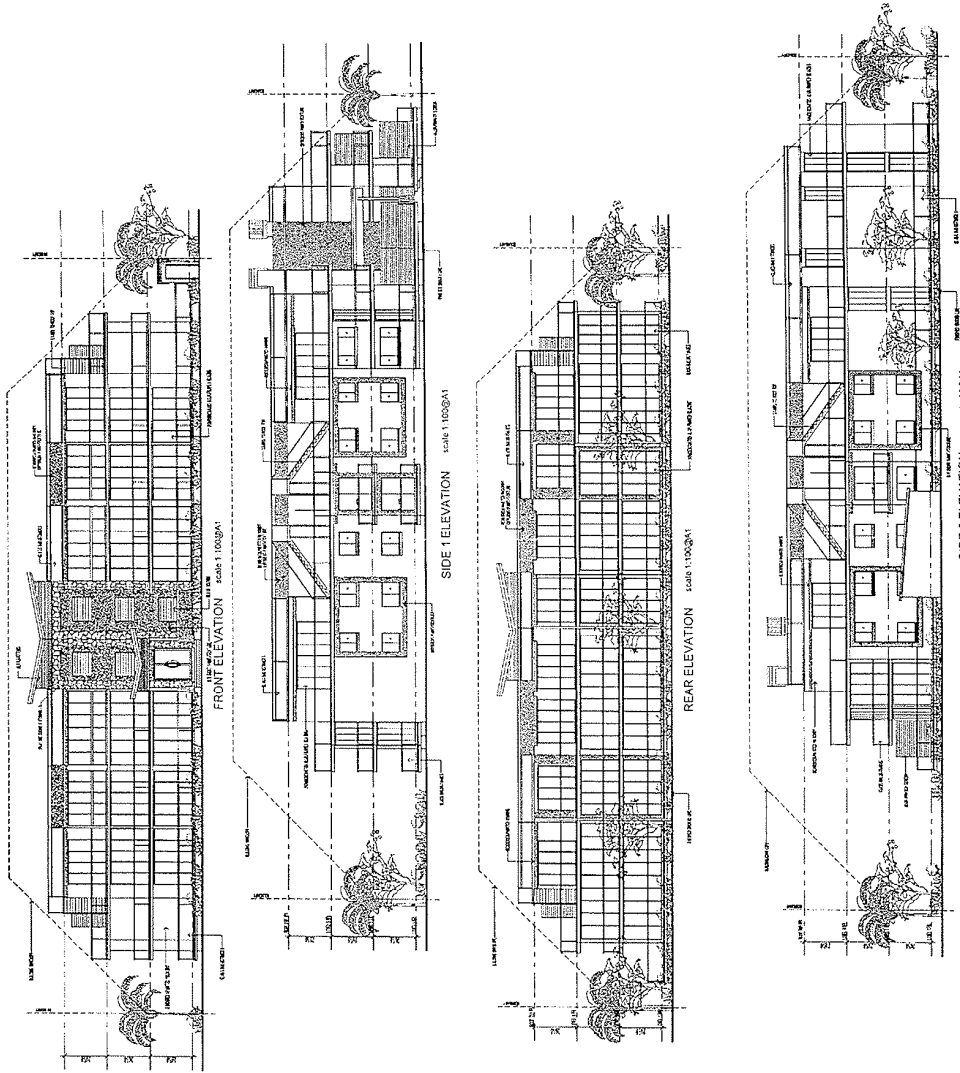
The Court did not grant Council's request but adjourned the matter for a call over on 18 February 2008. Council is required to lodge a Statement of Facts and Contentions by 14 February 2008 and as such Council's position in relation to this application will need to be resolved at this meeting.

SITE DIAGRAM:



<p>© TWEED SHIRE COUNCIL 2008 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 816 Murwillumbah, NSW, 2484 Tel (02) 6670 2409 Fax (02) 6670 2493</p>	<p><i>Tweed Shire Council</i></p> <p>Lot 1 DP 717669 No. 79-83 Tweed Coast Rd, Hastings Point</p>		<p>PLANNING REFORMS UNIT</p> <p>Site Plan</p>
	<p>File: N:\Munsys\A4P - SITE PLAN.Wor</p>	<p>Author: J. Batchelor</p>	<p>Date: 05/02/2008</p>
		<p>Scale: 1:5,000</p>	<p>Sheet: 1 of 1</p>

DEVELOPMENT PLANS:



TP06 A
0772

PROPOSED MULTI-UNIT DEVELOPMENT
79-87 TWEED COAST RD, HASTINGS POINT
SALAH P/L
ELEVATIONS

DATE: 12/02/08
DRAWN BY: [Name]
CHECKED BY: [Name]
SCALE: 1:100 @ A1

FRANKLAND & ASSOCIATES
ARCHITECTS
100/101 WILSON ST, HASTINGS POINT, NSW 2486
PH: 08 9372 1111
WWW.FRANKLAND.COM.AU

REVISIONS

NO.	DATE	DESCRIPTION

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 4 - Aims of the plan**

It is considered that the aims of the plan have been satisfied and that the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan and the Tweed Futures, Tweed 04/24 Plan have been considered in this application.

Clause 5 - Ecological Sustainable Development

It is considered that the proposed development meets the objectives of this clause, in that the proposal is considered to be consistent with the four principles of ecological sustainable development as set out in the LEP.

Clause 8(1) - Consent Considerations

- a) The consent authority may not grant consent to development (other than development specified in Item 3 of the table to Clause 11) only if:
- b) It is satisfied that the development is consistent with the primary objective of the zone within which it is located, and
- c) It has considered those other aims and objectives of this plan that are relevant to the development, and
- d) It is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of the Tweed as a whole.

The TLEP 2000 defines 'multi dwelling housing' as:

"more than one dwelling on an allotment, but does not include a rural worker's dwelling"

It is considered that the proposed multi dwelling housing development satisfies Clause 8 of TLEP 2000, in that the proposal satisfies the objectives of the zone (as discussed in Clause 11), that the proposal has taken into consideration the other aims and objectives of this plan and that it is considered that this development would not have an unacceptable cumulative impact on the community, locality or catchment of the Tweed.

Clause 11 – Zone Objectives

The subject land is zoned 2(b) medium density residential under the provisions of the Tweed Local Environmental Plan (TLEP) 2000.

A multi dwelling housing development is permissible with Council's consent in the 2(b) zone.

The objectives of the 2(b) Medium Density Residential zone are:

Primary objective:

- to provide for and encourage development for the purpose of medium density housing (and high density housing in proximity to the Tweed Heads sub-regional centre) that achieves good urban design outcomes.

Secondary objectives:

- to allow for non-residential development which supports the residential use of the locality.
- to allow for tourist accommodation that is compatible with the character of the surrounding locality.
- to discourage the under-utilisation of land for residential purposes, particularly close to the Tweed Heads sub-regional centre.

It is considered that the development incorporates a level of design detail and consideration to adjacent allotments that will ensure that a quality urban design outcome will be achieved. In this regard, the proposed multi dwelling housing development satisfies the objective of this zone.

Clause 15 – Availability of Essential Services

The subject site is adequately serviced by way of existing storm water, electricity, sewer and water connections. Therefore the proposal is considered to be consistent with this clause.

Clause 16 – Building Heights

The subject site possesses a statutory height limit of three stories, the proposed development complies with this restriction.

Clause 17 - Social Impact Assessment

The proposal is unlikely to create any adverse social or economic impacts and as such a social impact assessment is not considered necessary.

Clause 22 - Development near Designated Roads

The subject site has direct frontage to Tweed Coast Road. The road currently does not contain kerb and gutter.

Council's Traffic Engineer has provided comment and advises that the "proposed plans are generally acceptable, however frontage works will be required such as road widening and kerb and channelling".

Kerb and gutter should be extended to cover the full frontage of the site to Tweed Coast Road incorporating an indented bus bay at the existing shelter location. Detailed engineering drawings for these works including any shoulder widening required shall be submitted for approval by the Director Engineering & Operations prior to issue of a Construction Certificate. It shall be conditioned that the Applicant has the option to undertake these works or pay a contribution.

The site will generate additional traffic, however Tweed Coast Road can support the additional traffic loading that will be imposed on it.

The proposal is considered to meet the objectives of the clause, in that:

- the development is unlikely to constitute a traffic hazard or materially reduce the capacity or efficiency of the designated road, and
- the location, standard and design of access points, and on-site traffic movement and parking arrangements, will ensure that through traffic movement on the designated road is not impeded, and
- the access point, will not prejudice any future improvements to, or realignment of, the designated road, and
- 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
- the development would not detract from the scenic values of the locality, particularly from the point of view of road users.

Clause 34 – Flood Liable Lands

This Clause provides objectives to minimise future potential flood damage by ensuring only appropriate compatible development occurs on flood liable land. A minimum design floor level of 2.7m AHD had been adopted under TDCP-A3 for the Hastings Point area. A minimum floor level in excess of 6.0m AHD has been adopted for the proposed development and complies with the requirements. As such it is considered that the proposal complies with the objectives of this clause.

Clause 35 – Acid Sulphate Soils

This clause provides for the management of acid sulphate soils. The subject land is identified as being in a Class 3 area. A Preliminary Acid Sulphate Soil Investigation prepared by HMC Environmental Consulting P/L (June 2007) has been submitted.

The report was referred to Council's Environmental Health Unit for comments.

"Fifteen samples were collected at a maximum depth of 3.75m. No soil samples recorded any actual or potential acidity exceeding guideline values for sandy soils. Therefore the investigation is considered adequate. The ground water was not intercepted. Excavations are proposed down to 2.5m and therefore no dewatering will be required. Standard conditions of consent have been will be imposed regarding this."

It is therefore considered that this proposal meets the objectives of this clause.

Clause 39 – Remediation of Contaminated Land

The Cudgen Topographical maps indicate that the subject site is 'built up'. Aerial photography dated 1976 and 1993 reveal residential structures on site. Therefore it is considered unlikely that potentially contaminating activities have been undertaken on the site.

Clause 39A - Bushfire

This Clause of the TLEP requires consideration of bushfire protection issues and the planning for bushfire guidelines in the development of areas mapped as bushfire prone. This clause, aims to minimise bushfire risk to built assets and people and to reduce bushfire threat to ecological assets and environmental assets. The Rural Fire Service provided the following conditions: -

- 1. 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 Management Protection 2006 and the Service's document 'Standards for asset protection zones'*
- 2. Water, electricity and gas are to comply with Section (4.1.3 and 4.2.3 of Planning for Bush Fire Protection 2006.*
- 3. Where the rear of the structure is greater than 70m from the nearest hydrant, a new hydrant/s is required to be installed as per AS2419.1 – 2005 'Fire Hydrant Installations'. Locations of fire hydrants are to be delineated by blue pavement markers offset 100mm from the centre of the road. The direction of offset shall indicate on which side of the road the hydrant is located.*
- 4. Construction shall comply with AS3959-1999 'Construction of buildings in Bush Fire Prone Areas' Level 1.*
- 5. Roofing shall be gutter less or have leafless guttering and valley to prevent the building up of flammable material. Any materials used shall have a Flammability Index no greater than 5.*

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 comply with AS3959-1999 'Construction of buildings in Bush Fire Prone Areas' Level 1.*
7. *All Class 10 structures as defined per the Building Code of Australia 2006 attached to or within 10 metres of the eastern side of the habitable building shall comply with AS3959-1999 'Construction of buildings in Bush Fire Prone Areas' Level 2.*
8. *No brushwood or treated pine fencing shall be used.*
9. *Roller doors tilt a doors and the like shall be sealed to prevent the entry of embers into the structure.*
10. *Landscaping to the site is to comply with the principles of Appendix 5 of Planning for Bush Fire Protection 2006.*
11. *As the units have been assessed under 79BA for residential purposes and not 100B for Special Protection Development (tourist facility) the building/s shall not be used as a tourist facility.*

These conditions have been incorporated into the recommendation for approval.

Based on the above assessment the proposed development is considered to generally comply with the provisions of the TLEP2000.

North Coast Regional Environmental Plan 1988

32B Development control—coastal lands

- (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).

Clause 32 B(2) is applicable to this application, in that the NSW Coastal Policy 1997, the Coastline Management Manual and the North Coast: Design Guidelines must be taken into account in the assessment phase.

32B (2)(a) - NSW Coastal Policy 1997:

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 policy statement essentially seeks *to provide for population growth and economic development without putting the natural, cultural and heritage values of the coastal environment at risk, with its central focus being the ecological sustainable development of the NSW coastline.*

It is acknowledged that the density of the subject sites will be increased, however, the presumption that increased density equals increased damage to the environment, is considered not necessarily justified. It is not considered that such a marginal increase in density (resulting from this 20 unit development) will inevitably cause major detriment to the environment.

It is considered that this development has been designed taking into account the principles of ESD and as a result has resulted in a development which is in harmony with the environment and ecological processes of the coast.

It is not considered that the proposed multi dwelling housing development contradicts the objectives of the Government Coastal Policy.

32B (2)(b) - The Coastline Management Manual

Given the site is not situated directly adjacent to the coastal foreshore, the proposal will have no impact on coastal processes and coastal hazards including erosion (ie sand dunes systems, waves (etc), in accordance with the NSW Coastline Management Manual.

However, given the proximity to the coast, the policy requires that other planning factors, such as social, economic, recreational, aesthetic and ecological issues, be weighed along with hazard considerations and beach amenity requirements when making decisions regarding coastal developments. A review of these factors in accordance with this manual has been carried out against the proposal and is considered to be an appropriate form of development within this coastal area.

32B (2)(c) - The North Coast: Design Guidelines:

It is considered that the Hastings Point locality would fit within the settlement type of a 'coastal hamlet' under these guidelines. The desired future character of these areas is one where *the natural environment dominates individual buildings and the settlement as a whole and that new development is within the settlement boundaries and the scale and architectural character of new buildings allows the setting to predominate.*

In this regard, it is considered that the proposal, meets the design principles and objectives for this coastal settlement.

Although these guidelines refer that height of up to two storeys are maintained throughout the hamlet settlements, it also mentions that "*Heights are subject to place-specific urban design studies and that new development is appropriate to the predominant form and sale of surrounding development.*" In regards to this statement, considering the neighbouring property has consent for a three storey seniors living development and that numerous other developments in the coastal strip have been approved with a three storey height limit, this proposal is considered appropriate.

In summation it is considered that this proposal is sensitive in scale and height to existing and proposed buildings within the area, whilst respecting its natural surrounds and relationship to the environment.

Clause 32 B(4)(b) of the NCREP is applicable. This clause requires the consideration of potential shadow impacts on beaches and waterfront open space before 3pm midwinter or 7pm midsummer. The submitted overshadowing diagrams are satisfactory in midsummer, however a marginal breach is of the clause is apparent at midwinter to the adjoining coastal reserve.

The proposal seeks a variation to the extent of shadow impacts to the adjacent foreshore reserve to the west in the morning period. The property adjoining the site is zoned 6(a) public open space and is considered to be waterfront open space pursuant to this clause. The application was accompanied with a SEPP 1 variation and the applicant has provided the following reasons as to why this standard is unreasonable or unnecessary:

- *Whilst the proposed development is generally consistent with the intent of this clause, it is evident the development does not strictly comply with the overshadowing provisions. In this regard the proposal will result in a shadow which will extend a maximum of 7 metres into the adjacent foreshore reserve, with the following areas being calculated:*
 - *9am Midwinter = 254m²*
 - *12 noon Midwinter = 95m²*
 - *3pm Midwinter = 162m² and*
 - *9am Midsummer = 21m² (No overshadowing at midday or in the evening)*

The overshadowing created by this development will never fall upon the beach or open space areas to the east of the site on the opposite side of Tweed Coast Road, whilst the overshadowing generated falls adjacent to the property boundaries and generally on the access handle of the foreshore reserve adjacent to the southern boundary.

- *The objective of the standard contained within Clause 32b is related to the protection of the recreational integrity of foreshore open space areas and the need to restrict adverse impacts upon same by the erection of buildings in close proximity.*
- *It is contended that the proposal is consistent with the above-mentioned objectives and that the integrity of the Clause 32 b would not be impacted upon via the approval of this structure. In this regard, the following matters are considered relevant to assessing the merits of the proposed departure from the development standard:*
 - *The extent of overshadowing at the prescribed time is considered to be minor in scale, relative to the overall size of the foreshore reserve.*
 - *That area subject to overshadowing is vegetated and the overshadowing will not extend into active recreational areas such as the beach.*
 - *The proposed overshadowing in no way precludes the future use or reclassification of the adjacent reserve.*
 - *The proposal does not overshadow the beach*
 - *The proposed development is designed to comply with Council's height requirements for the area.*
 - *The proposal will not be visible from the beach or from the water edge.*

- *In light of the foregoing analysis it is concluded that compliance with the development standard is both unreasonable and unnecessary. Furthermore, as the proposed development demonstrates consistency with the intent and object of the development standard, the granting of a variance in this instance would not prejudice the future integrity of that standard, not impact upon the amenity of the locality.*

The above points are supported and in accordance with Council's assumed concurrence delegations the extent of shadow impacts contained within the North Coast Regional Environmental Plan is considered unreasonable and unnecessary in this instance.

Clause 43 of the NCREP is applicable. This residential development clause states that Council is prohibited from granting consent to residential development within coastal lands unless it is satisfied the proposal complies with the items set out in Clause 43(1) of NCREP. The items relevant to this development relate to site density and erosion control. The proposed multi-dwelling development maintains an appropriate site density, and suitable measures to mitigate adverse impacts of erosion and sedimentation during construction have been proposed and are to be enforced through as conditions of consent. In that regard, Clause 43 is considered satisfied.

Clause 81 of the NCREP is applicable. This clause contains provision in relation to development on land within 100 metres of the ocean or any substantial waterway. In this regard it is considered that the proposal would not reduce the amount of available foreshore open space for the public, nor would it detract from the visual amenity of the creek.

The proposed development is considered to have satisfied the relevant provisions of the NCREP

State Environmental Planning Policies

SEPP 55 Remediation of Land

Based on the applicants various geotechnical and contamination site assessments and Council's Environmental Health Officers assessment of such reports contamination is not considered a constraint for this development.

SEPP 65 – Design Quality of Residential Flat Development

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 twenty (20) self contained dwellings.

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. The following need to be addressed:

Design principles 1 – Context

The proposed development has been designed with regard to the geographical context in which it is located. As such the design has been justified based on a review of the features in the area, with regard to both natural and built. The context for the development is based on its location in relation to the Hastings Point and its general beachside location. Given the above location elements the design has been orientated towards presenting the highest quality design and finish to provide a feature building in the locality.

It is also evident, having regard to other recently approved developments within the immediate area, that the proposed development demonstrates consistency with the existing trends and desired future character of the Hastings Point locality. The overall design concept takes on a modern, sub-tropical, beach-side response with extensive variation of high quality heavy and light weight materials and general façade articulation. Having regard to the above, the proposed development is considered to be in context with the desired 'future' character of the area and the general coastal locality.

Design Principle 2 – Scale

The proposal is generally in accordance with the scale of the local building stock and planning regulations. The area is undergoing a period of transition and it is to be noted that numerous three storey medium density developments have been approved in the locality,

The scale of the proposal, whilst not insignificant, has been articulated and minimised via the provision of a number of differing elements, each of which possess an independent design and scale. The scale is consistent with future development in the precinct.

Design Principle 3 – Built Form

The proposal is considered to achieve an appropriate built form for the site. Given the increased setback to the street frontage the building is not considered to dominate the streetscape or detrimentally impact upon the public domain. The developments level of articulation and the suitable use of materials results in an appropriate form, scale and mass, one which compliments the amenity of the area.

Design Principle 4 – Density

The proposed development encourages and assists in the revitalisation of Hastings Point. In this regard, the density demonstrated incorporates desired uses, clear compliance with the current three (3) storey height limit and in no way corresponds to an overdevelopment of the site. The proposed density is generally consistent with the parameters contained within TDCP – A1

Design Principle 5 – Environmental Issues

The proposal has evolved through a recognition and commitment to sustainability and the need to minimise environmental impacts. The credentials of the proposal in this regard, are demonstrated within the attached NatHERS and BASIX documentation and the simple design basics exhibited within the attached plans.

Design Principle 6 – Landscaping

Given the front setback landscape treatment, particularly given the significant setback (approximately 12m) from the street, the treatment is considered satisfactory. Although the basement limits deep soil planting zones, the level provided at the front and rear is acceptable. It is noted that the proposed landscaping recognises an integrated approach within the development, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain.

Design Principle 7 – Amenity

Each of the apartments has been designed so as to maximise available sunlight, space and ventilation. In this regard, each dwelling opens out onto sufficient open space balcony areas. All apartments have been designed and positioned to ensure visual and acoustic privacy for the residents. Public areas are landscaped and open with access to sunlight and shade as required.

Design Principle 8 – Safety and Security

The building and landscape has been design to accord with the CPTED (Crime Prevention Through Environmental Design) principles to provide passive overlooking of all areas due to the orientation of the residential building; to provide casual surveillance of the street and internal spaces and provide secure parking and lock-up storage facilities within the development with the provision of appropriate lighting facilities.

Design Principle 9 – Social Dimensions

The proposal will provide for units of varying size and provide an alternative form to existing apartment buildings in the area. The proposed development satisfactorily considers and promotes the social dimensions of the locality and the proposal specifically.

Design Principle 10 – Aesthetics

The proposed building has been designed and sited so as to address the streetscape. In this regard, the proposed structure has been designed such that it promotes a high level of visual interest and appeal. The proposed building incorporates differing facade treatments through the use of various materials, textures and colours and demonstrates high quality finishes through out.

The proposal is considered to be consistent with the design principles and objectives of the SEPP.

SEPP 71 Coastal Protection

The subject site is mapped within a sensitive coastal location. Whilst the Department of Planning does not require consultation under Clause 11(2) of SEPP 71 as detailed above the application still needs to be assessed having regard to Clause 8 of the SEPP.

Clause 8 details sixteen matters for consideration all focussed on maintaining the quality of water bodies and maintaining adequate public access to foreshore areas.

The matters for consideration are as follows:

- (a) *the aims of this Policy set out in clause 2,*
- (b) *existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,*

- (c) *opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,*
- (d) *the suitability of development given its type, location and design and its relationship with the surrounding area,*
- (e) *any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,*
- (f) *the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,*
- (g) *measures to conserve animals (within the meaning of the [Threatened Species Conservation Act 1995](#)) and plants (within the meaning of that Act), and their habitats,*
- (h) *measures to conserve fish (within the meaning of Part 7A of the [Fisheries Management Act 1994](#)) and marine vegetation (within the meaning of that Part), and their habitats*
- (i) *existing wildlife corridors and the impact of development on these corridors,*
- (j) *the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,*
- (k) *measures to reduce the potential for conflict between land-based and water-based coastal activities,*
- (l) *measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,*
- (m) *likely impacts of development on the water quality of coastal waterbodies,*
- (n) *the conservation and preservation of items of heritage, archaeological or historic significance,*
- (o) *only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,*

- (p) *only in cases in which a development application in relation to proposed development is determined:*
 - (i) *the cumulative impacts of the proposed development on the environment, and*
 - (ii) *measures to ensure that water and energy usage by the proposed development is efficient.*

The proposed multi dwelling housing development is considered to be consistent with the aims of the policy. The proposal does not impede public access or result in any significant or unwarranted overshadowing of coastal foreshore areas. In regards to visual impact, given the scale of the building and the increased setback from the road, the development will not be visible from the beach.

The development is consistent with the zone objectives of TLEP2000, the requirements of relevant Council DCPs, and consistent with ESD principles and objectives. It is considered that the proposed development neither offends nor compromises the intent or specific provisions of the SEPP. It is therefore considered that the proposal satisfies the matters for consideration under SEPP 71.

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

Draft SEPP 1

Draft SEPP 1 was exhibited in July 2001 and has not been adopted to date. The proposed change would make developers and Councils more accountable. When applicants use SEPP 1, they must provide sufficient evidence that the proposed development meets the objectives of the local plan.

The proposed development is considered to have achieved this and thus the SEPP 1 was recommended for approval.

The proposed development does not require further assessment in relation to any Draft Planning Instrument.

Draft Tweed LEP 2000 No. 81 – Heights of Buildings, Hastings Point.

At its meeting of 6 July 2005 Council resolved, pursuant to Section 54 of the Environmental Planning and Assessment Act 1979, to amend the Tweed Local Environmental Plan 2000 to restrict the height of buildings south of Cudgera Creek at Hastings Point to 2 storeys (currently 3 storeys).

However, as part of Council's upcoming Local Environmental Plan 2007, all building height controls within the Shire are to be reviewed. Having regard to a response from the Department of Planning (which did not support the LEP Amendment without a more strategic approach) and the current Planning Reform agenda it was considered that to actively pursue an individual LEP Amendment to specific sites is not an option in this instance when a wider strategic assessment is to be undertaken almost simultaneously.

Therefore at its meeting of 19 December 2006, Council resolved to abandon the pursuance of Tweed Local Environmental Plan 2000, Amendment No. 81 - Height of Buildings, Hastings Point.

A review of the Hastings Point building heights will be undertaken within a Shire-wide review as part of Council's Tweed Local Environmental Plan 2007. It is noted that on 20 March 2007 Council received a second letter from the Department of Planning that states in part:

"I refer to your letter of 22 December 2006, where you indicate that Council had decided not to proceed with the above amendment.

Having further considered this matter, I wish to advise that, in view of the locality's sensitive coastal location, a reduction in building heights would appear to better reflect the aims and objectives of the NSW Coastal Policy. In this regard, Council can continue with the proposed amendment to building heights at Hastings Point.

The strategic review of building heights along the Tweed Coast, which is foreshadowed in my earlier letter, can now be undertaken as part of the comprehensive LEP.

Please find attached an Authorisation in respect of the proposed draft LEP. This Authorisation means that Council is able to exercise the following function with respect to the draft LEP, subject to the terms and conditions contained in the Authorisation:

Since the date of the above letter from the Department of Planning Council has not reinstated Draft LEP 81 and therefore the current application has been considered against the current applicable height limit of three storeys.

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

Tweed Development Control Plan

Section A1 – Multi Dwelling Housing

The following table assess the proposed development in relation to the provisions of this section of the DCP:

Provision	Requirement	Provides	Compliance
Site Density	0.5:1 FSR	0.94:1	* See below
Landscaping	30% of the site (713m ²) or sum of number of dwellings multiplied by ratio in table 2 (1580m ²)	850m ²	* See below
Front Setback	Street (Tweed Coast Rd) = 6m	12.8m to wall	Yes
	Sides = 3m	3.9m to wall	Yes
	Rear = 3m	4.9m to wall	Yes
Building Envelope	Height = 12m Envelope/3.5m @ 45degrees	Compliance	Yes
Private Open Space	20% of site area, one part 25m ² , with a minimum dimension of 4m = 476m ²	1735m ² (yet not all have minimum dimension of 4m)	* See below
Car parking	Conform with TDCP A2	Compliance – see later in this report	See later in this report
Landscape Design	Integration of building and landscape, to blend new development within the streetscape, enhance development for visual and acoustic privacy and enhance the appearance of the development	Achieved	Yes
Energy Conservation	To provide dwellings with adequate daylight and natural ventilation and to avoid the potential for significant overshadowing.	Achieved	Yes
Stormwater Management	To provide an effective stormwater management system which is sustainable and requires minimal maintenance.	Achieved	Yes
Car Wash Areas	1 space every 10 dwellings = total 2 car wash areas	2 car wash areas	Yes
Security, Site Facilities and Services	adequate personal and property security for residents.	Provided	Yes

* See below

The proposal generally meets the specified performance criteria within TDCP A1, with minor variations which are detailed below:

(1) Site Density

It is noted that the floor space ratio of the proposed development does not strictly comply with the requirements stated in the DCP. The 0.5:1 requirement is currently under review by Council and is not strictly applicable to development in the 2(b) medium density zone. The FSR for residential development is similar to the recent multi dwelling housing approvals in the 2(b) zone and is consistent with the zone objectives.

The objectives of the site density clause in the control are to *ensure that the building bulk of new development is compatible with the existing or desired future character of the locality*. In relation to the performance criteria, the design of multi-dwelling housing may achieve the site density objective where:-

P1. The scale of new development is compatible with and sympathetic to the scale and bulk of existing development in the locality, particularly on the perimeter of the development site, or where that locality or development site has some heritage significance or distinctive character.

P2. In areas subject to redevelopment, new development is compatible with the desired future character of the locality.

It is considered that the proposal is compatible with the existing and recently approved development within the area, in terms of bulk, scale and height, thereby considering that the variance to site density is warranted.

(2) Landscaping

The Plan states that landscaping should be 30% of the site area (which equates to 713m²) or, the sum of the number of small and large size dwellings multiplied by the respective landscaped area required (which equates 1580m²) to whichever is the greater. The application proposes a landscaped area of 850m².

An assessment against the performance criteria is as follows:

P1. The scale of new development is compatible with and sympathetic to the scale and bulk of existing development in the locality, particularly on the perimeter of the development site, or where that locality or development site has some heritage significance or distinctive character.

It is pertinent to note that the proposal when viewed from adjacent areas is not imposing and that the proposal provides for a greater level of landscaped and genuine 'green/deep soil' planted areas than that of many existing medium

density developments within the locality, and other parts of the Shire. Extensive areas have been set aside for deep soil planting within the front and rear and a mixture of trees and shrubs have been selected to invoke a subtropical and native feel to the development.

In terms of built form and character of Hastings Point, the development has adopted the design criteria as specified under TDCP A1, and is of a bulk, scale and height synonymous with the current desired built form for the locality. The proposal has architectural merit and does not, impose itself upon the built environment. It is therefore considered that the proposal satisfies the first performance criteria. It is also worthy to note that the subject allotment is bounded at the south by an open space access handle and to the west by open space and the Cudgera creek. Land to the east (across the road) is the coastal beachfront reserve, thereby clearly indicating that the allotment is virtually surrounded by a mixture of useable, naturally landscaped open space. Therefore although the shortfall numerically exists, the objectives and performance criteria behind the clause are considered to be achieved.

P2. In areas subject to redevelopment, new development is compatible with the desired future character of the locality.

The proposed development, with particular reference to the provisions of TDCP A1, the North Coast Design Guideline is predominately consistent with the desired future character of the locality which is zoned 2(b) Medium Density Residential.

Reference is also made to the suitable provision of efficient useable balcony areas and private open space areas to all units, the articulation afforded to the building in terms of its presentation to the street and adjoining properties, and the close proximity of active natural open space areas. It is considered that the proposed residential flat building suitably responds to the medium density zoning of the site and is compatible with the desired future character of the locality.

It is concluded the proposed development in terms of landscaping is a satisfactory response to the performance criteria underpinning this design element. The landscaping proposed is therefore considered appropriate and acceptable for the site.

(3) Private Open Space

The proposal provides well in excess of the required private open space area, however in some of the units the minimum dimension of 4m in the width is not achieved. The application however is considered to meet the objective of the Useable Open Space Clause, in that the private open space for each unit is useable and meets user requirements for privacy, safety, access and landscaping. The proposal also meets the performance criteria for private open space areas, in that:

- the spaces are clearly defined to distinguish between communal and private open space.
- The areas are of dimensions to suit the projected requirements of the dwelling occupants, and to accommodate some outdoor recreational needs as well as providing space for service functions.
- Part of the private open space is capable of serving as an extension of the function of the dwelling for dining and entertainment.

It is therefore considered that the variance to the width requirements of the private open space provisions is acceptable.

Section A2 Site Access & Parking Code

Council’s development engineer provided the following comments in relation to access and parking:

"The proposed development is broken up as follows.

Unit 1 = 1 bedroom

Units 2 – 16 = 2 bedrooms

Units 17 – 20 = 3 bedrooms

Under Council’s DCP Section A2, the following parks are required:

Proposal	Parking rate	Required Spaces	Spaces Provided	Compliance
1 x 1 bedroom	1 park per 1 bd unit	1 space		
15 x 2 bedroom	1.5 parks per 2 bd unit	22.5 spaces		
4 x 3 bedroom	2 parks per 3 bd unit	8 spaces		
	Total for residence	32 spaces		
Visitors	1 per 4 units	5 spaces		
	Total (incl visitors)	37 spaces		
	Total Provided	39	39	YES
Car wash bays	1 per 10 units	2 car wash bay spaces		
	Total Provided	2	1	*See Below

Section A2.3.7 (6) states that “Stacked parking for customer/public and multi dwelling housing will not be supported”, however Council of late have accepted stacked parking provide each stacked pair are nominated to a single unit. Units 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20 are proposed to

have stacked parking. This occupies all of the 3 bedroom units which are required to have 2 car parks. This therefore leaves the following 2 bedroom units with single car spaces. Units 2-7, 12 & 13 (= 8 units). Therefore to satisfy DCP parking requirements, 1.5 spaces are required for these units = 8 x 1.5 = 12. 11 spaces are proposed. A shortfall of 1 car space will be accepted.

Standard car parking and aisle widths have been sporadically dimensioned and will be enforced. As such, appropriate manoeuvring will be available.

PROVISION FOR ONE CAR WASHING BAY HAS BEEN MADE AT THE FRONT OF THE PROPERTY. COUNCIL'S DCP FOR MULTI DWELLING HOUSING REQUIRES ONE CARWASH BAY PER 10 DWELLINGS. THE APPLICANT HAS REQUESTED FOR A VARIATION TO THIS POLICY BASED ON THE FACT THAT A MAJORITY OF THE DWELLINGS ARE ONLY TWO BEDROOMS. THIS IS NOT SUPPORTED AND A CONDITION WILL BE IMPOSED ON THE CONSENT REQUIRING A MINIMUM OF TWO CAR WASHING BAYS.

Having regard to the above comment it is noted that with the acceptance of the stacked parking 2 additional car parking spaces have been provided over the required number in the DCP. The five (5) visitor spaces have been provided outside the secure basement car park and are acceptable.

On this basis it is considered that the proposed development is satisfactory with regards TDCP – A2, subject to appropriate conditions of consent.

Section A3 Development of Flood Liable Land

The proposed development is considered suitable for the site with appropriate conditions of consent being recommended to ensure compliance with the relevant section of the DCP. The majority of the site is in excess of the design flood level for this locality.

Section A9 Energy Smart Homes

Appropriate conditions of consent have been applied to the recommendation to ensure compliance with Section A9 and the Basix provisions.

Section A11 Public Notification of Development Proposal

The development has been advertised and notified in accordance with the Policy as detailed later in this report. The application received 14 submissions, which have been considered as part of this assessment.

Section A14 Cut & Fill on Residential Land

The proposed development is considered to generally comply with this policy. Generally, all cut to accommodate the basement car parks occurs below the footprint of the buildings.

Section B9 Tweed Coast Strategy

The Tweed Coast Strategy contains a number of principles and planning objectives relating to the development of land in the Hastings Point locality. The proposed development is generally in accordance with the strategies and objectives identified in this plan.

Section B18 Tweed Coast Building Heights

The following table assess the proposed development in relation to the provisions of this section of the DCP:

Provision	Acceptable Solution	Compliance
Building Height	A1 – 3 storey residential development = 9m to the uppermost ceiling A2 – 3 storey residential development = 11m to the highest point on the ridge	8.6m to uppermost ceiling 11m highest point on the ridge YES
Building Setback	Minimum of 6m for the front setback Minimum of 3m side and rear setbacks	12.8m to Tweed Coast Road Minimum 3.985m to side and 4.950m to rear YES
Roof Design	A1 – Articulate roof structures A2 – Appropriate materials with minimal visual impact	The roof form is generally flat allowing for utilisation for open space purposes and as such will not be viewed by the surrounding parapet, thereby minimising visual impact. In regards to the materials, the applicant submitted a perspective drawing which indicated colours and materials. However a condition will be imposed on the consent to ensure the colours and materials are compatible with its surrounds. YES
Building Envelope	Height = 12m Envelope/3.5m @ 45degrees	Compliance YES

The Plan specifies that the proposed development complies with this acceptable solutions and guidelines set out in the Tweed Coast Building Heights Plan and is considered to be suitable for the site given the changing character of Hastings Point.

Fencing Policy

Council's fencing policy states that:

"All fences or structures located on or near the front property boundary are to be constructed so as to provide a clear pedestrian sight line from driveways, carports, garages etc., comprising of a triangular area of not less than 2 metres by 2 metres measured from the front boundary and the edge of the driveway. Council may permit the erection of archways over gates and other features, if these are considered not to significantly affect the intent of this policy. The maximum fence height permitted in front of the building line without Council approval shall be 1200mm."

The perspective drawing and landscape plan submitted with the application indicate a front fence, however dimensions were not supplied. Therefore an appropriate condition will be imposed on the consent to slightly modify the proposal and to control the height of the structure, as indicated below:

The front fence is to have a total maximum height of 1.5m, the solid wall height can be up to 1.2m. Above the solid wall the fence is to have a minimum openness ratio of 60%.

The imposition of this condition will contribute to the streetscape, whilst still enhancing the usability of the private open space.

Council's Resolution of 21 August 2007

It is to be noted that, Council at its meeting of 21 August 2007, resolved the following:

1. *Council resolves to publicly exhibit the draft Residential and Tourist Code (Section A1 of the Tweed Development Control Plan) for a period of 60 days.*
2. *Where a public submission received raises an issue that would result in a major change in the draft Plan that a public workshop be convened to address the issue prior to the reporting of the Plan to Council.*
3. *Council engages Ruker & Associates Urban Design to assess the height and density provisions in the current Local Environmental Plan for Hastings Point to provide a report to inform the consultants GHD who are undertaking the overall review of the urban land release strategy for the new Tweed Local Environmental Plan.*
4. *Council defers the assessment and determination of development applications for Hastings Point which have already been submitted but not determined or are submitted for determination after this date until the report from Ruker & Associates Urban Design is finalised for Council's consideration.*

As a result of this decision, the applicant was advised of this resolution and that Clauses 3 & 4 was applicable to their application and that this DA will be held in abeyance until the Ruker & Associates Report is finalised for Council's consideration.

Although this Council resolution (Cl.4) deferred the assessment and determination of the development applications in Hastings Point until the report from Ruker & Associates has been finalised for Council's consideration, given that an appeal has been lodged with the Land & Environment Court, Council is now required to make a decision on this application.

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

It is to be noted that all applicable Regulations have been discussed elsewhere in this report and that the application has been conditioned to ensure compliance with all applicable Regulations.

(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

Character and Amenity

The bulk, scale and likely impacts on the streetscape character and amenity are discussed in greater detail earlier in this report (SEPP No. 65). It is acknowledged that the character of the area is undergoing transition.

Amenity, Overshadowing & Visual Impacts

The proposed development is considered to compliment the existing streetscape, by adopting a number of design elements which aim to reduce the impacts associated with overshadowing, privacy and amenity of adjoining properties and the adjoining reserve area. The development has also provided appropriate landscaping to soften visual impacts, reduce run off and improve the aesthetics of the public domain.

Demolition

A separate application is to be made to demolish the existing structures on site. Council will impose appropriate conditions of consent regarding this.

Traffic

Council's Engineer has identified that the proposal will generate increased traffic, however it is considered that Tweed Coast Road can support the additional traffic loading that will be imposed on it.

Waste

Provision for the storage of wheelie bins have been made in the basement car park. Council's Waste Management Officer, stated that Solo Waste provide a waste collection service along Tweed Coast Road. A letter from Solo Waste has also been provided with the application, stating that they have viewed the proposed plans are that they appear adequate for Solo Waste to carry out a collection service of the proposed refuse area.

Stormwater Management

The applicant submitted a Stormwater Management Plan which has been assessed by Council's Development Engineer and Council's Infrastructure Engineer, whereby it was is considered to be satisfactory, subject to appropriate conditions of consent.

Threatened Species

Section 5A of the Act sets out matters which must be considered in determining whether or not there is likely to be a significant effect on threatened species, populations, ecological communities, or their habitats. The proposal does not involve the removal of any significant trees and there is no indication that the site possesses sensitive or protected species. In the circumstances a Species Impact Statement is not deemed to be necessary.

Creek Access/Impacts

The proposed development is approximately 100m from Cudgera Creek. No creek access is proposed as part of the development. Council's Co-ordinator of Natural Resources Management Unit, advised that the creek is very shallow and is not used for recreational purposes. The development is not anticipated to have any significant impacts upon Cudgera Creek.

It is considered that the proposal is unlikely to result in any adverse impacts on the existing natural or built environment on the subject sites or on the adjoining sites. The proposal is generally consistent with the current desired future character of the Hasting Point region.

(c) Suitability of the site for the development

The subject site provides for a multi dwelling house development within an existing established, yet evolving residential area and it is considered that the development is commensurate with the zone intent. The application was referred to Council's Building and Environment Unit and Engineering and Operations Division for assessment. The application was reviewed by all abovementioned departments with no concerns being raised, subject to appropriate conditions being imposed on the consent.

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

The proposed development was advertised in the Tweed Link with additional notification letters going out to all residents within close proximity of the site for two weeks (27 June 2007 – 11 July 2007). During this period Council received 14 letters of objection.

It should be noted that a number of the submissions raised concerns and made statements about the development occurring in Hastings Point in general and also commented on a number of other specific development applications that have already received consent from Council. This report assesses the specific comments relevant to this application.

The issues raised are summarised below with responses following each one.

- 1. Objectors Concern:** *That the size and scale of this overdevelopment will increase the population of the area, which will in turn have a cumulative impact on the estuary/creek/beach, the localities infrastructure (including water, roads and sewerage) and the associated social impacts as well*

Comment:

It is acknowledged that the development of 20 units will increase the density/population over the site. However the 2(b) zoning of the site 'encourages development for the purpose of medium density housing', thereby actually promoting a population growth over those sites. Nevertheless, it can not be automatically assumed that increased density equals increased environmental damage. It is considered that any potential impacts on the creek/beachfront and localities infrastructure would be addressed in a proactive manner through proper management practices.

- 2. Objectors Concern:** *It is not reasonable that opportunistic developers are allowed to determine the future character of the village and council is obliged to contain this type of strip development*

Comment:

It is not considered that developers determine the future character of an area, rather it is the regulations and controls set by both Council and the State Government that guide the future desired character of an area. The developers response to these regulations and controls are subject to merit assessment by Council.

- 3. Objectors Concern:** *This application (and all in Hastings Point) should be based on a comprehensive plan for Hastings Point itself, not a generic document, which does not address the uniqueness of this community. And that Council should work to protect the existing coastal villages' identity and preserve the sensitive environmental areas.*

Comment:

As noted earlier in this report, a report is currently being prepared by Ruker & Associates to study the Hastings Point area south of the bridge. However as the applicant has lodged an appeal, the application must now be processed under the current planning controls and legislation.

4. **Objectors Concern:** *That the bulk, scale and three storey height of this development is not in keeping with local and state government planning, or the desires of the local community (to have a two storey height limit), the village atmosphere or the unique character of Hastings Point. It appears to be a deliberate misunderstanding of these instruments.*

Comment:

As noted earlier in this report, the bulk, scale and proposed height of this proposal is considered to be in keeping with the current local and state government planning controls. Given an appeal has been lodged on this application, the application assessment must be made. As noted above the Ruker & Associates report and the associated community consultation is considering the local communities views as to future development in Hastings Point.

5. **Objectors Concern:** *It is the understanding of local residents that the subject sites are in fact 79-81 Tweed Coast Rd, not 79-83 Tweed Coast Road, as stated on the DA. This is a clear grab on the part of the developer which will impact resident and ratepayer access to the estuary and is clearly unacceptable.*

Comment:

Lot 1 on DP717669 is known as 79-83 Tweed Coast Road, Hastings Point and as such the description on the application is correct. The adjoining 6(a) Open Space zoned land is Lot 7013 on DP1068894 and is known as 85 Tweed Coast Road, Hastings Point

6. **Objectors Concern:** *The proposal has not provided for sustainable development practices (ie water harvesting, solar panels etc)*

Comment:

Under the current legislation the application has to comply with the Basix Standards. A Basix Statement has been submitted with the application that addresses water and energy issues as well as thermal comfort and is satisfactory.

7. **Objectors Concern:** *Concerns is raised that residents are forced to foot the bill for upgrades and improvements to local infrastructure as developer contributions in no way cover these costs. We also demand that all infrastructure costs pertaining to any development be met by the developer by an increase in developer contributions to at least 5-10% of the final sale costs of the development*

Comment:

Council's contribution plans are based on the current legislation and recover costs directly attributable to the development. The contributions cannot be varied unless the plans are formally changed.

8. **Objectors Concern:** *The DA documentation state that the value of this development to be \$4 million, this appears, this seems unrealistic, this is simply another method of circumventing their developer contributions.*

Comment:

The building cost estimate for the proposed development has been reviewed under the 'Building Cost Guide' published by the Australian Institute of Building Surveyors, and based on the building configuration to cost estimate is realistic.

9. **Objectors Concern:** *Demand that the LEP Amendment 81 be reinstated and that this DA be referred to the Minister and Department of Planning for consideration.*

Comment:

As mentioned earlier in this report the Draft LEP Amendment No. 81 has not been reinstated and therefore the current application has been considered against the current applicable controls. The application is not a State significant development and as such the Minister is not the consent authority. As mentioned earlier the matter is now before the Land and Environment Court.

10. **Objectors Concern:** *This development goes against the North Coast Strategic Plan and NSW Coastal Policy to retain village character*

Comment:

This report details an assessments of the proposal against all current relevant legislation required under the Act, including the North Coast Regional Environmental Plan, the NSW Coastal Policy 1997, the Coastline Management Manual, and the North Coast: Design Guidelines.

11. **Objectors Concern:** *No roofing or shade structures should ever be permitted on the rooftop terrace*

Comment:

A condition will be imposed on the consent regarding this.

- 12. Objectors Concern:** *There will be increased vehicular movement due to parking one behind the other instead of side by side.*

Comment:

The car parking layout has been reviewed by Council's Development Engineer and Traffic Engineer who supported stacked parking in this instance provided each stacked pair are nominated to a single unit. A condition has been imposed on the consent, in this regard. Any additional vehicle movement will be internal to the building.

- 13. Objectors Concern:** *That there is a lack of sufficient visitor parking*

Comment:

The development requires 1 visitor car parking space per 4 units, thereby required 5 spaces. The proposal provides 5 visitor spaces that are accessible outside the secure parking area and therefore complies with the requirements of the relevant DCP.

- 14. Objectors Concern:** *That this development will impact on our privacy and we request that the same terms and conditions (from DA04/0517 – 75 Tweed Coast Rd) as to orientation and screening be imposed on this development.*

Comment:

A review of the plans in regards to privacy and overlooking indicates that as the number of storeys increases, so to do the side setbacks. Thereby minimising direct overlooking into the adjoining property. For example:

Storeys	Side Setback to Balconies	Side Setback to Building Wall
Ground Floor	1.5m	4m
2 nd Floor	4m	4m
3 rd Floor	4m	7.5m - 11.5m
Roof Top Terrace	7.4m – 11.5m	N/A

Further to this, given the sites surrounds, the open space reserve and creek to the west and the coastal beach foreshore to the east, it is considered that the views and vistas are directly to the east and west and not the northern adjoining allotment. In addition, the balconies have been located off living/entertaining areas (to the east and west) to take advantage of these primary views (i.e. the creek and beachfront). It is to be noted that a review of the consent for DA04/0517 revealed no specific conditions relating to privacy or overlooking, as such, in order to minimise these privacy concerns, a number of conditions will be imposed on the consent, relating to frosted glass balustrade on the balconies facing the northern boundary and including one metre wide planter boxes along these balcony edges.

15. Objectors Concern: There are a number of concerns regarding stormwater, which have been detailed below:

Where will the Stormwater go?

- The applicant proposes to install an infiltration system within the front yard of the site, to cater for and dispose of all runoff from the roof and driveway catchments in storms up to the ARI 3 month storm. Surcharge from this system in larger events would be directed to the road reserve as dispersed surface flow. Given the lack of alternative drainage options, this stormwater management proposal is generally acceptable. The arrangement of the proposed Atlantis Cell infiltration system will be checked with the s68 application to confirm sufficient infiltration area and volume is provided.

Will perimeter drainage be installed?

- Perimeter drainage will be required to be installed to ensure that no additional runoff or ponding occurs on neighbouring property – as per consent condition PCC0485 - *“All fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided. The construction of any retaining wall or cut/fill batter must at no time result in additional ponding occurring within neighbouring properties. All earthworks shall be contained wholly within the subject land. Detailed engineering plans of cut/fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.”*
- Raising of ground level will impact on adjoining properties, Condition 16 addresses this issue and *will be enforced at the Construction phase of the development.*

(e) Public interest

Far North Coast Regional Strategy

The Far North Coast Regional Strategy applies to the Tweed local government area. The purpose of the strategy to manage the region's expected high growth rate in a sustainable manner.

A review of this application against the strategy revealed that the proposal is situated on a residentially zoned site which is within the village's growth boundary, thereby not spreading development along the coastal areas. It is considered that the existing and future desired character of the Hastings Point area will not be compromised by this development, nor is it considered that the proposal will detrimentally impact upon the environmental assets, landscape, cultural values and natural resources of the area. It is considered that the proposal meets the vision and aims of the strategy.

Given the circumstances outlined in this report, subject to conditions the application is considered reasonable and appropriate for the locality and its approval would not be contrary to the public interest.

OPTION:

1. Approve the application subject to conditions
2. Refuse the application with reasons for refusal.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil

POLICY IMPLICATIONS:

Nil

CONCLUSION:

Given that the application is now before the Land and Environment Court, the proposal has been assessed against the current planning legislation and planning instruments and is considered to be suitable to the site, unlikely to cause any significant long term negative impacts to the surrounding built and natural environment and generally meets all of Council's applicable standards. The application has been assessed by Council's technical officers with no objections being raised subject to appropriate conditions of consent. On this basis the proposed multi-dwelling housing development is therefore recommended for approval.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.



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P3 [PR-PC] Development Application DA07/0226 for a Dwelling at Lot 1 DP 1075086, No. 27 Vulcan Street, Kingscliff

ORIGIN:

Building & Environmental Health

FILE NO: DA07/0226 Pt1

SUMMARY OF REPORT:

An application has been received to construct a three (3) storey dwelling on the subject property. The property is situated on the southern side of Vulcan Street Kingscliff and backs on to the costal reserve of Cudgen creek.

While Council's LEP 2000 allows for 3 storeys in this locality, the area has predominately one and two storey dwellings.

In conjunction with the development the applicant sought, under SEPP No.1, consideration for a relaxation of the development standard in regard to overshadowing of the foreshore.

The application was notified to surrounding property owners and as a result Council has received several objections to the proposed development. One Objection was from a single resident and the other was a group submission from Planit Consulting from 4 property owners.

Councils Development Assessment Panel, at its meeting on Wednesday 19 December 2007 considered a report recommending approval of the proposed dwelling and resolved that given the number of objections received that Development Application DA07/0226 for a dwelling at Lot 1 DP 1075086, No.27 Vulcan Street Kingscliff be reported to Council for determination. Subsequently this report has been prepared for Councils consideration and determination.

RECOMMENDATION:

That: -

- 1. State Environmental Planning Policy No. 1 objection to Clause 34B(4)(b) of the North Coast Regional Environmental Plan regarding shadowing of the foreshore be supported and the concurrence of the Director-General of the Department of Planning be assumed.**
- 2. Development Application DA07/0226 for a dwelling at Lot 1 DP 1075086, No. 27 Vulcan Street, Kingscliff be approved subject to the following conditions: -**

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos 1-12 prepared by Parameter Designs and dated 5th October 2007, except where varied by the conditions of this consent.

[GENNS01]

2. Privacy screens to a height of a least 1.8 metres are to be provided on the eastern and western sides of the rear verandas at the first and second floor levels, details of which are to be provided to Council for approval prior to issue of the construction certificate.
3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.

[GEN0115]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

4. 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]

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

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

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

[PCC1145]

PRIOR TO COMMENCEMENT OF WORK

6. 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]

7. 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]

8. 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]

9. 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]

10. All roof waters are to be disposed of through properly jointed pipes to the street gutter, interallotment 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 roof water must be connected to an interallotment drainage system where available. A detailed stormwater and drainage plan is to be submitted to and approved by the Principal Certifying Authority prior to commencement of building works.

[PCW1005]

11. 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]

12. 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]

DURING CONSTRUCTION

13. No retaining walls or similar structures are to be constructed over or within the zone of influence of Council's sewer main.
- [DUR2705]
14. 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]
15. 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]
16. 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]
17. 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]

18. 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]

19. 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]

20. 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]

21. 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]

22. 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]

23. 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]

24. 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]

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

[DUR1945]

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

[DUR2515]

- 27. 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]

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

[DUR0445]

- 29. 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]

- 30. 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]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

31. 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]

32. 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]

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

[POC0435]

USE

34. All externally mounted air conditioning units, swimming pool pumps, water tank pumps and any other mechanical plant and equipment shall be acoustically treated so as to avoid the creation of offensive, or intrusive noise to any occupant of neighbouring or adjacent premises.

[USE0235]

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

[USE0505]

36. The keeping of dogs, cats or other animals on the property is to be in accordance with any relevant 88B Instrument requirements.

REPORT:

Applicant: Mr GJ Clare and Mrs LJ Clare
Owner: Mr GL Clare and Mrs LJ Clare
Location: Lot 1 DP 1075086 No. 27 Vulcan Street, Kingscliff
Zoning: 2(a) Low Density Residential
Cost: \$482,160

BACKGROUND:

An application has been received to construct a three (3) storey dwelling on the subject property. The property is situated on the southern side of Vulcan Street Kingscliff and backs on to the costal reserve of Cudgen creek.

While Council's LEP 2000 allows for 3 storeys in this locality, the area has predominately one and two storey dwellings

The application was notified to surrounding property owners and as a result Council has received several objections to the proposed development. One Objection was from a single resident and the other was a group submission from Planit Consulting from 4 property owners.

The objections have been summarised below for Councils perusal.

Objection No 1

Objected to the application on the grounds that the height and bulk of a 3 storey dwelling is out of character with other houses in the street.

The house to the east, No 25 Vulcan St, is two storeys, but only at the rear due to the fall of the land and is only about 4.5-5.00 metres high at the front, the house to the west is low set.

The application as it stands will have the front of the dwelling some 7-8 metres high and some 9 metres high at the rear, totally out of character with surrounding houses and indeed in the whole street

Objection No2

Planit consulting prepared a submission against the proposed development on behalf of the residents of No 18, 20, 22 and 25 Vulcan Street Kingscliff. Planit Consulting advised that their clients wish to register the strongest of opposition to the proposal, with particular reference to the apparent bulk and scale of the proposal and the resultant impacts of the same on adjoining/ neighbouring properties.

The submission from Planit consulting is quite lengthy and detailed and has been attached to for perusal. However the main objections were to the:

1. Adequacy of the plans to determine the full impact of the dwelling in relation to its height above existing ground levels.
2. Bulk and scale of the dwelling in relation to its impact on the streetscape and existing neighbouring dwellings.
3. Privacy of adjoining residents
4. Impacts of over shadowing of the foreshore and adjoining properties

It should also be noted that while this report was originally prepared for DAP's determination Planit Consulting in their submission requested that the application be determined by the full Council/ Administrators.

The objections to the proposed development appear to be mainly concerned with the bulk and scale of the dwelling being three storeys and the accuracy of the plans to determine the dwelling's compliance with DCP B18- Tweed Coast Building Heights, (DCP 48) and its impact on adjoining properties.

Correspondence was forwarded to the applicant advising them of the objections received by Council.

As a result of the objections received by Council the applicant has submitted amended plans in attempt to address these concerns. The plans included: -

- A detailed site plan with contours showing the proposed cut and fill on the site and reduced levels so the overall height of the dwelling can be determined in relation to existing ground levels.
- Accurate elevations showing the height of the building addressing the requirements of Section B18 –Tweed Coast Building Heights of Council's DCP.
- Shadow diagrams showing the shadows cast by the proposed dwelling on adjoining side properties and the reserve at the rear of the property.
- Elevations showing privacy screens to the sides of the rear 1st and 2nd storey verandas to address concerns from adjoining property owners.

The amended plans were renotified. No further objections have been received by Council.

In relation to the amended plans the shadow diagram provided confirms that the dwelling will cast a shadow on the foreshore reserve at the rear of the property at 3pm June 21 and 7pm December 21

As a result of the shadow cast by the dwelling into the fore shore, a SEPP 1 objection has been submitted to Clause 34B of the North Coast Regional Plan. Clause 34B of the NCRP prohibits overshadowing of the foreshore coastal reserve, at the times of 3pm on the 21st June and 6.30pm on the 21st December.

SITE DIAGRAM:



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 4 - Aims of the plan

It is considered that the aims of the plan have been satisfied and that the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan have been considered in this application.

Clause 5 - Ecological Sustainable Development

It is considered that the proposed development meets the objectives of this clause, in that the proposal is considered to be consistent with the four principles of ecological sustainable development as set out in the LEP.

Clause 8(1) - Consent Considerations

- a) The consent authority may not grant consent to development (other than development specified in Item 3 of the table to Clause 11) only if:
- b) It is satisfied that the development is consistent with the primary objective of the zone within which it is located, and
- c) It has considered those other aims and objectives of this plan that are relevant to the development, and
- d) It is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of the Tweed as a whole.

The TLEP 2000 defines 'dwelling house' as:

"a building containing one but not more than one dwelling."

It is considered that the proposed single dwelling house satisfies Clause 8 of TLEP 2000, in that the proposal satisfies the objectives of the zone (as discussed in Clause 11), that the proposal has taken into consideration the other aims and objectives of this plan and that it is considered that this development would not have an unacceptable cumulative impact on the community, locality or catchment of the Tweed.

Clause 11 – Zone Objectives

The subject land is zoned 2(a) low density residential under the provisions of the Tweed Local Environmental Plan (TLEP) 2000. A single dwelling housing development is permissible with Council's consent in the 2(a) zone.

It is considered that the development incorporates a level of design detail and consideration to adjacent allotments that will ensure that a quality urban design outcome will be achieved. In this regard, the proposed single dwelling housing satisfies the objective of this zone.

Clause 15 – Availability of Essential Services

The subject site is adequately serviced by way of electricity, sewer and water connections. Therefore the proposal is considered to be consistent with this clause.

Clause 16 – Building Heights

The subject site possesses a statutory height limit of three storeys, in accordance with the TLEP2000 definitions; therefore the proposed development complies with this restriction.

- Clause 16 Heights of Buildings
- Development Control Plan:
 - Section A14 - Cut and Fill on Residential Land
 - Section B18 Tweed Coast Building Heights
 - Section B16 Kingscliff

North Coast Regional Environmental Plan 1988

32B - Development control - coastal lands

- (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).

Clause 32 B(4)(b) of the NCREP is applicable for this application. This clause requires the consideration of potential shadow impacts on beaches and waterfront open space before 3pm midwinter or 6.30pm midsummer. The submitted overshadowing diagrams show that the building will cast a shadow on to the waterfront open space/ coastal reserve before required times. The proposal seeks a variation to the extent of shadow impacts to the adjacent foreshore reserve to the south and a SEPP1 variation has been submitted with the application.

State Environmental Planning Policy

SEPP 1

The proposal seeks a variation to the extent of shadow impacts to the adjacent foreshore reserve to the east. The property adjoining the site is zoned 6(a) public open space and is considered to be waterfront open space pursuant to this clause. The application was accompanied with a SEPP 1 variation and the applicant has provided the following reasons as to why this standard is unreasonable or unnecessary:

- "* *At 7.00pm mid-summer, shadows cast by the proposed building, which encroach onto the foreshore reserve, would be relatively narrow and therefore, would affect only a small portion of the reserve.*
- * *At the stated time, the shadows cast by the proposed building would not extend to any beach areas and therefore will not impact on sunbathers and surfers.*
- * *The shadow does not impact on any areas used by the public for formal recreational activities.*
- * *The shadow cast by the building is similar to that cast by the buildings located on the adjacent properties.*

An objection has been lodged under SEPP 1 to vary the development standard provided by clause 32B (4) of the North Coast Environmental Plan 1988(NCREP 1988), which prohibits overshadowing of the waterfront open space/coastal reserve at the times of 3pm mid winter and 6.30pm midsummer to be unreasonable. The shadow diagrams submitted show that the building will overshadow the coastal reserve to the south at both of these times.

It is considered in this instance that the standard is unreasonable for the following reasons.

While the dwelling will overshadow the coastal reserve the area of the coastal reserve that will be affected is an area with significant vegetation and limited public access. There is no formal access or pathway behind the property to the picnic areas adjacent to Cudgen Creek. The public picnic areas within this reserve are located approximately 50metres to 100 metres away from the subject property.

It should be noted that the shadows cast by the trees in the reserve located immediately behind the subject property will have a greater impact on the reserve than the dwelling under consideration.

Council has granted many other approvals for dwellings along the Tweed Coast with similar minor overshadowing encroachments into the coastal foreshore and it is considered that in this instance Council should support this request also.

SEPP 71

The development is generally consistent with the objectives of SEPP 71 and will not impact on the public's enjoyment and access to the foreshore.

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

None apparent

(a) (iii) Development Control Plan

Section A14- Cut and Fill on Residential Land

The proposal involves minor cut and fill works for the driveway and ground floor area of the dwelling. In this regard the proposed cut and fill is reasonable and is generally consistent with the provisions of this section of the plan. This cut also has the effect of helping to reducing the impact the bulk and size of the dwelling on the street by lowering the dwelling on the site.

Section B18-Tweed Coast Building Heights

The subject site is located on Kingscliff Hill in an area which has a three storey height limit as nominated in Council's LEP 2000.

The proposed dwelling is three storeys and is generally consistent with the height requirements of section B18 for three storey dwellings.

The submitted plans show the maximum height of the dwelling at approximately 10.5 meters, .5 below the maximum height permitted under section B18. The height of the top plate of the third storey portion of the dwelling to ground level is 9 metres. This height is consistent with the requirements of section B18 for three storey dwelling.

The building is centrally located within the property and is generally compliant with the building envelope outlined in section B18. The building has a small portion of the secondary storey gable roof on the southern side extending outside the envelope .This encroachment is considered only minor in nature and is consistent with the performance requirements of the section B18.

In regard to overshadowing the submitted plans demonstrate that the property most affected by shadow will be the property to the west of the site with a portion of this property being in shade during the time of 9am mid winter. As the day progresses shadowing of the property will substantially decrease providing full solar access to the property.

Section B16-kingscliff

While two storey dwellings are encouraged on Kingscliff Hill, three storeys dwelling are permitted in the area. The ground floor area of the proposed dwelling comprises a garage, bedroom, laundry, rumpus room and rear verandah and has a combined approximate floor area of 159m². The first floor area comprises two bedrooms, bathroom, kitchen/living room and two verandas with a combined floor area of 159m². The second floor area comprises a master bedroom, ensuite and verandah with a combined floor area of 70m².

The design of the dwelling is generally consistent with the objectives of the section B16 with the apparent bulk of the building being broken down into smaller component parts with articulation of wall design and protruding verandas. The third storey portion of the dwelling has a smaller floor area which has enabled the third storey to be set back at the rear of the dwelling to reduce the impact of the bulk and scale of the dwelling and emphasise the two storey character of the area when viewed from the front property boundary.

The ground floor area of the dwelling has been stepped down the site to utilise the slope of the site and reduce cut and fill on the site.

The proposed development being a single dwelling will be in keeping with the residential character of the area.

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

None apparent

(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 property is a vacant site in an existing established residential subdivision which has been specifically created for residential development. The proposed dwelling is in keeping with the residential character of the area.

The dwelling will be three storeys which is permissible in the area. The dwelling is located centrally in the property to help minimise impacts on adjoining properties and to comply with section B18- Tweed Coast Building Heights.

The main objectors to the development are from property owners on the opposite side of Vulcan St No 18, 20, 22 and it appears their main concern is about the height of the development and loss of views. These properties are all two storey with decks or large windows at the first floor level enjoying wide views to the south over the vacant subject property and the existing dwellings on the Southern side of Vulcan Street.

While the proposed development will impact on the view from these properties, the impact of the third storey portion of the proposed dwelling will be only a small portion of the whole view enjoyed from these properties. And it is considered an unreasonable expectation from these properties owners that a development on the subject site should not impact on their views.

(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 existing residential area and utilities of reticulated water, public sewer and power are provided to the site.

The property is a vacant grassed site with an approximate 5% fall towards the rear of the property. The design of the dwelling is in keeping with the residential character of the area.

The building has been centrally located on the property and complies with minimum side and rear boundary setbacks. The dwelling is set 10 metres from the front property boundary which is well behind Council's 6 metre Building line.

The site is not identified as having acid sulphate soil potential on Council's acid sulphate soils planning map, nor is the property located in a bushfire prone area on Council's Bushfire Hazard Map.

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

The application was notified to surrounding property owners and as a result Council has received several objections to the proposed development. One Objection was from a single resident and the other was a group submission from Planit Consulting from 4 property owners.

Objection No 1

I object to the application on the grounds that the height and bulk of a 3 storey dwelling is out of character with other houses in the street.

The house to the east, No 25 Vulcan St, is two storeys, but only at the rear due to the fall of the land and is only about 4.5-5.00 metres high at the front, the house to the west is low set.

The application as it stands will have the front of the dwelling some 7-8 metres high and some 9 metres high at the rear, totally out of character with surrounding houses and indeed in the whole street

The plans indicate a setback of some 11 metres from the street, perhaps the plans could be redrawn to bring the front of the dwelling closes to the street and therefore negate the need to build so high.

Objection No2

Planit consulting prepared a submission against the proposed development on behalf of the residents of No 18, 20, 22 and 25 Vulcan Street Kingscliff. Planit Consulting advised that their clients wish to register the strongest of opposition to the proposal, with particular reference to the apparent bulk and scale of the proposal and the resultant impacts of the same on adjoining/ neighbouring properties.

The submission from Planit consulting is quite lengthy and detailed and has been attached to for perusal.

The applicant was advised of the objections and as a result submitted amended plans in attempt to address these concerns.

The amended plans were renotified to surrounding property and no further submissions were received by Council.

The main issues raised by the objectors to the development were;

5. *Adequacy of the plans to determine the full impact of the dwelling in relation to its height above existing ground levels.*

The applicant submitted amended site plans showing, showing contours and reduced levels so the overall height of the dwelling can be determined in relation to existing ground levels. Amended elevations of the dwelling also demonstrate that the building will generally complies with the building envelope requirements of Section B18 –Tweed Coast Building Heights of Council's DCP.

6. *Bulk and scale of the dwelling in relation to its impact on the streetscape and existing neighbouring dwellings and loss of views.*

The dwelling will be three storeys which is permissible in the area. The existing dwellings located on the same side of the street as the proposed are predominantly one and two storey, with dwellings to the eastern of the subject development being two storeys and to the western side being single storey, so the development will have an impact on the existing streetscape.

The dwelling has been located centrally on the property to help minimise impacts on adjoining properties and to comply with section B18- tweed coast building heights. The third storey portion of the dwelling is set back at the rear of the dwelling to reduce the impact of the bulk and scale of the dwelling on the streetscape.

The main objectors to the development are from property owners on the opposite side of Vulcan St at No 18, 20, 22. It appears their main concerned are about the height of the development and loss of views. These properties are all two storey with decks or large windows at the first floor level enjoying wide views to the south over the vacant subject property and the existing dwellings on the Southern side of Vulcan Street.

While the proposed development will impact on the view from these properties, the impact of the third storey portion of the proposed dwelling will be only a small portion of the whole view enjoyed from these properties. It is considered an unreasonable expectation from theses properties owners that a development on the subject site should not impact on their views.

7. *Privacy of adjoining residents*

In relation to the privacy of adjoining residents it is considered that the amended pans for the proposal have adequately addressed this issue. Windows on the eastern and western sides of the dwelling have been kept to a minimum and privacy screen have been provided to the eastern and western sides of the rear deck at the first floor level and the eastern side of the rear deck at the third floor level, to minimise over looking of adjoining properties.

8. *Impacts of over shadowing of the foreshore and adjoining properties*

Shadow diagrams have been provided for the proposed dwelling for the hours of 9am June 21, 12am 21 June, 3pm June 21 and 7pm December 21.

In relation to overshadowing of the foreshore the shadow diagrams for 3pm 21 June and 7pm December confirm that the dwelling will cast a shadow on the foreshore reserve at these times. The impact of the shadows on the foreshore at these times will have minimal impact on the public's use and enjoyment of the foreshore, which has been previously commented on with the SEPP 1 objection in this report.

In regard to overshadowing of adjoining properties the submitted plans demonstrate that the property which is most affected by shadow will be the property to the west of the site with a portion of this property being in shade during the time of 9am mid winter. As the day progresses shadowing of the property will substantially decrease with full solar access to the property being achieved by 12 noon.

(e) Public interest

The development will not prejudice the public interest

OPTIONS:

1. Approve the development subject to conditions.
2. Refuse the development.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed development is generally consistent with Council's policies and the development of the site is consistent with the residential character of the area. While the development is to be three storeys in a predominately one and two storey area, three storeys is permissible in the area and the development is generally consistent with the requirements Section B18- Tweed Coast Height.

Many of the dwellings on Kingscliff Hill are over 30 years old and it is envisaged that as redevelopment or renovations occur to existing dwellings, property owners will take advantage of the three storey height limit in the area to maximise the use of the site and any coastal views.

In regard to the SEPP No 1 submission to vary the development standard provided by Clause 32B(4) of the NCRP 1988 is considered reasonable under the circumstances discussed in the report as the variation is minor and should be supported.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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P4 [PR-PC] Review of Determination of Development Application DA06/0640 for Dwelling Additions, Fence & Gatehouse at Lot 16 DP 244426, No. 44 Oyster Point Road, Banora Point

ORIGIN:

Building & Environmental Health

FILE NO: DA06/0640 Pt1

SUMMARY OF REPORT:

Council at its meeting of 22 January 2008 resolved to defer the report for consideration to be given of the information tabled by the applicant.

A review of the applicants submission identified that the applicant has made a submission in relation to recommendation 1 and 2 of the report which included photographs of various 2 and 3 storey developments in the Banora Point area and a letter from the owners of No. 5 Adina Place and 46 Oyster Point Road advising that they have no objections to the proposal.

Main points raised in recommendation 1 are as follows: -

"The addition maintains a typical form, scale and exterior finish that is typical of contemporary residential design similar to many other residences in area sited within mature trees landscape area there is no negative visual impact.

As shown in attached photo's many local existing dwellings are of a more outstanding and non streetscape unity.

The proposed addition is only relatively visible to the Adina Place residents. As described in councils report (as stated by Council). Both residences of which have the opinion that it is irrelevant to their views or streetscape. They have both given written statements for same, as attached.

Both believe that the design is uniformly flowing from the existing lower stories, as per the illustration provided."

In regard to this part of the submission and the letters that have raised no objections to the proposal it is still considered that the proposal does not achieve a high quality of design and would adversely affect the secondary streetscape in Adina Place and would have a negative impact on the owners of No. 42 Oyster Point Road.

In regard to the submission in relation to Recommendation No. 2 of the report the applicant raises the following main points:

*"The roof line is lower than the existing
No change to the building footprint
Set back 8m from No. 1 Adina Place
Neighbourhood typically 2 & 3 story houses
Large expansive residences
No exceptional features on proposal to warrant refusal*

Refer to attached local photo's

In addition:

Clause 16 of the Tweed Local Environmental Plan 2000 allows 3 storey dwellings to be erected on the property

It is consistent with the North Coast Regional Environmental Plan 1988 and State Environmental Planning Policies

All setbacks are within Councils allowances".

The second item raised is the dividing timber fence,

"The average height of the existing retaining wall is 500mm, so the total height would have an average of 2.3m from the lower side (42 Oyster side), and an average height of 1.8 on the higher side (44 Oyster side) which is natural ground level.

*As shown on the plans it is proposed to be 1.8m high from the **natural ground** line not above the existing masonry retaining wall as stated by the council report.*

*As stated in the council report page 159 **"the objectors did state that they are only objecting to the third storey addition and not to the other proposals"** copy attached.*

The owners of No. 42 Oyster have agreed to this 1.8m height as shown on the fencing notice and plan which is signed by all owners on the 14/11/05. This design chosen to minimise the height effect. Copy attached.

There is a portion of the fence located at approx 10 metre setback (from Oyster Point Rd boundary) in which a retaining wall steps down approx 1.8m lower, this section is approx 2.0m long which does put the total height at 3.8 metres, but this is located between the side of the houses, I believe there is no objection to this from 42 side but if necessary I can reduce this section down to 1.0m from natural ground level.

Please find attached a more detailed plan of the dividing fence heights".

In addition to the comments above the applicant has also hand written a note at the bottom of the letter stating that: -

"I propose that the dividing fence height be reduced to an average height of 1.8m measured from the lower side (42 Oyster side)."

In regard to the submission made in relation to Recommendation No. 2 the points made in relation to the height and design of the building proposal still does not give justification for the first part of this recommendation to be altered. However, in regard to the boundary fencing the proponent has indicated that the height of the fence adjacent to the street frontages would be 1.8m when measured from natural ground and not above the existing retaining wall as previously indicated in the original report. The proponent has also indicated that the proposed dividing fence between No. 42 and 44 will be reduced to an average height of 1.8m when measured from the lower side of the fence. Therefore in regard to the fencing proposal contained in the application it is considered that this part of the proposal given the reduction in height could be given favourable consideration.

Notwithstanding the applicants submission the previous recommendation is resubmitted with the exception of the reference to the fence.

RECOMMENDATION:

That the Review of Determination of Development Application DA06/0640 for dwelling additions, fence & gatehouse at Lot 16 DP 244426, No. 44 Oyster Point Road, Banora Point be refused and the original decision by the Development Assessment Panel at its meeting of 2 May 2007 to refuse the application be amended as follows: -

- 1. Pursuant to the provisions of Section 79C (1)(b) of the Environmental Planning and Assessment Act, 1979, it is considered that the proposed development does not achieve a high quality design and would adversely affect the secondary streetscape in Adina Place.**
- 2. Pursuant to the provisions of Section 79C (1)(d) of the Environmental Planning and Assessment Act, 1979, it is considered that having regard for the public submission, the development is unsuitable with respect to the bulk and setback of the three storey addition.**

REPORT:

Applicant: Mr M McDonald
Owner: Mrs BJ McDonald and Mr KJ McDonald
Location: Lot 16 DP 244426 No. 44 Oyster Point Road, Banora Point
Zoning: 2(a) Low Density Residential
Cost: \$11,750

BACKGROUND:

A development application was lodged with Council on 16 June 2006 to construct dwelling additions (additional third storey and foyer extension), a double carport, fence, and gatehouse on the abovementioned property.

The allotment contains a part two and part three storey brick veneer dwelling that was constructed in 1980.

Although unclear from the poor quality of the plans submitted the applicant proposes the following;

- Add a third storey to part of the dwelling which will incorporate a fifth bedroom, toilet, living room with a robe and a lounge room with a walk-in robe, which will be separated from the living room with a removable partition wall.
- Construct what appears to be a double carport (dimensions unknown) with a 4.6 metre setback from the Adina Place secondary property frontage. Access to the carport will be via an existing second driveway.
- Add a two storey foyer to the front of the house facing Oyster Point Road which includes a spiral stair case and water feature. This foyer will have a setback of 2.6 metres from its secondary frontage of Adina Place.
- Convert an existing single garage that has access off Oyster Point Road into another bedroom.
- Convert the one of the double garages that has access off Adina Place to an entertainment area. The plans submitted indicate that the roller doors are to remain.
- Raise the existing 1.2 metre high masonry fence facing Oyster Point Road to a height of 1.8 metres. The majority of this has already been partly carried out without the prior consent of Council.
- Raise the height of the existing dividing fence located between 42 and 44 Oyster Point Road by the addition of a 1.8m high timber fence which would have an overall height of 3.9m as measured from 42 Oyster Street which is the lower side.
- Construct a 3.5 x 3.5 metre gatehouse on the front boundary facing Oyster Point Road that will be enclosed on three sides.

A similar Development Application 0933/2000DA was previously submitted in August 2000, which proposed the same third storey addition as the one proposed in this Development Application. This application was reported to Council on 15 November 2000 which resolved that the application be refused due to the visual effect on the amenity of the adjoining site and the affect on natural light available to the adjoining property. The plans submitted indicate that the third storey addition (approximately 58.4m²) for the current application are identical to those originally submitted in 2000 under Development Application 0933/2000DA.

A site inspection identified that precedence does exist in the street and the general vicinity for front fences and other open structures within Councils building line.

The proposal is clear of any easements and sewer mains on the site.

It should be noted that the majority of additions proposed to the existing rendered masonry fence that runs parallel to the Adina Place and Oyster Point Road have been constructed without Council approval. From a site inspection it appears that this fence is much greater than 2 metres in height in parts and may have been constructed partly on Councils road reserve. The erection of this fence without approval has implications for safe vehicular access to the site, as clear 2 metre sight triangles cannot be achieved without modification of the fence. The owner has provided evidence in respect of the age of the fence and a memo of no objection has been received from Councils' Technical Officer Trevor Harris. Consequently Council correspondence has been sent to the owner advising that no further action is to be taken in this regard to the fencing along the Oyster Point Road and Adina Place boundaries.

The objectors at 42 Oyster Point Road have raised concern in respect of the proposal to raise the height of the existing masonry dividing fence located between 42 and 44 Oyster Point Road by the addition of a 1.8m high timber fence which would have an overall height of 3.9m as measured from 42 Oyster Street which is the lower side.

The immediate locality comprises mainly of single storey dwellings with a lesser amount of two storey dwellings which are sympathetic to the character of the area. Approval to add an additional 60m² of floor area to the three storey component of the existing dwelling would establish an undesirable precedent.

Development Application No. DA06/0640 was referred to the Development Assessment Panel on the 2 May 2007 who unanimously resolved to refuse it for the following reasons;

1. The proposed three storey addition will have a negative visual impact on the amenity of the adjoining sites and will affect the natural light available to the adjoining property.
2. The bulk and scale of the additions proposed are unsympathetic with that of the existing dwellings which comprise of the immediate streetscape.
3. Approval of the proposal would set an undesirable precedent in the area and will affect the streetscape and character of the area.



4. The majority of additions proposed to the existing masonry fencing have already been carried out without the prior consent of Council which are not in accordance with Councils' fencing policy. Council cannot grant retrospective approval to unauthorised building works.
5. Council already considered a similar proposal in 2000 which it subsequently refused due to its impact upon the immediate locality.

The applicant lodged an application on the 22 November 2007 for a review of the determination pursuant to Section 82A of the Environmental Planning and Assessment Act 1979. This application includes a submission by Jim Glazebrook & Associates Pty Ltd (Town Planners & Development Consultants) in response to the above reasons of refusal.

SITE DIAGRAM:



CONSIDERATIONS UNDER SECTION 79C & 82A OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

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

Tweed Local Environmental Plan 2000

The environmental planning instrument in force is the Tweed Local Environmental Plan 2000 and the proposal generally satisfies this instrument.

Clause 16 of the Tweed Local Environment Plan 2000 references the Height of Buildings map which permits the erection of a three storey dwelling on the subject allotment. Notwithstanding, further addition to the three storey component of the existing dwelling will dominate upon the immediate locality and will primarily affect the residents of No. 42 Oyster Point Road especially in terms of its bulk, scale, reduction of visual amenity and reduction of natural light.

North Coast Regional Environmental Plan 1988

The development is considered consistent with the requirements of the North Coast Regional Environmental Plan 1988.

State Environmental Planning Policies

SEPP 71 – Coastal Protection - The site is located within the coastal zone. Having regard to Clause 8 of SEPP 71 and based on the nature and scale of the development, the proposal is unlikely to have any adverse impacts in this coastal location due to its location from the coastal zone. The proposed development is considered compatible with the intent for the development of the locality.

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

There are no Draft Environmental Planning Instruments applicable to this DA

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

The proposal satisfies all relevant Development Control Plans.

In accordance with DCP 42, the application was originally notified in 2006 to adjoining property owners. During the two week notification period one objection to the proposal was received from the neighbour most likely to be effected. The objection was quite comprehensive and objected to the proposed third storey addition on the grounds that it would reduce the visual amenity of their property and would reduce the natural light available to their property. It should be noted that the reasons mentioned above are the same reasons as to why the application was originally refused in 2000. The objectors did state that they are only objecting to the third storey addition and not to the other proposals.

In accordance with Councils' notification policy the Section 82A review was notified to the same adjoining property owners on 5 December 2007. Subsequently another objection was received from the owners of No. 42 Oyster Point Road who have primarily raised objection to the three storey addition which they have alleged will obstruct view and natural light to their second bedroom and living room, reduce the benefit of southeast breezes and will dominate upon their property.

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

There are no matters prescribed by the Regulations

(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 proposed dwelling additions are anticipated to result in a negative impact on the surrounding environment, in particular on the adjoining property located at 42 Oyster Point Road, Banora Point. The impacts of the proposed third storey addition have been investigated comprehensively during the assessment of an almost identical proposal in 2000. In the previous application for a third storey addition it was refused as the proposal would have a negative impact on the visual amenity of the adjoining sites and would limit the amount of natural light available to the adjoining property. As the three storey component of the current proposal is identical to that submitted in 2000, the anticipated impacts are considered to be the same. Furthermore it is considered that the three storey element does not achieve a high quality design and would impact upon the secondary street frontage of Adina Place.

(c) Suitability of the site for the development

The site is located in a residential area and the proposal includes a further addition to the three storey component of the existing dwelling. It is considered that this three storey addition will dominate upon the immediate locality and will primarily affect the residents of No. 42 Oyster Point Road especially in terms of its bulk, scale, reduction of visual amenity and reduction of natural light. Also the three storey addition will cause additional overshadowing upon the objectors residence located at No. 42 Oyster Point Road which adjoins the subject properties western boundary. The applicant has submitted shadow diagrams which indicate that the neighbouring property will not be adversely affected in respect of overshadowing.

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

In accordance with DCP 42, the application was originally notified to adjoining property owners. During the two week notification period one objection to the proposal was received from the neighbour most likely to be effected. The objection was quite comprehensive and objected to the proposed third storey addition on the grounds that it would reduce the visual amenity of their property and would reduce the natural light available to their property. The objectors did state that they are only objecting to the third storey addition and not to the other proposals.

In accordance with Councils' notification policy the Section 82A review was notified to the same property owners on 5 December 2007. Subsequently another objection was received from the owners of No. 42 Oyster Point Road who have primarily raised objection to the three storey addition which they have alleged will obstruct view and natural light to their second bedroom and living room, reduce the benefit of southeast breezes and will dominate upon their property.

The objectors at 42 Oyster Point Road have raised concern in respect of the proposal to raise the height of the existing masonry dividing fence located within the building setback between 42 and 44 Oyster Point Road by the addition of a 1.8m high timber fence which would have an overall height of 3.9m as measured from 42 Oyster Street which is the lower side. Councils' Fencing Policy states that as part of the development assessment process in respect of proposed fencing which exceeds 1.2m in height in front of the six (6) metre building line submissions arising from the notification process are to be considered. Also in the case of sloping sites the height limitation may be averaged to Council's satisfaction with regular steps. The height limitation is measured from 'natural ground' on the lower side of the fence. However, where there is a significant difference in level either side of the fence, Council may permit an increase of height to allow the fence to be erected to a height of 1000mm above the 'natural ground' level on the high side.

Definition - For the purpose of this policy `Natural Ground' shall mean the undisturbed ground level or, where significant changes in ground level have been made during major subdivision of land, shall mean the levels as established at the time of the final approval of the subdivision. It appears that the raised garden beds and associated landscaping located beside the western boundary of No. 44 are above the natural ground level. Also the courtyard area located in the front setback of No. 42 appears to be below natural ground level in part. Therefore in respect of the above, the overall height of the proposed timber fencing on top of the existing masonry fencing will exceed the existing higher ground level located at No. 44 by more than 1.0m. The proposal would exceed the above requirement and in turn would dominate the front courtyard of No. 42 and adversely affect the residents amenity

(e) Public interest

The proposed development, in particular the further addition proposed to the third storey, is considered to be contrary to the wider public interests. Approval of the addition will set an undesirable precedent in the immediate locality which comprises mainly of single and two storey dwellings, and will in turn affect the streetscape and character of the area.

Review of determination – reasons for refusal and applicants submission

1. The proposed three storey addition will have a negative visual impact on the amenity of the adjoining sites and will affect the natural light available to the adjoining property.

The applicants' consultant has responded in his report that he considers that the mature trees provide a visual separation between the addition and No. 1 Adina Place and that there will be no significant visual association to the Oyster Point Road elevation. Also there will be no unreasonable loss of views or privacy to the residents of No. 42. Shadow diagrams have been submitted which demonstrate that No. 42 is not impacted to any appreciable extent.

It is considered that the three storey addition due to its overall bulk will have a visual impact upon the neighbouring property at No. 42 Oyster Point Road. Also, in light of the shadow diagrams submitted the point of natural light available is now considered not to be an issue.

2. The bulk and scale of the additions proposed are unsympathetic with that of the existing dwellings which comprise of the immediate streetscape.

The applicants' consultant has responded in his report that he considers that the addition would make an insignificant difference to the bulk and scale of the existing building, due to its setback off the Adina Place boundary and No. 1 Adina Place.

It is considered that the three storey addition to the existing dwelling will have a visual impact upon the secondary frontage of Adina Place especially as Adina Place comprises of single and two storey dwellings.

3. Approval of the proposal would set an undesirable precedent in the area and will affect the streetscape and character of the area.

The applicant has responded by stating they have already addressed streetscape and character issues and has sited examples of three storey dwellings which Council has approved in east Banora Point. Also the consultant has stated that approval of this application or other cannot and does not pre-empt approval of any subsequent application.

It is considered that the three storey addition to the existing dwelling will be out of context with the other dwellings in the immediate neighbourhood. Notwithstanding the three storey dwelling will adversely impact upon the amenity of the residents of No. 42 Oyster Point Road.

4. The majority of additions proposed to the existing masonry fencing have already been carried out without the prior consent of Council which are not in accordance with Councils' fencing policy. Council cannot grant retrospective approval to unauthorised building works.

The owner has provided evidence in respect of the age of the fence and a memo of no objection has been received from Councils' Technical Officer Trevor Harris. Consequently Council correspondence has been sent to the owner advising that no further action is to be taken in this regard. This reason of refusal is not considered appropriate and should be deleted.

5. Council already considered a similar proposal in 2000 which it subsequently refused due to its impact upon the immediate locality.

The applicant has responded stating that this does not constitute a valid reason for refusing the application. This reason of refusal is not considered appropriate and should be deleted.

OPTIONS:

1. Reaffirm the Development Assessment Panel's decision of 2 May 2007 to refuse the application with appropriate amendments to the reasons for refusal.
2. Approve the application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The Section 82A application has been considered and having regard to the assessment of the Planning Consultants report it is recommended that the refusal of Development Application No. DA06/0640 be confirmed however in light of the above assessment reasons 4 and 5 of the original refusal should be deleted and reasons 1, 2 & 3 be reworded as follows: -

1. Pursuant to the provisions of Section 79C (1)(b) of the Environmental Planning and Assessment Act, 1979, it is considered that the proposed development does not achieve a high quality design and would adversely affect the secondary streetscape in Adina Place.
2. Pursuant to the provisions of Section 79C (1)(d) of the Environmental Planning and Assessment Act, 1979, it is considered that having regard for the public submission, the development is unsuitable with respect to the bulk and setback of the three storey addition, and the proposed addition of a 1.8m high timber fence which is to be erected on top of the existing masonry fence located between No. 42 and No. 44 Oyster Point Road which will dominate and adversely affect the level of amenity presently available to the residents of No. 42 Oyster Point Road.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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PLANNING COMMITTEE MEETING DATE: TUESDAY 12 FEBRUARY 2008



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