



AGENDA

PLANNING COMMITTEE MEETING

Tuesday 15 July 2008

Chairman: Mr Max Boyd AM

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



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REPORTS THROUGH GENERAL MANAGER

REPORTS FROM DIRECTOR PLANNING & REGULATION

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

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

MATTERS FOR CONSIDERATION

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



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P1 [PR-PC] Development Application DA07/1176 for a Rural Tourist Facility Comprising Four Cabins at Lot 9 DP 773470, No. 1836 Reserve Creek Road, Cudgera Creek

ORIGIN:

Development Assessment

FILE NO: DA07/1176 Pt1

SUMMARY OF REPORT:

Council is in receipt of a Development Application for 1836 Reserve Creek Road, Cudgera Creek. The proposal seeks consent for a rural tourist facility that consists of four cabins, walking trails, landscaping and associated infrastructure. The subject site is 5.36 hectares in size and consists of an existing dwelling house, swimming pool and a small timber plantation.

The subject site had a prior application (DA06/1449) for ten tourist cabins refused on the site predominantly for reasons of overdevelopment of the site, site not suitable for the proposed development and failure to provide adequate buffers between the subject site and adjoining agricultural lands.

Eleven submissions were received for the current proposed development, eight in support and three opposed to the development, including a petition with 23 signatures.

The subject development provides a 35 metre buffer to the residential dwelling house to the north. This is the only adjoining dwelling visible from the proposed development. The plans propose landscape buffers along the boundary of the site. A condition of approval would require a further detailed landscape plan to address issues of privacy and buffers along the northern boundary. A further condition would be placed on the approval for the landscaping to be established along the northern boundary prior to occupation of the development.

The proposed development is considered to demonstrate compliance with Tweed Local Environmental Plan, the North Coast Regional Environmental Plan and is considered to be compliant with the Environmental Planning and Assessment Act 1979. Therefore the application is recommended for conditional approval.

RECOMMENDATION:

That Development Application DA07/1176 for a rural tourist facility comprising of four cabins at Lot 9 DP 773470, No. 1836 Reserve Creek Road Cudgera Creek 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 WD01 Floor Plan, Plan Nos WD02 Elevation Plan, WD03 Elevation Plan prepared by Valley Kit Homes and dated 19 October 2006, 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. The proposed cabins are not be utilised for permanent accommodation.

[GENNS03]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

4. The developer shall provide a minimum of one parking space for each cabin (including parking for the disabled as required), in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code.

[PCC0065]

5. **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:

12 Trips @ \$1021	\$12,252
S94 Plan No. 4	
Sector11_4	

- (b) Open Space (Casual):

1.536 ET @ \$167	\$257
S94 Plan No. 5	



- (c) **Emergency Facilities (Surf Lifesaving):**
 - 2.62 ET @ \$200 \$524
 - S94 Plan No. 16
- (d) **Extensions to Council Administration Offices
& Technical Support Facilities**
 - 2.3077 ET @ \$1996.8 \$4,608.02
 - S94 Plan No. 18
- (e) **Regional Open Space (Casual)**
 - 1.539 ET @ \$855 \$1,316
 - S94 Plan No. 26

[PCC0215]

6. 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]

7. Erosion and Sediment Control shall be provided 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]

8. Prior to the issue of Construction Certificate the applicant is required to lodge a Section 68 application to install an on on-site sewage management system, pay the appropriate fee and be issued with an approval to install.

[PCCNS01]

9. A detailed landscape plan shall be submitted to and approved by the General Manager or delegate prior to issue of the construction certificate. The plan shall be prepared by a landscape architect or landscape consultant to a standard acceptable to the General Manager or delegate. The plan shall include the following documentation -

- (a) A site plan (at 1:100 to 1:1000 scale) showing the existing features, including north point, access road and an outline of proposed buildings indicating doors and windows. Any trees to remain in the vicinity are to be located to scale and identified by botanical and common names.
 - (b) Proposed and existing site services, including water, gas, electricity, sewer, stormwater, etc.
 - (c) Easements on or adjacent to the site.
-

- (d) View lines to and from the development and details of pedestrian access and circulation areas within and around the development, including retaining walls, seating, fences, gates, decorative features etc.
 - (e) Additional survey plan showing the location, canopy spread, trunk diameter, height and names of those existing tree/s and significant tree/s adjacent to the site likely to be affected by the development. The plan shall also include the existing ground levels at the base of the trunk of the tree/s as well as at the drip lines of the tree/s.
 - (f) Existing and proposed ground levels (shown as spot heights and/or contours over the site and direction and degree of slope) indicating the site boundaries, and the base of the trees proposed to be planted or that are to be retained (if applicable).
 - (g) Sectional elevations through the site showing the existing and proposed ground lines, building elevations and proposed plantings.
 - (h) Construction details of planter boxes (including width and depth), paving, edging, fencing, screening, panels and other hard landscape components. As far as possible deep root zones must be provided for large trees and paving is to be porous. Paving works within 2m of the trunk of the large trees shall be constructed in such a way as to ensure the existing moisture infiltration and gaseous exchange to the tree root system is maintained.
 - (i) Planting details for the preparation and planting of tube and potted plants, super-advanced plants, bare-rooted stock and any other planting.
 - (j) A detailed plant schedule and plan at a scale of 1:100 to 1:1000 indicating the location of all proposed planting and any existing vegetation to be retained on and adjacent to the site. The plan is to include a detailed plant schedule which shall include;
 - species listed by botanical and common names, with the majority of plants constituting local native species;
 - specific location, planting densities and quantities of each species; pot sizes; the estimated sizes of the plants at maturity, and proposed staking methods, if applicable.
 - maintenance methods including the use of drip irrigation and mulching or groundcovers to reduce bare soils areas and including a maintenance schedule for a minimum period of one year after completion of landscaping on site.
- [PCCNS02]
10. Submit an amended site plan including the neighbouring dwelling house to demonstrate that the proposed cabins are not in direct alignment with the neighbouring dwelling. The plan is to be approved by the General Manager or delegate prior to issue of the Construction Certificate.

[PCCNS03]



PRIOR TO COMMENCEMENT OF WORK

11. The erection of a building in accordance with a development consent must not be commenced until:
- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
 - (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - (c) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

12. 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]

13. 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]

14. 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]

15. 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:

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

Certification of the works performed by the person carrying out the works is to be submitted to the PCA; and

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]

16. 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]

DURING CONSTRUCTION

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

[DUR0005]

- 18. 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]

- 19. The roof cladding is to have low reflectivity where it would otherwise cause nuisance to the occupants of the buildings with direct line of sight to the proposed building.**

[DUR0245]

- 20. All building work must be carried out in accordance with the requirements of the Building Code of Australia as Class 3 buildings (as in force on the date the application for the relevant construction certificate was made).**

[DUR0375]

- 21. 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]

- 22. 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]

- 23. 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]

- 24. 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]
25. **At least one cabin shall be provided with access to the building for people with disabilities and be constructed in accordance with the requirements of Section D of the Building Code of Australia. Particular attention is to be given to the deemed-to-satisfy provisions of Part D-3 and their requirement to comply with AS1428.**
- [DUR1685]
26. **Where a building or part of a building is required, under the provisions of Section D of the Building Code of Australia, to be accessible to permit use by people with disabilities, prominently displayed signs and symbols shall be provided to identify accessible routes, areas and facilities. The signage, including Braille or tactile signage, should be installed in accordance with the relevant provisions of the Building Code of Australia and achieve the minimum design requirements provided under AS1428.**
- [DUR1695]
27. **Where access for people with disabilities is required to be provided to a building, sanitary facilities for the use of the disabled must also be provided in accordance with the provisions Part F-2 of the Building Code of Australia.**
- [DUR1705]
28. **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]
29. **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]
30. **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]
31. 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]
32. 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]
33. Construction of an all weather driveway access to service the approved cabins off the existing bitumen driveway, in accordance with the provision of Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual and Councils Development Design and Construction Specification.
- [DURNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

34. 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]
35. 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]
36. 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]

37. Prior to the occupation of any building and prior to the issue of any occupation certificate a final inspection report is to be obtained from Council to verify the satisfactory installation of all plumbing and drainage and the on-site sewage management facility.

[POC1035]

38. Council approved landscaping along northern boundary of an adequate height to buffer neighbouring dwelling shall be completed prior to the release of the occupation certificate. Landscaping shall be maintained at all times to the satisfaction of the General Manager or delegate.

[POCNS01]

USE

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

[USE0125]

40. The accommodation and amenities shall be maintained in a clean and tidy manner.

[USENS02]

41. A Drinking Water Management Plan shall be compiled & implemented and made available on-site as a reference document.

[USENS01]

42. In the event that untreated or untested water is supplied for tourist type accommodation a warning sign shall be displayed at all fixtures. Such signs shall state the source of raw water and method of treatment, if any.

[USENS03]

REPORT:

Applicant: Planit Consulting
Owner: Swanny's Developments Pty Ltd
Location: Lot 9 DP 773470, No. 1836 Reserve Creek Road Cudgera Creek
Zoning: 1(a) Rural
Cost: \$120,000

BACKGROUND:

The proposed development application is seeking Council approval for a rural tourist facility at No. 1836 Reserve Creek Road, Cudgera Creek. The development consists of the following:

- Construction of 4 self contained cabins;
- Associated access and car parking;
- Landscaping;
- Onsite sewerage system; and
- Onsite potable water supplied by water tanks.

The four cabins have an identical floor plan consisting of studio style accommodation with the bedroom and living space contained within the one room. Each cabin has the dimension of 7.2m x 7.2m excluding the carport. They consist of 46.21m² floor area, 5.63m² of verandah and have an attached single space carport of 16.2m². The floor area includes a bathroom with a spa bath. The kitchen consists of a sink, bench top, and fridge. No laundry facilities are proposed within the cabins.

The proposed development will provide an onsite effluent disposal system, individual rainwater tanks (10,000) for each cabin with the overflow directed to a large 40,000 litre reserve tank. Garbage and general waste will be collected by Solo waste when required.

The proposed development is to provide a quiet setting with low impact activities such as the provision of walking trails through-out the site, access to the pool existing on the site, and the provision of bocce, badminton on the levelled grass area adjoining the existing house.

The proposed cabins are setback approximately 30m from the western boundary and 35m from the northern boundary. The separation distance between each of the cabins is approximately 10m.

The proposed development was advertised in the Tweed Link for a period of two weeks from Wednesday 21 November 2007 to Wednesday 5 December 2007. During this period 11 written submissions were received, eight in support and three opposed to the application of which 1 submission consisted of a petition of 23 signatures.

The subject site is irregular in shape and measures 5.39ha in size. The subject land is undulating with the cabins located on the north-western portion of the site at the base of a slope.

The land contains an existing dwelling house, and swimming pool which is situated amongst established timber plantation trees. The proposed cabins will be located down slope of the existing dwelling house on an existing cleared portion of the property.

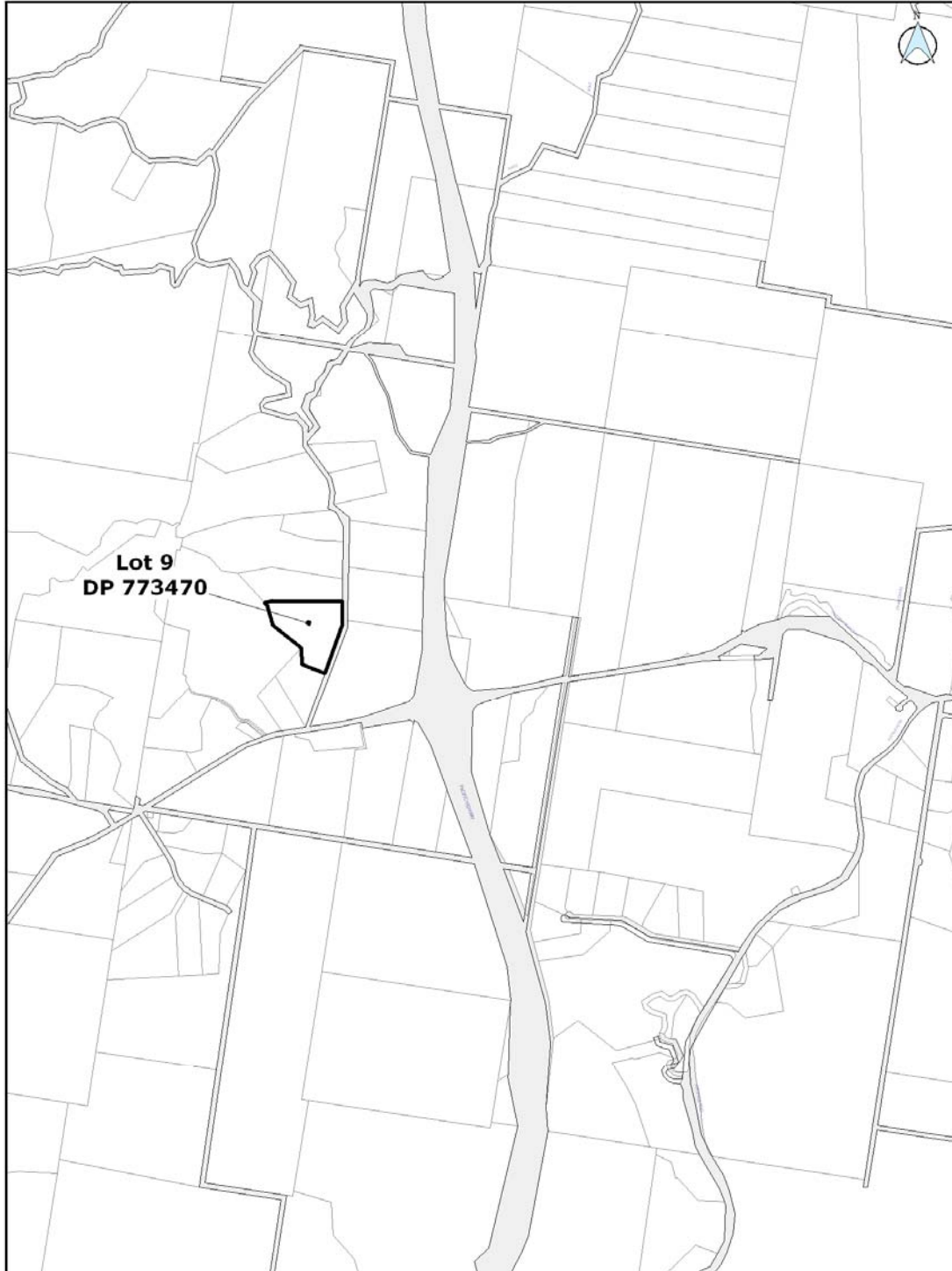
The site is approximately 320 metres west of the Pacific Highway. The immediate surrounding land is predominantly used for cattle grazing and rural residential development. The subject land is 5 km west of the township of Pottsville.

The adjoining neighbour to the north is 35 metres from the proposed development. Should option 1 of this report be adopted then a condition for an established landscape buffer along the northern boundary prior to occupation would be imposed.

A prior application, DA06/1449 for ten tourist cabins was refused by Council on the grounds of overdevelopment of the site, site suitability, failure to provide adequate buffers between the subject site and adjoining agricultural lands, failure to consider the objectives of the 1(a) rural zone and numerous negative submissions were considered to have merit.

The subject application has significantly reduced the number of cabins and has resulted in a small scale development that is considered to satisfy the objectives of the zone. The proposal is considered not to be an over development of the site. It provides adequate buffers between the proposed development and neighbouring land. Further the proposed development for four cabins is considered suitable for the site with regards to the topography and environmental characteristics of the land.

SITE DIAGRAM:



<p>© TWEED SHIRE COUNCIL 2007 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 816 Murwillumbah, NSW, 2484 Tel: (02) 6670 2409 Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i> Lot 9 DP 773470 No. 1836 Reserve Creek Road, Cudgera Creek</p>		<p>PLANNING REFORMS UNIT Site Plan</p>
<p>File: N:\Munsys\A4P - SITE PLAN.Wor</p>		<p>Author: J.Batchelor</p>	<p>Date: 01/May/2007</p>
		<p>Scale: 1:20,000</p>	<p>Sheet: 1 of 1</p>

CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**(a) (i) The provisions of any environmental planning instrument**Clause 4 – Aims of this Plan:

The proposed development is considered consistent with the aims of the Tweed Local Environmental Plan. The proposed development is considered consistent with the vision of the shire “to manage growth so that the unique natural and developed character of the Tweed shire is retained.” The proposed development is for a low scale tourist facility where the proposed design is low key and will blend into the surrounding environment. The proposed development is considered to be in keeping with the objectives of the Tweed Heads Strategy which states “opportunities for expanded farm-based and rural tourism need to be pursued energetically”. The proposed development is a rural tourist facility to provide an opportunity to utilise a rural landscape. The proposed development is considered to be in keeping with the aim of the plan to encourage sustainable economic development of the area while having regard to the area’s environmental and residential amenity qualities. The proposed development is for a small scale development that would provide a sustainable economic development for the owner’s of the site.

Clause 5 – Ecologically sustainable Development:

The proposed development is considered to be generally compliant with the principles of ecological sustainable development. The proposed development is on cleared rural land, that is generally free from environmental constraints. Therefore the proposed development is considered to have minimal impact on the environment and in keeping with the precautionary principle, inter generational equity and the conservation of biological diversity and ecological integrity.

Tweed Local Environmental Plan 2000

Clause 8(1) (c) Cumulative Impact: The proposed development is not considered to create a cumulative impact in the locality. The applicant identified a deficiency of rural tourist facilities in the Tweed shire and therefore the surrounding locality consists of only single dwelling houses. The proposed development is not considered to create a cumulative impact in the locality.

Clause 11 – The Zones: The subject land is zoned 1(a) Rural under the Tweed LEP 2000, which provides the following primary and secondary objectives:

Primary objectives

- *to enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilisation purposes and associated development.*
- *to protect rural character and amenity.*

Secondary objectives

- *to enable other types of development that rely on the rural or natural values of the land such as agri- and eco-tourism.*
- *to provide for development that is not suitable in or near urban areas.*
- *to prevent the unnecessary fragmentation or development of land which may be needed for long-term urban expansion.*
- *to provide non-urban breaks between settlements to give a physical and community identity to each*

The proposed application is for a rural tourist facility which is permissible in the zone. The proposed development is set on a small rural acreage that has been planted with timber cabinet trees. Walking trails are to be provided through the timber groves and gardens. Therefore the proposed development is reliant upon the setting and providing visitors with an appreciation of the natural environment. Therefore the proposed development is considered to satisfy the definition of rural tourist facility.

The proposed development is considered to be in keeping with the 1(a) zone objectives. The proposed small scale development is considered unlikely to interfere with the rural character and amenity of the locality. The proposed development is considered to be in keeping with the secondary objectives as the proposed rural tourist facility relies on the rural and natural values of the land.

Clause 15 – Essential Services: The proposed development provides rainwater tanks and a new on-site septic system to cater for the development. The on-site system has been reviewed by Council's Environmental Health Officer and found to be satisfactory and therefore satisfies clause 15.

North Coast Regional Environmental Plan 1988

Clause 75 - Development control—tourism development: The proposed development satisfies the requirements for clause 75 as the proposed development is not considered to cause a detrimental impact on the scenery or the natural environment. The proposal has adequate access to the site and is easily accessible from the Pacific Highway. The proposal has been assessed by Council's environmental health officer and is considered to provide adequate services with regard to potable water and on-site sewerage system.

Council has given consideration to the Tourism Development along the NSW Coast: Guidelines. The proposed development satisfies the physical factors guidelines. The proposed development is accessible, serviceable, free from

environmental hazards, ie bushfire, minimal visual impact on the surrounding properties due to the scale and siting of the development.

The guidelines refer to the principles outlined in Department of Planning, Tourism Development Near Natural Areas. The site is not considered to be a natural tourism area as it does not adjoin a national park or crown land, however, the principles identified are considered relevant. The proposed development is generally compliant with these principals in terms of location's accessibility, serviceability, landform stability; the siting of the development in regards to orientation, buffers and sympathy with the landform. The proposed development is in keeping with the scale and character of the locality. The proposed development is in keeping with the guidelines for preferred materials for construction as the proposed development will be constructed from timber. Therefore the proposed development is generally compliant with clause 75 tourism development.

State Environmental Planning Policies

No state environmental planning policies apply to the site.

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

The proposed development is not affected by any draft EPIs.

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

Tweed Development Control Plan – Section A2 – Access and Car Parking Code

For tourist accommodation section A2 DCP requires one car space per cabin. The proposed plans provide one carport per cabin. Adequate area is available on site to accommodate further staff and visitor's spaces if required.

The proposed development is considered satisfactory with regard to the provisions of section A2 of the Tweed DCP.

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

No matters prescribed by the Regulations are considered relevant to this proposed development.

(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

Context and Setting

The site is located in a rural locality that is predominantly surrounded by grazing land. The proposed four cabins has the potential to be visible from Reserve Creek Road, however, the design of the development, low set timber

construction, proposed landscaping and the nature of the development to caters for couples is considered to not have a detrimental impact on the locality.

Access and Traffic

The application was assessed by Council's development engineer who found that the traffic generated by the development was considered reasonable in the locality. Further the access and sight distances in both directions were considered suitable. Therefore the proposed development is considered unlikely to cause an impact on traffic in the locality.

Farmland of State or Regional Significance

The site adjoins land identified as regionally significant farmland along the southern and eastern boundary. The proposed development was therefore referred to Department of Agriculture who provided the following comments:

NSW DPI offers no objection to the proposed development provided it is made clear to the applicants and visitors to the cabins that agricultural pursuits within the locality have the right to carry out routine practices without complaint or pressure from new non-agricultural land uses or visitors.

The proposed development is not considered to have an impact on the surrounding land identified as regionally significant farmland. However, should option 1 be adopted Council would provide the advice from Department of Agriculture to the applicant.

Flora and Fauna

The subject site of the proposed development is cleared land, therefore no vegetation is to be removed as part of the development application and therefore the proposed development would have minimal impact on the flora and fauna in the locality.

Noise and Vibration

The subject development is unlikely to generate excessive noise, given the fact that the development is for four cabins and the maximum number of people on the site would be eight people. The proposed development is for a relaxing getaway for couples, it does not cater for families. Therefore the proposed tourist facility is considered unlikely to generate excessive noise.

Social Impacts in the Locality

The subject location for the proposed cabins on the site is visible to the dwelling to the north on Lot 13/842410. The proposal is approximately 35 metres from the adjoining dwelling. The buffer distance is considered adequate to reduce any potential noise impact to the neighbouring dwelling.

Further the landscaping proposed would ensure that the proposed development is screened from the adjoining dwelling. If option 1 is adopted then a condition would be placed on the approval to ensure landscaping is established prior to the operation of the rural tourist facility. A further condition would be placed on the approval to amend the site plan to ensure the cabins are not in direct alignment with the neighbouring dwelling.

The subject development provides approximately 35 metre buffer from the northern and south western boundary. Other adjoining dwellings are approximately 300- 350 metres from the proposed development and cannot visually see the proposed development.

The proposed development has the potential to be seen from Reserve Creek Road, however, the design for low set cabins and the timber materials will result in the proposed development to be in keeping with the surrounding environment. Further landscaping is proposed around the property boundary of the site to ensure adequate screening is provided to the development.

Therefore the proposed development is considered to have minimal social impacts if approved with the suggested conditions of consent.

(c) Suitability of the site for the development

Surrounding Land Uses/Development

The site is 5.36 hectares in size in a rural locality that is predominantly surrounded by grazing land. The number of cabins over the site results in a ratio of 1.34 hectare per cabin. Therefore the proposed development is not considered an overdevelopment of the site. Therefore the site is considered an adequate size and suitable for the development proposed.

The prior application for 10 rural cabins would have resulted in a ratio of 1 cabin per 0.563 hectares and was considered an overdevelopment of the site. The subject application has significantly reduced the number of cabins and therefore the proposed development is considered to be suitable for the site.

The prior application DA06/1449 was refused on site suitability. However, the prior application was for 10 cabins that would have resulted in up to 20 people on the site.

However, the subject application has been significantly reduced to four cabins that would result in a maximum of eight people on the site. Therefore the proposed development would be able to provide a relaxing low key stay for visitors to appreciate the natural and rural environment of the site.

Availability of Utilities & Services

The prior application, DA06/1449 was refused on grounds that the proposed development does not provide adequate services and facilities as identified as identified in market research report. However, given the fact that the subject

application has significantly reduced the size of the development, the proposal services are more in keeping with a small scale tourist facility.

The applicant provided a market research report: Evaluation for New Tweed Coast Accommodation Site it provided information regarding why people holiday in the Tweed. The main reasons provided were:

1. *Relaxing*
2. *Quality of beaches*
3. *Hinterland Environment*

The subject site has the potential to provide these qualities, the low key nature of the current proposal ensure a quiet relaxing stay within a short drive to the beach in a hinterland environment.

Activities identified in the market report identified as important in tourist accommodation:

1. *Walking Tracks*
2. *Picnic/BBQ Areas*
3. *Bike Hire*

Comment: The subject development proposes walking tracks and has the ability to provide on site picnic areas. The application does not address bike hire, however, such activities could be provided on the subject site. Therefore the proposed site is considered suitable for the low key activities proposed as part of the development.

Natural Hazards

The subject site is not affected by any physical constraints. The site is not affected by bushfire, flooding or acid sulphate soils. Therefore the proposed site is considered free from constraints and suitable for the proposed development.

Farmland of State or Regional Significance

The subject site has regionally significant farmland along the entire southern boundary of the site. The subject development is not contained within the land identified as regionally significant farmland. The southern boundary of the site is parallel to Reserve Creek Road and the portion of land identified as regionally significant land is only 11 metres wide, which is considered a marginal portion of regionally significant farmland. Therefore the site is considered suitable for the proposed development and is not constrained by regionally significant farmland.

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

The proposed development was notified to surrounding properties and advertised within the Tweed Link from 21 November 2007 to Wednesday 5 December 2007 for a period of two weeks. During this period 11 written submissions were received, 8 were in support of the proposed development and 3 against (one of which was a petition with approximately 23 signatories) and one negative submission was received outside the advertised time. The following issues raised within the submissions are discussed as follows:

Issue: Rural Character - The proposal is not in keeping with the rural zone and considered an overdevelopment of the site and if approved will later apply for more cabins.

As mentioned earlier in the report the subject application is considered in keeping with the zone objectives. The application is only for four cabins on 5.39 hectares and therefore is not considered an over development of the site as it equates to 1.3 hectares per cabin. The proposed application is for 4 cabins and any later application would be the subject of separate assessment.

Issue: Pollution – concern is raised regarding the noise impacts from holiday-makers, increase in traffic to the locality and lighting of internal road.

The proposed development is for only four cabins and associated activities and therefore is considered unlikely to generate excessive noise from the development. Further it is unlikely that the proposed development would result in excessive noise from traffic as the maximum number of vehicles at one time would be four vehicles. Any lighting proposed as part of the development would be conditioned to ensure it does not have an effect on neighbouring properties.

Issue: Effluent Disposal – Concern has been raised regarding potential environmental impacts of the proposed effluent disposal methods.

The proposed development was assessed by Council's Environmental Health officer who found that the on-site effluent disposal systems for the proposal is satisfactory.

Issue: Property Values – Concern is raised regarding the loss of property values from the proposed development

The Environmental Planning and Assessment Act 1979 does not require an assessment of development's affect on property prices. Therefore this issue is not relevant to the proposed development.

Issue: Concern has been raised regarding the suitability of the site for tourist development, particularly in light of the proximity and noise generated by the adjoining Pacific Highway and lack of natural features on the site.

The applicant has provided the following response to the concerns raised:

The site ...is ideally located in all respects, to enjoy the benefits of proximity to the beach, rainforest, rural areas and indeed the more commercial attractions of the Gold coast and Byron Bay. These facts are undisputable and outline the basis of why the site is supportable for the purposes of Rural Tourist Accommodation. We also note in this regard the written support tendered by the Tweed Tourist body – Tweed Tourism Inc.

We also note that the proposal, given its proximity to natural areas such as Tweed Coast, Mooball / Burringbar and Murwillumbah Hinterlands and the attractions of Byron Shire. We also note that the proposal is 100% compliant with the location guidelines within the 'Tourism Development near Natural Areas' Guidelines' prepared by the Department of Planning in 1989. In particular, the site is free from constraint relating to natural features and despite the comments of surrounding residents, free from constraints associated with preserving the amenity of neighbours.

The site suitability has been discussed within Section (c) of this report, concluding that the site is free from constraints, provides rural a experience for short tourist stays.

Issue: Lack of facilities– Concern was raised that the proposed development is lacking in facilities and details and entertainment.

The statement of environmental effects identifies that the proposal is generally to provide a:

“quiet and private setting to enable couples to get away and relax...walking trails through the cabinet groves and gardens, whilst access will be made available to the swimming pool for guests. Also a level area with manicured lawn....this will be able to be used for bocce, badminton or other lawn sports.

Therefore the proposed development will only provide low key facilities. However, people would be aware of the basic facilities to be provided and the proposal would only attract visitors seeking a break to appreciate the natural and rural environment. This is further discussed under section (c) suitability of the site.

Issue : Unsuccessful tourist venture – Concern the cabins would be utilised for permanent accommodation if the venture fails.

Under the Environmental Planning and Assessment Act 1979, the application is assessed as proposed. Accordingly, it is not appropriate to refuse the application on the speculation that the cabins may not be used in accordance with the consent. If option 1 is adopted a condition would be placed on the

approval to ensure the development is not used for permanent accommodation.

Issue: Concern over the proposed development affect on the environment in terms of the native wildlife and the locality's natural beauty.

The proposed development is on a vacant paddock surrounded by cleared agricultural land and therefore would not be considered to have a significant affect on the natural environment. The development will increase site usage to a maximum of eight people, however, as mentioned the site is cleared agricultural land and therefore not considered to impact on any potential flora and fauna in the locality.

Issue: Concern the proposed development is not in the public interest

Three submissions were received in the negative within the advertised time period, one which was a submission of 23 signatures. Eight submissions were received in support of the proposed development. This issue is further discussed below.

Issue: Concern lack of buffers result in loss of privacy and safety and incompatible land uses with adjoining properties.

The proposed cabin closest to the northern boundary is approximately 35 metres from the approved dwelling. The Department of Agriculture provided comments on the proposed development and stated that the proposal is generally compliant with the buffers.

The proposed development has includes landscaping along the property boundary to ensure privacy to neighbouring dwellings. If option 1 is adopted a condition would be placed on the approval to submit a detailed landscaping plan and an amended site plan demonstrating that the cabins will not be in direct alignment of the neighbouring dwelling to the north. Further a condition should be placed on the consent to ensure that a landscape buffer is established along the northern boundary prior to occupation of the facility.

The issues of safety from tourists visiting the facility are not head of consideration under Section 79C of the Environmental Planning and Assessment Act 1979.

(e) Public interest

The subject application is for a small scale rural tourist facility which received eight submissions in support of the application. The proposal has identified a lack of small scale development in the Tweed Shire in close proximity to the beach and coastal villages. The proposal offers a getaway in a relaxing rural environment. The proposed development seeks to provide an alternative accommodation outside of a caravan park or resort to visitors of Tweed Shire.

A number of submissions were received against the proposal, however, the issues raised were addressed above, where it was found that the issues raised can be addressed by conditions of consent.

OPTIONS:

1. Approve the application in accordance with the recommendations in this report.
2. Refuse the application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The subject application is considered to comply with statutory and policy requirements. The application has amended the development from that originally sought by significantly reducing the size of the development. In assessing the subject application on its merits it is considered that the site is suitable for the proposed development. The proposed development is not considered to have any significant impacts on the built or natural environmental. The recommended conditions of consent will enable the establishment of vegetation buffer along the northern boundary. Therefore the proposed development is 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.

P2 [PR-PC] Development Application DA08/0197 for a Caravan Park Comprising 580 Long Term Sites and Ancillary Facilities (Including Reception/Administration Building, General Store, Recreational Areas, Bowling Green, Gym, Swimming Pool, Sewerage Treatment Plant, Helicopter Landing Pad, Nursery, Caravan and Boat Storage Area and Golf Course) and Light Industry for the Manufacture of Movable Dwellings at Lot 8 DP 804836, No. 349 Pottsville Road, Sleepy Hollow

ORIGIN:

Development Assessment

FILE NO: DA08/0197 Pt2

SUMMARY OF REPORT:

Council is in receipt of Development Application for a caravan park comprising 580 long term sites as well as light industry for the manufacture of moveable dwellings on a rural site in the area known as Sleepy Hollow. The application also proposes a number of ancillary uses and estimates a total population for the development of 1,160 people.

The application submitted is deficient in detail and closely resembles the content of an application received by Council in 2006 for a caravan park at Pottsville and subsequently withdrawn.

Clarification from the applicant has confirmed that the dual primary uses proposed by the application can be best defined as a *manufactured home estate* and *light industry* pursuant to the Tweed LEP 2000.

The subject site is located within the 1(a) Rural zone, where *manufactured home estates* are prohibited and *light industry* is only permissible if the applicant can demonstrate compliance with clause 8(2) of the Tweed LEP 2000.

The application has been lodged, however, as an application under SEPP 21 - Caravan Parks. Pursuant to this SEPP, the application must be assessed as a *caravan park* which is only permissible if the applicant can demonstrate compliance with clause 8(2) of the Tweed LEP 2000.

Further the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005, called up by the SEPP, deems that a caravan park can not be used for the purposes of the manufacture of moveable dwellings. This element of the proposed use, being *light industry*, is therefore not permissible pursuant to SEPP 21 - Caravan Parks.

On review of the application, the applicant has failed to demonstrate compliance with the aims and objectives and consent considerations of SEPP 21 - Caravan Parks as well as

compliance with clause 8(2) of the Tweed LEP 2000. Further, the application has not been able to demonstrate that the subject site, being an isolated rural site, is suitable for the proposed development.

The application is therefore recommended for refusal.

RECOMMENDATION:

That Development Application DA08/0197 for a caravan park comprising 580 long term sites and ancillary facilities (including reception/administration building, general store, recreational areas, bowling green, gym, swimming pool, sewerage treatment plant, helicopter landing pad, nursery, caravan and boat storage area and golf course) and light industry for the manufacture of movable dwellings at Lot 8 DP 804836, No. 349 Pottsville Road, Sleepy Hollow be refused because the application fails to satisfy the criteria listed as Heads of Consideration listed in Section 79C of the Environmental Planning and Assessment Act 1979 on the following counts:

1. Section 79(C)(1)(c) Site Suitability:

An isolated rural site is not suitable for the location of a caravan park comprising 580 manufactured home sites accommodating an expected population of 1,160 people.

2. Section 79(C)(1)(a)(i) The provisions of any environmental planning instrument:

2.1 The application fails to satisfy the Aims and Objectives outlined in clause 3 of SEPP 21 - Caravan Parks - Caravan Parks and the Matters to be Considered by Councils outlined in clause 10 of this SEPP.

2.2. The application fails to satisfy the consent considerations outlined in clause 7 of SEPP 55 – Contaminated Lands

2.3 The application fails to satisfy the consent considerations outlined in clause 104 of SEPP (Infrastructure) 2007.

2.4 The application fails to satisfy the consent considerations outlined in clause 10 of SEPP (Rural Lands) 2008.

2.5 The application fails to satisfy the consent considerations relevant to development assessment outlined in the North Coast Regional Environmental Plan, specifically:

- Clause 12 Development control—impact of development on agricultural activities**
- Clause 15 Development control—wetlands or fishery habitats**
- Clause 43 Development control—residential development**

- **Clause 66 Development control—adequacy of community and welfare services**
- 2.6 The application fails to satisfy the consent considerations outlined in clause 8(2) of the Tweed LEP 2000 primarily in that it is not consistent with the aims of the Tweed LEP 2000 or the objectives of the Rural 1(a) zone.**
- 2.7 The application fails to satisfy the following additional clauses of the Tweed LEP 2000 as it fails to provide the technical information required:**
- **Clause 17 Social impact assessment**
 - **Clause 22 Development near designated roads**
 - **Clause 34 Flooding**
 - **Clause 35 Acid sulfate soils**
 - **Clause 39 Remediation of contaminated land**
 - **Clause 39A Bushfire protection**
- 2.8 The application fails to satisfy clause 49 of the Environmental Planning and Assessment Regulation 2000 as it fails to provide the consent in writing of an owner of the land to which it relates.**
- 4. *Section 79(C)(1)(a)(iii) The provisions of any development control plan***
- 4.1 The application fails to satisfy the following additional sections of the Tweed Shire Development Control Plan 2007 as it fails to provide the technical information required:**
- **A3 Development of Flood Liable Land**
 - **A4 Advertising and Signs Code**
 - **A13 Socio Economic Impact Assessment**
 - **A14 Cut & Fill on Residential Land**

REPORT:

Applicant: Auscorp Capital Pty Ltd
Owner: Mr N Marshall
Location: Lot 8 DP 804836, No. 349 Pottsville Road, Sleepy Hollow
Zoning: 1(a) Rural
Cost: \$4,900,000

BACKGROUND:

Council is in receipt of a Development Application for a caravan park comprising 580 long term sites as well as light industry for the manufacture of moveable dwellings. The application, including the various consultant reports and assessments submitted, closely resembles both the qualitative and quantitative content of an application received by Council in 2006 for a caravan park at Pottsville.

Permissibility:

The application submitted is deficient in detail. The overall concept however, being to provide 580 long term sites for manufactured homes which will be constructed on site, is clear. This has been further clarified by the prototype image below confirming that the dual primary uses proposed by the application can best be defined as a manufactured home estate and light industry pursuant to the Tweed LEP 2000.

SEPP 21 - Caravan Parks defines a *caravan park* as land on which *moveable dwellings* are to be placed. *Moveable dwellings* are further defined as inclusive of *manufactured homes*. The SEPP prevails to the extent of any inconsistency with the Tweed LEP and the definition in the SEPP applies to this application. This element of the proposed use must therefore be assessed as a caravan park which is only permissible if the applicant can demonstrate compliance with clause 8(2) of the Tweed LEP 2000.

Further SEPP 21 - Caravan Parks calls up the various controls of the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005* which deem that a caravan park can not be used for the purposes of the manufacture of moveable dwellings. This element of the proposed use, being light industry, must therefore be deemed as not permissible pursuant to SEPP 21 - Caravan Parks.

The Proposal:

In addition to 580 long term manufactured home sites and light industry, the application proposes a number of ancillary uses. These are a reception/administration building, general store, swimming pool, two bowling greens with club house, three tennis courts with club house, nine hole golf course with clubhouse, sewerage treatment plant, helicopter landing pad, nursery, caravan and boat storage area, staff amenities, 2000 litre water reservoir and fire station. The proposal does not make provision for any short term or tourist accommodation. It does not include shared shower facilities (other than those available to staff) or a shared laundry. The applicant has submitted that the

proposal is aimed at the 'over 55' market and will appeal as a low cost housing solution for retirees.

The layout of the proposal is best demonstrated on the site plan submitted with the application and attached below. In summary, the light industry is limited to the western portion of the site which is separated from the remainder of the site by Lot 3 DP717240 which is surrounded by the subject site on all but its southern boundary. Access from the manufacturing plant to the site placement areas is via a right of carriageway burdening Lot 3 DP717240 and also via a dual access system from Pottsville Road. Site placement areas occupy approximately 21 hectares of the site in a central area extending from the north to the southern boundary. Recreational uses are scattered throughout the eastern portion, including a nine hole golf course which sits flush with the site's eastern boundary to the Pacific Motorway.

Site Description:

The subject site has an area of 77.72 hectares and is irregular in shape. This irregularity appears to be the result of various historical rural subdivisions which have created new lots from what would have originally been a relatively uniform parcel. Most notable is Lot 3 DP 717240 which all but dissects the site from north to south. This lot does not form part of this application.

Access to the site is from Pottsville Road. The site is also adjacent to the Pacific Motorway, which forms its eastern boundary, however there is no access to the site from the highway itself.

The site is well vegetated and subject to various uses, including a banana plantation and cattle grazing which complement substantial areas of natural bush land which appears to be in reasonable condition. Existing built form on site is limited to various farm sheds, a dwelling house and a closed restaurant/commercial building which was previously the centrepiece of two failed eco-tourism ventures. Both "Rainforest Secrets" and "Pioneer Plantation" were based on a remarkable effort by the current owners to regenerate the native vegetation on the site in the 1980s.

Council's GIS indicates that elevations on site range from RL80m at the Pottsville Road frontage to RL 10m AHD in the centre of the site with a portion of the site to the west and along Pottsville Road displaying slopes greater than 18 degrees. There are also areas on site which are relatively unconstrained topographically, particularly throughout the centre of the site, and as it bounds the Pacific Highway. Council's GIS further indicates a 3rd order stream running through the site which appears to be relatively degraded. Of further relevance is that the site contains areas classed as 3 according to Council's Acid Sulphate Soils Planning Map and the site is mapped as bushfire prone.

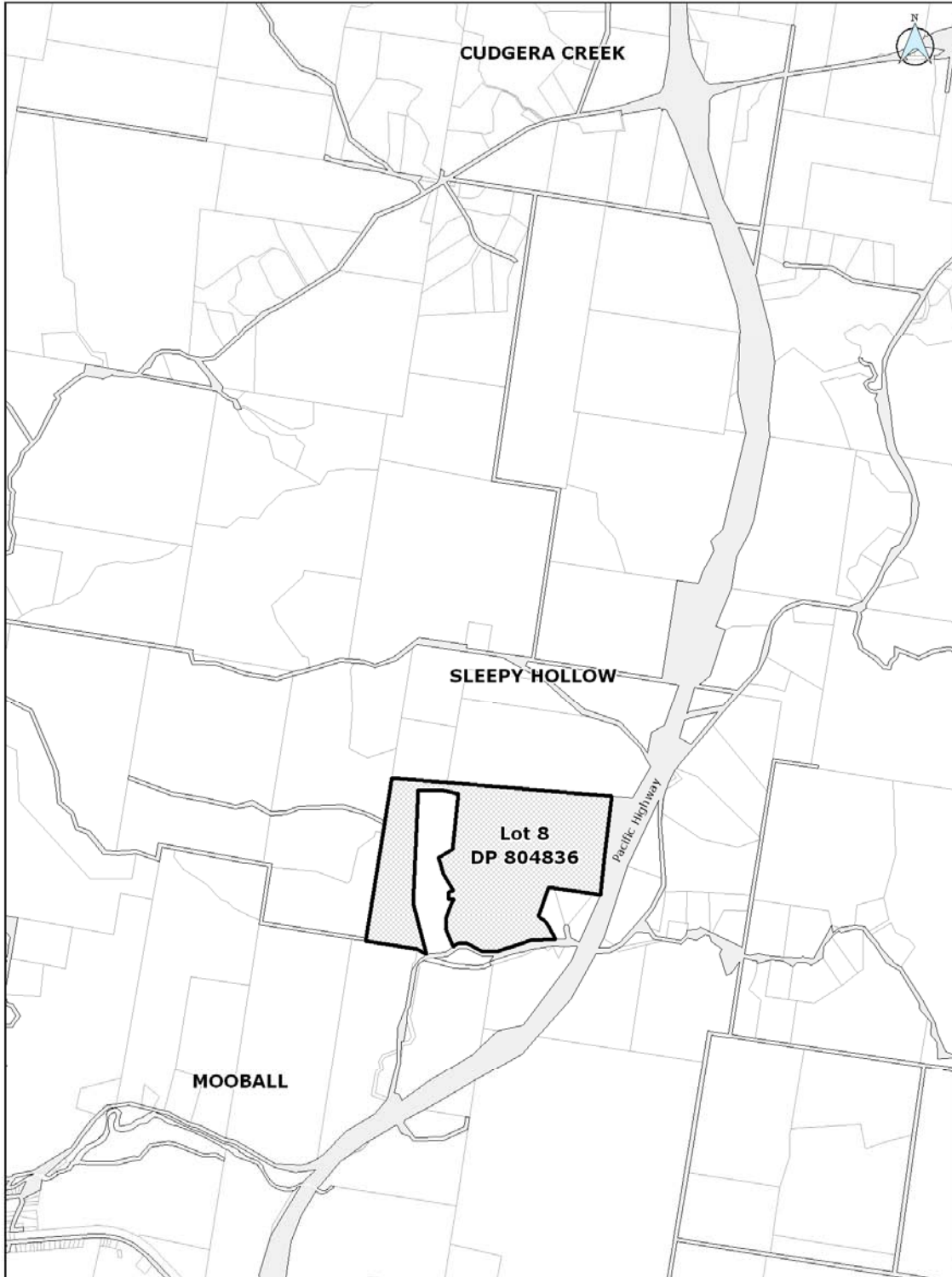
The site has a detailed history and has traditionally been used for agricultural pursuits. As mentioned, more recently this has been supplemented by tourism developments which are now no longer operating. Council records indicate a number of development consents submitted and determined throughout the last 20 years however none can be considered relevant to the subject application.

Locality:

The site is just south of the locality known as Sleepy Hollow, directly west of the Pacific Motorway in the south east corner of the Shire. The nearest village to the site is Mooball, approximately 3.8km to the west along Pottsville Road, with the village of Pottsville some 9km to the north east and the township of Murwillumbah some 24km to the north west.

The site is surrounded by typically rural land uses dominated by areas used for grazing as well as several banana plantations which are complemented by scattered dwelling houses and eco tourism pursuits.

SITE DIAGRAM:



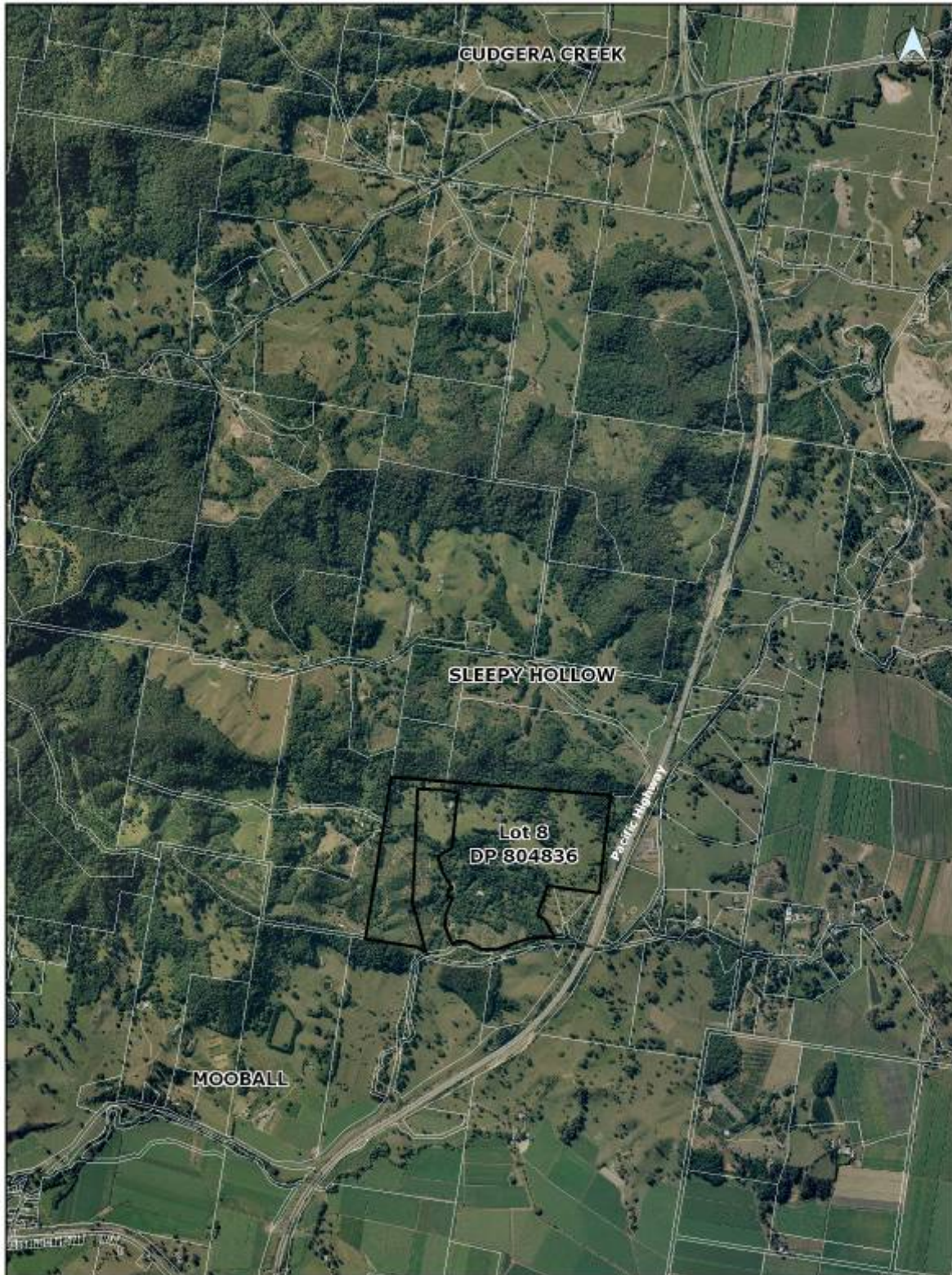
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Tweed Shire Council
Lot 8 DP 804836
No. 349 Pottsville Road, Sleepy Hollow
 GDA

Site Plan

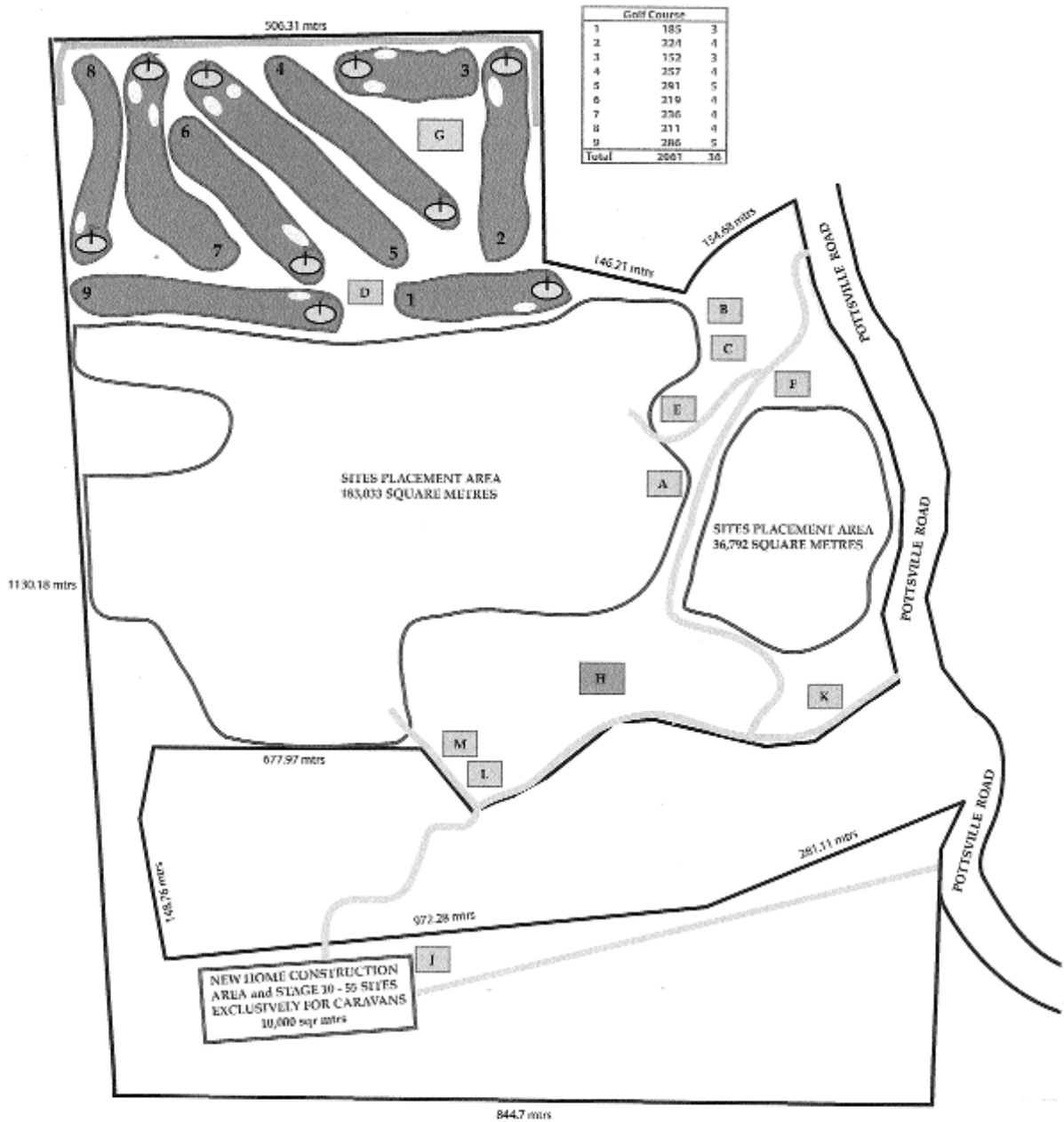
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 Scale: 1:25,000 Sheet: 1 of 1

AERIAL PHOTOGRAPH:



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<p>File: G:\GIS_Jobs\Site Plan.Wor Author: J. Batchelor Date: 07/July/08</p>		

DEVELOPMENT PLANS:



Land Size 72.77 hectares
(179.82 acres) 719,273 sq. mtrs

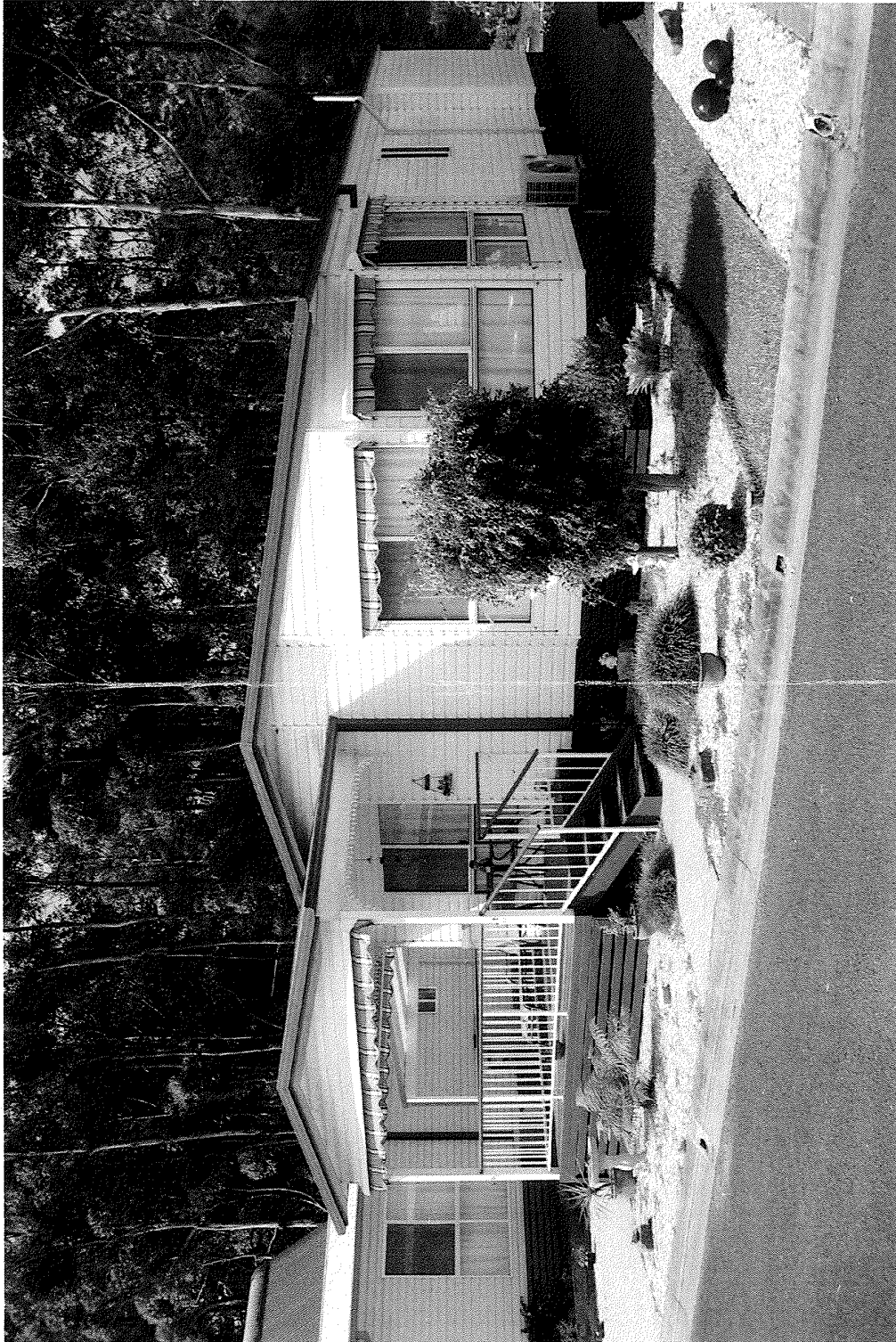
- A 3 Tennis Courts & Clubhouse
- B Swimming Pool & Gym
- C 2 Bowling Greens & Clubhouse
- D Golf Course Clubhouse
- E General Store
- F Administration and Reception Building
- G Treatment Plant
- H 2,000 KL Reservoir
- I Site Staff, M & F change rooms, showers, WC's
- J Construction Material Storage Yard
- K Fire Station
- L Caravan & Boat Storage

- 4.5 mtr high acoustic fence
- 1.80 mtr high presentation front fence
- Roads & Streets - (Artery Roads 7 mtrs wide, Streets containing caravan and moveable dwelling sites 4.5 mtrs wide)



SCALE: 1:2000

PROTOTYPE OF PROPOSED MANUFACTURED HOMES:



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

The subject land is zoned 1(a) Rural under the Tweed Local Environmental Plan 2000. The primary objectives of the zone are:

- *To enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilisation purposes and associated development.*
- *To protect rural character and amenity.*

The secondary objectives of the zone are:

- *To enable other types of development that rely on the rural or natural values of the land such as agri- and eco-tourism.*
- *To provide for development that is not suitable in or near urban areas.*
- *To prevent the unnecessary fragmentation or development of land which may be needed for long-term urban expansion.*
- *To provide non-urban breaks between settlements to give a physical and community identity to each settlement.*

The Tweed Local Environmental Plan provides the definition of a "manufactured home estate" which is:

"land on which manufactured homes are, or are to be, erected"

And a "manufactured home", which is:

"a self-contained dwelling (that is, a dwelling that contains at least one kitchen, bathroom, bedroom and living area and that also includes toilet and laundry facilities), being a dwelling:

- (a) that comprises one or more major sections that are each constructed, and assembled, away from the manufactured home estate on which it is situated and transported to the estate for installation on the estate, and*
- (b) that is not capable of being registered under the Road Transport (Vehicle Registration) Act 1997,*

and includes any associated structures that form part of the dwelling.”

The proposed use is considered to be a manufactured home estate and manufactured home estates are a prohibited use in the Rural 1(a) zone.

The provisions of SEPP 21 Caravan Parks prevail in this instance. The provisions of this SEPP are further assessed below. It is pertinent to note here, however, that clause 7 of this SEPP provides that any reference to “*caravan parks*” in any environmental planning instrument is a reference to “*caravan parks*” as defined by the SEPP. While the definitions contained within the Tweed LEP distinguish between manufactured homes and caravans, SEPP 21 does not. The definition of a caravan for the purposes of the SEPP and for the purposes of this application is therefore inclusive of a manufactured home estate and the proposal is subsequently allowed only with consent and must satisfy the provisions of clause 8 (2).

Comment to the Applicant’s response to clause 8(2) of Tweed Local Environmental Plan 2000 is as follows:

Clause 8(2) of the Tweed LEP states that:

(2) *The consent authority may grant consent to development specified in Item 3 of the Table to clause 11 only if the applicant demonstrates to the satisfaction of the consent authority that:*

(a) *the development is necessary for any one of the following reasons:*

(i) *it needs to be in the locality in which it is proposed to be carried out due to the nature, function or service catchment of the development*

Applicant’s Response:

(i) *The locality of the development was carefully selected in providing security, amenities and care to seniors, in a catchment which is largely void of community and social services.*

Comment:

While the proposal will provide basic amenities and some security to seniors, the application does not propose any facilities required for the care of the elderly, such as medical facilities. It is agreed that the area is void of requisite community and social services, however the facilities envisaged by the proposal do not fill this void.

Tweed LEP:

(ii) it meets an identified urgent community need,

Applicant's Response:

(ii) Auscorp has conducted a survey within 10 kilometres of the proposed development site, including the Hastings Point area and concluded that availability for moveable dwellings in the area are non-existent. Demand is increasing as per (Product Demand Analysis).

Comment:

Council's Environmental Health Officer responsible for the inspection of caravan parks has advised that there are seven caravan parks within a 10km radius of the site and that there are long term sites available at two of these parks. Further, there are no less than 35 caravan parks throughout the Shire. 20 of these parks have long term sites available, with 4 of these parks dedicated to the sole provision of long term accommodation with no short term sites available.

Council's Environmental Health Officer has further advised that, despite this availability, his anecdotal observation is that the demand for long term sites across the Shire is high. This observation reflects the accepted knowledge that there is a community need for affordable housing options across the Shire. The simple provision of physical dwellings that are affordable, however, does not constitute the provision of affordable housing. Affordable housing by definition implies housing that is located in areas already serviced by requisite infrastructure and facilities, or the provision of housing in new estates in which the requisite infrastructure and facilities are simultaneously provided. Integration, not isolation, is a crucial component of affordable housing provision and in order to facilitate this some provision for affordable connectivity is required, such as walkable access to services, as well as public transport.

The infrastructure, facilities and services envisaged by the subject proposal are inadequate. The proposed site is isolated and as such the proposal can not be considered to be one fulfilling the need for affordable housing which currently exists across the Shire.

Further, the product demand analysis submitted with the application provides insufficient justification that demand for manufactured homes specifically, or services for their construction, is increasing.

Tweed LEP:

(iii) it comprises a major employment generator, and

Applicant's Response:

- (iii) The development will provide significant local employment through construction, and substantial capital investment. Long term, there will be continual employment opportunities for resort staff and related services.*

Comment:

The proposal estimates that 35 staff will be employed during construction of the estate and six permanent staff will be employed to facilitate its long term operation. The proposal can not be considered to comprise a major employment generator.

Tweed LEP:

- (b) there is no other appropriate site on which the development is permitted with consent development (other than as advertised development) in reasonable proximity, and*

Applicant's Response:

- (b) there is no other appropriate site on which the development (SEPP 21 - Caravan Parks) is permitted with consent within reasonable proximity*

Comment:

Caravan Parks are permitted in the following residential zones:

- 2(c) Urban Expansion
- 2(d) Village
- 2(e) Residential Tourist
- 2(f) Tourism

The recently prepared Draft Tweed Shire Urban Land Release Strategy concludes that across the Shire there is currently approximately 1,533 ha of land zoned as residential land and potentially available for development. This figure is based on all land currently zoned residential and includes land in the 2(a) and 2(b) zone. Regardless, it is logical to assume that of this 1,533ha, a percentage large enough to facilitate the permissible development of a 560 site caravan park would be available.

The Draft Urban Release Strategy further nominates, in addition to land available and already zoned as residential, 576ha of land as having potential for urban release land. Of note is that the combined release areas of Mooball and Dunloe Park nominate 194 net hectares of land suitable for urban release and use between now and 2018. Both these areas are within a 3km radius of the subject site.

Tweed LEP:

- (c) *the development will be generally consistent with the scale and character of existing and future lawful development in the immediate area, and*

Applicant's Response:

- (c) *the proposed development is mindful of the environmental and visual qualities of the area, consistency with the scale and character of other future lawful development, in the immediate area. Only a small portion of the entire site is being developed, the balance (65%) will be retained and/or enhanced with vegetation. All dwellings are single level.*

Comment:

The proposal is inconsistent with the immediate area, which is dominated by rural uses and natural bushland.

Tweed LEP:

- (d) *the development would be consistent with the aims of this plan and at least one of the objectives of the zone within which it is proposed to be located.*

Applicant's Response:

The proposed development is consistent with the Tweed LEP 2020 (4.) Aims of this Plan) and at least one of the objectives of the zone within which it is to be located.

The proposed development, being provision of moveable dwellings is consistent with clause 4 Aims of this Plan in regards to;

- a) *desired outcomes, the vision of which "the management of growth so that the unique natural and developed character of the Tweed Shire is retained...", and*
d) *to encourage sustainable economic development of the area of Tweed compatible with the area's environmental and residential amenity qualities*

At least (1) of the zone objectives:

To protect rural character and amenity is a primary objective and to provide for development that is not suitable in or near urban areas is a secondary objective. The proposed development satisfies both in the following regards:

The site location largely falls away from the road to the south, and the Sleepy Hollow rest area creates a buffer to the east. The rural character will be protected, if not enhanced, the combination of the peripheral vegetation and topography essentially negates visual impact issues. Amenities for seniors will

be augmented by the facilities our resort offers. Furthermore, existing clubs and non-profit associations may/will experience improved participation.

Secondary objective – to provide for development that is not suitable in or near urban areas. The proposed SEPP 21 - Caravan Parks Caravan Parks, connected to a reticulated sewerage system, in not suitable in or near urban areas.

Comment:

The proposed development is considered to contradict to the objectives of the rural 1(a) zone for the following reasons:

- The proposal is for the residential use of land that is considered suitable for agricultural utilisation and natural resource preservation. This land contributes to an urban break between the rural village of Mooball and the coastal township of Pottsville. The cumulative impact of development of this nature creates fragmentation of land uses risking the integrity of this break and eventually the physical and community identity of these townships and others throughout the Valley and along the coast. Unplanned fragmentation of land use is contrary to the principles of ecologically sustainable development. For example, contiguity of land use is recognised as being of primary importance to the preservation of the ecological integrity and agricultural productivity of rural areas. These are two principles preserved throughout the Shire in an effort to promote the basic pillars of ESD including intergenerational equity, maintenance of the precautionary principle and conservation of biological diversity.
- The rural amenity of the area is currently sustained through the maintenance of predominately agricultural uses complemented by sparsely settled dwelling houses and low impact eco-tourism pursuits. The proposal is inconsistent with these existing uses and would result in unreasonable impact on the amenity of the area from increases in traffic and noise.
- The development of 580 long term manufactured home sites as well as various ancillary facilities does not rely on the existing rural and natural values of the land. In direct contrast, the proposal would be better serviced and more appropriately located on land that is not defined by a predominately rural character and is closer to existing urban areas.

The proposed development is contradictory to aims and objectives of the Tweed LEP 2000 that are relevant to the development as follows:

- The proposal is contradictory to the vision of the Tweed Shire Strategic Plan in that it is not compatible with the Tweed's environmental and residential amenity qualities currently characterised by distinct urban areas separated by contiguous breaks of rural and natural uses.

- The proposal will result in undue impact on the cultural fabric of the existing communities in the immediate vicinity of the site through unjustifiable impact on amenity in terms of increased utilisation of infrastructure and services that are ill-equipped to deal with an influx of population of the magnitude proposed. The greater cultural fabric of the Valley will be further damaged through the social and cultural isolation of any population utilising the development.

While the specific provisions of clause 8(1) do not apply to this application, it is pertinent to assess the cumulative impact of its approval.

The development will have an unacceptable cumulative impact on the community, the locality as well as the Tweed as a whole. Of primary importance is the risk the development poses to the integrity of urban breaks and rural contiguity currently maintained throughout the Valley. The cumulative impact of the development, represented by replication of the development in similar locations throughout the Tweed risks the existing physical and community identity of individual townships and the ecological integrity and agricultural productivity of rural areas throughout the Valley and along the coast.

Clause 15 of the Tweed Local Environmental Plan aims to ensure that development occurs in an orderly manner and that development does not occur without adequate provision of essential services such as water and facilities for effluent disposal. The site is not connected to Council's water or a reticulated sewer service. The site is serviced by electricity and telecommunication services.

Water: It is proposed that rain water will supply 67.4% of the potable supply of the development. This rainwater will be roof harvested and stored in a central reservoir. The proposal is then to use an existing main located along Pottsville Road to "top up" supply. Council's Engineers have assessed the proposed development and have advised that an appropriate yield analysis supporting the viability of this aspect of the proposal has not been supplied with the application. Further, Council's Environmental Health Officer has assessed the application and advised that the roof collection of rainwater with "top up" from Council's reticulated supply is unacceptable and, based on the limited information submitted with the application, likely to be non compliant with the Australian Drinking Water Guidelines 2004.

Sewer: The application proposes an onsite sewerage treatment plan. Council's Engineer and Council's Environmental Health Officer have advised that adequate detail to assess this component of the application has not been provided.

Based on the information submitted, the application has not been able to satisfy the statutory consent considerations of the clause 15 and is unable to be supported.

Clause 16 of the Tweed Local Environmental Plan relates to heights of buildings. The subject land under the Local Environmental Plan has a three (3) storey height limitation. The manufactured homes as well as all built form associated with the application, including the various club houses and management building are one to two storeys in height. The proposal is considered to comply with the height limitation under the Local Environmental Plan.

Clause 17 of the Tweed Local Environmental Plan relates to social impact assessment and states *"that where the consent authority considers the proposal is likely to have a significant social economic impact, the consent authority must consider a social impact statement in relation to the proposed development."* The applicant has submitted a social impact assessment as part of the proposed development. The most critical elements of the social impact of the proposed development as submitted by the applicant are:

- The provision of long term affordable housing for retirees
- The increased uptake of existing services
- Opportunities for employment for residents in the area

This aspect of the proposal is further assessed in the sections of this report addressing the aims of SEPP 21 - Caravan Parks below. In summary, the applicant has failed to identify the adverse social impacts of the proposal or adequately justify the need for the development. Based on the information submitted with the application the proposal has not been able to satisfy the statutory consent considerations of the clause 17 and is unable to be supported.

Clause 22 of the Tweed Local Environmental Plan relates to Development near designated roads. The site does not have frontage to or access from the Pacific Motorway however the motorway does constitute its eastern boundary. The motorway is a State designated road. The traffic report submitted with the application is deficient and does not address the impact of the development on the Pacific Motorway in terms of its ability to compromise its safe and efficient operation. It is noted that the basic site layout plan submitted with the application proposes to locate a nine hole golf course flush with the eastern boundary of the site and subsequently the Pacific Motorway. Based on the information submitted with the application the proposal has not been able to satisfy the statutory consent considerations of the clause 22 and is unable to be supported.

Clause 34 of the Tweed Local Environmental Plan relates to flooding. An acceptable site plan and flood extents have not be submitted with the application. Council's Engineer has advised that while the location and topography of the site indicate that it would not be susceptible to mainstream flooding, the flash flooding of numerous watercourses leading off the steeper parts of the site could be an issue. It is not possible to make a proper assessment of the proposal with respect to flooding based on the information provided. Subsequently the proposal has not been able to satisfy the statutory consent considerations of clause 34 and is unable to be supported.

Clause 35 of the Tweed Local Environmental Plan relates to the management of acid sulfate soils. Council's Acid Sulfate Soils Planning Map indicates that parts of the site are mapped as having class 3 acid sulfate soils. An acceptable earthworks plan detailing the extent of cut and fill earthworks has not been submitted with the application. Subsequently the proposal has not been able to satisfy the statutory consent considerations of the clause 35 and is unable to be supported.

Clause 39 of the Tweed Local Environmental Plan aims to ensure that land is adequately remediated prior to development occurring and requires consistency with the provisions of SEPP 55 - Contaminated Lands. The application's compliance with the provisions of this SEPP is assessed below with the conclusion that the application as submitted is unable to satisfy the consent considerations of the SEPP and is unable to be supported.

Clause 39A of the Tweed Local Environmental Plan relates to land identified as bushfire prone. The proposed development is considered to be a "Special Purpose" pursuant to Section 100B of the Rural Fires Act 1997. The application is subsequently considered to be "Integrated Development" and has been referred to the RFS for approval. The RFS have advised that for any assessment to take place an acceptable site plan should be submitted with the application. The application lacks such a plan and the proposal is therefore unable to satisfy the statutory consent considerations of the clause 39A. The proposal is subsequently unable to be supported.

North Coast Regional Environmental Plan 1988

The North Coast Regional Environmental Plan 1988 (NCREP) applies to the whole of the Tweed Shire. The plan essentially aims to provide a planning and policy development framework which is underpinned by principles such as the protection of the natural environment and provision of an efficient and attractive built environment. The plan states that development should not compromise the productivity or environmental integrity of the north coast. Of relevance to the subject application is that the plan outlines various considerations that a consent authority needs to take into account in the assessment of development. The relevant provisions are as follows:

12 Development control—impact of development on agricultural activities

The council shall not consent to an application to carry out development on rural land unless it has first considered the likely impact of the proposed development on the use of adjoining or adjacent agricultural land and whether or not the development will cause a loss of prime crop or pasture land.

Part of the subject site has been mapped as Regionally Significant farmland pursuant to "Northern Rivers Farmland Protection Project, Final Map 2005" (Section 117(2) Direction). The proposed development would occupy the

extent of this resource, impacting on the future use of the resource for agricultural production and primary industries.

The agricultural assessment provided with the application is deficient, it does not indicate the extent of the agricultural resources or current land uses on the site. A site inspection reveals that there appears to be banana production, or prior banana production on site and areas of the site are also used for cattle grazing. There also appears to be banana production and other horticulture and grazing on adjoining lands. The application does not indicate the extent to which these uses will be integrated with the proposal.

The application was referred to the Department of Primary Industries for comment, this Department's unsupportive response is further outlined in this report's address to section 79(C)(1)(d) 'Public Submissions' below.

The application has failed to satisfy the consent considerations of clause 12 of the NCREP and cannot be supported.

15 Development control—wetlands or fishery habitats

Clause 15 refers to development control on land in proximity to wetlands or fishery habitats. The clause requires that Council not consent to an application to carry out development for any purpose within, adjoining or upstream of a river or stream or fishery habitat area unless it has considered various matters. Matters include the need to maintain or improve the quality or quantity of flows of water to the wetland or habitat, any loss of habitat which will or is likely to be caused by the carrying out of the development and the need to ensure that native vegetation surrounding the wetland or fishery habitat area is conserved.

The NSW Department of Fisheries have advised that the principal watercourse flowing through the site is a relatively degraded 3rd order stream. The application has not addressed the implications of the development on this stream in terms of loss of habitat or the conservation of riparian vegetation. The application has failed to satisfy the consent considerations of clause 15 of the NCREP and cannot be supported.

43 Development control—residential development

- (1) *The council shall not grant consent to development for residential purposes unless:*
 - (c) *it is satisfied that, where development involves the long term residential use of caravan parks, the normal criteria for the location of dwellings such as access to services and physical suitability of land have been met,*

The application fails to demonstrate that the services normally required by residential development of this scale can be supplied to the subject site. Further, the application has failed to demonstrate the physical suitability of the

site. The application therefore fails to satisfy the consent considerations outlined in clause 43 of the NCREP and cannot be supported.

66 Development control—adequacy of community and welfare services

Before granting consent to a development application for the subdivision of land intended for residential or rural residential purposes, the council shall consider the adequacy of community and welfare services available to the land and take into account the results of that consideration.

The intention of the application is to use the subject site for the provision of long term residential accommodation and in the application of clause 66, the proposal can be considered as one for residential purposes. The failure of the proposal to provide adequate community and welfare services is assessed throughout this report with particular reference to clause 10 of SEPP 21 - Caravan Parks below. This assessment concludes that the application does not provide the welfare and community services necessitated by the scale of the development. The application is subsequently not compliant with clause 66 of the NCREP and cannot be supported.

Although specifically relevant to the preparation of a draft LEP, clause 21 of the NCREP is also noteworthy in consideration of the subject application:

21 Plan preparation—dwellings on rural land

(3) A draft local environmental plan which permits development for the purpose of caravan parks or camping grounds on land in rural or environmental protection zones should only allow the provision of temporary accommodation, unless:

(a) the land adjoins or is adjacent to land zoned for urban use,

The Tweed LEP 2000 has been prepared subsequent to and in accordance with the provisions of the NCREP. This clause highlights that it would not be the intent of the LEP to permit permanent residential accommodation in the Rural 1(a) zone through the permissibility of caravan parks.

Based both on the nature of the proposal and the lack of detailed information provided with the application it can be concluded that the application fails to satisfy the consent considerations of the NCREP. The application can therefore not be supported.

State Environmental Planning Policies

SEPP 21 Caravan Parks

SEPP 21 applies to caravan parks across the State and prevails to the extent of any inconsistency with any other environmental planning instrument. For the definitional reasons outlined previously in this report, the provisions of

SEPP 21 deem that the subject application is to be assessed as a caravan park and the provisions of the SEPP therefore apply.

The relevant aims of SEPP 21 as outlined in clause 3 are to encourage:

- (a) *the orderly and economic use and development of land used or intended to be used as a caravan park...*

Comment: In assessing whether the application represents the orderly and economic use of the land it is pertinent to note that the proposal is listed as a prohibited use pursuant to the Tweed LEP 2000. The fact that the proposal is a prohibition within the zone applicable to both the site and all adjoining sites, indicates that Council's intention is not to locate a caravan park of this scale on this site. This intention was formulated following the appropriate consultation and regulatory processes outlined in Part 3 of the EP&A Act pertaining to the preparation of environmental planning instruments. It follows, therefore that this intention is based on an overarching system which aims to promote the orderly and economic use of the land.

It can be concluded that by contradicting the intentions of the LEP, the application represents a contradiction to a locally formulated plan for the orderly and economic use of the land. It is subsequently contradictory with the aims and objectives outlined in clause 3(a) of SEPP 21 - Caravan Parks.

- (b) *the proper management and development of land so used, for the purpose of promoting the social and economic welfare of the community...*

Social welfare is dependent on an integrated society. The proposal is to locate up to 1160 people in affordable housing on a site that is isolated from services, facilities and infrastructure. This "dislocation" impacts not only potential tenants of the development but also the existing community. The economic welfare of the community in the Shire is not dependent on an unplanned influx of population in an isolated rural area. It is widely acknowledged that the population of the Shire is growing and it follows that this growth, *if properly managed*, will ensure the Shire's ongoing economic prosperity.

It can be concluded that the application does not promote the social and economic welfare of the community and is subsequently contradictory with the aims and objectives outlined in clause 3(b) of SEPP 21 - Caravan Parks.

- (c) *the provision of community facilities for land so used..*

The proposal envisages long term accommodation for up to 1160 people and could be classified as a small village, proposing dwelling numbers and a population akin to existing villages such as Mooball, Burringbar, Tyalgum and Condong. In the Urban Centres Hierarchy outlined for the Kingscliff Coast and incorporated into DCP Section B9, a small village is generally serviced by a cluster of up to 15 shops for daily shopping which may include a butcher,

hairdresser, bank, café and take away food shop and are also generally serviced with bus stops and schools. Furthermore, these services and facilities are generally within 5 to 10 minutes walking distance of residential areas. Although the specific provisions of DCP Section B9 do not apply to the subject application, the Urban Centres Hierarchy is a commonly recognised tool for assessing the requirements for community facilities and services generated by urban developments of different scales. The proposal does not provide any of the abovementioned requisite services or facilities adequately on site and these services and facilities are not available within 5 to 10 minutes walk of the site itself.

It can be concluded that the application does not provide adequate community facilities and is subsequently contradictory with the aims and objectives outlined in clause 3(c) of SEPP 21 - Caravan Parks.

(d) the protection of the environment of, and in the vicinity of, land so used.

Inadequate information has been provided with the application to assess its environmental impact on the site and surrounding land areas. It is therefore not possible to make a proper assessment of the proposal with respect to environmental impact based on the information provided and the proposal has not been able to satisfy the statutory consent considerations of the clause 3(d) of SEPP 21 - Caravan Parks.

Of further relevance is that clause 10 of SEPP 21 outlines matters to be taken into consideration by Councils in assessing applications for caravan parks and states that:

A Council may grant a development consent required by this Policy only after it has considered the following:

(a) whether, because of its location or character, the land concerned is particularly suitable for use as a caravan park for tourists or for long-term residence,

The land is an isolated rural site currently used for grazing as well as containing areas of bushland. The site does not have access to the infrastructure and services required by a long term residential development of this scale, an indication of which has been provided in the discussion of the urban centres hierarchy model above. The applicant proposes to resolve the site's isolation through provision of a regular bus service to Pottsville and the provision of various on site facilities such as a general store and recreational facilities. The application fails to provide the strength of argument required to justify that these measures will appropriately mitigate the effects of the site's geographical isolation and therefore render the site suitable for use as a caravan park for long term residence. The application can therefore be considered to be non compliant with clause 10(a) of SEPP 21 - Caravan Parks.

- (b) *whether there is adequate provision for tourist accommodation in the locality of that land, and whether existing or potential tourist accommodation will be displaced by the use of sites for long-term residence,*

The application is for long term sites and does not propose to displace any sites currently used for the purposes of tourist accommodation. This matter therefore requires no further consideration.

- (c) *whether there is adequate low-cost housing, or land available for low-cost housing, in that locality,*

There is a justifiable argument for a community need for affordable housing options across the Shire and this issue has been addressed previously in this report with reference to clause 8(2) of the Tweed LEP 2000.

This address concluded that the infrastructure, facilities and services envisaged by the subject proposal are inadequate as a result of the site's isolation and as such the proposal can not be considered to be one contributing to fulfilment of the need for affordable housing which currently exists across the Shire.

- (d) *whether necessary community facilities and services are available within the caravan park to which the development application relates or in the locality (or both), and whether those facilities and services are reasonably accessible to the occupants of the caravan park,*

The lack of community facilities provided for the development has been addressed in addressing clause 3(c) and clause 10(a) of the SEPP above with the conclusion that adequate community facilities and services will not be made available within the development or accessible to the site.

- (e) *any relevant guidelines issued by the Director, and*

There are no relevant guidelines issued by the Director.

- (f) *the provisions of the Local Government (Caravan Parks and Camping Grounds) Transitional Regulation 1993.*

The Regulation, now cited as the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005* ("the Regulation") is designed to generally regulate the provision of opportunities for affordable alternatives in short-term and long-term accommodation in the form of manufactured home estates, caravan parks and camping grounds. It provides detailed controls on the structure and management of caravan parks, including controls for access and car parking that would normally be assessed against Council's own DCP controls.

Although the application is for the installation of manufactured homes, the application has been lodged under SEPP 21 - Caravan Parks and subsequently the controls outlined in Part 3 of the Regulation pertaining to caravan parks, not manufactured home estates, apply.

The lack of information submitted with the application as submitted does not allow reasonable assessment against these controls however the following clauses are of relevance:

Part 3 Caravan parks, camping grounds and moveable dwellings

Division 1 Application of Part

Subdivision 1 Operation of caravan parks and camping grounds

71 Factors for consideration before approval is granted

(1) *The council must not grant an approval to operate a caravan park or camping ground unless it is satisfied that it will be designed, constructed, maintained and operated:*

(a) *in accordance with the relevant requirements of Subdivisions 1–8 of Division 3, or*

(2) *In deciding whether or not the approval for a caravan park or camping ground should allow the installation of a relocatable home, rigid annexe or associated structure on flood liable land, the council must have regard to the principles contained in the Floodplain Development Manual.*

Insufficient detail has been provided in the application to enable a full and proper assessment against the requirements of Subdivision 1-8 of Division 3 in its entirety. Further, the principles contained within the Floodplain Development Manual require an acceptable site plan and flood extents which have not been submitted with the application. It is not possible to make a proper assessment of the proposal with respect to the Floodplain Development Manual and flooding generally based on the information provided. The proposal has therefore not been able to satisfy the consent considerations outlined in clause 71 of the Regulation and subsequently the Matters for Consideration outlined in clause 10 of SEPP 21 - Caravan Parks. The application is therefore unable to be supported.

124 Use of caravan parks and camping grounds

(1) *A caravan park or camping ground must not be used:*

(a) *for any commercial purpose other than a caravan park or camping ground or an associated purpose, or*

(b) *for the manufacture, construction or reconstruction of moveable dwellings.*

The proposal is to manufacture moveable dwellings on site. Further, the proposal is for the use of ancillary recreational facilities by members of the public who are not residents of the caravan park. It can only be assumed that this will be for commercial gain. On these two counts the proposal does not comply with clause 124 of the Regulation and is therefore unable to satisfy the Matters for Consideration outlined in clause 10 of SEPP 21 - Caravan Parks. The application is therefore unable to be supported.

SEPP 36 - Manufactured Home Estates

The application has been lodged under SEPP 21 - Caravan Parks and as such SEPP 36 – Manufactured Home Estates does not apply. It is pertinent to note that should SEPP 36 apply the application would not be permissible pursuant to clause 6 of this SEPP which excludes development of manufactured home estates on land that is zoned rural and not adjacent to or adjoining land zoned for urban use.

SEPP 44 - Koala Habitat Protection

SEPP 44 aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas. The SEPP requires the preparation of plans of management before development consent can be granted in relation to areas of core koala habitat, the identification of areas of core koala habitat, and, the inclusion of areas of core koala habitat in environment protection zones.

Council's Specialist Planner/Ecologist has assessed the Flora and Fauna Impact Report, Koala Plan of Management and Fire Assessment and Mitigation report and made the following comment:

..the report is so poorly written and contains so much conflicting information (both within itself and conflicting with the Fire report), outdated information, incorrect species identification and spelling of scientific names that it is not possible to assess with any certainty and must be rejected outright.

The proposal has therefore not been able to satisfy the statutory consent considerations of SEPP 44 and is unable to be supported.

SEPP 55 - Remediation of Contaminated Land

State Environmental Planning Policy 55 provides a Statewide planning approach to the remediation of contaminated land and promotes the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. Clause 7 of the SEPP refers to the consideration of contamination in the determination of a development application, stating that:

- (1) *A consent authority must not consent to the carrying out of any development on land unless:*
- (a) *it has considered whether the land is contaminated.*

The land is currently used for agricultural pursuits, including the growing of bananas –acknowledged as a potential source of land contamination from the use of pesticides and sprays. Further, Council’s Enlighten GIS program indicates that the land contains a cattle tick dip site. It is therefore highly likely that the land is contaminated however an acceptable contaminated lands report has not been submitted with the application. It is therefore not possible to make a proper assessment of the proposal with respect to contamination based on the information provided. Subsequently the proposal has not been able to satisfy the statutory consent considerations of SEPP 55 and is unable to be supported.

SEPP 64 Advertising and Signage

Schedule 1 of State Environmental Planning Policy No. 64 provides assessment criteria when considering proposed signage and includes reference to the *Transport Corridor Outdoor Advertising and Signage Guidelines* which detail assessment criteria for signage proposals adjacent to State classified roads. The site adjoins the Pacific Motorway and so any signage that could be viewed from the motorway would be subject to such assessment. It is acknowledged that signage accompanies developments of this nature and size however it is considered that as the site was never intended to support a caravan park of this scale, however the applicant has not submitted any details of signage proposed. The proposal therefore cannot satisfy the assessment criteria outlined in SEPP 64 and is unable to be supported.

SEPP (Infrastructure) 2007

SEPP (Infrastructure) aims to facilitate the effective delivery of infrastructure across the State. The application is listed as a traffic generating development in Schedule 1 of the SEPP and as such the application was referred to the RTA for comment. The RTA has advised that the traffic study submitted with the application is inadequate to facilitate a submission.

Clause 103(4) of the SEPP specifies other matters to be taken into account by the consent authority prior to granting consent with the relevant considerations being as follows:

Before determining a development application for development to which this clause applies, the consent authority must:

- (ii) *the accessibility of the site concerned, including:*

- (A) *the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and*
 - (B) *the potential to minimise the need for travel by car...*
- (iii) *any potential traffic safety, road congestion or parking implications of the development.*

The traffic report submitted with the application was undated and unsigned and replicates both the qualitative and quantitative data contained in an application for a similar, but much smaller, development proposed at Pottsville some years ago. The report was referred to Council's Traffic Engineer who has indicated that in addition to the traffic report being deficient, various proposals to manage the primary access to and from Pottsville Road, such as a reduction in speed zone and a localised on street parking plan, cannot be supported. It is questionable therefore that, even on the provision of an appropriate traffic report, an access strategy from Pottsville Road could be proposed that would be acceptable given the scale of the development.

In lieu of appropriate information and on preliminary consideration of both the nature of Pottsville Road and the potential number of trips generated by the proposal, the application has failed to satisfy the consent considerations of SEPP (Infrastructure) 2007 and cannot be supported.

SEPP (Rural Lands) 2008

The application is for a caravan park however the proposal is to construct structures which are defined in clause 3 as dwellings pursuant to SEPP (Rural Lands) 2008. Clause 10 of the SEPP outlines matters to be considered in determining development applications for dwellings in rural areas. Of relevance is that the clause requires Council to consider whether the development is likely to be incompatible with and impact on land uses that, in the opinion of the consent authority, are likely to be preferred as well as the predominant land uses in the vicinity of the development.

The incompatibility of the proposed use with Council's preferred use has been assessed throughout this report, with particular reference to clause 3(a) of SEPP 21 - Caravan Parks and clause 8(2) of the Tweed LEP 2000 above. It can be concluded that the development is likely to be incompatible with and impact on land uses in its vicinity and that these uses are preferred by Council as the consent authority and that subsequently it does not satisfy the consent considerations of SEPP Rural Lands 2008.

Section 5A of the Environmental Planning & Assessment Act 1979

Section 5A of the Environmental Planning and Assessment Act 1979 relates to the assessment of the effect of development on threatened species, populations or ecological communities, or their habitats.

The Section outlines a number of factors to be taken into consideration in deciding whether there is a likelihood that a proposed development will have a significant effect on threatened species, populations or ecological communities, or their habitats.

These factors require identification of species, populations and communities on site.

The site is significant in containing Subtropical and Dry Rainforest vegetation communities recognised as Endangered Ecological Communities (EECs) under the Threatened Species Conservation Act 1995. The locality also has many individual threatened flora and fauna species adjacent and in the vicinity of the site, thus it would be expected that some would occur or utilise the site for at least part of their lifecycle.

Council's Specialist Planner/Ecologist has assessed the Flora and Fauna Impact Report, Koala Plan of Management and Fire Assessment and Mitigation report with the conclusion that these reports are inadequate and do not satisfy the statutory consent considerations of Section 5A of the Act. The application is therefore unable to be supported.

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

There are no draft Environmental Planning instruments relevant to the subject application or site.

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

A3 Development of Flood Liable Land

An acceptable site plan and flood extents have not be submitted with the application. It is therefore not possible to make a proper assessment of the proposal with respect to flooding based on the information provided and the proposal cannot satisfy the requirements of DCP Section A3.

A4 Advertising and Signs Code

The applicant has not submitted details of signage proposed. The proposal can therefore not satisfy the assessment criteria outlined in DCP Section A4.

A11 Public Notification of Development Proposals

The application was notified in accordance with Council policy for a period of 30 days from the 30th of April 2008 to the 30th May 2008. During this period 80 submissions were received, these submissions have been assessed 79(c)(1)(d) below.

A13 Socio Economic Impact Assessment

The applicant has submitted a social impact assessment (SIA) as part of the proposed development. The assessment is deficient in detail and relies on the use of data of questionable integrity.

The most critical elements of the social impact of the proposed development as submitted by the applicant are:

- The provision of long term affordable housing for retirees
- The increased uptake of existing services
- Opportunities for employment for residents in the area

The SIA submitted with the application has failed to identify the adverse social impacts of the proposal or adequately justify the need for the development. Based on the information submitted with the application the proposal has not been able to satisfy the statutory consent considerations of the clause 17 and is unable to be supported.

A14 Cut and Fill on Residential Land

An acceptable earthworks plan detailing the extent of cut and fill earthworks has not been submitted with the application. The proposal can therefore not satisfy the assessment criteria outlined in DCP Section A14.

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

Clause 92 of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) prescribes additional matters that a consent authority must take into consideration in determining a development application and relates primarily to demolition and the NSW Coastal Policy 1997. The subject application is not located in the coastal zone and no demolition is proposed, the matters prescribed by clause 92 are subsequently satisfied.

Clause 49 of the EP&A Regulation requires an applicant to obtain consent in writing of the owner of the land to which the development application relates.

The application proposes to use an existing Right of Carriageway which burdens Lot 3 DP717240, being the parcel of land all but enclosed by the subject site. This Right of Carriageway joins the proposed site placement area with the proposed manufacturing plant. A site visit has revealed that while a road permitting access over the lot burdened exists, it will require widening and surfacing and is more than likely not located in the same position as is indicated in the relevant 88B instrument. Given that the application implies the necessity for works to this Right of Carriageway and possibly amendment of the S88B instrument governing its use, owners consent is required from the owner of the lot burdened. This has not been obtained and the owner of the land has submitted an objection to the proposal indicating that such consent would not be granted.

Clause 93 of the EP&A Regulation relates to fire safety considerations for new buildings. Council's Senior Health and Building Surveyor has assessed the plans for various elements of built form proposed, such as the sports club houses and the reception and administration building, the general store and the amenities block and confirmed that these structures comply with clause 93 of the EP&A Regulation.

Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005

The matters prescribed by this regulation have been addressed in the section of this report addressing the clause 10 consent considerations to SEPP 21 - Caravan Parks above.

(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 impact of the proposed development is deemed to be excessive in terms of impact on the natural environment and social and economic impacts on the locality for the following reasons:

Context and Setting

The proposal is for the residential use of land that is considered suitable for agricultural utilisation and natural resource preservation. It promotes the location of what is essentially a small village in an isolated rural area and will result in fragmentation of existing land uses.

The rural amenity of the area is currently sustained through the maintenance of predominately agricultural uses complemented by sparsely settled dwelling houses and low impact eco-tourism pursuits. The proposal is in direct conflict with these existing uses. It risks an irreversible break in the contiguity of agricultural uses and undue impact on the existing rural context.

Access Transport and Traffic

The proposed access to the development from Pottsville Mooball Road is not appropriate and the impact of the development in terms of traffic generation has not been properly assessed by the application. The isolated nature of the site promotes car dependency and limits opportunities for more sustainable forms of transport such as cycling, walking or use of existing public transport infrastructure.

Utilities

The site is isolated and is not currently connected to an articulated sewerage system and Council's water infrastructure is not able to support a development of this magnitude. The application proposes various measures to resolve these issues however both Council's Engineer and Environmental Health Officer have advised that these measures are inadequate.

Farmland of Regional Significance

The site contains farmland deemed to be of regional significance and is currently used for grazing and primary production purposes. Further, the land is surrounded by rural uses on land that is also dedicated to primary production and grazing.

Water

The land contains a number of dams and watercourses which currently supply water to neighbouring properties for agricultural uses. The application has not adequately detailed the treatment of these watercourses or addressed whether the site has access to harvestable water rights for their use.

Flora and Fauna

Although the site is significant in containing Subtropical and Dry Rainforest vegetation communities recognised as EECs under the Threatened Species Conservation Act 1995 an adequate report assessing the proposals impact on these EECs has not been submitted. The locality also has many individual threatened flora and fauna species adjacent and in the vicinity of the site and it would be expected that some would occur or utilise the site for at least part of their lifecycle.

Social Impact

Social well being is dependent on an integrated society. The proposal is to locate up to 1,160 people in affordable housing on a site that is isolated from services, facilities and infrastructure. This "dislocation" impacts not only potential tenants of the development but also the existing community.

The proposal will result in undue impact on the cultural fabric of the existing communities in the immediate vicinity of the site through unjustifiable impact on amenity in terms of increased utilisation of infrastructure and services that are ill-equipped to deal with an influx of population of the magnitude proposed.

Further, the proposal risks damage to the greater cultural fabric of the Valley through the social and cultural isolation of any population utilising the development. The proposal envisages long term accommodation for up to 1,160 people and could be classified as a small village. A small village is generally serviced by a cluster of up to 15 shops for daily shopping which may include a butcher, hairdresser, bank, café and take away food shop and are

also generally serviced with bus stops and schools. Furthermore, these services and facilities are generally within 5 to 10 minutes walking distance of residential areas. The proposal does not provide any of the abovementioned requisite services or facilities adequately on site and these services and facilities are not available within 5 to 10 minutes walk of the site itself.

Any undue social impact of refusing the development can only be interpreted in the context of a lost opportunity for the provision of affordable housing, which has been identified as in demand across the Shire. The simple provision of physical dwellings that are affordable, however, does not constitute the provision of affordable housing. Affordable housing by definition implies housing that is located in areas already serviced by requisite infrastructure and facilities, or the provision of housing in new estates in which the requisite infrastructure and facilities are simultaneously provided. Integration, not isolation, is a crucial component of affordable housing provision and in order to facilitate this some provision for affordable connectivity is required such as walkable access to services as well as public transport.

The infrastructure, facilities and services envisaged by the subject proposal are inadequate, including provisions for connectivity. The proposed site is isolated and as such the proposal can not be considered to be one fulfilling the need for affordable housing which currently exists across the Shire.

Cumulative Impact

The proposal is located on rural land contributing to an urban break between the rural village of Mooball and the coastal township of Pottsville. The cumulative impact of development of this nature risks the integrity of this break and eventually the physical and community identity of these townships and others throughout the Valley and along the coast.

(c) Suitability of the site for the development

Surrounding Land Uses and Development

The proposal's core failure is its ability to reconcile the subject site as suitable for the proposed development in the context of surrounding land uses and development. Regardless of the lack of information provided by the sub-standard development application, there are only two facts required to draw this conclusion:

1. The site is approximately 9km from the nearest village of Pottsville and 24km from the nearest town centre of Murwillumbah, with the surrounding area dominated by agricultural uses and bushland.

and,

2. The proposal is a residential development, dominated by the provision of long term housing designed to accommodate 1,160 people.

A site that could be reconciled as suitable for the proposed use would require services, facilities and infrastructure beyond those that have been, or could lawfully be, proposed by the development. It would be either in, or adjoining, an existing urban area that had the demonstrated capacity to provide services, facilities and infrastructure for 1,160 people.

Availability of Utilities and Services

Further assessment of this can be found in this report's address to clause 15 of the Tweed LEP 2000 with the conclusion that the application as submitted has not been able to demonstrate that the site can support both the sewerage treatment and water infrastructure required by the development.

Natural Hazards

The application as submitted has not been able to demonstrate that suitable mitigation measures for risks to the development from natural hazards. Areas on the site are considered bushfire prone, yet the application does not address the Planning for Bushfire Protection Guidelines. The site contains watercourses susceptible to localised flooding however the application does not propose an appropriate plan to deal with site drainage. Parts of the site are topographically constrained, however the application does not provide an appropriate plan outlining the level of cut and fill proposed or any other details on geotechnical earthworks required. No assessment against the suitability of the site for the proposal in terms of its ability to appropriately mitigate risks from readily identified natural hazards can be undertaken.

Contamination

The land is currently used for agricultural pursuits, including the growing of bananas –acknowledged as a potential source of land contamination from the use of pesticides and sprays. Further, Council's Enlighten GIS program indicates that the land contains a cattle tick dip site. It is therefore highly likely that the land has been contaminated and that the site is not suitable for a residential development of this scale. This conclusion could be confirmed by an acceptable contaminated lands report and land conflict analysis. These details have not been submitted with the application. It is therefore not possible to make a proper assessment of the proposal with respect to contamination based on the information provided.

Resource Value

Part of the subject site has been mapped as Regionally Significant farmland pursuant to "Northern Rivers Farmland Protection Project, Final Map 2005" (Section 117(2) Direction). The proposed development would occupy the

extent of this resource, impacting on the future use of the resource for agricultural production and primary industries.

The agricultural assessment provided with the application is deficient, it does not indicate the extent of the agricultural resources or current land uses on the site. A site inspection reveals that there appears to be banana production, or prior banana production on site and areas of the site are also used for cattle grazing. There also appears to be banana production and other horticulture on adjoining lands. The application does not indicate the extent to which these uses will be integrated with the proposal.

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

Public Authority Submissions Comment:

The applicant nominated the requirement for integrated approval from a number of Authorities and subsequently, in accordance with S91 of the EP&A Act, the application was referred to the following authorities who have made comment accordingly:

Rural Fire Service

The application required referral to the RFS under section 100B of Rural Fires Act 1997. The RFS responded by requesting further information including a site plan complied with the provisions of the Planning for Bushfire Protection guidelines. In light of the subject refusal and in accordance with Section 91A(2) of the EP&A Act it was deemed unnecessary to forward this request to the applicant.

Roads and Traffic Authority

The Applicant nominated that referral from the RTA was required under S138 of the Roads Act 1993. Pursuant to S91(3) of the EP&A Act, however, an application cannot be integrated development for the purposes of the Roads Act 1993 if it requires development consent from a Council and approval under the Roads Act 1993 from the same Council. The application was subsequently not referred to the RTA as integrated development but was referred to the RTA for comment under the provisions of SEPP (Infrastructure) 2007. Subsequent action has been addressed under the heading SEPP (Infrastructure) 2007 above.

Department of Environment and Climate Change

The applicant nominated that referral to the Department of Environment and Climate Change (DECC) was required under Section 90 of the National Parks and Wildlife Act 1974. DECC returned the application and the requisite fee for processing with comment that based on the information provided their approval was not required.

Department of Water and Energy

The applicant nominated that referral to the Department of Water and Energy (DWE) was required to gain a Controlled Activity Approval under the Water Management Act 2000. DWE submitted comment outlining their general terms of approval with clarification that in order to gain a CAA further information would be required from the applicant.

Department of Primary Industries (Fisheries)

The applicant nominated that referral to the Department of Primary Industries (Fisheries) (DPI) was required under the provisions of the Fisheries Management Act 1994. DPI submitted comment outlining their general terms of approval with various conditions including adherence to the various guidelines associated with the Act.

The various submissions and comments received from public authorities granted in response to the development as integrated development do not require further consideration pursuant to Section 91(A)(2) of the EP&A Act which states that:

“Nothing in this section requires the consent authority to obtain the general terms of any such approval if the consent authority determines to refuse to grant development consent.”

Department of Primary Industries (Land Use and Planning)

Part of the subject site has been mapped as Regionally Significant farmland pursuant to "Northern Rivers Farmland Protection Project, Final Map 2005" (Section 117(2) Direction). The proposed development would occupy the extent of this resource, impacting on the future use of the resource for agricultural production and primary industries and as such was referred to the Department of Primary Industries (DPI) for comment.

The DPI have noted that the proposed development *“consists of a major transformation of the property”* and on assessment of the proposal concluded that it is for *“the proposed caravan park and associated infrastructure....is an urban type land use in a rural precinct and distant to services and a sizeable community”*.

The DPI's response continues:

“The Far North Coast Regional Strategy indicates that one of the challenges of the region is the protection of rural landscapes from increased settlement. The strategy aims to limit development in places constrained by, among other things, important farmland. The strategy also indicates that future rural residential development will be located close to existing areas and avoid high quality agricultural land”.

The response has been noted and directly reiterates the various conclusions drawn by this report. No further assessment is considered necessary.

Public Submissions Comment

In accordance with statutory obligations the application was advertised and notified to land owners within a five kilometre radius of the site for a period of 30 days from the 30th of April 2008 to the 30th of May 2008. This notification catchment encompassed the village of Mooball and the Sleepy Hollow area.

During this period 80 submissions were received. 79 of these submissions objected to the development with 1 submission supporting the proposal. 64 of these submissions were in the form of a template letter which gave the opportunity for individual comment. This opportunity was only taken up by 10 of the template letters returned with the majority choosing to simply sign the letter.

The issues and concerns raised in the template letter and individual responses have been assessed as follows with quotes reproduced here considered to be representative:

Issue:

Context and Setting

Concern:

"It is the location of this development rather than its general intent"

"I object to DA08/0197 because the scale of the development is completely inconsistent with the rural area adjacent to it"

"This is just a short term solution to the wider community's need for budget housing"

At the heart of the majority of submissions was the fact that the scale of the development was inappropriate for an isolated and rural the site. Many of the other issues of concern to the community which have been examined below flow on from this core concern.

Many submissions acknowledged the need for affordable housing however nominated the urban release areas closer to Pottsville and other areas on the fringe of existing centres such as Tweed Heads as being more suitable. Submissions highlighted the fact that the proposal was not consistent with the aims and objectives of the Rural 1(a) zone or the aims of the Tweed LEP 2000.

Assessment:

It is accepted that the site is unsuitable for the proposed development. The report preceding this assessment has clearly articulated this through its assessment of the relevant statutory considerations with particular reference to assessment of Section 79(C)(1)(c) regarding site suitability. The claim that the site is not suitable for any higher density development for long term residential sites is also concurred with to an extent in that the provision of long term residential accommodation needs to be reconciled in the context of the availability of social services and infrastructure to deal cater for the newly facilitated community. The requisite social services and infrastructure are not currently

available to this site and unless this is resolved, the site will remain unsuitable for the provision of long term residential accommodation of any scale above that permitted by the provisions of the Rural 1(a) zoning in the Tweed LEP.

Issue:

Access and Traffic

Concern:

“Entry to the site is on a spur of the Burringbar Range with complicated access for sizeable caravans and the movement of large mobile homes on, to and away from the site”

“The Mooball-Pottsville Road will not be the only road that will see more traffic either. Other rural roads such Tweed Valley Way and Cudgera Creek Road will also see an increase”

“The road is not wide, and there are several blind curves which have caused accidents in the past. This development will increase the driving hazards and noise on this road”.

Many submissions raised concerns as to the viability of the Pottsville Mooball Road and surrounding road network to support the proposal.

Assessment:

It is accepted that the access arrangements proposed are inappropriate and that the surrounding road network is not equipped to cater for the number of additional trips generated by the development. The report preceding this assessment has clearly articulated this through its assessment of the relevant statutory considerations with particular reference to assessment of SEPP (Infrastructure) 2007.

Issue:

Rural Amenity

Concern:

Various submissions were received from those directly neighbouring the site subject to the proposal indicating specific concern regarding negative impact on existing views, increased impact from noise and fumes, particularly in relation to the manufacturing plant and the sewerage treatment plant.

Other submissions highlighted the proposal’s potential to affect the broader amenity of the rural area through increased traffic, utilisation of services, increased noise and visual impact. These submissions referred to rural amenity in the context of its value both in the promotion of eco-tourism and the retention of housing and land prices.

Assessment:

The application as submitted was lacking an appropriate acoustic or visual impact assessment and it is therefore impossible to assess the exact impact of the development on neighbouring properties. In light of the impact being unknown, this concern must be accepted as viable. Whether the application will impact on the economic use of the land for eco-tourism or residential uses has been determined through the application’s assessment of both clause 10 of SEPP 21 - Caravan Parks and the LEP. In that assessment it was concluded that the fact the actual use proposed by the application is essentially prohibited in the rural zone indicates that the proposal is contrary to the aims and objectives of the Tweed LEP 2000 – a plan that, through its compliance with the statutory obligations outlined in Part 3 of the EP&A Act, has been

formulated in an effort to facilitate the orderly and economic use of the land.

Issue:

Impact on Flora and Fauna

Concern:

“The land to be developed provides a very valuable wildlife corridor to Mooball National Park”

“The setting is a unique site that has been an icon in the area for many years”

Assessment:

The site has been subject to a substantial rehabilitation effort undertaken by the current owner which has contributed to the fact that the site has previously been an icon in the area. It is accepted that the proposal will impact flora and fauna currently on site and that the application as submitted does not detail appropriate measures to mitigate this impact. The report preceding this assessment has clearly articulated this through its assessment of the relevant statutory considerations with particular reference to assessment of Section 5A of the EP&A Act and SEPP 44.

Issue:

Social and Economic Impact on the Locality

Concern:

“The development would be attracting low income earners, pensioners or young families from out side the immediate area and from large centres such as Sydney, Brisbane and Melbourne”

“The township of Mooball currently know for its beauty and mixed diversity amongst its residents will be identified as the ‘caravan or trailer park’ housing only the needy of society. 1200 plus low income earners and pensioners can not be absorbed into the community. This will do nothing but create divisions and social problems in the future”

Directly related to the scale of the proposal discussed above is that the majority of submissions reiterated concerns regarding the social impact of the development. Of note in this respect, however, is that many submissions objected not only to the fact that the proposal was for 580 sites but that any proposal for unplanned long term accommodation in a rural zone not adjoining an existing urban area is inappropriate.

Submissions highlighted a diverse array of impacts, including impacts resulting from the site’s isolation from services and an existing social network and the effect this would have on the eventual residents of the development, increased pressure on already constrained services and infrastructure and the possibility of increased crime throughout the area. While submissions raised a genuine concern for both the existing and proposed community, many of these concerns were underpinned by the desire to avoid an influx of people of a low socio-economic status into the area.

Assessment:

The only useful and relevant interpretation of the concern that the proposal will result in an influx of a low socio-economic demographic into the area can be as that the residents of the proposal will be isolated with limited opportunity for integration with the existing community. The proposal’s failure to meet the essential components of a good affordable housing development has been assessed in detail in relation to its ability to

satisfy the aims and objectives and consent considerations of SEPP 21 - Caravan Parks. Other concerns regarding the social impact of the development have also been addressed through this assessment and particular reference to the social impact of the development in terms of the availability of services is made below.

Issue:

Cumulative Impact

Concern:

"This type of facility will mushroom in the Tweed Shire rural areas as developers recognise the potential profits generated from hundreds of long term caravan parks..."

Many objections raised the concern that the application paved the way for similar developments in rural areas which would amount to compromising the contiguity of farmland and individual "identity" of surrounding villages.

Assessment:

It is agreed that cumulative impact of such a proposal would risk the integrity of farmland and village identity and this has been assessed in assessment of the consent considerations of the Tweed LEP 2000 above. No further consideration is deemed necessary.

Issue:

Availability of Services

Concern:

"It would be better in my view to incorporate a caravan park nearer established infrastructure, especially in view of rising fuel prices"

"Medical facilities servicing the local area aren't meeting existing local demand, increasing this rapidly by another 1200 people predominately retired would cause unnecessary strain on facilities"

"Public transport does not exist in this location so they (the residents) would be dependent on a vehicle to travel to work"

"The proposed development is removed from major commercial and retail centres, medical and dental practices in the centres of Pottsville and Murwillumbah are presently heavily booked, requiring 2 weeks delay in obtaining appointments"

"Its major drawback is its distance from vital community services, including medical, dental, chemist and supermarket"

Directly related to the scale of the proposal discussed above is that the majority of submissions reiterated concerns that the site is isolated and lacks the requisite services to cater for the potential new population. Concerns were expressed both in terms of the impact this would have on potential residents and the impact on the availability of services for the existing population. This delineation indicates the aforementioned duality of the general nature of the objections – being both to the location of the proposal and to the scale of the development. The common theme being that the community objects not only to the development on this specific site but to a development of this magnitude and type anywhere in this locality.

Assessment:

It is accepted that the services required by the proposed development are not available to the subject site. The report preceding this assessment has clearly articulated this through its assessment of the relevant statutory considerations with particular reference to assessment of Section 79(C)(1)(c) regarding site suitability as well as the assessment of the aims and objectives and consent considerations of SEPP 21 - Caravan Parks. It is reiterated that the requisite social services and infrastructure are not currently available to this site and unless this is resolved, the site will remain unsuitable for the provision of long term residential accommodation of any scale above that permitted by the provisions of the Rural 1(a) zoning in the Tweed LEP.

Issue:

Resource Value

Concern:

"The site is currently a productive farm producing many acres of bananas. It also has good flat fields that grow excellent grass for the production of beef cattle".

"The effluent management plan...will need to consider the effects of such effluent on the downstream watercourses. The nutrients from the development will encourage growth of algae and aquatic species and subsequently restrict the local drainage"

"Our concern is that we rely on fresh water for our cattle. This fresh water comes from the main creek that flows through the Marshall Property"

Some submissions highlighted the value of the land for agricultural use and objected to the proposal both in terms of its impact on surrounding agricultural uses and the fact that it would represent a loss of agricultural land.

Assessment:

It is accepted that the application would result in a loss of agricultural land and further result in the fragmentation of land used for agriculture on surrounding sites.

The application as submitted has not addressed the impact of the proposal on the resources currently available to surrounding sites, with no particular reference to the impact the diversion of flows from the watercourse on site would have on the water rights of adjoining land owners.

The effluent management plan submitted with the application has been deemed unacceptable by Council's Engineer.

These matters have been addressed in the various sections of this report with the conclusion that the impact of the proposal on the agricultural viability of the site and surrounding sites is unacceptable. No further consideration of this submission is considered necessary.

(e) Public interest

The proposed development raised a significant number of objections. The majority of concerns raised in the objections are concurred with and echoed throughout this report as reasons for refusal of the application.

The core issue of site suitability, highlighted by the proposal's failure to be reconciled with surrounding land uses and development and failure to provide the facilities, services and infrastructure appropriate to its scale, indicate that the proposal is not in the public interest.

Subsequent issues such as the potential for contamination, susceptibility to hazards such as bushfire and flood as well as amenity impacts such as increased traffic and noise also indicate that the proposal is not in the public interest.

In conclusion, it is not in the public interest to develop isolated rural land for the purposes of long term residential accommodation.

OPTIONS:

1. Refuse the application as per recommendation
2. Defer consideration of this item to give the applicant the opportunity to provide all the technical information required to assess the application in its entirety.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be dissatisfied with the determination of the application they may seek a remedy in the NSW Land and Environment Court.

POLICY IMPLICATIONS:

The proposal represents an essential contradiction to the desired future character of the Tweed Shire as articulated in Council's Strategic Plan. This clearly seeks a land use structure characterised by distinct urban areas separated by contiguous breaks of rural and natural uses.

CONCLUSION:

The application submitted is deficient in detail and closely resembles the content of an application received by Council in 2006 for a caravan park at Pottsville.

Sufficient information has been submitted, however, to determine that the nature and scale of the proposal is unsuitable for the site. This unsuitability is reflected in the proposal's non compliance with the statutory and strategic framework applicable to the application, as well as genuine public opposition to the proposal.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

P3 [PR-PC] Development Application DA06/0413.01 for Amendment to Development Consent DA06/0413 for a Staged Seniors Living Development Under SEPP (Seniors Living) 2004 Comprising 84 Independent Living Units, 94 Supported Living Units and 67 Beds Within a High care facility at Lot 1 DP 786570, No. 87-89 Tweed Coast Road Hastings Point

ORIGIN:

Development Assessment

FILE NO: DA06/0416 Pt9

SUMMARY OF REPORT:

On 8 May 2007 Council approved an aged care facility in accordance with the State Environmental Planning Policy for Seniors Living. The facility comprised a total of 245 units (or 394 beds) with distinct stages. Stage 1 comprised independent living units within Buildings A, B & C.

This S96 Application seeks to modify Stage 1 of this consent in summary as follows;

- Increase the number of units from 84 to 91;
- Decrease the overall number of bedrooms from 176 to 175;
- Undertake minor internal alterations;
- Increase the balconies to enable wrap around function;
- Add a roof deck over top of unit 54 (unroofed) and behind a solid parapet wall and
- Amend the entry configuration.

Following exhibition of the proposed S96 Amendment many concerns were raised in regards to the proposed roof deck and the interpretation of this area as an additional storey. Due to this concern the applicant has since deleted the originally proposed roof deck.

- ~~Add a roof deck over top of unit 54 (unroofed) and behind a solid parapet wall and~~

The following report assesses each proposed amendment on its merits and has been assessed in the context of the variation only, as this is not an opportunity to re-visit the original determination.

Having assessed the S96 Application against the applicable controls, the application is considered to warrant conditional approval.

RECOMMENDATION:

That Development Application DA06/0413.01 for an amendment to Development Consent DA06/0413 for a staged seniors living development under SEPP (Seniors Living) 2004 comprising 84 independent living units, 94 supported living units and 67 beds within a high care facility at Lot 1 DP 786570, No. 87-89 Tweed Coast Road Hastings Point be approved subject to the following changes to the original consent: -

Change description of the development to read as follows:

"a staged seniors living development under SEPP (Seniors Living) 2004 comprising 91 independent living units, 94 supported living units and 67 beds within a high care facility"

Delete Condition 1 and replace with new Condition 1A as follows:

1A. The development shall be completed in accordance with the State Environmental Planning Policy (Senior Living) 2004 and the Statement of Environmental Effects and Plans as follows:

- Overall Site Plan TP01 Rev N prepared by R.H Frankland and Associates and dated 01/11/2007;
- Overall Unit Details TP11 Rev B prepared by R.H Frankland and Associates and dated 03/04/2006; except where varied by
- Control Data TP00 Rev D prepared by R.H Frankland and Associates and dated 06/07/2006; except where varied by

Stage 1:

- ST01 Rev D prepared by R.H Frankland and Associates and dated 30/10/2006, except where varied by
- TP02 Rev E prepared by R.H Frankland and Associates and dated 31/10/2007,
- TP03 Rev E prepared by R.H Frankland and Associates and dated 31/10/2007,
- TP04 Rev F prepared by R.H Frankland and Associates and dated 18/06/2008,
- TP05 Rev F prepared by R.H Frankland and Associates and dated 31/10/2007,
- TP06 Rev F prepared by R.H Frankland and Associates and dated 31/10/2007

Stage 2:

- ST02 Rev B prepared by R.H Frankland and Associates and dated 03/04/2006,
- TP07 Rev G prepared by R.H Frankland and Associates and dated 19/09/2006,



- TP08 Rev D prepared by R.H Frankland and Associates and dated 03/04/2006,

Stage 3:

- ST03 Rev C prepared by R.H Frankland and Associates and dated 02/10/2006,
- TP09 Rev D prepared by R.H Frankland and Associates and dated 03/04/2006,
- TP010 Rev D prepared by R.H Frankland and Associates and dated 19/04/2006, and

Stage 4:

- ST04 Rev B prepared by R.H Frankland and Associates and dated 02/10/2006,

except where varied by the conditions of this consent.

[GEN0005]

Delete Condition 22 and replace with new Condition 22A as follows:

22A. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

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

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

Stage 1

Water DSP6: 12.6 ET @ \$4598	\$57,934.80
Sewer Hastings Point: 14.4 ET @ \$2863	\$41,227.20

Stage 2

Water DSP6: 31.2 ET @ \$4598	\$143,458
Sewer Hastings Point: 39 ET @ \$2863	\$111,657

Stage 3

Water DSP6: 45.3 ET @ \$4598	\$208,289
Sewer Hastings Point: 65 ET @ \$2863	\$186,095



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

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

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

[PCC0265/PSC0165]

Delete Condition 23 and replace with new Condition 23A as follows:

23A. 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 the original consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 94 Plan current at the time of the payment.

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

Stage 1

(a) Open Space (Structured):	\$29,576.74
S94 Plan No. 5	
(b) Open Space (Casual):	\$4,745.47
S94 Plan No. 5	
(c) Shirewide Library Facilities:	\$26,101.21
S94 Plan No. 11	
(d) Eviron Cemetery/Crematorium Facilities:	\$5,219.83
S94 Plan No. 13	



(e) Community Facilities (Tweed Coast - South)	\$14,405.37
S94 Plan No. 15	
South Coast	
(f) Emergency Facilities (Surf Lifesaving)	\$4,144.00
S94 Plan No. 16	
(g) Cycleways	\$4,090.94
S94 Plan No. 22	
(h) Regional Open Space (Casual)	\$10,049.67
S94 Plan No. 26	
<u>Stage 2</u>	
(a) Tweed Road Contribution Plan:	\$44,069.10
S94 Plan No. 4 (Version 4.0)	
Sector8a_4	
(b) Open Space (Structured):	\$27,028
S94 Plan No. 5	
(c) Open Space (Casual):	\$6,605
S94 Plan No. 5	
(d) Shirewide Library Facilities:	\$23,851
S94 Plan No. 11	
(e) Bus Shelters:	\$688.02
S94 Plan No. 12	
(f) Eviron Cemetery/Crematorium Facilities:	\$4,770
S94 Plan No. 13	
(g) Community Facilities (Tweed Coast - South)	\$20,051
S94 Plan No. 15	
South Coast	
(h) Emergency Facilities (Surf Lifesaving)	\$6,943
S94 Plan No. 16	



(i) Extensions to Council Administration Offices & Technical Support Facilities	\$66,578.50
S94 Plan No. 18	
(j) Cycleways	\$12,190
S94 Plan No. 22	
(k) Regional Open Space (Casual)	\$29,627
S94 Plan No. 26	
<u>Stage 3</u>	
(a) Tweed Road Contribution Plan:	\$99,285
S94 Plan No. 4 (Version 4.0)	
Sector8a_4	
(b) Open Space (Structured):	\$13,259
S94 Plan No. 5	
(c) Open Space (Casual):	\$6,413
S94 Plan No. 5	
(d) Shirewide Library Facilities:	\$41,852
S94 Plan No. 11	
(e) Bus Shelters:	\$1,488
S94 Plan No. 12	
(f) Eviron Cemetery/Crematorium Facilities:	\$8,370
S94 Plan No. 13	
(g) Community Facilities (Tweed Coast - South)	\$19,467
S94 Plan No. 15	
South Coast	
(h) Emergency Facilities (Surf Lifesaving)	\$4,216
S94 Plan No. 16	
(i) Extensions to Council Administration Offices & Technical Support Facilities	\$111,124.12
S94 Plan No. 18	



(j) Cycleways	\$5,980
S94 Plan No. 22	
(k) Regional Open Space (Casual)	\$36,577
S94 Plan No. 26	

[PCC0215/PSC0175]

Delete Condition 34 and replace with new Condition 34A as follows:

34A. The developer shall provide a minimum 133 parking spaces 116. The provision of a minimum of 133 off street car parking spaces and 2 ambulance spaces including parking for the disabled where applicable. The layout and construction standards to be in accordance with Development Control Plan No. 2 - Parking Controls, the Building Code of Australia and AS 2890. Please note that the 11 car parking spaces along the northern boundary shall be allocated for staff parking only.

[DUR0085]

Delete Condition 116 and replace with new Condition 116A as follows:

116. The provision of a minimum of 133 off street car parking spaces and 2 ambulance spaces including parking for the disabled where applicable. The layout and construction standards to be in accordance with Development Control Plan No. 2 - Parking Controls, the Building Code of Australia and AS 2890. Please note that the 11 car parking spaces along the northern boundary shall be allocated for staff parking only.

[DUR0085]

REPORT:

Applicant: Seek Change Pty Ltd
Owner: Seek Change Pty Ltd
Location: Lot 1 DP 786570, No. 87-89 Tweed Coast Road Hastings Point
Zoning: 2(c) Urban Expansion
Cost: N/A to S96

BACKGROUND:

On 8 May 2007 Council considered a Development Application for the re-development of the existing Hastings Point Holiday Caravan Park for the purposes of an aged care facility. The development proposed to provide a total of 245 units (or 394 beds) in a combination of independent living units, hostel use units and residential care units, which will have 24-hour medical assistance available.

In addition to the re-development of the site the applicant proposed to continue operating the existing Holiday Caravan Park under a diminished caravan park licence.

The key issues for consideration included (but were not limited to):

- The impact on existing residences;
- The impact the development would have on the character of Hastings Point;
- The overall bulk and scale of a three storey development within Hastings Point;
- The suitability of the setback variation to the 50m criteria to Cudgera Creek;
- The suitability of the interpreted SEPP 14 boundary line;
- The suitability of the site for the development; and
- The general public interest.

Having considered all of these issues in addition to the statutory assessment the proposed development was recommended for conditional approval. At the Council Meeting of 8 May 2007 the recommendation was adopted and subsequently approval granted to the applicant on 14 May 2007.

In August 2007 Council was served with a third party appeal (Class 4 Appeal) by the Hastings Point Residents Group and Progress Association Incorporated (via the Environmental Defenders Office). Tweed Shire Council was the first respondent with Aeklig Pty Ltd (the original applicant for the DA) as the second respondent.

The appeal was lodged as it was alleged that Council failed to consider cumulative impact and furthermore that Council's decision to approve the development was manifestly unreasonable.

The case was heard before Judge Nicola Pain in February 2008. On 6 June 2008 the NSW Land & Environment Court dismissed the appeal and ruled that the decision by Council was not manifestly unreasonable and furthermore the Council assessed the application against all relevantly applicable statutory planning instruments.

Subsequently the consent issued by Council is valid. This NSW Land & Environment Court decision may still be challenged in the NSW Court of Appeal, however, notwithstanding Council has an obligation to determine the current S96 Application.

In November 2007 the applicant lodged the current S96 Amendment which seeks approval for the following alterations to the originally approved plans;

T.P.O. 1 Rev O - Overall Site Plan:

1. Entry configuration altered to avoid a long straight view down the entry driveway. This access geometry has been checked by the applicants traffic engineer, Mr Luke Rytenskild of CRG Traffic and Acoustic Engineers.
2. End units of building A2 to have wrap around balconies on all levels.
3. Padmount transformer is required by Country Energy to service this development. The transformer is located in a position agreed with the design engineers from Country Energy. It is located approximately 40 m from Tweed Coast Road and is behind the proposed acoustic fence on the service station rear boundary.

T.P.O.2 Rev E Building 'A' Basement/Ground Floor:

4. A fire door has been added to the basement to achieve B.C.A. compliance without sprinkler system.
5. A 2 bed home unit (No. 15) in place of original gym/games room which is relocated to kiosk location. Kiosk deleted.
6. Wrap around balconies to units 1 and 13 as referred to in Item 2.
7. 2 bedroom single bathroom unit type redesigned to incorporate separate ensuite and separate bathroom. This amendment takes place throughout the upper levels of this building and all similar units in Buildings 'B' and 'C'.

T.P.O. 3 Rev E Building 'A' First and Second Floor

8. Wrap around balcony added to Units 30 and 43.
9. Wrap around balcony added to Units 24,29,37 and 42.
10. Solid roof to deck in lieu of clear roofed pergola of original scheme.

T.P.O.4 Rev E Building B and G Basement

11. Hobby room incorporated into basement as a resident amenity. This is to provide a space to carry out hobby work usually found in domestic residential garage.
12. ~~A roof deck has been added over top of Unit 54. The deck is unroofed and located behind a solid parapet wall (see Elevation 2) of the original roof shape.~~
13. A sliding fire door has been added to comply with BCA Regulations for unsprinkled basements.



T.P.O. 5 Rev F Building 'B' First and Second Floor

14. Minor reconfiguration of internal shop partitions (no extra floor space).
15. A hole has been created through first floor slab to create 2 storey high void / feature in entry foyer.
16. Feature entry canopy shape has been inverted.
17. A small (20 seat) theatre has been added in existing 1ST floor open space.
18. A servery / bar is proposed in first floor Amenities Room for resident amenity.

T.P.O. 6 Rev F Building 'C' Floor Plans

19. Units 55, 58, 72,75, 84 and 87 have wrap around balconies added.
20. Units 59 to 64 and 66 to 71 - 12 x one bedroom units are proposed in place of 6 x two bedroom units previously approved. These one bedroom units allow more variety in unit offering and a lower entry point to seniors and to accommodate some caravan park residents.

The proposed amendment relating to item 20 (introduction of 1 bedroom units in place of 2 bedroom units) results in an increase on the total number of units approved (84) to now proposed (91). Also, 3 units in Building c part 1 (units 56, 73 and 85 Ground Floor, First Floor and second floor) were originally shown as 2 bedroom units behind the lift shaft. These three units have been converted to 1 bedroom units. The table listed below shows that while Stage 1 units have been increased from 84 to 91, the number of bedrooms has decreased from 176 to 175.

	<u>1 Bedroom Units</u>		<u>2 Bedroom Units</u>		<u>3 Bedroom Units</u>	
	<u>Original</u>	<u>S96</u>	<u>Original</u>	<u>S96</u>	<u>Original</u>	<u>S96</u>
<u>Building A - Ground Floor</u>	---	---	14	15	---	---
<u>Building A - First Floor</u>	---	---	17	17	---	---
<u>Building A - Second Floor</u>	---	---	9	9	4	4
<u>Building B - Ground Floor</u>	---	---	---	---	---	---
<u>Building B - First Floor</u>	---	---	3	3	---	---
<u>Building B - Second Floor</u>	---	---	6	6	---	---
<u>Building C - Ground Floor</u>	---	13	11	4	---	---
<u>Building C - First Floor</u>	---	1	12	11	---	---
<u>Building C - Second Floor</u>	---	1	4	3	4	4

<u>Total Number Units In Original Approval:</u>		<u>Total Number Units In Proposed S96:</u>	
0 x 1 bedroom units	0 Units	15 x 1 bedroom units	15 Units
76 x 2 bedroom units	76 Units	68 x 2 bedroom units	68 Units
8 x 3 bedroom units	8 Units	8 x 3 bedroom units	8 Units



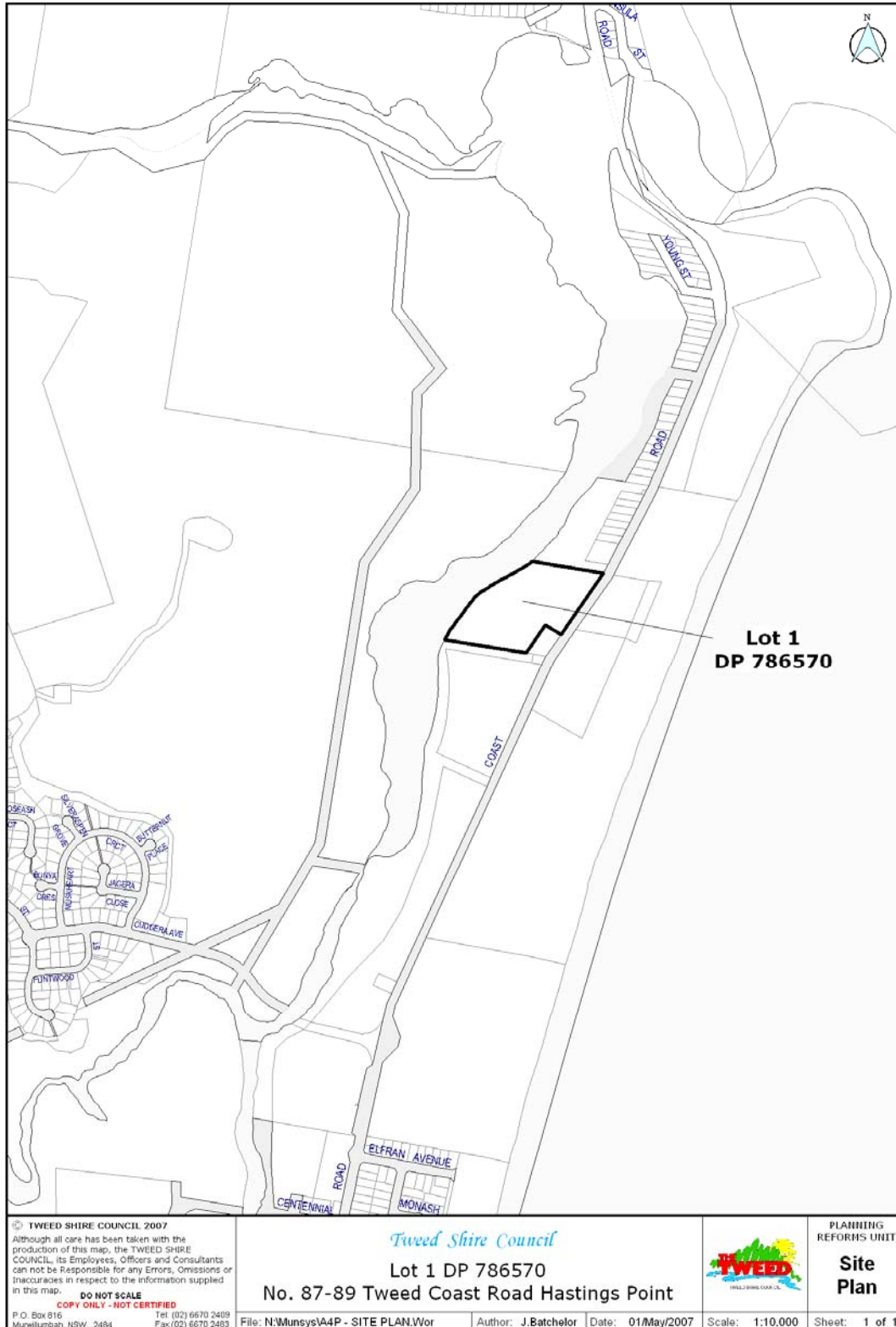
TOTAL	84 Units	TOTAL	91 Units
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Total Number Bedrooms In Original Approval:		Total Number Bedrooms In Proposed S96:	
1 bed x 0	0 beds	1 bed x 15	15 beds
2 beds x 76	152 beds	2 beds x 68	136 beds
3 beds x 8	24 beds	3 beds x 8	24 beds
TOTAL	176 beds	TOTAL	175 beds

21. An internal courtyard bridge has been added from Building 'C' Part 1 to Part 2 to satisfy B.C.A. travel distance requirements.

The following report assesses each proposed amendment on its merits.

SITE DIAGRAM:





STAGE 1 S96 PLANS OF THE DEVELOPMENT

CONTROL DATA

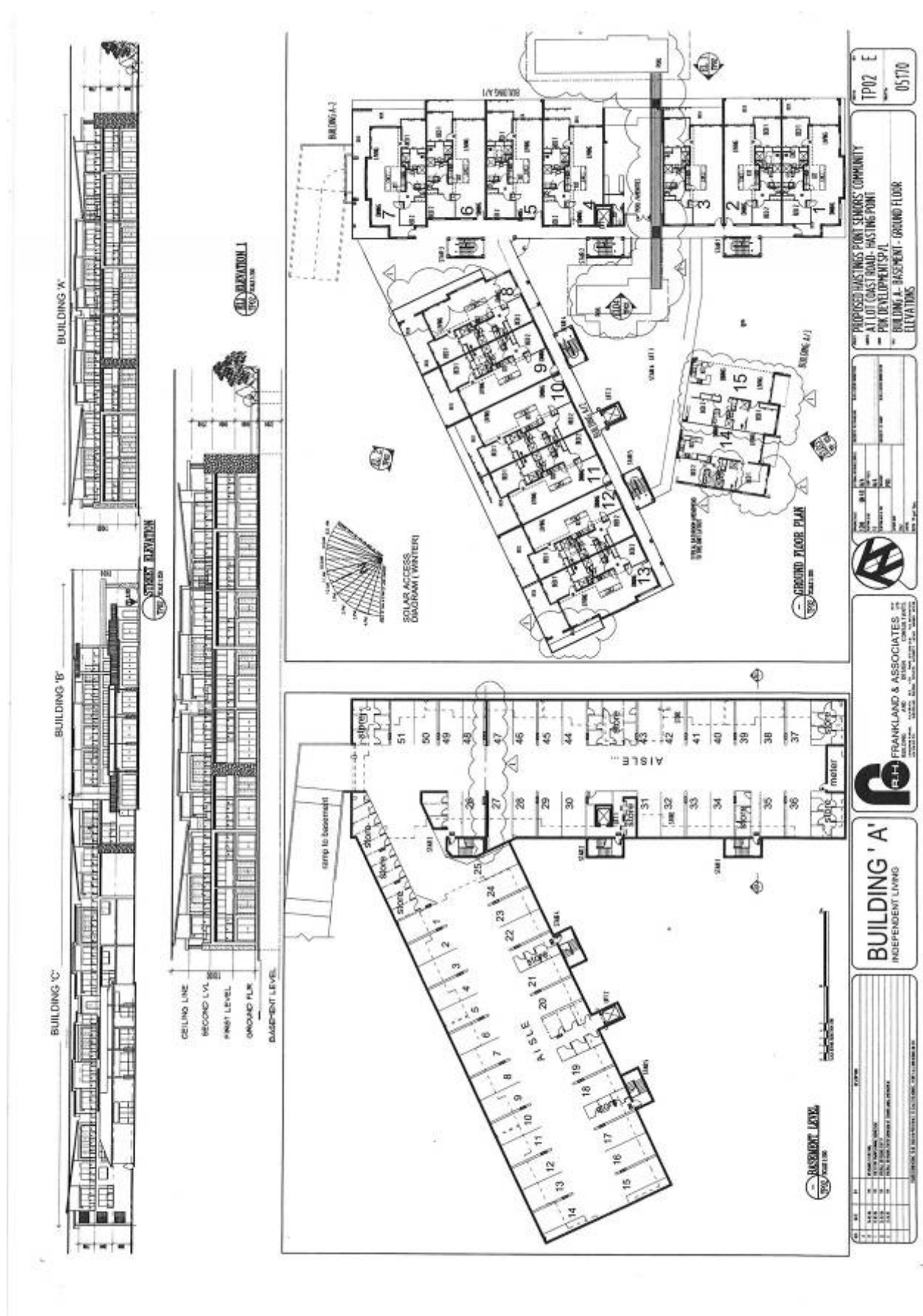
SITE DESCRIPTION:
LOT 1 DP 786570
SITE AREA - 37970m²

FLOOR SPACE RATIO		UNIT TYPE & DISTRIBUTION				CAR PARKING		LANDSCAPING	
UNIT FLOOR AREA	COMMON AREAS	BALCONIES	GALLERIES	TOTAL	BUILDING A: 1 BED	BUILDING B: 2 BED	BUILDING C: 3 BED	BUILDING D: 4 BED	BUILDING E: 5 BED
STAGE 1									
<p>BUILDING A: 1 BED</p> <p>GROUND FLOOR = 10342 FIRST FLOOR = 17942 SECOND FLOOR = 13342 TOTAL = 41626</p> <p>BUILDING B: 2 BED</p> <p>GROUND FLOOR = 14042 FIRST FLOOR = 24142 SECOND FLOOR = 18142 TOTAL = 56326</p> <p>BUILDING C: 3 BED</p> <p>GROUND FLOOR = 18142 FIRST FLOOR = 28242 SECOND FLOOR = 22242 TOTAL = 68626</p> <p>BUILDING D: 4 BED</p> <p>GROUND FLOOR = 22242 FIRST FLOOR = 32342 SECOND FLOOR = 26342 TOTAL = 80926</p> <p>BUILDING E: 5 BED</p> <p>GROUND FLOOR = 26342 FIRST FLOOR = 36442 SECOND FLOOR = 30442 TOTAL = 93126</p> <p>COMMON AREAS</p> <p>GROUND FLOOR = 10342 FIRST FLOOR = 17942 SECOND FLOOR = 13342 TOTAL = 41626</p> <p>BALCONIES</p> <p>GROUND FLOOR = 10342 FIRST FLOOR = 17942 SECOND FLOOR = 13342 TOTAL = 41626</p> <p>GALLERIES</p> <p>GROUND FLOOR = 10342 FIRST FLOOR = 17942 SECOND FLOOR = 13342 TOTAL = 41626</p> <p>TOTAL</p> <p>GROUND FLOOR = 10342 FIRST FLOOR = 17942 SECOND FLOOR = 13342 TOTAL = 41626</p>									
STAGE 2									
<p>BUILDING A: 1 BED</p> <p>GROUND FLOOR = 10342 FIRST FLOOR = 17942 SECOND FLOOR = 13342 TOTAL = 41626</p> <p>BUILDING B: 2 BED</p> <p>GROUND FLOOR = 14042 FIRST FLOOR = 24142 SECOND FLOOR = 18142 TOTAL = 56326</p> <p>BUILDING C: 3 BED</p> <p>GROUND FLOOR = 18142 FIRST FLOOR = 28242 SECOND FLOOR = 22242 TOTAL = 68626</p> <p>BUILDING D: 4 BED</p> <p>GROUND FLOOR = 22242 FIRST FLOOR = 32342 SECOND FLOOR = 26342 TOTAL = 80926</p> <p>BUILDING E: 5 BED</p> <p>GROUND FLOOR = 26342 FIRST FLOOR = 36442 SECOND FLOOR = 30442 TOTAL = 93126</p> <p>COMMON AREAS</p> <p>GROUND FLOOR = 10342 FIRST FLOOR = 17942 SECOND FLOOR = 13342 TOTAL = 41626</p> <p>BALCONIES</p> <p>GROUND FLOOR = 10342 FIRST FLOOR = 17942 SECOND FLOOR = 13342 TOTAL = 41626</p> <p>GALLERIES</p> <p>GROUND FLOOR = 10342 FIRST FLOOR = 17942 SECOND FLOOR = 13342 TOTAL = 41626</p> <p>TOTAL</p> <p>GROUND FLOOR = 10342 FIRST FLOOR = 17942 SECOND FLOOR = 13342 TOTAL = 41626</p>									
STAGE 3									
<p>BUILDING A: 1 BED</p> <p>GROUND FLOOR = 10342 FIRST FLOOR = 17942 SECOND FLOOR = 13342 TOTAL = 41626</p> <p>BUILDING B: 2 BED</p> <p>GROUND FLOOR = 14042 FIRST FLOOR = 24142 SECOND FLOOR = 18142 TOTAL = 56326</p> <p>BUILDING C: 3 BED</p> <p>GROUND FLOOR = 18142 FIRST FLOOR = 28242 SECOND FLOOR = 22242 TOTAL = 68626</p> <p>BUILDING D: 4 BED</p> <p>GROUND FLOOR = 22242 FIRST FLOOR = 32342 SECOND FLOOR = 26342 TOTAL = 80926</p> <p>BUILDING E: 5 BED</p> <p>GROUND FLOOR = 26342 FIRST FLOOR = 36442 SECOND FLOOR = 30442 TOTAL = 93126</p> <p>COMMON AREAS</p> <p>GROUND FLOOR = 10342 FIRST FLOOR = 17942 SECOND FLOOR = 13342 TOTAL = 41626</p> <p>BALCONIES</p> <p>GROUND FLOOR = 10342 FIRST FLOOR = 17942 SECOND FLOOR = 13342 TOTAL = 41626</p> <p>GALLERIES</p> <p>GROUND FLOOR = 10342 FIRST FLOOR = 17942 SECOND FLOOR = 13342 TOTAL = 41626</p> <p>TOTAL</p> <p>GROUND FLOOR = 10342 FIRST FLOOR = 17942 SECOND FLOOR = 13342 TOTAL = 41626</p>									

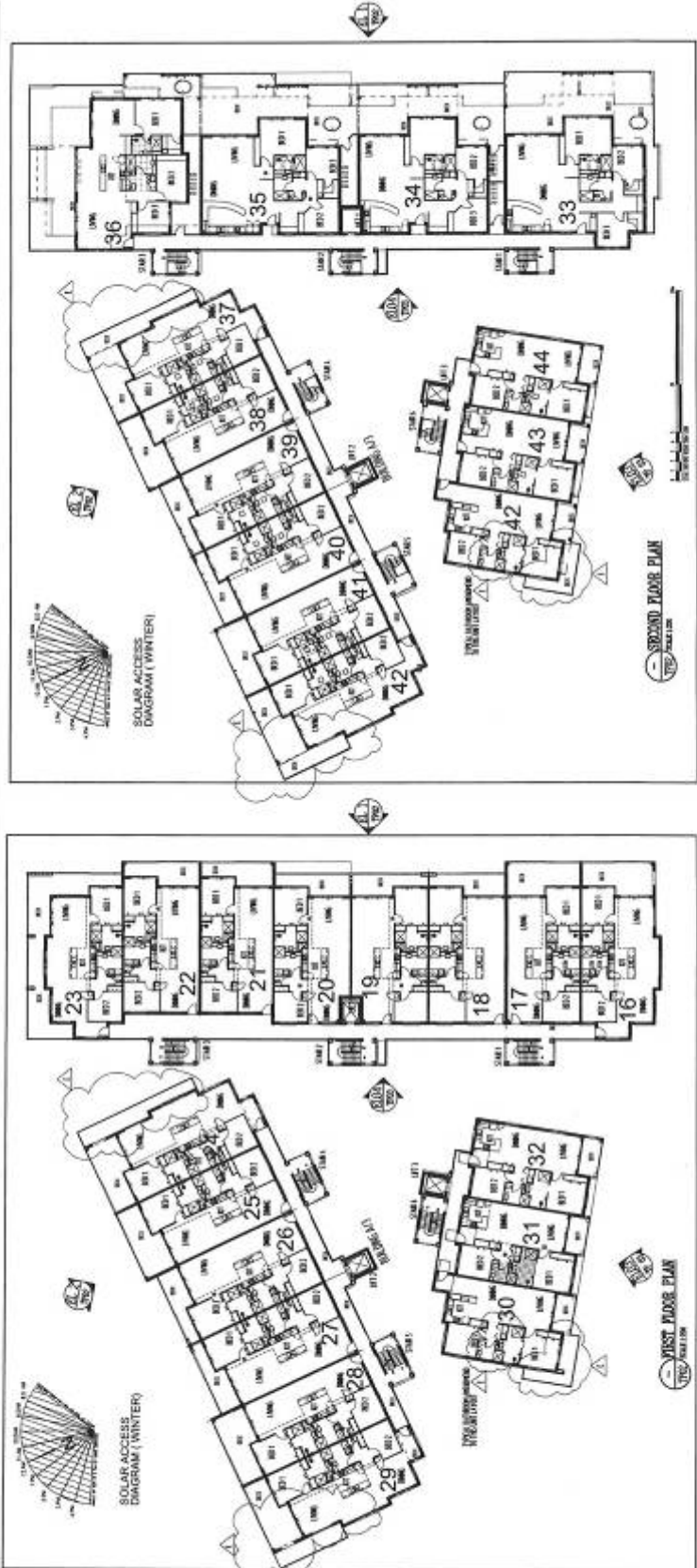
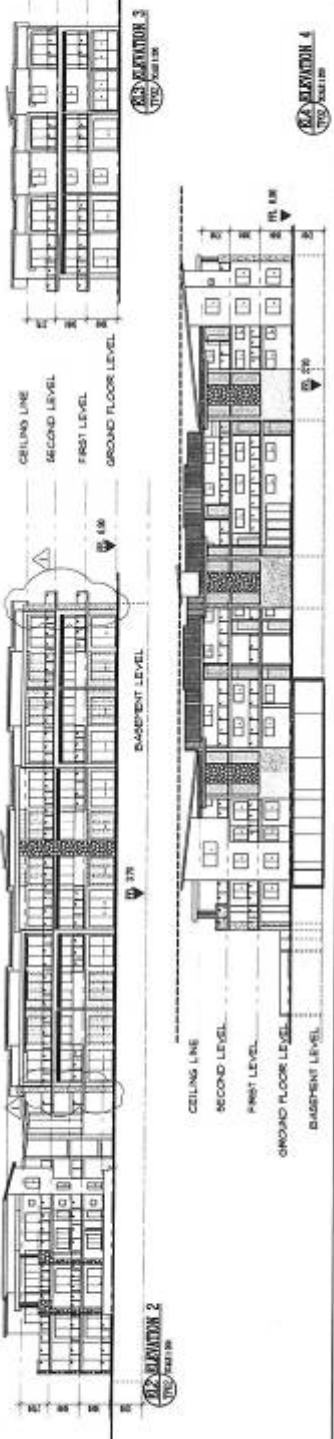
APPROVED TRADING POINT SCHEDULES COMPLIANT
AT LOT, COAST ROAD - HASTING POINT
SEE CHANGE P17/A TO
CONTROL DATA

FRANKLAND & ASSOCIATES
100/101 FRANKLAND ROAD, HASTING
VIC 3910
PH: 03 5207 1000
WWW.FRANKLAND.COM.AU

TP40 D
15/70



BUILDING 'A' INDEPENDENT LIVING		 R. FRANKLAND & ASSOCIATES ARCHITECTS 100/102, 104, 106, 108, 110, 112, 114, 116, 118, 120, 122, 124, 126, 128, 130, 132, 134, 136, 138, 140, 142, 144, 146, 148, 150, 152, 154, 156, 158, 160, 162, 164, 166, 168, 170, 172, 174, 176, 178, 180, 182, 184, 186, 188, 190, 192, 194, 196, 198, 200, 202, 204, 206, 208, 210, 212, 214, 216, 218, 220, 222, 224, 226, 228, 230, 232, 234, 236, 238, 240, 242, 244, 246, 248, 250, 252, 254, 256, 258, 260, 262, 264, 266, 268, 270, 272, 274, 276, 278, 280, 282, 284, 286, 288, 290, 292, 294, 296, 298, 300, 302, 304, 306, 308, 310, 312, 314, 316, 318, 320, 322, 324, 326, 328, 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408, 410, 412, 414, 416, 418, 420, 422, 424, 426, 428, 430, 432, 434, 436, 438, 440, 442, 444, 446, 448, 450, 452, 454, 456, 458, 460, 462, 464, 466, 468, 470, 472, 474, 476, 478, 480, 482, 484, 486, 488, 490, 492, 494, 496, 498, 500, 502, 504, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 528, 530, 532, 534, 536, 538, 540, 542, 544, 546, 548, 550, 552, 554, 556, 558, 560, 562, 564, 566, 568, 570, 572, 574, 576, 578, 580, 582, 584, 586, 588, 590, 592, 594, 596, 598, 600, 602, 604, 606, 608, 610, 612, 614, 616, 618, 620, 622, 624, 626, 628, 630, 632, 634, 636, 638, 640, 642, 644, 646, 648, 650, 652, 654, 656, 658, 660, 662, 664, 666, 668, 670, 672, 674, 676, 678, 680, 682, 684, 686, 688, 690, 692, 694, 696, 698, 700, 702, 704, 706, 708, 710, 712, 714, 716, 718, 720, 722, 724, 726, 728, 730, 732, 734, 736, 738, 740, 742, 744, 746, 748, 750, 752, 754, 756, 758, 760, 762, 764, 766, 768, 770, 772, 774, 776, 778, 780, 782, 784, 786, 788, 790, 792, 794, 796, 798, 800, 802, 804, 806, 808, 810, 812, 814, 816, 818, 820, 822, 824, 826, 828, 830, 832, 834, 836, 838, 840, 842, 844, 846, 848, 850, 852, 854, 856, 858, 860, 862, 864, 866, 868, 870, 872, 874, 876, 878, 880, 882, 884, 886, 888, 890, 892, 894, 896, 898, 900, 902, 904, 906, 908, 910, 912, 914, 916, 918, 920, 922, 924, 926, 928, 930, 932, 934, 936, 938, 940, 942, 944, 946, 948, 950, 952, 954, 956, 958, 960, 962, 964, 966, 968, 970, 972, 974, 976, 978, 980, 982, 984, 986, 988, 990, 992, 994, 996, 998, 1000
BUILDING 'K' SENIORS COMMUNITY		
ALL LOT (GOLF ROAD - HASTING POINT) PKM DEVELOPMENT SP/L BUILDING 'A' - BASEMENT - GROUND FLOOR ELEVATIONS		
TP02 E 05/170		

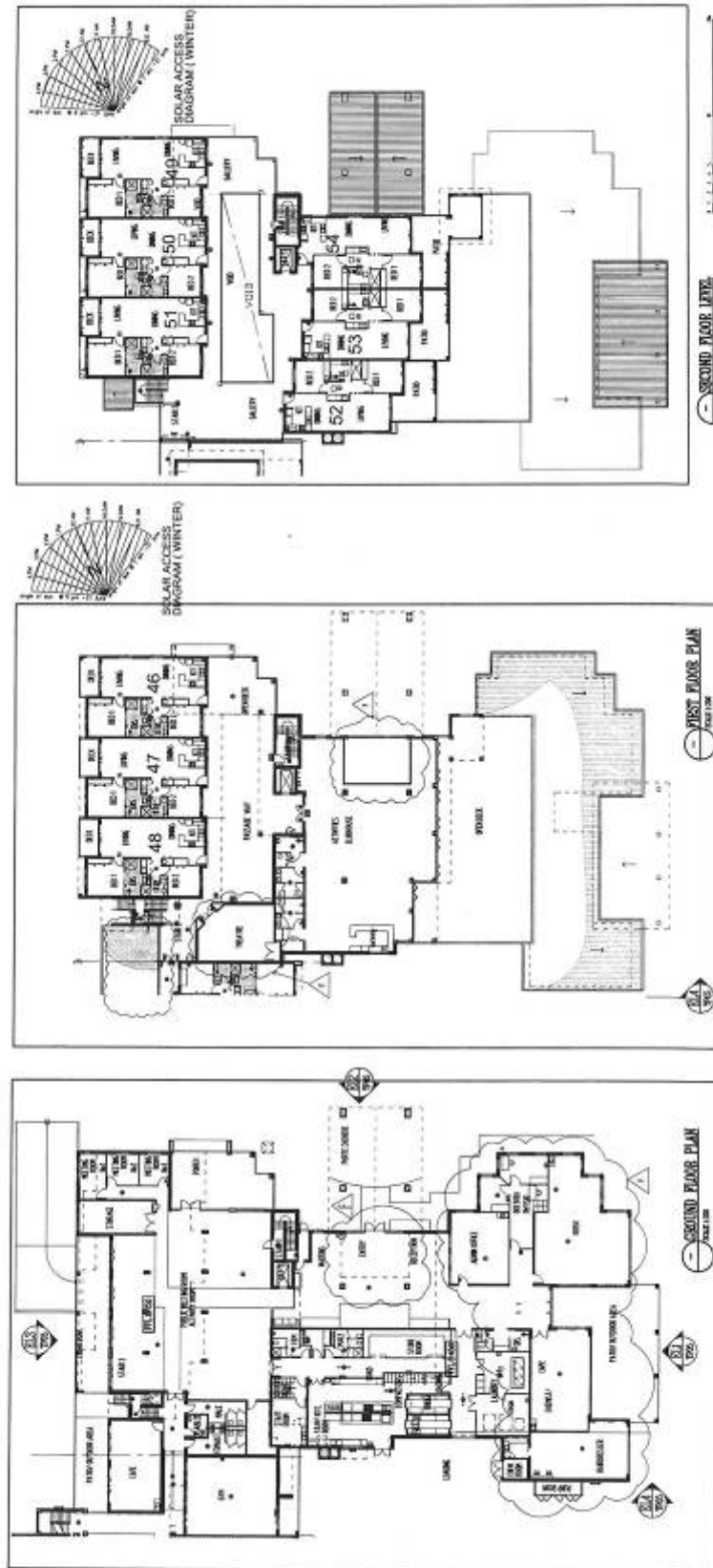


BUILDING 'A' INDEPENDENT LIVING		 FRANKLAND & ASSOCIATES, INC. ARCHITECTS 1000 W. 10TH AVE., SUITE 200 DENVER, CO 80202	PROPOSED HASTINGS POINT SQUARES COMMUNITY AT LOT 1, COAST ROAD - HASTING POINT PARK DEVELOPMENT SP-1 BUILDING A - FIRST AND SECOND FLOOR ELEVATIONS	TP03 E DATE: 05/17/08
NO. OF UNITS NO. OF BATHS NO. OF KITCHENS NO. OF GARAGES NO. OF STAIRS NO. OF ELEVATORS NO. OF COMMON AREAS NO. OF STORAGE UNITS NO. OF BIKE RACKS NO. OF VEHICLE SPACES NO. OF TRUCK SPACES NO. OF MOTORCYCLE SPACES NO. OF STORAGE SPACES NO. OF OTHER SPACES	TOTAL NO. OF UNITS TOTAL NO. OF BATHS TOTAL NO. OF KITCHENS TOTAL NO. OF GARAGES TOTAL NO. OF STAIRS TOTAL NO. OF ELEVATORS TOTAL NO. OF COMMON AREAS TOTAL NO. OF STORAGE UNITS TOTAL NO. OF BIKE RACKS TOTAL NO. OF VEHICLE SPACES TOTAL NO. OF TRUCK SPACES TOTAL NO. OF MOTORCYCLE SPACES TOTAL NO. OF STORAGE SPACES TOTAL NO. OF OTHER SPACES		PREPARED BY: [] CHECKED BY: [] DATE: [] SCALE: [] SHEET NO.: [] TOTAL SHEETS: []	PROJECT NO.: [] CLIENT: [] ADDRESS: [] CITY: [] STATE: [] ZIP: []

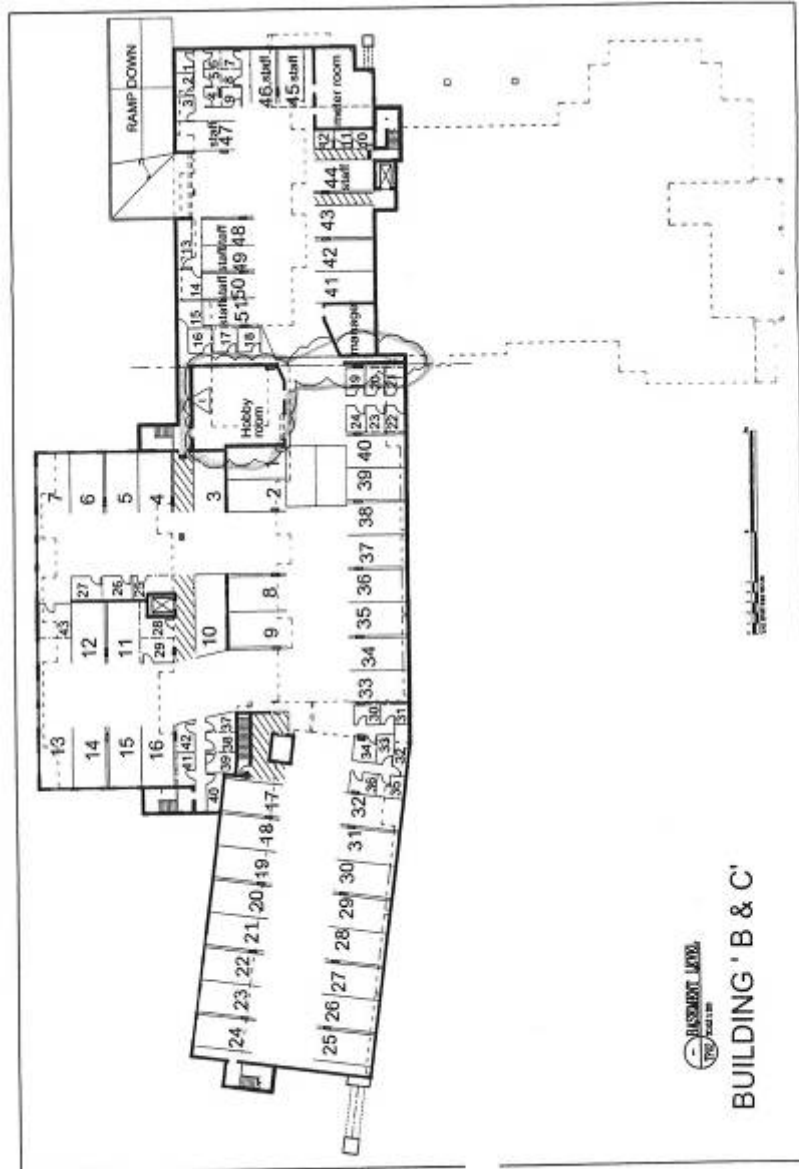
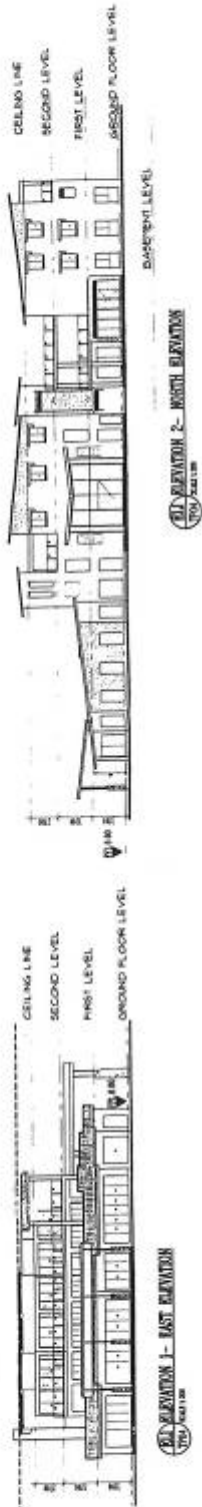


SECTION 4 - SOUTH ELEVATION
 1:50
 10/07/08

SECTION 3 - WEST ELEVATION
 1:50
 10/07/08



FRANKLAND & ASSOCIATES ARCHITECTS 10/110 SOUTH ROAD, HASTINGS, VIC 3910 PH: 03 5462 1100 FAX: 03 5462 1101 WWW.FRANKLANDANDASSOCIATES.COM.AU		BUILDING 'B' INDEPENDENT LIVING	PROPOSED HASTINGS POINT SHORES COMMUNITY AT LOT COAST ROAD - HASTINGS POINT SEEK CHANGE P/L/D BUILDING 'B' FIRST FLOOR PLAN SECOND FLOOR PLAN AND ELEVATIONS	TP95 F 05170
PROJECT NO: _____ SHEET NO: _____ DATE: _____ DRAWN BY: _____ CHECKED BY: _____ APPROVED BY: _____		SCALE: _____ NORTH: _____ EAST: _____ SOUTH: _____ WEST: _____		



TP04 F
05/10

PROPOSED HASTINGS POINT SENIORS' COMMUNITY
 AT LOT COAST ROAD - HASTINGS POINT
 SEX CHANGE PT LTD
 BUILDING 'B' & 'C' BASEMENT LEVEL
 AND ELEVATIONS

DATE	BY	REVISION



FRANKLAND & ASSOCIATES
 ARCHITECTS
 111/113 ROSS ST, HASTINGS NSW 2570
 PH: 02 4321 1111 FAX: 02 4321 1112
 WWW.FRANKLAND.COM.AU



BUILDING 'B & C'
 INDEPENDENT LIVING

NO.	DATE	BY	REVISION

CONSIDERATIONS UNDER SECTION 96 & 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

S96 (1A) of the Act relates to modifications involving minimal environmental impact. It specifies that a consent authority may, on application being made by the applicant modify the consent if:

- (a) *it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) *it has notified the application in accordance with:*
 - (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

S96 (3) further states that in determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.

Minimal Environmental Impact

The proposed changes to Stage 1 of the development need to be considered in the context of the originally approved plans. Stage 1 originally comprised the construction of the independent living units as follows:

- Basement parking under Building (A-1) & (A-2) comprising 51 car parking spaces and seven (7) storage areas
- Building (A-1) being a three-storey building fronting Tweed Coast Road. This component of the building will accommodate 19 independent living units (15 comprising two bedrooms and 4 comprising 3 bedrooms). The ground level of this building is divided between units 3 and 4 to accommodate a feature pool that extends east and west of the building. The building is setback a minimum of 15m from Tweed Coast Road;
- Building (A-2) being a three-storey building behind building (A-1). This component of the building will accommodate 18 independent living units (all comprising two bedrooms);

- Building (A-3) being a three-storey building behind building (A-1). This component of the building will accommodate 7 independent living units (all 7 comprising two bedrooms). The ground level of this building also accommodates a gym, games room and kiosk for residents only;
- Building (B) being a part single and part three storey building fronting Tweed Coast Road, comprising the main foyer areas (including administration, hairdresser, sales, chemist/doctor, café, kiosk, common laundry, staff kitchen, public meeting rooms and lawn bowl green), activity club house, and nine independent living units at levels 1 & 2 (all 9 comprising two bedrooms);
- Basement parking under Building (C-1) & (C-2) comprising 62 car parking spaces (including 8 staff parks) and ten (10) storage areas
- Building (C-1) being a three storey building located behind Building (C-2) comprising 12 independent living units (all 12 comprising two bedrooms); and
- Building (C-2) being a three storey building located behind the service station comprising 19 independent living units (15 comprising two bedrooms, and 4 comprising three bedrooms).

Stage 1 represented a site coverage of 5732m², which equated to 14.1% of the total site area.

The applicant provided that at completion:

“58 percent of the site will be landscaped. There would be an emphasis on walking tracks and “mature trees” although this is not shown in any detail on the artists impressions, We will be complimenting the local native palms, including Pandanus, Bangalow, and although not native, mature canary island date palms. A lush Tropical oasis, which also reduces the impact”.

Stage 1 retains long-term caravan park sites for existing residents under a diminished caravan park licence. However, due to the location of the construction works some permanent home sites would need to be relocated to either 1 of 12 creek frontage sites or 1 of 15 sites along the southern boundary within the park.

The proposed changes to Stage 1 represent changes that would have minimal environmental impact. The basements have been reconfigured to accommodate individual storage areas for each unit, balconies have been extended to accommodate a wrap around function, and some units have been reconfigured. Furthermore the application creates seven (7) additional units and the internal amenities (kiosk, hairdresser etc) have been reconfigured. The changes are not considered to increase gross floor area and do not represent any significant changes to that originally approved. The additional units have been achieved within the previously approved footprint by reducing some units from 2 bedroom units into one bedroom units. Thus whilst the number of units have increased by seven (7), the number of bedrooms has decreased from 176 down to 175.

The proposed S96 application is considered to satisfy the test of minimal environmental impact.

Substantially the Same Development

Having regard for this criterion the applicant has provided that the proposed variations result in substantially the same development on the basis that the changes are very minor in nature and do not alter the scale or intensity of the original approved proposal.

The proposed modifications would still result in substantially the same development as that originally approved (that being an aged care development in accordance with the SEPP) and can therefore be dealt with via S96 (1A) of the Act.

Relevant Section 79C(1) Matters

In considering an application to modify development consent Council must have regard to Section 79 of the Act.

This includes the statutory framework including the Tweed Local Environmental Plan 2000, the North Coast Regional Environmental Plan and State Environmental Planning Policies specifically including SEPP Senior Living 2004 now called State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

The proposed S96 will have minimal environmental impact and is substantially the same development to that originally approved and therefore the assessment against these statutory instruments is very similar to that of the original assessment. The following amended assessments should be noted:

The S96 amendments will still result in a similar density to that approved. The additional 7 units are achieved by reducing the number of beds previously approved. The revised unit numbers are still considered to satisfy the consent considerations within the Tweed LEP 2000 including the zone objections, and the aims of the Plan itself. The amended development will not have an unreasonable cumulative impact as the additional units can be accommodated having regard to parking, landscaping and private open space areas. Moreover, given the units are accommodated within the previously approved footprint no negative impacts are envisaged by the minor increase in unit numbers.

The S96 amendments will still result in predominantly three storey buildings as required by Clause 16 of the TLEP 2000 which provides that a three-storey height limitation exists over the site. Since the original determination of this application height limits have been reviewed for the properties south of the bridge in Hastings Point. The study was undertaken by Ruker and Associates, however, this study specifically excluded the subject site. This study resulted in the creation of Draft DCP Section A1. This Draft introduces an Area Specific Development Control for all land south of the Cudgera Creek Bridge which introduces a 2 storey and 8 metre height limit.

Whilst this study and the subsequent Draft DCP are acknowledged they do not specifically affect this S96 Application. The current S96 application does not change the height of the originally approved development and therefore the amendments need to be considered on their own merits as this is not an opportunity to reassess the original application.



The original application specifically acknowledged Clause 32 B(4)(b) of the North Coast Regional Environmental Plan. This clause required the consideration of potential shadow impacts on beaches and waterfront open space before 4pm midwinter or 7pm midsummer. The originally submitted overshadowing diagrams were satisfactory in midsummer, however a marginal breach of the clause was apparent at midwinter to the adjoining coastal reserve.

The proposal sought a variation to the extent of shadow impacts to the adjacent Council Reserve to the south and the Coastal Reserve east of the site at 4pm on the midwinter solstice. The original application was accompanied with a SEPP 1 demonstrating that the standard was unreasonable and unnecessary in this instance.

The proposed S96 increases the extent of balconies to enable a wrap around function. This will have minimal impact on the original shadow diagrams and is considered acceptable having regard to Clause 32 B (4) (b).

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 having regard to the locational context and the minimal impacts.

The proposed S96 application does not change the original assessment with regards to SEPP 11 (Traffic Generating Developments) as the originally imposed conditions regarding the need for a Section 138 remain the same. The relocation of the driveway to the south will enable an internal driveway with a curve as opposed to a straight line of sight through the site. The original conditions prevail.

The whole application was originally assessed against SEPP Senior Living 2004 which is now called State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004).

Stage 1 of the development originally comprised 84 self contained dwellings. The proposed S96 application seeks to increase this to 91 self contained dwellings for the purposes of the SEPP.

The recommended conditions of consent will continue to ensure appropriate restrictions are provided to comply with the SEPP.

The increase in the number of units will require the following minimum parking facilities to be provided onsite.

DEVELOPMENT	PARKING RATE	PROPOSAL	TOTAL
Residential Care	1 / 10 dwellings 1 / staff 1 ambulance	67 residential care beds 15 staff	22 1 ambulance
Hostel	1 / 5 dwellings 0.5 / staff 1 ambulance	94 units 7 staff	23 1 ambulance
Independent living	0.5 / bedroom	91 units (175 beds)	87.5
TOTAL PARKING REQUIRED			132.5 2 ambulance

The amended application shows 11 fewer parking spaces as originally approved in the basement for Buildings B & C. The site now accommodates a total of 167 spaces. Despite this reduction the onsite parking continues to comply with the requirements in the SEPP.

In all other regards the amendments satisfy the Senior Living SEPP.

There are no additional matters of relevance that have not been addressed by way of condition of consent as originally determined for DA06/0413

Therefore, the proposed amendments are considered satisfactory based on the assessment of the original application and the assessment of the amended application against S96 and 79C of the Environmental Planning & Assessment Act 1979. The proposed changes by way of S96 are considered appropriate having regard to all the provisions within all appropriate planning instruments including the SEPP for Senior Living and Tweed LEP 2000.

Submissions

The S96 application was advertised between 23 January 2008 and 7 February 2008. This involved an ad in the Tweed Link, notification to nearby residents and notification to those people who originally objected to the application. During this period Council received six (6) written objections. Three of these objections were from local resident groups.

The issues raised in the objections to these modifications are detailed as follows:

Issue	Assessment
<p><i>The additional seven units will place further strain on the already stressed biodiversity of Cudgera Creek.</i></p> <p><i>The fragile sand dune structure in front of this site is such that with greater use the environmental structure that is already under extreme pressure will collapse totally.</i></p>	<p>The proposed development will not significantly increase the footprint of the building or the overall Gross Floor Area of the building and will therefore have no additional burden on the structural integrity of the building.</p> <p>This objection is not considered to warrant refusal of the S96 or further amendment to the conditions of consent.</p>
<p><i>This application is one of many that will change this site from a seniors living development to a resort in the true application without any restrictions.</i></p>	<p>The original conditions of consent remain which requires a restriction on user in accordance with the Senior Living SEPP.</p> <p>This objection is not considered to warrant refusal of the S96 or further amendment to the conditions of consent.</p>
<p><i>This Section 96 should be put aside until the moratorium and Court Case are cleared.</i></p>	<p>In accordance with the Environmental Planning & Assessment Act 1979 the Council has an obligation to determine this S96.</p> <p>This objection is not considered to warrant refusal of the S96 or further amendment to the conditions of consent.</p>



Issue	Assessment
<i>We are totally opposed to the whole concept.</i>	<p>Each proposed amendment has been assessed on its merits and has been assessed in the context of the variation only, as this is not an opportunity to re-visit the original determination.</p> <p>This objection is not considered to warrant refusal of the S96 or further amendment to the conditions of consent.</p>
<i>The letter sent to residents is contrary to the advice published in the Tweed Link which did not specify under which section of S96 the applicants are seeking to amend. It is our understanding that this renders the application invalid under the Act.</i>	<p>The letter to the objectors specified it was an application under S96(1A) of the Act .</p> <p>The notice in the Tweed Link specifies it is an application under S96 of the Act. This is not contrary as S96 of the Act encapsulates S96 (1A).</p> <p>The exhibition of the S96 Application was lawful and was in accordance with the requirements of the Act and Regulations.</p> <p>This objection is not considered to warrant refusal of the S96 or further amendment to the conditions of consent.</p>
<p><i>This development was passed under SEPP Senior Living to address affordable aged care. Since the DA was approved it has been advertised as Luxury Seniors Living with no mention of aged care or affordable housing.</i></p> <p><i>Council approved an aged care facility. It is now being marketed as a luxury resort with restaurants, cafes, post office, newsagent, chemist, hairdresser, convenience store, medical centre and bottle shop. What next can we expect? Perhaps a tavern!</i></p>	<p>This S96 is still approved under the provisions of the Senior Living SEPP with the appropriate restrictions as to user imposed. It was not specifically approved as affordable housing.</p> <p>The marketing of this site as Luxury Seniors Living is not contrary to the conditions of the consent.</p> <p>The S96 continues to satisfy the objectives of the Tweed LEP 2000 and the Senior Living SEPP.</p> <p>Any future amendments will needs to be assessed on their merits.</p> <p>These objections are not considered to warrant refusal of the S96 or further amendment to the conditions of consent.</p>
<i>The developers have neither applied for nor been granted an Aged Care bed allocation by the Department of Health.</i>	<p>The allocation of aged care beds by the Department of Health is a separate process to the Development Application and any subsequent S96 Assessment.</p> <p>This objection is not considered to warrant refusal of the S96 or further amendment to the conditions of consent.</p>
<i>Any increase in the number of units is inappropriate to what is already a proposed over development is being radically increased with the addition of balconies</i>	<p>As detailed in the above report, the additional 7 units are created within the existing footprint with no additional gross floor area. Furthermore, whilst there are seven additional units there is one less bed. This density is considered substantially the same as that approved and does not warrant refusal of the S96 or further amendment to the conditions of consent.</p>
<i>No qualification of the internal alterations is provided</i>	<p>The amended plans were placed on public exhibition for 14 days. These plans were accompanied with a letter from the applicant detailing the changes.</p> <p>This objection is not considered to warrant refusal of the S96 or further amendment to the conditions of consent.</p>

Issue	Assessment
<p><i>The proposed Roof Deck effectively constitutes a fourth storey in a zone restricted to three storey's.</i></p>	<p>The roof deck has been deleted from the plans. This objection is not considered to warrant refusal of the S96 or further amendment to the conditions of consent.</p>
<p><i>It concerns us that the developer is using the pending case brought against the existing development consent to have these amendments heard by the Court as the consent authority.</i></p> <p><i>This perpetuates a current trend by unscrupulous developers to use the Court as an instrument of consent.</i></p> <p><i>This removes the community out of the consultation process as most residents are not aware of the Court hearing dates, are restricted in giving evidence, and are generally more reticent about voicing objections at a judicial hearing than under the community consultation process which is the basis of good local government decision making.</i></p>	<p>Tweed Shire Council is the consent authority for the S96 Application. The public exhibition of the application ensures community involvement and therefore this objection is not considered to warrant refusal of the S96 or further amendment to the conditions of consent.</p>
<p><i>Information provided is insufficient and Hastings Point residents should be involved directly with TSC in all matters relating to a development which is currently in the Land & Environment Court</i></p>	<p>The information submitted was considered satisfactory to enable an assessment in accordance with S96 of the Act. The public exhibition of the application ensures community involvement and therefore this objection is not considered to warrant refusal of the S96 or further amendment to the conditions of consent.</p>
<p><i>These are major amendments to an already seriously flawed DA, they are not minor amendments as advertised.</i></p>	<p>The above report details why the amended application is considered minor. The report concludes that the S96 has minimal environmental impact and results in substantially the same development. This objection is not considered to warrant refusal of the S96 or further amendment to the conditions of consent.</p>
<p><i>This development and subsequent behaviour of the proponents makes a mockery of the Council's Planning Department and we request that these amendments be denied.</i></p>	<p>The S96 Application satisfies the requirements of the Act and warrants conditional approval. This objection is not considered to warrant refusal of the S96 or further amendment to the conditions of consent.</p>



Issue	Assessment
<p><i>Our original concern was with the size of this proposal in relation to the present amenity of Hastings Point, so any increase in size is opposed by the organisation</i></p>	<p>The original complaints in regards to size focused on bulk and scale and a change in character to the locality. This is not exacerbated by the increase of 7 units as the changes occur within the already approved footprint.</p> <p>This objection is not considered to warrant refusal of the S96 or further amendment to the conditions of consent.</p>
<p><i>We have difficulty with S96 Applications to substantially change original approvals introducing new aspects that may have been detrimental in gaining the original approval.</i></p>	<p>The S96 does not present any additional aspects that would have been detrimental to the original approval. Each proposed amendment has been assessed on its merits and has been assessed in the context of the variation only, as this is not an opportunity to re-visit the original determination. Based on that assessment the application is recommended for conditional approval.</p> <p>This objection is not considered to warrant refusal of the S96 or further amendment to the conditions of consent.</p>
<p><i>If approved, this will increase the problems we already have because of this development, by increasing the number of people, cars, traffic movement, and further jeopardising the environment and well being of the Estuary.</i></p>	<p>The additional 7 units are not considered to represent an unreasonable increase in density. Car Parking requirements under the SEPP are based on the number of bed's not the number of units and this S96 reduces the number of beds by one.</p> <p>Having considered the S96 in relation to this objection it is not considered to warrant refusal of the S96 or further amendment to the conditions of consent.</p>
<p><i>The additional balconies will increase the overall floor area which we consider was far too large in the first place and creates privacy issues with neighbouring properties.</i></p>	<p>The additional balcony areas are minor and increase the provision for private open space. The additional areas are not prominently located and will have minimal impact to the overall design. As detailed within the original report privacy impacts are limited on this site as a result of adjoining Crown Land reserves and the distance of separation with the property boundaries.</p> <p>This objection is not considered to warrant refusal of the S96 or further amendment to the conditions of consent.</p>
<p><i>The developers have their own agenda with no regard to planning laws or community expectations. We ask that no decision is made with these amendments until we have proper community consultation with Ruker & Associates, Tweed Shire Council and the developers.</i></p>	<p>The application has been assessed against the Senior Living SEPP and the Tweed LEP 2000. As detailed within the above report the Ruker report and subsequent Draft DCP are acknowledged but they do not specifically affect this S96 Application. The current S96 application does not change the height of the originally approved development and therefore the amendments need to be considered on their own merits as this is not an opportunity to reassess the original application.</p> <p>This objection is not considered to warrant refusal of the S96 or further amendment to the conditions of consent.</p>
<p><i>It is very disturbing and disappointing that we have no right of appeal on this application.</i></p>	<p>In accordance with Clause 117 of the Environmental Planning and Assessment Regulations 2000, there is no right of appeal under Section 98 of the Act by an objector.</p> <p>However, there are appeal rights under Section 123 of the Environmental Planning and Assessment Act where any person may bring proceedings in the Court for an order to remedy or restrain a breach of this Act.</p> <p>This objection is not considered to warrant refusal of the S96 or further amendment to the conditions of consent.</p>

All of the above issues have been considered as part of the assessment of this Section 96 Application. The issues are not considered to warrant further amendment or refusal and subsequently the current S96 application is recommended for conditional consent.

OPTIONS:

1. Approve the S96 Application in accordance with the recommended changes to the consent.
2. Refuse the S96 Application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be dissatisfied with the determination of this application they have a right to make an appeal to the Land & Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

Each proposed amendment has been assessed on its merits and has been assessed in the context of the variation only, as this is not an opportunity to re-visit the original determination.

Having assessed the S96 Application against the applicable controls, the application is considered to warrant conditional approval.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. NSW Land & Environment Court Judgement – Nicola Pain 6 June 2008 (DW 1837450)
 2. Council Report 8 May 2007 (DW 1591820)
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P4 [PR-PC] Class 1 Appeal 08/10628 - Development Application DA06/0946 for a Mixed Development Comprising 2 x 2 Bedroom Units, 2 x 3 Bedroom Units and Commercial Premises at Lot 3 DP 520276, No. 20 Marine Parade, Kingscliff

ORIGIN:

Development Assessment

FILE NO: DA06/0946 Pt4

SUMMARY OF REPORT:

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

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

RECOMMENDATION:

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



REPORT:

BACKGROUND:

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

Critical Dates/Application History

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

Council's reasons for refusal are as follows:-

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

OPTIONS:

1. Defend the Class One Appeal and engage consultants to act as Council's expert witness. The application was recommended for approval and refused by Council. As such it is inappropriate for staff to act as expert witnesses in this Appeal. Planning consultants will need to be engaged to defend the refusal.
2. Negotiate consent orders. Negotiation of consent orders would involve the NSW Land and Environment Court considering the application following agreement between the applicant and Council. The objectors would have an opportunity to be heard by the Court.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Council will incur legal costs and costs for consultants

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.



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P5 [PR-PC] Class 1 Appeal - Development Application DA06/1332 for an Animal Establishment for Greyhounds at Lot 3 DP 701833, No. 3808 Kyogle Road, Mount Burrell

ORIGIN:

Development Assessment

FILE NO: DA06/1332 Pt2

SUMMARY OF REPORT:

Council has received a Class 1 appeal against its decision to refuse Greyhounds Kennels (DA06/1332).

It is recommended to defend the appeal.

RECOMMENDATION:

That Council's solicitors are directed to defend the refusal of DA06/1332 and if appropriate, engage an external acoustic consultant to assist as an expert witness.

REPORT:

Council refused an application for Greyhounds Kennels (DA05/0701) on 26 August 2005. It upheld that decision when a "Review of Determination" was requested under S.82A.

A fresh application including an Acoustic Report (DA06/1332) was again refused by Council on 13 November 2007. Council again upheld that decision when a "Review of Determination" was requested under S.82A.

The applicant has now lodged an appeal with the Land and Environment Court.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The legal costs associated with Class 1 Appeals are normally borne by each party. In other words, unlike a Class 4 matter, Council cannot generally make an application for costs after the case is settled unless exceptional circumstances occur.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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1. Council Report DA06/1332 (DW 1698815)
 2. S82A Review Report DA06/1332 (DW 1808891)
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P6 [PR-PC] Residential and Tourist Code – Section A1 of Tweed DCP

ORIGIN:

Planning Reforms

FILE NO: GT1/DCP/A1

SUMMARY OF REPORT:

This Report deals with the implementation of the draft Residential and Tourist Code (Section A1 of the Tweed Development Control Plan) in particular it seeks a resolution to clarify the floor to ceiling height requirements and to suspend a mandatory development control relating to the requirement for the retention and planting of mature trees.

RECOMMENDATION:

That:

- 1. Council notes the provisions of Tweed Development Control Plan Section A1 in relation to floor to ceiling heights as being desirable rather than prescriptive controls, and**
- 2. Controls in Tweed Development Control Plan section A1 relating to the retention and planting of trees be suspended from application pending the final determination and adoption of the draft Tweed Development Control Plan A1.**

REPORT:

On 22 April 2008 Council resolved to prepare an amendment to Tweed Development Control Plan Section A1 to include interim development controls in relation to the height and density limit in Hastings Point and it was subsequently exhibited from 7 May to 6 June 2008. The submissions received in relation to the proposed changes and those raising additional matters remain under assessment and will be reported on at a later meeting.

In the meantime, there are two areas of the Plan that have caused some concern and require clarification and comment.

Floor to ceiling height

In the first instance there has been significant debate and claims made in relation to the supposed increase in the floor to ceiling height under the new DCP and the associated cost burden of such a change, which is estimated at approximately \$10,500 for an average dwelling. Contrary to some views the new DCP does not in fact prescribe a minimum floor to ceiling height above those required under the Building Code of Australia (BCA), but instead the new DCP control expresses a preference to the use of a greater height (2.7m as opposed to 2.4m) so as to achieve the Plan's stated objectives. Any height beyond that required under the BCA is ultimately at the discretion of the proponent. The ceiling height control states:

Ceiling Height

Higher ceilings can create better proportioned internal spaces. Generous ceiling heights are particularly important in buildings with small, deep rooms or in rooms that have little sun penetration such as those facing south.

Objectives

- *To increase the sense of space in dwellings.*
- *To contribute to well proportioned rooms.*
- *To promote the penetration of daylight into dwellings.*

Controls

- Minimum finished floor to ceiling dimensions are set out in the Building Code of Australia.*
- It is encouraged to provide minimum ceiling heights of 2.7m min. finished floor level to finished ceiling level for habitable rooms. For habitable rooms with a raking ceiling it is preferable to have at least 30% of the ceiling at 2.7m high.*

It is quite clear from the above that the Plan **encourages** a greater height and where a raked ceiling is utilised a **preferable** 30% of the floor area should be at that greater height. Although the controls in the DCP are "mandatory" per se they are not all prescriptive, that is, not all of the controls have a prohibitive application. As demonstrated above some controls although mandatory for consideration do no more

than indicate a preferential design in order to meet the desired objectives. The first part of the controls (control (a)) adds further weight to this proposition as it is a prohibitive control; it prohibits a floor to ceiling height that does not achieve the minimum prescribed standard specified in the BCA, and once that height is established the second part (control (b)) aims to encourage greater thought about the overall design as a means of achieving the objectives.

This component of the DCP does not require any amendment.

Retention and provision of mature trees.

The Planning Reform Unit has developed a sound working relationship with the NSW Housing Industry Association (HIA) and it is through consultation with the Association and its members that the significance of the requirement to retain and plant mature trees has come to light. The primary issue is the potential impact upon the structural integrity of building foundation areas both within and external to the site, which also carries with it a potential risk of liability not only on the property owner but also on Council.

It is now intended to remove the prescriptive nature of the controls deferring instead to the alternative which will allow the proponent to decide whether or not to plant mature trees on the circumstances of their case. The draft Plan, to be referred to Council for adoption at a later time, will incorporate the changes as proposed here.

It is recommended that the controls in Tweed DCP section A1 relating to the retention and planting of trees be suspended pending the final determination and adoption of the draft DCP A1:

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

