



TWEED SHIRE COUNCIL

AGENDA

PLANNING COMMITTEE MEETING

Tuesday 18 November 2008

Mayor: Cr J van Lieshout

**Councillors: Cr B Longland, Deputy Mayor
Cr D Holdom
Cr K Milne
Cr W Polglase
Cr K Skinner
Cr P Youngblutt**



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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] Residential and Tourist Code - Section A1 of Tweed DCP - Hastings Point Review

ORIGIN:

Planning Reforms

FILE NO: GT1/DCP/A1

SUMMARY OF REPORT:

This report seeks a resolution to adopt the exhibited amendments in draft Tweed Development Control Plan (DCP), Section A1 – Residential and Tourist Code. The amendments include interim development controls for Hastings Point, south of Cudgera Creek Bridge, relating to building height and density.

On 21 August 2007 Council engaged Ruker Urban Design to assess the appropriateness of the height and density controls under the Tweed LEP 2000 for development in Hastings Point. The final report was considered by Council on 22 April 2008 whereupon it was resolved:

- "1. Council amend Section A1 of the Tweed Development Control Plan to include interim development controls in relation to the height and density limit in Hastings Point applicable to all land south of the Cudgera Creek Bridge, restricting height to two (2) storeys only with such provision being reviewed no later than 12 months from the date of adoption.*
- 2. That the draft amendment be publicly exhibited in accordance with s 74E of the Environmental Planning Assessment Act 1979."*

A draft development control plan was prepared and publicly exhibited between 7 May and 6 June 2008. An extensive range of public submissions were received during this period comprising of completed feedback forms and correspondence.

The submissions presented a mixed range of views ranging from landowners who purchased their land for investment and development purposes, whom considered the interim controls too restrictive, and conversely, other landowners who were of the opinion that the controls did not go far enough, particularly in the absence of a locality based plan, and they expressed the view that the controls should be stricter.

In light of recent Land and Environment Court and Supreme Court of Appeal proceedings brought in respect of multi-dwelling residential and seniors housing development in Hastings Point, it is an imperative for Council to provide a clearer direction on the preferred form of housing development in this locality and to adopt more legally definable planning controls in the form of the exhibited draft DCP amendments.

Upon adoption the draft DCP controls should provide a more effective interim planning mechanism for Council that can be readily enhanced through the preparation of a more detailed locality plan and DCP for the Hastings Point Area.

RECOMMENDATION:

That: -

- 1. Council adopts the exhibited draft amendments to Section A1 of the Tweed Development Control Plan – Residential and Tourist Code, as it applies to development controls for the Hastings Point area, and in accordance with s21 of the *Environmental Planning Assessment Regulation 2000* gives public notice of the resolution to adopt the Plan in its newspaper, the Tweed Link, within 28 days of that resolution.**
- 2. A detailed Locality Plan and Development Control Plan be prepared for the Hastings Point locality in a timeframe consistent with Council's Strategic Planning priorities.**

REPORT:

Background

In July 2005 Council resolved to amend the Tweed LEP 2000 (Draft Amendment No. 81) with a proposal to reduce the maximum height of buildings south of Cudgera Creek Bridge at Hastings Point from 3 to 2 storeys. Following advice from the Department of Planning, Council resolved to abandon the draft LEP process in December 2006, in light of the need to provide a broader strategic context to building heights across the Tweed Shire.

In response to the public opposition to various three-storey redevelopment proposals, such as the seniors living proposal at Nos. 87-97 Tweed Coast Road, known as the "Point", and a multi-dwelling development at No. 21 Tweed Coast Road, Council resolved at its August 2007 Meeting to engage the services of the consultant, Ruker Urban Design, with a brief for a study focused on determining if the 3-storey height and density controls under the Tweed LEP 2000 are appropriate for development in Hastings Point. The study was to comprise the residential area south of the Cudgera Creek Bridge, which consists of 44 lots.

The map below illustrates the Hastings Point study area, the area of Hastings Point north of Cudgera Creek Bridge, and other key local sites.

HASTINGS POINT LOCALITY MAP - NORTH AND SOUTH OF CUDGERA CREEK BRIDGE:



<p>© TWEED SHIRE COUNCIL 2008 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map.</p>	<p><i>Tweed Shire Council</i> HASTINGS POINT REVIEW STUDY AREA</p>	<p>PLANNING REFORMS UNIT </p>
<p>DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 616 Murumbidgee, NSW, 2484</p>	<p>File: G:\GIS_Jobs\00039679\Site Plan Wor author: J. Batchelor Date: 21/Oct/08 Scale: 1:7,000 Sheet: 1 of 1</p>	<p> </p>

Preparation of the Ruker Urban Design Report

Following Council's decision at the August 2007 Meeting, Ruker Urban Design commenced the preparation of the Hastings Point Study. The Consultant and Council's Staff convened two consultation workshops with the study area residents, landowners and representatives of the Hastings Point Residents Association. This feedback was used to finalise the study report.

The concluding recommendations in the Consultant's report states:

Concluding Recommendations

This report finds that the current controls under the Tweed LEP 2000 will not provide the necessary level of certainty to ensure new buildings achieve a desirable built form outcome for Hastings Point.

After consideration of the built and natural attributes of Hastings Point it is apparent that the control in Tweed LEP 2000; building height, alone is not enough to ensure that developments result in buildings that suit the present and future character of Hastings Point.

Primarily this results from the issue that larger scale and denser building forms have greater impacts to the natural and urban environments and as such require a higher degree of design control specific to the context of the place and to achieving high quality buildings.

In particular multi-dwelling developments and three storey developments will have a significant impact on the character of Hastings Point as a small coastal village. The existing position can be rectified by:

- Council developing a structure plan (locality plan) for the whole of Hastings Point.*
- Council developing as part of the structure plan detailed site and building design guidelines on a street by street basis (block by block) and building types that suit Hastings Point to supplement and add to the Draft RTDC. This would look at all building types, of both two and three storeys.*

In the case where the two recommendations above are not undertaken or in the interim during the development of the Hastings Point plans a two storey limit should be enforced.

As an outcome of this report the structure plan should include (but not be limited to):

- Clearly defining the boundary and footprint of the settlement in line with the Tweed Local Environmental Plan and the Far North Coast Regional Strategy.*
- Exploration of, testing and detailing the capacity of the settlement within the context of it reaching the size of a small coastal village.*

- *Exploration of, testing and detailing the environmental constraints of the settlements waterways and estuary in relation to the effects of multi-dwelling developments including both design and construction.*

Council Resolution to Publicly Exhibit Draft Amendments to Tweed DCP – Hastings Point

As outlined above, the Consultant concluded that the Tweed LEP 2000 height control is not adequate in the context of the established character of the Hastings Point area, south of the Cudgera Creek Bridge, and as such it does not provide a clear direction for the redevelopment of the area.

A report was submitted to Council's Meeting of 22 April 2008, including the final Ruker Urban Design Report, with a recommendation to publicly exhibit a draft amendment to Section A1 of the Tweed DCP.

On the basis of this recommendation, Council resolved the following:

- "1. *Council amend Section A1 of the Tweed Development Control Plan to include interim development controls in relation to the height and density limit in Hastings Point applicable to all land south of the Cudgera Creek Bridge, restricting height to two (2) storeys only with such provision being reviewed no later than 12 months from the date of adoption.*
2. *That the draft amendment be publicly exhibited in accordance with s 74E of the Environmental Planning Assessment Act 1979."*

An extract of the draft amendment to the DCP is provided below:

Tweed Development Control Plan
Section A1 - Residential and Tourist Code
Area Specific Development Controls

AREA SPECIFIC DEVELOPMENT CONTROLS

INTRODUCTION

This section of the Plan provides development provisions that have been formulated in response to an identified specific need of a particular site(s) or locality. This section is to prevail to the extent of inconsistency with any other development provision in this Plan.

Area of Application

Hastings Point – all land south of the Cudgera Creek Bridge.

Objectives

- * To implement the recommendations of the Hastings Point 'Review of Height, FSR and Setback Controls' Report, prepared by Ruker and Associates dated 26 March 2008, as resolved by Council on 22 April 2008.
- * To limit the impact of new development on the existing character and amenity of this coastal settlement prior to any further locality based planning by:
 - o Implementing interim restricting height and density provisions for new development until provisions appropriately tailored to larger and more dense development (where appropriate) is adopted following community consultation, that will
 - o Provide greater certainty to the protection and preservation of the areas natural and built environment.

Controls

- a. The maximum building height is 2-storeys and 8 metres.
- b. The maximum density on any lot or combination of lots is one dwelling per 250m² of site area.

Review Period

The review period for interim development controls outlined above for Hastings Point is 12 months from the adoption of this Plan, except where a locality or structure plan, or area specific planning controls are in preparation in which case it will be the adoption date of that body of work and the subsequent repeal of the interim provisions.

Results of Public Exhibition - Draft DCP s A1 – Interim Hastings Point Controls

The draft DCP was publicly exhibited between 7 May and 6 June 2008.

To assist in gaining greater feedback for the preparation of the Hastings Point Report feedback forms were prepared and distributed by Ruker Urban Design and Council staff.

A summary of the overall feedback in respect of the exhibition of the draft DCP amendments is provided below.

Written Submissions

A total of 25 individual submissions were received.

6 submissions were in support of the draft controls, however, raised the following issues:

- Greater protection of the uniqueness of Hastings Point is needed;
- Building density should be restricted to a maximum of 2 dwellings per development pending the completion of a locality plan;
- The draft controls should also include the area of Hastings Point north of the Cudgera Creek Bridge;
- Residential flat buildings should not be allowed;
- The building site cover and landscape requirements should be tightened;
- Preparation of a locality plan for the whole of Hastings Point;
- Stop development from contaminating the creek;
- Remove the current 3-storey height limit; and
- Current redevelopment is against the aims of the Tweed LEP 2000.

19 submissions were opposed to changes in the height and land-use zoning, and raised the following issues:

- Properties were purchased on the basis of the present zoning;
- 3-storey development reduces the need for new release areas;
- More impressionable buildings are needed to tidy up the area;
- 3-storey buildings should be designed to be more sympathetic to the character of the area and need not be inappropriate;
- New development controls are needed to guide the redevelopment of the area.

Of the individual submissions received 68% were opposed to changes in current zoning, however, they generally noted a need for greater certainty in Council's planning controls.



There are requests in the submissions for the exhibited draft amendments to be extended to land north of the Cudgera Creek Bridge. This area is located outside of the project study area and no detailed assessment of this area was undertaken in the preparation of the Ruker Urban Design Report. Recommendations are provided in the conclusion section of this report should the application of the interim controls need to be extended to cover the area north of the bridge.

Feedback Forms

The Hastings Point Residents Association made a submission requesting that the feedback forms generated out of the public consultation workshops be taken into consideration in respect of the draft DCP.

A total of **85** individual forms were received during the second consultation workshop and are relevant to the draft DCP amendments. The following table is taken from the Ruker Urban Design Report as it summarises the number of responses to questions that were raised on the feedback forms.

Because not all feedback forms were completed in full there is not exactly 85 responses to each question in the table shown.

	Agree	Perhaps	Disagree
A locality plan is needed	77		
A style guide is needed	76	1	
Appropriate Buildings are necessary	75		
Houses, Dual Occs and Granny flats have a fair chance of being in keeping with HP	66	6	4
Villas may be in keeping with the settlement	32	35	13
Is there less chance that 3Stroey Res Flat Buildings are appropriate for HP	6	20	53

The comments below were those included over and above responses to specific questions raised in the feedback forms:

Don't want to down zone land	23
No 3 storeys. No place in Hastings Point for this building form due to visual impact	19
Need specific prescriptive controls for HP ie height, setback, overshadowing, site coverage etc	4
Natural landscape to dominate, not buildings. Green space coverage on individual sites paramount to retain character and protect amenity	11
Villas may be appropriate without 3 storey and high site coverage	1
Beautiful natural environment important, 'greenbelts' important. Built form should not detract.	4
Retain character, village atmosphere and promote quality of life	15
No underground carparking / threat to estuary resulting from surface water runoff	20
Protect pristine natural estuary and native wildlife	13
Traffic Management a problem	3
Low coast holiday destination, safe swimming, holiday feel (keep camping and caravan park)	16
Overhaul sewerage treatment plant. Potential for major contamination of estuary.	17
Formalise access to beach and pedestrian networks, public carparks. Improve Pedestrian safety	8
No residential flat building development	3
No large population increase	6
Moratorium to be reinstated	9
2 or 3 Storey acceptable, however aesthetics MUST improve. This would be better than some existing buildings	2
Want to rezone to low density	1

The Need for Both Immediate and Medium-Term Council Action

The findings of the Hastings Point Report, public consultation and exhibition of the draft DCP highlight the following:

- The limited supply of coastal and estuarine land increases the pressure for development and the potential for future legal challenges;
- The immediate need to adopt the exhibited interim draft development controls; and
- a medium-term goal for producing a locality plan and more comprehensive DCP controls that build on the Ruker Urban Design Report, for the whole of the Hastings Point area.

Preparation of a Locality Plan

Council staff are currently reviewing a quotation from Ruker Urban Design to prepare a locality plan and detailed development controls for Hastings Point. It is anticipated that an agreement on this further work will be finalised following the Council's affirmative resolution of the recommendations provided in this Report.

The expected timeframe for completion of the project is six months, including professional investigations, community consultation and reports to Council for final adoption.

CONCLUSION:

It is concluded that the following action is necessary to address the current planning and development pressures facing the Hastings Point Locality:

1. Adopt the draft DCP A1- Residential and Tourist Development Code, as it relates to the interim development controls for Hastings Point.
2. The preparation of locality plan and detailed development controls for the Hastings Point locality.

In response to recent representations of the Hastings Point Residents Association, Council may also wish to consider the adoption of the following further matters:

1. Resolve to prepare a new draft DCP to extend the interim development controls to north of the Cudgera Creek Bridge, and
2. To further restrict the interim density ratio to no more than 2 dwellings per site through a new draft DCP.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

There would be no implications on Council's forward budget estimates arising from the recommendations in this report relating to the preparation of a locality plan and detailed development control plan. Funds may be available in the 2008/09 Planning and Regulation Division Budget for the additional consultancy based work, pending prioritisation of Council's Strategic Planning Program.

POLICY IMPLICATIONS:

The recommendations of this report would represent a policy shift through amendment in the Tweed DCP relating to building height and density in Hastings Point, south of Cudgera Creek Bridge. It may lead to amendments in the Tweed LEP at a later stage.

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. Additional Report on Residential and Tourist Code - Section A1 of Tweed DCP - Hastings Point Review (DW 1930984)
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P2 [PR-PC] Development Application DA07/0022 for Multi Dwelling Housing Comprising 7 Units at Lot 9 DP 14141, No. 21 Tweed Coast Road, Hastings Point

ORIGIN:

Development Assessment

FILE NO: DA07/0022 Pt4

SUMMARY OF REPORT:

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

The application initially proposed a 3-storey residential flat building, but, after consultation with Council Planning Officers the proposal was modified to a townhouse styled development comprised of three separate building components of two and three bedroom townhouse / units of three storeys in height (total of 7 units).

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

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

The applicant has now requested that Council re-assess the Development Application and make a determination on the proposal. The proposed plans are identical to that which Council previously approved.

Since the original determination of DA07/0022 the Council has engaged the services of Ruker & Associates Urban Design to assess the appropriateness of the height and density controls for Hastings Point (south of the bridge). This review produced a final report on recommendations for the Council. Some of those recommendations have been incorporated into a Draft DCP (Draft DCP Section A1 - amended to incorporate controls for Hastings Point). The Draft DCP has been recommended to Council for adoption, and is dealt with in a report in Item P1 of this Business Paper.

The subject Development Application is now ready for determination.

Whilst DA07/0022 was lodged in January 2007 the Development Application must be assessed against the controls in force as at the time of determination. Furthermore, the assessment needs to be undertaken having regard to information that is now available that may not have been available as at the time of the original determination.

Based on this revised assessment the proposed three storey development is considered contrary to the future desired character of the area and contrary to the ecological constraints of the site. Therefore the subject application is now recommended for refusal.

RECOMMENDATION:

That: -

A. Development Application DA07/0022 for multi dwelling housing comprising 7 units at Lot 9 DP 14141, No. 21 Tweed Coast Road Hastings Point be refused for the following reasons: -

- 1. The application is not considered to be consistent with Section 79C 1(a) of the Environmental Planning & Assessment Act 1979 as it does not satisfy the following applicable planning instruments:**
 - a. The Tweed LEP 2000 including Clause 4 Aims of the Plan, Clause 5 Ecologically Sustainable Development, Clause 8 Consent Considerations, Clause 11 The Zones, Clause 16 Height, and Clause 31 Development Adjoining Waterbodies;**
 - b. The North Coast Regional Environmental Plan including Clause 15 Development Control Wetlands or Fisheries and Clause 32B Development Control – Coastal Lands;**
 - c. Clause 8 of State Environmental Planning Policy No. 71 – Coastal Protection.**
 - d. Tweed Development Control Plan Section A1 Residential & Tourist Development Code, & Section A2 Site Access & Parking Code.**
 - 2. The application is not considered to be consistent with Section 79C 1(b) of the Environmental Planning & Assessment Act 1979 as it would have a negative impact on both the natural and built environment.**
 - 3. The application is not considered to be consistent with Section 79C 1(c) of the Environmental Planning & Assessment Act 1979 as the proposed development has not responded to the sites constraints, the sites ecological significance or the future desired character of Hastings Point.**
 - 4. The application is not considered to be consistent with Section 79C 1(e) of the Environmental Planning & Assessment Act 1979 as the proposed development is not considered in the public interest.**
-



- B. Council engages legal representation to achieve site remediation (which would include the removal of any building footings and re-vegetation of the site to its original state. Such remediation will not include relocation of the sewer line but will include the applicant submitting works as executed drawings, video footage of the line (testing), and dedication of the easement for the sewer line.**



REPORT:

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

THE DEVELOPMENT SITE:

The development site is on a prominent corner site with frontages to both Tweed Coast Road and Young Street, Hastings Point. It is a long rectangular allotment with an area of 1315m². The site has its rear boundary with Cudgera Creek. It is located in a sensitive coastal location as defined by SEPP 71, and between SEPP 26 littoral rainforest on the eastern side of Tweed Coast Road and SEPP 14 wetlands to the west within and around Cudgera Creek. Cudgera Creek is the only one of the three Tweed coastal estuaries to have a natural entrance, i.e. it is not kept permanently open by the provision of training walls as is the case with Cudgen Creek at Kingscliff and Mooball Creek at Pottsville. This means that the entrance can block with sand at times and less tidal flushing occurs, so that nutrients and pollutants have greater ability to accumulate and the risk of flooding of low-lying land is increased. This has also meant that the channel depth is generally shallower than the other two creeks in their lower reaches and thus more open to impacts from sedimentation.

The proposed development site is located some 400m upstream from Hastings Point bridge on an outside bend of Cudgera Creek subject to erosion. It is a largely cleared and levelled block where the installation of footings has commenced (in accordance with a valid Construction Certificate at the time of works). A few trees remain adjacent to Cudgera Creek although some clearing was undertaken to relocate a sewer main to the rear of the property (in accordance with a valid Sewer Application as at the time of works). Sections of concrete block and rubble exist on the creek bank, with occasional mangroves beyond. Riparian vegetation (consisting of native species with some introduced species) occurs on adjacent properties to varying width, but generally at 10m to 20m or greater.

BACKGROUND:

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

The application initially proposed a 3-storey residential flat building with 6 units, but, after consultation with Council Planning Officers the proposal was modified to a townhouse styled development comprised of three separate building components of two and three bedroom townhouse / units of three storeys (total of 7 units).

Council approved DA07/0022 in June 2007 subject to conditions of consent.

Council also approved the following subsidiary approvals that enabled the commencement of works on the subject site:

- Construction Certificate CC07/0977
- S138 Driveway Approval DWY07/0338
- S68 Stormwater Drainage SWD07/0406 (erosion and sediment control)
- S68 Stormwater Drainage SWD07/0431 (includes h2 quality control devices to install a permanent stormwater quality control device in a private drainage system,
- S68 Sewer Application SEW07/0420

To activate these approvals the applicant had to pay the applicable S64 & S94 Developer Contributions. These equated to \$75,246.75.

In accordance with these approvals the applicant demolished an existing shed, cleared the development site, commenced installation of footings and relocated a sewer line that would have dissected Building No. 3 (that building closest to Cudgera Creek). The sewer line was relocated closer to the Creek in accordance with Sewer Application SEW07/0431.

The validity of the DA was challenged in the NSW Land & Environment Court by Hastings Point Progress Association Incorporated. Judge Pain determined that Council failed to adequately consider cumulative impact which was a statutory requirement of Clause 8 of the Tweed LEP 2000. The consent was determined void and of no effect. It is also Council's understanding that this voids any subsidiary approvals linked to DA07/0022.

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

The Proposed Building Characteristics

As mentioned, the application was originally submitted as a residential flat building that comprised of 6 x 3 bedroom units over ground level garaging.

The application was amended to include 3 individual buildings (all three storeys in height), which consist of:

Units 1 & 2 – these units comprise building No.1 located at the eastern end (Tweed Coast Road) of the site. Each unit has 3 bedrooms and car parking and garaging is provided at ground level, with the garaging and access located at the rear of the dwellings.

Units 3, 4 & 5 - these units comprise building No.2 located in the centre of the site. Each unit has 2 bedrooms and car parking and garaging is similar to that of building No.1, except that the garages front Young Street. Each of these units has a rumpus room and open space is provided via a private courtyard at ground level.

Units 6 & 7 – these units comprise building No.3 located at the western end of the site. They are of a similar format and layout to Units 1 & 2 (building No.1). This building is located 5m from edge of Cudgera Creek

The proposed plans are identical to that which Council previously approved.

Other Recently Approved Developments

In determining any DA Council should have regard to any other applications that have already been determined in the immediate area. This allows Council to project this pattern and consider the possible cumulative impact that a repeated Development Application may have. Following is a list and brief summary of those applications recently approved:

DA03/1759 – 8 Tweed Coast Road: Council approved this residential flat building comprising 5 x 3 and 1 x 2 bedroom apartments in June 2004. The building is fundamentally three-storey in height. Basement car parking was proposed with access off Tweed Coast Road.

DA04/0517 – 75 Tweed Coast Road: Council approved this multi dwelling housing development comprising 1 x two (2) bedroom unit, 3 x three (3) bedroom units and a penthouse with three (3) bedrooms and a study, within a predominantly three-storey building in July 2005. It was the lodgement of this application that triggered Draft LEP Amendment No. 81 (which is discussed later in this report).

DA06/0413 – “The Point” 87-97 Tweed Coast Road: In May 2007 Council approved an aged care facility comprising 245 units (or 394 beds) in a combination of independent living units, hostel use units and residential care units. The proposed complex would involve the construction of seven (7) distinct three-storey buildings.

This application was subject to the same third party appeal of that of the subject application. However, a different outcome was achieved in this appeal (to that for DA07/0022). In June 2008 the Land & Environment Court Judgement declares the appeal is dismissed and the decision (issued by Tweed Shire Council) as "valid".

The Hastings Point Progress Association Incorporated has since lodged an appeal to this Land and Environment Court decision in the Supreme Court (Court of Appeal). Council has filed a submitting appearance only for this case and subsequently the applicant is responsible for any defence.

DA07/0411 – 18 Tweed Coast Road: In January 2008 Council approved a three storey multi dwelling residential development, comprising a total of 3 x three bedroom units and 1 x 4 bedroom unit, in two separate buildings, with on site parking for eleven vehicles.

DA07/0529 – 79-83 Tweed Coast Road: In March 2008 Council approved a development application for a three storey multi dwelling housing development, comprising of 20 units with basement car parking at 79-83 Tweed Coast Road, Hastings Point.

DA07/0965 – 9 Young Street: In September 2007 Council received a development application for a three storey multi dwelling housing development, comprising of 7 units

with basement car parking at 9 Young Street, Hastings Point. The applicant has since submitted amended plans demonstrating only a partial third storey which reduces the number of units to six. This determination of this application is still pending and will be reported to Council upon completion of the assessment.

DA08/0948 – 87-89 Tweed Coast Road (including Crown Land south of the site): In August 2008 Council received a DA seeking approval for a temporary secondary access to “The Point” (DA06/0413) to accommodate site entry for remaining residents.

This application has not been determined to date. Upon finalisation of the assessment the matter will be determined under Staff Delegation.

The above applications were all assessed on the basis of the 2(b) Medium Density zone and the statutory height limit as detailed within the LEP for 3 storeys.

Since the original determination of DA07/0022 the Council has engaged the services of Ruker & Associates Urban Design to assess the appropriateness of the height and density controls for Hastings Point (south of the bridge). This review produced a final report on recommendations for the Council. Some of those recommendations have been incorporated into a Draft DCP (Draft DCP Section A1). The Draft has been recommended to Council for adoption.

This action shows a new future desired character for those properties south of the bridge. Based on this revised future desired character (Coastal Village) and a reconsideration of the ecological constraints of the site, the proposed development is now considered unsuitable for the site and the application is therefore recommended for refusal.

PUBLIC NOTIFICATION:


The original advertising of the proposal attracted 30 submissions and a petition containing approximately 620 signatories, predominately regarding the building height controls of Hastings Point.

The re-exhibition of the DA (post the Court determination to void the previous approval) attracted 197 submissions.

The issues raised within the submissions and the nature of these submissions are discussed further within Section (d) of this report.

SITE DIAGRAM:

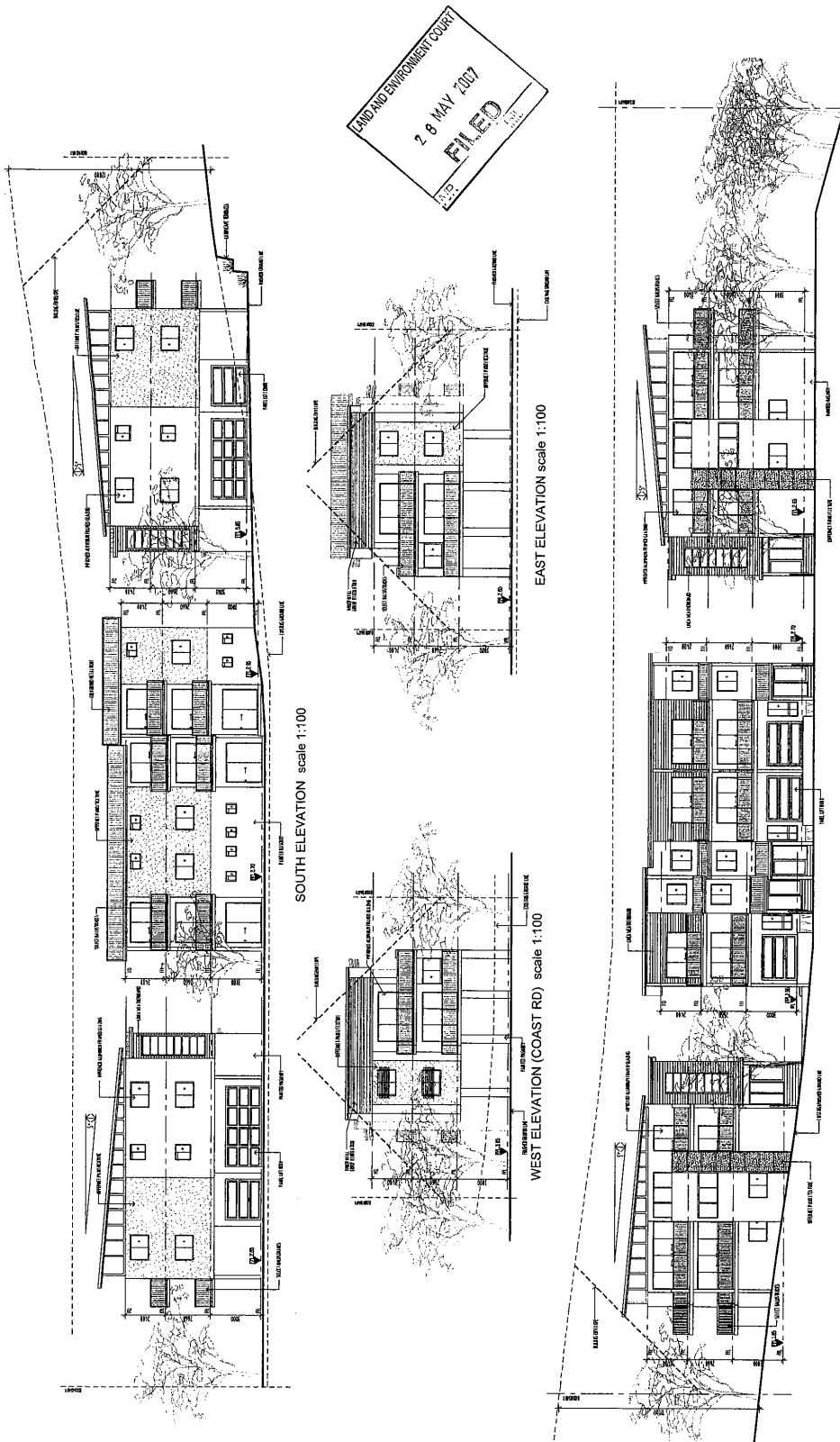


<p>© TWEED SHIRE COUNCIL 2007 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - 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 14141 No. 21 Tweed Coast Road, Hastings Point</p>		<p>PLANNING REFORMS UNIT Site Plan</p>
<p>File: N:\Munsys\A4P - SITE PLAN.Wor Author: J.Batchelor Date: 18/May/2007</p>		<p>Scale: 1:10,000</p>	<p>Sheet: 1 of 1</p>

2007 AERIAL PHOTOGRAPH HASTINGS POINT DEPICTING CURRENT DEVELOPMENT SITES:



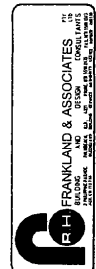
ELEVATIONS



TP03 C
06/58

PROPOSED HOME UNITS DEVELOPMENT
100 COAST ROAD, YOUNG ST, HASTINGS POINT
THE P/M DEVELOPMENTS
THE ELEVATIONS

DATE	BY	CHECKED BY	SCALE



RH FRANKLAND & ASSOCIATES
15
FRANKLAND AND ASSOCIATES
CONSULTANTS
200/210
200/210

NO.	DATE	DESCRIPTION
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CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**(a) (i) The provisions of any environmental planning instrument**Tweed Local Environmental Plan 2000

Clause 4 of the TLEP nominates the aims of the plan which are: -

- (a) *to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan which was adopted, after extensive community consultation, by the Council on 17 December 1996, the vision of which is:*
- “The management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced”, and*
- (b) *to provide a legal basis for the making of a development control plan that contains more detailed local planning policies and other provisions that provide guidance for future development and land management, such as provisions recommending the following:*
- (i) *that some or all development should be restricted to certain land within a zone,*
- (ii) *that specific development requirements should apply to certain land in a zone or to a certain type of development,*
- (iii) *that certain types or forms of development or activities should be encouraged by the provision of appropriate incentives, and*
- (c) *to give effect to and provide reference to the following strategies and policies adopted by the Council:*
- *Tweed Heads 2000+ Strategy*
 - *Pottsville Village Strategy, and*
- (d) *to encourage sustainable economic development of the area of Tweed compatible with the area’s environmental and residential amenity qualities.*

The Tweed Shire 2000+ Strategic Plan (published in 1997) in conjunction with Tweed 4/24 Strategic Plan 2004-2024 forms the strategic framework and visionary direction for the Tweed Shire.

They set overarching goals that will help manage the Tweed into the future.

In the 1997 Tweed Shire 2000 + Strategic Plan the following recommendation should be noted:

129. Heights of Buildings *Current provisions for heights of buildings be retained in the new LEP and DCP's with the exception of Kingscliff, Fingal, Hastings Point and Pottsville. Undertake an urban design review with public consultation to evaluate whether the heights of buildings provisions should be amended at Kingscliff. Initiate and evaluate a two storey limit at Pottsville, Hastings Point and Fingal urban zonings.*

This strategic plan informed the Tweed LEP 2000 and whilst a two storey height limit was adopted in part at Kingscliff, Fingal and Pottsville no such reduction in height occurred at Hastings Point.

Having regard to these strategic planning instruments and the Far North Coast Regional Strategy the proposed development should be refused. The proposed development does not have regard to the existing character of Hastings Point which contributes to the attraction of Tweed Shire itself. Furthermore, the development's 5m setback from Cudgera Creek is considered to compromise the site's ecological integrity.

Clause 5 of the TLEP requires consideration of the four principals of ecologically sustainable development.

Council's Specialist Planner/Ecologist has provided that the site's location is significant in an ecological sense. It is located in a sensitive coastal location as defined by SEPP 71, between SEPP 26 littoral rainforest and SEPP 14 wetlands and has its rear boundary with Cudgera Creek.

Consideration of the intent of all relevant legislation and policy relating to coastal estuarine foreshores has shown that the following outcomes are expected:

- protection and enhancement of the riparian zone;
- maintaining or improving water quality;
- consideration of visual amenity, coastal processes, the appropriateness of public access and of the dedication of riparian zones as public land.

To achieve such aims requires a buffer between any development and the estuary. Given the significance of the site, its location on an eroding bend of Cudgera Creek, the presence of a sewer main potentially limiting planting area; uncertainties with regard to climate change; and the lack of formal public access for this part of the creek a 20m buffer of densely planted local native vegetation is the minimum acceptable riparian buffer for the site to enable ecologically sustainable development and compliance with all relevant legislation.

The development as proposed provides a 5m setback to Cudgera Creek and can therefore not be considered ecologically sustainable development.

Clause 8 of the TLEP sets out the consent considerations when determining a development application.

8(1) The consent authority may grant consent to development (other than development specified in Item 3 of the Table to clause 11) only if:

- (a) it is satisfied that the development is consistent with the primary objective of the zone within which it is located, and
- (b) it has considered those other aims and objectives of this plan that are relevant to the development, and
- (c) it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.

To address Clause 8(1) (a) the primary objectives of the 2(b) zone states: -

Primary objective

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

The proposed development is permissible with development consent within the zone. The development does represent medium density development however it has a large extent of hard stand areas, provides minimal private open space and is of a height and form uncharacteristic to the area.

The proposed development is not considered to represent a good urban design outcome.

The secondary objectives of the 2(b) zone state:

Secondary objectives

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

In regards to the secondary objectives it is acknowledged that one of the largest problems facing the Tweed Shire is accommodating a growing population and hence why discouraging the under utilisation of land for residential purposes is important.

The subject site is located within the town and village boundary of Hastings Point as mapped within the Far North Coast Regional Strategy (FNCRS). The strategy states that "The Regional Strategy will reduce the proportion of

additional dwellings in the Coastal Area to 60% by limiting future development to within the mapped Town & Village Growth Boundaries.

The Strategy also places an emphasis on providing a balance:

“Economic growth must be balanced with conserving the natural environment and heritage assets and preserving the character of the villages and lifestyle for residents”

It is considered that the proposed development does not achieve this balance. A multi unit development on this site could be achieved with a 20m creek setback and either a two storey height limit or specifically designed sympathetic three storey development. Such development could be considered to achieve the aims of the plan, achieve compliance with the principals of ecologically sustainable development and achieve compliance with the zone objectives.

To address Clause 8(1)(b) this report considers those other aims and objectives of this plan that are relevant to the development.

To address Clause 8(1)(c) this report in its entirety represents a cumulative impact report. This planning report weighs up the development as a whole and makes a recommendation based on consideration of the implications on or from the perspective of flooding, bushfire constraints, ecology, water quality, bulk and scale, overshadowing, privacy, amenity, character, economic ramifications, social impacts and the general public interest.

Judge Pain provided that cumulative impact incorporates the consideration of what effect this development could have on existing developments and the approval of further similar developments and how these developments might impact on a locality, community and catchment.

The potential impacts as a result of the development need to be considered assuming a duplication of a similar development on other adjoining properties to consider the overall cumulative impact.

In recent times Council has approved five (5) developments within Hastings Point that have a three storey height limit. These applications were all approved at a time when three storey developments were the future desired character (based on a 3 storey height limit and a 2(b) Medium Density Zoning in the LEP).

Whilst this statutory framework has not changed in April 2008 an independent review by Ruker & Associate Urban Design was completed and subsequently reported to Council on 22 April 2008. The thrust of the consultant's report is that Hastings Point is a unique coastal settlement (best defined as a Coastal Village in accordance with the Coastal Design Guidelines) that although limited in it's growth potential is nonetheless open to significant impact upon its identity stemming from development that possesses little or no relationship to the site and locality. This is not to say that assessment revealed that 3

storey developments are not appropriate per se, but, that it is inappropriate in the context of the current controls. This clearly answers the question asked by Council in the negative, being that, the height and density controls under the Tweed LEP 2000 are not suitable for development in Hastings Point.

The report recommends that an interim development control be drafted and incorporated into the Tweed DCP section A1 to the effect that:

- The maximum height limit in Hastings Point south of the Cudgera Creek bridge is 2-storeys.

This report and recommendation advanced to the exhibition of a Draft DCP. The Draft has yet to be adopted by Council however, for the purposes of Clause 8(1)(c) the report states that developments not ensuring a high level of landscaping, informal low and open front fences, reduced building mass, tapered roofs, and use of lightweight material run the risk of incurring major impacts on the character of Hastings Point.

The report concludes that the current controls under the Tweed LEP 2000 will not provide the necessary level of certainty to ensure new buildings achieve a desirable built form outcome for Hastings Point.

Based on this new information (that was not available at the time of the original determination of DA07/0022) the proposed development is considered to have a potential negative cumulative impact on the Hastings Point Community if this type of development were to be duplicated.

Therefore it is concluded that the development would have an unacceptable cumulative impact on the community, locality and catchment.

Clause 15 of the TLEP requires Council to ensure adequacy of services prior to determining the application. All essential services are currently provided to the subject site.

Clause 16 of the TLEP requires Council to ensure that the height and scale of development is appropriate to the site and the surrounding built and natural environment. The subject land has a maximum height limitation of 3 stories with the proposal comprising of 3 stories.

However, the proposed development is not considered to be consistent with the future desired character of the area with regard to bulk and scale. This future desired character has been recently established as a result of the Ruker Urban Design Report, and Draft DCP Section A1, both of which have been subject to public exhibition and extensive consultation. In this instance these strategies are considered to better represent the future desired character than the existing 3 storey maximum height limit. Therefore, the proposal is not considered to comply with the objectives of Clause 16.

Clause 31 of the TLEP relates to development adjoining water bodies and applies to land that adjoins the mean high-water mark (or the bank where

there is no mean high-water mark) of a water body. Clause 31 states that consent must not be granted in respect of such land “within such distance as is determined by the consent authority of the mean-high water mark or top of bank” unless satisfied certain criteria can be met. These criteria include: that the development will not have a significant adverse effect on scenic quality, water quality, marine ecosystems, or the bio-diversity of the riverine or estuarine area or its function as a wildlife corridor or habitat; adequate arrangements for public access to and use of foreshore areas have been made where appropriate and desirable; the development is compatible with any coastal, estuary or river plan of management adopted by the Council under the *Local Government Act 1993* that applies to the land; and the development addresses the likely impact and amelioration measures of biting midge and mosquitoes on residents and tourists.

Clause 31 further states that the consent authority may require as a condition of consent to any development that the rehabilitation of land adjoining the waterbed to create a vegetated riparian zone or works to stabilise the bank or shoreline of a waterbed be carried out. The clause further states that, in determining a distance for the purposes of this clause the consent authority shall have regard to:

- (a) the preservation of the scenic quality of foreshores, and
- (b) minimising the risk of pollution of waterways, and
- (c) the protection of foreshore ecosystems, and
- (d) the intended or planned use for the foreshore.

It is clear that the intent of all relevant legislation and policy relating to coastal estuarine foreshores is for protection and enhancement of the riparian zone; maintaining or improving water quality; consideration of visual amenity; coastal processes; the appropriateness of public access and of the dedication of riparian zones as public land. To achieve such aims requires a buffer between any development and the estuary. The proposed 5m buffer is inadequate and hence forms part of reasons for refusal

Clause 34 of the TLEP requires Council to minimise future flood damage by ensuring that only appropriate compatible development occurs on flood liable land.

The original assessment of DA07/0022 stated that:

The proposal has been reviewed by Council’s Assessing Development Engineer and Infrastructure and Planning Officer, whom have confirmed that whilst the proposal is located on flood prone land, adequate design measures have been incorporated to ensure habitable floor levels are above the design floor level. Accordingly, the proposal is seen to meet the objectives of clause 34.

The application was referred back to the Planning & Infrastructure Engineer who has now provided that:

My flooding assessment has not changed, as the new Coastal Creeks Flood Study is not yet available. As such, the design flood level of 2.4m AHD still applies. Further decisions regarding potential increases in freeboard to habitable areas (which would be irrelevant here as all the habitable areas are on the first storey and only garages on ground floor), climate change issues etc. are yet to be considered. The new Flood Study will also set a PMF level for the site, but until then, an assumed PMF of design flood level +2.0m is assumed. The site would therefore conform to the emergency shelter in place requirements given its 3 storey configuration.

Clause 39A of the TLEP requires Council to minimise bushfire risk to built assets and people. The proposal was reviewed by the NSW Rural Fire Service, concluding that no objections were raised subject to the conditions of consent (which would need to be imposed should this application be approved).

North Coast Regional Environmental Plan 1988

Clause 15 - Development control—wetlands or fishery habitats

This clause states that Council shall not consent to an application to carry out development within, adjoining or upstream of a river or stream, coastal or inland wetland or fishery habitat area or within the drainage catchment of a river or stream, coastal or inland wetland or fishery habitat area unless it has considered a number of matters, including:

- the need to maintain or improve the quality or quantity of flows of water to the wetland or habitat;
- the need to conserve the existing amateur and commercial fisheries;
- any likely loss of habitat;
- whether an adequate public foreshore reserve is available and whether there is adequate public access to that reserve;
- whether the development would result in pollution of the wetland or estuary and any measures to eliminate pollution;
- whether the watercourse is an area of state protected land
- any measures to prevent soil erosion, and
- the need to ensure that native vegetation surrounding the wetland or fishery habitat area is conserved.

The site adjoins a coastal stream which is recognised as an important wetland and fishery habitat area.

Given the significance of the site, including its proximity to state significant wetlands and littoral rainforest, its location on an eroding bend of Cudgera Creek, the presence of a sewer main potentially limiting planting area, uncertainties with regard to climate change; and the lack of formal public access for this part of the creek it is Council's Specialist Planner/Ecologist opinion that 20m of densely planted local native vegetation is the minimum

acceptable riparian buffer for the site to enable ecologically sustainable development and compliance with all relevant legislation, including Clause 15 of the North Coast REP.

The development's potential impact on Cudgera Creek forms one of the reasons to refuse this application.

Clause 32B - Coastal Lands

This Clause states that Council must not consent to development on land to which the Coastal policy applies if it would impede public access to the foreshore or result in waterfront open space being overshadowed before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time). The proposed development includes plans to use the foreshore area for private open space and includes a non-compliance with the prescriptive overshadowing requirements within this Clause. The applicant has lodged a SEPP 1 Objection in this regard, which is discussed later in this report, concluding that the proposed overshadowing will not unreasonably impact on residential amenity or vegetation and is therefore satisfactory.

The proposal is considered to generally satisfy all other relevant provisions contained within the NCREP 1988.

State Environmental Planning Policies

State Environmental Planning Policy (SEPP) 1 – Development Standards

The application includes a SEPP 1 objection to the requirements of Clause 32B of the North Coast REP 1988. The applicant has provided the following detail in response to the prescriptive requirements;

The proposed development partially overshadows part of the foreshore reserve at 7 pm Mid Summer to the east of the site. This shadow extends past the road reserve and into the foreshore reserve for a distance of approximately 8 metres assuming a road reserve width of 20 metres. It is contended that the overshadowing created by the proposed development will not fall upon 'open space' as identified in Clause 32B of the NCREP 1988, and has no impact upon the beach or similar areas of useable open space. In this regard, shadows created by the proposal will fall upon vegetation within the reserve. It is noted that the NCREP 1988 does not define open space, however upon adoption of a practical stance, open space is more closely aligned to open recreational parkland and foreshore areas such as the beach as opposed to dense bushland and the like.

It is also noted that the development will partially overshadow the adjacent Cudgera Creek during the morning hours which is zoned 6(a) Public Open Space. As such and for reasons of abundant caution, this proposal is accompanied by a SEPP 1 variation as follows:-

Clause 32(b) of the NCREP 1988 states, inter alia:-

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

Whilst the proposed development is generally consistent with intent of this clause, it does result in the overshadowing of the reserve immediately across the road from the site during the evening, and part of Cudgera Creek during the morning hours. The section of reserve opposite the site to the east is heavily vegetated and is in part SEPP 26 Littoral Rainforest. In this regard, the attached overshadowing plans indicate that some overshadowing will occur at 7.00pm midsummer (EDST), whilst no overshadowing will occur during (midwinter).

The expected shadow cast will be in the order of approximately 90m² in area only and as such will not adversely impact upon the enjoyment or use of the beach or recreation areas. Significantly the overshadowing created by this development will never reach the beach which is located a further 100 metres to the east but will fall wholly within and upon the vegetation within foreshore reserve.

In terms of the morning overshadowing the development will in part shadow the creek as demonstrated in the Sun Shadow Plans. At 9 am midwinter this is estimated as having an area of approximately 80m² whilst in mid summer the overshadowing is reduced to approximately 36m². This will fall into the adjacent waterway during both mid summer

and midwinter as opposed to on land which is designated as public open space.

*State Environmental Planning Policy No.1 – Development Standards, provides a mechanism by which Council can consent to a variation to a development standard where it is considered **unreasonable** or **unjustified** to request strict adherence to the standard or where the granting of such a variance will not result in the compromising of the objects of the Act.*

The objective of the standard contained within Clause 32(b) is related to the protection of the recreational integrity of foreshore open space areas and the need to restrict adverse impacts upon same by the erection of buildings in close proximity.

It is contended that the proposal is consistent with the abovementioned objective and that the integrity of Clause 32(b) would not be impacted upon via the approval of the structure. In this regard, the following matters are considered relevant to assessing the merits of the proposed departure from the development standard:-

- The extent of overshadowing at the prescribed time (approx 90 sq.m - 7 pm midsummer, 80 sq.m 9 am midwinter and 36 sq.m – 9 am midsummer) is considered to be minor in scale, relative to the overall size of Cudgera Creek to the west of the site the Coastal Reserve to the east of the site;*
- That area subject to overshadowing during the morning periods is in part overshadowed pre-dominantly by Riparian Vegetation and additional plantings proposed adjacent to the creek will provide further shading of the creek*
- The overshadowing of the creek in no way impacts upon the useability or function of the waterway.*
- The overshadowing of the creek will not impact upon active recreational space such as parkland areas.*
- That area subject to overshadowing in the evening is heavily vegetated and the overshadowing will not extend into active recreational areas such as parkland or the beach.*
- The proposed overshadowing of both the creek and the reserve opposite the site in no way precludes the future use or reclassification of these parcels of land;*
- No overshadowing of the reserve to the east will occur before 3pm in midwinter (please see attached overshadowing plan);*

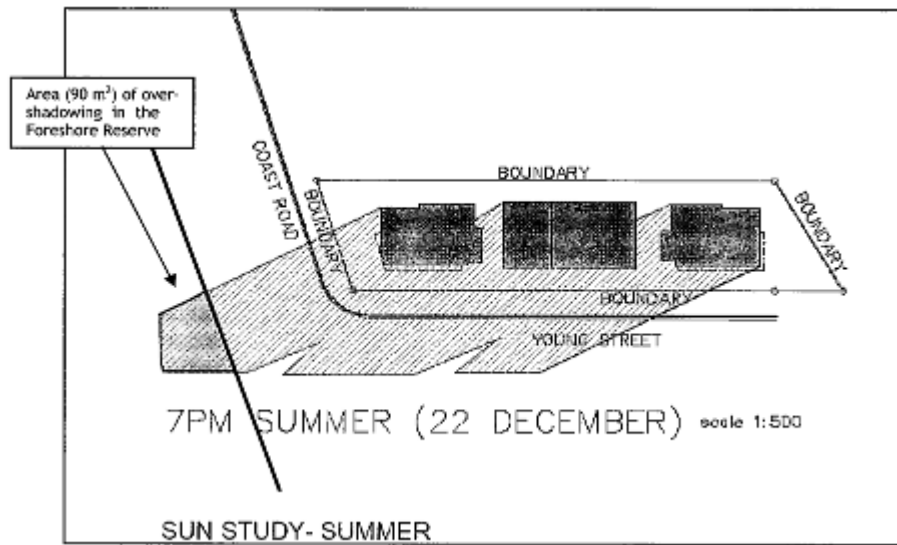
- *The proposal does not overshadow the beach to the east.*
- *The building has been designed and sited on the allotment to provide substantial setbacks to the rear boundary and Cudgera Creek to ameliorate visual impacts upon this waterway and to enable further rehabilitation of the river bank by way of additional plantings of native species.*
- *Given the time frames of overshadowing expected, the development will not overshadow waterfront open space and arguably no variation is necessary.*

In the light of the foregoing analysis it is concluded that compliance with the development standard is both unreasonable and unnecessary. Furthermore, as the proposed development demonstrates consistency with the intent and objective of the development standard, the granting of a variance in this instance would not prejudice the future integrity of that standard nor impact upon the amenity of the locality.

*It is also further noted that table 3 of the NSW Coastal Policy 1997 provides for comments under the heading of **'Design and Locational Principles for Consideration in LEPs, DCPs and Development Control'**. In this regard and with reference to the overshadowing standard within NCREP 1988, the policy states, Inter alia:*

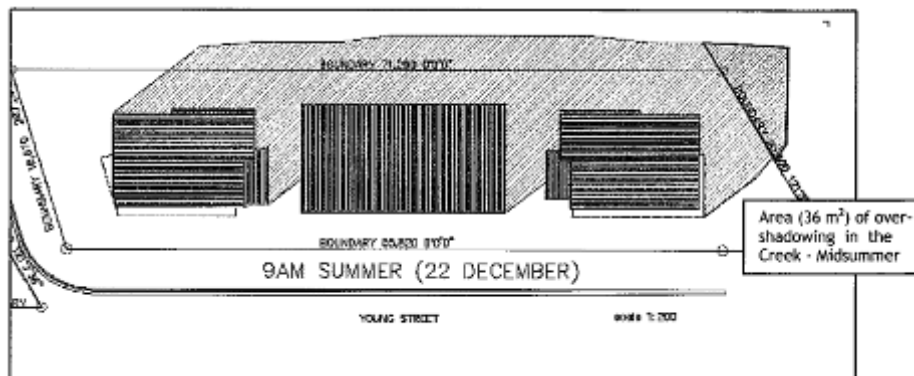
'The suggested standard in this principle may be difficult to apply in highly urbanised environments. An LEP or DCP which is tailored to local conditions and which has the overriding objective of minimising overshadowing may be required in these situations'

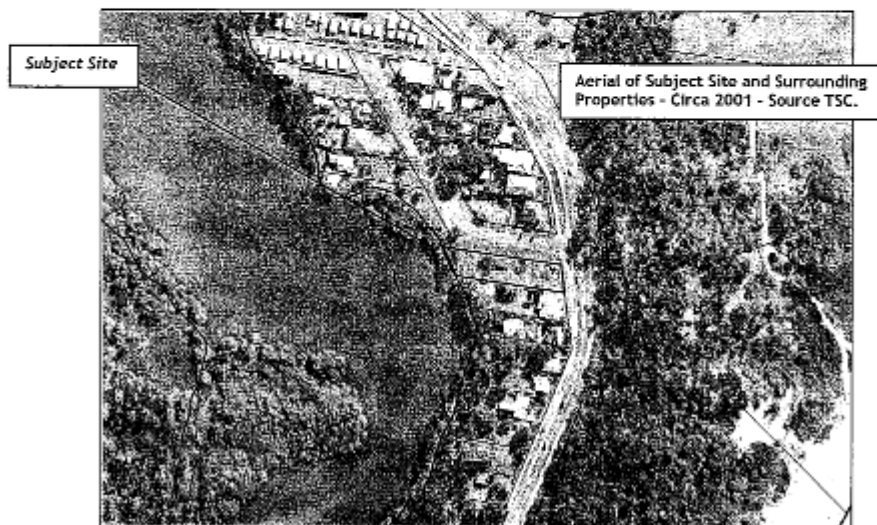
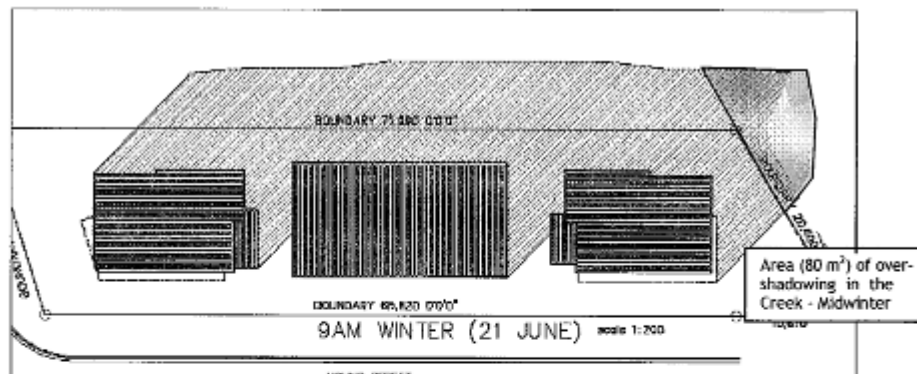
In this circumstance, the subject environment is indeed urbanised, with the proposal representing an infill development of an existing residential allotment. Further, the proposal is consistent with the current overriding objectives of the Tweed LEP in that medium density development consistent with Council's desired density is proposed.



Given the locational characteristics of the area, its evolution as an urbanised centre, the fact that the sun sets at 7.42 pm mid summer (source: Geoscience Australia) with the level of twilight far less than what is received in more southern climates, and the scale and nature of the reserve opposite, strict compliance with the standard in the evening period is considered both unjustifiable and unnecessary.

In terms of the morning overshadowing Council's attention is drawn to the aerial photo below whereby it is clearly obvious that this shadow will fall into the waterway itself which is in part overshadowed by adjacent vegetation.





Again the scale of overshadowing is minor and will in no way impact upon the Creek or its ability to be used for recreational purposes and strict compliance with the standard in the morning period is considered unnecessary and unwarranted, and a variation is justified in this instance.

Having regard to the objects of the Act (as listed under section 5), it is also submitted that the proposal will not compromise their attainment, with particular reference to the management and preservation of valuable community assets and the continued use and enjoyment of public foreshore areas and waterfront open space.

Council's support in assuming the concurrence of the Director in this instance is respectfully requested.

It is generally agreed that the impact of overshadowing will be limited to a reasonable amount based on the nature of the development, the context of the existing planning regime and the purpose of the Plan, which are satisfied by this proposal. In this instance the State Environmental Planning Policy No. 1 objection to Clause 32B of North Coast Regional Environmental Plan 1988 regarding the overshadowing of the adjoining reserve could be supported and the concurrence of the Director-General of the Department of Planning be assumed, should the Council wish to approve the application.

State Environmental Planning Policy (SEPP) 14 – Wetlands

SEPP14 protects mapped coastal wetland communities. The site is within 50m of a mapped SEPP 14 wetland. This land does not require assessment against SEPP 14.

State Environmental Planning Policy (SEPP) 26 – Littoral Rainforest

The subject land is located approximately 42m from land mapped as SEPP 26 Littoral Rainforest. This land does not require assessment against SEPP 26 or concurrence as the parcel is defined a 'Residential Land'.

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development

Clause 30 of SEPP No. 65 requires the consent authority to consider each of the ten (10) design quality principles when determining a development application for a residential flat building. The SEPP is not considered to apply to the development. Notwithstanding, the original assessment undertook an assessment against the relevant criteria and concluded that the development exhibits suitable regard for the SEPP 65 principles and demonstrates good practice in urban design.

The revised assessment is contrary to the original assessment and this is best evidenced in the Tweed DCP Section A1 Assessment that concludes that the subject site has departures with regards to the dominance of car parking and non compliant front and rear setbacks warranting refusal of the application.

State Environmental Planning Policy (SEPP) 71 – Coastal Protection

Clause 8 of the SEPP details *Matters for Consideration* which include provisions that require Council's to consider various matters when considering development within the coastal zone. The SEPP defines land within 100m of the ocean or coastal estuaries, SEPP 14 wetlands and SEPP 26 littoral rainforest to be a *sensitive coastal location*. The subject site fits this description and is within 300m of the ocean. The matters for consideration include (but are not limited to):

- retaining, improving and creating new opportunities for public access to coastal foreshore (includes estuary foreshores);
- avoiding detrimental impact on amenity of coastal foreshores, including overshadowing or loss of views;
- measures to conserve animals, plants, fish and their habitats and any wildlife corridors;
- consideration of coastal processes and coastal hazards; reducing conflict between land-based and water-based activities; water quality the cumulative impact on the environment; and
- The cumulative impacts of the proposed development on the environment



The proposed development is not considered to have suitable regard to Clause 8 of the SEPP by failing to provide sufficient site landscaping or a suitable setback to Cudgera Creek.

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

Draft LEP 2000 Amendment No. 81

In July 2005 Council resolved to amend the Tweed LEP 2000 by reducing the maximum height of buildings south of Cudgera Creek at Hastings Point from three storeys to two storeys.

On 6 March 2006 Council wrote to the Director General of the Department of Planning requesting delegated authority to issue a s65 certificate which would permit Council to put Draft LEP 2000 Amendment 81 on exhibition.

On 30 March 2006 The Director General informed Council that he is withholding the issuing of delegated authority for the s65 certificate in relation to Draft LEP 2000 Amendment 81 until Council provides a review of building heights along the Tweed Coast to give a 'strategic context' for heights at Hastings Point.

Draft LEP 2000 Amendment Number 81 was abandoned by Council on 19/12/2006 based on the following reasoning:

"Discussion with Council's Planning Reform Unit has indicated that a review of all building height controls throughout the Shire are proposed to be undertaken within 'Phase 2' of the upcoming Tweed LEP 2007 (target date for exhibition March 2008).

In light of the DoP's advices, a review of the building height controls for Hastings Point alone is not considered possible. Further, it is considered largely unnecessary to further pursue this specific amendment to individual sites and review the entire Tweed Coastline when a Shirewide review is planned within the immediate future. Accordingly, it is recommended that Council resolve to abandon pursuance of LEP Amendment No 81 – Heights of Buildings, Hastings Point."

On 20 March 2007 the Director General reconsidered his previous advice dated 30 March 2006 and provided Council with written authorisation to exercise delegation which conferred the right onto the Council to issue a s65 certificate and publically exhibit the Draft Amendment.

In addition to the above letter from the Department of Planning dated 20 March 2007 on the same date the Office of the Honourable Frank Sartor MP (Minister for Planning) wrote to Mr Neville Newell MP and stated as follows:

"I am pleased to advise you that following your numerous and strong representations the Department of Planning has agreed that the Tweed LEP Amendment Number 81 - Hastings Point can now be placed on

public exhibition. I have attached a copy of a letter of today's date from the Director General of the Department of Planning to the General Manager Tweed Shire Council confirming this advice.

The Minister has asked me to relay his thanks for bringing the concerns of your local community to his attention."

Despite the DoP letter dated 20 March 2007 and the Frank Sartor letter, Council did not proceed with Draft LEP 2000 Amendment No. 81 given that the Amendment was formally abandoned in December 2006.

Draft LEP Amendment No. 81 is not considered imminent and can therefore not be given any determining weight.

Non Statutory Draft DCP
Review of Height, FSR and Setback Controls - Hastings Point

Prepared for Tweed Shire Council by Ruker & Associate Urban Design

As a result of the public opposition to DA07/0022 (predominately) regarding the building height controls of Hastings Point, Council at the Council Meeting of 21 August 2007 resolved the following:

3. *Council engages Ruker & Associates Urban Design to assess the height and density provisions in the current Local Environmental Plan for Hastings Point to provide a report to inform the consultants GHD who are undertaking the overall review of the urban land release strategy for the new Tweed Local Environmental Plan.*
4. *Council defers the assessment and determination of development applications for Hastings Point which have already been submitted but not determined or are submitted for determination after this date until the report from Ruker & Associates Urban Design is finalised for Council's consideration.*

Clarification from Council's (then) Director of Planning and Regulation confirmed that this resolution was only intended to be applied to lands south of the Hastings Point Bridge.

In April 2008 the independent review by Ruker & Associate Urban Design was completed and subsequently reported to Council on 22 April 2008. The following is an extract from that Report:

Council resolved at its meeting of 21 August 2007 to further engage the services of the consultant preparing the draft DCP referred to above, with a view to determining if the 3-storey height and density controls under the Tweed LEP 2000 are appropriate for development in Hastings Point.

The residents of Hastings Point, including the residents association, were invited to attend a workshop on Sunday 2 December 2007 at the

Pottsville Environmental Centre, attended by the project consultant and Council's Planning Reform Planners. A follow up meeting was held on Sunday 16 March 2008 at the same venue and principally with the same attendees.

The first workshop was aimed at walking through the many issues that had been raised over the proceeding year or so, by discussing the characteristics of the area, and the expectations of both the community as residents and the community as developers. It provided sufficient detail for the consultant to prepare some relevant material for the second workshop relating to the identification of key characteristics / features, the potential impacts of certain building types and recognition of the type of buildings that would best suite Hastings Point under the current and possible future planning controls.

The thrust of the consultant's report is that Hastings Point is a unique coastal settlement that although limited in its growth potential is nonetheless open to significant impact upon its identity stemming from development that possesses little or no relationship to the site and locality. This is not to say that assessment revealed that 3 storey development is not appropriate per se, but, that it is inappropriate in the context of the current controls. This clearly answers the question asked by Council in the negative, that, the height and density controls under the Tweed LEP 2000 are not suitable for development in Hastings Point.

The concluding recommendations in the Consultant's report are:

Concluding Recommendations

This report finds that the current controls under the Tweed LEP 2000 will not provide the necessary level of certainty to ensure new buildings achieve a desirable built form outcome for Hastings Point.

After consideration of the built and natural attributes of Hastings Point it is apparent that the control in Tweed LEP 2000; building height, alone is not enough to ensure that developments result in buildings that suit the present and future character of Hastings Point.

Primarily this results from the issue that larger scale and denser building forms have greater impacts to the natural and urban environments and as such require a higher degree of design control specific to the context of the place and to achieving high quality buildings.

In particular multi-dwelling developments and three storey developments will have a significant impact on the character of Hastings Point as a small coastal village. The existing position can be rectified by:

- Council developing a structure plan (locality plan) for the whole of Hastings Point.
- Council developing as part of the structure plan detailed site and building design guidelines on a street by street basis (block by block) and building types that suit Hastings Point to supplement and add to the Draft RTDC. This would look at all building types, of both two and three storeys.

In the case where the two recommendations above are not undertaken or in the interim during the development of the Hastings Point plans a two storey limit should be enforced.

As an outcome of this report the structure plan should include (but not be limited to):

- *Clearly defining the boundary and footprint of the settlement in line with the Tweed Local Environmental Plan and the Far North Coast Regional Strategy.*
- *Exploration of, testing and detailing the capacity of the settlement within the context of it reaching the size of a small coastal village.*
- *Exploration of, testing and detailing the environmental constraints of the settlements waterways and estuary in relation to the effects of multi-dwelling developments including both design and construction.*

In light of the above findings, this report recommends that an interim development control be drafted and incorporated into the Tweed DCP section A1 to the effect that:

- *The maximum height limit in Hastings Point south of the Cudgera Creek bridge is 2-storeys.*

It is also recommended that any interim controls be reviewed within 12 month of their adoption.

It is should be noted that any locality plan would need to apply to Hastings Point as a whole and not restricted to south of the Cudgera Creek bridge. The timeframe for the preparation of the locality plan will need to be considered as part of the 08/09 work programme and budget allocation for the Planning Reform Unit.

It is therefore, recommended that Council resolves to amend Section A1 of the Tweed Development Control Plan to include interim development controls in relation to the height limit in Hastings Point applicable to all land south of the Cudgera Creek Bridge, restricting height to two (2)

storeys only, with any such provision being reviewed within 12 months from the date of adoption.

It was resolved that:

1. Council amend Section A1 of the Tweed Development Control Plan to include interim development controls in relation to the height and density limit in Hastings Point applicable to all land south of the Cudgera Creek Bridge, restricting height to two (2) storeys only with such provision being reviewed no later than 12 months from the date of adoption.
2. The draft amendment be publicly exhibited in accordance with s74E of the *Environmental Planning Assessment Act 1979*.

In accordance with the above recommendation Draft DCP Section A1 was prepared and placed on public exhibition from Wednesday 7 May 2008 to Friday 6 June 2008.

It included the following two controls for those properties south of the bridge:

- The maximum building height is 2 storeys and 8 metres;
- The maximum density on any lot or any combination of lots is one dwelling per 250m² of the site area.

The proposed development represents 3 storeys to a maximum height of 9.4m, therefore not complying with the Draft DCP with regards to height.

The proposed development represents 1 dwelling per 188m², therefore not complying with the Draft DCP with regards to density. Based on the Draft DCP the site could accommodate a maximum of five dwellings.

On 30 October 2008 a Council report recommended that these controls be adopted. This report was deferred to allow for a workshop on 11 November 2008 and is the subject of a further report to Council in Item P1 of this Business Paper. Notwithstanding the decision to defer determination of Draft DCP Section A1 the subject Development Application is now ready for determination.

Draft DCP's have no statutory weight, however, the background work detailed within the *Ruker & Associate Urban Design Report on Hastings Point*, can be used to assist the assessment of this application.

Based on a revised assessment of the subject DA, the proposed three storey development would be considered to have an impact on the existing character of Hastings Point and therefore the subject application is now recommended for refusal.

Please note the moratorium as adopted on 21 August 2007 deferred the assessment and determination of DA's only until the report from Ruker & Associates was finalised for Council's consideration and is therefore no longer

applicable. Notwithstanding Council is obligated to determine Development Applications in accordance with the Environmental Planning & Assessment Act and subsequently the moratorium is not considered to have a legal basis.

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

Tweed Development Control Plan

Section A1 – Residential and Tourist Development Code

(Adopted 22 April 2008)

When DCP Section A1 was adopted Council resolved that:

3. *That an application for development lodged, but not yet determined, prior to the adoption of the draft Development Control Plan be saved from strict compliance with that Plan.*

The proposed development is considered to best fit within category Part B of the DCP for Town House Development (or a hybrid version of townhouse and residential flat buildings). The new DCP introduces detailed parameters for improved site outcomes. These include the requirement for deep soil zones (front and rear), 60% impermeable site area, private open space, landscaping, car parking, setbacks and general street presence.

A detailed assessment is available on Council's files, however, the proposed development does not meet all of these requirements. Minor non compliances could be saved from strict compliance, however, the departures with regards to the dominance of car parking, front setbacks, rear setbacks, and contribution to the streetscape are considered to warrant refusal of the application.

It should further be noted that the application has not been accompanied by a detailed variation report or complying plans as required by the DCP. The DCP specifies a variation or relaxation will only be considered where it has been demonstrated (through architectural and/or landscape drawings) how and why the mandatory controls cannot work on the particular site. This would require a solution to be designed using the mandatory controls. This has not been provided for this application.

Section A2 – Access & Car parking

The following table details the current controls for on site parking requirements:

Requirement	Proposal	Complies
<p>1 per each 1 bedroom unit, 1.5 per 2 bedroom unit, and 2 spaces for 3 or more bedroom units.</p> <p>Plus 1 space per 4 units for visitor parking.</p> <p>Units 1, 2, 6 and 7 are clearly three bedrooms units.</p> <p>Units 3, 4 and 5 are two bedrooms with a rumpus capable of conversion to a bedroom and are therefore assessed as 3 bedroom units.</p> <p>Therefore 14 spaces plus 1.75 spaces for visitors is required.</p> <p>Total 16 onsite parking spaces required.</p>	<p>The proposal includes 9 garage spaces and 2 visitor/car wash bays, with a further 3 tandem spaces in the driveways abutting Young Street</p> <p>Total onsite parking equates to 14 spaces (However tandem spaces are not permissible under the DCP)</p> <p>The proposed development is at least 2 car parking spaces short of the requirements.</p>	<p>Does not comply - The car parking controls have changed since lodgement of the DA in January 2007. The new provisions as detailed result in the subject application presenting at least two car parking spaces short of the requirements.</p> <p>This non compliance forms part of the reasons for refusal</p>

Section A3 – Development of Flood Liable Land

The proposal requires a small amount of fill at the rear of the site to raise the level of the land to the design flood level of 2.4m AHD. All finished floor levels are located at or above the required floor level for residential development (2.7m AHD) and the provisions of Section A3 are satisfied.

Section B18 – Tweed Coast Building Heights

DCP Section A1 repealed this previous section of the DCP.

Coastal Design Guidelines for NSW

Council should also have regard for the North Coast Design Guidelines. The Ruker & Associates Urban Design Report utilised this instrument to assist in her determination of a local hierarchy of settlements. The report concludes that Hastings Point is best defined as a “Coastal Village”. Part 1 of the Guidelines discusses desired future character, relationship to the environment, visual sensitivity, edges and water and natural areas, streets, buildings and height. In regard to height the Guidelines state that:

- a. The village centre and the main street have a maximum of up to three storeys;
- b. Some elements of important public buildings within the centre may be marginally higher than surrounding buildings;
- c. Residential buildings surrounding the centre have a maximum of two storeys;

- d. Heights are subject to place specific urban design studies. New development is appropriate to the predominant form and scale of surrounding development (either present or future), surrounding landforms and the visual settings of the settlement.

Part 2 of the Guidelines then enter into Design Principals for Coastal Settlements. These Guidelines are being used to form the policy framework for locality plans. In the interim they can be used to guide the assessment of development applications but they must be considered in the context of the existing development control plans (specifically Tweed DCP Section A1 – Residential & Tourist Development Code).

Having regard to the Coastal Design Guidelines for NSW in conjunction with the Tweed DCP Section A1 - the proposed development has not responded to the constraints of the site and does not represent a sympathetic development having regard to the existing or future desired character of the area.

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

NSW Coastal Policy

The 1997 Coastal Policy includes coastal waters and lands one kilometre landward of the open coast high water mark, and land within one kilometre of coastal rivers, lakes, lagoons, estuaries and islands. The subject site is within one kilometre of the ocean and adjoins a coastal estuary. The policy requires that: water quality will be maintained or improved; fisheries habitats protected and restored where possible; and coastal lands and aquatic environments with conservation values will be assessed and appropriate measures put in place to protect them.

An increased setback from Cudgera Creek would be considered necessary to comply with these controls.

Demolition

The proposal originally required the demolition of an existing shed. The demolition has already occurred in accordance with CC 07/0977.

(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 & Setting / Building Height Restrictions

The present building height restriction (3 storeys) has been in place for a considerable period of time.

Despite this the general public appears to want the maintenance of the established context and setting of the Hastings Point. In this regard, Council has been in receipt of a significant number of public submissions, particularly

identifying the desire for a 2 storey height restriction throughout Hastings Point.

It appears that the issue is one of maintaining the quiet, peaceful and natural amenity presently maintained by the low density urban development pattern and natural environment.

A reduction in building height alone will not necessarily achieve this position. There are single dwelling houses in other areas of the coast, where the design of such houses would substantially alter the existing street character in Hastings Point.

Notwithstanding the proposed development is not considered to be sympathetic to the existing developments and could be better designed to increase the setbacks to Cudgera Creek, increase landscaping, reduce hard stand areas and present better to the street with parking areas located behind the front facades.

The proposed development is therefore not considered to fit within the future desired character of Hastings Point.

(c) Suitability of the site for the development

Gravity Sewer Line

The subject site was constrained by a sewer line traversing the site approx 10m from the edge of the creek. This would have been located under Building No. 3 and accordingly the original consent including an approval for the applicant to relocate the sewer line.

Council's Water & Sewer Engineer has reviewed the relocated sewer line and provided the following comments:

"I refer to your advice yesterday that a consequence of the over-turning of the development approval in the Land and Environment Court is that other approvals including Section 68 approvals for works associated with the development are also overturned. Consequently the approval issued by Council for the relocation of the 300 dia. gravity sewer in the property is now void and the issue of whether the completed works should be reversed and the sewer in the original location should be reinstated is raised.

The situation is that the sewer relocation works approved on 25 September, 2007 have been completed although a number of conditions prior to issue of a certificate of practical completion have not yet been fulfilled. The works were inspected during construction and are considered satisfactory subject to a pressure test of the line. It has however been in service satisfactorily for a considerable period of time.

Items not yet fulfilled refer to the final commissioning (waiting on the test result), works as executed drawings, video and the dedication of the easement.

It is considered that there would be no benefit in requiring the removal of the relocated pipes and reinstatement of the original or pipes on the original alignment. The manhole adjacent to the creek is not considered likely to be a significant hazard and it appears to have been constructed at a level that means the overflow location has most likely been retained at Manhole AK/1 opposite the pump station rather than being transferred to the new manhole, although the works as executed levels needed to confirm this have not been received.

Hence, subject to the provision of the works as executed information and testing, the new line provided is considered satisfactory and does not need to be relocated."

The above engineering advice results in recommendation C to ensure the above outstanding matters are rectified as part of the recommended site remediation works.

Ecological Constraints & Buffers

The following comments (extracts) have been provided by Council's Specialist Planner/Ecologist

"I have read the additional information submitted with this application, undertaken a site visit and perused the file including the previous consent and court case documentation. The main issues of ecological interest are the property's riparian zone and its treatment and functions, and protection of SEPP 14 wetland areas within and across Cudgera Creek and SEPP 26 Littoral Rainforest across Tweed Coast Road.

Summary

The site location is significant in an ecological sense. It is located in a sensitive coastal location as defined by SEPP 71, between SEPP 26 littoral rainforest and SEPP 14 wetlands and has its rear boundary with Cudgera Creek. Cudgera Creek is the only of the three Tweed coastal estuaries to have a natural entrance, thus can be more sensitive to adverse impacts.

Consideration of the intent of all relevant legislation and policy relating to coastal estuarine foreshores has shown that the following outcomes are expected:

- *protection and enhancement of the riparian zone;*
- *maintaining or improving water quality;*

- *consideration of visual amenity, coastal processes, the appropriateness of public access and of the dedication of riparian zones as public land.*

To achieve such aims requires a buffer between any development and the estuary. Buffers to waterways are not specifically required by Tweed LEP, but it is only within DCP Section A5 and the Tweed Coast Estuaries Management Plan that a specific width from the creek bank is discussed, which, with regard to the subject site on Cudgera Creek, is consistently 50m.

Such an imposition on the subject site would mean about two-thirds of the site would be unavailable for development. Given the relatively short frontage (20m) and the previous assessment allowing just 5m, this could be seen as unreasonable. However, it is my opinion that 5m is insufficient to achieve any of the legislative aims, particularly when private recreational use and a sewer main are combined within this narrow zone. Thus it would seem that somewhere between these two extremes is a reasonable approach that may be guided by the particular situation and by available data for the site.

In practice, similar situations have resulted in agreement that the area from the creek bank to 20m inside the property boundary be densely re-vegetated, with asset protection zones and recreational or storm water infrastructure located outside of this zone within a more open vegetated area.

Given:

- *the significance of the site, including its proximity to state significant wetlands and littoral rainforest (as discussed elsewhere);*
- *its location on an eroding bend of Cudgera Creek;*
- *the presence of a sewer main potentially limiting planting area;*
- *uncertainties with regard to climate change; and*
- *lack of formal public access for this part of the creek (possible future access along foreshore would be precluded with the current proposal);*

It is my opinion that 20m of densely planted local native vegetation is the minimum acceptable riparian buffer for the site to enable ecologically sustainable development and compliance with all relevant legislation.

Landscaping

The Statement of Landscape Intent submitted with the previous construction certificate application is not appropriate as it includes species known to be environmental weeds (in a location surrounded by

significant natural areas), offers little riparian revegetation and appears to encroach on Crown land outside property boundary.

Recommendation:

- *That the application be refused in its current form; or*
- *That the applicants be requested to redesign their proposal to facilitate a minimum 20m re-vegetated riparian zone."*

The above ecological assessment forms one of the reasons for the subject application to be recommended for refusal.

Other Permits Required

The Water Management Act 2000 requires a Controlled Activity Approval for works within 40m of the bed of a designated stream (Cudgera Creek is included, thus such approval is required for the proposed development). The general terms of such approval are usually sought as integrated development at the time of DA assessment. As the applicant did not nominate such integrated development, the onus was on the applicant to obtain such approval prior to works commencing. This is not an ideal approach however; as it can mean that an approved development cannot proceed if in conflict with the Water Management Act objectives. Should Council approve this application, a condition of consent would be required to ensure the applicant obtains a Controlled Activity Approval.

The Fisheries Management Act requires a permit for *dredging and reclamation* activities within water land (land inundated permanently or intermittently by water) and for removal of marine vegetation (e.g. mangroves, salt marsh and riparian vegetation). Revetment works on the creek bank require a Fisheries permit, thus this Act is triggered by the proposal. Again the applicant did not nominate this form of integrated development, General Terms of Approval were not received and thus the permit was required to be separately sought. Should Council approve this application, as condition of consent would be required to ensure the applicant obtains a Fisheries Permit.

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

The original assessment of DA07/0022 made the following summary of the submissions received during exhibition:

The advertising of the proposal attracted 30 submissions and a petition containing approximately 620 signatories, predominately regarding the building height controls of Hastings Point. This matter has been discussed extensively earlier in this report, concluding that the current proposal must be assessed in accordance with the current controls, which allow for a three storey building height.

In addition, a number of objections have been received detailing concern that the proposal was not in keeping with the character of Hastings Point,

applicable planning controls and the Tweed Local Environmental Plan 2000. These items have been discussed extensively within this report. The amended proposal complies with Council's current controls as well as providing an appropriate design response which is considered to positively contribute to the locality whilst meeting Council's desired planning outcomes, as established within applicable sections of the DCP and the Tweed LEP 2000.

Concerns have also been raised in relation to loss of views, seabreezes and overshadowing, as well as increased traffic and overshadowing. The following comments are offered in these areas:

Loss of Views and Seabreezes, Overshadowing - The subject site and a number of adjoining properties currently enjoy vistas towards the ocean/creek to the north. Property to the south would bear the most impact, however it should be noted that the primary view corridors of these premises are unrestricted to the east and west. It is the secondary view corridor to the north which would be impeded, but, as with many older underdeveloped urban areas it is a benefit that cannot be maintained in most instances of redevelopment.

The proposed development is not unreasonable by design and context and based on the orientation of the site and that of the adjoining land does not represent an unreasonable impact on the adjoining land. The NSW Land and Environment Court has considered the issue of view loss at great length. The Tenacity Consulting Pty Limited v Warringah Council [2004] Court decision, established a test to be applied. The proposed development has been considered against the principles outlined in this case with the conclusion that the proposal is justified and reasonable.

Additional Traffic - The additional traffic generated by the proposal has been assessed as satisfactory, as has the amended vehicular access, which details access from Young Street as opposed to Tweed Coast Road. Refusal of the application on this basis is not considered warranted.

This conclusion is not concurred with. The information available to date demonstrates that the proposed development does not represent the future desired character of Hastings Point.

After the determination of Judge Pain it was considered necessary to re-advertise DA07/0022 to allow the public time to review the applicant's additional information in relation to:

- Clause 4 of Tweed LEP 2000;
- Clause 5 of Tweed LEP 2000;
- Clause 8 of Tweed LEP 2000;
- Draft LEP 2000 Amendment No. 81;

- Tweed Shire 2000+ Strategic Plan/Tweed Futures Strategic Plan 2004/2024; and
- Coastal Design Guidelines for NSW;

The re-exhibition occurred between 15 October and 29 October 2008. In addition to the original 30 submissions and the petition of 620 signatures Council has received 197 submissions as a result of the re-exhibition.

These come in many different formats including form letters (x 70), the urban design community consultation feedback forms (x 57), individual submissions (x 10) and general letters requesting a two storey height limit (x 60).

<p><u>Issues</u></p>
<p>Form Letter 1:</p> <p>No 3 storeys, No RFB, lower site cover, more landscaping, Ruker full interim controls for Nth & Sth/2st/2dw per development, stop pollution of estuary, no underground car parks, a full locality plan for all Hastings Point.</p>
<p>Form Letter 2:</p> <p>A locality plan for ALL Hastings Point to address development size, scale, the environment, flooding and sewerage issues; Council expert's full interim controls for Nth & Sth - 2 st/2dw per development; No Residential Flat Buildings; Lower site cover; More Landscaping; Stop pollution of estuary; No underground car parks, No 3 storey.</p>
<p>General Letters (no identifying date) mostly form letters:</p> <p>2 storey height limit, No RFB's, lower site coverage & increased landscaping, full protection controls, immediate action to protect estuaries, no underground car parks, locality plan for Hastings Point.</p>
<p>Individual Submissions:</p> <ul style="list-style-type: none"> • Building style does not fit in existing local character, mass & bulk of structure burdens the site, structure will be an environmental detriment to already stressed Cudgera Creek, lack of consideration for cumulative impact obvious in this submission. • More like a 3 storey RFB that takes up entire site & sits right on Cudgera Creek, will still set a precedent of size and scale of development in the area that is inappropriate & will destroy character of the areas. Area must have ecologically sustainable development. Minimal permeable cover & landscaping to allow stormwater to filtrate before entering estuary. Highly visible on Hastings Points' only corner & main viewing point to Cudgera Creek. Movement of sewerage pipes close to the estuary is inappropriate. Development is contrary to planning recommendations of 2 storeys for this area. Contrary to Coastal Design Guidelines & Far North Coast Regional Strategy. • Cumulative impact unacceptable. Inappropriate in hamlet of Hastings

Issues

Point, will set a precedent of size & scale of development, which will lead to the destruction of its character & environment. Contrary to planning departments' recommendations of 2 storeys. Contrary to Coastal Design Guidelines & Far North Coast Regional Strategy. Large 3 storey building type does not reflect desired future character of the area. Blocks out significant viewing.

- Does not comply with current State & TSC planning policies, regulations & guidelines, does not represent the desired future character of Hastings Point, contributes to cumulative environmental impact. Scale of development excessive. Does not satisfy limit on FRS. Does not satisfy requirement for "green" landscaping. Casts long winter shadows over neighbouring property.

The assessment as detailed above has had regard for all of these submissions. Furthermore, it is acknowledged that additional letters have been received to the Draft DCP Section A1 seeking adoption of those Draft controls.

The reasons for objection form part of the recommendation for refusal of this application.

(e) Public interest

Hastings Point has been the subject of great public interest.

There are certainly two opposing views on the matter.

The first is the developers interest in maintaining their right to develop property in accordance with the statutory three storey height limit applicable under the Tweed LEP 2000.

The second comprises some residents and owners view of wanting to maintain the village character of Hastings Point. This has been attempted through specialised controls in the Development Control Plan Section A1 (a two story height limit and a density of no more than 1 dwelling per 250m² of site area).

Despite these two opposing viewpoints each Development Application needs to be assessed on its individual merits.

On review of this application it is recommended that this DA be refused as the development has failed to respond to the sites constraints and failed to respond to the developments future desired character.

OPTIONS:

Option 1 (as recommended by the officers)

That:

- A. Development Application DA07/0022 for multi dwelling housing comprising 6 units at Lot 9 DP 14141, No. 21 Tweed Coast Road Hastings Point be refused for the following reasons: -
1. The application is not considered to be consistent with Section 79C 1(a) of the Environmental Planning & Assessment Act 1979 as it does not satisfy the following applicable planning instruments:
 - (a) The Tweed LEP 2000 including Clause 4 Aims of the Plan, Clause 5 Ecologically Sustainable Development, Clause 8 Consent Considerations, Clause 11 The Zones, Clause 16 Height, and Clause 31 Development Adjoining A Water Way;
 - (b) The North Coast Regional Environmental Plan including Clause 15 Development Control Wetlands or Fisheries and Clause 32B Development Control – Coastal Lands;
 - (c) Clause 8 of State Environmental Planning Policy No. 71 – Coastal Protection.
 - (d) Tweed Development Control Plan Section A1 Residential & Tourist Development Code, & Section A2 Site Access & Parking Code.
 2. The application is not considered to be consistent with Section 79C 1(b) of the Environmental Planning & Assessment Act 1979 as it would have a negative impact on both the natural and built environment.
 3. The application is not considered to be consistent with Section 79C 1(c) of the Environmental Planning & Assessment Act 1979 as the proposed development has not responded to the sites constraints, the sites ecological significance or the future desired character of Hastings Point.
 4. The application is not considered to be consistent with Section 79C 1(e) of the Environmental Planning & Assessment Act 1979 as the proposed development is not considered in the public interest.
- B. Council engages legal representation to achieve site remediation (which would include the removal of any building footings and re-vegetation of the site to its original state. Such remediation will not include relocation of the sewer line but will include the applicant submitting works as executed drawings, video footage of the line (testing), and dedication of the easement for the sewer line.

Option 2

- C. That Council defers this item and seeks a further report to Council's meeting of 9 December 2008 providing recommended conditions of consent as the basis of a Council approval of DA07/0022.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should this matter proceed to an Appeal substantial costs may be incurred in defending Council's determination.

POLICY IMPLICATIONS:

This revised assessment of DA07/0022 reinvestigates the appropriateness of the proposed development. The re-assessment specifically has regard for the future desired character of the area, and the ecological constraints of the site. These are both elements that were focussed on in the *Ruker & Associate Urban Design Report on Hastings Point*. Whilst this report has not been adopted in its entirety the document has been through public exhibition and consultation and can be used to assist the assessment of this application.

The determination of this DA could potentially have an impact on guiding the future desired character of Hastings Point in lieu of adoption of controls for the area.

CONCLUSION:

The proposed development has been the subject of multiple assessments against a variety of changing policies since initial lodgement in January 2007.

Notwithstanding these time delays and changing policies Council now has an obligation to assess this application against the controls as in place at the time of determination. Council also has to utilise the additional knowledge that is available as a result of studies such as the *Ruker & Associate Urban Design Report on Hastings Point*.

With the benefit of that additional information the revised assessment of the proposed three storey development shows that the development is considered contrary to the future desired character of the area and contrary to the ecological constraints of the site. Therefore the subject application is now recommended for refusal.

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. Original Assessment Report DA07/0022 (DW 1929215)
 2. Land & Environment Court Decision 6 June 2008 (DW 1871912)
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P3 [PR-PC] Results of the Department of Planning's Local Development Performance Monitoring Report 2007/08

ORIGIN:

Director Planning & Regulation

FILE NO: Development - General; Development Reports; LEP - Planning Reforms

SUMMARY OF REPORT:

The purpose of this report is to provide Council with a summary of the results from the recently published Department of Planning report, "Local Development Performance Monitoring 2007/08", with particular reference to the results affecting the development assessment performance of Tweed Shire Council.

The Department of Planning commenced this form of reporting for all NSW Councils for the 2005/06 financial year, with subsequent reports for 2006/07 and the most recent for 2007/08. The reports provide a range of comparative benchmark statistics, including the total number, estimated construction value, determination times of various approvals processes, including development applications, Section 96 modifications, complying development certificates and construction certificates. Other statistics include the number of Section 82 reviews (DAs that have been refused and reconsidered by Council), the breakdown of Council and delegated officer determinations, and appeals in the Land and Environment Court.

Overall, the results showed that Tweed Council maintained a similar rate of performance in terms of a statewide comparison of the mean gross (or average) period of determination of all types of development applications, albeit with an increase in the total number of days from 91 in 2006/07 to 103 in 2007/08. This compares to the 2007/08 NSW average of 74 days.

However, when analysed in the context of other councils in the North Coast Region and the State, there were also some very positive results for Tweed Council in terms of the total number and total value of DAs determined, the high quantity of Complying Development Certificates issued, the rate of DAs determined per EFT (Equivalent Full-Time) staff, and the relatively low number of 4 legal appeals determined in the Land and Environment Court, with only one of these appeals being upheld.

More generally, the results of the report needs to be acknowledged within the context of the unique combination of factors impacting upon the Tweed Shire over the last several years in respect of the extensive range of highly sensitive and complex development constraints, a transitional period of a Council Administration, a high turnover of development assessment staff and management, and the resource draining demands of a large number of Part 3A Major Projects and State Significant developments, which

require significant, ongoing Council multi-disciplinary staff review and assessment, often within very tight timeframes.

Regardless of these factors, the DOP report results clearly necessitate a major improvement in the efficiency of all of Council's development approvals processes, with a major indicator that too much time is spent on requiring additional information and negotiating outcomes for poorer applications once they have been lodged, as evidenced by the high proportion of all DAs (56%) involving "stop the clock" actions.

The DOP report is very timely in terms of informing the Development Assessment Review project which was commenced in early 2008 through a detailed independent audit of Tweed Council's approvals processes. A staff Working Group from the Planning and Regulation Division has developed a project plan to act on and implement the main recommendations of the independent audit, in order to work towards a series of best practice approvals systems, with a major emphasis on the introduction of "e-planning", customer-focused procedures, which will also place Council in a good position to respond to the State Government's emerging Planning Reforms.

RECOMMENDATION:

That Council receives and notes this report.

REPORT:

The purpose of this report is to provide Council with a summary of the results from the recently published Department of Planning (DOP) report, "Local Development Performance Monitoring 2007/08", with particular reference to the results affecting the development assessment performance of Tweed Shire Council.

Copies of the report have been printed and separately distributed to all Tweed Councillors. The report can also be viewed on-line through the Department of Planning's web site www.planning.nsw.gov.au.

The DOP commenced this form of reporting for all NSW Councils for the 2005/06 financial year, with subsequent reports for 2006/07 and the most recent for 2007/08. The reports provide a range of comparative benchmark statistics, including the total number, estimated construction value, determination times of various approvals processes, including development applications, Section 96 modifications, complying development certificates and construction certificates. Other statistics include the number of Section 82 reviews (DAs that have been refused and reconsidered by Council), the breakdown of Council and delegated officer determinations, and appeals in the Land and Environment Court.

It should be noted that the accuracy of the results produced in the report are off-set by the fact that virtually all NSW councils record their own assessment statistics in different forms of development categories and IT programs, and the raw data from these systems are then consolidated by the DOP into their own report classifications. Nonetheless, the final DOP report provides a good, indicative guide for Council's to benchmark and improve their assessment processes on a statewide basis.

Summary of Results

Overall, the results showed that Tweed Council maintained a similar rate of performance in terms of a statewide comparison of the mean gross (or average) period of determination of all types of development applications, albeit with an increase in the total number of days from 91 in 2006/07 to 103 in 2007/08. **(Refer to Page 107, Table 3-17)** This compares to the 2007/08 NSW average of 74 days.

In terms of Section 96 applications (modifications of development consent), the mean gross determination for Tweed Council was 83 days in 2007/08 **(Refer to Page 107, Table 3-17)**, compared to the NSW average of 58 days.

However, when analysed in the context of other councils in the North Coast Region and the State, there were also some very positive results for Tweed Council in terms of the following:

- Tweed Council was ranked 10th in the state in terms of the total number of 232 Complying Certificates issued, the highest in the North Coast Region **(Refer to Page 26, Table 2-14)**;



- Tweed Council’s total determination of 1,340 DAs and total value of DAs of \$285M in 2007/08 (**Refer to Pages 86-90, Table 2-15**) are much greater than those councils in the North Coast Region: Ballina (799 and \$143M), Byron (756 and \$105M.), Kyogle (226 and \$14M.), Lismore (707 and \$93M.), and Richmond Valley (444 and \$47M.);
- Tweed Council’s total determination of construction certificates and occupation certificates in 2007/08 (**Refer to Pages 165-169, Table 7.5**) also are much greater than the other councils in the North Coast Region, as shown in the table below:

COUNCIL	CONSTRUCTION CERTIFICATES DETERMINED	OCCUPATION CERTIFICATES DETERMINED
Ballina	631	542
Byron	521	251
Kyogle	139	12
Lismore	588	494
Richmond Valley	367	174
Tweed	1,214	1,229

- Tweed Council performed well above the state average (68.9 DAs) and the best in the North Coast Region in terms of the rate of DAs determined per EFT (Equivalent Full-Time) staff, with 83.8 DAs per staff member, representing an increase of 13.7% from 2006/07 (**Refer to Page 152, Table 5-4**); and
- Tweed Council had a relatively low number of 4 legal appeals determined in the Land and Environment Court, with only one of these appeals being upheld (**Refer to Page 163, Table 6-6**).

The indicator which best identifies the key area for improvement in Tweed Council’s development assessment processes is **Table 3-21: Effect of stop-the-clock on DAs, on Page 132**. “Stop-the clock” provides a legal mechanism for NSW Councils under the Environmental Planning and Assessment Act to stop counting the days taken for assessing DAs in those instances when the applicant has been requested to provide additional information. The statewide average for the use of “stop-the clock” functions is 40% of all DAs.

The rate of use of “stop-the-clock” by Tweed Shire Council in 2007/08 was 56% of all DAs, with an average number of days stopped of 76 days, and a range of days stopped from a minimum of one day up to a maximum of 1,782 days. For those DAs where “stop-the-clock” is used, if there were no requests for further information, the average processing time would be 60 days, a major reduction from the current overall Tweed average of 103 days.

Clearly this issue needs to be addressed. The simplest way of reducing this reliance on “stop-the-clock” is to provide applicants with clearer pre-lodgement checklists, and to be a lot stricter on the refusal to accept those deficient applications when they are lodged.

A new project for improving Tweed Council's development assessment practices is discussed further in this report.

Other Specific Tweed Shire Influences

More generally, the results of the DOP's report need to be acknowledged within the context of the unique combination of factors impacting upon the Tweed Shire over the last several years in respect of the extensive range of highly sensitive and complex development constraints, and a period of transition under Council Administration, and a high turnover of development assessment staff and management.

Another major impact upon Council's development assessment processes are the resource draining demands of a large number of Part 3A Major Projects and State Significant developments, which require significant, ongoing Council multi-disciplinary staff review and assessment, often within very tight timeframes. In the context of the North Coast Region, Tweed Council also carries a comparatively much greater workload and redevelopment pressure, as evidenced by the total number of current, undetermined Part 3A Major Projects and State Significant development proposals: Tweed – 19, Ballina – 11, Richmond Valley – 9, Byron – 7, Lismore – 2, and Kyogle – 0.

Council will also need to consider the implications of the emerging introduction of a new Planning Assessment Commission (PAC) and Joint Regional Planning Panels (JRPPs) through the State Government's Planning Reforms legislation. A recent announcement from the Minister for Planning advised that certain local development applications which exceed \$10 Million in construction estimates will need to be referred to a JRPP for determination. These applications are separate to the Part 3A Major Projects applications which will mainly be dealt through the PAC and the Minister, albeit with some delegated Council determination role. Tweed Council does not generally receive a high proportion of the JRPP applications, as evidenced by the following statistics:

DA DETERMINATION TYPES	DAS VALUED BETWEEN \$5m. AND \$10M.	DAS VALUED IN EXCESS OF \$10M.
DAs determined in 2007/08	6	3
Current undetermined DAs	5	2 (NB. One of these applications is the proposed shopping centre at Seabreeze, Pottsville)

The full operational details of the new PAC and JRPPs are yet to be determined by Council.

The Development Assessment Review Project

Tweed Shire Council has recently completed a series of strategic investigations as the basis of a major review of its main organisational operations, including a series of independent, external reports on its business planning, corporate relations and communications, administrative and development assessment functions. Staff working groups have since commenced the follow-up planning and prioritising of actions and resources for each of the organisational review reports. Work on the implementation of

the Development Assessment Review is well under way, with Council staff focusing on the process and technology improvements needed to address the recent changes to the NSW Environmental Planning and Assessment Act, to achieve best practice, streamlined, customer-focused assessment of all forms of new development in the Tweed Shire.

Council is planning a staged progression of DA systems and planning information improvements, including an initial trial in early 2009 of more streamlined customer lodgement practices and introduction of enhanced electronic, internal referral of plan and document information, leading through to the medium term goal of implementing a full range of “e-planning” functions in 2010/2011, including web site access to all forms of zoning and land use information, and the capacity for electronic lodgement and tracking of DAs and other approvals processes. These improvements are being designed in close consultation with the other corporate review processes, with the priority of creating a new “Contact Centre” at Council’s Murwillumbah office, which will provide both one-stop-shop customer services, as well as a new call centre. These improvements are seeking a major reduction in the processing times of Tweed DAs, which Council believes will address the broader economic and housing affordability objectives of NSW State and Federal Government programs.

Background to the Development Assessment Review

In terms of Council’s approvals processing review, it was decided to engage the services of a highly experienced consultant Gary Poole, of the firm Building Code Advisory Services Pty Ltd, to conduct a comprehensive, independent review of the full range of Council’s development and building assessment processes. This project was initiated in late 2007, and commenced in early 2008, and involved extensive consultation with officers from Council’s Planning and Regulation Services Division, and other relevant sections of Council involved in the approvals processes. The project was also considered very timely in the context of the NSW State Government’s Planning Reform legislation and increasing pressure on local councils to reduce their development assessment processing times, with the threat of the removal of planning powers for poorly performing councils.

The key legislation affecting Council’s Review is the NSW Environmental Planning and Assessment Act 2008 and the Building Professionals Amendment Act 2008, which was assented to by Parliament in June 2008, and will involve a gradual roll out of a wide range of changes to the development system in NSW. In terms of those changes affecting the approvals processes, the Department of Planning had advised NSW Councils that Regulations which govern the details of the new processes are likely to be introduced within the next 6 months, which suits the timing of the initial roll-out of the Tweed Shire Council Review.

Project Timing

There will need to be a staged timing of implementation of the Gary Poole recommendations, both to coincide with other organisational review initiatives, as well as achieving the ultimate goal of the electronic lodgement of applications.

Three Broad Timeframes Envisaged

- **Stage 1** – Trial of initial electronic approvals lodgement and processing systems under the current Murwillumbah office arrangements – commence in early 2009.
- **Stage 2** – Review and refine initial trial and prepare to implement new approvals systems to coincide with opening of new Contact Centre at Murwillumbah in late 2009/early 2010.
- **Stage 3** – Implement supporting Gary Poole Recommendations and work towards full e planning systems by early 2011.

Initial Actions for “Front-end” Process Improvements

- The key, over-arching principle is to provide a high level of expertise and automation in the initial lodgement process, whilst reducing the need to duplicate resources through more traditional, manual handling processes.
- A major emphasis will also be placed on formal, fee-for-service, pre DA lodgement advice.
- New daily courier mail service from the Tweed Office for new DAs (and other applications), and then following same process as Murwillumbah Office.
- New system of DA/other applications acceptance at the Murwillumbah Office, involving:
 - initial Technical Officer check of documents (including improved forms and check lists);
 - a new records unit “satellite” desk within the DA Unit requiring initial data entry, scanning of documents, make up of hard copy files and financial transactions; and
 - electronic referral of application to Senior Officers to determine any advertising/notification, allocation to relevant staff and any internal/external referrals.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Funds have been allocated for the DA Review project in the 2008/09 Budget, as part of the broader program of organisational review. Council staff has also applied for grant funding on the Federal Government’s Housing Affordability Fund program.

POLICY IMPLICATIONS:

Nil.



UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.



P4 [PR-PC] Development Application DA07/0945 for Multi Dwelling Housing Consisting 34 Residential Units at Lot 290, 630 DP 755740; Lot 1 DP 781512, No. 7 Elsie Street, Banora Point

ORIGIN:

Development Assessment

FILE NO: DA07/0945 Pt3

SUMMARY OF REPORT:

The subject application was lodged in September 2007 for forty six (46) multi-dwelling housing units. On 14 October 2008 the applicant submitted a redesign to the development to provide clearance of the sewer main traversing the property.

The original plans submitted with the application were deficient of the elevation plans. The applicant was informed that there were numerous constraints and issues that required further information. Numerous requests for the outstanding information were carried out and to date there is still significant information outstanding.

The subject site has a sensitive vegetation community, to the north, sewer mains traversing the property, stormwater issues, a steep site and is bushfire prone land. The applicant has not provided sufficient information to demonstrate how the proposed development will address these constraints.

The applicant provided a redesign to address the sewer main through the property and the façade treatment of the buildings. However, the amended design resulted in other non-compliant issues in terms of the height of the building, the bulk and scale, the lack of communal services, and other non-compliant issues of the original design remained.

The proposed development attracted eight (8) objections. The objections raised concerns in regard to vegetation clearance, stormwater and the proposed development being out of character with the area.

Having regard to the extent of outstanding information, the sensitive nature of the site, the considerable physical constraints on the site and the bulk and scale of the design, the proposed development is therefore recommended for refusal.

RECOMMENDATION:

That Development Application DA07/0945 for multi dwelling housing consisting of 34 residential units at Lot 290, 630 DP 755740; Lot 1 DP 781512, No. 7 Elsie Street, Banora Point be refused for the following reasons: -

1. In accordance with Section 79(C)(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development does not comply with the following environmental planning instruments:
 - a. The application fails to satisfy SEPP 65 – Design Quality of Residential Flat Development.
 - b. The application fails to satisfy the following additional clauses of the Tweed LEP 2000 as it fails to provide the technical information required:
 - Clause 4 Aims of the Plan
 - Clause 5 Ecologically Sustainable Development
 - Clause 8(1)(c) Consent considerations
 - Clause 11 zone objectives
 - Clause 16 Height of Buildings
 - Clause 39A Bushfire Protection
 - Clause 54 Tree Preservation Order
 2. Pursuant to Section 79(C)(1)(a)(iii) the proposed development is not considered to be compliant with the following Tweed Development Control Plans:
 - a. Tweed Shire Development Control Plan – Section A1 –Multi-dwelling Housing and Tourist Accommodation in regards to the following provisions: communal open space, landscaping, basement carpark, carparking generally, topography, cut and fill, building orientation, building height, sunlight access, visual privacy, natural ventilation, dwelling design and layout, internal circulation, waste management.
 - b. Tweed Shire Development Control Plan – Section B3 Banora Point West - Tweed Heads South
 3. In accordance with Section 79(C)(1)(a)(iv) of the Environmental Planning and Assessment Act 1979 the proposed development does not satisfy the following Environmental Planning and Assessment Regulations, as the application has failed to provide:
 - Plans to scale that indicates the height of the building;
 - Plans showing existing vegetation and trees on the land;
 - Amended Bushfire Assessment Report;
 - Amended Stormwater Management Report
 - Plans showing existing levels of the land in relation to buildings and roads; and
 4. Pursuant to Section 79C (1) (b) of the Environmental Planning & Assessment Act 1979 the proposed site is considered to have a detrimental impact on the natural and built environment.
-



5. Pursuant to Section 79C (1) (c) of the Environmental Planning & Assessment Act 1979 the proposed site is not considered suitable for the proposed development.
6. In accordance with Section 79C (1) (e) of the Environmental Planning & Assessment Act 1979 the proposed development is not considered to be in the public interest.

REPORT:

Applicant: Zinkohl Pty Ltd
Owner: Rocksee Pty Ltd
Location: Lot 290 & 630 DP 755740; Lot 1 DP 781512, No. 7 Elsie Street, Banora Point
Zoning: 2(a) Low Density Residential & 2(c) Urban Expansion
Cost: \$4,500,000

BACKGROUND:

The subject application was lodged in September 2007 for forty six (46) multi-dwelling housing units. On 14 October 2008 the applicant submitted a redesign to the development to provide clearance of the sewer main traversing the property.

The amended application with Council is for the erection of a multi dwelling housing development comprising 34 units. The development consists of three large buildings A, B and C, with Building B separated into B1, B2, and B3. The development consists of seventeen (17) three (3) bedroom units and seventeen (17) two (2) bedroom units:

- Block A consists of four (4) three (3) bedroom units over two residential levels with basement carparking, Block A is the only building with street frontage and pedestrian access and has northern elevation for the internal and external living areas.
- Block B consists of nine (9) three (3) bedroom units over three residential levels. Block B is divided into three modules, Block B2 and B3 are connected and B1 as a stand alone. It has adjacent carports for parking and each module has 1 unit per level.
- Block C consists of twenty two (22) units; four (4) units are three (3) bedroom units the other seventeen (17) units are two (2) bedroom. The building has two residential levels with an undercroft style parking and Block C has one lift in the middle of the building.

The subject site is located on the northern side of Elsie Street. The site is an irregular shape and consists of three allotments that has 42.670m frontage and the western boundary has a depth of 159.14m and the eastern boundary has a depth of 93.485 to create a total site area of 9215.59m². The site grades steeply from approximately RL 26 m AHD at Elsie Street to RL 1.5m AHD at the northern boundary. The subject site is vacant and on the northern portion of the site is a significant vegetation community, Lowland Rainforest on Floodplain which is classed as an endangered ecological community under the Threatened Species Conservation Act 1995. There are stands of native vegetation across the site which is protected under a tree preservation order.

The surrounding development is characterised by mainly detached dwelling houses single and two storeys in height.

The residential flat development is proposed to be constructed from colourbond for the roof, rendered finishes and colourbond walls, timber privacy screens, timber awnings,



feature glass balustrade. Windows are a mixture of fixed and openable windows for the units and Block B has skylights.

The siting of the buildings on the site result in Block A with street frontage, then downward of the site in an east to west direction are Blocks B1, B2 and B3, and at the bottom of the site is Block C. No pedestrian paths are provided on the site and no communal facilities have been provided on the site. The driveway is located on the western boundary of the site and access to Block C is provided to the rear of the building.

The application was lodged in September 2007 and has had a long history of event relating to the assessment of the proposal. The following is a summary of the chronological timeframe of processing the application.

DATE	EVENT
14 September 2007	The application was lodged for forty six (46) multi dwelling housing units without elevation plans.
19 October 2007	Further information request was sent to the applicant in regards to Environmental Health Officer request to carry out an assessment in regards to: <ul style="list-style-type: none">• Detailed site contamination report as required by SEPP 55;• Details of methods to collect, store and dispose of waste;• Advice on the extent and likely duration of any dewatering operations;
2 November 2007	Further information request was sent to the applicant in regards to the Building surveyor to carryout an assessment in regards to: <ul style="list-style-type: none">• Levels reduced to AHD are to be provided for each floor, the top of all roofs, carparking/basement areas and finished site levels. A detailed plan of the driveway location in relation to the road reserve, existing pavement and adjoining dwelling is required.• Site plan showing the buildings clear of sewer lines.• Egress and exits from the basement carpark of Block A do not comply with Part D BCA.• Block B1, B2, B3 and Block C has non-compliance with Part C of BCA Protection of Openings• Basement exit stair widths of Block A appear less than 1m wide clear of handrails as required by Part D of the BCA Further information request was sent to the applicant in regards to the Flooding Engineer's request to carryout an assessment in regards to: <ul style="list-style-type: none">a) (i) The applicant is requested to amend the development proposal, so as to provide an unobstructed overland flow path for external stormwater catchment flows along the existing gully line through the centre of the site.(ii) Should the applicant not wish to undertake this redesign, and continue to divert external flows via the internal access road, they shall bear all costs associated with providing this

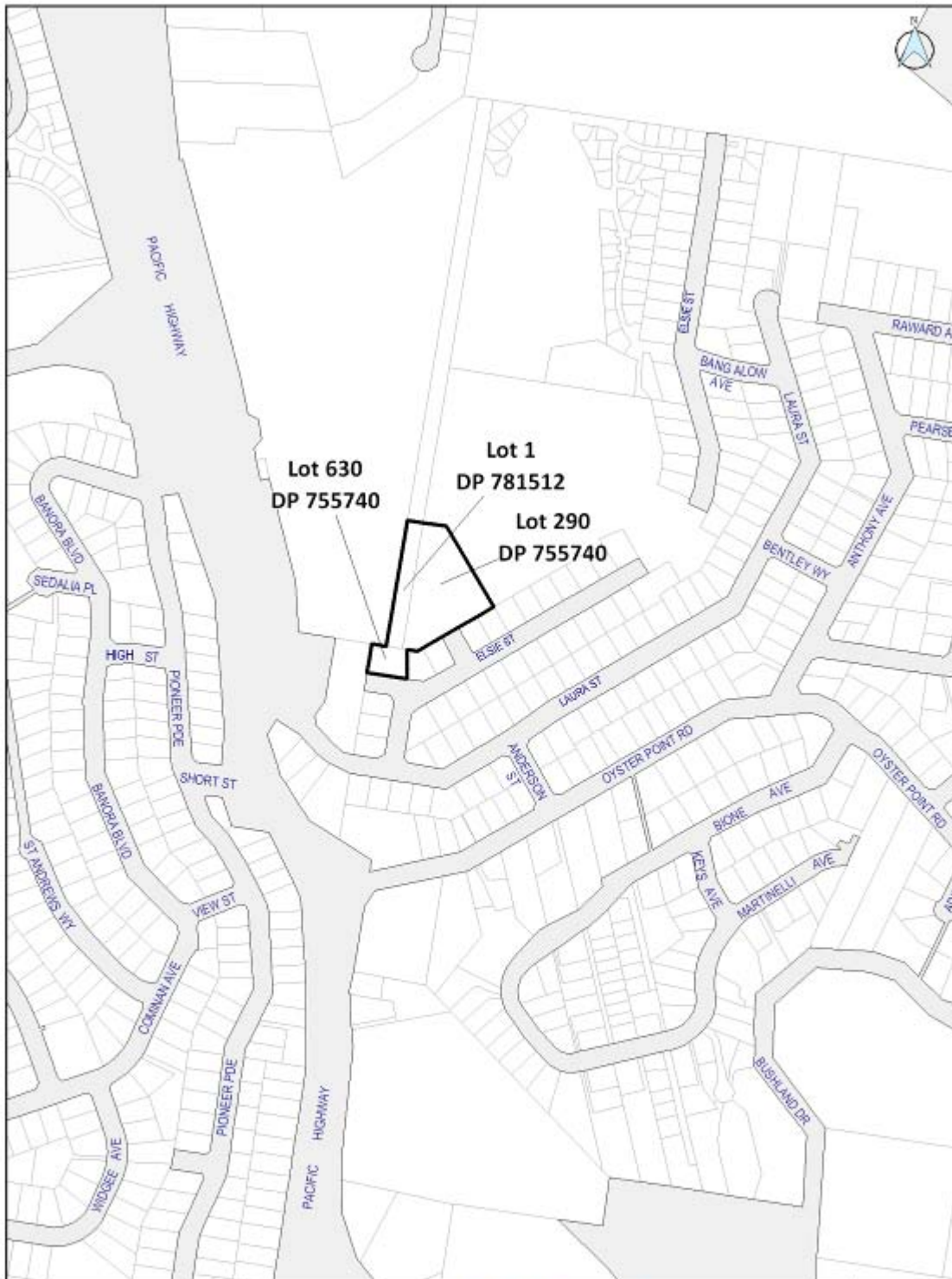



DATE	EVENT
	<p>infrastructure, and shall inherit all future maintenance for this system. Details of fill depths and finished surface level contours must be provided, to demonstrate that filling of the existing gully complies with DCP Section A14 - Cut and Fill on Residential Land.</p> <p>b) Provide further measures, such as level spreaders and detention basins, downstream of the discharge headwall and the western overland flow path to ensure that discharge to downstream land is dispersed as sheet flow and not concentrated onto adjoining properties.</p> <p>c) The proposed earth bund to protect the basement level carpark from flooding is not acceptable, and the proposal must be amended to provide permanent structural protection from inundation up to 3.1m AHD via driveway regrading, cut off walls and the like.</p>
14 January 2008	The application was referred to Rural Fire Service.
4 February 2008	The application was referred to Council specialist planner/ ecologist for comment.
5 February 2008	A further information letter was sent to the applicant regarding flora and fauna issues.
25 March 2008	After six (6) months of no response from the applicant, a letter was sent to the applicant requesting the applicant respond to the outstanding information the letter attached all previous correspondence sent by Council.
30 April 2008	The applicant first contacted Council, seven months after submitted application in regards to the numerous outstanding information requests.
8 May 2008	The applicant submitted Stormwater Quality Assessment Report
26 May 2008	Council's ecologist met the applicant out on site to discuss flora and fauna issues.
29 May 2008	An amended flora and fauna request was sent to the applicant.
12 June 2008	Nine months later elevation plans were submitted to Council.
16 June 2008	Council's Flooding Engineer requested further information in regards to the stormwater report.
25 June 2008	The applicant was sent a request to withdraw the application due the bulk and scale of the development, numerous issues of non-compliance and the outstanding information or to provide a significant redesign of the proposal.
1 July 2008	Meeting with owner, architect, planner and Council staff to discuss the application in regards to areas of non-compliance and outstanding information.
4 August 2008	<p>The applicant submitted amended plans.</p> <p>The application was reviewed by Council staff and found the amended plans still to be significantly non-compliant and still numerous information requests outstanding.</p>



DATE	EVENT
3 September 2008	The applicant was contacted and informed that the application in its current form cannot be supported.
11 September 2008	Meeting with applicant, architect, planner and Council staff, Development Assessment Manager, Director of Planning to discuss issues of non-compliance and outstanding issues. The following issues were raised: <ul style="list-style-type: none">• The site had considerable constraints that have not been addressed in the application;• The applicant was advised that the sewer main issue had not been addressed and was a significant constraint to the site; and• Council and applicant decide resolve the sewer issue first then address all other issues in the application.
23 September 2008	Council's engineer staff accepted the design of Block C in principle in regards to the sewer access only and advised further detail would be required.
18 September 2008	The applicant was advised by Council town planner that any design to provide clearance over the sewer main could result in the development which would not comply with the height limit under the LEP and this would need to be addressed.
14 October 2008	<p>The applicant submitted amended plans, preliminary contamination report and a Statement of Landscape intent. The plans made the following changes:</p> <ul style="list-style-type: none">• Reduced the development from 46 units to 34;• Removed the communal swimming pool and BBQ area;• Removed level from Block C and removed the basement carparking and provided undercroft parking that is up to 5 metres in height; and• Amended the façade of the buildings. <p>The amended plans that were submitted were scaled at 1:100 at A1, however, only A3 plans were submitted, no section plan was provided for Block B1 and Block B2 & B3 did not have all the elevation plans provided.</p> <p>To date the following still remains outstanding:</p> <ul style="list-style-type: none">• Amended stormwater report;• Amended bushfire report;• Requested overlay plan of the development over an aerial photograph to show the proximity of the development to the EEC and the existing vegetation on the site;• Further engineering detail;• SEPP 1 objection for a departure from development standards;• Details of waste management on the site. <p>The plans Council received on the 14 October 2008 did amend some issues of non-compliances but it has resulted in other subsequent areas of non-compliance. Further, over year after the application was lodged there is still numerous issues of outstanding information. In addition to the areas of non-compliances, the subject development cannot be supported in its current form.</p>

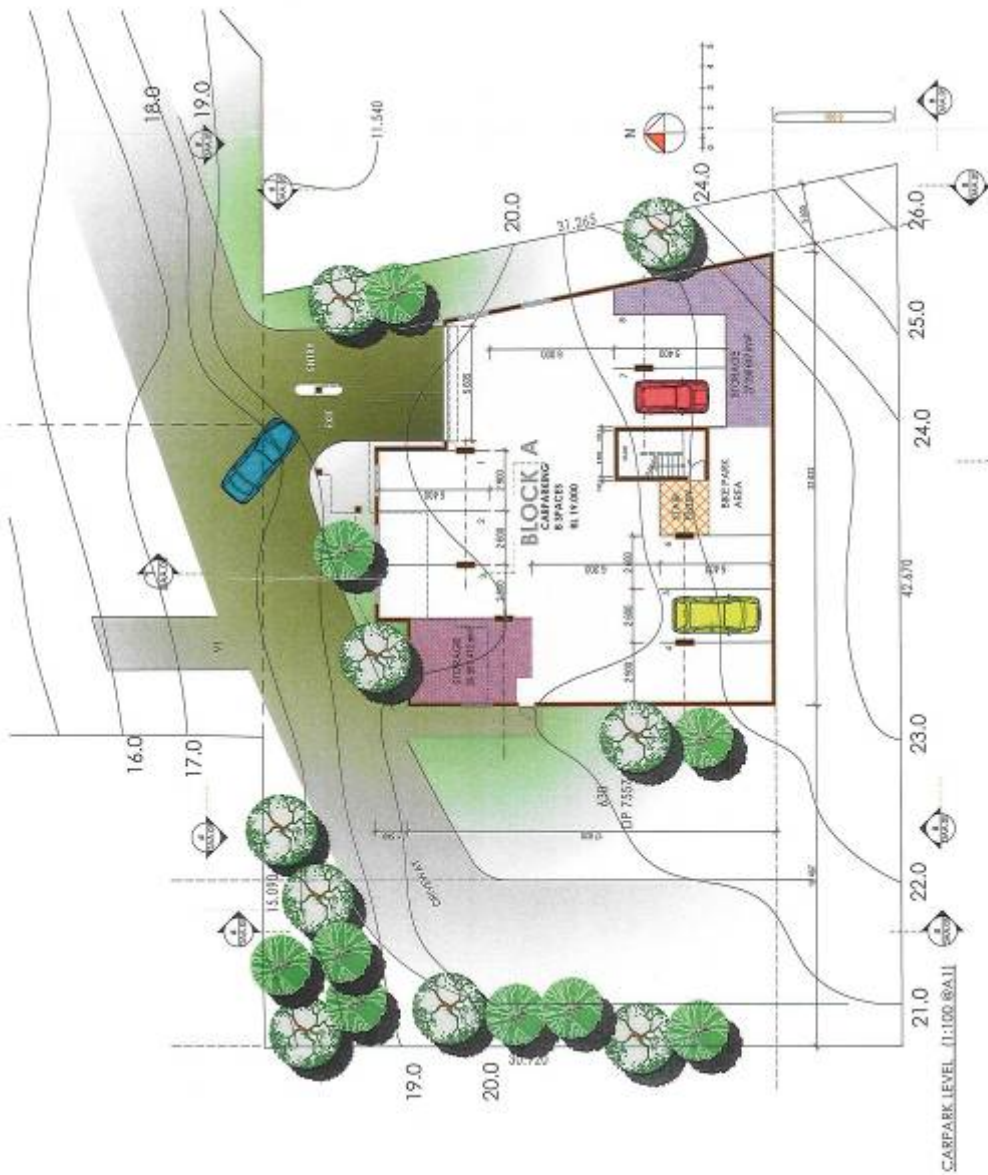
SITE DIAGRAM:



<p>© TWEED SHIRE COUNCIL 2008 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be responsible for any errors, omissions or inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 814 Fax: (02) 6670 2409 Murrumbidgee NSW, 2484 Fax: (02) 6678 2483</p>	<p><i>Tweed Shire Council</i></p> <p>Lot 290 & 630 DP 755740; Lot 1 DP 781512 No. 7 Elsie Street, Banora Point</p>	<p>Site Plan</p>  <p>Sheet: 1 of 1</p>
<p>File: Z5565_Jobs/Site Plan/Wor Author: J. Bathford Date: 21/Oct/08 Scale: 1:5,000</p>		

DEVELOPMENT PLANS:





○ SCALE: AS SHOWN
 ○ DATE: 08/07
 ○ DRAWN: ca
 ○ DWG No: 2881 DAA.02 G
 ○ APPROVED V10 20/03/08 (S.H.P.)

ALEX ENBORISOFF
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ACTING

DRAWING: CARPARK LEVEL

CLIENT: ROCKSEE PTY LTD

AT: ELSIE STREET
 BANORA POINT
 NSW

PROJECT: BANORA POINT

NO.	DATE	REVISION
1.	15/07/08	FINAL DESIGN FOR PROVISION
2.	15/07/08	FOR PRELIMINARY APPROVAL
3.	15/07/08	FOR PRELIMINARY APPROVAL
4.	15/07/08	FOR PRELIMINARY APPROVAL
5.	15/07/08	FOR PRELIMINARY APPROVAL
6.	15/07/08	FOR PRELIMINARY APPROVAL
7.	15/07/08	FOR PRELIMINARY APPROVAL
8.	15/07/08	FOR PRELIMINARY APPROVAL
9.	15/07/08	FOR PRELIMINARY APPROVAL
10.	15/07/08	FOR PRELIMINARY APPROVAL

DRAWING: CARPARK LEVEL
 CLIENT: ROCKSEE PTY LTD
 AT: ELSIE STREET
 BANORA POINT
 NSW
 PROJECT: BANORA POINT



NORTH ELEVATION_BLOCK A



WEST ELEVATION_BLOCK A



SOUTH ELEVATION_BLOCK A



EAST ELEVATION_BLOCK A

NO.	DATE	REVISIONS
1.	15/04/08	PRELIMINARY CONCEPTS
2.	15/04/08	CONCEPT DEVELOPMENT
3.	15/04/08	CONCEPT DEVELOPMENT
4.	15/04/08	CONCEPT DEVELOPMENT
5.	15/04/08	CONCEPT DEVELOPMENT

PROJECT:
BANDORA POINT

AT:
ELSIE STREET
BANDORA POINT
NSW

CLIENT:
ROCKSEE PTY LTD

DRAWING:
ELEVATIONS_BLOCK A

CONCEPT OF THIS DRAWING IS AN ILLUSTRATION AND DOES NOT REPRESENT A CONTRACT. ANY CONTRACT IS MADE BY THE SEPARATE CONTRACT DOCUMENTS AND NOT THIS DRAWING.



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SCALE: 1:100
DATE: 15/04/08
DRAWN: CU
DRAWN No: 2881 DAA-05 G
APPROVED: 17/04/2008 (21/04/08)



SCALE: AS SHOWN
 DATE: 14/01/08
 DRAWN BY: JAC
 CHECKED BY: JAC
 PROJECT NO: 2881 DAA.06 G
 ADDRESS: 1101 BROADWAY ST, BRISBANE

ALEXENBORISOFF
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DRAWING:
SECTION AA
 EXHIBIT OF THE ARCHITECTURAL WORKS
 PREPARED AND SUBMITTED TO THE
 ARCHITECT IN ACCORDANCE WITH THE
 SUBMISSION REQUIREMENTS OF THE ACT.

CLIENT:
ROCKSEE PTY LTD

SITE:
**ELSIE STREET
 BANDORA POINT
 NSW**

PROJECT:
BANDORA POINT

NO.	DATE	DESCRIPTION
1	14/01/08	ISSUED FOR PERMIT
2	14/01/08	ISSUED FOR PERMIT
3	14/01/08	ISSUED FOR PERMIT
4	14/01/08	ISSUED FOR PERMIT
5	14/01/08	ISSUED FOR PERMIT
6	14/01/08	ISSUED FOR PERMIT
7	14/01/08	ISSUED FOR PERMIT
8	14/01/08	ISSUED FOR PERMIT
9	14/01/08	ISSUED FOR PERMIT
10	14/01/08	ISSUED FOR PERMIT



BLOCK B1 NORTH WEST ELEVATION



BLOCK B1 SOUTH EAST ELEVATION

NO.	DATE	REVISION
1	15/11/08	PRELIMINARY APPROVAL
2	18/11/08	FINAL APPROVAL
3	18/11/08	FINAL APPROVAL
4	18/11/08	FINAL APPROVAL
5	18/11/08	FINAL APPROVAL
6	18/11/08	FINAL APPROVAL

PROJECT:
BANORA POINT

AT:
**ELSIE STREET
BANORA POINT
NSW**

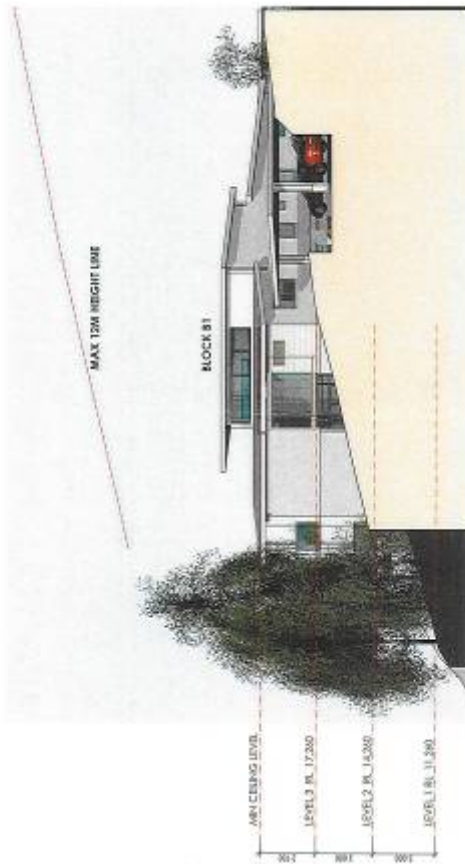
CLIENT:
ROCKSEE PTY LTD

DRAWING:
ELEVATIONS BLOCK B1
CONSENT OF THE PLANNING BOARD
APPLICANT'S NAME IS ENTERED IN THE
CONTRIBUTION TO THE DEVELOPMENT
CONTRIBUTION TO THE DEVELOPMENT



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SCALE: 1:100 (PH)
DATE: 18/11/08
DRAWN: cu
DWG No: 2851 DAB.07G
PROJECT: BANORA POINT



BLOCK B1 SOUTH WEST ELEVATION

SCALE: 1:100 @ A1
 DATE: 14/08/08
 DRAWN: TM
 DWG. NO: 2881 DAB.08C
 APPROVED BY: TM/08/08 11:25 AM

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 DRAWING: ELEVATIONS BLOCK B1
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CLIENT: **ROCKSEE PTY LTD**

AT: **ELSE STREET BANORA POINT NSW**

PROJECT: **BANORA POINT**

REV	DATE	DESCRIPTION
1	14/08/08	ISSUED FOR APPROVAL
2	14/08/08	ISSUED FOR APPROVAL
3	14/08/08	ISSUED FOR APPROVAL
4	14/08/08	ISSUED FOR APPROVAL
5	14/08/08	ISSUED FOR APPROVAL



BLOCK B1 & 2 NORTH WEST ELEVATION



BLOCK B1 & 2 SOUTH EAST ELEVATION

NO.	DATE	APPROVER
1.	15/09/08	PRELIMINARY CONSULTATION
2.	15/09/08	REVISION 1 - COMMENTS
3.	15/09/08	REVISION 2 - COMMENTS
4.	15/09/08	REVISION 3 - COMMENTS
5.	15/09/08	REVISION 4 - COMMENTS
6.	15/09/08	REVISION 5 - COMMENTS
7.	15/09/08	REVISION 6 - COMMENTS

PROJECT:
BANORA POINT

AT:
**ELSIE STREET
BANORA POINT
NSW**

CLIENT:
ROCKSEE PTY LTD

DRAWING:
ELEVATIONS BLOCK B2 & B3

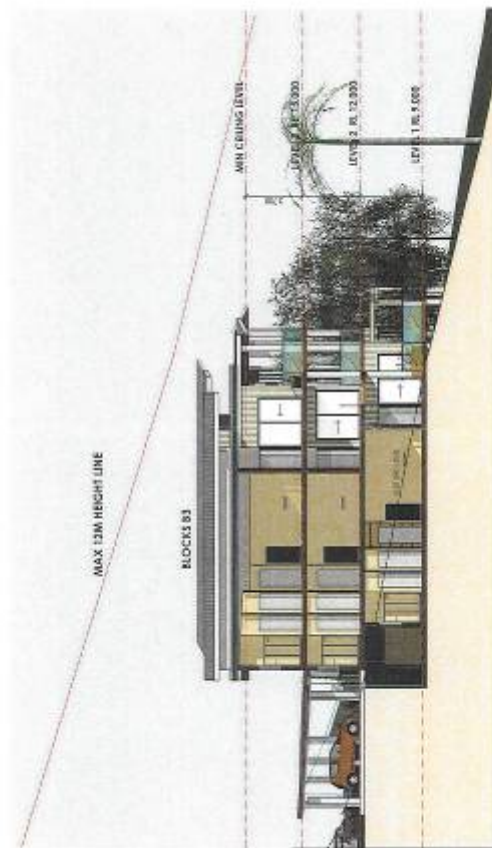
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SCALE: 1:100 @ A1
DATE: 15/09/08
DRAWN: CA
DIMS. No: **2881 DAB.09G**
APR/04/01/2 13/02/08 11:03M



SECTION B8

SCALE: 1:100 @ A1
 DATE: 14/09/08
 DRAWN: CM
 DWG No: **2881 DAB.10G**
 APPROVAL V2: 18/09/08 11:42AM

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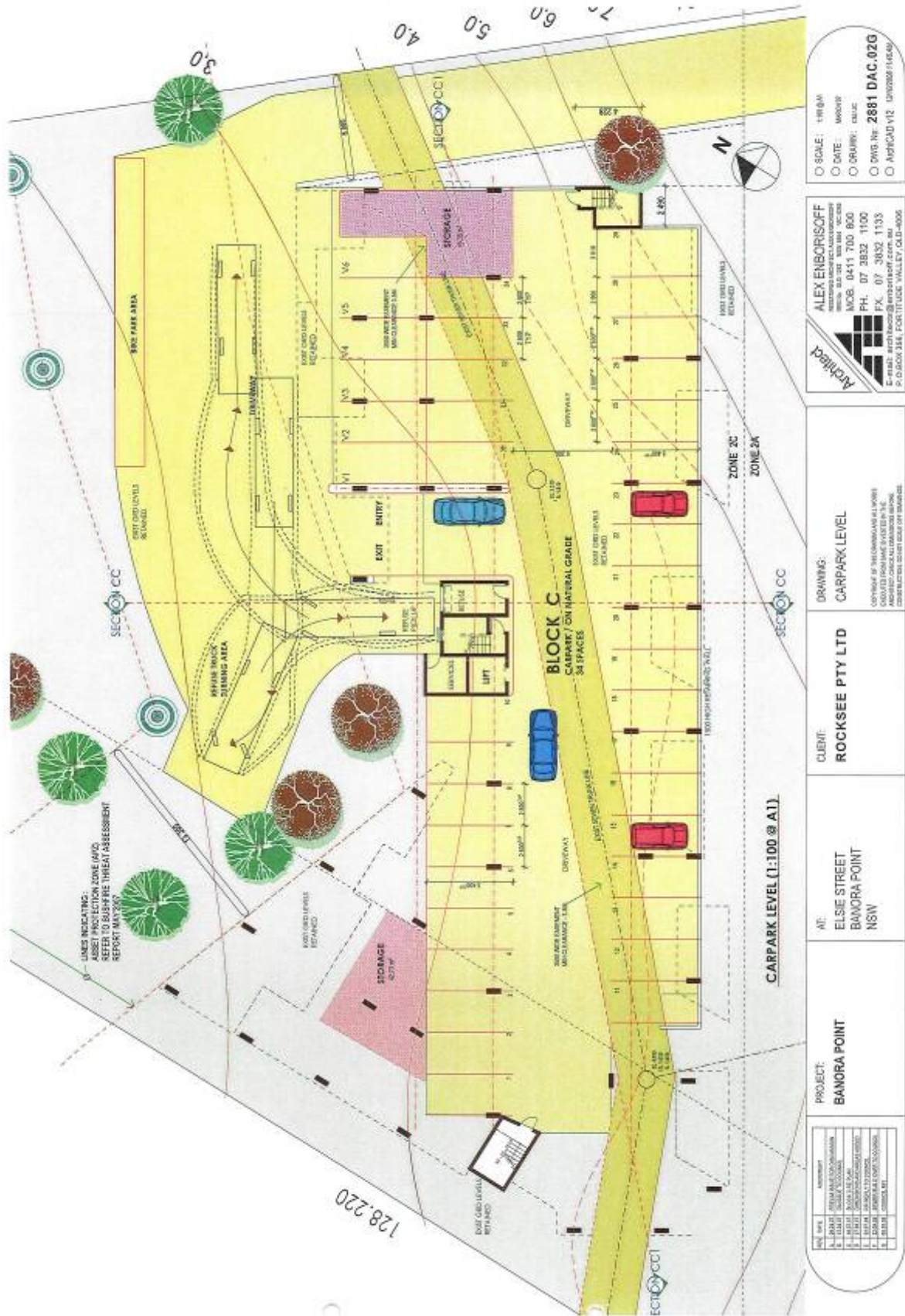
DRAWING: SECTION B8
 CLIENT: ROCKSEE PTY LTD
 AT: ELSE STREET, BANGORA POINT, NSW
 PROJECT: BANGORA POINT

PROJECT: BANGORA POINT
 AT: ELSE STREET, BANGORA POINT, NSW
 CLIENT: ROCKSEE PTY LTD

PROJECT: BANGORA POINT
 AT: ELSE STREET, BANGORA POINT, NSW
 CLIENT: ROCKSEE PTY LTD

PROJECT: BANGORA POINT
 AT: ELSE STREET, BANGORA POINT, NSW
 CLIENT: ROCKSEE PTY LTD

REV	DATE	DESCRIPTION
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2	14/09/08	ISSUED FOR PERMIT
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4	14/09/08	ISSUED FOR PERMIT
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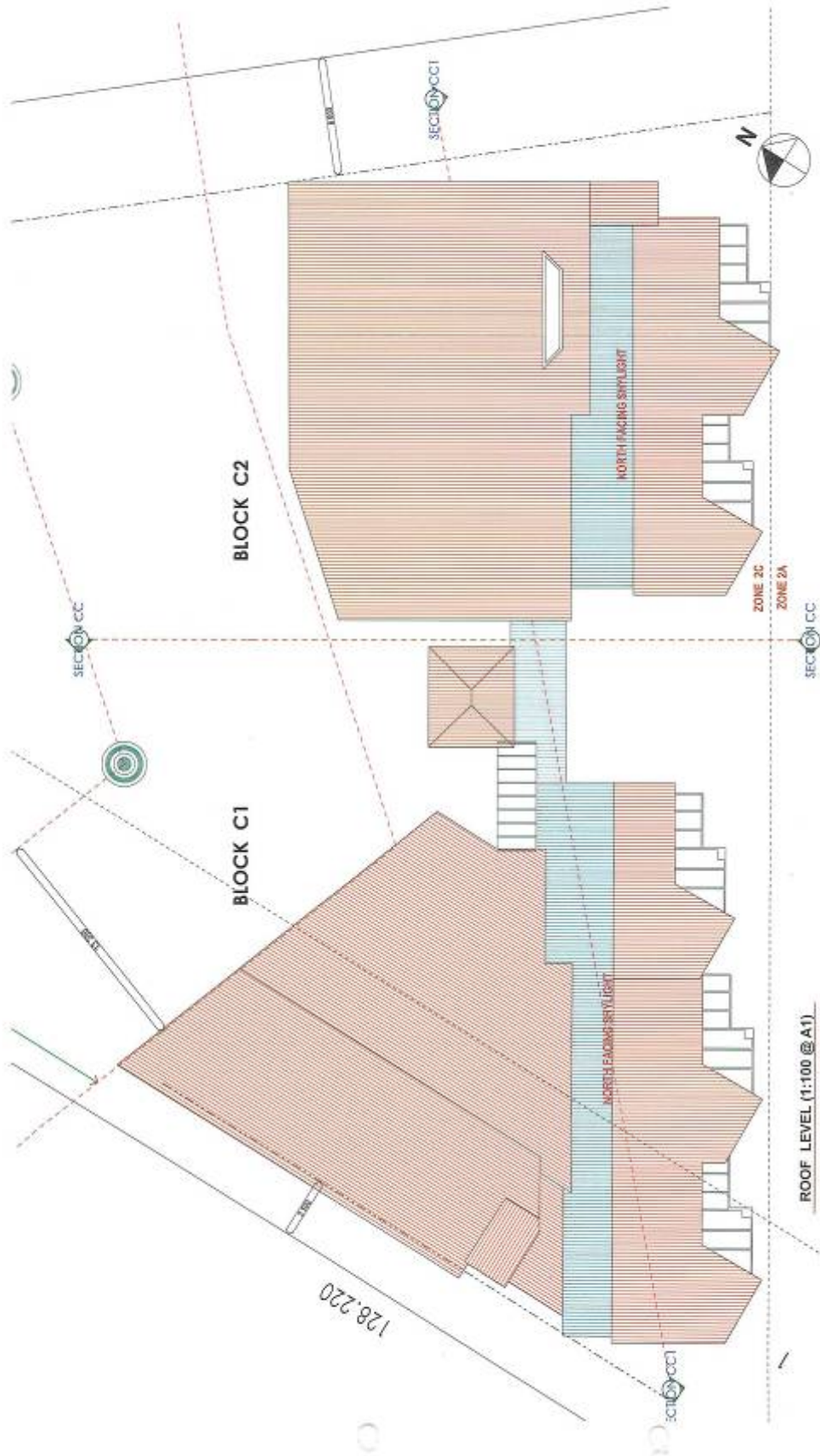


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 DATE: 10/09/08
 DRAWN: DALE
 DWG No: 2881 DAC.02G
 APPROVED: [Signature]

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CLIENT: ROCKSEE PTY LTD
PROJECT: BANORA POINT
AT: ELSE STREET BANORA POINT NSW
DRAWING: CARPARK LEVEL
 CONSULTING ARCHITECTS AND DRAFTSMEN
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 CONSULTING ARCHITECTS AND DRAFTSMEN
 CONSULTING ARCHITECTS AND DRAFTSMEN

NO.	DATE	REVISION
1	10/09/08	ISSUED FOR PERMIT APPLICATION
2	10/09/08	ISSUED FOR PERMIT APPLICATION
3	10/09/08	ISSUED FOR PERMIT APPLICATION
4	10/09/08	ISSUED FOR PERMIT APPLICATION
5	10/09/08	ISSUED FOR PERMIT APPLICATION
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9	10/09/08	ISSUED FOR PERMIT APPLICATION
10	10/09/08	ISSUED FOR PERMIT APPLICATION



SCALE:	1:100 @ A1
DATE:	10/09/08
DRAWN:	DAUG
CHKD:	DAUG
DATE:	10/09/08
DWG NO:	2881 DAC.05G
PROJECT:	BANORA PT

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PROJECT:	BANORA POINT
CLIENT:	ROCKSEE PTY LTD
AT:	ELSIE STREET BANORA POINT NSW
DRAWING:	ROOF LEVEL

NO	DATE	DESCRIPTION
1	10/09/08	ISSUED FOR PERMIT
2	10/09/08	ISSUED FOR PERMIT
3	10/09/08	ISSUED FOR PERMIT
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8	10/09/08	ISSUED FOR PERMIT
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10	10/09/08	ISSUED FOR PERMIT

PROJECT:	BANORA POINT
CLIENT:	ROCKSEE PTY LTD
AT:	ELSIE STREET BANORA POINT NSW
DRAWING:	ROOF LEVEL

PROJECT:	BANORA POINT
CLIENT:	ROCKSEE PTY LTD
AT:	ELSIE STREET BANORA POINT NSW
DRAWING:	ROOF LEVEL

NO	DATE	DESCRIPTION
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8	10/09/08	ISSUED FOR PERMIT
9	10/09/08	ISSUED FOR PERMIT
10	10/09/08	ISSUED FOR PERMIT



NORTH ELEVATION



SOUTH ELEVATION

NO.	REV.	REVISION
1.		ISSUED FOR APPROVAL PROCESS
2.		ISSUED FOR APPROVAL PROCESS
3.		ISSUED FOR APPROVAL PROCESS
4.		ISSUED FOR APPROVAL PROCESS
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9.		ISSUED FOR APPROVAL PROCESS
10.		ISSUED FOR APPROVAL PROCESS

PROJECT:
BANORA POINT

AT:
**ELSIE STREET
BANORA POINT
NSW**

CLIENT:
ROCKSEE PTY LTD

DRAWING:
ELEVATION 1 & 2 - BLOCK C

APPROVED BY THE ARCHITECT AS PER
DEVELOPMENT APPLICATION NO. 08/00010
FOR THE PROPOSED DEVELOPMENT
CONSTRUCTED TO BE AS SHOWN

Architect

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SCALE: 1:100 (B1)
DATE: 08/09/08
DRAWN: GJL/E
Dwg. No: **2881 DAC.06G**
Arch/CAD v12 13/03/08 11:48 AM



EAST ELEVATION



WEST ELEVATION

NO	DATE	REVISION
1	15/11/08	FINAL FOR APPROVAL
2	17/11/08	FOR APPROVAL
3	18/11/08	FOR APPROVAL
4	19/11/08	FOR APPROVAL
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8	23/11/08	FOR APPROVAL
9	24/11/08	FOR APPROVAL
10	25/11/08	FOR APPROVAL

PROJECT:
BANORA POINT

AT:
**ELSIE STREET
BANORA POINT
NSW**

CLIENT:
ROCKSEE PTY LTD

DRAWING:
ELEVATION 3 & 4 - BLOCK C

COMPANY OF THE PROFESSIONAL ARCHITECTS
REGISTERED UNDER THE ARCHITECTS ACT 1996
REGISTERED UNDER THE ARCHITECTS ACT 1996
CONTRACTOR TO BE NOTIFIED BY THE
CONTRACTOR TO BE NOTIFIED BY THE

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SCALE: 1:100
DATE: 15/11/08
DRAWN: GML
DMS. No. 2881 DAC.07G
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 ○ DATE: 10/08/08
 ○ DRAWN: DWL
 ○ DWS. No. 2881 DAC.08G
 ○ ARCHICAD v12 19/07/08 11:45 AM

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 CONSTRUCTION TO BE TOTAL PER DRAWINGS

CLIENT:
ROCKSEE PTY LTD

AT:
**ELSIE STREET
 BANORA POINT
 NSW**

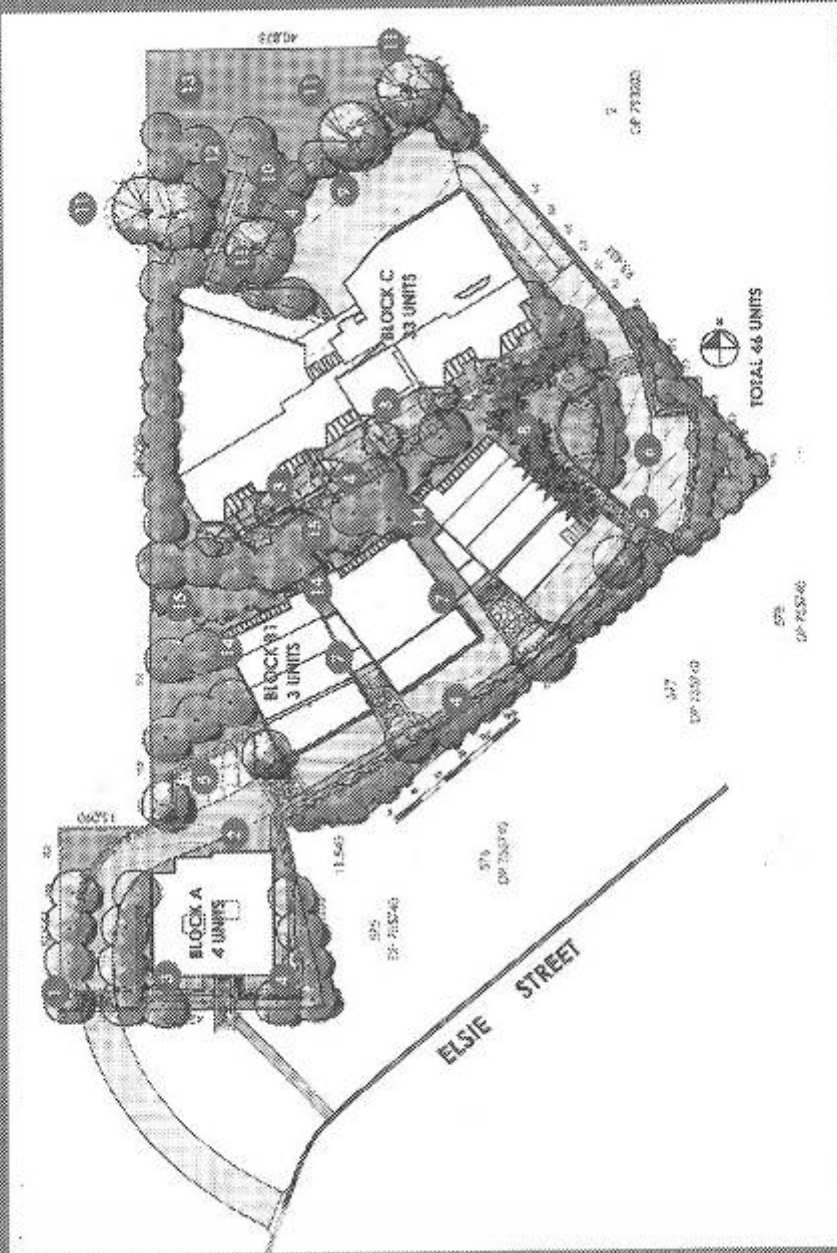
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BANORA POINT

REV	DATE	BY	DESCRIPTION
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6	10/08/08	ENBORISOFF	FOR PERMISSORS
7	10/08/08	ENBORISOFF	FOR PERMISSORS

MASTERPLAN

LEGEND

1. ENTRY SIGNAGE
2. CARPARK ENTRY
3. COURTYARD
4. RETAINING WALL WITH CLIMBER VINES
5. VEGETATION SCREENING
6. CAPYBARA PARK
7. BUILDING ENTRY FEATURE
8. SWIMMING POOL RECREATION FACILITY
9. UNDERCOVER PARKING
10. LANDSCAPE MOUND
11. SUSTAINABLE PLANTING
12. COMMUNAL COURTYARD
13. UNDERCOVER RECREATION ZONE PER ENVIRONMENTAL NET 30%
14. RECREATION VIEW
15. LANDSCAPE PLANTING
16. STABILISATION OF MOUND



DEVELOPER
 BANODA POINT



DA PACKAGE

BANODA POINT

PLANNING
 BANODA POINT
 PLACE

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

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

Tweed Local Environmental Plan 2000

Clause 4 – Aims of this Plan:

The proposed development is considered inconsistent with the aims of the Tweed Local Environmental Plan. The vision of the shire is “to manage growth so that the unique natural and developed character of the Tweed Shire is retained.” The proposed development is not considered to managed growth and not considered to be in keeping with the natural and developed character of the Tweed Shire.

The proposed development is not considered compatible with the area’s environmental and residential amenity qualities. The proposed site has an ecological endangered community on the site and no information has been provided as to the restoration and protection of the community from the proposed development. The site has a tree preservation order on the site and no information has been provided as to the existing vegetation on site that will be required to be removed.

The latest plans provide minimal residential amenity on the site as no common facilities have been provided. The internal layout, of the units in block C provide minimal amenity as there are minimal windows for cross ventilation.

Therefore the proposed development does not comply with the aims of this plan.

Clause 5 – Ecologically Sustainable Development:

The proposed development is not considered to be compliant with the principles of ecological sustainable development. In particular, the precautionary principle states that a careful evaluation is required to avoid where practicable serious or irreversible damage to the environment. Therefore an adequate assessment of the effect of the proposed development on the environment was unable to be carried out due to the lack of information provided, even though the information was requested on numerous occasions. The proposed development has not satisfied the principle of conservation of biological diversity and ecological integrity. The subject application has failed to demonstrate how the endangered ecological community will be protected from the development and further failed to provide information in regards to the tree preservation order over the site.

Therefore the subject application has not satisfied the principles of ecological sustainable development.

Clause 8 – Consent Considerations:

Clause 8 (1)(a) and clause 8(1)(b) requires consideration of the aims of the plan and other relevant clauses of the LEP. Accordingly this assessment reveals that the DA should be refused. Clause 8(1)(c) states that the consent authority may grant consent to a development only if it is satisfied that the development would not have an unacceptable cumulative impact in the locality. The site has numerous physical constraints on the site that have not been adequately addressed with regards to bushfire, flora and fauna and stormwater. Further, the application has failed to provide sufficient information to demonstrate that the proposed development for 34 units will not have a negative cumulative impact on the natural environment. The proposed design of the development is considered to result in unacceptable cumulative impact on the locality.

Clause 11 – The Zones

The subject land is zoned part 2(a) Low Density Residential and part 2(c) Urban Expansion under the Tweed LEP 2000. The 2(a) zone provides the following primary and secondary objectives:

Primary objectives

- *to provide for and maintain a low density residential environment with a predominantly detached housing character and amenity.*

Secondary objectives

- *to allow some diversity of housing types provided it achieves good urban design outcomes and the density, scale and height is compatible with the primary objective.*
- *to allow for non-residential development that is domestically based, or services the local needs of the community, and does not detract from the primary objective of the zone.*

The proposed development does not comply with the primary objective for low density residential development with detached housing character and amenity. Block B has three modules, however, B2 and B3 appear as one slab building up to 35 metres in length. Therefore, the proposed development does not appear as low density or is not considered detached styled housing.

The proposed development is not consistent with the secondary objective of the zone as the development does not achieve good urban design. This is demonstrated by the buildings non-compliance with Council's Planning Controls which are detailed later in this report.

The secondary objective allows for a variety of housing types, provided that the development achieves "good urban design outcomes". The proposed development does not achieve good urban design. Block B provides minimal articulation, and variation in materials on the south eastern elevation.

The proposed development does not comply with the 2(a) zone objectives.

The 2(c) Urban Expansion zone provides the following primary and secondary objectives:

Primary objectives

- *to identify land for urban expansion (which will comprise mainly residential development focused on multi-use neighbourhood centres) and to ensure its optimum utilisation consistent with environmental constraints and the need to minimise residential landtake.*

Secondary objectives

- *to allow associated non-residential development which meets the recreation, shopping, commercial, employment and social needs of future residents.*
- *to ensure that sensitive environmental areas within and outside the zone are protected from any adverse impacts of development.*

Block C is contained within the 2(c) zone, the development originally provided for thirty three (33) units and the latest amended plans provided twenty two (22) units. Therefore the proposed design has sought to ensure optimum utilisation of the site, however, it has not demonstrated that it is consistent with the environmental constraints of the site, in regards to bushfire, stormwater and flora and fauna. Therefore, due to the lack of information submitted it can not be determined that the proposed development has satisfied the primary objective for optimum utilisation of the site that is consistent with the environmental constraints on the site.

The proposed development has not satisfied that the secondary objective to ensure that sensitive environmental areas are protected from any adverse impacts of the development. The subject application is lacking in information in regards to the proposed development proximity and impact on the endangered ecological community. Therefore the proposed development has not satisfied that the proposed development will not have an adverse impact on the sensitive environmental area on the site.

Therefore the proposed development has not satisfied the primary and secondary objective of the zone.

Clause 15 – Availability of Essential Services:

The subject site is within an existing residential area and there are existing services available to the site. Therefore the proposed development complies with this clause. Existing services may require relocation to accommodate the development. Should Council approve this DA appropriate conditions would need to be applied.

Clause 16 – Height of building:

The clause states that the height and scale of the development is appropriate to its location, surrounding development and environmental characteristics of the land. The subject site has a three storey height limit.

A storey is defined under the Tweed Local Environmental Plan 2000 as:

- (a) the space between two floors, or*
- (b) the space between a floor and any ceiling or roof immediately above it, or*
- (c) foundation areas, garages, workshops, storerooms and the like, excluding access paths to basement areas, where the height between the finished ground level and the top of the floor immediately above them exceeds 1.5 metres in height. A storey which exceeds 4.5 metres for residential buildings is counted as two storeys. For the purpose of counting the number of storeys in a building, the number is to be the maximum number of storeys of the building which may be intersected by the same vertical line, not being a line which passes through any wall of the building.*

The amended plans submitted to Council on the 14 October 2008 were scaled at 1:100 at A1, however, only A3 plans were provided. Therefore the plans are not accurately provided to scale. Further the RL for the finished ground level do not provide the minimum finished ground level. However, based on the available information it would appear that building Block B and C does not comply with the three (3) storey limit.

Block B has three levels of units, B1 shows the building on the north western elevation to have concrete piers under the first level over 3 metres in height and therefore this satisfies the definition for another storey. Therefore Block B1 results in four storeys and does not comply with this clause.

Block C was redesigned to enable access to Council's sewer main. Block C resulted in removing a residential storey, level 3. However, the redesign has resulted in an undercroft carpark, which shows the concrete pillars on the section plan being up to 5 metres. In accordance with the definition of storey, this would result in the undercroft being two storeys in addition to the two residential storeys. Block C therefore is four (4) storeys in height and does not comply with this clause.

No SEPP 1 objection has been provided to ask for a variation to this development standard and therefore Block B and C of the proposed development do not comply with the height requirements.

Clause 34 – Flooding:

The objective of the clause is to minimise future potential flood damage by ensuring that only appropriate compatible development occurs on flood liable land.

The proposed development was assessed by Council's flooding engineer who provided the following comments:

“The application generally complies with the flooding requirements.”

The amended plans of Block C have resulted in the carpark being an open structure which is required to be above 2.6m AHD. The proposed development complies with this requirement. Therefore the proposed development satisfies this clause.

Clause 35 – Acid Sulfate soils:

A small portion of the site on the north western corner has been identified on Council's GIS mapping system as possessing Class 2 acid sulphate soils. No development or disturbance of soils will be carried out in that location of the site. Therefore this clause is not relevant to the proposed development.

Clause 39A – Bushfire protection:

The objective is to minimise bushfire risk to built assets and people and to reduce bushfire threat to ecological assets and environmental assets. The northern portion of the site is identified as bushfire prone land.

A bushfire report was sent to the local Rural Fire Service, in correspondence from the local Rural Fire Service it was advised that an adequate assessment of the proposed development could not be carried out as there was still outstanding information in regards to access and asset protection zones.

The applicant was advised on numerous occasions that the Rural Fire Service is awaiting additional information and Council requires their comments to determine whether the proposed development will provide adequate bushfire protection. Therefore this clause has not been satisfied and is one of the reasons for refusal.

Clause 51A – Multi –dwelling housing densities in Zone 2(a)

The objective of the clause is to control the density of multi-dwelling housing in Zone 2(a) Low Density zone. Multi-dwelling housing in the 2(a) zone is not to exceed one dwelling per 450 square metres of site area.

The applicant has argued that the proposed development complies with this requirement, however, the survey information that the applicant has relied upon, has not been provided and this would be required to demonstrate compliance with this clause.

Clause 54 – Tree preservation Order

The objectives of this clause are to enable the protection of vegetation for reasons of amenity or ecology. The northern portion of the site is covered by a Tree Preservation Order. The Statement of Environmental Effects did not address this clause. Further Council ecologist/specialist planner requested a rectified aerial photograph with an overlay of the proposed development to determine the proximity of the development to the endangered ecological community and whether any trees are required for removal. Therefore this clause has not been adequately addressed, and there is insufficient

information to assess the proposed development effect on the tree preservation order. Therefore this clause has not been satisfied and is another reason for refusal of the subject application.

North Coast Regional Environmental Plan 1988

Clause 43 Development control—Residential Development:

43 Development control—residential development

- (1) The council shall not grant consent to development for residential purposes unless:
 - (a) it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land,
 - (b) it is satisfied that the proposed road widths are not excessive for the function of the road,
 - (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,
 - (d) it is satisfied that the road network has been designed so as to encourage the use of public transport and minimise the use of private motor vehicles, and
 - (e) it is satisfied that site erosion will be minimised in accordance with sedimentation and erosion management plans.

The North Coast Regional Environmental Plan states that Council shall not grant consent for residential purposes unless it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land.

The subject application has significant outstanding information that has been requested on numerous occasions, such as the amended bushfire, information regarding the protection and conservation of the endangered ecological community and the amended stormwater management report.

There is insufficient information for Council to be satisfied that the proposed density of the dwellings have been maximised without adversely affecting the environmental features of the land. Therefore the proposed development does not comply with this clause.

State Environmental Planning Policies

State Environmental Planning Policy No. 1 – Development Standards

The SEPP application may seek to depart from a development standard provided that it is supported by a written objection that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case, and specifying the grounds of that objection.

The subject application does not comply with Clause 16 Height of the building of the Tweed Local Environmental Plan, however no SEPP 1 objection has been provided by the applicant. Further the SEPP states that the applicant must provide a written objection to the development standard for consideration. Therefore, the proposed development does not satisfy this SEPP.

State Environmental Planning Policy No. 55 – Remediation of 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.*

A preliminary site contamination report was assessed by Council's Environmental Health Officer who provided the following comments:

“this report concludes that on the basis of site history information and soil testing for contaminants associated with banana cropping that the site is suitable for the proposed use”.

Therefore the proposed development is considered to be compliant with SEPP 55.

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development

This Policy applies to a new residential flat building which is defined as:

- (a) *3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and*

- (b) *4 or more self-contained dwellings (whether or not the building includes uses for other purposes, such as shops).*

The proposal is consistent with the definition of a residential flat building as it is three to four storeys in height.

The 10 design quality principles of the SEPP provides a guide to achieving good design and the means of evaluating the merit of a proposal. The application has provided a section 65 architect statement.

Context

The site is on the perimeter of existing residential locality which predominantly consists of single dwellings that are single or double storey dwellings. The dwellings are of a design from the 60 - 70's that are predominantly brick and tile construction. Recently houses in the locality have been renovated with rendering brick and provision of front balconies.

Block A is the only building visible from Elsie Street. The amended plan submitted provides a more domestic scale that is in keeping with the North Coast Design Guidelines. The built form has provided a good articulation and break up of materials to the building and is considered to be in keeping with the context of the surrounding locality.

Block B and C are not visible from the surrounding streetscape and therefore are not considered in regards to the context of the surrounding area. The proposed development therefore complies with this design requirement.

Scale

The scale of the surrounding locality is two storeys in height. Block A streetscape elevation appears two storeys in height and is in keeping with the scale of the surrounding locality. However, upon entering the site, Block B1 and Block C appear as 4 storey development which is out of scale with the surrounding locality, further the 60m length of Block C is not in scale with the surrounding development. The proposed development therefore does not comply with this design requirement.

Built Form

The amended design is an improvement on the built form from the original design, as Block A and Block C have been provided with articulation and variation of building materials and variation to the roof form.

However, Block B, south eastern elevation has no variation to building materials, no articulation of the elevation and minimal windows, this does not contribute to the built form of the development.

Further Block B1 and Block C exposed undercroft areas, over 3m for Block B1 and 5m high underground carpark for Block C does not contribute to the built form of the development.

Therefore the proposed development does not comply with built form requirements of the SEPP.

Density

The subject site is a large site of over 9000m² and therefore is capable of supporting a number of dwellings on the site. However, given the lack of information addressing the constraints on the site; cut and fill, stormwater, bushfire and addressing the endangered ecological community the applicant has not demonstrated that the proposed density is considered adequate with regard to the constraints of the site. Therefore the proposed development has not satisfied this requirement.

Landscaping

The submitted application has provided a plan of Landscape Intent. The plan was assessed by Council ecologist/specialist planner, who identified numerous weed species not to be included on the plan. Further the plan did not clearly identify where species would be located on site. Therefore the submitted landscape plan is not considered sufficient to demonstrate whether the landscaping will break up the built form of the development and provide amenity to the residents.

Therefore the proposed development does not satisfy this design requirement.

Amenity

The site appears to have limited amenity for the residents. The original plan showed pool area and BBQ, however, the amended plans have deleted these facilities, and therefore has not provided any on-site private open space outside of the units.

Only Block A has north orientation of the internal and external living areas and therefore Block B and half of Block C has a north western orientation. Further half of Block C units have a southern elevation which does not receive any sunlight to the internal and external living areas of the units during winter. Further the internal layout of Block C units does not provide cross ventilation and numerous units have over 10 metres to the back kitchen wall which is not consistent with "good urban design guidelines".

Therefore the proposed development does not comply with this design quality principle.

Safety and Security

The design criteria states that the visibility, functionality and safety of building entrances can be achieved by orientating the entrances to the public street. The site slopes down from Elsie Street and therefore street frontage for the whole development is not achievable. However, the site layout should promote entryways visible from access road. Block C entrance is provided at the rear of the building which raises security and safety issues.

Further the internal corridor of Block C is over 60 metres in length and is not a straight corridor but has corners that would create a safety issue. The Residential Design Flat Code states that better design practice is to provide corridors which are short with clear sight lines. Further design solutions for long corridors are to provide a series of foyer areas, windows along the end of the corridor. The amended plans have provided doors on the corridor and created a lobby walkway and windows on the corridor. However, the amended design has not improved the design of the corridor to provide clear sight lines, as there are still corners provided which raises security issues.

Therefore the proposed development does not comply with this design principle.

Aesthetics

Block A & C have significantly improved the external appearance of the building through the articulation of the built form and the variation in materials. However, the visual appearance of the underneath garage on the northern elevation for block A, and the exposed concrete piers on Block B1 and Block C detract from the improved aesthetics of the building. Further Block B, south eastern elevation has provided no articulation, no variation of materials and minimal windows that don't open.

Therefore overall the proposed development does not comply with the aesthetics design requirements.

State Environmental Planning Policy No.71 – Coastal Protection

Clause 8 of the Policy details sixteen matters for consideration for land within the coastal zone.

- e) *measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995 and plants (within the meaning of that Act) and their habitats;*

The subject application has failed to demonstrate how the endangered ecological community will be conserved. The subject application has not provided a satisfactory stormwater management plan. Therefore it can not be satisfied that the existing quantity, quality and velocity of the surface runoff can be maintained at or near current levels, which is necessary for the long

term survival of the endangered ecological community. Therefore the proposed development does not comply with SEPP 71.

- (p) *only in cases in which a development application in relation to proposed development is determined:*
- (i) *the cumulative impacts of the proposed development on the environment,*

The subject application has not adequately addressed the proposed development's cumulative affect on the environment. The subject site has significant constraints on the site which have not been addressed despite numerous requests from Council. Further the site has an endangered ecological community which has not been adequately addressed in terms of proximity and conservation of the community. As discussed above the proposed development is considered to have a detrimental cumulative impact on the environment.

The application has not adequately satisfied all matters for consideration under SEPP 71, due to the lack of information it can not be determine conclusively the proposed development will not have an impact on the endangered ecological community and the environmental constraints of the site.

SEPP (Infrastructure) 2007

SEPP (Infrastructure) aims to facilitate the effective delivery of infrastructure across the State. Clause 13 of the SEPP states that the consultation is required when the development is likely to generate traffic to an extent that will strain the capacity of the road system in a local government area.

The application was referred to Development Traffic Advisory Group (DTAG) who advised that the application should be referred to the RTA. The RTA responded that they had no concerns with the application provided a condition was included that noise attenuation measures are implemented into the design of the buildings.

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

The proposed development is not affected by any draft EPIs.

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

Tweed Development Control Plan Section A1: Residential and Tourist Development Code

The subject application was submitted prior to the adoption of the current Tweed Development Control Plan which was adopted on 22 April 2008. Council resolved in the Planning Committee meeting of Tuesday 22 April that for applications that have been lodged prior to that date that have not yet been determined will be saved from strict compliance with the plan.

The subject application due to the numerous areas of non compliance, however, is considered to not be consistent with the development control plan.

CHAPTER 1- BUILDING TYPES

Small Residential Flat Building

The main pedestrian entry to the building should be facing the street and accessible from the street. Block A of the development clearly addresses the street however the other buildings on site, due to the site's configuration are not accessible from the street. Therefore the proposed development cannot comply with these controls.

Deep soil zones have not been provided on the plans in accordance with this part. Therefore the proposed development does not comply with this requirement.

CHAPTER 2 - SITE AND BUILDING CONTROLS

DESIGN CONTROL 1- Public Domain Amenity

Streetscape

The proposed development generally complies with the streetscape controls as it provides setbacks in keeping with the locality, no carport or garages are visible from the public street, and the proposal has minimised the driveway and hardstand areas visible from the street.

However, the proposed development does not comply with the deep soil zone controls as no areas have been nominated. Therefore, the proposed development does not comply with these controls.

Public Views and Vista

The proposed development does not diminish public views to natural features, heritage items or dominant landmarks. Therefore the proposed control is not relevant to the proposed development.

DESIGN CONTROL 2 – Site Configuration

Deep Soil Zone

The subject development does not comply with this control as no deep soil zones have been nominated on the proposed plans.

Impermeable Site Area

The proposed controls in regards to infiltration on the site are not relevant to the subject development as the site could not retain water and facilitate adequate infiltration on the site due to the slope and nature of the soils on the site.

The control states that rain water shall be collected in tanks and reused, however, no information has been provided that there will be rainwater tanks on the site and therefore this control has not been satisfied.

The proposed development would satisfy the requirement for 60% of the allotment for impervious surfaces on lot sizes greater than 750m².

External Living Area

The proposed development does not comply with all the external living area controls. A portion of Block C on the western boundary is located only 3.584m from the boundary and no screening has been provided when the control states that suitable screening should be provided if less than four (4) metres from the side boundary.

External living areas should be oriented to north where possible. The site is a large site capable of a northern orientation for all dwellings. Block A complies with this requirement and faces to the north. However half of block C faces south and Block B1 & B2 & B3 and half of Block C have a 40 degree northwest elevation and therefore does not comply with this requirement.

Above Ground External Living Spaces, Balconies and Terraces

All external living areas have over 2.5m depth and are greater than 10m² in size and therefore comply with this size requirement. All external living areas are located adjacent to main living areas and therefore comply with this requirement. All external living areas are of a sufficient size capable of fitting a dining table and chairs and therefore complies with this requirement.

Communal Open Space

The amended plans submitted for the application on 14 October 2008 did not provide a communal open space to provide recreational and relaxation uses for the residents. Therefore the proposed development does not comply with this requirement.

Landscaping

The plan of landscape intent did not provide sufficient detail to address these controls. Therefore the controls are not satisfied and therefore form one of the reasons for refusal.

Topography, Cut and Fill

The subject application has not provided sufficient information to determine the extent of cut and fill for the proposed development and whether it has been minimised onsite. Further, the cut and fill requirements are restricted to 1m in height and therefore the plans do not demonstrate whether they comply with these controls. Therefore the lack of information in this regard is another reason for refusal of the subject application.

DESIGN CONTROL 3 - Setbacks

Front Setbacks (building Lines)

The subject development complies with the 6m front setback controls, as the front setback is 6m from the front boundary.

Side setbacks

The proposed development complies with the minimum 1.5m side setback controls. The proposed development has minimum 7.508m setback on the eastern boundary and 3.584m on the western boundary and therefore complies with this control. Garages and carport side setback controls are not relevant to the proposed development.

Rear Setbacks

The rear setback is 8m or the deep soil zone which ever is the greater, the proposed development provides over 27m to the rear setback and therefore complies with this control.

DESIGN CONTROL 4 - Carparking and Access

Carparking Generally

The proposed carparking has been assessed in accordance with Tweed Development Control Plan Section A2 and is assessed below. The carparking on the site is not located within the front setback and the driveway width from the street is minimised and therefore complies with these controls.

The site layout design has not minimised hard stand areas, by vehicle movement and parking areas on the site. The driveway extends nearly the whole length of the site and Block C is accessed from the rear of the building which further extends the concrete hardstand areas. Therefore the proposed development does not comply with this control.

Basement carparking

Block A does not comply with the requirement for the basement to not extend a metre above the ground as the northern and eastern elevation of the plans show that the garage extends over 2.0m above the ground level and therefore does not comply with this control.

The control in regard to ramps is not relevant to the subject proposal as no ramps are proposed for the subject development.

Block A basement carpark is located in line with the buildings footprint and therefore complies with this clause.

DESIGN CONTROL 5 – Building Footprint and Attics, Orientation and Separation

Building footprint and attics

The control states that a back wall of the living room should not be greater than 10 metres from a window. Block A, unit 102 and 202, and eight units in Block C do not comply with this requirement. This issue of non-compliance forms a reason for refusal.

The proposed development does not have any attic spaces and therefore these controls do not comply.

Building orientation

The pedestrian entry into Block A is clearly visible and accessible from the street, however, as Block B and C do not have street frontage there is no clearly delineated pedestrian access to the rest of the buildings within the site and therefore the proposed development does not comply with this clause.

The subject site is a large site capable of a design that could comply with the control to orientate bathroom, laundry and other ancillary room windows to the side boundaries. In particular, the front elevation of Block B has small fixed bathroom windows that detract from the façade. Therefore the proposed development does not comply with this requirement.

The proposed development does not comply with the requirement to orient living areas to employ passive solar design principles. Block B and C do not employ passive solar design principles, as the units are orientated to the north-west and 11 units in Block C are orientated to the south. This non-compliance is another reason for refusal of the application.

Building separation

The proposed development does not comply with all the building separation controls. Block C has not provided a 4m minimum separation between walls containing primary windows/doors of living rooms (on any level of the building) to shared driveways. The proposed development does not provide a 3m min separation distance of Block B from the sleeping rooms (on any level of the building) to the carport. Therefore the proposed development does not comply with these requirements.

DESIGN CONTROL 6 – Height

Building Height

The amended plans submitted are provided at 1:100 at A1 scale, however, only A3 plans were provided. Therefore, the plans do not provide an accurate measurement of the height of the proposed buildings. Further the plans provide RL measurements of the maximum finished ground level at Block C, not the minimum finished ground level. Given the A3 plans submitted, the applicant has not demonstrated that the plans comply with these controls.

The proposed development does not appear to comply with the 9.6m wall plate height requirement for Residential Flat Buildings. The flat roof style of the development of Block C shows that the development would not comply with the wall plate requirements. However, the exact wall height cannot be determined by the plans submitted. Therefore the plans submitted have not demonstrated compliance with these controls.

DESIGN CONTROL 7 – Building Amenity

Sunlight Access

The proposed development has not complied with the requirement to orientate living spaces to the north where possible. The subject site has adequate space to have living spaces to be located predominantly to the north, however, only four (4) units (Block A) of 34 units are orientated towards the north. Therefore, this forms another issue of non-compliance.

Eleven (11) units within Block C face south and during winter the private open space of the units do not receive two hours sunlight between 9am and 3pm on June 21. Therefore the proposed development does not comply with this requirement.

The subject development does not result in any overshadowing on the neighbouring properties and therefore complies with the overshadowing to neighbouring property controls.

Visual privacy

Block A has balconies adjoining internal living areas that are directly overlooking the neighbouring property to the east. Terraces and balconies are generally not to be located above ground floor if they overlook neighbours therefore the proposed development does not comply with this requirement.

Acoustic privacy

No detail was provided as to the air conditioners that will be installed therefore there is insufficient information to assess this requirement. The subject site is not on a designated road however, it is in close proximity to the Pacific Highway. Council's Environmental Health Officer stated that if approved a condition would require a revised traffic noise impact report to be submitted to Council prior to construction certificate. Therefore this requirement could be satisfied.

View sharing

The proposed development was designed to ensure that it did not interfere with surrounding properties views. Therefore the proposed development complies with the requirement to have the building siting, as far as it is practical, to be designed to minimise the impact on view sharing between properties.

Natural Ventilation

Block A and Block C have operable windows to habitable rooms, however, no elevation plans have been provided for the north east and south west elevation for Block B and therefore insufficient information is provided to determine whether there are operable windows for the habitable rooms.

Non habitable rooms including kitchen, bathroom & laundry are encouraged to have operable windows. The proposed development has not provided operable windows for the bathrooms and laundries and therefore does not comply with this requirement.

The proposed development does not comply with the requirement to design dwelling units to optimise access to prevailing breezes and to provide for cross-ventilation. As Block C internal layout has not been designed with regard to cross ventilation and therefore does not comply with this requirement.

DESIGN CONTROL 8 – Internal Building Configuration

Dwelling layout and design

The submitted plans show units in Block A and C that have greater than 10m from a window. The amended plans submitted at 1:100 scale at A1, however, only A3 plans. Therefore the application has not provided an accurate measurement of the distance from the window to the back of the kitchen. Therefore, the subject application was unable to satisfy compliance with this clause.

Storage

The amended plan has provided storage areas for the units, however, Block A and Block C have been provided with communal storage areas for all the units and no detail has been provided as to how this space will be allocated per unit. Therefore the proposed development does not comply with the requirement for 4m³ for two (2) bedroom unit and 5m³ for a three (3) bedroom unit.

Internal circulation

The proposed development does not comply with the requirement to limit the number of units accessible from a single core/corridor to eight. Block C has 11 units accessed from a single corridor, while the amended plans has provided doors on the corridors, it is still the one level corridor. Therefore the proposed development does not comply with this requirement.

The proposed development does not comply with the corridor width requirements of 2.5m, as only 1.5m corridor widths have been provided in sections of Block C corridor. Therefore the proposed development does not comply with this requirement.

The development has not minimised corridor lengths to give short clear sight lines in accordance with the requirements. This has resulted in 11 units accessed from the one corridor that has bends in the corridor and results in no clear sight lines. Therefore the proposed development does not comply with this requirement.

DESIGN CONTROL 9 - External building elements

Fences and Walls; Front, Side and Rear Controls *Side and rear fences*

No front, side or rear walls have been provided as part of the development application, therefore these requirements are not applicable.

Roof, Dormers and Skylights

The proposed development is compliant with the roof design requirements as the built form is articulated and the roof height is in proportion with the height of the building. The main roof of the development is not a trafficable terrace and therefore complies with these controls. The proposed development has provided skylights in block B, the application was reviewed by Council building surveyor who did not raise any concerns with the structural integrity of the building and therefore the proposed development complies with this control.

Elevations Visible from the Public Domain

The requirements that the building should be designed to provide front door and the building entry to be prominent from the street is satisfied by Block A of the development as it is the only building visible from the street. Due to the site configuration and slope of the site the other buildings cannot comply with this clause.

Corner Building Elevations

The subject site is not a corner allotment and therefore these controls are not considered relevant.

Awnings, Canopies, Storm Blinds, Sails and Signage

The proposed development has not included any awnings, canopies, storm blinds, sails or signage and therefore these requirements are not relevant to the proposed development.

Minor Elements

No details have been provided in regards to minor elements for the development, such as air conditioning units, and no BBQ area has been located on the amended plans. Therefore the lack of information in regards to these controls results in the development unable to satisfy these controls.

DESIGN CONTROL 10 – Building Performance

Energy Efficiency

The proposed development has a BASIX certificate and therefore complies with this requirement.

Waste Management

No demolition is proposed for the subject development and therefore the controls in regards to demolition do not apply.

The statement of Environmental Effects has not provided sufficient information in regards to the storage and collection of waste and therefore has not satisfied this requirement.

Water Conservation

The proposed development has a BASIX certificate and therefore complies with this requirement.

Maintenance

The subject application has not demonstrated through the plans for the development in terms of the external materials and the plan of landscape intent whether it can satisfy the maintenance control. The control state the development should ensure long life and ease of maintenance for the development. Therefore it is considered that this control has not been adequately satisfied.

DESIGN CONTROL 11 – Floor Space Ratio

The proposed development complies with the maximum floor space ratio requirement of 1.2:1.

Tweed Development Control Plan – Section A2 Site Access and Parking

The carparking requirements for multi-dwelling housing is 1.5 carparking spaces per 2 bedroom unit and 2 carparking spaces for 3 bedroom units, one space per four units for visitor parking.

The proposed development has thirty-four (34) units of which seventeen (17) units are two (2) bedroom and seventeen (17) units are three bedrooms. Block A has four (4) units that are three (3) bedroom and therefore requires eight (8) carparking spaces and one (1) visitor space. Block A complies with this requirement.

Block B has nine (9) three (3) bedroom units and therefore requires eighteen (18) car parking spaces and therefore requires three (3) visitor spaces. Block B has provided eighteen (18) carparking spaces and three visitor parking spaces and therefore satisfies the parking for Block B.

Block C has four (4) three (3) bedroom units and seventeen (17) two (2) bedroom units, therefore requires thirty four (34) spaces and six (6) visitor spaces. The proposed development provides 34 residential spaces and 6 visitor parking spaces and therefore complies with this requirement.

The DCP requires the storage for two (2) bicycles spaces per unit and therefore needs to provide storage for 68 bicycles. The proposed development has provided adequate space at each building for the storage of bicycles.

Therefore the proposed development complies with the DCP.

Tweed Development Control Plan – Section A3 Development of Flood Liabile Land

Section A3.3.3 Residential Development on Flood Liabile Land in regards to development at Banora Point. The control states that all habitable areas of the residential buildings are to be at a level of not less than Council's adopted minimum floor level for development.

As mentioned above the application was assessed by Council's Flooding Engineer who found that the proposed development was generally compliant with the flooding controls. Therefore the proposed development complies with this development control plan.

Tweed Development Control Plan – Section B3 Banora Point West – Tweed Heads South

The design philosophy for the DCP has five broad considerations. In regards, to the proposed development, the following considerations are relevant:

- iii) *The need to ensure the development is in harmony with the natural environment,*
- iv) *The need to take into account constraints inhibiting development.*

The proposed development has not provided sufficient information to demonstrate that the proposed development is in harmony with the natural environment. Further the development has not adequately considered the constraints on the site. Therefore the proposed development does not satisfy the considerations of the DCP.

The DCP outlines development principles in regards to the proposed development the following principles are relevant:

- m. *To ensure the provision of an adequate, efficient and environmentally safe drainage system;*

The proposed development has not provided sufficient information to demonstrate that the proposed development will provide an adequate, efficient and environmentally safe drainage system. Comments from Council's specialist planner/ecologist stated that the EEC on site is reliant upon the current ground water and surface water regime, the subject application has failed to demonstrate that the quantity, quality and velocity of the surface water runoff can be maintained at or near current levels. Therefore, the proposed development is not considered to satisfy the development principles of the DCP B3.

The site is identified under the DCP as Residential B – predominantly medium density housing of the type generally known as townhouses and villa homes. Further the guidelines states that no building within the residential area should exceed two (2) storeys in height. The Statement of Environmental Effects has

not had regard to this DCP and this is reflected in the proposed design of the development. Therefore the proposed development does not comply with this development control plan, and this forms part of the reasons for refusal.

(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. No demolition is proposed, however, the subject application is located in the coastal zone and therefore the proposed development is required to be assessed in regards to the NSW Coastal Policy.

The NSW Coastal Policy 1997

The 1997 Coastal Policy is based on the four principles of ESD. These principles are the Conservation of biological diversity and ecological integrity, inter-generational equity, improved valuation, pricing and incentive mechanisms and the precautionary principle. These principles are included in the Tweed Local Environmental Plan clause 5 ecological sustainable development and therefore have been addressed above.

Table 2 contains in Appendix C a list of the provisions of the policy which are most relevant to development control. In regards to the proposed development strategic action 2.1.3 is relevant to Council's assessment process. It states that physical and ecological processes are to be considered when assessing development application. In this regard, Council has considered the application inadequate in addressing stormwater management and buffers for the endangered ecological community and the coordination of the stormwater on site in regards to the EEC. Further no detail was provided for a restoration plan and how the plan of landscape intent will provide consideration of the EEC. Therefore the proposed development is not considered to comply with the NSW Coastal Policy.

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

Compatibility with Adjoining Land Uses

The surrounding development is predominantly single and double storey dwellings. The proposed development is for 34 units in three residential flat block buildings. While the subject site is large and capable of supporting medium density housing the proposed scale and bulk of the buildings are not in keeping with the surrounding residential character, nor compliant with the applicable DCP.

Privacy

Block A has balconies adjoining living areas that are directly overlooking the neighbouring property to the east. No privacy screens have been provided for that elevation of the building. The subject site is a large site capable of providing a development that does not result in privacy impacts on the neighbouring property.

Bulk Scale & Design

The original application was for 46 residential units within three buildings in particular, Block C is over 60 metres long and three storeys in height and was not considered in keeping with the bulk and scale of good design principles of a residential flat building.

The amended plans improved the façade treatment of Block A & C, reduced the density on the site from 46 units to 34 units which included removed of level 3 of Block C. However, the redesign still resulted in issues of bulk and scale as Block C is still 60 metres in length, now has an exposed undercroft carparking area up to 5m in height. Further Block B on the south eastern elevation has little articulation to the façade and no variation on materials. Therefore, the overall design is not satisfactory in relation to bulk and scale.

Stormwater

Council's Flooding Engineer has provided the following:

"The applicant has elected to provide a piped system to convey the Q100 external flows through the site, in accordance with (ii), rather than redesign the proposed buildings as per option (i). The stormwater consultant has calculated that a 1200mm pipe can accommodate these flows. In order to provide adequate inlet capacity, the internal road that separates the inlet from the adjacent habitable dwelling would need to be built 1.72m above invert level of the inlet structure. One way cross fall on the internal driveway away from the buildings will provide additional protection from stormwater flooding. No arrangement for this inlet system has been provided. It is considered that further design is required so that the adequacy of this inlet can be properly assessed, and the consequences of failure examined.

For the area between the proposed buildings, an overland flow path is to be constructed, to drain the gully area along the western boundary. Design of this drain has been provided, but no details of other cut and fill / regrading works in this area have been provided to demonstrate compliance with the DCP, as was requested."

An amended stormwater report has been requested on numerous occasions. The following earthworks and stormwater management issues have still not been adequately addressed:

- a) *Site plan(s) showing existing ground level contours (clearly labelled), and preliminary finished road, drainage and building floor levels. Any areas where cut/fill earthworks exceed 1m must be clearly shown.*
- b) *Detail of the intended structural arrangement (including invert levels and approximate dimensions) of the inlet structure servicing the external catchment at the top of the site.*
- c) *Detail of the intended stormwater management measures (level spreaders, energy dissipation, detention devices etc) at the outlets to the piped and swale drainage systems, to ensure no adverse impacts on downstream land due to the development.*

Council's Flooding & Stormwater Engineer has subsequently held numerous meetings with the applicant and his drainage consultants to discuss these requirements. However, the applicant has still not submitted an amended stormwater report and therefore this outstanding information forms one of the reason for refusal of the application.

Noise

Council's Environmental Health Officer has reviewed the proposal and provided the following comments:

"A Revised Traffic Noise Impact report is to be prepared for submission to council prior to the issue of the Construction Certificate. Such Report shall consider any proposed Pacific Highway upgrading information and shall make recommendations relating to the provision of noise barriers and the like and/or any necessary building shell acoustic treatments required to achieve internal noise criteria.

The Report shall be prepared by an appropriately qualified and experienced acoustic consultant.

All recommendations as to barriers and building shell treatments as contained within the Report shall be implemented to the satisfaction of Council's General Manager or his Delegate.

Notwithstanding the above the following internal noise objectives for all habitable rooms under ventilated conditions shall as a minimum comply with the following:

All habitable rooms other than sleeping rooms: 45 dB(A) Leq(15hr) and 40 dB(A) Leq (9hr) and Sleeping rooms : 35 dB(A) Leq(9hr)."

Should Council determine to approve this application the above would need to be imposed as a condition on the consent.

Site Design and Internal Design

The proposed development is not considered to provide good urban design for the site layout and the internal design of the units. No on-site facilities have been provided, no pedestrian pathways have been provided through-out the development to create a useable open space. The internal layout of the Block C units provide little amenity as there are no ventilation for cross breezes. The design of block C raises issues of concerns with regard to safety and security for residents as the access is to the rear of the building and the internal corridors do not provide clear lines of sight.

Cumulative Impacts

The subject application, in its current form would be considered to result in cumulative impact on the environment. The application has not satisfactorily demonstrated how the stormwater will be managed, how the endangered ecological community will be protected and how the development will comply with bushfire requirements. Further the bulk and scale of the development if duplicated would result in a detrimental impact on the built and natural environment.

(c) Suitability of the site for 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. The site is bushfire prone land, yet the local Rural Fire Service is still awaiting an amended report in regards to asset protection zones and access. The site has significant stormwater issues, however, to date an amended stormwater report has still not been received by Council despite numerous requests and meeting with the applicant. The site has moderate to steep slopes, 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. Therefore, the application does not satisfy that the development has mitigated risks against the natural hazards.

Flora and Fauna

Council's specialist planner/ecologist has reviewed the proposal and provided the following comments:

"The area contains significant vegetation of high conservation value that is classed as an Endangered Ecological Community (EEC) under the Threatened Species Conservation Act 1995.

The vegetation community is Lowland Rainforest on Floodplain which intergrades with Swamp Sclerophyll Forest. Both of these communities exist where the groundwater and surface water regime is suitable, and rely upon the current regime continuing unchanged.

The applicant has failed to demonstrate that the development will not impact directly or indirectly on the significant vegetation and habitat. A request (see below) for an aerial photograph with the development footprint (which includes any required asset protection zones, recreational areas and stormwater treatment devices) overlain has never been provided.

A site plan at a scale of 1:1000 or greater for the whole site clearly indicating:

- i. mapped extent of existing vegetation communities;*
- ii. final building design and locations;*
- iii. extent of asset protection zones;*
- iv. location of any stormwater treatment devices*
- v. the location of any trees identified for retention in the development application plans;*
- vi. location of grassed areas, boardwalk (if any), paved areas (if any) and stormwater infrastructure including swales and infiltration basins.*

The applicant has failed to demonstrate that the quantity, quality and velocity of surface water runoff can be maintained at or near current levels, a factor necessary for the long-term survival of the EEC."

Therefore given the lack of information in regards to the flora and fauna on the site it cannot be concluded with certainty that the proposed development will not impact on the EEC directly or indirectly.

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

Public Authority Submissions Comment

Roads and Traffic Authority

The application was referred to Development Traffic Advisory Group (DTAG) as required under the provisions of SEPP (Infrastructure) 2007. DTAG stated that the application should be referred to the Roads and Traffic Authority of NSW.

The RTA provided the following comments:

"The Roads and Traffic Authority (RTA) has no objection to the proposed Multi Dwelling housing providing the noise requirements stated below are incorporated into the approval. The proposed development is located in the vicinity of and could be affected by traffic noise from the existing Pacific Highway".

The comments were reviewed by Council Environmental Health Officer, who provided an appropriate condition of consent, should Council approve the subject development.

Local Rural Fire Service

The application required referral to the RFS under section 100B of Rural Fires Act 1997. The RFS requested further information from the applicant that to date is still outstanding. Therefore no comments have been provided from the Rural Fires Service as there is inadequate information to provide an assessment of the proposed development and therefore this is one of the reasons for refusal of the subject application.

Public Submissions Comment

The proposed development was advertised for fourteen (14) days from Wednesday 17 October to Wednesday 31 October 2007. Eight submissions were received. The issues raised in the submissions are addressed in the following table.

Issue	Comment
Concern with the current street layout ability to handle an increase in traffic during construction and on completion of the development	The application was referred to Development Traffic Advisory Group (DTAG) on 15 November 2007. The committee had no concerns with the subject application in regards to traffic numbers of the area. DTAG had advised a condition regarding the resealing of Elsie Street if the application be approved.
The proposed development will result in increase in younger people who will increase the noise in the locality.	The proposed development is considered to result in general residential noise and therefore is not considered to be an excessive noise generation. The demographic that the proposed development will attract, is not an issue for consideration. Council is only concerned that diversity in housing is created to provide for the variety of the community's needs.
Increase in offstreet parking being generated from the development.	The proposed development complies with the parking requirement for residents and visitors under the Tweed Development Control Plan Section A2 and therefore this is not considered to result in an increase in off street parking in the area.
Increase in noise generated from increased use of the garage service	The increase in noise from the servicing for garbage disposal is not considered an excessive noise incompatible with residential locality. Therefore, this is not considered an issue for refusal for the proposed development.

Issue	Comment
Concern for tree clearing and impact on wildlife	The application has not provided detailed information of the trees required to be cleared for the subject development. Further the applicant has not satisfied that the Endangered Ecological Community will be protected and therefore this is one of the reasons for refusal.
Concern the proposed development will block views	The proposed development slopes down significantly from Elsie Street, only Block A is visible from the street and this building appears as two storeys from the street. The views from the dwelling across the street therefore will not be affected by the proposed development.
Concerned the reflection of the roofs if zincalum, or a tiled roof would be an eyesore.	The original and amended plans have predominantly been for flat roof design that would not impact on neighbouring properties views, the amended design has dark roof and therefore would not result in a reflection to surrounding properties.
The proposed development will devalue property prices and make the property unliveable.	The impact of the development on property prices is not a matter for consideration under section 79C of the Environmental Planning and Assessment Act 1979.
Large stormwater flow over the site	<p>The stormwater report submitted with the proposal was considered not to adequately address the disposal of stormwater from the site.</p> <p>An amended report was requested on numerous occasions and to date still remains outstanding. Therefore the lack of information in regards to stormwater is one of the reasons for refusal of the subject application.</p>
Out of character with the area	<p>The locality of Elsie Street is predominantly low density residential housing, consisting of single dwelling houses.</p> <p>Block A is the only building visible from Elsie Street, this building is only two storeys in height from the street elevation and therefore this building alone is considered in keeping with the scale and built form of the dwellings in the locality.</p> <p>However, when the whole development of the site is viewed in the context of the surrounding locality it is considered not in keeping with the surrounding locality. In particular, in regards to Block B and Block C which appears not in character with the bulk and scale of surrounding development. The proposed development is considered to be out of character with the surrounding area, and this forms part of the</p>



Issue	Comment
	reasons for refusal.
Concerned with the line of sight in both directions when accessing the site.	The application was referred to Development Traffic Advisory Group (DTAG) on 15 November 2007. The committee had no concerns with the subject application in regards to line of sight into and out of the development site.

(e) Public interest

The proposed development raised a significant number of objections. While a number of the issues are not issues that Council can consider under s79C matters for consideration, the submissions have also raised concerns that Council has raised as issues for refusal.

The issues raised by the submissions of stormwater management, environmental impact of tree clearing and the development being out of character for the area are issues of concern for Council and reasons that outline that the proposal is not in the public interest.

Subsequent issues that have not been adequately addressed such as susceptibility to hazards such as bushfire and stormwater as well as amenity issues for residents of the proposed development further reiterates that the development is not in the public interest.

OPTIONS:

1. Refuse this application in accordance with the recommendation for refusal.
2. Request the applicant to provide all the outstanding information within 28 days and re-report the DA to Council for consideration.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

The proposed development could potentially set an unwarranted precedent for applications that have not adequately addressed sites constraints, environmental features and provided outstanding information.

CONCLUSION:

The proposed development application does not comply with the Tweed Local Environmental Plan and the Tweed Development Control Plan Section A1 Tourism and Multi-Dwelling Housing. The proposal has sought to maximise development potential for little regard to the environmental constraints of the site or good urban design.

The application has significant flaws, which have not been adequately addressed. Given the length of time the application has been with Council and the numerous attempts that the applicant has had at re-design it is now considered prudent to determine the application.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.



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P5 [PR-PC] Refurbishment of the Banora Point Caravan Park, Lot 5 in DP 828639 & Lot 382 in DP 755740, Pacific Highway East, Banora Point

ORIGIN:

Development Assessment

FILE NO: PF4030/2620

SUMMARY OF REPORT:

In late 2007 the Banora Point Caravan Park was sold to Lifestyle Resorts Australia Pty Ltd. Since purchasing this property the owner has facilitated the relocation of previous tenants and commenced site works to refurbish and upgrade the old caravan park in accordance with their previous development approvals and “community plan”. The previous consents allocated for the construction of 180 permanent home sites within a licensed caravan park.

When initial site works commenced Council was under the impression that these works would comprise maintenance of existing sanitary, stormwater pipelines, and water supply lines. These works were meant to involve minimal rectification work. However this maintenance work has lead to the renewal of the private infrastructure works consisting of sanitary drainage, water supply and stormwater drainage in addition to significant earthworks across the site.

Council has been trying to work with the new owner to ensure all site works meet legislative requirements. A meeting was held on 11 November 2008 which identified all outstanding matters to date as detailed within this report. The owner has indicated that the outstanding matters are capable of resolution and will get the additional information to Council in the near future.

This report aims to inform all Councillors of the project to date and to seek support for a programme for the management of the various approvals and possible enforcement actions arising from any unlawful development of the site.

RECOMMENDATION:

That Council: -

- 1. Continues to negotiate directly with the owner to seek a lawful development across the site; and**
- 2. Should the negotiations not resolve in a lawful outcome within 2 months Council engages legal representation and seeks their direction for the management of approvals and enforcement actions**



REPORT:

Applicant: Lifestyle Resorts Australia Pty Ltd(Own)
Owner: Lifestyle Resorts Australia Pty Ltd(Own)
Location: Lot 5 in DP 828639 & Lot 382 in DP 755740, Pacific Highway East, Banora Point.
Zoning: 6(b) Recreation
Cost: Unknown

Background & Report

The land is described as Lot 5 in DP 828639 being 2.815 hectares and Lot 382 DP 755740 being 1.4215 hectares, Pacific Highway East, Banora Point. The total parcel is irregular in shape with frontage to both the Pacific Highway and the Tweed River (to the east). The land adjoins Crown Road to the west.

The land is historically low lying and is mapped as a partial SEPP 14 wetland.

The Banora Point Caravan Park has an extensive development history:

<u>Date</u>	<u>Consent Number</u>	<u>Approval</u>
14 November 1967	PN 1074	Filling of land to RL 11 and developing a caravan park and holiday units.
10 October 1983	T4/2795	Consent issued for the erection of 2 amenity blocks
17 March 1986	T4/2794	Extension to an existing caravan park to accommodate thirty six movable dwelling sites.
24 June 1994	D94/0015	Additions to existing caravan park to accommodate 5 relocatable home sites (these sites already existed and the DA was only lodged in response to the Council's request due to non compliance.
11 December 2000	DA 0910/2000	Boat Mooring & Launching Facilities
19 April 2001	DA 1198/2000	Erection of a demountable amenities building.

DA94/0015 was the last development consent issued for caravan park sites, bringing the total lawful number of sites to 180.

Whilst the original approval authorised a caravan park and holiday units the site consent have morphed into a caravan park with a maximum capacity of 180 permanent home sites.

Since late 2007 the new owner has facilitated the relocation of all previous tenants and commenced site works to refurbish and upgrade the old caravan park in accordance with their previous development approvals and "community plan".

In November 2007 the new owner lodged a S96 Modification Application to D94/0015 to reduce the number of long term sites from an approved 180 sites down to 92 sites (each

comprising a minimum site area of 230m² with the average dwelling having a floor area of 151m²).

The S96 was not considered to meet the substantially the same development test and the applicant subsequently withdrew the application before a refusal was issued.

It was at this point that the new owner decided to proceed with the refurbishment of the caravan park utilising the previous approval rather than a new DA.

Since this time Council has been trying to liaise with the applicant to obtain applications for stormwater works, sewer works, and earthworks.

It would be Council's preference to manage this site in a holistic manner. This would require the lodgement of site plans demonstrating the ultimate configuration including all residents sites, all recreational facilities and any future development areas (such as the crown road reserve) on the one masterplan. The owner has indicated that this will be received in the near future as design work is almost complete.

Some of the required information has been submitted to Council, however, there are outstanding matters that have been brought to the applicant's attention on 7/11/2008. Please find following an extract of a letter sent to the applicant:

Issue (Approval Required)	Status of Issue/Approval
<p>S68 required for sewer and onsite sewerage management application</p> <p>Last requested by Council 21/08/2008</p>	<p><u>Council Application SEW08/0500</u></p> <p>This relates to an application for a pump station. Council's Senior Building Surveyor is co-ordinating the assessment of this application in consultation with Council's Environmental Health Officer.</p> <p><u>Council Application SEP08/0016</u></p> <p>This relates to an application for a pump station. Council's Environmental Health Officer is co-ordinating the assessment of this application and a further information request has been requested (E-Mail Robert Noakes to Scott Morrison 16/07/2008) regarding the modification of the pump station.</p> <p>A. <i>Maintenance of existing sanitary, stormwater pipelines, and water supply lines is permitted to proceed providing;</i></p> <p style="padding-left: 40px;">i) <i>there are no additional lines added,</i></p> <p style="padding-left: 40px;">ii) <i>work as executed drainage plans and certification of the same by a hydraulic consultant are forwarded to Council, and</i></p> <p style="padding-left: 40px;">iii) <i>you demonstrate that such works are in accordance with current planning approvals.</i></p> <p>B. <i>It is to be noted that SEP08/0016 & SEW08/0090 are undetermined. The following information is required to be submitted to Tweed Shire Council to complete assessment of these applications;</i></p> <p style="padding-left: 40px;">i. <i>Service agent name, business address and copy of the signed service agreement from a suitably qualified service agent (the service agreement shall specify a 12 monthly maintenance schedule and details of the servicing method).</i></p>



Issue (Approval Required)	Status of Issue/Approval
	<p>ii. Owners consent in respect of sanitary drainage lines located in Crown Land, and the road reserve in Oyster Point Road/Bushland Drive owned by Tweed Shire Council</p> <p>iii. Certification and "work as executed drawings" from a hydraulic consultant in respect of the sanitary drainage line connecting the pump station to the manhole EE/1 located in the Road reserve of Oyster Point Road/Bushland Drive confirming that such line is in good working order free of breakages and defects.</p> <p>C. You are required to contact Senior Town Planner Denise Galle and Compliance Officer Steven Bishop in respect of the works being currently undertaken at Banora Point Caravan Park.</p> <p><u>Council Application SEW 08/0090</u></p> <p>This relates to an application for a pump station. Council's Senior Building Surveyor is co-ordinating the assessment of this application in consultation with Council's Environmental Health Officer.</p> <p>The above e-mail of 16/07/2008 is applicable to this application.</p> <p>Council requires the applicant to liaise with Council to enable a final determination of these permits.</p>
<p>S68 Applications in the form of Section 68h2 and Section 68h3</p>	<p><u>Council Application SWD08/0628</u></p> <p>Swimming Pool 1 (near front entrance)</p> <p>Ready for issue if corresponding DA for pool is approved.</p> <p><u>Council Application SWD08/0629</u></p> <p>Swimming Pool 2 (on riverfront)</p> <p>Ready for issue if corresponding DA for pool is approved.</p> <p><u>Council Application SWD08/0633</u></p> <p>SW drainage over whole site with 10 SW quality devices</p> <p>Ready for issue if corresponding approvals are in place i.e. fill applications.</p> <p><u>Council Application SWD08/0003</u></p> <p>Outdated (based on old S96) to be withdrawn by applicant.</p> <p>Please note: Council's Planning & Infrastructure Engineer was contacted by your surveyor, who asked whether you are required to provide works as executed plans for the internal civil works currently underway on the site.</p> <p>The submission of works as executed plans for the water, sewerage and stormwater drainage infrastructure, and site works (filling), are required to be prepared in accordance with Development Design Specification D13, Section D13.15 Summary WAX Plans. These plans should be produced by a qualified surveyor and provided in the formats specified by D13.13.</p> <p>Council will await this information</p>
<p>Development</p>	<p>On 22 September Council received your letter and accompanying legal advice</p>



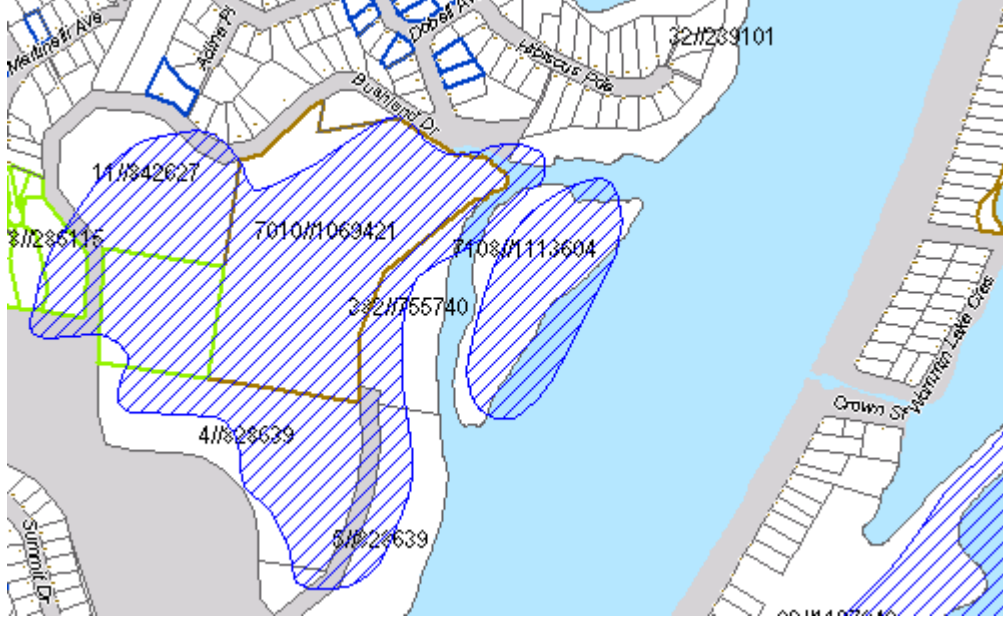
Issue (Approval Required)	Status of Issue/Approval
<p>Application required seeking approval for filling the site to the current design flood level.</p> <p>Requested 21 August 2008.</p>	<p>stating that in your opinion the site already has consent to fill to the required flood level, and that therefore you will not be submitting a DA for the “topping up” of the site.</p> <p>You further provided that you will submit to Council details on where the fill came from, method of transport, haulage route and evidence it is free from contaminates.</p> <p>To date this information has not been received.</p> <p>Council is still of the opinion that a DA is required for the filling works of the subject site.</p> <p>Whilst the 1967 approval authorised fill to RL 11, this level is not the current design flood level and therefore “topping up the site” constitutes earthworks which require development approval.</p> <p>Council is again requesting the lodgement of a Development Application for earthworks. Failure to produce the necessary Development Application may result in Council commencing legal proceedings for unauthorised works.</p>
<p>Plans for “Community Plan” to demonstrate compliance with the relevant Acts</p> <p>Last requested 21 August 2008</p>	<p>Your letter of 22 September acknowledged the need for this to be lodged, yet you provided that it would need to await the DoL Road Reserve.</p> <p>The licensing of the road reserve may take some time to resolve.</p> <p>Council requires a “Community Plan” that excludes the road reserve as your current development approvals do not extend within the road reserve.</p> <p>A community Plan is again requested as a matter of urgency to ensure your site will be capable of complying with the legislation. One of the requirements of the legislation relates to flooding and a community plan should be accompanied with detailed site levels pre recent filling works and post recent filling works.</p> <p>Failure to produce the necessary Community Plan may result in future delays in granting a licence for the subject site.</p> <p>Council’s Coordinator Environmental Health will be managing this aspect of the project.</p>
<p>Traffic Control Plan required.</p> <p>Last requested 21 August 2008</p>	<p>Your letter of 22 September acknowledged the need for this to be lodged, yet to date this has not been received.</p>
<p>On-site Construction requested by you 22 September 2008</p>	<p>Your letter of 22 September 2008 indicated that you would be applying for a Section 68 approval for onsite construction with a Section 82 Objection.</p> <p>To date no such application has been received.</p> <p>No onsite construction (of homes) is to occur without prior approval from Council.</p>



Issue (Approval Required)	Status of Issue/Approval
<p>Validity of 0910/2000DA (Boat Mooring and Launch Facilities)</p>	<p>Your letter of 22 September 2008 indicated that you believe works undertaken to date demonstrate commencement.</p> <p>The documents you have provided to date do not adequately demonstrate commencement.</p> <p>Council notes that your letter of 22 September 2008 indicates that you will provide to Council drawings showing the proposed replacement jetties meeting current construction standards. No information has been supplied to date.</p> <p>It is further noted that your comments as detailed above are contrary to a letter from the Department of Fair Trading in which it states:</p> <p><i>“Ms Morrison has confirmed that they have removed any reference to existing approved Marina berths from all of their promotional material in order to prevent any confusion in the future. All sales staff has also been informed of the importance of reiterating that any marina berths they have on the site on completion of the development are not currently approved”</i></p> <p>No construction of any marina or boating facility is to occur without prior approval from Council or the Department of Planning as statutorily required.</p>
<p>Site Contamination Reports</p> <p>Requested by Council on 23 September 2008</p>	<p>In an e-mail from Council to Scott Morrison on 23 September 2008, site contamination reports were requested.</p> <p>On 29 September 2008 you advised Council that such a report has been commissioned.</p> <p>To date Council has not received a copy of this report.</p>
<p>Landscaping Plan & Regeneration Work Plan</p> <p>Requested 23 September 2008</p>	<p>In an e-mail from Council to Scott Morrison on 23 September 2008, landscaping reports were requested.</p> <p>On 29 September 2008 you advised Council that such plan was not going to be provided.</p> <p>The landscaping plan was requested to review “the extent of works” to establish whether the activities constitute works within 40m of a waterway which would trigger the need for a permit from the Department of Water & Energy in accordance with the Water Management Act 2000.</p> <p>This landscaping & regeneration plan is again requested to ensure your development meets the legislative requirements, and ensures the protection of a sensitive coastal location.</p>
<p>DA08/1033 Pool (adjoining the river)</p>	<p>This DA was lodged on 23/09/2008.</p> <p>The application triggers “Integrated Development” and accordingly requires 3 referrals (each requiring a separate cheque of \$250 to each government department)</p> <ul style="list-style-type: none"> • Department Water & Energy for works within 40m of a waterway, and Dewatering (requiring 30 days for exhibition); • Department of Primary Industries for dredging or reclamation works; • NSW Rural Fire Service tourist accommodation (caravan park) in a bushfire prone area (as requested by Scott Sewell NSW Local Rural Fire Service).



Issue (Approval Required)	Status of Issue/Approval
	<p>The application was submitted without</p> <ul style="list-style-type: none"> • plans to scale; • a bushfire management plan; • 3 X \$250 cheque made out to each Department as detailed above; • 3 X \$110 paid to Council per Integrated referral required • \$540 advertising fee; • Justification demonstrating compliance with the previously approved community map. <p>Please note the objection to a pool on the immediate riverbank relates to potential impact to bank stability, but mainly that the site chosen would require significant tree removal (namely a clump of large Riveroaks (<i>Casuarina glauca</i>), a native species the predominant component of the Endangered Ecological Community Swamp Oak on Floodplain. The sites proximity to the Tweed River may make it likely to be an EEC classification.</p> <p>Therefore, the application should be accompanied with a flora and fauna report.</p> <p>Council will now await this additional information and fees.</p>
<p>DA08/1032 Pool (internal adjoining Road No. 2)</p>	<p>This DA was lodged on 23/09/2008.</p> <p>The application triggers "Integrated Development" and accordingly requires 2 referrals (each requiring a separate cheque of \$250 to each government department)</p> <ul style="list-style-type: none"> • Department Water & Energy for works within 40m of a waterway, and Dewatering (requiring 30 days for exhibition); • NSW Rural Fire Service - tourist accommodation (caravan park) in a bushfire prone area (as requested by Scott Sewell NSW Local Rural Fire Service). <p>The application was submitted without</p> <ul style="list-style-type: none"> • plans to scale; • a bushfire management plan; • 2 X \$250 cheque made out to each Department as detailed above; • 2 X \$110 paid to Council per Integrated referral required • \$540 advertising fee; • Justification demonstrating compliance with the previously approved community map. <p>Please note the pool appears to fall within a mapped SEPP 14 area and would therefore trigger the need for an EIS. Please see below map and address with additional information</p>

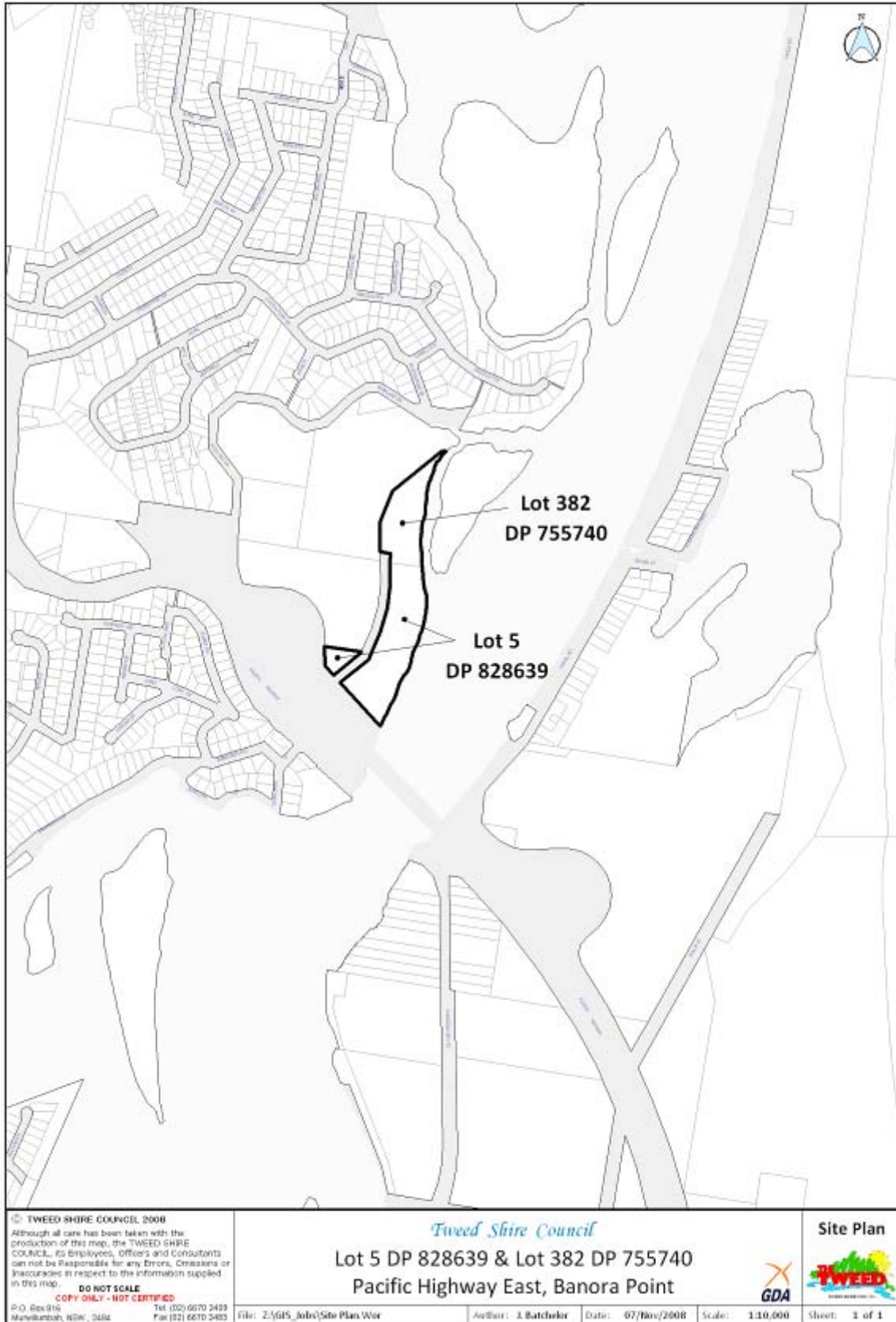
Issue (Approval Required)	Status of Issue/Approval
	 <p>Council will now await this additional information fees.</p>
<p>Clarification of works within the mapped SEPP 14 area</p>	<p>In your letter dated 29 September you query the process for amending the SEPP 14 maps.</p> <p>The Department of Planning is responsible for SEPP 14.</p> <p>There is an avenue for persons to apply to the Department of Planning to alter SEPP 14 mapping based on elevation, micro topography, inundation regime, soil type and vegetation type. This would normally be done by the landowner, which in this case is the Department of Lands.</p>

Whilst the above table demonstrates remaining outstanding matters it should be noted that the applicant has responded to Council's requests for improved erosion and sediment control and has maintained a controlled building site throughout works conducted so far.

Council has maintained open communication with the owner of the property and met with the applicant on the 11th of November 2008 to further discuss the outstanding matters. The owner has indicated that the unresolved issues are capable of being resolved with additional information to be lodged in the near future.

The owner has been asked to formally respond to the above issues within 14 days.

SITE DIAGRAM:



OPTIONS:

1. Council continue to negotiate directly with the owner to seek a lawful development across the site. Should the negotiations not resolve in a lawful outcome within 2 months Council engage legal representation and seek their direction for the management of approvals and enforcement actions
2. Council engage legal representation and seek their direction for the management of approvals and enforcement actions relating to Lot 5 in DP 828639 & Lot 382 in DP 755740.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Council will incur legal costs if option 2 is adopted.

POLICY IMPLICATIONS:

It is considered necessary to continue working with the owner to ensure the legislative requirements are upheld and that this results in a lawful development site.

CONCLUSION:

This report aims to inform all Councillors of the project to date and to seek support for a programme for the management of the various approvals and possible enforcement actions arising from any unlawful development of the site.

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.

P6 [PR-PC] Development Application DA07/0716 for a 2 Lot Subdivision at Lot 490 DP 1095234, Casuarina Way, Kingscliff

ORIGIN:

Development Assessment

FILE NO: DA07/0716 Pt1

SUMMARY OF REPORT:

Council is in receipt of an application from the Department of Lands (Crown DA) to subdivide Lot 490 into two allotments along the alignment of Casuarina Way.

In accordance with the provisions of the Act pertaining to DA's lodged by the Crown Council can not refuse or determine a Crown DA without the relevant Department agreeing to the conditions of consent.

The subject DA was assessed under Staff Delegation and accordingly Council Staff recommended 8 Conditions of Consent.

Normally for a subdivision Council would require physical connection to services such as water and sewer. In this instance it was resolved that a restriction of user would be imposed on both lots, such that appropriate water and sewer services are provided at time of future development. Such conditions were considered necessary as the standard of service required at this stage is unknown.

Appropriate conditions were drafted for the Department of Lands approval as the Crown Authority. The Department of Lands have refused to accept 2 of those 8 conditions (Conditions 6 & 7) relating to the need for restrictions on user.

It is recommended that the Department of Lands be advised of Council's Recommended Draft Conditions and that should they wish to progress this matter further the Department of Lands will need to instigate mediation with Council and the Minister in accordance with the Act.

RECOMMENDATION:

That Council provides the following Draft Conditions to the Department of Lands in relation to Development Application DA07/0716 for a 2 lot subdivision at Lot 490 DP 1095234, Casuarina Way Kingscliff: -

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos Figure B Proposed Subdivision**

prepared by Department of Lands and dated 9 May 2007, except where varied by the conditions of this consent.

[GEN0005]

2. The subdivision is to be carried out in accordance with Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual and Councils adopted Development Design and Construction Specifications.

[GEN0125]

3. Future re-development of the proposed allotments shall be subject to separate Development Applications as statutorily required.

[GENNS01]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

4. Prior to issue of a subdivision certificate, all works/actions/inspections etc required by other conditions or approved plans or the like shall be completed in accordance with those conditions or plans.

[PSC0005]

5. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of this Development Consent have been complied with.

[PSC0825]

6. The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:

(a) DELETED

(b) Restrictions on use, including but not limited to the following;

- Prior to any development of either of proposed Lots 1 or 2, a Sewerage and Water Management Plan must be submitted to and approved by Tweed Shire Council, confirming how these lots will be appropriately serviced.
- Council's existing 450mm dia water main within the Casuarina Way road reserve shall be extended to the bridge crossing of Cudgen Creek on an approved alignment, at the time of any development of either of proposed Lots 1 or 2, whichever being the first.
- If not already installed at the time of first development of either of proposed Lots 1 or 2, an appropriately sized sewer rising main shall be extended through the existing 400mm dia steel enveloping conduit under Cudgen Creek and connected to the existing 225mm dia PVC PN16 sewer rising main either side of the conduit.
- Proposed Lot 2 is to have a minimum 50m buffer to Cudgen Creek (measured from mean high water mark).

Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating the right of carriageway/easement to drain water shall make provision for maintenance of the right of

carriageway/easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis.

Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of Council.

[PSC0835]

7. DELETED

[PSC0865]

8. Prior to registration of the plan of subdivision, a Subdivision Certificate shall be obtained.

The following information must accompany an application:

(a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.

(b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 7.6 and Councils Application for Subdivision Certificate including the attached notes.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.

[PSC0885]



REPORT:

Applicant: Mr P Fogarty
Owner: Department OF Natural Resources
Location: Lot 490 DP 1095234, Casuarina Way Kingscliff
Zoning: The land is zoned part 2(f) Tourism, part 7(a) Environment Protection (Wetlands Littoral Rainforests) and part 7(f) Environmental Protection (Coastal Lands)
Cost: N/A (subdivision)

BACKGROUND:

Lot 490 lies on the banks of Cudgen Creek between Kingscliff village to the north, the "SALT" Development to the south and Lot 500 to the east. The site is bisected by Lot 491 DP 1095234 which forms the Council public road known as Casuarina Way.

The coastal lands to the east are undeveloped littoral lands with frontage to the Pacific Ocean. The western and north-western boundaries of Lot 490 are formed by the southern bank of Cudgen Creek. The riparian boundary of the site would occasionally experience inundation from the Creek. The site has a total area of 22.82 ha.

A development application has been received from the Department of Lands to subdivide Lot 490 in to two lots.

The proposed lots are to be divided by Casuarina Way. Proposed Lot 1 (11.67 ha) located east of Casuarina Way and will be the site of a future tourist development. Proposed Lot 2 (11.15 ha) is located west of Casuarina Way and will be used for environmental rehabilitation and facilities such as walking trails and creek access.

Development of the proposed lots will be subject to future applications.

The proposed subdivision is administrative in function and will not significantly disturb the vegetation or soil. The subdivision does not propose any physical works. Normally Council would require physical connection to services such as water and sewer, yet following discussion with Council's Water & Sewer Engineer and Council's Development Engineer it was resolved that a restriction of user would be imposed on both lots, such that appropriate water and sewer services are provided at time of future development. This was considered necessary as the standard of service required at this stage is unknown.

Appropriate conditions were drafted for the Department of Lands approval as the Crown Authority. The Department have contested conditions 6 and 7 which stated that:

6. The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:

- (a) Easements for services and drainage on private property, including an easement over the existing sewer rising main within the south western corner of the subject allotment, as identified within Lot 490 DP 1095234 by survey.
- (b) Restrictions on use, including but not limited to the following;
- Prior to any development of either of proposed Lots 1 or 2, a Sewerage and Water Management Plan must be submitted to and approved by Tweed Shire Council, confirming how these lots will be appropriately serviced.
 - Council's existing 450mm dia water main within the Casuarina Way road reserve shall be extended to the bridge crossing of Cudgen Creek on an approved alignment, at the time of any development of either of proposed Lots 1 or 2, whichever being the first.
 - If not already installed at the time of first development of either of proposed Lots 1 or 2, an appropriately sized sewer rising main shall be extended through the existing 400mm dia steel enveloping conduit under Cudgen Creek and connected to the existing 225mm dia PVC PN16 sewer rising main either side of the conduit.
 - Proposed Lot 2 is to have a minimum 50m buffer to Cudgen Creek (measured from mean high water mark).

Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating the right of carriageway/easement to drain water shall make provision for maintenance of the right of carriageway/easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis.

Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of Council.

7. Where new state survey marks and/or permanent marks are placed a copy of the locality sketch relating to the marks shall be submitted to Council within three months of registration of the Subdivision Certificate in accordance with the Survey Practices Regulation.

[PSC0835]

[PSC0865]

As part of negotiations with the Department of Lands Council staff agreed to delete conditions 6(a) and 7, as they were considered standard conditions that were not essential for a Crown DA. However condition 6(b) is considered to be a reasonable condition which requires no physical work but rather simply alerts a future developer of their obligations to provide infrastructure. This is not considered an onerous or superfluous condition.

Specifically the first three dot points highlight the requirements for the provisioning of essential services to each allotment ensuring the future developers are aware of any infrastructure requirements.

The fourth dot point is considered necessary as the Tweed Coast Estuaries Management Plan 2004 – 2008 (Cudgen, Cudgera and Mooball Creeks) specifies that Council should adhere to a minimum 50m buffer zone of riparian vegetation on any new development site. Furthermore, the Department of Primary Industries responded to this application as follows:

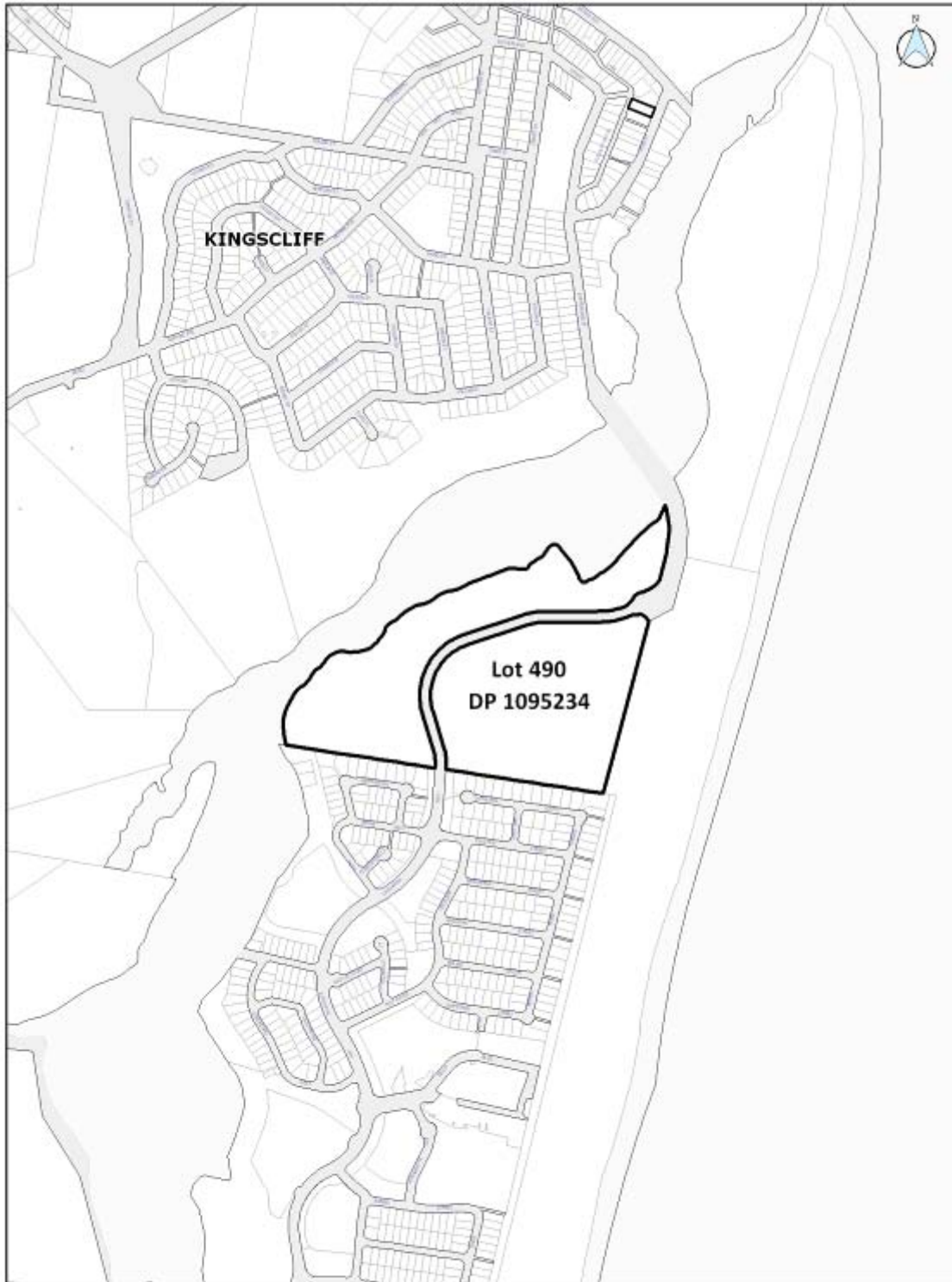
"DPI accepts that the subdivision is primarily an administrative matter and the department raises no objection to the proposal.



DPI does note however that the development parameters outlined in figure 2 in the draft plan of management for Lot 490 incorporates a minimum 50 metre setback that appears to be from mapped open water in the estuary rather than a setback mapped from, at least, the mean high water mark. Ideally the highest astronomical tide level which incorporates the location of endangered ecological communities of saltmarsh should be the starting point for an appropriate 50 metre habitat buffer.

This is an important component of future planning of the site and appropriate management of Cudgen Creek. Accordingly DPI will be compelled to highlight this matter as a key requirement to be addressed in a satisfactory manner in future assessments for the further planning of the site."

Please find attached two letters from the Department of Lands setting out their reasons for why condition 6(b) should be deleted.

SITE DIAGRAM:



<p>© TWEED SHIRE COUNCIL 2008 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 616 Murrumbidgee NSW 2484 Tel (02) 8670 2489 Fax (02) 8670 2493</p>	<p><i>Tweed Shire Council</i> Lot 490 DP 1095234 Casuarina Way, Kingscliff</p>	<p>Site Plan   Scale: 1:10,000 Sheet: 1 of 1</p>
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PLAN OF PROPOSED SUBDIVISION:



Figure B - Proposed Subdivision

OPTIONS:

1. That Council provide the recommended Draft Conditions to the Department of Lands in relation to Development Application DA07/0716 for a 2 lot subdivision at Lot 490 DP 1095234, Casuarina Way Kingscliff.

This option may result in the Department of Lands seeking mediation with Council and the Minister to resolve this issue.

2. Delete condition 6(b) as requested by the Department of Lands and delegate the final determination of DA07/0716 to the General Manager or his delegate.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the Department of Lands decide to refer the DA to the Minister for mediation this will require Council staff to represent Council's position in this matter.

POLICY IMPLICATIONS:

The proposed recommendation is considered to uphold Council's policies in regards to the proposed subdivision.

CONCLUSION:

A subdivision would normally require physical connection to services such as water and sewer. In this instance it was resolved that a restriction of user would be imposed on both lots, such that appropriate water and sewer services are provided at time of future development. Such conditions were considered necessary as the standard of service required at this stage is unknown.

It is therefore recommended that the Department of Lands be advised of Council's Recommended Draft Conditions and that should they wish to progress this matter further the Department of Lands will need to instigate mediation with Council and the Minister in accordance with the Act.

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. Delegated Assessment Report - DA07/0716 (DW 1927995)
 2. Department of Lands letter dated 1 July 2008 (DW 1927998)
 3. Department of Lands letter dated 28 July 2008 (DW 1928001)
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P7 [PR-PC] Development Application DA08/0929 for Construction of a Storage Depot Comprising the Erection of a New Shed and Associated Works at Lot 1 DP 1057594, Fernvale Road, Fernvale

ORIGIN:

Development Assessment

FILE NO: DA08/0929 Pt1

SUMMARY OF REPORT:

Council is in receipt of a Development Application to establish the subject site as a machinery storage depot in association with the applicant's current business activities as a demolition contractor. The proposal includes the construction of a storage shed and the establishment of hardstand areas with access off Fernvale Road.

The proposal is best defined as 'depot' in accordance with the Tweed Local Environmental Plan 2000 (LEP 2000). In order for a 'depot' to be permissible on unzoned land, it must be compatible with surrounding development and zones, which in this case is 1(a) Rural. It also must be compatible with development permissible in the adjoining zone.

A 'depot' is listed under Item 2 in the 1(a) Rural zone, which is a consent use, taking into consideration that it is a land use not included in Item 1, 3 or 4. The character and use of existing development in the vicinity is also taken into account in the assessment of the proposal.

The proposed development has issues regarding intensity of proposed land use, visual amenity, impact upon habitat for flora and fauna, proximity to existing development and suitability for the site given the rural character of the area.

The proposed development did not attract any objections.

Having regard to relevant statutory controls and an assessment against Clause 13 of the Tweed LEP 2000, the proposed storage depot is not considered suitable for the location and therefore the proposed development is recommended for refusal.

RECOMMENDATION:

That: -

- A. Development Application DA08/0929 for the construction of a storage depot comprising the erection of a new shed and associated works at Lot 1 DP 1057594, Fernvale Road, Fernvale be refused for the following reasons: -**

1. Pursuant to Section 5 Objects of the Environmental Planning & Assessment Act 1979 (as amended), the proposed development can not be determined to satisfy sub section (a)(ii), the orderly and economic use and development of the land.

It is Council's view that the proposal has the ability to impact upon external properties; accordingly the proposal is not identified as satisfying the Objects of the Environmental Planning & Assessment Act 1979.

2. Pursuant to Section 5 Objects of the Environmental Planning & Assessment Act 1979 (as amended), the proposed development can not be determined to satisfy sub section (a)(vi), the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats.

It is Council's view that the proposal has the ability to impact upon the protection and conservation of native animals and plants; accordingly the proposal is not identified as satisfying the Objects of the Environmental Planning & Assessment Act 1979.

3. In accordance with Section 79C(1)(a)(i) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be compliant with Environmental Planning Instruments.

It is Council's view that the proposed development does not satisfy the provisions contained within:

The Tweed LEP 2000:

- Clause 4: Aims of this plan
- Clause 5: Ecologically sustainable development
- Clause 8(1): Consent Considerations
- Clause 11: Zoning
- Clause 13: Development of uncoloured land on the zone map
- Clause 16: Height of buildings

Development Control Plan:

Section A2: Site Access and Parking Code

4. Pursuant to Section 79C (1) (c) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed site is not considered suitable for the proposed development.

It is Council's view that use of unzoned land adjacent rural land for the purposes of a storage depot is considered unacceptable for the

site due to its industrial scale and close proximity to conflicting land uses.

5. In accordance with Section 79C (1) (e) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be in the public interest.

It is Council's view that it is in the broader general public interest to enforce the standards contained within the Tweed LEP 2000 specifically as it relates to the objectives of unzoned land and the 1(a) Rural zone.

- B. Engage solicitors to commence legal proceedings (for a breach of the Environmental Planning & Assessment Act 1979) in respect of the unauthorised works at Lot 1 DP 1057594, Fernvale Road, Fernvale, and seek site remediation as part of the legal proceedings.

REPORT:

Applicant: Mr DW Long
Owner: Mr WJ Dickinson, Ms D Dickinson, Mr LJ Dickinson and Mrs CS Dickinson
Location: Lot 1 DP 1057594 Fernvale Road, Fernvale
Zoning: Unzoned Land
Cost: \$95,000

BACKGROUND:The Subject Site

The subject land is described as Lot 1 DP 1057594 Fernvale Road, Fernvale and has a total area of 2728m² (0.27 hectare).

The site is an irregular-shaped allotment with a frontage of 50m to Fernvale Road and a depth of approximately 70m. Development is proposed for approximately 90% of the site. Vehicular access to the site is from Fernvale Road only. Power is available to the site. Provision of an on-site water supply and waste management system is required.

The site is located in an area generally characterised as rural. Surrounding development is low-intensity rural residential and agricultural grazing. Four residential dwellings are located within a 300m radius of the subject site, one of which is within 2.5m of the site boundary.

The Proposed Development

Council is in receipt of a Development Application for utilisation of the subject site for the purposes of a storage depot. The applicant states that the shed will be used to store a truck, possibly a small excavator and hand tools used in association with an existing demolition business.

The development has two main components:

1. The erection of a new 48m x 15m shed (total floor area of 720m²) on a concrete slab foundation with steel portal frames and Colorbond cladding, and
2. Establishment of a hardstand car park/driveway and manoeuvring area on the western side of the shed with access off Fernvale Road.

Application details state that:

- The applicant will not reside on site
- Maintenance of equipment will be carried out (defined as “depot” and permissible in the adjacent rural zone)
- No actual business will be carried out from the shed
- No employees will be based there

- A domestic-scale compressor may be used
- No machinery or equipment will be installed – only hand tools will be used.

It is acknowledged that the proposed use may involve a compressor and/or electrical machinery such as power tools that can constitute a noise source for adjoining residences.

Site History

The site is unzoned land located adjacent the 1(a) Rural zone and has a known history as follows:

Prior to 2001, the allotment was an unused road reserve in Council ownership. Originally, Fernvale Road was a narrow track that went around the north of this road reserve. However, in the 1970's, earthworks were undertaken by Council that levelled the site and the path of Fernvale Road was relocated to the south of the road reserve to its current location.

Of note is a two-storey dwelling on the adjacent site to the east (5.5m from the proposed development) which is currently a rental property. It was moved there in the 1980's with ownership transferring in 2007 to the current owner of the subject site and adjoining land to the north.

There have been no previous development applications lodged on the subject site. This application was lodged on 30 July 2008.

Extensive earthworks and clearing of vegetation took place on site sometime after July 2008 rendering the site significantly altered from that depicted on aerial photography and in supporting application documentation. The unauthorised works were not included in the proposal and are the subject of compliance action. As such, the applicant has been advised to cease work immediately.

Aerial photography taken in 2007 indicates an existing driveway servicing the site from Fernvale Road connecting with the adjoining allotment to the north by way of a narrow informal access track along the eastern boundary. A flat grassed area is located on the eastern portion of the allotment, on level with the adjacent allotment to the east.

The photography shows an abundance of vegetation defined as 'Grey Ironbark/White Mahogany/Grey Gum Open Forest Complex' and mapped as being of 'high ecological status' in the Tweed Shire Vegetation Management Plan on the south-western, western and northern boundaries in the Tweed Shire Vegetation Management Plan.

Site photos accompanying supporting documentation for the application (Annexure D, page 11 - attached) confirm the subject site as flat and on level with the eastern adjacent site where the dwelling is located. The photos also depict vegetation since removed.

As a result of unauthorised works, the site has been cut on the eastern boundary to a maximum depth of approximately 1.8m and lined with concrete retaining blocks. Fill has been spread out to the western and northern edges of the site and pushed over the northern boundary into the adjacent allotment creating a 10m high bank from top to toe. Fill

has also been pushed up against and over trunks of surviving native trees along the western boundary.

Damage and potential for deterioration to remaining trees on the subject site has been identified, as well as loss of habitat for flora and fauna.

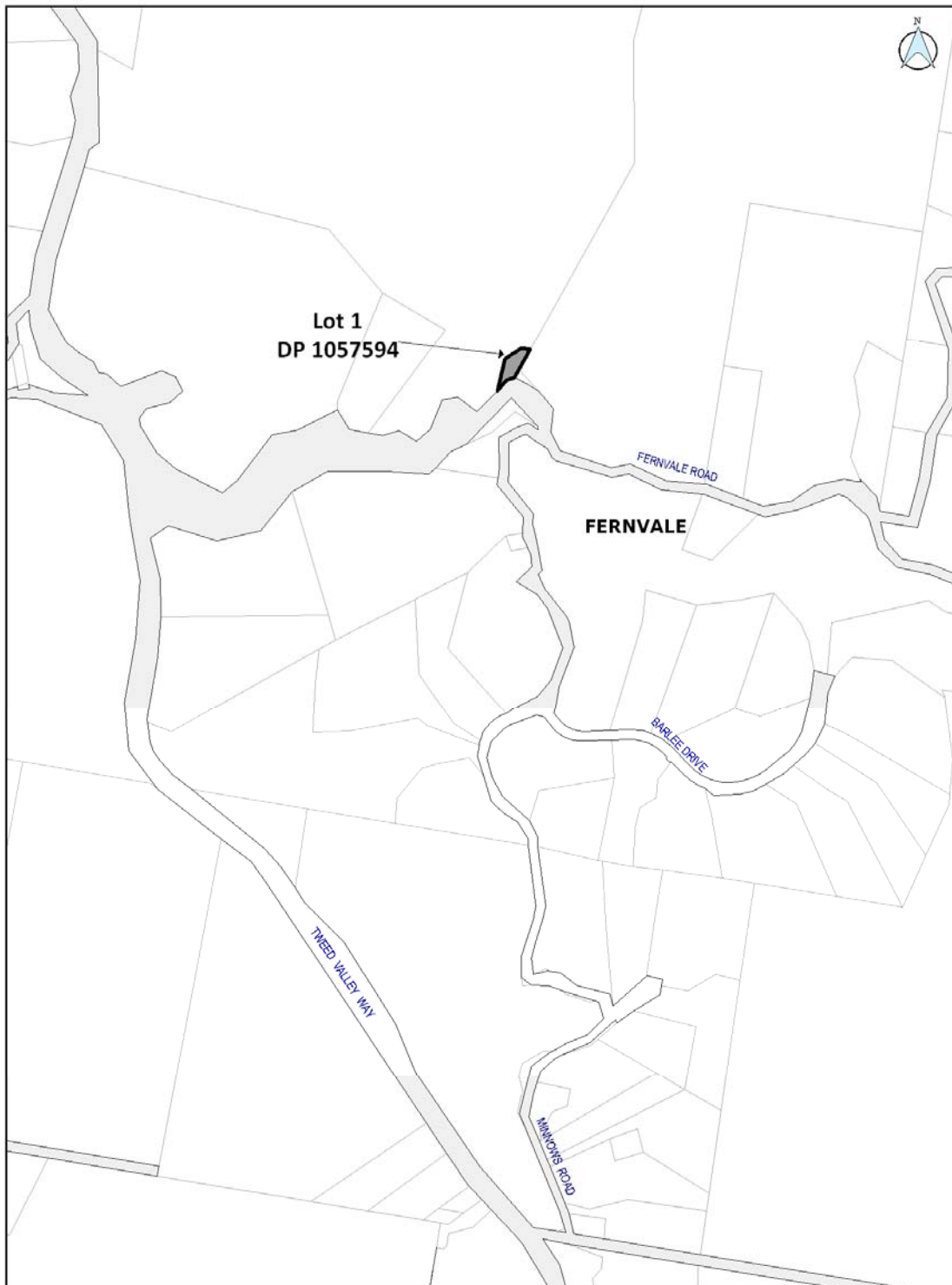
Public Submissions

The proposed development attracted three individual letters of support following exhibition of the application. The letters of support were brief, stating there were no objections to the proposal. A letter of support was also included in the application details from the owners of 45 Fernvale Road, located 140m west of the subject site.

Conclusion

Having regard to the site's characteristics, the site history, intended use, proximity of surrounding development and an assessment against Clause 13 of the Tweed LEP 2000 the proposed storage depot is not considered suitable for the location and therefore the proposed development is recommended for refusal.

SITE DIAGRAM:



<p>TWEED SHIRE COUNCIL 2008 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 816 Murrumbidgee, NSW, 2484 Tel: (02) 6670 2409 Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i> DA08/0929 - Lot 1 DP 1057594 Fernvale Road, Fernvale</p>	<p>Site Plan  </p>			
	File: Z:\GIS_Jobs\Site Plan.Wor	Author: J. Batchelor	Date: 21/Oct/08	Scale: 1:10,000	Sheet: 1 of 1

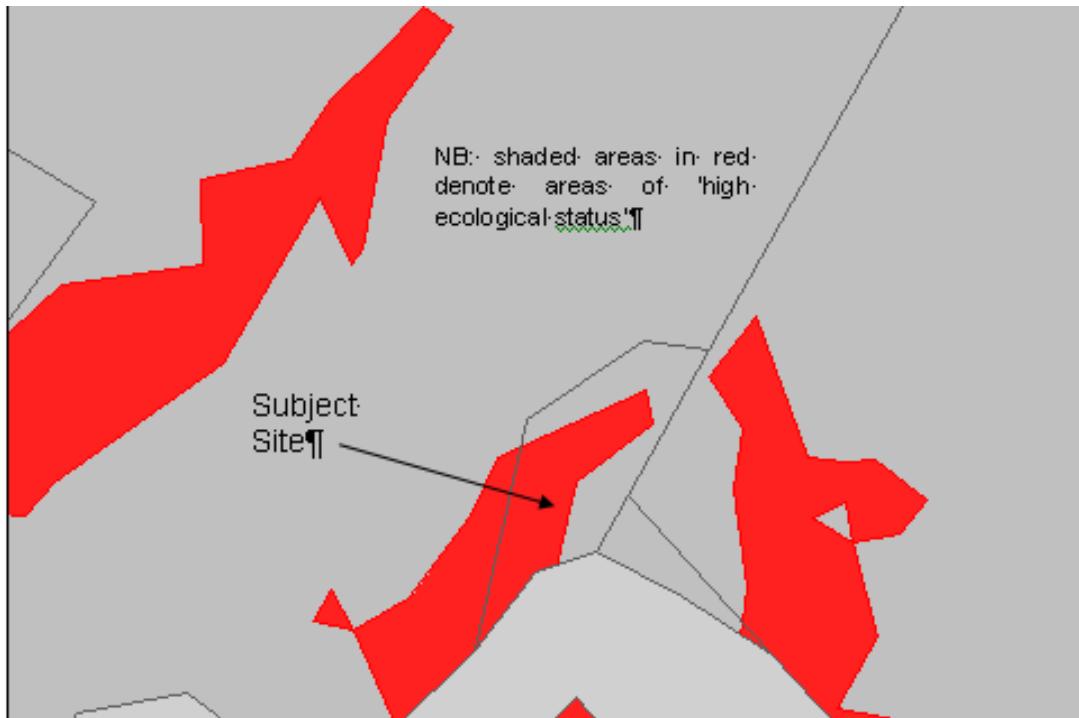
AERIAL PHOTOGRAPHY:

JULY 2007 AERIAL PHOTOGRAPHY



NB: inaccuracies exist in Council's cadastral boundaries as shown in grey on this map

HIGH ECOLOGICAL STATUS OF SUBJECT SITE



PHOTOS:

The subject site before unauthorised works

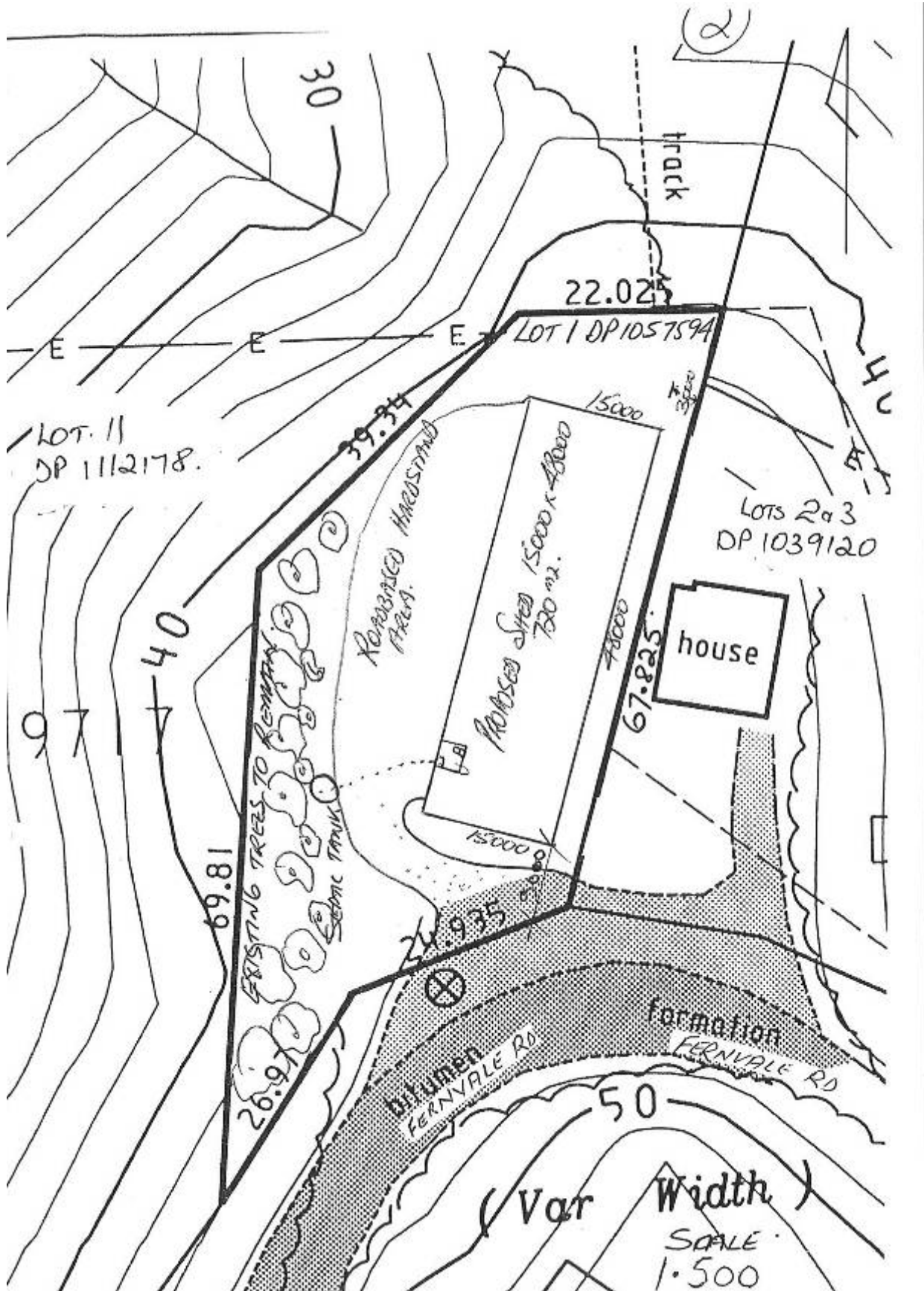


Photo 1 Proposed shed site looking north

The subject site after unauthorised works

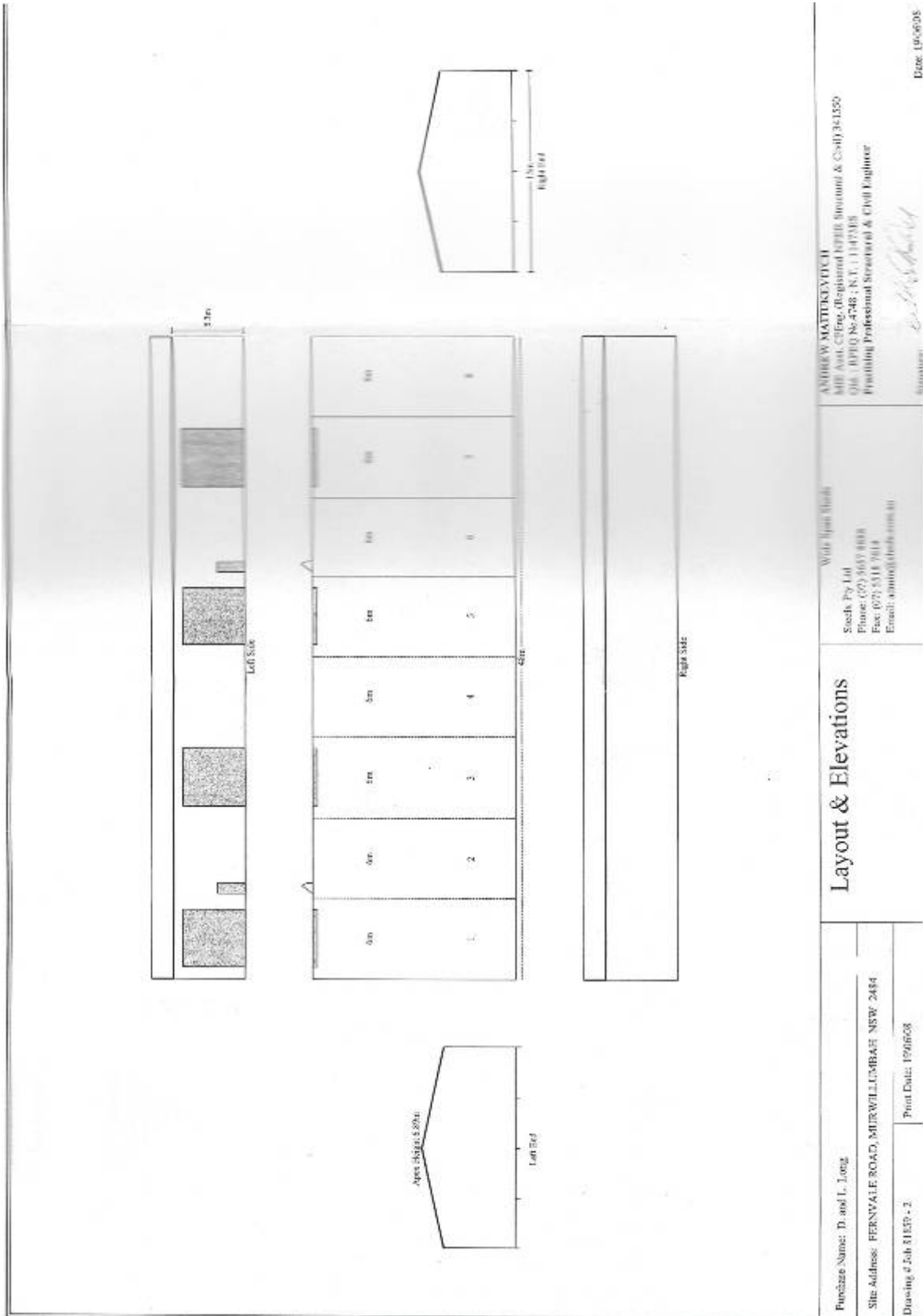


OVERALL SITE PLAN:





LAYOUT & ELEVATIONS PLAN:



Purchase Name: D. and L. Long Site Address: FERNVALE ROAD, MURWILLUMBAH NSW 2484 Drawing of Job: 31837 - 2 Print Date: 19/06/08	Layout & Elevations Seeds Pty Ltd Phone: (07) 5531 8000 Fax: (07) 5531 7014 Email: anna@seeds.com.au	ANDREW MATREKOVICH 4101 Avon, C/Eng. Department 10718 Stroud & C/10 341350 046 10910 88-4748 ; N.Y. 1147308 Practising Professional Structural & Civil Engineer Signature: <i>[Signature]</i> Date: 19/06/08
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CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**(a) (i) The provisions of any environmental planning instrument**Tweed Local Environmental Plan 2000**Clause 4: Aims of this plan**

One of the aims of the plan is:

(d) to encourage sustainable economic development of the area of Tweed compatible with the area's environmental and residential amenity qualities.

Council Assessment

The proposed development is not considered to be compatible with the area's environmental and residential amenity qualities. It compromises habitat for flora and fauna. The unnecessary removal of native vegetation from the allotment in order to accommodate an industrial-sized shed with access and hard-stand areas results in these areas take up approximately 90% of the site.

The location of the shed in close proximity to an existing dwelling house on the eastern adjoining allotment results in a reduction of residential amenity quality for the present and future occupants of the dwelling and the locality in general.

Clause 5: Ecologically sustainable development

Development must be consistent with four principles of ecologically sustainable development. The first principle (a) applies in particular to the proposed development. It states that precautionary measures should be taken to prevent environmental degradation where there is a threat of irreversible damage to the environment.

Council Assessment

Removal of native vegetation that has been classed as being of 'high ecological status' (as outlined in the Tweed Shire Vegetation Management Plan) in order to progress the development poses the threat of irreversible damage to the environment by destroying habitat for flora and fauna. Therefore, the proposal is not consistent with this clause.

Clause 8: Consent Considerations

The proposed development is inconsistent with provisions contained within 1(a), (b) and (c) of this clause which states that the consent authority may grant consent to the development only if:

- (a) it is satisfied that the development is consistent with the primary objective of the zone within which it is located, and
- (b) it has considered those other aims and objectives of this plan that are relevant to the development, and
- (c) it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.

Council Assessment

Assessment of the proposal as outlined below in relation to Clauses 11 and 13 results in the development being inconsistent with the primary objective of the 1(a) Rural zone which is adjacent to the uncoloured land against which the application has been lodged.

Consideration has been given to other aims and objectives of the plan that are relevant to the development.

The proposed development is of a light industrial nature best suited to a business zone. The size of the shed is not comparable to existing agricultural sheds in the area, being 141% larger than the largest shed (300m²) within a radius of 1.6km from the site.

The ratio of the floor area of the shed to the area of the land is also high at 26.4%, rendering the proposal as an overdevelopment of the site. Should the proposed development be approved, it would set an unacceptable precedent for future development in rural areas due to its bulk and scale and close proximity to residential land uses.

Clause 13: Development of uncoloured land on the zone map

The subject land is zoned 'uncoloured' under the Tweed LEP 2000. Relevant objectives of Clause 13 are:

- to enable the control and development on unzoned land, and
- to ensure that development of unzoned land is compatible with surrounding development and zones.

For the purposes of the Tweed LEP 2000, the proposed storage and maintenance of machinery and equipment would be defined as a 'depot'.

In deciding whether to grant consent to development on unzoned land (above the mean high-water mark or waterways), the consent authority must consider:

- whether the proposed development is compatible with development permissible in the adjoining zone and the character and use of existing development in the vicinity.

Clause 11: Zoning

The subject land adjoins the 1(a) Rural Zone to the east, north and west, and over a road reserve to the south.

A 'depot' is permissible with development consent on uncoloured land *providing it is compatible with surrounding development and zones*. A 'depot' is permissible with consent in the 1(a) Rural zone.

Primary objectives for the 1(a) Rural zone include:

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

Secondary objectives for the 1(a) Rural zone include:

- *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, and*
- *to provide non-urban breaks between settlements to give a physical and community identity to each settlement.*

Council Assessment

Development surrounding the subject site is characterised by non-intensive residential and agricultural uses on large rural allotments:

- to the east, Lot 3 DP 1039120 has a total site area of 85.07 hectares. There is a two-storey dwelling house setback 2.5m from the adjoining boundary with the subject site
- to the west and north, Lot 34 DP 1128192 has a total site area of 184.5 hectares. There are two large sheds located at the northern end of this allotment at a distance of 1.6kms from the subject site. They are approximately (30m x 10m) 300m² each
- to the south, Council owns land opposite the proposed development (in two parcels) that has a total site area of 1.13 hectares upon which is located a public hall.

Other rural allotments within 1.6kms of the subject site range in size from 8108m² to 184.5 hectares. Aerial photography suggests that there are few agricultural sheds in the wider vicinity, none of which appear larger than 300m².

The proposal does not satisfy the abovementioned primary objectives in that:

- it is development of a light industrial nature that is not associated with agricultural activities or natural resource utilisation, and
- the location of an industrial sized shed on a small rural allotment in close proximity to a dwelling house on an adjacent allotment threatens rural character and reduces amenity both from the streetscape and from the adjoining allotment in particular.

The proposal does not satisfy the abovementioned secondary objectives for the 1(a) Rural zone in that:

- it is not a development such as agri- or eco-tourism that relies on the rural or natural values of the land
- it is development that would be most suited in a zone that promotes light industrial activity in closer proximity to urban areas
- it reduces the likelihood of a larger adjacent allotment realigning its boundary to incorporate the subject site in order to minimise fragmentation of rural lands, and
- it is a development that would be more suitably defined as 'urban industrial' and does not enhance the non-urban landscape between settlements.

Clause 15: Availability of essential services

This clause of the TLEP requires Council to be satisfied that the subject land has the benefit of essential services prior to issuing consent.

Council Assessment

The subject land is provided with single phase power. No town water or sewerage services are available.

The applicant has submitted an application to install an on-site Sewage Management System, which is pending approval. The site plan for the proposed system is included in the application documents on page 8 in Annexure D.

Conditions from the NSW Rural Fire Service received 30 September 2008 require a 10,000 litre water supply and tank to be installed on the site. A separate roof catchment water supply source is also required. The applicant would need to demonstrate suitable locations for rainwater tanks that do not conflict with the 42m² area required as an absorption bed for sewage management.

Clause 16: Height of buildings

This clause of the TLEP requires development to be undertaken in accordance with a building height plan, which identifies the site as being limited to three storeys.

Council Assessment

The proposed shed at a height of 6.89m complies with this criterion. However, the proposed height of the shed does not satisfy the objective of the clause:

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

As outlined previously in this report, the bulk and scale of the proposed development is inappropriate for a small rural allotment of 2728m² that adjoins an existing rural residential land use. It also depletes the environmental characteristics of the land through unnecessary excavation and removal of native vegetation.

Clause 17: Social impact assessment

The objective of Clause 17 is to ensure proper consideration of development that may have a significant social or economic impact and deems that where a proposal is likely to have a significant social or economic impact it must be accompanied by a socio-economic impact statement.

Council Assessment

The proposed storage depot will impact most significantly on the amenity of the locality and the natural environment. It is therefore unlikely to have a significant social or economic impact and is subsequently compliant with Clause 17 of the LEP.

Clause 35: Acid Sulfate Soils

No acid sulphate soils are located on the subject site.

Clause 39A: Bushfire Protection

The objective of Clause 39A is:

- to minimise bushfire risk to built assets and people and to reduce bushfire threat to ecological assets and environmental assets.

The development application was forwarded to the Local Rural Fire Service on 1 September 2008 for consideration and comment, as the subject site is bushfire prone land. A response was received 30 September 2008. The

Service recommended conditions to be attached to the development consent, should it be granted.

The conditions related to Asset Protection Zones, Water and Utilities, Access and Landscaping.

North Coast Regional Environmental Plan 1988

The following Clauses of the NCREP are relevant and are addressed below.

Clause 12 – Impact on Agricultural Activities

This clause states that 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.

Council Assessment

The site itself has been extensively modified through excavation and placement of concrete retaining blocks. The recent history of the use of the site is not for agricultural activities. In any event, the small parcel of land is of marginal agricultural value as an elevated, significantly vegetated site.

Adjoining and surrounding land is utilized for residential and grazing purposes.

The development would not lead to a loss of prime crop and pasture land, or adversely impact upon nearby agricultural activities.

Clauses 46 & 47 – Principals for Commercial and Industrial Development

The objective of this plan in this regard is to 'encourage an adequate supply of zoned land located where there are planned growth areas foreshadowed and where essential services can be provided with minimal environmental damage'.

Council Assessment

This objective encourages the supply of land suitably zoned to accommodate commercial and industrial development in areas that do not come into conflict with the natural environment. Whilst this proposal does not affect the supply of suitably zoned land, environmental damage has occurred as a result of unauthorised excavation and clearance of native vegetation to make way for hard-stand areas and dispersal of septic waste.

Part 2 of clause 47 outlines that Council must take into consideration the principle that land used for industrial and/or commercial development should be located where it can be adequately serviced by the transport system and is accessible from urban areas.

The proposed development for a storage depot / light industrial use within a rural area remote from urban development is not easily accessible from urban areas and will access higher order roads by way of Fernvale Road.

Insufficient information was supplied in order to facilitate a final determination of the impact of the proposal on the transport system, or the efficacy of site access and site distances. However, Council's Traffic Engineer stated that a 720m² shed, in normal circumstances, would generate approximately 30 trips per day (15 in and 15 out).

State Environmental Planning Policies

SEPP (Rural Lands) 2008

This SEPP introduces rural planning principles to facilitate the orderly and economic use and development of rural lands for rural and related purposes. It provides controls for rural subdivisions and identifies State significant agricultural land. It also implements measures designed to reduce land use conflicts.

None of the provisions contained within the SEPP relate specifically to this site. Measures designed to reduce land use conflicts are aimed at creation of residential land uses through subdivision on land that is adjacent existing farming activities.

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

Council has numerous shire-wide LEP amendments. However, none of which are specifically relevant to this application.

Furthermore, there are no other draft EPI's that require assessment.

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

Section A2: Site Access and Parking Code

Access and parking generation for a 'depot' is included in the Industry Service Group within this Development Control Plan.

It states that 'site design must allocate adequate space for the loading, unloading, parking and manoeuvring of delivery and service vehicles within the subject property and that design of these areas shall comply with AS 2890.2.'

In summary, requirements include:

- 1 space per 200m² for 'heavy rigid vehicles' (HRV: min length = 8.8m; min height clearance = 4.1m)

- 10% of site for staff parking and access lanes (driveways are excluded from this calculation)
- No additional customer car parking (included in staff parking requirements), and
- No reductions are generated as this proposal does not generate employment.

The floor area of the proposed shed is 720m². Site area is 2728m². Parking requirements are as follows:

- 4 spaces for 'heavy rigid vehicles'
- 272.8m² for staff parking and access lanes

No information in relation to parking and access requirements has been supplied by the applicant. The site plan shows the proposed hardstand area extending towards the western, north western and northern boundaries, where native vegetation had recently been located.

Discussions with Council's Engineers indicate that a full engineering report with traffic study and design turning templates would be required in relation to the proposal in order to determine compliance with this DCP.

A large hardstand area of 272.8m² is likely to compound the impact of the proposed development on the amenity of the surrounding rural locality.

The DCP states that 'large vehicle manoeuvring areas, loading and unloading areas shall be located as far as possible from adjoining residential areas'. Also, 'where these activities are likely to result in loss of amenity in nearby residential areas, visual and acoustic screening approved by Council shall be required to minimise the loss of amenity'.

The size of the allotment, the bulk of the shed, the necessity to remove vegetation, reduced areas for landscaping and the proximity to adjoining residential uses and Fernvale Road combines to preclude this development from complying with these standards.

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

There are no additional matters that affect this application.

(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

Visual Impacts

Excavation of the site and removal of native vegetation to provide a lowered platform for the proposed storage depot has extensively modified the subject

site. The bulk and scale of the shed and the area required for hard-stand areas and vehicle manoeuvring contribute to 90% of the site area being of 'industrial' appearance.

Adjacent to open rural land, in close proximity to residential uses and with little opportunity for landscaping, the visual impact of the development will be prominent from the streetscape and adjoining land.

Should Council determine to refuse the application, the applicant should be responsible for remediating the site to its state prior to the occurrence of unauthorised works.

Noise and Amenity

Council's Environmental Health Officer has reviewed the proposal and provided the following comments:

The shed is proposed in a rural locality however, there is an existing dwelling immediately adjacent. A letter has been provided from the owner of that dwelling which indicates that they raise no objection.

The proponents own a demolition business and the shed is proposed for storage of machinery and 'limited maintenance' of trucks and machinery. Standard conditions to be applied regarding lighting, noise, waste materials etc.

The EH Officer included concerns about amenity and potential conflict of land uses in the future should ownership of the adjoining dwelling transfer.

Application details do not include a Noise Level Impact Assessment indicating levels of noise that may emanate from the proposed development. Whilst the SEE states that no machinery or equipment will be installed in the shed, a compressor may be used along with hand tools. These hand tools may be electric power tools. It is possible that noise including vehicle noise may detract from the residential amenity of the adjacent allotment in particular, and the surrounding rural amenity in general.

Conditions in relation to hours of operation were not imposed by the EH Officer but it was suggested that imposition of restricted hours would be necessary to address potential of amenity conflict. Another issue was a requirement that vehicles that remain on site for periods in excess of two minutes switch off their engines.

Drainage

The preliminary erosion and sedimentation control plan and stormwater management plan provided in the application details at Annexure B are based on 'very minor site works for the preparation of the building pad'. They are not based on the actual site following unauthorised works.

The proposed drainage system is that 'roof water from the proposed building will be conveyed to rainwater tanks'.

Drainage of the extent of hardstand areas for access, parking and manoeuvring of vehicles was not addressed. A relevant engineering report would need to address these matters.

(c) Suitability of the site for the development

For the reasons detailed in the above report the proposed rural site is not considered suitable for a storage depot.

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

The Development Application was notified to surrounding properties for a period of two weeks, closing on Thursday 11 September 2008. During this period, three written submissions were received in support of the proposal.

No issues were raised in the submissions. They focused on their lack of objection. Two submissions stated that the proposed development 'would be an asset to the area'. One submission incorrectly identified the house they were renting as 50m from the proposed shed. It is 5.5m from the proposed shed.

(e) Public interest

The issues considered in the assessment of the proposal are considered valid and contribute to the reasons for refusal. The proposed development could potentially set an unwarranted precedent for utilisation of rural land for the location of large industrial-style sheds in close proximity to existing residential development for purposes and unrelated to the land upon which they are situated. Therefore it is in the public interest for this application to be refused.

OPTIONS:

1. Refuse this application in accordance with the recommendation for refusal.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

Council will incur costs as a result of legal action however upon resolution of the matter the Land & Environment Court may award costs.

POLICY IMPLICATIONS:

The proposed development could potentially set an unwarranted precedent for overdevelopment of rural land and utilisation of rural land for semi-industrial purposes in close proximity to residential uses.

It is imperative that Council pursue unauthorised works to uphold the integrity of Council's policies and any lawfully issued development consents.

CONCLUSION:

The application submitted is deficient in detail. However, sufficient information has been submitted 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.

Having undertaken an assessment against Clause 13 of the Tweed LEP 2000 taking into account the rural character of the area and the proximity of the development to residential properties the proposed use is not considered suitable for the location and therefore the proposed development is recommended for refusal.

In addition, this is a clear case of extensive site works and removal of native vegetation outside the parameters of any existing development approval. Council has a responsibility to ensure that all developers undertake works as approved, in accordance with statutory controls.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.



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P8 [PR-PC] Development Application DA07/0705 for the Demolition and Redevelopment of Existing Club & Advertising Sign at Lot 1 DP 1088100, No. 260 Fraser Drive, Banora Point

ORIGIN:

Development Assessment

FILE NO: DA07/0705 Pt2

SUMMARY OF REPORT:

Council has received a Class 1 Appeal – deemed refusal for DA07/0705.

The development application is for the demolition of the existing Clubhouse (Twin Towns Juniors) and construction of a new club building and site works.

Details of the construction of the new club are as follows:

- Ground floor consisting of loading dock, car parking and storage areas.
- First floor consist of refreshment rooms, function rooms, kitchen, dining, entertainment, children's play area, bar/TAB, office, toilets, gaming, entertainment and beer garden.

The first floor uses and apportioned areas are;

- | | |
|----------------------------------|-------------------|
| • Function room | 410m ² |
| • Dining area | 240m ² |
| • Kitchen | 100m ² |
| • Entertainment area | 430m ² |
| • Gaming area | 200m ² |
| • Beer garden | 385m ² |
| • Children room | 49m ² |
| • Common refreshment room dining | No area provided |

Since initial lodgement of the development application, Council has requested additional information to justify the parking shortfall. This additional information has not been received and has prevented determination of the development application to date.

Jodie McCullan from Marsdens Law Group appeared on behalf of Council for a telephone callover before Assistant Register Hourigan of the Land and Environment Court on 10 November 2008 along with the applicant's solicitor Mark Bolster.

The parties advised the Register that the proceedings would be appropriate to be listed for a Section 34 conference. A Section 34 conference is a conciliation conference aimed at resolving or narrowing issues.

The Register directed that the proceeding be listed for a Section 34 Conference for 22 January 2009, commencing 10.00am on site. The parties made a further request on 12 November 2008 to the Court, that the date be brought forward to 16 January 2009 and are awaiting a response from the Court. The reason for the request is that Council's Traffic Engineer is unavailable on 22 January 2009.

RECOMMENDATION:

That Council endorses staff to continue to liaise with its Solicitors and defend the Appeal in the Land and Environment Court in respect of Development Application DA07/0705 for the demolition and redevelopment of existing club and advertising sign at Lot 1 DP 1088100, No. 260 Fraser Drive, Banora Point by way of an initial Section 34 conference and to proceed to a full hearing should the Section 34 conference be unsuccessful in mediating an outcome suitable to both parties.



REPORT:

Applicant: Twin Towns Services Club Limited
Owner: Twin Towns Services Club Limited
Location: Lot 1 DP 1088100, No. 260 Fraser Drive, Banora Point
Zoning: 6(b) Open Space
Cost: \$7,000,000

BACKGROUND:

Critical Dates/Application History

Date	Action
16 July 2007	DA submitted to Council.
29 August 2007 to 28 September 2007	30 day Public advertising period. One (1) submission was received.
1 August 2007	Further Information Request – Fees.
13 August 2007	Payment of fees received.
29 August 2007	Referral to Department of Energy & Water (de-watering).
24 December 2007	Response received from the Department of Energy & Water (de-watering) – approval subject to general terms and conditions provided.
30 August 2007	Referral to NSW Rural Fire Service.
13 September 2007	Response received form NSW Rural Fire Service – approval subject to conditions.
6 September 2007	Further Information Request – Noise, fit out and food handling.
10 October 2007	Response received – Acoustic report and letter from Solo relating to garbage and recycling. Report received 4th March 2007 considered satisfactory subject to conditions.
18 September 2007	Further Information Request – disposal of waste and location of waste disposal bins and noise relating to these bins.
10 October 2007	Response received – Acoustic report and letter from Solo relating to garbage and recycling. Report received 4th March 2007 considered satisfactory subject to conditions.
26 October 2007	Further Information Request – Traffic, car parking, stormwater management plan (calculations) inadequate, inadequate details on the existing sewer pump station’s ability to serve the proposed development.
20 December 2007	Response received – regarding car parking existing floor areas

Date	Action
	<p>and proposed floor areas.</p> <p>STILL OUTSTANDING: The stormwater management plan (calculations) and the calculations demonstrating that the existing sewer pump station's ability to serve the proposed development.</p>
<p>11 January 2008</p> <p>4 March 2008</p>	<p>Further Information Request – precise location of the waste disposal bins on site and whether the Acoustic Report has considered noise relating to the use of these bins in the assessment relating to waste collection particularly in respect to glass disposal.</p> <p>Response received – regarding location of waste bins and noise generated from waste bins. Report considered satisfactory subject to conditions.</p>
<p>24 April 2008</p>	<p>Further Information Request – car parking, traffic report inconsistent with submitted plans, upgrade to Council's adjacent car park is required.</p> <p>STILL OUTSTANDING</p>
<p>23 June 2008</p> <p>2 July 2007</p>	<p>Referral to Country Energy clause 37 – Electricity transmission line corridor</p> <p>Response received from Country Energy supporting the proposal.</p>

Below is an extract from the latest further information request dated 24 April 2008, to which no response has been received:

- Why a car parking requirement of 62 car spaces for the existing 'outdoor entertainment area' has been used when this does not represent the current demand for the area;
- Why hasn't carparking for additional staff been included;
- Where has HRV and bicycle parking been incorporated;
- Why are the areas used in the traffic report for the various proposed uses markedly different from the original areas shown on architectural and other drawings submitted with the application. Revised plans may be required;
- What specific upgrading is proposed to be done in Council's adjacent car park area to increase overall parking numbers.

Council's Engineering and Operations Division has provided the following comments on parking, stormwater and sewerage issues relating to this development application:

1. The applicant has provided insufficient off street vehicle and bicycle parking for the development. As such the application is requested to amend the submission to include the required spaces.

What is required

Section A2 of Council's DCP requires the following parks for a Club.

- (a) Public Transport, Bus Stop Seating - 1/10 car parking spaces
- (b) Bicycle Parking - 1/5 car park
- (c) Delivery, Service Vehicle parking Refer to Table 3.0 - 1 HRV
- (d) Staff parking - 0.3 spaces per staff. Where spaces are to be reserved for specific members they must be additional and be nominated at DA stage
- (e) Customer car Parking - 1/4m² bar area + 1/7m² lounge/dining area + 1/15m² auditorium. Minimum 1 coach parking space on site.

Based on the submitted plans, this equates to;

Dining Area: $240\text{m}^2/7 = 34.3$ spaces
Entertainment Area: $430\text{m}^2/15 = 28.7$ spaces
Gaming Area: $200\text{m}^2/7 = 28.6$ spaces
Function Room: $410\text{m}^2/15 = 27.3$ spaces
Bar: $100\text{m}^2/4 = 25$ spaces
Beer Garden: $385\text{m}^2/7 = 55$ spaces
Refreshment Rooms: $650\text{m}^2/7 = 92.9$ spaces
Staff: $20 \times 0.3 = 6$ spaces
Total spaces required = 298

Total spaces required with 20% Reduction = 238 (if the applicant can demonstrate support for the Strategic Plan, ESD principles or cross-utilisation)

What is currently proposed

Only **103** on site car spaces have been provided.

Parking facilities for a MRV. Council's DCP requires a HRV.

Required Amendments

- (a) Amend design to provide the appropriate number of off-street car spaces.
 - (b) A delivery / service vehicle parking space for one HRV, not MRV.
 - (c) Provide $(238 / 5 =)$ 48 bicycle spaces. Note, a reduction to this number could be considered, if requested and justified).
 - (d) Provide $(238/10 =)$ 24 Public Transport, Bus Stop Seats. Again, a reduction to this number could be considered if requested provided they will also be covered).
 - (e) Disabled parking spaces also have not been shown on the proposal plans and need to be included, as required.
 - (f) Provide a minimum of one coach parking space on site.
2. The following comments are also provided on the submitted CRG's Traffic Engineering Assessment.

- (a) CRG propose a reduction of the refreshment room area by 60% from 650m² to 260m² on the assumption that this represents the dining component and the remaining area will not be used by patrons. There is no detailed explanation of why this scenario is appropriate within the report and tables or chairs are not shown on the proposal plans. Based on the application provided, the total 650m² should be used for the evaluation of off street parking spaces.
- (b) Table 6.2 (Queue Lengths) appeared inaccurate when considered by DTAG however the metres should be revised to car lengths thereby confirming that there will be no impacts of the queue of right turning vehicles from Fraser Drive (northbound) on the Fraser Drive / Leisure Drive traffic signals (Refer to DTAG resolution).
- (c) CRG have used a daily trip generation rate from the RTA guidelines for restaurants of 60 trips per 100m² GFA (which is the same as Council's). Council's generation rate for licensed clubs of 100 trips per 100m² GLA should have been applied with a peak hour factor of 8% or 8 trips per 100m² GLA.
- (d) CRG states there are 121 spaces available on Fraser Drive and in the adjacent car park associated with the playing fields. In this regard, the existing on street car parking spaces are not to be used for off street car parking calculation unless there is a demonstrated public benefit for such. Part of the existing on street parking areas could also be used for bus parking which is not unreasonable for such a development. Also there is no evidence within the application that an agreement has been reached with Council regarding shared used of the adjacent recreation parking area.
- (e) CRG has shown a medium rigid vehicle loading bay for servicing the site with allowance for the movement of a heavy rigid vehicle through the site. This is considered acceptable in this case.

Council await amended documentation to address the above points.

3. The submitted Stormwater Management Plan (prepared by Cozen Regan Williams Prove) proposes to discharge piped site drainage into the existing pipe drainage system on the south side of the allotment. The report assumes that the existing network is adequately sized to cater for this flow. Calculations are required to confirm this assumption. If the existing pipe drainage network does not provide the required capacity, appropriate On Site Detention (OSD) is required to ensure that post development discharge equals pre development discharge. Council await the appropriate supportive / amended documentation.

4. Re - Sewerage:

The site is currently serviced by a private pump station that injects into Council's rising main from SPS3018 which currently pumps directly to the Banora Point Sewage Treatment Plant. The additional area being provided in the development will generate a significant increase in loading but the submitted report did not provide quantities.

Council require a detailed design on the pump system to assure that either the existing system can cope without modification, or that an appropriate system is provided. If the existing system cannot serve the development, two options should be considered:

- a. Upgrading the pumps to inject into the SRM ensuring that they will operate satisfactorily in conjunction with Council's pump station without causing significant loss of performance.
- b. Provision of a new private SRM to discharge to manhole 5/2 in Leisure Drive west of Fraser Drive. This would involve approximately 140 m of main and under-boring of Fraser Drive/Leisure Drive.

OPTIONS:

1. Do not defend Appeal.
2. Council endorses staff and its legal team to proceed to a section 34 conciliation conference at which the Court could approve the development application if agreement is reached between the parties or their representatives at that conciliation conference to the Court granting consent to the development subject to conditions. In that regard section 34(3) of the Land and Environment Court Act provides as follows:

"34 Conciliation conferences

- (3) *If, either at or after a conciliation conference, agreement is reached between the parties or their representatives as to the terms of a decision in the proceedings that would be acceptable to the parties (being a decision that the [Court](#) could have made in the proper exercise of its [functions](#)), the [Commissioner](#):*
 - (a) *must dispose of the proceedings in accordance with the decision, and*
 - (b) *must set out in writing the terms of the decision."*

Unless the Court otherwise requires objectors are not required to be notified or present at a section 34 conciliation conference and the Court can approve the development application with agreed conditions of consent without the need to hear from objectors.

3. Should the Section 34 Conference be unsuccessful in mediation an outcome suitable to both parties, endorse the Council staff and its legal team to proceed to a full hearing.

This report recommends that Council endorses Options 2 and 3.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Council will incur legal costs, as a result of this appeal.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The development application has not provided adequate detail regarding car parking, stormwater and sewerage calculations to enable Council to assess the potential impacts the application may have on the natural and built environments.

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.



P9 [PR-PC] Section 96 Application DA06/1442.01 for an Amendment to Development Consent DA06/1442 for Extensions to Existing Nursing Home Facility at Lot 1 DP 1099088, No. 18 Ballymore Court, Banora Point

ORIGIN:

Development Assessment

FILE NO: DA06/1442 Pt1

SUMMARY OF REPORT:

Council is in receipt of an application to amend a development consent that was granted by Council in April 2008 for the construction of a 41 bed extension to an existing nursing home at Ballymore Court, Banora Point.

The applicant is seeking to modify the development consent in relation to the relevant contributions that were applied to the original consent. The proposed amendments incorporate the deletion of all S94 contributions and the requirement of payment of applicable S64 contributions (Water and Sewer) prior to the issue of an Occupation Certificate, as well as a substantial decrease in the S64 fees.

Council's contribution plans do not have any allowances for reductions or exemptions for non-profit organisations, nor has there been any history of Council approving a reduction or exemption of contribution fees. Each contribution plan clearly states that approvals involving building works require payment of the appropriate fees prior to the issue of a construction certificate.

The proposed modifications do not comply with current Section 94 and Section 64 Plans. The proposed variation to Council's standards may lead to future policy implications in terms of setting an undesirable and inappropriate precedent for the application of contribution fees. The loss of applicable S94 and S64 contribution fees would likely impact upon Council's ability to provide adequate services for the future growth of the Shire. As such, the following report addresses the issues and reasons for recommending refusal of the proposed amendment.

RECOMMENDATION:

That Section 96 Application DA06/1442.01 for an amendment to Development Consent DA06/1442 for extensions to an existing nursing home facility at Lot 1 DP 1099088, No. 18 Ballymore Court, Banora Point be refused for the following reasons:-

- 1. The proposed modification is not considered to be in accordance with the provisions of Council's Section 64 Water and Sewer Development Servicing Plans.**



2. **The proposed modification is not considered to be in accordance with the provisions of Council's Section 94 Contributions Plan.**
3. **The proposed modification is not considered to be in the public interest.**

REPORT:

Applicant: Amity Group Pty Ltd
Owner: Healthcare Property Funds Pty Ltd
Location: Lot 1 DP 1099088, No. 18 Ballymore Court Banora Point
Zoning: 2(c) Urban Expansion
Cost: Nil

BACKGROUND:

The subject site has an existing nursing home, which is Stage 1 of a two-staged development approved in February 1999. The existing building incorporates 56 beds. The second stage (not constructed) involved an additional 40 bed facility and aged care Day Centre.

Development consent was granted in April 2008 for the construction of a 41 bed extension to the existing nursing home, on the presently vacant portion of the allotment to the north and east of the existing building. The new extensions will house 20 high care / dementia residents and 21 low care residents. Offices and staffing areas are also incorporated within the extensions.

Proposed Modifications

The applicant is seeking to modify the development consent in relation to the relevant contributions that were applied to the original consent. The proposed amendments incorporate the deletion of all S94 contributions and the requirement of payment of applicable S64 contributions (Water and Sewer) prior to the issue of an Occupation Certificate, as well as a substantial decrease in S64 fees.

The amendments incorporate Conditions 5 and 6, which are noted below in their current format:

"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) *Banora Point West/Tweed Heads South (DCP Section B3)*
Open Space Passive (Casual):
13.9348 ET @ \$1571 *\$21,892*
S94 Plan No. 1
 - (b) *South Tweed Heads Master Drainage (DCP Section B3 area):*
0.1807 HA @ \$8805 *\$1,591.06*
S94 Plan No. 2
 - (c) *Tweed Road Contribution Plan:*
41.4 Trips @ \$851 *\$35,231*
S94 Plan No. 4
Sector2_4
 - (d) *Shirewide Library Facilities:*
11.7361 ET @ \$688 *\$8,074*
S94 Plan No. 11
 - (e) *Bus Shelters:*
10.9234 ET @ \$26 *\$284*
S94 Plan No. 12
 - (f) *Eviron Cemetery:*
26.167 ET @ \$131 *\$3,428*
S94 Plan No. 13
 - (g) *Emergency Facilities (Surf Lifesaving):*
11.755 ET @ \$200 *\$2,351*
S94 Plan No. 16
 - (h) *Extensions to Council Administration Offices*
& Technical Support Facilities
24.8058 ET @ \$1996.80 *\$49,532.22*
S94 Plan No. 18
 - (i) *Cycleways:*
11.7214 ET @ \$352 *\$4,126*
S94 Plan No. 22
 - (j) *Regional Open Space (Casual)*
11.7298 ET @ \$855 *\$10,029*
-

S94 Plan No. 26

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

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

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

Water DSP4: 20.5 ET @ \$9997 \$204,939

Sewer Banora: 30.75 ET @ \$4804 \$147,723

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

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

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."

The proposed modifications do not comply with current Section 94 and Section 64 Plans. As such, the proposed modifications to conditions of consent are not considered to be acceptable, as discussed in detail below.

SITE DIAGRAM:



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

The applicant has provided the following justification for the proposed modifications:

"We respectfully request that Council reconsider scale of the financial levies that have been imposed on what is a modest extension. The Levies add up to \$489,200, for a project valued at \$4,500,000. That is over 10% of the value of the works and, in our view, places an unfair burden on this important community facility.

*The Amity Group is one of Australia's leading operators of residential aged care and we offer a mix of low and high care, specialist dementia care, respite and palliative care, ageing in place programs and extra service offerings to residents. Amity is part of the UK based health and care group, BUPA, whose vision is "taking care of the lives in our hands" and shares with Amity the same passion and commitment for high standards of care and service to residents and employees. Importantly **BUPA has no shareholders and re-invests** its surpluses back into the business, thereby increasing the benefits and quality of services to its customers.*

Amity @ Banora Point currently provides care for a substantial number of aged with dementia, which is becoming an increasing facet of care (predictions are 1 in 4 over the age of 85) as well as Palliative Care, for the very ill. The enlarged facility will increase our capacity to service these increasing needs within the community.

This application is to modify the development consent conditions relating to the Section 94 and Section 64 Contributions as follows:

1. Delete Condition #5 – Section 94 Contributions

The reasons for requesting this exemption are:

- a. The application of S94 contributions to a Nursing Home is unreasonable, because the Home already provides a substantial and material Public Benefit to the community, while providing respite to families.*
- b. Not only does the Nursing Home provide a material Public Benefit, the proposed extension also will meet the increasing Social Needs of the local community, particularly in dementia and palliative care as well as the growing trend for 'ageing in place'.*
- c. Another Public Benefit is the fact that the Nursing Home is a significant employer, providing close to one hundred skilled and unskilled jobs, on a full and part time basis, for its 24 / 7 operation.*
- d. Further, unlike property developers, the Nursing Home is subsidised by the Commonwealth and does not have the capacity to pass on these additional costs to the residents. As a result of these levies the quality of facilities is affected due to budget constraints.*



- e. *The residents of the Nursing Home over their lives have already contributed significantly to their local community and in their twilight years place negligible demand on the facilities covered by the S94 Contribution Plan.*
- f. *We note that Council, in approving the original Nursing Home (in 1999), did NOT levy S94 contributions. Applying S94 levies on the extension is unfair.*
- g. *We note that Nursing Homes are not specifically referred to in the S94 Contributions Plan and therefore implies exemption.*
- h. *We note that the S94 contributions plan has been developed by Council in the context of self contained dwellings, which a nursing home is not.*
- i. *We note that the development is NOT a retirement village, or connected with a retirement village, or “independent living”, it is a quality home for those needing full time care. The point being that the development is not being undertaken by a developer, ownership stays with Amity as the operator of the nursing home.*
- j. *We note that the development will include a flood refuge, at some considerable cost, which we understand is part of the wider area flood management strategy. This facility would be used in the extremely rare event that the residents cannot be evacuated in accordance with the emergency management plans already developed with the local emergency services.*

2. *Modify Condition #6 – Section 64 Contributions*

Propose to modify the wording of the second paragraph of Condition #6 as follows:

“Pursuant to Clause 146 of the EP & A Regulation 2000, an Occupation Certificate shall NOT be issued by a Certifying Authority unless all S64 Contributions have been paid and the Certifying Authority has sighted Council’s “Contributions Sheet” and a “Certificate of Compliance” signed by an authorised office of Council”.

and to modify the wording of the fourth paragraph of Condition #6 as follows”

*“Water DSP4: 8.2ET @ \$9997 = \$81,975.40
Sewer Banora: 8.2ET @ \$4804 = \$39,392.80”*

The reasons for requesting this exemption are:

- a. *While we acknowledge that the Nursing Home will contribute to water and sewer demands, we note that the Council annual levies and rates already cover the amortised costs of such.*
- b. *Deferral of the levies is sought as a sign of good faith and generous assistance by Council for the provision by the private sector of important and increasingly urgent aged care services within the local community.*
- c. *We note that the Development Services Plans for Water and Sewer do not include Nursing Homes as a basis for determining the potential future demands on the water and sewer infrastructure.*
- d. *In accordance with the Servicing Plans one ET represents the equivalent demand or loading from a standard household. Based on ET calculations in other regional jurisdictions, we propose that each resident be determined as being 0.2 of an ET. The reason being that this rate more closely relates to the actual level of usage of these services in a nursing home.*

Therefore the ET for the 41 bed extension would be $0.2 \times 41 \text{ beds} = 8.2\text{ET}$. This rate is then applied to the \$ rate as provided under the contributions plan.

We trust Council appreciates the significant contribution Amity @ Banora Point is already making to the community and that the proposed extension will improve the nursing capacity, enabling it to meet the growing demand for residential care that is already in short supply in the area.

We feel that Council is in effect penalising our expansion objectives and we hope Council can find a way to support us, and provide some leniency in regards to the so called developer levies'.

S94 Contributions

The relevant S94 contributions applied to the original approval were in accordance with Council's S94 Contribution plans and in line with contributions applied to similar type development.

The application of applicable ET rates for each contribution fee was based on the likelihood of the residents using the facilities. As noted above, the approved extensions incorporate 20 high care beds and 21 low care beds, totalling in 41 beds within the approved development.

Subsequently, the following breakdown of ET rates was applied for the S94 contributions:

S94-1 (Banora Point Open Space - Casual)

Only applied to low care beds = $0.7588\text{ET}/\text{bed} \times 21 \text{ beds (less 2ET credit)} = 13.9348 \text{ ET}$

S94-2 (Tweed Heads South Drainage)

Area of extensions only (ha) = $1807\text{m}^2 / 10,000\text{m}^2 = 0.1807\text{ha}$

S94-4 (Tweed Road Contributions)

Applied to all 41 beds = 2 trips/day x 41 beds (less 2 x 6.5 trips credit)
= 69 trips/day (less 40% employment discount)
= 41.4 trips per day

S94-11 (Library)

Only applied to low care beds = $0.6541\text{ET}/\text{bed} \times 21 \text{ beds (less 2ET credit)} = 11.7361 \text{ ET}$

S94-12 (Bus Shelters)

Only applied to low care beds = $0.6154\text{ET}/\text{bed} \times 21 \text{ beds (less 2ET credit)} = 10.9234 \text{ ET}$

S94-13 (Cemeteries)

Applied to all 41 beds = $0.6870\text{ET}/\text{bed} \times 41 \text{ beds (less 2ET credit)} = 26.1670 \text{ ET}$

S94-16 (Surf Lifesaving)

Only applied to low care beds = $0.6550\text{ET}/\text{bed} \times 21 \text{ beds (less 2ET credit)} = 11.755 \text{ ET}$

S94-18 (Council Admin)

Applied to all 41 beds = $0.6538\text{ET}/\text{bed} \times 41 \text{ beds (less 2ET credit)} = 24.8058 \text{ ET}$

S94-22 (Cycleway)

Only applied to low care beds = $0.6534\text{ET}/\text{bed} \times 21 \text{ beds (less 2ET credit)} = 11.7214 \text{ ET}$

S94-26 (Regional Open Space - Casual)

Only applied to low care beds = $0.6538\text{ET}/\text{bed} \times 21 \text{ beds (less 2ET credit)} = 11.7298 \text{ ET}$

The following is a response to the abovementioned issues raised by the applicant:

- Council is not disputing the public benefit provided by nursing homes. However, the S94 contributions applied to proposed development are not considered to be 'unreasonable'. Rather, they are in accordance with the provisions of each relevant plan. As mentioned above, the application of applicable ET rates for each contribution fee was based on the likelihood of the residents using the facilities (i.e. high or low care);
- All new development of this nature are applied with S94 contributions, unless they are Crown applications. Although the applicant is subsidised by the Commonwealth, this does not constitute Crown development. As such, the proposal attracts contribution fees, less any relevant credits for the subject site. In this case, 2 ET credits were applied (linking back to the 2 parent parcels prior to the amalgamation of the site, as required by the previous approval;

- The fact that the residents have already contributed to the community is not in dispute. Each contribution plan was assessed in terms of whether the proposed use required the plan to be applied. The issue of whether the residents place a demand on each of the relevant plans was also taken into consideration in determining whether to apply 21 or 41 beds into each calculation, in addition to the site credit;
- Any previous contributions applied / paid were investigated during the original assessment of this application to determine if any additional credit could be applied. The investigation of Council records indicated that only S64 contributions were applied in 1999, due to a Direction of the Minister under section 94E of the EP&A Act 1979, whereby S94 contributions were not applicable to development relating to housing for older people or people with a disability (within the meaning of (former) SEPP 5). It was noted at such time that the Ministers Direction under section 94E of the Act has since been revoked. As such, S94 contributions are applicable;
- The applicant has referred to the proposed development as a 'Nursing Home', which is not specifically referred to in the S94 plans. However, the proposal is defined under '*Housing for Older People or People with a Disability*' pursuant to the definitions of the Tweed LEP 2000, and is considered to be a form of residential development. Contribution Plans 1, 11, 12, 13, 16, 18 and 26 all relate to 'residential development'. The ET rate for each of these plans was applied at a medium density rate, which is only 65% of the standard residential rate, in an effort to reduce the ET value. Contribution Plan 2 applies to all land within boundary marked on Figure 1, which includes the subject site. Contribution Plan 4 (TRCP) has a specific trip rate for the various forms of development under the SEPP. The proposed development falls under the applicable rate for residential care facilities. Contribution Plan 22 applies to land zoned 2(c), which the subject site is zoned. Again the medium density rate was applied. In light of the above, the proposed development is not considered to be exempt from S94 contributions and applicable rates have been applied to the consent in accordance with the provisions of each applicable plan;
- As noted above, the proposed development was lodged as a Nursing Home and has been assessed as such. The ownership of the development has had no bearing on how the relevant contributions have been applied. The rates for each of the applicable plans have been applied by taking into consideration the ability of the resident to use the particular facilities. That is, high care residents were not included in all calculations; and
- The applicant has noted that they were required to provide a PMF flood refuge at some considerable cost. This issue was assessed in great detail during the original assessment, with Council's Infrastructure Engineers firstly not supporting the proposal as it did not meet the minimum flooding requirements. However, the proposal was seen as very important to the needs of the local elderly residents and Council's Engineers were able to support a modified design which met the draft flooding provisions at that time. It should be noted that a similar proposal if lodged with Council today would be required to provide a much larger refuge area, in accordance with the recent amendments to the Flooding DCP. Whilst it is recognised that the refuge would increase the overall construction costs, it should be noted that the S94 contributions were largely based on the number of beds proposed, rather than overall floor area.

S64 Contributions

The relevant S64 contributions applied to the original approval were in accordance with Council's S64 Contribution plans for Nursing Homes in force at the date of determination. The following is a breakdown of the ET rates, noting that any available site credit was taken up in the original approval in 1999 and could not be applied to the S64 contributions. In addition, Council records indicate that the S64 contributions applied to Stage 2 of the approved (but not constructed) development in 1999 have not been paid. Therefore, no additional credit can be applied to the following:

S64 (Water)

Applied to all 41 beds = $0.5\text{ET} / \text{bed} \times 41 \text{ beds} = 20.5 \text{ ET}$

S64 (Sewer)

Applied to all 41 beds = $0.75\text{ET} / \text{bed} \times 41 \text{ beds} = 30.75 \text{ ET}$

- Whilst the applicant has acknowledged that the proposed development will create additional demand on Council's reticulated water and sewer systems, they have noted that Council's annual levies and rates already cover the usage of water and sewer. Section 64 of the Local Government Act enables Council to levy a 'one off' contribution charge towards the provision of water and sewerage infrastructure services. This is based on the cost of existing augmentation works, existing demand, anticipated growth and the cost of works required to meet the demand created by growth. The S64 charges are separate to, and in addition to, annual rates charges, which relate to the maintenance of infrastructure and the management of community facilities;
- The applicant has requested Condition 6 to be modified in terms of when the payment of S64 contributions are to be paid. The contribution fees have been applied in accordance with clause 2.3 of each plan. That is, where building works are required S64 contributions must be paid *prior to the issue of a construction certificate*. As such, the applicant's request to defer the payment until occupation stage is not supported. To do so would create an undesirable precedent and be problematic in terms of administration of deferred payments;
- The applicant has noted that the development servicing plans for water and sewer do not include Nursing Homes as a basis for determining the potential future demands on the water and sewer infrastructure. In addition, they note that the Plans reference one ET, which is equivalent to the demand created from a standard household. They have used this argument as a basis for a reduced ET rate per bed (0.2ET per bed), which they see is closer to the actual level of usage for a Nursing Home. Although the Plan itself may not reference a Nursing Home, Council's Fees and Charges document breaks down the appropriate ET rates for various forms of accommodation. It is here that 'Nursing Homes' are *specifically identified* and given the appropriate ET rates for water and sewer demand (0.5ET & 0.75ET per bed respectively). As such, the applicant's request for a reduction in the relevant ET rate (0.2ET for both water and sewer) is not supported.

CONSIDERATIONS UNDER SECTION 96(1)(a) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

Section 96 (1A) of the Act states that in order to grant consent, the consent authority must consider the following:

- "(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 and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations."*

Likely Environmental Impact

The proposed modifications, being the deletion / amendment to contribution payments, are not considered to have any direct environmental impact on the surrounding locality.

Substantially the Same Development

The proposed amendments do not involve any modifications to the proposed development in terms of design layout or construction works. Rather, the proposed modifications relate to the contribution fees applied to the original approval. In this regard, the amendments are considered to be substantially the same as that approved under Development Consent DA06/1442.

Notification / Submissions

The proposed modifications did not require public notification. As such, no submissions were received.

Public Interest

Whilst it is acknowledged that the application of the relevant contribution fees may effect the quality of facilities within the proposed extensions due to budget constraints, the loss of applicable contribution fees is also likely to impact on Council's ability to provide the level of service that the general public demands. The likelihood of the proposed modifications setting an unreasonable precedent is not considered to be in the public interest.

OPTIONS

1. To refuse the application in accordance with the recommended reasons.
2. To approve the application with conditions.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS

The applicant has a right of appeal if dissatisfied with the determination.

POLICY IMPLICATIONS

The proposed variation to Council's standards may lead to future policy implications in terms of setting an undesirable and inappropriate precedent for the application of contribution fees. The loss of applicable S94 and S64 contribution fees would likely impact upon Council's ability to provide adequate services for the future growth of the Shire.

CONCLUSION

Council's contribution plans do not have any allowances for reductions or exemptions for non-profit organisations, nor has there been any history of Council approving a reduction or exemption of contribution fees. Each contribution plan clearly states that approvals involving building works require payment of the appropriate fees prior to the issue of a construction certificate.

The proposed modifications to amend Development Consent DA06/1442 are not considered to be in accordance with the applicable S94 and S64 Contribution Plans. As such, the proposed amendments to Conditions 5 and 6 are not supported and are subsequently recommended for refusal.

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.

P10 [CNR-PC] Development of a Model Biodiversity Development Control Plan - NRCMA Contract IS8-9-L-1

ORIGIN:

Natural Resource Management

SUMMARY OF REPORT:

Development Control Plans (DCPs) are land use planning documents produced by Councils to fine tune and complement their Local Environmental Plans (LEPs). DCPs are often used to provide guidelines on building design, subdivisions and master planning for urban release areas. Very few Councils provide detailed guidance on acceptable standards for biodiversity and habitat management aspects of proposed developments. This is surprising given the relatively complex set of statutory obligations and the strong potential for land use conflict arising from poorly designed or inappropriate development.

The preparation of a DCP to provide guidance to proponents, Council and State agencies on issues associated with habitat management in the Shire was a key recommendation of the Tweed Vegetation Management Strategy 2004 which was adopted by Council on 17 April 2007.

Tweed Shire Council has been awarded a \$45,000 grant from the Northern Rivers Catchment Management Authority for the preparation of a model Biodiversity DCP which may be customised by individual local authorities. Tweed Shire Council will coordinate and provide in-kind support for the project. Project partners include: Tweed Shire Council, Northern Rivers CMA, other north coast NSW Local Government Authorities and State Agencies.

RECOMMENDATION:

That Council:-

- 1. Accepts the grant of \$45,000 from the Northern Rivers Catchment Management Authority in accordance with NRCMA Contract IS8-9-L-1 - Development of a Model Biodiversity Development Control Plan and votes the expenditure.**
- 2. Prepares a draft Biodiversity Development Control Plan based on the model plan described in 1 above consistent with adoption of the Tweed Vegetation Management Strategy 2004 at the Council meeting of 17 April 2007.**

REPORT:

Development Control Plans (DCPs) are land use planning documents produced by Councils to fine tune and complement their Local Environmental Plans (LEPs). DCPs are often used to provide guidelines on building design, subdivisions and master planning for urban release areas. Very few Councils provide detailed guidance on acceptable standards for biodiversity and habitat management aspects of proposed developments. This is surprising given the relatively complex set of statutory obligations and the strong potential for land use conflict arising from poorly designed or inappropriate development.

The preparation of a DCP to provide guidance to proponents, Council and State agencies on issues associated with habitat management in the Shire was a key recommendation of the Tweed Vegetation Management Strategy 2004 which was adopted by Council on 17 April 2007.

Tweed Shire Council has been awarded a \$45,000 grant from the Northern Rivers Catchment Management Authority for the preparation of a model Biodiversity DCP which may be customised by individual local authorities. Tweed Shire Council will coordinate and provide in-kind support for the project. Project partners include: Tweed Shire Council, Northern Rivers CMA, other north coast NSW Local Government Authorities and State Agencies. Outcomes of the project include:

1. Improved consideration and integration of biodiversity issues.
2. Greater certainty for all stakeholders (proponents, community, consent authority, State agencies).
3. Consistent and standard approach in line with published science and relevant State Guidelines.
4. Streamlined approval process – reduce the need for referrals by planners and reduce the possibility of inappropriate approvals
5. Support for Biodiversity related clauses in LEPs.
6. Improved coordination of statutory and non-statutory biodiversity considerations.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

In kind support from Council's Biodiversity Program Leader (Natural Resource Management Unit) and Specialist Planner/Ecologist (Major Development Assessment Unit).

POLICY IMPLICATIONS:

Nil.



UNDER SEPARATE COVER/FURTHER INFORMATION:

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1. NRCMA contract IS8-9-L-1 & Letter of Offer (DW 1900561)
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