



TWEED SHIRE COUNCIL

AGENDA

PLANNING COMMITTEE MEETING

Tuesday 22 April 2008

Chairman: Mr Max Boyd AM

**Administrators: Mr Max Boyd AM
Mr Frank Willan**



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ITEMS FOR CONSIDERATION OF THE COMMITTEE:

ITEM	PRECIS	PAGE
	REPORTS THROUGH GENERAL MANAGER	4
	REPORTS FROM DIRECTOR PLANNING & REGULATION	5
P1	[PR-PC] Review of Determination of Development Application DA06/1332 for an Animal Establishment for Greyhounds at Lot 3 DP 701833, No. 3808 Kyogle Road, Mount Burrell	5
P2	[PR-PC] Review of Determination of Development Application DA07/0055 for Site Rehabilitation (Earthworks Involving Filling) at Lot 71 DP 819194, Duranbah Road, Duranbah	11
P3	[PR-PC] Development Application DA06/1442 for Extensions to Existing Nursing Home Facility at Lot 1 DP 1099088, No. 18 Ballymore Court, Banora Point	39
P4	[PR-PC] Development Application DA07/0595 for the Koala Beach to Seabreeze Link Road at Lot 2 DP 1087664; Lot 1 DP 1106275, Cudgera Avenue & Seabreeze Boulevard, Pottsville	91
P5	[PR-PC] Review of Determination of Development Application DA06/0946 for a Mixed Development Comprising 2 x 2 Bedroom Units, 2 x 3 Bedroom Units and Commercial Premises at Lot 3 DP 520276, No. 20 Marine Parade, Kingscliff	121
P6	[PR-PC] Class 1 Appeal - Development Application DA08/0024 for the establishment of the Seabreeze Central Shopping Centre comprising supermarket, fuel station/store, childcare centre, speciality shops and kiosk at Lot 1 DP 1106275, Seabreeze Boulevard P	183
P7	[PR-PC] Tweed LEP 2000 Review: Tweed LEP 2008	189
P8	[PR-PC] Residential and Tourist Code – Section A1 of Tweed DCP	227
P9	[PR-PC] Residential and Tourist Code - Section A1 of Tweed DCP - Hastings Point Review	237
P10	[EO-PC] Subdivision Manual (Section A5 of the Tweed Development Control Plan)	243
P11	[EO-PC] Development of Flood Liable Land (Section A3 of the Tweed Development Control Plan)	247

REPORTS THROUGH GENERAL MANAGER

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.

REPORTS FROM DIRECTOR PLANNING & REGULATION

P1 [PR-PC] Review of Determination of Development Application DA06/1332 for an Animal Establishment for Greyhounds at Lot 3 DP 701833, No. 3808 Kyogle Road, Mount Burrell

ORIGIN:

Development Assessment

FILE NO: DA06/1332 Pt1

SUMMARY OF REPORT:

The Development Assessment Panel at a meeting on 26 August 2005 refused a Development Application for greyhound kennels. A request for a S.82A 'Review of Determination' resulted in Council again refusing the proposal on 30 November 2005. At that time, an Appeal was lodged with the Land & Environment Court but was later withdrawn.

The applicant has since engaged an Acoustic Engineer to prepare a more substantial Noise Report and also a Planning Consultant to assist in lodgement of a new application.

Local complaint and concern about noise from the barking dogs remains constant with disturbances being diarised and documented. The neighbours have also engaged an Acoustic Engineer to substantiate their claims.

The Review was reported to Council on 13 November 2007 where Council again resolved to refuse the application.

The applicant then lodged another S.82A 'Review of Determination' application. This is the subject of this report.

In summary, the issue of noise emission remains contentious. The applicants have **not** added any additional information or evidence to support their proposal. They have simply put it back to Council for a review. A different Environmental Health Officer has assessed the noise impacts and made a fresh appraisal. This independent review has again drawn the same conclusion that the use generates unacceptable environmental impacts and should be refused. The same consistent level of community concern was registered through submission of 14 separate written representations all in the negative.



RECOMMENDATION:

That Council reaffirms the determination for refusal of Development Application DA06/1332 for an animal establishment for greyhounds at Lot 3 DP 701833, No. 3808 Kyogle Road, Mount Burrell.



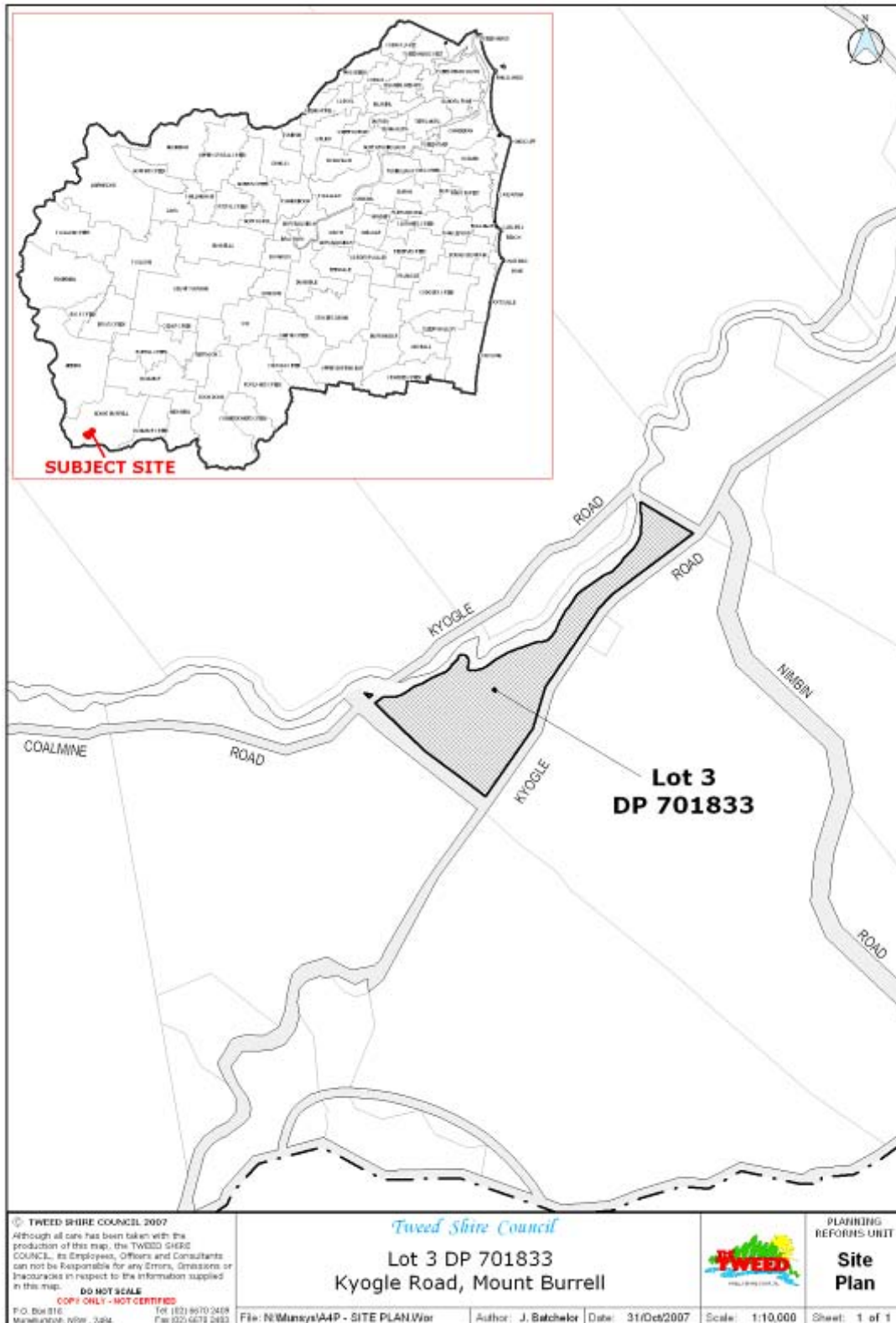
REPORT:

Applicant: Mrs LL Green
Owner: Mr A Sinclair and Mrs LL Green
Location: Lot 3 DP 701833 No. 3808 Kyogle Road, Mount Burrell
Zoning: 1(a) Rural
Cost: \$3,000

BACKGROUND:

As per summary.

SITE DIAGRAM:



OPTIONS:

1. Reaffirm Council's previous refusal of the application.
2. Approve the application subject to conditions.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

In view of no change to the application a consistent conclusion from an independent Environmental Health Officer and a similar comprehensive reaction from the local neighbours, the same report submitted to Council in November 2008 is attached.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Council's report on DA06/1332 of 13 November 2007 (DW 1698815)
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P2 [PR-PC] Review of Determination of Development Application DA07/0055 for Site Rehabilitation (Earthworks Involving Filling) at Lot 71 DP 819194, Duranbah Road, Duranbah

ORIGIN:

Development Assessment

FILE NO: DA07/0055 Pt2

SUMMARY OF REPORT:

Council has received a section 82A request to review a determination.

The review relates to a decision by Council to refuse an application for site rehabilitation (earthworks involving filling) at Lot 71 DP819194 on Duranbah Road, Duranbah (Council Meeting held Tuesday 2 October 2007).

The applicant applied to undertake earthworks (fill) in the southern portion of the site (adjacent to on-site lakes) and treat acid sulfate soil to allow for improved pastures for grazing.

Council received four objections during the notification period. Submissions raised concerns in relation to increased risk of flooding, haulage, air quality / dust and hours of operation. In assessment of the original development application, Council Officers were satisfied that these matters could be managed through conditions.

The Department of Water and Energy (DWE) indicated that licences were required under both the *Water Act 1912* and the *Rivers and Foreshores Improvement Act 1948* to undertake the proposed works as they result in modifications to Blacks Creek which traverses the site. The proposal was identified as Integrated Development. The DWE opposed the proposal and declined to issue general terms of approval.

Council refused the application because part 91A (4) of the *Environmental Planning and Assessment Act* (EP&A) states that the consent authority must refuse the application if the approval body (DWE) will not grant the required approval.

The applicant subsequently filed a Class 1 Appeal against the decision to refuse the development application on 16 October 2007. After proceedings were commenced, the DWE exercised its entitlement to apply to be joined as a party and after several mentions the applicant elected for the application NOT to be treated as integrated development. The DWE agreed to this approach provided that the DWE would not be compellable to issue the necessary permits required separately to the development consent. A Notice of Discontinuance was filed.

The section 82A was notified in accordance with requirements of the Environment Protection and Assessment Act. No submissions were received during the notification period. One submission was received after the notification period raising concerns with potential flooding impacts on neighbouring properties, loss of vegetation, habitat and fauna. There were also concerns that the filling would facilitate rezoning of the site to residential and that the Department of Water and Energy and the Department of Planning should be involved in the decision making.

It is considered that the applicant adequately demonstrated sufficient flood storage is available on-site during the original assessment of the proposal. Comments from Council's Engineer addressing this issue are provided in the body of the report. Despite the application not being integrated, the applicant will be required to obtain appropriate licences from the Department of Water and Energy (DWE) to undertake works associated with the drainage channels. The Department of Planning does not have any jurisdiction to be involved in the assessment of the proposal. Finally, should the applicant seek to rezone the site to residential at a later stage, this will be assessed as a separate application based on its merits. The filling enables rehabilitation of acid sulphate soils occurring across the site. It is considered that the submitters concerns in relation to vegetation, habitat, flooding and DWE licences are affectively addressed through conditions.

Given that the development is no longer Integrated Development, part 91A of the Act no longer applies and Council is able to approve the development application, subject to assessment.

RECOMMENDATION:

That the Review of Determination of Development Application DA07/0055 for a site rehabilitation (earthworks involving filling) at Lot 71 DP 819194, Duranbah Road, Duranbah be approved subject to the following conditions: -

GENERAL

1. The development shall be completed in accordance with:

- **the Statement of Environmental Effects;**
- **Supplementary Rehabilitation Management Plan prepared by Gilbert and Sutherland December 2006 version 5 (23.3.07) and further amendments dated 28 August 2007; and**
- **Drawing Nos GJ0531.1.2 and 2b (dated 23/03/07) and GJ0531.1.3, 4, 4b, 5b and 5c prepared by Gilbert and Sutherland dated 28/08/07 and 21/05/07;**

except where varied by the conditions of this consent.

[GEN0005]

2. This consent does not include the nomination of any future dwelling site.

[GENNS01]



3. The applicant is required to obtain relevant licences and permits under part 3A of the Rivers and Foreshores Improvement Act 1948 and Part 2 of the Water Act 1912 prior to commencement of works.

[GENNS02]

4. Erosion and Sediment Control shall be provided in accordance with the following:

- (a) A detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.
- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCC1155]

5. All fill for the proposed development shall be obtained from the adjoining Kings Forest development and shall be trucked to the subject site via a haul route located on private land only. The use of public roads or rights of carriageway for haulage shall not occur.

[PCCNS01]

6. All fill shall be graded to an approved permanent drainage system. Plans and details of the permanent drainage systems shall be submitted with Council's standard s68 stormwater drainage application form, for approval by the General Manager or his delegate. Filling activities must not obstruct or prevent overland stormwater flows from adjoining land from discharging to the main drainage channel through the site. Filling activities must not result in ponding on adjoining land.

[PCCNS02]

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0985]

8. Prior to commencement of work, a sign detailing the project and names and contact numbers of the developer, contractor and Subdivision Works Accredited Certifier shall be erected and maintained in a prominent position at the entry to the site in accordance with Council's adopted Development Design and Construction Specifications. The sign is to remain in place until works are complete.

[PCWNS01]

DURING CONSTRUCTION

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

[DUR0005]

10. During construction, all works required by other conditions or approved management plans or the like shall be installed and operated in accordance with those conditions or plans.

[DUR0015]

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

Monday to Saturday from 7.00am to 7.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

12. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:

A. Short Term Period - 4 weeks.

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

B. Long term period - the duration.

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0215]

13. On completion of filling works, all topsoil is to be re-spread and the site is to be grassed and rehabilitated in accordance with approved plans.

14. All battered areas are to be topsoiled and grassed, or other suitable protection provided as soon as filling is placed adjacent to neighbouring properties.

[DUR0755]

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

[DUR0815]

16. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate.

[DUR0985]

17. All work associated with this approval is to be carried out so as not to impact on neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -



- **Noise, water or air pollution**
 - **Minimise impact from dust during filling operations and also from construction vehicles**
 - **No material is removed from the site by wind**
- [DUR1005]
18. **The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. All such materials should be chipped on site and used in landscaping unless it is not possible due to size, non suitability of the material or some other limitation, in which case the material will be disposed of at Council's Stotts Creek depot.**
- [DUR1015]
19. **All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.**
- [DUR1025]
20. **Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.**
- Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.**
- This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.**
- [DUR2375]
21. **Appropriate measures are to be put in place during the construction and/or demolition period to prevent the transport of sediment from the site. Should any material be transported onto the road or any spills occur it is to be cleaned up prior to cessation of same days work and/or commencement of any rain event.**
- [DUR2405]
22. **All actual or potential acid sulfate soil shall be appropriately identified prior to disturbance. Appropriate identification shall include all soil analyses required to adequately neutralise subject soils immediate on disturbance / excavation.**
- [DURNS01]
23. **Agricultural drainage pipes are not permitted to be placed within any acid sulfate soil profile and shall be constructed to drain the imported fill material only.**
- [DURNS02]
24. **All fill and cut batters shall be contained wholly within the subject land.**
- [DURNS04]
-



25. Vehicles leaving the premises shall be sufficiently free from dirt, aggregate or other materials such that materials are not transported onto public roads.

[DURNS05]

26. An easement benefiting adjoining upstream landholders shall be registered over the main drainage channel and its connecting drains, order to preserve the discharge rights for those landholders.

[POCNS01]

REPORT:

Applicant: Project 28 Pty Ltd
Owner: South East Excavations Pty Ltd
Location: Lot 71 DP 819194 Duranbah Road, Duranbah
Zoning: 1(a) Rural
Cost: \$700,000

BACKGROUND:

Council approved a sand quarry at the subject site (D95/0176) on 28 August 1996. Since operations of the quarry commenced, various amendments to the consent were issued (reference D95/8176 approved 24 February 1999 and reference D96/9176 approved 9 July 1999).

The sand quarry operations have allowed for extraction of a maximum of 750,000m³ of sand and the hydraulic transportation of this material off-site. Operations have involved both dry excavation and dredging activities.

Quarry operations have now finalised and resulted in the formation of two on-site lakes separated by a central bund. The lakes currently collect runoff from the surrounding catchments (largely agricultural / grazing lands) via open drains. Rehabilitation works are currently being conducted within the quarry area in accordance with the rehabilitation plan detailed in the Environmental Impact Statement and conditions associated with the consent for sand extraction. Council is currently assessing compliance with remediation conditions.

The following consents have also been issued over the site:

- Application for a machinery shed (reference DA02/0959) approved 11 July 2002.
- Backflow devices (reference BFD00111) approved 13 September 2006.
- Application for a pipeline construction - hydraulics transport and placement of fill (reference DA04/0456) approved 8 October 2004.

On 23 January 2007, Council received the application for site rehabilitation (earthworks involving filling) subject of this review.

Council refused the application at its meeting held on Tuesday 2 October 2007.

A Class 1 Appeal against the refusal was filed with the court on 16 October 2007.

Throughout the proceedings, the applicant elected that the appeal be determined on the basis that the application is not for integrated development.

The DWE agreed with this approach and a Notice of Discontinuance was filed 29 January 2008.

Proposal

The application is for site rehabilitation (earthworks that involve fill) to allow for future grazing and a potential dwelling (subject to a future application).

The proposal includes importation of fill (from an approved source) to approximately 0.5 metres above the current surface level as well as construction and re-surfacing of agricultural drains to drain the fill material. The fill is proposed to be located at the southern end of the site, adjacent to the existing lakes.

Rehabilitation works include the following steps:

1. Existing drainage line to be bunded at the northern extent of the works.
2. Topsoil to be stripped and stockpiled.
3. Existing drain sides to be limed.
4. Existing drains to be filled with pine mulch and sand to a minimum level of 0.5m AHD.
5. Agricultural drainage pipes to be installed above existing drains and backfilled with pine mulch and sand.
6. Construction of new drainage channel sections (sides to be limed).
7. Rehabilitation of existing drainage channel (sides to be limed).
8. Import and place approximately 78,000m³ of fill to achieve final grade.
9. Replace topsoil.
10. Seed with pasture.

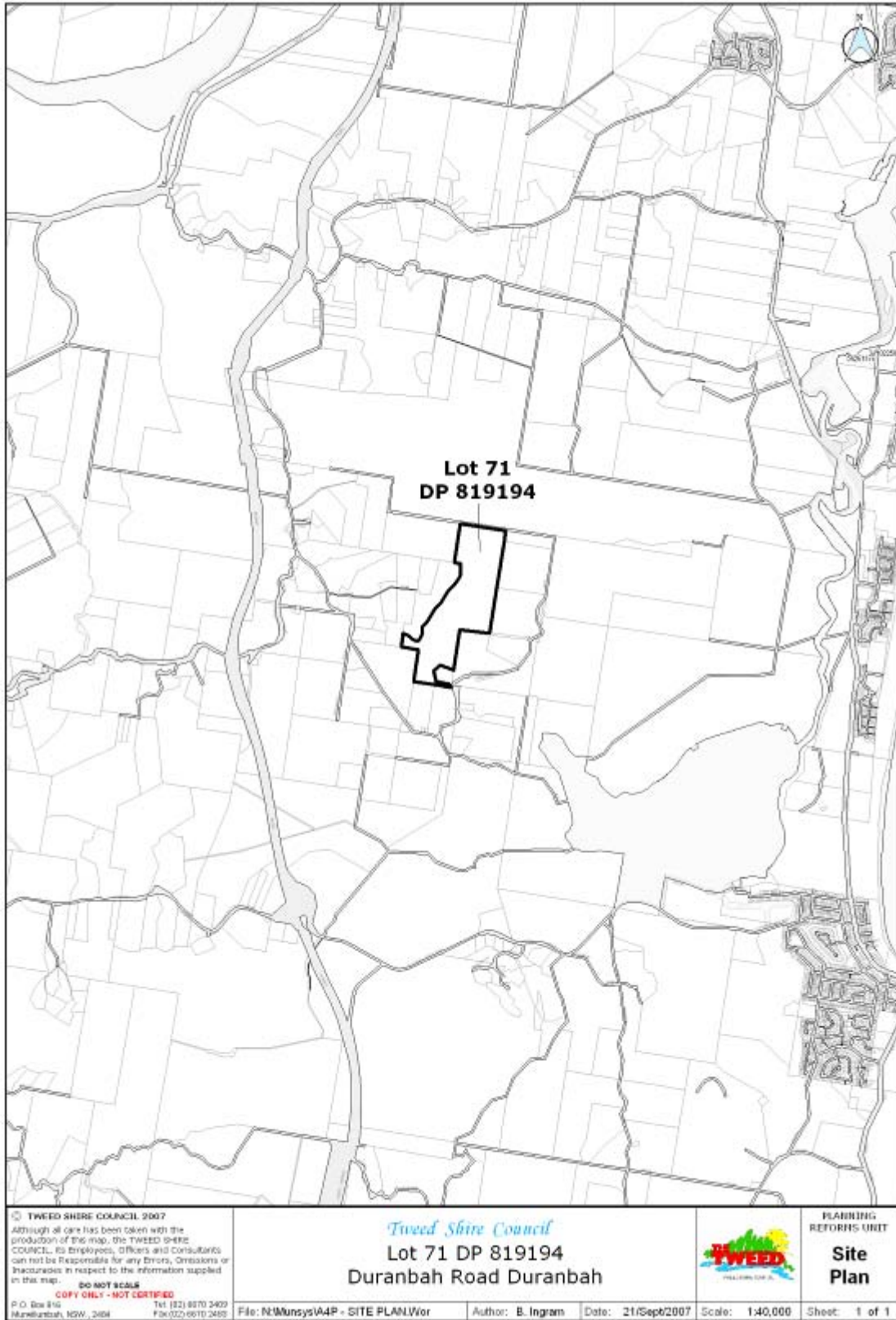
Site Details

The subject site is approximately 54.4800 ha in size and situated south of Kings Forest. Access to the site is from Duranbah Road.

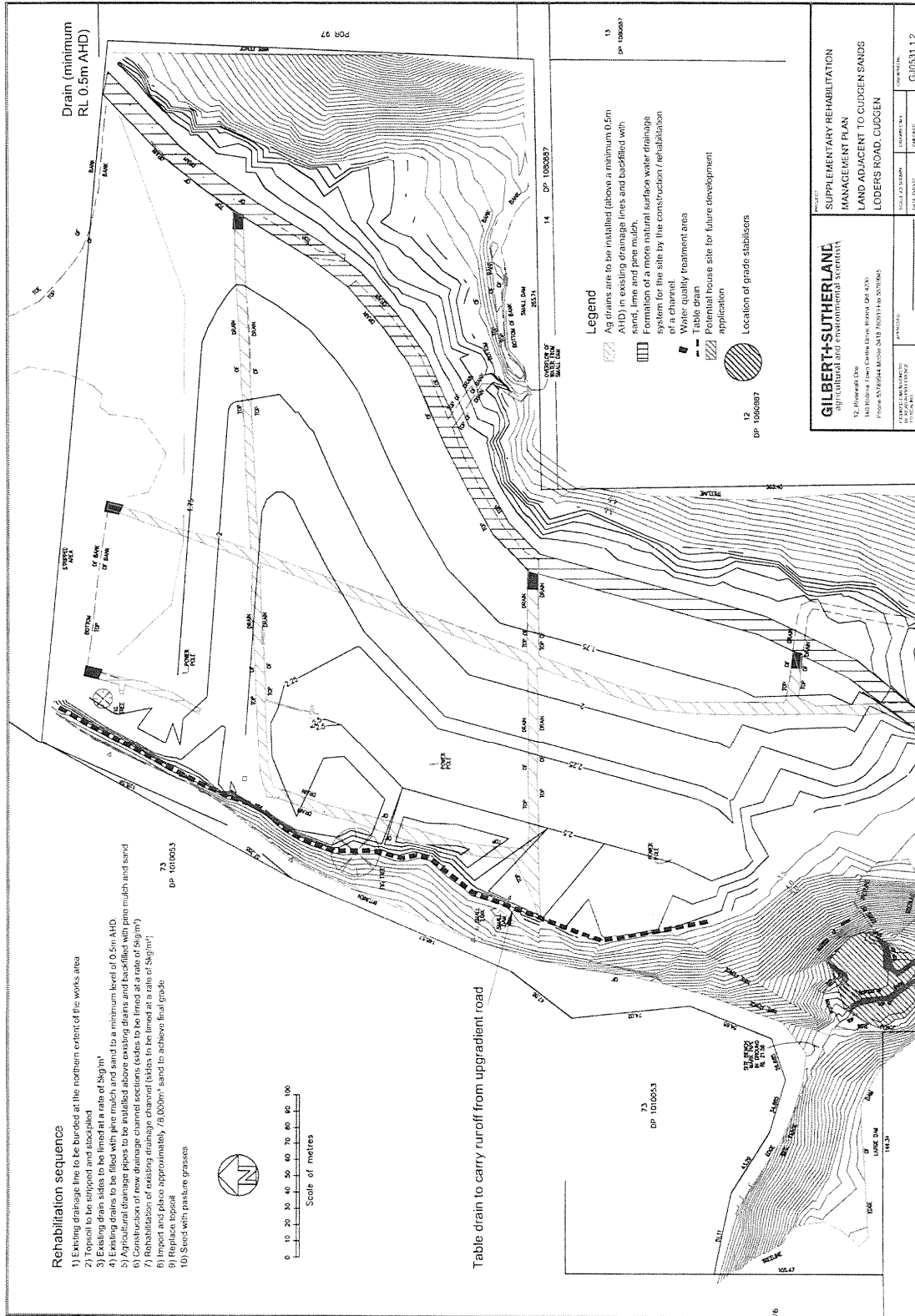
Whilst the northern part of the site is characterised by lakes, the balance of the site has largely been used for cattle grazing purposes. Open pit drains have previously been constructed to direct runoff flowing from upstream dams (to allow for improved drainage for grazing purposes).

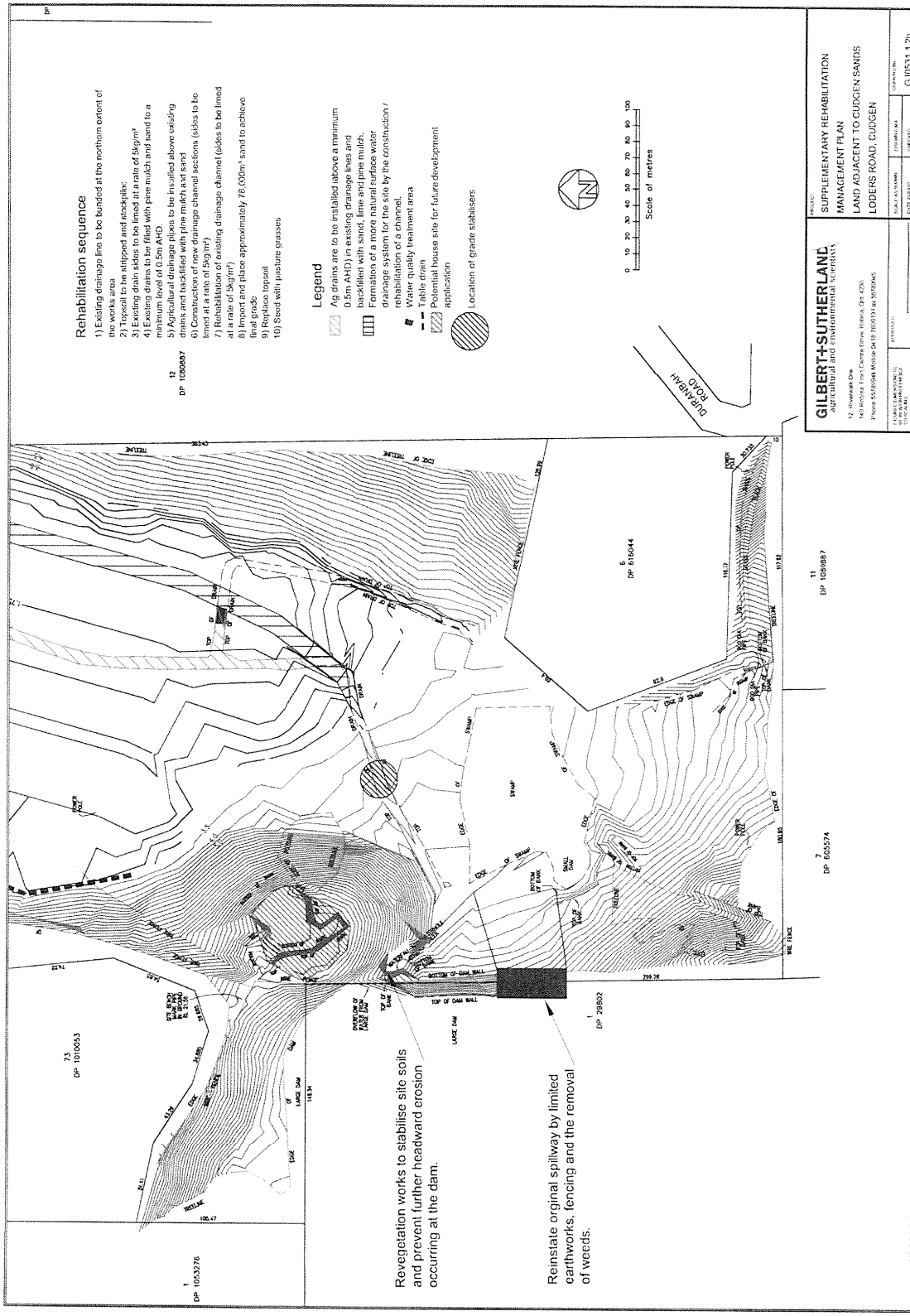
The applicant has identified that previous land uses and constructed drains have resulted in the oxidisation of acid sulfate soils, declining water quality and headward erosion.

SITE DIAGRAM:



DEVELOPMENT PLANS:





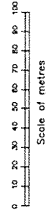
Rehabilitation sequence

- 1) Existing drainage line to be bunded at the northern extent of the works area
- 2) Topsoil to be stripped and stockpiled
- 3) Existing drain sediments to be limed at a rate of 5kg/m²
- 4) Existing drains to be filled with pine mulch and sand to a depth of 100mm
- 5) Agricultural discharge pipes to be installed above existing drains and backfilled with pine mulch and sand
- 6) Construction of new drainage channel sections (subject to be limed at a rate of 5kg/m²)
- 7) Rehabilitation of existing drainage channels (sediments to be limed at a rate of 5kg/m²)
- 8) Import and place approximately 76 000m³ sand to achieve final grade
- 9) Replow topsoil
- 10) Seed with pasture grasses

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Legend

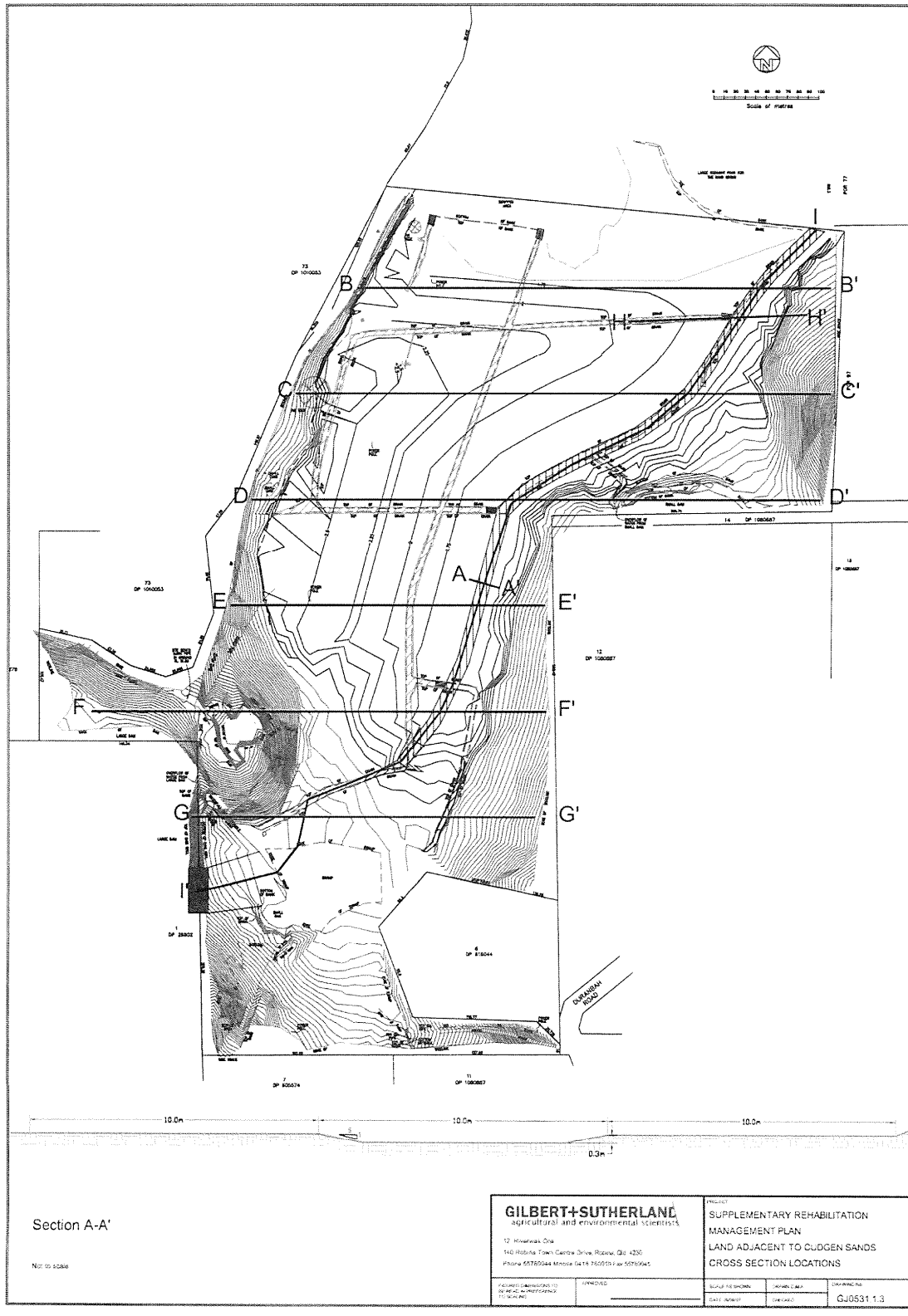
- Ag drains are to be installed above a minimum 0.5m AHD in existing drainage lines and backfilled with sand, lime and pine mulch.
- Formation of a more natural surface water drainage system for the site by the construction / rehabilitation of a channel.
- Water quality treatment area
- Stable drain
- Proposed house site for future development application
- Location of grade stabilisers



GILBERT+SUTHERLAND agricultural and environmental scientists 12, HENRIETTA CTR 140 JARVIS ST, CUDGEN, NSW, 2454 Phone 55391944 Mobile 0418 280919 Fax 55390945 Email: g+s@gs.com.au www.gilbertsutherland.com.au	PROJECT: SUPPLEMENTARY REHABILITATION MANAGEMENT PLAN LAND ADJACENT TO CUDGEN SANDS LODGERS ROAD, CUDGEN
	DATE OF DRAWING: 07/12/2007 DRAWN BY: GJES/SL/12/20 CHECKED BY: GJES/SL/12/20

Revegetation works to stabilise site soils and prevent further headward erosion occurring at the dam.

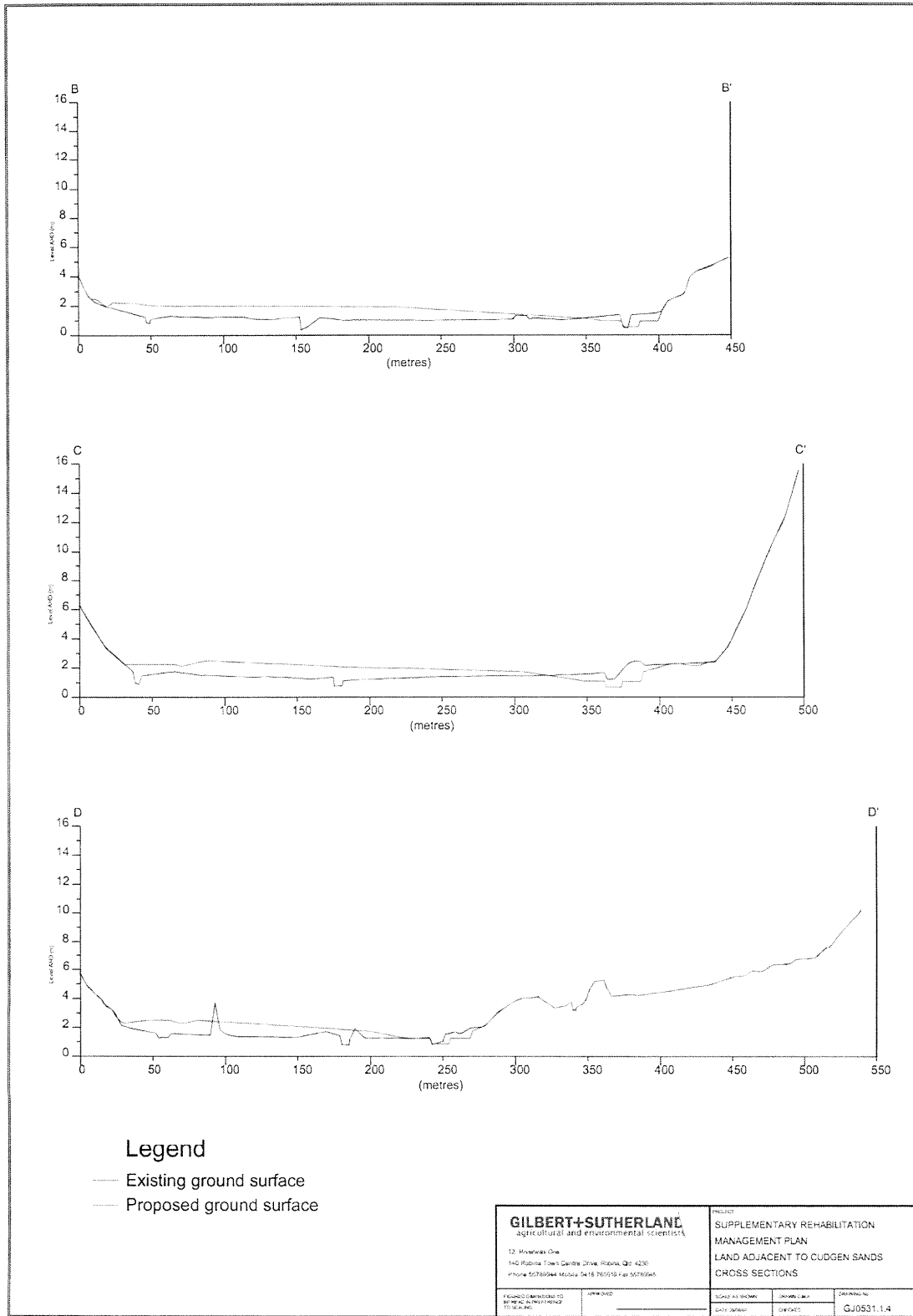
Reinstatement of original spillway by limited earthworks, fencing and the removal of weeds.

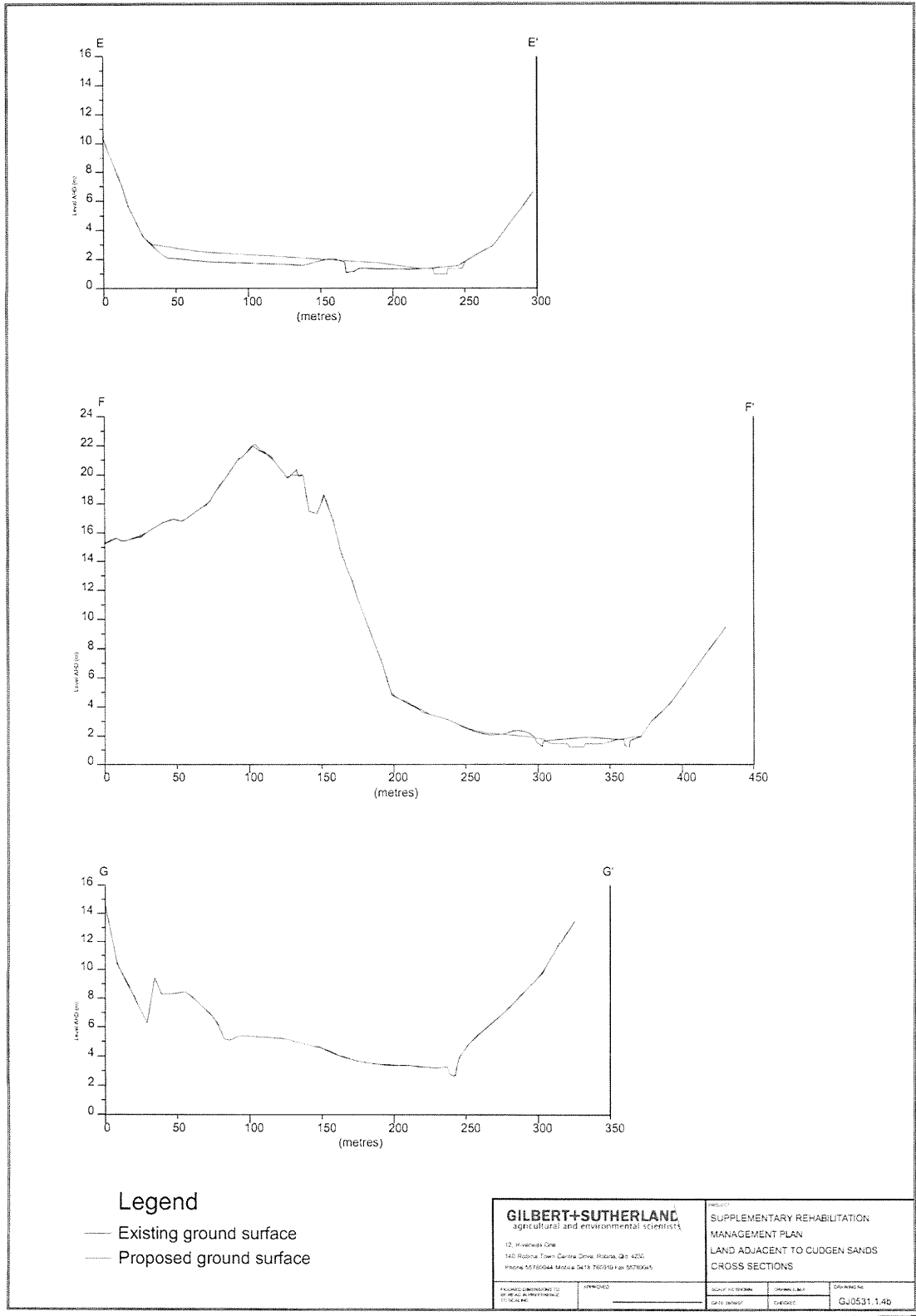


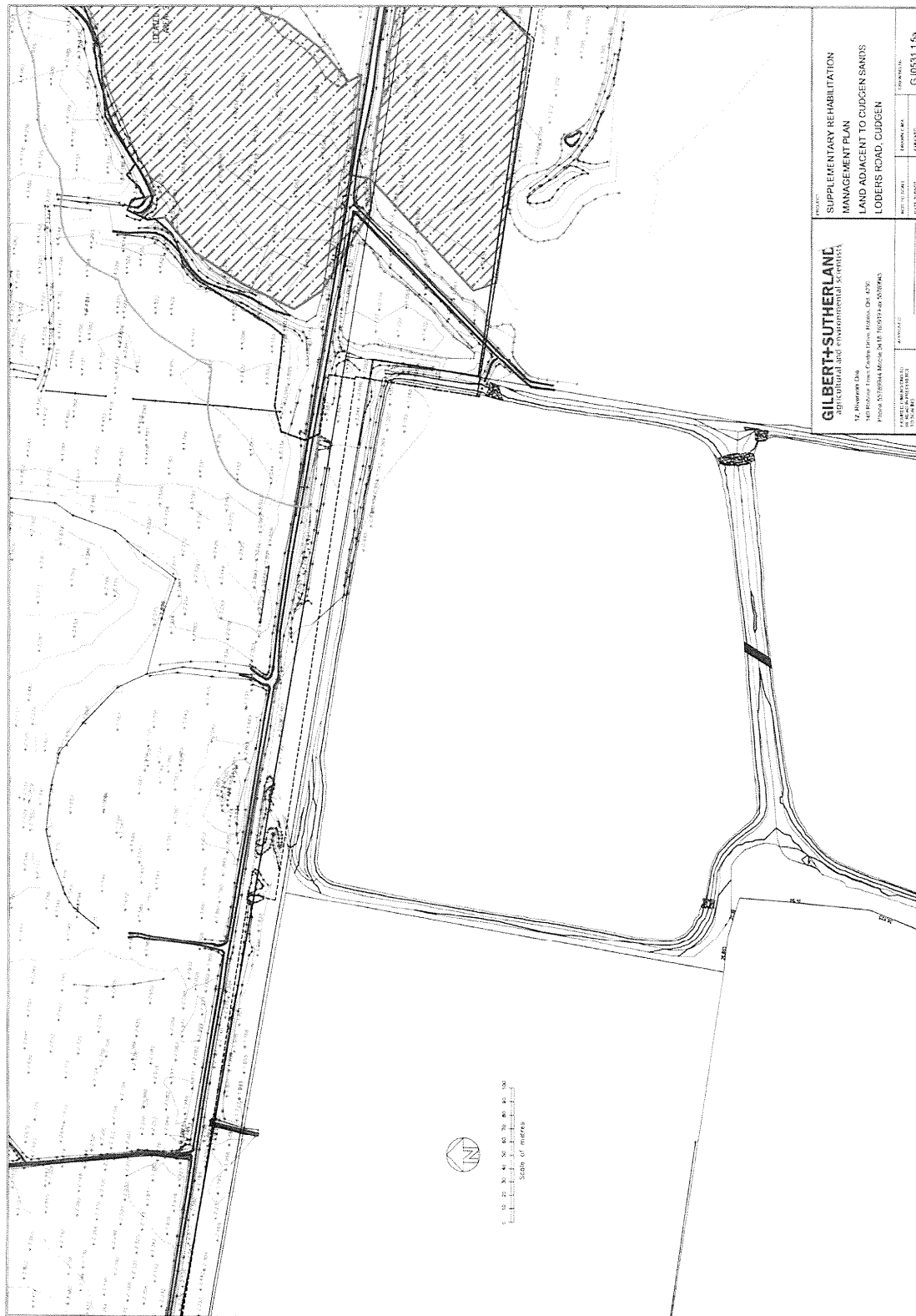
Section A-A'

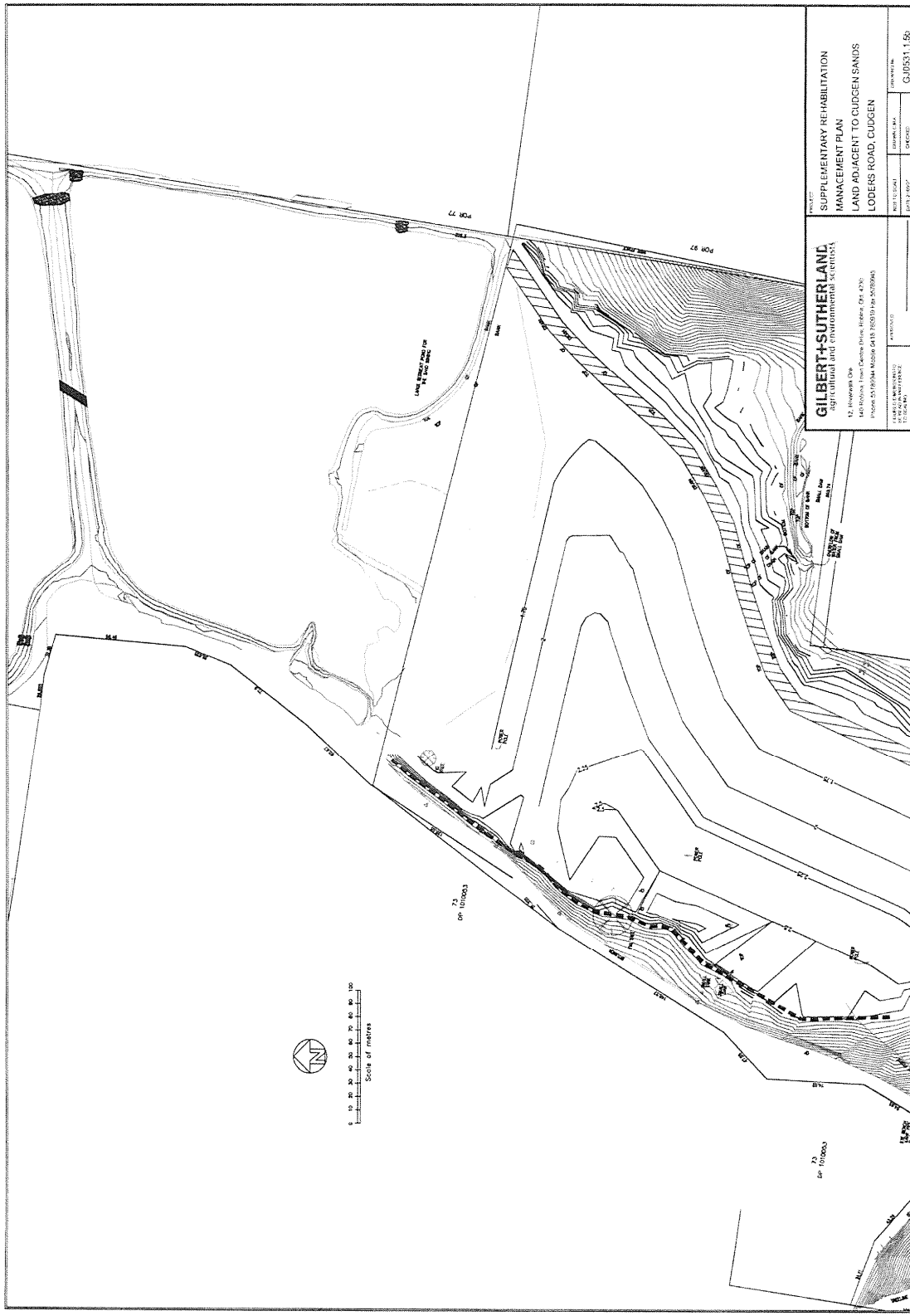
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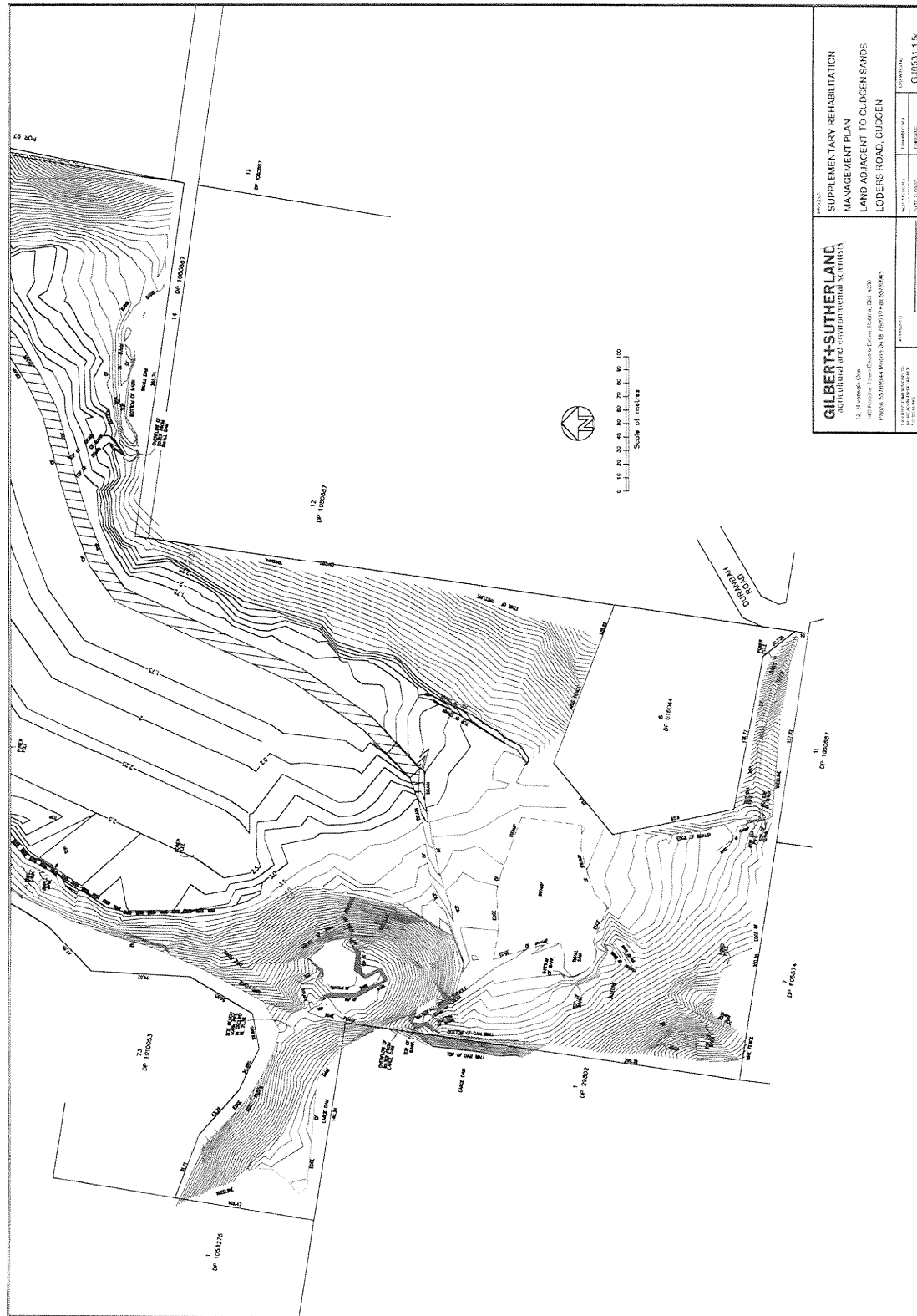
GILBERT+SUTHERLAND Agricultural and environmental scientists 17 Riverview Drive 140 Robina Town Centre Drive, Robina, Qld 4226 Phone 0755554444 Mobile 0418 750754 Fax 55789645		PROJECT SUPPLEMENTARY REHABILITATION MANAGEMENT PLAN LAND ADJACENT TO CLIDGEN SANDS CROSS SECTION LOCATIONS	
PROJECT MANAGER T. SUTHERLAND	APPROVED 	SCALE 1:5000 DATE 2008	DRAWING NO. SHEET NO. GJ0531 1.3











GILBERT + SUTHERLAND Agricultural and environmental scientists 12, Homestead Cnr. 1470 Princes Street, Cumnock, Ballina, NSW 2460 Phone: 65219644 Mobile: 0438 959946 FAX: 65219645 Email: g+s@gs.com.au	PROJECT SUPPLEMENTARY REHABILITATION MANAGEMENT PLAN LAND ADJACENT TO CUDGEN SANDS LODGERS ROAD, CUDGEN
	DATE OF PREPARED 09/12/2007 DRAWN BY G.SUTHERLAND CHECKED BY G.SUTHERLAND

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 8 – Zone Objectives

The site is located within the Rural Zone 1 (a).

The primary objective of the rural zone is to enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural utilisation purposes and associated development and to protect rural character and amenity.

The applicant has indicated that proposed earthworks and rehabilitation will improve the current drainage pattern across the site and assist in treating existing acid sulfate soils to allow for improved pasture. This will allow for greater opportunity for grazing and future use of the site as intended by the zone. The proposed rehabilitation and filling is not contrary to the zone objectives.

Clause 15 – Essential Services

Services are not required for the proposed earthworks. Any future dwellings proposed on the subject allotment will be required to demonstrate adequate connection to services as part of a future application.

Clause 16 – Height of Buildings

Buildings are not proposed as part of this application and assessment against this clause is not required.

Clause 17 – Social Impact Assessment

Given the scale and nature of the works, it is not considered there is a requirement for the preparation of a Social Impact Assessment. The proposed rehabilitation works are unlikely to create any social or economic impacts.

Clause 35 – Acid Sulfate Soils

The subject site is identified on Councils 'Acid Sulfate Soil Planning Maps' as having potential for acid sulfate soil (class 2 and class 3). The applicant has indicated that the proposed rehabilitation will seek to reduce the potential for further oxidation of acid sulphate soils, neutralise acidic discharges and improve environmental integrity.

Management of acid sulfate soils is addressed in detail below.

Clause 31 – Development Adjoining Waterbodies

The purpose of this clause is to ensure that scenic quality, water quality and aquatic ecosystems of adjoining waterways are protected. Objectives also seek to ensure that adequate public access is provided to waterways.

The clause is applicable given the on-site lakes and Blacks Creek.

As identified above, the site is significantly degraded and currently experiencing acid sulfate soil issues. Ongoing oxidation of acid sulphate soils on the southern portion of the site is resulting in the discharge of acidic waters into the lake system. The applicant has submitted that works will allow for improved habitat values and hydraulic systems as works will assist to reduce oxidisation of acid sulfate soils which currently reduce surrounding water quality.

With regards to public foreshores, the site is not located within any public foreshore area and access is not limited by this proposal.

Scenic quality of the area will be maintained given re-vegetation of working areas is proposed within the *Supplementary Rehabilitation Management Plan* (SRMP).

The proposal is consistent with the intent of clause 31.

Clause 38 – Remediation of Contaminated Land

This clause provides that the consent authority considers whether the land is contaminated, based on a preliminary investigation of the land.

This clause is not considered relevant at this stage, given no change of use is proposed.

Clause 39A – Bushfire Protection

The site is identified as being partly bushfire prone.

Given that subdivision or special fire protection purposes are not proposed it is not integrated and referral to the Rural Fire Service is not required.

Notwithstanding, Clause 39A requires that the Consent Authority take into account a variety of issues. In considering these matters, the proposal is not considered to increase risk of bushfire as on-site access and on-site water supply are not limited. Further, the proposal does not impose any additional demand on fire services as it does not introduce any new population to the site.

The proposal satisfies clause 39A and complies with *Planning for Bushfire 2006*.

Clause 54 – Tree Preservation Order

A small portion of the site is covered by a Tree Protection Order 2004. Filling works is not proposed in this area.

Flora and fauna issues are discussed in greater detail below.

North Coast Regional Environmental Plan 1988

Clause 12 – Impact on Agricultural Activities

The intent of this Clause is to ensure that development does not result in the loss of prime crop or pasture land. Whilst the site is not considered to be a significant farmland site, the applicant has indicated that filling is proposed to allow for establishment of pasture for grazing.

The proposal does not include any building works or subdivision resulting in loss of agriculture activities in accordance with the clause.

Clause 15 – Wetland or Fishery Habitats

This clause applies to 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.

This clause is applicable due to Blacks Creek.

The above clause requires that Council considers various matters in assessment, including the need to maintain or improve the quality or quantity of water flows to the waterbody, loss of habitat, access to public foreshore, pollution resulting from the development, proximity of the development on fisheries reserves, conservation of native vegetation surrounding the wetland.

As identified above, the submitted SRMP includes implementation strategies to manage potential impacts on flora and fauna and water quality management. The SRMP incorporates a water quality monitoring program and erosion and sediment control strategies.

It is considered these strategies comply with the intent of Clause 15.

State Environmental Planning Policies

SEPP No. 55 – Remediation of Land

As identified above, land contamination matters are not relevant at this stage as no new land use is proposed.

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

There are no Draft Environmental Planning Instruments relevant to this proposal.

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

Section A 2 – Site Access and Parking Code

This DCP is particularly concerned with the provision of access and vehicle parking.

There is sufficient area on-site for car parking of employees while works are being undertaken. The use does not generate the requirement for additional car parking in the long-term as no new uses are proposed at this stage.

With regard to access, the applicant has indicated that fill will be sourced from the adjoining Kings Forest and haulage of fill material can occur over private land not impacting upon public roads.

The proposal is consistent with the intent of Section A2 of the DCP.

DCP No. 51 – Tweed Coast Strategy

The subject site is located within the area of the Tweed Coast Strategy, however it is not nominated within any precinct in the DCP Structure Plan map.

There are no provisions relevant to the subject site.

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

The proposal is consistent with the Coastal Policy as outlined above.

Buildings or demolition of buildings are not proposed as part of the application. Fire safety considerations and requirements for upgrading of buildings are not applicable.

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

Context and Setting

The proposal does not result in any built form or structures and will not impose on the rural character of the area.

Access and Traffic

As indicated above, the applicant proposes to source the proposed fill from adjoining Kings Forest via internal access roads. The traffic generated by the proposal will not have an adverse impact on the surrounding public road system given truck movements will be confined to private lands with the same ownership.

Water Quality

The SRMP includes satisfactory strategies for implementing water quality monitoring, erosion control strategies, acid treatment and re-vegetation.

Flora and Fauna

The Flora and Fauna Assessment Report submitted with the application (prepared by Peter Parker, dated December 2006) identified four vegetation communities on-site including: woodland, shrubland, sedgeland and grassland. No threatened plant species were recorded on-site and the proposal will not result in the removal or modification of threatened species habitat or any Endangered Ecological Community.

A review of threatened vertebrate species known from the vicinity was included in the report. The likelihood of threatened species occurring at the site was assessed together with an assessment against section 5A and 5C of the EP&A Act.

The Flora and Fauna Assessment concluded that there would be no significant effect on threatened species, populations, ecological communities or their habitats due to the degraded nature of existing habitats and the proposed preservation of habitats with conservation significance. Further, proposed rehabilitation of the site is intended to improve the on-site habitat and remove environmental weeds.

The Flora and Fauna Assessment report includes recommendations to use native sedges, rushes and grasses in the upper drainage channels as planting stock.

Soils

As identified above, the subject site is identified as having a high acid sulfate potential. The applicant has argued that proposed filling, relocation of drains to within the fill and treatment with lime, will remove the exposure of existing potential and actual acid soil to oxygen.

Council's Environmental Health Officer has assessed the proposal and is satisfied that the existing situation will not be worsened, nor will it impede rehabilitation works associated with the adjoining sand extraction area.

Council's Environmental Health Officer recommended conditions for approval as follows:

- Rehabilitation should be in accordance with the Supplementary Rehabilitation Management Plan (SRMP) and associated modifications prepared by Gilbert and Sutherland;
- All actual or potential acid sulfate soil shall be appropriately identified prior to disturbance. Appropriate identification shall include all soil analyses required to adequately neutralise subject soils immediately on disturbance / excavation.
- Agriculture drain pipes are not permitted to be placed within any acid sulfate soil profile and shall be constructed to drain the imported fill material only.

Flooding and Drainage

Council's Engineer has assessed the proposal and is satisfied that the on-site lakes have a surface area of approximately 15.8ha. It is noted that perimeter bunds provide approximately 1m of freeboard above the normal standing water level and as such, the lakes provide approximately 158,000m³ of additional flood storage. As the development proposal is to import approximately 78,000m³, there is still a net gain in flood storage for the locality.

Survey plans of the lake perimeter show that flood flows are able to enter the lake system in the south-eastern corner to utilise this storage. As such, the proposed filling will not have an adverse impact on flooding in the locality.

The main drainage channel through the site has been designed to cater for the ARI 10 year storm, which is satisfactory for the rural / agricultural site. Larger events will sheet flow over the filled site in much the same manner as currently occurs. Council's Engineer has concluded that the proposed filling does not appear to obstruct or prevent flows from adjoining properties from discharging to the main drain.

Council's Engineer recommended the following conditions of approval:

- All fill shall be graded to an approved permanent drainage system. Filling activities must not obstruct or prevent overland stormwater flows from adjoining land from discharging to the main drainage channel through the site. Filling activities must not result in ponding on adjoining land.
- An easement benefiting adjoining upstream landholders shall be registered over the main drainage channel and its connecting drains, to preserve the discharge rights for those landholders.

(c) Suitability of the site for the development

Given the existing degraded nature of the site, the proposed fill and rehabilitation is considered an improvement to the current situation. Filling will enable improved pastures for grazing in accordance with the zone objectives.

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

Council received a total of 4 objections during the original public notification period. The matters raised by submitters are summarised below, followed the Council Officer's comments.

Flood level

There is concern that surrounding properties may be impacted from flooding given the amount fill proposed.

Comment

As identified above, the applicant has provided modelling and ground level details to demonstrate that the lakes have sufficient flood storage capacity. Council's engineer is satisfied the filling will not result in flood impacts to adjoining properties.

Traffic and Haulage

There is concern that truck volumes required for haulage of fill will impact on use and safety of roads and shared right-of-carriageways.

Comment

The applicant has indicated that fill will be sourced via private access tracks from adjoining Kings Forest. Dust abatement measures will be undertaken as outlined in the SRMP.

Hours of Operation

It is considered that the proposal should only operate between the hours of Monday to Friday 7.30 to 5pm.

Comment:

Councils standard conditions allow for works to occur between the hours of 7am to 7pm Monday to Saturday. For consistency, these hours are considered acceptable in this instance.

Dust and Air Quality

There is concern that the proposal will result in reduced air quality which will impact on the drinking water.

Comment:

The SRMP has identified various implementation strategies for air quality and dust management. These include staging of works, erosion and sediment control measures, re-vegetation of bunds, minimal stockpiling, damp ground surfaces, ceasing activities where wind speed exceeds 10m/sec and minimising the use of traffic on disturbed areas.

Corrective actions are also proposed where complaints are received.

Water Supply

Adjoining Lots 7 and 11 currently have legal easement to pump water from the on-site water body marked 'swamp'. There is concern that the proposal will impact upon this existing arrangement.

Comment:

The filling does not extend as far south as the abovementioned waterbody and works will not impact on this arrangement.

The request for a review of determination was notified in accordance with the Act. No additional submissions were received during the notification period however one late submission was received objecting to the proposal.

The submitter raised concerns with relation to issues outlined below.

Flood Impacts on Neighbouring Properties

The submitter is concerned that given the scale of fill, the water flows will impact neighbouring properties as the site currently acts as a flood plain.

As identified above, the applicant has provided modelling and ground level details to demonstrate sufficient on-site flood storage capacity is available. Council's engineer is satisfied the filling will not result in flood impacts to adjoining properties.

Impact on Vegetation, Habitat and Fauna

The submitter has identified that wetlands, native trees and grasses have established since sand mining activities ceased on site. This has allowed for use of the site by birdlife and fish.

As identified above, the submitted Flora and Fauna assessment concluded that proposed filling would not have a significant effect on ecological communities or habitats due to the degraded nature of existing habitats. Any on-site habitats with conservation significance would be preserved. The proposal includes rehabilitation of the site, using native sedges, rushes and grasses in the upper drainage channels as planting stock.

Involvement of Other Agencies

The submitter is concerned that the Department of Planning and Department of Water and Energy (DWE) are not involved with the decision making process of the Tweed Shire Council.

The applicant will be required to obtain necessary licences from the DWE prior to commencement of any works. There is no legal requirement for the Department of Planning to be involved with this application.

Likely for Future Residential Re-Zoning

The applicant is concerned that there will be an application lodged in the future for rezoning of the site to allow for residential development.

The filling has been designed to improve the soil and water quality of the site. The applicant states that this will allow for grazing. On this basis, there are insufficient grounds to refuse the application based on potential for the applicant to lodge a future development application or rezoning application. Any intention to use of the site for residential development would require a lengthy assessment process and would require justification and assessment on its merits.

The applicant provided the following responses to the submission.

"The submission refers to a "review of determination of DA07/0055" it is not clear what this means because the development application has not been determined and therefore there is no opportunity to carry out a statutory review as contemplated by the Act.

The submission indicates that it is intended to raise Lot 71 by 1m. This is not the case as clearly indicated in the development application and Statement of Environmental Effects it is intended to fill parts of the site to approximately 0.5m above current surface levels.

The submission questions why the Department of Planning and NSW Water Catchment Authority are not involved. The Department of Planning has no jurisdiction and as you are aware we will be lodging applications with the Department of Water and Energy for approvals under Part 3 Chapter 3 of the Water Management Act 2000 and Part 3A of the Rivers and Foreshores Improvement Act 1948 after we obtain development consent.

The submission suggests that the motive to raise Lot 71 could be to facilitate future zoning changes. We confirm that this is not the case and the sole purpose of the development is as stated in the Statement of Environmental Effects, that is rehabilitation of the site is intended to allow the construction of a dwelling house and create horse paddocks and complement existing rehabilitation measures relating to extraction of sand pursuant to Development Consent No. 95/176.”

With regard to the comments above, the applicant's response and the previous assessment and proposed conditions, it is considered that the submitters concerns have been adequately addressed.

(e) Public interest

The proposal is compliant with the intent of the zone and the relevant regional and local policy documents.

The proposal is not considered to be contrary to any public, government or community interests.

Department of Water and Energy

Further permits are required from the DWE. Conditions are imposed to ensure that these are obtained prior to any commencement of works.

OPTIONS:

1. Approve the proposed development in accordance with the recommended conditions of consent.
2. Refuse the application, with reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has a right of appeal in the NSW Land and Environment Court should they be dissatisfied with the determination of the application.

POLICY IMPLICATIONS:

The proposed development has been assessed on its merits and for that reason the development does not generate a policy implication for Council.

CONCLUSION:

Council has received an application for rehabilitation and filling at Lot 71 DP 819194, Duranbah Road Duranbah.

Council Officers have assessed the relevant issues associated with the application, including management of acid sulfate soils, flooding, internal haulage routes. Council Officers are satisfied that potential impacts from works can be adequately managed through conditions. The SRMP submitted by the applicant includes management implementation strategies for a range of issues including water quality, revegetation, acid treatment, erosion and sediment control and air quality.

Council received four submissions in relation to the proposal and it is considered that the matters raised are adequately addressed given the flood storage capacity of the on-site lakes and proposal source of fill.

Despite the generally favourable assessment of Council Officers outlined above, Council was required to refuse the original application as it was Integrated Development and the DWE declined to issue General Terms of Approval required for licences under the Water Act and Rivers and Foreshore Act.

During the proceedings of the Class 1 Appeal relating to the abovementioned refusal, the applicant elected to proceed with the development NOT as Integrated Development. On this basis, the proposal is recommended for approval subject to conditions requiring additional licences under the Water Act and Rivers and Foreshore 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).

Nil.

P3 [PR-PC] Development Application 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:

The subject site incorporates an existing nursing home, which is Stage 1 of a 2 staged development approved on 3 February 1999. The existing building housing 56 beds is largely of single storey construction, with a second storey component approved as a manager's residence. The second stage of the approval incorporated an additional 40 bed facility to be built on the northern side of the existing car park, as well as aged care Day Centre.

Council is now in receipt of a Development Application seeking consent for extensions to the existing aged care facility. The proposed development involves the construction of a 41 bed aged care nursing home extension to the existing facility on the presently vacant portion of the lot to the north and east of the existing building. This will take the total resident population to 97. The new extensions will house 20 high care/dementia residents and 21 low care residents, with each room incorporating an ensuite and bedroom.

Having considered the application against all relevant policies, including Council's flooding provisions and the SEPP (Housing for Seniors of People with a Disability) 2004, the proposed development is recommended for conditional approval.

RECOMMENDATION:

That Development Application DA06/1442 for extensions to existing nursing home facility at Lot 1 DP 1099088, No. 18 Ballymore Court Banora Point be approved subject to the following conditions: -

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and the following plans:**
 - Dwg A3806 DA01 (Rev 3) – Site & Roof Plan;**
 - Dwg A3806 DA02 (Rev 5) – Floor Plan;**
 - Dwg A3806 DA03 (Rev 3) – Elevations;**
 - Dwg A3806 DA04 (Rev 2) – Sections & Elevations; and**

- **Dwg A3806 DA07 (Rev 2) – Upper Floor Plan**
prepared by Hill Lockart Architects and dated 9 November 2007, except where varied by the conditions of this consent.
[[GEN0005]
- 2. **The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**
[[GEN0115]
- 3. **Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within or adjacent to the subject property.**
[[GEN0135]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

- 4. **The developer shall provide 40 parking spaces including parking for the disabled in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code.**
Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.
The design detail shall include a minimum of 10 on-site car spaces to be provided for the sole use of staff members and visitors of the existing aged care facility during the construction period.
[[PCC0065]
- 5. **Section 94 Contributions**
Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.
Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.
A CURRENT COPY OF THE CONTRIBUTION FEE SHEET ATTACHED TO THIS CONSENT MUST BE PROVIDED AT THE TIME OF PAYMENT
These charges will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 94 Plan current at the time of the payment.
A copy of the Section 94 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.



- (a) **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 @ \$1996.8 \$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

[[PCC0215]]



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.

[PCC0265]

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

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

[PCC0485]

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

[PCC0585]

9. Details of the kitchen exhaust system are to be provided and approved prior to release of the Construction Certificate if required. Such details are to include the location of discharge to the air, capture velocity, size and hood and angle of filters. The system shall comply with AS1668.2 - Ventilation Requirements.

[[PCC0735]

10. Details from a Structural Engineer are to be submitted to the Principal Certifying Authority for approval for all retaining walls/footings/structures etc taking into consideration the zone of influence on the sewer main or other underground infrastructure and include a certificate of sufficiency of design prior to the determination of a construction certificate.

[[PCC0935]

11. The footings and floor slab are to be designed by a practising Structural Engineer after consideration of a soil report from a NATA accredited soil testing laboratory and shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.

[[PCC0945]

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

[[PCC0955]

13. Permanent stormwater quality treatment shall be provided in accordance with the following:

- (a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils *Development Design Specification D7 - Stormwater Quality*.
- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management. Typical water sensitive features include infiltration, maximising permeable/landscaped areas, stormwater retention /detention/reuse, and use of grass swales in preference to hard engineered drainage systems.
- (d) Specific Requirements to be detailed within the Construction certificate application include:
 - (i) Shake down area along the haul route immediately before the intersection with the road reserve.

[[PCC1105]

14. All roof waters are to be disposed of through properly jointed pipes to the street gutter, inter-allotment drainage, or elsewhere if so directed in the conditions of consent. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZ3500.3.2. Note: A detailed stormwater and drainage plan is to be submitted to and approved by the PCA prior to commencement of building works.

[[PCC1115]

15. A construction certificate application for works that involve any of the following:-

- connection of a private stormwater drain to a public stormwater drain
- installation of stormwater quality control devices
- erosion and sediment control works

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

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

[[PCC1145]

16. Erosion and Sediment Control shall be provided in accordance with the following:

- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.
- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[[PCC1155]

17. An application shall be lodged and approved by Tweed Shire Council under Section 68 of the Local Government Act for any water, sewerage or drainage works prior to the issue of a construction certificate.

[[PCC1195]

18. Where any existing sewer junctions are to be disused on the site, the connection point shall be capped off by Council staff. Applications shall be made to Tweed Shire Council and include the payment of fees in accordance with Councils adopted fees and charges.

[[PCC1235]

19. A flood refuge area shall be provided in general accordance with Hill Lockhart Architects "Upper Floor Plan" (Drawing Number A3806 DA07, November 2007), except where varied by these conditions of consent. The refuge shall meet the following design criteria:
- a) Minimum floor area 120m² (in addition to "existing upper level accommodation");
 - b) Minimum finished floor level RL 4.5m AHD;
 - c) Permanent internal connection to "existing upper level accommodation";
 - d) Permanent internal stairway connection to lower level;
 - e) Provision of storage area(s) for sufficient food and medical supplies for all occupants and staff for 3 days duration;
 - f) Provision of back-up power, to remain operational up to a maximum flood inundation level of RL 4.5m AHD;
 - g) Provision of an alternate drinking water source (e.g. rainwater tank) to supply all occupants and staff for 3 days duration, should normal potable water services be unavailable during flood events;
 - h) Provision of engineering certification that the flood refuge area shall remain structurally sound and stable up to a maximum flood inundation level of RL 4.5m AHD.
- [[PCCNS01]]
20. The existing aged care building has been the subject of an alternate solution, therefore an appropriately qualified fire engineer is to review the existing "Fire Engineered Assessment Report by SSL" Report No.: XR0258/R1, File No.:XR0258 and Issue date; Sep-99 in respect of the proposed additions and alterations to the existing aged care facility. This engineer is to provide a report in respect of his/her recommendations ensuring an adequate level of fire safety as required by the Building Code of Australia to the building including the proposed additions and alterations, which is to be submitted to the Principal Certifying Authority for assessment and approval prior to the issue of the Construction Certificate.
- [[PCCNS02]]
21. Prior to the issue of the Construction Certificate, an Acid Sulfate Soils Management Plan prepared in accordance with the relevant provisions of the Acid Sulfate Soil Management Advisory Committee Guidelines dated August 1998 shall be submitted to Council for assessment and approval by Council's Environmental Health Officer.

[[PCCNS03]]

22. Prior to the issue of the Construction Certificate complete construction and fitout details shall be prepared and submitted for assessment and approval by Council's Environmental Health Officer in respect to alterations to the kitchen, freezer, coolroom and dry goods storage room. Such details shall include relevant cross sections and include details on wall and floor construction. Any new concrete floor in the freezer room shall be constructed to resist freezing temperatures.

[[PCCNS04]

PRIOR TO COMMENCEMENT OF WORK

23. The proponent shall accurately locate and identify any existing sewer main, stormwater line or other underground infrastructure within or adjacent to the site and the Principal Certifying Authority advised of its location and depth prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure prior to start of any works.

[[PCW0005]

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

- (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[[PCW0215]

- 25. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.

[[PCW0225]

- 26. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every fifteen (15) persons or part of fifteen (15) persons employed at the site. Each toilet provided must be:-
 - (a) a standard flushing toilet connected to a public sewer, or
 - (b) if that is not practicable, an accredited sewage management facility approved by the council

[[PCW0245]

- 27. Where prescribed by the provisions of the Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

[[PCW0255]

- 28. The building is to be protected from attack by termites by approved methods in accordance with the provisions of Australian Standard AS 3660.1, and:
 - (a) Details of the proposed method to be used are to be submitted to and approved by the Principal Certifying Authority prior to start of works; and
 - (b) Certification of the works performed by the person carrying out the works is to be submitted to the PCA; and
 - (c) A durable notice must be permanently fixed to the building in a prominent location, such as in the electrical meter box indicating:-
 - (i) the method of protection; and
 - (ii) the date of installation of the system; and

- (iii) where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and
- (iv) the need to maintain and inspect the system on a regular basis.

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

[[PCW0775]

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

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

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

[[PCW0985]

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

[[PCW1065]

DURING CONSTRUCTION

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

[[DUR0005]

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

Monday to Saturday from 7.00am to 7.00pm

No work to be carried out on Sundays or Public Holidays

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

[[DUR0205]

- 33. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:**



- A. Short Term Period - 4 weeks.**
L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.
- B. Long term period - the duration.**
L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.
- [[DUR0215]]
- 34. The wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of the buildings with direct line of sight to the proposed building.**
- [[DUR0245]]
- 35. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).**
- [[DUR0375]]
- 36. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.**
- [[DUR0395]]
- 37. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.**
- [[DUR0405]]
- 38. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Occupational Health and Safety Regulation 2001.**
- [[DUR0415]]
- 39. Excavation**
- (a) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with WorkCover 2000 Regulations.**
- (b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.**
- [[DUR0425]]

- 40. If the work involved in the erection or demolition of a building:**
- (a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or**
 - (b) building involves the enclosure of a public place,**
a hoarding or fence must be erected between the work site and the public place in accordance with the WorkCover Authority of NSW Code of Practice and relevant Australian Standards.
Where necessary the provision for lighting in accordance with AS 1158 - Road lighting and provision for vehicular and pedestrian traffic in accordance with AS 1742 shall be provided.
Any such hoarding, fence or awning is to be removed prior to the issue of an occupation certificate/subdivision certificate.
Application shall be made to Tweed Shire Council including associated fees for approval prior to any structure being erected within Councils road reserve.
- [[DUR0435]]
- 41. The finished floor level of the building should finish not less than 225mm above finished ground level.**
- [[DUR0445]]
- 42. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover NSW, Occupational Health and Safety Regulation 2001.**
- [[DUR0645]]
- 43. Minimum notice of 48 hours shall be given to Tweed Shire Council for the capping of any disused sewer junctions. Tweed Shire Council staff in accordance with the application lodged and upon excavation of the service by the developer shall undertake Works.**
- [[DUR0675]]
- 44. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited.**
- [[DUR0815]]
- 45. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate.**
- [[DUR0985]]
- 46. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate.**
- [[DUR0995]]
-

47. All work associated with this approval is to be carried out so as not to impact on neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -

- **Noise, water or air pollution**
- **Minimise impact from dust during filling operations and also from construction vehicles**
- **No material is removed from the site by wind**

[[DUR1005]

48. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.

[[DUR1025]

49. Landscaping of the site shall be carried out in accordance with the submitted/approved landscaping plans.

[[DUR1045]

50. All walls in the food preparation and storage areas shall be of solid construction. For this purpose walls in such areas may be of masonry or stud wall construction. If stud wall construction is used then the wall shall be lined as a minimum with 9mm thick high impact resistant material E.g. Villaboard or Versilux lining or other suitable material(s) approved by Council's Environmental Health Officer and tiled to a height of at least 2 metres above the floor. The floor/ wall junction shall be coved to the satisfaction of Council's Environmental Health Officer.

Masonry walls where not tiled may be cement rendered to provide a smooth faced impervious finish from the floor surface up to the underside of the ceiling or where permitted from the top of any bench or fitting permanently fixed to the wall.

Metal stud wall framing in lieu of timber framing shall be used in wet areas or where the walls and floor surfaces will be subjected to high levels of moisture or alternatively as directed by Council's Environmental Health Officer.

All penetrations of the wall surface in food preparation areas shall be effectively sealed to the satisfaction of Council's Environmental Health officer.

[[DUR1495]

51. All flooring materials in the food preparation and storage areas are to be impervious, non slip, non abrasive and capable of withstanding heavy duty operation. Where tiling is to be used epoxy grout finished flush with the floor surface is to be used in joints or alternatively all tiles are to be butt joined and free of cracks or crevices.

[[DUR1505]

52. **Windows and doors opening into food handling, preparation and storage areas shall be pest proofed in accordance with the provisions of Food Safety Standard 3.2.3.**

[[DUR1515]

53. **Separate hand washing facilities must be provided with warm water and located in a position where it can be easily accessed by food handlers and be of a size that allows easy and effective hand washing to the satisfaction of the General Manager or his delegate.**

[[DUR1545]

54. **A floor waste connected to the drainage system shall be provided within 1.5 metres of the opening of the cool room.**

[[DUR1565]

55. **All shelving, benches, fittings and furniture on which appliances and utensils are positioned within the premises must be of durable, smooth, impervious material capable of being easily cleaned.**

[[DUR1605]

56. **The walls and floors of the premises must be lined, sealed or sheeted with an approved smooth impervious material capable of being easily cleaned.**

[[DUR1615]

57. **The walls immediately behind any basin shall be provided with an impervious splashback to a height of 450mm and at least 150mm either side of the basin.**

[[DUR1625]

58. **Any air-handling system, hot or warm water system or water-cooling system and any other regulated system as defined in Part 4, Section 43 of the Public Health Act shall be installed in accordance with the requirements of Part 2, Clauses 6, 7 and 8 of the Public Health (Microbial Control) Regulation 2000.**

[[DUR1645]

59. **Access to the building for people with disabilities shall be provided and constructed in accordance with the requirements of Section D of the Building Code of Australia. Particular attention is to be given to the deemed-to-satisfy provisions of Part D-3 and their requirement to comply with AS1428.**

[[DUR1685]

60. **Where a building or part of a building is required, under the provisions of Section D of the Building Code of Australia, to be accessible to permit use by people with disabilities, prominently displayed signs and symbols shall be provided to identify accessible routes, areas and facilities. The signage, including Braille or tactile signage, should be installed in accordance with the relevant provisions of the Building Code of Australia and achieve the minimum design requirements provided under AS1428.**

[[DUR1695]

61. Where access for people with disabilities is required to be provided to a building, sanitary facilities for the use of the disabled must also be provided in accordance with the provisions Part F-2 of the Building Code of Australia.
- [[DUR1705]]
62. Please note that while the proposal, subject to the conditions of approval, may comply with the provisions of the Building Code of Australia for persons with disabilities your attention is drawn to the Disability Discrimination Act which may contain requirements in excess of those under the Building Code of Australia. It is therefore recommended that these provisions be investigated prior to start of works to determine the necessity for them to be incorporated within the design.
- [[DUR1715]]
63. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils adopted Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.
- [[DUR1875]]
64. The contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.
- [[DUR2015]]
65. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction.
- [[DUR2185]]
66. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials. A screened, graded and drained garbage storage area shall be provided within the boundary.
- [[DUR2205]]
67. Hazardous or industrial waste must be stored and disposed of in a manner to minimise its impact on the environment including appropriate segregation for storage and separate disposal by a waste transporter licensed by the EPA.
- [[DUR2215]]
68. The guttering downpiping and roof waste water disposal system is to be installed and operational before the roofing is installed.
- [[DUR2245]]
69. The additional rainwater drains must be connected to the existing rainwater disposal system; to provide satisfactory stormwater disposal in accordance with Australian Standard AS/NZS3500.3.2.
- [[DUR2255]]
-

70. All roofwaters are to be disposed of through properly jointed pipes to the street gutter, inter allotment drainage or to the satisfaction of the Principal Certifying Authority. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZS3500.3.2. Note - All roofwater must be connected to an inter allotment drainage system where applicable.

[[DUR2335]

71. During construction, a “satisfactory inspection report” is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.

[[DUR2445]

72. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:

- (a) internal drainage, prior to slab preparation;
- (b) water plumbing rough in prior to the erection of brick work or any wall sheeting;
- (c) external drainage prior to backfilling.
- (d) completion of work and prior to occupation of the building.

[[DUR2485]

73. Plumbing

- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.

[[DUR2495]

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

[[DUR2515]

75. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard.

[[DUR2535]

76. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.

[[DUR2545]

77. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-

- * 43.5°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
- * 50°C in all other classes of buildings.

A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.

[[DUR2555]]

78. House drainage lines affected by the proposal are to be relocated to Council's satisfaction. Prior to the relocation of any plumbing and drainage lines, a plumbing permit and the relevant plumbing permit fee is to be submitted to Council. Inspection of drainage works prior to covering is required

[[DUR2565]]

79. The structure is to be sited at least one metre horizontally clear of sewer main on site. All footings and slabs within the area of influence of the sewer main are to be designed by a practising Structural Engineer. The engineer is to submit a certification to the Principal Certifying Authority that the design of such footings and slabs will ensure that all building loads will be transferred to the foundation material and will not effect or be affected by the sewer main.

[[DUR2645]]

80. A Sewer manhole is present on this site. This manhole is not to be covered with soil or other material.

Should additional fill be proposed in the area of the sewer manhole application shall be made to Council's Engineering & Operations Division for the raising of the manhole.

[[DUR2655]]

81. A stair climbing device shall be provided to allow wheel chair bound residents access to the upper level refuge area.

[[DURNS01]]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

82. Prior to issue of an occupation certificate, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[[POC0005]]

83. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[[POC0205]]

84. The building is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the building to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.
- [[POC0225]
85. Prior to the issue of an occupation certificate,
- (a) Certification of termite protection methods performed by the person carrying out the works is to be submitted to the PCA; and
 - (b) A durable notice must be permanently fixed to the building in a prominent location, such as in the electrical meter box indicating:-
 - (i) the method of protection; and
 - (ii) the date of installation of the system; and
 - (iii) where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and
 - (v) the need to maintain and inspect the system on a regular basis.
- [[POC0235]
86. The food premises shall provide appropriate notification to the NSW Food Authority prior to commencement of operations.
- [[POC0625]
87. The premise is to be treated on completion of fit-out and prior to commencement of trading and thereafter on a regular basis by a Licensed Pest Control Operator. A certificate of treatment is to be made available for Council inspection on request.
- [[POC0635]
88. Redundant road pavement, kerb and gutter or foot paving including any existing disused vehicular laybacks/driveways or other special provisions shall be removed and the area reinstated to match adjoining works in accordance with Councils adopted Development Design and Construction Specifications.
- [[POC0755]
89. On completion of work a certificate signed by a practising structural engineer is to be submitted to the Principal Certifying Authority to certify the structural adequacy of the structure.
- [[POC0805]
90. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the “satisfactory inspection report” issued by Council for all s68h2 permanent stormwater quality control devices.
- [[POC0985]
91. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.

[[POC1045]



92. Prior to the issue of a final occupation certificate, all conditions of consent are to be met.

[[POC1055]]

USE

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

[[USE0125]]

94. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.

[[USE0175]]

95. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.

[[USE0225]]

96. All loading/unloading to take place within the boundary of the subject property.

[[USE0525]]

97. Any air-handling system, hot or warm water system or water-cooling system and any other regulated system as defined in Part 4, Section 43 of the Public Health Act shall be operated in accordance with the requirements of Part 3, Clause 9 of the Public Health (Microbial Control) Regulation 2000.

[[USE0935]]

98. Any air-handling system, hot or warm water system or water-cooling system and any other regulated system as defined in Part 4, Section 43 of the Public Health Act shall be maintained in accordance with the requirements of Part 4, Clauses 11, 12 and 13 of the Public Health (Microbial Control) Regulation 2000, and a certificate to confirm that the regulated system is being maintained shall be submitted to Council on a 12 Monthly basis.

[[USE0945]]



99. Clinical wastes shall be separated from the general waste stream and disposed via Council's approved clinical waste collection and disposal service. Suitable arrangements shall be made for the collection and disposal of clinical wastes to the satisfaction of the General Manager or his delegate.

[[USE0995]]

100. No deliveries to the premises shall occur before 5am and after 10pm on any day with the exception of one off type deliveries where it can be justified to Council's Environmental Health Officer that the delivery could not be made after 5am or before 10pm on the day the delivery is made or in the case of an emergency situation where delivery before 5am or after 10pm is required.

[[USENS01]]

101. Any vehicle mounted refrigeration unit on any delivery vehicle that makes a delivery to the site shall be switched off while the vehicle is on the site between the hours 5am and 7am and between the hours of 8pm and 10pm on any day.

[[USENS02]]

102. In accordance with State Environmental Planning Policy (Housing for Seniors of People with a Disability) 2004, the following restrictions on occupation of senior housing allowed is as follows: -

- (a) seniors or people who have a disability;**
- (b) people who live within the same household with seniors or people who have a disability;**
- (c) staff employed to assist in the administration of and provision of services to housing provided under this policy.**

[[USENS03]]

REPORT:

Applicant: Hill Lockart Architects
Owner: DCA Funds Management Limited
Location: Lot 1 DP 1099088, No. 18 Ballymore Court, Banora Point
Zoning: 2(c) Urban Expansion
Cost: \$4,500,000

BACKGROUND:

The site is described as Lot 1 in DP 1099088, being No. 18 Ballymore Court, Banora Point. The site is irregular in shape with a 40m frontage to Ballymore Court. The immediate locality surrounding the subject site is essentially residential in character, with a mixture of older one and two storey single dwellings on the northern and eastern boundaries, and the public reserve leading onto Trutes Bay adjoins the south western boundary.

The development site is relatively level, with a total site area of 1214m². Site improvements comprise an existing nursing home and car park on the southern portion of the property. Vegetation on the site is limited to a vacant grassed area within the northern portion of the site and landscaped courtyards associated with the existing aged care facility.

The existing nursing home is Stage 1 of a development approved on 3 February 1999. The overall approval incorporated a 2 staged development across the site. The existing building housing 56 beds is largely of single storey construction, with a second storey component approved as a manager's residence. The second stage of the approval incorporated an additional 40 bed facility to be built on the northern side of the existing car park, as well as aged care Day Centre.

The Proposal

Council is in receipt of a Development Application seeking consent for extensions to the existing aged care facility. The proposed development would involve the construction of a 41 bed aged care nursing home extension to the existing facility on the presently vacant portion of the lot to the north and east of the existing building. This will take the total resident population to 97. The new extensions will house 20 high care/dementia residents and 21 low care residents.

Each of the rooms incorporates an ensuite and bedroom, with residents utilising common lounge, dining and activity areas. Offices and staffing areas are also incorporated within the extensions. Additional landscaped areas are incorporated around the perimeter and internal courtyards, for the benefit of the residents and to minimise potential impact upon the surrounding dwellings.

The main entrance is to be relocated to better service the expanded facility, as well as accommodate high vehicles such as ambulances and mini buses. The existing kitchen, laundry and car parking facilities are proposed to be enlarged to cater for the greater demand created by the 41 additional residences.

In order to meet Council's flooding requirements, the upper level area has been increased by an additional 120m² in order to provide an adequately sized PMF flood free refuge area. The proposal includes a stair climbing device to aid in the transport of residents to the upper floor refuge.

The proposed development has been assessed against all of Council's applicable policies, as well as the State Environmental Planning Policy (Housing for Seniors of People with a Disability) 2004. The application was advertised for a period of two weeks, during which time three submissions were received.

Having considered all issues raised by the submissions, in addition to the statutory assessment, the proposed development is recommended for conditional approval.

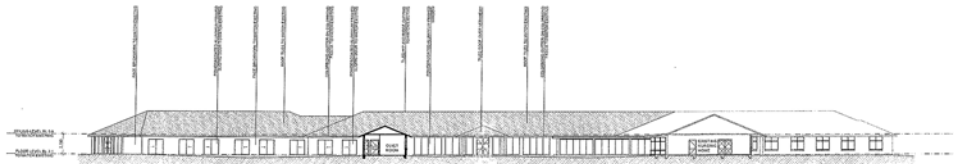
SITE DIAGRAM:



DEVELOPMENT PLANS:



SOUTH WEST ELEVATION
EXISTING ELEVATION
 SCALE 1:100



ELEVATION / SECTION 01
SCALE 1:100



SECTION 02
SCALE 1:100

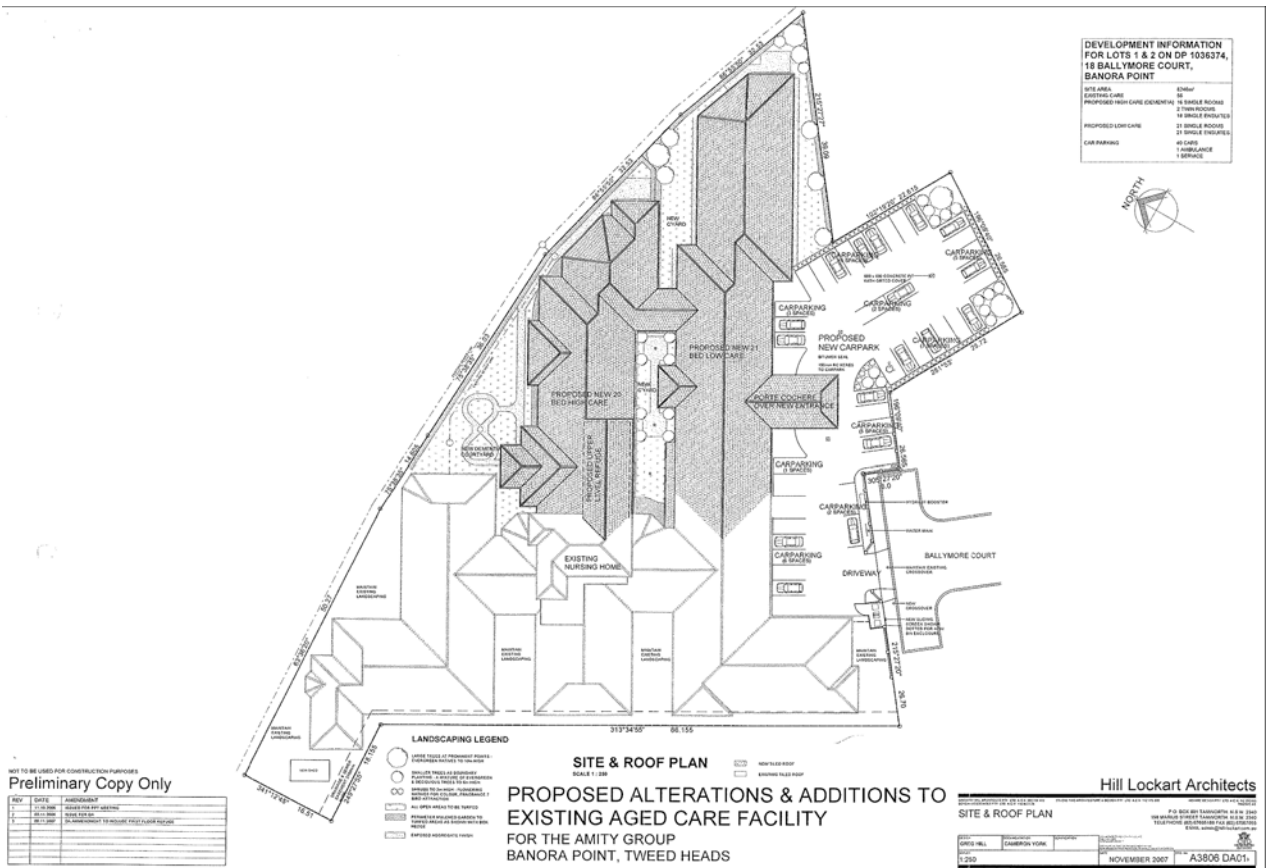
NOT TO BE USED FOR CONSTRUCTION PURPOSES
Preliminary Copy Only

REV	DATE	AMENDMENT
1	18/11/07	ISSUE FOR I.D.
2	18/11/07	FOR APPROVAL TO PROCEED WITH CONSTRUCTION

**PROPOSED ALTERATIONS & ADDITIONS TO
 EXISTING AGED CARE FACILITY
 FOR THE AMITY GROUP
 BANORA POINT, TWEED HEADS**

Hill Lockart Architects

SECTIONS & ELEVATIONS			
DATE	PROJECT	SCALE	NO. OF SHEETS
18/11/07	BANORA POINT	1:100	4
1:200			
		NOVEMBER 2007	A3806 DA04



DEVELOPMENT INFORMATION FOR LOTS 1 & 2 ON DP 1036374, 18 BALLYMORE COURT, BANORA POINT

SITE AREA	281m ²
EXISTING CARE	18 SINGLE ROOMS 17 TROUSERS
PROPOSED HIGH CARE (EXISTENT)	25 SINGLE ROOMS 19 TROUSERS
PROPOSED LOW CARE	21 SINGLE ROOMS 21 SINGLE TROUSERS
CAR PARKING	10 CARSPACES 1 RAMP/LANCE 1 SERVICE



NOTE TO BE USED FOR CONSTRUCTION PURPOSES
Preliminary Copy Only

REV	DATE	DESCRIPTION
1	17/06/08	ISSUE FOR APPROVAL
2	20/07/08	FINAL DESIGN
3	28/11/07	FOR DEVELOPMENT TO PROCEED PRELIMINARY DRAWING

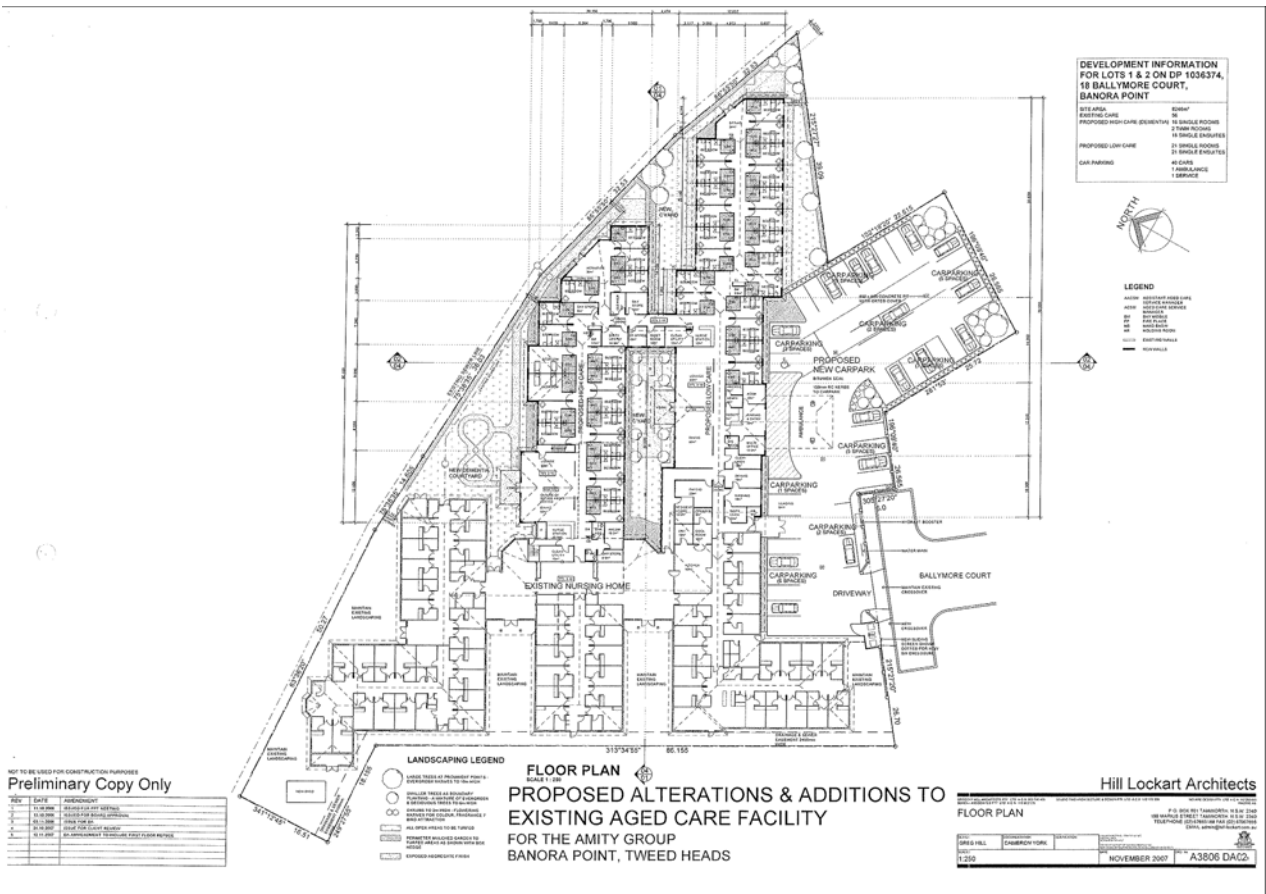
SITE & ROOF PLAN
SCALE 1:100

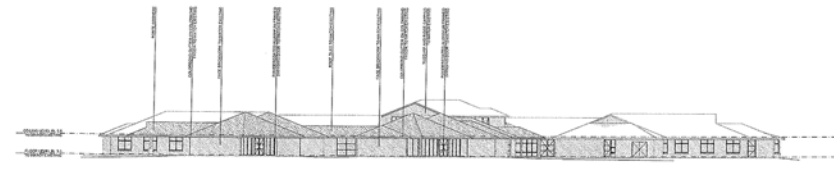
PROPOSED ALTERATIONS & ADDITIONS TO EXISTING AGED CARE FACILITY FOR THE AMITY GROUP BANORA POINT, TWEED HEADS

Hill Lockart Architects

PROFESSIONAL DESIGN SERVICES

12/250 CAMDEN YORK
NOVEMBER 2007
A3806 DA01

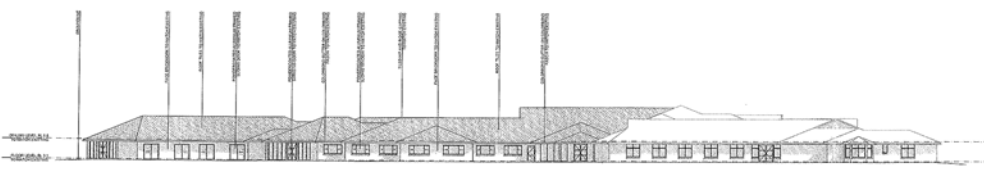




NORTH EAST ELEVATION
SCALE 1:200



SOUTH EAST ELEVATION
SCALE 1:200



NORTH WEST ELEVATION
SCALE 1:200

NOT TO BE USED FOR CONSTRUCTION PURPOSES

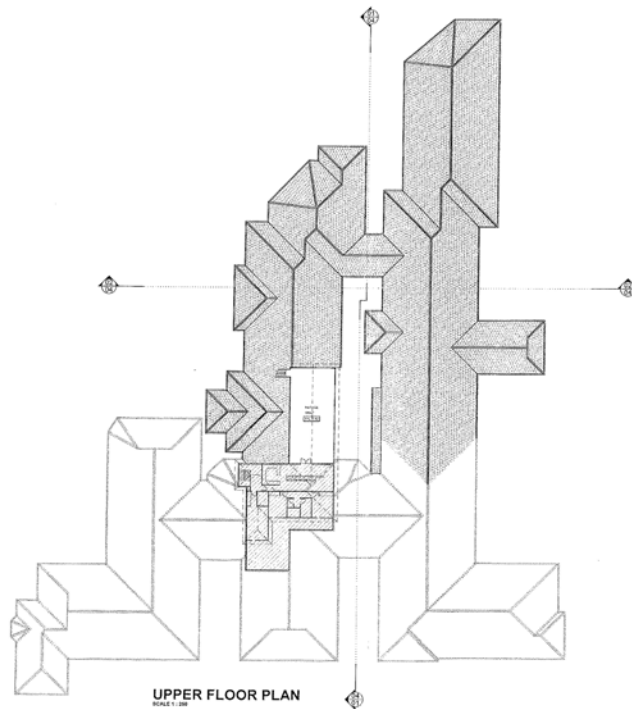
Preliminary Copy Only

REV	DATE	REVISION
1	12.10.2007	ISSUE FOR PRELIMINARY
2	01.11.2007	FOR APPROVAL
3	02.11.2007	FOR APPROVAL TO INCLUDE TRAIL PAVED DRIVE

**PROPOSED ALTERATIONS & ADDITIONS TO
EXISTING AGED CARE FACILITY
FOR THE AMITY GROUP
BANORA POINT, TWEED HEADS**

Hill Lockart Architects

PROJECT INFORMATION		DRAWING INFORMATION	
PROJECT NAME	BANORA POINT AGED CARE FACILITY	DRAWING TITLE	ELEVATIONS
CLIENT	AMITY GROUP	DATE	NOVEMBER 2007
SCALE	1:200	DRAWING NO.	A3806 DA03



UPPER FLOOR PLAN
SCALE: 1:100

NOT TO BE USED FOR CONSTRUCTION PURPOSES
Preliminary Copy Only

REV	DATE	DESCRIPTION
1	10/11/07	ISSUE FOR CONSTRUCTION PURPOSES

PROPOSED ALTERATIONS & ADDITIONS TO
EXISTING AGED CARE FACILITY
FOR THE AMITY GROUP
BANORA POINT, TWEED HEADS

Hill Lockart Architects

REV	DATE	DESCRIPTION
1	10/11/07	ISSUE FOR CONSTRUCTION PURPOSES

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 illustrates that the aims of the TLEP 2000 are to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan. The vision of the plan 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”*.

Clause 4 further aims to provide a legal basis for the making of a DCP to provide guidance for future development and land management, to give effect to the Tweed Heads 2000+ Strategy and Pottsville Village Strategy and to encourage sustainable economic development of the area which is compatible with the Shire’s environmental and residential amenity qualities.

The proposed development is considered to meet the provisions of Clause 4 by way of maximising the density of the property whilst being compatible with the existing streetscape and amenity of the area.

Clause 5 of the LEP relates to ecologically sustainable development. The TLEP aims to promote development that is consistent with the four principles of ecologically sustainable development, being *the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms*.

Appropriate conditions of consent have been applied, which will ensure that the proposed extensions will not significantly impact upon the surrounding residences or adjoining public reserve. As such, the proposed development is considered to meet the provisions of Clause 5 of the LEP.

Clause 8 – Consent Considerations

This clause specifies that 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 that those other aims and objectives of this plan (the TLEP) 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.*

In this instance, the proposed development is considered to meet the primary objective of the zone by way of optimum utilisation of the site, whilst taking into account environmental constraints. The proposal generally complies with Clause 8(a).

Other relevant clauses of the TLEP have been considered elsewhere in this report, and it is considered that the proposal generally complies with the aims and objectives of each.

The proposed development is not considered to have an unacceptable cumulative impact on the locality or the community as a whole.

Clause 11 of the LEP relates to zone objectives. The subject land is zoned 2(c) Urban Expansion under the provisions of the LEP. The objectives of the zone include:

- *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*

The Tweed LEP 2000 provides a definition for housing for older people or people with disabilities being: -

“Residential accommodation which is used permanently as housing for the accommodation of older people or people with a disability which may consist of a residential care facility, a hostel or a grouping of two or more self contained dwellings or a combination of these but does not include a hospital”.

The proposed use of the subject land as a residential aged care facility is permissible under State Environmental Planning Policy (Senior Living) 2004 which allows Council to set aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in the SEPP.

An assessment of the proposal against the SEPP is detailed in the following report. Based on that assessment use of the subject land for the proposed purpose is permissible with consent.

Clause 15 of the TLEP requires the provision of essential services to be available to the site prior to any consent being granted. The proposed development will be able to connect to all necessary services.

Clause 16 of the TLEP provides a three-storey height limitation over the site. The proposed development, being primarily single storey with a small second storey component, complies with the height requirements.

Clause 17 of the TLEP requires a social impact assessment for development types likely to have a significant social impact in the locality. Given that the proposed development consists of extensions to an existing development and replaces an already approved second stage of the facility, a social impact assessment is not considered necessary in this instance.

Clause 25 of the TLEP relates to development on land adjacent to land zoned 7(a) – Environmental Protection (Wetlands and Littoral Rainforests). The aim of this Clause is to ensure that wetlands and littoral rainforests are preserved and protected in the environmental and economic interests of the area of Tweed. It is considered that the aims of this Clause have been achieved, in that:

- The existing building is adjacent to the 7(a) land, rather than the proposed development. The proposed extensions are well setback from the wetlands area, with no impact considered likely from the additions;
- The proposed development does not require any dewatering, which results in no impact upon the quantity and quality of the existing groundwater; and
- All works are contained within the site and additional stormwater runoff will be directed to the existing public stormwater system. As a result, the proposed extensions are unlikely to result in detrimental effects on the existing adjacent wetlands.

Clause 34 of the TLEP provides objectives to minimise future potential flood damage by ensuring only appropriate compatible development occurs on flood liable land.

Early in the assessment process, Council's Infrastructure Engineer noted that the proposed extensions (in their original form) did not meet Council's flooding requirements. Detailed discussions between the applicant and various council staff have been undertaken to date, resulting in an amended design which is now considered acceptable with regard Council's PMF flood requirements. Further detail is provided later in this report on the matter.

Clause 35 of the TLEP provides for the management of acid sulfate soils. The subject land is identified as being in a Class 2 area. Council's Environment and Health Unit has assessed the proposed development in this regard, noting the following;

'An Acid Sulphate Soils Assessment has been submitted from Border-Tech, Report BT 15979 dated July 2006.

This assessment concludes that Acid Sulfate Soils will need to be managed at the time of excavation; however no Acid sulphate soils Management Plan has been submitted.

The ASSMAC Guidelines require an Acid Sulfate Soil Management Plan to be submitted if the action criteria as specified in Section 4.3 of the Guidelines are exceeded.

Accordingly an Acid Sulfate Soil Management Plan is required to be submitted to Council for consideration and approval prior to the issue of any Construction Certificate'.

Standard conditions of consent have been recommended in this regard.

Clause 39 of the TLEP relates to the remediation of contaminated land. A Contaminated Land Assessment Report (Border-Tech, report 15979 dated July 2006) was submitted.

Council's Environment & Health Unit assessed the contamination report, raising concerns with conflicting data within the report. The applicant was requested to investigate the issue.

The applicant subsequently submitted a revised assessment in February 2008 (report BT 15979-3). Having considered all the potential contaminants the applicant's consultant and Council's Environmental Health Officer confirm that the site is suitable for the proposed use subject to the recommended conditions of consent.

Clause 39A of the TLEP requires consideration of bushfire protection issues and the planning for bushfire guidelines in the development of areas mapped as bushfire prone.

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

North Coast Regional Environmental Plan 1988

Clause 15 of the NCREP is applicable. This Clause contains provisions relating to development adjoining rivers or streams. The development has addressed these provisions through, the implementation of stormwater quality control devices and management measures to maintain or improve the water quality to Trutes Bay. The proposed extensions are not considered to have any impact upon the existing public access to the waterway, which is located further to the north west, off Botanical Court.

Clause 32B(2) and (3) of the NCREP is applicable. This Clause requires the consideration of the NSW Coastal Policy, Coastline Management Manual and the North Coast Design Guidelines for proposals on coastal lands; and also contains provisions relating to public access to the foreshore. As noted above, public access to the bay exists further north west of the subject site. Therefore, the proposed extensions are not considered to have any impact upon public access and the development is considered to satisfy the provisions of this clause.

Clause 32 B(4)(b) of the NCREP is applicable. This clause requires the consideration of potential shadow impacts on beaches and waterfront open space before 4pm midwinter or 7pm midsummer. The submitted overshadowing diagrams are satisfactory for both midsummer and midwinter to the adjoining coastal reserve, with the majority of shadow falling on the building itself or remaining within the subject site.

Clause 43 of the NCREP is applicable. Clause 43 contains provisions relating to residential development. The development has addressed these provisions in relation to maximising the density over the site, not providing excessive road widths and ensuring erosion and sedimentation control measures are adopted. This has been enforced through the recommended conditions of consent.

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

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

State Environmental Planning Policies

SEPP 14 Wetlands

The subject site is mapped as being partially SEPP 14 land. This affects the south-western portion of the site only. The existing aged care facility is located within the SEPP 14 area and beyond. The proposed extensions will not be located within the wetland buffer area, with no impact from the proposed development considered likely. Therefore SEPP 14 is not considered to apply.

SEPP 55 Remediation of Land

Based on the applicants' contamination land assessment and Council's Environmental Health Officer's assessment of such report, contamination is not considered a constraint for this development.

SEPP 71 Coastal Protection

The subject site is mapped within a sensitive coastal location as land within 100m above mean high water mark, and as land within 100m of a mapped SEPP 14 area. Whilst the Department of Planning Department does not require consultation under Clause 11(2) of SEPP 71 as detailed above the application still needs to be assessed having regard to Clause 8 of the SEPP.

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

The matters for consideration are as follows:

- (a) *the aims of this Policy set out in clause 2,*
- (b) *existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,*
- (c) *opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,*
- (d) *the suitability of development given its type, location and design and its relationship with the surrounding area,*
- (e) *any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,*
- (f) *the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,*
- (g) *measures to conserve animals (within the meaning of the [Threatened Species Conservation Act 1995](#)) and plants (within the meaning of that Act), and their habitats,*
- (h) *measures to conserve fish (within the meaning of Part 7A of the [Fisheries Management Act 1994](#)) and marine vegetation (within the meaning of that Part), and their habitats*
- (i) *existing wildlife corridors and the impact of development on these corridors,*
- (j) *the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,*
- (k) *measures to reduce the potential for conflict between land-based and water-based coastal activities,*
- (l) *measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,*
- (m) *likely impacts of development on the water quality of coastal waterbodies,*
- (n) *the conservation and preservation of items of heritage, archaeological or historic significance,*
- (o) *only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,*
- (p) *only in cases in which a development application in relation to proposed development is determined:*
 - (i) *the cumulative impacts of the proposed development on the environment, and*

- (ii) *measures to ensure that water and energy usage by the proposed development is efficient.*

The proposed development is considered to be consistent with the aims of the policy. Although the subject site does not provide direct access to the adjoining reserve, it is not considered to have any impact upon the existing public access to the waterway, which is located further to the north west, off Botanical Court. Therefore, the proposed development is considered to comply with the relevant provisions of SEPP 71.

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

Aims of the Policy:

- (1) *This Policy aims to encourage the provision of housing (including residential care facilities) that will:*

- (a) *increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and*
- (b) *make efficient use of existing infrastructure and services, and*
- (c) *be of good design.*

(2) *These aims will be achieved by:*

- (a) *setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in this Policy, and*
- (b) *setting out design principles that should be followed to achieve built form that responds to the characteristics of its site and form, and*
- (c) *ensuring that applicants provide support services for seniors or people with a disability for developments on land adjoining land zoned primarily for urban purposes.*

This policy applies to Tweed Shire. Following is an assessment of the development against the SEPP:

Part 1 – General

Clause 17 - Development adjoining land zoned primarily for urban purposes

- *A consent authority must not consent to a development application made pursuant to this Chapter to carry out development on land that adjoins land zoned primarily for urban purposes unless the proposed development is for the purpose of one of the following: Hostel, residential care facility, or serviced self-care housing.*

The proposed development complies with the definition for Residential care Facility. In the SEPP, a "residential care facility" is residential accommodation for seniors or people with a disability that includes:

- (a) *meals and cleaning services, and*
- (b) *personal care or nursing care, or both, and*
- (c) *appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care, not being a dwelling, hostel, hospital or psychiatric facility.*

Clause 18 - Restrictions on occupation of seniors housing allowed under this Chapter

- (1) *Development allowed by this Chapter may be carried out for the accommodation of the following only:*
 - (a) *Seniors or people who have a disability,*
 - (b) *People who live within the same household with seniors or people who have a disability,*
 - (c) *Staff employed to assist in the administration of and provision of services to housing under this Policy.*

The subject application seeks approval for extensions to an existing aged care facility. The new extensions will house 20 high care/dementia residents and 21 low care residents. That is, both seniors and people with a disability will be cared for.

- (2) *A consent authority must not consent to a development application made pursuant to this Chapter unless a condition is imposed by the consent authority to the effect that only the kinds of people referred to in subclause (1) may occupy any accommodation to which the application relates.*

The recommended conditions of consent will ensure appropriate restrictions are provided.

Clause 19 details provision for use of seniors housing in commercial zones. This is not applicable to this application as the site is not zoned for commercial purposes.

Clause 20 provides special provisions concerning certain land to which this Policy applies. The subject site is not defined as specific within the Local Government Area and therefore this clause does not apply.

Clause 21 allows the subdivision of the land with consent. The application does not seek approval for subdivision therefore this clause does not apply.

Clause 22 details provisions for heritage conservation areas and heritage items. The subject site is not a nominated heritage listed site, with no heritage significant areas or items in the vicinity of the subject site. This clause therefore does not apply.

Clause 23 refers to development on land used for the purposes of an existing registered club. The subject site is not a registered club and therefore this clause does not apply.

Clause 24 and **Clause 25** relates to site compatibility certificates required for certain development applications. Given that the subject site has an existing aged care facility located on it and this application is for extensions to the existing facility, it is not considered that a site compatibility certificate is required in this instance, and therefore these clauses do not apply.

Part 2 – Site-related requirements

Clause 26 - Location and access to facilities

(1) *A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied, by written evidence, that residents of the proposed development will have access that complies with sub-clause (2) to:*

- (a) *shops, banks and other retail and commercial services that residents may reasonably require, and*
- (b) *community services and recreation facilities, and*
- (c) *the practice of a general medical practitioner.*

(2) *Access complies with this clause if:*

- (a) *the facilities and services referred to in subclause (1) are located at a distance of not more than 400 metres from the site of the proposed development and the overall average gradient along the distance is no more than 1:14.*
- (b) *N/A*
- (c) *N/A*

Access to facilities is already arranged by the existing nursing home using a bus service from the nursing home to local shopping centres at Banora Point, South Tweed and Tweed Heads. The surrounding shopping precincts have a range of shops, banking, retail / commercial services, as well as recreation facilities and medical practitioners. The applicant has indicated that existing bus service will continue for the expanded client base. In addition, a bus stop is located approximately 240m from the subject site, which is serviced by Surfside Bus lines. On this basis, residents would be transported to a place that is within 400 metres numerous health care facilities, professionals, commercial and retail and community services. This Clause is considered satisfied.

Clause 27 refers to Bushfire Prone Land. The subject site is not classified as bushfire prone land. Therefore, this clause does not apply.

Clause 28 - Water and sewer

(1) *A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied, by written evidence, that the housing will be connected to a reticulated water system and have adequate facilities for the removal or disposal of sewage.*

(2) *Not applicable*

The proposed development is located within the existing urban area of Banora Point with water and sewerage services present for the existing facility. Council officers have indicated that the existing services are capable of meeting the additional demand created by the proposed extensions. This Clause is considered satisfied.

Part 3 – Design requirements

Division 1 – General

Clause 30 requires that the applicant must provide a site analysis statement with the application addressing the following points; site dimensions, topography, services, existing vegetation, microclimates, location of buildings and other structures, views to and from the site and overshadowing by neighbouring structures. The applicant has provided sufficient site analysis plans and detail within the Statement of Environmental Effects to satisfy this provision. This Clause is considered satisfied.

Clause 31 relates to the design of in-fill self-care housing. The proposed development does not meet the definition for ‘in-fill self-care housing’, rather it is defined as a ‘residential care facility’. Therefore, this clause does not apply.

Clause 32 refers to the design of residential development. This clause states that a consent authority must not consent to a development application unless they are satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2. An assessment against the individual design principles are noted below, which concludes that this clause is considered satisfied.

Division 2 – Design Principles

Clause 33 - Neighbourhood amenity and streetscape

This clause specifies a number of requirements that must be taken into consideration when assessing such a facility. They include the need for new development to add to the character and amenity of the area, maintain neighbourhood amenity and appropriate residential character, including setbacks, building form and building heights, appropriate planting and where possible retain existing major trees on the site.

The proposed development, being predominantly single storey, complies with the three storey height limit and is consistent with the existing one to two-storey character of the area. The applicant has provided the following comment with regard impact upon neighbouring properties:

'There are a total of twelve neighbouring properties bordering the nursing home site.

Five of these neighbouring properties are adjacent to the existing development and minimal, if any, impact is anticipated for these properties from the extensions to the existing buildings.

Of the remaining seven properties, the impact of the new development will be similar to the impact that would have been experienced with the construction of Stage 2 of the Development Application granted consent in 1998.

Indeed, it could be argued that for two or three of these existing properties the impact will be reduced as the currently proposed building extension footprint is generally further from the fence lines than the 1998 proposal and all neighbouring properties will experience a lessened impact owing to the fact that the current DA does not include an Aged Care Day Centre with the additional traffic, noise and general activity such a centre normally generates'.

The proposed development is considered to provide acceptable side setbacks, with considerable landscaping provisions along the perimeter of the site and within the proposed courtyard areas. The subject site is located at the end of Ballymore Court, the proposed extensions having little impact upon the existing street frontage. This Clause is considered to be satisfied.

Clause 34 - Visual and acoustic privacy

This clause requires that the proposed development consider the visual and acoustic privacy of surrounding development by appropriate location of windows, balconies, screening devices and landscaping.

As noted above, the existing building and proposed extensions are predominantly single storey, similar to surrounding residential development. The extensions include a small second storey component, in order to comply with Council's flooding requirements. The location and shape of the subject site results in the property only having approximately 40m of road frontage at the end of Ballymore Court. The proposed extensions are setback a considerable distance from the side boundaries, with landscaped courtyards providing additional visual privacy to both the subject site and surrounding residences.

In terms of potential noise impact, the applicant has provided the following comment:

'The noisiest activities at the nursing home are the kitchen and laundry. These are already, and will be in the future, located well away from site boundaries.

The kitchen will be extended in its current position and will remain an "internal" area. The new laundry will be relocated to an external wall of the building but will be still at least 20 metres from the nearest boundary with a neighbour. Reasonable steps will be taken to treat noise generating areas such as the kitchen and laundry to minimize any noise impact on neighbours.

As described above, traffic noise will be normal for such a development.

The final positions for potentially noise generating air conditioning units have not yet been determined, however, the locations will be selected to minimize any noise impact on the locality'.

Council's Environment & Health Unit has assessed the proposed development with regard acoustic impact. Due to a recent petition in relation to noise nuisance caused by deliveries to the existing nursing home in the early hours of the morning, appropriate conditions of consent have been applied limiting deliveries to the premises to more appropriate hours of the day. In addition, standard conditions of consent have been applied with regard the location of externally mounted air conditioning units and other mechanical plant or equipment. Therefore, this clause is considered satisfied.

Clause 35 - Solar access and design for climate

This clause relates to the provision for solar access and design for climate. It is considered that the development has been designed so that the rooms receive adequate solar access, that there is adequate mature landscaping to reduce energy use, whilst also providing for the best practicable use of natural ventilation, solar heating and lighting by locating the windows of living and dining areas in a northerly direction. It is noted that the proposed extensions include an inner courtyard adjacent to the dining/lounge area, which will allow appropriate solar access in a northerly direction. Residents also have access to landscaped courtyard areas. This clause is considered satisfied.

Clause 36 - Stormwater

The application was referred to Council Development Assessment Engineer for assessment who has noted that...*'the road drainage network is capable of accepting additional rainwater runoff generated by the proposed development'*. Appropriate conditions of consent with regard the provision of further engineering detail to ensure adequate stormwater measures will be in place. This clause is considered satisfied.

Clause 37 - Crime Prevention

This clause relates to crime prevention and aims to protect and provide security for the residents living within the proposed development. The site planning will allow general observation (from inside the majority of dwellings) of the car park area at the entrance of the facility and also within the site. Shared entries that serve a small number of dwellings from courtyard areas, have been incorporated into the design to improve security. This clause is considered satisfied.

Clause 38 - Accessibility

This clause aims to facilitate the use of a pedestrian friendly environment for residents and visitors. The proposed extensions incorporate a new porte coche over the new entrance way to the building. The entrance to the new building includes a large pedestrian area for residents to safely gather and access the facility's on-site mini-bus. It is considered that the development has incorporated safe environments for pedestrians and motorists with convenient access and parking for residents and visitors. As such, this clause is considered satisfied.

Clause 39 - Waste Management

This Clause states that the development should be provided with waste facilities that maximize recycling by the provision of appropriate facilities. It is noted that the existing waste bin storage area will be moved from its present location to a new location to accommodate for the proposed extensions. Any medical waste is to be removed and disposed of by a specialist medical waste contractor.

This clause is considered satisfied.

Part 4 – Development standards to be complied with**Clause 40 - Development standards – minimum sizes and building height.**

- (1) **General** *A consent authority must not consent to a development application made pursuant to this Chapter unless the proposed development complies with the standards specified in this clause.*
- (2) **Site size** *The size of the site must be at least 1,000 square metres.*
- (3) **Site frontage** *The site frontage must be at least 20 metres wide measured at the building line.*
- (4) **Height in zones where residential flat buildings are not permitted** *If the development is proposed in a residential zone where residential flat buildings are not permitted:*
 - (a) *the height of all buildings in the proposed development must be 8 metres or less, and*

- (b) *a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and*

Note. *The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.*

- (c) *a building located in the rear 25% area of the site must not exceed 1 storey in height.*

The total area of the site is approximately 8246m², exceeding the minimum requirement of 1000m².

The site frontage to Ballymore Court is approximately 40m, exceeding the minimum requirement of 20m.

The site is zoned 2 (c) urban expansion, in which residential flat buildings are permissible with consent, with the site being affected by a three (3)-storey height limit. Therefore the 8m standard is not applicable to this development as residential flat buildings are a permissible land use in the 2(c) Urban Expansion zone.

Division 2 – Residential Care Facilities: Standards concerning access and usability

The SEPP notes that development standards concerning accessibility and usability for residential care facilities are not specific to the policy. For relevant standards, see the Commonwealth aged care accreditation standards and the *Building Code of Australia*.

The proposed development has been assessed by Council's Building Services Unit, who have provided appropriate conditions of consent to ensure there compliance with the appropriate Australian Standards and with the BCA.

Part 7 – Development standards that cannot be used as grounds to refuse consent

Division 2 – Residential care facilities

Clause 48 – *Standards that cannot be used to refuse development consent for residential care facilities*

(a) Building Height: *if all proposed buildings are 8 metres or less in height.*

This clause stipulates that Council cannot refuse a residential care facility on the grounds of height, if the building height is less than 8m.

The applicant has noted that...*'all proposed building extensions are less than 8 metres in height as the whole development will remain single storey apart from the small extension to the existing upper level to provide a flood refuge as required by Tweed Shire Council. In any case the development is less than 8 metres in height'*. As such, the proposed development is considered to comply with the building height restrictions.

- (b) Density and Scale:** *if the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less.*

Based on the combined floor area of the existing and proposed development, the Floor Space Ratio is approximately 0.53:1, which complies with the requirements.

- (c) Landscaped area:** *if a minimum of 25m² of landscaped area per residential care facility bed is provided.*

The combined existing and proposed residential care facility incorporates 97 beds, which equates to the need for 2425m² of landscaped area. Although the applicant has noted a landscaping figure of 28m² per bed, the proposed landscaping has been calculated as approximately 2540m² (approx 26m² per bed), which exceeds the requirement and is considered satisfactory.

- (d) Parking for residents and visitors:** *if at least the following is provided:*
- (i) 1 parking space for each 10 beds in the residential care facility (or 1 parking space for each 15 beds if the facility provides care only for persons with dementia), and*
 - (ii) 1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time, and*
 - (iii) 1 parking space suitable for an ambulance.*

The applicant has provided the following comment with regard car parking provisions:

'Access to the site will be maintained from Ballymore Court.

The existing car parking facilities will be replaced by a revised driveway and new car park together with a porte cochere for covered drop off and pick up of residents/visitors as well as a new ambulance zone. Total new car parking will cater for 40 cars including 2 disabled persons parking spaces plus an ambulance bay and a service vehicle loading bay.

The proposed number of car parking spaces exceeds the minimum requirements of the NSW State Environment Planning Policy (Seniors Living) 2004 for residential care facilities. This policy precludes any council from refusing development consent provided that at least the following amount of parking is provided:

- (i) 1 parking space for each 10 dwellings in the residential care facility, and*
- (ii) 1 parking space for each 2 persons employed in connection with the development and on duty at any one time, and*
- (iii) 1 parking space suitable for an ambulance.*

Using the above minimum requirements there needs to be 10 spaces for the 100 residents/beds (97 actual) plus 18 staff spaces on the assumption that the number of employees on duty at any one time will not exceed 36 (the morning shift is the busiest time with up to 35 staff on duty). The ambulance is catered for at the front entrance/porte cochere.

The required number of 28 car spaces is exceeded by 12 and this will help ensure Ballymore Court is kept clear of parked cars, contributing to the amenity of the area.

The whole of the new car park and access roads will be bitumen sealed and suitably line marked. Stormwater will be collected and piped to the existing stormwater drainage infrastructure in Ballymore Court'.

As noted by the applicant, the proposed development exceeds the required 28 spaces thus complying with the requirements for residential care facilities.

Therefore having considered all of the abovementioned criteria the proposed development is considered to meet the aims and requirements of the SEPP (Housing for Seniors or People with a Disability) 2004.

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

There are no draft EPI's applicable to the proposed development.

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

Consolidated Development Control Plan

Section A2 – Site Access and Parking Code

Council's parking provisions for aged care refers to the car parking requirements pursuant to SEPP (Housing for Seniors or People with a Disability) 2004. As noted above, the proposed development proposes a total of 40 on-site spaces as well as ambulance provisions, which exceeds the required 28 spaces, thus complying with the SEPP's requirements for residential care facilities.

Section A3 – Development of Flood Liable Land

The design flood level (Q100 flood) for the site is 2.6m AHD, with the minimum habitable floor level being 3.1m AHD. The proposed development proposes to construct the extensions at the same level as the existing stage, which has a floor level of 3.1m AHD (which is above the 1 in 500 year flood level). Therefore, the proposal meets current standards for property protection.

Early in the assessment process, Council's Infrastructure Engineer highlighted a serious issue regarding the protection of life for the occupants of the development should a flood exceed the design 1 in 100 year event. Having undertaken a recent flood study for the Tweed, Council is aware of the Probable Maximum Flood (PMF) level for the subject site and must have consideration for the PMF level on new development. The PMF level for the subject site is 4.5m AHD.

Clause 34 of the Tweed LEP 2000 requires Council to have regard for the impact of a development on emergency services. The proposed extensions will increase the number of beds by 41, which would significantly increase emergency response requirements for the State Emergency Services during a major flood.

Following preliminary assessment of the proposal, Council's Infrastructure Engineer provided the following comments:

'The development is considered to be a "low island" as it has been filled to the 1 in 100 year level, but local access roads are below this level and will be cut much earlier in a flood event. This means that should flood waters approach the PMF level, occupants would be unable to evacuate the facility by road and cannot seek flood free storage within the development itself. The occupants of the facility would therefore require rescue by the SES, who have acknowledged during the recent updating of the Tweed Local Flood Plan that at current resourcing levels, such rescue may not be possible, particularly for high care patients who have additional needs in terms of supervision and medical support. Finding a suitable services and accessible evacuation destination for such patients is also problematic.'

As a result of the above assessment, a lengthy negotiation period took place whereby various alternative solutions were discussed. The applicant lodged an Emergency Evacuation Plan for the entire facility. Despite the detailed measures and administration procedures proposed by the evacuation plan, Council's Infrastructure Engineer noted that...*'the plan ignores the likelihood of significantly reduced road access during flood events in the immediate locality of Banora Point'*. As such Council's only other alternative was to request the applicant to provide PMF refuge within the development.

Council's original PMF refuge requirements included an area at least 50% of the development's total floor area at PMF level (i.e. 4.5m AHD), with services provided as part of normal operations (including food, water, shelter, power, medical services and hygiene) for a period of up to a week. The applicant's response that such a refuge area was unworkable and would not meet government requirements for the caring of residents. Given that such requirements were commercially unviable, the likelihood of the application being withdrawn was high.

Faced with the possibility of losing a highly sought after additional 41 aged care beds in the Tweed, the application was referred to Council's Executive Management Team on 19 September 2007 for further discussion. EMT resolved that...*'the Director Engineering & Operations and Director Planning & Regulation have further discussions with the applicant in an attempt to resolve an agreed refuge area'*.

At this point, it was agreed that a figure of 3m² per person would be acceptable as a refuge area for the 41 beds incorporated with the extensions. That is, an area similar in size (and additional to) the existing upper level area. Council would require further detail as to how the applicant would get all residents up to the refuge in such an event, i.e. wheel chair access. In addition, the development would require back up power, a source of drinking water (e.g. roof water tank) and storage measures for the provision of food and medical supplies to the occupants for a period of approximately 3 days.

As a result, the applicant submitted amended plans (incorporating an additional 120m² upper level refuge area) on 12 November 2007. The amended plans include provisions for a stair climbing device to transport residents to the upper level refuge. Council's Infrastructure Engineer has assessed the amended plans on with no objections, subject to conditions of consent.

It should be noted that at the time of Council's Infrastructure Engineer finalising their comments on the amended plans, Part 3 of Council's Floodplain Risk Management Study was still in draft format. It was not until 18 December 2007 that Council adopted the Part 3 Study and implemented its recommendations via a new Flood Risk Management Policy, bringing into force stringent development controls relating to PMF refuges for critical development such as the proposed development.

Given the lengthy discussions undertaken between Council and the applicant, decisions made by Council's EMT on the matter and support from Council's Infrastructure Engineer in relation to the amended plans incorporating an acceptable PMF refuge level, it is considered appropriate that variations to the provisions of the Flood Risk Management Policy be applied to the proposed extensions in this instance. It should be noted that any future development application of a similar nature will be required to comply fully with the provisions of the policy.

(a) (iv) Any Matters Prescribed by the RegulationsCoastal Policy

The subject site is located within the Coastal Zone and as such the provisions of the Coastal Policy apply to the site. The proposed development is consistent with the objectives of the Coastal Policy.

Demolition Works

The proposed development involves the demolition of part of the existing building, to allow the construction of the extensions. Council's Building Services Unit has assessed the application in this regard and appropriate conditions of consent have been applied.

(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**Contamination**

The applicant has submitted an amended Contaminated Land Assessment Report (Border-Tech, report BT15979-3 dated February 2008), which concludes that the subject site is suitable for the proposed residential use. Council's Environment & Health Unit has undertaken an assessment of the proposed development in this regard, with no objections.

Noise

The applicant has acknowledged that the noisiest activities within the nursing home are the kitchen and laundry, both of which are located away from site boundaries within the existing facility. The proposed extensions are to continue this scenario, with the kitchen being extended in its current position and remaining an internal area. The extensions incorporate a new laundry being relocated to an external wall, this being some 20m from the nearest boundary of a neighbouring dwelling.

Due to recent complaint relating to noise nuisance caused by deliveries being made to the existing nursing home at early hours of the morning, the applicant was requested to provide details of all deliveries made to the site including times in which they occur. As a result, Council's Environment & Health Unit have been able to apply suitable restrictions on the timing of deliveries (in line with the hours of operation of the facility), including vehicles with mounted refrigeration units, in an attempt to protect the acoustic privacy of surrounding residences.

Access & Traffic

The existing nursing home has vehicular access off the end of Ballymore court, leading into the sealed car parking area to the north east of the existing building. The proposed development will result in the existing car park being replaced by the extensions to the existing building. A new car parking area is proposed to the east of the proposed extensions, incorporating a new porte cochere which will provide a covered drop off / pick up zone at the new entrance of the facility. The car park will also provide provisions for an ambulance and service vehicle loading bay.

The applicant has noted that...*'a moderate increase in traffic movement in Ballymore Court and feeder streets is anticipated owing to the additional staff and visitors attending the nursing home, however the majority of the traffic movements will be during daylight hours and early evening when minimal impact on neighbouring residents will result'*.

Council's Development Assessment Engineer has assessed the proposed development in this regard, noting that the surrounding road network has sufficient capacity for the additional traffic movements resulting from the proposed extensions.

Stormwater Management

Several submissions have been received raising concern with the existing inadequate stormwater drainage from the vacant, grassed portion of the site. The submissions have objections to the extensions, but wish to highlight the existing undesirable situation in an effort to ensure that the proposed development will resolve the stormwater runoff onto adjoining residential properties.

The application was referred to Council Development Infrastructure Engineer for assessment who has noted that...*'the road drainage network is capable of accepting additional rainwater runoff generated by the proposed development'*. Appropriate conditions of consent with regard the provision of further engineering detail to ensure adequate stormwater measures will be in place.

Construction

Council's Building Services Unit has undertaken an assessment of the proposed extensions. A site inspection revealed numerous non-compliances with the deemed-to-satisfy requirements of the BCA. Pursuant to Clause 94 of the Environmental Planning & Assessment Regulations 2000, the applicant will be required to engage an appropriately qualified fire engineer to review the proposed building works involving the additions to the existing aged care facility in terms of adequate levels of fire safety as required by the BCA . A condition of consent has been applied in this regard, along with standard conditions of consent for the proposed building works.

(c) Suitability of the site for the development

The subject site is located within a well established residential estate within Banora Point. There is an existing nursing home located on the site, which is Stage 1 of an approved development. The original development consent for the existing facility includes a second stage of the aged care facility. The current owners of the site wish to provide an alternative design for the approved second stage, hence this application has been lodged.

As noted earlier in this report, the proposed extensions are generally compliant with all relevant policies applicable to such a development. This includes the SEPP (Housing for Seniors and People with a Disability) 2004, the Tweed LEP 2000 and Council's flooding provisions. As such, the proposed development is considered suitable for the subject site, subject to conditions of consent.

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

The application was an exhibition for a two (2) week period during January 2007. During this time, three (3) written submissions were received.

Issue	Comment	Assessment
Stormwater runoff	All three submissions raised the issue of stormwater problems with the existing vacant portion of the subject site affecting adjoining residential properties. The proposed development is to incorporate sufficient site drainage to alleviate the existing situation.	Council's Infrastructure Engineer has assessed the proposed development, noting that stormwater from the extensions will be connected to the existing site network. The public system is considered to adequately cater for the increased runoff. Appropriate conditions of consent have been applied requiring further detailed engineering plans to be lodged and approved prior to the issue of a construction certificate.
Noise impact	A request for adequate on-site storage of delivered goods to minimise noise and the number of trucks making early morning deliveries.	Council's Environment & Health Unit has assessed the proposed development in this regard. Appropriate conditions of consent have been applied limiting the delivery times to appropriate hours of operation for the facility. In addition, further restrictions have been placed on the delivery times for refrigerated vehicles in an effort to minimise impact upon surrounding residences.
Increased traffic	Concern is raised over the generation of additional traffic movements as a result of the proposed extensions.	The existing local road network has the capacity for the additional traffic generated by the development. The majority of car movements will be during daylight hours or early evening. Restrictions have been placed on delivery times for service vehicles.

(e) Public interest

The provision of aged care facilities within the local community is an important need. The proposed development will upon completion contain an additional 41 units to the existing 56 bed facility. The proposed development is considered to be of a high standard and would cater for a need within the community.

The subject land has been identified for urban expansion purposes under the Tweed local Environmental Plan 2000. The proposed development is a permissible use within the zone and has been designed in accordance with the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

Despite submissions from 3 adjoining residences, the proposal is not considered to be in conflict with the general public interest.

OPTIONS:

1. Approve the application subject to the recommended conditions of consent.
2. Refuse the application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

The proposed development has been entirely assessed on its merits and for that reason the development does not generate a policy implication for Council.

CONCLUSION:

The proposed development complies with the requirements of SEPP (Housing for Seniors or People with a Disability) 2004 and meets Council's requirements.



The proposed development is considered to be suitable for the site and has been designed with regard to the existing aged care facility, impact upon adjoining residences and the need for aged care facilities within Tweed Shire. The recommended conditions of consent will enable management of the site during the construction phase and through to the operation of the facility.

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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P4 [PR-PC] Development Application DA07/0595 for the Koala Beach to Seabreeze Link Road at Lot 2 DP 1087664; Lot 1 DP 1106275, Cudgera Avenue & Seabreeze Boulevard, Pottsville

ORIGIN:

Development Assessment

FILE NO: DA07/0595 Pt1

SUMMARY OF REPORT:

Council is in receipt of a development application for the construction of a road that will form the final link of the Koala Beach to Seabreeze Link Road.

The application was notified during a two week period and subsequently attracted sixteen submissions. Fourteen objections opposing the development and two in support of the development.

Having regard to these submissions, the strategic planning framework applicable to the area, and the overall environmental factors associated with the development the proposal is considered suitable for the site and accordingly is recommended for conditional approval.

RECOMMENDATION:

That Development Application DA07/0595 for the Koala Beach to Seabreeze link road at Lot 2 DP 1087664; & Lot 1 DP 1106275, Cudgera Avenue & Seabreeze Boulevard Pottsville be approved subject to the following conditions: -

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos**
 - WK05012 (Sheets 1-5) prepared by Tweed Shire Council Design Unit and dated September 2006.**

except where varied by the conditions of this consent.

[GEN0005]

2. Impact mitigation measures and environmental controls shall be undertaken in accordance with Table 11.1 "Summary of mitigation measures and environmental controls" of the *Statement of Environmental Effects Koala Beach – Seabreeze Link Road* prepared by Tweed Shire Council dated June 2007. Any deviation from these measures shall be subject to the separate approval of the Director Planning and Regulation.

[GEN0005]

3. Salvage of riparian buffer plantings on the southern side of Cudgera Creek and impacted by the proposed route shall be undertaken wherever practicable and salvaged plants replanted as close as practicable to their original location yet outside the development footprint.

[GEN0005]

4. Compensatory plantings for native vegetation lost shall be replaced within the riparian area immediately upstream or downstream of the development footprint where bank vegetation is lacking. Control of noxious and environmental weeds shall be undertaken within a 50m radius of any proposed planting area prior to planting

[GEN0005]

5. The proposed route of the link road crosses Crown land comprising the bed of Cudgera Creek in the vicinity of the tidal limit of that waterway, as well as crossing Crown Public Roads. No works shall occur in these areas without a prior licence agreement between Tweed Shire Council and the Department of Lands.

[GEN0005]

6. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within or adjacent to the subject property.

[GEN0135]

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

[GEN0265]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

[PCC0585]

9. A traffic control plan in accordance with AS1742 and RTA publication "Traffic Control at Work Sites" Version 2 shall be prepared by an RTA accredited person shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate. Safe public access shall be provided at all times.

[PCC0865]



10. The proponent shall submit plans and specifications with an application for construction certificate for the following civil works and any associated subsurface overland flow and piped stormwater drainage structures designed in accordance with Councils adopted Design and Construction specifications.
- (a) Construction of a minimum 11.4m wide gravel formation comprising a bitumen sealed surface 10.6m wide and incorporate a cycleway 2.0m wide from Seabreeze Boulevard to the end of the existing pavement approximately 460m north of Seabreeze Boulevard.
 - (b) Construction of a Rocla M-Lock Bridge having a span of 12m and width of 12m. the bridge shall incorporate safety fencing.
 - (c) The road levels shown on drawings WK05012 (Sheets 1 - 5) are a maximum height and may be lowered in the construction certificate.

[PCC0875]

11. Prior to the issue of a Construction Certificate the following detail in accordance with Councils adopted Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.
- (a) copies of compliance certificates relied upon
 - (b) four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:
 - earthworks
 - roadworks/furnishings
 - stormwater drainage
 - landscaping works
 - sedimentation and erosion management plans
 - location of all service conduits (water, sewer, Country Energy and Telstra)

The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 and Section 138 of the Roads Act to be certified by an Accredited Certifier.

[PCC0985]

12. Erosion and Sediment Control shall be provided in accordance with the following:
- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.

- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCC1155]

PRIOR TO COMMENCEMENT OF WORK

13. The proponent shall accurately locate and identify any existing sewer main, stormwater line or other underground infrastructure within or adjacent to the site and the Principal Certifying Authority advised of its location and depth prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure prior to start of any works.

[PCW0005]

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

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

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

[PCW0985]

15. A permit under s198-202 of the *Fisheries Management Act 1994* for dredge and reclamation activities must be obtained prior to commencement of the works associated with the scour protection or bridge construction works. This condition may also be satisfied by evidence of a Crown land licence (or other consultation) clearly indicating Department of Primary Industries (Fisheries) satisfaction with the development impacts and construction methods

[PCWNS01]

DURING CONSTRUCTION

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

Monday to Saturday from 7.00am to 7.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

17. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:

A. Short Term Period - 4 weeks.

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

B. Long term period - the duration.

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0215]

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

[DUR0815]

19. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate.

[DUR0995]

20. All work associated with this approval is to be carried out so as not to impact on neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -

- Noise, water or air pollution
- Minimise impact from dust during filling operations and also from construction vehicles
- No material is removed from the site by wind

[DUR1005]

21. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. All such materials should be chipped on site and used in landscaping unless it is not possible due to size, non suitability of the material or some other limitation, in which case the material will be disposed of at Council's Stotts Creek depot.

[DUR1015]

22. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.

[DUR1025]

23. Before the commencement of the relevant stages of road construction, pavement design detail including reports from a Registered NATA Consultant shall be submitted to Council for approval and demonstrating.
- (a) That the pavement has been designed in accordance with Tweed Shire Councils Development Design Specification, D2.
 - (b) That the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils Construction Specifications, C242-C245, C247, C248 and C255.
 - (c) That site fill areas have been compacted to the specified standard.
 - (d) That supervision of Bulk Earthworks has been to Level 1 and frequency of field density testing has been completed in accordance with Table 8.1 of AS 3798-1996.

[DUR1805]

24. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils adopted Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[DUR1875]

25. Tweed Shire Council shall be given a minimum 24 hours notice to carry out the following compulsory inspections in accordance with Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, Appendix D, based on the rates contained in Council's current Fees and Charges:-

Roadworks

- (a) Pre-construction commencement erosion and sedimentation control measures
- (b) Completion of earthworks
- (c) Excavation of subgrade
- (d) Pavement - sub-base
- (e) Pavement - pre kerb
- (f) Pavement - pre seal
- (g) Pathways, footways, bikeways - formwork/reinforcement
- (h) Final inspections - on maintenance

Council's role is limited to the above mandatory inspections and does **NOT** include supervision of the works, which is the responsibility of the Developers Supervising Consulting Engineer.

The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

[DUR1895]

26. The works are to be completed in accordance with Tweed Shire Councils Development Control Plan, Part A5 - Subdivision Manual and Design & Construction Specifications, including variations to the approved drawings as may be required due to insufficient detail shown on the drawings or to ensure that Council policy and/or good engineering practices are achieved.

[DUR2025]

27. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction.

[DUR2185]

28. All stormwater gully lintels shall have the following notice cast into the top of the lintel: 'DUMP NO RUBBISH, FLOWS INTO CREEK' or similar wording in accordance with Councils adopted Design and Construction Specification.

[DUR2355]

29. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR2375]

30. Appropriate measures are to be put in place during the construction and/or demolition period to prevent the transport of sediment from the site. Should any material be transported onto the road or any spills occur it is to be cleaned up prior to cessation of same days work and/or commencement of any rain event.

[DUR2405]

31. All waters that are to be discharged from the site shall have a pH between 6.5 and 8.5 and suspended solids not greater than 50mg/kg. The contractor shall nominate a person responsible for monitoring of the quality of such discharge waters on a daily basis and the results recorded. Such results shall be made available to Council's Environmental Health Officer(s) upon request.

[DUR2435]



- 32. Any lopping or removal of vegetation shall be restricted to the minimum work area required to construct the proposed road.**

[DURNS01]

- 33. Prior to the commencement of any physical works on the site a plan of management for surface water and acid sulfate soil shall be submitted to Council to the satisfaction of the Director Planning and Regulation. All works shall comply with that approved plan.**

[DURNS02]

- 34. Environmental safeguards (silt curtains, booms etc.) are to be utilized during construction / installation of the revetment work to ensure there is no escape of turbid plumes into the aquatic environment. Erosion and sediment controls must be in place prior to commencing, during and after works.**

[DURNS03]

- 35. Construction of the bank scour protection is to use clean rock material only which is to be placed onto the waterway edge, not dropped. Scour protection or other works associated with the bridge shall be designed so as to result in no narrowing or realignment of the current Cudgera Creek channel in this location, either at bank or bed level.**

[DURNS03]

- 36. Sand, gravel, silt, topsoil or other materials must not be stockpiled within 50 metres of the water unless surrounded by sediment control measures.**

[DURNS03]

USE

- 37. All landscaping work is to be completed in accordance with the approved plans prior to any use of the road.**

[USE0735]

REPORT:

Applicant: Tweed Shire Council
Owner: Tweed Shire Council and Metricon (Qld) Pty Ltd
Location: Lot 2 DP 1087664; Lot 1 DP 1106275, Cudgera Avenue and Seabreeze Boulevard, Pottsville
Zoning: 1(a) Rural, 6(a) Open Space, Unzoned, Road Reserve, & Clause 52
Cost: \$600,000

BACKGROUND:

Council is in receipt of a development application for the construction of a road that will form the final link of the Koala Beach to Seabreeze Link Road.

This link road has been a key element in the strategic planning of Pottsville and has been referred to in the Tweed Consolidated DCP Section B10 Koala Beach, Section B15 Seabreeze Estate Pottsville, the Tweed Road Contributions Plan (S94 Plan No. 4), and the Tweed Road Development Strategy.

It is important to note that whilst The Pottsville Locality Plan is currently being prepared the project brief for the preparation of the Pottsville Locality Plan did not require that the validity of the link road be investigated as it was always assumed the road was needed. Nevertheless the consultants undertaking the study have further acknowledged the need for the link road by identifying potential improvements the road will make towards the management of traffic within the area and adding justification to the implementation of better public transport services for local residents.

Therefore this application is not considered pre-emptive of The Pottsville Locality Plan but rather a planned strategic requirement that meets the needs of the broader Pottsville community.

The proposed road comprises an 11.4m wide seal formation for a distance of 505m. This will incorporate a shoulder, two travel lanes a 2m cycleway, and a 12m long concrete bridge over Cudgera Creek. Fill will be required over most of the alignment to bring the height of the road to the finished design levels.

Council's Design Unit has provided that the link road will provide:

- Inter-neighbourhood connectivity between Koala Beach and Seabreeze (vehicles, cycles and pedestrians),
- Access to any future Seabreeze shops, community facilities, recreational facilities, and a potential schools by Koala Beach Residents and others,
- Access to Koala Beach facilities including sports fields from Seabreeze residents and others;
- More direct access to the Pacific Highway by Koala Beach residents;
- A loop road through Pottsville, Seabreeze and Koala beach enabling more conveniently located and higher frequency bus services; and improves amenity in Pottsville Town Centre by reducing unnecessary vehicle trips

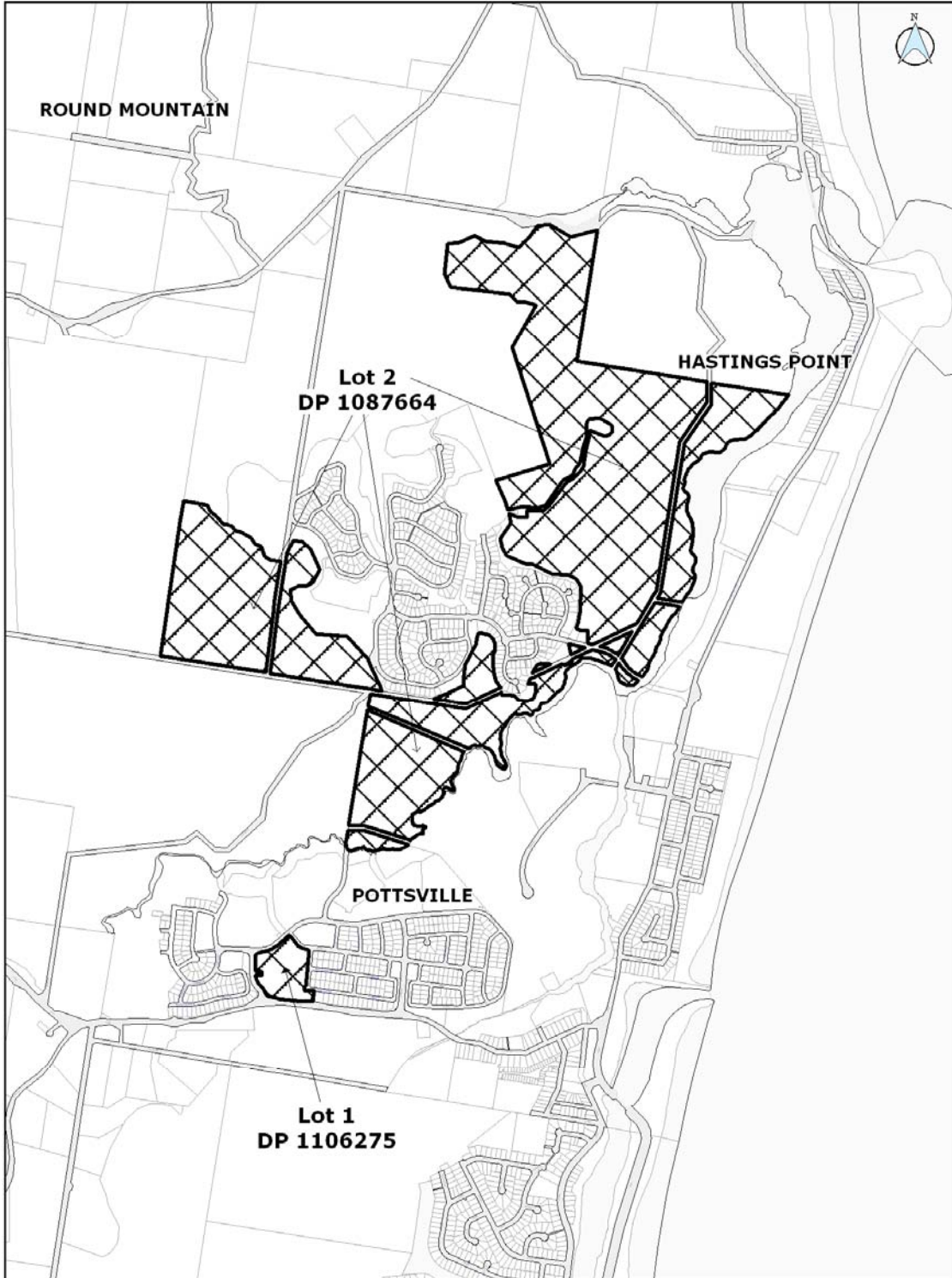
Previous approvals have been granted (and construction completed) for the Koala Beach portion of the link road extending from Macadamia Drive through to the northern bank of Cudgera Creek with access to the Koala Beach sports fields.


In the previous approval (DA04/0249) the alignment from Koala Beach was approved to the northern bank of Cudgera Creek. The crossing point over Cudgera creek shown within this plan has been amended as part of this current proposal to minimise creek bank disturbance and clearing of sensitive vegetation.

The main issues that the application raises is, impacts to the environment generally, the suitability of connection having regard to the environmental attributes of Koala Beach (i.e. no cat and dog policy) and the general public interest of the proposal.

Council has investigated these issues and has concluded that the application warrants a recommendation for conditional approval. Furthermore, the Department of Planning and the Department of Primary Industries were consulted in the assessment of the application and no objections were raised subject to the imposition of the recommended conditions of consent.

SITE DIAGRAM:



<p>© TWEED SHIRE COUNCIL 2008 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 816 Murwillumbah, NSW, 2484 Tel: (02) 6670 2409 Fax: (02) 6670 2493</p>	<p><i>Tweed Shire Council</i></p> <p>Development Application DA07/0595 for the Koala Beach to Seabreeze link road at Lot 2 DP 1087664; Lot 1 DP 1106275, Cudgera Avenue & Seabreeze Boulevard, Pottsville</p>	<p>Site Plan</p>   <p>Sheet: 1 of 1</p>
<p>File: G:\GIS_Jobs\00037413\Seabreeze boulevard Wor Author: J. Batchelor Date: 04/Mar/2008 Scale: 1:10,000</p>		

DEVELOPMENT PLAN (SHEET 1 OF 5):

**TWEED SHIRE COUNCIL
LINK ROAD BETWEEN SEABREEZE & KOALA BEACH AT POTTSVILLE
CONSTRUCTION OF NEW ROAD & BRIDGE OVER CUDGERA CREEK**

INDEX

DESCRIPTION	DWG NO.	SCALE
1. SITE PLAN	#10000-01	1:100
2. SEWERAGE	#10000-02	1:100
3. WATER SUPPLY	#10000-03	1:100
4. ROADWAY	#10000-04	1:100
5. UTILITIES	#10000-05	1:100

APPROVALS

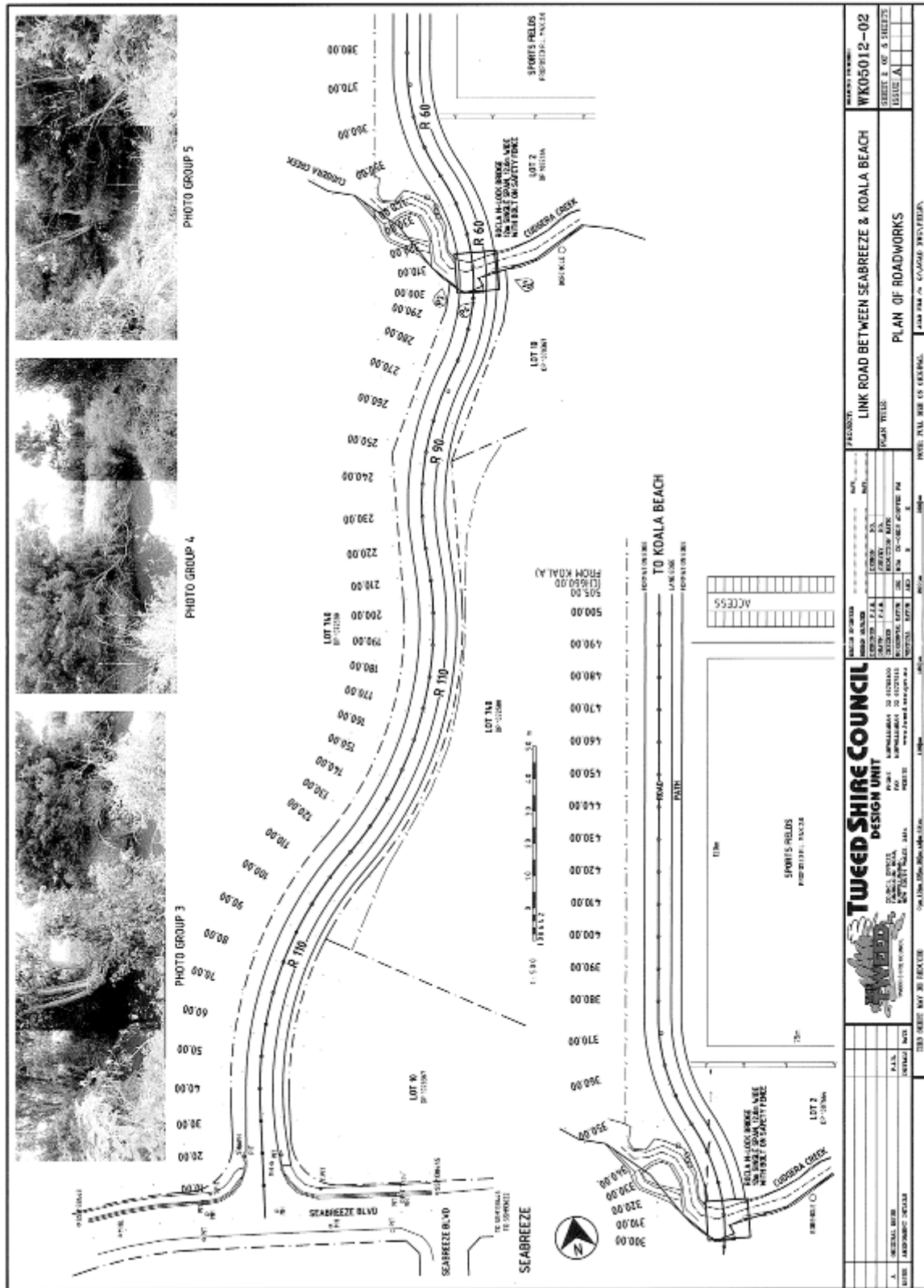
 M. J. DIXON, Mayor
 02 9585 5033
 02 9585 5034

**BRIEF NO
WK05012**

SHEET 1
OF 5



DEVELOPMENT PLAN (SHEET 2 OF 5):



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

The subject land is partly zoned 1(a) Rural, 6(a) Open Space, Unzoned, Road Reserve and affected by Clause 52 (Pottsville Zone Map Overlay Provisions) under the Tweed Local Environmental Plan 2000.

Development for the purpose of a road in each of these nominations is either permissible with consent or permissible subject to an assessment under Part 5 of the EP&A Act 1979. For consistency in the assessment process and presentation of a complete project the proposal has been submitted under part 4 of the Act

The Tweed LEP 2000 sets out the aims of the plan at Clause 4, the principals of Ecologically Sustainable Development at Clause 5 and the overarching consent considerations at Clause 8.

Clause 8(1) requires the consent authority to be satisfied that the proposal is consistent with the primary zone objectives, consistent with other aims and objectives of the plan and thirdly that the development would not have an unacceptable cumulative impact.

The proposed road and bridge are considered to be generally consistent with the primary and secondary objectives of the 1(a) Rural zone and the 6(a) Open Space zone. Having regard to Clause 13 development of uncoloured land on the zone map the proposed development may be considered as a permissible land use that satisfies the objectives of each respective zone (and Clause 13). Furthermore, the subject site is affected by Clause 52 (Pottsville Zone Map Overlay Provisions) which requires additional assessment against environmental impacts on Cudgera Creek. This assessment has concluded that the proposed development may be considered as a permissible land use and that based on the recommended conditions of consent the development satisfactorily ensures the protection of the environment.

The construction of the proposed road is considered acceptable having regard to the aims of this plan (including ESD principals) and the strategic planning documents referenced by this plan such as the Tweed Shire 2000+ Strategic Plan, Tweed Futures Strategic Plan 04/24, and the Pottsville Village Strategy.

Clause 8 of the TLEP also requires the development to satisfy that the works will not result in an unacceptable cumulative impact.

The proposed development of a road for connection between Koala Beach and Seabreeze Estate is not considered to be inconsistent with the objectives of the plan. The cumulative impacts of the proposal are not considered to outweigh the cumulative benefits of the provision of this link road. The environmental impact of the provision of the road in the proposed location is considered to be managed through the design of the road to avoid koala trees and other significant vegetation.

Given the assessment of the site constraints and the design of the road it is considered that the development to construct the road in the proposed location can be considered.

Clause 15 of the TLEP requires essential services to be provided or alternative suitable arrangements be made prior to the determination of an application. All necessary services are available.

Clause 17 of the TLEP relates to social and economic impact of development and requires assessment of this issue where Council is of a view that significant impacts will be generated an assessment is required. The proposed development is considered to generate positive social benefits for the locality through the provision of the link road.

Clause 34 of the TLEP relates to flooding and has the objectives to minimise potential flood damage from development on flood liable lands. Council's Development Engineer has provided that the road is subject to flooding and has therefore been designed in accordance with the recommendations of the flood study undertaken by WMB Oceanics.

Clause 35 of the TLEP relates to the management of acid sulfate soils. The proposed development is accompanied by an acid sulfate soils management plan, which addresses this issue for the proposed works. Council's Environmental Health Officer has provided that acid sulfate soils may be managed during the construction of the development subject to the recommended conditions of consent.

Clause 44 of the TLEP relates to the development of land where there are known archaeological sites. Previous applications provided information in relation to the archaeological report for the area which did not identify any sites in this location. No further assessment is required in relation to this clause.

The proposed development is consistent with all relevant provisions of the Tweed LEP 2000.

North Coast Regional Environmental Plan 1988

Clause 12 of the NCREP requires an assessment of development in relation to impacts on adjoining agricultural land. The proposed works are designed at a height that could result in flood impacts to the adjoining flood lands. These flood impacts were assessed in a flood study prepared by Council's consultants.

Construction of the other parts of the link road included consultation with the Cudgera Creek Drainage Union and the adjoining farmer to assess the impacts in relation to agricultural activities on the land. Loss of crop or pasture was addressed with the farmer who provided an explanation as to the localised flooding issues. These previous discussions highlighted the importance of ensuring that the connecting road has flood gates provided in the road design to ensure management of flood waters in the area.

While these flood gates will only manage flooding at one end of the development, the adjoining land owner recognised that the benefits of managing the flooding at one end would outweigh the cost of duration of inundation at the southern end of his farm.

Appropriate conditions of consent are recommended.

Clause 15 of the NCREP requires a number of matters to be considered in relation to development adjoining a stream or river. The proposed road works and bridge over Cudgera Creek are adjoining an area of wetlands and saltmarsh that are part of the estuary and catchment of Cudgera Creek. The Department of Primary Industries have been involved in the assessment of the proposed works and it is considered that any likely impacts to the waterway has been assessed and addressed in the recommended conditions of consent.

Clause 32B of the NCREP is applicable to the land as it is located in the coastal policy area. The proposed development does not result in shadow impacts on coastal open space or reduce access to coastal foreshore areas.

Clause 81 of the NCREP relates to development adjacent to the ocean or a waterway. The proposed development does not impact on the open space foreshore areas or the amenity of any waterway.

There are no further clauses under the NCREP applicable to the proposed development.

State Environmental Planning Policies

State Environmental Planning Policy No.14 - Coastal Wetlands

The proposed works are not located in an area of State Environmental Planning Policy No.14 - Wetlands.

State Environmental Planning Policy No.44 - Koala Habitat

The subject land is affected by SEPP44. The Koala Beach area has an approved Koala Management Plan that was amended and approved by the Director of Urban Affairs and Planning in 1994. The Koala Management Plan has also previously been amended with various applications including the other parts of the link road.

The requirements of SEPP44 have been addressed with this application and all flora fauna information has been reviewed by Council's Environmental Scientist and Town Planner (Ecologist). Appropriate conditions of consent are recommended.

State Environmental Planning Policy No.55 - Remediation of Land

The applicant submitted information in relation to the historical land uses of the site in accordance with Council's Contamination land policy. Council's Environmental Health Officer has assessed the information submitted and raises no objection to the proposal in relation to contamination land. No further assessment is required in relation this issue.

State Environmental Planning Policy No.71 - Coastal Protection

The subject land is affected by SEPP71. The site is partially mapped as a sensitive coastal location and accordingly the application was referred to The Department of Planning for comment.

The Department have provided that:

"We have examined the application and we have decided that in relation to SEPP 71, the Director General does not need to be involved in consideration of the matter.

However, Council may wish to reconsider the vegetation compensation ratio for rainforest plantings of 1:1 as this appears to be low. For example compensatory wetlands require the ration of 1:10 where the wetland is destroyed and or permanently impacted.

Council can now determine the proposal having regard to the matters listed above and in Clause 8 of the Policy".

The proposed development is not considered to be in conflict with the provisions of Clause 8 of SEPP71. Environmental issues relevant to the proposal have been reviewed and Department of Primary Industries and Council's Environmental Scientists, and Council's Town Planner (Ecologist) who has provided the following comments with regards to flora and fauna matters:

"I have read the Statement of Environmental Effects and in particular, the flora and fauna assessment for the construction of a new road and bridge over Cudgera Creek to link the Seabreeze estate with the Koala Beach Estate.

The applicant has provided a thorough analysis of issues and a reasoned argument in relation to potential impacts and mitigation measures. It is also noted that the original alignment has been altered to reduce impacts on the riparian vegetation and on an important habitat island within the creek some 25m upstream. This is sufficient for me to be satisfied that the proposed development is unlikely to cause a significant effect on threatened species, populations and ecological

communities. Although aquatic species have not been covered in the assessment, Cudgera Creek is beyond the tidal limit at this point and not mapped as potential aquatic threatened species habitat. Nonetheless, downstream impacts due to construction must be well managed and conditioned. The applicant has stated that as a short term Crown land licence to construct below the bank of the creek will be sought and that this precludes the requirement for a Fisheries permit (normally required for this type of work). However, it is not the usual practice of the Department of Lands to seek Fisheries advice for short-term licences and it is important that DPI Fisheries are aware of, and have opportunity to comment on the proposal. This aspect has been conditioned below.

It is apparent that the majority of the road alignment on the northern side of Cudgera Creek has been previously approved and is largely constructed, thus impacts are restricted to construction of the bridge and section of road south of the creek, impacts arising from traffic during use and potential movement of feral animals or domestic dogs and cats into the Koala Beach subdivision, which is dog and cat free. Although dogs and cats are permitted within the Seabreeze estate, restrictions on title mean that animals must be confined to a yard so wandering animals should not move freely along the route. Clear signage at the southern entrance of the Koala Beach estate similar to the eastern entrance advising that no cats and dogs are allowed has been conditioned.

On the Seabreeze side, the new alignment will impact upon plantings required as a condition of consent for riparian buffer restoration and now reasonably well established. Some of these trees and shrubs may be suitable for transplanting and this should occur wherever possible. Other habitat impacted is restricted to mainly exotic grass species in the north, and three trees in the immediate riparian zone. The applicant has stated that all vegetation lost will be replaced on a 2:1 basis; such work should be focussed on the riparian area on the northern bank where little vegetation remains.

The applicant has recommended that the road be restricted to a 40km per hour speed limit to reduce the incidence of road strike on fauna of all types in the area and further, that no night lighting for traffic or pedestrians be used along the alignment to avoid attracting species that feed on insects for example or to avoid reducing the range of light-shy species. These measures are included in a summary table which I have linked in with the first condition. Should safety considerations require constant night lighting or should a 40km per hour speed limit prove impractical, I will need to amend this condition to reflect this. There is an option to select a type of lighting which does not attract insects.

Recommendations:

That the following conditions be applied to the development:

General

- *Impact mitigation measures and environmental controls shall be undertaken in accordance with Table 11.1 "Summary of mitigation measures and environmental controls" of the Statement of Environmental Effects Koala Beach – Seabreeze Link Road prepared by Tweed Shire Council dated June 2007. Any deviation from these measures shall be subject to the separate approval of the Director, Planning and Regulation.*
- *Salvage of riparian buffer plantings on the southern side of Cudgera Creek and impacted by the proposed route shall be undertaken wherever practicable and salvaged plants replanted as close as practicable to their original location yet outside the development footprint.*
- *Compensatory plantings for native vegetation lost shall be replaced within the riparian area immediately upstream or downstream of the development footprint where bank vegetation is lacking. Control of noxious and environmental weeds shall be undertaken within a 50m radius of any proposed planting area prior to planting.*

Prior to commencement of works

- *A permit under s198-202 of the Fisheries Management Act 1994 for dredge and reclamation activities must be obtained prior to commencement of the works associated with the scour protection or bridge construction works. This condition may also be satisfied by evidence of a Crown land licence (or other consultation) clearly indicating DPI Fisheries satisfaction with the development impacts and construction methods.*

During Construction

- *Environmental safeguards (silt curtains, booms etc.) are to be utilized during construction / installation of the revetment work to ensure there is no escape of turbid plumes into the aquatic environment. Erosion and sediment controls must be in place prior to commencing, during and after works.*
- *Construction of the bank scour protection is to use clean rock material only which is to be placed onto the waterway edge, not dropped. Scour protection or other works associated with the bridge shall be designed so as to result in no narrowing or realignment of the current Cudgera Creek channel in this location, either at bank or bed level.*
- *Sand, gravel, silt, topsoil or other materials must not be stockpiled within 50 metres of the water unless surrounded by sediment control measures."*

The above recommendations form part of the conditions of consent as detailed within this report. Based on these conditions the application is considered suitable.

The application has also been referred to the Department of Primary Industries (Fisheries) as part of the assessment process for this application. The Department stated that:

"The Aquatic Habitat Protection Unit within DPI has reviewed the development application and accompanying information in light of provisions in the Fisheries Management Act, 1994 and the policies that underpin them.

Cognisant of considerable discussion regarding the proposed link road prior to lodgement of the development application and that the bridge will freely span the waterway DPI has no objection to the proposed works contingent upon appropriate and effective adoption of mitigation measures outlined in the SEE that accompanied the DA.

In the event however, that constructability of the bridge necessitates changes that precipitate dewatering, installation of earthen pads in the creek or machinery entering the waterway, DPI strongly recommend Council ensure that the short term Crown Lands licence specifically cover the activities that are proposed on the Crown land rather than just being a licence to occupy or permitting the undertaking of activities on Crown lands. In such a circumstance certain other, more appropriate and specific approvals based on assessing and conditioning mitigating measures impacts on key habitats or other environmental parameters may need to be obtained."

Based on the recommended conditions of consent the proposed development is considered suitable having regard to SEPP 71, Section 5A of the EP&A Act 1979 having regard to flora and fauna, and the Fisheries Management Act 1994.

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

There are no draft environmental planning instruments applicable to the proposed development or subject land.

Draft LEP 2000 Amendment No. 21 does not change the existing zoning provisions for the site and is therefore not considered specifically applicable to this application.

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

Tweed Consolidated Development Control Plan

Section A3 – Development of Flood Liable Land

There are no specific provisions in this section of the DCP for the construction of a road in this location. Council's Development Engineer has recommended suitable conditions of consent to ensure the road and bridge are designed in accordance with the recommendations of the WMB Oceanics Report.

No further assessment is required for the development in relation to this Section of the DCP.

Section A5. - Subdivision Manual

This section of the DCP contains construction standards that would apply to the works required with the development and this will be reflected in the recommended conditions of consent. No further assessment is required in relation to the provisions of this section and the proposed development.

Section A13 - Socio-Economic Impact Assessment

Section A13 of the DCP details scales of developments requiring a socio economic impact assessment. The proposal is not likely to generate adverse social impacts rather it will provide facilities needed in the locality due to the increasing population.

Section B 10 – Koala Beach Estate

Whilst the subject site is technically just outside this DCP area the following assessment has been undertaken to ensure consistency with the objectives of the plan generally.

The proposed development complies generally with this section of the DCP

It includes in the performance criteria for the street design and speed control that provision be made for planning the future road link to the development site at the south (now known as Seabreeze Estate). The proposed development will complete the last link and thereby provide the connection for the road network.

This section also includes the performance criteria for the pedestrians and cyclists by stating that the network should link to open space. The proposed development will include in the extension of the road network the provision of a footpath cycleway.

The recommended conditions of consent will ensure that the development is completed to the standard required by DCP Section B10.

Section B15 – Seabreeze Estate Pottsville

The proposed development complies generally with this section of the DCP.

It includes in the performance criteria for the pedestrians and bicycle network to provide a safe and convenient network incorporating all weather paths. The proposed development will include in the extension of the road network the provision of a all weather footpath/cycleway.

Map 4 & Map 7 further reinforces the intention for the subject link road to Koala Beach as proposed within this DA.

The required environmental protection measures are considered satisfied to ensure compliance with the aims and requirements of this section of the DCP.

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

NSW Coastal Policy

The subject land is affected by the NSW Coastal Policy. The proposed development is not considered to be in conflict with the strategic aims of this 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

Natural Environment

The subject site does have natural characteristics that need to be protected as much as possible.

This required the road to be redesigned to avoid more sensitive areas.

Further site constraints include the area being affected by koala habitat. While the proposal does not involve the removal of significant habitat areas, the design has attempted to minimise the impacts to the koala habitat.

The actual site of the road construction is generally a vacant cleared area, which is low lying. The area does however contain a number of scattered trees especially closer to the edge of Cudgera Creek.

The range of natural environment attributes over the site has been considered in the assessment of the proposed development and it is considered that conditions can be imposed to mitigate adverse impacts.

Flood Impacts

Flooding has been fully assessed and recommended conditions of consent will ensure better management of this issue in the locality.

Local Road Network

The proposed Link Road has been planned from a strategic perspective for some time with the future provision being accommodated via the Tweed Road Contribution Plan (TRCP).

Previous applications allowed the construction of the sporting fields and a local road extension from the koala beach residential area through to the new sports fields. These historical applications did not detail the extra link road through to Seabreeze as the road connection from the residential component of the Koala Beach estate to the sporting fields was not funded by the TRCP and accordingly was an expense incurred by the developer.

The completion of this road link will enable the local road network to function more effectively as originally intended.

Bushfire Prone Land

The Koala Beach estate is surrounded by bushfire prone land. The estate is presently accessed by only one formal access point and should a fire break out near this access point emergency evacuation would be compromised.

The proposed link road will provide a second formal access to the Koala Beach Estate that will assist in the fighting of bushfires and assist in the emergency evacuation of residents should the need ever arise.

This is consistent with the new principals contained within the Planning for Bushfire Protection Guidelines 2006 (previously 2001) that were not in place when Koala Beach was approved.

(c) **Suitability of the site for the development**

Based on the assessment of the proposal the site is considered to be suitable for the proposed development.

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

The proposed development was advertised between 4 July 2007 and 18 July 2007 and subsequently attracted sixteen submissions. Fourteen objections opposing the development and two in support of the development.

The submissions raised the following issues:

Table 1 – Summary of Submissions

<u>Issue</u>	<u>Statement</u>	<u>Assessment</u>
<u>Strategic Planning</u>	<i>The Pottsville Locality Plan is finally being undertaken. Why should Council undertake the construction of a bridge that may not be required until after this study is complete?</i>	Council's Planning reform Unit has advised that: "The Seabreeze Estate – Koala Beach Link Road has long been identified as an essential piece of infrastructure between these two key residential areas of Pottsville, as it will provide an alternative access route to the residents of Koala Beach and improve



<u>Issue</u>	<u>Statement</u>	<u>Assessment</u>
		<p>the overall connectivity of the Pottsville area.</p> <p>In recognition of the importance of the link road Council has been acquiring contributions (TRCP) towards its construction for some time.</p> <p>The project brief for the preparation of the Pottsville Locality did not require that the validity of the link road be investigated as it was always assumed the road was needed. Nevertheless the consultants undertaking the study have further acknowledged the need for the link road by identifying potential improvements the road will make towards the management of traffic within the area and adding justification to the implementation of better public transport services for local residents.”</p> <p>This objection is not considered grounds for refusal of the application.</p>
	<p><i>When we purchased our property we were not told or made aware that such a link road was proposed. This will create noise, pollution, congestion, impact the environment and affect property prices.</i></p>	<p>As detailed within the above report the proposed link road has been planned for numerous years and has been reflected within the DCP's that dictate development standards for both estates.</p> <p>Having regard to potential noise, pollution, and congestion the proposed link road is not considered to unreasonably impact on any one individual property.</p> <p>The road will have community benefits that outweigh any negative impact.</p> <p>Property prices are not a matter for consideration under S79C of the EP& A Act 1979.</p> <p>This objection is not considered grounds for refusal of the application.</p>

<u>Issue</u>	<u>Statement</u>	<u>Assessment</u>
<u>Nature of Road</u>	<i>...described the proposed Koala Beach –Seabreeze connecting road as a BYPASS ROAD. This is unacceptable due to the environmental significance of the Koala Beach Estate which is recognised internationally...”</i>	<p>The proposed road is a link road that will result in several benefits for residents at Seabreeze and Koala Beach. The proposed mitigation measures including a low speed limited road in addition to the design of the road will naturally will deter use of this road as a bypass road.</p> <p>The proposed development is considered suitable on ecological grounds and its functionality generally.</p> <p>This objection is not considered grounds for refusal of the application.</p>
<u>Environmental Significance</u>	<i>...in addition to the Koala population we have at least 23 highly threatened species...</i>	<p>The application has been reviewed by Council's Environmental Scientists and Council's Town Planner/Ecologist. Based on this assessment the proposed development is considered acceptable having regard to the applicable legislation (Section 5A of the EP&A Act 1979) and the recommended conditions of consent that incorporate mitigation measures.</p> <p>The proposed development is considered suitable on ecological grounds.</p> <p>This objection is not considered grounds for refusal of the application.</p>
	<p><i>The residents of Koala beach have restrictions on keeping domestic pets. By opening the site to through traffic from adjoining estates, additional uncontrolled movement of domestic animals in vehicles and on foot is probable through the estate.</i></p> <p><i>There will be a potential influx of neighbouring stray domestic animals disturbing the protected wildlife that meander freely in the estate</i></p> <p><i>The two estates are not compatible</i></p>	<p>Council's Specialist Planner (ecologist) has stated that</p> <p>“Although dogs and cats are permitted within the Seabreeze estate, restrictions on title mean that animals must be confined to a yard so wandering animals should not move freely along the route. Clear signage at the southern entrance of the Koala Beach estate similar to the eastern entrance advising that no cats and dogs are allowed has been conditioned”</p> <p>Subject to the recommended mitigation measures the proposed development is suitable for approval.</p> <p>This objection is not considered grounds for refusal of the application.</p>

<u>Issue</u>	<u>Statement</u>	<u>Assessment</u>
	<p><i>...attached is a Koala Beach Fact Sheet that is either being forgotten or ignored...</i></p>	<p>For additional information the Koala Beach Fact Sheet as referenced in the submissions is annexed to this report.</p> <p>As detailed above the proposed development is considered suitable on ecological grounds.</p> <p>This objection is not considered grounds for refusal of the application.</p>
<u>Traffic</u>	<p><i>There will be an increase in traffic through the estate resulting in a decrease of child safety.</i></p> <p><i>We have enough hoon's driving into the estate to avoid police already. We do not need to turn this into a racing track.</i></p> <p><i>There is not much room if vehicles are parked in the streets creating a dangerous situation</i></p>	<p>Council's Development Engineer has stated that:</p> <p><i>"The link road shall not create additional traffic movements over the road network as a whole. The link road shall however reduce the need for vehicles travelling from one estate to the other to rely on the coast road"</i></p> <p>The proposed mitigation includes low speed limits to reflect the residential neighbourhood.</p> <p>Furthermore, on street parking will be a natural slowing mechanism for people utilising this road link and thus will protect the existing neighbourhood amenity.</p> <p>These objections are not considered grounds for refusal of the application.</p>
	<p><i>Increasing traffic carrying barking dogs will disturb peace and tranquillity</i></p>	<p>There is no information available to suggest that additional traffic will be carrying barking dogs.</p> <p>Having regard to potential noise and additional traffic the proposed link road is not considered to unreasonably impact on any one individual property.</p> <p>The road will have community benefits that outweigh any negative impact.</p> <p>This objection is not considered grounds for refusal of the application.</p>
<u>Alternative</u>	<p><i>We propose as an alternative, a walk link pathway with a very clearly signed entrance to foster neighbouring community connections.</i></p>	<p>A proposal for a walk link pathway only would not achieve the benefits that the proposed link road achieves.</p> <p>The proposed road will have community benefits that outweigh any negative impact.</p>



<u>Issue</u>	<u>Statement</u>	<u>Assessment</u>
<u>Necessity</u>	<i>A link road is simply not necessary and potentially dangerous.</i>	<p>As detailed within the above report the proposed link road has been planned for numerous years and has been reflected within the DCP's that dictate development standards for both estates.</p> <p>The road will have community benefits that outweigh any negative impact.</p> <p>This objection is not considered grounds for refusal of the application.</p>
	<i>Since you have already built the road illegally why have you bothered with a DA?</i>	<p>This application seeks approval for the final link across Cudgera Creek.</p> <p>Previous approvals have been granted (and construction completed) for the Koala Beach portion of the link road extending from Macadamia Drive through to the northern bank of Cudgera Creek with access to the Koala Beach sports fields. In the previous approval (DA04/0249) the alignment from Koala Beach was approved to the northern bank of Cudgera Creek. The crossing point over Cudgera creek shown within this plan has been amended as part of this current proposal to minimise creek bank disturbance and clearing of sensitive vegetation.</p> <p>This objection is not considered grounds for refusal of the application.</p>
	<i>Why spend \$600,000 on a bridge that will no play a critical role to improve access when the Cudgen Creek bridge has been deferred for 7-8 years.</i>	<p>Council's Planning reform Unit has advised that:</p> <p>"The Seabreeze Estate – Koala Beach Link Road has long been identified as an essential piece of infrastructure between these two key residential areas of Pottsville, as it will provide an alternative access route to the residents of Koala Beach and improve the overall connectivity of the Pottsville area.</p> <p>In recognition of the importance of the link road Council has been acquiring contributions (TRCP) towards its construction for some time."</p> <p>This objection is not considered grounds for refusal of the application.</p>



<u>Issue</u>	<u>Statement</u>	<u>Assessment</u>
<u>Contents of the DA</u>	<p><i>I object to the DA and dispute the claims within the DA in relation to:</i></p> <ul style="list-style-type: none"> <i>Justifying the road to service shops at Pottsville when no DA is lodged for shops;</i> <i>Justifying the road to better accommodate the bus loop when the bus route is a dead end at Blackrock's estate;</i> <i>Justifying the road by allowing additional access to coastal foreshore areas that are affected by threatened species;</i> <i>Justifying a road against flood measures when the applications states the road will be covered by water</i> 	<p>Whilst the statement of environmental affects assists the assessment of the application by providing information it is not the only source of information in the assessment process.</p> <p>Having regard to all the issues and the proposed mitigation measures the proposal is considered suitable for conditional approval.</p> <p>This objection is not considered grounds for refusal of the application.</p>
<u>Environmental Levy</u>	<p><i>Residents of Koala Beach pay a yearly levee towards the care of the environment and animals in the estate. We would not wish to keep paying this levee if Council demonstrates how little they care for the environmental aspects of the estate by support of the "link road".</i></p>	<p>The special environmental levy forms part of the rates for properties within the Koala Beach Estate.</p> <p>This is a separate matter to the current DA.</p> <p>This objection is not considered grounds for refusal of the application.</p>

Council has also had regard for the comments provided by the relevant state government agencies in relation to the potential impacts to the environment and it is considered that the link road and bridge are able to be supported with appropriate conditions.

Department of Planning

The proposed development is located within a SEPP 71 Coastal Area (Sensitive Coastal Location) and required approval from the Department. Approval was granted.

Department of Primary Industries

The Department of Primary Industries (Fisheries) has reviewed the application and have endorsed the proposed mitigation measures.

(e) Public interest

The proposed link road and bridge are considered to be in the community interest. They have formed part of the overall strategic plan for the area for many years. The proposal will allow the final link to form the connection between the two estates.

Environmental constraints of the site have been mitigated by way of the design and recommended conditions. The proposal is therefore considered not to undermine the general public interest in the locality.

OPTIONS:

1. Approve the application in accordance with the recommended conditions of consent.
2. Refuse the application and prepare reasons for refusal.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Appeal rights apply to both the applicant and any third party. However, third party appeals can only be considered for a breach of process not merit.

POLICY IMPLICATIONS:

The proposed development is consistent with the current planning regime adopted by the Tweed Shire Council.

CONCLUSION:

The Seabreeze Estate – Koala Beach Link Road has long been identified as an essential piece of infrastructure between these two key residential areas of Pottsville, as it will provide an alternative access route to the residents of Koala Beach and improve the overall connectivity of the Pottsville area.

Through the imposition of conditions of consent it is concluded that environmental impacts can be mitigated and accordingly the development may progress.

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. Koala Beach Fact Sheet & Attachments (as provided by the Koala Beach Wildlife and Habitat Management Committee) (DW 1773806)



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P5 [PR-PC] Review of Determination of Development Application DA06/0946 for a Mixed Development Comprising 2 x 2 Bedroom Units, 2 x 3 Bedroom Units and Commercial Premises at Lot 3 DP 520276, No. 20 Marine Parade, Kingscliff

ORIGIN:

Development Assessment

FILE NO: DA06/0946 Pt1

SUMMARY OF REPORT:

This report is the review of determination for DA06/0946 pursuant to Section 82A of the Environmental Planning and Assessment Act, 1979. The original application was refused by Council at the meeting held on the 31st July 2007.

The application is seeking approval for a mixed used development comprising four residential units (2 x 2 bedrooms units and 2 x 3 bedroom units) and a commercial premise of 190m² in area on the subject allotment on Marine Parade.

The subject site contains a site area of approximately 347.8m² and is zoned 3(b) general business pursuant to the Tweed Local Environmental Plan 2000. The site is currently occupied by a three (3) storey mixed use building with the ground floor being commercial floor space and two levels of residential. This building is proposed to be demolished as part of a separate application.

The site is the most southern 3(b) zoned lot within the Kingscliff CBD with 2(b) zoned land situated to the south and east of the site. Marine Parade fronts the site to the north east with an unformed laneway to the south east. The proposal seeks to formalise the laneway for vehicle access to the site with the removal of the existing stairway and construction of new pedestrian stairs linking Marine Parade with Hungerford Lane.

The main issues associated with the application are:-

- A small area (approximately 84m²) of the proposed building is technically a fourth storey;
- Minor encroachments/non-compliance to the building height and building setback envelope for acceptable solutions and
- Replacement of the existing stairway with new stairway

Each of these matters are addressed/justified within the body of this report.

RECOMMENDATION:

That: -

A. State Environmental Planning Policy No.1 - Development standards objection to Clause 16 – Building Height of the Tweed Local Environmental Plan 2000. The variation to the development standard be supported and concurrence of the Director-General of the Department of Planning be assumed for the following reasons:-

- The underlying object or purpose of the standard is to ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land.
- The proposed development is located within the 3(b) zones (general business) in which surrounding developments have approximately 100% site coverage with buildings extending from boundary to boundary with a varying height of between 12 and 13 metres.
- The proposed development is considered to be consistent in terms of the desired height and scale and with surrounding development as the proposed development has an approximate site coverage of 100% and a maximum height of 12.6metres.
- The areas of the fourth storey component (being solid roof areas) are located within the centre of the development therefore limiting what impacts maybe generate in terms of overshadowing or view loss.
- The elevation most visible is the south eastern elevation (2.6m out of the 26meters being fourth storey). This non-compliance is considered to be further reduced due to the location of the 3metre wide unformed road reserve providing a formal separation from any potential future developments. This road reserve is to be utilised as both the access to the subject site and a pedestrian access between Marine Parade and Hungerford Lane.
- The proposed development is approximately 26m long and incorporates a 4 storey component of 6.9m solid roof line as viewed from north-western elevation and 2.8m as viewed from the south-east (see plan/drawing No. 2.04, 2.02 and 1.06 all three (3) plans are dated 04.12.07).

However, it is pertinent to note that 1.1metres of the roof line is not enclosed by walls.

- The technical fourth storey component is directly related to the slope of the site and is considered not to adversely impact on the surrounding natural or built environments.

- B. State Environmental Planning Policy No.1 - Development standards objection to Clause 32B of the North Coast Regional Environmental Plan 1988. The variation to the development standard be supported and concurrence of the Director-General of the Department of Planning be assumed for the following reasons:-**
- The building height has been reduced by 0.4metre after the Council meeting dated 31st July 2007, therefore reducing the level of overshadowing on the adjacent open space zoned land.
 - The approximate area of overshadowing by the proposal during summer only is 240m².
 - The area affected currently contains two very large fig trees, which create significant shadowing of the area.
 - No overshadowing will occur before 3pm midwinter.
 - The shadow caused will not adversely impact on the enjoyment or use of the beach or recreation areas. The shadow at any stage does not reach the beach.
 - The development is cut into Kingscliff Hill which is located behind the development, as such the adjoining open space land currently experiences overshadowing from the Hill without any input from the built development.
- C. That Development Application DA06/0946 for a mixed development comprising two (2) x two (2) bedroom units, two (2) x three (3) bedroom units and commercial premises at Lot 3 DP 520276, No. 20 Marine Parade Kingscliff be approved subject to the following conditions: -**

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and the Plans listed in the table below except where varied by the conditions of this consent.



Plan Numbers	Drawn By	Dated
DA 0.00 E	Lightwave	04.12.07
DA 0.01 E	Lightwave	04.12.07
DA 0.02 E	Lightwave	04.12.07
DA 1.01 E	Lightwave	04.12.07
DA 1.02 E	Lightwave	04.12.07
DA 1.03 E	Lightwave	04.12.07
DA 1.04 E	Lightwave	04.12.07
DA 1.05 E	Lightwave	04.12.07
DA 1.06 E	Lightwave	04.12.07
DA 2.01 E	Lightwave	04.12.07
DA 2.02 E	Lightwave	04.12.07
DA 2.03 E	Lightwave	04.12.07
DA 2.04 E	Lightwave	04.12.07
DA 3.01 E	Lightwave	04.12.07
DA 3.02 E	Lightwave	04.12.07
CPO209 sheet 1 of 3	SB	SEPT 2006
CPO209 sheet 2 of 3	SB	SEPT 2006
CPO209 sheet 3 of 3	SB	SEPT 2006
Photo Plates (2)	Planit Consulting	DEC 2007

[GEN0005]

2. **The use of crushing plant machinery, mechanical screening or mechanical blending of materials is subject to separate development application.**

[GEN0045]

3. **Submission of a further Development Application(s) for the first use of the shops, offices and industrial shed use, such to be approved by Council prior to their use or occupation.**

[GEN0055]

4. **Advertising structures/signs to be the subject of a separate development application (where statutorily required).**

[GEN0065]

5. **All signage is to be fitted with necessary devices capable of permitting the change in intensity of illumination of the sign in order to regulate glare or other like impacts.**

[GEN0075]



6. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.

[GEN0115]

7. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within or adjacent to the subject property.

[GEN0135]

8. The subject building is to be no greater in height than RL17.00metres AHD.

[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

9. The developer shall provide 8 car parking spaces including parking for the disabled in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code AS2890 and Austroads Part 11 for the residential component.

A contribution shall be made in lieu of providing the 4 car parking spaces necessary for the commercial tenancy in accordance with Council's Section 94 plan No. 23.

Full design detail of the proposed parking and maneuvering areas including integrated landscaping shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.

[PCC0065]

10. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form, be accompanied by the required attachments and prescribed fee.

Receipt of approval is to be obtained prior to the issue of a construction certificate for works within the development site.

[PCC0075]

11. Section 94 Contributions

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

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

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

These charges will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 94 Plan current at the time of the payment.

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

(a) Tweed Road Contribution Plan:

19.26 Trips @ \$782 \$15,061

S94 Plan No. 4

Sector6_4

(b) Open Space (Structured):

1.6152 ET @ \$780 \$1,260

S94 Plan No. 5

(c) Open Space (Casual):

1.6108 ET @ \$167 \$269

S94 Plan No. 5

(d) West Kingscliff – Open Space:

1.6152 ET @ \$2600 \$4,200

DCP Section B4

S94 Plan No. 7

(e) Shirewide Library Facilities:

1.6164 ET @ \$688 \$1,112

S94 Plan No. 11

(f) Eviron Cemetery:

1.748 ET @ \$131 \$229

S94 Plan No. 13

(g) Community Facilities (Tweed Coast - North)

3 ET @ \$492 \$1,476

S94 Plan No. 15

(h) Emergency Facilities (Surf Lifesaving):

1.62 ET @ \$200 \$324

S94 Plan No. 16

(i) Extensions to Council Administration Offices



& Technical Support Facilities

1.6152 ET @ \$1996.8	\$3,225.23
S94 Plan No. 18	
(j) Cycleways:	
1.6136 ET @ \$352	\$568
S94 Plan No. 22	
(k) Shirewide Car Parking	
4 space/s @ \$20000	\$80,000
S94 Plan No. 23	
(l) Regional Open Space (Structured):	
1.6144 ET @ \$2327	\$3,757
S94 Plan No. 26	
(m) Regional Open Space (Casual)	
1.6152 ET @ \$855	\$1,381
S94 Plan No. 26	

[PCC0215/PSC0175]

12. 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 DSP5: 2.054 ET @ \$9997 \$20,534

Sewer Kingscliff: 2.881 ET @ \$4804 \$13,840

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

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

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

[PCC0265/PSC0165]

13. In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 1979 (as amended), a construction certificate for **SUBDIVISION WORKS OR BUILDING WORKS** shall NOT be issued until any long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

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

- (a) Reconstruction of the concrete footpath (full width) along the Marine Parade frontage
- (b) Construction of the driveway cross over from Marine Parade

Relocation and construction of the stairs within the unnamed lane linking Marine Parade to Hungerford Lane. Provisions must be made to preserve the integrity of the existing stormwater line and sewer pipe that traverses the lane way.

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

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

[PCC0895]

15. A construction certificate application for works that involve any of the following:-
- connection of a private stormwater drain to a public stormwater drain

- installation of stormwater quality control devices
- erosion and sediment control works

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

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

[PCC1145]

16. Prior to the issue of a Construction Certificate, Council shall be provided with a construction management plan to the satisfaction of the Director of Planning and Regulation. All works shall comply with the approved plan.

[PCCNS01]

17. Prior to the issue of a Construction Certificate detailed engineering design plans for the lane construction including the retaining walls and stairway shown on the Application Plans are to be submitted and approved by Council.

The following should be noted:-

- The plans are to be prepared and certified by a qualified structural/civil engineer.
- The detailed engineering plans and design calculations are to be submitted to Council for approval by the Director of Engineering Operations before construction commences.
- If “ground anchors” are required to support the wall adjacent to the northern boundary of Lot 1 DP 781722 (18 Marine Parade) then the written consent of the owner agreeing to the registration of an easement for support being registered on the title of the property affected and details supplied to Council with the above design.
- A security bond of \$15,000.00 is to be paid to Council to cover any repair work required for the first 12 months after construction. At the end of the 12 months the bond will be returned less any expenses for the repair work

[PCCNS02]

18. Details of a system that alerts residents and visitors when the lift is in use and the car park is full is to be submitted prior to the issue of a Construction Certificate to Council for approval by the General Manager or delegate.

[PCCNS03]

19. The roof of the building within the proposed development is to be constructed of non-reflective materials, and shall not be light in colour.

[PCCNS04]

20. Private infrastructure such as the bio-infiltration planter beds and CRS Humers Humeceptor and the like, are to be located within the subject lot.

[PCCNS04]

21. A schedule of building materials are to be approved by Council prior to the issue of a Construction Certificate. The building materials are to have a low reflectivity rating, to ensure minimal adverse impact on adjoining properties.

[PCCNS05]

PRIOR TO COMMENCEMENT OF WORK

22. The erection of a building in accordance with a development consent must not be commenced until:

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

- (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

23. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.

[PCW0225]

24. Residential building work:

- (a) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:

- * in the name and licence number of the principal contractor, and
- * the name of the insurer by which the work is insured under Part 6 of that Act,

- (ii) in the case of work to be done by an owner-builder:

- * the name of the owner-builder, and
- * if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.

- (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

25. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every fifteen (15) persons or part of fifteen (15) persons employed at the site. Each toilet provided must be:-

- (a) a standard flushing toilet connected to a public sewer, or
- (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

26. Where prescribed by the provisions of the Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

[PCW0255]

27. It is a condition of this approval that, if an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made must comply with the following:
- (a) The person must, at the person's own expense:
 - (i) preserve and protect the building from damage; and
 - (ii) if necessary, underpin and support the building in an approved manner.
 - (b) The person must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars to the owner of the proposed work.

[PCW0765]

28. The building is to be protected from attack by termites by approved methods in accordance with the provisions of Australian Standard AS 3660.1, and:
- (a) Details of the proposed method to be used are to be submitted to and approved by the Principal Certifying Authority prior to start of works; and
 - (b) Certification of the works performed by the person carrying out the works is to be submitted to the PCA; and
 - (c) A durable notice must be permanently fixed to the building in a prominent location, such as in the electrical meter box indicating:-
 - (i) the method of protection; and
 - (ii) the date of installation of the system; and



(iii) where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and

(iv) the need to maintain and inspect the system on a regular basis.

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

[PCW0775]

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

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

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

[PCW0985]

30. The proponent shall notify Councils Engineering & Operations Division of intention to commence drawing water in accordance with the requirements of the approval to draw water.

[PCW1045]

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

[PCW1065]

32. Any business or premises proposing to discharge a pollutant discharge greater than or differing from domestic usage is to submit to Council an application for a Trade Waste Licence. This application is to be approved by the General Manager or his delegate prior to any discharge to sewer being commenced. A trade waste application fee will be applicable in accordance with Councils adopted Fees and Charges.

[PCW1075]

33. Prior to the commencement of building works and after the existing structure has been demolished a comprehensive Geotechnical Report shall be lodged with Council. This report must clearly identify that the proposed earthworks and associated retaining structures will not have any adverse impact of the adjoining residences or existing public infrastructure.

[PCWNS01]

34. All earthworks and excavation works associated with the proposed development shall be undertaken in accordance with the Geotechnical Report prepared by Soil Surveys Engineering Pty Ltd and dated August 2006.

[PCWNS02]

35. Sewer main, stormwater line or other underground infrastructure within or adjacent to the site is to be accurately located and the Principal Certifying Authority advised of its location and depth prior to start of any building works. The integrity of the 450mm diameter storm water pipe and sewer that traverses the unnamed laneway shall be maintained. If necessary the existing 450 diameter storm water pipe shall be relocated to prevent conflict with the construction of the stairs.

[PCWNS03]

36. An S68 application to connect to Council's sewer or carry out plumbing and drainage works, together with any prescribed fees including inspection fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.

[PCWNS03]

DURING CONSTRUCTION

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

[DUR0005]

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

Monday to Saturday from 7.00am to 7.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

39. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:

A. Short Term Period - 4 weeks.

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

B. Long term period - the duration.

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0215]

- 40. All pumps used for onsite dewatering operations are to be installed on the site in a location that will minimise any noise disturbance to neighbouring or adjacent premises and be acoustically shielded to the satisfaction of Council's General Manager or his delegate so as to prevent the emission of offensive noise as a result of their operation.**

[DUR0225]

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

[DUR0375]

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

[DUR0395]

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

[DUR0405]

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

[DUR0415]

45. Excavation

- (a) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with WorkCover 2000 Regulations.
- (b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

[DUR0425]

46. If the work involved in the erection or demolition of a building:

- (a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or
- (b) building involves the enclosure of a public place,

a hoarding or fence must be erected between the work site and the public place in accordance with the WorkCover Authority of NSW Code of Practice and relevant Australian Standards.

Where necessary the provision for lighting in accordance with AS 1158 - Road lighting and provision for vehicular and pedestrian traffic in accordance with AS 1742 shall be provided.

Any such hoarding, fence or awning is to be removed prior to the issue of an occupation certificate/subdivision certificate.

Application shall be made to Tweed Shire Council including associated fees for approval prior to any structure being erected within Councils road reserve.

[DUR0435]

47. Minimum notice of 48 hours shall be given to Tweed Shire Council for the capping of any disused sewer junctions. Tweed Shire Council staff in accordance with the application lodged and upon excavation of the service by the developer shall undertake Works.

[DUR0675]

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

The earthworks shall be monitored by a Registered Geotechnical Testing Consultant to a level 1 standard in accordance with AS 3798. A certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798 shall be submitted to the Principal Certifying Authority upon completion.

[DUR0795]

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

[DUR0815]

50. All retaining walls proposed are to be constructed in accordance with the construction Certificate approval issued by the Principal Certifying Authority.

[DUR0845]

51. The development is to be carried out in accordance with the current BASIX certificate and schedule of commitments approved in relation to this development consent.

[DUR0905]

52. All new residential dwellings (and extensions comprising over 50% of the original floor area) are to fully comply with Tweed Shire Council Development Control Plan, Part A9 - Energy Smart Housing Policy. In order to comply with the Policy consideration must be given to the building envelope, orientation, insulation, ventilation, thermal mass and zoning.

[DUR0915]

53. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate.

[DUR0985]

54. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate.

[DUR0995]

55. All work associated with this approval is to be carried out so as not to impact on neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -

- Noise, water or air pollution
- Minimise impact from dust during filling operations and also from construction vehicles
- No material is removed from the site by wind

[DUR1005]

56. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.

[DUR1025]

57. Access to the building for people with disabilities shall be provided and constructed in accordance with the requirements of Section D of the Building Code of Australia. Particular attention is to be given to the deemed-to-satisfy provisions of Part D-3 and their requirement to comply with AS1428.

[DUR1685]

58. Please note that while the proposal, subject to the conditions of approval, may comply with the provisions of the Building Code of Australia for persons with disabilities your attention is drawn to the Disability Discrimination Act which may contain requirements in excess of those under the Building Code of Australia. It is therefore recommended that these provisions be investigated prior to start of works to determine the necessity for them to be incorporated within the design.

[DUR1715]

59. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

[DUR1795]

60. The proponent must not undertake any work within the public road reserve without giving Council's Engineering & Operations Division forty eight (48) hours notice of proposed commencement. Failure to comply with this condition may result in a stop work notice being issued and/or rejection of the works undertaken.

[DUR1845]

61. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils adopted Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[DUR1875]

62. The proponent shall comply with all requirements tabled within any approval issued under Section 138 of the Roads Act.

[DUR1885]

63. Where the kerb is to be removed for driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.

[DUR1905]

64. No portion of the structure may be erected over any existing sillage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains.

[DUR1945]

65. All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction. Certification from a suitably qualified engineer experienced in structures is to be provided to the PCA prior to the issue of an Occupation Certificate.

[DUR1955]

66. A certificate from a suitably qualified practicing structural engineer shall be submitted to Council and the Principle Certifying Authority within seven (7) days of the site being excavated certifying the adequacy of the sheet piling or other retaining method used to support adjoining properties.

[DUR1965]

67. The contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.

[DUR2015]

68. The works are to be completed in accordance with Tweed Shire Councils Development Control Plan, Part A5 - Subdivision Manual and Design & Construction Specifications, including variations to the approved drawings as may be required due to insufficient detail shown on the drawings or to ensure that Council policy and/or good engineering practices are achieved.

[DUR2025]

69. **Swimming Pools (Building)**

- (a) The swimming pool is to be installed and access thereto restricted in accordance with Council's "Code for the Installation of New Swimming Pools" and Australian Standard AS 1926-1986 (Copy of code enclosed).
- (b) Swimming pools shall have suitable means for the drainage and disposal of overflow water.
- (c) The pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.

[DUR2075]

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

[DUR2085]

71. The spa pool is to be installed and access thereto restricted in accordance with Council's "Code for the Installation of New Swimming Pools" and Australian Standard AS1926-1986 (Copy of code enclosed).

[DUR2115]

72. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction.

[DUR2185]

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

[DUR2195]

74. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials. A screened, graded and drained garbage storage area shall be provided within the boundary.

[DUR2205]

75. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR2375]

76. Appropriate measures are to be put in place during the construction and/or demolition period to prevent the transport of sediment from the site. Should any material be transported onto the road or any spills occur it is to be cleaned up prior to cessation of same days work and/or commencement of any rain event.

[DUR2405]

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

[DUR2425]

78. All waters that are to be discharged from the site shall have a pH between 6.5 and 8.5 and suspended solids not greater than 50mg/kg. The contractor shall nominate a person responsible for monitoring of the quality of such discharge waters on a daily basis and the results recorded. Such results shall be made available to Council's Environmental Health Officer(s) upon request.

[DUR2435]

79. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:

- (a) internal drainage, prior to slab preparation;
- (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
- (c) external drainage prior to backfilling.
- (d) completion of work and prior to occupation of the building.

[DUR2485]

80. Plumbing

- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.

[DUR2495]

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

[DUR2505]

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

[DUR2525]

83. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard.

[DUR2535]

84. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.

[DUR2545]

85. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-

- * 43.5⁰C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
- * 50⁰C in all other classes of buildings.

A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.

[DUR2555]

86. All water drawn from Councils reticulated system shall be via a Tweed Shire Council metered standpipe. The location of the hydrant shall be nominated by Tweed Shire Council and all water shall be only used for the purposes nominated by the applicant for the duration of the construction activities.

[DUR2575]

87. Where two (2) or more premises are connected by means of a single water service pipe, individual water meters shall be installed to each premise beyond the single Council water meter (*unless all the premises are occupied by a single household or firm*).

[DUR2615]

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

[DUR2625]

89. The structure is to be sited at least one metre horizontally clear of sewer main on site. All footings and slabs within the area of influence of the sewer main are to be designed by a practising Structural Engineer. The engineer is to submit a certification to the Principal Certifying Authority that the design of such footings and slabs will ensure that all building loads will be transferred to the foundation material and will not effect or be affected by the sewer main.

[DUR2645]

90. No retaining walls or similar structures are to be constructed over or within the zone of influence of Council's sewer main.

[DUR2705]

91. The provision of adequate vehicular access in accordance with Council's "Vehicular Access to Property Construction Specification" pamphlet, including the provision of an invert crossing at the kerb and gutter where required and paving of the driveway across the footpath to the front alignment to the satisfaction of the General Manager or his delegate.

Such to specifically include the following:

- (a) 150 millimetres thick reinforced with F72 Mesh for residential development or F82 mesh for Commercial/Industrial Development

Twenty four (24) hours notice is to be given to Council's Engineering & Operations Division before placement of concrete to enable formwork to be inspected. Failure to do so may result in rejection of the works and its reconstruction.

Paving bricks are not acceptable unless laid on a 100mm thick concrete base.

[DURNS01]

92. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments" and the Geotechnical Report prepared by Soil Surveys Engineering. Pty Ltd and dated August 2006.

[DURNS02]

93. All fill and cut batters shall be obtained wholly within the subject land.

[DURNS02]

94. The written consent of the registered proprietors of adjoining land, where the said works encroach thereon is to be submitted to Council prior to works commencing.

[DURNS02]

95. Vehicles leaving the premises shall be sufficiently free from dirt, aggregate or other materials such that materials are not transported onto public roads.

[DURNS02]

96. Acid sulphate soils shall not be exposed or disturbed.

[DURNS03]

97. Swimming pools and spa pools shall be maintained in a clean and healthy state at all times.

[DURNS03]

98. Vehicles leaving the premises shall be sufficiently free from dirt, aggregate or other materials such that materials are not transported onto public roads.

[DURNS03]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

99. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0205]

100. The building is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the building to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.

[POC0225]

101. Work as executed plans are to be provided to Council in accordance with Councils Development Design Specification, D13 and a CCTV inspection of the stormwater pipes and sewerage system to be dedicated to Council as public infrastructure including joints and junctions demonstrate that the standard of the system is acceptable to Council.

Note: Where works are carried out by Council on behalf of the developer it is the responsibility of the DEVELOPER to prepare and submit works-as-executed plans.

[POC0765]

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

[POC1045]

103. Removal of disused laybacks.

[POCNS01]

104. A name for the subject unformed laneway to be submitted and approved by Council and lane name signs on posts to be installed at both ends of the lane.

[POCNS01]

105. Repairs any damage to road and verge.

[POCNS01]

106. Three (3) bicycle spaces are to be provided within the site.

[POCNS01]

USE

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

[USE0125]

108. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.

[USE0175]

109. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.

[USE0225]

110. No items or goods are to be stored or displayed outside the confines of the premises.

[USE0445]

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

[USE0875]

112. The rainwater storage tank shall be periodically inspected for sediment build up, and shall be cleaned accordingly. Use of water stored in the rain water storage tank shall be restricted to landscape irrigation and car washing only. Storage and use of this water shall not be permitted to unreasonably impact the amenity of any premise. The water shall not be used for portable purposes.

[USENS01]

113. All activities associated with the occupancy of the building are to comply with the Protection of the Environment Operations Act, 1997.

[USENS02]

REPORT:

Applicant: Planit Consulting Pty Ltd
Owner: Moduplex Corporation Pty Ltd
Location: Lot 3 DP 520276, No. 20 Marine Parade Kingscliff
Zoning: 3(b) General Business
Cost: \$2,129,000

BACKGROUND:

This report is the review of determination for DA06/0946 pursuant to Section 82A of the Environmental Planning and Assessment Act, 1979.

The original proposal was reported to the Council meeting dated 31st July 2007, where it was resolved to refuse the application for the following reasons:-

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

The applicant provided the following comments in relation to the reasons for refusal:

1. A revised SEPP 1 variation has been prepared in the context of the amended plans.
2. This is acknowledged and in line with Council's own adopted Section 94 plans, payment is proposed in lieu of provision of on site carparking.
3. The amended plans depict a reduced bulk and scale which has been the subject of discussions and in principle support by Council and its administrators.
4. A revised SEPP 1 objection has been prepared in regard to the shadow onto public foreshore land.

5. The proposal now complies with the absolute height requirements of the DCP as demonstrated in the attached plans.

(This not correct as the building exceeds the acceptable solutions of 12m by 0.6 of a metre for a length of 1m as viewed from the south-east elevation and 6.7metres as viewed from the north-west elevation. However, it is pertinent to note that the assessment of the proposal against the performance criteria justified the variation).

The proposed development incorporates the following elements:-

Commercial Component

- 1 tenancy of 190m² located on the Ground floor

Residential Units

- 2 x 2 bedroom units with kitchen, living and bathrooms located on the 1st floor
- 2 x 3 bedroom units with bathrooms located on the 2nd floor
- Kitchen, dining and living areas relating to the 2nd floor (internal stair access between floors) are located on the 3rd floor.

Storeys

- Generally three (3) storeys plus basement car parking
- Fourth storey element through the centre of the building (mainly due to the topography of the land)

Car parking

- Eight (8) spaces are provided on site these are proposed to be utilised by the residential component of the development (see Section (a) (iii) of this report for car parking assessment).

The site is currently occupied by a 3 storey, single residential dwelling containing some commercial floor space on the ground floor. This building is proposed to be demolished as part of a separate application.

The site incorporates a site area of approximately 347.8m² with frontage to Marine Parade. An unformed laneway is located to the south east of the site. A set of stairs are located within this unformed laneway providing pedestrian access from Hungerford Lane through to Marine Parade. The existing stairs are proposed to be replaced with new stairs with the formation of the laneway to provide vehicle access to the development and pedestrian access to the new stairs.

The levels of the site drop significantly from the rear of the site (south) down to Marine Parade (RL14.72m AHD to RL4.25m AHD). Residential dwellings are located to the south and south west of the site with commercial buildings located to the north-west, with 6 (a) open space to the north of the site. It is pertinent to note that the dwelling to the south west is wholly located within the 3(b) zone with both the closest residential dwellings being elevated in relation to the subject site.



The application was lodged with Council on the 21st August 2006. A preliminary assessment of the proposal identified unsupportable variations to development standards such as building height and building envelope. Amended plans were submitted on the 1st May 2007, requiring the application to be re-advertised for a period of 14 days. However, a car parking shortfall for the residential component of the proposal required a second amendment identifying the required amount of car spaces. These plans were lodged on the 13th July 2007.

SITE DIAGRAM:

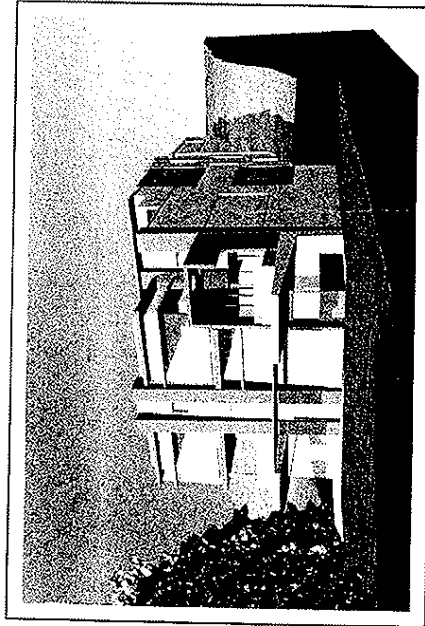
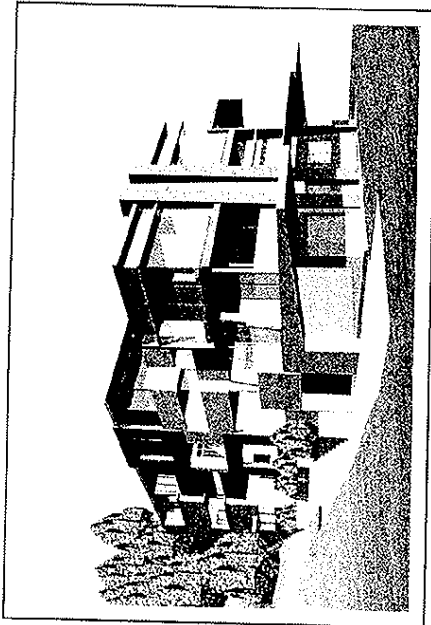


DEVELOPMENT PLANS:

P: 02 6674 2633 F: 07 3009 5930

Drawing List

- DA0.00 Cover Page
- DA0.01 Site Plan
- DA0.02 Site Section
- DA1.01 Basement Plan
- DA1.02 Ground Floor Plan
- DA1.03 Level 1 Floor Plan
- DA1.04 Level 2 Floor Plan
- DA1.05 Level 3 Floor Plan
- DA1.06 Roof Plan
- DA2.01 North-East Elevation
- DA2.02 South-East Elevation
- DA2.03 South-West Elevation
- DA2.04 North-West Elevation
- DA3.01 Section A
- DA3.02 Section B



1098 E 1100@A3 DA 0.00
 Job No. Issue Date Draw No.



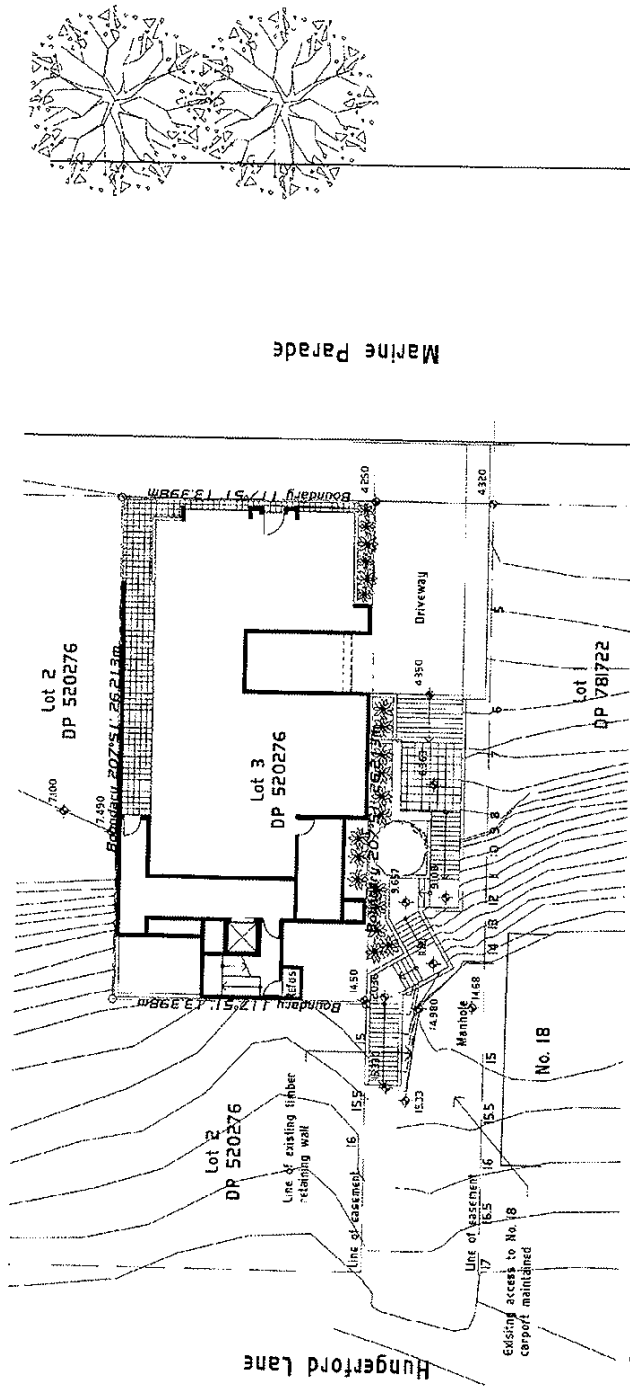
APPLICATION FOR DEVELOPMENT APPROVAL
 E Cover Page
 CLIENT Moduplex Pty Ltd

20 Marine Parade

LOT 3 ON RP520276

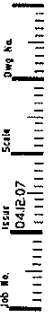


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Site Plan
SCALE 1 : 200

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Job No. Issued Date
041807 08/08/07

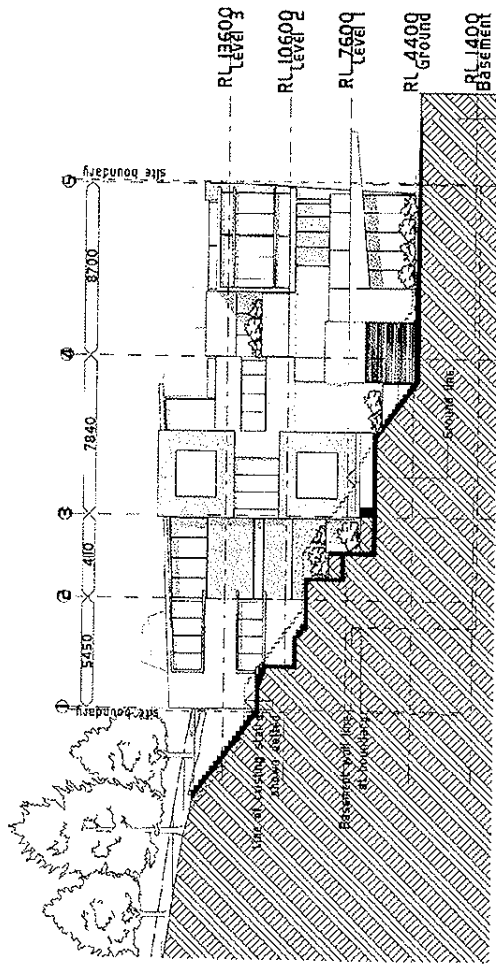


APPLICATION FOR DEVELOPMENT APPROVAL
by Site Plan
CLIENT Moduplex Pty Ltd

20 Marine Parade

LOT 3 ON RP520276

P. 03 6674 2833 F. 07 3003 5930



Site Section
SCALE 1 : 200

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Job No Issue Date PWS No

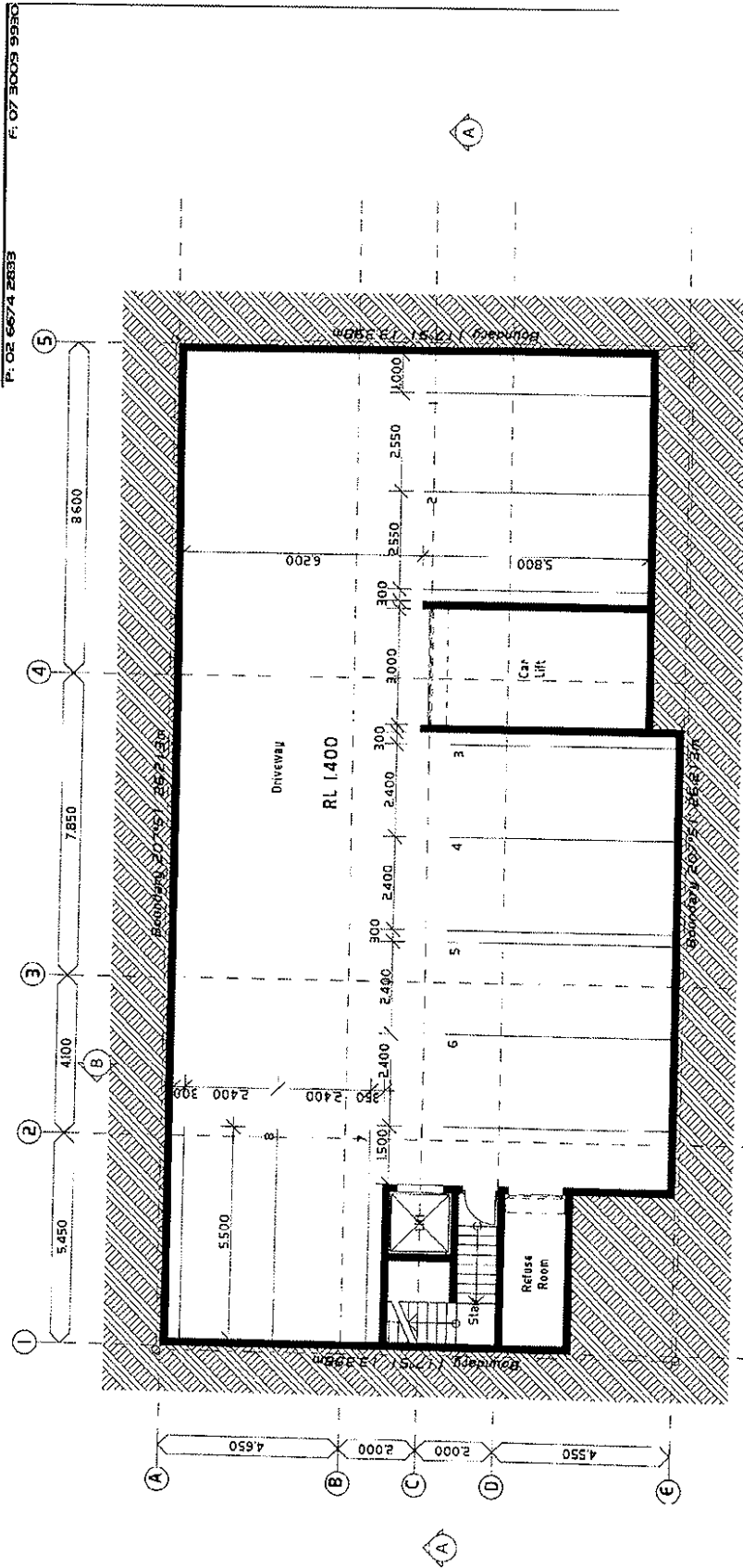


APPLICATION FOR DEVELOPMENT APPROVAL
Site Section

20 Marine Parade

LOT 3 ON RP520276

Modulplex Pty Ltd
CLIENT



Basement Plan
SCALE 1 : 100

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 JOB No. 10412.07
 ISSUE 04.12.07
 SCALE
 DWG No.

20 Marine Parade
 LOT 3 ON RP520276

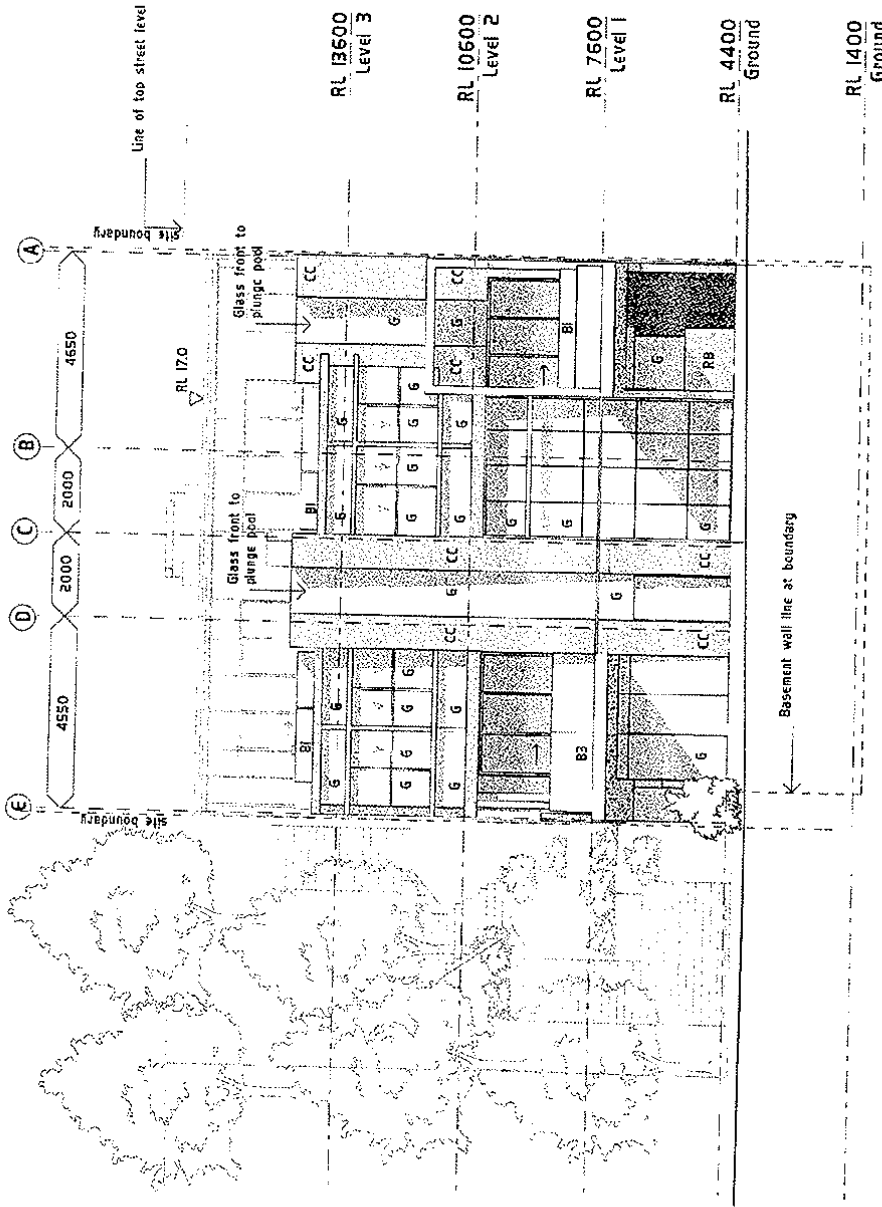
APPLICATION FOR DEVELOPMENT APPROVAL
 Basement Plan

CLIENT
 Moduplex Pty Ltd

P: 02 6674 2833 F: 07 3005 9330

MATERIALS LEGEND

- RR - Rendered blockwork - Painted finish
- G - Glass
- CC - Façade corner cladding
- LV - Louvre sun awnings
- BI - 500mm high rendered block upstand with 400mm high curtain glass balustrade
- B2 - 1000mm high rendered block balustrade
- B3 - 1000mm high curtain glass balustrade



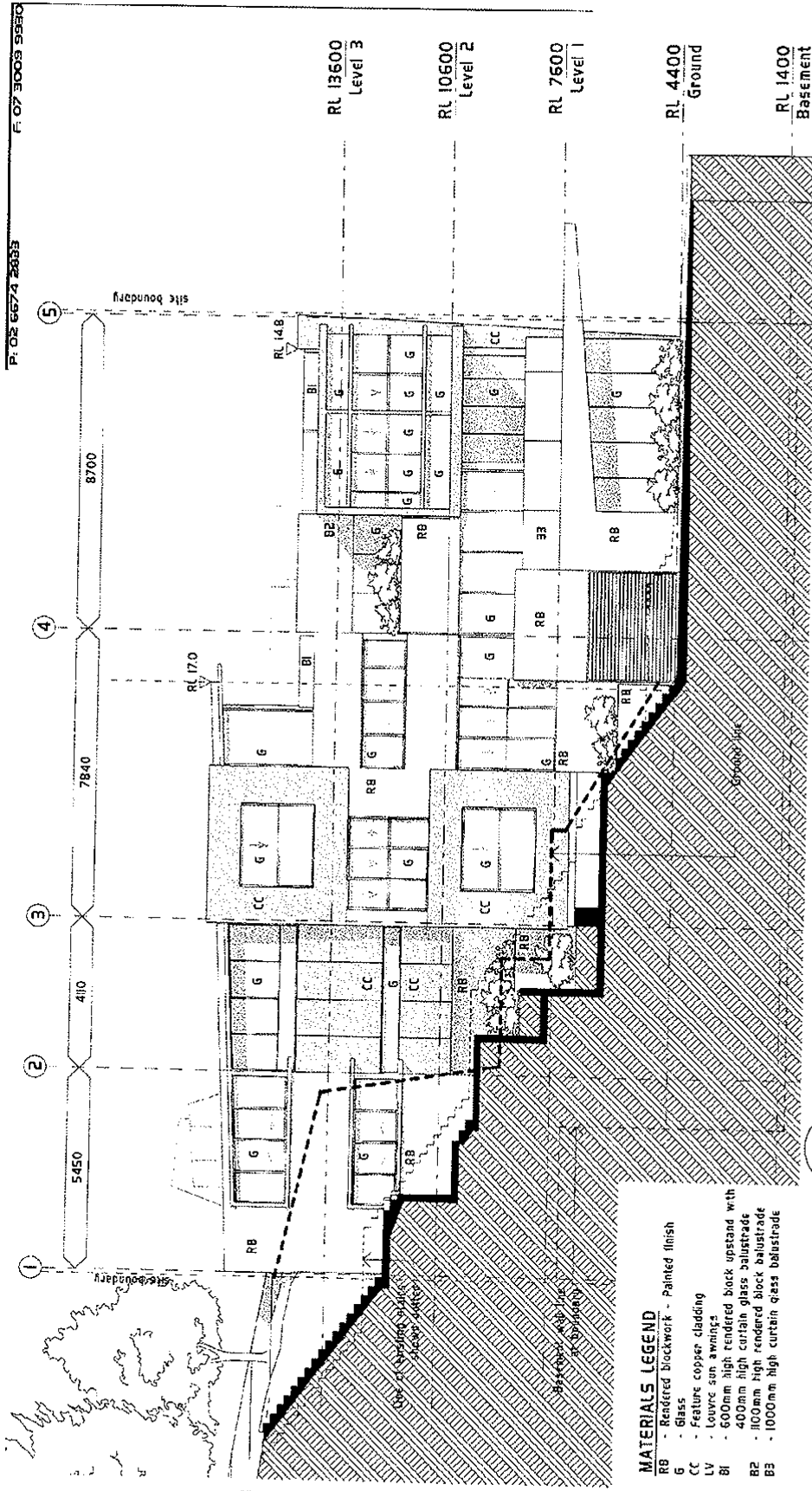
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SCALE 1 : 100

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Job No. 041207
Scale 1:100
Date 11/04/07



APPLICATION FOR DEVELOPMENT APPROVAL
North East Elevation
CLIENT
Modulplex Pty Ltd

20 Marine Parade
LOT 3 ON RP200276



- MATERIALS LEGEND**
- RB - Rendered blockwork - Painted finish
 - G - Glass
 - CC - Feature copper cladding
 - LV - Louvre sun awnings
 - BI - 600mm high rendered block upstand with 400mm high curtain glass balustrade
 - B2 - 1100mm high rendered block balustrade
 - B3 - 1000mm high curtain glass balustrade

South-East Elevation
SCALE 1 : 100

1098 F 1100@A3 DA 2.02
Job No. Issue 04.12.07
Date 10/04/08
Scale 1:100
Dwg No. 10000



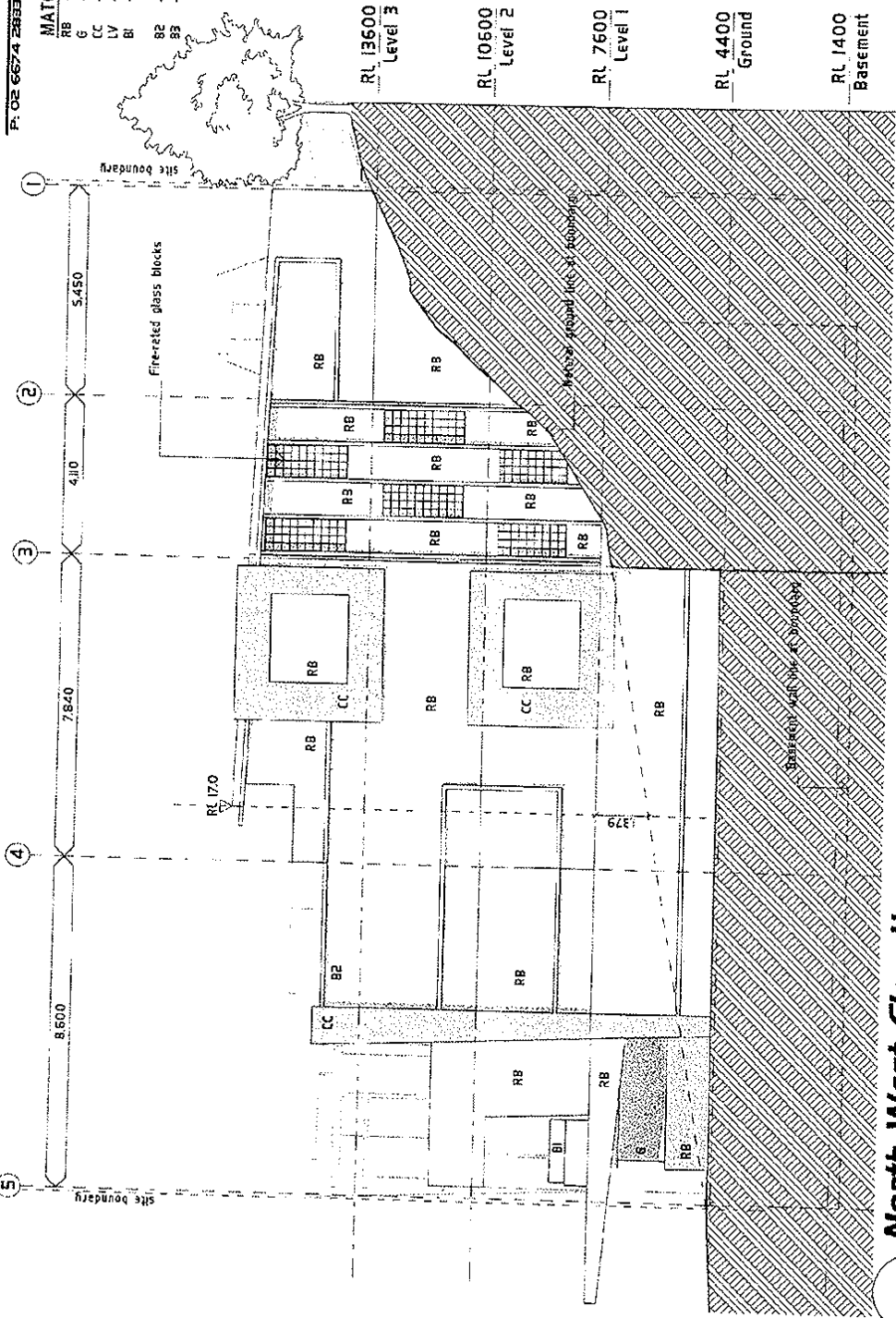
APPLICATION FOR DEVELOPMENT APPROVAL
20 South East Elevation
CLIENT: ModuPLEX Pty Ltd

20 Marine Parade
LOT 3 ON RPS20276

P. 02 6674 2883 6 07 3005 9930

MATERIALS LEGEND

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- G - Glass
- CC - Feature copper cladding
- LV - Louvre sun awnings
- BI - 600mm high rendered block upstand v
- B2 - 400mm high curtain glass balustrade
- B3 - 100mm high rendered block balustrade
- B3 - 1000mm high curtain glass balustrade



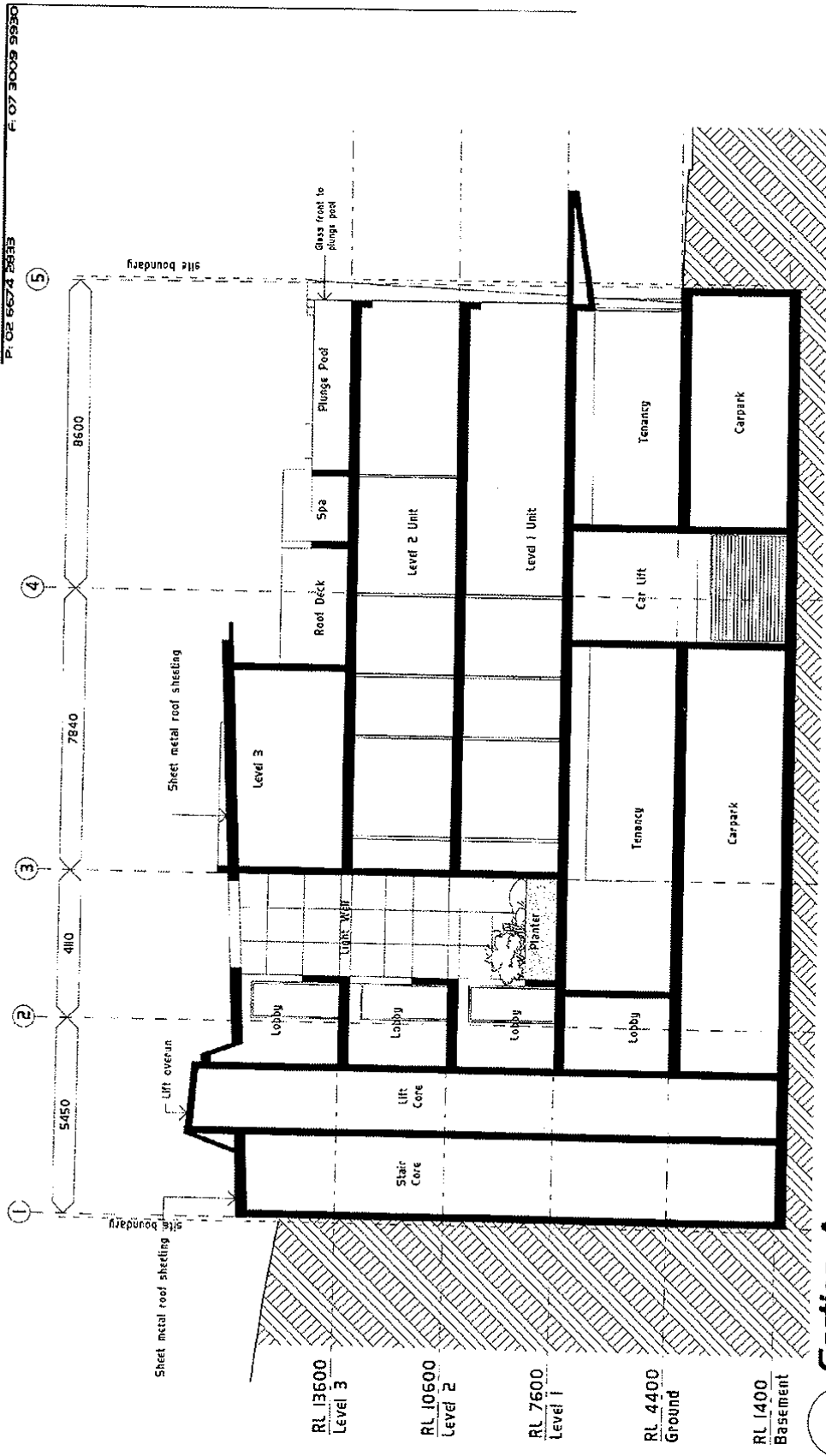
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JOB No. 1584 04/207
SHEET 1 of 1
DWG No. 1000000

APPLICATION FOR DEVELOPMENT APPROVAL
20 Marine Parade
North West Elevation
CLIENT: Moduplex Pty Ltd

20 Marine Parade

LOT 3 ON RP520276





P: 02 6674 2833 F: 07 3003 5930

① 5450 ② 4110 ③ 7840 ④ 8600 ⑤

Section A
SCALE 1:100

1098 E H100@A3 DA 3.01
Job No. Issue 04/207
Scale 1:100
Date 10/04/07



APPLICATION FOR DEVELOPMENT APPROVAL
Modulplex Pty Ltd
CLIENT

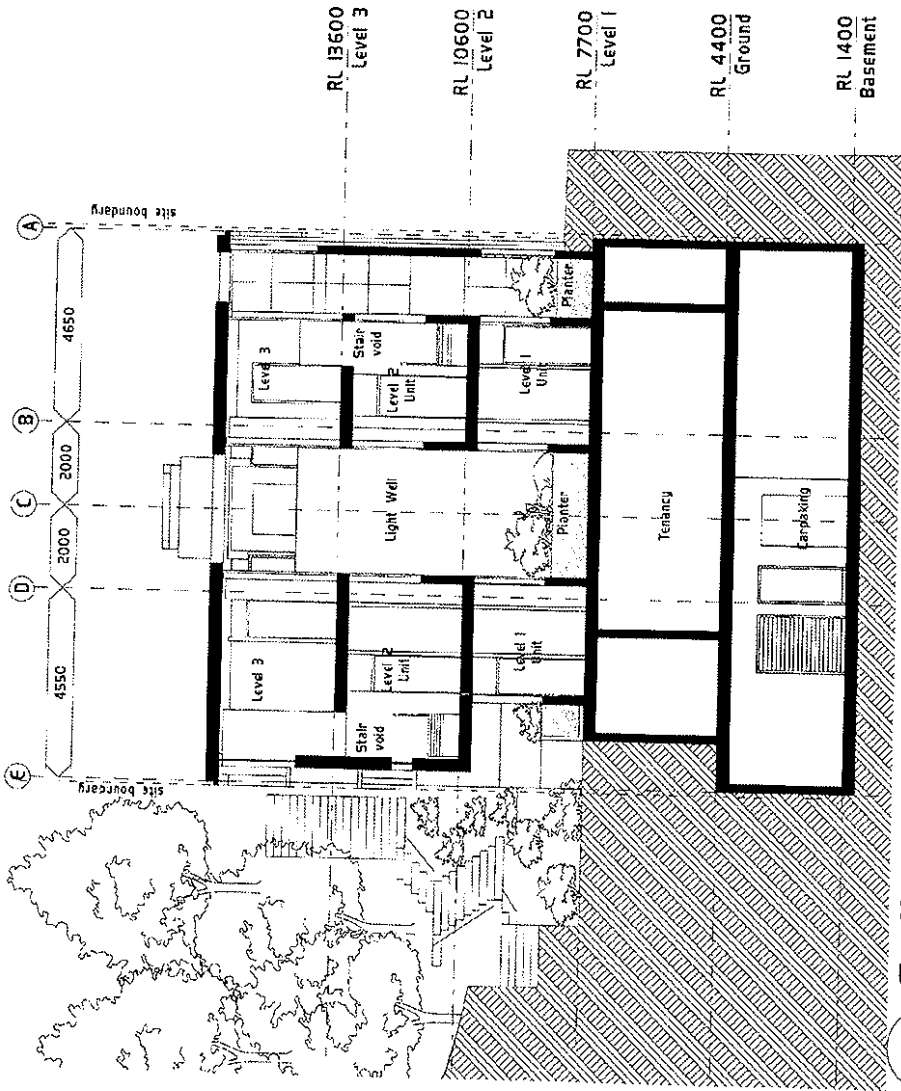
20 Marine Parade

Site Sections A

LOT 3 ON RP620276



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Section B
SCALE 1 : 100

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 Job No. 15555
 Issue No. 04/207
 Scale
 Draw No.



20 Marine Parade
 LOT 3 ON RP520276
 APPLICATION FOR DEVELOPMENT APPROVAL
 Sections B
 Moduplex Pty Ltd
 CLIENT

CONSIDERATIONS UNDER SECTION 79C & S82A OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**(a) (i) The provisions of any environmental planning instrument**Tweed Local Environmental Plan 2000**Clause 11 The zones**

The subject site is zoned 3(b) General Business in accordance with the provisions of the Tweed Local Environmental Plan 2000 (Tweed LEP 2000). The objectives of the zone are as follows:-

Primary objectives

- *to provide business centres in which the community's shopping, business, welfare and social needs can be met.*
- *to provide business locations within residential areas, and to ensure that the scale and type of development is compatible with the character and amenity of the surrounding residential areas.*

Secondary objectives

- *to provide for tourist orientated development.*
- *to encourage upper floor residential or tourist accommodation.*

The proposal is defined as commercial premise and multi dwelling housing, is considered to meet the objectives of the zone by encouraging upper floor residential accommodation with a ground floor commercial premise. The commercial premise component of the proposal is permissible with consent. Multi dwelling housing is prohibited unless it is development that is subject to Clause 51B. Clause 51B is discussed below.

Clause 51B Multi-dwelling housing in zones 3(a) and 3(b)***(1) Objective***

the objective of this clause is to allow multi-dwelling housing on land zoned 3(a) or 3(b), but only if it meets certain criteria to ensure the development of the land does not undermine its commercial use and the objectives of those zones.

(2) This clause applies to land within Zone 3(a) or 3(b).

(3) Despite the Table to clause 11, a person may, with the consent of the Council, carry out development on land to which this clause applies for the purpose of multi-dwelling housing, subject to sub-clauses (4) and (5).

- (4) *Multi-dwelling housing on land to which this clause applies must be attached to shops, commercial premises, or other non-residential development on the same site.*
- (5) *If multi-dwelling housing is located at ground level or within 2.4 metres of ground level, a dwelling or car park area must not front any commercial street listed in Schedule 8.*

The proposal is a mixed use development comprising multi-dwelling housing and a commercial tenancy area of approximately 190m². Therefore the multi dwelling housing component is attached to a commercial premise satisfying sub clause 4 above.

The development does not propose multi dwelling housing at or within 2.4m of ground level, in addition a dwelling or car park area is not proposed to front Marine Parade (being a commercial street listed within Schedule 8) satisfying sub clause 5 above.

The development is considered to meet the objectives of the zone.

Clause 4 Aims of the plan

The proposal is consistent with the desired character of the locality, with the area's environmental and residential amenities qualities retained.

The proposal is considered consistent with the clause.

Clause 8 Consent consideration

- (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.*

The proposal is considered consistent with the clause due to the following;

The proposal is consistent with the primary objective of the zone being a mixed use development within the 3(b) zone. The other aims and objectives of this plan have been considered and addressed. The proposal is considered not to create an unacceptable cumulative impact on the community, locality or catchment. The development is of a scale and type of development that is compatible with the character and amenity of the surrounding residential areas.

Clause 15 – Availability of essential services

The site is located within an established area. The site is adequately serviced by stormwater, electricity, sewer and water connections.

The proposal is considered consistent with the clause.

Clause 16 Building Heights

The objective of this clause is to ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land.

A three (3) storey height limit applies the subject site. The proposal is mostly a three (3) storey building with a small section of the building being four (4) storeys in height. The small element of 4 storeys occurs in the centre of the development due to the steep slope of the land. The building will present to the street as a three (3) storey building. The development is considered to be consistent with the objectives of the clause as the proposal is appropriate to its location and surrounding developments.

A State Environmental Planning Policy No. 1 – Development Standards, is required when a variation to a 'statutory' development standard is proposed. The variation sought is pursuant to Clause 16 heights of buildings development standard. This is discussed later in this report, under State Environmental Planning Policies.

Clause 35 Acid sulphate soils

The subject site is not affected by acid sulphate soils as identified on Council's Acid Sulphate Soils Planning Maps. The application was referred to Council's Environmental and Health Services Unit, to which no objections were raised regarding Acid Sulphate Soils.

Clause 39 – Remediation of contaminated land

The application was referred to Council's Environmental and Health Services Unit, to which no objections were raised regarding contaminated land.

The proposal is consistent with the provisions of this clause.

North Coast Regional Environmental Plan 1988

Clause 32B 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).*

The proposal is generally consistent with the intent of this clause, however, the development does result in the overshadowing of land zoned 6(a) open space land (across the road to the north).

It is pertinent to note the following;

1. The building height has been reduced by 0.4metre after the Council meeting dated 31st July 2007, therefore reducing the level of overshadowing on the adjacent open space zoned land.
2. The approximate area of overshadowing by the proposal after 6.30pm midsummer (daylight saving time) is 240m².
3. The area affected currently contains two very large fig trees, which create significant shadowing of the area.
4. No overshadowing will occur before 3pm midwinter.
5. The shadow caused will not adversely impact on the enjoyment or use of the beach or recreation areas. The shadow at any stage does not reach the beach.

6. The development is cut into Kingscliff Hill which is located behind the development, as such the adjoining open space land currently experiences overshadowing from the Hill without any input from the built development.

The objective of the standard contained within Clause 32B is to protect the foreshore open space areas against adverse impacts from development within close proximity to those areas.

The SEPP 1 variation is supported in this instance as the proposal is considered to be consistent with the objectives of Clause 32B and the integrity of the clause would remain if the development is supported. Furthermore, compliance with the development standard is both unreasonable and unnecessary in this instance particularly given the locational characteristic as being a highly urbanised area and the large scale of the open space areas adjacent to the site. The proposal is of a consistent height and scale to that recently approved and with surrounding developments.

Clause 43 – Residential development

The densities of the development have been maximised without adversely affecting the environmental features of the land. The development is located within an existing, highly urbanised and established area. A sedimentation and erosion management plan has been submitted, an appropriate condition has been placed on the consent to ensure the development is completed in accordance with the submitted management plan.

Clause 47 – Principles for Commercial and Industrial Development

The proposal occurs within an existing commercial zone 3(b). The subject site is located within the existing local and regional road networks, all services are available to the site. The proposal is therefore considered to comply with the objectives of clause 47 of the NCREP.

Clause 51 Development control – Director’s concurrence for tall buildings

This clause applies to buildings over 14metres in height. The proposal has a maximum height of 12.6metres, which is below 14metres.

Accordingly, the concurrence of the Director-General is not required.

State Environmental Planning Policies

State Environmental Planning Policy No. 1 – Development Standard

State Environmental Planning Policy No. 1 – Development standard (SEPP No. 1) provides a mechanism by which a variation to ‘statutory’ development standards can be assessed. SEPP No. 1 enables flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary.

As the proposal partially exceeds the allowable height limit, a SEPP No. 1 application has been lodged and the relevant sections read as follows:

3 Aims, objectives etc

This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.

6 Making of applications

Where development could, but for any development standard, be carried out under the Act (either with or without the necessity for consent under the Act being obtained therefore) the person intending to carry out that development may make a development application in respect of that development, 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.

7 Consent may be granted

Where the consent authority is satisfied that the objection is well founded and is also of the opinion that granting of consent to that development application is consistent with the aims of this Policy as set out in clause 3, it may, with the concurrence of the Director, grant consent to that development application notwithstanding the development standard the subject of the objection referred to in clause 6.

The ‘statutory’ development standard to which the SEPP No. 1 applies to is Clause 16 Height of Buildings (Tweed LEP 2000) which is states inter alia;

(1) Objective

- to ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land.

- (2) *Consent must not be granted to the erection of a building which exceeds the maximum height or number of storeys indicated on the Height of Buildings map in respect of the land to which the application relates.*

Council's definition of a storey states, inter alia:-

storey means:

- (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.

A storey which exceeds 5 metres for commercial 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.

Council's definition of finished ground level, in relation to land states, inter alia:-

finished ground level, in relation to land

means the following (and, if more than one of the following paragraphs applies in relation to the land, whichever is the highest):

- (a) *the natural ground level of the land that was the level of the land at the appointed day, or the level of the land after such earthworks (excluding any basement excavations) as are consented to by the consent authority, whichever is the lower,*
- (b) *the level of the land approved by the consent authority as the finished ground level of the land prior to the commencement of Tweed Local Environmental Plan 2000 (Amendment No 46),*
- (c) *if the land is within an area identified by the Council as flood liable land, the level of the land after filling the land in accordance with the consent authority to the adopted design flood level under Tweed Development Control Plan No 5 - Development of Flood Liable Land, as adopted by the Council on 6 March 1996.*

Extent of Statutory Variation Sought

The proposed development is approximately 26m long and incorporates a 4 storey component of 6.9m solid roof line as viewed from north-western elevation and 2.8m as viewed from the south-east (see plan/drawing No. 2.04, 2.02 and 1.06 all three (3) plans are dated 04.12.07).

However, it is pertinent to note that 1.1metres of the roof line is not enclosed by walls.

Objective of the standard

The applicant provided the following;

“The site is located within the 3(b) zoned and has therefore been identified for the purposes of mixed use development – that is development approximating 100% of the site. This is confirmed by the character of other developments within the commercial zones, the majority of which (with reference to recently developed examples) sit on the boundary and extend to a height of approximately 12m to 13m. Having particular regard to the ‘desired future character’ of the area, it is fair to assume that the adjacent site to the north will be redeveloped for similar purposes and even in the event that the proposal maintains a compliant three (3) storey form, will unlikely represent a physical height difference to that proposed, particularly against a test of scale, the proposal complies with the provisions of DCP 48 (section B18 of Council’s DCP).

Council’s attention is drawn to the elevation within which the greatest encroachment is shown. This is demonstrated within the north western elevation. Again, with reference to the desired future character of the area, this elevation will be largely covered from view by the re-development of the adjacent lands, which will incorporate a height similar to that proposed. Where the building is most visible (south eastern elevation), coincides with a very small portion of the three storey variation (2.8m horizontally). This encroachment is negligible in respect of impact, but also almost impossible to discern. The consistency of the proposal with adjacent lands to the south is considered more complex given that the site is on the cusp of the 3(b) zone. However, in this instance the site is fortunate to be located adjacent to a gazetted road/pedestrian path, which in effect provides formal separation from the desired future character of the subject site and the residentially zoned lands further south.

The future character of the area will largely be dictated by both the continued development of medium density forms, however in terms of scale, the future character will more commonly be defined by the provisions of DCP 48 (section B18 of Council's DCP). In this regard, future development will largely incorporate a maximum height of 12m only. The latter is considered more relevant to the future character of the area than the actual definition of a storey (or number of storeys requirement), as the provisions of DCP 48 are a more accurate and translatable measure of scale than the number of storeys. In this respect, the information submitted to Council demonstrates that only a very small portion incorporates a height of 12m or greater.

With respect to the character of properties to the rear, it is pertinent to note that the subject development will result in no unreasonable impact on these lands. In this respect, all views are maintained within reason, whilst no concerns exist in relation to overshadowing, privacy or the like."

The underlying object or purpose of the standard is to ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land.

The proposed development is located within the 3(b) zones (general business) in which surrounding developments have approximately 100% site coverage with buildings extending from boundary to boundary with a varying height of between 12 and 13 metres.

The proposed development is considered to be consistent in terms of the desired height and scale and with surrounding development as the proposed development has an approximate site coverage of 100% and a maximum height of 12.6metres.

The areas of the fourth storey component (being solid roof areas) are located within the centre of the development therefore limiting what impacts maybe generate in terms of overshadowing or view loss.

The elevation most visible is the south eastern elevation (2.6m out of the 26m being a fourth storey). The impact of this non-compliance is considered to be further reduced due to the location of the 3metre wide unformed road reserve providing a formal separation from any potential future developments. This road reserve is to be utilised as both the access to the subject site and a pedestrian access between Marine Parade and Hungerford Lane.

Views

The two most affected properties relating to views are street numbers 22 and 18 Marine Parade, Kingscliff. Both these properties gain access from Hungerford lane with neither dwelling being situated directly behind the proposal. The development has a solid roof line of a height of 17m AHD (the roof line height was 17.4m when viewed at Council meeting dated 31st July 2007). Property numbers 22 and 18 have balcony levels of 17.3 and 17.2m AHD respectively, with a standing eye sight of 18.9 and 18.8 m AHD respectively. It is considered due the location of dwellings in respect to the proposal and the height of the dwellings due to the topography of the land that these properties will retain reasonable existing levels of views (see Photo Plates prepared by Planit Consulting).

Summary

The subject development is predominantly three storeys in height with a minor fourth storey component.

The proposal is consistent with the objectives of Clause 16 as the height and scale of the development is appropriate to its location, surrounding development and topography.

The proposal presents as a three (3) storey development when viewed from Marine Parade with a lay person unlikely to be able to determine whether the proposal is four (4) storeys in part.

The proposal includes substantial vertical articulation as the building steps down the site. Recently approved and constructed buildings within the surrounding locality of Kingscliff are of similar or greater height. The proposal is consistent with the character of the locality. Number 60-74 Marine Parade and number 32-34 Marine Parade both have approval and are constructed with a height of 13m.

The technical fourth storey component is directly related to the slope of the land and does not adversely impact on the surrounding residents by way of overshadowing, loss of sea views, privacy or amenity.

The fourth storey component comprises an area of only approximately 84m² out of a total area of 347.8m² (solid roof) within the centre of the building. The proposed 4th storey will result in negligible adverse impacts upon the locality.

It is concluded that the variation sought under SEPP No. 1 warrants support.

State Environmental Planning Policy No. 65 – Residential Flat Buildings

This Policy applies to development including the erection of a new residential flat building. In accordance with a residential flat building means a building that comprises or includes:

- (a) 3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and
- (b) 4 or more self-contained dwellings (whether or not the building includes uses for other purposes, such as shops).

The proposal is consistent with the definition of a residential flat building as it is three storeys in height and contains 4 self-contained dwellings.

Clause 30 requires that in determining a development application, the consent authority is to take into consideration the design quality principles contained within Part 2 of the SEPP.

It is pertinent to note that the design quality principles are not design solutions; they are a guide to achieving good design and the means of evaluating the merit of proposed solutions.

Principle 1: Context

The precinct is undergoing a transitional phase with low density older styled single dwelling houses being replaced with medium density modern multi-dwelling and multi-use developments. As such the character of the area is a mixture of the both low and medium density residential housing with the commercial tenancies fronting Marine Parade.

The proposed development is consistent with the desired future character of the area as detailed in Council's Development Control Plans. The proposal is considered to contribute to the quality and identity of the area.

Principle 2: Scale

The proposed development is considered consistent and appropriate in terms with the desired bulk, scale and height for the area and recently constructed surrounding buildings. The building's height does not exceed 13 metres at any point, the building has also been designed, suppressed (basement car park) and cut into hill at the rear providing a satisfactory level of vertical articulation to reduce the potential impact of building height and scale.

Principle 3: Built Form

The development clearly defines the public domain and makes a positive contribution to the street and locality. Future residents of the proposal will enjoy internal amenity and have views to the north of the beach and open space areas. The proposal will not detract from the character and amenity of adjoining properties nor will the proposal result in a loss of or domination of public and private views within the area.

Principle 4: Density

The development is considered to achieve appropriate densities consistent with the desired future density of the area. The proposal consists of four (4) residential unit and one (1) commercial tenancy. The development's density is sustainable in terms of infrastructure, public transport community facilities and environmental quality.

Principle 5: Resource, energy and water efficiency

The development is considered to maximise the available solar energy and natural ventilation through orientation and design. A BASIX for each dwelling has been supplied demonstrating compliance with Council's energy efficiency requirements.

Principle 6: Landscape

The proposal incorporates the landscaping with the built form through a central and northern and southern light wells with planters. All balconies are located off main living areas which are orientated to the north east for maximum solar access and views of open spaces, ocean and beaches.

Principle 7: Amenity

The proposed development has been designed providing a functional living environment. The proposal provides sufficient resident parking, open space through private balconies located off main living areas orientated to the north east for maximum solar access, natural light, sea breezes views of open spaces, ocean and beaches.

In determining whether the current application unreasonably impacts upon the amenity of the adjoining properties the desired future character of the area must be considered. The area is nominated as a medium density area with a height limit of 3 storeys. Having regard to the applicable planning controls and the desired future urban form of the area it is considered that the proposal does not unreasonably detract from the amenity of the area, nor restrict the amenity of adjoining parcels in terms of view loss.

Principle 8: Safety and security

The proposal has been designed to enable causal surveillance of Marine Parade and the unformed road to the south. Appropriate lighting will be installed for security purposes within the unformed road, unit entry and car parking areas.

Principle 9: Social dimensions

The proposed development provides a mixture of unit configurations being 2x2 bedroom units and 2x3 bedroom units. The site is situated within close proximity to public open space areas; a shopping precinct; recreational facilities and professional services.

Principle 10: Aesthetics

The design and variety of materials used in the building's façade are consistent with the desired future character of the area. The contemporary design of the development will make a positive contribution to the streetscape.

State Environmental Planning Policy No. 71 – Coastal Protection

The provisions of SEPP No.71 affect the subject site. The subject site is not identified as being a sensitive coastal location (land within 100m above mean high water mark) nor a significant coastal development (development within 100m below mean high water mark). The development is considered to be consistent with Part 2 Clause 8 Matters for consideration as the proposal is considered not to adversely affect the access to and along the coastal foreshore, fish and marine vegetation and their estuarine habitats, limit overshadowing of foreshore areas and that the type, bulk, scale and size of the development is appropriate within the SEPP 71 zone.

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

There are no draft environmental planning instruments, which affect the development application.

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

Section A2 of Council's consolidated DCP – Site Access and Parking Code (adopted by Council on the 12 April 2007)

Standard	Requirement	Proposed	Complies
Multi Dwelling Housing	1.5 spaces per 2 bedroom unit (2 units x 1.5) = 3 2 spaces per 3 or more bedroom unit (2 units x 2) = 4 Plus 1 space per 4 units for visitor parking = 1 Total = 8	8 on-site car spaces no visitor parking space.	Yes
Commercial Premise	1 per 40m ² 190m ² /40m ² = 4.75 (20% ESD reduction) = 3.8 spaces Total = 4 Overall Total 12	Zero (0) proposed spaces	No*

The application provides for 8 onsite parking spaces, that creates a shortfall of four (4) spaces for the commercial component.

The applicant has offered payment of a monetary contribution for the 4 spaces, in accordance with the car-parking contribution plan.

The 30% reduction in the CBD (subject to certain conditions) is not supported due to shortage of public parking areas and on street parking.

The proposal seeks to obtain access through the construction of the unformed laneway located adjacent to the subject site.

Section A1 of Council's consolidated Development Control Plan – Multi Dwelling Housing

The application has been assessed against the relevant provisions contained within this policy relating to multi dwelling housing within commercial areas and is listed below.

- 3.2.1 *Streetscape, building appearance and front setbacks*
In commercial areas, no setback requirements for the first 9 metres, thereafter to conform to the requirements for multi dwelling being 6 metres and 3 metres from a secondary frontage.

The proposal provides a zero setback to the front, side and rear boundaries, which is desirable within commercial zones. The front elevation has a height of 10.4metres however, the non-compliance of 1.4metres consists of terrace balcony and plunge pool. The northern elevation is considered to be highly articulated, in addition the southern elevation has the benefit of the laneway to provide separation from adjoining development. The northern elevation will abut any future redevelopment of the adjoining property. The encroachments are considered relatively minor and do not significantly add to the scale of the proposal. The development is consistent with and makes a positive contribution to the desired future character of the area.

The variation to the acceptable solutions standards are supported as the objective and performance criteria are achieved.

3.3.3 Usable open space

An area accessible from the main living areas with a minimum area of 10m² and a minimum dimension of 2 metres.

The development proposes accessible balconies located off main living areas of all dwellings facing northeast that comply with the minimum standards outlined within the acceptable solutions.

Section B16 of Council's consolidated Development Control Plan - Kingscliff

The site is located within Precinct 1 - Town Centre Precinct, the objectives and strategic policy regarding commercial redevelopment is addressed below.

- *'encourage consolidation and redevelopment of existing commercial land'.*

Comment:

The proposal involves redevelopment of the existing commercial site through the demolition of the existing mixed-use development and the construction of a mixed-use development with a larger commercial area.

- *'stimulating the town centre environment through the development of mixed commercial and residential developments'.*

Comment:

The proposal seeks approval for the construction of a mixed-use development with a commercial component at ground level.

- *'safe convenient pedestrian access and create linkages between beachfront, commercial and residential areas'.*

Comment:

The existing pedestrian access between Marine Parade and Hungerford lane will be upgraded with the construction of a new footpath and stairs. The driveway will be located to the south of the existing building with access being provided via the existing unformed laneway. Vehicles will now be able to enter and exist the site in a forward direction.

- *'public car parking areas are not to be provided between the footpath and new commercial developments. New buildings are to be built up to the footpath to enhance pedestrian amenity. New developments will incorporate innovative design themes, high quality finishes, discrete car parking areas and well landscaped parking and service areas. The number of vehicle entry points to a development site are to be kept to a minimum'.*

Comment:

The building has a zero setback to the front boundary adjacent to the footpath. Parking areas are located within the basement to the rear of the premises and will not be visible from the street. The buildings design is innovative and modern with high quality finishes in keeping with the desired future character of the locality.

The proposal is considered to comply with the building type guidelines (Clause 8.2) for three (3) storey commercial residential buildings (type 1 building) and building design (Clause 8.1) being:- building mass, facades, rooflines, verandas, materials and colours, landscaping.

Section A14 of Council's consolidated Development Control Plan – cut and fill on residential land

The application was lodged with Council on the 21 August 2006. Council adopted amendments to this policy (version 1.2) on the 26 April 2006, which is subject to a savings provision (Clause 1.2.3) of six (6) months. Accordingly the amended provisions do not apply to this application.

Council's Major subdivision co-ordinator provided the following comments;

"The application seeks to undertake additional extensive excavation works within the subject allotment to allow for the construction of the building. The subject site is steep and is bound by residential properties to the rear.

The applicant has submitted amended plans following consultation with Council. These amendments include details for a proposed car lift facility to overcome driveway gradient issues, amendments to the location of the stairs within the laneway to reduce excavation and a concept plan to realign the stormwater line that traverses the laneway to minimise conflict with the new stairs.

A preliminary Geotechnical Report has been prepared by Soil Surveys Engineering Pty Ltd. This report investigates various construction options that maybe employed to retain and support the excavation works. These options include;

- 1. Batter to safe angle*
- 2. Sheet Piles*
- 3. Post and Panel*
- 4. Panel system*
- 5. Contiguous Piers*

Soil Surveys Engineering Pty Ltd has advised that Post and Panel, Panel System or Contiguous Piers are the recommended options for retaining the excavation works given the site limitations.

These recommendations have been made given the preliminary site investigations undertaken.

It is acknowledged that a further comprehensive geotechnical investigation should be undertaken once the existing structure is demolished and the site is cleared.

This comprehensive investigation must recommend the method to retain the excavation works. In addition, this report must determine that the proposed excavation works will not have any adverse impacts on the adjoining residences or existing public infrastructure

A condition of consent will be drafted requiring the excavation works to be undertaken in accordance with the Geotechnical report prepared by Soil Survey Engineering Pty Ltd dated August 2006 and that a further comprehensive geotechnical report be prepared after removal of the existing dwelling.

In relation to foundations, the Geotechnical Engineers have recommended "deep foundations.

Given the subsurface encountered in past investigations completed in this area of Kingscliff, it is recommended that a deep foundation system be adopted for the proposed development at the above site."

Manoeuvring

The proposed access complies with AS 2890.1 and construction of the access driveway will be in accordance with Council's Access to Property Policy.

The applicants propose the installation of a car lift to transport vehicles to and from the basement car park. This proposal will address any problems that may arise from non compliant gradients and flood water ingress.

In addition, the applicants have modified the car park layout. Swept path movements for a single car using vehicle turning templates show that a vehicle can satisfactorily manoeuvre within the modified basement car park.

Section B18 of Council's consolidated Development Control Plan - Tweed Coast Building Heights

This policy is set out to provide guidelines on building height, building setbacks, design and use of rooftops, protect the Region's public amenity by enhancing its diverse and unique built environment through qualitative urban design, provide the community with a pre-determined maximum height in relation to a building.

This is achieved through providing objectives and performance criteria with examples to achieve the objectives and performance criteria called acceptable solutions.

The proposal exhibits certain non-compliances with reference to acceptable solutions relating to building height and building setbacks. The proposed development is considered to satisfactorily comply with the relevant performance criteria in each instance.

Clause 2.2 – Building Heights

This policy provides acceptable solutions for a 3 storey mixed development set at 10 metres from the finished ground level to the upper most ceiling or top plate of the highest external wall and the maximum height of a building from the finished ground level to the highest point on the roof is at 12 metres.

The proposal exceeds these acceptable solutions by maximum of 0.6metre for a length of 6.7metres as viewed from the north-western elevation and by 1metre as viewed from the south eastern elevation.

The applicant provided an analysis of the relevant performance criteria.

P1. The likely impacts of new buildings on surrounding development, particularly with regard to overshadowing, privacy and the obstruction of views are avoided.

Comment: The proposal has been designed to respect neighbourly views. In this regard no unreasonable loss of views will occur in relation to surrounding properties. The balcony heights of the two dwellings behind the site are set above the predominant ridge cap height of the proposal.

The orientation of the allotment and the elevation differences with adjoining properties (the southern properties are much higher than the subject lot) ensure that no overshadowing impacts will occur. Privacy is maintained for surrounding properties and the subject development.

P2. Topographical features of the site and surrounding properties such as slope, existing natural vegetation and opportunities for the creation of views and vistas are identified.

Comment: The proposal has been designed with respect to the topography of the land, and steps down the property from the rear to Marine Parade. Little vegetation exists on the site.

P3. The scale of new development is compatible with and sympathetic to the scale and bulk of existing development and/or the desired future character of the locality.

Comment: The scale and height is compatible with and sympathetic to the desired future character of the locality. The development has been specifically designed to step down the property in respect to the topography of the site.

It is pertinent to note that the encroachment on the north western elevation will not be seen by the future redevelopment of the adjacent allotment.

P4. Buildings are designed and constructed to relate to the existing land shape with minimal cut and fill allowed.

Comment: The majority of the site has been excavated away due to previous developments. The proposal requires additional excavation, however, the benefits demonstrated are reduced overall height leading to a reduction in overshadowing and the retaining of current views.

P5. Grand vistas and views, including heritage or familiar dominant landmarks that are recognised and valued by the community, are not obscured by new development.

Comment: The proposal does not impact upon any grand vistas or views or heritage or dominant landmarks.

Clause 2.3 Building Setbacks

Buildings setbacks are established by projecting an 8 metre vertical line up from the property boundary and then at 45 degrees to the maximum height of the building.

The proposal exhibits minor encroachments into the building envelope on the north western and south eastern elevations however substantial encroachments are demonstrated on the north east elevations.

The applicant provided the following assessment against the performance criteria contained within the clause:-

P1. New development is compatible and sympathetic to the scale and bulk of existing development and/or the desired future character of the locality.

Comment: The proposal consists of high quality design and contemporary built form is consistent with the desired future character of the area.

P2. The streetscape reflects the functions and characteristics of the street type and which supports or establishes a sense of place and street identity.

Comment: The proposal is consistent with the function of the street by containing continuous commercial frontage and consistent with the building type 1 contained within this policy, which requires that building be brought forward to the street for the first 3 levels. The side elevations demonstrate high quality architecture and variation.

P3 Building setbacks are related to the height of individual buildings and the width of the street, in such a way to ensure pedestrians do not feel buildings are overbearing.

Comment: The unformed laneway is better described as pedestrian access strip between Hungerford Lane and Marine Parade and vehicle access to the proposed development. The scale of development is consistent with other (recent) mixed use buildings in the commercial area to the north west of the site. The proposal will not be overbearing to pedestrians.

P4. Residents feel an adequate sense of visual and acoustic privacy when using rooms fronting the street and/or adjoining properties.

Comment: The proposal provides a high level of privacy to residents occupying the building. The residential units are located on the first floor and above with no adjoining developments overlooking private open space areas.

P5 Direct overlooking of main internal living areas and private open space of other dwellings is minimised by building layout, the location and design of windows and balconies or by screening devices and landscaping.

Comment: The proposal has been designed and orientated to over look the park and ocean, as such the proposal does not over look adjoining residential properties.

The non-compliance with the acceptable solution relating to building envelope is supported given the architectural merit of the proposal, the absence of any adverse impacts on adjoining properties and the development complying with the objectives and performance criteria contained within the clause.

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

Satisfactory.

(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

There are no significant detrimental impacts envisaged on the natural or built environments or social or economic impacts on the locality as a result of the proposed development.

The location of the site adjoins existing yet evolving mixed use precinct with commercial/residential development to the north-west with the location of an unformed laneway to the south east providing separation from the residential zoned lane. No residentially zoned properties are likely to be adversely affected by the proposal.

The bulk and scale of the proposal is consistent with the existing and desired future character of the area.

Conditions have been placed on the development consent to address potential impacts of the proposal.

(c) Suitability of the site for the development

The subject site is considered suitable for the proposed development. The site is located within an established, yet evolving mixed use precinct. The site is fully serviced and not significantly constrained by adjoining development or the natural features of the land.

The proposal is consistent with the zone objectives with the development considered to make a positive contribution to the streetscape and is in keeping with the desired future character of the area.

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

The application has been advertised three times all for a period of 14 days in accordance with Council's Notification Policy. The first advertising period was Wednesday 6 September to Wednesday 20 September 2006. The second advertising period was Wednesday 16 May 2007 to Wednesday 30 May 2007. The third advertising period was Wednesday 23 January 2007 to Thursday 7 February 2008. During these periods multiple submissions were received. The issues raised in those submissions are tabled below:-

Issue	Assessment
Over development of the site	Addressed previously in report
Four storey development	Addressed previously in report
The permanent removal of the existing stairs	The stairs are proposed to be replaced with new stairs to be utilised by the public
The privatisation of the stairs	The new stairs will remain for use by the public
Parking lack of onsite spaces and	Addressed previously in report



Issue	Assessment
surrounding area	
Traffic	The application was referred to Council's Traffic and Transport engineer no objections were raised.
Safety of pedestrians	The application was referred to Council's Traffic and Transport engineer no objections were raised.
Subsidence and excavation works	Addressed previously in report
Loss of views	Addressed previously in report
Use of the unformed laneway for private access	Addressed previously in report
Maintenance of stairs and access driveway	Addressed previously in report
Loss of access of the stairs during construction	Two other pedestrian access are available for the public to use to gain access to and from Marine Parade namely Sutherland Lane and Seaview Street with a third being an unnamed lane through to Moss Street from Hungerford Lane.
Variations to setback requirements	Addressed previously in report
Proposal not in keeping with the predominantly residential area	The proposal is located within zone 3(b) general business zone, accordingly the area is predominantly mixed use consisting of ground floor commercial with upper floor being residential.
Materials used on the eastern and western elevation will reflect light and heat into adjoining residential property and buildings	Condition A schedule of building materials are to be approved by Council prior to the issue of a Construction Certificate. The building materials are to have a low reflectivity rating, to ensure minimal adverse impact on adjoining properties.
Use of the commercial premise – ventilation outlet maybe located on roof	Any use of the commercial premise will require separate approval from Council. With potential impacts/issues addressed through the development assessment process.
Overshadowing of the foreshore	Addressed previously in report
Non-compliance to building height	Addressed previously in report
Will the roofing material reflect sunlight	Condition "Roofs of all buildings within the proposed development are to be constructed of non-reflective materials, and shall not be light in colour".

(e) Public interest

The proposed development is considered to be in the public's interest.

OPTIONS:

1. Approve the application in accordance with the recommendation and conditions of consent.
2. Refuse the application and confirm the previous reasons for refusal.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicants have a right of appeal in the NSW Land and Environment Court if they are dissatisfied with the determination.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposal is considered suitable for the subject site, is considered not to create any significant adverse impacts on the natural or built environments.

The subject application is recommended for conditional approval.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.



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P6 [PR-PC] Class 1 Appeal - Development Application DA08/0024 for the establishment of the Seabreeze Central Shopping Centre comprising supermarket, fuel station/store, childcare centre, speciality shops and kiosk at Lot 1 DP 1106275, Seabreeze Boulevard P

ORIGIN:

Development Assessment

FILE NO: DA08/0024 Pt4

SUMMARY OF REPORT:

Council has been served notice of a Class 1 Appeal against a deemed refusal for an application for a supermarket, fuel station / convenience store, child care centre, specialty shops and kiosk at Lot 1 DP1106275 on Seabreeze Boulevard (formally Lot 4 DP803030), Pottsville.

The purpose of this report is to notify Administrators of the Appeal and provide an update of its progress. Draft Facts and Contentions are attached for information. The first call over was stood over to the 16 April 2008. Drafting of this report occurred prior to this date. At the time of drafting of this report, it was not known when the Facts and Contentions would be filed with the Court.

The attachment to this report is **CONFIDENTIAL** in accordance Section 10A(2)(c) of the Local Government Act 1993, because it contains information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business

RECOMMENDATION:

That Council notes the report and defends the appeal.

REPORT:

Council has received a development application for a supermarket, fuel station / convenience store, child care centre, specialty shops and kiosk at Lot 1 DP1106275 Seabreeze Boulevard (formally Lot 4 DP803030), Pottsville.

The application was received on 11 January 2008 and advertised for a period of 14 days from Wednesday 6 February 2008 to Wednesday 20 February 2008. During the advertising period, approximately 99 submissions were received, 40 of which were against the proposal. A total of 59 submissions were received in support of the proposal, 54 of which were form letters.

Council Officers issued correspondence to the applicant (dated 18 February 2008) outlining concerns with the proposal in its current form and requesting further information.

On 6 March 2008, the applicant filed a Class 1 Appeal on the basis of a deemed refusal which was effectively the 41st day after lodgement of the application.

The Proposal / Site

Details about the proposal and the site are outlined in the attached draft Facts and Contentions.

SITE DIAGRAM:





DEVELOPMENT PLAN:

NO. 148	AREA	PROJECT	
1	REAR FACILITY/REAR	16	
2	REAR FACILITY/REAR	17	
3	REAR FACILITY/REAR	18	
4	REAR FACILITY/REAR	19	
5	REAR FACILITY/REAR	20	
6	REAR FACILITY/REAR	21	
7	REAR FACILITY/REAR	22	
8	REAR FACILITY/REAR	23	
9	REAR FACILITY/REAR	24	
10	REAR FACILITY/REAR	25	



RENINSULA
Development Group

metricon

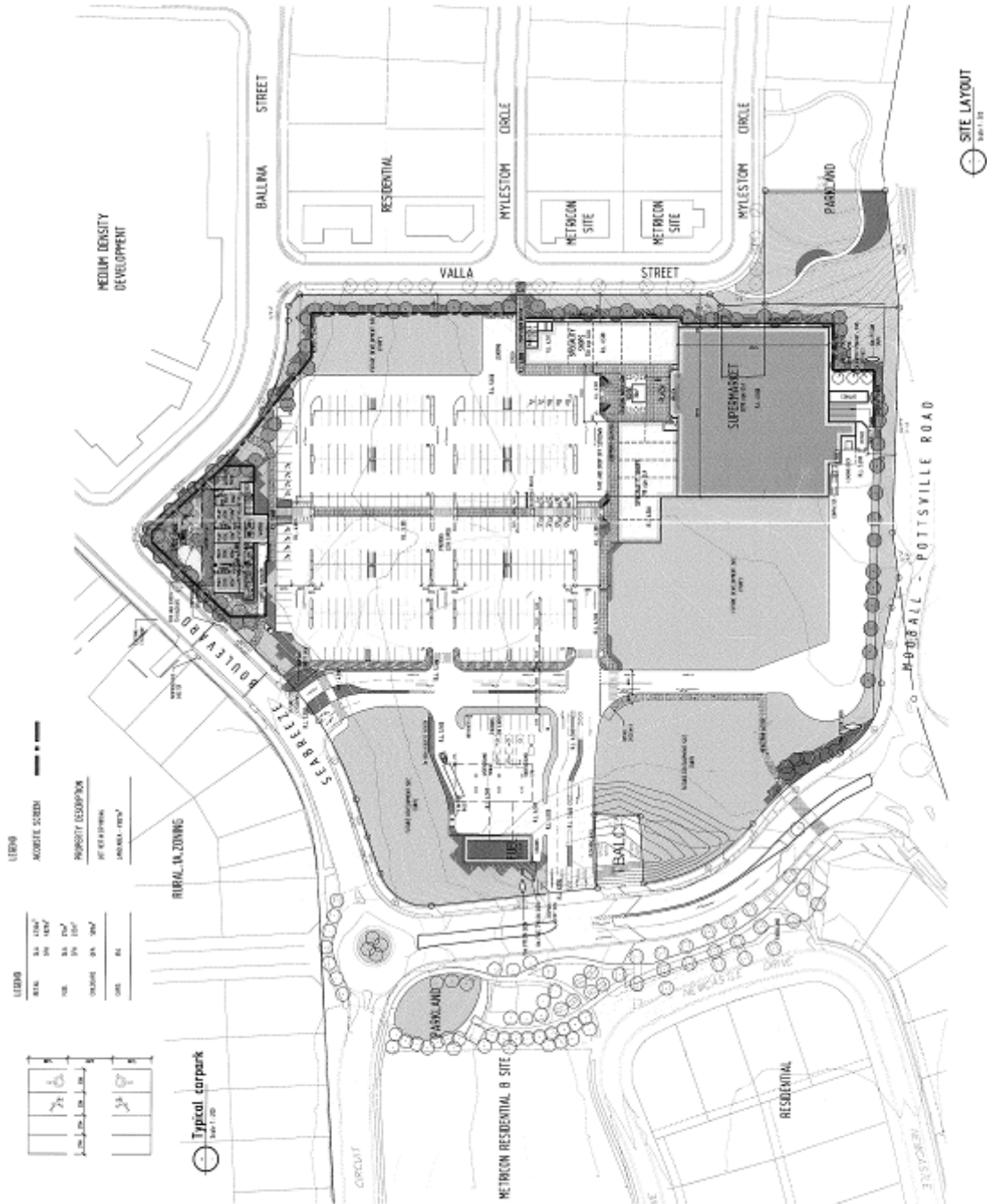
12 FOOT ROAD
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THICKNESS



SEABREEZE CENTRAL
POTTSVILLE

SITE LAYOUT PLAN

DATE	SCALE
NO. 148	1:1000
90334	04. 01



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

In its current form, the proposed development is contrary to the Tweed Local Environment Plan 2000 and North Coast Regional Strategy. Insufficient information has been provided to determine compliance with State Environmental Planning Policy no. 71 – Coastal Protection and State Environmental Planning Policy no. 64 – Advertising and Signage.

The proposal is either contrary to, or has not provided sufficient information to determine compliance with various sections of Council's DCP including sections: A4 Subdivision Manual, A7, Child Care Centres, A13 Socio-Economic Impact Assessment, B15 Seabreeze Estate Pottsville and B18 Tweed Coast Building Heights.

Further details in relation to the non-compliance with relevant documents are outlined in the attached draft contentions.

Notwithstanding the matters identified above and in the attachment, due to time constraints, a full assessment under Section 79c has not yet been undertaken.

The first call over was to be held on 7 April 2008. This was stood over until the 16 April 2008. As this had not occurred at the time of drafting this report, an update of the outcome of the call over is not provided herein.

Furthermore, given this limited timeframe, the facts and contentions are draft and are still being finalised with Council's legal representatives at this time and it is unknown when they will be filed with the Court. As such, draft facts and contentions are included as a confidential attachment.

It is likely that other impacts and issues relating to the proposal will be raised on assessment and during the Appeal process.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The Council will incur legal costs to defend the Appeal.

It is likely that expert input will be required in the Appeal proceedings, also generating expenses for Council.

POLICY IMPLICATIONS:

The proposal and the outcome of the Appeal will have significant policy implications for Council, particularly in relation to the Tweed Retail Strategy and Tweed Coast hierarchy of centres.



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. **Confidential** Draft Facts and contentions (DW 1799008)
-



P7 [PR-PC] Tweed LEP 2000 Review: Tweed LEP 2008

ORIGIN:

Planning Reforms

FILE NO: GT1/LEP/2006 Pt4

SUMMARY OF REPORT:

At its meeting of 11 March 2008 Council considered a Planning Report in which the background to the preparation of the draft LEP 2008 (Stages 1 & 2), which tied into the adopted *Tweed Futures* strategic plan, and their progress was addressed. It included a summary of the planning projects that would form the basis of the local environmental study, which is the document used to identify and justify Stage 2 amendments to the LEP.

This Report has been prepared on the basis that Stage 2 of the draft LEP has been delayed, but, the planning strategies are to be pursued through to their adoption and implementation through the Stage 2 LEP process.

This Report is made up of the following Parts:

- PART A UPDATE ON STAGE 1 – LEP 2008
- PART B UPDATE ON STAGE 2 – LEP 2008
- PART C TWEED URBAN RELEASE STRATEGY
- PART D TWEED EMPLOYMENT LAND STRATEGY
- PART E MURWILLUMBAH LOCALITY DCP
- PART F POTTSVILLE LOCALITY PLAN/DCP

Based on the information provided in each of the Report's Parts it is recommended that planning strategies be adopted or exhibited in accordance with their corresponding recommendation, as detailed below.

It should be noted that in relation to the Tweed Urban Release Strategy it is recommended that the principles of urban consolidation form the basis for land use policy development to provide for future growth.

RECOMMENDATION:

That Council:

- 1. Publicly exhibits the Tweed Shire Urban Release Strategy for a period of 28 days nominating Section 11.3 (Urban Consolidation and Existing Zoned Land) as Council's preferred growth option and refers the Strategy to the Department of Planning for their consideration.**
- 2. Publicly exhibits the Tweed Shire Employment Lands Strategy for a period of 28 days and refers the Strategy to the Department of Planning for their consideration.**
- 3. Adopts draft section B22 of the Tweed Shire Development Control Plan – Murwillumbah Locality Development Control Plan as tabled within this report subject to the amendments outlined in the body of the report and publicly notify the adoption of the Plan in the Tweed Link, within 28 days of the resolution.**
- 4. Considers implementing the recommendations of the Murwillumbah Locality Plan/Development Control Plan as part of the Stage 2 review of Council's Local Environmental Plan.**
- 5. Publicly exhibits the Pottsville Locality Plan/Development Control Plan in accordance with section 74E of the *Environmental Planning Assessment Act 1979*.**

REPORT:**Introduction:**

At its meeting of 11 March 2008 Council considered a Planning Report in which the background to the preparation of the draft LEP 2008 (Stages 1 & 2), which tied into the adopted *Tweed Futures* strategic plan, and their progress was addressed. It included a summary of the planning projects that would form the basis of the local environmental study, which is the document used to identify and justify Stage 2 amendments to the LEP.

At that meeting the following was resolved:

- "1. Notes the status of its Planning Reform Unit's ongoing project schedule and continues with a commitment to completing Draft LEP 2008.*
- 2. Upon receipt of a Section 65 Certificate from the Department of Planning, formally publicly exhibits draft Tweed Local Environmental Plan 2008 (Stage 1).*
- 3. Resolves to exhibit draft Tweed Local Environmental Plan 2008 (Stage 1 and Stage 2) in accordance with the Department's Best Practice Guidelines - "LEPs and Council Land".*

Since 11 March 2008, there have been high level discussions at the State level regarding policy directions relating to increased residential densities on flood liable land and land likely to be affected by climate change. Until such time as a Tweed Valley Flood Plain Risk Management Study has been completed in accordance with Flood Plain Development Manual this issue cannot be finally resolved. Consultants have recently been engaged by Council to undertake this Study which is due for completion in 2009.

This issue impacts directly on parts of the Tweed Heads/Tweed Heads South and Murwillumbah Locality Plans and associated documents. As these Plans were to be a significant part of the Stage 2 LEP the timeline for the completion of this Plan as referred to in the report to the meeting on 11 March 2008 will need to be modified.

In the meantime work can still be progressed on Stage 2 of the LEP by the completion and adoption of the Planning strategies referred to in the summary of this report.

PART A – UPDATE ON STAGE 1 – LEP 2008

Council's Planning Reforms Unit has completed draft LEP 2008 (Stage 1). It should be noted that, whilst it was the intention of Council that Stage 1 be a direct transfer of Tweed LEP 2000 into the new standard template, the DoP has required Council to remove a number of local controls in its effort to produce consistent planning frameworks across the State. In some instances, new State Government Legislation (such as newly gazetted SEPPs) will encapsulate previous local planning provisions, however at the time of writing this report Council continues to negotiate with DoP on other local matters.

Land use zones have been transferred over to the format prescribed by the standard template. Tweed LEP 2008 (Stage 1) does not include any strategic landuse changes, with the exception of areas previously zoned urban release that have been developed in accordance with development consents. These are zoned to reflect development that now exists on the ground. Further, an audit of the Shire's environmental land has been undertaken as part of the Tweed Vegetation Management Strategy. The findings of this have been incorporated into the Agricultural and Environmental Zones as part of Stage 1.

A copy of the draft Tweed LEP 2008 (Stage 1) has been with DoP since September 2007. It is envisaged that a section 65 Certificate will be issued in late April after upon which the public exhibition will commence.

PART B – UPDATE ON STAGE 2 – LEP 2008

Tweed Heads / Tweed Heads South Planning Projects

On Tuesday 29 May 2007, Council resolved to engage JBA Urban Planning Consultants (JBA) to prepare a Locality Plan for the Tweed Heads and a second Locality Plan for Tweed Heads South. The Locality Plans were to review existing planning controls, draft planning provisions and detail future planning controls through an LEP and DCP, as well as a developer contribution plan for Tweed Heads.

After conducting an inception meeting with JBA, interest was shown from Department of Planning's' Cities and Centres Taskforce (DoP) to be strongly involved in the preparation of these plans. Council's Executive were agreeable and accordingly DoP have taken the prime role to Tweed Shire Council and JBA in the plan preparation process.

A significant amount of work had been undertaken in relation to the Tweed Heads and Tweed Heads South areas, however recent issues identified earlier in this report regarding flooding and climate change have required much of this work to be revisited.

Stage 2 of the LEP 2008

As indicated in the introduction to this report the intention was to use all of the planning strategies referred to herein to form the basis of the local environmental study documents required to implement zoning changes into the LEP 2008. It was, and remains as Stage 2 of the LEP.

However, due to recent policy changes relating to flooding and also referred to in the introduction to this report the most significant components of several planning strategies are now to be held in abeyance pending the finding of the Tweed Valley Floodplain Risk Management Study. In light of these developments it was considered that the most appropriate course of action would be to pursue the planning strategies referred to herein to the point of adoption with a view to re-evaluating the progression of the Stage 2 LEP at the time of completion of that Study. In the meantime other work associated with the preparation of Stage 2 of the LEP documents will proceed as and when the various planning strategies are adopted.

PART C TWEED URBAN RELEASE STRATEGY

Introduction

This report presents the findings of the Tweed Shire Urban Land Release Strategy and recommends that the Strategy be placed on public exhibition for community comment.

Background

In 2004 Tweed Futures identified the need *to guide sustainable growth and change, and to safeguard the Tweed's quality of life and environment*. Through the implementation of this goal Council will need to revise its strategic directions for urban growth in the Tweed. The current Urban Release Strategy was adopted by Council in 1991 and presented a clear road map for urban growth in the Tweed. However with current trends there will be a likely shortage of urban land within the Shire within the next two decades.

The Tweed Shire Urban Release Strategy revises current proposals for urban growth and development and presents an urban growth strategy for the next 25 years.

Urban Land Release Strategy

Council resolved last year to proceed with the engagement of GHD Pty Ltd to prepare a Strategy that would guide the release of urban land in the Tweed until 2031. The purpose of the Tweed Shire Urban Release Strategy is to ensure there are adequate supplies of urban land to accommodate future urban growth by up to 2,000 new residents per annum. To achieve this, the Strategy has identified several 'greenfield sites' across the Tweed. These sites have been selected due to their minimal environmental impact and location to existing urban infrastructure.

The Strategy has discounted the release rate to accommodate areas of land already zoned for residential purposes which have not yet reached the market. A major portion of this land is located at Kings Forest and Cobaki Lakes. Figure 1 below identifies that the existing residential zoned land can accommodate an additional 46,247 persons.

This Strategy recommends a land releases program which will replenish the stocks of zoned land to ensure a continuous and long term supply. It is not appropriate that all areas identified in this strategy proceed to rezoning at the same time as Council does not have the resources to undertake this, nor is it desirable for the market. Only those areas sequenced within the identified time frames will be considered by Council.

In the preparation of this Strategy two significant NSW State Government documents need to be considered, these are detailed below.

Urban Release Program

To determine the amount of residential land that is required this Urban Release Strategy has undertaken an assessment of all existing residential zoned land within the Tweed. Two categories of land were identified in determining their availability to the market and subsequently their contribution towards the supply of residential land. These categories have been based on whether, or not, the area has been granted subdivision approval. Achieving subdivision approval can substantially delay the time it takes land to get to the market.

Figure 1 below summarises the status of several of the larger subdivisions within the Tweed. These subdivisions represent a total current residential land supply of 1,913 ha. At current rates this residential land supplies is anticipated to run out before the end of this Strategy.

Urban Release Area	Approx. area zoned residential that remains vacant (ha)	Approx. Max. No. Dwellings	Approx. max. No. Persons
<i>Residential Land Zoned with Approval for Subdivision</i>			
Cobaki Lakes	350	5,500	12,000
Pottsville (Seabreeze)	16	170	450
Pottsville (Black Rocks)	11	90	250
Casuarina / Salt / Seaside City	41	750	2,000
West Murwillumbah	10	80	200
Cudgen (Heights)	8	125	290
Sub Total	436	6,685	15,137
<i>Residential Land Zoned Yet to be Subdivided</i>			
	Approx. area zoned residential that remains vacant (ha)	Approx. Max. No. Dwellings ⁽¹⁾	Approx. max. No. Persons
Tanglewood	78	650	1,500 – 3,000
Kings Forest	495	4,500	10,000
West Murwillumbah / Keilvale	170	2,500	3,900 ⁽²⁾
Bilambil Heights	370	2,500	7,500 ⁽³⁾
Area 'E' (Terranora)	188	1,600	4,000
Kunghur (Nightcap Village)	43	400 – 450 ⁽⁴⁾	750 – 1,200
West Kingscliff	47	1,375 ⁽⁵⁾	3,460
Other Lands	Discounted	Discounted	Discounted
Sub Total	1,477	13,525	31,110
TOTAL	1,913	20,210	46,247

Figure 1: Residential Zoned Land Not Yet Developed

Notes:

- 1) Land zoned but not yet subdivided has been discounted by 20% for infrastructure unless otherwise known.
- 2) Architectus, 2007
- 3) Darryl Anderson Consulting, 2007
- 4) Nightcap Village et al, 2006
- 5) Darren Gibson Planning, 2008

The Strategy has identified nine (9) new sites which proposes a total 981 hectares of additional residential land. These sites range from new 'greenfield sites' to extensions to existing residential areas. Figure 2 below identifies the location and size of these sites. More detailed maps of these sites can be found within the Strategy which is attached to this report.

Location	Gross Potential Area (ha)	Comment
East Keilvale (Area 1)	370	Located east of and adjoining the Kielvale Village zone.
West Murwillumbah (Areas 2 and 3)	73, 13	One area along North Arm Road and one area along Tyalgum Road, both in proximity to existing residential development. These areas provide logical extensions to the west Murwillumbah growth areas.
West Kings Forest (Area 4)	214	A large area located west and adjoining the existing Kings Forest residential zoned land.
North of Seabreeze Estate (Area 5)	27	Adjoins the northern edge of the existing residential zoned Seabreeze Estate near Pottsville. Provides a link between Seabreeze and Koala Beach estates.
West of Seabreeze Estate (Area 6)	3	Small area adjoins the western edge of the existing residential zoned Seabreeze Estate near Pottsville.
Dunloe Park (area 7)	224	Large area in a rural location west of Black Rocks Estate near Pottsville.
Burringbar (Area 8)	11	One area located immediately adjacent to the residential zoned land north of the railway line at Burringbar.
Mooball (Area 9)	46	Adjoins the southern boundary of the Mooball Village.
TOTAL	981	

Figure 2: Potential Residential Areas – Tweed Shire

Far North Coast Strategy

The Far North Coast Regional (FNCR) Strategy was adopted by the New South Wales Government in 2006 as an all of government policy document. The purpose of the FNCR Strategy is to manage anticipated population growth within the Far North Coast region. Their growth management model balances environmental assets, cultural values and the natural resources of the region.

The Strategy also identifies the boundaries of existing towns and villages as well as future urban release area already identified in approved residential release strategies. Any significant residential development outside of these approved areas must be identified in a new document, a Local growth Management Strategy. These documents are to be produced by Councils. This Local Growth Management Strategy needs to be approved by the State Government before they will consider any request to zone land for urban purposes outside of any approved area.

The Tweed Shire Urban Land Release Strategy has been prepared in accordance with the FNCR Strategy guidelines. It is therefore recommended that the Tweed Shire Urban Land Release Strategy, in association with the Tweed Shire Employment Lands Strategy, be presented to the Department of Planning as an appropriate for the Tweed.

North Coast Regional Environmental Plan

The North Coast Regional Environmental Plan (NCREP) is a regional plan in force under the Environmental Planning and Assessment Act. Clause 38(1) of the NCREP requires that;

38(1)The council should not prepare a draft local environmental plan which permits development that, in the opinion of the council (subject to the directions given by the Director), constitutes significant urban growth unless it has adopted an urban land release strategy for the whole of its local government area.

The Tweed Shire Urban Land Release Strategy has been prepared with due regard to the NCREP and the requirements it specifies for Councils prior to undertaking any zone changes within a Local Environmental Plan.

It is recommended that when the Tweed Shire Urban Land Release Strategy has been adopted it be forwarded to the Department of Planning as an Urban Land Release Strategy in accordance with Clause 38 of the NCREP.

Summary of Strategy Findings

The findings of this report have been based on the Urban Release Strategy which recommends the following implementation program.

Areas that are already zoned for residential development will continue to supply land to the market over the life of this strategy. The intention of the strategy is to replenish these stocks of zoned land to ensure a continuous and long term supply. It is not appropriate that all areas identified in this strategy proceed to rezoning at the same time and Council does not have the resources to do this. Only those areas within the identified time frame will be considered by Council.

The strategy will be implemented by the rezoning process. It is Council's decision as to whether a rezoning should proceed, but in the first instance an interested landowner will need to contact Council to confirm the timing of the proposed rezoning and whether Council has the resources to proceed. Council will need to advise on the type and extent of studies required to support a rezoning and whether Council wishes to undertake this work (at the applicant's expense). Each potential land release area (or group of areas) will require an amendment to the Tweed LEP, and may require Development Control Plan provisions, a Section 94 contributions plan and/or a planning agreement with Council. A local environmental study may be required by the NSW State government.

All investigation areas identified in this Strategy need to be designed to maximise the density yield of the land. It is expected that greenfield sites located in the more remote rural areas, such as Burringbar (Area 8), Mooball (Area 9), and West Murwillumbah (Area 2 and 3), will achieve a net density between 7 – 13 dwellings per hectare. In the areas of Kielvale (Area 1), Seabreeze (Area 5 and 6), and Kings Forest (Area 4), the expected density is 10 – 15 dwellings per hectare, whereas Dunloe Park (Area 7), is expected to yield 12 – 18 dwellings per net hectare.

In order to achieve the best development outcome for the site and its surrounds and so as to ensure the full utilisation of the land, each area must have a Master Plan / Concept Plan prepared for the entire investigation area and must address all facets of the urban layout, mix and design. Council will work to produce a development control plan for each Master Plan at the cost of the proponent.

It is recommended that Council review the strategy every five to seven years to check whether areas were developed as expected and to assess any changes in demand or services and infrastructure.

Conclusions

Although the general findings of the Strategy are supported one component that is not fully investigated is the impact that urban consolidation may have on the rate of release of new greenfield sites. At Section 11.6 of the Strategy there is however a reference for *"Council to consider reviewing the density of key urban areas in order to ensure a variety of housing forms, and to revitalise its urban centres and provide for good urban design outcomes. Any density increases will also supply additional dwellings to the residential land market."*

Urban consolidation proposes an increase of either population or dwellings in an existing defined urban area and among other things provides for: -

- Improving opportunity for living and working within the same locality,
- Increasing economic activity across the board, but, in particular within the private public transport sector;
- Decreasing dependency on car ownership as the primary means of transportation,
- Providing greater justification for greater expenditure and provision of social infrastructure,
- Reducing land take-up for urban purposes, and
- Reducing the impact on the environment as a consequence of all of the above.

Subject to resolving the matters referred to in Part B of this report, Tweed Heads and Tweed Heads South would be key areas for urban consolidation. As well as this there may also be opportunities to increase densities in the proposed Cobaki Lakes and Kings Forest areas.

In light of the above, it is recommended that the principles of urban consolidation should form the basis for land-use policy development and decisions within Tweed. It is therefore recommended that Council endorse Section 11.3 of the Strategy as its preferred option to deal with growth and change in the short to medium term. Section 11.3 is as follows: -

"11.3 Rely on Existing Zoned Areas and Increase the Density of Development in Key Urban Areas

This option would see Council maintain the existing residential zoned lands subject to a review of residential density in key urban areas such as Tweed Heads Town Centre, Murwillumbah and Kingscliff through a process of locality planning. This would likely involve increasing the height limits in these areas to accommodate the additional expected population. The advantages of this option would be that it could be used as a tool to revitalise these centres (especially Tweed Heads) and bring investment into these areas that can also contribute to public infrastructure. It would also increase the likelihood of these centres achieving higher order social and infrastructure services (eg health and education) commensurate with the larger population. Given the existing level of unit production in Tweed Shire is around 35% of new dwellings there is scope to increase this to the 40% target suggested by the State government in the Far North Coast Regional Strategy. However, higher densities often lead to increased social issues (this would need to be carefully monitored) and would change the social fabric of these areas as they evolve and grow. It would also have immediate visual impacts as taller buildings appear and the urban form changes. Traffic and public transport issues will increase in importance as density increases and congestion problems occur."

It is therefore recommended that the Tweed Shire Urban Release Strategy be publicly exhibited with Section 11.3 nominated as Council's preferred growth option. It is further recommended that the Strategy be referred to the Department of Planning for their consideration.

PART D TWEED EMPLOYMENT LAND STRATEGY

Introduction

This report presents the findings of the Tweed Shire Employment Lands Strategy and recommends that the Strategy be placed of public exhibition for community comment.

Background

In 2004 Tweed Futures identified the need to *generate more local jobs, tackle youth unemployment, offset the decline in rural industries, and balance the population mix by attracting residents in the 30-55 age groups*. It also identified the importance of linking economic growth with environmental protection and education. One of the key outcomes for implementing the Vision of Tweed Futures was preparing the Tweed Shire Employment Lands Strategy.

This Strategy has been prepared in two discrete components, each relating to different types of employment land, industrial and commercial. The Strategy does not consider the future demand and supply of land for retail developments, this is covered independently by Council's Retail Development Strategy.

The Employment lands Strategy has been prepared to guide and manage industrial and commercial land supply in the Tweed until 2031. The findings of the Strategy present a land release program which aims to replenish the stocks of zoned land to ensure a continuous and long term supply. It is not appropriate that all areas identified in this strategy proceed to rezoning at the same time and Council does not have the resources to do this. Only those areas within the land release program will be considered by Council for future rezoning.

The Tweed Economy

The Tweed economy is at a cross roads. It is critical that all available avenues to assist the Tweed economy to mature and diversify must be pursued. Otherwise stagnation and unemployment will follow unsustainable economic growth which is primarily backed by urban development. The Strategy identifies that the Tweed economy in 2004/05 generated an estimated \$1.2 billion, this represents 0.4% of the New South Wales gross regional product. In the same year the value adding per capita in the Tweed was \$15,200 compared to a state average of \$43,600. The main reasons for this difference are;

- Lower labour participation rate in the Tweed,
- Net outflow of resident workers for employment, and
- Lower value adding activities undertaken by Tweed industries.

Figure 1 below shows the industry structure of the Tweed in relation to NSW and Australia.

Table 3-1: Industry Structure – Contribution to Gross Regional/State/National Product

	Tweed	NSW	Australia	Location Quotients	
				Tweed / NSW	Tweed / Australia
Primary (resource-based)	3.3%	4.6%	10.1%	0.7	0.3
Agriculture, Forestry and Fishing	2.9%	2.3%	3.7%	1.3	0.8
Mining	0.4%	2.3%	6.4%	0.2	0.1
Secondary (goods-based)	20.0%	23.4%	23.7%	0.9	0.8
Manufacturing	8.7%	13.0%	13.1%	0.7	0.7
Electricity, Gas and Water Supply	0.7%	2.2%	2.7%	0.3	0.3
Construction	10.6%	8.2%	7.9%	1.3	1.3
Tertiary (commerce-based)	23.1%	17.7%	17.7%	1.3	1.3
Wholesale Trade	4.0%	6.2%	5.8%	0.6	0.7
Retail Trade	12.9%	6.8%	7.1%	1.9	1.8
Transport and Storage	6.2%	4.7%	4.8%	1.3	1.3
Quaternary (information-based)	30.7%	40.5%	35.0%	0.8	0.9
Communication Services	1.2%	3.2%	3.2%	0.4	0.4
Finance and Insurance	3.4%	11.4%	8.4%	0.3	0.4
Property and Business Services	14.2%	17.3%	14.4%	0.8	1.0
Government Administration, Defence	4.7%	3.8%	4.1%	1.2	1.1
Education	7.2%	4.8%	4.9%	1.5	1.5
Quinary (household-based)	22.9%	13.9%	13.6%	1.6	1.7
Accommodation, Cafes, Restaurants	6.4%	3.0%	2.7%	2.1	2.4
Health and Community Services	10.6%	6.9%	7.1%	1.5	1.5
Cultural and Recreational Services	2.4%	1.9%	1.6%	1.3	1.5
Personal and Other Services	3.5%	2.1%	2.2%	1.7	1.6
Total	100.0%	100.0%	100.0%	1.0	1.0

Note: Location Quotient represents the relative reliance of the regional economy on an individual sector compared to NSW i.e. a quotient of 1 means identical reliance, a quotient of 2.3 implies that the regional economy is 2.3 times more reliant on that sector than the NSW average.
Source: TEDC/Tweed Shire Council (Tweed Economic Model), ABS, AECgroup

Figure 1: Tweed Industry Structure; ; Tweed Shire Employment Lands Strategy.

The Tweed economy has a strong reliance on;

- Property and business service sector (14% GRP),
- Retail trade (13% GRP),
- Health and community services (11% GRP),
- Construction (11% GRP),
- Manufacturing (9% GRP).

The economic drivers behind these industries are rapid population growth or growing tourism sector in the Tweed. The industries identified above generally demonstrate low productivity and limited opportunities to move up the value adding chain.

Diversification of the Tweed's economic base, needs to be driven by a reduction in the vulnerability to external shocks and increasing value-adding by local firms, catalytic policies which shift the focus from the quinary services (information and household based industries) and take advantage of the opportunities for higher value-adding activities in the region. This focus should be placed on goods producing industries and knowledge-based industries which can achieve high value-adding and offer scope for productivity increases.

A series of Future Strategic Growth Sectors have been identified by the Strategy. The specific niches identified in each of these sectors represent the potential to dramatically assist in diversifying and expanding the Tweed economy. These industry niches are;

- Tourism
 - Ecotourism
 - Beach Tourism
- Health and Community Services
 - Aged Lifestyle Products
 - Medical Research
 - Pharmaceuticals
 - Nutraceuticals
- Manufacturing
 - Marine
 - Food and Beverage Manufacturing
- Agriculture, Forestry, Fishing
 - Aquaculture

Employment Lands (Industrial)

The Strategy has undertaken a significant review of all existing industrial land within the Tweed Shire. There is 231 Ha of land suitably zoned for industrial purposes. Of this 92 Ha is currently developed with a remaining 138 Ha undeveloped. There is 62 Ha of zoned land which represents constraints which restrict it from development. These constraints include flood liability, slope constraints and environmental constraints.



In 2001 8,820 employees left the Tweed every day for work, this represents 37% of Tweed's resident workforce. A majority of these workers travel to the Gold Coast region which offers better job opportunities. This daily commuter migration creates a jobs deficient between the Tweed and Gold Coast regions. This means that there are more Gold Coast residents travelling to Tweed to work than there are Tweed residents travelling to the Gold Coast to work.

The Strategy has identified that there is a current deficit of 800 workers in the manufacturing, wholesale trade and transport and storage sectors in the Tweed. This equates to a shortfall of approximately 20 Ha of industrial land.

The employment levels required to meet future industrial land supplies will be influenced by several factors. Firstly, current industrial land take up rates in the Tweed are relatively low. Secondly more localised employment opportunities could help to reverse the current employee outmigration trends. It is assumed that future industrial land releases could potentially influence the demographic trends attracting younger working families to the area.

The Employment Lands Strategy has estimated the future demand for industrial land in the Tweed will be between 110 and 250 Ha. This demand will accommodate the projected employment capacity over the next 25 years. The Strategy has based this projected employment capacity on a potential high population growth scenario. This represents a take up rate of approximately 10 Ha per annum, which is significantly above the existing industrial land development rates. This augmented rate will allow for an increase in the retention of future employees located in the Tweed as well as an increase in the significance of manufacturing, wholesale and transport related industries. Figure 2 below presents the Strategies projected demand for industrial land in the Tweed.

Table 5-5 Projected Additional Industrial Land Demand in Tweed, ha

Region	2011	2016	2021	2026	2031
Baseline					
Low Population Projections Scenario	30	50	70	90	110
Medium Population Projections Scenario	30	60	80	110	140
High Population Projections Scenario	30	70	100	140	170
Baseline + 15%					
Low Population Projections Scenario	30	50	80	100	120
Medium Population Projections Scenario	30	70	100	130	160
High Population Projections Scenario	40	80	120	160	200
Baseline + 30%					
Low Population Projections Scenario	30	60	90	110	140
Medium Population Projections Scenario	40	70	110	150	180
High Population Projections Scenario	50	90	130	180	220
Baseline + 45%					
Low Population Projections Scenario	40	70	100	130	150
Medium Population Projections Scenario	40	80	120	160	200
High Population Projections Scenario	50	100	150	200	250

Source: ABS 2001 Census, ABS 2001 Journey to Work Data, DIPNR 2005 Population Projections, AECgroup

Figure 2: Projected Additional Industrial Land in Tweed; Tweed Shire Employment Lands Strategy.

The employment levels that can potentially be achieved through the industrial land release program is projected at 3,311 additional employees in the manufacturing, wholesale, transport and supporting industries by 2031.

In determining a suitable supply of sites to accommodate a land release program the Strategy has undertaken a Land Suitability Analysis. Industrial developers typically have a series of key requirements in identifying a suitably located site for their business. These factors include;

- The land must be flood free in order for business to feel secure,
- Proximity to transport options including major roads and the port,
- Easy access for trucks and into the site,
- The topography of the land for cost-effective development,
- Proximity to existing industrial land to allow for less impact on the region,
- Proximity to existing industrial land to allow industry clustering opportunities, and
- A buffer between the land and conflicting land uses such as residential.

These factors have been matched against the following physical environmental constraints comprising;

- Environmental (Open Space, Acid Sulphate Soils, Contaminated Lands etc.)
- Vegetation Management (SEPP 14, SEPP 26, Koala Habitat)
- Threatened Species and Vegetation Management
- Agricultural Land
- Bushfire Management
- Topography
- Land Susceptibility to Climate Change
- Flood Liable Land
- Airport Noise

The Employment Lands Strategy has reviewed these land requirements and constraints and proposed the following land release program to guide the location of future employment lands over the next 25 years, refer figure 3. This program includes three time frames short term (0-10 years), medium term (10-20 years) and long term (20 years plus). These time frames refer to the period in which rezoning of the particular areas should commence. It is assumed that there will be up to a six year lead time before each area reaches market from the commencement of rezoning. A map of each area identified in Figure 3 are located in the Strategy which is attached to this report.

Potential Employment Locality	Gross Area (ha)	Net Area (ha)	Approximate Years supply (@ 10 Ha per yr Shire wide demand)	Timing for commencement of rezoning	Comment
Airport Precinct Area 1	14	11	1.1	Medium Term	Assumes 80% of land will yield lots.
Airport Precinct Area 2	29	23	2.3	Medium term	Assumes 80% of land will yield lots.
Border Race Track Area 3	11	9	0.9	Medium term	Assumes 80% of land will yield lots.
Chinderah East Area 4	37	26	2.6	Short Term	Assumes 70% of land will yield lots due to vegetation buffers.
Wardrop Valley West Area 5	63	44	4.4	Long Term	Assumes 70% of land will yield lots due to vegetation buffers and agricultural buffers.
Wardrop Valley East Area 6	60	48	4.8	Short Term	Assumes 80% of land will yield lots.
West Pottsville Area 7	144	86	8.6	Short / Medium Term	Assumes 60% of land will yield lots due to residential and riparian buffers.

Figure 3: Tweed Shire Land Release Program; Tweed Shire Employment Lands Strategy

Employment Lands (Commercial)

There is an estimated 58,970 m² of office floor space in the Tweed, evenly distributed between Tweed Heads (18,600 m²), South Tweed (15,300 m²) and Murwillumbah (16,200 m²). The next largest cluster of space are located at Kingscliff (4,400 m²) and Banora point (1,800 m²).

Anecdotal evidence suggests that there is a current shortages of office space throughout the Tweed, evidenced by low vacancy rates and business turnover. There is also limited new office development providing additional supply to the market in the Tweed.

Based on the current 0.75 m² per capita office supply (which is likely to decline as the market matures) and projected population growth, the demand for office space is estimated at between 19,800 and 29,100 m² over the next 25 years. Tweed Heads and Tweed Heads South are projected to account for 65% of future demand.

In terms of projecting future demand for office space, the projected population growth of the region and continued business and economic growth is likely to result in the creation of new businesses and office space requirements.

Future commercial development is most likely to be located within an existing urban area rather than on 'greenfield sites' unless it is commercial floor space that is part of a master planned neighbourhood centre or the like.

The Strategy identifies a release program for commercial floor space as listed below;

- To incorporate an additional 19,000 m² (approximately) of commercial office space in existing zoned commercial land within Tweed Heads and South Tweed Heads urban area,
- To incorporate an additional 5,000 m² (approximately) of commercial office space in existing zoned commercial land at Murwillumbah and South Murwillumbah, and
- To allow the remaining 5,000 m² (approximately) to be incorporated in existing commercially zoned land in other urban areas.

There is an additional proposal for consideration which would allow an additional 2 hectares of land to be rezoned for commercial office use in either Tweed Heads or South Tweed Heads provided that it was adjoining an existing commercial zone. It also recommends that Council make provisions in its planning instruments to allow for home based offices in all residential and mixed use zones.

Far North Coast Strategy

The Far North Coast Regional (FNCR) Strategy was adopted by the New South Wales Government in 2006 as an all of government policy document. The purpose of the FNCR Strategy is to manage anticipated population growth within the Far North Coast region. Their growth management model balances environmental assets, cultural values and the natural resources of the region.

The Strategy also identifies the boundaries of existing towns and villages as well as future urban release area already identified in approved residential release strategies. Any significant urban development, including commercial or industrial, outside of these approved areas must be identified in a new document, a Local Growth Management Strategy. These documents are to be produced by Councils. This Local Growth Management Strategy needs to be approved by the State Government before they will consider any request to zone land for urban purposes outside of any approved area.

The Tweed Shire Employment Lands Strategy has been prepared in accordance with the FNCR Strategy guidelines.

North Coast Regional Environmental Plan

The North Coast Regional Environmental Plan (NCREP) is a regional plan in force under the Environmental Planning and Assessment Act. Clause 38(1) of the NCREP requires that;

39(b)if the expansion is not adjacent to or adjoining the existing centre, that development is in accordance with a commercial/retail expansion strategy prepared by the council, published for public discussion.

The Tweed Shire Employment Lands Strategy has been prepared with due regard to the NCREP and its requirements for Council's undertaking zone changes within Local Environmental Plans.

It is recommended that the Tweed Shire Employment Lands Strategy be referred to the Department of Planning as a commercial/retail expansion strategy in accordance with Clause 39 of the NCREP.

Conclusions

The conclusions of this report have been based on the Employment Lands Release Strategy which recommends the following implementation program.

Areas that are already zoned for industrial development will continue to supply land to the market over the life of this strategy. The intention of the strategy is to replenish these stocks of zoned land to ensure a continuous and long term supply. It is not appropriate that all areas identified in this strategy proceed to rezoning at the same time and Council does not have the resources to do this. Only those areas within the identified time frame will be considered by Council.

Commercial office space will be supplied to the market mainly from existing commercial zoned land in the major regional centres and the district town centres identified in this strategy. Any additional commercial rezoning will need to consider the Tweed Retail Strategy as well as this Employment Lands Strategy given that retail and office development are typically both permitted in commercial or business zones.

This strategy will be implemented by the rezoning process. It is Council's decision as to whether a rezoning should proceed, but in the first instance an interested landowner will need to contact Council to confirm the timing of the proposed rezoning and whether Council has the resources to proceed. Council will need to advise on the type and extent of studies required to support a rezoning and whether Council wishes to undertake this work (at the applicant's expense).

Council is supportive of master planned business and employment parks and will consider reviewing the development assessment process for subsequent tenants where the issues relevant to the overall site can be addressed through the rezoning phase and the substantive development consent that is originally issued for the site meets Council requirements. Although this would be site specific, Council would consider identifying such locations as enterprise areas where employment generating businesses can commence operations quickly and with limited 'red tape' and delays that can be encountered at the development application stage.

Each potential employment land release area (or group of areas) will require an amendment to the Tweed LEP, and may require Development Control Plan provisions, a Section 94 contributions plan and/or a planning agreement with Council. A local environmental study may be required by the NSW State government.

The Strategy proposes that Council review the strategy every five to seven years to check whether areas were developed as expected and to assess any changes in demand or services and infrastructure.

It is also recommended that the Tweed Shire Employment Land Strategy be publicly exhibited, and referred to the Department of Planning for their consideration.

PART E MURWILLUMBAH LOCALITY PLAN / DCP

Introduction

This part of the report presents the findings of the Murwillumbah Locality Plan / DCP (“the locality DCP”) and recommends that the Plan be adopted in its amended form as detailed in this report.

Background

This part of the report is written with regard to the draft Murwillumbah Locality DCP prepared by Architectus. In 2006, after the submission of a development application for a retail complex comprising a supermarket and seven (7) speciality shops in Murwillumbah, Council resolved to defer consideration of such matters until a Town Centre Strategy had been provided. From this, it was deemed appropriate to undertake a locality plan for the subject study area and as such Council resolved to prepare a Locality DCP on 15th August 2006. After a public tender process, the project consultancy was awarded to Architectus on 17th October 2006.

As part of the work undertaken in preparing the draft Locality DCP, community and key stakeholder consultation workshops were undertaken on 12th and 13th February 2006 and 4th and 5th April 2006. The workshops were attended by a broad spectrum of the community and stakeholders that included:

• Sugar Milling Cooperative	• Knox Park user sports groups (Croquet Club)
• Red Cross	• TEDC & Internal
• Murwillumbah District Business Chamber	• Knox Park user sports groups (Tennis Club)
• Sunnyside Mall Centre Management	• TEDC
• Industry Practitioners group	• Knox Park user sports groups (Netball)
• General Public	• Tweed Tourism
• Murwillumbah Residents Association	• Tafe NSW
• Dept. of State and Regional Development	

The plan has a dual purpose in setting the strategic direction for development in Murwillumbah Town Centre and immediate surroundings, and also provides specific development guidelines in the form of planning controls for use in the assessment of development applications. This report summarises the strategic direction of the document and makes recommendations for some minor changes. It further examines the submissions received after workshops and public consultation and how concerns raised are addressed by the document.

The document forms part of the Local Environmental Scheme (LES) that will inform Stage 2 of draft Tweed Local Environmental Plan 2008 and further, once adopted will be the overriding DCP for development within the locality.

A key component of this DCP and the work that informed its preparation has been a focus on increasing the residential population of Murwillumbah, in and around the town centre. The plan identified a number of key areas and involved the creation of opportunities for medium density residential housing, mixed use residential and non-residential land-use precincts, and potential new core retail site opportunities.

Impact of Recent Developments in Flood Policy

Due to recent information being made available in relation to flooding and climate change and the need to address safety and evacuation issues arising from habitation of the floodplain, a number of areas of the plan are to be deferred at the present time. Options to resolve this issue will be explored in detail as part of Council's current Tweed Valley Floodplain Risk Management Study. These options may include raising local roads to provide flood free evacuation routes and "shelter in place" strategies for flood emergency response. As a result of this, there is a key element of the Plan that cannot be carried forward at the present time.

The report identifies the areas that need to be deferred at the present time and makes recommendations to the effect of requiring some modification to the Plan prior to it becoming operational. Submissions arising out of the public exhibition have been addressed within the report and recommendations for the adoption of the revised Plan have been incorporated should it be resolved that the amendments are satisfactory.

Summary of Plans intent

Murwillumbah DCP serves as both a general locality plan (setting a strategic vision) and a formal DCP (prescribing specific controls) for adoption, it is appropriate at the commencement of this report to note both the vision and key strategies that underpin the document. The vision which outlines the underlying purpose of the DCP aims to:

“Build on Murwillumbah’s lively hinterland village qualities to create a walkable, vibrant, mixed use centre with a successful main street and a balance between building scale and landscape character.”

To achieve this, a number of key strategies have been developed to provide the framework within which the more detailed DCP policies can be developed, these are:

- 1) *Reinforce the character and vitality of the Murwillumbah Street Precinct;*
- 2) *Create an active, liveable town centre, which provides for residential growth (that cannot be accommodated elsewhere) and which integrates Knox Park;*
- 3) *Create a Framework for revitalising the Prospero Street area;*
- 4) *Create a walkable, connected centre that focuses on the River.*

To achieve this, the Murwillumbah DCP proposes a number of public domain improvements and a vision for 8 precincts in the locality. Delivery of the vision is dependant on both public and private initiative. Part 3 of the document details specifics in relation to desired improvement and precinct character.

Murwillumbah Town Centre / Knox Park Area / South Murwillumbah Medium Density Residential Development (Part 5)

The Plan proposes the facilitation of density increases at various locations within the study area, underpinned by the principles of urban consolidation and sustainability. Figure 5.1 of the Plan demonstrates proposed medium density residential development areas surrounding Knox Park, Church and Queen Street and in South Murwillumbah south of Stafford Street. The principle focus in these areas is residential development (dual occupancies and residential flat buildings), with potential for some mixed uses.

It is envisaged that in the vicinity of Knox Park, the building style would alter significantly with a vision to promote town and row house type development with innovative design solutions to mitigate against constraints imposed by flooding.

The DCP identifies that lower lying areas (Knox Park and South Murwillumbah) experience flooding during extreme events. Specific guidelines in relation to ground level uses are prescribed to encourage innovative and acceptable design solutions around the potential flooding constraint, which came about after much discussion with Council's flood engineers. However, a number of the strategy's recommendations can not be carried forward at the present time because the flood constraint in certain areas has been determined prohibitive at this time.

Mixed Use Precincts (Town Centre and Prospero Street - Part 6 and Part 7.2)

The DCP proposes to regenerate areas included in figure 6.1 for mixed use purposes to encourage active street frontages, a high level of surveillance and diverse residential opportunities. Part 6 of the DCP prescribes general controls for mixed use development, and part 7.2 outlines specific controls in relation to Prospero Street.

The Prospero Street precinct (figure 7.2) is susceptible to 1 in 20 year flooding and is considered to be economically suffering, with little new activity at the present time and with limited opportunities on the horizon. The DCP identifies guidelines for the revitalisation of this area by encouraging site consolidation and by increasing the development opportunities largely through increases in height. Although it was fully intended to require car parking at grade level so as to improve the flood water permeability the two strongest forces denying this opportunity is localised public concern for tall buildings and recent changes in flood policy. As a result of the latter this section of the draft Plan must be deferred pending the recommendations of the Tweed Valley Floodplain Risk Management Study. This may prove in the long-term to be fortuitous either because it will be found that the area simply is not suitable for any further development due the flood constraints or that attitudes to tall buildings will temper and allow room for the much needed change investment in the area.

The proposed controls, which included maximum floor space ratios of 2.5:1 and maximum heights of 6 storeys on consolidated sites, will be held in abeyance for future debate.

Murwillumbah Street Precinct and New Retail Options (Parts 7.1 and 7.3)

The importance of the Murwillumbah Street Precinct (Figure 7.1) and its role as the principal commercial core of the town is reinforced by the DCP. Further investigative work into the historical significance of the area has been undertaken with recommendations to update Tweed Shire's inventory of heritage and contributory buildings as part of the Stage 2 LEP 2008.

Part 7.3 of the DCP scopes and provides general principles to guide the development of further major retail within the Town Centre. The DCP is stringent in its position of maintaining all major retail activity within the Town Centre and excludes options for development on the eastern side of the bridge to ensure that any new major retail contributes to the primary function of the town centre core.

Town Centre Core, Civic Precinct, Riverfront Employment

These precincts are included within the Locality Plan/DCP however it is noted that the existing zonings within these areas provide the appropriate framework for future development. Whilst there is no significant strategic change proposed within the locality plan, a number of civic improvement plans are suggested. Further, the general DCP controls which guide development would positively impact upon these locations.

South Murwillumbah Riverfront

This area is subject to regular flooding and is unsuitable for residential development. The plan proposes the rezoning of this land to Public Open Space as part of a long term vision to reclaim the area to alleviate threat of extreme flooding on residential properties. However, at the present time this element of the project will not be carried forward.

General DCP Controls

Part 4 of the document outlines general DCP controls for the locality including the locality specific FSR, site coverage, building heights and other controls. The Murwillumbah DCP would operate in conjunction with other relevant shirewide DCP's, however the subject document will override a shirewide DCP in the event of inconsistency. Work to produce these controls was done in simultaneously with work being undertaken on DCP A1 – Residential and Tourist Development Code. It is critical that the DCP is adopted accordingly to ensure that locality specific controls are adopted in conjunction with the shirewide development controls contained within A1.

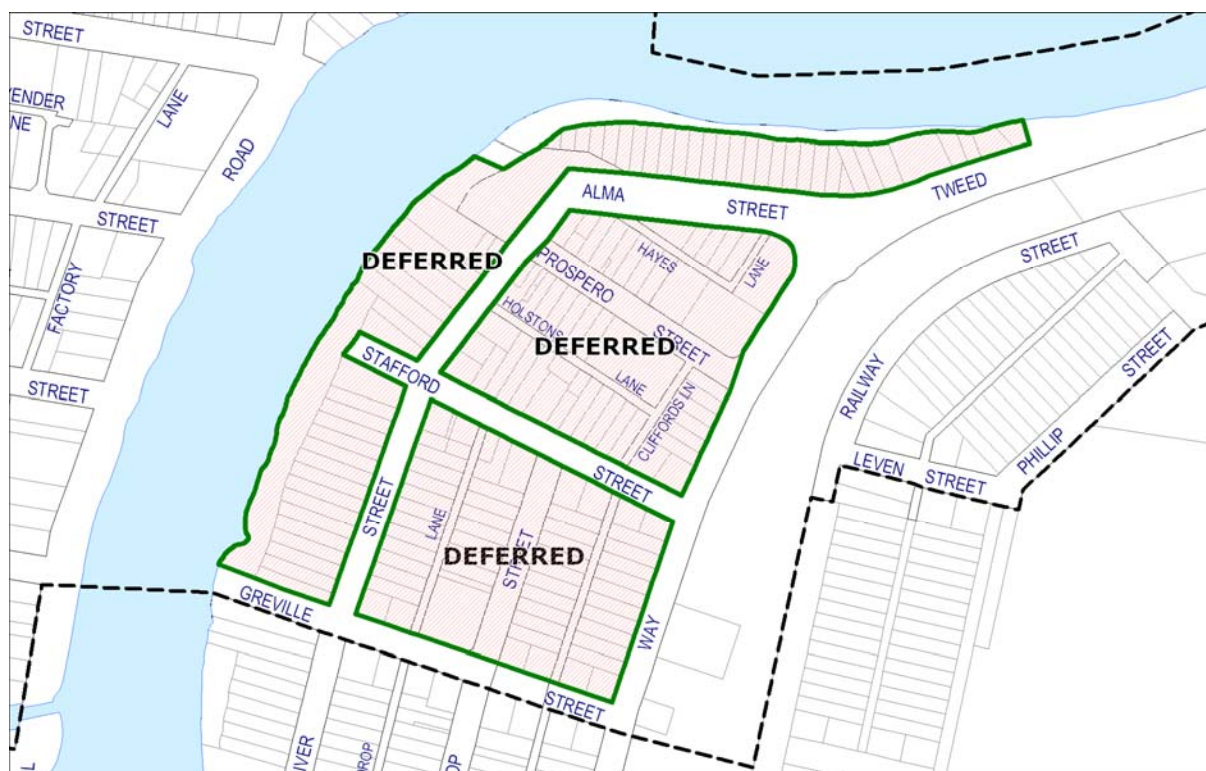
Recommendations to Amend and Defer

Some parts of the Locality DCP require minor amendment and particular sub localities must be deferred for consideration at a future time. The purpose of this section is to provide reasoning for this and justification for elements of the strategy and DCP which are to be carried forward at the present time.

In December 2007, Council adopted a Flood Risk Management Policy, to address safety and evacuation issues arising from habitation of the floodplain. The policy aims to avoid increasing residential densities on "low islands" to avoid putting lives at risk and minimise reliance on emergency services to rescue and relocate trapped occupants. As a result, there is constraint on increasing densities in parts of the study area.

Options to resolve this issue will be explored in detail as part of Council's current Tweed Valley Floodplain Risk Management Study. These options include raising local roads to provide flood free evacuation routes, and "shelter in place" strategies for flood emergency response.

The detailed examination of options to resolve issues relating to increased population and prudent flood plain management densities will also take into account climate change factors. Resolution of these issues is necessary for the planned increases in population proposed principally in the South Murwillumbah precinct. As a result, the works identified in the strategy for the South Murwillumbah residential area, the Prospero Street mixed-use area and the South Murwillumbah riverfront (relating to areas in the plan below) are, as previously discussed, deferred until completion of the Tweed Valley Floodplain Risk Management Study.

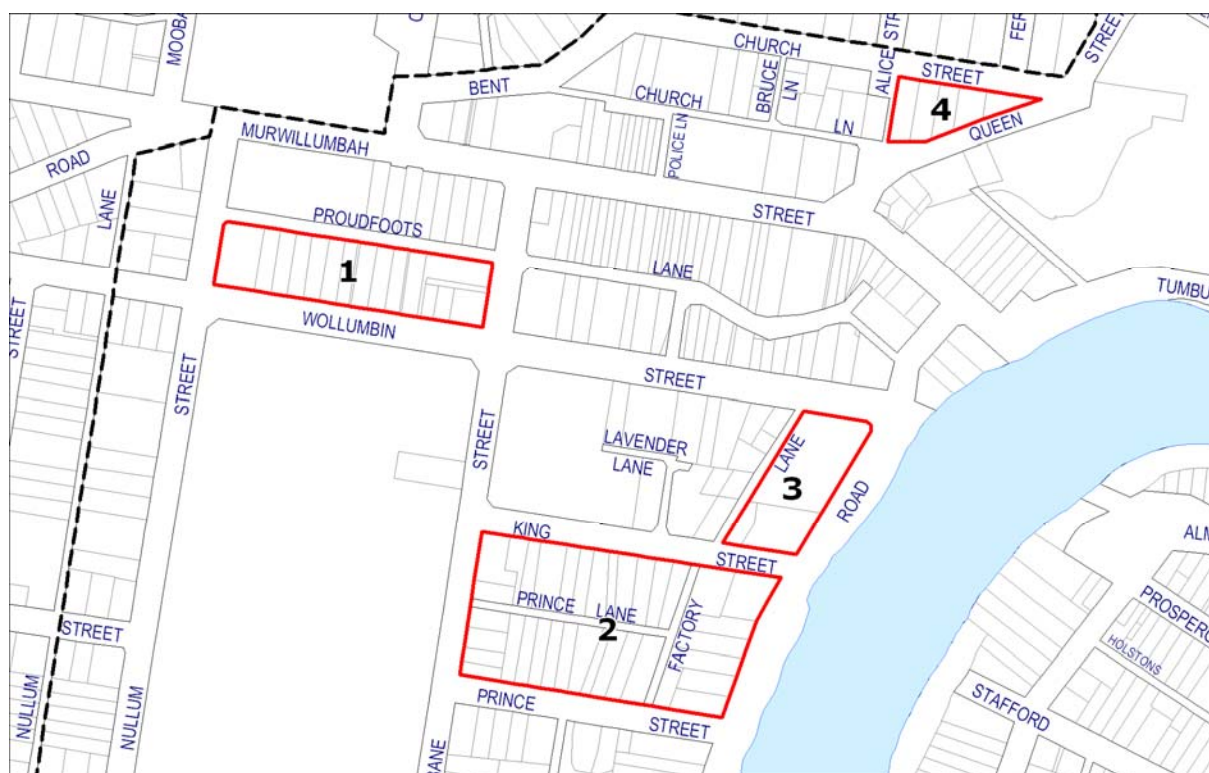


Strategies identified for Murwillumbah town centre and in the vicinity of Knox Park are to be carried forward with exception of some recommendations at the southern end of the study area. It is critical that the entire locality plan and DCP is not deferred in light of constraints in the South Murwillumbah residential and Prospero Street mixed use area. There is a number of beneficial local area strategies proposed to foster improvements in the locality, particularly in respect of the revitalisation of the Knox Park precinct.

It should be noted that, whilst the amended strategy proposes minimal increases in residential densities in the Town Centre and Knox Park area, land to the western side of the Tweed River is protected by a purpose built levee wall to mitigate against potential flood impact. Further, it is demonstrated below that the locality plan intends to revitalise the area, without significant increase to the overall density west of the river. Increases in residential densities south of Knox Park are no longer proposed in full, generally as a result of flooding constraints and in response to community sentiment. For those small areas where rezonings are proposed, it will be demonstrated that the yields expected through suggested building forms are potentially less than that which could be expected under the more traditional configurations promoted by LEP 2000 and DCP A1 at the present time.

Mixed Use areas Murwillumbah Town Centre and Knox Park area

Part 6 of the locality plan identifies three areas within the Town Centre / Knox Park area that are identified for mixed use which are shown in the diagram below. It is recommended that these be adopted in principle. It should be noted that the DCP highlights area 4 for medium density residential, however on review it has been considered that maintaining the commercial use of these properties would be appropriate given their proximity and relationship to the town's main street. Therefore a mixed-use zone seems more appropriate and it is recommended that the draft Plan be amended accordingly.



The following table demonstrates the general DCP controls that are applicable and how this locality plan influences Stage 2 of the draft LEP specifically in relation to the outlined locations.



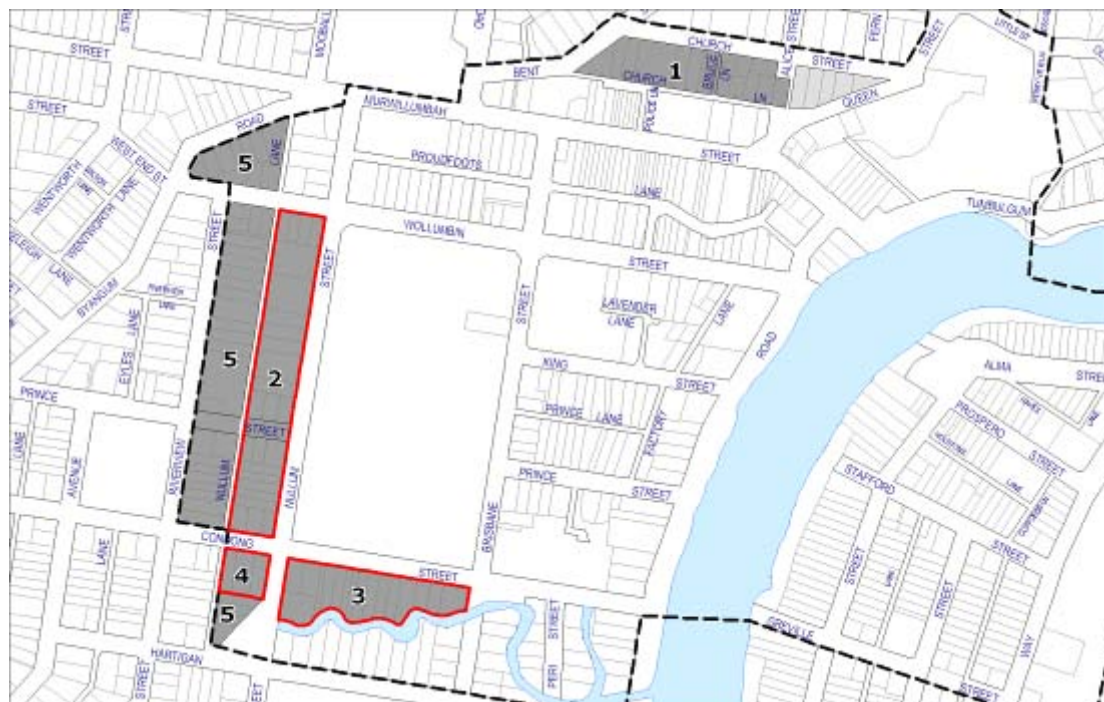
Area	DCP Considerations	Potential Future LEP Amendments
1	-3 Story - Site Coverage 100% - FSR 2:1	Rezone from 3(c) – Commerce and Trade (B5 – Business Development draft LEP 2008 Stage 1) to B4 – Mixed Use
2	- 3 Story - Site Coverage 70% - FSR 1.2:1	Rezone from 3(c) – Commerce and Trade (B5 – Business Development draft LEP 2008 Stage 1) to B4 – Mixed Use.
3	- 3 Storey - 100% Site Coverage - 2:1 FSR	Rezone from 3(b) – General Business (B3 Commercial Core draft LEP 2008 stage 1) to B4 Mixed Use
4	- 1-2 Story - 80% Site Coverage - 1.2:1 FSR	Rezone from 3(c) – Commerce and Trade (B5 Business Development draft LEP 2008 stage 1) to B4 Mixed Use. NOTE: Area 4 was included within the Locality Plan as medium density residential. However given its interface with Queen Street and its current land use, mixed-use is deemed more appropriate.

The strategy actively encourages mixed-use precincts within the study area, prescribing a number of controls to facilitate high quality development that addresses public spaces and respects the role and historical significance of the Town Centre core. The fundamental component of the mixed use precinct is a retail/commercial function at the ground level and residential function over, with entrances to upper floors clearly separate from the commercial/retail component. The mixed-use areas are proposed to address the Northern and Eastern side of Knox Park and the eastern end of Wollumbin Street, as an entrance to the town centre core.

Originally, the strategy recommended medium density residential at the intersection of Queen Street and Church Street, however after further consideration, a mixed-use area is deemed more appropriate given the immediate land-use context and the address to Queen Street. This would also be keeping with the towns historic structure.

For the strategy to eventuate, rezoning of some land would be required, specifically land zoned 3(c) – Commerce and Trade in areas 1, 2, and 4 and land zoned 3(b) – General Business in area 3, as illustrated in the diagram above. In relation to area 3, this is somewhat the status quo as mixed-use development types are possible under LEP 2000.

Medium Density Precincts Murwillumbah Town Centre and Knox Park Area



Area	DCP Considerations	Potential Future LEP Amendments
1	-3 Storey - Site Coverage 80% - 1.2:1	No rezoning required currently 2(b) – Medium Density Residential
2	- 3-4 Storey - Site Coverage 60% - FSR 1.2:1	Rezone from 3(c) – Commerce and Trade (B5 – Business Development draft LEP 2008 Stage 1) to R3 – Medium Density Residential
3	- 3-4 Storey - Site Coverage 60% - 1.2:1 FSR	Rezone from 2(a) – Low Density Residential (R2 LEP 2008 stage 1) to R3 – Medium Density Residential
4	-3-4 Storey -Site Coverage 60% -FSR 1.2:1	No rezoning required currently 2(b) – Medium Density Residential
5	- 3 Storey - Site Coverage 60% - FSR1.2:1	No rezoning required currently 2(b) – Medium Density

The plan above demonstrates proposed medium density areas. Areas 1 and 5 already have the benefit of a medium density zoning. Area 2 is currently zoned 3(c) – Commerce and Trade which is deemed to be somewhat inappropriate in this locality. The objectives of the 3(c) zone encourage the development of land-uses generally not suited to modern business areas. At present the zone would allow for a number of incompatible industry based activities. The use of subject area 2 for the 3(c) function is deemed to be somewhat obsolete given the delivery of such land-uses would be more appropriate in other Business Development and Industrial type zones outside of the town centre.

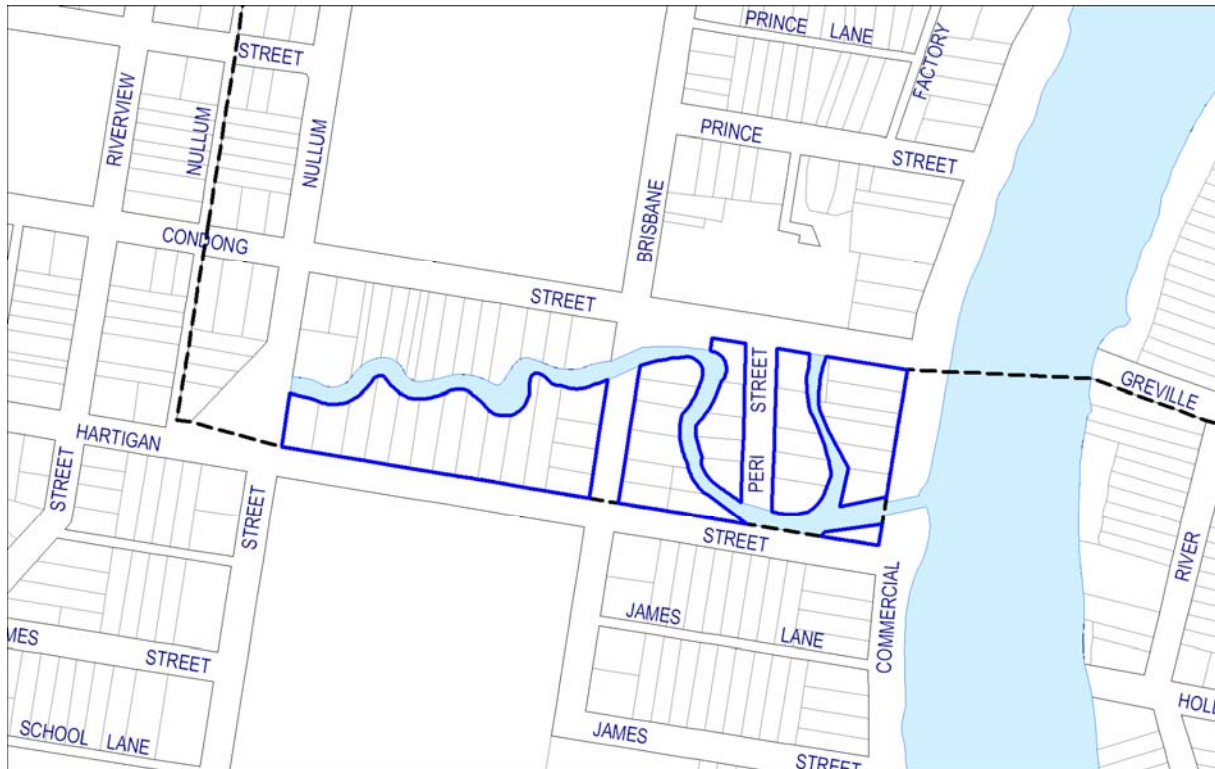
The strategy recommends rezoning of both areas to medium density in conjunction with area 3 which would be rezoned from low to medium density residential. Area 4 already has the benefit of medium density residential zoning. The intent of the strategy and the associated site planning controls specifically over these areas is to encourage the development of residential forms that address the park, in turn improving the interface between buildings and public space, promoting casual surveillance of the area and injecting residential livelihood into the area. This element of the plan would be ineffectual until the rezoning is adopted through Stage 2 of the LEP.

The site planning controls on the south and western edge of Knox Park have been developed to encourage building forms with vertical internal spaces (like a traditional house configuration where dwellings are side by side as opposed to horizontal spaces which are more akin to unit development where the units are one on top of the other), hence discouraging traditional RFB style development which adopts a more horizontal format and generally higher densities. The principle here is not maximise density but to facilitate good urban designed buildings that have sufficient density to make their construction viable and to be capable of providing for adaptable uses and PMF refuge. The proposed height increase over these areas from 3 storey to a (partial 4th storey mandated to be no greater than 60% of the floorplate area), coupled with site coverage, FSR and setback requirements encourages a vertical type arrangement akin to traditional townhouses and rowhouses. It is recommended however that the allowable floorplate area for the uppermost storeys be reduced to 40% to further mitigate against any impact that may result from building form on the locality, as this has been raised in public submissions as an area of concern..

Site planning is to require individual dwelling entries to be located at the street frontage, further discouraging traditional RFB forms which seldom foster the public – private interface of traditional town or row house style development. It is recommended that the draft Plan be amended to include some additional wording to further reinforce the desired character of these buildings.

As mentioned briefly above, areas 2 and 3 will have the ability to provide shelter in place within upper levels of each vertically aligned dwelling.

Other sites within locality study Area



The area outlined above was originally designated for 3-4 storey, medium density residential development. This would have involved rezoning of the land from 2(a) – Low Density Residential to R2 – Medium Density Residential (under the new standard format LEP). Due to constraints in relation to flooding these areas are no longer proposed for rezoning at this time and will be deferred from the Plan.

Summary: Issues arising from Consultation. November 2007

A review of the submission has been undertaken. Those with content wholly or partly relating to the Draft Murwillumbah Town Centre DCP have been analysed.

A total of 55 submissions were received and where possible have been classified as being in support (no objections/concern raised), against (either against in principle or against a single component) or For and Against (generally being in support of the concept in principle, however against certain elements). The breakdown is as follows:

In Support:	5
Against:	28
For and Against	19
Non specific:	3

The following is an outline of the relevant and/or prevalent issues raised.

Character, Heritage Conservation, Setting and Landscape Impact (resulting from zoning, density, height):

Overall, the increased density proposed in the medium density precincts (part 5) provoked the greatest response, with respondents objecting to 'Maximum storeys' prescribed in parts 4.3, 5 and 7.2 of the document.

Concern regarding the loss of existing character (country town, low density, buildings of heritage status, the "Queenslander" architecture), invoked the greatest response, with the maximum height controls being evidenced as the greatest threat. It has been strongly submitted that Murwillumbah has distinct character and historic charm which needs preserving in order for the area to remain distinct from settlements in South East Queensland.

Proposed maximum height controls were also seen as a threat to short and long range views across town, over the river and towards Wollumbin / Mt Warning. The 6 storey height maximum in South Murwillumbah raised some support given its potential to create a distinct town entrance.

It was generally forwarded that the town should retain a maximum 2 and 3 storey limit where appropriate.

Whilst the proposed rezoning of the Prospero Street area to a mixed use precinct (Part 6) received some support, particularly from business/commercial operators of that area, the overall concept for south Murwillumbah was not received favourably.

With the exception of rezoning along River Street to open space (discussed below), there was no dispute of general landuse layout proposed by the zoning, with the exception of one respondent who forwarded that the Knox Park precinct need not be solely residential.

The majority of concern within the submissions related to Prospero Street and South Murwillumbah which have now been deferred from further consideration. Whilst there may be some amendment to the locality plans recommendations, this will be revisited at a later date.

Extensive concern regarding loss of character was received. The intent of the locality DCP is to retain the town centre core as it currently exists, with specific controls to protect the town centre core and civic precinct. The changes proposed in and around the periphery of Knox Park are not considered to be at the detriment of Murwillumbah's heritage significance and character, but it is noted that the present land-use zone could well be. These changes are considered to present significant public realm and neighbourhood improvements without significant impact on the town's character.

Some concern still arose regarding the proposed 4th storey surrounding Knox Park. It should be noted that (as highlighted above) a large element of the proposed medium density residential zoning has been deleted from the locality plan. However, the proposed 4 storey height limited on the immediate periphery of Knox Park has been considered to satisfactory, particularly as the floor plate area of the fourth storey element is recommended to be further reduced.

Urban Consolidation and Sustainability:

Some respondents noted the value of urban consolidation and understood that this principle underpins the Draft DCP. These respondents agreed that higher densities and resulting population increases were appropriate within the town centre, particularly surrounding Knox Park.

This was often counteracted by the notion that larger building forms (such as unit style development) are unsustainable in terms of building and construction process and water/energy consumption.

At the present time, the locality plan and DCP results in minimal zoning changes for increased residential density. Whilst some areas are deferred from consideration, these can be revisited at a future time in light of any documented need at that stage.

Traffic and Parking (Third Party Response)

It was forwarded that the medium density precincts would exacerbate the traffic and parking congestion within the locality. Particularly, near the main street (Church, Queen, Main). Further, it was forwarded that increased traffic along Wollumbin Street (resulting from higher densities around Knox Park) and Bridge access would be problematic. Concern was raised regarding emergency vehicle access and the increase in heavy goods vehicle trips.

The TEDC made reference to the Murwillumbah Transport Strategy, and potential traffic and parking implications arising from current proposed rezonings.

As stated above, there is little by the way of zoning changes that would have a significant impact on traffic volume and flow from that which currently exist. In the future when increased densities are revisited, the proposed rezonings can be assessed in light of a traffic study at that time. In the meantime Council's traffic engineers had advised the project consultant of no issues pertaining to traffic capacity.

Rezoning to Open Space: River Street (Structure Plan Designation)

There was objection to the proposed rezoning of River Street properties to open space due to concerns relating to displacement, compensation and the like.

This element of the plan is deferred.

Major Retail Option

The proposed retail options received diverse comment as follows:

- Respondents questioned the need for an additional supermarket given the existing provision within the town;
- Questioned the theory of ensuring the livelihood of the Main Street, by not permitting major retail in South Mur'bah, when the proposed locations listed could equally impact the Main Street;
- Some respondents were disappointed that South Mur'bah had been excluded for consideration as Major Retail location. It was felt that this could be the required mechanism to regenerate this locality.

The provisions suggested for an additional supermarket are in principle only. The Locality plan's purpose in respect to an additional supermarket is to guide its location (in principle) and ensure it reinforces the Town Centre's core as the principle business and service area for Murwillumbah. However, the purpose of the locality plan was not to research the need for an additional supermarket, but, to illustrate areas in the town that would be appropriate for maintaining the integrity and consolidation of the town's structure

Artists' Impression

Comments about the accuracy of artists impressions were received, with a request that 'more accurate' versions be made available for public consultation.

The artists' impressions are indicative only and can be left off the Plan.

Conclusions

Having taken into account that a major component of the draft Plan has been deferred and that amendments are proposed to the Plan in light of the issues raised by public submission, in particular the area identified for four-storey buildings and the actual area of any fourth-storey component has been reduced, the Plan, in its proposed amended form, is sufficiently aligned between the needs of the locality and the communities expectations for it to be formally adopted.

It is recommended that the Plan be adopted in accordance with recommendations provided within this report, and that any changes required under the LEP to facilitate the Plan be pursued in Stage 2 of the draft LEP 2008.

PART F POTTSVILLE LOCALITY PLAN/DCP

Introduction

Council on 29 May 2007 resolved to prepare a Locality Plan and Development Control Plan (DCP) for the Pottsville area. Architectus, a leading architecture, planning and urban design firm were awarded the tender to prepare the draft Plans on the behalf of Council.

Background

The purpose of the Locality Plan and DCP is to establish the long-term planning vision for Pottsville and ensure that the area evolves with the needs of the local community.

Preparation of the draft Plans has included extensive community input. A number of separate workshop sessions were held over two two-day periods whereby both individuals and specific interest groups were able to participate in the identification of and/or comment on the issues affecting the area and local community. The last of these workshops was held late last year.

Key Issues

The issues identified and consequently addressed in the draft Plans include the protection of the area's character particularly that of the village centre, the need and location of additional retail development, the creation of employment opportunities, the provision of community/social infrastructure like health care services and a youth activities centre, and traffic and transport.

Protection of the Village Character

The village centre of Pottsville has long been the heart of the local area and as such is firmly fixed as being a place of great distinction and importance to the local community. The draft Plans recognise this fact and attempt to ensure that the character of the village centre is maintained and enhanced.

Provisions relating to building height, setback and bulk have been identified as well as a number of improvements to the public domain (street-scaping works along Coronation Avenue and the reconfiguring of open space to allow better access to the foreshore of Mooball Creek).

The most significant of the identified provisions is an increase in the nominated building height within the village centre from two-storeys to a three-storey equivalent that will be measured in metres in accordance with the methodology adopted for the measuring of building height under the new LEP.

The advantage of allowing new development an increased height within the village centre is that it fosters the sense of place that the centre has within the community and will better facilitate the establishment of a true mixed-use commercial/residential precinct ensuring the centre remains viable and active despite the development of surrounding urban zoned land.

Future Retail Development

Council's Retail Strategy, which was adopted in 2005, identifies that additional retail development may be required in the Pottsville area provided it is not to the detriment of other local communities and/or villages along the Tweed Coast.

Anecdotal evidence supports the provision of additional retail development given that major retail chains including Coles and Woolworths, work off a population catchment of approximately 7, 000 people for the provision of a full-line supermarket. The expected population of the subject area is expected to be in excess of 10, 000 people should the proposed future release area of Dunloe Park be developed.

Therefore, it is foreseeable that the establishment of additional retail development within the Pottsville area, at some point, is likely and can be sustained by the local community; not by people from a wider catchment.

The preferred location for establishing additional retail development, including a full-line supermarket, is within the existing village centre. To provide it elsewhere would have an impact on existing businesses and potentially the vitality of the village, particularly if it were provided prior to a sizeable catchment being established.

The consultants in the preparation of the Locality Plan investigated this issue and determined that whilst it is preferred to locate additional major retail development within the village centre, a range of factors such as the availability of land and the management of increased traffic, when combined prevent this from being a realistic option.

The draft Plans consider that two alternative sites, being the potential future release area of Dunloe Park and the Seabreeze Estate, are the only viable options for the establishment of additional retail development to meet the needs of Pottsville residents.

To ensure that a significant negative impact of having retail development outside of the village centre does not eventuate, the draft Plans identify a number of provisions to require that it (the additional retail development outside of the village centre) is established incrementally.

The incremental establishment of additional retail development at either the Seabreeze Estate or Dunloe Park is considered to better address the needs of the local community and also allow for the evolution of the types of business activities undertaken in the village centre. It is expected that over time the village centre will evolve to provide a more leisure based type of retailing experience due to its location to Mooball Creek and the area's character.

Employment Opportunities

The creation of Koala Beach, Black Rocks and the Seabreeze Estate has resulted in an increased demand for the provision of greater employment opportunities within the Pottsville Locality Plan area.

Generally this issue has been addressed by the Employment Lands Strategy. However, the Locality Plan and DCP reinforce the need for greater employment opportunities as well as provide some limited guidelines for how the area should develop in the future so as to ensure that it contributes to the overall character of Pottsville.

Community/Social Infrastructure

During the preparation of the draft Plans it was identified that additional community facilities are needed within the Pottsville study area, particularly youth and health care facilities.

Whilst the Locality Plan itself cannot directly implement additional community facilities, it can provide a framework for their location and operation when provided.

In response to the above the Locality Plan identifies that additional community facilities incorporating health care services and an activity centre for the area's youth should be accommodated within the village centre, preferably adjacent to the existing facilities established in Elizabeth Street.

The Locality Plan also recognises that additional educational facilities particularly a local high school will be needed in the future. The draft identifies Dunloe Park as being the likely location for the provision of these.

Traffic and Transport

Although the Pottsville area is reasonably well serviced by private transport means the local traffic network is considered to be linear spiralling out from the village centre, which has resulted in a poor level of connectivity between the various clusters of residential development around the village.

Some modification of the traffic network has long been planned for through the development of a link road between Koala Beach and the Seabreeze Estate, which once developed, will improve the connectivity of the area at least on the northern side of the village.

The draft Plans further identify additional modifications to the local traffic network including the implementation of a road connection between the existing Black Rocks Estate and the proposed Dunloe Park to the Pottsville – Mooball Road. It is anticipated that once constructed this too will improve the connectivity of the area. However, this road is not likely to be constructed until the Dunloe Park area is also developed.

The linear nature of the traffic network has, thus far, been one of the contributing factors in the provision of a regular public transport service; another has been the relatively small population that currently resides in the area. Given the identified improvements to the local traffic network and the expected increase in population it is anticipated that public transport services will also improve in the future to become more readily available.

Implications for Stage 2 of Tweed LEP 2008

Implementation of part of the Locality Plan for Pottsville will require that some amendment to the LEP is undertaken. However, it is envisaged that only the amendment of the building height within the village centre be undertaken as part of stage 2 of Tweed LEP 2008.

All other amendments to the LEP to further the implementation of the Locality Plan will be effected by individual landowners overtime and further justified by detailed environmental investigation.

Conclusions

The draft Plan has been through a process that has involved, among others, the local community, and the views and expectations raised throughout the process have been embodied as far as practical into the exhibition draft. It has reached a key milestone that now warrants its public exhibition and comment.

It is recommended that Council resolve to exhibit the draft Pottsville Locality Plan / Development Control Plan.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

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).

1. A copy of the documents listed below will be tabled at the meeting of 22 April 2008.
 - (a) Tweed Urban Land Release Strategy (DW 1801682)
 - (b) Tweed Employment Land Strategy (DW 1801679)
 - (c) Murwillumbah Locality DCP (in final draft form, not with proposed amendments) (DW 1801657)
 - (d) Pottsville Locality Plan and DCP (DW 1802106) & (DW 1802027)
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P8 [PR-PC] Residential and Tourist Code – Section A1 of Tweed DCP**ORIGIN:****Planning Reforms****FILE NO:** GT1/DCP/A1**SUMMARY OF REPORT:**

This Report deals with the implementation of the draft Residential and Tourist Code (Section A1 of the Tweed Development Control Plan).

On 15 September 2004 Council resolved to prepare a draft Development Control Plan that would comprise a comprehensive review of the then DCP 6 – Multi Dwelling Housing (Tweed Development Control Plan Section A1), which would have Shirewide application.

On 1 June 2006 Ruker Urban Design Pty Ltd was appointed to prepare the Plan on behalf of the Council.

The draft Plan has been made in accordance with s 74C of the *Environmental Planning Assessment Act 1979* and has been publicly exhibited on two occasions in accordance with ss 18–20 of the *Environmental Planning Assessment Regulation 2000*.

Council resolved on 28 November 2006 to publicly exhibit the first draft for a period of 90 days and after significant amendment of the Plan following review of public and industry submissions, further resolved on 21 August 2007 to readvertise the revised draft Plan for a further 60 days. In response to the re-exhibition ten submissions were received from the general public. A summary of the main issues and identification of the key amendments following the exhibition period are provided in this report.

Anecdotal evidence gained through general enquiries from industry practitioners and the general public who have used the draft Plan as the basis for their preliminary building designs suggests that the Plan is legible across that spectrum and importantly the development controls are pliable.

The recommendation of this report is based upon a significant body of expert work and a recommendation for a 'savings provision' that will allow already lodged development applications that, are yet to be determined, to continue to be assessed under the controls in force prior to the adoption of this Plan.

RECOMMENDATION:

That: -

- 1. Council adopts draft Section A1 of the Tweed Development Control Plan – Residential and Tourist Code, and in accordance with section 21 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. That an amendment to the draft Plan be made to the effect that it shall specify that all tourist nominated developments made under that Plan are to include a condition of approval requiring that the nominated use and any incidental residential occupational time limit restrictions thereto are to be registered on the title to the subject land.**
- 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.**

REPORT:

Introduction

As early as September 2004 the need to review the then DCP 6 Multi-dwelling Housing Plan (Tweed Development Control Plan Section A1) was contemplated as part of the Tweed Heads Masterplan project, where it was recognised that consequential amendments may arise. This led to the Council resolving at its meeting of 15 September that year to prepare, among other things, a draft Plan.

Due to the complexities associated with the planning work being undertaken at the time the tender briefs were not sent out until 27 October 2005 and were then followed by the appointment of Ruker Urban Design (the Consultant) on 1 June 2006, after reconfirming the tender proposal fee structures and the tendering consultant's availability on 26 May of that year.

The purpose of this report is to summarise the preparation of the draft Plan and to identify the more significant issues arising from any submissions that have been received in response to the exhibition of the draft Plan.

Project Background

The purpose of preparing the draft DCP intensified over time and was ultimately to improve the responsiveness of development within the Tweed to local conditions, with the goal of sustaining the special character of the region's areas while at the same time allowing for diversity in accommodation for both present and future residents.

It was evident from the beginning that a complete rethink of how development was being managed through the DCP process was required, particularly in the way the Plan needed to be structured. The options consisted of maintaining a largely performance based plan, a move to a largely prescriptive plan or a plan comprising of both.

The present DCP was introduced in 2001 and was based predominantly on a performance based criterion, which at the time was considered best practice, and it aligned neatly with the State Government's philosophies as embodied in such documents as *Amcord: a National Resource Document for Residential Development*. The methodological approach was quite innovative and it provided significant flexibility and scope for myriad development designs and themes; traditional, contemporary and modern. The advantages of the performance based approach did not however materialise as users of the plan at all levels and in all professions took the flexible controls and guidelines and over time turned them into quasi-development controls, reintroducing prescription into the framework of the plan. Once this situation took hold no amount of persuasion and argument would ever return the document's provisions to their former status, although many have tried in vain. Because the plan's provisions were never intended to be prescriptive tools they were not subjected to detailed modelling and evaluation at the document design phase, and the culmination of the false interpretation and use of the plan resulted in the application of inappropriate development guidelines as prescriptive development controls. The responsibility for the

unfortunate and premature demise of what started life as an innovative flexible plan must fall squarely on all those who both used and applied it.

It would be easy to catalogue the number of times and the number of developments that could have and perhaps should have provided a far better or improved alternative to those that were ultimately accepted, whether that be through external appearance, in the provision of occupant comfort or in the preservation of the natural environment or some other kind. Nevertheless, this is not to say that those developments failed to comply with the rules of the day

The reasons that brought the effectiveness of the current DCP undone are extremely important and should not be underestimated or dismissed. The success of the draft DCP lies in-part only on its drafting, the most significant area is its uniform and consistent interpretation and application. If this is carried out effectively and a proper monitoring and amendment regime is implemented to manage the Plan, it will serve the Tweed community well and will justify the amount of resources used up in its preparation.

Armed with the knowledge of what method of controls have seemingly been favoured in the past it was resolved in consultation with the Council Administration of the day that a return to a prescriptive based DCP would provide greater certainty for building designers and that should result in more site responsive development. The draft DCP also took the step of describing different classes of building types and this was married with a suite of development controls tailored specifically to each of those types. To facilitate this it was necessary for the draft document to be divided in sections, each one containing the full set of controls for that building type.

For the first time Tweed will have a comprehensive suite of development controls specifically adapted for:

- Dwelling houses, including outbuildings;
- Dual occupancy, including granny flat;
- Town houses, including villas;
- Row housing, including terraces;
- Residential flat buildings (apartments); and
- Shop top housing (mixed-use).

The key controls include:

- Specific floor space ratio controls for each building type;
- Revised building setback provisions aimed at encouraging the appropriate orientation of living spaces, improving privacy and retaining appropriate building separation and natural features;
- The introduction of deep soil zones for improved on-site stormwater infiltration and for the provision of adequate areas for larger trees;
- New building heights reflecting the different building types;
- The use of storeys within the overarching building height control as a means for directing, along with the other controls, the appropriate scale of development,
- Improved illustrations and images that assist in articulating the written controls;
- A clear and precise set of objectives for each series of development controls;

- A clearer and more robust control setting out the process required for a variation to any mandatory control.
- Directions on the use of controls for hybrid development.
- Controls relating to garages, carports, swimming pools and tennis courts.

Preparation of the draft Plan

The draft plan was prepared by the appointed consultant in consultation with Council's Senior Planner Planning Reforms. The preparation of the draft Plan has taken nearly 2 years and with the assistance of internal and external input into the project the draft Plan has been significantly redrafted since the first draft and has been continually updated and amended throughout the whole process. Initial feedback indicates that final document is a step in the right direction.

Exhibition of the draft Plan

The draft Plan was placed on public exhibition in accordance with the *Environmental Planning and Assessment Regulation 2000* from Wednesday 13 December 2006 to Tuesday 13 March 2007 and Wednesday 7 November 2007 to Tuesday 5 February 2008, totalling a period in excess of 150 days. On both occasions the draft Plan was notified in the Tweed Link, on more than one occasion each time, and made available at the following locations:

- Murwillumbah Civic Centre from 8.00am to 4.30pm weekdays.
- Tweed Heads Civic Centre from 8.00am to 4.30pm weekdays.
- Kingscliff Library from 10.00am to 5.00pm Tuesday-Friday and 9.00am to 12 noon Saturday.
- Tweed Shire Council's website

During the period following the first public exhibition it came to light that an industry practitioners group had formed with a view to making a collective assessment and submission on the draft Plan. An invitation to the industry group was sent out and a workshop was held on 7 March 2007, attended by the project consultant. It proved to be of great value and was the basis for a number of significant changes to the early draft; the reconfiguration of the document format into individual self-contained sections, each dealing with a specific building type, can be attributed to the efforts of that group.

In response to the second public exhibition ten public submissions were received. They too have formed the basis of some further amendments and refinement to the draft Plan.

After two years of work on the draft Plan the time has arrived when it needs to be implemented, and put to its ultimate test, which is that of its application by a broad spectrum of industry architects, designers, planning consultants and home builders alike. Until that happens the degree of refinement that remains to be done will not truly reveal itself, because it is the unforeseeable circumstances that arise on real case by case development scenarios that will highlight the strengths and weaknesses of the draft Plan. This is also true in respect of continually receiving suggestions through submissions, that the Plan is at stage where the strength of individual ideas and views is on equal footing with those already built into the Plan and that it falls into the realm of subjective debate of

individual preferences. Actual implementation and application is the only way of further improving on the final draft.

Summary of Key Issues

In response to the second exhibition of the draft Plan ten sub submissions were received from the general public. A summary of the issues being raised and the kind of response to them is provided below, but, it is important to remember the earlier discussion that raised the point about subjective debate of personal preferences when considering the issues raised at this stage of the project. Nonetheless, all the submissions received to-date have contributed in some way to the preparation of the draft Plan and will continue with that contribution as the Plan is evaluated through its life.

It is also important to bare in mind when reviewing submissions that have their basis founded on certain controls being too stringent that the Plan has Shirewide application and it will therefore be inevitable that occasions will arise where this may be the case, but, the opposite is also true. One obvious advantage to having controls that are more stringent is that it enables the assessment of variations on a case by case basis so that the best outcome can be achieved. This is not so for controls that are too loose, and experience has shown that relying on the subjectivity that arises from reliance on the objectives as a means of imposing a stricter position than that of the control seldom results in the achievement of the 'optimum' outcome; this method can also give rise to determinations that are difficult for the general public to understand.

Issue: Some of the illustrations show four storey buildings.

Response: A number of the diagrams have been amended and a notice in relation to the use of the illustrations and diagrams has also been added. Of note, the illustrations and diagrams are indicative only, they are not to be used to as a control measure. The earlier illustrations like that of the present do not include measurements or the like consequently the illustrations would need to read outside of their indicative nature so as to support a view as to their height representation in storeys or otherwise. The note added to the document makes it quite clear that they are indicative only.

Issue: The impermeable site area provisions seem excessive.

Response: The percentages prescribed for the different building types are currently adopted under the Tweed Development Control Plan and are not new. Anecdotal evidence through the assessment of a significant number of development applications suggests that the nominated percentiles are working effectively.

Issue: Planting on structures will have an on-going maintenance issue.

Response: It is true that poorly designed and operated structures can give rise to maintenance issues and that even the best designs will need a degree of maintenance. This should not in itself be of sufficient concern so as to prohibit their use when there are many examples where they work effectively and that are seemingly valued by the occupants of the building. Nevertheless, the assessment of these structures must not be token and appropriate conditions of approval will need to be considered. The Planning Reform Unit will work collaboratively with the Development Assessment Unit to ensure

that this issue is monitored and that assessment is as comprehensive as the proposal dictates.

Issue: Communal areas should not be on the roof.

Response: This issue is similar to the previous one. There are occasions when roof top recreation areas are / are not appropriate. The greater majority seemingly work without complications and as such a blanket prohibition would be inappropriate. The Planning Reform Unit will work collaboratively with the Development Assessment Unit to ensure that this issue is monitored and that assessment is as comprehensive as the proposal dictates.

Issue: The setbacks for medium density development should be increased on the side setback and to the basement.

Response: The controls have been devised to encourage the orientation of primary living spaces away from the side setbacks, in part to minimise one of the most common areas of privacy conflict. It is impractical to increase the side setbacks in the face of the other controls that require significant areas to the front and rear for deep soil zones. To do so would undermine the object discussed above and would cause the continuation of privacy impacts. Anecdotal evidence to-date provided by practitioners in the local building design and construction industry suggests that the yield on the average lot for medium density development will be noticeably reduced as a result of the controls in the draft Plan, this will be further and severely impacted if further setback provision were introduced. This applies equally to the basement car parks. The project Urban Designer has tested the controls and considers them appropriate for implementation as they are designed not to work in isolation, but, in conjunction with all the other prescribed controls. It is therefore the achievement of all the controls together that is essential, not individually.

Issue: The percentage ratio garaging within the frontage of a building fronting a laneway is too high.

Response: This matter has been reviewed. The percentage ratio has been reduced, in the case of medium density development, by a further 30%.

Issue: To prescribe a blanket control on floor to ceiling heights at 2.7m is too onerous.

Response: This matter has been reviewed and additional criteria have been introduced so that it is a less stringent control. However the goal is to achieve a higher ceiling height to at least 30% of the habitable floor areas, not least because it is more climate responsive than solely relying on the minimum standards prescribed by the BCA. It is also interesting to note that many of the applications assessed by Council are for buildings that have ceiling heights at 2.7m and above, this seems to be particularly so in the higher density developments and free standing dwellings.

Issue: The roof of residential flat development should not be used for useable space.

Response: This issue was addressed above in relation to the use of roof top areas for communal space. The response is equally applicable here.

Issue:The DCP should state that it relates to 3-storey development.

Response: This would be problematic in that any development seeking a variation to the height limit under the LEP would technically fall outside the ambit of the DCP; it would not make it prohibited, so essentially it would remove any control mechanism from that development. Clearly this is not desirable. The draft Plan provides for a series of building types and it discusses the number of storeys that are considered to comprise that building type, which allows for variation and the continued capture of all developments not falling within some other site specific Plan. This will be particularly relevant when the new generation of standardised LEP's is introduced, as it will bring in heights that are measured in metres not storeys.

Issue:The definition of a flat building should be amended to read: a building up to three storey in height.

Response: The reason why it refers to buildings of three or more storeys is simply because they are defined this way in the State Governments Residential Flat Design Code. This is an important Code because it is a mandatory consideration under the *Environmental Planning Assessment Regulation 2000*. Any building not being of three or more storeys is not defined as a residential flat building, so to vary the definition for the draft DCP would cause confusion.

Issue:Attics should not be permitted.

Response: Attics have been removed from the draft DCP, however, in the longer term it is immaterial in form because they will be permissible under the State government's standard lep instrument, as a compulsory control on all councils.

Issue:Garages and car parking should not be allowed in the rear setback area.

Response: The most obvious issue that arises to justify the need for controls is that many properties have more than one frontage and the secondary frontage can also constitute the rear of the block. This is most noticeable where there is a laneway, such as, Hungerford Lane in Kingscliff.

Issue:Dual Occupancy should not be prohibited on 'fan tail' lots.

Response: Notwithstanding that this is an existing adopted control under the Tweed DCP, irregular shaped lots, including 'fan tail,' have proved themselves time over to be the least desirable configuration for dual occupancy in terms of the ultimate design outcome. Whilst there is no doubt appropriate designs arise they seem limited in number. It is understandable from a commercial perspective that it would be advantageous to permit dual occupancy simply because this design configuration generally results in larger lots. Unfortunately, size is not all that counts when determining appropriate configurations that will allow for good design outcomes.

Issue:The deep soil requirements will be too restrictive on irregular shaped lots.

Response: The variation clause can be used were proper justification can demonstrate that the controls are too restrictive in the particular circumstances of the case.

Issue: Requiring dwellings to have their entries facing the street is too restrictive as there may be better design outcomes.

Response: In such cases the design should speak for itself. The appropriate mechanism would be to demonstrate this through the use of the variation clause.

Issue: The width of a driveway between the property and the gutter should not be more than one car width.

Response: Car parking and access is directed under the relevant section of the Tweed DCP and the Australian Standards.

Issue: Finished basement walls should not be closer than 1 metre from the boundary.

Response: The draft Plan requires 1.5 metres setback to the outer enclosing wall of the building and the basement is only permitted to this point.

Issue: There are measurements for the rear deep soil zone but not for the front; what about pools in this area.

Response: A swimming pool is not a deep soil area, as such, it cannot coexist with (in) a deep soil zone. There is no need to provide the same level of control for the front deep soils zone simply because it is based on the front setback area less any required driveway and footpath. The setback requirement is directed by other controls within the Plan and access driveways are covered by controls in another section of the DCP.

Issue: There is no requirement for bike racks or scooter parking areas.

Response: It is a requirement under the parking and access Section of the Tweed DCP to provide where prescribed the provision for bicycle parking. This issue will be further raised with the Manager Development Assessment to ensure appropriate design / conditions of approval are considered. Scooter parking will require further review, and would require a level of survey to determine whether or not the use of the on-site garaging adequately meets those needs.

Recommendation/Conclusions

The draft Plan has been on the drawing board for a significant period of time and it has not lain idle at any time, having undergone significant transformation from the first draft to continual refinement until the last moment. The public exhibition periods totalling in excess of 150 days is significant for this type of project, however it is a reflection of how important the Plan is and how serious the Planning Reforms Unit has been in ensuring the best product. The community and industry practitioners' assistance and support through their submissions has been extremely valuable and will undoubtedly assist with any necessary reviews of the Plan over the first year of implementation.

Generally speaking the information received on the draft Plan to date has been very positive and it has matured sufficiently over nearly 2 years for it to warrant adoption.

It is therefore, recommended that the draft Plan be adopted.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Implementation of the draft Residential and Tourist Code (Section A1 of the Tweed Development Control Plan) will not have any adverse implication on Council's forward budget estimates.

POLICY IMPLICATIONS:

Implementation of the draft Residential and Tourist Code (Section A1 of the Tweed Development Control Plan) will not give rise to policy implications.

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. A copy of the draft Residential and Tourist Code (Section A1 of the Tweed Development Control Plan) will be tabled at the meeting (DW 1801807)
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P9 [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:

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 study area comprised the residential area south of the Cudgera Creek bridge and covers 44 lots.

After two consultation workshops with the study area residents, landowners and representatives of the Hastings Point Residents Association, the consultant, Ruker Urban Design, has completed the requested evaluation. The report generally concludes that prior to the approval of any further development comprising buildings of 3 or more storeys and / or containing 3 or more dwellings, site and building design guideline would need to be prepared specifically for Hastings Point.

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.

RECOMMENDATION:

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. That the draft amendment be publicly exhibited in accordance with s 74E of the *Environmental Planning Assessment Act 1979*.**

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 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.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

There would be implications on Council's forward budget estimates arising from the recommendations in this report relating to the preparation of a locality plan.

POLICY IMPLICATIONS:

The recommendation of the report would represent a policy shift through amendment in the Tweed LEP relating to building height.

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. A copy of Ruker Urban Design's Report will be tabled by the Director Planning and Regulation at the meeting. (DW 1801807)
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P10 [EO-PC] Subdivision Manual (Section A5 of the Tweed Development Control Plan)

ORIGIN:

Planning & Infrastructure

FILE NO: GT1/DCP/16; GT1/DCP/A5

SUMMARY OF REPORT:

Council's Development Control Plan Section A5 – Subdivision Manual has been reviewed and it is proposed that the draft Plan as amended be exhibited for public comment.

The DCP has been amended to take account of Council's Floodplain Risk Management Study and Plan and, in particular, the requirements of Part 3 of the *Tweed Valley Floodplain Risk Management Study - Habitable Land Use on the Floodplain*.

The DCP also includes amendments to reflect recent changes to legislation and the certification procedures for Subdivision Works Accredited Certifiers (SWACs).

RECOMMENDATION:

That the draft Development Control Plan Section A3 – Development of Flood Liable Land be exhibited for public comment for a period of 28 days in accordance with Clauses 18-20 Environmental Planning and Assessment Regulation 2000.

REPORT:

Council's Development Control Plan Section A5 – Subdivision Manual has been reviewed and it is proposed that the draft Plan as amended be exhibited for public comment.

a) Flooding

Since the completion of the Tweed Valley Flood Study in late 2005, Council officers have been working with the State Emergency Service (SES) to update the Local Flood Plan for the Tweed Shire. While contemporary subdivision design, as currently prescribed in Sections A3 and A5 of the DCP, provides a standard suitable for the protection of property (the ARI 100 year flood level plus a freeboard to all habitable development), there is currently little or no consideration of the protection of life in subdivision design when considering larger floods up to the probable maximum flood (PMF).

As large scale residential development has progressed in areas such as Banora Point and West Kingscliff without such consideration, the SES has surmised that there are several thousand people who will be trapped in their homes during a major flood with no means of unassisted evacuation should water levels continue to rise. A rescue operation of that magnitude is unfeasible for the SES at current resourcing levels. Further "low island" subdivision design will only exacerbate this potentially disastrous situation, so it is important that this issue be properly addressed in the forthcoming land release areas in Cobaki Lakes, Kings Forest and West Kingscliff via DCP amendments.

The DCP has been amended to take account of Council's Floodplain Risk Management Study and Plan and, in particular, the requirements of Part 3 of the *Tweed Valley Floodplain Risk Management Study - Habitable Land Use on the Floodplain*. Significant in terms of future subdivision proposals in Tweed Shire the Study requires that *"all flood prone allotments (those below probable maximum flood level) are located in proximity to high level flood evacuation routes..."*

Such measures ensure that the occupants of new residential subdivisions can respond appropriately to a flood emergency and evacuate from their premises to land that is above the PMF level (that is, not flood liable) without the assistance of the SES. In smaller infill subdivisions where high level evacuation routes are not feasible due to existing land use patterns and infrastructure, shelter in place measures have been mandated, so that residents can remain safely in-situ for the duration of the flood.

These amendments also bring the DCP into line with the recently adopted Flood Risk Management Policy (18 December 2007).

On 31 January 2007, the Department of Planning (DoP) released a Planning Circular (PS 07-003) and a new Guideline concerning flood related development controls on residential development on land above flood planning level (Q100 + freeboard). Of relevance to the current draft amendments, the Guideline stated that:

"...unless there are exceptional circumstances, councils should adopt the 100 year flood (plus freeboard, per correspondence from the Department of Planning) as the FPL (flood planning level) for residential development. In proposing a case for exceptional circumstances, a Council would need to demonstrate that a different FPL was required for the management of residential development due to local flood behavior, flood history, associated flood hazards or a particular historic flood.

Unless there are exceptional circumstances, councils should not impose flood related development controls on residential development on land with a low probability of flooding, that is, land above the residential FPL (low flood risk areas).

Justification for variations to the above should be provided in writing to, and agreed by, the Department of Natural Resources and the Department of Planning prior to exhibition of a draft local environmental plan or a draft development control plan that proposes to introduce flood related development controls on residential development."

As detailed above, the planning controls proposed in the Draft DCP have already been through the exhibition and adoption process for the Part 3 Floodplain Risk Management Study and the Flood Risk Management Policy, and no objections were received in relation to the Guideline. During the exhibition period for these documents, both DoP and DECC (formerly DNR) were asked to provide their concurrence on exceptional circumstances. DECC approved the case for exceptional circumstances, however formal concurrence is yet to be provided from the Director General of DoP, although it has support at the local officer level.

Whilst the DoP circular says that Councils "should" seek concurrence for planning controls above 100 year flood plus freeboard, the use of the word "should" indicates that this is advisory rather than mandatory. DECC have provided concurrence and it is now 5 months since DoP were requested for similar concurrence and have not replied. It is understood that concurrence is supported by officers at DoP Regional level. Given the delay in receiving advice from DoP and the necessity to implement controls on residential subdivisions on the floodplain, it is proposed to proceed with exhibition of the draft DCP changes, whilst concurrently making representations to DoP to provide their concurrence.

A copy of the amended DCP is attached to this report.

b) Subdivision Works Accredited Certifiers

Recent changes to the certification procedures for Subdivision Works Accredited Certifiers (SWACs) by the Board require amendments to Council's Subdivision Manual.

In March 2007 the Building Professionals Board introduced a new scheme for the accreditation of Professional Engineers as private certifiers.

The Building Professional Board has now assumed the responsibilities previously undertaken by the Institution of Engineers Australia for the accreditation of Professional Engineers in accordance with the Accreditation Scheme for Certifiers under the Environmental Planning and Assessment Act (NSW) July 2000.

Councils Subdivision Manual – A5 requires that a Subdivision Works Accredited Certifier (SWAC) be appointed by the subdivider to ensure that works are completed in accordance with Council's standards and the conditions of consent.

After a review of the Building Professionals Board Accreditation Scheme it is considered that a SWAC must hold the following accreditation categories:

- B1: Accredited certifier – subdivision certificate.
- C3: Accredited certifier – stormwater management facilities design compliance.
- C4: Accredited certifier – stormwater management facilities construction compliance.
- C5: Accredited certifier – subdivision works and building works (location of works as constructed) compliance.
- C6: Accredited certifier – subdivision road and drainage construction compliance.

The proposed amendments to the Subdivision Manual – A5 ensure that SWAC's are accredited in accordance with the Building Professional Board.

A copy of the amended DCP is attached to this report.

c) Housekeeping Amendments

Other minor housekeeping amendments have been provided by Council's Development Engineers to clarify the current requirements for developers, including minimum street frontage and access width requirements.

A copy of the amended DCP is attached to this report.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

After public exhibition of the draft DCP, submissions will be addressed in a further report to Council, where adoption of the amended DCP will be considered.

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. Subdivision Manual (Section A5 of the Tweed Development Control Plan (DW 1801018)).
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P11 [EO-PC] Development of Flood Liable Land (Section A3 of the Tweed Development Control Plan)

ORIGIN:

Planning & Infrastructure

FILE NO: GT1/DCP5; GT1/DCP/A3

SUMMARY OF REPORT:

Council's Development Control Plan Section A3 – Development of Flood Liable Land has been amended to enable implementation of Part 2 (Planning Controls for High Flow Areas) and Part 3 (Habitable Land Use on the Floodplain) of the *Tweed Valley Floodplain Risk Management Study and Plan 2005*. It is proposed that the draft Plan as amended be exhibited for public comment.

RECOMMENDATION:

That the draft Development Control Plan Section A3 – Development of Flood Liable Land be exhibited for public comment for a period of 28 days in accordance with Clauses 18-20 Environmental Planning and Assessment Regulation 2000.

REPORT:

Council's Development Control Plan Section A3 – Development of Flood Liable Land has been reviewed and it is proposed that the draft Plan as amended be exhibited for public comment.

The Draft DCP has been amended to enable implementation of Part 2 of the *Tweed Valley Floodplain Risk Management Plan 2005 - Planning Controls for High Flow Areas*, which was adopted on 17 October 2006. The Part 2 Plan included the following implementation measure:-

"3. Implementation

- (a) *The development controls should be implemented by an amendment to Development Control Plan No.5 Development of Flood Liable Land. Draft Version 2.4 of DCP5 incorporating these amendments will be publicly exhibited in accordance with Clause 18 of the Environmental Planning and Assessment Regulation 2000."*

DCP No.5 has been incorporated into the consolidated Shire-wide DCP as Section A3.

The amendments to Section A3 in order to implement the planning controls from the Part 2 Study and Plan are:-

- Additional definitions.
- Addition of development control details for individual zones for land within high flow areas (Section A3.2.4).
- Inclusion of reference to New Map of High Flow Areas in the Tweed Valley contained in the Part 2 Plan.

The DCP also has been amended to enable implementation of Part 3 of the *Tweed Valley Floodplain Risk Management Study - Habitable Land Use on the Floodplain*, which was adopted on 18 December 2007. Controls adopted under the Part 3 Study have already been implemented in Council's new Flood Risk Management Policy, however to give these controls greater statutory authority, they are also proposed for inclusion in DCP-A3.

The amendments to Section A3 in order to implement the planning controls for Part 3 Study are:

- Amended and additional definitions.
- Addition of development control details for various land uses to ensure adequate provisions are made for flood emergency response for all events up to the probable maximum flood (PMF) (Section A3.2.5).

A copy of the amended plan is attached to this report.

On 31 January 2007, the Department of Planning (DoP) released a Planning Circular (PS 07-003) and a new Guideline concerning flood related development controls on residential development on land above flood planning level (Q100 + freeboard). Of relevance to the current draft amendments, the Guideline stated that:

"...unless there are exceptional circumstances, councils should adopt the 100 year flood (plus freeboard, per correspondence from the Department of Planning) as the FPL (flood planning level) for residential development. In proposing a case for exceptional circumstances, a Council would need to demonstrate that a different FPL was required for the management of residential development due to local flood behavior, flood history, associated flood hazards or a particular historic flood.

Unless there are exceptional circumstances, councils should not impose flood related development controls on residential development on land with a low probability of flooding, that is, land above the residential FPL (low flood risk areas).

Justification for variations to the above should be provided in writing to, and agreed by, the Department of Natural Resources and the Department of Planning prior to exhibition of a draft local environmental plan or a draft development control plan that proposes to introduce flood related development controls on residential development."

As detailed above, the planning controls proposed in the Draft DCP have already been through the exhibition and adoption process for the Part 3 Floodplain Risk Management Study and the Flood Risk Management Policy, and no objections were received in relation to the Guideline. During the exhibition period for these documents, both DoP and DECC (formerly DNR) were asked to provide their concurrence on exceptional circumstances. DECC approved the case for exceptional circumstances, however formal concurrence is yet to be provided from the Director General of DoP, although it has support at the local officer level.

Whilst the DoP circular says that Councils "should" seek concurrence for planning controls above 100 year flood plus freeboard, the use of the word "should" indicates that this is advisory rather than mandatory. DECC have provided concurrence and it is now 5 months since DoP were requested for similar concurrence and have not replied. It is understood that concurrence is supported by officers at DoP Regional level. Given the delay in receiving advice from DoP and the necessity to implement controls on DAs for habitable uses on the floodplain, it is proposed to proceed with exhibition of the draft DCP changes, whilst concurrently making representations to DoP to provide their concurrence.

It is recommended that the draft DCP be exhibited in its current form.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:



After public exhibition of the draft DCP, submissions will be addressed in a further report to Council, where adoption of the amended DCP will be considered.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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1. Draft Section A3 of the Tweed Development Control Plan - Flood Liable Land (DW 1793352).
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