



TWEED SHIRE COUNCIL

# AGENDA

## PLANNING COMMITTEE MEETING

### Thursday 30 October 2008

**Chairman:** Cr J van Lieshout, Mayor

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

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**ITEMS FOR CONSIDERATION OF THE COMMITTEE:**

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## REPORTS THROUGH GENERAL MANAGER

### REPORTS FROM DIRECTOR PLANNING & REGULATION

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

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

#### MATTERS FOR CONSIDERATION

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

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**P1 [PR-PC] Development Application DA07/1329 for an Eleven Storey Mixed Use Development (Comprising Hotel, Shops, Refreshment Room, Tourist Accommodation and Multi-Dwelling Housing) at Lot A DP 332137, No. 21-23 Wharf Street, Tweed Heads**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA07/1329**

**SUMMARY OF REPORT:**

On 6 December 2007 Council received the subject Development Application seeking approval for the demolition of all existing structures and the erection of an eleven storey mixed use development (comprising hotel, shops, refreshment room, tourist accommodation and multi-dwelling housing) at 21 – 23 Wharf Street, Tweed Heads.

The Development Application has an estimated cost of development of \$20 Million and is accordingly being reported to Council for determination as the estimated cost exceeds the \$10 Million dollar threshold for Officer Delegation.

The application was notified and advertised for a period of 30 days and during this period Council received one objection. The objector was opposed to the development as they did not want to see further multi dwelling accommodation structures due to an existing proliferation of this type of development. The objector felt this development was an overdevelopment of the site.

This is the second application for re-development of the site. A previous application was received in 2002 for an 11 storey mixed use development (comprising a hotel, tourist accommodation, multi- unit dwellings and refreshment room). The Department of Planning was the consent authority and issued consent in July 2006 (DoP-DA-62-2-2003).

The subject proposal differs from the existing consent in design, increases the floor space ratio, increases the gross floor area, increases car parking, and increases density by increasing the number of 1 bedroom units and decreasing the number of 3+ bedroom apartments. However, the proposed design of the subject application is considered superior to that previously approved.

The Department of Planning has advised that the changes between the two designs do not meet the substantially the same test for a S96 Modification Application. The Department has further advised that a new Development Application can be made to Tweed Shire Council under Part 4 of the Act. Subsequently the subject application is now before Council for determination.

The primary areas seeking a variation to Council's controls include;

- Variation to height limit as defined by the Tweed Heads Town Centre Master Plan;
- Overshadowing (SEPP 1 Objection);
- Minor building envelope encroachments and
- Onsite parking concessions for cross utilisation and site parking credits

Having regard to all referral comments, the letter of objection, the originally approved building and the statutory and merit assessment of this application the proposed development is recommended for approval subject to the recommended conditions of consent.

**RECOMMENDATION:**

That: -

1. Council assumes the concurrence of the Director General of the Department of Planning in relation to Clause 32B of the North Coast Regional Environmental Plan as it relates to overshadowing.
2. Council assumes the concurrence of the Director General of Department of Planning in relation to Clause 51 of the North Coast Regional Environmental Plan as it relates to buildings greater than 14m in height.
3. Development Application DA07/1329 for an eleven storey mixed use development (comprising hotel, shops, refreshment room, tourist accommodation and multi-dwelling housing) at Lot A DP 332137, No. 21-23 Wharf Street Tweed Heads 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 as follows except where varied by the conditions of this consent;

Level 2 Basement Plan	Turner & Associates Job Number 07021	Plan DA03 Revision D - 22/02/2008
Level 1 Basement Plan	Turner & Associates Job Number 07021	Plan DA04 Revision E - 22/02/2008
Level 00 Floor Plan	Turner & Associates Job Number 07021	Plan DA05 Revision E - 04/12/2007
Level 01 Floor Plan	Turner & Associates Job Number 07021	Plan DA06 Revision D - 03/12/2007
Level 02 Floor Plan	Turner & Associates Job Number 07021	Plan DA07 Revision D - 03/12/2007
Level 03 Floor Plan	Turner & Associates Job Number 07021	Plan DA08 Revision D - 03/12/2007
Level 04 -06 Typical Floor Plan	Turner & Associates Job Number 07021	Plan DA09 Revision D - 22/02/2008



Level 07 -08 Typical Floor Plan	Turner & Associates Job Number 07021	Plan DA10 Revision C - 03/12/2007
Level 09 Floor Plan	Turner & Associates Job Number 07021	Plan DA11 Revision C - 03/12/2007
Level 10 Floor Plan	Turner & Associates Job Number 07021	Plan DA12 Revision C - 03/12/2007
Typical Unit Plan	Turner & Associates Job Number 07021	Plan DA13 Revision A - 03/12/2007
Context Elevation Wharf Street	Turner & Associates Job Number 07021	Plan DA20 Revision C - 04/12/2007
Context Elevation Navigation Lane	Turner & Associates Job Number 07021	Plan DA21 Revision B - 03/12/2007
East Elevation Wharf Street	Turner & Associates Job Number 07021	Plan DA22 Revision D - 04/12/2007
South Elevation Through Site Link	Turner & Associates Job Number 07021	Plan DA23 Revision C - 03/12/2007
West Elevation Navigation Lane	Turner & Associates Job Number 07021	Plan DA24 Revision C - 03/12/2007
North Elevation	Turner & Associates Job Number 07021	Plan DA25 Revision C - 03/12/2007
Section AA	Turner & Associates Job Number 07021	Plan DA30 Revision C - 03/12/2007
Section BB	Turner & Associates Job Number 07021	Plan DA31 Revision C - 03/12/2007

The development shall be landscaped in accordance with the following landscaping plans except where amended to include all native species local to this area:

Ground Floor Plan	Aspect Studios Landscape Architecture	Drawing No 27053-L00 Rev C 4/12/2007
Level 1 Floor Plan	Aspect Studios Landscape Architecture	Drawing No 27053-L01 Rev C 4/12/2007
Level 2 Floor Plan	Aspect Studios Landscape Architecture	Drawing No 27053-L02 Rev C 4/12/2007
Level 3 Floor Plan	Aspect Studios Landscape Architecture	Drawing No 27053-L03 Rev C 4/12/2007
Level 10 Floor Plan	Aspect Studios Landscape Architecture	Drawing No 27053-L04 Rev C 4/12/2007

[GEN0005]

2. This development consent has approved:

- 38 Hotel Rooms (tourist accommodation)
- 36 Tourist Accommodation Apartments;
- 22 Permanent Accommodation Apartments
- Retail Space 209m<sup>2</sup>;
- Tavern 250m<sup>2</sup>;

- Conference Rooms 643m<sup>2</sup>;
- 151 Car Parking Spaces in the two tiers of basement (with spaces allocated as follows: 46 residential spaces, 36 tourist accommodation spaces, 38 hotel room spaces, and 31 retail/tavern spaces)

[GEN0005]

3. The tourist accommodation units and hotel units are approved for temporary accommodation only. In this regard a covenant restricting use is to be placed on the title of each tourist and hotel accommodation unit restricting the stay of users within each unit to no more than 40 consecutive days, and no more than 150 days in any 12 month period.

[GEN0005]

4. All waste storage areas are to be designed and installed in accordance with Council's Code for Storage & Disposal of Garbage and Other Solid Wastes.

[GEN0005]

5. The proposed retail first uses, and any advertising signage (not building identification signs previously approved) must be the subject of a separate development consent, where statutorily required. The use of the retail space is to be approved by Council prior to their use or occupation.

[GEN0035]

6. 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]

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

[GEN0115]

8. 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]

9. 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 the road reserve or footpath for the "dining blister" for dining purposes. Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.

[GEN0245]

10. All signage is subject to a separate Development Application being submitted to an approved by Council.

[GENNS01]

11. Prior to the use of the building for the purposes of providing public entertainment; the applicant is to obtain approval as required by the Environmental Planning and Assessment Act 1979 from Council in respect of the activity; *use of a building as a place of public entertainment* in the prescribed manner. Should it be intended to use the building as a place of public entertainment the building should be designed to satisfy the *place of public entertainment* requirements of the BCA inclusive of the NSW amendments

[GENNS02]

12. All de-watering operations shall be carried out in accordance with the provisions of the De-Watering Management Plan dated July 2008 prepared by Precise Environmental Pty Ltd.
13. A copy of the De-Watering Management Plan dated July 2008 prepared by Precise Environmental Pty Ltd shall be provided to the site manager, project manager and all other persons provided with responsibilities under the provisions of the De-Watering Management Plan. In addition a copy of the De-Watering Management Plan shall be kept on the site while de-watering operations are being carried out.
14. The names and 24 hour contact phone numbers of the site manager, project manager and all other persons provided with responsibilities under the provisions of the De-Watering Management Plan dated July 2008 prepared by Precise Environmental Pty Ltd shall be provided to Council's Environmental Health Officer prior to the commencement of de-watering operations.
15. Prior to the commencement of de-watering operations an examination of the quantity of pre-existing sediment within the stormwater drainage network that is intended to receive the de-watering discharge shall be undertaken by methods considered acceptable to Council's Stormwater Maintenance Engineer. A report of the findings of the examination shall be provided to Council's Stormwater Maintenance Engineer prior to the commencement of de-watering operations.
16. Prior to the commencement of de-watering operations the applicant or their nominated representative shall consult with Council's Stormwater Maintenance Engineer in respect to the most appropriate method of connection of the de-watering system to Council's stormwater drainage system. The applicant or their nominated representative shall comply with any and all directions as may be provided by Council's Stormwater Maintenance Engineer.

17. Prior to the commencement of any de-watering discharge from the site, a report representing the quality of the groundwaters intended to be discharged shall be provided to Council's Environmental Health Officer. This report shall provide results from a NATA accredited laboratory on the following parameters, pH, Dissolved Oxygen, Suspended Solids, Turbidity, Ammonia, Chromium, Copper, dissolved Aluminium and Lead.
18. The applicant or their nominated representative shall arrange for a site inspection to be carried out with Council's Environmental Health Officer and all representatives involved in the de-watering operations including consultants and personnel responsible under any approved De-Watering Management Plan. Such site inspection shall be arranged and carried out prior to the commencement of any de-watering operations.

[GENNS03]

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

19. Pursuant to Section 80A(1)(B) of the Environmental Planning and Assessment Act, 1979 (as amended) and Clause 97 of the Environmental Planning and Assessment Regulations, 2000 all prior development approvals over the site (specifically but not limited to DoP 62-2-2003) shall be surrendered by lodgement of the prescribed information suitably executed, PRIOR to the issue of a Construction Certificate/Subdivision Certificate.

[PCC0005]

20. The developer shall provide 151 parking spaces including parking for the disabled in accordance with the approved plans and Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code. The parking should be allocated as follows:
  - 46 residential spaces (including 1 car wash bay);
  - 36 tourist accommodation spaces
  - 38 hotel room spaces;
  - 31 retail/tavern spaces.

Please note that residential tandem spaces are to be allocated to the same strata unit.

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.

[PCC0065]

21. 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]

22. 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:

499.54 Trips @ \$596 \$297,726

S94 Plan No. 4

Sector1\_4

(b) Open Space (Casual):

28.1464 ET @ \$570 \$16,043

S94 Plan No. 5

(c) Open Space (Structured):

16.182 ET @ \$653 \$10,567

S94 Plan No. 5

<b>(d) Shirewide Library Facilities:</b>		
13.3902 ET @ \$688		<b>\$9,212</b>
S94 Plan No. 11		
<b>(e) Bus Shelters:</b>		
13.5388 ET @ \$26		<b>\$352</b>
S94 Plan No. 12		
<b>(f) Eviron Cemetery:</b>		
14.114 ET @ \$131		<b>\$1,849</b>
S94 Plan No. 13		
<b>(g) Emergency Facilities (Surf Lifesaving):</b>		
55.675 ET @ \$200		<b>\$11,135</b>
S94 Plan No. 16		
<b>(h) Extensions to Council Administration Offices &amp; Technical Support Facilities</b>		
50.9283 ET @ \$1996.8		<b>\$101,693.63</b>
S94 Plan No. 18		
<b>(i) Cycleways:</b>		
38.7117 ET @ \$352		<b>\$13,627</b>
S94 Plan No. 22		
<b>(j) Casual Open Space:</b>		
38.3236 ET @ \$855		<b>\$32,767</b>
S94 Plan No. 26		
<b>(k) Structured Open Space:</b>		
13.3792 ET @ \$2327		<b>\$31,133</b>
S94 Plan No. 26		
<b>(l) Tweed Heads Master Plan:</b>		
85 MDU @ \$1047		<b>\$88,995.00</b>
S94 Plan No. 27		

[PCC0215/PSC0175]

23. 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: 33.93116 ET @ \$10346.9 \$351,082.30

Sewer Tweed Heads: 50.8549 ET @ \$4972.1 \$252,855.60

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]

24. The basement car parking is to be protected against the inflow of water to a level of 500mm above the design flood level of RL 2.6m AHD in accordance with Tweed Shire Council Development Control Plan Part A3 - Development of Flood Liable Land. This immunity shall be provided at all accesses including external stairs to the basement car park. The pump system shall be designed for a storm event with a 10 year average return interval (ARI 10) and shall have failsafe measures in place such that property (onsite and adjacent) is protected against pump failure. Consequences of the 100 year ARI storm event must also be addressed. Details of the basement stormwater pump-out system shall be submitted to and approved by the Principle Certifying Authority prior to the issue of a Construction Certificate.

Installed pumps must be designed and installed in accordance with Section 9 of AS/NZS3500.3.2 1998 "*National Plumbing and Drainage – Part 3.2: Stormwater Drainage – Acceptable Solutions*"

[PCC0685]

25. 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]

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

[PCC0865]

27. 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.

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]

28. 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]

29. 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]

30. In accordance with Section 68 of the Local Government Act, application shall be made to Council for any proposed sewerage drainage system. Detail shall include hydraulic drawings, pipe sizes, details of materials and discharge temperatures.

[PCC1225]

31. 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]



32. In accordance with Section 68 of the Local Government Act, 1993, any premises proposing to discharge into Councils sewerage system a waste water other than domestic sewage, shall submit to Council a completed application for a Trade Waste Licence. This application is to be approved by the General Manager or his delegate PRIOR to the issuing of a Construction Certificate to discharge to Councils sewerage system.

[PCC1255]

33. Prior to the issue of any Construction Certificate, details of the location of any proposed off site deposition site for the treatment of Acid Sulfate Soils are to be provided to Council's Environmental Health Officer. If the proposed site is not within NSW or lies outside of Tweed Shire then confirmation of acceptance of the Acid Sulfate Soil material from the relevant Local Government or State Authority for the proposed site is to be provided to Council's Environmental Health Officer. The applicant or their nominated representative shall confirm in writing that the proposed deposition site has sufficient area available for the treatment of the Acid Sulfate Soil material including the installation of catch ponds and other treatment devices if required. The applicant shall ensure that they have obtained any required Development Approvals or other appropriate consent(s) in respect to the use of the deposition site such purpose.
34. The name and 24 hour phone numbers of the person responsible for ensuring that the Acid Sulfate Soils material has been appropriately managed and treated in accordance with the provisions of the Acid Sulfate Soil Management Plan prepared by Soil Surveys Engineering Pty Ltd Job No: 202-3643-A Ref: 3643R dated 17 October 2002 shall be provided to Council's Environmental Health Officer. Such responsible person shall provide written evidence to Council's Environmental Health Officer following the completion of the Acid Sulfate Soil treatment process that the Acid Sulfate Soils have been treated and are suitable for any proposed further use prior to the removal of the treated material from the treatment site or use on the treatment site.
35. Prior to the issue of any Construction Certificate a detailed explanation is to be provided to Council's Environmental Health Officer as to how the recommendation as contained within Section 7.1.1 of the Acid Sulfate Management Plan prepared by Soil Surveys Engineering Pty Ltd Job No: 202-3643-A Ref: 3643R dated 17 October 2002 will be carried out so as to ensure the separation of the various substrata is achieved to enable appropriate management of any Acid Sulfate Soil material.

[PCCNS01]

36. Prior to the issue of a Construction Certificate an Operational Noise Investigation Report prepared by a qualified Acoustic Consultant shall be submitted to the satisfaction of the Principal Certifying Authority in respect to noise from the operations of the Tavern and Hotel. Such Report shall include but not be limited to the following:- noise from any amplified music from the Tavern or the Hotel, patron activities, the need for any sound shell attenuation for the Tavern or Hotel, noise from the operation of the loading docks, waste rooms (including the residential waste room), garbage rooms, mechanical plant and equipment (including the swimming pool pump). The Report shall include any recommendations for noise attenuation in order to prevent the occurrence of offensive or intrusive noise. The applicant shall comply with all recommendations of the Report.

[PCCNS02]

37. Prior to the issue of a construction certificate the applicant is to submit to Council for approval detailed plans including turning templates for the provision of loading bays and service areas. The details shall demonstrate service vehicles can access the site via Navigation Lane from Stuart Street and exit the site in a forward direction following the same path. Note: Through traffic movements along Navigation Lane is restricted south of the site.

#### **PRIOR TO COMMENCEMENT OF WORK**

38. 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]

39. Where any pumps used for dewatering operations are proposed to be operated on a 24-hour basis, the owners of adjoining premises shall be notified accordingly prior to commencement of such operations.

[PCW0125]

40. 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]

41. 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]

42. 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]

- 43. 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]

- 44. 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]

- 45. 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.

[PCW0665]

- 46. 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]

47. 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]

48. All roof waters are to be disposed of through properly jointed pipes to the street gutter, interallotment drainage or to the satisfaction of the Principal Certifying Authority. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZS3500.3.2. Note All roof water must be connected to an interallotment drainage system where available. A detailed stormwater and drainage plan is to be submitted to and approved by the Principal Certifying Authority prior to commencement of building works.

[PCW1005]

49. 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]

50. 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]

51. An Approval to Install a Waste Treatment Device shall be obtained prior to the commencement of the installation of the facility.

[PCW1105]

52. Prior to the commencement of any works on the site, a Noise and Vibration Management Plan prepared by a suitably qualified person shall be submitted to and approved by the Principal Certifying Authority. The Plan shall address, but not be limited to, the following matters:

- (1) Identification of the specific activities that will be carried out and associated noise sources;
- (2) Identification of all potentially affected sensitive receivers including residences, schools, and properties containing noise sensitive equipment;
- (3) The construction noise objective specified in the conditions of this consent;
- (4) Determination of appropriate noise and vibration objectives for each identified sensitive receiver;
- (5) Noise and vibration monitoring, reporting and response procedures;
- (6) Assessment of potential noise and vibration from the proposed construction activities including noise from construction vehicles and any traffic diversions;
- (7) Description of specific mitigation treatments, management methods and procedures that will be implemented to control noise and vibration during construction;
- (8) Justification of any proposed activities outside the construction hours specified in the conditions of this consent;
- (9) Construction timetabling to minimise noise impacts including time and duration restrictions, respite periods, and frequency;
- (10) Procedures for notifying residents of construction activities that are likely to affect their amenity through noise and vibration;
- (11) Contingency plans to be implemented in the event of non-compliances and/or noise complaints;

[PCWNS01]

#### **DURING CONSTRUCTION**

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

[DUR0005]

54. 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]

- 55. 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's authorised officer deem to be reasonable, the noise from the construction site is not to exceed the following:**

**A. Short Term Period - 4 weeks.**

**L<sub>Aeq</sub> 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.**

**L<sub>Aeq</sub> 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]

- 56. 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]

- 57. All waters pumped from the site in the dewatering process are to be treated with an effective deodoriser to the satisfaction of Councils General Manager or his delegate to neutralise any offensive odours. The point of discharge shall be approved by Councils General Manager or his delegate prior to installation and shall include a water sampling outlet.**

[DUR0235]

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

[DUR0245]

- 59. Pumps used for dewatering operations are to be electrically operated. Diesel pumps are not to be used unless otherwise approved by the Tweed Shire Council General Manager or his delegate.**

[DUR0255]

60. 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]
61. Provision shall be made for the collection of builder's solid waste in accordance with the following requirements:
- (a) A temporary builder's waste chute is to be erected to vertically convey builder's debris to a bulk container.
  - (b) The chute shall be located in a position approved by the Principal Certifying Authority.
  - (c) A canopy shall be provided to the chute outlet and container to reduce the spillage of materials and nuisance caused by dust.
- [DUR0385]
62. 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]
63. 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]
64. 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]
65. 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]
66. 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]

- 67. 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]

- 68. 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]

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

[DUR0815]

- 70. 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]

- 71. 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]

**72. 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]

**73. 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]

**74. All works shall be carried out in accordance with the Acid Sulfate Soils Investigation and Management Plan prepared by Soil Surveys Engineering Pty Ltd Job No: 202-3643-A Ref: 3643R dated 17 October 2002.**

[DUR1065]

**75. 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]

76. 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]
77. 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]
78. 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]
79. A floor waste connected to the drainage system shall be provided within 1.5 metres of the opening of the cool room.
- [DUR1565]
80. 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]
81. 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]
82. 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]
83. No portion of the structure may be erected over any existing sullage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains.
- [DUR1945]
84. 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]

**85. Swimming Pools (Building)**

- (a) The swimming pool is to be installed and access thereto restricted in accordance with Australian Standard AS 1926.1 - 2007. (Refer Council's web site [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au))
- (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.
- (d) Warning notices are to be provided in accordance with Part 3 of the Swimming Pool Regulations 2008.

[DUR2075]

- 86. 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]

- 87. 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]

- 88. Any proposed cooling tower installation must also include details on the proposed means of back flow prevention to the water supply prior to installation.**

[DUR2475]

- 89. 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]

**90. 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]

91. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position.  
[DUR2505]
92. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993.  
[DUR2515]
93. All water plumbing pipes concealed in concrete or masonry walls shall be fully lagged.  
[DUR2525]
94. 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]
95. 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]
96. 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<sup>0</sup>C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
  - \* 50<sup>0</sup>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]
97. Pre-treatment devices must be serviced by a Council approved waste contractor. The applicant will be required to enter into a service agreement with this waste contractor. Pre-treatment device service frequency will be approved by Councils Manager Water.  
[DUR2595]
98. 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]
99. A hose tap shall be provided adjacent to a grease arrester for cleaning purposes and shall be fitted with a RPZD for the purpose of back flow prevention.  
[DUR2675]
-

**100. A trade waste agreement will be issued and a permit number allocated once the device has been installed, inspected and Council has received a copy of the Waste Contractor's Service Agreement**

[DUR2685]

**101. Hourly inspections extending over a 24 hour period of the stormwater discharge network that is receiving de-watering discharge shall be undertaken at the responsibility of the project manager during rainfall events. The provisions of Section 6.3 of the De-Watering Management Plan dated July 2008 prepared by Precise Environmental Pty Ltd shall be implemented where exceedance of the capacity of the receiving stormwater network is likely to result.**

**102. The frequency of the monitoring regime for the various parameters as listed within Section 7.6.3, Table 7.6.3 of the De-Watering Management Plan dated July 2008 prepared by Precise Environmental Pty Ltd shall be increased at the direction of Council's Environmental Health Officer.**

**103. All water quality monitoring reports prepared under the provisions of Section 7.6.4 of the De-Watering Management Plan dated July 2008 prepared by Precise Environmental Pty Ltd shall be made available to Council's Environmental Health Officer upon request.**

[DURNS01]

**104. Any use of a crane or other equipment that may exceed a top RL of 49.5 metres AHD would intrude into the prescribed airspace of Gold Coast Airport, and therefore represent a "controlled activity" under the Airports (Protection of Airspace) Regulations. The proponent must obtain the approval of the Secretary, Department of Transport and Regional Services. An application for the Secretary's approval must be given to the airport lessee company (i.e. Gold Coast Airport Limited) at least 28 days before the intended commencement of the controlled activity**

[DURNS02]

#### **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

**105. 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]

**106. 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]

**107. Prior to occupation of the building the property street number is to be clearly identified on the site by way of painted numbering on the street gutter within 1 metre of the access point to the property.**

The street number is to be on a white reflective background professional painted in black numbers 100mm high.

The above requirement is to assist in property identification by emergency services and the like. Any variations to the above are to be approved by Council prior to the carrying out of the work.

[POC0265]

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

[POC0435]

109. Prior to commencement of operations and on completion of fit out an inspection is to be arranged with Council's Environmental Health Officer for final approval.

[POC0615]

110. The food premises shall provide appropriate notification to the NSW Food Authority prior to commencement of operations.

[POC0625]

111. 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]

112. 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]

113. 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]

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

[POC1055]

## USE

115. 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]

**116. The  $L_{Aeq}$  noise level emitted from the premises shall not exceed the background noise level ( $L_{Aeq}$ ) in any Octave Band centre frequency (31.5 Hz - 8KHz inclusive) by more than 5dB(A) between 7am and 12 midnight, at the boundary of any affected residence. Notwithstanding the above, noise from the premises shall not be audible within any habitable room in any residential premises between the hours of 12 midnight and 7am weekdays and 12 midnight and 8am weekends.**

[USE0165]

**117. 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]

**118. 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]

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

[USE0235]

**120. A Post Construction Noise Assessment Report from a suitably qualified acoustic consultant shall be prepared and submitted to the satisfaction of the General Manager or his delegate and the Principal Certifying Authority in respect to noise likely to be generated by the activities associated with the Hotel and Tavern and other areas associated with the Development subject of the Operational Noise Investigation Report.**

**The assessment report shall include any recommended noise amelioration measures to be carried out by the applicant. The report shall be submitted within a period not exceeding 60 days of the date of operation of the Hotel and Tavern.**



The applicant shall carry out any such recommendations as provided within the noise assessment report to the satisfaction of the General Manager or his delegate within 30 days from the date of the acoustic assessment, provided that the General Manager or his delegate may extend the time period for the carrying out of any recommended acoustic treatment to a date which may be determined by the General Manager or his delegate.

[USE0295]

121. Any premises used for the storage, preparation or sale of food are to comply with the Food Act 2003, FSANZ Food Safety Standards, AS 4674-2004 Design, Construction and Fit-out of Food Premises and other requirements of Council's Environmental Health Officer as may be directed.

[USE0835]

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

[USE0875]

123. 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]

124. 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]

125. The premises shall be operated in accordance with the *Public Health (Swimming Pools and Spa Pools) Regulation 2000* and the current NSW Health Public Swimming Pool and Spa Pool Guidelines.

[USE0985]

126. Swimming Pools (Building)

- (a) It is the responsibility of the pool owner to ensure that the pool fencing continues to provide the level of protection required regardless of and in response to any activity or construction on the adjoining premises. Due regard must be given to the affect that landscaping will have on the future effectiveness of the security fencing. (Section 7 Swimming Pool Act 1992).
- (b) The resuscitation poster must be permanently displayed in close proximity to the swimming pool. (Section 17 Swimming Pool Act 1992).

**(c) Warning notices required under Part 3 of the Swimming Pool Regulations 2008 shall be maintained at all times.**

[USE1295]

**127. The swimming pool is not to be used for commercial purposes without prior Development Consent.**

[USE1305]

**128. Collection of waste is to occur in between the hours of 7.00am and 8.00pm.**

[USENS01]

**129. The hours of operation of the Tavern and Hotel shall comply with any recommendations of the Operational Noise Investigation Report or the Post Construction Noise Assessment Report and in any case shall be to the satisfaction of Council's General Manager or his Delegate.**

[USENS02]

## **GENERAL TERMS OF APPROVAL FOR A LICENSE UNDER THE WATER ACT 1912**

### **General Conditions (all approvals)**

The purposes of these conditions are to:

- Define certain terms used in other conditions
- Specify the need to obtain a license, permit or authority before commencing any works
- Specify that, in most cases an approval will only be issued to the occupier of the lands where the works are to be located (as required by the Water Act)
- Require existing approvals to be cancelled or let lapse when a license is issued (if applicable)
- Require the safe construction and operation of all works
- Require the use of appropriate soil conservation measures
- Limit vegetation destruction or removal to the minimum necessary
- Require the separate authorisation of clearing under the NVC Act
- Allow conditions to be imposed for management of fuel (petroleum)

In the following conditions relating to an approval under the Water Act 1912;

‘the department’ means the department administering the Water Act 1912;

‘approval’ means a license, permit, authority or approval under that Act;

‘river’ has the same meaning as in Section 5 of the Water Act 1912;

‘work’ means any structure, earthwork, plant or equipment authorised under the approval to be granted, as defined in Section 5 and 105 of the Water Act 1912;

controlled work' means any earthwork, embankment or levee as defined in Section 165 of the Water Act 1912

Before commencing any works or using any existing works for the purpose of dewatering an approval under Part V of the Water Act 1912 must be obtained from the department. The application for the approval must contain sufficient information to show that the development is capable of meeting the objectives and outcomes specified in these conditions.

An approval will only be granted to the occupier of the lands where the works are located, unless otherwise allowed under the Water Act 1912.

When the department grants an approval, it may require any existing approvals held by the applicant relating to the land subject to this consent to be surrendered or let lapse.

All works subject to an approval shall be constructed, maintained and operated so as to ensure public safety and prevent possible damage to any public or private property.

All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry or sediments into any river, lake, waterbody, wetland or groundwater system.

The destruction of trees or native vegetation shall be restricted to the minimum necessary to complete the works.

All vegetation clearing must be authorised under the Native Vegetation Conservation Act 1997, if applicable.

The approval to be granted may specify any precautions considered necessary to prevent the pollution of surface water or groundwater by petroleum products or other hazardous materials used in the construction or operation of the works.

A license fee calculated in accordance with the Water Act 1912 must be paid before a license can be granted.

### **Conditions of water use (including irrigation)**

The purpose of these conditions are to:

- Allow the department to obtain an accurate measure of water use where necessary
- Specify the purpose(s) for which the water may be used
- Specify conditions to protect water quality and the environment
- Specify the maximum rate that water may be taken from the water source
- Specify the limitations of when water may be taken from the water source
- Ensure proper management of tailwater drainage
- Ensure accessions to groundwater systems are restricted

If and when required by the department, suitable devices must be installed to accurately measure the quality of water extraction or diverted by the works.

All water measuring equipment must be adequately maintained. It must be tested as and when required by the department to ensure its accuracy.

The water extracted under the approval to be granted shall be used for the purpose of dewatering and for no other purpose. A proposed change in purpose will require a replacement license to be issued.

**Conditions for bores and wells**

See also 'general conditions' and 'conditions for water use'

The purpose of these conditions are to:

- Set a limited period bore construction
- Require the bore to be properly completed and sealed
- Require certain information to be provided on completion of the work, including a location plan
- Allow DWE access for inspection and testing
- Specify procedures if saline or polluted water found
- Specify a volumetric allocation for the works purpose
- Allow DWE to alter the allocation at any time

Works for construction of bore must be completed with such period as specified by the department.

Within two months after the works are completed the department must be provided with an accurate plan of the location of the works and notified of the results of any pumping tests, water analysis and other details as are specified in the approval.

Officers of the department or other authorised persons must be allowed full and free access to the works for the purpose of inspection and testing.

Any water extracted by the works must not be discharged into any watercourse or groundwater if it would pollute that watercourse.

The department has the right to vary the volumetric allocation or the rate at which the allocation is taken in order to prevent the overuse of an aquifer.

(1) THE LICENSEE MUST ALLOW AUTHORISED OFFICERS OF THE DEPARTMENT OF WATER AND ENERGY, AND ITS AUTHORISED AGENTS REASONABLE ACCESS TO THE LICENSED WORKS WITH VEHICLES AND EQUIPMENT AT ANY TIME FOR THE PURPOSES OF:

- INSPECTING THE SAID WORK
- TAKING SAMPLES OF ANY WATER OR MATERIAL IN THE WORK AND TESTING THE SAMPLES.

- (2) THE LICENSEE SHALL WITHIN 2 WEEKS OF BEING NOTIFIED INSTALL TO THE SATISFACTION OF THE DEPARTMENT OF WATER & ENERGY IN RESPECT OF LOCATION, TYPE AND CONSTRUCTION AN APPLIANCE(S) TO MEASURE THE QUANTITY OF WATER EXTRACTED FROM THE WORKS. THE APPLIANCE(S) TO CONSIST OF EITHER A MEASURING WEIR OR WEIRS WITH AUTOMATIC RECORDER, OR METER OR METER(S) OF MEASUREMENT AS MAY BE APPROVED BY THE DEPARTMENT OF WATER & ENERGY. THE APPLIANCE(S) SHALL BE MAINTAINED IN GOOD WORKING ORDER AND CONDITION. A RECORD OF ALL WATER EXTRACTED FROM THE WORKS SHALL BE KEPT AND SUPPLIED TO THE DEPARTMENT OF WATER & ENERGY UPON REQUEST. THE LICENSEE WHEN REQUESTED MUST SUPPLY A TEST CERTIFICATE AS TO THE ACCURACY OF THE APPLIANCE(S) FURNISHED EITHER BY THE MANUFACTURER OR BY SOME PERSON DULY QUALIFIED.
- (3) THE AUTHORISED WORK SHALL NOT BE USED FOR THE DISCHARGE OF POLLUTED WATER INTO A RIVER OR LAKE OTHERWISE THAN IN ACCORDANCE WITH THE CONDITIONS OF A LICENCE GRANTED UNDER THE PROTECTION OF THE ENVIRONMENT OPERATIONS ACT 1997. A COPY OF THE LICENCE TO DISCHARGE IS TO BE PROVIDED TO THE DEPARTMENT OF WATER & ENERGY.
- (4) THE TERM OF THIS LICENCE SHALL BE SIX (6) MONTHS.
- (5) THE VOLUME OF GROUNDWATER EXTRACTED FROM THE WORK AUTHORISED BY THIS LICENCE SHALL NOT EXCEED 10 MEGALITRES FOR THE TERM OF THE LICENCE.
- (6) THE AUTHORISED WORK SHALL NOT BE USED FOR THE DISCHARGE OF WATER UNLESS THE PH OF THE WATER IS BETWEEN 6.5 AND 8.5, OR THE WATER HAS BEEN TREATED TO BRING THE PH TO A LEVEL BETWEEN 6.5 AND 8.5 PRIOR TO DISCHARGE, OR THE WATER IS DISCHARGED THROUGH THE COUNCIL'S SEWERAGE TREATMENT SYSTEM.
- (7) THE LICENSEE SHALL TEST THE PH OF ANY WATER EXTRACTED FROM THE WORK PRIOR TO THE COMMENCEMENT OF DISCHARGE AND AT LEAST TWICE DAILY THEREAFTER AND RECORD THE DATE, TIME AND RESULT OF EACH TEST IN THE SITE LOG. A COPY OF THE RECORDS OF THE PH TESTING IS TO BE RETURNED WITH THE FORM 'AG'.
- (8) THE WORKS SHALL BE MANAGED IN ACCORDANCE WITH THE CONSTRAINTS SET OUT IN THE DEWATERING MANAGEMENT PLAN PREPARED BY PRECISE ENVIRONMENTAL AND DATED JULY 2008.

**REPORT:**

**Applicant:** Ballanday Pty Ltd and Cheval Properties Pty Ltd  
**Owner:** Ballanday Pty Ltd and Cheval Properties Pty Ltd  
**Location:** Lot A DP 332137 No. 21-23 Wharf Street, Tweed Heads  
**Zoning:** 3(a) Sub Regional Business  
**Cost:** \$20,000,000

**BACKGROUND:****Site & Surrounds**

The subject site is located at 21- 23 Wharf Street and is described as Lot A DP332137. It is located within the heart of the Tweed Heads central business district on a large rectangular site (2510m<sup>2</sup>) bound by Wharf Street, Navigation Lane and commercial properties. The frontages to these roads are approximately 50m in length. The site is generally level with no significant vegetation.

The site has the benefit of water views to the east over Jack Evans Boat Harbour and Chris Cunningham Recreational Park. The site is separated from Wharf Street by a public car park and landscaping

The site currently houses an existing two storey hotel (Dolphin Hotel) which consists of a bar and lounge area at ground level, 11 hotel accommodation units at first floor level and ground level car parking at the rear (30 spaces). The subject site has been operating as a similar purpose for approximately 100 years.

The area surrounding the site is undergoing transition. The site borders commercial development to the north, beyond which is the Twin Towns Development (this consists of two towers of approximately 18 storeys' each). Across Navigation Lane to the west is Stage 1 of the Tweed Ultima Development. Land to the immediate south of this site is currently vacant and will be developed in the near future for Stage 2 of the Tweed Ultima Development. Tweed Mall shopping centre is to the south west.

**Background**

In recent times, approvals have also been issued for:

- Establishment of a drive through bottle shop (D89/0685)
- Beer garden enclosures and refurbishments (D90/0406 in 1990 and 0470/2000DA in 2000);
- Advertising signs;
- The Department of Planning Approval (DA62-2-2003) for the redevelopment of the site (11 storey mixed use development comprising hotel, tourist accommodation, multi- unit dwellings and refreshment room). The Department of Planning and Natural Resources was the consent authority and issued consent in July 2006.

As detailed above the current application has been made to replace DA62-2-2003.

- Alterations and additions to accommodate new smoking laws (DA07/1030)

The recommendation for approval incorporates a condition of consent for the applicant to surrender all prior approvals.

## Proposal

The proposal includes application for demolition of the existing building. Access to the basement and loading bays is from Navigation Lane.

A breakdown of each level of the proposal is provided in the table below:

<u>Level</u>	<u>Proposed</u>	<u>GFA / No</u>	<u>Comments</u>
<b><u>Basement 2</u></b>	Residential Car Parking	37	Residential lobby
	Residential Visitor Car Parking	7	Bicycle Racks,
	Tourist Accommodation	36	Storage Areas
	Car Wash Bay (CWB)	1	
	<b>Total Car Parking B2</b>	<b>81</b>	
<b><u>Basement 1</u></b>	Residential Visitors	1	Bicycle racks
	Tavern Staff	2	Plant room
	Hotel Units	38	Keg room
	Tavern	14	Residential Lobby
	Tavern Retail	10	Hotel lobby
	Conference facility	5	Storage
	<b>Total Car Parking B1</b>	<b>70</b>	
	<b>Total Car Parking B1 and B2</b>	<b>151</b>	
	Residential (inc. 8 visitor & 9 tandem spaces & 1 CWB)	46	
	Tourist Accommodation	36	
	Hotel Units	38	
	Hotel Tavern, Reception, Staff, Conference	31	
<b><u>Ground Floor</u></b>	Retail component	209m <sup>2</sup>	Also includes back of house hotel facilities including laundry, dry and cold storage, luggage storage, loading bay, waste rooms.
	Residential lobby		
	Indoor bar/lounge – 250m <sup>2</sup> inc gaming	120 seats	
	Outdoor seating	65 seats	
	Gaming area	63m <sup>2</sup>	
	Hotel reception		

<u>Level</u>	<u>Proposed</u>	<u>GFA / No</u>	<u>Comments</u>
<u>Level 1</u>	Hotel rooms Care takers apartment Conference rooms Conference deck Pool	18 1 643m <sup>2</sup> 80m <sup>2</sup> 1	Also includes Hotel Service Area, plant room, kitchenette and male and female facilities
<u>Level 2</u>	Hotel rooms Gymnasium Sundeck Residential garden area Hotel service area	19 70m <sup>2</sup> 80m <sup>2</sup> 98m <sup>2</sup>	Also includes void to conference area below, lobby service areas male and female facilities, storage areas.
	<b>Total Hotel Units inc.caretakers</b>	<b>38 Units</b>	
<u>Level 3</u>	1x Bed - Tourist Accommodation 2x Bed - Tourist Accommodation <b>Total</b>	7 Units 2 Units <b>9 Units</b>	Balconies for each unit and central lobby area.
<u>Level 4</u> <u>Level 5</u> <u>Level 6</u>	1x Bed - Tourist Accommodation 2x Bed - Tourist Accommodation <b>Total</b>	3 Units 6 Units <b>9 Units per floor</b>	Balconies for each unit and central lobby area.
	<b>Total Tourist Units</b>	<b>36 Units</b>	
<u>Level 7</u> <u>Level 8</u>	1 x Bed – Residential Accommodation 2 x Bed – Residential Accommodation 3 x Bed – Residential Accommodation <b>Total</b>	2 Units 4 Units 2 Units <b>8 Units per floor</b>	Balconies for each unit and central lobby area.
<u>Level 9</u>	1 x Bed – Residential Accommodation 3 x Bed – Residential Accommodation <b>Total</b>	2 Units 2 Units <b>4 Units</b>	Balconies for each unit and central lobby area.
<u>Level 10</u>	4 x Bed – Residential Accommodation	2 Units	
	<b>Total Residential Units</b>	<b>22 Units</b>	

The proposal includes a through link (on private land) from Wharf Street to Navigation Lane. Pedestrian access to the hotel reception area is off Wharf Street, with pedestrian access to residential apartments being available from Navigation Lane and the through site access.



The landscape design for the ground level of the development consists of streetscape, a public plaza to the west of the development, and a paved bar spill out space. The decorative paving pattern is consistent with adjoining development to create unity within the public domain. Landscape areas comprise of 7m<sup>2</sup> at ground level, 12m<sup>2</sup> on Level 1, 33m<sup>2</sup> on Level 2, 270m<sup>2</sup> on Level 3 and 200m<sup>2</sup> on Level 10 including 97m<sup>2</sup> turf area.

Concept signage has been included as part of the proposal. The signs consist of a number of building identification signs.

The application is not proposing any changes of use from the previous approval but is simply capitalising more effectively on the sites opportunities by rationalising space within the design.

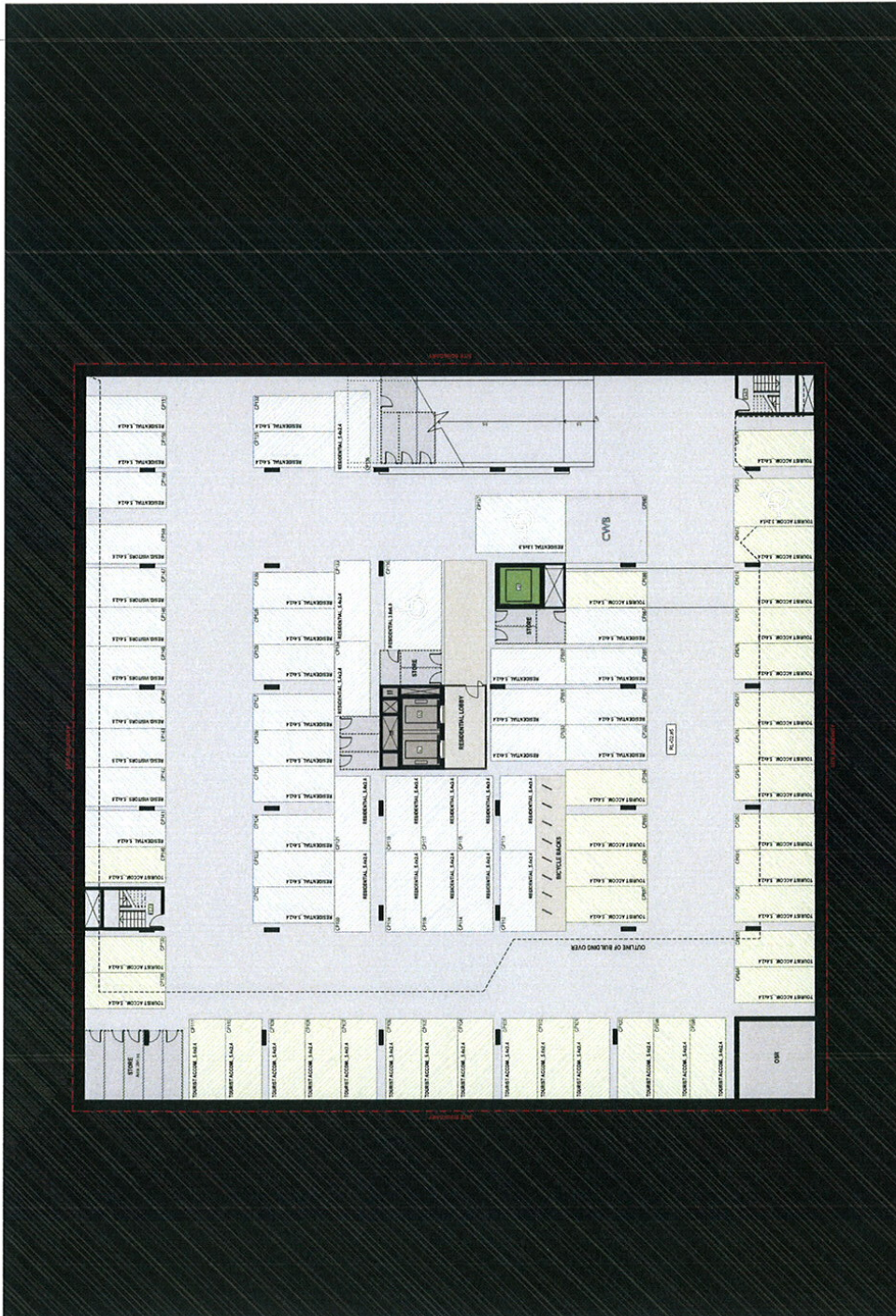
The application has been assessed by Council's Senior Town Planner, Traffic Engineer, Environmental Health Officer, Building Surveyor, Waste Management Officer and Water & Sewer Connections Officer. In addition the application has been considered by the Department of Planning (Council has Assumed Concurrence for Overshadowing), Department of Water & Energy (Dewatering), Development Traffic Advisory Group; and the Consultants representing Gold Coast Airport.

Having regard to all referral comments, the letter of objection, the originally approved building and the statutory and merit assessment of this application the proposed development is recommended for approval subject to the recommended conditions of consent.





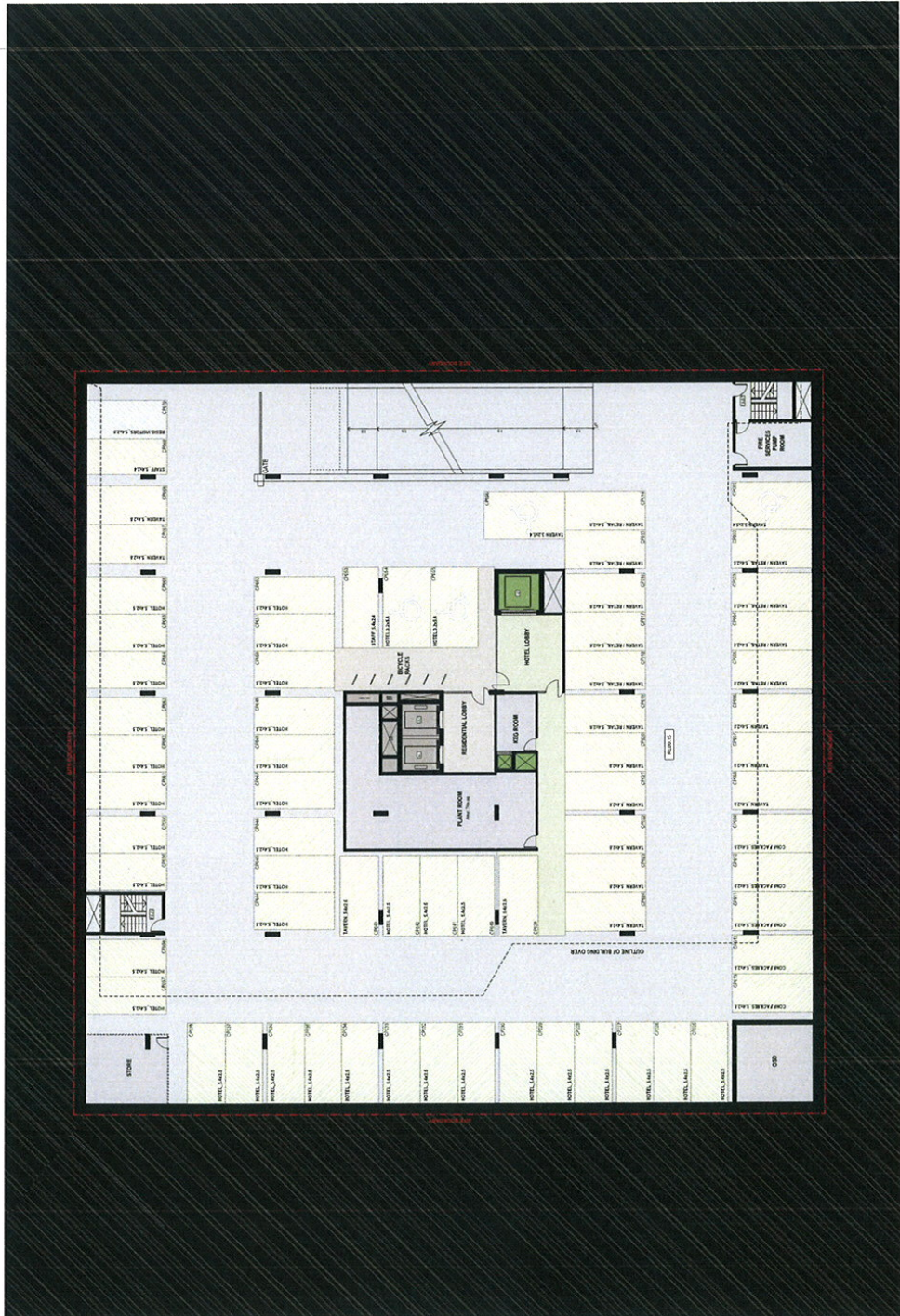




Level 12 Plan  
 07021  
 1803  
 D

TURNER ASSOCIATES  
 1721 Whitby, Tweed Heads  
 23/10/08

Blairgowrie Pty Ltd  
 1100 WBS 12500 WBS  
 SCALE 1:100



DRAWING NO: 1004  
 DATE: 07/02/08  
 PROJECT: Level 81 Plan  
 CLIENT: Dolphin Hotel - Mixed Use Development  
 1721 WINDYBUSH, BENTLEY HILLS  
 ARCHITECT: TURNER ASSOCIATES  
 PROJECT NO: 1721 WINDYBUSH, BENTLEY HILLS  
 DATE: 22/02/08  
 SCALE: 1:100  
 SHEET: 1004-081  
 TOTAL SHEETS: 1004-081 TO 1004-082  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 APPROVED BY: [Name]





1. APPROVED	2. REVISED	3. REVISED	4. REVISED
DATE	DATE	DATE	DATE

Level 01 Plan  
07021  
DMS

TURNER+ASSOCIATES  
Delphin Hotel - Mixed Use Development  
1/2/1 Wharf St, Tweed Heads

DATE: 11/09/08  
SCALE: 1:100  
PROJECT NO: 07021  
DRAWING NO: 07021-01

Author: [Name]  
Checked: [Name]  
Approved: [Name]





1	2008/01/15	Final Design
2	2008/01/15	Final Design
3	2008/01/15	Final Design
4	2008/01/15	Final Design

Level 02 Plan 07021

Level 02 Plan 07021

TURNER+ASSOCIATES

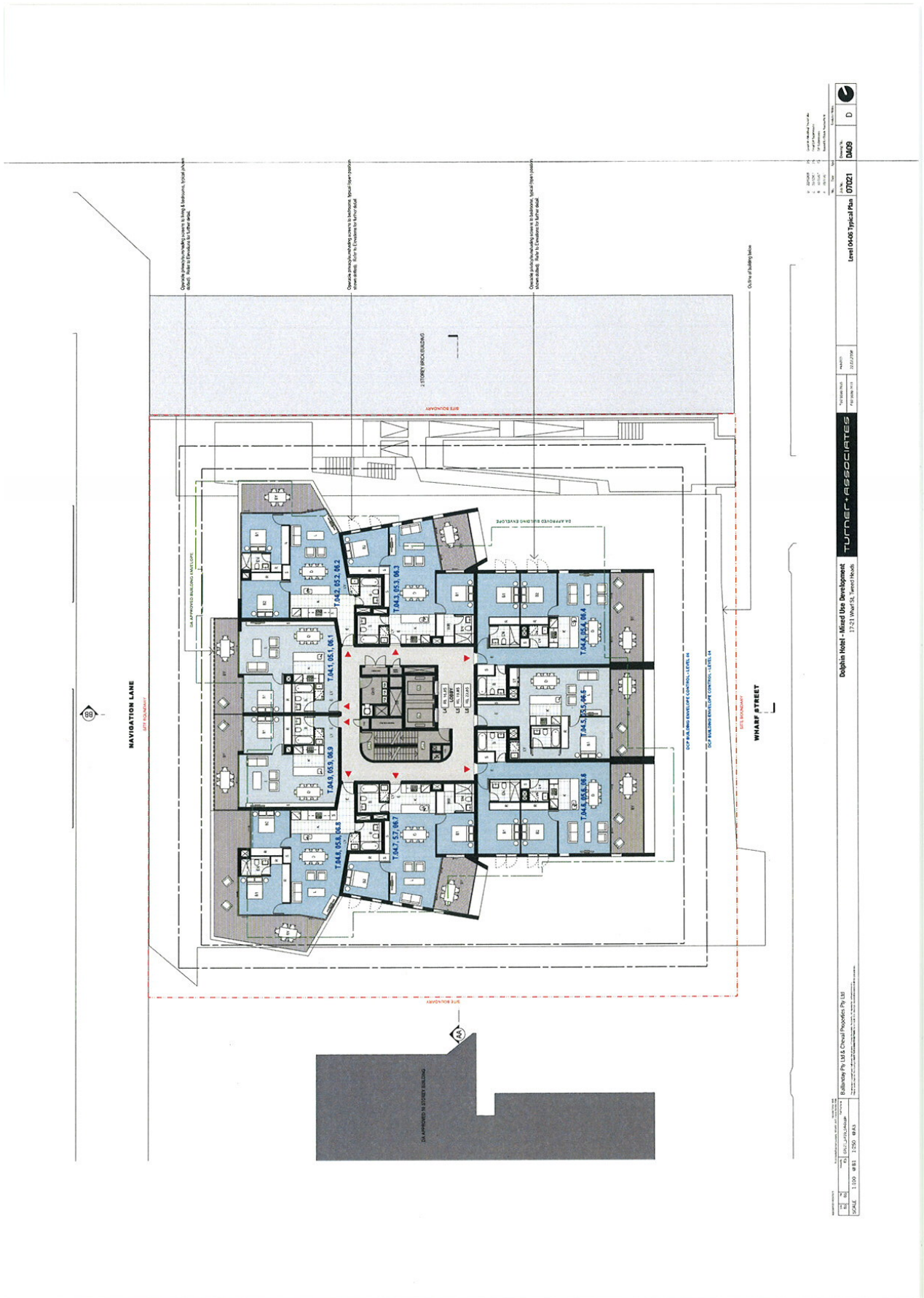
Delphin Hotel - Mixed Use Development  
17-21 Wharf St, Tweed Heads

17-21 Wharf St, Tweed Heads

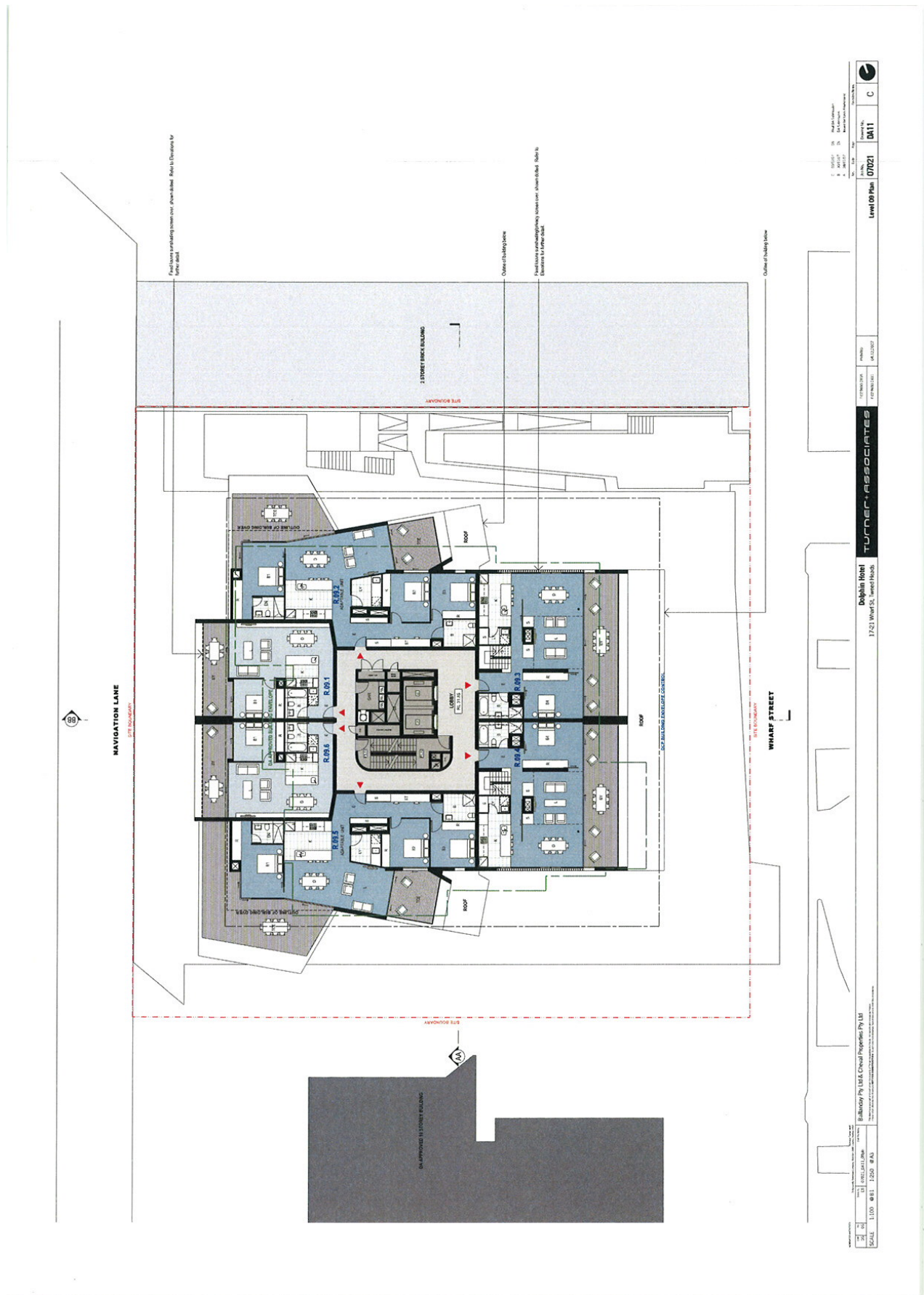
17-21 Wharf St, Tweed Heads

17-21 Wharf St, Tweed Heads









DATE	11/09/08	BY	DA11
SCALE	1:100	PROJECT NO.	07021
PROJECT NAME	Dublin Hotel		
CLIENT	17-21 Wharf St, Tweed Heads		
DESIGNER	TURNER ASSOCIATES		
DATE	11/09/08	BY	DA11
PROJECT NO.	07021	SCALE	1:100
CLIENT	Dublin Hotel		
CLIENT ADDRESS	17-21 Wharf St, Tweed Heads		
DESIGNER	TURNER ASSOCIATES		
DATE	11/09/08	BY	DA11
PROJECT NO.	07021	SCALE	1:100
CLIENT	Dublin Hotel		
CLIENT ADDRESS	17-21 Wharf St, Tweed Heads		
DESIGNER	TURNER ASSOCIATES		



**HOTEL**

**HTL SUITE**  
Internal Net Area - 42.94 sqm  
Shedding Net Area - 1.00 sqm

**HTL TYPE A TYPICAL**  
Internal Net Area - 28.54 sqm  
Shedding Net Area - 0.75 sqm (7.70sqm)

**HTL TYPE B**  
Internal Net Area - 28.54 sqm  
Shedding Net Area - 1.00 sqm

**HTL TYPE C**  
Internal Net Area - 28.54 sqm  
Shedding Net Area - 1.00 sqm

**HTL TYPE D ACCESSIBLE**  
Internal Net Area - 28.54 sqm  
Shedding Net Area - 1.00 sqm

**RESIDENTIAL**

**1 BED TYPE A**  
Internal Net Area - 44.94 sqm  
Shedding Net Area - 1.00 sqm

**1 BED TYPE B**  
Internal Net Area - 72.24 sqm  
Shedding Net Area - 1.00 sqm

**1 BED TYPE C**  
Internal Net Area - 42.94 sqm  
Shedding Net Area - 1.00 sqm

**1 BED TYPE ACCESSIBLE**  
Internal Net Area - 44.94 sqm  
Shedding Net Area - 1.00 sqm

**2 BED TYPE A**  
Internal Net Area - 68.94 sqm  
Shedding Net Area - 1.00 sqm

**2 BED TYPE B**  
Internal Net Area - 52.94 sqm  
Shedding Net Area - 1.00 sqm

**2 BED TYPE C**  
Internal Net Area - 28.54 sqm  
Shedding Net Area - 1.00 sqm

**2 BED TYPE D**  
Internal Net Area - 48.94 sqm  
Shedding Net Area - 1.00 sqm

**3 BED TYPE A**  
Internal Net Area - 132.94 sqm  
Shedding Net Area - 1.00 sqm

**3 BED TYPE B**  
Internal Net Area - 138.94 sqm  
Shedding Net Area - 1.00 sqm

**3 BED TYPE C**  
Internal Net Area - 132.94 sqm  
Shedding Net Area - 1.00 sqm

**PH - TYPE A Lower**  
Internal Net Area - 122.94 sqm  
Shedding Net Area - 1.00 sqm

**PH - TYPE A Upper**  
Internal Net Area - 122.94 sqm  
Shedding Net Area - 1.00 sqm

Project Name: **Dolphin Hotel - Mixed Use Development**  
1702 West St, Tweed Heads

Client: **TURNER + ASSOCIATES**

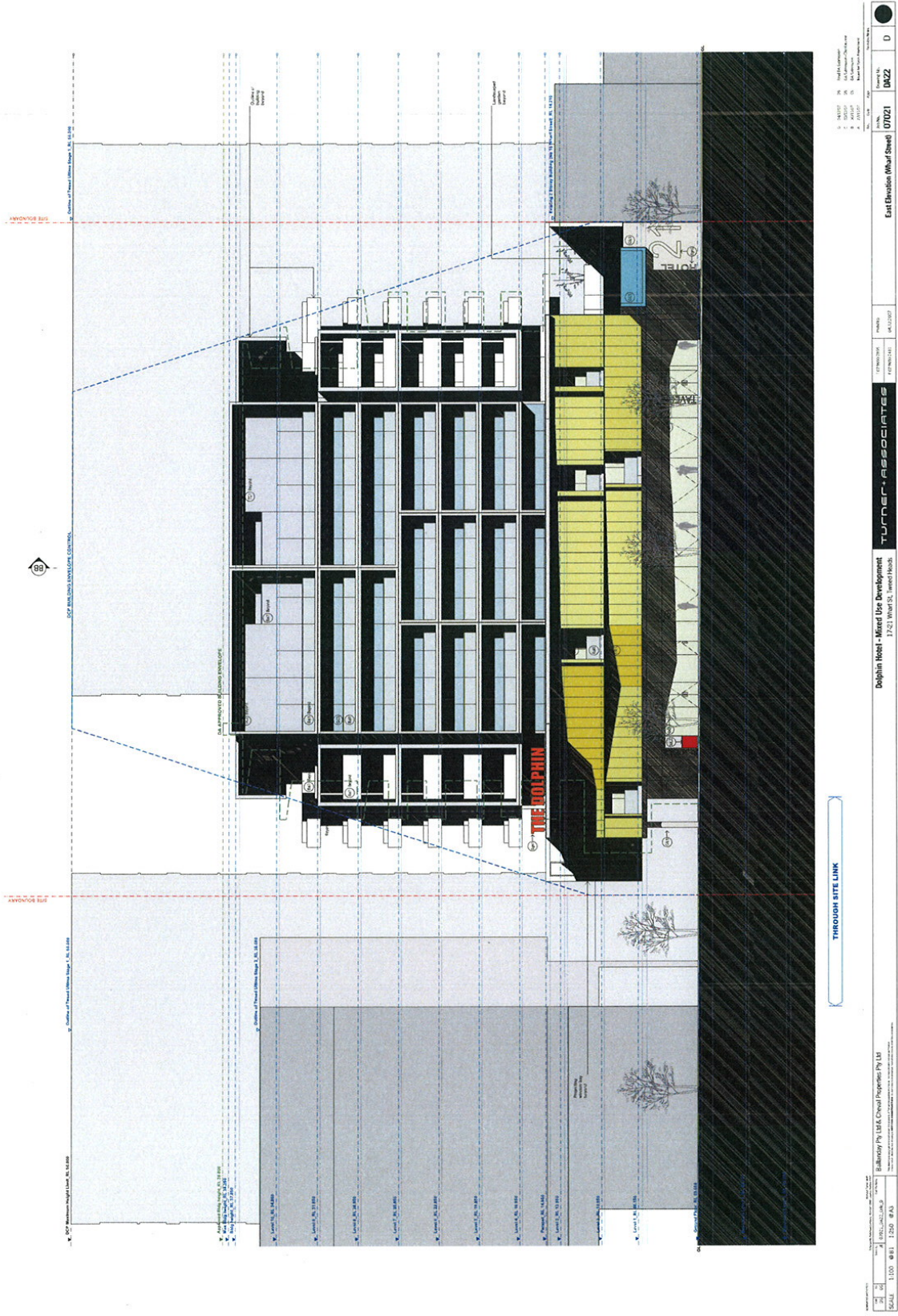
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Drawing No: DA13  
Drawing Title: Typical Unit Plans

Scale: 1:100  
Date: 10/10/08



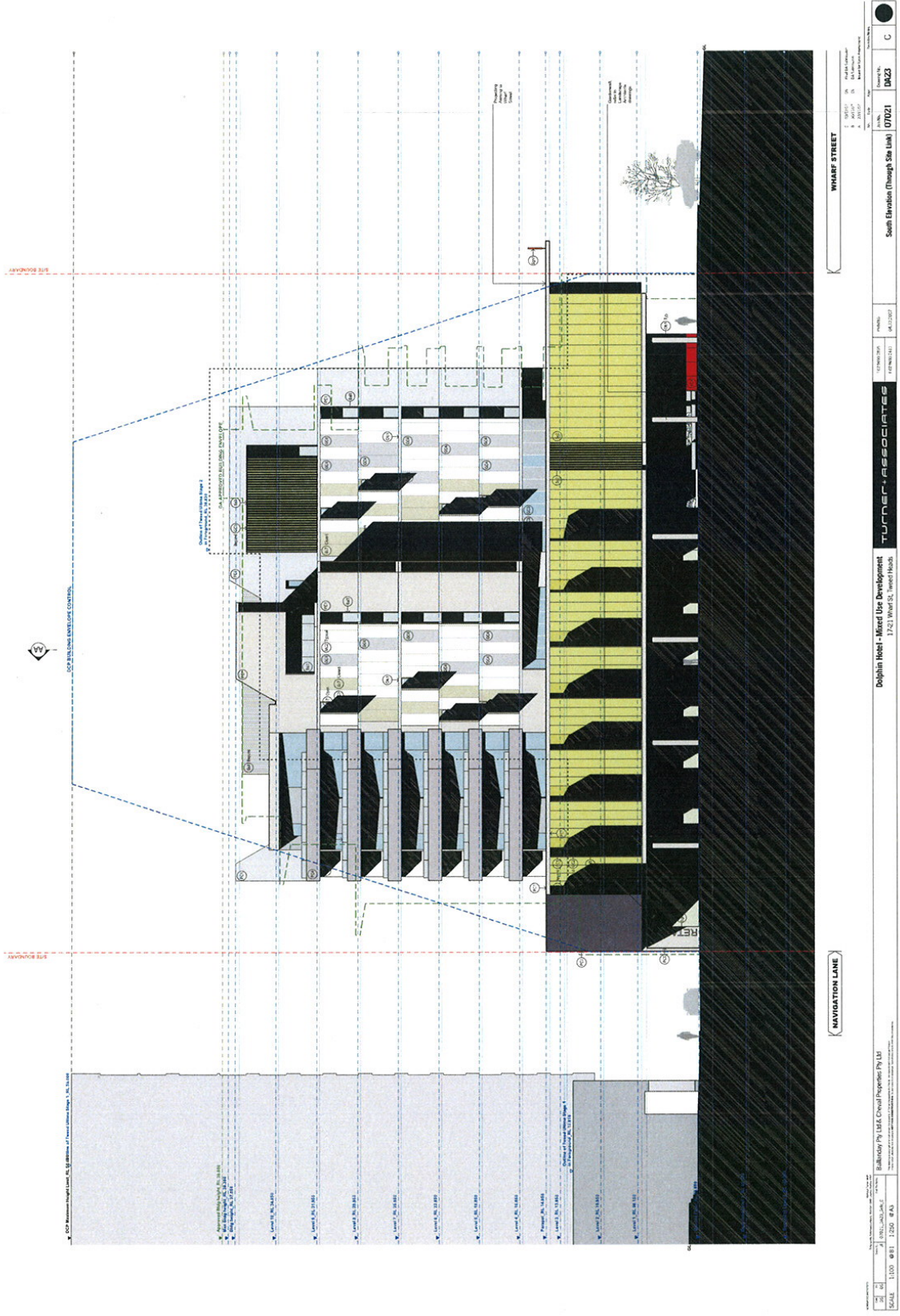






THROUGH SITE LINK

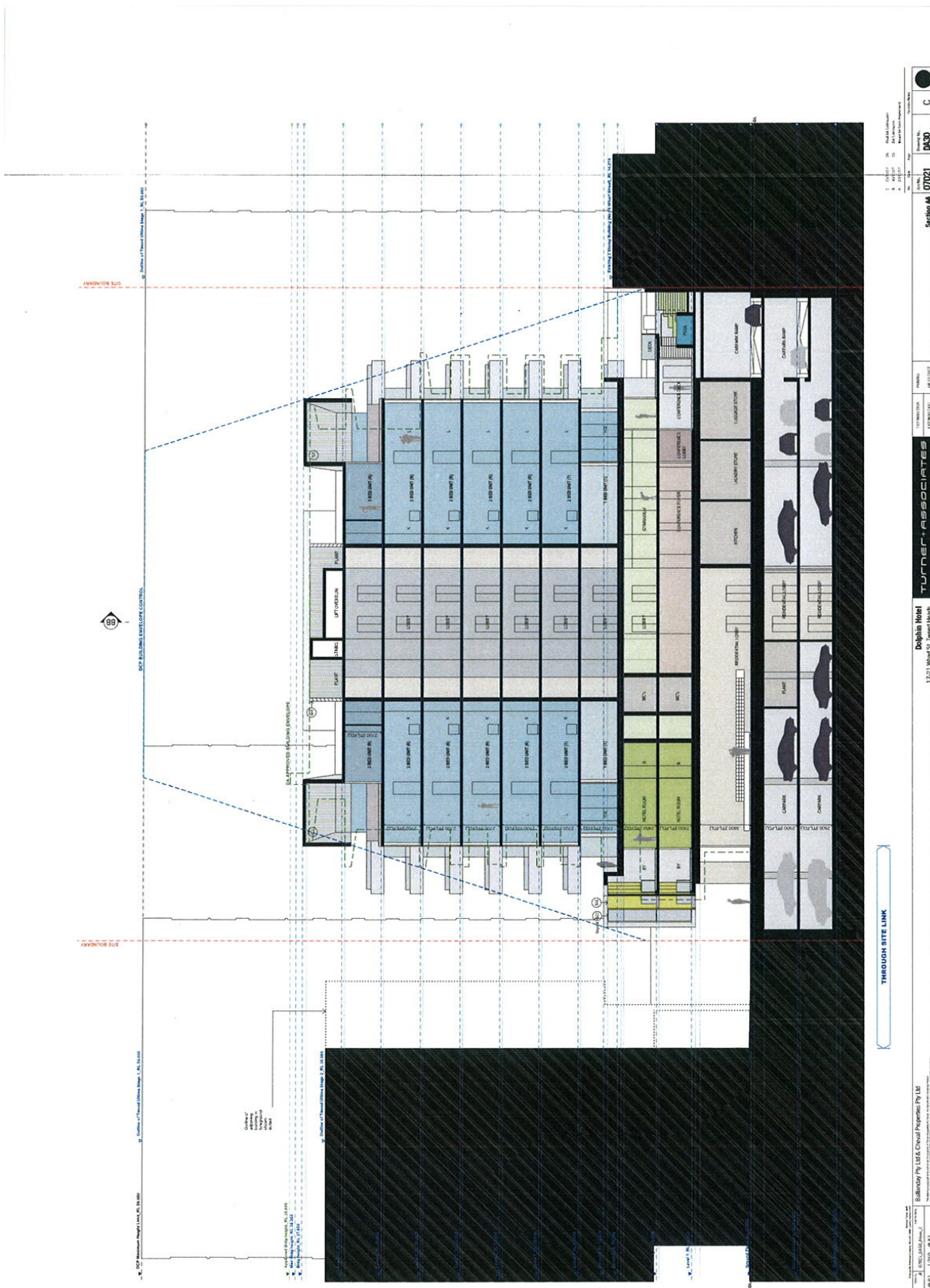
DATE	1/10/08	BY	WJG	PROJECT	Delphin Hotel - Mixed Use Development	CLIENT	TURNER + ASSOCIATES	DATE	04/2007	NO.	04/2007	SCALE	1:100	DATE	04/2007	NO.	04/2007	SCALE	1:100
PROJECT	Delphin Hotel - Mixed Use Development																		
CLIENT	TURNER + ASSOCIATES																		
DATE	04/2007																		
NO.	04/2007																		
SCALE	1:100																		
DATE	04/2007																		
NO.	04/2007																		
SCALE	1:100																		



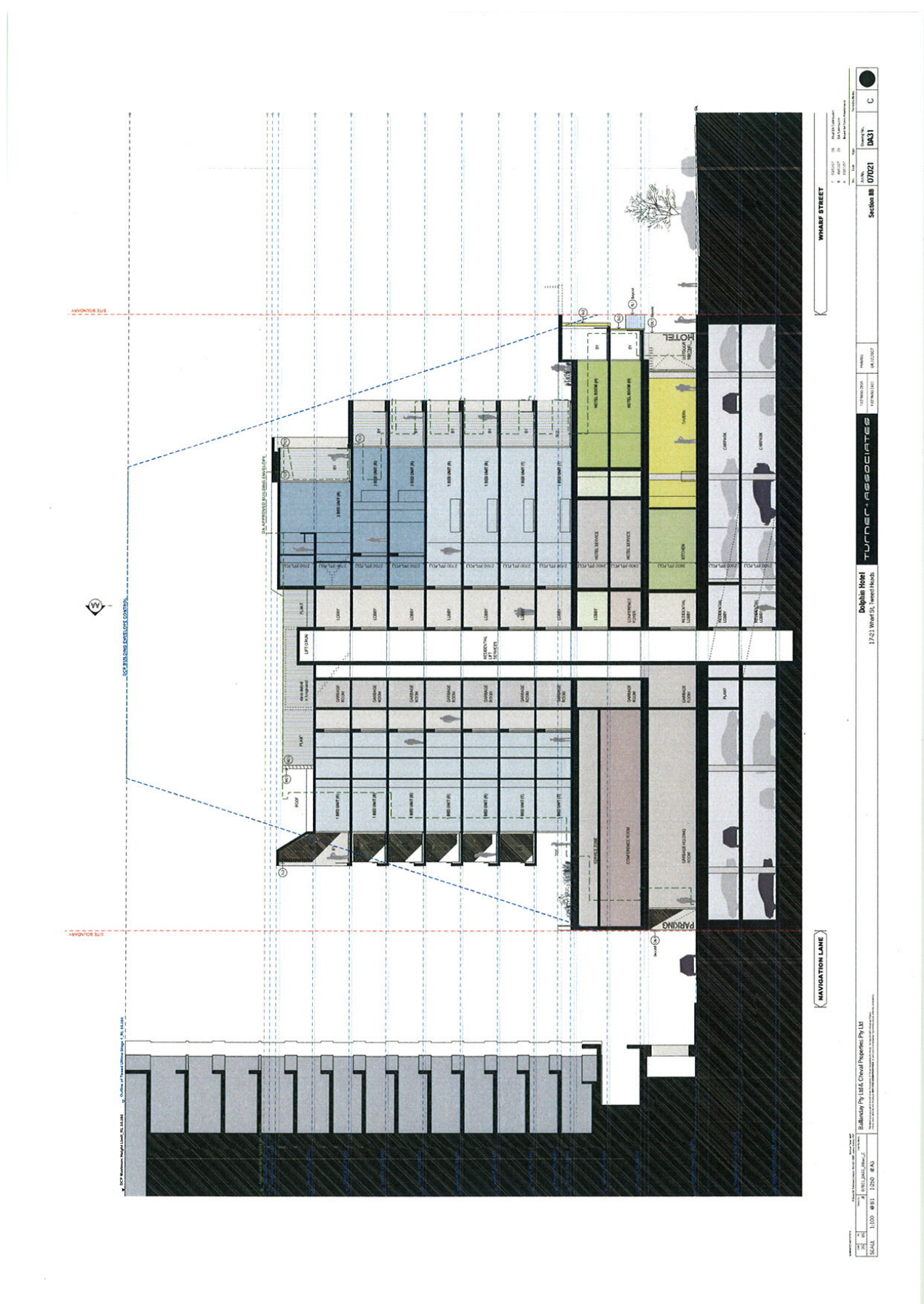
PROJECT NO: 1100 881 1200 8A SCALE: 1:100 DATE: 11/03/08	DRAWING NO: 07/021 DATE: 04/12/07 DRAWING TITLE: South Elevation (Through Site Link)	PROJECT NAME: Dolphin Reef - Mixed Use Development 17-21 Wharf St, Tweed Heads	ARCHITECT: TURNER + ASSOCIATES 17-21 Wharf St, Tweed Heads	SHEET NO: 07/021 SHEET COUNT: 07/021 DRAWING TITLE: South Elevation (Through Site Link)
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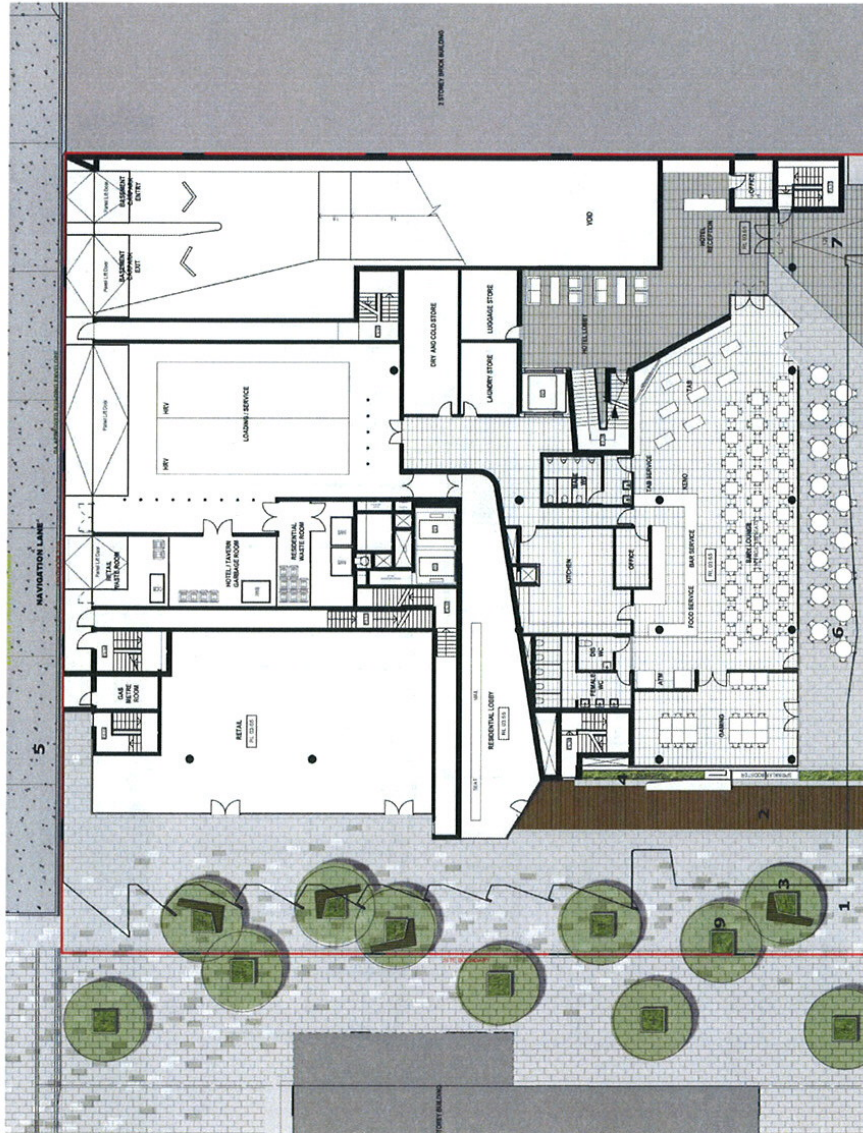




DATE	11/09/08	BY	1/2008	NO.	2/08
PROJECT	Dolphin Hotel, 17-21, Wharf St, Tweed Heads				
DESIGNER	TURNER ASSOCIATES				
SCALE	AS SHOWN				
SECTION	Section A-A (07/021)				
DATE	03/30				
NO.	C				



PROJECT NO: 07021 DRAWING NO: 07021 DATE: 08/02/08 SCALE: 1:100 SHEET: 8/11	<b>TURNER ASSOCIATES</b> 17/21 Wharf St, Tweed Heads PHONE: (07) 9381 1111 FAX: (07) 9381 1112 EMAIL: info@turnerassociates.com.au	CLIENT: D&S SECTION: 07021 SHEET: 8/11	PROJECT: 07021 DRAWING: 07021 DATE: 08/02/08 SCALE: 1:100 SHEET: 8/11
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**Material images >**



**Key >**

1. Concrete unit paving, descriptive colour vegetation in random pattern to match adjacent 'Ultima' development pavement
2. The 'red carpet': timber flush with pavement to mark residential entry
3. Hibiscus bilaceus 'Rubra' in 800mm raised planter with timber seat
4. Green wall with concrete seat to front
5. Exposed aggregate concrete pavement on Navigation Lane
6. Outdoor seating area; concrete unit pavers
7. Pavement colour change to mark hotel entry. Concrete pavement
8. Streetscape to future design in accordance with Tweed Heads
9. Hibiscus bilaceus 'Rubra' in 800mm raised planter

**Plant schedule >**

Botanical name	Common name	Native / Exotic	Pot size	Spacing
Trees > <i>Hibiscus bilaceus</i> 'Rubra'	Native Hibiscus	Native	100L	N/A
Understorey > <i>Festuca herbsteri</i> <i>Stylosanthes trifoliate</i> <i>Coryphantha</i>	Bloodleaf Festuca herbsteri Coryphantha	Exotic	5L 10L 5L	300mm c/s 300mm c/s 400mm c/s



Date: 4th December 2007  
 Drawing Title: Ground floor plan  
 Drawing Number: 27053-L00  
 Client: Ballandry Pty Ltd & Cheval Properties Pty Ltd  
 Architects: Turner Associates  
 Scale: 1:250 @ A3  
 Rev: C  
 Drawn by: CB/MB  
 Reviewed by: SC

**DOLPHIN HOTEL - 17-21 Wharf Street, Tweed Heads**  
 ASPECT Studios  
 100/101/102/103/104/105/106/107/108/109/110/111/112/113/114/115/116/117/118/119/120/121/122/123/124/125/126/127/128/129/130/131/132/133/134/135/136/137/138/139/140/141/142/143/144/145/146/147/148/149/150/151/152/153/154/155/156/157/158/159/160/161/162/163/164/165/166/167/168/169/170/171/172/173/174/175/176/177/178/179/180/181/182/183/184/185/186/187/188/189/190/191/192/193/194/195/196/197/198/199/200/201/202/203/204/205/206/207/208/209/210/211/212/213/214/215/216/217/218/219/220/221/222/223/224/225/226/227/228/229/230/231/232/233/234/235/236/237/238/239/240/241/242/243/244/245/246/247/248/249/250/251/252/253/254/255/256/257/258/259/260/261/262/263/264/265/266/267/268/269/270/271/272/273/274/275/276/277/278/279/280/281/282/283/284/285/286/287/288/289/290/291/292/293/294/295/296/297/298/299/300/301/302/303/304/305/306/307/308/309/310/311/312/313/314/315/316/317/318/319/320/321/322/323/324/325/326/327/328/329/330/331/332/333/334/335/336/337/338/339/340/341/342/343/344/345/346/347/348/349/350/351/352/353/354/355/356/357/358/359/360/361/362/363/364/365/366/367/368/369/370/371/372/373/374/375/376/377/378/379/380/381/382/383/384/385/386/387/388/389/390/391/392/393/394/395/396/397/398/399/400/401/402/403/404/405/406/407/408/409/410/411/412/413/414/415/416/417/418/419/420/421/422/423/424/425/426/427/428/429/430/431/432/433/434/435/436/437/438/439/440/441/442/443/444/445/446/447/448/449/450/451/452/453/454/455/456/457/458/459/460/461/462/463/464/465/466/467/468/469/470/471/472/473/474/475/476/477/478/479/480/481/482/483/484/485/486/487/488/489/490/491/492/493/494/495/496/497/498/499/500/501/502/503/504/505/506/507/508/509/510/511/512/513/514/515/516/517/518/519/520/521/522/523/524/525/526/527/528/529/530/531/532/533/534/535/536/537/538/539/540/541/542/543/544/545/546/547/548/549/550/551/552/553/554/555/556/557/558/559/560/561/562/563/564/565/566/567/568/569/570/571/572/573/574/575/576/577/578/579/580/581/582/583/584/585/586/587/588/589/590/591/592/593/594/595/596/597/598/599/600/601/602/603/604/605/606/607/608/609/610/611/612/613/614/615/616/617/618/619/620/621/622/623/624/625/626/627/628/629/630/631/632/633/634/635/636/637/638/639/640/641/642/643/644/645/646/647/648/649/650/651/652/653/654/655/656/657/658/659/660/661/662/663/664/665/666/667/668/669/670/671/672/673/674/675/676/677/678/679/680/681/682/683/684/685/686/687/688/689/690/691/692/693/694/695/696/697/698/699/700/701/702/703/704/705/706/707/708/709/710/711/712/713/714/715/716/717/718/719/720/721/722/723/724/725/726/727/728/729/730/731/732/733/734/735/736/737/738/739/740/741/742/743/744/745/746/747/748/749/750/751/752/753/754/755/756/757/758/759/760/761/762/763/764/765/766/767/768/769/770/771/772/773/774/775/776/777/778/779/780/781/782/783/784/785/786/787/788/789/790/791/792/793/794/795/796/797/798/799/800/801/802/803/804/805/806/807/808/809/810/811/812/813/814/815/816/817/818/819/820/821/822/823/824/825/826/827/828/829/830/831/832/833/834/835/836/837/838/839/840/841/842/843/844/845/846/847/848/849/850/851/852/853/854/855/856/857/858/859/860/861/862/863/864/865/866/867/868/869/870/871/872/873/874/875/876/877/878/879/880/881/882/883/884/885/886/887/888/889/890/891/892/893/894/895/896/897/898/899/900/901/902/903/904/905/906/907/908/909/910/911/912/913/914/915/916/917/918/919/920/921/922/923/924/925/926/927/928/929/930/931/932/933/934/935/936/937/938/939/940/941/942/943/944/945/946/947/948/949/950/951/952/953/954/955/956/957/958/959/960/961/962/963/964/965/966/967/968/969/970/971/972/973/974/975/976/977/978/979/980/981/982/983/984/985/986/987/988/989/990/991/992/993/994/995/996/997/998/999/1000



**Key >**

1. Timber deck
2. Bamboo garden
3. Bamboo garden with lush understorey
4. Raised concrete seating edge
5. Pool with raised concrete edges
6. *Ficus pumila* climber to wall

**Plant schedule >**

Botanical name	Common name	Native / Exotic	Pot size	Spacing
<i>Bambusa lako</i>	Timor Balck Bamboo	Exotic	75L	N/A
<i>Cordyline</i>	Cordyline	Exotic	5L	400mm cts
<i>Paroo lilly</i>	Paroo lilly	Native	5L	300mm cts
<i>Chloea minata</i>	Chloea	Exotic	5L	300mm cts
<i>Comandra 'balkid'</i>	Dwarf Mat Rush	Native	3L	300mm cts

**Material images >**

**Planting >**

**Surfaces >**

**Furniture >**

**DOLPHIN HOTEL - 17-21 Wharf Street Tweed Heads**

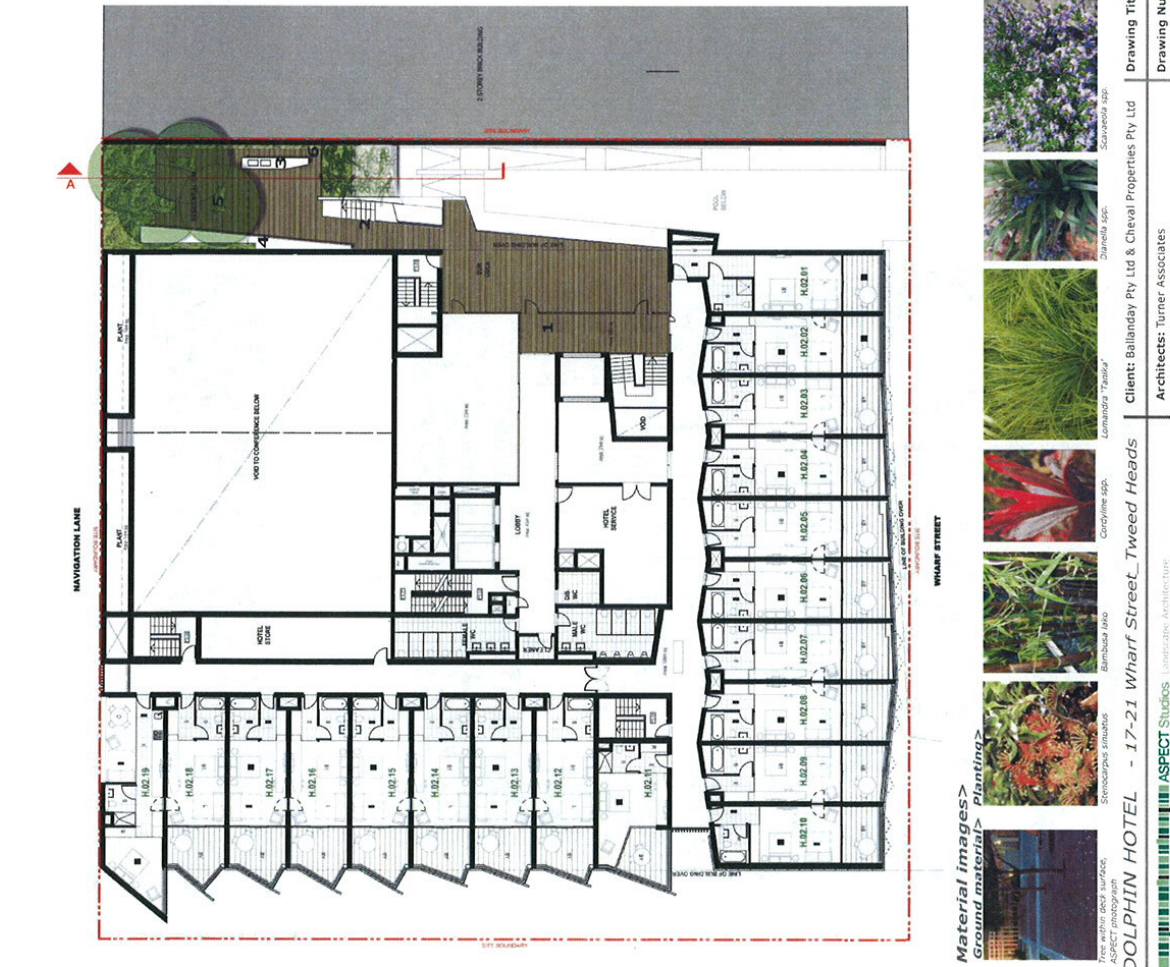
ASPECT Studios Landscape Architecture  
 Suite 11 of 11, Parkside@Wharf Street, Tweed Heads NSW 2486  
 P +61 3 2999 1100 F +61 3 2999 1101 www.aspect.com.au

Client: Ballandry Pty Ltd & Cheval Properties Pty Ltd  
 Architects: Turner Associates

Navigation Lane

Wharf Street

Date: 4th December 2007  
 Scale: 1:250 @ A3  
 Drawing Title: Level 1, plan  
 Drawing Number: 27053-L01  
 Rev: C  
 Drawn by: CB/NB  
 Reviewed by: SC



**Plant schedule >**

Botanical name	Common name	Native / Exotic	Pot size	Spacing
Trees >				
<i>Stenocarpus sinuatus</i>	Fire Wheel Tree	Native	75L	N/A
<i>Bambusa lako</i>	Timor Black bamboo	Exotic	75L	N/A
Understorey >				
<i>Cordyline spp.</i>	Cordyline	Exotic	5L	400mm cts
<i>Paroo Lily</i>	Paroo Lily	Native	5L	300mm cts
<i>Dianella spp.</i>	Dwarf Hat Rush	Native	5L	300mm cts
<i>Lomandra "thanka"</i>	Clewa	Exotic	5L	300mm cts
<i>Carex imraya</i>				
Climbers >				
<i>Ficus pumila</i>	Creeping Fig	Exotic	5L	500mm cts

**Material images >**

**Ground material >**

**Plantings >**

**DOLPHIN HOTEL - 17-21 Wharf Street, Tweed Heads**

Client: Ballandry Pty Ltd & Cheval Properties Pty Ltd  
Architects: Turner Associates  
Drawing Title: Level 2 plan  
Drawing Number: 27053-L02  
Rev: C  
Scale: 1:250 @ A3  
Date: 4th December 2007  
Drawn by: CB/BB  
Reviewed by: SC

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### Key >

1. Timber deck
2. Raised concrete edge 450mm high
3. Concrete bench seat
4. Mass planting of succulents and native grasses
5. 800mm high screen planting between courtyards including species such as *Echinium* spp. and *Fernisatium* spp.
6. Balustrade to edge

### Section B

scale 1:1,000

### Section C

scale 1:1,000

### Plant schedule >

Botanical name	Common name	Native / Exotic	Pot size	Spacing
<i>Understory</i>				
<i>Ornithoglossum</i>	Perozi Lily	Native	5L	300mm cts
<i>Lomatium "banksii"</i>	Dwarf Mat Rush	Native	5L	300mm cts
<i>Kalanchoe thyrsiflora</i>	Flapjack Plant	Exotic	5L	300mm cts
<i>Agave attenuata</i>	Agave	Exotic	25L	1700mm cts
<i>Chorizanthe</i>	Wattle	Native	5L	500mm cts
<i>Chorizanthe glaucescens</i>	Pogaea	Native	5L	500mm cts
<i>Sedum</i> spp.	Succulent	Exotic	5L	300mm cts
<i>Echinaria</i> spp.	Succulent	Exotic	5L	300mm cts
<i>Fernisatium</i> spp.	Fountain Grass	Native	5L	300mm cts

### Material images >

Seating edge >

Balustrade >

### Planting >

Mass planting of succulents, ASPECT photograph

Mass planting, ASPECT

Mass planting of succulents and native grasses, ASPECT photograph

Mass planting, ASPECT

Mass planting of succulents and native grasses, ASPECT photograph

### DOLPHIN HOTEL - 17-21 Wharf Street, Tweed Heads

ASPECT Studios

17-21 Wharf Street, Tweed Heads NSW 2486

Client: Ballanay Pty Ltd & Cheval Properties Pty Ltd

Architects: Turner Associates

Drawing Title: Level 3 plan

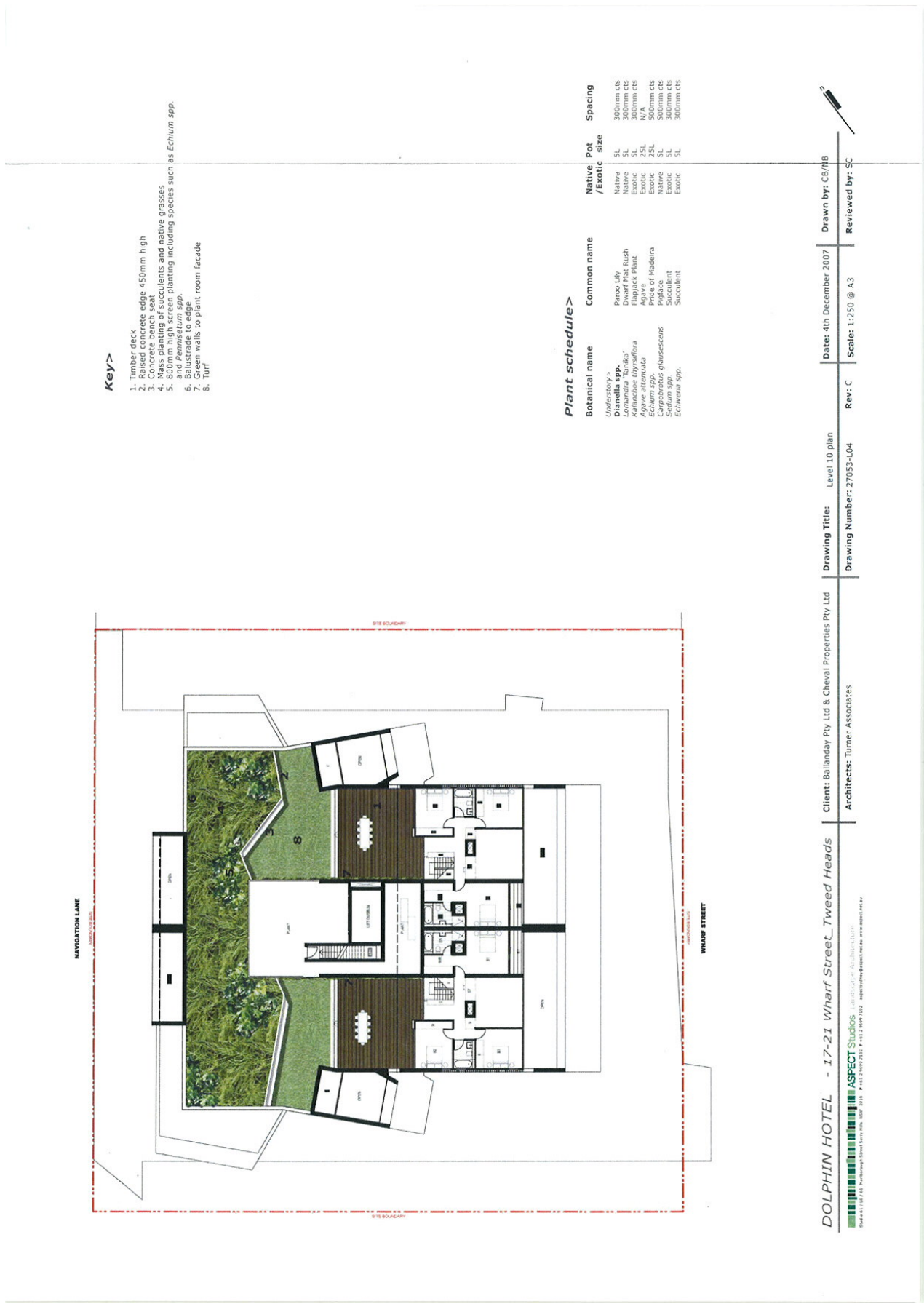
Drawing Number: 27053-1-03

Date: 4th December 2007

Scale: 1:250 @ A3

Drawn by: CB/MB

Reviewed by: SC



**Key>**

1. Timber deck
2. Raised concrete edge 450mm high
3. Concrete bench seat
4. Mass planting of succulents and native grasses
5. 800mm high screen planting including species such as *Echium spp.*
6. Balustrade to edge
7. Green walls to plant room facade
8. Turf

**Plant schedule>**

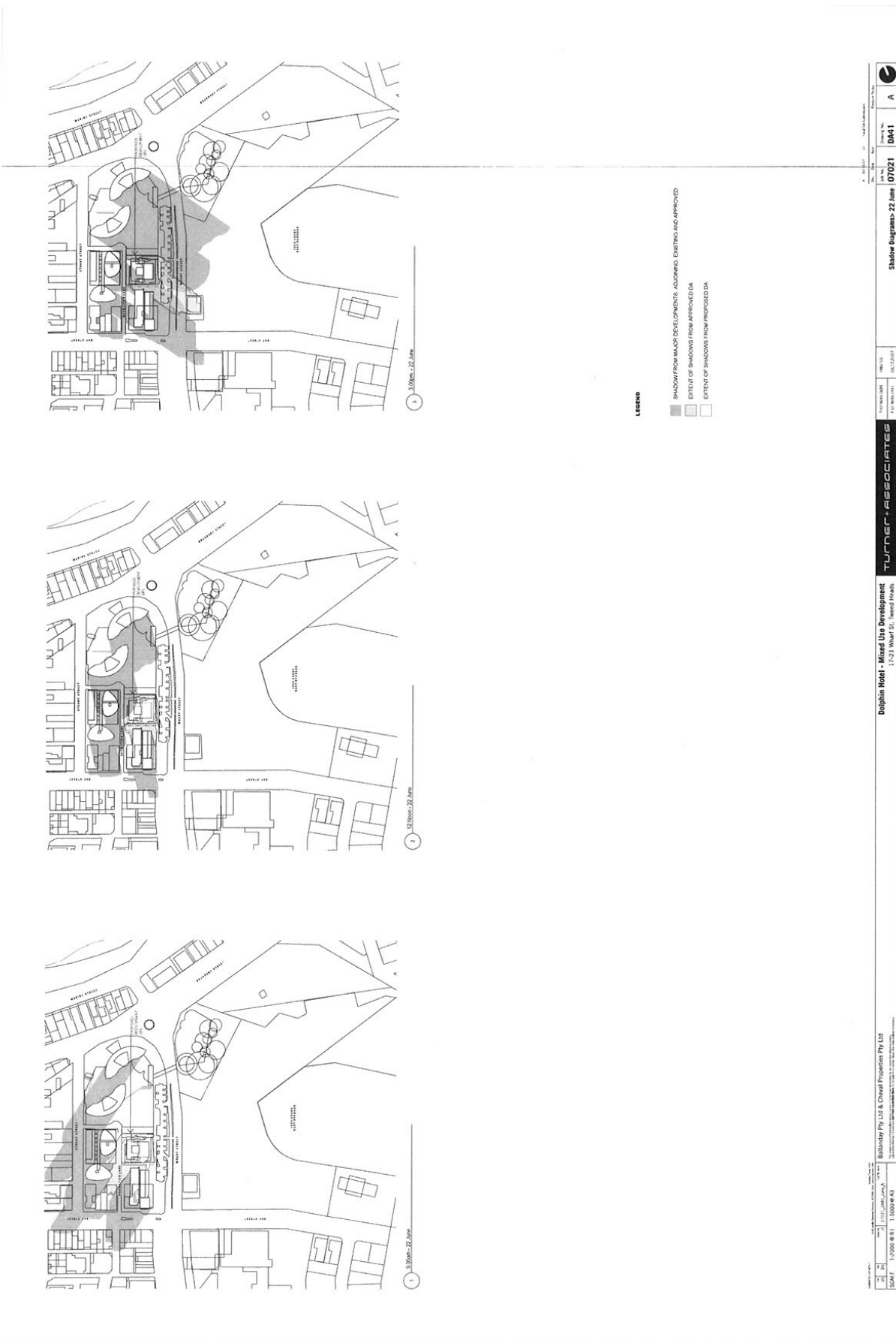
Botanical name	Common name	Native / Exotic	Pot size	Spacing
<i>Utricularia</i> spp.	Pincus Lily	Native	SL	300mm cts
<i>Lomatium "pink"</i>	Dwarf Red Rush	Native	SL	300mm cts
<i>Kalanchoe thyrsiflora</i>	Flapjack Plant	Exotic	SL	300mm cts
<i>Agave attenuata</i>	Agave	Exotic	SL	300mm cts
<i>Carportus glaucescens</i>	Plant of Madera	Exotic	2L	500mm cts
<i>Sedum</i> spp.	Pigface	Native	SL	500mm cts
<i>Echium</i> spp.	Succulent	Exotic	SL	300mm cts
		Exotic	SL	300mm cts



**DOLPHIN HOTEL - 17-21 Wharf Street, Tweed Heads**  
 Client: Balanday Pty Ltd & Cheval Properties Pty Ltd  
 Architects: Turner Associates  
 Drawing Title: Level 10 plan  
 Drawing Number: 27053-L04  
 Date: 4th December 2007  
 Drawn by: CB/MB  
 Scale: 1:250 @ A3  
 Rev: C  
 Reviewed by: SC

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**LEGEND**

- SHADOWS FROM MAJOR DEVELOPMENTS, ADDITIONAL EXISTING AND APPROVED
- EXTENT OF SHADOWS FROM APPROVED DA
- EXTENT OF SHADOWS FROM PROPOSED DA

BATHURST PROPERTY Pty Ltd & Chival Properties Pty Ltd SCALE: 1:2000 (B 1) 1:5000 (A 1)		TURNER ASSOCIATES Dolphin Hotel - Mixed Use Development 17-21 Wharf St., Tweed Heads		SHADOW DIAGRAMS 22 June 07/021 Drawing No. DA41		PROJECT No. A
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**CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:****(a) (i) The provisions of any environmental planning instrument****Tweed Local Environmental Plan 2000**

The LEP and Strategic Plan encourage 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 are enhanced.

The LEP also requires development applications to have regard to the objectives of the zone, relevant clauses of the LEP and the potential cumulative impact associated with the proposed development.

Having regard to these overarching principals the proposed application is considered to warrant approval. By utilising our central business district for higher densities Council can protect natural areas from pressures of urban sprawl.

This application has been assessed having regard to other potential developments. For example the overshadowing assessment associated with this application has had regard for the existing Twin Town buildings and Ultima buildings in addition to the proposed Stage 2 building for Ultima, and redevelopment opportunities for other allotments within the vicinity.

The proposed development complies with the Council's future desired character for the Tweed Heads central business district

The subject site is located within the 3 (a) – Sub Regional Business zone.

A hotel, refreshment rooms, shops, multi-dwelling housing and tourist accommodation are all permissible uses with consent (Item 2).

The objectives of the 3(a) zone are:

***Primary objective***

- *to encourage the development and rejuvenation of the Tweed Heads core business area as a sub-regional centre primarily for tourist, cultural, retail and commercially orientated development, including a choice of accommodation.*

***Secondary objective***

- *to encourage upper floor residential and tourist accommodation.*

The proposed development is considered to specifically comply with both the primary and secondary objectives of the zone.

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The demolition of all existing structures and re-development of the site will enable linkages with other recent re-developed sites to encourage the rejuvenation of the Tweed Heads central business area. The development application provides a variety of housing options including 1, 2, 3, and 4 bedroom hotel units, tourist units and permanent residential units. These units are supported by a hotel and accompanying retail spaces.

Clause 15 of the TLEP requires Council to be satisfied that the subject land has the benefit of essential services prior to issuing consent. The subject land has the benefit of services and is considered able to support the proposed development. Appropriate conditions of consent are recommended for treatment of storm water prior to disposal to Councils storm water network.

Clause 16 of the TLEP requires development to be carried out in accordance with the height limitation plan. The subject land is identified as having a 50m AHD height limitation with an objective to ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land.

It is considered that the proposed building complies with the 50m AHD height limit by providing a building, which contains eleven levels (plus a two tier basement), reaching a maximum height of 37.85 - 38.35m AHD. The proposal complies with the numerical height requirements and has good urban design principles and incorporates interesting and appealing articulation.

Below is a comparative table demonstrating height limits in the immediate vicinity:

<b>Development</b>	<b>Approved Height Limit</b>
Twin Towns - Tower Development	58m AHD and 61m AHD
Tweed Ultima – Stage 1	50m AHD
Tweed Ultima – Stage 2	36.08m AHD – 39.83m AHD
15 Wharf Street	14.210m AHD
Approved DA Dolphin Hotel	38.8m AHD
Proposed DA Dolphin Hotel	37.85m AHD - 38.35m AHD

The proposed height limit is considered consistent with the changing character of the area and compliant with Clause 16 of the Tweed LEP.

Clause 17 of the TLEP requires a Social Impact Assessment to be submitted for residential development comprising 50 units or more and any hotel application. Accordingly the application was accompanied by a socio economic statement that considered the impact of the development will not have negative impacts. Specifically the application indicates that the equivalent of 30 full time jobs would be created for the tavern, and retail facilities with additional employment opportunities in the accommodation sectors. Furthermore, the socio economic impact of the gaming area has been considered and justified given the presence of the same number of gaming machines as is within the existing facility.

It is considered that the proposal in terms of these guidelines will not have a negative social or economic impact upon the area.

Clause 22 of the TLEP requires Council to consider designated roads. Wharf Street is a Council designated road. However, the proposed development will not cause a traffic hazard, nor reduce the capacity of Wharf Street. The development is separated from the road, by a public car park and landscaping. No direct vehicular access is to be obtained from Wharf Street. The proposed development satisfies the provisions of Clause 22.

Clause 33 of the TLEP requires Council to consider any current obstacle limitation surface plan or procedures for aircraft navigation services. Council received the following comments on the application from Mr Ian Rigby who acts for the Gold Coast Airport Limited (GCAL):

*"The Obstacle Limitation Surface (OLS) in that locality is 49.5 m AHD, so the height of the proposed building, even if not related to AHD, would not appear problematic, unless there are any oversized above roof aerials.*

*As a precaution could you please impose a condition on any consent requiring the proponent to obtain approval from GCAPL with a minimum of five days notice, for any temporary penetration of the OLS by construction cranes or otherwise"*

The following condition has been included in the recommended conditions of consent:

"Any use of a crane or other equipment that may exceed a top RL of 49.5 metres AHD would intrude into the prescribed airspace of Gold Coast Airport, and therefore represent a "controlled activity" under the Airports (Protection of Airspace) Regulations. The proponent must obtain the approval of the Secretary, Department of Transport and Regional Services. An application for the Secretary's approval must be given to the airport lessee company (i.e. Gold Coast Airport Limited) at least 28 days before the intended commencement of the controlled activity."

Clause 34 of the TLEP requires Council to consider flooding impacts. Council is currently in the process of preparing a locality plan for Tweed Heads, titled Revitalising Tweed City Centre Plan. A significant element of this plan deals with the issue of flooding, climate change and relevant evacuation/mitigation measures in a localised context. The subject site is not identified as land that is flood or climate change affected utilising Council's current flooding planning heights and the 'high' climate change projections identified within Department of Environment & Climate Change (DECC) guidelines, issued late 2007. In addition, the subject land is within land identified and agreed upon by Council officers, Senior DECC, State Emergency Services and Department of Planning officials as suitable to maintain or increase habitable floor area, in regard to flood and climate change constraints.

The proposed design provides a range of compatible land uses within its form possesses sound architectural merit and provides quality urban design features such as permeability, active street frontages, housing mix and choice. These design features are specifically targeted within the Council's ongoing strategic work and the proposal is considered to have appropriate regard to Council's ongoing vision for the area and the strategic work undertaken thus far.

Clause 35 of the TLEP requires an acid sulfate soils management plan be assessed where the proposed development is likely to interfere with acid sulfate soils. The subject site is identified as possessing Class 2 acid sulphate soil levels and as a result of excavations for the basement car parks the works will intercept acid sulphate soils. Council's Environmental Health Officers, have recommended suitable conditions of consent to manage disposal of the acid sulfate material thereby satisfying Clause 35.

Clause 39 requires Council to consider the likelihood of contaminated land and subsequently remediate any such material. The application was accompanied by a preliminary contaminated lands site investigation report and accordingly suitable conditions of consent are recommended to ensure the appropriate treatment of the site during works.

Clause 47 of the LEP requires Council to consider advertising signage. The application incorporates some building identification signage, which details street address. The signage is at key entry points of the building to assist in identifying the various entries to the building. The signage is integral to the overall building design given that it is rebated into the façade material. All additional advertising signage will be subject to a separate application if statutorily required.

Clause 50 details floor space ratio within the (3a) zone as follows:

Maximum FSR for sites less than 2000m <sup>2</sup>	Maximum FSR for sites 2000m <sup>2</sup> or more <u>without</u> bonuses	Maximum FSR for sites 2000m <sup>2</sup> or more <u>with</u> bonuses
2:1	2:1	4:1

The proposed development represents a site 2000m<sup>2</sup> or more which seeks additional FSR (Maximum FSR 4:1) as a result of bonuses.

In order to achieve the maximum floor space ratio contained in Column 3 a development must provide bonuses as specified in Tweed DCP Section B2 – Tweed Heads:

- (a) 3m<sup>2</sup> for 1m<sup>2</sup> of public through block identified pedestrian network providing the walkway is at least 3.5m wide.
- (b) 2m<sup>2</sup> for 1m<sup>2</sup> of publicly available community space such as internal landscaped court, cinemas, art gallery, performing arts, library, community meeting room, tourist information centre, parents room, child care facility, public toilets.

- (c) 1m<sup>2</sup> for 1m<sup>2</sup> of hotel, place of assembly, refreshment room, shop or tavern floor space.
- (d) 0.5m<sup>2</sup> for 1m<sup>2</sup> of tourist accommodation floor space.
- (e) 550m<sup>2</sup> of floor space for each up/down pair of escalators, where in Council's opinion, the facility is of major benefit as part of an identified pedestrian network.
- (f) Council may be prepared to negotiate additional bonuses for the provision or funding of Town Centre improvements over and above those required for the particular development. Such improvements may include the retention of existing mature trees (other than Cocos palms). Such additional bonuses involving a departure from the floor space ratio standard will be subject to submission of a written objection to the standard in accordance with the provisions of State Environmental Planning Policy (SEPP) No. 1 - Development Standards to accompany the development application. Such objection must demonstrate to Council's satisfaction that the objection is well founded and that the departure from the standard is consistent with the aims of SEPP No. 1.

Having regard to these bonus provisions, the proposed development incorporates a pedestrian linkage through the site, connecting with a planned pedestrian corridor through the adjacent site to the south, permitting access between Wharf Street and Navigation Lane and contributing to the pedestrianisation of Navigation Lane.

Additionally, the proposal incorporates preferred development uses set out in the Tweed DCP, being hotel, tourist accommodation, multi-dwelling housing above non-residential ground floor development, and a retail area which is proposed to incorporate either retail shop, refreshment room use, or a combination of the two. Floor space bonuses are sought for the proposed development in recognition of these preferred development uses.

The development proposal incorporates a hotel premises and retail/refreshment room floor space at ground floor level, attracting a bonus ratio of 1m<sup>2</sup> for 1m<sup>2</sup>. Within the first and second floors of the development, hotel accommodation rooms are proposed. This accommodation has been considered as "tourist accommodation" for the purposes of calculating the FSR bonus, and attracts a bonus of 0.5m<sup>2</sup> per 1m<sup>2</sup> floor space.

The tourist accommodation bonus ratio has also been applied to the tourist apartments on levels 4 and 5 and 6 of the development.

The following table demonstrates the calculation of floor space bonuses applied to the proposed development representing, as outlined above.

**BONUS FLOOR SPACE CALCULATIONS**

Component of Development	Bonus Rate	GFA (sqM)	Bonus Floor Area (sqM)
Pedestrian Through Link	3sqM/1sqM	475	1,425
Hotel - Licensed Premises, including Conference Facilities	1sqM/1sqM	593	593
Retail	1sqM/1sqM	209	209
Tourist Accommodation	0.5sqM/1sqM	5,750	2,875
TOTAL Bonus Floor Space Available	-	-	5,102sqM
BONUS FSR (maximum used as part of development)	-	-	2.0:1 or (5,020sqM)
TOTAL FSR (refer to SEE for further details)	-	-	3.99:1 or (10,012sqM)

Note: Site area = 2,510.12sqM

As illustrated above, the overall floor space ratio achieved over the site is 3.99:1. This is consistent with the controls in both the LEP and DCP.

Clause 51B allows multi-dwelling housing in zones 3 (a) and 3(b), but only if it meets certain criteria to ensure the development of the does not undermine its commercial use and the objectives of the zone. Furthermore multi-dwelling housing in this zone must be attached to shops, commercial premises or other non residential development on the same site. The proposed development provides a variety of accommodation types including hotel rooms, tourist rooms and permanent residential units. These are all located above commercial uses to ensure the commercial viability of the site is retained.

**North Coast Regional Environmental Plan 1988**

In accordance with Clause 32B of the REP the proposal is considered to be generally consistent with the relevant provisions of the NSW Government Coastal Policy 1997 and the Coastline Management Manual.

The proposal does not incorporate any physical restriction of access to a foreshore area or detrimental impacts upon the coastal character and amenity of the site.

The development does however overshadow a small portion of the Chris Cunningham Park. Subsequently the subject application has been supported by a SEPP 1 – Objection seeking a variation to the overshadowing provisions contained within Clause 32B(4) of the North Coast REP which states:

*“Council must not consent to the carrying out of development... on urban land at Tweed Heads,..., if carrying out that development would result in beaches or adjacent open space being overshadowed before 3pm (mid winter) or 6.30 pm (midsummer) daylight saving time”*

As indicated in the submitted shadow diagrams the proposed development casts a minor shadow over a small part of Chris Cunningham Park in December. During the spring and autumn months no overshadowing will occur, with minimal overshadowing in winter.

SEPP 1 allows development standards to be varied if it can be demonstrated that the particular standard is unreasonable and unnecessary in a particular instance. The applicant has put forth the following reasons (summarised) as to why Council should support the proposed SEPP 1 variation:

- *The development achieves compliance with the maximum height restrictions of 50m AHD as prescribed by Clause 16 of the Tweed LEP;*
- *The proposed development also generally complies with the building height of 10 storeys nominated by the Tweed Heads Town Centre Master Plan, with only a partial eleventh storey proposed;*
- *The variations does not exceed reasonable expectations given the development standards applying to the local area;*
- *The overshadowing effect remains minor in the context of the overall area of the park, and in comparison to that of approved and proposed buildings on surrounding sites;*
- *The overshadowing is numerically no different to that approved in previous application as it is only the footprint that changes.*
- *The NSW Coastal Policy includes the following statement:*  

*“The suggested standard in this principal may be difficult to apply in highly urbanised environments. An LEP or DCP which is tailored to local conditions and which has the overarching objective of minimising overshadowing may be required in these situations”*
- *Given the minor extent of overshadowing arising for the proposed development at this late afternoon time period and the compliance with the controls of the LEP the proposal does not compromise to objects of the EP&A Act, nor the intent of the Clause 32B(4). It is therefore concluded that strict compliance with the development standard set out by Clause 32B(4) of the North Coast REP is unreasonable and unnecessary in the circumstances of the case.*

Having regard to the applicant's submission above and a review of the previously approved overshadowing within DA 62-2-2003, the proposed development is considered reasonable. The shadow cast in December and mid winter will not cast a shadow over the waterway or foreshore sand, but will rather cast a shadow late in the afternoon over the grassed Chris Cunningham Park. This shadow is considered to be consistent (or smaller) with other shadows of recently approved buildings and is therefore considered acceptable.

Strict compliance with Clause 32B(4) is therefore considered unreasonable and unnecessary in this instance. Subsequently the applicants SEPP 1 objection is supported and the following forms part of the recommendation:

*That Council assumes the concurrence of the Department of Planning in relation to Clause 32B of the North Coast Regional Environmental Plan as it relates to overshadowing.*

Please note that the Department of Planning reviewed this application and made the following comments:

*“Under the provisions contained in Circular No. B1 State Environmental Planning Policy No. 1 – Development Standards, the Council can assume concurrence under SEPP 1 other than for a rural workers dwelling or for a rural subdivision. Council therefore has the delegation to assume the Director General’s concurrence in this instance”*

Clause 43 of NCREP 1988 provides guidelines for Council when considering residential development. These controls discuss density, the environmental constraints of the land and road widths.

The proposed density is considered to be a reasonable response to the proposed land use character of the area and will not result in the creation of any adverse physical impacts upon the locality. This is demonstrated through general consistency with the numerical requirements of Council’s Local Environmental Plan and Council’s numerous Development Control Plans. Further, the existing road widths are adequate for the function of the proposal with a detailed sedimentation and erosion control plan to be enforced in relation to the construction.

Clause 51 of NCREP 1988 relates to buildings greater than 14m in height and requires such buildings to obtain concurrence from the Director General of the Department of Infrastructure Planning and Natural Resources. However as detailed above Council has been given authority to assume the Directors Concurrence.

In deciding whether to grant concurrence to an application the Director (or Council due to our assumed concurrence role) shall take into consideration the likely regional implications of the development as regards its social, economic and visual effect and the effect, which it will or is likely to have on the amenity of the area.

It is considered the proposal will not have an adverse social, economic or visual impact regionally, and in local terms, the proposal will not have an adverse impact upon the amenity of the neighbourhood. The issues considered to conclude this involve overshadowing, privacy, loss of view, traffic impacts, bulk and scale and the objectives for the area. Each of these issues are assessed in detail throughout this report.

Therefore, strict compliance with Clause 51 is considered unreasonable and unnecessary in this instance. The following forms part of the recommendation for approval:

*That Council assumes the concurrence of the Department of Planning in relation to Clause 51 of the North Coast Regional Environmental Plan as it relates to buildings greater than 14m in height*

Clause 75 relates to the development control criteria for tourist developments. It aims to ensure that developments are not approved unless suitable services (including social services) are available within proximity of the site. The proposed development occurs within a cluster of other high rise developments that all have good access to services within the Tweed Heads central business district.

The proposal is considered to be consistent with the provisions of the North Coast Regional Environmental Plan 1988.

### **State Environmental Planning Policies**

#### SEPP (Infrastructure) 2007

In accordance with this SEPP the development application was reported to the Development Traffic Advisory Group (DTAG) on Thursday 14 February 2008. The Group noted the application and made no additional comments to that provided by Council's Traffic Engineer.

#### SEPP 55 – Remediation of Land

Council's Environmental Health Officer has reviewed this application having regard to contaminated land, pre demolition testing of the existing buildings and, acid sulfate soils.

A Pre-Demolition testing investigation has been carried out by Precise Environmental Ref: PE387.08 dated 28 July 2008.

This report concluded that no detectable concentrations of organochlorine pesticides were reported and that as a consequence no further investigation was considered necessary.

In regards to acid sulfate soils all issues can be addressed with appropriate conditions included on any Development Consent as recommended.

The site is not considered to need remediation in accordance with SEPP 55.



## SEPP 65 – Design Quality of Residential Flat Buildings

The applicant has submitted a statement addressing the 10 design principles under the SEPP. The following comments are provided (from the applicant) on these design principles.

### **1. Context**

The site is located within the Tweed Heads Town Centre Precinct, as defined in the Revitalisation of Tweed Heads Town Centre Master Plan. This master plan sets out a framework for redevelopment and revitalisation for future development. The proposal responds to the anticipated context defined by the Master Plan as well as acknowledging the existing context of the town centre, local and distant views.

The site's relationship to Jack Evans Boat Harbour and the future desired pedestrian links to the Town Centre is also reflected in the permeable relationship of internal to external spaces and the relaxed expression of the building being more open and less defensive.

### **2. Scale**

The scale of the proposed building has been informed by the design process that Council, DIPNR and the Client negotiated during the DA assessment process. Although the articulation and language of the building may vary the scale and building form do not vary from the principles already established.

Consistent with Tweed Shire Council planning controls the building has a podium base providing a legible base that defines both street edges and the Pedestrian Through Site Link whilst the upper levels are set back to assist in reducing the overall bulk and scale of the building.

### **3. Built Form**

The proposed design has achieved an appropriate built form for the site and context through a considered design approach and a respect for accepted planning principles and theory.

The manipulation and modelling of the building forms takes careful cues from adjoining buildings and represents a holistic design approach.

Specifically the alignment, scale, articulation and set backs from adjoining buildings work together to reinforce streetscape and public domain, creating legible urban spaces and providing a variety of urban experiences. Movement and space networks, use patterns, contextual integration and amenity outcomes have all been carefully supported through a built form model, developed as part of the design process.

#### **4. Density**

With consideration to amenity, scale, distribution of mass, mix of uses and access to employment and recreational facilities, the density of the proposed development is considered appropriate given the location of the site and the future desired objectives for the Town Centre.

#### **5. Resource, Energy & Water Efficiency**

Both the built form and landscape have been designed to embrace ESD principles, both passive and active to ensure the site and its occupants contribute to providing an environmentally sustainable development. Details of the proposed resource, energy and water efficiency are detailed in the BASIX assessment included as part of the DA submission. BASIX compliance is achieved.

#### **6. Landscape**

The landscape design creates a variety of useable spaces for public, communal and private use that vary in scale, programme and experience. The proposed Pedestrian Through Site Link provides a coherent connection to Navigation Lane and adjoining Tweed Ultima civic core.

On Level 1 and Level 2 a communal garden and recreation area, orientated to the north takes advantage of views to Jack Evans Boat Harbour and provides formal and informal outdoor areas for residents and hotel guests over varying levels. The change in levels also assists in providing separation from the private outdoor areas to apartments above.

Apartments located on top of the podium base utilise the landscape design to ensure adequate levels of privacy and amenity are achieved.

As with the built form the landscape design has embraced ESD principles and microclimate strategies. Flora species have been selected for their hardiness and appropriateness to site context, to minimise water consumption and maintenance, and provide a natural habitat for native fauna.

#### **7. Amenity**

The manipulation of built form in response to the intrinsic opportunities and constraints of the site, including the outlook to the Jack Evans Boat Harbour, Pedestrian Through Site Link and relationship with adjoining buildings has ensured that the design offers an active, diverse and highly liveable place.

The proposed building uses good design practice consistent with the Residential Flat Design Code objectives and guidelines to effectively manage the development of the design and ensure that the development achieves a high level of amenity, not only to the internal and external areas of the development but also to the broader context of the Town Centre.

72% of residential apartments are naturally cross ventilated whilst large outdoor areas, shaded from the sun provide flexible outdoor spaces. Privacy is maintained between apartments through orientation, internal layouts, setbacks and appropriate screening. Apartments located on the podium level have large areas of planting to assist in maintaining privacy. The various uses of the building are separated and clearly defined.

## **8. Safety & Security**

The organization and orientation of the building provides visual permeability into and out of the site as well as passive surveillance from Hotel rooms and residential apartments over.

A clearly legible entry to the residential foyer at ground level, separated from the more public tavern and hotel entries to the building provides access to all apartments. Furthermore, the retail edges combined with the landscape design assist in defining the public and private domains.

Lighting of the communal areas and the public domain will be designed to enhance the safety and security of the spaces without creating light spill outside of the development.

## **9. Social Dimensions**

The proposed development will provide a mix of retail, tavern, hotel accommodation, communal areas and apartment types appropriate to the social and economic context of the Tweed Heads Town Centre.

Social accessibility and adaptability has underpinned the design of all public and communal areas.

## **10. Aesthetics**

The building has been designed with consideration to creating a highly modelled and legible building form. The balanced tri-partite approach to the building allows the various uses of the building to be identified.

At Street level the main entry points to the building are separated and assist in activating both Wharf Street and the Pedestrian Through Site Link. The articulation and design of the entry points assist in 'holding' the building and are integral to the building design. External screening to the lower levels of the building to provide privacy to hotel rooms help to unify the base of the building whilst on the upper levels the orientation of balconies towards predominant views including Jack Evans Boat Harbour and the civic core of the adjoining Tweed Ultima building inform the articulation of the building.

Furthermore the landscape design and elements thereof, rather than being an 'add on' or after thought, are integrated into the design and help to inform the aesthetic of the building.

The proposed development is considered to satisfy the aims and objectives, the design principals and the pattern book in relation to SEPP 65.

### SEPP 71 – Coastal Protection

Clause 8 of the Policy details sixteen matters for consideration for land within the coastal zone. The application is considered to adequately satisfy the matters for consideration. Specifically the proposed development is considered compatible with the intent for the development of the locality. Furthermore, the cumulative impacts of the development are considered negligible. The proposal maximises the development potential of the land in a manner which is consistent with both policy and the nature of the surrounding built landscape and environment.

### Tweed Heads Town Centre Master Plan

The Master Plan establishes a vision for the Town Centre of Tweed Heads which describes the desired future character for Tweed Heads and provides urban guidelines for each precinct together with indicative plans and sections to illustrate the principal planning objectives and design intent.

The proposed application is generally consistent with the objectives and numerical requirements as detailed in the Plan.

The subject site is located in the Town Centre Core precinct and is restricted to a 10-storey height limit in accordance with the Plan.

The proposed development represents an eleven storey development (partial eleventh storey for upper living spaces associated with 2 dwelling units occupying the tenth storey of the building.

This variation to the Master Plan is not considered excessive or warrant refusal or amendment of the application. The height of the building is comparative to the heights of other recently approved developments and acts as a transition zone to the Twin Town Developments to the north.

This Plan is not a statutory document and the proposed variation is therefore not required to have a SEPP 1 objection for this element of the proposal. In this instance Council's statutory LEP height limit is considered appropriate for the site (50m AHD) with the development broadly satisfying the objectives of the Master Plan.

The Master Plan specifically encourages developments to contribute positively to activating the Wharf Street frontage adjacent to Jack Evans Boat Harbour. This application further improves the public domain and provides an attractive landscape pedestrian environment through the site.

The building has a distinctive form with all elevations having strong vertical and horizontal articulation. Overall the proposed development is considered to be of a form and finish which achieves the vision and objectives of the Tweed Heads Master Plan and results in a built product which will contribute positively to the revitalisation of the town centre area.

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

Draft LEP Amendment No 64 – Tweed Heads Master Plan

This Draft LEP was exhibited between 21/12/05 - 10/2/06. Originally this Draft was going to adopt the height limits as prescribed within the Tweed Heads Master Plan, however, since this time Council has not advanced the Draft.

In assessing the weight that Council should apply to this Draft Council must consider the Plan's immanency.

Given the extent of time since the exhibition this Plan can not be considered to have significant determining weight.

Therefore, the development as proposed is considered satisfactory given the existing height limit for the site being 50m AHD.

There are no other Draft Plans specifically applicable to this site.

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

**Section A2 – Site Access and Parking Code**

The proposed development seeks approval for:

- 151 Car Parking Spaces in the two tiers of basement (46 residential spaces, 36 tourist accommodation spaces, 38 hotel room spaces, and 31 retail/tavern spaces)
- Retail 209m<sup>2</sup>;
- Tavern 250m<sup>2</sup>;
- Conference Rooms 643m<sup>2</sup>;
- 38 Hotel Rooms;
- 36 Tourist Accommodation Apartments; and
- 22 Permanent Accommodation Apartments.

In summary the proposed car parking adequately caters for the development as proposed by providing 151 on site car parking spaces. This is achieved by reducing the customer and staff requirements by up to 30% in accordance with the DCP and further acknowledging a cross utilisation argument for the tourist accommodation and conference room facility and acknowledging an existing on site credit of 50 car parking spaces. Details of this calculation are provided below:

<u>Use</u>	<u>GFA</u>	<u>DCP Section A2 Classification</u>	<u>Staff Requirement</u>	<u>Customer Requirement</u>	<u>Resident Parking</u>
Retail	209m <sup>2</sup>	Item C18 Shop	1 space per 100m <sup>2</sup>  <b>= 2.09</b>	4.4 spaces per 100m <sup>2</sup>  <b>= 9.196</b>	N/A
Tavern/Hotel	250m <sup>2</sup>	Item B4 Hotel	0.5 spaces per staff  <b>= 3 spaces</b>	1 space per 3.5m <sup>2</sup> licensed floor area  <b>= 71.4286</b>	1 space per room  <b>= 38</b>
Conference Rooms	643 m <sup>2</sup>	Item F6 Conference Centre (May be reduced for hotel component if applicable)	0.5 per staff  (Assume 4 staff)  <b>= 2 spaces</b>	0.3 spaces for each seat  (equivalent to 1 space for every 7m <sup>2</sup> )  <b>= 91.8572</b>	N/A
Tourist Accommodation	36 Rooms	Item B6 Tourist Accommodation	0.5 per staff  (Assume 4 staff)  <b>= 2 spaces</b>	N/A	1 space per room  <b>= 36</b>
Permanent Residential	22 Rooms  8 x 1 bed  8 x 2 beds  6 x 3 beds	Item A4 Multi Dwelling Housing	N/A	N/A	1 per 1 bed/ 1.5 per 2 bed/ 2 per 3 or more beds  <b>= 32</b>

Total parking spaces required are therefore assessed as;

<u>Use</u>	<u>Staff Requirement</u>	<u>Customer Requirement</u>	<u>Resident Parking</u>
<b>Retail</b>	2.09	9.196	N/A
<b>Tavern / Hotel</b>	3 spaces	71.4286	38
<b>Conference Rooms</b>	2 spaces	91.8572	N/A
<b>Tourist Accommodation</b>	2 spaces	N/A	36
<b>Permanent Residential</b>	N/A	N/A	32
<b>SUB TOTAL</b>	9.09	172.4818	106
<b>TOTAL</b>		<b><u>287.57</u></b>	

Councils DCP allows for a 20% reduction in parking numbers based on ESD principles. Alternatively, Table 4.8 of the DCP allows for a reduction of up to 30% (for public car parking) within defined areas. This application is located within an identified area, Area 1 Tweed Heads.

The total number of parking spaces may therefore be reduced to 233.1 spaces based on the following maths equation:

$$(2.09 + 9.196 + 3 + 71.4286 + 2 + 91.8572 + 2) \times 0.7 = 127.1$$

$$127.1 + 38 + 36 + 32 = 233.1$$

In addition, Councils Senior Development Engineer has advised that it is not unreasonable to consider cross utilisation of parking spaces in the areas of the tourist accommodation and Conference rooms. An assessment based on a maximum of 45% of the tourist accommodation parking requirements may be applicable to conferences held on site.

This would equate to a further reduction of 33.3 spaces based on the following maths equation:

$$(38 + 36) \times 0.45 = 33.3$$

The total onsite parking needs now equates to 199.8 spaces.

In the assessment of DA62-2-2003 it was agreed that the site had credits for 50 unsupplied parking spaces. Accepting this previous assessment results in the required onsite parking to be as follows:

$$199.8 - 50 \text{ parking credits} = 149.9 \text{ spaces required onsite.}$$

The application supplies 151 on site parking spaces (including one care wash bay) and therefore satisfies the required onsite parking requirements.

However, this does not leave any onsite parking credits for any future change of use. Should future change of use activities come to Council for assessment any additional parking required would need to be satisfied by way of Section 94 Contributions.

### **Section A4 – Advertising Signs Code**

The application incorporates some building identification signage, which details the street address. The signage is at key entry points of the building to assist in identifying the various entries to the building. The signage is integral to the overall building design given that it is rebated into the façade material. All additional advertising signage will be subject to a separate application if statutorily required.

### **Section A13 – Socio-economic Impact Assessment**

A Social Impact Assessment to be submitted for residential development comprising 50 units or more and any hotel application. Accordingly the application was accompanied by a socio economic statement that considered the impact of the development will not have negative impacts. Specifically the application indicates that the equivalent of 30 full time jobs would be created for the tavern, and retail facilities with additional employment opportunities in the accommodation sectors. Furthermore, the socio economic impact of the gaming area has been considered and justified given the presence of the same number of gaming machines as is within the existing facility. It is considered that the proposal in terms of these guidelines will not have a negative social or economic impact upon the area.

### **Section B2 – Tweed Heads**

The subject site is located within the Central Precinct which nominates the preferred developments as mixed residential/commercial developments. The DCP specifies precinct objectives in addition to specific controls for building envelopes, treatments for commercial facades, and integrated signage arrangements. The residential components of the DCP then go on to specify controls for building mass ventilation, cross ventilation, wind mitigation, overshadowing, variety of roof forms, security, materials and colours, access and parking and open space/balcony requirements.

#### **Building Envelopes – Maximum Building Height**

The site of the proposed development is located within an area to which a maximum permissible building height of 50m AHD is prescribed by clause 16 of the TLEP. The proposed development complies with the maximum height criteria, however, the development does exceed 8 metres in height.

According to Section B2.9.1 of the DCP, “Where a proposed development will have a height in excess of 8m, applicants should provide block models, visual impact statements, shadow diagrams and perspective drawings to demonstrate compliance with the objectives of the building envelope control”.



The applicant has provided shadow diagrams, elevation drawings and perspective images.

Section B2.9.1.3 provides the following objectives in relation to building envelopes:

- Ensure that building setbacks to property boundaries increase relative to any increase in building height;
- Minimise the visual and physical impact and apparent bulk of tall building on adjoining developments and public streets and spaces;
- Facilitate adequate sunlight access to and minimise shadow impact on adjoining properties and public streets and spaces;
- reduce ground level wind effects caused by tall buildings;
- Facilitate the development of taller, narrow buildings which produce visual diversity and can preserve important view corridors.

The proposed development is compatible with the objectives stated above, in that the development incorporates generous setbacks to property boundaries in the components of the building situated above ground level. The tower setbacks contribute effectively to the minimisation of visual and physical impact of the building on adjoining developments and public spaces and preserve important view corridors, whilst the sleek building lines and design attributes of the development provide an element of visual interest in the streetscape. The proposal therefore recognises the intentions of the building envelope controls as stated within the objectives.

The specific building envelope controls are depicted on the applicants plans (elevation drawings DA20-24). The proposed building is generally compliant with the Building Envelope control, however minor variations do occur in the upper levels of the building where minor incursions of balconies and roofing elements exist. The actual building only encroaches on the allowable envelope on levels 7 and above on the southern and western sides of the building. Encroachment of the building envelope line by balconies/roofing elements of the proposed building represents a particularly minor variation to the envelope control, and involves minor features of the building designed to contribute to climate control and achieving energy efficiency objectives. The benefits offered by these elements are considered to outweigh concerns regarding the building envelope line, and the particularly minor incursion does not offend the Building Envelope Objectives outlined above.

The encroachment of the external wall of the building is also considered minor and inconsequential, having regard to the Building Envelope Objectives discussed above. The design of the building overall involves varied building alignments, offset walls and spaces, such that the majority of the building achieves substantial setbacks to all property boundaries in these upper levels of the development. The encroachment of the building envelope at this level involves a very minor portion of the floor space of the building and only a small section of the external walls of the building.

Accordingly, the development overall is considered to respond favourably to the Building Envelope objectives set out within Section B2.9.2 of the DCP, and support for this minor variation is warranted on these grounds.

### Commercial Facades – Facade Alignments

Section B2.10.1 provides that all buildings within the business zones should be built up to the street edge to reinforce the streetscape image and to provide a sense of continuity in the streetscape. It also requires that building components above 8 metres in height are to be setback from the street in accordance with the building envelope controls contained in Section B2.9 to create a ‘tower’ effect in the building above a podium level.

The proposed development incorporates a building alignment which is generally aligned with the street edge, although at the ground floor space has been utilised for outdoor eating areas. This achieves a desirable streetscape treatment and visual presentation to the public street corridor.

Further to this, however, the proposed retail component of the development is setback beyond the street frontage of the site, and oriented to face toward the south. This design element has been adopted in response to the proposed redevelopment of lands immediately adjoining to the south, forming part of the ‘Tweed Ultima’ development, where a pedestrian corridor is proposed through the site to create an active space in this location and to contribute effectively to the pedestrianisation of Navigation Lane.

Overall, the design approach of the development is considered to respond favourably to the intention of the Section B2.10.1 in terms of creating active pedestrian space and appropriate interaction with the public street corridor adjoining the site. The design of the building overall also responds appropriately to this Section of the DCP in relation to the creation of a ‘tower effect’ above the building podium level.

### Facade Modulation

Section B2.10.2 provides that new development should maintain diversity within façade design, such that each separate shop or office front should have its own identifiable design features. The design of the proposed development is such that the component of the building directly fronting Wharf Street at ground level is occupied by the public areas of the proposed hotel. The remainder of the street frontage acts as pedestrian space providing a corridor through to Navigation Lane and linking with a proposal corridor on the adjoining site to the south.

Accordingly, the façade of the building at ground level, facing Wharf Street encompasses a singular internal use area. The building design treatment, incorporates structural elements to create visual interest in the appearance of the building as viewed from public areas, whilst entries to individual ground level components are clearly identifiable through orientation and variation in external materials. Accordingly, the proposed development favourably responds to the intentions of the Section.

### Continuity of Facades

Section B2.10.3 of the DCP incorporates requirements relating to commercial facades maintaining a continuous built edge to the street incorporating presentation of a two-storey facade to the street, with facade height and window locations being similar to adjoining buildings.

The proposed development incorporates the presentation of a two-storey façade to the street, with the façade height being similar to existing adjacent buildings. A residential tower is then situated above this lower level podium of the building.

### Design Elements

Section B2.10.4 provides that the street level of buildings should comprise of active and open shop fronts incorporating windows and entrances, and avoiding expansive blank walls. The proposal incorporates extensive use of windows and open shop fronts at the ground level of the development. The proposal also incorporates clearly identifiable entry points to the upper levels of the building.

### Office and Shop Front Design

Section B2.10.5 the DCP relates to office and shop front design and requires that continuous level access to ground floor entranceways should be easily accessible for all people including those with disabilities, with ramps and handrails included where necessary, and steps being avoided.

The proposed development provides ease of access for all persons, being directly accessible at street level, with elevator access to upper levels from the street and basement levels of the building.

The building also incorporates varied building alignments and façade treatment creating visual interest in the streetscape and a high level of amenity in the ground level pedestrian environment on the site.

#### Residential Design – Building Mass

Section B2.11.1 of the Tweed DCP provides that large, unbroken expanses of walls can appear visually imposing, and the integration of varied setbacks, inclusion of balconies and window shade elements can contribute to dividing the building into smaller components and achieving visual variation and innovative design. Specifically, this Section requires that any wall or face of a residential building should not have a continuous unbroken length of more than 15 metres.

The proposed building does not include any large, unbroken expanses of wall. The proposed building is built to the boundary at podium level where it adjoins existing commercial buildings to the north of the site. The east and west faces of the podium level are oriented to the street frontages of Wharf Street and Navigation Lane respectively, with large openings and varied building alignments at street level creating visual interest and strongly linking the external and internal spaces of the building.

The southern part of the podium level building incorporates retail and/or refreshment room area, oriented toward a planned pedestrian corridor linking between Wharf Street and Navigation Lane, aimed at facilitating the pedestrian permeability of this central area of Tweed Heads.

The upper level residential components of the building incorporate balconies to all units, and offset walls clearly breaking the building into smaller components, ensuring that the development incorporates no continuous unbroken wall length exceeding 15 metres, and achieving the objectives of Section B2.11.1 of Tweed DCP.

#### Energy Efficiency

Section B2.11.2 provides a number of criteria relating to suitable energy efficiency design criteria within residential development. The criteria include such aspects as natural ventilation being achieved by incorporating cross ventilation within the residential units, and daylight access catered for by providing glazed areas to predominantly face toward the north and east. The proposed development is designed to optimise the northern and eastern aspects available to the individual apartments, and to ensure cross ventilation and solar access is available to all dwelling units.

These objectives are achieved through such elements as offset walls, varied orientations and generous private open space balconies. Cross ventilation was one of the key issues addressed in the new design. The resulting layout is considered a vast improvement on the previous design.

This development application is accompanied by NatHERS certification with regard to the energy efficiency of the apartments, demonstrating that all apartments achieve a minimum 3.5 star rating. The residential component of the development also complies with BASIX, a certificate for which is provided.

#### Wind Mitigation and Overshadowing

Section B2.11.3 provides that tall buildings can create windy conditions and downdraft at street level if they are not carefully designed, and that downdraft can be avoided by incorporating a podium level or sitting tall buildings back from low buildings. It also provides that buildings should be designed to minimise overshadowing of all public reserves with particular consideration given to mid-winter shadow effects.

The proposed development has been designed in accordance with the requirements of Section B2.11.3.1 with regard to incorporating a tall residential building stepped inward above the alignment of the lower level podium to effectively reduce potential impacts of downdraft. The stepped design of the proposed building also contributes to reducing the likely impacts of overshadowing of adjacent public reserves, and this matter is discussed at length within the report above and relating to the provisions of clause 32B(4) of the NCREP.

#### Privacy

The provisions of section B2.11.5 of the Tweed DCP are met by the proposed development through the careful orientation of primary living areas within the proposed dwelling units, combined with generous boundary setbacks in the upper levels of the building and window and balcony placement and alignment within the building.

#### Security

Security objectives of Section B2.11.6 are satisfied by the development through the promotion of active public spaces in the ground level areas, clear direct access to entry foyers and active ground level uses adjacent to these entries. Secure access to upper levels of the building via elevators is provided from the basement of the building, with casual surveillance opportunities maximised through the provision of generous private open space balconies in the upper levels of the building, oriented toward adjoining public spaces. In addition to this, separate access to the building is provided for the different components of the development, which will ensure the security of residents and guests utilising the tourist apartments.

This is another key design issue that was not incorporated into the previous design.

### Materials and Colours

Materials and colours proposed for the development are provided in Drawings DA20-25. The overall appearance of the development is a contemporary building, with the design adopting sleek building lines a variety of offset wall alignments contributing to the achievement of visual interest in the building as viewed from adjacent areas. The outcomes achieved by the proposed development are considered to satisfy the provisions of Section B2.11.7.

### Access and Parking

The proposed development incorporates basement parking area accessed via Navigation Lane, being the secondary street frontage of the site. Careful consideration has been given to the design and location of the vehicular access point to the site, to ensure that safe and convenient access is achieved. A carwash bay is proposed within the basement parking area, in recognition of the provisions of Section B2.11.8. Although this represents a reduction to the nominated rate of car wash bays for the overall number of dwelling units, this is considered to be a reasonable approach given the existence of a number of nearby specialised car wash facilities and the intended tourist use of the development.

### Open Space and Balconies

Section B2.11.9 of Tweed DCP sets criteria relating to the provision of open space and balconies in residential development. Specifically, the following parameters apply to the provision of landscaped open space.

- Dwellings under 85m<sup>2</sup> in floor area – 20m<sup>2</sup> per dwelling
- Dwellings over 85m<sup>2</sup> in floor area – 25m<sup>2</sup> per dwelling

It is also required that where open space is provided at ground or podium level, it should have a minimum dimension of 4 metres and be appropriately landscaped, and that open space provided in the form of a balcony for dwelling units without direct access to ground level, must have a minimum area of 8m<sup>2</sup> and minimum dimension of 2 metres and achieve direct access from the main living room.

Required and proposed open space areas are set out within the table below.

UNIT SIZE (Levels 3-10)	OPEN SPACE REQUIRMENTS
Units <85m <sup>2</sup> = 32	640m <sup>2</sup>
Units >85m <sup>2</sup> = 26	650m <sup>2</sup>
TOTAL REQUIRED	1290m <sup>2</sup>
PROPOSED FOR APARTMENTS	2143.09m <sup>2</sup>

Accordingly, the total landscaped open space provided to the residential component of the development exceeds the minimum required areas specified by Section B2.11.9 by 853.09m<sup>2</sup>. The siting and design of the landscaped and outdoor living spaces creates attractive and functional spaces for the enjoyment of occupants of the development. In addition, an indoor gymnasium and swimming pool are provided within the development, which have not been included within the open space calculations.

**Development Control Plan Section A9 – Energy Smart Homes Policy**

The applicant has submitted a NatHERS certification and a Basix Certificate for the proposed development that outlines compliance with the requirements DCP section A 9.

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

**Coastal Policy**

The land is identified under the Coastal Policy. However, the site is significantly landward from the Coastal Erosion Zones, and is unlikely to be affected by the coastal processes, or restricting public access to the coast. Therefore, the proposed development is not considered to be in conflict with the policies and strategies contained in the coastal policy.

**Demolition**

The proposal requires the demolition of the existing buildings. The applicant has submitted a demolition plan, which has been assessed as adequate, and appropriate conditions of consent have been recommended to control demolition activities.

**(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**

It is considered the proposed development will not have an adverse impact upon the natural environment as the site is currently developed for commercial purposes. In terms of the built environment the proposed mixed use development will replace a two storey hotel and as such the development will have an impact upon the built environment. The following issues are raised.

**Character of the area**

The area is made up of a mix of commercial and residential development. The area is currently undergoing a transition phase as these older developments come under market pressures to be demolished and the land redeveloped for higher density residential and commercial development as encouraged under the applicable planning controls. The proposal is considered not to be out of character with the area and is consistent with the future built form as per Tweed LEP 2000, DCP Section B2 – Tweed Heads, and the Tweed Heads Town Centre Master Plan.

**Noise and Amenity**

The issue of noise can be divided into two sections:

- noise from the construction activities which includes vibration control; and
- noise from the operations of the various components of the development post construction, in particular the tavern and hotel.

The applicants Statement of Environmental Effects provides only a brief explanation on the issue of noise. It is noted from the previous approval that conditions were placed on the approval in respect to the need to provide a Noise and Vibration Management Plan prior to the commencement of any works on the site. This Plan was to specifically deal with the control of construction noise and vibration. It is considered that a similar condition be placed on any consent requiring the provision of a Noise and Vibration Management Plan to the satisfaction of the PCA prior to the issue of any Construction Certificate. Suitable condition recommended in addition to standard construction noise conditions.



Noise from the operations of the Tavern and Hotel components as well as noise from the operation of the loading docks, waste rooms (including the residential waste room), garbage rooms, mechanical plant and equipment (including the swimming pool filter pump) will need to be investigated via the provision of a separate Operational Noise Investigation Report which is to be provided to the satisfaction and approval of the PCA prior to the issue of any Construction Certificate. The need for this report is to be provided prior to the issue of any Construction Certificate and is to ensure that the noise consultant can examine the proposed construction plans and make any redesign recommendations before the commencement of construction activities. Suitable conditions are recommended and include compliance with any recommendations made as to operations times etc.

It will also be necessary for a Post Construction Noise Report to be provided for the purpose of verifying that any noise attenuation or mitigation measures as may be recommended by the noise consultant have been carried out and that operational noise levels are within the required criteria.

Standard conditions are also recommended in respect to construction operation times.

As the site is being entirely redeveloped potential purchasers will be completely aware of the commercial nature of the area generally and more specifically be aware that they are purchasing above an approved tavern/hotel. Therefore the recommended conditions of consent are considered satisfactory to manage noise issues associated with this development.

### **Views**

Tweed DCP Section B2 acknowledges that views provide a sense of place and identity, and that key view corridors should be retained. The Senior Commissioner in the Land & Environment Court in *Tenacity Consulting Pty Ltd v Warringah Council* adopted the following four-stage test to assess the reasonableness of view sharing:

1. The first step is the assessment of views to be affected;
2. The second step is to consider from what part of the of the property are the views obtained (an expectation to retain side views and sitting views would be unreasonable);
3. The third step is to assess the extent of the impact (the extent of the impact should be assessed for the whole of the property not just for the view that is affected. This could be done by ranking the affect from negligible to devastating); and
4. The fourth step is to assess the reasonableness of the proposal that is causing the impact (it may be unreasonable if it comes about as a result of non compliance with planning standards).

The proposed development will potentially affect distant views of residential properties within the wider Tweed Heads area and specifically impact on views from the recently approved Stage 1 Ultima Buildings.

The views would be obtained from the upper floors of both buildings. The views would be from bedrooms, living areas, and balcony space.

The impact would be a sense of enclosure and loss of distant views, which provide a higher level of amenity, however this impact would be considered acceptable given the opportunity of view sharing around the development and given the reasonableness of the views being maintained.

In assessing the reasonableness of the proposed application it has been determined that the building satisfies the intent for the character of the area, while complying with the height and satisfying Council that the application has had adequate regard for the amenity of adjoining property in terms of shadow, privacy and general amenity.

Therefore, it is concluded that the loss of view that will result from the construction of the proposed building is not unreasonable despite the impact it will have on adjoining properties.

### **Dewatering**

A preliminary issue of dewatering was raised, however, following receipt of additional information the applicant has demonstrated the ability of the development to adequately dewater the site by providing onsite storage for water treatment. The Department of Water & Energy has also granted General Terms of Approval (GTA's) for the dewatering activity.

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

The subject site is within the commercial business district of Tweed Heads, which provide for a variety of shopping, dining, and recreational opportunities. The area is serviced by medical facilities including the Tweed Heads Hospital and various professional consulting rooms in Boyd Street.

The subject site has been nominated as a designated high-density area to utilise the areas facilities as detailed above. Additionally the site has the benefit of a 50m AHD height limitation, which further encourages high-density development for the area. The existing public infrastructure is adequate to service the proposed residential flat building, as the area is not subject to any known hazard such as slip, flood or bushfire. The site of the proposed development is considered suitable for this type of development and encouraged through our strategic plan for the area.

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

The proposal was advertised and notified for a period of 30 days from 16 January 2007 to 18 February 2007. During this period Council received one individual objection

The grounds for objection are discussed in the below table.

OBJECTION	IMPACT ASSESSMENT
<i>I object to any further multi-dwelling accommodation structures due to a proliferation of this type of development</i>	As detailed earlier in this report the LEP and Strategic Plan encourage 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 are enhanced.
<i>Overdevelopment should not occur</i>	<p>Having regard to these overarching principals the proposed application is considered to warrant approval. By utilising our central business district for higher densities Council can protect natural areas from pressures of urban sprawl.</p> <p>The proposed development complies with the Council's future desired character for the Tweed Heads central business district.</p> <p>The objection is not considered to warrant refusal or any amendment to the application as proposed.</p>

**(e) Public interest**

Despite the objection received to this application the proposal is not considered to be in conflict with the general public interest in the locality. The proposed development adequately reflects the provisions of the controls and the intended development for the locality.

**OPTIONS:**

1. Approve the application in accordance with the recommended conditions.
2. Refuse the application for specified reasons.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

The applicant has a right of appeal to the Land and Environment Court.

**POLICY IMPLICATIONS:**

Nil.

## CONCLUSION:

The proposed development has provided a mixed use high rise development in an area nominated for such a use given its location within the commercial business districts of Tweed Heads.

The existing public infrastructure is adequate to service the proposed mixed use development, as the area is not subject to any known hazard such as slip, flood or bushfire. Furthermore, the local road network surrounding the site is suitable for such a development especially when basement car parking is provided.

The merit assessment of the applicable issues relating specifically to the building height, overshadowing, building envelope encroachments, and on site car parking are not considered to be unsustainable or result in an over development of the site.

The site of the proposed development is considered suitable for this type of development and encouraged through Council's strategic planning documents for the area. Having had regard for the proposed development and controls provided for the site it is considered that conditional consent is warranted.

## 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](http://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. DA02/1824 (DoP – DA62-2-2003) Planning Report (DW 1915258)
  2. DA02/1824 (DoP – DA62-2-2003) Approval Notice (DW 1915262)
  3. DA02/1824 (DoP – DA62-2-2003) Approved Plans (DW 1915264)
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**P2 [PR-PC] Unauthorised Works - Development Application DA05/0308 for a Staged Residential Subdivision (3 Stages) Comprising 89 Single Dwelling Lots, 7 Duplex Blocks, 1 Drainage Reserve, 1 Residue Lot & 2 Public Reserves at Lot 13 DP 793985; Lot B DP 368706**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA05/0308 Pt12**

**SUMMARY OF REPORT:**

It has been brought to Council's attention that unauthorised works have occurred in conjunction with DA05/0308.

Council approved DA05/0308 (a residential infill subdivision comprising 96 allotments) in June 2006. The site earthworks were proposed to result in a balanced cut and fill approach to negate the need for importation of fill.

An excess of material (35,000m<sup>3</sup>) is now being placed on that part of the site zoned for agricultural protection. Council is of the opinion that such works are not authorised by the existing consent and are therefore unlawful.

Negotiation attempts with the developers to date have not produced any satisfactory outcomes and therefore to resolve this matter it is considered necessary to commence legal proceedings (for a breach of the Environmental Planning & Assessment Act 1979) in respect of the unauthorised works at Lot 13 DP 793985, Barnby Street, Murwillumbah.

**RECOMMENDATION:**

**That Council engages solicitors to commence legal proceedings (for a breach of the Environmental Planning & Assessment Act 1979) in respect of the unauthorised works at Lot 13 DP 793985, Barnby Street, Murwillumbah.**

**REPORT:**

**Applicant:** Metricon (Qld) Pty Ltd  
**Owner:** Barnby Developments Pty Ltd  
**Location:** Lot 13 DP 793985; Lot B DP 368706; Lot 1 DP 392245, Barnby Street Murwillumbah  
**Zoning:** 2(a) Low Density, 2(c) Urban Expansion & 1(b2) Agricultural Protection  
**Cost:** \$6,000,000

**BACKGROUND:**

In July 2006 Council approved an infill subdivision (3 stages) comprising 89 single dwelling lots, 7 duplex blocks, 1 drainage reserve, 1 residue lot & 2 public reserves.

The application proposed site earthworks to fill the low lying flood prone areas of the site. The central ridge within the site was to provide the material for fill, however, the ridge was to remain as a feature of the estate. This approach was meant to create a balanced cut and fill approach so that no importation of fill was required.

On Friday 19 September 2008 Council started receiving complaints from residents in the local area stating that the developers had started moving excess fill material to that part of the site zoned 1(b2) Agricultural Protection.

Council Officers investigated the complaints and met with the developers on site.

The developers explained that final earthwork levels on the site had now been achieved in accordance with the approved plans, but that as a result they had an excess of approximately 35,000m<sup>3</sup> of material (from 400,000m<sup>3</sup> of material that formed the earthworks).

The developers explained that they had reviewed their options in relation to the excess material and decided to place the fill on that part of the site the site zoned 1(b2) so they did not have to truck the material off site.

Whilst the land being used as a stockpile site formed part of the DA, the stockpile site is outside the site works area and is zoned for agricultural protection. Furthermore, the applicant has a current application before Council seeking this area be re-zoned to residential to allow for the expansion of the residential estate. Placement of fill in this location is unlawful and is furthermore presumptuous and premature without lawful development consent and without resolution of the rezoning application.

The stockpile is approximately 150m x 150m and has approximately 20,000m<sup>3</sup> (of the intended 35,000m<sup>3</sup>) of material sitting there at the moment. This creates a height of approximately 2m.

Council has formally asked the developers to stop placing fill in this location as it is Council's opinion that this constitutes earthworks which needs a separate development approval. The land is a low lying cane paddock that is on the floodplain adjoining Rous River. Any development assessment would need to consider amenity, flooding and storm water dispersal. Furthermore, such DA would normally be publically notified and advertised.

The developers were requested to attend a meeting with Council's Executive staff on Thursday 25 September in an attempt to rectify this matter. No resolution was forthcoming with the developers advised to go away and review their options and report back to Council with a lawful resolution.

Below are extracts from written communications between Council and the developers to date:

Tweed Shire Council Letter to Metricon 26 September 2008:

*I refer to the above application and recent discussions held between Council Officer's, representatives from Metricon and Jim Glazebrook, in regards to illegal stockpiling of excess material on Lot 13 DP 793985.*

*As discussed with you on Wednesday 24 September 2008, the excess site material (approximately 25,000m<sup>3</sup>) that has been placed west of the Joshua Street link road, has been stockpiled without prior development approval.*

*Council further notes that you have a remaining excess of approximately 10,000 -15,000m<sup>3</sup> of material that has yet to be moved to the illegal stockpile site.*

*On Monday 22 September 2008 Council Officers instructed you to stop work with regards to the illegal stockpile. The remaining excess material should not be moved to the illegal stockpile. Any additional work in this regard will result in Council pursuing legal action for works without development approval.*

*As discussed on Wednesday 25 September 2008, this matter requires resolution as soon as possible.*

*Council is allowing Metricon time to come up with a mutually acceptable lawful resolution to this matter. Such resolution is to be presented to Council by Monday 29 September 2008. Such resolution will probably necessitate the lodgement of a Development Application and or S96 Modification Application. However, please note that the lodgement of such application/s will need to be assessed on their merits and may not be capable of support by Council. Subsequently please consider all options available to you and liaise with Council regarding your options on Monday 29 September 2008.*

Tweed Shire Council Letter to Metricon 8 October 2008:

*"I refer to discussions that took place between Metricon representatives and Council staff at a meeting held at Council on Thursday, 25 September, 2008 in respect of the above activity undertaken in association with the adjoining Barnby Street residential subdivision proposal of DA05/0308.*

*At that meeting, it was acknowledged by all parties that the recent soil stockpiling activity on property known as Lot 13 DP 793985 Joshua Street, Murwillumbah was unauthorised by Council, and would have, under normal circumstances, necessitated prior development approval under the Tweed Council Local Environmental Plan 2000.*

*As part of the meeting, Council officers provided the following advice to Metricon representatives:*

- 1. Council is currently considering whether any punitive or legal action is warranted in this instance, particularly in light of the sensitive nature of the subject site and its current 1(b) Agricultural Protection zoning, as well as the seriousness of the perceived breach of the NSW Environmental Planning and Assessment Act;*
- 2. A development application would be required should the proponent of the adjoining subdivision proposal seek to retain the stockpiled soil on property known as Lot 13 DP 793985 Joshua Street, Murwillumbah; alternatively, approval for a modification of DA05/0308 under Section 96 of the Act would be required should the proponent seek to remove and re-locate the stockpiled soil from this site; Council officers advised that they could not provide any assurance at this stage that either of these applications would be approved by Council; and*
- 3. The proponents were given notice that all works on the subject land should be ceased, and that a response to the matters raised by Council officers should be provided by no later than Monday, 29 September, 2008.*

*Despite a verbal acknowledgement of the above matters at the recent meeting, Council has yet to receive a satisfactory written response on these matters.*

*Given the time elapsed since the 25 September meeting, as well as the serious nature of the unauthorised works, I now wish to give notice that, if a satisfactory written response to these matters is not received by 5.00pm, Friday, 10 October, 2008, Council will consider the issuing of a Penalty Infringement Notice (PIN) and commencement of legal proceedings against the proponents of DA05/0308.*

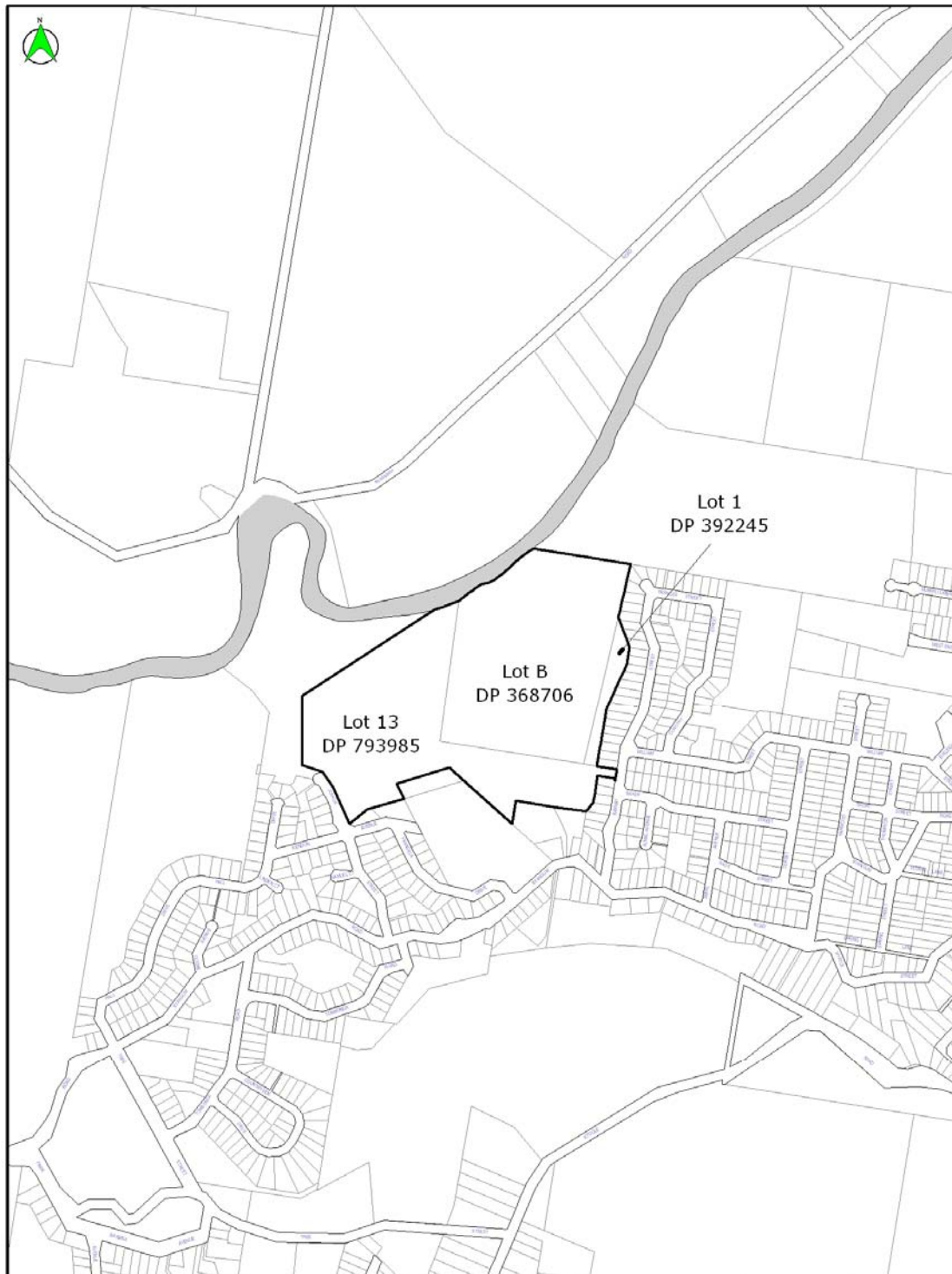
*Please contact me if you wish to discuss these matters further."*

On 13 October 2008 the developer's solicitors wrote to Council stating that it was their opinion that placement of fill in the stockpile area is incidental to the works authorised in the consent.

Council Officers do not concur with this advice and hence it is now considered necessary to commence legal proceedings to resolve this matter.



**SITE DIAGRAM:**



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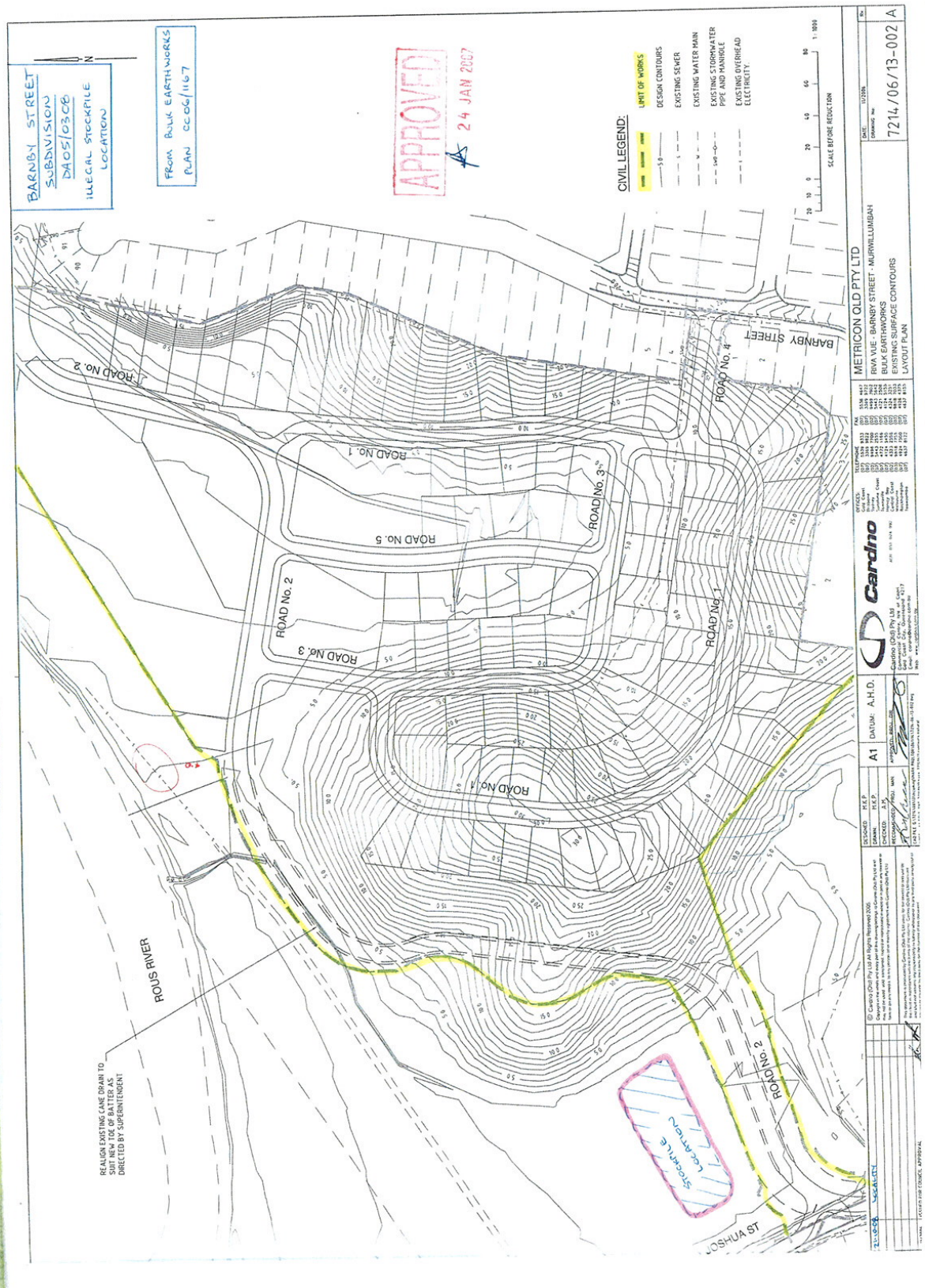
*Tweed Shire Council*  
 Lot 1 DP 392245, Lot B DP 368706, Lot 13 DP 793985  
 Barnby Street, Murwillumbah

File: N:\MapInfo 7...V4P Site Plan.Wor Author: C.Davis Date: 6/Dec/2005



STRATEGIC PLANNING UNIT  
**Site Plan**  
 Sheet: 1 of 1

STOCKPILE LOCATION PLAN:



**PHOTO'S OF UNAUTHORISED STOCKPILE SITE:**





**OPTIONS:**

1. Engage solicitors to commence legal proceedings (for a breach of the Environmental Planning & Assessment Act 1979) in respect of the unauthorised works at Lot 13 DP 793985, Barnby Street, Murwillumbah.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Council will incur costs as a result of legal action, however, upon resolution of the matter the Land & Environment Court may award costs.

**POLICY IMPLICATIONS:**

It is imperative that Council pursue unauthorised works to uphold the integrity of Council's policies and any lawfully issued development consents.

**CONCLUSION:**

This is a very clear case of extensive site works outside the parameters of an existing development approval (DA05/0308). Council has a responsibility to ensure that all developers undertake works as approved, not in excess of that approved.

Whilst this resolution seeks to engage solicitors to commence legal proceedings, should a negotiated resolution be achieved in the interim then Council need not pursue a full legal hearing.

**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](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

Nil.

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**P3 [PR-PC] Residential and Tourist Code - Section A1 of Tweed DCP - Hastings Point Review**

**ORIGIN:**

**Planning Reforms**

**FILE NO: GT1/DCP/A1**

**SUMMARY OF REPORT:**

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

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

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

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

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

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

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

**RECOMMENDATION:**

**That: -**

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



## **REPORT:**

### **Background**

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

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

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

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



<p><b>TWEED SHIRE COUNCIL 2008</b>          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.  <b>DO NOT SCALE</b>          COPY ONLY - NOT CERTIFIED          P.O. Box 816                      Tel: (02) 6670 2409          Murwillumbah, NSW, 2484      Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i>  <b>HASTINGS POINT REVIEW          STUDY AREA</b></p>	<p><b>PLANNING          REFORMS UNIT</b></p> 
<p>File: G:\GIS_Jobs\00039679\Site Plan.Wor</p>	<p>Author: J. Batchelor    Date: 21/Oct/08</p>	<p>Scale: 1:7,000    Sheet: 1 of 1</p>

## Preparation of the Ruker Urban Design Report

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

The concluding recommendations in the Consultant's report states:

### *Concluding Recommendations*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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## AREA SPECIFIC DEVELOPMENT CONTROLS

### INTRODUCTION

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

#### **Area of Application**

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

#### **Objectives**

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

#### **Controls**

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

#### **Review Period**

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

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

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

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

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

### Written Submissions

A total of 25 individual submissions were received.

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

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

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

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

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

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

### Feedback Forms

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

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

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

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

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

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

### The Need for Both Immediate and Medium-Term Council Action

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

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

### Preparation of a Locality Plan

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

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

### CONCLUSION:

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



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

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

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

#### **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

#### **POLICY IMPLICATIONS:**

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

#### **UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://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] Draft Tweed Local Environmental Plan 2000 Amendment No. 82  
- Dwelling Entitlement Lot 2 DP 586869 Cavendish Road, Duroby**

**ORIGIN:**

**Development Assessment Unit**

**FILE NO: GT1/LEP/2000/82**

**SUMMARY OF REPORT:**

On 2 May 2006 Council resolved, pursuant to Section 54 of the *Environmental Planning and Assessment Act 1979*, to prepare Tweed Local Environmental Plan 2000, Amendment No 82.

The purpose of Amendment No 82 is to amend Schedule 3 of the Tweed Local Environmental Plan 2000, to enable a dwelling house to be established on Lot 2 DP582869, Cavendish Road, Duroby.

The draft Plan was publicly exhibited for 28 days from Wednesday, 16 July 2008. No submissions were received.

Adoption of the draft Plan, as exhibited, will enable a dwelling house to be established on the subject site.

The draft Plan, as exhibited, can be forwarded to the Minister to make the Plan.

**RECOMMENDATION:**

**That Council:**

- 1. Adopts draft Tweed Local Environmental Plan 2000, Amendment No 82, as exhibited.**
- 2. Obtains any necessary advice from Parliamentary Counsel with respect to the draft Plan and prepare and furnish a section 69 report in respect of the draft *Tweed Local Environmental Plan 2000 (Amendment No. 83)*, as exhibited, to the Minister, requesting the Plan be made in accordance with Section 70 of the *Environmental Planning & Assessment Act 1979*.**

**REPORT:****Background**

In 1979 a subdivision was created by the dedication of a road reserve through Lots 16 and 17 DP574016. The road split the previous two (2) lots into four (4) lots on DP582869. Lots 1 and 2 on DP58769 had one dwelling entitlement between them based on the original lot entitlement. A restrictive covenant was placed on Lot 1 which prevented the erection of a dwelling on it without the consent of the registered proprietor of Lot 2. This covenant also required the owner of Lot 1 to agree to any future application for a dwelling on Lot 2. There was no covenant on Lot 2, which was purchased by Mr and Mrs McDonald in 1979.

In 1985 the solicitor acting for the owner of Lot 1 requested Mr and Mrs McDonald to sign a consent to allow the construction of a dwelling on Lot 1. In this letter to Mr and Mrs McDonald the solicitor advised that their consent to allow a dwelling on Lot 1 "*in no way affects you or your property and that such consent is a mere formality as required by the Local Authority*". This statement was entirely misleading as far as the legal position is concerned.

A building application for Lot 1 was submitted and approved by Council. The procedure at that time was to allow the building entitlement to be on either allotment in these circumstances, i.e. subdivisions created by roads, if there was agreement between the separate owners. Council's procedures have changed over time whereby all of the landowners must grant consent to the lodgement of a Development Application where there are multiple parcels of land that share an entitlement or are affected by the application.

Mr and Mrs McDonald lodged a complaint with the NSW Ombudsman about the matter after receiving several letters from Council that there were no measures available for Council to grant another building entitlement for Lot 2. An extract of the Ombudsman's letter (dated 7 December 2005) is as follows:

*"I have been told that although Council appreciates the unfortunate circumstances, Council considers it was under no obligation to ensure that the landowners of Lot 2 were cognisant of the impact of granting their consent for the construction of a dwelling on Lot 1. Council maintains that its only obligation was to ensure the consent from the owners of Lot 2 was obtained prior to the assessment of the development application (DA) for Lot 1.*

*I understand that Council's procedures have since changed. In such cases Council now requires a DA to be lodged which includes all parcels of the land that share the entitlement and that all landowners must grant consent for the lodgement of the DA. This approach should ensure that, before granting such consent, affected landowners are aware of the possible consequences the development may have on their own lot and entitlements.*

*It appears likely that the McDonalds genuinely believed that this consent would not impact on their own property rights, particularly their own right to build a dwelling on Lot 2. It also appears that Council staff could have been more prudent in examining the wording of the 'consent letter' and clarifying this with the complainants.*

*Even though we do not consider there is sufficient public utility in pursuing this matter, having reviewed the circumstances of this matter and the seriousness of its consequences for the complainants, I suggest Council further considers possible outcomes for resolving their unfortunate situation."*

On 7 February 2006 Council resolved that:

- "1. Council makes representations to the Department of Planning in Grafton to ascertain whether an exception can be made to the Far North Coast Rural Settlement Policy for Mr and Mrs McDonald in view of their special circumstances;*
- 2. The NSW Ombudsman be advised accordingly".*

A response on the matter was received from the Department of Planning on 28 March 2006. An extract of the Department's letter is noted below:

*"It would appear that there are limited options available to resolve this issue. As the provision limiting a house in the rural areas to lots of at least 40 hectares is contained in the table of uses, it is not a development standard that is subject to State Environmental Planning Policy No. 1.*

*The only other option is to amend the Tweed LEP 2000 to specifically allow a dwelling on the individual lot. However, it is not clear what sort of precedent this would set for other lots in the Shire in a similar situation. The minister has also been reluctant to consider spot re-zonings, preferring Councils to put resources into a new shire wide plan under the Governments planning reforms. In such circumstances, Council would have to make a persuasive case to treat such a proposal outside the normal course of LEP amendments".*

Council resolved on 2 May 2006 that:

- "1. Council informs the Director-General of the Department of Planning that pursuant to section 54(1) of the Environmental Planning and Assessment Act, 1979 Council intends to prepare a draft Local Environmental Plan to amend Schedule 3 of Tweed Local Environmental Plan 2000 to enable a dwelling house to be established on Lot 2 DP582869 Cavendish Road, Duroby;*
- 2. Council advises the Director-General that it does not consider a Local Environmental Study is needed;*
- 3. Council staff prepare a detailed submission to address the section 117 Ministerial directions and the proforma for the LEP Review Panel in view of the exceptional circumstances of Mr and Mrs McDonald".*

The Department of Planning replied on 10 December 2006, noting the following:

*“Council should continue with the preparation of the draft LEP. The Department recognises that the issues relating to this parcel of land has existed for many years, and given the recommendations of the Ombudsman, would support the Council taking action to resolve the issue”.*

The Department also advised that there is no need for an environmental study to be prepared in respect of the draft LEP. As such, sections 57 and 61 of the EP&A Act do not apply and consultation with the Department under section 62 of the Act is not required in this instance.


### **Public Exhibition**

Pursuant to Section 66 of the *Environmental Planning and Assessment Act 1979*, draft Local Environmental Plan 2000, Amendment No 82 was placed on public exhibition from Wednesday, 16 July 2008 to Wednesday, 13 August 2008. See Locality Plan, Aerial Photo and Zoning Map below.

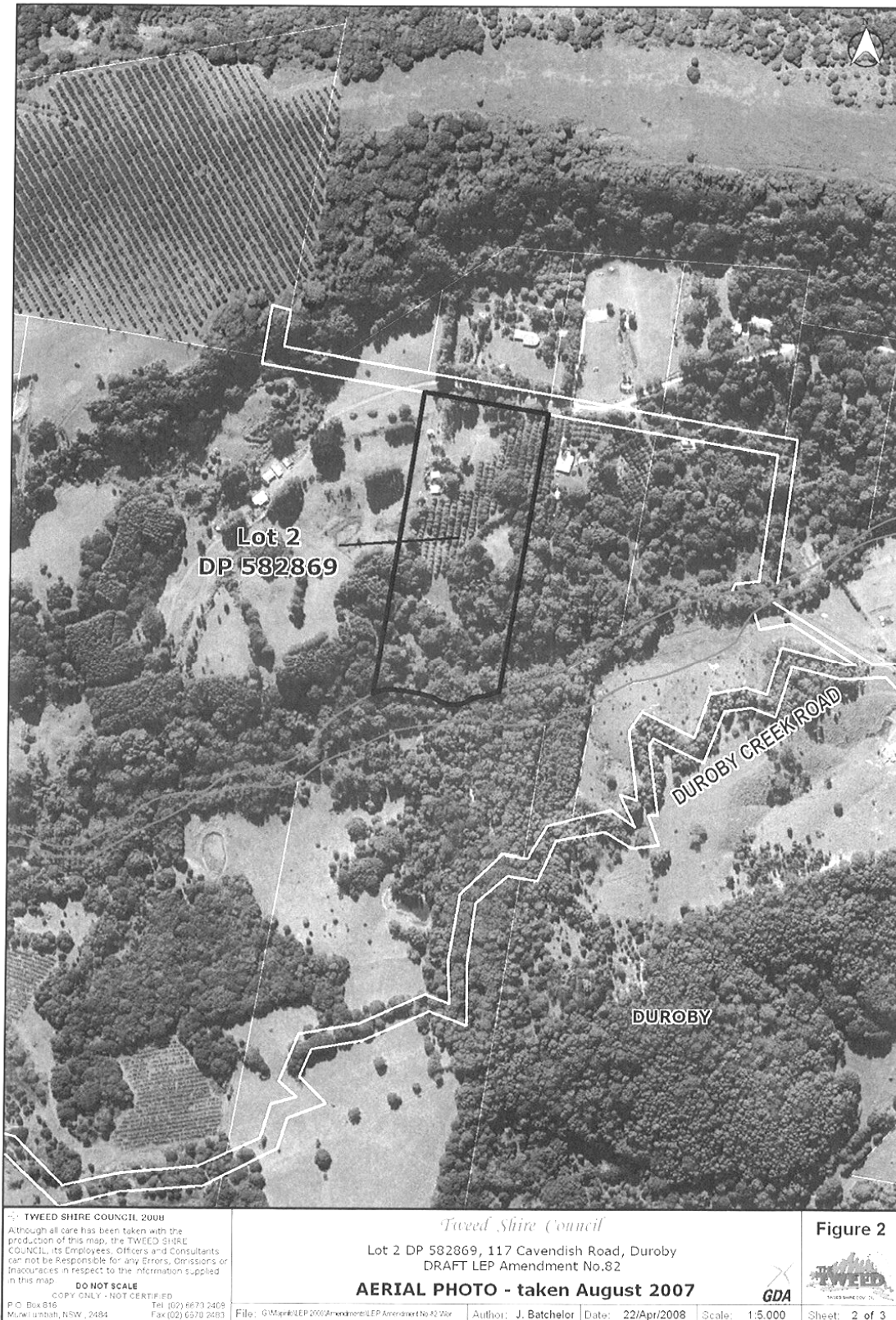
No submissions to the exhibition of the draft Plan were received.

**LOCALITY PLAN:**



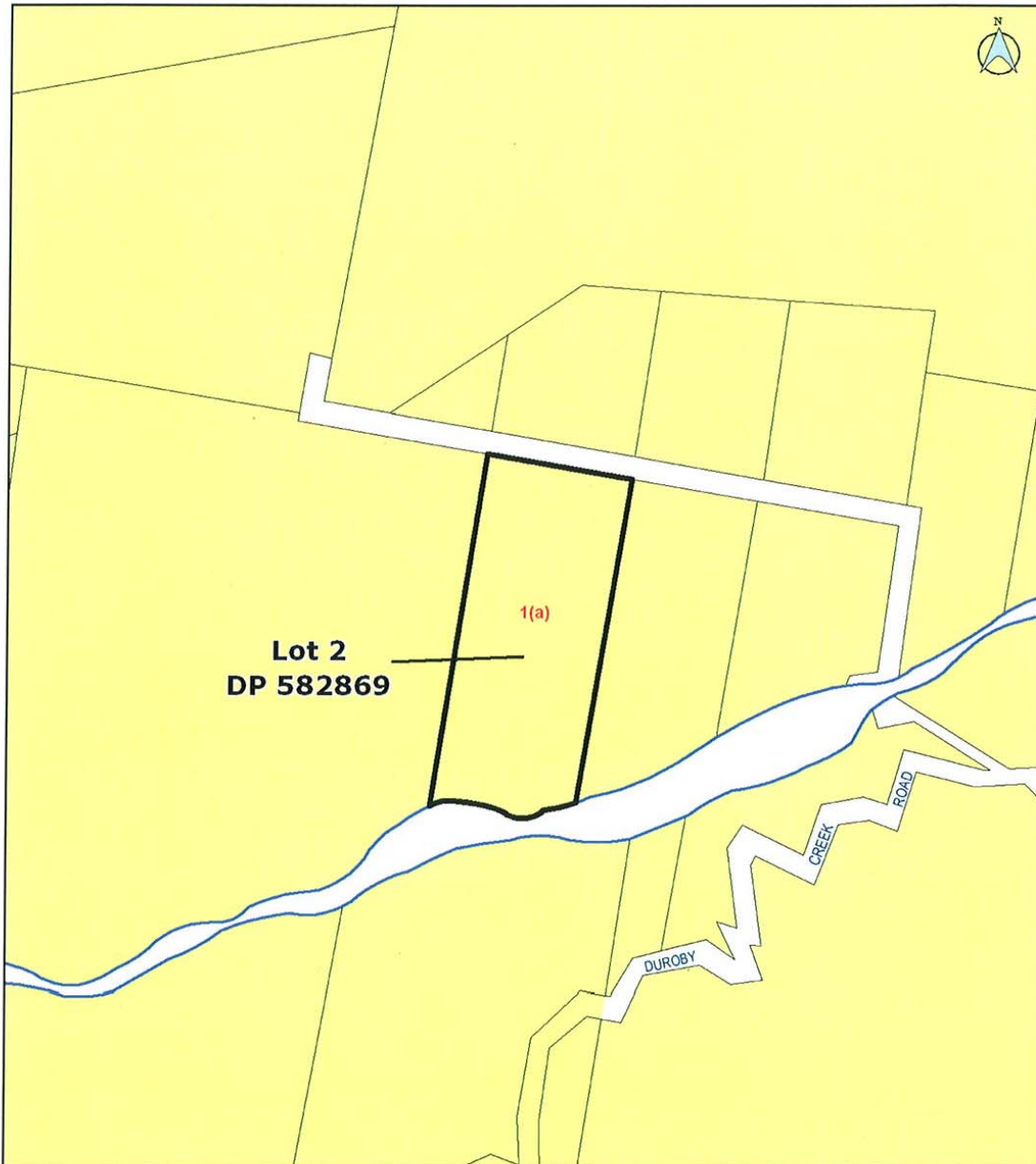
<p>© TWEED SHIRE COUNCIL 2008          Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map.  <b>DO NOT SCALE</b>  <b>COPY ONLY - NOT CERTIFIED</b>          P.O. Box 816          Murwillumbah, NSW, 2484          Tel: (02) 6670 2409          Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i>          Lot 2 DP 582869, 117 Cavendish Road, Duroby          DRAFT LEP Amendment No.82  <b>LOCALITY PLAN</b></p>	<p><b>Figure 1</b>            Sheet: 1 of 3</p>
<p>File: G:\Map\LEP 2000\Amendments\LEP Amendment No.82.Wkr Author: J. Batchelor Date: 22/Apr/2008 Scale: 1:5,000</p>		

**AERIAL PHOTO:**





ZONING MAP:



LEGEND - TWEED LOCAL ENVIRONMENT PLAN 2000			
<b>RURAL</b> 1(a) Rural 1(b1) Agricultural Protection 1(b2) Agricultural Protection 1(c) Rural Living	<b>BUSINESS</b> 3(a) Sub-Regional Business 3(b) General Business 3(c) Commerce and Trade 3(d) Waterfront Enterprise 3(e) Special Tourist <i>(Jack Evans Southside)</i>	<b>ENVIRONMENTAL PROTECTION</b> 7(a) Environmental Protection (Wetlands & Littoral Rainforests) 7(a) Environmental Protection (Scenic / Escarpment) 7(f) Environmental Protection (Coastal Lands) 7(i) Environmental Protection (Habitat)	<b>ADDITIONAL CONTROLS</b> Clause 37 (Transmission Line Corridor) Clause 38 (Future Roads) Clause 41 (Heritage Conservation Area) Clause 52 (Kings Beach / Kings Forest / Osprey Nest) Clause 52 (Pottsville) Clause 52 (Stormwater and Fill) Clause 52 (Minimum Lot Sizes) Clause 52 (Cobaki Lakes) Clause 52 (Existing and Future Dam Areas) Clause 53 (Schedule 3 Item)
<b>RESIDENTIAL</b> 2(a) Low Density Residential 2(b) Medium Density Residential 2(c) Urban Expansion 2(d) Village 2(e) Residential Tourist 2(f) Tourism	<b>INDUSTRIAL</b> 4(a) Industrial	<b>NATIONAL PARKS &amp; NATURE RESERVES</b> 8(a) National Parks and Nature Reserves	
	<b>SPECIAL USES</b> 5(a) Special Uses		
	<b>OPEN SPACE</b> 6(a) Open Space 6(b) Recreation		

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Tweed Shire Council  
 Lot 2 DP 582869, 117 Cavendish Road, Duroby  
 DRAFT LEP Amendment No.82  
**EXISTING LEP 2000**

File: G:\Map\LEP 2000\Amendments\LEP Amendment No.82\Map  
 Author: J. Batchelor  
 Date: 22/Apr/2008  
 Scale: 1:5,000

**Figure 3**

Sheet: 3 of 3

**CONCLUSION:**

Adoption of the draft Plan, as exhibited, will enable a dwelling house to be established on the subject site.

The draft Plan, as exhibited, can be forwarded to the Minister to make the 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](http://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. Nil
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