

**ASSESSMENT UNDER DEVELOPMENT CONTROL PLAN SECTION A1
DA08/1161 - town house development comprising eight (8) attached dwellings
at Lot 2, 1 DP 568733; Lot 9 DP 33501 Pacific Highway West BANORA POINT**

BUILDING TYPES

TOWN HOUSES (VILLAS)

The site comprises of Lots 1 and 2 DP 568733 and utilising a small portion of the adjoining Lot 9 DP 33501. All three lots are under the same ownership. Town Housing is permissible within the 2(a) zone on minimum lot sizes of 1350m², with a development lot area of minimum 220m² each dwelling. The site area has a total of 2218m² and each of the eight dwellings have a development site area of greater than 220m².

A SEPP 1 objection has been made in respect of the planning standard identified within Clause 51A of the Tweed LEP, specifically seeking variance to the site density development standard of 450m² per dwelling in the 2(a) zone for multi-dwelling development. The proposed eight dwelling multi-unit town house development would, following the development standard, require a minimum site area of 3600m². As the total site area is 2218m² which is a shortfall of 1382m² of site area in this instance this equates to a variation of 38%.

The objective providing foundation for the density of multi-dwelling housing in the 2(a) zone and affecting the subject site states:

- *To control the density of multi-dwelling housing in the 2(a) zone (the low density residential zone) by the use of a development standard.*

The objective specifically states that its intent is to control the density of multi-dwelling housing within the 2(a) zone therefore it would be unnecessary or unreasonable for Council to allow such a large variation i.e. 38% to the development standard and also considering the development is within an established low density single dwelling area and is 1.4kms away from the nearest business area.

The applicants have justified the SEPP 1 variation by noting that the recently adopted DCP A1 – Residential and Tourist Code, for the type of multi-dwelling development proposed (Town Houses as defined under this section of the DCP) contains both objectives and controls (development standards) for Town Housing in the 2(a) zone. These objectives and relevant control of the DCP are as follows:

Objectives

- To provide development capacity on larger lots within residential areas.
- To retain the residential character in streets and suburbs.
- To create or retain quality residential and pedestrian friendly streetscapes.
- To provide an alternative form of medium density housing.

Controls

- a. Town housing is permissible in 2(a),(b), (c), (d), (e) and (f) zones.
- b. In 2(a) zone lot size min. 1350m², development lot area of 220m² each.

The applicants state:

It is clear when observing the development standards presented in both the LEP and the DCP that the standard for any site over 1350m² for multi-dwelling (town house) development in the 2(a) zone is conflicting with the DCP standard of a minimum site area per dwelling of 220m². the DCP standard (control) cannot be achieved if the overarching development standard of the LEP is enforced.

The Tweed Shire Council is in the process of introducing a new LEP in accordance with introduced standards for LEP preparation. As section A1 of the DCP has been recently reviewed, researched, advertised and adopted, it is considered that the objectives and controls for multi-dwelling housing in the 2(a) zone (as found in the DCP), are those that the shire wish to implement to achieve the objectives of the 2(a) zone as outlined in the present LEP. The assumption could be made that the new LEP will present objectives and development standards (if applied) that correlate with the newly adopted DCP in regard to density controls for multi-dwelling town houses development in the 2(a) zone.

After speaking with Council's Planning Reforms Unit, they clarified that the control within the DCP relating to the 2(a) zone lot size being a min. 1350m², and the development lot area for each dwelling is to be a min. of 220m² each is not a conflict with the LEP. However, was carefully considered to support the existing LEP development standard outlined within Clause 51A of one dwelling per 450m² of site area within the 2(a) zone. Therefore, the justification provided by the applicant stating why the development standard is unnecessary and unreasonable is not supported for the following reasons:

Firstly, as Multi dwelling housing under the DCP is referred to a development with more than 3 dwellings to a site, the numerical standard of 1350m² was established (ie 3 x 450m² = 1350m²). Therefore, this supports the development standard of one dwelling per 450m² in accordance with Clause 51A of the LEP.

Secondly, the 220m² development area control specifically relates to the minimum size for each new development lot area to be created on site (i.e. each new strata/community title allotment area cannot be below 220m²). Therefore, the 220m² is not a density control, but is a numerical figure which confines the intensity of new development otherwise permitted by the LEP. This provision ensures that all new multi-dwelling developments have a lower density development lot area to allow larger dwelling sizes and/or greater private open space as they are situated within a designated Low Density Zone.

Also, Section 79C(1) of the *Environmental Planning & Assessment Act 1979* provides the matters which must be considered in relation to all development applications. Of particular relevance in the present case are the following matters referred to in s 79C(1):

- "(a) the provisions of:
 - (i) any environmental planning instrument, and ...
 - (iii) any development control plan ...
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the suitability of the site for the development...
- (e) the public interest".

It is considered that there is no difficulty when considering the relevant provisions of a Local Environmental Plan. Subject to the discretion to uphold an objection made pursuant to State Environmental Planning Policy No 1, a provision of any relevant environmental planning instrument must be given determining weight. The position is otherwise with respect to development control plans or any other detailed planning document adopted by the Council.

The role of a development control plan was considered by the Court of Appeal in *Zhang v Canterbury City Council* (2001) 115 LGERA 373 at 386-387. The correct approach to consideration of, and the weight to be given to, a development control plan is assisted by the express inclusion of a reference to development control plans in s 79C of the *Environmental Planning and Assessment Act 1979*.

North Sydney Council v Ligon 302 Pty Ltd (1995) 87 LGERA 435 and in the later decision *North Sydney Council v Ligon 302 Pty Ltd (No 2)* (1996) 93 LGERA 23 provides the principles relevant to consideration of development control plans, specifically, a development control plan is a detailed planning document which reflects a council's expectation for parts

of its area, which may be a large area or confined to an individual site. The provisions of a development control plan must be consistent with the provisions of any relevant local environmental plan. However, a development control plan may operate to confine the intensity of development otherwise permitted by a local environmental plan.

Notwithstanding above, all dwellings provide habitable rooms at ground level and have adjacent external living areas. Each dwelling has been provided with front doors being clearly identifiable and visible from the public street. The development provides a mix of dwelling sizes and diversity in the number of bedrooms per dwelling as units 1 and 2 have two bedrooms each and units 3 to 6 have 3 bedrooms.

Town housing developments are to be compatible with the existing or desired future streetscape character. The streetscape is predominantly low density single dwelling houses which reflect the zone being low density. Therefore, an 8 unit town house development in a low density area does not comply with this control.

SITE AND BUILDING DESIGN CONTROLS

PUBLIC DOMAIN AMENITY

Streetscape

The site has a gentle slope from the western corner to the eastern corner and at its maximum has a height variation of 1.6m, however the majority of the site is relatively flat. The proposal considers the topographic features of the surrounding area which generally slopes from Sexton Hill to the north north-east toward the Tweed River to the south and east of the site. The articulated two storey components of the building are setback at varying depths and along with the finished building heights proposed it is considered the proposal is sympathetic to the surrounding areas. The site is constrained by having three prominent street frontages, however, the design has managed to provide a front and rear deep soil zones and designs for appropriate landscaping which will be sympathetic to the adjoining properties has been provided.

The carports and driveways will be visible from the street due to the property having three street frontages. The architects have managed to design the development so as to minimise visual impact upon the street by setting back all garages and car ports behind the front facades and dividing the amount of garages and carports with each street frontage to eliminate the amount of hardstand areas on each frontage.

The design proposed will improve the outlook of the site to the streetscapes surrounding the site. The buildings façade which are visible from the public domain have been designed by having front doors and building entry areas prominent in the building facade and clearly identifiable from the street, coordinating and integrating building services, such as drainage pipes, with overall facade design, integrating the design of architectural features, including stairs and ramps, and garage/carport entries with the overall facade design, and because the development has three street frontages, all facades have been designed by careful placement and sizing of windows, ensuring entrance porticos are single storey or of a scale relative to the building.

Public views and vistas

Some visual impact will always occur when new development is proposed at any location. The proposed development will not significantly impact upon public view corridors in the area and will not significantly alter the views of existing properties to public open space areas. The proposed building will to some degree provide a visual buffer for the adjoining low density dwelling houses to the concrete columns and road way that is the Pacific Highway bridge over the Tweed River.

SITE CONFIGURATION

Development lots

Not applicable

Deep soil zones

The controls for deep soil zones require that they be located to the front and rear of the site and meet the controls for the minimum sizes for deep soil zones. Due to the site having three road frontages, a rear deep soil zone is not been able to be conventionally achieved at the rear of the property. The applicants have taken the rear of the site for the purposes of this proposal as the site boundary running parallel to the Old Pacific Highway. In the original plans submitted, the rear deep soil zone did not comply with the relevant controls. The revised plans show that the proposed rear deep soil zone is 16.775m x 5.5m which equals 92m², this is 30% of the average width of the site and therefore complies with the provision.

The front deep soil zones have been located within the remaining front setback areas which are the width of the site boundary minus the driveway width and the pathway width by the front setback depth. It is considered that this provision has been satisfied.

Impermeable site area

The individual courtyards central to the development, along with the deep soil zones adjacent to the boundaries of the property, provide for the retention of stormwater on site and increased infiltration to the ground. The proposed development shows along with the deep soil zones (and soft landscaping areas) and additional porous paving and grid pavers on all driveways, the impervious area of the site is 53% which is compliant with the controls which provide for a maximum area of 60% for sites over 750m². It is considered that the proposal complies with the controls for impermeable site area.

External living areas

External living areas are best located adjacent to the internal living (dining rooms, living room, or lounge room) areas so as to extend the overall living space. It is considered that the proposed development complies with this control.

Above Ground External Living Spaces, Balconies and Terraces

Above ground external living areas are not provided as such. Rather, small balconies are provided off bedrooms to increase airflow to the building and expand the liveable areas of these rooms. Also, these balconies provide an articulation to the façade of the dwellings.

Communal open space

Not applicable

Landscaping

The proposed development allows for numerous and areas of open space on site which will provide for mature trees plantings and landscaped gardens which will be compatible with the adjoining streetscapes.

Topography, cut and fill *

The subject allotment is to be filled for the purpose of this development to achieve the necessary flood development level. The fill depth will not exceed 1.0m with the exception of very minor spot areas toward the centre of the site and the eastern corner to enable the finished floor level of 3.5m AHD (as required). In this instance, the applicant has sought a variation to provision f). This variation is supported in this instance as the variation is very minor and the amount of fill is considered appropriate and will no significantly raise the dwelling height to be a level that is not in keeping with the residential development in the area. The fill proposed for the site is considered to meet all other relevant controls.

SETBACKS**Front setbacks (building lines)**

This standard requires setbacks to be consistent with adjoining development and where a

site has dwellings with frontages to two or more streets, the street setbacks for these frontages are to be considered as front setbacks and there be 6m. The locality surrounding the site is an established low density residential area and the site has no immediate adjoining neighbour with a dwelling on these lots. The original plans submitted had areas of non-compliance with the relevant setback controls. The revised design provides setbacks of 6m on all three street frontages, therefore complies with this control.

Side setbacks

The side boundary setback proposed is 1.5m which complies with the controls.

Rear setbacks

By virtue of Control b) of Front Setbacks, there is no dedicated rear setback. The definitions to Section A1 of the DCP provide that where a site has two frontages the frontage where the property is addressed is the primary setback. The property is addressed as No.111 Bimbadeen Avenue implying that the rear setback is the old Pacific Highway. In any case there is a 6m setback to both these frontages which would comply with the rear setback requirement.

CARPARKING AND ACCESS

Carparking generally

The car parking for the site is generally in accordance with Section A2 of the Tweed Shire Development Control Plan.

Basement carparking

Not applicable

Garages

The proposed garages are considered to not dominate the street frontages as the architects have carefully configured the design of the building to share the amount of garages on each frontage. Therefore the garages are compliant with the controls.

Note: The applicants have stated within the SEE that they are including carports. However, after assessing the application, the proposed "carports" are in fact pseudo garages without doors. The garages cannot be considered as carports as they have walls and have been integrated into the design of the building.

Carports

Not applicable

BUILDING FOOTPRINT AND ATTICS, ORIENTATION AND SEPARATION

Building footprint and attics

Not applicable

Building orientation

It is considered that the proposed design of the building complies with the relevant controls.

Building separation

Adequate separation is provided to maintain privacy in the way of extended wall lines to separate decks and courtyards and also the provision of screening on upper level decks, to minimise view angles into neighbouring courtyards within the development. There is no dwelling on the immediately adjoining property. The proposal is considered to meet these controls.

HEIGHT

Building height

The design control specifies that buildings are to have a maximum height of 9.0m and a

maximum wall plate height of 8.5m. The proposed development complies with this requirement.

Ceiling height

The proposed development complies with the minimum ceiling heights.

BUILDING AMENITY

Sunlight access

The proposed development has been designed with outdoor living areas predominantly orientated to the north and east. This will provide good solar access for residents of the dwelling and meets the requirements of the design control. However, due to the orientation of the allotment, units 1 and 2 have been orientated to the south west.

With regard to overshadowing of adjacent properties, point 'e' specifies *'For neighbouring properties ensure:- sunlight to at least 50% of the principal area of private open space of adjacent properties is not reduced to less than 2 hours between 9am and 3pm on June 21, and windows to living areas must receive at least 3 hours of sunlight between 9am and 3pm on 21 June'*.

The impact of shadowing on adjacent properties is not considered to be unreasonable, and would be of a similar level to what would be achieved by a single two storey residence being erected on the property.

Visual privacy

No windows look directly into the windows of adjoining dwellings within the development. The upper level decks within the central courtyard areas are provided with screening to the sides to minimise view angles and provide adequate privacy to ground floor courtyards. The proposal is considered to meet the controls.

Acoustic privacy

The noise of an air conditioner, pump, or other mechanical equipment must not exceed the background noise level by more than 5dB(A) when measured in or on any premises in the vicinity of the item.

View sharing

The subject development will not impact on any views.

Natural ventilation

The proposed dwelling is proposed to have operable windows to habitable and non habitable rooms. The proposed design of the dwelling has been designed to optimise access to prevailing breezes and to provide for cross-ventilation.

EXTERNAL BUILDING ELEMENTS

Fences and walls: front, side and rear

All fencing and walls proposed are constructed of materials compatible with the building. The materials proposed, including small sections of rendered wall, cable wire and timber batons, create an open and very permeable structure in harmony with the building materials. The proposed fencing is considered to comply with the provisions.

Side and rear fences

As there are three street frontages for the property these controls are not necessary applicable. Refer to the above comments regarding the proposed fencing.

Roofs, Dormers and skylights,

The roof controls require articulation, eaves and compatible roof form, slope and materials. The proposed development has provided variation in roof form in regards to providing flat

roof and low pitch roof which is considered to be compatible with the surrounding residences which have a variety of low pitched roofs and skillion and flat roofs. Therefore the proposed development complies with this control.

Elevations visible from the public domain

The control for elevations visible from the street requires front doors and entry areas to be clearly identifiable from the street. The proposed development's building entry is clearly identifiable from the street. Therefore the proposed development complies with this control.

The street elevation control requires proportions, materials, windows and door types that are residential in scale and type. The proposed design of the dwelling is sympathetic to the locality through its mix of building proportions and materials being used.

Awnings, Canopies, Pergolas, Storm Blinds, Sails and Signage

Not applicable

Minor Elements

No information has been provided for the minor elements of the development, in regards to air-conditioning, letterboxes, etc.

BUILDING PERFORMANCE

Energy efficiency

A BASIX certificate has been provided with the development application.

Waste Management

Not applicable

Water conservation

BASIX has been provided with the development application and the proposed development is considered to comply with the BCA.

FLOOR SPACE RATIO

Floor space ratio

The controls provide for a maximum FSR for Town Housing of 0.8:1. The proposed FSR is 0.53:1

Assessing Officer

Adam Henson

Date: 12 March 2009

