

- 11 [PR-CM] Development Application DA08/0911 for a Staged Integrated Housing Development Comprising 18 Residential Dwellings, Community Building, Car Parking, 19 Lot Community Title Subdivision with Pathway to Public Open Space at Lot 86 DP 1066472; Lot 238 DP 1070792, Salt Water Crescent & No. 41 Elliston Street, Kingscliff**

ORIGIN:

Development Assessment

FILE NO: DA08/0911 Pt2

SUMMARY OF REPORT:

This development application is being reported to Council due to the Department of Planning's Circular PS08-014 issued on 14 November 2008 requiring all State Environmental Planning Policy No. 1 (SEPP No. 1) variations greater than 10% to be determined by full Council. In accordance with this advice by the Department of Planning, officers have resolved to report this application to full Council. The standard is varied up to 56%.

The SEPP No. 1 variation relates to Schedule 3 of the Tweed Local Environmental Plan 2000 (LEP 2000) which contains an enabling clause that permits integrated housing in the 2(f) zone. Subclause (2) of the enabling clause stipulates that proposed allotment sizes for the creation of dwelling houses within a subdivision of the subject land must have a minimum area of 450m². Areas of proposed lots range from 199m² to 404m².

The applicant seeks consent for 18 residential dwellings (13x3 bedrooms and 5x4 bedrooms), a community building and a 19 lot staged community title subdivision (inclusive of common lot):

- Stage 1 comprises of the community building, all civil works, landscape works and the registration of the proposed subdivision (community title)
- Remaining Stages (number unknown) comprise of the development of the approved housing. The applicant has advised they wish to have flexibility within these stages to sell/construct as many dwellings as the market demands at the time.

The applicant also proposes to undertake continuation of a pedestrian pathway within an adjoining lot to the site's north, Lot 86 DP 1066472. This lot is a Council owned public reserve. Council officers support these works subject to conditions of consent.

The proposal was placed on public exhibition for fourteen days. No submissions were received.

It is considered that the application is suitable for approval, subject to conditions.

RECOMMENDATION:

That:

- A. State Environmental Planning Policy No. 1 objection to Schedule 3 of the Tweed Local Environmental Plan 2000 regarding minimum allotment sizes in the 2(f) zone be supported and the concurrence of the Director-General of the Department of Planning be assumed, and**
- B. Development Application DA08/0911 for a staged integrated housing development comprising 18 residential dwellings, community building, car parking, 19 lot community title subdivision (inclusive of common lot) with pathway to public open space at Lot 86 DP 1066472; Lot 238 DP 1070792, Saltwater Crescent and No. 41 Elliston Street, Kingscliff be approved subject to the following conditions: -**

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and the following Plans:**
 - Plan No. 2008 02 - 01b Revision 1 (Community Lots) dated 22/04/09, prepared by Anstey Designer Homes**
 - Plan No. 2008 02 - 01c Revision 1 (Site Plan Ground) dated 22/04/09, prepared by Anstey Designer Homes**
 - Plan No. 2008 02 01d Revision 1 (Site Plan Upper) dated 22/04/09, prepared by Anstey Designer Homes**
 - Plan No. 2008 02-01h Revision 2 (Concept Landscape Plan) (as amended in red) dated 30/09/09, prepared by Anstey Designer Homes**
 - Plan No. 2008 02 - 01h/s Revision 1 (Streetscape Fencing Design) (as amended in red) dated 22/04/09, prepared by Anstey Designer Homes**
 - Plan No. 01/01 Issue 1A (Vehicle Manoeuvring Plan) dated 17 April 2009, prepared by Greg Alderson and Associates Pty Ltd**
 - Plan No. 2008 02 - 02 (Lot 1 Model DR Floor Plans) dated 3/06/08, prepared by Anstey Designer Homes**
 - Plan No. 2008 02 - 02c (Lot 1 Model DR Elevations) dated 3/06/08, prepared by Anstey Designer Homes**
 - Plan No. 2008 02 - 02d (Lot 1 Model DR Elevations) dated 3/06/08, prepared by Anstey Designer Homes**
 - Plan No. 2008 02 - 03 (Lot 2 Model D2 Floor Plans) dated 3/06/08, prepared by Anstey Designer Homes**
 - Plan No. 2008 02 - 03c (Lot 2 Model D2 Elevations) dated 3/06/08, prepared by Anstey Designer Homes**
 - Plan No. 2008 02 - 03d (Lot 2 Model D2 Elevations) dated 3/06/08, prepared by Anstey Designer Homes**

- Plan No. 2008 02 - 04 (Lots 3-5 Model D Floor Plans) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 04/6 (Lot 6 Model D Floor Plans) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 04c (Lots 3-6 Model D Elevations) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 04d (Lots 3-6 Model D Elevations) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 05 (Lots 7, 9, 10, 12 and 13 Model A Floor Plans) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 05c (Lots 7 - 13 Model A Elevations) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 05d (Lots 7 - 13 Model A Elevations) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 06 (Lots 8 and 11 Model A2 Floor Plans) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 06c (Lots 8 and 11 Model A2 Elevations) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 06d (Lots 8 and 11 Model A2 Elevations) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 07 (Lot 14 Model E1 Floor Plans) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 07c (Lot 14 Model E1 Elevations) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 07d (Lot 14 Model E1 Elevations) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 08 (Lot 15 Model E2 Floor Plans) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 08c (Lot 15 Model E2 Elevations) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 08d (Lot 15 Model E2 Elevations) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 09 (Lot 16 Model C Floor Plans) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 09c (Lot 16 Model C Elevations) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 09d (Lot 16 Model C Elevations) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 10 (Lot 17 Model B3 Floor Plans) dated 3/06/08, prepared by Anstey Designer Homes

- Plan No. 2008 02 - 10c (Lot 17 Model B3 Elevations) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 10d (Lot 17 Model B3 Elevations) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 11 (Lot 18 Model B2 Floor Plans) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 11c (Lot 18 Model B2 Elevations) dated 3/06/08, prepared by Anstey Designer Homes
- Plan No. 2008 02 - 11d (Lot 18 Model B2 Elevations) dated 3/06/08, prepared by Anstey Designer Homes,

except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0115]

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

[GEN0125]

4. 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]

5. A Construction Certificate approval is to be obtained for all proposed pre-cast concrete panel fencing of any height and masonry fencing in excess of 1.2 metres in height, prior to any construction of the fence being commenced.

Site specific design details or approved generic details prepared by a practicing structural engineer are required to be submitted and approved as part of the Construction Certificate application.

Such structural engineers design details are to confirm that the fence proposal has been designed to take account of all site issues including the site's soil and load bearing characteristics, wind and other applied loadings, long term durability of all components particularly in relation to corrosion and compliance with Tweed Shire Council's policies for "Sewers - Building in Proximity" and provision of appropriate pedestrian sight clearances to footpaths in accordance with Australian Standard AS2890 "Parking Facilities".

[GEN0145]

6. 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 connecting access pathways to Casuarina Way. 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.

[GENN0245]

7. Stormwater management shall be in general accordance with the Stormwater Management Report prepared by Greg Alderson and Associates Pty Ltd, dated 17th April 2009, except where varied by the conditions of this consent.

The proposed Gross Pollutant Trap (GPT) must be installed upstream of the proposed On Site Detention (OSD) tank.

[GENNS01]

8. Erosion and Sediment Control shall be designed, installed and maintained in accordance with Tweed Shire Council Development Design Specification D7 - Stormwater Quality and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[GENNS02]

9. All works shall be retained within the development site. No parking, storage or access is permitted to occur through the adjoining public land.

[GENNS03]

10. Should the existing landscaping on the adjoining public land be affected by construction, it must be repaired to the satisfaction of Council's General Manager or delegate.

[GENNS04]

11. The proposed access path on Community Land, north of the development (Lot 86 DP1066472) is acceptable provided the following are achieved:

- i. Any damage to the existing garden bed shall be repaired.
- ii. No plants are permitted within 1m of the path so as not to overgrow the path. Any plants within this distance are to be removed using appropriate horticultural methods.
- iii. An inspection of the completed works associated with this path must be undertaken by Council's Recreation Services staff in the presence of the developer's representative before any occupation certificate is issued.

[GENNS05]

12. The site is to be developed into a Community Title Subdivision. The plan of subdivision shall be registered with the Lands Titles Office prior to issue of any occupation certificate for any dwelling associated with this consent.

[GENNS06]

13. Outdoor security lighting shall be located and designed so as to avoid light spill into the living and sleeping areas of the dwelling. Light spill shall be confined to the source property.

[GENNS07]

14. All air conditioning and barbeque facilities shall be consistent with the Tweed Development Control Plan Section A1.

[GENNS08]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

15. The developer shall provide the following parking facilities including parking for the disabled (as required) in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code.

- A minimum of 2 car parking spaces per dwelling,
- A minimum of 5 visitor car spaces with unrestricted access,
- A minimum of 2 car wash bays – note Council will accept these car wash bays being of dual use with visitor car spaces

Full design detail of the proposed parking and maneuvering areas shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate.

[PCC0065]

16. Prior to the issue of a Construction Certificate, a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the works (minimum \$1,552).

The bond may be called up at any time and the funds used to rectify any non-compliance with the conditions of this consent which are not being addressed to the satisfaction of the General Manager or his delegate.

The bond will be refunded, if not expended, when the final Subdivision Certificate is issued.

[PCC0275]

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

[PCC0285]

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

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

[PCC0485]

19. Prior to the issue of a Construction Certificate for Civil works, the following detail in accordance with Councils Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

(a) copies of compliance certificates relied upon
(b) four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:

- earthworks
- roadworks / access including;

(c) Provision of an 6.0m wide private access in accordance with Section A2 – “*Site Access and Parking Code*” of Council’s consolidated Tweed Development Control Plan and Council’s “*Driveway Access to Property – Part 1*” Design Specification June 2004.

The access shall provide the required 2m x 2m “sight triangle” envelope at the entrance to Salt Water Crescent.

- stormwater drainage including;

(d) Permanent stormwater quality treatment, sized according to Council’s Development Design Specification D7 – *Stormwater Quality*, Section D7.12.

- water supply works including;

(e) Internal reticulation and hydrants,

(f) Bulk water meter

- sewerage works including;

(g) New manhole off existing stub in western corner of the site,

- internal reticulation
- landscaping works
- sedimentation and erosion management plans
- location of all service conduits (water, sewer, Country Energy and Telstra)

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

[PCC0985]

20. Permanent stormwater quality treatment shall be provided in accordance with the following:
- (a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 – Stormwater Quality*.
 - (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 – Stormwater Quality.
 - (c) The stormwater and site works may incorporate water sensitive design principles and where practical, integrated water cycle management. Typical water sensitive features include infiltration, maximising permeable/landscaped areas, stormwater retention /detention/reuse, and use of grass swales in preference to hard engineered drainage systems.
 - (d) Specific Requirements to be detailed within the Construction certificate application include:
 - (e) Shake down area shall be installed within the property, immediately prior to any vehicle entering or exiting the site prior to any earthworks being undertaken.
 - (f) Runoff from all hardstand areas, (including car parking and hardstand landscaping areas and excluding roof areas) must be treated to remove oil and sediment contaminants prior to discharge to the public realm. All permanent stormwater treatment devices must be sized according to Council's Development Design Specification D7 – *Stormwater Quality*, Section D7.12. Engineering details of the proposed devices, including maintenance schedules, shall be submitted with a s68 Stormwater Application for approval prior to issue of a Construction Certificate.
 - (g) Roof water does not require treatment, and should be discharged downstream of treatment devices, or the treatment devices must be sized accordingly.

[PCC1105]

21. Disposal of stormwater by means of infiltration devices shall be carried out in accordance with Section D7.9 of Tweed Shire Councils Development Design and Construction Specification - Stormwater Quality.

[PCC1125]

22. Stormwater

- (a) Details of the proposed roof water disposal, including surcharge overland flow paths are to be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. These details shall include likely landscaping within the overland flow paths.

- (b) All roof water shall be discharged to infiltration pits located wholly within the subject allotment.
- (c) The infiltration rate for sizing infiltration devices shall be 3m per day:
 - * As a minimum requirement, infiltration devices are to be sized to accommodate the ARI 3 month storm (deemed to be 40% of the ARI one year event) over a range of storm durations from 5 minutes to 24 hours and infiltrate this storm within a 24 hour period, before surcharging occurs.
- (d) Surchage overflow from the infiltration area to the street gutter, inter-allotment or public drainage system must occur by visible surface flow, not piped.
- (e) Runoff other than roof water must be treated to remove contaminants prior to entry into the infiltration areas (to maximise life of infiltration areas between major cleaning/maintenance overhauls).
- (f) If the site is under strata or community title, the community title plan is to ensure that the infiltration areas are contained within common land that remain the responsibility of the body corporate (to ensure continued collective responsibility for site drainage).
- (g) All infiltration devices are to be designed to allow for cleaning and maintenance overhauls.
- (h) All infiltration devices are to be designed by a suitably qualified Engineer taking into account the proximity of the footings for the proposed/or existing structures on the subject property, and existing or likely structures on adjoining properties.
- (i) All infiltration devices are to be designed to allow for construction and operation vehicular loading.
- (j) All infiltration devices are to be located clear of stormwater or sewer easements.

[PCC1135]

23. The development is required to provide a single bulk water service, placed at a suitable location within the subject land off Salt Water Crescent, to the satisfaction of the Director of Engineering Services.

Individual metering beyond this point shall be managed by occupants. Application for the bulk metre shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements.

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.

[PCC1185]

24. An application shall be lodged and approved by Tweed Shire Council under Section 68 of the Local Government Act for the installation of stormwater quality control devices prior to the issue of a Construction Certificate.

The Legal Point of Discharge for piped stormwater for the development is via connection into the existing field inlet and 450mm dia pipe in the north-western corner of the site.

[PCC1195]

25. The applicant shall prepare a site plan and applicable elevations demonstrating the central letterbox structure is consistent with the Tweed Development Control Plan Section A1. The plans shall be prepared to the satisfaction of Council's General Manager or delegate.

[PCCNS01]

PRIOR TO COMMENCEMENT OF WORK

26. 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]

27. Prior to commencement of work all actions or prerequisite works required at that stage, as required by other conditions or approved management plans or the like, shall be installed/operated in accordance with those conditions or plans.

[PCW0015]

28. Prior to the commencement of works, the applicant shall ensure that a Site-Specific Safety Management Plan and Safe Work Methods for the subject site have been prepared and put in place in accordance with either:-

- (a) Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3rd Edition, NSW Government, or
- (b) AS4804 Occupation Health and Safety Management Systems - General Guidelines on Principles Systems and Supporting Techniques.
- (c) WorkCover Regulations 2000

[PCW0025]

29. 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]

30. 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]

31. 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]

32. 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]

33. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, 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]

34. Any imported fill material shall be from an approved source.

[PCW0375]

35. Civil work in accordance with a development consent must not be commenced until:-
- (a) a Construction Certificate for the civil work has been issued in accordance with Councils Development Design and Construction Specification C101 by:
 - (i) the consent authority, or
 - (ii) an accredited certifier, and
 - (b) the person having the benefit of the development consent:

- (i) has appointed a principal certifying authority,
 - (ii) has appointed a Subdivision Works Accredited Certifier (SWAC) in accordance with Tweed Shire Council's Development Control Plan, Part A5 - Subdivision Manual, Appendix C, with accreditation in accordance with the Building Professionals Board Accreditation Scheme. As a minimum the SWAC shall possess accreditation in the following categories:
 - C4: Accredited Certifier – Stormwater management facilities construction compliance
 - C6: Accredited Certifier – Subdivision road and drainage construction compliance
 - (iii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment,
 - (iv) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Subdivision Works Accredited Certifier is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued, and
- (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the civil work.

[PCW0815]

36. The proponent shall provide to the PCA copies of Public Risk Liability Insurance to a minimum value of \$10 Million for the period of commencement of works until the completion of the defects liability period.

[PCW0835]

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

[PCW0985]

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

[PCW1065]

DURING CONSTRUCTION

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

[DUR0005]

40. If during construction works any Aboriginal object or relic is disturbed or uncovered, works are to cease and the Department of Environment, Climate Change and Water are to be notified immediately, in accordance with the provisions of the *National Parks and Wildlife Act 1974*.

[DUR0025]

41. Construction and/or demolition 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 6.00pm

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]

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

A. Short Term Period - 4 weeks.

LAeq 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.

LAeq 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]

43. 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]

44. 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]

45. 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]

46. 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]

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

[DUR0795]

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

[DUR0815]

49. 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]

50. Provision to be made for the designation of two durable and pervious car wash-down bays. The wash bays must be appropriately sized and identified for that specific purpose and be supplied with an adequate water supply for use within the areas. Any surface run-off from the area must not discharge directly to the stormwater system.

[DUR0975]

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

[DUR0985]

52. 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 any Occupation Certificate.

[DUR0995]

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

- Noise, water or air pollution
- dust during filling operations and also from construction vehicles
- material removed from the site by wind

[DUR1005]

54. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. Such materials shall either be recycled or disposed of in a manner acceptable to Councils General Manager or his delegate.

[DUR1015]

55. 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]

56. All landscaping is to comply with the 88B Instrument pertaining to the site.

[DUR1055]

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

[DUR1795]

58. Before the commencement of the access road construction, pavement design detail including reports from a Registered NATA Consultant shall be submitted to Council for approval and demonstrating.

- (a) That the pavement has been designed in accordance with Tweed Shire Councils Development Design Specification, D2.
- (b) That the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils Construction Specifications, C242-C245, C247, C248 and C255.
- (c) That site fill areas have been compacted to the specified standard.
- (d) That supervision of Bulk Earthworks associated with the access has been to Level 1 and frequency of field density testing has been completed in accordance with Table 8.1 of AS 3798-1996.

[DUR1805]

59. During the construction of the access, tests shall be undertaken by a Registered NATA Geotechnical firm. A report, including copies of test results shall be submitted to the PCA demonstrating;

- (a) That the pavement layers have been compacted in accordance with Councils Development Design and Construction Specifications.
- (b) That pavement testing has been completed in accordance with Table 8.1 of AS 3798 including the provision of a core profile for the full depth of the pavement.

[DUR1825]

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

[DUR1845]

61. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Council's Development Design and Construction Specifications prior to any use or occupation of any buildings.

[DUR1875]

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

Roadworks

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

Water Reticulation, Sewer Reticulation, Drainage

- (a) Excavation
- (b) Bedding
- (c) Laying/jointing
- (d) Manholes/pits
- (e) Backfilling
- (f) Permanent erosion and sedimentation control measures
- (g) Drainage channels
- (h) Final inspection - on maintenance
- (i) Off maintenance

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

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

[DUR1895]

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

[DUR1905]

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

[DUR2015]

65. **Swimming Pools (Building)**

- (a) The swimming pool is to be installed and access thereto restricted in accordance with Australian Standard AS 1926.1 – 2007 and AS 1926.3 -2003. (Refer Council's web site 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]

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

[DUR2085]

67. 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/demolition.

[DUR2185]

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

[DUR2195]

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

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

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

[DUR2375]

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

[DUR2425]

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

[DUR2435]

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

[DUR2445]

73. 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]

74. 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]

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

[DUR2505]

76. 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]

77. 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]

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

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

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

[DUR2555]

79. 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.

[DUR2615]

80. Sedimentation and erosion control measures shall be placed and maintained to the satisfaction of the General Manager.

[DURNS01]

81. Fixed bollards (or equivalent) shall be provided between the proposed car wash bays and Casuarina Way to prevent vehicles from entering or exiting the site in this location.

[DURNS02]

82. Landscaping of the subject site is to be undertaken in accordance with Landscaping Concept Plans (Sheets 1 to 11) dated May 2009 prepared by Bizscapes unless otherwise authorised by the General Manager or his delegate.

[DURNS03]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

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

[POC0005]

84. 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]

- 85. 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 professionally painted in black numbers 100mm high.

On rural properties or where street guttering is not provided the street number is to be readily identifiable on or near the front entrance to the site.

For multiple allotments having single access points, or other difficult to identify properties, specific arrangements should first be made with Council and emergency services before street number identification is provided.

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

[POC0265]

- 86. 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]

- 87. All landscaping work is to be completed in accordance with the approved plans prior to any use or occupation of the building.**

[POC0475]

- 88. 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]

- 89. Prior to occupation of any building and prior to the issue of an occupation certificate Council shall be provided with a report by a suitably qualified person which confirms that construction elements utilised in the various buildings comply with the report, Residential Development lot 238 Saltwater Crescent, Kingscliff, Acoustic Design Review, Ron Rumble P/L July 2008.**

[POCNS01]

USE

- 90. 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 and odours or the like.**

[USE0125]

- 91. Except as may be expressly provided in a licence approval under the Protection of the Environment Operations Act 1997 (POEO) Act,**

the licence holder must comply with section 120 of the POEO Act 1997 prohibiting the pollution of waters.

[USE0155]

92. 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]

93. 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]

94. All plant and equipment installed or used in or on the premises: -
- (a) Must be maintained in a proper and efficient condition, and
 - (b) Must be operated in a proper and efficient manner.

In this condition, "plant and equipment" includes drainage systems, infrastructure, pollution control equipment and fuel burning equipment.

[USE0315]

95. All commercial / industrial / residential wastes shall be collected, stored and disposed of in accordance with any approved Waste Management Plan or to the satisfaction of the General Manager or his delegate.

[USE0875]

96. The premises shall be maintained in a clean and tidy manner.

[USE0965]

97. The keeping of dogs, cats or other animals on the property is to be in accordance with any relevant 88B Instrument requirements.

[USE1245]

98. **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]

99. Any water stored within on site water storage tanks shall not be utilised for potable purposes. Appropriate signage shall be provided to the satisfaction of the General Manager.

[USENS01]

100. All shared community facilities shall be maintained in a clean and tidy at all times.

[USENS02]

101. Collection points for domestic waste from the development are not to restrict access to the bus stop located on Casuarina Way.

[USENS03]

102. If the subdivision certificate at any stage is to be released prior to construction of the proposed dwellings, an appropriate restriction as to user is to be placed on the title of each lot stating that a dwelling may only be constructed on the lot in accordance with DA08/0911.

[USENS04]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

103. Prior to issue of a subdivision certificate, all works/actions/inspections/ conditions of consent associated with the subdivisional component of the development and the Construction Certificate for Civil Works shall be completed in accordance with those conditions or plans.

[PSC0005]

104. 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 Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision 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 DSP6:	17.2 ET @ \$10709 per ET	\$184,194.80
South Kingscliff Water Levy:	17.2 ET @ 248.4 per ET	\$4,272.00
Sewer Kingscliff:	17.6 ET @ \$5146 per ET	\$90,569.60

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.

[PSC0165]

105. Section 94 Contributions

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

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision 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 include indexation provided for in the S94 Plan and 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:
 - 110.5 Trips @ \$955 per Trips \$105,528
 - (\$868 base rate + \$87 indexation)
 - S94 Plan No. 4
 - Sector7_4
- (b) Shirewide Library Facilities:
 - 17 ET @ \$374 per ET \$6,358
 - (\$374 base rate + \$0 indexation)
 - S94 Plan No. 11
- (c) Bus Shelters:
 - 17 ET @ \$26 per ET \$442
 - (\$26 base rate + \$0 indexation)

	S94 Plan No. 12	
(d)	Eviron Cemetery:	
	17 ET @ \$131 per ET	\$2,227
	(\$131 base rate + \$0 indexation)	
	S94 Plan No. 13	
(e)	Community Facilities (Tweed Coast - North)	
	17 ET @ \$492 per ET	\$8,364
	(\$492 base rate + \$0 indexation)	
	S94 Plan No. 15	
(f)	Emergency Facilities (Surf Lifesaving):	
	17 ET @ \$200 per ET	\$3,400
	(\$200 base rate + \$0 indexation)	
	S94 Plan No. 16	
(g)	Extensions to Council Administration Offices & Technical Support Facilities	
	17 ET @ \$1996.8 per ET	\$33,945.60
	(\$1996.8 base rate + \$0 indexation)	
	S94 Plan No. 18	
(h)	Cycleways:	
	17 ET @ \$352 per ET	\$5,984
	(\$352 base rate + \$0 indexation)	
	S94 Plan No. 22	
(i)	Regional Open Space (Casual)	
	17 ET @ \$855 per ET	\$14,535
	(\$855 base rate + \$0 indexation)	
	S94 Plan No. 26	
(j)	Regional Open Space (Structured):	
	17 ET @ \$2327 per ET	\$39,559
	(\$2327 base rate + \$0 indexation)	
	S94 Plan No. 26	

[PSC0175]

106. Prior to the issue of a Subdivision Certificate a defect liability bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.

The bond shall be based on 5% of the value of the works (minimum as tabled in Council's fees and charges current at the time of payment) which will be held by Council for a period of 6 months from the date on which the Subdivision Certificate is issued. It is

the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.

[PSC0215]

107. A bond shall be lodged prior to the issue of the subdivision certificate to ensure that the landscaping is maintained by the developer for a period of 6 months from the date of issue of a Subdivision Certificate. The amount of the bond shall be 20% of the estimated cost of the landscaping or \$3000 whichever is the greater.

[PSC0235]

108. Prior to the issue of a Subdivision Certificate, Works as Executed Plans of the constructed access road and the constructed civil services to all properties associated with the development shall be submitted in accordance with the provisions of Tweed Shire Council Development Control Plan A5 - Subdivisions Manual and Councils Development Design and Construction Specification, D13 - Engineering Plans.

The plans are to be endorsed by a Registered Surveyor OR a Consulting Engineer Certifying that:

- (a) all drainage lines, sewer lines, services and structures are wholly contained within the relevant easement created by the subdivision;
- (b) the plans accurately reflect the Work as Executed.

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

[PSC0735]

109. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions associated with the subdivision component of this Development Consent, including the construction of all services to all properties within the development and the construction of the access road have been complied with.

[PSC0825]

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

- (a) Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property.
- (b) A Restriction As To User requiring that all roofwater from houses, buildings or structures shall be discharged to an approved infiltration pit located on the subject property. The infiltration pit shall be approved by the Principle Certifying Authority.

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

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

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

Privately owned infrastructure on community land may be subject to the creation of statutory restrictions, easements etc in accordance with the Community Land Development Act, Strata Titles Act, Conveyancing Act, or other applicable legislation.

[PSC0835]

111. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council with the application for Subdivision Certificate.

[PSC0855]

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

[PSC0865]

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

The following information must accompany an application:

- (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
- (b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.

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

[PSC0885]

114. Prior to the application for a Subdivision Certificate a Compliance Certificate or Certificates shall be obtained from Council OR an accredited certifier for the following:-

- (a) Compliance Certificate – Roads
- (b) Compliance Certificate – Water Reticulation
- (c) Compliance Certificate – Sewerage Reticulation
- (d) Compliance Certificate - Drainage

Note:

1. All compliance certificate applications must be accompanied by documentary evidence from the developers Subdivision Works Accredited Certifier (SWAC) certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual and Councils Development Design and Construction Specifications.
2. The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

[PSC0915]

115. The six (6) months Defects Liability Period commences upon the registration of the Plan of Subdivision.

[PSC0925]

116. Prior to issuing a Subdivision Certificate, reticulated water supply and outfall sewerage reticulation (including household connections) shall be provided to all lots within the subdivision in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual, Councils Development Design and Construction Specifications and the Construction Certificate approval.

Fire Hydrants spacing, sizing and pressures shall comply with Council's DCP – Section A5 – Subdivision Manual, associated Development Design and Construction Specifications and AS2419.1-2005. Location of hydrants to be appropriately marked with standard blue reflectors on road pavement.

A new sewer manhole shall be constructed off the existing sewer main stub in western corner of the site. This manhole will become public infrastructure. All internal sewer infrastructure servicing the development from this manhole will become private infrastructure. An easement for drainage of sewer, benefiting Council must extend a minimum of 1.0 beyond this manhole.

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.

[PSC1115]

117. The production of written evidence from the local telecommunications supply authority certifying that the provision and commissioning of underground telephone supply at the front boundary of the allotment has been completed.

[PSC1165]

118. Electricity

- (a) The production of written evidence from the local electricity supply authority certifying that reticulation of underground electricity has been completed; and

- (b) The reticulation to include the provision of fully installed electric street lights to the relevant Australian standard.**

[PSC1185]

- 119. Prior to the issue of a subdivision certificate, the applicant shall produce a copy of the “satisfactory inspection report” issued by Council for all s68h2 permanent stormwater quality control devices.**

[PSCNS01]

- 120. Prior to issue of Subdivision Certificate a final Community Management Statement is to be submitted too and approved by Council. The statement is to include provisions for (but not be limited to) the use of the access road by emergency services, bona fide members of the public and public authorities.**

The statement must also provide a Utility Services plan, showing works as executed (WAE).

[PSCNS02]

- 121. The applicant shall formally lodge a S96 application for DA02/1422 to amend and update the approved Staging Plan for SALT, prior to the release of a subdivision certificate for Stage 3.**

[PSCNS03]

REPORT:

Applicant: Newton Denny Chapelle
Owner: South Kingscliff Developments Pty Ltd
Location: Lot 86 DP 1066472; Lot 238 DP 1070792, Salt Water Crescent and No. 41 Elliston Street, Kingscliff
Zoning: 2(f) Tourism
Cost: \$3,726,000

BACKGROUND:

History

DA02/1422 was the initial development application for Salt, which was granted consent on 24 April 2003 for a 473 lot staged subdivision of Lot 907 DP 1070791, with several subsequent amendments. The approved master plan for Salt involved a variety of development from single dwelling sites to multi dwelling housing and tourist resorts. This application relates to Stage 3 of Salt, which was originally approved under the concept master plan as a large vacant allotment.

Stage 3 is located at the northern end of the Salt development, on the eastern side of Casuarina Way, adjacent to an existing open space area to the north and south. Stage 2 is to the west and Stage 1A2 is to the east. Some of Stage 3 adjacent to Salt Water Crescent has previously been developed as individual residential lots.

The subject site is irregular in shape and has a western frontage to Casuarina Way, a northern frontage to a public reserve, an eastern frontage to Salt Water Crescent (by way only of access handle) and a southern frontage to a public reserve. The parcel of land is presently vacant with a low cut grass cover.

Prior to the application being lodged in July 2008, the developers met with Council officers at the Development Assessment Panel meeting held on Wednesday 12 March 2008.

The original proposal involved the development of 16 dwellings within a community title subdivision scheme.

Development of the residue allotment in Stage 3 of Salt involves an eighteen (18) lot residential subdivision, with lots ranging from 199m² up to 404m² and includes common property in the form of an internal roadway and community building. Access to the site is through an access handle with frontage onto Salt Water Crescent. No vehicular access for individual allotments is proposed to Casuarina Way.

The Subject Site

The subject land is described as Lot 238 DP 1070792 Salt Water Crescent, Kingscliff and has a total area of 6420m² (0.642 hectare). Extension of a pathway into Lot 86 DP 1066472 (public reserve) is also included in the proposal.

The site is an irregular-shaped allotment with a frontage of 9m (access handle) to Salt Water Crescent and a secondary frontage of 125.45m to Casuarina Way. The site has a moderate slope of 6.25 – 8.5%, with a gentle fall from the eastern to the western boundary. The average depth of the site is 42m. Development is proposed for approximately 59% of the site. Vehicular access to the site is from Salt Water Crescent only. All services are available to the site. Provision of some on-site stormwater detention is required.

The site is located in an area generally characterised as residential and adjoins public reserves to the north and south. Surrounding development comprises medium density residential and tourist uses. Two-storey detached dwellings are located on the eastern boundary of the subject site with frontage to Salt Water Crescent.

The Proposed Development

The applicant seeks consent for 18 residential dwellings (13x3 bedrooms and 5x4 bedrooms), a community building and a 19 lot staged community title subdivision (inclusive of common lot):

- Stage 1 comprises of the community building, all civil works, landscape works and the registration of the proposed subdivision (community title)
- Remaining Stages (number unknown) comprise of the development of the approved housing.

The applicant also proposes to undertake continuation of a pedestrian pathway within an adjoining lot to the site's north, Lot 86 DP 1066472.

The proposal includes:

- Associated swimming pools
- On-site car parking and driveways with permeable paving
- Earthworks / Civil works
- Landscaping and stormwater controls
- Pathways and connections to public reserves with permeable paving
- Boundary and lot perimeter fencing
- A community facility building with open shared area and cooking/office facilities (this building will be used as a site office until construction of the dwellings is completed).

As shown in the architectural plans, the dwellings have been designed to include a variety of individual types through the nine (9) design models. The dwellings provide opportunities for living areas at either the ground or first floor levels and whilst adding variety, maintain a primary, integrated architectural theme to the building facades. External colours proposed provide differing neutral shades and tones that co-ordinate well with existing surrounding residential development.

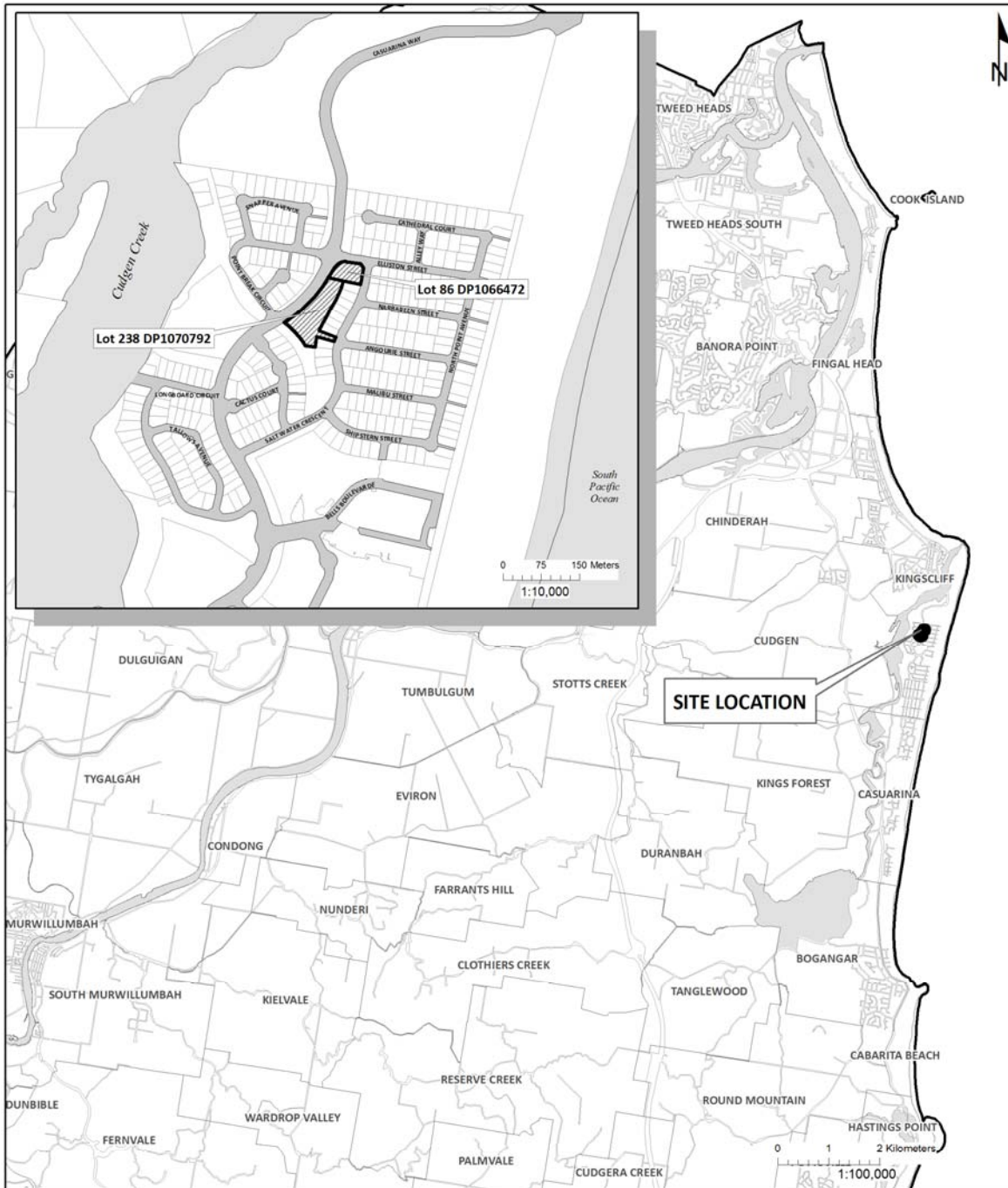
Public Submissions

The proposed development did not attract any letters of support or objection following exhibition of the application.

Summary

Having regard to the site's characteristics, the site history, intended use, proximity of surrounding residential development, amenity issues and an assessment against SEPP 1 and Schedule 3 of the Tweed LEP 2000 in particular, the proposed staged integrated housing development comprising 18 residential dwellings, community building, car parking, 19 lot community title subdivision (inclusive of common lot) with pathway to public open space is, on balance, considered suitable for the location and therefore the proposed development is recommended for approval.

SITE DIAGRAM:



LEGEND

Lot 86 DP 1066472; Lot 238 DP 1070792
 Salt Water Crescent & No. 41 Elliston Street, Kingscliff

Filename: z:\esri\planning\mxd\A4P_B&W_SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 30 September, 2009

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Cadastre 30 September, 2009
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Coordinate System - MGA Zone 56
 Datum - GDA 94

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Tweed Shire Council

PO Box 816, Murwillumbah NSW 2484
 Tel: (02) 6670 2409
 Fax: (02) 6670 2483

DEVELOPMENT PLANS:



DESIGNED HOMES
ansteyhomes.com.au - Ph: 0256 80333 - Lic No: 17221C
REVISION - 22 04 09
1. Amendments as requested by TSC



Proposed Community Title Residential Development
SALT 3 Pty Ltd
Lot No: 238 DP No: 1070792
Salt Water Crescent KINGSCLIFF COMMUNITY LOTS
DATE 03 / 06 / 08 SCALE 1 : 400



Lot Boundaries Colour Coded as detailed and Lot areas as indicated

Architectural Commentary

The Saltspay development has been designed for those downsizing to Salt by the Sea in mind, with 18 freestanding homes offering private courtyards, with a lush, tropical and harmonious landscape, that overlays the entire site, melting into the surrounding parklands.

Living area orientation has been maximised to capture northern solar access, mountain views in the northwest to southwest and predominant breezes from the east.

A community facility has been incorporated to encourage share facilities within the complex and pathways link walking access to the adjacent parks to the north and south, with an easy stroll to the town centre.....lifestyle by design.

SALTWATER CRESCENT

casuarina way

LOT 238 DP 1070792 Site Area 6420 m2

125 450

74 917

12 350

20 585

60 712

19 344

27 673

94 350

anstey design

2008 02 - 01b
DESIGNED IN ACCORDANCE WITH THE BCA 2005

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ANSTEY
DESIGNER ARCHITECTS
ansteydesign.com - Ph: 0266 809233 - LIC No: 137216
REVISION - 22 04 09
1. Amendments as requested by TSC



Proposed Community Title Residential Development
SALT 3 Pty Ltd
Lot No: 238 DP No: 1070792
Salt Water Crescent
KINGSCLIFF
SITE PLAN GROUND
DATE 03 / 06 / 08 SCALE 1 : 400

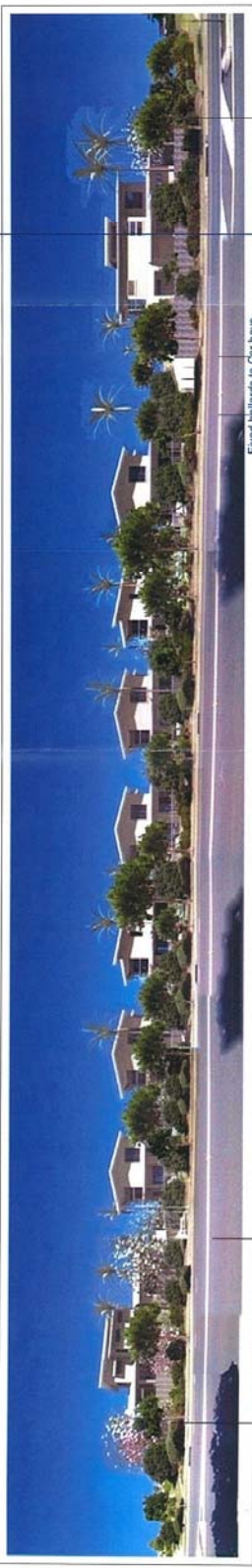
2008 02 - 01c
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 REVISION - 22 04 09
 1. Amendments as requested by TSC



lot 14 Panel/PIER solid fences 1300-1600h
 125.45m
 lots 7 - 13 Permeable Alum fence to 1500h
 lot 7 Panel/PIER solid fence to 1500h
 Exact bollards to Car bays

Street Elevation - Casuarina Way SCALE 1 : 400



Typical Panel /PIER Fence to 1300-1600h
 Detail lot 14 1200h over 0-400h subwall
 Refer Lot 14 Elevations & Sections 07c-e
 SCALE 1:200



Typical Permeable Aluminium Fence to 1500h
 Detail lot 9,10
 SCALE 1:200



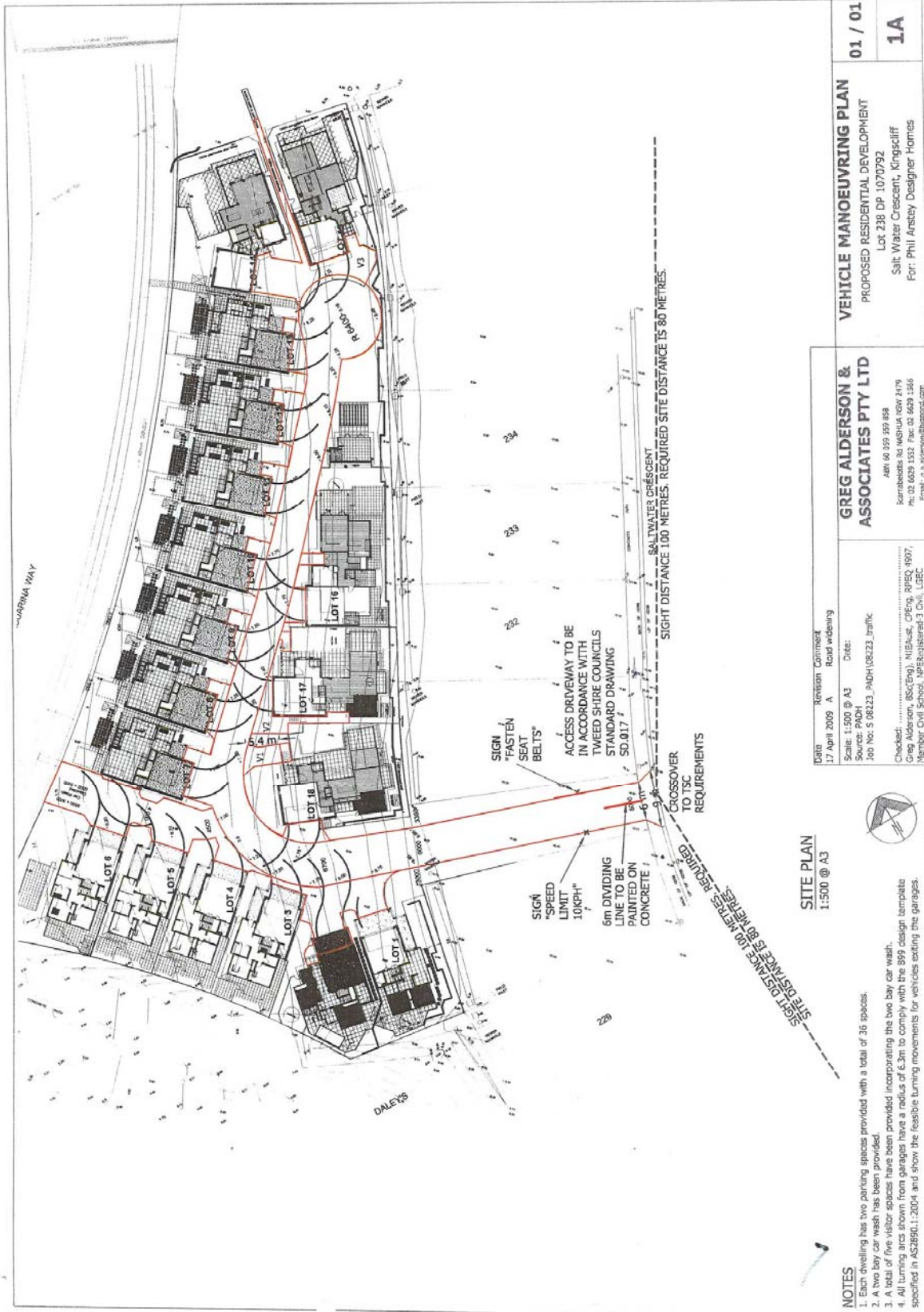
Typical Fence Interaction
 Aluminium to Solid Panel/PIER
 1500 high

Proposed Community Title
 Residential Development
SALT 3 Pty Ltd
 Lot No:238 DP No: 1070792
 Salt Water Crescent
 KINGSCLIFF
STREETSCAPE

DATE 03 / 06 / 08 SCALE 1 : 200/400

2008 02 - 01h/s
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- NOTES**
1. Each dwelling has two parking spaces provided with a total of 36 spaces.
 2. A two bay car wash has been provided.
 3. A total of five visitor spaces have been provided incorporating the two bay car wash.
 4. All turning arcs shown from garages have a radius of 6.3m to comply with the 999 design template specified in AS2895.1:2004 and show the feasible turning movements for vehicles exiting the garages.

SITE PLAN
1:500 @ A3



Date: 17 April 2009
Revision: A
Scale: 1:500 @ A3
Source: P&H
Job No: 5 08223_P&H\08223_traffic

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Checked by: Greg Alderson, BSc(Eng), NIEAUS, CPEng, RPEQ, 4907, Member Civil School, NP&R(alderson)@j Civil, LGEC

VEHICLE MANOEUVRING PLAN
 PROPOSED RESIDENTIAL DEVELOPMENT
 Lot 238 DP 1070792
 Salt Water Crescent, Kingscliff
 For: Phil Anstey Designer Homes

01 / 01
1A

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The proposal is consistent with the aims of the Tweed Local Environmental Plan 2000 (TLEP). The proposal represents sustainable economic development which is consistent with the area's environmental and residential amenity qualities.

Clause 5 - Ecologically Sustainable Development

The proposal is consistent with the principles of ecologically sustainable development. The carrying out of the development will not result in unacceptable cumulative impacts.

Clause 8 - Zone objectives

The site is zoned 2(f) Tourism as per the TLEP. Primary objectives for the zone relate to the encouragement of tourist development and the 'best-use' development of prime sites so that their economic and employment generating use for the area is fulfilled.

The secondary object of the zone permits high quality residential development that is supportive of the primary intent of this zone and that is consistent with and enhances the proposed tourist resort character in terms of scale, design and management structure.

The proposed residential development is consistent with the applicable secondary objective of the zone in that it represents high quality development of appropriate scale and character to that of the locality.

The subject site was earmarked for medium density development (number of units anticipated is not clear within the staging plan) within the Salt Masterplan.

The proposed development is permissible within the zone. It is noted that this zone's prohibition of dwelling houses in Item 4 does not apply as the development by definition is regarded as an integrated housing development, as regulated by Schedule 3.

Clause 15 - Essential Services

Water supply and sewer system are available within the area. Reticulated water supply and sewerage is to be extended to all lots.

Clause 16 - Height of Building

According to subclause (4) of Clause 16, this clause does not apply to the land to which Clause 53B applies.

Clause 17 - Social Impact Assessment

Given the minor residential nature of the proposal a Social Impact Assessment is not considered necessary.

Clause 35 - Acid Sulfate Soils

The site is identified as having class 4 acid sulfate soils. The site has been the subject of major disturbance and earthworks for construction of the original subdivision. Any ASS which may have been present were required to be identified and addressed at the original subdivision earthworks stage.

Other Specific Clauses

Clause 19 – Subdivision (General)

This clause allows subdivision to take place on the subject land with development consent.

Clause 34 – Flooding

The site is identified as being flood affected the adopted minimum floor level for the site is RL 2.83m AHD. Due to previous earthworks undertaken in conjunction with the earthworks for the Salt subdivision (DA02/1422), the lowest natural ground surface of the site is approximately RL 5.25m AHD, which is above the minimum floor level.

Clause 53B – Height restrictions – Coast Road, South Kingscliff

Clause 53B relates to height restrictions for the Coast Road at South Kingscliff within which the subject site is located. This clause imposes a maximum two-storey height limit for all single dwelling houses, integrated housing or multi-dwelling housing. It is noted each dwelling will be on a separate community lot. The development is consistent with this height limit being a maximum of two storeys.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

This clause applies to the subject site as the NSW Coastal Policy applies. The proposal is consistent with the NSW Coastal Policy, Coastline Management Manual and North Coast Design Guidelines. The development will not result in overshadowing of the beach or waterfront open space.

Clause 43: Residential development

Clause 43 of the North Coast Regional Environmental Plan 1988 (NCREP) provides guidelines for Council when considering residential development. These controls include density, site erosion and environmental constraints on the land.

Site erosion will be minimised throughout the construction phase and enforced via conditions of consent. The density of the proposed development has been maximised without adversely affecting the environmental features of the land.

SEPP No. 1 - Development Standards

As discussed, the applicant seeks to vary the development standard regarding minimum allotment size for a residential subdivision as contained within Schedule 3 (subclause 2) of the Tweed LEP 2000.

The applicant contends that *the proposed development raises no matters of adverse significance in local, regional or state terms and no public benefit will result from the maintenance of the subject development standard in this case.*

A SEPP No. 1 submission may be supported where the applicant demonstrates that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case and specifies the grounds of that objection. The applicant must also demonstrate the consistency with the aims of the SEPP.

In support of the proposed variation, the applicant has provided the following:

The upholding of the prescribed 450m² minimum lot size is considered to be both unreasonable and unnecessary in this instance based on the following grounds:

- *The subject land permits integrated housing for which the proposal satisfies the prescribed density under the Tweed DCP 2000 – Section A1*
- *The proposal is consistent with the land use definition for integrated housing and permissible under the Tweed LEP 2000*
- *The proposed lots reflect the proposed built form and as such are compatible with the strategic planning for the site and other integrated housing in the surrounding Salt Estate*
- *The proposal provides an acceptable form of housing which adds to the variety of housing choice within the Salt Estate and wider community*
- *The property is well placed in location relative to key community, educational and commercial services*

- *The subdivision will not result in any irreversible environmental impact*
- *The proposal is consistent with the provisions of Clause 43 of the NCREP (Deemed SEPP) in so far that it maximises the density without affecting the environmental features of the site.*

The application is consistent with the objectives of the Schedule 3 development standard in that:

- *The proposed development seeks to meet the need for housing in Tweed by providing a variety in housing choice in an area close to existing services and infrastructure.*
- *The proposed architectural design will provide a high quality residential development which compliments the existing retail, service and tourist facilities located within the immediate surrounding locality.*
- *The community title scheme associated with the development provides a tourist like structure to the multi dwellings, through the managed neighbourhood statement and community facilities.*
- *The proposed landscaping will contribute to the visual amenity of the locality through the use of landscape species, colours and shapes commonly found in the natural landscape within the coastal environment of Salt and will therefore contribute positively to the quality of the residential development.*

The applicant's entire submission is attached to this report.

Assessment of the applicant's submission:

The following assessment of the SEPP No. 1 is based on the principles set by Chief Justice Preston (*Wehbe v Pittwater Council [2007] NSW LEC 827*).

- 1. The applicant must satisfy the consent authority that "the objection is well founded", and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case**

Chief Justice Preston has noted 5 ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. In this instance, the first option, being the objectives of the standard are achieved notwithstanding non-compliance with the standard has been adopted.

The objective of Schedule 3 of the Tweed LEP is achieved despite the variation to the development standard pertaining to minimum allotment size. The objectives of Schedule 3 provide for the control of density in the subject land known as Portions 194, 301 and 312 Kings Beach, South Kingscliff through the use of the development standard.

The proposal is of a high quality design that is consistent with surrounding development. It does not compromising density controls within Schedule 3.

The applicant's submission in relation to being well founded is supported.

- 2. The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979*; and**

The objects specified within Section 5(a)(i) and (ii) relate to the promotion and co-ordination of the orderly and economic use and development of land, and the protection, provision and co-ordination of communication and utility services.

The proposal provides for a community title subdivision that incorporates a modern, energy efficient residential development with access to utility services and within close proximity to community facilities.

It is not considered that the granting of this application would hinder the attainment of such objectives.

- 3. It is also important to consider:**
 - a. whether non-compliance with the development standard raises any matter of significance for State or regional planning; and**
 - b. the public benefit of maintaining the planning controls adopted by the environmental planning instrument.**

The proposed non-compliance with Schedule 3 of the Tweed LEP 2000 is not considered to raise any matter of significance for State or regional planning.

There would be little public benefit in maintaining the development standard in this case as it would not allow such dwelling diversity that is warranted in a coastal area frequented as a tourist destination. The streetscape and amenity of the locality will be enhanced by the modern, energy efficient dwelling and infrastructure designs which in turn may lead to a resource-related wider public benefit.

Chief Justice Preston notes that there is a public benefit in maintaining planning controls. However, the proposed non-compliance with the Tweed LEP 2000 is considered to be justified in this instance and is not likely to result in an adverse planning precedent as it is localised. As such, the granting of this application is unlikely to impact upon public benefit.

It is recommended that Council assume the Director's concurrence.

SEPP No. 55 - Remediation of Land

Contaminated land investigations were dealt with under the subdivision DA02/1422 as sand mining residues required remediation. The Cardno

surface radiation validation statement dated 22 June 2008 covered the subject area. As such, there are no contamination issues in relation to the subject land.

SEPP No 71 – Coastal Protection

Clause 8 of the SEPP identifies matters for consideration. The proposal is consistent with the aims of the SEPP. Public access to the coastal foreshore will not be affected as a result of the proposal.

The protection of cultural heritage has been addressed via a condition of consent, in the event items of cultural significance are discovered all site works shall cease immediately.

The development is suitable for the location in regards to bulk, scale and size. This matter is discussed in further detail later within the A1 assessment associated with this report.

The proposed development is not considered to result in adverse cumulative impacts, which is evident throughout this assessment. The proposal is regarded as being energy efficient.

SEPP (Building Sustainability Index: BASIX) 2004

The applicant has submitted a BASIX certificate demonstrating the proposal meets the energy target score. The energy saving measures such as water tanks are evident on the plans. The proposal is therefore consistent with the SEPP.

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

Draft TLEP amendment numbers 20, 21, 70 and 76 apply to the subject site. As per advice from the Department of Planning (Planning Circular 08-013) draft environmental planning instruments exhibited prior to 1 March 2006 and have not been gazetted are no longer required to be taken into consideration by consent authorities when determining development applications under section 79C of the EPA Act 1979. Therefore draft LEP amendment numbers 20 and 21 have not been considered in this assessment. Amendment numbers 70 and 76 are not relevant to the site.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

A1-Residential and Tourist Development Code

(Adopted 22 April 2008)

Part B - Dual Occupancy Housing, Granny Flats, Town Houses and Row Houses

The proposed development contains a variety of two-storey dwelling house designs on individual community title lots. Being an integrated housing development, the proposal is more closely aligned with a 'townhouse' development. Townhouse development controls are more stringent than detached dwelling design controls.

Architectural plans supplied for consideration of this application number dwelling lots from 1 to 18 with indication of common property. A subdivision plan has also been provided that allocates the common property as 'Lot 1' and subsequently numbers the dwelling lots from 2 to 19. This assessment refers to dwelling lots 1 to 18 with associated common land, as outlined in the plans recommended for approval.

Variations to design controls are sought in relation to deep soil zones and front fencing. Consideration of the requested variations is included in the following assessment.

Applicable design controls are addressed as follows:

Building Types

Suitable Locations for Town Housing

Town housing is permissible in the 2(f) zone. Ground floors of the proposed dwellings contain a habitable room such as bedroom, study or lounge room and an adjacent external living area.

Dwellings on Lots 6 to 14 are not designed so that front door access is visible to *the public road*. The front door is situated within the development site via an internal driveway and is visible from the internal road. Pedestrian access points into the development site are highlighted along the Casuarina Way frontage. The private road can be accessed by the general public if necessary (eg. visitors) and the positioning of front doors is deemed appropriate in this instance (community title subdivision).

The proposal is regarded as being a quality design which reflects the coastal environment.

Public Domain Amenity

Streetscape

The general locality is relatively new. Any existing development has had regard to the future desired character in relation to design, setbacks, level changes and topographic setting. The proposed development is consistent with outcomes achieved with recently established development in the area.

A 1.5m permeable aluminium fence is proposed along the Casuarina Way frontage adjoining a 3.6m wide buffer on the council verge. A 1.8m permeable aluminium fence is proposed to the park areas to the north and south of the

site. Lots 6 and 14 have solid panel fencing (from 1.3 – 1.6m high) facing Casuarina Way for privacy and acoustic reasons. There are no 'older and well-established' garden landscapes in the area. They are all relatively new developments. However, the landscape theme chosen for this development is consistent with the seaside, rainforest designs found in the Salt subdivision. No significant vegetation exists on-site other than grasses. Proposed local native landscaping includes a variety of species and heights.

The driveway from Saltwater Crescent is the only driveway which will be visible from a public road. The internal driveway will be screened via dwellings and landscaping.

Facades visible from Casuarina Way are well designed, particularly considering this is the western elevation. Treatments to Casuarina Way include windows and private open space areas. Gates are situated along Casuarina Way into private dwellings on Lots 6 to 14.

External colours proposed are a variety of neutral tones for roofing, walls, eaves, downpipes, garage doors and window/door frames (eg. Dune, Paperbark and Surfmist). The applicant has provided coloured representations of each individual dwelling design (using an approximation of the proposed neutral colours). There is variety in the combination of these colours which contributes to the variety in dwelling styles. The applicant has provided an artist's impression of the overall development from Casuarina Way however the colours used in this elevation are not a reflection of the colour palette proposed. The design drawings provided in the original plans of each dwelling type reflect the suitable colour palette chosen for each type of dwelling more accurately.

Public Views and Vistas

There are no surrounding heritage items or landmarks within close proximity of the site. The site is within 200m of Cudgen Creek. The development is two storeys in height and is scattered throughout the site, by way of the internal road and landscaped areas. The 6m setback from the Casuarina Way boundary to the wall of the dwellings enables the view corridor along this frontage to be retained.

Site Configuration

Development Lots

Subdivision layouts have been provided in the application details. The lots range from 199m² to 404m². Due to the enabling clause in the LEP, the lot sizes for a community title subdivision/ integrated housing development in the 2(f) zone may be less than 450m² if a SEPP 1 objection to vary the Schedule 3 standard is lodged, assessed and approved accordingly.

Deep Soil Zones

Variation sought: applicant provided sketches of compliant plans

The subject site is irregular in shape. The applicant has proposed to use the total area required for rear DSZs as per the design control. However the configuration and locations of the DSZs are subject to a variation assessment.

The DSZs are not allocated to each 'dwelling' but are concentrated along the Casuarina Way frontage to provide screening and separation from this road. These DSZ's will join with any existing or future landscaping occurring on the 3.6m wide council verge. The private open space areas of lots 6 to 14 are situated along this frontage. Secondary DSZs are provided on all lots, particularly within the front of Lot 18 and within the communal area adjacent to the community facility. However, The rear DSZs for lots 1-5, 15-18 do not meet minimum dimensions. Detailed landscaping plans have been provided for each dwelling and the sides of the communal driveway into the development.

Rear Deep Soil Zones are to have minimum width of 8m or 30% of the average width of the site whichever is the greater and a minimum depth of 18% of the length of the site up to 8m but not less than 5.5m. Greater than 8m may be provided if desirable.

Requirements for the whole of the site are calculated as such:

Average width = $125.450\text{m} \times 0.3 = 38\text{m}$

Minimum depth = $42\text{m} \times 0.18 = 7.56\text{m}$

Total area = 287.28m^2

The rear DSZ takes up the whole of the 125.45m on the Casuarina Way frontage minus 8m for emergency vehicle access. The dwellings have a consistent setback of 6m from that boundary. There are permeable pavers and small plunge pools within the DSZ for lots 7 to 13 and larger pools associated with lots 6 and 14.

In total, 501m^2 is provided along the Casuarina Way frontage which exceeds the requirement (by strict compliance with controls) by 213.72m^2 .

The front boundary is actually the boundary that abuts existing development facing Salt Water Crescent. It is practically considered to be a side boundary or secondary rear DSZ's for several lots. However, individual allotments meet the requirement of the control for front DSZs and are adequately landscaped to face the front of the internal road.

In this instance the variation to Deep Soil Zones is supported:

- The applicant has provided an additional 213.72m^2 of DSZ than the control requires
- The DSZs are integrated into the design of the 'dwellings' and therefore become a dual use area as private open space/DSZ area
- Compliant plans prepared by the applicant result in compressed development within the centre of the site if DSZs are concentrated along the Casuarina Way frontage and rear of the site being Saltwater

Crescent. This will further result in an extension to the internal road in turn, increasing the site's impermeability and reducing physical separation and privacy between residents which is not desirable

- The applicant had also highlighted concerns with achieving the anticipated lot yield. To achieve a high development yield the applicant would have to seek a 3 storey proposal which is not supported by Clause 53B
- Detailed landscaping plans have been provided for all dwelling sites. They further strengthen the suitability of the variation and enhance the development overall.

Impermeable Site Area

The maximum area for impervious surfaces is 60% of the allotment area of 6420m² which is 3,852m². The applicant's calculations indicate the development proposes 3,812.5sq.m of impervious surfaces (or 59%) which is consistent with the design control. The applicant has used a range of treatments to reduce the site's impermeability including porous paving, grid paving and landscaped areas.

External Living Areas

External living areas proposed on the ground floor are located adjacent to private open space in order to extend the development's useable living area.

Given the smaller allotment sizes proposed, the ground level external living areas are within 4m from the common side boundaries (but not located closer than 900mm from the side boundary). The areas are sufficiently screened with vegetation and dividing fences and as such, meet the requirement of this control.

Above Ground External Living Spaces, Balconies and Terraces

The above ground external living spaces are consistent with the above control as they are consistent with the minimum area required and are situated immediately adjacent to internal living areas. The configuration of each balcony is functional for outdoor recreation.

The upper floor balcony for dwelling type A (for Lots 7, 8, 9, 10, 11, 12 and 13) is 1.89m x 2.21m = 4.1769m². However this balcony is situated off a minor room in each instance. The primary external living areas for this dwelling type are located adjacent to the main living areas on the ground floor.

Landscaping

Detailed landscaping plans indicate sufficient plantings across the whole development in addition to the nominated rear DSZ.

Each dwelling lot has front, side and rear landscaping. The detailed landscaping plan provides for functional and aesthetic external spaces within

each lot. The ground level patio areas are integrated with the deep soil zones and landscaped areas.

Common areas are proposed to be landscaped generously with local native species. A '750m landscaped garden wall' is proposed along the rear of lots 1 and 15 – 18 and the community facility. It appears that landscaping will be established in front of retaining walls.

All controls are considered to be met. Each dwelling has a 900mm wide pathway incorporated into the design.

Topography, Cut and Fill

Council's Development Engineer reviewed the proposal with regards to cut and fill. The officer advised the site has a moderate slope of 6.25 – 8.5% to the west. The highest part of the site is approximately RL 9.5m AHD (eastern boundary) with the lowest point of around RL 5.5m AHD (near Casuarina Way). The proposal includes several small retaining walls all less than 1m including a wall proposed at the rear of lots 1 and 15-18 and the community building.

Cut and fill contour plans were requested however after reviewing these plans, the officer advised the cut and fill was minor and no further consideration was necessary. Heavy haulage as per TRCP is therefore not required.

The applicant advises the allotment's runoff can be dispersed onto grassed and landscaped areas of the allotment as well as into onsite stormwater detention tanks. Each dwelling has a 3000 litre rainwater tank to collect roof water and reuse it according to BASIX requirements.

Setbacks

Front Setbacks (Building lines)

The applicant has taken Salt Water Crescent to be the primary street frontage. The setback from this street is 12.35m along the entrance driveway due to the site configuration. The secondary setback from Casuarina Way is 6m to the wall of the dwellings. This setback is proposed to be landscaped and includes the DSZ areas. The adjoining sites are open space/parks and are undeveloped. The proposed setbacks to the streets are deemed to be acceptable.

Side Setbacks

The setbacks for the northern and southern boundaries are regarded as the development's side setbacks. The setback proposed for the northern side is 3m. The setback proposed for the southern side ranges from 3.150m to 3.850m.

Dwelling types DR, D2, A1, A2, E1, E2, C, B3 and B2 for Lots 1, 2, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 do not contain primary living room windows

that face the side boundaries. Dwelling type D for Lots 3-5 contains a primary dining room window within 4m from the boundary. This is regarded as being consistent with the DCP as dining rooms are separately listed (from living room) in the definition for 'habitable'.

Rear Setbacks

The site's configuration does not lend itself to having a 'rear' boundary. However for thoroughness sake, the setback from the eastern boundary (Casuarina Way) could be regarded as the 'rear' of the site, this setback is required to be a minimum of 3m and is actually 6m.

Car Parking and Access

Carparking Generally

Tweed Shire Development Control Plan A2 requires 1 on-site car space per dwelling plus the provision for driveway parking of another vehicle. Double garages are proposed for all dwellings. A visitor space is required for each 4 units.

Rates for Integrated Housing	Proposed
1 space per dwelling plus provision for driveway parking of another vehicle, Visitor parking at ¼ unit	Each dwelling is provided with a double garage totalling 36 spaces, 3 visitor car spaces and 1 disabled car space. Stacked parking is available on several Lots being 1, 4, 5, 6 and 14. A car wash bay is also proposed
Resident: 18 car spaces Informal: 18 stacked spaces Visitor: 4.5 spaces Total: 41 spaces	Resident: 36 spaces (double garages) Informal: 5 spaces Visitor: 4 spaces Car wash bay: 1 space Total: 45 spaces (excluding car wash bay)

Given the design of the development, stacked driveway parking is not possible throughout the site. It is noted the applicant has shown some stacked parking within the site however stacked parking on other lots are likely to obstruct internal vehicular movements. In any case, the informal stacked spaces have been incorporated into the resident spaces by way of double garages.

The configuration of the proposed car parking is considered to be acceptable. The applicant has provided a total of 45 car spaces/informal spaces on-site which is beyond that which was required.

Garages

The garages are not visible nor are they accessed from public roads. All garages are orientated towards the centre of the site and are accessed via an internal driveway. The proposal is consistent with this control. Materials proposed are compatible with those used for the main dwelling.

Building Footprint and Attics, Orientation and Separation

Building Footprint and Attics

This is not applicable given the orientation of the development is north-east.

Building Orientation

The applicant reduced the height of the fencing along the Casuarina Way frontage to 1.5m (from 1.8m) and included pedestrian entries into the private open space of each dwelling.

Living rooms and bedrooms are orientated towards the front and rear of the dwellings and the bathrooms, laundries and similar rooms are situated along the side boundaries.

Primary living areas are orientated north where possible to maximise access to sunlight.

Building Separation

All primary openings of living rooms are orientated towards the internal road or to Casuarina Way rather than towards the proposed dwellings or adjoining development's to the site's east.

The proposal is consistent with the required 2m separation distance between the windows/doors of non-habitable rooms (on any level of the buildings).

Height

Building Height

The maximum overall building height permitted is 9m. The applicant proposes a maximum height of 7.4m.

The maximum wall plate height permitted is 8.5m. The applicant proposes a height of 5.5m.

Ceiling Height

It is encouraged to provide minimum ceiling heights of 2.7m (minimum) from the finished floor level to finished ceiling level for habitable rooms. The proposal is consistent with the control at 2.4m - 2.7m for both ground and upper levels.

Building Amenity

Sunlight Access

The dwellings' private open space areas have been orientated so as to have a northerly aspect where possible.

Lots 6-14 are orientated north. The setback to the wall of these dwellings is 6m. Lot 15 is setback 4m from the site's northern boundary. These dwellings, their primary private open space areas and habitable rooms will receive a minimum of 3 hours of sunlight during 9am-3pm on June 21.

The shadow plan provided for June 21 shows the adjoining dwellings to the site's east will be free of shadow at 1pm. Therefore adjoining windows and private open space areas will enjoy sunlight between at least 9am and 1pm.

Visual Privacy

Balconies located off living areas have been designed to minimise overlooking. The balconies are generally located to face towards the internal road of the site, on the opposite elevation of the adjoining internal site's ground level (primary) private open space.

Lots 15 to 18 adjoin existing residential development to the site's east. These dwellings do not incorporate balconies/decks on the upper levels, thus reducing overlooking potential. Windows of primary living areas are also orientated away from this boundary.

The dwellings have been designed to maintain privacy within the development site itself and adjoining developments to the site's east (Salt Water Crescent). Each lot will be separated by a future shared boundary fence (not part of this DA). The upper levels which adjoin dwellings contain very few windows (bathroom, WC and minor bedroom windows) to reduce the potential of overlooking into neighbours private open space, living room windows and the like.

Acoustic Privacy

Dwellings facing Casuarina Way are considered to be setback a sufficient distance to mitigate any issues in relation to acoustic privacy.

Conditions have been placed on the development consent in relation to the operation of noise generating equipment.

View Sharing

There is no issue in relation to view sharing.

Natural Ventilation

The dwellings contain operable windows to habitable rooms and other non-habitable rooms. Each dwelling contains windows and openings to optimise breezes and to encourage cross-ventilation.

External Building Elements

Side and rear fences

The side fences proposed on the north and southern boundaries are 1.8m high aluminium fences. An existing solid panel fence (approximately 1.5m high) adjoins the site's northern boundary within the adjoining park (Lot 86 DP 1066472). This will act as a buffer between the park and private space.

Front fences

Variation sought: Casuarina Way (secondary frontage)

A 1.5m high black aluminium fence is proposed along the Casuarina Way frontage. This fencing is consistent with the existing fencing along Casuarina Way within Salt. The overall height of the fencing has been amended since the lodgement of the DA, negotiations with the applicant has resulted in a reduced overall height from 1.8m to 1.5m

Lots 6 and 14 will be a combination of aluminium and rendered fencing a maximum of 1.6m high. The solid section of the fence does not have an openness ratio of 60%. A review of the streetscape plan details this section of the fence to be a typical panel/pier fence ranging from 1.3m to 1.6m. Lot 14 is proposed to have a maximum sub-floor of 400mm high with a 1.2m high panel above (the solid/masonry component).

The solid component is intended to reinforce the development along the Casuarina Way frontage. Further Lots 6 and 14 adjoin public parks immediately to the north and south of the site. Also surrounding the site's northern, western and southern boundaries are public pathways. The solid fence and setback of the dwellings will act as a privacy buffer between the public and private space.

Roofs, Dormers and Skylights

The roof designs are consistent with the above controls. All roofs contain articulation, eaves, compatible colours to those used on the dwelling and the roof height is in proportion to the wall heights. The roofs are not trafficable.

Elevations Visible from the Public Domain

The section of fencing fronting lots 7 to 13 contain pedestrian entries to those dwellings which are evident along Casuarina Way.

Entry into each dwelling is clearly defined through the use of covered entry ways, materials and finishes.

Due to the irregular shape of the site and the design of the development, none of the dwellings have dual street frontage.

The indicative landscaping proposed along the Casuarina Way frontage is of such a standard and quality as would be expected of a primary street frontage. This is attributed to the orientation of the dwelling's private open space.

Minor Elements

A communal BBQ area is proposed within the community building. The BBQ is presumably within the footprint of the community building or within this allotment. To ensure the BBQ complies with the DCP, this will be reinforced via a condition.

Drying areas are shown on some of the design models within the ground level private open space areas adjoining Casuarina Way (secondary street frontage), in front of the dwelling houses. The other models do not label a space for clothes drying. These areas are proposed to be screened with vegetation as they are the primary private open space areas for the dwellings and will therefore not be readily visible.

The remaining dwellings informal/formal drying areas are situated along the northern and southern boundaries and the eastern boundary within the private open space areas. These areas are landscaped and as such the areas likely to be used as drying areas will not be readily visible from adjoining properties/parks.

The applicant has advised central letterbox structure is proposed which satisfies the above controls. The letterbox structure will be required to be consistent with the design controls. The central letterbox structure will be conditioned as it does not appear on the landscaping plan as advised.

Outdoor security lighting is to be located and designed so as to avoid light spill into the living and sleeping areas of the subject development and to confine light spill to the source property. This matter will be enforced via a condition of consent.

Building Performance

Energy Efficiency

The applicant has provided a BASIX certificate which demonstrates the proposal achieves the minimum targets for water, thermal comfort and energy (Certificate No. 199726M).

Floor Space Ratio

The site has an area of 6420m². The SEE states the GFA for the dwellings is 3984.96m², thus the FSR is 0.62:1, which is consistent with the design control stipulating a maximum FSR of 0.8:1.

A2-Site Access and Parking Code

As per Section A2 dwellings are required to provide car parking as outlined in the table below:

Rates for Integrated Housing	Proposed
1 space per dwelling plus provision for driveway parking of another vehicle, Visitor parking at ¼ unit	Each dwelling is provided with a double garage totalling 36 spaces, 3 visitor car spaces and 1 disabled car space. Stacked parking is available on several Lots being 1, 4, 5, 6 and 14. A car wash bay is also proposed
Resident: 18 car spaces Informal: 18 stacked spaces Visitor: 4.5 spaces Total: 41 spaces	Resident: 36 spaces (double garages) Informal: 5 spaces Visitor: 4 spaces Car wash bay: 1 space Total: 45 spaces (excluding car wash bay)

Each of the 18 dwellings is provided with a double garage (36 spaces). Four (4) visitor spaces are also provided resulting in a total of 40 car spaces on-site. It is noted that stacked parking within the driveways of the majority of the lots will encroach into the site's internal road. However, the need for stacked parking has been reduced by the provision of double garages for each dwelling.

A3-Development of Flood Liable Land

The site is identified as being flood affected the adopted minimum floor level for the site is RL 2.83m AHD. Due to previous earthworks undertaken in conjunction with the earthworks for the Salt subdivision (DA02/1422), the lowest natural ground surface of the site is approximately RL 5.25m AHD, which is above the minimum floor level.

A5-Subdivision Manual

DCP A5 provides various guidelines for the subdivision of land and aims to facilitate "best practice" subdivision development in line with the policies of Council and the State. The DCP defines "subdivision" liberally as "the division of land into two or more parts" and includes the creation of lots in community title subdivisions. Parts of this DCP that are applicable to the proposal have been addressed below with the conclusion that subject to various conditions attached to this report the application is compliant with the provisions of this part of the DCP.

The proposal is considered an 'infill subdivision' – that of continuing division of land in an existing urban structure.

Two-way vehicular access to the proposed community lots is via Salt Water Crescent. Service connections are available on site, as discussed previously in this report. Council's Engineers have considered all aspects of the division such as stormwater drainage, water reticulation, traffic generation, site regrading, access, pedestrian networks, earthworks, intersections, parking, sewer and water supply services and flooding.

The site is not listed in Schedule 1 of Council's contaminated lands policy, nor is it within an investigation area under Division 2 of Part 3 of the Contaminated Land Management Act 1997 and Council's Environmental Health Officer has advised that any likelihood of contamination on the subject site was dealt with sufficiently in the original Salt Masterplan division DA02/1422.

The site is stable, not bushfire prone and not at the risk of land slip. The site adjoins public reserves at both the northern and southern ends. Class 4 acid sulfate soil is present, however as previously discussed in this report, it is not a constraint as minor works are to be undertaken as a result of this division.

A11-Public Notification of Development Proposals

Notification of the development was provided to adjoining land owners/properties in accordance with this section. The proposal was placed on exhibition for 14 days from 6 to 20 August 2008. No submissions were received as a result of this process.

B9-Tweed Coast Strategy

The Plan sets objectives for future development concentrating on public services and design principals. This application does not contradict the objectives of this plan.

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

Clause 92(a) Government Coastal Policy

The subject land is affected by the coastal policy. The proposed development is not considered to be in conflict with the policies and strategies of the policy.

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

There are no further likely impacts in addition to those previously discussed.

The proposal is consistent with surrounding residential character. The site's suitability has been demonstrated throughout the assessment of the proposal including the assessment of the minimal environmental impacts and consistency with environmental planning instruments and the DCP.

(c) Suitability of the site for the development

The suitability of the site for the development has been demonstrated by way of general consistency with the applicable environmental planning instruments and the Tweed Development Control Plan and minimal environmental impacts. The proposal is consistent with the residential character of the locality.

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

As previously discussed the proposal was placed on public exhibition for fourteen days from the 6 to 20 August 2008. To date no submissions have been received.

(e) Public interest

The proposed development is generally consistent with the applicable environmental planning instruments and the Tweed Development Control Plan. The development is considered to be in the interest of the general public.

OPTIONS:

1. Resolve to assume the Director-General's concurrence and support the SEPP submission and resolve to approve the development application with conditions; or
2. Resolve to refuse the development application with reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has the option to appeal the matter in the Land and Environment Court should they be dissatisfied with Council's resolution.

POLICY IMPLICATIONS:

Nil.

CONTRIBUTIONS:

Applicable contribution fees have been calculated for the proposed 18 residential lot subdivision (allowing for the site credit of 1ET for all applicable contribution plans, with the exception of Water contributions which has a credit of 1.2ET) and applied as a condition of consent. The community building on common property attracts a lower Water and Sewer contribution based on the public amenity rate and is not subject to TRCP. A breakdown of the calculations is on file.

It was determined as part of the assessment for DA08/1141 (37 lot subdivision: Stage 6) that the Salt development is in credit of dedication of open space and as such there is no requirement for open space to be dedicated as part of this application.

CONCLUSION:

The proposed integrated housing development is consistent with the applicable environmental planning instruments, the Tweed Development Control Plan and policies. The proposal will not result in adverse cumulative impacts. It is considered the site is suitable for the development.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Applicant's SEPP 1 Objection (ECM 7025655)
-

12 [PR-CM] Development Application DA05/0824.07 for a Section 96 Amendment to DA05/0824 for Multi Dwelling Housing Comprising Four (4) Units at Lot 4 Section 2 DP 7309, No. 26 Seaview Street, Kingscliff

ORIGIN:

Development Assessment

FILE NO: DA05/0824 Pt3

SUMMARY OF REPORT:

ITEM DEFERRED FROM MEETING HELD:

15 September 2009

Decision this item be deferred to undertake further consultation.

The resolution adopted by Council in respect of this Section 96 application at its meeting held on Tuesday, 21 April 2009, was *'that this item is to be deferred pending further advice and a report from the Director Planning & Regulation'*. The main purpose behind Council's deferral was to verify that there was accurate plan information to base a determination on.

In response to this resolution Council officers have since held further meetings with the applicant prompting the receipt of further amended plans on 3 August 2009, relating to the subject Section 96 application. The changes primarily relate to the applicant's attempt to readdress the constructed buildings non-compliance with the original, approved development application plans. This report seeks to assess the proposed changes and provide a recommendation for Council to determine.

The latest Section 96 plans and documentation outline the applicant's intent to achieve compliance with the approved development application plans. From the officers' assessment, the applicant has produced a height profile for the majority of the East-West length of the proposed building which is actually lower than the approved development application plans. Only the two sections of proposed roof at the rear (eastern) part of the building will now exceed the approved roof heights by 5cm and 6cm respectively for a combined length of 7.97m or 21.04% of the length of the building.

The main form of design amendments include:

1. Splitting of the front and rear roof sections (over the lounge and balcony areas fronting Seaview Street and the rear bedroom and balcony fronting the rear lane) from the main central roof section so as to reduce the height of these components to reflect the approved plans. Actual proposed roof heights are shown within the submitted plans.

2. Adoption of a revised roof form to the front and rear, being a single pitch skillion so as to avoid splitting of the roof lines, thus preserving views further for the adjoining resident.
3. Adjustment to capping treatment on the central roof section at 32.9m AHD so as to generate compliance with the approved plans.

The proponent claims:

“the plans have been amended so as to achieve greater compliance with the approved plans where the opportunity exists and where possible, in a manner consistent with the interpretation of the plans by the neighbouring residents.”

It is pertinent to note that the amended plans show the addition of an eave on the roof section adjacent to Seaview Street (marked in Red on the northern and southern elevations and ‘roof plan and roof sections’). This eave is not supported with plans amended in Red deleting reference to the subject eave. The ‘roof plan and roof sections’ also incorrectly identifies the finished floor levels, 0.09m lower than proposed (and built). This error has been amended in Red on the subject plans.

Adjoining owners were notified of the latest amended plans relating to the subject Section 96 application. One submission was received from the owner of No. 28 Seaview Street, who reiterates previous concerns about inaccuracies in the information presented by the applicants, the inconsistencies and non-compliance with approved plans, and the view loss impacts of the proposed retention of two large Norfolk Pines trees in the front section of the site.

Given the applicant's agreement to alter the current unauthorised building works to generally conform to the height levels of the approved original development application, it is considered that the current Section 96 modification is suitable for approval. In this regard, the only exceedence of the approved roof height profile at the rear part of the proposed building (a variation of 5-6cm) will still allow for a reasonable degree of view sharing to adjoining properties, particularly for the owners of No. 28 Seaview Street.

On the basis of this proposed rectification works, as well as other advice reported to Council, the officers have also recommended that Penalty Infringement Notice (PIN) for the sum of \$1500 be issued in respect of the unauthorised works. The officers have also provided information on further criminal proceedings that can be pursued should Council consider it to be appropriate.

It is pertinent for Council to also take account of the attached Council report dated Tuesday 21 April 2009 in their assessment prior to determining this matter, particularly in respect of the other designated plan amendments of this Section 96 application, including the proposed retention of 2 Norfolk Pine trees in the front section of the subject site.

RECOMMENDATION:

That:

- A. Development Application DA05/0824.07 for a Section 96 amendment to DA05/0824 for multi dwelling housing comprising four (4) units at Lot 4 Section 2 DP 7309, No. 26 Seaview Street, Kingscliff be approved and the consent be amended as follows:**

- 1. Condition No. 1 be deleted and replaced with Condition No. 1A which reads as follows:**

1A The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos 62531 sheet 1-4 of 7 inclusive prepared by Gordon Bismire and dated 09/02/07 (revised 24/02/09), Plan Nos 62531 sheet 5 of 7 prepared by Gordon Bismire and dated 09/03/09 (revised 07/07/09), Plan Nos 62531 sheet 1 of 1 prepared by Gordon Bismire and dated 09/03/09 (revised 07/07/09), Plan Nos LP01 prepared by Boyds Bay Landscape & Environmental and dated 11.03.09, (as amended in Red on the approved plans) except where varied by the conditions of this consent.

[GEN0005]

- 2. The addition of Condition Nos 6.1 and 76.1:**

6.1 The two Norfolk Pines (within the front setback adjacent to Seaview Street) are permitted to remain whilst it can be demonstrated the potential risk of harm to public safety is appropriately assessed. This shall be determined through the landowner(s) submitting to Council 6 monthly assessments by a suitably qualified Arborist (minimum Australian Qualification Framework Level 5) for a period of 2 years. The first report is to be submitted within 6 months of the date of this amended consent. A section 88B restriction is to be placed on the title of Lot 4 Section 2 DP 7309 giving effect to the terms of this condition.

[GENNS03]

76.1 Prior to the issue of an occupation certificate a surveyor's report prepared by a registered surveyor is to be submitted to Council detailing the height of the building at all relevant points as detailed on the approved plans Plan Nos 62531 sheet 1-4 of 7 inclusive prepared by Gordon Bismire and dated 09/02/07 (revised 24/02/09), Plan Nos 62531 sheet 5 of 7 prepared by Gordon Bismire and dated 09/03/09 (revised 07/07/09), Plan Nos 62531 sheet 1 of 1 prepared by Gordon Bismire and dated 09/03/09 (revised 07/07/09), (as amended in Red on the approved plans) to the satisfaction of Council or delegate. All levels are to be provided in Australian Height Datum.

[POCNS03]

- B. A Penalty Infringement Notice for the sum of \$1500 be issued to Gordon Bismire Builder for the non-compliance with Development Consent DA05/0824 be issued.**
- C. The applicant be advised that if the rectification works have not commenced within 30 days from the date of this amended consent Council will commence Class 5 Criminal proceedings in the Land and Environment Court. Any additional breaches of the development consent as amended will result in Council commencing Class 5 Criminal proceedings in the Land and Environment Court.**
- D. Attachment 1 is CONFIDENTIAL in accordance with Section 10A(2)(g) of the Local Government Act 1993, because it contains advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**

REPORT:

Applicant: Jeanleighmac Developments Pty Ltd, Mr GF Bismire and Mr WC Engwirda
Owner: Mr GF Bismire, DM Househam, WC Engwirda and Jeanleighmac Pty Ltd
Location: Lot 4 Section 2 DP 7309, No. 26 Seaview Street Kingscliff
Zoning: 2(b) Medium Density Residential
Cost: \$1,100,000

BACKGROUND:

Development application DA05/0824 was approved on the 15 August 2006 for the construction of a two storey multi-dwelling housing development containing four units. The main issues of contention in this original application related to the proposed building height and view loss for adjoining and surrounding properties particularly for the adjoining southern property to the south, No. 28 Seaview Street.

Council received a Section 96 application (DA05/0824.01) on the 27 March 2008 following complaints that the building under construction had exceeded the previous approved maximum height levels. This application was refused by Council at its meeting held 16 December 2008 for the following reason:

1. *The unauthorised increase in building height will create an unacceptable visual impact/view loss on the neighbouring property No. 28 Seaview Street Kingscliff.*

Council also resolved as follows: -

- "B. Council's solicitors be engaged as soon as possible to commence appropriate action for unauthorised building works.*
- C. Council will not issue an Occupation Certificate until such breaches are rectified."*

Council's solicitors advised the applicant via letter dated 12 January 2009 to immediately cease construction and to rectify the unauthorised building works within 28 days of the date of the letter, or otherwise Council would commence proceedings in Class 4 of the Land and Environment Court.

The applicant lodged a second Section 96 application (DA05/0824.07) on the 8 January 2009, to rectify the breach in building height, amend the landscaping plan and amend the front fence and other building elements. In accordance with advice from Council's Solicitors, legal proceedings were deferred until the determination of the section 96 is finalised.

The section 96 application (DA05/0824.07) was reported to the Council meeting held Tuesday, 21 April 2009. Following concerns raised regarding the accuracy of the latest plans, Council deferred the determination to seek further clarification. The resolution adopted by Council was *'that this item is to be deferred pending further advice and a report from the Director Planning & Regulation'*.

For a more detailed chronology of events refer to the attached previous Council report dated Tuesday, 21 April 2009.

Since the 21 April Council meeting, further meetings were held between the applicant and Council officers. As a result of those meetings, Council has received further amended plans on the 3 August 2009 (referenced revised 07/07/09), relating to the subject Section 96 application. This report seeks to assess the proposed changes and provide a recommendation for Council recommendation.

The amended plans propose:

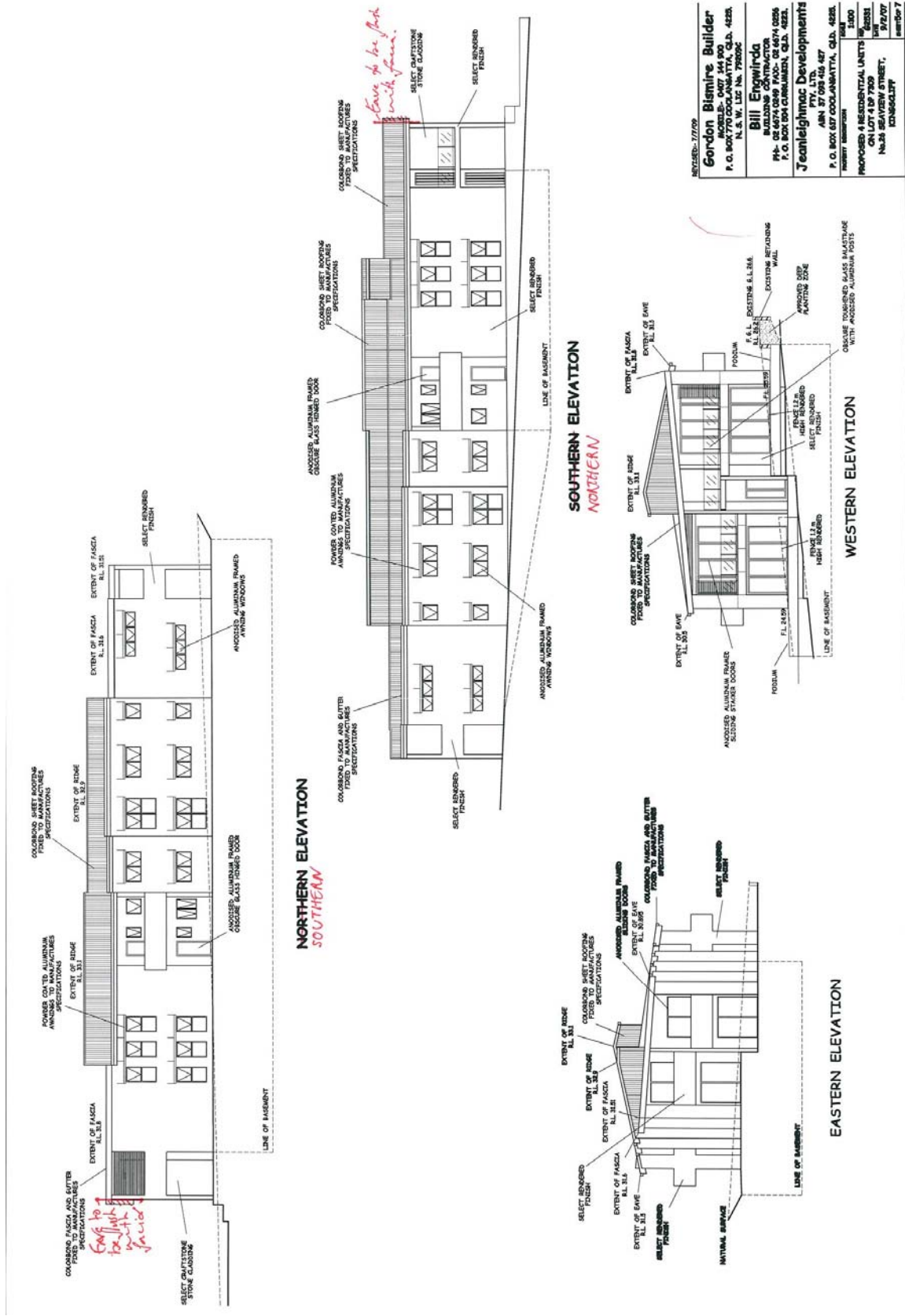
- “1. Splitting of the front and rear roof sections (over the lounge and balcony areas fronting Seaview Street and the rear bedroom and balcony fronting the rear lane) from the main central roof section so as to reduce the height of these components to reflect the approved plans. Actual proposed roof heights are shown within the submitted plans.*
- 2. Adoption of a revised roof form to the front and rear, being a single pitch skillion so as to avoid splitting of the roof lines, thus preserving views further for the adjoining resident.*
- 3. Adjustment to capping treatment on the central roof section at 32.9m AHD so as to generate compliance with the approved plans.”*

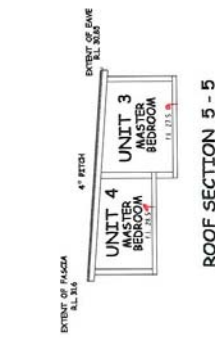
The proponent claims:

“the plans have been amended so as to achieve greater compliance with the approved plans where the opportunity exists and where possible, in a manner consistent with the interpretation of the plans by the neighbouring residents.”

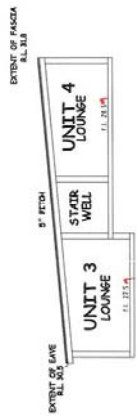
The elevation plans still incorrectly reference the Northern and Southern elevations. The proposed floor levels on the roof sections relating to the ‘Roof plan and roof section plan’ are incorrect. These have been amended in Red on the proposed plans.

DEVELOPMENT PLANS:

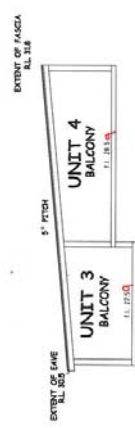




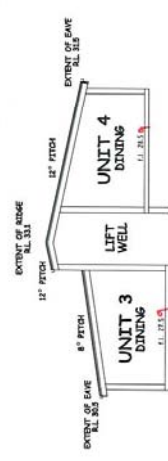
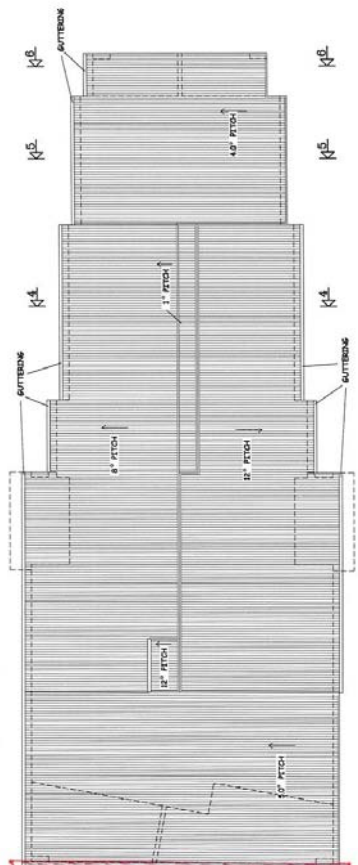
ROOF SECTION 5 - 5



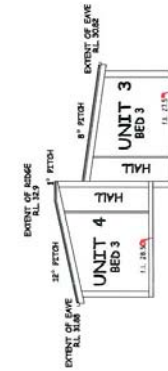
ROOF SECTION 2 - 2



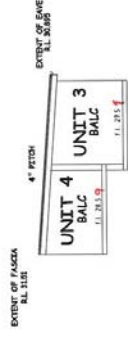
ROOF SECTION 1 - 1



ROOF SECTION 3 - 3



ROOF SECTION 4 - 4



ROOF SECTION 6 - 6

ROOF PLAN AND ROOF SECTIONS

NOTE- ALL BUILDING WORKS SHALL COMPLY WITH THE RELEVANT AUSTRALIAN STANDARDS AND ALL REQUIREMENTS OF THE NATIONAL BUILDING REGULATIONS. ALL LEVELS ARE IN METRES AND ARE BASED ON AUSTRALIAN HEIGHT DATUM.

NOTE: ALL DIMENSIONS TO BE VERIFIED BY BUILDER PRIOR TO COMMENCEMENT OF WORK.

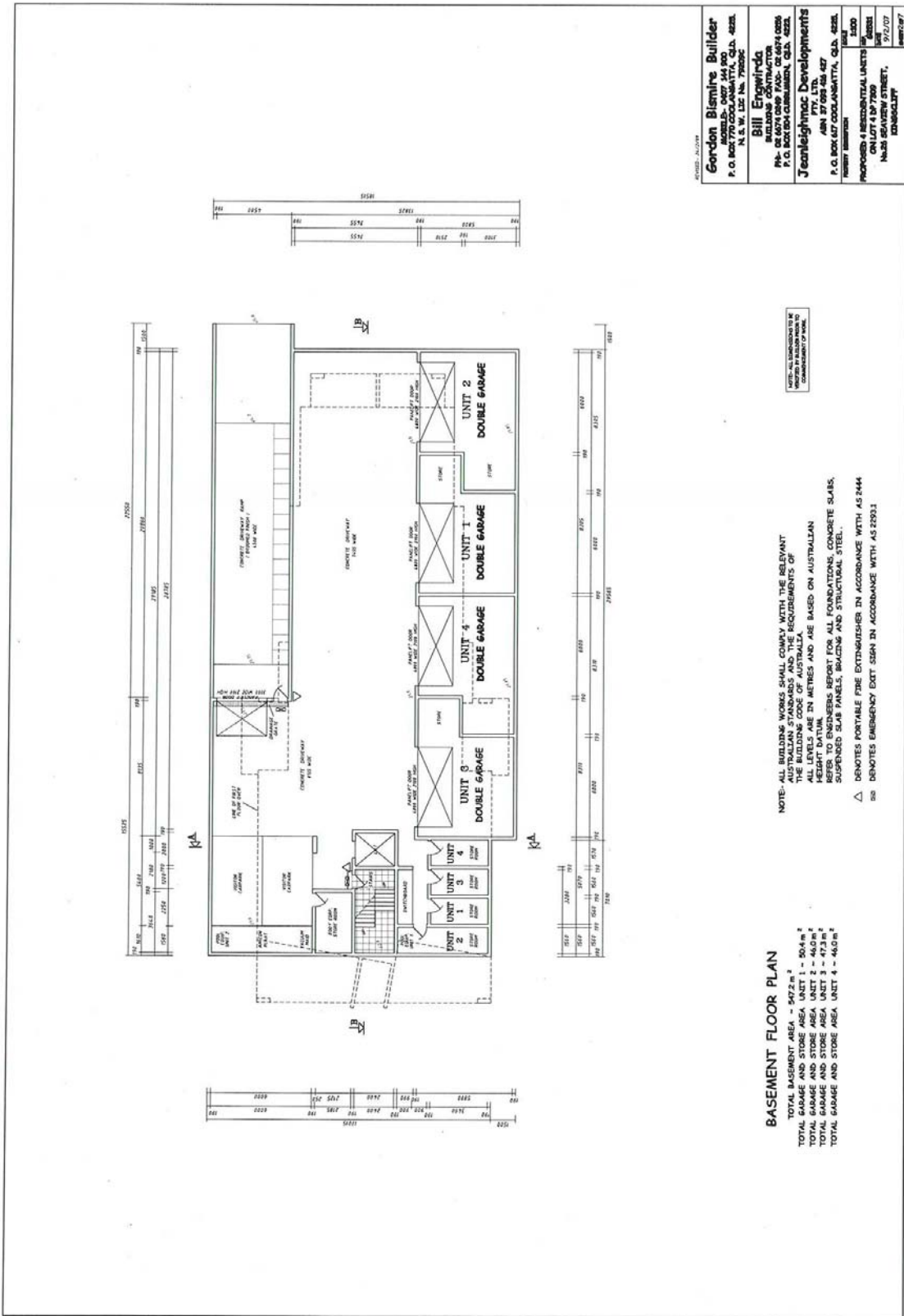
REVISED: 27/10/09

Gordon Bismire Builder
 ADDRESS: 0427 344 900
 P.O. BOX 804 CARLINDALE, Q.L.D. 4220.
 N.S.W. LIC. NO. 720292

Bill Engwirda
 ARCHITECT
 PH: 02 4574 0269 FAX: 02 4574 0256
 P.O. BOX 204 CARLINDALE, Q.L.D. 4220.

Jeanleighmac Developments
 PTY. LTD.
 ABN 27 093 455 457
 MEMBER BSMBSA
 P.O. BOX 427 DOCKLANDS, Q.L.D. 4220

PROPOSED 4 RESIDENTIAL UNITS
 ON LOT 4 BP 7309
 1/1, 2/1, 3/1, 4/1
 9/3/09
 1/1, 2/1, 3/1, 4/1
 1/1, 2/1, 3/1, 4/1



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

PROPOSAL

The latest revised Section 96 application now proposes the following composite of modifications including the latest proposed reconstruction of the roof profile to achieve lower building heights:

1. The swimming pool located on the southern side of the property has been deleted.
2. The skylights on the upper level northern elevation have been deleted.
3. Minor changes to the entry door in the ground floor foyer.
4. The front balcony to Unit 4 (previously known as unit 3) now protrudes across the front elevation, where previously there was a three metre void. This element has been brought about by way of rationalizing the current design and to increase the area of private open space available to the upper level apartment.
5. The glass balustrade to the balcony facing the laneway (east elevation) is to be changed from glass balustrade to a rendered concrete block balustrade. This element has been brought about by way of rationalizing the design, increasing privacy and reducing costs to what is a secondary frontage.
6. Minor change to the bathroom layout on the top floor (bath deleted and shower repositioned).
7. Louver windows to the bathroom and laundry in the northern and southern elevations changed to awning windows.
8. Laundry window to the northern and southern elevations deleted.
9. The eave overhang adjacent to the lift has been reduced. This element has been brought about by way of design rationalization and a response to the need to maintain building heights around the lift overrun.
10. Pine trees to the front of the property to be retained.
11. The front fence height is to be reduced and constructed of rendered brick with a continuous height of 1200mm. The fence is proposed to run parallel to the finished ground level on the property boundary. The original consent was for a rendered brick fence with varying heights up to 1600mm high.
12. Revised landscaping plan.
13. Splitting of the front and rear roof sections (over the lounge and balcony areas fronting Seaview Street and the rear bedroom and balcony fronting the rear lane) from the main central roof section so as to reduce the height of these components

to reflect the approved plans. Actual proposed roof heights are shown within the submitted plans.

14. Adoption of a revised roof form to the front and rear, being a single pitch skillion so as to avoid splitting of the roof lines, thus preserving views further for the adjoining resident.
15. Adjustment to capping treatment on the central roof section at 32.9m AHD so as to generate compliance with the approved plans.”
16. Approve the following proposed floor levels:
 - Unit 1 – 24.59
 - Unit 2 – 25.59
 - Unit 3 – 27.59
 - Unit 4 – 28.59

Note these floor levels are all 0.09m (9cm) higher than the approved floor levels.

Assessment under Section 79(c)(1) of the EP&A Act, 1979

The proposed modification is considered to be in accordance with Section 79(c)(1) Matters for consideration, as the modification is consistent with the planning rationale used to support the original approved DA05/0824 in respect of all relevant Council environmental planning instruments and development control plans. It is considered that the proposed modifications will not create any significant adverse impact on the natural or built environments or create social or economic impacts on the locality.

Further details of the assessment of these planning issues relating to of the Section 96 application are provided in the next section of this report.

ASSESSMENT UNDER SECTION 96 (1A) OF THE EP&A ACT, 1979

(a) Minimal Environmental Impacts

The proposed modifications (as outlined in the previous section) numbered 1 to 9 are mainly modifications that are considered not to create an adverse impact on the natural or built environment.

The proposed modifications numbered 10 to 12 are modifications that have been considered in the Council report dated Tuesday 21 August 2009.

The proposed modifications numbered 13 to 16 are the latest modifications relating to building height, and are assessed below:

1. Roof and Building Height

The applicant has sought to remove the entire existing roof (as built) and proposes to rebuild the roof so the height of the building is lower than as measured on the approved plans for roof areas for the majority of the length of the building exceed the approved roof heights by a maximum of 5-6cm and the impacts of this non-

compliance are discussed below. An appropriate condition is recommended requiring a surveyor's report detailing height of the building at all relevant points prior to issue of an occupation certificate.

In assessing the proposed modifications, Council officers relied on the applicant's submission of a qualified surveyor's report on the building constructed to date. This information was further qualified through comparison with an additional surveyor's report provided by one of the objectors to the subject proposal, the owners of No. 28 Seaview Street.

The proposed roof contains five (5) main areas with different maximum height levels. These locations have been used as a reference point for the following scenarios:

1. The first level is located adjacent to Seaview Street,
2. The second level is the lift over run,
3. The third level is located within the centre of the building east of the lift over run,
4. The fourth level is located to the east or to the rear of the site,
5. The fifth level is located adjacent to Orient Lane

The roof levels as currently built are;

(measurements begin from Seaview Street and end at Orient Lane):

1. The first level = 32.70m AHD
2. The second level = 33.42m AHD
3. The third level = 33.13m AHD
4. The fourth level = 32.32m AHD
5. The fifth level = 32.25m AHD

As measured on the Council approved plans by Council officers (DA05/0824) the following roof heights were calculated (measurements begin from Seaview Street and end at Orient Lane):

1. The first level = 31.85m AHD
2. The second level = 33.15m AHD
3. The third level = 32.95m AHD
4. The fourth level = 31.55m AHD
5. The fifth level = 31.45m AHD

The s96 application proposes to physically remove the existing roof structure and reform the pitch and roof height to the following levels:

1. The first level = 31.8m AHD
2. The second level = 33.1m AHD
3. The third level = 32.9m AHD
4. The fourth level = 31.6m AHD
5. The fifth level = 31.51m AHD

Difference between approved plans and proposed reformed roof heights are:

1. The first level = 0.05m lower
2. The second level = 0.05m lower
3. The third level = 0.05m lower
4. The fourth level = 0.05m/5cm higher
5. The fifth level = 0.06m/6cm higher

As identified above the latest s96 plans propose a lower building height than previously approved for the main reference points 1, 2 and 3 being a combined length of 29.9m out of a total of 37.87m or 78.95% of the length of the building. Areas 4 and 5 exceed the approved roof heights by 5cm and 6cm respectively for a combined length of 7.97m or 21.04% of the length of the building.

The southern elevation is directly facing the neighbouring property and that which has the most impact upon their view opportunities.

The proponent provides the following points in regards to roof areas 4 and 5 exceeding the approved roof heights, which are supported;

1. In this regard, the proponent will be seeking a performance based solution as 1/3 ceiling space will be less than 2.4m high;
2. A roof pitch of only 4 degrees has been adopted in this area so as to lower the roof height at the upper pitch as much as possible, thus preserving the view lines for the neighbouring residents as much as is physically possible;
3. If the approved plans had of been pursued strictly in accordance with the approved plan, then well over half of the rear master bedroom on the upper level would have been inconsistent with the ceiling height provisions of the Building Code of Australia, where a height of only 2.1m was proposed between the finished floor level and the underside of the ceiling;
4. The proponent is also splitting the roof from the main roof section so as to lower both the pitch and height further where there is a view impact for the neighbouring property;
5. Given the limitations on floor to ceiling heights with respect to the rear bedroom, there is no ability to flatten the roof, with this action also resulting in an increase in the eave height on the down side of the current roof line. As such, it can only be concluded that the rear roof section has been lowered as much as possible without contravening the provisions of the BCA and indeed the development consent issued (with reference to Condition No. 3); and
6. With respect to the impacts upon the adjoining property that the heights now proposed still afford a reasonable level of view line access over the rear section of the property it is pertinent to note that the adjoining property provides for an approximate level of 26.5m AHD central to the rear portion of their land (where it adjoins the rear section of our clients building). Given a two (2) storey height limit and a physical restriction of 9m overall (giving a potential overall building height of 35.5m it is reasonable to assume that views over the proposed rear ridge of 31.6m AHD can readily be achieved.

In regards to the increase in eave heights on the northern elevations, the plans as proposed incorporate reduced eave widths to the original approved plans and therefore the eave heights will be higher than that approved. This is an important element as it explains why on assessment particularly of the northern elevation, the eave heights appear to be higher than that consented to. The higher eave heights are considered not to adversely impact on neighbouring properties particularly in respect to view lines.

On the basis of the above actions it is considered that the building and roof heights proposed in the revised plans will not create a significant reduction of the views of the adjoining property owners, No. 28 Seaview Street.

(b) Substantially the same Development

The development to which the modification relates is considered to be substantially the same development as the development for which the consent was originally granted.

(c) Notification

Due to applicant amending plans (revised 07/07/09) the application was re-notified. The documentation was on public display at Council's Murwillumbah and Tweed Heads Civic Centres during ordinary office hours and the Kingscliff library during library hours for a period of fourteen (14) days from Monday 17 August 2009 to Monday 31 August 2009 (public holidays excepted).

(d) Consideration of Submissions

One submission was received in relation to the modified plans. The issues raised in the submissions are summarised below;

- Unauthorised building works
- Building Height
- View loss
- Landscape
- Retention of existing "Norfolk Pine" trees, view loss & safety

Please refer to the previous section and Council report dated Tuesday 21 April 2009, for a detailed review and comment on these issues of objection.

(e) Public interest

The proposed development is considered not to negate the public's interest.

OPTIONS:

1. Approve the application subject to the recommended conditions.
2. Refuse the application and provide reasons.

3. Take action in respect of the unauthorised building works.
4. Take no punitive action against the applicant, owners or builders, in respect of the unauthorised building works through Class V of the Land and Environment Court.

Option 1 is recommend by the officers together with a PIN under Option 3. A PIN is recommended as opposed to prosecution in the Land and Environment Court or the Local Court, as approval of this application will result in the developer removing the roof structure and re-constructing the roof with a revised roof height profile generally in accordance with the original consent, which is considered sufficient penalty together with a PIN.

In terms of other variations for criminal proceedings under Option 3, the officers have previously sought legal advice from its' solicitors in respect of possible criminal proceedings under Class 5 of the Land and Environment Court, and also the Local Government Act. A copy of the advice was provided in a confidential attachment to the report for this matter to Council's meeting of 21 April 2009. Council may wish to proceed with the alternative criminal proceedings, should they deem it to be appropriate.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

If the applicant is dissatisfied with the determination a right of appeal exists in the Land and Environment Court.

As stated above, Council officers have recommended the issue of a PIN for the unauthorised building works. Council may wish to consider further prosecution action stated above, taking account of the costs that may be incurred by Council in carrying out such actions.

It is also considered that Council not proceed with its earlier decision to commence investigation for Class 4 proceedings under the Land and Environment Court in respect of the unauthorised works given that the applicant has sought to rectify this non-compliance through the latest amended Section 96 plans.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposal is considered not to adversely affect the natural or built environments or negate the public's interest.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. **Confidential Attachment** - Legal Advice from Marsdens Law Group (ECM 4983925)
 2. Council of report to Council meeting 21 April 2009 in respect of DA05/0824.07 (ECM 4983926)
-

13 [PR-CM] Development Application DA04/0580.15 for an Amendment to Development Consent No. DA04/0580 for Retail Shops at Lot A DP 380558; Lot 1 DP 772440; Lot B DP 380558; Lot 1 DP 1104696; Lot 1 SP 77979, No. 10-12; 14 & 16 Brisbane Street, Murwillumbah

ORIGIN:

Development Assessment

FILE NO: DA04/0580 Pt3

SUMMARY OF REPORT:

Council is in receipt of an application to amend a development consent that was granted by Council in October 2004 for the construction of 7 retail shops in Brisbane Street, Murwillumbah. Several subsequent amendments have been approved since then, resulting in the existing development having only 6 premises, made up of 2 shops, 3 refreshment rooms (Subway; Sushi and Gelato) and a bottle shop.

The original application for the entire site incorporated the use of the outdoor area (adjacent to Shop 1). As the area was encumbered by a Right of Carriageway, which benefits the adjoining business (Budds Farm Supplies Pty Ltd), the use of the area could not be approved.

The applicant has provided written notification that legal action has begun to extinguish the Right of Carriageway over the outdoor area. As a result of the extinguishment of the Right of Carriageway, the applicant wishes to remove the prohibition on the use of the "outdoor" area between Shop 1 and the adjoining building.

The use of the outdoor area as part of the refreshment room premises (Shop 1) generates additional car parking provisions (2 spaces). Previous approvals over the site have effectively used up all available credit spaces. As such, the applicant wishes to pay a cash contribution in lieu of the parking spaces, under the provisions of S94 Plan 23 – Offsite Parking.

This application has been reported to Council as a result of a previous Council resolution (23 January 2007) which stated the following:

"Ensure all new developments in Murwillumbah provide on-site car parking in compliance with Development Control Plan No. 2 Site Access and Parking Code, rather than making monetary contributions, unless exceptional circumstances (such as adverse impacts on street frontages) can be demonstrated."

In accordance with this resolution, Council officers have investigated the issue and are satisfied that the proposal does not constitute "new development" and recommend approval of the proposed modifications, subject to conditions of consent.

RECOMMENDATION:

That Development Application DA04/0580.15 for an amendment to Development Consent No. DA04/0580 for retail shops at Lot A DP 380558; Lot 1 DP 772440; Lot B DP 380558; Lot 1 DP 1104696; Lot 1 SP 77979, No. 10-16 Brisbane Street, Murwillumbah be approved and the conditions be amended as follows: -

1. Delete Condition No. 1B and replace it with Condition No. 1C which reads as follows: -

1C. The development shall be completed in accordance with the Statement of Environmental Effects and Plan No's P478WD-01 (Rev C); WD-02 (Rev C); WD-03 (Rev C); WD-04 (Rev C); WD-05 (Rev C); and WD-06 (Rev A) prepared by Glen Petersen Architects and dated 18/07/05, except where modified by Plan No. P478WD-02 (Rev H) dated 5 December 2005, except where modified by Plan No. SH1/2-4309 (as highlighted), prepared by Mina Drafting Pty Ltd and dated 18 August 2009 (2 Sheets), except where varied by these conditions.

2. Delete Condition No. 18A and replace it with Condition No. 18AA which reads as follows:-

18AA. Section 94 Contributions

- (i) 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 for the outdoor area adjacent to Shop 1 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.

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

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

a. Tweed Road Contribution Plan: \$19,479

S94 Plan No. 4 (Version 4.0)

Sector9_4

b. Shirewide Car Parking

2 space/s @ \$15907 per space/s \$31814

(\$0 base rate + \$15907 indexation)

S94 Plan No. 23

3. The following new GENERAL condition are to be ADDED as Condition 6H and 6I:
- 6H. A construction certificate is required for the proposed roof structure over the outdoor area adjacent to Shop 1.
- 6I. The construction certificate shall incorporate details of the fire rated wall which is required along the eastern external boundary of the proposed outdoor area, in accordance with the provisions of the Building Code of Australia (BCA).
4. The following new PRIOR TO CONSTRUCTION CERTIFICATE condition is to be ADDED as Condition 18C:

18C. 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 applicable to the outdoor area adjacent to Shop 1 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:

Outdoor Area Adjacent to Shop 1

Water DSP2: 0.0936 ET @ \$10709 per ET \$1002.40
Sewer Murwillumbah: 0.2114 ET @ \$5146 per ET \$1087.90

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.

5. The following new PRIOR TO CONSTRUCTION CERTIFICATE condition is to be ADDED as Condition 18D:
- 18D. Prior to the issue of a Construction Certificate for the roof structure over the outdoor area adjacent to Shop 1, documentation is to be submitted demonstrating that the Right of Carriageway over the outdoor area has been extinguished, to the satisfaction of Council's General Manager or his delegate.

REPORT:

Applicant: Mr A Yap

Owner: The Owners Strata Plan 77979 and Lykapa Pty Ltd

Location: Lot A DP 380558; Lot 1 DP 772440; Lot B DP 380558; Lot 1 DP 1104696; Lot 1 SP 77979, No. 10-12; 14 & 16 Brisbane Street, Murwillumbah

Zoning: 3(b) General Business

Cost: N/A

BACKGROUND:

The existing Shopping centre originally gained development consent (DA04/0580) in October 2004 for the construction of 7 retail shops. Several Section 96 applications to modify the consent have been approved since then, resulting in the existing development having only 6 premises, made up of 2 shops, 3 refreshment rooms (Subway; Sushi and Gelato) and a bottle shop.

The original application for the entire site incorporated the use of the outdoor area (adjacent to Shop 1), but was deleted from the original consent due to the outdoor area being encumbered by a Right of Carriageway over the outdoor area, which had not been extinguished. The use of the outdoor area has never been a planning issue; rather a legal one. All approvals for the site to date have not permitted use of the outdoor area, which benefits the adjoining business (Budds Farm Supplies Pty Ltd).

PROPOSED DEVELOPMENT:

The applicant has provided written notification that legal action has begun to extinguish the Right of Carriageway over the outdoor area. The final process leading to the extinguishment of the Right of Way has started in that a Plan and Section 88B Instrument have been prepared and those documents have already been signed by Lykapa Pty Ltd and the Owners Corporation. Once the appropriate documents are executed by Budds Farm Supplies Pty Ltd and the National Australia Bank, registration will then proceed after that.

As a result of the extinguishment of the Right of Carriageway, the applicant wishes to remove the prohibition on the use of the "outdoor" area between Shop 1 and the adjoining building. The proposed modification seeks to enable the outdoor area as a refreshment room, in conjunction with the approved internal use of Shop 1 as a refreshment room (approved under DA07/1010). The premises is now proposed to operate as a Chinese Restaurant (rather than Gelato business) incorporating both indoor and outdoor dining. The S96 application for DA07/1010 is being assessed concurrently (under delegation) with this application in regard to the proposed Chinese Restaurant.

The use of the outdoor area as part of the refreshment room triggers additional car parking requirements. Previous approvals over the site have effectively used up all available credit spaces. As such, the applicant wishes to pay a cash contribution in lieu of the parking spaces, under the provisions of S94 Plan 23 – Offsite Parking.

In 2006, Council received a report titled the Murwillumbah CBD Parking Study. A copy of the report is **attached**. The report investigated the provision and adequacy of public and private parking within the Murwillumbah CBD. The study also attempted to reconcile the demand for parking created by businesses within the Murwillumbah CBD with the supply of both private and public car parking.

Based on the findings from the study, a series of short term policy and physical options were recommended to Council to address future provision of parking within the Murwillumbah CBD. One such policy option was:

Currently new developments are permitted to pay cash contributions to cover shortfalls in the provision of on-site customer car parking. As there is a shortage of land for Council to provide new public car parks it is proposed to restrict Section 94 Plan 23 Offsite Parking contributions such that all new developments must provide parking as required by DCP2 Site Access and Parking Code. In exceptional circumstances based on merit considerations such as undesirable impacts on street frontages caused by driveway penetrations Council may still consider accepting cash contributions in lieu of on-site provision of parking. This will ensure most developments comply with DCP2 Site Access and Parking Code and reduce the need for Council to provide parking in the future.

Note: One (1) unsupplied parking space in Murwillumbah would normally be charged \$15, 907 in accordance with the recently amended Tweed Section 94 Plan No. 23.

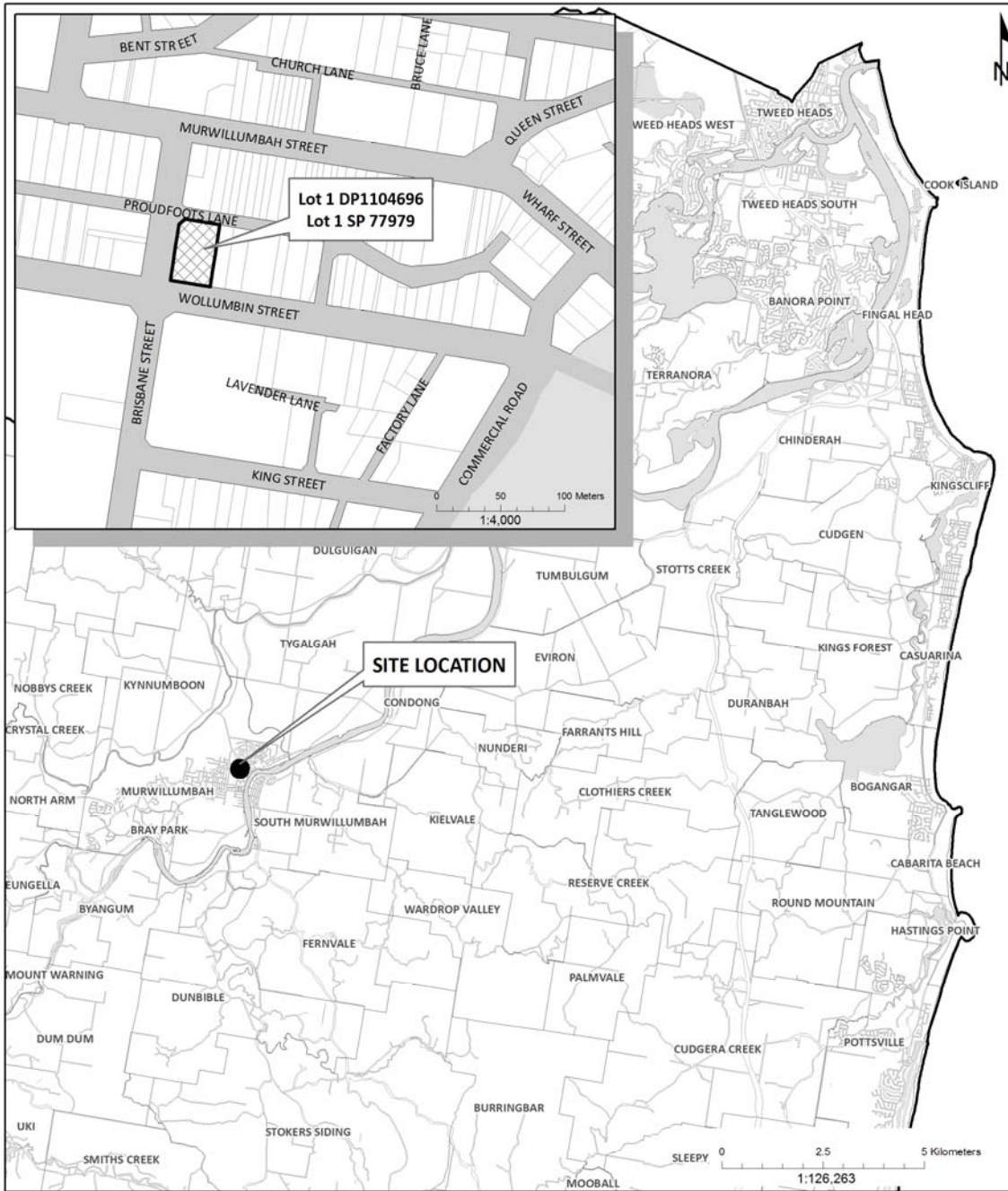
As a result of the findings from the study and the options recommended, Council resolved to endorse a number of short term actions to reduce car parking implications within the Murwillumbah CBD (A copy of the Council resolution and associated report is **attached**) . The most applicable resolution stated:

“Ensure all new developments in Murwillumbah provide on-site car parking in compliance with Development Control Plan No. 2 Site Access and Parking Code, rather than making monetary contributions, unless exceptional circumstances (such as adverse impacts on street frontages) can be demonstrated.”

In accordance with this resolution, Council officers have investigated the issue and are satisfied that the proposed modifications do not constitute “new development”, as noted in the body of the following report.

Although not highlighted within the applicant’s Statement of Environmental Effects, it is also noted that the proposed modifications incorporate the construction of a patio over the outdoor area.

SITE DIAGRAM:



LEGEND

Lot 1 DP 1104696; Lot 1 SP 77979
 (Formerly Lots A DP 380558, Lot B DP 380558 & Lot 1 DP 772440)
 No. 10-16 & No. 1/10-16 Brisbane Street, Murwillumbah

Filename: z:\esri\planning\mxd\A4P_B&W_SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 24 September, 2009

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "Dial before You Dig" enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.



Cadastre 24 September, 2009

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Coordinate System - MGA Zone 56
 Datum - GDA 94

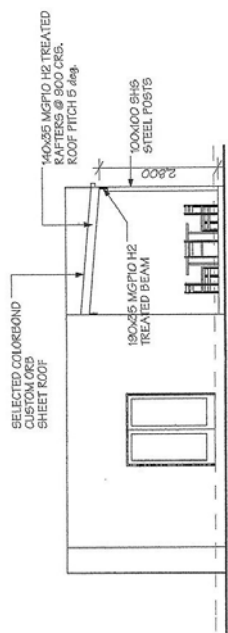
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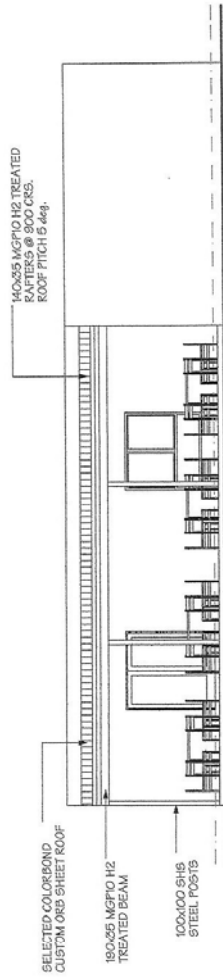
Tweed Shire Council

PO Box 816,
 Murwillumbah
 NSW 2484

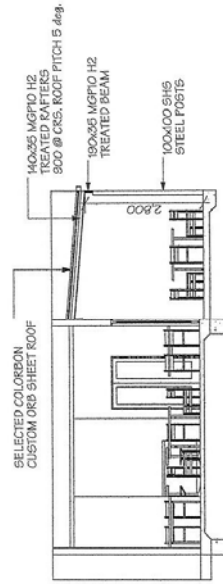
Tel: (02) 6670 2409
 Fax: (02) 6670 2483



FRONT ELEVATION



R.H. SIDE ELEVATION



SECTION A - A

NOTE:
ALL FOOTINGS, SLAB, BRACING & TIE-DOWN TO ENG. DETAIL

NOTE:
ALL DIMENSIONS, CONSTRUCTION METHODS AND MATERIALS TO BE CHECKED BY THE CLIENT BEFORE CONSTRUCTION.
ALL MEASUREMENTS TO BE TAKEN IN PREFERENCE TO SCALING

AMENDMENTS	
DRAWN	H. HANNA
DATE	18/08/09
SCALE	1:100 ON A3
DRAWING NO.	SH-272-45-09

ALL BUILDING CONSTRUCTION TO COMPLY WITH THE LOCAL AUTHORITY BY-LAWS AND RELEVANT PROVISIONS OF THE BUILDING CODE OF AUSTRALIA 1996 USE GIVEN DIMENSIONS IN PREFERENCE TO SCALE THESE DRAWINGS, THE DESIGN AND THE COPYRIGHT THEREFORE ARE THE PROPERTY OF MINA DRAFTING AND MUST NOT BE USED, RETAINED OR COPIED WHOLLY OR IN PART WITHOUT THE WRITTEN PERMISSION OF MINA DRAFTING.

PROPOSED ADDITION AT
SHOP 1/10-16 BRISBANE STREET
MURWILLUMBAH, NSW 2484
FOR ...ALAN YAP

MINA DRAFTING P/L.
 GBS LIC: 162951
 31 COLLINS CRESCENT
 MURWILLUMBAH, N.S.W. 2484
 PH: (07) 55047019
 FAX: (07) 55047019
 EMAIL: MINA@MINADRAFTING.COM.AU

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

Section 96 (1A) of the Act states that in order to grant consent, the consent authority must consider the following:

- “(a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations.”*

Substantially the Same Development

The proposed modifications relate to the use of the originally approved retail shop development. The amendments involve the existing outdoor area adjacent to Shop 1. The use of this area (upon extinguishment of the existing Right of Carriageway) would not result in any significant changes to the approved uses or the overall appearance of the building. As such, the proposal is considered to be substantially the same development, as that originally approved under Development Consent DA04/0580.

Likely Environmental Impact

Extinguishment of the Right of Carriageway

Although the extinguishment of the Right of Carriageway has not been finalised, the applicant has provided written documentation, confirming agreement between both parties to this effect. It is also noted that legal documentation includes a Plan and Section 88B Instrument for the creation of an easement to permit an encroaching structure (as a result of the Budds Hardware building encroaching onto the subject site), which is not part of this application.

An appropriate condition of consent has been applied with regard to the final documentation being provided, demonstrating the removal of the Right of Carriageway, prior to the issue of a Construction Certificate for the proposed roof structure over the subject outdoor area.

Car Parking Provisions

The most recent approval over the site (DA07/1010) relates to the use of Shop 1 as a Gelato Shop. The assessment of that application concluded that 1.814 credit spaces remained over the site. It should be noted that Council are also currently assessing a

proposed Change of Use application for Shop 5, which is effectively “on hold” until this application is determined. The parking requirements for Shop 5 will use up the remaining credit spaces.

The proposed use of the outdoor area (33.84m²) adjacent to Shop 1, in conjunction with the approved refreshment room, generates the following parking requirements (which are based on parking calculations (i.e. 70% concession for customer parking) applied over the site throughout the history of the development):

1 additional staff member = 1 space / staff – 20% ESD = 0.8spaces
1 space / 7m² dining area = (33.84 / 7) – 70% concession = 1.45 spaces
Total = 2.25 spaces

The applicant has also requested the use of 0.82 credit spaces from DA07/1010.03 (being assessed concurrently), which effectively reduces the required parking provisions to 1.43 spaces. However, In accordance with the provisions of DCP A2, the 1.43 spaces must be rounded up to the nearest whole number. That is, **two (2) car spaces** are generated by the proposed modifications.

As a result of all credit spaces being used up by a separate application and no other opportunity is available for on-site car parking; the applicant has requested the payment of a cash contribution in lieu of supplying the additional spaces on-site.

As noted above, Council’s resolution to “*ensure all new developments in Murwillumbah provide on-site car parking in compliance with Development Control Plan No. 2 Site Access and Parking Code, rather than making monetary contributions, unless exceptional circumstances (such as adverse impacts on street frontages) can be demonstrated*” must be taken into consideration.

The applicant has made the following submission, with regard to exceptional circumstances:

- *“The proposed modification is not a new development, rather, it is simply an infill of the existing outdoor area, development of which was contemplated by the original Development Application and Consent, however it could not be approved at that time because the right of carriageway had not been extinguished.*
- *Modification of the original consent is appropriate because the additional area of 33.84m² is only a very minor increase in the overall floor area of the original development and because the right of carriageway has now been extinguished after extensive negotiations with the benefited party.*
- *Extinguishment of the right of carriageway has taken considerably longer than anticipated and this creates an exceptional circumstance in that it has delayed the applicant’s ability to lodge an application to use the area and therefore the application should be treated as a modification only and not a new development in terms of Council’s resolution.*
- *In addition, the proposed use will provide an active frontage to that section of Murwillumbah Street and eliminate the potential for kerb penetrations for vehicles to actually access the right of carriageway. In overall terms this will provide positive impacts on the street frontage.”*

The applicant's submission that the proposed development is not new development is concurred with. It is also noted that Council's Traffic Engineer provided a similar comment in April 2008 in relation to the same issue on the subject site, stating that it could be argued that...*'the change of use of the individual shops in this complex is not "new development" as the development already physically exists, so if a particular usage exceeds the spare on site parking a contribution could be accepted'*.

Council records indicate that the original assessment of the development would have incorporated the use of the outdoor area, if the Right of Carriageway had not been in place. This supports the argument that the proposal is not new development. In addition, the removal of the Right of Carriageway and subsequent use of the outdoor area in conjunction with the approved refreshment room of Shop 1 is considered to be appropriate activation of the street frontage, which is encouraged by Council's Murwillumbah Town Centre DCP (Section B22).

As such, the payment of a cash contribution for the two (2) spaces is considered to be acceptable in this instance, on the basis that the Right of Carriageway will be extinguished in the near future. Appropriate conditions of consent have been applied in this regard.

Cash Contributions

As the subject site is located within the Murwillumbah CBD area nominated within DCP A2, there is an opportunity for the applicant to pay a cash contribution (pursuant to the provisions of Section 94 Plan No 23 – Off-Site Parking) in lieu of supplying the two (2) spaces required for customer and staff parking. The current monetary rate per car space in the Murwillumbah CBD area is \$15,907. Therefore, the total amount of contributions in this instance is **\$31,814**. Appropriate conditions of consent have been applied in this regard.

Development Contributions

In addition to the proposed payment of cash contribution, the use of the outdoor area triggers the payment of applicable development contributions. S64 Water and Sewer contributions have been calculated, based on the GFA of the outdoor area. Appropriate conditions of consent have been applied in this regard.

To avoid confusion, a new condition has been applied relating to the S64 contributions for the outdoor area only, which is separate from the original S64 contributions (Condition No. 18) applied over the entire development. The new contribution fees will be required to be paid prior to the issue of a construction certificate for the roof structure over the outdoor area.

Construction Works

As noted above, the proposed modifications include the construction of roofing over the existing outdoor area, in the form of timber posts / rafters and Colorbond custom orb sheeting. Council's Building Services Units has assessed the proposed and provided appropriate comments. A Construction Certificate will be required for the structure and needs to incorporate details of the fire rated wall along the eastern external boundary of the outdoor area, in accordance with the provisions of the Building Code of Australia

(BCA). Conditions to this effect have been included in the recommended conditions of approval.

In terms of planning issues, the proposed roof structure is not considered to result in any environmental impacts. Rather, it will provide suitable shelter from rain / sunshine for the customers of Shop 1.

Conclusion

The proposed modifications (including the extinguishment of the Right of Carriageway and subsequent removal of the prohibition on the use of the “outdoor” area between Shop 1 and the adjoining building) are not considered to result in any likely environmental impact upon the surrounding area or community in general.

Consideration of Submissions

The proposed modifications did not require notification. As such, no objections were received.

Public interest

The proposed modifications to Development Consent DA04/0580 are considered to be acceptable in terms of public interest. Given the majority of the required car parking provisions are to be provided on-site (with the applicant being required to pay cash contributions in lieu of the two car spaces triggered by the proposed use of the outdoor area), the proposed modifications are not considered to result in a negative impact upon the existing public car parking provisions in the surrounding area.

OPTIONS:

1. Approve the proposed modifications that result in the payment of a cash contribution in lieu of supplying the additional car parking spaces on-site, subject to the recommended amendments to Development Consent DA04/0580.
2. Refuse the application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has a right of appeal if dissatisfied with the determination.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

Having regard for all of the issues raised by the amendments to the previously approved retail development, the proposed modifications are considered to be acceptable. As noted above, a detailed assessment has been conducted with regard to the car parking requirements as a result of the proposed use of the existing outdoor area. As such, it is

considered that the proposal warrants approval, subject to the recommended amendments to Development Consent DA04/0580.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Murwillumbah CBD Parking Study (ECM 7023534)
 2. Council Report and Minutes 23 January 2007 (ECM 7023553)
-

14 [PR-CM] Fees in Relation to Construction Certificate Applications

ORIGIN:

Building & Environmental Health

SUMMARY OF REPORT:

In late May 2009 a written submission was received by Council from Coastline Building Certification Group Pty Ltd in relation to Councils proposed 2009/2010 fees and charges as set out in the Draft Management Plan. The submission specifically related to Councils proposed fees relating to the approval of Construction Certificates and building inspections fees.

Similar submissions have been made by this company over a number of years however this report has been prepared to address the issues raised and provide some historical background in the formulation of Councils current fees and charges structure applicable to Construction Certificates.

The review of this matter has highlighted the opportunity to seek increased inspection fees for Construction Certificate applications. It therefore recommended that Council approve the public exhibition of an amendment to Council's 2009/2010 adopted Fees and Charges.

RECOMMENDATION:

That Council: -

- 1. Approves the public exhibition of the proposal to increase the Construction Certificate fee for all classes of buildings including the flat rate for single dwellings by \$50.00.**
- 2. Notes that a further report will be submitted to Council following the completion of the public exhibition referred to in (1) above, seeking final Council endorsement of the proposed fee increases.**
- 3. Advises Coastline Building Certification Group Pty Ltd that their submission has been reviewed and a marginal increase is proposed to Construction Certificates however Council considers that a flat fee for single dwellings and alterations and additions to single dwellings is equitable due to the manner in which these applications are assessed.**

REPORT:

On 22 May 2009 a submission was received by Coastline Building Certification Group Pty Ltd in relation to Councils proposed 2009/2010 fees and charges specifically in relation to the approval of Construction Certificates and related inspections. Their submission is reproduced below:

"I write concerning the Draft Fees and Charges found in Council's Draft Management Plan which is to be considered by Council for adoption on the 28 May 2009.

I note an article in the Tweed Sun newspaper on the 23 April 2009 (copy attached) stating "Council will budget for a \$710,000 shortfall in the general fund next year, mainly due to fewer payments of developer and building fees, meaning cuts to jobs & programs."

This submission will illustrate that the projected shortfall can be reduced by almost 50% by simply charging Construction Certification (approval) and building inspection fees equivalent to those charged by all other Councils on the North Coast of New South Wales. Construction Certification and inspection fees are those fees charged by Council to assess building plans for compliance with the Building Code and to carry out inspections of building works during the course of construction of new buildings. The fees are typically levied on the applicant who may be a builder, project builder, developer or home owner.

The proposed Council charge for its Construction Certification and building inspection fees (item 29 & 32 of the 2009/2010 Draft Fees and Charges Construction Certificate Fees (building) is inadequate, especially when compared to the fees levied by other North Coast Councils for that same building approval and inspection service.

Council's proposed Construction Certification and building inspection fees for a typical \$260,000 home, in comparison to the same construction certificate service and building inspection fees for a \$260,000 home in other Council areas in the North Coast of New South Wales are as follows:

Comparison of Construction Certification & Total Building inspection Fees for a typical \$2601000 home in various local Government Areas North Coast NSW

<i>Byron Shire Council</i>	<i>\$2060 Construction Certificate and inspection fee</i>
<i>Ballina Shire Council</i>	<i>\$1360 Construction Certificate and inspection fee</i>
<i>Lismore Shire Council</i>	<i>\$1289.10 Construction Certificate and inspection fee</i>
<i>Clarence Valley Council</i>	<i>\$1606 construction certificate and inspection fee</i>
Average Council Fee	\$1578
Tweed Shire Council	\$895 proposed 2009/2010 Construction Certificate and inspection fee
Difference in \$ value Tweed Shire Council to other Council areas = minus	
\$683	

If you were to take the average of the four adjacent North Coast Council Construction Certification and inspection rates (2008/2009) year, it can be seen Tweed Shire Council is well below current market rate. The average charge for the four Councils is \$1578. Tweed Council is effectively undercharging \$683 per job for an average house. If Council were to issue 500 such house approvals in one year, Council is forgoing approximately \$341,000 in a financial year.

I have also attached the recommended fee schedule prepared in 2004 by the Australian Institute of Building Surveyors in which they recommend a fee for a Construction Certificate and inspections for a dwelling be a minimum of \$2,000.00.

Given that Council is budgeting for a \$710,000 shortfall in the general fund in the next financial year, Council can reduce this shortfall by almost 50% just by charging market rates similar to those charged by other Councils on the North Coast of NSW.

As Tweed Shire residents and ratepayers, we recognize the extraordinary growth and subsequent demands placed upon Council to provide infrastructure and services to meet the needs of its residents. To this end, we understand the need for Council to seek a variation to the rate capping regime levied on Council by the NSW Government.

However, we are concerned Council is seeking these additional rate charges, for all ratepayers, while not charging standard market rates for its existing services.

By not charging the existing market rates for its current Construction Certification services, I estimate Council is foregoing approximately \$400,000 per year.

Should you wish to discuss my submission in more detail feel free to contact me at your convenience."

The matter was briefly reported to Councils meeting of 28 May 2009 with a recommendation that no change be made to the proposed fees and charges at that time however that a review of the fees structure would be undertaken and a report made back to Council on the matter as part of the September 2009 quarterly budget review.

To give some background Coastline Building Certification Group Pty Ltd is a company that is involved in the private certification and inspection of buildings. This particular company has made a number of similar submissions which date back to around the introduction of private certification in 1998. Each submission has suggested that Council should increase its charges for the certification process. In March 1999 a letter was also received from the Australian Competition and Consumer Commission advising that a complaint had been received from Mark Stapleton and Associates (MSA), which now trades as Coastline, relating to possible contraventions of the Trade Practises Act 1974. Council responded back to the Commission in writing in relation to the letter and in September 1999 the Commission replied to Council advising that it had considered the matter in relation to Councils response and found that there appeared to be no contravention of the Trade Practises Act.

In June 2004 a report was made to Council in relation to a similar submission by Coastline on the Draft Management Plans proposed fees and charges for building

certification. The report resulted in the Council at that time concluding that the fees and charges proposed in the 2004/05 Management Plan Budget by the Building Services Unit were equitable and reflect Councils costs for providing these services.

The most recent submission essentially targets Councils proposed charges for Construction Certificates and building inspection fees, being items 30 and 33 although in paragraph 4 of the letter it specifically identifies items 29 and 32 however item 29 relates to a "Building Advisory Service" (a charge that was introduced last year in the 08/09 budget to charge on an hourly rate of \$120.00 for preliminary Building Code compliance assessments which was to mainly target larger developments) and item 32 relates to "Complying Development Certificates".

Unlike Development Applications the assessment fees applied to a Construction Certificate are not statutorily bound. While Council typically applies a sliding scale of fees based on the estimated cost of the proposed development a flat rate was initially introduced for Construction Certificate applications which related to single dwellings only and alterations or additions to single dwellings. The flat rate applied to these applications is where the proposed works have a value exceeding \$100,000. The reasoning behind a flat rate being charged was due to the cost effective manner in which the applications for single dwellings were able to be assessed by the Building Unit which gave the ability to provide a more competitive rate.

With respect to the current flat rate it should be noted that the 2009/10 fees and charges were revised and resulted in the introduction of a two tiered flat rate for Construction Certificates relating to single dwellings and alterations and additions associated with single dwellings, the first being for works with a value of more than \$100,000 but less than or equal to \$1,000,000 (which is \$235.00) and the second being similar works with a value more than \$1,000,000 (which is \$280.00). Again this flat rate is for the Construction Certificate approval only and only applies to single dwellings and does not apply to any other types of development such as dual occupancies, residential flat buildings, commercial or industrial buildings as the development assessment process is not undertaken by the Building Unit.

With the implementation of private certification in 1998 the owner of a property now has the ability to choose either Council or a privately accredited person to carry out the assessment and approval process in relation to Construction Certificates and Complying Development Certificates together with any mandatory inspections required during construction. The choice in respect of this service would obviously be driven by the level of service available from the provider and the cost for such a service. In the event that the owner of the property chooses to utilise Council in the Construction Certificate process for the erection of a single dwelling the applicant has the ability to have both the Development Application and the application for the Construction Certificate lodged and assessed concurrently as a result of the approval process implemented by the Building Unit.

In comparison, assessing applications separately or having approvals done by different officers for the same development site results in a large amount of duplication during each of the processes however as Tweed Shire Councils Building Surveyors undertake the assessment of both the Development Application and Construction Certificate both processes are undertaken at the same time by a single assessing officer. Furthermore Councils Building Surveyors also assess applications to connect to Councils sewer as

part of this process. With this process there is only a necessity for a single site visit by the assessing officer for all three processes and once each of the assessments have been satisfactorily completed the Building Unit has the ability to prepare and issue the Development Consent, Construction Certificate and sewer approval together which provides a better utilisation of resource for the overall process. It should also be noted that Councils Building Unit receives a substantial amount of income from Development Applications as well as the fees from Construction Certificates, Sewer Applications and the required inspections relating to these applications.

In regard to the flat rate available for the issue of a Construction Certificate for single dwellings a review of Councils fees and charges relating to these approvals which includes those relating to inspection fees has been undertaken from the date that the matter was previously reported to Council in 2004. These figures have been set out below for Councils information.

2004/05: Flat Rate - \$110.00 – Inspection Fee \$80.00 ea. – Minimum 4 inspections.

2005/06: Flat Rate - \$110.00 – Inspection Fee \$85.00 ea. – Minimum 4 Inspections.

2006/07: Flat Rate - \$200.00 – Inspection Fee \$95.00 ea. – Minimum 4 inspections

2007/08: Flat Rate - \$210.00 – Inspection Fee \$100.00 ea. – Minimum 6 inspections

2008/09: Flat Rate - \$225.00 – Inspection Fee \$105.00ea. – Minimum 6 inspections.

2009/10: Flat Rate - \$235.00 and \$280.00 – Inspection Fee \$110.00 ea.– Minimum 6 inspections

As can be identified from the information provided above, from the 2006/07 period Councils Building Services have increased its annual flat rate in excess of the recommended annual increase in Councils fees and charges and while it may be appropriate to now review this particular charge Council needs to be mindful of its current ability to provide a cost effective and streamlined process with respect to the processing of applications for single dwellings and consider the added financial impact on property owners if Council were to have an unjustified increase to this particular charge.

In regard to the inspection fees Council has, as an organisation, not had a consistent inspection fee charge and in fact the fees charged by the Building Unit have been greater than that charged by other units within Council for similar services. However a recent review of this charge has seen a more consistent approach in the development of inspection fees throughout Council with several other areas now increasing the inspection fee charged for the 2009/10 budget to be consistent with that charged by the Building Unit. These inspections include stormwater inspections carried out by Planning and Infrastructure Unit, Compliance Certificate inspections undertaken by the Subdivisions Unit and food premises inspections undertaken by the Environmental Health Unit. It is therefore considered that the inspection fee proposed for the 2009/10 period is appropriate as the current fee has become more widely accepted throughout the organisation for this service and the fee is seen to adequately cover the cost involved in providing this service. Furthermore as Councils Building Surveyors also carry out plumbing and drainage inspections the officer has the ability to look at both areas on a single site visit, for example a final inspection on the building work can also incorporate a

final inspection of the plumbing and drainage work. It should also be noted that Councils Building Unit is currently in the process of undertaking stormwater approvals and inspections for single dwelling which again will provide a more streamlined approval and inspection process and a more efficient utilisation of resource.

The claim made in the May 2009 submission that Council could reduce its budgetary shortfall by almost 50% if Council raised its Construction Certificate and inspection fees is not supported and certainly the shortfall in predicted income is directly the result of the economic downturn during that period which unquestionably effected local building approvals. To give an example of this a check on the number of Development applications lodged with Council during the January 1 to June 30 periods over the last four years identified the following figures:

2006 - approximately 723 applications.

2007 – approximately 670 applications

2008 – approximately 880 applications

2009 – approximately 400 applications

While raising Councils charges for approvals to a certain level could be justified and certainly provide an ability to gain further income the main purpose of the introduction of private certification was to provide competition and therefore too large an increase in fees could have the reverse effect upon Council in that Council may not be engaged to carry out the certification work and therefore reduce its income in this area.

Currently the ratio of certification work done by Council in comparison to the private sector is approximately fifty percent and therefore it is considered that any dramatic increase in certification fee would see Council loose a greater percentage of this work to the private sector and also drive the cost of certification work up which would be to the detriment of the consumer. Furthermore Councils fees and charges are both advertised and fixed unlike the private sector which does not have to advertise its fees and therefore has the ability to under cut Councils fees and charges.

To look at the comparisons given in the May submission, if Tweed were not to have the current flat rate the Construction Certificate and building inspection fees for the referenced \$260,000 home the charge for a Construction Certificate and mandatory inspections would be \$1086.00. When broken down this amounts to \$426.00 for the Construction Certificate component and \$660.00 for inspections. In comparison the flat rate for a \$260,000 home is \$235.00 for the Construction Certificate plus the \$660.00 for inspections which totals \$895.00.

Therefore in determining any increase to the current fees and charges for a Construction Certificate it is considered that Council is justified in charging a reduced fee for dwellings and alterations and additions to dwellings due to the cost effective manner in which these applications are able to be assessed, determined and issued however given the figures identified in the submission there does appear to be some justification to propose a marginal increase in the overall cost of the Construction Certificate process.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

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15 [PR-CM] Alcohol Free Zones

ORIGIN:

Building & Environmental Health

SUMMARY OF REPORT:

Alcohol-free zones were previously established by Council in 2006 over specified public roads, footpaths and public carparks for the Murwillumbah Town Centre, Tweed Heads and Kingscliff for a period of 3 years. The declaration of these zones has expired.

This report provides for the re-establishment and expansion of the previous alcohol-free zones following appropriate public consultation in accordance with the provisions of *Section 644, 644A and 646 of the Local Government Act 1993*.

RECOMMENDATION:

That Council:

1. Approves the establishment and timeframes of alcohol-free zones in accordance with section 644B of the Local Government Act 1993, within the Tweed Heads, Tweed Heads South, Kingscliff, Salt, Cabarita Beach and Murwillumbah areas over roads, footpaths and public carparks for a maximum period of four (4) years expiring no later than 1 December 2013 as follows:

TWEED HEADS

- Wharf Street between Bay Street and the Queensland border
- Bay Street, east of Wharf Street to John Follent Park
- Chris Cunningham Park public carpark

24 hours per day, all days

TWEED HEADS SOUTH

- Public car park adjoining South Tweed Swimming Pool, Home and Community Care (HACC) and skate park

24 hours per day, all days

KINGSCLIFF

- Marine Parade between Turnock Street and Cudgen Creek
- Turnock Street between Marine Parade and Pearl Street
- Pearl Street between Turnock Street and Seaview Street
- Seaview Street between Pearl Street and Marine Parade

- Lions Park and Faulks Park public car parks and the public carpark adjoining Kingscliff Memorial Park

24 hours per day, all days

SALT

- Bells Boulevard

Between the hours of 4pm December 31 to 10am January 1

CABARITA BEACH

- Pandanus Parade
- Public carpark between Palm Avenue and Pandanus Parade

24 hours per day, all days

MURWILLUMBAH

- Queensland Road between 'Harry Williams Gate' of the Murwillumbah Showgrounds and Murwillumbah Street
- Public car park area near Mount Saint Patricks School on Queensland Road
- Bent Street between Queensland Road and Church Street
- Church Street between Bent Street and Queen Street
- Alice Street between Queen Street and Church Street
- Church Lane
- Police Lane
- Bruce Lane
- Queen Street between Murwillumbah Street and Church Street
- Murwillumbah Street between Nullum Street and Queen Street
- Wharf Street between Queen Street and Tumbulgum Road
- Proudfoots Lane
- Public car parks between Wollumbin Street and Proudfoots Lane
- Commercial Road between Wharf Street and King Street
- King Street between Commercial Road and Brisbane Street
- Public carpark between Lavender Lane and King Street
- Lavender Lane
- Brisbane Street between Murwillumbah Street and Condong Street
- Condong Street between Brisbane Street and Nullum Street
- Nullum Street between Condong Street and Murwillumbah Street
- Wollumbin Street between Nullum Lane and Commercial Road
- Nullum Lane between Wollumbin Street and Byangum Road

- **Byangum Road between Nullum Lane and Muwillumbah Street**
- **Alma Street between Commercial Road and Tweed Valley Road**
- **Tumbulgum Road between Wharf Street and Racecourse Road**
- **Public carpark adjoining Tweed Shire Council civic centre and swimming pool**
- **Sunnyside Lane**
- **Factory Lane between King Street and Wollumbin Street**
- **Budd Park public carpark**
- **Knox Park public carpark**
- **Red Cross Hall public carpark**

24 hours per day, all days

Excluding those businesses approved by Council for the purposes of footpath dining whilst those businesses are trading.

- 2. Delegates to the General Manager authority to vary or suspend the zones for special circumstances.**

REPORT:

The object of alcohol-free zones is an early intervention measure to prevent the escalation of irresponsible street drinking to incidents involving serious crime.

The drinking of alcohol is prohibited in an alcohol-free zone that has been established by a council. Public places that are public roads, footpaths or public car parks may be included in a zone. Alcohol-free zones promote the use of these roads, footpaths and car parks in safety and without interference from irresponsible street drinkers.

Council approved footpath alfresco dining areas are not included within the alcohol-free zones. These areas are clearly delineated by Council placed footpath markers. However businesses operating outside of these markers will expose their patrons to the regulatory provisions.

To validly establish an alcohol-free zone a council must comply with the procedures in sections 644 to 644C of the *Local Government Act 1993* (the *Act*) and the *Ministerial Guidelines on Alcohol-Free Zones (Guidelines), 2009*.

In June 2006 Council resolved to establish specified streets and public car parks within Tweed Heads, Murwillumbah and Kingscliff as alcohol-free zones. The resolution was for a period of 3 years only in accordance with the then maximum period specified within the *Act*. Whilst the *Act* prevents an extension of time for the operation of an alcohol-free zone, a zone can be re-established after a phase of public consultation and advertising.

The preparation of a proposal expanding on the areas established in 2006 was prepared, (See Attachment 1 for public exhibition material), and a public consultation period of thirty (30) days was undertaken to satisfy the requirements of Sections 644 and 644A of the *Act*. As a result of this consultation, 9 written submissions were received and a number of telephone enquiries taken. All submissions and enquiries were supportive of the proposal with the NSW Police Force requesting further consideration of other areas as outlined below:

1. Bay Street, east of Wharf Street to John Follent Park, including Chris Cunningham Park public carpark TWEED HEADS
2. Pandanus Parade and public carpark between Palm Avenue and Pandanus Parade CABARITA BEACH
3. Lions Park and Faulks Park public car parks and the public carpark adjoining Kingscliff Memorial Park KINGSCLIFF

Following proper consideration of the submissions as set out under the *Guidelines* these requests appear valid therefore the locations have been included.

The nominated areas, inclusive of the new areas arising from the exhibition submissions, are as follows:

TWEED HEADS

- Wharf Street between Bay Street and the Queensland border
- Bay Street, east of Wharf Street to John Follent Park
- Chris Cunningham Park public carpark

24 hours per day, all days

TWEED HEADS SOUTH

- Public car park adjoining South Tweed Swimming Pool, HACC and skate park

24 hours per day, all days

KINGSCLIFF

- Marine Parade between Turnock Street and Cudgen Creek
- Turnock Street between Marine Parade and Pearl Street
- Pearl Street between Turnock Street and Seaview Street
- Seaview Street between Pearl Street and Marine Parade
- Lions Park and Faulks Park public carparks and the public carpark adjoining Kingscliff Memorial Park

24 hours per day, all days

SALT

- Bells Boulevard

Between the hours of 4pm December 31 to 10am January 1

CABARITA BEACH

- Pandanus Parade
- Public carpark between Palm Avenue and Pandanus Parade

24 hours per day, all days

MURWILLUMBAH

- Queensland Road between 'Harry Williams Gate' of the Murwillumbah Showgrounds and Murwillumbah Street
- Public car park area near Mount Saint Patricks School on Queensland Road
- Bent Street between Queensland Road and Church Street
- Church Street between Bent Street and Queen Street
- Alice Street between Queen Street and Church Street
- Church Lane
- Police Lane
- Bruce Lane
- Queen Street between Murwillumbah Street and Church Street
- Murwillumbah Street between Nullum Street and Queen Street
- Wharf Street between Queen Street and Tumbulgum Road
- Proudfoots Lane
- Public carparks between Wollumbin Street and Proudfoots Lane
- Commercial Road between Wharf Street and King Street
- King Street between Commercial Road and Brisbane Street

- Public carpark between Lavender Lane and King Street
- Lavender Lane
- Brisbane Street between Murwillumbah Street and Condong Street
- Condong Street between Brisbane Street and Nullum Street
- Nullum Street between Condong Street and Murwillumbah Street
- Wollumbin Street between Nullum Lane and Commercial Road
- Nullum Lane between Wollumbin Street and Byangum Road
- Byangum Road between Nullum Lane and Muwillumbah Street
- Alma Street between Commercial Road and Tweed Valley Road
- Tumbulgum Road between Wharf Street and Racecourse Road
- Public carparks adjoining Tweed Shire Council civic centre and swimming pool
- Sunnyside Lane
- Factory Lane between King Street and Wollumbin Street
- Budd Park public carpark
- Knox Park public carpark
- Red Cross Hall public carpark

24 hours per day, all days

Within Tweed Shire the enforcement of alcohol-free zones is the responsibility of the NSW Police Force. The power to seize and tip out or otherwise dispose of alcohol without the need to issue a warning applies within an alcohol-free zone. The re-establishment of Alcohol-free Zones will provide the NSW Police Force with options beyond their existing 'move on' powers including the confiscation of alcohol or the issue of Penalty Infringement Notices in problem cases.

In accordance with the *Guidelines* maps of all established areas will be provided on Council's Website and publicly advertised by notice through the Tweed Link newspaper. All established alcohol-free zones will not operate until seven (7) days after publication of the notice AND until the roads, footpaths and public carparks affected are adequately signposted.

OPTIONS:

Nil

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil

POLICY IMPLICATIONS:

Nil

UNDER SEPARATE COVER/FURTHER INFORMATION:

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1. Proposals for the Establishment of Alcohol-Free Zones 2009 – Public Exhibition Material (ECM 7019147)
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16 [PR-CM] Progress Report for the 2009/10 Planning Reform Unit Work Program

ORIGIN:

Planning Reforms

FILE NO: GT1/LEP/2006 Pt10

SUMMARY OF REPORT:

The purpose of this report is to provide Council with advice on the progress of the adopted 2009/10 Planning Reform Unit Work Program.

The report highlights the substantial demands currently being placed upon Council to advance a number of significant Council-wide and locality based planning policy projects, as well as facilitating the rezoning of a number of privately owned sites for the future redevelopment.

RECOMMENDATION:

That Council receives and notes the Progress Report for the 2009/10 Planning Reform Unit Work Program.

REPORT:

Following an extensive consultative process with Councillors, a detailed, three year work program for Council's Planning Reform Unit (PRU) was endorsed by Council at its meeting of 16 June, 2009. A copy of the 2009/12 program is provided in Attachment 1 of this report.

Given the high degree of community and developer based interest in the current range of strategic projects and rezoning proposals, it was considered timely for Council to be provided with an update on the progress of the 2009/10 PRU Work Program.

PROJECT CATEGORY	PROJECT TITLE	STATUS
High order strategic Plans	Draft Stage 1 LEP 2010	Awaiting updated s.65 Certificate from Department of Planning (DoP) – recent delays arose through inter-State Government Department policy conflicts on flooding policy. PRU Resources currently engaged in preparing public exhibition, which is now likely to commence in November 2009. Extensive support material and staff / community workshops currently being prepared.
	Draft Tweed Heads LEP	Body of work prepared by Tweed City Centre Taskforce and currently being finalised by DoP in consultation with PRU. Seeking to co-ordinate a joint public exhibition with the Stage 1 Draft LEP 2010, due to commence in November 2009.
Locality Based Plans	Draft Tweed Heads "Cities Taskforce" Masterplan & DCP	Related to Draft Tweed Heads LEP.
	Draft South Tweed DCP	Related to Draft Tweed Heads LEP.
	Draft Pottsville Locality Plan and Development Control Plan	Extensive review has been undertaken by the PRU since early March 2009 working with key TSC stakeholders. Following Council endorsement at its September Meeting, the Draft Plans are currently on public exhibition.

PROJECT CATEGORY	PROJECT TITLE	STATUS
	Draft Hastings Point Locality Plan and Development Control Plan.	Extensive work has been undertaken on the Hastings Point Locality plan by the PRU and Council's consultant Ruker and Associates. Two workshops have been held by Council to workshop issues with the general public. It is anticipated that a report will be submitted to Council's November Meeting, seeking endorsement for public exhibition of a draft plan.
Development Control Plans	New Draft DCP – Tree Preservation Orders	Work has commenced on this Draft DCP within the PRU.
	New Draft DCP – Rural Tourism	Work on the Draft DCP is expected to commence in early 2010.
	New Telecommunications Infrastructure DCP	Draft DCP has been prepared and tabled for preliminary comment at Council's Infrastructure Coordination Committee. It is anticipated the document will be finalised for exhibition in February 2010.
	New Draft DCP - Biodiversity	Council's NRM and PR Units are currently working together in the preparation of this Draft DCP, and a report is expected to be submitted to Council in early 2010.
	Draft DCP - A1 (Hastings Point) Amendment Nos 2 & 3	Amendments 2 and 3 to DCP A1 have been finalised and adopted by Council and are now operational.
	New Draft DCP – Area E (Terranora)	Council officers have regularly liaised with the land owners and consultants, seeking to resolve major environmental, planning and engineering issues, to inform the preparation of a draft DCP and Section 94 Plan. Once these matters are resolved, a report will be submitted to Council.
	Draft DCP (Master-planning)	Due to be commenced in first half of 2010.
	Draft DCP (Urban Design)	Due to be commenced in first half of 2010.

PROJECT CATEGORY	PROJECT TITLE	STATUS
Draft LEPs (Major)	Draft LEP 69 – Seabreeze Estate (Stage 2 rezoning)	Awaiting the final draft of the Local Environmental Scheme from the Consultant (Land Partners). A report is expected to be submitted to Council by late 2009, prior to request for a s.65 Certificate from DoP
	Draft LEP 85 – Pottsville Industrial Lands	PRU has been allocating resources to this project since May 2009. Rezoning submission reviewed by PRU and other Council officers, comments reported back to proponent. Currently working with the proponent to resolve major planning, environmental and engineering issues. A progress report on this rezoning proposal is expected to be submitted to Council's November Meeting.
Draft LEP (Minor)	Draft LEP 35 – Billabong caravan Park (expansion of existing site)	The PRU has given priority to this rezoning proposal in recent months, and has regularly met with the owners and consultants, providing them guidance on the need to address outstanding planning, environmental and engineering issues. Currently awaiting a response.
Review of existing policy documents	Tweed Development Control Plan (TDCP) – All sections	Work on this project is expected to commence in early 2010, subject to progress on other major projects.
	TDCP – s A1 – Residential and Tourist Code	Work on this project is expected to commence in early 2010, subject to progress on other major projects.
	TDCP s A11 – Public Notification	No advancement to date – not a major priority at this stage.
	TDCP s A10 – Exempt and Complying Development	The requirement for review and amendment of this DCP has been superseded by NSW State Government Policy and the Exempt and Complying Development Provisions included within Draft LEP 2010.
	TDCP s B11 – Seaside City	DCP was to be proponent led however works done to date have seen an alternative proposal for the development of Seaside City, thereby negating the need for any PRU input at this stage.

PROJECT CATEGORY	PROJECT TITLE	STATUS
Ongoing commitments	Implementation of the Tweed Urban and Employment Land Release Strategies	Policy operational for approximately 6 months. Regular requests received by private development proponents to seek amendments to the Strategy.
	Bilambil Heights ("Rise"), Cobaki Lakes and Kings Forest release areas	Continued PRU resources provided to assist DAU on matters of these proposals.
	Hastings Point – Young St appeal	Continued PRU resources provided to assist DAU on matters of these proposals.
	S 149 Certificates	Continued GIS resources provided to assist on matters of s.149 certificates.
	Cartography / GIS	Ongoing
	NSW Government Land (Housing and Industrial) Monitor	Ongoing development of Monitoring system in accordance with DoP Monitoring Requirements.
	Strategic Planning Policy	Ongoing
	Development applications	Continued PRU resources provided to assist DAU on matters of these proposals.

CONCLUSION:

Council's Planning Reform Unit is currently attempting to balance the competing demands of necessary strategic policy processes, as well as private, development based rezoning proposals. Apart from the projects identified in this report, the Unit regularly receives requests to consider additional private rezoning proposals, and for reviews to the recently adopted Tweed Urban and Employment Lands Release Strategy 2009. For example, Council has received a request from the owners of the Boyd's Bay Garden World site, to revise the timing of any rezoning of the site in the adopted Strategy from a medium to short term timeframe. In response to this request, Council officers have advised the proponents of the rezoning that they will be seeking a peer review of the proposal from the firm GHD, who were the authors of the Strategy. These requests place an additional resource burden on the Unit, which is forcing consideration of a further "user pays" fees approach to advance those projects outside of the adopted 2009/10 Work Program. The officers will keep Council informed on its progress on these matters.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

The Planning Reform Unit Work Program is advancing a significant review of Council's current planning controls and policies.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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1. 2009/2012 Planning Reform Unit Work Program - Adopted by Council on 16 June 2009 (ECM 7021262)
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17 [PR-CM] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards

ORIGIN:

Director Planning & Regulation

SUMMARY OF REPORT:

In accordance with the Department of Planning's Planning Circular PS 08-014 issued on 14 November 2008, the following information is provided with regards to development applications where a variation in standards under SEPP1 has been supported.

RECOMMENDATION:

That Council notes for the month of September 2009 that there are no Variations to Development Standards under State Environmental Planning Policy No 1 - Development Standards.

REPORT:

On 14 November 2008 the Department of Planning issued Planning Circular PS 08-014 relating to reporting on variations to development standards under State Environmental Planning Policy No. 1 (SEPP1).

In accordance with that Planning Circular, no Development Applications have been supported where a variation in standards under SEPP1 has occurred.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

18 [PR-CM] Development Application DA09/0006 for a Four (4) Lot Industrial Subdivision, Construction of Part of Ozone Street and Associated Drainage at Lot 1 DP 102255, No. 16-18 Ozone Street, Chinderah

ORIGIN:

Development Assessment

FILE NO: DA09/0006 Pt2

SUMMARY OF REPORT:

Council is in receipt of an application for a four (4) lot industrial subdivision at 16 -18 Ozone St, Chinderah. The application includes the construction of 630m of Ozone Street which is presently unformed. The subject site is zoned 4(a) Industrial and has an area of 20,000m². The application seeks consent to subdivide the parent lot into 4 lots with approximate areas of 5000m² each (each with frontage to Ozone St of approximately 38.5m). Future built form is not known at this stage and consent is sought for subdivision and associated road works only.

The site is located along an unformed section of Ozone Street, with access presently provided via a gravel track from Anne Lane. The subdivision therefore requires the construction of approximately 630m of new road (in the designated road reserve), to an urban wider access street standard. The proposed road would be accessed via Chinderah Bay Drive.

The Ozone Street road reserve has a width of 30.18m and an existing open drain is located on its southern side that supports an Endangered Ecological Community (EEC) of Swamp Oak. To accommodate the required road widths (9m wide pavement within 17m wide road reserve), approximately 4500m² (at least half) of the EEC is proposed to be cleared.

In addition, the application proposes to clear all vegetation on the subject site as a result of filling requirements in a flood prone area.

Following public notification, one (1) submission was received, which focused on potential amenity impacts arising from the proposal and queried the number of vehicle trips/day specified by the applicant. These issues have been considered in the assessment of this application as detailed in the following report.

It is noted that the open drainage line is classified as a natural waterway for the purposes of the Water Management Act 2000 (WMA 2000) and the Fisheries Management Act 1994 (FMA 1994). A Controlled Activity Approval (under the WMA 2000) and a Fisheries permit (under the FMA 1994) are therefore required. Neither of these permits have been obtained to date as the proposal was not nominated as integrated development.

Council has been served with a Deemed Refusal Class 1 Appeal in the Land & Environment Court NSW, in relation to this application. However, should this application

be approved (by way of a deferred commencement to allow for a suitable compensatory package to be negotiated and the provision of an aboriginal heritage assessment) it is envisaged that this appeal will be withdrawn. Should the application be refused Council's solicitors will be instructed to defend the appeal commencing with the first call over on 26 October 2009.

It is considered that the application is suitable for a deferred commencement approval to enable environmental and Aboriginal Cultural Heritage to be suitably addressed before any development consent is activated.

RECOMMENDATION:

That Development Application DA09/0006 for a four (4) lot industrial subdivision at Lot 1 DP 102255, No. 16-18 Ozone Street Chinderah be approved subject to the following conditions: -

"DEFERRED COMMENCEMENT"

This consent shall not operate until the applicant satisfies the consent authority by producing satisfactory evidence relating to the matters set out in Schedule "A". Such evidence is to be provided within 6 months of the date of notification.

Upon the consent authority being satisfied as to compliance with the matters set out in Schedule "A". The consent shall become operative and take effect from the date of notification under Section 67 of the Environmental Planning and Assessment Regulations subject to the conditions set out in Schedule "B".

SCHEDULE "A"

Conditions imposed pursuant to Section 80(3) of the Environmental Planning and Assessment Act, 1979 and Section 67 of the Regulations as amended.

- A. A Habitat Restoration Plan relating to a specific site and approved by Council's General Manager or his delegate which demonstrates adequate replacement on a 2 for 1 basis of the Swamp Oak Floodplain Forest impacted by the proposed development. The Habitat Restoration Plan must include:**
- a schedule and timing of works to be undertaken**
 - a statement of commitment by the consent holder to funding the proposed works**
 - a statement of commitment by the consent holder that the works will be completed by qualified and experienced bush regeneration personnel.**
- B. An Aboriginal archaeological heritage assessment shall be prepared by a suitably qualified and experienced consultant to the satisfaction of Council's General Manager or his delegate to determine the impact of the proposed subdivision and road works. The assessment shall include**

consultation with the Tweed Byron Local Aboriginal Land Council and any other related stakeholders. The assessment shall also include any mitigation and management measures where required.

SCHEDULE B

NOTE: THIS PART OF THE CONSENT WILL NOT BECOME OPERABLE UNTIL COUNCIL ADVISES THAT THE MATTERS CONTAINED IN SCHEDULE A ARE SATISFIED.

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos: SK20090604 (9m wide road) and SK20090610 (road layout) prepared by Opus Qantec McWilliam and dated June 2009, Figure 6.0 (9m wide road option 2) as amended in red, prepared by Opus Qantec McWilliam and dated November 2008, DWG 00926-01 (Proposed Subdivision Plan) prepared by Planit Consulting and dated October 2008, and the Habitat Restoration Plan approved under Schedule A of this consent, except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0125]

3. 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]

4. The level of fill placed on the site shall not exceed RL 2.0m AHD.

[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

5. Prior to the issue of a Construction Certificate, a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the works (minimum \$1,552).

The bond may be called up at any time and the funds used to rectify any non-compliance with the conditions of this consent which are not being addressed to the satisfaction of the General Manager or his delegate.

The bond will be refunded, if not expended, when the final Subdivision Certificate is issued.

[PCC0275]

6. In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 1979 (as amended), a construction certificate for

SUBDIVISION WORKS OR BUILDING WORKS shall NOT be issued until any long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

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

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

[PCC0485]

8. **A 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]

9. **The proponent shall submit plans and specifications with an application for construction certificate for the following civil works and any associated subsurface overland flow and piped stormwater drainage structures designed in accordance with Councils adopted Design and Construction specifications.**

URBAN ROAD

- (a) **Construction of an urban bitumen sealed road formation with upright kerb & gutter to a 9m sealed pavement width within a 17m road reserve width as per Council's road works standards for an access street with a bus route.**

INTERSECTION

- (b) **Construction of an intersection layout for a basic left turn treatment in accordance with AUSTRROADS Pt 5 "Intersections at Grade" giving particular attention to sight distance.**

[PCC0875]

10. **Prior to the issue of a Construction Certificate the following detail in accordance with Councils adopted Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.**

- (a) **copies of compliance certificates relied upon**

- (b) four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:
- earthworks
 - roadworks/furnishings
 - stormwater drainage
 - water supply works
 - sewerage works
 - landscaping works
 - sedimentation and erosion management plans
 - location of all service conduits (water, sewer, Country Energy and Telstra)

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

[PCC0985]

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

[PCC1105]

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

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

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

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

[PCC1145]

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

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

[PCC1155]

14. Where water is to be drawn from Councils reticulated system, the proponent shall: -

- Make application for the hire of a Tweed Shire Council metered standpipe including Councils nomination of point of extraction.
- Where a current standpipe approval has been issued application must be made for Councils nomination of a point of extraction specific to the development.
- Payment of relevant fees in accordance with Councils adopted fees and charges.

[PCC1205]

15. Prior to the issue of a construction certificate the applicant is required to lodge an application to install/operate an onsite sewerage management

system (private sewage ejection pump station) under Section 68 of the Local Government Act 1993, pay the appropriate fee and be issued with an approval.

[PCC1285]

16. Engineering plans and specifications lodged with an application for a construction certificate are to provide detail for the following works: -
- Common sewer rising main to be accepted as Council infrastructure with each lot to have a private pressure pump station.
 - The pump stations are to be designed within a small compound that includes the control box and concrete slab.
 - A boundary assembly shall be provided for each lot which is no more than 1m from the point on the boundary where the main from the pump station crosses into the road reserve.
 - The pump stations and rising main are to be designed in accordance with Council's design and construction specifications and the WSA 07 pressure sewer code of Australia.

[PCCNS01]

17. Prior to issue of a construction certificate a Sediment & Erosion Control Management Plan relating to the access road and open drain shall be provided to Council to the satisfaction of Council's General Manager or delegate.

[PCCNS02]

18. Prior to issue of a construction certificate a Water Quality Monitoring Program shall be provided to Council to the satisfaction of Council's General Manager or delegate.

[PCCNS02]

19. Adequate transverse drainage shall be provided to connect existing stormwater runoff discharge points from the north of Ozone Street through to the open drain on the southern side of the new carriageway. Details of the transverse drainage shall be submitted with the s68 Stormwater Application for separate Council approval prior to the issue of a construction certificate.

20. Roadworks in Ozone Street shall maintain the integrity of the earth bund along the southern boundary of the road reserve.

21. Any works associated with the Ozone Street road construction that encroach on private land require the written consent of the affected landholder(s). A copy of the consent(s) shall be submitted to the PCA prior to the works being undertaken.

[PCCNS03]

PRIOR TO COMMENCEMENT OF WORK

22. 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]

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

[PCW0225]

24. Civil work in accordance with a development consent must not be commenced until:-

- (a) a construction certificate for the civil work has been issued in accordance with Councils adopted Development Design and Construction Specification C101 by:

- (i) the consent authority, or
- (ii) an accredited certifier, and

- (b) the person having the benefit of the development consent:

- (i) has appointed a principal certifying authority,
- (ii) has appointed a Subdivision Works Accredited Certifier (SWAC) in accordance with the Building Professionals Board Accreditation Scheme. As a minimum the SWAC shall possess accreditation in the following categories:

C4: Accredited Certifier – Stormwater management facilities construction compliance

C6: Accredited Certifier – Subdivision road and drainage construction compliance

The SWAC shall provide documentary evidence to Council demonstrating current accreditation with the Building Professionals Board prior to approval and issue of any Construction Certificate, and

- (iii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment,
- (iv) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Subdivision Works Accredited Certifier is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction

Specifications. The sign is to remain in place until the Subdivision Certificate is issued, and

- (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the civil work.**

[PCW0815]

- 25. 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]

- 26. All imported fill material shall be from an approved source. Prior to the commencement of work details of the source of fill, description of material and documentary evidence that the fill material is free from any contaminants shall be submitted to Tweed Shire Council for approval.**

[PCWNS01]

- 27. Prior to the commencement of works on the access road and open drain an inspection is to be arranged with Council's Environmental Health Officer to ensure the implementation of the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated June 2009 is undertaken.**

[PCWNS02]

- 28. Prior to the commencement of any demolition works on the site a development application for demolition is to be submitted to and approved by Council.**

[PCWNS03]

- 29. Commencement of works in accordance with the approved Habitat Restoration Plan must be demonstrated prior to clearing of the Swamp Oak Floodplain Forest vegetation.**

- 30. A permit under s198-202 of the Fisheries Management Act 1994 for dredge and reclamation activities must be obtained prior to commencement of the works.**

- 31. A permit under s205 of the Fisheries Management Act 1994 for harm to marine vegetation (seagrass, mangroves, kelp) must be obtained prior to commencement of the works.**

32. Environmental safeguards (silt curtains, booms etc.) are to be utilised during reconstruction of the drainage line to ensure there is no escape of turbid plumes into the aquatic environment. Erosion and sediment controls must be in place prior to commencing, during and after works.

[PCWNS04]

33. Before commencing any works or using any existing works for the purpose of Temporary Dewatering for Construction Purposes, a Controlled Activity Approval under the Water Management Act 2000 must be obtained from the Department of Environment, Climate Change and Water. 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.

[PCWNS05]

34. 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]

DURING CONSTRUCTION

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

[DUR0005]

36. 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 6.00pm

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]

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

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

LA eq 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.

LA eq 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]

- 38. 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]

- 39. All lots must be graded to prevent the ponding of surface water and be adequately vegetated to prevent erosion from wind and/or water to the satisfaction of the General Manager or his delegate.**

[DUR0745]

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

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

[DUR0795]

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

[DUR0815]

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

[DUR0985]

- 43. 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]

- 44. 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]

45. 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]

46. A concrete footpath 1.2 metres wide and 100 millimetres thick is to be constructed on a compacted base along the entire length of the Ozone Street upgrade in accordance with Councils Development Design and Construction Specifications and Standard Drawing SD013.

Twenty four (24) hours notice is to be given to Council's Engineering & Operations Division before placement of concrete to enable formwork and subgrade to be inspected.

[DUR1735]

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

[DUR1795]

48. Before the commencement of the relevant stages of road construction, pavement design detail including reports from a Registered NATA Consultant shall be submitted to Council for approval and demonstrating.

- (a) That the pavement has been designed in accordance with Tweed Shire Councils Development Design Specification, D2.
- (b) That the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils Construction Specifications, C242-C245, C247, C248 and C255.
- (c) That site fill areas have been compacted to the specified standard.
- (d) That supervision of Bulk Earthworks has been to Level 1 and frequency of field density testing has been completed in accordance with Table 8.1 of AS 3798-1996.

[DUR1805]

49. 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]

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

Roadworks

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

Water Reticulation, Sewer Reticulation, Drainage

- (a) Excavation
- (b) Bedding
- (c) Laying/jointing
- (d) Manholes/pits
- (e) Backfilling
- (f) Permanent erosion and sedimentation control measures
- (g) Drainage channels
- (h) Final inspection - on maintenance
- (i) Off maintenance

Sewer Pump Station

- (a) Excavation
- (b) Formwork/reinforcement
- (c) Hydraulics
- (d) Mechanical/electrical
- (e) Commissioning - on maintenance
- (f) Off maintenance

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

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

[DUR1895]

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

[DUR2015]

52. Inter allotment drainage shall be provided to all lots where roof water for future structures cannot be conveyed to the street gutter by gravitational means.

[DUR2285]

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

[DUR2355]

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

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

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

[DUR2375]

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

[DUR2425]

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

[DUR2435]

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

[DUR2445]

58. All works associated with the access road and open drain are to be undertaken in accordance with the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated June 2009.

[DURNS01]

59. The approved water quality monitoring program is to be implemented during any earthworks or construction activity for any runoff from the site, and is to continue until stabilisation of any exposed areas.

[DURNS02]

60. Vegetation clearing at all locations shall be limited to the minimum necessary for the road alignment, and all works sites, stockpile areas, storage facilities and vehicle parking and maintenance areas shall be located on already disturbed land, avoiding any necessity for the clearing of vegetation for these activities.

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

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

[DURNS02]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

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

[PSC0005]

64. 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.

A Subdivision Certificate shall NOT be issued unless the Certifying Authority is satisfied provisions pursuant to Section 109J of the EP&A Act, 1979 have been complied with and the Certifying Authority has sighted Councils contributions sheet and Certificate of Compliance signed by an authorised officer of Council.

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

Water DSP5:	4.8 ET @ \$10709 per ET	\$51403.20
Sewer Kingscliff:	15.5041 ET @ \$5146 per ET	\$79784.10

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

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.

[PSC0165]

65. **Section 94 Contributions**

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

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979, a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

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

(a) Tweed Road Contribution Plan:

19.5 Trips @ \$861 per Trips \$16790

(\$782 base rate + \$79 indexation)

S94 Plan No. 4

Sector6_4

(b) Extensions to Council Administration Offices

& Technical Support Facilities

0.6001 ET @ \$1996.8 per ET \$1198.28

(\$1996.8 base rate + \$0 indexation)

S94 Plan No. 18

[PSC0175]

66. 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.

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.

Heavy Haulage Component

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road

Contribution Plan No. 4 - Version 5 prior to the issue of a construction certificate. The contribution shall be based on the following formula:-

$$\text{\$Con}_{\text{TRCP - Heavy}} = \text{Prod.} \times \text{Dist} \times \text{\$Unit} \times (1 + \text{Admin.})$$

where:

$\text{\$Con}_{\text{TRCP - Heavy}}$ heavy haulage contribution

and:

Prod. projected demand for extractive material to be hauled to the site over life of project in tonnes

Dist. average haulage distance of product on Shire roads
(trip one way)

\\$Unit the unit cost attributed to maintaining a road as set out in Section 7.2 (currently 5.4c per tonne per kilometre)

Admin. Administration component - 5% - see Section 6.6

[PCC0225/PSC0185]

67. Prior to the issue of a Subdivision Certificate a defect liability bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.

The bond shall be based on 5% of the value of the works (minimum as tabled in Council's fees and charges current at the time of payment) which will be held by Council for a period of 6 months from the date on which the Subdivision Certificate is issued. It is the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.

[PSC0215]

68. Any damage to property (including pavement damage) is to be rectified to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate. 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.

[PSC0725]

69. Prior to the issue of a Subdivision Certificate, Works as Executed Plans shall be submitted in accordance with the provisions of Tweed Shire Council Development Control Plan A5 - Subdivisions Manual and Councils Development Design and Construction Specification, D13 - Engineering Plans.

The plans are to be endorsed by a Registered Surveyor OR a Consulting Engineer Certifying that:

- (a) all drainage lines, sewer lines, services and structures are wholly contained within the relevant easement created by the subdivision;
- (b) the plans accurately reflect the Work as Executed.

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

[PSC0735]

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

[PSC0825]

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

- (a) Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property.
- (b) A Section 88B restriction to user shall be placed on the land title of each new allotment to limit site coverage of structures and permanent improvements to retain a minimum of 50% of the area available for flood flow.

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

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

[PSC0835]

72. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council with the application for Subdivision Certificate.

[PSC0855]

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

[PSC0865]

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

The following information must accompany an application:

- (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
- (b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 7.6 and Councils Application for Subdivision Certificate including the attached notes.

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

[PSC0885]

75. Prior to the application for a Subdivision Certificate a Compliance Certificate or Certificates shall be obtained from Council OR an accredited certifier for the following:-

- (a) Compliance Certificate - Roads
- (b) Compliance Certificate - Water Reticulation
- (c) Compliance Certificate - Sewerage Reticulation
- (d) Compliance Certificate - Drainage

Note:

- 1. All compliance certificate applications must be accompanied by documentary evidence from the developers Subdivision Works Accredited Certifier (SWAC) certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual and Councils Development Design and Construction Specifications.
- 2. The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

[PSC0915]

76. The six (6) months Defects Liability Period commences upon the registration of the Plan of Subdivision.

[PSC0925]

77. Prior to the issue of a Subdivision Certificate and also prior to the end of defects liability period, a CCTV inspection of the stormwater pipes and

sewerage system including joints and junctions will be required to demonstrate that the standard of the stormwater system is acceptable to Council.

Any defects identified by the inspection are to be repaired in accordance with Councils adopted Development Design and Construction Specification.

All costs associated with the CCTV inspection and repairs shall be borne by the applicants.

[PSC1065]

78. Prior to issuing a Subdivision Certificate, reticulated water supply and sewerage reticulation shall be provided to all lots within the subdivision in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual, Councils Development Design and Construction Specifications and the Construction Certificate approval.
79. 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.

[PSC1115]

80. The production of written evidence from the local telecommunications supply authority certifying that satisfactory arrangements have been made for the provision of underground telephone supply.

[PSC1165]

81. Electricity

- (a) The production of written evidence from the local electricity supply authority certifying that reticulation of underground electricity has been completed; and
- (b) The reticulation to include the provision of fully installed electric street lights to the relevant Australian standard. Such lights to be capable of being energised following a formal request by Council.

[PSC1185]

82. Prior to the issue of a subdivision certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all s68h2 permanent stormwater quality control devices.

[PSCNS01]

83. Primary weeding and/or planting and establishment will be completed in accordance with Habitat Restoration Plan prior to issue of subdivision certificate

[PSCNS02]

84. Prior to the issue of a Subdivision Certificate, a positive covenant under Section 88B of the Conveyancing Act is to be placed on the title of the

proposed allotments to the satisfaction of Council's General Manager or his delegate. The covenant shall inform future owners that Tweed Shire Council will maintain the pressure pump station and delivery pipe system and require access to install and maintain the pressure pump station. The pump station will remain the property of Council. The 88B Instrument shall benefit Tweed Shire Council and contain a provision enabling the easement or right of access to be revoked, varied or modified only with the consent of Council.

[PSCNS03]

REPORT:

Applicant: CMF Property Services Ltd
Owner: Wareemba Investments Pty Ltd
Location: Lot 1 DP 102255 No. 16-18 Ozone Street, Chinderah
Zoning: 4(a) Industrial
Cost: \$650

BACKGROUND:

The subject site is located on the eastern side of the Pacific Highway and is thus severed/isolated from the existing industrial estate in Morton/Rotumah Streets at Chinderah. The site is one of only four (4) remaining industrial zoned allotments on the western side of the highway.

Surrounding sites are zoned 2(a) Low Density Residential to the north and 3(d) Waterfront Enterprise, with the predominant built form being residential development (including two caravan/holiday parks) to the north west of the subject site. The Action Sands property adjoins the subject site to the west and vacant RTA owned land is located between the subject site and the highway to the east and south.

The site is presently occupied by two (2) dwellings, two (2) sheds, a concrete driveway and a gravel track. All structures are proposed to be demolished, should the application receive approval. The site has been previously used as a nursery and contains both natural and planted areas of vegetation, including an established windrow of eucalypts on the site's eastern boundary.

The existing drain running along the unformed road reserve connects directly with the Tweed River to the west. A tidal floodgate has recently been installed within the larger existing floodgate to allow direct tidal passage between the drainage line and the Tweed River to improve fish passage, reduce mosquito and midge breeding and balance acidity issues. The drain is classified as a natural waterbody for the purposes of the Water Management Act 2000 and the Fisheries Management Act, and therefore requires a Controlled Activity Approval from the Department of Environment, Climate Change and Water and a Fisheries Permit for dredging of 'waterland' from NSW Fisheries. Advice and permits from such agencies has not been sought to date as the application has not been nominated as integrated development. Should the application be favourably supported, the abovementioned permits will be required to be obtained prior to any works commencing.

Construction of Ozone Street is required for approximately 630m to an "urban wider access street" standard. The application originally proposed two options with respect to road design: a 13m wide pavement (within 20m wide road reserve); or a 9m wide pavement (within a 17m wide road reserve). After consideration, the 9m wide pavement option is considered to be the most appropriate for the proposed development, which will cater for a 129 vehicles per day whilst resulting in the least amount of impact on the existing drain and EEC.

The subject site is identified as containing Class 3 Acid Sulphate Soils (ASS), and the applicant has submitted an ASS Management Plan to the satisfaction of Council's Environmental Health Officer.

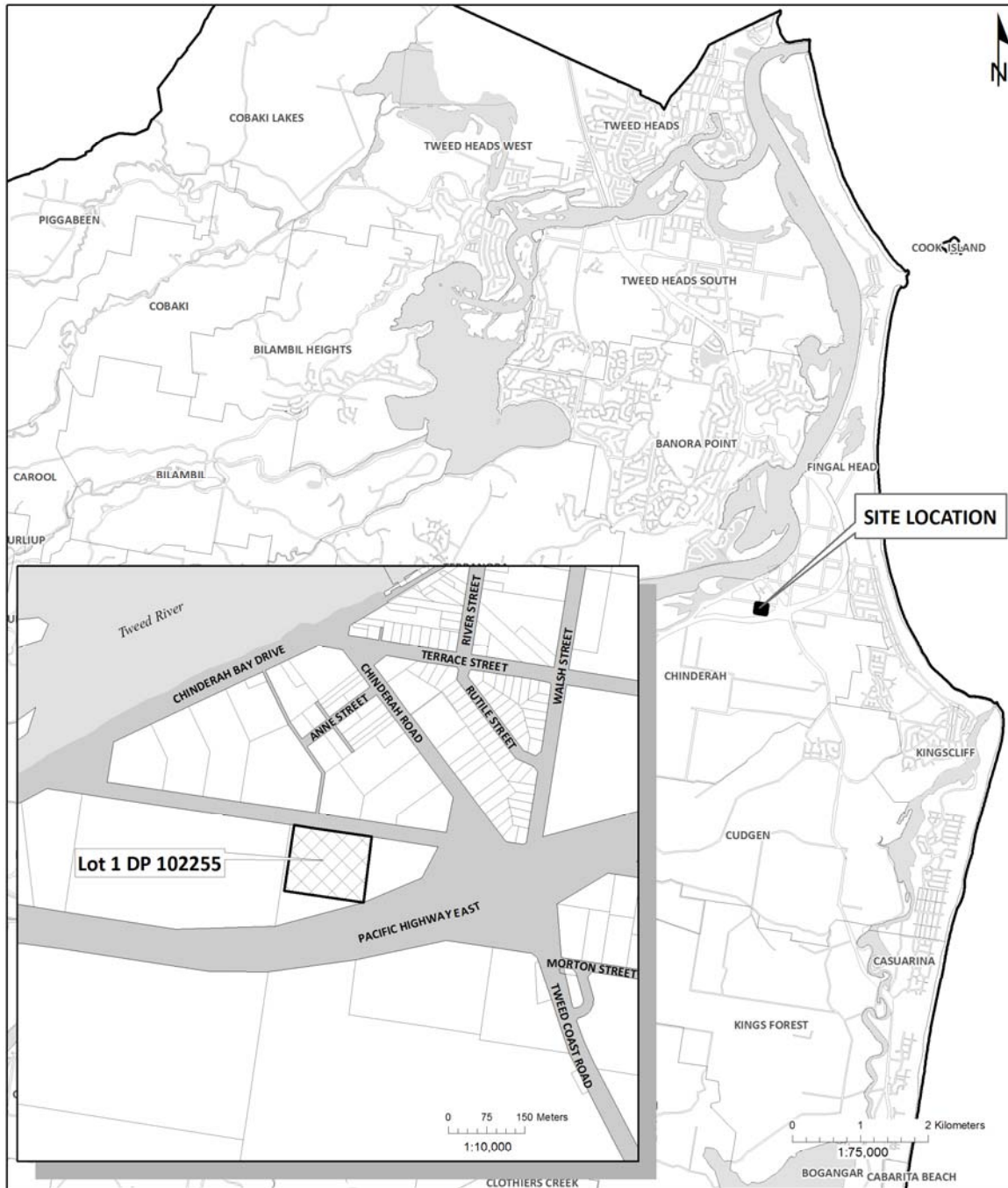
PROPOSAL

The proposal involves the subdivision of the parent allotment into four (4) allotments of similar size (5000m²), each with a direct frontage of 38.5m to the proposed new road pavement along Ozone Street.

The proposal incorporates construction of Ozone Street, concrete lining of the drainage channel and filling of the subject site to meet flooding requirements.

The future uses of the lots are not known at this stage.

SITE DIAGRAM:



LEGEND

Lot 1 DP 10225
No. 16-18 Ozone Street, Chinderah

Filename: z:\esri\planning\mxd\A4P_B&W_SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 13 October, 2009

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "Dial before You Dig" enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.



Cadastre 13 October, 2009
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Coordinate System - MGA Zone 56
 Datum - GDA 94

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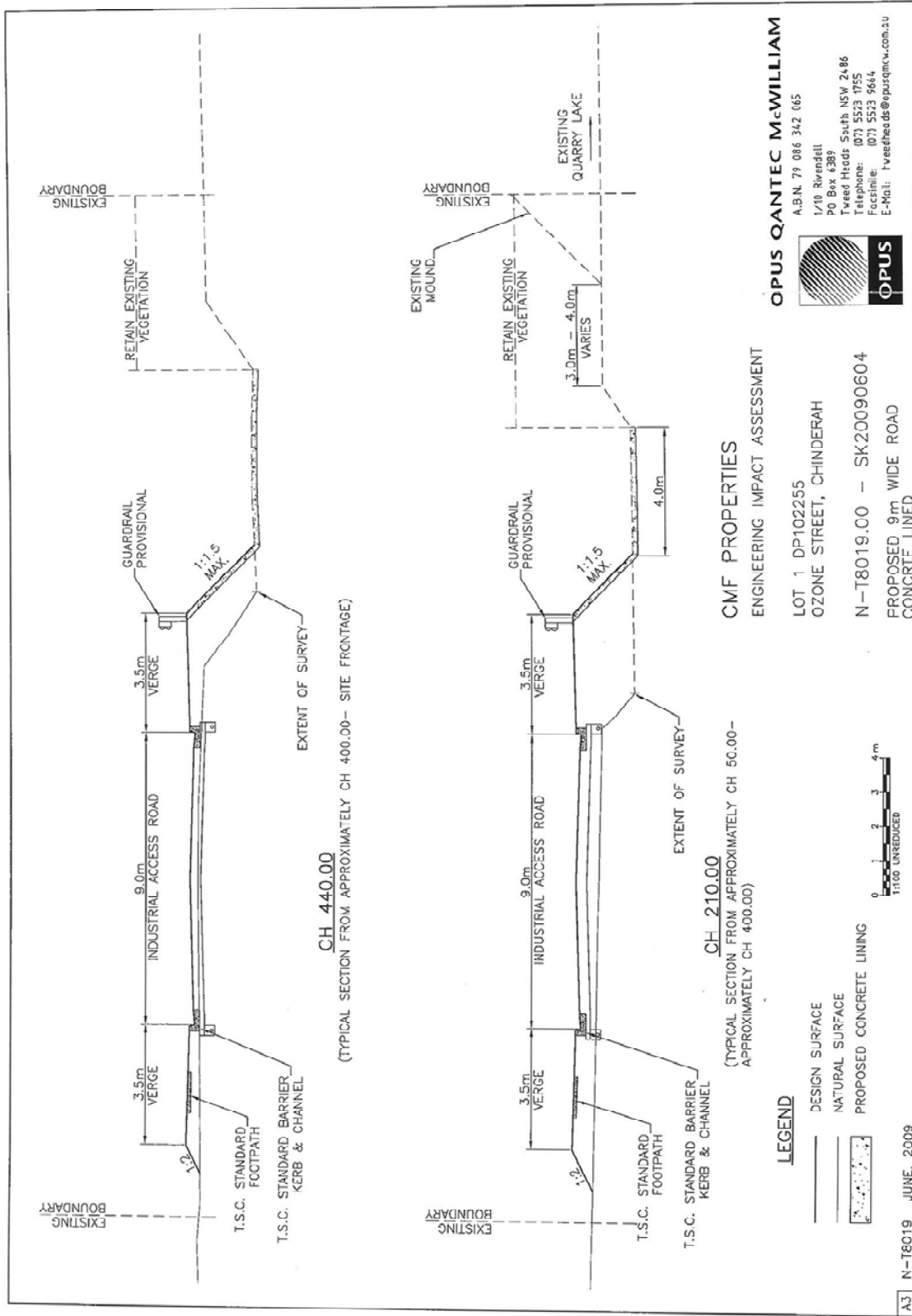


Tweed Shire Council

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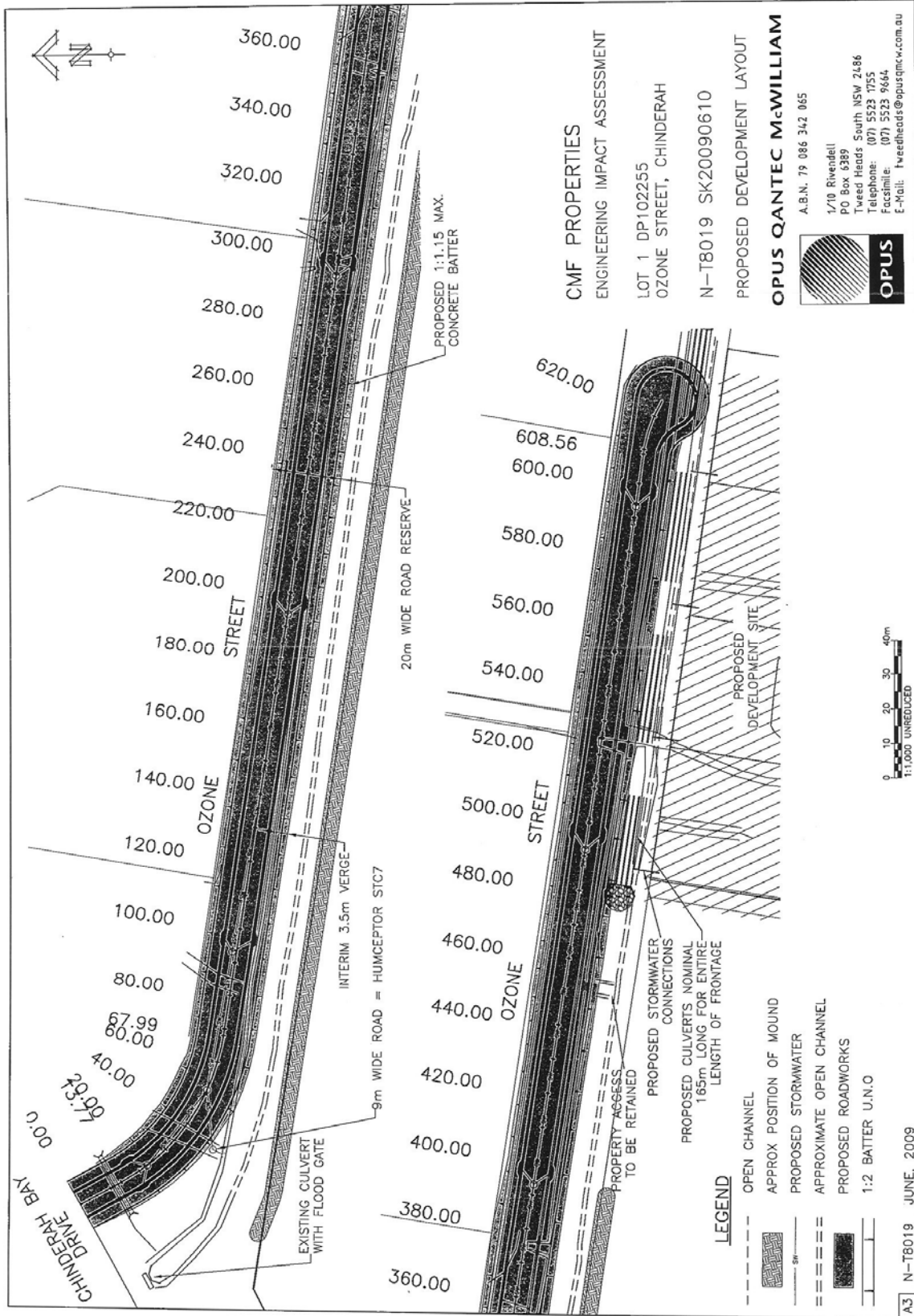
DEVELOPMENT PLANS:

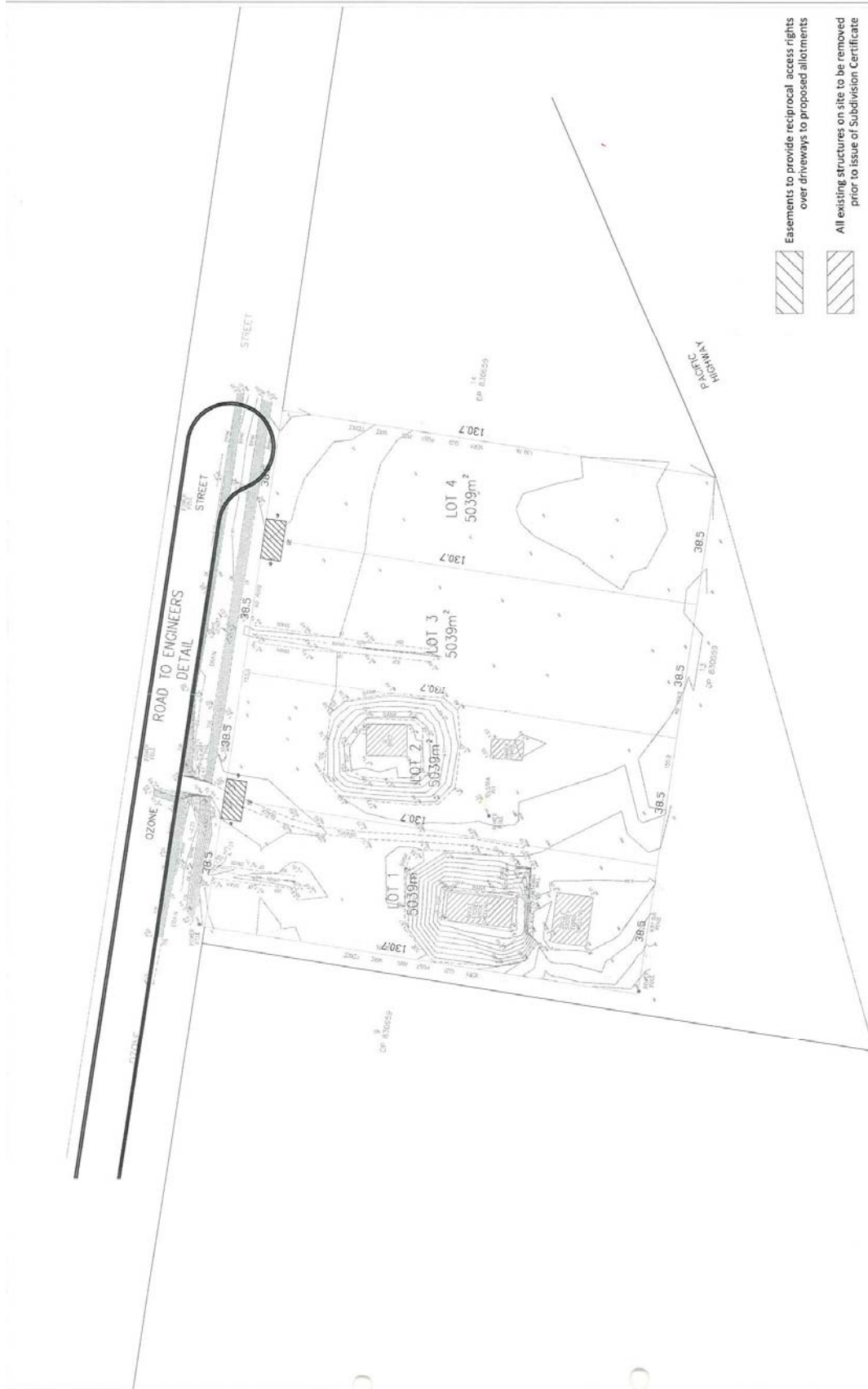




CMF PROPERTIES
ENGINEERING IMPACT ASSESSMENT

OPUS QANTEC McWILLIAM
A.B.N. 79 086 342 665
1/10 Rivendell
PO Box 6389
Tweed Heads South NSW 2486
Telephone: (07) 5523 1755
Facsimile: (07) 5523 9664
E-Mail: tveefields@opusqntec.com.au

LOT 1 DP102255
OZONE STREET, CHINDERAH
N-T8019.00 - SK20090604
PROPOSED 9m WIDE ROAD
CONCRETE LINED





-  Easements to provide reciprocal access rights over driveways to proposed allotments
-  All existing structures on site to be removed prior to issue of Subdivision Certificate



Level 22/47 Gold Coast Highway
 Nobby Beach
 PO Box 205 QLD 4218
 Telephone: 07 5526 1500
 Fax: 07 5526 1502
 Email: admin@planitconsulting.com.au



SCALE	1:500 (P.A.)
DATE	October 2008
REV	
DRAWN	JP
DRAWN No.	01
PROJ No.	40092A

CLIENT
 CMF Properties

DRAWING TITLE
 Proposed Subdivision Plan
 Re-Subdivision of Lot 1 in DP 102255
 Ozone Street, Chinderah

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

Subject to a suitable compensatory offset package, the proposal is considered to be consistent with Clause 4, including Clause 4(d) which relates to sustainable economic development compatible with the environmental and residential amenity qualities of the Tweed.

Clause 5 - Ecologically Sustainable Development

The proposal (with a suitable compensatory offset for the loss of an EEC) is considered to be consistent with Clause 5 as the road to be constructed is a dedicated road reserve and opportunities exist for off-site compensation for vegetation loss.

Clause 8 - Zone objectives

The subject site is zoned 4(a) Industrial pursuant to the provisions of the TLEP 2000. The primary objectives of this zone are:

- *To provide land primarily for industrial development and*
- *To facilitate economic activity and employment generation.*

The proposal is consistent with both primary objectives as it seeks to capitalise on the site's land use zoning to provide for future industrial development (under separate development consent). This would in turn facilitate future economic activity and employment generation during both the construction and operational phases of the project.

Clause 15 - Essential Services

All essential services are available to the site, including connection to Council's reticulated water and sewer. Council's Water and Sewer Systems Engineer has indicated that the proposed method of water supply is satisfactory and that Council is prepared to accept a common sewer rising main in Council ownership, with each individual lot to have a private pressure sewer pump station. Separate S68 applications will be required to this effect.

Clause 17 - Social Impact Assessment

The proposal is not anticipated to generate significant social impacts aside from the potential future generation of employment opportunities, subject to development consent for future built form on the site.

Clause 19 – General (Subdivision)

This clause allows for the proposed subdivision of land zoned 4(a) Industrial with consent.

Clause 22 – Development Near Designated Roads

The site is located in proximity to the Pacific Highway which is an RTA classified road, however access to or from the highway is neither currently available or sought by the applicant. The proposed development is anticipated to have negligible impacts in terms of traffic safety on the classified road.

Clause 31 – Development Adjoining Waterbodies

Although the subject site is not located directly adjacent to the Tweed River, the existence of the stormwater drain (which experiences tidal flows) within the road reserve has prompted Council to assess the application against Clause 31.

Subject to the issuing of the required permits by NSW Fisheries and the Department of Environment, Climate Change and Water, and the recommended conditions of consent detailed in this report, the proposed development is considered to satisfy the provisions of Clause 31 in terms of adverse impact on the water quality or scenic quality of the Tweed River.

Clause 34 – Flooding

The subject site is flood prone, with a design flood level of 3.3m AHD. It is also identified as having a 'low' flood velocity. It is proposed to fill the site by approximately 0.5m (to RL2.0m AHD). This issue is discussed in further detail later in this report.

Clause 35 - Acid Sulfate Soils

The subject site (and road reserve) exhibits class 3 Acid Sulphate Soils (ASS) as per Council's GIS System. The applicant has submitted an Acid Sulphate Soils Management Plan, prepared by HMC Environmental Consulting. Council's Environmental Health Officer has reviewed this plan and concerns have been raised that there is not adequate site area to apply the proposed treatment method (neutralisation with agricultural lime) outlined in the plan. Conditions have been applied requiring the on-site contractor to liaise with Council's Environmental Health Officer prior to the commencement of work on the proposed road or drain, and requiring the preparation of a Water Quality Monitoring Program prior to commencement of work.

It is considered that the recommended conditions represent an appropriate solution in this regard.

Clause 39 – Remediation of Contaminated Land

The subject property is currently used for residential purposes, and has previously been used as a nursery and for cattle grazing. Council's Environmental Health Officer has indicated that no further consideration with regard to contaminated land is required.

Clause 44 – Development of Land Within Likely or Known Archaeological Sites

Clause 44 (1) permits consent to be granted for development on a site that has Aboriginal heritage significance or a potential archaeological site that is reasonably likely to have Aboriginal heritage significance if an assessment of how the development will affect the conservation of that site has been considered.

The applicant has stated the following:

"We are confident that the site is not within proximity to any known sites, furthermore, given that the matter is not a Part 3A project, a condition requiring cessation of works if any item is disturbed is considered acceptable. We will also accept a condition that requires us to have the site inspected prior to works commencing by representatives of the Tweed Byron Aboriginal Land Council".

Such conditions have been applied. The applicant has also advised that they are in the process of obtaining an assessment from a local archaeologist which has not been supplied to Council to date.

As such, Council has applied a deferred commencement condition to ensure that Aboriginal heritage significance issues are appropriately addressed which will in turn satisfy Clause 44.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 15: Rivers, streams and wetlands

Inclusive of compensatory habitat works to the satisfaction of Council (deferred commencement of consent to enable this to occur) the proposal is considered to be consistent with Clause 15.

Clause 32B: Coastal Lands

The NSW Coastal Policy applies to the subject site and Council must therefore take into consideration the NSW Coastal Policy, the Coastline Management Manual and the North Coast: Design Guidelines.

Broadly, the proposal does not contravene the provisions of the above documents, should a suitable compensatory package be provided.

The proposal will not impede public access to the foreshore and will not overshadow the foreshore.

Clause 47: Principles for Commercial and Industrial Development

Clause 47 (2) specifies that before granting consent for industrial development, Council must consider that land used for such development should be located where it can be adequately serviced by the transport system and is accessible from urban areas. At this stage, consent is sought for subdivision only, with industrial development to occur under separate application in the future. The subject site is not adequately served by the transport system at present for the purposes of this application, hence construction of the proposed road to the required 9m minimum standard.

However, if the proposal is favourably supported, the new road will provide adequate access for large vehicles in Ozone Street, Chinderah Bay Drive and Chinderah Road onto the existing highway interchange, which is considered to meet the provisions of Clause 47 (2).

Clause 81: Development adjacent to the ocean or a waterway

This clause specifies that Council must not consent to an application for development on land within 100m of the ocean or any substantial waterway unless satisfied the development does not limit access to available open space, does not detract from the amenity of the waterway and is consistent with any foreshore management plan applying to the area.

In this instance, the proposed subdivision does not limit access to open space (whilst it does propose to create a road in a road reserve area presently utilised by residents as open space). Without a suitable compensatory offset, the proposal is considered to have the potential to detract from the amenity of the waterway by removing a stand of established vegetation (the EEC) and clearing all site vegetation. However, the applicant has provided general agreement to the provision of a habitat compensation plan to offset the vegetation loss and the proposal is therefore considered to be consistent with Clause 81. There is no foreshore management plan applying to the area.

SEPP No. 14 - Coastal Wetlands

The existing drain terminates into an area of the Tweed River identified under SEPP 14 (and also classified as a sensitive coastal location under SEPP 71) and part of the proposed road works (in particular, upgrading of the Chinderah Bay Drive/Ozone Street intersection) are located within 50m of SEPP 14 wetlands.

Consideration of SEPP 14 only occurs if the subject site is covered by the policy, which in this case it is not. Subject to conditions to prevent sediment/runoff impacts into the Tweed River, the proposed development is considered to generally accord with SEPP 14.

SEPP No 71 – Coastal Protection

The subject site is covered by SEPP 71, although the site is not identified as a sensitive coastal location under the Policy.

Subject to the provision of compensatory habitat for the significant vegetation to be lost from the site and protection in perpetuity of such, the proposal is considered to be consistent with the matters for consideration under SEPP 71.

In particular the proposal is considered to be consistent with the aims of the policy, will not affect access to any coastal foreshore areas and is considered to be suitable for the subject locality due to the site's industrial zoning and proximity to the Pacific Highway and other industrial development. The proposal is not considered to impact adversely on the coastal foreshore, will not create overshadowing and is not considered to detract from the scenic qualities of the New South Wales coast.

The applicant has demonstrated (via the 7-Part Test) that the proposed vegetation clearing will not impact significantly on threatened flora or fauna species and has indicated their intention to engage in compensatory works to offset the vegetation loss at the rate of 2:1. No wildlife corridors are mapped on the subject site or along the Ozone Street road reserve. The subject site is located outside of the coastal erosion zones under the NSW Coastal Policy and coastal processes will not impact on the proposed development. The proposal does not have the potential to create conflict between land based and water based activities.

With regard to Clause 8(l), the applicant has noted that they are confident that the site is not within proximity to any known archaeological sites. Applicable conditions of consent have been applied in this regard, including the requirement to cease works if any item is disturbed and the need to have the site inspected prior to works commencing by representatives of the Tweed Byron Aboriginal Land Council. More importantly, a deferred commencement condition has been incorporated to ensure that the applicant has adequately addressed all issues related to the potential impact of the proposed subdivision and associated road works. The deferred commencement condition incorporates the requirement to consult with the Tweed Byron Local Aboriginal Land Council and associated stakeholders and include appropriate mitigation/management measures.

In terms of cumulative impact, it is considered that the development will no longer pose a significant impact to the EEC community due to damage being compensated on a 2:1 (two (unit areas) gained for one lost basis).

If the above mentioned deferred commencement conditions can be satisfied, the proposal is considered to be consistent with the matters for consideration under SEPP 71.

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

There are no draft EPI's pertaining to the subject site.

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

Tweed Development Control Plan

A2 - Site Access and Parking Code

At the subdivision stage, the provision of car parking is not required. The applicant will be required to demonstrate compliance with DCP A2 at the time of lodgement of an application for the future development of each site.

As the proposal meets the minimum lot size and lot frontage (width) controls for industrial subdivision, it is considered that future development will be able to demonstrate compliance with parking/access/manoeuvrability requirements under this DCP.

A3 - Development of Flood Liable Land

The subject site is flood prone to a design level of RL 3.3m AHD. Ground levels on the site range from RL1.42m to RL1.82m. Approximately 0.5m of fill is proposed to be imported onto the site.

Council's Planning and Infrastructure Engineer has provided the following comment in this regard:

"The site is flood liable, with ground levels ranging from RL 1.42m - 1.82m AHD. Design flood level in this part of Chinderah is RL 3.3m AHD.

Approximately 0.5m of fill is intended to be imported onto the site, to achieve levels of approximately RL 2.0m AHD, which is generally consistent with the level intended for Ozone St. This filling is necessary to regrade the site and to provide surface and sub-surface drainage to the future Ozone St drainage system. The filling is therefore acceptable under DCP- A3.

DCP-A3 states that "structures and permanent improvements within the industrial zoned land are to be restricted in site coverage to retain a minimum of 50% of the area available for flood flow". No structures are proposed for the subject subdivision DA, however an 88B restriction should be placed on the title for each lot so that future development will comply".

Appropriate conditions of consent have been applied, including the requirement for a Section 88B restriction to user over each new allotment to limit site coverage of structures and permanent improvements to retain a minimum of 50% of the area available for flood flow for future development.

Therefore, the proposal is considered to be consistent with DCP A3.

A5-Subdivision Manual

This policy contains guidelines for subdivision development. Relevant to this application, the policy specifies that subdivided land in the 4(a) Industrial zone must meet the following criteria:

- Have a minimum lot size of 2000m²;
- Be capable of containing a 10m x 15m building platform; and
- Have a minimum of 30m road frontage.

The proposal is consistent with the above criteria.

In addition, consideration is required of the physical and environmental constraints of the site, the degree of landforming, stormwater and drainage and buffers as follows:

Physical constraints

The subject site is relatively unconstrained in physical terms with the exception of the unformed section of Ozone Street which has hindered access. The site is relatively flat and does not contain any waterways (besides the adjacent open drain) and the proposal does not necessitate significant changes to the natural landform.

Environmental constraints

The site contains established native vegetation and the open drain within the Ozone Street road reserve supports an Endangered Ecological Community. The site is unlikely to be contaminated based on historical landuses, is not at risk of land slip or subsidence and is not bushfire prone. The site does exhibit class 3 ASS and appropriate conditions have been applied in this regard by Council's Environmental Health Officer.

A 7-Part Test has been carried out by the applicant which has indicated that the proposed vegetation clearing will not have a significant effect on threatened species or their habitat. Notwithstanding, the applicant has acknowledged the presence of EEC vegetation and appropriate compensation measures will be undertaken as discussed below.

The proposal is considered to be consistent with the NSW Coastal Policy.

Significant Vegetation

As mentioned, the site and the road reserve both support significant vegetation. The need for compensatory works to offset the loss of this vegetation has been acknowledged by the applicant and negotiations have commenced between the applicant and Council as to the development of a plan for compensatory habitat works for an off-site area of the same or like vegetation communities. The plan will require a minimum 2:1 compensation outcome, i.e. at least 1ha of the same vegetation community to be provided in

an area set aside for conservation as an offset for loss of around 0.5ha of habitat. Appropriate deferred commencement conditions have been applied in this regard.

This is considered to satisfy this section of DCP A5.

Aboriginal Heritage or Cultural Items

The applicant has noted that they are confident the site is not within proximity to any known sites and are presently preparing an assessment in this regard (not received by Council to date).

A deferred commencement condition has been applied in this regard to ensure that Aboriginal heritage significance issues are appropriately addressed.

Should the applicant satisfy the deferred commencement condition, this section of DCP A5 is considered to be satisfied.

Landforming

The application proposes minor earthworks to fill the site to RL 2.0m AHD. The site at present is relatively flat with two dwellings existing on raised earth pads. Apart from the removal of the existing vegetation, the proposed filling works will not significantly alter the natural landform and is not considered to impact upon any nearby properties in this regard.

Issues relating to access, stormwater, drainage, waterways and flooding are detailed further later in this report.

The proposed development, inclusive of the compensatory habitat plan and protection in perpetuity of such land is considered to be generally consistent with DCP A5.

A11-Public Notification of Development Proposals

The proposed development was notified for a period of two weeks from 21 January 2009 to 5 February 2009. During this time, one (1) submission was received, which raised issues such as increased traffic generation, amenity impacts and the issuing of orders by Council for the removal of unlawful structures constructed by residents of the Caravan Park over the road reserve. These issues will be addressed later in this report.

A13-Socio-Economic Impact Assessment

The proposal is not considered to create significant social or economic impacts

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

Clause 92(a) Government Coastal Policy

The land is identified under the Coastal Policy. However, the site is not located within the Coastal Erosion Zones, and is unlikely to be affected by the coastal processes and the proposal will not overshadow any foreshore reserves or restrict 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.

Clause 92(b) Applications for demolition

The proposal requires the demolition of all existing site structures. The applicant has not submitted a demolition plan and subsequently it is recommended that demolition form part of separate development consent. 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

Context and Setting

Inclusive of the compensatory habitat scheme, the proposal is considered to be generally consistent with the context of the subject locality which exhibits mixed zoning, including residential, waterfront enterprise and industrial. The site is located in proximity to the established Chinderah industrial area, the Pacific Highway and nearby industrial developments including Action Sands (sand mining) and a recently approved warehouse for boat manufacture and sales in Chinderah Bay Drive.

The proposal is considered to be an appropriate development to occur in the context and setting of the subject site.

Access, Transport and Traffic

Council's Development Assessment Engineer has provided the following comment pertaining to the proposed access arrangements for the development:

“Access to the proposed subdivision is from Chinderah Bay Drive and via new road construction through the existing Ozone Street road reserve. Ozone Street is currently a partial gravel track with the Tweed Heritage Park adjoining the length of the road reserve.

It is noted that a number of fences, gates, furniture and vehicles are located within the Ozone Street road reserve, blocking access through the reserve. These structures will be required to be removed to physically construct the road.

Chinderah Bay Drive and Ozone Street both have flat vertical and horizontal alignments. Chinderah Bay Drive has a 10m wide pavement in good condition with no kerb & gutter.

A formalised intersection will be created with the proposed upgrade of Ozone Street. The intersection of Ozone Street is located towards the end of Chinderah Bay Drive. Sight distance at the intersection is considered adequate.

Current access to the property is via a gravel track, approximately 3m wide and 90m in length. Access to the gravel track is from Anne Lane.

Proposed access to the 4 lot subdivision is via a new road approximately 630m in length constructed to an urban wider access street standard. The proposed road will be accessed via Chinderah Bay Drive, following the Ozone Street road reserve alignment and terminating in a cul-de-sac.

The application has lodged two options in relation to the road standard. The options are as follows:

- 13m wide pavement within a 20m wide road reserve with kerb & gutter (industrial type road standard designed for a maximum of up to 8000 vehicles per day)*
- 9m wide pavement within a 17m wide road reserve with kerb & gutter (access street bus route road standard designed for a maximum of up to 3000 vehicles per day)*

The rationale for the 9m wide pavement is that a reduced width will require less construction works to create a level platform for the road and associated drainage. A 9m wide pavement within a 17m wide road reserve is considered adequate to service the 4 lot industrial subdivision.

An existing drain is located on the southern side of the road reserve and earthworks for both road widths will be required.

The actual width for the Ozone Street road reserve is 30.18m.

Council's road design specifications for a cul-de-sac specify that the maximum length is 120m. Due to site constraints which include the location of the Pacific Highway roundabout to the east of the site, it is considered that the 630m road is acceptable".

Notwithstanding the environmental issues associated with the loss of an EEC (and the proposed method of compensation for such), the proposed 9m wide road (within a 17m reserve) is considered to be appropriate for the proposed development and suitable conditions of consent have been applied in this regard.

Traffic Generation

Council's Development Assessment Engineer and Traffic Engineer have provided the following comment:

The 4 lot industrial subdivision will not affect the surrounding road network.

The construction of Ozone Street to an urban wider access street provides a level of road standard capable of supporting a high vehicle volume.

Please note the following comments from Council's Traffic Engineer: "Some 680m of Ozone Street will need to be constructed to Council's standards of 9.0m rather than 13.0m is acceptable for this construction.

I calculate proposed traffic generation at about 129 vpd (56 vpd is stated in the report) and peak hour at about 23 vph. The traffic volume can be accommodated within the existing road capacity of Chinderah Bay Drive. Only BAL intersection treatment will be required at the proposed Ozone Street/ Chinderah Bay Drive intersection."

The proposed development is considered to be appropriate from a traffic generation perspective, subject to the imposition of a condition requiring BAL intersection treatment (as above) and notwithstanding potential amenity impacts for nearby residents as is addressed further in this report.

Flora and Fauna

The applicant's flora and fauna survey has specified the following:

"Whilst the roadway upgrade proposal is considered unlikely to significantly affect native vegetation communities, fauna and associated habitat it will result in the minor loss of local habitat for native species through tree removal, alteration to the existing drainage channel and construction of the new roadway and associated trunk infrastructure (i.e.: communications, sewer, stormwater etc). In this regard recommendations have been included in this report regarding the construction management, water quality controls and offsite revegetation to offset loss of vegetation".

Council's Ecologist has noted the following:

"Negotiations have commenced with the developer in relation to provision of compensatory habitat for the significant vegetation to be lost from the site. Agreement in principle has been reached that restoration and protection in perpetuity of an off-site area of the same or like vegetation communities will be undertaken to provide a minimum of 2:1 outcome, i.e. at least 1ha of the same vegetation community to be provided in an area set aside for conservation as an offset for loss of around 0.5ha of habitat.

The vegetation is presently contained along a linear drainage line and thus is long and narrow in shape, leaving it subject to degradation through a long edge to area ratio and contained within road reserve and land zoned for development, thus a conservation benefit is likely upon completion of the restoration and protection of the offset site. Sites for compensation will be chosen based on larger overall reserve size and rounder shape to reduce degradation arising from edge effects, thus chance of long-term survival.

A number of suitable sites are under discussion, in relation to suitable public land parcels (applicable because the road reserve is public land) but agreement has yet to be reached on particulars”.

It is considered that the matter can be approached through the application of a deferred commencement condition. Additional conditions have also been applied relating to construction management and water quality controls as identified by the applicant in the flora and fauna study above.

(c) Suitability of the site for the development

Department of Climate Change and Water and NSW Fisheries Permits

In accordance with the definitions relating to watercourses within the Water Management Act 2000, the Fisheries Management Act 1994 and Tweed LEP 2000, the drainage line must be assessed in the same way as a natural watercourse, thus the proposed development requires permits under both the Water Management Act 2000 and the Fisheries Management Act 1994. Neither of these have been obtained to date as the applicant did not choose to nominate the application as integrated development in this regard. Should the application be favourably supported, the applicant will be required to obtain both required permits/approvals prior to the commencement of any works. It is noted that as neither Department has yet had the opportunity to review the proposal, there is no guarantee that the required permits would be issued.

Stormwater Drainage

Council’s Planning and Infrastructure Engineer has provided the following comment pertaining to drainage from the site:

“The proposed construction of Ozone St from Chinderah Bay Drive, particularly the cul-de-sac head, will encroach into the existing drainage channel that runs along the road reserve to the Tweed River. It is also intended to replace the open drain with 4 x 1200mm diameter pipes for the full frontage of the site, to facilitate access to the subdivided lots.

The road design shows that drain realignment works to accommodate the standard road cross section may impact on an existing earth bund along the southern edge of the road reserve. It is assumed that this bund is in place to protect the caravan park residents to the north from noise from the sand quarry to the south of the road reserve. This bund must be

maintained, and may involve works on the quarry site, therefore requiring owners consent.

No transverse drainage is shown in the design of Ozone St. There are a number of minor open drains that currently discharge runoff from properties to the north to the main Ozone St drain, which will need to be catered for in detailed design”.

Appropriate conditions of consent have been applied, including the submission of a S68 Stormwater application, a requirement for the maintenance of the earth bund and owners consent for any works encroaching into adjacent private land.

Earth Bund

The existing earth bund along the southern boundary of the road reserve serves as an acoustic barrier between nearby caravan parks and the Action Sands development. Conditions will be applied so as to maintain the integrity of the bund during road construction.

Surrounding Landuses/Development

Considering the industrial zoning of the subject site and the fact that development of the site for any purpose would facilitate the upgrade of Ozone Street, the proposal is considered to be appropriate in the context of the wider Chinderah locality.

Water

Council’s Water and Sewer Systems Engineer has reviewed the proposal in regard to water supply. The following comment has been received:

“The application proposes the construction of a 150mm diameter water main to service this development. It is connected to an existing 150mm main at the intersection of Chinderah Road, Walsh Street and the Pacific Highway. The calculation in the application relates to a potential consumption on the basis of an average demand scenario, but has not included an assessment of the fire flow that may be necessary.

The proposed main complies with the minimum requirement for size servicing industrial properties and is likely to be able to deliver the required fire flows although no calculation has been carried out to demonstrate this.

The water supply proposed is therefore considered satisfactory”

Appropriate conditions have been applied in this regard.

Sewer

Council’s Water and Sewer Systems Engineer has reviewed the proposal in regard to sewer and indicated that the Rutile Street Pump Station is capable

of handling the extra loading generated by the proposal. In terms of connection to the pump station, Council is prepared to accept a suitably sized common sewer rising main in Council ownership with each individual lot to have a private pressure sewer pump station installed in the front of each lot.

For each lot serviced by the pressure sewer system, a capital contribution of \$14, 800 shall be paid by the applicant to Council to enable installation of each pump station and a positive covenant will be placed on each lot that will permit Council access for the installation, maintenance and replacement of the pump station, the provision of electricity by the landholder and the placement of the control box and alarm system on an exterior wall of the future structure.

The above has been applied as a condition of development consent (via an 88B restriction to benefit Council) and the \$14, 800 fee per lot incorporated within the total sewer S64 contribution charge.

The developer will be required to obtain s68 approval to install and operate each of the pump stations from Council's Environmental Health section. Subsequent owners will then have 60 days under the Act to lodge an application to transfer the approval to operate the pump station.

Appropriate conditions have been applied in this regard.

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

The proposal was notified under DCP A11 for a period of 14 days. With one (1) submission was received. The submission raised the following issues:

Issue	Response
<p><u>Vehicle count too low</u></p> <ul style="list-style-type: none"> • Application states 56 vehicle trips/day based on 28 employees per hectare, the number of daily trips would be higher given the nature of the subdivision (industrial) and vehicles would be of an industrial/commercial nature rather than passenger vehicles; • Will create increased dust, noise, vibration and visual pollution. 	<p>Council's Traffic Engineer has reviewed the proposal in this regard and confirmed that the submitted 56 trips/day is too low: <i>I calculate proposed traffic generation at about 129 vpd (56 vpd is stated in the report) and peak hour at about 23 vph. The traffic volume can be accommodated within the existing road capacity of Chinderah Bay Drive. The proposed road is to be constructed to the correct standard to enable use by large vehicles.</i></p> <p>It is acknowledged that dust and noise are potential temporary outcomes of this proposal, however these issues are considered adequately resolved via conditions of consent.</p> <p>This issue is considered to be adequately resolved.</p>

<p><u>Proposed road too narrow</u></p> <ul style="list-style-type: none"> • 9m is too narrow to account for size of vehicles to and from subdivision (ie: semi-trailers). 	<p>Council's Development Assessment Engineer has reviewed the application in this regard and confirmed that a 9m road (within a 17m wide reserve) is appropriate for the proposed development.</p> <p>This issue is considered to be adequately resolved.</p>
<p><u>Presence of structures in road reserve</u></p> <ul style="list-style-type: none"> • Construction of road doesn't consider existing structures built by Caravan Park residents that encroach into the road reserve • Council must initiate orders to have such structures removed; • Removal of structures/disturbance of residents' homes would affect their amenity and enjoyment of life. 	<p>Site inspection has indicated a number of unlawful structures encroaching onto the road reserve. The construction of the road will necessitate the removal of these unlawful structures on Council owned land.</p> <p>As such, Council's Compliance Officer will likely be involved with initiating the removal of them. Although unfortunate, the unlawful structures will need to be removed, despite any potential impacts to the amenity of residents.</p>
<p><u>Traffic management would be improved via access immediately off roundabout</u></p> <ul style="list-style-type: none"> • Road access from roundabout could terminate in a cul-de-sac in front of subject property; • This would obviate noise and amenity disturbances to Caravan Park residences. 	<p>Access off roundabout is not proposed and it is unlikely that the RTA would support such a proposal given the close location of the site to the roundabout and highway.</p> <p>It is not possible to know the potential of noise and amenity impacts at this stage as the end uses of each of the allotments is not known. Until this point it is not possible to theorise as to what volume of traffic may use the new road, with the exception of applying conditions relating to the development being conducted in a manner so as not to cause disruption to the amenity of the locality by way of the emission of noise, dust and odours or the like.</p>
<p><u>Socio-economic characteristics of Caravan Park residents</u></p> <ul style="list-style-type: none"> • Large majority of residents are elderly; • Large majority if residents' sole source of income is a social security payment and most have limited financial resources to be able to relocate. 	<p>Council officers are not of the opinion that the proposal will result in residents of the caravan park needing to relocate. The proposal is not considered to impact on the ability of residents to enjoy their own homes.</p>

(e) Public interest

Subject to the applicant satisfying the deferred commencement conditions, the proposed development is considered to be in the public's interest.

OPTIONS:

1. Approve the application in accordance with the recommended conditions for deferred commencement.
2. Refuse the application and defend the appeal in the Land & Environment Court. Any resolution for refusal needs to be supported by valid reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has lodged a Deemed Refusal Class 1 Appeal with the Land and Environment Court. Should Council approve the application it is anticipated that the appeal would be withdrawn.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed development is located on a site zoned for industrial development and appropriate conditions of consent have been applied to ensure that the proposal meets all applicable legislative requirements, subject to the deferred commencement conditions (Habitat Restoration Plan on suitable compensatory site and Aboriginal cultural heritage significance assessment) being satisfied.

Subject to satisfaction of the deferred commencement conditions, the proposal is considered to warrant approval.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.
