

**Mayor:** Cr Warren Polglase

**Councillors:** P Youngblutt (Deputy Mayor)  
D Holdom  
B Longland  
K Milne  
K Skinner  
J van Lieshout

# Agenda

## Planning & Regulation Reports

### **Ordinary Council Meeting**

### **Tuesday 17 November 2009**

held at Murwillumbah Cultural & Civic Centre  
commencing at 4.30pm

### **COUNCIL'S CHARTER**

Tweed Shire Council's charter comprises a set of principles that are to guide Council in the carrying out of its functions, in accordance with Section 8 of the Local Government Act, 1993.

Tweed Shire Council has the following charter:

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively;
- to exercise community leadership;
- to exercise its functions in a manner that is consistent with and actively promotes the principles of multiculturalism;
- to promote and to provide and plan for the needs of children;
- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development;
- to have regard to the long term and cumulative effects of its decisions;
- to bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible;
- to facilitate the involvement of councillors, members of the public, users of facilities and services and council staff in the development, improvement and co-ordination of local government;
- to raise funds for local purposes by the fair imposition of rates, charges and fees, by income earned from investments and, when appropriate, by borrowings and grants;
- to keep the local community and the State government (and through it, the wider community) informed about its activities;
- to ensure that, in the exercise of its regulatory functions, it acts consistently and without bias, particularly where an activity of the council is affected;
- to be a responsible employer.

---

**Items for Consideration of Council:**

<b>ITEM</b>	<b>PRECIS</b>	<b>PAGE</b>
	<b>REPORTS FROM THE DIRECTOR PLANNING AND REGULATION</b>	<b>5</b>
8	[PR-CM] Development Application DA09/0048 for an Eighteen (18) Lot Community Title Subdivision Comprising of Seventeen (17) Residential and One (1) Neighbourhood Property Allotment at Lot 56 DP 1030322, Collins Lane Casuarina	7
9	[PR-CM] Development Application DA09/0385 for a Telecommunications Facility (30 Metre High Monopole and Associated Infrastructure) at Lot 17 DP 778719, No. 19 Meadow Place Uki	47
10	[PR-CM] Development Application DA09/0523 for a Dwelling at Lot 383 DP 1134599, Overall Drive Pottsville	75
11	[PR-CM] Development Application DA08/0869 for a Dwelling, Attached Garage, Swimming Pool & Fence at Lot 346 DP 1087716, No. 9 Cylinders Drive Kingscliff	95
12	[PR-CM] Update on Development Application DA05/0223 for a restaurant at Lot 1 DP 553728, No. 4 Wharf Street Tweed Heads	125
13	[PR-CM] Court of Appeal Judgement (CA40279/09) in Relation to Development Application DA06/0413 for a Staged Seniors Living Development under SEPP (Seniors Living) 2004 at Lot 1 DP 786570 No. 87-89 Tweed Coast Road, Hastings Point	133
14	[PR-CM] Planning Reform Unit Work Program	139
15	[PR-CM] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards	147

**THIS PAGE IS BLANK**

## REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

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

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

#### MATTERS FOR CONSIDERATION

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

**THIS PAGE IS BLANK**

**8 [PR-CM] Development Application DA09/0048 for an Eighteen (18) Lot Community Title Subdivision Comprising of Seventeen (17) Residential and One (1) Neighbourhood Property Allotment at Lot 56 DP 1030322, Collins Lane Casuarina**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA09/0048 Pt1**

**SUMMARY OF REPORT:**

The proposed development is to undertake a three stage, eighteen (18) lot community title subdivision comprising of seventeen (17) residential and one (1) neighbourhood property allotment. The lots will be formed under a community title scheme.

A SEPP 1 objection also accompanies the application. The objection is in respect of the planning standard identified within Clause 21A (2)(a) of the Tweed Local Environmental Plan 2000, specifically seeking variance to the 40 hectare minimum lot size development standard for the 7(f) Environmental Protection (Coastal Lands) zone.

The SEPP 1 objection relates to a small portion of the site adjacent to the eastern boundary which is zoned 7(f) Environmental Protection (Coastal Lands). The 7(f) zoned land represents approximately 11.7% of the site and the remainder of the site is zoned 2(e) Residential Tourist which has a minimum lot size of 450m<sup>2</sup>. It is proposed as part of the subdivision to include the 7(f) zoned land within proposed lots 13 to 17.

The application was referred to the NSW Department of Planning requesting the Director-General's Concurrence. Concurrence was granted to vary the 40 hectare minimum lot size development standard subject to no residential, associated buildings or structures permitted on land zoned 7(f).

The purpose of this report is to have the application determined by a full Council as Council Officers do not have the delegation to determine a development application with a SEPP 1 objection greater than 10 per cent variation of the applicable development standard.

After consideration of applicable environmental planning instruments, the Tweed Development Control Plan and various policies, the proposal is recommended for approval.

**RECOMMENDATION:**

**That Development Application DA09/0048 for a eighteen (18) lot community title subdivision comprising of seventeen (17) residential and one (1) neighbourhood property allotment at Lot 56 DP 1030322, Collins Lane Casuarina be approved subject to the following conditions: -**

## **GENERAL**

1. The staged development shall be completed in accordance with the Statement of Environmental Effects, the associated documentation and Plan No. 1 – Subdivision Plan prepared by Planit Consulting dated June 2009.

The staging is to occur as follows:

### **Stage 1**

One allotment comprising proposed Lot 6.

### **Stage 2**

Five allotments comprising proposed Lots 1-5.

### **Stage 3**

Eleven residential allotments and one neighbourhood property allotment containing an internal service road comprising proposed Lots 7-17 and internal road.

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

[GEN0265]

5. No residential buildings (or associated buildings, structures or services) are permitted on land zoned 7(f) Environmental Protection (Coastal Lands) within proposed allotments 13-17 within Stage 3.

This excludes the existing and proposed sewer infrastructure subject to compliance with Condition 15 of this consent to ensure compliance with the permissible uses within the 7(f) zone.

[GENNS01]

## **PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

6. 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 as set out in Council's fees and charges at the time of payment.

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/Occupation Certificate is issued.

[PCC0275]



7. 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]
8. All imported fill material shall be from an approved source. Prior to the issue of a construction certificate details of the source of fill, description of material, proposed use of material, documentary evidence that the fill material is free of any contaminants and haul route shall be submitted to Tweed Shire Council for the approval of the General Manager or his delegate.
- [PCC0465]
9. 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 included as part of the construction certificate application.
- [PCC0485]
10. A detailed plan of landscaping is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate for each stage of this development.  
The landscaping plan shall show street trees to Casuarina Way (with a minimum of one street tree per allotment frontage to Casuarina Way) and landscaping addressing the internal road within Stage 3.
- [PCC0585]
11. 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]
12. 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 driveways
    - stormwater drainage

- water supply works
- sewerage works
- landscaping works
- sedimentation and erosion management plans
- location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure)

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]

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. Medium density/integrated developments (subject to separate future approvals) will be required to provide a single bulk water service at the road frontage. 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.

This is relevant for Lots 7 - 11 and 13 - 17 in Stage 3 only.

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]

15. Prior to issue of a Construction Certificate for Stage 3 the applicant is to lodge revised sewer infrastructure provisions for Lots 13 – 17 to relocate the proposed private sewer infrastructure outside the 7(f) zone.

Council may consider alternative options to maintain the proposed alignment including the possibility of retaining the sewer as public infrastructure upon lodgement of the Construction Certificate application. In this regard an easement in favour of Council over the public sewer would be required if it remained within the 7(f) zone.

This condition has been imposed to ensure compliance with the permissible uses within the 7(f) zone.

[PCCNS01]

---

**PRIOR TO COMMENCEMENT OF WORK**

16. 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.
17. 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:- [PCW0005]
- (a) Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3<sup>rd</sup> Edition, NSW Government, or
  - (b) AS4804 Occupation Health and Safety Management Systems - General Guidelines on Principles Systems and Supporting Techniques.
  - (c) WorkCover Regulations 2000
18. 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. [PCW0025]
19. All imported fill material shall be from an approved source. Prior to commencement of filling operations details of the source of the fill, nature of material, proposed use of material and confirmation that further blending, crushing or processing is not to be undertaken shall be submitted to the satisfaction of the General Manager or his delegate. [PCW0225]
- Once the approved haul route has been identified, payment of the Heavy Haulage Contribution calculated in accordance with Section 94 Plan No 4 will be required prior to commencement of works. [PCW0375]
20. 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 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) accredited in accordance with Tweed Shire Council DCP 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

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,

This part of the condition is applicable to Stage 3 only 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]

21. 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]

22. 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]

23. Prior to the commencement of work, a Construction Certificate shall be obtained for the works proposed by this consent.

[PCWNS01]

24. 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**

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

[DUR0005]

26. Construction of the internal accessway serving lots 7 to 11 and 13 to 17, generally to a 6m wide concrete/bitumen sealed standard, in accordance with the provisions of Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual and Councils Development Design and Construction Specifications.

This condition is applicable to Stage 3 only.

[DUR0055]

27. The provision of 7 off street car parking spaces including parking for the disabled where applicable. The layout and construction standards to be in accordance with Tweed Shire Council Development Control Plan, Part A2 - Site Access and Parking Code.

This condition is applicable to Stage 3 only.

[DUR0085]

28. 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]

29. 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]

30. 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]

31. During filling operations,

- No filling is to be placed hydraulically within twenty metres (20m) of any boundary that adjoins private land that is separately owned. Fill adjacent to these boundaries is to be placed mechanically.
- All fill and cut batters shall be contained wholly within the subject land.
- All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications and to the satisfaction of the Principal Certifying Authority.

and upon completion,

- all topsoil to be respread and the site to be grassed and landscaped including battered areas.

[DUR0755]

32. No filling is to be placed hydraulically within twenty metres (20m) of any boundary that adjoins private land that is separately owned. Fill adjacent to these boundaries is to be placed mechanically.

No filling of any description is to be deposited, or remain deposited, within adjacent properties.

[DUR0765]

33. 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]

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

[DUR0815]

35. 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]

36. 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]

37. 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]

38. 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]

39. 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]

40. Landscaping of the site shall be carried out in accordance with the submitted/approved landscaping plans as required by Condition 10 of this consent.

[DUR1045]

41. 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]

42. 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 Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[DUR1875]

43. 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:-

**Road / Access Works**

- (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

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]

44. 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]

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

[DUR2025]

46. 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]

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

[DUR2205]

48. 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 Development Design and Construction Specifications.

[DUR2355]

49. 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]

50. All waters that are to be discharged from the site shall have a pH between 6.5 and 8.5 and suspended solids not greater than 50mg/kg.

[DUR2435]

51. All imported fill shall be from an approved source and free from contaminants.

52. A sewer manhole is present on the site. This manhole is not to be covered with soil or other material.

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

[DURNS02]



**USE**

53. 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]

54. 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]

55. 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]

**PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE**

56. 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]

57. 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:

**Stage 1**

Water DSP6: 1 ET @ \$10709 per ET	\$10709
South Kingscliff Water Levy: 1 ET @ 248.4 per ET	\$248
Sewer Kingscliff: 1 ET @ \$5146 per ET	\$5146

**Stage 2**

Water DSP6: 5 ET @ \$10709 per ET	\$53545
South Kingscliff Water Levy: 5 ET @ 248.4 per ET	\$1242
Sewer Kingscliff: 5 ET @ \$5146 per ET	\$25730

**Stage 3**

Water DSP6: 9 ET @ \$10709 per ET \$96381

South Kingscliff Water Levy: 10 ET @ 248.4 per ET \$2484

Sewer Kingscliff: 9 ET @ \$5146 per ET \$46314

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]

**58. 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, Tumbulgun Road, Murwillumbah and Brett Street, Tweed Heads.

**Stage 1**

(a) Tweed Road Contribution Plan:  
6.5 Trips @ \$861 per Trips \$5597

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

S94 Plan No. 4

Sector6\_4

LCA4 - Casuarina: \$103

(\$154 base rate + \$5 indexation per trip)

**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 5.1.1 prior to the issue of a construction certificate or subdivision certificate, whichever occurs first. The contribution shall be based on the following formula:-

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

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 6.4 (currently 2.5c per tonne per kilometre)

**Admin.** Administration component - 5% - see Section 6.5

- |     |  |                  |
|-----|--|------------------|
| (b) | <b>Shirewide Library Facilities:</b><br>1 ET @ \$374 per ET<br>(\$374 base rate + \$0 indexation)<br>S94 Plan No. 11   | <b>\$374</b>     |
| (c) | <b>Bus Shelters:</b><br>1 ET @ \$26 per ET<br>(\$26 base rate + \$0 indexation)<br>S94 Plan No. 12   | <b>\$26</b>      |
| (d) | <b>Eviron Cemetery:</b><br>1 ET @ \$131 per ET<br>(\$131 base rate + \$0 indexation)<br>S94 Plan No. 13  | <b>\$131</b>     |
| (e) | <b>Emergency Facilities (Surf Lifesaving):</b><br>1 ET @ \$200 per ET<br>(\$200 base rate + \$0 indexation)<br>S94 Plan No. 16   | <b>\$200</b>     |
| (f) | <b>Extensions to Council Administration Offices<br/>&amp; Technical Support Facilities</b><br>1 ET @ \$1996.80 per ET<br>(\$1996.80 base rate + \$0 indexation)<br>S94 Plan No. 18 | <b>\$1996.80</b> |

- (g) **Casuarina Beach/Kings Forest Community Facilities:**  
1 ET @ \$1443 per ET \$1443  
(\$1443 base rate + \$0 indexation)  
S94 Plan No. 19
- (h) **Casuarina Beach/Kings Forest Open Space:**  
1 ET @ \$1544 per ET \$1544  
(\$1544 base rate + \$0 indexation)  
S94 Plan No. 19
- (i) **Cycleways:**  
1 ET @ \$352 per ET \$352  
(\$352 base rate + \$0 indexation)  
S94 Plan No. 22
- (j) **Regional Open Space (Casual)**  
1 ET @ \$855 per ET \$855  
(\$855 base rate + \$0 indexation)  
S94 Plan No. 26
- (k) **Regional Open Space (Structured):**  
1 ET @ \$2327 per ET \$2327  
(\$2327 base rate + \$0 indexation)  
S94 Plan No. 26

**Stage 2**

- (a) **Tweed Road Contribution Plan:**  
32.5 Trips @ \$861 per Trips \$27983  
(\$782 base rate + \$79 indexation)  
S94 Plan No. 4

Sector6\_4

LCA4 - Casuarina: \$516

(\$154 base rate + \$5 indexation per trip)

**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 5.1.1 prior to the issue of a construction certificate or subdivision certificate, whichever occurs first. 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:

<b>Prod.</b>	<b>Projected demand for extractive material to be hauled to the site over life of project in tonnes</b>	
<b>Dist.</b>	<b>Average haulage distance of product on Shire roads (trip one way)</b>	
<b>\$Unit</b>	<b>the unit cost attributed to maintaining a road as set out in Section 6.4 (currently 2.5c per tonne per kilometre)</b>	
<b>Admin.</b>	<b>Administration component - 5% - see Section 6.5</b>	
<b>(b)</b>	<b>Shirewide Library Facilities: 5 ET @ \$374 per ET (\$374 base rate + \$0 indexation) S94 Plan No. 11</b>	<b>\$1870</b>
<b>(c)</b>	<b>Bus Shelters: 5 ET @ \$26 per ET (\$26 base rate + \$0 indexation) S94 Plan No. 12</b>	<b>\$130</b>
<b>(d)</b>	<b>Eviron Cemetery: 5 ET @ \$131 per ET (\$131 base rate + \$0 indexation) S94 Plan No. 13</b>	<b>\$655</b>
<b>(e)</b>	<b>Emergency Facilities (Surf Lifesaving): 5 ET @ \$200 per ET (\$200 base rate + \$0 indexation) S94 Plan No. 16</b>	<b>\$1000</b>
<b>(f)</b>	<b>Extensions to Council Administration Offices &amp; Technical Support Facilities 5 ET @ \$1996.8 per ET (\$1996.8 base rate + \$0 indexation) S94 Plan No. 18</b>	<b>\$9984</b>
<b>(g)</b>	<b>Casuarina Beach/Kings Forest Community Facilities: 5 ET @ \$1443 per ET (\$1443 base rate + \$0 indexation) S94 Plan No. 19</b>	<b>\$7215</b>
<b>(h)</b>	<b>Casuarina Beach/Kings Forest Open Space: 5 ET @ \$1544 per ET (\$1544 base rate + \$0 indexation) S94 Plan No. 19</b>	<b>\$7720</b>
<b>(i)</b>	<b>Cycleways: 5 ET @ \$352 per ET (\$352 base rate + \$0 indexation) S94 Plan No. 22</b>	<b>\$1760</b>

(j) **Regional Open Space (Casual)**  
5 ET @ \$855 per ET \$4275  
((\$855 base rate + \$0 indexation)  
S94 Plan No. 26

(k) **Regional Open Space (Structured):**  
5 ET @ \$2327 per ET \$11635  
((\$2327 base rate + \$0 indexation)  
S94 Plan No. 26

**Stage 3**

(a) **Tweed Road Contribution Plan:**  
58.5 Trips @ \$861 per Trips \$50369  
((\$782 base rate + \$79 indexation)  
S94 Plan No. 4

Sector6\_4

LCA4 - Casuarina: \$930

(\$154 base rate + \$5 indexation per trip)

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 5.1.1 prior to the issue of a construction certificate or subdivision certificate, whichever occurs first. 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 6.4 (currently 2.5c per tonne per kilometre)

**Admin.** Administration component - 5% - see Section 6.5

(b) **Shirewide Library Facilities:**  
9.6918 ET @ \$374 per ET \$3625  
((\$374 base rate + \$0 indexation)  
S94 Plan No. 11

---

(c) Bus Shelters: 10 ET @ \$26 per ET (\$26 base rate + \$0 indexation) S94 Plan No. 12	\$260
(d) Eviron Cemetery: 9.619 ET @ \$131 per ET (\$131 base rate + \$0 indexation) S94 Plan No. 13	\$1260
(e) Emergency Facilities (Surf Lifesaving): 9.689 ET @ \$200 per ET (\$200 base rate + \$0 indexation) S94 Plan No. 16	\$1938
(f) Extensions to Council Administration Offices & Technical Support Facilities 9.4828 ET @ \$1996.8 per ET (\$1996.8 base rate + \$0 indexation) S94 Plan No. 18	\$18935.26
(g) Casuarina Beach/Kings Forest Community Facilities: 9.6922 ET @ \$1443 per ET (\$1443 base rate + \$0 indexation) S94 Plan No. 19	\$13986
(h) Casuarina Beach/Kings Forest Open Space: 9.6938 ET @ \$1544 per ET (\$1544 base rate + \$0 indexation) S94 Plan No. 19	\$14967
(i) Cycleways: 9.6874 ET @ \$352 per ET (\$352 base rate + \$0 indexation) S94 Plan No. 22	\$3410
(j) Regional Open Space (Casual) 9.6932 ET @ \$855 per ET (\$855 base rate + \$0 indexation) S94 Plan No. 26	\$8288
(k) Regional Open Space (Structured): 9.6968 ET @ \$2327 per ET (\$2327 base rate + \$0 indexation) S94 Plan No. 26	\$22564

[PSC0175]

59. 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.

This requirement is directed at Stage 3, but may also be imposed on earlier stages, depending on the extent of works required for those earlier stages.

[PSC0215]

60. 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.

This requirement is directed Stage 3, but may also be imposed on earlier stages, depending on the extent of works required for those earlier stages.

[PSC0235]

61. All landscaping requirements shall be completed to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate.

[PSC0485]

62. 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]

63. Prior to the issue of a Subdivision Certificate, Work as Executed Plans shall be submitted in accordance with the provisions of Tweed Shire Council's Development Control Plan Part A5 - Subdivision Manual and Council's Development Design 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 (WAX) plans.

[PSC0735]

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

[PSC0825]



65. 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) Restriction as to user for proposed allotments 13 - 17 (inclusive) in accordance with Condition 5 of this consent as it relates to the 7(f) Environmental Protection (Coastal Lands) zone.

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]

66. 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]

67. 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]

68. Pursuant to Section 80A(1)(b) of the Environmental Planning and Assessment Act, 1979 (As amended) and Clause 97 of the Environmental Planning and Assessment Regulations, 2000, the following Development Consents shall be surrendered by lodgement of the prescribed information, suitably executed, PRIOR to the issue of a Subdivision Certificate for the relevant Stages of the approved development, as follows;

- Stage 1: - Development Consent No. DA02/1009 and associated CC04/0403
- Development Consent No. DA02/1708 and associated CC04/0402
  - Development Consent No. DA09/0109 and any associated construction certificate.

Stages 2 and 3: - any relevant conflicting Development Consents.

[PSC0875]

69. 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.

70. A Community Management Statement detailing the by-laws necessary for the efficient running of the scheme. The Statement may include defining any proposed open and/or private accessways, as well as any statutory easements (service works plan). The Statement shall provide details on:

- The theme of the development (if any)
- Any special requirements for use or maintenance of the association property,
- Whether access within a scheme will be via public roads or whether accessways are to be used. Accessways remain association property and will have to be maintained by the association and not the local council.
- Who owns and maintains service lines within the scheme: the association or the service providers.
- The existing Council-imposed title restrictions over the property. These must all be reiterated within the Community Management Statement and cover: the restricted building area within the site; stormwater discharge infiltration requirements; and pet and plant restrictions.
- Other issues such as the hanging of washing, and noise.

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]

71. The following restrictions apply to dog and cat ownership and control on all residential lots:-

- (a) Owners of dogs within the development shall have their yards fenced so as to securely contain a maximum of one (1) dog per allotment and the ownership of cats within the development shall be restricted to one de-sexed cat per allotment and such cats shall be restrained within the house or a secure night cage between the hours of 6.00pm and 6.00am.
- (b) No dog shall be registered without the construction of a dog-proof compound which must be approved by Council and the relevant fee paid by the applicant.
- (c) No owner can retrieve a dog that has been impounded unless they can demonstrate to Council they have a secure compound. These ownership and control requirements shall be reinforced by inclusion in the Community Management Statement.

Any Instrument creating these restrictions shall contain a provision enabling the restriction to be revoked, varied or modified only with the consent of Council.

[PSC0905]

**72. 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 / Accessways**
- (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]

**73. The six (6) months Defects Liability Period, where relevant, commences upon the registration of the Plan of Subdivision.**

[PSC0925]

**74. Prior to the issue of a Subdivision Certificate and also prior to the end of defects liability period, a CCTV inspection of any stormwater pipes and sewerage system installed and to be dedicated to Council including joints and junctions will be required to demonstrate that the standard of the infrastructure is acceptable to Council.**

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

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

[PSC1065]

**75. Prior to issuing a Subdivision Certificate, reticulated water supply and outfall 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. 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]

**76. 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]

**77. Electricity**

- (a) The production of written evidence from the local electricity supply authority certifying that reticulation and energising of underground electricity (residential and rural residential) has been provided adjacent to the front boundary of each allotment; and
- (b) The reticulation includes 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.  
Should any electrical supply authority infrastructure (sub-stations, switching stations, cabling etc) be required to be located on Council land (existing or future), then Council is to be included in all negotiations. Appropriate easements are to be created over all such infrastructure, whether on Council lands or private lands.

Compensatory measures may be pursued by the General Manager or his delegate for any significant effect on Public Reserves or Drainage Reserves.

[PSC1185]

The existing Right-of-Carriageway registered over the western section of the Collins Lane cul-de-sac head and footpath area shall be extinguished, and a public road shall be dedicated to Council free of cost over the same road and footpath areas.

The area for road dedication shall be to the satisfaction of the Director Planning and Regulation.

This requirement is to be addressed as part of Stage 1

[PSCNS01]

- 78. All Community Title subdivisions require 'Lot 1' to be the 'community lot', with all common access and servicing provisions constructed and nominated within that lot. The proposed lots will need to be re-numbered accordingly, prior to the issue of a Subdivision Certificate for any stage of the development.**

[PSCNS02]

Prior to the issue of a Subdivision Certificate for Stage 1, the applicant is required to:

- a) Address the provision of all services to proposed Lot 6. This may require the prior submission of application forms and/or a construction certificate for any necessary relevant works.
- b) Submit Work-as-Executed information, test results and engineering certification on any subdivisional civil works that were previously constructed under either of the Council-issued construction certificates CC04/0402 and CC04/0403. All sewer junctions on new infrastructure are to be clearly nominated.
- c) Submit a Community Management Statement detailing the by-laws necessary for the efficient running of the scheme. The Statement may include defining any proposed open and/or private accessways, as well as any statutory easements (service works plan). The Statement shall provide details on:
  - The theme of the development (if any)

- Any special requirements for use or maintenance of the association property,
  - Whether access within a scheme will be via public roads or whether accessways are to be used. Accessways remain association property and will have to be maintained by the association and not the local council.
  - Who owns and maintains service lines within the scheme: the association or the service providers.
  - The existing Council-imposed title restrictions over the property. These must all be reiterated within the Community Management Statement and cover: the restricted building area within the site; stormwater discharge infiltration requirements; and pet and plant restrictions.
  - The NSW Rural Fire Service restrictions including Asset Protection Zones (APZ's).
  - Other issues such as the hanging of washing, and noise.
- d) The Stage 1 release must address (not necessarily construct) the stormwater management requirements for the entire development. This is due to the requirement for all lots to infiltrate roofwater, and have a surcharge overflow path to the street. Lots 7 to 12 have adverse fall away from the street, and the applicant must determine the most appropriate stormwater scheme for the site. Some site filling may be necessary to achieve this, and may involve Lot 6, being Stage 1 of the development. The stormwater management plan must also take into account:
- Likely landscaping within the surcharge overland flowpaths,
  - Surcharge overflows from the infiltration area to the street or public drainage system must occur by visible surface flow, not piped.
  - Treatment for runoff other than roofwater, to remove contaminants prior to entry into the infiltration device,
  - The design criteria infiltration rate of 3m per day, when sizing infiltration devices,
  - Sites under Strata or Community Title are normally required to have infiltration areas contained within community land, to ensure collective responsibility for site drainage. The applicant must specifically address and justify any deviation from this standard.
  - All infiltration devices are to be designed to allow for cleaning and maintenance overhauls.
  - All infiltration devices are to be located clear of all easements, and take into account the proximity of future dwelling foundations.

[PSCNS03]

#### **GENERAL TERMS OF APPROVAL UNDER SECTION 100B OF THE RURAL FIRES ACT 1997**

79. At the issue of the subdivision certificate and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bushfire Protection 2006' and the NSW Rural Fire Services document 'Standards for asset protection zones'.

80. A minimum 15 metre asset protection zone (APZ) is to be provided from the eastern boundary of proposed Lots 13 to 17 (inclusive) of the development and shall be maintained as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
81. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.
82. Public road access shall comply with section 4.1.3 (1) of 'Planning for Bush Fire Protection 2006'.
83. The existing dwellings on proposed Lots 15 and 16 are required to be upgraded to improve ember protection. This is to be achieved by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen. Where applicable, this includes any sub floor areas, openable windows, doors vents, weepholes and eaves.

**REPORT:**

**Applicant:** Mr D O'Rourke  
**Owner:** Mr D O'Rourke  
**Location:** Lot 56 DP 1030322, Collins Lane Casuarina  
**Zoning:** Part 2(e) Residential Tourist and Part 7(f) Environmental Protection (Coastal Lands)

**BACKGROUND:**Proposal

The proposed development is to undertake a three stage, eighteen (18) lot community title subdivision comprising of seventeen (17) residential and one (1) neighbourhood property allotment. The lots will be formed under a community title scheme.

The proposed subdivision will be delivered over three (3) stages, with all lots to be of varying size and utilise varying points of access. The stages, proposed lot sizes and access points are summarised in the table below:

Proposed Lot	Size (m <sup>2</sup> )	Accessed from
<b>Stage 1</b>		
6	503.15	Casuarina Way
<b>Stage 2</b>		
1	520.5	Casuarina Way
2	607.25	Casuarina Way
3	555.2	Casuarina Way
4	503.15	Casuarina Way
5	503.15	Casuarina Way
<b>Stage 3</b>		
7	714.8	Lot 19
8	479.8	Lot 19
9	479.8	Lot 19
10	479.8	Lot 19
11	464	Lot 19
12	503.9	Collins Lane
13	560	Lot 19
14	642	Lot 19
15	918.96	Lot 19
16	761.3	Lot 19
17	1362.6	Lot 19
18	910	Collins Lane

Proposed Lot 18 is to function as a neighbourhood property allotment and will be used to provide access, water, visitor parking (7 spaces) and a communal garbage storage area. This lot is proposed to be created as part of stage 3.

### SEPP 1 Objection

A SEPP 1 objection also accompanies the application. The objection is in respect of the planning standard identified within Clause 21A (2)(a) of the Tweed Local Environmental Plan 2000, specifically seeking variance to the 40 hectare minimum lot size development standard for the 7(f) zone.

The SEPP 1 objection relates to a small portion of the site adjacent to the eastern boundary which is zoned 7(f) Environmental Protection (Coastal Lands). The 7(f) zoned land represents approximately 11.7% of the site and the remainder of the site is zoned 2(e) Residential Tourist which has a minimum lot size of 450m<sup>2</sup>. It is proposed as part of the subdivision to include the 7(f) zoned land within proposed lots 13 to 17.

The application was referred to the NSW Department of Planning requesting the Director-General's Concurrence. Concurrence was granted to vary the 40 hectare minimum lot size development standard subject to no residential, associated buildings or structures being permitted on land zoned 7(f).

The Department of Planning advised that concurrence was granted in this instance for the following reasons:

- The majority of the proposed residential lots are within the land zoned 2(e) Residential Tourist while only the eastern strip consists of 7(f) Environmental Protection;
- The residential dwellings will be situated entirely within the 2(e) zone. No buildings or associated structures would be permitted in the 7(f) zone;
- The proposed uses of the land would be residential, which is consistent with the surrounding land uses.

### Site

The subject site is located off the end of Collins Lane within (but has frontage to Casuarina Way) within the central precinct for Casuarina (approved Stage 4). It is a rectangular shaped block with a 93 metre frontage to Casuarina Way and a depth of 143 metres to create a total site area of 1.61 hectares. The subject site is generally level (as a result of fill for the subdivision) and is clear of any significant vegetation, however the site is partially identified as bushfire prone.

The site accommodates existing vehicular access from Collins Lane and an approved detached dual occupancy (two dwellings). With a number of ancillary outbuildings such as storage sheds, tennis court and a cabana.

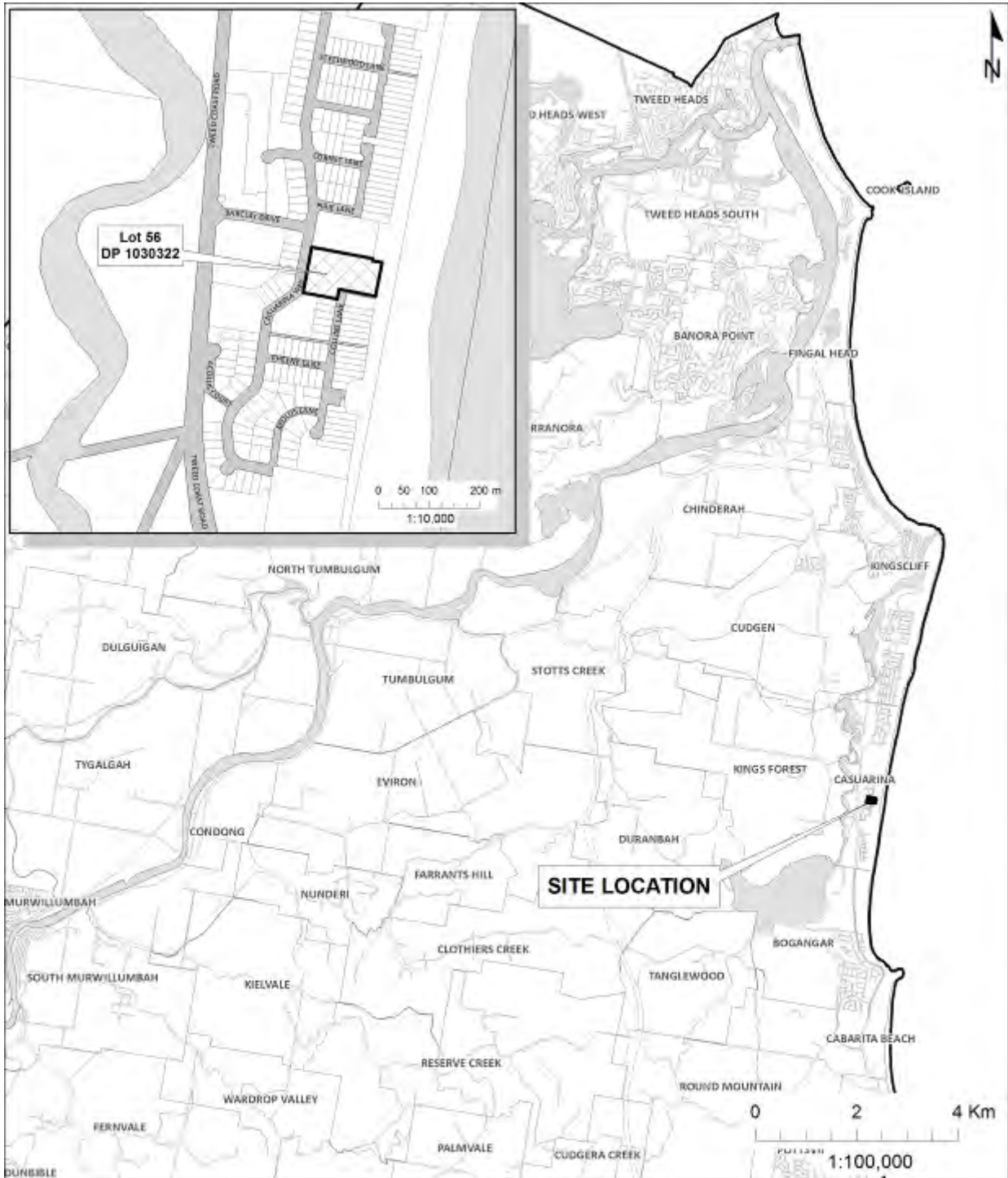
### Summary

As the Department of Planning have granted Director General's Concurrence, the purpose of this report is to have the application determined by a full Council as Council Officers do not have the delegation to determine a development application with a SEPP 1 objection greater than a 10 per cent variation of the applicable development standard.

After consideration of applicable environmental planning instruments, the Tweed Development Control Plan and various policies, the proposal is recommended for approval.



**SITE DIAGRAM:**



**LOCALITY PLAN**  
**Lot 56 DP 1030322,**  
**Collins Lane, Casuarina**

Filename: z:\asn\planning\msd\449\_B&W SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 4 November, 2009

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation 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 excavation 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 4 November, 2009  
 © Dept. of Lands & Tweed Shire Council

Coordinate System - MGA Zone 56  
 Datum - GDA 94

DO NOT SCALE  
 COPY PRINT - NOT CERTIFIED

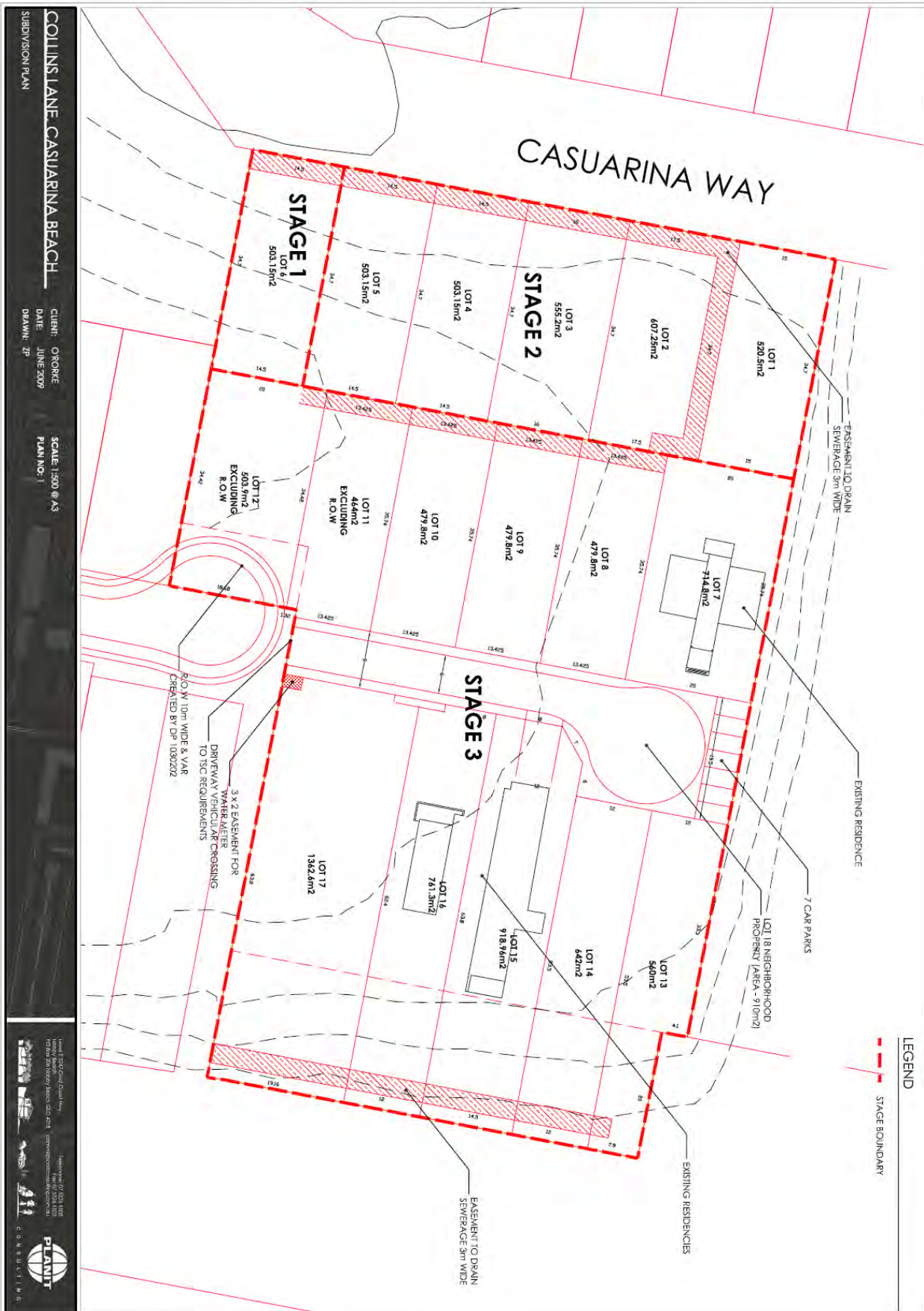
Civic and Cultural Centre  
 3 Tumbulgun Road  
 Murwillumbah NSW 2484  
 PO Box 616  
 Murwillumbah NSW 2484

T: (02) 6670 2400 / 1300 292 672  
 F: (02) 6670 2465  
 W: www.tweed.nsw.gov.au  
 E: plan@reforms@tweed.nsw.gov.au



**TWEED**  
**SHIRE COUNCIL**

DEVELOPMENT/ELEVATION PLANS:



**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**

Clause 4 illustrates that the aims of the TLEP 2000 are to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan. The vision of the plan is "*the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced*". Clause 4 further aims to provide a legal basis for the making of a DCP to provide guidance for future development and land management, to give effect to the Tweed Heads 2000+ Strategy and Pottsville Village Strategy and to encourage sustainable economic development of the area which is compatible with the Shire's environmental and residential amenity qualities.

The subject development application is considered suitably in keeping with the above, as it is not considered likely to result in a reduction of residential amenity for nearby residential properties or the shire as a whole.

**Clause 5 - Ecologically Sustainable Development**

Clause 5 of the LEP relates to ecologically sustainable development. The TLEP aims to promote development that is consistent with the four principles of ecologically sustainable development, being *the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms*. The subject site is an existing infill site and therefore the proposed development is considered to be in keeping with the ESD principles.

**Clause 8 Consent considerations**

This clause specifies that the consent authority may grant consent to development (other than development specified in Item 3 of the table to clause 11) only if:

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

In this instance, the subject site is part zoned 2(e) Residential Tourism, the primary objectives of which are outlined below.

The proposed subdivision is considered consistent with the primary objective of the zone as it will be for residential use.

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

The proposal is not considered to contribute to any unacceptable cumulative impact in the community due to the established residential nature of the subject area.

#### Clause 11 - Zone objectives

The site is part zoned 2(e) Residential Tourist and 7(f) Environmental Protection (Coastal Lands).

#### **2(e) Residential Tourist Zone**

Primary objective

- *To encourage the provision of family-oriented tourist accommodation and related facilities and services in association with residential development including a variety of forms of low and medium density housing and associated tourist facilities such as hotels, motels, refreshment rooms, holiday cabins, camping grounds, caravan parks and compatible commercial services which will provide short-term accommodation and day tourist facilities.*

Secondary objective

- *To permit other development which has an association with a residential/tourist environment and is unlikely to adversely affect the residential amenity or place demands on services beyond the level reasonably required for residential use.*

The proposed development for an eighteen (18) lot subdivision of a residential development lot within the Casuarina Beach Estate is considered to be consistent with the objectives of the 2(e) zone.

#### **7(f) Environmental Protection**

Primary objectives

- *To identify land susceptible to coastal erosion and protect it from inappropriate development.*
- *To protect and enhance the scenic and environmental values of the land.*

Secondary objective

- *To allow for other development that is compatible with the primary function of the zone.*

The proposed subdivision is considered to be appropriate in the 7(f) zone as the majority of the proposed residential lots are wholly within the land zoned 2(e) Residential Tourist while only the eastern strip consists of 7(f) Environmental Protection.

The residential dwellings will also be situated entirely within the 2(e) zone and no buildings or associated structures will be permitted in the 7(f) zone. The proposed uses of the land will be residential, which is consistent with the surrounding land uses.

#### Clause 15 - Essential Services

The proposal can be adequately serviced by way of existing water and sewer mains within the locality, whilst augmentation and embellishment of the existing stormwater facilities can also be satisfactorily achieved subject to compliance with the provisions of Tweed DCP Section A5 and conditions of consent.

The proposal is considered to be consistent with the provisions of Clause 15 of TLEP 2000.

#### Clause 16 - Height of Building

A 3 storey height limit encumbers the allotment. No buildings are proposed as part of this application.

The proposal is considered to be consistent with the provisions of Clause 16 of TLEP 2000.

#### Clause 17 - Social Impact Assessment

Having regard to the provisions of DCP Section A13, a detailed social impact assessment is not required.

#### Clause 27 - Development in Zone 7(f) Environmental Protection (Coastal Lands)

The objective of Clause 27 is to protect land that may be susceptible to coastal erosion processes from inappropriate development. It is considered that the proposed eighteen (18) lot community title subdivision will not impact on the behaviour of the sea, beach or dune, landscape or scenic quality of the locality, and any native vegetation.

The existing 3m wide easement to drain sewer in the 7(f) zone has been previously approved as public infrastructure (which is a permissible use). The current proposal seeks to relocate the existing sewer line (which services one house) and relocate it in alignment with the sewer infrastructure south of the subject site.

Works within the 7(f) zone for sewer infrastructure is only permissible for public purposes not private purposes as proposed within the subject community title scheme.

Accordingly Condition 15 has been recommended which reads as follows:

15. *Prior to issue of a Construction Certificate for Stage 3 the applicant is to lodge revised sewer infrastructure provisions for Lots 13 – 17 to relocate the proposed private sewer infrastructure outside the 7(f) zone.*

*Council may consider alternative options to maintain the proposed alignment including the possibility of retaining the sewer as public infrastructure upon lodgement of the Construction Certificate application. In this regard an easement in favour of Council over the public sewer would be required if it remained within the 7(f) zone.*

*This condition has been imposed to ensure compliance with the permissible uses within the 7(f) zone.*

Having a public sewer line within the 7(f) zone is consistent with surrounding development and in this instance is considered acceptable.

#### Clause 35 - Acid Sulfate Soils

The subject site is identified as possessing Class 4 Acid Sulphate Soil levels. Council's Environmental Health Unit have advised that the site has been subject to significant earthworks and disturbances for historical sand mining and construction of the subject subdivision. Any ASS which may have been present on the site would have been exposed previously. Further, the approved ASSMP for Casuarina Beach required treatment of materials below 5m AHD, west of the old coast road (which does not apply to the subject land).

It is considered that the proposal complies with the requirements of Clause 35 of the TLEP 2000.

#### Clause 39 - Contaminated Lands

The site is existing residential land and is part of the greater Casuarina Beach Estate. Council Environmental Health Unit have advised that in accordance with a Council Resolution of 21/11/2001 no further testing for contamination was necessary.

It is considered the proposal complies with the requirements of Clause 39 of the TLEP 2000.

#### Clause 39A - Bushfire Protection

The subject land is identified as being within a Bushfire hazard area. As per the provisions of the Rural Fires Act 1997 and pursuant to Section 100B of the Act a permit is required for subdivisions on land subject to bushfire hazard.

The NSW RFS has given their general terms of approval for the development and appropriate conditions of consent have been imposed.

## **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 33: Coastal hazard areas**

The proposal is for subdivision of an existing residential allotment within the Casuarina Beach Estate. All foreshore rehabilitation and beach access points have been undertaken/established as part of the parent subdivision. The proposal has no direct implications or relevance in this regard.

It is considered the proposed subdivision is in accord with the Coastline Management Manual and the existing subdivision patterns within the area. The proposal is compliant with Clause 33.

#### **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 proposed subdivision has been designed to replicate the existing layout with regard to the 'beach front' allotments and is clearly representative of the established subdivision pattern.*

*In this regard the established subdivision pattern provides 'beach front' residential allotments (inclusive of the subject site) which incorporates a part 2(e)/7(f) zoning. This configuration sees all 7(f) zoned land within the existing residential allotments provide areas less than 40 hectares. An effective visual representation of this situation can be found within Council's zoning maps.*

*The proposed layout inclusive of lot size variation is clearly in keeping with the existing subdivision pattern and will enable the continued development of the Casuarina Beach Estate in a coordinated and consistent manner. Granting of development consent inclusive of the proposed lot size variation will not result in an excess or avoidable impact.*

*Despite the lot size variation all existing 'beach front' allotments within Casuarina Beach achieve land uses generally in accordance with the objectives of the 7(f) zone. This is achieved by way of the regulatory requirements of Tweed Development Control Plan 2008 Section B5 and 88b Covenants which enforce no development and strict landscaping standards (native coastal dune species) in these areas. By virtue of the proposal applying these existing controls the subdivision will effectively duplicate the established environmental and scenic characteristics of both the adjoining 'beach front' allotments and that of the subject property. No adverse impacts will result to the established environmental character.*

**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.

- 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 in an existing subdivision that incorporates a development with access to utility services and within close proximity to community facilities. The subject allotment has been identified for subdivision since the creation of the Casuarina Beach Estate.

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 only a small fraction of the property is zoned 7(f) and the proposed layout inclusive of lot size variation is also clearly in keeping with the existing subdivision pattern and will enable the continued development of the Casuarina Beach Estate.

The streetscape and amenity of the locality will also be enhanced through the erection of new dwellings 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.

In addition, the Director-General's Concurrence has been granted to vary the 40 hectare minimum lot size development standard subject to no residential, associated buildings or structures permitted on land zoned 7(f).

**SEPP No. 55 - Remediation of Land**

The land has been sand mined in the past and areas of radiation have been discovered in the Casuarina Beach area. In relation to this development, Council's environmental Health Unit are satisfied that on the basis of the information submitted to Council, that further investigation is not required for radioactive material.

**SEPP No 71 – Coastal Protection**

Clause 8 of the SEPP identifies matters for consideration for land within the coastal zone. The application is considered to adequately satisfy the matters for consideration. Specifically the proposed development will be considered compatible with existing and approved development for the locality upon completion of the proposed subdivision works.

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

There are no draft Environmental Planning instruments applicable to the proposed development.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

Each allotment has been designed to enable a dwelling house to be erected that will be fully compliant with the relevant Sit and Building Design controls contained within Section A1.

It is noted that the existing dwelling which is to be located on Lot 7 provides a minor variation to the front deep soil zone with a small 3.5m x 4.0m uncover feature entry deck located in this area. Given this structure is existing and was approved prior to Section A1, a variation is considered appropriate in this instance.

A2-Site Access and Parking Code

The property has frontage to both Casuarina Way and Collins Lane. Proposed Lots 1 to 6 will have individual access driveway directly fronting an existing public road. Lots 7 to 11 and 13 to 17 will share the proposed 6m wide concrete driveway which will be constructed as part of Stage 3.

Seven (7) additional off street car parking spaces have been provided within the neighbourhood property allotment. It is considered that seven additional visitor car parking spaces is ample to service 17 residential allotments.

Council's Engineer therefore has raised no concerns with regard to site access and parking.

A5-Subdivision Manual

The proposed community title subdivision generally complies with the requirements of Section A5 of the DCP. With regards to the relevant provisions regulating lot size and dimensions, all allotments are compliant meeting both the 450m<sup>2</sup> minimum lot size and providing sufficient width and length to accommodate the required 10m by 15m building envelope.

B5-Casuarina Beach

The provisions of Section B5 relate to the land within the Casuarina Beach Estate. It is considered that the proposed infill subdivision is compliant with all relevant requirements of Section B5.

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 the 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**

The proposal was advertised for a period of fourteen days from Wednesday 25 February to 11 March 2009. During this period eight (8) submissions were received against the development. In response to the various objecting submissions the following assessment of the common issues is summarised below.

Objection	Response
Significant increase in traffic flow in Collins Lane, Pheeny Lane Aeolus Lane	Council's Engineers have raised no issues regarding the existing road network catering for the increased traffic resulting from the subdivision. The subject allotment has always been identified for future subdivision and as a result the local road network has been designed and has the capacity to accommodate the minor increase generated by the proposal.

Loss of Turning circle at northern end of Collins Lane	The existing cul de sac at the end of Collins Lane is to be retained as to allow for a suitable turning circle for vehicles to safely manoeuvre.
Insufficient parking	Seven additional off street car parking spaces have been provided within the neighbourhood property allotment. It is considered that seven additional visitor car parking spaces is ample to service 17 residential allotments.
Construction traffic management	It is envisaged that there will be increased traffic movement during construction periods. This traffic however will only be temporary.

**(e) Public interest**

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

**OPTIONS:**

1. Adopt the recommendation and resolve to approve the development application with conditions.
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.

**CONCLUSION:**

The proposed 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 therefore considered the site suitable for the development and warrants 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](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

Nil.

---

**THIS PAGE IS BLANK**

**9 [PR-CM] Development Application DA09/0385 for a Telecommunications Facility (30 Metre High Monopole and Associated Infrastructure) at Lot 17 DP 778719, No. 19 Meadow Place Uki**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA09/0385 Pt1**

**SUMMARY OF REPORT:**

Council has received an application for the construction of a telecommunication facility at Lot 10 DP 778719, No. 19 Meadow Place Uki. The telecommunication facility will comprise of:

- A 30 metre high monopole with 6 panel antennas mounted on a circular headframe and 2 x 1.2 metre parabolic antennas at 26 metres.
- A prefabricated equipment shelter will be located at the base of the proposed monopole.
- A high security chain wire fence around the proposed compound;
- Ancillary and associated equipment including items such as safety equipment, amplifiers, diplexers, triplexers, mounts, feeders, cable trays, and other associated infrastructure which are all considered to be necessary to facilitate the safe operation of the authorised facilities.

The application was advertised for a period of fourteen (14) days from Wednesday 22<sup>nd</sup> July 2009 to Wednesday 5<sup>th</sup> August 2009. During this period forty (40) submissions were received comprising of thirty four (34) objections and six (6) submissions in favour of the development. The most common issues raised were regarding the visual impact of the monopole, health concerns from electromagnetic energy generated from the facility and consideration of alternative locations. An assessment of the issues raised is summarised within the body of this report.

Additionally, this application has considered possible alternative sites. The applicant submitted sufficient material to suggest that alternative sites would not provide as significant improvement to the 3G coverage (or have the ability to provide any suitable coverage at all) as the subject site.

Following the assessment against the relevant heads of consideration, Council Officers consider that the proposed telecommunication facility will enhance the telecommunications services in Uki and the broader locality and therefore are recommending approval of the application. It is considered that the location and design of the proposal is suitable without causing any significant adverse impacts on the natural and built environments, the communications facility will also create a positive impact socially and economically by providing enhanced telecommunications coverage for the locality.

**RECOMMENDATION:**

**That Development Application DA09/0385 for a telecommunications facility (30 metre high monopole and associated infrastructure) at Lot 17 DP 778719, No. 19 Meadow Place, Uki be approved subject to the following conditions: -**

**GENERAL**

1. **The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos S8479F, Sheets G1 – G4 prepared by Daly International dated 06/04/2009, except where varied by the conditions of this consent.**  
[GEN0005]
2. **The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**  
[GEN0115]
3. **Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within or adjacent to the subject property.**  
[GEN0135]
4. **Access to the site shall be upgraded to provide a bitumen seal from edge of the existing road carriageway of meadow Place to the property boundary.**  
[GENNS01]
5. **Erosion and Sediment Control shall be provided and maintained in accordance *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - “Code of Practice for Soil and Water Management on Construction Works”.**  
[GENNS01]
6. **The access track from the property boundary at Meadow Place to the Optus Compound shall be upgraded to provide a driveway of minimum standard to allow a 2 wheel drive vehicle access to the compound under all weather conditions.**  
[GENNS01]
7. **A Right of Carriageway shall be created over the existing property access road servicing the proposed Optus compound.**  
[GENNS01]
8. **An easement for electricity supply (minimum 2m wide) shall be created (as required) over the electricity infrastructure within Lot 17 DP 778719 servicing the proposed Optus compound.**  
[GENNS01]
9. **The monopole is to be painted mist green to blend with it's surrounds.**  
[GENNS02]
10. **At the commencement of building works and in perpetuity the leased area shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of ‘Planning for Bush Fire Protection 2006’ and the NSW Rural Fire Service’s document ‘Standards for asset protection zones’.**  
[GENNS03]



## **PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

11. 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]

12. Detailed design drawings for the proposed access road to the monopole site must be submitted for approval by Director Planning and Regulation. The location of native vegetation species must be indicated and named on the plans and measures to avoid or ameliorate impacts indicated. In particular, avoidance of the average 2m wide root plate for larger Brushbox (*Lophostemon confertus*) trees and avoidance of damage to the Strangler Fig (*Ficus watkinsiana*) roots must be demonstrated.

[PCCNS01]

13. A vegetation management plan must be submitted for approval by Director Planning and Regulation detailing compensatory works as an offset for loss of native species. Such works must include planting of a minimum of 30 native species and Camphor Laurel and other weed species control within a defined area no less than 1 hectare in area.

[PCCNS02]

## **PRIOR TO COMMENCEMENT OF WORK**

14. 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]

- 15. 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]

- 16. 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]

- 17. 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]

## **DURING CONSTRUCTION**

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

[DUR0005]

- 19. 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]

20. 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]
21. 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]
22. 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]
23. 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]
24. 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.  
Any damage to property (including pavement damage) is to be rectified by the Developer to the satisfaction of the General Manager.  
[DURNS01]

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

25. 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]
26. On completion of work a certificate signed by a practising structural engineer is to be submitted to the Principal Certifying Authority to certify the structural adequacy of the structure.  
[POC0805]

#### **USE**

27. 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]

**28. 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]

**29. 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]

**30. All hazardous and/or dangerous goods shall be stored in accordance with requirements of WorkCover NSW.**

[USE1035]

**31. Works must be completed by qualified bush regenerators in accordance with the approved vegetation management plan.**

[USENS01]

**REPORT:**

**Applicant:** Optus Mobile Pty Ltd  
**Owner:** Mr D Nelmes and Mrs C Timbs  
**Location:** Lot 17 DP 778719, No. 19 Meadow Place Uki  
**Zoning:** 1(a) Rural  
**Cost:** \$200,000

**BACKGROUND:**

Council has received an application for the construction of a telecommunication facility at Lot 10 DP 778719, No. 19 Meadow Place Uki. The telecommunication facility will comprise of:

- A 30 metre high monopole with 6 panel antennas mounted on a circular headframe and 2 x 1.2 metre parabolic antennas at 26 metres.
- A prefabricated equipment shelter will be located at the base of the proposed monopole.
- A high security chain wire fence around the proposed compound;
- Ancillary and associated equipment including items such as safety equipment, amplifiers, diplexers, triplexers, mounts, feeders, cable trays, and other associated infrastructure which are all considered to be necessary to facilitate the safe operation of the authorised facilities.

Optus have stated that the purpose of siting a mobile tower in this location is that they have identified the need to improve digital mobile telephone coverage and to introduce the new Optus 3G mobile phone network to the areas of Uki, Dum Dum and rural surrounds.

The proposed site is located approximately 1.1 km north east of Uki Village on an elevated rural property. The subdivision pattern in this vicinity comprises of a mixture of small and large rural holdings used for both farming practices and residential occupation. The closest dwelling house to the facility is approximately 150 metres. The proposed location for the telecommunication facility is located amidst a dense plot of vegetation made up of predominantly camphor laurel trees with a number of native species. Access to the proposed site is achieved firstly via the existing driveway which leads to the existing residence on the property and secondly onto an existing dirt track.

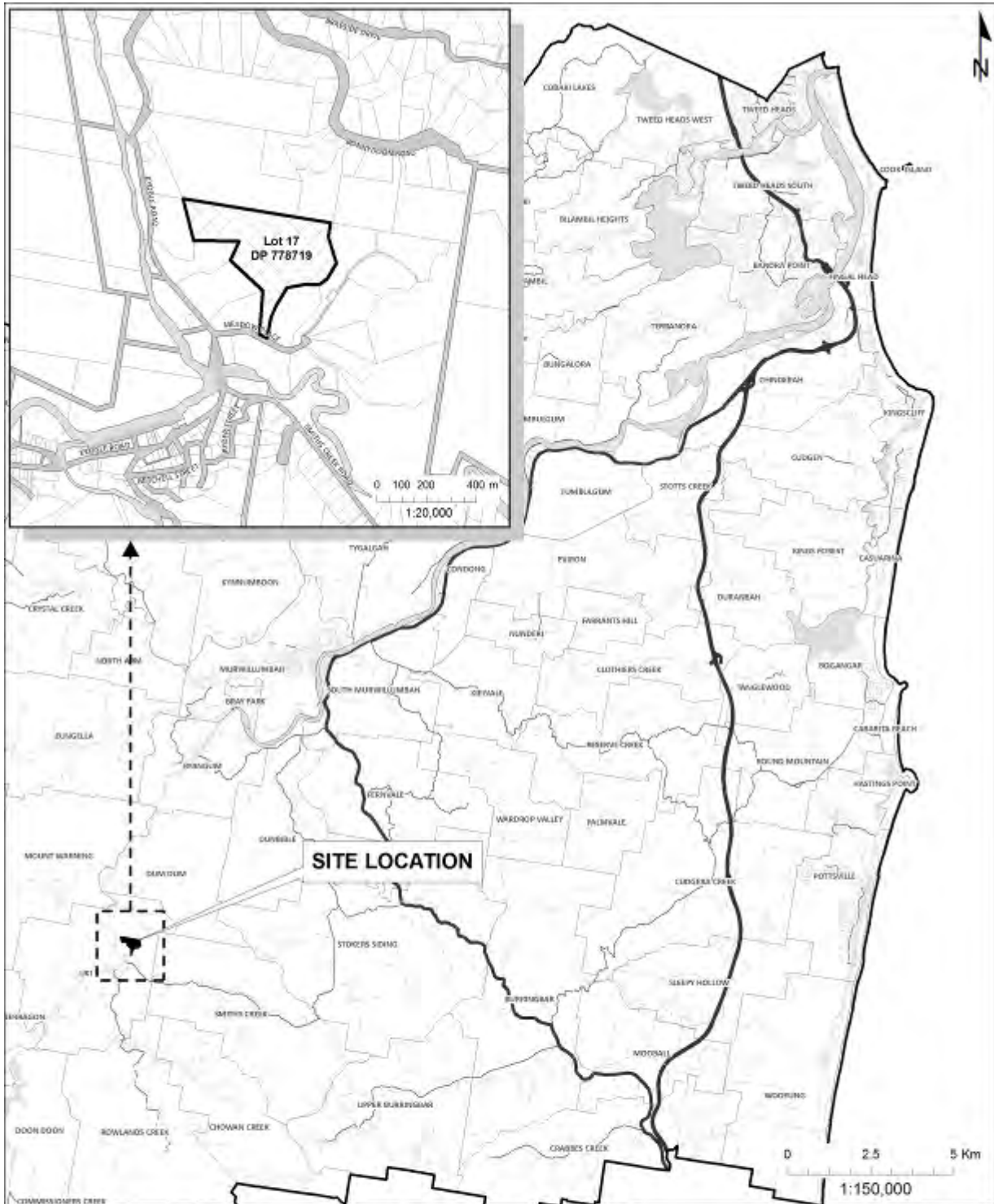
The applicants have stated that the proposed site was preferred as opposed to other locations in the Uki area for the following reasons:

- The elevated position of the site;
- The visual screening the existing tree cover affords;
- The Rural 1(a) zoning as opposed to an environmental protection zoning which incorporates a majority of the high points in Uki;
- The site is readily accessible;
- The availability of power at close range; and
- The lower ecological value of the site;

The application was advertised for a period of fourteen (14) days from Wednesday 22<sup>nd</sup> July 2009 to Wednesday 5<sup>th</sup> August 2009. During this period forty (40) submissions were received comprising of thirty four (34) objections and six (6) submissions in favour of the development. The most common issues raised were regarding the visual impact of the monopole, health concerns from electromagnetic energy generated from the facility and consideration of alternative locations. An assessment of the issues raised is summarised within the body of this report.

Following the assessment against the relevant heads of consideration, Council Officers consider that the proposed telecommunication facility will enhance the telecommunications services in Uki and the broader locality and therefore are recommending approval of the application. It is considered that the location and design of the proposal is suitable without causing any significant adverse impacts on the natural and built environments, the communications facility will also create a positive impact socially and economically by providing enhanced telecommunications coverage for the locality.

**SITE DIAGRAM:**



**LOCALITY PLAN**  
 Lot 17 DP 778719  
 No.19 Meadow Place, Uki

Filename: z:\as\planning\msd\A4P\_B&W SitePlan.mxd

Author: J. Batchelor - Planning Reforms Unit

Date Printed: 4 November, 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 declines 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 construction a "Dig before you Dig" enquiry must be made by calling 1300. The information contained on this document remains valid for 30 days only from the date of supply.



Cadastral 4 November, 2009  
 © Dept. of Lands & Tweed Shire Council

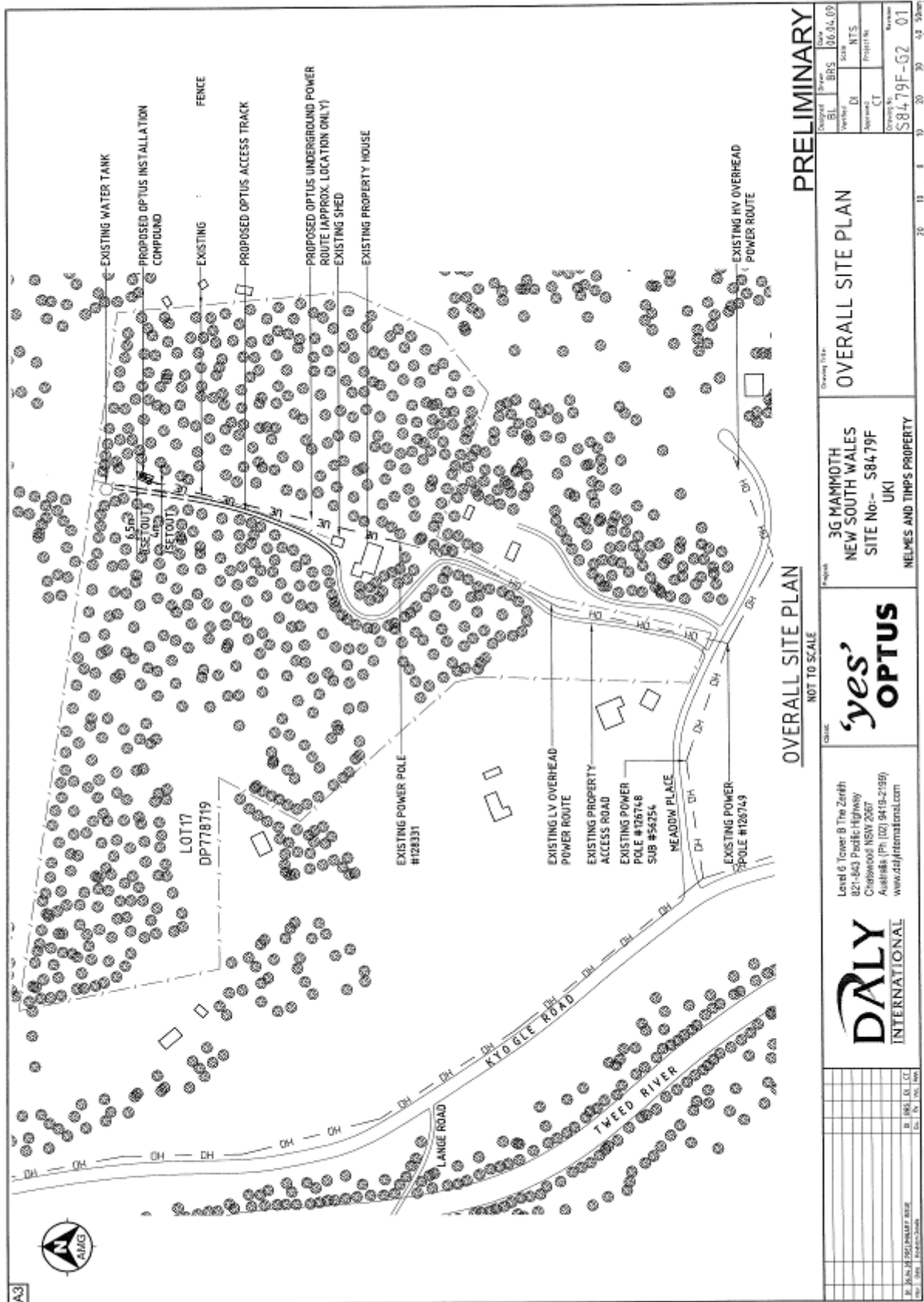
Coordinate System - WGA Zone 56  
 Datum - GDA 94

DO NOT SCALE  
 COPY ONLY - NOT FOR FIELD

Civic and Cultural Centre  
 3 Tumbalong Road  
 Murrumbidgee NSW 2464  
 PO Box 616  
 Murrumbidgee NSW 2484  
 T: (02) 6670 2400 / 1300 292 872  
 F: (02) 6670 2483  
 W: www.tweed.nsw.gov.au  
 E: planning@tweed.nsw.gov.au



DEVELOPMENT/ELEVATION PLANS:



**OVERALL SITE PLAN**

NOT TO SCALE

**PRELIMINARY**

<b>Client:</b> BRS	<b>Date:</b> 06/04/09	<b>Drawing Title:</b> OVERALL SITE PLAN	
<b>Author:</b> DA	<b>Scale:</b> NTS	<b>Project No.:</b> 58479F	
<b>Approved:</b> CT	<b>Revision:</b> S8479F-G2_01		

**3G MAMMOTH NEW SOUTH WALES**  
SITE No-- 58479F  
UKI  
HELMES AND TIMPS PROPERTY

**yes' OPTUS**

**DAILY INTERNATIONAL**

Level 6 Tower B The Zeebri  
821-843 Pacific Highway  
Cherwood NSW 2807  
Australia (Ph) (00) 9415-2199  
www.dailyinternational.com

<b>Author:</b> DA	<b>Scale:</b> NTS	<b>Project No.:</b> 58479F	<b>Revision:</b> S8479F-G2_01
-------------------	-------------------	----------------------------	-------------------------------



**ANTENNA CONFIGURATION**

ANTENNA SYMBOL	SECTOR 1	SECTOR 2	SECTOR 3	SECTOR TEC	PARAMOUNT 4	PARAMOUNT 5
ANTENNA TYPE	100% TH	75% TH	30% TH	TEC	34.5 TH	TEC TH
ANTENNA TYPE OFF POSITION	TEC OFF POSITION	TEC OFF POSITION	TEC OFF POSITION			
ANTENNA DIMENSIONS	2620 x 210 x 95	2620 x 210 x 95	2128 x 210 x 95	TEC	4000W	4000W
ANTENNA MOODT	50/0/0	50/0/0	50/0/0	TEC	26.0/0	26.0/0
ANTENNA STATUS	PROPOSED	PROPOSED	PROPOSED	PROPOSED	PROPOSED	PROPOSED
WAS	YES	YES	YES	TEC		
COMBINED MULTIPLE	NO	NO	NO	TEC		
FBEID TYPE	TEC OFF POSITION	TEC OFF POSITION	TEC OFF POSITION	TEC		
FBEID LENGTH APPROX	3.0m	3.0m	3.0m	TEC	5.0m	TEC
FBEID NUMBER	TEC	TEC	TEC	TEC		
5-DIGIT SITE NUMBER				TEC		
5-DIGIT SITE NAME				TEC		

**NOTE:**  
 1. ALL ANTENNA ANTENNA ARE IN DECIBEL RELATIVE TO THE MATH.  
 2. PROPOSED PANEL ANTENNA COLOUR TO BE CONFIRMED.  
 3. PROPOSED HORN ANTENNA DESIGN INDICATIVE ONLY. MANUFACTURER DESIGN AND CAPACITY TO BE DETERMINED.

**PROPOSED ANTENNA LOCATIONS:**  
 - PROPOSED HORN ANTENNA INDICATIONS WITH INDICATIVE ONLY EXACT SIZE (TEC)  
 - PROPOSED OPTUS 1000 PARABOLIC ANTENNA (2 MATH AND ESTIMATION TEC)  
 - PROPOSED OPTUS 300 HIGH HORN ANTENNA WITH OPTUS LAP LEAF FENCE  
 - PROPOSED OPTUS PANEL ANTENNA (5 OFF TYPE AND ANTENNA TEC)  
 - PROPOSED OPTUS 430 WIRE ELEVATED CABLE LAUNDER GANTRY AND SUPPORT POSTS  
 - PROPOSED OPTUS 140 HIGH CHANNEL SECURITY CONDUIT WITH 36 WIRE ACCESS GATES  
 - PROPOSED OPTUS UNDERGROUND POWER SUPPLY ROUTE APPROX. 47m TO EXISTING POWER PILE #108833

**30% OPTUS**

**DAILY INTERNATIONAL**

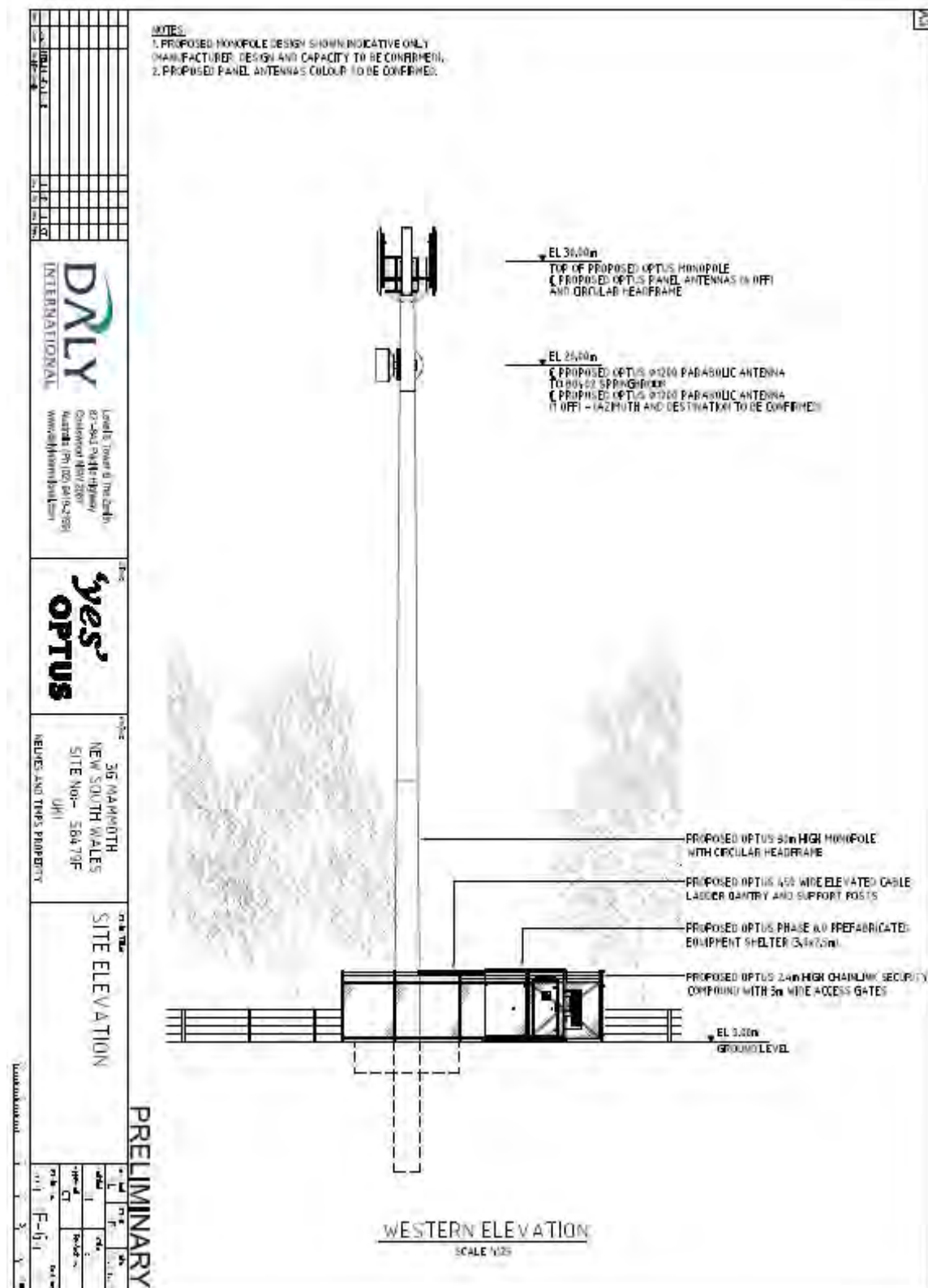
Level 19, Tower 2, 200, South Brisbane Quay, Brisbane, QLD 4101  
 Australia (07) 3255 5555  
 email: info@dailymedia.com.au

**3G MAMMOTH NEW SOUTH WALES**  
 SITE No: 58474P  
 UTA  
 (METS AND TIME) PROPERTY

**PRELIMINARY**

**SITE LAYOUT AND SETOUT PLAN**

SCALE: 1:500  
 DATE: 10/11/09  
 DRAWN BY: [Blank]  
 CHECKED BY: [Blank]  
 DATE: 10/11/09  
 DRAWN BY: [Blank]  
 CHECKED BY: [Blank]



**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 main objective of Clause 4 is:

*“the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced.”*

The subject proposal seeks consent for the erection of a telecommunications facility comprising of a 30 metre high monopole and ancillary infrastructure. The proposal involves minor modification to the natural environment in the form of the removal of a small clump of camphor laurel trees. The remaining vegetation including native species will not be touched. It is considered that the proposed development will have minimal impact on the natural environment.

In terms of the developed character of the area the proposal will facilitate better technological availability for people in the area which could potentially enhance economic viability in the area.

The proposed development is therefore considered to be consistent with the aims of this plan.

Clause 5 - Ecologically Sustainable Development

The proposed development is consistent with the four principles of ecological sustainable development by;

- a) not creating irreversible environmental damage.
- b) the environment is maintained for the benefit of future generations.
- c) the biological diversity and ecological integrity is retained and a fundamental consideration.
- d) the environmental qualities of the locality are retained.

Clause 8 Consent considerations

The subject land is zoned 1(a) Rural.

The primary objective of the 1(a) zone is to enable the ecologically sustainable development of land that is suitable primarily for agricultural and natural resource utilisation purposes and associated development and to protect rural character and amenity.

The proposal is consistent with the primary objective of the zone by aiding technological advancement in the rural area while not compromising the rural character and amenity of the area.

The proposed telecommunication facility is consistent with the secondary objective of the 1(a) zone by allowing development that is not suitable within an urban area due to the greater visual impact it generates and at the same time improving telecommunications in the locality. The proposed telecommunication facility is permissible with consent.

The other aims and objectives of this plan that are relevant have been considered and addressed within this report.

An assessment addressing relevant policies has been undertaken identifying that the development would not create an unacceptable cumulative impact on the community, locality or catchment.

### Clause 11 - Zone objectives

#### *Primary objectives*

- *to enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilisation purposes and associated development.*
- *to protect rural character and amenity.*

#### *Secondary objectives*

- *to enable other types of development that rely on the rural or natural values of the land such as agri- and eco-tourism.*
- *to provide for development that is not suitable in or near urban areas.*
- *to prevent the unnecessary fragmentation or development of land which may be needed for long-term urban expansion.*
- *to provide non-urban breaks between settlements to give a physical and community identity to each settlement.*

The proposal is defined by the Tweed LEP 2000 as a Telecommunication Infrastructure (Facility). The proposal is considered permissible with development consent and is consistent with the objectives of the zone by aiding technological advancement in the rural area while not compromising the rural character and amenity of the area.

### Clause 15 - Essential Services

Electricity supply is available from Meadow Place. Power is proposed to be supplied as an extension to this supply. The power supply is proposed to be run underground via a 2 metre easement.

### Clause 16 - Height of Building

The proposed equipment shelter is single storey in height, with the associated tower being approximately 41m in height. Under the definition of storey within the Tweed LEP 2000 the tower can not be measured in storeys, however given the placement of the tower amongst vegetation of a comparable height and scale the proposal is considered consistent with the clause.

### Clause 39A – Bushfire Protection

The site is identified as being prone to bush fire. The telecommunication facility is considered to comply with the clause due to the following:

- The development will not create a significant adverse impact on the implementation on bush fire control strategies. The telecommunication facility will assist bush fire control by providing communications.
- The facility will not increase the threat to the lives of residents, visitors or emergency service personnel (the facility does not house residents or visitors).
- The facility will be constructed of non-flammable material.

### **State Environmental Planning Policies**

#### **SEPP (North Coast Regional Environmental Plan) 1988**

##### Clause 12: Impact on agricultural activities

The council shall not consent to an application to carry out development on rural land unless it has first considered the likely impact of the proposed development on the use of adjoining or adjacent agricultural land and whether or not the development will cause a loss of prime crop or pasture land.

Due to the site being heavily vegetated, it is considered that the development will not cause a loss of prime crop or pasture land.

#### **SEPP (Infrastructure) 2007**

The proposed development is classified under Division 21 as development that requires consent from Council. The SEPP stipulates:

*‘Development for the purposes of telecommunications facilities, other than development in clause 114, may be carried out by any person with consent on any land.’*

Hence the application is applying for consent to erect the telecommunications tower.

#### **SEPP (Rural Lands) 2008**

The land is within the 1(a) Rural Zone and the provisions of this SEPP apply to the proposed development.

The principles are stated and addressed as follows:

*The Rural Planning Principles are as follows:*

- (a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
- (b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*
- (c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*
- (d) in planning for rural lands, to balance the social, economic and environmental interests of the community,*
- (e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*
- (f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*
- (g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*
- (h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

It is considered that the proposed development satisfies the rural planning principles as it will provide development on rural land that will contribute to the broader community needs by improving telecommunications in the locality.

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

N/A

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

**Tweed Development Control Plan**

**A2-Site Access and Parking Code**

Vehicular access to the site is proposed via Meadow Place. An existing driveway

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

N/A

(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**

Noise

Some level of noise will be generated during the construction phase for the proposed monopole. During the operation phase of the lifespan of the monopole noise associated with use of air conditioning plants servicing the equipment shelter will be generated. However, considering the distance to nearby dwellings is approximately 150 metres, no significant impacts are anticipated. If the development is approved appropriate conditions of consent can be utilised to address any subsequent noise issue associated with construction works and the use of the air- conditioning units.

Lighting

The application does not make mention of any security lighting to be used at the facility. It is considered that this issue can be addressed by appropriate conditions of consent.

Contamination

The issue of contamination has been considered in the SEE. The SEE states that the site is heavily vegetated and the site has not been used for any other uses. Council's mapping system shows that there are no cattle dip sites within 200m of the proposed facility. An examination of the available aerial photos and topographical maps for the site also do not indicate that the site was used for any potentially contaminating activity.

Radiofrequency Electro Magnetic Emissions (RF-EME Levels)

The Australian Government and the Australian Communications and Media Authority (ACMA) (Australia's regulator for broadcasting, the internet, radio-communications and telecommunications) published a Factsheet titled Mobile phone base stations and electromagnetic radiation (EME).

The following is an extract from the fact sheet;

*"ACMA has made mandatory EME exposure limits for installations such as broadcast towers and mobile phone base stations. The exposure limits set by ACMA were determined by the **Australian Radiation Protection and Nuclear Safety Agency (ARPANSA)** based on recent scientific findings and the world's best practice. **These limits are many times below a level of exposure to EME that is known to have adverse effects on the human body and are consistent with World Health Organisation guidelines.***

*ACMA has adopted a precautionary approach to the regulation of EME, ensuring that **exposure limits** to emissions from communications transmitters are stringent and **lower** than those levels that have been found to cause adverse health effects.*

*Public exposure to emissions from radio-communications transmitters is generally many times less than the exposure limits required by the standards. ARPANSA conducted audits of base stations between 1997 and 1999, and again in 2003. The results show low EME levels were found in areas accessible to the public."*

Radiofrequency Electro Magnetic Emissions (RF- EME) from the operation of the Base Station has been assessed and a report has been provided dated 24/04/09. This Report has been prepared in accordance with the requirements of The Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) and estimates the maximum cumulative EME levels (% of ACMA mandated exposure limit) produced by the site at ground level at the following distance from the antennas:

Distance from the antennas at 19 Meadow Place	Maximum Cumulative EME Level
0m to 50m	0.0051%
50m to 100m	0.0079%
100m to 200m	0.042%
200m to 300m	0.042%
300m to 400m	0.024%
400m to 500m	0.014%

The values of electromagnetic energy are given as percentages of the permitted limit. The results indicate that the **maximum estimated EME level is 0.042% of the ACMA mandated exposure limit at a distance of 202.67m**. The report demonstrates that the predicted emissions produced by the proposed facility are well within these standards. Therefore the operation of the Base Station is not expected to give rise to any RF- EME issue for the public.

### Visual Impact

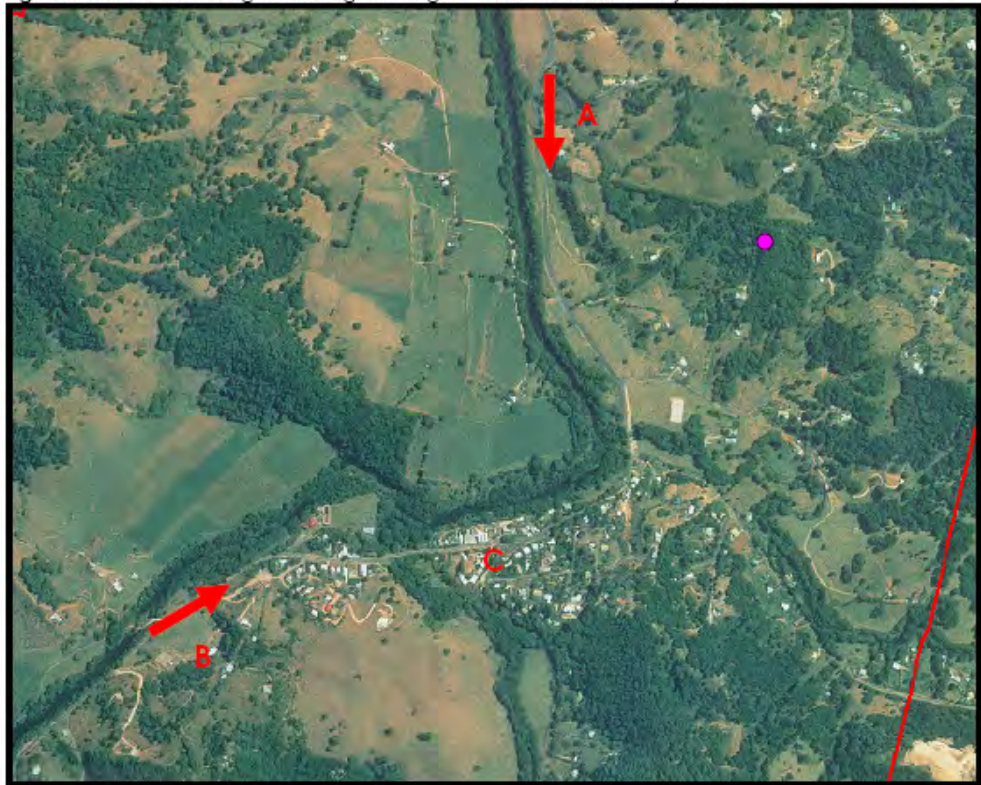
The proposed monopole is 30 metres in height and located on the top of an existing hill, some level of screening is afforded to the development from existing mature tree species that are located on the hill top. The undulating and winding terrain also assists in mitigating numerous view sheds to the site. The proposed monopole is to be painted mist green as to blend with its surrounds. The monopole structure has a relatively small circumference and the type of headframe is in a compact circular form as to further reduce the visual impact.

The following is a response provided by the applicant regarding the potential impact of the main view sheds of concern with this proposal.



- *Figure 3 below depicts view sheds when exiting and entering Uki village.*

Figure 3. Viewsheds entering and exiting Uki Village. Pink dot denotes the subject site.



Source: <http://imagery.maps.nsw.gov.au/>

- *Entering Uki heading north east along Kyogle Road “B”, the proposed monopole will not be visible.*
- *Entry into Uki heading south along Kyogle Road “A”; the proposed monopole is also unlikely to be detected until just before/driving past 1361 Kyogle road (refer to photo 6 below). The driver’s attention would have to be towards the left of the vehicle to view the proposed monopole. The impact of this view shed will be mitigated by vegetation which will make detection by drivers passing by difficult.*

Photo 6. Photograph taken from 1361 Kyogle road looking north east towards cherry picker and proposed site (proposed site located 140m behind cherry picker). The orange arrow indicates location of cherry picker. Pink arrow indicates compensation (distance & angle) for approximate location.



- *Views from the main centre of the village area “C” (commercial/tourist area). The proposed site location is difficult to detect from the centre of the village because of the elevated terrain at the northern end of the village. It is not anticipated that the monopole would be visible from the central area of Uki Village.*
- *There is minimal to no detrimental effect when heading through Uki village along Kyogle Road due to the double factors of dense mature vegetation and sharply twisting roads/ undulating steep terrain that limits the “panoramic view sheds”. Panoramic view sheds are more common when driving through rural farmland largely cleared of the majority of vegetation combined with gently undulating terrain. The only area where varying degrees of view to the proposed monopole can be gained is at the end of Meadow Place. The figures below identify potentially 4 properties which may have Mount Warning and the proposed monopole in the same view shed.*



From the information submitted above by the applicants, it is conceded that the proposed monopole may have some visual impact in public areas and on some neighbouring private properties as it will not be completely invisible as the facility needs a clear line of sight for transmission. However, the main view sheds of concern's impact is considered to be minimal as the applicants have designed the facility to be amongst existing mature tree species and the monopole is to be painted mist green as to blend with its surrounds.

#### Consideration of Alternative Sites

The applicant provided the following analysis of alternative sites:

*"When looking at alternative sites there is a limit as to how far the 3G mobile base station can be located from the targeted coverage area (in this case the township of Uki). Even though 3G coverage from a mobile station may reach many kilometres out from the actual base station the greater the distance from the base station the greater degradation the 3G signal suffers. Signal degradation leads to commonly experienced problems such as dropping out, poor connectivity, etc.*

#### **Alternative sites considered - (please refer to Map 1)**

*A telecommunications facility at this location would have been prominent from the main street of Uki.*

#### **Candidate 2 - Lot 2 DP 581366 No. 22-30 Aults Road Uki**

*Difficulties were encountered in sourcing power to this site. Additionally it was also anticipated that there would be difficulty in getting heavy machinery to the site (for construction) due to the steep gradient of the terrain.*

#### **Candidate 3 - Lot 53 DP 755754, Langes Road, Uki**

*Inability to obtain tenure approval from the property owner.*

#### **Candidate 4 - Water Treatment works, end of Old Convent Road, Uki**

*As per candidate 1.*

#### **Candidate 5 - Water Reservoir at end of Grants Road, Uki**

*Existing layout of area around water reservoir is problematic. There was difficulty in locating an appropriate area for the facility to be erected.*

#### **Candidate 6 - Lot 4 DP 43844 1359 Kyogle Road, Byangum NSW**

*Insufficient space left on property to appropriately accommodate the proposed facility. Furthermore, the existing house is already located in the prime area for any proposed telecommunications facility.*

**Candidate 7 - Property at end of Sunrise Place, Uki**

*As per candidate 3.*

**Candidate 8 - Working Quarry site off Smiths Creek Road, East of Uki**

*Site was discounted from a radiofrequency perspective because the 3G signal to Uki was blocked by terrain of a greater elevation to the west of the quarry. Basically, the main intended target of the 3G coverage, Uki Village, would have received no coverage from this location. Please see Figure 1 for a 3D illustration. Additionally the quarry is also a working quarry which also makes it difficult to secure an area that will not impede quarry activities now and in the future.*

**Candidate 9 - Site located around Mt Wollumbin**

*This site was very difficult to access by heavy machinery due to the steep terrain. It is also probable that the creation of a significant power easement (20m wide) requiring tree removal, would have been needed if this site had been progressed.*

**Candidate 10 - Lot 17 DP 778719, 19 Meadow Place, Uki**

*Candidate 10 is situated on elevated terrain outside the main Uki village area. This candidate has many attractive features for telecommunications facility siting including access, power and good vegetation cover.*

*Following critical evaluation of the above candidates, a preferred nominated candidate is then selected. This selection is based on a number of key issues including radiofrequency coverage; planning/environmental considerations; engineering criteria; and the availability of the site and associated construction costs (as outlined in greater detail in Section 2.2 above).*

*In this particular instance, the proposed candidate identified as Candidate 10 at Lot 17 DP 778719, 19 Meadow Place, Uki was considered as the optimum outcome to provide Optus 3G mobile and wireless broadband to the Uki area."*

Council is satisfied with the applicant's analysis as detailed above and accordingly has recommended approval for the subject site based on appropriate conditions of consent.

### Flora and Fauna

The site is mapped under the Tweed Vegetation Management Strategy 2004 as Camphor Laurel dominated vegetation of low ecological significance and low ecological sensitivity. A site visit confirmed that the area upon which the monopole is proposed is mainly cleared and surrounded by Camphor Laurel, declared a Noxious Weed in Tweed Shire in March 2009. Camphor Laurel trees up to 6m as well as 10 rainforest edge species saplings 1 to 2m will require removal to enable the monopole erection. In addition, some further minor removal of native and exotic vegetation is likely along the proposed access road.

The larger site is mapped as Steep Protected Land in part with slopes over eighteen degrees. Ecological value exists within the occasional large (greater than 40cm diameter at breast height) Brushbox and Strangler Fig trees on the lot at lower elevation and regeneration of native rainforest seedlings is occurring in the vicinity of these trees. Despite the dominance of Camphor Laurel, these regenerating species indicate that the hillside could be rehabilitated to Brushbox Open Forest with a rainforest understorey over a period of time if significant effort were to be expended. Such occurrences are greater than 50m from the proposed monopole site and thus potential fauna using these trees are unlikely to be affected by installation of the tower.

Wildlife Atlas records for the surrounding 5km radius include records of a number of threatened flora and fauna species and the site is likely to provide occasional forage habitat for some of these threatened species such as the Grey-headed Flying Fox, Rose-crowned Fruit Dove and Superb Fruit Dove. However, the habitat is unlikely to provide roost sites for these species such that they could be considered resident on site.

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

The existing vegetation will provide a visual screen to the subject proposal. The elevated nature of the hill top affords the desired level of coverage to the proposed telecommunication tower. The proposed telecommunication facility will provide for a greater/better telecommunications service for the locality. The site has been deemed to be suitable for the proposal.

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

The application was advertised for a period of fourteen (14) days from Wednesday 22<sup>nd</sup> July 2009 to Wednesday 5<sup>th</sup> August 2009. During this period forty (40) submissions were received comprising of thirty four (34) objections and six (6) submissions in favour of the development. In response to the various objecting submissions the following assessment of the common issues raised is summarised below.

Objection	Response
Health concerns from electromagnetic energy generated from the facility	This has been discussed previously in this report.
Devaluation of property prices	The consideration of property prices is not a Section 79C matter for consideration.
Increased Traffic	The facility will be unmanned and service vehicles are expected to attend the facility for maintenance purposes only on average four (4) times per year. Due to the limited amount of servicing, additional traffic on Meadow Place is not considered an issue.
Alternative sites	<p>Optus has a network of base stations throughout Australia and when an area is identified to have poor network coverage or capacity a new facility has to be located to fit into the existing network. Optus, where practicable will try and locate telecommunications equipment on existing structures or rooftops.</p> <p>A search of the area has revealed that due to the area being generally rural, there are no existing structures such as water towers that would be suitable to house a telecommunications facility.</p> <p>In choosing the proposed location for the monopole, the applicants also considered a number of alternative sites, <b>attached</b> to this report is a copy of the applicants assessment of Alternative Sites.</p>
Location/site unsuitable	A search of the area has revealed that there are no other telecommunications facilities in the area. In order to reduce the number of facilities in the area Telstra would normally co-locate, but there are no such towers in the area.
Lack of community consultation	It is not a statutory obligation for the applicants to undertake community consultation.
Visual impacts	This has been discussed previously in this report.

**(e) Public interest**

The submissions that have been received are noted, Council currently has no specific policies in relation to telecommunication tower development. The proposal is a permissible form of development in the 1(a) zone and therefore can be assessed by Council.

The visual impact on the adjoining landowners will be minimal as the applicants have designed the facility to be amongst existing mature tree species and the monopole is to be painted mist green as to blend with its surrounds.

The communities concerns in regard to health risks are acknowledged and have been considered. However, current research indicates that the potential for health implications from EME levels is minimal. In this instance Council relies on the relevant standards from ARPANSA and other authorities. Council's Environmental Health Officers deemed the submitted information and reporting on the potential health risks of the monopole to be consistent with outlined Australian standards. The proposed development is consistent with all relevant guidelines and proposed to be conducted in accordance with outlined Australian standards. The proposed telecommunication facility will provide for a greater/better telecommunications service for the locality.

**OPTIONS:**

1. Resolve to adopt the recommendations made and approve the development application.
2. Resolve to refuse the development application.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The proposed telecommunication facility will enhance telecommunications services in the locality. The location and design of the proposal is considered suitable without any significant adverse impacts on the natural and built environments, the communications facility will create a positive impact socially and economically by providing enhanced telecommunications coverage for the locality.



**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. Applicant's assessment of alternative sites (ECM 8404297)
-

**THIS PAGE IS BLANK**

**10 [PR-CM] Development Application DA09/0523 for a Dwelling at Lot 383 DP 1134599, Overall Drive Pottsville**

**ORIGIN:**

**Building & Environmental Health**

**FILE NO: DA09/0523 Pt1**

**SUMMARY OF REPORT:**

An application has been received to construct a single storey dwelling at the above property. The property is a corner allotment has a primary street frontage to Overall Drive and secondary street frontage to Kellehers Road with the rear boundary of the property adjacent to a public reserve zoned 7(l) Environmental Protection Habitat which extends down to the river foreshore of Mooball Creek.

The applicant has lodged a SEPP No. 1 variation as the proposed development will result in overshadowing of the adjoining foreshore.

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 variations greater than 10% to be determined by full Council. Given that the Department of Planning has advised Council Officers to be conservative with the application of the 10% rule, the difficulties of calculating 10% of the shadow development standard (as it is time based), it has been decided to report this application to Council.

After assessment of the relevant planning matters, and taking into account the minor overshadowing to open waterfront space at Mooball Creek and also the constraints imposed by the geometry of the corner allotment it is considered that the proposed development is suitable for approval, subject to conditions.

**RECOMMENDATION:**

**That:-**

- A. State Environmental Planning Policy No. 1 objection to Clause 32B of the North Coast Regional Environmental Plan regarding overshadowing be supported and the concurrence of the Director-General of the Department of Planning be assumed**
- B. That Development Application DA09/0523 for a dwelling at Lot 383 DP 1134599, Overall Drive Pottsville be approved subject to the following conditions: -**

## **GENERAL**

1. The development shall be completed in accordance with the plans approved by Council and the Statement of Environmental Effects, except where varied by conditions of this consent.  
[GEN0015]
2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.  
[GEN0115]
3. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within or adjacent to the subject property.  
[GEN0135]
4. A Sewer manhole is present on this site. This manhole is not to be covered with soil or other material.  
Should additional fill be proposed in the area of the sewer manhole application shall be made to Council's Engineering & Operations Division for the raising of the manhole.  
[GEN0155]

## **PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

5. 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]

## **PRIOR TO COMMENCEMENT OF WORK**

6. 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]
7. 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]
8. 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]
9. 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]
10. 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]

11. 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]

12. 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]

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

[PCW1005]

#### **DURING CONSTRUCTION**

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

[DUR0005]

15. 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]

16. 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]

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

[DUR0245]

18. 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]

19. 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]

20. 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]

21. 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]

22. The finished floor level of the building should finish not less than 225mm above finished ground level.

[DUR0445]

23. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan Part A1 to the satisfaction of the Principal Certifying Authority. Please note timber retaining walls are not permitted. [DUR0835]
24. 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]
25. 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]
26. 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]
27. 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 Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings. [DUR1875]
28. No portion of the structure may be erected over any existing sullage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains. [DUR1945]
29. 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]
30. The guttering downpiping and roof waste water disposal system is to be installed and operational before the roofing is installed. [DUR2245]
31. 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]



- 32. 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]
- 33. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993.**
- [DUR2515]
- 34. 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]
- 35. 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]
- 36. 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]

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

- 37. 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]
- 38. Prior to the issue of an occupation certificate,**
- (a) Certification of termite protection methods performed by the person carrying out the works is to be submitted to the PCA; and**
  - (b) A durable notice must be permanently fixed to the building in a prominent location, such as in the electrical meter box indicating:-**
    - (i) the method of protection; and**
    - (ii) the date of installation of the system; and**
    - (iii) where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and**
    - (iv) the need to maintain and inspect the system on a regular basis.**

[POC0235]

39. 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]

40. 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]

41. 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]

## USE

42. 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]

43. 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]

44. The building is to be used for single dwelling purposes only.

[USE0505]

**REPORT:**

**Applicant:** Mr JB Watson and Mrs JA Watson  
**Owner:** Mr JB Watson and Mrs JA Watson  
**Location:** Lot 383 DP 1134599, Overall Drive Pottsville  
**Zoning:** 2(a) Low Density Residential  
**Cost:** \$236,000

**BACKGROUND:**

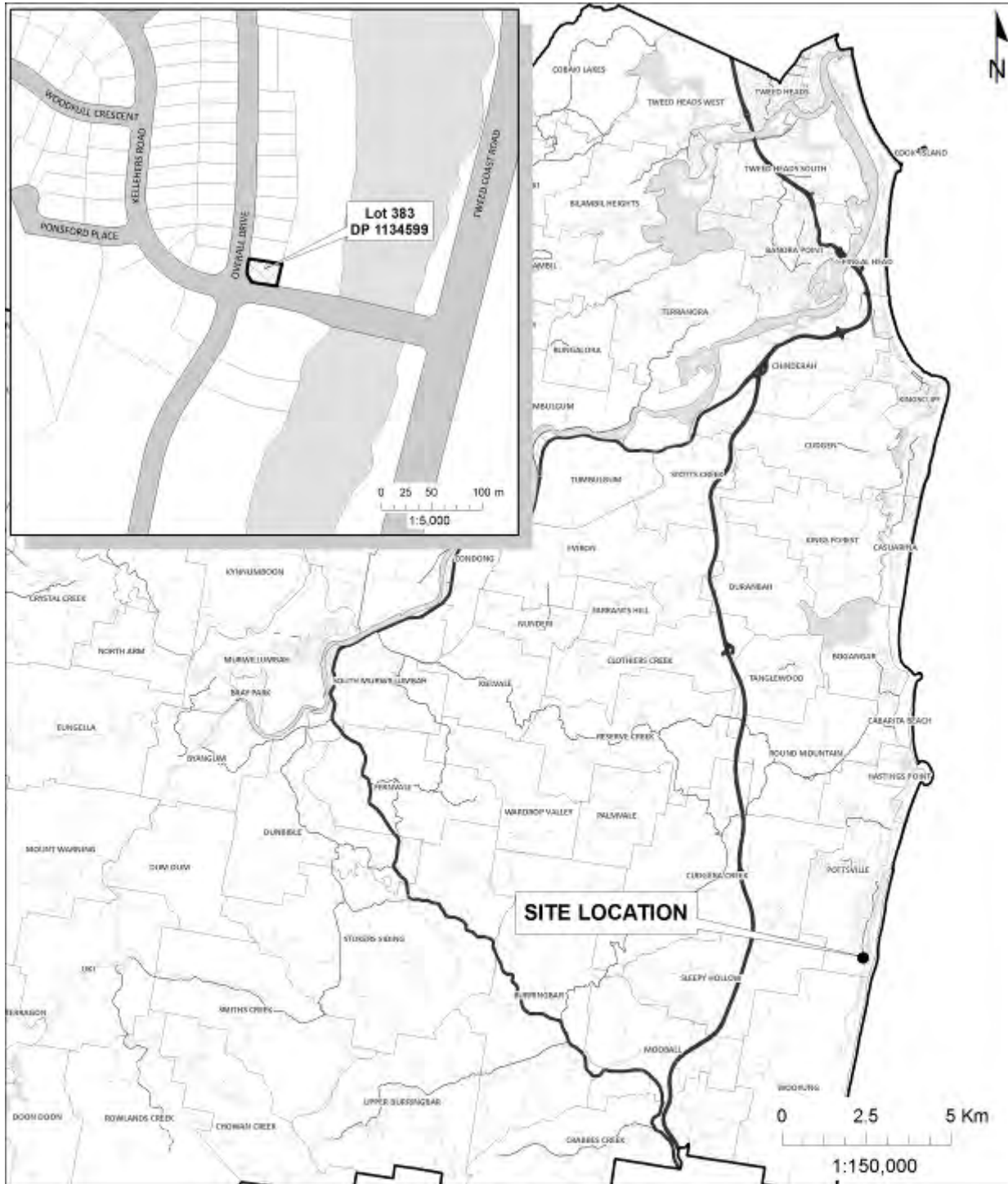
An application has been received to construct a new single storey dwelling on the subject property and part of the application is a SEPP1 objection against Clause 32B 4(b) of the North Coast Regional Environmental Plan 1988 (now a State Environment Planning policy) relating to overshadowing of waterfront open space before 3pm midwinter 21 June and 7pm midsummer (daylight saving time) 21 December. The proposed single storey dwelling will cast a shadow onto the waterfront open space before the above times and therefore must be considered by Council.

The property is zoned 2(a) Low Density Residential under Tweed Local Environmental Plan 2000 and the proposal is permitted development under the local environment plan. The adjoining zoning to the south and east is 7(l) Environmental Protection (Habitat). The allotment is located on the eastern side of Overall Drive Pottsville and is bounded by an existing approved residence to the north and the secondary street (Kellehers Drive) to the south with the eastern rear boundary adjacent to the Mooball Creek reserve (waterfront open space).

The submitted shadow diagrams at 3.00pm on the 21 June and 6.00pm 21 December illustrate overshadowing from the dwelling extending approx 1.8m onto the waterfront open space from the rear boundary of the subject property. This does not impact upon the creek foreshore and areas where the public will congregate for recreational and water activities. It is considered the existing riparian vegetation at Mooball Creek is of a height, size and area that will overshadow the reserve and creek to a greater extent than overshadowing from the proposed dwelling.

The geometry of the corner allotment will not allow the development to be pushed 1.8m closer to the front boundary to prevent overshadowing to waterfront open space as this will reduce the front building line to the south western corner of the house to 0.888m affecting the primary street alignment of the building to Overall Drive in relation to existing approved development to the north of the property and will generally be detrimental to the streetscape. If the building structure is pushed closer to Overall Drive it will also impact on sight lines for safe traffic flow at the Overall Drive/Kellehers Road roundabout.

**SITE DIAGRAM:**



**LOCALITY PLAN**  
**Lot 383 DP 113459**  
**Overall Drive, Pottsville**

Filename: z:\wsl\planning\mxd\A4@\_B&W\_SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 4 November, 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 interest 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 surveys or construction purposes and prior to any major works 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.



Coordinate System - MGA Zone 56  
 Datum - GDA 94

Cadastral 4 November, 2009  
 © Dept. of Lands & Tweed Shire Council

DO NOT SCALE  
 COPY ONLY - NOT CERTIFIED

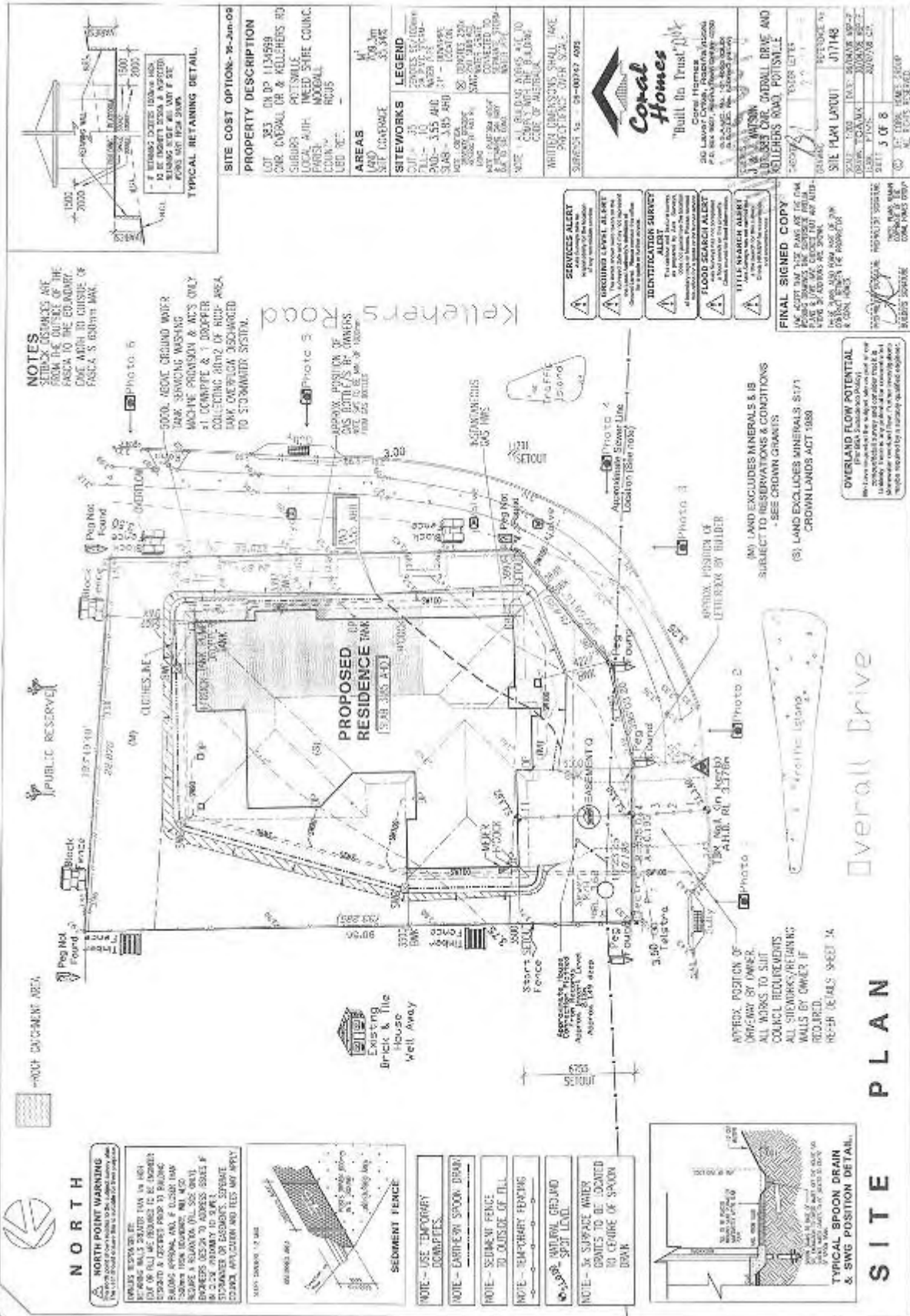
Civic and Cultural Centre  
 3 Tunstall Road  
 Murwillumbah NSW 2484  
 PO Box 616  
 Murwillumbah NSW 2484

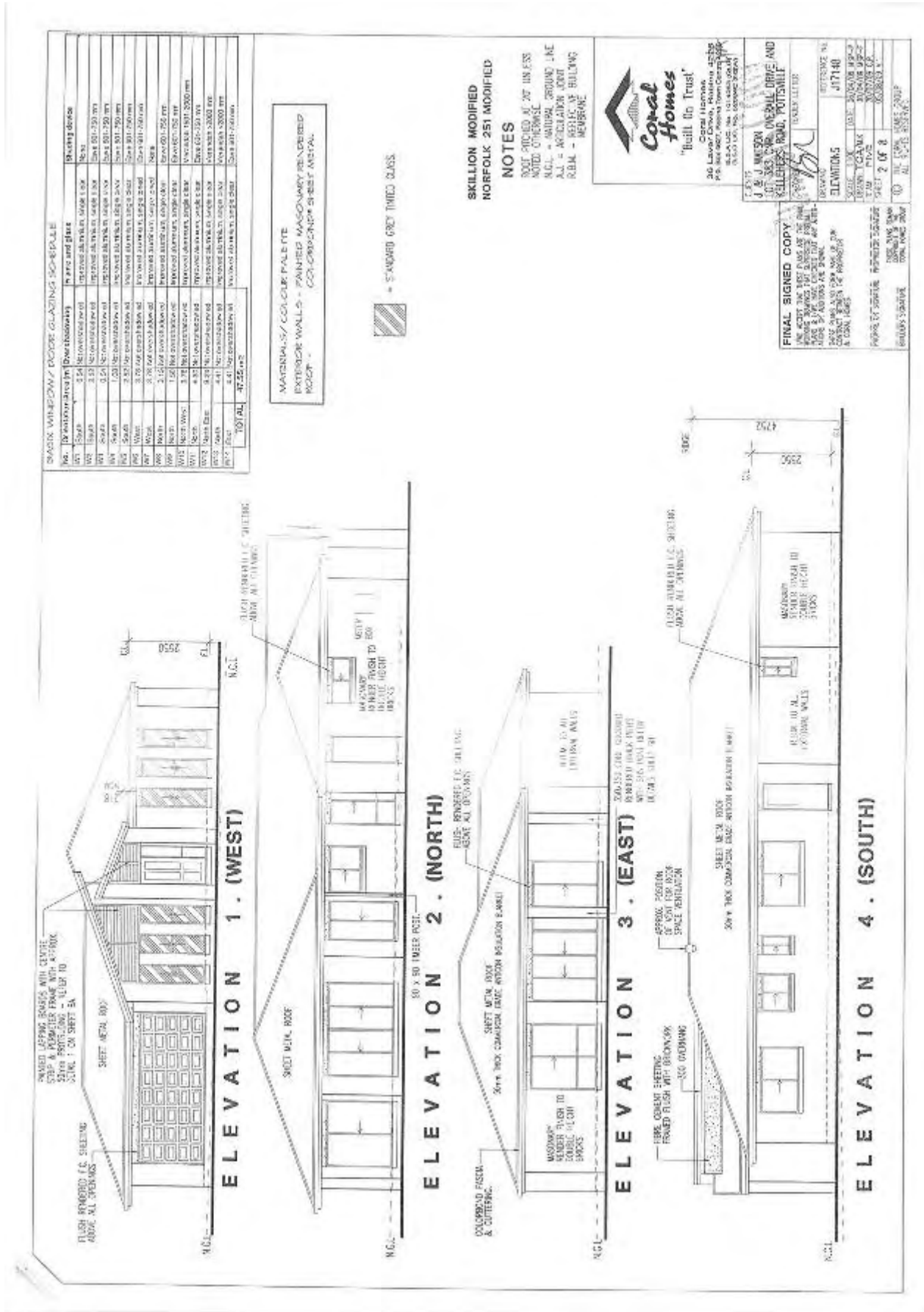
T: (02) 6670 2400 / 1300 292 672  
 F: (02) 6670 2485  
 W: www.tweed.nsw.gov.au  
 E: plans@reforms@tweed.nsw.gov.au

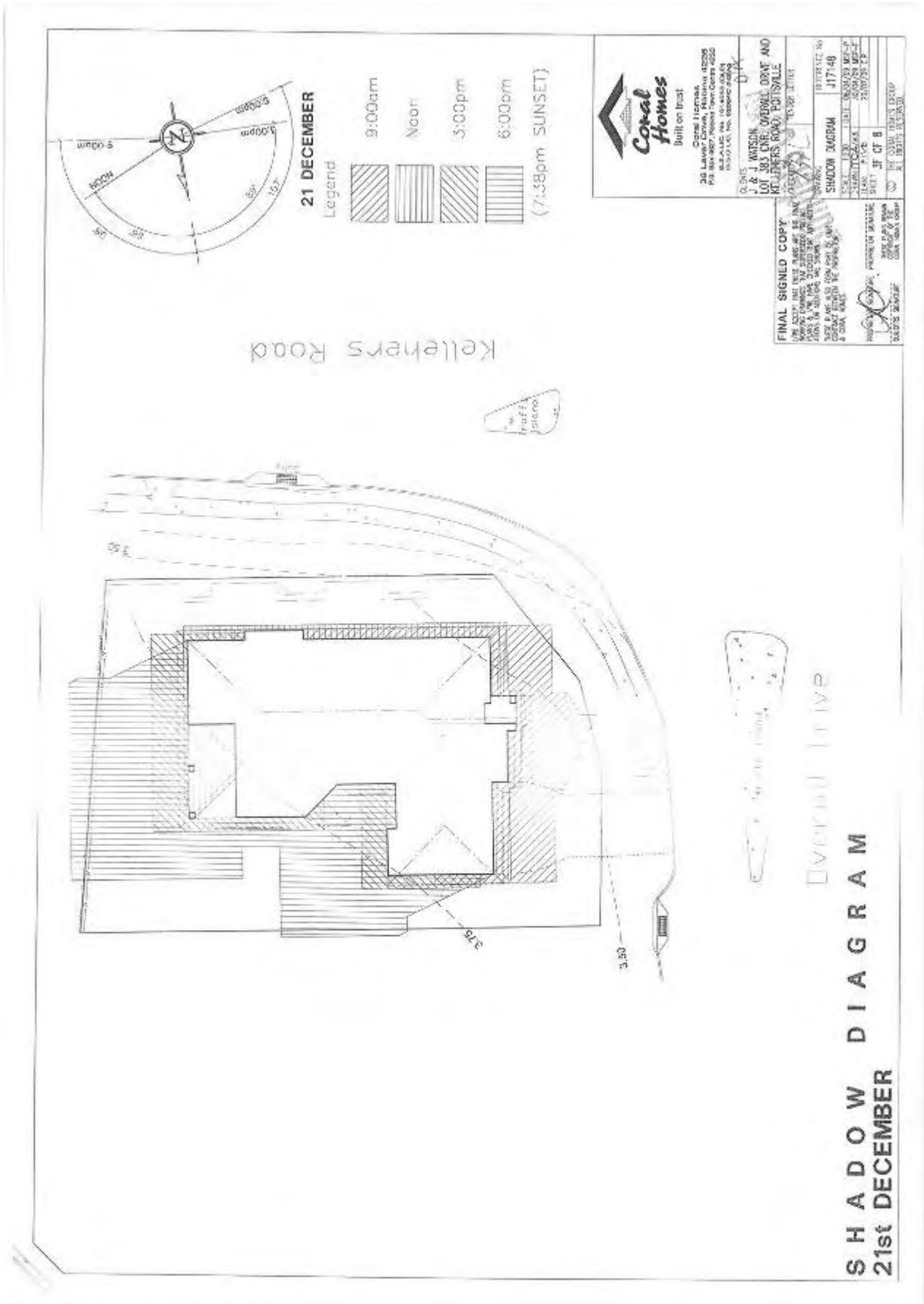


**TWEED**  
 SHIRE COUNCIL

**DEVELOPMENT/ELEVATION PLANS:**







**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 subject site is zoned 2(a) Low Density Residential. The primary objective of the zone relates to the provision for and maintenance of low density residential development with a predominantly detached housing character and amenity. The secondary objectives relate to the option of housing diversity and for non-residential development. The proposed development is consistent with the primary objective of the zone.

Clause 5 - Ecologically Sustainable Development

Development is consistent with the objectives and aims of clause 5

Clause 8 - Zone objectives

Development is consistent with the objectives and aims of clause 8

Clause 15 - Essential Services

All essential services are available within the area.

Clause 16 - Height of Building

Single storey development complies with two storey height requirements of the area.

Clause 17 - Social Impact Assessment

A social impact assessment is not required given the minor nature of the proposal

Clause 35 - Acid Sulfate Soils

Council records advise the allotment is subject to Class 3 ASS and as the earthworks for the building pad will not exceed 1m in depth it is anticipated that the construction of the dwelling will not impact on any acid sulfate soils in the area.

Other Specific Clauses

None apparent

Specific Clauses



## **North Coast Regional Environmental Plan 1988**

### **Clause 32B: Coastal Lands**

Clause 32B – Development Control applies as the NSW Coastal Policy 1997 applies to the subject site.

The proposal is consistent with the NSW Coastal Policy 1997, Coastline Management Manual and North Coast: Design Guidelines.

The proposal will not impede public access to Mooball Creek foreshore.

The applicant's submission and shadow plans demonstrate that the proposed development will result in the 7(l) environmental protection (waterfront open space) to the east of the site being overshadowed before 3pm midwinter (standard time) on the 21 June and 7pm midsummer (daylight saving time) on the 21 December.

The applicant is seeking Council's support to assume the Director-General's concurrence in this instance. This matter is discussed in further detail in the SEPP No. 1 variation section within this report.

### **Clause 33: Coastal hazard areas**

The development will have minimal impact on coastal processes. The proposal is consistent with the Coastline Management Manual.

## **State Environmental Planning Policies**

### **SEPP No. 1 - Development Standards**

The proposal seeks a variation to the extent of shadow impacts on the adjacent foreshore reserve to the east. The property adjoining the site is zoned 7(l) environmental protection and is considered to be waterfront open space pursuant to this clause. The application was accompanied with a SEPP 1 objection and the applicant has provided the following reasons as to why this standard is unreasonable or unnecessary;

- *"Existing buildings in Overall Drive result in overshadowing of the foreshore area prior to the relevant times in both mid winter and mid summer.*
- *Existing trees on the foreshore areas result in significant overshadowing of the foreshore reserve prior to the relevant times.*
- *The immediate foreshore areas to be overshadowed are not useable passive open space areas and do not contain any public amenities or facilitates at which members of the community would be expected to congregate. The overshadowing will therefore not alienate the physical use of the area.*
- *The shadows do not extend to the foreshore area during winter."*

An objection has been lodged under SEPP 1 to vary the development standard provided by clause 32B (4) of the North Coast Environmental Plan 1988(NCREP 1988), which prohibits overshadowing of the coastal reserve at the times of 3pm mid winter (standard time) 21 June and 7.00 pm midsummer (daylight saving time) 21 December to be unreasonable. The shadow diagrams submitted show that the building will overshadow the coastal reserve to the east at both of these times.

It is considered in this instance that the standard is unreasonable for the following reasons.

Whilst the dwelling will overshadow the coastal reserve the area of the coastal reserve that will be affected is a managed grassed area only. The shadow will not impact on any areas used by the public for formal water and recreational activities.

It should be noted that the shadows cast by the riparian vegetation on Mooball Creek in this reserve located behind the subject property will have a greater impact on the river foreshore and the managed reserve area than the proposed dwelling. The creek is over 20 metres from the rear boundary of the property.

Council has granted many other approvals for dwellings along Overall Drive with similar minor overshadowing encroachments into the waterfront open space and it is considered that in this instance Council should also support this request.

### **State Environmental Planning Policies**

#### **SEPP (North Coast Regional Environmental Plan) 1988**

##### Clause 32B: Coastal Lands

See above (under specific clauses)

##### Clause 43: Residential development

The proposal is consistent with the requirements and objectives of Clause 43 part (1) a, b, c, d, and e

##### SEPP No. 1 - Development Standards

The objection against overshadowing is well founded and it is also considered that granting of the consent to the development application is consistent with the aims of this Policy as set out in clause 3.

##### SEPP No. 6 - Number of Storeys in a Building

Compliant

##### SEPP No 71 – Coastal Protection

The development is generally consistent with the objectives of SEPP 71 and will not impact on the public's enjoyment and access to the foreshore.

SEPP (Building Sustainability Index: BASIX) 2004

The applicant has provided a BASIX certificate for the proposal which is consistent with the required energy target.

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

None apparent

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The proposed development meets the requirements of A1-Residential and Tourist Development Code (DCP6) with the exception of the front building line setback. The development control plan requires a 6m front building line setback and the proposed development application is requesting a variation to the mandatory 6m front building line setback of 4.227m reducing down to 2.688m due to the irregular geometry of the corner block and the constraints imposed by the splayed corner boundary lines. The proposed front building line setbacks have been assessed by an area team meeting and they have indicated notification for a variation to *Design Control 3: Setbacks* of A1 Residential and Tourist Development Code (DCP6) is not required. The primary street setback variation has allowed the dwelling to be positioned on a difficult corner allotment to benefit the streetscape and protect traffic sight lines and also achieve the required 5m rear boundary setback and maintain front Deep Soil Zones and provide areas in the front yard for landscaping that will enhance the natural and built environment of the area.

A3-Development of Flood Liable Land

Council records advise the land is subject to flooding and the habitable floor area must be above 3.3m Australian Height Datum. The submission presents habitable floor area at 3.85 Australian Height Datum and is compliant.

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

Clause 92(a) Government Coastal Policy

The proposal is consistent with the goals and objectives outlined within 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**

### Context and Setting

The property is a vacant site in an established subdivision which has been specifically created for residential development. The proposed development is of a design in keeping with the architectural style and residential character of the area.

### Access, Transport and Traffic

Minimal impact is envisaged, the proposed is a single residence within an approved residential subdivision. Driveway Application DWY 09/0200 has been approved by Council.

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

### Surrounding Landuses/Development

The site is currently vacant and is suitable for the proposed development. The property is located within an existing residential area and all essential services are provided to the site. The area is a mixture of new dwellings under five (5) years old with varying architectural styles and the design of the proposed dwelling is in keeping with the existing residential character of the area.

### Flora and Fauna

No flora and fauna will be affected by the proposed residential dwelling.

### Topography

Site is flat.

### Site Orientation

The dwelling has been located on the property, with compliant side and rear boundary setbacks. The dwelling has a front building line variation and does not meet the required 6 metre building line as required in Councils A1 Residential Tourist and Development Code (DCP6) and a variation has been requested [see above (a) (iii) *Development Control Plan (DCP)*]. The internal primary living area and external living areas of the dwelling have been orientated to the northeast and will optimize ocean breezes and north solar access. The 4m boundary clearance for living areas has been achieved with the design and privacy to the neighbouring allotment is compliant.

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

Notification not required as per Area Team Meeting decision.

## **(e) Public interest**

The proposed development raised no major implications in terms of the public's interest.

**OPTIONS:**

1. Council resolve to assume the Director-General's concurrence and resolve to approve the development application.
2. Council not resolve to assume the Director General's concurrence and resolve to refuse the development application.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be dissatisfied with the determination they have the right to appeal the decision in the Land and Environment Court.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

After assessment of the relevant planning matters, and taking into account the minor overshadowing to open waterfront space at Mooball Creek and also the constraints imposed by the geometry of the corner allotment it is considered that the proposed development is suitable for approval, subject to conditions.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

---

**THIS PAGE IS BLANK**

**11 [PR-CM] Development Application DA08/0869 for a Dwelling, Attached Garage, Swimming Pool & Fence at Lot 346 DP 1087716, No. 9 Cylinders Drive Kingscliff**

**ORIGIN:**

**Building & Environmental Health**

**FILE NO: DA08/0869 Pt1**

**SUMMARY OF REPORT:**

An application has been received to construct a two (2) storey dwelling and in-ground swimming pool on the subject property. The property is situated on the eastern side of Cylinders Drive, Kingscliff and backs on to the coastal foreshore of South Kingscliff Beach.

The applicant has lodged a SEPP No. 1 variation as the proposed development will result in overshadowing of the foreshore.

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 variations greater than 10% to be determined by full Council. Given that the Department of Planning has advised Council Officers to be conservative with the application of the 10% rule, the difficulties of calculating 10% of the shadow development standard (as it is time based), it has been decided to report this application to Council.

No submissions have been received in relation to the proposal. It is considered that the subject application is suitable for approval.

**RECOMMENDATION:**

**That:**

- A. State Environmental Planning Policy No. 1 objection to Clause 32B of the North Coast Regional Environmental Plan regarding overshadowing be supported and the concurrence of the Director-General of the Department of Planning be assumed.**
- B. That Development Application DA08/0869 for a dwelling, attached garage, swimming pool & fence at Lot 346 DP 1087716, No. 9 Cylinders Drive Kingscliff be approved subject to the following conditions: -**

**GENERAL**

- 1. The development shall be completed in accordance with the plans approved by Council and the Statement of Environmental Effects, except where varied by conditions of this consent.**

[GEN0015]

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

[GEN0115]

3. 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]

4. A Sewer manhole is present on this site. This manhole is not to be covered with soil or other material.  
Should additional fill be proposed in the area of the sewer manhole application shall be made to Council's Engineering & Operations Division for the raising of the manhole.

[GEN0155]

5. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on the road reserve or footpath for the "dining blister" for dining purposes. Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.

[GEN0245]

6. a) New construction shall comply with Australian Standard AS3959-1999 'Construction of buildings in bushfire-prone areas' Level 2. New construction of the western façade shall comply with Australian Standard AS3959-1999 'Construction of buildings in bushfire-prone areas' Level 1.
- b) Screen-less door systems, including glazing and supporting framework shall be designed and constructed to withstand 19kW/m<sup>2</sup> of radiant heat flux to prevent the entry of embers into the building. Draught excluders, seals and door furniture shall be manufactured from materials having a flammability index no greater than 5 (with the exception of intumescent seals which are permissible) and ensure that there are no gaps >2.0mm in diameter when the door is closed.
- c) Roller doors, tilt-a-doors and the like shall be sealed to prevent the entry of embers into the building.



- d) No brushwood (or the like) or treated pine timber fencing shall be used.
- e) At the commencement of building works the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and appendix 5 of *Planning for Bush Fire Protection 2006* and the NSW Rural Fire Service's document '*Standards for asset protection zones*'.
- f) Water, electricity and gas are to comply with section 4.1.3 of *Planning for Bush Fire Protection 2006*.
- g) To aid in fire fighting activities, unobstructed pedestrian access to the rear of the property shall be provided and maintained at all times.

[GENNS01]

#### **PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

- 7. 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]

#### **8. 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) Surcharge 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]

**9. 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

will not be approved until prior separate approval to do so has been granted by Council under S68 of the Local Government Act.

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

[PCC1145]

**PRIOR TO COMMENCEMENT OF WORK**

**10. 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]
11. 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]
12. 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]
13. 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]

- 14. 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]

- 15. 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]

- 16. 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**

- 17. 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]

- 18. The wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of buildings with direct line of sight to the proposed building.

[DUR0245]

19. 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]
20. 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]
21. 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]
22. 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]
23. The finished floor level of the building should finish not less than 225mm above finished ground level. [DUR0445]
24. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan Part A1 to the satisfaction of the Principal Certifying Authority. Please note timber retaining walls are not permitted. [DUR0835]
25. 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]
26. 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]
27. All landscaping is to comply with the 88B Instrument pertaining to the site. [DUR1055]

28. 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 Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.  
[DUR1875]
29. No portion of the structure may be erected over any existing sullage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains.  
[DUR1945]
30. **Swimming Pools (Building)**  
(a) The swimming pool is to be installed and access thereto restricted in accordance with Australian Standard AS 1926.1 – 2007 & AS 1926.3 -2003. (Refer Council's web site [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au))  
(b) Swimming pools shall have suitable means for the drainage and disposal of overflow water.  
(c) The pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.  
(d) Warning notices are to be provided in accordance with Part 3 of the Swimming Pool Regulations 2008.  
[DUR2075]
31. Backwash from the swimming pool is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9.  
[DUR2085]
32. 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]
33. 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]
34. **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]
35. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993.  
[DUR2515]

36. **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]

37. **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]

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

[DUR2645]

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

[DUR2705]

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

40. **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]

41. **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]

42. 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]

43. 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]

#### USE

44. 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]

45. The building is to be used for single dwelling purposes only.

[USE0505]

46. Bushfire asset protection zones are to be maintained around the house site at all times to the satisfaction of the NSW Rural Fire Service.

[USE0575]

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

[USE1245]

48. **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]

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

[USE1305]



**REPORT:**

**Applicant:** Inarc Design Qld  
**Owner:** Ms TM Bourke  
**Location:** Lot 346 DP 1087716, No. 9 Cylinders Drive Kingscliff  
**Zoning:** 2(f) Tourism  
**Cost:** \$650,000

**BACKGROUND:**

The property is zoned 2(f) tourism under Tweed Local Environmental Plan 2000 and is located on the eastern side of Cylinders Drive, Kingscliff. The property is currently vacant and is bounded by residential land to the north and south and to the east a coastal reserve (waterfront open space).

An application has been received to construct a new two (2) storey dwelling and swimming pool on the subject property. The property is situated on the eastern side of Cylinders Drive Kingscliff and backs on to the coastal foreshore of South Kingscliff Beach

A SEPP No. 1 is sought for a variation to the North Coast Regional Environmental Plan 1988 relating to overshadowing of waterfront open space, as the proposed two storey dwelling will cast a shadow on the adjacent waterfront open space.

In terms of the assessment of this application it should be noted that Council has previously resolved the following in respect of the imposition of the controls of Tweed Development Control Plan Section A1:

*"The provisions of Tweed Development Control Plan Section A1 in relation to single dwelling houses not be applied to applications received prior to close of business on Monday 30<sup>th</sup> June 2008 and this decision be notified in the Tweed Link".*

In this instance the proposed development application was lodged with Council on 30 June 2008 and therefore has been designed to comply with Council's development requirements that were applicable before the introduction of A1.

**SITE DIAGRAM:**



**LOCALITY PLAN**  
**Lot 346 DP 1087716**  
**No.9 Cylinders Drive, Kingscliff**

Filename: z:\wsp\planning\mxd\A4@ B&W SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 4 November, 2009

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation 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 interest 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 excavation, a "Dig before you Dig" enquiry must be made by calling 1400. The information contained on this document remains valid for 30 days only from the date of supply.



Cadastre 4 November, 2009  
 © Dept. of Lands & Tweed Shire Council

Coordinate System - MGA Zone 56  
 Datum - GDA 94

DO NOT SCALE  
 COPY ONLY - NOT CERTIFIED

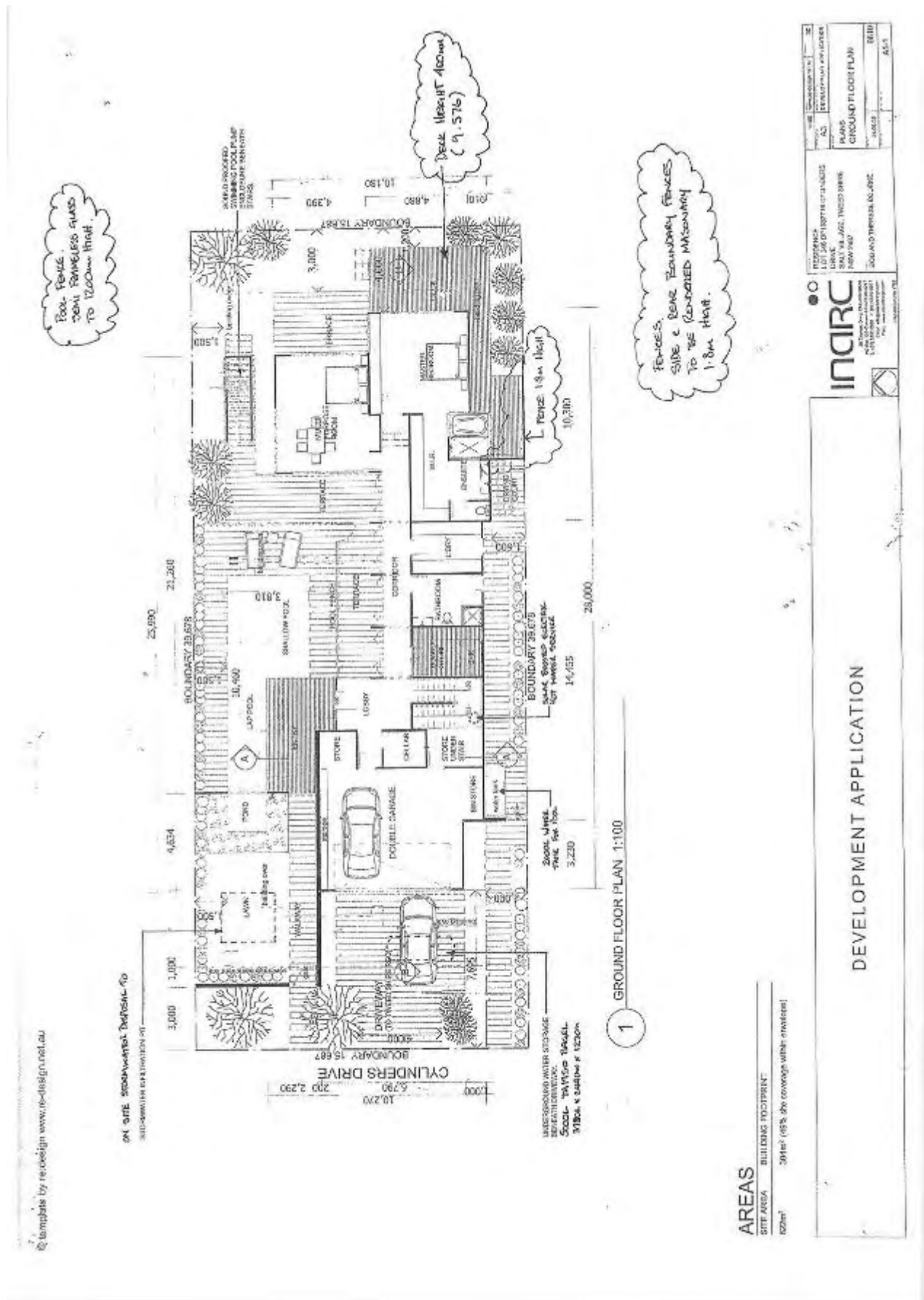
Civic and Cultural Centre  
 3 Tumbulgan Road  
 Murwillumbah NSW 2494  
 PO Box 616  
 Murwillumbah NSW 2484

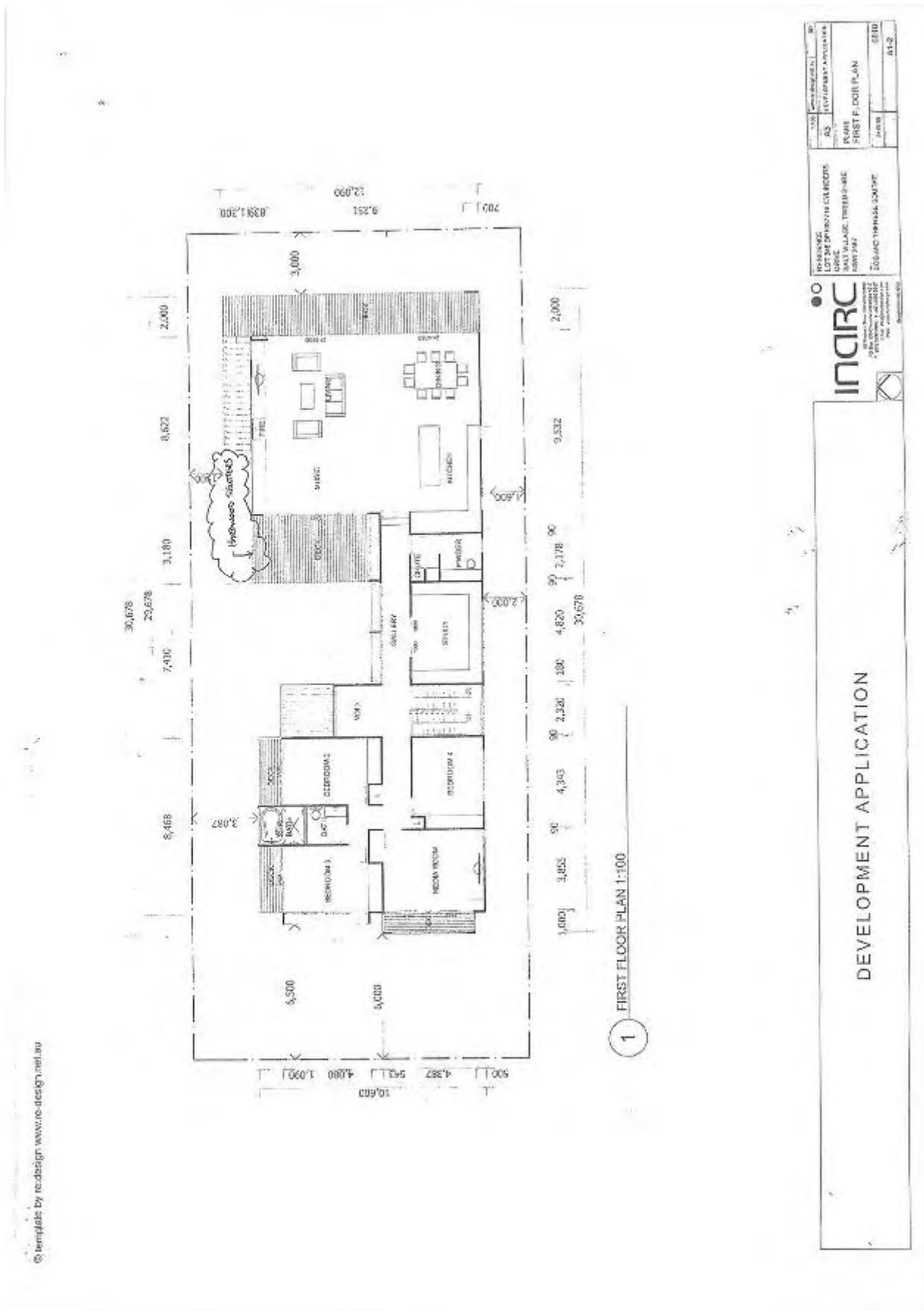
T: (02) 6670 2400 / 1300 292 672  
 F: (02) 6670 2485  
 W: www.tweed.nsw.gov.au  
 E: plans@reforms@tweed.nsw.gov.au



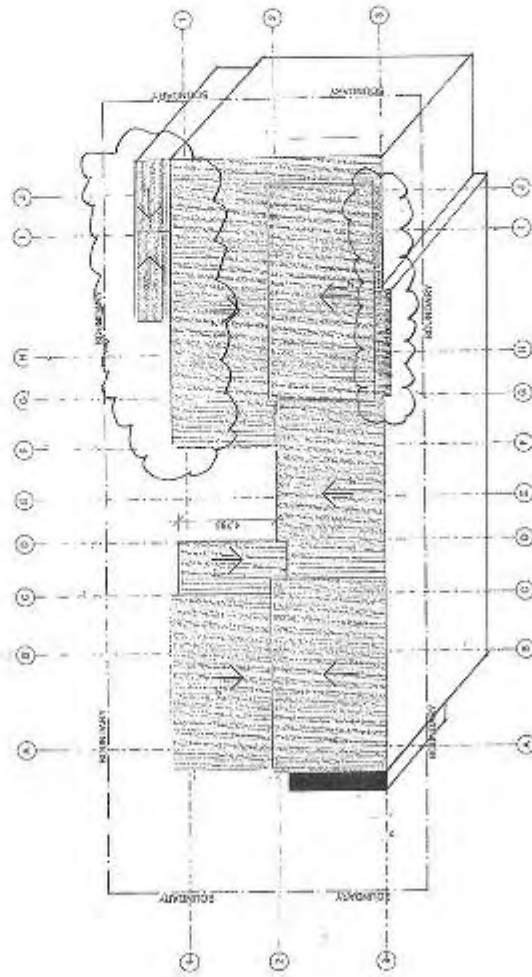
**TWEED**  
**SHIRE COUNCIL**

DEVELOPMENT/ELEVATION PLANS:





© prepared by architects www.designer.co.nz

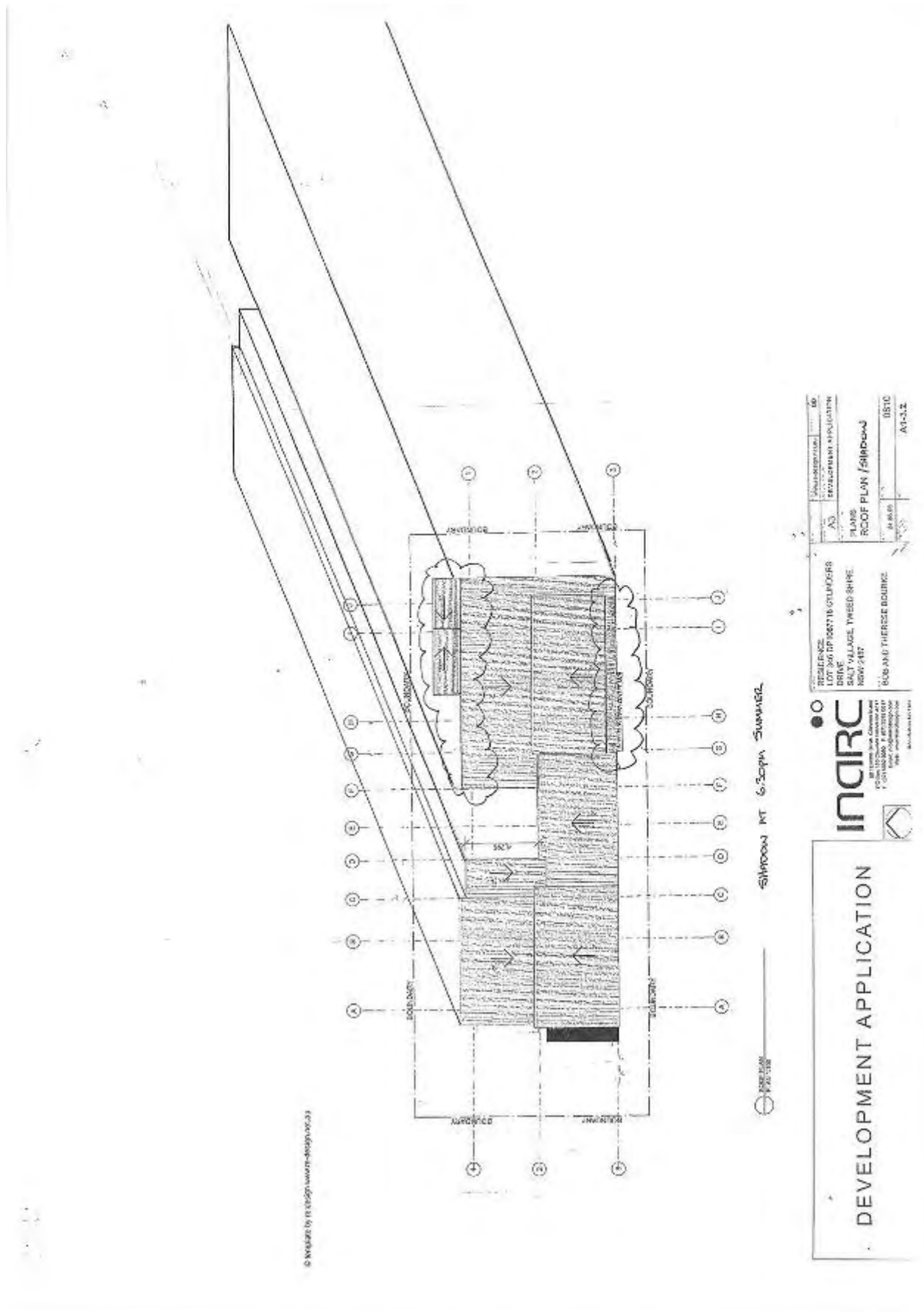


SHADOW AT 3 PM WINTER



PROJECT	INDIRC	DATE	08/10
CLIENT	INDIRC	SCALE	A1-3-J
DESIGNER	INDIRC	PROJECT NO.	INDIRC-001
DATE	08/10	PROJECT NAME	INDIRC
SCALE	A1-3-J	PROJECT LOCATION	INDIRC
PROJECT NO.	INDIRC-001	PROJECT TYPE	INDIRC
PROJECT NAME	INDIRC	PROJECT STATUS	INDIRC
PROJECT LOCATION	INDIRC	PROJECT DESCRIPTION	INDIRC
PROJECT TYPE	INDIRC	PROJECT PHASE	INDIRC
PROJECT STATUS	INDIRC	PROJECT OWNER	INDIRC
PROJECT DESCRIPTION	INDIRC	PROJECT CONTACT	INDIRC
PROJECT OWNER	INDIRC	PROJECT ADDRESS	INDIRC
PROJECT CONTACT	INDIRC	PROJECT PHONE	INDIRC
PROJECT ADDRESS	INDIRC	PROJECT FAX	INDIRC
PROJECT PHONE	INDIRC	PROJECT EMAIL	INDIRC
PROJECT FAX	INDIRC	PROJECT WEBSITE	INDIRC
PROJECT EMAIL	INDIRC	PROJECT URL	INDIRC
PROJECT WEBSITE	INDIRC	PROJECT URL	INDIRC

**DEVELOPMENT APPLICATION**

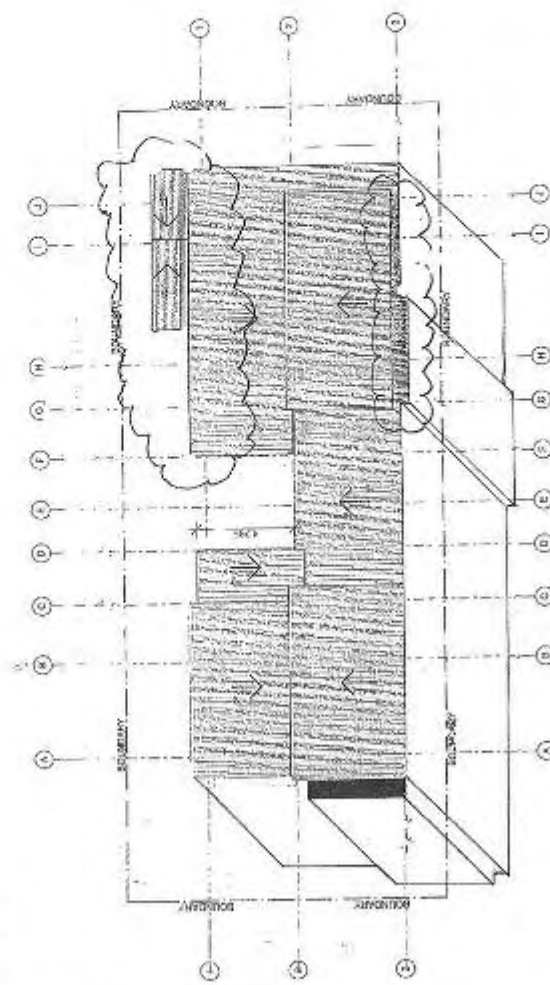


<p style="font-weight: bold; font-size: 24px; margin: 0;">INDIRC</p> <p style="font-size: 8px; margin: 0;">                 101 FIVE STAR CHURCHILL                  1 CHURCHILL BLVD                  SYDNEY NSW 2009                  TEL: 02 9550 4444                  WWW.INDIRC.COM.AU             </p>	<p style="font-size: 8px; margin: 0;">RESUBMITTAL NO. 04</p> <p style="font-size: 8px; margin: 0;">AS DEVELOPMENT APPLICATION</p> <p style="font-weight: bold; font-size: 12px; margin: 0;">PLANS</p> <p style="font-weight: bold; font-size: 12px; margin: 0;">ROOF PLAN / Silwood</p> <p style="font-size: 8px; margin: 0;">AT 8/09</p> <p style="font-size: 8px; margin: 0;">BETC</p> <p style="font-size: 8px; margin: 0;">A1-3.2</p>
---	---

DEVELOPMENT APPLICATION

REFERENCE  
 LOT 304 DP 105718 GUILDFORDS  
 DRIVE  
 COLLEGE THREE SHIRE  
 NSW 2187  
 SUB AND THREE SECTORS

© prepared by incirc www.incirc.com



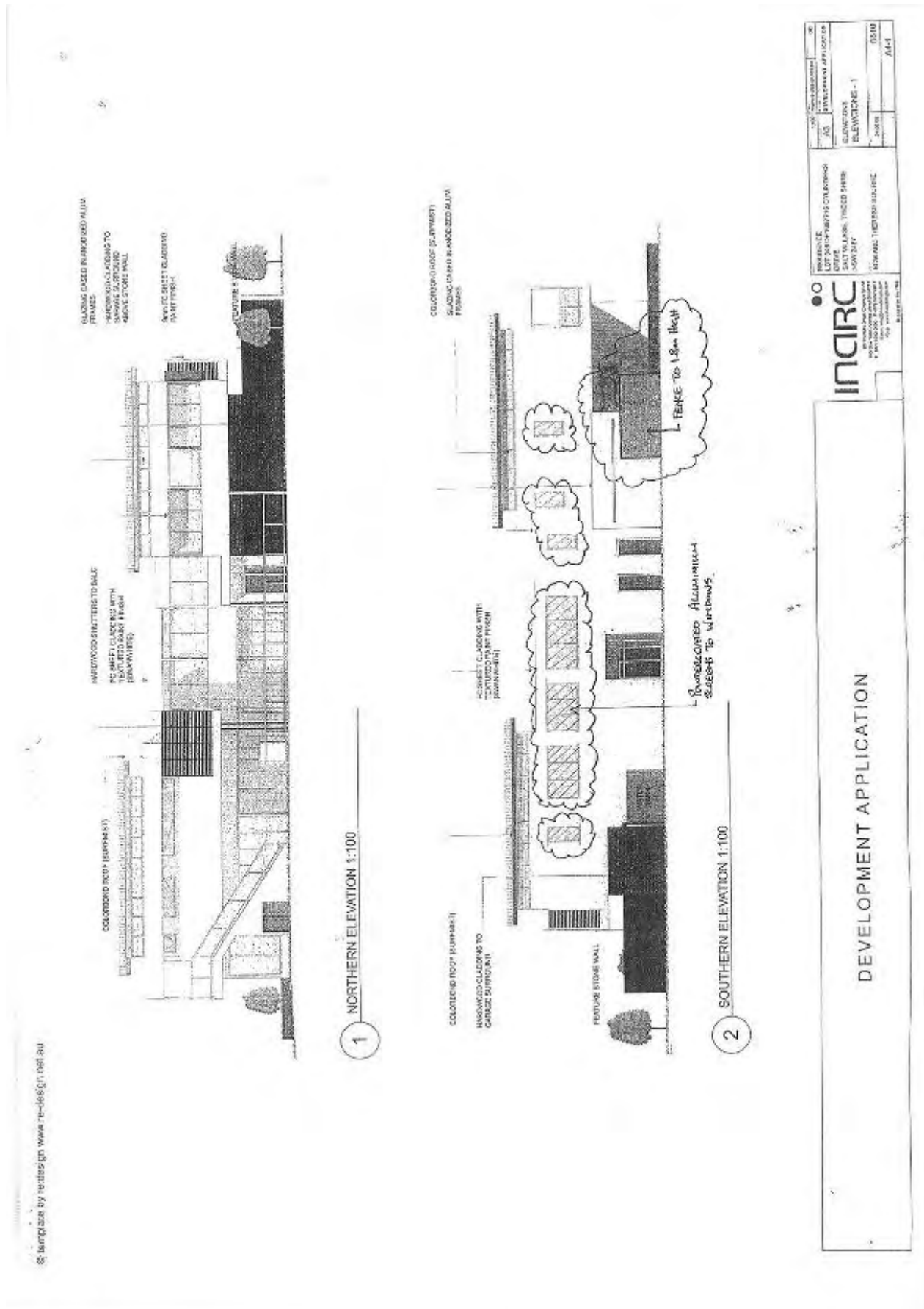
SHADOW AT 9 AM WINTER



INCIRC  
 20 BOYD STREET SUITE 101  
 WILLOWBROOK NSW 2157  
 T 02 9371 6777  
 F 02 9371 6778  
 WWW.INCIRC.COM

PROJECT	RESIDENCE LOT 248 (P/277) IS COLINDERS DRIVE SALT VILLAGE, THIRD STAGE RSA 387
CLIENT	SCB AND HERSE BOURNE
NO.	248/09
DATE	08/10
SCALE	A1-3:3
DESCRIPTION	PLANS ROOF PLAN / SHADOW DEVELOPMENT APPLICATION
DESIGNER	INCIRC

DEVELOPMENT APPLICATION

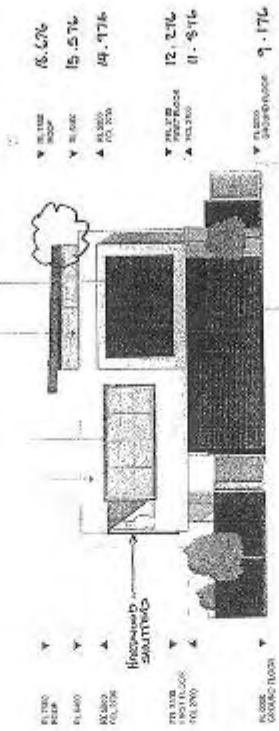




© template by re:design www.re-design.net.au

FEATURE STONE WALL  
 10 SHEET GLAZING WITH  
 TEXTURED PAINT FINISH  
 (SINK-IN-115)  
 WITH 20-BEST GLAZING  
 PAINT FINISH  
 GOLDENROOF (SHPMKT)  
 GLAZING CASING IN ANODIZED ALUMINUM  
 FINISH  
 HARDWOOD SHUTTERS TO BALCONY

10 SHEET GLAZING WITH  
 TEXTURED PAINT FINISH  
 (SINK-IN-115)  
 GOLDENROOF (SHPMKT)  
 GLAZING CASING IN ANODIZED ALUMINUM  
 FINISH



1 EASTERN ELEVATION 1:100

2 CYLINDERS STREET ELEVATION 1:100

**DEVELOPMENT APPLICATION**

---

**INDIRC**  
 INDEPENDENT DESIGNERS  
 100 MARKET STREET, SUITE 401  
 SYDNEY, NSW 2000  
 TEL: (02) 9550 1111  
 WWW.INDIRC.COM.AU

PROJECT NO.	DATE	DRAWN BY	SCALE
100	10/11/09	INDIRC	1:100
PROJECT NAME		DRAWING NO.	
100 MARKET STREET, SUITE 401		ELEVATIONS - 2	
PROJECT NO.		DATE	
100		10/11/09	



**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 subject site is zoned 2(f) Tourism. The primary objective of the zone relates to the provision of integrated tourist development and uses associated with, ancillary to or supportive of the tourist development.

The secondary objectives relate to the provision of high quality residential development being integral and supportive of the primary intent of this zone. The proposed development is consistent with the secondary objective of the zone.

Clause 15 - Essential Services

All essential services are available within the area.

Clause 16 - Height of Building

The proposed height of the development is 7.5m and complies with the 2 storey and 9m maximum height limitation affecting the subject site.

Clause 17 - Social Impact Assessment

A social impact assessment is not required given the minor nature of the proposal.

Clause 35 - Acid Sulfate Soils

The area contains class 4 acid sulfate soils, which exist at a depth of greater than 2 metres below surface level. As approximately 2 metres of fill was placed on the site at subdivision stage, the depth of Acid soils would be approximately 4 metres below current surface level. It is not anticipated that the development will impact on the acid soils in the area.

Other Specific Clauses

Clause 36 - Coastal Erosion Hazard Outside Zone 7(f)

The proposal is consistent with the considerations of this clause. The proposed development will not affect the beach or dune system and landscape or scenic quality of the locality, other than in relation to shadowing which is discussed in detail later in this report.

Council's mapping records indicate the subject site is clear of the 100 year hazard line.

### Clause 39A – Bushfire Protection

Council's records indicate that the site is bushfire prone. The proposal is consistent with the considerations of this clause. Conditions placed on this consent are in keeping with the conditions of consent requested by the NSW Rural Fire Service for neighbouring properties with a similar bush fire exposure.

### State Environmental Planning Policies

#### SEPP (North Coast Regional Environmental Plan) 1988

##### Clause 32B: Coastal Lands

Clause 32B – Development Control applies as the NSW Coastal Policy 1997 applies to the subject site.

The proposal is consistent with the NSW Coastal Policy 1997, Coastline Management Manual and North Coast: Design Guidelines.

The proposal will not impede public access to the foreshore.

The applicant's submission and shadow plans demonstrate that the carrying out the development will result in the waterfront open space to the east of the site being overshadowed before 3pm midwinter (standard time) and 6.30pm midsummer (daylight saving time).

The applicant is seeking Council's support to assume the Director-General's concurrence in this instance. This matter is discussed in further detail in the SEPP No. 1 variation section within this report.

##### Clause 33: Coastal hazard areas

The development will have minimal impact on coastal processes. The proposal is not inconsistent with the Coastline Management Manual.

##### SEPP No. 1 - Development Standards

An objection has been lodged under SEPP 1 to vary the development standard provided by clause 32B (4) of the North Coast Environmental Plan 1988(NCREP 1988), which prohibits overshadowing of the coastal reserve at the times of 3pm mid winter and 6.30 pm midsummer to be unreasonable. The shadow diagrams submitted show that the building will overshadow the coastal reserve to the east at both of these times.

The proposal seeks a variation to the extent of shadow impacts to the adjacent foreshore reserve to the east. The property adjoining the site is zoned 7(f) environmental protection and is considered to be waterfront open space pursuant to this clause. The application was accompanied with a SEPP 1 variation and the applicant has provided the following reasons as to why this standard is unreasonable or unnecessary;

- *We believe the overshadowing to be predominately on a walking path and some natural vegetation on the foreshore.*
- *There will not be any overshadowing to the beach itself.*
- *This residence is in line with other residences in the street which have similar issues.*

Generally, the above points are agreed to and it is considered in this instance that the standard is unreasonable for the following reasons.

Whilst the dwelling will overshadow the coastal reserve, the area of the coastal reserve that will be affected comprises a grassed area and coastal dune vegetation and a cycle way. The shadow will not impact on areas used for formal recreational activities.

It should be noted that the shadows cast by the trees in the reserve located immediately behind the subject property will have a greater impact on the beach than the dwelling under consideration and in the most part intercept the dwelling shadows. The beach is over 100 metres from the rear of the property.

Council has granted many other approvals for dwellings along the Tweed Coast, particularly in the Salt subdivision that have similar minor overshadowing encroachments into the coastal foreshore and it is considered that in this instance Council should also support this request.

#### SEPP No 71 – Coastal Protection

The development is generally consistent with the objectives of SEPP 71 and will not impact on the public's enjoyment and access to the foreshore.

#### SEPP (Building Sustainability Index: BASIX) 2004

The applicant has provided a BASIX certificate for the proposal which is consistent with the required energy target.

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

None apparent

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

##### Tweed Development Control Plan

##### A1-Residential and Tourist Development Code

In regards to compliance with the design controls out lined in section A1, when DCP Section A1 was adopted Council resolved that:

- The provisions of Tweed Development Control Plan Section A1 in relation to single dwelling houses not be applied to applications received prior to close of business on Monday 30<sup>th</sup> June 2008 and that this decision be notified in the tweed link.

In this instance the development application was lodged with Council on the 30<sup>th</sup> June 2008 and therefore has been designed to comply with Council's development requirements that were applicable before the introduction of A1.

Notwithstanding the above the requirements of A1 have been considered in the assessment of the application.

It should be noted that the most recent amended plans and supporting information were received by Council on the 14<sup>th</sup> September 2009 and these plans were the result of information requested during the assessment of the application.

Section A1 of Tweed DCP introduced detailed parameters for improved site outcomes including the provision of deep soil zones, impermeable site area, private open space, landscaping, car parking, setbacks and general street presence. These are addressed below.

External Building Elements Part A – Dwelling Houses, Alterations and Additions to Dwelling Houses, Garages, Outbuildings, Swimming Pools.

#### Public Domain Amenity

##### **Streetscape**

The proposed development is consistent with the desired future character of the area whilst being sympathetic to the surrounding developments.

The dwelling is clearly visible from Cylinders Drive and the dwelling is setback 6m from the street which is consistent with the surrounding developments.

##### **Public Views and Vistas**

The proposal will not result in an unreasonable view loss of the beach and foreshore given the 2 storey limitation as specified in the Tweed Local Environmental Plan 2000 and the 9 metres height in A1. The proposed dwelling provides view corridors for dwellings located on the western side of Cylinders Drive, between dwellings and side boundary set backs.

#### Site Configuration

##### **Deep soil zones (DSZs)**

The property contains two areas of deep soil zones, one at the front of the dwelling and the other at the rear of the dwelling adjacent to the eastern property boundary.

The deep soil zone in the front yard of the property extends across the entire length of the site, and excludes the concrete driveway and entrance path, which is consistent with the design control requirements.

The second deep soil zone extends across the entire width of the property adjacent to rear eastern boundary and has a width of 3 metres to 1.2 metres while this is less than the required 5.5 metres under the more recent controls it is consistent with the 3 metres for the dwelling and 1.2 metres for the deck, setback requirement outlined in the 88b instrument for the subdivision and is therefore considered acceptable.

### **Impermeable Site Area**

The current provisions of A1 limit the maximum allowable impervious surface area of the site to 65% for allotments between 500m<sup>2</sup> and 750m<sup>2</sup>. The area of the subject site is 622m<sup>2</sup> and therefore the maximum impermeable area permitted at the completion of the development would be 404m<sup>2</sup>.

The proposal has a calculated impervious area of 69.25% which is in excess of the current requirements by 4.25%.

Although the impermeable area is slightly above the current requirements, the objectives are considered satisfied as all the roof water is to be discharged on site into infiltration pits and a 5000L water tank will be installed. In addition, this requirement is not strictly enforceable as the application is subject to previous design controls which did not directly address this issue.

### **External Living Areas**

The dwelling makes provision for external living areas in the form of a patio and terrace areas adjacent to the pool providing adequate solar access to the dwelling and private open space.

### **Landscaping**

The applicant has provided a landscape plan in conjunction with the proposal, providing screening plants along the southern side boundary and shrubs within the front and rear setbacks.

The proposal is generally consistent with this design control.

### **Topography, Cut and Fill**

The site is in a new residential subdivision. The whole subdivision, when constructed was filled approximately 2 metres. The building platform for the property is generally flat, but has an approximate fall of 10% from the building platform to the eastern rear property boundary. Minimal cut and fill is proposed with the construction of the dwelling, which complies with the design controls outlined in section A1.

### **Setbacks**

The proposal is consistent with the set back controls being 6 metres from the front boundary, 1.5 metres from the northern side boundary and 1.6 metres from the southern side boundary.

The set back from the rear boundary while not the required 5 metres nominated in A1, is 3 metres for the dwelling and 1.2 metres for the deck which is consistent the prescribed set back requirement in the 88b instrument for the subdivision and Councils requirements prior to the introduction of A1.

#### Car Parking and Access

The design control requires the proposed vehicle access and parking to be consistent with Section A2 of the DCP. Two (2) off street car parking spaces are provided behind Council's 6 metre building line in the garage located at ground floor level within the dwelling. Vehicle access to these spaces is considered adequate.

#### Height

##### **Building Height**

The maximum height of the dwelling is 7.5 metres which is consistent with the current maximum design control of 9 metres.

##### **Ceiling Height**

The control encourages a minimum ceiling height of 2.7m for habitable rooms. The architectural plans show a minimum floor to ceiling height of 2.7m which satisfies the current requirements of the DCP.

#### Building Amenity

##### **Sunlight Access**

Private open space for the dwelling will receive sufficient access to sunlight. The dwelling includes the provision of terraced areas orientated north adjacent to the pool area and eastern rear boundary.

Overshadowing will impact on any proposal on the southern side of the site however impacts are considered in keeping with what could be reasonably expected by a neighbouring dwelling as the proposed development is in keeping with the bulk and scale of existing dwellings in the area. Cylinders Drive runs north – south and it is anticipated that most of the dwellings along this street will have similar shadow impacts to those caused by the proposed dwelling.

##### **Visual Privacy**

Overlooking into adjoining properties has been minimized with the provision of suitable screening and strategic window positioning along both sides of the dwelling.



### **Acoustic Privacy**

The applicable control relates to air conditioning and other mechanical equipment. A condition of consent has been recommended stating the noise of an air conditioner, pump or other mechanical equipment shall not exceed the background noise level by more than 5dB(A) when measured in or on any premises in the vicinity of the item.

### **View Sharing**

This matter has been discussed previously in this report.

### **Natural Ventilation**

The design of the dwelling provides for adequate natural ventilation.

### **Building Orientation**

The dwelling has been sited on the property to optimize solar access and coastal views as well as providing an acceptable street presentation.

### **Fences and Walls; Front, Side and Rear**

The submitted architectural plans show only minimal fencing is proposed with the development. The proposal incorporates a 1.8m high and 5.5 metre long feature stone front court yard wall which stands 3 metres from the front property boundary. Landscaping is proposed in front of this fence to help reduce its impact on the streetscape.

1.8 metre high concrete block boundary fences are proposed to both side boundaries.

The development was notified to adjoining property owners and no objections were received to the proposal.

Fencing for the proposal is consistent with the design controls in place prior to the introduction of A1.

### **Roof**

The design of the roof being generally flat is consistent with the design requirements of section A1. A condition regarding the implementation of non-reflective roof materials has been recommended in the conditions.

### **Building Performance**

The proposal is consistent with this design control. As discussed previously the proposal is consistent with the SEPP (Building Sustainability Index: BASIX) 2004.

### Swimming Pools

The proposed swimming pool is set back behind Council's Building line and 1.5 from the eastern side property boundary and is consistent with the design control objectives for swimming pools in Section A1.

### Floor Space Ratio (FSR)

The current A1 provisions control the maximum allowable floor area of a dwelling in relation to the total area of the site, as a means of matching the building scale with the capacity of the site and local area.

The proposed site has an area of 622m<sup>2</sup> and the dwelling has an approximate 'floor area' as defined by the DCP of 338m<sup>2</sup> which complies with the current prescribed allowance applying the 0.55:1 ratio.

The proposal is also consistent with the design requirements applicable at the time of lodgement of the application.

### A2-Site Access and Parking Code

The development will comply with the requirements of section A2 in relation to vehicle access and parking. Two car spaces have been provided in the garage located at ground floor level within the dwelling.

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

### Clause 92(a) Government Coastal Policy

The proposal is consistent with the goals and objectives outlined within 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**

### Context and Setting

The property is within a residential subdivision which has been specifically created for residential development. The proposed development is an architect designed building of high quality and will be in keeping with the architectural style and residential character of the area.

### Access, Transport and Traffic

Minimal impact is envisaged, the proposal is a single residence within an approved residential subdivision.

### Flora and Fauna

Minimal impact is envisaged, the site has been cleared during the creation of the subdivision.

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

Surrounding Land uses/Development

It is considered that the site is suitable for the proposed development. The property is located within an existing residential area and utilities of reticulated water, public sewer and power are provided to the site.

The design of the dwelling is in keeping with the residential character of the area.

Topography

The building platform was created at subdivision stage and is generally flat, but has an approximate fall of 10% from the building platform to the eastern rear property boundary.

Site Orientation

The building has been centrally located on the property 6 metres back from the front property boundary. The site is rectangular in shape with the western front boundary facing Cylinders Drive, the northern side boundary adjoining another residential property, the eastern rear boundary adjoins a coastal reserve and the southern side boundary adjoins an unformed lane way, which is part of a large proposed residential development.

The living areas of the dwelling have been mainly orientated to the east and north to optimize ocean views and solar access to the north.

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

None apparent

**(e) Public interest**

The development will not prejudice the public interest.

**OPTIONS:**

1. Council resolve to assume the Director-General's concurrence and resolve to approve the development application.
2. Council not resolve to assume the Director General's concurrence and resolve to refuse the development application, providing reasons for refusal.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be dissatisfied with the determination they have the right to appeal the decision in the Land and Environment Court.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The proposed development is consistent with the applicable environmental planning instruments with an acceptable variation of Clause 32B of the NCREP, and is generally consistent with the applicable Council policies. The proposal represents quality urban development which will make a positive contribution to the locality.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

---

**12 [PR-CM] Update on Development Application DA05/0223 for a restaurant at Lot 1 DP 553728, No. 4 Wharf Street Tweed Heads**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA05/0223 Pt2**

**SUMMARY OF REPORT:**

In late 2008, Council was made aware of unauthorised building works at the existing approved restaurant adjacent to the Jack Evans Boatharbour. An investigation into the works was undertaken, with the proprietor of the premises being advised that an application to modify Development Consent DA05/0223 was required. This was to be accompanied with a Building Certificate application for the unauthorised works, as well as a Construction Certificate for any further building works.

An application to modify the original approval by way of internal and external building modifications and use of the premises (known as the "iBar") was subsequently lodged by the applicant. Unauthorised use (lap dancing) was also included in Council's assessment of the development.

The application was refused by Council, with a recommendation to initiate legal action with regard to: unauthorised building works; the premises being used in a different manner from the original consent; and outstanding contributions fees.

The following report has been prepared to highlight the fact that the issues arising with this application have evolved and require reconsideration. It has also been prepared to update Council on the best way forward with regard to finalising all outstanding matters and includes a summary of the legal advice received on the matters raised above.

**RECOMMENDATION:**

**That:-**

- 1. Council requests the occupier of the premises at No. 4 Wharf Street, Tweed Heads, known as the "iBar" to lodge an extra S96 application to modify Development Consent DA05/0223 and building certificate application, incorporating all unauthorised building works on the subject site. If such applications are not lodged within 21 days of any Council resolution, Council officers will seek further legal advice about an appropriate cause of action in regard to the unauthorised building works, including the option of the issue of a penalty infringement notice;**
- 2. Outstanding contribution fees relating to DA05/0233 not be pursued and that only the contributions paid to date are recognised as credit for any future development of the subject site; and**

## REPORT:

The subject site is located adjacent to the Chris Cunningham Park and Jack Evans Boat Harbour, opposite Centro Tweed (Tweed Mall) on Wharf Street, Tweed Heads. The existing single storey building was previously a Tourist Information Centre, as well as the sales office for the Latitude 28 proposal, which is now the Ultima site.

On 8 June 2005, Council's Development Assessment Panel issued development consent DA05/0223 for a restaurant known as "*Wright on the Water*" at 4 Wharf Street, Tweed Heads. The original approval was for the installation of a commercial kitchen to run a Steakhouse Restaurant from the existing building. The approval was for two stages of development. Stage 1 involved: the installation of a kitchen and bar within the existing building; the replacement of part of the northern and eastern external walls with retractable doors; and the installation of the services and refuse enclosure on the southern side of the building. Stage 2 incorporated: the construction of a 4.5m wide roofed terrace along the northern and eastern elevations for alfresco dining; and an additional unisex disabled toilet.

Following an investigation by Council's Compliance Officer with regard to a complaint regarding unauthorised construction activities in December 2008, the Lessee of the premises lodged a S96 application on 19 March 2009 incorporating:

- The replacement of the approved external masonry deck with a timber deck, by way of constructing the timber deck above and over the existing masonry deck. In addition, increase the size of the timber deck by an additional 18m<sup>2</sup>;
- Extend the roof area over the deck area to cover the entire deck. The roof is proposed to be pitched;
- The internal dining area removed and all dining on the external deck, with "casual dining" inside. The stacking doors removed and replaced with walls;
- Bar area moved and increased in size, and kitchen moved;
- Waiting area deleted;
- Office added near entry, adjacent to toilet facilities. An external fan proposed to meet BCA requirements;
- Additional unisex toilet added;
- Increase area of the approved service and refuse area on southern side of the building from 6m<sup>2</sup> to 43m<sup>2</sup>, to be used for storage, refuse, cool room and cleaners amenities;
- Relocate the cool room from within the main building to the service and refuse area noted above;
- Continue 24 hour trading, requiring the removal of Conditions 6 and 7 from the consent.

On 16 June 2009, Council resolved to refuse the proposed modifications and initiate legal action in relation to: unauthorised building works; the premises being used in a different manner from the original consent; and outstanding contributions fees.

The proprietor of the restaurant has continued operating from the premises with the unauthorised building works remaining unregulated.

**SITE DIAGRAM:**



**LOCALITY PLAN**  
**Lot 1 DP 553728**  
**4 Wharf Street, Tweed Heads**

Filename: e:\year\planning\msd\A4P\_B&W Site Plan.mxd

Author: J. Batchelor - Planning Reforms Unit

Date Printed: 6 November, 2009

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty 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/or its use. This information is supplied for the general guidance and is to be considered indicative and diagnostic only. It should not be used for survey or construction purposes and prior to any excavation a "Dig 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.



Cadastral 6 November, 2009  
 © Dept. of Lands & Tweed Shire Council

Coordinate System - MGA Zone 56  
 Datum - GDA 94

DO NOT SCALE  
 COPY ONLY - NOT FOR FIELD

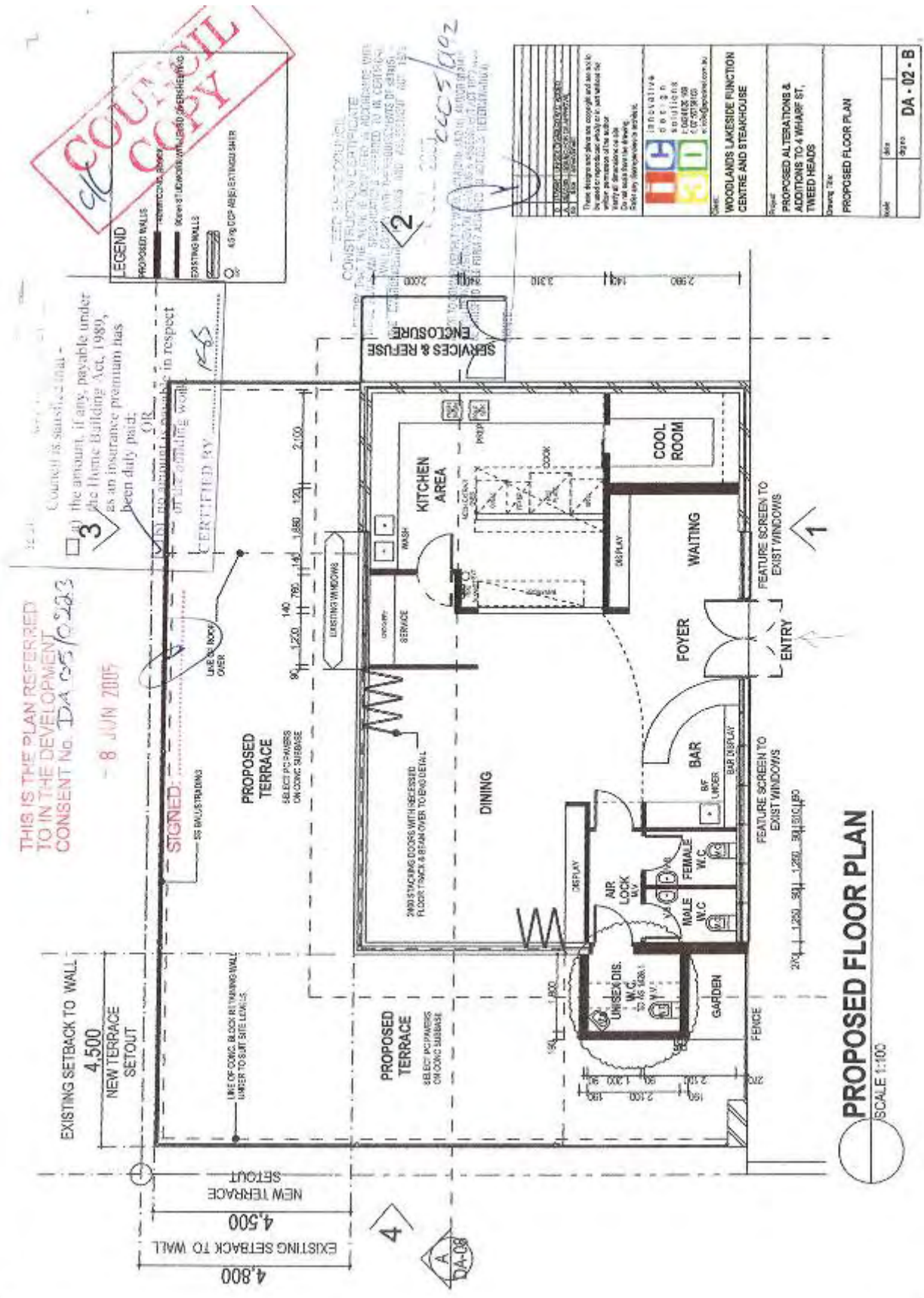
Civic and Cultural Centre  
 3 Tambourine Road  
 Murwillumbah NSW 2486  
 PO Box 619  
 Murwillumbah NSW 2484

T: (02) 6670 2400 / 1300 202 872  
 F: (02) 6670 2483  
 W: www.tweed.nsw.gov.au  
 E: planning@twc@tweed.nsw.gov.au



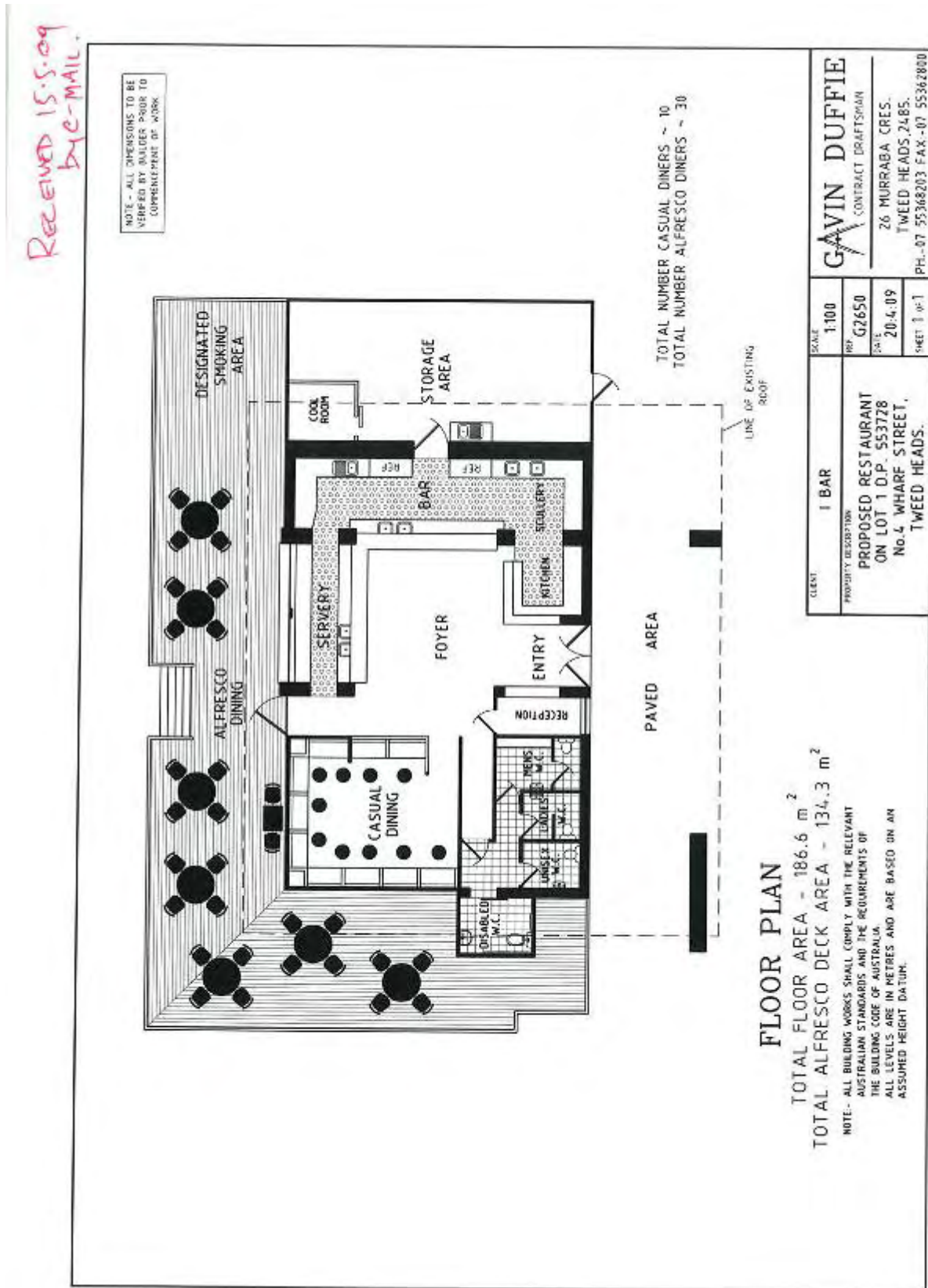
**TWEED**  
**SHIRE COUNCIL**

**APPROVED LAYOUT PLAN OF RESTAURANT:**





EXISTING INTERNAL LAYOUT:



Legal advice has been obtained from Marsdens Law Group and is attached as a confidential item. Based on the legal advice, Council's Development Assessment Unit has concluded the following:

### Unauthorised Building Works

Council records clearly indicate that unauthorised building works have taken place, beyond that approved under Stages 1 and 2 of Development Consent DA05/0223. As noted by Council's legal advice, the works carried out to date can be regularised by Council through the issue of a building certificate, upon receipt of such application.

Council's Building Services Unit has previously noted that a building certificate application is required in respect to the unauthorised works. The building certificate would not be issued until such time that appropriate development consent has been obtained for the development.

Since the refusal of the S96 application in June 2009, a site inspection on 11 September 2009 by Council's Building Services Unit has also identified additional works undertaken by the proprietor of the premises. These works consist of an awning over part of the northern and eastern external decks, which appear to be in accordance with Stage 2 of the approved development. However, as Stage 2 has not been issued with a Construction Certificate, such works will need to obtain building certification.

As noted throughout this entire process, the building works undertaken to date incorporates development beyond that approved under DA05/0223. This includes (but is not limited to): changes to the approved internal configuration of the premises (i.e. a new office; the deletion of kitchen & cool room; and new bar location); as well as external modifications (i.e. the external plant area is now much larger and incorporates a cool room (which does not comply with the BCA).

As noted by the above legal advice, court action is not recommended at this stage with regard to unauthorised works. Rather, it is recommended that in addition to a Building Certificate, the occupier of the premises lodge a new S96 application to modify the approved layout of the restaurant (assuming owners consent can be obtained). This would allow Council an opportunity to "tidy up" existing conditions of consent, so as to ensure appropriate provisions are in place in terms of noise / amenity etc.

It is also recommended to issue a Penalty Infringement Notice for the unauthorised building works. Such a fine (\$1,500) would be consistent with previous Council procedures for similar unauthorised works.

The alternative to a S96 is proceeding with legal action, which may incorporate the removal of all unauthorised works to date by way of reinstating the building to how it was originally approved. Whilst this is a valid option, it is not considered to be the most practical, in that the new works have given the aging building an uplift and result in a much better looking development overall.

### Unauthorised Use of Building

The approved use under DA05/0223 was for a restaurant incorporating a maximum of 40 diners. The proposed use of the premises (under the recently refused S96) was somewhat different from the originally approved use, in that the development incorporated a lap dancing component within the building.

Since the refusal of the S96, several evening site inspections from Council staff and observations from Tweed Police have concluded that lap dancing no longer occurs at the premises. As such, the occupation of the premises now appears to be in general accordance with the approved use – a restaurant.

Despite this, a S96 application is still required for the unauthorised changes to the layout of the premises. The lodgement of such application would allow Council to undertake a merit assessment of the development, ensuring that it meets Council requirements in terms of patronage, parking, noise, amenity issues etc.

To determine what application is the most appropriate (i.e. S96 or new development application), an assessment needs to be undertaken in terms of whether the proposed development is “substantially the same” as the originally approved development, pursuant to the provisions of the Environmental Planning and Assessment Act. Key planning principles relate to a general comparison (rather than in detail) between the approved development and the proposed modifications, to determine if the development as a whole is essentially or materially similar to the originally approved development.

In this regard, it could be argued that the development is substantially the same, in that it is still a “restaurant”, despite the internal / external configuration changing somewhat. One of the critical issues is the constraint of only 40 diners. If the amendments incorporated additional seating etc, a new development application would be required and reassessment undertaken in terms of car parking provisions and applicable contribution fees etc. In either situation, the applicant would be required to provide a clear indication of seating, hours of operation, noise impact etc for Council’s consideration.

The previously refused application incorporated an issue of a Place of Public Entertainment (POPE) licence being required for the lap dancing component of the development. This issue is no longer relevant as a result of the lap dancing use ceasing within the premises. It should also be noted that the Department of Planning has issued new ‘Planning for Entertainment Guidelines’ (26 October 2009) which state that...*“pubs, restaurants, registered clubs and other venues do not need development consent to provide live, or any other form of, entertainment that is part of the venues main business”*.

In light of the above legal advice, Class 4 court proceedings are not recommended at this stage with regard to use of the premises.

### Outstanding Contributions

Despite the approved plans not distinguishing between the 2 stages, Condition 1 of the consent requires the development to be carried out in accordance with the applicant’s Statement of Environment Effects. Council’s file incorporates a letter from the applicant requesting 2 stages for the development: Stage 1 being the kitchen and interior of the restaurant; and Stage 2 being the verandah on the external part of the building.

Although the above legal advice questions the certification of Stage 2 (i.e. no distinction between either stage on the Construction Certificate issued in July 2005), Council’s internal electronic records appear to indicate that the Construction Certificate was only for Stage 1.

In addition, the applicant was advised on numerous occasions prior to the lodgement of the S96 application that a construction certificate was required and that recalculation of outstanding contribution fees was required.

Nonetheless, the above legal advice on this matter clearly indicates that Council is not guaranteed of a positive outcome if Class 4 proceedings were undertaken and that Council would likely be up for court costs if unsuccessful. In this regard it is recommended that court action not proceed. Rather, the site would only have a credit for the contributions paid to date.

**OPTIONS:**

1. Council requests the occupier of the premises at No. 4 Wharf Street, Tweed Heads, known as the "iBar" to lodge an extra S96 application to modify Development Consent DA05/0223 and building certificate application, incorporating all unauthorised building works. If such applications are not lodged within 21 days of any Council resolution, Council officers will seek further legal advice about an appropriate cause of action in regard to the unauthorised building works, including the option of the issue of a penalty infringement notice; or
2. Proceed with legal action through Council's Solicitor's in relation to unauthorised building works. This may incorporate the removal of all unauthorised works to date by way of reinstating the building to how it was originally approved.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Option 1 - the applicant has a right of appeal in the NSW Land and Environment Court if dissatisfied with the determination of any future S96 application.

Option 2 - financial implications may result from legal proceedings.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. Confidential legal opinion (ECM 4108123)
-

**13 [PR-CM] Court of Appeal Judgement (CA40279/09) in Relation to Development Application DA06/0413 for a Staged Seniors Living Development under SEPP (Seniors Living) 2004 at Lot 1 DP 786570 No. 87-89 Tweed Coast Road, Hastings Point**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA06/0413 Pt12**

**SUMMARY OF REPORT:**

In May 2009 the Hastings Point Progress Association challenged an earlier NSW Land and Environment Court Judgement in regards to "The Point" (an aged care development at Hastings Point) in the Court of Appeal.

Council is now in receipt of the Court of Appeal Judgement in relation to this application.

The Judgement declares the Court of Appeal matter is "dismissed with costs" and the previous decision (issued by NSW Land and Environment Court) as "valid".

Therefore the development consent for DA06/0413 (comprising an aged care housing development) as issued by Tweed Shire Council in May 2007 remains valid.

Council did not actively defend this case and only put on a submitting appearance thus allowing the case to be defended by the applicant. Council's legal expenses in relation to this case have been minimal to date (approximately \$1300). Council's legal advice indicates that as Council only put on a submitting appearance Council is not entitled to claim any legal expenses associated with the case. Therefore the costs order issued by the Court of Appeal would only apply to the second respondent Aeklig Pty Ltd to recover their costs from the applicant Hastings Point Progress Association.

It is recommended that Council receive and note the attached judgement.

Since receipt of this judgement, Council has been further advised of two (2) additional appeals that are being lodged by Hastings Point Progress Association Incorporated in regards to this matter:

1. Application for Leave to Appeal to the High Court (reference S270/2009);
2. Court of Appeal to Re-List under the "slip rule" as the appellant submits that the conclusion reached by the Court of Appeal (Justice McColl and Justice Young) should lead to the Appeal being allowed and the matter being remitted to the Trial Judge.

In both the above matters, Council has put on a submitting appearance (as previously discussed with Councillors) and will take no participatory role in these proceedings. Upon finalisation of these additional matters Council will be advised of the outcome.

**RECOMMENDATION:**

**That:-**

- A. The report on the Court of Appeal Judgement (CA40279/09) in Relation to Development Application DA06/0413 for a Staged Seniors Living Development under SEPP (Seniors Living) 2004 at Lot 1 DP 786570 No. 87-89 Tweed Coast Road, Hastings Point be received and noted.**
  
- B. That Council receive and notes the two (2) additional appeals that have been received in regard to this matter and further notes the decision in accordance with legal advice to put a submitting appearance with regard to these matters.**

**REPORT:**

DA06/0413 sought approval for a staged seniors living development under SEPP (Seniors Living) 2004 comprising 91 independent living units, 94 supported living units and 67 beds within a high care facility at Lot 1 DP 786570 No. 87-89 Tweed Coast Road, Hastings Point.

The application was approved by Council subject to conditions of consent.

The DA was challenged in the NSW Land and Environment Court by Hastings Point Progress Association Incorporated. The nature of the appeal focused on two matters of procedure (as the Appeal could only relate to procedure and NOT merit);

1. That Council failed to consider Clause 8 of the Tweed LEP 2000 specifically in regard to cumulative impact; and
2. That Council's decision was manifestly unreasonable.

The appeal was unsuccessful on both counts.

The judgement determined that the Senior Living SEPP prevailed over Clause 8 of the Tweed LEP 2000, as Clause 8 of the Tweed LEP 2000 was inconsistent with the SEPP Senior Living.

Secondly the judgement determined that Council's decision was not manifestly unreasonable.

The case was accordingly dismissed.

In May 2009 the Hastings Point Progress Association challenged the NSW Land and Environment Court decision. The NSW Court of Appeal undertook a judicial review of the NSW Land and Environment decision primarily focussing on whether Clause 8 of the Tweed LEP 2000 actually formed an inconsistency with the Senior Living SEPP.

The Hastings Point Progress Association argued that the Clause was an additional assessment criterion not one in conflict with anything contained within the SEPP.

Aeklig Pty Ltd argued that:

1. Clause 8 of the LEP mandates that a refusal be granted unless the three matters (8 (1) (a) and (b) and (c) are satisfied; and
2. The SEPP Senior Living permits development despite the provisions of any other instrument provided the development complies with the SEPP

Therefore Aeklig argued that Clause 8 was inconsistent with the SEPP enabling the SEPP to prevail.

The Court of Appeal decision is determined by three judges. In this instance two judges ruled in the favour of Aeklig and one judge was dissenting.

The judgement summarised inter alia:

*“...The critical issue on appeal was whether Clause 8 of the Tweed LEP 2000 was inconsistent with Clause 17 of the SEPP – SL for the purposes of s36 of the Environmental Planning and Assessment Act 1979 (NSW) because it mandated refusal of a development which nevertheless was to be carried out in accordance with SEPP – SL.*

*...That provision cannot, in my view, operate concurrently with Clause 17 of SEPP SL which permits the development to which it refers “despite the provisions of any other environmental planning instrument if the development is carried out in accordance with this Policy.*

*This is not to say that the consent authority is not required by s79C to take those conditions into account in its consideration of a development that otherwise complies with SEPP – SL. But having done so, the consent authority has a discretion to grant consent, notwithstanding that it is not satisfied of each of the three conditions in Clause 8(1). The inconsistency arises because Clause 8(1) mandates refusal in those circumstances.”*

The Court of Appeal held that the case was dismissed with costs.

As detailed within the summary above Council did not actively defend this case and only put on a submitting appearance. Therefore the costs order issued by the Court of Appeal would only apply to the second respondent Aeklig Pty Ltd to recover their costs from the applicant Hastings Point Progress Association.

It is recommended that Council receive and note the attached judgement.

Since receipt of this judgement, Council has been further advised of two (2) additional appeals that are being lodged by Hastings Point Progress Association Incorporated in regards to this matter:

1. Application for Leave to Appeal to the High Court (reference S270/2009);
2. Court of Appeal to Re-List under the "slip rule" as the appellant submits that the conclusion reached by the Court of Appeal (Justice McColl and Justice Young) should lead to the Appeal being allowed and the matter being remitted to the Trial Judge.

In both the above matters, Council has put on a submitting appearance (as previously discussed with Councillors) and will take no participatory role in these proceedings. Upon finalisation of these additional matters Council will be advised of the outcome.

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

Council did not actively defend this case and only put on a submitting appearance thus allowing the case to be defended by the applicant. Council's legal expenses in relation to this case have been minimal (approximately \$1300).

Should the Hastings Point Progress Association Incorporated continue with the Appeal in the High Court minimal additional legal costs may be incurred to again put on a submitting appearance only.



**POLICY IMPLICATIONS:**

The judgement provides an interpretation to the way in which State Environmental Planning Policies can override the local controls.

The Court of Appeal judgement implies that where a local control mandates refusal unless matters are satisfied (as is the case with Clause 8) then the consent authority need not undertake the assessment of that control in the first instance.

It is recommended that TSC continue to undertake judicious consideration of environmental planning instruments when assessing development applications and await the future determinations of the pending verdicts.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. NSW Court of Appeal Judgement CA40279/09 - 11 September 2009 (ECM 6125683)
  2. NSW Land and Environment Court Judgement - 6 June 2008 (ECM 1871912)
-

**THIS PAGE IS BLANK**

**14 [PR-CM] Planning Reform Unit Work Program**

**ORIGIN:**

**Planning Reforms**

**FILE NO: GT1/LEP/2006 Pt14**

**SUMMARY OF REPORT:**

This report seeks Council's endorsement of a new fee and process structure for ensuring that costs associated with reporting and investigation of 'betterment' proposals and 'scoping' exercises are recoverable from a proponent and not borne by the community through Council.

The impact on Council's resources generally arising from external commercially driven and or speculative development concepts and proposals is addressed in this report. In particular the report highlights the implications arising from requests to reconsider strategic planning policies from a financial and resource cost perspective.

A proposed fee structure catering for strategic policy review that occurs outside of nominated and or general policy review periods, whereby the process would otherwise be widely open to public review and comment, is provided with two options comprising a 'lower' and 'upper' (full) cost recovery model.

Ensuring that the Tweed community does not carry the financial burden by way of Council's resources, but, also to ensure that the resources committed to implementing the Council's adopted Planning Reforms work program 2009/2012 are not unduly diminished or diverted away from the commitment to preparing a strategic planning framework for the Tweed, the report presents the view that a fee schedule and procedural guideline is essential.

Lastly, the report raises the importance of having an effective strategic planning framework, particularly in light of the considerable development pressure on the Tweed Council to release further land, and canvasses the necessity for Council to endorse the proposed fees and procedure to enable Council Officers to continue to direct the necessary efforts into building that framework over the next 3 years.

**RECOMMENDATION:**

**That: -**

- 1. Council supports the fees and charges schedule identified within Table 1 (Option 1) to this report relating to requests to review strategic planning policies:**

**Table 1 – Fees and Charges**

<b>Request for review of strategic planning policy outside of review period</b>	
<b>Item</b>	<b>Fees &amp; Charges</b>
General administration fee	\$500
Review process fee	\$500 + \$95 per hour per reviewer beyond 4hrs Plus, all additional printing costs
Council appointed and managed consultancy	The cost is to be determined by a Council invitation and submission process and agreed to by applicant + 25% administration fee.
Other costs	The applicant is liable to all additional costs in relation to the reprinting of an amended strategy and in addition is also liable for the partial cost of the current printing charge relating to the printing of the current policy, which shall be based on the number of unsold copies remaining

2. **The fees and charges identified within Table 1 (Option 1) of this report relating to requests to review strategic planning policies be exhibited in accordance with Section 610F of the Local Government Act, 1993, and**
3. **Council endorses a general process procedure for the management of requests for the review of strategic planning policies as detailed in Figure 1 of this report.**

## **REPORT:**

### **Report Purpose**

#### ***The key Issue***

This report seeks Council's endorsement of a process that enables the Planning Reform Unit to recover the cost associated with the services rendered in the assessment, investigation and reporting of 'betterment' or scoping type proposals. The reason for the proposed fees is that all associated costs arising from commercially or speculative proposals should be borne by the proponent who is making the request of Council.

Betterment relates to the enhanced value of real property arising from local improvements that would include, but not limited to, land rezoning or the listing of a property in a strategic policy, e.g. a land release strategy.

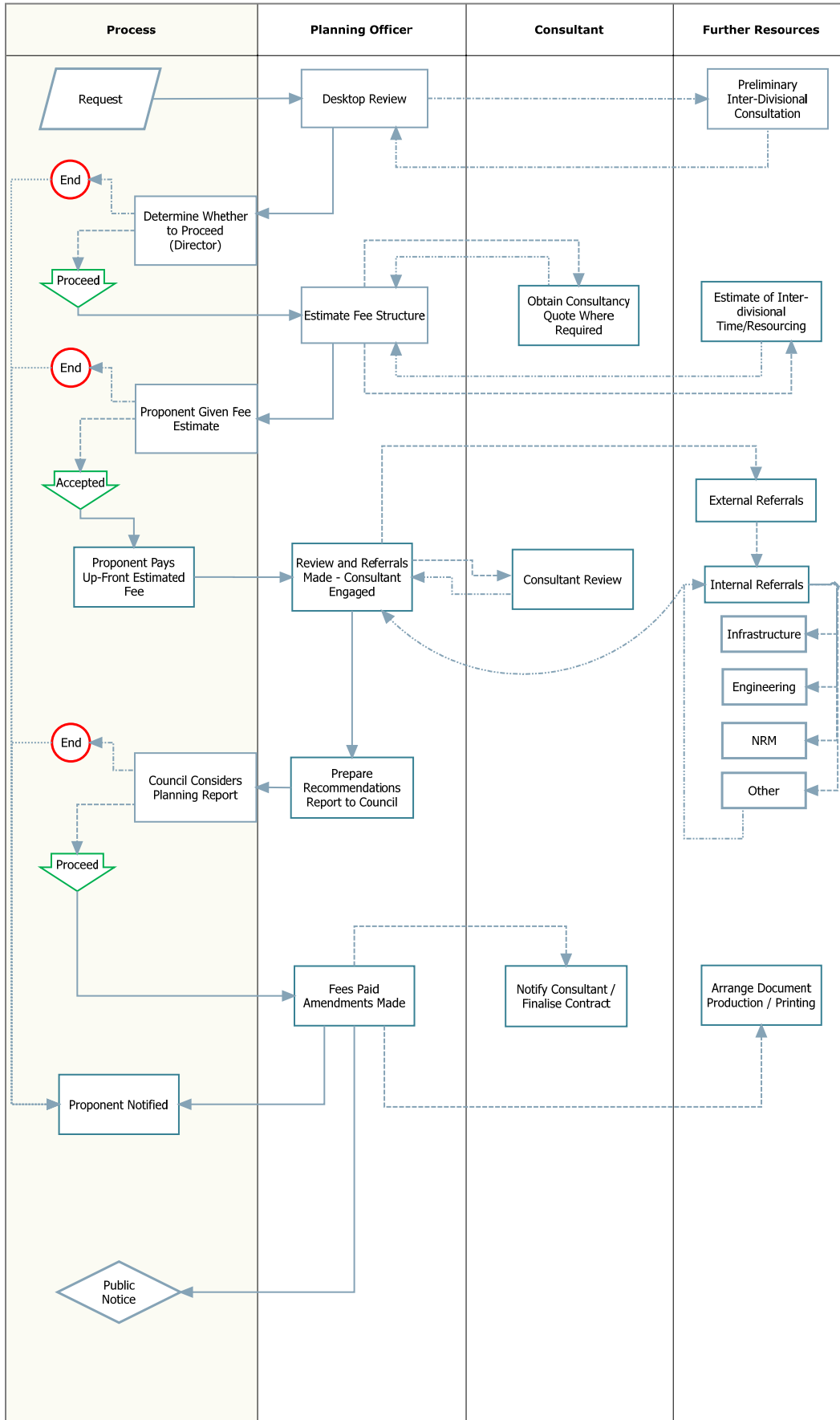
Council's Planning Reforms Unit (PRU) is frequently called upon to provide preliminary and sometimes detailed assessment of commercially driven and speculative development scenarios. The level of assessment required to undertake a proper review is often far reaching, typically with resource demands arising beyond the PRU into specialised areas of engineering, ecology, and the like. It is quite rare that requests of a development nature can be dealt with on a planning analysis alone.

#### ***What is a Request for Review in this Report?***

The kind of request referred to in this report is a reference to those, typically, but not always, made by professional consultancies on behalf of a client who is seeking to raise the capital value and development capacity of their land by way of land rezoning or listing of the land in a broader strategic strategy, for example; Tweed Urban and Employment Land Strategy 2009, with similar results. These requests are those typically made against an adopted strategy. It does not include general enquiries regarding, for example; information on the particular zoning of a property, the process by which a rezoning may occur, or how a particular provision of the local environmental plan or development control plan affects or applies to a particular scenario or site.

The following illustration, Figure 1, highlights a procedure that could typically be used for the evaluation and assessment of a proposed review, and the general process typically employed.

Figure 1 – Diagrammatical Representation of Key Review Processes



### ***Are there any Current Examples of a Request?***

Councillor's would be aware from the Ordinary Meeting of Council on 20 October 2009 that a request has been made by Planit Consulting Pty Ltd ("the Planit request") on Behalf of Leisure Brothers seeking a review of the Tweed Urban and Employment Land Release Strategy ("the TUELRs") 2009, as adopted by Council on 17 March 2009.

Although the Planit request is not subject to any form of cost recovery it is indicative of the kind of request for reconsideration of a strategic land-use policy canvassed in this report.

### ***Are Reviews a Good or Bad Thing?***

In general, reviews of Council strategic planning policies are a legitimate and relevant practice that can be used to take account of circumstances not envisaged at the time of preparation or to take account of change in circumstance. In essence, reviews are a mechanism or tool for project review and control. When properly managed externally driven reviews can add value to the relevance and currency of the strategic policy.

### ***Will there be an Impact on the Strategic Policy?***

There can be far reaching impacts on the strategic policy being reviewed but also on the broader framework. However, the tendency for impacts to arise is often linked to the process used for evaluation. A well planned and considered procedure like that illustrated in Figure 1 should not lead to adverse impacts and may have a positive impact on the relevance and currency of the policy.

In summary, with a properly managed and resourced procedure for assessing requests to review strategic policy there should be no need for a reactive approach by way of barring requests for reconsideration. The review procedure can further reduce the impact on Council's resources if supplemented with an appropriate system of cost recovery. This report provides two options for cost recovery below.

### ***What Impact do Requests Have on Council's Other Resources?***

Resource implications arise in different ways. The more obvious impact is with the staff resourcing of the review, which depending on the nature and complexity of the proposal will determine how many staff will be required. Several key areas that arise typically include;

- Engineering (water, sewer, roads, hydrology, civil)
- Natural Resource Management
- General Administration
- Resourcing of correspondence, postage, public notification, printing
- Administration of external consultations (external State Agencies, key stakeholders, business groups, organisations, community groups)

The interactions across Council's resource base, that is, the different areas of specialty, are best illustrated in Figure 1 above.

## Managing Impact without Limiting Opportunity

### Cost Recovery Option

Basically, the better way to limit and manage the substantial costs associated with requests to review strategic policies, without ruling out or unnecessarily limiting the opportunity presented by way of reviews, is to levy an hourly rate for the time of the Council staff directly involved with the review, and the full cost of any consultancy fees with an additional 25% for administrative project management.

The cost recovery procedure outlined above will recover the “full cost” as far as it is practical to do so, however, it is worth noting that unless an additional general administrative cost is levied the cost of processing, filing, receipting, postage and handling, and the like, will not be recoverable.

The tables below provide two options for consideration:

#### Option 1 – Preferred Option.

**Table 1 – Fees and Charges**

Request for review of strategic planning policy outside of review period			
Item	Fees & Charges		
General administration fee	\$500		
Review process fee	\$500 + \$95 per hour <u>per reviewer</u> beyond 4hrs Plus, all additional printing costs		
Council appointed and managed consultancy	The cost is to be determined by a Council invitation and submission process and agreed to by applicant + <b>25%</b> administration fee.		
Other costs	The applicant is liable to all additional costs in relation to the reprinting of an amended strategy and in addition is also liable for the partial cost of the current printing charge relating to the printing of the current policy, which shall be based on the number of un-sold copies remaining		

#### Option 2 – Alternative Option.

**Table 2 – Fees and Charges**

Request for review of strategic planning policy outside of review period			
Item	Fees & Charges		
General administration fee	Nil		
Review process fee	\$500 + \$95 per hour <u>per reviewer</u> beyond 4hrs Plus, all additional printing costs		
Council appointed and managed consultancy	The cost is to be determined by a Council invitation and submission process and agreed to by applicant + <b>20%</b> administration fee.		
Other costs	Nil.		



The Environmental Planning and Assessment Act 1979, makes no reference to fees and charges for strategic policies generally, as it does with other policies, such as, local environmental plans (LEP) and development control plans (DCP). There is no restriction operating on local councils for the levying of fees and charges for related costs on the Council arising from the kind of requests canvassed in this report.

The latter plans above, namely LEPs and DCPs, have their fees and charges detailed in the Council's Schedule of Fees and Charges 2009/2010, as a requirement, and which is adopted with the Council's Management Plan. It is intended that any fee structure arising from this report will also be included in that Schedule, for consistency.

### **CONCLUSION:**

It is important to recognise the strategic relevance and necessity of a coherent and defensible strategic policy framework, not only from Council's perspective but also as a means of providing certainty for the development industry and for investment in the Tweed.

This report discussed above the relevance and appropriateness of allowing reviews as a method of project control, provided that the procedure employed is sufficient to allow for a proper assessment. This latter element is the key ingredient to justify and validate any review process outside of the Council's ordinary review of the policy as a whole. It can be a very important mechanism for updating policy in the short-term that may otherwise not be internally scheduled for review, but, that is nevertheless needed.

Although limiting the ability for review outside of the nominated strategy review period will for the most part maintain the value embedded in those policies it is, as discussed in this report, equally valuable to capitalise on the ability to review Council's policies as circumstances change. To support this process and to limit the impact on Council's resources this report canvasses the idea of cost recovery or "user-pays", by the proponent making the request.

Taking these matters into account it seems both fair and reasonable to the community through Council and the proponent that the latter be required to pay the cost of any work arising from the latter's intention to 'test' or 'scope- out' the betterment options available and open to them through a review of Council's strategic planning policies.

If the propositions in this report are accepted it would be open to Council to introduce a fee structure to recover the costs associated with a request for review, with a reciprocating benefit to both the proponent and Council. Two options are canvassed in this report with Option 1 providing broader scope for the full cost recovery, and being the preferred option.

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

Adoption of a fee structure associated with the request to review strategic planning policies will limit otherwise potential substantial resource impacts.

### **POLICY IMPLICATIONS:**

This report seeks a clear direction on managing requests to review adopted strategic planning policies in a way that limits the impact on Council's resources by way of an appropriate and relevant fees and charges schedule.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

---

**15 [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 October 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, the following Development Applications have been supported where a variation in standards under SEPP1 has occurred: -

DA No.	Description of Development	Property Address	Date Granted	Development Standard to be Varied	Zoning	Justification	Extent	Authority
DA08/0911	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	Lot 238 DP 1070792 & Lot 86 DP 1066472 Saltwater Crescent, Kingscliff	23/10/2009	Schedule 3 of Tweed Local Environmental Plan 2000	2(f) Tourism	Variation to Subclause (2) of the enabling clause in Schedule 3 of the Tweed LEP 2000 for 'Portions 194, 301 and 312 Kings Beach, South Kingscliff' stipulating that proposed allotment sizes for the creation of dwelling houses within a subdivision of the subject land must have a minimum area of 450sqm. None of the proposed allotments meet this control.	Up to 56%	Tweed Shire Council
DA08/1161	town house development comprising eight (8) attached dwellings	Lot 9 DP 33501, No. 109 Pacific Highway; Lots 1 & 2 DP 568733 No. 111 Pacific Highway, Banora Point	18/9/2009	Clause 51A of Tweed Local Environmental Plan 2000	2(a) Low Density Residential	Clause 51A of the LEP requires a density of not more than 1 dwelling per 450m <sup>2</sup> of site area. This methodology is followed in Section A1, where it requires a minimum lot size of 1350m <sup>2</sup> for town house developments (being 3 x 450m <sup>2</sup> ). The provision for a 'development lot' to created at a minimum size of 220m <sup>2</sup> enables the concurrent application of building and subdivision development with the ability to co-locate and provide communal private infrastructure, but, it is not a density guide beyond the 1350m <sup>2</sup> minimum lot size, or minimum 450m <sup>2</sup> site area per dwelling.  Accordingly, when reviewing the controls as detailed above, the LEP and DCP controls correspond with each other and in our respectful opinion do not provide a basis for	38%	Tweed Shire Council

DA No.	Description of Development	Property Address	Date Granted	Development Standard to be Varied	Zoning	Justification	Extent	Authority
						<p>inconsistency.</p> <p>The applicant's interpretation of the DCP is not concurred with in so far as there is no intention by Council to alter density, that is, the DCP does not seek nor intend on altering the density ratio in the 2(a) zone.</p>		
DA08/1170	two (2) lot subdivision	Part Lot 1 DP 1073137 & Part Lot 1 DP 1073137 No. 43 & 19Turners Road, Wardrop Valley	23/10/2009	Clause 20(2)(a) of Tweed Local Environmental Plan 2000	1(a) Rural	<p>The application was originally submitted in the form of proposed Lot 1 being 1.2 hectares and proposed Lot 2 being 40.5 hectares. As Lot 2 was not complying with Clause 11 an objection under SEPP 1 and the concurrence of the Department of Planning (DoP) was required.</p> <p>Concurrence was granted by the DoP on the condition that Council requires that the proposed Lot 1 be enlarged to include all land south of the currently proposed northern boundary. Proposed Lot 2 – became approx 39.2 ha and the smaller rural residential holding proposed Lot 1 became approx 2.5ha.</p> <p>Council Officers did not agree with the Department of Planning and recommended the application for refusal. However, the Councillors approved the application.</p>	93.25%	Director-General Department of Planning
DA09/0415	additions to multi unit dwelling - small roof structure (resulting in partial fourth storey component)	Lot 11 SP 79988 No. 11/1-3 Murphys Road, Kingscliff	23/10/2009	Clause 16 of Tweed Local Environmental Plan 2000 and Clause 32B of North Coast Regional Environmental Plan 1988	2(b) Medium Density Residential	<p>The partial 4th storey is not of significant scale or size to raise any issues for regional or local planning. The partial 4th storey represents an open shade structure that is in keeping with the existing scale and context of the building.</p> <p>The proposed overshadowing is minor in scale relative to the overall size of the foreshore</p>	approximately 5% of the actual building to be a partial 4th storey	Tweed Shire Council

DA No.	Description of Development	Property Address	Date Granted	Development Standard to be Varied	Zoning	Justification	Extent	Authority
						reserve. The shadow falls within the vegetated portion of the foreshore dune.		

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

---