

## JUDGMENT/ORDER

### COURT DETAILS

Court Land and Environment Court of New South Wales  
Class One  
Registry Level 4, 225 Macquarie Street, Sydney NSW 2000  
Case number 10480 of 2009

### TITLE OF PROCEEDINGS

Applicant SEASIDE CITY DEVELOPMENTS PTY LTD  
Respondent TWEED SHIRE COUNCIL

### DATE OF ORDER

Date made or given 8<sup>th</sup> March 2010  
Date entered 16/3/10



### TERMS OF JUDGMENT/ORDER

The Court notes that the parties or their representatives have reached agreement at or after a conciliation conference held pursuant to section 34 of the *Land and Environment Court Act, 1979* presided over by Commissioner Murrell, as to the terms of a decision in the proceedings that would be acceptable to the parties (being a decision that the Court could have made in the proper exercise of its functions).

By consent, the Court makes the following orders:

- 1 The Appeal is upheld.
- 2 Development application No DA08/0755 for the re-subdivision of Lots 1 to 18 Casuarina Way into 24 residential allotments is approved subject to the conditions contained in Annexure "A" to this Agreement.
- 3 There be no order as to costs.



By consent, the Court notes the following:

- 1 The parties will amend the Seaside City Planning Agreement dated 9 January 2007 ("**Planning Agreement**") to reflect the following:

- (a) no levy will be imposed for future development of the Land under Contributions Plan No. 26 - Regional Open Space;
- (b) noting that a credit is to be applied for existing allotments of the Land, where legally permitted, a levy may be imposed for local structured open space under Contributions Plan No. 28 for future subdivision of the Land and development of the Land that results in more than one dwelling on an allotment (excluding tourist accommodation);
- (c) subject to 1(a), where legally permitted and subject to any credit that may apply, levies may be imposed for future development of the Land for contributions which are applicable to the Land having regard to the terms of the Planning Agreement (as varied); and
- (d) until exhausted, a credit for works in kind will be applied for future development of the Land in satisfaction of the levy under Contributions Plan No. 22 - Cycleways.

"Land" has the meaning given to it in the Planning Agreement.

- 2 If the parties have not yet executed the amended Planning Agreement, the parties agree that should any development application lodged for the Land be determined by the granting of consent, any section 94 contributions that apply will be levied in accordance with the terms of the Planning Agreement and notation 1 above.
- 3 In relation to the General Terms of Approval of the Rural Fire Service ("RFS"), as outlined in Annexure "A":
  - (a) GTA 1 is satisfied by condition 76 of the consent;
  - (b) GTA 2 has already been satisfied. This has been confirmed by the RFS its letter of 4 February 2010.
  - (c) GTA 3 will be satisfied by a restriction on the use of land pursuant to s88B of the *Conveyancing Act* being placed on Lots 1 to 24 (inclusive).

**SEAL AND SIGNATURE**

Court seal  
Signature  
Date of signature

*Gray*  
ACTING REGISTRAR  
16/3/10



**PERSON PROVIDING DOCUMENT FOR SEALING UNDER UCPR 36.12**

Name	The Applicant
Legal representative	David Stanley O'Donnell, Mallesons
Legal representative reference	DOD:MMA - 02-5501-7621
Contact name and telephone	Michelle Astridge, (02) 9296 2951



**ANNEXURE A  
CONDITIONS OF CONSENT  
DEVELOPMENT APPLICATION NO. DA08/0755**



**GENERAL**

1. The development shall be completed in accordance with:
  - (a) the Statement of Environmental Effects prepared by Planit Consulting dated May 2008;
  - (b) Plan No. 2698.01 Issue C prepared by EDAW/AECOM and dated 16 May 2008;
  - (c) Engineering and Environmental report prepared by Cardno dated June 2009;
  - (d) Air Quality Construction Management Plan prepared by Cardno under cover of letter from Mallesons Stephen Jaques to HWL Ebsworth Lawyers dated 4 November 2009,

Except where varied by the conditions of this consent.

[GEN0005]

2. This subdivision application has approved 24 single dwelling allotments only (no duplex sites have been approved by this application). Each allotment is to be a minimum of 450m<sup>2</sup> in size as indicated on the approved plan. Any greater density is subject to separate Development Approval in accordance with the applicable legislation in place at the given time.

[GEN0005]

3. All works shall comply with the Council approved Construction Management Plan, under Condition 3.49 of DA05/1464.

[GEN0005]

4. All works shall comply with the Radiation Investigation and Remediation Action Plan, Cardno, 23 May 2008 to the satisfaction of the Council.

[GEN0005]

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

[GEN0045]

6. Subject to condition 75, 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]

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

[GEN0135]

8. All works shall comply with the Acid Sulfate Soils Management Plan, Cardno December 2005.

[GENNS01]

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

9. **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 Council.

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

[PCC0275]

10. 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]

11. 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.

[PCC0485]

12. 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]

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

### **RIGHT OF CARRIAGEWAY**

- (a) The right of carriageways providing access to proposed lots 4, 5, 6, 8, 9, 10, 16, 17, 18, 20, 21 and 22 shall be constructed with a 4.5m wide sealed pavement and shall also comply in general terms with Council's Driveway Access to Property Policy.

[PCC0875]



14. Prior to the issue of a **Construction Certificate** for civil works to be dedicated to Council, 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
  - stormwater drainage
  - rights of carriageway
  - water supply works
  - sewerage 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]

15. 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.
  - (i) Infiltration areas are to be sized with a factor of safety of 2 (this is to allow for long term deterioration in infiltration rate).
  - (ii) Runoff entering infiltration trenches/basins shall be pre-treated to remove sediment and gross pollutants.
  - (iii) The infiltration rate for infiltration devices shall be determined as follows:
    - Conduct percolation tests on the site in accordance with Appendix B of AS 1547-1994 Disposal Systems for Effluent from Domestic Premises.
    - If the above calculation yields a result of <6 m/day, this rate may be used for design.
    - If the result is >6 m/day, the rate for design may not exceed 6 m/day unless this rate is confirmed by independently determining the coefficient of permeability of the soil in accordance with AS 1289.6.7.3. Notwithstanding these tests, the maximum infiltration rate that may be used for design and sizing purposes is 12 m/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.
- (c) Surchage overflow from the infiltration area to the street gutter, inter-allotment or public drainage system must occur by **visible surface flow**, not piped.
  - (d) 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).
  - (e) 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).
  - (f) All infiltration devices are to be designed to allow for cleaning and maintenance overhauls.
  - (g) 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.
  - (h) All infiltration devices are to be designed to allow for construction and operation vehicular loading.
  - (i) All infiltration devices are to be located clear of stormwater or sewer easements.

[PCC1135]

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

[PCC1155]

17. DELETED.

[PCCNS01]

#### PRIOR TO COMMENCEMENT OF WORK

18. 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.

19. Prior to commencement of work all actions or prerequisite works required at that stage, as required by other conditions or approved management plans or the like, shall be installed/operated in accordance with those conditions or plans. [PCW0005]

20. **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:- [PCW0015]

- (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

21. Any 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 further blending, crushing or processing is not to be undertaken, shall be submitted to the satisfaction of the Council [PCW0025]

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.

22. Civil work in accordance with a development consent must not be commenced until:- [PCW0375]

- (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, 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]

23. 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]

24. 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]

#### **DURING CONSTRUCTION**

25. All proposed works are to be carried out in accordance with the conditions of development consent, approved management plans, approved Construction Certificate, drawings and specifications.

[DUR0005]

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

Monday to Saturday from 7.00am to 7.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

27. 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:

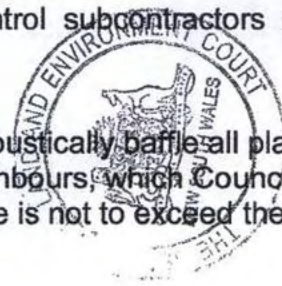
A. Short Term Period - 4 weeks.

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]



28. Any 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.

29. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house or building is strictly prohibited. [DUR0795]
30. No soil, sand, gravel, clay or other material shall be disposed of off the Seaside City site without the prior written approval of the Council. [DUR0815]
31. 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. [DUR0985]
32. All work associated with this approval is to be carried out so as not to adversely impact on the neighborhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: - [DUR0995]
- Noise, water or air pollution
  - dust during filling operations and also from construction vehicles
  - material removed from the site by wind
33. 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 the Council. [DUR1005]
34. 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. [DUR1015]
35. All hazardous and/or dangerous goods shall be handled and stored in a designated area away from stormwater drains. The designated area is to be: - [DUR1025]
- (a) Roofed;
  - (b) Provided with a sealed floor; and
- Bunded so as to hold 110% of the total quantity of goods stored. Bunded area(s) shall not be flood-labile and shall be provided with pump out facilities. [DUR1635]
36. A concrete footpath 1.2 metres wide is to be constructed on a compacted base along the entire frontage of the site to Casuarina Way in accordance with Councils Development Design and Construction Specifications and Standard Drawing SD013.

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

[DUR1735]

37. 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]

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

**Roadworks**

- (a) Pathways, footways, bikeways - formwork/reinforcement
- (b) Rights of Carriageway
- (c) Final inspections - on maintenance
- (d) 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]

39. 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]

40. 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]

41. 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]

42. The site shall not be dewatered, unless written approval to carry out dewatering operations is received from the Council and DECCW as statutorily required.

[DUR2425]

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

[DUR2435]

44. 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.

[DURNS01]

45. Noise from the proposed works shall not be permitted to unreasonably impact the amenity of any residential premise.

[DURNS02]

46. **CONSTRUCTION ACTIVITIES** The construction and works are to be conducted so as not to cause unreasonable disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like. The Air Quality Construction Management Plan prepared by Cardno under cover of letter from Mallesons Stephen Jaques to HWL Ebsworth Lawyers dated 4 November 2009 must be complied with at all times.

In addition the contractor shall be required to install on site a calibrated wind velocity meter for recording wind velocities during construction activities. The wind meter must be located so that it is easily accessed by relevant supervisors and Council Officers.

[DURNS03]



**PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE**

- 47. Prior to issue of a subdivision certificate, Development Consent DA 05/1464 is to be modified to accord with the revised staging created by DA08/0755. The relevant conditions are to be modified so that DA 05/1464 and DA08/0755 are consistent.
- 48. Prior to issue of a subdivision certificate, all infrastructure works approved in Stage 1 of Development Consent DA 05/1464 as modified from time to time must be completed to the satisfaction of the Council.
- 49. 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.
- 50. Prior to issue of a subdivision certificate, all land required to be dedicated pursuant to Development Consent DA 05/1464 must be dedicated to the Council including completion of all necessary infrastructure works, all park embellishments and remaining landscaping of the dedicated land.
- 51. 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. [PSC0005]

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall **NOT** be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

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

Water DSP6: 24 ET @ \$10,709 per ET	\$257,016
South Kingscliff Water Levy: 24 ET @ 248.4 per ET	\$5962
Sewer Kingscliff: 24 ET @ \$5146 per ET	\$123,504



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]

- 52. Section 94 Contributions

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

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

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

These charges include indexation provided for in the S94 Plan and will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 94 Plan current at the time of the payment.

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

S94 Plan No. 4 - TRCP

Tweed Road Contribution Plan:  
39 Trips @ \$955 per trip \$37245  
(\$868 base rate + \$87 indexation)  
S94 Plan No. 4  
Sector 7\_4

S94 Plan No. 11 - Libraries

Shirewide Library Facilities:  
6 lots @ \$792 per lot \$4,752  
(\$792 base rate + \$0 indexation)  
S94 Plan No. 11

S94 Plan No. 12 - Bus Shelters

Bus Shelters:  
6 lots @ \$60 per lot \$360  
(\$60 base rate + \$0 indexation)

S94 Plan No. 13 - Cemeteries

Eviron Cemetery:  
6 lots @ \$120 per lot \$720  
(\$101 base rate + \$19 indexation)  
S94 Plan No. 13

S94 Plan No. 15 - Community Facilities

Community Facilities (Tweed Coast - North)  
6 lots @ \$581 per lot \$3,486  
(\$492 base rate + \$0 indexation)  
S94 Plan No. 15



S94 Plan No. 18 - Council Administration

Extensions to Council Administration Offices  
& Technical Support Facilities  
6 lots @ \$1759.9 per lot \$10,559.40  
(\$1759.9 base rate + \$0 indexation)  
S94 Plan No. 18

S94 Plan No. 22 - Cycleways

Plan No. 22 states \$47 per m2 for 715m of cycleway is required.  
This equates to \$84,012 credit  
An additional 6 lots (\$447 per lot) = \$2,682  
\$84,012 - \$2,682 = \$81,330 remaining credit for works in kind.  
That would equate to credit for an extra 232 lots (604 people).

S94 Plan No. 28

Seaside City:  
6 new allotments Local "Structured Open Space"  
@ \$3585 per lot \$21,510  
(\$0 base rate + \$3585 indexation)

S94 Plan No. 28

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

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

[PSC0215]

54. Prior to the issue of a Subdivision Certificate, a maintenance bond equal to 25% of the contract value of the footpath construction works shall be lodged for a period of 3 years or until 80% of the lots fronting paved footpaths are built on.

Alternatively, the developer may elect to pay a cash contribution to the value of the footpath construction works plus 25% in lieu of construction and Council will construct the footpath when the subdivision is substantially built out. The cost of these works shall be validated by a schedule of rates.

[PSC0225]

55. Any damage to property (including pavement damage) is to be rectified to the satisfaction of the Council **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.



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

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

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

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

57. All retaining walls in excess of 1.2m are to be certified by a suitably qualified geotechnical/structural engineer. The certification is to be submitted with the subdivision certificate application and shall state that the retaining walls have been designed and constructed in accordance with AS4678-2002 Earth Retaining Structures and are structurally sound.

In addition to the above certification, the following is to be included in the Section 88B Instrument to accompany the final plan of subdivision.

- (a) A restriction to user for each lot that has the benefit of a retaining wall that prevents any cut or fill greater than 0.3m in vertical height within a zone adjacent to the wall that is equal to the height of the wall.
- (b) Each lot burdened and or benefited by a Type 1 wall as defined in AS4678-2002 Earth Retaining Structures, shall contain a restriction to user advising the landowner of the need to maintain the wall in accordance with that standard.

Tweed Shire Council is to be nominated as the authority empowered to release, vary or modify the restrictions.

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

59. 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) Rights of carriageway with a minimum combined width of six (6.0m) meters shall be created over the accessways to proposed lots 4, 5, 6, 8, 9, 10, 16, 17, 18, 20, 21 and 22.



- (c) A Restriction As To User requiring that all roofwater from houses, buildings or structures shall be discharged to an approved infiltration pit located on the subject property. The infiltration pit shall be approved by the Principle Certifying Authority.
- (d) A Restriction As To User on proposed lots 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21 and 22 to nominate the provisions applying to the cluster/battle axe allotments as detailed within condition 75 of this consent.
- (e) A Restriction As to User creating the Asset Protection Zone as detailed within condition 76 of this consent.

Pursuant to Section 88B 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]

- 60. 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]

- 61. 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]

- 62. Prior to registration of the plan of subdivision, a **Subdivision Certificate** shall be obtained.

The following information must accompany an application:

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

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

[PSC0885]

63. 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 - Water Reticulation
- (b) Compliance Certificate - Sewerage Reticulation

**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]

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

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

Fire Hydrants spacing, sizing and pressures shall comply with Council's DCP – Section A5 – Subdivision Manual, associated Development Design and Construction Specifications and AS2419.1-2005.

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]

66. The production of written evidence from the local telecommunications supply authority certifying that the provision and commissioning of underground telephone supply to all allotments.

[PSC1165]

67. 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 Council for any significant effect on Public Reserves or Drainage Reserves.

[PSC1185]

68. Prior to issue of a subdivision certificate a validation statement for the subject development stage regarding radiation monitoring, from a suitably qualified person, shall be provided to Council to the satisfaction of the Council. Monitoring and investigation shall include both surface and depth monitoring. The validation statement shall include details of monitoring undertaken, the nature and depth of materials on site, and establish that the site is suitable for the proposed use.

[PSCNS01]

69. Radiation monitoring and validation required by conditions of DA05/0775, DA05/0793, DA05/1464 and the Council approved Remediation Action Plan must be completed and provided to Council to the satisfaction of the Council, prior to issue of a subdivision certificate under this consent.

[PSCNS02]

70. Surface radiation validation required by Condition 11 of DA05/0793 in respect to Lot 1971 DP 133919 must be provided to Council prior to the issue of a subdivision certificate.

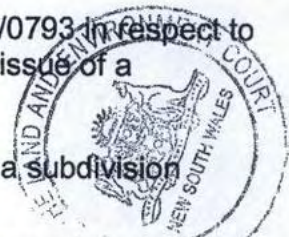
71. The following information must accompany an application for a subdivision certificate:

- (a) Original survey plan 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 DCP16, CL 7.6 and Councils Application for Subdivision Certificate including the attached notes.

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

72. 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 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 (1) 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 consultation 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 a Restrictions as to User under Section 88B of the Conveyancing Act, 1919 – 1964.

A Section 88B Instrument creating the restriction as to user shall contain a provision enabling the restriction to be revoked, carried or modified only with the consent of Council.

73. A restriction under the provisions of Section 88B of the Conveyancing Act is to be placed on the title of Lots 17 and 18 Section 4 DP 14895 indicating that part of the lots as indicated on plan 296703-VMP01 contained in DA 05/0793 are located within the 50m Cudgen Creek buffer area and no building works, swimming pools or structures except fences are to be placed within this buffer area. A draft copy of the instrument is to be submitted to Council.

A Section 88B Instrument creating the restriction as to user shall contain a provision enabling the restriction to be revoked, varied or modified only with the consent of Council.

74. The restrictions under the provisions of Section 88B required by these conditions of consent must be registered on the land when the plan of subdivision is lodged.

## USE

### PROPOSED CLUSTER / BATTLEAXE ALLOTMENT PROVISIONS

75. The battleaxe allotments will be developed in accordance with the principles illustrated in Diagram 1 below:

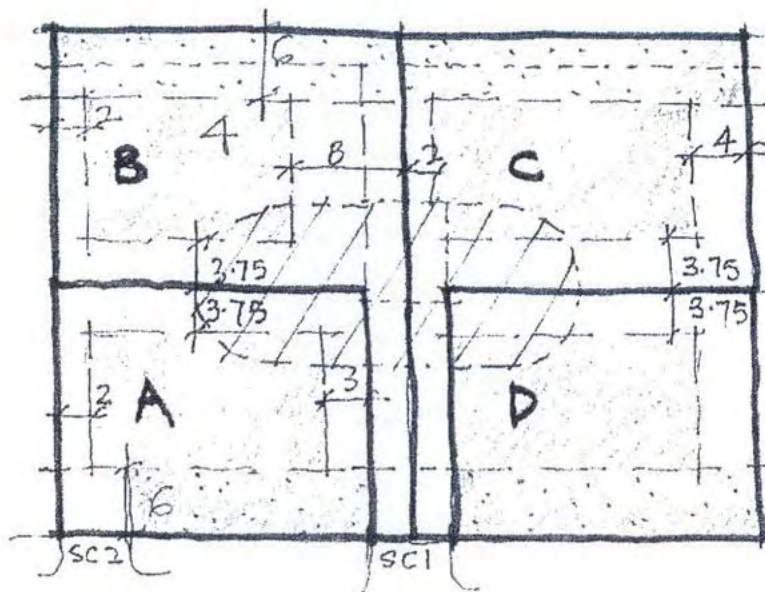


DIAGRAM 1

- SC : STREET CROSSING
- ▨ CARPARK ZONE
- DEEP SOIL ZONE
- 3.75 SETBACK
- BUILDING PLATFORM
- - - EASEMENT POSITIONS



These provisions are to be read in conjunction with the Coastal Housing provisions described in Tweed Shire Council DCP 2008: Section B11 – Seaside City.

These provisions are applicable as guiding principles and are described by a layout common to the four individual clusters of lots in the application which are designated Lots A, B, C and D on Diagram 1.

The principles underpinning these clusters/battleaxe allotments are:

- (i) the maximum number of driveway footpath crossings applicable to each cluster will be 2. Crossings will be allowed in the central location between allotments and adjacent to the southern boundary of Lot A. No other crossing positions will be allowed.
- (ii) If a single street crossing is nominated all carparking for the lots will be located generally in the area designated on Diagram 1:
- (iii) A 3.75 metre setback, shall apply on either side of the common north-south boundary between Lots A and B, and between Lots D and C, to provide a minimum of 7.5 metres separation distance between habitable rooms. Garages and Carports may intrude into this setback.
- (iv) A deep soil zone will be provided in the 6 metre setback of Lots A and D along the frontage to Casuarina Way and in the 6 metre setback to the rear boundary of Lots B and C.
- (v) Each lot will contain a 30% landscape provision inclusive of deep soil areas previously nominated.
- (vi) Each lot will have additional minimum setbacks as designated on Diagram 1 (carports and garages excepted) to provide for effective privacy, screening and solar access.



If there is any inconsistency between this condition and the controls in the Tweed Shire DCP 2008, then this condition prevails to the extent of the inconsistency.

76. In satisfaction of the RFS' GTA condition (1), 15m wide Asset Protection Zone (APZ) for Lots 1 to 24 (inclusive) must be provided at the commencement of building works as follows:

- (a) 5m of the APZ to be situated on Lots 1 to 24 (inclusive); and
- (b) 10m of the APZ to be situated on adjoining Lot 1971.

## GENERAL TERMS OF APPROVAL

### Bushfire Safety Authority

#### As Required Under Section 100B of the *Rural Fires Act 1997*

#### Asset Protection Zone

The intent of measures is to provide sufficient space for fire-fighters and other emergency services personnel, ensuring radiant heat levels permit operations under critical conditions of radiant heat, smoke and embers, while supporting or evacuating occupants.

1. At the commencement of the building works and in perpetuity a minimum 15 metre asset protection zone (APZ) is required along the entire length of the western boundary. The APZ's must comply with the guidelines contained within the NSW Rural Fire Service's document 'Standards for asset protection zones'.

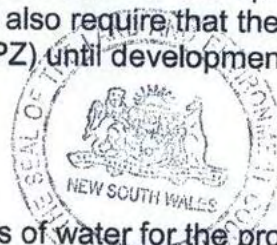
Where this requirement is proposed on council land (to the west) the relevant plan of management shall be formally implemented and the relevant APZs' in place prior to building works.

2. Proposed Lots 1 and 24 shall not be developed until the commencement of future proposed residential development on the adjacent lots to the south and north respectively, but only if the hazard is removed as part of the proposal.
3. A restriction of the land use pursuant to Section 88B of the Conveyancing Act 1919 shall be placed on all lots within the subdivision that the lots cannot be sold until they are hazard reduced so that all proposed lots have the vegetation managed as an outer protection area (OPA) 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'. The restriction to the land use shall also require that the land be maintained as an asset protection zone (APZ) until development occurs that removes the hazard.

#### Water and Utilities

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building.

4. Water, electricity and gas are to comply with section 4.2.7 of Planning for Bush Fire Protection 2006.



General Advice – Council to Note

Any further development application for class 1, 2 and 3 buildings as identified by the Building Code of Australia must be subject to separate application under Section 79BA of the EP & A Act and address the requirements of Planning for Bush Fire Protection 2006.

The reasons for the imposition of conditions are to minimise any adverse impact the development may cause and to give effect to the objectives of the Environmental Planning and Assessment Act, 1979.

The consent to operate from:

**9 March 2010**

The consent to lapse on **9 March 2015** unless commenced prior to that date.

