



**TWEED**  
SHIRE COUNCIL

**Mayor:** Cr K Skinner (Mayor)

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

# Agenda

## Planning and Regulation Reports **Ordinary Council Meeting** **Tuesday 16 November 2010**

held at Murwillumbah Cultural & Civic Centre  
commencing at 3.30pm

### **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.

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**Items for Consideration of Council:**

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## 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.

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**6 [PR-CM] Development Application DA10/0451 for a Two (2) Lot Subdivision at Lot 2 DP 562104, No. 42-44 Terrace Street, Chinderah**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA10/0451 Pt1**

**SUMMARY OF REPORT:**

The proposed development involves an allotment with the zoning being part 1(a) Rural and part 7(a) Environmental Protection (Wetlands & Littoral Rainforests). The area of the lot is 3.66ha. The applicant is seeking approval for a two (2) lot subdivision of land. The 7(a) zoned land will be contained within proposed Lot 2.

The proposal incorporates a SEPP 1 Objection in relation to the 1(a) portion of the site being less than the minimum lot size (40ha). The proposal is being reported to Council for determination as a result of the variation being greater than 10% of the development standard.

The subdivision will result in two (2) allotments with areas of 3.483ha and 0.1761ha. Each allotment will contain a dwelling.

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

**RECOMMENDATION:**

**That Development Application DA10/0451 for a two (2) lot subdivision at Lot 2 DP 562104, No. 42-44 Terrace Street Chinderah 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 18035 D Rev. A prepared by B & P Surveys and dated 25/01/10, 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 approved modifications to any existing public utilities situated within or adjacent to the subject property.**

[GEN0135]

4. Council advises that the land is subject to inundation in a 1 in 100 year event to the Design Flood Level of 3.2m AHD.

[GEN0195]

5. The referenced easement for water supply over existing line of pipe (Y) as shown on proposed Survey Plan 18035 D Rev. A, prepared by B & P Surveys and dated 25/01/10 is not supported by Council.

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

[PCC0865]

9. 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
- roadworks/furnishings
  - The extension of Walsh Street, including a sealed pavement of 6.0m width with barrier kerb and gutter for the on the subject site's side of Walsh Street, for it's full frontage, on an alignment approved by Tweed Shire Council.



- Access shall be provided to the proposed allotments in accordance with Council standards including:
  - a) The proposed Right of Carriageway shall be upgraded to a 3.6m wide, 150mm thick gravel pavement and 2 coat seal from Walsh Street to the property boundary of Proposed Lot 2.
- stormwater drainage
- Roofwater from the existing dwelling on proposed Lot 3 shall discharge into the new kerb and gutter in Walsh Street, where physically achievable.
- water supply works
- The existing dwellings must be serviced by separate water meters, with the water service for proposed Lot 2 to be provided along that allotments frontage to Walsh Street. Any interconnection of water pipes between the two properties must be removed.
- sewerage works
- The septic systems servicing the existing dwellings must be decommissioned and replaced with individual, private pump stations.
- All pressure mains shall be located with the road reserve. The Developer shall provide a Boundary Kit for connection for each lot to be serviced by the pressure sewer within each associated lot, in accordance with Council's standard specifications and drawings. The location of connection or the pressure main to sewerage shall be determined in consultation with Council during preparation of the engineering design plans so as to minimise the length of rising main so as to reduce any potential odour and septicity issues.
- The associated pressure mains will become the responsibility of Council. The mains must be sized so as to permit neighbouring properties to the north to be connected in the future.
- 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]

10. Permanent stormwater quality treatment shall be provided in accordance with Councils *Development Design Specification D7 - Stormwater Quality*.

[PCC1105]

11. 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]

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

- 12. 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]

- 13. 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, 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]

14. 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]

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.

[PCW0985]

#### **DURING CONSTRUCTION**

16. 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]

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. 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.

$L_{Aeq, 15 \text{ min}}$  noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

- B. Long term period - the duration.

$L_{Aeq, 15 \text{ min}}$  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]

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

[DUR0815]

20. 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]

21. 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.

[DUR0995]

22. 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]

23. 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]

24. 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]

25. All works shall be carried out in accordance with Councils Acid Sulfate Soils Management Plan for Minor Works. A signed copy of this Management Plan shall be submitted to Council prior to the commencement of works.

[DUR1075]

26. 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]

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

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

[DUR1805]

28. During the relevant stages of road construction, tests shall be undertaken by a Registered NATA Geotechnical firm. A report including copies of test results shall be submitted to the PCA prior to the placement of the wearing surface demonstrating:

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

[DUR1825]

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

[DUR1845]

30. Any damage caused to public infrastructure (roads, 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.

[DUR1875]

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

**Roadworks**

- (a) Pre-construction commencement erosion and sedimentation control measures
- (b) Completion of earthworks
- (c) Excavation of subgrade
- (d) Pavement - sub-base
- (e) Pavement - pre kerb
- (f) Pavement - pre seal

(g) Final inspections - on maintenance

(h) 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]

32. 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]

33. 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]

34. Any required 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]

35. 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]

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

[DUR2425]

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

[DUR2435]

38. All works shall comply with the Erosion and Sediment Control Plan, Cozens Regan Williams Prove June 2010.

[DURNS01]

#### **PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE**

39. 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]

40. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

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

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

Water DSP5:	1 ET @ \$11020 per ET	\$11020
Sewer Kingscliff:	1 ET @ \$5295 per ET	\$5295

These charges to remain fixed for a period of twelve (12) months from the date of this consent and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

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

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

[PCC0265/PSC0165]

41. 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]

42. 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]

43. 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]

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

[PSC0825]

45. 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) Creation of a Right of Carriageway over proposed Lot 3 to service proposed Lot 2.

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

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

[PSC0835]

46. Submit to Council's property officer an appropriate plan indicating the address number to both new and existing lots for approval. Prior to the issue of a Subdivision Certificate, each lot shall have its' address number displayed in accordance with Council policy.

[PSC0845]



47. 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]

48. 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]

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

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

Note:

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

[PSC0915]

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

[PSC0925]

51. 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 gravity sewerage systems 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]

52. 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]

53. Prior to the issue of a subdivision certificate the existing dwellings shall be connected to reticulated sewer to the satisfaction of the General Manager or his delegate and the applicant is required to lodge an application to install and operate an onsite sewage management system (private pump station) under Section 68 of the Local Government Act 1993, pay the appropriate fee and be issued with an approval.

[PSCNS01]

54. Prior to the issue of a subdivision certificate the existing on-site sewage management systems are to be removed in accordance with NSW Health Advisory Note 3 - October 2000 "Destruction, Removal or Reuse of Septic Tanks, Collection Wells and Aerated Wastewater Treatment Systems (AWTS)" to the satisfaction of the General Manager or his delegate.

[PSCNS02]

55. Prior to the issue of a Subdivision Certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all works required under Section 68 of the Local Government Act 1993.

[PSCNS01]

56. Prior to the issue of a Subdivision Certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all works required under Section 138 of the Roads Act 1993.

[PSCNS02]

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

1. At the issue of subdivision certificate and in perpetuity, the land surrounding the existing dwelling(s) on proposed Lot 2 and 3, to a distance of 20 metres, shall be maintained 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'.
2. Water, electricity and gas are to comply with the following requirements of 4.1.3 of 'Planning for Bush Fire Protection 2006'.

- A hardened ground surface for truck access is to be supplied up to and within 4 metres of the water source.
  - A 65mm metal Storz outlet with a gate or ball valve shall be provided.
  - In recognition that an unreliable reticulated water supply exists, a 5000 litre water supply shall be provided for fire fighting purposes.
  - Polycarbonate/plastic tanks shall be shielded from the impact of radiant heat and direct flame contact.
3. The existing building on proposed Lot 2 and 3 is 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.
  4. Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

**REPORT:**

**Applicant:** Mrs L Curtis and Mr D Curtis  
**Owner:** Estate OF EJ Holland  
**Location:** Lot 2 DP 562104, No. 42-44 Terrace Street, Chinderah  
**Zoning:** Part 1(a) Rural and Part - 7(a) Environmental Protection (Wetlands & Littoral Rainforests)  
**Cost:** Nil

**BACKGROUND:**

Council is in receipt of a development application for a subdivision.

The subject site is legally described as Lot 2 DP562104 and is located at 42-44 Terrace Street, Chinderah. The allotment is irregular in shape and has an overall area of 3.66 hectares. The site contains two dwellings with one dwelling located in proximity to the alignment of Walsh Street and the other located further to the east in proximity to the southern boundary. The area to the north and east of the existing dwellings comprises a low lying vegetated area which is also burdened by an easement (variable width) for drainage.

The proposed new allotments do not meet the minimum lot size requirements for the zone although it is unlikely to have any impact upon the potential for agricultural use of the site, as the existing allotment is not currently used for agricultural purposes and the proposal will be almost identical to the current situation.

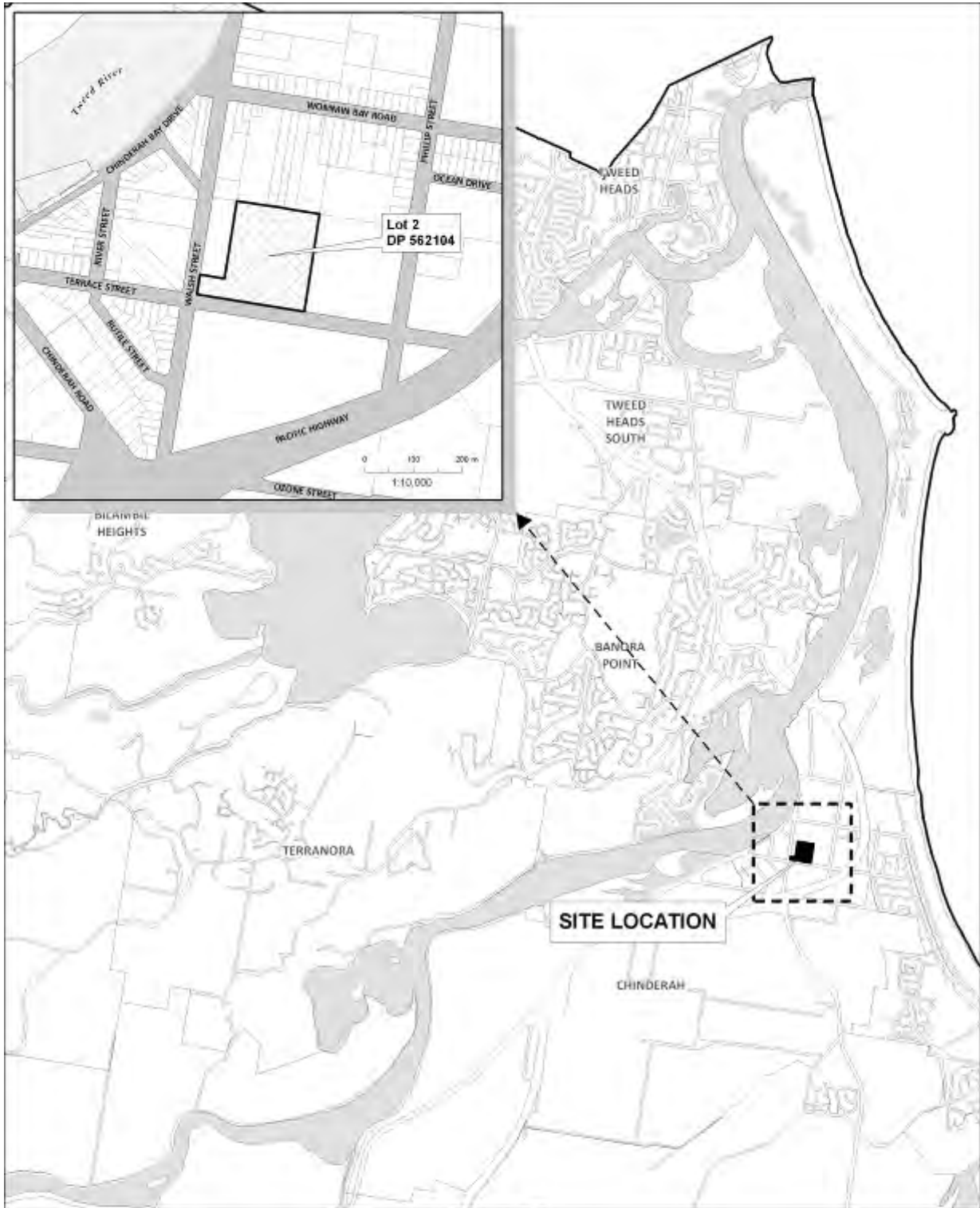
A SEPP 1 Objection has been lodged in relation to the 1(a) portion of the site being less than the minimum lot size (40ha). As the proposal incorporates a variation greater than 10% of the development standard, the application is being reported to Council for determination. The Director-General's concurrence has been granted for the proposed development.

Improvements on the site include: a single storey dwelling in the rural area, approved under Development Permit T4/3168 and Building Permit No 276/84 in 1984; and a single storey dwelling that was constructed on site prior to 1964 and inhabited continually. A statutory declaration has been provided in relation to the construction of the original dwelling.

Whilst there are two (2) existing dwellings on the site Section 64 contributions for water and sewer are applicable as the site has only been rated for one water service.

Access to the rear dwelling on proposed Lot 2 is proposed via the utilisation of an existing track through proposed Lot 3. This will be covered via an ROW/ROC. This access will be sealed to at least the property boundary.

**SITE DIAGRAM:**



**Locality Plan**  
 Lot 2 DP 562104  
 No.42-44 Terrace Street, Chinderah

Disclaimer: CADR entry can be false or contain the name of the State. Tweed Shire Council makes no representation or warranty as to the accuracy of the information shown. It is the user's responsibility to verify the accuracy of the information shown. The information is provided for general information only and should not be used for any other purpose. The information is provided for general information only and should not be used for any other purpose. The information is provided for general information only and should not be used for any other purpose. The information is provided for general information only and should not be used for any other purpose.

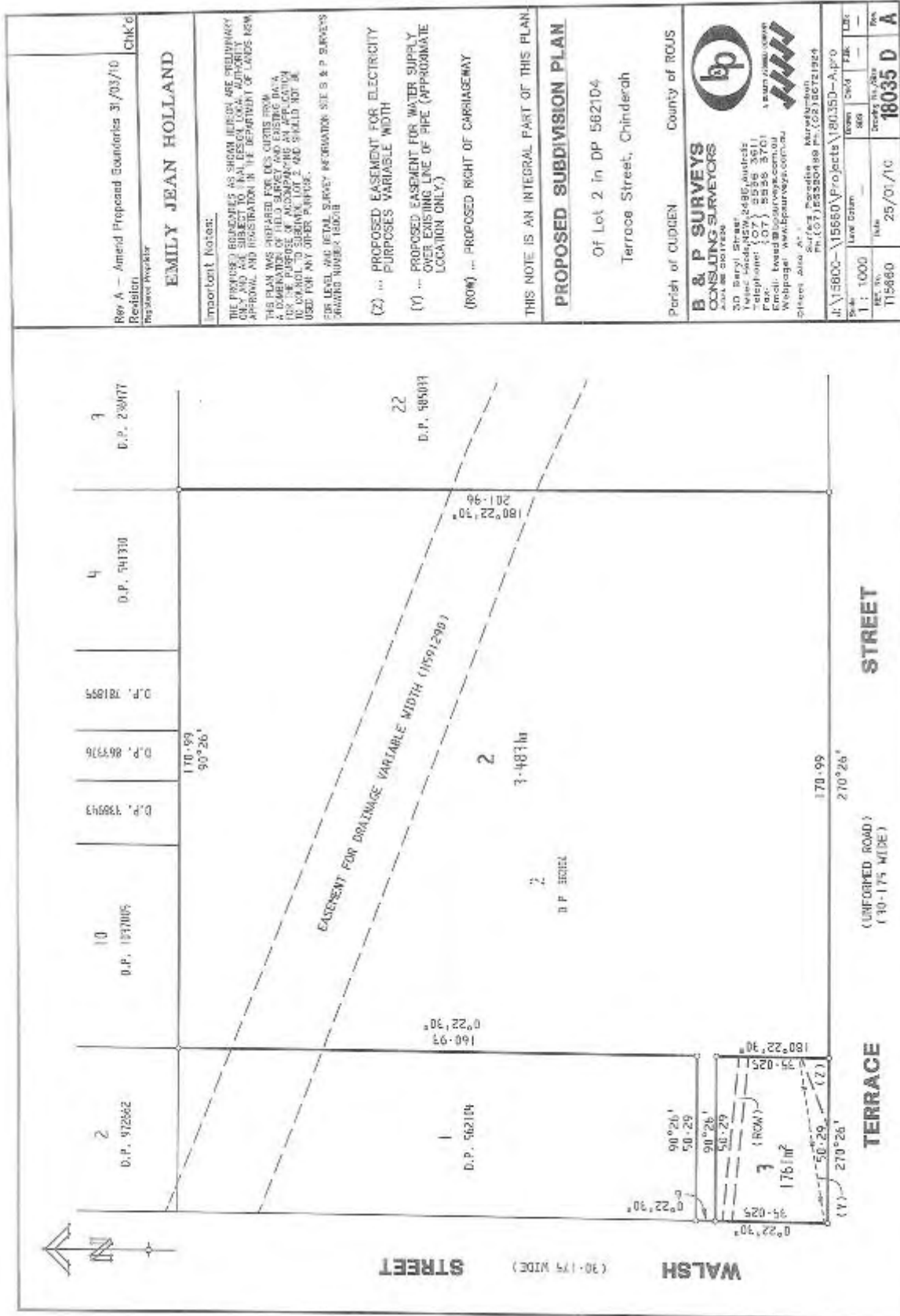
Cadastral: 03 November 2010  
 © Land and Property Management Authority (LPM) & Tweed Shire Council  
 Boundaries shown should be considered approximate only.

0 0.5 1 km  
 1:50,000 @ A4 Portrait  
 GDA  
Geographic Data Australia  
 National Reference Database  
 Australian Edition of Australia's  
 Grid: Map of Australia, June 2008

Civic and Cultural Centre  
 2 Tullaghan Road  
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 Murwillumbah NSW 2484  
 T | 02 6670 2488 | 1300 202 870  
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 W | www.tweed.nsw.gov.au  
 E | planning@tweed.nsw.gov.au



DEVELOPMENT PLAN:



Rev A - Amend Proposed Boundaries 3/03/10  
 Registered  
 Registrar General  
**EMILY JEAN HOLLAND**

**Important Notes:**  
 THE PROPOSED BOUNDARIES AS SHOWN HEREON ARE PRELIMINARY ONLY AND ARE SUBJECT TO FINAL DESIGN LOCAL AUTHORITY APPROVAL AND REGISTRATION IN THE DEPARTMENT OF LANDS NSW.  
 THIS PLAN WAS PREPARED FOR THE SURVEYOR'S WORKS. A DRAINAGE EASEMENT FOR WATER SUPPLY AND DRAINAGE PURPOSES IS SHOWN ON THIS LOT. THIS EASEMENT IS TO BE USED FOR ANY OTHER PURPOSE.  
 FOR LEVEL AND DETAIL SURVEY INFORMATION SEE S & P SURVEYS DRAWING NUMBER 18035D

- (2) ... PROPOSED EASEMENT FOR ELECTRICITY PURPOSES VARIABLE WIDTH
- (Y) ... PROPOSED EASEMENT FOR WATER SUPPLY OVER EXISTING LINE OF PIPE (APPROXIMATE LOCATION ONLY)
- (ROM) ... PROPOSED RIGHT OF CARRIAGEWAY

THIS NOTE IS AN INTEGRAL PART OF THIS PLAN.  
**PROPOSED SUBDIVISION PLAN**

Of Lot 2 in DP 562104  
 Terrace Street, Chinderah

Parish of CUDDIEN County of ROUS

**B & P SURVEYS**  
 CONSULTING SURVEYORS  
 20 Berry Street  
 Chinderah NSW 2490 Australia  
 Telephone: (07) 5558 3511  
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Survey No. 18035D  
 Date of Issue 25/01/10

Scale 1:1000  
 Date 11/5/10

18035 D A



**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 proposed development is considered to meet the provisions of Clause 4. Appropriate conditions of consent have been applied in order to maintain an acceptable level of amenity for the area.

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*.

Appropriate conditions of consent have been applied, which will ensure that the proposed development will not significantly impact upon the surrounding residences or locality. As such, the proposed development is considered to meet the provisions of Clause 5 of the LEP.

Clause 8 - Zone objectives

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.*

As noted below, the proposed development is considered to meet the primary objective of the zones by way of taking into account agricultural matters and environmental constraints. The proposal generally complies with Clause 8(a).

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

Given that the subject allotments will only have a minor change in configuration of the allotment and one (1) additional lot, the proposed development is not considered to have an unacceptable cumulative impact on the locality or the community as a whole.

### Clause 11 – Zone Objectives

Clause 11 of the LEP relates to zone objectives. The subject site consists of 1(a) Zoned land under the provisions of the LEP. The objectives of this zone are:

#### *Primary objective*

- *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 objective*

- *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 proposed subdivision does not affect the agricultural suitability of the site. The site does not have adequate area to sustain agricultural or natural resource utilisation. There are currently two (2) approved dwellings and this will not change as a result of the application. As such, there is no agricultural use of the land that requires protection and the proposal is considered to meet the objectives of the zone. The Department of Planning and the NSW Rural Fire Service have also noted that the proposal is consistent with the objectives of the zone.

The objectives of the 7(a) Environmental Protection (Wetlands and Littoral Rainforests) zone are as follows:

#### *Primary objectives*

- *to identify, protect and conserve significant wetlands and littoral rainforests.*
- *to prohibit development which could destroy or damage a wetland or littoral rainforest ecosystem.*

#### *Secondary objectives*

- *to protect the scenic values of wetlands and littoral rainforests.*
- *to allow other development that is compatible with the primary function of the zone.*

The proposed subdivision will locate the subject dwellings within the Rural 1(a) zoned part of the site and no development or additional impacts are associated with the 7(a) zoned part of the site. The whole of the land zoned 7a will be contained within one lot. Accordingly, the proposal will protect and conserve the part of the site that is located within the 7(a) zone and is therefore consistent with the objectives of the 7(a) zone.



#### Clause 15 - Essential Services

Clause 15 of the TLEP requires the provision of essential services to be available to the site. Onsite effluent treatment and disposal systems exist for each dwelling house. Reticulated water, electricity and telecommunications are connected to both existing dwellings on the land. As part of this proposal, each existing dwelling will be provided with a connection to the reticulated sewer. It should be noted that the property has only been rated for one water service.

#### Clause 16 - Height of Building

There are no new dwellings proposed. The proposal will not change the existing single storey dwellings located on the allotment and therefore the proposal complies with this clause.

#### Clause 17 - Social Impact Assessment

It is not considered that the proposed development will result in an adverse social impact.

#### Clause 20 - Subdivision of Land Zoned 1(a), 1(b2), 7(a), 7(d) or 7(l)

This Clause requires a minimum lot size of 40 hectares. Proposed Lots 2 and 3 will provide lot areas that do not comply with this development standard. A State Environmental Planning Policy No. 1 Objection was undertaken and sent to the Department of Planning for Concurrence. On 24 August 2010 the Department of Planning granted concurrence in this instance as the proposal will not result in any new dwelling entitlements and will maintain the objectives of the zone.

#### Clause 25 - Development in Zone 7(a)

This Clause provides that Council must not grant consent to development on land within zone 7(a) unless it has considered various matters relating to flora and fauna, impacts on the water table, any proposed clearing and a Plan of Management showing how adverse affects can be mitigated.

This application does not propose any development, works or clearing within, or within close proximity to, the 7(a) zoned wetland. The only works involved in the application are the construction of underground sewer pipelines from the existing dwellings to the proposed connection points on Walsh Street. These works are approximately 40m from the 7(a) zone boundary.

It is therefore considered that the proposal complies with the provisions of this clause.

#### Clause 34 - Flooding

The subject site is located within the Flood Prone Area. There is no new dwellings proposed and as such it is considered that the flooding on the site will not be affected by the proposal. Therefore this clause is complied with.

### Clause 35 - Acid Sulphate Soils

The subject site is located in an area which is identified as having Class 3 Acid Sulphate Soils which indicates that acid sulphate soil may be disturbed if excavations deeper than 1m below the ground level are proposed. As excavations will be required to install the reticulated sewer a Preliminary Acid Sulphate Soil Investigation was been undertaken which will mitigate any potential disturbance of acid sulphate soils.

### Clause 39A - Bushfire

The subject site is located within a Bushfire Prone area. As such the proposal was referred to the NSW Rural Fire Service for comment. The NSW Rural Fire Service responded on 23 August 2010 with conditions of approval to be included in the recommendations.

## **State Environmental Planning Policies**

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

#### Clause 12: Impact on agricultural activities

This clause requires Council consider 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. The proposed subdivision is unlikely to have any impact upon the surrounding agricultural land, given that the proposed allotments are well under the 40ha minimum and do not have significant agricultural potential.

It is also noted that in granting concurrence for the proposed subdivision, the Department of Planning was satisfied that the proposal is consistent with the objectives of the zone. As such, the application is considered to meet the provisions of Clause 12.

#### Clause 15: Wetlands or Fishery Habitats

This Clause requires the consent authority to take into account the likely impact of the proposed development on rivers, streams and wetlands. A drain is located in the vegetated area to the north of the existing dwellings.

On the basis that the proposal is only for a subdivision that does not involve any change of use of the land, it is considered that approval of the application would not create any additional impact to any river stream or wetland and would not be inconsistent with this Clause or any other relevant provisions of this Plan.

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

The proposed development incorporates a SEPP 1 Objection which relates to the proposal not meeting the minimum 40 hectare allotment size requirement, pursuant to Clause 20(2) of the Tweed Local Environmental Plan 2000.

The parcel of land involved with the proposed subdivision is located within the 1(a) Rural zone.

The applicant has submitted the following in support of the SEPP 1 objection:

*“This State Environmental Planning Policy No.1 Objection has been prepared by Darryl Anderson Consulting Pty Ltd and relates to the 40 hectare minimum lot size, which applies to land zoned 1(a), 1(b), 7(a), 7(d) and 7(l) pursuant to Clause 20(2) of Tweed Local Environmental Plan 2000. Proposed Lot 2 will be within land zoned part 1(a) and part 7(a) having an area of 3.483 hectares. Proposed Lot 3 will be within land zoned 1(a) and will have an area of 1761m<sup>2</sup>. The purpose of the subdivision is to achieve separate titles for the two existing detached dwellings which are presently located on the land. The proposed lot shapes and areas are characteristic of the locality and will not result in the creation of any additional dwelling entitlements. Clause 20(2) of Tweed Local Environmental Plan 2000 is in the following terms:*

*‘Consent may only be granted for the subdivision of land; a) Within zone 1(a), 1(b2), 7(a), 7(d) or 7(l) if the area of each allotment created is at least 40 ha.’*

*The Court has consistently emphasised that there is no single determinative test for assessing a SEPP 1 Objection. However, it has become usual practice in recent years to apply the “underlying object test” and to use the formulation suggested by Lloyd J in Winten Property Group Limited v North Sydney Council (2001) 130 LGERA 79.*

*In Wehbe v Pittwater Council [2007] NSW LEC 827, Chief Judge of the Land and Environment Court, Preston J recast the long standing 5 part test for consideration of a SEPP 1 Objection set out in Winten Property Group Ltd v North Sydney Council (2001).”*

*The Chief Judge suggests that a consent authority must be satisfied of three matters before a SEPP 1 Objection can be upheld:*

- (1) That the objection is well founded and that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.*
- (2) That the granting of consent is consistent with the aims of SEPP 1.*
- (3) That Clause 8 matters (in SEPP 1) are satisfied, ie.*
  - Whether noncompliance raises matters of State or Regional planning significance.*
  - The public benefit of maintaining the planning controls.*

*Each of the three key matters is addressed in turn, as follows:*

- 1. That the objection is well founded and that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.**

*The Chief Judge advised that the requirement to demonstrate that an objection is well founded and that the approval of the objection may be consistent with the aims of the policy could be satisfied in any one of the following ways:*

- (i) The objectives of the standard are achieved notwithstanding non-compliance with the standard.*
- (ii) The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.*
- (iii) The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.*
- (iv) The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*
- (v) The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

*We submit that the objectives of the standard are achieved notwithstanding non-compliance with the standard.*

*Clause 20(1) of the Local Environmental Plan provides the following objectives in relation to subdivisions in zones 1(a), 1(b), 7(a), 7(d) and 7(l), which is directly associated with development standard in question.*

- To prevent the potential for fragmentation of ownership of rural land that would:
  - (i) Adversely affect the continuance or aggregation of sustainable agricultural units, OR*
  - (ii) Generate pressure to allow isolated residential development, and provide public amenities and services, in an uncoordinated and unsustainable manner.**
- To protect the ecological or scenic values of the land.*
- To protect the area of Tweed's water supply quality.*

*The terms of Clause 20(1) of the LEP are not to prevent any fragmentation, rather it is to prevent only fragmentation that has potential to create certain adverse impacts.*

*The relevant questions to properly assess whether the objectives of the standard are achieved notwithstanding non-compliance with the standard are as follows:*

- (a) Will the proposed subdivision result in fragmentation that has potential to adversely affect the continuance or aggregation of sustainable agricultural units?*
- (b) Will the proposed subdivision result in fragmentation which would generate pressure to allow isolated residential development in an uncoordinated manner?*
- (c) Will the proposed subdivision result in any adverse impact upon the ecological or scenic values of the land?*
- (d) Will the proposed subdivision result in any adverse impact upon the area of Tweed's water supply quality?*

*The responses to these questions are provided as follows:*

- (a) Will the proposed subdivision result in fragmentation that has potential to adversely affect the continuance or aggregation of sustainable agricultural units?*

*In this regard the proposed subdivision relates to a lot which is 3.66 ha in size, of which the cleared part of the site is approximately 4000m<sup>2</sup> (or 1 acre). That part of the site contains two existing dwellings.*

*Accordingly the parent parcel does not represent a sustainable agricultural unit. In addition the subject site is separated from other rural zoned land to the south by a road reservation. Therefore there are no reasonable prospects for amalgamation. In any case, the subject dwellings will always remain on the site and therefore, whether the land is subdivided or not, it will render that part of the site unsuitable for aggregation as part of any wider agricultural unit.*

*It is clear that the proposed subdivision therefore will not adversely affect the continuance of, or aggregation of, sustainable agricultural units.*

- (b) Will the proposed subdivision result in fragmentation which would generate pressure to allow isolated residential development in an uncoordinated manor?*

*The proposed subdivision will not result in any additional dwellings or dwelling entitlements. Therefore the proposal cannot be considered to generate any pressure to allow isolated residential development as the dwellings already exist.*

- (c) Will the proposed subdivision result in any adverse impact upon the ecological or scenic values of the land?*

*The proposal does not alter the existing built form in any way and does not include vegetation removal. Therefore the proposal cannot affect the ecological or scenic values of the land.*

- (d) *Will the proposed subdivision result in any adverse impact upon the area of Tweed's water supply quality?*

*The proposal is not located in the Tweed's water supply catchment and therefore cannot affect the quality of the water supply catchment.*

*It is therefore submitted that the proposed development is consistent with the objectives for subdivision in the Rural 1(a) or 7(a) zone as set out in Clause 20(1) of Tweed LEP 2000.*

*For the above stated reasons we submit that the objectives of the standard are achieved notwithstanding non-compliance with the standard. Following from the first test established in *Wehbe v Pittwater Council* [2007] NSW LEC 827, we conclude that the objection is well founded and that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.*

**2. That the granting of consent is consistent with the aims of SEPP 1.**

*The aims and objectives of the Policy (SEPP 1) are as follows:*

*"This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act."*

*Section 5(a)(i) and (ii) of the Environmental Planning and Assessment (EP&A) Act 1979 is stated inter alia:*

- (a) *to encourage:*
- (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
  - (ii) *the promotion and co-ordination of the orderly and economic use and development of land,"*

*Compliance with the 40ha development standard would preclude a logical subdivision of the site to provide separate titles for each of the lawfully established dwellings.*

*The proposed subdivision will not create any additional dwelling entitlements and will not involve any site works other than connection of each dwelling to reticulated sewer. As previously discussed the site cannot be utilised for any agricultural purpose due to the existing dwellings and the vegetation over the balance of the property. In addition, due to the separation of the site to other rural zoned land to the south (neighbouring property approximately 8ha) by the Terrace Street Road reserve, aggregation is impractical. The proposal does not involve any work or disturbance of land within the 7(a) zone. For these reasons the proposal will not alter the current or future agricultural potential of the site. Therefore the proposed development will not alter the management or conservation of agricultural land or environmental protection land as compared to the existing situation.*

*In this case, where the proposed development would not alter the status-quo, compliance with the development standard would hinder attainment of the EP&A Act's object to promote orderly and economic use and development of land in accordance with the zoning of that land and its physical capabilities.*

**3. That clause 8 matters (in SEPP 1) are satisfied, ie.**

- **Whether noncompliance raises matters of State or regional planning significance.**
- **The public benefit of maintaining the planning controls.**

*In considering whether the proposal creates any matters of Regional or State planning significance or raises any issues in relation to the public benefit of maintaining the standard the following points are relevant.*

- *No change in land use results from the subdivision;*
- *No physical disturbance to the landform or vegetation results from the subdivision;*
- *Two lawful detached dwelling houses exist on the land;*
- *Two lawful dwelling houses exist on the subject site and are presently not each within an allotment of at least 40 hectares;*
- *No additional dwelling entitlements will be created;*
- *The shape of each lot and common boundary location provides a logical and efficient layout;*
- *The proposed subdivision will create lots that are similar to the size of other lots in the immediate locality;*
- *No impacts can be created by the proposal on the surrounding area.*

*We conclude that the proposed two lot subdivision does not raise any matters of Regional planning significance and there is considered to be no public benefit in maintaining the standard.*

**Assessment of the applicant's submission:**

It is considered that compliance with the 40 hectare development standard in this instance would unreasonably prevent the appropriate subdivision of the site in accordance with the capability of the land and the nature of the existing lawful dwellings which are located on the land.

As both of the dwelling houses have existed on the subject site for many years and although being lawful, presently both already represent nonconforming uses as they are presently not each within their own allotment of at least 40 hectares.

The proposal does not involve any change of use, does not involve any physical works, other than connection to reticulated sewer, and will not create any additional dwelling entitlements on the land.

Accordingly, in the circumstances of this case non-compliance with the development standard is well founded. We conclude that upholding the Objection is considered to be in the public interest and consistent with the objects of the Act.

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

The land currently comprises two dwelling houses. No new dwelling entitlements will be created by the proposed subdivision and no new dwellings are proposed. It is submitted that the parts of the land which will continue to be used for residential purposes will continue to be suitable for that purpose.

The land has been occupied by Lorna Curtis since circa 1943. A declaration from Mrs Curtis in relation to potentially contaminating activities

**SEPP No 71 – Coastal Protection**

The site is located within the Coastal zone and therefore this Policy applies. As such the applicant provided an assessment under Clause 8 of the policy as follows:

<b>MATTERS FOR CONSIDERATION</b>	<b>COMMENT</b>
<i>a) The aims of this Policy set out in Clause 2.</i>	<i>The proposal is consistent with the aims of the Policy.</i>
<i>b) Existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved.</i>	<i>The subject land does not have frontage to foreshore reserve and therefore this consideration is not relevant.</i>
<i>c) Opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability.</i>	<i>See Above.</i>



<p>d) <i>The suitability of development and its type, location and design and its relationship with the surrounding area.</i></p>	<p><i>Development of the subject land as proposed is consistent with the zone objectives of Tweed LEP 2000, the provisions of Council's Tweed Development Control Plan 2008 and is also consistent with ESD principles and urban consolidation objectives.</i></p>
<p>e) <i>Any detrimental impact that the development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore.</i></p>	<p><i>This issue is addressed in the Statement of Environmental Effects and supporting documents.</i></p>
<p>f) <i>The scenic qualities of the NSW coast, and means to protect and improve these qualities.</i></p>	<p><i>As Above.</i></p>
<p>g) <i>Measures to conserve animals (within the meaning of the Threatened Species Conservation Act, 1995) and plants (within the meaning of that Act) and their habitats.</i></p>	<p><i>Given that the site does not propose any removal of native vegetation, it is submitted that impacts will be negligible.</i></p>
<p>h) <i>Measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act, 1994 and marine vegetation within the meaning of that part) and their habitats</i></p>	<p><i>Subject to normal management measures in relation to water quality and given that the proposal will connect each dwelling to reticulated sewer rather than the existing on site effluent disposal systems, it is submitted that impacts will be negligible.</i></p>
<p>i) <i>Existing wildlife corridors and the impact of development on these corridors.</i></p>	<p><i>Given that the site does not propose any removal of native vegetation, or the erection of any new dwellings, it is submitted that impacts will be negligible</i></p>
<p>j) <i>The likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards.</i></p>	<p><i>As the dwellings exist, there is considered to be no increased exposure to impacts of coastal hazards.</i></p>
<p>k) <i>Measures to reduce the potential for conflict between land based and water based coastal activities</i></p>	<p><i>Not applicable.</i></p>
<p>l) <i>Measures to protect the cultural places, values, customs, beliefs and traditional knowledge of aboriginals.</i></p>	<p><i>Not applicable.</i></p>

<p>m) <i>Likely impacts of development on the water quality of coastal water bodies.</i></p>	<p><i>The proposal includes connection of the existing dwellings to reticulated sewer. Subject to implementation of normal water quality management measures during the connection to sewer, the proposed development is unlikely to have any impact on water quality.</i></p>
<p>n) <i>The conservation and preservation of items of heritage, archaeological or historic significance.</i></p>	<p><i>Not applicable.</i></p>
<p>o) <i>Only in cases in which a Council prepares a draft Local Environmental Plan that applies to land to which this policy applies, the means to encourage compact towns and cities.</i></p>	<p><i>Not applicable.</i></p>
<p>p) <i>Only in cases in which development application in relation to proposed development is determined:</i></p> <p><i>i) The cumulative impacts on the proposed development on the environment;</i></p> <p><i>ii) Measures to ensure that water and energy usage by the proposed development is efficient.</i></p>	<p><i>This issue is addressed in the Statement of Environmental Effects and supporting documents.</i></p>

The applicant's assessment of the Clause 8 issues has been taken into consideration. As there are no new dwelling entitlements being created and there will be minimal construction as a result of the application it is considered that the proposal will not affect the provisions as set out in SEPP 71.

**SEPP (Rural Subdivision) 2008**

**Clause 7: Rural Planning Principles**

The applicant has provided the following assessment of the principles as follows:

*“(a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*

The site is not presently suitable for any form of agricultural use due to the existence of the two lawful dwellings, existing sandy soils and the extent of vegetation on the site. Therefore the proposal cannot affect the continuance or aggregation of sustainable agricultural units as none presently exist.

- (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,*

The proposed subdivision will not create any additional dwelling entitlements and as both dwellings presently exist, the proposed subdivision will make no difference to future activities on the site.

- (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,*

As stated above, since the proposal effectively relates to the subdivision of the two existing dwellings which have been established on the site for many years, it is considered that the proposal cannot result in any significant impact on the rural community or create any material social or economic issues.

- (d) *in planning for rural lands, to balance the social, economic and environmental interests of the community,*

As no dwelling entitlements will be created and both dwellings already exist, the proposal will not create any additional demand upon social, economic or environmental planning considerations.

- (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,*

The proposed subdivision will provide reticulated sewer connections to each of the existing houses (which are presently serviced by septic systems). No other subdivision works are required and therefore no environmental issues are likely to result.

- (f) *the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*

The proposed subdivision will allow the creation of lots that are characteristic of the surrounding area.

- (g) *the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*

All normal services are to be provided to both dwellings. No subdivision works are required other than the proposed sewer connection.

- (h) *ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

The proposed rural subdivision is consistent with the Far North Coast Regional Strategy insofar as it is located within designated “rural land” and “coastal area” and will not alter the rural landscape or increase rural settlement. The proposal will however provide reticulated sewer connections for the existing dwellings which will improve coastal water quality.”

The applicant’s assessment of the abovementioned principles has been taken into consideration. As a result of the proposed subdivision there will be no additional dwelling entitlements created and the proposal will not affect the potential for agricultural uses on the site. It is therefore considered that the proposal will not affect the rural planning principles on the site.

#### Clause 8: Rural Subdivision Principles

The applicant has provided the following assessment of the principles as follows:

*“(a) the minimisation of rural land fragmentation.*

The proposed subdivision will not result in any additional dwellings and therefore cannot affect the continuance or aggregation of sustainable agricultural units. Since the dwellings already exist and no new dwelling entitlements will be created, the proposed subdivision will not generate any additional pressure to allow isolated residential development.

*“(b) the minimisation of rural land use conflicts, particularly between residential land uses and other rural land uses,*

The proposal does not alter the existing built form in any way and therefore cannot affect the potential for any additional residential and rural land use conflicts.

*“(c) the consideration of the nature of existing agricultural holdings and the existing and planned future supply of rural residential land when considering lot sizes for rural lands,*

The nature of the existing agricultural holding is heavily constrained by the existing vegetation and sandy soils and is effectively unsuitable for agriculture. The proposed development, regardless of lot size, will not result in any increase of dwelling entitlements or affect the future supply of rural residential land.

*“(d) the consideration of the natural and physical constraints and opportunities of land,*

The proposed subdivision will retain the natural features of the site in one lot and will not require any additional subdivision work other than connection to reticulated sewer.

- (e) *ensuring that planning for dwelling opportunities takes account of those constraints*

The proposed subdivision layout relates to the existing dwellings and the constraints of the site. The proposed development will not create any additional dwellings or dwelling entitlements and will not create any additional impacts on the natural features of the site.”

The applicant’s assessment of the abovementioned principles has been taken into consideration. As a result of the proposed subdivision there will be no additional dwelling entitlements created and the proposal will not affect the potential for agricultural uses on the site. It is therefore considered that the proposal will not affect the rural planning principles on the site.

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

Under the Draft LEP 2010, the subject site has a similar zoning to the current LEP 2000 in that the 1(a) land is zoned RU2 – Rural Landscape and the 7(a) land is zoned E2 - Environmental Conservation. The proposed development is considered to be consistent with the objectives of the zone and will only be located within the RU2 zoned land.

Clause 4.1 of the Draft LEP 2010 relates to minimum subdivision lot sizes and refers to the Lot Size Map. This map identifies the same minimum lot sizes as the current LEP. That is, the RU2 land currently zoned 1(a) is identified as Lot Size code AB2, which requires 40ha.

The applicant has lodged a written request that seeks to justify the contravention of the development standard (SEPP1 Objection).

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

Tweed Development Control Plan

A3-Development of Flood Liable Land

The proposed development is located on Flood Liable Land. As there is no new building work proposed and there will be no physical change to the land it is considered that the proposed development will not be affected by flooding and will not increase the severity of flooding in the locality. Therefore the proposed complies with the Tweed Development Control Plan Section A3.

A5-Subdivision Manual

This DCP contains Council’s guidelines for the preparation of applications for subdivision and aims to facilitate Council’s assessment and consideration of such applications. A number of factors are required to be assessed including environmental constraints, land forming, design specifications, storm water runoff, drainage, waterways and flooding, setbacks and buffers (where appropriate). Where applicable, these matters have been discussed below.

*Physical Constraints* – The proposal is largely only constrained by the shape of the subject site and location of the existing roadways Terrace Street, Walsh Street and adjoining parcels of land.

*Environmental Constraints* – this section of the DCP relates to issues such as contamination etc, which are discussed in detail later in this report.

*Landforming* – The site is quite flat with a slight fall to the east. No earthworks are proposed as part of the development.

*Stormwater Runoff, Drainage, Waterways & Flooding* – The existing dwelling on proposed Lot 3 is intended to discharge stormwater / roof-water to Walsh Street. This shall be enforced via appropriate conditions.

The site is subject to external catchments, the extent of which has not been investigated within this application. An open drain bisects both allotments draining stormwater towards the north (towards the drainage easement).

There are inlets and piped drainage within Walsh Street and Terrace Street downstream of the site. The extension of Walsh Street as required under this development will need to grade towards this infrastructure, where possible.

*Lot Layout* – As the proposed allotment is below the minimum lot size for rural land it is considered that there will be no fragmentation of prime agricultural land. The subdivision would not be in conflict with the purpose of the 40ha standard as both the existing and proposed lot configurations are not sufficient for sustainable agricultural production. It is therefore considered that the standard is not reasonable in the existing context and therefore compliance is not necessary.

*Infrastructure* – Council's Development Engineer has assessed the proposed development against the relevant standards pertaining to road ways, reticulated water, reticulated sewer, electricity and telecommunications. Appropriate conditions of consent have been applied with regard to infrastructure requirements.

In particular, Council's GIS indicates that the water main along the subject site's frontage is a 300mm dia main. Although Council consider this main a trunk main, Council's Strategic and Assets Engineer has advised that house connections (although not preferred) have been connected to such mains, as appears to be the case here. It was advised that it would be acceptable for the house connections servicing the 2 existing dwellings to remain off this main.

Although the application states that the existing dwellings are serviced by Council's reticulated potable water network, only 1 water meter is shown within the documentation. The Applicant will be required to provide separate water meters to the 2 dwellings, with the water service for proposed Lot 2 to be provided along that allotments frontage to Walsh Street. Any interconnection of water pipes between the two properties must be removed.

Council's Strategic and Assets Engineer advises that the development would be subject to s64 water charges based on 1 ET as only 1 existing water meter is being utilised by the existing 2 properties. The development will also be charged on 1ET for the additional sewer connection.

In light of the above assessment, the proposed subdivision to create proposed Lot 2 (3.483ha) and Proposed Lot 3 (1761m<sup>2</sup>) is considered to meet the provisions of Section A5 of Council's Consolidated DCP.

A11-Public Notification of Development Proposals

The proposed development was notified to adjoining neighbours for a period of 14 days from 21 July 2010 to 4 August 2010. During this time there were no submissions received.

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

There are no matters prescribed by the Regulations applicable to the proposed subdivision.

**(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**

7(a) Environmental Protection (Wetlands & Littoral Rainforests) Zoned Land

The subject site has a large area that is zoned 7(a) Environmental Protection. This area of the land will not be affected by the proposed subdivision which will be entirely located within the 1(a) zoned land. Additionally, there will be no building work with the exception of excavation for the extension of the sewer connection. As such it is considered that there will be no impact on the Environmental Protection area and does not warrant refusal of the application.

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

The proposed development is considered to be suitable for the site, subject to appropriate conditions of consent.

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

Notification

The proposed development was notified to adjoining neighbours for a period of 14 days from 21 July 2010 to 4 August 2010. During this time there were no submissions received.

Department of Planning

After reviewing the SEPP1 Objection to Clause 20(2) of the LEP, the Department provided the following comments:

*“Following consideration of the application, concurrence has been granted to vary the 40ha minimum lot size development standard contained in clause 20(2)(a) of the Tweed LEP 2000 to permit two proposed lots being; Lot 2 - 3.483ha and Lot 3 - 0.1761ha.*

*Concurrence was granted in this instance as the proposal will not result in any additional dwelling entitlements and will maintain the objectives of the zone."*

The Department of Planning have not included any conditions to be placed in the recommendations. It is therefore considered that the proposal has satisfied the requirements.

#### NSW Rural Fire Service

The proposed development was referred to the NSW Rural Fire Service for comment as the land has been identified as being Fire Prone Land. The Rural Fire Service has provided conditions on 23 August 2010 to be included in the recommendations. The conditions relate to Asset Protection Zones, Water and Utilities, Design and Construction and Landscaping. The proposal will comply with these conditions and is therefore considered to satisfy the requirements.

#### **(e) Public interest**

The proposed development is generally considered to reflect the provisions of all applicable development control plans. Appropriate conditions of consent have been applied in an effort to limit any impact upon the surrounding residences and agricultural landowners.

#### **OPTIONS:**

1. Approve the application subject to the recommended conditions of consent.
2. Refuse the application, with reasoning.

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

Should the applicant be unsatisfied with Council's determination an appeal may be lodged with the NSW Land & Environment Court.

#### **POLICY IMPLICATIONS:**

The proposed development has been assessed on its merits and having regard to the applicable legislation and for that reason the development does not generate a policy implication for Council.

#### **CONCLUSION:**

The proposed development is consistent with the applicable environmental planning instruments with an acceptable variation to Clause 20 of the Tweed LEP 2000. Having had regard for the proposed development and controls provided for the site it is considered that conditional consent is warranted.



**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**7 [PR-CM] Development Application DA06/1034.08 for an Amendment to Development Consent DA06/1034 for Alterations and Additions to Existing Tavern at Lot 1 DP 848875, No. 2-14 Henry Lawson Drive, Terranora**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA06/1034 Pt6**

**SUMMARY OF REPORT:**

Council has received a S96 Modification Application to DA06/1034 which approved alterations and additions to an existing tavern within the Terranora Shopping Village.

The proposed modification seeks to adopt the operating hours as per the 6 month trial period which would result in a change to Condition 62A which currently reads as follows:

62A. The Trading Hours of the Tavern are restricted to the following:-

- Sunday to Saturday 10.00 am to 12 midnight for a trial period of six (6) months from the date of commencement of trading operations of the Tavern. The applicant shall notify Tweed Shire Council by notice in writing of the date of commencement of trading operations of the Tavern

Any request to vary this condition to a permanent arrangement will require a Section 96 application to be lodged at least two (2) months prior to the expiry of the six (6) month trial period. If after the trial period no application has been received and approved, the trading hours of the Tavern are restricted to the following:

- 10.00am to 10.00pm – Sunday to Wednesday
- 10.00am to 11.00pm – Thursday to Saturday

The tavern has been operating since 11 December 2009 and now seeks consent to amend Condition 62 to allow the tavern to operate between 10.00am to 12 midnight Sunday to Saturday.

During the exhibition period Council received four (4) letters of objection. The main reasons for objection to the increased hours were the loud music when a live band performs, and general noise concerns.

The original S96 seeking a change to the hours of operation was substantiated by an Acoustic Report and Management Plans. Council's Environmental Health Officer has re-considered the original documentation as well as an additional Acoustic Report and Management Plan, liaised with NSW Police and reviewed the four letters of objection. Neither Council nor the Police have recorded any complaints in regards to the operation of the Tavern. Upon review of all of this material it has now been recommended that the hours being sought be approved.

This Section 96 application is being reported to Council due to being a sensitive operational matter for the tavern (increased trading hours). It is concluded that the original trial period has enabled Council to monitor the impacts of additional trading hours and given the applicant an opportunity to prove the tavern can run effectively without impacting upon the amenity of the neighbourhood. This is demonstrated by the reduction in the number of objections from 20 objections (plus petitions) at the time of the original proposed hours (DA06/1034.06) down to four objections for this application (DA06/1034.08).

**RECOMMENDATION:**

**That Development Application DA06/1034.08 for an amendment to Development Consent DA06/1034 for alterations and additions to existing tavern at Lot 1 DP 848875, No. 2-14 Henry Lawson Drive, Terranora be approved subject to the following amendments to the consent:**

**1. A new condition 59A be added as follows:**

**59A Any live music shall be conducted from the original stage near the kitchen (centrally located within the building) and not in the immediate vicinity of the balconies.**

**2. A new condition 59B be added as follows:**

**59B. The operation of live music events at the Tavern shall comply with the provisions of the Noise Management Plan prepared by Terranora Tavern received by Council on 6 September 2010, that is:**

- **All doors to the outdoor deck are to remain closed**
- **Doors to the outdoor beer garden are to remain closed**
- **Such doors shall only be permitted to be open temporarily for ingress and egress purposes**

**3. Condition 62A be deleted and replaced with new condition 62B which reads as follows:**

**62B. The Trading Hours of the Tavern are restricted to the following:**

- **Sunday to Saturday 10.00am to 12 midnight**

**REPORT:**

**Applicant:** Terranora Village Shopping Centre Pty Ltd  
**Owner:** Terranora Village Shopping Centre Pty Ltd  
**Location:** Lot 1 DP 848875, No. 2-14 Henry Lawson Drive Terranora  
**Zoning:** 2(d) Residential Village  
**Cost:** N/A

**BACKGROUND:**

The tavern was originally approved as part of the Terranora Shopping Village under D95/0320.

In 2006 the applicant lodged DA06/1034 seeking approval for internal alterations. As part of that application the applicant also requested an extension to the trading hours to between 9.00am till 1.00am. After discussions and meetings with Council Officers and strong community objection to the extended trading hours the applicant requested that the application be amended to propose to have the trading hours revised to 10.00am to 11.00pm seven days a week.

DA06/1034 was considered at the Council Meeting 28 November 2006. Council Officers recommended adoption of the proposed hours (being 10.00am to 11.00pm seven days a week), however, the then administrators amended the recommended conditions and approved the application with trading hours of the Tavern restricted to the following:

- 10.00am to 10.00pm - Sunday to Wednesday
- 10.00am to 11.00pm - Thursday to Saturday

In October 2008 the applicant lodged a S96 (DA06/1034.06) to again request Council reconsider these hours. At that time Council resolved to allow the proposed additional hours as follows:

62A. The Trading Hours of the Tavern are restricted to the following:

- Sunday to Saturday 10.00 am to 12 midnight for a trial period of six (6) months from the date of commencement of trading operations of the Tavern. The applicant shall notify Tweed Shire Council by notice in writing of the date of commencement of trading operations of the Tavern

Any request to vary this condition to a permanent arrangement will require a Section 96 application to be lodged at least two (2) months prior to the expiry of the six (6) month trial period. If after the trial period no application has been received and approved, the trading hours of the Tavern are restricted to the following:

- 10.00am to 10.00pm – Sunday to Wednesday
- 10.00am to 11.00pm – Thursday to Saturday

Having now operated since December 2009 the applicant is requesting that the trial hours be adopted as the permanent hours of operation thus enabling operation Sunday to Saturday between 10.00 am to 12 midnight.

The applicant has provided the following justification for the S96:

*“The tavern is operating under management who are very experienced in managing hotels in accordance with the current NSW state legislation.*

*It is proposed that this Section 96 application is to seek a variation of condition No. 62A, being “Trading Hours of the Tavern are restricted to Sunday – Saturday 10am to 12 midnight for a trial of six months from the date of commencement of trading.” The application is to make the trading hours till midnight a permanent arrangement, to bring the Tavern in line with standard trading conditions administered by the NSW Office of Liquor and Gaming and Racing (OLGR) which will avoid any discriminatory conditions imposed upon Terranora Tavern.*

*Standard Conditions of trading hours as administered by OLGR are as follows:*

*Monday to Saturday: 5:00AM till 12:00 midnight*

*Midnight Sunday: 10:00 AM till 10:00 PM*

*This application will show that the extended trading hours can be achieved without varying the noise levels imposed by condition 60 of the abovementioned consent, being “Noise from amplified entertainment is not to exceed 5dB(a) above the L10 background at the boundary of the closest affecting property between 7:00 AM and 12 midnight and is not to exceed the L10 background between 12 midnight and 7:00 AM weekdays and 12 midnight weekends.”*

*There are no further matters or conditions of the previously approved consents that we wish to vary as part of this application.*

### **PREVIOUS APPLICATIONS**

*We note a previous application has been made to extend the trading hours and was granted for a trial period of six months from the date of commencement of trading operations of the Tavern.*

### **PREVIOUS PUBLIC SUBMISSIONS (OBJECTIONS)**

*We have read through the previous submitted letters from the community of Terranora outlining their objections to the previous applications.*

*The public submissions can be summarised as follows:*

- *Anti social public behaviour*
- *Increased vandalism*
- *Increased vehicle noise*

*While we respect the views of the local community, the above matters are police matters and not solely attributable to Terranora Tavern as there is a number of other licensed venues in the area and these incidents do not occur within the licensed premises.*

*Other matters raised by the community were:*

- *Increase in alcohol consumption*
- *Patrons being further intoxicated by extending trading hours*

*The above matters are licensing matters administered by the OLGR and not a matter for council to administer. Intoxicated patrons are asked to leave the premises and cannot be served under current licensing conditions.*

*Since the tavern has begun trading there appears to be very few community complaints to either the Tavern, Council or the Tweed Heads Police.*

### **COMMUNITY IMPACT**

*We would like to point out some of the added benefits to the community for extending the trading hours.*

- *Cater for the growth of the population of the local community.*
- *Increased employment opportunities of the local community.*
- *Financial benefits of catering for an increased tourist industry.*
- *Giving the local community access to Pay TV and Sporting events they would not normally have access to at home after 10:00 PM.*

*OLGR has imposed state wide standard conditions of trading till midnight for 6 days a week similar to that of all other licensed venues in the Tweed area.*

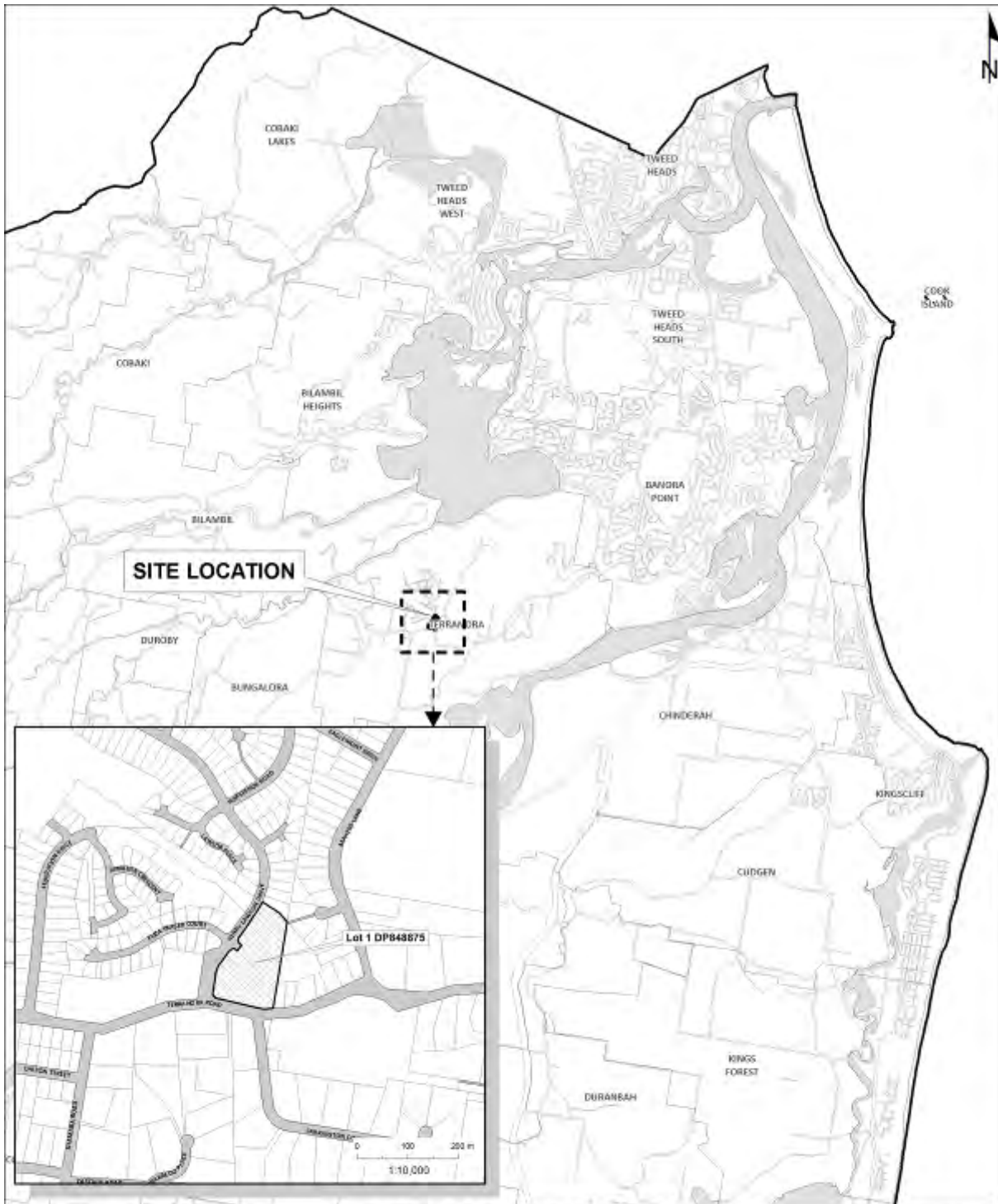
*The dining room is design to meet the needs of the local community and not necessarily to draw from outside the local community with the likes of amplified music. It will be promoted as a family tavern.*

*It is not envisaged that the tavern will be trading till midnight every night as it will not be financially viable. We envisage the tavern to trade in accordance with the demands of the local community and subsequently it may only be open til midnight on Friday and Saturday nights. Other events like State of Origin Football and Day/Night cricket games will give the local community an opportunity to watch such sporting events in the company of their specific social groups that may continue to pass 10:00 PM on a few nights of the year.*

### **TWEED BYRON POLICE SUPPORT**

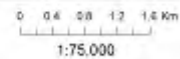
*We have contacted the current liquor licensing officer at Tweed Heads Police, Snr Cons Grant Seddon, who has also pledged his support.”*

**SITE DIAGRAM:**



**LOCALITY PLAN**

**Lot 1 DP 848875**  
**Henry Lawson Drive, Terranora**



Filename: z:\yes\planning\mvd\AAP\_B&W SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 04 May, 2010

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**TWEED**  
 SHIRE COUNCIL



## **CONSIDERATIONS UNDER SECTION 96 and 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**

S96(1A) of the Act specifies that a consent authority can modify the development consent only if it is satisfied that the proposed modified development is of minimal environmental impact and is substantially the same as the approved development and that all relevant consultations and submissions have been undertaken.

### **Minimal Environmental Impact**

The subject Section 96 Application has been submitted to allow for increased trading hours only. The proposed amendments have no direct physical environmental impacts. Social implications (including possible anti social behaviour) and noise management are addressed further below.

The proposed increased trading hours are considered to have minimal environmental impact.

### **Substantially the Same Development**

The applicant's proposal to increase the trading hours of the venue will still result in substantially the same development as was detailed within the original Development Consent.

### **Notification & Consideration of Submissions**

The Section 96 Application was notified to all originally nearby properties and to all those people who previously objected to DA06/1034 from Monday 29 March 2010 to Wednesday 14 April 2010.

During the exhibition period Council received four (4) letters of objection. The reasons for objection are summarised below:

- *There is ample opportunity for accessing alcohol needs within the confines of the Tweed CBD;*
- *The tavern is located adjoining a school and its incorporation within a shopping centre is a concern;*
- *Vandalism, noise, domestic violence and loud drunken obscene abuse is now a regular weekend – late night happening on once a quiet road;*
- *There is a lack of Police presence;*
- *On the whole I have found the tavern has not caused many problems with the service of alcohol and have acted responsibly. The only problem I have experienced is with loud music when a live band /performances occur. I have on occasion heard the music, particularly later in the evening as other background noises abates.*
- *The noise at times is intrusive. The placement of the live performances on the balcony as opposed to inside the property is causing problems for people.*

- *Terranora Village is a quiet peaceful area and this is why people move here in the first place. By 9pm on a Sunday the valley is very quiet and any noise from the tavern is unacceptable. An 11pm close on Saturdays seems ideal.*
- *The tavern in no way tries to contain the live music it hosts every weekend to its own premises. All folding doors on the balcony are opened and the music is broadcast across the suburb.*
- *The noise levels of the music is closer to 50decibles at times at our house, not even close to the 5decibles or less at the nearest boundary as required by the Council condition.*
- *My family have suffered sleep deprivation due to excessive noise. On occasion the noise has continued past midnight.*
- *The Police have been contacted on numerous occasions due to excessive noise.*
- *The tavern has had very few positive benefits to the Terranora Community being far outweighed by the negative aspects.*

Council's Environmental Health Coordinator has reviewed the above submissions and assessed the application as follows:

*Letters of objection received by Council in regard to the proposal as requested have been considered. This necessitated an inspection of the area in the locale of the Tavern to:*

- determine the proximity of the Tavern to the residential premises occupied by those objecting*
- establish the existence of other factors (if any) which may contribute to the assessment by this unit.*

*The inspection of the area was undertaken by Council's Coordinator Environmental Health and Council Environmental Health Officer on 28/04/10 and included external visitations to all premises in which the objectors reside, the Tavern and the surrounding area in the immediate vicinity of the Tavern. No residents were interviewed.*

*There are a considerable number of other occupied residential premises between the Tavern and those occupied by the objectors. No objections have been received by Council from those tenants. Also the area is in part quite heavily vegetated by trees and the like which may shield some residential premises and perhaps filter or block out any noise associated with the conduct and operation of the Tavern. There are also a number of such trees and the like between the objectors and the Tavern.*

*Since the Tavern commenced trading just prior to Christmas there have been **no objections** received by Health Unit relating to noise or any other issue.*

*Further, TSC contacted the Tweed Heads Police enquiring as to their receiving complaints from the public including those persons in nearby residence to the Tavern and was advised that "No complaints of any nature have been received since the Tavern commenced trading."*

*Although the letters of objection received by Council relate mainly to noise issues it is considered that the majority of residents are not opposed to the presence of the*

*Tavern and its conduct and/or operation – a total of four (4) objections have been received.*

*It is therefore recommended by the Environmental Health Unit that the S96 Application seeking a change to Hours of Operation as applied for (DA06/1034.08) be granted subject to the conditions of consent as originally imposed as follows:*

*58A. A Management Plan shall be prepared which addresses all recommendations as contained within the Noise Impact Study prepared by Warrick Smith RPE:7099AAAS.MBE REF:J160 dated 28.08.06. Such plan shall detail what operational measures will be employed to satisfy all recommendations in the Noise Impact Study. Such Plan shall be submitted to Council prior to the issue of an Occupational Certificate and shall be to the satisfaction of Council's General Manager or delegate.*

*[POCNS01]*

*58B. A Post Construction Noise Impact Report shall be provided to the satisfaction of Council's General Manager or delegate from a suitably qualified acoustic consultant which assesses the compliance with all recommendations as contained within the Noise Impact Study prepared by Warrick Smith RPE:7099AAAS.MBE RFE:J160 dated 28.08.06. Such Report shall in addition specifically address any noise issues associated with the operation of any air conditioning plant or other mechanical plant. Any recommended noise attenuation measures as contained within the Post Construction Noise Impact Report shall be complied with within 60 days of the date of the Report or such other time period as may be approved by Council's General Manager. Such Post Construction Noise Impact Report shall be submitted and approved prior to the issue of the Construction Certificate.*

*[POCNS02]*

*59. 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, fumes or the like.*

*[USE0125]*

*60. The LA10 noise level emitted from the premises shall not exceed the background noise level (LA90) in any Octave Band centre frequency (31.5 Hz - 8KHz inclusive) by more than 5dB(A) between 7am and 12 midnight, at the boundary of any affected residence. Notwithstanding the above, noise from the premises shall not be audible within any habitable room in any residential premises between the hours of 12 midnight and 7am weekdays and 12 midnight and 8am weekends.*

*[USE0165]*

*61. 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 noise.*

*[USE0175]*

In addition to this assessment Council's Coordinator Development Assessment has reviewed the objections and recommends an additional new condition of consent to ensure any live music is conducted from the original stage near the kitchen (centrally located within the building) and not in the immediate vicinity of the balconies.

The condition shall read:

59A Any live music shall be conducted from the original stage near the kitchen (centrally located within the building) and not in the immediate vicinity of the balconies.

Such additional condition should assist mitigate impacts as described above.

Further to the above, additional information from an acoustic consultant demonstrating that compliance with Condition 60 is achievable was requested during the assessment process. The applicant supplied a further acoustic report which incorporated sound testing over five separate occasions and concluded that compliance is possible with the introduction of management actions. Such actions were set out in a Noise Management Plan as follows:

- All doors to the outdoor deck are to remain closed
- Doors to the outdoor beer garden are to remain closed
- The doors shall only remain open for ingress and egress purposes

Council's Environmental Health Officer has reviewed the acoustic report and Management Plan and confirmed that subject to enforcement of the recommendations of both documents (via conditions), compliance with Condition 60 is possible.

The following comments were supplied:

*"In my opinion, I consider the recommendations of the Acoustic Consultant to be reasonable and the Noise Management Plan provided by the Tavern management (in the context of the recommendations that have been made by the Acoustic Consultant) to be reasonable as well. The provisions of the Noise Management Plan can be included as conditions on the Section 96 application in addition to those as originally suggested in the comments in previous conditions.*

*The provisions of Condition 60 will remain unchanged as the applicant is not proposing to amend this condition; in addition other enforcement provisions are available to Council to control noise from licensed premises under the provisions of the Liquor Act".*

With respect to the above, the following additional condition has been applied:

59B. The operation of live music events at the Tavern shall comply with the provisions of the Noise Management Plan prepared by Terranora Tavern received by Council on 6 September 2010, that is:

- All doors to the outdoor deck are to remain closed
- Doors to the outdoor beer garden are to remain closed
- Such doors shall only be permitted to be open temporarily for ingress and egress purposes

As such, the application is recommended for conditional approval.

### **79C Matters for Consideration**

Having regard to the applicable planning instruments (including the Tweed LEP 2000, the Tweed Development Control Plan and Draft LEP 2010), site suitability and the overall social

implications of the proposed development, the proposed S96 Application is considered suitable for approval.

**OPTIONS:**

1. Approve the S96 as per the recommendation.
2. Refuse the S96 and provide reasons for the refusal.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be dissatisfied with Council's determination they may lodge an appeal with the NSW Land & Environment Court.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The subject site has been operating in accordance with the trial hours of operation since December 2009. These operating hours have attracted no complaints to Council or the NSW Police. The applicant has in place acoustic reports, management plans, and detailed conditions of consent regarding noise management. The four letters of objection are not considered to be representative of the broader community and accordingly it is considered reasonable to allow the applicant the increased hours of operation.

**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. Council Report DA06/1034.06 (ECM 15885200)
  2. Council Report DA06/1034 (ECM 15885207)
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- 8            **[PR-CM] Development Application DA08/1225.01 for an amendment to Development Consent DA08/1225 for Demolition of Existing Dwellings & Hall & Construction of an Aged Care Facility Comprising 200 Units in a Three (3) Storey Building at Lot 4 DP 617471; Lot 1 DP 605577; Lot 6 Section 1 and Lot 7 Section 1 DP 28949; Lot 1 and Lot 2 DP 378971; Nos. 16-20 Kingscliff Street and Nos. 90 and 92 Pearl Street, Kingscliff**

**ORIGIN:**

**Development Assessment**

**FILE NO:     DA08/1225 Pt5**

**SUMMARY OF REPORT:**

Council is in receipt of a S96 application for proposed modifications to an existing approval for a 200 unit retirement village at Kingscliff. The application has been lodged under the provisions of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

The originally approved development incorporated a negotiated agreement involving a developers contribution of \$1,130,000.00 towards the upgrade of the Blue Jay Circuit stormwater pipe to provide sufficient capacity for the proposed development in terms of stormwater drainage.

Consequently, the applicant is seeking to modify the proposed development by way of increasing the yield of units to assist in offsetting part of the unforeseen drainage costs and to achieve a more efficient and viable project.

The proposal involves an increase in yield from 200 to 225 units. The footprint of the overall development is essentially the same as originally approved.

The application was advertised for a period of 14 days, during which time one submission was received in support of the development.

Having undertaken a thorough assessment against all relevant statutory requirements, the proposed development is recommended for conditional approval.

**RECOMMENDATION:**

**That Development Application DA08/1225.01 for an amendment to Development Consent DA08/1225 for demolition of existing dwellings and hall and construction of an aged care facility comprising 200 units in a three (3) storey building at Lot 4 DP 617471; Lot 1 DP 605577; Lot 6 Section 1 and Lot 7 Section 1 DP 28949; Lot 1 and Lot 2 DP 378971; Nos. 16-20 Kingscliff Street and Nos. 90 and 92 Pearl Street, Kingscliff be approved and the following conditions be amended:**

- 1. Delete Condition No. 1 and replace it with Condition No. 1A which reads as follows:**

**1A. The development shall be completed in accordance with the Statement of Environmental Effects and the following Plan Nos:**

- **A-DA-01-01 (Rev H) – *Site Plan* prepared by ML Design and dated 21/05/2010;**
- **A-DA-03-01 (Rev F) – *Yield Schedule* prepared by ML Design and dated 21/05/2010;**
- **A-DA-10-01 (Rev I) – *Basement Floor Plan* prepared by ML Design and dated 21/05/2010;**
- **A-DA-10-02 (Rev I) – *Ground Floor Plan* prepared by ML Design and dated 21/05/2010;**
- **A-DA-10-03 (Rev F) – *Level 01 Floor Plan* prepared by ML Design and dated 21/05/2010;**
- **A-DA-10-04 (Rev B) – *Level 02 Floor Plan* prepared by ML Design and dated 21/05/2010;**
- **A-DA-14-01 (Rev B) – *Roof Plan* prepared by ML Design and dated 21/05/2010;**
- **A-DA-15-01 (Rev B) – *Tenancy Plans (Type A – C)* prepared by ML Design and dated 21/05/2010;**
- **A-DA-15-02 (Rev A) – *Tenancy Plans (Type D – E)* prepared by ML Design and dated 21/05/2010;**
- **A-DA-18-01 (Rev B) – *Sequence Stages 1-4* prepared by ML Design and dated 21/05/2010;**
- **A-DA-20-01 (Rev D) – *Overall Section* prepared by ML Design and dated 21/05/2010;**
- **A-DA-20-02 (Rev F) – *Typical Section* prepared by ML Design and dated 21/05/2010;**
- **A-DA-30-01 (Rev D) – *Elevations 1-4* prepared by ML Design and dated 21/05/2010;**
- **A-DA-30-02 (Rev D) – *Elevations 5-8* prepared by ML Design and dated 21/05/2010;**
- **A-DA-30-03 (Rev G) – *Elevations 9-12* prepared by ML Design and dated 21/05/2010;**
- **A-DA-30-04 (Rev B) – *Typical Elevations* prepared by ML Design and dated 21/05/2010;**
- **A-DA-30-05 (Rev A) – *Materials & Finishes* prepared by ML Design and dated 21/05/2010,**

except where varied by the conditions of this consent.

**2. Delete Condition No. 7 and replace it with Condition No. 7A which reads as follows:**

**7A. Staging of the development (Stages 1-4) shall be in accordance with the approved Construction Sequencing Plan Reference No. A-DA-18-01 Rev B, 21/05/10.**



3. Delete Condition No. 9 and replace it with Condition No. 9A which reads as follows:

9A. The developer shall provide a total of 257 parking spaces including parking for the disabled in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code. This includes the provision of 14 on-street parking spaces.

Full design detail of the proposed parking and manoeuvring areas (including integrated landscaping) shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate. Landscaping within the parking and manoeuvring areas shall be in accordance with any Council approved landscaping plan.

4. Delete Condition No. 10 and replace it with Condition No. 10A which reads as follows:

10A. Section 94 Contributions

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

These charges 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.

Stage 1

(a) Tweed Road Contribution Plan:

289.9 Trips @ \$861 per Trips \$249,604

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

S94 Plan No. 4

Sector6\_4

(b) West Kingscliff – Open Space:

53.3723 ET @ \$2386 per ET \$127,346

(\$1849 base rate + \$537 indexation)

DCP Section B4

S94 Plan No. 7

<b>(c) Shirewide Library Facilities:</b>	
53.3723 ET @ \$792 per ET	\$42,271
(\$792 base rate + \$0 indexation)	
S94 Plan No. 11	
<b>(d) Bus Shelters:</b>	
53.3723 ET @ \$60 per ET	\$3,202
(\$60 base rate + \$0 indexation)	
S94 Plan No. 12	
<b>(e) Eviron Cemetery:</b>	
53.3723 ET @ \$120 per ET	\$6,405
(\$101 base rate + \$19 indexation)	
S94 Plan No. 13	
<b>(f) Community Facilities (Tweed Coast - North)</b>	
53.3723 ET @ \$1305.6 per ET	\$69,683
(\$1305.6 base rate + \$0 indexation)	
S94 Plan No. 15	
<b>(g) Emergency Facilities (Surf Lifesaving):</b>	
53.3723 ET @ \$113 per ET	\$6,031
(\$113 base rate + \$0 indexation)	
S94 Plan No. 16	
<b>(h) Extensions to Council Administration Offices &amp; Technical Support Facilities</b>	
53.3723 ET @ \$1759.9 per ET	\$93,929.91
(\$1759.9 base rate + \$0 indexation)	
S94 Plan No. 18	
<b>(i) Cycleways:</b>	
53.3723 ET @ \$447 per ET	\$23,857
(\$447 base rate + \$0 indexation)	
S94 Plan No. 22	
<b>(j) Regional Open Space (Casual)</b>	
53.3723 ET @ \$1031 per ET	\$55,027
(\$1031 base rate + \$0 indexation)	
S94 Plan No. 26	

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**Stage 2**

- (a) **Tweed Road Contribution Plan:**  
 171.6 Trips @ \$861 per Trips \$147,748  
 (\$782 base rate + \$79 indexation)  
 S94 Plan No. 4  
 Sector6\_4
- (b) **West Kingscliff – Open Space:**  
 31.1652 ET @ \$2386 per ET \$74,360  
 (\$1849 base rate + \$537 indexation)  
 DCP Section B4  
 S94 Plan No. 7
- (c) **Shirewide Library Facilities:**  
 31.1652 ET @ \$792 per ET \$24,683  
 (\$792 base rate + \$0 indexation)  
 S94 Plan No. 11
- (d) **Bus Shelters:**  
 31.1652 ET @ \$60 per ET \$1,870  
 (\$60 base rate + \$0 indexation)  
 S94 Plan No. 12
- (e) **Eviron Cemetery:**  
 31.1652 ET @ \$120 per ET \$3,740  
 (\$101 base rate + \$19 indexation)  
 S94 Plan No. 13
- (f) **Community Facilities (Tweed Coast - North)**  
 31.1652 ET @ \$1305.6 per ET \$40,689  
 (\$1305.6 base rate + \$0 indexation)  
 S94 Plan No. 15
- (g) **Emergency Facilities (Surf Lifesaving):**  
 31.1652 ET @ \$113 per ET \$3,522  
 (\$113 base rate + \$0 indexation)  
 S94 Plan No. 16
- (h) **Extensions to Council Administration Offices  
 & Technical Support Facilities**  
 31.1652 ET @ \$1759.9 per ET \$54,847.64  
 (\$1759.9 base rate + \$0 indexation)  
 S94 Plan No. 18

<b>(i) Cycleways:</b>	
31.1652 ET @ \$447 per ET	<b>\$13,931</b>
(\$447 base rate + \$0 indexation)	
S94 Plan No. 22	
<b>(j) Regional Open Space (Casual)</b>	
31.1652 ET @ \$1031 per ET	<b>\$32,131</b>
(\$1031 base rate + \$0 indexation)	
S94 Plan No. 26	
<b>Stage 3</b>	
<b>(a) Tweed Road Contribution Plan:</b>	
237.9 Trips @ \$861 per Trips	<b>\$204,832</b>
(\$782 base rate + \$79 indexation)	
S94 Plan No. 4	
Sector6_4	
<b>(b) West Kingscliff – Open Space:</b>	
43.2063 ET @ \$2386 per ET	<b>\$103,090</b>
(\$1849 base rate + \$537 indexation)	
DCP Section B4	
S94 Plan No. 7	
<b>(c) Shirewide Library Facilities:</b>	
43.2063 ET @ \$792 per ET	<b>\$34,219</b>
(\$792 base rate + \$0 indexation)	
S94 Plan No. 11	
<b>(d) Bus Shelters:</b>	
43.2063 ET @ \$60 per ET	<b>\$2,592</b>
(\$60 base rate + \$0 indexation)	
S94 Plan No. 12	
<b>(e) Eviron Cemetery:</b>	
43.2063 ET @ \$120 per ET	<b>\$5,185</b>
(\$101 base rate + \$19 indexation)	
S94 Plan No. 13	
<b>(f) Community Facilities (Tweed Coast - North)</b>	
43.2063 ET @ \$1305.6 per ET	<b>\$56,410</b>
(\$1305.6 base rate + \$0 indexation)	
S94 Plan No. 15	

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<b>(g) Emergency Facilities (Surf Lifesaving):</b>	
43.2063 ET @ \$113 per ET	<b>\$4,882</b>
(\$113 base rate + \$0 indexation)	
S94 Plan No. 16	
<b>(h) Extensions to Council Administration Offices &amp; Technical Support Facilities</b>	
43.2063 ET @ \$1759.9 per ET	<b>\$76,038.77</b>
(\$1759.9 base rate + \$0 indexation)	
S94 Plan No. 18	
<b>(i) Cycleways:</b>	
43.2063 ET @ \$447 per ET	<b>\$19,313</b>
(\$447 base rate + \$0 indexation)	
S94 Plan No. 22	
<b>(j) Regional Open Space (Casual)</b>	
43.2063 ET @ \$1031 per ET	<b>\$44,546</b>
(\$1031 base rate + \$0 indexation)	
S94 Plan No. 26	
<b>Stage 4</b>	
<b>(a) Tweed Road Contribution Plan:</b>	
152.1 Trips @ \$861 per Trips	<b>\$130,958</b>
(\$782 base rate + \$79 indexation)	
S94 Plan No. 4	
Sector6_4	
<b>(b) West Kingscliff – Open Space:</b>	
27.6237 ET @ \$2386 per ET	<b>\$65,910</b>
(\$1849 base rate + \$537 indexation)	
DCP Section B4	
S94 Plan No. 7	
<b>(c) Shirewide Library Facilities:</b>	
27.6237 ET @ \$792 per ET	<b>\$21,878</b>
(\$792 base rate + \$0 indexation)	
S94 Plan No. 11	
<b>(d) Bus Shelters:</b>	
27.6237 ET @ \$60 per ET	<b>\$1,657</b>
(\$60 base rate + \$0 indexation)	
S94 Plan No. 12	

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- (e) Eviron Cemetery:  
27.6237 ET @ \$120 per ET \$3,315  
(\$101 base rate + \$19 indexation)  
S94 Plan No. 13
- (f) Community Facilities (Tweed Coast - North)  
27.6237 ET @ \$1305.6 per ET \$36,066  
(\$1305.6 base rate + \$0 indexation)  
S94 Plan No. 15
- (g) Emergency Facilities (Surf Lifesaving):  
27.6237 ET @ \$113 per ET \$3,121  
(\$113 base rate + \$0 indexation)  
S94 Plan No. 16
- (h) Extensions to Council Administration Offices  
& Technical Support Facilities  
27.6237 ET @ \$1759.9 per ET \$48,614.95  
(\$1759.9 base rate + \$0 indexation)  
S94 Plan No. 18
- (i) Cycleways:  
27.6237 ET @ \$447 per ET \$12,348  
(\$447 base rate + \$0 indexation)  
S94 Plan No. 22
- (j) Regional Open Space (Casual)  
27.6237 ET @ \$1031 per ET \$28,480  
(\$1031 base rate + \$0 indexation)  
S94 Plan No. 26

5. Delete Condition No. 12 and replace it with Condition No. 12A which reads as follows:

12A. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

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

**Stage 1**

Water DSP5:	55.776 ET @ \$11020 per ET	\$614,651.50
Sewer Kingscliff:	64.201 ET @ \$5295 per ET	\$339,944.30

**Stage 2**

Water DSP5:	26.4 ET @ \$11020 per ET	\$290,928
Sewer Kingscliff:	33 ET @ \$5295 per ET	\$174,735

**Stage 3**

Water DSP5:	36.6 ET @ \$11020 per ET	\$403,332
Sewer Kingscliff:	45.75 ET @ \$5295 per ET	\$242,246.30

**Stage 4**

Water DSP5:	23.4 ET @ \$11020 per ET	\$257,868
Sewer Kingscliff:	29.75 ET @ \$5295 per ET	\$157,526.30

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.

6. Delete Condition No. 21 and replace it with Condition No. 21A which reads as follows:

**21A. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include engineering plans and specifications for the following required works: -**

- (a) Vehicular access to Pearl Street**
- (b) Construction of vehicular access to Kingscliff Street, within the existing (un-named) road reserve.**
- (c) The above-mentioned access to Kingscliff Street is to have a minor realignment to ensure the driveway is perpendicular to the kerb line.**
- (d) The construction of 14 on-street parking spaces within the existing road reserve.**
- (e) Construction of a 1.2m wide concrete footpath within the existing road reserve, to link with the existing path in Kingscliff Street.**
- (f) Provision of suitable identifying marks or signage to delineate the actual end of the public road area.**

The above mentioned engineering plan submission must include copies of compliance certificates relied upon and details relevant to but not limited to the following: -

- Road works/furnishings
  - Stormwater drainage
  - Water and sewerage works
  - Sediment and erosion control plans
  - Location of all services/conduits
  - Traffic control plan
7. Delete Condition No. 41 and replace it with Condition No. 41A which reads as follows:
- 41A. The relocation of public stormwater infrastructure through the site requires separate TSC approval of a Section 68 Local Government Act Stormwater Application, prior to the issue of a Construction Certificate. For the design of public stormwater systems, a safety factor of 2 shall be applied to design rainfall intensities, with a 500mm freeboard to be provided before overtopping can occur. Provision of this factor of safety and freeboard shall be clearly detailed in the s68 Stormwater Application.
- Any Council stormwater infrastructure traversing the site should make provision for a relief overland flowpath through the site, as a fail-safe alternative measure.*
8. Delete Condition No. 58 and replace it with Condition No. 58A which reads as follows:-
- 58A. The provision of 257 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.
- All visitor and staff spaces within the subject site are to be marked and maintained as such.*
9. Delete Condition No. 73 and replace it with Condition No. 73A which reads as follows:
- 73A. The development is to be carried out in accordance with the *BASIX certificate dated 21 April 2010 and the Schedule of Commitments approved in relation to this modified* development consent.
10. Delete Condition No. 115 and replace it with Condition No. 115A which reads as follows:-
- 115A. All works associated with the demolition, construction and use of the proposed development are to be in accordance with the Waste Management Plan *prepared by HMC Pty Ltd, dated May 2010* and HMC's detailed plan of the Waste Storage Area (submitted on 22 June 2009), unless approved otherwise by Council's General Manager or his delegate.
11. The following new DURING condition is to be ADDED as Condition 116.2:
- 116.2 *Where any treatment/processing area or bunding is required to be placed in association with site dewatering or acid sulfate treatment, the location and construction of that area shall be approved on site by*



***Council's Environmental Health Officer prior to the commencement of any treatment or discharge activities'.***

12. Delete Condition No. 127 and replace it with Condition No. 127A which reads as follows:
    - 127A. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "Certificate of Practical Completion" issued by Council for all works covered by the Sec.68 approval for sewer relocation works.
  13. Delete Condition No. 130 and replace it with Condition No. 130A which reads as follows:
    - 130A. Construction and operation of the development shall comply with the Environmental Noise Impact Report prepared by CRG Pty Ltd, dated 10 May 2010, including Section 6, to the satisfaction of the General Manager or his delegate.

Prior to the issue of an occupation certificate for any stage of the development a report shall be provided to Council from a suitably qualified person which confirms that the recommendations made in that report have been satisfactorily complied with.
  14. The following new USE condition is to be ADDED as Condition 156:
    156. Servicing and storage of the waste/recycling bins shall be carried out so as not to cause a nuisance to occupants of adjoining properties and/or residents of the aged care facility.
  15. The Department of Water and Energy Schedule of Conditions is to be replaced with the following:

**DEPARTMENT OF WATER AND ENERGY**  
**SCHEDULE OF CONDITIONS FOR TEMPORARY DEWATERING**  
**DEVELOPMENT APPLICATION NUMBER\_\_DA08/1225**
1. All works shall be constructed, maintained and operated so as to ensure public safety and prevent possible damage to any public or private property.
  2. All works are to be constructed in accordance with Report HMC 2008.144B Dewatering Management Plan December 2008 HMC's Addendum to HMC 2008.144B dated 12 May 2010 (pages 1-5) and/or with conditions of development consent.
  3. All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry of sediments into any river, lake, waterbody, wetland or groundwater system.
  4. The destruction of trees or native vegetation shall be restricted to the minimum necessary to complete the works.
  5. All vegetation clearing must be authorised under the Native Vegetation Conservation Act 1997, if applicable.
  6. All precautions considered necessary to prevent the pollution of surface water or groundwater by petroleum products or other

hazardous materials used in the construction or operation of the works shall be taken.

7. The water extracted shall not be used for any purpose other than temporary construction dewatering.
8. Any water extracted by the works must not be discharged into any watercourse or groundwater if it would pollute that water.
9. Polluted water shall not be discharged into a river or lake other than in accordance with the conditions of a licence granted under the Protection of the Environment Operations Act 1997.
10. Tailwater drainage shall not be allowed to discharge onto adjoining roads, Crown land or other persons land, or into any river as defined in the Water Act 1912, or a groundwater aquifer, by surface or sub-surface drains or pipes or any other means.
11. Water must not be discharged unless the ph of the water is between 6.5 and 8.5, or the water has been treated to bring the ph to a level between 6.5 and 8.5 prior to discharge, or the water is discharged through the Council's sewerage treatment system.
12. The ph of any water extracted must be tested prior to the commencement of discharge and at least twice daily thereafter and a record kept of the date, time and result of each test in the site log.
13. Works used for the purposes of conveying, distributing or storing water from the dewatering work shall not be constructed or installed so as to obstruct the free passage of floodwaters flowing in, to or from a river or lake.
14. Authorised officers of the Department of Water and Energy (DWE), or any other duly authorised officer, must be granted unrestricted access to the works either during or after construction, for the purpose of carrying out any inspection or test of the of the works and its fittings or to take samples of water or material in the work.
15. Any works deemed necessary by DWE for the protection or proper maintenance of the works, or for the control of the water extracted or prevention of pollution of groundwater, shall be undertaken on instruction to do so.
16. A record shall be maintained of the actual volume of groundwater pumped (in kilolitres or megalitres) from the dewatering works, the discharge rate (in litres per second) and duration of pumping (number of days) and this information is to be provided to DWE if and when requested.
17. A record shall be maintained of the actual volume and quality of any tailwater generated by the dewatering and this information is to be provided to DWE if and when requested.
18. A record shall be maintained of the groundwater levels beneath and around the construction site throughout the duration of the dewatering and for a period of at least two (2) months following cessation of the required pumping, and this information is to be provided to DWE if and when requested.

19. DWE may request the provision of interim information relating to the records described in the above three (3) conditions at any time during construction.
16. The NSW Rural Fire Service General Terms of Approval is to be replaced with the following:

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

1. At the commencement of building works and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within Appendices 2 and 5 of 'Planning for Bushfire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
2. Water, electricity and gas are to comply with sections 4.1.3 and 4.2.7 of 'Planning for Bushfire Protection 2006'.
3. Internal roads shall comply with section 4.2.7 of 'Planning for Bushfire Protection 2006'. Except that in this instance a perimeter road and a through road is not required.
4. Arrangements for emergency and evacuation are to comply with section 4.2.7 of 'Planning for Bushfire Protection 2006'.
5. New construction shall comply with section 5 (BAL 12.5) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bushfire Protection 2006'.
6. A minimum 1.8 metre high radiant heat shield made of non-combustible materials shall be constructed along the southeast, south and west boundaries adjacent to the hazard. All posts and rails shall be constructed of steel. The bottom of the fence is to be in direct contact with the finished ground level or plinth.
7. Landscaping to the site is to comply with principles of Appendix 5 of 'Planning for Bushfire Protection 2006'.
8. No brushwood fencing shall be used.

**REPORT:**

**Applicant:** Kingscliff Retirement Ltd Atf Kingscliff Retirement Trust  
**Owner:** Kingscliff Retirement Ltd  
**Location:** Lot 4 DP 617471; Lot 1 DP 605577; Lot 6 Section 1 & Lot 7 Section 1 DP 28949; Lot 1 & Lot 2 DP 378971; Nos. 16-20 Kingscliff Street & Nos. 90 & 92 Pearl Street, Kingscliff  
**Zoning:** 2(b) Medium Density Residential and 2(c) Urban Expansion  
**Cost:** N/A

**BACKGROUND:**

The subject site (involving 6 allotments) is described as Lot 4 DP 617471; Lot 1 DP 605577; Lot 6 Section 1 & Lot 7 Section 1 DP 28949; Lot 1 & Lot 2 DP 378971; No 16, No 18, No 20 Kingscliff Street & No 90 & 92 Pearl Street Kingscliff. The site is irregular in shape with a 32m frontage to Kingscliff Street to the north and an approximate 34m frontage to Pearl Street to the east.

Council granted consent on 24 July 2009 for the construction of a multi-level aged care development (retirement village), comprising of two hundred (200) two and three bedroom self contained units in a staged development. The proposal incorporated six clusters of apartments (on three levels), with the clusters grouped around and linked to a Central Facility at ground level.

In addition to the 200 units, the proposal incorporated: a basement car park; construction of a bowls green; vegetable gardens serviced by the residents; medical and day care nursing onsite visitation; demolition of the existing RSL Hall and dwelling houses; filling of the site to the design flood level of RL 3.3m AHD; driveway entry off Kingscliff Street; and separate service and delivery bay access off Pearl Street.

As a result of detailed assessment and negotiations with the applicant, Council proposes to upgrade the Blue Jay Circuit stormwater pipe to provide sufficient capacity for the proposed development in terms of stormwater drainage. Due to the high cost of this project, and the reliance on this service to provide a lawful point of discharge for the subject land, the applicant agreed to provide a monetary contribution to the project. A condition was been imposed requiring a Planning Agreement to be entered into for the stormwater works.

**PROPOSED DEVELOPMENT:**

Condition 38 of the development consent requires payment of a drainage contribution of \$3,000,037.00 in total, of which Council is required to pay a fixed amount of \$1,900,000.00.

The applicant has noted that the developers contribution of \$1,130,000.00 was not contemplated in the project feasibility analysis because the downstream drainage capacity constraints and difficulties (in terms of timing in particular) with other drainage options through the adjoining land were not known at that time.

Consequently, the applicant is seeking to modify the proposed development by way of increasing the yield of units to assist in offsetting part of the unforeseen drainage costs and to achieve a more efficient and viable project.

The key modifications to Development Consent DA08/1225 include:

- An increase in the number of units from 200 to 225;

- A reduction in the size of the basement car park and a reconfiguration of the basement car parking layout;
- Relatively minor external alterations to the building in relation to balconies, setbacks and footprint;
- An increase in the number of bedrooms from 429 to 450 (ie 21 bedrooms or 4.9%); and
- An increase in car parking from 256 to 257 spaces.

The type of units has been modified in that the proposal no longer incorporates 3 bedroom units. Each cluster of apartments incorporates six to eighteen units per floor, in a staggered configuration. The individual apartments are self contained and consist of a mix of two bedroom units (approximately 82m<sup>2</sup>) and two bedroom units plus study (up to 105m<sup>2</sup>).

The breakdown of the 225 units is as follows:

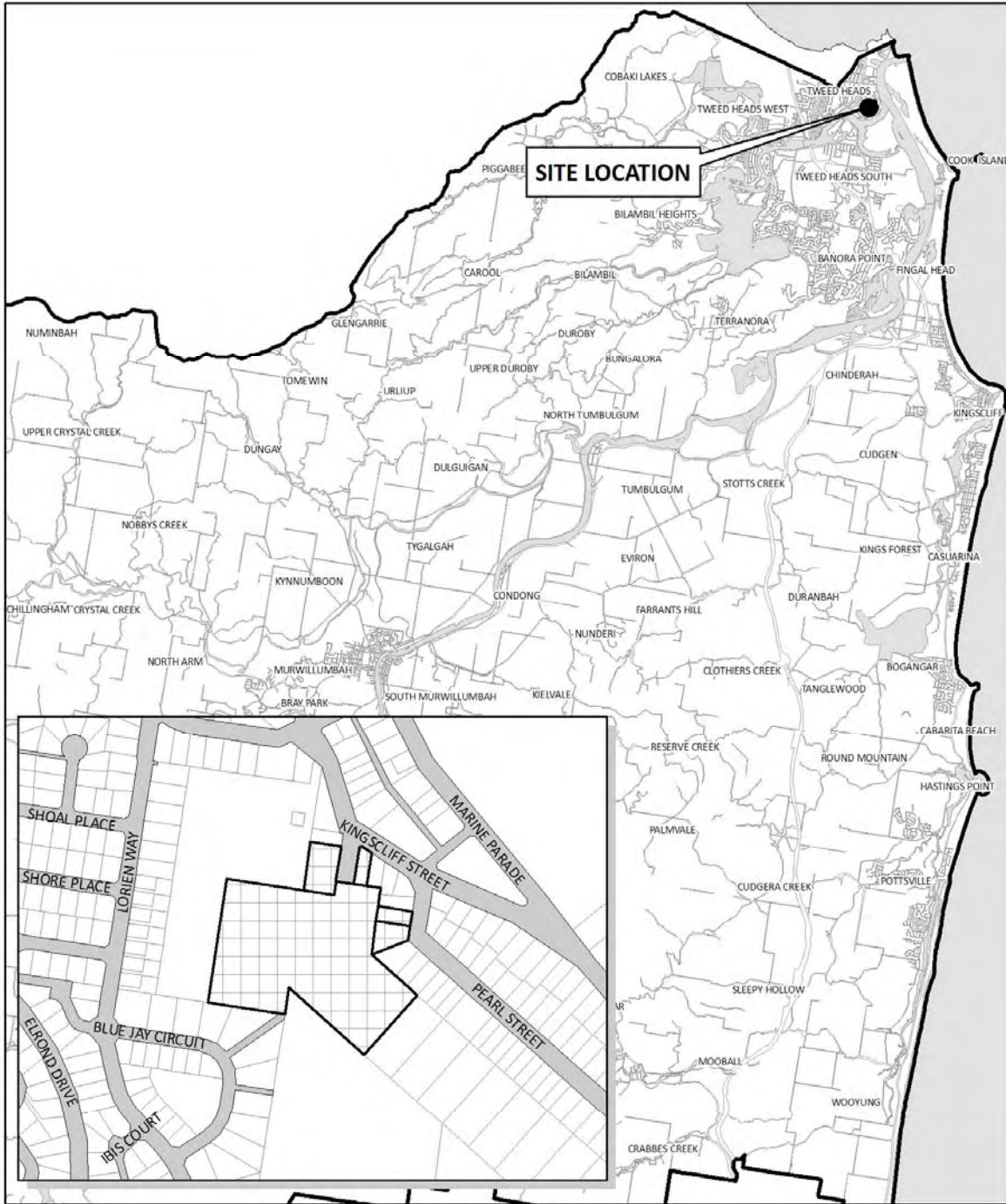
- 88 x Type A units (2 bedrooms);
- 11 x Type B units (2 bedrooms);
- 96 x Type C units (2 bedrooms + study)
- 19 x Type D units (2 bedrooms + study)
- 11 x Type E units (2 bedrooms + study nook)

The application was advertised for a period of fourteen days from Wednesday 30 June 2010 to Thursday 14 July 2010. In response to the advertising, one (1) submission was received in support of the proposed modifications. The application was also forwarded to the NSW Office of Water and the NSW Rural Fire Service.

The applicant's proposed modifications relate to the following conditions:

- **Condition 1** to be replaced with revised approved plans;
- **Condition 7** to be replaced with a revised condition for the proposed staging of the development;
- **Condition 9** to be replaced with a revised condition with regard to the amended carparking spaces required;
- **Condition 10** to be replaced with revised Section 94 contributions (staged);
- **Condition 12** to be replaced with revised Section 64 contributions (staged);
- **Condition 58** to be deleted as it duplicates Condition 9;
- **Condition 73** to be revised to indicate the updated BASIX certification;
- **Condition 115** to be revised to indicate the updated Waste Management Plan; and
- **Condition 130** to be revised to indicate the updated Environmental Noise Impact Report.

**SITE DIAGRAM:**



**LOCALITY PLAN**

Lot 4 DP 617471; Lot 1 DP 605577; Lot 6 Section 1 & Lot 7 Section 1 DP 28949; Lot 1 & Lot 2 DP 378971  
 No 16, No 18, No 20 Kingscliff Street & No 90 & 92 Pearl Street Kingscliff

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

Author: J.Batchelor - Planning Reforms Unit

Date Printed: July 03, 2009

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Coordinate System - MGA Zone 56  
 Datum - GDA 94

Cadastre July 03, 2009  
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DO NOT SCALE  
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**Tweed Shire Council**

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



DEVELOPMENT PLANS:



APPROVED

DATE: 16/11/2010

PROJECT: KINGSLIFF RETIREMENT VILLAGE - APPROVALS

SCALE: AS SHOWN

NOTES

1. All dimensions are in millimeters unless otherwise stated.

2. All dimensions are to the centerline of the structure unless otherwise stated.

**MDesign**

ARCHITECTS

REGISTERED ARCHITECTS

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

**KINGSLIFF RETIREMENT VILLAGE - APPROVALS**  
REVISED 15/11/2010

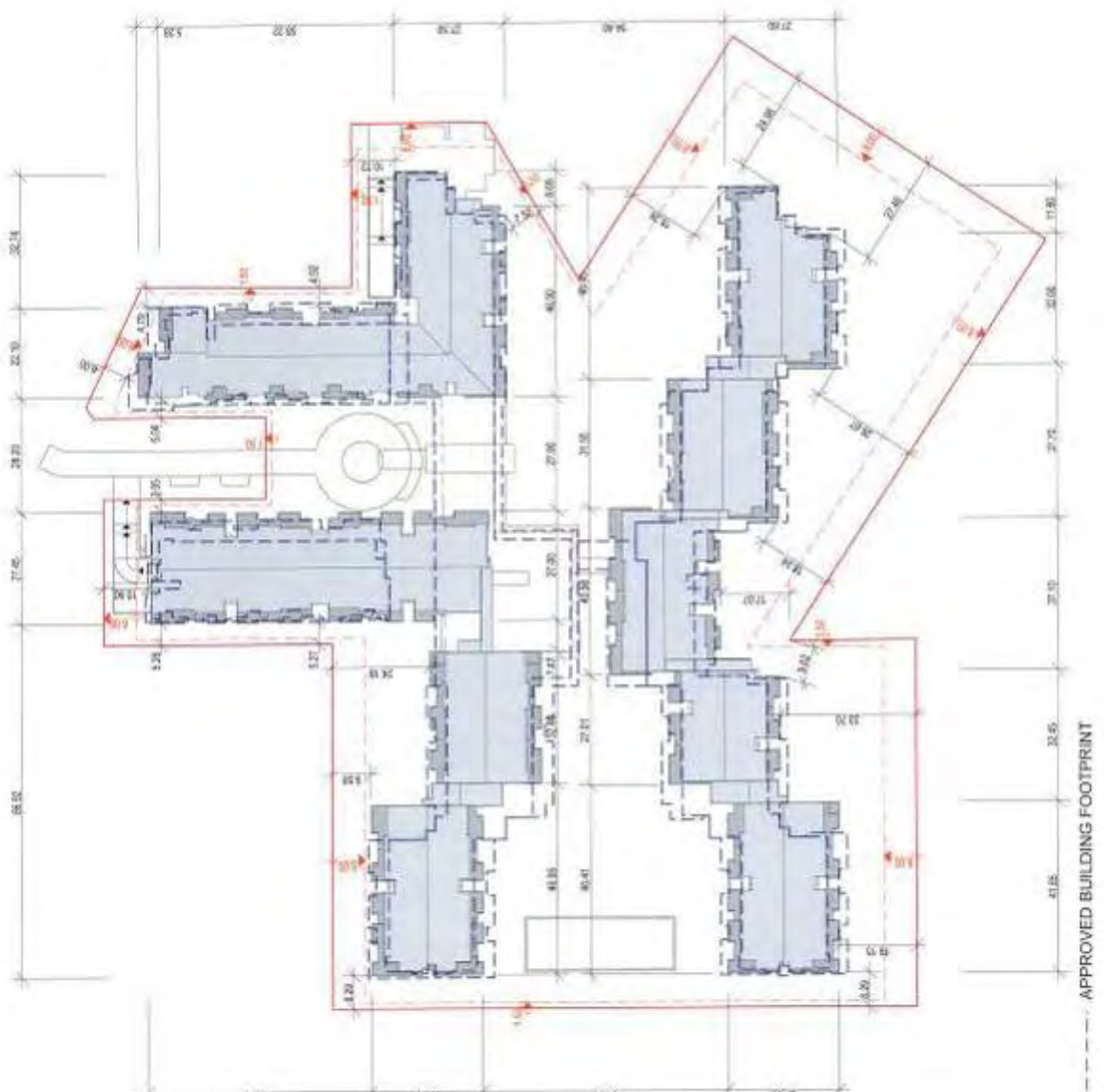
BY: KINGSLIFF RETIREMENT TRUST LIMITED

SITE PLANS  
APPROVED BUILDING FOOTPRINT OVERLAY

DATE: 16/11/2010

SCALE: AS SHOWN

PROJECT: 4627-01-0 A-01-01-08



--- -- APPROVED BUILDING FOOTPRINT

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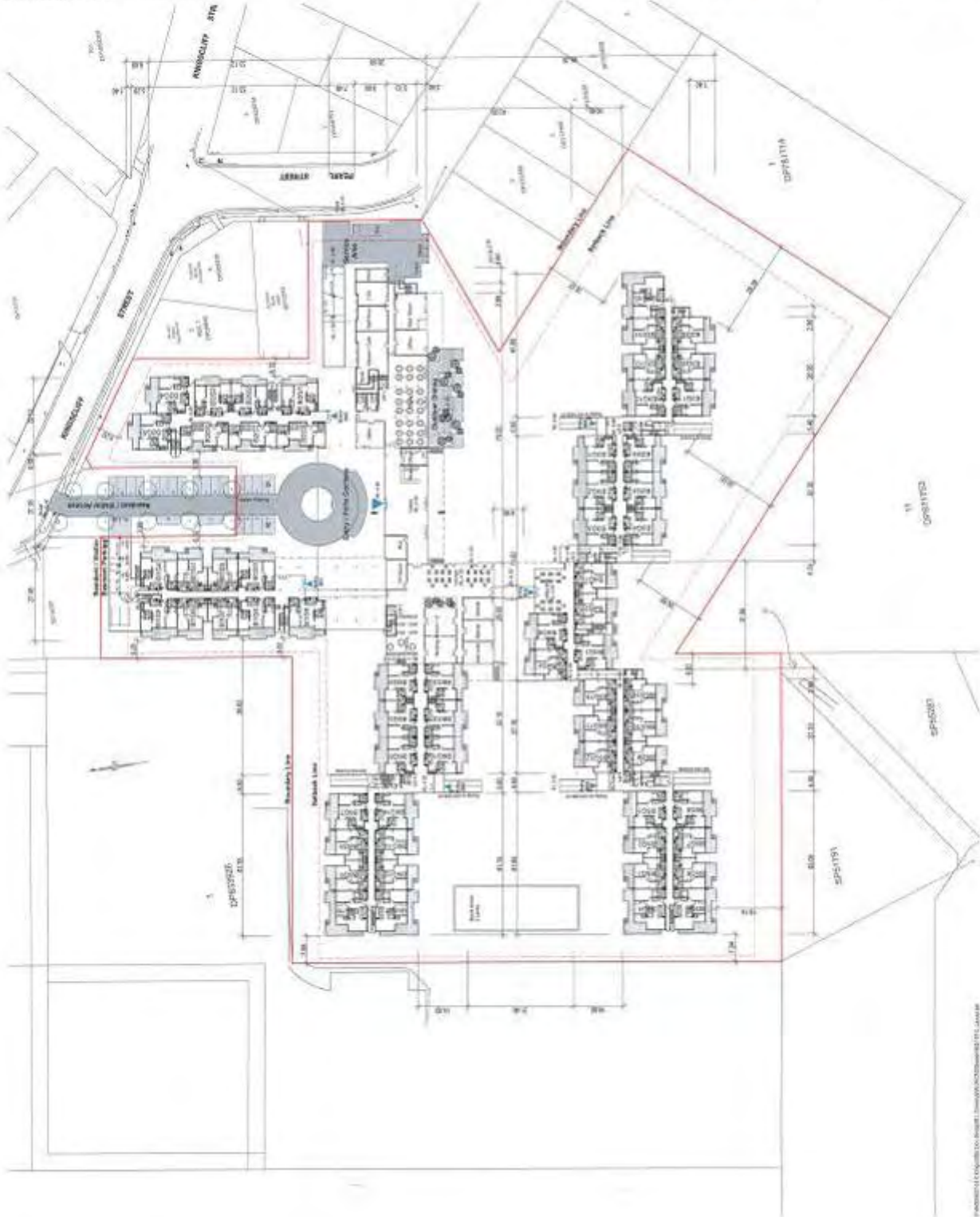


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**KINGSCLIFF RETIREMENT VILLAGE - 4827-01-02**  
 FOR **KINGSCLIFF RETIREMENT TRUST LIMITED**  
**FLOOR PLANS GROUND**

**PROJ. NO. 4827-01-02**  
**DATE: 11/08/09**  
**REV. 1**  
**4827-01-0 A-DA-10-02**



Prepared by: M. JONES CONSULTANTS LTD. 11/08/09



**NOTES**

1. Details at dimensions are to be used only where applicable.
2. Dimensions are shown in millimetres unless otherwise stated.

**ACCOMMODATION**

**REVISIONS**

NO.	REVISION	DATE
1	ISSUED FOR DESIGN	

Scale: 1:500



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Tel: 611 200 360  
Fax: 611 200 360  
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PROJECT: **KINGSCLIFF RETIREMENT VILLAGE - MODIFICATION**  
DRAWING NO: **SPR1183**

FOR: **KINGSCLIFF RETIREMENT TRUST LIMITED**

**FLOOR PLANS LEVEL 02**

ISSUED FOR: DESIGN

**SPR1183**  
DATE: 21/02/2010  
BY: [Signature]  
SCALE: 1:500

4627-01-0 A-DA-10-01 B



P:\04\1183\1183\_Spr1183.dwg, Dimension=60, Number=1, U.L. Change



**Yield per Stage**

Stage	1	2	3	4
Units	32	5	23	4
Car Spaces	0	3	8	2
Gravel	0	0	0	0
<b>Total Yield in Stage 1</b>	<b>32</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Total Yield in Stage 2</b>	<b>0</b>	<b>8</b>	<b>0</b>	<b>0</b>
<b>Total Yield in Stage 3</b>	<b>0</b>	<b>0</b>	<b>31</b>	<b>0</b>
<b>Total Yield in Stage 4</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>
<b>Total Yield in Stages 1-4</b>	<b>32</b>	<b>8</b>	<b>31</b>	<b>2</b>
<b>Total number of units</b>	<b>73</b>	<b>8</b>	<b>31</b>	<b>2</b>

**Stages 1-4**



**Basement Stages 1-3**



**KINGSLIFF RETIREMENT VILLAGE - WINDY HILLS ROAD, WINDY HILLS, SA 5086**  
**BY KINGSLIFF RETIREMENT TRUST LIMITED**  
**CONSTRUCTION SEQUENCE STAGES 1-4**  
 DRAWING NUMBER: 1070-SCALE 200000  
 DATE: 16/11/10  
 A-D-A: 18/01



North Elevation 01 / Kingscliff Street



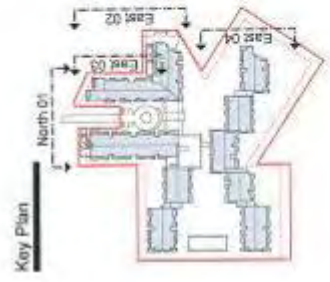
East Elevation 02 / Pearl Street



East Elevation 03



East Elevation 04



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**DESIGN**  
 All drawings are prepared in accordance with the Australian Standards AS/NZS 1546:2006 and AS/NZS 1547:2006. All drawings are prepared in accordance with the Australian Standards AS/NZS 1546:2006 and AS/NZS 1547:2006.

**APPROVAL**  
 All drawings are prepared in accordance with the Australian Standards AS/NZS 1546:2006 and AS/NZS 1547:2006. All drawings are prepared in accordance with the Australian Standards AS/NZS 1546:2006 and AS/NZS 1547:2006.



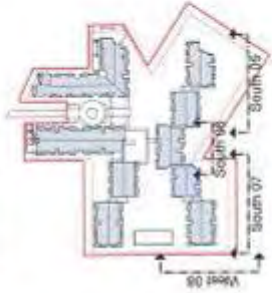
**KINGSCLIFF RETIREMENT VILLAGE - SUBDIVISION OF LAND**  
 KINGSCLIFF RETIREMENT TRUST LIMITED  
 ELEVATIONS OVERALL ELEVATIONS 1-4  
 DRAWN BY: OPHEE THIERIE  
 DATE: 11/08/10  
 SCALE: AS SHOWN  
 PROJECT NO: 4827-01-0 A-DA-3A-01 D

FORWARD TO: Kingscliff Retirement Village Pty Ltd

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South Elevation 05



Key Plan



South Elevation 06



South Elevation 07

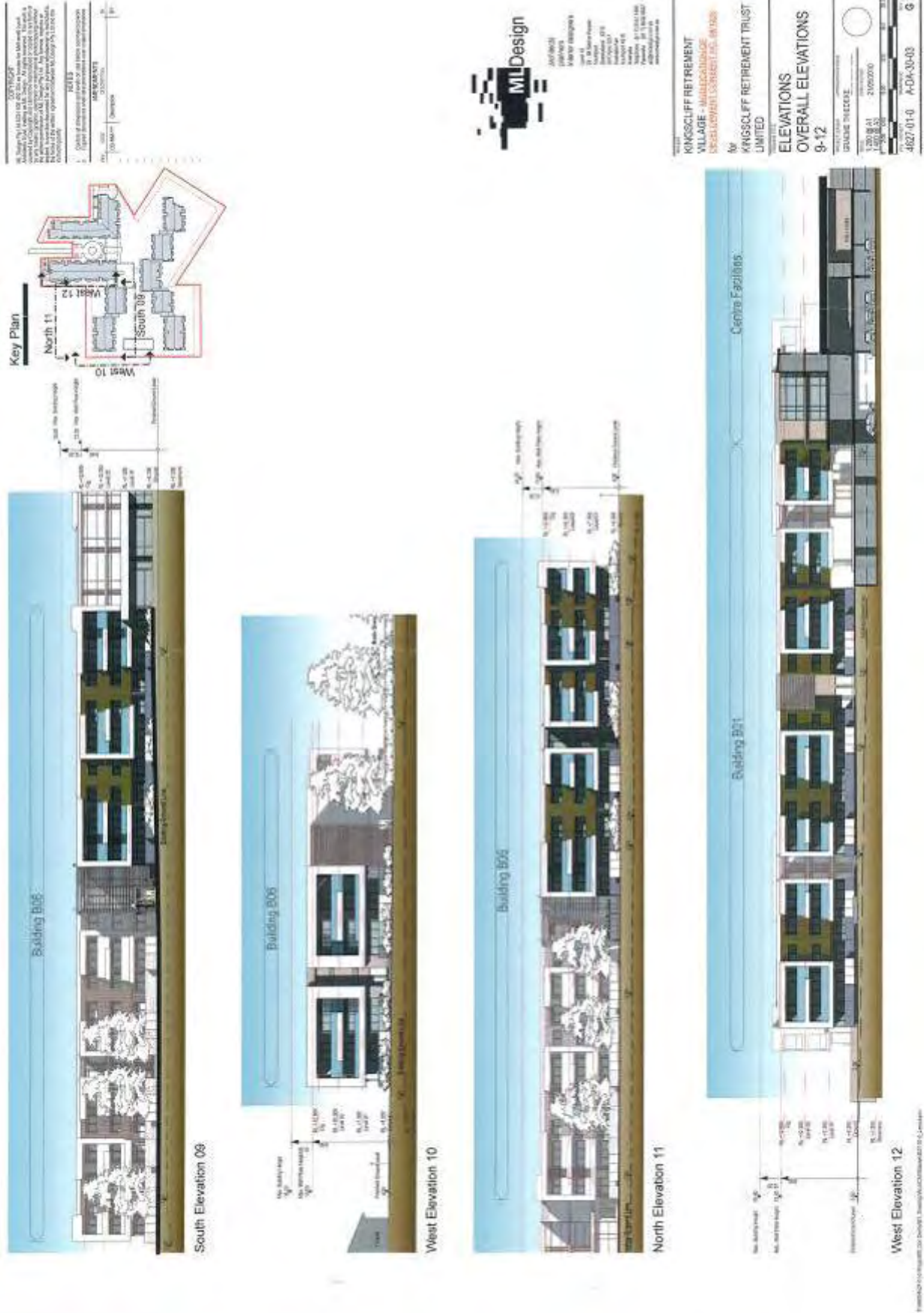


West Elevation 08



**KINGSCLIFF RETIREMENT VILLAGE - 4023/24/25/26/27/28/29/30/31/32/33/34/35/36/37/38/39/40/41/42/43/44/45/46/47/48/49/50/51/52/53/54/55/56/57/58/59/60/61/62/63/64/65/66/67/68/69/70/71/72/73/74/75/76/77/78/79/80/81/82/83/84/85/86/87/88/89/90/91/92/93/94/95/96/97/98/99/100**  
 for KINGSCLIFF RETIREMENT TRUST LIMITED  
**ELEVATIONS OVERALL ELEVATIONS 5-8**  
 DATE: 13/08/10  
 DRAWING NO: 2006/001  
 SCALE: 1:100  
 PROJECT NO: 4827-01-01 A-DC-30-02  
 D









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

### Tweed Local Environmental Plan 2000

#### 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.*

The proposed modifications are considered to result in a development which is consistent with the primary objective of the 2(b) and 2(c) zones by way of optimum utilisation of the site, whilst taking into account environmental constraints. The proposal generally complies with Clause 8(a).

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

The proposed development is not considered to have an unacceptable cumulative impact on the locality or the community as a whole.

#### SEPP (Housing for Seniors or People with a Disability) 2004

The original assessment of the development undertook a detailed assessment of the proposal, concluding that the 200 unit development met the provisions of the SEPP. The applicant has provided an amended compliance checklist to demonstrate that the modified development has substantial compliance with the SEPP or justifies any minor non-compliance. The proposed modifications have been assessed against the SEPP, with only relevant clauses affected by the revised design noted below.

#### Part 2 – Site-related requirements

##### **Clause 27 – Bush fire prone land**

- (1) *A consent authority must not consent to a development application made pursuant to this Chapter to carry out development on land identified on a bush fire prone land map certified under section 146 of the Act as “Bush fire prone land—vegetation category 1”, “Bush fire prone land—vegetation category 2” or “Bush fire prone land—vegetation buffer” unless the consent authority is satisfied that the development complies with the requirements of the document titled Planning for Bush Fire Protection, ISBN 0 9751033 2 6, prepared by the NSW Rural Fire Service in co-operation with the Department of Planning, dated December 2006.*

The subject site is identified as bush fire prone land and as such the applicant submitted an addendum to the original Bushfire Threat Assessment Report. The application was referred to the NSW Rural Fire Services for consideration. The RFS have issued a bushfire safety authority as required under section 100B of the Rural Fires Act 1997 and the amended conditions have been applied.

**Clause 28 - Water and sewer**

- (1) *A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied, by written evidence, that the housing will be connected to a reticulated water system and have adequate facilities for the removal or disposal of sewage.*
- (2) *Not applicable*

Council's Water & Sewer Engineer has confirmed that connection is available to Council's reticulated water and sewer mains in Pearl Street and Kingscliff Street. Further detail regarding water and sewer are discussed later in this report. Clause 28 is considered satisfied.

Part 3 – Design requirements

*Division 2 – Design Principles*

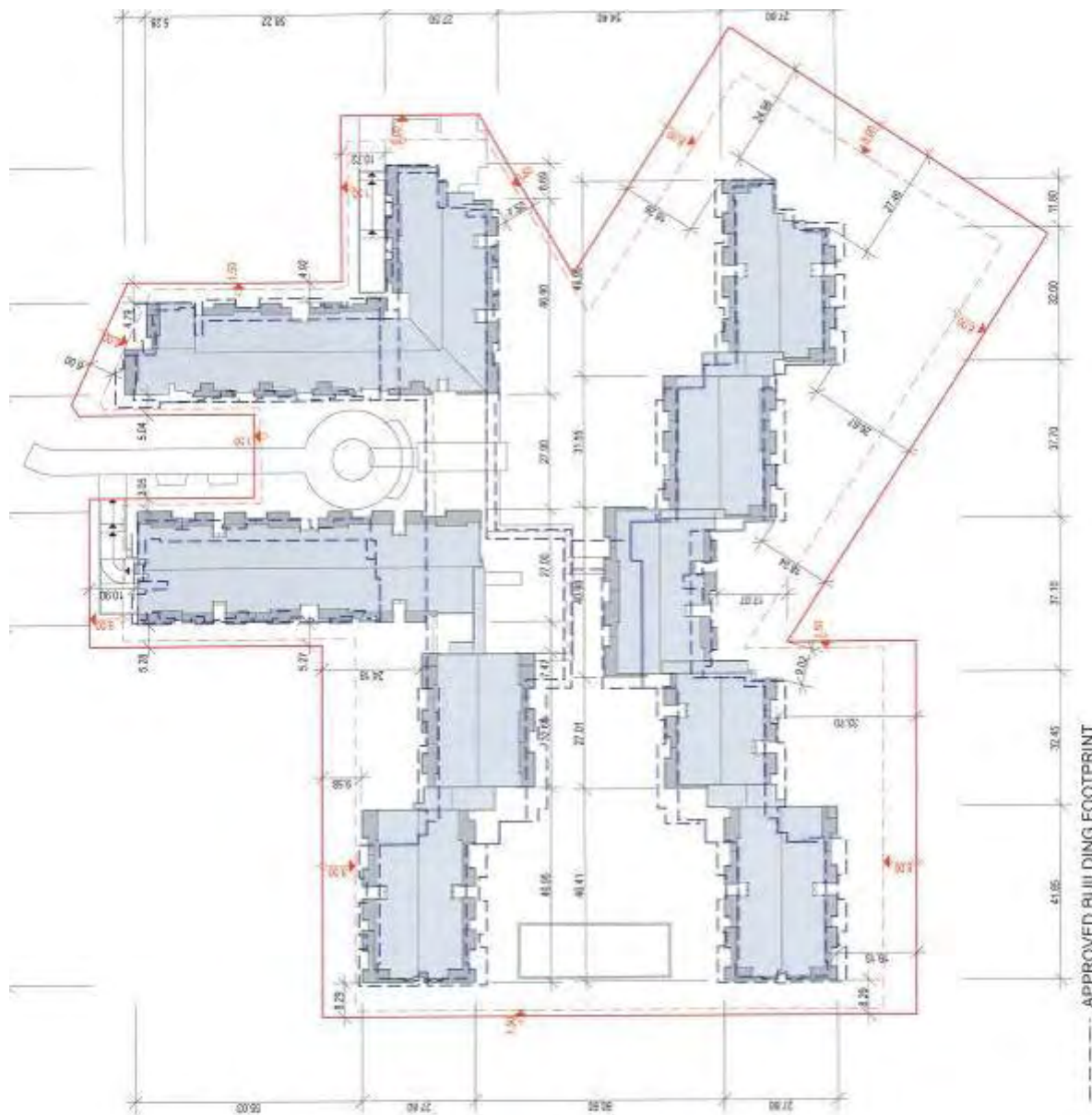
**Clause 33 - Neighbourhood amenity and streetscape**

*The proposed development should:*

- (a) *recognise the desirable elements of the location's current character (or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area; and*
- (b) *N/A; and*
- (c) *maintain reasonable neighbourhood amenity and appropriate residential character by:*
- (i) *providing building setbacks to reduce bulk and overshadowing; and*
  - (ii) *using building form and siting that relates to the site's land form; and*
  - (iii) *adopting building heights at the street frontage that are compatible in scale with adjacent development; and*
  - (iv) *considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours; and*
- (d) *be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line, and*
- (e) *embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, and*
- (f) *retain, wherever reasonable, major existing trees, and*
- (g) *be designed so that no building is constructed in a riparian zone.*

The original development was considered to be acceptable with regard to neighbourhood amenity and streetscape. Setbacks from adjoining residential development have largely been maintained. Figure 1 below indicates the original and proposed footprint. In summary, despite an increase in yield, the proposed modifications are considered to satisfy this clause.

Figure 1 – Comparison of approved and proposed building footprint



**Clause 34** - Visual and acoustic privacy

*The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by:*

- (a) appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and*
- (b) ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.*

The applicant has provided an assessment of the proposed modifications in terms of compliance with DCP A1, which highlights that the development remains compliant with required separation from existing residences and between each unit within the proposal.

An addendum to the original Environmental Noise Impact Assessment has been submitted with the application. Council's Environment & Health Unit has assessed the proposed development with no objections, subject to conditions of consent. Therefore, this clause is considered satisfied.

**Clause 36** - Stormwater

*The proposed development should:*

- (a) control and minimise the disturbance and impacts of stormwater runoff on adjoining properties and receiving waters by, for example, finishing driveway surfaces with semi-pervious material, minimising the width of paths and minimising paved areas, and*
- (b) include, where practical, on-site stormwater detention or re-use for second quality water uses.*

Stormwater was largely addressed during the original assessment, which resulted in an agreement between Council and the applicant in relation to an upgrade in the public stormwater drainage system. The proposed modifications are not considered to increase the development footprint with regard to stormwater. Therefore, no stormwater issues are raised by the amended design. Appropriate conditions of consent have been applied to ensure that the development complies with Clause 26 of the SEPP.

*Part 4 – Development standards to be complied with*

**Clause 40** - Development standards – minimum sizes and building height.

- (1) **General** A consent authority must not consent to a development application made pursuant to this Chapter unless the proposed development complies with the standards specified in this clause.*
- (2) **Site size** The size of the site must be at least 1,000 square metres.*
- (3) **Site frontage** The site frontage must be at least 20 metres wide measured at the building line.*
- (4) **Height in zones where residential flat buildings are not permitted** If the development is proposed in a residential zone where residential flat buildings are not permitted:
  - (a) the height of all buildings in the proposed development must be 8 metres or less, and*
  - (b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and**

**Note.** *The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.*

- (c) *a building located in the rear 25% area of the site must not exceed 1 storey in height.*

The original assessment determined that the proposal satisfied Clause 40. The proposed modifications maintain compliance with all relevant development standards in Clause 40.

*Division 3 – Hostels and Self-Contained Dwellings: Standards concerning access and usability*

**Clause 41** - Standards for hostels and self-contained dwellings.

The SEPP notes that development standards concerning accessibility and usability for self contained dwellings require the development to be assessed against the standards specified in Schedule 3. An assessment against the provisions of Schedule 3 was undertaken during the original assessment. The proposed modifications are considered to maintain compliance. Applicable conditions of consent remain in place, in terms of requiring further detail prior to the issue of a construction certificate, to ensure that access and usability standards are met.

*Part 7 – Development standards that cannot be used as grounds to refuse consent*

*Division 4 – Self contained dwellings*

**Clause 50** – *Standards that cannot be used to refuse development consent for self contained dwellings*

- (a) **Building Height:** *if all proposed buildings are 8 metres or less in height.*

This clause stipulates that Council cannot refuse a residential care facility on the grounds of height, if the building height is less than 8m.

The proposed modifications do not result in any change to the approved building height. Although the proposal is a multi level development that exceeds 8m, the development meets the three (3) storey height limit applicable to the site.

- (b) **Density and Scale:** *if the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less.*

The applicant has noted that the proposed modifications have slightly increased the Floor Space Ratio to 0.80:1, which is allowable under the FSR provisions of DCP Section A1 for multi dwelling development. It is also noted that the maximum FSR under Section A1 is 1.2:1 for residential flat buildings.

- (c) **Landscaped area:** *if a minimum of 30% of the area of the site is landscaped.*

The area of the site is 3.5188ha, which equates to the need for 10,556m<sup>2</sup> of landscaped area. The proposed modifications slightly reduce the landscaping, with an area of 10,716m<sup>2</sup> (30.45% of the site), which exceeds the requirement and is considered satisfactory.

- (d) **Deep soil zones:** *15% of the site area, with two-thirds of the area to be located at the rear of the site, each having a minimum dimension of 3m.*

15% of the site equates to 5,278m<sup>2</sup> in area required for deep soil zones. The reduced basement excavation increases the deep soil zone area of the site from 5,600m<sup>2</sup> (16%) to 7189m<sup>2</sup> (20.4%). Therefore, the proposal is considered to exceed the minimum deep soil zone requirements.

**(e) Solar access:** *living rooms and private open spaces for a minimum of 70% of the dwellings receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter.*

In order to meet the 70% solar access requirement, 158 of the 225 units have to comply with the solar access provisions for living rooms and private open space areas. The applicant has noted that 127 units (56.4%) fully comply with this clause. An additional 31 units comply for 2 hours and 45 minutes. The outstanding 15 minutes of direct sunlight occur at lunchtime where the sun will be controlled by eaves and balconies) east facing units of B01 and B02). This results in 158 units (70%) complying with the objective of Clause 50(e).

The original design incorporated a clerestory component in the roof design to enable compliance with the solar access requirements. It is unclear as to whether the clerestory is proposed to remain in the modified design. The original condition of consent requiring the clerestory component to be incorporated into the development at the Construction Certificate stage has been kept; enabling the applicant to incorporate that into the design if desired.

**(h) Parking:** *if at least the following is provided:*

- (i) 0.5 car spaces for each bedroom where the development application is made by a person other than a social housing provider.*

The proposed modifications incorporate 450 beds, which requires 225 car spaces under this provision of the SEPP. After various discussions relating to car parking (detailed later in this report) a car parking arrangement has been proposed incorporating 257 spaces. As such, the proposal is considered to comply with this clause.

Therefore, having considered all of the abovementioned criteria, the proposed modifications are considered to meet the aims and requirements of the SEPP (Housing for Seniors or People with a Disability) 2004, subject to applicable conditions of consent.

## **Tweed Development Control Plan**

### **A2-Site Access and Parking Code**

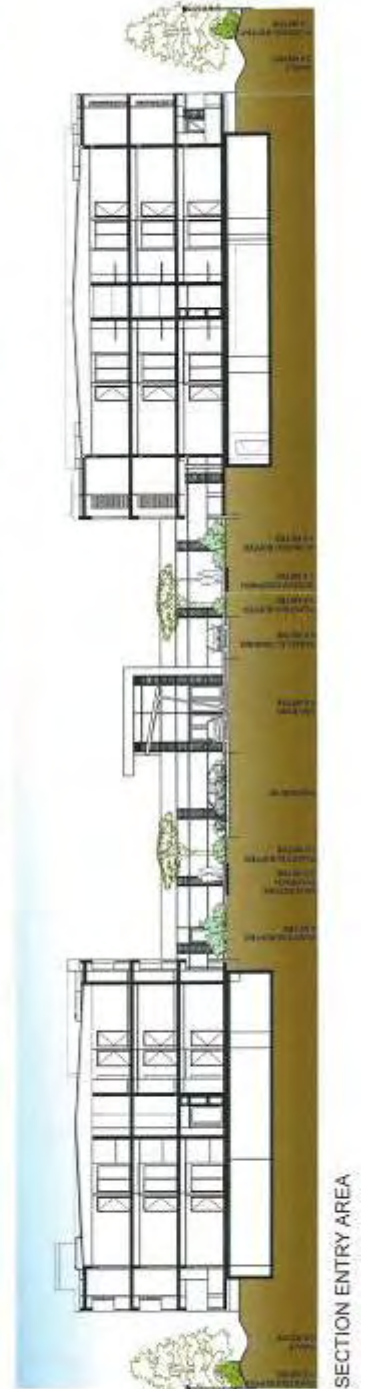
Council's DCP refers to the Seniors SEPP carparking requirements for housing for older people or people with a disability. As noted above, the SEPP requires 0.5 spaces for every bed within the development. The proposed modifications increase the total bed numbers from 429 to 450, which results in a minimum of 225 spaces for parking purposes.

Prior to the lodgement of this S96 application, the applicant met with Council staff to discuss the merits of the proposed modifications in terms of car parking. In order to reduce construction costs, the applicant advised that the basement was to be reduced. The overall residential parking was to remain relatively consistent with the original approval, but the basement visitor spaces were removed from the design. The applicant proposed additional visitor spaces on ground level.

The concept of ground level visitor spaces was encouraged, but not at the expense of visual amenity concerns for the main entry to the development. That is, wall to wall hardstand would not be supported. The applicant modified the ground level car parking design to incorporate landscaping bays for amenity purposes, whilst maintaining 22 visitor spaces (see Figure 2 below). It should also be noted that 14 of the 22 spaces are located on the road reserve leading into the subject site. The use of the public road reserve was assessed and supported in the original assessment.



Figure 2 – Perspective and section of entry area



SECTION ENTRY AREA

The applicant has provided an amended Traffic and Parking Impact Assessment, which notes that inclusive of the 257 spaces, the proposal incorporates 2 parking spaces for a community bus and an ambulance and 2 car spaces for carwash bays. 50% of the residential spaces have been designed with a width of 3.2m or greater and two 3.8m wide disabled spaces have been provided on the ground level for disabled visitors.

Council's Development Engineer has provided the following comments:

*'The existing consent approved the provision of 256 parking spaces in total. The amended submission proposes 257 parking spaces in total (note that both totals include 2 x car wash bays, a bus bay and an ambulance bay).*

*Although 25 more units (but only 21 more beds) are proposed, the applicant has provided supporting evidence and investigations to justify this small increase in parking space numbers.*

*The submitted proposal is the end result of prior discussions and negotiations, which have been supported by Council's Traffic Engineer.*

*This submission alters the previously approved access and parking provisions as follows: extra visitor parking in the road reserve beside the main driveway; reduced and reconfigured basement parking with improved circulation; resident parking increased from 200 to 225; visitor parking reduced from 40 to 22; staff parking reduced from 12 to 6; total parking bays @ 3.8m wide reduced from 19 to 17; total parking bays @ 3.2m wide increased from 85 to 99; total parking bays @ 2.6m wide reduced from 136 to 131'*

Upon consideration of the revised parking layout and justification for the variation to SEPP requirements, Council's Traffic Engineer and Development Engineer have no objections to the development, subject to conditions.

The applicant has requested that **Condition 9** be modified (shown in bold) to reflect the amended car parking provisions, suggesting the following wording:

9. The developer shall provide a total of **257** parking spaces including parking for the disabled in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code. ~~This includes the provision of 10 on-street parking spaces.~~

Full design detail of the proposed parking and manoeuvring areas (including integrated landscaping) shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate. Landscaping within the parking and manoeuvring areas shall be in accordance with any Council approved landscaping plan.

Council's Development Engineer has no objection to Condition 9 being modified to nominate 257 parking spaces, but wants the reference to on-street parking spaces to remain. It should be noted that the on-street parking spaces has increased from 10 spaces to 14, which is considered to be acceptable. The following modification to **Condition 9** (modifications shown in bold) is recommended:

9. The developer shall provide a total of **257** parking spaces including parking for the disabled in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code. This includes the provision of **14** on-street parking spaces.

Full design detail of the proposed parking and manoeuvring areas (including integrated landscaping) shall be submitted to and approved by the Principal Certifying Authority



prior to the issue of a construction certificate. Landscaping within the parking and manoeuvring areas shall be in accordance with any Council approved landscaping plan.

Although not identified by the applicant, Council's Development Engineer has recommended a modification to **Condition 21(d)** (as shown in bold) as a result of the revised car parking design:

21. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include engineering plans and specifications for the following required works: -
  - (a) Vehicular access to Pearl Street
  - (b) Construction of vehicular access to Kingscliff Street, within the existing (unnamed) road reserve.
  - (c) The above-mentioned access to Kingscliff Street is to have a minor realignment to ensure the driveway is perpendicular to the kerb line.
  - (d) The construction of **14** on-street parking spaces within the existing road reserve.
  - (e) Construction of a 1.2m wide concrete footpath within the existing road reserve, to link with the existing path in Kingscliff Street.
  - (f) Provision of suitable identifying marks or signage to delineate the actual end of the public road area.

The above mentioned engineering plan submission must include copies of compliance certificates relied upon and details relevant to but not limited to the following: -

- Road works/furnishings
- Stormwater drainage
- Water and sewerage works
- Sediment and erosion control plans
- Location of all services/conduits
- Traffic control plan

The applicant has also requested the deletion of **Condition 58**, as they believe it duplicates Condition 9. Condition 9 requires detail design of the proposed car parking prior to the issue of a Construction Certificate, where as Condition 58 applies to the "During Construction" component of the development and it also references signage requirements. Council's Development Engineer does not support the deletion of Condition 58, but recommends the following modification (shown in bold):

58. The provision of **257** 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.

***All visitor and staff spaces within the subject site are to be marked and maintained as such.***

### Likely Impacts

#### Revised Plans & Staging

The applicant has requested a modification to **Condition 1** to reflect the revised plans of the development. There are no objections to this request and Condition 1 has been revised accordingly.

The proposed modifications maintain four (4) stages for the development. The applicant has requested a modification to **Condition 7** (as shown in bold). There are no objections to this proposed modification:

7. Staging of the development (Stages 1-4) shall be in accordance with the approved **Construction Sequencing Plan Reference No. A-DA-18-01 Rev B, 21/05/10**.

The change to the yield and unit type in each stage triggers a modification to the development contributions. The applicant has requested a modification to **Conditions 10 and 12** to reflect the changes. An assessment of the revised staging has been undertaken and the development contributions conditions have been replaced with the updated figures.

#### Acid Sulfate Soils

The original application was supported by an Acid Sulfate Soils Investigation Report (Border Tech, 7 November 2008), which addressed potential impacts arising from the disturbance of acid sulfate soils. The applicant has noted that the revised proposal decreases the basement car park excavation by approximately 500m<sup>2</sup> and it follows that that there will be no additional impact resulting from the modified proposal.

Council's Environmental Health Unit has assessed the proposed modification with regard to acid sulfate soils, noting the following:

*'The modified submission indicates that the basement excavation is decreased by about 500m<sup>2</sup> and the depth of excavation remains unchanged. This issue is adequately dealt with by existing condition 116. No further action required'*.

#### Dewatering

The applicant has submitted an addendum to the Dewatering Management Plan for the proposed development. In addition to the decreased area of basement carpark excavation, the addendum notes that the perimeter of the excavation also decreases from approximately 700m to approximately 570m, which results in a reduced discharge.

Council's Environment & Health Unit has assessed the addendum to the approved management plan with no objection, noting that...*'the dewatering requirements to facilitate the development remain largely unchanged. The existing conditions are deemed adequate'*.

In addition, Council's Specialist Planner / Ecologist assessed the proposal in this regard, providing the following comment:

*'Although the proposal involves an intensification of use of the site by adding an additional 25 units and some additional carparking, the development footprint has not increased in the main area of interest for frog habitat. The proposal will result in a reduction (of some 500m<sup>2</sup>) in the excavated area required for basement carparking. The perimeter of the excavation will also decrease under the revised proposal, from approximately 700m to approximately 570m. Coupled with the reduced excavation requirements is a reduction in the dewatering needed to complete excavations, hence reduced discharge and drawdown will result, meaning the zone of influence will not extend outside the site southern boundaries (where any impact on wetlands might be problematic)'.*

The proposal was also forwarded to the NSW Office of Water within the Department of Environment, Climate Change and Water (DECCW) for consideration. The Office of Water's comments have been noted later in this report.

### Contamination

The applicant has submitted an addendum to the Preliminary Contaminated Land Assessment for the proposed development. The addendum notes that although the basement excavation will decrease, recommendations 6 and 7 in section 12 of the HMC report remain generally unchanged.

Council's Environment & Health Unit has assessed the addendum to the approved management plan with no objection, noting that...*'with respect to site disturbances and filling of the site, the development remains largely unchanged. The existing assessment and conditions of consent are deemed satisfactory'*.

### Noise

The applicant provided a modified Environmental Noise Impact Assessment (incorporating consideration with regards to: construction noise; vehicle noise; and operational noise impacts for both on and off site). In summary, the revised report concludes that the amended design does not alter acoustic impacts significantly.

The applicant has requested that **Condition 130** be modified (shown in bold) to reflect the amended report, suggesting the following wording:

130. Construction and operation of the development shall comply with the Environmental Noise Impact **Report prepared by CRG Pty Ltd, dated 10 May 2010**, including Section 6, to the satisfaction of the General Manager or his delegate.

Prior to the issue of an occupation certificate for any stage of the development a report shall be provided to Council from a suitably qualified person which confirms that the recommendations made in that report have been satisfactorily complied with.

Council's Environment & Health Unit has provided the following comments:

*'The document has been reviewed and found to be satisfactory (minor amendments provided). The various existing conditions of consent related to noise limitations are noted.*

*No objection is raised to the proposed amendment to the existing condition 130 (refer pg14 of the submission) which is basically an upgrade of the reference to the most current Noise Impact Report'.*

### Stormwater Management

The applicant has submitted a revised Stormwater Management Plan addressing the potential impacts of the modified proposal. Council's Development Engineer has provided the following comment with regard to the proposed modifications:

*'No significant change to the previous stormwater management concept – all stormwater will drain to the southern corner to discharge to an upgraded stormwater system that the developer will contribute to. No attenuation or retention of stormwater from the site will be required.*

*No new details provided, but a revised Stormwater Management Plan by Hyder (dated 12 march 2010), reiterates the above information.*

*Upon re-checking the existing consent conditions though, it is desirable to 'enhance' an existing condition regarding the relocation and upgrading of the existing Council stormwater lines that currently traverse and encumber the site. The provision of an overland flowpath is considered essential for any Council stormwater infrastructure coming off the public road system, as a fail-safe trunk drainage design requirement. This may well be a design requirement, but it should be reinforced via consent*

*conditions, to avoid any subsequent 'alternative' argument regarding Q100 pipes or factors of safety'.*

The abovementioned enhancement of a condition refers to **Condition 41**, which is to be modified (shown in bold) as follows:

41. The relocation of public stormwater infrastructure through the site requires separate TSC approval of a Section 68 Local Government Act Stormwater Application, prior to the issue of a Construction Certificate. For the design of public stormwater systems, a safety factor of 2 shall be applied to design rainfall intensities, with a 500mm freeboard to be provided before overtopping can occur. Provision of this factor of safety and freeboard shall be clearly detailed in the s68 Stormwater Application.

***Any Council stormwater infrastructure traversing the site should make provision for a relief overland flowpath through the site, as a fail-safe alternative measure.***

In terms of stormwater, Council's Environmental Health Unit has also noted the following:

*'Having regard for the sediment fencing and temporary bunding plans provided under Appendix N to Annexure 7, it is proposed to apply the following condition:*

*Where any treatment/processing area or bunding is required to be placed in association with site dewatering or acid sulfate treatment, the location and construction of that area shall be approved on site by Council's Environmental Health Officer prior to the commencement of any treatment or discharge activities'.*

The recommended additional condition has been applied as new DUR **Condition 116.2**.

### Sewer

The applicant provided a revised Services Report, which addresses the potential impacts of the modified proposal in terms of sewer, water supply and access. Based on this documentation, Council's Water & Sewer Engineer provided the following comment:

*'I advise that the changes do not appear to make any significant difference to the water and sewer aspects of the development, other than resulting in an increase in s64 charges due to the increase in number of units.*

*The sewer relocation appears to still be possible and provide the 4m easement that we require.*

*The details of the relocation proposed are not necessarily the final design as there is some potential to shorten the relocation and hence improve the grade.*

*Condition 127 relates to receiving a "satisfactory inspection report". Water Unit would prefer this to be "Certificate of Practical Completion" as this is issued by the manager and will require submission of works as executed drawings and details and a post construction video. In the past we have had difficulty obtaining these once the development is completed and we have had to chase it up or go and get the details our selves'.*

**Condition 127** has been suitably modified, as noted below (changes shown in bold). S64 Water and Sewer development contributions (Condition 12) have also been amended to reflect the proposed increased to unit numbers.

127. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the **"Certificate of Practical Completion"** issued by Council for all works covered by the Sec.68 approval for sewer relocation works.

### Waste Collection

The applicant has provided an amended Waste Management Plan (WMP) for the proposal, (which includes the additional 25 units). The WMP incorporates works involved with the demolition of existing structures, construction and operation of the proposed development. Also provided were details of the location, size and collection of the waste bins.

The applicant has requested that **Condition 115** be modified (shown in bold) to reflect the amended report, suggesting the following wording:

115. All works associated with the demolition, construction and use of the proposed development are to be in accordance with the Waste Management Plan **prepared by HMC Pty Ltd, dated May 2010** and HMC's detailed plan of the Waste Storage Area (submitted on 22 June 2009), unless approved otherwise by Council's General Manager or his delegate.

Council Waste Management Unit has provided the following comments:

*'I have looked at the Waste Management Plan for the abovementioned development application and consider it to be satisfactory.*

*Waste generated from the additional rooms proposed under the proposed DA can be satisfactorily managed through increased servicing of the existing waste/recycling bins.*

*It is noted that the property is rated commercial and does not have to use Council as the waste service contractor (residential properties required to use Council).*

*Should the development be approved, I recommend that the following conditions be included:*

- *Waste management shall be carried out in accordance with the approved Waste Management Plan prepared by HMC Pty Ltd, dated May 2010, reference number 2010.029.*

*[Reason: To ensure suitable management of waste]*

- *Servicing and storage of the waste/recycling bins shall be carried out so as not to cause a nuisance to occupants of adjoining properties and/or residents of the aged care facility.*

*[Reason: To ensure noise and odour issues are not created by servicing or storage of waste].*

The first condition recommended by the Water Management Unit is adequately addressed by the applicant's proposed modification of Condition 115. The second condition results in a new USE **Condition 156** being applied.

### Bushfire

The applicant has provided an addendum to the Bushfire Threat Assessment Report for the proposed development. The addendum notes that the proposed building envelope is not closer to the hazard than the proposal that was subject to the original bushfire threat assessment report and concludes that no changes are required to the recommendations of the original bushfire threat assessment report.

The proposal was also forwarded to the NSW Rural Fire Service (RFS) for consideration. The RFS comments have been noted later in this report.

### BASIX Certification

The applicant provided an amended BASIX Certification and has requested that **Condition 73** be modified (shown in bold) to reflect the amended certificate as follows:

73. The development is to be carried out in accordance with the ***BASIX certificate dated 21 April 2010 and the Schedule of Commitments approved in relation to this modified*** development consent.

The proposed modification of Condition 73 is supported.

#### Flora and Fauna

The applicant has provided an addendum to the original Ecological Assessment, which concludes that with adherence to the construction phase mitigation measures and the collection of stormwater by the upgraded Council Stormwater System, it is considered that there will be no adverse impacts, of the proposed development, on any ecological value outlined in the original report, including the threatened Wallum Froglet on the neighbouring property.

Council's Specialist Planner / Ecologist has made the following comments in this regard:

*'The main concern remaining from initial consideration of the proposed amendment was that resulting from an engineering condition applied to the original consent which required **all** stormwater to be directed to a legal point of discharge in the southwest corner (known as Blue Jay Crescent inlet), raising uncertainty over what impact the changed water regime may have on the threatened frog populations to the south. This aspect has been satisfactorily explained within a recently submitted Council application for the stormwater drainage augmentation submitted by Council's Design Unit.*

*In light of this information, no ecological issues remain and the amendment can be supported. I have also copied my previous conditions applied to the original application. No amendment to these conditions has been requested and no change is considered necessary as addendums to the named reports have not resulted in any substantial change to their original recommendations such that would require reference to them within the conditions'.*

#### Site Suitability

As noted above, the subject site is located within a well established residential area of Kingscliff. The proposed modifications are generally compliant with all relevant policies applicable to such a development. This includes the SEPP (Housing for Seniors and People with a Disability) 2004, the Tweed LEP 2000 and Development Control Plan. As such, the proposed development is considered suitable for the subject site, subject to conditions of consent.

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

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

- "(a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:*
  - (i) the regulations, if the regulations so require and*

(d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations.”*

### **Likely Environmental Impact**

An extensive assessment has been undertaken with regard to the proposed modifications to the approved aged care development, as noted in the 79C assessment above.

In conclusion, the proposed amendments are not considered to result in any significant environmental impact, subject to appropriate conditions of consent.

### **Substantially the Same Development**

The applicant has referenced Land and Environment Court decisions with regard to the threshold requirement that the development to which the consent as modified relates is substantially the same development for which consent was originally granted.

The following key principles have been applied:

- *The comparison is undertaken at a general level rather than between detail;*
- *The question is whether the development as a whole is essentially or materially the same development;*
- *If the impacts of the modifications are minor, the modified development is more likely to be essentially or materially the same development; and*
- *It is relevant to consider the magnitude of any physical changes to the development and any changes to the use of the land.*

The applicant provided the following comparative analysis between the currently approved development and the proposed modified development:

<b>TABLE 1 – COMPARATIVE ANALYSIS</b>		
<b>ELEMENT</b>	<b>DEVELOPMENT CONSENT NO. 08/1225</b>	<b>PROPOSED MODIFICATIONS</b>
Units	200	225
Bedrooms	429	450
Configuration	3 storey over basement	3 storey over basement
Basement Footprint	See Annexure 2	See Annexure 4 the basement footprint is reduced
Building Footprint	See Annexure 2	See Annexure 4 the building footprint involves minor changes only
Car Parking	456	457
Staging	4 Stages	4 Stages
Use	Aged Persons	Aged Persons
Entry/Exit	No Change	No Change
Building Height	No Change	No Change
Side Setbacks	West – See Annexure 2	West – See Annexure 4 – minor changes only

**TABLE 1 – COMPARATIVE ANALYSIS**

<b>ELEMENT</b>	<b>DEVELOPMENT CONSENT NO. 08/1225</b>	<b>PROPOSED MODIFICATIONS</b>
	East – See Annexure 2	East – See Annexure 4 – minor changes only
	South – See Annexure 2	South – See Annexure 4 – minor changes only
	North – See Annexure 2	North – See Annexure 4 – minor changes only

In summary, the applicant submits that the threshold question is satisfied on the basis that :

- *‘The development as a whole, being for an aged care facility, will remain unchanged.*
- *The proposed modifications will not alter the statutory or policy compliance of the proposal, create any other material difference and do not give rise to any significant environmental impacts.*
- *The siting, bulk and scale of the buildings essentially remain the same.*
- *The impacts of the modifications are minor.*
- *The increase in the number of units by 25 (12.5%) and the number of bedrooms by 21 (4.9%) does not amount to a radical transformation and the modified development will have essentially and materially the same essence. That is to say, the building bulk, scale and footprint will be essentially the same as will be the use and access arrangements’.*

The submission put forward by the applicant with regard to the proposed modifications being substantially the same development as that originally approved is concurred with. The proposed modifications are considered to satisfy the key principles for determining the threshold requirements in this regard.

### **Consideration of Submissions**

The application was placed on exhibition for 14 days. During this time, one (1) written submission was received from the Kingscliff Ratepayers & Progress Association, in support of the proposal.

#### NSW Office of Water

The proposed modifications required referral to DWE (now known as the NSW Office of Water, within the Department of Environment, Climate Change and Water (DECCW)) with regard to dewatering licensing. The following is an extract from the Office of Water’s correspondence:

*‘Please be advised that the Department has reviewed the documentation provided and has determined that the proposal would still fall into the category of “low risk” due to the limited time frame (one month) and volume of dewatering (7.8 megalitres) involved.*

*Consistent with advice provided by way of letter dated 19.01.09, please include the schedule of conditions in any development consent granted. Note, these conditions are not General Terms of Approval as the Department does not require licensing of the dewatering as proposed.*



*It is again requested that the applicant's attention should also be drawn to the fact that the act of dewatering has the potential to lower the water table beneath adjacent properties which, under some circumstances, may result in subsidence of material causing adverse impacts on the above ground structures. It is the applicant's responsibility to ensure that all appropriate action is taken to avoid this occurring'.*

Essentially, the only modification to the Schedule of Conditions applied to the original approval was the reference to HMC's Addendum report. However to avoid any confusion, all of the Department's original conditions have been replaced with the updated set of conditions.

#### NSW Rural Fire Services

The proposed modifications required referral to the NSW Rural Fire Services with regard to bushfire provisions for this type of development. The RFS has issued a revised bush fire safety authority under section 100B of the Rural Fires Act 1997, subject to conditions of consent relating to: asset protection zones; water & utilities; access; evacuation & emergency management; design & construction; and landscaping. The revised authority essentially makes reference to additional Appendices of *Planning for Bushfire Protection 2006*. The design and construction conditions have also been revised.

For simplicity, the original RFS conditions have been replaced with the revised conditions as noted in the recommended conditions of consent.

#### **Public interest**

The provision of a retirement village within the local community is an important need, which upon completion will contain 225 self contained units. The proposed development is considered to be of a high standard and would cater for a need within the community.

The subject land has been identified for medium density residential purposes under the Tweed Local Environmental Plan 2000. The proposed development is a permissible use within the zone and has been designed in accordance with the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

In summary, the proposal is not considered to be in conflict with the general public interest.

#### **OPTIONS:**

1. Approve the proposed modifications, subject to the recommended conditions of consent.
2. Refuse the proposed modifications.

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

Should the applicant be unsatisfied with Council's determination an appeal may be lodged with the NSW Land & Environment Court.

#### **POLICY IMPLICATIONS:**

The proposed development has been entirely assessed on its merits and for that reason the development does not generate a policy implication for Council.

**CONCLUSION:**

The proposed modifications comply with the requirements of SEPP (Housing for Seniors or People with a Disability) 2004 and meets Council's requirements.

The proposed development is considered to be suitable for the site and has been designed with regard to the need for the future residents within the development as well as the surrounding environment. The recommended conditions of consent will enable management of the site during the construction phase and through to the operation of the facility.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**9 [PR-CM] Notice of Appeal of a Joint Regional Planning Panel (JRPP) Development Application DA09/0727 for Additions to Existing Manufactured Home Estate (Noble Lakeside Park) including 45 New Manufactured Home Sites, Construction of a Community Hall and F**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA09/0727 Pt3**

**SUMMARY OF REPORT:**

At its meeting on 20 August 2010, the Joint Regional Planning Panel refused Development Application DA09/0727 including 45 new manufactured home sites construction of a community hall and facilities and extension of internal roads (JRPP) at Lot 193 DP 1014329, No. 34 Monarch Drive, Kingscliff.

Council has been served notice of a Class 1 Appeal against the Joint Regional Planning Panels determination in the NSW Land and Environment Court. A telephone direction's hearing has been set down for 22 November 2010.

The Legal Services Branch of the Department of Planning have provided the following advice:

*"In the Department's view, the usual course for appeals against Panel determinations is that the Council has responsibility for these appeals (including financial responsibility). However, we note that this appeal has been brought in the circumstances where the Council officer's recommendation was wholly not adopted by the Panel. (The Council recommendation for approval of the proposal subject to deferred commencement and other conditions, and the Panel refused the proposal subject to the reasons for refusal as detailed in minutes of the Panel's 20 August 2010 meeting).*

*In these limited circumstances, the Department's position is that the Panel ought to appear in the proceedings under s64 of the LEC Act to defend its determination. The Council will still be a necessary party to the proceedings to provide assistance to the Court in relation to such matters as conditions, etc. To the extent that the Council is required to participate in the proceedings, it will be entirely responsible for its own legal costs of the appeal."*

From the above advice and further contact by email, it appears that the Department will co-ordinate legal defence on behalf of the JRPP, and Council is expected to have a lesser role, primarily to provide directions on any proposed conditions of development consent. The full extent of Council's role in this matter has yet to be clarified. It is expected that these details will be clarified at the upcoming telephone directions hearing.

The purpose of this report is to establish Council's position on defending the Appeal to enable engagement of solicitors and consultants where needed.

**RECOMMENDATION:**

**That Council in respect of the Joint Regional Planning Panel's decision to refuse Development Application DA09/0727 including 45 new manufactured home sites construction of a community hall and facilities and extension of internal roads (JRPP application) at Lot 193 DP 1014329, No. 34 Monarch Drive, Kingscliff:**

- 1. Engages its solicitors to provide assistance to the Court only in a limited capacity in relation to such matters as conditions of consent; and**
- 2. Pursues the Department of Planning for associated legal costs incurred by Council.**

## REPORT:

Council received a development application for an extension to an existing manufactured homes estate on Lot 193 DP1014329 at 39 Monarch Drive, Kingscliff.

The extension allowed for 45 new manufactured homes on the northern side of the existing on-site lake. The proposal included construction of a new community facilities building as well as an internal road and additional car parking.

The main issues raised during the assessment of the application include the following:

- Legal uncertainties in terms of existing use rights, canal estate development and applicable provisions;
- Flooding and drainage impacts;
- Geotechnical and landforming issues, particularly with proposed fill;
- Ecological issues and impact on potential on-site Endangered Ecological Communities (EEC);
- Impacts on amenity due to loss of open space, and
- Issues associated with land use conflict and noise.

The development application was notified and advertised for a period of 30 days from 25 November 2009 to 29 December 2009. The advertising period was extended until 14 January 2010. A total of approximately 50 submissions were received. This includes two petitions, one with approximately 92 signatures and another with approximately 84 signatures.

Council officers assessed the proposal and considered that the applicant satisfactorily addressed most of the matters of concern, except for insufficient information in relation to drainage and on-site EEC. In this regard, deferred commencement conditions were recommended to ensure that off-site compensatory habitat is nominated and Council drainage works are undertaken prior to commencement of the consent.

The Joint Regional Planning Panel (JRPP) was the consent authority for the proposal due to value of works. Despite the Council officer recommendation for deferred commencement, the JRPP resolved to refuse the application based on the following grounds.

1. *In accordance with Section 79(c) (1)(b) of the Environmental Planning and Assessment Act 1979 the proposed development is considered to have a detrimental impact on the natural and built environment and detrimental social and economic impacts in the locality as the development will result in:*
  - *Loss of visual amenity for existing residents in the development because of loss of vegetation and change of view to urban environment;*
  - *Loss of amenity for existing residents due to loss of access to the nature walk;*
  - *Loss of amenity for existing residents due to increased noise from the proposed residences affecting the open space on the southern side of the lake;*

- *Loss of visual amenity to adjoining properties due to the impact of the proposed fill, retaining walls and noise attenuation fencing;*
  - *The proposed community building will have a setback of only 20m to Tweed Coast Road and is therefore out of keeping with adjoining properties and other developments;*
  - *The impact of retaining walls. Council's design specifications specify that the maximum height of retaining walls & batters is 2.4m. The application is not in accordance with Council's specifications due to the excessive fill and height of retaining walls;*
  - *There is insufficient information to demonstrate that the development will not have a negative impact on flooding affecting neighbouring properties; and*
  - *The noise level impact assessment indicates noise from the adjacent trotting track will exceed background noise levels by 10dBa.*
2. *Pursuant to Section 79C(1)(C) of the Environmental Planning and Assessment Act 1979 the site is not considered suitable for the proposed development for the following reasons:*
- *The proposed development will have a negative impact on the natural environment as the site is of ecological significance as part of a regional wildlife corridor and in providing habitat for wading birds and other wetland species, a number of which are listed as threatened on the Schedules of the Threatened Species Conservation Act 1995 and all existing vegetation is proposed to be removed.*
  - *A geotechnical report addressing the potential impacts of the development has not been provided. It is uncertain if the site is suitable for the development.*
  - *The design of the internal road as a combined road and walkway will adversely affect the safety and amenity of all residents.*
  - *The development requires excessive fill and alteration to the natural landform and the proposed cantilevered buildings overshadowing the lake which demonstrates that the proposal is an overdevelopment of the site.*

Council has been served notice of a Class 1 Appeal against the Joint Regional Planning Panels determination in the NSW Land and Environment Court. A telephone direction's hearing has been set down for 22 November 2010.

The Legal Services Branch of the Department of Planning have provided the following advice:

*"In the Department's view, the usual course for appeals against Panel determinations is that the Council has responsibility for these appeals (including financial responsibility). However, we note that this appeal has been brought in the circumstances where the Council officer's recommendation was wholly not adopted by the Panel. (The Council recommendation for approval of the proposal subject to deferred commencement and other conditions, and the Panel refused the proposal subject to the reasons for refusal as detailed in minutes of the Panel's 20 August 2010 meeting).*

*In these limited circumstances, the Department's position is that the Panel ought to appear in the proceedings under s64 of the LEC Act to defend its determination. The*

*Council will still be a necessary party to the proceedings to provide assistance to the Court in relation to such matters as conditions, etc. To the extent that the Council is required to participate in the proceedings, it will be entirely responsible for its own legal costs of the appeal."*

From the above advice and further contact by email, it appears that the Department will co-ordinate legal defence on behalf of the JRPP, and Council is expected to have a lesser role, primarily to provide directions on any proposed conditions of development consent. The full extent of Council's role in this matter has yet to be clarified. It is expected that these details will be clarified at the upcoming telephone directions hearing.

The purpose of this report is to establish Council's position on defending the Appeal to enable engagement of solicitors and consultants where needed.

**OPTIONS:**

1. Defend the Appeal, through the engagement of consultants to be expert witnesses on behalf of Council.
2. Engages solicitors to assist the Court only with the preparation of conditions of development consent.
3. Refuse to take part in the Land and Environment Court proceedings.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Council will be required to engage legal representation regarding the Appeal.

As Council staff recommended approval for the application it will also be necessary to engage consultants to be expert witnesses on behalf of Council if it is resolved to defend the Appeal.

Costs will be incurred as a result of the Appeal.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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Nil.

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**10 [PR-CM] Development Control Policy**

**ORIGIN:**

**Development Assessment**

**SUMMARY OF REPORT:**

The Development Control Policy adopted by Council on 13 November 2007 (see attachment) has become redundant and is recommended to be rescinded. The Policy is a collection of nine items related to development assessment and planning. It is likely that the policies originated up to six years ago and have now become redundant due to changes in legislation, procedure and standard practice.

**RECOMMENDATION:**

**That the Policy Document Development Control Version 1.1 adopted by Council on 13 November 2007 be rescinded.**

**REPORT:**

**BACKGROUND:**

The Development Control policy document sets out requirements for the following items:

- Development Application – Late Provision of Information
- Development Application Fees- Council Works
- Directional Signage for New Residential Estates
- Headworks Policy
- Hydraulic Filling of Land
- Road Development Contribution- Multiple Occupancy Development
- Rezoning submissions- Administrative Procedure
- Strategic Planning- Illegal Actions within Environmental Protection Zones
- Application Determination Policy

**Reasons for redundancy**

**Development Application- Late Provision of Information**

The staff deadline for finalisation of reports is 13 days prior to the Council meeting date. The agenda is finalised eight days prior to the Council meeting date. Given the rigorous assessment that applications undergo prior to finalisation for the agenda it is unlikely that further information will be required at that stage in the process. Withdrawing applications from the agenda on the basis that information has been tendered by the applicant is not appropriate or efficient. The Environmental Planning and Assessment Act Regulations sets out the following procedure for amending or varying a development application:

- (1) *A development application may be amended or varied by the applicant (but only with the agreement of the consent authority) at any time before the application is determined.*
- (2) *If an amendment or variation results in a change to the proposed development, the application to amend or vary the development application must have annexed to it written particulars sufficient to indicate the nature of the changed development.*
- (3) *If the development application is for:*
  - (a) *development for which concurrence is required, as referred to in section 79B of the Act, or*

(b) *integrated development,*

*the consent authority must immediately forward a copy of the amended or varied application to the concurrence authority or approval body.*

There may be circumstances where it is or is not appropriate to withdraw applications from the agenda. Having a Policy that says the application will be withdrawn from the agenda whenever the applicant tenders late information is not conducive to efficient decision making.

The Environmental Planning and Assessment Act has mechanisms to deal with dissatisfaction of applicants regarding decisions from the consent authority such as section 96 amendments, section 82A Reviews or appeals to the NSW Land and Environment Court.

### **Development Application Fees -Council Works**

The policy does not cover Part 5 applications, construction certificates or other ancillary fees such as advertising. Whilst there should be some policy position it would be better suited to an internal Executive Direction and carried out as a standard operating procedure that was more easily reviewable and adapted to changing circumstances.

### **Directional Signage for New Residential Estates**

Use of road reserves for commercial real estate purposes is not an appropriate use of public land. Driver safety is also at risk with additional signage in the road reserve. There is no justifiable reason for this policy.

### **Headworks Policies**

Parts of this Policy will be retained in a separate Water and Sewerage Policy however the deferment of headworks charges is recommended to be rescinded given it is not clear when deferment should be applied, the additional administration costs incurred by Council, the charges have to be underwritten by a Bank Guarantee anyway and the difficulties of tracking and monitoring of fee payment at diffuse points in the process.

Requiring payment at subdivision certificate release or construction certificate release is the most efficient and reliable process for collection of contributions.

### **Hydraulic Filling of Land**

The details of this policy would be included in the application for filling and covered by conditions of consent. A stand alone policy for this rare activity is superfluous.

### **Road Development Contribution- Multiple Occupancy Development**

It is not appropriate to for Council to defer contributions for five years nor is it appropriate to secure contributions via a mortgage over the property. The S.94 plan for roads contains requirements for deferred payments and this is the only place that permits lawful payments and conditions for contributions.

## **Rezoning submissions- Administrative Procedure**

Part 3 of the NSW Environmental Planning and Assessment Act 1979 as amended sets out the process for rezonings in NSW. The Planning Reforms Unit has developed a procedural framework in line with the recent Department of Planning requirements such as the gateway process. The policy is superfluous to the current procedures.

## **Strategic Planning- Illegal Actions within Environmental Protection zones**

As above.

## **Application Determination Policy**

The process for lodgement, assessment and determination of a development application is set out in the NSW Environmental Planning and assessment Act and Regulation. The Policy is superfluous to the statutory requirements. In addition changes to the Regulations are proposed that will render the Policy out of date.

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

Nil.

## **POLICY IMPLICATIONS:**

The Policy document has become redundant and the items have been superseded by legislation or improved internal administration and practices. Elements of the Policy that should be retained are contained in other more appropriate procedural documents.

## **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. Development Control Policy Version 1.1 (ECM 23601811)
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**11 [PR-CM] Visitor Carparking at Lot 1 DP 525502 No. 4 Second Avenue, Tweed Heads**

**ORIGIN:**

**Development Assessment**

**FILE NO: PF4980/130 Pt2**

**SUMMARY OF REPORT:**

Council considered a report on 17 August 2010 regarding visitor carparking at Lot 1 DP 525502, No. 4 Second Avenue, Tweed Heads. The visitor carparking location for the units has been altered and complaints were received from some of the occupants of the units requesting Council take action for non compliance with the approvals for the site.

**RECOMMENDATION:**

**That Council seeks advice from its Solicitors regarding options for appropriate action for the car parking issue at Lot 1 DP 525502 No. 4 Second Avenue, Tweed Heads (SP35133).**

**REPORT:**

Council considered a report on 17 August 2010 regarding visitor carparking at Lot 1DP 525502, No. 4 Second Avenue, Tweed Heads. The visitor carparking location for the units has been altered and complaints were received from some of the occupants of the units requesting Council take action for non compliance with the approvals for the site.

Council resolved as follows:

***“RESOLVED*** that Council endorses the following actions in respect of Strata Plan 35133, Lot 1 DP 525502, No. 4 Second Avenue, Tweed Heads:

- 1. The owners of Strata Plan 35133 be advised that a Section 96 amended application is required to be submitted to Council for consideration of an alternate visitor parking arrangement or the visitor space is to be returned to the approved location parallel to Unit 2A; and*
- 2. The owners of Strata Plan 35133 be advised if neither of the above options is undertaken within sixty days of notification Council will consider legal action against the body corporate for non-compliance with Development Consent 88/212 and Building Permit 1024/88.”*

The following response has been received from the strata managers on behalf of the owners:

*“With reference to the above letter dated 20 August 2010, the Owners Corporation have resolved that we forward the following response:*

*The Owners Corporation cannot come to an agreement with regards to the requirements stated in the letter.*

*At the Extraordinary General Meeting held 10 September 2010 the following motion was lost:*

- 2. THAT by ordinary resolution the owners corporation instructs the secretary to notify Council that the configuration of the common area will be returned to that shown on the approved plan as soon as possible but in any case, not later than 22 October 2010 in accordance with the requirements of Council’s letter of 20 August 2010.”*

***MOTION LOST Lots 1, 2 & 5 NO Lots 3 & 4 YES”***

The body corporate has not agreed to comply with Council’s request accordingly it is recommended that legal advice be sought regarding the options available for Council action.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Costs will be incurred for legal advice.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

Legal advice is required to provide options for further Council action.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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1. 17 August 2010 Council report and resolution (ECM 23643382)
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**12 [PR-CM] Vegetation Removal Complaints**

**ORIGIN:**

**Development Assessment**

**SUMMARY OF REPORT:**

Council resolved on 21 September 2010 that:

*“Council brings forward a report to consider adopting a reward system, similar to the reward for graffiti reports, for community members that report tree clearing incidents, where such a report results in a fine or prosecution.”*

The issue with vegetation removal is not the lack of vigilance by the community in alerting Council to possible breaches but the complexity of the legislation that relates to Native Vegetation, the roles that Council and the Department of Environment, Climate Change and Water (DECCW) have in administering the applicable legislation and the resource intensive nature of investigative and regulatory action.

**RECOMMENDATION:**

**That Council does not support the proposal to reward community members who advise Council of vegetation removal that results in a prosecution.**

**REPORT:**

Council does not administer the Native Vegetation Act or the Threatened Species Conservation Act. DECCW are the responsible authority for these two Acts. Council's role rests with the environmental planning instruments that apply to the Tweed being firstly the Local Environmental Plan that contains controls for vegetation in environmental protection zones and provisions for tree preservation orders and secondly State Environmental Planning Policies No.14 Coastal Wetlands and No. 26 Littoral Rainforests.

Another mechanism under the NSW Environmental Planning and Assessment Act that Council has jurisdiction over is existing and continuing use rights. These rights are statutory provisions that can influence the legality of vegetation removal.

The exemptions (Routine Agricultural Management Activities) under the Native Vegetation Act are broad and seem to be interpreted widely by DECCW.

In light of the above the following procedure for responding to unauthorised vegetation removal complaints is in operation:

- *Person receiving call will first check whether any approvals exist in Proclaim for the site that may allow vegetation clearing or whether a Camphor management plan is registered in ECM.*
- *If the site is within the area covered by either of Council's Tree Preservation Order (TPO) areas the DAU Compliance Officer (DAUCO) will inspect the site and advise the person responsible to stop work if that person can be located alternatively contact will be made with the owner firstly by telephone if able and then in writing to stop work. Assistance from the DAU Town Planner – Ecologist (DAUTPE) may be sought by the DAUCO regarding biodiversity issues.*
- *If the site is within an environmental protection zone (including SEPP 14 and SEPP26) the DAUCO will inspect the site and advise the person responsible to stop work if that person can be located alternatively contact will be made with the owner firstly by telephone if able and then in writing to stop work. Assistance from the DAU Town Planner – Ecologist (DAUTPE) may be sought by the DAUCO regarding biodiversity issues*
- *If the site is not within the area covered by Council's TPO or an Environmental Protection zone the DAUCO will inspect the site to determine if the work carried out requires development consent eg. earthworks, roads, drainage, existing use rights. If native vegetation has been removed the DAUCO will advise the Department of Environment, Climate Change and Water's (DECCW) hotline for action under the Native Vegetation Act or the Threatened Species Conservation Act.*
- *If the vegetation removal is for camphor laurel removal for the Condong Sugar Mill and the number of trees exceeds twenty the person responsible will be advised to stop work and submit a development application for works or be requested to produce a management plan approved by North Coast Weeds.*

- *Unauthorised clearing on Coastal Lot 500 will be carried out in accordance with the Executive Management Team decision of 21 November 2007 which is as follows-*

***Management of unauthorised clearing on Coastal Lot 500 be carried out in the following manner:***

1. *Natural Resource Management Unit as vegetation managers:*
  - (a) *Monitor Lot 500 for unauthorised clearing and follow up any reported incidents*
  - (b) *Liaise with Council's Regulatory Services Unit to determine appropriate action*
2. *Director Planning and Regulation be responsible for investigating and initiating prosecutions and other legal action as may be appropriate.*
3. *Recreation Services Unit be engaged by the Natural Resource Management Unit to erect required screens or signage.*
4. *Natural Resource Management Unit to make budget submissions to enable (2) and (3) above to be actioned.*

The key issue is resourcing vegetation removal complaints not the vigilance of the community to raise complaints. Resourcing and responding to complaints is not solely the responsibility of Council as DECCW administer two key statutes that regulate vegetation.

Investigation of vegetation removal is resource intensive as the sites are usually remote, contacting owners or the person responsible for the work is mostly difficult, and untangling the applicable legislation that relates to the site and the work is highly technical and legalistic. In addition to this all of this investigation may result in Council not been the regulatory authority.

It should also be noted that Council treats complaints confidentially and does not reveal the identity of the complainant publicly. Rewarding complainants may run counter to this procedure and discourage the bringing forward of information to Council by the public. It is assumed a reward system would need to be publicly accountable and therefore accessible by the public.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

As discussed above there are significant legal, resource and financial issues regarding regulation activities including responding to vegetation removal complaints.

**POLICY IMPLICATIONS:**

Singling out rewards for vegetation removal complainants from other complainants for unauthorised or illegal activity is a preferential policy position that is difficult to clearly and broadly justify.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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Nil.

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**13 [PR-CM] Planning Reform Unit - Tweed Development Control Plan Section B23 - Hastings Point Locality Based Development Code**

**ORIGIN:**

**Planning Reforms**

**FILE NO: GT1/DCP/B23**

**SUMMARY OF REPORT:**

Preparation of the draft Tweed Development Control Plan, Section B23 - Hastings Point Locality Based Development Code began in April 2009. The draft Plan has been the subject of an extensive, staged community consultation program and has been prepared for adoption following a review of public submissions received during the draft Plan's public exhibition.

The project team for the plan comprised of the consultant Ruker Urban Design and staff from the Planning Reform Unit (PRU). Ruker was engaged in the capacity of an 'extension officer' to the PRU enabling the collaboration of ideas, skills and experiences through a co-authoring process of the draft plan; this was designed to ensure that the plan was the work of the Council as much it was Ruker, and that any copyright or intellectual property rights would ultimately vest in the Council, rather than an external party.

The issues raised through public submissions on the draft plan and an initial response from Council officers and the consultant was reported to the Council Meeting of 19 October 2010. An updated schedule of response to the public submissions is provided within the final Code document. Further detail on specific, post-exhibition amendments made to the Plan is detailed in the body of this report.

The report further highlights the response to concerns raised by the community through amendments to the draft Plan and provides a chronology of events in the production of the Plan and the community consultation processes.

Ultimately, the report and the corresponding amended draft Plan recognises the unique qualities of the locality that distinguish it to other small coastal villages in the Tweed. Distilling the characteristics and developing them in line with the expectations of the local community, landowners, and residents in a document which projects a desired future character consistent with these expectations has been the overriding objective of the placed based planning process, which was greatly assisted by local community participation by way of feedback and input.

The key post exhibition amendments which have been made to the document include:

1. Removal of residential flat building type and reduction of the maximum number of storeys from 3 to 2 for residential developments in the South Hastings Point and Centre Precincts;
2. Removal of requirement for trees in front and rear setbacks;

3. Variation of setbacks in Northern Entry and Peninsula Street Precinct (rear setback) and Creek Streets (north side front setback);
4. Revising diagrams removing reference to indicative development footprints over Lot 156 and The Point;
5. Additional resource material;
6. Removal of duplication text, predominantly reproduced from DCP A1;
7. General document revisions improving readability, maps and graphics.

The consultant for this project is supportive of the final draft Code amendments.

Based on the extent and nature of the amendments, and the extensive investigations underpinning these changes, the report concludes that a re-exhibition of the draft Plan is not warranted.

This report recommends the adoption of the draft Tweed Development Control Plan, Section B23 - Hastings Point Locality Based Development Code.

#### **RECOMMENDATION:**

##### **That Council:**

1. **Receives and notes the amendments to the publicly exhibited Draft Tweed Development Control Plan, Section B23 - Hastings Point Locality Based Development Code, arising from the review of public consultation submissions.**
2. **Adopts the exhibited Draft Tweed Development Control Plan, Section B23 - Hastings Point Locality Based Development Code, as amended, and provided as an attachment to this report, and resolves to give public notice of the Plan's adoption in accordance with Clause 21(2) of the Environmental Planning and Assessment Regulation 2000.**
3. **That a notice be placed in the Tweed Link notifying Councils intention to repeal the Hastings Point Interim Development Controls within the Tweed Development Control Plan Section A1 – Residential & Tourist Development Code. The publication of the notice of intention to take place 14 days before publication of the notice of repeal and commencement of Tweed Development Control Plan Section – B23 Hastings Point Locality Based Development Code.**
4. **Forwards a copy of the adopted Tweed Development Control Plan, Section B23 - Hastings Point Locality Based Development Code, to the Director-General of the NSW Department of Planning in accordance with Clause 25AB of the Environmental Planning and Assessment Regulation 2000.**

## REPORT:

Preparation of the draft Tweed Development Control Plan, Section B23 - Hastings Point Locality Based Development Code began in April 2009 and comprised of several public (community based) workshops, councillor workshops, general information sessions, site inspections, on-site meetings, and a statutory public exhibition. A chronology of the key dates and activities associated with and leading to this project is provided at **Attachment 3**.

The information gathered from the various consultations was collated and used to inform decisions leading to and in the preparation of the draft Plan. The project team for the plan comprised of Ruker Urban Design and staff from the Planning Reform Unit (PRU). Ruker was engaged in the capacity of an 'extension officer' to the PRU enabling the collaboration of ideas, skills and experiences through a coauthoring process of the draft plan. The intent behind the designed team collaboration was to ensure that Council staff had at its disposal the best means of ensuring that contemporary industry practice, and a diverse range of views, skills and experiences were available to draw upon beyond that of the council and the community. The appointment of Ruker was invaluable to the overall process as their role was multidisciplinary acting both in the capacity of expert urban design advisor, umpire and workshop facilitator.

The overriding vision of the locality is to reinforce Hastings Point's role as a low key holiday destination for temporary residents and visitors and a small coastal settlement for permanent residents where buildings are to reflect coastal architectural styles and the integrity of the natural landscape including Cudgera and Christies Creek, ocean beaches and headland is carefully managed.

The methodology employed throughout the locality plan process included:

- extensive community consultation including workshops, questionnaires and stakeholder meetings;
- a comprehensive mapping and constraints overlay exercise to establish a baseline level of locality information and data including environmental protection areas and flooding;
- a locality wide visual analysis to determine the defining view corridors within the locality;
- identification of four precincts within the locality derived from existing built form character coupled with precinct specific environmental constraints, topographic and geographic features criteria;
- the identification of the existing character within each of the precincts including built form and natural features;
- the establishment of vision statements and desired future character for each of the precincts;
- the formulation of precinct specific development controls which provides certainty to future development within them including appropriate building types, building heights, setbacks, floor space ratio and landscaping requirements.

The key characteristics and exhibited development controls as they relate to the four identified precincts has been discussed below. The four precincts include; Peninsula Street and the Northern Entry Precinct; Creek Street Precinct, The Centre Precinct; and South Hastings Point Precinct.

### Peninsula Street and the Northern Entry Precinct

The north hill component of this precinct has a number of existing residential flat buildings as well as a mix of single and two-storey dwellings and multi-unit dwellings. The draft plan identified this part of the precinct as being suitable for small residential flat buildings with a height limit of 10 metre (3 storeys).

The draft plan identified that future development will need to be setback from the dunes, step with the topography and screened by vegetation along the Tweed Coast Road. The exhibited plan also established a 5.0 metre rear setback of the potential 3<sup>rd</sup> storey building element to reduce the visual bulk of future development when viewed from the beach, headland, bridge and Tweed Coast Road. Houses, dual occupancies and townhouses are also appropriate forms of development within this precinct and would have an 8.0 metre building height limit.

Lots around the bridge and estuary (western side of Peninsula Street) are predominantly double storey multi-unit dwellings. Given the potential of future development to have a significant impact on views, character and natural amenity, the draft plan limited future development to houses, dual occupancies, villas and townhouses, which have an 8.0 metre building height limit.

### Creek Street Precinct (including Lot 156)

Creek Street is a low scale, single and two-storey residential precinct. The draft plan identified that future buildings must complement the low scale, well landscaped residential qualities which currently exist. Appropriate building types identified by the draft plan include houses and dual occupancies only with a maximum 8.0 metre building height.

Lot 156 has been identified as being part of the Creek Street Precinct. The draft plan identified that any future development which may occur over this site would need to reflect the low scale residential character of Creek Street. The draft plan therefore identified houses and dual occupancies, with a maximum 8.0 metre height limit, as the appropriate building types over Lot 156.

### The Centre Precinct

In the Centre Precinct the draft plan identified opportunity for shop-top housing and expansion of retail uses of the existing shop site into the immediately adjoining lots, with a maximum height limit of 10.0m.

Apart from the existing retail corner the balance of the precinct is predominantly low scale single and two storey dwellings and dual occupancies. Given the proximity to the Cudgera Creek and the high visual and environmental sensitivity of this precinct, the draft plan identified houses, dual occupancies, villas and townhouses which will have an 8.0 metre building height limit as the predominant building type. The draft plan also provided opportunity for Council to consider small residential flat buildings where key design and visual setting criteria combined with character objectives could be satisfied.

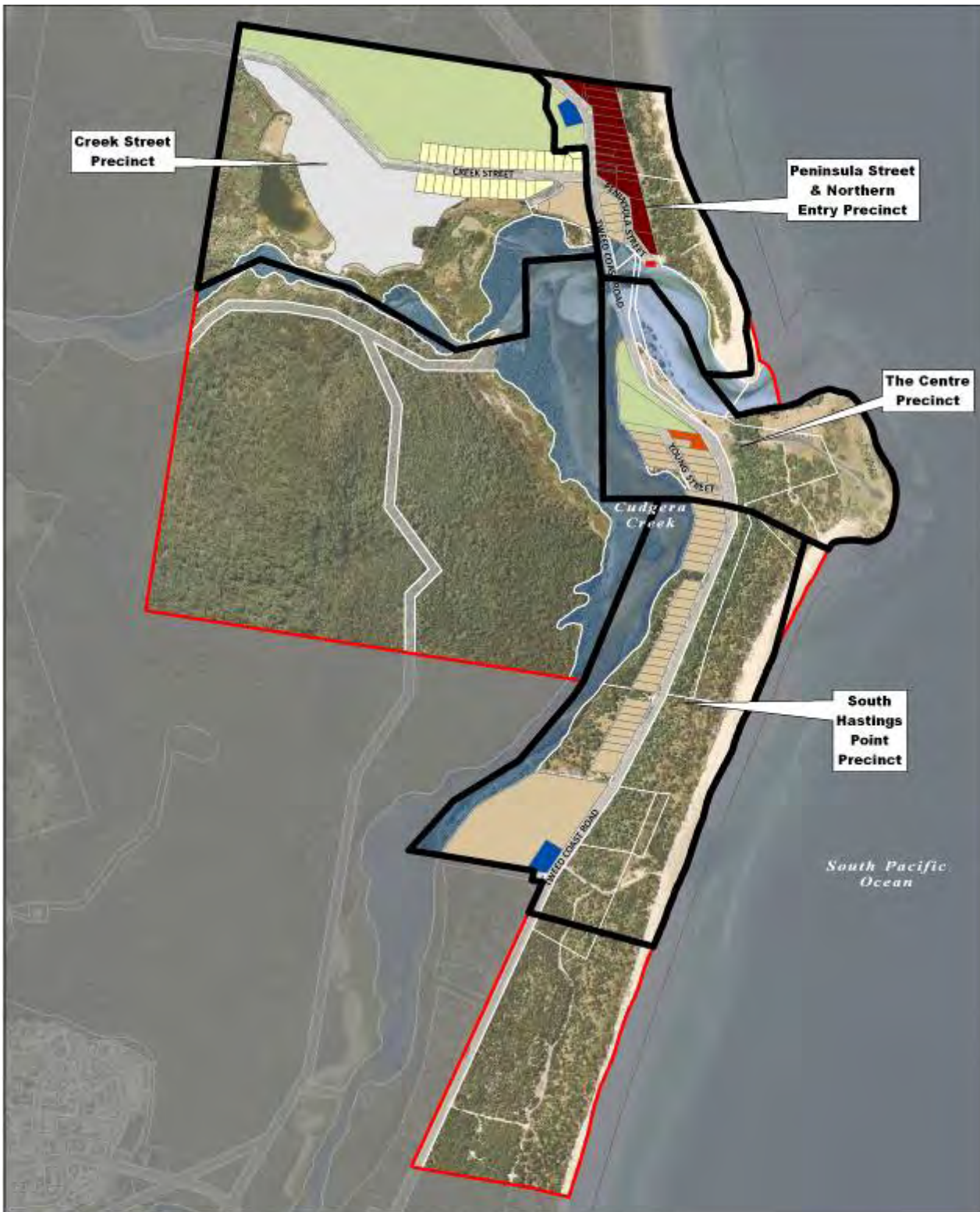


### South Hastings Point Precinct

South Hastings Point Precinct consists predominantly of single and two storey houses and dual occupancies. Given the environmental constraints and coastal sensitivity of the precinct, and potential of future development to impact on views, as well as the inability of many of the allotments to adequately accommodate larger developments, development is limited to houses, dual occupancies, villas and townhouses, a maximum 8.0 metre building height limit. The exhibited draft plan also provided the opportunity for Council to consider small residential flat buildings where key design and visual setting criteria combined with character objectives could be satisfied.

The post exhibition review of the Draft Code has resulted in a series of amended development controls, which are further discussed in the next section of this report.

Figure 1: Hastings Point Building Types and Precinct Boundaries



SOURCE:  
Aerial imagery taken  
October 2006 by  
Fugro Spatial Pty Ltd.

Figure 3.9 - Building Types & Precinct Plan  
Tweed Development Control Plan - Section B23

Hastings Point Locality Boundary	Caravan Parks	Houses / Dual Occupancies	Houses / Dual Occupancies / Town Houses	Houses / Dual Occupancies / Residential Flat Buildings	Subdivision - Houses / Dual Occupancies	Commercial
	Public Buildings	Houses / Dual Occupancies / Town Houses				Commercial / Shop-top

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty as to the accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (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. The information is required for the general guidance and is to be considered advisory and approximate only. It should not be used for any construction purposes and prior to any excavation a "dig before you dig" enquiry must be made by calling 1311. The information contained on this document remains valid for 14 days only from the date of issue.

Created on: 01 November, 2010  
By: Land and Property Management Authority (LPAWA) & Tweed Shire Council  
Boundaries shown should be considered approximate only.

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1:10,000 @ A4 Portrait  
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## Public Exhibition

The Draft Code was placed on public exhibition during the period 28 April 2010 to 2 July 2010, and concluded with 113 submissions received. During the exhibition period a special workshop was held for local landowners on 25 May 2010. Submissions received during the public exhibition period covered a broad range of issues including:

- Acid Sulfate Soils
- Building Type
- Beach and Dunal System
- Cudgera Creek bridge
- Cycle and foot paths
- Development Approvals
- Design Controls
- Estuary
- FSR
- Property Value
- Landscape
- Northern dunes
- Residential Flat Buildings
- Retail
- Signage
- Tree canopy height
- Vegetative Escarpment
- Building height
- Building Materials
- Buffers
- Car parking
- Caravan Park
- Drainage
- Education Signage
- Foreshore
- Floodwater
- Headland
- Littoral Rainforest
- Sea level rise
- Setback
- Southern Planting
- Sewerage system
- Tidal wetlands
- Views
- Deep soil zones
- Camping
- Character
- Cudgera Creek
- Christies Creek
- Eastern foreshore
- Fill
- Flooding
- Compliance
- Park facilities
- Precincts
- The Point
- Visual Setting
- Service Station
- Traffic
- Wildlife Corridor
- Water Quality

Tabulation, collation and an initial response from the Council officers and the consultant to the public submissions were reported to Council at the Ordinary Meeting of 19 October 2010. An updated schedule of response to the public submissions is provided within an attachment of the final draft Code document.

### Post Exhibition Amendments

The Project Team, consisting of both Council officers and the consultant, Ruker Urban Design, worked together to review and respond to the public submissions on the draft Code. The consultant submitted a final draft Code document to Council on 30 September 2010, thereby finalising her main contracted services.

Council officers have since conducted further, post-exhibition analysis of the issues raised by the public submissions, and have recommended a series of further amendments to the final draft Code.

These further changes were communicated to the consultant, who acknowledged the rationale of these further investigations, and raised no objection to the final draft Code amendments.

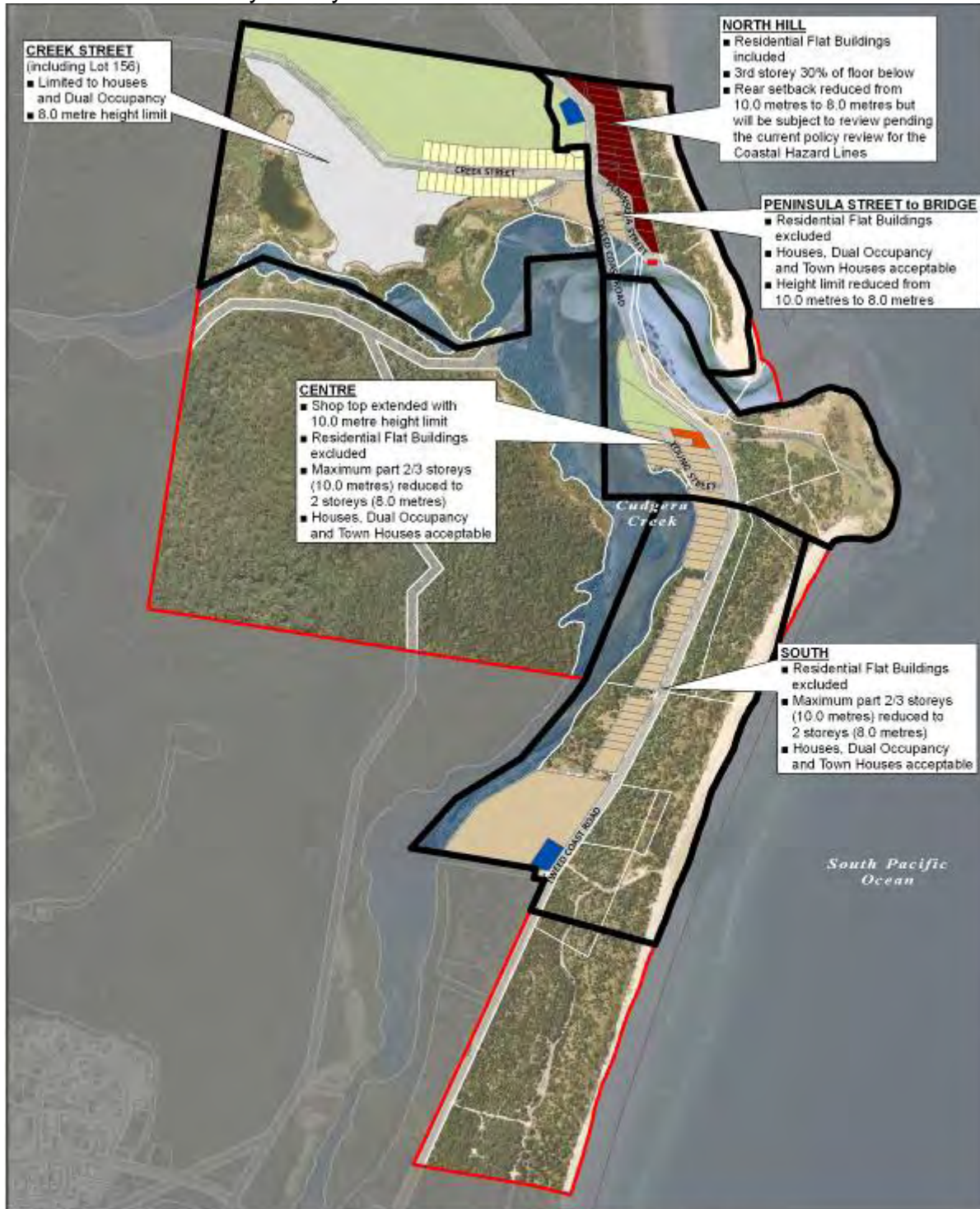
Whilst the format of the document has been changed to be consistent with the layout of the recently adopted Pottsville Locality Based Development Code, the content of the document remains substantially unchanged, except for those amendments which include:

1. Removal of residential flat building type and reduction in maximum number of storeys from 3 to 2 for residential developments in the South Hastings Point and Centre Precincts;
2. Removal of requirement for trees in front and rear setbacks;
3. Variation of setbacks in Peninsula and Creek Streets;
4. Revising diagrams removing reference to indicative development footprints over Lot 156;
5. Additional resource material;
6. Removal of duplication text, predominantly reproduced from DCP A1;
7. General document revisions improving readability, maps and graphics.

These amendments are further discussed below and graphically represented in Figure 2 which provides a summary of key post exhibition amendments to the Plan. A detailed comparison of development controls between DCP A1 and the Hastings Point Locality Based Development Code is provided at **Attachment 3**.



FIGURE 2: Summary of Key Post Exhibition Amendments



SOURCE:  
Aerial imagery taken  
October 2009 by  
Fugro Spatial Pty Ltd

Figure 3.91 - Summary of Key Post Exhibition Amendments  
Tweed Development Control Plan - Section B23

Hasting Point Locality Boundary	Caravan Parks	Houses / Dual Occupancies	Houses / Dual Occupancies / Town Houses / Residential Flat Buildings	Subdivision - Houses / Dual Occupancies	Commercial
Public Buildings	Public Buildings	Houses / Dual Occupancies / Town Houses	Houses / Dual Occupancies / Town Houses / Residential Flat Buildings	Subdivision - Houses / Dual Occupancies	Commercial / Shop-top

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation as to whether it is correct or reliable, and does not accept any liability, completeness or availability 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 reliance on this data in any way and for any reason. This information is required for the general public use and is to be considered indicative and approximate only. It should not be used for survey or construction purposes and for other uses. A "Not for use for" warning must be made by calling 1000. The information contained in this document remains valid for 10 days only from the date of supply.

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## **Variation to certain building type and height provisions in the South Hastings Point and Centre Precincts**

Under the definitions of coastal settlements within NSW North Coast Design Guidelines 2008 and the Coastal Design Guidelines 2003, Hastings Point is a small coastal village which defines residential buildings as being typically low rise, one to two storeys in height with opportunity for a village centre (retail hub) to be 3 storeys in height commensurate with the limited level of retail, commercial and social infrastructure services. Height limits and building typologies as identified within each of the Hastings Point Precincts have been applied consistent with these guiding documents.

Following community responses expressing concern about the potential impact of increased residential densities, further design investigations were undertaken, which revealed that:

- the majority of sites within both the South Hastings Point and Centre Precincts would have difficulty providing adequate basement car parking and car manoeuvring room within the setback defined building envelope (6 metre front, and 8 metre rear). This was particularly evident on blocks which had relatively modest lot dimensions typically having a 20 metre street frontage and depths of as little as 36 metres.
- the predominant existing building types within the South Hastings Point Precinct and Centre Precincts are single and two storey detached dwellings and dual occupancies, and that
- the existing and desired future character as expressed by the residents of these precincts is consistent with the definitions in the NSW North Coast Design Guidelines 2008 and the Coastal Design Guidelines 2003.

During public exhibition, and throughout the public consultation process, considerable concern was expressed about the potential adverse impact of 10 metre, 3 storey residential flat buildings (RFBs) development on the character of these precincts and Hastings Point generally, and as such, the Draft Code was amended post-exhibition to remove the provisions relating to RFBs from South Hastings Point and the Centre Precinct.

Whilst it is possible that a range of RFB configurations may have resulted in a greater variety of housing options, it was considered that the cumulative impact of three-storey (10 metre high) development and the potential for a significant change in the urban subdivision pattern through consolidation would ultimately undermine both the existing and future character of the precinct.

The project team formed the view that the design provisions that were being developed to enable this building type were becoming increasingly complex and inflexible and that they would be difficult for the Council's Development Assessment Unit to both regulate and implement. The complexity of the controls and the limited area of their potential application was a positive indicator supporting the view that RFBs are generally not appropriate for the southern side of Hastings Point, south of Cudgera Creek Bridge.

The removal of RFBs as a building type from both the South Hastings Point Precinct and Centre Precincts ensures redevelopment of these precincts will provide a better balance of single detached dwellings and low rise multi-dwelling housing types (townhouses) that will

maintain an adequate level of diversity while responding to concerns about protection of the natural environment, which is an essential feature of the character of the locality.

As such the plan identifies appropriate building types within both the South Hastings Point and Centre Precincts being houses, dual occupancies and townhouses, with a maximum 8.0 metre height limit.

It is proposed to retain the proposed maximum 10 metre height limit for the retail/commercial properties of the Centre Precinct.

Should a landowner wish to pursue an alternative development to that permitted under the Plan no less than two options are available. This can occur as a result of a planning proposal, a combined development application and planning proposal, a development control plan amendment or a combination of one or more. These processes increase the Council's and the community's ability to participate and direct an appropriate outcome and is seen as the better practice for managing larger developments.

### **Removal of requirement for trees in front and rear setbacks**

Council has recently received advice relating to the potential liability it may face were it to apply specific requirements for the inclusion of trees within setbacks surrounding a development. While it is considered highly desirable and consistent with the maintenance of the character of the locality, it is not advisable to maintain specific design control requirements which place Council at risk of litigation. As such, all reference to provision of trees in front and rear setbacks have been removed from the Code. This does not however preclude a landowner from planting trees by their own decision.

This is consistent with Council's resolution of 15 July 2008 in relation to Tweed DCP section A1, which stated:

2. *That the controls in Tweed DCP section A1 relating to the retention and planting of trees be suspended from application pending the final determination and adoption of the draft Tweed DCP A1*

It should be noted for reference that the DCP was adopted on 22 April 2008 and that resolution was actually aimed at providing direction on how the adopted plan should be implemented in respect of the tree clause. It was based on community and industry concern that the planting or retention of trees in close proximity to a building could undermine or affect the structural integrity of a building.

### **Variation of setbacks in Peninsula and Creek Streets**

Allotments located on the rear of the northern dune system off Tweed Coast Road and Peninsula Streets were, in the draft DCP, to apply a rear setback (that is the setback which faces the South Pacific Ocean) of 10 metres. When coupled with a front setback of 10 metres, it reduced the potential development envelope by 20 metres which, given the narrowness of some of those allotments was considered unreasonable. As an alternative, a rear setback, that is the setback from the coastal reserve facing the ocean, is proposed at a minimum of 8 metres, consistent with the general setback for RFBs throughout the locality.

It is material to note that this rear setback may need to be co-ordinated with the any relevant adopted outcomes of the Tweed Coastal Hazards Lines DCP which is currently being drafted.

### **Revised Lot 156 and 'The Point' Diagrams**

The draft exhibited document included as part of the Creek Street Precinct Plan a diagrammatic representation of building envelopes over the site known as Lot 156. These illustrated building envelopes however were done without the benefit of a full site master plan or detailed consideration of the significant flooding and environmental constraints over the site. For this reason, and in consideration of the current Part 3A application over the site, the building envelopes have been removed from the plan to avoid misrepresenting what may realistically be achieved over the site.

As Lot 156 has been identified as part of the Creek Street Precinct, any future development would need to be carried out consistently with the stated objectives and development controls of that precinct plan. The plan identifies that appropriate building types within this plan are houses and dual occupancies, with a maximum building height of 8.0 meters.

Similarly, diagrammatic representations of South Hasting Point illustrate smaller development footprints over the Point site. Given that 'The Point' is a relatively new development, the diagrams within the plan have now been revised to represent the existing building envelopes.

### **Additional resource material**

Apart from the detailed built form and landscape design ideas provided, a comprehensive suite of native vegetation species representative of the vegetation communities in the locality have been provided to allow for the consideration of indigenous plant species as part of landscaping and revegetation plans.

An additional section has been added which provides sample responses to the questionnaire forwarded to all landowners in the Hastings Point, along with a summary of responses to the public exhibition of the document. These sample responses have previously been reported to Council and are now incorporated into the DCP to provide background to the development of the Plan.

The Summary of responses to the public exhibition is substantially the same as the one reported to the Council Meeting of 19 October 2010, with the addition of comments relating to the removal of RFBs from the South Hastings Point and Centre Precincts, as discussed above.

### **Removal of duplication, predominantly from DCP A1**

While comprehensive in its coverage of design controls, much of the information provided was a duplication of controls current in the Tweed DCP A1. As such, and given the intention of this DCP to only refer to controls in addition to those in DCP A1, all duplication has been removed. This has made the document more concise and improved the ability to clearly identify where variations from the standard requirements of A1 occur.



## **General document revisions improving readability, maps and graphics**

Editorial corrections were undertaken to ensure that the intent of the document was as clear as possible and ambiguity or misunderstandings were minimised. A number of maps were reformatted to improve presentation and ensure consistency with Council's editorial requirements.

A comparison of the development controls between each of the precincts and DCP A1 has been appended to this report at Attachment 2 – Document Structure and Comparison of Development Controls.

## **Implementation of the Hastings Point Locality Based Development Code**

Implementation of the DCP involves several steps that both give effect to the DCP and facilitate amendments to the Tweed LEP.

Following a Council resolution to adopt the Plan, notice of the resolution will need to be published; this is done through the Tweed Link and typically occurs within two weeks.

In addition, because this new plan is intended to provide the locality specific development provisions for the Hastings Point locality, the 'interim' development controls incorporated into Tweed DCP Section A1 following Council's resolution of 22 April 2008 will need to be repealed. This will also occur through a public notice in the Tweed Link at the same time that the new DCP takes effect.

The 'interim' development controls, which were further amended following a Council resolution of 30 October 2008, are in the following terms:

## INTRODUCTION

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

### **Area of Application**

Hastings Point – all land within the boundaries of the locality of Hastings Point.

### **Objectives**

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

### **Controls**

- a. The maximum building height is 2-storeys and 8 metres.
- b. The maximum density on any lot or combination of lots comprising a development site is two dwellings (dual occupancy).

### **Review Period**

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

The interim development controls relating to the Hastings Point locality shall take effect on the giving of public notice of the Council's adoption of the amended Tweed Shire Development Control Plan in accordance with clauses 21 & 22 of the Environmental Planning and Assessment Regulation 2000. There is no saving provision in respect of the area specific development controls herein above.

The new DCP was prepared in response to the Hastings Point “*Review of height, FSR and Setback Controls*,” prepared by Ruker and Associates and satisfies the requirements of that report by providing a comprehensive character and design analysis and suit of locality based development provisions. Following adoption of the new DCP the interim provisions (*Review Period*) will have been satisfied and no longer necessary.

As such the existing Hastings Point interim controls within the Tweed DCP A1 will need to be repealed. In order to repeal these interim controls, Council will need to notify of its intention to repeal at least 14 days before publication of the notice of repeal. The repeal of a development control plan is facilitated by public notice in a local newspaper (Tweed Link) and takes effect on the date of publication of the notice which will correspond with the commencement date of the Hastings Point Locality based Development Code.

Following those processes discussed above the DCP will take full effect and will provide the necessary development guidance on any new or existing development application lodged.

The implementation of the new DCP will also facilitate changes to the Tweed LEP, which are likely to occur through the Draft Tweed LEP 2010 rather than as a separate planning proposal. Those amendments would reflect the new locality specific provisions and would include:

- Amendment to the 'Height of Buildings Map' to reflect the new building heights.
- Amendment to the 'Zoning Map' to reflect any necessary changes in permissible land-use, including;
  - Minor extension of the existing commercial area.
  - Reclassification of Lot 156 from 2(e) Residential Tourism to low-density residential development.
  - Potential reclassification of some Residential 2(b) Medium Density and 2(c) Urban Expansion to low density residential (permitting villa & townhouses), south of Cudegera Creek Bridge and south-side of Creek Street.
- Amendment to the 'FSR Map' to reflect FSR provisions across the study area.

The amendments to the Tweed LEP are not required in order to give effect to any element of the DCP. It is best practice that requires that the amendments be made so as to avoid any confusion or ambiguity arising between the two planning documents.

The Council's Web-site will be updated accordingly to reflect the Council's adoption of the new DCP and any subsequent amendments arising through the Tweed LEP.

## **Conclusion**

The Hastings Point Locality Based Development Code has been drafted taking into account extensive community consultation, physical constraints analysis within the locality and design investigations into what can be realistically achieved within each of the defined precincts. It has also been developed as collaboration between council staff, consultant Ruker Urban Design and the community. It is based on current practice of urban planning and has taken into account relevant NSW Land and Environmental Court decisions and the provisions of the North Coast Urban Design Guidelines 2008 and the Coastal Design Guidelines for NSW 2003.

Hastings Point possesses unique qualities which made it identifiably different to other small coastal villages in the Tweed. Distilling these characteristics, and developing them in line with the expectations of the local community, landowners, and residents in a document which projects a desired future character consistent with these expectations has been the over-riding objective of this locality planning process. This requires careful planning about what uses and building typologies are appropriate within given precincts which collectively contribute to the localities overall urban structure and character.

The draft plan has taken all of these factors into account and has been design to foster Hastings Point as small coastal village whilst allowing opportunity for careful growth commensurate with its sensitive coastal location and limited level of retail and social infrastructure services available. The co-ordinated nature of the document provides strategic direction to the ongoing management of precinct specific built form, the public

domain including the estuary, beach, headland and abundant surrounding natural and environmental protection areas.

Principally, the draft plan is about identifying key settlement principles which underpin the character of the locality and seeking to accommodate growth in a contemporary coastal format embedded within the built form controls. The planning process has also reaffirmed the communities right to contribute to local planning is preserved and made easier by way of clear intentions and legible provisions, and to ensure that new development is not ahead of its time or incompatible with its context. Future generations will have the ability to have their say about the development and direction of growth within the village as the Plan is scheduled for review every 5 years.

Based on the issues raised in this report and those by way of the public submission the re-exhibition of the draft Plan is not considered warranted.

The most significant amendment is arguably the removal of the exceptional circumstances enabling provisions relating to part three-storey RFBs south of Cudgera Creek Bridge. It is note worthy that a high percentage of the submissions raised concern with these provisions. The majority of those submissions were opposed to RFB development and particularly development over 8 metres in height. The remainder of those submission objected on the basis that the provisions were too onerous and in effect would render RFB development unattainable or uneconomical. There was seemingly a perception amongst those wanting to retain the current controls under the Tweed LEP that anything less would be unreasonable and unlawful. On the balance of the strong planning and environmental grounds identified in this report, the latter view is not supported.

Based on the extent and nature of the amendments, and the extensive investigations underpinning these changes, the report concludes that a re-exhibition of the draft Plan is not warranted.

In light of the above the draft Plan is considered suitable for adoption, as amended.

**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) (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

1. Draft Tweed Development Control Plan, Section B23 - Hastings Point Locality Based Development Code:
    - Part 1 - Introduction (ECM 23756257)
    - Part 2 - Hastings Point in Context (ECM 23757259)
    - Part 3 - Vision for Hastings Point (ECM 23757262)
    - Part 4 - Precinct Specific Strategies (ECM 23757263)
    - Part 5 - Visual Settings (ECM 23757264)
    - Part 6 - Building Type Controls (ECM 23757265)
    - Part 7 - Appendices (ECM 23936749)
  2. Document Structure and Comparison of Development Controls (ECM 23754164)
  3. Chronology of Key project dates (ECM 23755171)
-

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**14 [PR-CM] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards**

**ORIGIN:**

**Director Planning and 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 the October 2010 Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.**

**REPORT:**

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

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

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

Nil.

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