



TWEED
SHIRE COUNCIL

Mayor: Cr K Skinner (Mayor)

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

Minutes

Planning and Regulation Reports

Ordinary Council Meeting

Tuesday 14 December 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.

The Meeting commenced at 3.35pm.

IN ATTENDANCE

Cr K Skinner (Mayor), Cr B Longland (Deputy Mayor), Cr D Holdom, Cr K Milne, Cr W Polglase, Cr J van Lieshout and Cr P Youngblutt.

Also present were Mr Mike Rayner (General Manager), Mr Troy Green (Director Technology & Corporate Services), Mr Ian Knight (Acting Director Engineering & Operations), Mr Vince Connell (Director Planning & Regulation), Mr David Oxenham (Director Community & Natural Resources), Mr Neil Baldwin (Manager Corporate Governance/Public Officer) and Mrs Meredith Smith (Minutes Secretary).

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

10 [PR-CM] Tweed Development Control Plan Section a8 - Tweed Brothels

822

Cr D Holdom

Cr K Skinner

RESOLVED that:

1. Draft Tweed Development control Plan 2008, Section A8 - Tweed Brothels Code by publicly exhibited for a period of 60 days and in accordance with the Environmental Planning and Assessment 1979.
2. Following public exhibition of Draft Tweed Development Control Plan 200, Section A8 - Tweed Brothels Code, and having regard to matters arising from the public consultation and any submissions received, a further report be submitted to Council seeking final adoption of the Plan.
3. The General Manager writes to the NSW Minister for Planning seeking the development of a new licensing system for the operators of brothels, similar to the current licensing system for the owners of licensed premises, to include probity, licensing, identification tracking, compliance fees and checks and regular policing.

The Motion was **Carried**

FOR VOTE - Cr P Youngblutt, Cr W Polglase, Cr D Holdom, Cr B Longland, Cr K Milne, Cr K Skinner

AGAINST VOTE - Cr J van Lieshout

11 [PR-CM] Tweed Development Control Plan Section B23 - Hastings Point Locality Based Development Code

823

Cr B Longland
Cr K Milne

RESOLVED that:

1. Council 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. Council 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. Section 4.1.3.6 paragraph 6 (Page 87) be replaced with the following:
 - *"Where Council will consider a residential flat building on or behind the beach dune area or that is otherwise visually prominent to or from the beach, estuary or headland, it shall be a maximum of 8m (2 storeys) in presentation to the beach, estuary, headland or in combination, whichever applies.*
 - The remainder of the site can be a maximum of 10m (3 storeys) with the third level to be a maximum footprint of 50% of the internal spaces below".*
 - Figure 4.8 (Page 86) be deleted from the Plan.
 - Figure 5.2 (Page 161) of the Plan be amended so that the far right mid layer white box is dropped to be in line with the white box immediately adjacent to it.
 - The wording of control 3. of Part 4.2.3.6 – Subdivision Control 3 (page 105) be amended to read as follows:
 - “3. A new public park located outside of the required vegetated riparian buffer is to be considered.”
4. Council 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.

The Motion was **Carried**

FOR VOTE - Cr D Holdom, Cr B Longland, Cr K Milne, Cr J van Lieshout
AGAINST VOTE - Cr W Polglase, Cr P Youngblutt, Cr K Skinner

A NOTICE OF RECISSION HAS BEEN RECEIVED ON THIS ITEM FROM CRS W POLGLASE, P YOUNGBLUTT AND K SKINNER

12 [PR-CM] Draft Tweed City Centre Local Environmental Plan

824

**Cr D Holdom
Cr B Longland**

RESOLVED that:

1. The report on Draft Tweed City Centre Local Environmental Plan be received and noted.
2. Council endorses the process of a concurrent finalisation of the Draft Tweed City Centre Local Environmental Plan and Draft Development Control Plan prior to any further report to Council seeking the endorsement of the re-exhibition of these plans.

TEMPORARY ABSENCE FROM MEETING

Cr D Holdom left the meeting at 04:57 PM

RETURN TO MEETING

Cr D Holdom has returned from temporary absence at 04:59 PM

825

AMENDMENT

**Cr K Milne
Cr B Longland**

PROPOSED that:

1. The report on Draft Tweed City Centre Local Environmental Plan be received and noted.
2. Council endorses the process of a concurrent finalisation of the Draft Tweed City Centre Local Environmental Plan and Draft Development Control Plan prior to any further report to Council seeking the endorsement of the re-exhibition of these plans.
3. Council requests a meeting with key community stakeholders in the new year, prior to public exhibition, in an effort to resolve issues with the Draft Tweed Local Environment Plan.

The Amendment was **Lost**

FOR VOTE - Cr B Longland, Cr K Milne, Cr J van Lieshout

AGAINST VOTE - Cr P Youngblutt, Cr W Polglase, Cr D Holdom, Cr K Skinner

The Motion was **Carried** (Minute No 823 refers)

FOR VOTE - Unanimous

13 [PR-CM] Development Application DA10/0612 for a Tennis Court at Lot 9 DP 1092500, No. 43 Sunnycrest Drive, Terranora

826

Cr W Polglase

Cr D Holdom

RESOLVED that:

- A. State Environmental Planning Policy No. 1 objection to clause 24 of the Tweed Local Environmental Plan 2000 regarding the setback of the tennis court from Terranora Road be supported and the concurrence of the Director General of the Department of Planning be assumed.
- B. Development Application DA10/0612 for a tennis court at Lot 9 DP 1092500, No. 43 Sunnycrest Drive, Terranora be approved subject to the following conditions:

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Site Plan prepared by Greg Millhouse except where varied by the conditions of this consent.
[GEN0005]
2. Stormwater or surface water runoff from the tennis court or battered banks shall not be concentrated onto adjoining residential premises and adequate drainage shall be provided to divert water away from batters.
[GENNS01]
3. The battered banks around the tennis court shall be landscaped to consolidate the surface and minimise erosion.
[GENNS02]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

4. A construction certificate application for works that involve any of the following:-
 - connection of a private stormwater drain to a public stormwater drain
 - installation of stormwater quality control devices
 - erosion and sediment control works

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

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

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

[PCC1145]

PRIOR TO COMMENCEMENT OF WORK

5. The erection of a building in accordance with a development consent must not be commenced until:
- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
 - (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - (c) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

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

[PCW0225]

7. Residential building work:
- (a) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - * in the name and licence number of the principal contractor, and
 - * the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - * the name of the owner-builder, and
 - * if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.
- (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

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

In addition to these measures the core flute sign provided with the stormwater approval under Section 68 of the Local Government Act is to be clearly displayed on the most prominent position of the sediment fence or erosion control device which promotes awareness of the importance of the erosion and sediment controls provided.

This sign is to remain in position for the duration of the project.

[PCW0985]

DURING CONSTRUCTION

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

[DUR0005]

10. 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]

11. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).

[DUR0375]

12. Building materials used in the construction of the tennis court are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.

[DUR0395]

13. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.

[DUR0405]

14. All cut or fill associated with the construction of the tennis court is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan Part A1 to the satisfaction of the Principal Certifying Authority.

Please note timber retaining walls are not permitted.

[DUR0835]

15. 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]

16. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction/demolition.

[DUR2185]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

17. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0205]

USE

18. 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, lighting glare or the like.

[USE0125]

19. Hours of operation of the tennis court are restricted to the following hours: -
-

7.00 am to 10.00pm - Mondays to Fridays

8.00 am to 10.00pm - Saturdays, Sundays & Public Holidays

[USE0185]

20. Any external artificial lighting to the tennis court shall be shielded where required to the satisfaction of Council's General Manager or delegate to ensure that the spill of light or glare from such lighting does not create a nuisance to any adjoining or neighbouring premises or to traffic using Terranora Road

[USENS01]

The Motion was **Carried**

FOR VOTE - Cr P Youngblutt, Cr W Polglase, Cr B Longland, Cr J van Lieshout, Cr K Skinner

AGAINST VOTE - Cr D Holdom, Cr K Milne

- 14 [PR-CM] Land and Environment Court Judgement relating to Development Application DA10/0020 for the Establishment of a Brothel at Lot 411 DP 859933, No. 36 Enterprise Avenue, Tweed Heads South

827

Cr W Polglase

Cr D Holdom

RESOLVED that the report on Land and Environment Court Judgement relating to Development Application DA10/0020 for the establishment of a brothel at Lot 411 DP 859933 No. 36 Enterprise Avenue, Tweed Heads South be received and noted.

The Motion was **Carried**

FOR VOTE - Voting - Unanimous

- 15 [PR-CM] Development Application DA02/1983.14 for an Amendment to Development Consent DA02/1983 for the Use of Property for Filming and Producing a Television Program at Lot 74, 77, 93 DP 755715, Dungay Creek Road, Dungay

828

Cr D Holdom

Cr K Skinner

RESOLVED that Development Application DA02/1983.14 for an amendment to Development Consent DA02/1983 for the use of property for filming and producing a television program at Lot 74, 77, 93 DP 755715, Dungay Creek Road, Dungay be approved and the conditions be amended as follows:

1. Amend the Consent to state at the end:

The consent to expire on 1 June 2014.

2. Delete Condition No. 1A and replace it with new Condition No. 1B which reads as follows (Note: existing Condition 1B is to be re-numbered to Condition 1.1 – see Item 3 below):
 - 1B. The development shall be completed in accordance with the Statement of Environmental Effects; Drawing No 34504 prepared by Brown and Haan Surveyors and dated 27/11/2002; Drawing No 34505 prepared by Brown and Haan Surveyors; Plans No A1219 prepared by Edwin Shirley Stage Australia Pty Ltd dated 28/11/2002; Plan No A1-221102 Sheets 1 & 2 prepared by Richard Harry Engineering Services and dated 11/2002; Plan No 232311 prepared by Waco Kwikform and dated 26/11/2002, except as amended by Drawing No.20345 Sheets 1 to 5 prepared by Brown and Haan and dated 26/2/2003; Plans and documentation prepared by Richard Harry Engineering Services dated 3/2/2003. Where amended the development shall be completed in accordance with Plan No.20345 Dwg 345C6 prepared by Brown and Haan dated 22/9/2003, and plans and documentation prepared by Richard Harry Engineering Services Pty Ltd dated 23/9/2003, except where varied by these conditions. Where amended the development shall be undertaken in accordance with Sheet Nos. 2,3 & 4 of Site Plan 20345 prepared by Brown & Haan Surveyors, Floor Plan Nos. B12052-01 & B12052-02, 4034531, BH5-1230, MP3630, 4036921_1, 4044234-01 and 4044417_01 prepared by Ausco Building Systems and submitted with the amendment application dated 9 September 2006, and Dungay Creek Road Environmental Management Plan prepared by Ecosure dated June 2008 (and any subsequent amendments) and the Site Management Plan as submitted on 27 August 2010.
3. Delete existing Condition No. 1B, then re-number and amend the condition as Condition 1.1 which reads as follows:
 - 1.1 Prior to commencement of filming in the 2011 Filming Session the applicant is to provide to Council a *Flora and Fauna Assessment report detailing results of survey undertaken in accordance with the Threatened Biodiversity Survey and Assessment: Guidelines for Developments and Activities - Working Draft dated November 2004 (DEC 2004) for approval by Director Planning and Regulation. Survey is to stratify the site and sample each stratification unit but is to concentrate effort on 'use' areas and their surrounds, including activity nodes, trials areas and helicopter pad. Particular targeted survey is to be undertaken to determine species' reliance upon particular sites or localities (such as important roost or home range habitat) within parts of the site that are, or are intended to be, used during any part of the filming or associated activities or where native vegetation is proposed to be cleared. Direct and indirect impacts and Key Threatening Processes on native flora and fauna must be considered and recommendations for impact avoidance formulated, including a training and education package for site employees.*

4. In order to be consistent with the numbering of the conditions, amend existing Condition 1C by re-numbering the condition to Condition 1.2 as follows:
 - 1.2 Prior to commencement of the filming in the 2008/2009 Filming Session the applicant is to obtain a current approval to operate an on-site sewerage management system.

5. The following new GENERAL condition is to be ADDED as Condition 1.3:
 - 1.3 Prior to commencement of filming in the 2011 Filming Session the applicant is to provide to Council a Habitat Restoration Plan in general accordance with Council's draft guidelines (attached) as applicable to the use, for approval by Director Planning and Regulation. The Plan is to target removal of weed species from the areas under use and their surrounds and is to detail methods to encourage natural regeneration of these areas. Works are to be implemented in accordance with the approved Habitat Restoration Plan throughout the consent period.*

6. Delete Condition 4A and replace it with Condition 4B which reads as follows:
 - 4B. Relevant recommendations within the approved Flora and Fauna Assessment Report referred to within Condition 1.1A shall be included within a revised Environmental Management Plan within four (4) weeks of the approval of the Flora and Fauna Assessment Report.

Any removal or relocation of protected fauna on the property shall only be undertaken in accordance with scientific licence or under written advice from the Department of Environment, Climate Change and Water. No planting of exotic species or weeds is to occur on the site. Any introduced fauna is to be sourced from agents certified to be free of pests and diseases with potential to impact native fauna, in particular introduction of Plague Minnow or Mosquito Fish (Gambusia holbrooki) with aquatic species; chytrid fungus causing the disease chytridiomycosis with amphibians; Psittacine circoviral (beak & feather) disease with birds and Phytophthora cinnamomi with plants.

7. Delete Condition 34A and replace it with Condition 34.1 which reads as follows:
 - 34.1 The Dungay Creek Road Environmental Management Plan prepared by Ecosure dated June 2008 is to be amended to include Tweed Shire Council to receive Environmental Compliance Reports at the end of each 'wrap-up' period of filming, inclusive of the 2010/2011 filming season. The Environmental Management Plan is to be amended to include Tweed Shire Council to receive a copy of the completed environmental compliance checklist, following each site visit.

8. In order to be consistent with the numbering of the conditions, amend existing Condition 34B by re-numbering the condition to Condition 34.2 as follows:
34.2 Should Council receive complaints regarding use of the subject site Council can instigate the commencement of a Community Liaison Committee that consists of a representative of the local community, a representative of Granada Productions Pty Ltd, representatives from Council's Planning and Development Division, Environment and Community Services Division and Engineering and Operations Division. This Committee could monitor the performance of the Site Management Plan.
9. In order to be consistent with the numbering of the conditions, amend existing Condition 34C by re-numbering the condition to Condition 34.3 as follows:
34.3 If the Community Liaison Committee is formed a community liaison officer and community contact phone number shall be available on a 24 hour basis on the days of the production (including 24 hours pre and post the commencement of the production). Details of the name of the contact person and the contact telephone number must be provided to Council, locally advertised and affected residents notified of these details by means of an individual letter drop to each household.
10. Delete Condition 37 which reads:
37. Adequate storage of an on-site potable water supply shall be provided at all times.
11. The following new USE condition is to be ADDED as Condition 44.1:
44.1 Water supplied for human consumption must comply with the NSW HEALTH Private Water Supply Guidelines 2008 and the Australian Drinking Water Guidelines published in 2004 by the National Health and Medical Research Council. Registration of the premises shall be maintained with Tweed Shire Council's Public Health Register for Private Water Suppliers including payment of associated fee.

The Motion was **Carried**

FOR VOTE - Cr P Youngblutt, Cr W Polglase, Cr D Holdom, Cr B Longland, Cr J van Lieshout, Cr K Skinner
AGAINST VOTE - Cr K Milne

16 [PR-CM] Development Application DA10/0430 for the Erection of a Second Dwelling to Create a Dual Occupancy at Lot 494 DP 755740, No. 15 Adelaide Street, Tweed Heads

829

Cr D Holdom
Cr K Milne

PROPOSED that Development Application DA10/0430 for the erection of a second dwelling to create a dual occupancy at Lot 494 DP 755740, No. 15 Adelaide Street, Tweed Heads be refused for the following reasons:

1. The proposed development does not comply with Development Control Plan A1: Residential and Tourist Development Code (Part B), in particular:
 - Rear setback
 - Rear deep soil zone
 - Impermeable site area
 - Floor space ratio
 - Overshadowing
2. The proposed development does not comply with Development Control Plan A2: Site Access and Parking Code, in particular:
 - On-site car parking
 - Driveway access
3. In accordance with Section 79C(1)(a)(i) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be compliant with Environmental Planning Instruments.

It is Council's view that the proposed development does not satisfy the provisions contained within:

The Tweed LEP 2000:

- Clause 4: Aims of this plan - – proposed density of the site is not compatible with the existing and future streetscape and amenity of the area
 - Clause 8(1): Consent Considerations - the proposal sets an unacceptable precedent for densification of steep residential areas
 - Clause 11: Zoning - the proposal does not achieve a good urban design outcome.
4. Pursuant to Section 79C (1) (c) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed site is not considered suitable for the proposed development.

The use of the rear portion of the subject site for the location of a second dwelling results in an overdevelopment of the site. This is considered an unacceptable outcome for the site due to its requirement for multiple variations to development controls, unsupported access from the laneway and impact upon existing residential uses within close proximity of the site.

5. In accordance with Section 79C (1) (e) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be in the public interest.

It is in the broader general public interest to enforce the standards contained within the Development Control Plan 2008 and Tweed LEP 2000 specifically as it relates to residential development controls and the objectives of the 2(b) Medium Density Residential zone.

830

AMENDMENT

Cr K Skinner
Cr W Polglase

RESOLVED that this item be deferred to schedule a workshop to include consideration of this Development Application in addition to Sellicks Lane.

The Amendment was **Carried**

FOR VOTE - Cr P Youngblutt, Cr W Polglase, Cr D Holdom, Cr J van Lieshout, Cr K Skinner

AGAINST VOTE - Cr B Longland, Cr K Milne

The Amendment on becoming the Motion was Carried - (Minute No 830 refers)

FOR VOTE - Cr P Youngblutt, Cr W Polglase, Cr D Holdom, Cr J van Lieshout, Cr K Skinner

AGAINST VOTE - Cr B Longland, Cr K Milne

17 **[PR-CM] Development Application DA10/0552 for a Proposed Subdivision to Create a Public Road, Associated Acoustic Fencing and Residual Lot at Lot 12 DP 830659, Chinderah Road, Chinderah**

831

Cr D Holdom
Cr K Skinner

PROPOSED that Development Application DA10/0552 for a proposed subdivision to create a public road, associated acoustic fencing and residual lot at Lot 12 DP 830659, Chinderah Road, Chinderah be approved subject to the following conditions:

"DEFERRED COMMENCEMENT"

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

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

SCHEDULE "A"

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

- A. The developer shall submit to Council an engineering design for all acoustic fencing (maximum 2.5m high) that provides for the adequate flow of flood water in both directions through the fence in order to prevent significant adverse impacts on adjoining properties, while maintaining the required acoustic properties. This design shall be certified by both a qualified hydraulic consultant and a qualified acoustic consultant, and be to the satisfaction of Council's General Manager or his delegate.
- B. The developer shall to submit to Council an asset handover report for all acoustic fencing assets in the public realm. The report must provide Council with a funding proposal that renders the assets revenue neutral to Council for its design life, to the satisfaction of Council's General Manager or his delegate, in order for Council to accept ownership of the assets.
- C. A Habitat Restoration Plan relating to a specific site and approved by Council's General Manager or his delegate which demonstrates adequate replacement on a 10 to 1 (gained to lost) basis of the sub-mature Forest Red Gum (*Eucalyptus tereticornis*) and Pink Bloodwood (*Corymbia intermedia*) impacted by the proposed development. The Habitat Restoration Plan must include:
- a schedule and timing of works to be undertaken
 - written agreement from the owner of the agreed site to planting and/or restoration works on the land
 - a suitable protection mechanism on the land to ensure the trees are protected in perpetuity
 - a legally binding commitment by the consent holder to funding and/or undertaking the proposed works
 - a statement of commitment by the consent holder that the works will be completed by qualified and experienced bush regeneration personnel.
- D. A legally binding commitment by the developer to funding and/or undertaking a sufficient component of the works as detailed within the approved Plan and agreed by Council to offset the loss of Swamp Oak Floodplain Forest. The approved plan is the *Amended Rehabilitation/Restoration Plan for Elsie Street, Banora Point: Lot 1 DP285117* prepared by Planit Consulting dated March 2010.

SCHEDULE B

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

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects, plans approved by Schedule A of this consent and plans as detailed in the table below, except where varied by the conditions of this consent.

Title	Drawn	Dated
Proposed Subdivision Plan DWG Ozonest_sub_01/Rev 1	Planit Consulting	11/2010
Proposed industrial subdivision civil works plan – preliminary (SK5/Issue A)	Cozens Regan Williams Prove	07/2010
Proposed industrial subdivision intersection detail (SK7/Issue A)	Cozens Regan Williams Prove	07/2010

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. The level of fill placed on the site shall not exceed RL2.2m AHD.

[GENNS01]

5. Department of Environment, Climate Change and Water General Terms of Approval

- The applicant must comply with Part 6 of the National Parks and Wildlife Act 1974 (NPW Act) as amended, prior to commencing or during any ground disturbance or development works which is the subject of the development application.
- In the event that surface disturbance identifies a new Aboriginal site, all works must halt in the immediate area to prevent any further impacts to the object(s). A suitably qualified archaeologist and Aboriginal community representatives must be contacted to determine the significance of the object(s). The site is to be registered in the AHIMS (managed by DECCW) and the management outcome for the site included in the information provided to the AHIMS. The proponent will consult with the Aboriginal community representatives and the archaeologist to develop management strategies for all objects/sites, which will require DECCW approval prior to recommencing works.
- An application for a Care and Control Permit must be lodged along with any application for any Aboriginal objects that are located and moved in accordance with the NPW Act. The applicant is to consult with all of the registered Aboriginal stakeholders identified in the consultation process and

is to provide evidence of the support with any application for a care and control permit.

- If human remains are located in the event that surface disturbance occurs, all works must halt in the immediate area to prevent any further impacts to the remains. The NSW Police are to be contacted immediately. No action is to be undertaken until NSW Police provide written notification to the proponent. If the skeletal remains are identified as Aboriginal, the proponent must contact DECCW Enviroline 131555 and no works are to continue here until DECCW provide written notification to the proponent.
- The applicant must continue to consult with and involve all Aboriginal representatives for the duration of the project, in relation to the ongoing management of the Aboriginal cultural heritage matters associated with this project. Evidence of this consultation must be collated and provided to the consent authority upon request.
- The applicant shall provide fair and reasonable opportunities for the local Aboriginal community to monitor the initial earth moving/construction activities associated with this project.

[GENNS02]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

6. Prior to the issue of a Construction Certificate, a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the works as set out in Council's fees and charges at the time of payment.

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

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

[PCC0275]

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

[PCC0285]

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

[PCC0485]

9. 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]

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

Intersection Works

- (a) The proposed intersection with Chinderah Drive and the Ozone Street upgrade will be required to be designed in accordance Ausroads and drawing no. Sk 7 prepared by Cozens Regan Williams Prove titled 'proposed industrial subdivision ~ intersection detail', dated 7 October 2010.
- (b) A 1.2m reinforced concrete footpath 100mm thick on compacted road base is to be constructed along the full length of the proposed road located in the Ozone Street reserve.

Road Works

- (c) Construction of an urban bitumen sealed road formation with upright kerb & gutter to a 9m sealed pavement width within a 17m road reserve width as per Council's road works standards for an access street with a bus route.
- (d) Kerb and guttering is to be provided on both sides for the full length of the road. An adequately sized stormwater quality treatment device is also to be provided for the subdivision.

Stormwater

- (e) The proposed drainage system shall be designed to collect runoff from the northern side of the road formation and shall avoid longitudinal lengths of pipework underneath the road carriageway. All connection points to the open drain shall be designed and constructed with headwalls and scour protection. All drainage shall be designed and constructed in accordance with TSC's Development Design Specification D5 - Stormwater Drainage Design.
- (f) The proposed box culverts located over the existing open drain shall be designed to cater for wheel loads from heavy industrial vehicles. Geotechnical certification is to be provided prior to the construction certificate to demonstrate that the bearing capacity of the underlying soil is adequate to ensure no subsidence will occur under these loads.

Sewer

- (g) All common rising mains shall be located in road reserve. The developer shall provide a connection for each lot to be serviced by pressure sewer within the lot to be served in accordance with Council's standard specifications and drawings. The location of connection of the rising 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.
- (h) All lots within the development shall be provided with a connection to Council's Sewerage System.

General

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

[PCC0875]

11. Prior to the issue of a Construction Certificate for civil works the following detail in accordance with Councils Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.
- (a) copies of compliance certificates relied upon
- (b) four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:
- earthworks
 - roadworks/furnishings
 - stormwater drainage
 - water supply works
 - sewerage works
 - landscaping works
 - sedimentation and erosion management plans
 - location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure)

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

[PCC0985]

12. Permanent stormwater quality treatment shall be provided in accordance with the following:
- (a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 – Stormwater Quality*.
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils *Development Design Specification D7 – Stormwater Quality*.
- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management.

[PCC1105]

13. Erosion and Sediment Control shall be provided in accordance with the following:
- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 – Stormwater Quality*.

- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCC1155]

14. A detailed plan of landscaping containing no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate. The plan shall be compiled in collaboration with the owners of adjoining Lot 109 DP 755701 and submitted plan shall include landscaping along both sides of the acoustic fence (i.e.: within Lot 12 DP 830659 and adjoining Lot 109 DP 755701) for the entire length of the road reserve.

Prior to installation of such landscaping, written owners consent from the owners of Lot 109 DP 755701 shall be obtained.

[PCCNS01]

PRIOR TO COMMENCEMENT OF WORK

15. 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]

16. All imported fill material shall be from an approved source. Prior to commencement of filling operations details of the source of the fill, nature of material, proposed use of material and confirmation that further blending, crushing or processing is not to be undertaken shall be submitted to the satisfaction of the General Manager or his delegate.

[PCW0375]

17. 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 Council's 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]

18. 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]

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

In addition to these measures the core flute sign provided with the stormwater approval under Section 68 of the Local Government Act is to be clearly displayed on the most prominent position of the sediment fence or erosion control device which promotes awareness of the importance of the erosion and sediment controls provided.

This sign is to remain in position for the duration of the project.

[PCW0985]

20. Prior to the commencement of works on the access road and associated infrastructure works an inspection is to be arranged with Council's Environmental Health Officer to ensure the implementation of the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated 18 November 2010 is undertaken.

[PCWNS01]

21. Commencement of works in accordance with the approved Habitat Restoration Plans and legally binding agreement as detailed in Schedule A must be demonstrated prior to clearing of the Swamp Oak Floodplain Forest vegetation within Ozone Street road reserve or the Forest Red Gum (*Eucalyptus tereticornis*) and Pink Bloodwood (*Corymbia intermedia*) within Chinderah Road road reserve.

[PCWNS02]

DURING CONSTRUCTION

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

[DUR0005]

23. 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]

24. 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]

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

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

[DUR0795]

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

[DUR0815]

27. 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]

28. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate.

[DUR0995]

29. 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]

30. Landscaping of the site shall be carried out in accordance with the submitted/approved landscaping plans.

[DUR1045]

31. 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]

32. 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]

33. 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]

34. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[DUR1875]

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

Roadworks

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

Water Reticulation, Sewer Reticulation, Drainage

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

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]

36. 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]

37. The applicant shall obtain the written approval of Council to the proposed road/street names and be shown on the Plan of Subdivision accompanying the application for a Subdivision Certificate.

Application for road naming shall be made on Councils Property Service Form and be accompanied by the prescribed fees as tabled in Councils current Revenue Policy - "Fees and Charges".

The application shall also be supported by sufficient detail to demonstrate compliance with Councils Road Naming Policy.

[DUR2035]

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

[DUR2285]

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

[DUR2355]

40. 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]

41. 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]

42. All works associated with the access road and associated infrastructure is to be undertaken in accordance with the Acid Sulfate Soil Management Plan prepared by HMC Environmental Consulting Pty Ltd dated 18 November 2010.

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

[DURNS01]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

44. 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]

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

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

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

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

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

[PSC0165]

46. 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]

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

[PSC0235]

48. 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]

49. 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]

50. 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]

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

- (a) Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property.
- (b) A Section 88B restriction to user shall be placed on the land title of each new allotment to limit site coverage of structures and permanent improvements to retain a minimum of 50% of the area available for flood flow."
- (c) A Positive Covenant for each allotment sewered by a pressure sewer system, enabling Tweed Shire Council with rights to construct, install and maintain the pressure sewerage infrastructure in accordance with the following terms:

TERMS OF PUBLIC POSITIVE COVENANT

1. *Pressure sewerage reticulation infrastructure is to be constructed within the land referred to herein and such infrastructure will comprise a pump station, valve pit, control panel and associated pipelines excluding gravity house connections and plumbing,*
2. *Such infrastructure is to be supplied by Tweed Shire Council at commencement of construction of a dwelling on the land referred to herein.*
3. *All costs in relation to the installation of the pressure sewer reticulation infrastructure within the land referred to herein will be borne by Tweed Shire Council.*
4. *The control panel for the pumping station is to be wired into the household switchboard by a registered electrician and all electricity to operate the control panel and pump station shall be supplied from the household switchboard. All costs in relation to the running of the pressure sewerage reticulation are to be borne by the registered proprietor.*

5. *The pressure sewer infrastructure will at all times remain the property of Tweed Shire Council to be inspected, serviced, repaired and maintained in good working order only by Tweed Shire Council*
6. *Tweed Shire Council shall have the right to enter upon the land referred to herein with or without equipment, at all reasonable times to inspect, construct, repair, service and maintain in good working order all pressure sewerage reticulation infrastructure in or upon the said land pursuant to "Power of Entry" provisions under sections 191 and 191A of the NSW Local Government Act, 1993. This right to enter is restricted to the land in which the pressure sewerage infrastructure is placed for the time being and includes any points of egress or ingress to or from the said land.*
7. *The registered proprietor of the land referred to herein shall not construct any type of development, including external buildings, swimming pools or permanent structures which may interfere with the sewerage reticulation infrastructure, or impede access to any part of the sewerage reticulation infrastructure for the purposes of repair, maintenance and service.*
8. *If at any time it becomes necessary to relocate any part of the sewerage reticulation infrastructure for the purposes of construction of external buildings, swimming pools or building extensions and/or modifications Tweed Shire Council will not object to the relocation of the existing sewer pump station or associated pipeline providing that the registered proprietor makes the necessary application to Tweed Shire Council as the consent authority to modify the existing sewerage reticulation infrastructure and upon the registered proprietor obtaining development consent to do so. The registered proprietor will bear all costs in relation to the application and the re-location which is to be carried out by Tweed Shire Council.*
9. *The registered proprietor shall be responsible for notifying Tweed Shire Council when maintenance, repair, relocation or service is necessary on the sewerage reticulation infrastructure.*
10. *Should any part of the sewerage reticulation infrastructure be damaged by the registered proprietor or by any person who is a servant, workman, tenant, invitee, employee, or agent of the registered proprietor Tweed Shire Council will repair the damage at the cost of the registered proprietor.*

11. *The registered proprietor shall indemnify Tweed Shire Council and any adjoining landowners against any damage and injury to their land, property or person arising from the failure of any component of the sewerage reticulation infrastructure due to the negligent use or misuse of the sewerage reticulation system by the registered proprietor or any person who is a servant, workman, tenant, invitee, employee or agent of the registered proprietor.*
12. *Tweed Shire Council shall indemnify the registered proprietor against all damage and injury to property and person (including any damage to the land referred to herein and any land adjacent to the land referred to herein) arising from the failure of any component of the sewerage reticulation infrastructure and its construction, inspection, repair, service and maintenance and or in entering upon and occupying the subject property for such purposes.*
13. *Any reference to Tweed Shire Council, excepting as consent authority, means its employees, agents, contractors, servants."*

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

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

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

[PSC0835]

52. 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]

53. 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]

54. 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 - Sewerage Pump Station
 - (e) 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]

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

[PSC0925]

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

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

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

[PSC1065]

57. 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]

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

[PSC1165]

59. Electricity

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

Should any electrical supply authority infrastructure (sub-stations, switching stations, cabling etc) be required to be located on Council land (existing or future), then Council is to be included in all negotiations. Appropriate easements are to be created over all such infrastructure, whether on Council lands or private lands.

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

[PSC1185]

60. For each lot serviced by a pressure sewer system, a capital contribution of \$14,800 shall be provided for the installation of each individual pressure sewer pump station prior to the issue of the subdivision certificate. Tweed Shire Council will then install the pump station at a suitable location within each lot at the building stage.

[PSCNS01]

61. Primary weeding and/or planting and establishment must be completed in accordance within approved Habitat Restoration Plans prior to issue of subdivision certificate.

[PSCNS02]

62. A permit under s198-202 of the Fisheries Management Act 1994 for dredge and reclamation activities must be sought prior to commencement of any dredging or reclamation activities within the drainage channel.
63. A permit under s205 of the Fisheries Management Act 1994 for harm to marine vegetation (seagrass, mangroves, kelp) must be sought prior to any activities which could result in harm to marine vegetation.
64. Before commencing any works or using any existing works for the purpose of Temporary Dewatering for Construction Purposes, a Controlled Activity Approval under the Water Management Act 2000 must be obtained from the Department of Environment, Climate Change and Water.

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AMENDMENT

Cr K Skinner
Cr P Youngblutt

RESOLVED that:

1. This item be deferred to schedule a workshop during February between Council, the applicants, adjoining landholders directly affected and key community members representing Royal Pacific Caravan Park (1), Heritage Caravan Park Residents' Association (1), Chinderah Lakes Caravan Park (1), Chinderah Residents' Association (1) and the Roads and Traffic Authority.
2. The applicant be encouraged to pursue alternative access options.

The Amendment was **Carried**

FOR VOTE - Unanimous

The Amendment on becoming the Motion was **Carried** - (Minute No 832 refers)

FOR VOTE - Unanimous

18 [PR-CM] Development Application DA09/0006.01 for an Amendment to Development Consent DA09/0006 for a Four (4) Lot Industrial Subdivision, Construction of Part of Ozone Street and Associated Drainage at Lot 1 DP 102255, No. 16-18 Ozone Street, Chinderah

833

Cr D Holdom
Cr J van Lieshout

RESOLVED that:

1. This item be deferred to schedule a workshop during February between Council, the applicants, adjoining landholders directly affected and key community members representing Royal Pacific Caravan Park (1), Heritage Caravan Park Residents' Association (1), Chinderah Lakes Caravan Park (1), Chinderah Residents' Association (1) and the Roads and Traffic Authority.
2. The applicant be encouraged to pursue alternative access options.

FOR VOTE - Unanimous

19 [PR-CM] Development Application DA10/0480 for the Demolition of Existing Dwellings and Construction of a Function Centre at Lots 9 and 10 Section 4 DP 2974; Nos. 9 and 11 River Street, South Murwillumbah

834

**Cr D Holdom
Cr B Longland**

PROPOSED that Development Application DA10/0480 for the demolition of existing dwellings and construction of a function centre at Lots 9 and 10 Section 4 DP 2974; Nos. 9 and 11 River Street, South Murwillumbah be refused for the following reasons:

1. The application does not comply with the 3(c) Commerce & Trade zone objectives (within Tweed LEP 2000), as approval of a Function Centre would jeopardise the viability and function of the Murwillumbah business centre as adequate car parking cannot be supplied.
2. The application has failed to satisfy Clause 8(1) of the Tweed LEP 2000 specifically Clause 8(1)(c). The development will have an adverse cumulative impact in the shire created by lack of car parking spaces.
3. The application is not considered satisfactory with regard to parking and access. Adequate car parking has not been provided in accordance with Tweed Shire Council Development Control Plan Section A2 - Site Access and Parking Code.
4. The proposed function centre will have significant noise impacts on adjacent residential land uses. The proposed development exceeds the adopted noise criteria.
5. The applicant has not satisfactorily addressed the volume of stormwater being discharged from the site. An adequate stormwater management plan has not been proposed for the subject site.

835

AMENDMENT

**Cr J van Lieshout
Cr W Polglase**

RESOLVED that this item be deferred, with amended plans to be reported, at a future Council meeting.

The Amendment was **Carried**

**FOR VOTE - Cr P Youngblutt, Cr W Polglase, Cr D Holdom, Cr B Longland, Cr J van Lieshout, Cr K Skinner
AGAINST VOTE - Cr K Milne**

The Amendment on becoming the Motion was **Carried** - (Minute No 835 refers)

FOR VOTE - Cr P Youngblutt, Cr W Polglase, Cr D Holdom, Cr B Longland, Cr J van Lieshout, Cr K Skinner

AGAINST VOTE - Cr K Milne

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

836

**Cr D Holdom
Cr B Longland**

RESOLVED that Council notes the November 2010 Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.

The Motion was **Carried**

FOR VOTE - Unanimous

21 [PR-CM] Consideration of Pursuit of Costs - Land and Environment Court Matter - Tweed Shire Council ats Those Best Placed Pty Ltd

837

**Cr D Holdom
Cr B Longland**

RESOLVED that Council instruct its legal representatives HWL Ebsworth to pursue the proprietors of Those Best Placed, Andrew Crowther and Sandra Schultz, for the costs incurred against Council for defending the matter.

The Motion was **Carried**

**FOR VOTE - Cr P Youngblutt, Cr W Polglase, Cr D Holdom, Cr B Longland, Cr J van Lieshout, Cr K Skinner
AGAINST VOTE - Cr K Milne**

22 [PR-CM] On-site Sewage Management - Kielvale

838

**Cr D Holdom
Cr B Longland**

RESOLVED that the report on on-site sewerage management – Kielvale be received and noted.

The Motion was **Carried**

FOR VOTE - Unanimous



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