

**TWEED SHIRE COUNCIL
MEETING TASK SHEET**

User Instructions

If necessary to view the original Report, double-click on the 'Agenda Report' blue hyperlink above.

Action Item - COUNCIL MEETING Tuesday, 17 August 2010

Action is required for Item **15** as per the Council Resolution outlined below.

TITLE: [PR-CM] Visitor Carparking Lot 1 DP 525502, No. 4 Second Avenue, Tweed Heads

**Cr D Holdom
Cr B Longland**

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 Motion was **Carried**

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

Agenda Report

TITLE: [PR-CM] Visitor Carparking Lot 1 DP 525502, No. 4 Second Avenue, Tweed Heads

ORIGIN:

Development Assessment

FILE NO: PF4980/130

SUMMARY OF REPORT:

Council has received a complaint from residents within a residential strata titled complex (Lot 1 DP 525502, 4 Second Avenue Tweed Heads, SP 35133) regarding alterations to visitor parking arrangements without Council approval. The complainants are seeking to have the parking restored to its approved location.

Council Officers have inspected the site and spoken to both the owners and complainants in this matter. It is the Officers view that a Section 96 application is required to rectify the non compliance of the current parking arrangements with the development and building approvals. It is therefore recommended that Council endorse that an application be submitted or legal action will be initiated.

RECOMMENDATION:

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.**

REPORT:

Council has received submissions from unit owners/residents (units 3A and 2B) within the SP 35133 at No. 4 Second Avenue, Tweed Heads advising that another unit owner/resident (unit 2A) has altered the visitor parking location for one of the units and is now contrary to the approved plan. The complaint also relates to the impact of the relocation on the enjoyment and useability of the site by the residents affected by the relocation.

Background

Development consent (88/212) issued on 3 June 1988 for the erection of five cluster houses. Condition 2 of the consent states-

2. The provision of ten (10) off street car parking spaces in accordance with the submitted plans and Council's code for Off Street Car Parking.

The approved plan includes an attached garage and adjacent open carparking space for visitors for each of the five units.

Building Permit 1024/88 was issued on 23 September 1988 for the units. The approved site plan (dated 30.9.88) adjusted the visitor spaces for four of the units. On 11 April 1989 the visitor parking was further adjusted as follows-

- Unit 1A visitor parking on the south side of the driveway opposite unit 1A.
- Unit 2A visitor parking on the eastern side of unit 2A
- Unit 3A and 2B visitor parking centrally located on the eastern side of the site between units 3A and 2B.
- Unit 1B visitor parking on the eastern side of unit 1B.

Strata plan registered on 21 July 1989.

The strata plan indicates the private courtyard of unit 2A moved forward to align with the front wall of unit 2A. The significance of this is that the majority of the visitor car space is no longer located on common property with no alternate location designated on the strata plan. It is considered that with the layout of the units on the site it does not matter if the car spaces are located within common property or on private areas. The consent requires ten spaces on the site.

ISSUE

The owners of unit 2A have fenced, gated and landscaped the area of the visitor car space so a vehicle can no longer park parallel to the unit. The owner of unit 2A parks their vehicle in the common property across part of the frontage of unit 2A and part of the frontage of unit 3A. The garage for unit 2A does not appear to be used for a vehicle.

This partly blocks access to and from unit 3A and adversely affects vehicle manoeuvring for other unit owners and their visitors.

The body corporate (ie. unit owners) has not been able to resolve their differences regarding this issue.

It would appear that when the strata was signed off by Council the visitor space for unit 2A would have been physically located in the correct location however the strata plan removed the space from the common property and increased the size of the private courtyard.

This has led to a conflict between the approved plan and the registered strata plan.

The solicitor for Unit 2A has contends in a letter dated 24 May 2010 that the strata plan supersedes the approved plan. If this were to be correct relocation of the parking space still needs approval from Council. This approval has not been sought or gained.

The solicitor's letter also states the following-

Accordingly in our view as long as a vehicle parked in your courtyard is wholly within the courtyard area, then it is not a matter under the control of the Owners Corporation.

It is considered that to comply with the consent ten carparking spaces are required on the site. In this instance it does not matter if they are on private land or common property given the configuration of the development. Clearly alterations have occurred to the physical layout of the parking without approval from Council.

On 11 June 2010 a letter received from the strata manager representing the Owners states the following-

The Owners Corporation have recently held their Annual General Meeting and the letter sent by Council with the above reference was discussed.

By majority it was agreed to submit the following response:

The Strata Plan dated 10/05/1989, bearing the certification of the Tweed Shire Council supersedes Council's 1988 plan, and does not include visitor parks. It would therefore be necessary by Special Resolution of the Owners Corporation, to submit a visitor car park plan, showing present parking layouts, wholly within the common area as acknowledged by the Tribunal Adjudicator.

Options for Council

1. Commence legal proceedings to require compliance with the approved plan.
2. Seek legal advice regarding the conflict between the strata plan and the approved plan and the likelihood of success if regarding restoration of the visitor parking space.
3. Advise the owners that a S.96 amended application for 88/212 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. Given the owners corporation need to consider this issue a timeframe of sixty days to carry out the above actions is considered appropriate.

Comment

It is unlikely that the owners will agree to lodge a S.96 application given owners consent is required for Council to legally consider the application. The issue remains for Council whether or not to pursue legal action to enforce compliance should the matter not be resolved as per option three above. Council should reserve its right to pursue legal action on the basis that the body corporate resolves the issue and that they explore all avenues including independent mediation.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

If Council resolved to take legal action costs would be incurred.

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 (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. Strata plan, photographs in relation to the car parking issues and approved building plan (ECM 19884409)
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TITLE: [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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TWEED SHIRE COUNCIL MEETING TASK SHEET

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Action Item - COUNCIL MEETING Tuesday, 16 November 2010

Action is required for Item 11 as per the Council Resolution outlined below.

TITLE: [PR-CM] Visitor Carparking at Lot 1 DP 525502 No. 4 Second Avenue, Tweed Heads

**Cr D Holdom
Cr B Longland**

RESOLVED 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).

The Motion was **Carried**

FOR VOTE - Unanimous