

Mayor: Cr G Bagnall

Councillors: P Youngblutt (Deputy Mayor) M Armstrong C Byrne B Longland K Milne W Polglase

Agenda

Planning Committee Meeting Thursday 4 June 2015

held at Kingscliff Bowls Club Waves Function Room, Marine Parade, Kingscliff commencing at 5.00pm

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - SECT 79C 79C Evaluation

- (1) Matters for consideration-general In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:
 - (a) the provisions of:
 - (i) any environmental planning instrument, and
 - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
 - (iii) any development control plan, and
 - (iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
 - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and
 - (v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),

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 in 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.

Note: See section 75P (2) (a) for circumstances in which determination of development application to be generally consistent with approved concept plan for a project under Part 3A.

The consent authority is not required to take into consideration the likely impact of the development on biodiversity values if:

- (a) the development is to be carried out on biodiversity certified land (within the meaning of Part 7AA of the Threatened Species Conservation Act 1995), or
- (b) a biobanking statement has been issued in respect of the development under Part 7A of the Threatened Species Conservation Act 1995.
- (2) Compliance with non-discretionary development standards-development other than complying development If an environmental planning instrument or a regulation contains non-discretionary development standards and development, not being complying development, the subject of a development application complies with those standards, the consent authority:

- (a) is not entitled to take those standards into further consideration in determining the development application, and
- (b) must not refuse the application on the ground that the development does not comply with those standards, and
- (c) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards,

and the discretion of the consent authority under this section and section 80 is limited accordingly.

- (3) If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards:
 - (a) subsection (2) does not apply and the discretion of the consent authority under this section and section 80 is not limited as referred to in that subsection, and
 - (b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.

Note: The application of non-discretionary development standards to complying development is dealt with in section 85A (3) and (4).

- (4) Consent where an accreditation is in force A consent authority must not refuse to grant consent to development on the ground that any building product or system relating to the development does not comply with a requirement of the Building Code of Australia if the building product or system is accredited in respect of that requirement in accordance with the regulations.
- (5) A consent authority and an employee of a consent authority do not incur any liability as a consequence of acting in accordance with subsection (4).
- (6) Definitions In this section:
 - (a) reference to development extends to include a reference to the building, work, use or land proposed to be erected, carried out, undertaken or subdivided, respectively, pursuant to the grant of consent to a development application, and
 - (b) "non-discretionary development standards" means development standards that are identified in an environmental planning instrument or a regulation as non-discretionary development standards.

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Items for Consideration of Council:

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REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

1 [PR-PC] Development Application DA15/0102 for Multi-Dwelling Housing Comprising Three Units and a Pool at Lot 5 DP 9173 No. 24 Thomson Street, Tweed Heads

SUBMITTED BY: Development Assessment and Compliance

FILE REFERENCE: DA15/0102 Pt1



LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

1	Civic Leadership
1.2	Improve decision making by engaging stakeholders and taking into account community input
1.2.1	Council will be underpinned by good governance and transparency in its decision making process

SUMMARY OF REPORT:

Consent is sought for the construction of a small residential flat building containing three units at 24 Thomson Street, Tweed Heads.

The site represents a small and constrained allotment within Medium Density (R3 zoning) under Tweed City Centre Local Environmental Plan 2012.

The development comprises a four storey building with a rooftop pool. The building will contain basement car parking, a one bedroom unit on Level 1 and two one bedroom units on Level 2. The rooftop will contain a shared pool area, outdoor living and entertaining area.

The application was notified for a period of 14 days in accordance with Section A11. During this time, a total of three submissions (objections) were received.

The application is being reported to Council as it contains a variation to a development standard contained with Tweed City Centre Local Environmental Plan, namely Clause 6.6 which requires that development within the R3 zone has a 20m minimum street frontage to encourage development of an appropriate scale in the medium density area. The variation is greater than ten percent and thus cannot be determined under delegation.

The officers recommendation is for approval, subject to conditions.

RECOMMENDATION:

That:

- A. Clause 4.6 Exceptions to Development Standards objection to Clause 6.6 of Tweed Local Environmental Plan 2014 regarding the minimum building street frontage be supported and the concurrence of the Director-General of the Department of Planning be assumed.
- B. Development Application DA15/0102 for multi-dwelling housing comprising three units and a pool at Lot 5 DP 9173 No. 24 Thomson Street, Tweed Heads be approved subject to the following conditions:

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plans as listed in the table below, except where varied by the conditions of this consent:

Drawing	Prepared by	Dated
Site Plan - Basement (Sheet 36 of 96) Revision J	Stuart Osman Building Designs	10/04/15
Site Plan - Ground Floor (Sheet 37 of 96) Revision J	Stuart Osman Building Designs	10/04/15
Site Plan - First Floor (Sheet 38 of 96) Revision J	Stuart Osman Building Designs	10/04/15
Site Plan - Second Floor (Sheet 39 of 96) Revision J	Stuart Osman Building Designs	10/04/15
Basement and Ground Floor Plans (Sheet 43 of 96) Revision J	Stuart Osman Building Designs	10/04/15
First and Second Floor Plans (Sheet 44 of 96) Revision J	Stuart Osman Building Designs	10/04/15
Elevations (Sheet 45 of 96) Revision J	Stuart Osman Building Designs	10/04/15
Section A (Sheet 47 of 96) Revision J	Stuart Osman Building Designs	10/04/15

[GEN0005]

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

[GEN0115]

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

It is noted that the existing power pole along the developments frontage will be required to be relocated to accommodate the new access.

[GEN0135]

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

[GEN0265]

5. This development consent does not include demolition of the existing structures on the subject site. A separate approval will need to be obtained for this purpose, as statutorily required.

[GEN0305]

6. Prior to the commencement of construction of the new structure or use of the site a 'clearance inspection' shall be conducted for the site and a 'clearance certificate' issued by a licensed asbestos assessor or competent person which states that the site 'does not pose a risk to health and safety from exposure to asbestos' in accordance with Clause 474 of the Work Health and Safety Regulation 2011. A copy of this certificate shall be forwarded to the Principal Certifying Authority and Council within 7 days of completion of the 'clearance inspection'.

[GEN0350]

7. To ensure that the building and any associated structures are correctly positioned on the site, a report prepared by a registered surveyor is to be submitted to the principal certifying authority at footing stage and at the completion of the building indicating that the building, retaining walls and the like have been correctly positioned and at the correct height on the site, noting that all boundary setback measurements are taken from the real property boundary and not from such things as road bitumen or fence lines.

[GENNS01]

8. Vehicles from the basement car park shall enter and exit the development in a forward direction.

[GENNS02]

9. Erosion and Sediment Control shall be designed, installed and maintained 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".

[GENNS02]

- 10. A Tweed Byron Local Aboriginal Land Council Cultural Sites Officer shall be engaged and on site to monitor works when any removal of vegetation and soil disturbance is carried out.
- 11. If Aboriginal cultural material is uncovered during earth working activities, the following measures shall be undertaken:
 - Works will cease immediately;
 - A temporary exclusion zone established;
 - Tweed Byron Local Aboriginal Land Council will be advised;
 - Office of Environment and Heritage will be contacted;

• An appropriate qualified cultural heritage professional will be contacted.

[GENNS04]

- 12. Should skeletal material be exposed during ground disturbance, work within the project area must cease immediately and contact made with the following, as per OEH requirements:
 - NSW Police
 - National Parks and Wildlife
 - Tweed Byron Local Aboriginal Land Council
- 13. It is a requirement of the legislation that if cultural materials are uncovered as a result of development within the project area, they are to be registered as Aboriginal sites with OEH on the AHIMS database within the required timeframe.
- 14. It is recommended that consultation with Tweed Byron Local Aboriginal Land Council be ongoing for the life of the works proposed for this site.

[GENNS04]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

15. Prior to issue of Construction Certificate the applicant is to submit to Council's General Manager or his delegate a list of the finished building materials and colours (including colour product photo images) for approval.

[PCC0175]

16. 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.

[PCC0585]

17. 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, including (but not limited to) the construction of a new access in accordance with Section A2 - "*Site Access and Parking Code*" of Council's consolidated Tweed Development Control Plan and Council's "*Driveway Access to Property - Part 1*" Design Specification June 2004.

Applications shall include engineering plans and specifications undertaken in accordance with Council's Development Design and Construction Specifications, including (as applicable):

- Road works/furnishings
- Stormwater drainage
- Water and sewerage works
- Sediment and erosion control plans
- Location of all services/conduits
- Traffic Control Plan (as applicable)

[PCC0895]

18. The footings and floor slab are to be designed by a practising Structural Engineer after consideration of a soil report from a NATA accredited soil testing laboratory and shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.

[PCC0945]

19. Council will not permit ground anchors (to retain sacrificial sheet piling for basement excavations) within Council or neighbouring private property or within 200mm of the subject site's property boundary, without prior consent from Council or the applicable neighbouring property owner being obtained. If the land is owned by Council, approval is required from the General Manager or his delegate.

Additionally, the applicant or owner must enter into a contract regarding liability for the ground anchors and lodges an application under Section 138 of the Roads Act together with an application fee of \$10,000 and a bond of \$25,000 for each road frontage. This bond will be refunded upon the removal of the ground anchors. If the ground anchors are not removed prior to the occupation/use of the development, the bond shall be forfeited to Council.

[PCC0955]

- 20. A Construction Certificate application for building 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 Section 68 of the Local Government Act.

a) Applications for these works must be submitted on Council's standard Section 68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.

[PCC1145]

21. The peak stormwater flow rate that may be discharged from the site to the public realm, in events of intensity up to the ARI 100 year design storm, shall be limited to the pre-development flow rates utilising water sensitive urban design measures in accordance with Water Sensitive Urban Design Technical Design Guidelines for South East Queensland (Healthy Waterways) and/or on site stormwater detention (OSD) utilising above and or below ground storage. OSD devices including discharge control pits (DCP) are to comply with standards in the current version of The Upper Parramatta River Catchment Trust "On-Site Stormwater Detention Handbook" except that Permissible Site Discharge (PSD) and Site Storage Requirements (SSR) in the handbook do not apply to Tweed Shire.

All stormwater must initially be directed to the DCP. Details are to be submitted with the S68 stormwater application.

Any proposed roof level stormwater storage system must be limited to a maximum ponding depth of 60mm for the ARI 100 year storm event and must provide a failsafe overflow, to ensure stormwater will not overflow back into the building or neighbouring properties during larger rainfall events or if blockage of the system occurs.

[PCC1165]

22. An application shall be lodged together with any prescribed fees including inspection fees and approved by Tweed Shire Council under Section 68 of the Local Government Act for any water, sewerage, on site sewerage management system or drainage works including connection of a private stormwater drain to a public stormwater drain, installation of stormwater quality control devices or erosion and sediment control works, prior to the issue of a construction certificate.

[PCC1195]

23. Where any existing sewer junctions are to be disused on the site, the connection point shall be capped off by Council staff. Applications shall be made to Tweed Shire Council and include the payment of fees in accordance with Councils adopted fees and charges.

[PCC1235]

PRIOR TO COMMENCEMENT OF WORK

24. 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]

25. An application is to be made to Council to disconnect the existing building from Council's sewerage system, prior to any demolition work commencing.

[PCW0045]

- 26. 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]

27. 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]

- 28. Residential building work:
 - (a) Residential building work within the meaning of the <u>Home Building Act</u> <u>1989</u> 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.

- 29. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one closet for every 15 persons or part of 15 persons employed at the site. Each toilet provided must be:
 - (a) a standard flushing toilet connected to a public sewer, or
 - (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

- 30. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

[PCW0255]

31. Please note that while the proposal, subject to the conditions of approval, may comply with the provisions of the Building Code of Australia for persons with disabilities your attention is drawn to the Disability Discrimination Act which may contain requirements in excess of those under the Building Code of Australia. It is therefore recommended that these provisions be investigated prior to start of works to determine the necessity for them to be incorporated within the design.

[PCW0665]

- 32. It is a condition of this approval that, if an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land or is likely to effect the integrity of the adjoining land, the person causing the excavation to be made must comply with the following:
 - (a) The person must, at the person's own expense:
 - (i) preserve and protect the building/property from damage; and
 - (ii) if necessary, underpin and support the building in an approved manner.
 - (b) The person must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars to the owner of the proposed work.

[PCW0765]

33. 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. These measures are to be in accordance with the approved Erosion and Sedimentation Control Plan and adequately maintained throughout the duration of the development.

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]

34. An application to connect to Council's sewer or carry out plumbing and drainage works, together with any prescribed fees including inspection fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.

[PCW1065]

35. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of a new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.

[PCW1170]

DURING CONSTRUCTION

36. 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]

37. 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]

38. 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 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. $L_{Aeq, 15 min}$ 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]

39. 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]

- 40. Provision shall be made for the collection of builder's solid waste in accordance with the following requirements:
 - (a) A temporary builder's waste chute is to be erected to vertically convey builder's debris to a bulk container.
 - (b) The chute shall be located in a position approved by the Principal Certifying Authority.
 - (c) A canopy shall be provided to the chute outlet and container to reduce the spillage of materials and nuisance caused by dust.

[DUR0385]

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

[DUR0395]

42. 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]

43. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Work Health and Safety Regulation 2011.

[DUR0415]

- 44. Excavation
 - (a) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with WorkCover 2000 Regulations.

(b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

[DUR0425]

- 45. If the work involved in the erection or demolition of a building:
 - (a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or
 - (b) building involves the enclosure of a public place,

a hoarding or fence must be erected between the work site and the public place in accordance with the WorkCover Authority of NSW Code of Practice and relevant Australian Standards.

Where necessary the provision for lighting in accordance with AS 1158 -Road lighting and provision for vehicular and pedestrian traffic in accordance with AS 1742 shall be provided.

Any such hoarding, fence or awning is to be removed prior to the issue of an occupation certificate/subdivision certificate.

Application shall be made to Tweed Shire Council including associated fees for approval prior to any structure being erected within Councils road reserve.

[DUR0435]

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

[DUR0815]

47. The development is to be carried out in accordance with the current BASIX certificate and schedule of commitments approved in relation to this development consent.

[DUR0905]

48. 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]

49. 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 an Occupation Certificate.

[DUR0995]

50. 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]

51. Access to the building for people with disabilities shall be provided and constructed in accordance with the requirements of Section D of the Building Code of Australia. Particular attention is to be given to the deemed-to-satisfy provisions of Part D-3 and their requirement to comply with AS1428.

[DUR1685]

52. Where a building or part of a building is required, under the provisions of Section D of the Building Code of Australia, to be accessible to permit use by people with disabilities, prominently displayed signs and symbols shall be provided to identify accessible routes, areas and facilities. The signage, including Braille or tactile signage, should be installed in accordance with the relevant provisions of the Building Code of Australia and achieve the minimum design requirements provided under AS1428.

[DUR1695]

53. Pursuant to the provisions of the Disability Discrimination Act, 1992 (Commonwealth) the design of the proposed development shall facilitate access for the disabled in accordance with the relevant provisions of AS1428- Design for Access and Mobility.

[DUR1725]

54. 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]

55. 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 any use or occupation of the buildings.

[DUR1875]

56. Where existing kerb, footpath or driveway laybacks are to be removed for new driveway laybacks, stormwater connections, pram ramps or for any other reason, the kerb, footpath or driveway laybacks must be sawcut on each side of the work to enable a neat and tidy joint to be constructed

[DUR1905]

57. During construction, a "satisfactory inspection report" is required to be issued by Council for all works required under Section 138 of the Roads Act 1993. The proponent shall liaise with Councils Engineering Division to arrange a suitable inspection.

[DUR1925]

58. A certificate from a suitably qualified practicing structural engineer shall be submitted to Council and the Principal Certifying Authority within seven days of the site being excavated certifying the adequacy of the sheet piling or other retaining method used to support adjoining properties.

[DUR1965]

59. 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]

- 60. Swimming Pools (Building)
 - (a) The swimming pool is to be installed and access thereto restricted in accordance with Australian Standard AS 1926.1 - 2012 & AS 1926.3 -2010 & AS 1926.2-2007, the Swimming Pool Act 1992 and the Swimming Pool Regulation 2008.
 - (b) Swimming pools shall have suitable means for the drainage and disposal of overflow water.
 - (c) The pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.
 - (d) Warning notices are to be provided in accordance with Part 3 of the Swimming Pool Regulations 2008.
 - (e) Once your pool or spa is complete please register it at www.swimmingpoolregister.nsw.gov.au.

[DUR2075]

61. Backwash from the swimming pool is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9.

[DUR2085]

62. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blown from the site.

[DUR2185]

63. The guttering downpiping and roof waste water disposal system is to be installed and operational before the roofing is installed.

[DUR2245]

64. 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]

65. 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]

- 66. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:
 - (a) internal drainage, prior to slab preparation;
 - (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
 - (c) external drainage prior to backfilling.
 - (d) completion of work and prior to occupation of the building.

[DUR2485]

- 67. Plumbing
 - (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
 - (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the Plumbing Code of Australia and AS/NZS 3500.

[DUR2495]

68. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position.

[DUR2505]

69. All water plumbing pipes concealed in concrete or masonry walls shall be fully lagged.

[DUR2525]

70. Swimming pool pumps, air conditioning units, heat pump water systems and the like shall be located, installed and operated so as not to be heard in a habitable room of a residence during restricted hours or where it would create offensive noise as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2008.

[DUR2835]

71. Construction of the development shall comply with the Waste Management Plan prepared by J.D. Crimmins dated 9/2/15.

[DURNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

72. Prior to issue of an Occupation Certificate, all works/actions/inspections etc required at that stage by other conditions or approved Management Plans or the like shall be completed in accordance with those conditions or plans.

[POC0005]

73. 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]

74. The building is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the building to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.

[POC0225]

75. A final occupation certificate must be applied for and obtained within 6 months of any Interim Occupation Certificate being issued, and all conditions of this consent must be satisfied at the time of issue of a final occupation certificate (unless otherwise specified herein).

[POC0355]

76. Section 94 Contributions

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

Prior to the occupation of the building or issue of any Interim or Final Occupation Certificate (whichever comes first), all Section 94 Contributions must have been paid in full and the Certifying Authority must have sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

A CURRENT COPY OF THE CONTRIBUTION FEE SHEET ATTACHED TO THIS CONSENT <u>MUST</u> 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.

(a)	Tweed Road Contribution Plan: 5.2 Trips @ \$853 per Trips (\$815 base rate + \$38 indexation) S94 Plan No. 4 Sector1_4	\$4,436
(b)	Open Space (Casual): 0.625 ET @ \$549 per ET (\$502 base rate + \$47 indexation) S94 Plan No. 5	\$343
(c)	Open Space (Structured): 0.625 ET @ \$629 per ET (\$575 base rate + \$54 indexation) S94 Plan No. 5	\$393

(d)	Shirewide Library Facilities: 0.625 ET @ \$847 per ET (\$792 base rate + \$55 indexation) S94 Plan No. 11	\$529
(e)	Bus Shelters: 0.625 ET @ \$64 per ET (\$60 base rate + \$4 indexation) S94 Plan No. 12	\$40
(f)	Eviron Cemetery: 0.625 ET @ \$124 per ET (\$101 base rate + \$23 indexation) S94 Plan No. 13	\$78
(g)	Extensions to Council Administration Offices & Technical Support Facilities 0.625 ET @ \$1880.38 per ET (\$1,759.90 base rate + \$120.48 indexation) S94 Plan No. 18	\$1,175.24
(h)	Cycleways: 0.625 ET @ \$478 per ET (\$447 base rate + \$31 indexation) S94 Plan No. 22	\$299
(i)	Regional Open Space (Casual) 0.625 ET @ \$1103 per ET (\$1,031 base rate + \$72 indexation) S94 Plan No. 26	\$689
(j)	Regional Open Space (Structured): 0.625 ET @ \$3872 per ET (\$3,619 base rate + \$253 indexation) S94 Plan No. 26	\$2,420
(k)	Tweed Heads Master Plan: 2 MDU @ \$1047 per MDU (\$1,047 base rate + \$0 indexation) S94 Plan No. 27	\$2,094

77. Prior to the issue of a final occupation certificate adequate proof and/or documentation is to be submitted to the Principal Certifying Authority to identify that all commitment on the BASIX "Schedule of Commitments" have been complied with.

[POC0435]

[POC0395]

78. 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.

Prior to the occupation of the building or issue of any Interim or Final Occupation Certificate (whichever comes first), all Section 64 Contributions must have been paid in full and the Certifying Authority must have 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 DSP4:	0.2 ET @ \$12907 per ET	\$2,581.40
Sewer Banora:	0.5 ET @ \$6201 per ET	\$3,100.50

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 <u>MUST</u> 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.

[POC0675]

79. Prior to the issue of an occupation 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.

[POC0745]

80. Redundant road pavement, kerb and gutter or foot paving including any existing disused vehicular laybacks/driveways or other special provisions shall be removed and the area reinstated to match adjoining works in accordance with Councils Development Design and Construction Specifications.

[POC0755]

81. On completion of work a certificate signed by a practising structural engineer is to be submitted to the Principal Certifying Authority to certify the structural adequacy of the structure.

[POC0805]

82. Upon completion of the pool the builder is to submit to the Principal Certifying Authority a certificate stating that the "Water Recirculation System" has been installed in accordance with AS 1926.3-2010.

[POC0905]

83. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.

[POC1045]

84. Prior to the issue of a final occupation certificate, all conditions of consent are to be met.

[POC1055]

85. Prior to the issue of an Occupation Certificate, a certificate of practical completion shall be obtained from Council's General Manager or his delegate for all works required under Section 68 of the Local Government Act.

[POCNS01]

USE

86. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.

[USE0125]

87. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.

[USE0175]

88. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.

[USE0225]

89. The premises shall be suitably identified by Unit No. (where appropriate) and Street Number displayed in a prominent position on the facade of the building facing the primary street frontage, and is to be of sufficient size to be clearly identifiable from the street.

[USE0435]

90. All landscaping work is to be completed in accordance with the approved plans prior to any use or occupation of the building.

[USE0735]

91. Operation of the development shall comply with the Waste Management Plan prepared by J.D. Crimmins dated 9/2/15.

[USENS01]

REPORT:

Applicant:	Mr JD Crimmins
Owner:	Mr Keith A Driesen
Location:	Lot 5 DP 9173 No. 24 Thomson Street, Tweed Heads
Zoning:	R3 Medium Density Residential
Cost:	\$700,000

Background:

Consent is sought for the construction of a small residential flat building containing three units at 24 Thomson Street, Tweed Heads.

The site represents a small and constrained allotment within Medium Density (R3 zoning) under Tweed City Centre Local Environmental Plan 2012.

The subject site is shown below.



The application proposes the erection of a four storey building with a rooftop pool. The building will contain basement car parking, a one bedroom unit on Level 1 and two one bedroom units on Level 2. The rooftop will contain a shared pool area, outdoor living and entertaining area.

The levels of the development are further described below:

Basement:

 Is proposed to be accessed via a gated driveway, adjacent to the southern boundary of the site.

- Will contain parking for four vehicles and will include a vehicle turn table to allow the vehicles to leave the site in a forward direction. Basement parking is proposed for Units 2 & 3 of the development only.
- Constitutes a 'storey' as the rear of the basement will be wholly above ground.
- Will also contain a communal laundry for the use of Units 2 & 3, the plant room, water storage tanks, stairwell and the lift.

Level 1 (Ground Floor):

- Is proposed to contain **Unit 1** only, which consists of 1 bedroom, laundry, office, sitting room, kitchen dining and family room and a large alfresco area at the rear of the unit.
- Access to the unit will be via a double garage (sharing the same driveway layback as the basement), or via the foyer and lobby which is to be located at the southern extent of the building.

Level 2 (First Floor):

- Is proposed to contain 2 x 1 bedroom Units.
 - **Unit 2** is proposed to be located at the front of the site, containing 1 bedroom, a combined kitchen/lounge, as well as a large outdoor balcony located above the ground floor garage.
 - **Unit 3** comprises 1 bedroom with a study, kitchen and lounge and a rear balcony.

Level 3 (Second Floor):

- Contain a swimming pool, outdoor living room and covered entertaining room with bathroom facilities.
- The rooftop also contains a second large deck.

The entry to the building will be at street level, where the foyer will be accessible via a walkway adjacent to the garage and driveway. The central lobby and lift provides access to all levels of the building. No lift overrun is proposed. The lift to the rooftop will be contained within the upper floor entertainment area.

Demolition of the existing dwelling on site will be sought under separate application.

The site currently contains a single dwelling house and concrete car parking pad. The average width of the site is 10.63m and the average length is 60.55m, contributing to an overall site area of only 577m². The site also slopes from front to rear, with an 8.5m fall over the site. The pivotal issue with regard to the application has been ensuring an appropriate yield can be developed on the lot commensurate with the R3 zoning given the narrow width of the site, its small size and limited opportunities for amalgamation with adjoining allotments.

With regard to the background of the subject application, it is relevant to note the following:

• The site and the adjacent site (28 Thomson Street, the allotment which contains the dwelling currently under renovation) were previously subject to Development Consent DA04/1535 for an apartment building containing 15 units. This consent has expired. Since that time, both allotments have been offered for sale as a development lot and have not sold.

- In August 2014, the applicant submitted Development Application DA14/0516 for construction of a dwelling and pool on the subject site. After assessment, it was determined that the application could not be supported as the density was too low. The application was withdrawn.
- The applicant advises that in March 2014, both 24 Thomson Street and 28 Thomson Street were offered for sale separately. Within a week, 28 Thomson Street sold. The owners of this lot have commenced substantial renovations to the existing dwelling and have provided written notice to Council of their intention to continue to occupy the existing dwelling as such.

The surrounding area contains a mix of residential developments, including a large multi storey residential building (27 units over 12 floors) to the immediate north, Council parkland to the rear and a single dwelling (currently under renovation) and a two storey townhouse development to the immediate south.

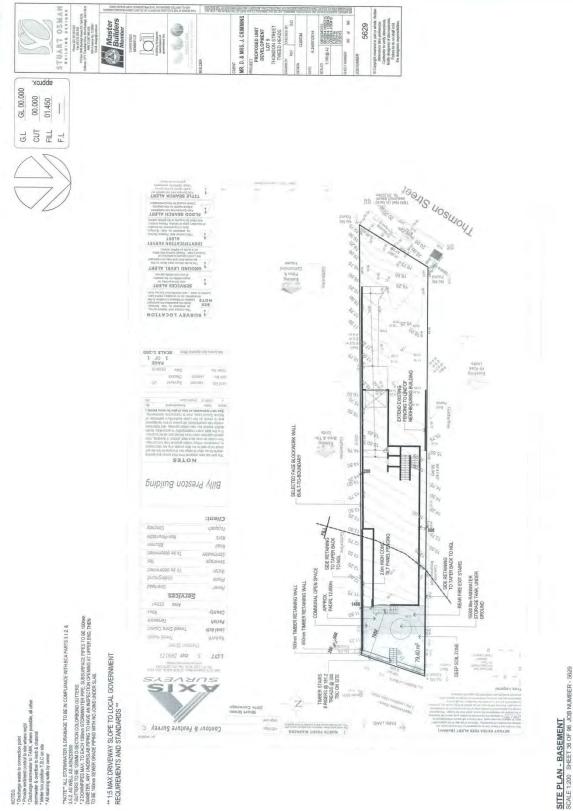
The application was notified to surrounding landholders for a period of 14 days from Wednesday 4 March to Wednesday 18 March 2015. During this time, a total of three submissions were received. The matters raised within the submissions are addressed later in this report.

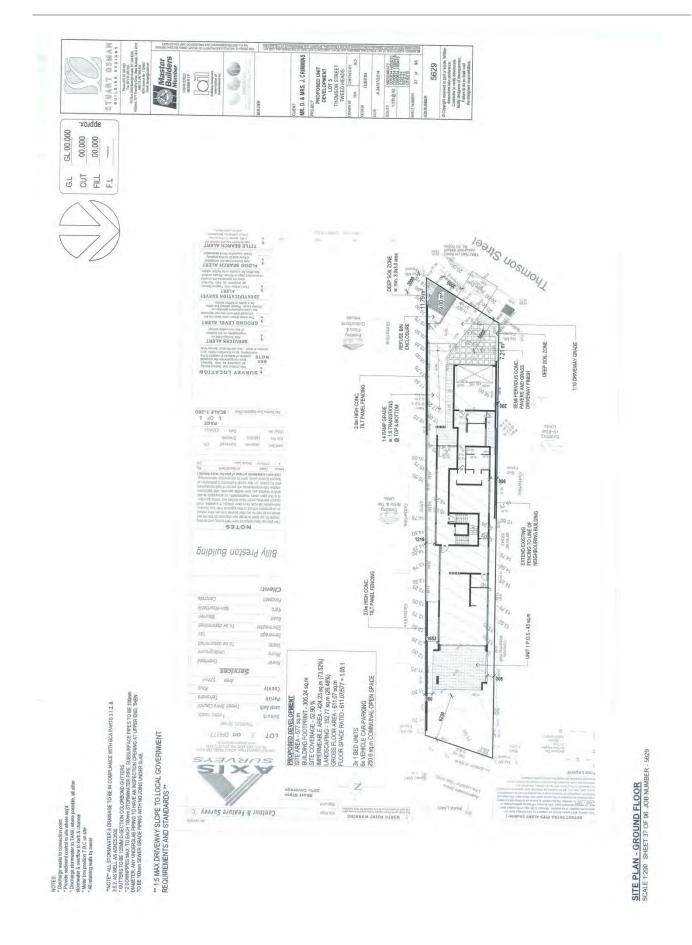
The application is being reported to Council as it contains a variation to a development standard contained with Tweed City Centre Local Environmental Plan, namely Clause 6.6 which requires that development within the R3 zone has a 20m minimum street frontage to encourage development of an appropriate scale in the medium density area. The variation is greater than 10% and thus cannot be determined under delegation.

It is recommended that the application be approved and Council assumes the concurrence of the Director-General in relation to Clause 6.6 of Tweed Local Environmental Plan 2012.

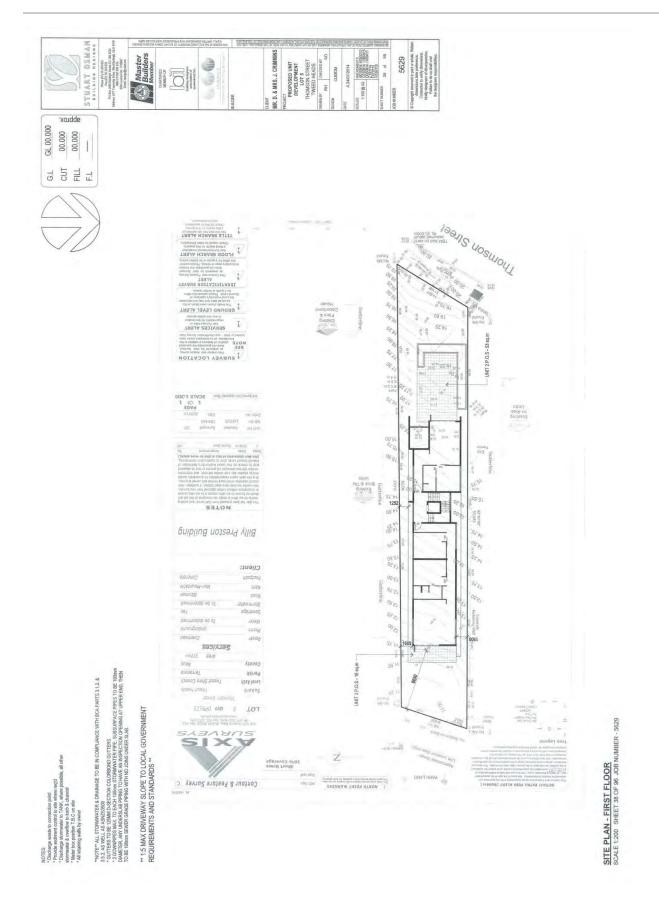


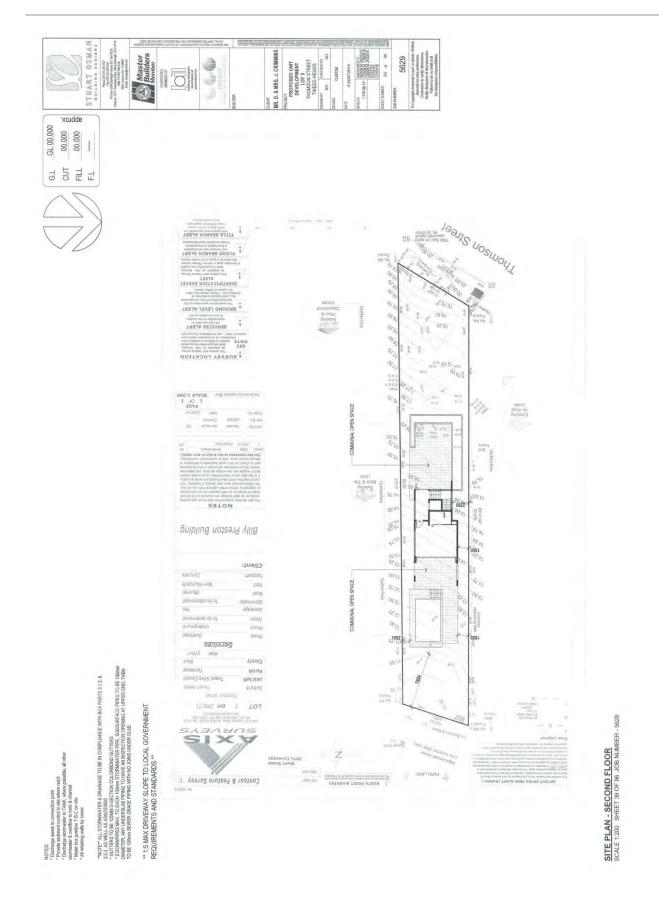
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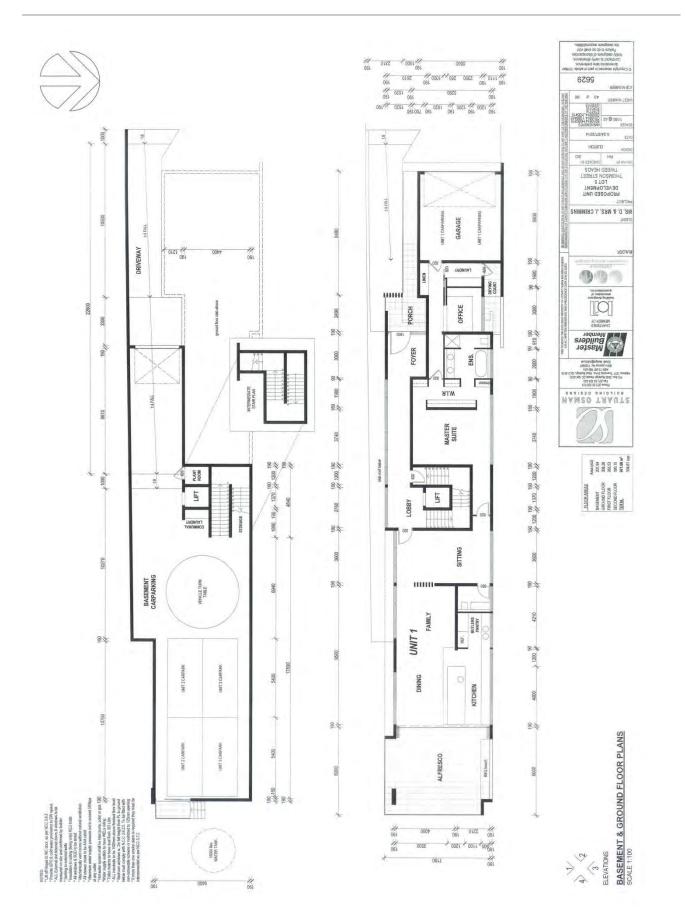




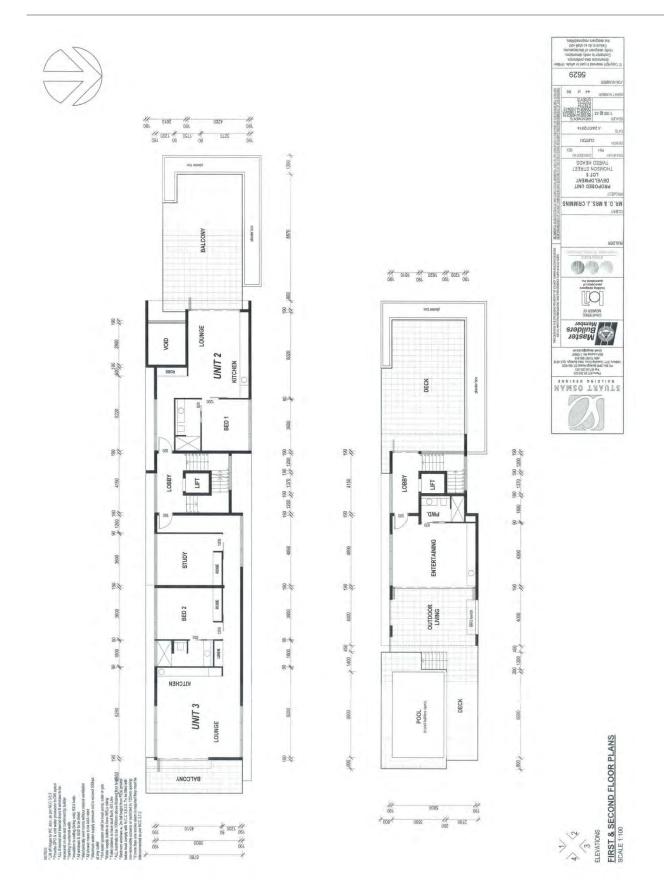
Planning Committee: Thursday 4 June 2015

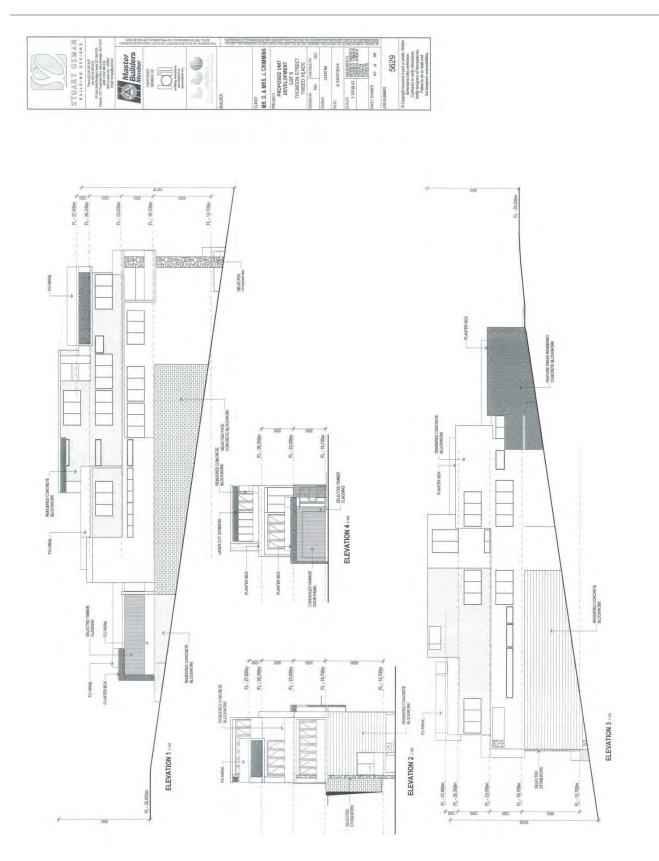






Planning Committee: Thursday 4 June 2015





Considerations under Section 79C of the Environmental Planning and Assessment Act 1979:

(a) (i) The provisions of any environmental planning instrument

Tweed City Centre Local Environmental Plan 2012

Clause 1.2 – Aims of the Plan

The aims of the plan are set out below:

- (a) to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents,
- (b) to promote employment, residential, recreational, arts, social, cultural and tourism opportunities in Tweed City Centre,
- (c) to encourage the responsible sustainable management and conservation of Tweed City Centre's natural and environmentally sensitive areas, the built environment and cultural heritage,
- (d) to promote development that is consistent with the principles of ecologically sustainable development,
- (e) to promote the economic revitalisation of Tweed City Centre,
- (f) to strengthen Tweed City Centre as a multi functional and innovative regional centre that encourages employment and economic growth,
- (g) to protect and enhance the vitality, identity and diversity of Tweed City Centre,
- (h) to facilitate building design excellence appropriate to a regional city in Tweed City Centre.

The proposed development is considered to be consistent with the aims of the plan as it provides for medium density accommodation in a suitably zoned area.

Clause 2.3 – Zone objectives and Land use table

The site is zoned R3 Medium Density Residential. The objectives of this zone are as follows:

- To provide for the housing needs of the community within a medium density residential environment;
- To provide a variety of housing types within a medium density residential environment;
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The development provides medium density accommodation within an appropriately zoned location and is thus considered to be consistent with the zone objectives. Residential accommodation (multi dwelling housing) is permitted with consent in the zone.

Clause 4.3 - Height of Buildings

The objectives of this clause include provisions to establish the maximum height for which a building can be designed and ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity.

This clause states that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. In this instance the subject development site is identified as having a maximum building height of 49.5m AHD as identified on the building height map.

The proposed development has a maximum stated height of 29.5m AHD (building height of 9.41m maximum).

Although the proposal is well below the maximum height limit, it is considered to be acceptable given the site constraints (narrow width etc).

As such, the proposed development is considered acceptable, noting that the height does not exceed the prescribed maximum.

Clause 4.4 – Floor Space Ratio

The objectives of this clause are as follows:

- (a) to define the allowable development density of a site and for particular classes of development,
- (b) to enable an alignment of building scale with the size of a site,
- (c) to provide flexibility for high quality and innovative building design,
- (d) to limit the impact of new development on the existing and planned natural and built environment,
- (e) to encourage increased building height and site amalgamation at key locations in Tweed.

This clause goes on to further state that the maximum floor space ratio (FSR) for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area. In this instance the applicable floor space ratio is V (3.25:1) over the entire site.

The subject site has a total area of 577m² and a proposed Gross Floor Area of 971.9m². This results in an FSR of 1.68:1 which is much less than the permitted maximum (which would allow a floor area of 1875m²). The proposal is acceptable in this regard and it is considered that achieving a higher FSR would be difficult based on the size and constraints of the subject site.

Clause 4.6 - Exceptions to development standards

- (1) The objectives of this clause are as follows:
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Director-General has been obtained.
- (5) In deciding whether to grant concurrence, the Director-General must consider:
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note. When this Plan was made it did not include all of these zones.

- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
 - (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which <u>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</u> applies or for the land on which such a building is situated,
 - (c) clause 5.4.

The application requires a variation to Clause 6.6 of the LEP, as the site is not able to meet the 20m minimum street frontage control prescribed by that clause.

Council has recently been a party to court proceedings in which Morris C found that satisfaction of Clause 4.6 of TLEP 2012 was a precursor to satisfaction of Clause 6.6. As such, Council must be satisfied that both Clause 4.6 and Clause 6.6 are appropriately addressed.

In relation to the Clause 4.6 provisions, the applicant has provided a written request (as required by subclause 3) which demonstrates that compliance with the standard is both unreasonable and unnecessary (and in fact impossible in the subject location).

The applicant's justification is as follows:

"Clause 6.6 of the Tweed City Centre LEP 2012 requires that Development consent must not be granted to the erection of a building on land in zone B3 Medium Density Residential, Zone B2 Local Centre, Zone B3 Commercial Core or Zone B4 Mixed Use that does not have at least one street frontage of 20 metres or more.

Clause 4.6 of the Tweed City Centre LEP aims to allow flexibility in applying certain development standards to achieve better outcomes for and from development by allowing flexibility in particular circumstances. Sub clause (2) allows consent to be granted to a development even though the development would contravene a development standard.

To seek variation to a Development Standard within the Tweed City Centre LEP, the consent authority must be satisfied that the applicant has demonstrated that:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

To demonstrate that the requirement for a 20m site frontage for the development is unreasonable, unnecessary and that the 20m frontage requirement would hinder planning objectives, the following matters are submitted for Council's consideration:

- Clause 6.6, subclause (3) allows Council to grant consent on a site with a lesser frontage if it is of the opinion that due to physical constrains of the site or an adjoining site or sites, it is not possible for the building to be erected with at least a frontage of 20m and if the development is consistent with the aims and objectives of the plan.
- The LEP aims to give effect to the outcomes stated in the adopted strategic planning documents and to promote residential opportunities in Tweed City Centre. The aims include to promote economic revitalisation and to enhance the vitality and diversity of the Tweed City Centre. The specific aims of the Medium Density Zone are to provide for the housing needs of the community in a medium density environment, to provide a variety of housing types within a medium density environment and to allow other land uses that provide services or facilities to meet the needs of residents.
- The proposed development comprises a medium density development with a variety of housing sizes. The additional residential development will contribute to enhancing the diversity of developments in the City Centre and promote residential opportunities, as per the LEP objectives.
- The site has a frontage of 11.6m. The approval of a small residential flat building on the site would aid in achieving the aims and objectives of the LEP.
- The strict adherence to the requirement for a 20m site frontage is unreasonable and unnecessary in this case as the objectives of Clause 6.6 of the LEP can be met regardless of the sites frontage being less than 20m.
- The objectives of Clause 6.6 which require the 20m site frontage are:

- To ensure that, visually, buildings have an appropriate overall horizontal proportion compared to their vertical proportions,
- To provide appropriate dimensions and spacing to ensure adequate privacy between any residential component and the adjoining land use,
- To provide appropriate dimensions for the design of car parks levels and ensure access is reasonably spaced along roads and lanes,
- To encourage larger development of commercial office, business, residential and mixed use buildings provided for under this Plan.
- Clause 6.6 of the Tweed City Centre LEP is aimed at preventing larger developments on narrow sites, and it is recognised that the site's width makes is unsuitable for larger scale development. Whilst the site's frontage is limited, it is entirely appropriate for the erection of a small residential flat building.
- The development is appropriately proportioned, as per the above objective. The development is not excessively high, and will appear as a three storey building when viewed from Thomson Street. The proposed building has been designed to achieve proportions appropriate for the site, with the structure tapering at the upper level. The bulk of the dwelling has been minimised, by ensuring that the upper level is centrally located, with lower building heights being provided at the front and rear of the site.
- The development is separated from the unit building to the north by a driveway, and from the development to the south by a proposed driveway, and setbacks of 1.609m to the upper floor. Refer to detailed discussion within the SEE regarding the setbacks. Privacy of adjacent sites would not be affected as this development does not contain windows with a direct line of site into the adjacent properties. The outlook from this development will be eastward, and over the rooftop of the townhouse development located on Frances St.
- The carpark levels and access is reasonably spaces along the roadway, as per the objectives of Clause 6.6. The street has development on only one side, and is a low traffic environment. Access is appropriate.
- The objective of Clause 6.6 includes to encourage larger development. However, any larger development in this locality may not be appropriate due to the impacts on the surrounding developments. The current development is of a size which both achieves Council's aims of medium density development whilst not being excessive for the site.
- There is no scope to amalgamate the site with adjoining land. Land to the north contains a large apartment building, land to the

south has recently been purchased and the owners are renovating the existing dwelling with a view to occupying the dwelling on the site in the long-term. Additional land to the south contains two storey villas of relatively recent construction, and land to the east is public parkland which is utilised heavily by a primary school as their playground. A letter has been provided from the adjacent land owner stating that they have no interest in development their site and that they intend on residing in the existing home.

- The land has been for sale (until recently) as a 'development site' with the adjacent dwelling at No. 28 Thomson Street. The sites were marketed with a valid development consent for 15 units. No interested developer could be found for the project. The site was considered unsuitable for a multi unit development due to the unusual shape of the combined land parcels, the slope and narrow width of the subject site. A letter is attached from McGraths Real Estate which confirms the above.
- The applicant has attempted to gain Council approval for a detached dwelling on the site, however, Council considered that this was inconsistent with the Objectives of the Medium Density zone, and required a higher density of development at the site. The current application has been prepared to response to Council's concerns that a higher density of development should be provided at the site.
- The issue of site amalgamation was discussed with Council's Development Assessment Panel on the 28th November 2014. The Panel was of the opinion that the design of the proposed building was a reasonable response to the constraints of the site but this will need to be assessed thoroughly as part of any future development application.
- The sites width is considered to be entirely appropriate for the erection of a small residential flat building, however, is insufficient for any higher density of development. Council's support for the development under Sub Clause (3) of Clause 6.6 is therefore requested.

Strict adherence to the requirement for a 20m road frontage for development would render the site unusable for development, and would prevent the obtainment of the zone objectives which are to encourage medium density housing.

Council's support for a variation to Clause 6.6 of the Tweed City LEP is respectively requested."

In relation to the Clause 4.6 matters, subclause 4 provides that consent must not be granted for contravention of a standard unless the consent authority is satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by subclause (3), and the development is in the public interest and consistent with the objectives of the relevant zone. The concurrence of the Director General must also be obtained.

It is considered that proposed development would be in keeping with the objectives of the zone by providing a medium density residential development in an area specified for such development and thus the public interest is considered to be protected. It is noted that Council has assumed concurrence in relation to varying the Clause 6.6 standard under Clause 4.6 as prescribed by Planning Circular PS08-003, 9 May 2008, issued by NSW Government Department of Planning.

In relation to subclause 5, it is relevant to consider the matters that the Director General must consider when deciding whether to issue concurrence for the varied standard. In this regard, the unique constraints of the site (limited size and width without possibility for amalgamation) provide clear justification for variation of the standard in order to allow the development to meet the zoning provisions. In this regard, the variation is not considered to raise any matters of significance for state or regional environmental planning as the objection is well founded. Maintaining the standard is not considered to result in a public benefit as it would essentially render the site unsuitable for the desired development type and thus undermine Council's zoning regime.

It is considered that a sufficient argument on planning grounds exists for contravention of the standard (namely that contravention of the standard does not impact on the site's ability to support a medium density residential development, albeit a small one).

There are no further matters prescribed by Clause 4.6 which require consideration. It is noted that the consent authority is obligated to keep a record of their assessment of the factors required to be addressed in the applicant's written request referred to in subclause 3. This assessment is considered to provide such a record.

Based on the above, Clause 4.6 is considered to be satisfied in relation to the proposed variation and support is warranted. It is thus recommended that the application be approved and concurrence be assumed by Council for the proposed variation.

Clause 5.5 – Development within the Coastal Zone

This clause states that development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered the following:

- (a) existing public access to and along the coastal foreshore for pedestrians (including persons with a disability) with a view to:
 - *(i)* maintaining existing public access and, where possible, improving that access, and
 - (ii) identifying opportunities for new public access, and

The subject application does not propose any amendments to existing public access to or along the coastal foreshore.

- (b) the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:
 - *(i)* the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and
 - (ii) the location, and
 - (iii) the bulk, scale, size and overall built form design of any building or work involved, and

The proposed development is permissible on the subject site and is generally consistent with the prescribed development requirements as outlined throughout this report. As such the proposal is considered to be acceptable at this location.

- (c) the impact of the proposed development on the amenity of the coastal foreshore including:
 - (i) any significant overshadowing of the coastal foreshore, and
 - (ii) any loss of views from a public place to the coastal foreshore,

The proposed development is located in excess of 500m from the coastal foreshore and is therefore not considered to impact on the amenity of the foreshore by virtue of overshadowing or a loss of views. The subject application is considered to be acceptable having regard to the above considerations.

(d) how the visual amenity and scenic qualities of the coast, including coastal headlands, can be protected, and

The proposed development is not considered to compromise the scenic qualities of the coast as it represents an acceptable development on appropriately zoned land. Beyond this, the subject development is not considered to generate any specific opportunities to protect the visual amenity and scenic qualities of the coast due to its nature and scale.

- (e) how biodiversity and ecosystems, including:
 - (i) native coastal vegetation and existing wildlife corridors, and
 - (ii) rock platforms, and
 - (iii) water quality of coastal waterbodies, and
 - (iv) native fauna and native flora, and their habitats, can be conserved, and

The proposal is to be undertaken on a previously developed land which is currently utilised for residential purposes. The proposed development would result in the removal of some landscaping vegetation within the existing site. It is considered that this vegetation provides amenity landscaping rather than having a specific ecological value.

It is noted that replacement landscaping is to be provided to the site. It is considered that the proposal will have a minimal impact on the local biodiversity or ecosystems in this regard.

(f) the cumulative impacts of the proposed development and other development on the coastal catchment.

The proposed development is not considered to result in an unacceptable cumulative impact on the coastal catchment given the sites zoning and the permissibility of the development at this location.

This clause goes on to further state:

- (3) Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority is satisfied that:
 - (a) the proposed development will not impede or diminish, where practicable, the physical, land-based right of access of the public to or along the coastal foreshore, and

As outlined elsewhere in this report, the proposal will not impede or diminish the right of access of the public either to or along the public foreshore.

(b) if effluent from the development is disposed of by a non-reticulated system, it will not have a negative effect on the water quality of the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and

The subject site would maintain connection to Councils reticulated sewer system.

(c) the proposed development will not discharge untreated stormwater into the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and

It is noted that the application has been reviewed by Council's Development Engineering Unit with respect to stormwater, who has advised that whilst the application has not specifically addressed stormwater management, the development will connect to the existing drainage infrastructure in adjacent Lot 24 DP 776673 which connects through to Frances Street and is considered appropriate.

Having regard to the above, it is considered that the subject application would be in accordance with the above controls, with no untreated stormwater being discharged to the sea, beach or the like.

- (d) the proposed development will not:
 - (i) be significantly affected by coastal hazards, or
 - (ii) have a significant impact on coastal hazards, or
 - (iii) increase the risk of coastal hazards in relation to any other land.

The proposed development is considered to be acceptable having regard to coastal hazards as outlined above due to its nature, permissibility and the spatial separation between the site and coastal hazards at this location.

Having regard to the above assessment the proposal is considered to be acceptable with respect to the provisions of this clause.

Clause 5.9 – Preservation of Trees or Vegetation

The subject site is not subject to a TPO and comprises limited vegetation. It is considered that the proposal raises no major implications in respect of this clause. Conditions will be applied to any development consent in respect to the provision of adequate native vegetation under the required landscaping plan.

Clause 6.1 – Acid Sulfate Soils

Class 5 Acid Sulfate Soils are identified on the subject site.

The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.

Council's Environmental Health Officer has reviewed this aspect of the proposed development and has not returned any objections on this basis. As such, the proposed development is considered to be acceptable having regard to Acid Sulfate Soils.

Clause 6.6 – Minimum building street frontage

This clause provides the minimum 20m street frontage requirement referred to in Clause 4.6 above.

The objectives of this clause are:

- to ensure that, visually, buildings have an appropriate overall horizontal proportion compared to their vertical proportions,
- to provide appropriate dimensions and spacing to ensure adequate privacy between any residential component and the adjoining land use,
- to provide appropriate dimensions for the design of car parks levels and ensure access is reasonably spaced along roads and lanes,
- to encourage larger development of commercial office, business, residential and mixed use buildings provided for under this Plan.

This clause goes on to further state that development consent must not be granted to the erection of a building on land in Zone R3 Medium Density

Residential that does not have at least one street frontage of 20 metres or more, unless <u>physical constraints</u> of the site make this impossible and the development continues to be consistent with the aims and objectives of the plan.

The site has a frontage of 11.6m.

Council has recently been a party to court proceedings in which Morris C found that satisfaction of Clause 4.6 of TLEP 2012 was a precursor to satisfaction of Clause 6.6. As such, Council must be satisfied that both Clause 4.6 and Clause 6.6 are appropriately addressed. In relation to Clause 4.6, comments have been provided above and overall, the proposed variation is considered warranted.

It is considered that the submitted justification is detailed and well reasoned and planning staff are of the opinion that the proposed variation is justified on this basis. As detailed under Clause 4.6 above, Council has assumed concurrence with regard to the standard and support of the variation is thus recommended.

In relation to the matters for consideration under Clause 6.6, it is evident that there are clear physical constraints which prevent the site from achieving the minimum street frontage. Notwithstanding, the objectives of the clause are considered to be met as the development provides a well designed development which contains all required amenities within the limited space (including outdoor space, car parking and landscaping) with negligible streetscape impacts. The development meets all other relevant aims of Tweed Local Environmental Plan 2012 as detailed above. As such, Clause 6.6 is considered to be satisfied and support of the proposed variation is warranted.

Clause 6.10 – Design excellence

This clause applies to development involving the erection of a new building or external alterations to an existing building and in particular applies to land identified as being on the 'key sites map' and development in respect of a building that will be higher than 35 metres.

The proposed development does not relate to a 'key site' or a building with a height in excess of 35m which eliminates the requirement for the proponent to undertake an architectural design competition, however the consent authority must consider whether the development exhibits design excellence. In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters *(in italics).*

(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,

The subject application has been assessed in detail under DCP B2 provisions elsewhere in this report with respect to the above controls and it is considered that the subject development is generally compliant with these requirements, demonstrating an acceptable architectural design, materials and detailing. It is noted (and discussed later) that SEPP 65 does not apply to the proposed development.

(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,

The subject development is considered to represent an appropriate building form and external appearance having regard to the development controls applicable to residential development at this location. Whilst this represents a higher density development than has previously existed on the site, it is considered that the proposal will improve the quality and amenity of the public domain and fit within the emerging higher density character of the area.

(c) whether the development detrimentally impacts on view corridors,

The proposed development is not considered to impact detrimentally on view corridors having regard to the proposed building mass and height, which is significantly less than the large multi storey development immediately to the east.

(d) the requirements of the Tweed City Centre DCP,

The proposed development is assessed elsewhere in this report against the provisions of this DCP and is found to be generally acceptable and consistent with the intent of the document.

- (e) how the development addresses the following matters:
 - (i) the suitability of the land for development,
 - (ii) existing and proposed uses and use mix,
 - (iii) heritage issues and streetscape constraints,
 - (iv) the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,
 - (v) bulk, massing and modulation of buildings,
 - (vi) street frontage heights,
 - (vii) solar access controls,
 - (viii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,
 - *(ix) the achievement of the principles of ecologically sustainable development,*
 - (x) pedestrian, cycle, vehicular and service access, circulation and requirements,
 - (xi) the impact on, and any proposed improvements to, the public domain.

The proposed development is considered to be acceptable having regard to the above criteria. In particular it is noted that the proposal relates to a medium density residential building on appropriately zoned land.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

In accordance with Clause 1.9 Application of SEPPs of the Tweed City Centre Local Environmental Plan 2012 the North Coast Regional Environmental Plan does not apply to the subject site.

Clause 1.9 Application of SEPPs (TCC LEP 2012)

- (1) This Plan is subject to the provisions of any State environmental planning policy that prevails over this Plan as provided by section 36 of the Act.
- (2) The following State environmental planning policies (or provisions) do not apply to the land to which this Plan applies:
 - State Environmental Planning Policy No 1—Development Standards
 - State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Exempt and Complying Development (clause 6 and Parts 3 and 4)
 - State Environmental Planning Policy No 60—Exempt and Complying Development
 - North Coast Regional Environmental Plan

SEPP No. 65 - Design Quality of Residential Flat Development

Clause 4 of SEPP 65 provides the following:

4 Application of Policy

- (1) This Policy applies to development being:
 - (a) the erection of a new residential flat building, and
 - (b) the substantial redevelopment or the substantial refurbishment of an existing residential flat building, and
 - (c) the conversion of an existing building to a residential flat building.
- (2) If particular development comprises development to which subclause (1) applies and other development, this Policy applies to the part of the development that is development to which subclause (1) applies and does not apply to the other part.

The corresponding definitions within the policy specify that:

residential flat building means a building that comprises or includes:

(a) 3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), **and**

(b) 4 or more self-contained dwellings (whether or not the building includes uses for other purposes, such as shops), but does not include a Class 1a building or a Class 1b building under the Building Code of Australia.

Whilst the proposed development satisfies the first criteria in that the 'basement' car park becomes a full additional storey at the rear of the allotment, the building comprises three units only and as such, SEPP 65 does not apply.

SEPP No 71 - Coastal Protection

SEPP 71 applies as the site is located in the coastal zone, though it is not in proximity to the coastal foreshore (and not within a sensitive coastal location).

(a) The aims of this Policy set out in Clause 2:

The proposed development is considered to be consistent with the aims of the policy as set out in clause 2.

(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.

The proposed development will not alter or restrict the public's access to the foreshore reserve areas located adjacent to the Pacific Ocean.

(c) Opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability.

The proposal does not generate any additional opportunities to improve public access to foreshore reserve areas and the like, nor are there any physical opportunities to do so given the spatial separation between the site and foreshore reserve.

(d) The suitability of the development given its type, location and design and its relationship with the surrounding area.

The proposed development is sited and designed in general accord with the relevant Council controls and is considered unlikely to create any form of adverse imposition upon the immediate area in terms of size, scale or usage. The design of the development is contemporary in nature incorporating a variety of elements consistent with current design trends for the area.

(e) any detrimental impact that 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.

The proposal is not considered to generate any detrimental impact on the public foreshore, given its spatial separation.

(f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities

The proposal is unlikely to impact upon the scenic quality of the NSW coast, with the development being spatially separated from the Beach and Ocean. The proposal is consistent with the built environment of the Tweed Heads area and the general desire for future built development in the locality.

(g) 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;

The proposal will not have an adverse impact upon threatened species. The subject site has been developed over time for urban purposes and contains minimal vegetation or native habitat.

(h) measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Par), and their habitats.

The proposal is unlikely to have an adverse impact upon marine environments or habitats.

(i) existing wildlife corridors and the impact of development on these corridors,

The proposal will not have an adverse impact upon wildlife corridors or the like.

(j) the likely impact of coastal process and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards;

The subject site is not located within an area affected by Coastal Erosion (WBM Coastline Hazard Definition Study), and is inland of the defined Coastal Erosion Zones. The development is unlikely to have an adverse impact upon Coastal Processes or be affected by Coastal Processes.

(k) measures to reduce the potential for conflict between land-based and waterbased coastal activities;

Not applicable.

(I) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals;

The subject site is not identified as a cultural place or similar.

(m) likely impacts of development on the water quality of coastal waterbodies,

The proposal is unlikely to adversely impact upon the water quality of nearby waterways. Appropriate erosion and sediment controls will be put in place to ensure no sediment impacts on the surrounding area.

(n) the conservation and preservation of items of heritage, archaeological or historic significance,

The subject site is not identified as land containing items of heritage, archaeological or historical significance.

 (o) 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;

Not applicable.

- (p) only in cases in which a development application in relation to proposed development is determined:
 - *(i)* the cumulative impacts of the proposed development on the environment; and

No cumulative impacts are likely as a result of the proposed development.

(ii) measures to ensure that water and energy usage by the proposed development is efficient.

A BASIX certificate has been prepared as part of this application which demonstrates the proposal would be acceptable having regard to the above.

The proposal is considered to be consistent with the matters for consideration within clause 8. The proposal will have no impact on access to and along the foreshore and will not result in overshadowing of the foreshore. The proposal is consistent with the desired future character for the area. It is considered the proposed development does not compromise the intent or specific provisions of State Environmental Planning Policy No. 71 – Coastal Protection.

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

There is no draft EPI.

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

Tweed Development Control Plan

<u>Comment</u>

A1 - Residential Development Code

Section B2 Tweed City Centre of the Tweed Development Control Plan (DCP) 2008 applies to the subject development as it is within the Tweed City Centre.

Where there are no provisions under Section B2, consideration is required to be given to Section A1 Residential and Tourist Development of the Tweed DCP 2008,

however in the event of an inconsistency between this section and another section of the DCP, Section B2 shall prevail.

A thorough assessment of the controls provided within Section B2 has been carried out, as detailed below (see comments under Section B2).

In relation to the subject application Section B2 is silent on overshadowing, therefore, Section A1 applies.

In relation to overshadowing, Section A1 has the following controls:

Controls

- a. Living spaces are to be located predominantly to the north where the orientation of the allotment makes this possible.
- b. Dwellings on allotments which have a side boundary with a northerly aspect are to be designed to maximise sunlight access to internal living areas by increasing the setback of these areas. In these cases a minimum side setback of 4 metres is required.
- c. Private open space of the subject dwelling is to receive at least two hours sunlight between 9am and 3pm on June 21.
- d. Windows to north-facing habitable rooms of the subject dwelling are to receive at least 3 hours of sunlight between 9am and 3pm on 21 June over a portion of their surface.
- e. For neighbouring properties ensure:
 - sunlight to at least 50% of the principal area of private open space of adjacent properties is not reduced to less than 2 hours between 9am and 3pm on June 21, and
 - windows to living areas must receive at least 3 hours of sunlight between 9am and 3pm on 21 June.
- f. Where existing overshadowing by buildings is greater than this, sunlight is not to be further reduced by more than 20%.

The applicant has provided a detailed response to Council planning staff's concerns about overshadowing of the adjoining two storey town house development to the west of the proposed building (as shown in figure below).



The applicant's justification is provided below:

"Council requested the provision of an assessment relating to overshadowing and viewsharing as contained in DCP A1. To address the issue of overshadowing, plans have been prepared by the architect which show the shadow impact at the winter solstice. Mid winter was selected to depict shadow impact, as this is well-known to be the date of greatest shadow impact, and is the time period referred to in Council's DCP. Of particular relevance when assessing shadow impact, is the height of the adjoining development at 22 Thomson Street, and the large shadow generated by the existing development. The shadow from the adjacent development has been plotted on the shadow diagrams from the information contained within Council' records. The plans of the shadow impact of 22 Thomson Street provided by Council have been overlaid with the shadow plans for the current development. When assessing the shadow impact, Council is respectively requested to consider the following:

- The shadow impact of the proposed development is only marginally greater than the shadow cast by the adjacent high rise development, as shown on the shadow plans, attached.
- The adjacent townhouse development on Frances Street is near completely covered in winter shadow from approximately 9.30am to 3.00pm mid-winter.

- The proposed development may create additional shadow on the easternmost unit for a minor part of their yard area for perhaps an additional 15 mins in the early morning. During this time, sunlight would be available to the eastern facade & yard of the townhouse.
- In the afternoon period, the shadow diagrams indicate that the westernmost townhouse would receive approximately 1.0hr of additional shadow. However this townhouse development is situated in approximately 2.5m 3.0m of cut, with a high retaining wall located on their boundary. Photographs overleaf show that the rear yard is in complete shadow from the retaining wall during the winter and autumn afternoon period. Existing vegetation along the boundary also contributes to shadow. The existing shadow experienced by this adjoining site is depicted in the attached photographs.
- With regard to the controls of DCP A1 Part C, the it is submitted that the neighbouring properties will not have their sunlight access substantially reduced, as the properties do not receive sunlight access between 9.00am and 3.00pm on June 21 (which is the critical date referred to in the DCP).
- No notable views currently exist over this site. Units within the neighbouring high rise have rear balconies with easterly views or front balconies with westerly outlooks."

The applicant supplied shadow diagrams which compare the extent of existing shadow from the development at 20-22 Thomson Street (12 storey building) with the cumulative shadow from that development and the subject development:



The diagrams illustrate that there will be additional shadow on the adjoining townhouses to the south as a result of the proposed development. In relation to the Section A1 controls (as shown above), the following assessment is provided:

Assessment:

- a) Living spaces are located to the east and west as there is not sufficient width within the subject site to locate them to the north. On the top level, the shared external living spaces are open to all directions.
- b) The allotment has a north facing side boundary however there is not sufficient width within the site to accommodate a 4m side setback in this location.
- c) Private open space of the proposed development will be affected by shadow from the existing 12 storey development to the north at most times of the day in mid winter. From 12 noon to 3pm it would appear that the western part of the top floor balcony (communal open space) and the Unit 2 western balcony would be free of shadow though the rear balconies of Units 1 and 3 would be in shadow.
- d) North facing windows of the proposed units will not receive sunlight in midwinter.
- In relation to neighbouring properties, it is evident that the town house e) development to the south (in particular the block of units adjacent to the southern boundary) is almost entirely covered by shadow from the existing development at 20-22 Thomson Street from 9.30am to 3pm mid winter. The subject development will worsen this slightly, by around 15 minutes of additional shadow in the early morning for the easternmost unit (though sunlight will be available to the eastern facade and terrace area). In the afternoons, the westernmost townhouse would receive an additional 1hr of shadow on the northern wall. In this regard however, it is noted that in this location, the townhouse development is located in up to 3m of cut with a high retaining wall located on the boundary. The wall provides that the rear yard area is almost completely in shadow in the winter afternoon period. Because these properties do not receive sunlight access between 9.00am and 3.00pm on June 21, it is submitted that the proposed application does not result in a worse outcome than currently experienced (except for the small amount of additional shadow for the easternmost townhouse in the morning).

Further to the above, the applicant has provided the following further information pertaining to the impacts of the existing high rise building shadow on the proposed development:

"It is recognised that the subject site is highly limited with regard to access to sunlight. The shadow diagrams for June 21 indicate that there is no developable part of the site which would receive 2hrs of sunlight between the hours of 9.00am and 3.00pm.

The very rear of the site (rear yard) would receive sunlight from sunrise until approximately 11.00am. This area is not private open space, but will be a yard which is accessible by all future residents as community open space.

The frontage of the site will receive sunlight from approximately 11.00am onwards, however this is within the street frontage, and is not a suitable location for private open space as it is required to provide access to the development.

Unit 1 will have a large alfresco area orientated eastward to capture sunlight in the early morning period. Providing a northern orientation to this private open space would reduce the access to sunlight rather than increase it, due to the shadow generated by the adjacent development, and hence the balcony faces directly east rather than north. Sunlight would be available until approximately 9.00am.

Unit 3 will also have a private balcony orientated eastward to access early sunlight. This unit is on the first level of the building, and being higher, may retain sunlight for marginally longer than Unit 1.

Unit 2 has a large balcony facing west. This balcony will receive afternoon sunlight in mid-winter from around 1.00pm over part of its area.

The units have all been designed to capture some of the limited sunlight available to this site. There is no opportunity to increase sunlight to the proposed units due to the large shadow created by the adjacent development. East and west facing balconies and windows have greater opportunity to access sunlight than if they were north facing".

Overall it is considered that the development is acceptable with regard to overshadowing and will not create a situation significantly worse than currently experienced by the townhouse development to the rear. It is noted that the existing overshadowing only affects those units adjacent to the southern boundary and that those which front Frances Street continue to receive sufficient sunlight access throughout the day in mid winter. In terms of the amenity of the proposed building, the applicant's comments above are noted and supported. It is considered that the development represents the best outcome for the site given the existing constraints and extent of overshadowing and the need to develop the site to a higher density than currently exists.

In relation to view sharing, it is evident that the large residential flat building to the north effectively blocks views north from the subject site and from surrounding development (noting that surrounding development has a lower height than the proposed development (2storey) and is located at a lower level than the subject site). The proposed development is not considered to impact adversely on the views of any surrounding development toward the coast. Views will be available from the second floor communal open space area to the east, south and west.

A2 - Site Access and Parking Code

In relation to on site car parking, parking provision is established by Section B2 Tweed City Centre of the DCP. Section B2 sets out reduced parking rates to boost development within the Tweed Heads area. The proposal comprises satisfactory parking arrangements, as per Section B2 (below). Further consideration under Section A2 is not required. In relation to access, Council's Development Engineer has applied a condition to ensure that the proposed access ramp to the basement parking area is designed in accordance with AS2890.1.

The proposed development is considered to be consistent with the applicable provisions of Section A2.

A11 - Public Notification of Development Proposals

The application was notified for a period of 14 days in accordance with Section A11. During this time, a total of three submissions (objections) were received. The matters raised in the submissions are addressed later in this report.

A15 - Waste Minimisation and Management

A Waste Management Plan was submitted with the application and referred to Council's Waste Management Unit for comments. It was advised that the plan is appropriate. A condition requiring compliance with the plan during construction and operation of the development will be applied.

B2 - Tweed Heads

The site is located within the City Centre Core Precinct prescribed by DCP Section B2.

The character statement for this precinct outlines that the future character will be of a dynamic centre with a mix of land uses comprising retail uses at ground level activating the street frontage and podium levels comprising commercial offices, topped by residential high rise development from 10m to 14m in height. The two main streets are Bay Street and Wharf Street. Thomson Street has a dedicated residential zoning (medium density).

BUILDING FORM

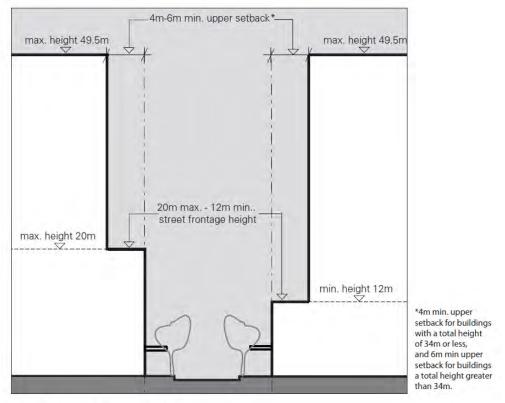
Section 3 provides design controls for building form in the area to which Section B2 applies. An assessment of the development against these controls is provided below:

3.1 - Building Alignment and Setbacks

The DCP requires a minimum building setback of 4m for the subject site, with an allowance of balconies to project up to 1.2m into the setback on land zoned R3.

The proposed development has a 5m front setback to the external wall of the first and second floor balconies which complies with the setback. There are no balconies etc that protrude forward of this line. The building aligns with Thomson Street and with those setbacks of adjoining properties (between approximately 3m and 6m setback to the street).

3.2 - Street frontage heights



Street frontage height C applies to the subject site:

Figure 3-7: Street frontage height 'C'

The proposed building as viewed from Thomson Street has a height of 9.44m. As it steps down the site (and natural ground level drops away) the height increases to around 13.5m. At the very rear of the site (over the 4 storey component), the height is approximately 16m.

At the Thomson Street frontage, the development does not meet the minimum height limit prescribed by street frontage height control C (12m). Notwithstanding, the proposed building is considered to appropriately define the public domain whilst contributing to a comfortable street environment for pedestrians in terms of daylight, scale, sense of enclosure and wind mitigation. There are existing street trees in the vicinity. In terms of key streets, the development will continue to allow sufficient sunlight access. The development meets the upper level front setback requirements.

3.3 - Building depth and bulk

Under Section 3.1, in a residential zone, the maximum GFA per floor is 700m². The maximum depth of building (excluding balconies) is 18m.

The proposed building has the following floor areas:

Basement - 207m² Ground Floor - 308.28m² First Floor - 265.53m² Second Floor - 190.15m² The total floor area is 971.9m².

As such, the development complies with the GFA maximum per floor. The depth of the building is around 32m which exceeds the 18m maximum. It is considered that this is necessary because of the narrow width of the site. There is not sufficient space to accommodate a wider building (which would necessitate a reduced building depth to achieve a similar floor area).

The objectives of the building depth and bulk controls are as follows:

Objectives

- 1) To promote the design and development of sustainable buildings.
- 2) To achieve the development of living and working environments with good internal amenity, and minimise the need for artificial, heating, cooling and lighting.
- 3) To provide viable and useable commercial floor space.
- 4) To achieve a usable and pleasant public domain at ground level by controlling the size of upper level floorplates of buildings.
- 5) To achieve a city skyline sympathetic to the topography and context.
- 6) To allow for view sharing and view corridors.
- 7) To reduce the apparent bulk and scale of buildings by breaking up expanses of building walls with modulation of form and articulation of facades.
- 8) To encourage building designs that meet the broadest range of occupants' needs possible, and which can accommodate whole or partial changes of use.

In relation to these objectives, it is considered that given the constraints of the site, the proposed development represents the most sustainable development of the allotment commensurate with Council's zoning objectives. The public domain will continue to be useable and pleasant, and due to the small size and narrow width of the site, will not be dominated by the proposed development. The size of the site effectively regulates the bulk and scale such that impacts of the development from the street are considered to be negligible. Though the building depth exceeds the prescribed maximum (which would appear to apply more to larger sites with a greater ability to achieve a more typical building form, especially when viewed in the context of Tweed City Centre LEP Clause 6.6 which requires a minimum building street frontage of 20m), this is not considered to result in significant impacts to any adjoining property. The side elevations do contain mixed building materials and are not considered to represent large expanses of blank walls.

The remaining controls in this section do not apply to the proposed development based on its small size. Internal building amenity is considered to be appropriate.

3.2.1 - Side and rear building setbacks and building separation

Though the building is 9.44m high (at the street frontage), the site drops away such that most of the building is between 11.2m and 16m high.

Residential uses between 12 and 25m high require the following setbacks:

- 6m front setback (only where the development exceeds 12m in height. Below 12m, a zero front setback applies)
- 9m side setback (only where the development exceeds 12m in height. Below 12m, a zero front setback applies)
- 9m rear setback

In relation to the front setback, the development has a 5m (minimum) setback to the Unit 1 garage. This section of the building does not exceed 12m and is thus permitted to have a zero setback which the development significantly exceeds.

In relation to the side setbacks, a zero side setback applies where the building height doesn't exceed 12m. The height exceeds 12m for only the upper level pool and entertaining area which is at 13.9m. The 9m side setback is required for this area. The development does not comply for this section of the building (1m to southern boundary and 1.5m to northern boundary is proposed).

The 9m rear setback is not met by the development. At ground floor, 6.23m is provided (to external wall of deck), at first floor 7m is proposed and at the upper level 7.894m is proposed.

As such, the applicant seeks variations in relation to the 9.0m side setback and the 9m rear as detailed in Table 3.2 of Section B2.

In support of the proposed variations to the setback controls, the applicant has provided the following:

"At the upper level, the pool will be at a level which is 13.9m above the ground level. For that part of the development above 12m the table specifies that the side and rear setbacks for a balcony or habitable room are to be 9m. A variation is therefore required to the requirements of this table.

A variation is sought on the following grounds:

- The site has a width of less than 10m, and as such a 9m side setback is impossible to achieve.
- Council has made it clear that the erection of a single dwelling on the site is not desirable and as such, units have been designed for the site. Due to the slope of the land, the height marginally exceeds 12m to achieve the three units on the property. Strictly applying the 9m side setback for a development over 12m in height would result in the site being unusable for an apartment building. Apartments would reasonably exceed 12m in height.

- It is only the pool and upper floor entertaining area which is non compliant with the side setback requirement, and not living areas of the units.
- The reduced upper floor setback is compensated for by the lower levels of the building being set back more than the nil setback permitted by the DCP.
- The privacy of adjacent sites will not be affected, as land to the north is the driveway of the adjacent units and to the rear is parkland. View lines from the upper floor deck will be over the roofline of the residential development to the south. The outlook from the upper floor deck will not be downward into adjacent sites.

For the above reasons, Council is respectfully requested to permit a reduced side and rear setback for the minor part of the development which exceeds 12m in height, as a 9m side/rear setback is impossible to achieve on this narrow site".

The above justification is generally accepted with regard to the side setbacks. Whilst the rear setback of 9m could likely be achieved on the site, the minor variation from the setback (2.87m at ground floor to 1.2m at upper level) is considered to be acceptable given the existence of Council owned reserve at the rear. Additionally, the development on either side of the subject site is built right to the rear boundary. As such, the larger setback will actually result in an improved outcome for the subject development site as well as adjoining properties.

In terms of the side setbacks, there is no possible way the narrow site can accommodate the required setbacks. At the upper level, there are side setbacks of 1m to the southern boundary and 1.5m to northern boundary provided. In the context of the overall locality, constraints of the site and negligible impacts on surrounding properties, the reduced setbacks are considered to be appropriate.

Note that the variation only applies to the portion of the building which exceeds 12m.

In relation to the objectives of this section of the policy, the development, inclusive of the proposed variations is considered to meet the overarching aims of the control.

The objectives are:

- To ensure an appropriate level of amenity for building occupants in terms of daylight, outlook, view sharing, ventilation, wind mitigation and privacy; and
- To achieve usable and pleasant streets and public domain areas in terms of wind mitigation and daylight access.

The development provides setbacks which are sufficient to provide privacy and amenity to residents and also makes use of generous outdoor living spaces at the front and rear of the allotment to make up for the reduced side setbacks. It is considered that these areas ensure that appropriate amenity for future occupants is provided. In relation to pleasant streets, the development is acceptable with regard to the required front setbacks and thus is considered to contribute to useable and pedestrian friendly streets. The development is also considered to meet the second objective in this regard (noting that a variation to the front setback requirements is not proposed).

3.4 - Mixed use buildings

Does not apply - the building comprises residential use only.

3.5 - Building design and materials

The objectives of this section are to ensure that development contributes positively to the streetscape and public domain by means of high quality architecture and robust material selection.

In general it is considered that the proposal complies with this section for the following reasons:

- The proposal takes into consideration adjoining buildings and the general form and nature of the building is considered to be in keeping with the scale of the area as well as achieving the highest density possible on a very small and constrained site in accordance with the prescribed zoning;
- In general the development incorporates appropriate alignment and street frontage heights as well as setbacks above street frontage heights;
- The proposal incorporates a variety of materials and facade proportions including articulation;
- Generous balconies are provided;
- The lift overrun has been concealed within the upper floor entertaining area;
- The building provides planter boxes and feature walls to soften the front facade;
- Landscaping is proposed in the front setback.

3.6 - Landscape design

Due to the slope of the site, the design actually provides for considerable landscaped area on parts of the site otherwise unsuitable for development.

There is no remnant vegetation on the subject site with only landscaped trees (jacaranda, frangipani, palms) being present in the vicinity of the existing dwelling.

A condition will be applied to the consent to ensure that suitable native species (minimum 80% total numbers) are utilised and to ensure that a variety of plant species are used such as trees/shrubs of varying heights.

For residential flat developments the minimum area of open space for communal use should be 30% of the site area. The subject application contains around 230m² of communal open space which is comprised of around 89m² at ground level (made up of the two deep soil zones) and around 140m² on the upper floor deck/pool area. This equates to almost 40% of the site area and complies with the

control. Additionally, the large private deck areas for each unit are noted and together with the large communal space are considered to provide sufficient area in which residents can recreate.

The control also requests that for residential flat building developments, a minimum 25% of the open space area of a site shall be a deep soil zone. The proposed development includes two deep soil zone areas with a combined area of around 88m². Against the amount of open space at the site, the deep soil zone area equates to a percentage of around 38% and complies with the 25% control.

A landscaping plan has been submitted with the application which contains the following species:

Ivory Curl (1) Burgundy Spire (3) Sago Palm (7) Draceana (4) Golden Cane Palm (15) Spear Lilly (6) Quandong (4) Spider Lilly (24) Mat Rush (52) NZ Flax (9) Bird of paradise (13) **Total 138 individuals**

Only the Spear Lilly (Doryanthes palmerii) and Quandong (Elaeocarpus eummundi) are suitable species (10 individuals combined are proposed). At present, they comprise less than 1% of the proposed species makeup. The rest are non local natives or cultivars. As above, submission of a revised plan prior to issue of construction certificate will be required.

3.7 - Planting on structures

The site is located within the City Centre Core Precinct and as such this section applies. The section aims to contribute to the quality and amenity if open space on roof tops and in internal courtyards. As discussed, a landscaping plan has been submitted however the species selection is not considered appropriate, nor are the provisions of Table 3-3 (minimum soil depths and volumes for deep soil zones) of Section B2 addressed. As above, a further detailed landscaping plan prior to issue of construction certificate will be required. The plan will be required to be consistent with the Section B2 controls pertaining to minimum soil depths and volumes for deep soil zones as per Table 3-3.

Notwithstanding the further information required, the proposal incorporates planter boxes and ample landscaped area over the development site and a satisfactory outcome is considered to be able to be achieved.

PEDESTRIAN AMENITY

This part of Section B2 aims to encourage future through site links at ground level, ensure active street frontages, ensuring adequate awnings on frontages of commercial buildings and mitigate adverse impacts on the street from driveway accesses.

4.1 - Permeability

Permeability controls of Section B2 aim to provide and encourage connections between the long side of street blocks and extending and enhancing lands to improve accessibility. This control is not considered applicable to the subject application.

4.2 - Active street frontage

The development incorporates habitable areas at street level and provides adequate levels of street address. The proposal incorporates two entry points - one being the basement parking area, the other the main entry to the foyer and internal circulation space at ground floor which is readily accessible from Thomson Street.

The proposal has ground level street address to Thomson Street as well as large balconies which overlook both Thomson Street and the reserve to the area.

The proposal is considered to be acceptable with regard to the street frontage objectives.

4.3 - Safety and security

The building design allows for passive surveillance and provides entrances in visually prominent positions, the location of balconies and living areas of the units provide the opportunity for casual surveillance from within the site of Thomson Street and the surrounding area. It is considered that appropriate delineation is provided between the public and private realm.

4.4 - Front fences and boundary treatments

The proposed development doesn't propose any front fencing. There is a small section of wall which wraps around from the southern boundary (which ultimately forms part of the basement wall) which forms the bin enclosure at the front of the site. This section of wall is considered to be appropriately integrated with the building design.

In relation to boundary treatments, the southern boundary will be formed by a 6m high retaining wall which forms structural support for the upper levels of the building and forms part of the side wall of the basement carparking area. The wall is 200mm within the side boundary for around 35m, however only exceeds 2m in height (i.e.: between 2m and 6m in height) for around 20m (whilst on the boundary). At the rear edge of the basement area, the wall steps further in from the boundary (around 1.5m) but remains approximately 6m high (forming the external wall adjacent to the car park area). The applicant advises that a 2m high

concrete panel fence will be located on the boundary in this location (forming an essentially unusable small strip of land in between both walls which is proposed to be landscaped. It is not envisaged due to the location and size of this area that plants would be very successful and it is likely that the area would become gravelled (or similar).

In relation to the northern boundary wall, it is noted that this will adjoin an existing large perimeter retaining wall associated with the driveway access for the adjacent high rise multi unit development to the north. This wall will be located around 200mm from the northern boundary for around 21m. The height of the wall will be around 5m where it forms part of the side wall of the garage. After this point, the wall of the building steps back in (side setback of around 900mm) and the external walls of the building will be screened by the existing wall to the north.

In relation to the rear boundary, the submitted plans indicate two staggered timber retaining walls and a small set of stairs set into the site to provide rear access.

No objection has been raised by Council's Development Engineer in their review of these aspects of the development and appropriate conditions regarding design (use of a variety of building materials) and construction have been applied.

Conditions will also be applied in respect to colours of proposed materials and landscaping to soften the built form.

4.5 - Awnings

Section B2 requires that certain sites provide awnings over the public street. The subject site is not a nominated site.

4.6 - Vehicle footpath crossings

One vehicle access point only is proposed with a minimum of 13.8m setback to the basement entry area and 6m setback to the garage door for Unit 1. The width of the driveway is 4m at the property boundary, widening to around 9m at the widest point where it incorporates basement access as well as access to the ground floor garage.

The controls require a single crossover (however it is wider than the preferred 2.7m) though it is noted that 5.4m is permitted where there is a safety concern. With regard to the design of the proposed development, it is evident that because of the constraints of the land that there is no other option for car parking other than the basement scenario coupled with the at grade double garage. This design is considered to be appropriate for the site and as such a wider driveway width at the property boundary is considered acceptable. It is noted than the 4m crossover is less than the 5.4m permitted by the control in certain circumstances and the proposed variation is considered to be minor.

In general it is considered that vehicle entry points are integrated into the building design. Roller doors are fitted behind the building facade and whilst the garage door to the ground floor garage is prominent within the front facade, from the street it will be partially screened by landscaping as well as having planter boxes forming part of the Unit 1 balcony immediately above. It is considered that draping foliage

could be utilised to present an attractive outcome in terms of streetscape and softening. The garage door will be framed with timber cladding which provides further softening and visual interest.

ACCESS, PARKING AND SERVICING

This section of B2 aims to facilitate the excellence of building design, determine required car parking, minimise amenity impacts on the public domain and ensure access for the disabled and mobility impaired.

5.1 - Pedestrian access and mobility

These controls state that any new development is designed to ensure safe and equitable access is provided to all, including those with a disability. The entry points to the subject site and building are clearly visible from Thomson Street and AS 2890 Pt 1 for compliance with access for disabled persons has been conditioned. The development also provides a continuous access path from the site entrance to the communal area and foyer (which provides access to all units).

As such the proposed development is considered consistent with the prescribed requirements for pedestrian access and mobility.

5.2 - Vehicular driveways and manoeuvring areas

The subject site does not have access to a lane or secondary street, as such the proposed access driveway is nominated on the Thomson Street frontage (which is in fact the only road frontage to the site). The proposed driveway will be located a minimum of 6m from an intersection of any two roads.

All vehicles would be able to enter and exit the site in a forward direction from the basement (due to the car turnaround installed within the basement), however vehicles utilising the Unit 1 double garage (at street level) will not and such vehicles will exit in a similar manner to that accepted for a standard dwelling.

Council's Development Assessment Engineer has advised that this is no worse than the current situation where cars reverse from the existing dwelling on the property. Good sight distance is available both north and south of the site, and Thomson Street is a low traffic environment.

The proposed development initially did not include the use of semi-pervious materials for the uncovered parts of driveway, as specified under Clause 5.2, nor did it address the management of stormwater.

In relation to stormwater management (addressed elsewhere in this report), Council's Development Assessment Engineer has advised that there is a strip of land to the rear of the allotment (owned by Council) which appears to provide an overland flow path for allotments along Thomson Street. This rear allotment (Lot 24 DP776673) contains drainage infrastructure which picks up stormwater within the allotment and then conveys it within the piped drainage system within Frances Street. Council's Building Surveyor advised that neighbouring Lot SP82638 discharges its roofwater into Lot 24 and considered Lot 24 the legal point of discharge for the subject site. The topography of the site would indicate that this is appropriate. Stormwater discharge will be limited to pre development flow rates via conditions applied by Council's Development Engineer.

In relation to semi pervious materials, the applicant was requested to incorporate same into their design. Revised plans have incorporated semi pervious paving and grass to the double garage located at the Thomson Street frontage of the site. This will also assist with stormwater infiltration at the site. Pervious paving was requested for all parts of the uncovered driveway (i.e.: for the garage as well as the basement parking entry) however the applicant has advised that due to the slope of the basement driveway (1 in 4, with 1 in 8 transitions at top and bottom), it is not practical to include porous paving/grass in this location due to possible vehicle slip issues. It has also been submitted that being on the southern side of the building, it is unlikely that porous paving interspersed with grass would be successful due to reduced sunlight impeding growth. Both of these arguments are considered reasonable and the proposed outcome (semi pervious concrete pavers interspersed with grass to the garage only) is considered acceptable. It is noted that the grade to the garage is only 1 in 10.

5.3 - On-site parking

The development proposes 6 car parking spaces. Table 5.1 nominates the following parking requirement:

Residential			
Attached dwellings	1 space per 1 and 2 bedroom dwelling; 1.5 spaces per 3 bedroom dwelling; 1 space per 10 dwellings (visitors in multi unit developments)	2 spaces per dwelling	1 motorbike space per 25 car spaces
Detached dwellings	Minimum rates: 1 covered space per dwelling		
Other development			

Generally in accordance with RTA guidelines and Section A2 of the Tweed Shire Development, whoever is the lesser

The applicant has utilised the 'attached dwellings' rate as shown in the table above which is considered to be appropriate. As such, each unit is required to be provided with a minimum of one car parking space. The development proposes two spaces per unit (basement parking for Units 2 & 3 and double garage parking for Unit 1), which complies. The basement area is ventilated by way of an operable door to the rear which provides rear yard access.

Car parking spaces will comply with the dimension requirements of AS2890.1.

The application has not specifically proposed visitor, bicycle or motorbike parking however it is considered that there is sufficient area within the basement to accommodate such parking. In relation to visitor parking, the requirement is one space per 10 dwellings. Even if applied pragmatically (i.e.: one space per 10 dwellings or part thereof), it is considered that the additional parking as provided for each unit adequately satisfies the provision of one visitor parking space.

The applicant has not nominated a space for disabled parking however it is considered that sufficient space exists.

The proposal satisfies the above parking requirements of DCP Section B2. The garage is considered to be appropriately designed with timber screening and landscaping to present well to the street.

5.4 - Development in other zones

The development proposes a double garage at grade however it is not really within the front setback, being located 6m from the property boundary. Given the constraints of the site this is considered appropriate. There will be sufficient area available for landscaping including a deep soil zone within the front setback.

5.5 - Site facilities and services

Clothes drying areas, letterboxes and the like are integrated with the building. A refuse bin enclosure is provided at the front of the site. It is considered that adequate provision has been made for the provision of essential services.

ENVIRONMENTAL MANAGEMENT

6.1 - Energy efficiency and conservation and 6.2 Water Conservation

A BASIX certificate has been provided with regard to the energy efficiency and water conservation measures within the building. Roof water is to be directed to run-off system. Conditions have been applied in respect to stormwater management. The proposed semi permeable driveway to the Unit 1 garage will assist with stormwater infiltration.

6.3 - Climate change and floodplain management

The site is not flood prone. No further consideration is required under this clause.

6.4 - Reflectivity

It is not considered that the proposal will raise any concerns in relation to reflectivity - the majority of the building will be painted render with windows and balcony elements unlikely to cause sufficient glare to warrant the submission of a reflectivity report.

6.5 - Wind mitigation

The building is 4 stories in height and would be unlikely to cause any significant impact in respect of wind tunnelling.

6.6 - Waste and recycling

Matters relating to waste and recycling are detailed within this report. For developments of greater than six units the DCP requires storage areas to be located in a position that is not visible from the street. This provision does not apply to the proposed development.

RESIDENTIAL DEVELOPMENT CONTROLS

7.1 - SEPP 65 and Residential Flat Design Code

SEPP 65 does not apply to the proposed development.

7.2 - Housing choice and mix

The development proposes a mixture of unit sizes, offering two one bedroom units and one two bedroom unit (Unit 3 shown as a bedroom and a study though the study contains a robe. It could be used as a bedroom). Parking spaces are generally in accordance with Australian Standards.

7.3 - Residential design for a subtropical climate

The development will provide natural cross ventilation for each unit with generous openings on the east and west elevations. All dwellings have balconies which have north facing external living space and all units have access to the proposed top floor pool and open air living space. The balconies have a minimum depth which exceeds the 2m minimum width control for 1-2 bedrooms.

8.0 - Special areas

The site is not located in a special area; as such this control does not apply to the subject application.

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

Clause 92(1)(a)(ii) Government Coastal Policy

The development does not contravene the Government Coastal Policy, being landward of any defined erosion zones. The proposed development would not overshadow any foreshore open space or impede public access to any such areas.

Clause 92(1)(b) Applications for demolition

Demolition of the existing dwelling will be required and consent for same will be sought under separate application.

Clause 93 Fire Safety Considerations

Council's Building Surveyor has applied appropriate conditions with regard to fire safety.

Clause 94 Buildings to be upgraded

There are no buildings to be upgraded. Construction will be reliant on the demolition of the existing dwelling.

(a) (v) Any coastal zone management plan (within the meaning of the <u>Coastal</u> <u>Protection Act 1979</u>),

The site is not covered by a coastal zone management plan.

Tweed Shire Coastline Management Plan 2005

The land is not subject to this plan.

Tweed Coast Estuaries Management Plan 2004

The land is not subject to this plan.

<u>Coastal Zone Management Plan for Cobaki and Terranora Broadwater</u> (adopted by Council at the 15 February 2011 meeting)

The land is not subject to this plan.

(b) The likely impacts of the development and the environmental impacts on both the natural and built environments and social and economic impacts in the locality

Context and Setting

The proposed development is considered to be consistent with the surrounding medium density residential context and setting of the subject site.

Overshadowing

Overshadowing has been addressed in detail above and it is considered that the proposed development represents a reasonable outcome for the site and area given the high level of existing constraints on the subject allotment.

Tweed Coast Comprehensive Koala Plan of Management

The development requires removal of some exotic species (landscaped trees such jacaranda, frangipani, palms) however does not require removal of any native species or koala food trees. There are no further implications with regard to the Koala Plan of Management.

(c) Suitability of the site for the development

Surrounding Landuses/Development

Whilst the site is small and on the basis of land area alone is probably better suited to a single dwelling, the site exists within a dedicated medium density area and as such development of a higher density is mandatory on the site in order to comply with the zone objectives. It is considered that the development achieves the zone objectives in a way that minimises impacts to adjoining properties as much as practical whilst also ensuring an appropriate level of amenity for future residents.

Aboriginal Cultural Heritage

The application was referred to Tweed Byron Local Aboriginal Land Council for comments as the site is falls within Council's predictive cultural heritage mapping (by virtue of its location on a ridge). Correspondence was received from the Land Council to the effect that there was minimal concern with regard to the proposed application however to it was recommended that conditions be applied requiring Land Council presence on site during vegetation removal and soil disturbance works, as well as immediate cessation of works should any cultural material be uncovered. The conditions recommended by the Land Council have been applied.

Geotechnical/Earthworks/Landforming

The development requires significant excavations to create the proposed basement. As stated above, this creates a retaining wall in the order of 6.0m above the natural surface along the southern boundary.

Council's DCP - B2 - Tweed City Centre - Section 2.1 Topography, Cut & Fill - Point C3 allows for such a wall - "excavations and fill in excess of 1 metre may be permitted to allow for compliant driveways and basement garages providing the excavations are adequately retained and drained in accordance with engineering requirements."

Impacts of this wall on the neighbouring property are addressed above. No objections have been raised from an engineering perspective in relation to the construction of the wall and standard conditions have been applied.

Services

The site is in an urban locale and all required services are available. It is noted that the proposed development will require the relocation of the existing power pole which is currently located in the vicinity of the proposed access.

Acid Sulfate Soils

The site is mapped as containing Class 5 Acid Sulfate Soils. Due to the elevation of the site, the water table will not be encountered during construction and hence, an Acid Sulfate Soils Management Plan is not considered necessary for this development.

Demolition

Demolition of the existing dwelling will be required with approval under separate cover. The existing building is clad in what appears to be asbestos sheet materials. A standard condition will be applied requiring a clearance certificate in accordance with the Work Health and Safety Regulation 2011 prior to commencement of construction of the new building.

Contribution charges

Contribution charges are applicable to the proposed development with credit applicable for the existing residential allotment.

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

Three submissions (objections) were returned during the notification period. The matters raised are addressed in below, noting that the applicant has also provided a response to the submissions.

Matters raised:

- The application does not comply with the minimum 20m street frontage and the development is therefore not conducive to the size of the allotment and is an overdevelopment of the site.
- The proposal does not comply with the landscaping requirements, being built boundary to boundary.
- The building dominates the site, blocking light and air (at adjacent townhouse development to the south). The reduced setbacks will restrict light and air to the bedroom, kitchen and living room of the premises next door and will create noise problems.
- The development will result in the demolition of a historical beach cottage which adds to the multiplicity of building form in the street.
- The plan does not provide enough car parking and will put pressure on existing street parking.
- The floor space ratio is excessive for the building size.
- The previous DA was amalgamated with the premises next door. Views, vistas and shadow will be impacted upon (at adjacent townhouse development to the south).
- Eaves are too close to the boundary fence and will block light and cause rain runoff (at adjacent townhouse development to the south).
- Privacy of back yard will be reduced (at adjacent townhouse development to the south). There will be over ten windows looking into the back yard.
- The proposal does not meet the minimum landscaping requirement of 30%.
- The development is seeking to override Council's controls for economic gain. Approval of the application would create an undesirable precedent.
- The plan is the same plan lodged in a previous application and there are variations in a blatant attempt to circumvent Council's planning laws.
- The site coverage is too high (52.9% instead of 50%).
- The building exceeds the height limit (15.9m against 9m limit)
- The building is less than 1m from boundary line (at adjacent townhouse development to the south)
- There will be noise impacts from the entertainment area
- The building is outside of the existing footprint.
- The basement would be 200mm from the boundary. No scaffolding will be allowed on our land (at adjacent townhouse development to the south). Our boundary fence sites on top of a deep drop (4m at western end). It is hard to see how the necessary scaffolding can be safely and legally constructed.

Applicant's response:

"The content of the three objections is noted. Comments on issues raised are provided below:

- The objections mistakenly submit that a 9m height limit and 50% site cover applies. These standards are applicable to dwellings when being assessed under DCP Section A1, however do not apply to this development for multi dwelling housing. A height limit of 29.5m applies to the site. The relevant planning controls are addressed within the LEP.
- Council's primary concern with the previous application for a single dwelling on the site was that the development represented an underdevelopment of the site, and that it was not intensive enough to satisfy the objectives of the medium density zone. Council is the impetus for the amendments to the proposal to change the development to multi dwelling housing.
- The issue of setbacks and impacts on adjacent sites is addressed in the Statement of Environmental Effects and in the preceding sections of this letter.
- Shadow Impacts are addressed in the preceding sections of this report and within the additional shadow diagrams and photographs provided. The shadow of the proposed building primarily falls within the existing shadow from the adjacent high rise, and within the area affected by the existing dwelling & vegetation on site.
- With regard to privacy, the outlook from the development will be over the roofline of the adjacent townhouse development. The windows of the proposed development will be located at a higher level than the windows of the adjacent townhouses, and a direct line of vision from the windows within the townhouse development to the windows in the proposed development would not occur. Interior window furnishings would achieve an acceptable level of privacy.
- The upper level pool and entertaining area is elevated, and will be located above the roofline of the adjoining townhouse development. Sound transmission is not likely to be downward to the townhouses. The use of the a swimming pool is unlikely to generate any unreasonable noise levels."

Comments provided earlier in this report, coupled with the applicant's response are considered to appropriately address the matters raised in the submissions.

The site is highly constrained however the applicant is considered to have demonstrated a design which responds to these constraints in a manner which is sympathetic to surrounding development whilst also meeting Council's intent for higher density development on the site. None of the matters raised in the submissions are considered to warrant the provision of further information by the applicant, nor provide a reason for refusal of the application. It is considered that standard conditions of consent will mitigate most of the matters raised and that once constructed, ongoing impacts of the proposed development would be negligible.

(e) Public interest

The proposed development is considered to be an appropriate outcome for the site and subject to the recommended conditions is considered to be in the public interest.

OPTIONS:

That Council:

- 1. Approves the application in accordance with the recommended conditions of consent and assumes the concurrence of the Director General in relation to the Clause 6.6 variation under Tweed Local Environmental Plan 2012.
- 2. Refuses the application for specified reasons.

Council officers recommend Option 1.

CONCLUSION:

Subject to conditions, the proposed development is considered to represent a reasonable and well designed building which responds to the site constraints. Detailed information has been supplied by the applicant in support of the application and in response to requests from Council staff. The proposed variation to the street frontage control is considered worthy of support given that opportunities to amalgamate the site have been exhausted. It is considered that the applicant has demonstrated that the proposed development is the best fit for the site and is thus worthy of support.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

The applicant may lodge an appeal in the Land and Environment Court in respect of any determination made by Council.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

2 [PR-PC] Interpretation of the Tweed Development Control Plan Section B11 Seaside City and Tweed Local Environmental Plan 2014 in Regard to Four Development Applications DA15/0079, DA15/0080, DA15/0081 and DA15/0082, Cylinders Drive, Kingscliff

SUBMITTED BY: Development Assessment and Compliance

FILE REFERENCE: DA15/0079 Pt1; DA15/0080 Pt1; DA15/0081 Pt1; DA15/0082Pt1



SUMMARY OF REPORT:

Council is in receipt of four Development Applications that all seek to re-subdivide land at Seaside City to create small residential lots ranging in size between 294m² and 420m². The applications show possible house designs that could fit on the proposed small lots BUT the houses themselves do not form part of the current subdivision applications.

The four applications are proposed as follows:

- Stage 11 DA15/0079, six lots into 22 lots (a density of one dwelling per 358.2m²)
- Stage 12 DA15/0082, four lots into 17 lots (a density of one dwelling per $367.11m^2$)
- Stage 13 DA15/0080, five lots into 17 lots (a density of one dwelling per 391m²)
- Stage 14 DA15/0081, one lot into 6 lots (a density of one dwelling per 353.3m²)

Much of Seaside City has already been subdivided into 450m² allotments; however, to date these approvals have been over land nominated for Coastal Housing under the Tweed Development Control Plan (DCP) Section B11 Seaside City, and zoned R2 Low Density Residential under the Tweed Local Environmental Plan (LEP) 2014.

The subject applications seek approval for smaller lots (generally only suitable for houses and maybe a secondary dwelling) over land that is nominated within the Tweed DCP Section B11 Seaside City as Coastal Multi Dwelling Housing (11m height limit) and zoned R3 Medium Density under the Tweed LEP 2014. Please note that there is no minimum lot size on land zoned R3 Medium Density, however, the DCP requires a density of <u>one</u> dwelling per 220m² to meet the objectives of the DCP.

The concern with the subject applications is that they represent a substantial under utilisation of the land as envisaged by the DCP and LEP and would result in an urban design outcome (single houses) which is contrary to the medium density framework (residential flat buildings, town houses etc) envisaged by the approved and adopted planning regime.

The Seaside City DCP has already been amended once to reduce future population yields, through a combination of increased areas of low density housing (Coastal Dwellings) and the associated reduction in other medium density accommodation areas. However, by retaining the minimum density levels within the Coastal Multiple Dwellings (subject of these applications), Village Centre Fringe and Village Centre areas, the reduction in future population was not considered to substantially affect the integrity of the Seaside City DCP.

A higher density within Seaside City is considered crucial to utilise unrestrained available land for an increasing population and to ensure the proposed town centre at Seaside City can be viable which will create a sense of community within this new release area.

Council staff are of the opinion that such departures should not be considered or debated within the scope of Development Applications and that the applicant should be encouraged to withdraw the current applications and consider whether there is sufficient strategic justification to embark on a Planning Proposal encompassing a DCP amendment and possible site re-zoning.

RECOMMENDATION:

That Council endorses:

- 1. Council staff to request the applicant for DA15/0079, DA15/0080 DA15/0081 and DA15/0082 to withdraw the applications as they represent a significant departure from the Tweed Development Control Plan Section B11 and Medium Density zoning of the site in accordance with the Tweed Local Environmental Plan 2014; and
- 2. If the applicant fails to withdraw the applications within 14 days from the date of the Planning Committee Meeting of 4 June 2015 Council staff, in accordance with their delegated authority, determines the applications as submitted.

REPORT:

A History of the Tweed DCP Section B11 Seaside City:

Seaside City was first based on a 1920's grid subdivision pattern, however, it wasn't until 2005 that preparation of a DCP commenced which was initiated when a private company lodged development applications for site works in preparation of the land being used for residential purposes.

After extensive work and community consultation the DCP was ultimately adopted in April 2008 in conjunction with a Section 94 Plan and Voluntary Planning Agreement for the site.

The Seaside City DCP establishes a vision as 'a casual coastal community with a comfortable and welcoming atmosphere and a vibrant and attractive village centre'. The original Land Use Plan is displayed below as Figure 1 and includes a combination of housing and land use types including:

- 2 storey coastal dwellings
- 2 storey coastal multi dwelling housing
- 3 storey coastal units
- 3 storey tourist accommodation (medium density tourist accommodation only)
- 3 storey village centre

The higher density tourist and village centre areas are focused along the central movement spine of 'Ocean Avenue' with densities tapering out towards the peripheries of the site.

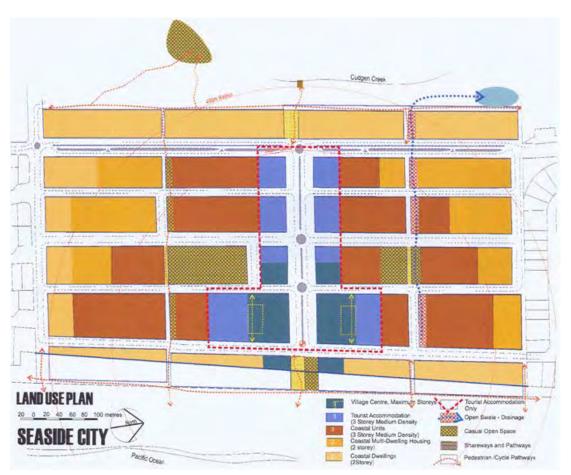


Figure 1 - Original Seaside City Land Use Plan

The 'original' DCP had a 'probable' yield of 1,001 dwellings, equating to 1,796 people. In May 2012 Council received correspondence from Planit Consulting on behalf of Richtech Pty Ltd (the proponent) in relation to Seaside City, comprising a request to amend Tweed Development Control Plan 2008 Section B11 – Seaside City (Seaside City DCP).

To review this request an independent town planning consultant was engaged to assess the requested amendments. The majority of the requested amendments were supported, with the exception to the removal of the 'minimum density' provisions. In this regard, the report recommends retaining the minimum density provisions in order to provide:

- Greater assurance that the highest and best use of the land will be achieved;
- A minimum population yield that is sufficient to support a sustainable community, focussed around a walkable, mixed-use village centre as per the Vision and Aims of the Seaside City DCP; and
- Improved ability for infrastructure planning and coordination.

It was acknowledged that the amendments sought by the proponent would likely reduce future population yields, through a combination of increased areas of low density housing (Coastal Dwellings) and the associated reduction in other medium density accommodation areas. However the amendment concluded that by retaining the minimum density levels within the Coastal Multiple Dwellings, Village Centre Fringe and Village Centre areas, the reduction in future population is not considered to substantially affect the integrity of the Seaside City DCP.

The amended DCP was adopted in April 2013 it is likely to provide a yield of 601 dwellings, equating to a population of 1,384 if the objectives of the DCP are upheld.



Figure 2 - Amended Seaside City Land Use Plan

Based on local field experience, Council's consultant was of the view that a catchment in excess of 800-1,000 people is necessary to provide genuine sustainability to the commercial component of Seaside City.

The assessment of the amended DCP stated:

"The retention of the minimum density provisions within the Seaside City DCP is a key component of the future development form. In this regard it is highly desirable to achieve an appropriate balance between facilitating short-term economic stimulus and housing variety and the longer-term considerations of ensuring the highest and best use of the land, creating sustainable communities and coordinating infrastructure provision. Whilst the draft Seaside City DCP is considered to achieve this balance, removing the density control completely could significantly jeopardise the integrity and vision contained therein."

In accordance with the DCP the medium density areas are meant to be developed at a density of not less than one dwelling per 220m².

The Zoning of the Land:

The Seaside City estate was originally zoned 2(e) Residential Tourist pursuant to the Tweed Local Environmental Plan 2000 (TLEP 2000). Environmental Protection zones framed the estate to the east and west, specifically 7(I) Environmental Protection (Habitat) bordering on the banks of the nearby Cudgen Creek to the west, and 7(f) Environmental Protection (Coastal Lands) bordering the sand dunes to the east.

Upon finalisation of the Tweed DCP Section B11 as detailed above the land was re-zoned under the Tweed LEP 2014 based on the approved and endorsed Structure Plan as detailed within the DCP.

Therefore the area of the site affected by the four subject development applications has all been zoned R3 Medium Density as follows:



The R3 Medium Density Objectives are as follows:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The Current Development Applications:

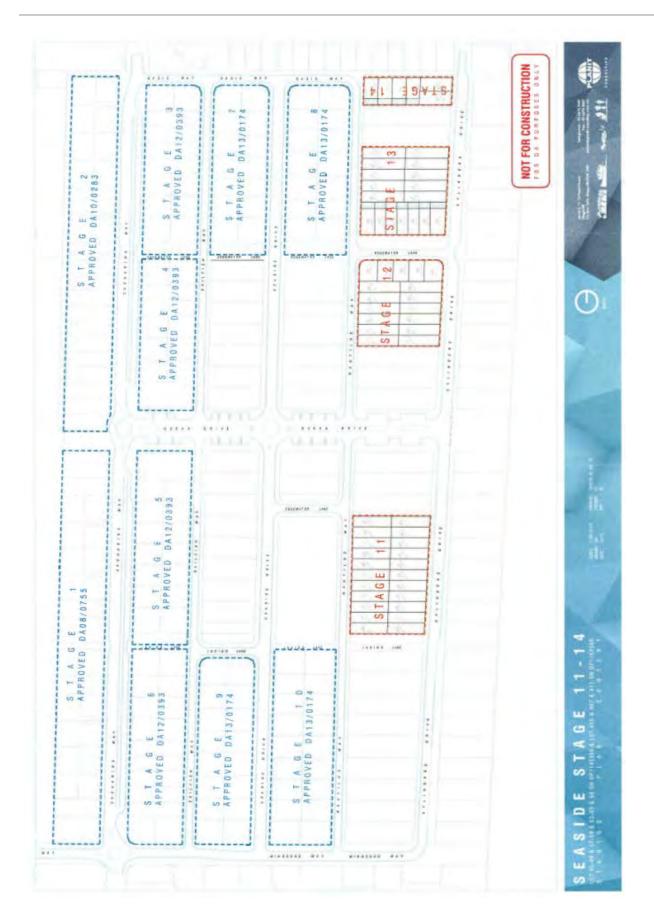
Council is in receipt of four Development Applications that all seek to re-subdivide land at Seaside City to create small residential lots ranging in size between 294m² and 420m².

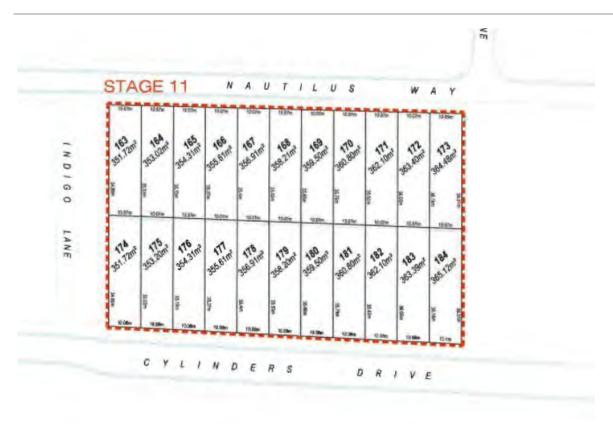
There are no houses proposed for these lots as part of the applications.

The average lots are 10m wide and 35 metres deep.

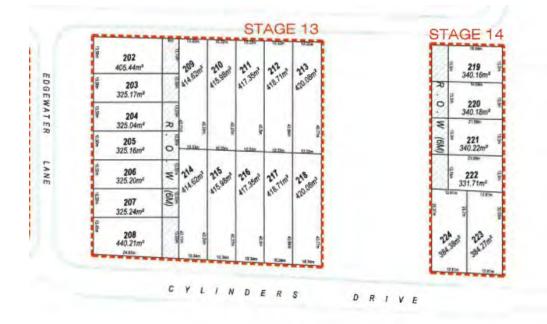
The four applications are represented on the below plan as:

- Stage 11 DA15/0079 six lots into 22 lots;
- Stage 12 DA15/0082, four lots into 17 lots;
- Stage 13 DA15/0080 five lots into 17 lots;
- Stage 14 DA15/0081 one lot into 6 lots.









Much of Seaside City has already been subdivided into 450m² allotments; however, to date these approvals have been over land marked for Coastal Housing under the Tweed DCP Section B11 Seaside City, and zoned R2 Low Density Residential under the Tweed LEP 2014.

The subject applications seek approval for smaller lots (generally only suitable for houses) over land that is nominated within the Tweed DCP Section B11 Seaside City as Coastal Multi Dwelling Housing (11m height limit) and zoned R3 Medium Density under the Tweed LEP 2014. Please note that there is no minimum lot size on land zoned R3 Medium Density.

The concern with the subject applications is that they represent an under utilisation of the land as envisaged by the DCP and LEP and would result in an urban design outcome that is contrary to that envisaged by the approved and adopted planning regime.

The Environmental Planning & Assessment Act 1979 was amended to state that the "principal purpose" of a DCP is to "provide guidance" on:

- (a) giving effect to the aims of any environmental planning instrument that applies to the development,
- (b) facilitating development that is permissible under any such instrument, and
- (c) achieving the objectives of land zones under any such instrument.

Whilst the consent authority is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development. What is very obvious is that it is the objectives of the DCP that are important.

And in this instance Council Officers are of the opinion that the proposed applications do not satisfy the objectives of the DCP which specifically state:

- Provide accommodation that makes good use of available and sought after land.
- Provides residential accommodation at a density that will make a local centre viable at a walkable distance.

Furthermore, Council Officer's are of the opinion that the proposed subdivision does not satisfy the objectives of the R3 Medium Density zone which specifically state:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The Applicants Comments:

Fundamentally, the applicant states that the proposal will not deliver housing at the DCP prescribed rate of 1 dwelling per 220m² site area, however argues that this density is not required as the overall product is similar to what the DCP envisaged.

On 1 May 2015, the applicant was made aware of Council's Officer's concerns with the subject applications and was invited to comment on these matters.

When no response was received the applicant's town planner was contacted by telephone on 15 May 2015, however, no response was forthcoming to Council's concerns and the applicant was awaiting the outcome of this report to the elected Councillors.

OPTIONS:

Option 1

That Council endorses:

- 1. Council staff to request the applicant for DA15/0079, DA15/0080 DA15/0081 and DA15/0082 to withdraw the applications as they represent a significant departure from the Tweed Development Control Plan Section B11 and Medium Density zoning of the site in accordance with the Tweed Local Environmental Plan 2014; and
- 2. If the applicant fails to withdraw the applications within 14 days from the date of the Planning Committee Meeting of 4 June 2015, Council staff, in accordance with their delegated authority, determines the applications as submitted.

Option 2

Request the applicant to amend their application to incorporate the proposed houses as an integrated building and subdivision application so Council can assess the actual built form being proposed as part of the applications.

Option 3

Upon receiving additional information from the applicant as per Council's requests for information, the officers submit report the applications to Council for a complete 79C Merit Consideration.

CONCLUSION:

Despite the applicants' arguments as to why they believe the applications satisfy the intent of the DCP, Council staff are of the opinion that the zoning of the land and the site specific DCP had a very different vision and objective for the areas of land under consideration of these four Development Application's.

Given that the Act requires the intent of DCP's to be upheld, Council staff are of the opinion that such departures should not be considered or debated within the scope of Development Applications and that the applicant should be encouraged to withdraw the current applications and consider whether there is sufficient strategic justification to embark on a Planning Proposal encompassing a DCP amendment and possible site re-zoning.

COUNCIL IMPLICATIONS:

a. Policy:

This report seeks Council's direction on the proposed variation to Council's existing Development Control Plan planning controls.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

The applicant has a right of appeal in the NSW Land and Environment Court if dissatisfied with the future determination of the development applications.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

[PR-PC] Rural Land Strategy - Stage 3 Options Paper - Public Exhibition

SUBMITTED BY: Strategic Planning and Urban Design

Civic Leadership LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK: 1 Civic Leadership 1.5 Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land 1.5.2 Land use plans and development controls will be applied and regulated rigorously and consistently and consider the requirements of development proponents, the natural environment and those in the community affected by the proposed development

SUMMARY OF REPORT:

This report seeks a resolution to place the Tweed Shire Rural Land Strategy Stage 3 Options Paper, prepared by GHD on behalf of Council, on public exhibition.

GHD have taken the Stage 2 Issue Analysis document prepared by EnPlan Partners and developed a range of options for facilitating and focusing discussion around actions to address the concerns and aspirations of the rural community and its allied industries.

A total of 56 options are listed, and 31 preferred options highlighted. A summary of the document has been presented by GHD to the Executive Management Team, the Rural Land Strategy Reference Panel and a Councillor Workshop; which resulted in minor corrections made in the attached document; feedback received to date on the draft document has generally been positive.

At this stage, it is not intended for Council to form any definitive policy positions on the document, but rather it is a tool prepared by the consultants to facilitate community engagement and response to the key initiatives proposed.

Once all submissions and feedback are received post exhibition, an assessment of the implications of proposed options will be finalised and a draft strategy be prepared in Stage 4, and submitted to Council for further consideration.

RECOMMENDATION:

That:

1. The Tweed Shire Rural Lands Strategy Stage 3 Options Paper prepared by GHD Pty Ltd, on behalf of Council, be placed on public exhibition for a period of 60 days;

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- 2. Four community information sessions be conducted during the public exhibition of the Options Paper;
- 3. Once all submissions and feedback are received post exhibition, an assessment of the implications of proposed options will be finalised and a draft Rural Land Strategy be prepared in Stage 4, and submitted to Council for further consideration.

REPORT:

This report seeks Council's endorsement to publicly exhibit the Stage 3 - Options Paper completed by GHD.

Background

Following extensive community consultation and stakeholder engagement, the Stage 2 - Issues Analysis was completed by EnPlan Partners in 2014.

GHD consultants have subsequently been contracted to complete Stage 3 which requires the development of a range of options addressing the issues previously identified, which in turn will lead to a comprehensive strategy for the management of rural land to be finalised in Stage 4.

The Stage 3 Options Paper presented with this report represents the opinions of GHD and does not necessarily reflect the content or format of the final strategy to be completed in Stage 4.

The Options Paper is intended to facilitate and focus discussion around actions to address key issues, and with feedback generated during community and stakeholder consultation during the public exhibition period will form the basis of targeted options to be incorporated into the final strategy.

Earlier versions of the Options Paper were circulated internally for comment from Council officers, which has lead to a range of modifications contained in the final document, including addition of a section on Aboriginal and European Archaeology.

Issues

During Stage 2 of the project the community was heavily engaged in identification of issues affecting the present and potential future of rural land in the Tweed.

With the exception of Aboriginal Cultural Heritage and Non-Aboriginal Heritage, the following issues were identified:

- 1. Economic and Financial considerations;
- 2. Rural Tourism;
- 3. Extractive and mining resources;
- 4. Rural lot size;
- 5. Rural Housing Alternatives;
- 6. Landscape character and scenic amenity;
- 7. Biodiversity;
- 8. Climate Change;
- 9. Biophysical Constraints;
- 10. Aboriginal Cultural Heritage and Non-Aboriginal Heritage;
- 11. Governance, and
- 12. Public infrastructure.

EnPlan Partners' Issues Analysis document is available for viewing on Council's website under Planning & Regulation > Strategic Landuse Planning > New Forward Planning>Rural Land Strategy.

Options

For each issue, GHD has presented a range of options (both preferred and alternative) which have been evaluated in terms of advantages, disadvantages and alternatives as displayed in the following table; options are not listed in order of priority.

While a total of 56 options have been presented by GHD, some options may be mutually exclusive, but are included to demonstrate the range of options and assist in facilitating and focusing discussion. The document selects 31 of these as preferred options but does not exclude inclusion of additional options.

It is the purpose of the Options Paper to identify options in addition to already existing policy of Council: however, it should be noted that some of the options listed, and not identified as preferred options, refer to actions proposed in the Economic Development Strategy and have been included to reinforce the significance of these recommendations in achieving outcomes consistent with the direction of both documents.

A concise discussion of each issue and associated options can be found in the full version of the Options Paper attached to this report.

The Options Paper has been presented by GHD to the following groups:

- Executive Management Team 17 March 2015;
- Rural Land Strategy Reference Panel 21 April 2015, and
- Councillor Workshop 23 April 2015.

While a range of comments were received from the above groups leading to some minor changes included in the attached document no major concerns were raised thereby leading to a recommendation to place the document on Public exhibition.

Following public exhibition, a review of submissions and assessment of the implications of each option will be required prior to their exclusion or inclusion in the final draft strategy in Stage 4.

Linkage with other strategies

Proper management of any land requires a holistic approach addressing social, economic, environmental, and governance responsibilities. The Rural Land Strategy acknowledges the linkages of other Council and external policies and strategies, but is not able to identify and address all commonalities between such a diverse array of documents, and does not seek to duplicate other strategies.

The Rural Land Strategy is not a Rural Residential Strategy; and similarly, while matters of economic viability of properties have been raised regularly by the community, matters of economic development are deferred to Council's Economic Development Strategy which has a list of recommendations relevant to rural land.

Likewise, matters relating to the way in which rural land is used for agricultural purposes and agricultural productivity is not within the scope of this strategy, and as such, matters of agricultural production and farming practices are referred to the Sustainable Agriculture Strategy once finalised.

Other strategies of Council which would link heavily with the Rural Land Strategy would include the Tweed Vegetation Management Strategy 2004, and the Rural Villages Strategy currently under development.

As such, GHD have included a number of options referring to operational or pending strategies of Council to reinforce this inter-connection between other documents which have or are likely to have a significant role in how rural land is utilised and developed.

The Rural Land Strategy is focused on what is required to address issues identified by the community and through broader consultation, about what needs to be changed or improved rather than what is already in operation, and about projecting a vision for the future of rural Tweed, which includes consideration of existing and pending strategies and documents, both of Council and the State Government, but does not necessarily include detailed reference to each and every document.

Outcomes

GHD's presentation to the Reference Panel and Councillors listed the following outcomes which they believe will eventuate from the adoption of the options presented in their paper:

- Agriculture protection areas remain available for increased productivity and innovation;
- Rural jobs retained and increased through industry support;
- Land available for future non-agricultural enterprises;
- Additional options for living and working on rural land;
- Equitable outcomes for the protection of environmental and scenic rural land and Aboriginal sites;
- Fast approvals for genuine and innovative rural industries that are green and clean;
- Decreased conflicts in rural localities;
- Protection of land suitable for village or urban expansion;
- Support for rural tourism, gate to plate enterprises and the rural economy, and
- Key public infrastructure such as a rail trail.

The Rural Land Strategy is very much about minimising land-use conflict, providing for diversification and value-adding and certainty about the ability of existing farming operations to continue along with alternative land-uses where appropriate.

Public exhibition

Pending resolution of Council to proceed to public exhibition, procedures have been commenced for exhibition and notification to commence in early July and run for a period of 60 days.

Under Council's contract with GHD, four public information sessions have been allowed for over a two day period expected to be conducted in late July, leaving time thereafter for the community to respond through submissions.

Venues proposed include Murwillumbah, Burringbar, Tyalgum, and Piggabeen with an early afternoon and evening session on each day.

Comprehensive listing of options prepared by the bold option number in the left hand column, but do not exclude other options being included. Note 2: Some of the options presented represent options already addressed in the Economic Development Strategy, but are included to emphastse the significance of the endorsed position of Council as it relates to rural land.

Option	Economic and Tinancial considerations Advantages	ns Disadvantages	Alternatives
Support the Implementation of the Tweed Economic Development Strategy (Directions 17 to 23) that relate to resilient and innovative agriculture	Adopted Direction from Tweed Shire Economic Development Strategy	NA	NA
Undertake a strategy which reviews the opportunity to establish a food processing cluster in Tweed Shire. This Includes : Identifying existing food processing businesses, Consultation with the processing industry, Identifying regional produce, Branding food processed in the Tweed, Opportunities for collaboration between processing businesses.	Adopted Direction from Tweed Shire Economic Development Strategy	NA	Ч Х
Investigate opportunities into organic and non – traditional agricultural production in conjunction with the Department of Primary Industries. A study should be undertaken which analyses the following: Commercial demand for organic and non-traditional agricultural production. Suitability of non-traditional agriculture to Tweed Shire land characteristics; Identification of areas in Tweed Shire that would support various non-traditional agricultural activities	Adopted Direction from Tweed Shire Economic Development Strategy	NA	A
Prepare an investment prospectus for highlighting the regions attributes and opportunities in organic farming and non-traditional industries	Adopted Direction from Tweed Shire Economic Development Strategy	NA	NA
Educate rural land owners regarding the opportunities for non- traditional agriculture. This may include : Literature relating to opportunities, Seminars on non-traditional markets, supply chains and case studies that demonstrate success factors.	Adopted Direction from Tweed Shire Economic Development Strategy	NA	NA

		Economic and financial considerations	ations	
	Option	Advantages	Disadvantages	Alternatives
6	Provide case studies of small scale on site value adding and direct to market success storles to Tweeds' farmers and rural land owners	Adopted Direction from Tweed Shire Economic Development Strategy	NA	NA
×	Continue to develop the Tweed fresh scheme	Adopted Direction from Tweed Shire Economic Development Strategy	NA	NA
co	Finalise and implement the sustainable agriculture strategy	Adopted Direction from Tweed Shire Economic Development Strategy	NA	NA
-	Complete the Tweed Shire Sustainable Agriculture Strategy to improve agriculture outcomes in relation to financial considerations	The Sustainable Agriculture Strategy is an ideal document to look at economic and financial actions for farming and rural land generally. Don't need to duplicate work covered in other Council projects.	The Sustainable Agriculture Strategy Discussion Paper was released in 2011 and the draft strategy has yet to be prepared and exhibited.	Take relevant draft actions from the work undertaken to date on the Sustainable Agriculture Strategy and put them in the draft Rural Land Options paper or Strategy.
		Rural Tourism		
	Option	Advantages	Disadvantages	Alternatives
2	Support the establishment of the Northern Rivers Rail Trail in Tweed Shire commencing with a section near Murwillumbah.	Is a tourism facility that has worked well elsewhere in Australia and other countries. Fits with the clean green image of Tweed. Links places with potential to grow nural tourism like Stokers Siding Burringbar and Mooball. Creates a clear link to the Byron Bay tourist market. Doubles as an activity space for residents as well as visitors. Provides a useful walking/cycling link to the Tweed Regional Art Gallery and between other localities.	Will put visitors in close contact to farming areas with potential for privacy and security issues. Is viewed by some as a prohibition to a commuter train returning to the line. Could result in Council being involved in maintenance of it.	Council could support a commuter train that also serves tourists. Council could support the Rall Trail but have it commence in a different location such as Mooball to Burningbar (to act as a bike link for those communities)
Ŧ	Undertake a brand development strategy for Tweed aligning with Australia's National Landscapes Program	Adopted Direction from Tweed Shire Economic Development Strategy	NA	NA

		Rural Tourism		and the second s
	Option	Advantages	Disadvantages	Alternatives
5	Promote the values and magnificence of the Tweed World Hentage Rainforest through a redevelopment of the existing World Hentage Rainforest Centre and the surrounding Gateway at Alma St	Adopted Direction from Tweed Shire Economic Development Strategy	NA	NA
13	Continue to develop the Tweed fresh project which promotes local produce in Tweed Shire	Adopted Direction from Tweed Shire Economic Development Strategy	NA	NA
14	Undertake a destination management plan focusing on product development	Adopted Direction from Tweed Shire Economic Development Strategy	NA	NA
in T	Complete the Tweed Rural Villages Strategy	Adopted Direction from Tweed Shire Economic Development Strategy	NA	NA
		Extractives and mining resources	ces	
	Option	Advantages	Disadvantages	Alternatives
2	Ensure that existing quarries and known extractive resources (sand, hard rook, road base, etc) are protected in Tweed LEP 2014 through an overlay and associated local provisions.	Consistent with State policies on resource protection. Decreased transport costs on extractive materials. Employment opportunities preserved.	Can impact on short term land uses located on or near long term resource options.	Could achieve a similar outcome with DCP map and controls.
E	Continue opposition to the CSG industry in Tweed Shire until the recommendations of the NSW Chief Scientist and Engineer are implemented including designation of CSG extraction areas.	Council maintains its clean green image. Investment in agriculture and ecotourism can proceed without concern about land use conflicts.	Tweed may miss out on some employment opportunities. No opportunity to use locally produced gas in the region. Council's view may not have an impact on the decision to extract CSG in any case. Licensing and approvals in relation to CSG are dealt with by the State government.	Could support the industry subject to meeting the requirements of the NSW Chief Scientist and Engineer report. Take a neutral position on CSG extraction as it may not be viable in the Tweed Shire in any case.
		Rural fot size		
	Option	Advantages	Disadvantages	Alternatives
<u>e</u>	Outside of the mapped agricultural protection areas identify existing clusters of small lots on RU1 or RU2 zoned land and place them in a R5 Large Lot Residential zone with a MLS that reflects the average lot size (or minimum lot size) in each cluster.	This will give proper recognition to past planning practices that created rural residential enclaves in RU1 and RU2 zoned land. It will make existing rural residential "estates" subject to zone objectives	Could create additional subdivision a possibility where it currently does not exist by adopting a new MLS. Need to be sure it does not create pressure on Council to provide reticulated sewerage or water	Zone E4 Environmental Living may suit some locations better This zone is currently not in LEP 2014. Zone RU4 Primary Production Small Lots may suit some

		Rural lot size		
	Option	Advantages	Disadvantages	Alternatives
		and a land use table that reflects the dominant use of the land.	Some types of intensive plant and animal agrioulture are prohibited under a R5 zone,	locations better. This zone is ourrently not in LEP 2014. Only apply the R5 zone to some localities (based on predominant land use) and leave others as is.
	Retain the 40 hectare MLS for a subdivision for the purposes of a dwelling on all agricultural protection areas currently in a RU1 or RU2 zone. Retain the 10 hectare MLS for a subdivision for the purposes of a dwelling on all RU1 zoned land where it currently applies under LEP 2014.	No change to subdivision options so no perceived "winners or losers". Sends a message that Council is not "pushing" for further subdivision of agricultural protection areas. Preserves the remaining larger lots for future rural uses.	Unhappy landowners may see it as a "cop out". Could be a missed opportunity to generate a change in rural land management. Can impact on farm succession plans and retirement plans.	Increase the MLS to 60 hectares and 20 hectares to better reflect the prevailing landholding size in these areas and reduce pressure for further subdivision. Reduce the MLS to 20 hectares and 5 hectares to intentionally create opportunity for new purchasers to buy into agricultural protection areas inclusive of a dwelling opportunity.
8	Retain the 40 hectare MLS for a subdivision for the purposes of a dwelling on all constrained rural land and future village/urban land.	Preserves constrained land with its existing subdivision opportunities. Allows future urban or village land to be held in larger lots until it is needed. Generally perceived as a no "winners or losers" decision	Much of the constrained land won't be suitable for a dwelling at any size due to problems such as flooding or steep land Future urban may not suit the current owners due to timeframes.	Increase MLS of constrained rural land to 60 or 80 hectares. Uncouple MLS from dwelling permissibility on constrained land by having no MLS and no dwellings permitted. Allow future urban or willage land to be subdivided to 20 hectares as an interim measure towards urbanisation.

	Option	Advantages	Disadvantages	Alternatives
8	Commence a rural residential strategy that investigates in more detail the supply and demand for rural residential land in Tweed LGA including preferred lot size and characteristics, preferred localities and service level preferences.	A rural residential strategy is a requirement of the Far Nth Coast Regional Strategy (FNCRS) its an opportunity to firm up the genuine supply and demand opportunities including capacity in existing zoned land.	Expensive for Council to prepare and does not yield outcomes on the ground – has to be followed by a rezoning and DA's before you get a result Usually time consuming and can be controversial. Often perceived as creating winners and losers. DPE is currently reviewing the FNCRS and there is general uncertainty to State planning legislation.	Focus on the options that create short term rural dwelling outcomes such as amendments to LEP 2014 that allow merit consideration of rural housing opportunities. Don't encourage rural residential beyond existing zoned areas. Focus Council resources on whether villages can accommodate additional dwellings without destroying character and amenity.
3	Adopt the rural subdivision suitability criteria as part of Tweed Rural Land Strategy as a basis for accepting joint planning proposal/development applications for reduced MLS (with a dwelling) on land mapped as secondary rural land.	Creates a ment based scenario for all secondary rural land that can meet the capability and suitability criteria. Will take the pressure off doing a rural residential strategy. Applicant initiated planning proposals are paid for by the applicant not Council	Could oreate disputes over the mapping and definition of secondary rural land. Could lead to multiple joint planning proposals/DA's that are time consuming for staff.	Don't encourage rural residential beyond existing zoned areas. Undertake a rural residential strategy for the whole LGA.
1	Adopt the rural subdivision suitability criteria as part of Tweed DCP 2014 as a basis for evaluating development applications for a variation to the MLS for the purposes of a dwelling on an existing undersize lot mapped as secondary rural land.	Gives a clear basis for the use of an existing clause in LEP 2014 (CI 4.6) in combination with a DCP amendment. No LEP amendment required.	DPE has a concurrence role in the application of CI.4.6 for rural housing. It may change the rules if it becomes widely used. May result in a lot of applications for rural dwellings on existing lots.	Deal with applications pursuant to CI4.6 for rural housing on their ments without suitability criteria in the DCP,
24	Amend Tweed LEP 2014 to include a special provision allowing subdivision below the prevailing MLS for secondary rural land subject to consistency with certain criteria that are inserted into the LEP.	If successful then it can yield immediate results through lodgement of a DA for subdivision. Don't need to spend time and money on a rural residential strategy. "Winners and losers" are based on merit applications paid for by the applicant.	Undermines the MLS map that states the prevailing MLS for most ural land. DPE may not allow Council to insert these special provisions Can't be certain where the next application is going to come from Refusats are fully appealable and this could get expensive if there are multiple cases to defend.	Don't encourage rural residential beyond existing zoned areas. Undertake a rural residential strategy for the whole LGA.

And the second	Rural lot size		
 Option	Advantages	Disadvantages	Alternatives
Identify land use conflict (and resolution) and buffers as key issues to be addressed in a new chapter in Tweed DCP 2008. It should apply to all rural and environmental zoned land.	Other North Coast Council's have already undertaken some of this work that may be applicable. DCP amendments are quicker than LEP amendments as they do not involve the State. Can be undertaken in conjunction with most other Options.	This DCP amendment would be at Council's expense. DCP's are relevant to development applications. They don't stop people from buying in the wrong location or with inappropriate expectations of rural life.	Produce a brochure and/or web based document that provides advice to prospective rural residents about rural land use conflicts
	Rural housing alternatives		
Option	Advantages	Disadvantages	Alternatives
Amend Tweed LEP 2014 clause 4.2B (3) to include a further basis for a dwelling being permitted on an existing lot or parcel of rural zoned land as follows: " is a lot or a group of lots identified as having 1 Dwelling opportunity on the Dwelling Opportunity Map.". After two years delete clauses 4.2B (3) (c) and (d).	Deleting clauses 4.2B (3) (c) and (d) simplifies the dwelling permissibility process for existing rural lots. It makes it a merit process not a historical search. Resolves a difficult problem for Council staff. After the two year period of lot nominations the concept of dwelling permissibility on rural lots becomes a lot simpler. Landowners that don't end up on the map still have clause 4.6 to fall back on.	Landowners may perceive that they could "miss out" on a rural dwelling opportunity eg absentee landowners. The two year period for lot nominations may generate a lot of work for Council staff.	Continue with complex historical searches to establish dwelling permissibility. Don't create a dwelling opportunity map Could instead delete clauses 4.2B (3) (c) and (d) and let all existing rural lots be assessed on merit pursuant to clause 4.6.
 Amend Tweed LEP 2014 in relation to rural workers dwellings by deleting clause 4.2C (3) (d) the development is necessary considering the nature of the agriculture or rural industry land use lawfully occurring on the land or as a result of the remote or isolated location of the land.	Makes it a lot easier to justify a rural workers dwelling in Tweed Shire. Will take some pressure off farmers that need assistance but are not remotely located. Changes the focus of the assessment to the economic capacity of the farm to support a rural worker.	Difficult to police who lives in the dwelling after is approved for a rural worker. Can become a defacto detached dual occupancy	Leave the rural workers dwelling provisions as is and use detached dual occupancy provisions instead.

Option Depon Depone Depon <			Rural housing alternatives		
Amend Tweed LEP 2014 by personal synchronia the intersect of order for order of and order of a detached dual of detached dual of detached dual of a detached dual of detached dual of a detached dual of detached dual of a deta		Option	Advantages	Disadvantages	Alternatives
In the event that the State repeats SEPP 15 it is not recommended that Council adopt rural land sharing community controls in LEP 2014 are not required. Community controls in LEP 2014 are not required. There provisions have not been used in more than 15 years in Tweed Shile suits (even if its not used) and are not required. There provisions have not required are not required. The provision have been mapped by Brouwer (1995), in research and recent represent on the LEP overlages of the rest of an overlay have been mapped by Brouwer (1995), in research the the LEP overlages of the rest of the rest of an overlay have been mapped by Brouwer (1995), in research the represent have hare and the LEP overlages of the rest of an overlay report. The report reportmentations in undecate its final position on this is not used of an overlay report.	81		Allows two families own a together as tenants in common sh the work load but not houses. Allows a farm to have additional it on site even though it can't mee rural workers dwelling requirement can be used to promote succession - allowing retining far to remain close to the land. Can generate regular income for farm that is an alternative to off income.	Increased potential for conflict with agriculture and rural industry, particularly on neighbouring farms. Puts pressure on rural roads and infrastructure. Can be a precursor to pressure for subdivision. Can overcapitalise the land.	Limit detached dual occupancy and secondary dwellings to the RU1 and RU2 land outside of the agriculture protection areas. Limit detached dual occupancy and secondary dwellings to only that part of RU1 and RU2 land that is secondary rural land. Limit detached dual occupancy and secondary dwellings to only land zoned RU2. Extend detached dual occupancy and secondary dwellings to be permitted in some environment protection zones where dwellings are currently permitted. Pursue changes to rural workers dwellings instead
Landscape character and visual amenity Coption Coption Coption Advantages Advantages Advantages Advantages Advantages This would give Council a clear The State government has yet to indicate its final position on this scenic impacts on rural developments in areas identified on the LEP overlay. Provensitient with the Parsons Brinckerhoff report. Brinckerhoff report recommendations. Some landowners will view this as an unnecessary imposition	8	In the event that the State repeals SEPP 15 it is not recommended that Council adopt rural land sharing community controls in LEP 2014	2-2-2	Reduces an option for low cost rural land ownership that currently exists (even if its not used)	Pursue land sharing controls and sultable locations in a rural residential strategy if Council prepares one. Amend Tweed LEP 2014 to include rural land sharing community controls
Option Advantages Disadvantages Amend Tweed LEP 2014 to include an overlay that lotentifies the designated scenic landscapes that have been mapped by Brouwer (1995). This would give Council a clear the State government has yet to indicate its final position on this scenic impacts on rural developments issue and the Parsons Brinckerhoff in areas identified on the LEP overlay. Consistent with the Parsons Some landowners will view this as Brinckerhoff report recommendations.			Landscape character and visual a	menity	a manual of
Amend Tweed LEP 2014 to include an overlay that This would give Council a clear The State government has yet to identifies the designated scenic landscapes that opportunity to consider visual and indicate its final position on this have been mapped by Brouwer (1995). Consistent with the Parsons Brinckerhoff report. Consistent with the Parsons and unnecessary imposition the Brinckerhoff report recommendations.		Option	Advantages	Disadvantages	Alternatives
	8	Amend Tweed LEP 2014 to include an overlay that identifies the designated scenic landscapes that have been mapped by Brouwer (1995).	This would give Council opportunity to consider vis scenic impacts on rural devel in areas identified on the LEP Consistent with the Brinckerhoff report recomment	The State government has yet to indicate its final position on this issue and the Parsons Brinckerhoff report. Some landowners will view this as an unnecessary imposition	Use an instead of ar Don't identif Tweed LEP

Council could develop in internal policy for assessment of DA's instead.

May be seen by the community as an onerous requirement when submitting development applications to Council

Allows an assessment of development to ensure that landscape character and visual amenity is not detrimentally

Could construct its application to avoid

impacted.

Amend Shire wide DCP 2014 to require a visual impact assessment for development applications in rural or environment protection zones that are within the designated scenic landscapes that have been mapped by Brouwer (1995).

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	Option	Landscape character and visual amenity Advantages	menity Disadvantages	Alternatives
		affecting small applications.	B	
-	Adopt the visual impact assessment questions in this Options Paper as a basis for preparing a visual impact statement for high impact planning proposals.	Provides a good basis upon which a LEP or DCP provision could be developed.	May be seen by the community as an onerous requirement when submitting planning proposals to Council.	Council can ask for this on a case by case basis through the existing Gateway process.
8	Prepare clear guidelines for the design and siting of dwellings and associated infrastructure in rural locations in the Tweed Shire.	Provides Council with the opportunity to apply locality based controls relating to landscape character and visual amenity.	May be seen by the community as an onerous requirement when submitting development applications to Council for rural dwellings.	Adopt the visual impact assessment questions in this Options Paper as a basis for preparing a visual impact statement for rural dwellings
34	Prepare a Scenic Landscape Strategy based on the Tweed Scenic Landscape Evaluation 1995 (Brouwer).	Communicates to the community that Council is serious about protecting scenic amenity. Existing information is a good basis for this work.	Another strategy for Council to prepare. May be seen by the community as an onerous requirement when submitting development applications to Council.	Could go straight to LEP and DCP control amendments.
		Biodiversity		
	Option	Advantages	Disadvantages	Alternatives
	Amend Tweed LEP 2014 to insert E2 and E3 zones in accordance with any future Ministerial direction as a result of the Parsons Brinckerhoff "Northern Councils E Zone Review Interim Report" 2013. Retain the existing 40 hectare MLS across these lands.	Will meet community's managing ou current and fu	E zones can only be reinstated when the State government agrees that they can	Apply overlays for all environment protection controls. Use a DCP to identify environmentally sensitive areas.
99	Maintain Tweed LEP 2014 without E2 and E3 zones.	Reduces the limitations to development within rural areas.	Would not meet the Council and the community's vision of caring and managing our natural environment for current and future generations. Has the potential to result in increased clearing of native vegetation and habitat for threatened species. Places greater emphasis on the development application process. Minimises Council's role in controlling land clearing and incremontate rural development	Apply an overlay with associated provisions that limit development in environmentally sensitive areas. Use a DCP to identify environmentally sensitive areas.

37		Biodiversity		
5	Option	Advantages	Disadvantages	Alternatives
	Include E2 and E3 zones on public land only	Reduces the limitations to development within rural areas.	Would only partially meet the Council and the community's vision of caring and managing our natural environment for ourrent and future generations. Limits the potential of native vegetation on private land to contribute to wildlife corridors	Don't apply any E2 or E3 zoning over public land using ownership as a land management tool
38	Include E2 and E3 zones on private land with landowner approval	Encourages those landowners who want to actively protect biodiversity.	Would only partially meet the Council and the community's vision of caring and managing our natural environment for current and future generations.	Encourage volurtary conservation agreements or investigate rate relief for encouraging commercial conservation initiatives.
:8	Develop a density borus scheme that applies to rural and environment protection land. If the scheme receives community support then amend Tweed LEP 2014 and the Shire wide DCP	Changes the perception of environmental protection zones in rural areas being considered a restraint to land use by offering a development incentive.	Density bonus schemes may result in inappropriate development in the absence of adequate development controls. Need to be consistent on how land is to be protected in perpetuity. Consistent application is difficult to valuation and location issues.	Council could investigate a range of conservation and rehabilitation incentives including rate relief.
4	Consider provisions in Tweed LEP 2014 that recognise biophysical constraints such as steep land, riparian areas and bushland.	Will meet the Council and the community's vision of caring and managing our natural environment for current and future generations.	May be seen by the community as an onerous requirement when submitting development applications to Council.	Rely on erwironmertal assessment process and existing legislation such as Protection of the Environment Act, eto
		Climate change		
	Option	Advantages	Disadvantages	Alternatives
44	Not release new land for small lot rural lifestyle subdivision pending the completion of the Tweed Rural Villages Strategy	Makes a clear statement on climate unfriendly low density residential development	Will not be well received by some rural land owners. Will be difficult to achieve politically. Denies a housing choice that is usually considered a "lifestyle choice".	Permit some rural housing through LEP changes such as detached rural dual occupancy. Identify areas that are best placed to accept more rural housing. Accept planning proposals for new rural housing areas on a merits basis. Change density controls in existing rural residential areas to focus new development chee to where it

-	Complete the Tweed Shire Sustainable Agriculture Strategy to improve agriculture outcomes in relation to climate change	The Sustainable Agriculture Strategy is an ideal document to detail climate change actions for rural land. Don't need to duplicate work covered in other Council projects.	The Sustainable Agriculture Strategy Discussion Paper was released in 2011 and the draft strategy has yet to be prepared and exhibited.	Take relevant draft actions from the Sustainable Agriculture Strategy process and put them in the draft Rural Land Options Paper.
-12	Complete the Tweed Rural Villages Strategy to improve village lifestyle opportunities in relation to climate change.	The Tweed Rural Villages Strategy is well placed to carvas climate friendly lifestyle options outside of major urban areas. The process has momentum.	The Tweed Rural Villages Strategy may not result in additional village lifestyle opportunities. Some rural landowners will not agree with linking the Tweed Rural Villages Strategy to the Tweed Rural Land Strategy.	Take relevant actions from the Tweed Rural Villages Strategy process and put them in the draft Rural Land Options Paper
		Biophysical constraints		
	Option	Advantages	Disadvantages	Alternatives
4	Retain the 40 hectare MLS for a subdivision for the purposes of a dwelling on all agricultural protection areas currently in a RU1 or RU2 zone. Retain the 10 hectare MLS for a subdivision for the purposes of a dwelling on all RU1 zoned land where it currently applies under LEP 2014.	Maintains consistency in planning controls known to the local community. Retains agricultural land in larger lots that have more land use options.	Allowing for dwellings to be built on lots 10 hectares may reduce the potential for future agricultural uses. Can lead to large areas remaining underutilised as "lifestylers" buy into larger lots that they don't need.	Increase the MLS to 60 hectares and 20 hectares to better reflect the prevailing landholding size in these areas and reduce pressure for further subdivision. Reduce the MLS to 20 hectares and 5 hectares to intentionally create opportunity for new purchasers to buy into agricultural protection areas inclusive of a dwelling opportunity.
\$	Retain the 40 hectare MLS for a subdivision for the purposes of a dwelling on all constrained rural land.	Limits further fragmentation of rural land which may reduce the potential for future agricultural uses Limits the creation of lots that should not have a dwelling located on them	May be seen as an onerous requirement if land is not suitable for agricultural production. Can act to constrain developments that may have merit	Increase MLS of constrained rural land to 60 or 80 hectares. Uncouple MLS from dwelling permissibility on constrained land by having no MLS and no dwellings permitted. Allow future urban or village land to be subdivided to 20 hectares as an Interim measure towards urbanisation.
46	Complete the Tweed Shire Sustainable Agriculture Strategy to improve agriculture outcomes	Consistency with Council's existing strategic direction. It's an ideal document to address agriculture and other land uses on the context of biophysical constraints	No definite time frame for completing the Tweed Shire Sustainable Agriculture Strategy	Don't complete the Tweed Shire Sustainable Agriculture Strategy

already occurs

		Aboriginal and non-Aboriginal heritage	al heritage	
	Option	Advantages	Disadvantages	Alternatives
4	Work with the local Aboriginal community to finalise the Tweed Aboriginal Cultural Heritage Management Plan for the Tweed Shire.	Consistent with State policies on protection and recognition of Aboriginal objects and places Will give a Shire wide perspective to the issue.	Can take a long time to achieve. Can't always get community agreement on outcomes	Rely on existing legislation for site and place protection and Aboriginal Heritage due diligence procedures.
₩.	Continue the implementation of the recommendations of the adopted Community Based Heritage Study as they apply to rural areas in the Tweed Shire.	The CBHS made a wide range of recommendations beyond statutory protection of sites and HCA's. These will help protect heritage and assist the owners of heritage items.	Each recommendation will require allocation of staff time to implement with a cost to Council	Rely on LEP and other statutory protection of listed items and HCA's
		Governance		
	Option	Advantages	Disadvantages	Alternatives
and the second sec	Writhout prejudice meetings with applicants (at minimal cost) to assist in problem solving for past or future activities proposed on rural land.	Council is perceived as a helper not a hindrance. Council may have encountered the problem elsewhere and can provide a speedy, practical solution. Taps into the experience and knowledge of staff. Can avoid the "slow no" syndrome that applicants dislike. Better to be told early that an idea is not likely to be supported.	Potential for conflict of interest if Council staff become too involved. Council is an approval authority and compliance authority as well Staff can't be sure what will or will not be approved at a later date. Assistance costs Council staff time and money.	Offer a without prejudice telephone assistance hottine to get a clear picture of the problems being encountered and the nature of possible solutions.
8	Promote Council supported planning charrettes or facilitated workshops to explore and if possible resolve complex issues for larger rural projects or proposals in an open and transparent way without significant time delays.	Gets to the heart of perceived problems early. Can overcome early poncerns in a transparent way with all parties involved. Can solve engineering unknowns. Can solve engineering unknowns. Solves the public or just technical experts. Shows that Council is interested and committed.	Not cost effective for small projects. Not well used in the Tweed in the past. Will cost Council staff time. Will cost applicants consultant time, facilitator time and early studies.	Continue with traditional adversarial approach.

	Option	Governance Advantages	Disadvantages	Alternatives
5	Conduct an annual review of planning requirements and systems in response to public and applicant feedback on the processes and outcomes.	Good practice to keep requirements up to date. Less likely to be challenged in court. Shows that Council can listen (and change if required)	Council's are busy and reviews are time consuming.	Choose a less regular review cycle such as every three years,
52	Seek legal advice on providing a notification to purchasers of rural land that could be attached to a Section 149(5) certificate as described in the Living and Working in Rural Areas Handbook.	Legal advice relevant to Tweed Shire will give confidence in the information being considered for Section 149(5) certificates.	Legal advice is expensive. Legal advice may not be conclusive.	Proceed to prepare advice for Section 149(5) certificates without legal advice. Produce an information booklet or the like as an alternative.
8	Publish advice on rural land issues to prospective purchasers in the Tweed on Council's web site with sufficient key words to generate hits in searches.	Can be done quickly. Other Council's already do this eg Byron Shire, Goulburn Mulwaree Shire. Most people search for information on the web.	Does not have the legal weight of a Section 149(5) certificate. People only get the information if they look for it.	Prepare advice for Section 149(5) certificates as an alternative. Supply the information in hard copy with all Section 149(2) certificate requests for rural land.
		Public infrastructure		
	Option	Advantages	Disadvantages	Alternatives
3	Ensure that Tweed rural road contribution plan (S94 plan) remains current and linked to any increases in the potential for traffic generating rural development (such as rural housing).	Council need to collect contributions that are proportionate to the impact on public infrastructure.	These costs are passed on to rural residents	Council can choose to subsidise rural residential development through reduced contributions
8	Ensure that a detailed rural road and bridge assessment is undertaken as part of any rural residential development so that Council is not required to bring forward major replacement of infrastructure that it has not budgeted for.	Major infrastructure items need long lead times for upgrades. Capacity and thresholds are not always obvious.	Off-site assessments will add oosts to rural residential development.	Discourage rural residential development to reduce pressure on infrastructure.
8	Consider village expansion and infill areas (if consistent with the Tweed Rural Villages Strategy) where physical infrastructure and social services can be supplied to a population at a higher density than rural residential development	Higher density of population typically provides for increased efficiency in service provision. Villages have existing infrastructure including halls, general stores and Post Office, rural fire brigade, etc.	Increased population could impact on village oharacter. Rural residential and low density rural living generally is a life style choice. Village are still not as efficient as urban areas in larger centres.	Don't encourage either rural residential or village expansion/infill in order to concentrate on urban infill and future urban areas.

OPTIONS:

That Council endorse:

- 1. To publicly exhibit Stage 3 Options document, or
- 2. Deferral of the matter for a further Councillors workshop, and a further report be brought back to the July Planning Committee meeting.

Council Officers' recommend Option 1.

CONCLUSION:

The Rural Land Strategy has now progressed into Stage 3 with GHD consultants preparing an Options Paper designed to facilitate and focus discussion once the document is placed on public exhibition.

The Paper presents 56 options in total, with 31 preferred options identified. Some options will be mutually exclusive but are included to demonstrate the range of potential options.

GHD has made presentations to the Executive Management Team, the Rural Land Strategy Reference Panel, and at a Councillor Workshop which have resulted in minor amendments to the final version now presented for resolution to place on public exhibition.

Following conclusion of the public exhibition period, feedback received from the community, agencies and internal circulation will be used to undertake final assessment of the potential implications of preferred options, and inform the preparation of a draft Rural Land Strategy in the final stage of the project.

It is recommended that the Stage 3 Options Paper prepared by GHD be placed on public exhibition and that community information sessions be conducted during this period.

COUNCIL IMPLICATIONS:

a. Policy:

While the preferred options demonstrate consistency with Council's Community Strategic Plan, the Options Paper is a GHD document for the purpose of community engagement prior to preparation of the strategy in Stage 4.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Empower-We will give the community greater opportunity to participate in a transparent flow of information and feedback to Councillors who have been empowered as the Community representatives to make decisions in accordance with the Local Government Act 1993. **Involve/Collaborate**-We will work with you on an ongoing basis to ensure your ideas, concerns and aspirations are considered. We will provide feedback on Council's decisions. **Consult**-We will listen to you, consider your ideas and concerns and keep you informed.

Inform - We will keep you informed.

This report recommends the public exhibition of the Stage 3 Options document.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Tweed Rural Land Strategy Options Paper (ECM 3674233)

4 [PR-PC] PP11/0005 Club Banora, Leisure Drive, Banora Point - Development Control Plan

SUBMITTED BY: Strategic Planning and Urban Design

FILE REFERENCE: PP11/0005 Pt4

Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

 1
 Civic Leadership

 1.5
 Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land

 1.5.2
 Land use plans and development controls will be applied and regulated rigorously and consistently and consider the requirements of development proponents, the natural environment and those in the community affected by the proposed development

SUMMARY OF REPORT:

This report seeks endorsement to place Draft Development Control Plan Section B28 - Club Banora (DCP) on public exhibition and that post exhibition a further report is to be presented to Council responding to all submissions received.

At its meeting of 7 May 2015 Council resolved to send Planning Proposal PP11/0005 Club Banora to the Department of Planning and Infrastructure to have the plan made.

Council also resolved to amend Tweed LEP 2014 to ensure that a Development Control Plan is prepared for the site addressing two key issues raised during public exhibition of the planning proposal.

The two issues to be addressed by the DCP include:

- 1. Gross floor area of retail development, and
- 2. Integration of development with the adjoining Banora Point Shopping Village.

The DCP proposes to limit the gross floor area of retail development to not more than 5000 square metres, unless an economic impact assessment can justify a variation.

The DCP also seeks to facilitate integration of development with the existing retail centre through the incorporation of site planning and urban design principles.

The DCP provides guidance on matters to be further considered once an application is received for development of the site, at which time detailed assessment of the proposal against the requirements of the DCP must be addressed to the satisfaction of Council.

RECOMMENDATION:

That:

- 1. In accordance with the *Environmental Planning and Assessment Regulation* 2000 clause 18, draft Tweed Development Control Plan Section B28 Club Banora be placed on public exhibition for a period of not less than 28 days, and
- 2. Following public exhibition a further report responding to all submissions is to be presented to Council.

REPORT:

On 9 April 2015 Council resolved to send the Planning Proposal PP11/0005 Club Banora, Leisure Drive Banora Point, to the Department of Planning and Environment to have the plan made, and that Tweed LEP 2014 be amended to require inclusion of a section in Tweed Development Control Plan 2008 addressing site specific requirements of the Club Banora site.

The proposed Development Control Plan amendment (DCP) affects only that part of the Club Banora property subject of the rezoning as identified in Figure 1 below.

Two key issues affecting development on the site were identified during public consultation and included:

- 1. A limit on the gross floor area of retail development to not more than 5000 square metres;
- 2. Integration with the existing Banora Point Shopping Village where possible; which includes application of site planning and urban design principles to be applied in the design and future development on the site.

The draft Development Control Plan section B28 - Club Banora provides principles, guidance and planning provisions on both issues in a way which provides certainty about the objectives and clear options for implementation.

The landowner and consultant acting for the landowner have been consulted and have no objection to the DCP being placed on public exhibition.

Objectives of the DCP

The objectives of the DCP are:

- 1. To achieve an appropriate scale of retail development in the context of the Banora Point catchment area and Tweed's retail hierarchy.
- 2. To achieve integrated site planning and urban design outcomes by facilitating high quality business, retail and public domain land uses that recognise the contextual relationship of the site with the surrounding area by:
 - i. Drawing on best practice site appropriate urban design principles to effectively integrate the development of the site within its context.
 - ii. Providing a sense of place and high quality retail and business environments which include well scaled building forms, strong connectivity to and across the site, co-ordinated car parking and vehicular movement and provision of public domain and outdoor amenity spaces for site users, and

iii. Ensure that future development of the site is designed to integrate contextual and climatically appropriate passive design principles.

Limit to gross floor area of retail development

Concern was expressed in a submission received during public exhibition of the planning proposal that retail development on the site could increase to the point of disadvantaging adjoining retail development within the Banora Point Shopping Village and be inconsistent with Council's Retail Principles.

Restricting the Gross Floor Area of retail development to not more than 5000 square metres will provide opportunity for a full line supermarket supported by smaller speciality shops, but prevent the site from becoming a new district retail shopping centre which might threaten or fracture existing centres without a more detailed understanding acquired through the preparation of an economic impact assessment.

The limit to the maximum gross floor area of retail development will apply unless a variation can be justified in an economic impact assessment as part of any development proposal.



Figure 1: Land affected by the DCP

Integration with adjoining retail development and urban design principles

The Club Banora site represents an opportunity to provide a well articulated and active frontage to Leisure Drive, make strong connections with the adjoining retail development to the east and include a series of public domain and landscape elements to strengthen the character of the locality sense of place, improve the overall visual amenity, accessibility and experience of users.

Given the highly walkable surrounding residential catchment, and the elderly demography of nearby retirement complexes, and households, access to and across the site connecting with the existing Banora Point Shopping Village is a high priority. Collectively these two sites will form the Banora local centre precinct.

The draft DCP provides planning and design principles addressing the key issues discussed above, and will provide provisions to be considered in the assessment of any development applications for the site.

Draft DCP ready for exhibition

The attached DCP has been prepared to address the key issues of gross floor area of retail development, and integration with the existing retail development adjoin the site utilising urban design principles and guidelines to apply at the development application stage.

OPTIONS:

That Council:

- 1. Proceeds with public exhibition of Draft DCP B28 Club Banora for a period of 28 days; or
- 2. Defers this matter and hold a Councillors workshop, and the report be brought back to the July Planning Committee.

The officers recommend Option 1.

CONCLUSION:

The Draft DCP B28 - Club Banora presents a concise suite of objectives, design principles and planning controls aimed at guiding future retail development over the site. The DCP, through these provisions establishes a desired future character for a well designed, well connected small local centre which has the potential to be integrated with the existing retail development to the east through the implementation of access, landscape and public domain measures.

Two key issues identified during public exhibition of the associated Planning Proposal and addressed in the DCP include:

- i. Limiting the gross floor area of retail development to not more than 5000 square metres unless an economic impact assessment can justify a variation, and
- ii. Integration of any proposed development of the site with the existing Banora Point Shopping Village; which also incorporates key urban design principles.

The DCP addresses these issues in a concise manner and is ready to be placed on public exhibition.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

The cost of preparing the Development Control Plan will be borne by the landowner.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Consult-We will listen to you, consider your ideas and concerns and keep you informed. **Inform** - We will keep you informed.

It is proposed to publicly exhibit the Draft Development Control Plan for a period not less than 28 days.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Draft Development Control Plan B28 - Club Banora (ECM 3674055)

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

SUBMITTED BY: Director

5

Civic Leadership LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK: 1 Civic Leadership 1.4 Strengthen coordination among Commonwealth and State Governments, their agencies and other service providers and Statutory Authorities to avoid duplication, synchronise service delivery and seek economies of scale 1.4.1 Council will perform its functions as required by law and form effective partnerships with State and Commonwealth governments and their agencies to advance the welfare of the Tweed community

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/refused.

RECOMMENDATION:

That Council notes the May 2015 Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.

REPORT:

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

In accordance with that Planning Circular, the following Development Applications have been supported/refused where a variation in standards under SEPP1 has occurred.

DA No.	DA15/0108
Description of Development:	Boundary adjustment
Property Address:	Lot 9 DP 789933 & Lot 11 DP 789933 No. 4 Rosemount Court, Terranora
Date Granted:	12/5/2015
Development Standard to be Varied:	Clause 4.2A(2) - Subdivision of land in Zone R5
Zoning:	R5 Large Lot Residential
Justification:	Connection to reticulated sewer standard. There are two existing allotments which both contain existing dwellings and approved services for water, onsite sewer, electricity and access which will not be impacted upon by the proposal and the large distance between the subject site and nearest sewer main.
Extent:	The variation applies to clause 4.2A(2)(b) <i>Subdivision of land in Zone R5</i> , which requires the development to be connected to Council's sewerage reticulation system. The site is not connected to Council's sewage reticulation system and it is not feasible to do so, due to the distance separating the subject site to the nearest sewer main. In addition the two allotments contain approved existing dwellings both connected to approved essential services such as water, on site sewer and electricity, which will not be affected by the boundary adjustment.
Authority:	Tweed Shire Council under assumed concurrence

DA No.	DA14/0384
Description of Development:	21 lot subdivision - staged development
Property Address:	Lot 1 DP 1077697 No. 678-770 Casuarina Way, Casuarina
Date Granted:	8/5/2015
Development Standard to be Varied:	Clause 21A(2)(a) - Minimum lot size 40ha
Zoning:	7(f) Environmental Protection (Coastal Lands)
Justification:	The proposal relates to the subdivision of an already undersized allotment and no physical development is to be undertaken on the land zoned 7(f) Environmental Protection (Coastal Protection)
Extent:	Proposal relates to a 99.6% variation to the 40ha minimum lot size
Authority:	Director-General of the Department of Planning and Infrastructure

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.