



TWEED
SHIRE COUNCIL

Mayor: Cr K Milne

Councillors: P Allsop
R Byrnes
C Cherry (Deputy Mayor)
R Cooper
J Owen
W Polglase

Agenda

Planning Committee Meeting Thursday 1 December 2016

held at **Harvard Room, Tweed Heads Administration Building,
Brett Street, Tweed Heads** 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 FROM THE DIRECTOR PLANNING AND REGULATION | 6 |
| 1 | [PR-PC] Development Application DA15/0042 for a 20 Lot Subdivision including Demolition of Existing Structures & Construction of a Public Road at Lots 1 & 2 DP 1098348 Nos. 55-57 Walmsleys Road, Bilambil Heights; Lot 1 DP 134787, Lot 1 DP 167380 & Lot 2 DP 961928 Walmsleys Road, Bilambil Heights | 6 |
| 2 | [PR-PC] Development Application DA16/0527 for the Demolition of Existing Structures and Construction of a Residential Flat Building (Seven Units) and Swimming Pool at Lot 14 Section 5 DP 758571 No. 204 Marine Parade, Kingscliff | 70 |
| 3 | [PR-PC] Review of Determination of Development Application DA15/1064 for a Redevelopment of Waterslide Playground at Lot 1 DP 1014298 No. 1-3 Tweed Coast Road, Hastings Point | 147 |
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REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

- 1 [PR-PC] Development Application DA15/0042 for a 20 Lot Subdivision including Demolition of Existing Structures & Construction of a Public Road at Lots 1 & 2 DP 1098348 Nos. 55-57 Walmsleys Road, Bilambil Heights; Lot 1 DP 134787, Lot 1 DP 167380 & Lot 2 DP 961928 Walmsleys Road, Bilambil Heights

SUBMITTED BY: Development Assessment and Compliance

Validms



Civic Leadership

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:

Council is in receipt of an application for a 20 lot subdivision over two stages (bulk earthworks at Stage 1) at the above location with demolition of the existing dwelling and ancillary residential structures. A total of 18 residential lots and a sewer pump station lot/drainage reserve lot are to be created along with a large residue lot with a view to future development. The proposal incorporates an extension to the existing Walmsleys Road to provide vehicular access to the development.

The actual subdivision site (containing the 19 smaller lots) is zoned R1 General Residential and the large residue lot is zoned R5 Large Lot Residential under the Tweed Local Environmental Plan 2014. A small portion of land predominantly to the north of the subdivision site will be dedicated to create a section of Road 1. It is zoned R1 but is part of a larger allotment that contains land zoned 7(d) Environmental Protection (Scenic/Escarpment) under the Tweed Local Environmental Plan 2000. No development is to occur on the 7(d) zoned land.

Accordingly, and as a precautionary measure, the application involves a SEPP No. 1 Objection to Clause 20(2)(a) of the Tweed Local Environmental Plan 2000 in relation to the minimum lot size (40 hectares) in the 7(d) Environmental Protection (Scenic/Escarpment) zone. Dedication of the 930m² to form part of Road No. 1 will result in a reduction in area of the lot containing the 7(d) zoned land. The lot in question is already substantially undersized and has previously been granted concurrence for subdivision associated with Master Project

MP05_0198. This SEPP No. 1 Objection is considered minor, reasonable and is supported. Concurrence has also been received from NSW Department of Planning and Environment.

An Integrated referral was made to the NSW Rural Fire Service under the Rural Fires Act 1997 as the proposal relates to the subdivision of bushfire prone land. General Terms of Approval have been received in this regard. Furthermore, the application was referred to Tweed Byron Local Aboriginal Land Council (TBLALC) for comment. An email was sent to TBLALC requesting comment, however, a response to either forms of communication has not been received.

The application was placed on exhibition for a period of 14 days. One public submission was received.

The application was lodged with Council on 2 February 2015 and has been subject to a number of further information requests and design revisions as assessment has progressed.

The proposed development has been reviewed by Councils Development Engineering Unit, Infrastructure Engineer, Traffic Engineer, Building Unit, Natural Resource Management Unit, Environmental Health Unit and Water Unit who have all provided comment with respect to the proposal. It is recommended that the application be approved subject to the provision of appropriate recommended conditions of consent.

As the development requires a SEPP No. 1 Objection (greater than 10%) this has triggered referral to Council for determination.

RECOMMENDATION:

That:

- A. State Environmental Planning Policy No. 1 objection to Clause 20(2)(a) of Tweed Local Environmental Plan 2000 regarding minimum lot size be supported.**
- B. Development Application DA15/0042 for a 20 lot subdivision including demolition of existing structures & construction of a public road at Lots 1 & 2 DP 1098348 Nos. 55–57 Walmsleys Road, Bilambil Heights; Lot 1 DP 134787, Lot 1 DP 167380 & Lot 2 DP 961928 Walmsleys Road, Bilambil Heights be approved subject to the following conditions:**

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and the following Plans;**
 - **Drawing No. Sk.1 Issue Q,**
 - **Drawing No. Sk.4 Issue G,**
 - **Drawing No. Sk.6 Issue E,**
 - **Drawing No. Sk.11 Issue G,**
 - **Drawing No. Sk.13 Issue G,**
 - **Drawing No. Sk.14 Issue D,**
 - **Drawing No. Sk.15 Issue D,**
 - **Drawing No. Sk.16 Issue D,**

- **Drawing No. Sk.17 Issue D,**

prepared by Cozens Regan Williams Prove Pty Ltd, except where varied by the conditions of this consent.

[GEN0005]

2. **The use of crushing plant machinery, mechanical screening or mechanical blending of materials is subject to separate development application.**
[GEN0045]
3. **The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**
[GEN0115]
4. **The subdivision is to be carried out in accordance with Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual and Councils Development Design and Construction Specifications.**
[GEN0125]
5. **Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property.**
[GEN0135]
6. **Prior to demolition work commencing a sign containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm by 300mm shall be erected in a prominent visible location on the site. The sign shall remain in place until all asbestos has been removed from the site.**
[GEN0345]
7. **Sewer pumping station, collector manhole or vent must be minimum distance of 10 meters from the adjacent property boundary (ie: lot 11).**
8. **A separate lot shall be created in the plan of subdivision for the sewer pumping station site and transferred to Council.**
9. **Building footprint is limited to the area east of the sewer main on lots 9, 10 and 11 with no building allowable within or over the sewer easement.**
10. **Water & sewer approvals relate to works proposed on Lot 2 DP1098348 only. Water and sewer works proposed for Lot 2 DP961928 will be subject to further review upon S305 application and prior to construction certificate for DA09/0527 (MP05_0198).**
11. **The following trees shall be retained and afforded adequate protection as shown on Tree Survey Plan dated 31/03/2015 Dwg. No. 20663D Rev. B provided by B & P Surveys Consulting Surveyors and corresponding Tree Survey Data prepared by Ecosure (submitted 18 June 2015):**
 - a. **Tree No. 109, threatened species Macadamia tetraphylla (Rough-shelled Bush Nut) located on proposed Lot 10;**
 - b. **Tree No. 29 Flindersia australis (Australian Teak) on proposed Lot 12; and**
 - c. **Tree No. 32 Flindersia australis (Australian Teak) on proposed Lot 12.**

[GENNS01]

12. Approval is given for the absorption of the 3.2m battleaxe handle (as per Positive Covenant DP1098348), provided the Developer relocates power, water and any other existing services to Lot 1 DP 1098348 at the Developers expense and continues to provide access to Lot 1 DP 1098348 whilst the development is under construction.

[GENNS02]

13. Site regrading shall be limited to the provisions of Council's DCP Design Specification D6 - *Site Regrading*, except where Council have endorsed higher retaining walls as nominated on approved Drawing No. Sk.4 Issue G prepared by Cozens Regan Williams Prove and the variation is supported by certification of adequacy of design from a suitably qualified Structural / Geotechnical Engineer.

[GENNS03]

14. The Construction Certificate for Road No.1 and the intersection of Road No.1 and Road No.5 shall be compatible with any applicable Construction Certificate approved under DA09/0527 (being Major Project MP05-0198).

The design must take into consideration bus and garbage truck turning templates.

[GENNS04]

15. Prior to application for a Construction Certificate, owners consent shall be obtained from all existing property owners external of the subject allotments, where the development requires physically works to be undertaken within their property, such as earthworks and driveway re-establishment for the extension / construction of Road No. 1 (Walmsleys Road).

[GENNS05]

16. Prior to application for a Subdivision Certificate, any existing, private property improvement (such as driveway, retaining wall or associated landscaping) that is affected by the development shall be re-constructed / re-instated at the Developer's expense, in a location approved by Council, to a standard of no less than that existing, to the satisfaction of Council.

[GENNS06]

17. Unless approved otherwise by Council, rumble bar delineators (including line marking) are to be provided on the crest of Road No. 1 (Walmsleys Road) at the start of the Walmsleys Road extension, in front of the existing driveways, to physically reduce the running lanes to 3.0m. Appropriate "Crest Signs" and "No Parking" signs are to be installed.

[GENNS07]

18. In the event that the development pursuant to Development Consent No. DA15/0042 is carried out independent of the subdivision approved under Major Project Approval No. 05_0198 (Council reference - DA09/0527), an easement for sewerage shall be created over the proposed sewer rising main and the future gravity sewerage reticulation from Manhole 2/30 - 2/31, generally as shown on the approved Drawings No. Sk.15 and Sk.16.

The easement shall be created in conjunction with registration of the Plan of Subdivision (DA15/0042) in the Land and Property Information Office.

[GENNS08]

19. Prior to the excavated material being removed from the site under this development consent (DA15/0042) and deposited on the site under MP05_0198, all relevant conditions relating to MP05_0198 are to be complied with.

[GENNS05]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

20. The Construction Certificate Application for Subdivision Works shall include a detailed Stormwater Management Plan (SWMP) for the occupational or use stage of the proposed development, prepared in accordance with Section D7.07 of Council's *Development Design Specification D7 - Stormwater Quality*. Such plans are to include measures, monitoring and adaptive management actions to ensure appropriate stormwater quality outcomes are achieved.

Permanent stormwater quality treatment shall comply with the *Tweed Urban Stormwater Quality Management Plan* and Council's *Development Design Specification D7 - Stormwater Quality*. Variations to these standards shall only be accepted where they are supported by best practice water sensitive urban design principles entailed in the "Water By Design" guidelines (being a program of the South East Queensland Healthy Waterways Partnership).

Treatment basins must be provided with a facility to bypass major stormwater flow events (greater than the Q3 month storm event), or otherwise cater for major storm flows without disturbing captured pollutants or damaging the structure.

Proposed treatment measures other than "deemed to comply" measures as specified in Council's *Development Design Specification D7*, must be supported by engineering calculations, including MUSIC modelling, to confirm that acceptable capacity and efficiency is achieved.

An Operational Manual for all stormwater quality control devices must be provided as part of the SWMP. This manual must be updated as required during the Defects Liability ("On-Maintenance") Period for the device and the final version of the manual must be handed over to Council at the formal commissioning of the device, at the completion of the Defects Liability Period ("Off Maintenance").

[PCC0165]

21. Prior to the issue of a Construction Certificate for Subdivision Works, a Cash Bond or Bank Guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the works associated with the Construction Certificate as set out in Council's fees and charges at the time of payment.

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

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

[PCC0275]

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

[PCC0285]

23. Where earthworks result in the creation of batters and/or cuttings greater than 1m high and/or slopes within allotments 17^o (1:3.27) or steeper, such slopes shall be densely planted in accordance with a detailed Landscaping Plan endorsed by Council. This Plan shall accompany the Construction Certificate application.

Such plans shall generally incorporate the following and preferably be prepared by a landscape architect:

- (a) Contours and terraces where the height exceeds 1m.
- (b) Cover with topsoil and large rocks/dry stone walls in terraces as necessary.
- (c) Densely plant with appropriate native species to suit the aspect/micro climate. Emphasis to be on trees and ground covers which require minimal maintenance. Undergrowth should be weed suppressant.
- (d) Mulch heavily (minimum 300mm thick) preferably with unwanted growth cleared from the estate and chipped. All unwanted vegetation is to be chipped and retained on the subdivision.

[PCC0455]

24. The Construction Certificate application shall include a certificate of adequacy of design in accordance with AS 4678 (current version) and Council's Development Design and Construction Specifications, signed by a practising Structural Engineer on all proposed retaining walls in excess of 1.2m in height. The certificate must also address any loads or possible loads on the wall from structures adjacent to the wall and take into consideration the zone of influence on any underground infrastructure within the subject site.

The Certificate shall be supported by Geotechnical assessment of the founding material.

Timber retaining walls are not permitted.

[PCC0475]

25. Notwithstanding any other condition of this consent separate Construction Certificates for bulk earthworks and subdivision works may be issued and the carrying out of bulk earthworks may be commenced as Stage 1, prior to the issue of a Construction Certificate for Subdivision Works where it can be demonstrated all works are compatible.

[PCC0495]

26. Prior to the issue of a Construction Certificate, a Detailed *Geotechnical Investigation* shall be undertaken by an appropriately qualified practising professional Geotechnical Engineer, unless considered unjustified and supported in writing by the Geotechnical Engineer and endorsed by Council.

The investigation shall identify (as required) any areas of compressible clay materials, loose sands, landslip, instability, subsidence or reactive soil profiles which may impact on construction or building activities. If unsuitable materials are identified, the investigation shall provide recommendations such as a preloading or other forms of treatment necessary to achieve surface movement (y_s) rates consistent with a site classification "M" as defined by AS 2870 (current version). All consolidation resulting from preloading shall be monitored by settlement plates or detailed survey to determine consolidation/settlement characteristics.

[PCC0500]

27. A Traffic Control Plan in accordance with AS1742 and the latest version of the NSW Government Roads and Maritime Services (RMS) publication "Traffic Control at Work Sites" shall be prepared by an RMS accredited person and shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate for Subdivision Works. Safe public access shall be provided at all times.

[PCC0865]

28. Prior to the issue of a Construction Certificate for Subdivision Works, the following detail in accordance with Council's Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

- (a) copies of compliance certificates relied upon
- (b) Detailed engineering plans and specifications, *prepared in accordance with Development Design Specification D13 - particularly Section D13.09*. The detailed plans shall include (but are not limited to) the following, unless approved otherwise by the PCA:
 - earthworks
- (c) Demonstrate that all allotments can be serviced by a compliant driveway.
 - roadworks/furnishings/access
- (d) Existing cul-de-sac bulb in Walmsleys Road to be removed when road is extended.

- (e) Detailing all applicable traffic regulatory signage and line marking.
- (f) Re-instatement / re-construction of any disturbed, existing private property improvement (i.e. driveway) affected by the development.
 - stormwater drainage
 - water supply works
 - sewerage works
 - landscaping works
 - sedimentation and erosion management plans
 - location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure),
- (g) Including submission of electrical reticulation plans clearly identifying the location of streetlights (on the opposite side to water mains), underground cables and all other electrical infrastructure including transformers and substations.

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

[PCC0985]

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

A shake down area shall be installed within the property, immediately prior to any vehicle entering or exiting the site, prior to any earthworks being undertaken.

[PCC1155]

30. Prior to the issue of a Construction Certificate, applications 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 the following works (as applicable, but not limited to):
- a. water,
 - A Pressure Reducing Valve (PRV) installation including valve pit and high and low flow valves shall be provided and located in

Walmsleys Road near the boundary of existing Lot 1 DP167380 and Lot 1 DP1034976.

- The water supply in each cul-de-sac shall be designed as per S.D.301.

b. sewerage, including;

- Depth of cover to mains shall comply with Council's Works In Proximity Policy.
- A scour valve is required at the low point of the proposed sewer rising main.
- An air valve is required at the high point of the proposed sewer rising main.
- As per WSA02 Table 5.4, the minimum clearance between sewers and other services (including proposed infiltration pits) must be provided.
- Sewer house connections shall not be made to manholes.
- External drops are required where manhole drops are greater than 490mm as outlined in WSA02-2014 Section 7.6.
- Sewer manholes shall not be greater than 5 meters in depth.

c. drainage works, including;

- the connection of a private stormwater drain to a public stormwater drain,
- the installation of stormwater quality control devices,
- erosion and sediment control works

[PCC1195]

31. If the development is likely to disturb or impact upon water or sewer infrastructure (eg: extending, relocating or lowering of pipeline), written confirmation from the service provider that they have agreed to the proposed works must be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate or any works commencing, whichever occurs first. Applications for these works must be submitted on Council's standard Section 68 Application form accompanied by the required attachments and the prescribed fee. The arrangements and costs associated with any adjustment to water and wastewater infrastructure shall be borne in full by the applicant/developer.

[PCC1310]

32. A detailed plan of landscaping (DPoL) is required to be prepared by a suitably qualified professional with expertise in landscape architecture and bushland restoration. The DPoL shall be submitted and approved by Council's General Manager or delegate (Recreation Services and Natural Resource Management) prior to issuing the first of any construction certificates and shall include:

a. A Street-scaping component which includes the following details:

- i. A plan of suitable scale prepared in accordance with *Tweed Shire Council Development Control Plan Section A5 - Subdivision Manual Development Design Specification D14 - Landscaping Public Space.*

- ii. A schedule of plants containing no noxious or environmental weed species and a minimum 80% of total plant numbers comprised of local native species.

Plants to be included in the detailed landscape plan are to meet the following criteria:

- A minimum of 80% locally occurring Australian native species and maximum of 20% non locally occurring Australian native species to apply to all trees;
 - A minimum of 80% locally occurring native species and maximum of 20% Australian native or exotic species to apply to other plants (shrubs, ground cover and similar);
 - Where practical locally occurring native plants should exceed these amounts;
 - Preferred turf species is *Cynodon dactylon* (Green Couch). Justification required if an alternative species is proposed;
 - Industry bred plants (cultivar or variety) are acceptable.
- b. A habitat restoration component for proposed Lot 12 (to be transferred to Council) that involves the revegetation of the area between the most western boundary of proposed Lot 12 and the candidate Endangered Ecological Community (EEC) Lowland Rainforest in NSW North Coast and Sydney Basin Bioregion 10 m buffer line on Lot 12 (as shown on *Dwg No. Sk.1 Issue Q by Cozen Regan Williams Prove Consulting Engineers Pty Ltd dated June 2016*) for of an approximate area of 674 m². The habitat restoration component shall be prepared generally in accordance with the Tweed Shire Council Draft Habitat Restoration Preparation Guideline and detail the following:
 - i. An appraisal of the present condition of vegetation;
 - ii. A plan overlaying an aerial photograph of the site which depicts the zone for planting,
 - a. A management strategy for the zone, including the approach, methods and techniques to be used for vegetation restoration;
 - b. A schedule of 100% appropriate local native plant species (suitable for site conditions) to be used for planting with a planting density to achieve one (1) plant per metre square and comprise 50% trees, 20% Small Trees/Shrubs, 30% Groundcovers/ Sedges/Grasses;
 - c. A program of works to be undertaken to remove invasive weed species;
 - d. A schedule of timing of proposed works;
 - e. A maintenance, monitoring and reporting schedule with developer commitment for a period not less than five (5) years;
 - f. An adaptive management statement detailing how potential problems arising may be overcome and requiring approval of the General Manager or delegate for such changes;
 - g. Plantings shall be undertaken in accordance with standard *Dwg. No. S.D.701-702 Tree & Shrub Planting Details and Standard Revegetation Detail* in *TSC Landscape Procedures*

and Style Manual Appendix H (of DCP A5 Subdivision Manual - D14 Landscaping Public Space);

- h. A threatened species propagation plan for the removal of one (1) *Macadamia tetraphylla* (Rough Shelled Bush Nut) located on the northern property boundary of proposed Lot 8 shall be prepared to offset its loss. The plan shall state that onsite replacement planting stock shall be propagated by a bushland contractor or qualified nursery operator with a permit to collect from local specimens in accordance with the Flora-bank Guidelines and Code of Practice and Australian Network for Plant Conservation Guidelines. Details including propagation methods, number of specimens propagated and planted, monitoring and maintenance regime and final instalment locations (being within the habitat restoration zone on proposed Lot 12) are to be provided.

[PCCNS01]

33. As the Water Supply Authority under the Water Management Act 2000, prior to construction certificate the water supply and sewerage system information outlined in the Tweed Shire Council Development Design Specifications shall be to be submitted to Council's General Manager or his delegate for approval.
34. The Civil Works Plans for water supply and sewerage are considered to be preliminary and subject to change to meet Council requirements prior to construction certificate.
35. Any future development of this site will require an updated civil work plan to be submitted be approved by the General Manager or his delegate for approval prior to construction. The plans 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 and sewer works.
36. Any alterations to Council approved water and sewer plans after construction certificate approval shall be provided to and approved by General Manager or his delegate prior to construction works.
37. Stormwater

All stormwater outlets shall discharge to a lawful point of discharge, being a Council drainage system, existing watercourse or registered easement, compliant with Council's Design Specifications D5 - *Stormwater Drainage Design* and D7 - *Stormwater Quality*. The design and location of all stormwater outlets and related treatment and mitigation structures must consider and make provision for future access for maintenance, to the satisfaction of Council.

Allotments with adverse fall that cannot drain to a street shall provide a combination of infiltration and detention with level spreaders, to minimise adverse impacts on downstream property. The Applicant may choose to install these devices under the Construction Certificate for Subdivision

Works or impose an applicable restriction on title, to advise future property owners of this obligation during dwelling construction.

Where infiltration is adopted, the infiltration device must:

- (a) Comply with the provisions of Council's Design Specification D7 - Stormwater Quality, section D7.09.9.**
- (b) Surcharge by visible surface flow, not piped.**
- (c) Be sized to limit surcharge (per allotment) to 200l/s/ha, up to a Q100 storm event.**
- (d) Be designed to allow for cleaning and maintenance overhauls.**
- (e) Be designed by a suitably qualified Engineer taking into account the proximity of the footings for the proposed/or existing structures on the subject property, and existing or likely structures on adjoining properties.**
- (f) Be designed to withstand loading from vehicles during construction and operation of the development.**
- (g) Be located clear of sewer easements.**

[PCCNS03]

38. Prior to the issue of a Construction Certificate for subdivision works:

- 1. Application shall be made to Council under Section 305 of the Water Management Act 2000 for a certificate of compliance for development to be carried out - i.e.: the provision of water and sewerage to the development.**
- 2. Following this, requirements shall be issued by Council under Section 306 of the Water Management Act 2000.**
- 3. Following this, any works needing to be undertaken will require a further application to be made to Council under Section 68 of the Local Government Act for the relevant water / sewer works. Approval of this application will be required prior to/in conjunction with issuing the Construction Certificate.**

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.

[PCCNS04]

39. Safety rails, compliant with the Building Code of Australia are to be provided where any retaining wall within public land exceeds 1.0m in height.

[PCCNS06]

40. Prior to the issue of a Construction Certificate, an RTA Risk Assessment is to be undertaken to determine if guard rail is required for the proposed road works.

If guard rails are required, a certificate of sufficiency of design signed by a practicing Structural Engineer shall be submitted to Council, certifying the proposed safety barrier. The design is to specifically address the potential for vehicle collision at the design road speed.

[PCCNS07]

PRIOR TO COMMENCEMENT OF WORK

41. 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]
42. Prior to the commencement of works, the applicant shall ensure that a Site-Specific Safety Management Plan and Safe Work Methods for the subject site have been prepared and put in place in accordance with either:-
- (a) Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3rd Edition, NSW Government, or
 - (b) AS4804 Occupation Health and Safety Management Systems - General Guidelines on Principles Systems and Supporting Techniques.
 - (c) WorkCover Regulations 2000 [PCW0025]
43. 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]
44. 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]
45. 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]
46. Subdivision work in accordance with a development consent must not be commenced until:
- (a) a Construction Certificate for the subdivision work has been issued in accordance with Councils Development Construction Specification C101 by:

- (i) the Consent Authority, or
- (ii) an Accredited Certifier, and

(b) the person having the benefit of the development consent:

- (i) has appointed a Principal Certifying Authority,
- (ii) has appointed a Certifying Engineer to certify the compliance of the completed works.

The Certifying Engineer shall be a Professional Engineer (Civil) with National Engineering Register (NER) or a Registered Surveyor. Documentary evidence is to be provided to Council demonstrating currency of the above accreditation, and

- (iii) has notified the Consent Authority and the council (if the council is not the Consent Authority) of the appointment,
- (iv) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Certifying Engineer is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued, and

(c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the subdivision work.

[PCW0815]

47. The proponent shall provide to the PCA copies of Public Risk Liability Insurance to a minimum value of \$10 Million for the period of commencement of works until the completion of the Defects Liability Period for the Subdivision works.

[PCW0835]

48. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area, where required to the satisfaction of the Principal Certifying Authority. These measures are to be in accordance with the approved Erosion and Sedimentation Control Plan and adequately maintained throughout the duration of the development.

[PCW0985]

49. Excavation, shoring and dewatering of the approved works must be considered when undertaking works. Any permits required to undertake dewatering shall be obtained prior to commencing. The applicant shall conduct a thorough site assessment to determine trench safety for the approved works.

50. Prior to any soil being extracted from site, the Developer must advise Council of the proposed haul route and intended destination. No material can leave site until the proposed route and destination have been endorsed by the General Manager or his delegate and any applicable Heavy Haulage Contribution paid.

[PCWNS02]

DURING CONSTRUCTION

51. 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]

52. 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]

53. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:

A. Short Term Period - 4 weeks.

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

B. Long term period - the duration.

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

[DUR0215]

54. 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]

55. 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]

56. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover NSW, Work Health and Safety Regulation 2011.

The proponent shall also observe the guidelines set down under the Department of Environment and Climate Change publication, "A Renovators Guide to the Dangers of Lead" and the Workcover Guidelines on working with asbestos.

[DUR0645]

57. All earthworks and filling shall be carried out in accordance with AS 3798 (current version) to a Level 1 inspection regime and testing (including trenches) in accordance with Table 8.1.

The earthworks and filling shall also be undertaken in accordance with the recommendations provided in the *Geotechnical Investigation* (as required by Consent Condition Number 25 / PCC0500) and monitored by a Registered Geotechnical Testing Consultant.

[DUR0795]

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

[DUR0815]

59. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council's General Manager or his delegate.

[DUR0985]

60. The surrounding public 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 deposited on the roadway by construction vehicles will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate.

[DUR0995]

61. 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]

62. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. Such materials shall either be recycled or disposed of in a manner acceptable to Councils General Manager or his delegate.

[DUR1015]

63. A concrete footpath 1.2 metres wide is to be constructed on a compacted base as per approved Drawing No. Sk.13, in accordance with Councils Development Design and Construction Specifications and Standard Drawing SD013.

24 hours notice is to be given to Council's Engineering Division before placement of concrete to enable formwork and subgrade to be inspected.

[DUR1735]

64. 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]

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

- (a) That the pavement has been designed in accordance with Tweed Shire Councils Development Design Specification, D2.
- (b) That the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils Construction Specifications, C242-C245, C247, C248 and C255.
- (c) That site fill areas have been compacted to the specified standard.
- (d) That supervision of Bulk Earthworks has been to Level 1 and frequency of field density testing has been completed in accordance with Table 8.1 of AS 3798-2007.

[DUR1805]

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

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

[DUR1825]

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

[DUR1845]

68. 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 Council's Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[DUR1875]

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

Roadworks

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

Water Reticulation, Sewer Reticulation, Drainage

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

Sewer Pump Station and Lift Stations

- (a) Excavation
- (b) Formwork/reinforcement
- (c) Hydraulics
- (d) Mechanical/electrical
- (e) Commissioning - on maintenance
- (f) Off maintenance

Stormwater Quality Control Devices (other than proprietary devices)
For detail refer to Water By Design - Technical Guidelines

- (a) Earthworks and filter media
- (b) Structural components
- (c) Operational establishment
- (d) Mechanical/electrical
- (e) Commissioning - On Maintenance
- (f) Off Maintenance

Council's role is limited to the above mandatory inspections and does **NOT** include supervision of the works, which is the responsibility of the Developers Supervising Consulting Engineer.

The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "Accredited Certifier".

The fee for the abovementioned inspections shall be invoiced upon completion of all subdivision works, and subject to the submission of an application for a 'Subdivision Works Compliance Certificate'.

[DUR1895]

70. The developer/contractor is to maintain a copy of the development consent, approved Management Plans and Construction Certificate approval including plans and specifications on the site at all times.

[DUR2015]

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

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

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

[DUR2035]

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

[DUR2355]

73. 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]

74. During construction, a “satisfactory inspection report” is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering Division to arrange a suitable inspection.

[DUR2445]

75. An accurate plan of the sewage pumping station site shall be submitted to Council 60 days prior to lodgement of the Application for Subdivision Certificate to allow the land to be classified.

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

[DUR2635]

76. No retaining walls or similar structures are to be constructed over or within the zone of influence of Council's sewer main unless designed by a practising Structural Engineer. The engineer is to submit a certification to the Principal Certifying Authority that the design of such footings and slabs will ensure that all building loads will be transferred to the foundation material and will not affect or be affected by the sewer main and that the design meets the Council Sewers - Works in Proximity Policy.

[DUR2705]

77. Appropriate tree protection fencing shall be installed generally in accordance with *Australian Standard AS4970-2009 Protection of trees on development sites* prior to commencement of any works on site and remain for the duration of the construction period. Tree protection fencing shall be installed in the following locations unless otherwise approved by Councils general manager or their delegate.

- a. Along the boundary of the 10 m EEC buffer line within proposed Lot 12 as shown on *Proposed 20 Lot Subdivision Plan Dwg. Sk.1 Issue Q dated June 2016 prepared by Cozen Regan Will Prove Consulting Engineers Pty Ltd*; and
- b. Around the tree protection zone of Tree No. 109 *Macadamia tetraphylla* (Rough-shelled Bush Nut) as depicted in *Tree Survey Plan dated 31/03/2015 Dwg. No. 20663D Rev. B provided by B & P Surveys Consulting Surveyors and Tree survey Data by Ecosure (submitted 18 June 2015)*.

[DURNS01]

78. Landscaping of the site shall be carried out in accordance with the submitted/approved detailed plan of landscaping and associated habitat restoration component.

[DURNS01]

79. A suitably qualified ecologist who holds a fauna survey licence is required to manage wildlife onsite during any tree removal and/or disturbance to wildlife habitat. Fauna management methods employed should be generally consistent with the *Draft Queensland Code of Practice for the Welfare of Wild Animals Affected by Clearing and Other Habitat and Wildlife Spotter/Catchers* (Hangar & Nottidge 2009). Where translocation is required the proponent shall seek any relevant permits from the state regulating agency (Office of Environment & Heritage). It is the responsibility of the proponents to ensure all relevant licences have been obtained prior to any fauna interactions.

[DURNS01]

80. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. Such materials shall either be recycled or disposed of in a manner acceptable to Councils General Manager or delegate.

[DURNS01]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

81. Prior to issue of a Subdivision Certificate, all works/actions/inspections etc required by other conditions or approved Management Plans or the like shall be completed in accordance with those conditions or plans.

[PSC0005]

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

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

BELOW IS ADVICE ONLY

The Section 64 Contributions for this development at the date of this approval have been estimated as:

| | | |
|---------------|--------------------------|--------------|
| Water DSP3: | 17.8 ET @ \$13386 per ET | \$238,270.80 |
| Sewer Banora: | 19 ET @ \$6431 per ET | \$122,189 |

83. Section 94 Contributions

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

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

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

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

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

| | |
|--|-----------|
| (a) Tweed Road Contribution Plan: 110.5 Trips @ \$3013 per Trips (\$2,836 base rate + \$177 indexation) S94 Plan No. 4 Sector4_4 | \$332,937 |
| (b) Open Space (Casual): 17 ET @ \$557 per ET (\$502 base rate + \$55 indexation) S94 Plan No. 5 | \$9,469 |
| (c) Open Space (Structured): 17 ET @ \$638 per ET (\$575 base rate + \$63 indexation) S94 Plan No. 5 | \$10,846 |
| (d) Shirewide Library Facilities: 17 ET @ \$859 per ET (\$792 base rate + \$67 indexation) S94 Plan No. 11 | \$14,603 |
| (e) Bus Shelters: 17 ET @ \$67 per ET (\$60 base rate + \$7 indexation) S94 Plan No. 12 | \$1,139 |
| (f) Eviron Cemetery: 17 ET @ \$125 per ET (\$101 base rate + \$24 indexation) S94 Plan No. 13 | \$2,125 |
| (g) Community Facilities (Tweed Coast - North) 17 ET @ \$1425 per ET (\$1,305.60 base rate + \$119.40 indexation) S94 Plan No. 15 | \$24,225 |

| | |
|--|--------------------|
| (h) Extensions to Council Administration Offices & Technical Support Facilities 17 ET @ \$1909.57 per ET (\$1,759.90 base rate + \$149.67 indexation) S94 Plan No. 18 | \$32,462.69 |
| (i) Cycleways: 17 ET @ \$485 per ET (\$447 base rate + \$38 indexation) S94 Plan No. 22 | \$8,245 |
| (j) Regional Open Space (Casual) 17 ET @ \$1119 per ET (\$1,031 base rate + \$88 indexation) S94 Plan No. 26 | \$19,023 |
| (k) Regional Open Space (Structured): 17 ET @ \$3928 per ET (\$3,619 base rate + \$309 indexation) S94 Plan No. 26 | \$66,776 |

[PCC0215/POC0395/PSC0175]

- 84. Prior to the issue of a Subdivision Certificate a Defect Liability Bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.**

The bond shall be based on 5% of the value of the works associated with the Construction Certificate for subdivision works (minimum as tabled in Council's fees and charges current at the time of payment) which will be held by Council for a period of 6 months from the date on which the plan of subdivision is registered.

It is the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.

[PSC0215]

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

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

[PSC0225]

- 86. A bond to ensure acceptable Plant Establishment and Landscaping Performance at time of handover to Council shall be lodged by the Developer prior to the issue of the Subdivision Certificate.**

The bond shall be held by Council for a period of 12 months from the date of issue of the Subdivision Certificate and may be utilised by Council during this period to undertake essential plant establishment or related plant care works, should non compliance occur. Any balance remaining at the end of the 12 months establishment period will be refunded.

The amount of the bond shall be 20% of the estimated cost of the landscaping or \$3000 whichever is the greater.

[PSC0235]

87. At the completion of the earthworks/filling and prior to the issue of the Subdivision Certificate, an appropriately qualified practising professional Geotechnical Engineer shall provide an Engineering Certification that clearly states the following:
1. All earthworks and filling have been inspected to a Level 1 standard in accordance with AS 3798 (current version) and in accordance with the recommendations of the detailed *Geotechnical Investigation* (as required by Consent Condition Number 25 / PCC0500).
 2. All surface movement (y_s) has achieved rates that are consistent with a site classification M as defined by AS 2870 (current version). If expected surface movement (y_s) for the proposed allotments are likely to exceed a site classification of M, all affected allotments shall be burdened by a Restriction on Use pursuant to Section 88B of the Conveyancing Act advising future owners of the site classification.
 3. Trenches have been compacted in accordance with Council's Construction Specifications.
 4. All allotments are suitable for their intended use.

The submission shall include copies of all undertaken test results.

[PSC0395]

88. All approved landscaping requirements must be completed to the satisfaction of the General Manager or his delegate prior to the issue of a Subdivision Certificate. Landscaping must be maintained at all times to the satisfaction of the General Manager or delegate.

[PSC0485]

89. Any damage to property (including pavement damage) is to be rectified to the satisfaction of the General Manager or his delegate prior to the issue of a Subdivision Certificate. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate.

[PSC0725]

90. Prior to the issue of a Subdivision Certificate, Work as Executed Plans shall be submitted in accordance with the provisions of Tweed Shire Council's Development Control Plan Part A5 - Subdivision Manual and Council's Development Design Specification, D13 - Engineering Plans.

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

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

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

[PSC0735]

91. All retaining walls in excess of 1.2m in height must be certified by a suitably qualified Geotechnical / Structural Engineer. The certification is to be submitted with the Subdivision Certificate application and shall state that the retaining walls have been designed and constructed in accordance with AS4678-2002 Earth Retaining Structures, the approved Construction Certificate and are structurally sound.

In addition to the above certification, "Easement for support" and "Restriction On Use" (or equivalent) shall be included in the Section 88B Instrument to accompany the final plan of subdivision, in accordance with Section 6.06A - Retaining Walls of Council's Design Specification D6 - Site Regrading.

Each lot burdened and or benefited by a Type 1 wall as defined in AS4678-2002 Earth Retaining Structures, shall contain a restriction to user advising the landowner of the need to maintain the wall in accordance with that standard.

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

[PSC0785]

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

[PSC0825]

93. Prior to the issue of the Subdivision Certificate, certification from a Fire Protection Association Australia (FPA Australia) accredited Bushfire Planning And Design (BPAD) certified practitioner, must be submitted to the PCA, confirming that the subject development complies with the Rural Fire Service's General Terms of Approval imposed under Section 100B of the Rural Fires Act 1997 on the consent.

[PSC0830]

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

- (a) Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property.
- (b) Easements to establish Legal Points of Discharge for stormwater.

- (c) **Positive Covenant over the subject land (as applicable) to ensure that the required provisions of the "Planning for Bushfire Protection 2006" Guidelines and the General Terms of Approval of the Consent as imposed under Section 100B of the Rural Fires Act 1997 are enforced in perpetuity.**
- (d) **Restriction to be placed on Lot 10 with respect to the retention of the *Macadamia tetraphylla* and ongoing protection as a threatened species.**
- (e) **Easement for support and Restriction On Use (as applicable) for installed retaining walls.**
- (f) **Restrictions on title (as applicable) as recommended by the developments Geotechnical Investigations.**

Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating a Right Of Carriageway or Easement shall make provision for maintenance of the Right Of Carriageway or Easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis (as applicable).

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

[PSC0835]

- 95. In accordance with clause 60 of the Surveying and Spatial Information Regulation 2012 the Plan of Subdivision (Deposited Plan) shall show the approved street address for each lot in the new Deposited Plan.**

[PSC0845]

- 96. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council with the application for Subdivision Certificate.**

[PSC0855]

- 97. Prior to registration of the Plan of Subdivision, a Subdivision Certificate shall be obtained.**

The following information must accompany an application:

- (a) **original Plan of Subdivision prepared by a registered surveyor and 2 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.**
- (b) **all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.**

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

[PSC0885]

98. In conjunction with the application for a Subdivision Certificate, the applicant must also apply to Council (OR PCA if applicable) for a Compliance Certificate for Subdivision Works. This may require obtaining individual Compliance Certificates for various civil works components such as (but not limited to) the following:

- (a) Roads
- (b) Water Reticulation
- (c) Sewerage Reticulation
- (d) Sewerage Pump Station
- (e) Drainage
- (f) Bulk Earthworks
- (g) Retaining Walls

Note:

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

[PSC0915]

99. The six (6) months Defects Liability Period for the subdivision works commences upon the registration of the Plan of Subdivision.

[PSC0925]

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

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

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

[PSC1065]

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

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

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

[PSC1115]

- 102. The production of written evidence from the local telecommunications supply authority certifying that the provision and commissioning of underground telephone supply at the front boundary of all allotments has been completed.**

[PSC1165]

103. Electricity

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

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

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

[PSC1185]

- 104. In accordance with the Federal Government's National Broadband Network (NBN) initiatives, the Developer is required (at the Developer's expense) to install a fibre ready, pit and pipe network (including trenching, design and third party certification) to NBN CO's Specifications, to allow for the installation of Fibre To The Home (FTTH) broadband services.**

[PSC1205]

- 105. Prior to the issue of a Subdivision Certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all installed s68h2 permanent stormwater quality control devices.**

[PSCNS01]

- 106. The developer is to undertake care and maintenance operations on all streetscapes, for a minimum of 12 months after the Subdivision is registered with the Land Titles Office. This is the establishment period for new plantings. Such maintenance will include all soft landscaping, particularly mowing and weed control. Any power and water consumption costs during this period must also be met by the developer**

[PSCNS02]

107. Prior to issue of a Subdivision Certificate, Work as Executed Plans (WAX) must be submitted for all landscaped casual and active open space. These must show all underground services, irrigation systems and the location of concrete paths, structures, other park infrastructure and garden bed outlines.

The plans are to be certified by a registered surveyor or consulting engineer.

Two categories of WAX plans are to be provided:

- a) The original approved plan with any variation to this indicated.
- b) Plan showing only the actual as constructed information,

The plans are to be submitted in the following formats:

- a) 2 paper copies of the same scale and format as the approved plan.
- b) A PDF version on CD or an approved medium.
- c) An electronic copy in DWG or DXF format on CD or an approved medium.

[PSCNS04]

108. All primary habitat restoration works as detailed in the approved detailed landscaping plan - habitat restoration component must be completed to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate.

[PSCNS05]

109. The following restrictions as to user under Section 88B of the *Conveyancing Act 1919* are to be created to Council's satisfaction:

Restriction as to user regarding the retention and protection in perpetuity of one (1) *Macadamia tetraphylla* (Rough-shelled Bush Nut) identified as Tree No. 109 on proposed Lot 10 as depicted in *Tree Survey Plan Dwg. No. 20663D Rev. B dated 31/03/2015 provided by B & P Surveys Consulting Surveyors* and associated *Tree Survey Data by Ecosure (submitted 18 June 2015)*.

Burden: Part Lot 10. Benefit: Tweed Shire Council

[PSCNS05]

110. A cash bond or bank guarantee to ensure that the approved detailed landscaping plan - habitat restoration component (DPoL-HRC) for Lot 12 is implemented and completed must be lodged with Council prior to the release of the subdivision certificate unless all ecological restoration works over a five (5) year period have been completed in accordance with the approved DPoL-HRC to the satisfaction of Council's General Manager or delegate. The amount of such bond will be based on the cost of environmental repair, enhancement and maintenance works to be undertaken in accordance with the approved DPoL-HRC. In this regard, two (2) written quotes from suitably experienced and qualified bush regenerators (to the satisfaction of the General Manager or delegate) must be submitted to Council which detail the cost of all associated work. The

amount of the bond will be equivalent to 130% of the estimated cost of works.

- (a) One third of the cash bond or bank guarantee will be refunded one year after the initiation of works on submission of certification by a suitably experienced and qualified bush regenerator stating that works are being satisfactorily undertaken in accordance with the approved DPoL-HRC. A further one third of the bond or bank guarantee will be refunded 3 years after the initiation of works on submission of certification by a suitably experienced and qualified bush regenerator stating that works have been satisfactorily reached the defined half-way stage of the DpoL-HRC. The final one third of the bond or bank guarantee will be released 5 years after completion of all works on submission of certification by a suitably experienced and qualified bush regenerator stating that the DpoL-HRC has been satisfactorily completed and accepted by Council's General Manager or delegate
- (b) Monitoring of the effectiveness of environmental repair, enhancement and maintenance works must be undertaken by an independent and suitably qualified and experienced bush regenerator at yearly intervals following initiation of the habitat restoration works in accordance with the DPoL-HRC. Reports of this monitoring must provide the basis for the person issuing certification for the bond or bank guarantee refunding stages and must be annually submitted to Council as evidence. Any supplementary or approved adaptive management works deemed necessary by the independent bush regenerator during the life of the DPoL-HRC works must be undertaken once the need is identified.

[PSCNS05]

111. A bond to ensure acceptable plant establishment and landscaping (street-scaping only) performance at time of handover to Council shall be lodged by the Developer prior to the issue of the Subdivision Certificate. The bond shall be held by Council for a period of 12 months from the date of issue of the Subdivision Certificate and may be utilised by Council during this period to undertake essential plant establishment or related plant care works, should non-compliance occur. Any balance remaining at the end of the 12 months establishment period will be refunded.

The amount of the bond shall be 20% of the estimated cost of the landscaping or \$3000 whichever is the greater.

[PSCNS05]

112. The site of the sewage pumping station and habitat restoration area being proposed Lot 12 as depicted on Proposed 20 Lot Subdivision Plan Dwg. Sk.1 Issue Q dated June 2016 prepared by Cozen Regan Will Prove Consulting Engineers Pty Ltd shall be transferred to Council in fee simple, at no cost to Council within 28 days of the date of registration of the plan of subdivision.

[PSCNS05]

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

- 1. The development proposal is to comply with the subdivision layout identified on the drawing: prepared by Cozens, Regan, Williams, Prove Pty Ltd, numbered 14446, Drawing No. Sk.1 Revision Q, and dated June 2016.**

Asset Protection Zones

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

- 2. At the issue of subdivision certificate and then in perpetuity the entire property, except for the following areas, shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones':**
 - The western part of proposed Lot 12 that is wholly contained in the area between the "10m EEC Buffer" line and the "Potential EEC" line, as identified on the plan prepared by Cozens, Regan, Williams, Prove Pty Ltd, numbered 14446, Drawing No. Sk.1 Revision Q, and dated June 2016.**

Water and Utilities

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

- 3. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.**

Access

The intent of measures for public roads is to provide safe operational access to structures and water supply for emergency services, while residents are seeking to evacuate from an area. To achieve this, the following conditions shall apply:

- 4. Public road access shall comply with section 4.1.3 (1) of 'Planning for Bush Fire Protection 2006'.**

General Advice - consent authority to note

- This approval is for the subdivision of the land only. Any further development application for class 1,2 & 3 buildings as identified by the 'Building Code of Australia' must be subject to separate application under**

section 79BA of the EP & A Act and address the requirements of 'Planning for Bush Fire Protection 2006'.

- This BFSA has been assessed (in part) against information provided from Tweed Shire Council identifying that the EEC buffer, located in the Western section of proposed Lot 12, will be revegetated with a rainforest species mix, as part of compensatory plantings.

REPORT:

Applicant: Border Holdings Pty Ltd
Owner: Mr Roy Walmsley & Mrs Dianne L Millar & Mr Peter N Walmsley & Ms Helen J Mabbutt
Location: Lot 1 DP 1098348 No. 55 Walmsleys Road, Bilambil Heights; Lot 2 DP 1098348 No. 57 Walmsleys Road, Bilambil Heights; Lot 1 DP 134787 & Lot 1 DP 167380 & Lot 2 DP 961928 Walmsleys Road, Bilambil Heights
Zoning: R1 - General Residential; R5 - Large Lot Residential; 7(d) Environmental Protection (Scenic/Escarpment)
Cost: \$1,050,000

Background:

The applicant seeks Council consent for a 20 lot subdivision (18 residential allotments, one sewer pump station/drainage reserve lot and one residue lot) over two stages as follows:

Proposal

Stage 1

- Bulk earthworks

Stage 2

Proposed Stage 2 creates the 18 residential lots, infrastructure lot and residue lot as identified in the table below:

| Lot | Area |
|-------------------------|--------------------|
| 1 | 783m ² |
| 2 | 675m ² |
| 3 | 697m ² |
| 4 | 678m ² |
| 5 | 602m ² |
| 6 | 724m ² |
| 7 | 775m ² |
| 8 | 943m ² |
| 9 | 746 m ² |
| 10 | 757m ² |
| 11 | 721m ² |
| 12 (infrastructure lot) | 1867m ² |
| 13 | 1012m ² |
| 14 | 700m ² |
| 15 | 966m ² |
| 16 | 820m ² |
| 17 | 820m ² |
| 18 | 820m ² |
| 19 | 820m ² |
| 20 (residue lot) | 7.5415 ha |

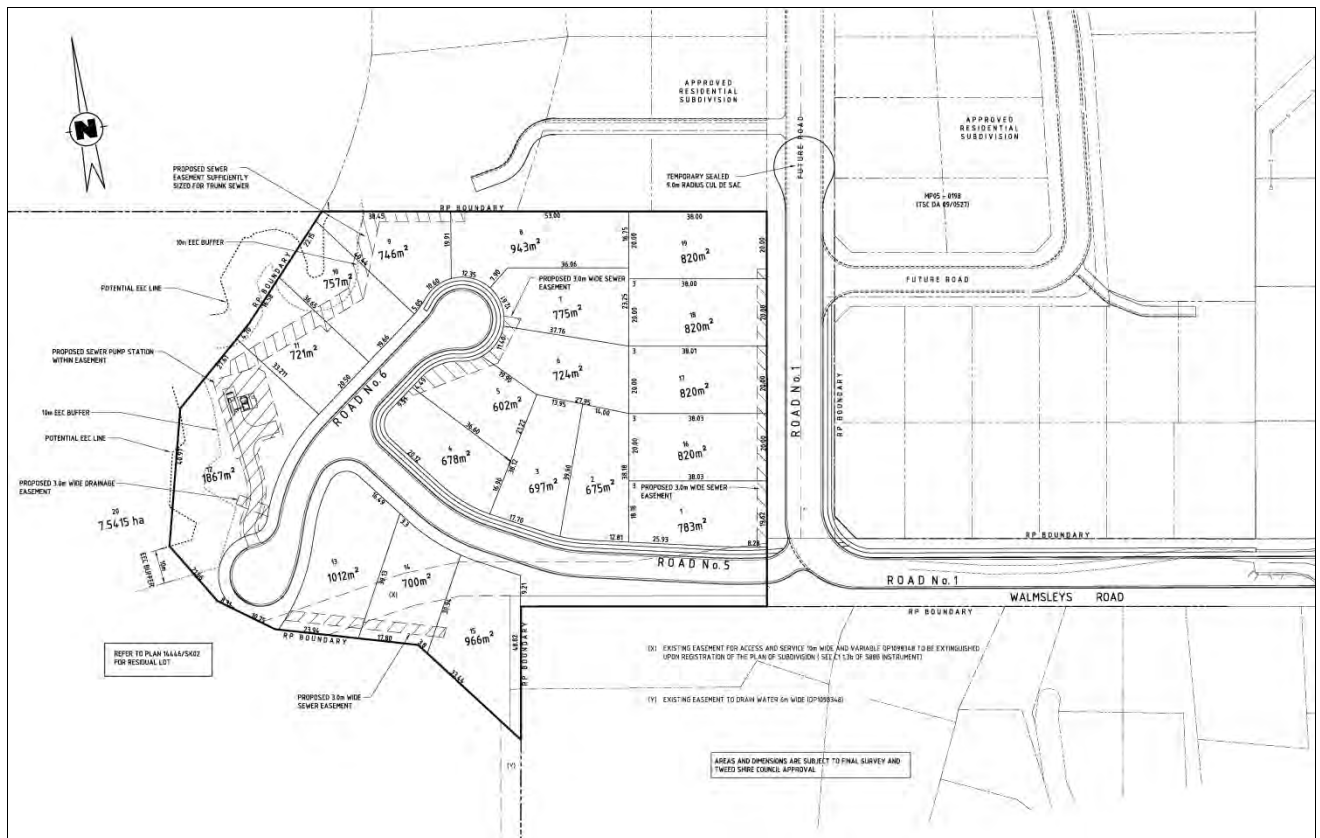


Figure 1: Proposed Subdivision Stage 2 Plan

The subdivision requires the construction of an extension to Walmsleys Road (Road No. 1), an internal access road from the extension (Road No. 5) and a cul de sac head (Road No. 6). Future access to the residue lot will be by way of the southern cul de sac head of Road No. 6.

The infrastructure allotment provides for a sewer pump station and a drainage reserve.

A number of amendments were received during the assessment of the proposal in response to Council's requests for further information.

The proposed development has been reviewed by Councils Building Services Unit, Development Engineering Unit, Infrastructure Engineer (Traffic/Stormwater), Natural Resource Management Unit, Environmental Health Unit and Water Unit who have all provided comment with respect to the originally lodged and subsequently amended proposal.

Assessment details are provided below as part of this report.

Site Details

The site is located approximately 5.5km south west of Tweed Heads, adjoining the urban development of Bilambil Heights. The site is currently occupied by a two-storey residence and associated outbuildings on Lot 2 DP 1098348 and a dwelling with associated structures on proposed residue Lot 1 DP 1098348. Access off Walmsleys Road is via a gravel access driveway which follows the southern boundary of the site before veering north to the highest point of the site. Access to Lot 1 is via Lot 2.

Lot 2's site characteristics include a relatively steep slope from the eastern boundary towards the west. Land along the eastern boundary is generally flat and the land slopes in all directions from a plateau in the north eastern portion of the site.

Lot 1 has fairly similar characteristics but has a much larger area of plateau and slope.

The site has unobstructed views from its eastern boundary towards the ocean and views to the west are of vegetated hills.



Figure 2: Development Site

Various areas of high, medium, low and very low risk of instability have been identified over the site. The site is bush fire prone but is not flood prone.

Total land area of Lot 2 DP 1098348 is 2 hectares. Total land area of Lot 1 DP 1098348 is 7.578 hectares. Combined, the development site (exclusive of Road No. 1) has an area of 9.578 hectare

A portion of Lot 2 DP 961928 is utilised to facilitate creation of Road No. 1 and the narrow Lot 1 DP 134787 will also be utilised in the creation of Road No. 1. Earthworks are expected to yield approximately 50,000m³ of spoil which is proposed to be transported to the approved open space Lot 15 within Lot 1 DP 167380. Lot 15 is within the adjoining approved residential subdivision immediately to the northeast of the site as approved under MP05_0198.

Currently water drains to the south with a 6m wide easement located on the eastern boundary of Lot 1 DP 1098348. Lot 2 is benefited by this easement.

The following restrictions currently burden Lot 2 DP 1098348:

- Easement for access and services 10 wide and variable benefiting Lot 1 DP 1098348;
- Positive covenant referring to any subdivision of Lot 2 into residential housing allotments shall incorporate the 3.2 metre battleaxe handle of Lot 1 currently located adjacent to the southern and south-eastern boundary of Lot 2. Lot 1 must consent to the re-subdivision of Lot 2 and provide alternative legal road frontage to Lot 1.

The development is considered to be in accordance with the above restrictions, with vehicle access provide to Lot 1 via proposed Road No. 6. The 3.5 metre battleaxe handle from Lot 1 is to be incorporated into proposed Lot 15 and proposed Road Reserve. The easement for stormwater (y) is to remain to retain a legal point of access for stormwater. This will also provide access for maintenance for the proposed retaining wall along proposed Road No. 5.

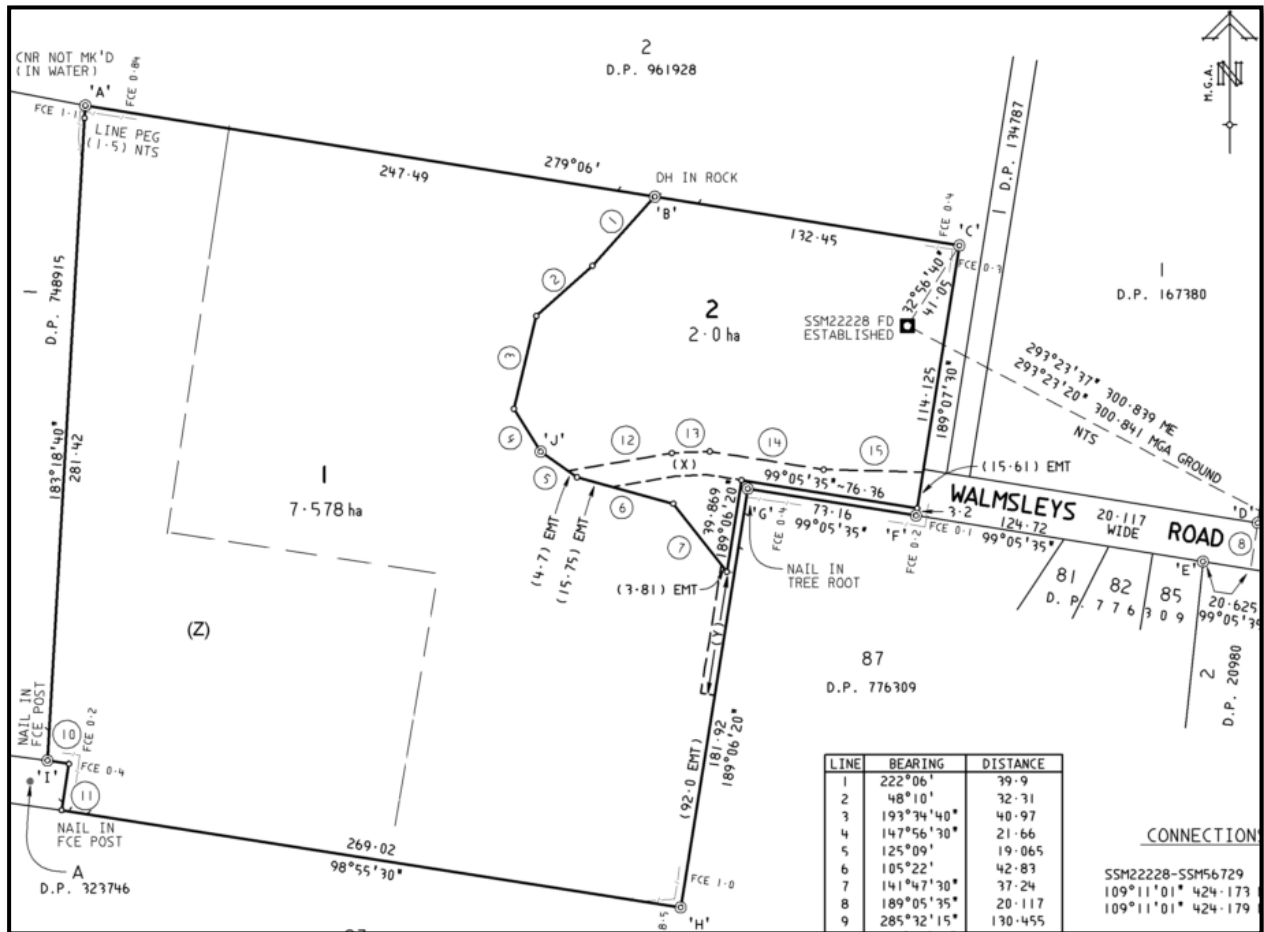


Figure 3: DP 109834 (2006)

Lot 1 DP 1098348 is also benefited by a right of carriageway associated with DP 748915 (marked as 'Z') (DP 717171 has been superseded by DP 748915). Lots 1 and 2 in DP 1098348 were created from Lot 2 DP 748915 (shown below). DP 748915 indicates that the area benefited by the right of carriageway (the subject site) has an area of 9.579 hectares and is marked as 'X'. This area is consistent with that previously marked as 'Z'. The right of carriage way 'Z' provides access through Lot 1 DP 748915 and Lot 1 DP 717171 and Lot 3 DP 717171 to Cobaki Road. The right of access is not impacted upon nor does it impact on the proposed residential subdivision of Lot 2 DP 1098348.

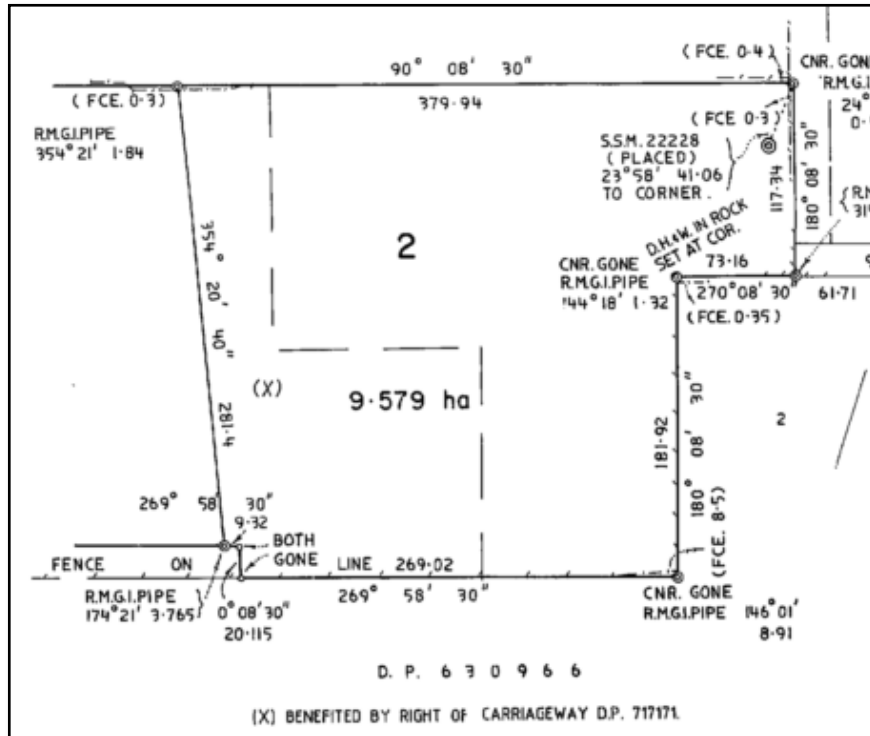


Figure 4: DP 748915 (1987)

History

Previous owners of the site have indicated that the property has been used for cattle grazing. A long term connection extends back to the early 1900's.

Land to the north and east of the site is the subject of an approved Major Project application for an 82 lot residential subdivision (DA09/0527 / MP05-0198), the MP was determined on 2 August 2012 and is valid for five years until 2 August 2017. Part of that application includes the continuation of Stott Street along the eastern boundary of the subject site which will provide a link to existing residential development located to the north of the site. However, the outcome of the determination of this major project resulted in no through traffic restrictions to Stott Street.

Council records indicate the following development history relevant to the subject application on this site:

- DA09/0288 – 20- lot subdivision.

On 18 July 2011, deferred commencement development consent was issued for DA09/0288 over the subject site which included a 20 lot residential subdivision, demolition of existing structures and construction of a public road (extension to Walsmsleys Road). DA09/0288 is essentially the same development as the current proposal. The consent lapsed as deferred matters were not satisfied within the prescribed time.

The previous (and current) proposal did not need the lodgement of a Master Plan in accordance with SEPP 71. Clause 18 of the Policy provides that a Development Control Plan is required if the subdivision relates to land within a residential zone and the site is within a sensitive coastal location or within a residential zone not identified as a sensitive coastal location if more than 25 lots are proposed or 25 or less if the land proposed to be

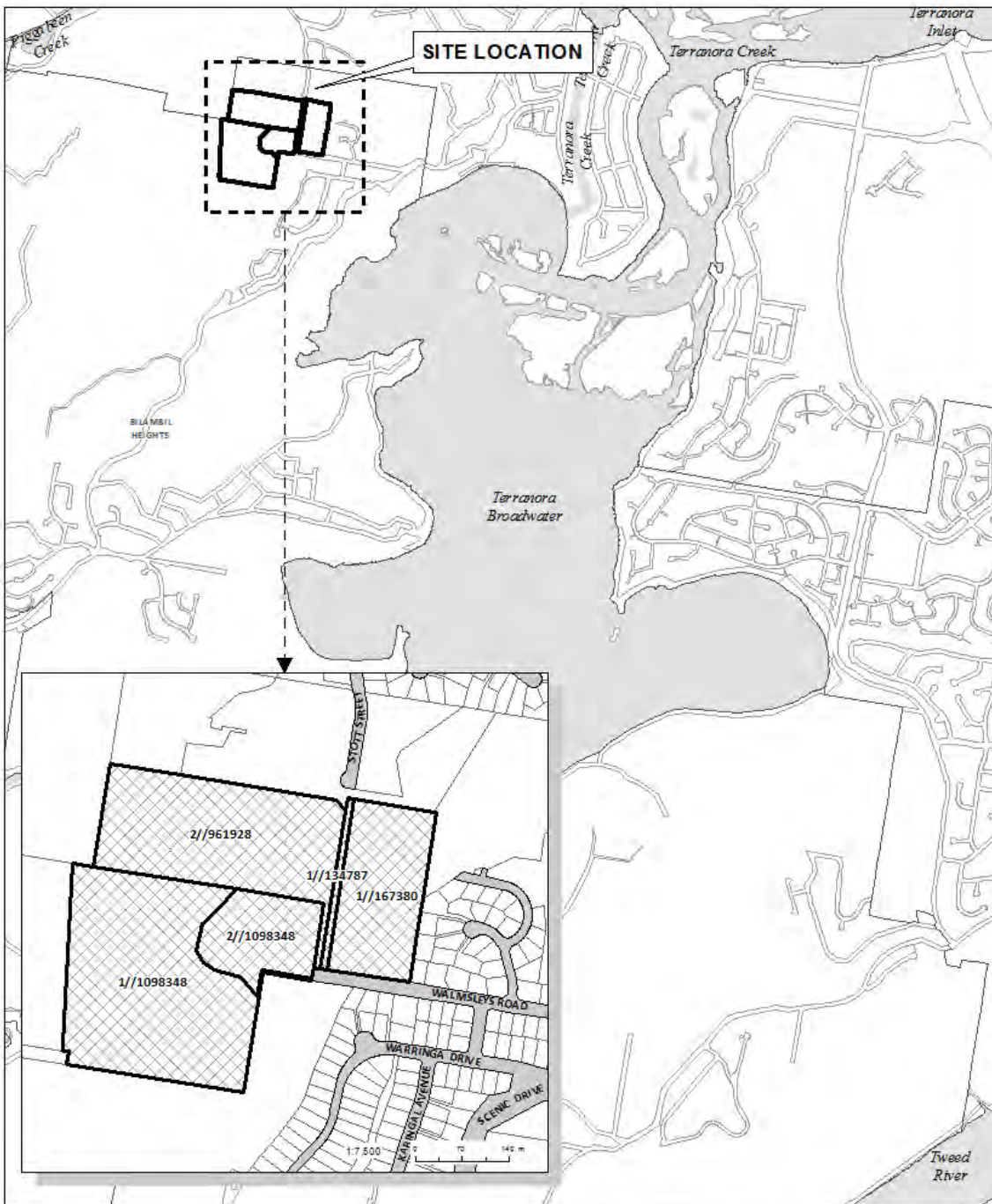
subdivided and any adjoining land in the same ownership could be subdivided into more than 25 lots.

The site is within the coastal zone but is not within a sensitive coastal location. As the proposal is less than 25 lots and the adjoining land is subject to a separate subdivision approval under different ownership neither a Development Control Plan or a Development Control Waiver is not required.

Details of the previous proposal DA09/0288 were as follows:

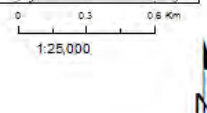
- Torrens title subdivision of residential zoned land with creation of 20 residential lots ranging in size from 614m² to 1000m²
- Demolition of existing structures on site
- Construction of a public road
- Extension of Walmsleys Road
- Retaining walls
- Associated earthworks
- Removal of approximately 51,700m³ of spoil from the site as a result of the proposed earthworks
- Nomination of dual occupancy lot (Lot 14 at 1000m²) which was not supported
- Incorporation of 3.2m battleaxe handle of adjoining Lot 1 into proposed Lot 16 and the Walmsleys Road extension
- Vegetation removal.

SITE DIAGRAM:



LOCALITY PLAN

Lots 1 & 2 DP 1098348 Nos. 55-57 Walmsleys Road, Bilambil Heights
 Lot 1 DP 134787
 Lot 1 DP 167380
 Lot 2 DP 961928 Walmsleys Road, Bilambil Heights



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GDA Cadastral: 30 June, 2010
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 Coordinate System - MGA Zone 56
 Datum - GDA 94
 DO NOT SCALE
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Civilians' Cultural Centre
 3 Turnbullum Road
 Murwillumbah NSW 2484
 PO Box 916
 Murwillumbah NSW 2484
 T: (02) 6670 2400 / 1300 292 872
 F: (02) 6670 2483
 W: www.tweed.nsw.gov.au
 E: planning@tweed.nsw.gov.au



DEVELOPMENT/ELEVATION PLANS:



| | | | |
|--|--|--|--|
| COZENS-REGAN & WILLIAMS-PROVEY CONSULTING ENGINEERS 111 KILMINTON RD PERTH WA 6150 Phone: 08 9437 4200 Email: info@crp.com.au | | CLIENT: BORDER HOLDINGS PTY. LTD. PROJECT: PROPOSED 20 LOT SUBDIVISION LOT: 20 PLAN OF PROPOSAL SHEET 1 OF 2 | DRAWING NO: 14446 DATE: 11/11/16 SCALE: Sk.1 |
| SHEET NO: 14446 SHEET TOTAL: 14446 PROJECT NO: 14446 DRAWING NO: 14446 DATE: 11/11/16 SCALE: Sk.1 | SHEET NO: 14446 SHEET TOTAL: 14446 PROJECT NO: 14446 DRAWING NO: 14446 DATE: 11/11/16 SCALE: Sk.1 | SHEET NO: 14446 SHEET TOTAL: 14446 PROJECT NO: 14446 DRAWING NO: 14446 DATE: 11/11/16 SCALE: Sk.1 | SHEET NO: 14446 SHEET TOTAL: 14446 PROJECT NO: 14446 DRAWING NO: 14446 DATE: 11/11/16 SCALE: Sk.1 |

SCALE A: 1:500
 SCALE B: 1:100

PRELIMINARY NOT FOR CONSTRUCTION

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

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

Tweed Local Environmental Plan 2014

Part 1 Preliminary

Clause 1.2 – Aims of the Plan

The aims of this plan as set out under Section 1.2 of this plan are as follows:

- (1) This Plan aims to make local environmental planning provisions for land in Tweed in accordance with the relevant standard environmental planning instrument under section 33A of the Act.
- (2) The particular aims of this Plan are as follows:
 - (a) to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,
 - (b) to encourage a sustainable, local economy, small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed Shire,
 - (c) to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, the built environment, and cultural heritage,
 - (d) to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,
 - (e) to promote building design which considers food security, water conservation, energy efficiency and waste reduction,
 - (f) to promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,
 - (g) to conserve or enhance the biological diversity, scenic quality, geological and ecological integrity of the Tweed,
 - (h) to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World

Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,

- (i) to conserve or enhance areas of defined high ecological value,
- (j) to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.

The proposed development is considered to be generally in accordance with the aims of this plan having regard to its nature, and permissibility at this location.

Part 2 Permitted or prohibited development

Clause 2.1 Land use zones

The proposed development area is zoned as R1 General Residential (proposed Lots 1 to 19) and R5 Large Lot Residential (residue Lot 20) under the provisions of this plan.

Clause 2.3 – Zone objectives and Land use table

The Tweed Local Environmental Plan 2014 zones the subject site R1 General Residential and R5 Large Lot Residential.

The objectives of the R1 Zone are as follows:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage the provision of tourist accommodation and related facilities and services in association with residential development where it is unlikely to significantly impact on amenity or place demands on services beyond the level reasonably required for residential use.*

The objectives of the R5 Zone are as follows:

- *To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.*
- *To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.*
- *To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To maintain the rural and scenic character of the zone.*

The proposed subdivision is considered to meet the aims and objectives of the R1 zone by providing appropriately sized allotments for the future siting of dwelling houses. The residue lot complies with the minimum lot size of 1 hectare

in the R5 zone. The subdivision is in keeping with the surrounding developed character of the Bilambil Heights area.

In addition, the proposal is consistent with zone objectives, by virtue of creating residential allotments to provide for the housing needs of the growing community.

Clause 2.6 Subdivision

This clause states that land to which this Plan applies may be subdivided, but only with development consent. As this application has been submitted in order to obtain development consent, the proposal is considered to be in accordance with this clause.

Clause 2.7 Demolition requires development consent

This clause outlines that the demolition of a building or work may be carried out only with development consent. The subject application also includes the demolition of the existing dwelling and ancillary structures. As consent is sought for the demolition, the proposal is in accordance with this clause.

Clause 4.1 Minimum subdivision lot size

The objectives of this clause are:

- (a) *to ensure minimum lot sizes are appropriate for the zones to which they apply and for the land uses permitted in those zones,*
- (b) *to minimise unplanned rural residential development.*

This clause applies to a subdivision of any land shown on the Lot Size Map. The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map. In this case, the subject site is identified as 'G' under the Lot size map which has a minimum lot size of 450m².

All proposed residential allotments have an area in excess of 450m² with the smallest proposed allotment having an area of 602m².

It is noted that a sewer pump station is to be located on its own allotment which has an identified area of 1834m².

Residue Lot 2 has an area of 7.5415 hectares which well exceeds the minimum lot size of 1 hectare in the R5 Large Lot Residential zone.

As such the proposal is in accordance with this clause.

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 site has a maximum building height of 13.6m (Control N2) for the R1 zone and 9m (Control J) for the R5 zone, as identified on the building height map.

The proposed development relates to a subdivision application only and no structures are proposed at this time. Any future development would need to adhere to this building height and would be subject to assessment in this regard.

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 proposed subdivision will not alter existing access arrangements to the 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 meets all requirements with respect to allotment size for residential allotments. As such the proposal is considered to be acceptable at this location and is appropriate with respect to the above criteria.

- (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 subdivision will not result in any overshadowing or loss of views from a public place to the coastal foreshore.

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

The proposed development, located some seven kilometres from the coastline, is not considered to compromise scenic qualities of the coast. 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.

(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 proposed subdivision development has been reviewed by Council's Natural Resource Management (NRM) Unit with respect to potential impacts on biodiversity and ecosystems. In this regard, the NRM Unit have recommended conditional approval for the proposed development and as such the proposed development is not considered to have an unexpected impact with respect to the above. It is considered that the proposal will have a minimal impact on the local biodiversity or ecosystems.

(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 site's 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*

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 proposed development is to connect into Council's 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 proposal results in a swale and detention basin to cater for stormwater drainage in specified locations within the subdivision which would treat stormwater as per the above requirements. The subject application has been reviewed by Council's NRM Unit and Development Engineering Section who have provided recommended conditions of consent with respect to stormwater. This is considered to satisfy the above clause.

- (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 subdivision development is considered to be acceptable having regard to coastal hazards as outlined above due to its nature, scale, and physical separation of development works from any area affected by coastal hazards.

Clause 5.9 – Preservation of Trees or Vegetation

Refer to assessment at DCP A16 of this report.

Clause 5.10 - Heritage Conservation

The objectives of this clause are as follows:

- (a) *to conserve the environmental heritage of Tweed,*
- (b) *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) *to conserve archaeological sites,*
- (d) *to conserve Aboriginal objects and Aboriginal places of heritage significance.*

With regard to (a), (b) and (c), no listed items are located on, or in close proximity to the subject land.

The subject site is however, identified as having potential cultural heritage significance on Council's draft cultural heritage mapping. In this regard the DA

was referred to the Tweed Byron Local Aboriginal Land Council (TBLALC) who did not provide a response to Council.

In this regard the proposal is not considered to impact negatively on the provisions of this clause.

Clause 5.11 - Bush fire hazard reduction

This clause outlines that 'Bush fire hazard reduction work authorised by the *Rural Fires Act 1997* may be carried out on any land without development consent.'

It is noted that the subject development site is mapped as being bushfire prone by virtue of being located predominantly within vegetation buffer areas and also vegetation Category 1.

The subject application was identified as nominated integrated development under s100B of the Rural Fires Act 1997 and as such was referred to NSW Rural Fire Service (RFS) who has provided a bushfire safety authority and conditions of consent to include in any approval.

Having regard to the comments received from NSW RFS, the proposal is considered to be acceptable with respect to bushfire considerations.

Part 7 Additional local provisions

Clause 7.1 – Acid Sulfate Soils

The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. The subject land to which this clause relates is entirely identified as Class 5 Acid Sulfate Soils (ASS), (with a minor amount of Class 3 ASS on the SW corner of the residue lot).

Councils Environmental Health Unit have reviewed the application and provided the following comments:

'ASS are not a constraint in relation to the proposed subdivision or proposed demolition works subject of this application.'

Having regard to the above advice and recommended conditions it is considered that the proposal is acceptable in terms of impact upon ASS and does not contravene the provisions of this clause.

Clause 7.2 - Earthworks

The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

The subject application proposes significant earthworks and has been referred to Council's Development Engineering Unit who raised no objection subject to recommended conditions.

It is considered that subject to the application of recommended conditions as provided by Council's Development Engineering Unit, the proposed development would be acceptable having regard to the provisions of this clause and would not contravene the clause objective.

Clause 7.5 - Coastal risk planning

The subject site is not identified as being within a coastal risk area on Council's Coastal Risk Planning Map on land to which this LEP relates.

Clause 7.6 - Stormwater Management

The objectives of this clause are to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and receiving waters. This clause goes on to state that consent must not be granted to development unless the consent authority is satisfied that the development:

- (a) *is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and*
- (b) *includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*
- (c) *avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.*

The proposed stormwater infrastructure has been reviewed by Council's Infrastructure Engineer who has provided the following advice:

"The drainage from the majority of proposed residential lots is intended to be collected in a piped system and directed to the kerb and channel in front of the lots. The stormwater runoff from the site is then intended to be captured and piped to (originally two, but now) a single legal point of discharge along the western boundaries.

- *The majority of the drainage system is proposed to discharge into an existing overland flow path located beyond proposed Lot 12's western boundary.*
- *Proposed Lots 9, 10, 11, 13, 14 and 15 have adverse fall and are intended to discharge via individual infiltration pits with level spreaders. As mentioned earlier, these allotments will be subject to Council's standard 200l/s/ha discharge limit to minimise the impact and discharge to downstream property."*

The proposed development is considered to be acceptable with respect to stormwater drainage subject to compliance with the relevant conditions which would ensure no detrimental impact on the surrounding area from stormwater management. Proposal is considered acceptable in this regard.

Clause 7.9 - Development in areas subject to aircraft noise

The subject site is not identified as being within an area subject to aircraft noise.

Clause 7.10 - Essential Services

This clause states that development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

(a) *the supply of water,*

The subject application has been reviewed by Council's Water Unit with respect to the above, with it being noted that adequate water supply could be provided to service the proposed subdivision.

(b) *the supply of electricity,*

Overhead electricity services are currently provided to the area via Essential Energy infrastructure. Appropriate conditions of consent shall be imposed (in the event of approval) to ensure that the applicant provides services in accordance with the standards of the supply authority.

(c) *the disposal and management of sewage,*

Council's Water Unit has reviewed the application with respect to sewage reticulation, advising that adequate sewer management can be provided subject to compliance with recommended conditions of consent. The proposal is considered to be acceptable with respect to this.

(d) *stormwater drainage or on-site conservation,*

Stormwater management has been specifically addressed under clause 7.6 of the Tweed LEP assessment above. The proposal is considered to be acceptable with respect to stormwater drainage subject to the application of relevant conditions of consent.

(e) *suitable road access.*

The proposed allotments are to be accessed from roads which are to be constructed as part of this application which, in turn, are to be accessed from Walmsleys Road.

This road access has been reviewed by Council's Development Engineering Unit and Traffic Engineer who have raised no objections with respect to the proposed road access.

With respect to the above assessment against the provisions of this clause, it is considered that the proposed development would be acceptable from the perspective of essential services available to the site.

Tweed Local Environmental Plan 2000

The following assessment against TLEP 2000 relates only to the western portion of northern adjoining Lot 2 in DP 961928, zoning of which defaults as a 'deferred matter' to 7(d) Environmental Protection (Scenic Escarpment) under TLEP 2000.

No development is to occur on this part of Lot 2. The current application benefits from the dedication of the 'handle' of this lot to form part of proposed 'Road 1'. The eastern portion of Lot 2, including the 'handle' is zoned R1 under the TLEP 2014.

Clause 4 - Aims of the Plan

The proposal is consistent with the aims of the Tweed Local Environmental Plan 2000 (TLEP). The proposal represents sustainable economic development which is consistent with the area's environmental and residential amenity qualities.

Clause 5 - Ecologically Sustainable Development

The proposal is consistent with the principles of ecologically sustainable development. The carrying out of the development will not result in unacceptable cumulative impacts within the 7(d) zoned portion of Lot 2.

Clause 8 - Consent Considerations

No development is proposed within the 7(d) zoned portion of Lot 2.

Clause 11- Zone Objectives

The objectives of the 7(d) Environmental Protection (Scenic/Escarpment) zone are:

- *To protect and enhance those areas of particular scenic value to the area of Tweed, minimise soil erosion from escarpment areas, prevent development in geologically hazardous areas, and maintain the visual amenity of prominent ridgelines and areas.*
- *To allow other development that is compatible with the primary function of the zone.*

No development is proposed within the 7(d) zoned portion of Lot 2.

The zone objectives are not compromised by the proposed development.

Clause 15- Essential Services

Essential services to be provided to the proposed subdivision do not impact upon the 7(d) zoned portion of Lot 2.

Clause 16 - Height of Building

No structures are proposed.

Clause 17 - Social Impact Assessment

No development is proposed within the 7(d) zoned portion of Lot 2. As such, a social impact assessment is not required.

Clause 35 - Acid Sulfate Soils

The site contains Class 5 Acid Sulfate Soils. No development is proposed within the 7(d) zoned portion of Lot 2.

Other Specific Clauses

Clause 19 – Subdivision (General)

This clause allows subdivision to take place on the subject land with development consent. Subdivision of Lot 2 is not proposed within this application but was the subject of DA09/0527 (MP05_0198) approved by the Minister of Planning for 82 residential lots on 2 August 2012.

Clause 20 – Subdivision in Zones 1(a), 1(b), 7(a), 7(d) and 7(l)

The main objective of this clause is to prevent the potential for fragmentation of rural land that would lead to an adverse impact upon its agricultural and/or environmental character. It is also to prevent unsustainable development and to protect the area of Tweed's water supply quality.

In this particular instance it is noted that the previously approved subdivision DA09/0527 resulted in the subdivision of land within Lot 2 to include creation of Road No. 1, a residue Lot 61 and residential lots. The area of Lot 2 zoned 7(d) (known as residue Lot 61) retained an area of 3.108 hectares, which is less than prescribed 40 hectare minimum lot size for this zone.

This resulted in a SEPP 1 variation to this clause by the developer of that land as part of DA09/0527. New titles have not yet been registered.

The applicant has submitted a SEPP 1 objection with the current application as a precautionary measure which is discussed elsewhere in this report.

Clause 26 – Development in Zone 7(d) Environmental Protection (Scenic/Escarpment)

The objective of Clause 26 is as follows:

- *To ensure that the development of the land within Zone 7(d) minimises soil erosion and will preserve or enhance the scenic quality of the land and the locality.*

No development is proposed or required on that part of Lot 2 zoned 7(d) and therefore, the proposal is not inconsistent with this clause.

Clause 39 – Remediation of Contaminated Land

The objective of this clause is ‘*to ensure that contaminated land is adequately remediated prior to development occurring.*’ It is noted that the subject development area is currently dirt / grassed.

All contamination issues were dealt with via DA09/0527.

Clause 39A – Bushfire Protection

All bushfire protection issues were dealt with via DA09/0527.

Clause 54 – Tree Preservation Order

There is no removal of vegetation to facilitate construction of Road 1.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

This SEPP applies only to the deferred matter land zoning area identified on Lot 2 DP 961928 as being the 7(d) Environmental Protection (Scenic/Escarpment) land.

Clause 32B: Coastal Lands

The proposal is considered to be generally consistent with Clause 32B as it is not considered to contravene the strategic aims of the NSW Coastal Policy 1997, the Coastline Management Manual or the North Coast: Design Guidelines.

Furthermore it is considered unlikely that it will impede public foreshore access or result in overshadowing of adjacent open space. The proposal does not contradict the NSW Coastal Policy, the Coastline Management Manual or the North Coast: Design Guidelines.

Clause 43: Residential development

There is no proposed residential development as part of the subject application on Lot 2.

SEPP No. 1 - Development Standards

State Environmental Planning Policy No. 1 provides a mechanism in which a variation to a statutory development standard can be assessed and supported.

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

The subject application includes precautionary submission of a SEPP 1 objection in relation to Clause 20 (Subdivision in Zones 1(a), 1(b), 7(a), 7(d) and 7(l)) of the Tweed LEP 2000.

Clause 20(2)(a) of the Tweed LEP 2000 states the following:

- (2) *Consent* may be granted to the subdivision of land:
- (a) *within Zone 1(a), 1(b2), 7(a), 7(d) or 7(l) if the area of each allotment created is at least 40 hectares*

The proposal seeks to carry out a 20 lot subdivision. The subject utilises a small portion of a parcel of land to the north of the site (Lot 2 DP 961928) that is made up of two different zones as outlined elsewhere in this report.

The current proposal seeks to dedicate part of Road No. 1 in Lot 2 DP 961928, with an area of approximately 930m², install services and construct a road to access the 20 lot subdivision which further reduces the size of current Lot 2 DP 961928 from 5.67 hectares to 5.577 hectares. The approved 3.108 hectare size of residue Lot 61 will not be affected.

Dedication of part of Lot 2 does not require development consent by virtue of Clause 94 of SEPP (Infrastructure) 2007.

The applicant states the following in support of the objection:

...the proposed development, which does not involve any physical works in, or in close proximity to the 7(d) zoned land, is not inconsistent with the provisions of Clause 26 (sic) of TLEP 2000 and is reasonable and appropriate in the circumstances of this case.

Given that approval to subdivide Lot 2 has already been granted and this Development Application only proposes the dedication and construction of a road occupying approximately 930m² of the lot which is located approximately 130m east of the 7(d) zone boundary, it is considered that the development will have no impact on the 7(d) zoned land.

The applicant contends that the objectives of the standard are achieved notwithstanding minor non-compliance with the clause.

Council considers strict compliance with the standard to be both unjustifiable and unnecessary in the context of the proposed development. It is further noted that Concurrence has been granted from NSW Government Department of Planning and Environment for this variation. The variation and justification is supported.

SEPP No. 55 - Remediation of Land

The aim of SEPP No. 55 is to provide a State wide planning approach to the remediation of contaminated land and to require that remediation works meet certain standards and conditions.

SEPP No. 55 requires a consent authority to consider whether land is contaminated and if contaminated, that it would be satisfied that the land is suitable, in its contaminated state (or will be suitable after remediation). Further, it advises that if the land is contaminated and requires remediation, that the consent authority is satisfied that the land will be remediated before the land is used for that purpose.

The subject application has been reviewed by Council's Environmental Health Unit with respect to land contamination, who have provided the following comments:

"In response to this request the applicant has provided statutory declarations from the past and present owners of the site advising that no chemicals, pesticides, herbicides or other contaminants have been applied to the land between the period from the issue of the previous Development Approval to the present under their respective periods of ownership of the land.

The Statutory Declarations are considered to satisfy Council's request regarding contamination."

Having regard to the advice provided, the subject application is considered to be acceptable with respect to contaminated land and would not contravene the provisions of this SEPP.

SEPP No 71 – Coastal Protection

The subject development site is within the coastal zone at this location and as a result is subject to the provisions of State Environmental Planning Policy No.71. Council is required to consider the matters under Clause 8 and the following comments are made for Council's consideration.

Clause 8 – Matters for consideration

(a) the aims of this Policy set out in clause 2,

The proposal is generally in accordance with the aims of this policy.

(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 proposal will not impact on the developed public access along the coastal foreshore.

- (c) *opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,*

The subject site is located at a considerable distance from the coastal foreshore. Provision of new public access as outlined above is not achievable as part of this application.

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

The proposal is considered suitable, having regard to its permissibility in this 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 will not result in any detrimental impact on the coastal foreshore given its nature being for a residential subdivision and the distance of physical works on site from same.

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

This proposal is not considered to have any negative impact on the scenic qualities of the NSW coast.

- (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 has been reviewed by Council officers from the Natural Resource Management (NRM) Unit. Whilst it is noted that the proposed development will result in the removal of some vegetation where proposed residential allotments are to be provided, Council's NRM Unit have reviewed the vegetation to be removed and indicated that the proposal would be acceptable, subject to the application of conditions of consent with respect to the retention of other vegetation on the site. Having regard to this, the proposal is considered acceptable under the above provision.

- (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 Part), and their habitats*

The proposal is not considered to have an adverse impact upon marine environments or habitats.

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

The proposed development is not considered to impact negatively on wildlife corridors.

- (j) *the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,*

The proposed development is not considered to have any significant impact of development on coastal processes and coastal hazards as the application relates to a subdivision of land only.

- (k) *measures to reduce the potential for conflict between land-based and water-based coastal activities,*

The proposal is not considered to cause any conflict between land-based and water-based activities.

- (l) *measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,*

The subject development is not considered to impact on any traditional Aboriginal cultural values. In this regard it is noted that the application was referred to Tweed Byron Local Aboriginal Land Council for comment. However, no response was received.

- (m) *likely impacts of development on the water quality of coastal water bodies,*

The subject application is not considered to have any significant impact upon the water quality of coastal waterbodies.

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

It is not considered that the proposal impacts upon the conservation or preservation of any of the above items.

- (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 to the subject application.

- (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*

This development is not considered to have a negative cumulative impact on the environment.

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

The proposed development application has not addressed water or energy usage requirements in the submitted application, given that the proposal currently before Council relates to a subdivision only.

SEPP 71 applies to land within the 'coastal zone' which is defined as having the same meaning as in the *Coastal Protection Act 1979*. The subject land is located within the coastal zone and the provisions of SEPP 71 therefore apply to the proposed development. The proposed development is consistent with the aims of SEPP 71, with the development considered to be an appropriate response to the location, subject to conditions of consent as outlined above.

Clause 18 of the SEPP requires a master plan for the land to be developed in certain instances, including for the subdivision of land into 25 lots or less, if the land proposed to be subdivided and any adjoining or neighbouring land in the same ownership could be subdivided into more than 25 lots and is on land identified as a sensitive coastal location.

The site is within the coastal zone but is not within a sensitive coastal location. Lot 5 DP 1117326 located approximately 150m to the north of the site is owned by a company with the same Directors as this applicant. As Lot 5 is not adjoining or neighbouring the subject land and as it is the subject of a current Major Project approval MP05_0198 for a residential subdivision, a Development Control Plan or waiver is such is not required under the provisions of this policy.

No further assessment required in this regard.

Conclusion

It is considered the proposed development does not compromise the intent or specific provisions of State Environmental Planning Policy No.71 – Coastal Protection.

SEPP (Major Development) 2005

Subdivision of Lot 2 DP 961928 was the subject of DA09/0527 (MP05_0198) approved by the Minister of Planning for 82 residential lots on 2 August 2012 under this SEPP. This approval is valid until 2 August 2017. The Applicant has advised that commencement will occur when/if the subject application DA15/0042 is approved, as it is more practical to develop both sites at the same time.

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

The draft Coastal Management SEPP applies to the site. The 'coastal zone' is defined in the *Coastal Management Act 2016* as four coastal management areas:

- Coastal wetlands and literal rainforests area
- Coastal environment area
- Coastal use area
- Coastal vulnerability area.

The site is identified as being within the 'Coastal Use Area'. The Coastal Use Area is land adjacent to coastal waters and the like, and needs protection through permitting appropriate development, adequate public open space, and avoiding adverse impacts of development on cultural and built environment.

The proposed subdivision is considered to address the public interest criteria by not impacting on public access to foreshore areas, does not create overshadowing, wind funnelling or impede views from public places, is not visible from the coast, will not impact on Aboriginal cultural heritage or the surf zone. The site is located approximately 600 metres from the nearest coastal water and therefore is considered not likely to conflict with the Draft Coastal Management SEPP.

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

Tweed Development Control Plan

A5-Subdivision Manual

Part A5 of the Tweed Consolidated DCP provides various guidelines for the subdivision of land and aims to facilitate "best practice" subdivision development in line with the policies of Council and the State. The DCP defines "subdivision" liberally as "the division of land into two or more parts" and as such many of the elements are not applicable to this application. Parts that are applicable have been addressed below with the conclusion that subject to various conditions attached to this report the application is compliant with the provisions of this part of the DCP.

The proposal is considered a 'residential subdivision'. LEP provisions regulate minimum lot areas required. The proposed lot areas substantially exceed the minimum.

The site is an infill state that is constrained by surrounding existing and proposed residential development, road network, zoning boundaries, topography and vegetation. It is noted that the proposal requires significant level of cut and fill, however, the preliminary cut and fill plans indicate that cuts deeper than 5 metres in depth will not exceed 10% of the site which complies with Council's D6 requirements.

Council's Development Assessment Engineer has reviewed the proposal with regard to compliance with DCP A5 and Council's D6 requirements and considers the proposed subdivision to be consistent with this DCP.

A11-Public Notification of Development Proposals

The proposed development was advertised and notified from 18 February 2015 to 4 March 2015. During this time one public submission was received. The issues raised in the submission are addressed elsewhere in this report.

A15-Waste Minimisation and Management

A demolition plan has been submitted with regard to existing structures located on Lot 2 DP 1098348.

Spoil from bulk earthworks will be stored on eastern adjoining Lot 1 DP 167380.

A16-Preservation of Trees or Vegetation

The proposal has been reviewed by Council officers from the Natural Resource Management (NRM) Unit. Whilst it is noted that the proposed development will result in the removal of some vegetation where proposed residential allotments are to be provided, Council's NRM Unit have reviewed the vegetation to be removed and indicated that the proposal would be acceptable, subject to the application of conditions of consent with respect to the retention of other vegetation on the site. Having regard to this, the proposal is considered acceptable under the section of the DCP.

Council's NRM unit provided the following comments.

- *The applicant has satisfactorily addressed Councils request to identify the EEC boundary and 10 m buffer across Lots 9-12 inclusively. These areas are to be afforded adequate protection through conditions of consent.*
- *Conditions are to be imposed seeking the retention of an additional two (2) ex-rainforest trees on proposed Lot 12 (sewerage pump station) and the submission and approval of a detailed landscape plan which is to incorporate a habitat restoration component addressing compensatory measures (i.e. revegetation).*
- *With the implementation of environmental management measures as stipulated under conditions of consent (i.e. revegetation offsetting and construction phase tree protection, refer to figure below for area to be revegetated), the proposal is not anticipated to have a significant ecological impact on threatened species, populations or ecological communities.*



Most current lot layout with lot 12 as sewerage pump station, with NRM note depicting area to be revegetated. Dwg No. Sk.1 Issue Q by Cozen Regan Williams Prove Consulting Engineers Pty Ltd dated June 2016).

A small *Macadamia tetraphylla* (Rough-shelled Bush Nut) (on proposed Lot 10) is intended to be retained and protected as a threatened species in perpetuity. The application did not identify the *Macadamia tetraphylla* (Rough-shelled Bush Nut) on proposed Lot 8 because it was considered to be a planted specimen based on its location being within close proximity to the house and surrounded by planted exotics including fruit trees and therefore was not afforded the same level of protection as the *M. tetraphylla* on proposed Lot 10. A propagation plan of the local threatened species (*Macadamia tetraphylla*) will be required for the removal of one (1) stem located on proposed Lot 8.

Despite the Secondary B Koala Habitat mapping, the site does not support potential koala habitat as per the State Environmental Planning Policy 44 Koala Habitat Protection.

Council officers advised that the ecological impacts have been limited to on-site impacts associated with vegetation removal of significant ex-rainforest vegetation. NRM have provided conditions of consent which requires:

- Revegetation of the area between the Candidate EEC line 10 m and EEC buffer line on proposed Lot 12 to offset the removal of ex-rainforest vegetation;
- Retention of two ex rainforest trees No. 29 and 32 on proposed Lot 12 within the candidate EEC/buffer area;
- A propagation plan of the local threatened species (*Macadamia tetraphylla*) will be required in for the removal of one stem located on proposed Lot 8.

Tree protection fencing to be erected for the protection of threatened species *Macadamia tetraphylla* (Rough-shelled Bush Nut) and those Australian Teak on proposed Lot 12 identified as to be retained as part of this consent.

Providing conditions of consent are closely adhered to the proposed development is not anticipated to have an unacceptable impact on significant ecological values.

Recommended conditions of consent require the Applicant to submit a Habitat Restoration landscape plan to Council for approval. The Applicant is to undertake the restoration works in accordance with approved plan or submit a cash bond to ensure the works are implemented and completed, and maintain the habitat restoration area for a period of five years. The re-vegetation area within proposed Lot 12 is to be managed by Council's Natural Resource Management Unit after the five year maintenance period.

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

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

The subject site is located on land to which the Government Coastal Policy applies. The policy contains a strategic approach aiming to protect, rehabilitate and improve the natural environment of areas covered by it. This proposal has been assessed with this in mind, and it is considered that the proposal does not contravene the objectives of the policy.

Clause 92(1)(b) Applications for demolition

Assessment has taken into consideration the demolition of the existing double storey brick veneer dwelling and associated sheds/structures.

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

The subject site is not located within an area that is affected by this management plan. Therefore, no further assessment is required.

Tweed Shire Coastline Management Plan 2005

The subject site is not located within an area that is affected by this management plan. Therefore, no further assessment is required.

Tweed Coast Estuaries Management Plan 2004

The subject site is not located within an area that is affected by this management plan. Therefore, no further assessment is required.

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

The subject site is not located within an area that is affected by this management plan. Therefore, no further assessment is required.

(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 an extension of existing residential development within the Bilambil Heights area. In this regard, the proposal is consistent with surrounding existing and proposed development within the locality.

Access, Transport and Traffic Intersections, Internal Roads

The proposed road network and intersections are considered to be acceptable and appropriate conditions have been recommended. Access is provided to each allotment, with a pedestrian footpath required throughout the development.

Sewer Pump Station and Odour

A Sewer Pump Station (SPS) is proposed within proposed Lot 12. Council officers reviewed the proposal and raised no objection subject to recommended conditions. The recommended condition requires that the facility is to be a minimal distance of 10 metres from the adjacent property boundary (i.e. Lot 11). The minimum distance of 10 metres is considered acceptable in this specific instance as this SPS can be decommissioned in the future (when adjacent development downhill commences i.e. MP05_0198), the upstream sewerage is gravity feed not pumped, with a smaller upstream population. All of these factors were taken into consideration which would result in less odour than from other SPS models.

(c) Suitability of the site for the development

Surrounding Landuses/Development

Surrounding land uses are similar to that proposed as residential. Land to the north east of the site is the subject of a Major Project Approval 05/0198, the land is currently vacant and used for grazing. Land to the south east is used for residential purposes, with land to the south and east used for grazing.

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

Public Authority Submissions Comment

NSWRFS

The application is an integrated form of development pursuant to section 91 of the EP&A Act 1979. The application was referred to the NSW Rural Fire Service who provided their general terms of approval. The general terms of approval will be recommended as conditions.

NSW Department of Planning and Environment

The application required concurrence from the NSW Department of Planning and Environment, as the proposal requested to vary the development standard contained within clause 20(2) of the *Tweed LEP 2000*. The Department granted concurrence as there is no public benefit in maintaining the standard and the development would not result in further fragmentation of rural or environmentally sensitive land.

Public Submissions Comment

The proposal was notified in accordance with DCP A11 – Public Notification of Development Proposals for a period of 14 days from 18 February 2015 to 4 March 2015. During this time, one submission was received.

The submission refers to the master project approval for the northern adjoining site (MP05_0198) and alleged through access of Road No. 1 on application documentation, specifically, the joining of Walmsleys Road with Stott Street.

The joining of these two roads was not approved by way of MP05_0198, nor does the current application propose to do so.

The current application proposes to create a portion of Road No. 1 with a cul de sac head at the northern end of proposed Road No. 1. It does not propose to make any road connections within the master project development.

(e) Public interest

Given the nature of the proposed development, being for a residential subdivision development on an appropriately zoned site, it is considered that the proposal would be unlikely to result in an unacceptable impact on the wider public interest at this location which includes objectives to provide for the housing needs of the community.

OPTIONS:

That Council:

1. Approves the development application with the recommended conditions of consent; or
2. Refuses the application and provide reasons.

Council Officers recommend Option 1.

CONCLUSION:

Having regard to the assessment of the proposed development highlighted throughout this report, it is recommended that development consent should be granted for the proposed development given the application relates to an appropriate land use on land zoned for residential purposes.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

The applicant has the right of appeal in the NSW Land Environment Court if dissatisfied with the determination.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

2 [PR-PC] Development Application DA16/0527 for the Demolition of Existing Structures and Construction of a Residential Flat Building (Seven Units) and Swimming Pool at Lot 14 Section 5 DP 758571 No. 204 Marine Parade, Kingscliff

SUBMITTED BY: Development Assessment and Compliance

Validms



Civic Leadership

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:

Council is in receipt of a development application that proposes demolition of the existing structures and the construction of a residential flat building and swimming pool at the above location which comprises seven units within four storeys and vehicular parking provided at a basement level.



Perspective drawings of the development

The application was originally lodged as a mixed residential/tourist use development, however the applicant requested that the tourist use be removed from the proposal and as such the development has been considered as a residential flat building.

The proposal requires variations to several development controls under the State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development (SEPP 65) and Tweed Development Control Plan (TDCP) 2008. The variations are requested by the applicant for the overall building height (exceeds 12.2m), internal floor to ceiling heights, floor space ratios, controls relating to public domain amenity,

built form and scale, context and character, visual privacy and separation distances, overshadowing, solar and daylight access, apartment layout, car parking and communal open space. The multiple variations cumulatively result in a significant reduction in liveability to the future residents and neighbours by way of loss of sunlight access from significant overshadowing, low ceiling heights, minimal window openings along the northern and southern elevations and inconvenient tandem car parking. This is in addition to the four storey development being out of character with the neighbourhood, proposing a top heavy rectilinear building form with little roof expression which projects more of a metropolitan impression rather than the subtropical coastal character that is prevalent along Marine Parade Kingscliff.

It is noted that Tweed Local Environmental Plan (TLEP) 2014 nominates the zone, maximum building heights and maximum floor space ratio (FSR) for the subject site which in this case are met. Under previous LEPs, which is prevalent in the character of Marine Parade, the maximum building height was three storeys. Under TLEP 2014, the subject site is zoned R3 Medium Density Residential. However, in the R3 zone, shop top housing is permissible with consent which is defined as *one of more dwellings located above ground floor retail premises or business premises*, which in this case could be a maximum 300m² neighbourhood shop below two storeys of residential development. Under the National Construction Code, commercial premises require a higher ceiling height and as such, the TLEP maximum building height control was required to cater for development of that nature in this zone. Similarly regarding Floor Space Ratio (FSR), as stated in Part 2 *Developing the Controls* in SEPP 65's Apartment Design Guide, commercial developments generally result in a higher FSR and as shop top housing is a permissible land use in the R3 zone, the TLEP maximum FSR control must cater for the shop top housing type of development.

However, SEPP 65 and Tweed Development Control Plan 2008 outline controls relevant to specific development types to ensure the development is appropriate in character, scale, amenity and performance. In this instance, although the development meets the highest order maximum primary controls under TLEP 2014, the proposed four storey residential flat building is considered an overdevelopment of the site as it does not comply with the specific SEPP 65 and TDCP controls for residential development which require floor to ceiling heights of 2.7m which if complied with would result in a three storey building with a maximum height of 12.2m which is the nominated control in the TDCP. The proposed development seeks approval for four storeys with a maximum height of 13.5m with minimal setbacks, which results in a failure to meet many amenity outcomes and design principles. The proposed development will tower over the adjoining lots comprising of two storey dwellings and additionally, the proposal is considered out of character for the area with the most recent similar development in the area located at 198 Marine Parade, featured a building height of 11.3m and three storeys.

This development application is referred to Council for determination as previously requested by Councillors Milne and Bagnall.

The proposed development is recommended for refusal.

RECOMMENDATION:

That Development Application DA16/0527 for the demolition of existing structures and erection of a residential flat building (seven units) and swimming pool at Lot 14 Section 5 DP 758571 No. 204 Marine Parade, Kingscliff be refused for the following reasons:

- 1. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (1)(a). The proposed development is not considered to be in accordance with State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development.**
- 2. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (1)(a). The proposed development is not considered to be in accordance with Tweed Development Control Plan 2008 - Section A1 Residential and Tourist Code.**
- 3. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (1)(a). The proposed development is not considered to be in accordance with Tweed Development Control Plan 2008 - Section A2 Site Access and Parking Code.**
- 4. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (1)(b) and the likely amenity impacts of the development.**
- 5. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (1)(e) the public interest. The development is not considered to be in the public interest given the number and scale of variations to the controls required.**

REPORT:

Applicant: Midson Construction Pty Ltd
Owner: Chris Heyer Promotions Pty Ltd
Location: Lot 14 Sec 5 DP 758571 No. 204 Marine Parade, Kingscliff
Zoning: R3 - Medium Density Residential
Cost: \$3,000,000

Background:

Proposed Development

Council is in receipt of a development application that proposes demolition of the existing structures and the construction of a residential flat building and swimming pool at the above location which comprises seven units within four storeys and vehicular parking provided at a basement level.

The application was originally lodged as a mixed residential/tourist use development, however the applicant requested that the tourist use be removed from the proposal and as such the development has been assessed as a residential flat building.

The proposed four storey residential flat building features:

- 1 x 2 bedroom unit
- 1 x 2 bedroom unit with study
- 4 x 3 bedroom units
- 1 x 4 bedroom penthouse unit that encompasses the 4th storey
- Communal swimming pool to the rear of the site
- Rear laneway vehicular access and ground level visitor parking
- Basement car park which features tandem parking for 4 units and storage bays
- Concrete render with paint finish, feature wall cladding, extensive fixed decorative privacy screens and metal fencing
- Front and rear setbacks of 6 metres with side setbacks of 1.5 metres
- Extensive privacy screening along side balconies
- Landscaping areas nominated around the boundary

Site History

The site is comprised of one regular shape lot and possesses frontage to both Marine Parade and Kingscliff Lane of approximately 22.1 and metres 22.8 metres respectively. The site has a total area of 834m². The subject site is located in between existing single dwellings along the Marine Parade and opposite the parkland and the beach.

At present, the Lot contains a total of seven small residential units within two detached single storey buildings. A consent search for the site revealed Development Consent T4/2120 for the erection of five home units was granted consent 28 September 1982. Subsequently Development Consent T4/2141 approved the erection of six home units on 21 October 1982.

Furthermore, a Building Certificate (No. C248/97) was issued on 11 June 1997 for seven Residential Flats. It is noted that a building certificate is essentially a certificate of “non action”. It does not certify that the building complies with the relevant legal requirement, nor is it a status report in respect of defects or contraventions which may exist in the building.

More recently however, Development Consent DA10/0636 for a residential flat building (6 units) was granted 24 June 2011. The building approved was three storeys in height with basement car parking accessed from Kingscliff Lane and a swimming pool within the front setback from Marine Parade. This development consent lapsed in 24 June 2016.

Other approvals at the site include Permit number 560 (Building Application 139/66B) for motel units was granted in 1966 and Development Consent D91/59 for the erection of an illuminated pole sign which was granted consent 19 March 1991.

Application Assessment

The subject application was placed on public exhibition for a period of 14 days, during which time six submissions were received, addressed elsewhere in this report. The proposal was referred to the NSW Rural Fire Service for assessment in accordance with Section 100B Rural Fires Act 1997 given the original proposed tourist use. No objections were raised subject to conditions of consent.

The application was originally lodged as a mixed residential/tourist use development, however the applicant requested that the tourist use be removed from the proposal and as such the development has been considered as a residential flat building.

Internally, the proposal was reviewed by Tweed Shire Council officers in the Building Services, Environmental Health, Development Engineering, Water, Stormwater and Waste Units. Approval of the application is recommended by these Units subject to the imposition of conditions in the event of a consent being issued. Council’s Strategic Planning and Urban Design and Traffic Units were also consulted on this application and were not supportive of the development in its current design.

Council requested further information from the applicant on 12 September 2016 with regard to building height, Building Code Australia non-compliances related to the tourist use, justifications for variations to Tweed Development Control Plan and SEPP 65 Apartment Design Guide.

The application as originally submitted provided inconsistent information with regard to building height with the plans displaying non-compliance with the 13.6m maximum building height under TLEP 2014. Additionally, the application originally submitted did not provide sufficient justification for variations requested under SEPP 65 and TDCP 2008 and as such the proponent was given further opportunity to address these matters and issues raised by objectors to the development. Additionally the proponent was advised that the application had been called up for determination by Council.

Amended plans and further information were provided to Council 10 October 2016 and subsequently the proponent requested the application be reported to Council.

The proposal requires variations to several development controls under the State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development (SEPP 65) and Tweed Development Control Plan (TDCP) 2008. The variations include:

- Overall building height – the proposed 13.5m height exceeds 12.2m maximum;
- Internal floor to ceiling heights – 2.4m to 2.5m proposed does not meet 2.7m requirement;
- Floor space ratios – the proposed 1.46:1 does not meet maximum of 1.2:1;
- Context and neighbourhood character – The four storey rectilinear building form with minimal setbacks, landscaping and little roof expression lacks a sense of building form diversity, articulation and detail befitting of a subtropical coastal context;
- Built form and scale – The proposed relatively top heavy and four storey building provides minimal setbacks results in an overdevelopment of the subject site, whilst internally, although each dwelling enjoys an eastern coastal foreshore outlook, ceiling height and sunlight access has been substituted for an additional storey and penthouse dwelling;
- Public domain amenity - The four storey development not considered to be compatible with the positive characteristics of the existing streetscape, nor enhances the character of the existing streetscape which features only three storeys, generous setbacks and landscaping in a subtropical coastal context;
- Visual privacy and separation distances – The 1.5m setback does not meet the 6m separation requirement and is mitigated by extensive privacy screening and lack of side window openings along side elevations minimising sunlight access;
- Building orientation and overshadowing – solar access requirements to the neighbouring property are not met whilst the lack of separation distances contribute further to the variation;
- Solar and daylight access – The criteria related to minimum direct sunlight exposure to habitable rooms to each dwelling is not met;
- Apartment layout – room depths are too great proportional to the ceiling height;
- Communal open space – the communal space and design is not nominated on the plans, nor for a *range of activities* beyond the pool which is also without an adjoining recreational area;
- Energy efficiency – passive environmental design criteria for natural light to habitable rooms is not met;
- Car parking – four of the seven dwellings are burdened by an inefficient tandem car parking configuration.

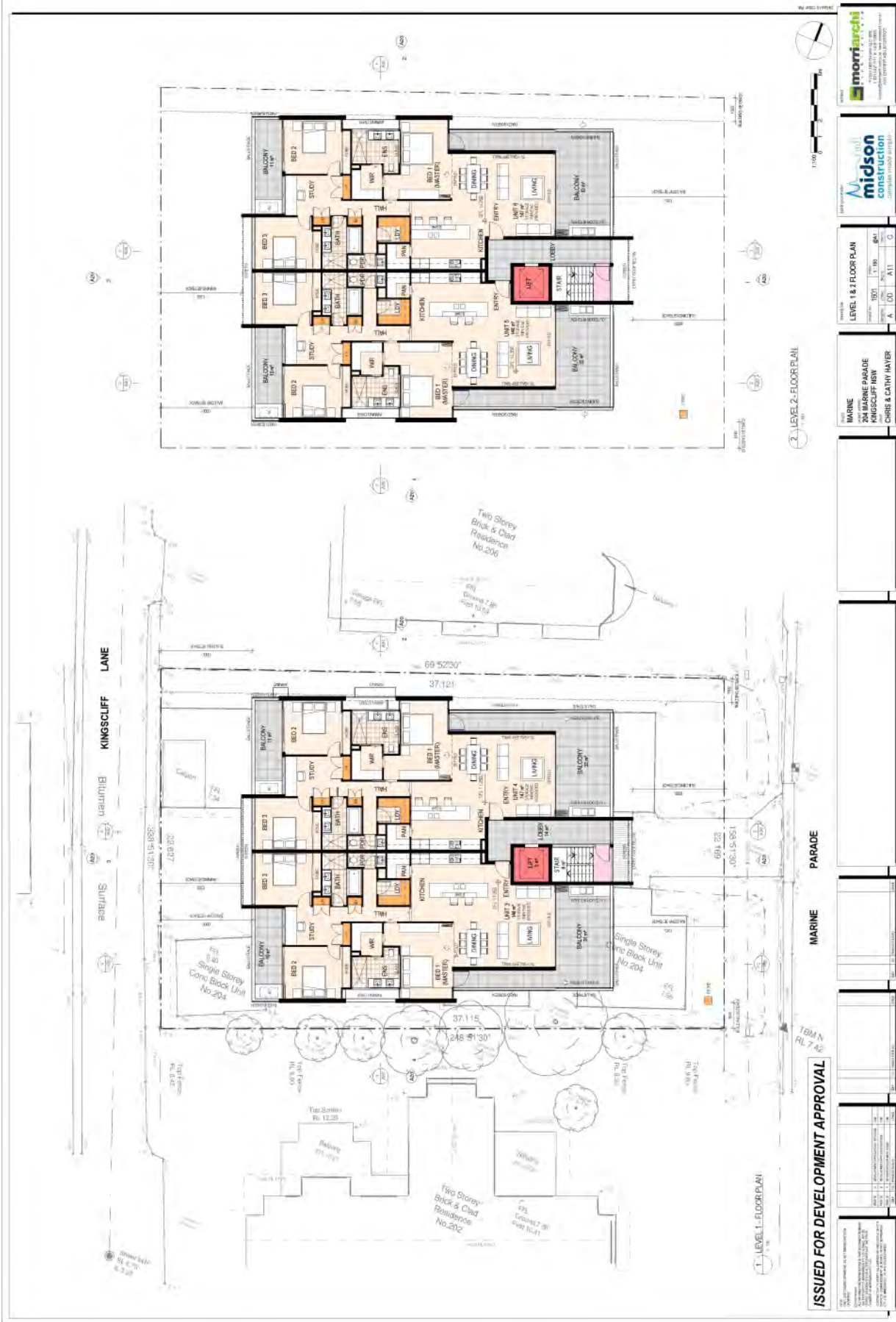
The detailed assessment of the proposal against each control under SEPP 65 and TDCP 2008 are provided later in the report.

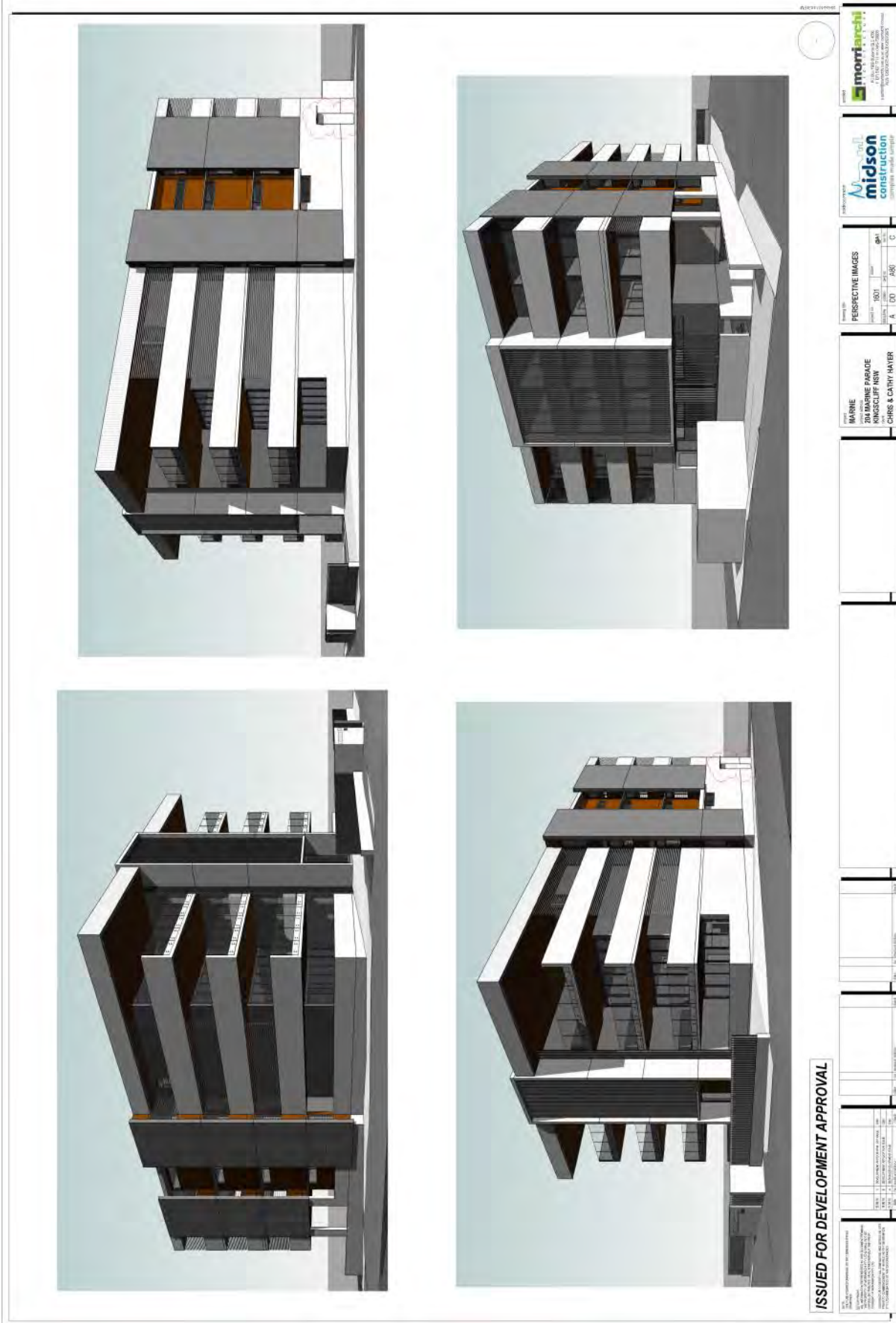
It is considered that the multiple variations cumulatively result in a significant reduction in liveability to the future residents and neighbours by way of loss of sunlight access from significant overshadowing, low ceiling heights, minimal window openings along the northern and southern elevations and inconvenient tandem car parking. This is in addition to the four storey development being out of character with the neighbourhood, proposing a top heavy rectilinear building form with little roof expression which projects more of a metropolitan impression rather than the subtropical coastal character prevalent along Marine Parade Kingscliff.

It is noted that Tweed Local Environmental Plan (TLEP) 2014 nominates the zone, maximum building heights and maximum floor space ratio (FSR) for the subject site which in this case are met (13.6m maximum height and 2:1 FSR). Under previous LEPs, which is prevalent in the character of Marine Parade, the maximum building height was three storeys. Under TLEP 2014, the subject site is zoned R3 Medium Density Residential. However, in the R3 zone, shop top housing is permissible with consent which is defined as *one of more dwellings located above ground floor retail premises or business premises*, which in this case could be a maximum 300m² neighbourhood shop below two storeys of residential development. Under the National Construction Code, commercial premises require a higher ceiling height and as such, the TLEP maximum building height control was required to cater for development of that nature in this zone. Similarly regarding Floor Space Ratio (FSR), as stated in Part 2 *Developing the Controls* in SEPP 65's Apartment Design Guide, commercial developments generally result in a higher FSR and as shop top housing is a permissible land use in the R3 zone, the TLEP maximum FSR control must cater for the shop top housing type of development.

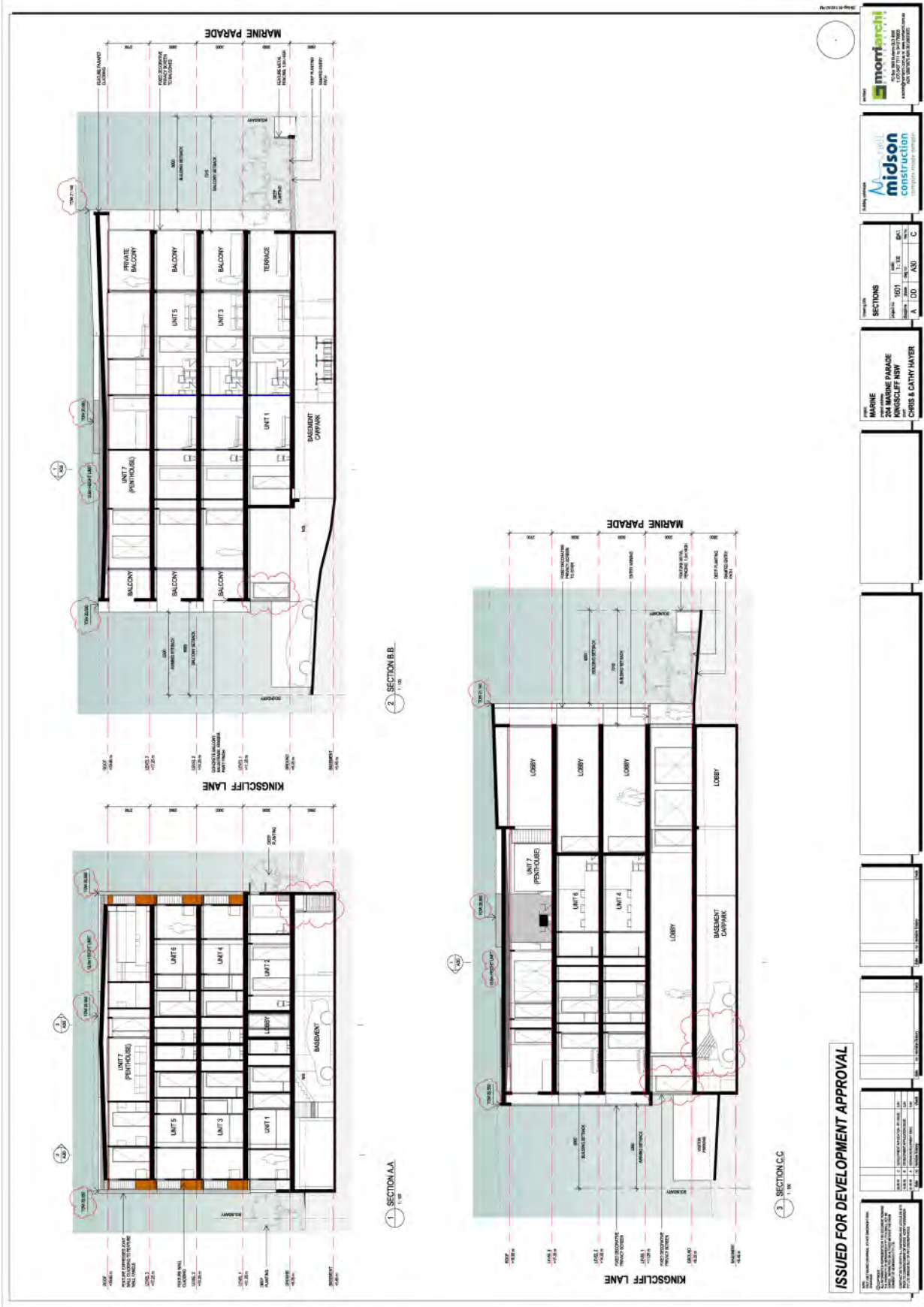
However, SEPP 65 and Tweed Development Control Plan 2008 outline controls relevant to specific development types to ensure the development is appropriate in character, scale, amenity and performance. In this instance, although the development meets the highest order maximum primary controls under TLEP 2014, the proposed four storey residential flat building is considered an overdevelopment of the site as it does not comply with the specific SEPP 65 and TDCP controls for residential development which require floor to ceiling heights of 2.7m which if complied with would result in a three storey building with a maximum height of 12.2m which is the nominated control in the TDCP. The proposed development seeks approval for four storeys with a maximum height of 13.5m with minimal setbacks, which results in a failure to meet many amenity outcomes and design principles. The proposed development will tower over the adjoining lots comprising of two storey dwellings and additionally, the proposal is considered out of character for the area with the most recent similar development in the area located at 198 Marine Parade, featured a building height of 11.3m and three storeys.











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

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

Tweed Local Environmental Plan 2014

Clause 1.2 – Aims of the Plan

This Plan aims to make local environmental planning provisions for land in Tweed City Centre in accordance with the relevant standard environmental planning instrument under section 33A of the Act.

The particular aims of this Plan are as follows:

- (a) To give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,*
- (b) To encourage a sustainable local economy and small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed,*
- (c) To promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, built environment, and cultural heritage,*
- (d) To promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,*
- (e) To promote building design which considers food security, water conservation, energy efficiency and waste reduction,*
- (f) To promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,*
- (g) To conserve or enhance the biological diversity, scenic quality and geological and ecological integrity of Tweed,*
- (h) To promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,*
- (i) To conserve or enhance areas of defined high ecological value,*
- (j) To provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.*

The proposed development (as amended) relates to a residential flat building development on appropriately zoned land. The proposed development is considered to be consistent with the aims of the plan.

Clause 1.4 – Definitions

Under this clause the proposed development would the following development definitions:

residential accommodation means a building or place used predominantly as a place of residence, and includes any of the following:

- (a) attached dwellings,
- (b) boarding houses,
- (c) dual occupancies,
- (d) dwelling houses,
- (e) group homes,
- (f) hostels,
- (g) multi dwelling housing,
- (h) residential flat buildings,**
- (i) rural workers' dwellings,
- (j) secondary dwellings,
- (k) semi-detached dwellings,
- (l) seniors housing,
- (m) shop top housing,

but does not include tourist and visitor accommodation or caravan parks.

residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.

Note. Residential flat buildings are a type of **residential accommodation** - see the definition of that term in this Dictionary.

Clause 2.1 – Land use zones

The subject development site is zoned R3 Medium Density Residential under the provisions of this clause.

Clause 2.3 – Zone objectives and Land use table

The objectives of the R3 zone are:

- *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.*

A residential flat building is proposed in the R3 Medium Density Residential zone.

This use is considered to be in accordance with the objectives of the zone and the proposal is acceptable in this regard.

Clause 4.1 to 4.2A - Principal Development Standards (Subdivision)

Subdivision does not form part of this application.

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 13.6m (Control N2) as identified on the building height map.

The applicant originally stated the building height is 12.4m however when referring to the survey plans and the proposed plans, it appears the building has a maximum building height of 13.5m which complies with this control in this instance.

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 2:1 (Control T). The land area of the site is 834.7m² with a gross floor area of the proposal being 1,217m² which results in a floor space ratio of 1.46:1 and as such the proposal complies with Clause 4.4.

Clause 4.6 - Exception to development standards

No exceptions to development standards are proposed as part of this application.

Clause 5.4 - Controls relating to miscellaneous permissible uses

No miscellaneous permissible uses are proposed as part of this development.

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 although permissible on the subject site, the design involving four storeys could be considered unsuitable taking into account the built form within the residential surrounding area. However, the development is not considered unsuitable with minimal impact on the natural scenic quality and as such the proposal is considered to be acceptable in this regard.

- (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 20 metre wide Marine Parade road reserve separates the proposed development from the coastal foreshore. It is not considered to impact on the amenity of the foreshore by virtue of overshadowing or a loss of views from a public place given the topography. 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 residential 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 location 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 land which is already developed. 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 development does not propose to dispose effluent by non-reticulated 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 raised no concerns with respect to stormwater subject to the application of appropriate conditions of consent. 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 Clause 5.5.

Clause 5.9 – Preservation of Trees or Vegetation

The objective of this clause is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation. With respect to this, it is noted that the proposed development site is developed with no significant vegetation proposed for removal. It is noted that a large frangipani tree is proposed for relocation however the proposal is considered acceptable having regard to the provisions of this clause.

Clause 5.10 - Heritage Conservation

The objectives of this clause are as follows:

- (a) to conserve the environmental heritage of Tweed,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) to conserve archaeological sites,
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

The subject site is not located within a Heritage Conservation Area and is not within proximity of a Heritage Item and as such this clause is considered satisfied.

Clause 5.11 - Bush fire hazard reduction

The subject site is mapped as bushfire prone and as such the proposal was referred to the NSW Rural Fire Service for assessment in accordance with Section 100B Rural Fires Act 1997 given the proposed tourist use. No objections were raised subject to conditions of consent.

No bushfire hazard reduction is proposed and as such, the proposal is considered acceptable with regard to Clause 5.11.

Clause 7.1 – Acid Sulfate Soils

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

The application was referred to Council's Environmental Health Unit with respect to this who has advised the following:

The site is class 5 on the ASS Planning maps.

An ASS Assessment Border-Tech May 2010 has been submitted which includes soil sampling. 8 samples were subject to laboratory analysis and results did not exceed S% or TAA thresholds

Having regard to the above, the proposed development is considered to be acceptable having regard to Acid Sulfate Soils and the development is in accordance with this clause.

Clause 7.2 - Earthworks

The objective of this clause is *to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.*

The clause states that before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following:

- (a) *the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*
- (b) *the effect of the development on the likely future use or redevelopment of the land,*
- (c) *the quality of the fill or the soil to be excavated, or both,*
- (d) *the effect of the development on the existing and likely amenity of adjoining properties,*
- (e) *the source of any fill material and the destination of any excavated material,*
- (f) *the likelihood of disturbing relics,*
- (g) *the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
- (h) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development,*

- (i) *the proximity to, and potential for adverse impacts on, any heritage item, archaeological site, or heritage conservation area.*

Council's Development Engineer has reviewed the proposal and advised the following:

Earthworks associated with the proposal relate to site stripping, basement carpark excavation and provision of services, with the only excavation exceeding 1m below existing ground level being the basement and swimming pool excavation.

It is advised that the maximum (estimated) depth of basement excavation is 2.8m (including footings), with an estimated volume of material to be removed from site of 1000m³.

The proposal development does not include any retaining walls outside of the proposed basement and pool. As mentioned below, there are no perimeter retaining wall or batters proposed, with existing perimeter surface levels intended.

The basement is setback 1.5m from both side and is consistent with the building line.

The basement extends 1m above the natural ground level where it faces the public street.

A "Geotechnical Engineering Assessment" report from Bordertech was submitted, being the same report submitted for the previous application. Irrespective of the reports recommendations (which are general), the submitted Engineering Assessment advises that a standard geotechnical investigation shall be undertaken as part of the detailed design phase of the project, to determine basement slab / wall design, as well as driveway design.

Council's Development Engineer has raised no concerns in relation to earthworks proposed subject to standard conditions of consent. It is considered that the earthworks associated with the proposed development is acceptable with regard to Clause 7.2.

Clause 7.3 – Flood Planning

The subject site is not identified as Flood planning area on the Plan's Flood Planning Map.

Clause 7.4 - Floodplain risk management

The subject site is mapped as being subject to the probable maximum flood however is not land surrounded by the flood planning area and as such this clause does not apply to this development.

Clause 7.5 - Coastal risk planning

The subject site is not identified as being within a coastal risk area on Council's Coastal Risk Planning Map on land to which this LEP relates.

Clause 7.6 - Stormwater Management

The objective of this clause is *to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and receiving waters*

Stormwater details have been provided as part of this application and reviewed by Council's Development Engineering Unit who have advised of the following in this regard:

Stormwater is proposed to be collected from hardstand areas, (driveway and carparks) and treated prior to discharge. Roof water is proposed to be collected and discharged to rainwater tanks and then to the existing stormwater system / infiltration areas.

The submitted Engineering Assessment advises that there will be no increase in peak discharge rates as a result of the development, with peak flow attenuation provided by way of infiltration of minor stormwater flows from the development (via use of a suitably sized "Atlantis Triple Flow Tank" or equivalent. Standard 200l/s/ha discharge limits will be imposed on the development. Applicable, standard conditions will be imposed.

Stormwater management measures catering for construction phase (erosion and sediment control) and operational phase have also been reviewed with no issues raised in this regard subject to the application of appropriate conditions of consent.

Clause 7.10 - Essential Services

(a) *the supply of water,*

The subject application has been reviewed by Council's Water Unit and Development Engineering Unit with respect to the above, with it being noted that adequate water supply could be provided to service proposal. Further detail with respect to this is outlined elsewhere in this report.

(b) *the supply of electricity,*

Electricity services are currently provided to the area. Appropriate Conditions of Consent shall be imposed to ensure that the applicant provides services in accordance with the standards of the supply authority.

(c) *the disposal and management of sewage,*

The disposal and management of sewage has also been reviewed by Council's Water and Development Engineering Units with it being determined that this can

be adequately serviced through infrastructure available to the area. The proposal is acceptable in this regard.

(d) *stormwater drainage or on-site conservation,*

Stormwater management has been reviewed by Council's Development Engineering Unit with the proposal being considered to be acceptable with respect to stormwater drainage subject to the application of appropriate conditions of consent.

(e) *suitable road access.*

Vehicular access to the development is to be provided to the site via a 6m wide crossover to the Kingscliff Lane frontage which provides access to at grade visitor parking and the basement carpark. This is considered to be appropriate access to service the development.

With respect to the above assessment against the provisions of this clause, it is considered that the proposed development would be acceptable from the perspective of essential services available to the site.

Having regard to the above assessment, the subject application is considered to be generally in accordance with the provisions of the Tweed Local Environmental Plan 2014.

State Environmental Planning Policies

SEPP No. 55 - Remediation of Land

The objectives of SEPP No. 55 is to provide a State wide planning approach to the remediation of contaminated land and to require that remediation works meet certain standards and conditions.

SEPP No. 55 requires a consent authority to consider whether land is contaminated and if contaminated, that it would be satisfied that the land is suitable, in its contaminated state (or will be suitable after remediation). Further, it advises that if the land is contaminated and requires remediation, that the consent authority is satisfied that the land will be remediated before the land is used for that purpose. In particular it is noted that this SEPP states that a consent authority must not consent to the carrying out of any development on land unless:

- (a) *it has considered whether the land is contaminated, and*
- (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The subject application has been reviewed by Council's Environmental Health Unit who has provided the following advice with respect to contamination:

The SEE indicates that the land has been used for residential purposes and no potentially contaminating activities have been identified.

A 2010 sub slab investigation has been submitted. Composite samples were subject to laboratory analysis and results were below the LOR.

Review of Council's historical aerials indicated:

1944 – undeveloped land with no sand mining evident.

1962 – residential area with no sand mining evident on western side of Marine Parade.

Council's GIS indicates heavy mineral sand mining paths to be along the foreshore and road, but not within the subject allotment.

Having regard to the advice provided, the subject application is considered to be acceptable with respect to contaminated land subject to the application of the recommended conditions of consent.

State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development (SEPP 65)

This Policy provides guidelines to improve the design quality of residential apartment development and aims:

- (a) *to ensure that it contributes to the sustainable development of New South Wales:*
 - (i) *by providing sustainable housing in social and environmental terms, and*
 - (ii) *by being a long-term asset to its neighbourhood, and*
 - (iii) *by achieving the urban planning policies for its regional and local contexts, and*
- (b) *to achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define, and*
- (c) *to better satisfy the increasing demand, the changing social and demographic profile of the community, and the needs of the widest range of people from childhood to old age, including those with disabilities, and*
- (d) *to maximise amenity, safety and security for the benefit of its occupants and the wider community, and*
- (e) *to minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions, and*

- (f) *to contribute to the provision of a variety of dwelling types to meet population growth, and*
- (g) *to support housing affordability, and*
- (h) *to facilitate the timely and efficient assessment of applications for development to which this Policy applies.*

This SEPP applies to *development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:*

- (a) *the development consists of the erection of a new building, and*
- (b) *the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and*
- (c) *the building concerned contains at least 4 or more dwellings.*

As the proposed development is a new four storey plus basement residential flat building with seven dwellings this Policy is applies.

Clause 28 of the SEPP requires the consent authority to consider each of the nine *Design Quality Principles* and the publication *Apartment Design Guide* when determining a development application to which this SEPP applies. The applicant has provided a Design Statement addressing these principles and a consolidated assessment is provided against these principles and Guide below:

Schedule 1: Design quality principles

The following assessment of the proposed residential flat building against SEPP 65 - Schedule 1: Design Quality Principles, highlights how the proposal is considered to be inconsistent with Principle 1: Context and Neighbourhood Character, Principle 2: Built Form and Scale and Principle 6: Amenity. These inconsistencies are also reflected in non-compliances revealed in the assessment of the proposal against SEPP 65 Apartment Design Guide following.

Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including adjacent sites, streetscape and neighbourhood.

Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

The context of this development is clearly subtropical beachside residential accommodation. The neighbourhood features a mix of single to three storey buildings of varied densities, architectural roof features with generous side setbacks and landscaping. The existing character is relatively consistent with the desired neighbourhood character of this location, with the only transition towards a subtly higher density.

The applicant states the following:

The intent of the design is to offer a highly considered beachside living typology – the apartment development aims to reinforce the idea of coastal living. Efficient floor plans offer holistically considered opportunities for solar gain and shading, natural ventilation and coastal outlook.

Council's Urban Designer has provided the following comments:

... "the rectilinear building form with little roof expression lacks a sense of building form diversity, articulation and detail befitting of a subtropical coastal context. The rectilinear building form and material composition exudes more of an urban or metropolitan rather than subtropical coastal architectural character."

Further, the proposal is four storeys in height, offers minimal 1.5m side setbacks, and landscaping and nominal window openings that do not take advantage of the subtropical climate.

The proposal is not considered to be consistent with the context and existing and desired neighbourhood character.

Principle 2: Built form and scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building's purpose, in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.

Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

As stated above, the existing neighbourhood features a mix of single to three storey buildings of varied densities and architectural roof features. The existing character is relatively consistent with the desired neighbourhood character of this location, with the only transition towards a subtly higher density.

The applicant states the following:

The buildings form and materials develops complimentary characteristics associated with coastal living and lifestyle.

The introduction of terraces and balconies overlooking Marine Parade, Jack Bayliss Park and the beach promotes neighbourhood safety principles by providing opportunities for passive surveillance of the street and surrounding area. These elements also provide depth and articulation within the building elevation. The associated shadow casting assists to reduce scale and addresses monotony in the streetscape.

Council's Urban Designer provided the following comments:

The proposed building is to be constructed of concrete block with a predominantly painted rendered finish with strong heavy and dominant horizontal balustrades to the north, south and west elevations. Whilst this strong heavy horizontal banding is broken down by glass balustrading to the east (Marine Parade), fixed decorative privacy screens (to all elevations) and feature expressed joint wall cladding panels (north and south elevations), the rectilinear building form with little roof expression lacks a sense of building form diversity, articulation and detail befitting of a subtropical coastal context. The rectilinear building form and material composition exudes more of an urban or metropolitan rather than subtropical coastal architectural character.”

Given the above, the proposed building is considered to be relatively top heavy and four storeys in height, which is of a bulk and scale not consistent with the existing, nor desired character of the street. The building provides minimal setbacks and landscaping resulting in an overdevelopment of the subject site. Further, the heavy building form is not considered to contribute positively to the public domain and internally, although each dwelling enjoys an eastern coastal foreshore outlook, ceiling height and sunlight access is substituted for an additional storey and penthouse dwelling. As such, the built form and scale is not considered appropriate for this location.

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities are sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Given the development's consistency with the objectives of R3 Medium Density Residential zone with seven dwellings proposed on the 834m² site, the proposal is considered to be in accordance with Principle 3.

Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and

passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.

The proposed design adopts energy efficient measures like natural cross ventilation and is to meet Basix Certificate requirements. As such, the proposal is considered to achieve the intent of Principle 4.

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.

Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, and provides for practical establishment and long term management.

Landscaping is proposed for within the front and side setbacks and providing screening along the side boundaries. This is considered to be consistent with Principle 5.

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.

The applicant has stated the following:

The design of the building provides an appropriate climatic response through the provision of projecting decks, roof overhangs and screening elements that provide amenity to terraced areas and protect doors and windows from the elements such as sub-tropical sun and rain.

Materials have been selected in response to the coastal climate and beach side aesthetic and for low maintenance performance.

Private spaces such as decks and terraces are generous. Windows facing the side and rear boundaries include obscure glass and fixed screening elements where glass is clear acting as privacy strategy for occupants.

North & South facing decks within proximity to side boundaries offer fixed/operable screening elements that occupants can control to suit their privacy/solar needs.

Units have been designed to maximise the coastal foreshore views with each indoor and outdoor space oriented toward the east. However, as outlined elsewhere in the report, the proposal has attempted to design a four storey with basement residential building under 13.6 metres in height in addition to providing the minimal side setbacks. The consequences of this are diminished amenity outcomes including reduced ceiling height, non-compliance with criteria related to orientation and sunlight access for residents and neighbours, nominal window openings along the southern and northern elevations and extensive privacy screening attempting to mitigate visual privacy and building separation non-compliances in addition to insufficient provision of communal open space facilities and inefficient tandem car parking. This is considered to be inconsistent with Principle 6.

Principle 7: Safety and security

Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

The development design provides:

- casual surveillance of the public street and communal open space.
- clear visibility of the main pedestrian entry point from Marine Parade and Kingscliff Lane.
- alternative exit paths (eg. basement exit)

This is considered to be consistent with Principle 7.

Principle 8: Housing diversity and social interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.

The development proposes a swimming pool as communal space for social interaction among residents and a mix of 2, 3 and 4 bedroom apartments which is considered to be consistent with Principle 8.

Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

The aesthetic appearance of the proposal is considered to be acceptable. As outlined above, it not considered an appropriate character for the neighbourhood or context however, there is a balance and variety of materials and textures. Clearly identified horizontal and vertical edges have been provided and the development also incorporates decorative functional screening elements introduce movement to the building's facade and to the streetscape.

Given the assessment above considering SEPP 65; Schedule 1: Design Quality Principles, the proposal is considered to be inconsistent with Principle 1: Context and Neighbourhood Character, Principle 2: Built Form and Scale and Principle 6: Amenity. These inconsistencies are reflected in non-compliances revealed in the following assessment of the proposal against SEPP 65 Apartment Design Guide.

Apartment Design Guide

The Apartment Design Guide aims to achieve better design and planning for residential apartment development, by providing benchmarks for designing and assessing these developments.

Parts 3 and 4 set out objectives, design criteria and design guidance for the siting, design and amenity of residential apartment development. It is noted that objectives, design criteria and design guidance in Parts 3 and 4 of the Apartment Design Guide that are referred to in SEPP 65 will prevail over any inconsistent DCP control.

Furthermore it is advised that the Design Guide gives direction for defining local development controls, which support and facilitate good residential flat design. It provides design guidelines, which assist in establishing consistent minimum standards across local government areas. It will also assist planners in assessing the design merit of proposed development.

It is noted that the assessment under TDCP 2008 Section A1, and the SEPP 65 Design Quality Principles establishes that the proposal is not supported and it is recommended for refusal.

Under this document the proposed development is considered to be a *narrow infill apartments* building type.

Part 2 Developing the controls

This part of the Apartment Design Guide explains the application of building envelopes and primary controls including building height, floor space ratio, building depth, separation and setbacks. It provides tools to support the strategic planning process when preparing planning controls rather than applying specific design controls. In this instance it is noted that the proposal would be subject to some of these controls through the Tweed Local Environmental Plan 2014 (building height and floor space ratio) while the remainder of the controls are administered either through the Shirewide Development Control Plan Section A1 – Residential and Tourist Development Code (building depth and building separation). These are addressed in detail elsewhere in this report under the specific assessments of these various documents.

Part 3 Siting the development

This part provides guidance on the design and configuration of apartment development at a site scale. Objectives, design criteria and design guidance outline how to relate to the immediate context, consider the interface to neighbours and the public domain, achieve quality open spaces and maximise residential amenity.

3A Site analysis

A site analysis plan demonstrating winter and summer sun orientation, prevailing breezes, available views and beach access/pedestrian walks has been submitted as part of this application. This is considered to adequately demonstrate that site conditions have been considered in the formulation of the proposed development design.

3B Orientation

Objective 3B-1: Building types and layouts respond to the streetscape and site while optimising solar access within the development

The site has street frontage to the east and west. The building is considered to face the street and offers direct street access and as such, the proposal is considered acceptable in this regard.

Objective 3B-2: Overshadowing of neighbouring properties is minimised during mid winter

The submission included shadow diagrams that outlined the extent of overshadowing of neighbouring properties which were also raised as a concern as part of public submissions.

The Guide includes the following *Design guidance*:

- *Living areas, private open space and communal open space should receive solar access in accordance with sections 3D Communal and public open space and 4A Solar and daylight access.*

As addressed later in the report, additional details regarding the provision of communal open space are required and will be conditioned accordingly, however the development is not considered acceptable with regard to 4A solar and daylight access.

- *Solar access to living rooms, balconies and private open spaces of neighbours should be considered.*

Solar access has been considered in the design with regard to the dwellings of the development.

- *Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20%.*

It is considered that the adjoining property currently received the required hours of solar access. The applicant shows existing overshadowing trees in the shadow diagrams however, these were not located upon site inspection.

- *If the proposal will significantly reduce the solar access of neighbours, building separation should be increased beyond minimums contained in section 3F Visual privacy.*

It is noted that not only does the development not provide a separation distance greater than the 6m, a 70% variation is requested, proposing a side setback of 1.6m. This is justified by visual impact being mitigated with screening and minimal windows, however the overshadowing resulting from the proximity to the boundary remains non-compliant.

- *Overshadowing should be minimised to the south or down hill by increased upper level setbacks.*

As the area is relatively flat, this guidance does not apply.

- *It is optimal to orientate buildings at 90 degrees to the boundary with neighbouring properties to minimise overshadowing and privacy impacts, particularly where minimum setbacks are used and where buildings are higher than the adjoining development.*

The privacy impacts have been minimised by way of building orientation however overshadowing, remains prevalent.

- *A minimum of 4 hours of solar access should be retained to solar collectors on neighbouring buildings.*

As shown in the figures below, solar panels with a north western orientation exist at the neighbouring allotment. The shadow diagrams show interference with the solar access to most of the collectors from 11.30am onwards.



Aerial photography of the subject site (shaded blue) and the solar panels located on the building to the south.



Shadow diagrams for 21 June 11am and 3pm

The applicant has stated the following with regard to Object 3B-2:

Overshadowing through winter is minimal; refer the revised plans for shadow diagrams. Solar access to living rooms, balconies and private open spaces of neighbours have been considered and the proposal results in minimal overshadowing impacts to adjacent properties. From a review of the shadow diagrams the proposed development will have a minimum overshadow on solar collectors of neighbouring buildings.

The proposed development is not considered to be acceptable with respect to the overshadowing of the development as the plans do not support the assessment as provided by the applicant. It is noted that units are generally orientated to the north and south, reflective of the allotment layout. However, given that a 70% variation of the side setback/ separation distance is proposed as required under Clause 3F and the resultant significant overshadowing and interference with the existing solar

collectors on the adjoining allotment, this is considered to not be an acceptable design outcome in relation to both orientation and solar access.

3C Public domain interface

The proposed development is considered to be appropriate when considering the public domain interface and the objectives of this clause which include the following:

Objective 3C-1 - Transition between private and public domain is achieved without compromising safety and security

Objective 3C-2 - Amenity of the public domain is retained and enhanced.

To the Marine Parade and Kingscliff Lane elevations, public interface is treated via upper level balconies which provide interaction and casual surveillance over the public domain. The amenity of the public domain is retained by landscape screening with deep planting zones in the front and rear setbacks softening the development.

The proposal is considered to adequately provide transition between private and public areas and does not impact on the amenity of the public areas in accordance with the Objectives.

3D Communal and public open space

Communal open space is an important environmental resource that provides outdoor recreation opportunities for residents, connection to the natural environment and valuable 'breathing space' between apartment buildings.

The function of open space is to provide amenity in the form of:

- landscape character and design
- opportunities for group and individual recreation and activities
- opportunities for social interaction
- environmental and water cycle management
- opportunities to modify microclimate
- amenity and outlook for residents.

The useable part of the communal open space area may be supplemented by:

- additional landscape area, circulation space and areas for passive use and outlook
- public land used for open space and vested in or under the control of a public authority.

Communal open space was not nominated on the plans however, at ground level of the development, it appears that communal open space is provided by way of a swimming pool and landscaping (52m²) to the rear of the site and landscaped open space within the front setback (120m²). This covers an approximate area of 172m². No facilities have been noted beyond a swimming pool and no area is

provided adjacent to the pool for recreation as the deep soil zone is at a different level than the pool access.

Objective 3D-1 stipulates that there should be a minimum area of 25% of the site provided as communal open space with direct sunlight criteria and a minimum dimension of 3m. The communal open space should be co-located with deep soil zones

Communal open space was not nominated on the plans however the proponent states the following:

“The proposal provides ample communal open space with dimensions greater than 3.0m. The communal open space is consolidated into a well-designed, easily identified and usable area that covers 78% of the site. The communal open space receives solar access between 9am and 3pm, as shown on the shadow diagrams contained within the revised Architectural Plans. The communal open space is sheltered by perimeter landscaping planters.”

In this proposal, the required 25% area would equate to a total communal open space area of 209m² which is not met. However consistent with the Design guidance, the proposal would be able to demonstrate good proximity to public open space given Jack Bayliss Park and coastal foreshore are located to the east of the property and are overlooked by the proposed dwellings therefore the variation in the area provision is considered acceptable with the park considered to be an acceptable supplement to the space onsite.

Objective 3D-2 requires communal open space to be designed to allow for a range of activities, respond to site conditions and be attractive and inviting. Further, Objective 3D-3 states communal open space is to be designed to maximise safety whilst Objective 3D-4 requires public open space, where provided, is responsive to the existing pattern and uses of the neighbourhood.

Communal open space design was not nominated on the plans with no nominated area or activity use beyond the swimming pool. The development is not considered to be acceptable with regard to Objective 3D-2 or 3D-3 based upon current level of information provided. In the event of a consent being issued, a condition will be included to ensure that the landscaping plan includes details of the design and provision of open space that meets these objectives.

3E Deep soil zones

The objective and design criteria with respect to deep soil zones are outlined below:

Objective 3E-1
 Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality

Design criteria

1. Deep soil zones are to meet the following minimum requirements:

| Site area | Minimum dimensions | Deep soil zone (% of site area) |
|---|--------------------|---------------------------------|
| less than 650m ² | - | 7% |
| 650m ² - 1,500m ² | 3m | |
| greater than 1,500m ² | 6m | |
| greater than 1,500m ² with significant existing tree cover | 6m | |

The submitted application provides a dedicated deep soil zone generally around the perimeter however the only areas that meet the minimum dimension criteria are the north-west corner of the site which covers an area of 28m² and the landscaped area within the front setback to the east of the site which covers an area of 114m². As such the total of 142m² deep soil zone is provided on this site, compliant with the 7% area above (which equates to 58m²).

3F Visual privacy

This element of the Guide details that visual privacy allows residents within an apartment development and on adjacent properties to use their private spaces without being overlooked and balances the need for views and outlook with the need for privacy. This control further outlines that degrees of privacy are also influenced by a number of factors including the activities of each of the spaces where overlooking may occur, the times and frequency these spaces are being used, the expectations of occupants for privacy and their ability to control overlooking with screening devices.

Objective 3F-1 and the associated design criteria are outlined below:

Objective 3F-1
Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy

Design criteria

1. Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:

| Building height | Habitable rooms and balconies | Non-habitable rooms |
|-------------------------|-------------------------------|---------------------|
| up to 12m (4 storeys) | 6m | 3m |
| up to 25m (5-8 storeys) | 9m | 4.5m |
| over 25m (9+ storeys) | 12m | 6m |

Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2)

Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties

It is noted that the proposed development is 13.5 metres in height and is 4 storeys (plus basement). The proposed distance from the habitable rooms to the side boundaries is 1.64m to the south and 1.5m to the north and as such a 70% variation is requested.



Level 2 and Level 3 Floor Plans

The proponent has provided the following justification for the variation:

It is clear when viewing the proposal that the minimum separation distances are not met, however the design criteria is in relation to windows and bedrooms, implying privacy concerns of overlooking upon adjacent premises for bedrooms with windows. This has been avoided by not including any windows of bedrooms on southern and northern boundaries.

The proposal is considered an acceptable alternative as visual privacy to the adjoining properties has been achieved through a fixed decorative privacy screen for the length of the southern and northern portion of the balconies. The ground floor southern and northern units are screened by maintaining the existing vegetation along this boundary and improving landscaping onsite generally.

Therefore visual privacy is reliant on privacy screening and lack of windows along the northern and southern side of the building as shown in the elevations below.



North and South elevations showing the lack of windows and balconies with extensive privacy screening.

Further, Objective 3F-2 requires the site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space. The lack of windows along the northern and southern elevations could be considered a compromise of access to light into the proposed dwellings.

It is also noted that the 4th floor (Level 3) of the development, greater than 12m in height is to be 9m from the boundary. The building does not provide an additional step back which adds to the heavy appearance of the building and results in an 82% variation to the separation distance control along both the north and south of the building.

From a purely visual privacy perspective, given the lack of windows and extensive privacy screening, the development could be considered acceptable however it is considered that the building design elements attain privacy by compromising access to light and air. Further, the additional non-compliances regarding Objective 3B Orientation and Objective 4A Solar and daylight access that occur as a result of this 70% variation to separation distance is not considered acceptable and as such this variation cannot be supported.

3G Pedestrian access and entries

Objective 3G-1: Building entries and pedestrian access connects to and addresses the public domain

Objective 3G-2: Access, entries and pathways are accessible and easy to identify

Objective 3G-3: Large sites provide pedestrian links for access to streets and connection to destinations

Pedestrian entry to the development is provided from Marine Parade to a central foyer area which is ramped and clearly visible. Pedestrian access is also from Kingscliff Lane however across the visitor carparking spaces. Individual pedestrian access to ground floor units is not provided. This is considered to be in accordance with the above objectives, with these access points addressing, and being easily identifiable from the public domain.

3H Vehicle access

Vehicular access to the site is to be provided via a new driveway crossover to Kingscliff Lane. This has been reviewed by Council's Traffic engineer with no issues raised with respect to this access and is considered to be acceptable in minimising conflicts between pedestrians and vehicles.

3J Bicycle and car parking

The development proposes at grade visitor car parking and basement car parking for residents. Four of the seven dwellings are allocated car parking in a tandem configuration. This is considered to be inefficient and therefore is not in accordance with *Objective 3J-3* and *Objective 3J-4*.

Also, the Design Guidance under this section states that *supporting facilities within car parks, including garbage, plant and switch rooms, storage areas and car wash bays can be accessed without crossing car parking spaces*. In this instance, storage and garbage areas cannot be accessed whilst the car space is utilised and as such is not considered acceptable.

Given the proposed tandem car parking configuration and supporting facilities, the proposal is not considered acceptable with regard to this clause.

The proposal is considered to be acceptable in this regard. It is noted that all designated parking is provided on-site and impacts of the underground car parking are considered minimised.

Part 4 Designing the building

Amenity

4A Solar and daylight access

Objective 4A-1 To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space.

Objective 4A-2 Daylight access is maximised where sunlight is limited.

Objective 4A-3 Design incorporates shading and glare control, particularly for warmer months

The applicant's assessment of the proposal makes reference to solar access diagrams which could not be located within the submission.

The living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid winter. Utilising the *Sunlight access analysis tool* from within Appendix 5 of the Guide, three dwellings located on the south of the building (43%) cannot achieve this criteria.

It is acknowledged that the building is oriented towards the ocean views to the east. However, small size or minimal windows openings are located along the north and south elevations to compensate for non-compliances related to separation distances and visual privacy which results in daylight access not being maximised in habitable rooms.

As such solar access provision is not considered to be acceptable.

It is noted that the building design features adequate shading and glare control by way of balcony location and screening.

4B Natural ventilation

Where possible, natural ventilation is provided through a building. Windows (and therefore natural ventilation) has been proposed to all bedrooms and living areas meeting the maximum cross through depth of 18m.

4C Ceiling heights

Objective 4C-1 and the associated design criteria are outlined below:

Objective 4C-1
Ceiling height achieves sufficient natural ventilation and daylight access

Design criteria

1. Measured from finished floor level to finished ceiling level, minimum ceiling heights are:

| Minimum ceiling height for apartment and mixed use buildings | |
|--|--|
| Habitable rooms | 2.7m |
| Non-habitable | 2.4m |
| For 2 storey apartments | 2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area |
| Attic spaces | 1.8m at edge of room with a 30 degree minimum ceiling slope |
| If located in mixed used areas | 3.3m for ground and first floor to promote future flexibility of use |

These minimums do not preclude higher ceilings if desired

Design guidance

Ceiling height can accommodate use of ceiling fans for cooling and heat distribution

The plans provide a floor to floor dimension of 3m however the proponent has stated the following:

The proposed development provides a minimum of 2.4 metre floor to ceiling heights for all rooms within the building. The ground floor communal area has a minimum of 2.6m floor to Ceiling height.

As such the proposal does not comply and would require a floor to floor height of at least 3.1m in order to meet the above Design criteria as noted in Figure 4C.5 of the Guide.

The proponent has stated that the *proposed development provides sufficient sense of space based on ceiling height consistent with NCC requirements with ceiling heights are maximised in habitable rooms by ensuring that bulkheads do not intrude and the stacking of service rooms from floor to floor where possible.* This is considered to address *Objective 4C-2* Ceiling height increases the sense of space in apartments and provides for well proportioned rooms.

However, *Objective 4C-3* which requires that ceiling heights contribute to the flexibility of building use over the life of the building. The design guidance states *Ceiling heights of lower level apartments in centres should be greater than the minimum required by the design criteria allowing flexibility and conversion to non-*

residential uses. The ground level does not have a higher ceiling height (2.4m) and as such does not meet Objective 4C-3.

4D Apartment size and layout

Following is the development assessed against the following objectives and Design Criteria:

Objective 4D-1: The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity

Objective 4D-2: Environmental performance of the apartment is maximised

Objective 4D-3: Apartment layouts are designed to accommodate a variety of household activities and needs

There are a number of design criteria relevant to these objectives which are outlined below:

Objective 4D-1
The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity

Design criteria

1. Apartments are required to have the following minimum internal areas:

| Apartment type | Minimum internal area |
|----------------|-----------------------|
| Studio | 35m ² |
| 1 bedroom | 50m ² |
| 2 bedroom | 70m ² |
| 3 bedroom | 90m ² |

The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each

A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each

2. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms

The proposed units comply with the minimum internal areas specified above. The smallest unit covers an area of 129m² and is a two bedroom unit (although there is a large study room also proposed). Windows are provided to each habitable room and are considered to be compliant with the minimum requirement above.

| | |
|---|---|
| Objective 4D-2 | |
| Environmental performance of the apartment is maximised | |
| Design criteria | |
| 1. | Habitable room depths are limited to a maximum of 2.5 x the ceiling height |
| 2. | In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window |

Ceiling heights of approximately 2.4m are proposed throughout this application as noted above with the variation to Design criteria 4C-1. This would equate to a maximum depth of 6m to these rooms. In terms of Criteria 2 above, the proposal is considered to constitute open plan layouts. From review of the submitted plans, bedrooms generally comply with the criteria however, the room depth of the open plan living area is ranges from 8.3m to 11m and as such the proposal does not comply with this design criteria.

The Design Guidance advises *Greater than minimum ceiling heights can allow for proportional increases in room depth up to the permitted maximum depths* and the variation to Design criteria 4C-1 is considered to contribute the non-compliance with Objective 4D-2.

| | |
|---|---|
| Objective 4D-3 | |
| Apartment layouts are designed to accommodate a variety of household activities and needs | |
| Design criteria | |
| 1. | Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space) |
| 2. | Bedrooms have a minimum dimension of 3m (excluding wardrobe space) |
| 3. | Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments |
| 4. | The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts |

It is considered that each unit has at least one bedroom which meets the 10m² control with the 9m² control also achieved. A minimum dimension of 3m is provided to all bedrooms also. The stipulated width of 4m is provided as required to the apartments.

4E Private open space and balconies

The design criteria under this control stipulates that all apartment are required to have balconies with a minimum depth and area dependant on the number of bedrooms proposed. It is noted that the subject application achieves the minimum

depth and area required under this control. The Design Criteria goes on to states that for apartments at ground level, a private open space is provided instead of a balcony. It is noted that in this proposal there are two units with ground level access. These are provided with balconies instead of private open space and is considered acceptable in this regard.

Beyond this, the development is considered to be in accordance with the objectives of this control, including having the private open space appropriately located to enhance liveability for residents, these spaces being incorporated into the architectural design of the building, and therefore is considered to be acceptable from a safety perspective.

4F Common circulation and spaces

The Design Criteria under this control outlines that “the maximum number of apartments off a circulation area on a single level is eight.” As there are seven units proposed across the development, this control is considered satisfied.

4G Storage

The submitted application has identified that individual residential storage is provided to unit per the required rates and split between basement storage areas and stores provided on each residential level. This is considered to be an appropriate response to the requirements of this clause and can be conditioned as a requirement of the consent.

4H Acoustic privacy

This relates to protecting sound transmission between external and internal spaces. In response to this control it is noted that generally the proposal co-locates walls of rooms with a similar use alongside each other, in addition to the provision of appropriate insulation in accordance with the Building Code of Australia. This is considered to minimise acoustic privacy issues in the proposal.

4J Noise and pollution

With respect to noise and pollution the applicant has advised that ‘*The subject site is not located within a noisy or hostile environment*’. As such the proposal is considered to be of an appropriate design with respect to potential noise/pollution impacts on the development.

Configuration

4K Apartment mix

This essentially relates to the provision of a mix of apartments with different numbers of bedrooms in a development. In this instance it is noted that 2 x 2 bedroom units, 4 x 3 bedroom units, 1 x 4 bedroom unit and no studios or 1 bedroom units are proposed as part of this development. While this demonstrates a dominance of 3 bedroom units in this particular development it is

noted that an apartment mix has been provided and is therefore compliant with this section of the guide.

4L Ground floor apartments

As ground floor apartments offer the potential for at-grade landscaped private open spaces and direct access from the street, this clause relates to maximising street frontage activity whilst ensuring amenity and safety for residents. Ground level apartments feature terraces overlooking Marine Parade approximately 1m above ground level providing casual surveillance, however no direct street access or terrace landscaping is provided. As additional detail is required with regard to landscaping within the front setback of the subject site which could address this requirement, a condition of consent is to be applied to ensure this clause is satisfied.

4M Facades

The façade of the development has been designed to provide visual interest along the street. The building is considered to be heavy in appearance lacking a defined '*base, middle and top*' as outlined in the Design guidance however the building features a mix of materials, building articulation with balconies and decorative screening creating horizontal and vertical elements and as such, the proposal is considered acceptable in this regard.

Building entry is clearly legible and prominence is given to the main elements of the development fronting Marine Parade.

4N Roof design

The roof design proposed is considered to be acceptable in terms of design and has been incorporated into the overall design of the building. It is noted that sustainability features have been considered in this design, with the submitted plans identifying a location for solar panels.

4O Landscape design

The objective of this control is to ensure that landscape design is viable and sustainable and that it contributes to the streetscape and amenity. In this instance, 282m² of landscape areas have been proposed along the northern and southern boundaries with wider deep soil zones located to the north-west and eastern section of the site which are considered to be in accordance with the above. Table 4 under this Clause also outlines that a site area of less than 850m² the recommended tree planting is for 1 medium tree per 50m² of deep soils zone. This would equate to 5 medium trees on the site. This would be required as a condition of consent. The proposal is considered to be acceptable with respect to the above.

4P Planting on structures

Planting on structures is where plants are on top of built structures such as basement car parks, podiums, roofs and walls. All landscaping is proposed at

ground level and not above the basement carpark. As such, this control does not apply in this instance.

4Q Universal design

Universal design is an international design philosophy that enables people to continue living in the same home by ensuring that apartments are able to change with the needs of the occupants. No apartments with adaptable designs are provided however it is considered that convenient access is provided by way of ramped entry or lift access.

4R Adaptive reuse

As this proposal relates to a new development on vacant land this does not apply to the subject application.

4S Mixed Use

The development was originally proposed as dual use residential and tourist accommodation however the proponent modified the proposal to be for residential use only in response to several non-compliances. Therefore, this clause does not apply to the residential flat building proposal being assessed.

4T Awnings and signage

Awning and signage do not form part of the residential flat building proposal and as such this clause does not apply.

Performance

4U Energy efficiency

This control relates to the passive design and natural ventilation elements of the proposal.

Objective 4U-1 states that the development is to incorporate passive environmental design featuring adequate natural light to habitable rooms and as such meet 4A Solar and daylight access. In this instance, solar access provision is not considered to be acceptable as the small size or minimal windows openings located along the north and south elevations (required to compensate for non-compliances related to separation distances and visual privacy) result in daylight access not being maximised in habitable rooms. Additionally well located screen outdoor areas for clothes drying were not nominated on the plans.

Objective 4U-2 requires that the development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer. The proposal integrates design solutions listed in the design guidance including shading devices and screening which satisfies this control.

Objective 4U-3 requires adequate natural ventilation minimises the need for mechanical ventilation. The apartments features sufficient cross ventilation and natural ventilation to all habitable rooms and as such is considered acceptable in this regard.

4V Water Management and conservation

The Building Sustainability Index (BASIX) ensures that all new dwellings are designed to minimise potable water use and reduce greenhouse gas emissions. To support the requirements of BASIX there are a number of planning and design considerations that are relevant to apartment developments. On site water storage has been stated as a requirement on the Basix certificate however the location of the tank has not been nominated on the plans. The requirements under the Basix certificate are considered to adequately address this component of the Guide.

4W Waste Management

These controls relate to the minimisation and effective management of domestic waste from apartments contributes to the visual and physical amenity of the building as well as limiting potentially harmful impacts on the environment. A Preliminary Waste Management Plan was submitted and has been reviewed by Council's Waste Management Unit. The Plan concludes that there is adequate area available on this site to provide suitable storage facilities for waste generated during operation of the proposal. Roadside collection of waste by the domestic waste contractor is considered feasible and will be the responsibility of residents to present their bins to the kerbside.

It is noted that bin storage areas have been identified to the basement level parking and storage area however the circulation design the provision for bins to be easily manoeuvred between storage and collection points is questionable and has been addressed in more detail under 3J Bicycle and car parking.

4X Building maintenance

These controls related to careful design and material selection that can reduce the long term maintenance obligations of apartment development. The proposal is not considered to contravene the objective outlined under this element of the guide. The proposal is considered to be acceptable from a building maintenance perspective.

Part 5 Design review panels

Not applicable to the subject application

Overall, given the number and scale of the variations required and subsequent cumulative impact on amenity, it is considered that the proposal is not consistent with State Environmental Planning Policy No 65 and as such cannot be supported by Council officers.

State Environmental Planning Policy No 71 – Coastal Protection

The subject development site is within the coastal zone at this location and as a result is subject to the provisions of State Environmental Planning Policy No.71. Council is required to consider the matters under Clause 8 and the following comments are made for Council's consideration.

Clause 8 – Matters for consideration

(a) *the aims of this Policy set out in clause 2,*

The proposal is considered to be generally in accordance with the aims of this policy.

(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 proposal development will not alter or restrict the public's access to the foreshore reserve areas.

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

It is not considered that this application offers any opportunities to provide new public access to the foreshore.

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

The proposed residential development is not considered unsuitable, having regard to its permissibility in this 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 proposed development is not considered to result in any detrimental impact on the coastal foreshore given its nature being for a residential development and its spatial separation from the foreshore by way of a 20m road reserve.

The proposed development is not considered to impact on the amenity of the coastal foreshore given its nature on appropriately zoned land. In particular there is considered to be no loss of views or overshadowing associated with this application.

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

This proposal is not considered to have any negative impact on the scenic qualities of the NSW coast.

- (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 is not considered to impact negatively animals or their habitats. The subject development site is already developed, and as such the proposal will not impact on measures as identified above.

- (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 Part), and their habitats*

The proposal is not considered to have an adverse impact upon marine environments or habitats.

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

The proposed development is not considered to impact negatively on wildlife corridors given it is to be undertaken on a site previously developed and cleared of significant vegetation.

- (j) *the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,*

The proposed development is not considered to have any significant impact of development on coastal processes and coastal hazards.

- (k) *measures to reduce the potential for conflict between land-based and water-based coastal activities,*

The proposal is not considered to cause any conflict between land-based and water-based activities.

- (l) *measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,*

The subject development is not considered to impact on any traditional Aboriginal cultural values.

- (m) *likely impacts of development on the water quality of coastal water bodies,*

The subject application is not considered to have any significant impact upon the water quality of coastal waterbodies.

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

It is not considered that the proposal impacts upon the conservation or preservation of any of the above items .

- (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 to the subject application.

- (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*

This development is not considered to have a negative cumulative impact on the environment.

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

The subject application has provided Basix certification with respect to energy efficiency. The subject application is considered to be acceptable in this regard.

SEPP 71 applies to land within the 'coastal zone' which is defined as having the same meaning as in the *Coastal Protection Act 1979*. The subject land is located within the coastal zone and the provisions of SEPP 71 therefore apply to the proposed development. The proposed development is consistent with the aims of SEPP 71, with the development considered to be an appropriate type in the location. It is considered the proposed development does not compromise the intent or specific provisions of State Environmental Planning Policy No. 71 – Coastal Protection.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The proposed development is considered to be BASIX affected development and as such a Basix Certificate accompanies the development application and as such this SEPP is considered satisfied.

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

No Draft Environmental Planning Instruments are considered relevant to the development proposal.

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

Tweed Development Control Plan

Section A1-Residential and Tourist Development Code

The purpose of this Section is to guide the planning and design of residential and tourist development and development ancillary to residential and tourist development within Tweed Shire.

It is noted that the controls from this Section are similar in nature to those of SEPP 65 and as such, when inconsistent, the SEPP prevails.

A comprehensive assessment of the proposal against *Section A1 Part C Residential Flat Buildings and Shop-top Housing* is found on the file.

The proposal requires variations to the following controls:

- Building Height (Design Control 6)
- Public Domain Amenity (Design Control 1)
- Ceiling Height (Design Control 6)
- Building Amenity Sunlight Access (Design Control 7)
- Floor Space Ratio (Design Control 11)
- Carparking (Design Control 4)
- Rear Deep Soil Zone (Design Control 2)
- Rear Setback (Design Control 3)
- Pool Setback (Part A Clause 6.3)
- Landscaping (Design Control 2)

The design controls are a development guideline and represent a possible acceptable solution to meet the design theme objectives and planning and design principles. Where a development application seeks an alternative solution to a design control this must be documented within the Statement of Environmental Effects (SEE), and include:

- Identification of the design control being varied; and
- Justification, supported by a detailed site analysis:
 - detailing why the design control cannot be met; and
 - demonstrating how the alternate proposal achieves the design theme objectives and planning and design principles.

It is noted that the proponent did not provide justification and formally request variations to many of the listed controls.

Building Height

Height is an important control to ensure that future development responds to the desired scale and character of the street and local area and to allow reasonable daylight access to existing developments. Height controls on individual sites are to be further refined by decisions about daylight access, roofs and residential amenity.

As the proposal is a residential flat building, the required maximum overall height 12.2m (Control C) or three storeys (Chapter 1 - RFB introduction) and therefore the proposed building height of 13.5m does not comply and a variation of 1.3m or 10.6% is sought.

Additionally a variation of 3.1m to the 9.6m is the maximum wall plate height for Residential Flat Buildings (Control D) is required with the proposed wall plate height of 12.7m (19.95 RL – 7.25 RL at the north west corner).

When considering variations to this control, it is noted that the objective of the Building Height controls are:

- *To design new development appropriate to the existing building scale in the street and the local area.*
- *To ensure new development maintains an appropriate residential character.*

The proponent provided following justification:

The TLEP 2014 allows a building height to 13.6m as such the Residential Flat Building has been built to comply with the LEP over riding the requirements for building height under the DCP section.

Further, the wall plate height variation was addressed similarly with the following:

The intent to comply with the building height limit under TLEP 2014 has allowed the building height to be beyond 12.2m, it is therefore inevitable that the wall plate height will increase in response to the LEP height limit, a variation is warranted without the need to seek variation.

Therefore the objectives of the control were not addressed as part of the submission. Given that historically under TLEP 2000, the building height control was three storeys, the proposed four storeys is not considered *appropriate to the existing building scale or appropriate residential character*.

Although the building height limit applied to the area under TLEP 2014 is met, Section A1 differentiates appropriate building heights with development types and in this case, the proposed building height does not meet the control relevant to the development height.

Council's Urban Designer did not support the proposal in relation to height further stating the following:

The proposed 13.6m high (4 storey) building height, whilst consistent with the maximum building height in the Tweed LEP 2014, is inconsistent with the maximum building height for residential flat buildings under the Tweed Development Control Plan A1 – Part C Design Control 6 (c). 13.6m building height only relates to shop top development which includes a retail or commercial ground floor.

It is considered that the proposed four storey residential flat building is an overdevelopment of the site. Although the maximum building height under TLEP 2014 is met, as a result of not meeting the maximum overall height requirement 12.2m applied to this type of development, several other variations to controls are required which cumulatively cannot be supported.

Public Domain Amenity - Streetscape

The public domain relates to those aspects of the urban environment which are either owned publicly or accessible to and enjoyed by the public.

The plan requires site design, building setbacks and the location and height of level changes are to consider the existing topographic setting of other buildings and sites along the street, particularly those that are older and more established (Control A).

The proponent stated the application complied with the proposal however, Council officers are not of the opinion that the building design and setbacks have considered the existing buildings and more established sites along the street.

Marine Parade is a popular location within the shire, featuring residential development overlooking parkland and coastal foreshore to the east. The western side of the street features a mix of large single dwellings to a maximum three storey residential flat buildings also known as 'six pack' multi-dwelling developments gradually established over the last 30+ years. The existing building designs with commonly generous side setbacks (greater than 1.5m) result in minimal overlooking and overshadowing.

The proposed development featuring four storeys, heavy material composition with strong horizontal banding, no vertical articulation and only 1.5m side setbacks is considered to not be compatible with other residential building development in the area.

It is noted that two objectives of the Public Domain Amenity controls are:

- *To ensure new development is compatible with the positive characteristics of the existing streetscape.*
- *To ensure new development enhances the character of the existing streetscape.*

A four storey development of heavy rectilinear building form, with no vertical articulation and minimal setbacks is not considered to be compatible with the positive characteristics of the existing streetscape, nor enhances the character of the existing streetscape which features only three storeys, generous setbacks, landscaping and building form diversity, articulation and detail befitting of a subtropical coastal context.

Ceiling Height

Higher ceilings can create better proportioned internal spaces. Generous ceiling heights are particularly important in buildings with small, deep rooms or in rooms that have little sun penetration such as those facing south.

A 2.7m ceiling height is required (Control A). Although the application states that the proposal complies, the plans reflect otherwise with a 3m floor to floor height is proposed and a ceiling height of 2.5m maximum. The applicant stated elsewhere in the submission (SEPP 65 Apartment Design Guide assessment) that the ceiling heights were proposed at 2.4m in accordance with the Building Code also contravening the SEPP 65 controls. Either way, the proposal does not comply with this clause with no justification provided by the applicant.

When considering variations to this control, it is noted that the objective of the Ceiling Height controls are

- *To increase the sense of space in dwellings.*
- *To contribute to well proportioned rooms.*
- *To promote the penetration of daylight into dwellings.*

The proposed four storey residential flat building is considered an overdevelopment of the site and consistent with the variation requested of the building height, the reduced ceiling heights proposed contributes to this end.

Building Amenity – Sunlight Access

Building amenity is the way in which the building provides a high quality of life for residents. The key aspects of building amenity include; sunlight access, visual privacy, acoustic privacy, view sharing, and natural ventilation. The use of passive solar design in dwellings is encouraged. Tweed has a temperate sub-tropical climate and well designed houses in Tweed should only require a limited amount of heating and cooling.

Living spaces are to be located predominantly to the north where possible (Control A) and 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 to a minimum side setback of four metres (Control B).

In this case four of the seven dwellings benefit from northern orientation however, the four metre setback has not been provided and windows have not been located accordingly due to address separation distance and privacy concerns. This has resulted in sunlight access to internal living areas not being maximised therefore not complying with the above criteria.

Further, based on the shadow diagrams submitted, the overshadowing to the neighbouring allotment is considerable with the private open space sunlight reduced less than minimum 2 hours between 9am and 3pm (Control E). Windows to living areas will receive less than the required amount of sunlight (Control E).

When considering variations to this control, it is noted that the objective of the Sunlight Access controls are

- *To maximise sunlight and daylight access.*
- *To ensure that sunlight access of neighbouring dwellings and neighbouring private open space is minimised.*
- *To encourage the use of passive solar design.*

Overall the proposed development does not comply with the controls. Within the application, the proponent has stated compliance with all of the above making reference to the Architectural Plans which are inconsistent with the report statements. Therefore variations have not been formally sought and no justification provided with regard to the objectives of the clause.

This lack of sunlight access is in addition to the reduced building heights that cumulatively erode the amenity of the proposed dwellings. Additionally, the variation in building height is considered to contribute additional variations with regard to the overshadowing neighbouring properties.

Floor Space Ratio (FSR)

Floor space ratio (FSR) control provides a guide as to the allowable densities for an area. FSR is not to be the sole determinant of future built form; it needs to be linked with all other building envelope controls to support the desired building-massing outcome.

The land area of the site is 834.7m² with a gross floor area of the proposal being 1,217m² which results in a floor space ratio of 1.46:1 and as such does not comply with the maximum 1.2: 1 FSR for Residential Flat buildings (Control B)

The proponent justifies this non-compliance stating:

The site is subject to a FSR of 2:1 under the TLEP 2014. The subject site complies with the TLEP 2014.

When considering variations to this control, it is noted that the objective of the Floor Space Ratio controls are

- *To match building scale with the capacity of the site and the local area.*
- *To define the allowable development density for sites.*

It is considered that the non-compliance with the development type specific floor space ratio control contributes to the conclusion that the proposed four storey residential flat building is an overdevelopment of the site for this development type. Similarly to the variation to the maximum building height, although the floor space ratio requirement under TLEP 2014 is met, the overdevelopment of the site results in several other variations being required which cumulatively cannot be supported.

Car parking

This clause states that car parking is to be convenient and is to be designed to meet the needs of residents. The design of car parking is to integrate with the overall site design to minimise visual and environmental impacts.

Design Control 4a requires the development to be in accordance with Section A2 of TDCP 2008. As addressed elsewhere in this report, the proposed car parking which features a tandem arrangement for four of the seven dwellings is not considered convenient for residents and as such is not supported.

Other considerations or proposed variations under Section A1 included the following:

Rear Deep Soil Zone

Deep soil zones are areas of soil suitable for the growth of vegetation and mature trees. Deep soil zones may be landscaped but are not covered with hard impervious surfaces such as concrete, asphalt or pavers, nor are they contained within or located over a carpark.

The Plan requires the rear deep soil zone to have a minimum width of 8m and minimum depth of 6.6m (Control C). The deep soil zone has been nominated on the plans as along the northern and southern boundaries of approximately 1.5m width. However, the northwest corner of the site includes a deep soil zone area of 5.6m by 5m.

A variation is sought with regard to the rear deep soil zone which is justified by the nominated choice in rear vehicular access that creates a better access and streetscape outcome for the site. This is considered acceptable given the overall sufficient volume of deep soil zone area provided.

Rear Setback

Setbacks are important as they set the buildings location in relationship to the lot boundaries, the street and neighbouring buildings allowing for space for landscaping and to achieve privacy.

The proposed rear setback is 6m and as such does not meet the 8m requirement (Control A). Additionally visitor car parking is proposed for within the rear setback.

The proponent stated this clause does not apply as the property fronts Kingscliff Lane and as such did not provide further justification. Similarly to the rear deep soil zone, the variation could potentially be justified by the nominated choice in rear vehicular access that creates a better access and streetscape outcome for the site which would be considered acceptable.

Pool setback

A variation is sought as the development proposes the swimming pool to be located 500mm from the rear boundary according to the plans which does not meet the minimum 1m requirement (Clause 6.3, Control C1). The proponent has provided the following justification:

The proposed swimming pool is setback 0.72m from the rear boundaries and more than 1m from any side boundary. It is considered with the landscaping proposed and the provided fencing the noted features will appropriately screened the development from Kingscliff Lane. [It] is considered as the rear boundary is to a Laneway, the reduce[d] setback will not impact on any rear neighbours.

It is noted that the pool is to be of concrete construction and above ground at that point. Further the access and useable area around the pool appears awkward and unresolved. Considering the objectives which relate to ensuring safety and minimising the impact of swimming pools on neighbours, the proposed fencing, pool level and proximity to neighbours, the variation is considered acceptable.

Landscaping

Insufficient detail with regard to landscaping of the site was provided to ensure compliance with the relevant controls. In the event of a consent, a condition will be applied to ensure additional detail is provided maintaining compliance

Cut and Fill

Cut and fill was raised as an issue in public submissions and it has been considered accordingly.

The site has a gentle slope westward, with levels ranging by approximately RL 8m AHD at the highest point to the east to RL 7m AHD at the lowest.

Council's Development Engineer reviewed the application and has no objections to the proposal.

The ground floor is proposed to have a finished floor level of RL 8.25m AHD, with a basement below. The majority of cut proposed on the site is within the confines of the building and where driveway access is provided to the basement. Cut in those areas exceeds 1m, approximately 2.8m towards the eastern corner of the building, though due to the slope of the land that cut reduces to approximately 1.6m (i.e. towards the west). All cut is in excess of 900mm from the boundaries.

Due to the level changes, a degree of fill is also required around the periphery of the building, though the amount of fill would not exceed 1m before battering to natural ground level. Overall the development is considered to comply with regard to cut and fill controls.

A number of minor variations proposed alone are considered acceptable, however overall it is considered that the proposal is not consistent with Section A1 TDCP 2008 given the significant extent and number of variations outlined above and the anticipated cumulative negative impact to the amenity of the residents and neighbours that results and as such, overall, these variations cannot be supported.

Section A2-Site Access and Parking Code

Basement car parking is proposed in addition to at grade visitor car parking within the rear setback of the property. The basement plan is shown below.



Basement and ground level car parking configuration

Units 6 & 7 have two spaces, unit 2 has one space. Units 1, 3, 4 & 5 have two spaces in tandem. Two spaces have been allocated for visitor car parking. A Traffic Impact Assessment by Bitzios Consulting has been submitted.

Section A2 requires the following car parking allocation for the development:

- 1 per each 1 bedroom unit,*
- 1.5 per 2 bedroom unit, and*
- 2 spaces for 3 or more bedroom units*
- Plus 1 space per 4 units for visitor parking*

Therefore 15 spaces are required and 15 spaces are provided.

It is noted that four of the seven dwellings are burdened with a tandem car parking configuration. Three of the four dwellings are three bedroom apartments.

Control C9 within Clause A2.2.3 states that *tandem or stacked parking is not generally favoured*. It also states that *tandem or stacked parking will not be permitted for customer/public parking or multi dwelling housing*;

The proponent provided the following justification:

The proposed tandem parking has been included for residential parking located in the basement for the residential flat building. The residential users of the parking are considered not to be inconvenienced with this parking arrangement and the tandem spaces will be for the individual units only. The provisions of tandem parking will not adversely affect the function of the site with all vehicles being able to enter and exit the site in the forward gear.

It is noted that in addressing the variation, the proponent did not address the relevant objectives which are the following:

1. *Ensure car park, roadway and pedestrian access layout is legible, safe and convenient for all users.*
2. *Ensure private vehicle parking is provided commensurate to the intensity and nature of the land use/s and expected traffic movements.*
3. *Achieve appropriate separation between pedestrians, loading and heavy vehicles.*
4. *Provide flexibility for reduced provision of parking in localities where demand is likely to be lower.*
5. *Prevent parking nuisance to adjacent properties by requiring adequate on-site car parking for development.*
6. *Ensure the provision of landscaping to enhance user comfort, amenity and improve the microclimate without compromising traffic safety or surveillance security.*
7. *Provide landscaping to break up the harsh visual impact of large parking areas, and mitigate any noise and light spill impacts on adjoining properties.*

Council's Traffic Engineer has reviewed the application and considered the proposed car parking layout for the multi dwelling development as not convenient for all users and therefore the variation is not supported.

With regard to bicycle parking allocation, Section A2 requires the following for the development:

Residents: 1/ unit (2). Visitors: 1/8 units (3)

The proposal requires 8 bicycle spaces in total. The plans show 6 spaces on the plans. If approved, the consent can be conditioned to require 7 spaces as proposed within the Traffic Impact Assessment.

Further, Council's Traffic Engineer has reviewed the application and made the following additional comments:

The application was accompanied by a Traffic Impact Assessment report which identified that the peak hour traffic generation of the development being 7 units would have negligible impact on the adjacent street network.

It is noted that the vehicular access to the site is from Kingscliff Lane and the existing access from Marine Parade will no longer be required. Accordingly, it is recommended that the following conditions of consent be applied should you recommend approval.

Overall, given the above assessment of the development which features a tandem car parking arrangement for four of the seven dwellings, the proposal is not considered to be in accordance with Section A2 of Tweed Development Control Plan 2008.

Section A3-Development of Flood Liable Land

The aim of this Section is to set detailed standards for land development in order to minimise the adverse effect of flooding on the community.

The site is identified as being located within the Probable Maximum Flood (PMF) area between the 7.9m AHD and 8.0m AHD contour lines. The proposal has a habitable floor level of 8.25m AHD and is above the PMF height. The site also has access to Marine Parade which is mapped above the PMF level and provides permanent evacuation routes to land above PMF level. The preparation of a Flood Response Assessment Plan is not considered required in this instance.

The proposal is considered satisfactory with regard to the requirements of Section A3.

Section A9-Energy Smart Homes Policy

A BASIX certificate has been submitted and the proposal meets all relevant requirements. The proposal is considered satisfactory with regard to the requirements of Section A9.

Section A11-Public Notification of Development Proposals

The development application was advertised for a period of 14 days effective from 20 July 2016 to 3 August 2016 and six submissions were received. These submissions have been addressed later in this report. The proposal is considered satisfactory with regard to the requirements of Section A11.

Section A13-Socio-Economic Impact Assessment

The purpose of this Section are to Ensure that Development Applications for certain developments that are likely to have a significant social and/or economic impact are properly considered. In accordance with clause A13.5.1, the application did not require a socio-economic impact statement and as such, this Plan is considered satisfied.

Section A15-Waste Minimisation and Management

This Section of the TDCP 2008 aims to minimise the generation of construction/demolition waste and facilitate effective ongoing waste management practices consistent with the principles of Ecologically Sustainable Development (ESD).

Council's Waste Management Unit reviewed the application and advised the following:

A waste management plan (WMP) has been provided and addresses the construction and operational phase of the proposal. The plan has been prepared in general accordance with TSC Development Control Plan Section A15 2008 and by a suitably qualified person and is supported by Architectural Plans (Appendix A). The WMP concludes that there is adequate area available on this site to provide suitable storage facilities for waste generated during operation of the proposal. Roadside collection of waste by the domestic waste contractor is considered feasible and will be the responsibility of residents to present their bins to the kerbside. No further considerations required.

Therefore the proposal is considered acceptable in this regard.

Section A16-Preservation of Trees or Vegetation

The purpose of this Section of the DCP (Preservation of Trees or Vegetation) is to protect, insofar as it is reasonably possible, the biodiversity, amenity and cultural values of the Tweed Shire through the preservation of trees and vegetation.

The proposed development site is developed with no significant vegetation proposed for removal. It is noted that a large frangipani tree is proposed for relocation however the proposal is considered acceptable having regard to the provisions of this Plan.

Section B4-West Kingscliff

The objectives of this section are related guiding subdivision development of West Kingscliff and as such the controls do not specifically apply to the subject development.

B9-Tweed Coast Strategy

A purpose of this Section is set Council's policies for the management of the growth of the Kingscliff and District of the Tweed Coast. The subject site is within an existing residential area and the proposed development is not considered to be inconsistent with B9.

B25-Coastal Hazards

The subject site is not mapped as being subject to coastal hazards and as such this Section does not apply to the development.

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

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

The proposed site is located within the area covered by the Government Coastal Policy, and has been assessed with regard to the objectives of this policy. The Government Coastal Policy contains a strategic approach to help, amongst other goals, protect, rehabilitate and improve the natural environment covered by the Coastal Policy. It is not considered that the proposed development contradicts the objectives of the Government Coastal Policy.

Clause 92(1)(b) Applications for demolition

Council's Building Services Unit have reviewed the application and have no objections to the proposal particularly with regard to the demolition proposed subject to the application of conditions of consent requiring compliance with Australian Standard 2601.

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

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. The subject site is not located on the coastal foreshore and is not affected by coastal hazards. The proposed development is not considered to be inconsistent with this Plan.

Tweed Coast Estuaries Management Plan 2004

The proposed development is not within Cudgen, Cudgera or Mooball Creeks. This Plan is therefore not relevant to the application.

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

The subject site is not located within the Cobaki or Terranora Broadwater (within the Tweed Estuary), with this Plan therefore not relevant to the proposed development.

(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 context of this development is clearly subtropical beachside residential accommodation. The neighbourhood features a mix of single to three storey buildings of varied densities, architectural roof features with generous side setbacks and landscaping. The existing character is relatively consistent with the

desired neighbourhood character of this location, with the only transition towards a subtly higher density.

The applicant states the following:

The intent of the design is to offer a highly considered beachside living typology – the apartment development aims to reinforce the idea of coastal living. Efficient floor plans offer holistically considered opportunities for solar gain and shading, natural ventilation and coastal outlook.

Council's Urban Designer has provided the following comments:

... "the rectilinear building form with little roof expression lacks a sense of building form diversity, articulation and detail befitting of a subtropical coastal context. The rectilinear building form and material composition exudes more of an urban or metropolitan rather than subtropical coastal architectural character."

Further, the proposal is four storeys in height, offers minimal 1.5m side setbacks, and landscaping and nominal window openings that do not take advantage of the subtropical climate.

The proposal is not considered to be consistent with the context, setting and existing and desired neighbourhood character.

Bulk, Scale & Design

The proposal has been assessed against the *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development* as detailed above, along with TDCP 2008.

Council's Urban Designer has provided the following comments:

"The proposed building is to be constructed of concrete block with a predominantly painted rendered finish with strong heavy and dominant horizontal balustrades to the north, south and west elevations. Whilst this strong heavy horizontal banding is broken down by glass balustrading to the east (Marine Parade), fixed decorative privacy screens (to all elevations) and feature expressed joint wall cladding panels (north and south elevations), the rectilinear building form with little roof expression lacks a sense of building form diversity, articulation and detail befitting of a subtropical coastal context. The rectilinear building form and material composition exudes more of an urban or metropolitan rather than subtropical coastal architectural character."

It is concluded that the proposed building is considered to be relatively top heavy and four storeys in height, which is of a bulk and scale not consistent with the existing, nor desired character of the street. The building provides minimal setbacks and landscaping resulting in an overdevelopment of the subject site. Further, the heavy building form is not considered to contribute positively to the public domain and internally, although each dwelling enjoys an eastern coastal

foreshore outlook, ceiling height and sunlight access is substituted for an additional storey and penthouse dwelling. As such, the built form, scale and design is not considered appropriate for this location

Amenity

It is noted that Part 4 of the SEPP 65 – Apartment Design Guide provides controls that specifically measure amenity outcomes and a detailed assessment of the proposal against the Guide is provided elsewhere in the report.

The development has been designed to maximise the coastal foreshore views for each dwelling with each indoor and outdoor space oriented toward the east. However, as outlined elsewhere in the report, the proposal has attempted to design a four storey with basement residential building under 13.6 metres in height in addition to providing the minimal 1.5m side setbacks and car parking in a tandem configuration.

The as detailed elsewhere in this report, consequences of this are diminished amenity outcomes including reduced ceiling height, hindered sunlight access for residents and neighbours, nominal window openings along the southern and northern elevations and extensive privacy screening attempting to mitigate visual privacy and building separation non-compliances in addition to insufficient provision of efficient car parking and communal open space facilities.

Overall, the overdevelopment of the site is considered to contribute to unacceptable amenity outcomes.

Access, Transport and Traffic

The existing vehicular access is off Marine Parade via a concrete driveway which transitions into a grassed driveway within the property. The existing grassed driveway is located centrally through the property.

Proposed vehicular access is from the rear of the site off Kingscliff Lane. Access is proposed via 6.5m wide driveway, which grades down to a basement car parking also accessing at grade visitor parking. The proposed grades comply with Tweed Shire Councils maximum grades and transitions.

There are no footpaths located within Kingscliff Lane. The closest footpath is located in Marine Parade. There is no pedestrian footpath constructed on the frontage of the site in Marine Parade. On the eastern side of Marine Parade is an existing constructed bicycle path. If approved the proponent would be required to construct a footpath on the frontage of the site (Marine Parade) as part of the construction as conditioned. As the existing driveway will not be utilised the driveway will be required to be demolished and the driveway section placed with kerbing and appropriate fill for the construction of a footpath.

Council's Traffic Engineer has reviewed the proposal and provided the following comments:

The application was accompanied by a Traffic Impact Assessment report which identified that the peak hour traffic generation of the development being 7 units would have negligible impact on the adjacent street network.

It is noted that the vehicular access to the site is from Kingscliff Lane and the existing access from Marine Parade will no longer be required. Accordingly, it is recommended that the following conditions of consent be applied should you recommend approval.

It is beneficial for the development to have access off a local laneway rather than a Marine Parade. The increased traffic volume on Kingscliff Lane is negligible given it's a small 7 unit development and the allowable maximum is 300 vehicles per day.

Flora and Fauna

The site is already developed with single storey multi-dwelling development. The proposed development site has been previously cleared of all significant vegetation, with minimal landscaping remaining. As such, this application does not necessitate the removal of any significant vegetation. The proposal is therefore considered to be acceptable with respect to flora/fauna considerations.

Noise

Potential noise impacts may exist from the operation of swimming pool pumps and mechanical air ventilation systems. Potential impacts can be adequately controlled through the application of standard conditions.

Lighting

Outdoor and security lighting may impact on neighbouring residents. Potential impacts can be adequately controlled through the application of standard conditions.

Overshadowing

As outlined elsewhere in the report, the application has proposed a four storey with basement residential building under 13.6 metres in height in addition to providing the minimal 1.5m side setbacks. Overshadowing was raised as an area of concern within submissions made by nearby residents.

Shadow diagrams were submitted as part of the application which highlighted the extent of the proposed overshadowing of the adjacent properties, particularly living areas and private open space for the development to the south. As such, the proposed development is not considered to be acceptable with respect to the overshadowing of the development.

Additionally, the proposed development is anticipated to have significant interference with the existing solar collectors on the adjoining allotment, this is considered to not be an acceptable design outcome in relation to solar access.

Visual Privacy

SEPP 65 – Apartment Design Guide provides controls that specifically measure amenity outcomes and a detailed assessment of the proposal against the Guide is provided elsewhere in the report. Visual Privacy is specifically addressed in Control 3F Visual Privacy, Control 3B Orientation and Design Quality Principle 6: Amenity.

It is noted that the proposal requests a significant variation to the 3F Visual Privacy controls with regard to building separation, proposing a 1.5m side setback rather than 6m separation as required under SEPP 65. The visual privacy impact has been mitigated in the design. From a purely visual privacy perspective, given the lack of windows along the side elevations and extensive privacy screening along side balconies, the development could be considered acceptable however it is considered that the building design elements attain privacy by compromising access to light and air to the dwellings which overall detracts from the amenity and liveability of the dwellings.

(c) Suitability of the site for the development

Surrounding Landuses/ Development

As stated above, the existing residential neighbourhood features a mix of single to three storey buildings of varied densities and architectural roof features. The existing character is relatively consistent with the desired neighbourhood character of this location, with the only transition towards a subtly higher density. It is noted that adjoining properties are two storeys in height with the most recent development in the area located at 198 Marine Parade, featuring a building height of 11.3m and three storeys.

It is not considered that the building height at four storeys and setbacks are compliant with the development control plan as discussed elsewhere in the report and as such, the proposal is considered an overdevelopment of the subject site. The materials might be similar to other developments along Marine Parade, however the additional storey proposed (which is not consistent with any existing adjacent development), with the heavy building form, is considered to overpower rather than compliment the coastal context and existing development. It is not considered that the subject site's R3 Medium Density Residential zone objectives adequately justify the additional storey providing only one additional dwelling.

Topography

The site is gently slopes to the west towards Kingscliff Lane. The development as proposed is considered appropriate with regard to the topography of the site.

Site Orientation

The building has been designed to maximise the coastal foreshore views with each indoor and outdoor space oriented toward the east for each of the dwellings with balconies located on each elevation.

Acid Sulfate Soil

The proposal for earthworks consists of excavating the basement and removal of spoil material. The subject site is mapped as Class 5 Acid Sulfate Soils pursuant to Council mapping. The submitted Acid Sulfate Soil Investigation advises that there are no acid sulfate soils within 5m below and that the water table is between 5.4m and 6.8m below ground level. Excavations are proposed, not exceeding 2.8m below natural ground.

Council's Environmental Health Unit have reviewed the Acid Sulfate Soils Assessment by Border-Tech May 2010 submitted with the application. The report included soil sampling where eight samples were subject to laboratory analysis and results did not exceed S% or TAA thresholds. This report was considered adequate and no objections were raised in this regard.

Bushfire Hazard

The subject site is identified as bush fire prone. The application was forwarded to NSW Rural Fire Service for comment and recommended conditions of consent were provided.

Waste Management

A Preliminary Waste Management was submitted as part of the application which addressed construction waste and ongoing waste management. The proposed development is to be serviced via individual bins. Each unit will be provided with a 240lt recycling 'wheelie bin' and 140lt refuse 'wheelie bin'. The bins are to be relocated to the Kingscliff Lane frontage by the unit tenant on the relevant day for collection. The individual bins will be stored within each unit's garage area. Ease of access to the bin storage is questionable however the proposal overall is considered acceptable in this regard.

Groundwater/Excavation

The Acid Sulfate Soil Assessment prepared by Border-Tech dated May 2010 identified groundwater was encountered at about 5.4m (BH1) below existing ground surface levels. Council's Environmental Health Unit has found this assessment acceptable and confirmed that groundwater is not anticipated to be encountered at the maximum depth of excavation and therefore a dewatering management plan is not required. In the event of a consent being issued, a condition can be applied that in the event that groundwater is encountered during excavations all work shall cease and preparation of a dewatering management plan shall be undertaken to the approval of Council's General Manager or delegate.

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

The development application was advertised for a period of 14 days effective from 20 July 2016 to 3 August 2016 and six submissions were received. All objectors were residents of Marine Parade.

The letters of objection generally methodically highlighted the many errors in the submission and variations that were required and not formally requested.

The general theme of the objections are reflected in the following statement:

“The nature of the variations sought are not minor from the perspective of neighbours and will greatly impact upon neighbours’ enjoying of residing in Kingscliff”.

The proponent stated:

It is noted there were several duplicate submissions received by Council which included uninformed responses to the tables of assessment with no planning foundation for the majority of items.

The issues raised are addressed within the following assessment.

Bulk and Scale & Public Domain Amenity

Objectors’ comments:

- *“The basic problem is the whole development is too large for the block of land.”*
- *“There are no other 4 storey residential flats in the region. The proposed development will be the largest such building in the area.”*
- *“Well out of scale of surrounding buildings and of course well above the stated three-storey limit for Marine Parade in the new Kingscliff Plan. I am aware of no other four-story buildings on the Parade”.*
- *“The direct neighbours both sides of the proposed developments are houses. The bulk and scale of this development far exceeds that of existing neighbours. All other similar residential flat buildings in the region are limited to 3 storeys”*
- *“There are no other 4 storey residential flats in the region. The proposed development will be the largest such building in the area.”*
- *“considering that the building is four storeys high... it could feel quite overpowering.”*
- *“The proposed development does not consider the older and more established buildings, particularly neighbours.”*
- *“Ocean views for both direct neighbours will be considerably affected.”*
- *“The development generally looks to fit with others on Marine Parade”.*

Applicant’s response:

The density, scale and setback is compliant with the requirements of the development control plan and is also assisting to improve the desired amenity as

evident when compared to similar residential flat buildings along Marine Parade. The building's form and materials develop complimentary characteristics associated with coastal living and lifestyle. Articulated building facades used in conjunction with decorative fixed and sliding balcony screens assist to break up the visual bulk of the building providing privacy to adjoining neighbours, and introduces movement and change to the building's form. The proposal is of an acceptable scale, is appropriate for the subject site and is in keeping with the intent of the zone.

Officer assessment:

It is not considered that the bulk, scale and setbacks are compliant with the development control plan as discussed elsewhere in the report. The materials might be similar to other developments along Marine Parade, however the additional storey proposed (which is not consistent with any existing adjacent development), with the building form featuring strong horizontal banding with no vertical setback or roof feature to lighten the appearance of the building, is considered to overpower rather than compliment the coastal context and existing development. It is not considered that the subject site's R3 Medium Density Residential zone objectives adequately justify the additional storey providing only one additional dwelling.

Building Height

Objectors' Comments:

- *"The 12.4m height (as stated in the submission) is grossly misleading as this is measured from top of ground floor with is up to 2m higher than existing natural ground level."*
- *The submission "shows Storeys/Height – Four (4) storeys/ 12.4m. Kingscliff frontage is currently limited to 3 storeys and over 9,000 residents have signed a petition to maintain 3 storeys as the limit.*
- *"There are no other 4 storey residential flats in the region. The proposed development will be the largest such building in the area."*
- *The proposed residential flat building "does not comply. The definition is 3 storeys (not 4)".*
- *"Variation should not be granted. Why should the TLEP 2014 over rule an existing and well accepted building height standard? In addition, this proposed development does not comply with the 13.6m limit provided by the TLEP2014 anyway" which is consistent with Council's assessment of the original set of plans. The original proposal could have been considered to be 14.49m at worst."*
- *With regard to the wall height increase "unjustified".*
- *"For direct neighbours (both houses), these side walls will be overpowering".*

Applicant's response:

Revised plans demonstrate compliance with the height restriction of 13.6m.

Officer assessment:

The proponent provided no further justification to the variation to the 12.2m maximum building height control under TDCP 2008 which is the control the objectors are referring to. As stated elsewhere in the report, although the development meets the highest order primary controls under TLEP 2014, the proposed four storey residential flat building is considered an overdevelopment of the site as it does not comply with the specific SEPP 65 & TDCP controls for residential development which require floor to ceiling heights of 2.7m which if complied with would result in a three storey building with a maximum height of 12.2m which is the nominated control in the TDCP. The proposed development seeks approval for four storeys with a maximum height of 13.5m, which results in a failure to meet many amenity outcomes.

Side setbacks, Sunlight access & Overshadowing

Objectors' comments:

- *"The shading diagrams clearly show that the two large solar panel arrays on the southern neighbour's house will be almost completely in shadow for most winter days."*
- *"The proposed development will significantly over power the direct two neighbours. In addition, views of Mount Warning from parkland will be extinguished"*
- *"The external living areas wrap around the living rooms and directly look over neighbours' yards, living areas etc"*
- *"The distance between the building and the dividing fence on the northern side is only 1500mm which is quite narrow, considering that the building is four storeys high... it could feel quite overpowering."*
- *"There seem to be not many three story blocks so close to boundaries on Marine Parade"*
- *"Clearly doesn't comply with this requirement [Design Control 7 – Sunlight Access] and in fact are requesting a variation" [without justification].*
- *The development "does not comply [with control E]. As can be seen from the shadow diagrams of the next door property on the southern side, large sections of the yard and some living areas in the house will receive no sun in the winter months. All of these areas currently enjoy full sunshine throughout the day in the winter months. The alleged existing shading from the existing trees shown on the shadow diagrams is blatantly incorrect". (Upon site inspection, Council officers concur that existing tree shade does not exist).*
- *With regard to sunlight access, the proposed dwellings 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 to a minimum side setback of 4 metres. The proposal "clearly doesn't comply with this requirement and in fact are requesting a variation".*

Applicant's response:

Confusion in interpreting the shadow diagrams was provided within the duplicate submissions. The revised plans clearly indicate the proposal does not overshadow the neighbouring properties by more than 50% and does not reduce

the availability of sunlight to less than three hours during the winter solstice of 21st June each year.

Officer assessment:

As stated elsewhere in the report, the proposal is not considered to comply with SEPP 65 and TDCP 2008 controls in relation to overshadowing, sunlight access and setbacks which in addition to building height variation is considered to result in a poor amenity outcome for the proposed dwellings and neighbours.

Visual Privacy

Objectors' comments:

- *“Large balconies at the front of the proposed development wrap around the living room and look directly in and down onto neighbours”.*

Officer assessment:

The proponent did not provide a response. It is also noted that the Visual Privacy controls under SEPP 65 have been significantly varied (from 6m to 1.6m) with regard to the building separation distances required from the boundary. The visual privacy concerns from the side balconies have attempted to be mitigated by extensive privacy screening and lack of windows along the northern and southern elevations of the building. This variation request in itself could be considered acceptable however as discussed elsewhere in this report the many variations proposed cumulatively result in a development that cannot be supported by Council officers.

Vegetation Removal

Objectors' comments:

- *“The proposal will require removal of all existing trees and vegetation”.*
- *“This is clearly a misleading statement as its obvious existing trees and vegetation will have to be removed”.*

Officer assessment:

The proponent did not provide a response to this issue raised however it is considered that the existing vegetation at the subject site is not significant and any consent will include conditions for landscaping that will improve the overall vegetation presence at the site in accordance with the development controls.

Pool Setback, Deep soil zones

Objectors' comments:

- *“Why should this variation be approved? The basic problem is the whole development is too large for the block of land”.*

Officer assessment:

The proponent did not provide a response to this matter. These minor variation requests alone could be considered acceptable as discussed elsewhere in this report however the objector's point is consistent Council's overall view that the proposal is an overdevelopment of the site and the many variations proposed cumulatively result in a development that cannot be supported by Council officers.

Topography, Cut and Fill

Objectors' comments:

"The front yard will be filled... This will put the front yard of the proposed development some 800mm higher than the southern neighbours yard."

Cut and fill setbacks do not comply and *"it appears the intention is to use the existing old paling fence to act as a retaining wall with the southern neighbour"*

Regarding fencing *"given the front yard of the proposed development will be filled, existing timber paling fences can't be reused as retaining walls."*

"There is an average slope from front to back of >3%"

Officer assessment

The proponent did not provide a response to this issue. It is considered that the cut and fill proposed in accordance with the plans will not result in additional retaining walls and is considered compliant in this regard.

Demolition

Objectors' comments:

- *"Due to the age of these existing buildings, neighbours have significant concerns regarding the wind borne hazardous materials such as asbestos. As direct neighbours, have can we be sure we'll be protected?"*

Applicant's response

Concern was raised in relation to airborne hazardous materials during demolition of the existing structures on site. A demolition plan was included with the submission of the application. Any contractor commissioned to undertake the demolition works has several Australian Standards to operate within in order to ensure there are no risks to neighbouring properties such as airborne particle abatement and management during the demolition phase. It is anticipated that Council's Environmental Health unit will provide informed judgement on the demolition of any structures on site, and condition the proposed development accordingly.

Officer assessment

By way of conditions of consent, any demolition works are to be undertaken in accordance with Australian Standards the ensure contractors' and adjoining residents' protection and in this regard the proposal is considered acceptable.

Contributions

The submission describes the current use of the subject site and states "...Council is requested to apply the applicable credits to the proposal."

Objectors' comments:

The objector commented that "*This statement is misleading as the current dwellings are generally occupied by a single person.*"

Applicant's response:

There was comment in relation to contributions which demonstrated a lack of understanding in terms of collection of contributions for development. Council are experienced and well equipped to calculate the relevant contributions in relation to this proposal and these contributions will be conditioned with any consent issued.

Officer assessment:

In the event of the issue of any consent, Section 64 and Section 94 developer contributions will be applied in accordance with Council's relevant Plans. The proponent's statement will not be the guide for how the contributions will be calculated.

(e) Public interest

The issues raised as a result of this proposal are considered to be in conflict with the interest of general public. The development is generally inconsistent with the State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development and Tweed Development Control Plan 2008 and as such, the multiple variations this development proposes are considered to undermine the Plans themselves which is not considered to be in the public interest.

OPTIONS:

1. Adopt the recommendations made and refuse the development application; or
2. Grant in-principle approval for the development application and that the officers submit a report to the next Planning Committee Meeting with recommended conditions of consent.

Option 1 is recommended.

CONCLUSION:

The subject application seeks consent for the demolition of existing structures and construction of a residential flat building comprising seven (7) units and swimming pool. The proposed building is four (4) storeys in height and provides for basement car parking with access off Kingscliff Lane. The proposed development requires multiple variations to controls under State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development and Tweed Development Control Plan 2008. The multiple variations cumulatively result in a significant reduction in liveability to the future residents and neighbours in addition to the heavy, four storey development being out of character with the neighbourhood. The proposal is not supported by assessing officers and is recommended for refusal.

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 Council's determination.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

3 [PR-PC] Review of Determination of Development Application DA15/1064 for a Redevelopment of Waterslide Playground at Lot 1 DP 1014298 No. 1-3 Tweed Coast Road, Hastings Point

SUBMITTED BY: Development Assessment and Compliance

FILE REFERENCE: DA15/1064

Validms



Civic Leadership

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:

Council has received a request for a Section 82A Review of Determination for the refusal of a development application for the redevelopment of a waterslide playground for the subject property. The redevelopment includes the removal of two existing waterslides and the installation of two larger and longer enclosed slides. The proposed works are located to the northeast of the site, adjacent to the Tweed Coast Road site boundary.

The original application was lodged in December 2015 and Council resolved to refuse the development application at the Planning Committee meeting of Thursday 7 July 2016. It is noted that the officer recommendation was for a conditional approval. Council resolved to refuse the development application for the following reasons:

1. The proposed facility is considered an overdevelopment of the site and not in keeping with the low key village scale character.
2. Unacceptable noise impacts to surrounding residents and environment.
3. Unacceptable visual impacts along Tweed Coast Road and to the neighbours.
4. This larger proposal would necessitate the provision of the 30m Tweed Coast Road setback to be provided.
5. The lack of capacity to provide adequate vegetation screening.
6. The potential for the development to attract public use not strictly associated with the caravan park is not considered to be orderly and economic use of the land or supporting the welfare of the community.
7. Taking into account the large number of objections, the proposal is not considered to be in the public interest.

Under the provisions of Section 82A of the Environmental Planning and Assessment Act 1979 the applicant has requested that Council review this determination. The review of determination has been lodged and must be determined within six months of the original determination date (7 July 2016).

The provisions of the Environmental Planning and Assessment Act, 1979 require presentation of this review of determination to Council where the original application was determined by Council.

The request for the Review of Determination was received by Council on 16 September 2016. The applicant has advised that the plans for the development have been amended as part of this review. The height of the platform has been reduced from 8.5m to 8.2m and the plans now include 1.8m high noise barrier at the eastern side of the waterslide platform and to the access stairs. Furthermore, the colour of the slides have been altered to exclude bright colours. Otherwise the development is the same as that previously assessed by Council.

As part of the review of determination process the application was notified to surrounding properties and to persons who made submissions through exhibition of the Development Application. Through the exhibition of this application, approximately 194 public submissions have been received.

In addition, the applicant has provided a submission which contains the following:

- 1,322 letters of support from 'guests and the local community',
- 39 letters(containing 56 signatories) from residents of the Caravan park,
- 14 letters from business who rely on the viability of the Caravan Park; and
- 57 letters of support from Caravan Park staff.

A submission was also received from NSW Office of Environmental Heritage (OEH), however the matters raised in this submission were subsequently addressed by the applicant.

The submissions received have been addressed within the report below.

The applicant has also indicated that '*Should the refusal of the application not be overturned with this 82A Review, the applicant will proceed to lodging an appeal against Council's refusal of the application.*' Therefore, the options contained in this report include the defending of any appeal lodged by the applicant in the Land and Environment Court.

The original development proposal was considered to be generally consistent with relevant environmental planning instruments and Council policy requirements. The development is considered to remain suitable for the subject site through this review of determination, given its permissibility at this location and its nature, being an ancillary component to the existing caravan park.

Conditional development consent of the application is recommended.

RECOMMENDATION:

That the Review of Determination of Development Application DA15/1064 for a redevelopment of waterslide playground at Lot 1 DP 1014298 No. 1-3 Tweed Coast Road, Hastings Point be approved subject to the following conditions:

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and the following plans identified as:
 - Site Plan (Sheet S-1), prepared by EXPANDesign and dated 2 May 2016;
 - Plan & Side Elevation, prepared by Swimplex Aquatics (undated), as amended in red;
 - Front View, prepared by Swimplex Aquatics (undated), as amended in red;
 - Design Drawing (Rev 4), prepared by Swimplex Aquatics and dated 5 February 2015:and,
 - S82A Application for Reconsideration of Development of Development Application DA15/1064, prepared by the applicant (undated), as amended in red;

except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0115]
3. Landscaping within the waterslide playground area is to comply with the principles of Appendix 5 of 'Planning for Bushfire Protection 2006'.

[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

4. 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 for the Tweed Coast Road Elevation at the proposed development is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate. This plan is to demonstrate front setback landscaping providing mature vegetation trees and a bushy and green appearance to the street as per the requirements of Tweed Shire Council Development Control Plan Section B23 - Hastings Point Locality Based Development Code.

[PCC0585]

PRIOR TO COMMENCEMENT OF WORK

5. The erection of a building in accordance with a development consent must not be commenced until:
 - (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and

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

[PCW0215]

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

[PCW0225]

- 7. 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]

DURING CONSTRUCTION

- 8. 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]

9. 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]

10. 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]

11. 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]

12. 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]

13. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover NSW, Work Health and Safety Regulation 2011.

The proponent shall also observe the guidelines set down under the Department of Environment and Climate Change publication, "A Renovators Guide to the Dangers of Lead" and the Workcover Guidelines on working with asbestos.

[DUR0645]

14. 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]

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

[DUR1045]

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

[DUR1075]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

17. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).
[POC0205]
18. Prior to occupation the applicant or business operator is to be registered in Council's Public Swimming Pool Register and pay the appropriate fee under Council's schedule of fees and charges.
[POC1095]

USE

19. The development shall be carried out strictly in accordance with the general provisions and Part 6 Conclusions of the Noise Impact Assessment (Reference: ATP150204-R-NIA-02) prepared by ATP Consulting Engineers dated August 2016 unless varied by conditions of this consent to the satisfaction of the General Manager or his delegate.
[USE0035]
20. 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]
21. Activities occurring at the premises must be carried out in a manner that will minimise emissions of dust from the premises.
[USE0145]
22. 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]
23. Hours of operation of the water slide component of the water park are restricted to the hours between 8am and 6pm on any day, no entrance to or use of the water slides is permitted outside of these hours.
[USE0185]
24. 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]

25. Upon receipt of a noise complaint that Council deems to be reasonable, the operator/owner is to submit to Council a Noise Impact Study (NIS) carried out by a suitably qualified and practicing acoustic consultant. The NIS is to be submitted to the satisfaction of the General Manager or his delegate. It is to include recommendations for noise attenuation. The operator/owner is to implement the recommendations of the NIS within a timeframe specified by Council's authorised officer.

[USE0245]

26. All plant and equipment installed or used in or on the premises:

- (a) Must be maintained in a proper and efficient condition, and
- (b) Must be operated in a proper and efficient manner.

In this condition, "plant and equipment" includes drainage systems, infrastructure, pollution control equipment and fuel burning equipment.

[USE0315]

27. The public swimming pool shall be operated in accordance with the Public Health Act 2010, Part 3 of the Public Health Regulation 2012 and the current NSW Health Public Swimming Pool and Spa Pool Advisory Document, NSW Ministry of Health 2012.

[USE0985]

28. Use of the water slide area shall be restricted at all times to permanent and temporary residents of the caravan park and their registered guests only. It shall not be open to the public.

A register is to be maintained detailing any guests who utilise the water play area, specifying the permanent/temporary resident of which they are guests of and the site no. of the permanent/temporary resident.

A copy of this register is to be submitted to Council for review by the General Manager or delegate upon request.

29. The noise barrier shall be constructed and maintained along the whole north-eastern side of the raised platform in accordance with the Noise Impact Assessment (Reference: ATP150204-R-NIA-02) prepared by ATP Consulting Engineers dated August 2016) to the satisfaction of the General Manager or his delegate.

30. Public announcement (PA) systems, whistles or loud control devices and amplified music system shall not be used in association with the water play park.

31. The number of patrons permitted on the water park raised platform shall be restricted to one person per square metre to the satisfaction of the General Manager or his delegate. Whilst ever the water park is in use direct caravan park staff supervision shall be provided to ensure that this requirement is achieved.

[USENS01]

REPORT:

Applicant: Ladehai Pty Ltd
Owner: Ladehai Pty Ltd
Location: Lot 1 DP 1014298 No. 1-3 Tweed Coast Road, Hastings Point
Zoning: RE2 - Private Recreation
Cost: \$650,000

Background:

Council at its meeting of 7 July 2016, resolved to refuse this development application for the redevelopment of a waterslide playground at 1-3 Tweed Coast Road, Hastings Point.

The application related to the removal of two existing waterslides and their replacement with longer enclosed slides with inbuilt slow down lanes. The proposed slides were larger in scale, with the overall development having a maximum height of 9.5m based on the submitted plans. A minor extension of the swimming pool is also proposed.

The waterslide area was to be located within the North Star Holiday Resort site and the development was stated as being in association with this development. The total area covered by the waterslide was approximately 160m².



Waterslide Development refused by Council

Proposed Modification to Development

As part of this review the plans for the development have been amended by the applicant. The height of the platform has been reduced from 8.5m to 8.2m and the development now includes a 1.8m high noise barrier at the eastern side of the waterslide platform and to the access stairs. Furthermore, the colour of the slides have been amended to exclude bright colours. These amendments have been demonstrated on the below images. Otherwise the development is the same as that previously assessed by Council.



Updated Waterslide Development (Noise barrier proposed and amended colour scheme)



Waterslide Development including Noise Barrier Location (from Noise Impact Assessment)

Site

The subject site is legally described as Lot 1 DP 1014298, known as No. 1-3 Tweed Coast Road, Hastings Point. The site mainly contains the North Star Holiday Resort and Caravan Park, although it is noted that there is also a service station to the east site boundary. The existing Approval to operate is for 179 Long Terms Sites, 136 Short Terms sites, 19 camp sites and 179 dwelling sites.

The site is bordered by road reserve to the east (Tweed Coast Road- a Classified Road) and south/south west (Creek Street). To the north and north-west the property borders Crown Land (Cudgen Nature Reserve).

The site is irregular in shape, with an area of 9.962 hectares and is relatively level.

This proposed development is to be located to the north-east of the site, in close proximity to Tweed Coast Road which borders the site at this point and the existing service station on site. The development is to be located adjacent to existing water play equipment on site.

Land to the south and east (across Tweed Coast Road) of the site is occupied by residential developments, comprising a mix of residential development types. It is noted that much of this land is zoned R3 Medium Density Residential.

Development History

DA15/1064: redevelopment of waterslide playground. Refused 7 July 2016.

The reasons of refusal stated the following:

1. The proposed facility is considered an overdevelopment of the site and not in keeping with the low key village scale character.
2. Unacceptable noise impacts to surrounding residents and environment.
3. Unacceptable visual impacts along Tweed Coast Road and to the neighbours.
4. This larger proposal would necessitate the provision of the 30m Tweed Coast Road setback to be provided.
5. The lack of capacity to provide adequate vegetation screening.
6. The potential for the development to attract public use not strictly associated with the caravan park is not considered to be orderly and economic use of the land or supporting the welfare of the community.
7. Taking into account the large number of objections, the proposal is not considered to be in the public interest.

Applicants Response to Reasons for Refusal

The applicant has provided a detailed response to the reasons of refusal. These are summarised below

1. ***The proposed facility is considered an overdevelopment of the site and not in keeping with the low key village scale character.***

An “overdevelopment”, in Planning terms, is generally referred to as being a development that is too high or bulky for the site on which it is situated. Neither is the case in this instance.

The height of the waterslides does not exceed the 10m height limit contained within the Tweed LEP 2014. The development was carefully designed to ensure that the structure was compliant with the height limit which the Local Environmental Plan specifies is suitable for the Holiday Park site.

For the site of the waterslides, a 10m height limit is specified by the LEP. However, at the rear of the holiday park, the height limit is only 8.0m. This indicates that Council anticipates development up to 10m at the location of the waterslides, and that Council accepts that a 10m high development will not contravene the objectives of Clause 4.3 of the LEP. The platform height of the slides has been reduced to a height of 8.2m, and a 1.8m high noise barrier is proposed at the platform, resulting in an overall height of 10.0m.

The other issue to consider in relation to ‘overdevelopment’ is the bulk of the structure. In this instance, the waterslides are a relatively visually transparent development. The most ‘solid’ part of the development will be the stairwell, which is predominantly open

with noise barriers on the eastern elevation, and the platform, which will have an open railing on three sides and a noise barrier with a height of 1.8m on the eastern side. The platform will have a length of 9.5m and will be sited with an angled setback to the Tweed Coast Road.

Furthermore, a structure can only appear 'bulky' if it is visible from a public area, which is not the case in this instance. The waterslides will be screened by the vegetation at the perimeter of the site which includes a dense planting of palm trees with heights of up to 15m. The established vegetation is 5m higher than the waterslide structure.

Given that the watersides are compliant with the 10m height limit for the site and as the development will not appear as being 'bulky' from any public area, the waterslides could not reasonably be considered to be an 'overdevelopment' of the site and cannot be considered to impact on the low-key village character of Hastings Point.

2. Unacceptable noise impacts to surrounding residents and environment.

A Noise Assessment was provided with the initial Development Application. The Noise Assessment was considered by Council's Environmental Health Department who found the information satisfactory and conditions of approval were recommended requiring that the development be carried out in accordance with the provisions of the Noise impact Assessment.

It is assumed that this reason for refusal may have stemmed from complaints from nearby residents in the area who raised the issue of noise created by children using the proposed slides, rather than the usual issue of mechanical noise.

To address this issue and to allay residents' concerns, the application plans have been amended to include a noise barrier located at eastern facade of the platform the top of the slides, and along the eastern edge of the stairwell.

The Noise Impact Assessment has been updated and revised to include additional detail on the likely noise impact of children using the slides. Whilst not considered essential, the report now includes a recommendation that a 1.8m high noise barrier be constructed along the north eastern side of the raised platform, and that the number of patrons on the raised platform be restricted to approximately one person per square metre.

3. Unacceptable visual impacts along Tweed Coast Road and to the neighbours.

This reason for refusal indicates that the Councillors were of the opinion that the structure would be highly visible from public areas including the Tweed Coast Road and neighbouring properties (assumed to be residential sites on the eastern side of the Tweed Coast Road).

However, information was provided to demonstrate that the existing landscaping will effectively screen the structure from public areas. The development application was accompanied by a photo montage, which has again been attached to demonstrate the likely visual impact of the structure.

The colours of the structure have been amended so that the slides are blue and green. Reds and yellows will be avoided. The green and blue alternate colouring will assist in blending the structure into the existing colours of the vegetation and pool area.

A landscape consultant has also been commissioned to address the adequacy of the vegetative screen.

Accordingly it is submitted that the visual impact of the development to the general public and to nearby residential properties will be minimal due to the effectiveness of the existing landscaping at the site.

4. This larger proposal would necessitate the provision of the 30m Tweed Coast Road setback to be provided.

The above reason for refusal refers to a “30m” road setback requirement. It is not known where the 30m requirement originates from. Council’s DCP for Hastings Point refers to a requirement for a 10m wide landscaped buffer at the front of this site.

The DCP does not require a 30m landscaped setback, as referred to in the reason for refusal. The proposed development will maintain the existing landscaped setback which varies in width from 3.0m to 4.5m in width. The existing perimeter landscaping will not be reduced.

The development and site will achieve the objectives of the Hastings Point DCP of “ensuring a well landscaped front setback along the Tweed Coast Road” notwithstanding that the landscaped setback is currently less than the 10m recommended buffer. The density of planting and effectiveness of the mature vegetation in screening the development compensates for the existing, and proposed landscaped buffer being less than 10m wide.

Accordingly this reason for refusal is unfounded and incorrect.

5. The lack of capacity to provide adequate vegetation screening.

A qualified landscape consultant was appointed to review the existing landscaping and to make recommendations on how the buffer could be improved to enhance landscaped screening.

The conclusion was that the existing landscaping at the site is highly appropriate for the location and provides an effective visual screen to the site and to the proposed development. It was recommended that the existing vegetation and management practices be maintained. No additional plantings were deemed necessary.

6. The potential for the development to attract public use not strictly associated with the caravan park is not considered to be orderly and economic use of the land or supporting the welfare of the community.

This issue was addressed in detail with the initial Development Application. All usage of the waterslides is strictly associated with the Holiday Park. There is absolutely no evidence that the water park is being used in any way not directly associated with the core operation of the Holiday Park.

This is an issue which would have been appropriately addressed by the recommended Conditions of Approval contained within the report from the Director of Planning and Regulation. Condition 27 of the draft conditions of approval required the following:

27. *Use of the water slide area shall be restricted at all times to permanent and temporary residents of the caravan park and their registered guests only. It shall not be open to the public. A register is to be maintained detailing any guests who utilise the water play area, specifying the permanent/temporary resident of which they are guests of and the site no. of the permanent/temporary resident. A copy of this register is to be submitted to Council for review by the General Manager or delegate upon request.*

It is unreasonable to assume that the development will be operated in breach of conditions of approval.

7. *Taking into account the large number of objections, the proposal is not considered to be in the public interest*

The vast majority of the objections received were not from local residents. Council's acceptance and validation of their objections by refusing the application on the grounds of the "public interest" indicate that Council gives equal weight to tourist views on the proposal.

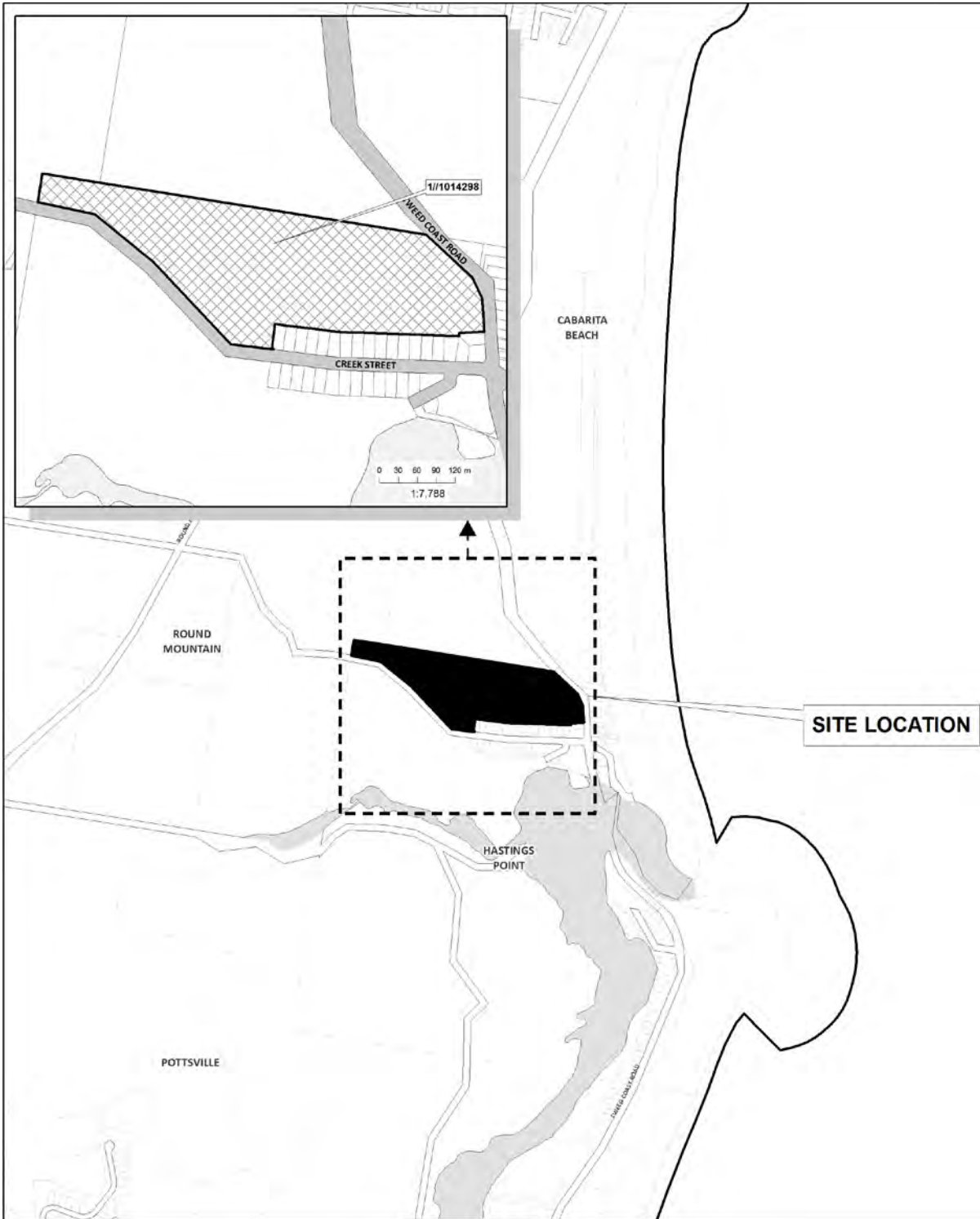
The "public interest" is therefore taken to be the interests of both the local residents and the visiting public.

It is noted that the Council will notify this application for Review of the determination of the DA. The applicant will strongly encourage those people who have expressed their verbal support for the development also convey their support in writing to Council during the upcoming exhibition period.

Tourists who have stayed at the Holiday Park will be invited and encouraged to lodge submissions to Council. It is anticipated that the letters of support that Council will receive will far outnumber the objections.

There are enormous economic benefits to the general public from the operation of the park. The continued upgrading of the facilities at the park is required to ensure that the economic benefit continues. As such, the development will have direct economic benefits to the community and is therefore has significant "public interest" benefits.

SITE DIAGRAM:



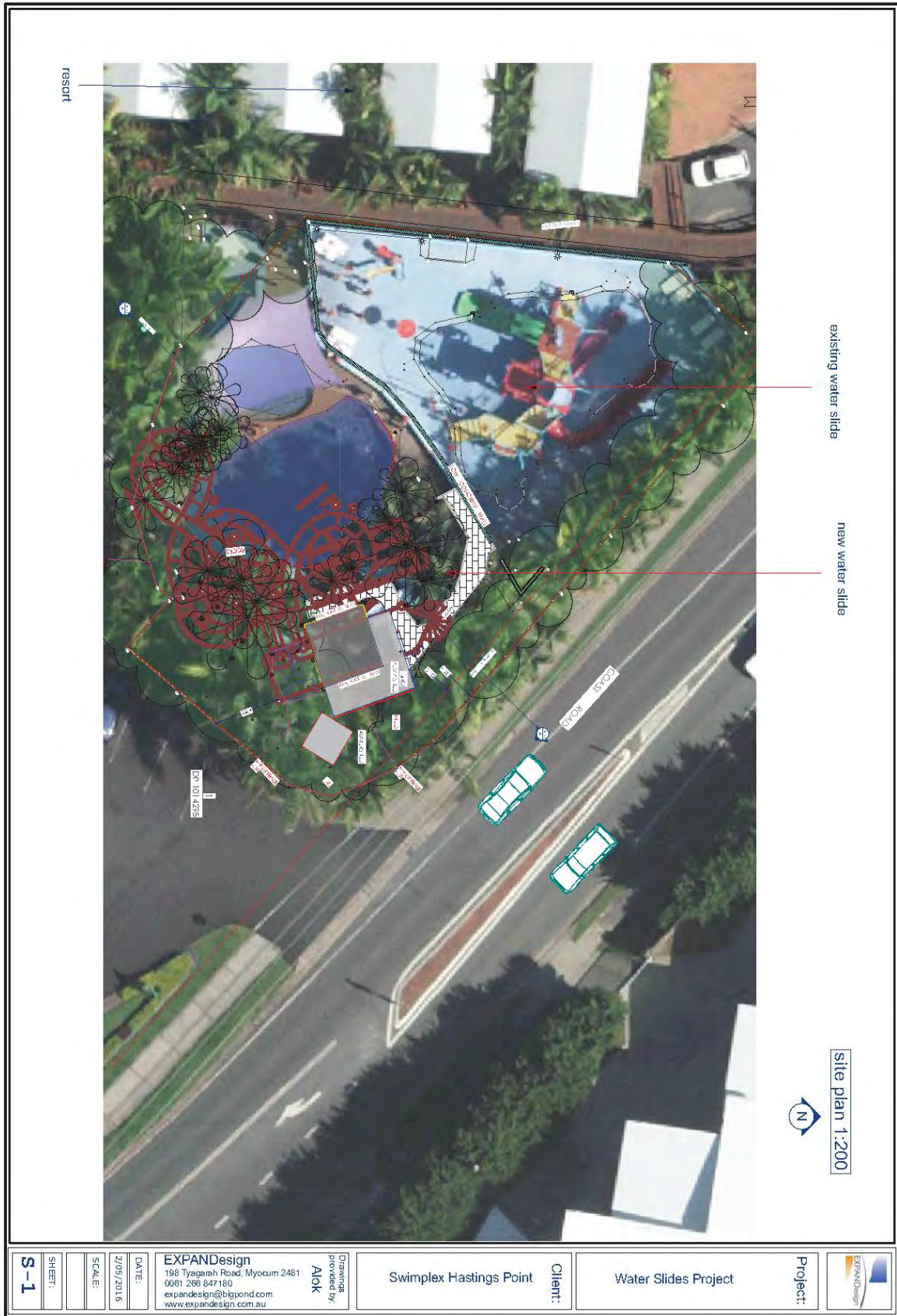
Locality Plan

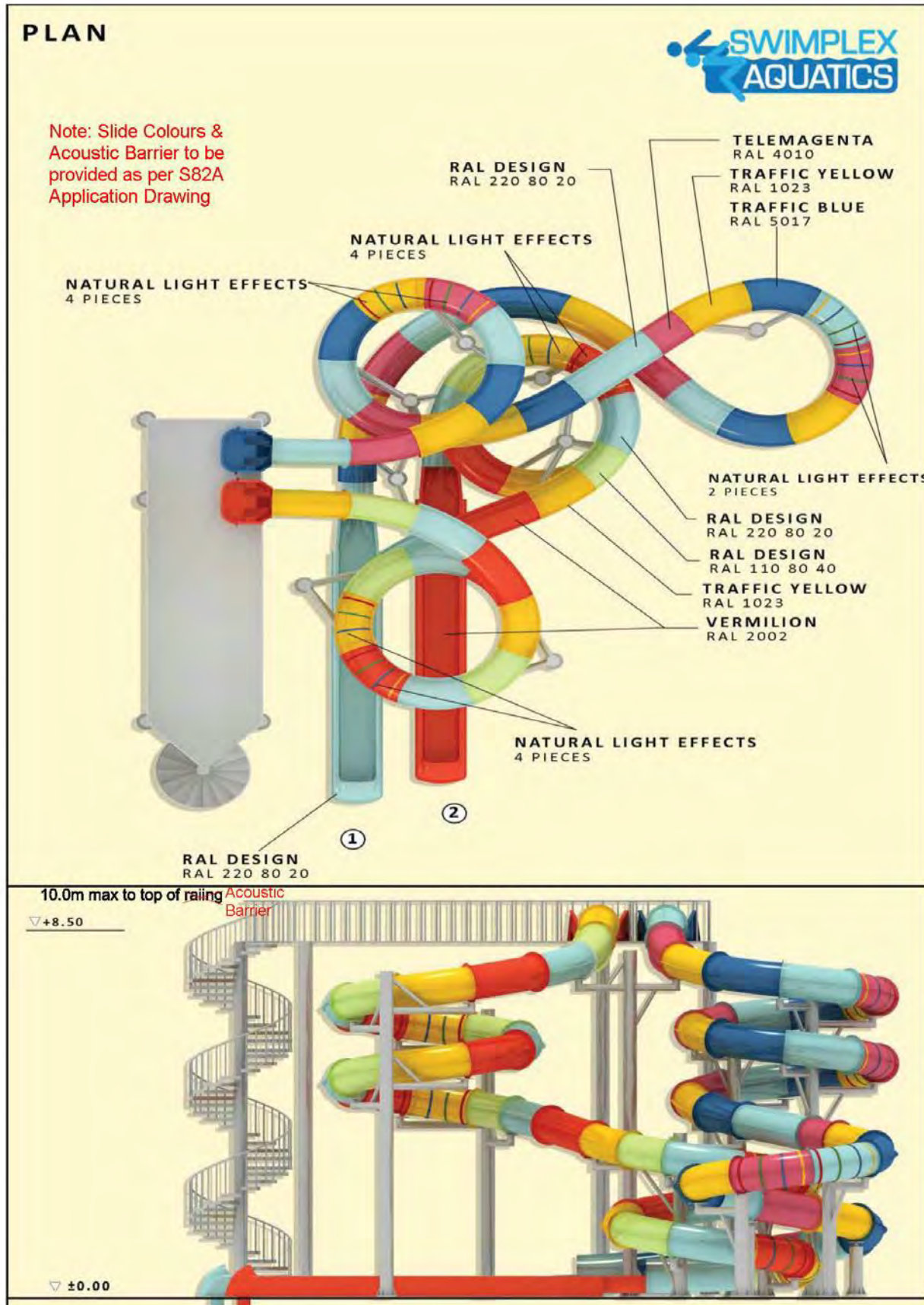
Lot 1 DP 1014298

No. 1-3 Tweed Coast Road, Hastings Point

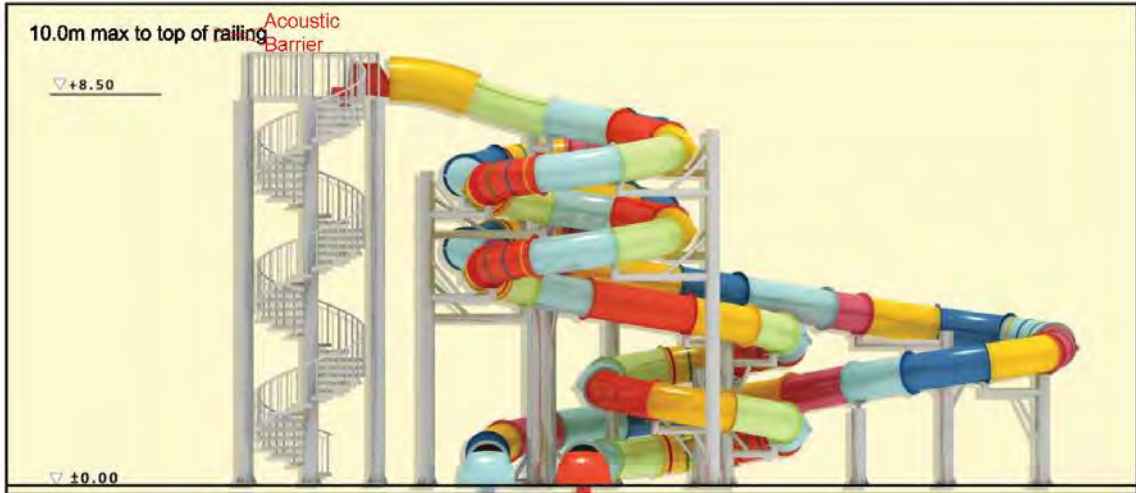
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|---|--|--|--|--|
| <p><small>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "dial before you dig" enquiry must be made by calling 1300. The information contained on this document remains valid for 30 days only from the date of supply.</small></p> | <p>Cadastral: 20 June, 2016 © Land and Property Information (LPI) & Tweed Shire Council. Boundaries shown should be considered approximate only.</p> | <p>0 0.15 0.3 Km 1:15,000 @ A4 Portrait © NOT SCALE COPY ONLY - NOT CERTIFIED</p> | <p>Chiv and Cultural Centre 3 Tumbugum Road Murwillumbah NSW 2484 PO Box 815 Murwillumbah NSW 2484 T (02) 6670 2400 1300 292 872 F (02) 6670 2429 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au</p> | |
| | <p><small>GDA</small></p> <p><small>Map Projection: Universal Transverse Mercator Horizontal Datum: Geoidetic Datum of Australia 1964 Vertical Datum: Mean Sea Level of Australia, June 16, 1984</small></p> | <p><small>Scale 1:15,000</small></p> | | |

DEVELOPMENT/ELEVATION PLANS:









Front View



Note: Slide Colours & Acoustic Barrier to be provided as per S82A Application Drawing



GERMUN USE REFR BY YOUR CAD.
 NO. 4186 DUDVSDVSDGGLL
 Tel: (+61) 8 936 61 999
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 www.polin.com.au

Project Number: 7028-W5-04
 Date: 15.10.2015

SWIMPLEX HASTINGS PROJECT


Australia

ALTERNATIVE 4

Drawing Units: Metric
 Paper Size: A3
 Scale: 1/150

Drawn by: Turan Akso
 Architect: Lendi Architect
 Checked by: Kubaly Alabdajin
 Ind.Eng.MSc.Phd
 Approved by: Ind.Eng.MSc.Phd

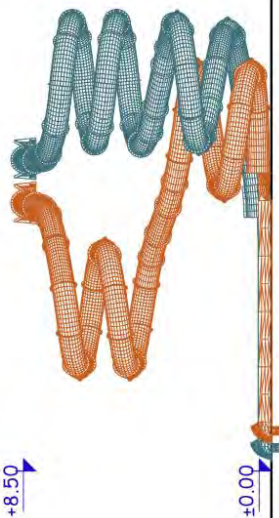
NOTES:
 1. NO FOR CONSTRUCTION



These drawings, illustrations and the design concepts associated herein are the exclusive property of Polin Waterparks and Pool Systems. These drawings or illustrations are not to be used for any other purpose without the written consent of Polin Waterparks and Pool Systems. The use of these drawings or illustrations for any other purpose without the written consent of Polin Waterparks and Pool Systems will be considered under all remedies provided by law.

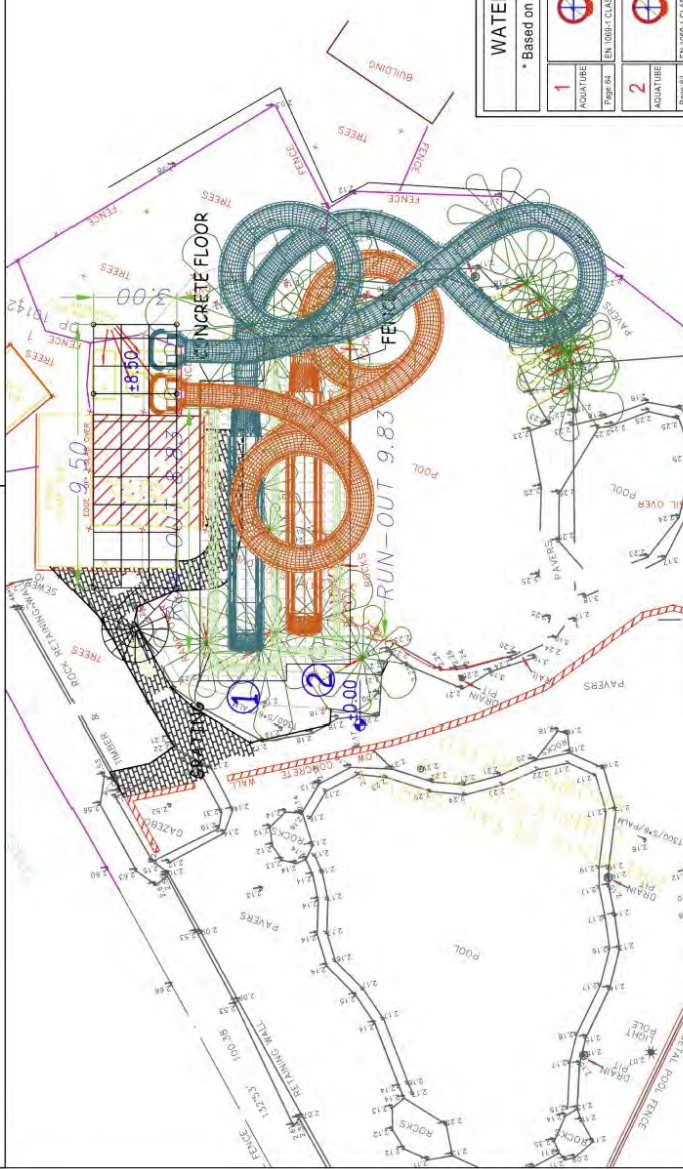
Dokuman No:07 TR 03 Rev:4 05-02-2015

Design Drawing



+8.50

±0.00



WATER SLIDES LIST

* Based on Polin Catalogue 2015

| Page No. | ADJUTIVE | EN 1081 CLASSIFICATION | TYPE | LENGTH | HEIGHT | RUN-OUT | ROBOD | TYPE 1 |
|----------|----------|------------------------|------|---------|--------|---------|-------|--------|
| 1 | | | | 85.79 M | 8.50 M | 8.83 M | | |
| 2 | | | | 61.36 M | 8.50 M | 8.83 M | | |

S82A APPLICATION FOR RECONSIDERATION OF DEVELOPMENT APPLICATION DA 15/1064
Redevelopment Of Waterslide Playground
At Lot 1 DP 1014298, No. 1 - 3 Tweed Coast Road, Hastings Point

**Plans demonstrating Slide
Colours & Acoustic Barrier**



Considerations under Section 82A of the Environmental Planning and Assessment Act 1979:

82A Review of determination

- (1) *If the consent authority is a council, an applicant may request the council to review a determination of the applicant's application, other than:*
- (a) *a determination to issue or refuse to issue a complying development certificate, or*
 - (b) *a determination in respect of designated development, or*
 - (c) *a determination in respect of integrated development, or*
 - (d) *a determination made by the council under Division 4 in respect of an application by the Crown.*

Not applicable to the subject application. The development application is not a type referred to in (a) – (d) above.

- (2) *A council must, on a request made in accordance with this section, conduct a review.*

This review has been undertaken in response to a request made by the applicant.

(2A) *A determination cannot be reviewed:*

- (a) *after the time limited for the making of an appeal under section 97 expires, if no such appeal is made against the determination, or*
- (b) *after an appeal under section 97 against the determination is disposed of by the Court, if such an appeal is made against the determination.*

The above summaries that the review must be made within six months of determination of the Development Application. The Development Application was determined at Council's Planning Committee meeting of Thursday 7 July 2016 and therefore the 82A review must be finalised before 7 January 2017.

(3) *(Repealed)*

(3A) *In requesting a review, the applicant may make amendments to the development described in the original application, subject to subsection (4) (c).*

The applicant has made amendments to the development in the original application. The height of the platform has been reduced from 8.5m to 8.2m and the plans now include 1.8m high noise barrier at the eastern side of the waterslide platform and to the access stairs. Furthermore, the colour of the slides have been altered to exclude bright colours.

(4) *The council may review the determination if:*

- (a) *it has notified the request for review in accordance with:*
 - (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the council has made a development control plan that requires the notification or advertising of requests for the review of its determinations, and*

The application has been notified in accordance with Tweed Shire Council Development Control Plan Section A11- Public Notification of Development Proposals.

- (b) *it has considered any submissions made concerning the request for review within any period prescribed by the regulations or provided by the development control plan, as the case may be, and*

Submissions receive during the exhibition period have been considered elsewhere in this report.

- (c) *in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same development as the development described in the original application.*

As outlined under (3A) above, the applicant has made amendments to the proposal by reducing the platform height and incorporating an acoustic barrier as well as removing bright colours from the slides. These are considered to be minor amendments and the development is substantially the same as that described in the original application.

(4A) As a consequence of its review, the council may confirm or change the determination.

The Section 82A review of determination has been referred to Council to confirm or change the determination of this application. It is recommended by Council officer that the determination be changed.

(5) *(Repealed)*

- (6) *If the council reviews the determination, the review must be made by:*
(a) *if the determination was made by a delegate of the council—the council or another delegate of the council who is not subordinate to the delegate who made the determination, or*
(b) *if the determination was made by the council—the council.*

As the determination of this application was originally made by (elected) Council, the review must also be made by Council in accordance with (b) above. As such, this has been reported to Planning Committee Meeting for the review to be made.

(7)–(9) *(Repealed)*

- (10) *If on a review the council grants development consent, or varies the conditions of a development consent, the council is entitled, with the consent of the applicant and without prejudice to costs, to have an appeal made under section 97 in respect of its determination withdrawn at any time prior to the determination of that appeal.*

Not applicable to the subject application.

(11) *(Repealed)*

- (12) *This section does not apply where a regional panel exercises a council's functions as the consent authority.*

Not applicable to the subject application.

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

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

Tweed Local Environmental Plan 2014

Clause 1.2 – Aims of the Plan

This Plan aims to make local environmental planning provisions for land in Tweed City Centre in accordance with the relevant standard environmental planning instrument under section 33A of the Act.

The particular aims of this Plan are as follows:

- (a) To give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,
- (b) To encourage a sustainable local economy and small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed,
- (c) To promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, built environment, and cultural heritage,
- (d) To promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,
- (e) To promote building design which considers food security, water conservation, energy efficiency and waste reduction,
- (f) To promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,
- (g) To conserve or enhance the biological diversity, scenic quality and geological and ecological integrity of Tweed,
- (h) To promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,

- (i) To conserve or enhance areas of defined high ecological value,
- (j) To provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.

The development relates to a use ancillary to the caravan park on site, and is considered to be generally consistent with the aims of the plan.

Clause 1.4 – Definitions

Under this clause the development would be defined as caravan park by virtue of being ancillary to the existing caravan park on the site. This is defined as follows:

caravan park means land (including a camping ground) on which caravans (or caravans and other moveable dwellings) are, or are to be, installed or placed.

Clause 2.1 – Land use zones

The subject site is zoned RE2 Private Recreation.

Clause 2.3 – Zone objectives and Land use table

The objectives of the RE2 zone are as follows:

- To enable land to be used for private open space or recreational purposes
- To provide a range of recreational settings and activities and compatible land uses
- To protect and enhance the natural environment for recreational purposes.

The development is for an ancillary addition to an existing caravan park to provide improved facilities and amenities for residents and users of that park. The development is considered to accord with all of the zone objectives.

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 area is identified as having a maximum building height of 10m (Control K) as identified on the building height map.

The development as originally lodged had a maximum height of 9.5m. It is noted that through the provision of a noise barrier and the slight lowering of the platform that the amended plans now demonstrate a 10m high structure.

In any event, this complies with the relevant building height control for this area. As such, the proposed development is considered acceptable with respect to this control.

Clause 4.4 – Floor Space Ratio

The subject site is not mapped as having any floor space ratio controls applicable to it under this clause. As such, this clause does not apply to the proposal.

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 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 approximately 160m from the coastal foreshore and it 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 land which has been previously developed. 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 development does not propose to dispose effluent by non-reticulated 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 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 5.10 - Heritage Conservation

The objectives of this clause are as follows:

- (a) to conserve the environmental heritage of Tweed,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) to conserve archaeological sites,
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

A search of the proposed development site has been undertaken on the NSW Government Office of Environment & Heritage website through the Aboriginal Heritage Information Management System (AHIMS) tool which has identified that there are no Aboriginal sites recorded or Aboriginal places declared at or near the proposed development site. In this regard the proposal is not considered to impact negatively on the provisions of this clause.

Clause 5.11 - Bush fire hazard reduction

The land is bushfire prone and given the nature of the caravan park development on site (tourist use), the application previously constituted an S79BA referral to the Rural Fire Service. A response has been received providing a recommended condition of consent which would be applied to any consent issued.

Clause 7.3 – Flood Planning

The objectives of this clause are as follows:

- (a) to minimise the flood risk to life and property associated with the use of land,
- (b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,
- (c) to avoid significant adverse impacts on flood behaviour and the environment.

This clause goes on to further state that development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

- (a) is compatible with the flood hazard of the land, and
- (b) is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and
- (c) incorporates appropriate measures to manage risk to life from flood, and
- (d) is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and
- (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.

With respect to the abovementioned matters, it is noted that the subject development site is mapped within the 1 in 100 year (Q100) and Probable Maximum Flood (PMF) level area and therefore consideration is required with respect to this clause.

In this instance it is noted that the proposal relates to the (non-habitable) development of a waterslide playground in an existing caravan park and as such would not be considered to raise any significant impacts with respect to flooding. Further assessment is provided with respect to flooding under DCP Section A3 elsewhere in this report.

Having regard to this, the proposal is considered to be in accordance with the provisions of this clause and would not result in an unacceptable development when assessed against the above criteria.

With respect to the above assessment against the provisions of this clause, it is considered that the proposed development would be acceptable from the perspective of essential services available to the site.

Having regard to the above assessment, the subject application is considered to be generally in accordance with the provisions of the Tweed Local Environmental Plan 2014.

State Environmental Planning Policies

State Environmental Planning Policy (SEPP) No. 21 - Caravan Parks

The subject development relates to the development of a caravan park and as such the provisions of this SEPP are applicable to the assessment of this application. *The aim of this Policy is to encourage:*

- (a) *the orderly and economic use and development of land used or intended to be used as a caravan park catering exclusively or predominantly for short-term residents (such as tourists) or for long-term residents, or catering for both, and*
- (b) *the proper management and development of land so used, for the purpose of promoting the social and economic welfare of the community, and*
- (c) *the provision of community facilities for land so used, and*
- (d) *the protection of the environment of, and in the vicinity of, land so used.*

The subject application is not considered to contravene the above objectives of this SEPP.

Under this SEPP a 'caravan park' means land (including a camping ground) on which caravans (or caravans and other moveable dwellings) are, or are to be, installed or placed.

Part 8, subclause 1 of this SEPP outlines that 'development for the purposes of a caravan park may be carried out only with the development consent of the Council.'

With respect to this it is noted that the subject application relates to the provision of a water slide within the existing caravan park for which development consent is sought.

Part 10 of the SEPP outlines six matters to be considered by Councils as follows:

10 Matters to be considered by Councils

A Council may grant a development consent required by this Policy only after it has considered the following:

- (a) *whether, because of its location or character, the land concerned is particularly suitable for use as a caravan park for tourists or for long-term residence,*

It is considered that the land is suitable for use as a caravan park given the caravan park has been long established and operational at this location and would be in accordance with the land zoning.

- (b) *whether there is adequate provision for tourist accommodation in the locality of that land, and whether existing or potential tourist accommodation will be displaced by the use of sites for long-term residence,*

It is noted that this application does not impact on the number of sites within the caravan park from that currently lawfully operating. In this regard, the subject application is not considered to have a significant impact on tourist accommodation in the locality..

- (c) *whether there is adequate low-cost housing, or land available for low-cost housing, in that locality,*

The proposed development does not impact on the number or type of sites within the caravan park.

- (d) *whether necessary community facilities and services are available within the caravan park to which the development application relates or in the locality (or both), and whether those facilities and services are reasonably accessible to the occupants of the caravan park,*

The subject application in itself relates to the provision of facilities and services within the park. The proposal is considered to be acceptable with respect to the above.

- (e) *any relevant guidelines issued by the Director, and*

There are no specific guidelines by the Director General of Planning.

- (f) *the provisions of the Local Government (Caravan Parks and Camping Grounds) Transitional Regulation 1993.*

The proposal is considered to be consistent with the provisions of the Local Government Regulations.

The proposed development is considered to be in accordance with this policy and satisfies the provisions of this SEPP.

SEPP No. 55 - Remediation of Land

The objectives of SEPP No. 55 is to provide a State wide planning approach to the remediation of contaminated land and to require that remediation works meet certain standards and conditions.

SEPP No. 55 requires a consent authority to consider whether land is contaminated and if contaminated, that it would be satisfied that the land is suitable, in its contaminated state (or will be suitable after remediation). Further, it advises that if the land is contaminated and requires remediation, that the consent authority is satisfied that the land will be remediated before the land is used for that purpose. In particular it is noted that this SEPP states that a consent authority must not consent to the carrying out of any development on land unless:

- (a) it has considered whether the land is contaminated, and
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

The subject application has been reviewed by Council's Environmental Health Unit who has provided the following advice with respect to contamination:

"The proposed development is located on a large block that is occupied a Holiday Resort and Caravan park and a service station. Service stations are defined as a potentially contaminating activity as set out in Schedule 1 of Tweed Shire Councils Contaminated Land Policy.

The applicant has considered contaminated land issues in the SEE. The SEE states 'The current application does not propose any change of use. The site has approval for use as a pool area with waterslides, and no change of use is proposed.' Previous works have been carried out in the proposed area (DA10/0839 - refurbishment of existing pool area and new water play equipment associated with the North Star Holiday Resort) without the requirement of a preliminary contaminated land investigation. A site visit indicates that the service stations are located at a distance of approximately 30m from the fence of the water park. Monitoring wells were observed on the site. Excavations proposed do not require dewatering.

Given the above information no further information is required."

Having regard to the advice provided, the subject application is considered to be acceptable with respect to contaminated land.

SEPP No 71 – Coastal Protection

The subject site is within the coastal zone (as per the NSW Government Coastal Policy 1997) and as a result is subject to the provisions of State Environmental Planning Policy No. 71. Council is required to consider the matters under Clause 8 and the following comments are made for Council's consideration.

Clause 8 – Matters for consideration

- (a) the aims of this Policy set out in clause 2,***

The proposal is generally in accordance with the aims of this policy.

- (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 subject application does not impact upon any public access way to the coastal foreshore. Furthermore, it is considered that the proposal does not offer any opportunity for a formal access way to be created or improved.

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

It is not considered that this application offers any opportunities to provide new public access to the foreshore.

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

The proposal is considered suitable, having regard to its nature (ancillary to existing caravan park) and permissibility in this 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 will not result in any overshadowing of the coastal foreshore. In addition, it is not considered that the proposed structure would result in any significant loss of views from a public place to the coastal foreshore, given the spatial separation between the development and the foreshore.

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

This proposal is not considered to have any negative impact on the scenic qualities of the NSW coast.

(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 is not considered to impact negatively any animals or their habitats. The subject development site has been historically developed and cleared of significant vegetation.

(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 Part), and their habitats

The proposal will not have an adverse impact upon marine environments or habitats.

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

It is considered that there are no wildlife corridors impacted by the proposed development.

- (j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,**

The proposed development is not considered to have any significant impact of development on coastal processes and coastal hazards.

- (k) measures to reduce the potential for conflict between land-based and water-based coastal activities,**

The proposal is not considered to cause any conflict between land-based and water-based activities.

- (l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,**

The subject development is not considered to impact on any traditional Aboriginal cultural values.

- (m) likely impacts of development on the water quality of coastal water bodies,**

The subject application is not considered to have any significant impact upon the water quality of coastal waterbodies.

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

It is not considered that the proposal impacts upon the conservation or preservation of any of the above items.

- (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 to the subject application.

- (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**

This development is not considered to have a negative cumulative impact on the environment.

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

The proposal is considered to be acceptable with respect to water and energy usage. It is noted that the development is to reduce water consumption in comparison to the existing water slides on site.

Conclusion

It is considered the proposed development does not compromise the intent or specific provisions of State Environmental Planning Policy No. 71 – Coastal Protection.

SEPP (Infrastructure) 2007

The subject application is located adjacent to Tweed Coast Road, which is a 'Main Road' classified road. Therefore, the subject application requires consideration under Division 17 Roads and traffic, Subdivision 2, Development in or adjacent to road corridors and road reservations, Clause 101, Development with frontage to classified road. The objectives of this clause are:

- (a) to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and*
- (b) to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.*

This clause goes on to further state that the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied of the following:

- a) where practicable, vehicular access to the land is provided by a road other than the classified road, and*

Vehicular access to the site is not proposed to be amended as part of this application. It is noted that the water play facilities form part of the existing caravan park on site.

- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:
 - (i) the design of the vehicular access to the land, or*
 - (ii) the emission of smoke or dust from the development, or*
 - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and**

The subject development is not considered to interfere with the efficiency or ongoing operation of Tweed Coast Road in this instance given its nature as a replacement waterslide development.

- (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

The proposal is not considered to be sensitive to traffic noise/emissions etc. as per the above. The proposal is for a replacement to an ancillary waterslide development to the existing caravan park. In this manner, the proposal is not considered to be of any significant sensitivity to traffic noise/emissions etc.

Having regard to the above, the proposal is considered to be acceptable when considered against the requirements of SEPP Infrastructure.

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

Tweed Development Control Plan

Section A2- Site Access and Parking Code

The subject application proposes a water slide redevelopment within an existing caravan park site. Under this DCP, access and parking provisions are deferred to the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2000*. This Regulation provides for a vehicular parking requirement based on the number of sites within a caravan park. As the proposal relates only to the development of a water slide development, ancillary to the existing caravan park only, the proposal is not considered to necessitate an increase to parking provision or vehicular access on the site.

It is therefore considered that the existing access and parking provisions within the caravan park are acceptable to serve this development in this instance.

Section A3- Development on Flood Liable Land

The proposed development is located on land which is indicated as being flood liable and as such the provisions of DCP A3 apply to the site. The site is within the probable maximum flood (PMF) level area and also exhibits a design flood (1 in 100 year flood level) measuring RL 2.6m AHD. The subject site is also located on land identified as being within a low flow area.

This DCP contains specific provisions with respect to caravan park developments. The proposed development is not considered to be inconsistent with these controls. It is noted that the majority of these controls relate to the development of caravan sites. The proposal is not considered to result in any significant impacts with respect to the impediment of floodwater given the nature and scale of the development.

With respect to the PMF level, the following control is provided:

Expansion of caravan park amenities and other non-habitable facilities permitted without consideration of PMF.

Again, the subject application is considered to be acceptable having regard to the above as the water slide would constitute caravan park amenities.

It is considered that the proposed development is in compliance with this policy and it is unlikely that it would exacerbate flooding within the locality and it is thus considered that the development is consistent with the aims of DCP Section A3.

Section B23-Hastings Point Locality Based Development Code

An assessment of the proposed development against Section B23 has been undertaken with the proposal considered to generally comply with Section B23 of the Tweed Development Control Plan. The site is situated within the Peninsula Street and the Northern Entry Precinct.



Peninsula Street and Northern Entry Precinct

Part 4 – Precinct Specific Strategies – Peninsular St and North Entry

The controls outlined for Caravan Parks under this precinct are as follows:

1. *The caravan park is to be retained for holiday accommodation and associated facilities.*

The proposal is consistent with this control, being a facility associated with the caravan park development currently on site.

2. *Fencing along Tweed Coast Road must be low and open to a maximum of 1.2 metre high.*

The subject application does not propose any amendments to the existing fencing along Tweed Coast Road which is considered acceptable.

Under Figure 4.6 Control Diagram, the proposed development area is identified as having a 10m landscape setback. In response to this the applicant has provided the following information:

“Figure 3.7 which relates to Urban Vegetation identifies that the front of the site is an indicative area for urban vegetation. In response to this, it is reiterated that the waterslides have been very carefully designed to minimise any impact on the existing vegetation. The slides will wind around the vegetation rather than requiring clearing. The large palm trees at the front of

the site area are an important feature of the site and will be retained. Only smaller golden cane palms and one triangle palm will require removal."

With respect to the above it is considered appropriate that a detailed landscape plan be provided (see Part 5 Visual Settings assessment below). A variation to the 10m requirement would be considered acceptable in this instance however, given the existing structure on site to be removed is within the 10m setback.

Part 5 Visual Settings

Under this section of the DCP, it is considered appropriate that that the subject site be assessed under section 5.9 'Northern Entry'.

The key characteristics of this view are:

- Contrast between dense coastal vegetation and then entering the settlement with buildings to both sides of the road.
- Houses set back behind dense and mature vegetation.

The controls of this visual setting are:

1. Prior to any alterations and additions, removal or addition of vegetation, new buildings and public domain improvements plans with photomontages must be submitted to council to demonstrate how this view may be impacted upon and measures to mitigate impacts.

The submitted application included provision of a photomontage demonstrating the proposal from the northern entry. In this regard it is considered that the proposal would not result in an unacceptable visual impact to this area. While the proposal represents a tall structure, it is not considered to be bulky or have an unacceptable massing which would dominate this area in a negative manner.

2. Front setback landscaping is to result in mature vegetation trees and a bushy and green appearance to the street resulting in buildings being dominated by vegetation

While the submitted application does not propose significant vegetation buffer in accordance with this control, it is considered that, in the event of approval, a condition would be applied to any consent which requires landscaping to be provided in accordance with the above. The proposal is considered acceptable in this regard.

3. Carparks are to be setback from the street front to allow for a generous landscaped area

Not applicable to the subject application as no carparks are proposed or required to service this application.

4. Commercial frontages must address the view corridor with active frontages. Large areas of bitumen and concrete and solid walls are not permitted. With any redesign of the service station it is to provide commercial building shop

fronts along the street with parking behind to create a small main street arrangement.

Not applicable to the subject application as this element of the DCP relates to the service station located to the south.

5. Simplify the visual qualities of the road by redesigning large and unsightly signage, undergrounding power lines and repositioning urban facilities such as garbage bins to be less visually obtrusive.

Not applicable to the subject application as the proposal does not relate to amending signage/powerlines etc. at this location.

The proposal is considered to be acceptable having regard to the provisions of this DCP.

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

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

The subject site is located within the area covered by the Government Coastal Policy, and has been assessed with regard to the objectives of this policy. The Government Coastal Policy contains a strategic approach to help, amongst other goals, protect, rehabilitate and improve the natural environment covered by the Coastal Policy. It is not considered that the proposed development contradicts the objectives of the Government Coastal Policy, given its permissible nature on a site identified for development works.

Clause 92(b) Applications for demolition

The subject application has been reviewed by Councils Building Unit who have provided recommended conditions of consent with respect to any demolition work to be undertaken on the site. No objections are raised with respect to this component of the proposed development.

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

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. The primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure.

The proposed development is not considered to impact upon that coastline with regard to demands and issues identified within the Plan for the whole of the Tweed coastline (Clause 2.4.1) including: recreation; water quality; heritage; land use and development potential; coastal ecology; and, social and economic demand. It is considered that the proposal represents an appropriate

development on land zoned for recreational use. The proposal is generally consistent with the objectives of the Management Plan.

Tweed Coast Estuaries Management Plan 2004

This Management Plan applies to the estuaries of Cudgen, Cudgera and Mooball Creeks. It is noted that the proposed development is located approximately 300m from Cudgera Creek. The proposal is not considered to impact on the provisions of this management plan given the spatial separation from the creek.

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

The subject site is not located within the Cobaki or Terranora Broadwater (within the Tweed Estuary), with this Plan therefore not relevant to the proposed development.

(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 proposal is to be located within an established caravan park in close proximity to the east site boundary and Tweed Coast Road. The proposed development is located to a section of the site which is currently developed as a waterslide playground area. It is considered that generally the proposal is appropriate to the context and setting of the site having regard to its use as a caravan park.

The proposed use has been assessed against the relevant state, regional and local policies, with the development considered not to create an adverse impact on the natural or built environments.

Noise

It is noted that an **updated and revised** Noise Impact Assessment has been submitted as part of this application. This was reviewed by Council's Environmental Health Unit who have provided specific comment in relation to noise (summarised below):

'A further updated and revised Noise Impact Assessment has been submitted to address point 2 of the refusal notice, being 'unacceptable noise impacts to surrounding residents and environment'. It is noted that the proposed construction of 2 water slides will be replacing 2 existing open slides and that currently the site has substantial existing water play activities and structures.

It is noted the purpose of the report was to consider the impact of the proposed waterslide modifications not necessarily the degree of existing intrusive noise or non-compliance from existing water park activities. The

report concludes that implementation of the following mitigation measures will ensure that the proposed modifications do not adversely affect existing noise amenity. This is interpreted to mean that whilst there may not be an increase in noise received by residents from the water park modifications, the existing 11dB(A) exceedance may continue.

The stipulated mitigation measures are:

- The hours of operation of the water park will be between 7.00am and 8.00pm, no entrance is to be admitted outside of these hours.
- No Public Announcement (PA) system, whistles or other loud control devices and amplified music system should be used.
- The combined sound pressure of all mechanical noise sources, including new and existing mechanical equipment, must not exceed 68dB(A) $L_{Aeq,adj,(15min)}$ during daytime (7:00am-6:00pm) and evening (6:00pm-10:00pm), when measured at a setback distance of 1m and after allowing for any adjustments due to tonality. During night-time (10:00pm-7:00am), the combined sound pressure of mechanical equipment must not exceed 63dB(A) $L_{Aeq,adj,(15min)}$.
- 1.8m high noise barrier should be constructed on the raised platform at the top of the water slides. The recommended alignment and construction of the noise barrier is discussed in Section 5.2 of this report.
- Number of patrons on the raised platform should be restricted to approximately one person per square metre.

Given the measured existing noise measurements and the amount of objections in relation to noise it is considered necessary that if approval were granted the hours of operation for the waterslide component of the water park be restricted to the hours 8:00am to 6:00pm 7 days a week. Furthermore, the above recommendations as specified in the report are to be conditioned.

Methodologies used to model and assess potential noise impacts from the proposed modifications have been done substantially in accordance with the NSW Industrial Noise Policy 1999. The complete report has been prepared in general accordance with the NSW Industrial Noise Policy and by a suitably experienced consultant (Senior Engineer – Acoustics) for the level of assessment required.

Given the above the proposal is considered adequate providing limiting conditions are applied”

It is considered that the development would be acceptable having regard to potential noise impacts arising from the development, subject to the application of conditions of consent requiring that the proposal be undertaken in accordance with the provisions of the Noise Impact Assessment and the modified recommended hours of operation as stipulated by Council’s Environmental Health Unit (8:00am to 6:00pm 7 days a week).

Having regard to the above comments from Council’s Environmental Health Unit the application is considered to be acceptable in this instance.

Use of Water Slides

The existing water play area and that proposed as part of this application are ancillary to the established caravan park use on this site. The submitted application advises that *“The waterslides are available for the use of patrons of the park only. To use the facility, people must be a resident or registered guest at the park.”*

It is noted that a number of submissions received (detailed further elsewhere in this report) during the exhibition of this review have indicated that *‘Whilst the park currently operates as not open to the public this requirement is circumnavigated frequently.’*

Under the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005, Clause 124 states that *“a caravan park or camping ground must not be used:*

- (a) for any commercial purpose other than a caravan park or camping ground or an associated purpose.”*

From this, the water play area can only be operated ancillary to the established caravan park on site and cannot be used for any other (including independent) commercial purpose.

The applicant provided the below (summarised) information with respect to the use of the water park:

“Our existing DA specifically requires that only ‘registered patrons of resort are able to use the facility. This is controlled by all registered guests wearing a wrist band and only persons wearing a wrist band are permitted in the facility. Registration is only available to persons leasing an overnight site, or their registered guests. Sites are not leased on an hourly basis, and the minimum leasing period is one night.

Persons staying at the resort are issued with a coloured wrist band which permits entry to the park facilities. Each registered guest must also obtain a wrist band for identification.

Water park is directly associated with caravan park – standard occurrence for caravan parks to include waterslides as part of their pool facilities – e.g. Billabong Holiday Park Tweed Heads.

Council’s proposal of “only persons staying at the caravan park are permitted to use the facility” is not supported. It is common practice for a guest’s registered visitor to have the right to use the park’s facilities. Many permanent residents of the park have grand-children visit and the proposed condition would prevent them from using the facility.”

Having regard to the above, it is considered appropriate that the use of the water slide area proposed as part of this application be limited to use by the following:

- Permanent residents of the caravan park;
- Temporary residents of the caravan park i.e. people registered as staying overnight at the caravan park with a park site allocated to them;
- Registered guests only of residents.

In order to ensure that this is the case, a condition is recommended to be applied to any consent issued in the following terms:

- # Use of the water slide area shall be restricted at all times to permanent and temporary residents of the caravan park and their registered guests only. It shall not be open to the public.

A register is to be maintained detailing any guests who utilise the water play area, specifying the permanent/temporary resident of which they are guests of and the site no. of the permanent/temporary resident.

A copy of this register is to be submitted to Council for review by the General Manager or delegate upon request.

Subject to compliance with the above condition it is considered that the development would be operational in accordance with the requirements of a caravan park and would therefore be acceptable.

(c) Suitability of the site for the development

Flora and Fauna

Cudgen Nature Reserve borders the northern boundary of the subject site, while within close proximity to the south, there is land which is identified as a wetlands and littoral rainforest environmental habitat. Having regard to the high ecological value of surrounding land it is important to assess how any development may impact on these areas. The proposed water play equipment is located to the roadside boundary of the caravan park site, maintaining a distance in excess of 70m to Cudgen Nature reserve and over 230m to the wetlands and littoral rainforest environmental habitat.

Given the spatial separation between the proposed development and these surrounding environmental areas, as well as the fact that the development area is currently developed for the purposes of a waterplay area, it is concluded that the proposed development will not have an unacceptable impact on flora and fauna in the area.

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

The Review of determination was notified to surrounding properties and to persons who previously made submission on the application for a period of 14 days from 19 October 2016 to 2 November 2016.

Through the exhibition of this application, approximately 194 public submissions have been received. Four of these were in support of the development with the

remainder objecting to the development. In addition, the applicant has provided a consolidated submission which contains the following:

- 1,322 letters of support from 'guests and the local community',
- 39 letters(containing 56 signatories) from residents of the Caravan park,
- 14 letters from business who rely on the viability of the Caravan Park; and,
- 57 letters of support from Caravan Park staff.

A submission was also received from NSW Office of Environmental Heritage (OEH), however the matters raised in this submission were subsequently addressed by the applicant.

A summary of the issues is provided below, along with Council officer assessment where relevant.

Submission from NSW Office of Environmental Heritage (OEH)

We have reviewed the documents supplied and advise that, although we have no concerns about flooding, acid sulfate soils, estuary management, biodiversity or Aboriginal cultural heritage, we have identified an issue regarding car parking and management of the strategic fire advantage zones/asset protection zones between the Cudgen Nature Reserve and the North Star Holiday Resort & Caravan Park.

The OEH is aware of current unauthorised parking at the entrance gate of the resort's asset protection zone off Tweed Coast Road. This obstructs access to the established asset protection zone and has the potential to impede both management of the area and emergency responses. We are concerned that the proposed redeveloped waterpark will lead to an increase in such unauthorised parking at this gate. Hence, it is critical that this issue is addressed as part of the waterpark redevelopment.

Further in this correspondence, the OEH advised that the applicant could contact them directly to address these issues. Subsequently, Council received advice from the OEH advising that 'OEH/NPWS notes that preliminary planning has commenced to address the issues raised under DA15/1064 with the APZ/ Strategic Fire Management Zones between Cudgen Nature Reserve and North Star. At this stage NPWS advises that they are satisfied with the progress.'

Based on this, it is considered that the matters raised in the original submission have either been addressed or are being addressed. In any event, it is not considered that the proposal would warrant refusal based on the above.

Public Submissions of support

Submissions of support have been provided both by the applicant and by members of the public directly to Council. In the main these submissions highlight the benefit of the development specifically and the Big 4 North Star Holiday Park on the surrounding area.

Of relevance to the merits of the development it is noted that many submissions advise that;

'the waterslides will not be visually obtrusive, as they will be screened from the Tweed Coast Road by the existing palm vegetation at the perimeter of the site, and the slides will not create an unreasonable amount of noise.'

And;

'Facilities at BIG 4 North Star have always been of the highest standard. Management's commitment to continually value-add, upgrade and improve the resorts facilities and amenities has been paramount in ensuring loyalty and consumer satisfaction'

As indicated in the quantity of these provided (over 1,400), there has been a significant level of support for the development demonstrated on Council records.

Public Submissions Objecting to the Proposed Development

Many of the submissions received are provided on a variety of pro-forma objection letters or raise similar issues with respect to the proposal. These are summarised below:

Objection: Character of Hastings Point/Visual Impact of Development

Development is not in keeping with a residential surrounding and the village Atmosphere or character that makes Hastings Point unique.

The structure is now 10m high and about 3 to 4m from the road which is well shy of the 10m setback stated in Hastings Point Development Control Plan. Regardless of what is or isn't over development, the slide certainly is not in the small village character that locals and visitors enjoy.

Ruin coastal village atmosphere/character/uniqueness/natural beauty appeal of Hastings Point

Council Officer Assessment

The subject application relates to the redevelopment of a waterslide playground in an established caravan park. In this regard, it is not considered that the proposed development would result in an unacceptable impact on the character etc. of the village. It is a permissible form of development on appropriately zoned land and complies with the relevant building height controls. Refusal is not warranted based on this issue.

Objection: Noise Impacts

The noise from the current water park can be very disturbing; although the sound barrier would help reduce slide noise the water play area needs to be addressed as a whole.

The inclusion of soundproof barriers to the platform and stairs is a welcome addition however given the noise that emanates from the water play area and that

the palms along that frontage have thinned over time, extending such a barrier along the eastern wall of Sammy's Lagoon would greatly improve the situation for patrons and the public alike.

The amended Noise Report obviously recognises that noise is a bigger problem than first thought and one way to reduce that impact would be to reduce the approved operating hours so residents know they won't have to listen to the park for 13 hours a day, seven days a week at any time in the future.

Council Officer Assessment

Issues with respect to noise emanating from the proposed development are addressed in more detail elsewhere in this report. It is noted that Council officers have assessed the proposal from a noise perspective and the development is considered to be acceptable subject to the application of appropriate conditions of consent. These include a reduction in the allowable hours of operation to between 8:00am to 6:00pm (7 days a week).

Objection: Hours of operation

The opening hours of 7am to 8pm or 13 hours per day, seven days a week seems excessive it would be far more reasonable to adopt the actual hours of operation as quoted in the original DA as being; 10,00am to 5.00pm from May to August and 8.00am to 5.00pm from September to April.

Proposed hours of 7am to 8pm seven days a week are excessive and would require flood lighting in winter if they were adopted.

Council Officer Assessment

Following review of the proposal by Council's Environmental Health Unit, a condition is recommended to be applied to any consent which limits the hours of use of the waterslide to between 8:00am and 6:00pm.

Objection: Landscaping

The palms cannot be relied upon for ongoing screening, they have disappeared or been thinned out over time and most sit outside the property on the footpath. They are not protected and can be cut down at any time without penalty.

Council asked for a landscape plan to help screen it from the road but with such a narrow setback and many existing structures within it there is very little room for any new planting. Most of the existing palms are on the strip of footpath between the fence and the property boundary. These palms remain at the mercy of the Council and the others remain subject to wild weather or anyone with a chainsaw.

The submitted plans do not demonstrate the existing palm trees or identify which need to be removed to facilitate the proposal.

Council Officer Assessment

It is recommended that a condition would be applied to any consent requiring landscaping to be undertaken to the roadside elevation. The proposal complies with the relevant building height controls (10m at proposed development location) and is not considered to result in an unacceptable visual impact.

Objection: Setback from Tweed Coast Road

A 10m high structure set back only 3m from the Tweed Coast Road boundary is an overdevelopment especially when located in a small village such as Hastings Point and when all other areas north of the bridge have been restricted to 8m. One wonders if it was an oversight to leave this area at 10m because there is very little land left to develop if a 10m setback is applied as it should be in accordance with Hastings Point DCP.

The development will be a visual distraction which could endanger motorists and pedestrians passing through the village from both directions

Council Officer Assessment

As outlined elsewhere in this assessment, the proposal is compliant with the relevant height controls and is located to a similar position as the existing waterslide on site. As such, the proposal is not considered to constitute a overdevelopment of the site as identified above and the setback from Tweed Coast Road is considered to be appropriate. Further to this, it is noted that the proposed development has been assessed as not having an unacceptable impact of the operation of Tweed Coast Road under the SEPP (Infrastructure) assessment elsewhere in this report. It is considered that that the development is in fact set back a minimum of 7.7m from Tweed Coast Road. The proposal is considered to be acceptable having regard to these issues raised.

Objection: Parking/Traffic Impacts

There will be an increase in traffic but no increased parking to accommodate those waterslide 'patrons' who aren't staying in the park.

Already an issue with parking/traffic congestion in the area. The proposed development will further exacerbate this.

Council Officer Assessment

The proposal does not generate additional traffic/parking requirements, given it relates to an ancillary facility to an established caravan park on site.

Objection: Users of Waterslide

If as suggested in the request for review it is mostly children who will use these slides it seems odd to make such a large investment and risk adverse impact on the towns amenity to serve the same clientele. It seems clear that a high

percentage of users will be teenagers and adults introducing a different mix of noise, management and risk factors.

The current slides (slippery dips into a pool) are mostly used by young children. I believe the 8.2m climb makes that less likely and older children, teenagers and adults will form the majority of users. The noise report recommends one person per sq.m but their size of 12.75sq.m contradicts the dimensions of the platform at 28.5sq.m. It's not stated how restricting numbers will be controlled or whether it's 13 or 29 people involved but reducing the size of platform would make good practical and financial sense.

Council Officer Assessment

The potential user of the waterslides is not considered to constitute a substantive assessment matter. The potential impacts as outlined above are better addressed as noise impacts, which has been undertaken elsewhere in this report. The above objections do not warrant refusal of the application.

Objection: Acoustic Barrier

The barrier between 8m and 10m height will diminish the localities visual appeal and could also distract motorists.

Acoustic barrier is an unacceptable visual intrusion to the main entry and exit points of Hastings Point.

Objection: Drawings Submitted

No elevation drawings have been provided with the proposal

Plans do not show palm trees to be removed to achieve the proposed layout

Palms will continue to encroach on electricity wires and be removed

Council Officer Assessment

The plans to which this objection relates were submitted as part of this application originally (including Landsurv Survey plan) and do not form part of the review of determination.

Objection: OHS Concerns

Number of OHS issues around the proposal raised including number of lifeguards, safety of users, methods for controlling no. of users on platform.

Council Officer Assessment

In the event of approval, conditions would be applied to any consent which respect to complying with the relevant Building Code of Australia provisions, as well as requiring a Construction Certificate for the development, thus addressing building/safety standards. Other considerations such as the number of lifeguards

etc. are not a substantive planning merit consideration and would need to be considered at an operational level under the relevant legislation.

Objection

Use of the waterslide by members of the public not staying at the caravan park

Council Officer Assessment

As outlined elsewhere in this report, a condition of approval has been applied which restricts usage of the proposal to residents and their registered guests only. Proposal is considered to be acceptable.

Council Officer Assessment

The use of the proposed development would be limited to being ancillary to the caravan park on site, as identified elsewhere in this report. A recommended condition has been applied to ensure that this is the case. Proposal is considered to be acceptable subject to compliance with this condition.

Objection

One business should not be entitled to change the look, feel and enjoyment of an entire community.

Council Officer Assessment

The subject application is for the redevelopment of a waterslide playground and is not considered to result in a significant impact on the locality such as that raised in this submission. The application does not warrant refusal based on this issue raised.

Objection: Impact on Wildlife

Impact on wildlife – not seen on adjacent bushland since existing water slides constructed – expansion will push them even further

Council Officer Assessment

The proposal is considered to be acceptable having regard to flora and fauna impacts given its spatial separation from environmentally sensitive area in a developed caravan park.

Objection: Development to be relocated

Development should be located elsewhere within the caravan park.

Council Officer Assessment

This does not constitute a substantive assessment matter under this assessment. Council can only assess the development proposal submitted.

Objection: Visual Amenity

Proposal has a negative on visual amenity to surrounding area.

Visual impact/impact on streetscape/palm trees thinning and not adequate screening.

Size and scale of structure excessive.

Council Officer Assessment

The proposal is considered to be consistent with the established use on the site to which it is located. Furthermore, a condition would be applied to any consent requiring landscaping to be undertaken to the roadside elevation. The proposal complies with the relevant building height controls (10m at proposed development location) and is not considered to result in an unacceptable visual impact.

Council Officer Assessment

The proposed platform is to be located over 25m from any surrounding residential development (being located across Tweed Coast Road). This is considered to provide an adequate building separation distance between developments and would not constitute an unacceptable impact with respect to visual amenity in an urban area which is zoned for the proposed development.

Objection: Proposal is Inconsistent with DCP B23

Proposal is against the provisions of DCP B23 to retain the quiet family village character

Council Officer Assessment

A detailed assessment has been provided against the requirements of DCP Section B23 elsewhere in this report. It is noted that the proposal is considered to be generally compliant with the requirements of this DCP. Refusal of the application is not warranted in this instance.

Objection: Property Values

Decrease in neighbouring property values

Council Officer Assessment

This does not constitute a substantive assessment matter under this assessment.

Objection: Lack of Notification

I had to rely on other Hastings Point residents to inform me about this review and given my past interest in the matter would have appreciated notification from Council.

Council Officer Assessment

The proposal was notified to nearby surrounding properties in accordance with the requirements of DCP Section A11 as well as to all persons who previously made a submission. The submitted application was not considered to warrant full advertisement nor was notification beyond that identified above deemed to be required in this instance.

Conclusion

Having regard to the various issues raised through the submission period and addressed above, it is not considered that these would warrant refusal of the application.

It is noted that conditions of consent would be applied which would prohibit the use of the water slides by the public other than by residents and their registered guests as well as requiring that the Tweed Coast Road elevation to be landscaped in accordance with the DCP B23 requirements.

A recommended condition of consent would be applied which stipulates that the development complies with the requirements of the submitted Noise Impact Assessment.

It is further noted that the subject application relates to the replacing of an existing waterslide development, currently operational at this location.

(e) Public interest

The proposed development is generally consistent with relevant environmental planning instruments and Council policy requirements. The proposal is considered suitable for the subject site, given its permissibility at this location and its nature, being an ancillary component to the existing caravan park. As such the proposal is not considered to contravene the wider public interest.

OPTIONS:

1. Grants development consent subject to the recommended conditions of consent; or
2. Refuses the Review of determination and advises the applicant in writing of the determination and defend any appeal lodged by the applicant in the Land and Environment Court.

Council officers recommend Option 1.

CONCLUSION:

The above assessment is considered to demonstrate that the proposal is generally acceptable with respect to the appropriate legislative considerations. As such, it is recommended that the previous determination be reviewed and amended to a conditional approval.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

If the applicant is dissatisfied with the determination, they may appeal the decision to the Land and Environment Court.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

4 [PR-PC] Draft Preliminary Gold Coast Airport 2017 Master Plan

SUBMITTED BY: Strategic Planning and Urban Design

Validms



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:

Gold Coast Airport Pty Ltd (GCAPL) has publicly exhibited the Preliminary Draft Gold Coast Airport 2017 Master Plan. Whilst the Airport operates under Federal legislation, the Draft Master Plan establishes development requirements for the next five year period, consistent with a broader 20 year strategic plan.

The Airport represents one of the most significant employment generators and a major contributor to the local and regional economy with a projected 16.6 million passengers expected to pass through the terminal by 2037.

The ongoing need for expansion and improvement of services and facilities associated with the airport provide the opportunity to work with GCAPL to capture opportunities for development of land in close proximity to the Airport for employment generating purposes.

This report presents a draft submission for the consideration by Council prior to finalisation and forwarding to GCAPL as Council's formal response to public exhibition.

RECOMMENDATION:

That Council endorses that the attached submission in response to the public exhibition of Preliminary Draft Gold Coast Airport 2017 Master Plan be forwarded to Gold Coast Airport Pty Ltd for consideration.

REPORT:

Preliminary Draft Gold Coast Airport 2017 Master Plan is currently on exhibition until 30 January 2017.

A recommended submission is attached to this report for information and reference.

The Master Plan is a statutory document prepared under the *Airports Act 1996*. As part of the planning framework, GCAPL is required to prepare an Airport Master Plan every five years detailing the twenty-year strategic direction for the Gold Coast Airport.

Given the significant passenger growth projected from approximately 6 million now to 16.6 million by 2037 the potential benefits for employment and tourism opportunities are recognised and supported.

With this continuing growth will come the potential for greater impacts to landowners and residents of land in close proximity to the Airport. The Master Plan introduces a 2047 ANEF map which shows a slight variation in the location of ANEF lines which will necessitate a change to Council's database to ensure that development applications within the boundaries of the ANEF zones are given appropriate consideration.

The Master Plan also introduces a new approach to understanding aircraft noise and nuisance through use of N70 Contours, which represent the number of occasions per day that aircraft noise will exceed 70 decibels, a level which is assumed to equate to an attenuated level of 55 decibels inside a dwelling which has windows closed. This level being the level above which interference with telephone conversations or listening to the TV can be assumed to be affected.

Nuisance from aircraft noise has been one of the most significant issues reported by landowners. The introduction of both means of representing the potential levels of aircraft noise is welcomed and will assist landowners and residents better understand the potential to be inconvenienced by aircraft arriving or departing the airport.

While the Master Plan has provided maps of the Long-range ANEF (20-plus year) forecast noise exposure levels (2047 ANEF), the Master Plan also makes mention of a category of ANEF called the Ultimate Practical Capacity ANEF which is a forecast of aviation noise exposure levels expected to exist when the Airport is developed to its ultimate practical capacity. Given that the ultimate length of the runway is 366 metres longer than that used to generate the 2047 ANEF levels, the ability to prepare a strategic land-use plan accommodating a transition in land-use on areas potentially affected by this ultimate level of development of the Airport would be of benefit in minimising future annoyance as the Airport approaches its ultimate practical capacity.

Community consultation has already commenced with a schedule of 4 public "drop-in sessions" to be conducted to the north of the Airport and two sessions in Tweed Shire, one has already been held at Kingscliff with the second scheduled for Tweed Heads on 6 December 2016. The attached draft submission proposes that further sessions be conducted in the Tweed.

A draft submission to Gold Coast Airport Pty Ltd is attached to this report, and highlights both support for the success of the Airport and economic benefits that will be generated from increased passenger and cargo movements and associated infrastructure improvements, and identifies opportunities and a desire to work closely with GCAPL in capitalising on improvements at the Airport, and development of employment generating opportunities on land close to the Airport.

OPTIONS:

1. Endorse the attached submission to the Preliminary Draft Gold Coast Airport 2017 Master Plan, or
2. Receive and note the attached submission to the Preliminary Draft Gold Coast Airport 2017 Master Plan Defer and detail any additional matters to be incorporated within the submission prior to it being submitted to GCAPL, or
3. Defer consideration of the Preliminary Draft Gold Coast Airport 2017 Master Plan and through the Office of the General Manager seek a briefing with GCAPL representatives.

Option 1 is the Council officers' recommended option.

CONCLUSION:

Gold Coast Airport is experiencing unprecedented growth in passenger numbers, and at a rate which requires continual upgrading of the services and infrastructure associated with the site.

While the economic benefits of having the fifth largest airport in Australia on the Shire's border are acknowledged and supported, managing the potentially adverse impacts of such growth must be considered as early in the planning process as possible.

A draft submission has been prepared and is attached to this report for reference, and if appropriate the inclusion of any additional matters that Council wishes to raise with the GCAPL.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.

Draft Submission in response to the public exhibition of the Preliminary Draft Gold Coast Airport 2017 Master Plan (ECM 4306563)

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

SUBMITTED BY: Development Assessment and Compliance

Validms



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 there are no variations for the month of November 2016 to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.

REPORT:

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

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

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.
