



**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 6 April 2017**

held at **Council Chambers, Murwillumbah Civic & Cultural Centre,**  
**Tumbulgum Road, Murwillumbah** 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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<b>1</b>	<b>[PR-PC] Development Application DA16/0029 for a Proposed Demolition of Existing House, Six Townhouse Development and Six Lot Strata Subdivision at Lot 678 DP 257438 No. 63-71 Sexton Hill Drive, Banora Point</b>	<b>6</b>
<b>2</b>	<b>[PR-PC] Submission on Draft Education and Child Care State Environmental Planning Policy (SEPP)</b>	<b>74</b>
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## REPORTS THROUGH THE GENERAL MANAGER

### REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

- 1 [PR-PC] Development Application DA16/0029 for a Proposed Demolition of Existing House, Six Townhouse Development and Six Lot Strata Subdivision at Lot 678 DP 257438 No. 63-71 Sexton Hill Drive, Banora Point

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

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### UPDATED SUMMARY OF REPORT:

Council at its meeting of 2 March 2017 resolved as follows:

**"RECOMMENDED** that Development Application DA16/0029 for a proposed demolition of existing house, six townhouse development and six lot strata subdivision at Lot 678 DP 257438 No. 63-71 Sexton Hill Drive, Banora Point be deferred for a workshop."

A Councillors Workshop was held on 9 March 2017.

The applicant was requested to provide additional information in regard to the visual/streetscape impact of the development when viewed from Sextons Hill Drive and the Pacific Motorway. The applicant has provided plans in response to Council's request. The amended plans are attached to this report. The additional information illustrates that the development is unlikely to create a visual impact when viewed from Sextons Hill Drive and the Pacific Motorway.

This report is now being reported back for determination.

### PREVIOUS SUMMARY OF REPORT:

Council is in receipt of an application for the proposed demolition of the existing dwelling and the construction of a six townhouse development and six lot strata subdivision. The development consists of six townhouses consisting of two storeys each, three bedroom and study and two resident parking spaces per townhouse. Two visitor parking spaces are provided on site with access via Sexton Hill Drive. Each townhouse has ground level access from a centrally located driveway, with individual private open space areas provided

to each townhouse. The site is described as Lot 678 DP 257438; No. 63-71 Sexton Hill Drive Banora Point. The site has a land area of 2,599 Square Metres, which currently contains a single dwelling which is to be demolished as part of this application. The site is zoned R2 Low Density Residential with a height restriction of 9 metres.

Section A1 Part B of Council's Consolidated Development Control Plan 2008, permits town house development within land zoned R2 if the lot size exceeds 1,350m<sup>2</sup>. The subject site is zoned R2 and has a land area of 2,599m<sup>2</sup>. The development control also requires that town house development is not to have a dwelling density exceeding 1 dwelling per 450m<sup>2</sup> with a development lot area of 220m<sup>2</sup> each. The proposed dwelling density is 1 dwelling per 433.17m<sup>2</sup> with the proposed development lots ranging between 306m<sup>2</sup> to 568m<sup>2</sup>. The proposed variation to the development control relating to dwelling density of 1 per 450m<sup>2</sup> equates to 16.83m<sup>2</sup> or 3.74% per dwelling. The proposed variation is considered to be reasonable in this situation as the development complies with all of the other density controls.

The application was notified for a period of two weeks, from Wednesday 27 January 2016 to Wednesday 10 February 2016. Council received seven submissions in relation to the application. The details of the submissions are addressed later within this report.

The proposed development has been reviewed by Council's Development Engineering Unit, Infrastructure Engineer, Traffic Engineer, Building Unit, Environmental Health Unit, Waste unit and Water and Waste 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.

The application was requested to Council for determination by Mayor Milne and Councillor Cherry.

### **RECOMMENDATION:**

**That Development Application DA16/0029 for a proposed demolition of existing house, six townhouse development and six lot strata subdivision at Lot 678 DP 257438 No. 63-71 Sexton Hill Drive, Banora Point be approved subject to the following conditions:**

### **GENERAL**

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos DA.100, DA.101, DA.102, DA.200, DA.201, DA.202, DA.300, issue 8 prepared by Marco & Co. and dated 05/09/16, as amended in Red, Strata Plans Sheet 1 to 3 drawn by Simon Berrisford dated 15/02/2017, 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. 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. Any necessary adjustment or modification of existing**

services are to be undertaken in accordance with the requirements of the relevant service authority.

[GEN0135]

4. Sewer manholes are present on this site. Manholes are not to be covered with soil or other material.

Should adjustments be required to the sewer manhole, then applications for these works must be submitted on Council's standard Section 68 Application form accompanied by the required attachments and the prescribed fee. Works will not be approved until prior separate approval to do so has been granted by Council under Section 68 of the Local Government Act.

[GEN0155]

5. The owner is to ensure that the proposed building is constructed in the position and at the levels as nominated on the approved plans or as stipulated by a condition of this consent, noting that all boundary setback measurements are taken from the real property boundary and not from such things as road bitumen or fence lines.

[GEN0300]

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

[GEN0350]

#### **PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

8. The developer shall provide 14 parking spaces including parking for the disabled (as required) in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code.

Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to the Principal Certifying Authority with the Construction Certificate for Building/Civil Works.

[PCC0065]



**9. Section 94 Contributions**

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

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

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

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

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

(a) Tweed Road Contribution Plan: 16.9 Trips @ \$1400 per Trips (\$1,318 base rate + \$82 indexation) S94 Plan No. 4 Sector2_4	\$23,660
(b) Open Space (Casual): 5 ET @ \$557 per ET (\$502 base rate + \$55 indexation) S94 Plan No. 5	\$2,785
(c) Open Space (Structured): 5 ET @ \$638 per ET (\$575 base rate + \$63 indexation) S94 Plan No. 5	\$3,190
(d) Shirewide Library Facilities: 5 ET @ \$859 per ET (\$792 base rate + \$67 indexation) S94 Plan No. 11	\$4,295
(e) Bus Shelters: 5 ET @ \$67 per ET (\$60 base rate + \$7 indexation) S94 Plan No. 12	\$335

(f) Eviron Cemetery: 5 ET @ \$125 per ET (\$101 base rate + \$24 indexation) S94 Plan No. 13	\$625
(g) Community Facilities (Tweed Coast - North) 5 ET @ \$1425 per ET (\$1,305.60 base rate + \$119.40 indexation) S94 Plan No. 15	\$7,125
(h) Extensions to Council Administration Offices & Technical Support Facilities 5 ET @ \$1909.57 per ET (\$1,759.90 base rate + \$149.67 indexation) S94 Plan No. 18	\$9,547.85
(i) Cycleways: 5 ET @ \$485 per ET (\$447 base rate + \$38 indexation) S94 Plan No. 22	\$2,425
(j) Regional Open Space (Casual) 5 ET @ \$1119 per ET (\$1,031 base rate + \$88 indexation) S94 Plan No. 26	\$5,595
(k) Regional Open Space (Structured): 5 ET @ \$3928 per ET (\$3,619 base rate + \$309 indexation) S94 Plan No. 26	\$19,640

[PCC0215/POC0395/PSC0175]

10. All imported fill material shall be from an approved source. Prior to the issue of a construction certificate details of the source of fill, description of material, proposed use of material, documentary evidence that the fill material is free of any contaminants and haul route shall be submitted to Tweed Shire Council for the approval of the General Manager or his delegate.

[PCC0465]

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

[PCC0485]

12. A detailed plan of landscaping containing no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate.

[PCC0585]

13. Site filling and associated drainage is to be designed to address drainage on the site as well as existing stormwater flows onto or through the site, and minimising the impact of filling on local drainage. Detailed engineering plans of fill levels and perimeter drainage shall be submitted for Council approval.

[PCC0675]

14. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include engineering plans and specifications undertaken in accordance with Councils Development Design and Construction Specifications for the following required works:

- (a) Vehicular access: widening of the existing vehicular footpath crossing to 6m, splaying to 6.5m wide at the kerb line.

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

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

Where Council is requested to issue a Construction Certificate for subdivision works associated with this consent, the abovementioned works can be incorporated as part of the Construction Certificate application, to enable one single approval to be issued. Separate approval under Section 138 of the Roads Act 1993 will then NOT be required.

[PCC0895]

15. Details from a Structural Engineer are to be submitted to the Principal Certifying Authority for approval for all retaining walls/footings/structures etc taking into consideration the zone of influence on the sewer main or other underground infrastructure and include a certificate of sufficiency of design prior to the determination of a construction certificate.

[PCC0935]

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

[PCC0945]

17. Permanent stormwater quality treatment shall be provided in accordance with the following:

- (a) The Construction Certificate Application shall detail stormwater management for the occupational or use stage of the development in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.

- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.
- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management.

[PCC1105]

18. A Construction Certificate application for works that involve any of the following:

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

will not be approved until prior separate approval to do so has been granted by Council under Section 68 of the Local Government Act.

- a) Applications for these works must be submitted on Council's standard Section 68 stormwater drainage application form accompanied by the required attachments and the prescribed fee. The Section 68 Application must be approved by Council prior to the associated Construction Certificate being issued.
- b) Where Council is requested to issue a Construction Certificate for subdivision works associated with this consent, the abovementioned works can be incorporated as part of the Construction Certificate application, to enable one single approval to be issued. Separate approval under Section 68 of the Local Government Act will then NOT be required.

[PCC1145]

19. Erosion and Sediment Control shall be provided in accordance with the following:

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

[PCC1155]

20. Medium density/integrated developments, excluding developments containing less than four attached or detached dwellings and having a Building Code classification of 1a, will be required to provide a single bulk water service at the road frontage. Individual metering beyond this point shall be managed by occupants. Application for the bulk metre shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements.

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

[PCC1185]

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

[PCC1195]

22. Where water is to be drawn from Councils reticulated system, the proponent shall:

- Make application for the hire of a Tweed Shire Council metered standpipe including Councils nomination of point of extraction.
- Where a current standpipe approval has been issued application must be made for Councils nomination of a point of extraction specific to the development.
- Payment of relevant fees in accordance with Councils adopted fees and charges.

[PCC1205]

23. Privacy screens are to be provided to all upper level windows facing the rear/southern elevation located on House 5 and House 6.

[PCCNS01]

24. A minor extension of the internal driveway will be required to enable a reversing movement for a vehicle egressing the last garage at the north-eastern end of the driveway. This will need to be addressed in the construction certificate plans.

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

25. 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]

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

[PCW0045]

27. 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]

28. 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]

29. Residential building work:

- (a) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - \* in the name and licence number of the principal contractor, and
    - \* the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - \* the name of the owner-builder, and
    - \* if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.

- (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

30. 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]

31. 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]

32. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area, where required. These measures are to be in accordance with the approved erosion and sedimentation control plan and adequately maintained throughout the duration of the development.

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

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

[PCW0985]

33. All roof waters are to be disposed of through properly jointed pipes to the street gutter, interallotment drainage or to the satisfaction of the Principal Certifying Authority. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZS3500.3.2. Note All roof water must be connected

to an interallotment drainage system where available. A detailed stormwater and drainage plan is to be submitted to and approved by the Principal Certifying Authority prior to commencement of building works.

[PCW1005]

34. Prior to the commencement of works, the applicant is to indicate their compliance with the provisions of the Road Traffic Noise Impact Assessment for 63-71 Sexton Hill Drive, Banora Point prepared by CRG Acoustics Pty Ltd dated 17 March 2016 (crgref: 16022 Report) and any addendum(s) or amendment(s) to this report as approved by Council's General Manager or delegate by providing to the Principal Certifying Authority details on the building components and systems intended to be used in the construction of the dwelling with the corresponding STC/RW ratings.

[PCWNS01]

## DURING CONSTRUCTION

35. 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]

36. All works shall comply with AS2601-2001 Demolition of Structures and the Work Health and Safety Regulation 2011.

[DUR0165]

37. Construction and/or demolition site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council:

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

The proponent is responsible to instruct and control subcontractors regarding hours of work.

[DUR0205]

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

A. Short Term Period - 4 weeks.

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



39. Prior to demolition of the structure is commenced all asbestos material shall be identified and removed from the site by an asbestos removalist who is licensed to carry out the work by WorkCover NSW. All asbestos waste shall be disposed at a facility that is licensed to receive asbestos waste (all receipts related to disposal must be kept on site and provided to a Council Authorised Officer upon request). [DUR0335]
40. 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]
41. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council. [DUR0395]
42. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979. [DUR0405]
43. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Work Health and Safety Regulation 2011. [DUR0415]
44. Excavation
- (a) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with WorkCover 2000 Regulations.
  - (b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property. [DUR0425]
45. If the work involved in the erection or demolition of a building:
- (a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or
  - (b) building involves the enclosure of a public place,
- a hoarding or fence must be erected between the work site and the public place in accordance with the WorkCover Authority of NSW Code of Practice and relevant Australian Standards.

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

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

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

[DUR0435]

46. 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]

47. Minimum notice of 48 hours shall be given to Tweed Shire Council for the capping of any disused sewer junctions. Tweed Shire Council staff in accordance with the application lodged and upon excavation of the service by the developer shall undertake the works.

[DUR0675]

48. During filling operations,

- No filling is to be placed hydraulically within twenty metres (20m) of any boundary that adjoins private land that is separately owned. Fill adjacent to these boundaries is to be placed mechanically.
- All fill and cut batters shall be contained wholly within the subject land, unless specifically nominated otherwise on the DA approved plans.
- All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications and to the satisfaction of the Principal Certifying Authority.

and upon completion,

- all topsoil to be respread and the site to be grassed and landscaped including battered areas.

[DUR0755]

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

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

[DUR0795]

50. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house, building or structure is strictly prohibited. [DUR0815]
51. The development is to be carried out in accordance with the current BASIX certificate and schedule of commitments approved in relation to this development consent. [DUR0905]
52. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate. [DUR0985]
53. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate. [DUR0995]
54. 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]
55. 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]
56. Landscaping of the site shall be carried out in accordance with the submitted/approved landscaping plans. [DUR1045]
57. 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]
58. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings. [DUR1875]

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

[DUR1905]

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

[DUR1925]

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

[DUR2015]

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

[DUR2185]

63. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials.

[DUR2205]

64. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR2375]

65. The site shall not be dewatered, unless written approval to carry out dewatering operations is received from the Tweed Shire Council General Manager or his delegate and NSW Department of Primary Industries - Water.

[DUR2425]

66. 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]

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

[DUR2485]

68. Plumbing

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

[DUR2495]

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

[DUR2505]

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

[DUR2525]

71. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.

[DUR2545]

72. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-

- \* 45°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
- \* 50°C in all other classes of buildings.

A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.

[DUR2555]

73. The structure is to be sited at least one metre horizontally clear of sewer main on site. All footings and slabs within the area of influence of the sewer main are to be 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.

[DUR2645]

**74. Dust and Erosion Management**

- (a) Completed earthworks areas are to be topsoiled and seeded immediately to protect them from water and wind erosion, unless building works are imminent.
- (b) All topsoil stockpiles are to be sprayed with dust suppression material such as "hydromulch", "dustex" or equivalent. All haul roads shall be regularly watered or treated with dust suppression material or as directed on site.
- (c) All construction activities that generate dust shall cease when average wind speeds exceed 15m/s (54 km/h). The applicant shall be responsible for the monitoring of on-site wind speeds and be able to produce this data to Council on request.

[DUR2825]

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

[DUR2835]

**76. Written notice shall be provided to the 'regulator' at least 5 days before the removalist commences licensed asbestos removal work in accordance with Clause 466 of the Work Health and Safety Regulation 2011.**

[DUR2840]

**77. The development shall be carried out in accordance with the recommendations of the Road Traffic Noise Impact Assessment for 63-71 Sexton Hill Drive, Banora Point prepared by CRG Acoustics Pty Ltd dated 17 March 2016 (crgref: 16022 Report) and any addendum(s) or amendment(s) to this report as approved by Council's General Manager or delegate.**

[DURNS01]

**78. If window systems to be used are not openable or are required to remain closed in order to satisfy the requirements of the Road Traffic Noise Impact Assessment for 63-71 Sexton Hill Drive, Banora Point prepared by CRG Acoustics Pty Ltd dated 17 March 2016 (crgref: 16022 Report) and any addendum(s) or amendment(s) to this report as approved by Council's General Manager or delegate, then a system of mechanical ventilation complying with the relevant provisions of the Building Code of Australia shall be installed to service all habitable areas of the dwellings.**

[DURNS02]

**79. The exportation or importation of fill or soil from or to the site must be in accordance with the provisions of the *Protection of the Environment Operations Act 1997* and the NSW Environmental Protection Authority's Waste Classification Guidelines.**

[DURNS03]

## **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

- 80. Prior to issue of an occupation certificate, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.** [POC0005]
- 81. 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]
- 82. Prior to the issue of an occupation certificate,**
- (a) Certification of termite protection methods performed by the person carrying out the works is to be submitted to the PCA; and**
  - (b) A durable notice must be permanently fixed to the building in a prominent location, such as in the electrical meter box indicating:-**
    - (i) the method of protection; and**
    - (ii) the date of installation of the system; and**
    - (iii) where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and**
    - (iv) the need to maintain and inspect the system on a regular basis.** [POC0235]
- 83. A final occupation certificate must be applied for and obtained within 6 months of any Interim Occupation Certificate being issued, and all conditions of this consent must be satisfied at the time of issue of a final occupation certificate (unless otherwise specified herein).** [POC0355]
- 84. Prior to the issue of a final occupation certificate adequate proof and/or documentation is to be submitted to the Principal Certifying Authority to identify that all commitment on the BASIX "Schedule of Commitments" have been complied with.** [POC0435]
- 85. All landscaping work is to be completed in accordance with the approved plans prior to the issue of a final occupation certificate for the building.** [POC0475]
- 86. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all works required under Section 138 of the Roads Act 1993.** [POC0745]
- 87. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all s68h2 permanent stormwater quality control devices.** [POC0985]

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

[POC1045]

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

[POC1055]

90. Prior to an Occupation Certificate being issued, a Post Construction Noise Impact Compliance Assessment report prepared by a suitably qualified acoustic consultant shall be prepared and submitted for consideration and approval by Council's General Manager or delegate.

The assessment report shall consider the Road Traffic Noise Impact Assessment for 63-71 Sexton Hill Drive, Banora Point prepared by CRG Acoustics Pty Ltd dated 17 March 2016 (crgref: 16022 Report) and any addendum(s) or amendment(s) to this report as approved by Council's General Manager and include any recommended noise amelioration measures to be carried out by the applicant.

The applicant shall carry out any such recommendations as provided within the Post Construction Impact Compliance Assessment report to the satisfaction of the General Manager or delegate within 30 days from the date of the acoustic assessment, provided that the General Manager or delegate may extend the time period for the carrying out of any recommended acoustic treatment to a date which may be determined by the General Manager or delegate.

[POCNS01]

## USE

91. 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]

92. The development shall be carried out in accordance with the provisions of the Road Traffic Noise Impact Assessment for 63-71 Sexton Hill Drive, Banora Point prepared by CRG Acoustics Pty Ltd dated 17 March 2016 (crgref: 16022 Report) and any addendum(s) or amendment(s) to this report as approved by Council's General Manager.

[USE0305]

93. All wastes shall be collected, stored and disposed of to the satisfaction of the General Manager or his delegate.

[USE0875]



94. Air conditioning units, heat pump water systems and the like shall not be operated if it can be heard in a habitable room of a residence during restricted hours or at other times should the noise from the article be deemed to be offensive as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2008. [USE1510]
95. 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]
96. 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 or Occupation Certificate (whichever occurs first). 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 or Occupation Certificate (whichever occurs first). [PSC0725]
97. A Subdivision Certificate will not be issued by the General Manager until such time as all relevant conditions of this Development Consent have been complied with. [PSC0825]
98. 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]

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

The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act, 2000 to be certified by an Accredited Certifier. [PSC1115]

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**100. Prior to the issue of a Subdivision Certificate (for Strata), all building construction works are to be completed.**

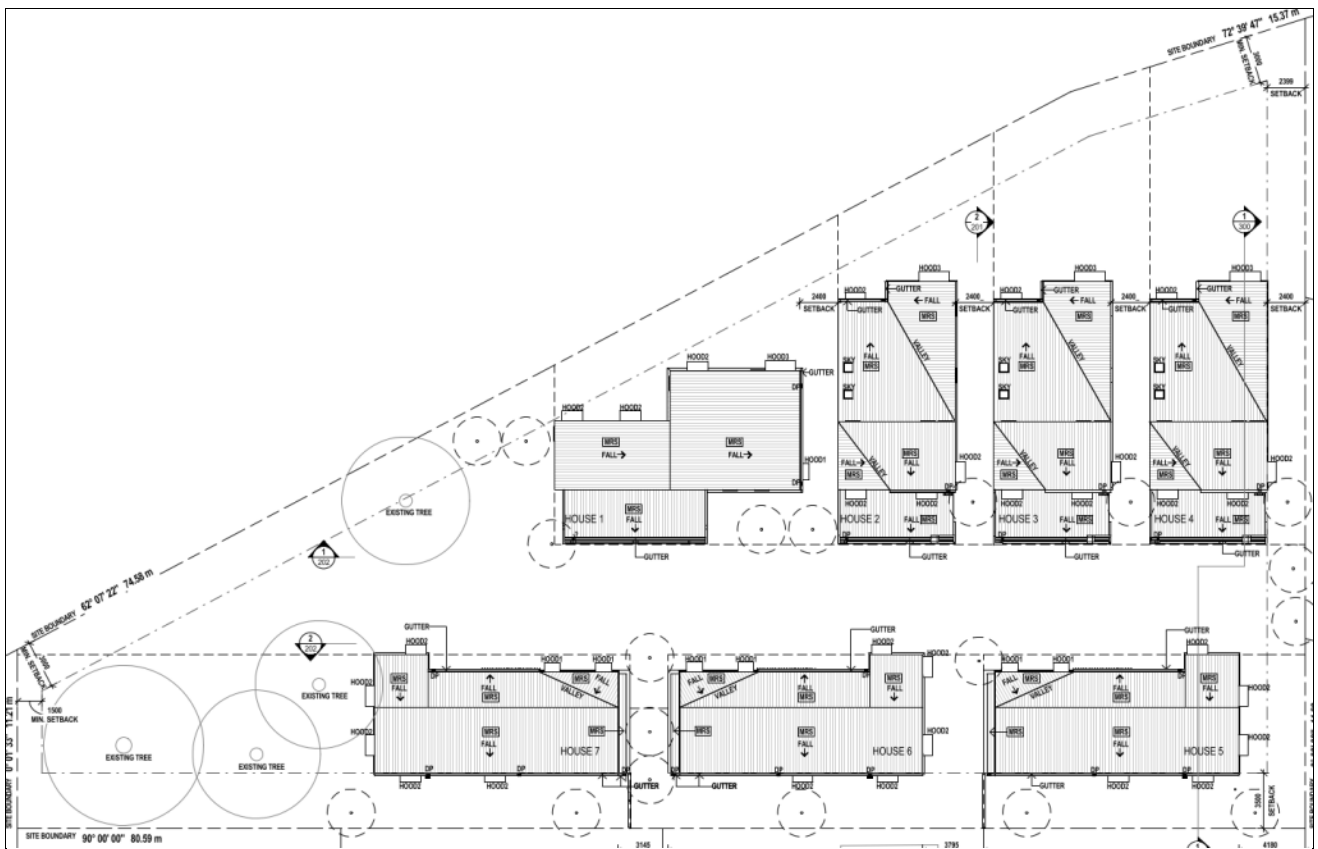
[PSCNS01]

**REPORT:**

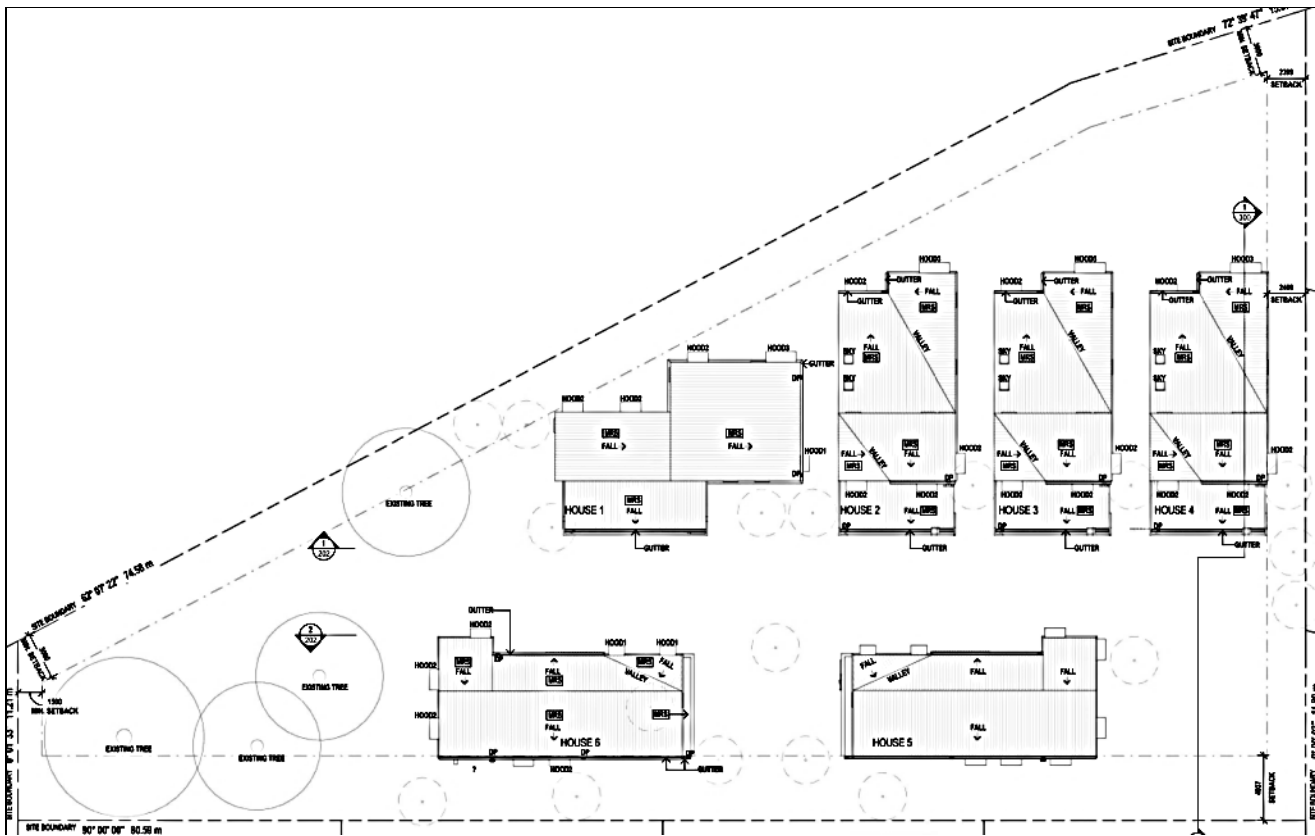
**Applicant:** Raynk Investments Pty Ltd  
**Owner:** Mr Frank H Yates & Mrs Rhonda A Yates  
**Location:** Lot 678 DP 257438 No. 63-71 Sexton Hill Drive, Banora Point  
**Zoning:** R2 - Low Density Residential  
**Cost:** \$1,500,000

**Background:**

The applicant originally sought approval for a seven townhouse development, however one townhouse located at the rear of the site has been removed therefore the amended application seeks Council consent for a six townhouse development and six lot strata subdivision.



**Original proposal - seven townhouse development 3.5m rear setback.**

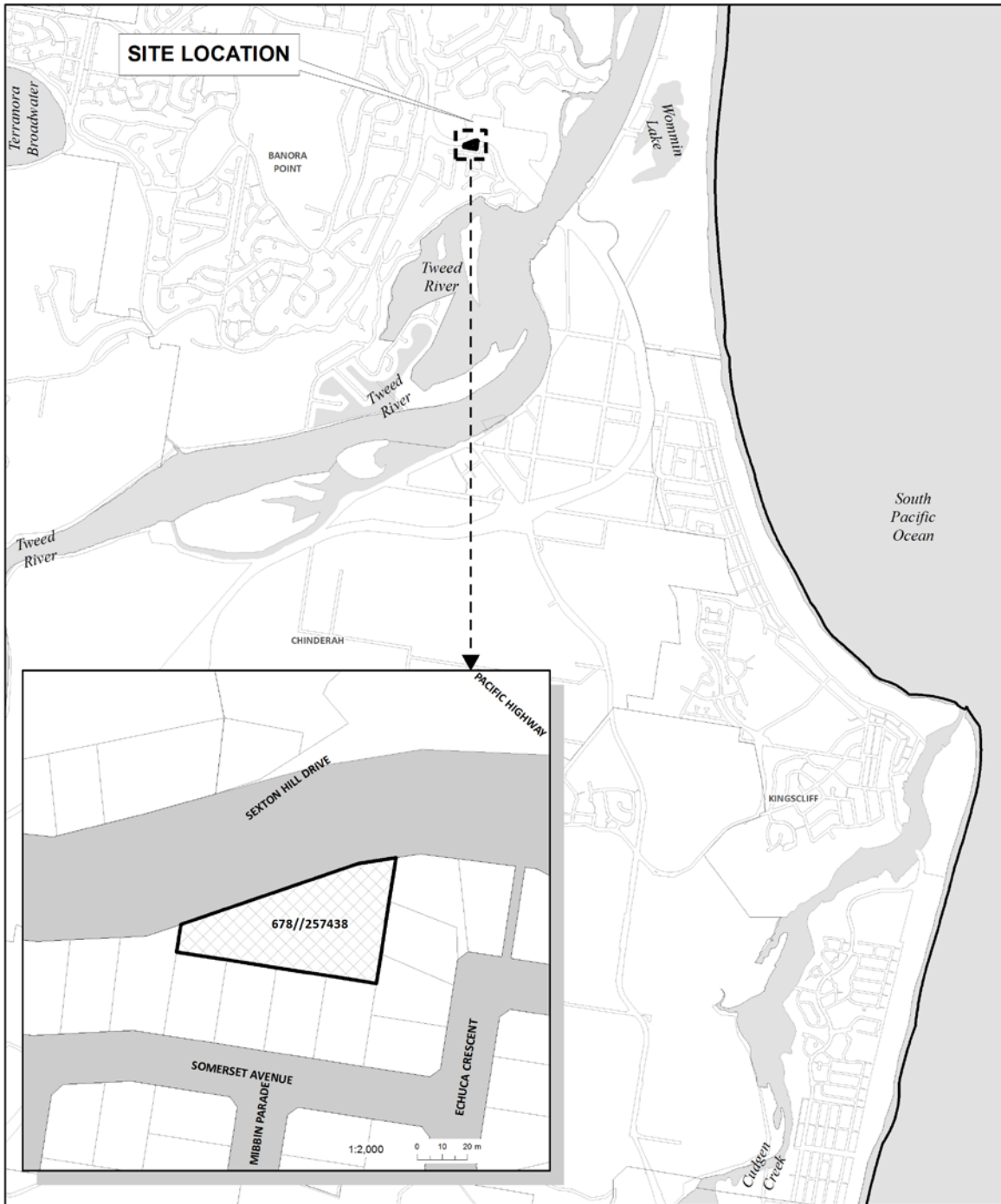


**Amended proposal – six townhouse development and increased rear setback to 4.037m.**

Design Element	Detail	Requirement
Number of Dwellings	6	
Storeys/Height	2 storeys or 8.5m	9m
Site area	2599m <sup>2</sup>	1350m <sup>2</sup>
Gross Floor Area	828m <sup>2</sup>	
Floor Space Ratio	0.318:1	0.8:1
Car Parking (Resident/Visitor)	2 spaces per unit and 2 visitor spaces. Total 14 spaces.	14

Site access will be via Sexton Hill Drive, with a double garage provided for each dwelling 12 and two visitor spaces, making a total of 14 car parking spaces. The two visitor spaces are located towards the front of the site.

**SITE DIAGRAM:**



**LOCALITY PLAN**

Lot 678 DP 257438  
No. 63-71 Sexton Hill Drive, Banora Point

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 disclaim 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 1100. The information contained on this document remains valid for 30 days only from the date of supply.



Coordinate System - MGA Zone 56  
Datum - GDA 94

Cadastral: 30 June, 2010  
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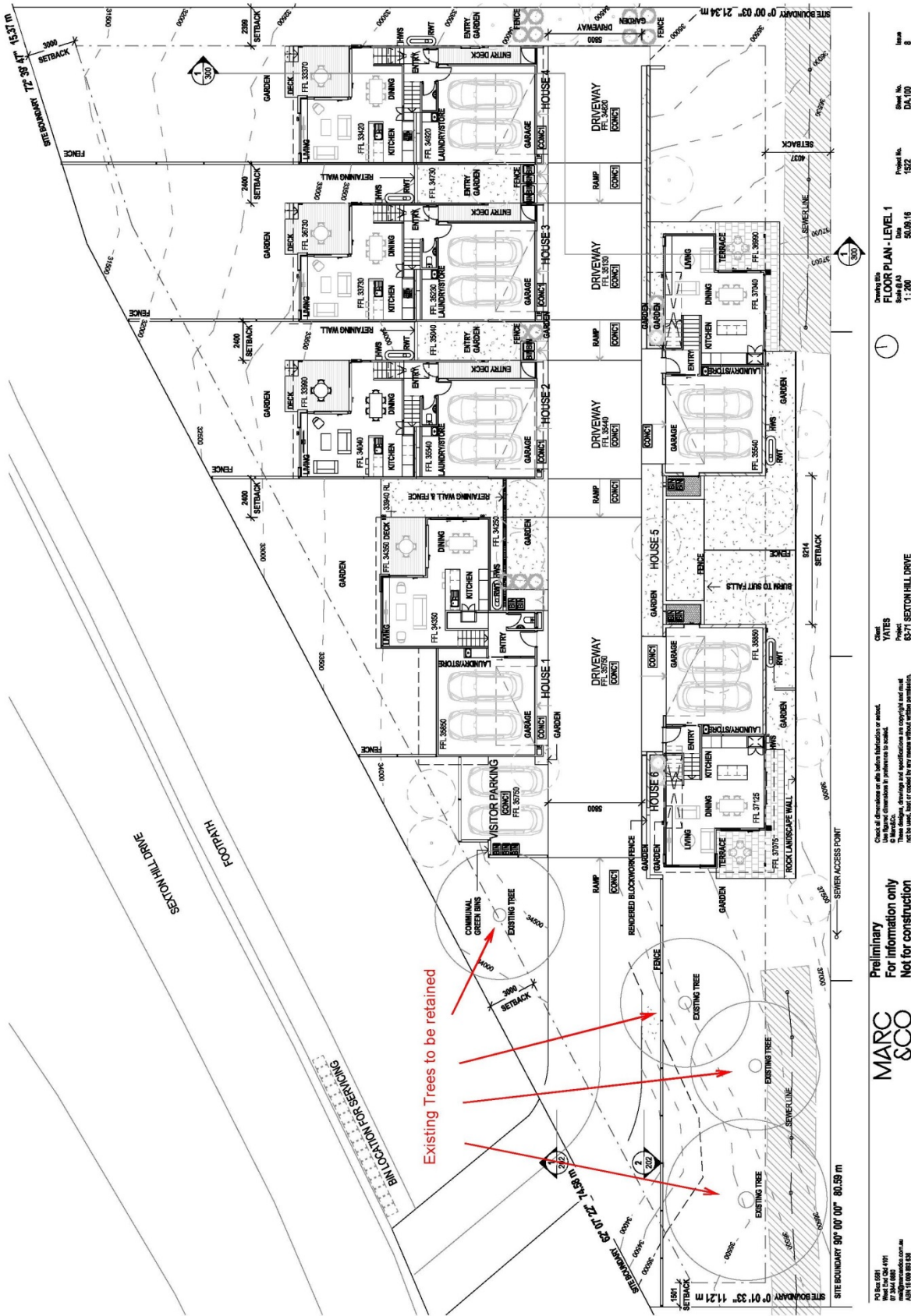
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Civic and Cultural Centre  
3 Tumbulgum Road  
Murwillumbah NSW 2484  
PO Box 816  
Murwillumbah NSW 2484  
T: (02) 6670 2400 / 1300 292 872  
F: (02) 6670 2483  
W: www.tweed.nsw.gov.au  
E: planningreforms@tweed.nsw.gov.au



**TWEED**  
SHIRE COUNCIL

DEVELOPMENT/ELEVATION PLANS:



PO Box 8711  
 West Hill, QLD 4177  
 Phone: 07 559 8888  
 www.marcSCO.com.au  
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**MARC SCO**

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Check all dimensions on all before fabrication or award.  
 Use figure dimensions in preference to text.  
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Client: YATES  
 Project: 65-71 SEXTON HILL DRIVE

Drawing Title: FLOOR PLAN - LEVEL 1  
 Scale: @ A3  
 Date: 30.06.16  
 Project No.: 1522  
 Sheet No.: DA.100  
 Issue: 8



**MARC & CO**  
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Title: VATES  
 Project: 83-37 SEXTON HILL DRIVE

Date: 08/09/16  
 Scale: 1:200  
 Project No: 1622  
 Sheet No: DA.011  
 Sheet: 8

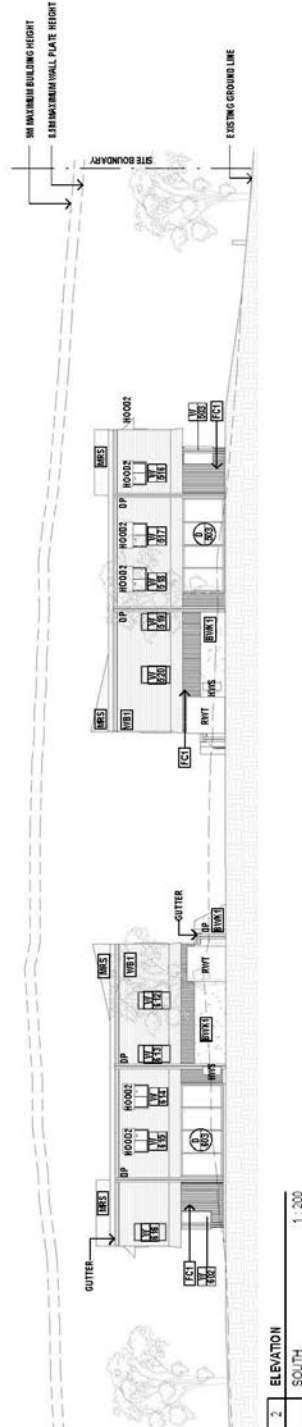
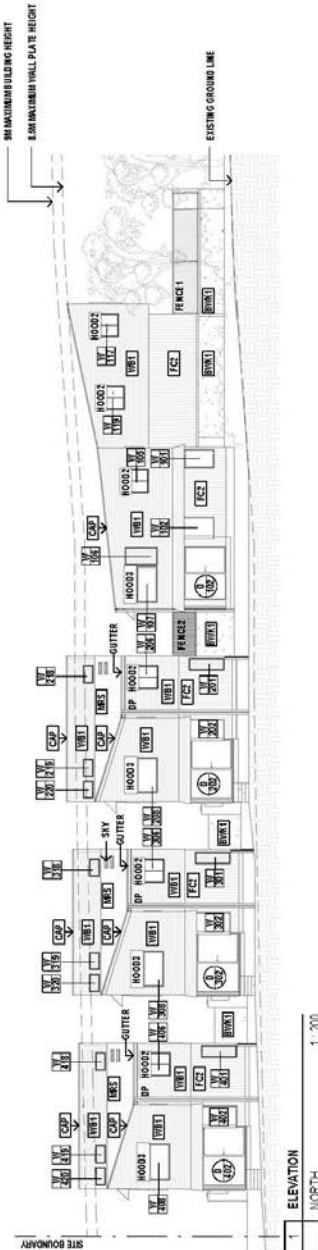
This is a preliminary drawing and is not to be used for construction without the written permission of the architect.  
 The architect is not responsible for any errors or omissions in this drawing.

Site Boundary: 0° 01' 33" 11.21 m  
 Site Boundary: 90° 00' 00" 80.59 m  
 Site Boundary: 0° 00' 03" 11.89 m  
 Site Boundary: 72° 38' 47" 15.31 m





MATERIAL LEGEND	
CODE	DESCRIPTION
BW1T	BLOCKWORK, REFINISHED FINISH
CP	ROCK AND BRIDGE CLIPPING
CP1	CONCRETE
CP2	CONCRETE
CP3	CONCRETE
CP4	CONCRETE
CP5	CONCRETE
CP6	CONCRETE
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**MARC SCO**  
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Client: **VATES**  
 Project: **6371 SEXTON HILL DRIVE**

Check of dimensions to be taken before construction is started.  
 All dimensions are in millimeters unless otherwise stated.  
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Scale: 1:200  
 Date: 30/09/16  
 Project No: 1622  
 Sheet No: DA-200  
 Issue: 8

MATERIAL LEGEND	
CODE	DESCRIPTION
BRFT	BRUSHED BRASS FINISH
CLAP	ROSEWOOD CLAPBOARD
CONC1	BROOMFINISHED CONCRETE
DP	DOWNPIPE
FAS20A	PAINTED TIMBER FASCIA
F1	JAMES HARVEY FORMHARVEYLEX, TIMBER COVER BATTENS
F2	85-200MM CENTERS, 25-250MM HARKAGE/LEX, TIMBER COVER BATTENS
FENCE1	CHAIN WIRE FENCE WITH TIMBER POSTS AND RAILS
FENCE2	PAINT FINISHED TIMBER BATTENS WITH PAINT FINISHED TIMBER POSTS AND RAILS
GUTTER	PAINT FINISHED ALUMINUM GUTTER
H1	PAINT FINISHED CUSTOM ALUMINUM IMPREGATED DOORS
H2	PAINT FINISHED CUSTOM ALUMINUM IMPREGATED DOORS
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H63	PAINT FINISHED CUSTOM ALUMINUM IMPREGATED DOORS
H64	PAINT FINISHED CUSTOM ALUMINUM IMPREGATED DOORS
H65	PAINT FINISHED CUSTOM ALUMINUM IMPREGATED DOORS
H66	PAINT FINISHED CUSTOM ALUMINUM IMPREGATED DOORS
H67	PAINT FINISHED CUSTOM ALUMINUM IMPREGATED DOORS
H68	PAINT FINISHED CUSTOM ALUMINUM IMPREGATED DOORS
H69	PAINT FINISHED CUSTOM ALUMINUM IMPREGATED DOORS
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H98	PAINT FINISHED CUSTOM ALUMINUM IMPREGATED DOORS
H99	PAINT FINISHED CUSTOM ALUMINUM IMPREGATED DOORS
H100	PAINT FINISHED CUSTOM ALUMINUM IMPREGATED DOORS



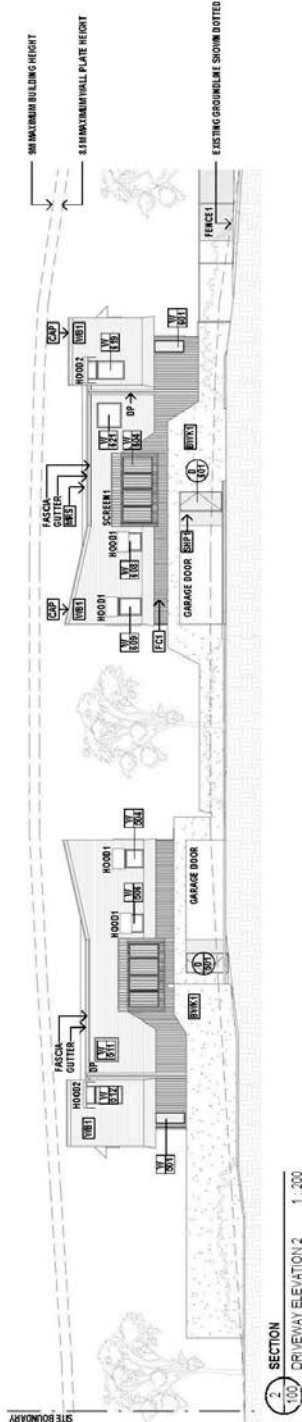
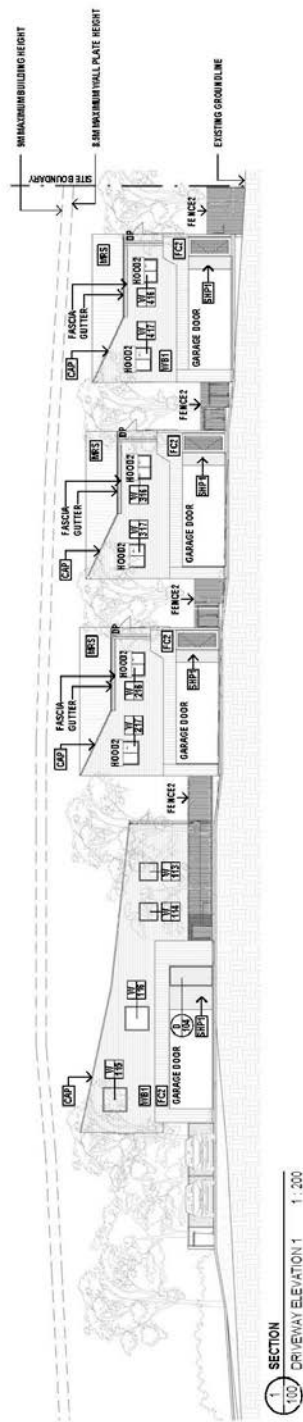
**MARC & CO**  
 1700-1001  
 West 42nd Street - 4TH FLOOR  
 1700-1001-1001-1001  
 A.B.N. 16 09 933 338


**Preliminary**  
 For information only  
 Not for construction

Check all dimensions with the fabricator before fabrication.  
 Use 1/2" dimensions in preference to 1/4".  
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**MATERIALS**  
**ELEVATIONS**  
 Scale: 1:200  
 Date: 5/08/16  
 Project No.: 1622  
 Sheet No.: DA.301  
 Issue: 3

MATERIAL LEGEND	
CODE	DESCRIPTION
SWK1	BLOCKWORK, RENDERED FINISH
CAP	RIDGE AND BARGE CLIPPING
CONC	BROOM FINISHED CONCRETE
DP	DOWN PIPE
FASDA	PAINTED TIMBER FASCIA
FCT1	30MM ALUMINIUM CHANNEL, HANGERS, FLEX, TIMBER COVER BATTENS @ 4MM ON CENTERS
FCT2	30MM ALUMINIUM CHANNEL, HANGERS, FLEX, TIMBER COVER BATTENS @ 4MM ON CENTERS
FENK1	CHARBURNER FENCE WITH TIMBER POSTS AND RAILS
FENK2	PAINT FINISHED TIMBER BATTENS WITH PAINT FINISHED RAILS AND WALL
GUTTR	GAGE GUTTER
HOOD1	POWER COATED CUSTOM ALUMINIUM PROFILED HOODS
HOOD2	POWER COATED CUSTOM ALUMINIUM PROFILED HOODS
HWS	HOT WATER SYSTEM
INS	COLORBOND METAL ROOF SHEETING
POST	PAINT FINISHED POST
ROOF	SKYLIGHT WATER TANK
SCREEN1	EXTERNAL PAINT FINISHED TIMBER BATTEN GREEN
SKY1	BORAL SHUTTER CLADDING, BLACK GRILL
SKY2	ALUMINIUM FINISHED VENTING SKYLIGHT
WB1	JAMES HARVEY SECTION LINEA WEATHERBOARD, PAINT FINISH




**Preliminary**  
**For information only**  
**Not for construction**

Client: **YATES**  
 Project: **6371 SECTION HILL DRIVE**

Drawings: **ELEVATIONS**  
 Scale: **As Shown**  
 Date: **5/10/16**  
 Project No: **1622**  
 Sheet No: **DA-302**  
 Issue: **8**

All dimensions are to be taken unless otherwise stated.  
 Dimensions are given in millimeters unless otherwise stated.  
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**REPORT:**

**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 plans aims to make local environmental provisions for land within the Tweed Heads area 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.*

It is considered that the proposal would be consistent with the aims of the plan, in enabling of a form of residential development with minimal impact on the environment.

### Clause 2.3 – Zone objectives and Land use table

The subject site is located within the R2 Low Density Residential zone. The objectives of this zone are:

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

The proposal is considered to provide a low density development within an appropriately zoned location, it is noted that a significant proportion of surrounding properties are dual occupancies with site areas of around 700m<sup>2</sup> (which equates to 1 dwelling per 350m<sup>2</sup>). Section A1 Part B of Council's DCP 2008 requires a dwelling density of 1 per 450m<sup>2</sup> the proposal would have a ratio of 1 dwelling per 433.17m<sup>2</sup>. The proposed variation of 16.83m<sup>2</sup> per dwelling is considered acceptable in this instance. Accordingly, the proposal is considered to be consistent with surrounding landuses, the zone objectives. Residential Accommodation (multi-dwelling housing) is permitted with consent in the zone.

### Clause 2.6 Subdivision

The proposal seeks approval for a seven lot (revised to six lot) strata subdivision.

### Clause 2.7 Demolition

The proposal seeks approval for the demolition of the existing dwelling. Appropriate conditions have been recommended.

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

The proposal seeks approval for a seven lot (revised to six lot) strata subdivision, strata subdivisions are not covered by the clause. The application does not propose a Torrens title subdivision, therefore the proposal is compliant with the clause.

### Clause 4.3 - Height of Buildings

The objectives of this clause are as follows:

- to establish the maximum height for which a building can be designed,*
- to ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity,*
- to ensure that taller development is located in more structured urbanised areas that are serviced by urban support facilities,*
- to encourage greater population density in less car-dependant urban areas,*
- to enable a transition in building heights between urban areas comprised of different characteristics,*
- to limit the impact of the height of a building on the existing natural and built environment,*

- (g) *to prevent gross overshadowing impacts on the natural and built environment.*

This clause states that the height of any 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 site is mapped as having a maximum building height of 9m.

The proposed development has a maximum stated height of 8.5m. Accordingly, the proposed development complies with this regard.

#### 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 states 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 (0.8:1) over the entire site.

The development has an approximate FSR of 0.318:1 which is much less than the permitted maximum. The proposal is acceptable in this regard.

#### Clause 4.6 - Exception to development standards

There are no exceptions to development standards proposed.

#### Clause 5.4 - Controls relating to miscellaneous permissible uses

The development is not listed as a miscellaneous permitted use.

#### Clause 5.5 – Development within the Coastal Zone

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

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

- (ii) *identifying opportunities for new public access, and*

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

- (b) *the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:*

- (i) *the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and*  
(ii) *the location, and*  
(iii) *the bulk, scale, size and overall built form design of any building or work involved, and*

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

- (c) *the impact of the proposed development on the amenity of the coastal foreshore including:*

- (i) *any significant overshadowing of the coastal foreshore, and*  
(ii) *any loss of views from a public place to the coastal foreshore,*

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

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

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

- (e) *how biodiversity and ecosystems, including:*

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

The proposal is to be undertaken on a previously developed land which is currently utilised for residential purposes. The proposed development would



result in the removal of some landscaping vegetation within the existing site. It is considered that this vegetation provides amenity landscaping rather than having a specific ecological value.

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

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

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

This clause goes on to further state:

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

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

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

The subject site would maintain connection to 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 application has been reviewed by Council's Engineering Unit with respect to stormwater. It has advised that the townhouse development site relies on two downstream easements through private allotments for the legal discharge of stormwater. Hydraulic investigation and design was required to determine the spare capacity of these services to accept increased runoff from the development (and any external contributing catchments) in minor and major storm events, and any upgrades and/or stormwater detention facilities necessary to protect downstream development.

Further information in this regard was received from the applicant, with Council's Flooding and stormwater Engineering raising no further concerns subject to conditions being applied.

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

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

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

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

#### Clause 5.9 – Preservation of Trees or Vegetation

The objective of this clause is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation. The subject site comprises limited vegetation, the four trees located in the eastern portion of the site consisting of any amenity value are proposed to be retained. A landscape intent plan was provided however a condition is recommended requiring a landscape plan to be submitted to Council for approval. It is considered that the proposal raises no major implications in respect of this clause.

#### Clause 5.10 - Heritage Conservation

The subject site is not mapped as being within a Heritage Conservation area. A search was undertaken via the AHIMS web services and found zero Aboriginal sites and places in or near the site.

#### Clause 5.11 - Bush fire hazard reduction

The subject site is mapped as not being bushfire prone land.

#### Clause 7.1 – Acid Sulfate Soils

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

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

Council's Environmental Health Officer has reviewed this aspect of the proposed development and has not raised any objections on this basis, stating "*Given the elevation of the site and proposed development, acid sulfate soil is not considered a constraint for the proposal.*" As such, the proposed development is considered to be acceptable having regard to Acid Sulfate Soils.

### 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.

There are earthworks required to facilitate the proposed development and access.

Clause 7.2(3)(a)-(i) outlines matters which require consideration when assessing an application.

- (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.*

The proposed development seeks consent to undertake earthworks for the construction of the development and access to the site.

The extent of works is considered not to have an impact on the amenity of the surrounding residences. No impact is envisaged on the drainage system, with stormwater to discharge directly in to a pit in Sexton Hill Drive.

The development meets the provisions of Clause 7.2.

### Clause 7.3 – Flood Planning

The subject site is not prone to flooding.

Accordingly, Clause 7.3 is considered satisfied.

### Clause 7.5 - Coastal risk planning

The subject land is not identified as being subject to coastal risk.

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.

It is noted that the amended application has been reviewed by Council's Engineering Unit with respect to stormwater, no concerns were raised in relation to stormwater management subject to conditions being applied.

Clause 7.8 – Airspace operations

The development will not impact on airspace operations.

Clause 7.9 - Development in areas subject to aircraft noise

The development is not located in an area subject to aircraft noise.

Clause 7.10 - Essential Services

All essential services are made available to the subject site, appropriate conditions are recommended with regards to essential services.

Other Specific Clauses

There are no other specific clauses applicable to the subject application.

**State Environmental Planning Policies**

SEPP No. 55

A Preliminary Site Investigation for 63-71 Sexton Hill Drive, Banora Point prepared by HMC Environmental Consulting Pty Ltd dated March 2016 (Report: HMC 2016.035) has been submitted.

A site history and investigation including sampling has been completed, with results below health investigation levels (HILs) for Residential A development. HMC advise that in relation to potential site contamination associated with the current and former land use, the site is considered suitable for the current and proposed residential land use. No further consideration is required in relation to contamination.

SEPP No. 65 - Design Quality of Residential Flat Development

The proposed development will comprise of a Class 1a building under the Building Code of Australia and is less than three storeys in height. Therefore is excluded from the definition of a residential flat building, as defined under SEPP 65.

Pursuant to Clause 4, the policy does not apply.

SEPP No 71 – Coastal Protection

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

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

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

(b) *Existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved.*

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

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

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

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

The proposed development is sited and designed in general accord with the relevant Council controls, the proposal is considered suitable for the surrounding area as the surrounding development consists of a mixture of single and dual occupancy development. The dual occupancy developments are at a higher density than the proposed development. Accordingly, the development is considered not likely to have a significant adverse imposition upon the immediate area in terms of size and scale.

(e) *any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore.*

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

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

The proposal is unlikely to impact upon the scenic quality of the NSW coast, with the development being spatially separated from the Beach and Ocean. The

proposal is consistent with the built environment of the Banora Point area and the general desire for future built development in the locality.

- (g) *measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats;*

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

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

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

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

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

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

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

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

Not applicable.

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

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

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

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

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

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

- (o) *only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities;*

Not applicable.

- (p) *only in cases in which a development application in relation to proposed development is determined:*

- (i) *the cumulative impacts of the proposed development on the environment; and*

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

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

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

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

#### SEPP (Building Sustainability Index: BASIX) 2004

The proposed development comprises 'dwellings' and accordingly the proposal is a "BASIX affected development". A BASIX certificate has been obtained and was lodged with the subject application.

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

There is no draft LEP applicable to the application.

#### **Exhibited Draft State Environmental Planning Policies or Regional Environmental Plan/s**

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 wetlands and Literal rainforest 100m buffer).
- Coastal environment area (water).
- Coastal use area (100m buffer above mean high water mark).
- Coastal vulnerability area (Coastal Hazard).

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 development 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 340 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*

A1-Residential and Tourist Development Code

A complete A1 assessment has been undertaken and is appended to the DA file. The subject application seeks the following variations to Section A1 of Councils DCP, namely:

**Section A1 - Part B - Chapter 1 - Building Types (Town Houses), Control B**

The proposed development does not meet the minimum 1 dwelling per 450m<sup>2</sup> as listed within Control B.

**Section A1- Part B - Chapter 2 Design Control - Site Configuration - Topography Cut & Fill - Control H**

The proposed development does not meet control H relating to the maximum level of cut and setback requirements for fill.

**Section A1- Part B - Chapter 2 Design Control- Setbacks - Front Setbacks - Control C**

The proposed development does not meet Control C relating to the average setback in established areas given that it is not possible to define an average as no neighbouring allotments front Sexton Hill Drive.

**Section A1- Part B - Chapter 2 Design Control- Setbacks - Rear Setbacks - Control C**

The proposed development does not meet Control C relating to the rear setback requirement of 5m or the deep soil zone.



**Section A1- Part B - Chapter 2 Design Control- Car parking and Access - Garages- Control E**

The proposed development does not meet Control E relating to the setback for on-grade car parking in town houses.

**Section A1 - Part B - Chapter 1 - Building Types (Town Houses), Control B**

The proposed development does not meet the minimum 1 dwelling per 450m<sup>2</sup> as listed within Control B.

The site is zoned R2 Low Density Residential, with a land area of 2599m<sup>2</sup>.

However, the proposal does not comply with 1 dwelling per 450m<sup>2</sup> with the development proposing 1 dwelling per 433m<sup>2</sup>. The proposal does comply by providing 1 per 220m<sup>2</sup> development lot area.

The objectives state:

- *To provide development capacity on larger lots within residential areas.*
- *To retain the residential character in streets and suburbs.*
- *To create or retain quality residential and pedestrian friendly streetscapes.*
- *To provide an alternative form of medium density housing.*

Comment:

The applicant provided the following:

*To provide development capacity on larger lots within residential areas.*

*Comment:*

*The sites unique nature has the capacity to provide six (6) town houses with the ability to ensure precedence is not created in the area.*

*To retain the residential character in streets and suburbs.*

*Comment:*

*Given the high set nature of the allotment on Sexton Hill Drive no true residential character exists through both the historical use of Sexton Hill Drive as the Pacific Highway and the allotments positioning above Sexton Hill Drive providing a clear disconnect between residential and public land. The unique characteristics of the allotment as mentioned above provide further support that precedent in the shire cannot possibly be set. Through architectural merit and response to landscaping provisions the presentation of the town houses to the street frontage will not over power the streetscape.*

*To create or retain quality residential and pedestrian friendly streetscapes.*

*Comment:*

*The architectural merit awarded to the development actively fronts Sexton Hill Drive, as such pedestrian and vehicular access is clearly oriented toward the street frontage in a safe and orderly method.*

*To provide an affirmative form of medium density housing*

*Comment:*

*The proposed development effectively provides an alternative form of housing in response to the zoning permissibility aiming to inject a housing type into the area to provide affordable living opportunities in the market.*

*While the development does not meet the 450m<sup>2</sup> minimum a further note within this control identifies that each town house is to be provided with a development lot area of 220m<sup>2</sup>. The development lot area for each town house ranges from 293m<sup>2</sup> - 481 m<sup>2</sup>. It is noted that the site is one of the last infill development sites of its kind within the Banora Point area, the development will inject a suitable residential type that will add to the mix of dwellings within the vicinity while increasing the availability of affordable housing stock. Being one of the last large residential allotments within the area the site presents a unique opportunity ensuring no precedent will be set given that no other property within the vicinity has the capacity to provide the density that this application can ultimately achieve. It is important to distinguish that this variation sought does not act as a precursor for other variations sought within this application.*

*Given that landscaping requirements can be achieved and that the sites characteristics allow the development to not unduly affect neighbouring developments or the streetscape, Councils support for the variation to the 450m<sup>2</sup> control is respectfully requested."*

#### Council Officer comment

- *To provide development capacity on larger lots within residential areas.*

The proposal complies with this objective by providing development on a larger lot within a residential area. However, it is noted that that proposal does not comply with the 1 per 450m<sup>2</sup> standard, but the proposal does comply with 1 per 220m<sup>2</sup> of development lot area.

- *To retain the residential character in streets and suburbs.*

The residential character of the area is primarily single and two storey, single dwelling detached residential housing on lots sizes around 650m<sup>2</sup>. It is noted that there are a few attached dual occupancy located within the immediate area on lot sizes around the 632m<sup>2</sup>-700m<sup>2</sup> size therefore equating to 1 dwelling per 316m<sup>2</sup> to 350m<sup>2</sup>.

- 7 Sommerset Avenue has a land area of 702m<sup>2</sup> therefore equating to 1 per 350m<sup>2</sup>.
- 46 Pacific Drive is a dual occupancy with a land area of 632.5m<sup>2</sup> therefore 1 per 316.25m<sup>2</sup>.
- 1 Mibbin Parade attached dual occupancy on land 670m<sup>2</sup>, therefore 335m<sup>2</sup> per dwelling. (There are many other examples within the immediate area).
- 50 unit aged care facility 2-4 Terranora Road Banora Point on land area of 7875m<sup>2</sup> therefore 157.5m<sup>2</sup> per unit.

It is also noted that the site is located at the rear of residential development and fronts Sexton Hill Drive which does not have a formalised residential character, refer to aerial photo below.



**Aerial of the site and surrounding land.**

The large setbacks proposed to the street (Sexton Hill Drive) of 3 metres to 13.5 metres in combination with the significant height difference between the subject site and Sexton Hill Drive (the site is approximately 3 metres higher than Sexton Hill Drive) and proposed landscape intent would assist in providing an improved and positive streetscape and would not adversely impact on the streetscape, refer below to site plan.



**Photo illustrating dense vegetation and change in elevation.**

- *To create or retain quality residential and pedestrian friendly streetscapes.*

As stated above, the proposal development with generally exceeding setbacks to Sexton Hill Drive (up to 13.5 metres) and proposed Landscape plan will improve on the current streetscape and will not impact on the existing pedestrian footpath. It is noted that the setback between the property boundary and the footpath is approximately 10 metres. Therefore the potential setback from the dwelling façade to the footpath is up to 23 metres (min 12 metres).

- *To provide an alternative form of medium density housing.*

The proposed development (six Townhouses) provides an alternative form of Medium density housing.

The proposal has been assessed against the objectives and it is considered that the proposal is consistent with the objectives as demonstrated above.

### **Section A1- Part B - Chapter 2 Design Control - Site Configuration - Topography Cut & Fill - Control H**

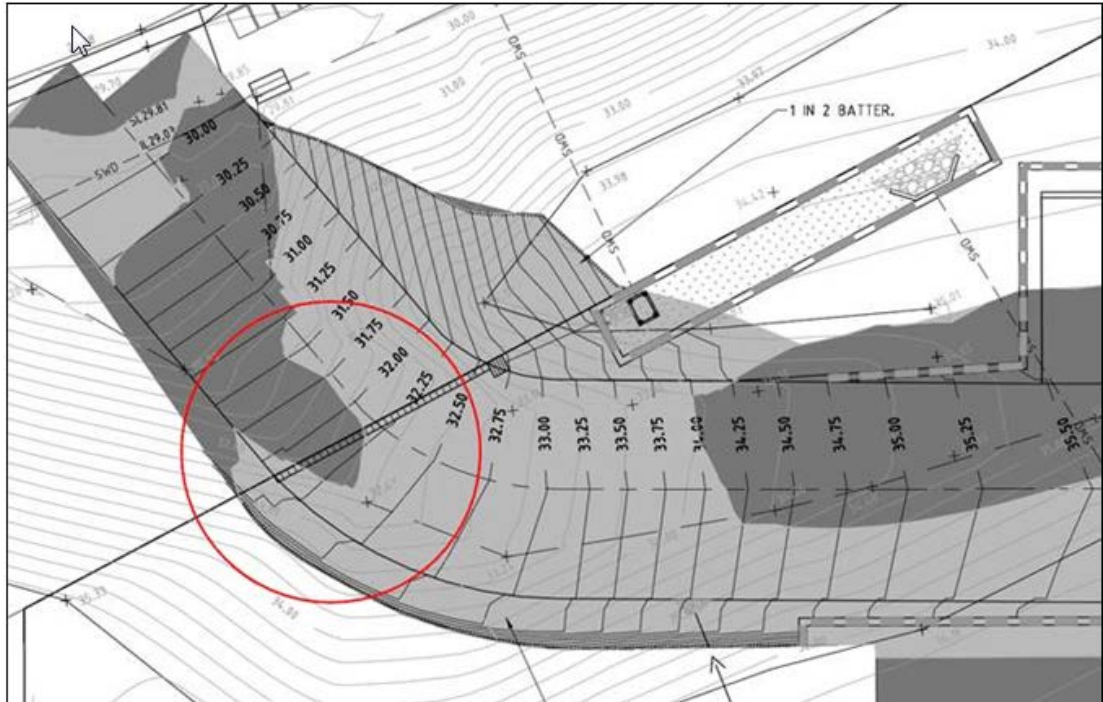
The proposed development does not meet control H relating to the maximum level of cut and setback requirements for fill.



The proposal seeks a variation in regards to the following standard:

- h. Cut areas are to be set back from the boundaries at least 900mm; fill areas are to be setback from the boundary a minimum of 1.5m.*

The area of noncompliance relates to proposed fill to enable improved access to the site, refer to figure below.



The applicant provides the following comments:

- To retain the existing landform.*

*Comment:*

*The proposal has been subject to extensive design development to ensure the minimum amount of cut/fill and retaining is required to facilitate the proposal. The extent of retaining is located within the confines of the building footprint. No adverse impact to the existing landforms results. The proposal is compliant with this objective.*

- To limit the extent of excavation.*

*Comment:*

*The proposed variation is associated with excavations within the building footprint. The extent of non-compliant excavation remains predominantly within the building footprint. The proposal does not compromise attainment of this objective.*

- . *To moderate the effects of building height and bulk on sloping land.*

*Comment:*

*The proposed variation to cut has no direct impact on the building height or bulk of the proposed building. The proposal is compliant with this objective.*

- . *To minimise the extent of earth works on residential land and earthworks associated with residential development.*

*Comment:*

*The proposed variation to retaining has no direct impact on the building height or bulk of the proposed building. The proposed variation relates to excavation within the building footprint. The proposal is compliant with this objective.*

- . *To ensure that the building design is appropriate for site topographical conditions*

*Comment:*

*Where variation is sought, the non-compliant cut and fill is predominantly contained within the building foot print. Minor encroachments outside of the building footprint will not restrict stormwater drainage nor does it dominate the landscape.*

*The proposal is compliant with this objective.*

*Council's support of the proposed variation to Design Control 2 - Site Configuration - Topography, Cut and Fill- Control F and H is respectfully requested.*

Council Officers comment:

The applicant states that cut and fill is proposed along the front boundary (driveway access) and therefore does not comply with the standard. Refer to the cut and fill plan above. Cut and fill appears to be minor but also required to provide improved access, with all other cut and fill is within the confines of the building footprint or internal access and parking. The proposed variation is minor and is due to the strict interpretation to the control. It is considered that the earthworks are unlikely to create an impact on the natural or built environments. However the following comments are made in relation to the objectives.

*Objectives*

- *To retain the existing landform.*

The proposed earthworks are considered to be relatively minor, with the development retaining the existing landform. The proposed earthworks are considered not likely to impact on adjoining properties.

- *To limit the extent of excavation.*

The extent of excavation is considered to be minor and is mainly contained within the building footprint or is providing access to the site.

- *To moderate the effects of building height and bulk on sloping land.*

The cut within the building envelope will reduce the height of the buildings.

- *To minimise the extent of earth works on residential land and earthworks associated with residential development.*

The proposed earthworks are considered to be relatively minor and relate to providing improved access to the site and within the building footprints.

- To ensure that the building design is appropriate for site topographical conditions.

The buildings have been designed to conform and reflect the existing topographical features of the site. This is evident in the minor levels of cut and fill relating to the development.

### **Section A1- Part B - Chapter 2 Design Control- Setbacks - Front Setbacks - Control C**

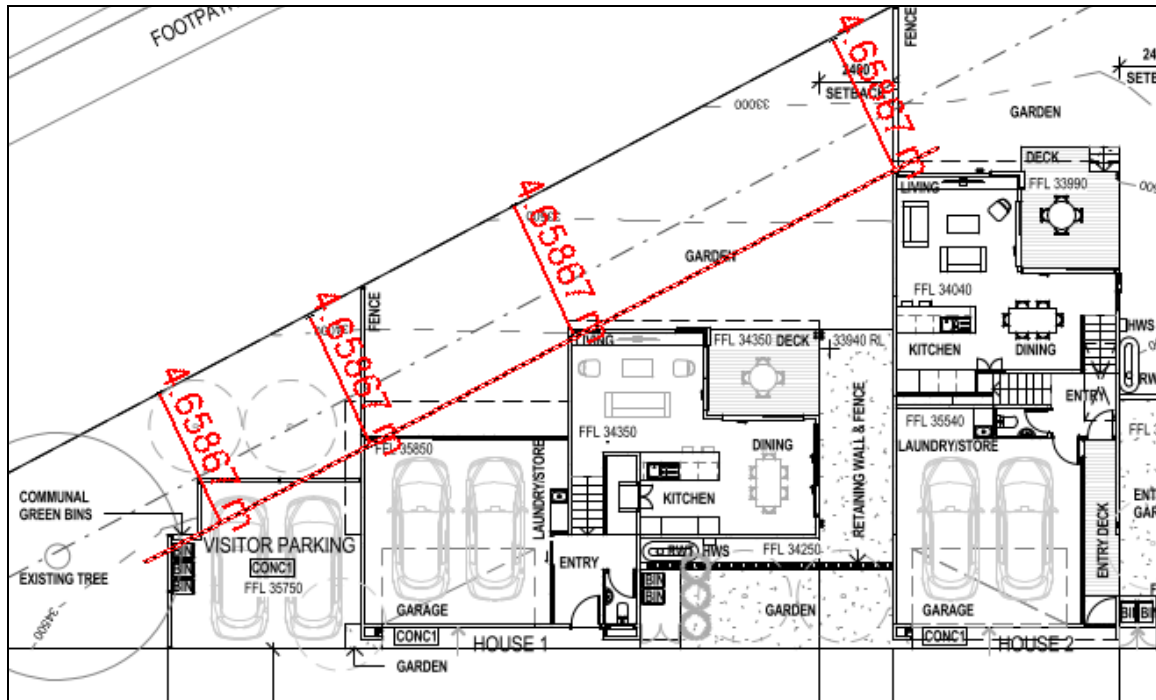
The proposed development does not meet Control C relating to the average setback in established areas given that it is not possible to define an average as no neighbouring allotments front Sexton Hill Drive.

The site is within an established area and is an infill site, with the neighbouring properties to the east having setbacks of 6m and 5.3m therefore the average could be suggested as 5.65m minus 1m would equate to 4.65m setback under the policy.

The site does not have dual frontage. The site has only one street frontage – Sexton Hill Drive.

The majority of developments on Sexton Hill Drive do not front Sexton Hill Drive but rather the rear of the properties front Sexton Hill Drive.

A setback of 6 metres is the development control, however, as the site is an infill site the average setback plus or minus 1m can be applied. Therefore the infill setback could be reduced to 4.65m. The development proposes a small variation relating to the visitor car parking space, refer to figure below illustrating the 4.65m setback and variation.



**Figure illustrating the front setback variation which effects the visitor car space.**

The applicant provides the following comments in relation to the front setback variation.

*The objectives of this control are as follow:*

- To establish the desired spatial proportions of the street and define the street edge.*

*Comment:*

*The site elevation ensures that the street edge remains definable, the encroachment does not constrain this objective.*

- To enable a transition between public and private space.*

*Comment:*

*The site elevation from public space provides a clear transition between public and private land, the encroachment to the nominated front building line does not constrain this objective.*

- To create a landscape setting for residential buildings.*

*Comment:*

*The proposed developments compliance with landscaping controls within the TDCP 2008 further quantify the ability to provide sufficient landscaping to each allotment and the site in general.*



- . To ensure compatibility with other buildings in the street.

Comment:

*The street frontage to Sexton Hill Drive is elevated and will not unduly affect any neighbouring properties visual privacy*

- . To allow for landscaping.

*Comment: With the encroachment of the front building line the provision of landscaping is not reduced given that gradual stepping back of the buildings from front boundary provides adequate capacity to maintain a large deep soil zone.*

Council Officers comment:

The proposed front setback variation is supported, as the variation will not impact on the streetscape as the buildings will not be visible from the Sexton Hill Drive. The site is elevated above Sexton Hill Drive which is vegetated therefore the variation will not be visible or impact on the street edge. The site has a large setback from the property boundary to the road edge being 11.8 metres, which contains vegetation, refer to figure below.



**Figure illustrating the large setback between the property boundary and the road edge.**



**Photo image illustrating Sexton Hill Drive, existing dense landscaping and the topography change.**

The Applicant has provided a landscape intent plan which illustrates landscaping between the buildings and the property boundary further reducing any potential impact to the street edge, refer to figure below.



**Figure illustrating the landscaping intent plan and vegetation within the front setback - Please note that this plan relates to the original proposal for seven townhouses.**

**Section A1- Part B - Chapter 2 Design Control- Setbacks - Rear Setbacks - Control C**

The proposed development does not meet Control C relating to the rear setback requirement of 5m or the deep soil zone.

The proposed rear setback is 4m which is less than the 5m requirement, therefore a variation is requested of 1m.

The applicant provided the following justification for the 1m variation to the rear setback.

*The objectives of this control are as follows:*

- . *To establish the desired spatial proportions of the street and define the street edge.*

*Comment:*

*N/A - This variation seeks consent for the rear setback only.*

- . *To enable a transition between public and private space.*



*Comment:*

*N/A - This variation seeks consent for the rear setback only.*

*. To create a landscape setting for residential buildings.*

*Comment:*

*The proposed developments compliance with landscaping controls within the TDCP 2008 further quantify the ability to provide sufficient landscaping to each allotment and the site in general.*

*. To ensure compatibility with other buildings in the street.*

*Comment:*

*Given that the site will require cut and fill during forming the scale of the proposed development will not unduly affect any neighbouring properties visual privacy*

*. To allow for landscaping.*

*Comment:*

*The proposed developments compliance with landscaping controls within the TDCP 2008 further quantify the ability to provide sufficient landscaping to each allotment and the site in general.*

*Councils support on the variation to the front building line setback control is respectfully requested.*

*Council officer comment:*

The proposed variation is supported as the variation will not impact on the residential properties located at the rear of the site, not impact on the transition between public and private space. Adequate space is provided on the rear property boundary for landscaping, refer to landscape intent plan below.

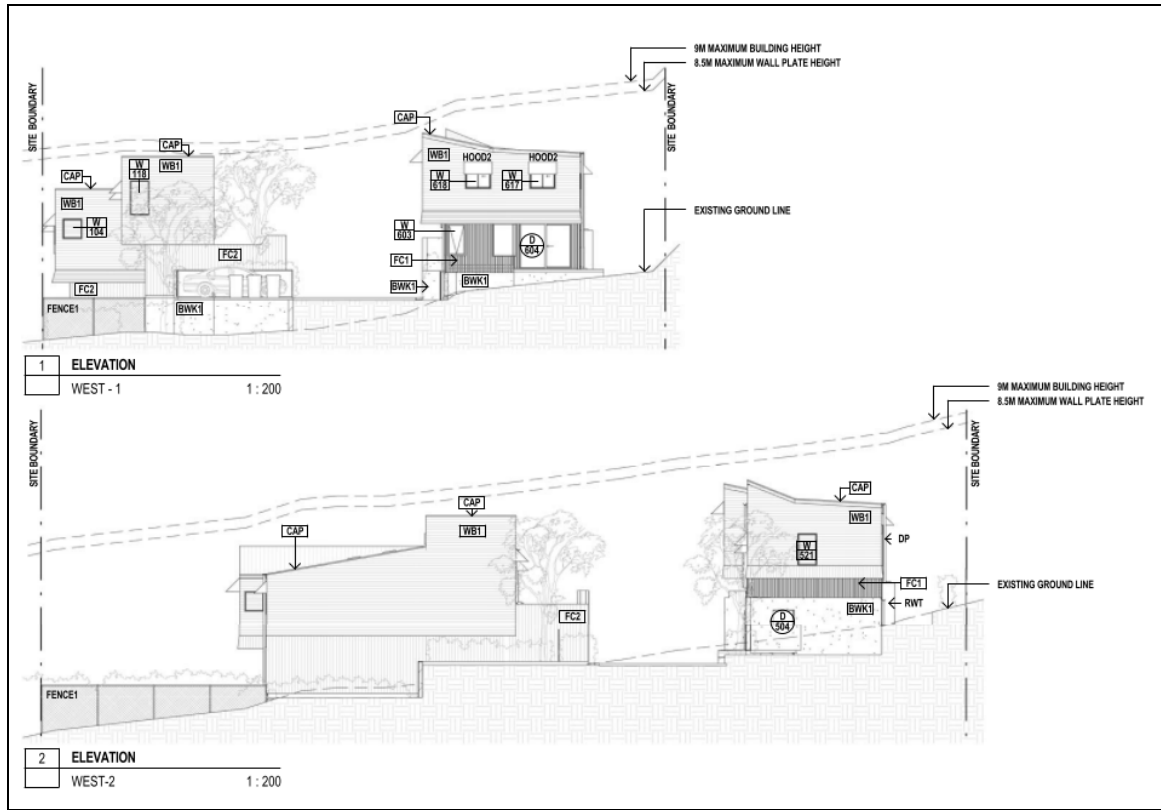


**Figure illustrating landscape intent - please note that this plan relates to the original proposal for seven townhouses.**

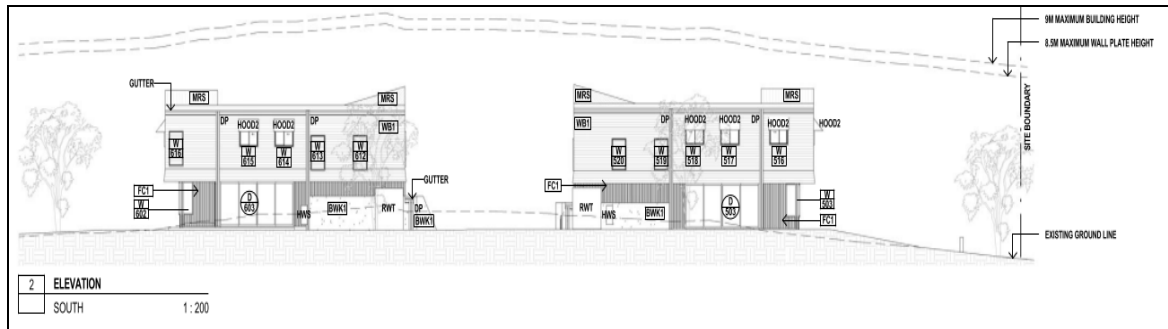


Due to the topography of the site being lower than the properties to the south and the proposed cut, the proposal is considered to less of a visual and privacy impact than if the site were level. The site level difference combined with rear fencing and the setback of the existing residential dwellings combine to assist in

reducing visual and privacy impacts and support the variation of 1m for the two town houses (numbered 5 and 6) located on the rear southern boundary.



**Figure illustrating the rear setback and topography of the subject site and neighbouring property to the rear (south).**



**Figure illustrating view from the south.**

**Section A1- Part B - Chapter 2 Design Control- Car parking and Access - Garages- Control E**

The proposed development does not meet Control E relating to the setback for on-grade car parking in town houses.

The development proposes at grade visitor parking that is within 6m (setback 3m from boundary).

The Applicant provided the following justification:

*The objectives of this control are as follow:*

- . To provide onsite car access, parking and manoeuvring areas.*

*Comment:*

*This application provides onsite car access, parking and manoeuvring areas, given the peculiar shape of the allotment a minor variation is sought relating to the front setback for on grade car parking.*

- . To minimise the physical and visual dominance of vehicles on sites.*

*Comment:*

*Given the peculiar shape of the allotment it is inevitable that at some point a minor variation will be sought relating to the front setback. With the shape of the allotment and gradual stepping back of townhouses only a portion of the development encroaches ensuring that the encroached features do not dominate across the entire front setback. The elevation of the site from the street frontage essentially prevents any dominance of the development to the street front.*

- . To minimise footpath and street reserve crossings.*

*Comment:*

*The sites elevation restricts pedestrian access to the site through the driveway crossing only. No new footpath or street reserve crossings will be required to facilitate this encroachment.*

*Councils support on the variation to the front building line setback for on grade car parking is respectfully requested.*

The applicant's justification is supported, as the variation is not visible from a public place, neighbouring property or from Sexton Hill Drive therefore no physical or visual dominance. Only one footpath and street reserve crossing is proposed.



**Photo image illustrating Sexton Hill Drive, existing dense landscaping and the topography change. The proposed at grade visitor car parking is unlikely to be visible from the street.**

A2-Site Access and Parking Code

The application and Traffic Impact Assessment report was referred to Council's Traffic Engineer no objection was raised to site access and parking for the development and the Traffic Report.

Development Type

Multi Dwelling housing

Parking Rate

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.



Parking required

14 spaces (12 for units 2 for visitors).

Parking Provided

14 spaces (12 for units 2 for visitors).

Access and parking is considered to be acceptable.

A11-Public Notification of Development Proposals

The application was notified for a period of two weeks, from Wednesday 27 January 2016 to Wednesday 10 February 2016. Council received seven submissions in relation to the application.

The matters raised in all submissions are addressed later in this report.

A15-Waste Minimisation and Management

A Waste Management Plan was submitted with the application and referred to Council's Waste Management Unit for comments. Council's Waste Management Unit responded who advised that there are no waste issues with the proposal.

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

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

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

Clause 92(1)(b) Applications for demolition

Demolition of the existing dwelling is proposed with the application. Council's Building Unit recommended suitable conditions in relation to demolition of the existing dwelling.

Clause 93 Fire Safety Considerations

Not Applicable.

Clause 94 Buildings to be upgraded

Not Applicable.

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

**Tweed Shire Coastline Management Plan 2005**

The site is not covered by a coastline management plan.

**Tweed Coast Estuaries Management Plan 2004**

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

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

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

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

**Context and Setting**

The proposed development, is considered to be acceptable in terms of the local context, as the surrounding area consists of a mixture of single dwelling attached dual occupancies and a 50 unit aged care facility. The average densities provided by the dual occupancy developments are 1 dwelling per 350m<sup>2</sup> with the proposal consisting of 1 dwelling per 433m<sup>2</sup>. The development is considered to offer a diversification of housing type to that in the surrounding areas, whilst still being a compatible land use. Accordingly, the development is considered to be consistent with the surrounding residential context of the site.

**Bulk and Scale**

Given the site's positioning, the proposed development will not be highly visible from Sexton Hill Drive, if at all. The character of development located behind the existing residential development and adjacent to Sexton Hill Drive will be difficult to view from public places. The development is considered not to have a negative impact in terms of bulk and scale, given its location behind existing dwellings (Somerset Avenue and Echuca Crescent) and elevation above Sexton Hill Drive and that the townhouses are under the maximum building height and floor space ratio.

**Access, Transport and Traffic**

Access to the site is proposed to be via a single 5.8m wide driveway, located off Sexton Hill Drive. The development proposes two visitor parking spaces and two spaces per town house, which complies with Council's parking requirements.

Flora and Fauna

Four trees will be retained in the north western frontage of the site. The approved plan has been amended in Red referencing the subject trees to be retained. Any trees proposed to be removed are not considered to be threatened species, and the site is already highly modified. The submitted statement of landscape intent clearly identifies where the retention of trees is proposed. A condition requiring a landscaping plan to be approved by Council is recommended.



**Figure illustrating landscape intent. Note this is for the original seven dwellings.**

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

Surrounding Landuses/Development

The subject site is located within an existing and established residential area, in Banora Point. The surrounding area contains a mixture of single dwelling houses, dual occupancies and 50 unit aged care facility.

Topography

The subject land slopes from the southern boundary down to the north, with minor cut proposed to create level building pads, access and parking areas. Site levels

vary from approximately RL 37m along the southern boundary to RL 31m along the northern boundary. The subject site is lower than the surrounding properties to the south and east, combined with the proposed cut the development will have an even lower finished ground level than the surrounding residential properties. This will assist in reducing potential impacts with regards to views and privacy from the neighbouring properties.

#### Services

The site is in within an existing urban area and all required services are available.

#### Demolition

Demolition of the existing dwelling is proposed under this application and appropriate conditions have been recommended.

#### Road Noise

A Road Traffic Noise Impact Assessment for 63-71 Sexton Hill Drive, Banora Point was prepared by CRG Acoustics Pty Ltd dated 17 March 2016 (crgref: 16022 Report) and been submitted to Council.

To achieve the required indoor noise levels, CRG Acoustics recommend building shell treatments as outlined in Table 3 of the report. To achieve the indoor criteria in affected spaces, it is necessary to close windows and doors. It is also noted that louvre style windows are unlikely to achieve the required Rw ratings and an alternate style is recommended.

CRG has advised that the proposal can be shown to comply subject to the recommended treatments detailed in Section 6 of the report being incorporated into the proposed buildings. Council officers have recommended conditions to be applied to the consent.

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

<b>Submission</b>	<b>Comment</b>
Is vehicular access from Sexton Hill or neighbouring property.	Applicant's response - Vehicular access is sought entirely from Sexton Hill Drive. A traffic report has been provided with this application, we confirm that the traffic report guided the yield for this application while Sexton Hill Drive can sustain a town house development.  Council's Response – No objection to access from Sexton Hill Drive.
Current vegetation and landscaping. Will landscaping be replaced if removed to facilitate the proposal?	Applicant's response - Concern is raised to the protection of trees that have been planted by neighbours within Council's road reserve. Our client is willing to reinstate to a satisfactory level any vegetation removed to facilitate required upgrades. Any landscaping would have to consider the clearance of services, this

Submission	Comment
	<p>in effect may not be plausible.                      Council's Response – No objection to the removal of vegetation. It is noted that the application was supported by a statement of landscape intent. A condition is recommended requiring a landscaping plan to be submitted to Council for approval.</p>
<p>Variation to the minimum lot size of 450m<sup>2</sup>. The proposal to develop seven houses is considered to significantly change the landscape of the area.</p>	<p>Applicant's response - Concern is raised around the variation to minimum 450m<sup>2</sup> lot size. Council's concerns have also been noted, we have responded accordingly. Please see attached Appendix A – Amended Architectural Plans addressing Council and objectors concerns about density.                      Council's Response – A Torrens title subdivision is not proposed therefore the current allotment of 2599m<sup>2</sup> remains compliant with Clause 4.1 of the Tweed LEP 2014. However Section A1 Part B contains a development control requiring a density of no greater than 1 dwelling per 450m<sup>2</sup>. The proposed amended development seeks a density of 1 dwelling per 433m<sup>2</sup>.                      The proposed variation is considered to be minor particularly in the context of the surrounding multi dwelling housing developments (dual occupancies and aged care facility 50 units) which have a much greater density of 1 dwelling per 433m<sup>2</sup>.</p>
<p>Rear setback. The proposed variation has potential impacts on privacy and increased noise.</p>	<p>Applicant's response - Rear setback. Objectors raise concerns around the rear setback variation. The siting of the building located 3.5m from the nominated rear boundary does not raise any privacy concerns given the excavation proposed effectively results in dwellings sited below the natural ground level of neighbouring properties. It is further noted that a variation between the proposed townhouses and neighbouring properties has not been sought. An assessment of separation distances for unit 5 &amp; 6 has been provided below confirming that the separation provides a distance greater than Councils controls.</p>
	<p>Councils controls. <b>Complies:</b> The 8m minimum proposed town houses separation are provided with significant setbacks between the wall containing primary living rooms (on doors to the adjacent</p>

Submission	Comment
	<p>any level of the building) to the wall of an adjacent building containing primary window/doors of living rooms</p> <p>6m minimum separation distance between primary windows/doors (on any level of the building) of living rooms to windows other than the primary windows of living rooms.</p> <p>buildings. The outdoor living space wall is setback 6.60m from the rear boundary, a review of the siting of existing homes to the west (rear boundary) confirms the outermost portion of outdoor living spaces is setback between 8.70m and 13.80m from their rear boundaries. It is therefore identified that a separation between the proposed town houses primary windows/doors to adjacent buildings is in exceedance of between 15.3m – 20.4m. No privacy concerns are borne.</p> <p><b>Complies:</b> The proposed town houses are provided with significant setbacks between the wall containing primary doors to the adjacent buildings. The outdoor living space wall is setback 6.60m from the rear boundary, a review of the siting of exciting homes to the west (rear boundary) confirms the outermost portion of outdoor living spaces is setback between 8.70m and 13.80m from their rear boundaries. It is therefore identified that a separation between the proposed town houses primary windows/doors to</p>

Submission	Comment
	<p>adjacent buildings is in exceedance of between 15.3m – 20.4m. No privacy concerns are borne.</p>
	<p>Council's Response – The proposed rear setbacks are considered to be acceptable due to the distance provided, change in elevation with the subject site being lower than the neighbouring property and solid timber fencing located between the rear property boundaries.</p>
<p>Cut and Fill. How much cut and fill is proposed?</p>	<p>Applicant's response - Fill: Objectors raise concern around fill levels and clarity around the proposal, we confirm that section 3.1 of the submitted engineering report documents the level of cut and fill. No imported fill will be required in order to facilitate this proposal in fact 240m<sup>3</sup> of soil will be exported from the site. Cut and fill is proposed to effectively grade the site in order to allow stormwater to be discharged to a lawful point.</p> <p>Council's Response – There are no engineering concerns relating to cut and fill. It is noted there is a numerical non-compliance issue involving the access driveway at the front of the site, however the access proposal is acceptable and the steepness of the site does not provide much flexibility for variation. This variation is supported.</p>
<p>Stormwater. All of our rear stormwater runs into Council approved stormwater drainage pit system that then runs into the proposed development.</p>	<p>Applicant's response - Storm water management: Objectors raise concern over stormwater discharge into neighbouring properties. Civil design has been undertaken, confirmation that stormwater can be discharged to a lawful point has been documented within the engineering report see section 4.0.</p> <p>Council's Response – There are no engineering concerns relating to stormwater. The revised plans show the previously proposed bio-retention pods removed and stormwater treatment requirements addressed by 2 x Humeceptor GPTs. This is acceptable in relation to Council's requirements.</p> <p>The revised proposal also discharges stormwater directly to a pit in Sexton Hill Drive. This resolves the previous issue of the outlet not free draining. No further objections.</p>

Submission	Comment								
<p>Vegetation removal. Which 3 existing trees are being left standing and will they be properly maintained if this development goes ahead.</p>	<p>Applicant's response - Tree retention: Objectors are unclear of the trees to be retained. The submitted statement of landscape intent clearly identifies where the retention of trees is proposed. Council's Response – The application was supported by a Landscape Intent which illustrates vegetation to be retained and location of new vegetation. The Landscape Intent illustrates that existing and proposed landscaping will be used to improve privacy and amenity. Conditions relating to landscaping are recommended.</p>								
<p>Car parking shortfall. We believe that there is not sufficient parking on the proposed size of the development and excess parking will spill over into adjoining streets ie. Summit St and Somerset Ave.</p>	<p>Applicant's response - Car parking: Objectors raise concerns around non compliance with car parking. We confirm the original submission maintained full compliance with Section A2 of the Tweed DCP 2008, furthermore, the reduction of 1 town house continues to fully comply as follows:</p> <table border="1" data-bbox="711 1061 1383 1644"> <thead> <tr> <th data-bbox="711 1061 911 1122">Development Type</th> <th data-bbox="917 1061 1062 1122">Parking Rate</th> <th data-bbox="1069 1061 1238 1122">Parking Required</th> <th data-bbox="1244 1061 1383 1122">Parking Provided</th> </tr> </thead> <tbody> <tr> <td data-bbox="711 1131 911 1644">Multi Dwelling Housing</td> <td data-bbox="917 1131 1062 1644">- 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.</td> <td data-bbox="1069 1131 1238 1644">6 townhouses at 2 spaces per town house = 12 + Provision of 2 visitor spaces Total required= 14</td> <td data-bbox="1244 1131 1383 1644">14</td> </tr> </tbody> </table> <p>Council's Response – There are no concerns relating to parking. The proposal is considered to provide compliant number of car parking spaces being two per unit and two visitor spaces, total of 14 spaces.</p>	Development Type	Parking Rate	Parking Required	Parking Provided	Multi Dwelling Housing	- 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.	6 townhouses at 2 spaces per town house = 12 + Provision of 2 visitor spaces Total required= 14	14
Development Type	Parking Rate	Parking Required	Parking Provided						
Multi Dwelling Housing	- 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.	6 townhouses at 2 spaces per town house = 12 + Provision of 2 visitor spaces Total required= 14	14						

**Public Authority Submissions Comment**

Comments from Public Authorities are not required.



**(e) Public interest**

The proposed development has been assessed against all relevant legislation and policies, is permissible with Council consent and is not considered to be contrary to the public interest. Subject to recommended conditions being imposed on the consent, the application is considered reasonable and appropriate for the locality.

**OPTIONS:**

1. Approve the development application with the recommended conditions of consent; or
2. Refuse the development 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:**

Attachment 1.

Additional plans and photographs in response to Councillors workshop held 9 March 2017 (ECM 4467951)

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**2 [PR-PC] Submission on Draft Education and Child Care State Environmental Planning Policy (SEPP)**

**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
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### **SUMMARY OF REPORT:**

The NSW Department of Planning and Environment (DP&E) have publically exhibited the Draft State Environmental Planning Policy (SEPP) (Educational Establishments and Child Care Facilities). The proposed changes seek to streamline the approvals process and expand the opportunity for approvals under the exempt and complying development pathway to make it easier for education and child care providers to build new facilities and improve existing ones.

At present, development of these types of facilities is principally governed by the National Quality Framework for early childhood education and care services, along with multiple policy documents at both state and local government. The Draft SEPP establishes a regulatory framework that will align all of these into one guiding document for development.

In broad terms, adoption of the Draft SEPP as currently exhibited is unlikely to result in any significant changes to the way Tweed Council approaches is strategic planning, development assessment or compliance functions. It would, however, open pathways for development standards within the TLEP 2014 (such as building height) to be varied for development in association with schools, and allow for the imposition of additional loads on Council infrastructure without providing a mechanism for Council to monitor the load increase or levy additional contributions.

This report presents a summary of the proposed policy changes and their implications for planning and development in the Tweed Shire. It also presents a submission for the consideration by Council prior to finalisation and forwarding to the NSW DP&E as Council's formal response to the Draft SEPP.

**RECOMMENDATION:**

**That the attached submission to this report in response to the public exhibition of the Draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities) be endorsed.**

## REPORT:

The NSW Department of Planning and Environment (DP&E) have released a suite of draft legislation, policy updates and design guidelines pertaining to child care, early childhood and ongoing education. They are currently on exhibition for public comment until 24 March 2017.

A recommended submission is attached to this report for information and reference, and endorsement if appropriate.

A key driver for the update is an identified urgent need to provide additional capacity in child care facilities and schools across the state, and to meet NSW State Government election commitments regarding significant investment in school infrastructure over the next 5-10 years.

The primary piece of proposed new legislation is the Draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017, with supporting amendments proposed for SEPP (State and Regional Development) 2001; SEPP (Exempt and Complying Development Codes) 2008, as well as consequential changes to SEPP (Infrastructure) 2007 and the LEP Standard Instrument.

The key Aims of the Draft SEPP (Educational Establishments and Child Care Facilities) are to:

- streamline the planning system for education and child care facilities including changes to exempt and complying development;
- bring Commonwealth Laws regulating early childhood education and care into a state planning system;
- bring the Department of Education into the planning process early, and give child care providers and developers information, from the beginning, regarding all national and state requirements for new child care services;
- streamline the delivery of new schools and upgrading existing facilities, with a focus on good design; and
- assist TAFEs and universities to expand and adapt their specialist facilities in response to the growing need, and to maintain our reputation for providing world class tertiary education, while allowing for more flexibility in the use of their facilities.

The proposed SEPP will:

- simplify and standardise the approval process for child care facilities, schools, TAFEs and universities, including broadening the range of development that can be undertaken as exempt development and complying development,
- set out clear planning rules for these developments, including where they can be built, what development standards apply, and consultation requirements, and
- establish state-wide assessment requirements and design considerations to improve the quality of these facilities and to minimise impacts on surrounding areas.

## Current Planning framework

Early childhood education and child care facilities are currently regulated through several national and state policies, including the National Quality Framework for early childhood education and care services. They also require development consent from local government, thus are subject to the planning controls within LEPs and DCPs. The result is a complicated assessment process with multiple layers.

All new public schools and major school expansions with capital investment value of \$30 million or over are declared State Significant Development (SSD) under the SEPP (State and Regional Development) with the Minister for Planning as the consent authority. Council's role in these developments is limited to a level of assessment only, and on request.

Planning provisions regulating expansion or alterations to public educational establishments with a capital investment value of less than \$30 million are covered in the SEPP (Infrastructure) 2007. It sets out provisions for development with and without consent, complying and exempt development in association with public schools, universities and TAFE.

Non-government schools are currently not identified within the Infrastructure SEPP and thus require development consent under local planning provisions, unless their capital investment value triggers SSD as described above. Under the proposed reforms, non-government schools will be declared as public authorities allowing them to undertake the same level of development without consent as public schools.

Tweed planning framework references to education and child care are limited to defined land uses within the LEP and permitted land uses within the Land Use Tables.

Tweed Development Control Plan A7 – Child Care Centres is a concise document focussing on the placement of child care centres within residential areas. It does not contain specific criteria relating to the built form or site design for childcare development.

## Summary of Proposed Changes

- The proposed SEPP will override all local planning controls relating to child care centres that are inconsistent with the National Quality Framework and consolidate other controls into one state wide document, being the *Child Care Planning Guideline*.
- Introduction of the Child Care Planning Guideline and the Better Schools Design Guide as the principle guiding documents in relation to achieving 'good design' in the development of new buildings.
- Expanding opportunities for child care facilities, schools, TAFEs and tertiary institutions across NSW through additional approvals pathways, including:
  - Classrooms and other school buildings no higher than one storey as development permitted without consent.
  - Sporting fields that do not require the clearing of more than 2 hectares of native vegetation as exempt development
  - Libraries, gymnasiums, halls, administration buildings, class rooms, lecture theatres etc. as complying development up to 22m in height

- Allowing tertiary institutions, which often operate as a combination of multiple land uses (e.g. research centres, commercial centres, online hubs etc.) to access change of use exempt provisions.
- Consideration for all applications for complying development certificates for school infrastructure to be issued by council certifiers to ensure that councils still have some oversight and involvement in the development of school infrastructure in their local area. A further option being considered is for relevant planning panels to be the consent authorities for all development applications relating to schools.
- Amendments to the Infrastructure SEPP to remove all references to educational facilities, and insert the relevant provisions for educational establishment related development that does not require consent into the Draft SEPP. Corresponding amendments to the EP&A Regulations to declare non-government schools as public authorities allowing them to undertake the same development without consent as declared for public schools.
- Introduction of a clause to enable consent to vary development standards in a LEP.
- Reduction in CVI trigger for State Significant Development - All new schools (regardless of capital investment value) and all major school upgrades (with capital investment higher than \$20 million) to be classed as State Significant Development under the State and Regional Planning SEPP.
- A Draft Standard Instrument (Local Environmental Plans) Amendment Order (No. 2) 2016 forms part of the proposed package. The proposed amendments include:
  - Increasing the scope of zones where centre-based child care is permitted to include R2 Low Density Residential and IN2 Light Industrial zoned land. TLEP 2014 already permits child care centres in the R2 and IN2 zones.
  - Creating the following new definition hierarchy:
    - ~ early childhood education and care facilities (group definition),
    - ~ centre-based child care,
    - ~ school-based child care,
    - ~ home-based child care, and
    - ~ mobile child care

## Implications for Tweed Shire Council

In broad terms, adoption of the Draft SEPP and other proposed amendments in their currently exhibited form are unlikely to result in any significant changes to the way Tweed Council approaches its strategic planning, development assessment or compliance functions. There is likely to be a period of adjustment and re-distribution of workloads due to changes in the approval pathways, and a brief review may be required regarding the potential implications of the new hierarchy of definitions on TLEP's current land use tables.

The proposed mandatory amendments to the Standard Instrument Order will automatically update the terminology across all published LEPs, thus they are not a matter for Council to attend to. However, it appears Council has discretion regarding *school-based* and *home-based child care* permissibility, noting *school-based child care* relates to child care services on school sites so can only be permitted where schools are permitted; and *home-based child care* can only be permitted with consent where residential accommodation is permitted

under the Land Use Table (noting *home-based child care* would be universally exempt should the Draft SEPP be adopted).

New school buildings and extensions to existing schools can be approved up to 22 metres in height (but limited to four storeys within that 22m) as complying development. This reflects in-part the contemporary design of schools which are more vertical than their predecessors and consequently use land more efficiently.

To address this additional permitted height and as part of the reform package the Draft SEPP calls-up 'Design Quality Principles' that are aimed at achieving good quality design outcomes. Design verification by a qualified designer is therefore an important aspect of the reforms as it captures buildings in excess of 12m and up to 22m in height.

While the Council officers generally support broadening the use of complying development there is concern regarding the use of this development pathway for properly managing development that exceeds the LEPs existing height controls. This concern is not so much about the proposed height per se but the limited scope for rejecting/refusing complying development when the prescribed SEPP standards are met, but the development is considered unacceptable in any case. As such the submission attached to this report requests the DP&E revisit this provision and recommends that all complying development be restricted to compliance with the relevant LEP development standard for building height.

In addition to the height of building concern is the greater physical threat to Council's infrastructure servicing presented by the increased opportunity for development that is either exempt or does not require consent, such as the installation of temporary classrooms or offices.

Development such as schools have a fairly high infrastructure loading and without any consideration of serviceability levels in the network, will put at risk both the greater network and the urban development that relies on it. This is particularly important for Council as sustained high urban growth over the preceding two decades has led to a significant reduction in the 'free' capacity that once existed within the Council's water and sewer system – some areas being better equipped to cope with additional demand over others. In the more extreme cases such as the southern coastal area there is extremely limited capacity with the Round Mountain WWTP being at its physical capacity. Consequently new development that has not been accounted for within the existing zonings and infrastructure calculations for the plant may pose as significant a threat as the risk of contamination or overflows from an improper level of assessment or design.

Further, assuming that capacity in the network or design of the school's water / waste water design is not an issue, the ability of Council to levy additional charges for the extra demand loading is bypassed with there being no approvals process to trigger the additional approvals under s.68 of the *Local Government Act 1993*.

In light of these concerns the submission attached to this report highlights these issues and requests the DP&E address this by way of amendment to the Draft SEPP.

### **Specific Resourcing Implications**

The new approvals pathways have the potential to increase the number and complexity of complying development certificate (CDC) applications both in terms of councils being the

only approval authority and there being a need for design verification and consequently design expertise in the assessment when development exceeds 12m in height. This may lead to more detailed and longer assessment timeframes and hence an impact on current staffing resources.

Notwithstanding this, the complying development approval pathway may not be available to many proposals given the range of environmental constraints (e.g. flooding, environmentally sensitive areas) that are experienced across the Tweed Shire and where complying development is not permissible. Should the Draft SEPP take effect this issue would be looked at in greater detail to better evaluate what the likely impact on resourcing would be, as well as what areas would potentially qualify for complying development.

Further impacting on the assessment aspect is the requirement for concurrence from Department of Education where the provisions of the *Child Care Planning Guide / Better Schools Guide* are not being met. The full effect of what that impact would be may require further review if the Draft SEPP takes effect however, given there will not be a proliferation of new school development within the Shire the threat of adverse impact is low. The same is true of the requirement under some circumstance to obtain approval from the Roads and Maritime Service (Roads).

Lastly, it is also worth noting that the Tweed Road Contribution Plan No. 4 requires significant developer contributions for child care centres and this may continue to act as a financial barrier to new development irrespective of the proposal to streamline the approvals pathways.

#### **OPTIONS:**

1. Endorse the attached submission to the Draft SEPP (Educational Establishments and Child Care Facilities), or
2. Receive and note the attached submission and detail any matters to be incorporated within the submission prior to it being submitted.

Option 1 is the Council Officer's recommended option.

#### **CONCLUSION:**

Development of child care centres, early education facilities, schools and tertiary facilities is currently subject to a complex hierarchy of planning controls across various levels of government. The NSW Department of Planning and Environment has developed a draft policy package aimed at streamlining the approvals process and decreasing assessment timeframes.

The benefit of easier and faster approvals is acknowledged in the context of responding to the identified need for additional child care and education establishments across the state. However achieving good design and meeting the targets of other policy and legislative requirements presents a challenge for complying development proposals.

The implications for Council are, on the whole, minor however there are multiple broader policy and planning matters that are questionable and on which further consideration should



be placed by the NSW Department of Planning and Environment prior to final adoption of the Draft SEPP.

A draft submission is attached to this report for reference, and if appropriate the inclusion of any additional matters that Council may wish to raise in reply to the Draft SEPP.

**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:**

Attachment 1.

Draft Submission in response to the public exhibition of the DRAFT State Environmental Planning Policy (Educational Establishments and Child Care Facilities) (ECM 4467006)

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

**SUBMITTED BY: Development Assessment and Compliance**

Valid



## **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
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### **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 February 2017 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.

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