



Land and Environment Court
of New South Wales

CITATION : Masterbuilt Pty Ltd v Tweed Shire Council [2006] NSWLEC 156

PARTIES : APPLICANT
Masterbuilt Pty Limited

RESPONDENT
Tweed Shire Council

FILE NUMBER(S) : 10827 of 2005

CORAM: Bly C

KEY ISSUES: Development Application :- conditions of consent, roads and drainage,
s. 94 contributions

LEGISLATION CITED: Environmental Planning and Assessment Act 1979
Tweed Roadn Contribution Plan S94 Plan No. 4,
Development Control Plan No 16 - Subdivision Manual

CASES CITED: Newbury District Council v Secretary of State for the Environment
[1981] AC 578 at 599-600;
Trehay & Ingold v. Gosford City Council [1995] NSWLEC 113

DATES OF HEARING: 21, 22 and 23/02/2006

DATE OF JUDGMENT: 06/04/2006

LEGAL REPRESENTATIVES: APPLICANT
Mr A. Galasso, barrister
Instructed by Mr C. Gough
of Storey & Gough

RESPONDENT
Mr R. O'Gorman-Hughes, barrister
Instructed by Mr J. Smith
of Stacks/Northern Rivers

**THE LAND AND
ENVIRONMENT COURT
OF NEW SOUTH WALES**

Bly C

Date

**10827 of 2005 Masterbuilt Pty Limited v Tweed Shire
Council**

JUDGMENT

Introduction

- 1 This appeal relates to the deemed refusal of development application No 04/1058 which is for the subdivision of land at 38 McAllisters Road, Bilambil Heights into 45 lots including 35 urban residential lots, 9 rural residential lots and 1 drainage lot.
- 2 The site is situated on the northern side of McAllisters Road approximately 7 km from the business centre of Tweed heads. It comprises four separate lots: Lot 1 DP 302949; Lot 1 DP 725165; Lot 5 DP 574986; and Lot 2 DP 30714. Together these lots have an area of 13.375 ha.
- 3 According to the council's Meeting Task Sheet for the council meeting on Wednesday, 5 October 2005, council considered a town planning report that recommended approval of the application subject to a number of conditions. At the meeting it was resolved, inter alia, that consent orders be entered into, approving the application in accordance with the recommended conditions plus a number of additional conditions relating to cut and fill and contributions. It is now apparent that the council does not object to the granting of consent subject to the draft conditions in Exhibit 13.

The evidence and the issues

- 4 On behalf of the respondent council, expert evidence was given by:
- Mr R Hornby-civil engineer
 - Mr P Morgan-civil engineer
 - Ms D O'Brien-town planner.
- 5 On behalf of the applicant expert evidence was given by:
- Mr M Findlater-civil engineer
- 6 The issue in this case involves conditions 14 and 68, which respectively involve contributions based on s 94 of the *Environmental Planning and Assessment Act 1979* ("the EPA act") and road construction requirements. Condition 68 is accepted but condition 14 is, in part, disputed. The remaining conditions are not in dispute.

Condition 68 - s94 contribution

- 7 Condition 68 requires the payment of a monetary contribution in the order of \$380,000 for roads, open space, and a range of community facilities including trees library facilities bus shelters and cycleways. This contribution includes an amount of \$175,720 which is based on the *Tweed Road Contribution Plan S94 Plan No 4* ("the Road Contributions Plan").
- 8 In Table 2 of the Road Contributions Plan, household contributions (ie contributions required for additional lots) are indicated for particular localities. For Bilambil Heights, the locality in which the site is situated, the Standard/Total Contribution per lot is \$4,393 ("the per lot contribution"). Multiplying this figure by the 40 additional residential lots (ie 45 – 5) in the proposal equates to the \$175,720 referred to above.
- 9 In essence the per lot contribution for Bilambil Heights was calculated by first determining the roads throughout the shire that need to be upgraded extended or created on the basis of future development facilitated by land

use zonings and the associated costs of such roads. Such costs include land acquisition, works associated with and including the construction of road pavement, kerb and guttering and associated drainage. By means of a complex mathematical formula these costs are apportioned throughout the shire on basis of identified localities so that all new development makes an appropriate contribution to the council for all of these roads. Except for changes involving the upgrading of McAllisters Road, there was no suggestion that the basis for and the calculation of the per lot contribution was incorrect.

- 10 As a consequence there can be no doubt that, by the payment of the per lot contribution for the additional lots, the applicant will have paid its fair share towards the upgrading of McAllisters Road as well as other roads in the shire.
- 11 Schedule 6 to the road contributions plan comprises a lengthy matrix of costs associated with the various planned road construction projects in the shire. It is divided into road corridor localities, the site being included, as referred to above, in the Bilambil Heights locality. Relevantly to this application the schedule refers to *Item 23 Construct McAllisters Road on existing alignment* ("the McAllisters Road upgrading") as having a total cost of \$856,300. (This item was formerly for the realignment of McAllisters Road at a cost of \$1,439,600 which realignment is now no longer proposed). I understand that this amount was calculated on the basis of an 11m wide pavement being the appropriate width according to *Development Control Plan No 16 - Subdivision Manual* ("the DCP") and which I accept as being the correct and relevantly applicable standard for this purpose. More particularly the costs associated with the 11 m wide construction include verges, road pavement, kerb and guttering and associated drainage, supporting batters and structures.
- 12 I also understand that the per lot contribution of \$4,393 was not adjusted to take into account the abandonment of the realignment proposal and the lower cost of the upgrading. At first it would seem that the reduction in

cost of about \$580,000 (ie \$1,439,600 - \$856,300) would make little difference to the total amount in Schedule 6 of more than \$122 million. However if a recalculation were done taking into account that the contributions plan methodology allocates a higher proportion of the costs within a road corridor locality to that locality, the reduction would be significant. Whilst the applicant does not seek to have the per lot contribution of \$4,393 reduced, despite the apparent justification that it should be, this may be a matter that the council needs to consider.

- 13 In the circumstances I cannot but accept that the total contributions required by the road contributions plan, of \$856,300 will be sufficient for the full upgrading of McAllisters Road. This means that the applicant's fair share for these works should be no more than the \$4,393 per lot contribution as determined by the road contribution plan.
- 14 However, absent the complete upgrading provided for in the road contributions plan which will undoubtedly be required in due course, there was no dispute that the additional traffic generated by the development of this subdivision will require at least a limited upgrading of McAllisters Road. The applicant does not oppose a condition that would require it to provide an upgrading of this road to a level warranted by the additional traffic generated by the subdivision proposal.

Condition 14 - road widening

- 15 Proposed condition 14 requires the preparation of engineering plans and specifications to accompany the construction certificate application. Such plans and specifications are to provide for:
 - (i) The widening of McAllisters Road along the full frontage of the site,
 - (ii) The construction of an access Street,
 - (iii) The construction of a stormwater drainage system,
 - (iv) The construction of cul-de-sac,
 - (v) The method of construction of the new intersection, and

(vi) Specific elements associated with Road upgrading drainage and other works.

- 16 The specific elements in VI above comprise:
1. General design criteria,
 2. Scope of work, including length and width of road, cross-section and road widening,
 3. Levels of pavement,
 4. Road drainage, including general design, transverse drainage, road drainage and upstream catchments,
 5. Retaining walls generally including guard rails and safety barriers.
- 17 With the exception of several significant elements of condition 14, the applicant did not oppose it. Those elements of the condition that were opposed comprise:
- 14(i) in so far as it requires that the road widening be 11 m instead of the proposed 7.5 m road width,
 - 14(vi)2(b) in so far as it fails to reflect the proposed 7.5 m road width,
 - 14(vi)2(c) in so far as it requires: a road width of 11 m rather than the proposed 7.5 m; and a verge width of 4 m rather than the proposed 3.5 m,
 - 14(vi)3(b) insofar as it requires the construction of a culvert under McAllisters Road
- 18 More particularly condition 14(i) requires the upgrading of McAllisters Road along the full length of the proposed subdivision including an 11 m wide road pavement, kerbing and guttering and stormwater drainage. As already indicated the applicant contends that the upgrade standard specified in this condition is in excess of the standard of upgrade that is required as a consequence of the subject development application. Instead it is the standard required to provide traffic capacity resulting from

the redevelopment of lands throughout Bilambil Heights and beyond. In my opinion, even though the site is included in the Bilambil Heights area there is plainly no justification that the proposed subdivision should be responsible for the construction of the full width upgrade of this section of McAllisters Road.

- 19 I understand that this upgrading of McAllisters Road will provide for traffic volumes in the order of 5,000 vehicles per day, including commuter buses. At present McAllisters Road carries about 500 vehicles per day including two return trips made by a school bus. The proposal will increase this to about between 790 and 950 vehicles per day. I do not know when traffic volumes on McAllisters Road are likely to reach a level that requires full upgrading or when population growth would justify the provision of a commuter bus service but I expect that this is some years away. On this basis I accept that the full width construction of the road as sought by the council is not warranted at this time.
- 20 In reaching this conclusion I have taken into account the evidence given by the council experts that:
- McAllisters Road cannot be an access road because it is longer than 350 m.
 - If the road remains at its current width the additional traffic generated by the proposal could make unsafe.
 - The council is financially unable to provide the full upgrade.
 - The parking of cars on this section of the road could be dangerous.
- 21 I have also taken into account the evidence of Mr Findlater that some road widening was necessary as a result of the proposal and that a target design of 40 kms per hour would be appropriate for a 7 m carriageway. I also accept his evidence that a verge width of 3.5 m is, in the circumstances sufficient.

The DCP requirements

- 22 The DCP in Table 4.23.2 sets out the function and characteristics of various categories of roads in urban areas, including laneways access streets, neighbourhood connectors and arterial roads. Once the zoned residential areas in Bilambil Heights are developed McAllisters Road will become a low-volume neighbourhood connector road carrying up to 5000 vehicles per day. At present McAllisters Road, which presently carries less than 1,000 vehicles per day, is categorised as a *narrower access street*.
- 23 The additional traffic generated by the proposed subdivision will see McAllisters Road categorised as a *wider access street* capable of carrying up to 3,000 vehicles per day. A street reserve and pavement width of 7.5 m is required. This width will facilitate parking within the street reserve. Given the likely total traffic volumes on the road and the construction of the new intersections in accordance with the otherwise agreed conditions I do not accept that a road width of 7.5 m would be inherently unsafe especially taking into account that this is a 50 kms per hour environment.
- 24 Whilst some concerns arose in relation to the inevitable parking of some resident's or associated vehicles on the road I accept that this is, according to Table 4.23.2 able to be accommodated. Also, on-street car parking is a matter of the application of appropriate parking controls by the council if and when necessary.
- 25 Table 4.23.2 provides that *wider access streets can cater for higher traffic volumes over longer distances, closer to neighbourhood centres, more intense if land and high-density land-use or where flexibility is required for future land-uses.*
- 26 *Wider access streets with a bus route* require a 9 m pavement width. There was no suggestion that the development of this subdivision would

generate a need for a commuter bus service. Taking into account that the existing school bus service apparently operates in a reasonably satisfactory fashion on the existing McAllisters Road construction, being about 6 m in width, the proposal to widen the pavement to 7.5 m and taking into account the additional traffic generated by the proposal, I do not accept that the pavement needs to be widened to 9 m and certainly not 11 m as a consequence of the proposal.

The Newbury tests

- 27 Condition 14 is sought by the respondent to be imposed pursuant to s 80A (1) (f) of the EPA Act and there was no dispute that this section of the act provides the relevant legislative power for such a condition. It is now well established that conditions of development consent should not only meet relevantly applicable statutory requirements (if any) but also meet the requirements of the so-called Newbury tests (see *Newbury District Council v Secretary of State for the Environment* [1981] AC 578 at 599-600). These tests are whether the condition is:
- (i) for a planning purpose;
 - (ii) fairly and reasonably relating to the development; and
 - (iii) not being so unreasonable that no authority would have imposed it.
- 28 As for the first test, there was no dispute that the upgrading of McAllisters Road is for a planning purpose. As for the second test the applicant argued that the condition in the form sought by the council does not fairly and reasonably relate to the subdivision proposal. This is an objective test and as I have already observed, the full upgrading of McAllisters Road will be required as a consequence of the residential development of more expansive areas of land beyond, whilst including this site. If the applicant were to be required to finance and construct a road which benefits significantly more traffic than would be generated by the development itself this could not be said to fairly and reasonably relate to the subject development. In this circumstance I do not accept that the condition

proposed by the council meets this test. Conversely I agree that the revised version of the condition as agreed to by the applicant would meet this test.

- 29 Similarly, whilst *TREHY & INGOLD v. GOSFORD CITY COUNCIL* [1995] NSWLEC 113 involves s 94 of the EPA Act, the resultant principle regarding contributions for roadworks can be applied here. At 274 Talbot J, in dealing with a question involving the placing of an unfair and thus unreasonable burden on the development under consideration, said: *Where there is a disproportionate burden on the land to be developed, it cannot be said to reasonably relate to the development.* In the case before me I am satisfied that, in relation to roadworks, the effect of council's condition 14 would be to place a disproportionate financial burden on the subject land.
- 30 As for the third test clearly the council believes that the imposition of their version of condition 14 would not be unreasonable. However for essentially the same reason as I have given in relation to the second test I agree with the applicant that, in relation to roadworks, the imposition of this condition would be unreasonable. Moreover the fact that condition 68 requires the applicant to pay a fair proportion, probably even more than a fair proportion, of the cost of the ultimate upgrading of McAllisters Road, this makes the imposition of the condition even more unreasonable.
- 31 Finally here I accept the submission that no credit against s 94 contributions should be given to the applicant if a roadway is constructed to a width of any less than the 11 m required for the future upgrade of McAllisters Road. In this context I accept the council engineer's evidence as to the likelihood that batters and possibly drainage works will need to be reconstructed if the full width is not provided at this time

Condition 14 - trunk drainage

- 32 In relation to drainage, the applicant's proposed stormwater plan indicates that proposed lot 20, the drainage lot is to provide for stormwater from parts of McAllisters Road and the natural watercourse/catchment generally to the southwest of the site. I understand that this lot can accommodate below ground pipes and an overland flow path.
- 33 The drainage plan also shows a realignment and amplification of the existing stormwater pipe under McAllisters Road to enable a direct connection into the drainage lot. I understand that this pipe is presently significantly undersized relative to certain rainfall events; hence from time to time stormwater from the catchment flows over the road.
- 34 The applicant now opposes the requirement in condition 14(vi)3(b) for the realignment and amplification of this stormwater pipe under. This means that instead of there being a direct, slightly angled connection into the drainage lot, water will need to flow in a "Z" configuration, involving two changes in direction, one at a right angle. In this regard I accept the engineering evidence that this would be a poor engineering design which would, in certain storm events, result in water flowing across a number of residential lots. This is unacceptable and thus realignment of the pipe is essential.
- 35 This watercourse comprises part of the trunk drainage system for the locality and is thus the responsibility of the council. However the need for the realignment is a direct consequence of this development proposal. Drainage is a planning purpose and in my opinion the realignment fairly and reasonably relates to the development and hence becomes the responsibility of the applicant.
- 36 I have reached this conclusion notwithstanding that the amplification of this pipe is not required as a result of the proposal and would, in this particular context, place a disproportionate financial burden on the subject land. In

these circumstances it would have been reasonable for the council to make a contribution, but I am unaware of any mechanism to facilitate this. The transverse road drainage requirement in condition 14(vi)3(b) is therefore retained.

- 37 Finally, the requirement for other transverse drainage works under McAllisters Road near the boundary of proposed lots 3 & 7 and proposed lot 41 has been deleted and I accept that these works are not critical.

Conclusion

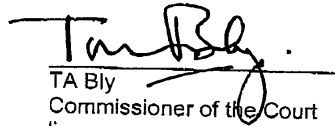
- 38 For the above reasons I have decided that the appeal should be upheld in relation to the width of McAllisters Road and that condition 14 should be amended accordingly. Conversely, in relation to drainage I have not been persuaded that the development should proceed in its present configuration without the realignment of the stormwater pipe under McAllisters Road.
- 39 It was submitted on behalf of the council that the applicant should not be granted the amendments to condition 14 because these amendments effectively comprise a substantial amendment to the application. Moreover condition 14 is consistent with the original application, which makes reference, in the plans, the Statement of Environmental Effects and the Engineering Impact Assessment, to an 11 m wide road.
- 40 The principal effect of the amended condition is that McAllisters Road is now required to be constructed to a width consistent with the traffic needs associated with the proposal. There are no other significant changes to the proposal that involves a 45 lot subdivision of land having an area of about 13 ha. In my opinion the development will remain substantially the same as that described in the development application.
- 41 In all of the circumstances and despite the fact that the council engineers believe that the 11 m pavement is the best option, I do not accept that the

amendment to condition 14 amounts to such a substantial amendment that I am prevented from determining it in the manner sought by the applicant.

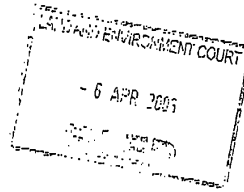
Orders

42 The orders of the Court are therefore:

1. The appeal is upheld.
2. Development application No 04/1058 for the subdivision of land at 38 McAllisters Road, Bilambil Heights into 45 lots including is determined by the granting of development consent subject to the conditions in Annexure A hereto
3. Exhibit A is retained


TA Bly
Commissioner of the Court
ljr

In the Land and Environment Court of New South Wales



No. 10827 of 2005

Masterbuilt Pty Limited

Applicant

Tweed Shire Council


Respondent

Order

The Court orders that:

1. The appeal is upheld.
2. Development application No 04/1058 for the subdivision of land at 38 McAllisters Road, Bilambil Heights into 45 lots including is determined by the granting of development consent subject to the conditions in Annexure A hereto
3. Exhibit A is retained

Ordered: 6 April 2006

By the Court

 Susan Dixon
 Registrar
 ljr

Annexure "A"
Conditions of Consent

MASTERBUILT PTY LTD v TWEED SHIRE COUNCIL
Conditions of consent DA 04/1058

Development Application DA04/1058 for a 45 lot subdivision comprising of 36 urban residential lots and 9 rural residential lots at Lot 1 DP 302949, Lot 1 DP 725165, Lot 5 DP 574986 & Lot 2 DP 30714, No. 38 & 142 McAllisters Road BILAMBIL HEIGHTS is approved subject to the following conditions: -

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Figure 3.0 prepared by Blue Land Engineers and dated April 2005, and Plans prepared by B & P Surveys numbered 12971B Rev B dated 7/4/2005 and 12942B Rev B dated 31/3/04, except where varied by these conditions.
[GEN0010]
2. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within the subject property.
[GEN0030]
3. The subdivision is to be carried out in accordance with Development Control Plan No 16 - Subdivisions Manual.
[GEN0040]
4. No retaining walls or similar structures are to be constructed over Council's sewer main.
[GEN0090]
5. Prior to commencement of work pursuant to this consent a Construction Certificate shall be obtained for the works proposed and required by this consent.
 - a) copies of compliance certificates relied upon
 - b) four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:
 - earthworks
 - roadworks
 - road pavement
 - road furnishings
 - stormwater drainage
 - water supply works



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- sewerage works
- landscaping works
- sedimentation and erosion management plans
- location of all service conduits (water, sewer, Country Energy and Telstra)
- the approved Traffic Control Plan
- the relevant maintenance manuals (eg. G.P.T's, water pump station)

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.

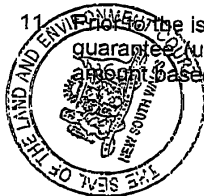
[GEN0140]

6. All subdivision works are to be carried out in accordance with the recommendations and guidelines set out in the geotechnical report from Maiden Geotechnics dated July 2004 Job. No. 03/74.
[GENNS01]
7. This subdivision has not nominated any sites for dual occupancy purposes, therefore, each lot is to be used for single dwelling purposes only, except where attached dual occupancies are permissible in accordance with the Tweed LEP 2000.
[GENNS01]
8. The applicant is to obtain a 3A permit from the Department of Infrastructure Planning & Natural Resources.
[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

9. A detailed plan of landscaping is to be submitted and approved by Council's Director, Planning and Environment prior to the issue of a Construction Certificate.
[PCC0010]
10. A traffic control plan that complies with the provisions of the RTA document "Traffic Control at Work Sites" Version 2 shall be prepared by a person who is qualified, authorised and has passed an RTA approved training course, and submitted to Council, prior to issue of the Construction Certificate. All works are to comply with the Occupational Health and Safety Act and the RTA document and the approval particularly in respect to works on public roads. Safe public access shall be provided at all times.
[PCC0040]

11. Prior to the issue of a Construction Certificate, a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the works (minimum \$1,000).



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The bond may be called up at any time and the funds used to rectify any non-compliance with the conditions of this consent which are not being addressed to the satisfaction of the Director, Development Services.

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

[PCC0080]

12. 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 to ensure minimal impact on adjoining properties. If filling is required, a plan of proposed drainage is to be submitted and approved by the PCA prior to the issue of a construction certificate. Drainage must be installed and operational prior to commencement of any building work.

All fill and cut batters shall be obtained wholly within the subject land.

[PCC0090]

13. Details from a Structural Engineer are to be submitted to the Principal Certifying Authority for approval for all retaining walls, prior to the issue of a construction certificate.

14. The Engineering Plans and specifications to accompany the Construction Certificate application shall provide for:-

- I. Construction along the full length of the proposed subdivision in McAllisters Road, vertical face kerb and gutter on an approved alignment along with associated sub-surface and over-land stormwater drainage systems and 7.5 metre wide road pavement from the face of the new kerb and gutter to the face of the existing kerb and gutter.

- II. Construction of an access street comprising vertical face kerb and gutter on an approved alignment along with associated sub-surface and over-land stormwater drainage systems and 6 metre wide road pavement measured from the face of the new kerb and gutter.

- III. Construction of a stormwater drainage system that will convey all water through the site to a legal point of discharge. The sub-surface and over-land drainage systems shall convey the respective flows from minor and major storm events. Clearly defined upstream catchment areas and supporting



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stormwater calculations shall accompany the engineering design plans.

- IV. The construction of a cul de sac at the end of the proposed access road having a minimum radius having a minimum radius of 9 metres.
- V. Construction of an intersection in accordance with Austroads Pt 5 – Intersections at Grade at the intersection of the proposed access road and McAllisters Road.
- VI. Specific elements for the construction in McAllisters Road (and associated drainage and other works) shall be designed and constructed in accordance with the following criteria (proposed lots referred to in this condition are those shown on B & P Surveys "Layout Plan of Lot 1 in DP 725165, Lot 1 in DP 302949, Lot 2 in DP 30714 and Lot 5 in DP 574968 McAllisters Road – Bilambil Heights" Drawing No 12791 B, Rev B 7/4/05).

Element - Design Criteria

1. General Design Criteria

As per DCP16, Development Design Specification D1 – Road Design and other associated Development Design Specifications, unless amended by this condition.

2. Scope of Work

(a) Length to be constructed: From eastern boundary of Lot 2 DP30714 to western boundary of Lot 1 DP302949, and such additional works as are necessary to merge the newly constructed road with existing road alignment at either end of the works.

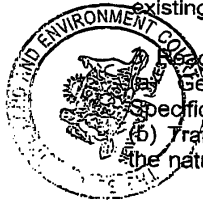
(b) Width of road works: Widening of McAllisters Road pavement to provide 7.5 metre wide carriageway from face existing kerb on south side to face of new kerb north side.

(c) Cross section and road widening: Pavement width to be 7.5 metres kerb to kerb; Verge width north side to be 3.5 metres incorporating 1.2 m footpath/generally Verge to have 2.5% crossfall towards road; The pavement cross section will provide a 3% crossfall from the edge of existing bitumen.

Stormwater Drainage

General Design: As per Development Design Specification D5 - Stormwater Drainage Design

(b) Transverse drainage near proposed lots 19 & 21: -; the natural watercourse traversing McAllisters Road near



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this location is to be conveyed under the road by a culvert, sized to accommodate Q100 flows. This will include a suitable inlet structure upstream of McAllisters Road.

(c) Road drainage: Minor system: - Drainage works (inlet pit and pipe systems) are to be provided on north side of McAllisters Road, for the length of the road adjacent to the subdivision, to capture and convey road and upstream runoff to the transverse/downstream drainage system. Major system: - Flow depths in McAllisters Road shall not exceed those designated in D5 and QUDM. Flow depths from Q100 runoff (including that from upstream catchments) must not exceed the roads overland flow capacity (where lots are lower than road, generally max 200mm flow depth in gutter if footpath 100mm higher than kerb and flows contained).

(d) Upstream catchments: - Sufficient capacity is to be provided in McAllisters Road longitudinal drainage systems to capture concentrated and overland flow from catchments upstream of McAllisters Road. These drainage systems shall be sized to cater for runoff from those upstream catchments when they are developed to their ultimate capacity in accordance with the current zoning of the land.

4. Retaining Walls

(a) General: - The edge of the formation of McAllisters Road may be supported by retaining walls. Such walls shall be located within private subdivision lots. An easement for support shall be created over the footprint of such retaining walls granting Council the right (but not the obligation) to repair such retaining walls if their condition becomes a threat to public land.

(b) Guardrail: - Guardrail may be required behind the kerb and gutter where retaining walls support the McAllisters Road formation.

(c) Safety barriers: - Appropriate pedestrian safety barriers are required at the top of retaining walls supporting the McAllisters Road formation

[PCC0170]

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

[PCC0190]



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16. The Engineering Plans required by this consent shall include details of settling ponds and the method of discharging the return water from the site. The design shall comply with the requirements of "Tweed Urban Stormwater Quality Management Plan" (adopted by Council 19 April 2000) section 5.5.2 "Stormwater Objectives During the Construction Phase of New Development", Appendix E of the Plan "Tweed Shire Council Aus-Spec D7 - Stormwater Quality" and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

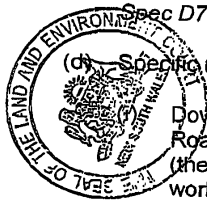
[PCC0220]

17. Permanent Stormwater Quality Treatment

- (a) Permanent stormwater quality treatment shall comply with "Tweed Urban Stormwater Quality Management Plan" (adopted by Council 19 April 2000) section 5.5.3 "Stormwater Objectives During the Post Construction or Occupational Phase of Development". New development is required to comply with table 5.4 of the plan and demonstrate compliance by modelling in accordance with section 5.5.4. Section 5.5.5 of the plan further advises that treatment that is in accordance with the "deemed to comply" provisions of Appendix E - Tweed Shire Council, Aus-Spec D7 - Stormwater Quality is deemed to comply with the objectives in 5.5.3.
- (b) Water sensitive design practices shall be adopted. Where it is practical, water quality features are to be designed into the land development site rather than rely on special end of pipe devices to strip pollutants and nutrients from stormwater prior to discharge. Typical water quality features that can be designed into the site development include use of porous pavements, directing runoff over filter strips or grass swales in landscaped areas, utilising landscaping as an integral part of stormwater quality management, maximising use of infiltration and stormwater reuse (eg. Rainwater tanks). These features can be complemented by site management practices which minimise creation of stormwater pollutants and nutrients and provide for appropriate operation, cleaning and maintenance of water quality control devices.
- (c) The Construction Certificate Application must include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development, prepared in accordance with Section D7.07 of Tweed Shire Council Aus-Spec D7 - Stormwater Quality.

(d) Specific requirements:

Downstream of the transverse drain under McAllisters Road near proposed lots 19 & 21, a drainage reserve (then easement through proposed lot 45) and drainage works (open channel, pipes or a combination) are to be



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provided within the subdivision to accommodate Q100 flows and convey them to a lawful point of discharge.

- (ii) Downstream of the transverse drains under McAllisters Road
- near the boundary of proposed lots 3 & 7 and
 - near proposed lot 41

drainage easements and drainage works (open channel, pipes or a combination) are to be provided within the subdivision to convey runoff to a lawful point of discharge.

- (iii) The drainage systems in (i) and (ii) shall be sized to cater for runoff from upstream catchments when they are developed to their ultimate capacity in accordance with the current zoning of the land.

[PCC0230]

18. A construction certificate application for works that involve any of the following:-

- 1.1 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 1993.

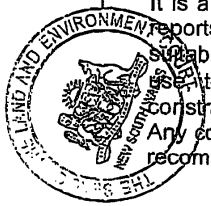
Applications for these works must be submitted on Council's standard s68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.

[PCC0240]

19. A detailed site contamination report is to be provided which is prepared in strict accordance with the provisions of the NSW EPA's Contaminated Site "Guidelines for Consultants Reporting on Contaminated Sites" November 1997 and Council Contaminated Land Policy.

Note:-

1 It is a requirement of these Guidelines that all contamination reports include a clear statement from the consultant as to the suitability or otherwise of the subject site for the proposed use, together with a statement detailing all limitations and constraints that are applicable in relation to the use of the site. Any contamination report that does not provide and follow the recommended report sections and information requirements



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as specified within the Guidelines will be returned on the basis of insufficient information provided.

3. Other relevant or applicable EPA Guidelines are to be used as appropriate.

[PCC0270]

20. Erosion and Sediment Control During the Construction Phase of Development

- (a) Construction phase stormwater quality treatment (erosion and sediment control) shall be designed and constructed in accordance with detailed engineering plans to be submitted and approved with the Construction Certificate. Erosion and sediment control shall be in accordance with the "Tweed Urban Stormwater Quality Management Plan" (adopted by Council 19 April 2000) section 5.5.2 "Stormwater Objectives During the Construction Phase of New Development". This section requires all new development to comply with Appendix E of the Plan "Tweed Shire Council Aus-Spec D7 - Stormwater Quality" and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works". Erosion and sediment controls shall remain in place until final approval is given and the maintenance bond (if required) has been released.

- (b) The Construction Certificate Application must include a detailed erosion and sediment control plan (ESCP) for the construction phase of development, prepared in accordance with Section D7.07 of *Tweed Shire Council Aus-Spec D7 - Stormwater Quality*.

[PCC0320]

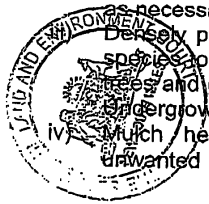
21. Where earthworks result in the creation of embankments and/or cuttings greater than 1m high and/or slopes within allotments 17° or steeper, such slopes shall be densely planted in accordance with a detailed landscaping plan. Such plan to accompany the Construction Certificate application.

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

- i) Contours and terraces where the height exceeds 1m.
ii) Cover with topsoil and large rocks/dry stone walls in terraces as necessary.

Densely plant with sub-tropical (rainforest) native and exotic species to suit the aspect/micro climate. Emphasis to be on trees and ground covers which require minimal maintenance. Undergrowth should be weed suppressant.

- iv) Muck heavily (minimum 300mm thick) preferably with unwanted growth cleared from the estate and chipped. All



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unwanted vegetation is to be chipped and retained on the subdivision.

- v) The landscaping shall be completed to the satisfaction of the Director Planning and Environment PRIOR to the issue of a Subdivision Certificate.
- vi) A bond shall be lodged prior to the issue of the subdivision certificate to ensure that the landscaping is maintained by the developer for a period of 6 months from the date of issue of a Subdivision Certificate. The amount of the bond shall be 20% of the estimated cost of the landscaping or \$3000 whichever is the greater.

[PCC0330]

22. Prior to the issue of a Construction Certificate a site audit statement/s (SAS) certifying that the subject sites (Lot 1 DP 302949, Lot 1 DP 725165, Lot 5 DP 574986 and Lot 2 DP 30714) are suitable for the proposed land use and are to be issued and submitted to Council. These SAS's are to be issued in accordance with the requirements of the Contaminated Land Management Act 1997. If a long term Site Management Plan (SMP) is required to allow the proposed land use, the requirements of the SMP/S will form part of this consent.

In circumstances where the requirements of the SMP/S is not consistent with Development Consent DA04/1058 the consent shall prevail to the extent of inconsistency and a Section 96 application pursuant to the provisions of the Environmental Planning and Assessment Act, 1979 will be required.

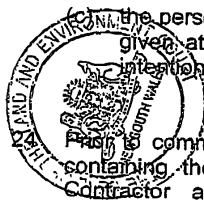
[PCCNS01]

PRIOR TO COMMENCEMENT OF WORK

23. Subdivision work in accordance with a development consent must not be commenced until:-
- (a) a construction certificate for the subdivision work has been issued by:
 - (i) the consent authority, or
 - (ii) an accredited certifier, and
 - (b) the person having the benefit of the development consent:
 - (i) has appointed a principal certifying authority, and
 - (ii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment, and
 - (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the subdivision work.

[PCW0020]

At commencement of work, a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Consulting Engineer shall be erected and



maintained in a prominent position at the site to the satisfaction of the Director, Development Services. The sign is to remain in place until the Subdivision Certificate is issued.

[PCW0030]

25. Where prescribed by the provisions of the Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003, 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 unauthorized 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.

[PCW0070]

26. 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.

[PCW0090]

27. Prior to start of building works provide a certificate of adequacy, signed by a practicing Structural Engineer on the proposed rock retaining wall. The certificate must also address any loads or possible loads on the wall from structures adjacent to the wall.

[PCW0100]

28. Prior to the commencement of building work, a certificate signed by a registered professional engineer is to be submitted to the Principal Certifying Authority to certify that adequate consolidation of foundation material has been achieved to support the proposed structure.

[PCW0110]



All imported fill material shall be from an approved source. Prior to commencement of filling operations details of the source of fill shall be submitted to the satisfaction of the Director Planning and Environment.

[PCW0140]

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30. Prior to commencement of works all required sedimentation and siltation control measures are to be installed and operational to the satisfaction of the Principal Certifying Authority.

Erosion and sediment control shall be in accordance with the "Tweed Urban Stormwater Quality Management Plan" (adopted by Council 19 April 2000) section 5.5.2 "Stormwater Objectives During the Construction Phase of New Development". This section requires all new development to comply with Appendix E of the Plan "Tweed Shire Council Aus-Spec D7 - Stormwater Quality" and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works". Erosion and sediment controls shall remain in place until final approval is given and the maintenance bond has been released.

[PCW0190]

31. Where water is required to be drawn from Council's water reticulation system it shall be the applicants responsibility to notify the Engineering & Operations Division prior to taking water.

All drawn water shall be via a Tweed Shire Council metered standpipe. The location of the hydrant shall be nominated by Tweed Shire Council and all water shall be only used for the purposes nominated by the applicant for the duration of the construction activities.

[PCW0260]

32. Prior to the commencement of work the applicant shall submit to Council evidence that a Site-Specific Safety Management Plan and Safe Work Methods for the subject site have been prepared in accordance with either:-

- a. Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3rd Edition, NSW Government, or
- b. AS4804 Occupation Health and Safety Management Systems - General Guidelines on Principles Systems and Supporting Techniques.

[PCW0270]

DURING CONSTRUCTION

33. All engineering works required to be approved prior to the issue of a construction certificate are to be constructed in accordance with the approval.

[DUR0020]

34. No soil, sand, gravel, clay or other material shall be disposed of off the site.

[DUR0030]

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35. 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 1742.3-2202 (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.

[DUR0040]

36. All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction.

[DUR0060]

37. 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.

[DUR0150]

38. Prior to the application for a Subdivision Certificate a Compliance Certificate or Certificates shall be obtained from Council OR an accredited certifier for the following:-

- (i) Compliance Certificate - Roads
- (ii) Compliance Certificate - Water Reticulation
- (iii) Compliance Certificate - Sewerage Reticulation
- (iv) Compliance Certificate - Sewerage Pump Station
- (v) Compliance Certificate - Drainage

Note:1. Where Council is requested to issue compliance certificates, applications for such certificates must be accompanied by documentary evidence from the Developers Supervising Consulting Engineer certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, DCP16 - Subdivision Manual and good Engineering Practice.

2. Where Council is requested to issue the construction certificate all compliance certificates and a Subdivision Certificate, Council will carry out the following inspections as deemed necessary by Council based on the rates contained in Council's current Fees and Charges:-



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

Water Reticulation, Sewer Reticulation, Drainage

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

Sewer Pump Station

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

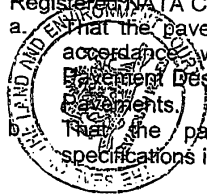
Council's role is limited to the above mandatory inspections and does NOT include supervision of the works, which is the responsibility of the Developers Supervising Consulting Engineer.

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

[DUR0360]

39. Before the commencement of the relevant stages of road construction, reports shall be submitted to Council from a Registered NATA Consultant demonstrating.

- a. That the pavement has been designed and constructed in accordance with subgrade analysis as per Austroads Pavement Design, A Guide to the Structural Design of Road Pavements.
- b. That the pavement materials used comply with the specifications in RTA Form Q3051 (June 1998)



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- c. That the pavement layers have been compacted to RTA specifications.
- d. That site fill areas have been compacted to the specified standard.
- e. That supervision of Bulk Earthworks has been to Level 1 and/or Level 2 and frequency of field density testing has been completed in accordance with Table 8.1 of AS 3798-1996.
- f. That pavement testing has been completed in accordance with Table 8.1 of AS 3798-1996.

[DUR0370]

- 40. All lots must be graded and trimmed to prevent the ponding of surface water. Additionally, all lots must be adequately vegetated and action must be taken to prevent erosion from wind and/or water to the satisfaction of the Director, Development Services.

[DUR0380]

- 41. All proposed road/streets, drainage and associated works within the subdivision shall be designed and constructed in accordance with the development consent plans AND the relevant provision of DCP No. 16 - Subdivisions Manual, except where varied by the conditions of this consent.

[DUR0400]

- 42. Construction of the right of carriageway serving lots: -
 - 2, 5 and 6
 - 4 and 7 to 9
 - 10 to 14
 - 15 to 19
 - 42 to 44, and
 - Proposed sewerage pumping station

to a minimum concrete/bitumen sealed standard, in accordance with the provision of DCP16 - Subdivision Manual.

[DUR0410]

- 43. The concrete driveway across the footpath is to be constructed in accordance with the approved plan dimensions and be a minimum of 150 millimetres thick reinforced with F62 mesh.

[DUR0450]

- 44. 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.

[DUR0490]

- 45. Pram ramps are to be constructed at road intersections in accordance with Council's Plan No. A4-96 to the satisfaction of the Director, Engineering & Operations and in accordance with Council's Standard Plan No. A4-96. Mountable or roll top kerb



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does not meet pram ramp requirements, and therefore requires a pram ramp to be constructed as above.

[DUR0500]

46. The footpath area is to be graded to the kerb and turfed for the full frontage of the site.

[DUR0510]

47. A concrete ribbon footpath 1.2 metres wide and 100 millimetres thick is to be constructed on a compacted base along the entire length of the proposed access road and a concrete ribbon footpath/cycleway 2.5 metres wide and 100 millimetres thick is to be constructed on a compacted base along the entire length of the frontage in McAllisters Road. The compacted base is to achieve 95% of maximum dry density determined in accordance with AS1289 5.4.1 for a minimum 100mm depth. A full depth construction joint is to be provided at 6.0 metre intervals and 20 millimetre deep groove joints provided every 1.5 metres, the balance area to be graded to the kerb and turfed. The footpath is to have a 3% crossfall which must be attained at each side boundary. This may result in work to be undertaken on the footpath at adjoining properties which must not exceed 1:14 and must be reinstated with turf. The footpaving is to be located 800 millimetres from the property boundary. The concrete footpath gradient shall be parallel to the top of kerb for the full frontage of the site and maintained unvaried across the (any) driveway cross-section. An inspection of the formwork is to be arranged with Council's Engineering & Operations Division prior to concrete being placed.

[DUR0520]

48. The concrete footpath is to be saw cut and removed to facilitate the construction of the concrete driveway access.

[DUR0530]

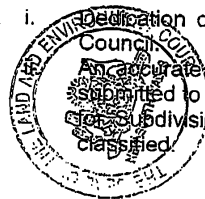
49. On completion of the filling work, all topsoil to be respread and the site to be grassed and landscaped.

[DUR0550]

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

[DUR0580]

51. i. Dedication of the proposed drainage reserve at no cost to the Council. An accurate plan of the proposed drainage reserve shall be submitted to Council 60 days prior to lodgement of Application for Subdivision Certificate (form 13) to allow the land to be classified.



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Failure to comply with this condition may result in delays in the issue of the Subdivision Certificate.

[DUR0600]

- 52. The earthworks program shall be monitored by a Registered Geotechnical Testing Consultant to a level 1 standard in accordance with Appendix B, AS 3798-1996. In addition, the frequency of field density testing shall be to a Type 1 standard in accordance with Table 8.1 of AS 3798. The geotechnical report shall be accompanied by a certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798.

[DUR0630]

- 53. All stormwater discharged from the site including dewatering discharge is to be directed to a sediment pond prior to final discharge into any waterway. The sediment ponds or other approved devices are to be maintained in good condition until the maintenance bond is released.

[DUR0720]

- 54. 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.

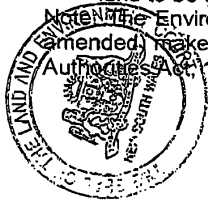
This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR0730]

- 55. i. The site of the sewage pumping station shall be transferred to Council in fee simple, at no cost to Council within 28 days of the date of registration of the plan of subdivision.
- ii. An accurate plan of the sewage pumping station site shall be submitted to Council 60 days prior to lodgement of the Application for Subdivision Certificate (form 13) to allow the land to be classified.

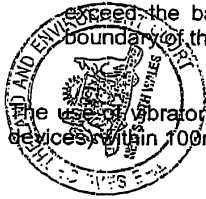
Under the Environmental Planning and Assessment Act, 1979 (as amended), no provision for works under the Water Supplies Act, 1987 to be certified by an Accredited Certifier.

[DUR0820]



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- 56. Suitable covering and protection is to be provided to ensure that no material is removed from the site by wind, causing nuisance to neighbouring properties. [DUR0850]
- 57. All battered areas are to be topsoiled and grassed, or other suitable protection provided as soon as filling is placed adjacent to neighbouring properties. [DUR0860]
- 58. All work associated with this approval is to be carried out so as not to cause a nuisance to residents in the locality from noise, water or air pollution. [DUR0870]
- 59. All necessary precautions shall be taken to minimise impact from dust during filling operations from the site and also from construction vehicles. [DUR0880]
- 60. The burning off of trees and associated vegetation felled by clearing operations is not permitted unless such burning is carried out in a specially constructed pit provided with an air curtain over the top. Separate approval is required prior to any burning. [DUR0890]
- 61. Construction site work including the entering and leaving of vehicles is to be restricted to between 7.00 am and 7.00 pm Monday to Saturday and no work on Sundays or public holidays. [DUR0900]
- 62. 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.
L10 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.
L10 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. [DUR0910]
- 63. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited.



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[DUR0920]

- 64. Prior to and during construction provide a "shake down" area along the haul route located immediately before the intersection with the road reserve. The "shake down" area is to be 10 metres long, minimum 3.0 metres wide, constructed of minimum 50mm diameter crushed rock; or other such device approved by the Director, Engineering & Operations.

[DUR0930]

- 65. 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 to the satisfaction of the Director, Engineering & Operations prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[DUR1210]

- 66. Landscaping of the site shall be carried out in accordance with the submitted landscaping plans. The landscaping to be completed prior to occupation of the building, to the satisfaction of the Director, Development Services.

[DUR1230]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

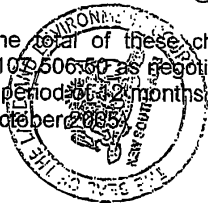
- 67. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

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

Water: 41.4 ET's @ \$9994 \$413,752.00
 Sewer: 41.4 ET's @ \$2634 \$109,048.00

The total of these charges (\$522,800.00) is to be reduced by \$102,506.50 as negotiated with Council (this concession applies for a period of 24 months only from the date of the negotiation being 5 October 2005)



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Following the twelve month period from the date of the negotiation thereafter the charges will be in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an Accredited Certifier. [PCC0070/PSC0004]

68. Section 94 Contributions

- (i) 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.

These charges 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: \$175,721
S94 Plan No. 4 (Version 4.0)
(Sector 4_4)

Heavy Haulage Component

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 4.1 prior to the issue of a construction certificate or subdivision certificate, whichever occurs first. The contribution shall be based on the following formula:-

\$Con TRCP - Heavy = Prod. x Dist x \$Unit x (1+Admin.)



TRCP - Heavy heavy haulage contribution

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Prod.	projected demand for extractive material to be hauled to the site over life of project in tonnes	
Dist.	average haulage distance of product on Shire roads (trip one way)	
\$Unit	the unit cost attributed to maintaining a road as set out in Section 6.4 (currently 2.5c per tonne per kilometre)	
Admin.	Administration component - 5% - see Section 6.5	
b.	Open Space (Structured): S94 Plan No. 5	\$31,200
c.	Open Space (Casual): S94 Plan No. 5	\$6,680
d.	Street Trees: S94 Plan No. 6	\$11,880
e.	Shirewide Library Facilities: S94 Plan No. 11	\$27,520
f.	Bus Shelters: S94 Plan No. 12	\$1,040
g.	Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$5,240
h.	Emergency Facilities (Surf Lifesaving) (REMSHIRE) S94 Plan No. 16	\$8,280
i.	Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$50,752
j.	Cycleways S94 Plan No. 22	\$14,080
	Regional Open Space (Structured) S94 Plan No. 26	\$60,840
	Regional Open Space (Casual) S94 Plan No. 26	\$34,200



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The total of the charges for Section 94 Plan No 16 (Surf Life Saving) and Section 94 Plan No 18 (Council Administration Offices & Technical Support Facilities) is to be reduced by \$18,777.80 as negotiated with Council (this concession applies for a period of 12 months only from 5 October 2005).

Following the twelve month period from the date of negotiation thereafter the charges will be in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

Please note that the applicant will receive S94 credits for constructing McAllisters Road. The amount of credits available is limited by:

The apportioned amount of the project costing as set out in schedule 6 of the Tweed Road Contribution Plan, applicable to the section of road to be constructed, and the TRCP contributions payable by this development.

[PCC0050/PSC0005]

69. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of Development Consent No DA04/1058 have been complied with.

[PSC0010]

70. The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act including the following:

- i. Easements for sewer, water supply and drainage over ALL services on private property.
- ii. Rights of carriageway to lots 2, 4 to 19, 42 to 44 and the proposed sewerage pumping station.
- iii. Easement for support over retaining walls granting adjoining owners the right but not the obligation to repair.
- iv. Restriction to user:

Development for future residential dwellings is to adopt sound urban design principles that are sympathetic to the topographical features of the site.

Future dwellings are not to be of contiguous slabs on ground level if the area of proposed development has a slope of greater than 10%.

Development on such land is to be of pole or pier construction or multiple slabs or the like that minimises the extent of cut and fill.



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For residential dwellings the depth of excavation shall not exceed one metre and the depth of fill shall not exceed one metre so that the degree of both cutting and filling is minimised.

Excavations in excess of one metre within the confines of the buildings may be permitted to allow for basements, garages etc providing the excavations are adequately retained and drained in accordance with engineering details.

Total site coverage of any buildings and any hard surfaces and any area covered by retaining walls shall not exceed 50% of the total allotment area.

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

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

[PSC0020]

- 71. Submit to Council's property officer an appropriate plan indicating the rural address number to both new and existing lots for verbal approval. Prior to the issue of a Subdivision Certificate, each lot shall have its' rural address number displayed in accordance with Council's "Rural Addressing Policy".

[PSC0030]

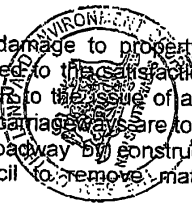
- 72. Prior to the issue of a Subdivision Certificate, Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council.

[PSC0040]

- 73. Where new state survey marks and/or permanent marks are placed a copy of the locality sketch relating to the marks shall be submitted to Councils Surveyor within two months of the issue of the Subdivision Certificate.

[PSC0060]

- 74. Any damage to property (including pavement damage) is to be rectified to the satisfaction of the Director, Development Services PRIOR to the issue of a Subdivision Certificate. 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



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Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate.

[PSC0070]

75. Prior to registration of the plan of subdivision, a Subdivision Certificate shall be obtained.

- (i) The following information must accompany an application:
- original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
 - relevant development consent
 - detailed subdivision engineering plans endorsed with a construction certificate (where applicable)
 - evidence that the applicant has complied with all conditions of consent, that it is required to comply with before a subdivision certificate can be issued (where applicable)
 - a certificate of compliance from the relevant water supply authority (where applicable)
 - for subdivision involving subdivision works evidence that:
 - the work has been completed, or
 - agreement reached with the relevant consent authority regarding payment of the cost of work or as to the time for carrying out the work, or
 - security given to the consent authority with respect to the completion of the work
 - Work as Executed Plans for ALL works
- (ii) Documentary evidence that all matters contained in Section 109J of the Act have been complied with.
- (iii) Written evidence from Council that the proposed road/street names have been approved.

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.

[PSC0090]

76. Prior to the issue of a Subdivision Certificate, Works as Executed Plans shall be submitted in accordance with the provisions of DCP16 - Subdivisions Manual.

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

- (i) all drainage lines, sewer lines and structures are wholly contained within the drainage easement created by the subdivision
- (ii) the plans accurately reflect the Work as Executed.

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

[PSC0100]

77. Prior to the issue of a Subdivision Certificate a defect liability bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.

The bond shall be based on 5% of the value of the works which will be held by Council for a period of 6 months from the date on which the Subdivision Certificate is issued and will be refunded following the remedying of any defects arising within the 6 month period.

[PSC0110]

78. Prior to the issue of a Subdivision Certificate and also prior to the end of defects liability period, a CCTV inspection of the stormwater pipes will be required to demonstrate that the standard of the stormwater system is acceptable to Council.

Any defects identified by the inspection are to be repaired using any one of the following repair techniques or such other technique as may be approved by the Director, Engineering & Operations.

- Tiger Patch patch liner;
- Econoliner;
- PL Quick Sleeve System;
- Flexi-Bond method

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

[PSC0140]

79. Prior to issuing a Subdivision Certificate, outfall sewerage reticulation shall be provided to all lots within the subdivision including a minimum 150mm diameter sewer junction terminated at least 1.0m inside the property boundary of each lot in accordance with engineering plans to accompany the Construction Certificate application. The reticulation shall be designed and constructed in accordance with DCP16 - Subdivisions Manual.

Council does not permit the building over Council's sewers. When buildings are located in close proximity to the sewer, detailed plans of footing types, location and depth relative to the sewer are required to be included with the Construction Certificate Application.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes the provision for works under the Water Supplies Authorities Act 1987 to be certified by an Accredited Certifier.

[PSC0150]

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80. Prior to issuing a Subdivision Certificate, Town Water shall be provided to each lot including a minimum size 25mm outside diameter water service terminated 1.0m inside the property boundary of each lot in accordance engineering with plans to accompany the Construction Certificate application. The reticulation shall be designed and constructed in accordance with DCP16 - Subdivisions Manual.

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.

[PSC0160]

81. The production of written evidence from Telstra Australia certifying that satisfactory arrangements have been made for the provision of underground telephone supply.

[PSC0170]

82. i. The production of written evidence from Country Energy certifying that reticulation of underground electricity (residential and rural residential) has been completed; and
 ii. The reticulation to include the provision of fully installed electric street lights to the relevant Australian standard. Such lights to be capable of being energised following a formal request by Council.

[PSC0190]

83. All stormwater gully lintels shall have the following notice cast into the top of the lintel: 'DUMP NO RUBBISH, FLOWS INTO CREEK' or similar wording to the satisfaction of the Director Planning and Environment.

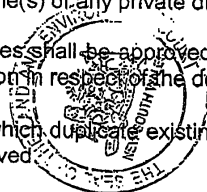
[PSC0220]

84. (i) PRIOR to lodging an application for a Subdivision Certificate, the applicant shall obtain the written approval of Council to the proposed road/street names. Approved names are to be in accordance with Council's Road Naming Policy adopted on 7 August 1996 and are to be shown on the Plan of Subdivision accompanying the application for a Subdivision Certificate.
 (ii) To avoid confusion resulting from duplication of private driveway/accessway name and public road/street names, the applicant shall submit to Council for approval the proposed name(s) of any private driveway/accessways.

The names shall be approved PRIOR to lodgement of any plan of subdivision in respect of the development.

Names which duplicate existing and approved street names will not be approved.

[PSC0230]



GENERAL TERMS OF APPROVAL**PERMIT UNDER PART 3A OF THE RIVERS AND FORESHORES IMPROVEMENT ACT 1948**


1. Soil disturbance in the natural drainage lines is to kept to the minimum necessary.
2. Any disturbance is to undertaken to ensure there is no reduction in the channel capacity of the drainage lines. Their capacity must be able to safely transmit the Q100 run-off events.
3. The works area shall be revegetated to reduce erosion potential as soon as works are completed.
4. Sediment control measures shall be provided for the duration of works and until the site is stabilised.
5. Vegetation native to the local area only is to be used in the revegetation program (except grasses for initial soil stabilisation)
6. Operations shall be conducted in such a manner as not to cause damage or increase the erosion of adjacent bed and banks.
7. Any structural works shall be secure to withstand flow velocities at the bank-full discharge of the stream.
8. No materials shall be used that may pollute the downstream watercourses.
9. No materials may be used that may create a risk to public safety.
10. All scrub, undergrowth and timber removed from the area of operation shall be disposed of so that the debris cannot be swept back into the stream during a flood.
11. If, in the opinion of any officer of the Department of Infrastructure, Planning and Natural Resources, any work is being carried out in such a manner that it may damage or detrimentally affect the stream, or damage or interfere in any way with any work, the operation in that section of the said stream shall cease forthwith upon written or oral direction of such officer.
12. A copy of the permit shall be made available to officers of the Department upon request.
13. The site shall be restored and revegetated to the satisfaction of the Department of Infrastructure, Planning and Natural Resources
14. The permit holder and the owner or occupier of the land are responsible for any excavation, removal or placement of material or construction of works undertaken by any other person or company at the site.

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15. This permit is not transferable to any other person or Company and does not allow operations at any other site.
16. This permit does not allow an extractive industry at the site.
17. If the permit conditions have been breached, the permit holder shall restore the site to the satisfaction of the Department. If the works as directed are not completed then the permit holder shall pay a fee prescribed by the Department.

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

1. Asset Protection Zones shall be applied to the proposed development as identified on drawing 04002C prepared by Bushfire Safe Services dated June 2004.
2. All APZ's shall be managed as an Inner Protection Area as required by Section 4.2.2(b) of Planning for Bushfire Protection 2001.
3. Property access to proposed lots shall have a minimum paved surface of 3.5 metres.


TA Bly
Commissioner of the Court
l/jr

