

TITLE: [PE] Development Application DA03/0667 for a Self Storage Facility at Lot 6 DP 10297, No. 111 Kennedy Drive, Tweed Heads

ORIGIN:

Development Assessment

FILE NO: DA03/0667

SUMMARY OF REPORT:

Council resolved at its meeting of 17 September 2003 to prepare a draft local environmental plan and to advise the Director-General of the Department of Infrastructure, Planning and Natural Resources of its intentions to do so. The Director-General was also advised that in Council's opinion a Local Environmental Study is not required, in this instance.

Draft Tweed Local Environmental Plan 2000 (Amendment No.55) was publicly exhibited from 25 February to 24 March 2004. The amendment seeks to include Lot 6 DP 10297, Kennedy Drive, Tweed Heads into Schedule 3 to enable development for the purposes of a self-storage facility and associated managers residence. No submissions have been received. The proposed development is considered satisfactory. It is recommend that the draft LEP be adopted and procedures implemented to expedite the Plans gazettal by the Minister administering the *Environmental Planing and Assessment Act, 1979* ('the Act'), and that the development be approved subject to the consent conditions provided in this report upon gazettal of the Tweed LEP amendment.

RECOMMENDATION:

That: -

1. Council forwards the draft Tweed Local Environmental Plan 2000 (Amendment No. 55), as exhibited, to the Minister administering the Environmental Planning and Assessment Act, 1979 requesting that the Plan be made in accordance with Section 70 of the said Act.
2. Upon gazettal of draft Amendment No. 55 to the Tweed Local Environmental Plan 2000, Development Application DA03/0667 for a self storage facility at Lot 6 DP 10297 No. 111 Kennedy Drive, Tweed Heads be approved subject to the following conditions:

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects prepared by Jim Glazebrook and Associates Pty Ltd dated May 2003, to the extent of inconsistency with the amended Plans Nos. 01-024 DA 01 Revision D, 01-024 DA 02 Revision C and 01-024 DA 03 Revision D prepared by R J Sinclair Pty Ltd and dated 18 July 2001, and the Acoustic Assessment dated 24 January 2003 and addendum of 3 August 2004 prepared by Richard Heggie Associates, except where varied by these conditions.

2. Amenity landscaping of Council's Ducat Park is to be carried out to the satisfaction of Council's Director Engineering and Operations. Prior to carrying out any works within the park Council's Manager Recreation Services shall be consulted on the level of work to be undertaken. Any required landscaping works are not to exceed that identified on the Landscape Plan No.01-024 L 01 Revision P1 prepared by R J Sinclair Pty Ltd dated 5 July 2004.
- [GEN0010]
3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.
- [GEN0120]
4. 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
 - (b1) 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
 - (b2) 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.
- [GEN0150]
5. The maximum intensity of any external lighting at 3° above the horizontal shall not exceed 150 candella.
6. External building materials shall not be reflective, in particular all roofed areas.
- [GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

7. 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.

Residential Component

a.	Tweed Road Contribution Plan: S94 Plan No. 4 (Version 4.0) Sector1_4	\$1,288
b.	Open Space (Structured): S94 Plan No. 5	\$780
c.	Open Space (Casual): S94 Plan No. 5	\$167
d.	Shirewide Library Facilities: S94 Plan No. 11	\$688
e.	Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$126
f.	Emergency Facilities (Surf Lifesaving) (REMSHIRE) S94 Plan No. 16	\$215
g.	Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$344.81
h.	Cycleways S94 Plan No. 22	\$160
i.	Regional Open Space (Structured) S94 Plan No. 26	\$1,177
j.	Regional Open Space (Casual)	\$221

S94 Plan No. 26

Industrial/Commercial Component

- a. Tweed Road Contribution Plan: \$4,410
S94 Plan No. 4 (Version 4.0)
Sector1_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:-

$$\text{\$Con}_{\text{TRCP - Heavy}} = \text{Prod.} \times \text{Dist} \times \text{\$Unit} \times (1 + \text{Admin.})$$

where:

$\text{\$Con}_{\text{TRCP - Heavy}}$ heavy haulage contribution

and:

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. Extensions to Council Administration Offices & Technical Support Facilities \$608.80
S94 Plan No. 18

[PCC0050/PSC0005]

8. 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 Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction 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:

Residential Component

Water:	1 ET @ \$4325	\$4,325
Sewer:	1 ET @ \$3490	\$3,490

Industrial / Commercial Component

Water:	2.058 ET @ \$4325	\$8,901
Sewer:	2.058 ET @ \$3490	\$7,182

These charges to remain fixed for a period of twelve (12) months from the date of this consent and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

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]

9. The site is to be filled to a minimum of RL2.65m AHD. The filling is to be retained by perimeter structural walls with concrete lined perimeter drainage, or other approved treatment, to a design submitted to and approved by the Director of Engineering Services prior to the release of the Construction Certificate. The filling plan of the site is to address the drainage on the site as well as any existing stormwater flows onto or through the site and the likely impact on stormwater drainage in the locality from the proposed filling.

[PCC0100]

10. 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 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:
 - (i) Runoff from all impervious hardstand and driveway areas (excluding roof areas) must be treated to remove oil and sediment pollutants prior to the discharge to the public realm. Permanent stormwater quality control devices shall be sized according to Council's Development Design Specification D7 - Stormwater Quality, Section D7.12. Full engineering details of treatment devices, including maintenance schedules, shall be submitted with a s.68 Stormwater Application.
 - (ii) Roof runoff does not require treatment and should be discharged downstream of any treatment devices, or the treatment devices shall be sized accordingly.

[PCC0230]

- 11. (a) 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 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.

- (b) The following additional detail shall be submitted with the s.68 Local Government Act: Stormwater Application, prior to the issue of a Construction Certificate:
 - (i) Written certification, from a suitably qualified practicing engineer, that the existing stormwater pump system operates according to the minimum standards detailed on R.J Sinclair Pty Ltd Drawing No.98 034 H 03 C, "Hydraulic Services Plant Room Layout and Schedules", dated 12/12/98.

- (ii) Should the existing pump system not meet the minimum standards referred to in part (i) above, details of the required pump system upgrades to meet these minimum standards shall be submitted for approval.
- (iii) Details of the current stormwater pump system maintenance contract, as described on R.J Sinclair Pty Ltd Drawing No.98 034 H 03 C, "Hydraulic Services Plant Room Layout and Schedules", dated 12/12/98. Updated maintenance contract details shall be supplied to council annually, for the life of the storage unit building.

[PCC0240]

12. 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]

13. The drainage system for the self storage units shall be adequately sized to provide storage of stormwater up to the ARI 20 year storm event without exceeding the capacity of the stormwater discharge pump system.

[PCCNS01]

14. Prior to the issue of a Construction Certificate an acoustic consultant shall provide details to Council on the form of all damping/insulation that is required for the loading areas and any cover plates. Stormwater grates and the like, which is necessary to prevent the emission of offensive noise.

15. Prior to the issue of a Construction Certificate the location and details of all proposed mechanical plant shall be provided to Council on a suitably detailed plan. The plant is not to be located close to the boundary that adjoining any neighbouring residential premises unless such mechanical

plant is acoustically treated so as to prevent the emission of offensive noise.

16. Prior to the issue of a Construction Certificate an acoustic consultant is to provide construction details of all proposed acoustic fencing and acoustic barriers to Council that detail the level of noise attenuation that will be achieved against each of the noise sources and predicted noise levels that are indicated in table 5.3.1 of the Acoustic Assessment prepared by Richard Heggie and Associates dated 24 January 2004, as well as any other potential noise sources that may be present on the site. The construction of the acoustic fencing and barriers shall be sufficient to prevent the emission of offensive noise.

[PCCNS02]

PRIOR TO COMMENCEMENT OF WORK

17. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised to the satisfaction of the Principal Certifying Authority and provided with a dish drain or similar at the base or otherwise retained to the satisfaction of the Principle Certifying Authority. All retaining works shall be completed to the satisfaction of the Principal Certifying Authority prior to start of building work. Please note timber retaining walls are not permitted.

Note: All cut and or fill must comply with DCP 47. The top of any battered cut, toe or battered fill and the face of any retaining wall structure supporting cut or fill cannot be closer that 900mm to the boundary where the overall height at any point exceeds 500mm.

[PCW0040]

18. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every twenty (20) persons or part of twenty (20) 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, or
 - (c) if that is not practicable, any other sewage management facility approved by the council.

[PCW0060]

19. **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 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.

[PCW0070]

20. 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]
21. Prior to commencement of any works on the site all required plumbing and drainage inspection fees are to be submitted to Council.
[PCW0200]
22. An application to connect to Council's sewer or carry out plumbing and drainage works, together with any prescribed fees including inspection fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.
[PCW0210]
23. Prior to 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]
24. Any business or premises proposing to discharge a pollutant discharge greater than or differing from domestic usage is to submit to Council an application for a Trade Waste Licence. This application is to be approved by Council prior to any discharge to sewer being commenced.
[PCW0220]

DURING CONSTRUCTION

25. 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 or complying development certificate was made).
[DUR0010]
26. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction.
[DUR0080]
27. 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.
[DUR0130]
28. 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.

[DUR0170]

29. It is the responsibility of the applicant to restrict public access to the building site, building works or materials or equipment on the site when building work is not in progress or the site is otherwise unoccupied.
[DUR0200]
30. 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]
31. The guttering downpiping and roof waste water disposal system is to be installed and operational before the roofing is installed.
[DUR0950]
32. 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.
- [DUR1020]
33. 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 NSW Code of Practice for Plumbing and Drainage.
[DUR1030]
34. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993.
[DUR1090]
35. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard.
[DUR1110]
36. 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.
[DUR1130]
37. 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:-
- * 43.5⁰C 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.

[DUR1160]

38. In the event that Council is not utilised as the inspection/Certifying authority, within seven (7) days of building works commencing on the site a Compliance Certificate in the prescribed form is to be submitted to Council together with the prescribed fee, by the nominated principal certifying authority to certify the following:
- i. All required erosion and sedimentation control devices have been installed and are operational.
 - ii. Required toilet facilities have been provided on the site.
 - iii. A sign has been erected on the site identifying:
 - Lot number
 - Builder
 - Phone number of builder or person responsible for site.
 - iv. All conditions of consent required to be complied with prior to work commencing on the site have been satisfied.

[DUR1200]

39. 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 of Engineering Services prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[DUR1210]

40. Landscaping within Ducat Park, for ameliorative screening of the proposed building, is to be to the Satisfaction of Council's Director Engineering and Operations.

[DURNS01]

41. 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]

42. 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]

43. 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]
44. All necessary precautions shall be taken to minimise impact from dust during filling operations from the site and also from construction vehicles.
[DUR0880]
45. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited.
[DUR0920]
46. 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 of Engineering Services.
[DUR0930]
47. The burning of builders waste on site by open fire is prohibited.
[DUR0940]
48. All fill material imported to the site shall be from an approved source. All material shall be free of from any contaminants that would exceed the recommended Soil Health Investigation Levels as specified in Schedule B (7a) of the National Environmental Protection Council Measures for the proposed use of the land.
[DURNS02]
49. All excavations below 2.0mAHD shall be subject to compliance with the Preliminary Acid Sulfate Soils Management Plan prepared by Martin Findlater and Associates dated 22 April 2003.
[DURNS03]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

50. In the event that Council is not utilised as the inspection/certifying authority, prior to occupation of the building a Compliance Certificate in the prescribed form is to be submitted to Council from the nominated principal certifying authority, together with the prescribed fee, to certify that all work has been completed in accordance with the approved plans and specifications and conditions of Consent.
[POC0020]
51. A person must not commence occupation or use of the whole or any part of a new building (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).
[POC0030]
52. Prior to the issue of an occupation certificate, a "satisfactory inspection report" issued by Council must be produced for s68h2 permanent stormwater quality control devices. This inspection report must be obtained from Council prior to backfilling of any of the s68h2 approved devices.
[POCNS01]

53. Prior to the issue of an Occupation Certificate an acoustic consultant shall in conjunction with the applicant provide a noise management plan to Council for approval. It must identify how all the noise sources are to be controlled. Such noise sources shall include but may not be limited to: roller doors, unloading trolleys, raised voices, car movement and related noises. Particular attention shall be paid to the control of all noise sources at night.

[POCNS02]

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

[USE0160]

55. Activities occurring at the premises must be carried out in a manner that will minimise emissions of dust from the premises.

[USE0190]

USE

56. All external artificial lighting shall be shielded where required to the satisfaction of Council's Director Environment and Community Services so as to prevent the spill of light or glare causing nuisance to the occupants of the neighbouring or adjacent residential premises.

The storage of any hazardous or explosive materials is not permitted without the prior separate approval of NSW WorkCover Authority.

[USENS01]

REPORT:

Applicant: Whale Auto Wash Pty Ltd
Owner: Dabav Pty Ltd
Location: Lot 6 DP 10297 No. 111 Kennedy Drive, Tweed Heads
Zoning: 2(a) Low Density Residential
Cost: \$1,200,000.00

BACKGROUND:

Council is in receipt of a development application made in accordance with Division 4B of the *Environmental Planning and Assessment Act, 1979* comprising a proposed and presently prohibited development and a facilitating *Tweed Local Environmental Plan 2000* amendment.

The proposed development comprises the erection of a predominantly two-storey self-storage facility with a three-storey component comprising a managers residence. The development consists of the following principle elements:-

1. Filling of the land to Tweed Council's adopted design flood level of RL 2.65m AHD from the current ranging natural site level of 1-2m AHD;
2. The construction of a part two and three-storey storage building comprising:-
 - 107 storage units, office / reception and W.C. area on the ground floor,
 - 244 storage units on the first floor,
 - a manager's residence on the second floor,
3. The provision of five (5) designated car parking spaces;
4. A building constructed of pre-cast concrete tilt up wall panels on the boundary elevations with colourbond walls and roller doors forming the remainder. The roof is proposed as colourbond roof sheeting;
5. Erection of the development in two-stages, and
6. Modification of the existing traffic island on the Kennedy Drive entrance to accommodate large rigid vehicles. Access to the complex would be via the existing carwash, which benefits from a shared right of carriageway over the neighbouring service station off Kennedy Drive.

The total floor area of the proposed facility, including undercover driveway and unloading areas, is 3959.8m².

The matter was reported to Council's ordinary meeting of 18 June 2003 raising concern that the development, as then proposed, had the potential to adversely impact upon neighbouring residences and would have adversely contributed to the locality through the provision of a generally uncharacteristic and visually obtrusive three-storey development. It was recommended that the proposed self-storage facility should be no greater than single-storey in height. The Council resolution of 18 June read:

“RESOLVED that this item be deferred to allow the applicant to discuss the development application with Council planners.”

Subsequent to consultation between the Applicant and Council’s Development Assessment Unit on 26 June 2003 amended plans were submitted.

At its meeting of 17 September 2003 Council considered a further Planning Report that was based upon the amended development design, Council further resolved:


“RESOLVED that Council: -

1. *Prepares a draft Tweed Local Environmental Plan 2000, to include Lot 6 DP 10297, Kennedy Drive, Tweed Heads into Schedule 3 to enable development for the purposes of a self-storage facility.*
2. *Pursuant to Section 54(4) of the Environmental Planning and Assessment Act, 1979 informs PlanningNSW of Council’s intention to prepare a draft Local Environmental Plan.*
3. *Advises the Director General of PlanningNSW that in Council’s opinion a Local Environmental Study is not considered required in this instance.*
4. *Advises the applicant that in initiating the draft Local Environmental Plan amendment, support is not, at this stage, given to the development application plans.”*

As reported, no public submissions have been received against the proposal. No issues have arisen with the proposed LEP amendment or the amended development design. As such there exists no justifiable reason for the facilitating draft LEP not to proceed to gazettal, to be subsequently followed by the approval of the development.

SITE DIAGRAM:



<p>© TWEED SHIRE COUNCIL 2003 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT FOR RED P.O. Box 816 Murwillumbah, NSW, 2484 Tel: (02) 6670 2409 Fax: (02) 6670 2483</p>	<p>Tweed Shire Council Lot 6 DP 10297 111 Kennedy Drive, Tweed Heads West</p>		<p>STRATEGIC PLANNING UNIT Site Plan</p>	
<p>File: N:\MapInfo 7...\AAP Site Plan.Wor</p>	<p>Author: J. Batchelor</p>	<p>Date: 11/June/2003</p>	<p>Scale: 1:5,000</p>	<p>Sheet: 1 of 1</p>

NSW Department of Planning

Further to Council's resolution of 17 September 2003 and the communication of such to the Department of Infrastructure, Planning and Natural Resources (DIPNR) the Director-General advised on 12 November 2003 of the dispensation of the requirement to prepare a Local Environmental Study and therefore Sections 57 and 61 of the Act. In this regard, the plan is inconsistent with Section 117 Direction S26 relating to the NSW Coastal Policy and as such Council does not have delegation to refer the draft plan directly to the Minister under s.69 of the Act. Any draft Plan must therefore be forwarded to the Director-General pursuant to s.68(4) of the Act.

Section 62 Consultation Process

Prior to the certification or exhibition of the Draft Tweed Local Environmental Plan (Amendment No.55) Council, pursuant to Section 65 of the Act, consulted with all relevant external authorities, which comprised:-

- DIPNR.
- NSW Roads Traffic Authority (RTA).
- NSW Environment and Conservation (EAC).

A response from two agencies was received, with the EAC having not formerly responded. However, It was advised by an Officer, Mr Brett Rudd, of the EAC in telephone communication of 15 April 2004, that the EAC raises no objection or requires any further involvement. Issues raised in DIPNR's letter of 12 November 2003 have been considered and assessed by appropriate Council staff and formed part of the draft LEP notification exhibition material as requested. The matters raised in DIPNR's letter have been assessed accordingly and where required conditions of development consent are proposed. The RTA raised no objection to the development based on the traffic assessment. Council's Traffic and Transport Engineer has reviewed the access and manoeuvring development plans, and traffic capacity of Kennedy Drive, raising no issue with the proposed development.

Further to the above, consultation with the Gold Coast Airport Limited, care of Rigby Consulting Pty Ltd, for the purposes of satisfying any requirements of the Department of Transport and Regional Services, was undertaken. It was advised that the caretaker's residence would likely be more seriously affected by noise from Kennedy Drive, the by-pass and the existing carwash than from aircraft noise and as such a condition relating to aircraft noise would be superfluous. The proposed land-use itself is considered "acceptable" between the 20 and 25 ANEF noise contours under Australian Standard (AS)-2021.

As the site is situated in the airport's Lighting Zone C, it will be necessary to impose appropriate conditions of any approval to ensure that that maximum intensity of lighting at 3° above the horizontal does not exceed 150 candela, and that roofing materials comprise non-reflective materials. These requirements would be imposed on any approval issued for the proposed development.

No other issues of concern are raised against the proposed development.

Public Exhibition of Draft LEP

The Draft Local Environmental Plan Amendment No.55 was publicly exhibited in accordance with Section 66 of the Act from 25 February to 24 March 2004, utilising the delegated authority provisions granted to the Manager – Strategic Planning under Section 65. No submissions have been received against the proposed development. Since the exhibition there has been lengthy negotiations with the applicant relating assessment of the development application component of the submission. These issues have now been satisfactorily resolved.

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 2000

The land is zoned 2(a) Low Density Residential under the Tweed LEP 2000. Storage units are a prohibited land-use in the zone. The Statement of Environmental Effects submits that appropriate planning justification for an amendment to the Tweed LEP exists, to enable the proposed development to be carried out on the land. Accordingly the Applicant has made provision in the development application, pursuant to Section 72J of Division 4B of the *Environmental Planning and Assessment Act, 1979* for the re-zoning (Schedule 3 amendment) and paid the relevant processing fee in addition to the general application fees.

LEP Amendment

To enable the erection of a self-storage facility over the subject land Council can amend the Tweed LEP by either:

1. Amend the land-use zoning from Residential 2(a) to another zoning, e.g. Industrial 4(a), or
2. Include the subject land in Schedule 3 (Development of Specific Sites) of the Tweed LEP, facilitating an exemption from the Residential 2(a) zoning table for the specifically nominated land-use.

Option 1 was not considered the preferred option because it would permit a far broader application of the land and could provide for undesirable land-use intensification. Option 2, which is sought by the Applicant, would limit development beyond the zoning provisions to that specifically nominated, and which is the preferred option.

North Coast Regional Environmental Plan 1988

The proposal is consistent with both the plan preparation and development control provisions of the NCREP 1988. The relevant clauses are discussed below:

Clause 15 - Development control - wetlands or fishery habitats

The site is not adjacent to a waterway. However, consideration needs to be given to the quality of water leaving the site and its impact on waterways. Management measures during both the construction and operational phase of the development are proposed to ensure that the proposal complies with the provisions of the Tweed Urban Stormwater Quality Management Plan. Council's Engineering and Operations Unit has invested considerable review and assessment of various stormwater management proposals for the site in conjunction with the applicant, over several months. A suitable stormwater management system has been devised that is considered satisfactory and that has permitted the formulation of appropriate conditions of consent.

Clause 32A - Plan preparation - coastal lands

This clause applies to land to which the NSW Coastal Policy applies. It requires that a draft LEP shall include provisions which are consistent with the Coastal Policy and it also contains requirements in respect of development in coastal protection zones and on dunes, beaches and headlands.

The proposed development and facilitating draft LEP are not inconsistent with the provisions of this clause.

Clause 32B - Development control - coastal lands

This clause applies to land covered by the NSW Coastal Policy 1997 and the North Coast Design Guidelines.

The North Coast Design Guidelines contains general principles concerning the location of development, particularly in relation to development on headlands and ridges, foreshores, wetlands, rainforests, inland waterways and hilly country. The proposal is consistent with the locational criteria in this document. The remainder of the document primarily concerns itself with residential and tourist development, which is not applicable to this proposal.

Clause 39 - Plan preparation - retail, commercial or business activities

This clause requires that a draft LEP for the establishment of significant retail, commercial or business development is to meet certain locational criteria. The proposal does not constitute "significant" commercial development, and therefore this clause does not apply.

Clause 45A - Plan preparation - flood liable land

The proposal does not seek to change the zoning of the land but rather to amend the development schedule through a specific land-use inclusion in Schedule 3 of the Tweed LEP. Under the current zoning and Council policies the land would have to be filled to 2.65m AHD to enable residential development. The proposal seeks to comply with the requirement notwithstanding that it is not a necessary requirement when carrying out commercial development. Therefore, in terms of flooding considerations, the proposal does not result in the intensification of development per se, i.e. the amount of proposed land filling is the same as that which would ordinarily have to occur having regard to the present land-use zoning.

The proposal is consistent with the provision of this clause. Council's Infrastructure Engineer has reviewed the proposed development and raises no issues.

Clause 47 - Plan preparation and development control - principles for commercial and industrial development

The clause requires that before preparing a draft LEP relating to commercial or industrial development that the Council should take into account a number of principles. These principles relate to the maintenance of strong multi-functional town centres, incorporation of flexible provisions in the LEP to enable the development of a light service industry near the CBD, and the adequate supply of industrial zoned land.

The proposed 'rezoning' is a facilitating amendment only that seeks to permit the orderly and economic development of a heavily constrained residential allotment. The nature of the proposed development is not considered likely to have a detrimental impact upon existing industrial/commercial or town centre areas nor will it act as a catalyst for further development. In this regard, the proposal is consistent with these principles. It is noted that the development, as amended, will satisfactorily maintain existing local amenity. No public submissions or enquiries have been received that would indicate otherwise.

NSW Coastal Policy 1997

The subject land is affected by the NSW Coastal Policy. The Policy is essentially a strategic management document that sets out *directions to be taken by local and state government in the planning and management of the coast .. (it) is underpinned by a number of principles which are designed to guide decision making and to clarify the basic philosophy of the goals.*

The Policy is required to be given effect, where necessary, through specific planning instruments. This application does not raise any inconsistencies in respect of those provisions. It is noted however that with respect to the Section 117 Direction, S26, that an inconsistency has occurred by virtue of the Minister waiving the need for an environmental study. Otherwise, the proposed development is not inconsistent.

State Environmental Planning Policies

State Environmental Planning Policy No.71 – Coastal Protection

The site is within the coastal zone and therefore the provisions of the Policy apply. When preparing a draft local environmental plan and determining a development application the Council as consent authority must take into consideration the matters outlined in Part 2 of the Policy. With respect to those matters of relevance the Applicant provides:

- “• *the site is well removed from natural waterways,*

- *the proposal does not generate the need to provide any new public access to, or along, the foreshore,*
- *the development would not be visible from the foreshore,*
- *the site is not affected by coastal processes,*
- *the development would not adversely impact on flora and fauna, and*
- *there are no known heritage items on, or within close proximity of, the site.”*

With respect to the matters in Part 4 of the Policy, it is commented that: -

- *The proposal would not affect the right of access of the public to or along the foreshore.*
- *Effluent would be disposed of by a reticulated system.*
- *The development would not discharge untreated stormwater to the sea or creek.*

The applicant contends that the proposal is consistent with the aims of the Policy, this view is concurred with.

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

There are no draft environmental planning instruments known to exist that would have any bearing on neither the assessment nor determination of the subject development application.

(a) (iii) Development Control Plans (DCP's)

Development Control Plan No.2 - Access and Parking Code applies. The development proposal complies with the provisions of the Plan.

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

Satisfactory.

(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

Land Contamination

The Applicant has advised, based upon investigation of a series of historical aerial and topographical maps, that the site is not contaminated. Council's Environment and Health Services Unit carried out an investigation based on Council's files and historical site data that supports this view. In addition, it should be noted that the site proposed to be filled. Conditions of consent are

proposed so as to ensure that any fill material is sourced from an approved location and free of contamination.

Acid Sulfate Soils

The land is identified as Class 3 on Council's Acid Sulfate Soil Planning Map. There are no works proposed beyond 1 metre below the natural ground surface. Therefore, in accordance with the provisions of this clause, further investigation for the presence of acid sulfate soils is not required. However, the engineering investigation of the site indicates that field investigation for the occurrence of acid sulfate soils is warranted. Accordingly, the Applicant has provided an Acid Sulfate Soil Management Plan for assessment. Council's Environment and Health Services Unit has reviewed the preliminary Acid Sulfate Soil Management Plan and raises no objection subject a condition of consent ensuring that any excavation works that may occur below 2 metres AHD are carried out in accordance with the preliminary Acid Sulfate Soil Management Plan prepared by Martin Findlater and Associates. In addition, it should be noted that the land is proposed to be filled.

Designated Roads

Kennedy Drive is a designated road and the proposed development seeks to utilise the existing car wash access to this road. Clause 22 of the Tweed LEP provides that Council may grant development consent if it is satisfied of certain matters relating to traffic safety and efficiency, traffic noise and scenic quality. Council's Traffic and Transport Engineer has assessed the existing road traffic capacity and site access as satisfactory. Having regard to the site context it is considered that there will be no adverse impact on existing levels of traffic noise, safety or efficiency. Scenic quality will remain materially unaltered.

Development Impacts – Noise: Amenity: Overshadowing

The self-storage facility is proposed to operate seven days a week, 24hrs a day. The application is accompanied by an acoustic report and associated addendum. The impact of the proposal upon the neighbouring residences has been assessed by Council's Environment and Health Service Unit. Noise impacts are considered likely to be minimal on the information provided. Detailed design and type of all plant and acoustic ameliorative measures is to be provided at the construction certificate stage. A condition of consent is proposed to this effect

Overshadowing of neighbouring properties and Council's open space land will occur to varying degrees. The reduced scale of the amended development design has resulted in reduced amount of proposed shadow. No public submissions have been received from neighbouring residential lands, which are situated to the east. The level of shadow impact is considered acceptable as it will not severely impact upon the use and functionality of the private recreation areas. Council's Parks and Recreation Unit has reviewed the proposed development and raised no objection to the level of overshadowing likely to occur in Ducat Park. In this regard, it is noted that the applicant has been advised of and has agreed to minor landscape works in the Park to

assist in minimising the visual impact of the development. The result of landscaping works would in itself result in overshadowing.

The amenity of the neighbouring residential properties and of Ducat Park is not considered to be significantly affected by the proposed development. The proposal is not inconsistent with this provision of the Act and no issue of overwhelming significance arise that warrant further assessment.

(c) Suitability of the site for the development

Having regard to the matter raised in this report it is concluded that the site is suitable for the proposed development. This is particularly so having regard to the constraints of the land that essentially prohibit land-uses that would ordinarily be permissible under the existing land use zoning.

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

Draft Tweed Local Environmental Plan 2000 (Amendment No.55) and the proposed development, which comprises the s.72J Development Application, was publicly exhibited from 25 February to 24 March 2004. No submissions were received.

(e) Public interest

Having consideration to the matters raised in the assessment of the subject development application, DA03/0667, it is concluded that no adverse or detrimental impact is likely to arise on the public interest.

OPTIONS:

1. Resolve to forward the draft Tweed Local Environmental Plan 2000 (Amendment No.55), as exhibited, to the Minister administering the Environmental Planning and Assessment Act, 1979 requesting that the Plan be made in accordance with Section 70 of the said Act and upon gazettal of the Plan issue development consent subject to the conditions provided in this report.
2. Resolve not to proceed with the rezoning / refuse the development application and provide reasons for the resolved action.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

A merit assessment of all relevant issues of consideration concludes on balance that the erection of the proposed facility is acceptable in the circumstances of the case. It is necessary, given that the Tweed LEP 2000 does not have provision to enable the

approval of the facility under the present land-use zoning, to facilitate inclusion of the land in to Schedule 3 of the Tweed LEP in order for the site specific proposal to proceed.

UNDER SEPARATE COVER:

1. Council Report of Wednesday 18 June 2003 (DW 919387)
 2. Council Report of Wednesday 17 September 2003 (DW 950787)
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