

REPORTS THROUGH GENERAL MANAGER

REPORTS FROM DIRECTOR PLANNING & DEVELOPMENT

- 1 [PD-PC] Development Application DA06/1462 for Alterations to Unit 301 at Lot 39 SP 77096, No. 39/2-6 Pandanus Parade Cabarita Beach

ORIGIN:

Development Assessment

FILE NO: DA06/1462 P1

SUMMARY OF REPORT:

Council has received a development application for alterations to the deck and planter box of Unit 301 within the recently completed tourist development known as 'The Beach' at Cabarita Beach

The proposal involves excising a portion of the planter box on the southern side of the building and replacing it with useable balcony space. The balcony will be extended in a triangular configuration by an area of approximately 15m². The alterations will also include the erection of a louvre privacy screen on top of the new planter wall and a lightweight shade sail over the extended deck area. It is proposed these two devices will eliminate the potential for direct line of sight between the balcony of Unit 301 and the neighbour's main living and entertaining area. The shade sail will also act as an acoustic barrier between the two properties.

The area surrounding The Beach is characterised by a mix of commercial, retail, residential and community land uses, however to the south is a three storey residential dwelling. The outdoor entertaining deck area of this dwelling is situated very close to the northern boundary of the site – a visual inspection estimates the most north-eastern corner of the deck is within 10 metres of the balcony of the subject Unit 301.

The application was notified to the owners of the adjoining property who submitted an objection raising privacy and amenity issues as their main concern. Given the current design did not pre-empt the existing amenity concerns of both parties, and the current approved plans do not include measures to mitigate such concerns, it is recommended that the proposed development, including the installation of privacy screens and a shade sail, would facilitate greater residential amenity for both the subject site and the adjoining site to the south. Hence the concerns of the adjoining neighbour are not warranted. This issue is discussed in greater detail in the body of this report.

RECOMMENDATION:

That Development Application DA06/1462 for alterations to Unit 301 at Lot 39 SP 77096, No. 39/2-6 Pandanus Parade Cabarita Beach be approved subject to the following conditions: -

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plans entitled "The Beach, Cabarita Apartment 301 Enlarged Balcony prepared by dated 22nd November 2006, except where varied by the conditions of this consent. [GEN0005]
2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia. [GEN0115]
3. Notwithstanding the reduction in physical size of the planter box, landscaping within the modified planter box shall be in accordance with the planting schedule as shown on the landscaping plan and approved under DA03/1221.
4. The shade sail shall be erected in a position that eliminates any potential for direct line of sight between the extended balcony area of Unit 301 and the main indoor living area or outdoor entertaining area of the neighbouring dwelling to the south. [GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

5. In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 1979 (as amended), a construction certificate for **SUBDIVISION WORKS OR BUILDING WORKS** shall NOT be issued until any long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided. [PCC0285]

PRIOR TO COMMENCEMENT OF WORK

6. The erection of a building in accordance with a development consent must not be commenced until:
 - (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
 - (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and

- (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - (c) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.
- [PCW0215]*
7. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.
- [PCW0225]*
8. 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.

[PCW0255]

DURING CONSTRUCTION

9. Construction site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council: -

Monday to Saturday from 7.00am to 7.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

10. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).

[DUR0375]

11. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.

[DUR0405]

12. All work associated with this approval is to be carried out so as not to impact on the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -

- Noise, water or air pollution
- Minimise impact from dust during filling operations and also from construction vehicles
- No material is removed from the site by wind

[DUR1005]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

13. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0205]

REPORT:

Applicant: Resort Corp Pty Ltd
Owner: Mr BJ Stoltz and Mrs E Stoltz
Location: Lot 39 SP 77096 No. 39/2-6 Pandanus Parade, Cabarita Beach
Zoning: 3(b) General Business
Cost: \$40,000

BACKGROUND:

Council has received a development application for alterations to the deck and planter box of Unit 301 within the recently completed tourist development known as 'The Beach' at Cabarita Beach.

The proposed alterations are required to facilitate improved privacy between the subject site and the outdoor entertaining area of the adjacent dwelling to the south.

The proposal involves excising a portion of the planter box on the southern side of the building and replacing it with useable balcony space. The balcony will be extended in a triangular configuration by an area of approximately 15m². At the eastern end, it will be 1.6 metres wider than the existing width; however will taper back towards the main building over a length of 11 metres to be less than 0.5 metres wider at the western end. The alterations will also include the erection of a louvre privacy screen on top of the new planter wall and a lightweight shade sail over the extended deck area. It is proposed these two devices will eliminate the potential for direct line of sight between the balcony of Unit 301 and the neighbour's main living and entertaining area. The shade sail will also act as an acoustic barrier between the two properties.

The subject site is legally described as Lot 39 in Strata Plan 77096, No. 2-6 Pandanus Parade Cabarita Beach. The building in its entirety is more commonly known as The Beach tourist accommodation, for which the (then) Department of Infrastructure, Planning and Natural Resources was the consent authority and assessed the proposal as State Significant Development. Approval was granted in 2004.

The Beach development is comprised of 57 tourist accommodation units, two levels of basement car parking, ground floor commercial and retail tenancies and internal landscaping and pools. The ground floor tenancies are yet to be fitted out, however the tourist accommodation component has been fully operational for some time now. The subject unit is on the third floor and is located at the south-eastern corner of the building.

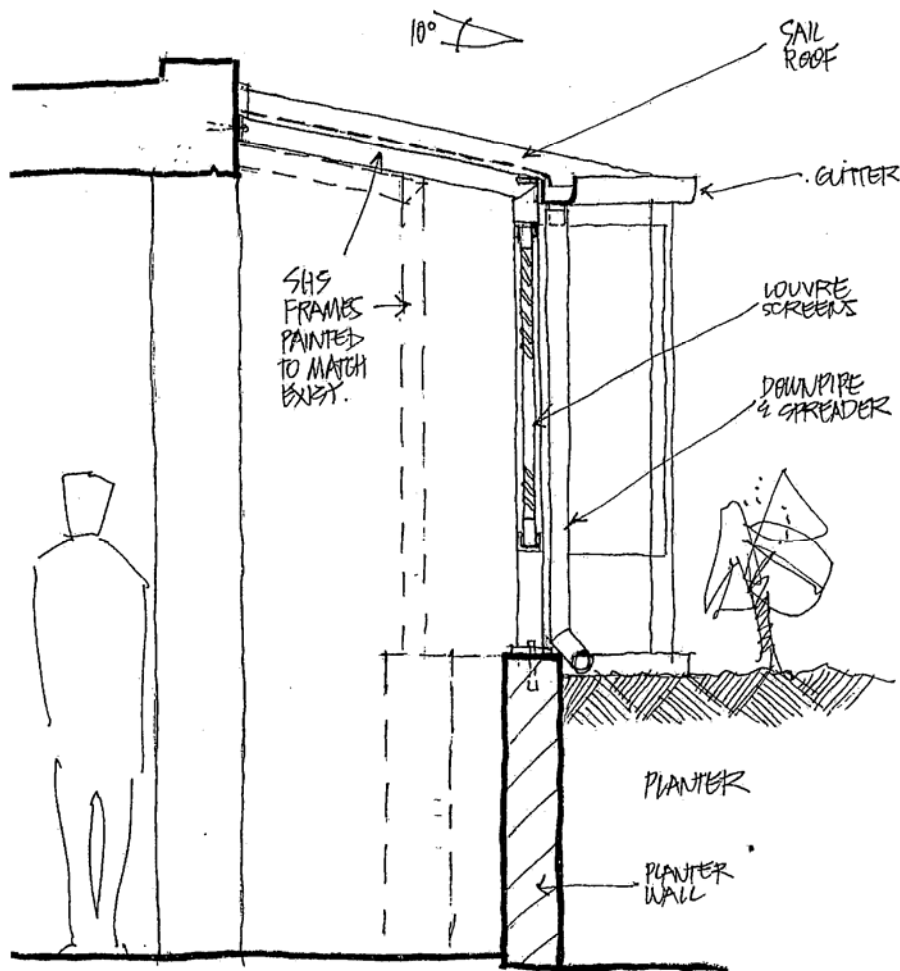
The area surrounding The Beach is characterised by a mix of commercial, retail, residential and community land uses. To the north of the complex is Pandanus Parade, the Cabarita Beach Surf Life Saving Club and a Council owned public car; to the east is coastal reserve land and Cabarita Beach; to the west is the Tweed Coast Road and the main commercial and retail strip of Cabarita Bogangar; and to the south is a three storey residential dwelling. The living and outdoor entertaining deck area of this dwelling are situated on the north eastern corner of the site and afford expansive ocean views to the east and northeast. They are very close to the boundary of the site – a visual inspection estimates the most north-eastern corner of the deck is within 10 metres of the balcony of the subject Unit 301.

The proposed alterations are intended to improve the amenity of both the owners of Unit 301 and the owner's of the dwelling to the south.

The original approval for The Beach did not include measures to specifically mitigate privacy and amenity issues between the two dwellings. The developer recognised this problem post construction and in an attempt to rectify the situation commenced the proposed works without consent, believing them to be exempt development. The resident of the dwelling to the south alerted Council to the works and the applicant was advised that a development application was required. Subsequently, the applicant has submitted this application, which proposes to create a more useable deck area for Unit 301, whilst also improving privacy between the two properties.

SITE DIAGRAM:



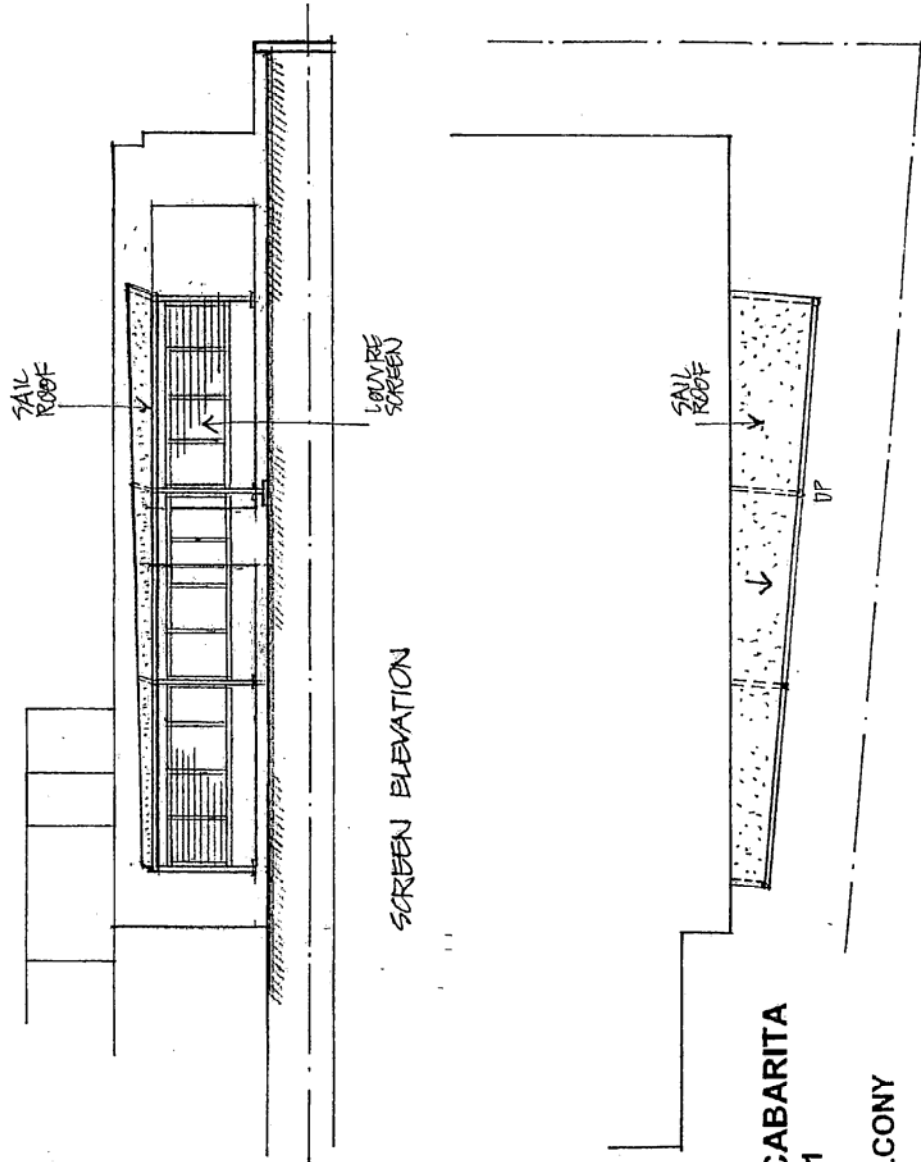


SECTION 1:20 @ A4

THE BEACH, CABARITA
APARTMENT 301

ENLARGED BALCONY

22.11.06.



**THE BEACH, CABARITA
APARTMENT 301**
ENLARGED BALCONY

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@ A4.
ROOF PLAN

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 subject site is located within the 3(b) General Business zone. The proposal is defined as ancillary development to the primary use of the site for *Tourist Accommodation*, which is a permissible use within the zone.

Clause 8 of TLEP requires Council to assess the consistency of the proposal against the primary zone objectives and any other aims and objectives of the plan. The primary objective of the 3(b) zone is to provide neighbourhood centres within residential areas where many of the community's needs can be met, but also to ensure they are at a scale that is compatible with the character of surrounding residential areas. A secondary objective is to provide for tourist development. Given the minor scale of the alterations and that the proposal is ancillary to an already approved land use that incorporates both tourist accommodation and commercial and retail floor space, it is considered to be in accordance with the zone objectives.

Clause 15 of the TLEP requires Council to be satisfied that the subject land has the benefit of essential services prior to issuing consent. All services are currently available to the site. The additional floor space would not add significant further demand upon the existing infrastructure and as such would not require the provision of additional services.

Clause 16 of the TLEP requires development to be carried out in accordance with the height limitation plan. The subject site has an allowable building height of three storeys. The existing building is 3 storeys and no additional height is proposed. As such, the proposed development is consistent with the allowable building height.

Clause 22 of TLEP is concerned with the impact of development on the capacity, efficiency, safety and scenic attractiveness of designated roads and the potential impact of traffic noise on development adjacent to such roads. The Tweed Coast Road is a Council designated road and as such the provisions of clause 22 are a relevant matter for consideration. These issues were addressed in the original consent for The Beach development, and it is considered that the alterations to the balcony of Unit 301 would have no further impact on the Tweed Coast Road, nor would the residents of the unit be further disturbed from traffic noise.

Clause 35 of the TLEP requires an acid sulfate soils management plan be assessed where the proposed development is likely to interfere with acid sulfate soils. Council's records indicate that the subject site may be affected by Class 4 and Class 5 Acid Sulfate Soils. The proposal does not involve the disturbance of any potential acid sulfate soils nor is it likely to lower the water table on site or on adjacent sites. Hence an Acid Sulfate Soils Assessment is not warranted.

North Coast Regional Environmental Plan 1988

Clause 32B – Development Control within coastal lands

The provisions of Clause 32B specify that all development within the region to which the NSW Coastal Policy 1997 applies must consider the provisions of that policy, the Coastline Management Manual and the North Coast: Design Guidelines. Given the minor nature of the alterations, the fact they are on the southern side of the building and that they would not be extending the actual bulk of the building but would simply be exchanging planter box area for balcony area, the proposed additions would not cause any additional overshadowing of waterfront open space, nor impede public access to the foreshore area. Hence the proposal is considered consistent with the aims and objectives of the abovementioned documents and Clause 32B.

State Environmental Planning Policies

State Environmental Planning Policy No. 71 – Coastal Protection

The subject site falls within land identified as the 'coastal zone' as under SEPP 71. Referral to the Department of Planning is not necessary given the proposal does not fall under the development types specified in Part 3 as significant coastal development as it is considered a minor alteration to a tourist facility.

Despite this, the items contained in Clause 8 of the policy remain a relevant matter for consideration. These items relate to the potential impacts of the development on public access to the foreshore, views, overshadowing of the foreshore, existing wildlife corridors, the suitability of the site for the development and measures to reduce other adverse environmental impacts. Given the nature of the alterations and that no additions to the building in terms of height or width are proposed, the proposal is considered consistent with the matters for consideration under Clause 8 and is a suitable development for the site.

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

There are no draft environmental planning instruments, which apply to the development application.

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

Development Control Plan No. 48 – Tweed Coast Building Heights (DCP 48)

DCP 48 provides guidelines on Council's preferred building heights, setbacks and design and use of rooftops in the urban areas of the Tweed Coast between Fingal Head and Pottsville, with the objective of protecting the region's public amenity by enhancing its diverse and unique built environment through qualitative urban design.

As the proposed balcony alteration would not add any additional height to the existing building, nor would it alter the design or appearance of the existing roofline, it is considered consistent with the objectives of DCP 48.

There are no other Development Control Plans that are applicable to this proposal.

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

Clause 92(a) Government Coastal Policy

The proposed site is located within the area covered by the NSW Coastal Policy 1997, and has been assessed with regard to the objectives of this policy. The Government Coastal Policy contains a strategic approach to help, amongst other goals, protect, rehabilitate and improve the natural environment covered by the Coastal Policy. The potential implications of the proposed balcony alterations are considered negligible given their minor nature with regards to impact on the natural environment. Hence the development is considered consistent with the stated objectives of the NSW Coastal Policy 1997.

There are no further matters prescribed by the regulations that are applicable to this proposal.

(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

Privacy and Amenity of adjoining neighbour

The Beach development was identified as State Significant Development, and as such the (then) Department of Infrastructure, Planning and Natural Resources was the consent authority. Approval was granted in 2004.

An oversight in the original assessment of The Beach meant that specific requirements to minimise privacy and amenity conflicts between Unit 301 and the neighbour on the southern side of the development were not addressed. The existing design is inadequate in that current approved plans do not include privacy screens on the balcony of the unit and do not incorporate tall fast growing plants that would grow to be a suitable screen.

The only measures specifically addressing privacy concerns of the adjoining neighbour to the south were in relation to the unit above the subject unit, included as Condition 9, which states that “the design of the proposed privacy screen to the southern length of the outdoor terrace to unit 404 is to be constructed in consultation with the southern neighbours, whose bedroom window and deck is located directly opposite, and to the satisfaction of the Director of Development Services, Tweed Shire Council.”

Notwithstanding that there are no planning controls which would justify refusal of this application, should it be refused on the grounds of reduced amenity for the neighbouring property, the owners of unit 301 will be required to re-instate the unit to the condition it was in at issue of occupation certificate in order to comply with the existing consent. As stated above, no privacy screens or shade sails were approved. Thus refusal would result in a planning outcome that is not beneficial to either party, as it would actually increase the amenity conflict between the two residences. Conversely, approval of this proposal would be in accordance with Council’s existing planning controls, would ensure privacy concerns of both parties are addressed, and it would greatly increase the overall amenity for both residences.

Due consideration has been given to the impacts on the amenity of the neighbouring property and it is considered that the proposal is an acceptable and desirable outcome.

Short Term Construction Noise

Construction of the proposed works will result in a temporary increase in noise. Standard conditions restricting hours of work and vehicle movements have been applied to ensure minimal disturbance to surrounding residents and landowners.

(c) Suitability of the site for the development

The site is considered suitable for the proposal given it is already in use as a residence and extension of the balcony by a further 15m², the installation of privacy screens and a shade sail would facilitate greater residential amenity for both the subject site and the adjoining site to the south.

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

The application was notified to the adjoining neighbour to the south, who responded with an objection raising the following issues:

“Substantial loss of amenity”

Discussion: Amenity issues have been discussed in the previous section of this report. It is considered that the proposed alterations would greatly improve the existing situation for both the neighbours and the owners of Unit 301, and minimal negative impacts are anticipated for either party.

“In the original proposal a 3-metre buffer zone, privacy screens and planting were arranged and agreed”

Discussion: As discussed in the above section, no privacy screens were included in the original approval. The screens that were erected after construction was complete were not approved and not in accordance with the consent. Whether or not the measures to maintain privacy were privately ‘arranged and agreed’ between the two parties has no bearing on the current proposal. This application is being assessed having regard to the current approved design, and the most appropriate method of resolving the existing amenity issues for both parties.

“For the last two months the unit has been an eyesore, with no screens and planting and at our own expense of approx. \$2000.00 we have had to erect screens for our own privacy”

Although it is not disputed that the temporary privacy screens and plantings have been removed, it must be acknowledged that temporary hoarding has been erected to mitigate privacy issues in the interim. Furthermore, the screens and plants that were previously in place were not in accordance with the approved plans and would have been removed anyway to re-instate the site to its original approved form.

“...by extending the verandah space it will create additional living areas which will create additional noise, less privacy and ultimately loss of our existing amenity. This additional area to be created adjoins our main living and outdoor entertaining area.”

The balcony will be extended by an area of approximately 15m². At the eastern end, it will be 1.6 metres wider than the existing width and less than 0.5 metres wider at the western end. This is not considered a significant increase in the overall living area of the unit, and would not result in a significant increase in noise. Furthermore, it is proposed to erect a lightweight shade sail over the extended deck area, which will eliminate the potential for direct line of sight between the balcony and the neighbour’s main living and entertaining area; and will also act as an acoustic barrier between the two properties. Due consideration has been given to the potential impacts on amenity of the neighbouring property and it is considered that the proposal is an acceptable and desirable design.

Public Authority Submissions

The Beach was originally assessed as a State Significant Development by the Department of Infrastructure, Planning and Natural Resources. As such, the Department of Planning were notified and given the opportunity for comment. Response from the Department was for full assessment to be undertaken by Council.

(e) Public interest

The proposed development demonstrates consistency with the relevant planning instruments and Council requirements. The applicant has addressed all relevant issues and sufficient information has been supplied to make a proper assessment of this application. Given that the proposed development would will eliminate the potential for direct line of sight between the balcony and the neighbour's main living and entertaining area; will act as an acoustic barrier between the two properties; and will improve the overall amenity of both residences, it is considered appropriate for the site, would not set an undesirable precedent for future development in the Shire and is considered beneficial to the wider public interest.

OPTIONS:

1. Resolve to adopt the recommendation and approve the development application subject to conditions
2. Resolve to refuse the application for stated reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

If the applicant is dissatisfied with the determination, a right of appeal exists in the NSW Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

That Development Application DA06/1462 for alterations to Unit 301 at Lot 39 SP 77096, No. 39/2-6 Pandanus Parade Cabarita Beach be approved subject to conditions.

UNDER SEPARATE COVER/FURTHER INFORMATION:

To view any "non confidential" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).

Nil.

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