

Attachment to Original Report on Residential and Tourist Code - Section A1 of Tweed DCP - Hastings Point Review

FILE NO: GT1/DCP/A1

SUMMARY OF REPORT:

This matter was referred to the Council meeting of 30 October 2008 where it was resolved as follows: -

"that this item be deferred to allow Council officers to include all information in a briefing to Councillors."

A Planning Briefing Workshop was held on 11 November 2008 and attended by all Councillors. The Councillors were provided with a briefing folder that comprised a comprehensive range of relevant documentation relating to the Hastings Point planning issues. At the Workshop Council staff presented a detailed history of the plans, processes and Council decision making for the Hastings Point planning issues, including results of the various community consultation processes and submissions to Council.

The officers provided the Councillors with the details of public submissions received after the earlier exhibition of the Draft DCP Amendment, including: -

- 28 July - 52 submissions, submitted by Hastings Point Progress Association (HPPA);
- 7 November – 197 submissions, also submitted by HPPA; and,
- 10 November – a petition comprising 77 signatories, submitted by the Secretary of HPPA.

The Councillors were also provided with a detailed history of all the major development applications determined by Council for the Hastings Point area, as well as those pending applications at No. 21 Tweed Coast Road and 9 Young Street, which will be the subject of reports to the respective 18 November and 9 December meetings.

Following a discussion of the various issues, all Councillors supported the re-submission of the previous officers report to the 18 November 2008 Planning Committee meeting, with an additional report attachment providing options to guide Council decision making on the draft interim DCP controls for Hastings Point, and any possible legal implications for these options.

In respect of the request, the following options are provided for Council to consider:

OPTION 1

To adopt the recommendation from the officers report of Item P3 of the 30th October 2008 Planning Committee meeting:

"That: -

1. *Council adopts the exhibited draft amendments to Section A1 of the Tweed Development Control Plan – Residential and Tourist Code, as it applies to*

development controls for the Hastings Point area, and in accordance with s21 of the Environmental Planning Assessment Regulation 2000 gives public notice of the resolution to adopt the Plan in its newspaper, the Tweed Link, within 28 days of that resolution.

2. *A detailed Locality Plan and Development Control Plan be prepared for the Hastings Point locality in a timeframe consistent with Council's Strategic Planning priorities."*

It should be noted that the officers report to the 30th October meeting, identified a request of the Hastings Point Progress Association that Council consider a variation to the above recommendation, by requiring the following:

"That in addition to the above resolution, Council further resolve to: -

1. *Prepare a new draft DCP to extend the interim development controls to north of the Cudgera Creek Bridge; and*
2. *Further restrict the interim density ratio to no more than 2 dwellings per site through a new draft DCP."*

Council may wish to resolve to add those points to the original recommendation.

LEGAL AND POLICY IMPLICATIONS:

In terms of the more immediate policy and legal implications of this option, the officers' report on the development application for a multi-dwelling residential building on No. 21 Tweed Coast Road is also on the agenda for this business paper. A resolution to support Option 1 would make it extremely difficult for Council to justify support for an approval of this application without a savings provision.

Furthermore, Council should also take into account that the officers have recommended refusal of the Development Application for No. 21 Tweed Coast Road. The applicants for this development application have already written to Council stating their intentions to take further legal and compensatory actions against Council should this development application be refused. These actions are based on the length of time taken in determining this matter, and the implications of the Land and Environment Court's decision to uphold a Class 4 appeal by the HPPA which has rendered Council's previous development consent for the proposal void on the grounds primarily that Council did not adequately take into account "cumulative impact" in the assessment of the development application.

Council should also take into account the impact of approving the development application prior to the commencement and preparation of a community based locality plan, which may ultimately direct an alternative building design for these sites.

Any Council adoption of Option 1 is also likely to have policy implications for the pending development application at No. 9 Young Street, the Part 3A Major Project proposal at Lot 156 Creek Street and the upcoming Supreme Court action in respect of the dismissal of a Class 4 appeal against Council's determination of the development application of "The Point" at 87-97 Tweed Coast Road.

OPTION 2

Council could consider an amendment to the recommendation of Item P3 of the Planning Committee meeting of 30th October 2008 through the following "savings provision":

"The creation of a new point 2:

2. *Any development application received on or before the Council adoption of the amended controls referred to in Point 1 shall not be subject to the assessment of these provisions".*

[NB: This resolution would involve the retention of the existing Point 1, and the retention and renumbering of the existing Point 2 to a new Point 3.]

LEGAL AND POLICY IMPLICATIONS:

In basic terms, this Option would mean that the pending major development applications at 21 Tweed Coast Road and 9 Young Street, Hastings Point would not need to conform to the amended Hastings Point DCP controls. Despite not being subject to the amended controls, it should be noted that these development applications still need to be considered on their merits, having regard to the level of compliance with the Tweed DCP Section A1, and the potential cumulative impact on the locality.

The above actions may still leave Council susceptible to further legal challenge from the applicants of the No. 21 Tweed Coast Road DCP as elements of their plans are not totally compliant with the broader, adopted Tweed DCP Section A1 controls.

This option may also lead to further legal challenges of the validity of Council's development assessment process for No. 21 Tweed Coast Road, and further appeals by the HPPA, given their recent record of appeals to both the Land and Environment Court and Supreme Court on Hastings Point planning issues.