



**TWEED**  
SHIRE COUNCIL

**Mayor:** Cr B Longland

**Councillors:** M Armstrong (Deputy Mayor)  
G Bagnall  
C Byrne  
K Milne  
W Polglase  
P Youngblutt

# Agenda

## **Planning Committee Meeting Thursday 6 February 2014**

held at Murwillumbah Cultural and Civic Centre  
commencing at 5.00pm

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - SECT 79C**  
**79C Evaluation**

(1) Matters for consideration-general In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:

- (i) any environmental planning instrument, and
- (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
- (iii) any development control plan, and
- (iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and
- (v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979 ),

that apply to the land to which the development application relates,

- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations,
- (e) the public interest.

**Note:** See section 75P (2) (a) for circumstances in which determination of development application to be generally consistent with approved concept plan for a project under Part 3A.

The consent authority is not required to take into consideration the likely impact of the development on biodiversity values if:

- (a) the development is to be carried out on biodiversity certified land (within the meaning of Part 7AA of the Threatened Species Conservation Act 1995 ), or
- (b) a biobanking statement has been issued in respect of the development under Part 7A of the Threatened Species Conservation Act 1995 .

(2) Compliance with non-discretionary development standards-development other than complying development If an environmental planning instrument or a regulation contains non-discretionary development standards and development, not being complying development, the subject of a development application complies with those standards, the consent authority:

- (a) is not entitled to take those standards into further consideration in determining the development application, and
- (b) must not refuse the application on the ground that the development does not comply with those standards, and
- (c) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards,

and the discretion of the consent authority under this section and section 80 is limited accordingly.

- (3) If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards:
  - (a) subsection (2) does not apply and the discretion of the consent authority under this section and section 80 is not limited as referred to in that subsection, and
  - (b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.

**Note:** The application of non-discretionary development standards to complying development is dealt with in section 85A (3) and (4).

- (4) Consent where an accreditation is in force A consent authority must not refuse to grant consent to development on the ground that any building product or system relating to the development does not comply with a requirement of the Building Code of Australia if the building product or system is accredited in respect of that requirement in accordance with the regulations.
- (5) A consent authority and an employee of a consent authority do not incur any liability as a consequence of acting in accordance with subsection (4).
- (6) Definitions In this section:
  - (a) reference to development extends to include a reference to the building, work, use or land proposed to be erected, carried out, undertaken or subdivided, respectively, pursuant to the grant of consent to a development application, and
  - (b) "non-discretionary development standards" means development standards that are identified in an environmental planning instrument or a regulation as non-discretionary development standards.

**THIS PAGE IS BLANK**

## Items for Consideration of Council:

ITEM	PRECIS	PAGE
	REPORTS THROUGH THE GENERAL MANAGER	5
	REPORTS FROM THE DIRECTOR PLANNING AND REGULATION	5
1	[PR-PC] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards	5
2	[PR-PC] Development Application DA13/0267 for the Demolition of Existing Building and Construction of 3 Storey Multi-Dwelling Housing Development Incorporating 7 Units Plus Basement Parking at Lot 27 DP 21680 No. 42 Sutherland Street, Kingscliff	9
	CONFIDENTIAL ITEMS FOR CONSIDERATION	59

**THIS PAGE IS BLANK**

## REPORTS THROUGH THE GENERAL MANAGER

### REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

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

SUBMITTED BY: Director



### Civic Leadership

#### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
  - 1.4 Strengthen coordination among Commonwealth and State Governments, their agencies and other service providers and Statutory Authorities to avoid duplication, synchronise service delivery and seek economies of scale
  - 1.4.1 Council will perform its functions as required by law and form effective partnerships with State and Commonwealth governments and their agencies to advance the welfare of the Tweed community
- 

#### SUMMARY OF REPORT:

In accordance with the Department of Planning's Planning Circular PS 08-014 issued on 14 November 2008, the following information is provided with regards to development applications where a variation in standards under SEPP1 has been supported/refused.

#### RECOMMENDATION:

**That Council notes the January 2014 Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.**

## REPORT:

On 14 November 2008 the Department of Planning issued Planning Circular PS 08-014 relating to reporting on variations to development standards under State Environmental Planning Policy No. 1 (SEPP1).

In accordance with that Planning Circular, the following Development Applications have been supported/refused where a variation in standards under SEPP1 has occurred.

<b>DA No.</b>	DA13/0717
<b>Description of Development:</b>	two storey dwelling and inground swimming pool
<b>Property Address:</b>	Lot 94 DP 1030322 No. 10 Hyndes Lane, Casuarina
<b>Date Granted:</b>	6/1/014
<b>Development Standard to be Varied:</b>	Clause 32B(4)(b) - overshadowing
<b>Zoning:</b>	2(e) Residential Tourist & 7(f) Environmental Protection (Coastal Lands)
<b>Justification:</b>	<p>The proposed development will result in waterfront open space being overshadowed before 3pm midwinter and before 6.30pm midsummer, and requires a variation to development standard Clause 32B(4)(a) of the North Coast Regional Environmental Plan.</p> <p>An objection to the development standard has been lodged under SEPP 1. The objection maintains the development standard is unreasonable because:</p> <ol style="list-style-type: none"><li>1. The site forms part of a subdivision created with a 3 storey height limit and reasonable development of the site was always predicted to result in overshadowing.</li><li>2. The overshadowing will not have an adverse affect on the open space area.</li></ol>
<b>Extent:</b>	The extent of the overshadowing of the waterfront open space is approximately 1m at 3pm midwinter and 20m at 6.30pm midsummer.
<b>Authority:</b>	Tweed Shire Council under assumed concurrence.

## COUNCIL IMPLICATIONS:

**a. Policy:**

Corporate Policy Not Applicable.

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

---

**THIS PAGE IS BLANK**

**2 [PR-PC] Development Application DA13/0267 for the Demolition of Existing Building and Construction of 3 Storey Multi-Dwelling Housing Development Incorporating 7 Units Plus Basement Parking at Lot 27 DP 21680 No. 42 Sutherland Street, Kingscliff**

**SUBMITTED BY:** Development Assessment

**FILE REFERENCE:** DA13/0267 Pt2



## **Civic Leadership**

### **LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

- 1 Civic Leadership
  - 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
  - 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
- 

### **SUMMARY OF REPORT:**

This development application is being reported to Council due to the Department of Planning's Circular PS08-014 issued on 14 November 2008 requiring all State Environmental Planning Policy No. 1 (SEPP No. 1) variations greater than 10% to be determined by full Council. In accordance with this advice by the Department of Planning, this application is reported to Council.

The SEPP No. 1 variation relates to Clause 16 of the Tweed Local Environmental Plan 2000 (TLEP 2000) which prescribes a two-storey height limit for the site. The degree of horizontal variation is 78% which is the entire third storey. The proposal complies with the building height provisions of the Draft Local Environmental Plan 2012.

The application requires concurrence pursuant to SEPP No. 1. However, Council has an instrument of assumed concurrence for this purpose and it was therefore not necessary to refer the application to the Department of Planning and Infrastructure (DP&I) for concurrence purposes.

The proposal was required to be placed on public exhibition. Three objections were received during the exhibition period. Matters raised within the submissions have been addressed by the applicant and considered in the assessment of the proposal.

It is considered that the application is suitable for approval, subject to conditions.

### **RECOMMENDATION:**

**That:**

- A. State Environmental Planning Policy No. 1 objection to Clause 16 of Tweed Local Environmental Plan 2000 regarding the height of the building be supported and the concurrence of the Director-General of the Department of Planning and Infrastructure be assumed.**

- B. Development Application DA13/0267 for the demolition of existing building and construction of 3 storey multi-dwelling housing development incorporating 7 units plus basement parking at Lot 27 DP 21680 No. 42 Sutherland Street, Kingscliff be approved subject to the following conditions:**

**GENERAL**

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos:**

- 01 - Basement/Carpark Plan dated 31/10/2013;
- 02 - Ground Floor Plan dated 25/09/2013;
- 03 - First Floor Plan dated 25/09/2013;
- 04 - Second Floor Plan dated 25/09/2013;
- 05 - Roof Plan dated 23/10/2013;
- 06 - Elevations dated 25/09/2013;
- 07 - Elevations dated 25/09/2013;
- 08 - Sections dated 25/10/2013;

prepared by KAS Studio and

- 520-02 Issue B - Landscape Intent Plan dated 03/10/2013;
- 520-03 Issue B - Concept Plan 1 dated 03/10/2013;
- 520-04 Issue B - Concept Plan 2 dated 03/10/2013;
- 520-05 Issue B - Landscape Concept dated 03/10/2013; and
- 520-06 Issue B - Landscape Concept dated 03/10/2013.

prepared by Plumber and Smith, except where varied by the conditions of this consent.

[GEN0005]

- 2. Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property.**

[GEN0135]

- 3. The development is to be carried out in accordance with Councils Development Design and Construction Specifications.**

[GEN0265]

- 4. Waste management on the site shall be carried out in accordance with the approved Waste Management Plan prepared by Darryl Anderson Consulting Pty Ltd, project no: SFE12/77- November 2013.**

[GENNS01]

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

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

All earthworks shall be contained wholly within the subject land. Detailed engineering plans of cut/fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.

[PCC0485]

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

(a) Vehicular access

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

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

[PCC0895]

7. Any sheet piling that utilises ground anchors that extend under public roads or land must not be used unless the applicant or owner enter into a contract regarding liability for the ground anchors and lodges an application under Section 138 of the Roads Act together with an application fee of \$10,000 and a bond of \$25,000 for each road frontage. This bond will be refunded upon the removal of the ground anchors. If the ground anchors are not removed prior to the occupation/use of the development, the bond shall be forfeited to Council.

The use of temporary or permanent ground anchors under the adjoining residential properties is not permitted.

[PCC0955]

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

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

(b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.

(c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management.

[PCC1105]

9. 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.

Applications for these works must be submitted on Council's standard Section 68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.

[PCC1145]

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

The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.

Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCC1155]

11. The peak stormwater flow rate that may be discharged from the site to the public realm, in events of intensity up to the ARI 100 year design storm, shall be 200 l/s/ha. This can be achieved by On site stormwater detention (OSD) utilising above and or below ground storage. OSD devices including discharge control pits (DCP) are to comply with standards in the current version of The Upper Parramatta River Catchment Trust "On-Site Stormwater Detention Handbook" except that permissible site discharge (PSD) and site storage requirements (SSR) in the handbook do not apply to Tweed Shire.

All stormwater must initially be directed to the DCP. Details are to be submitted with the S68 stormwater application.

[PCC1165]

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

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

[PCC1185]

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

[PCC1195]

- 14. Egress from the basement carpark is to be altered to comply with Part D of the Building Code of Australia.**

[PCCNS01]

- 15. The design of the ramp into the basement carpark is to comply with AS2890.1 - Part 1 off street car parking, including grade transitions to avoid bottoming or scraping of vehicles. A compliant ramp in accordance with AS2890.1 is to be detailed in the application for a Construction Certificate.**

[PCCNS02]

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

- 16. The proponent shall accurately locate and identify any existing sewer main, stormwater line or other underground infrastructure within or adjacent to the site and the Principal Certifying Authority advised of its location and depth prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure prior to start of any works.**

[PCW0005]

- 17. 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]

18. 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]

19. Residential building work:

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

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

[PCW0235]

20. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one closet for every 15 persons or part of 15 persons employed at the site. Each toilet provided must be:

- (a) a standard flushing toilet connected to a public sewer, or
- (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

21. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

[PCW0255]

22. Prior to start of works the PCA is to be provided with a certificate of adequacy of design, signed by a practising Structural Engineer on all proposed retaining walls in excess of 1.2m in height. The certificate must also address any loads or possible loads on the wall from structures adjacent to the wall and be supported by Geotechnical assessment of the founding material.

[PCW0745]

23. Dilapidation reports detailing the current general condition including the structural condition of the adjoining buildings/sites, infrastructure and driveway are to be prepared and certified by a suitably qualified and experienced structural engineer. The reports are to be submitted to Council prior to commencement of ANY works on the site.

[PCW0775]

24. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision

of a "shake down" area, where required. These measures are to be in accordance with the approved erosion and sedimentation control plan and adequately maintained throughout the duration of the development.

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

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

[PCW0985]

25. 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.

[PCW1065]

26. A piling management plan is to be provided prior to commencement of works to address the proposed construction/excavation/piling requirements for the proposed development. The plan is to address the following;

- a) Detail on the proposed piling method for the excavated basement carpark.
- b) The piling method is to address the impact of piling on adjoining and surrounding properties.
- c) Dilapidation reports for the surrounding properties prior to piling works.
- d) Predicted noise levels and mitigation measures to address both noise and vibration issues.
- e) Length of time for piling activities.
- f) Appointment of a community liaison officer to manage complaints from adjoining residents. Contact details of the community liaison officer are to be clearly provided on signage in a prominent position on the site safety fence.

[PCWNS01]

## **DURING CONSTRUCTION**

27. All proposed works are to be carried out in accordance with the conditions of development consent, approved management plans, approved construction certificate, drawings and specifications.

[DUR0005]

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

**Monday to Saturday from 7.00am to 6.00pm**

**No work to be carried out on Sundays or Public Holidays**

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

[DUR0205]

29. **Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.**

[DUR0395]

30. **All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover NSW, Work Health and Safety Regulation 2011.**

**The proponent shall also observe the guidelines set down under the Department of Environment and Climate Change publication, "A Renovators Guide to the Dangers of Lead" and the Workcover Guidelines on working with asbestos.**

[DUR0645]

31. **The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house, building or structure is strictly prohibited.**

[DUR0815]

32. **The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate.**

[DUR0995]

33. **All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from:**

- **Noise, water or air pollution.**
- **Dust during filling operations and also from construction vehicles.**
- **Material removed from the site by wind.**

[DUR1005]

34. **Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be**

**adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.**

[DUR1795]

- 35. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to any use or occupation of the buildings.**

[DUR1875]

- 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. Certification from a suitably qualified engineer experienced in structures is to be provided to the PCA prior to the issue of an Occupation/Subdivision Certificate.**

[DUR1955]

**37. Swimming Pools (Building)**

**(a) The swimming pool is to be installed and access thereto restricted in accordance with Australian Standard AS 1926.1 - 2012 & AS 1926.2 - 2007, the Swimming Pool Act 1992 and the Swimming Pool Regulation 2008.**

**(b) Swimming pools shall have suitable means for the drainage and disposal of overflow water.**

**(c) The pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.**

**(d) Warning notices are to be provided in accordance with Part 3 of the Swimming Pool Regulations 2008.**

**(e) Once your pool or spa is complete please register it at [www.swimmingpoolregister.nsw.gov.au](http://www.swimmingpoolregister.nsw.gov.au).**

[DUR2075]

- 38. Backwash from the swimming pool is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9.**

[DUR2085]

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

[DUR2185]

- 40. During construction, a “satisfactory inspection report” is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.**

[DUR2445]

**41. Plumbing**

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

[DUR2495]

**PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

- 42. Prior to issue of an occupation certificate, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.**

[POC0005]

- 43. 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]

**44. Section 94 Contributions**

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

**Prior to the occupation of the building or issue of any Interim or Final Occupation Certificate (whichever comes first), all Section 94 Contributions must have been paid in full and the Certifying Authority must have sighted Council's "Contribution Sheet" signed by an authorised officer of Council.**

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

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

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

- (a) **Tweed Road Contribution Plan:**
  - 7.8 Trips @ \$1176 per Trips** **\$9,173**
  - (\$1,137 base rate + \$39 indexation)**
  - S94 Plan No. 4**
  - Sector6\_4**

<b>(b) Open Space (Casual):</b> 2.0848 ET @ \$543 per ET (\$502 base rate + \$41 indexation) S94 Plan No. 5	<b>\$1,132</b>
<b>(c) Open Space (Structured):</b> 2.0848 ET @ \$622 per ET (\$575 base rate + \$47 indexation) S94 Plan No. 5	<b>\$1,297</b>
<b>(d) Shirewide Library Facilities:</b> 2.0848 ET @ \$838 per ET (\$792 base rate + \$46 indexation) S94 Plan No. 11	<b>\$1,747</b>
<b>(e) Bus Shelters:</b> 2.0848 ET @ \$64 per ET (\$60 base rate + \$4 indexation) S94 Plan No. 12	<b>\$133</b>
<b>(f) Eviron Cemetery:</b> 2.0848 ET @ \$123 per ET (\$101 base rate + \$22 indexation) S94 Plan No. 13	<b>\$256</b>
<b>(g) Community Facilities (Tweed Coast - North)</b> 2.0848 ET @ \$1389 per ET (\$1,305.60 base rate + \$83.40 indexation) S94 Plan No. 15	<b>\$2,896</b>
<b>(h) Extensions to Council Administration Offices &amp; Technical Support Facilities</b> 2.0848 ET @ \$1860.31 per ET (\$1,759.90 base rate + \$100.41 indexation) S94 Plan No. 18	<b>\$3,878.37</b>
<b>(i) Cycleways:</b> 2.0848 ET @ \$473 per ET (\$447 base rate + \$26 indexation) S94 Plan No. 22	<b>\$986</b>
<b>(j) Regional Open Space (Casual)</b> 2.0848 ET @ \$1091 per ET (\$1,031 base rate + \$60 indexation) S94 Plan No. 26	<b>\$2,275</b>
<b>(k) Regional Open Space (Structured):</b> 2.0848 ET @ \$3830 per ET (\$3,619 base rate + \$211 indexation) S94 Plan No. 26	<b>\$7,985</b>

[POC0395/PSC0175]

45. 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.

Prior to the occupation of the building or issue of any Interim or Final Occupation Certificate (whichever comes first), all Section 64 Contributions must have been paid in full and the Certifying Authority must have 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 DSP5:	2 ET @ \$12575 per ET	\$25,150
Sewer Kingscliff:	2.5 ET @ \$6042 per ET	\$15,105

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.

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

[POC0675/PSC0165]

46. **Section 94 Contributions**

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

Prior to the occupation of the building or issue of any Interim or Final Occupation Certificate (whichever comes first), all Section 94 Contributions must have been paid in full and the Certifying Authority must have 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.

**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 5 prior to the issue of a construction certificate. The contribution shall be based on the following formula:**

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

where:

**\\$Con 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 7.2 (currently 5.4c per tonne per kilometre)

**Admin.** Administration component - 5% - see Section 6.6

[POC0715]

47. Upon completion of all works on the site and prior to the issue of an Occupation (including interim)/Subdivision Certificate, a further dilapidation report is to be prepared and certified by a suitably qualified and experienced structural engineer detailing the current general condition including the structural condition of the adjoining buildings/sites, infrastructure and roads. The dilapidation reports shall take into consideration the findings of the original reports and provide to Council the written acceptance of the adjoining/adjacent owners confirming agreement that no damages have occurred/repairs carried out are acceptable.

[POC0825]

48. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all s68h2 permanent stormwater quality control devices.

[POC0985]

## USE

49. Swimming pool pumps, air conditioning units, heat pump water systems and the like shall not be operated if it can be heard in a habitable room of a residence during restricted hours or at other times should the noise from the article be deemed to be offensive as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2008.

[USE1510]

## REPORT:

**Applicant:** Sfeir & Associates Investments Pty Ltd  
**Owner:** Sfeir & Associates Investments Pty Ltd  
**Location:** Lot 27 DP 21680 No. 42 Sutherland Street, Kingscliff  
**Zoning:** 2(b) Medium Density Residential  
**Cost:** \$1,350,000

### Background:

Council is in receipt of a development application for the demolition of an existing building and construction of a three storey multi-dwelling housing development incorporating seven units plus basement parking on a parcel of land zoned 2(b) Medium Density Residential.

### History

The history which pertains to the site is as follows:

- Building Application number 59-52 - Flats approved 1959 (prior to IDO 1964)
- Permit number 2871 - Extensions to existing flats approved 21/08/1972
- K98/0619 - application to change shop to residential flat approved 19/01/1999

The existing structure is proposed to be demolished.

### The Subject Site

The property is of regular shape with a primary street frontage to Sutherland Street of 17.099m and a depth of 40.234m providing a total area of 688m<sup>2</sup>. The site has a secondary frontage to Hungerford Lane.

The site slopes gently from Sutherland Street to Hungerford Lane and has an existing multi dwelling building of single and two storeys in height. Vehicular access to the site is obtained via Sutherland Street. Council's records do not indicate the site is affected by any title restrictions.

The site is situated within an established medium density residential area characterised by tiered single and multi-dwelling houses on steep sites that take advantage of ocean views. Two-storey multi-dwellings adjoin the site at 40 and 44 Sutherland Street with vehicular access from both Sutherland Street and Hungerford Lane.

The built character of the area is typical of an area under transition with a mix of old and new architectural styles and building construction. The site is currently within a two storey height limit however the draft Local Environmental Plan 2012 allows a maximum building height of 9m which the proposed development will comply with.

### The Proposed Development

The proposed development comprises demolition of the existing structure on the site and the erection of a new three storey, multi dwelling housing development comprising a total of seven residential units with basement car parking for 14 vehicles.

TABLE 1 – DEVELOPMENT SUMMARY					
LEVEL	DESCRIPTION	BEDROOMS	OPEN SPACE m <sup>2</sup>	GROSS FLOOR AREA m <sup>2</sup>	FLOOR SPACE RATIO
Basement	14 Car Spaces	-	-	-	
Ground and Level 1	Landscape	-	241.60	-	
	Unit 1	2	12.00	103.97	
	Unit 2	2	13.00	98.45	
	Unit 3	2 + study	12.67	118.50	
	Unit 4	2	10.60	101.98	
	Unit 5	2	9.50	107.16	
Level 2	Unit 6	3	19.67	119.76	
	Unit 7	3	26.84	129.16	
TOTALS	7 Units 14 Car Spaces	16 Bedrooms	345.88m <sup>2</sup>	778.98m <sup>2</sup>	1.13:1

Pedestrian access to the units is available from both street frontages along a path extending along the southern side of the building. Deep soil landscaping is provided at both street frontages.

### Three-Storey Component of Proposal

The meaning of 'storey' is defined in Schedule 1 of the TLEP 2000 as follows:

- storey* means:
- (a) the space between two floors, or
  - (b) the space between a floor and any ceiling or roof immediately above it, or
  - (c) foundation areas, garages, workshops, storerooms and the like, excluding access paths to basement areas, where the height between the finished ground level and the top of the floor immediately above them exceeds 1.5 metres in height.

A storey which exceeds 4.5 metres for residential buildings is counted as two storeys.

A storey which exceeds 5 metres for commercial buildings is counted as two storeys.

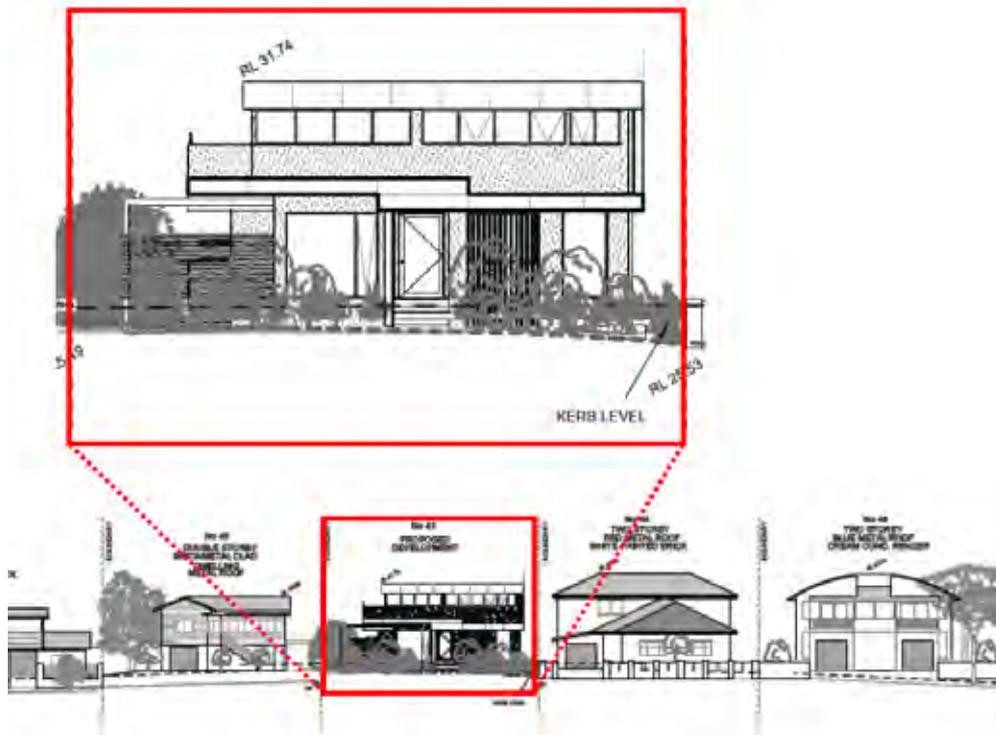
For the purpose of counting the number of storeys in a building, the number is to be the maximum number of storeys of the building which may be intersected by the same vertical line, not being a line which passes through any wall of the building.

Accordingly, the starting point of the three-storey component of this proposal is clarified by determining the floor area extending to the rear of the ground level that exceeds 1.5m in height excluding access paths to basement areas. It is therefore considered that the proposed third storey is the subject of the SEPP No. 1 Objection.

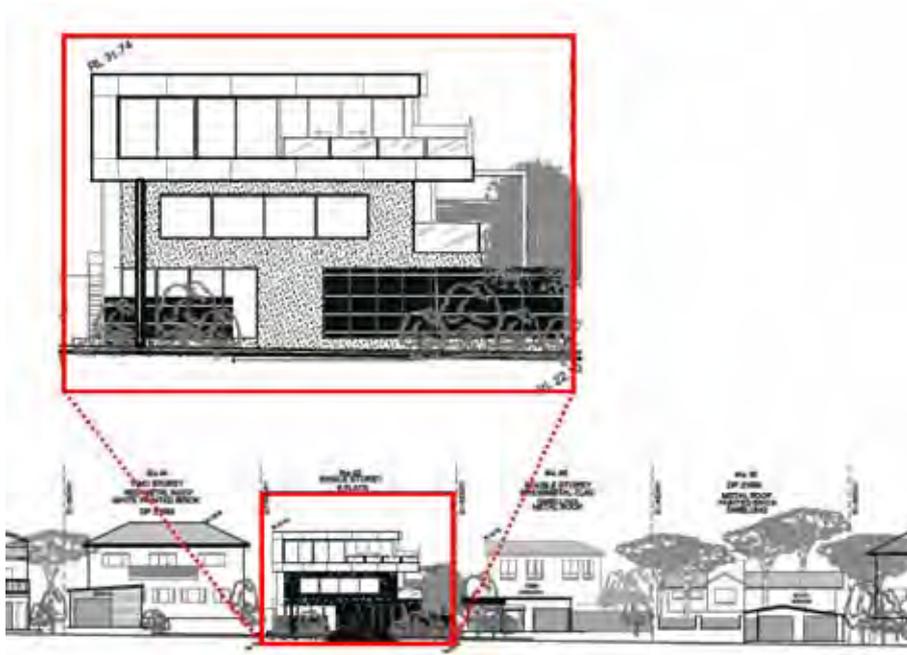


**Figure 1: Section (southern elevation)**

The visual impact of the three-storey component of the development is demonstrated in Figure 2 and 3 below. The third storey is approximately 26m long and the entire dwelling is 33.1m in length. This is therefore a non compliance area of approximately 78%. A SEPP No. 1 objection has been received and is outlined later in this report.



**Figure 2 - Western Elevation**



**Figure 3 - Eastern Elevation**

Summary

The proposal represents an increase in density on the site in line with the provision of the Medium Density zoning. The inclusion of an additional storey creates a portion that is identified as three-storey. However, at no point does the building exceed the proposed 9m building height limit for the site.

Visual impact of the proposal has been minimised through sensitive design and the continuing residential use does not conflict with adjoining land uses. Due to the Draft Tweed Local Environmental Plan 2012 identifying the site as having a 9m height limit and the proposed development not exceeding this it is considered that the variation is acceptable in this instance. As such, the proposal is recommended for approval, subject to conditions.

**SITE DIAGRAM:**



**Locality Plan**

Lot 27 DP 21680  
No. 42 Sutherland Street, Kingscliff

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranties, expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and of liability (including without limitation liability to neighbours) for all expenses, losses, damages (including without limitation consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general public and is to be considered indicative and approximate only. It should not be used for survey or construction purposes and prior to any transactions a 'field check' or 'site visit' enquiry must be made by calling 1300 292 872. The information contained on this document remains valid for 28 days only, from the date of supply.

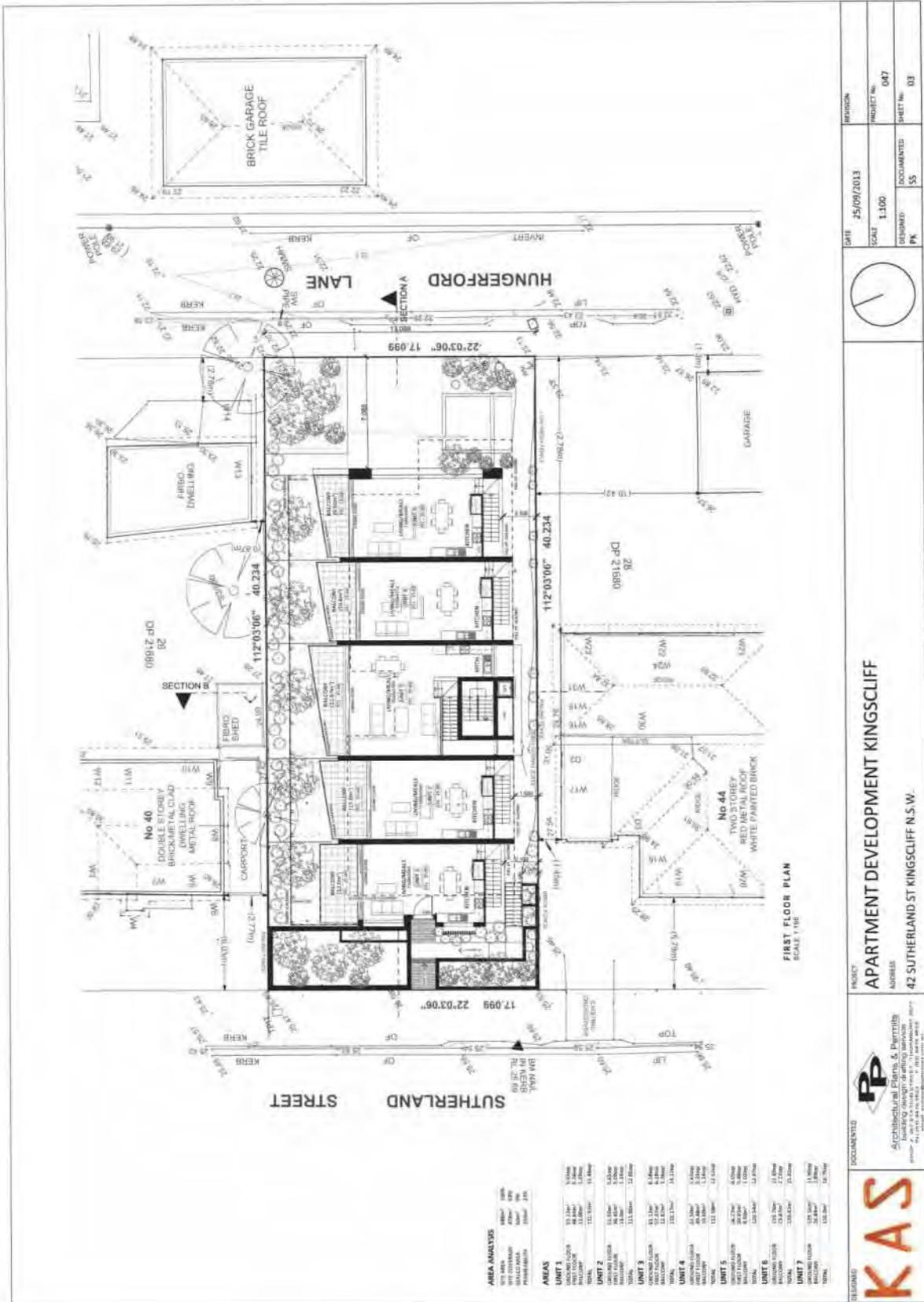
Cadastral 09/01/2014  
© Land and Property Information (LPI) & Tweed Shire Council.  
Boundaries shown should be considered approximate only.

0 0.5 1 Km  
1:50,000 @ A4 Portrait  
DO NOT SCALE  
COPY ONLY - NOT CERTIFIED

Civic and Cultural Centre  
2 Tumbulgum Road  
Murrumbidgee NSW 2484  
PO Box 818  
Murrumbidgee NSW 2484  
T | (02) 6678 2400 | 1300 292 872  
F | (02) 6678 2429  
W | www.tweed.nsw.gov.au  
E | planning@tweed.nsw.gov.au







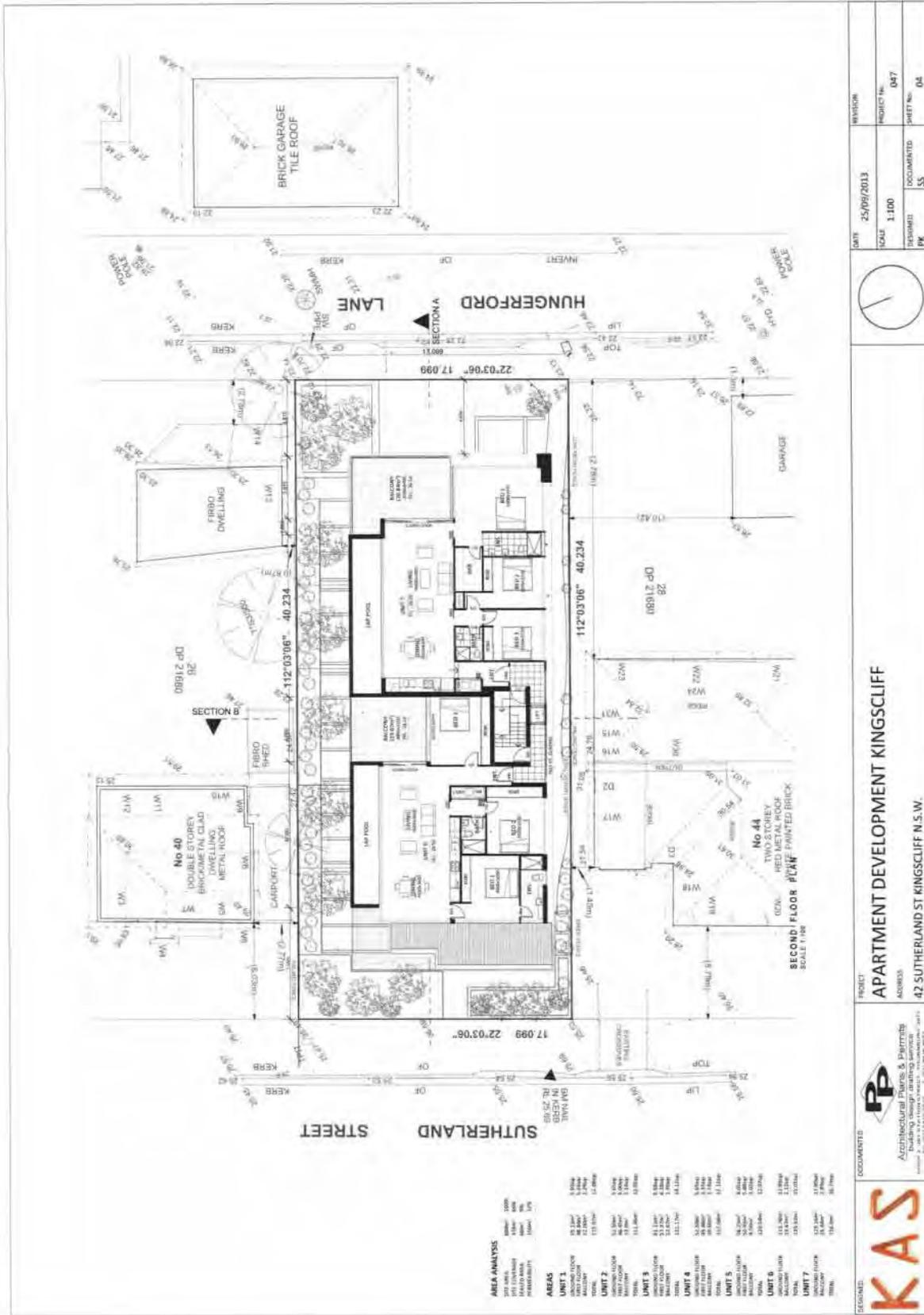
**AREA ANALYSIS**

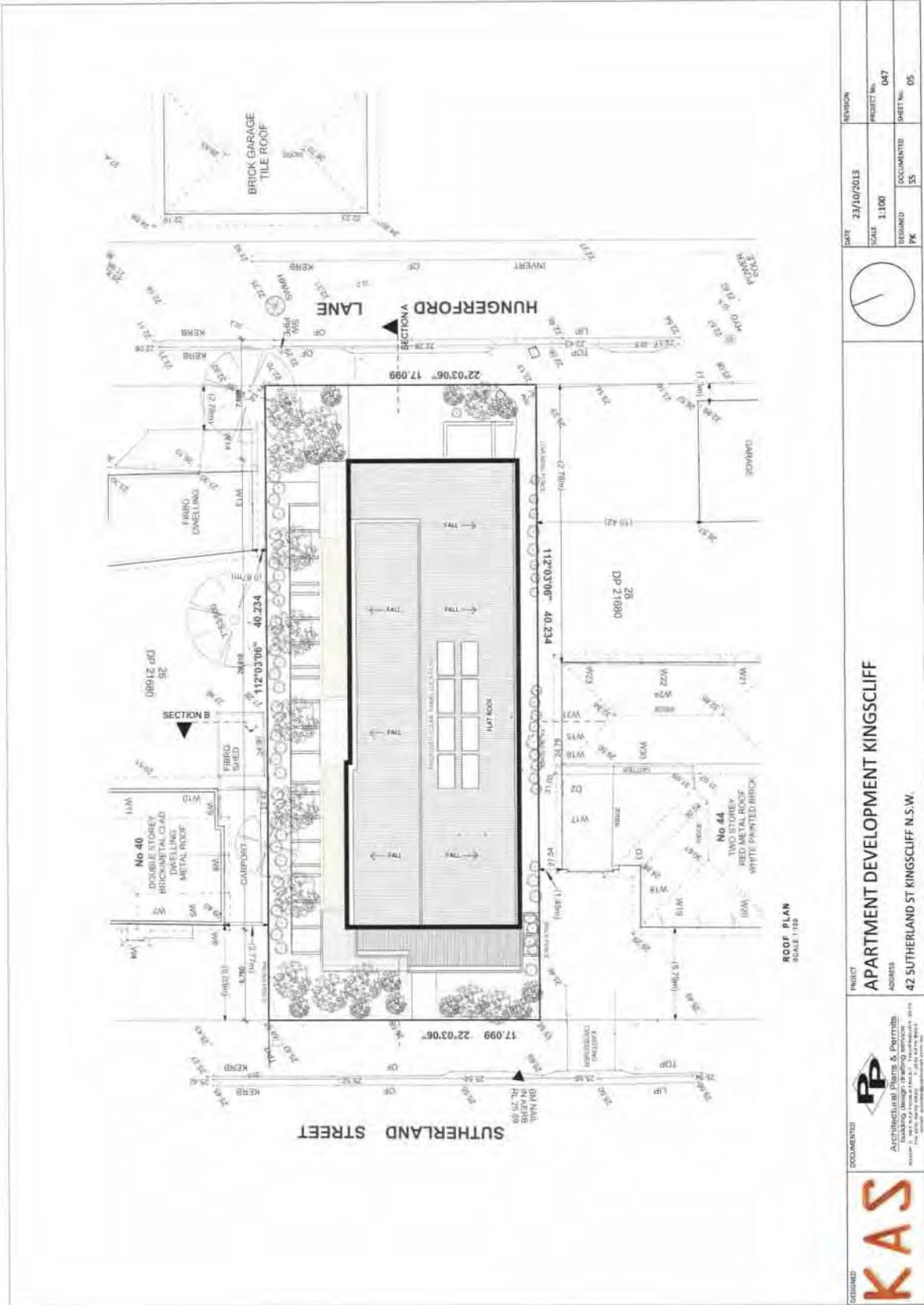
NET AREA	8862m <sup>2</sup>	100%
NET AREA EXCEPT	1000m <sup>2</sup>	11.28%
NET AREA PERMITTED	7862m <sup>2</sup>	88.72%

**AREAS**

<b>UNIT 1</b>	10.12m <sup>2</sup>	0.11%
UNIT 2	10.12m <sup>2</sup>	0.11%
UNIT 3	10.12m <sup>2</sup>	0.11%
UNIT 4	10.12m <sup>2</sup>	0.11%
UNIT 5	10.12m <sup>2</sup>	0.11%
UNIT 6	10.12m <sup>2</sup>	0.11%
UNIT 7	10.12m <sup>2</sup>	0.11%
UNIT 8	10.12m <sup>2</sup>	0.11%
UNIT 9	10.12m <sup>2</sup>	0.11%
UNIT 10	10.12m <sup>2</sup>	0.11%
UNIT 11	10.12m <sup>2</sup>	0.11%
UNIT 12	10.12m <sup>2</sup>	0.11%
UNIT 13	10.12m <sup>2</sup>	0.11%
UNIT 14	10.12m <sup>2</sup>	0.11%
UNIT 15	10.12m <sup>2</sup>	0.11%
UNIT 16	10.12m <sup>2</sup>	0.11%
UNIT 17	10.12m <sup>2</sup>	0.11%
UNIT 18	10.12m <sup>2</sup>	0.11%
UNIT 19	10.12m <sup>2</sup>	0.11%
UNIT 20	10.12m <sup>2</sup>	0.11%
UNIT 21	10.12m <sup>2</sup>	0.11%
UNIT 22	10.12m <sup>2</sup>	0.11%
UNIT 23	10.12m <sup>2</sup>	0.11%
UNIT 24	10.12m <sup>2</sup>	0.11%
UNIT 25	10.12m <sup>2</sup>	0.11%
UNIT 26	10.12m <sup>2</sup>	0.11%
UNIT 27	10.12m <sup>2</sup>	0.11%
UNIT 28	10.12m <sup>2</sup>	0.11%
UNIT 29	10.12m <sup>2</sup>	0.11%
UNIT 30	10.12m <sup>2</sup>	0.11%
UNIT 31	10.12m <sup>2</sup>	0.11%
UNIT 32	10.12m <sup>2</sup>	0.11%
UNIT 33	10.12m <sup>2</sup>	0.11%
UNIT 34	10.12m <sup>2</sup>	0.11%
UNIT 35	10.12m <sup>2</sup>	0.11%
UNIT 36	10.12m <sup>2</sup>	0.11%
UNIT 37	10.12m <sup>2</sup>	0.11%
UNIT 38	10.12m <sup>2</sup>	0.11%
UNIT 39	10.12m <sup>2</sup>	0.11%
UNIT 40	10.12m <sup>2</sup>	0.11%
UNIT 41	10.12m <sup>2</sup>	0.11%
UNIT 42	10.12m <sup>2</sup>	0.11%
UNIT 43	10.12m <sup>2</sup>	0.11%
UNIT 44	10.12m <sup>2</sup>	0.11%
UNIT 45	10.12m <sup>2</sup>	0.11%
UNIT 46	10.12m <sup>2</sup>	0.11%
UNIT 47	10.12m <sup>2</sup>	0.11%
UNIT 48	10.12m <sup>2</sup>	0.11%
UNIT 49	10.12m <sup>2</sup>	0.11%
UNIT 50	10.12m <sup>2</sup>	0.11%
UNIT 51	10.12m <sup>2</sup>	0.11%
UNIT 52	10.12m <sup>2</sup>	0.11%
UNIT 53	10.12m <sup>2</sup>	0.11%
UNIT 54	10.12m <sup>2</sup>	0.11%
UNIT 55	10.12m <sup>2</sup>	0.11%
UNIT 56	10.12m <sup>2</sup>	0.11%
UNIT 57	10.12m <sup>2</sup>	0.11%
UNIT 58	10.12m <sup>2</sup>	0.11%
UNIT 59	10.12m <sup>2</sup>	0.11%
UNIT 60	10.12m <sup>2</sup>	0.11%
UNIT 61	10.12m <sup>2</sup>	0.11%
UNIT 62	10.12m <sup>2</sup>	0.11%
UNIT 63	10.12m <sup>2</sup>	0.11%
UNIT 64	10.12m <sup>2</sup>	0.11%
UNIT 65	10.12m <sup>2</sup>	0.11%
UNIT 66	10.12m <sup>2</sup>	0.11%
UNIT 67	10.12m <sup>2</sup>	0.11%
UNIT 68	10.12m <sup>2</sup>	0.11%
UNIT 69	10.12m <sup>2</sup>	0.11%
UNIT 70	10.12m <sup>2</sup>	0.11%
UNIT 71	10.12m <sup>2</sup>	0.11%
UNIT 72	10.12m <sup>2</sup>	0.11%
UNIT 73	10.12m <sup>2</sup>	0.11%
UNIT 74	10.12m <sup>2</sup>	0.11%
UNIT 75	10.12m <sup>2</sup>	0.11%
UNIT 76	10.12m <sup>2</sup>	0.11%
UNIT 77	10.12m <sup>2</sup>	0.11%
UNIT 78	10.12m <sup>2</sup>	0.11%
UNIT 79	10.12m <sup>2</sup>	0.11%
UNIT 80	10.12m <sup>2</sup>	0.11%
UNIT 81	10.12m <sup>2</sup>	0.11%
UNIT 82	10.12m <sup>2</sup>	0.11%
UNIT 83	10.12m <sup>2</sup>	0.11%
UNIT 84	10.12m <sup>2</sup>	0.11%
UNIT 85	10.12m <sup>2</sup>	0.11%
UNIT 86	10.12m <sup>2</sup>	0.11%
UNIT 87	10.12m <sup>2</sup>	0.11%
UNIT 88	10.12m <sup>2</sup>	0.11%
UNIT 89	10.12m <sup>2</sup>	0.11%
UNIT 90	10.12m <sup>2</sup>	0.11%
UNIT 91	10.12m <sup>2</sup>	0.11%
UNIT 92	10.12m <sup>2</sup>	0.11%
UNIT 93	10.12m <sup>2</sup>	0.11%
UNIT 94	10.12m <sup>2</sup>	0.11%
UNIT 95	10.12m <sup>2</sup>	0.11%
UNIT 96	10.12m <sup>2</sup>	0.11%
UNIT 97	10.12m <sup>2</sup>	0.11%
UNIT 98	10.12m <sup>2</sup>	0.11%
UNIT 99	10.12m <sup>2</sup>	0.11%
UNIT 100	10.12m <sup>2</sup>	0.11%

	<p><b>PROJECT</b> APARTMENT DEVELOPMENT KINGSCLIFF</p> <p><b>ADDRESS</b> 42 SUTHERLAND ST KINGSCLIFF N.S.W.</p>	<p><b>DATE</b> 25/09/2013</p> <p><b>SCALE</b> 1:100</p> <p><b>DESIGNED BY</b> PK</p> <p><b>DOCUMENTED BY</b> SS</p>	<p><b>PROJECT NO.</b> 047</p> <p><b>SHEET NO.</b> 03</p>
	<p><b>REGISTERED ARCHITECTURAL PLANS &amp; PERMITS</b> Architectural Plans &amp; Permits Building design drawing services 11/120 PARADISE RD, SYDNEY NSW 1585 PH: 02 9550 4444 FAX: 02 9550 4445 WWW.ARP.COM.AU</p>		<p><b>PROJECT</b> APARTMENT DEVELOPMENT KINGSCLIFF</p> <p><b>ADDRESS</b> 42 SUTHERLAND ST KINGSCLIFF N.S.W.</p>





ROOF PLAN  
SCALE 1:100

	DOCUMENTED  Architectural Plans & Portfolios 10/100 St Johns Street, Kingscliff NSW 2480 Phone: 08 1300 82222 Fax: 08 1300 82223	PROJECT <b>APARTMENT DEVELOPMENT KINGSCLIFF</b> ADDRESS <b>42 SUTHERLAND ST KINGSCLIFF N.S.W.</b>	DATE <b>23/10/2013</b>	REVISION PROJECT No. <b>047</b> DRAWING No. <b>SS</b> SHEET No. <b>05</b>
	SCALE <b>1:100</b>	DOCUMENTED DATE <b>23/10/2013</b>	PROJECT No. <b>047</b>	SHEET No. <b>05</b>

**EAST ELEVATION**  
SCALE 1:100  
*Hoggsfaba*

**NORTH ELEVATION**  
SCALE 1:100  
*Hoggsfaba*

**WEST ELEVATION**  
SCALE 1:100  
*Sutherland st*

**SOUTH ELEVATION**  
SCALE 1:100  
*Hoggsfaba*

**PROJECT**  
APARTMENT DEVELOPMENT KINGSCLIFF

**ADDRESS**  
42 SUTHERLAND ST KINGSCLIFF N.S.W.

**DESIGNED**  
PK

**DOCUMENTED**  
SS

**DATE**  
25/09/2013

**SCALE**  
1:100

**REVISION**

**PROJECT No.**  
047

**SHEET No.**  
06

**DESIGNED**  
PK

**DOCUMENTED**  
SS

**DATE**  
25/09/2013

**SCALE**  
1:100

**REVISION**

**PROJECT No.**  
047

**SHEET No.**  
06

**ELEVATION HUMPHREYS LANE**  
SCALE: 1:100

**ELEVATION SUTHERLAND STREET**  
SCALE: 1:100

DATE	25/09/2013	REVISION	
SCALE	1:200	PROJECT NO.	0417
DESIGNED BY	PK	DOCUMENTED BY	SS
		SHRIFT NO.	07

**REVISIONS**

**KAS**

PROJECT: **APARTMENT DEVELOPMENT KINGSCLIFF**

ADDRESS: **42 SUTHERLAND ST KINGSCLIFF N.S.W.**

DOCUMENTED BY: **PP**

**Architectural Plans & Details**

Building design drawing service

10/100 100/100 100/100 100/100

**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**

Clause 4 - Aims of the Plan

Clause 4 illustrates that the aims of the TLEP 2000 are to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan. The vision of the plan is *“the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced”*.

Clause 4 further aims to provide a legal basis for the making of a DCP to provide guidance for future development and land management, to give effect to the Tweed Heads 2000+ Strategy and Pottsville Village Strategy and to encourage sustainable economic development of the area which is compatible with the Shire’s environmental and residential amenity qualities.

Council’s Strategic Plan 2004 – 2024 references effective control of new development and redevelopment as a key element of the Plan, with development controls being implemented ‘fairly and rigorously’ in order to minimise adverse impacts of development. The Plan notes that developers will be...*‘expected to adhere to planning controls as part of their contribution towards achieving more sustainable development’*.

The subject proposal results in a multi-dwelling development consisting of seven units to form part of Kingscliff. The proposal is consistent with the vision for the Shire.

Clause 5 - Ecologically Sustainable Development

Clause 5 of the LEP relates to ecologically sustainable development. The TLEP aims to promote development that is consistent with the four principles of ecologically sustainable development, being *the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms*.

The proposal is consistent with the aims and the ecological sustainable development principles outlined within the plan.

Clause 8 - Consent Considerations

This clause specifies that the consent authority may grant consent to development (other than development specified in Item 3 of the table to clause 11) only if:

- (a) *it is satisfied that the development is consistent with the primary objective of the zone within which it is located, and*
- (b) *it has considered that those other aims and objectives of this plan (the TLEP) that are relevant to the development, and*
- (c) *it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.*

In this instance, the subject site is zoned 2(b) Medium Density Residential, the primary objective of which is to provide for and encourage development for the purpose of medium density housing that achieves good urban design outcomes.

Other relevant clauses of the TLEP 2000 have been considered elsewhere in this report and it is considered that the proposed alterations generally comply with the aims and objectives of each.

The proposal will not create an unacceptable cumulative impact given the residential nature of the proposal and locality.

#### Clause 11 - Zone Objectives

The subject site is located within the 2(b) Medium Density Residential zone. The primary objective of that zone and consistency of the proposal with that objective has been outlined above.

Secondary objectives allow for non-residential development that supports the residential use of the locality and tourist accommodation that is compatible with the character of the surrounding locality. The under-utilisation of land for residential purposes is discouraged.

It is submitted that the proposal is a form of residential development within an established residential area that is suitable in scale, form and purpose. The density of the site is in line with zoning objectives and the multi-dwelling development is not considered to have an adverse effect on the character and amenity of the area.

#### Clause 15 - Essential Services

Clause 15 of the TLEP requires the provision of essential services to be available to the site prior to any consent being granted. The subject land has all essential services available.

The subject site is serviced with water, sewer, stormwater, power and telecommunications infrastructure. Accordingly, the proposal complies with the provisions of this clause.

#### Clause 16 - Height of Building

Clause 16 of the TLEP provides a two-storey height limitation over the site. The proposed development incorporates part two storey and part three storeys, thereby not complying with height requirements.

Clause 16 aims to ensure that the height and scale of development is appropriate to its location, surrounding development and environmental characteristics of the land. The subject site is affected by a two storey limitation. In accordance with the definition of a storey as per the TLEP 2000, the proposal represents a partial two and partial three storey development.

The applicant seeks consent to vary the development standard by way of a SEPP No. 1 objection, discussed later in this report.

#### Clause 17 - Social Impact Assessment

Clause 17 of the TLEP requires a social impact assessment for development types likely to have a significant social impact in the locality. The criteria for a socio-economic assessment to be provided is 50 units for multi dwelling housing. Therefore, the applicant has not provided an assessment in this regard.

#### Clause 35 - Acid Sulfate Soils

The site is located within Class 5 Acid Sulfate Soils (ASS) which is considered to be low risk. While substantial excavation associated with basement parking is

proposed, adverse impacts associated with acid sulfate soils are not anticipated as the property is above 20 m AHD (GIS).

Clause 39 – Remediation of Contaminated Land

The applicant has provided an underslab contamination report with the proposal. Council's Environmental Health Officer has reviewed the report and has provided conditions of approval in regards to the contaminated land that the applicant will need to implement upon approval.

Clause 54 – Tree Preservation Order

Clause 54 of the TLEP 2000 provides for the protection of vegetation for reasons of amenity or ecology by way of a Tree Preservation Order. The subject site is covered by the 2011 Tree Preservation Order (TPO) (Koala Habitat Study Area) which impacts upon the removal of Koala feed tree species. Removal of such vegetation on the site must be approved by way of development consent.

Existing landscaping on site comprises of native and exotic species but does not include Koala feed trees. The proposal does not include the removal of significant vegetation.

No further issues have been identified and this Clause is deemed to be satisfied.

**State Environmental Planning Policies**

**SEPP (North Coast Regional Environmental Plan) 1988**

Clause 32(b): Development Control – Coastal Lands

This clause applies to the subject site as the NSW Coastal Policy applies. The proposal is consistent with the NSW Coastal Policy, Coastline Management Manual and North Coast Design Guidelines. The development will not result in overshadowing of the beach or waterfront open space.

Clause 33: Coastal hazard areas

Clause 33 refers to development on coastal lands and requires the consent authority to take into account provisions of the Coastline Management Manual, whilst also requiring that disturbed foreshore areas be rehabilitated and that access points across foredune areas be confined to specific points. The proposal has no direct implications or relevance in this regard.

Clause 43: Residential development

Clause 43 of the North Coast Regional Environmental Plan 1988 (NCREP) provides guidelines for Council when considering residential development. These controls include density, site erosion and environmental constraints on the land.

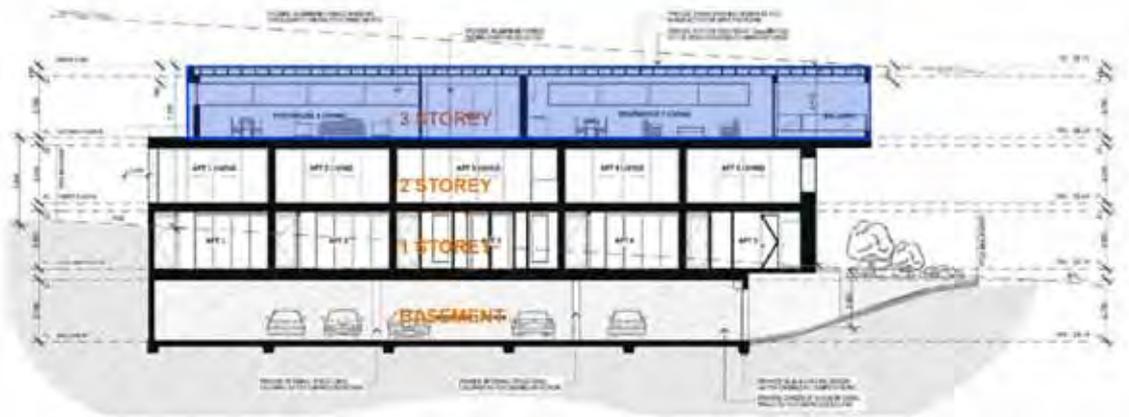
As a multi-dwelling development, the proposed density is considered to be a reasonable response to the land use character of the area and will not result in the creation of any adverse physical impacts upon the locality. Further, a sedimentation and erosion control plan will be enforced in relation to the construction.

The proposal is considered to be consistent with the relevant provision of Clause 43 of NCREP 1988.

### SEPP No. 1 - Development Standards

SEPP No. 1 enables Council to assume the Director's concurrence to a variation to a development standard where it is considered that strict adherence is both unnecessary and or unreasonable in the circumstances of the case.

The area of non-compliance is shown diagrammatically below.



A SEPP No. 1 submission may be supported where the applicant demonstrates that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case and specifies the grounds of that objection. The applicant must also demonstrate the consistency with the aims of the SEPP.

The applicant has raised the following arguments in support of the variation sought:

- *“The locality is characterised by a variety of building types, heights and designs, all of which have been influenced by the extreme topography of the area.*
- *The proposed three-storey element has no impact on view sharing and is compliant with Council's physical height limits under Tweed Development Control Plan (DCP) 2008.*
- *The maximum height of the proposed building is fully compliant with the building height controls of Tweed DCP 2008, Section A1 and exhibited Draft Tweed LEP 2012 as they apply to this site.*
- *The proposal steps up the slope and adopts urban design principles such as are promoted within Section 1 of the Tweed DCP 2008.*
- *There are a significant number of existing buildings within the locality that incorporate a three-storey form and a physical height exceeding 9m. As such the proposal will not be inconsistent with the current character of the area.”*

The applicant concludes that strict compliance with the development standard under Clause 16 is considered unreasonable and unnecessary in this instance.

As discussed previously the applicant has submitted a SEPP No. 1 to vary the number of storeys permitted on the site. The applicant's justification is shown below:

*“The Courts have consistently emphasised that there is no single determinative test for assessing a SEPP 1 Objection. However, it has become usual practice in recent years to apply the “underlying object test”*

*and to use the formulation suggested by Lloyd J in Winten Property Group Limited v North Sydney Council (2001) 130 LGERA 79.*

*In Wehbe v Pittwater Council [2007] NSW LEC 827, Chief Judge of the Land and Environment Court, Preston J recast the long standing 5 part test for consideration of a SEPP 1 Objection set out in Winten Property Group Ltd v North Sydney Council (2001).*

*The Chief Judge suggests that a consent authority must be satisfied of three matters before a SEPP 1 Objection can be upheld:*

- (1) That the objection is well founded and that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.*
- (2) That the granting of consent is consistent with the aims of SEPP 1.*
- (3) That Clause 8 matters (in SEPP 1) are satisfied ie:*
  - Whether non-compliance raises matters of State or Regional planning significance.*
  - The public benefit of maintaining the planning controls.*

*Each of these key matters is addressed in turn, as follows:*

- 1. *That the objection is well founded and that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.***

*The Chief Judge advised that the requirement to demonstrate that an objection is well founded and that the approval of the objection may be consistent with the aims of the policy could be satisfied in any one of the following ways:*

- (i) The objectives of the standard are achieved notwithstanding non-compliance with the standard.*
- (ii) The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.*
- (iii) The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.*
- (iv) The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*
- (v) The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

*We submit that the objectives of the standard are achieved notwithstanding non-compliance with the standard.*

The objective of Clause 16 of Tweed LEP is in the following terms:

**“Objective**

**To ensure that the height and scale of the development is appropriate to its location, surrounding development and the environmental characteristics of the land.”**

The proposed development is located in Sutherland Street, Kingscliff and is subject to a two (2) storey height limit pursuant to Clause 16 of Tweed Local Environmental Plan (LEP) 2000.

The proposed development proposes three storeys (see **Figure 1**), however due to the slope of the site and the level of basement car parking being accessed off the secondary frontage, the building provides an overall height that is consistent with the adjoining two storey buildings (see **Figures 2 and 3**).

The site is also located within a 2(b) Medium Density Residential zone, where the objectives of that zone seek to provide for and encourage development for the purpose of medium density housing.

Under Tweed DCP 2008 the relevant height control for development intended for this site provides for a 9m overall height limit.

Under exhibited Draft Tweed LEP 2012 the site remains in the Medium Density zone (R3 Zone) and the statutory height limit is to be 9m.

On this basis we submit that the development is of a height and scale that is appropriate to its location and is entirely consistent with the intended character of the area as described by Draft Tweed LEP 2012.

Therefore the proposed development achieves the objectives of the standard contained in Clause 16 of Tweed LEP 2000.

**2. That the granting of consent is consistent with the aims of SEPP 1.**

The aims and objectives of the Policy (SEPP 1) are as follows:

*“This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.”*

Section 5(a)(i) and (ii) of the Environmental Planning and Assessment (EP&A) Act 1979 is in the following terms:

“(a) to encourage:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,”

*Compliance with the development standard would preclude the development of this site for the purpose of a multi dwelling housing building as encouraged by the 2(b) Medium Density zoning of the land and the objectives of this zone under Tweed LEP 2000.*

*The proposal has been designed to respect the scale of the surrounding buildings. In this regard the proposed building presents as only two storeys to Sutherland Street and is similar in height to those buildings.*

*The proposed maximum building height also fully complies with the 9m maximum height limit contained in Tweed DCP 2008, Section A1 as it relates to residential flat buildings and the draft 9m height limit as proposed in Draft Tweed LEP 2012 as it applies to this site. Draft Tweed LEP 2012 has been exhibited and we understand, will be referred back to the Department of Planning and Infrastructure for finalisation in the near future.*

*In this case, strict compliance with the development standard would hinder attainment of the EP&A Act's object to promote orderly and economic use and development of land in accordance with the zoning of that land and its physical capabilities.*

**3. That clause 8 matters (in SEPP 1) are satisfied ie.**

- ***Whether non-compliance raises matters of State or regional planning significance.***
- ***The public benefit of maintaining the planning controls.***

*In considering whether the proposal creates any matters of State or Regional planning significance or raises any issues in relation to the public benefit of maintaining the standard the following points are relevant.*

- *The development standard relates to a local building height control.*
- *The proposed building height variation is similar in height to the existing surrounding buildings at the Sutherland Street frontage.*
- *The proposal is fully compliant with the proposed draft height limit for the site (which effectively represents the intended future character of the area).*
- *The proposed height fully complies with exhibited Draft Tweed LEP 2012.*

*We conclude that the proposed development does not raise any matters of State or Regional planning significance and there is considered to be no public benefit in strictly maintaining the standard in this instance."*

The proposed development is consistent with the scale of existing developments. When viewed from Sutherland Street and Hungerford Lane the surrounding properties appear as two to three storey developments, the proposal appears as a two storey development from the Sutherland Street elevation and three storeys from the Hungerford Lane elevation.

The proposed three storey element of the development will not significantly affect any adjoining property having regard to privacy, view sharing or overshadowing.

Having regard for the applicants SEPP 1 justification and the Courts assessment criteria, the proposed SEPP 1 is considered reasonable in the circumstances. Therefore it is recommended that the SEPP1 objection be supported and

concurrence to the variation to the number of storeys be assumed in this instance.

#### SEPP No. 55 - Remediation of Land

Clause 7 of this Policy provides that the consent authority must not consent to the carrying out of any development on land unless it has considered, among other things, whether the land is contaminated, based on a preliminary investigation of the land carried out in accordance with the Contaminated Land Planning Guidelines.

The Contaminated Land Planning Guidelines (Department of Urban Affairs and Planning, Environment Protection Authority, 1998) provide information relating to preliminary contamination investigations. In addition, Council has adopted a Contaminated Land Policy, which contains details of the information required to be submitted with applications for development.

The applicant has provided a preliminary contamination assessment in accordance with SEPP No. 55. It is highly unlikely that the site would pose a risk of contamination. The proposal is considered to be consistent with the relevant provisions of both Clause 39 of TLEP 2000 and SEPP No.55.

#### SEPP No. 65 - Design Quality of Residential Flat Development

Clause 30 of SEPP No. 65 requires the consent authority to consider each of the ten design quality principles when determining a development application for a residential flat building.

The applicant has provided a comprehensive assessment of the proposal against the relevant design quality. A summary of the applicant's assessment is provided below.

#### Principle 1: Context

“Good design responds and contributes to its context. Context can be defined as the key natural and built forms in the area.”

*The site is a regular square shape. It is located on the northeast corner of Sutherland Street and Hungerford lane, Kingscliff. Sutherland Street is to the West of the site and Hungerford lane is on the East. Sutherland Street is a main street and Hungerford lane is a quiet local road with little traffic. In the proposal, the main entrance is positioned off Hungerford lane.*

*The site is situated in zone 2b Medium Density Residential Zone. This zone generally permits residential buildings up to two storeys with a total height of 12m. There is no heritage building overlay & aboriginal cultural heritage overlay over this site. The road reserves are not zone under the current Tweed LEP 2000. Existing developments surrounding this locality is a mixture of one and two storey single dwelling houses. The site and many of the surrounding properties have been re-designed to follow the prevailing contemporary multi unit housing characteristics and also incorporating natural vegetation and landscaping to blend into the environment.*

*The total area of the site is 688m sq and the existing development has a 4.0m setback from Hungerford Lane and a 400mm setback from Sutherland Street. The site falls approximately 2.74 metres over a distance of 40.234m going from northwest to southeast. Existing development on the site has created minimal valuable trees and most trees belong to the adjoining property boundaries.*

### Principle 2: Scale

“Good design provides an appropriate scale in terms of the building bulk and height that suits the scale of the street and the surrounding buildings”

*The proposed development has a 7.085m setback from Hungerford Lane and a 4.0m setback from Sutherland Street which create an opportunity for a good vegetation surrounding area for the proposed development and the neighbourhood.*

*The proposed building is described on the architectural drawings and on the 3D images associated with the developments purposed. The building is generally setback 4.0m and 7.085m from the west and east street frontages respectively and setback a minimum of 1.5m and 4.5m from the southern and northern boundaries respectively. The development is a three story building contains 7 apartments/unit developments (5 x 2 bedrooms and 2 x 3 bedrooms). Each of which has private open space or balconies. There are 14 car parking spaces including 5 visitor spaces located at basement level under the building.*

*Viewed from Hungerford Lane the site is uniform and can be perceived as a single dwelling development which is comparable to the character of the neighbourhood streetscape.*

*The height of the proposed building is keeping in with the vision intended for residential buildings in this area. The articulation and architectural treatment of the third storey, specifically the further setback of its facades, reduces the scale and bulk of the building to suit the site's height requirements. The proposed building setbacks, orientation and street frontages ensure that the design does not greatly impact the scale set in the surrounding areas. The proposed context scale is sympathetic with the desired future characteristics of the area.*

### Principle 3: Built Form

“Good design achieves an appropriate built form for the site and the building’s purpose, in terms of building alignments, proportions, building type and the manipulation of building elements.”

*The proposed eastern & western facade provides a modern contemporary building with large windows on the ground floor, generous balconies and recessed windows on the top floors. A variation in materials emphasise the changes in building form which further articulates the building and facade compared to the surrounding area.*

*Designed by a landscape architect, both elevations benefit from the proposed trees and vegetation which assist in demonstrating strong and positive characteristic to the site.*

### Principle 4: Density

“Good design has a density appropriate for the site and its context, in terms of floor space yields (or number of units or residents).”

*The proposal consists of 7 apartments being 5 x 2 bedrooms, 2 x 3 bedrooms. The building provides various forms of accommodation and suits the current market's demands.*

### Principle 5: Resource Energy and Water

“Good design makes efficient use of natural resources, energy and water throughout its full life cycle, including construction.”

*The proposal intends to:*

- *Recycle excavation, building waste and resident waste materials;*
- *Use suspended floor concrete for floors for maximum thermal mass and insulation;*
- *provide sun shading for exposed glazing; and*
- *Used plantation timber and biodegradable finishing materials and products.*

*The proposal report outcomes include:*

- *Most apartments enjoy cross ventilation and have reasonable solar access to living areas and private open spaces;*
- *All apartments will achieve a NATHERS rating of at least 4.5; and*
- *Stormwater to be reused for irrigation, car washing and toilet flushing.*

#### Principle 6: Landscape

“Good design recognises that together landscape and buildings operate in an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain.”

*The landscape design of the proposal is described on the landscape plan by Plummer & Smith landscape architect*

- *Pleasing vegetation to both street frontages;*
- *Privacy of ground floor open spaces;*
- *Supplementation of sun control louvers to the North and West and tree species that are deciduous allowing solar access in the colder months;*
- *Softening of views of the proposed building in a manner characteristic of the locality; and*
- *Use of local plants/trees that are known to the local characteristic.*

#### Principle 7: Amenity

“Good design provides amenity through the physical, spatial and environmental quality of the development.”

*The proposed building contains a variety of apartment sizes and orientations with attached balconies or private open space areas. Access to the building and common spaces have been designed to satisfy the requirement of wheelchair users and at the same time provide appropriate dimensions and shapes for achieving a high degree of amenity.*

*Apartment views are generally oriented to the North and East for solar access.*

*Balconies and outdoor spaces have been design with louvers and trees to ensure privacy as well as providing good natural cross lighting and ventilation to each space.*

#### Principle 8: Safety and Security

“Good design optimises safety and security, both internal to the development and for the public domain.”

*Each dwelling has its own independent entry.*

*Visitors will enter each dwelling via the respective independent entrance and lift function for unit 6 & 7.*

*All building entrances, pathways and driveways will have automatic night lighting. The basement and stairwells will have timer control or on-demand/movement triggered lighting as the case requires. This will optimise safety, security and energy efficiency in those areas.*

*There is a clear definition between public and each private open space through the use of landscape and fencing.*

#### Principle 9: Social Dimensions

“Good design responds to the social context and needs of the local community in terms of lifestyles, affordability and access to social facilities”

*The size and style of the proposed apartments should appeal to the local market and will increase the local housing stock in the area thus fulfilling a useful social function.*

*There is a demand for smaller, more compact apartments in Kingscliff and the proposal meets that demand whilst providing a useful mix of apartment sizes and configurations that should suit a wide range of persons.*

#### Principle 10: Aesthetics

“Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context, particularly to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of the area.”

*The quality design of the proposed building is likely to appeal to potential buyers, with its modern contemporary style which also incorporates a moderate degree of external building detail that will complement existing surrounding buildings.*

*The building elements, materials and colours to be used are consistent with those generally found in the locality. The colours proposed will also blend in with those found in the surrounding natural environment. The colours and materials serve to define and break up the forms of the design creating an interesting building of a more intimate scale. The 3D images illustrates the proposed schedule of finishes and demonstrates that the texture of the materials to be used.*

In summary, the proposed development is considered to be consistent with the principles of SEPP 65. The proposal responds to context, scale, built form and the desired density of its neighbourhood. The proposal considers energy efficiency, landscape, amenity, safety and social context and is considered to have good design quality.

It is considered that the design of the proposed development exhibits suitable regard for these principles and demonstrates good practice in urban design. The modern appearance of the building is in keeping with the evolving character of the area.

#### SEPP No 71 – Coastal Protection

The subject site is identified within the coastal zone therefore clause 8 of the Policy applies. The 16 matters for consideration for land within the coastal zone relate to maintaining and protecting existing access to the foreshore and have little bearing on this application. One of the 16 matters requires Council to

consider the compatibility of the development with the existing surroundings and the suitability of the site. As previously discussed the application is considered to be suitable for the site having regard to adequate density of dwellings proposed for the site in relation to those existing in the locality.

No loss of sea views would result from the proposal as the site is some distance from the coast. The development would not be visible from the beach.

The development will not result in a loss of natural landscape as the site is cleared of vegetation. The site has not been identified as comprising important habitat, or as a wildlife corridor.

Stormwater treatment and sediment and erosion control measures would be implemented in accordance with the reports included with the application.

The proposed development does not compromise the intent or specific provisions of State Environmental Planning Policy No.71 - Coastal Protection. It is therefore considered that the proposed development complies with matters for consideration in clause 8 of this SEPP.

SEPP (Building Sustainability Index: BASIX) 2004

BASIX certificates were submitted demonstrating that the proposal meets the required targets.

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

The shire-wide Draft Tweed Shire Local Environmental Plan 2012 applies to the subject site. The draft zone for the subject site is R3: Medium Density Residential. The proposed multi-dwelling development is a 'child' form of 'Residential' development (multi dwelling housing) which is permissible in the relevant zone under Item 3. There is a proposed 9m height limit on development in this proposed zone. There is no minimum lot size, but a desired Floor Space Ratio of 2:1. The proposed development complies with the draft controls.

**(a) (iii) Development Control Plan (DCP)**

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The development application was submitted to Council with minor variations to Section A1 of the DCP. The applicant provided an assessment on the following:

1. Section A1 Chapter 1 – Building Types: Residential Flat Building: Control a.
2. Section A1 Design Control 2 – Site Configuration: Impermeable Site Area: Control g.
3. Section A1 Design Control 2 – Site Configuration: Above Ground External Living Spaces, Balconies and Terraces: Control a.
4. Section A1 Design Control 2 – Site Configuration: Topography, Cut and Fill: Control f, g and h.
5. Section A1 Design Control 3 - Setbacks: Front Setback (Building Lines): Control f.
6. Section A1 Design Control 3 - Setbacks: Side Setbacks: Control d and g.
7. Section A1 Design Control 3 - Setbacks: Rear Setbacks: Control a.

8. Section A1 Design Control 4 - Car Parking and Access: Basement Parking: Control d.
9. Section A1 Design Control 5 - Building Footprint and Attics, Orientation and Separation: Building Orientation: Control d.
10. Section A1 Design Control 6 - Height: Ceiling Height: Control a.
11. Section A1 Design Control 7 - Building Amenity: Sunlight Access: Control e.
12. Section A1 Design Control 8 - Internal Building Configuration: Internal Circulation: Control b and c.

The applicant's justification and an assessment against these variations for each of these is shown below:

1. Section A1 Chapter 1 – Building Types: Residential Flat Building: Control a.
  - a. *The main pedestrian entry to the building is to be provided, facing the street, accessible directly from the street and clearly visible from the street.*

The applicant has provided the following justification:

*“It is not possible to provide a single foyer at the Sutherland Street frontage and provide a building layout that achieves desirable solar design principles.”*

It is considered that the proposed development has incorporated desirable solar design through the orientation of the dwellings to the north. Due to this orientation is it not appropriate to provide a single foyer at the Sutherland Street frontage. As such it is considered that the applicants request for a variation is supported in this instance.

2. Section A1 Design Control 2 – Site Configuration: Impermeable Site Area: Control g.
  - g. *The maximum areas for impervious surfaces are:*
    - *70% of the allotment - On lot sizes less than 500m<sup>2</sup>.*
    - *65% of the allotment - On lot sizes between 500m<sup>2</sup> and 750m<sup>2</sup> inclusive.*
    - *60% of the allotment - On lot sizes greater than 750m<sup>2</sup>.*

The applicant has provided the following justification:

*“Proposal provides 78%.*

*The proposed impervious area of the proposal is slightly higher than the stated policy control. Notwithstanding this rainwater is to be detained in the rainwater tank in the basement and appropriate setbacks and landscaped private open space is provided.”*

The design of the proposed multi-dwelling unit has taken into account the deep soil zones, setbacks and private open space. There is additionally a rainwater tank to retain water located within the basement of the proposal. It is considered that these design measures will minimise the impact of the additional impervious area and as such the variation should be accepted in this instance.

3. Section A1 Design Control 2 – Site Configuration: Above Ground External Living Spaces, Balconies and Terraces: Control a.

- a. Above ground external living areas are to have a minimum depth of 2.5m and a minimum area of 10sq.m.

The applicant has provided the following justification:

*“Some balconies have dimensions less than 2.5m. However all units have an area of private open space with minimum dimensions of greater than 2.5m and 10m<sup>2</sup>.”*

The deck does not satisfy Control a. as its depth is less than 2.5m. The variation is however supported as there is enough space for a table and chairs and it would be undesirable for the deck to extend any further towards the adjacent boundary.

4. Section A1 Design Control 2 – Site Configuration: Topography, Cut and Fill: Control f, g and h.

- f. The maximum level of cut is 1m and fill is 1m except for areas under control j.
- g. Retaining walls maximum 1.2m.
- h. Cut areas are to be set back from the boundaries at least 900mm; fill areas are to be setback from the boundary a minimum of 1.5m.

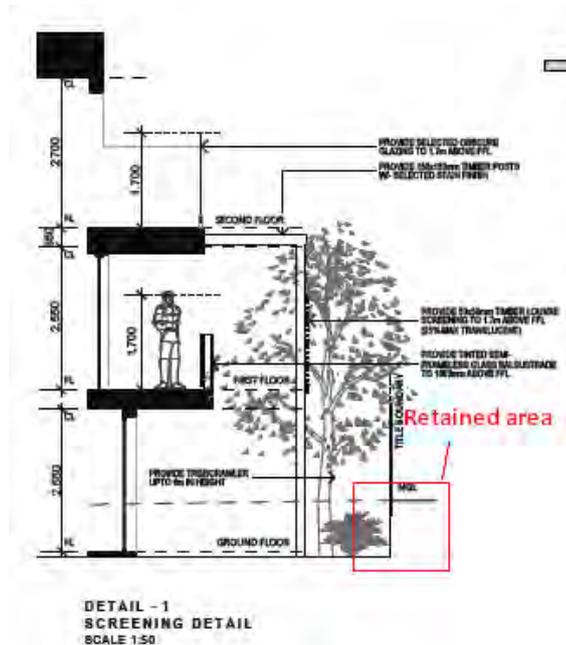
The applicant has provided the following justification:

*“The proposed cut (up to approximately 5.8m) is associated with the basement car park. The finished height of retaining walls is up to 2.68m on the southern side of the ground level private open space of Unit 1. Tiering the wall at that location would compromise the amenity of Unit 1 by removing convenient access to the courtyard. Other interfaces of the excavation are tiered and appropriately landscaped with planter boxes to address the change in levels (up to 1.2m) and provide an attractive appearance. Variations are applicable to enable the construction of basement car parking and to provide flat yard space for each unit.*

*Retaining walls of up to 2.68m in height (finished floor levels) are proposed however generally the changes in level are in the order of 1.2m. Appropriate landscaping is proposed to address visual impact. Variations are also applicable to enable the provision of flat yard space for each unit.*

*The cut is to be adequately retained at the boundary. Detail of construction is to accompany the Construction Certificate application. Variations are also applicable to enable the provision of flat yard space for each unit.”*

The proposed retaining walls appear to be greater than 1.2m in height with excavations exceeding 1m. This is due to a basement level being utilised for car parking. These excavations are approximately 5.8m, will not be visible and are located wholly within the building footprint. It is considered that the finished floor level will be compatible with adjoining neighbours with retaining walls and landscaping being utilised to maintain an acceptable finished floor level. As such, the variation in relation to excavation is considered acceptable.



The ground floor of the northern facing units will have planter boxes and retaining walls of up to 2.2m on the northern boundary. As these are the northern facing private open space areas it is considered that there will be adequate sunlight that will reach these areas and suitable screening is proposed to ensure privacy between the subject site and northern neighbour.

There are retaining walls of greater than 1.2m in height. These retaining walls have been incorporated to avoid compromising the amenity of the private open space for Unit 1. Through the design of the basement and the units, the landscaping will screen the majority of the retaining walls. Dense landscaping has been proposed around the site to soften the impact of the proposed retaining walls and earthworks. Additionally, the retaining walls have been modified into landscaping planter boxes to increasingly soften the impact of retaining walls in relation to neighbouring developments. It is considered that the impact in relation to the cut and fill variations will be kept to a minimum with the implementation of landscaping and screening and is therefore supported in this instance.

5. Section A1 Design Control 3 - Setbacks: Front Setback (Building Lines): Control f.

- f. *In established areas Residential Flat Buildings are to be setback from the street boundary by 6m with a variance of up to plus or minus 1m (ie. between 5m to 7m).*

The applicant has provided the following justification:

*"The proposed development will provide an increased setback of 4m to the primary frontage. The proposal will replace the existing building located with a zero setback from the front boundary. The dwellings either side of the site are setback approximately 6m, accordingly the average existing street setback is 3m (considering the existing building on the site). In this instance the proposed 4m setback to the street frontage together with the proposed landscaping at the street frontage is considered to be an improvement to the existing situation."*

The current building has a zero setback from the Sutherland Street frontage. The proposed development will be setback 4m from the road frontage. Additionally, the average setback on Sutherland Street is currently 3m. It is therefore considered that the 4m setback is an improvement on the current situation. It is therefore considered that the variation is acceptable in this instance.”

6. Section A1 Design Control 3 - Setbacks: Side Setbacks: Control d and g.
- d. *Shop top Residential Flat Buildings and Residential Flat buildings with the primary windows of living rooms facing the side boundaries are to be setback a minimum of 6m and meet the distances as set out in the Separation Controls.*
  - g. *Basement garages are to be set back a minimum of 1.5m from the side boundaries but preferably in line with the building above.*

The applicant has provided the following justification:

*“The primary windows facing the side boundary are setback 5m to 6m from the side boundary. Appropriate screening is also provided to the side boundaries.*

*The basement walls are to be built in proximity to the side boundaries in order to provide adequate car parking. This reflects the relative constraint presented by the site dimensions. Notwithstanding the setback variation, since the basement is located entirely below ground, it will not create visual amenity impacts upon the streetscape or adjoining properties. The construction of the basement is to be undertaken so as to adequately protect and support the adjoining properties.”*

The primary windows facing the side boundaries are setback 5 to 6m which is under the 6m control. The windows will be suitably screened to ensure privacy is maintained. The screening consists of a horizontal timber screen along the northern facing side of the units and planting of Bangalow Palms on the northern boundary. The Bangalow Palms have been utilised to soften the architecture visually by breaking up facades and mitigating the volume in an area where there is not enough space for a canopy tree. The planter boxes on the northern boundary are utilised on top of the basement car parking which have been designed to accommodate vegetation with shallow root systems which will not impact upon the integrity of the basement and any drainage. It is considered that the applicants request for a variation is acceptable in this instance.

The basement walls are to be built up to the side boundaries. Conditions of consent requiring a pre and post construction dilapidation report for the neighbouring dwellings has been placed within the recommendations. It is considered that the basement has been engineered to minimise the impact on adjoining neighbours. It is considered that the proposed basement is required to be this wide to provide for vehicle movement and adequate car parking spaces. It is considered that the applicants request for a variation be accepted in this instance.

7. Section A1 Design Control 3 - Setbacks: Rear Setbacks: Control a.
- a. *The minimum rear boundary setback is 8m or the deep soil zone whichever is the greater. The minimum building separation distances must be met.*

The applicant has provided the following justification:

*“A rear boundary setback of 7.085m (to wall) is proposed. A feature beam structure is proposed in the secondary frontage area with a setback of approximately 3m.”*

An architectural feature of the proposal is located within 3m of the rear boundary however the majority of the setback is over 7m in distance from the Hungerford Lane boundary. It is considered that this feature beam will not significantly impact upon the surrounding neighbours and is acceptable in this instance.

8. Section A1 Design Control 4 - Car Parking and Access: Basement Parking: Control d.

*d. The walls of basement carparks are best located in line with the buildings footprint. Basement carparking is not to extend outside the external line of terraces, balconies and porches.*

The applicant has provided the following justification:

*“It is considered that provision of adequate on site car parking would be beneficial to the amenity of the surrounding area. The basement walls are below the ground level and will not impose any unreasonable impacts on the streetscape appearance or the neighbouring properties.”*

The car parking is located within the front setback however as there will be no visual impact due to the car parking being located within a basement. The applicant has proposed a development which has adequate car parking provided within the basement it is considered the applicants request for a variation should be accepted in this instance.

9. Section A1 Design Control 5 - Building Footprint and Attics, Orientation and Separation: Building Orientation: Control d.

*d. Where possible orient the primary windows of living rooms to the front or the rear of lots.*

The applicant has provided the following justification:

*“The living areas are orientated to access the northern aspect.”*

Due to the orientation of the site it is not possible to have living rooms oriented towards the front and rear of the site. The living rooms are oriented towards the north to utilise passive solar access. It is considered that the variation is acceptable in this instance.

10. Section A1 Design Control 6 - Height: Ceiling Height: Control a.

*a. Provide minimum ceiling heights of 2.7m min. finished floor level to finished ceiling level for habitable rooms. For habitable rooms with a raking ceiling at least 30% of the ceiling is to be at 2.7m high.*

The applicant has provided the following justification:

*“The proposed minimum ceiling height of 2.55m complies with the BCA.”*

The proposed development complies with the Building Code of Australia's ceiling height of 2.4m minimum.

11. Section A1 Design Control 7 - Building Amenity: Sunlight Access: Control e.

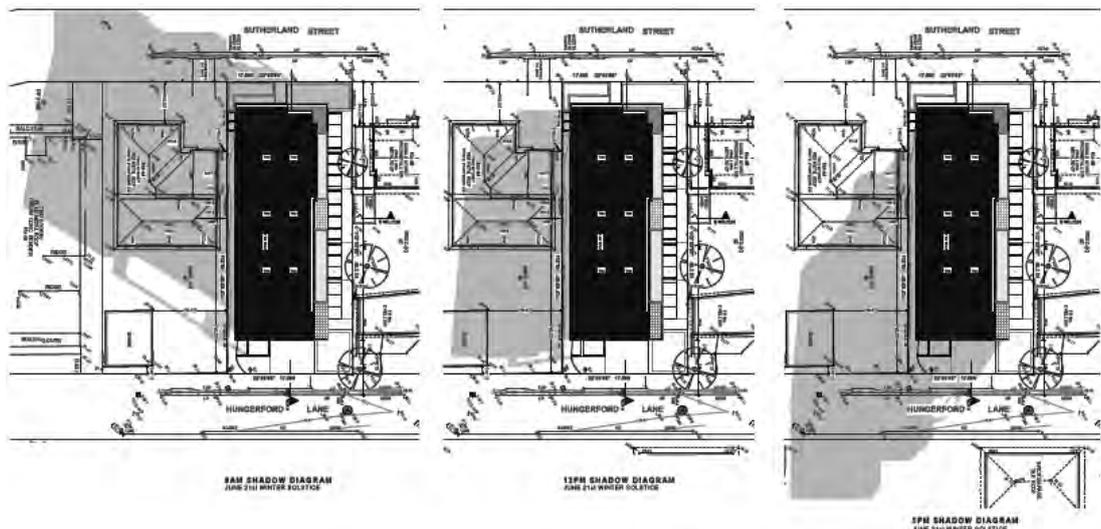
e. For neighbouring properties ensure:

- sunlight to at least 50% of the principal area of private open space of adjacent properties is not reduced to less than 2 hours between 9am and 3pm on June 21, and
- windows to living areas must receive at least 3 hours of sunlight between 9am and 3pm on 21 June.

The applicant has provided the following justification:

*“Due to orientation of the lots, the rear yard of the adjoining property to the south may receive sunlight to less than 50% of the principal private open space during the stated times midwinter. However the proposed building provides a compliant setback to the southern boundary and complies with the 9m building height limit contained in the Draft Tweed LEP 2012. Accordingly the proposed shadow impacts are not unreasonable in the context of the planning controls that apply to the site.*

*The adjoining building to the south comprises has a similar roof height to the proposed building and is located with 3m separation from the proposed building. It is likely that windows of that dwelling would receive adequate solar access.”*



It is noted that even with complying setbacks and a height that complies with the Draft LEP of 9m, the property to the south may receive sunlight of less than 50% of the private open space for 2 hours during times in midwinter.

It should be noted that the existing multi-dwelling unit has a roof level of 29.81m AHD and is setback 3m from the Hungerford Lane boundary and the proposed will have a finished roof level at approximately 31.7m AHD with an increased setback to 7m. It is considered that the increased setback will improve upon the existing overshadowing situation to the private open space on the neighbouring dwelling to the south due to the increase setback. As such it is considered that the shadow impacts are not unreasonable and are an improvement on the existing situation. It is therefore considered that the variation is acceptable in this instance.

12. Section A1 Design Control 8 - Internal Building Configuration: Internal Circulation: c.

- c. *providing generous corridor widths (preferred min. 2.5m) and ceiling heights (preferred min. 2.7m), particularly in lobbies, outside lifts and apartment entry doors.*

The applicant has provided the following justification:

*"The access path has a dimension of 1.5m which is considered adequate."*

It is considered that the 1.5m path is adequate to cater for internal circulation and should be accepted in this instance.

The applicants proposed variations have been assessed and it is considered that they are relatively minor in nature and as such have been supported in this instance.

A2-Site Access and Parking Code

The car parking rates specified by Tweed Development Control Plan 2008, Section A2 indicate that two spaces are required to be provided per three bedroom (or larger) unit and 1.5 spaces per two bedroom unit. In addition, one visitor car space is to be provided per 4 units.

Since the proposal comprises 5 x 2 bedroom units and 2 x 3 bedroom units, a total of 13.5 (14) car parking spaces (including 2 visitor spaces) are required.

The Application Plans indicate that the proposed development provides a total of 14 car parking spaces.

Accordingly, the proposal complies with Council's numerical requirements for car parking.

A11-Public Notification of Development Proposals

The development proposal was advertised in accordance with this section. The proposal was placed on exhibition for 14 days finishing on 10 July 2013. Three submissions were received as a result of this process and are discussed in detail later in this report.

A15-Waste Minimisation and Management

The proposed development was assessed by Council's Waste Management Unit who has provided the following:

*"Following relocation of the bin storage area, it is considered that the waste and recycling for the proposed development can be managed appropriately."*

It is therefore considered that the proposed development is consistent with the controls outlined within DCP Section A15.

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

Clause 92(a) Government Coastal Policy

The subject land is affected by the coastal policy. The proposed development is not considered to be in conflict with the policies and strategies of the policy.

Clause 92(b) Applications for demolition

The proposal includes demolition in order to facilitate the proposed. A Demolition Works Plan is to be provided by the applicant in accordance with a recommended condition of consent.

Clause 94 Buildings to be upgraded

Clause 94 is considered satisfied as the proposed alterations and additions generally comply with the Building Code of Australia.

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

The subject site is not located within an area that is affected by this management plan.

**Tweed Shire Coastline Management Plan 2005**

The subject site is not located within an area that is affected by this management plan.

**Tweed Coast Estuaries Management Plan 2004**

The subject site is not located within an area that is affected by this management plan.

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

The subject site is not located within an area that is affected by this management plan.

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

There are no further likely impacts in addition to those previously discussed.

The proposal is consistent with surrounding residential character. The suitability of the site has been demonstrated throughout the assessment of the proposal including the assessment of minimal environmental impact and general consistency with environmental planning instruments and the DCP.

The proposed development does not generate any additional Section 94 or Section 64 contribution charges.

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

The suitability of the site for the development has been demonstrated by way of general consistency with the applicable environmental planning instruments and the Tweed Development Control Plan with minimal environmental impact. The proposal is consistent with the residential character of the locality.

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

Public:

The proposal was advertised in accordance with DCP A11 – Public Notification of Development Proposals for a period of 14 days from Wednesday 26 June to Wednesday 10 July 2013. During this time, three submissions were received.

The submissions raised issues pertaining to the height of the building, amount of cut and fill, setbacks, overshadowing and traffic/pedestrian management in relation to the school on the western side of Sutherland Street. These matters are addressed below.

Issue	Assessment
Building Height	<p>The proposal is compliant with Council's 9m maximum height and 8.5m wall plate height. The number of storeys proposed is three within a two storey height limit however the draft LEP 2012 does not have maximum storeys rather maximum height in metres. It should be noted that a two storey development which complies with the building height can be built to the same height as that proposed. The future character of the area will largely be dictated by both the continued development of medium density forms and will be determined by the 9m maximum building height.</p> <p>The proposed building is centrally located along the north east/south west axis. Three-storey elements are a regular feature along Kingscliff Hill. The proposal provides a high quality architectural design and provides compliance with the physical height limits.</p> <p>It is therefore considered that this submission does not warrant refusal in this instance.</p>
Traffic Management Around Kingscliff Public School	<p>The proposal provides compliant onsite car parking sufficient to cater for the demand generated by the proposal. The proposed vehicular access to the development site is via Hungerford Lane which will not create conflict with the school area. The proposal also removes an existing vehicular crossover at the site frontage, increasing on street parking.</p> <p>As such, traffic arrangements are considered satisfactory.</p>

Issue	Assessment
Topography, Cut and Fill	<p>The proposal included the construction of a basement car park.</p> <p>The change in grade across the site has been utilised to minimise impacts on adjoining property, however it is necessary to retain the changes in level in order to achieve access to the property and amenity to future residents by providing useable private open space areas. It is considered that the minor variations in respect to cut and fill will not significantly impact the surrounding neighbours and it is considered that refusal in this instance is not warranted.</p>
Setbacks	<p>Front Setback - The proposed development will increase the zero setback of the existing building.</p> <p>Basement Setback - The limited width of the site is a constraint to the design of the basement car parking area. In this instance it is necessary to provide a basement wall to a side boundary in order to physically accommodate the parking of vehicles.</p> <p>Rear Setback - The rear setback of 7m to a rear lane is considered to be appropriate. It is consistent with other structures fronting that road.</p> <p>It is considered that the development is consistent with the surrounding residential developments and is an improvement on the current situation. Refusal of the application is not warranted in this instance.</p>
Overshadowing	<p>Shadow Diagrams of the summer and winter solstice and well as the equinox are included in the amended Application Plans. It should be noted that the existing multi-dwelling unit has a roof level of 29.81m AHD and is setback 3m from the Hungerford Lane boundary and the proposed will have a finished roof level at approximately 31.7m AHD with an increased setback to 7m. It is considered that the increased setback will improve upon the existing overshadowing situation to the private open space on the neighbouring dwelling to the south due to the increase setback. It is therefore considered that refusal of the application is not warranted in this instance.</p>

<b>Issue</b>	<b>Assessment</b>
View Sharing	The proposed development is consistent with the height and side setbacks of other development in the locality. The proposal does not comprise unreasonable impacts on views.
Internal Circulation	The lobby to the penthouse units services only two units and is adequately sized. Strict compliance with the non-statutory control is not warranted in this instance as a reasonable alternate solution has been provided.
Ceiling Height	The proposed ceiling heights comply with the Building Code of Australia by having a minimum of 2.4m. This submission does not warrant refusal.

It is considered that issues raised within the three submissions have been resolved satisfactorily.

**(e) Public interest**

The proposed development, generally consistent with the applicable environmental planning instruments and the Tweed Development Control Plan, is considered to be in accordance with public interest, with no significant impacts anticipated for surrounding residential uses and the local community in general.

**OPTIONS:**

1. State Environmental Planning Policy No. 1 objection to Clause 16 of the Tweed Local Environmental Plan 2000 regarding building height be supported and the concurrence of the Director-General of the Department of Planning and Infrastructure be assumed and the application be supported as per the recommendations;
2. Refuse the development application with reasons.

Council officer's recommend Option 1.

**CONCLUSION:**

The proposed development is generally consistent with the applicable environmental planning instruments, the Tweed Development Control Plan and policies. The proposal will not result in adverse cumulative impacts. It is considered that the site is suitable for the development.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

---

**THIS PAGE IS BLANK**

**CONFIDENTIAL ITEMS FOR CONSIDERATION**

Nil

**THIS PAGE IS BLANK**