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Sustainability in all things

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**Major Projects SEPP –**

**Pt. 6 Identification of Part 3A projects.**

**CONSTRUCTION OF SHOPS/TOURIST  
ACCOMMODATION/CARPARK**

**Lot 1 D.P. 128722 & Lot A D.P. 345689 Chinderah Bay  
Drive and Terrace St, Chinderah.**



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**Ms. Paula Tomkins**

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Dear Paula

**Major Projects SEPP – Pt. 6 Identification of Part 3A projects.  
CONSTRUCTION OF SHOPS/TOURIST ACCOMMODATION/CARPARK  
Lot 1 D.P. 128722 & Lot A D.P. 345689 Chinderah Bay Drive and Terrace St, Chinderah.**

## INTRODUCTION

Further to your letter of the 3<sup>rd</sup> Jan 2007, where in you advised that the Director General, as a delegate of the Minister, formed the opinion that the proposal is a Project and that Part 3A of the act applies.

To this end I submit the annexed application along with ten copies of this summary of the proposal, and ten sets of A3 plans of the proposed development.

I await your response and those of the various government departments concerned.

The proposed Development Application is for the construction of 2 shops and carparks at ground level, with two floors of Tourist Accommodation above, comprising 14 Tourist Accommodation units.

The properties in question sit on the eastern corner of Chinderah Bay Drive and Terrace St, Chinderah, and are known as Lot 1 D.P. 128722 & Lot A D.P. 345689.

The proposal also seeks the use of surplus adjacent road reserve, which is to be upgraded as part of this application to provide landscaping, pedestrian footway and some of the required casual parking spaces, as is permitted by DCP No. 2.

The approximate area of the combined properties is approx 907.5 sq. metres, with the adjacent areas of road reserve being 34.7 sq.m. in the west and 387.2 sq.m. to the south.

The site is mostly vacant, with a small dwelling located within Lot A. This is to be demolished.



Chinderah Hotel to the north

Adjacent Shops to the north

Existing Dwelling on Lot A to be removed.

Vacant Lot 1.

Road Reserve (Proposed Parking & Landscaping)



The site fronts what is now a quiet local traffic street, and has an expansive vista across the Tweed River which is located opposite the site, at a point in the river where a small sandy beach is located to the S.W. and dense river bank vegetation is located directly to the west. This river bank vegetation will screen the development site from view of the main river channel, thus ensuring that the development is visually softened when viewed from this major waterway.

The cleared and serviced nature of the site means that no significant habitat will need to be removed to make way for any future development, thus minimising site disturbance, reducing development costs, and avoiding environmental conflicts.

The property is located within two zones under the provisions of Tweed Local Environmental Plan 2000, i.e. 3(d) Waterfront Enterprise Zone applies to Lot A, and Lot 1 is Uncoloured.



Lot 1 D.P. 128722 & Lot A D.P. 345689





Future development potential of this site is guided by this Tweed Shire Local Environmental Plan 2000, the Chinderah Local Environmental Study, the Chinderah Foreshore Plans, as well as adopted Development Control Plans.

All of these Statutory and policy documents of Council, which specifically relate to this site, identify the site as one where a mix of commercial and tourist development is supported and actively encouraged to achieve the revitalisation of the Chinderah area generally and site specifically the development of this site to again reinstate Chinderah as a civic, cultural and economic focal point within the Shire.

The mixed landuse proposal meets all of these general policy directions envisaged for this now degraded area, and following numerous meetings with Councils Development Assessment Panel and individual officers of Council, has achieved a design which satisfies all of the design criteria set, as well as meeting the Statutory Objectives of 3(d) Waterfront Enterprise Zone as well as the provisions of Clause 13 of the L.E.P. for the adjacent uncoloured lands (Lot 1).

These three objectives have guided the design and direction of the Development application now presented.

The Development proposed also meets other specific L.E.P. requirements such as the Maximum height limit, which is set at 3 storeys, with the proposed parking area included as a storey for the purpose of these calculations.

In addition to these general requirements, the development proposal has also taken into account the fact that the site is flood prone and minimum floor levels need to be achieved for any accommodation component of the development proposed.

In this area, the Tweed River Valley is wide as it nears the Pacific Ocean. Historically this area has been subject to inundation following major storm events, particularly at times when King Tides are experienced, which makes it difficult for flood waters to easily drain from the valley. Flood data for the area puts the highest recorded flood level in the vicinity of this site at 3.09 metres Australian Height Datum (A.H.D.) with DCP No 5 estimating a maximum flood level of 3.2m AHD for the site.

The subject site has an average level approximating 1.8 metres A.H.D.

As such the design proposes parking and ground level shops on this part of the site, with a floor level of 2.1m AHD and all electrical fittings and a flood storage mezzanine level located above the 3.2 metre level.

The Tourist Accommodation components of the proposal are all located at first and second floor level, and achieve a floor level of at least 5.6 metres A.H.D., thus placing them well clear of even the most severe flood event.

The Development proposal also includes development within the road reserve, comprising some landscaping, footpath provision and some incidental parking areas as permitted by DCP No. 2.

These aspects of the application have been the subject of discussions with officers of Tweed Shire.

The design proposes a mixed pedestrian / vehicular precinct utilising mall type architecture so that the subject development site could relate more directly to the street.

This is one of the major components of this development application.

It is considered that the creation of a pedestrian friendly precinct is essential not only to the success and functional integrity of this design, but is also a key design feature in revitalising the Chinderah Foreshore area, and increases its appeal for use by families, and reduces the possibility of traffic/pedestrian conflict situations occurring.

The subject proposal was the subject of two Development Assessment Panel Meetings held on the 22<sup>nd</sup>. May 2002, and the 10<sup>th</sup>. July 2002.



The comments raised within the minutes of these meetings have been addressed in relation to the proposal.

In relation to the proposed provision of 7 car spaces within the road reserve to the south, and the landscaping of this area, it is proposed to lease this area from Council and to assume maintenance of this area in accordance with Councils requirements.

#### ***Integrated Development.***

Those aspects of the proposal to be constructed on crown land to the west of the main development site, involve in part, developments which require approval under :- **Rivers and Foreshore Improvement Act**, due to the proposed works occurring within 40m of the adjacent foreshore areas, this application needs to be forwarded to the Dept. of Lands for their comments under the Rivers and Foreshore Improvement Act. As the site is already cleared, and as erosion control measures are proposed as part of this application, then the proposal is most unlikely to have any adverse impact on River and Foreshore areas on the other side of Chinderah Bay Drive to the west of the site.

## **NATURE OF DEVELOPMENT**

The existing development site comprises a cleared development area and one small residence. The three level structure proposed is to be in the format of :-

- a) Ground Floor – 2 Shops 78m<sup>2</sup> and 110m<sup>2</sup> plus 2 x 10sq.m. flood storage mezzanine areas.
- b) First Floor – 7 Tourist Accommodation units ranging from 68 to 99 sq.m. Comprising 5 x 2 BR and 2 x 3 BR Units.
- c) Second Floor – 7 Tourist Accommodation units ranging from 68 to 99 sq.m. Comprising 5 x 2 BR and 2 x 3 BR Units.

It is a fundamental component of the redevelopment proposal that extensive landscaping of the property will be undertaken, using a large number of rainforest species which once would have occurred on this site.

The proposed development incorporates soft architectural styles which will create a street scape of a scale compatible with adjacent sites.

The development proposes broken elevations and roof lines, and incorporates extensive landscape plantings and landscape sculptural features with not only soften the bulk and scale of the development, but significantly reduce its visual impact.

The design provides an inviting development which maintains a human scale within the parameters of its structure.

Paving materials to be used will be both natural and man made to provide all weather surfaces and to visually guide pedestrian movement along perceived desire lines.

The main development structure will be of rendered block and concrete construction, with visual relief along elevations to soften the visual mass of the structure. All surfaces will be painted in a soft earth tone colour theme to blend the building into the natural environment.

The building will meet the three (3) storey height limit set for the area.

## **Sec. 79C(1)(a) ZONING OF LAND**

The property is located within two zones under the provisions of Tweed Local Environmental Plan 2000, i.e. 3(d) Waterfront Enterprise Zone applies to Lot A, and Lot 1 is Uncoloured.

The proposed Tourist Accommodation development is permissible as it sits above Commercial Development which is specifically permitted within the Zone. As such the Tourist Accommodation component meets the provisions of the landuse Table.



The mixed commercial/tourist accommodation proposal, satisfies all of the Statutory Objectives of 3(d) Waterfront Enterprise Zone as well as the provisions of Clause 13 of the L.E.P. for the adjacent uncoloured lands (Lot 1), and as such is a development permitted with the Consent of Council.

### **ZONE OBJECTIVES**

The proposed construction of commercial/tourist accommodation activities satisfies the objectives of the Waterfront Enterprise 3(d) Zone, as follows.

#### **Primary Objective**

**to encourage development related to waterfront and marine activities, recreation or tourism.**

The proposed commercial / tourist accommodation development and the separate approval the river front marina development, create a development style and outcome within the area which accords with this guiding objective.

The proposed flexible use of the accommodation units, where some may be permanently occupied, whilst others will be let out in a short term basis, reflects the reality of the Tweed Accommodation market, where the dominant role tourism plays is reflected in short term accommodation demands, whilst at the same time people are making lifestyle choices, and moving from other areas to coastal and river locations, require more permanent accommodation. This Chinderah site, which provides **waterfront and marine activities, recreation and tourism** activities, is better served by the amendments proposed, as this provides a realistic landuse mix, which reflects the local market, yet which maintains the approved nature of the development, and as such cannot be seen as changes which would prejudice the proper future planning of the area.

#### **Secondary Objectives**

**to allow for residential development in association with waterfront and marine activities, tourism or recreational uses, and**

The tourist accommodation proposed is designed to meet the actual accommodation needs of the local market.

As stated, the design will provide well designed accommodation units in close proximity to the river and the tourist draw cards of the Tweed Coast area. This reflects the reality of the Tweed Accommodation market, where the dominant role tourism plays is reflected in short term accommodation demands.

As such the mixed tourist accommodation and commercial development proposed, which is to be used, **in association with waterfront and marine activities, tourism or recreational uses** in the area, meets the aims of this secondary objective.

**to allow for other development that is compatible with the primary function of the zone.**

The provision of commercial spaces, adjacent to an existing café and an adjacent hotel, blends with the provision of specific types of Accommodation aimed at the broadest cross section of the tourist market. As such all activities which are **compatible with the primary function of the zone.**

### **CONCLUSION**

The only conclusion which can be drawn is that the proposed staged construction of this approved development, **TOTALLY** satisfies all of the Statutory Objectives of the new **Waterfront Enterprise 3(d) Zone** as set under the provisions of Tweed Local Environmental Plan 2000.





## **CLAUSE 13 OF THE TWEED L.E.P. 2000**

### **1) Objectives**

- to enable the control of development on unzoned land.
- to ensure that development of unzoned land is compatible with surrounding development and zones.
- to ensure that development of certain waters takes account of environmental impacts and other users of the waters.

(2) A person must not carry out development (other than development for the purpose of an outdoor eating area on a footpath within a road reserve or development listed in Schedule 5) on unzoned land except with consent.

(3) In deciding whether to grant consent to development on unzoned land, the consent authority must consider:

- (a) whether the proposed development is compatible with development permissible in the adjoining zone and the character and use of existing development in the vicinity, and
- (b) in the case of unzoned land that is below the mean high-water mark of the ocean or an estuary, bay, lake or river:
  - (i) whether or not the proposed development would alienate the use of the waters of the ocean, estuary, bay, lake or river from recreational uses or from commercial fishing and, if so, whether there is sufficient area in the locality for those uses to mitigate the adverse effect of the proposed development on those uses, and
  - (ii) the provisions of any coastal, estuary or river plan of management in force from time to time that applies to the unzoned land or land in the vicinity, and
  - (iii) any impact the proposed development may have on the natural environment.

As detailed above, Clause 13 of the L.E.P. directs a Consent Authority to be mindful of a proposed developments compatibility with that of the adjacent zone. (In this case the adjacent Zone is the Waterfront Enterprises 3(d) Zone which "encourages development related to recreation or tourism", and specifically permits mixed commercial/tourist accommodation development, as a development permitted with the Consent of Council.

The design of the proposal ensures minimal environmental impact as the landuse is located on a cleared and already partly developed site, which is already partly zoned 3(d) Waterfront Enterprises.

The site is spatially removed from the foreshore area by Chinderah Bay Drive, and through the erosion control measures proposed, will have no detrimental impact upon the amenity of the river or the environmental integrity of the river bank area.

On this basis the proposal meets all Clause 13 provisions as they relate to Uncoloured Land situated adjacent to 3(d) Waterfront Enterprises Zoned lands.

## **CLAUSE 34 OF THE TWEED L.E.P. 2000 (FLOODING)**

### **(1) Objectives**

- to minimise future potential flood damage by ensuring that only appropriate compatible development occurs on flood liable land.
- to minimise the adverse effect of flooding on the community.

(2) Where, in the consent authority's opinion, land is likely to be subject to flooding, then it must not grant consent to development on that land unless it has considered:

- (a) the extent and nature of the flooding hazard affecting the land, and



- (b) whether or not the development would increase the risk or severity of flooding of other land in the vicinity, and
- (c) whether the risk or severity of flooding affecting the development could be reasonably mitigated, and
- (d) the impact of the development on emergency services, and
- (e) the provisions of *Tweed Development Control Plan No 5—Development of Flood Liable Land* and any other relevant development control plan.

In response to frequent flooding within this local drainage system, the proposed development is designed such that residential areas are flood free, and commercial areas are flood tolerant. This particular section of the Tweed Valley is a wide coastal flood plain. Historically this area has been subject to inundation following major storm events, particularly at times when King Tides are experienced, which makes it difficult for flood waters to easily drain from the valley, through the Tweed Bar, to the Pacific Ocean.

Flood data for the area puts the highest recorded flood level in the vicinity of this site at 3.09 metres Australian Height Datum (A.H.D.), with DCP No 5 setting a maximum flood level of 3.2m AHD for this area.

The subject site has an average ground level approximating 1.8 metres A.H.D. As such the design proposes parking and ground level shops on this part of the site, with floor levels of 2.1 metres A.H.D., and all electrical fittings and flood storage mezzanines located above the 3.2 metre level.

The Tourist Accommodation components of the proposal are all located at first and second floor level.

These areas achieve a floor level of 5.6 metres A.H.D., thus placing them well clear of even the most severe flood event, and placing them above the minimum habitable floor level recommended by the Shire for this area under D.C.P. No. 5, which is 3.7 metres A.H.D.

The proposed development will not restrict the flow characteristics of flood waters in the area, as the type of flooding in this area is restricted to waters backing up behind the mouth of the Tweed River and spilling over the flood plain.

See following DCP No. 5 assessment for details.

### **CLAUSE 35 OF THE TWEED L.E.P. 2000 (Acid Sulfate Soils).**

No excavations are proposed below 1 m. and as such the proposed development is unlikely to interfere with sub-soil levels. As such Acid Sulfate Soils will not be intersected.



## **S.E.P.P. No. 71**

The proposal satisfies the matters for consideration in Clause 8 as follows:

### **AIMS OF S.E.P.P. No. 71**

The proposal satisfies the aims of the policy as follows:

- (a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and**

The site is zoned 3(d) Waterfront Enterprises and part Uncoloured under the provisions of Tweed LEP 2000, and the proposed landuse is permissible under the provisions of this zone. The proposal also achieves the underlying objectives of the L.E.P. where a mix of commercial and tourist accommodation landuses are envisaged for this section of the village of Chinderah. The development, which maintains the planned character of the area, is sensitive to its corner location, and proposes significant native landscaping. Its compliance with all of Councils design criteria ensure that it is in keeping with the planned character of the area, and cannot be seen as a development which would prejudice the proper future planning of the area.

- (b) to protect and improve existing public access to and along coastal foreshores**

to the extent that this is compatible with the natural attributes of the coastal foreshore, and

The development areas within site are set well back from the Tweed River Foreshore area, and is separated from it by over 40m of gardens and roads. On this basis the proposed development does not detract from the Foreshore area, some 40m from the Mixed Commercial Tourist Accommodation development.

- (c) to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and**

As detailed above, the development site is set well back from the Tweed River Foreshore area, and does not detract from the integrity of this Foreshore area, as commercial development, gardens and roads are maintained between the beach front and the mixed commercial / residential development areas within the site. Due to the heritage nature of the site, most of the existing buildings are being retained as an integral component of the design.

- (d) to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and**

Based on the modified nature of the site, (long standing commercial area) and review of historical and cultural records of the site, it is unlikely to hold important significance or cultural objects related to Aboriginal culture.

If any uses such as fishing/hunting occurred on the distant beach and swamp areas, then the use of these distant areas off site for commercial, residential and recreational purposes for over 100 years, has made research into the value of these areas, and their cultural interpretation, almost impossible. Given the nature of the site i.e. it has been modified by urban and commercial development and construction of utility services, it is not considered to hold any archaeological values other than those associated with the early white settlement and their associated farm product processing and landuse practices.



The site is not mentioned in Aboriginal Heritage registers held by Tweed Shire Council and NPWS., as containing historical or cultural objects or being a site of significance. Given its location within the coastal plain prior to modification of the area by white settlement, it is likely to have been traversed by Aboriginal people as part of their hunting/gathering in the general foreshore and wetland area.

Although no evidence can be found confirming this, the site, which is located well removed from the foreshore area, is unlikely to be of cultural significance.

No shell or bone waste is evident within soil profiles within this previously developed site.

**(e) to ensure that the visual amenity of the coast is protected, and**

The development areas within the site are set well back from the Tweed River Foreshore area, and are separated from it by over 40m of developed garden and road areas. As the development is designed to follow the rhythm of commercial / tourist accommodation development to the north of the site, and as the proposed development does not detract from the integrity of the river beach front or river bank vegetation, then it is considered that the proposed will not detract from the visual amenity of the area.

This is particularly so as the site is to be well landscaped, is not visible from the coast or river foreshore areas.

**(f) to protect and preserve beach environments and beach amenity, and**

The site is spatially removed from beach areas, and as such has no potential to impact upon the beach environment.

**(g) to protect and preserve native coastal vegetation, and**

The site is developed for a commercial development. The site supports no native trees other than a small Lilli Pilli.

No appreciable change in the character of the area will result from the changes proposed, particularly as the visual character of the area will not significantly change as the development areas already exist.

In view of this, it is considered that the proposed development will have no adverse impact on the environment of the area.

**(h) to protect and preserve the marine environment of New South Wales, and**

As stated above, the development does not impact upon the marine environment, and the erosion control and drainage control methodologies are detailed with this report to ensure that off site impacts will not result from the development of the site, either during or following construction.

**(i) to protect and preserve rock platforms, and**

Not Applicable to this coastal plain and river valley site, which is located on alluvial soil layers.

**(j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the Protection of the Environment Administration Act 1991), and**

The proposal meets E.S.D. principles as detailed within the Statement of Environmental Effects.



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## **CLAUSE 8 ASSESSMENT.**

**a) the aims of this Policy set out in clause 2,**

As detailed in the preceding assessments it is evident that the proposed development satisfies the Aims of S.E.P.P. No. 71

**b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,**

The development areas within the site set well back from the river beach front and vegetated foreshore areas to the west, by over 40m. of Uncoloured Zoned land developed for roads and landscaped gardens.

On this basis the proposed development does not detract from the integrity of the opposite River Beach area or the river bank wetlands and waterways.

**c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,**

The public ownership of most of the river frontage does permit public access, with many pathways and pedestrian controls constructed in these areas by Tweed Shire Council. This development, which is spatially removed from these areas, does not compromise such access.

**d) the suitability of development given its type, location and design and its relationship with the surrounding area,**

The site is zoned 3(d) Waterfront Enterprises and part Uncoloured under the provisions of Tweed LEP 2000, and the proposed landuse is permissible under the provisions of this zone and Clause 13 of the LEP.

The proposal also achieves the underlying objectives of the LEP, where a mix of commercial / Tourist Accommodation development is envisaged for this section of Chinderah.

The mixed commercial / Tourist Accommodation development emulates the existing and planned character of the adjacent area, particularly in respecting the scale of similar recent approvals within the 3(d) Zone to the north of the Chinderah Hotel just north of the site. On this basis the mixed commercial / Tourist Accommodation development is in keeping with the planned character of the area, and cannot be seen as a development which would prejudice the proper future planning of the area.

**e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,**

The mixed commercial / Tourist Accommodation development is set well back from the foreshore areas (over 40m), will not result in the overshadowing of these areas, and is out of line of sight of adjacent parks and their view of the river bank beach and foreshore.

(See photo following).



It is clearly evident from this photo taken from Terrace St. looking north west towards the site, that the development of the site does not obstruct views from adjacent parks through the to river bank beach area.



- f) **the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,**

the development areas are setback over 40m from the river bank foreshore. On this basis the proposed development will not detract from the visual amenity of the area, and by the retention of views from adjacent public places, will ensure that the visual integrity of the area is maintained.

- g) **measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,**

The report which accompanies this application shows clearly that the proposed site does not support habitat for threatened species. On this basis the proposed development will not detract from the habit of local wildlife.



**h) measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats**

The development does not impact upon the marine environment due to its spatial separation from these areas, and the erosion control and drainage control methodologies detailed with this report ensures that off site impacts will not result from the development of the site, either during or following construction.

**i) existing wildlife corridors and the impact of development on these corridors,**

The site is located within an area designated for and previously approved for mixed commercial / Tourist Accommodation area, and no wildlife corridors exist within the site. The site is well removed from the river bank vegetation corridor to the west.

**j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,**

the site is well removed from areas affected by coastal processes.

**k) measures to reduce the potential for conflict between land-based and water-based coastal activities,**

The spatial separation of the site from the foreshore areas, and the erosion control and drainage control methodologies detailed with this report, ensures that off site impacts will not result from the development of the site, either during or following construction.

**l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,**

As previously detailed within the AIMS assessment, the site is devoid of aboriginal heritage, and as such its development will not impact upon their cultural activities. This is particularly so as all distant river bank areas remain unaffected as a result of this development proposal, and as such the integrity of these areas is maintained.

**m) likely impacts of development on the water quality of coastal waterbodies,**

As stated earlier, the development areas within the site are well removed from the river bank areas, and the development does not impact upon the marine environment, and the erosion control and drainage control methodologies detailed with this report ensures that off site impacts will not result from the development of the site, either during or following construction.

**n) the conservation and preservation of items of heritage, archaeological or historic significance,**

The site does not impact upon items of heritage, archaeological or historic significance, particularly as this redevelopment provides a development in character with that planned for the area.

**o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,**

The proposal accords with the landuses deemed permissible and compatible within this area, under the provisions of the Gazetted Tweed L.E.P. 2000.

**(p) only in cases in which a development application in relation to proposed development is determined:**



**(i) the cumulative impacts of the proposed development on the environment, and**  
The development accords with L.E.P. development directions for the area, particularly in relation to permissibility of the landuse, and as such cannot be seen as development which will prejudice the proper future planning of the area.

**(ii) measures to ensure that water and energy usage by the proposed development is efficient.**

The design of the development enables the mixed commercial / Tourist Accommodation development to be constructed on an energy efficient basis with adequate cross flow ventilation, well oriented living areas and decks, thus optimising energy efficiency of future development within the site.

### **CONCLUSION**

The only conclusion which can be drawn is that the proposed development **TOTALLY** satisfies all of the Statutory Objectives of the 3(d) Waterfront Enterprise Zone, as well as Clause 13 provisions, as set under the provisions of Tweed Local Environmental Plan 2000.

Future to this, development potential is also guided by Development Control Plans adopted by the Tweed Shire.



**D.C.P. No. 2 Car Parking**

This D.C.P. sets requirements for all types of developments based on floor area and capacity characteristics.

The proposed development meets the criteria set within the D.C.P. as follows.

| DEVELOPMENT PROPOSED        | REQUIRED PARKING                     | PROPOSED PARKING                             |
|-----------------------------|--------------------------------------|--|
| Shop 1. 78m <sup>2</sup> .  | 1 / 25m <sup>2</sup> . G.F.A. = 3.12 |  |
| Shop 2. 110m <sup>2</sup> . | 1 / 25m <sup>2</sup> . G.F.A. = 4.4  |  |
| Apartment 1                 | 1 space per unit                     |  |
| Apartment 2                 | " "                                  |  |
| Apartment 3                 | " "                                  |  |
| Apartment 4                 | " "                                  |  |
| Apartment 5                 | " "                                  |  |
| Apartment 6                 | " "                                  |  |
| Apartment 7                 | " "                                  | <b>TOTAL proposed</b>                        |
| Apartment 8                 | " "                                  |  |
| Apartment 9                 | " "                                  |  |
| Apartment 10                | " "                                  |  |
| Apartment 11                | " "                                  |  |
| Apartment 12                | " "                                  |  |
| Apartment 13                | " "                                  | <b>Ground Level 16</b>                       |
| Apartment 14                | " "                                  | <b>Street Spaces as Permitted by DCP 2 7</b> |
|                             | = 14                                 |  |
|                             | <b>TOTAL REQUIRED = 21.52</b>        | <b>GRAND TOTAL = 23</b>                      |

Trucks making deliveries will unload within the S.W. driveway area.

Disable access is provided throughout, with a disabled access toilet located at ground level, and a lift to the two upper levels containing Tourist Accommodation units.

Part of the objectives of DCP No.2 sets primary objectives under Clause 1.7. Relevantly Clause 1.7 (h) states that one objective is to "promote flexibility in provision of parking allowing proposals that foster ecological sustainability and or include enhancement / increase of on street parking spaces as an alternative to off street parking".

Objective (i) "encourages car parking design and landscaping to enhance the visual amenity of the area".

The proposal which seeks to construct 7 Car Spaces in association with extensive landscaping and the construction of a currently non existent foot path network adjacent to the site, achieves both good urban design, increases pedestrian safety, and achieves a traffic management outcome which will promote safe access to the site, particularly as the egress point is located well back from the apex of the Chinderah Bay Drive / Terrace St. intersection.

Clause 4.4 of the D.C.P., which relates to Off Street and On Street Parking states that Council permits some parking off site by increasing On Street parking capacity. Council will consider such proposals where:

- On Street parking is less than that required on site. (This is the case in this instance with 16 provided on site, 7 provided on street, and this is more than the total 21.5 spaces required under the DCP for a development of this type.)



- The resultant street scape conforms with principles of good urban design. (In this instance, the proposal seeks to construct 7 Car Spaces in association with extensive landscaping within the adjacent vacant road reserve, and results in the construction of a currently non-existent foot path network adjacent to the site, achieves a graduated landscape theme which maintains good visibility at the access point and around the intersection, yet provides shade trees for the parking areas, and visually softens the proposed structure, thus achieving good overall urban design. As stated the design of the adjacent road reserve increases pedestrian safety, and achieves a traffic management outcome which will promote safe access to the site, particularly as the egress point is located well back from the apex of the Chinderah Bay Drive / Terrace St. intersection. For all of these reasons the design meets this Council requirement).
- The level of pedestrian, cycle and traffic amenity on the street is maintained. (As detailed above, pedestrian, cycle and traffic amenity will be improved as a result of the provision of these urban design features where none exist at present).
- The proposal is not detrimental to utility services. (All utility services skirt the development area, and as such are not compromised by the proposal).

On this basis the conclusion is that the complementary on street parking, landscape and pedestrian access design proposed meets the standards set by DCP No. 2 for on street parking to be used to offset on site parking deficiencies, and it is requested that this aspect of the design be supported by Council in the assessment of this application.

In relation to the proposed provision of 7 car spaces within the road reserve to the south, and the landscaping of this area, it is proposed to lease this area from Council and to assume maintenance of this area in accordance with Council's requirements.

### ***D.C.P. No. 5 - Development of Flood Liable Land***

Like most river systems in north eastern N.S.W., the Tweed River, within the catchment of which this development is proposed, experiences some degree of flooding during major storm events. These major storm events most frequently occur between January and April each year, and are caused either by Tropical Cyclones, (which have been known to cross the coast as far south as Coffs Harbour), or by intense East Coast Low Pressure Systems.

Each type of atmospheric event has the propensity to bring heavy rains to the area, and considerably increase sea levels, thus further increasing the risk of flooding.

In response to frequent flooding within this local drainage system, the proposed development is designed such that residential areas are flood free, and commercial areas are flood tolerant. This particular section of the Tweed Valley is a wide coastal flood plain. Historically this area has been subject to inundation following major storm events, particularly at times when King Tides are experienced, which makes it difficult for flood waters to easily drain from the valley, through the Tweed Bar, to the Pacific Ocean.

Flood data for the area puts the highest recorded flood level in the vicinity of this site at 3.09 metres Australian Height Datum (A.H.D.), with DCP No 5 setting a maximum flood level of 3.2m AHD for this area.

The subject site has an average ground level approximating 1.8 metres A.H.D. As such the design proposes parking and ground level shops on this part of the site, with floor levels of 2.1 metres A.H.D., and all electrical fittings and flood storage mezzanines located above the 3.2 metre level.

The Tourist Accommodation components of the proposal are all located at first and second floor level.

These areas achieve a floor level of 5.6 metres A.H.D., thus placing them well clear of even the most severe flood event, and placing them above the minimum habitable floor level recommended by the Shire for this area under D.C.P. No. 5, which is 3.7 metres A.H.D.



### **Restriction of Flood Waters.**

The proposed development will not restrict the flow characteristics of flood waters in the area, as the type of flooding in this area is restricted to waters backing up behind the mouth of the Tweed River and spilling over the flood plain.

The Chinderah Local Environmental Study investigated flood flow characteristics within this area at length before reaching its recommendations, and these are consistent with the proposal presented, that this site is not subject to prohibitive flood flow characteristics.

The Chinderah Local Environmental Study shows clearly that the flood flow channel in the area is located well clear of this site some 0.5km to the north.

No site works are proposed that will alter the existing drainage characteristics of the site, and the proposed redevelopment of this site will not alter flow characteristics.

The development comprises a small percentage increase in ground level site cover which has the potential to displace flood waters, as most of the developed ground level areas comprise either open structure carparking areas, or pedestrian accessways.

These design features ensure minimal impact on the flood storage capacity of the valley floor, thus preventing aggravation of flooding within the general catchment.

The minor filling of the landscaped areas of the site, and the small percentage of the site affected by the ground level building footprint, will only displace a minor depth of non moving flood water, and in any case, this water displacement will only occur during the 1% flood, with no water being displaced during the normal annual flood events, as these floods do not affect this site.

Due to the large size of the Tweed Valley storage area, the impact of this minor loss of storage area on the systems flood patterns will be so small as to have no measurable effect.

It is thus considered that the development will not increase the level of flooding on other land in the vicinity, particularly as the proposed development is designed to minimise ground level flood water displacement.

As the development is designed to minimise flood flow and storage capacity impacts within the valley floor, during the 1 in 100 year flood event, then the proposed development can be considered as satisfying this general planning objective of developments not restricting flood waters.

DCP No. 5 sets a normal maximum enclosed area for single dwellings at 50m<sup>2</sup>. Following a meeting with Patrick Knight of Council it became evident that this provision was not designed to relate to commercial development. In this instance however, the bulk of the ground floor area is of an open design to accommodate the parking proposed, and as such will permit the ease of entry of flood waters, thus optimising the amount of land retained for flood storage within the valley floor.

**The following flood access and evacuation plan is to be fixed to the Kitchen door of each Tourist Accommodation Unit, and on the wall of the two shops.**



## **FLOOD ACCESS & EVACUATION PLAN**

**APPLICABLE GAUGE** is the Chinderah Flood Gauge.

**GENERAL LEVEL** of land is 1.81m A.H.D.

**RECOMMENDED FLOOD WARNING EVACUATION ROUTE** east along Terrace St. to Kingscliff and or the Pacific Motorway.

**LOWEST POINT** on the recommended evacuation route is 1.61m.

**STAGE 1 FLOOD WARNING** - When a flood warning is current, you should:

- 1) Purchase spare batteries for radios.
- 2) Purchase spare food supplies.
- 3) Listen to the local radio station for updated flood information.

**STAGE 2 EVACUATION OF SITE** - When the flood reaches a gauge reading of 1.5 and further rises are expected yard areas should be secured as for high winds, contents should be placed as high as possible within Commercial Shops, using the flood storage Mezzanine Areas provided, storage lockers in the car park should have goods likely to be affected by water moved up into the units, and cars should be moved to Terrace St. ready to be moved to higher ground.

Your destination should be notified to the local SES.

### **NOTES**

- 1) It is natural to feel apprehensive if this is your first flood, however, SES HQ should not be phoned as this congests the control centre. Rely on radio advises.
- 2) Stage 2 evacuees should stay with friends or find motel accommodation or the like. (SES welfare centres are makeshift and do not offer a high degree of comfort).  
If a Welfare Centre is your only option bring in a water proof container or plastic bag containing
  - a) a change of clothes.
  - b) a sleeping bag or blanket & air bed.
  - c) any required medication.

### **CONCLUSION**

Flooding is not a significant constraint and has been easily overcome with the future residential sections of the buildings being well above the required floor height of 3.7 metres A.H.D., and all electrical services and flood storage mezzanine areas within the commercial sections being located above the 3.2 metre level.

### ***D.C.P. No. 25 – Biting Midges & Mosquito Control.***

The design proposes all residential development at first and second floor level only, thus eliminating most of the problems associated with Biting Midges & Mosquitos, as these pests swarm mostly at or above ground level. In addition to this design aspect of the design, all units are to have screens fitted to windows and doors to minimise the potential for loss of amenity as a result of Biting Midges & Mosquitos.



## **CLAUSE 5 - ECOLOGICALLY SUSTAINABLE DEVELOPMENT**

### **a) PRECAUTIONARY PRINCIPLE:-**

The Mixed Commercial / Tourist Accommodation development equates with the developed character of the area, and accords with its planned residential nature both in terms of the L.E.P. and Strategy Plans.

The Mixed Commercial / Tourist Accommodation is to be located on level, cleared and already partly developed land, in an area where recent studies and LEP 2000 have identified for this type of development.

On this basis the developments meet the precautionary principle, as minimal potential threat can result.

All necessary services pass the site, and as such the development can occur without major economic costs or unreasonable demands being placed on the local community.

The development will in fact broaden the economic base of the Tweed Shire, and the multiplier effect such development has will assist the areas building industry, and retail sector.

In terms of the visual amenity of the site, with the retention of all screening river bank trees on the opposite side of the road, as well as the proposed extensive landscaping of the site, including the parking area, then the visual amenity of the area will be greatly enhanced.

The conclusion is that the social and environmental impact of this development will be positive.

### **b) INTER-GENERATIONAL EQUITY:-**

The Mixed Commercial / Tourist Accommodation development results in a modest scale of development which maintains distant river bank vegetation, effects extensive revegetation, and ensures that the site will be left with a high degree of biological diversity.

### **c) CONSERVES BIOLOGICAL DIVERSITY AND ECOLOGICAL INTEGRITY:-**

As detailed, Mixed Commercial / Tourist Accommodation development, will not impact upon the "diversity of habitats for flora and fauna" as the proposal is a development that maintains all river bank vegetation, and effects significant revegetation within an existing disturbed site.

The conclusion is that the proposed development has a minimal impact on the environment, protects existing habitat areas, includes run off control measures, and effects major revegetation of the site.

The conclusion is that the proposal meets all requirements of the "precautionary principle", promotes "inter-generational equity", and "conserves biological diversity and ecological integrity".

## **Sec. 79(1)(b) IMPACT ON ENVIRONMENT**

The existing development site comprises a cleared development area, partly occupied by a small dwelling which is to be removed.

A small number of trees exist about the boundaries of the site, and these will need to be removed to make way for the proposed development. The nature of these trees is that of plant species not native to the rainforest ecotype which once covered the site, save the small Lilli Pilli.

Their removal will neither impact upon threatened species, nor remove viable habitat areas.

It is a fundamental component of the redevelopment proposal that extensive landscaping of the property be undertaken using a large number of rainforest species which once would have occurred naturally on this site.

In addition to on site vegetation, works are proposed within the adjacent road reserve to the south, which will include the planting of local rainforest and coastal forest species.

No river bank trees are to be impacted upon by the proposed development.

No appreciable change in the character of the area will result from the changes proposed, particularly as this is a core commercial area, and development such as that proposed is expected and planned for by virtue of the 3(d) Zoning that applies to the site.



Further, the nature of the activity ensures that the development does not detract from the commercial character of the area.

In view of this, it is considered that the proposed development will have no adverse impact on the environment of the area.

The site is to be connected to sewer, and as such the development will not compromise the environmental integrity of the area.

## **FLORA**

The site was extensively disturbed by vegetation clearance during the early part of this century when timber was extracted from the area. This was followed by decades of stock grazing resulting in the loss of all the original forest, and maintaining the area as pasture. The small dwelling in the north has meant that native habitat regeneration has been inhibited by urban land maintenance practices.

## **PLANT COMMUNITIES**

One community exists within the site i.e.

### **COMMUNITY 1 - GRASS LAND**

**Structure:** Lawn and Pasture, with isolated trees as individual specimens.

**Habitat:** Open Grass Land.

**Distribution:** Entire site.

#### **Main Species present:**

##### **Grass -**

Paspalum, Couch and Rye Grass species.

##### **Trees -**

|                     |            |
|---------------------|------------|
| Acmena smithii      | Lily Pilly |
| Mangifera Indica    | Mango      |
| Morus nigra         | Mulberry   |
| Plumeria acutifolia | Frangipani |

## **FAUNA**

During site investigations the value and type of species found within the vegetation stands was assessed.

The following native fauna were observed on the property or identified by tracks.

The site investigation failed to find any endangered fauna within the area proposed for residential development.

The proposed development of the property for Commercial and Tourist Accommodation purposes will have no additional impact on the habitat value of the area due to the sites spatial separation from forest areas, the existing densely settled nature of the surrounding commercial and residential areas, and the lack of floral structure within the site.

### **Mammal, Reptile, Bird and Bat Species:-**

The study area was traversed on foot, with fauna identified by tracks, scats, and visual sighting, as well as sightings by local residents.

### **REPTILES**

Skinks:- Lampropholis delicata (Common Garden Skink)

Snakes:- Although not sighted, the following reptiles are commonly known to inhabit the area:-  
Dewrelapinis punctulatus (Green Tree Snake),  
Cryptonhis nigreslens (Small Eyed Snake), and  
Morelia spilotes (Carpet Snake).

### **AMPHIBIANS**

|                       |                      |
|-----------------------|----------------------|
| Limnodynastes peronii | (Striped Marsh Frog) |
| Litoria caerulea      | (Green Tree Frog)    |



Bufo Marinus (Cane Toad)

**BIRDS** - (Sighted in regrowth adjacent to the site and along river bank)

|                              |                      |
|------------------------------|----------------------|
| Ardea sacra                  | (Eastern Reef Egret) |
| Cracticus torquatus          | (Grey Butcher-Bird)  |
| Dacelo novaeguineae          | (Kookaburra)         |
| Gymnorhina tibicen hypoleuca | (Magpie)             |
| Halcyon sancta               | (Sacred Kingfisher)  |
| Larus novaehollandiae        | (Silver Gull)        |
| Malurus cyaneus              | (Superb Blue Wren)   |
| Milvus indus                 | (Brahminy Kite)      |
| Philemon corniculatus        | (Noisy Friar Bird)   |
| Podargus strigoides          | (Tawny Frogmouth)    |
| Rhipidura leucophrys         | (Willie Wagtail)     |
| Strepera graculina           | (Pied Currawong)     |
| Trichoglossus moluccanus     | (Rainbow Lorikeet)   |

**NATIVE MAMMALS**

No Native Mammals have been identified or sighted other than flying foxes and bats in the general area. No habitat for them exists on this mostly cleared site.

**EFFECT ON THREATENED SPECIES SEC. 5.A. E.P.A. Act.**

**1. In the case of a threatened species, whether the life cycle of the species is likely to be disrupted such that a viable local population of the species is likely to be placed at risk of extinction.**

In these areas of the Shire, the following Endangered or rare species could occur:-

**Endangered or rare tree species:-**

Acianthus amplexicaulis  
Acronychia littoralis (Scented Acronychia)  
Amorphaespermum whiteii (Rusty Plum)  
Archidendron muellerianum (Veiny Lace Flower)  
Cordyline congesta  
Cryptocarya foetida (Stinking cryptocarya)  
Endiandra hayseii (Velvet Laurel)  
Syzygium hodgkinsoniae (Red Lilli Pilli)  
Syzygium moorei (Durobby)  
Thozetia racemosa  
Randia moorei (Spiny Gardenia)

**Endangered or rare Bat Species:-**

Chalinolobus nigrogriseus (Whorle Bat)  
Miniopterus australis (Mini Bent Wing Bat)  
Nyctophilus bifax (Small Cave Bat)

**Endangered or rare animal Species:-**

Phascolarctos cinereus (Koala)  
Potorous tridactylus (Long-nosed Potoroo)

**Amphibian Species:-**

Crinia tinnula (Wallum Froglet)

Threatened species were not identified on this site.

In general the habitat contained on site is not one conducive to the habitat needs of threatened species, particularly given its disturbed nature, and its Waterfront Enterprise Zoning and highly disturbed characteristics.

**2. In the case of an endangered population, whether the action proposed is likely to have an adverse effect on the life cycle of the species that constitutes the endangered**



**population such that a viable local population of the species is likely to be placed at risk of extinction.**

Endangered populations could be affected if established forest or mature regrowth was to be removed.

This however is not the case, habitat along the river bank is to be retained, and the Mixed Commercial / Tourist Accommodation development is to take place on an existing cleared site. As such it will not disrupt populations such that the viability of the population is likely to be significantly compromised.

**3. in the case of an endangered ecological community or critically endangered ecological community, whether the action proposed:**

**(i) is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or**

**(ii) is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction,**

As stated above, no significant habitat is to be removed, and the tree communities on site are common, and occur widely throughout this area.

**4. in relation to the habitat of a threatened species, population or ecological community:**

**(i) the extent to which habitat is likely to be removed or modified as a result of the action proposed, and**

**(ii) whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed action, and**

**(iii) the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species, population or ecological community in the locality.**

Due to areas of regrowth being unaffected, then none of the habitat areas to the west and south west of the site will become isolated from interconnecting or proximate areas of habitat for a threatened species, population or ecological communities, and this will also be the case for the River Bank Vegetation off site to the west, which is continue to benefit from the large areas of similar coastal forest to the south.

**5. whether the action proposed is likely to have an adverse effect on critical habitat (either directly or indirectly),**

As detailed, no critical habitat will be affected.

**6. whether the action proposed is consistent with the objectives or actions of a recovery plan or threat abatement plan.**

This area is characterised by developed commercial and residential lands.

The landscape plantings proposed will reintroduce rainforest and river bank species to the site, and assist in broadening the native floral base of the area.

**7. whether the action proposed constitutes or is part of a key threatening process or is likely to result in the operation of, or increase the impact of, a key threatening process.**

The Mixed Commercial / Tourist Accommodation development is located well clear of the river bank, and the development is to take place on a cleared and grossly disturbed site. It is thus considered that the development will not be a threatening development or activity.

**CONCLUSION**

The general conclusion is that the site of the proposed Mixed Commercial / Tourist Accommodation development, does not constitute an area of high conservation value, and is sufficiently removed from habitat areas to ensure that their environmental integrity is not prejudiced. In addition to this the habitat restoration plan proposed ensures that the site will be left in a state of greater bio-diversity and thus meets the objectives of the Act.





### ***EFFECT ON CRITICAL HABITAT SEC. 5B. E.P.A. Act.***

At the time of preparing this application, the subject site was not included in any register of critical habitat kept by the Director-General of the National Parks and Wildlife under the Threatened Species Conservation Act 1995.

### ***S.E.P.P. No. 44 KOALA HABITAT.***

1. The site is within schedule 1.
2. The site is under 1 ha.
3. Few Koala food trees present.
4. The site is removed from known Koala corridors.
5. No Plan of Management is required.

Koala habitat will not be affected due to the fact that the proposed site is generally cleared land.

### ***S.E.P.P. No. 55 - CONTAMINATED SOILS.***

In accordance with the provisions of S.E.P.P. No. 55, the site is one which has no history or industrial or agricultural use, and as such it is a site for which the threshold test is not reached. To this end detailed soil tests are not deemed necessary in relation to the subject Mixed Commercial / Tourist Accommodation development.

### ***Impact on the Built Environment***

The development proposed will not impact on the scenic quality of the area, as the development proposed will create a complementary street scape, as previously detailed.

The broken and varied building elevations, proposed landscape works, use of natural colours, and the incorporation of pedestrian oriented areas and pavements, all assist in visually softening the buildings proposed in terms of their internal and street presentation.

The development is thus considered to be one which is in keeping with the existing and planned character of the area.

Minimal site works are proposed, all earth works will occur following the construction of small berms of straw bails, filter mesh fences or similar, to be positioned and secured by metal stakes e.g. star pegs, in rills down hill from site works.

These porous bails will act to reduce water velocity and collect sediment during the construction of the parking area and landscaping.

This inexpensive method of sediment control will afford additional protection to the local drainage system. The collected sediment will need to be removed from these porous berms from time to time to ensure proper functioning, and after heavy rain straw bails may need to be replaced as they fill with fine sediment.

### ***Sec. 79C(1)(c) SUITABILITY OF THE SITE***

The site is large and already cleared. Despite its flood prone nature, the building is designed to meet all of Councils requirements in terms of flood proofing.  
(See previous D.C.P. No. 5 assessment for details).

The development is contained well within the site, with a large car park at the rear of the ground level shops, beneath the building, and 7 spaces, landscaping, and pedestrian access corridors within the road reserves to the west and south, with these areas to be leased from Council and maintained by the owners of the site.

This design and the overall concept is consistent with the planned character of the area, in terms of its scale and commercial nature.



The proposed use will therefore optimise the planned character of the area without overdeveloping this site.

## **MERIT CONSIDERATIONS**

It is considered that the proposed new mixed commercial / tourist accommodation development, will have no adverse impact on the environment of the area as the proposed activities are in keeping with the character of the area, and the development meets all L.E.P., Strategy Plan, and D.C.P. requirements, including onsite parking.

As already stated, the use is one which will not be a major traffic generator, parking is to be provided on site, with 7 spaces as well as landscaping and pedestrian pathways constructed within the adjacent road reserve areas to the west and south.

The development brings into being the long planned revitalisation of this area, it is of significant public benefit, providing much needed social and Tourist Accommodation facilities, and greatly stimulating the local economy.

In general, this redevelopment will assist in the further broadening and strengthening of the Tweed Shires social and economic base, and will improve its recognition as a destination for holiday makers, both domestic and overseas.

CHRIS LONERGAN. B.A.  
23<sup>rd</sup>. Nov. 2006