

INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES

URBAN ASSESSMENTS

Action required: for determination: Development Application

File No:	S03/01645/1 & 2
Application Number:	DA 176-04-2003
Date of lodgement:	28/04/2003
On land comprising:	Lot 1 DP 247808, Pandanas Parade, Cabarita
Application made by:	Resort Corp Cabarita Pty Ltd C/- Pacific Projects Group Cnr Adori & Burra Streets Chevron Island, Gold Coast, QLD 9726
Application made to:	Minister for Infrastructure, Planning & Natural Resources
Local government area:	Tweed Shire Council
State electorate:	The views of the Member are not known.
Notification:	Sent to Tweed Council, RFS & Coastal Council for comment on 14/08/03.
Public Exhibition	Advertised & adjoining owners/occupiers notified from 19/08/03 to 25/09/03.
For the carrying out of:	Development detailed in Section 3 of the Planning Report
Estimated cost of works:	\$18.75 million
FTE Jobs created:	68
Type of development:	State Significant Development – SEPP 71
Was a public inquiry held?	An inquiry under s.119 of the Act was not held.
Integrated approval bodies:	NSW Rural Fire Service & Tweed Shire Council
Main Issues:	Refer to attached page.
Compliance with the Act	The application has been considered with regard to the matters raised in section 79C of the Act. The application was notified in accordance with the Regulations and all submissions received in the period have been considered. On balance, it is considered that the proposed development is acceptable and that development consent be granted.
Applicant views on draft conditions:	Applicant expressed general support for proposed draft conditions.

Recommendation

It is recommended that the Minister for Infrastructure, Planning and Natural Resources pursuant to section 80 (1) and 80A of the *Environmental Planning and Assessment Act, 1979* (as amended) and clause 10 of SEPP 71:

- (A) grant **consent** to the application subject to conditions (Tagged “A”), and
- (B) authorise the Department to carry out post-determination notification.

Approved:

Sam Haddad
Deputy Director-General
Office of Sustainable
Development and Approvals

Craig Knowles
Minister for Infrastructure and Planning
Minister for Natural Resources

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Approved:

Sam Haddad
Deputy Director-General
Office of Sustainable
Development and Approvals

Diane Beamer
Minister assisting the Minister for Infrastructure
and Planning (Planning Administration)

INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES

URBAN ASSESSMENTS

Development Application: Supplementary Information

Proposed Development

The proposed development seeks consent for the demolition of the existing Cabarita Hotel/Motel and construction of a new building comprising 57 managed resort apartments over predominately 3 storeys and ground floor commercial tenancies, with basement level car parking.

Due to its sensitive coastal location the proposal was considered to be of State significance under the provisions of SEPP 71. The Minister is therefore the consent authority.

A current development consent exists for the subject site (granted by Tweed Shire Council) for demolition of the existing building and construction of a new 3 storey building comprising a hotel, restaurant, bottle shop, retail shops, conference/gym facility and 61 tourist accommodation units. While the consent is still valid, it is yet to be acted upon.

Summary of Significant Issues

A number of submissions have been received from local residents objecting to the proposed development, citing concerns of overdevelopment, excessive height, visual impact, loss of public tavern, overshadowing, loss of privacy and contravention of local planning laws. These issues have been addressed in detail in the body of this planning report.

Tweed Shire Council is generally supportive of the proposal.

The applicant has demonstrated that their proposal will not cause a significant amenity impact on adjoining residential properties, and is of a bulk and scale that is satisfactory in the context of its prominent coastal location. The development will form a 'landmark' development on the main Cabarita pedestrian access point to the beach, and will provide ground floor retail opportunities which allow passing visitors to interact with the development in the form of outdoor eating at cafes and restaurants.

While a minor non-compliance with Council's LEP control on number of storeys is proposed, a relaxation of the development standard is considerable reasonable in this instance considering the considerable difference in existing ground levels between the subject site and adjoining residential properties to the south. In this regard, the proposed 'technical' partial fourth storey will present only as a third storey when viewed from the south as the subject site is excavated to level much lower than the adjoining residential sites.

In terms of Urban Design, as lodged the overall disposition and massing of the proposal was considered generally acceptable, subject to design amendments to permit perception of the proposal as an assemblage of smaller components in a coastal – as distinct from urban – location. Extensive discussions were undertaken with the applicant's architect and significant design amendments were sought to achieve:

- Variation in design expressions for different segments of the façade to emphasise different built form components and orientation in order to avoid a monolithic appearance;

- A greater variety of materials and details with a particular emphasis on those that would be appropriate to, and evocative of, the beachfront location of the proposal.

In its amended form the proposal still retains design elements that are not distinctly associated with the coast. These components include glass balustrades, painted concrete masonry, and aluminium louvres. The architect reasonably asserts that these materials were selected for durability within the highly corrosive coastal environment. Other elements in the amended design – including timber and aluminium sunscreens, overhanging roof planes and timber pergolas – belong to a design idiom that is more distinctly coastal, and serve to offset the less sympathetic glass and masonry components. As amended the proposal will satisfy the aims and objectives of SEPP 71 relating to design, the *North Coastal Design Guidelines* and the *Coastal Design Guidelines*.



Planning Assessment Report Development Application

DA 176-04-2003

1 SUMMARY

This report is an assessment of the proposed development the subject of Development Application number 176-04-2003. The application seeks consent for the demolition of the existing Cabarita Hotel/Motel and construction of a new building comprising 57 managed resort apartments over predominately 3 storeys and ground floor commercial tenancies, with basement level car parking.

The Minister for Infrastructure Planning and Natural Resources is consent authority under clause 10 of State Environmental Planning Policy No. 71 (SEPP 71) – Coastal Protection. The application falls under Schedule 2 of SEPP 71 as the proposal is located within the coastal zone and the proposal falls under the definition of “*tourist facilities*”.

The proposal is classed as integrated development under the *Environmental Planning and Assessment Act* 1979 as approval is required from the NSW Rural Fire Service and Tweed Shire Council.

It is recommended that the development application be granted **consent**.

2 BACKGROUND

2.1 Site Context

The subject land is described as lot 1 DP 747808, Pandanus Parade, Cabarita Beach. A right of carriageway burdens the south-western corner of the site.

The land has an area of 5490 m² and is bounded to the east by Crown Reserve (No. 1001008 for public recreation and coastal environmental protection) adjacent to Cabarita Beach; to the south by residential development; to the west by a service road (adjacent to the Tweed Coast Road) and to the east by Pandanus Parade. To the north of Pandanus Parade is the existing Cabarita Beach Surf Lifesaving building together with a public car parking area.

Cabarita’s town centre comprising a strip shopping area is located to the west of the site abutting the Tweed Coast Road.

The land ranges in height from approximately RL 5.6 m AHD adjacent to Pandanus Parade to approximately 14.9 m AHD at its southern boundary. Soil types comprise sand on the flatter northern part of the site and a basalt outcrop forming part of Norries Headland on the southern part of the site. No significant vegetation remains on the land. The location of the land is shown at **Tag “B”**.

2.2 Previous Consents

The existing Cabarita Hotel/Motel comprises 36 motel units, a bottle shop, restaurant and public bar areas.

Development Consent T4/3520 was issued by Tweed Shire Council on the 8 March 1985 for the erection of 51 motel units and additions and alterations to the existing hotel. This consent provides for a 4 storey building to be constructed on the site. To date, only 3 storeys of motel units have been constructed overlooking Cabarita Beach. As the development has been commenced, the consent remains in force and therefore the remaining units in the 4th storey could be constructed under the terms of the current consent.

On the 21 June 2002, deferred commencement consent No. 0323/2001DA was issued by Tweed Shire Council for redevelopment of the existing hotel/motel, subject to conditions. In summary, the proposal involves demolition of the existing building and structures and the construction of a new 3 storey building comprising a hotel, restaurant, bottle shop, retail shops, conference/gym facility and 61 tourist accommodation units. The consent does not commence to operate until the deferred matter in Schedule A is complied with to the satisfaction of Council. The deferred matter relates to the design of the building and coastal erosion processes.

3 THE PROPOSED DEVELOPMENT

The application seeks consent for the demolition of the existing Cabarita Hotel/Motel and construction of a new building comprising 57 managed resort apartments over predominately 3 storeys (with a limited 4 storey component at the south-eastern area of the site) and ground floor commercial tenancies, with basement level car parking. Pools and outdoor amenities are proposed in the central courtyard area of the building (refer to **Tag "C"** for coloured elevations and perspectives).

It should be noted that the proposal originally included a tavern, however this component of the application has been deleted from the proposal and the floor space has been redesignated as commercial. It should also be noted that the management structure proposed for the building proposes to promote short term tourist accommodation and discourage, although not preclude, permanent occupation. This issue is discussed in more detail in section 4 of this report.

3.1 Amended Plans

On 9 March 2004 the applicant, submitted amended plans for the subject application incorporating design changes to all elevations, at the request of DIPNR's Team Leader, Urban Design (refer to section 6 of this report).

These amendments differ only in minor respects from the development application submitted and do not give rise to any additional impacts. Accordingly, these amendments were accepted as a replacement application in accordance with clauses 55 and 90 of the *Environmental Planning & Assessment Regulation 2000* (the Regulations). In accordance with clause 90 of the Regulations further notification of the application was not undertaken.

4 STATUTORY FRAMEWORK

4.1 Statutory Framework

State Environmental Planning Policy No. 71

State Environmental Planning Policy No 71 – Coastal Protection (SEPP71) applies to the site, and under clause 10 of this policy, the Minister is the consent authority. The application falls under Schedule 2 of SEPP 71 as the proposal is located within the coastal zone and the proposal falls under the definition of “*tourist facilities*”.

Tweed Local Environmental Plan 2000

The land to which this application relates is zoned 3(b) General Business under the provisions of Tweed Local Environmental Plan 2000. The objectives of the 3(b) zone are as follows:

Primary Objective

- *“To provide business centres in which the community’s shopping, business, welfare and social needs can be met.*
- *To provide business locations within residential areas, and to ensure that the scale and type of development is compatible with the character and amenity of the surrounding residential areas.”*

Secondary Objectives

- *“To provide for tourist orientated development.*
- *To encourage upper floor residential and tourist accommodation.”*

Development for the purposes of a shop, restaurant and hotel is permissible, with consent, in the zone. Tourist accommodation (defined in Schedule 1 of the LEP as “**a building principally used for the accommodation of tourists but does not include a building elsewhere specifically defined in this schedule**”) is also permissible, with consent, **if not at street level**.

This definition therefore does not preclude the development being used for accommodating persons other than tourists, provided the principle use is for tourist accommodation. In this instance however, the proposal as detailed on the DA form is specifically for “**demolition of existing structures on site and erection of a new building on site comprising 57 tourist accommodation apartments, ground floor commercial areas and car parking**”. Any approval issued under this DA will thus be only for tourist accommodation units (as applied for on the DA form) and ground floor commercial tenancies, with no permanent occupancy accommodation permitted under this consent. On 5 June 2003 the applicants submitted a report to DIPNR from specialist Body Corporate Managers, Stewart King & Burns, detailing how establishing Management Rights in a development of this nature actively promotes storm term accommodation use by tourists. This position was further supported by a report prepared by Hickey

Lawyers (engaged on behalf of the applicant) detailing the proposed management structure to be adopted for this development.

Due to the nature of the existing topography on the subject site, a number of tourist accommodation units are located at ground level on the south-eastern area of the site. In the original documentation submitted with the application this was identified as a possible non-conforming use, which was to be addressed by applying existing use rights. The premise was that both the existing building and the development approval granted by Council in June 2002 also contained ground level units. Upon further review of the definitions within Tweed LEP however, there is a clear distinction made between multi-dwelling housing being prohibited *“unless located above non-residential ground floor level development”*, and allowable tourist accommodation *“if not at street level”*. In this instance the tourist accommodation units located at ground floor level do not front onto a street on the eastern and southern boundaries of the site (instead front onto a public reserve and the beach and an adjoining residential property), while the units fronting Pandanus Parade (along the northern boundary) and Coast Road (along the western boundary) are at least one level higher than street level, primarily above proposed commercial/retail tenancies. It can therefore be concluded that the proposal complies with the current provisions of Tweed LEP 2000 and is permissible with consent.

The proposal is consistent with the zone objectives and the redevelopment of the site as proposed in this application is generally consistent with the approval granted by Council on 21 June 2002. Further, the design of the development and proposed management arrangements clearly demonstrate that the proposal comes within the definition of *“tourist accommodation”*.

Other Planning Policies

The Coastal Protection Act 1979, the Coastal Policy 1997 and North Coast REP 1998 are also relevant to the subject site.

5 CONSULTATION

5.1 Public consultation

The development application was advertised and adjoining owners/occupiers notified from 15 August 2003 to 25 September 2003. A summary of submissions is at **Tag “D”**. A petition was also received on the 23 October 2003 containing in the order of 580 signatures. The petition was distributed around a variety of local businesses and left for a period of two weeks. The petition read:

*“In reference to the redevelopment of the Cabarita Beach Hotel/Motel site, we, the undersigned strongly oppose the 4th level in the current development application “The Beach”. It will create:- (a) an overdevelopment for our small beachside village
(b) overshadowing on public areas
(c) a precedent for other developers on the Tweed coast.”*

Issues raised in the submissions and the petition are considered in Section 6 of this report.

5.2 Referrals

5.1.2 Integrated Approval Bodies

The application is integrated under the *Environmental Planning and Assessment Act* 1979 and the NSW Rural Fire Service has issued general terms of approval for the development (these are included in the proposed conditions of consent) under section 100B of the Rural Fires Act 1997. The proposal is also integrated under section 138 of the *Roads Act* 1993 and Council (as delegate for the RTA) has issued their Section 138 approval for the roads works associated with the proposed development in the public reserve adjacent to Coast Road.

5.2.2 Council

The application was referred to Tweed Shire Council on 14 August 2003. Council responded on 24 October 2003. No significant objection to the proposed development was raised subject to a number of conditions of development consent should the application be approved by the Minister.

6 CONSIDERATION

6.1 The Environmental Planning & Assessment Act, 1979

The application and the likely impacts of the proposed development have been considered in accordance with s.79C of the Act.

Section 79C of the EP&A Act requires the Development Application be assessed against the provision of any EPI, DCP or prescribed matter

6.1.1 State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71)

The subject site is within the coastal zone and therefore relevant provisions of SEPP 71 apply. Schedule 2 of the Policy includes “*tourist facilities*” as “state significant development.” The Minister for Infrastructure and Planning is the consent authority for development contained in Schedule 2 by virtue of Clause 10(2) of the Policy. As the proposed development involves the construction of tourist facilities, the Minister is the consent authority in this instance.

The matters for consideration in Clause 8 of the Policy are addressed at **Tag “E”**.

6.1.2 Coastal Protection Act 1979

The proposed development will be consistent with the objectives of the Coastal Protection Act 1979. The proposal will not restrict public pedestrian access to coastal areas, and it is not considered the proposal will have a detrimental impact on the coastal environment.

6.1.3 NSW Coastal Policy 1997

The proposed development will be consistent with the goals and objectives of the NSW Coastal Policy 1997. The proposal will not restrict public access to coastal areas, and it is not considered the proposal will have a detrimental impact on the coastal environment. The proposal will not detrimentally impact on the aesthetic qualities of the coastal zone.

6.1.4 North Coast Regional Environmental Plan 1988

Clause 32B - Coastal lands

This Clause reads as follows:

- 2) *"In determining an application for consent to carryout development on land to which the Coastal Policy applies, the Council shall take into account -
 - a) The NSW Coastal Government Policy;
 - b) The Coastline Management Manual; and
 - c) The North Coast Design Guidelines.*
- 3) *The Council shall not consent to the carryout of development which would impede public access to the foreshore area;*
- 4) *The Council shall not consent to the carrying out of development –
 - a) On urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out the development would result in beaches and adjacent open space being overshadowed before 3 pm mid-winter (standard time) or 6.30 pm mid-summer (daylight saving time); or
 - b) Elsewhere in the region, if carrying out the development would result in beaches or waterfront open space being overshadowed before 4 pm mid-winter (standard time) or 7 pm mid-summer (daylight saving time)."*

Relevant matters for consideration in the *NSW Coastal Policy, 1997* are addressed throughout the body of this report. The proposal will not restrict public access to coastal areas, and it is not considered the proposal will have a detrimental impact on the coastal environment. The proposal will not detrimentally impact on the aesthetic qualities of the coastal zone.

In accordance with the requirements of the *Coastline Management Manual, 1990*, Tweed Shire Council has prepared a Coastline Hazard Definition Study, but the preparation of a Coastline Management Plan is yet to be completed.

The key components of the *North Coast Design Guidelines* have been considered in the design of the proposed development, as amended, particularly in relation to the building form, external materials/finishes, solar access and energy efficiency. Guidelines for Larger Development (Pages 12 - 15), generally require tourist development to be broken into smaller elements; avoid large flat surfaces; link buildings to surrounding landscape; avoid flat roofs; make use of design elements characteristic of traditional buildings of the region; avoid concentrating development into large structures. Concern

was raised that the original building design did not achieve these objectives, the façade of the development was redesigned under the guidance of DIPNR's Acting Team Leader (Urban Design) to incorporate design elements that were considered to be more sympathetic to the prominent coastal location of the subject site – eg. metal and timber sunscreens, timber decking, canted columns, timber and stone cladding etc.

Overshadowing of beach and foreshore reserve

In reference to Clause 32B(4)(b), the shadow diagrams submitted with the application (refer **Tag "H"**) show the extent of overshadowing of the beach and foreshore open space areas by the proposed buildings. As the development fails to comply with the development standards contained in Clause 32B, an objection under SEPP 1 was submitted in support of the non-compliance (contained in the SEE), which reads as follows:

"The objectives of the development standard include:

- *To ensure that overshadowing of public areas such as beaches and foreshore open space does not occur at such times of the day as would effect the amenity and enjoyment of these areas by the public;*
- *To ensure that these public areas are not alienated from public use by inappropriate overshadowing caused by urban development.*

It is submitted that the development standards contained in Clause 32B(4)(b) of this instrument relating to overshadowing of beaches and foreshore open space areas are unreasonable and unnecessary in the circumstances of this case for the following reasons:

- *The shadow diagrams at Figure 3 show the extend of overshadowing by the existing, approved and proposed buildings. Although the dimensions of the shadow is different, the area shadowed by the proposed building is approximately 111 m² less than the approved development application in mid December.*
- *In June, shadows from the proposed building will increase by 384 m² compared to the existing building, however this is numerically insignificant.*
- *The area likely to be overshadowed prior to 4 pm mid-winter is 2816 m² and prior to 7 pm mid-summer is 4272 m² which is numerically insignificant given the total foreshore and beach area available at Cabarita.*
- *The shadows do not extend to the high water mark and therefore will not impact on sunbathers and surfers.*
- *Development Consent T4/3520 was issued by Council on the 8 March 1985 for the erection of 51 motel units and additions and alterations to the existing hotel. Consent provides for a 4 storey motel to be constructed on the site. At this stage only a 3 storey motel building has been constructed adjacent to Cabarita Beach. If the land owner proceeds with the construction of the 4th storey the overshadowing affect would be considerably more than the current proposal, in*

December being some 5386 m² compared to 4272 m² for the proposed building.

The NSW Government Coastal Policy contains a strategic action in relation to beaches and waterfront open space, which is referred to in Clause 32B of the North Coast REP. The principle contained in the Coastal Policy is that:

“Beaches and waterfront open space will be protected from overshadowing. The standard to be applied will vary according to local circumstances, however, generally the standard to be applied is:

- *In cities or large towns, no overshadowing before 3 pm mid winter and 6.30 pm summer daylight saving time;*
- *Elsewhere, no overshadowing before 4 pm mid winter and 7 pm midsummer daylight saving time.”*

The policy contains a note relating to this standard which states that:

“The suggested standard in this principle may be difficult to apply in highly urbanised environments. An LEP or Development Control Plan which is tailored to local conditions and which has the overriding objective of minimising overshadowing may be required in these situations.”

It is apparent from the note to the policy that it is difficult to achieve the objective of nil overshadowing of waterfront open space or beach areas in urban environments and it is therefore submitted that strict compliance with this development standard is not appropriate in the circumstance of this case.

It is submitted that upholding of the objection would be consistent with the aims of State Environmental Planning Policy No. 1 in that strict compliance with the beach and waterfront shadow restrictions would preclude the development of a viable and functional resort on the site. In addition, upholding the objection would also be consistent with the objects of the Act, in that, it will promote the social and economic welfare of the community, achieve a better environment through improved building design and promote the orderly and economic use and development of the land for a purpose which creates sustainable employment opportunities.”

The SEPP 1 objection is considered worthy of support in this instance as the degree of overshadowing of the adjacent public reserve to the east of the site and the dwelling to the south will be comparable with the shadow cast by the existing buildings. Whilst the shadow is a marginally different shape, the net differential impact between the existing and the proposed is not significant. Any building in this location will overshadow the reserve and adjoining residence at various times throughout the day. It is considered however, that the shadow cast by the proposed building will not substantially detract from the recreational value of the reserve or beach and not exacerbate the overshadowing impact caused by the existing building.

Clause 33 - Coastal hazard areas

In summary, this Clause requires the Consent Authority to take into account the provisions of the Coastline Management Manual and requires, as a condition of development consent, that disturbed foreshore areas be rehabilitated and access across foredune areas be confined to specific points. The proposed development is

considered to be consistent with this clause.

Clause 51 - Tall buildings

This Clause provides that the Council shall not, without the concurrence of the Director of DIPNR, grant consent to a development application for the erection of a building over 14m in height.

The term height is defined as follows;

" In relation to a building, means the greatest distance measured vertically from any point on the building to the natural ground level immediately below that point."

As indicated on the application plans, the proposed tourist resort hotel building will not exceed 14m from natural surface level to the highest part of the building. The Directors concurrence is therefore not required in this instance.

Clause 75 – Tourism development

This Clause provides that Council shall not consent to an application for tourism development unless it is satisfied that road access is adequate, social and community services exist in close proximity for permanent residents, urban services are available and natural site values will be maintained.

The site is adequately accessed by the existing Tweed Coast Road and Pandanus Parade and is conveniently located in relation to both Kingscliff and Tweed Heads, where appropriate social and community support services are available. In addition, full urban infrastructure is proposed for site. Natural site opportunities and constraints are reflected in the application plans and mix of commercial/tourist accommodation.

Clause 81 – Development adjacent to the ocean or a waterway

This Clause requires Council to take into account any existing waterway within 100m of the development site and the need for the dedication of foreshore open space together with the consistency with any foreshore management plan applying to the area. The application is consistent with this Clause in that public use of the foreshore will not be compromised.

The draft Tweed Coast Reserve Plan of Management (Department of Land and Water Conservation, May 1997) identifies the site as being adjacent to Precinct 5. The immediately adjoining foreshore is shown as environmental protection and State Environmental Planning Policy No. 26 buffer. No change to foreshore areas is proposed or required by this development application, however embellishment of the foreshore is proposed by way of a separate application, subject to negotiations with the DIPNR.

6.1.5 Tweed Local Environmental Plan 2000

The subject site is zoned 3(b) General Business under the provisions of Tweed LEP 2000. The objectives of the 3(b) zone are as follows:

Primary Objectives

- *“To provide business centres in which the community’s shopping, business, welfare and social needs can be met.*
- *To provide business locations within residential areas, and to ensure that the scale and type of development is compatible with the character and amenity of the surrounding residential areas.”*

Secondary Objectives

- *“To provide for tourist orientated development.*
- *To encourage upper floor residential and tourist accommodation.”*

Development for the purposes of a shop, restaurant and hotel (tavern) is permissible, with consent, in the zone. Tourist accommodation (defined as *“a building principally used for the accommodation of tourists but does not include a building elsewhere specifically defined in this schedule”*) is also permissible, with consent, if not at street level. As detailed previously in this report, the proposed development complies with this requirement. The proposal is consistent with the zone objectives and the design of the development and stated management arrangements clearly demonstrate that the proposal comes within the definition of *“tourist accommodation”*.

The following Clauses of the Plan are relevant to this application:

Clause 15 – Availability of essential services

The land is adequately serviced by existing water, sewer and stormwater infrastructure.

Clause 16 – Height of buildings

A 3 storey height limit applies under the provisions of this Clause. Due to the existing topography, several small areas of the proposed building technically constitute a partial fourth storey. Accordingly, a State Environmental Planning Policy No. 1 objection accompanies this application (refer to SEE). The SEPP 1 objection has been submitted based on the premises that these partial fourth storey components do not have any adverse impact on the overall bulk or scale of the building and do not cause significant adverse amenity impacts on adjoining residential properties. The SEPP 1 objection is outlined as follows:

“The development standards in Tweed LEP 2000 limit buildings to 3 storeys in height. The proposed building includes a basement car park more than 1.5m above natural ground level and a 3 storey hotel building above the basement. Based on the current definition of “storey” the building comprises 4 storeys for a short length, indicated on the application plans.

The term storey is defined in the LEP as follows;

“means:

- a) The space between 2 floors, or*
- b) The space between the floor and any roof immediately above it, or*

- c) *Foundation areas, garages, workshops, storerooms and the like, where the height between natural ground level and the top of the floor immediately above them is 1.5 m or more.*

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.”

Identifying the natural ground levels where sites are filled and/or earthworks are carried out (as has been the case here) is difficult. To assist in resolving this issue, Council has resolved, pursuant to Section 54 of the Act, to prepare a draft Local Environmental Plan Amendment to vary the definition of storey and include other provisions as follows;

- *“The definition for building height be amended to reflect “finished ground level” rather than “natural ground level”;*
- *A definition of finished ground level be introduced as follows;*
 - (a) *Where land is within an area designated by the Council as flood liable land, the adopted design flood level adopted by Council; or*
 - (b) *Where land is not within such an area, the level of the land (after earthworks) as approved by the Council, or where no earthworks are proposed, the natural ground level of the land.*
- *The definition of storey be amended to read;*
 - (b) *The space between 2 floors; or*
 - (c) *The space between the floor and any ceiling or roof immediately above it, or*
 - (d) *Foundation areas, garages, workshops, storerooms and the like, where the height between finished ground level and the top of the floor immediately above them is 1.5 m or more.*

A storey which exceeds 4.5 m is counted as 2 storeys.”

Gazettal of the amendment will assist in resolving the current issues, however given the uncertainty of timing of gazettal of the amendment this development application is accompanied by the following State Environmental Planning Policy No. 1 Objection addressing the current requirement to calculate the number of storeys from natural ground level.

It is submitted that the development standard limiting buildings to 3 storeys in height measured from natural ground level is unreasonable and unnecessary for the following reasons;

- *Council has resolved to amend the definition of the term “storey” such that it is measured from finished ground level;*
- *The site slopes approximately 6m south to north and has an irregular existing ground level. The basement car park extends more than 1.5m above natural*

ground level for a small part of its length (see elevations). The extent of the building extending above 3 storeys is minimal and does not significantly increase the bulk and scale of the structure or the extent of shadowing;

- *The building is stepped to reflect the slope of the site and the basalt rock out crop, however because of these constraints it is impractical to comply with the 3 storey height limit for the whole of the building;*
- *It is submitted that upholding of the objection would be consistent with the aims of the Policy in that strict compliance with the 3 storey height limit will preclude the development of a viable and functional resort on the site. In addition, upholding the objection would also be consistent with the objects of the Act in that it will promote the social and economic welfare of the community, achieve a better environment and promote the orderly and economic use and development of the land for a purpose which creates sustainable employment opportunities.”*

The issue of the partial fourth storey forms the focus of the majority of the public submissions received for this development application, including the signed petition, Tweed Shire Council is generally supportive of the proposal in its current form.

The initial elevations and sections submitted with the DA indicated the existing ground line only and did not show the projected natural ground line. This created the somewhat false impression that the extent of the partial fourth storey was far more significant than it actually is, due to considerable excavation and benching that has occurred on the site when it was originally developed. Since this issue has been highlighted as a main concern by the southern neighbours, natural ground lines have been carefully interpolated on revised DA plans submitted by the architect for the applicant, based on current survey and geotechnical information. The resulting contours demonstrate more precisely the areas that technically exceed three storeys. As can be seen from the revised plans (refer to **Tag “F”**) the partial four storey elements of the building occur on the NW internalised side of Units 4.01 and 4.02. These areas of non-compliance are not likely to adversely impact on the amenity of properties to the south of the subject site, nor are they likely to adversely impact on the visual amenity of the surrounding locality. In this regard, the objective of clause 16 of the Tweed LEP - *“to ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land”* - is deemed to be satisfied. It should also be noted that the existing hotel building (proposed to be demolished) on the subject site is clearly four storeys – comprising an open ground level car park, with three levels of accommodation above.

At the request of DIPNR, the applicant has carried out a detailed analysis on the impact of the proposed building on the amenity of properties to the SE, particularly residential property located adjacent to the beach and foreshore reserve, and sited on a ground level significantly higher than the subject site. Extensive shadow diagrams have been prepared identifying the shadow impact of the proposed development on the foreshore and adjoining neighbours to the SE. These diagrams demonstrate that at 3pm in mid-winter, the angle and position of the sun is such that no shadows fall on the beach, although there is some minor overshadowing of the grassed public reserve adjoining the site to the east. However, this level of overshadowing is not significantly worse than the

existing situation. Obviously properties to the south of the subject site will be overshadowed to a degree in the afternoon, but the degree of overshadowing is tempered by the significant difference in existing ground levels (with the subject site being excavated substantially more in the past than adjoining properties to the south) and the shadow cast by existing established vegetation. In this regard, the four storey component of the development will have no additional impact. The beach itself will not be overshadowed at any time by the proposed building.

It is therefore concluded that the strict imposition of the three storey height limit under clause 16 of Tweed LEP 2000 is unreasonable and unnecessary in this instance, and the applicants SEPP 1 objection is supported.

Clause 17 – Social impact assessment

In accordance with the provisions of this clause and Development Control Plan No. 45, a satisfactory Socio-economic Impact Statement accompanies this application.

Clause 17 of Tweed Local Environmental Plan 2000 which is in the following terms:

(1) Objective

To ensure proper consideration of development that may have a significant social or economic impact.

(2) Where the consent authority considers that a proposed development is likely to have a significant social or economic impact in the locality or in the area of Tweed, the consent authority may only grant consent to the proposed development if it has considered a social impact statement in respect of the proposed development.

(3) The social impact statement must:

- (a) Identify the likely future impacts of the development and the affected community, and*
- (b) Analyse the impacts in terms of magnitude, significance, duration, effect on current and future conditions and community services, and the like, and*
- (c) Determine and assess possible measures for the management or mitigation of likely impacts.*

In pursuance of this clause, Council has adopted Development Control Plan No. 45 – Socio-economic Impact Assessment. Clause 5.1 of the Development Control Plan requires a Socio-economic Impact Statement to accompany a development application for various land uses, including hotels and tourist accommodation with more than 50 beds; retail development greater than 1500 m² gross floor area and hotels.

A Socio-economic Impact Statement was originally submitted with this application as an Annexure to the SEE, prepared by Darryl Anderson Consulting Pty Ltd and dated April 2003. This statement was based on a development that still included a 'Tavern' as part of the proposal. The statement was prepared in accordance with the requirements of the LEP & DCP and concluded that the proposed development is likely to result in significant positive socio-economic impacts in the locality and the Tweed generally,

subject to appropriate mitigation and management measures as identified in the statement – *“development of the site will provide sustainable employment, local economic benefits and a range of accommodation types, in a location that is suitably serviced and conveniently located in relation to Cabarita Beach. Approval of the development would be consistent with the Tweed 2000+ Strategic Plan; Tweed LEP 2000 and Council’s Economic Development Strategy and would generate contributions towards additional community infrastructure based on the additional demand generated. An estimated 68 full time equivalent employment positions will be generated during the construction phase. Indirect employment opportunities are estimated at 157 positions based on the employment multiplier for the Northern Rivers Construction Industry of 2.3 (CARE, 1997). The development has been designed to achieve social cohesion, high levels of amenity, ecologically sustainable outcomes and positive socio-economic impacts for the community. The annual contribution to the local economy from the development is estimated at \$10 million.”*

At the request of DIPNR, a subsequent updated Economic Impact Report was submitted in November 2003, prepared Cooperative Research Centre for Sustainable Tourism, University of Queensland, dated 12 November 2003 for 57 managed resort apartments and 1550sqm of retail shops and restaurants (excluding a tavern). The report concluded that:

- *“The Beach development at Cabarita will provide a significant contribution to the Tweed shire economy. Gross development costs are in the vicinity of \$49 million with a direct workforce of about 250 jobs.*
- *It is estimated that this development activity will inject directly \$25.2 million in gross regional product to the Tweed economy, with an additional \$7.8 million in flow-on effects to supporting industries, resulting in a total contribution of \$33 million to the Tweed Shire.*
- *An additional 130 jobs will also be required in support industries during the construction process resulting in a total of over 380 jobs temporally generated.*
- *When the development becomes fully operational, the activities will contribute approximately \$10.9 million annually to the gross regional product of the Tweed.*
- *This is associated with about 116 jobs directly attributed to the operations and an additional 63 jobs in support industries, giving a total of 179 jobs created in the region.”*

At the request of DIPNR and Tweed Shire Council the applicants have also considered the social impact of the loss of the existing tavern. During the course of pre-DA analysis for the subject site, Resort Corp acquired the tavern licences and subsequently conducted extensive research into the viability of retaining the tavern within the proposed development. Ultimately it was decided to remove the tavern component of the proposed redevelopment primarily because of the negative impact of a hotel in a development incorporating accommodation and other commercial tenancies catering to the family market. The value of the prime beachfront land has also made it financially undesirable to the owners to continue to operate the hotel in its current location.

As liquor licensing regulations prohibit the license from being relocated further than 1km from the original location, it is critical that Resort Corp relocate the tavern within the Cabarita township, otherwise these licences will be lost. Resort Corp has indicated that they intend to relocate the hotel/tavern to a temporary location within 6 months after the exiting tavern closes its doors, which will trade until such time as it can be permanently

relocated to a permanent location within town – possibly within a new Cabarita Beach surf club, which is intended to be built on a block on the opposite side of Pandanus Parade to the current tavern site. It is therefore not envisaged that the tavern will be lost to the town for a long period of time as a social meeting place for local residents and beach users.

Clauses 22 and 23 – Designated roads

The Tweed Coast Road is a designated road. Access to the basement car park and loading dock will be obtained via the existing service road on the western side of the site adjacent to the Coast Road. Vehicular access to the site will be from Pandanus Parade. No additional access points are proposed or required to the Tweed Coast Road and therefore the proposal is considered to be consistent with the provisions of these clauses of the LEP.

Clause 35 – Acid sulphate soils

The Acid Sulphate Soil Planning maps indicate that the site is located in areas identified as Class 4. Excavation is proposed for the basement car park. In accordance with the provisions of this clause, a satisfactory Acid Sulphate Soil Management Plan has been provided with the application. Dewatering of the site is not proposed or required.

Clause 36 – Coastal erosion outside Zone 7(f)

The proposed building will be constructed on an existing developed site and will not adversely affect, or being adversely affected by, the behaviour of the sea. Further, the development will not adversely affect the adjacent beach or dunes or the scenic quality of the locality.

6.1.6 Tweed Council DCPs & Policies

Development Control Plan No. 2 – Site Access and Parking Code

The proposed development will comprise approximately 1560m² of retail/commercial space and 57 tourist accommodation units. Under DCP No. 2 the parking demand is as follows:

LANDUSE	REQUIREMENT		
	Customer parking	Staff parking	Bicycle parking
Retail/commercial	3.5/100GFA = 55 spaces	0.5/100GFA = 8 spaces	2 + 1/200GFA = 9 spaces
Tourist accommodation	1/unit = 57 spaces	0.5/staff (unknown staff at this stage)	1/unit = 57 spaces

Therefore the total number of car parking spaces required for the proposed development is 120 (plus additional spaces for staff of the proposed retail tenancies), with 66 bicycle spaces also required. The proposal provides for 190 on-site car parking spaces. This comprises 71 spaces for the proposed non-residential uses provided at

ground level and tenancy level. An additional 119 car spaces for the proposed tourist accommodation uses are provided at basement level and ground level. The proposal therefore easily complies with the requirements of the DCP. A condition will be attached to any consent issued requiring the provision of 88 bicycle spaces.

The proposed access to the basement car park is via a combined 6m wide ingress/egress driveway from the service road located adjacent to The Coast Road. The lower levels of the basement car park are accessed by a series of internal ramps with maximum gradients of 1 in 16. The parking spaces are provided at 90 degrees to the circulation aisles with dimensions of generally 2.4m x 5.5m. Larger dimensions or aisle extensions are proposed for spaces located adjacent to end walls. The internal aisle width is a minimum of 6m. The car park provides bicycle parking in a room located at basement level. Pedestrian access to the car park is via three lift cores spaced evenly across the site. In addition there are various stairways from the basement car park to ground level adjacent to each of the lift cores.

Delivery and service vehicles are accommodated in two locations within the site. A loading dock is provided in the car park at ground level. This loading dock is located in the vicinity of the entry to the car park and is positioned to allow adequate manoeuvring area for small delivery vehicles to enter and exit the site in a forward direction. A second delivery bay is proposed at street level within the service road (i.e. porte-cochere). This is intended as a secondary facility that was created as a result of the proposed rearrangement of the adjacent service road.

Council has issued their approval under section 138 of The Roads Act 1993 for the proposed works within the adjacent road reserve on 19 December 2003. The work within the service road adjacent to The Coast Road is required to provide access to the proposed porte-cochere and basement car park within the subject site. The proposed arrangement includes the provision of an additional 9 on-street parking spaces in a northern extension of the existing 90 degree spaces near Pandanus Parade. The additional 9 spaces will compensate the loss of 7 spaces located adjacent to the existing bottle shop and 1 space in Pandanus Parade. In addition, a loading zone and emergency services zone will be provided parallel to the kerb in the general location of the existing on-street car spaces adjacent to the existing drive through bottle shop. The emergency services zone is located adjacent to proposed fire hydrants within the site.

The applicant has provided a traffic impact report by *Gary Shiels & Associates* (dated April 2003), which includes an assessment of the proposal against the requirements of SEPP No. 11. The report concludes that *"the traffic generation of the proposal is not likely to result in any adverse impact on the local traffic situation and even if all peak trips from the proposed development were to occur in the same peak hour, it is unlikely that this would significantly affect the capacity, operation or level of service of surrounding streets"*.

Draft Development Control Plan No. 8 – Development of Land Liable to Coastal Erosion

This Development Control Plan remains in draft form, however Council nevertheless takes it into account when assessing development applications. Diagram No. 8(e)5 of the Development Control Plan indicates that the 50 year impact line and 100 year impact line are located adjacent to and west of the Coast Road respectively. The

immediate impact line passes through the approximate centre of the site.

The recently completed “Tweed Coast Hazard Definition Study” (WBM 2001) indicates that coastal land recession rates have either stabilized or show slight accretion. The study suggests that the property is landward of the 50 year hazard line.

An outcrop of rock exists on the southern part of the site which is not subject to erosion risks but in any case the footings of the proposed development will be pierced to the bedrock underlying the site to resist scour. The super structure will be designed to resist wave attack to RL 6.0 m AHD. Having regard to the above, it is considered that the proposal is consistent with the provisions of Development Control Plan No. 8 and the Coastline Management Manual. Annexure E contains an Engineering Assessment and Report further addressing the issue of coastal erosion.

Development Control Plan No. 39 – Energy Smart Homes Policy

Compliance with this plan is not mandatory for a tourist accommodation/commercial development. However the design of the building is consistent with energy efficiency principles. A NatHERS Report is contained in the documentation submitted with the application.

Development Control Plan No. 45 – Socio-Economic Impact Assessment

In accordance with the provisions of this plan, a satisfactory Socio-economic Impact Statement has been submitted in support of the proposed development (refer to section 6.1.5 of this report).

Draft Development Control Plan No. 48 - Tweed Coast Building Heights

This plan remains in draft form following exhibition. Clause 2.1 provides for a maximum building height of 11m for 3 storey mixed development, however the proposed building will achieve a height of up to 12.5m from finished ground level to the underside of the eaves. Considering the slope of the land and existing basalt rock out crop, and having regard to the design quality of the development, it is considered that the variation to the provisions of the draft plan is justifiable in the circumstances.

Tweed 2000 + Strategic Plan

In December 1996 Council adopted this Plan, the purpose of which is to “*provide a broad overview of Council’s intentions and directions for the future in relation to development, the environment and infrastructure provision*”. In particular, Shire Wide Strategic Principle No. 6 provides for an increased emphasis on economic, employment generation and retention in the Tweed whilst Strategic Principle No. 4 requires ecological sustainable development principles to be included in the decision making process. This application is considered to be consistent with these principles and relevant policies and actions contained in the Plan for the following reasons:

- The tourist resort together with associated commercial development will generate an estimated 250 full time employment positions during the operational phase.

- In total, the development will inject approximately \$33 million into the local economy during the construction phase and an estimated annual contribution of \$10.9 million.

The ecological values of the site are limited. The building has been designed to minimise impacts on the foreshore achieve energy efficiency and encourage public access to the beach.

Section 94 Contributions

Tweed Shire Council requires the following section 94 Contributions to be paid as a consequence of the proposed development:

- | | |
|---|------------|
| ▪ Open Space (Casual) | \$6600 |
| ▪ Emergency Facilities (Surf Lifesaving) | \$2961 |
| ▪ Extensions to Council Administration Offices & Technical Support Facilities | \$5,044.33 |
| ▪ Cycleways | \$6,448 |
| ▪ Regional Open Space (Casual) | \$8,734 |

These contributions have been incorporated into the conditions of consent.

Section 79C of the EP&A Act requires the likely Environmental, Social or Economic Impacts of the development be assessed.

Environmental, economic and social impacts of the proposal have been largely addressed in detail previously in this report. The following issues are relevant to the proposal and require further analysis:

Urban Design

The following controls and guidelines are relevant to an assessment of built form:

- SEPP 71 – Aims of the Policy, Clause (1)(k) “*to ensure the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area*”.
- North Coast Design Guidelines (1989) – Guidelines for Larger Development (Pages 12 - 15), generally require tourist development to be broken into smaller elements; avoid large flat surfaces; link buildings to surrounding landscape; avoid flat roofs; make use of design elements characteristic of traditional buildings of the region; avoid concentrating development into large structures.
- Coastal Design Guidelines (2003) – Appropriate Buildings for a Coastal Context (Pages 72 – 81), generally buildings should avoid overshadowing public foreshore areas, not be visually prominent, and take built-form cues from existing surrounding patterns of development.

As lodged, the overall disposition and massing of the proposal was considered generally acceptable, subject to design amendments to permit perception of the proposal as an assemblage of smaller components in a coastal – as distinct from urban

– location. Extensive discussions were undertaken with the applicant’s architect and significant design amendments were sought to achieve:

- Variation in design expressions for different segments of the façade to emphasise different built form components and orientation in order to avoid a monolithic appearance;
- A greater variety of materials and details with a particular emphasis on those that would be appropriate to, and evocative of, the beachfront location of the proposal.

In its amended form the proposal still retains design elements that are not distinctly associated with the coast. These components include glass balustrades, painted concrete masonry, and aluminium louvres. The architect reasonably asserts that these materials were selected for durability within the highly corrosive coastal environment. Other elements in the amended design – including timber and aluminium sunscreens, overhanging roof planes and timber pergolas – belong to a design idiom that is more distinctly coastal, and serve to offset the frequently perceived place-less-ness of the glass and masonry components.

Amenity Impact on Southern Neighbours

Strong objection to the proposed development has been raised by the occupants of the single dwelling house adjacent to the southern boundary (known as Lot 2) of the subject site and the owner of a vacant piece of land (known as Lot 4) adjoining the existing vehicle accessway along the southern boundary of the subject site. Issues raised included overshadowing, view loss and loss of privacy.

Lot 2 (vacant block)

It is difficult to assess the impact of the proposed development on a vacant piece of undeveloped land, which itself could be developed up to a height of 3 storeys in the future. As outlined earlier in this report, the level of overshadowing by the proposed building will not have a significant impact on this property in the context of the entire day, throughout the year, due primarily to the different ground levels of the two blocks (refer **Tag “I”**). Lot 4 sits substantially higher than the subject site, meaning that the proposed building will present primarily as 3 storeys on its southern elevation.

Views of the ocean and beach to the east of this property are currently blocked by the house on Lot 2, while the existing hotel development on the subject site restricts water and beach views to the north-east. Lot 4 currently enjoys unobstructed view of the surrounding hinterland to the west, which will remain unaffected by the proposed development. In terms of the impact of the proposed building on water views of Lot 2, the applicant has provided the following analysis:

- *“The detailed survey identifies the level of this site (Lot 2) as RL15.46 at the northern corner. The owner of this site is able to build a three storey residence within 900mm of the boundary as indicated on the attached plan (**Tag “G”**). Under the current LEP, the ground floor can be built up to 1500mm above the ground level without constituting a storey – this would put the ground floor level at approximately RL17.0.*

- *If the owner of Lot 2 proposed elected to build 3m storey heights to each level, this would put the floor of the upper level at RL23. This would allow panoramic views over our building [RL22.9 to top of balustrade] and the lower ridge line of the neighbouring property to the east.*
- *Assuming the scenario outlined above, ocean views would also be achieved in the corridor between the existing house to the east and our building from both the first and second floor levels. The view corridor would look over our roof (RL19.5) and the neighbours Pandanus palm (RL20.5).*
- *The partial fourth storey component of our development would have absolutely no impact on the views of this adjoining property.”*

Upon detailed review of the view loss analysis provided by both the applicant and the owner of Lot 2, it is agreed that the concept of view sharing will be preserved in this instance. While Lot 2 will experience some view loss as a consequence of the proposed development, an appropriately designed residence constructed on their vacant land would still receive some ocean views to the east and north-east, and uninterrupted views of the surrounding hinterland to the west and south-west.

Lot 4 (3 storey house)

The applicant has been involved in a number of consultations with the owners of Lot 4 since their initial objection to the proposed development primarily on the grounds of non-complying fourth storey, view loss, overshadowing and loss of privacy. The issue of the proposed fourth storey and resultant overshadowing has been addressed in detail in section 6.1.5 of this report (refer **Tag “I”**). The following analysis has also been provided by the applicant in support of their proposal:

- *“Impact of partial fourth storey (unit 4.04) - A report prepared by Jim Glazebrook town planner for the neighbour misinterprets the architectural drawings and makes the false assumption that the existing ground line is the same as the natural ground line. This has lead the neighbour to believe that most of proposed unit 4.04 was a fourth storey, and therefore not compliant with the LEP. Resort Corp provided a simple cross section sketch to the neighbour to demonstrate that only a very small component on the NW internalised side of this unit was likely to exceed 3 storeys, thus having no impact at all on their amenity. Further more detailed interpolation by the Architect of the existing levels taking into account the radial contours of the natural hillside demonstrates that in actual fact, unit 4.04 is a fully compliant third storey unit with no fourth storey component whatsoever.*
- *Loss of acoustic and visual privacy (unit 3.01) - This proposed unit abuts the boundary fence between the two properties and is set down approximately 2m lower than the living area of the house. The neighbour is concerned that people staying in this unit may use the side terrace for entertaining and be able to look up to their existing bedroom deck. Resort Corp has modified the design to increase the width of the landscaped planter, creating more of a buffer/screen and reducing this terrace area to a width suitable only for circulation. In addition the roof overhang has been increased to totally cover this terraced area and ensure maximum privacy.*
- *Loss of acoustic privacy (unit 4.04) - The original design proposed a plunge pool and screen wall located within 3m of the common side boundary. The neighbour was concerned that occupants of this unit would have late night pool parties and keep them awake. Resort Corp has relocated this pool twice to appease the*

neighbours concerns and it is now positioned 16m away from the neighbours bedroom window.

- *Loss of view (unit 4.04) - The privacy screen to unit 4.04's outdoor terrace, provided for the neighbours benefit, restricted a portion of the long distant beach view from their bedroom window. This window is located in the side wall of the bedroom above the current bed head. Resort Corp has modified the design of this privacy wall twice to maximise this view whilst maintaining the privacy between the properties. Resort Corp has also offered to detail the construction of this wall in any manner the neighbour would like to ensure an aesthetically pleasing result. The neighbours main beach views [to the east] remain totally unaffected by the proposed development.*
- *Overshadowing courtyard - Concern exists that the proposed development will significantly overshadow the lower level courtyard of Lot 4. Resort Corp provided additional sun diagrams which demonstrated that the existing trees overshadow this area significantly more than the proposed development will.*
- *Overshadowing clothesline - The clothesline for Lot 4 is located under their lower bedroom deck, so the majority of clothes would be in shadow for most of the day at any time of year. The proposed development will have no more adverse impact than the existing structures and vegetation. The exception is after 3pm in mid-winter when the area will be in shadow primarily due to the privacy screen wall proposed for the neighbours benefit."*

Again the applicant has adequately demonstrated that considerable effort has gone into appeasing the neighbours concerns regarding the potential amenity impacts of the proposed development. While some additional impact is inevitable due to the intensification of development on the subject site, the impacts are not substantial enough to warrant refusal of the application or a significant redesign.

While not specifically raised as an issue by the applicant or objectors, there is however potential to use the roof areas above Units 401, 402, 403 & 404 and Units 301, 302 & 303 as trafficable roof decks. This would have an unacceptable impact in terms of overlooking and noise emission on the residential properties to the south of the subject site, and as such a condition of development consent has been recommended restricting the use of these areas to non-recreation uses.

Suitability of the site for the Development

The proposed development is consistent with the provisions of the Tweed Shire Council Local Environmental Plan 2000, Council's relevant Development Control Plans, and provisions of the State Environmental Planning Policy No. 71 – Coastal Protection. It is not considered that the site would be unsuitable for the proposal tourist development.

Any Submissions to the Development

Tweed Shire Council submitted comments and recommended conditions to be attached. These conditions are recommended to be included as part of the conditions of consent.

The NSW Rural Fire Service submitted general terms of approval for the integrated approval under the EP&A Act, which have been included as part of the conditions of

consent. The concerns of local residents have also been carefully considered as assessed in the body of this planning report.

The Public Interest

It is considered that the proposed development does not significantly contravene the provisions of any planning instruments which apply to the site and will not result in any significant negative impacts on the environment. It is considered that the proposed development is not contrary to the public interest.

7 CONCLUSION

The Minister for Infrastructure Planning and Natural Resources is the consent authority for the proposed development application. The application has been considered with regard to the matters raised in s79C of the Act and the NSW Rural Fire Service and Tweed Shire Council, who were consulted and provided general terms of approval under the Integrated Development Provisions within the Act.

The application has been notified in accordance with the Regulations. All submissions received in the period prescribed by the Regulations have been considered. On balance, it is considered that **the proposed development is acceptable and should be approved.**

8 RECOMMENDATION

- A. It is recommended that the Minister for Infrastructure, Planning and Natural Resources pursuant to section 80 (1) and 80A of the *Environmental Planning and Assessment Act, 1979* (as amended) and clause 10 of SEPP 71:
- (1) grant **consent** to the development application subject to conditions (tagged 'A'), and
 - (2) support the SEPP 1 submission objecting to clause 32B of North Coast REP 1988 relating to overshadowing of the foreshore reserve and clause 16 of Tweed LEP 2000 relating to number of storeys in the proposed building; and
 - (3) authorise the Department to carry out post-determination notification.

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