

Council Reference: DA09/0830.16
Your Reference: MP07/0179.06



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Dear Lillian

MP07_0179 Mod 6 - Response to invitation for comments

Thank you for the opportunity to comment on MP07_0179 Modification No 6.

As set out hereunder Council have no objection in principle to the relocation of Units 1 - 8 and 20 - 27 westward by 2m towards Hastings Road to increase solar access and natural ventilation in the central landscaped podium and walkway between Buildings 1 and 2. It is acknowledged that limited detail has been provided in relation to the visual impact of the revised proposal when viewed from street level on Hastings Road, and that no revised shadow diagrams or view sharing analysis has been provided. However it is considered that the proposed modification would have a negligible impact in terms of visual impact, overshadowing or view sharing.

Council has no objection to the updating of the S7.11 contributions and S64 water and sewer charges to reflect the number of approved units (38 as opposed to stated 40), and other changes to conditions to reflect this anomaly in the current approval.

Council, however, does not support the proposal to allocate the rooftop landscaped area on Level 1 adjacent to the Hastings Road frontage to private open space for units 1 – 8.

It is acknowledged that this area is not currently accessible directly from any of the residential units, and has been landscaped in the approved plans to function as a view field from the units as opposed to a recreational area. However there is a deficiency of communal open space associated with the development and it is considered that the proposed modification to allocate this area to private open space represents a missed opportunity.

It is considered that it may be more appropriate to allow individual accesses from Units 1 - 8 as proposed, but to retain this as a single area landscaped area which also allows for access for other unit occupiers through the rooftop access. The

approved concept landscape plan could be modified to provide for seating and a path/paved walkway to enable this area to function as a passive open space area. This would be in line with the objectives and design guidance of the Apartment Design Guidelines (State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development).

While the height of the elevation to Tweed Coast Road is increasing, the maximum building height of the building is maintained. However Council has concerns in relation to the proposed changes to the roof profile. The modulated roof design as approved is more consistent with the roof lines controls for Bogangar/Cabarita in the Development Control Plan 2008 – Section B19. The current proposal is more monotonous and will contribute little to the streetscape, particularly when viewed from Hastings Road.

Planning history

The approved application (MP07_0179) comprised a part 3 and part 4 storey mixed use development including a 2,310sqm supermarket, 1,106sqm of retail specialty shops, shop top housing incorporating 40 residential apartments and combined parking for 204 vehicles situated on land described as Lots 184-187 & 191-194 DP 259164 and Lots 20-23 DP31208 (now consolidated and identified as Lot 1, DP 1185345).

The project approval has been modified as follows:

Modification 1 – Approved - 21 December 2011

- Increase the size of the supermarket from 2,310sqm to 2,479sqm and decrease the area of specialty retail from 1,106sqm to 913sqm resulting in a 24sqm net decrease in retail floor space on-site and changes as follows:
 - Allow for the staged construction of the project as follows:
 - Stage 1 comprised the retail/supermarket component; and
 - Stage 2 comprised the shop top housing residential component (40 residential apartments).
 - Relocate the pedestrian lane and incorporate a new traveller;
 - Relocate the residential lift and lobby;
 - Relocation the service loading bay access with the main access to the underground carpark on Hastings road;
 - Relocate the waste collection area to Hastings Road, adjacent to the open air carpark entrance;
 - Incorporate a new supermarket office level and new plant area within the approved mezzanine office level;
 - Amend the basement carpark flood freeboard requirement to comply with Council's flood planning controls;
 - In conjunction with this modification, the approved unit layout was altered during the assessment process reducing the number of Units from 40 to 38.

Modification No. 2 – Approved - 8 December 2012

- This application related to an extension to the approved hours of operation. The hours of operation of the commercial premises are 7.30am and 9pm seven (7) days per week for the retail uses, and 7am to 6pm Monday to Saturday for deliveries.

Modification No. 4 – Approved - 19 December 2014

- Approval to modify the terms of Schedule 1 and Conditions A2 and B22(4) of the Project Approval to include Lots 1 and 2 in DP 772172, and Lots 188, 189 and 190 in DP 259164 within the approved project area. The inclusion of these additional lots within the project area was requested by Council to finalise the dedication of the public laneway as required by Condition B22 of the Project Approval.

Modification No 5 – Approved - 15 April 2015

- Amendment of Condition B22 (4) to correct a minor error in the wording of this condition.

Current Modification Application

The applicant (Ardill Payne) describes the proposed modifications as follows:

‘This application proposes minor amendments to Stage 2 of the project, specifically the upper floors of the development consisting residential accommodation. The requested changes to the approved development relate to minor design changes to Levels 1 and 2 in response to certain conditions of development consent. The modification also requests that certain conditions be amended to correctly reflect the approved Major Project Mixed use development, specifically, Unit numbers and contributions.’

‘Design changes are limited to modifications in response to conditions of the development consent for resident amenity. Changes will not alter the overall number of residential units approved by this Major Project, will not increase height, density or car parking demands. The mod, by requesting the correct number of Units be referenced in the conditions and the correct contributions are applied to Stage 2, will not result in any discernible changes to the locality nor approved development.’

Summary of Proposes Changes/Amendments

- **Conditions A1 and A1A** – These conditions state the number of approved units within Stage 2 of the approved development. It is requested that the conditions are modified to reflect the correct number of units approved as provided by the stamped approved plans i.e. 38 units rather than 40 residential units.
- **Condition A2** – This condition lists the approved plan set. It is requested the condition is modified to reflect the updated plan set for the uncompleted component of the development (Stage 2 – Residential component and

Landscaping) as submitted with this application for Stage 2 of the development being the residential unit.

- **Condition B2** – This condition requires changes to Stage 2 of the project as detailed within Conditions B3 and B4 – which in turn require increasing the separation between Buildings 1 and 2 (landscaped podium) by reducing the length of units by 1m. The applicant requests that this condition becomes redundant and can be deleted.
- **Condition B3** – This condition requires the proponent to submit a Design Verification Statement to the Certifying Authority. This statement has been provided as part of the application. This condition also required Units 1 - 7, 13 - 27 and 33 - 40 to be reduced in overall length by 1m.

The applicant requests that the second sentence of the condition is deleted as the changes to the plans have been made, despite the size of the units remaining as approved, to achieve the 'intended' outcome in regards to design quality. Alternatively, the applicant submits that the deletion of this condition may now be appropriate given the Design Verification Statement has been provided and design changes to the second stage of the development have been made in conjunction with this modification application.

- **Condition B4** – This condition requires the reduction in the unit lengths of 1m as specified within Condition B3 above. The applicant requests that this condition be modified to remove specific amendment details i.e. reduction of the length of the Units by 1m. Alternatively, it is submitted that the deletion of this condition may now be appropriate given the proposed design changes to the second stage of the development have been made in conjunction with this modification application.
- **Condition B29** – This condition refers to Section 7.11 (formerly Section 94) Development Contributions payable for the approved development. It is requested that the contribution schedule be modified to reflect 38 (not 40) units within Stage 2 being the uncompleted residential component of the development.
- **Condition B30** – This condition refers to Section 64 Contributions applicable to the development. It is requested that the schedule of contributions applicable to the development be reviewed to reflect 38 (not 40) units.

Council's Response to modifications

Conditions A1 and A1A

This condition sets out the project description.

A1 Project Description

Project approval is granted only to carrying out the project described in detail below:

- 1) ~~part three (3) part four (4) storey mixed use development entailing ground level commercial component encompassing a 2310m² supermarket (with 200m² office mezzanine), and retail speciality shops (1106m²);~~*
- 1) part three (3) and part four (4) storey mixed used development entailing ground level commercial component encompassing a 2479m² supermarket (including 176m² office mezzanine) and 913m² retail speciality shops;*
- 2) **40 upper level residential units (16 x 2 bedroom units and 24 x 1 bedroom units);***
- 3) ground level public forecourt;*
- 4) pedestrian thoroughfare;*
- 5) landscaped podium;*
- 6) site landscaping;*
- 7) basement and surface car parking for 204 vehicles;*
- 8) loading bay;*
- 9) three access points from Hastings Road;*
- 10) excavation works; and*
- 11) signage.*

A1A Staging

The development is to be constructed in two stages as indicated in the Section 75W application submitted on 12 October 2011 and as follows:

- 1) Stage 1 will comprise the whole of the car parking and commercial/retail components of the development including;*
 - a. supermarket and retail speciality shops;*
 - b. ground level public forecourt;*
 - c. pedestrian thoroughfare;*
 - d. site landscaping;*
 - e. basement and surface car parking for 204 vehicles, including interim use of future residential parking to be allocated to Stage 2;*
 - f. loading bay;*
 - g. three access points from Hastings Road;*
 - h. excavation works; and*
 - i. signage.*
- 2) Stage 2 is to comprise the construction of the residential component of the development including:*
 - a. **40 upper level residential units;** and*
 - b. allocation of basement residential parking for 56 vehicles (for residential uses) as constructed in Stage 1.*

The proponent is to review on a yearly basis and report to the Council via the Certifying Authority the anticipated timeframe for the delivery of this residential stage (Stage 2) of the development.

Such review should demonstrate that the residential stage will be delivered at the appropriate time with regard to the land use and urban design objectives of Section B19 of Councils Development Control Plan - Bogangar / Cabarita Beach Locality Plan.

Council has no objection to modifying these conditions to reflect the approved number of units (38 units – 16 x 1 bed units and 22 x 2 bed units).

Condition A2

This condition lists the approved plan set.

A2 Project in Accordance with Plans

The project will be undertaken in accordance with the Environmental Assessment, the Preferred Project Report and the following drawings:

<i>Architectural (or Design) Drawings prepared by Stockwell</i>			
<i>Drawing No.</i>	<i>Revision</i>	<i>Name of Plan</i>	<i>Date</i>
DA - 11	C	Site Plan	27/07/09
DA - 12	D	Basement Lower Plan	15/10/09
DA - 13	H	Basement Mezzanine Plan	15/10/09
DA - 14	G	Ground Level 1 Plan	15/10/09
DA - 15	E	Level 2 Plan	27/07/09
DA - 16	D	Level 3 Plan	27/07/09
DA - 17	B	Roof plan	27/07/09
DA - 18	D	Units Plan	27/07/09
DA - 19	B	Tweed Coast Road Elevation	27/07/09
DA - 20	B	Hastings Road Elevation	27/07/09
DA - 21	D	Sections	27/07/09
DA - 22	C	Sections	28/08/09
DA - 25	D	Area Plan	27/07/09
<i>Landscape Drawings prepared by Jeremy Ferrier</i>			
<i>Drawing No.</i>	<i>Revision</i>	<i>Name of Plan</i>	<i>Date</i>
29013 SK01	A	Landscaped Concept	02/02/09
29013 SK02	A	Landscaped Concept	02/02/09
29013 SK03	A	Elevations & plant Palette	02/02/09
<i>Survey Drawings prepared by B&P Surveys</i>			
<i>Drawing No.</i>	<i>Revision</i>	<i>Name of Plan</i>	<i>Date</i>
15128B	C	Sheet 1	10/04/08
15128B	C	Sheet 2	10/04/08
<i>As Constructed Drawings prepared by Cameron Chislom & Nicol</i>			
<i>Drawing No.</i>	<i>Revision</i>	<i>Name of Plan</i>	<i>Date</i>
0001	D	Site Plan	30/09/2014
1203	F	Lower Ground Floor Level Part B Floor Plan	30/09/2014

The applicant requests that the condition is modified to reflect the updated plan set for the uncompleted component of the development (Stage 2 – Residential component and Landscaping) as submitted with this application.

As set out below, concerns are raised with regard to the proposed allocation of the landscaped rooftop area to private amenity space and to the proposed roof profile. In this regard, the plans as submitted are not supported.

No objection is raised to the modification of the landscaped podium or the relocation of units 1-8 to facilitate its increased width, nor the other minor modifications to the plans.

It is submitted that any changes to this condition to update the plans for Stage 2, should ensure that the approved plans for Stage 1 are retained as part of the stamped plan set.

Conditions B2, B3 and B4

Condition B2 requires changes to Stage 2 of the project as detailed within Conditions B3 and B4.

B2 Design Modifications

The design of the project shall be amended as follows:

(1) Amendment to the landscaped podium as required by Condition B4.

Reason: To ensure the future residents and occupants of the project have an acceptable level of amenity.

Amended plans incorporating this design modification shall be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

B3 Design Verification Statement - Residential Flat Buildings

Prior to the issue of a Construction Certificate, the proponent shall submit to the Certifying Authority a Design Verification Statement form a qualified designer, verifying that the plans and specifications achieve or improve the design quality of the development, having regard to the design quality principles set out in Part 2 of State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development. In addition, a reduction in the overall length of the residential units 1-7, 13-27 and 33-40 by at least 1,000mm is required to assist in the improvement in the design quality.

B4 Landscaped podium

In order to achieve an acceptable level of amenity for future residents and occupants of the proposed the landscape podium on level 2 shall be enlarged by way of reducing the overall length of residential units 1-7, 13-27 and 33-49 by in excess of 1,000mm.

It should be noted that front setbacks from Hastings Road and Tweed Coast Road shall not be amended in order to comply with this condition.

The applicant has submitted amended plans to address these conditions. A comparison of the approved and proposed plans is set out in **Attachment 1**.

The applicant submits the following:

'The single purposes of the proposed modification of the development is in response to Conditions B2, B3 and B4. These conditions relate to the building separation on Level 1 and 2 between the two rows of approved Units. The conditions required the central separation of the two rows of Units to be increased by an additional 2000mm through reducing the length of each Unit by 1000mm.'

The amended design of the residential component of the development, or Stage 2 is such that rather than decreasing the length of the Units, the separation by a total of 2000mm between the two rows of Units has been achieved by relocating or shifting the western row of units by 2000mm to the west toward Hasting Road, over the inaccessible landscaped area at the rear of these Units. Accordingly, the separation between the western and eastern block of units has been increased by 2000mm, as required by conditions B2, B3, and B4.'

'The attached suite of architectural plans demonstrates changes to the approved Stage 2 to satisfy the intent of Conditions B3 and B4.'

'While the depth of the units has not decreased, the intent of the condition has been achieved through increased separation over the two levels to ensure suitable amenity levels will be enjoyed by residents of units on the eastern and western side of the central landscape podium.'

In addition to the above, the applicant also seeks to allocate the western rooftop landscape area at Level 1 as private open space for Units 1 – 8. It is submitted that;

'Currently, this landscape podium between Hastings Road and the western bank of units as approved is not accessible by any residents. This inaccessibility would limit the opportunities to maintain the area and would prohibit the enjoyment of the area as common open space or common landscaped space by any residents. The allocation of this podium space for private open space use (identified as courtyards on proposed Plan set) is logically considered to be a more practical use of the area with improved outcomes for all residents. The allocation of this space would not have any detrimental impact on the development nor prejudice the future residents in any way, given the eastern bank of units did not have access to this area as part of the original approval.'

The applicant also proposes a number of minor changes to the plans:

First Floor

- Minor changes to screen exhaust behind Unit No's 16-19;
- Minor changes to entries of Units No's 4-8;
- Insertion of automatic doors;
- Minor changes to services (i.e. Heat exhaust, stairs and lift); and
- Increased Private Open Space areas behind units Nos 1-8.

Second Floor

- Minor changes to the entries to Unit's No's 35 and 36;
- Minor changes to screen exhaust behind Unit's No's 35-38;
- Minor changes to entries of Unit No's 23-27;
- Insertion of automatic doors;

- Minor changes to services (i.e. Heat exhaust, stairs and lift); and
- High Level windows to be incorporated into walk-way.

Roof

- Minor changes to skylights; and
- The form has been refined to provide a single pitched roof over each unit. The roof level has increased in some areas, though remains under the approved maximum limit.

Elevation	Approved RLM	Proposed RLM
<u>Tweed Coast Road Elevation</u>		
Maximum Building Height	21.250	21.085
Res 2 Floor Level	16.35	16.7
Res 1 Floor Level	13.65	13.65
<u>Hastings Road Elevation</u>		
Maximum Building Height	21.25	21.25
Res 2 Floor Level	16.35	16.7
Res 1 Floor Level	13.65	13.65
Overall Height		
Tweed Coast Road Elevation	M 13.65m	M 13.65m
Hastings Road	17.65m (21.250 RL - 3.6m RL NGL)	17.485 (21.085 - 3.6m RL NGL)

Figure 1: Approved Section Plan

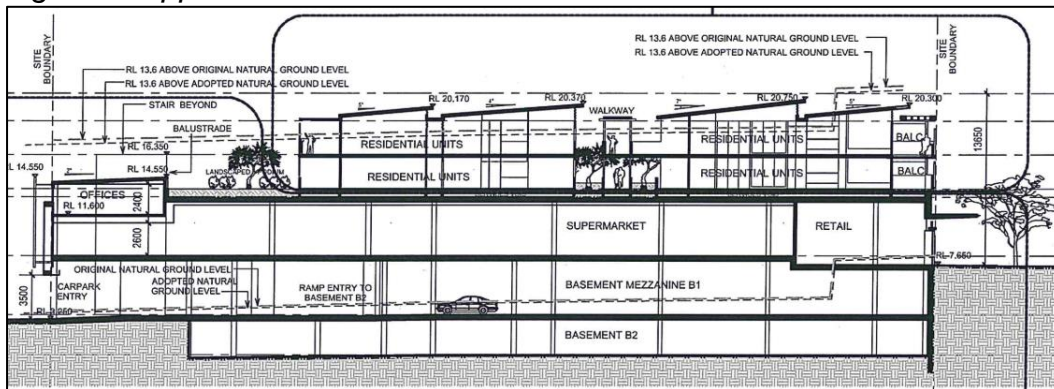


Figure 2: Proposed Section Plan

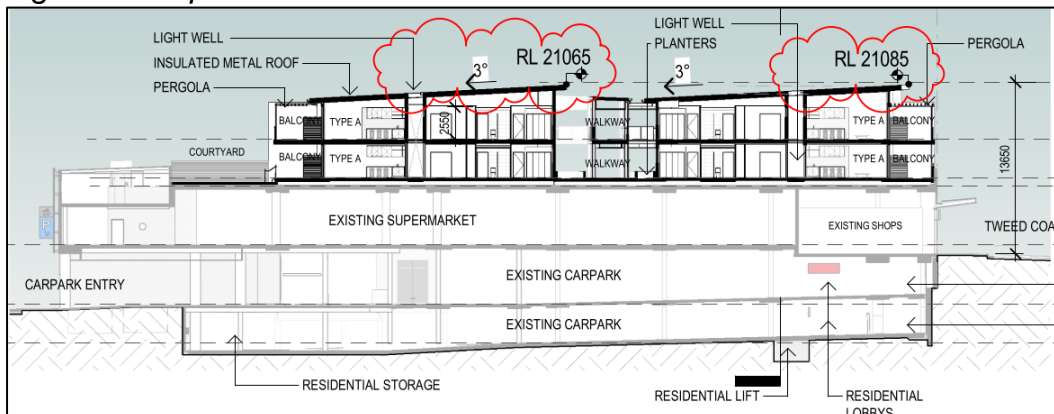


Figure 3: Approved Section Plan

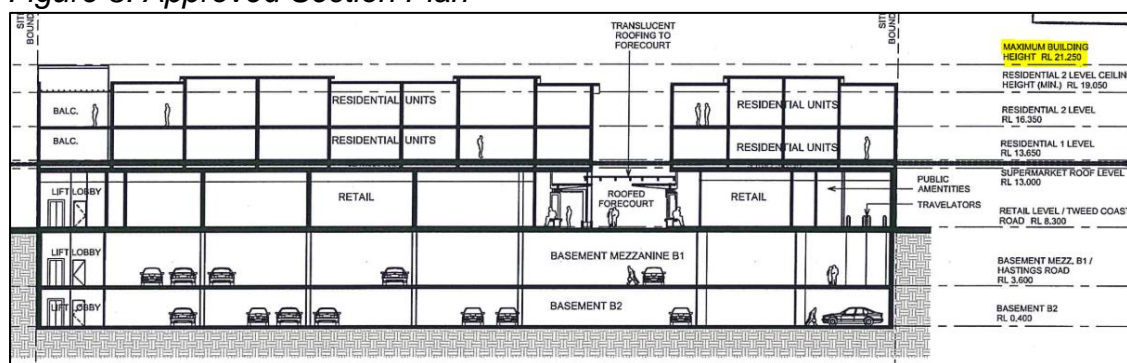
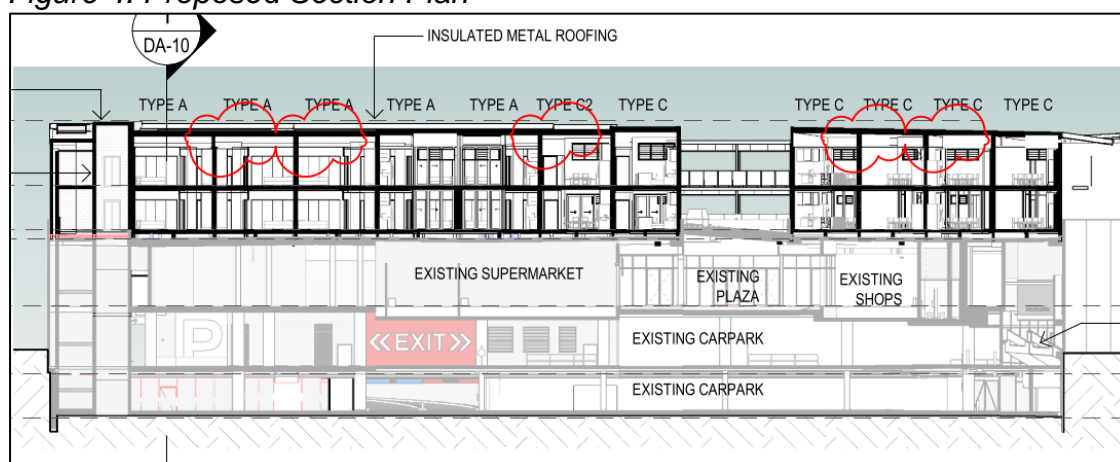


Figure 4: Proposed Section Plan



Assessment

The major changes here are threefold:

- Relocate western block of units by 2m towards Hasting Road;
- Allocate the western landscaped podium area to units 1 - 8 as private courtyards; and
- Change roof profile of level 2 units, maintaining the maximum height but generally increasing the extent of the building at this higher level.

To respond to these proposed changes, it is relevant to look back to the original application and the assessment of both the open space/landscaping requirements and the origin of these conditions.

Photomontages of approved development (when viewed from Hastings Road) which accompanied the original application are set out over.

Figure 5: Photomontage of approved building – Hastings Road elevation



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CABARITA DEVELOPMENT | Perspectives

24.02.09 | Dev. Application | DA-24 | A

Source: Stockwell Design & Construction Perspectives 24.02.2009 – Major Project Planning Portal

Figure 6: Photomontage of approved building - Hastings Road elevation



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CABARITA DEVELOPMENT | Hasting Road Photomontage

24.02.09 | Dev. Application | DA-10 | A

Source: Stockwell Design & Construction Perspectives 24.02.2009 – Major Project Planning Portal

The genesis of Condition B2, B3 and B4 can be found in the applicant's *Preferred Project Report in response to issues raised by the Department of Planning* (Planit Consulting) and the subsequent *Director-General's Environmental Assessment Report*.

An extract from the *Preferred Project Report & Response to Submissions, Cabarita Beach Mixed Use Proposal, July 2009* prepared by Planit Consulting set out below addresses concerns from the Department in the original assessment with regard to the upper landscaped podium:

'd) Upper landscaping podium – The department has the following concerns with the upper landscaped podium:

- i. overall size of common area outside unit entries;
- ii. ongoing maintenance and viability of landscaping within raised walkway overhead; and
- iii. non-compliance with SEPP 65 requirements for building separation. Note: the Code requires 12mtr separation between non-habitable rooms.

The raised walkway presents a number of issues, mostly due to a lack of sunlight penetration to this area. It is suggested that reduction in the overall depth of the proposed units be considered as a means to improve the general amenity of this area.

Response

Reducing the overall length of the units would provide only a small increase to the separation space between the buildings. Given the height restriction of 13.6mtrs across the site, the highest point of the units facing Mount Warning would be orientated closer to the Hastings Road frontage. This would create a visual amenity issue for the Reef Villa residential development adjacent to the site and a reduced amenity for the unit occupants themselves.

It was also considered that a reduction in the length of the units would be detrimental to the internal amenity of the units. The units are zoned "residential" providing opportunities for long term or permanent occupation. Accordingly, increased internal amenity created by greater internal spaces and functionality is deemed to be of utmost importance.

Flexible and functional design, large full height windows, raked ceiling lines, high level windows, large light voids and generous balcony spaces act so as to ensure significant access to natural sunlight all adding to the internal ambience of the units.

In response to comments from Council that 'The provision of upper storey communal space/s, for example a roof terrace, communal courtyard areas and the like could be incorporated into the development's design' the applicant responded as follows in the same report:

'The previous Development Application lodged with the DOP in December 2007 included roof top terraces. It was highlighted during consultation with the Cabarita Residents Association that the inclusion of this type of roof top space would only accentuate the height of the building on Tweed Coast Road. The heavily landscaped roof garden is provided to soften the view across the structure and provide a fore view to the mountains beyond. Opening this area as a communal space was considered. However, given the close proximity to the established residential community adjacent overlooking, privacy and noise issues would not create a conducive environment for this use.

The subsequent assessment of the Proposal is set out in the *Mixed Use Development, Cabarita Beach/Bogangar 07_0179 Director-General's Environmental Assessment Report Section 75I of the Environmental Planning and Assessment Act 1979*, November 2009 prepared by Department officers. An extract in relation to landscaped areas/podium is set out under.

5.5 PROVISION OF LANDSCAPED AREAS

The proposal as exhibited had designated share area open space landscaping in two main areas being the 402m² central forecourt (in the public domain adjacent to the supermarket), and the 397m² landscaped podium (adjoining the entries to residential units on level 2). The exhibited project also nominated a 265m² band of roof landscaping screening for level 2 apartments facing Hastings Road (inaccessible to residents) and 57m² of deep soil areas in the Hastings Road carpark. In total these landscaped areas form 19% of the site's open space areas.

Following exhibition of the EA, the Department raised with the proponent the project's non-compliance with SEPP 65 requirements for open space landscaping and residential amenity. In particular, the proponent was asked to reconsider the design of the podium landscaped area as it presented a number of issues with regards to achieving sufficient levels of solar access and residential amenity.

The main podium area represents a shared open space area which separates the dwelling entries of Building 1 (units 1-8, 21-28) from Building 2 (units 13-20, 33-40). This main podium area consists of a combination of planter boxes and residential walkways (Figure 15).

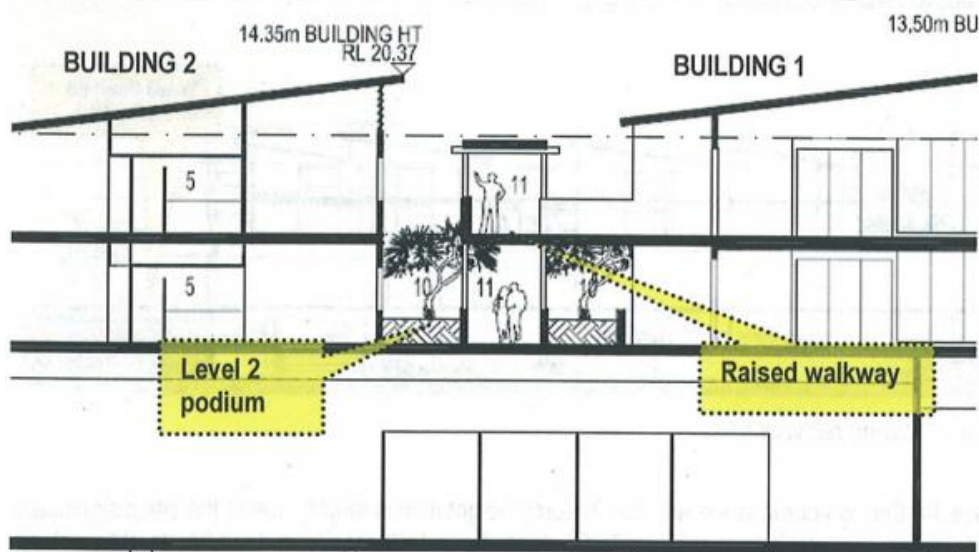


Figure 15 – Cross section of landscaped podium (Source: Environmental Assessment).

Above the level 2 communal area is a raised walkway servicing the entries to level 3 dwellings. The Department's concerns regarding the amenity problems associated with the landscape podium primarily relate to the proposed minimal separation distances between Building 1 from Building 2, and the overall length of these apartments. In particular, the lack of sunlight penetration to the level 2 area is considered poor design as it will prevent habitable rooms facing the podium from receiving natural sunlight. Further, the minimal solar access to the lower podium raises questions regarding the viability of plant growth in the absence of sufficient sunlight penetration.

The proponent responded to the issues raised by introducing visual screening devices to assist with separating the dwelling entries within the podium area. The proponent's PPR outlined that the inclusion of the screening provided both visual and acoustic privacy along with a further level of separation between habitable rooms. The PPR also noted that a further 192m² of landscaping has been added to inaccessible roof areas of level 2. These introduced screening devices and the additional landscaping appears to be an attempt by the proponent to address the guidelines set by the Residential Flat Design Code (the Code) which recommends building separation distances of 12m, and open space landscape areas (for mixed use developments) of between 25-30% (Table 2). The additional landscaping to the roof areas of the amended proposal is considered to be an improved outcome as it will allow for better vegetation screening to properties west of the site. However, the amendments have not increased the overall size of open space share areas accessible to occupants of the apartments. While the introduced screening attempts to improve the general amenity of the podium area, the minimal size of this shared common area and its lack of solar access remains of concern. Therefore, in order to achieve an acceptable level of residential amenity for future residents of the development and enlarge the landscaped podium, a condition of approval requiring the overall length of some apartments to be reduced has been recommended.

As a result, the consent was issued subject to Conditions B2, B3 and B4 which sought to resolve these issues associated with the landscape podium.

Relocation of Level 1 and 2 Units

It is difficult to see how the amended plans comply with the 'intent' of Condition B4, when they are clearly in breach of the second part of this condition: *'It should be noted that front setbacks from Hastings Road and Tweed Coast Road shall not be amended in order to comply with this condition.'*

Nevertheless, there is no objection to this element of the modification:

- The balconies of Units 1 - 8 and Units 20 - 27 will be located between 15.8m to 17.2m from the Hasting Road boundary. While no updated photomontages or 3D renders of the proposal have been submitted with this application it is not considered that the visual impact from street level will be significant.
- The applicant has not submitted any updated shadow diagrams for this proposal. Notwithstanding this, a review of the shadow diagrams submitted with the original application (Refer to Attachment 2) would indicate that there would not be a significant increase in overshadowing of adjacent properties as a result of this design change.
- The applicant has also not provided any analysis of the impact on view sharing, other than submitting that view sharing will not be impacted. However, having regard to the approved development and the height of the adjoining balconies at 49 Tweed Coast Road (Waterbreak Views), it is not apparent that there would be any additional view loss.

Figure 7: View of development from Hastings Road (source: Google Instant street view)

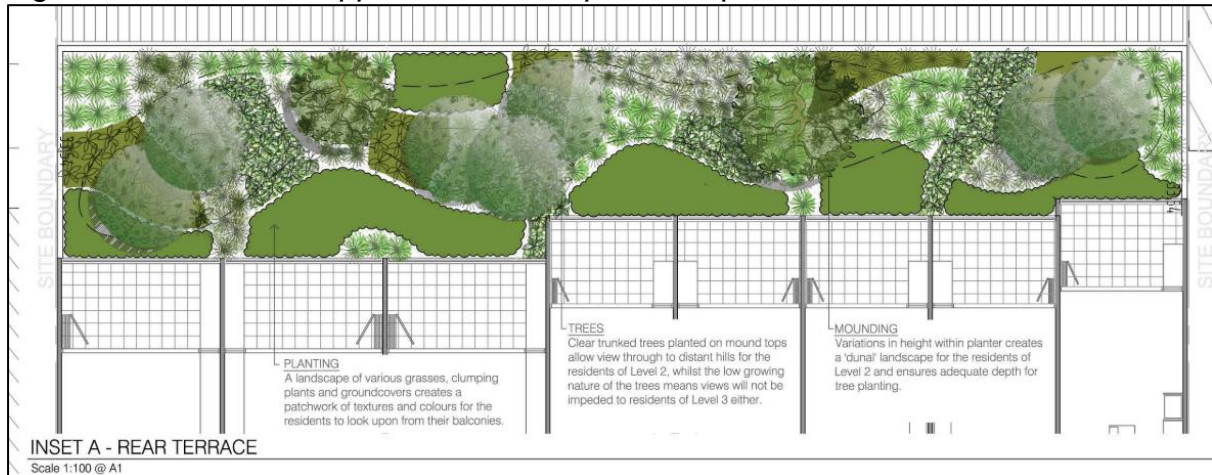


Allocation of landscaped podium to private courtyards

In relation to the proposed modification to allocate the landscaped rooftop area adjoining Units 1-8 to these units, concerns are raised.

As set out above, this landscape area is currently not directly accessible from any of the residential units, and from the approved concept landscape plans, it would appear that the intent of this area was more to provide a landscaped view than a functional recreational or open space area.

Figure 8: Extract from approved Landscape Concept Plan (Source: Jeremy Ferrier)



It is not clear from the plans, if this area is accessible to the residents in the development via the stairs adjoining the Woolworths offices, and as such it is unlikely that in its current form it would function as communal open space.

However the current proposal to allocate the area as private open space for Units 1 - 8 would result in the loss of any opportunity to achieve this. As demonstrated from the proposed plans, it is possible to allow for access directly from Units 1-8 to this area, and as such an opportunity to create a communal open space at this location, directly accessible from a number of units, with the potential to allow access for other unit occupiers through the rooftop stairs.

It is acknowledged (as set out in the Preferred Report accompanying the original application) that using this area as an active recreational communal space (bbqs, entertainment areas, etc.) could create issues with regard to overlooking, loss of privacy and noise issues. However there is the potential for the more passive use of this area with the provision of seating orientated to the west and a walking path/pavers connecting accesses to the seating areas.

This would be in line with the Apartment Design Guide which encourages the provision of open space which provides amenity in the form of landscape character and design, opportunities for social interaction, environmental and water cycle management, and amenity and outlook for residents. Refer to some relevant extracts from the Apartment Design Guide over.

On this basis, it is recommended that the applicant be requested to reconsider this modification and to retain this area as communal open space accessible to as many units as possible.

3D Communal and public open space

Communal open space is an important environmental resource that provides outdoor recreation opportunities for residents, connection to the natural environment and valuable 'breathing space' between apartment buildings. It also contributes to the appeal of a development and the wellbeing of residents. Some communal open space is accessible and usable by the general public.

The size, location and design of communal or public open space will vary depending on the site context and the scale of development. The function of open space is to provide amenity in the form of:

- landscape character and design
- opportunities for group and individual recreation and activities
- opportunities for social interaction
- environmental and water cycle management
- opportunities to modify microclimate
- amenity and outlook for residents.

The useable part of the communal open space area may be supplemented by:

- additional landscape area, circulation space and areas for passive use and outlook
- public land used for open space and vested in or under the control of a public authority.

High quality open space is particularly important and beneficial in higher density developments (for private open space requirements see section 4E Private open space and balconies).



Figure 3I



Figure 3D.3 The principal usable part of communal open spaces should be consolidated



Figure 3D.4 Recreation areas such as the communal garden setting above allow residents to relax and connect to the natural environment

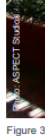


Figure 3I

Objective 3D-1

An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping

Design criteria

1. Communal open space has a minimum area equal to 25% of the site (see figure 3D.3)
2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter)

Design guidance

Communal open space should be consolidated into a well designed, easily identified and usable area

Communal open space should have a minimum dimension of 3m, and larger developments should consider greater dimensions

Communal open space should be co-located with deep soil areas

Direct, equitable access should be provided to communal open space areas from common circulation areas, entries and lobbies

Where communal open space cannot be provided at ground level, it should be provided on a podium or roof

Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should:

- provide communal spaces elsewhere such as a landscaped roof top terrace or a common room
- provide larger balconies or increased private open space for apartments
- demonstrate good proximity to public open space and facilities and/or provide contributions to public open space



Figure 3D.7 The location and design of open space responds to microclimate and site conditions



Figure 3D.8 The public open space should be well connected with public streets along at least one edge



Figure 3D.9 Communal open space and public domain should be readily visible from habitable rooms and private open space areas while maintaining visual privacy



Figure 3D.10 Community gardens incorporated into residential developments foster interaction amongst residents of all ages

Objective 3D-2

Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting

Design guidance

Facilities are provided within communal open spaces and common spaces for a range of age groups (see also 4F Common circulation and spaces), incorporating some of the following elements:

- seating for individuals or groups
- barbecue areas
- play equipment or play areas
- swimming pools, gyms, tennis courts or common rooms

The location of facilities responds to microclimate and site conditions with access to sun in winter, shade in summer and shelter from strong winds and down drafts

Visual impacts of services should be minimised, including location of ventilation duct outlets from basement car parks, electrical substations and detention tanks

Objective 3D-3

Communal open space is designed to maximise safety

Design guidance

Communal open space and the public domain should be readily visible from habitable rooms and private open space areas while maintaining visual privacy. Design solutions may include:

- bay windows
- corner windows
- balconies

Communal open space should be well lit

Where communal open space/facilities are provided for children and young people they are safe and contained

3D Communal and public open space



Figure 3D.11 Attractive and inviting communal open spaces with good solar access should be provided

Changes to roof profile

In relation to the proposed changes to the roof profile, this appears to be driven by the introduction of lightwells to increase solar access to the units.

The stepped roof profile of the approved development is visually more attractive than what is proposed and more successfully breaks up the bulk of the development. The approved roof plan is also consistent with the roof line controls in the Development Control Plan 2008 (Section B19 – Bogangar/Cabarita beach Locality Plan):

B19.15.3 Roof Lines

Roofs are strong visual elements in residential design.

Purely functional, flat roofs, with protruding lift over-runs or service plant rooms have little visual interest and do not contribute to the streetscape. Imaginative roof structures are encouraged, to produce a visually interesting skyline while retaining important views from adjoining developments.

Lift over-runs and service plants should be concealed within well designed roof structures that are integrated with the overall design of the building.

New development must maintain diversity in the design of roofed areas and avoid the construction of a “monotonous” roofscape. Roofed areas should not adversely impact on neighbouring properties and not detract from the existing roofline character

While it is recognised that the driver for the change in the roof profile appears to result from the introduction of the skylights (to provide additional light to internal areas), the upper level will be highly visible from Hastings Road.

Photo 1: View of southern elevation from Hastings Road



Photo 2: View of northern elevation from Hastings Road



Photo 3: View of southern elevation from Tweed Coast Road



As such, the applicant should be requested to address the controls for rooflines in the DCP – Section B19.

The change in the roof profile, will also result in an increase in the overall height of the building. The maximum height identified for the site in the Tweed Local Environmental Plan 2014 (which was adopted after the approval of this application) is 13.6m. While the maximum height in the approved plans (21.250m RL) is respected, the extent of the building at this maximum height is increased. As can be seen from the approved and proposed sections and elevations in Attachment 1.

Change to unit design

It is acknowledged that the original application was assessed against the now superseded Residential Flat Design Code, and that the approved unit layout is similar to what is currently proposed. It is noted that the current layouts are inconsistent with the current Apartment Design Guidelines with regard to the following design criteria in Part 4: Designing the building:

Objective 4A – 1: To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space

Design Criteria 2: In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid winter

This has not been demonstrated and given the orientation of the site, it is unclear if it can be achieved. However it is noted that the approved layout also appears to be non-compliant in this regard.

Objective 4D-2: *Environmental performance of the apartment is maximised*
Design Criteria 2: *In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.*

In Unit types B and C, the kitchen/dining room is 10.3m from an external window, though it does have access to a skylight/void.

Condition B29

Monetary Contributions

B29 Section 94 Monetary Contributions

- 1) Prior to the endorsement of a Subdivision Certificate for each stage of the subdivision, the proponent must pay, in proportion to the additional lots created by that stage, the following contributions to Council pursuant to section 94 of the Environmental Planning and Assessment Act 1979:

(1) Amount of Contributions

For Stage 1

<i>Tweed Road Contribution Plan No 4</i>			
	<i>No. of Trips</i>	<i>\$ per trip</i>	<i>Sub-total</i>
	321.773 Trips	\$868 + \$87	\$307,293.21

For Stage 2

<i>Tweed Road Contribution Plan No 4</i>			
	<i>No. of Trips</i>	<i>\$ per trip</i>	<i>Sub-total</i>
	156 Trips	\$868 + \$87	\$148,980
<i>S94 Plan No 5 Open Space (Casual)</i>			
	<i>No. of ET</i>	<i>\$ per ET</i>	<i>Sub-Total</i>
	17.196	\$502 + \$24	\$9,045
<i>S94 Plan No 5 Open Space (Structured)</i>			
	<i>No. of ET</i>	<i>\$ per ET</i>	<i>Sub-Total</i>
	17.184	\$575+ \$27	\$10,345
<i>S94 Plan No 11 Shirewide Library Facilities</i>			
	<i>No. of ET</i>	<i>\$ per ET</i>	<i>Sub-Total</i>
	17.184	\$792	\$13,610
<i>S94 Plan No 12 Bus Shelters</i>			
	<i>No. of ET</i>	<i>\$ per ET</i>	<i>Sub-Total</i>
	15.616	\$60	\$937
<i>S94 Plan No 13 Environ Cemetery</i>			
	<i>No. of ET</i>	<i>\$ per ET</i>	<i>Sub-Total</i>
	18.48	\$101 + \$19	\$2,218
<i>S94 Plan No 15 Community Facilities (Tweed Coast – South)</i>			
	<i>No. of ET</i>	<i>\$ per ET</i>	<i>Sub-Total</i>
	31	\$1,325	\$41,075
<i>S94 Plan No 16 Emergency Facilities (Surf Lifesaving)</i>			
	<i>No. of ET</i>	<i>\$ per ET</i>	<i>Sub-Total</i>

	17.2	\$113	\$1,944
<i>S94 Plan No 18 Extensions to Council Administration Offices & Technical Support Facilities</i>			
	<i>No. of ET</i>	<i>\$ per ET</i>	<i>Sub-Total</i>
	18.751	\$1772.82	\$33,242
<i>S94 Plan No 22 Cycleways</i>			
	<i>No. of ET</i>	<i>\$ per ET</i>	<i>Sub-Total</i>
	17.136	\$451	\$7,728
<i>S94 Plan No 26 Regional Open Space (Casual)</i>			
	<i>No. of ET</i>	<i>\$ per ET</i>	<i>Sub-Total</i>
	17.152	\$1,042	\$17,872
<i>S94 Plan No 26 Regional Open Space (structured)</i>			
	<i>No. of ET</i>	<i>\$ per ET</i>	<i>Sub-Total</i>
	17.144	\$3,656	\$62,678

2) *Timing and Method of Payment*

The contribution shall be paid in the form of cash or bank cheque, made out to Tweed Shire Council. For accounting purposes, the contribution may require separate payment for each of the categories above and you are advised to check with Council.

Evidence of the payment to Council, shall be submitted to the Certifying Authority prior to the issue of the Subdivision Certificate for each stage of the project.

3) *Section 94 Plans*

A copy of the Section 94 contribution plans may be inspected at Tweed Shire Council, Civic & Cultural Centre, Tumbulgum Road, Murwillumbah NSW 2484.

Council has no objection to the modification of this condition to reflect correct number of units approved.

The plans approved under MP07_0179 MOD 1 were 24 x 1 bed units and 14 x 2 bed units. The plans submitted with this application seek to change the unit mix to 22 x 1 bed units and 16 x 2 bed units. The tables below provide details of the S7.11 contributions applicable in both cases.

For Stage 2 (based on approved plans: 24 x 1 bed and 14 x 2 bed)

Tweed Road Contribution Plan No 4			
	No. of Trips	\$ per trip	Sub-total
	148.2 Trips	\$1,145 base rate + \$250 indexation	\$206,739
S94 Plan No 5 Open Space (Casual)			
	No. of ET	\$ per ET	Sub-Total
	15.5833	\$502 base rate + \$171 indexation	\$9,365
S94 Plan No 5 Open Space (Structured)			
	No. of ET	\$ per ET	Sub-Total
	15.5833	\$575 base rate + \$196 indexation	\$10,728
S94 Plan No 11 Shirewide Library Facilities			
	No. of ET	\$ per ET	Sub-Total
	15.5833	\$792 base rate + \$215 indexation	\$14,012
S94 Plan No 12 Bus Shelters			

	No. of ET	\$ per ET	Sub-Total
	15.5833	\$60 base rate + \$16 indexation	\$1,058
S94 Plan No 13 Environ Cemetery			
	No. of ET	\$ per ET	Sub-Total
	15.5833	\$101 base rate + \$42 indexation	\$1,990
S94 Plan No 15 Community Facilities (Tweed Coast – South)			
	No. of ET	\$ per ET	Sub-Total
	15.5833	\$1,305.60 base rate + \$355.40 indexation	\$23,112
S94 Plan No 16 Emergency Facilities (Surf Lifesaving)			
	No. of ET	\$ per ET	Sub-Total
	15.5833	\$113 base rate + \$0 indexation	\$1,572
S94 Plan No 18 Extensions to Council Administration Offices & Technical Support Facilities			
	No. of ET	\$ per ET	Sub-Total
	15.5833	\$1,759.90 base rate + \$492.21 indexation	\$31,337.21
S94 Plan No 22 Cycleways			
	No. of ET	\$ per ET	Sub-Total
	15.5833	\$447 base rate + \$121 indexation	\$7,903
S94 Plan No 26 Regional Open Space (Casual)			
	No. of ET	\$ per ET	Sub-Total
	15.2482	\$1,031 base rate + \$280 indexation	\$18,242
S94 Plan No 26 Regional Open Space (structured)			
	No. of ET	\$ per ET	Sub-Total
	15.5833	\$3,619 base rate + \$982 indexation	\$64,021

For Stage 2 (based on proposed plans: 22 x 1 bed and 16 x 2 bed)

Tweed Road Contribution Plan No 4			
	No. of Trips	\$ per trip	Sub-total
	148.2 Trips	\$1,145 base rate + \$250 indexation	\$206,739
S94 Plan No 5 Open Space (Casual)			
	No. of ET	\$ per ET	Sub-Total
	15.2482	\$502 base rate + \$171 indexation	\$9,589
S94 Plan No 5 Open Space (Structured)			
	No. of ET	\$ per ET	Sub-Total
	15.2482	\$575 base rate + \$196 indexation	\$10,985
S94 Plan No 11 Shirewide Library Facilities			
	No. of ET	\$ per ET	Sub-Total
	15.2482	\$792 base rate + \$215 indexation	\$14,348
S94 Plan No 12 Bus Shelters			
	No. of ET	\$ per ET	Sub-Total
	15.2482	\$60 base rate + \$16 indexation	\$1,083
S94 Plan No 13 Environ Cemetery			
	No. of ET	\$ per ET	Sub-Total
	15.2482	\$101 base rate + \$42 indexation	\$2,037
S94 Plan No 15 Community Facilities (Tweed Coast – South)			
	No. of ET	\$ per ET	Sub-Total
	15.2482	\$1,305.60 base rate + \$355.40 indexation	\$23,666
S94 Plan No 16 Emergency Facilities (Surf Lifesaving)			

	No. of ET	\$ per ET	Sub-Total
	15.2482	\$113 base rate + \$0 indexation	\$1,610
S94 Plan No 18 Extensions to Council Administration Offices & Technical Support Facilities			
	No. of ET	\$ per ET	Sub-Total
	15.2482	\$1,759.90 base rate + \$492.21 indexation	\$32,088.06
S94 Plan No 22 Cycleways			
	No. of ET	\$ per ET	Sub-Total
	15.2482	\$447 base rate + \$121 indexation	\$8,093
S94 Plan No 26 Regional Open Space (Casual)			
	No. of ET	\$ per ET	Sub-Total
	15.2482	\$1,031 base rate + \$280 indexation	\$18,679
S94 Plan No 26 Regional Open Space (structured)			
	No. of ET	\$ per ET	Sub-Total
	15.2482	\$3,619 base rate + \$982 indexation	\$65,555

Condition B30

B30 Section 64 Monetary Contributions

- 1) *Contributions plans relevant to the subdivision include:*
 - a. *Development Servicing Plan for Water Supply Services (July 2007)*
 - b. *Development Servicing Plan for Sewerage Services (July 2007)*
- 2) *Prior to the endorsement of a Subdivision Certificate for stage 2 of the subdivision, the proponent must pay, in proportion to the additional lots created by that stage, the following contributions to Council pursuant to section 64 of the Local Government Act 1993.*

Water Supply Services		Sewerage Services	
Calculation	Total	Calculation	Total
\$11,571 x 7.8582ET	\$90,927.23	\$5,560 x 16.8929ET	\$93,919.52
TOTALS	\$90,927.23		\$93,919.52

- 3) *These charges to remain fixed for a period of twelve (12) months from the date of this approval and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.*
- 4) *A copy of the section 64 contribution plans may be inspected at Tweed Shire Council, Civic & Cultural Centre, Tumbulgum Road, Murwillumbah NSW 2484.*

Council has no objection to modifying this condition.

The updated charges based on the Approved plans for 24 x 1 bed and 14 x 2 bed units are shown under:

	ET	Fee	Total
Water Developer Charges	6.17	\$11,268	\$69,525.81

Sewer Developer Charges	14.359	\$7,288	\$104,648.39
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Water = $22.437 - 16.2668 = 6.17$ ET @ \$11,268 = \$69,525.80

Sewer = $33.843 - 19.484 = 14.359$ ET @ \$7,288 = \$104,648.40

The updated charges based on the proposed plans for 22 x 1 bed and 16 x 2 bed units are as shown under.

	ET	Fee	Total
Water Developer Charges	6.510	\$11,268	\$73,358.30
Sewer Developer Charges	14.859	\$7,288	\$108,292.40

Total Section 64 Developer Contributions

Water = $22.777 - 16.2668 = 6.51$ ET @ \$11,268 = \$73,358.30

Sewer = $34.343 - 19.484 = 14.859$ ET @ \$7,288 = \$108,292

If you have any questions in relation to this letter, please contact Valerie Conway, Acting Team Leader, Development Assessment on 02 6670 2605.

Your sincerely,



Per

Lindsay McGavin

Manager Development Assessment and Compliance