

21<sup>st</sup> January 2008

**The General Manager  
Tweed Shire Council  
PO Box 816  
MURWILLUMBAH NSW 2484**

Attn: Rowena Michel

**Preferred Project Report – Section 75H of the EP&A Act, 1979  
DA07/1142, Lots A & B in DP 407809, Nos. 3 & 5 Tweed Terrace, Tweed Heads**

Dear Sir,

Further to the above and Council's concerns dated 4<sup>th</sup> December 2007, we hereby attach completed amended plans and documentation setting out responses to the concerns raised therein.

For reasons of abundant caution, this response takes the form of a 'preferred project report' in accord with Section 75H of the EP&A Act, 1979. We note that in this regard the minister 'may' determine the need for re advertising of the proposal, however in this instance and with reference to the relatively small scale of the development, it is considered that readvertising is in no way warranted.

If you have any further questions regarding this matter or would like to meet to discuss, please do not hesitate to contact me on (02) 6674 5001.

Yours sincerely,

Adam Smith  
**Director**  
**PLANIT CONSULTING Pty Ltd**

**Attachment**

# Preferred Project Report – Section 75H of the EP&A Act, 1979

## DA 07/1142 (DOP MP07-0056)

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This report is prepared in response to issues raised during the assessment of the proposal. In this regard correspondence from Tweed Shire Council dated 4<sup>th</sup> December sets out the primary concerns. A number of project team meetings have been undertaken with a view to addressing the concerns raised and arriving at a point which suitably addresses the matters raised.

In this regard a full set of ‘amended’ architectural plans are attached. These plans, which have been prepared by the pre-eminent and award winning firm in South East Queensland, aim to address matters raised by the independent review undertaken on behalf of Council.

## Preferred Project

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In line with consultations to date, the project has been amended in the following ways:-

1. The height of the building has been reduced from 50.95m AHD to 49.8m AHD. This reduction represents more than 1m in height reduction and assists greatly, in combination with roof form amendments carried out, in ensuring greater BHP compliance and an equivalent reduction in overall building mass.
2. Significant changes have been made to the roof form and distribution, inclusive of a lowering of roof voids in order to reduce scale. An outline of the previous roof outline has been provided, which demonstrates that in some areas up to 2.5m in roof height and (vertically) and 7m in roof form (horizontally from edges) have been trimmed from the proposal. Not only does the latter provide a more finer capping to the proposal, it also assists in ensuring that the roof form does not impose or dominate upon the streetscape and residents behind.
3. Other changes as required by Council in its correspondence have also been carried out. These are described in detail below.

## Response to Issues Raised

### Attachment 1 – Council’s Key Issues (DA07/1142)

#### Suitability of the Proposal (Bulk, Scale & Visual Amenity):

**Comment:** Council’s concerns in this regard have been addressed by way of reducing the building height and making significant changes to the extent of BHP encroachment on each of the side and rear boundaries. Given that the site provides for the highest most point between Hill Street, Tweed Terrace and the unnamed lane to the rear and that the land then falls off markedly to the west, it is possible to determine that given a compliant building height, no properties to the rear or surrounding will gain or have expectation to gain, views over or through the site. There is however an expectation from surrounding properties to gain views around or through the fringes of the development, with particular reference to the two (2) properties immediately to the west of the site.

The proposal recognises the view expectations from surrounding properties and in fact offers more in terms of view retention than it is entitled to if adopting the Land & Environment Court view principles. This is demonstrated in the attached plans, which incorporate an overlay of the existing building (recently constructed) to the west. These plans depict the fact that the views from this property will be retained from the full easterly and southerly extent that it currently enjoys. We also note that as the remaining encroachment in to the BHP is limited on the southern elevation to the uppermost level, and that given the

lower level of the adjoining property, no impacts associated with the encroachment will result in respect of the adjacent property.

The same can also be said for the property to the west of the site and fronting the unnamed lane. This property will enjoy views (once redeveloped) down the lane to the east and the Pacific Ocean. The proposal recognises this fact and exhibits strong compliance with the BHP on its northern elevation, thus ensuring the ability of the adjacent site to be developed within expectations.

We respectfully do not concur with the Council's concerns in respect of Coast Character. In this regard the proponent aims to break the mould and standard of buildings in the Tweed area and in this respect the building proposes a level of finish and design that is consistent entirely with coastal trends. In this regard, the proposal incorporates a strong mix of timbers, stonework and masonry whites which are reflective of the coastal environment. Indeed, the materials and design characteristics proposed are entirely more coastal in character than surrounding buildings many of which have been recently constructed and consist predominantly of rendered masonry and glass only.

It is contended that the proposal is consistent with high quality objectives of SEPP 65. We are unaware of any reason as to why the proposal would be deemed to be inconsistent with the provisions of SEPP 71 given the sites infill character and the proposal's consistency with the desired future character of the area.

**Shadow:**

**Comment:** Full shadow diagrams have been provided, inclusive of delineated areas relating to the coastal foreshore opposite. The proposal complies with the Council's requirements in relation to shadow generation and adjoining properties.

**Privacy / Views / Landscaping:**

**Comment:** As discussed above, the proposal will not have any adverse impact upon the views reasonably expected to be retained within the newly constructed building to the west and nor for that matter within the future form of the likely development of the property to the west (with frontage to the unnamed lane). No other views will be disrupted by the proposal in a manner that could be considered unreasonable in the context of the zoning of the land, the prescriptive building height and most importantly the fact that the BHP encroachments that do remain are at a level that is higher than all surrounding properties.

A landscaping plan prepared on behalf of the proponent is attached for Council's review.

There is potential for privacy to be of concern in respect of the property to the west that has been recently constructed and also in respect of the future redevelopment form of the existing single dwelling house adjoining. This has been addressed in part by the orientation of private open space on the newly constructed building but also by the inclusion of the proposed timber screen to the rear and the limited window openings outside of this area on the western elevation.

**Public Access:**

**Comment:** The existing footpath access is to be retained. If damaged in construction, then a new or partly new footpath will be constructed in its stead.

**Housing Choice:**

**Comment:** Whilst we understand the intent of Council in this regard we have yet to see any examples of where council has actually enforced or imposed pressure on developers where the opportunity exists. For instance this site represents one of the most valuable and expensive sites in the shire yet it is of a size that permits only a limited yield and therefore limited ability for the provision of both low to high end housing. On the flip side however, council has been involved in the assessment of several other larger scale multi

dwelling housing developments, also in the Tweed Heads area, which have incorporated numbers upwards of and often in excess of 100 apartments. In these circumstances, where the development could reasonably provide a choice of housing types, the council has not requested this nor imposed it as a means of addressing this concern. It is of course significant concern then when the issue is raised in respect of a development comprising only 12 apartments (and no ability to provide for more due to parking constraints) and located on the most expensive land in the shire.

Whilst we consider it unreasonable that Council would deem this site as appropriate for low cost housing, we do note that in fact this proposal will provide for a level of high quality housing that is not available in the rest of the shire, let alone Tweed Heads and as such arguably meets the need to provide for an alternate housing choice.

#### **Waste Management:**

**Comment:** A letter from Solo waste is attached in respect of the proposed waste management measures. In this regard, the proposed refuse room provides for chute operated general waste collection and an individual 'drop and go' recycled bin within the basement. Each bin will measure 1.0m x 1.4m and will be transported to the lane side waste collection point by the body corporate manager on the day of collection.

#### **Hazard Management & Mitigation / Water Cycle Management:**

**Comment:** A revised Soil and Water Management plan has been prepared by the consulting engineers and is attached for Council's review. This revised report addresses stormwater management within the construction process, inclusive of treatment of excavation pit waters.

#### **General Requirements – Statutory Considerations:-**

**Comment:** The approval of DOTARS has been requested but not yet received. We note that this approval is not required prior to the determination of the application and that we consider it on the basis of preliminary discussions, unlikely that approval from DOTARS will not be granted.

### **Response to Issues Raised**

#### **Attachment 2 – Additional Information Required (DA07/1142)**

##### **General Summary**

**Comment:** The proposal has been substantially amended in respect of both building height and building height plane compliance. The proposal now complies with the statutory height limits and offers substantially greater compliance in respect of the building envelope, particularly where this control relates to the actual impacts of the development on adjoining or surrounding properties. An encroachment continues to apply to the front and rear elevations, although each of the side elevations (and those most related to view impacts for properties to the rear) is now overwhelmingly compliant (refer attached plans in this regard).

##### **Landscape / Open Space Provision**

**Comment:** A landscape plan has been prepared and is attached for council's review.

We also note that the matter of landscape and open space provision was addressed in the original environmental assessment, wherein it states:-

*The DCP requires the provision of 20m<sup>2</sup> per dwelling, equating to a total of 240m<sup>2</sup>. This can be provided in part, above ground within private open space balconies.*

*In this instance, the ground level open space (including ground level terrace) incorporates a total area of 451.37m<sup>2</sup>, whilst each unit incorporates a minimum terrace or balcony area of 30.1m<sup>2</sup>.*

*The proposal is compliant with the landscape / open space provisions of Council.*

It is noted that in fact the DCP requires the provision of 25m<sup>2</sup> per dwelling, equating to a total provision of 300m<sup>2</sup>. The proposal remains consistent with the DCP in this regard, with well in excess of this being provided entirely at the ground level in addition to greater than required provision in respect of private balconies. A revised open space areas plan has been prepared and is attached. This plan demonstrates that an area has been provided at ground level equating to 385.4m<sup>2</sup>.

#### **State Environmental Planning Policy No.65**

**Comments:** The proposal is considered to be consistent with the requirements of SEPP 65, with demonstrated evidence of substantially improved building envelope compliance due to stepping of the roof lines. Details relating to the location of adjoining windows and private open space balconies have been provided in respect of the newly constructed building to the west.

#### **State Environmental Planning Policy No.71 – Coastal Protection**

**Comments:** An amended site analysis and photo montage set has been undertaken which incorporates revised perspectives from realistic levels and in the context of surrounding parks and recreation areas.

We note council's concerns in respect of view loss and have made previous comment in this regard. We also consider that the proposal, considered its high quality finish and improved compliance with the envelope (as viewed from the coast) is consistent with the provisions of SEPP 71.

A revised Statement of Commitments has been prepared which identifies the retention of the existing footpath. We also note that Council would ordinarily impose its standard condition in this regard, of which the proponent is amiable to.

#### **North Coast Regional Environmental Plan 1988 – Clause 32B**

**Comment:** Revised shadow diagrams have been prepared that show the extent of overshadowing on the adjacent coastal foreshore reserve. A SEPP 1 in respect of the overshadowing was previously submitted with the original EA.

#### **NSW Coastal Policy**

**Comment:** An amended soil and water management plan has been prepared and is attached for the Council's review. This amended report addresses Council's concerns and the requirement of the NSW Coastal Policy.

#### **Tweed Local Environmental Plan 1988**

**Comment:** Plans have been prepared limiting the height to 49.8m which is consistent with the requirements of the TLEP 2000. Also, approval has been sought from the DOTARS. We note that their approval is not required prior to the granting of consent and that indeed, Council has previously conditioned this requirement.

## Site Access & Car Parking Code

**Comment:** The revised Statement of Commitments incorporates confirmation that all tandem spaces will be utilised by the same apartment. We note that this matter could also be conditioned.

## Tweed Heads DCP – Section B2

**Comment:** The proposal has been amended considerably in line with the Council's concerns and now demonstrates overwhelming compliance with the building envelope in respect of each of the side elevations. Greater compliance is now also afforded in respect of the front elevation and hence how the proposal presents to the public realm. In regards to the latter, we note that some encroachments remain, however these are in the main limited to the architectural and privacy fin that separates the units. Indeed the section diagrams attached confirm that the encroachment does not go through any of the proposed balconies fronting Tweed Terrace.

Encroachments remain to the rear of the building adjacent to the recently completed building and older style dwelling house to the west. In this respect an assessment of the proposed encroachment has been undertaken in respect of the objectives of the DCP as it relates to the building envelope. Importantly we note that the DCP is in a performance criteria format and that therefore the acceptable solutions can be varied in instances where the objectives can be met. In this regard the objectives relate to ensuring that surrounding properties retain sufficient views and that the amenity of the surrounding area is not adversely impacted upon.

The objectives of the building envelope control are to:

- *ensure that building setbacks to property boundaries increase relative to any increase in building height;*

**Comment:** The proposal has been designed so that where important, compliance with the BHP has been achieved. In particular, the side elevations are now overwhelmingly compliant. The front elevation also demonstrate overwhelming compliance, however given the width of the allotment, encroachments remain in relation to the rear of the proposal. Given the known footprint and floor layout of the recently constructed building and the fact the ocean views (primary) will remain for the other adjoining property down the unnamed lane, the proposed encroachment to the rear is considered acceptable. In this regard, reference is also made to the fact that the rear elevation has been designed such that no direct overlooking opportunities or privacy impacts are likely (refer to proposed screening in this regard and limited window openings).

- *minimise the visual and physical impact and apparent bulk of tall buildings on adjoining developments and public streets and spaces;*

**Comment:** Please refer to the comments provided above and the attached plans. In this respect the proposal is considered to demonstrate good manners to adjoining properties and will not result in adverse amenity impacts.

- *facilitate adequate sunlight access to and minimise shadow impact on adjoining properties and public streets and spaces;*

**Comment:** The attached plans incorporate overshadowing diagrams that accurately confirm that the proposal will not have an adverse impact upon adjoining properties with respect to excessive overshadowing. The site is fortunate in this regard that the orientation of the sites ensures that strong northerly sun gains access to adjacent lands.

- *reduce ground level wind effects caused by tall buildings;*

**Comment:** The proposal represents a building height of six storeys only which is below that height considered to give rise to impacts in this regard.

- *facilitate the development of taller, narrow buildings which produce visual diversity and can preserve important view corridors.*

**Comment:** The proposal recognises the need to ensure that view lines are preserved, however in this instance the proposed amended plans satisfy this requirement as demonstrated in the attached

plans. Key views associated with the site are related to the direct easterly orientation which has been preserved to within reason by ensuring compliance with the envelope on each of the side elevations. That property on the opposite (northern) side of the unnamed lane also gains direct view access to the east and away from the remaining corridor between the rear of the proposal and the adjoining western lots. The latter ensures that the proposal, inclusive of the BHP encroachment on the western elevation, will not impact upon important view corridors.

In so far as energy efficiency is concerned, the proposal has been subject to Basix and Natethers modelling, each of which have confirmed that the proposal more than meets the requisite standards. In this regard the provision of multiple bathrooms and bedrooms is in itself unlikely to cause inefficient energy outcomes particularly as significant offset measures have been imposed. A copy of the modelled Basix and Natethers assessments are attached.

The proposed roof line is in our opinion a far superior outcome to that originally proposed. In this regard, significant amendments have been undertaken inclusive of a reduction in height and a reduction in horizontal spread. The proposed roofline has also been stepped in at the fringes to improve BHP compliance and maximise view lines from the rear. The front capping of the roof line is now dominated by glass insets as opposed to being of a solid material as previously proposed, whilst corners have been offset both horizontally and vertically in order to ensure a minimal roofline length.

Details relating to the recently constructed development have been provided in respect of both the building height and outline (refer elevations) and the location of balconies and windows (refer attached roof plan). It is evident that in this regard balconies are oriented to the south (Tweed River Mouth and Fingal). It is also evident that the apartments to the west will retain a clear view to the Pacific Ocean to the east as a result of the proposed amendments. Balconies to the rear will provide for a view to the north over Rainbow Bay, however it is unreasonable to maintain an expectation that views will be provided through the site from the rear balconies. Please note that extensive screening has been provided on the western elevation so as to minimise impacts upon adjoining properties.

We note Council's comments in respect of passive surveillance and the provision of fencing to Tweed Terrace. In this regard, it is noted that the floor heights of the proposed ground floor apartments are set at 30m AHD. It is evident therefore that whilst the street height of the fence is set at 1.8m, the height of the front fence (with the exception of the proposed entrance feature and other ancillary features) relative to the living areas and open space adjoining the apartments is limited to 1.2m only. The latter is in accord with the provision of passive surveillance, whilst to lower the fence to an overall height of 1.2m would render only a 600mm clearance to the apartments and open space areas thereby creating an additional safety and security concern. The proposed front fencing is considered permeable as demonstrated within the attached fencing detail provided by the Architects.

Given that only two apartments are located at the ground level, a single defined entry and exit arrangement is considered practical and consistent with the need to provide for passive surveillance (particularly as the practical fence height is indeed 1.2m high only).

### **Proposed Measures to Mitigate Potential Adverse Impacts**

**Comment:** Written confirmation from Solo Waste is attached for review. This consent is based on a combined (common) general waste compactor and a combined (common) recycled good compactor, each of which measure 1m x 1.4m and incorporate a volume of 1.5m<sup>3</sup>.

## **Revised Draft Statement of Commitments**

1. All building works is to be carried out in accord with the BCA and Workcover requirements
2. All building works will be monitored by the design architect in accord with the requirements of SEPP 65

3. All construction works will be complimented by best practice site control (sediment and erosion control measures)
4. Detailed construction management and geotechnical assessments will be undertaken within the detailed design phase, with all recommendations being adhered to within the construction process.
5. All conditions of consent will be adhered to at all times
6. All adjoining owners will be notified of works commencing and advised of a contact person to liaise with during construction process.
7. All tandems (car parking spaces) will be allocated to a single apartment.
8. Landscaping will be provided to the highest possible standard in a manner consistent with the Statement of Landscape Intent provided.
9. Domestic Waste will be managed by way of combined general and recycled waste facilities
10. All building works are to be limited to 49.8m AHD.

We trust that the information submitted is of assistance and ask that should any further information be required, that the council does not hesitate to contact our office at any time.

Kind regards

Adam Smith  
**Director**  
**Planit Consulting**