



Land and Environment Court New South Wales

Case Name: **Elanora Breeze Pty Ltd v Tweed Shire Council**

Medium Neutral Citation: [2023] NSWLEC 1338

Hearing Date(s): Conciliation conference on 16 June 2023

Date of Orders: 30 June 2023

Date of Decision: 30 June 2023

Jurisdiction: Class 1

Before: O'Neill C

Decision: The orders of the Court are:
(1) The appeal is upheld.
(2) Development Application DA21/0582, as amended, for the demolition of existing buildings, subdivision of 2 lots into 4 lots, construction of 4 dual occupancies and strata subdivision on land legally described as Lot 5 DP 23576 and Lot 6 DP 23576, being 7 and 9 Elanora Avenue, Pottsville, is approved, subject to the conditions of consent at Annexure A.

Catchwords: DEVELOPMENT APPLICATION – appeal against the conditions of consent imposed on the development consent – conciliation conference – agreement between the parties – orders

Legislation Cited: Environmental Planning and Assessment Act 1979
Environmental Planning and Assessment Regulation 2000, cl 55, 55AA, 121B
Environmental Planning and Assessment Regulation 2021
Land and Environment Court Act 1979
State Environmental Planning Policy (Resilience and Hazards) 2021 s 2.10, 4.6
Tweed Local Environmental Plan 2014 cl 7.1, 7.2

Category: Principal judgment

Parties: Elanora Breeze Pty Ltd (Applicant)

Tweed Shire Council (Respondent)

Representation:

Counsel:

M Young (Solicitor) (Applicant)

D Loether (Solicitor) (Respondent)

Solicitors:

McCartney Young Lawyers (Applicant)

Bartier Perry (Respondent)

File Number(s):

2022/371825

Publication Restriction:

No

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal pursuant to the provisions of s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (EPA Act) against certain conditions of consent to Development Consent No DA 21/0582 granted by Tweed Shire Council (the Council) on 6 March 2023 for the demolition of existing buildings, subdivision of 2 lots into 4 lots, construction of 4 dual occupancies and strata subdivision (the proposal), at 7 and 9 Elanora Avenue, Pottsville (the site).
- 2 The Court arranged a conciliation conference under s 34 of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which was held on 16 June 2023. I presided over the conciliation conference. At the conciliation conference, the parties reached agreement as to the terms of a decision in the proceedings that would be acceptable to the parties.
- 3 Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision if the parties' decision is a decision that the Court could have made in the proper exercise of its functions. The parties' decision involves the Court exercising the function under s 4.16 of the EPA Act to grant consent to the development application.
- 4 There are preconditions to the exercise of power to grant development consent for the proposal.
- 5 The Environmental Planning and Assessment Regulation 2000 (2000 Regulation) continues to apply to the application, because the application was lodged on 21 July 2021 and not yet determined on 1 March 2022 (s 3 of Sch 6 to the Environmental Planning and Assessment Regulation 2021). Pursuant to subs 3(2) of Sch 6 to the Environmental Planning and Assessment Regulation 2021, a requirement to use the NSW Planning Portal under the 2000 Regulation, cl 55(1), 55AA(2)(d) or 121B(1) does not apply if the development application is subject to proceedings in the Court.

- 6 The site is zoned R3 Medium Density Residential pursuant to Tweed Local Environmental Plan 2014 (LEP 2014). The objectives of the zone, to which regard must be had, are:
- To provide for the housing needs of the community within a medium density residential environment.
 - To provide a variety of housing types within a medium density residential environment.
 - To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- 7 The proposal is permissible development with consent in the R3 zone.
- 8 I accept the Council's submission that the site is mapped as Class 5 on the Acid Sulfate Soils map, pursuant to cl 7.1 of LEP 2014, and as only a shallow amount of excavation is proposed, no further assessment is required.
- 9 I accept the Council's submission that the earthworks proposed are minor and the matters under cl 7.2 of LEP 2014 are satisfied.
- 10 The site is within the coastal environment area pursuant to State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP (Resilience and Hazards)), s 2.10. I accept the Council's submission and the evidence in the Statement of Environmental Effects that the matters under s 2.10(2) of SEPP (Resilience and Hazards) are satisfied. I am satisfied, pursuant to the considerations under Pt 2.2 of SEPP (Resilience and Hazards), that the proposal does not increase the risk of coastal hazards, because the built form includes a generous rear setback to the adjoining area mapped littoral rainforest.
- 11 I accept the Council's submission that the site has been used for residential purposes for some time and is suitable for the proposal, pursuant to s 4.6 of SEPP (Resilience and Hazards).

Conclusion

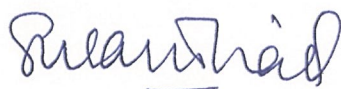
- 12 I have considered the submissions made by the Council in the Statement of Jurisdictional Issues filed with the Court on 16 June 2023 and I am satisfied on the basis of the evidence before me that the agreement of the parties is a decision that the Court could have made in the proper exercise of its functions.

Orders

- 13 The orders of the Court are:

- (1) The appeal is upheld.
- (2) Development Application DA21/0582, as amended, for the demolition of existing buildings, subdivision of 2 lots into 4 lots, construction of 4 dual occupancies and strata subdivision on land legally described as Lot 5 DP 23576 and Lot 6 DP 23576, being 7 and 9 Elanora Avenue, Pottsville, is approved, subject to the conditions of consent at Annexure A.

I certify that this and the preceding [2] pages are a true copy of my reasons for judgment.



Susan O'Neill

Commissioner of the Court

Annexure A**DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF
CONSENT****Development Application No:** DA21/0582**Development:** DEMOLITION, SUBDIVISION OF 2 LOTS INTO 4 LOTS,
CONSTRUCTION OF 4 DUAL OCCUPANCIES AND
STRATA SUBDIVISION**Site:** Lot 5 DP 23576; No. 7 Elanora Avenue POTTSVILLE; Lot
6 DP 23576; No. 9 Elanora Avenue POTTSVILLE

The above development application has been determined by the granting of consent subject to the conditions specified in this consent.

Date of determination: 30 June 2023**Date from which consent takes effect:** [Date of determination].**TERMINOLOGY**

In this consent:

- (a) Any reference to a Construction, Compliance, Occupation or Subdivision Certificate is a reference to such a certificate as defined in the *Environmental Planning and Assessment Act 1979*.
- (b) Any reference to the “applicant” means a reference to the applicant for development consent or any person who may be carrying out development from time to time pursuant to this consent.
- (c) Any reference to the “site”, means the land known as [insert details].

The conditions of consent are as follows:

Deferred Commencement Conditions deleted pursuant to Land and Environment Court proceedings number 2022/00371825.

GENERAL

1. The development shall be completed in accordance with the below plans, except where varied by the conditions of this consent.

Sheet No.	Issue	Plan Title	Drawn By	Dated
24428D	-	Proposed Subdivision of Lot 5 & 6 in DP23576	B&P Surveys	06/07/2021

24429D	-	Strata Subdivision of Proposed Lot 41 in Lot 5 in DP23576	B&P Surveys	09/03/2023
24438D	-	Strata Subdivision of Proposed Lot 42 in Lot 5 in DP23576	B&P Surveys	09/03/2023
24439D	-	Strata Subdivision of Proposed Lot 43 in Lot 6 in DP23576	B&P Surveys	09/03/2023
24440D	-	Strata Subdivision of Proposed Lot 44 in Lot 6 in DP23576	B&P Surveys	09/03/2023
SD 00	-	Site Plan	C2 Architecture	08/03/2023
SD 01	-	Site/Roof Plan	C2 Architecture	08/03/2023
SD 02	-	Ground Floor - Overall	C2 Architecture	08/03/2023
SD 03	-	First Floor - Overall	C2 Architecture	08/03/2023
SD 04	-	Second Floor - Overall	C2 Architecture	08/03/2023
SD 05	-	Roof Plan	C2 Architecture	08/03/2023
SD 06	-	Elevations	C2 Architecture	08/03/2023
SD 07	-	Elevation and Sections	C2 Architecture	08/03/2023
SD 08	-	Sectional Elevations	C2 Architecture	08/03/2023
SD 09	-	Fence Plan	C2 Architecture	08/03/2023
SD 10	-	Fence Elevation	C2 Architecture	08/03/2023
SD 11	-	Fence Elevation	C2 Architecture	08/03/2023
SD 12	-	Fence Elevation & Sections	C2 Architecture	08/03/2023
SD 13	-	Section 9 & 10	C2 Architecture	08/03/2023
3, DWG S8-1195LC	E	Landscape Area Plan - Ground Floor	Studio 8 Concept and Design	15/12/2022
5, DWG S8-1195LC	E	Landscape Area Plan - Level 1 Planters	Studio 8 Concept and Design	15/12/2022
6, DWG S8-1195LC	E	Landscape Area Plan - Level 2 Planters	Studio 8 Concept and Design	15/12/2022

Condition 1 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

2. The development shall be undertaken in the following stages (unless agreed otherwise by Council):

Stage 1	Demolition of existing buildings and Subdivision of land (2 Lots into 4 Lots)
Stage 2	Construction of dual occupancies on each Lot (4 total)
Stage 3	Strata title subdivision of dual occupancies

Condition 2 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

[GENNS01]

3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.

[GEN0115]

4. Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property. Any necessary adjustment or modification of existing services is to be undertaken in accordance with the requirements of the relevant authority, at the Developer's expense.

[GEN0135]

5. The development is to be carried out in accordance with Council's Development Design and Construction Specifications.

[GEN0265]

6. The owner is to ensure that the proposed building is constructed in the position and at the levels as nominated on the approved plans or as stipulated by a condition of this consent, noting that all boundary setback measurements are taken from the real property boundary and not from such things as road bitumen or fence lines.

[GEN0300]

7. Prior to demolition work commencing a sign containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm by 300mm shall be erected in a prominent visible location on the site. The sign shall remain in place until all asbestos has been removed from the site.

[GEN0345]

8. Prior to the commencement of works, a 'clearance inspection' shall be conducted for the site and a 'clearance certificate' issued by a licensed asbestos assessor or competent person which states that the site 'does not pose a risk to health and safety from exposure to asbestos' in accordance with Clause 474 of the *Work Health and Safety Regulation 2017*.

A copy of this certificate shall be forwarded to the Principal Certifier and Council within 7 days of completion of the 'clearance inspection'.

[GEN0350]

9. All works shall comply with AS 2601-2001 Demolition of Structures and the Work Health and Safety Regulation 2017.

[GEN0360]

10. Prior to demolition of the structure commences, all asbestos material shall be identified and removed from the site by an asbestos removalist who is licensed to carry out the work by SafeWork NSW.

All asbestos waste shall be disposed at a facility that is licensed to receive asbestos waste (all receipts related to disposal must be kept on site and provided to a Council Authorised Officer upon request).

[GEN0365]

11. Each proposed strata lot shall connect to the sewer junction of the associated Torrens Lot, ensuring each Torrens Lot only has one connection to Council sewer.

[GENNS02]

12. The entire area shaded green denoted as 'Littoral Forest Setback' in Ground Floor (Overall) Plan, Drawing No. SD 02 (dated 08/03/2023) prepared by C2 Architecture shall be managed and protected in perpetuity as a deep planting soft landscaping area only.

No structures or hard surface treatments are to be erected or installed in the denoted 'Littoral Forest Setback' area to protect the Littoral Forest Area within the adjoining public reserve.

Condition 12 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

13. The removal of native vegetation is limited to Tree No. 1 to Tree No. 9 (inclusive) as identified in Attachment 2 - Site Plan and Attachment 4 - Tree Data of the Arboricultural Report (dated 05 July 2021) prepared by Northern Tree Care, unless otherwise approved by Council's General Manager or delegate.

Vegetation removal shall not commence until issue of Subdivision Works Certificate.

[GENNS03]

Condition 14 deleted pursuant to Land and Environment Court proceedings number 2022/00371825.

15. An application for the Stage 3 Strata Subdivision Certificate shall be submitted in accordance with the approved strata plan.

[GENNS04]

Condition 15 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

16. Prior to the issue of the Stage 3 Strata Subdivision Certificate, a final occupation certificate must be provided to Council for each dual occupancy associated with Stage 2 of this consent.

[GENNS05]

Condition 16 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

17. All electricity meters on site shall be readily accessible for reading by electricity suppliers.

[GENNS06]

18. The proposed retaining walls on the eastern and western property boundaries (as identified in the Preliminary Earthworks Layout Plan included in the Engineering Services Report, prepared by Pinnacle Engineering Group (Rev 04) and dated July 2022) and any proposed retaining walls along the southern portion of each allotment (clear of the 7m wide littoral rainforest setback) are to be no greater than 600mm in height.

[GENNS07]

PRIOR TO ISSUE OF SUBDIVISION WORKS CERTIFICATE / CONSTRUCTION CERTIFICATE

19. Section 7.11 Contributions

Payment of the following contributions pursuant to Section 7.11 of the Act and the relevant Contribution Plan.

A Construction Certificate for Stage 2 shall NOT be issued by a Certifying Authority unless all Section 7.11 Contributions have been paid and the Certifying Authority has sighted Council's receipt confirming payment.

a.	Contribution Plan No 4 - Tweed Road Contribution Plan:	
	3.9 trips @ \$1,565.00 per trip (\$1,284.00 base rate + \$281.00 indexation)	\$6,103.50

	CP04 Road Contributions (8-Pottsville)	
b.	Contribution Plan No 5 - Local Open Space:	
	3.375 ETs @ \$732.00 per ET (\$502.00 base rate + \$230.00 indexation)	\$2,470.50
	CP05 (Local OS) Casual Open Space	
c.	Contribution Plan No 5 - Local Open Space:	
	3.375 ETs @ \$838.00 per ET (\$575.00 base rate + \$263.00 indexation)	\$2,828.25
	CP05 (Local OS) Structured Open Space	
d.	Contribution Plan No 11 - Tweed Shire Library Facilities:	
	3.375 ETs @ \$1,007.00 per ET (\$792.00 base rate + \$215.00 indexation)	\$3,398.62
	CP11 Libraries	
e.	Contribution Plan No 12 - Bus Shelters:	
	3.375 ETs @ \$76.00 per ET (\$60.00 base rate + \$16.00 indexation)	\$256.50
	CP12 Bus Shelters	
f.	Contribution Plan No 13 - Eviron Cemetery:	
	3.375 ETs @ \$143.00 per ET (\$101.00 base rate + \$42.00 indexation)	\$482.62
	CP13 Cemeteries	
g.	Contribution Plan No 15 - Developer Contributions for Community Facilities:	
	3.375 ETs @ \$2,083.00 per ET (\$2,083.00 base rate + \$0.00 indexation)	\$7,030.12
	CP15 Comm Facilities	
h.	Contribution Plan No 18 - Council Administration Offices and Technical Support Facilities:	
	3.375 ETs @ \$2,252.11 per ET (\$1,759.90 base rate + \$492.21 indexation)	\$7,600.87
	CP18 Council Admin Facilities	
i.	Contribution Plan No 22 - Cycleways:	
	3.375 ETs @ \$568.00 per ET (\$447.00 base rate + \$121.00 indexation)	\$1,917.00
	CP22 Cycleways	
j.	Contribution Plan No 26 - Shirewide Regional Open Space:	
	3.375 ETs @ \$1,311.00 per ET (\$1,031.00 base rate + \$280.00 indexation)	\$4,424.62
	CP26 (Regional OS) Casual	
k.	Contribution Plan No 26 - Shirewide Regional Open Space:	
	3.375 ETs @ \$4,601.00 per ET (\$3,619.00 base rate + \$982.00 indexation)	\$15,528.37
	CP26 (Regional OS) Structured	

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

These charges include indexation provided for in the Section 7.11 Contribution Plan and will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates in the relevant Plan as at the date the condition is imposed

(which may have been indexed or varied from the original contribution rates in the Plan by a clause adopted in the Plan).

A s7.11 fee sheet must be obtained from Council before payment of s7.11 contributions.

A copy of the Section 7.11 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.

NOTE: All Section 7.11 Contribution payments are non-refundable.

Condition 19 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

20. All existing trees within the road reserve are to be retained and protected unless otherwise approved by Council's General Manager or delegate.

Where removal is unavoidable and approved by Council under a Subdivision Works Certificate, street trees shall be replaced by the applicant with a similar coastal native species of minimum 80 litre stock size in accordance with Council's Development Design Specification D14.08.03C Tree Planting and Location and Standard Drawing 'Tree and Shrub Planting Details' Dwg. No. SD701.

21. Plans submitted with a Subdivision Works Certificate shall clearly show civil infrastructure and/or bulk earthworks clear of the area denoted as 'Littoral Forest Setback' in Ground Floor (Overall) Plan, Drawing No. SD 02 (dated 08/03/2023) prepared by C2 Architecture.

Condition 21 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

22. Prior to issue of Subdivision Works Certificate a Detailed Plan of Landscaping (DPoL) shall be submitted to Council and approved by Council's General Manager or delegate. The DPoL shall include the following:

- (a) Plant selection criteria for all areas of the site other than the area denoted as 'Littoral Forest Setback' in Ground Floor (Overall) Plan, Drawing No. SD 02 (dated 08/03/2023) prepared by C2 Architecture shall comply with the following:
 - (i) A minimum of 80% locally occurring Australian native species and maximum of 20% non-locally occurring Australian native species to apply to all trees.
 - (ii) A minimum of 80% locally occurring Australian native species and maximum of 20% Australian native or exotic species to apply to other plants (shrubs, ground cover and similar).
 - (iii) No noxious or environmental weed species.
- (b) A deep planting landscape zone component for the nominated 'Littoral Forest Setback' area shall comply with the following:
 - (i) 100% local native littoral rainforest species incorporating a minimum of nine (9) local native coastal trees of advanced stock size class (minimum 45 litre) comprising Cupaniopsis anacardioides (Tuckeroo) and Syzygium hemilampra (Blue Satinash) species.
 - (ii) Comprises 100% local native littoral rainforest species in the shrub and understorey layer of minimum tube-stock size.
 - (iii) Excludes any turfgrass, noxious or environmental weed species.
 - (iv) Satisfies the NSW Rural Fire Service Standards for Asset Protection Zones.

- (v) Consideration also be given to include an additional four (4) trees in the rear littoral rainforest setback of the same species identified in 22(b)(i).
- (c) Five (5) advanced stock street tree plantings comprising coastal local native species including (but not limited to) *Cupanipsis anacardioides* (Tuckeroo) and *Syzygium hemilampra* (Blue Satinash) in accordance with Council's Development Design Specification D14.08.03C Tree Planting and Location and Standard Drawing 'Tree and Shrub Planting Details' Dwg. No. SD701.
- (d) Landscaping must comply with any RFS requirements.

Condition 22 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

Condition 23 deleted pursuant to Land and Environment Court proceedings number 2022/00371825.

24. In accordance with Section 6.14 of the Environmental Planning and Assessment Act 1979 (as amended), a Construction Certificate for Building Works OR Subdivision Works Certificate for Subdivision Works shall NOT be issued until any Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid (as applicable). Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

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

All earthworks shall be contained wholly within the subject land.

[PCC0485]

26. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve, as applicable to Stage 2. Application shall include (but not limited to) engineering plans and specifications undertaken in accordance with Councils Development Design and Construction Specifications for the following required works:

(a) Vehicular access

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

- Road works/furnishings
- Stormwater drainage
- Water and sewerage works
- Sediment and erosion control plans
- Location of all services/conduits
- Traffic Control Plan (as applicable)

Condition 26 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

[PCC0895]

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

- (a) The Construction Certificate applications for Stage 2 shall include a detailed Stormwater Management Plan (SWMP) for the occupational or use stage of the development in accordance with Section D7.B2 of Councils *Development Design Specification D7 - Stormwater Quality*.
- (b) Permanent stormwater quality treatment shall comply with Councils *Development Design Specification D7 - Stormwater Quality*.
- (c) The stormwater and site works shall incorporate Water Sensitive Urban Design principles and where practical, integrated water cycle management.
- (d) Specific Requirements to be detailed within the Construction Certificate application include:
 - (i) Shake down area along the haul route immediately before the intersection with the road reserve.

Condition 27 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

[PCC1105]

28. The peak stormwater flow rate that may be discharged from the site to the public realm, in events of intensity up to the ARI 100 year design storm, shall be no greater than pre-development rates.

This can be achieved by on-site stormwater detention (OSD) utilising above and or below ground storage. OSD devices including discharge control pits (DCP) are to comply with standards in the current version of The Upper Parramatta River Catchment Trust "On-Site Stormwater Detention Handbook" except noting that permissible site discharge (PSD) and site storage requirements (SSR) in the handbook do not apply to Tweed Shire.

All stormwater must initially be directed to the discharge control pits. Details are to be submitted with the Section 68 Stormwater application.

[PCC1165]

29. For developments containing less than four attached or detached strata dwellings having a Building Code classification of 1a, each premises must be connected by means of a separate water service pipe, each of which is connected to an individual Council water meter to allow individual metering. Application for the meters shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements.

[PCC1175]

30. Prior to the issue of a Subdivision Works Certificate, Construction Certificate or commencing any works, whichever occurs first, a Section 68 application shall be submitted together with any prescribed fees (including inspection fees) and approved by Council for works that involve any of the following:

- Any water, sewerage, on site sewerage management system, or drainage works
- Connection of a private stormwater drain to a public stormwater drain
- Installation of stormwater treatment and quality control devices
- Erosion and sediment control works
- Any works that is likely to disturb or impact upon water or sewer infrastructure (e.g. extending, relocating or lowering of pipeline)

[PCC1195]

31. Where any existing sewer junctions are to be disused on the site, the connection point shall be permanently removed off by Council staff. Applications shall be made to Tweed Shire Council and include the payment of fees in accordance with Councils adopted fees and charges.

[PCC1235]

32. If the development is likely to disturb or impact upon water or sewer infrastructure (eg: extending, relocating or lowering of pipeline), written confirmation from the service provider that they have agreed to the proposed works must be submitted to the Certifier (Council or a Registered Certifier) prior to the issue of a Subdivision Works Certificate, Construction Certificate or any works commencing, whichever occurs first.

Applications for these works must be submitted on Council's standard Section 68 Application form accompanied by the required attachments and the prescribed fee. The arrangements and costs associated with any adjustment to water and wastewater infrastructure shall be borne in full by the applicant/developer.

The Section 68 Application must be approved by Council prior to the associated Subdivision Works Certificate / Construction Certificate being issued or as applicable to each stage of the development.

[PCC1310]

33. Prior to the issue of a Subdivision Works Certificate, Construction Certificate or commencing any works, whichever occurs first, written confirmation from the service provider that they have agreed to the proposed works must be submitted to the principal certifier if the development is likely to disturb or impact upon telecommunications infrastructure.

The arrangements and costs associated with any adjustment to telecommunications infrastructure shall be borne in full by the developer

[PCC1325]

PRIOR TO COMMENCEMENT OF WORK

34. Prior to commencement of works (excluding demolition), vegetation protection fencing, in accordance with Australian Standard AS 4970:2009 Protection of trees on development sites, shall be installed along the entire perimeter of the area denoted as 'Littoral Forest Setback' in Ground Floor (Overall) Plan, Drawing No. SD 02 (dated 08/03/2023) prepared by C2 Architecture.

The vegetation protection fencing shall remain for the entire construction period unless otherwise approved by Council's General Manager or delegate.

Condition 34 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

[PCWNS01]

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

[PCW0005]

36. The erection of a building in accordance with a development consent must not be commenced until:

- (a) a Construction Certificate for the building work has been issued by the consent authority, the Council (if the Council is not the consent authority) or a registered Certifier, and
- (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifier for the building work, and
 - (ii) notified the principal certifier that the person will carry out the building work as an owner-builder, if that is the case, and
- (c) the Principal Certifier has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the Council (if the Council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a Principal Contractor for the building work who must be the holder of a contractor license if any residential work is involved, and
 - (ii) notified the Principal Certifier of any such appointment, and
 - (iii) unless that person is the Principal Contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

37. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifier" shall be submitted to Council at least **2 days** prior to work commencing.

[PCW0225]

38. Residential building work:

- (a) Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a Principal Contractor is required to be appointed:
 - * in the name and license number of the principal contractor, and
 - * the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - * the name of the owner-builder, and
 - * if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.
- (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes

out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

39. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one closet for every 15 persons or part of 15 persons employed at the site. Each toilet provided must be:
- (a) a standard flushing toilet connected to a public sewer, or
 - (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

40. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2021, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (a) showing the name, address and telephone number of the principal certifier for the work, and
 - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the site is prohibited.

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

[PCW0255]

41. Prior to commencement of work on the site all erosion and sedimentation control measures as applicable to each stage are to be installed and operational including the provision of a "shake down" area, where required to the satisfaction of the Principal Certifier.

These measures are to be in accordance with the approved Erosion and Sedimentation Control Plan and adequately maintained throughout the duration of the development.

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

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

[PCW0985]

42. An application to connect to Council's sewer or carry out plumbing and drainage works, together with any prescribed fees including inspection fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.

[PCW1065]

DURING CONSTRUCTION

43. No construction works (excluding demolition) other than approved deep planting landscape works and fencing are permitted to occur within the 7m 'Littoral Forest Setback' area as shown in Ground Floor (Overall) Plan, Drawing No. SD 02 (dated

08/03/2023) prepared by C2 Architecture unless otherwise approved by Council's General Manager or delegate.

Condition 43 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

[DURNS03]

44. All proposed works are to be carried out in accordance with the conditions of development consent, any approved Management Plans, approved Subdivision Works Certificate, approved Construction Certificate, drawings and specifications.
- [DUR0005]
45. Should any Aboriginal object or cultural heritage (including human remains) be discovered, all site works must cease immediately and the Tweed Byron Local Aboriginal Land Council (TBLALC) Aboriginal Sites Officer (on 07 5536 1763) are to be notified. The find is to be reported to Heritage NSW, Department of Planning and Environment.
- No works or development may be undertaken until the required investigations have been completed and any permits or approvals obtained, where required, in accordance with the National Parks and Wildlife Act, 1974.
- [DUR0025]
46. Commencement of work, including the switching on and operation of plant, machinery and vehicles is limited to the following hours, unless otherwise permitted by Council:
- Monday to Saturday from 7.00am to 6.00pm
- No work to be carried out on Sundays or Public Holidays
- The proponent is responsible to instruct and control subcontractors regarding hours of work.
- [DUR0205]
47. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:
- A. Short Term Period - 4 weeks.
- $L_{Aeq, 15 \text{ min}}$ noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.
- B. Long term period - the duration.
- $L_{Aeq, 15 \text{ min}}$ noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.
- [DUR0215]
48. The roof cladding is to have low reflectivity where it would otherwise cause nuisance to the occupants of buildings with direct line of sight to the proposed building.
- [DUR0245]
49. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).

[DUR0375]

50. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.
- [DUR0395]
51. The Principal Certifier is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifier via the notice under Section 6.6 of the Environmental Planning and Assessment Act 1979.
- [DUR0405]
52. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with SafeWork NSW requirements and Work Health and Safety Regulation 2017.
- [DUR0415]
53. The finished floor level of the building should finish not less than 225mm above finished ground level.
- [DUR0445]
54. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover NSW, Work Health and Safety Regulation 2017.
- The proponent shall also observe the guidelines set down under the Department of Environment and Climate Change publication, "A Renovators Guide to the Dangers of Lead" and the Workcover Guidelines on working with asbestos.
- [DUR0645]
55. Minimum notice of 5 working days shall be given to Tweed Shire Council for the permanent removal of any disused sewer junctions. Tweed Shire Council staff shall undertake the works in accordance with the application lodged and upon excavation of the service by the Developer .
- [DUR0675]
56. The use of vibratory compaction equipment (other than hand held devices) within 100m of any existing dwelling house, building or structure is strictly prohibited.
- [DUR0815]
57. The development is to be carried out in accordance with the BASIX certificate and schedule of commitments approved in relation to this development consent.
- [DUR0905]
58. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council's General Manager or delegate.
- [DUR0985]
59. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material deposited on the roadway by construction vehicles will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate or Occupation Certificate, as applicable to each stage of the development.
- [DUR0995]
60. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from:

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

[DUR1005]

61. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. Such materials shall either be disposed of at the Council's Sotts Creek Resource Recovery Centre (Organics Processing Facility) or disposed of in a manner acceptable to Councils General Manager or delegate.

[DUR1015]

62. Landscaping of the site shall be carried out in accordance with the approved Detailed Plan of Landscaping.

[DUR1045]

63. Where existing kerb, footpath or driveway laybacks are to be removed for new driveway laybacks, or stormwater connections and kerb ramps for any other reason (as applicable to each stage of the development) then the kerb, footpath or driveway laybacks must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.

[DUR1905]

64. Swimming Pools (Building)

- (a) The swimming pool is to be installed and access thereto restricted in accordance with Australian Standard AS 1926.1 - 2012 & AS 1926.3 -2010 & AS 1926.2-2007, the Swimming Pools Act 1992 and the Swimming Pools Regulation 2008.
- (b) Swimming pools shall have suitable means for the drainage and disposal of overflow water.
- (c) The pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.
- (d) Warning notices are to be provided in accordance with Part 3 of the Swimming Pools Regulation 2008.
- (e) Once your pool or spa is complete please register it at www.swimmingpoolregister.nsw.gov.au.

[DUR2075]

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

[DUR2085]

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

[DUR2185]

67. All waste shall be collected, stored and disposed of in accordance with the provisions of Tweed Shire Council Development Control Plan Section 15 - Waste Minimisation and Management.

[DUR2195]

68. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:

- (a) internal drainage, prior to slab preparation;
- (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
- (c) external drainage prior to backfilling.
- (d) completion of work and prior to occupation of the building.

[DUR2485]

69. Plumbing

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

[DUR2495]

70. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position.

[DUR2505]

71. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard.

[DUR2535]

72. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.

[DUR2545]

73. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-

- * 45°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
- * 50°C in all other classes of buildings.

A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.

[DUR2555]

74. The Applicant shall submit the appropriate 'Application for Water Service Connection' form to Council's Water Unit to facilitate a property service water connection for each proposed Villa (Villas 1 to 8) on the 4 allotments, from the existing water main in Elanora Avenue. The connection shall be undertaken by Tweed Shire Council, with all applicable costs and application fees paid by the Applicant.

[DUR2800]

75. Dust and Erosion Management

- (a) Site earthworks are to be limited to a 5ha maximum at any time to reduce exposed areas. Completed area's are to be topsoiled and seeded immediately to protect them from water and wind erosion.
- (b) All topsoil stockpiles are to be sprayed with dust suppression material such as "hydromulch", "dustex" or equivalent. All exposed areas including haul roads

shall be regularly watered or treated with dust suppression material or as directed on site.

- (c) All construction activities that generate dust shall cease when average wind speeds exceed 15m/s (54 km/h). The applicant shall be responsible for the monitoring of on-site wind speeds and be able to produce this data to Council on request.

[DUR2825]

- 76. Swimming pool pumps, air conditioning units, heat pump water systems and the like shall be located, installed and operated so as not to be heard in a habitable room of a residence during restricted hours or where it would create offensive noise as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2017.

[DUR2835]

- 77. The occupier of any premises in or on which a swimming pool (not including a spa pool) is being constructed must ensure that a sign is erected and maintained that:
 - (a) bears a notice containing the words "This swimming pool is not to be occupied or used", and
 - (b) is located in a prominent position in the immediate vicinity of that swimming pool, and
 - (c) continues to be erected and maintained until a relevant occupation certificate or a certificate of compliance has been issued for that swimming pool.

Maximum penalty: 5 penalty units.

Note. The signage requirements in subclause (3) are in addition to any signage that may be required under the *Environmental Planning and Assessment Act 1979* or any other Act.

[DUR2845]

- 78. The exportation or importation of waste (including fill or soil) from or to the site must be in accordance with the provisions of the Protection of the Environment Operations Act 1997 and the NSW Environment Protection Authority "Waste Classification Guidelines".

The importation of waste to the site is restricted to the following:

- a. Virgin excavated natural material (as defined in Schedule 1 of the Protection of the Environment Operations (POEO) Act);
- b. Any other waste-derived material subject to a resource recovery exemption under Part 9 Clauses 91 and 92 of the Protection of the Environment Operations (Waste) Regulation 2014 that is permitted to be used as fill material.

The exportation of waste must be transported to a licenced waste facility or an approved site subject to a resource recovery order and exemption.

Any virgin excavated natural material or waste-derived fill material subject to a resource recovery exemption must be accompanied by documentation as to the material's compliance and must be provided to the Principal Certifying Authority or Council on request.

- 79. Prior to the importation of any waste (including fill or soil) from the south-east Queensland fire ant biosecurity zone, the supplier of the waste must demonstrate that a current biosecurity instrument permit issued by the Qld Department of Agriculture and Fisheries is in place.

80. Any importation of waste (including fill or soil) from the south-east Queensland fire and biosecurity zone must be in accordance with a current biosecurity instrument permit issued by the Qld Department of Agriculture and Fisheries.
81. Any importation of waste (including fill or soil) from the south-east Queensland fire and biosecurity zone must be in accordance with NSW Department of Primary Industries requirements.

[DURNS01]

82. Where public safety is at risk due to damage of water or sewer infrastructure, it is the responsibility of the applicant to immediately notify Council. Cost to undertake emergency works shall be borne in full by the applicant/developer. If additional works to repair or relocate water or sewer infrastructure due to the damage are required, arrangements and cost shall be borne in full by the applicant/developer.

[DURNS02]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

83. Prior to issue of an Occupation Certificate, all works, actions, inspections etc. required at that stage by other conditions or any approved Management Plans or the like shall be completed in accordance with those conditions or plans.

[POC0005]

84. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 6.9 and 6.10 unless an Occupation Certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0205]

85. Prior to the issue of an Occupation Certificate,
 - (a) Certification of termite protection methods performed by the person carrying out the works is to be submitted to the Principal Certifier; and
 - (b) A durable notice must be permanently fixed to the building in a prominent location, such as in the electrical meter box indicating:-
 - (i) the method of protection; and
 - (ii) the date of installation of the system; and
 - (iii) where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and
 - (iv) the need to maintain and inspect the system on a regular basis.

[POC0235]

86. Prior to occupation of the building, the property street number is to be clearly identified on the site by way of painted numbering on the street gutter within 1 metre of the access point to the property.

The street number is to be on a white reflective background professionally painted in black numbers 75-100mm high.

On rural properties or where street guttering is not provided the street number is to be readily identifiable on or near the front entrance to the site.

The above requirement is to assist in property identification by emergency services and the like. Any variations to the above are to be approved by Council prior to the carrying out of the work.

[POC0265]

87. Prior to the issue of an Occupation Certificate, adequate proof and/or documentation is to be submitted to the Principal Certifier to identify that all commitment on the BASIX "Schedule of Commitments" have been complied with.

[POC0435]

88. Prior to the issue of an Occupation Certificate, the applicant shall produce a copy of the "Satisfactory Inspection Report" issued by Council for all works required under Section 138 of the Roads Act 1993, as applicable to Stage 2.

Condition 88 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

[POC0745]

89. Redundant road pavement, kerb and gutter or foot paving including any existing disused vehicular laybacks/driveways or other special provisions shall be removed and the area reinstated to match adjoining works in accordance with Council's Development Design and Construction Specifications.

[POC0755]

90. Stage 1 must be completed and the plan subdividing 2 lots into 4 shall be registered with NSW Land Registry Services (formerly Land and Property Information (LPI)), prior to issue of any Occupation Certificate associated with Stage 2.

[POC0855]

Condition 90 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

91. Prior to the issue of any Occupation Certificate, a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.

[POC1045]

92. Any damage caused to public infrastructure (including roads, footpaths, water and sewer mains, power and telephone services) during construction of the Stage 2 works shall be repaired in accordance with Council's Development Design and Construction Specifications, prior to the issue of any Occupation Certificate.

Condition 92 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

[POCNS01]

93. Prior to the issue of an Occupation Certificate, a "*Certificate of Practical Completion*" shall be obtained from Council's General Manager or delegate for all works required under Section 68 of the Local Government Act, as applicable to Stage 2.

[POCNS02]

Condition 93 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

USE

94. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.

[USE0125]

95. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction

of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.

[USE0175]

96. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.

[USE0225]

97. All plant and equipment installed or used in or on the premises:

- (a) Must be maintained in a proper and efficient condition, and
- (b) Must be operated in a proper and efficient manner.

In this condition, "plant and equipment" includes drainage systems, infrastructure, pollution control equipment and fuel burning equipment.

[USE0315]

98. All commercial, industrial, and residential wastes shall be collected, stored and disposed of in accordance with any approved Waste Management Plan or to the satisfaction of the General Manager or delegate.

[USE0875]

99. Swimming Pools (Building)

- (a) It is the responsibility of the pool owner to ensure that the pool fencing continues to provide the level of protection required regardless of and in response to any activity or construction on the subject property or the adjoining premises. Due regard must be given to the affect that landscaping will have on the future effectiveness of the security fencing. (Section 7 Swimming Pools Act 1992).
- (b) The resuscitation poster must be permanently displayed in close proximity to the swimming pool. (Section 17 Swimming Pools Act 1992).
- (c) Warning notices required under Part 3 of the Swimming Pools Regulation 2008 shall be maintained at all times.

[USE1295]

100. The swimming pool is not to be used for commercial purposes without prior Development Consent.

[USE1305]

101. Swimming pool pumps, air conditioning units, heat pump water systems and the like shall not be operated if it can be heard in a habitable room of a residence during restricted hours or at other times should the noise from the article be deemed to be offensive as defined within the **NSW Protection of the Environment Operations (Noise Control) Regulation 2017**.

[USE1510]

102. All landscaping shall be maintained in accordance with the approved Detailed Plan of Landscaping. Landscape areas shall not be replaced by impervious surfaces including artificial turf or hardstand paving to maintain adequate stormwater infiltration and deep soil zones on site.

[USENS01]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

Condition 103 deleted pursuant to Land and Environment Court proceedings number 2022/00371825.

104. A Certificate of Compliance under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

A Subdivision Certificate shall **NOT** be issued for Stage 1 by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's receipt confirming payment.

[PCC0265]

Condition 104 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

105. Prior to issue of a Subdivision Certificate, all works, actions, inspections, and conditions of consent associated with the subdivisional component of the development (Stage 1) shall be completed in accordance with those conditions or plans.

[PSC0005]

Condition 105 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

106. Prior to the issue of a Subdivision Certificate, Work as Executed Plans (WAX Plans) and an accompanying ADAC XML Digital File shall be submitted to Council for endorsement in accordance with the provisions of Tweed Shire Council's Development Control Plan Part A5 - Subdivision Manual, and Council's Development Design Specification, D13 - Engineering Plans.

The WAX Plans are to be endorsed by a NSW Registered Surveyor and/or a Consulting Engineer as specified in D13, certifying that:

- (a) All drainage lines, sewer lines, services and structures are wholly contained within the relevant easement(s) created by the subdivision;
- (b) The plans accurately reflect the Work as Executed, including all the actual asset types and materials used in the construction;
- (c) The accompanying ADAC XML Digital File corresponds exactly with all details of the Summary WAX plan(s) including lot and easement details, geometries, relative levels, assets, and material types.

Note: Where works are carried out by Council on behalf of the developer, it is the responsibility of the Developer to prepare and submit Works-As-Executed (WAX) plans.

[PSC0735]

107. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions associated with the subdivision component of this Development Consent (Stage 1), including the construction of services to all 4 allotments have been complied with.

[PSC0825]

Condition 107 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

108. The creation of Easements for services, Rights of Carriageway and Restrictions as to User (including restrictions associated with planning for bushfire) as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:

- (a) Easements for sewer, water supply and drainage over **ALL** public services/infrastructure on private property.

Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating a Right of Carriageway or Easement shall make provision for maintenance of the Right of Carriageway or Easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis (as applicable).

Any Section 88B Instrument creating Restrictions as to User, Rights of Carriageway or Easements which benefit Council shall contain a provision enabling such Restrictions, Easements or Rights Of Carriageway to be revoked, varied or modified only with the consent of Council.

109. A Positive Covenant and Restriction as to User applicable under Section 88B of the Conveyancing Act 1919 shall be registered for the benefit of the Tweed Shire Council prior to issue of Subdivision Certificate on the terms specified below:

- a. A Positive Covenant shall be registered over the area denoted as 'Littoral Forest Setback' in Ground Floor (Overall) Plan, Drawing No. SD 02 (dated 08/03/2023) prepared by C2 Architecture. The nominated area of land must be subject to landscaping in accordance with Council approved detailed plan of landscaping and managed as a deep soil landscape zone in perpetuity.

Burden: Lot 41, Lot 42, Lot 43 and Lot 44 **Benefit:** Tweed Shire Council

- b. Restriction as to User restricting the following activities within the area denoted as 'Littoral Forest Setback' in Ground Floor (Overall) Plan, Drawing No. SD 02 Issue 04 (dated 16/12/2022) prepared by C2 Architecture:
- i. Clearing, lopping or removal of any native plants, whether existing at the date of this approval or planted pursuant to conditions of this consent unless otherwise required to comply with asset protection zone standards approved for the development;
 - ii. Erection of any fixtures or improvements, including buildings or structures;
 - iii. Construction of any trails or paths;
 - iv. Depositing of any fill, soil, rock, rubbish, ashes, garbage, waste or other material foreign to the land;
 - v. Keeping or permitting the entry of domestic animals or any other animals that are not indigenous to the land; and
 - vi. Performance of any other acts which may have detrimental impact on the values of the land.

Burden: Lot 41, Lot 42, Lot 43 and Lot 44 **Benefit:** Tweed Shire Council

Condition 109 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

[PSC0835]

110. In accordance with Clause 60 of the Surveying and Spatial Information Regulation 2012, the Plan of Subdivision (Deposited Plan) shall show the approved street address for each lot on the new Deposited Plan.

111. Prior to registration of the Plan of Subdivision, a Subdivision Certificate shall be obtained.

The following information must accompany an application:

- (a) Submission of all documentation electronically (in pdf format), plus the original Plan of Subdivision (and original Admin Sheets) prepared by a NSW registered surveyor together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
- (b) All detail as tabled within Tweed Shire Council's Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by a Registered Certifier.

[PSC0885]

112. Prior to issuing a Subdivision Certificate for Stage 1, reticulated water supply and outfall sewerage reticulation (including household connections) shall be provided to all 4 allotments within the subdivision in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual, Councils Development Design and Construction Specifications and approved Section 68 applications.

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

[PSC1115]

Condition 112 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

113. The production of written evidence from the local telecommunications supply authority certifying that the provision of underground telecommunications at the front boundary of all 4 allotments has been completed.

Unless agreed otherwise by Council, an acceptable form is Telstra's *"Telstra Network Infrastructure Letter"* or NBN's *"Provisioning of Telecommunication Services - Confirmation of final payment"* letter (for small subdivisions) or *"Certificate of Practical Completion of NBN network infrastructure"* letter (for large subdivisions) (as applicable to the development).

The NBN letter must reference:

- Over which Lot and Deposited Plan the agreement applies to,
- Identification of the number of lots to be serviced

[PSC1165]

114. Electricity

The production of written evidence from the local electricity supply authority certifying that reticulation and energising of low voltage underground electricity has been provided adjacent to the front boundary of all 4 allotments (unless agree otherwise by Council and the local electricity supply authority); and

All associated electricity supply works must be designed by an authorised Level 3 Accredited Service Provider and works undertaken by an authorised Level 1 Accredited Service Provider.

An acceptable letter from the local electricity supply authority is Essential Energy's "Notice of Arrangement".

Unless agreed otherwise by Council, the letter from the local electricity supply authority must reference:

- Over which lot and Deposited Plan did the arrangement for the supply of electricity (and street lighting, as applicable) apply to,
- Identification of the proposed lots to be created that have been serviced, or the development stage to which the arrangement applies.

Should any electrical supply authority infrastructure (e.g. sub-stations, switching stations, cabling etc.) be proposed to be located on Council land (existing or future), then Council's consent is to be obtained and Council included in all negotiations. Appropriate easements are to be created over all such infrastructure, whether on Council lands or private lands.

Compensatory measures may be pursued by the General Manager or his delegate for any significant effect on Public Reserves or Drainage Reserves.

[PSC1185]

115. Prior to the issue of a Subdivision Certificate, the applicant shall produce a copy of the "Satisfactory Inspection Report" issued by Council for all works required under Section 68 of the Local Government Act 1993, as applicable to Stage 1.

[PSCNS01]

Condition 115 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

GENERAL TERMS OF APPROVAL UNDER SECTION 100B OF THE RURAL FIRES ACT 1997

General Conditions

1. This Bush Fire Safety Authority, issued under Section 100B of the Rural Fires Act 1997, relates to the following specified plan set:
 - Subdivision Plan titled 'Proposed Subdivision' prepared by B & P Surveys, Drawing No. 24428-D, dated 6 July, 2021.
 - Strata Subdivision Plan titled 'Plan of Subdivision of Proposed Lot 41 in Lot 5 in DP23576' prepared by B & P Surveys, Reference: T16879/ 24429D, dated 9 March, 2023.
 - Strata Subdivision Plan titled 'Plan of Subdivision of Proposed Lot 42 in Lot 5 in DP23576' prepared by B & P Surveys, Reference: T16879/ 24438D, dated 9 March, 2023.
 - Strata Subdivision Plan titled 'Plan of Subdivision of Proposed Lot 43 in Lot 5 in DP23576' prepared by B & P Surveys, Reference: T16879/ 24439D, dated 9 March, 2023.
 - Strata Subdivision Plan titled 'Plan of Subdivision of Proposed Lot 44 in Lot 5 in DP23576' prepared by B & P Surveys, Reference: T16879/ 24440D, dated 9 March, 2023.
 - Architectural Plans titled 'Pottsville Villas for Omira Property 7 to 9 Elanora Ave' prepared by C2 Architecture, Plans SD 00 to SD 017 (inclusive), dated 8 March, 2023.

Asset Protection Zones

Intent of measures: to provide sufficient space and maintain reduced fuel loads to ensure radiant heat levels at the buildings are below critical limits and prevent direct flame contact.

2. At the commencement of building works or the issue of a subdivision certificate (whichever comes first) and in perpetuity to ensure ongoing protection from the impacts of bush fires, the entire site must be managed as an 'Inner Protection Area' (IPA) in accordance with the requirements of Appendix 4 of 'Planning for Bush Fire Protection 2019'. When establishing and maintaining an inner protection area, the following requirements apply:
 - a. tree canopy cover should be less than 15% at maturity;
 - b. trees at maturity should not touch or overhang the building;
 - c. lower limbs should be removed up to a height of 2m above the ground;
 - d. tree canopies should be separated by 2 to 5m;
 - e. preference should be given to smooth-barked and evergreen trees;
 - f. large discontinuities or gaps in vegetation should be provided to slow down or break the progress of fire towards buildings;
 - g. shrubs should not be located under trees;
 - h. shrubs should not form more than 10% ground cover;
 - i. clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation;
 - j. grass should be kept mown (as a guide, grass should be kept no more than 100mm in height), and;
 - k. leaves and vegetation debris should be removed.

Construction Standards

Intent of measure: To minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.

3. The buildings must be setback a minimum of 18m from the southern boundary.
4. New construction on the southern, eastern and western elevations must comply with section 3 and section 7 (BAL 29) Australian Standard AS3959-2018 Construction of buildings in bush fire-prone area or the relevant BAL 29 requirements of the NASH Standard - Steel Framed Construction in Bushfire Area (Incorporating amendment A - 2015). New construction must also comply with the construction requirements for BAL 29 in section 7.5 of Planning for Bush Fire Protection 2019.
5. New construction on the northern elevations must comply with section 3 and section 6 (BAL 19) Australian Standard AS3959-2018 Construction of buildings in bush fire-prone area or the relevant BAL 19 requirements of the NASH Standard - Steel Framed Construction in Bushfire Area (Incorporating amendment A - 2015). New construction must also comply with the construction requirements for BAL 19 in section 7.5 of Planning for Bush Fire Protection 2019.
6. Fences and gates must comply with Section 7.6 of Planning for Bush Fire Protection 2019.

Water and Utility Services

Intent of measure: To provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building.

7. The provision of water, electricity and gas must comply with Table 5.3c of Planning for Bush Fire Protection 2019.

Landscaping Assessment

8. Landscaping is to comply with the principles of Appendix 4 of Planning for Bush fire Protection 2019.

General Terms of Approval under section 100B of the Rural Fires Act 1997 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

The reasons for the imposition of conditions are to minimise any adverse impact the development may cause and to give effect to the objectives of the Environmental Planning and Assessment Act, 1979.

The application was determined on: **2 March 2023**

The consent to lapse 5 years from the date this consent becomes operative unless commenced prior to that date.

REVIEW OF DETERMINATION

For a determination other than for designated development you are entitled to request reconsideration of this determination under Section 8.3 of the Environmental Planning and Assessment Act, 1979. The request for review of the determination must be submitted on the NSW Planning Portal. The fees payable are specified in Schedule 4 and determined in accordance with Part 13 of the Environmental Planning and Assessment Regulation 2021.

The request for a review may be made at any time:

- a) prior to the time limited for the making of an appeal under Section 8.7 expires, if no such appeal is made against the determination, or
- b) prior to an appeal under Section 8.7 against the determination is disposed of by the Court, if such an appeal is made against the determination.

RIGHT OF APPEAL

If you are dissatisfied with this decision, Sections 8.7 and 8.10 of the Environmental Planning and Assessment Act 1979 gives you the right to appeal to the NSW Land and Environment Court.

Signed on behalf of the Tweed Shire Council

Lindsay McGavin, Manager Development Assessment and Compliance
6 March 2023

Annexure B

DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

Development Application No: DA21/0582

Development: DEMOLITION, SUBDIVISION OF 2 LOTS INTO 4 LOTS,
CONSTRUCTION OF 4 DUAL OCCUPANCIES AND
STRATA SUBDIVISION

Site: Lot 5 DP 23576; No. 7 Elanora Avenue POTTSVILLE; Lot
6 DP 23576; No. 9 Elanora Avenue POTTSVILLE

The above development application has been determined by the granting of consent subject to the conditions specified in this consent.

Date of determination: 30 June 2023

Date from which consent takes effect: [Date of determination].

TERMINOLOGY

In this consent:

- (a) Any reference to a Construction, Compliance, Occupation or Subdivision Certificate is a reference to such a certificate as defined in the *Environmental Planning and Assessment Act 1979*.
- (b) Any reference to the "applicant" means a reference to the applicant for development consent or any person who may be carrying out development from time to time pursuant to this consent.
- (c) Any reference to the "site", means the land known as [insert details].

The conditions of consent are as follows:

DEFERRED COMMENCEMENT

Pursuant to Section 4.18(1)(a) of the Environmental Planning and Assessment Act 1979, notice is hereby given of the determination by the Tweed Shire Council of Development Application No. **DA21/0582** relating to land described as:

Lot 5 DP 23576; No. 7 Elanora Avenue POTTSVILLE; Lot 6 DP 23576; No. 9 Elanora Avenue POTTSVILLE

to be developed in accordance with plans and details submitted for the purpose of –

DEMOLITION, SUBDIVISION OF 2 LOTS INTO 4 LOTS, CONSTRUCTION OF 4 DUAL OCCUPANCIES AND STRATA SUBDIVISION

The Development Application has been determined by the granting of a "deferred commencement" consent.

"DEFERRED COMMENCEMENT"

~~This consent shall not operate~~ until the applicant satisfies the consent authority by producing satisfactory evidence relating to the matters set out in Schedule "A". Such evidence is to be provided within 2 years of the date of notification.

~~Upon the consent authority being satisfied as to compliance with the matters set out in Schedule "A". The consent shall become operative and take effect from the date of notification under Section 76 of the Environmental Planning and Assessment Regulation subject to the conditions set out in Schedule "B".~~

SCHEDULE "A"

Conditions imposed pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act, 1979 and Section 76 of the Regulations

- A. ~~The strata plan shall be amended to correspond with the Architectural Plan Set Issue IRR No. 4 dated 16 December 2022.~~
- B. ~~The service units (including water heaters and air conditioning units) are to be relocated from the 900mm wide side setbacks for each dwelling, to provide unobstructed external access to the rear of each allotment.~~
- C. ~~The BASIX Certificate and associated Assessors Certificate shall be amended to correspond with the Architectural Plan Set Issue IRR No. 4 dated 16 December 2022.~~

SCHEDULE B

NOTE: THIS PART OF THE CONSENT WILL NOT BECOME OPERABLE UNTIL COUNCIL ADVISES THAT THE MATTERS CONTAINED IN SCHEDULE A ARE SATISFIED.

~~Deferred Commencement Conditions deleted pursuant to Land and Environment Court proceedings number 2022/00371825.~~

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GENERAL

1. The development shall be completed in accordance with the below plans, ~~as amended by Council in red~~, except where varied by the conditions of this consent.

Sheet No.	Issue	Plan Title	Drawn By	Dated
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24428D	-	Proposed Subdivision of Lot 5 & 6 in DP23576	B&P Surveys	06/07/2021
24429D	-	Strata Subdivision of Proposed Lot 41 in Lot 5 in DP23576	B&P Surveys	09/03/2023
24438D	-	Strata Subdivision of Proposed Lot 42 in Lot 5 in DP23576	B&P Surveys	09/03/2023
24439D	-	Strata Subdivision of Proposed Lot 43 in Lot 6 in DP23576	B&P Surveys	09/03/2023
24440D	-	Strata Subdivision of Proposed Lot 44 in Lot 6 in DP23576	B&P Surveys	09/03/2023
SD 00	4-	Site Plan	C2 Architecture	16/12/202208/03/2023
SD 01	4-	Site/Roof Plan	C2 Architecture	16/12/202208/03/2023
SD 02	4-	Ground Floor - Overall	C2 Architecture	16/12/202208/03/2023
SD 03	4-	First Floor - Overall	C2 Architecture	16/12/202208/03/2023
SD 04	4-	Second Floor - Overall	C2 Architecture	16/12/202208/03/2023
SD 05	4-	Roof Plan	C2 Architecture	16/12/202208/03/2023
SD 06	4-	Elevations	C2 Architecture	16/12/202208/03/2023
SD 07	4-	Elevation and Sections	C2 Architecture	16/12/202208/03/2023
SD 08	4-	Sectional Elevations	C2 Architecture	16/12/202208/03/2023
SD 09	4-	Fence Plan	C2 Architecture	16/12/202208/03/2023
SD 10	4-	Fence Elevation	C2 Architecture	16/12/202208/03/2023
SD 11	4-	Fence Elevation	C2 Architecture	16/12/202208/03/2023
SD 12	4-	Fence Elevation & Sections	C2 Architecture	16/12/202208/03/2023
SD 13	4-	Section 9 & 10	C2 Architecture	16/12/202208/03/2023
3, DWG S8-1195LC	E	Landscape Area Plan - Ground Floor	Studio 8 Concept and Design	15/12/2022
5, DWG S8-1195LC	E	Landscape Area Plan - Level 1 Planters	Studio 8 Concept and Design	15/12/2022

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6, DWG S8- 1195LC	E	Landscape Area Plan - Level 2 Planters	Studio 8 Concept and Design	15/12/2022
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Condition 1 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

2. The development shall be undertaken in the following stages (unless agreed otherwise by Council):

Stage 1	Demolition of existing buildings and Subdivision of land (2 Lots into 4 Lots)
Stage 2	Subdivision of land (2 Lots into 4 Lots)
Stage 32	Construction of dual occupancies on each Lot (4 total)
Stage 43	Strata title subdivision of dual occupancies

Condition 2 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

[GENN001]

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3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.

[GEN0115]

4. Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property. Any necessary adjustment or modification of existing services is to be undertaken in accordance with the requirements of the relevant authority, at the Developer's expense.

[GEN0135]

5. The development is to be carried out in accordance with Council's Development Design and Construction Specifications.

[GEN0265]

6. The owner is to ensure that the proposed building is constructed in the position and at the levels as nominated on the approved plans or as stipulated by a condition of this consent, noting that all boundary setback measurements are taken from the real property boundary and not from such things as road bitumen or fence lines.

[GEN0300]

7. Prior to demolition work commencing a sign containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm by 300mm shall be erected in a prominent visible location on the site. The sign shall remain in place until all asbestos has been removed from the site.

[GEN0345]

8. Prior to the commencement of works, a 'clearance inspection' shall be conducted for the site and a 'clearance certificate' issued by a licensed asbestos assessor or competent person which states that the site 'does not pose a risk to health and safety from exposure to asbestos' in accordance with Clause 474 of the *Work Health and Safety Regulation 2017*.

A copy of this certificate shall be forwarded to the Principal Certifier and Council within 7 days of completion of the 'clearance inspection'.

[GEN0350]

9. All works shall comply with AS 2601-2001 Demolition of Structures and the Work Health and Safety Regulation 2017.

[GEN0360]

10. Prior to demolition of the structure commences, all asbestos material shall be identified and removed from the site by an asbestos removalist who is licensed to carry out the work by SafeWork NSW.

All asbestos waste shall be disposed at a facility that is licensed to receive asbestos waste (all receipts related to disposal must be kept on site and provided to a Council Authorised Officer upon request).

[GEN0365]

11. Each proposed strata lot shall connect to the sewer junction of the associated Torrens Lot, ensuring each Torrens Lot only has one connection to Council sewer.

[GENNS02]

12. The entire area shaded green denoted as 'Littoral Forest Setback' in Ground Floor (Overall) Plan, Drawing No. SD 02 ~~Issue 04~~ (dated ~~16/12/2022~~08/03/2023) prepared by C2 Architecture shall be managed and protected in perpetuity as a deep planting soft landscaping area only.

No structures or hard surface treatments are to be erected or installed in the denoted 'Littoral Forest Setback' area to protect the Littoral Forest Area within the adjoining public reserve.

Condition 12 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

13. The removal of native vegetation is limited to Tree No. 1 to Tree No. 9 (inclusive) as identified in Attachment 2 - Site Plan and Attachment 4 - Tree Data of the Arboricultural Report (dated 05 July 2021) prepared by Northern Tree Care, unless otherwise approved by Council's General Manager or delegate.

Vegetation removal shall not commence until issue of Subdivision Works Certificate.

- ~~14. Prior to commencement of demolition works, vegetation protection fencing in accordance with Australian Standard AS 4970:2009 Protection of trees on development sites shall be installed along the southern site boundary and to the tree protection zone of all trees identified and described in Attachment 2 and Attachment 4 of the Arboricultural Report (dated 05 July 2021) prepared by Northern Tree Care unless otherwise approved by Council's General Manager or delegate.~~

[GENNS03]

Condition 14 deleted pursuant to Land and Environment Court proceedings number 2022/00371825.

15. An application for the Stage 4 ~~3~~ Strata Subdivision Certificate shall be submitted in accordance with the approved strata plan ~~approved under Deferred Commencement Condition A (or as amended).~~

[GENNS04]

Condition 15 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

16. Prior to the issue of the Stage 4.3 Strata Subdivision Certificate, a final occupation certificate must be provided to Council for each dual occupancy associated with Stage 3.2 of this consent.

[GENNS05]

Condition 16 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

17. All electricity meters on site shall be readily accessible for reading by electricity suppliers.

[GENNS06]

18. The proposed retaining walls on the eastern and western property boundaries (as identified in the Preliminary Earthworks Layout Plan included in the Engineering Services Report, prepared by Pinnacle Engineering Group (Rev 04) and dated July 2022) and any proposed retaining walls along the southern portion of each allotment (clear of the 7m wide littoral rainforest setback) are to be no greater than 600mm in height.

[GENNS07]

PRIOR TO ISSUE OF SUBDIVISION WORKS CERTIFICATE / CONSTRUCTION CERTIFICATE

19. Section 7.11 Contributions

Payment of the following contributions pursuant to Section 7.11 of the Act and the relevant Contribution Plan.

A Construction Certificate for Stage 3.2 shall NOT be issued by a Certifying Authority unless all Section 7.11 Contributions have been paid and the Certifying Authority has sighted Council's receipt confirming payment.

a.	Contribution Plan No 4 - Tweed Road Contribution Plan:	
	<u>5.23.9</u> trips @ \$1,565.00 per trip (\$1,284.00 base rate + \$281.00 indexation)	\$8,138.00 <u>\$6,103.50</u>
	CP04 Road Contributions (8-Pottsville)	
b.	Contribution Plan No 5 - Local Open Space:	
	<u>4.3.375</u> ETs @ \$732.00 per ET (\$502.00 base rate + \$230.00 indexation)	\$2,928.00 <u>\$2,470.50</u>
	CP05 (Local OS) Casual Open Space	
c.	Contribution Plan No 5 - Local Open Space:	
	<u>3.375.4</u> -ETs @ \$838.00 per ET (\$575.00 base rate + \$263.00 indexation)	\$3,352.00 <u>\$2,828.25</u>
	CP05 (Local OS) Structured Open Space	
d.	Contribution Plan No 11 - Tweed Shire Library Facilities:	
	<u>3.375.4</u> -ETs @ \$1,007.00 per ET (\$792.00 base rate + \$215.00 indexation)	\$4,028.00 <u>\$3,398.62</u>
	CP11 Libraries	
e.	Contribution Plan No 12 - Bus Shelters:	
	<u>3.375.4</u> -ETs @ \$76.00 per ET (\$60.00 base rate + \$16.00 indexation)	\$304.00 <u>\$256.50</u>
	CP12 Bus Shelters	
f.	Contribution Plan No 13 - Eviron Cemetery:	

	3.375 4 ETs @ \$143.00 per ET (\$101.00 base rate + \$42.00 indexation)	\$572.00\$482.62
	CP13 Cemeteries	
g.	Contribution Plan No 15 - Developer Contributions for Community Facilities:	
	3.375 4 ETs @ \$2,083.00 per ET (\$2,083.00 base rate + \$0.00 indexation)	\$8,332.00\$7,030.12
	CP15 Comm Facilities	
h.	Contribution Plan No 18 - Council Administration Offices and Technical Support Facilities:	
	3.375 4 ETs @ \$2,252.11 per ET (\$1,759.90 base rate + \$492.21 indexation)	\$9,008.44\$7,600.87
	CP18 Council Admin Facilities	
i.	Contribution Plan No 22 - Cycleways:	
	3.375 4 ETs @ \$568.00 per ET (\$447.00 base rate + \$121.00 indexation)	\$2,272.00\$1,917.00
	CP22 Cycleways	
j.	Contribution Plan No 26 - Shirewide Regional Open Space:	
	3.375 4 ETs @ \$1,311.00 per ET (\$1,031.00 base rate + \$280.00 indexation)	\$5,244.00\$4,424.62
	CP26 (Regional OS) Casual	
k.	Contribution Plan No 26 - Shirewide Regional Open Space:	
	3.375 4 ETs @ \$4,601.00 per ET (\$3,619.00 base rate + \$982.00 indexation)	\$18,404.00\$15,528.37
	CP26 (Regional OS) Structured	

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

These charges include indexation provided for in the Section 7.11 Contribution Plan and will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates in the relevant Plan as at the date the condition is imposed (which may have been indexed or varied from the original contribution rates in the Plan by a clause adopted in the Plan).

A s7.11 fee sheet must be obtained from Council before payment of s7.11 contributions.

A copy of the Section 7.11 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.

NOTE: All Section 7.11 Contribution payments are non-refundable.

Condition 19 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

20. All existing trees within the road reserve are to be retained and protected unless otherwise approved by Council's General Manager or delegate.

Where removal is unavoidable and approved by Council under a Subdivision Works Certificate, street trees shall be replaced by the applicant with a similar coastal native species of minimum 80 litre stock size in accordance with Council's Development Design Specification D14.08.03C Tree Planting and Location and Standard Drawing 'Tree and Shrub Planting Details' Dwg. No. SD701.

21. Plans submitted with a Subdivision Works Certificate shall clearly show civil infrastructure and/or bulk earthworks clear of the area denoted as 'Littoral Forest Setback' in Ground Floor (Overall) Plan, Drawing No. SD 02 ~~Issue 04~~ (dated ~~16/12/2022~~2022/03/2023) prepared by C2 Architecture.
- Condition 21 amended pursuant to Land and Environment Court proceedings number 2022/00371825.
22. Prior to issue of Subdivision Works Certificate a Detailed Plan of Landscaping (DPoL) shall be submitted to Council and approved by Council's General Manager or delegate. The DPoL shall include the following:
- (a) Plant selection criteria for all areas of the site other than the area denoted as 'Littoral Forest Setback' in Ground Floor (Overall) Plan, Drawing No. SD 02 ~~Issue 04~~ (dated ~~16/12/2022~~2022/03/2023) prepared by C2 Architecture shall comply with the following:
 - (i) A minimum of 80% locally occurring Australian native species and maximum of 20% non-locally occurring Australian native species to apply to all trees.
 - (ii) A minimum of 80% locally occurring Australian native species and maximum of 20% Australian native or exotic species to apply to other plants (shrubs, ground cover and similar).
 - (iii) No noxious or environmental weed species.
 - (b) A deep planting landscape zone component for the nominated 'Littoral Forest Setback' area shall comply with the following:
 - (i) 100% local native littoral rainforest species incorporating a minimum of nine (9) local native coastal trees of advanced stock size class (minimum 45 litre) comprising Cupaniopsis anacardioides (Tuckeroo) and Syzygium hemilampra (Blue Satinash) species.
 - (ii) Comprises 100% local native littoral rainforest species in the shrub and understorey layer of minimum tube-stock size.
 - (iii) Excludes any turfgrass, noxious or environmental weed species.
 - (iv) Satisfies the NSW Rural Fire Service Standards for Asset Protection Zones.
 - (v) Consideration also be given to include an additional four (4) trees in the rear littoral rainforest setback of the same species identified in 22(b)(i).
 - (c) Five (5) advanced stock street tree plantings comprising coastal local native species including (but not limited to) Cupanipsis anacardioides (Tuckeroo) and Syzygium hemilampra (Blue Satinash) in accordance with Council's Development Design Specification D14.08.03C Tree Planting and Location and Standard Drawing 'Tree and Shrub Planting Details' Dwg. No. SD701.
 - (d) Landscaping must comply with any RFS requirements.

Condition 22 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

- ~~23. Prior to issue of Subdivision Works Certificate a Detailed Plan of Landscaping (DPoL) shall be submitted to Council and approved by Council's General Manager or delegate. The DPoL shall include the following:~~

- a. ~~Plant selection criteria for all areas of the site other than the area denoted as 'Littoral Forest Setback' in Ground Floor (Overall) Plan, Drawing No. SD-02 Issue 04 (dated 16/12/2022) prepared by C2 Architecture shall comply with the following:~~
 - i. ~~A minimum of 80% locally occurring Australian native species and maximum of 20% non-locally occurring Australian native species to apply to all trees~~
 - ii. ~~A minimum of 80% locally occurring Australian native species and maximum of 20% Australian native or exotic species to apply to other plants (shrubs, ground cover and similar)~~
 - iii. ~~No noxious or environmental weed species~~
- b. ~~A deep planting landscape zone component for the nominated 'Littoral Forest Setback' area shall comply with the following:~~
 - i. ~~Comprises 100% local native littoral rainforest species incorporating a minimum of eight (8) local native coastal trees of advanced stock size class (minimum 45 litre)~~
 - ii. ~~Comprises 100% local native littoral rainforest species in the shrub and understorey layer of minimum tube stock size~~
 - iii. ~~Excludes any turfgrass, noxious or environmental weed species~~
 - iv. ~~Satisfies the NSW Rural Fire Service Standards for Asset Protection Zones~~
- c. ~~Advanced stock street tree plantings comprising coastal local native species in accordance with Council's Development Design Specification D14.08.03C Tree Planting and Location and Standard Drawing 'Tree and Shrub Planting Details' Dwg. No. SD701.~~
- d. ~~Landscaping must comply with any RFS requirements.~~

[PCCNS01]

Condition 23 deleted pursuant to Land and Environment Court proceedings number 2022/00371825.

24. In accordance with Section 6.14 of the Environmental Planning and Assessment Act 1979 (as amended), a Construction Certificate for Building Works OR Subdivision Works Certificate for Subdivision Works shall NOT be issued until any Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid (as applicable). Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

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

[PCC0485]

26. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve, as applicable to Stage 32. Application shall include (but not limited to) engineering plans and

specifications undertaken in accordance with Councils Development Design and Construction Specifications for the following required works:

(a) Vehicular access

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

- Road works/furnishings
- Stormwater drainage
- Water and sewerage works
- Sediment and erosion control plans
- Location of all services/conduits
- Traffic Control Plan (as applicable)

Condition 26 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

[PCC0895]

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

- (a) The Construction Certificate applications for Stage 3-2 shall include a detailed Stormwater Management Plan (SWMP) for the occupational or use stage of the development in accordance with Section D7.B2 of Councils *Development Design Specification D7 - Stormwater Quality*.
- (b) Permanent stormwater quality treatment shall comply with Councils *Development Design Specification D7 - Stormwater Quality*.
- (c) The stormwater and site works shall incorporate Water Sensitive Urban Design principles and where practical, integrated water cycle management.
- (d) Specific Requirements to be detailed within the Construction Certificate application include:
 - (i) Shake down area along the haul route immediately before the intersection with the road reserve.

Condition 27 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

[PCC1105]

28. The peak stormwater flow rate that may be discharged from the site to the public realm, in events of intensity up to the ARI 100 year design storm, shall be no greater than pre-development rates.

This can be achieved by on-site stormwater detention (OSD) utilising above and or below ground storage. OSD devices including discharge control pits (DCP) are to comply with standards in the current version of The Upper Parramatta River Catchment Trust "On-Site Stormwater Detention Handbook" except noting that permissible site discharge (PSD) and site storage requirements (SSR) in the handbook do not apply to Tweed Shire.

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All stormwater must initially be directed to the discharge control pits. Details are to be submitted with the Section 68 Stormwater application.

[PCC1165]

29. For developments containing less than four attached or detached strata dwellings having a Building Code classification of 1a, each premises must be connected by means of a separate water service pipe, each of which is connected to an individual Council water meter to allow individual metering. Application for the meters shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements.

[PCC1175]

30. Prior to the issue of a Subdivision Works Certificate, Construction Certificate or commencing any works, whichever occurs first, a Section 68 application shall be submitted together with any prescribed fees (including inspection fees) and approved by Council for works that involve any of the following:
 - Any water, sewerage, on site sewerage management system, or drainage works
 - Connection of a private stormwater drain to a public stormwater drain
 - Installation of stormwater treatment and quality control devices
 - Erosion and sediment control works
 - Any works that is likely to disturb or impact upon water or sewer infrastructure (e.g. extending, relocating or lowering of pipeline)

[PCC1195]

31. Where any existing sewer junctions are to be disused on the site, the connection point shall be permanently removed off by Council staff. Applications shall be made to Tweed Shire Council and include the payment of fees in accordance with Councils adopted fees and charges.

[PCC1235]

32. If the development is likely to disturb or impact upon water or sewer infrastructure (eg: extending, relocating or lowering of pipeline), written confirmation from the service provider that they have agreed to the proposed works must be submitted to the Certifier (Council or a Registered Certifier) prior to the issue of a Subdivision Works Certificate, Construction Certificate or any works commencing, whichever occurs first.

Applications for these works must be submitted on Council's standard Section 68 Application form accompanied by the required attachments and the prescribed fee. The arrangements and costs associated with any adjustment to water and wastewater infrastructure shall be borne in full by the applicant/developer.

The Section 68 Application must be approved by Council prior to the associated Subdivision Works Certificate / Construction Certificate being issued or as applicable to each stage of the development.

[PCC1310]

33. Prior to the issue of a Subdivision Works Certificate, Construction Certificate or commencing any works, whichever occurs first, written confirmation from the service provider that they have agreed to the proposed works must be submitted to the principal certifier if the development is likely to disturb or impact upon telecommunications infrastructure.

The arrangements and costs associated with any adjustment to telecommunications infrastructure shall be borne in full by the developer

[PCC1325]

PRIOR TO COMMENCEMENT OF WORK

34. Prior to commencement of works (excluding demolition), vegetation protection fencing, in accordance with Australian Standard AS 4970:2009 Protection of trees on development sites, shall be installed along the entire perimeter of the area denoted as 'Littoral Forest Setback' in Ground Floor (Overall) Plan, Drawing No. SD 02 [Issue 04](#) (dated [16/12/2022](#)[08/03/2023](#)) prepared by C2 Architecture.

The vegetation protection fencing shall remain for the entire construction period unless otherwise approved by Council's General Manager or delegate.

Condition 34 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

[PCWNS01]

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

[PCW0005]

36. The erection of a building in accordance with a development consent must not be commenced until:
- (a) a Construction Certificate for the building work has been issued by the consent authority, the Council (if the Council is not the consent authority) or a registered Certifier, and
 - (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifier for the building work, and
 - (ii) notified the principal certifier that the person will carry out the building work as an owner-builder, if that is the case, and
 - (c) the Principal Certifier has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the Council (if the Council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a Principal Contractor for the building work who must be the holder of a contractor license if any residential work is involved, and
 - (ii) notified the Principal Certifier of any such appointment, and

- (iii) unless that person is the Principal Contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

- 37. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifier" shall be submitted to Council at least **2 days** prior to work commencing.

[PCW0225]

- 38. Residential building work:

- (a) Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a Principal Contractor is required to be appointed:
 - * in the name and license number of the principal contractor, and
 - * the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - * the name of the owner-builder, and
 - * if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.
- (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

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

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

[PCW0245]

- 40. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2021, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (a) showing the name, address and telephone number of the principal certifier for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(c) stating that unauthorised entry to the site is prohibited.

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

[PCW0255]

41. Prior to commencement of work on the site all erosion and sedimentation control measures as applicable to each stage are to be installed and operational including the provision of a "shake down" area, where required to the satisfaction of the Principal Certifier.

These measures are to be in accordance with the approved Erosion and Sedimentation Control Plan and adequately maintained throughout the duration of the development.

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

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

[PCW0985]

42. An application to connect to Council's sewer or carry out plumbing and drainage works, together with any prescribed fees including inspection fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.

[PCW1065]

DURING CONSTRUCTION

43. No construction works (excluding demolition) other than approved deep planting landscape works and fencing are permitted to occur within the 7m 'Littoral Forest Setback' area as shown in Ground Floor (Overall) Plan, Drawing No. SD 02 ~~Issue 04~~ (dated ~~16/12/2022~~08/03/2023) prepared by C2 Architecture unless otherwise approved by Council's General Manager or delegate.

Condition 43 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

[DURNS03]

44. All proposed works are to be carried out in accordance with the conditions of development consent, any approved Management Plans, approved Subdivision Works Certificate, approved Construction Certificate, drawings and specifications.

[DUR0005]

45. Should any Aboriginal object or cultural heritage (including human remains) be discovered, all site works must cease immediately and the Tweed Byron Local Aboriginal Land Council (TBLALC) Aboriginal Sites Officer (on 07 5536 1763) are to be notified. The find is to be reported to Heritage NSW, Department of Planning and Environment.

No works or development may be undertaken until the required investigations have been completed and any permits or approvals obtained, where required, in accordance with the National Parks and Wildlife Act, 1974.

[DUR0025]

46. Commencement of work, including the switching on and operation of plant, machinery and vehicles is limited to the following hours, unless otherwise permitted by Council:
Monday to Saturday from 7.00am to 6.00pm
No work to be carried out on Sundays or Public Holidays
The proponent is responsible to instruct and control subcontractors regarding hours of work.
- [DUR0205]
47. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:
- A. Short Term Period - 4 weeks.
LAeq, 15 min noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.
- B. Long term period - the duration.
LAeq, 15 min noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.
- [DUR0215]
48. The roof cladding is to have low reflectivity where it would otherwise cause nuisance to the occupants of buildings with direct line of sight to the proposed building.
- [DUR0245]
49. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).
- [DUR0375]
50. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.
- [DUR0395]
51. The Principal Certifier is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifier via the notice under Section 6.6 of the Environmental Planning and Assessment Act 1979.
- [DUR0405]
52. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with SafeWork NSW requirements and Work Health and Safety Regulation 2017.
- [DUR0415]
53. The finished floor level of the building should finish not less than 225mm above finished ground level.
- [DUR0445]

54. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover NSW, Work Health and Safety Regulation 2017.

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

[DUR0645]

55. Minimum notice of 5 working days shall be given to Tweed Shire Council for the permanent removal of any disused sewer junctions. Tweed Shire Council staff shall undertake the works in accordance with the application lodged and upon excavation of the service by the Developer.

[DUR0675]

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

[DUR0815]

57. The development is to be carried out in accordance with the BASIX certificate and schedule of commitments approved in relation to this development consent.

[DUR0905]

58. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council's General Manager or delegate.

[DUR0985]

59. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material deposited on the roadway by construction vehicles will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate or Occupation Certificate, as applicable to each stage of the development.

[DUR0995]

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

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

[DUR1005]

61. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. Such materials shall either be disposed of at the Council's Sotts Creek Resource Recovery Centre (Organics Processing Facility) or disposed of in a manner acceptable to Councils General Manager or delegate.

[DUR1015]

62. Landscaping of the site shall be carried out in accordance with the approved Detailed Plan of Landscaping.

[DUR1045]

63. Where existing kerb, footpath or driveway laybacks are to be removed for new driveway laybacks, or stormwater connections and kerb ramps for any other reason

(as applicable to each stage of the development) then the kerb, footpath or driveway laybacks must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.

[DUR1905]

64. Swimming Pools (Building)

- (a) The swimming pool is to be installed and access thereto restricted in accordance with Australian Standard AS 1926.1 - 2012 & AS 1926.3 -2010 & AS 1926.2-2007, the Swimming Pools Act 1992 and the Swimming Pools Regulation 2008.
- (b) Swimming pools shall have suitable means for the drainage and disposal of overflow water.
- (c) The pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.
- (d) Warning notices are to be provided in accordance with Part 3 of the Swimming Pools Regulation 2008.
- (e) Once your pool or spa is complete please register it at www.swimmingpoolregister.nsw.gov.au.

[DUR2075]

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

[DUR2085]

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

[DUR2185]

67. All waste shall be collected, stored and disposed of in accordance with the provisions of Tweed Shire Council Development Control Plan Section 15 - Waste Minimisation and Management.

[DUR2195]

68. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:

- (a) internal drainage, prior to slab preparation;
- (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
- (c) external drainage prior to backfilling.
- (d) completion of work and prior to occupation of the building.

[DUR2485]

69. Plumbing

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

[DUR2495]

70. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position.

[DUR2505]

71. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard.

[DUR2535]

72. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.

[DUR2545]

73. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-

- * 45°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
- * 50°C in all other classes of buildings.

A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.

[DUR2555]

74. The Applicant shall submit the appropriate 'Application for Water Service Connection' form to Council's Water Unit to facilitate a property service water connection for each proposed Villa (Villas 1 to 8) on the 4 allotments, from the existing water main in Elanora Avenue. The connection shall be undertaken by Tweed Shire Council, with all applicable costs and application fees paid by the Applicant.

[DUR2800]

75. Dust and Erosion Management

- (a) Site earthworks are to be limited to a 5ha maximum at any time to reduce exposed areas. Completed area's are to be topsoiled and seeded immediately to protect them from water and wind erosion.
- (b) All topsoil stockpiles are to be sprayed with dust suppression material such as "hydromulch", "dustex" or equivalent. All exposed areas including haul roads shall be regularly watered or treated with dust suppression material or as directed on site.
- (c) All construction activities that generate dust shall cease when average wind speeds exceed 15m/s (54 km/h). The applicant shall be responsible for the monitoring of on-site wind speeds and be able to produce this data to Council on request.

[DUR2825]

76. Swimming pool pumps, air conditioning units, heat pump water systems and the like shall be located, installed and operated so as not to be heard in a habitable room of a residence during restricted hours or where it would create offensive noise as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2017.

[DUR2835]

77. The occupier of any premises in or on which a swimming pool (not including a spa pool) is being constructed must ensure that a sign is erected and maintained that:
- (a) bears a notice containing the words "This swimming pool is not to be occupied or used", and
 - (b) is located in a prominent position in the immediate vicinity of that swimming pool, and
 - (c) continues to be erected and maintained until a relevant occupation certificate or a certificate of compliance has been issued for that swimming pool.

Maximum penalty: 5 penalty units.

Note. The signage requirements in subclause (3) are in addition to any signage that may be required under the *Environmental Planning and Assessment Act 1979* or any other Act.

[DUR2845]

78. The exportation or importation of waste (including fill or soil) from or to the site must be in accordance with the provisions of the Protection of the Environment Operations Act 1997 and the NSW Environment Protection Authority "Waste Classification Guidelines".

The importation of waste to the site is restricted to the following:

- a. Virgin excavated natural material (as defined in Schedule 1 of the Protection of the Environment Operations (POEO) Act);
- b. Any other waste-derived material subject to a resource recovery exemption under Part 9 Clauses 91 and 92 of the Protection of the Environment Operations (Waste) Regulation 2014 that is permitted to be used as fill material.

The exportation of waste must be transported to a licenced waste facility or an approved site subject to a resource recovery order and exemption.

Any virgin excavated natural material or waste-derived fill material subject to a resource recovery exemption must be accompanied by documentation as to the material's compliance and must be provided to the Principal Certifying Authority or Council on request.

79. Prior to the importation of any waste (including fill or soil) from the south-east Queensland fire ant biosecurity zone, the supplier of the waste must demonstrate that a current biosecurity instrument permit issued by the Qld Department of Agriculture and Fisheries is in place.
80. Any importation of waste (including fill or soil) from the south-east Queensland fire ant biosecurity zone must be in accordance with a current biosecurity instrument permit issued by the Qld Department of Agriculture and Fisheries.
81. Any importation of waste (including fill or soil) from the south-east Queensland fire ant biosecurity zone must be in accordance with NSW Department of Primary Industries requirements.

[DURNS01]

82. Where public safety is at risk due to damage of water or sewer infrastructure, it is the responsibility of the applicant to immediately notify Council. Cost to undertake emergency works shall be borne in full by the applicant/developer. If additional works

to repair or relocate water or sewer infrastructure due to the damage are required, arrangements and cost shall be borne in full by the applicant/developer.

[DURNS02]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

83. Prior to issue of an Occupation Certificate, all works, actions, inspections etc. required at that stage by other conditions or any approved Management Plans or the like shall be completed in accordance with those conditions or plans.

[POC0005]

84. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 6.9 and 6.10 unless an Occupation Certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0205]

85. Prior to the issue of an Occupation Certificate,
- (a) Certification of termite protection methods performed by the person carrying out the works is to be submitted to the Principal Certifier; and
 - (b) A durable notice must be permanently fixed to the building in a prominent location, such as in the electrical meter box indicating:-
 - (i) the method of protection; and
 - (ii) the date of installation of the system; and
 - (iii) where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and
 - (iv) the need to maintain and inspect the system on a regular basis.

[POC0235]

86. Prior to occupation of the building, the property street number is to be clearly identified on the site by way of painted numbering on the street gutter within 1 metre of the access point to the property.

The street number is to be on a white reflective background professionally painted in black numbers 75-100mm high.

On rural properties or where street guttering is not provided the street number is to be readily identifiable on or near the front entrance to the site.

The above requirement is to assist in property identification by emergency services and the like. Any variations to the above are to be approved by Council prior to the carrying out of the work.

[POC0265]

87. Prior to the issue of an Occupation Certificate, adequate proof and/or documentation is to be submitted to the Principal Certifier to identify that all commitment on the BASIX "Schedule of Commitments" have been complied with.

[POC0435]

88. Prior to the issue of an Occupation Certificate, the applicant shall produce a copy of the "Satisfactory Inspection Report" issued by Council for all works required under Section 138 of the Roads Act 1993, as applicable to Stage 32.

[Condition 88 amended pursuant to Land and Environment Court proceedings number 2022/00371825.](#)

- [POC0745]
89. Redundant road pavement, kerb and gutter or foot paving including any existing disused vehicular laybacks/driveways or other special provisions shall be removed and the area reinstated to match adjoining works in accordance with Council's Development Design and Construction Specifications.

- [POC0755]
90. Stage 2-1 must be completed and the plan subdividing 2 lots into 4 shall be registered with NSW Land Registry Services (formerly Land and Property Information (LPI)), prior to issue of any Occupation Certificate associated with Stage 3-2.

[POC0855]

Condition 90 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

91. Prior to the issue of any Occupation Certificate, a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.

- [POC1045]
92. Any damage caused to public infrastructure (including roads, footpaths, water and sewer mains, power and telephone services) during construction of the Stage 3-2 works shall be repaired in accordance with Council's Development Design and Construction Specifications, prior to the issue of any Occupation Certificate.

Condition 92 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

- [POCNS01]
93. Prior to the issue of an Occupation Certificate, a "Certificate of Practical Completion" shall be obtained from Council's General Manager or delegate for all works required under Section 68 of the Local Government Act, as applicable to Stage 3-2.

[POCNS02]

Condition 93 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

USE

94. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.

- [USE0125]
95. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.

- [USE0175]
96. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or delegate where necessary or required so as

to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.

[USE0225]

97. All plant and equipment installed or used in or on the premises:

- (a) Must be maintained in a proper and efficient condition, and
- (b) Must be operated in a proper and efficient manner.

In this condition, "plant and equipment" includes drainage systems, infrastructure, pollution control equipment and fuel burning equipment.

[USE0315]

98. All commercial, industrial, and residential wastes shall be collected, stored and disposed of in accordance with any approved Waste Management Plan or to the satisfaction of the General Manager or delegate.

[USE0875]

99. Swimming Pools (Building)

- (a) It is the responsibility of the pool owner to ensure that the pool fencing continues to provide the level of protection required regardless of and in response to any activity or construction on the subject property or the adjoining premises. Due regard must be given to the affect that landscaping will have on the future effectiveness of the security fencing. (Section 7 Swimming Pools Act 1992).
- (b) The resuscitation poster must be permanently displayed in close proximity to the swimming pool. (Section 17 Swimming Pools Act 1992).
- (c) Warning notices required under Part 3 of the Swimming Pools Regulation 2008 shall be maintained at all times.

[USE1295]

100. The swimming pool is not to be used for commercial purposes without prior Development Consent.

[USE1305]

101. Swimming pool pumps, air conditioning units, heat pump water systems and the like shall not be operated if it can be heard in a habitable room of a residence during restricted hours or at other times should the noise from the article be deemed to be offensive as defined within the **NSW Protection of the Environment Operations (Noise Control) Regulation 2017**.

[USE1510]

102. All landscaping shall be maintained in accordance with the approved Detailed Plan of Landscaping. Landscape areas shall not be replaced by impervious surfaces including artificial turf or hardstand paving to maintain adequate stormwater infiltration and deep soil zones on site.

[USENS01]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

~~103. Section 7.11 Contributions~~

~~Payment of the following contributions pursuant to Section 7.11 of the Act and the relevant Contribution Plan.~~

A Subdivision Certificate for Stage 2 shall NOT be issued by a Certifying Authority unless all Section 7.11 Contributions have been paid and the Certifying Authority has sighted Council's receipt confirming payment.

a.	Contribution Plan No 4 – Tweed Road Contribution Plan:	
	13 trips @ \$1,565.00 per trip (\$1,284.00 base rate + \$281.00 indexation)	\$17,108.42*
	CP04 Road Contributions (8-Pottsville)	
b.	Contribution Plan No 5 – Local Open Space:	
	2 ETs @ \$732.00 per ET (\$502.00 base rate + \$230.00 indexation)	\$1,231.09*
	CP05 (Local OS) Casual Open Space	
c.	Contribution Plan No 5 – Local Open Space:	
	2 ETs @ \$838.00 per ET (\$575.00 base rate + \$263.00 indexation)	\$1,409.37*
	CP05 (Local OS) Structured Open Space	
d.	Contribution Plan No 11 – Tweed Shire Library Facilities:	
	2 ETs @ \$1,007.00 per ET (\$792.00 base rate + \$215.00 indexation)	\$1,693.60*
	CP11 Libraries	
e.	Contribution Plan No 12 – Bus Shelters:	
	2 ETs @ \$76.00 per ET (\$60.00 base rate + \$16.00 indexation)	\$127.81*
	CP12 Bus Shelters	
f.	Contribution Plan No 13 – Eviron Cemetery:	
	2 ETs @ \$143.00 per ET (\$101.00 base rate + \$42.00 indexation)	\$240.50*
	CP13 Cemeteries	
g.	Contribution Plan No 15 – Developer Contributions for Community Facilities:	
	2 ETs @ \$2,083.00 per ET (\$2,083.00 base rate + \$0.00 indexation)	\$3,503.25*
	CP15 Comm Facilities	
h.	Contribution Plan No 18 – Council Administration Offices and Technical Support Facilities:	
	2 ETs @ \$2,252.11 per ET (\$1,759.90 base rate + \$492.21 indexation)	\$3,787.66*
	CP18 Council Admin Facilities	
i.	Contribution Plan No 22 – Cycleways:	
	2 ETs @ \$568.00 per ET (\$447.00 base rate + \$121.00 indexation)	\$955.27*
	CP22 Cycleways	
j.	Contribution Plan No 26 – Shirewide Regional Open Space:	
	2 ETs @ \$1,311.00 per ET (\$1,031.00 base rate + \$280.00 indexation)	\$2,204.87*
	CP26 (Regional OS) Casual	
k.	Contribution Plan No 26 – Shirewide Regional Open Space:	
	2 ETs @ \$4,601.00 per ET (\$3,619.00 base rate + \$982.00 indexation)	\$7,738.10*
	CP26 (Regional OS) Structured	

* Includes adjustments which effect compliance with the Directions from the Minister for Planning in relation to the maximum contribution payable per dwelling dated 13 January 2009 and 19 July 2009.

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

These charges include indexation provided for in the Section 7.11 Contribution Plan and will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates in the relevant Plan as at the date the condition is imposed (which may have been indexed or varied from the original contribution rates in the Plan by a clause adopted in the Plan).

A copy of the Section 7.11 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.

NOTE: All Section 7.11 Contribution payments are non-refundable.

Condition 103 deleted pursuant to Land and Environment Court proceedings number 2022/00371825.

104. A Certificate of Compliance under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

A Subdivision Certificate shall **NOT** be issued for Stage 2-1 by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's receipt confirming payment.

[PCC0265]

Condition 104 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

105. Prior to issue of a Subdivision Certificate, all works, actions, inspections, and conditions of consent associated with the subdivisional component of the development (Stage 21) shall be completed in accordance with those conditions or plans.

[PSC0005]

Condition 105 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

106. Prior to the issue of a Subdivision Certificate, Work as Executed Plans (WAX Plans) and an accompanying ADAC XML Digital File shall be submitted to Council for endorsement in accordance with the provisions of Tweed Shire Council's Development Control Plan Part A5 - Subdivision Manual, and Council's Development Design Specification, D13 - Engineering Plans.

The WAX Plans are to be endorsed by a NSW Registered Surveyor and/or a Consulting Engineer as specified in D13, certifying that:

- (a) All drainage lines, sewer lines, services and structures are wholly contained within the relevant easement(s) created by the subdivision;
- (b) The plans accurately reflect the Work as Executed, including all the actual asset types and materials used in the construction;

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- (c) The accompanying ADAC XML Digital File corresponds exactly with all details of the Summary WAX plan(s) including lot and easement details, geometries, relative levels, assets, and material types.

Note: Where works are carried out by Council on behalf of the developer, it is the responsibility of the Developer to prepare and submit Works-As-Executed (WAX) plans.

[PSC0735]

107. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions associated with the subdivision component of this Development Consent (Stage 2.1), including the construction of services to all 4 allotments have been complied with.

[PSC0825]

Condition 107 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

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108. The creation of Easements for services, Rights of Carriageway and Restrictions as to User (including restrictions associated with planning for bushfire) as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:

- (a) Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property.

Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating a Right of Carriageway or Easement shall make provision for maintenance of the Right of Carriageway or Easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis (as applicable).

Any Section 88B Instrument creating Restrictions as to User, Rights of Carriageway or Easements which benefit Council shall contain a provision enabling such Restrictions, Easements or Rights of Carriageway to be revoked, varied or modified only with the consent of Council.

109. A Positive Covenant and Restriction as to User applicable under Section 88B of the Conveyancing Act 1919 shall be registered for the benefit of the Tweed Shire Council prior to issue of Subdivision Certificate on the terms specified below:

- a. A Positive Covenant shall be registered over the area denoted as 'Littoral Forest Setback' in Ground Floor (Overall) Plan, Drawing No. SD 02 ~~Issue 04~~ (dated ~~16/12/2022~~ 08/03/2023) prepared by C2 Architecture. The nominated area of land must be subject to landscaping in accordance with Council approved detailed plan of landscaping and managed as a deep soil landscape zone in perpetuity.

Burden: Lot 41, Lot 42, Lot 43 and Lot 44 **Benefit:** Tweed Shire Council

- b. Restriction as to User restricting the following activities within the area denoted as 'Littoral Forest Setback' in Ground Floor (Overall) Plan, Drawing No. SD 02 Issue 04 (dated 16/12/2022) prepared by C2 Architecture:
- i. Clearing, lopping or removal of any native plants, whether existing at the date of this approval or planted pursuant to conditions of this consent unless otherwise required to comply with asset protection zone standards approved for the development;
 - ii. Erection of any fixtures or improvements, including buildings or structures;

- iii. Construction of any trails or paths;
- iv. Depositing of any fill, soil, rock, rubbish, ashes, garbage, waste or other material foreign to the land;
- v. Keeping or permitting the entry of domestic animals or any other animals that are not indigenous to the land; and
- vi. Performance of any other acts which may have detrimental impact on the values of the land.

Burden: Lot 41, Lot 42, Lot 43 and Lot 44 **Benefit:** Tweed Shire Council

Condition 109 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

[PSC0835]

110. In accordance with Clause 60 of the Surveying and Spatial Information Regulation 2012, the Plan of Subdivision (Deposited Plan) shall show the approved street address for each lot on the new Deposited Plan.

[PSC0845]

111. Prior to registration of the Plan of Subdivision, a Subdivision Certificate shall be obtained.

The following information must accompany an application:

- (a) Submission of all documentation electronically (in pdf format), plus the original Plan of Subdivision (and original Admin Sheets) prepared by a NSW registered surveyor together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
- (b) All detail as tabled within Tweed Shire Council's Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by a Registered Certifier.

[PSC0885]

112. Prior to issuing a Subdivision Certificate for Stage 21, reticulated water supply and outfall sewerage reticulation (including household connections) shall be provided to all 4 allotments within the subdivision in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual, Councils Development Design and Construction Specifications and approved Section 68 applications.

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

[PSC1115]

Condition 112 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

113. The production of written evidence from the local telecommunications supply authority certifying that the provision of underground telecommunications at the front boundary of all 4 allotments has been completed.

Unless agreed otherwise by Council, an acceptable form is Telstra's "Telstra Network Infrastructure Letter" or NBN's "Provisioning of Telecommunication Services - Confirmation of final payment" letter (for small subdivisions) or "Certificate of Practical Completion of NBN network infrastructure" letter (for large subdivisions) (as applicable to the development).

The NBN letter must reference:

- Over which Lot and Deposited Plan the agreement applies to,
- Identification of the number of lots to be serviced

[PSC1165]

114. Electricity

The production of written evidence from the local electricity supply authority certifying that reticulation and energising of low voltage underground electricity has been provided adjacent to the front boundary of all 4 allotments (unless agree otherwise by Council and the local electricity supply authority); and

All associated electricity supply works must be designed by an authorised Level 3 Accredited Service Provider and works undertaken by an authorised Level 1 Accredited Service Provider.

An acceptable letter from the local electricity supply authority is Essential Energy's "Notice of Arrangement".

Unless agreed otherwise by Council, the letter from the local electricity supply authority must reference:

- Over which lot and Deposited Plan did the arrangement for the supply of electricity (and street lighting, as applicable) apply to,
- Identification of the proposed lots to be created that have been serviced, or the development stage to which the arrangement applies.

Should any electrical supply authority infrastructure (e.g. sub-stations, switching stations, cabling etc.) be proposed to be located on Council land (existing or future), then Council's consent is to be obtained and Council included in all negotiations. Appropriate easements are to be created over all such infrastructure, whether on Council lands or private lands.

Compensatory measures may be pursued by the General Manager or his delegate for any significant effect on Public Reserves or Drainage Reserves.

[PSC1185]

115. Prior to the issue of a Subdivision Certificate, the applicant shall produce a copy of the "Satisfactory Inspection Report" issued by Council for all works required under Section 68 of the Local Government Act 1993, as applicable to Stage 21.

[PSCNS01]

Condition 115 amended pursuant to Land and Environment Court proceedings number 2022/00371825.

GENERAL TERMS OF APPROVAL UNDER SECTION 100B OF THE RURAL FIRES ACT 1997

General Conditions

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1. This Bush Fire Safety Authority, issued under Section 100B of the Rural Fires Act 1997, relates to the plan set submitted dated 16/12/2022, following specified plan set:
 - Subdivision Plan titled 'Proposed Subdivision' prepared by B & P Surveys, Drawing No. 24428-D, dated 6 July, 2021.
 - Strata Subdivision Plan titled 'Plan of Subdivision of Proposed Lot 41 in Lot 5 in DP23576' prepared by B & P Surveys, Reference: T16879/ 24429D, dated 9 March, 2023.
 - Strata Subdivision Plan titled 'Plan of Subdivision of Proposed Lot 42 in Lot 5 in DP23576' prepared by B & P Surveys, Reference: T16879/ 24438D, dated 9 March, 2023.
 - Strata Subdivision Plan titled 'Plan of Subdivision of Proposed Lot 43 in Lot 5 in DP23576' prepared by B & P Surveys, Reference: T16879/ 24439D, dated 9 March, 2023.
 - Strata Subdivision Plan titled 'Plan of Subdivision of Proposed Lot 44 in Lot 5 in DP23576' prepared by B & P Surveys, Reference: T16879/ 24440D, dated 9 March, 2023.
 - Architectural Plans titled 'Pottsville Villas for Omira Property 7 to 9 Elanora Ave' prepared by C2 Architecture, Plans SD 00 to SD 017 (inclusive), dated 8 March, 2023.

Asset Protection Zones

Intent of measures: to provide sufficient space and maintain reduced fuel loads to ensure radiant heat levels at the buildings are below critical limits and prevent direct flame contact.

2. At the commencement of building works or the issue of a subdivision certificate (whichever comes first) and in perpetuity to ensure ongoing protection from the impacts of bush fires, the entire site must be managed as an 'Inner Protection Area' (IPA) in accordance with the requirements of Appendix 4 of 'Planning for Bush Fire Protection 2019'. When establishing and maintaining an inner protection area, the following requirements apply:
 - a. tree canopy cover should be less than 15% at maturity;
 - b. trees at maturity should not touch or overhang the building;
 - c. lower limbs should be removed up to a height of 2m above the ground;
 - d. tree canopies should be separated by 2 to 5m;
 - e. preference should be given to smooth-barked and evergreen trees;
 - f. large discontinuities or gaps in vegetation should be provided to slow down or break the progress of fire towards buildings;
 - g. shrubs should not be located under trees;
 - h. shrubs should not form more than 10% ground cover;
 - i. clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation;
 - j. grass should be kept mown (as a guide, grass should be kept no more than 100mm in height), and;
 - k. leaves and vegetation debris should be removed.

Construction Standards

Intent of measure: To minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.

3. The buildings must be setback a minimum of 18m from the southern boundary.
4. New construction on the southern, eastern and western elevations must comply with section 3 and section 7 (BAL 29) Australian Standard AS3959-2018 Construction of buildings in bush fire-prone area or the relevant BAL 29 requirements of the NASH Standard - Steel Framed Construction in Bushfire Area (Incorporating amendment A - 2015). New construction must also comply with the construction requirements for BAL 29 in section 7.5 of Planning for Bush Fire Protection 2019.
5. New construction on the northern elevations must comply with section 3 and section 6 (BAL 19) Australian Standard AS3959-2018 Construction of buildings in bush fire-prone area or the relevant BAL 19 requirements of the NASH Standard - Steel Framed Construction in Bushfire Area (Incorporating amendment A - 2015). New construction must also comply with the construction requirements for BAL 19 in section 7.5 of Planning for Bush Fire Protection 2019.
6. Fences and gates must comply with Section 7.6 of Planning for Bush Fire Protection 2019.

Water and Utility Services

Intent of measure: To provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building.

7. The provision of water, electricity and gas must comply with Table 5.3c of Planning for Bush Fire Protection 2019.

Landscaping Assessment

8. Landscaping is to comply with the principles of Appendix 4 of Planning for Bush fire Protection 2019.

[General Terms of Approval under section 100B of the Rural Fires Act 1997 amended pursuant to Land and Environment Court proceedings number 2022/00371825.](#)

The reasons for the imposition of conditions are to minimise any adverse impact the development may cause and to give effect to the objectives of the Environmental Planning and Assessment Act, 1979.

The application was determined on: **2 March 2023**

The consent to lapse 5 years from the date this consent becomes operative unless commenced prior to that date.

REVIEW OF DETERMINATION

For a determination other than for designated development you are entitled to request reconsideration of this determination under Section 8.3 of the Environmental Planning and Assessment Act, 1979. The request for review of the determination must be submitted on the NSW Planning Portal. The fees payable are specified in Schedule 4 and determined in accordance with Part 13 of the Environmental Planning and Assessment Regulation 2021.

The request for a review may be made at any time:

- a) prior to the time limited for the making of an appeal under Section 8.7 expires, if no such appeal is made against the determination, or
- b) prior to an appeal under Section 8.7 against the determination is disposed of by the Court, if such an appeal is made against the determination.

RIGHT OF APPEAL

If you are dissatisfied with this decision, Sections 8.7 and 8.10 of the Environmental Planning and Assessment Act 1979 gives you the right to appeal to the NSW Land and Environment Court.

Signed on behalf of the Tweed Shire Council

Lindsay McGavin, Manager Development Assessment and Compliance
6 March 2023

**SECTION 7.11 AND OTHER DEVELOPER CONTRIBUTIONS
SHEET**
**THIS FORM MUST ACCOMPANY PAYMENT OF CONTRIBUTIONS TO
COUNCIL**

Development: demolition, subdivision of 2 lots into 4 lots, construction of 4 dual occupancies and strata subdivision
 Development Consent No: DA21/0582
 Location: Lot 5 DP 23576; No. 7 Elanora Avenue POTTSVILLE; Lot 6 DP 23576; No. 9 Elanora Avenue POTTSVILLE
 Applicant: Elanora Breeze Pty Ltd Atf Elanora Breeze Unit Trust
 C/- Town Planning Alliance (NSW) Pty Ltd
 PO Box 7667
 EAST BRISBANE QLD 4169
 Owner: Elanora Breeze Pty Ltd
 Date: 6 March 2023
 Paid by:
 Stage: STAGE 2

Contribution Payable	Units/lots or rate/ha	Rate valid for 12 months from when consent becomes operable	Amount	Rate at Time of Payment after <u>1/1</u>	Amount at Time of Payment \$	Receipt Number	Charge Control	Bank Account
CP04 Road Contributions (8-Pottsville)	13	@ \$1565 per trip=\$20,345.00	\$17,108.42				Sector8_4	
CP05 (Local OS) Casual Open Space	2	@ \$732 per ET=\$1,464.00	\$1,231.09				CasualOS_5	
CP05 (Local OS) Structured Open Space	2	@ \$838 per ET=\$1,676.00	\$1,409.37				StructOS_5	
CP11 Libraries	2	@ \$1007 per ET=\$2,014.00	\$1,693.60				ResDev11	
CP12 Bus Shelters	2	@ \$76 per ET=\$152.00	\$127.81				Over10ET	
CP13 Cemeteries	2	@ \$143 per ET=\$286.00	\$240.50				ResDev13	
CP15 Comm Facilities	2	@ \$2083 per ET=\$4,166.00	\$3,503.25				ComFac15	
CP18 Council Admin Facilities	2	@ \$2252.11 per ET=\$4,504.22	\$3,787.66				Shirewide	
CP22 Cycleways	2	@ \$568 per ET=\$1,136.00	\$955.27				Shirewid22	

CP26 (Regional OS) Casual	2	@ \$1311 per ET=\$2,622.00	\$2,204.87				CasOS_26	
CP26 (Regional OS) Structured	2	@ \$4601 per ET=\$9,202.00	\$7,738.10				StrucOS_26	
TOTAL AMOUNT			\$39,999.94					

Please forward receipt to**Name:** _____**Address:** _____

_____**METHODS OF PAYMENT****IN PERSON**

You can pay your Section 7.11 Developer Contributions in person at the Tweed Shire Council's Murwillumbah Office. Payments can be made by cash, cheque, money order (or EFTPOS (debit card or credit card).

We accept Mastercard or Visa. Please note that a surcharge will apply to all payments made via credit card.

Receipting Hours Monday – Friday, 8.30am – 4.00pm

BY MAIL

Please make all cheques payable to Tweed Shire Council. All cheques must be crossed 'Not Negotiable'. Post dated cheques will not be accepted.

Mail payments to: **PO Box 816, Murwillumbah NSW 2484**

**SECTION 7.11 AND OTHER DEVELOPER CONTRIBUTIONS
SHEET**
**THIS FORM MUST ACCOMPANY PAYMENT OF CONTRIBUTIONS TO
COUNCIL**

Development: demolition, subdivision of 2 lots into 4 lots, construction of 4 dual occupancies and strata subdivision
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 Applicant: Elanora Breeze Pty Ltd Atf Elanora Breeze Unit Trust
 C/- Town Planning Alliance (NSW Pty Ltd
 PO Box 7657
 EAST BRISBANE QLD 4169
 Owner: Elanora Breeze Pty Ltd
 Date: 6 March 2023
 Paid by:
 Stage: STAGE 3

Contribution Payable	Units/lots or rate/ha	Rate valid for 12 months from when consent becomes operable	Amount	Rate at Time of Payment after <u> </u> / <u> </u> / <u> </u>	Amount at Time of Payment \$	Receipt Number	Charge Control	Bank Account
CP04 Road Contributions (8-Pottsville)	5.2	@ \$1565 per trip=\$8,138.00	\$8,138.00				Sector8_4	
CP05 (Local OS) Casual Open Space	4	@ \$732 per ET=\$2,928.00	\$2,928.00				CasualOS_5	
CP05 (Local OS) Structured Open Space	4	@ \$838 per ET=\$3,352.00	\$3,352.00				StructOS_5	
CP11 Libraries	4	@ \$1007 per ET=\$4,028.00	\$4,028.00				ResDev11	
CP12 Bus Shelters	4	@ \$76 per ET=\$304.00	\$304.00				Over10ET	
CP13 Cemeteries	4	@ \$143 per ET=\$572.00	\$572.00				ResDev13	
CP15 Comm Facilities	4	@ \$2083 per ET=\$8,332.00	\$8,332.00				ComFac15	
CP18 Council Admin Facilities	4	@ \$2252.11 per ET=\$9,008.44	\$9,008.44				Shirewide	
CP22 Cycleways	4	@ \$568 per ET=\$2,272.00	\$2,272.00				Shirewid22	
CP26 (Regional OS) Casual	4	@ \$1311 per ET=\$5,244.00	\$5,244.00				GasOS_26	

GP26-(Regional OS)-Structured	4	@ \$4601 per ET=\$18,404.00	\$18,404.00				StrucOS_26	
TOTAL AMOUNT			\$62,582.44					

Please forward receipt to**Name:** _____**Address:** _____

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