

JRPP No	2010NTH030
DA Number	DA10/0707
Local Government Area	Tweed Shire Council
Proposed Development	Proposed mixed use motor showroom car repair station and commercial premises - staged development (JRPP) at Lot 16, 20 Section 4 DP 2379; Lot 1 DP 1014402; No. 58 Recreation Street Tweed Heads; No. 169-171 Boyd Street Tweed Heads; No. 60 Boyd Street Tweed Heads; Boyd Street Tweed Heads.
Applicant	Bruce Lynton Pty Ltd
Number of Submissions	1
Recommendation	Approval, subject to conditions of consent
Report by	Colleen Forbes, Acting Coordinator Development Assessment, Tweed Shire Council

Assessment Report and Recommendation

FILE NO: DA10/0707

REPORT TITLE:

Development Application DA10/0707 for a proposed mixed use motor showroom car repair station and commercial premises - staged development (JRPP) at Lot 16, 20 Section 4 DP 2379; Lot 1 DP 1014402; No. 58 Recreation Street Tweed Heads; No. 169-171 Boyd Street Tweed Heads; No. 60 Boyd Street Tweed Heads; Boyd Street Tweed Heads.

SUMMARY OF REPORT:

The proposed development is a staged, multi-storey development comprising motor showrooms, car servicing, and commercial premises at the corner of Recreation Street, Wharf Street and Boyd Street at Tweed Heads.

The subject site involves three (3) allotments, all of which are zoned 3(b) General Business.

A SEPP 1 objection accompanies the application. The objection is in respect of the development standard identified within Clause 32B of the North Coast Regional Environmental Plan 1988, specifically seeking variance to the overshadowing of a reserve standard at 3.00pm midwinter.

The purpose of this report is to have the application determined by the Northern Region Joint Regional Planning Panel, due to the capital investment value of the proposed development exceeding \$10,000,000.

After consideration of the SEPP 1 Objection and all applicable environmental planning instruments, the Tweed Development Control Plan and various policies, the proposal is recommended for approval, subject to conditions of consent.

REPORT:

Applicant: Bruce Lynton Pty Ltd
Owner: Mr BR Lynton
Location: Lot 16 Section 4 DP 2379; Lot 1 DP 1014402 No. 169-171 Wharf Street & Lot 20 Section 4 DP 2379 No. 58 Recreation Street, TWEED HEADS
Zoning: 3(b) General Business
Cost: \$20,134,000.00

BACKGROUND:

The subject site is located over three (3) allotments at the southern end of Recreation and Boyd Streets, fronting onto Wharf Street at Tweed Heads. The allotment is a key site as you come across the Boyd's Bay Bridge into the Tweed Heads CBD, and is located north of the Ivory Tavern and marina.

The site is relatively flat and irregular in shape, with a western frontage of 77.84m to Recreation Street, an eastern frontage of 24.82m to Boyd Street and a southern frontage of 111.493m to Wharf Street (nominated as Minjungbal Drive on the applicant's plans). This results in a total site area of 5,702.3m².

At the time of lodgement, the site was occupied by a long steel shed structure, which is located in the northern portion of the site, attached to a masonry building which is more centrally located within the site. The remainder of the site is an open dirt / gravel car parking area. There is no vegetation on the site.

Previous development on the subject site includes the Scott's Market Basket (wholesale fruit and vegetable outlet) and associated warehouse, and more recently, a retail nursery and cafe. A car / truck rental business currently operates out of the eastern end of the existing building fronting Boyd Street. A boat sales / service workshop also operates within the building (located centrally on the site).

The surrounding properties are a mix of commercial and residential, with the properties to the north being commercial / industrial type buildings. Further to the north are a mixture of commercial premises, the Tweed Heads Police Station and Court House. To the east of the site (beyond Boyd Street) is a large motor showroom (Holden, Honda Suzuki and Kia dealerships). To the south of the site (beyond Wharf Street) is the Ivory Tavern and associated marina. To the west of the site (beyond Recreation Street) are various residential properties.

PROPOSAL:

The proposed development has been designed specifically to the requirements of Bruce Lynton BMW and largely involves the construction of a mixed use development comprising a motor showroom, car repair station and commercial premises in two (2) stages. The proposal provides a building height of six storeys, with a basement parking.

Stage 1

Stage 1 involves the demolition of all structures on the western part of the site and the construction of a two storey building and its use as a motor showroom and car repair station. In addition, the proposal incorporates a small café, with associated outdoor dining. The proposal will provide for a total of 108 car parking spaces (39 at basement level, 12 at ground level and 57 spaces at the first floor level).

The ground level will provide a motor showroom (BMW dealership), café, landscaping, amenities and a service area (car repair station) for BMW and Land Rover at the rear. The motor showroom and café will front Recreation and Wharf Street. A cantilevered awning and signage is also proposed along the site's Wharf Street frontage.

The first floor level incorporates a roofed car parking area as well as an enclosed service reception counter, a special display vehicle area and void to the main showroom below.

Access to the site will be via a new cross-over on Recreation Street, which provides access to the basement, ground and first floor parking areas. A refuse storage and collection area for a bulk bin is proposed at the rear of the site.

The existing commercial uses (hire vehicles and boat sales) on the eastern portion of the site will remain in place for Stage 1 of the development.

Stage 2

Stage 2 incorporates the demolition of all structures on the eastern part of the site and the construction of a six storey building and its use as a motor showroom and commercial premises. Stage 2 also involves the conversion of part of the first floor car parking area within Stage 1 to commercial office space.

Parking provisions within Stage 2 amount to 203 car spaces (97 at basement level, 21 at ground level and 85 spaces at the first floor level).

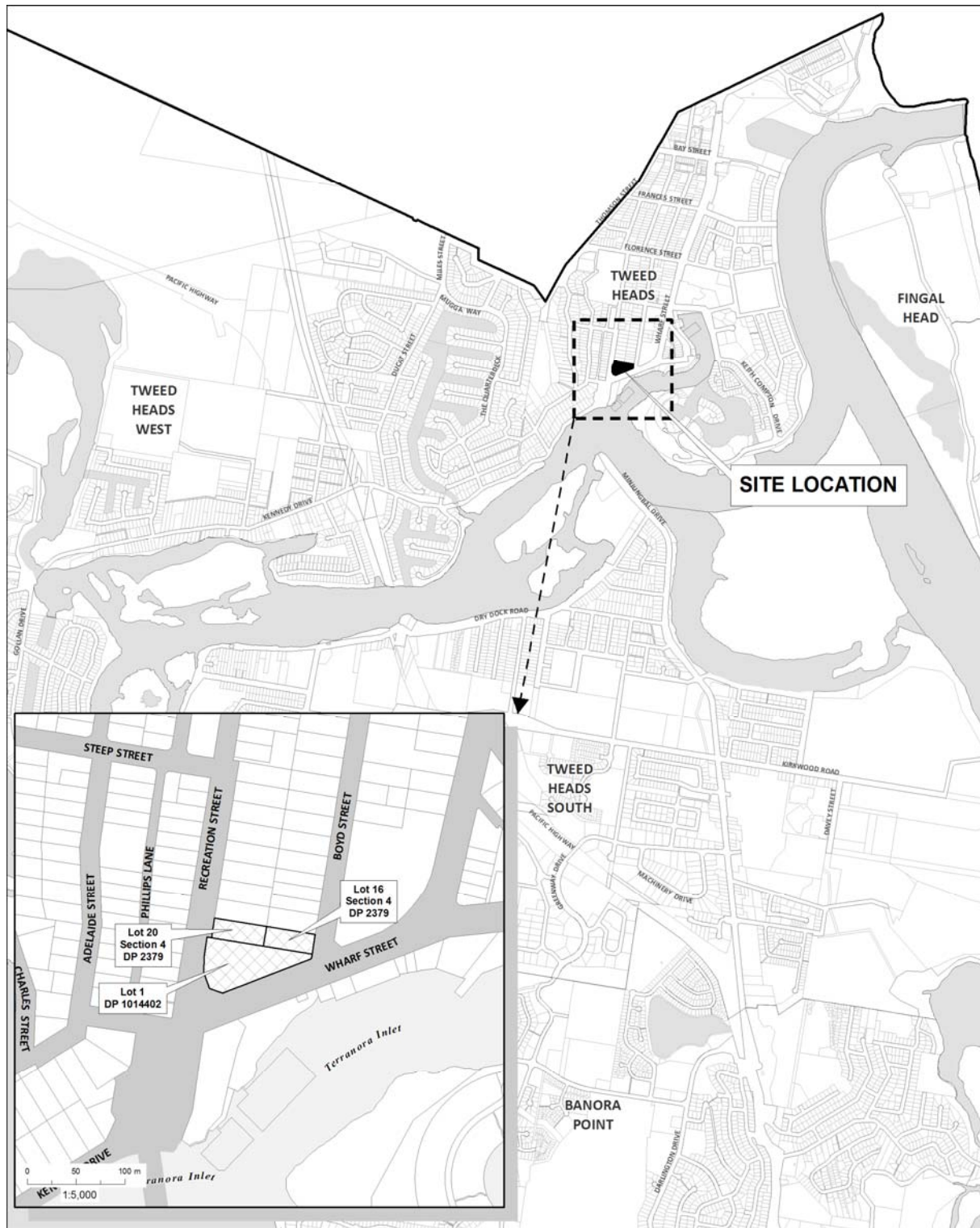
The ground level will provide a motor showroom (Land Rover dealership), retail accessories, a foyer entry and feature forecourt for the commercial premises above. A vehicular connection is proposed along the northern boundary (via a “left out only” turning movement onto Boyd Street).

The first floor level of Stage 2 involves the central lift and service core area and car parking area. Access to the first floor parking area utilises the vehicular access ramp constructed as part of Stage 1 of the proposal.

Levels 2 – 5 within Stage 2 propose six (6) office tenancies per floor, located around the central lift and service core. Amenities, kitchenette and refuse facilities are proposed at the western end of each floor. A landscaped deck is also proposed at Level 2, on top of the podium.

The capital investment value of the proposed development has been estimated at, \$20,134,000 which results in this assessment report being forwarded to the Northern Region Joint Regional Planning Panel (JRPP) for determination.

SITE DIAGRAM:



Locality Plan

Lot 16 Section 4 DP 2379; Lot 1 DP 1014402 No. 169-171 Wharf Street &
Lot 20 Section 4 DP 2379 No. 58 Recreation Street, TWEED HEADS

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Cadastre: 29 March, 2011
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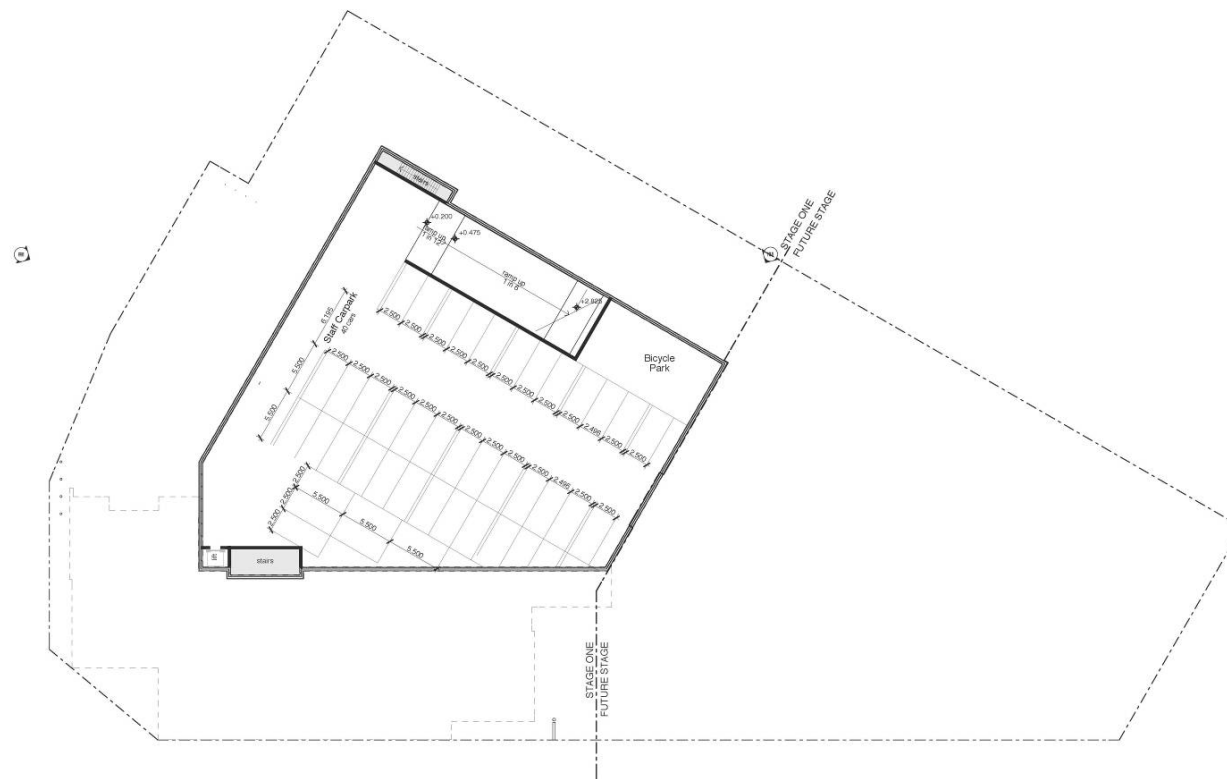
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GDA

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DEVELOPMENT/ELEVATION PLANS:



BASEMENT FLOOR PLAN - STAGE ONE

BRUCE LYNTON ON TWEED 8089 1:200 @ A1

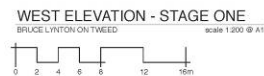
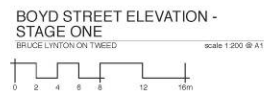


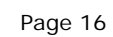
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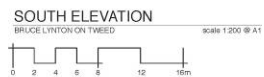
Project BRUCE LYNTON ON TWEED	17 SHORT STREET, P.O. BOX 930 SOUTHPORT, QUEENSLAND, 4215 AUSTRALIA www.burlingbrown.com	Phone +61 7 5532 2044 Fax +61 7 5532 9127 Email mail@burlingbrown.com	B BURLING BROWN ARCHITECTS
Location CRN BOYD ST, MINJUMBAL DR	Drawing title BASEMENT FLOOR PLAN - STAGE ONE	Approved date 9 Dec 11	Scale as indic
	Client BRUCE LYNTON BMW	Drawn / date LYN07	Check / date SK-6.1
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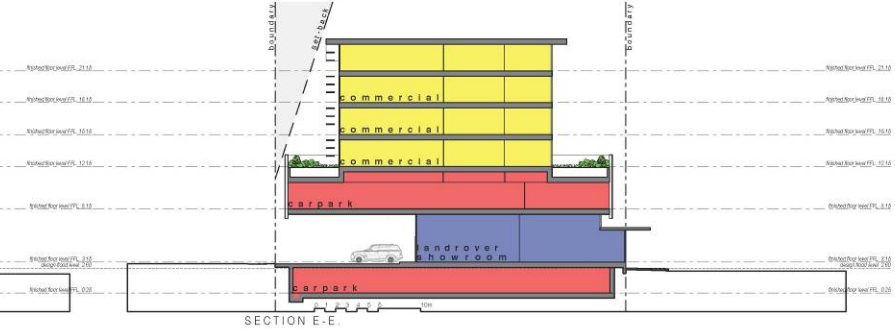
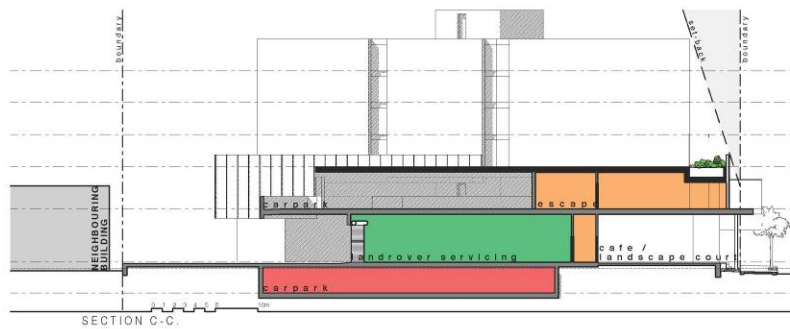
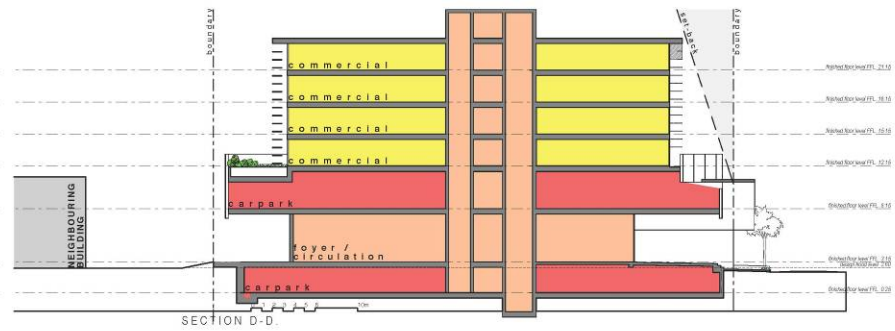
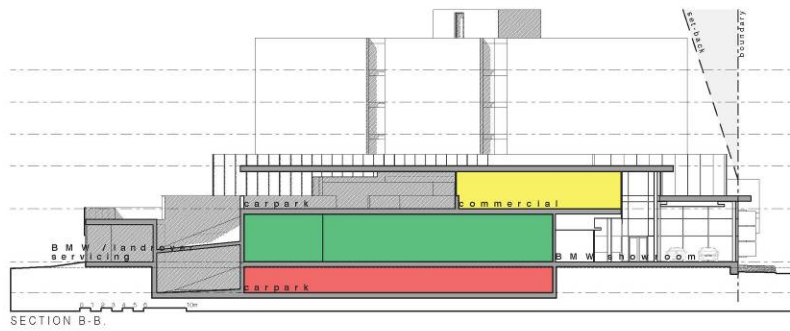
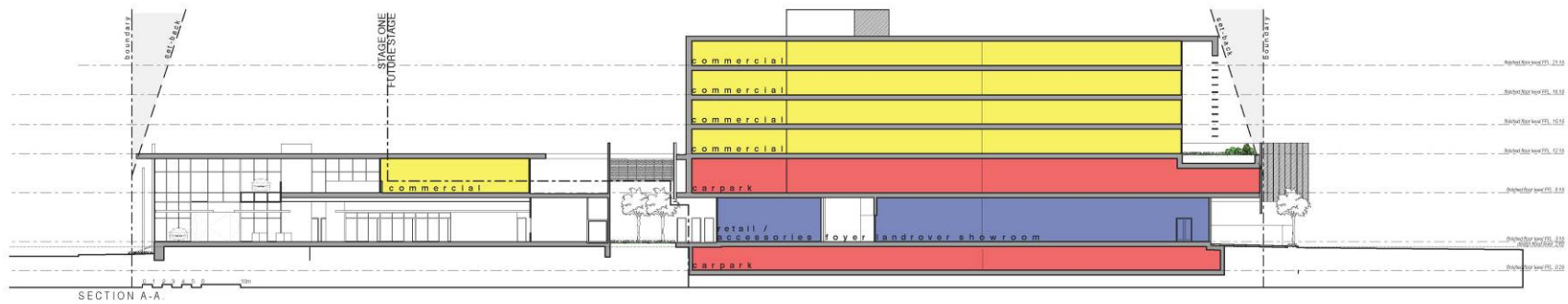
JRPP (Northern Region) Business Paper – 13 April 2011 - 2010NTH030

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Rev	Date	By	Approved	Issue	Date	By	Approved

Project	BRUCE LYNTON ON TWEED	17 SHORT STREET, P.O. BOX 930 SOUTHPORT, QUEENSLAND, 4215 AUSTRALIA. www.burlingbrown.com	Phone Fax Email	+ 61 7 5532 2044 + 61 7 5532 5127 mail@burlingbrown.com	 BURLING BROWN ARCHITECTS
Location	CRN BOYD ST, MINJUMBAL DR	Sections			
Client	BRUCE LYNTON BMW				
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CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

(a) (i) The provisions of any environmental planning instrument

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

Clause 4 illustrates that the aims of the TLEP 2000 are to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan. The vision of the plan is *“the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced”*. Clause 4 further aims to provide a legal basis for the making of a DCP to provide guidance for future development and land management, to give effect to the Tweed Heads 2000+ Strategy and Pottsville Village Strategy and to encourage sustainable economic development of the area which is compatible with the Shire’s environmental and residential amenity qualities.

The development application is considered suitably in keeping with the above, as it is not considered likely to result in a reduction of residential amenity for nearby residential properties or the shire as a whole.

Clause 5 - Ecologically Sustainable Development

Clause 5 of the LEP relates to ecologically sustainable development. The TLEP aims to promote development that is consistent with the four principles of ecologically sustainable development, being *the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms*.

The proposed development is considered to be in keeping with the ESD principles.

Clause 8 – Consent Considerations

(1) This clause specifies that the consent authority may grant consent to development (other than development specified in Item 3 of the table to clause 11) only if:

- (a) *it is satisfied that the development is consistent with the primary objective of the zone within which it is located, and*
- (b) *it has considered that those other aims and objectives of this plan (the TLEP) that are relevant to the development, and*
- (c) *it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.*

In this instance, the subject site is zoned 3(b) General Business, the primary objectives of which are outlined in Clause 11 assessment below.

The proposed development is considered to be consistent with the primary objectives of the zone.

Other relevant clauses of the TLEP have been considered elsewhere in this report and it is considered that the proposed development generally complies with the aims and objectives of each.

The proposal is not considered to contribute to any unacceptable cumulative impact in the community.

(2) The consent authority may grant consent to development specified in Item 3 of the Table to clause 11 only if the applicant demonstrates to the satisfaction of the consent authority that:

- (a) *the development is necessary for any one of the following reasons:*
- (i) *it needs to be in the locality in which it is proposed to be carried out due to the nature, function or service catchment of the development,*
 - (ii) *it meets an identified urgent community need,*
 - (iii) *it comprises a major employment generator, and*
- (b) *there is no other appropriate site on which the development is permitted with consent development (other than as advertised development) in reasonable proximity, and*
- (c) *the development will be generally consistent with the scale and character of existing and future lawful development in the immediate area, and*
- (d) *the development would be consistent with the aims of this plan and at least one of the objectives of the zone within which it is proposed to be located.*

The proposed car repair station component of the development triggers assessment against Clause 8(2) of the LEP. The applicant has provided the following comments with regard to Clause 8(2):

TABLE 6 – MATTERS FOR CONSIDERATION UNDER CLAUSE 8(2) OF TWEED LEP 2000	
MATTERS FOR CONSIDERATION	ASSESSMENT COMMENT
<p>(a) the development is necessary for any <u>one</u> of the following reasons:</p> <p>(i) <u>it needs to be in the locality in which it is proposed to be carried out due to the nature, function or service catchment of the development.</u></p> <p>(ii) it meets an identified urgent community need,</p> <p>(iii) it comprises a major employment generator, and</p>	<p>The site is to be developed to accommodate both a BMW and Land Rover dealership. A motor showroom is an Item 2 use of the site and it is a fundamental requirement of a car dealership to be able to perform car servicing on site. This situation is demonstrated by the recently constructed car dealerships to the east of the site.</p> <p>Having regard to the circumstances discussed above, we submit the proposal to incorporate a car repair station on the site as an integral component of the proposed motor showroom use satisfies the requirements of this subclause.</p>
<p>(b) there is no other appropriate site on which the development is permitted with consent development (other than as advertised development) in reasonable proximity, and</p>	<p>The nearest land at which the proposed use may be conducted as an Item 2 use is located in the 4(a) zone at Ourimbah Road.</p> <p>Ourimbah Road is not a practical consideration for the applicant as commercially it is necessary to provide both the showroom and servicing uses within the one premises and that the subject site provides the necessary exposure and locational requirements for the proposed showroom use.</p>

	<p>Although Ourimbah Road is not a viable alternative it should be noted that a motor showroom is an Item 3 use in the 4(a) zone and therefore a similar issue would arise if this was considered as an alternative.</p> <p>Relocating the business to Ourimbah Road does not provide the required exposure necessary for the car dealerships and is therefore not practical or reasonable as it would adversely affect the viability of the business.</p> <p>Accordingly, there is no other appropriate site on which the development would be permitted as an Item 2 use in reasonable proximity.</p>
(c) the development will be generally consistent with the scale and character of existing and future lawful development in the immediate area, and	<p>The proposed car repair station component of the proposal is entirely consistent with recently approved development to the east of the site (although that other development is more than twice the scale of the proposed development) which comprises the same car repair station use associated with car dealerships.</p> <p>Accordingly, the proposal is entirely consistent with the existing development in the immediate area.</p>
(d) the development would be consistent with the aims of this plan and at least one of the objectives of the zone within which it is proposed to be located.	<p>The aims of the Local Environmental Plan include <i>"to encourage sustainable economic development of the area"</i>.</p> <p>The proposed use will provide access to services that cater to the needs of the Tweed population and surrounding regions. Presently owners of these vehicles from as far away as Ballina are required to travel to the Gold Coast for car servicing. The development is therefore consistent with the aims of the Tweed LEP <i>"to encourage sustainable economic development of the area"</i>.</p> <p>The proposal is considered to be consistent with the zone objectives as previously addressed in Section 4.7 of this Statement above.</p>

Comment:

The applicant's submission regarding the Clause 8(2) matter is considered to be supportable. It is noted that other car dealerships in Tweed Heads have a car repair station component associated directly with the motor showroom. As noted in DCP B2, the preferred development in this location includes motor showrooms. With regard to the first consideration of Clause 8(2), the argument that car servicing is an integral part / function of the motor showroom is valid, and therefore it could be argued that the servicing component is needed.

In terms of the second matter for consideration, the applicant has demonstrated that there is no other appropriate site on which the development is permitted with consent in reasonable proximity. The industrial area noted by the applicant (Ourimbah Road) is approximately 1km (in a straight line) or 2km – 3km (depending which road you take by car) from the subject site.

As noted by the applicant, the proposed development is considered to be generally consistent with the existing (and future) development in the immediate area, in terms of scale and character. From the street, the proposed development will look like a motor showroom and commercial premises, with the car servicing hidden from view at the rear of the proposal. Therefore, the third matter for consideration is satisfied.

With regard the fourth matter for consideration, the proposed development incorporates ESD initiatives (siting and orientation, shading, passive ventilation, energy efficiency and rainwater collection), which satisfies one of the aims of the LEP. As noted in Clause 11 below, the proposal as a whole is considered to be consistent with the objectives of the zone.

In summary, the applicant has satisfactorily demonstrated that the proposal meets the provisions of Clause 8(2). Therefore, the proposed car repair station is considered to be permissible.

Clause 11 - Zone objectives

The three allotments involved with this application are all zoned 3(b) General Business.

The primary objectives for land zoned 3(b) General Business are:

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

The proposed development incorporates several uses, these being: motor showroom; car repair station; and commercial premises, all of which are considered to be consistent with the primary zone objectives, in that the development will provide active street level uses complementary to the surrounding land uses, as well as additional commercial floor space in the upper levels of Stage 2 of the development.

The proposed motor showroom and commercial premises are permissible uses. However, the proposed car repair station is an Item 3 matter within the zone table. Therefore, this component of the proposed development is only permissible if it can satisfy the provisions of Clause 8(2) of the LEP. As noted in the assessment above, the proposed development is considered to satisfy Clause 8(2) and as such is a permissible use.

Overall, the proposed development is permissible with consent and is considered to be consistent with the zone objectives applicable to the site.

Clause 15 - Essential Services

Clause 15 of the TLEP requires that Council be satisfied that the subject land has the benefit of essential services before issuing consent. Connections to Council's reticulated water services along Boyd Street are available. Comments on sewer connection are detailed later in this report.

Clause 16 - Height of Building

Clause 16 of the TLEP requires development to be carried out in accordance with the height limitation plan. The subject land is identified as having a six (6) storey height limit, with an objective to ensuring that *the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land*. The proposed development complies with Clause 16, being six (6) storeys in total.

Clause 17 - Social Impact Assessment

Clause 17 of the TLEP relates to social impact assessment, with the objective *to ensure proper consideration of development that may have a significant social or economic impact*. DCP A13 does not require a social impact assessment for any of the proposed uses. As a result, Clause 17 does not apply to the proposed development.

Clause 22 – Development near a Designated Road

Clause 17 of the TLEP applies to the proposed development, because the subject site has frontage to a designated road (Wharf Street). Access/egress to and from the site is not proposed on Wharf Street. The nature, appearance, illumination or volume / type of traffic generated by the proposed development is not considered likely to constitute a traffic hazard or reduce the capacity / efficiency of the designated road. Council's Traffic Engineer is suitably satisfied with the proposal, as such the development is not considered to impede the through traffic movement of Wharf Street. The proposed development is not considered to be sensitive to traffic noise and the proposal is not considered to detract from the scenic value of

the locality. In terms of view, the proposal is considered to result in a higher visual amenity than the existing use of the site. As such, Clause 22 is satisfied.

Clause 23 – Control of Access

The objective of Clause 23 is to control access to designated roads. As noted above, the proposed development does not involve any access to or from Wharf Street, thereby satisfying Clause 23.

Clause 31 – Development adjoining Waterbodies

As noted above, the subject site is adjacent to Terranora Inlet, which is a form of a waterbody. The proposed development is not considered to have a significant adverse effect on scenic quality, water quality, marine ecosystems, or the bio-diversity of the estuarine area or its function as a wildlife corridor or habitat. The proposed development has no impact upon public access to the foreshore area. As such, the provisions of Clause 31 are considered satisfied.

Clause 33 – Obstacles to Aircraft

Clause 33 of the TLEP requires that Council takes into account any Obstacle Limitation Surface (OLS) plan. Council records indicate that OLS for the Tweed Heads area is RL 49.5m AHD. As noted by the applicant, the proposed development has a maximum height of approximately RL 28m AHD. Therefore, the proposal complies with Clause 33.

Clause 34 - Flooding

Clause 34 of the TLEP refers to flooding. The subject site is flood liable; with Council's mapping system indicating that the site is affected by design flood inundation of between 3m to 5m in height. Applicable conditions of consent have been applied for the proposed mixed use development.

Clause 35 - Acid Sulfate Soils

Clause 35 relates to Acid Sulfate Soil (ASS) management. Council's GIS indicates that the site is classified as Class 2 soils. The applicant has provided a revised Acid Sulfate Soil & Groundwater Investigation report. Council's Environmental Health Unit has undertaken an assessment the proposed development in this regard, with no objections. Applicable conditions of consent have been applied.

Clause 50 – Floor Space Ratios in Zones 3(a) and 3(b) at Tweed Heads

Clause 50 of the TLEP regards floor space ratio (FSR) in Tweed Heads. For sites greater than 2000m², the maximum FSR permitted in the 3(b) – General Business zone is 1:1 (without bonuses) or 2:1 (with bonuses). The proposed development has an FSR of 1.542:1 and therefore relies on bonuses to comply with FSR requirements.

Allowable bonuses are noted in DCP B2 as follows:

In 3(b) Zone

(a) 2m² for 1m² of public through block identified pedestrian network providing the walkway is at least 3.5m wide.

(b) 2m² for 1m² of publicly available community space such as internal landscaped court, community meeting room, parents room, child care facility, public toilets.

(c) 0.5m² for 1m² of commercial or residential accommodation including serviced apartments.

(d) Council may be prepared to negotiate additional bonuses for the provision of funding of town centre improvements over and above those required for the particular development.

(e) Council may be prepared to negotiate additional bonuses for the elimination of existing non-conforming signage, or for the retention of existing mature trees (other than Cocos palms).

Items b and c above are being utilised by the applicant in terms of providing a publically available community space in the form of a landscaped court (identified in green in Figure 1 below) and commercial office space within Stage 2 of the development.

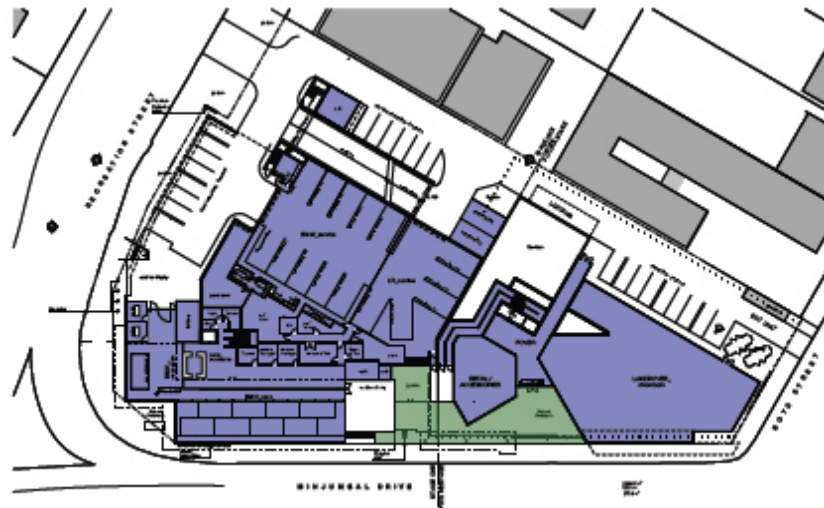


Figure 1: FSR Bonus provisions – landscaped court (shown in green)

The applicant has provided a breakdown of the calculation of the bonuses applicable to each stage:

TABLE 9 – BONUS FLOOR SPACE RATION CALCULATION			
STAGE	DESCRIPTION	GROSS FLOOR AREA	FLOOR SPACE RATIO
Stage 1	Basic FSR	5702.3 m ²	1.000:1
	Landscaped Court (108.1m ² provided)	216.2m ²	0.038:1
	TOTAL	5918.5m²	1.138:1
Stage 2	Basic FSR	5702.3 m ²	1.000:1
	Landscaped Court (273.0m ² provided)	546.2m ²	0.096:1
	Commercial Area (5759.7m ² provided)	2879.85m ²	0.505:1
	TOTAL	5918.5m²	1.596:1

‘Effectively the maximum allowable FSR at Stage 1 of the development is 1.138:1 and the proposal will result in a total FSR of 0.545:1. At Stage 2 the maximum allowable FSR is 1.596:1 and the proposal will result in a total FSR of 1.542:1.

Accordingly at both stages of the development the proposal will fully comply with the FSR development Standard contained in Clause 50 of Tweed Local Environmental Plan 2000’.

The proposed bonus FSR calculations are considered to be acceptable. As noted in the table above, the proposed development does not exceed the allowable FSR of 1.596:1, thereby satisfying the provisions of Clause 50 of the LEP.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

Clause 32B – Development Control applies as the NSW Coastal Policy 1997 applies to the subject site. The proposal is consistent with the NSW Coastal Policy 1997, Coastline Management Manual and North Coast: Design Guidelines.

The proposal will not impede public access to the foreshore.

The applicant's submission and shadow plans demonstrate that the carrying out the development will result in the 6(a) waterfront open space being overshadowed before 3pm midwinter.

The applicant is seeking Council's support to assume the Director-General's concurrence in this instance. This matter is discussed in further detail in the SEPP No. 1 variation section within this report.

Clause 81: Development adjacent to the ocean or a waterway

For land within 100m of the ocean or any substantial waterway, Clause 81 of NCREP requires Council to be satisfied that:

- (a) there is a sufficient foreshore open space which is accessible and open to the public within the vicinity of the proposed development,*
- (b) buildings to be erected as part of the development will not detract from the amenity of the waterway, and*
- (c) the development is consistent with the principles of any foreshore management plan applying to the area.*

The subject site does not have direct access to the foreshore area, with Wharf Street between the site and the foreshore. The setback distance of the proposed development from the Terranora Inlet waterway (approximately 50m) suggests that the visual amenity of the waterway will not be detracted from. Appropriate conditions have been applied to mitigate any impact upon the waterway in terms of stormwater drainage. There are no foreshore management plans applicable to the subject site. As a result, the application is considered to be consistent with the provisions of Clause 81.

SEPP No. 1 - Development Standards

The applicant's SEPP 1 Objection relates to the proposed development overshadowing the adjacent foreshore reserve, pursuant to Clause 32(b) of the North Coast Regional Environmental Plan 1998. Section 4 of Clause 32(b) states:

'4 Council must not consent to the carrying out of development:

- (a) on urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out the development would result in beaches or adjacent open space being overshadowed before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time).'*

The applicant has acknowledged that the proposed development will result in overshadowing of the reserve at 3.00pm midwinter, with no overshadowing occurring during midsummer. See Figure 2 below, which indicates the extent of overshadowing over Wharf Street and across part of the reserve. The expected shadow cast by the proposed development has been estimated as approximately 380m² in area (8m deep x 48m wide). This equates to approximately 11.5% of the reserve.

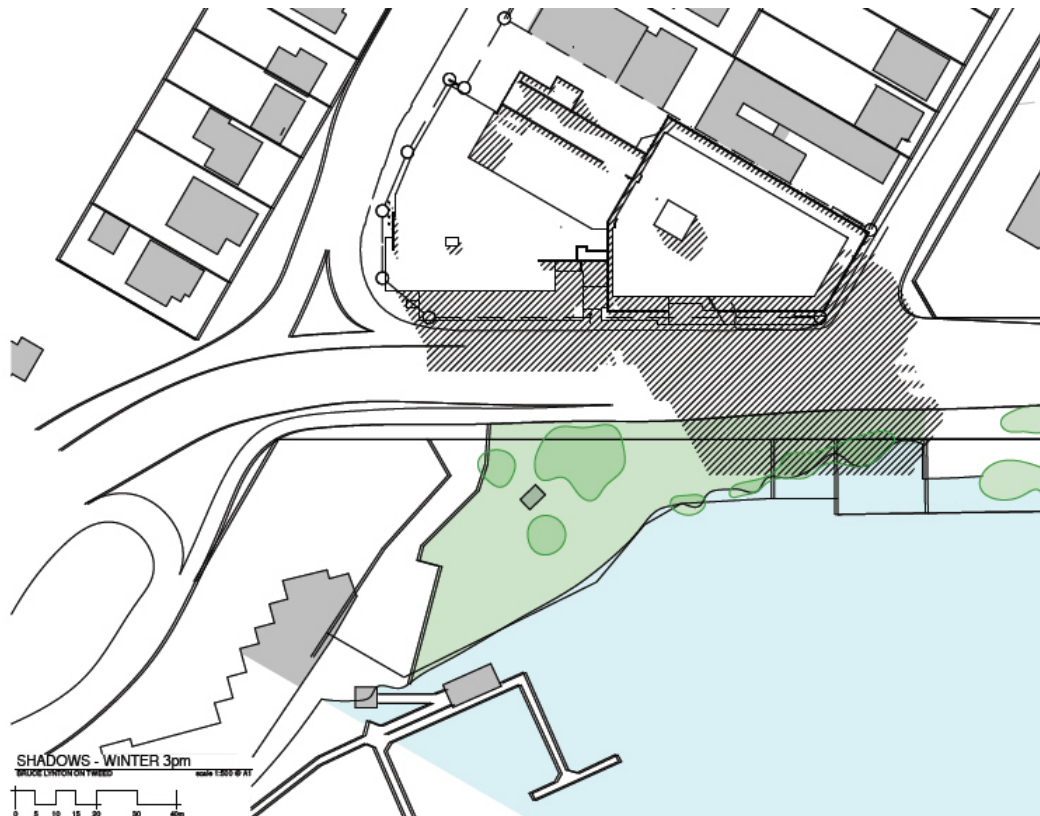


Figure 2: Extent of Overshadowing of Adjacent Reserve

It should be noted that the area where the shadow line will fall is largely unusable area in terms of recreation purposes. As noted in Figure 3 below, the portion of the reserve in question is either a pump station, concrete footpath or a narrow band of grass between the footpath and the rock revetment wall at the waters edge.

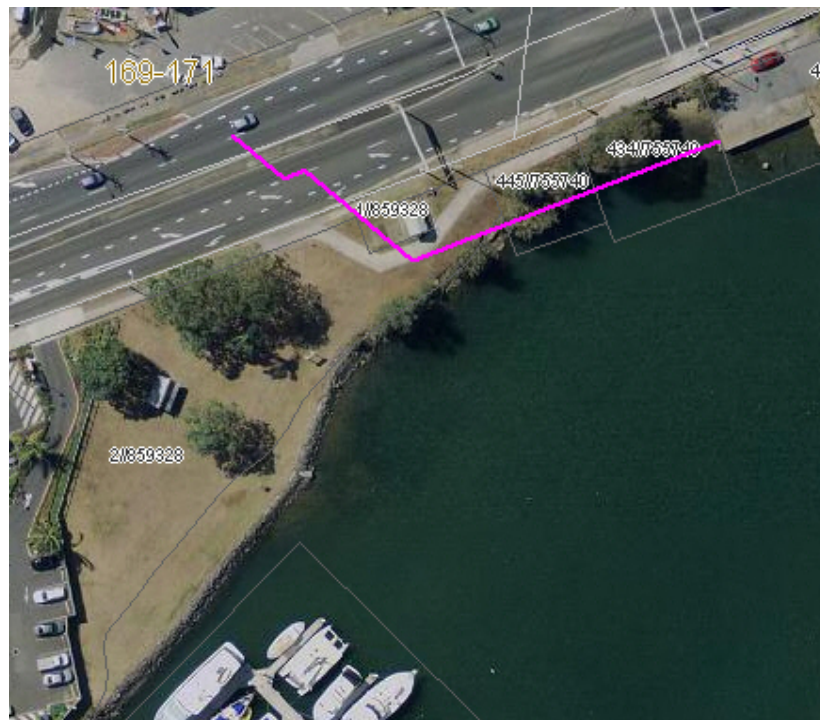


Figure 3: Overlay of Shadow Line on Aerial Photo (shown in pink)

Nevertheless, the applicant has submitted a SEPP1 Objection for the proposed development. SEPP1 notes that a submission may be supported where the applicant demonstrates that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case and specifies the grounds of that objection. The applicant must also demonstrate the consistency with the aims of the SEPP, and satisfy Clause 8 of the SEPP.

In support of the proposed variation, the applicant has provided an assessment of the proposal against the three principles set by Chief Justice Preston for SEPP 1 Objections:

1. That the objection is well founded and that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

The Chief Judge advised that the requirement to demonstrate that an objection is well founded and that the approval of the objection may be consistent with the aims of the policy could be satisfied in any one of the following ways:

- (i) The objectives of the standard are achieved notwithstanding non-compliance with the standard.
- (ii) The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
- (iii) The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
- (iv) The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.
- (v) The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

We submit that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.

Numerous developments along the Tweed Coast have been approved since 1988 which include variations to the foreshore shadow development standard contained in the North Coast REP. These variations include numerous detached dwellings, multi dwelling housing buildings and commercial developments.

The widespread application of variations to the development standard including the approval of developments in the immediate vicinity of the subject site indicate that the application of the development standard has been virtually abandoned. Accordingly compliance with the standard for this development in the commercial area of Tweed Heads is unnecessary and unreasonable.

For the above stated reasons we submit that the development standard has been virtually abandoned or destroyed by Council's and the Department of Planning's own actions in granting consents departing from the standard. Following from the fourth test established in *Wehbe v Pittwater Council [2007] NSW LEC 827*, we conclude that the objection is well founded and that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

Comment:

Chief Justice Preston has noted 5 ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. Council does not agree with the applicant in that the development standard has been virtually abandoned. In this instance, Council is of the opinion that the first option (being the objectives of the standard are achieved notwithstanding non-compliance with the standard) is the most appropriate.

It is considered that the objectives of Clause 32B are directly related to Clause 30 of the NCREP, which states that the objectives of this plan in relation to coastal planning are:

- (a) *to enhance the visual quality of the coastal environment,*

- (b) to provide for the appropriate recreational use of beaches,
- (c) to protect the water quality of the coastal environment,
- (d) to minimise risks to people and property resulting from coastal processes,
- (e) to minimise changes to coastal processes resulting from development, and
- (f) to encourage retention of natural areas and regeneration of those natural areas which are already degraded.

Figure 3 above indicates the line of overshadow impacts on very little of the usable / recreational area of the reserve. In addition, the proposed development is not considered to impact upon the visual quality of the coastal environment; there is no beach at the reserve; water quality is not considered likely to be impacted upon by the minor overshadowing of the reserve; the proposed overshadowing will not increase the risk to people and property resulting from coastal processes; there is not likely to be any change to coastal processes resulting from the development; and the proposed overshadowing will not impact on the natural areas. Therefore, it is Council's opinion that the objectives of the standard are achieved, notwithstanding non-compliance with the standard.

Despite not agreeing with the applicant's option for demonstrating that the objection is well founded, it is considered that strict compliance with the overshadowing provisions of Clause 32(B) is unreasonable and unnecessary in this instance.

2. That the granting of consent is consistent with the aims of SEPP 1.

The aims and objectives of the Policy (SEPP 1) are as follows:

"This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act."

Section 5(a)(i) and (ii) of the Environmental Planning and Assessment (EP&A) Act 1979 is in the following terms:

"(a) to encourage:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,"*

Compliance with the foreshore shadow development standard would preclude the type of commercial development intended for this site as expressed by the zoning and objectives of the 3(b) zone under Tweed LEP 2000 and the prevailing six storey height limit.

The proposed building will result in some afternoon shadowing of the adjacent linear park, however due to the nature of the foreshore open space and the temporal and casual uses of the space (due to the lack of a beach or direct access to the river), the resultant impact on the amenity of the open space is considered minor.

In this case, strict compliance with the development standard would hinder attainment of the EP&A Act's object to promote orderly and economic use and development of land in accordance with the zoning of that land and its physical capabilities.

Comment:

The objects specified within Section 5(a)(i) and (ii) relate to the promotion and co-ordination of the orderly and economic use and development of land, and the protection, provision and co-ordination of communication and utility services.

The applicant's comments above are concurred with in that strict compliance with Clause 32B would preclude the development intended for the subject site.

Figure 3 above demonstrates that the proposed overshadowing of the reserve falls over an area that is largely covered by concrete (footpath, pump station etc). The impact of shadow upon this portion of the reserve is considered to be negligible.

The SEPP1 Objection is considered to warrant support in that flexibility in planning controls is achieved and approval of the development would not hinder the attainment of the objectives of Section 5(a)(i) and (ii) of the EP&A Act.

3. **That clause 8 matters (in SEPP 1) are satisfied i.e.**

- **Whether noncompliance raises matters of State or regional planning significance.**
- **The public benefit of maintaining the planning controls.**

In considering whether the proposal creates any matters of Regional or State planning significance or raises any issues in relation to the public benefit of maintaining the standard the following points are relevant.

It is submitted that strict adherence to the development standards contained in Clause 32B(4)(a) of this Instrument relating to overshadowing of beaches and foreshore open space areas is unreasonable and unnecessary in the circumstances of this case for the following reasons;

- At 6:30pm midsummer shadows cast by the proposed buildings do not affect the reserve (see Shadow Diagrams in **Annexure B** of Statement of Environmental Effects).
- At 3:00pm midwinter shadows cast by the proposed building, which encroach onto the foreshore reserve, are relatively narrow (from the eastern end of the building only) and therefore affect only a small portion of the reserve (see **Annexure B** of Statement of Environmental Effects).
- At 3:00pm midwinter, the shadows cast by the proposed building would not extend to any sandy beach areas and therefore will not impact on sunbathers and surfers.
- The shadow does not impact on any areas used by the public for formal recreational activities.
- The shadow cast by the building is similar to that cast by the buildings located on the adjacent properties, including the Tavern and marina located adjacent to the foreshore.

Notwithstanding this, the NSW Government Coastal Policy contains a strategic action in relation to beaches and waterfront open space (Table 3 of the NSW Coastal Policy), which is referred to in Clause 32B of the North Coast REP. The principle contained in the Coastal Policy is stated as follows:

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

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

The Policy contains a note relating to this standard, which states inter alia:

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

It is apparent from the abovementioned note to the Policy that it is difficult to achieve the stated outcome of nil overshadowing of waterfront open space or beach areas in urban environments.

Accordingly, in the context of the surrounding development and the planning controls applying to the site, the design of the proposal is not considered to be inconsistent with the anticipated development of this site or the immediate area. More importantly, the proposed encroachment of shadow at the statutory time of 3:00pm midwinter into part of the foreshore open space is not considered to be significant nor is it considered to be inconsistent with the assumed objectives of Clause 32B(4)(a) of the North Coast REP.

We conclude that the proposed development does not raise any matters of Regional planning significance and there is considered to be no public benefit in maintaining the standard.

Comment:

The proposed non-compliance with Clause 32B of the NCREP is not considered to raise any matter of significance for State or regional planning.

There would be little public benefit in maintaining the development standard in this particular case. As noted previously, the area of the reserve which would be overshadowed at 3.00pm midwinter is not utilised for recreational purposes.

Chief Justice Preston notes that there is a public benefit in maintaining planning controls.

However, the proposed non-compliance with Clause 32B of the NCREP is considered to be justified in this instance and is not likely to result in an adverse planning precedent as it is quite site specific. As such, the granting of this application is unlikely to impact upon public benefit.

Conclusion

Given that the three principles set by Chief Justice Preston have been met, strict compliance with the development standard under Clause 32B of the NCREP is considered unreasonable and unnecessary in this instance.

As such, the SEPP1 Objection warrants support, particularly as it is considered that the extent of overshadowing into the adjacent reserve is of a scale that would not result in any significant impact upon the recreational integrity of the foreshore open space area.

It is recommended that the concurrence of the Minister administering the Environmental Planning and Assessment Act, 1979 be assumed in this instance.

SEPP No. 64 – Advertising and Signage

The applicant has provided an assessment of the proposed signage against the provisions of SEPP 64:

TABLE 3 - COMPARATIVE ANALYSIS OF THE EXISTING AND PROPOSED DEVELOPMENT	
MATTERS FOR CONSIDERATION	COMMENT
1. Character of the area <ul style="list-style-type: none"> Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located? Is the proposal consistent with a particular theme for outdoor advertising in the area or locality? 	<p>The proposed signage is consistent with the existing commercial character of the area. There is no identified theme for outdoor advertising in the area however the proposed signage is of high quality and will make a positive contribution to the character of the area.</p>
2. Special areas <ul style="list-style-type: none"> Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas? 	<p>The site is located within an established business area and is focussed on the main Wharf Street frontage of the site. Therefore the proposal is unlikely to detract from amenity or visual quality of any environmentally sensitive or residential area.</p>
3. Views and vistas <ul style="list-style-type: none"> Does the proposal obscure or compromise important views? Does the proposal dominate the skyline and reduce the quality of vistas? Does the proposal respect the viewing rights of other advertisers? 	<p>The proposed signage will not obscure any significant views or dominate the skyline. The proposed signage is sited such that no other advertisers in the immediate vicinity of the site will be directly affected by the proposed signage.</p>
4. Streetscape, setting or landscape <ul style="list-style-type: none"> Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape? Does the proposal contribute to the visual interest of the streetscape, setting or landscape? Does the proposal reduce clutter by rationalising and simplifying existing advertising? Does the proposal screen unsightliness? Does the proposal protrude above buildings, structures or tree canopies in the area or locality? 	<p>The proposed signage is of an appropriate scale, particularly considering the scale of the development. The proposed signage will provide effective business identification utilising a well known brand and styling and will add visual interest to the site.</p> <p>The proposed signs will not project above the buildings.</p>
5. Site and building <ul style="list-style-type: none"> Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located? Does the proposal respect important features of the site or building, or both? Does the proposal show innovation and imagination in its relationship to the site or building, or both? 	<p>As previously mentioned, the scale and proportion of the proposed signage has been designed to create minimal impact on the features of the building.</p>

6. Associated devices and logos with advertisements and advertising structures <ul style="list-style-type: none"> • Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed? 	Due to the nature of the proposed signs no safety devices are required. Lighting of the signs is to be internal and will not result in unsightly attachments to the structures.
7. Illumination <ul style="list-style-type: none"> • Would illumination result in unacceptable glare? • Would illumination affect safety for pedestrians, vehicles or aircraft? • Would illumination detract from the amenity of any residence or other form of accommodation? • Can the intensity of the illumination be adjusted, if necessary? • Is the illumination subject to a curfew? 	The illumination of the proposed signs will be standard internal illumination and is unlikely to result in any adverse impact on pedestrian, vehicular or aircraft safety.
8. Safety <ul style="list-style-type: none"> • Would the proposal reduce the safety for any public road? • Would the proposal reduce the safety for pedestrians or bicyclists? • Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas? 	The location of the signs within the site will not reduce the safety of any public road, affect pedestrian safety or intercept critical sightlines.

The applicant's assessment of the proposed signage is concurred with. The proposed signage, being consistent with the BMW brand, is considered to be of an appropriate scale and of quality design. Appropriate conditions have been applied with regard to any future signage, in order to reduce visual clutter and proliferation of signage, as well as allowing the illumination of signage to be reduced if necessary. As such, the proposed development is considered to be consistent with the provisions of SEPP 64.

SEPP No 71 – Coastal Protection

The proposed development is located within coastal zone and therefore relevant provisions of the SEPP apply.

Clause 8 of the SEPP identifies matters for consideration for land within the coastal zone. The application is considered to adequately satisfy the matters for consideration. Specifically the proposed development is considered suitable, given its type, location and design and its relationship with the surrounding area.

(a) (ii) The Provisions of any Draft Environmental Planning Instruments

Draft Tweed City Centre Local Environment Plan 2009

The Draft Tweed City Centre Local Environment Plan 2009 zones the subject site as B4 – Mixed Use. A motor showroom is best defined as a Vehicle Sales or Hire Premises under the draft LEP, which is permissible with consent. The car servicing component of the proposed development is best defined as Vehicle Repair Station, which is permissible with consent. The proposed commercial premises are best defined as office premises, which are also permitted with consent under the draft LEP.

Clause 4.3 of the TCCLEP is related to building height. The general objectives for this clause include establishing the maximum height of a building, ensuring the height relates to the lands capability to maintain an appropriate level of urban character, and to encourage greater population density. The maximum height for the subject site under the Draft LEP is 28m over most of the site and 22m on Lot 20 (fronting Recreation Street). The maximum height of

the proposed development is estimated at 23m (for the lift overrun), which is within the portion of the site having a maximum of 28m. The remainder of the building in Stage 2 has a height of approx 20.4m, which satisfies the maximum requirements. Overall, the proposal complies with the Draft LEP in terms of height provisions.

Clause 4.4 relates to floor space ratio, and states that the *maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map*. The FSR map indicates a maximum of 2.5:1 over most of the site and 2.25:1 on Lot 20 (fronting Recreation Street). The applicant has identified a total FSR of 1.54:1 for the proposed development, which complies with the Draft LEP.

Clause 6.6 regards minimum street frontage of land for buildings in Zones R3, B2, B3 and B4 [local]. As the site is situated in zone B4 – Mixed Use, this clause applies. Development consent must not be granted unless the building has at least one (1) street frontage of 20m or more. Each of the three street frontages exceeds 20m in length. Therefore, the proposed development exceeds this minimum requirement.

The draft LEP identifies the subject site as a ‘Key Site’. Accordingly, Clause 6.9 of the draft LEP applies. Clause 6.9 requires Council to be satisfied that the proposed development has design excellence and lists the matters to take into consideration when assessing design excellence. Clause 6.9 notes that development consent must not be granted to such development unless an architectural design competition has been held in relation to the proposed development, or the Director-General certifies in writing that the development is one for which an architectural design competition is not required. With regard to the architectural design competition, the applicant has noted that the draft LEP is... ‘*neither certain, nor imminent and therefore following the principles established by the NSW Land and Environment Court, has no determining weight. Accordingly an architectural design competition is not relevant to the proposed development. To remove any doubt the Draft Plan includes a savings provision*’. Notwithstanding this, the applicant has provided justification as to how the proposed development has been designed to create a building of high architectural merit. This issue has been assessed in detail later in this report.

(a) (iii) Development Control Plan (DCP)

Tweed Development Control Plan

A2-Site Access and Parking Code

Council’s DCP A2 Site Access and Parking Code specifies the following number of car parks to be provided dependant on the usage of the proposed development.

Table 1.0 - DCP No.2 – Site access and Parking code requirements

Use	Parking Rate	Required Spaces Stage 1	Required Spaces Stage 2
Motor Showroom	1 space per staff + 1 space per 10 display vehicles (min 5)	4 staff x 1 = 4 spaces + 13 display spaces / 10 = 1.3 spaces (min 5 for Stage 1) Total required = 9 spaces (Stage 1 only)	3 staff x 1 = 3 spaces + 12 display spaces / 10 = 1.2 spaces (min 5 for Stage 1 & 2) Total required = 12 spaces (for the combined Stages 1 & 2)

Car Repair Station	1 space per staff + 4 spaces per work bay (customer parking requirement is inclusive of the work bay)	11 staff x 1 = 11 spaces + 13 work bays x 4 = 52 spaces Total required = 63 spaces (Stage 1 only)	No additions to the Car Repair Station in Stage 2 Total required = 63 spaces (for the combined Stages 1 & 2)
Commercial Premises	<u>Staff Parking</u> 1 space for every 40m ² GFA (customer parking requirement is inclusive of the staff parking)	No Commercial Premises in Stage 1	946.4m ² (western side) + (994.1m ² x 4 levels on eastern side) = 5772.9m ² GFA / 40 = 144.3 spaces (Rounded up to 145 spaces)
	Total	72 Spaces	220 Spaces (for the combined Stages 1 & 2)

Parking Provision Provided

An analysis of the proposed parking spaces has been undertaken. Stage 1 of the development proposes a total of 108 spaces, which exceeds the requirement of 72 car spaces. The overall parking provisions (combined Stage 1 and 2) have a total of 203 spaces. Although this figure is less than the required number (220) calculated in the table above, the proposed parking provisions are considered to be satisfactory.

Ecologically Sustainable Development (ESD) principles within DCP A2 allow a 20% reduction to staff and customer car parking requirements. Therefore, the total car parking requirements can be reduced to **176 spaces**. Taking this figure into account, the proposed development, having **203 spaces**, complies with the applicable car parking provisions.

Motor Showroom

Based on the parking rate of 1 space per 10 display vehicles, the proposed motor showrooms in each stage only trigger the need for 1.3 spaces for Stage 1 and 1.2 spaces for Stage 2. That is a total of 2.5 spaces required overall. However, DCP A2 notes a minimum of 5 spaces need to be provided (which is equivalent to having 50 display vehicles – only 25 are proposed). Therefore, the application complies with the motor showroom requirements.

Car Repair Station

DCP A2 requires 4 spaces per work station. The proposed development incorporates 13 service bays – which is the rate used in Table 1 above. The plans also note a diagnostic bay, tyre bay, car wash bay and detailing bay. These 4 bays have not been included in the car parking calculations as they are not considered to be a “work bay”. Rather, they are spaces utilised by the dealership for vehicles already accounted for in the service bays. For example, a car being serviced will be washed and detailed prior to the customer picking it up. A condition has been applied to the effect that the car wash bay and detailing bay must not be open to the general public – they must only be utilised for vehicles being serviced. It should

also be noted that DCP A2 requires 4 spaces per work bay for customers, which is considered to be excessive. Nevertheless, the proposed development complies with the required parking provisions.

Commercial Premises

As noted on the proposed plans, Stage 2 incorporates commercial premises within the western portion of the development. That is, 30 car spaces on Level 1 in Stage 1 will be replaced with 946.4m² of commercial premises.

The four levels of commercial premises on the eastern portion (Stage 2) have been calculated as 994.1m² per level. The proposed plans indicate a 109.8m² area on each level, nominated for the purposes of kitchenette, refuse and amenities. Although DCP A2 requires 1 space per 40m² GFA, the kitchenette, refuse and amenities area has not been taken into consideration. Given that these areas are common areas for all of the tenancies on each level, they are not considered to generate any additional traffic. As such, the common area has been excluded from car parking requirements.

It is also noted that the proposed development only provides floor plates for the Stage 2 commercial development. This issue has been discussed with the applicant, who acknowledged the lack of detail. The plans have been designed this way on purpose, without knowing who the tenant will be. A future occupant of the tenancies may want to occupy an entire floor(s), in which the internal walls between each tenancy would not necessarily be required. In terms of an occupation certificate for Stage 2, it is considered more appropriate to not incorporate a detailed design of the commercial tenancies for this approval. The applicant has verbally agreed to a condition of consent which will require a separate approval for the internal fitout and use of the commercial tenancies in Stage 2. A more detailed assessment of parking requirements can be undertaken when the separate application is lodged, utilising any surplus car spaces if required.

Cafe

Stage 1 of the development incorporates a small café, with an outdoor dining area. Discussions were held with the applicant regarding the proposed use of the café. Initially it was proposed that the café would only provide for the staff and customers of the BMW and Land Rover dealerships, as well as staff / customers of tenants within the commercial premises in Stage 2. However, the applicant has since advised that they wish to include the café at the applicable 'refreshment room' car parking rates, making it open to the general public.

Based on a 74m² dining area and three staff (max), the café would require 11.4 spaces. Taking into account ESD principles, the café generates an additional 9.12 parking spaces (which is rounded up to 10 spaces). This brings Stage 1 requirements to 82 spaces and the total required spaces to **186 spaces**. The additional spaces can be provided, with the development proposing 108 in Stage 1 and 203 spaces in total.

Retail / Accessories Shop

Stage 2 of the proposed development incorporates a retail / accessories component. The applicant has not incorporated this use of the development within the car parking calculations, stating that it is ancillary to the Land Rover dealership, similar to the accessories shop linked with the Holden dealership adjoining the subject site.

Whilst it is acknowledged that the retail / accessories component is ancillary to the Land Rover dealership, it is possible that customers would travel to the site specifically to purchase accessories for their existing vehicle. As such, additional parking provisions should apply.

Shops are calculated as 1 space per 100m² for staff and 4.4 spaces per 100m² for customers. This results in the 120m² shop requiring 6.48 spaces. As noted above, it is considered reasonable to apply a percentage of the requirements (say 1/3) to this application. Therefore,

an additional two (2) spaces is considered to be adequate. This brings the total required spaces to **188 spaces**. The proposed development (having 203 spaces in total) complies with the overall parking provisions, leaving a **surplus of 15 spaces**.

Delivery, Service Vehicle Parking

With regard to service / delivery vehicles, Council's Development Engineer has provided the following comments:

'Service Delivery Vehicles are required to service the proposed development and must be able to manoeuvre entirely on site and enter and leave the site in a forward direction. Such manoeuvring areas, if reversing of large vehicles is involved, must be separate from areas of normal pedestrian or vehicular traffic.'

Stage 1 of the development provides an area adjacent to the Recreation Street entrance for an MRV service vehicle (8.8m in length and 2.5m in width). The area provided will enable an MRV service vehicle to adequately access, manoeuvre and egress the site in a forward direction.

A second service delivery vehicle unloading / loading area has been provided for a HRV (12.5m long and 2.5m wide) in stage 2. This is the general length of a garbage truck and is considered adequate to service the increased motor showroom facilities and commercial space proposed for stage 2 of the development.

The applicant was queried in regards to the size of the service delivery vehicles provided for the development. Generally a 19m long semi trailer is required for transportation of motor vehicles to the showroom and the applicant was advised that Council will not permit the unloading of motor vehicles on the street.

Correspondence from traffic consultants TTM dated 21 January 2011 was provided with the submission of further information and the response stated;

"The nature of the development in Stage 1 is such that the vehicle showroom will act as a satellite dealership. That is, it will behave as a subsidiary of the major dealership in Southport (existing) and therefore all major vehicle deliveries will occur to the Southport dealership. Occasional vehicle deliveries to the proposed site in Tweed will be performed by a tilt-tray two truck, as occurs at the other dealerships similar in nature. This vehicle is dimensionally similar to a medium rigid vehicle (MRV). These deliveries will typically involve only a single vehicle at a time, for customer delivery purposes or changes of display models."

The two service delivery vehicle areas provided are considered adequate to service the development. Although a condition of consent is recommended to state that all loading and unloading of motor vehicles is to occur on site and not in surrounding streets or road reserve and Stage 1 of the development is limited to a Medium Rigid Vehicle (MRV)'.

Applicable conditions of consent have been applied with regard to service delivery vehicles.

Tandem Spaces

Council's Development Engineer has provided the comment with regard to the proposed tandem spaces within the basement level of Stage 1:

'19 of the car parking spaces provided are tandem spaces. It is noted that these have been designated as staff parking. Tandem parking is not generally favoured, although for staff parking it may be provided where no inconvenience arises. DCP A2 specifies that no more than 2 cars are to be parked in a stacked arrangement. It is noted that 3 of the spaces are located in a tandem arrangement, although generally the tandem parking as proposed is acceptable'.

Despite the above comments, the proposed triple tandem space in Stage 1 (basement carpark) is not considered to be acceptable. The total number of car spaces (203) for the proposal has taken into account the loss of the unacceptable triple tandem space. Any approved plans will need to be marked in red, identifying the unacceptable space. This will result in there only being double tandem spaces, which is considered to be acceptable under the provisions of DCP A2, providing they are identified for staff parking only. A suitable condition of consent has been applied in this regard.

Bicycle Parking

The DCP requires one (1) per two car spaces for car repair stations, which equates to 32 bicycle spaces. Commercial premises also require 1 bicycle space per 100m² GFA, which equates to 60. In total, the DCP requires 92 bicycle spaces. The plans indicate a 13m x 7m area within the basement (Stage 1 area) specifically for the storage of bikes. This area is considered adequate.

Overall, the revised basement design is considered to satisfy the provisions of DCP A2, subject to conditions of consent.

A3-Development of Flood Liable Land

The subject site is flood prone. Council's mapping system shows the site affected by design flood inundation of between 3m to 5m in height. Section A3.3.4 of DCP A3 (Commercial and Industrial Development on Flood Liable Land) states that...*'Commercial and industrial development will be required to make adequate provision of flood free storage areas for stock and equipment susceptible to water damage'*.

Council's Development Engineer has recommended applicable conditions of consent in this regard.

A4-Advertising Signs Code

The proposed development incorporates the following signage:

- A freestanding 'Premium Selection' sign 2.4m high x 2.4m wide, proposed to be located along the Recreation Street frontage, near the proposed access point to the site;
- 4 x 9m high flagpoles, to be located along the Recreation Street frontage;
- A 9m wide x 1.65m high dealer name sign, located below the 7m high awning of Stage 1, fronting Wharf Street;
- A 5.8m high x 2.2m wide pylon sign, centrally located on the Wharf Street frontage.

The applicant has provided the following comment with regard to the requirements of DCP A4:

'Under the numerical controls of Tweed Development Control Plan 2008, Section A4, the allowances for signage display area and the number of signs is a function of the number of tenancies within the site and the frontages of the tenancies. Therefore, based on a preliminary allowance of five signs per premises and the tenancy frontage calculation, the signage allowance of the centre has been estimated at 185 signs with an area allowance of over 600m² (tenancy frontages over upper levels included).

Clearly the proposed signage, comprising only three signs and four flagpoles is well below the maximum number and area controls contained in the signage DCP'.

The applicant's comments with regard to the total number of allowable signs on the site are not considered to be correct. Whilst the DCP does have provisions allowing 5 signs per business, that number of signs would not necessarily be approved, particularly in such a

prominent location. Council has previously restricted multiple businesses (on one development site) to a total of 5 signs in the Tweed Heads area. Future signage for the proposed commercial premises will be subject to separate assessment.

Despite not agreeing with the applicant's assessment of allowable signs on the site, it is considered that the proposed signage for this development is acceptable.

The proposed development does not incorporate any other signage on the site (i.e. Stage 2). Concern has been raised by Council's Urban Planner with regard to future use of the western face of the commercial tower being utilised as some form of billboard signage, particularly on such a prominent site. A condition of consent has been applied requiring any additional signage to be subject to a separate development application, whereby a suitable merit assessment can be undertaken.

A11-Public Notification of Development Proposals

The proposed development was placed on public exhibition for a period of 30 days, during which time one (1) objection was received. The issues raised by the submissions are discussed later.

A13-Socio-Economic Impact Assessment

As noted by the applicant, none of the proposed uses within the development trigger the need for a social impact assessment. Notwithstanding this, the applicant has made an assessment of the proposed development against Council's standard checklist of social and economic issues. It is considered that the positive outcomes from the development (i.e. creation of employment during construction and ongoing use of the development) far outweigh any potential negative outcomes created by the development.

B2-Tweed Heads

B2.2.4 View Corridors

Map 3 identifies a view corridor between Razorback Hill, the boat harbour and the river. The applicant has noted that the...*'proposed building is consistent with the maximum height limit applying to the site and therefore will not adversely affect the view from the elevated Razorback lookout to the nominated features. Also the proposed building will not unreasonably affect views from other existing developments in the locality'*. The applicant's comments are concurred with.

The subject site is located in the Southern Precinct.

B2.4.3 Southern Precinct – Preferred Development

The DCP notes that mixed use developments oriented towards Wharf Street, where achievable, are the preferred forms of development in this precinct. Ideally, lots should be consolidated to form larger development sites with Wharf Street frontages where possible. The precinct will cater for commercial uses that are not appropriate in the central precinct, such as car hire businesses, motels and motor showrooms.

The proposed development complies with this clause in that it is a mixed use development fronting Wharf Street. The three allotments will be conditioned to be consolidated and the proposal incorporates motor showrooms.

- *Height Restriction*

A maximum height restriction of six (6) storeys applies to all development on development sites greater than 2000m². As the combined size of the three allotments is 5072m², the proposed six (6) storey development complies with this requirement.

▪ *Floor Space Ratios*

The FSR provisions of the DCP are the same as that of Clause 50 of the Tweed LEP 2000. As noted under the Clause 50 assessment, the proposal complies with the DCP in terms of maximum 1.596:1 FSR for the 3(b) zoned land.

B2.9 Building Envelopes

Clause B2.9.2 specifies the requirements for building envelopes within Business zones. As shown on the proposed elevation plans, the proposed development complies with the building envelope provisions.

B2.10 Commercial Façade

Council's Planning Reforms Unit has provided the following comments with regard to the commercial façade and the design of the proposed development in general:

'Generally the design of the building is of a high standard, especially if stage 2 of the development is realised. The simple horizontal planes of the showroom which are continued vertically into stage 2 create a strong, yet simple formal elegance. The lightness of the glazed façade assists in visual transparency across the site and along the street edge and forms an important part of the buildings tectonic language.

Given the proposed use is primarily as a motor showroom, the site response of designing to the street boundary rather than create a deep apron creates a defining edge on this visually prominent corner. Not only does this create opportunity for improving the public domain and pedestrian amenity (landscaping and roof overhangs creating an awning over footpath) in this vehicle dominated environment, but the open floor plate and street address embeds an element of future adaptability for alternate land uses.

Although the building has been designed to a specific brief, the future potential of this site as a mixed use precinct (Draft Tweed City Centre LEP 2009) questions whether the proposal would result in an underdevelopment of the site. Whilst it is conceded that Stage 2 includes a significant amount of commercial floor space, perhaps a future staging plan should also consider future development options over the car showroom and/or an active edge along Recreation Street. Opportunity also exists to further pronounce the Minjungbal/Recreation Street corner with an additional 3rd storey element.

Absent from the submitted drawings is an identification of the principle materials and finishes of the buildings external elevations. It is also noted that stage 2 presents an extremely large blank western elevation. Whilst it is conceded that this is large to control the buildings overall heat gain, given the visual prominence this elevation will need to be appropriately addressed.

Located on the corner of Minjungbal Drive and Recreation Street the subject site is visually prominent especially when travelling north along the Boyds Bay Bridge. In this regard the subject site could be described as being a key gateway site into the Tweed City Centre. Any development on this site will have a lasting impression on the visual character of this part of the Tweed City Centre.

A site inspection identified that as one transitions off the bridge, the corner of the site and a significant proportion of the Recreation Drive elevation occupy the view field. It is noted that the proposal includes a significant proportion of this elevation will be car parking. As such it is important that the application address the Recreation Street elevation in terms of its landscape treatment in the context of this view field'.

In terms of the draft DCP for Tweed Heads, the applicant was requested to provide a response to a number of design issues, including the need to: consider potential development above the proposed showroom on the corner of Wharf and Recreation Street and an active edge along Recreation Street within the current Stage 1; consider a third storey element on corner of Wharf and Recreation Street as part of Stage 1; describe principle materials on buildings external elevations; provide a contextual photomontage viewed from Boyds Bay Bridge looking north across the site, given the visual prominence of the subject site; and address the buildings Recreation Street elevation in terms of landscape treatment to car parking areas in the context of the northern view field off the Boyds Bay Bridge.

Revised plans were provided, with the applicant noting the following:

- *Active edge to Recreation Street, development above showroom – The Recreation Street frontage has been designed to minimise potential impact upon residential uses to the west. The potential provision of an additional storey has been considered but cannot be accommodated within the applicable floor space ratio or car parking provisions;*
- *Consider 3 storeys on corner of Wharf Street and Recreation Street – refer to comment above. This matter has been discussed with Council’s Urban Designer and an amendment has been made to the building façade to address concerns of massing as raised by Council;*
- *Describe building materials – materials, textures and colours for the proposed building are provided on Amended Drawing No. SK-5.11;*
- *Photomontage – an additional photomontage of the proposed building viewed from Boyds bay Bridge looking north across the site to assist Council’s assessment of the application (See Figure 4 below);*
- *Landscape Treatment to Recreation Street – the Landscape plans have been amended to address the treatment of the car parking area to the Recreation Street frontage, as viewed from the Boyds Bay Bridge.*



Figure 4: Photomontage of the proposed design from Boyds Bay Bridge

Council’s Urban Planner provided the following comments on the applicant’s revised documentation:

‘As noted the key elevational changes include:

- *Additional height to the Wharf St / Recreation St corner;*
- *Reduction in the height of the entrance hood to stage 02 improving the proportional relationship between stage 01 and stage 02.*
- *High level screen (approx 4.0m above FFL) along Recreation Street*

Previous design comments made a series of recommendations. Below provides a response as to the extent to which those recommendations have been addressed or considered by these revised drawings.

Consider potential development above the proposed showroom on the corner of Minjungbal and Recreation Street and an active edge along Recreation Street as a future stage to provide more of an accented corner treatment.

Whilst a third storey has not been added to the development, the increased height and volume of the south west corner of the proposed building now more appropriately addresses the corner in terms of scale and building form.

The revised elevations illustrate the increased building height to the Minjungbal Drive / Recreation St corner to 9.705m (SK7.6) measured to the underside of the soffit. The additional building height improves the proposed building address to the prominent gateway corner and also improves the buildings proportional relationship between stages 01 to stage 02. The proposed building will define the street edge and its glazed façade to Minjungbal Drive provides transparency to the street edge.

Whilst previous suggestions for designing in an outdoor roof terrace on the roof area above stage 01 to take advantage of the views over the Tweed River towards the coastline have been overlooked on budgetary and brief grounds, the integration of the roof structural system to perhaps support such a future addition would contribute to the proposals future flexibility and adaptability, especially in the context of the upper level car park becoming commercial floor space in stage 02.

Previous concern also related to the levels coming off the Boyd’s Bay Bridge corresponding with the upper car parking level and therefore being prominent within this view field. It is now conceded that this car parking area will be partially obscured from view given it is offset from the Minjungbal street elevation and obscured by a blade wall along Recreation Street. The degree of visibility or transparency of this upper level car park will to a large extent be determined by the type of glazing chosen (tint, opaque, patterned stencilled overlay would further obscure), and the material of facing car park elevation (lining the void over the showroom) which is currently unknown.

Given the visual prominence of the subject site, the preparation of a contextual photomontage viewed from Boyd’s Bay Bridge looking north across the site would assist in the assessment of the proposed buildings visual impact.

A 3d montage of the view field as described above has now been issued and provides a contextualised visualisation of the proposal thereby satisfying this recommendation. The requested photomontage (SK 5.10) depicts the ‘gateway corner’ view as one would traverse off the Boyd’s Bay Bridge on approach to Tweed Heads. The montage confirms the proposal is of a scale, form and material appropriate to this site in terms of townscaping and streetscaping considerations. The proposed building which would in part be built to the boundary along Minjungbal Drive defines the street edge which is desirable rather than propose a deep apron similar to other car yards within the immediate area.

The montage also demonstrates that the proposed large glazed façade fronting Minjungbal Drive atop a small podium provides transparency and visual interest to the street which is an important consideration in terms of designing to corner (albeit gateway) sites. The transparent façade combined with the wide floor plate and structural configuration also embeds future flexibility for reuse of the proposed building which theoretically could meet the spatial requirements of a number of other land uses. Similarly, the upper level car park over the showroom has been identified for future commercial uses as part of stage 02 contributing to the potential mix of uses over this site more in alignment with the intent of B4 Mix Use under the Tweed City Centre Draft LEP 2009.

Describe principle materials on buildings external elevations.

The principle materials have now been described on SK 5.11 and generally satisfy this requirement. The proposed materials largely consist of tinted grey glazed double volume curtain wall to Minjungbal Drive supported by a series of off-white texture rendered blade walls (over concrete block?), podium and columns. This is considered a simple yet effective palette reinforcing the buildings geometric formal language whilst satisfying the pragmatic need to display cars. The internal illumination at night time will accentuate this, with the proportion of the mullions to the glazed expanse creating a lanterning effect on the prominent corner.

Previous comments also raised concern in relation to the western façade of stage 02 which is most apparent travelling north off Boyd's Bay Bridge in terms of it being a large blank detail-less elevation. The vertical bands of glazing within this elevation (aligning internally with a kitchenette area and circulation corridor of indicative floor plans) somewhat break this elevation. This elevation could be further detailed with bands of glazed off-white tiles corresponding with floor levels reflecting light particularly in the afternoon.

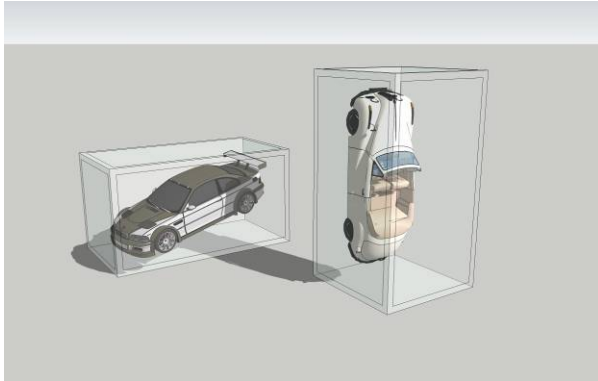
It is however conceded that the proposed architectural language of the building, which includes the continuous horizontal and vertical planes offset by the lightness and transparency of glazed façade and layering of the perforated aluminium screens, provides an overall form and material composition generally acceptable to this site. It is further acknowledged that due to the orientation (west facing) and in consideration of the need to reduce heat loads on the building this elevation needs to be solid.

Previous conversations with the designer alluded to a perforated aluminium 'art wall' screen extending along the Recreation Street elevation. The stepping configuration of the screen with the bottom edge being approximately 3.0m above finished floor level generally breaks down the scale of this elevation. The final finish in terms of colour and further detail of the chosen pattern or motif would be required to assess potential interface issues with residential land uses on the opposite side of the road. Perhaps in addition to the perforated screen, the wall on the ground floor beyond the screen (western wall of the service bay) could also be treated as a painted art wall to provide additional depth and layering to the Recreation Street elevation.

There is still some ambiguity in relation to the use and embellishment of the feature forecourts, one located within the step on the corner of Minjungbal Drive and Recreation Street (it is unknown whether this is landscaped or whether a car will be displayed in this location) and other fronting Minjungbal Drive adjoining the foyer area of stage 02 (will this be a semi public space with a retail using the forecourt). There is opportunity for the later to contain a high amenity landscaped area which will integrate plant ecology with the building, have beneficial microclimate outcomes and be a point to utilise water collected on site.



The Capita Centre in Sydney incorporates a landscaped forecourt on the ground floor with café / lunch bar and seating. Given the direct access off Castlereagh Street and high amenity value of the landscaped space, the area is used by the general public and building users alike.



Dynamic car displays could form the centrepiece of the forecourt on the corner of Recreation Street and Minjumbal Drive contributing to the gateway site and streetscape interest.

Address the buildings Recreation Street elevation in terms of landscape treatment to car parking areas in the context of the northern view field off the Boyds Bay Bridge.

As previously noted, the revised elevations illustrate a high level perforated aluminium art screen to the Recreation St interface however little detail has been provided in terms of the motif or finish. It is important to note that this elevation forms an important interface with residential areas and as such, further information on the art work content and material finish needs to be provided to consider any amenity related issues.

It is still noted that whilst a landscape plan has been submitted (RFI 01) the detailed landscape treatment including nominated species and locations has also not been included on general arrangement and elevation drawings. Landscape treatment along the Recreation Street elevation and within the identified planter and forecourt areas will form an important part of the resultant streetscape and landscape ‘softening’ of the buildings elevations and streetscape interface. Further detail of these landscape treatments (including species, edges, material finishes etc) are required.

Overall, the proposed development is considered to comply with the relevant provisions of DCP B2, and has adequately addressed the design principles relating to the draft DCP for the locality.

(a) (iv) Any Matters Prescribed by the Regulations

Clause 92(a) Government Coastal Policy

The subject land is affected by coastal policy. The proposed development is not considered to be in conflict with the policies and strategies contained within the NSW Coastal Policy 1997.

Clause 92(b) Applications for demolition

Stage 1 of the proposed development involves the demolition of all structures on the western part of the site. Similarly, Stage 2 involves the demolition of all structures on the eastern part of the site. The demolition of the existing structures has been incorporated within a Waste management Plan (prepared by HMC Consulting and dated October 2010).

It was noted upon lodgement of the application that the existing long steel shed structure on the western side of the development site had already been demolished by the applicant. No further demolition works have been undertaken, to the knowledge of Council.

(a) **(v) Any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)**

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. The subject site is not mapped as being within the current or draft coastal hazard lines. As such, the Tweed Shire Coastline Management Plan 2005 is not applicable to the proposed development.

Tweed Coast Estuaries Management Plan 2004

This Plan relates to the Cudgen, Cudgera and Mooball Creeks and is therefore not applicable to the proposed development.

Coastal Zone Management Plan for Cobaki and Terranora Broadwater

Figure 3.1 *Cobaki and Terranora Broadwater Catchments*, indicates that the subject site is outside the catchment area for the Terranora Broadwater. As such, Coastal Zone Management Plan for Cobaki and Terranora Broadwater is not considered to be applicable to the proposed development.

Despite this, applicable conditions of consent have been applied in order to ensure that appropriate sediment and erosion control measures are in place and adequate stormwater drainage provisions are provided (particularly in relation to dewatering) to ensure the quality of the adjacent waterway (Terranora Inlet to the south east).

(b) **The likely impacts of the development and the environmental impacts on both the natural and built environments and social and economic impacts in the locality**

Compatibility with Adjoining Land Uses

The area surrounding the development site is a mix of residential commercial businesses and public buildings. In terms of future development, the Draft Tweed City Centre Plan identifies the surrounding area as mixed use to the east and north; and medium density residential (beyond Recreation Street to the west). Therefore, as the area is redeveloped and changes character, the proposed development is expected to be of similar character to the surrounding locality.

Access, Transport and Traffic

Council's Development Engineer has provided the following comment with regard to the local road network:

'The subject property is surrounded by three roads; these being Wharf Street, Recreation Street and Boyd Street. Wharf Street is a 2 way 4 lane arterial road separated by a concrete medium strip and listed as a designated road in Council's LEP 2000. Recreation Street and Boyd Street are two way urban collector roads in

reasonable condition. These roads are in reasonable condition with the horizontal and vertical alignment of all roads being relatively flat.

Site distance at the Recreation Street access is 200m in both north and south directions. Minimum requirements for Approach Site Distance (ASD) and Safe Intersection Sight Distance (SISD) as specified in Ausroads part 5 – Intersections at grade for a 60km/h speed environment are 71m and 121m respectively. The site distance is in accordance with Ausroads part 5 – Intersections at grade.

Site distance at Boyd Street is for egress only and the exit complies with the site distance requirements specified in Ausroads’.

In terms of access to the site, the following arrangements are proposed:

Stage 1

The main vehicle access to the site is via a new driveway crossover to Recreation Street. An internal ramp then provides access to the basement, ground and first floor parking areas constructed as part of Stage 1. Refuse collection is also proposed from Recreation Street.

Stage 2

The main access is still via Recreation Street. A left out only turning movement has also been provided for one way egress onto Boyd Street.

With regard to traffic generation, the applicant submitted a traffic impact assessment report (prepared by TTM Group, dated September 2010). The traffic report concludes that the proposed development will have no impact on the operation of the surrounding traffic network. It is noted that the RTA have no concerns with the development application.

The following comments were provided from Council’s Traffic Engineer:

‘I have perused the TTM Group traffic response dated 21 January 2011. The MRV service delivery parking and manoeuvring is acceptable for Stage 1 even though there is some minor reversing required for the service delivery vehicle. Any approval of consent however should include the condition that service and delivery vehicles for the development must not exceed the size of a medium rigid vehicle (MRV) as defined in AS 2890.

I do not agree with the statement made in the traffic response that “there are no traffic impacts at the proposed main access driveway as a result of the proposed development”. My quick SIDRA evaluation at this proposed driveway location shows a drop in level of service (LOS) to LOS B for two turns in the PM peak period as a result of the proposed development traffic. Even so, the delays and queues are minor and acceptable (better than LOS C)’.

The proposed development incorporates excavation works for the proposed basements, which will result in construction traffic to remove the excavated soil from the site. The following comments were provided from Council’s Development Engineer:

‘Details of construction traffic from ADG consulting via email dated 25 January 2011 to Council’s Traffic Engineer states that the estimated number of maximum truck movements per hour is 6 in and 6 out. This information is slightly unrealistic as a truck and trailer have to be loaded up with excavated material and be out of the site within 10 minutes with another truck in its place ready to be filled.

Construction traffic to the site will be approximately 100 trucks per day for a period of 2-3 weeks. This is based on 10,650m³ of excavated fill material (total excavation calculated for both stages 1 & 2) with a truck and trailer capacity of 20m³ and also including a 20% bulking factor on the fill material. 100 truck movements (accounting for two way traffic movements, including an empty truck arriving and a fully loaded

truck leaving the site) will occur every day throughout the site and the surrounding traffic network. This will create noise and amenity issues for any existing residences in Recreation Street for a short period of time.

The above calculations are based on the applicant advising that they propose to excavate the site between the hours of 7am and 6pm six days per week.

Heavy haulage for the development applies'.

Stormwater Drainage

Council's Planning and Infrastructure Engineer has provided the following comments with regard to stormwater drainage:

'The subject development is proposed to be constructed in two stages over a largely impervious site. The Stormwater Management Plan (SWMP) concludes that the development will not result in any appreciable increase in runoff for a range of storm intensities, which is agreed. The site is well serviced by kerb and gutter and piped stormwater on the three street frontages, and therefore there is no requirement for on site detention of stormwater.

Each stage of the development will operate separate stormwater systems, and discharges to Recreation St and Boyd St respectively, which are lawful discharge points.

There are extensive hardstand, driveway and carparking areas in each stage, which require permanent quality control devices. The SWMP proposes Humeceptor proprietary devices in each catchment, which are acceptable under Development Design Specification D7 – Stormwater Quality.

It is acceptable for internal stormwater services to be provided with each stage, such that the Stage 2 site will continue to drain under current conditions until such time as it is developed, provided this discharges in a lawful manner and does not cause a nuisance.

All wash bays need to be located undercover, be bunded, and discharge to sewer as trade waste, to prevent contamination of the stormwater system.

No objections are raised on the basis of stormwater management. Standard conditions are recommended'.

Sewer

Council's Development Engineer has noted that piped sewer infrastructure is available within the area. Recommended conditions of consent shall require the applicant to provide a service in accordance with Council's standards.

Council's Water & Sewer Engineer provided the following initial comments with regard to the proposed reticulated sewer system:

'The proposed sewer location appears feasible but it does lack some detail.

I assume that sewer line ARB will be removed (Dead end line from NH AR/5) as part of Stage 1.

The detail at stage two is particularly limited, however it is apparent that the basement level will be greater than the level of the existing and the relocated sewer. It would seem that the proposed relocation is directly beneath the northern wall of the basement, which is unacceptable. Either the building and the boundary, or some arrangement needs to be designed for the sewer to be accessible from within the basement, perhaps by providing a duct in the floor with suitable access.

For the relocation to occur, it will be necessary for the proponent to make application for approval under s68 of the Local Government Act to carry out works in a public road, unless a CC through Development Engineering is required under subdivision conditions.

As part of that approval an easement to provide access to the sewer will be required, either as conventional, or an easement to drain water within the cavity of the building.

Full engineering drawings will also be required along with all usual provisions such as works as executed drawings, video survey of completed works, etc.

S64 Charges should be calculated in accordance with the Fees and Charges rates applicable.”

Following the submission of further information, the following additional comments were provided:

‘The revised Stage Two Sewer Relocation Plan provides clarity as to the alignment of the relocated sewer and advice that ducting will be provided in the floor for access to the sewer.

The design of the sewer shall be such that no load from the building is transferred to the sewer pipe and where the sewer penetrates the structure, suitable flexible joints shall be provided to allow differential settlement. The design of the relocation shall be in accordance with the requirements of Development Design Specification D12 Sewerage Systems and Council’s Sewers – Works in Proximity Policy.

The proponent lodged an Application to Alter Council’s Water or Sewer Infrastructure and obtain such approval prior to commencement for each stage of the proposed sewer relocation works. Section 138 Roads Act applications may be required for works within the road reserve in relation to the sewer relocations as well.

It should be conditioned that an easement to drain sewage within a wall or floor cavity shall be provided burdening the subject land in favour of Tweed Shire Council’.

Contamination

The applicant provided a Preliminary Site Investigation Contamination (prepared by ADG Consulting, dated 19 April 2010). Given that dieldrin was reported above detectable levels beneath those slabs that were able to be accessed, Council’s Environmental Health Unit requested further investigation of the material beneath those slabs that were not accessible. The following comments were provided after the additional information was submitted for consideration:

‘A Supplementary Pre-demolition Investigation report has been provided by ADG Consulting to address the issue raised in the previous comments. This report dated 27 January 2011 and Referenced ADG151.10 concludes that “the site is considered suitable for the proposed commercial development ... demolition of the existing buildings and concrete slabs will not present a risk to human health or the environment as a result of OCP contaminated soils on the site.” The report however makes certain recommendations. The Report has been assessed and is considered satisfactory’.

Applicable conditions of consent have been recommended.

Dewatering

The applicant provided a Preliminary Acid Sulfate Soil and Groundwater Investigation report (ADG Consulting, dated 23 April 2010). Council’s Environmental Health Unit noted that the report was in error as it referred to the construction of a 3 level basement car park associated with Stage 2. Discussions were held with the applicant’s consultants, whereby it was verbally

confirmed that a single level basement car park is proposed for Stage 2, as indicated on the plans originally submitted with the development application.

The applicant was requested to submit a revised groundwater investigation and water quality management plan. The revised documentation was to cover a number of issues, including (but not limited to): the correct basement levels; complete sizing and system design details of the groundwater treatment system and temporary retention pond; and site plan for both stage 1 and stage 2 dewatering operations that clearly indicates where all dewatering operation treatments systems will be installed on the site for each stage.

The following comments were provided by Council's Environmental Health Unit after the additional information was submitted for consideration:

'Previous comments in respect to dewatering operations intended to be carried out on site have been addressed with the submission of reports entitled "Acid Sulphate Soil and Groundwater Investigation" prepared by ADG Consulting dated 20 January 2011 and referenced ADG151.10. and "Acid Sulphate Soil and Dewatering Management Plan" prepared by ADG Consulting dated 20 January 2011 and referenced ADG151.10.

These reports have been assessed and considered satisfactory subject to conditions'.

Food Preparation

Council's Environmental Health Unit provided the following comments:

'A café and associated outdoor dining area is proposed in respect to stage one. It is likely that the café will provide retail trade food services to the general public in a manner similar to the café operating in the car dealership located on the corner of Boyd and Wharf Street.

Standard conditions will be relevant to any consent in respect to the fit out and construction of the food handling areas associated with the café. A special condition is required in relation to the provision of fit out plans and specifications prior to construction work commencing on the café'.

Trade Waste

Council's Environmental Health Unit noted that the proposed car service area may incorporate waste oil collection and an oil separator. In addition, a carwash bay is also proposed. The applicant was requested to provide further details regarding trade waste; however they requested that a suitable condition of consent be applied. Council's Trade Waste Connections Officer has recommended the applicable conditions of consent, with regard to the car service area and proposed café.

Demolition/Asbestos

Council's Environmental Health Unit noted that the Preliminary Site Investigation Contamination report (prepared by ADG Consulting, dated 19 April 2010) recommended that an asbestos audit should be conducted prior to demolition to identify any asbestos containing building materials that would require removal and disposal in accordance with relevant guidelines.

An applicable condition of consent has been recommended in this regard.

Waste Management

The applicant provided a Waste Management Plan (HMC Consulting, dated October 2010). The Plan details the proposed bulk waste bins and recycling wheelie bins. It is noted that the Plan also references the handling and removal of asbestos material. Council's Waste

Management Unit assessed the management report with no objections, subject to conditions of consent.

Lighting

Council's Environmental Health Unit provided the following comment with regard to lighting:

'It is noted that illuminated advertising signage is proposed along the Wharf Street frontage and on the Recreation Street frontage; it is not apparent whether the flag poles in Recreation Street will be illuminated.

The residential dwellings in Recreation Street will be the most affected by any lighting or glare issues. However the orientations of the Pylon sign as shown on sheet No. SK-6.2 dated 30.9.10 (Ground Floor Plan – Stage one) on Recreation Street will serve to minimise any nuisance aspect for this sign.

Any proposed illumination of the flag poles does however have the potential to cause lighting nuisance particularly if such lighting is reflected off any large wall surface.

Security lighting associated with the car display areas and generally in respect to the car dealership also has the potential to cause nuisance to the residents in Recreation Street.

The applicant was requested to advise if lighting associated with the flag poles was proposed and if so, how they proposed to mitigate any reflected glare from such lights affecting residential premises on Recreation Street. The applicant provided a written response advising that the proposed flag poles will not be illuminated and therefore no special lighting condition in respect to these is required. Council's Environmental Health Unit has recommended standard conditions of consent, in respect to the proposed advertising signs that are to be illuminated.

(c) Suitability of the site for the development

The site is centrally located and within walking and cycling distance of the Tweed Heads and Coolangatta business districts, local bowls clubs, sporting fields, medical facilities and beaches of the area. The property is fully serviced by all necessary infrastructure (water, sewer, stormwater, electricity and telecommunications), and has easy access to the main roads to central Tweed Heads or South Tweed. The site and surrounding properties are zoned for general business and medium density residential. It is therefore considered that the site is suitable for the proposed development.

(d) Any submissions made in accordance with the Act or Regulations

One submission was received during the public exhibition period, which ran from 3 November 2010 to 3 December 2010. The only issue raised in the submission was the ongoing car parking problem along Boyd Street, and the concern that the proposed development would add to existing parking problems.

The proposed access point into the subject site is located on Recreation Street, as opposed to Boyd Street. The only access point upon Boyd Street is the proposed 'left out only' proposed behind the Stage 2 building. Given that the proposed development provides adequate car parking provisions on site, and all manoeuvring of vehicles is accommodated for on site, the access point onto Boyd Street is not considered likely to impact upon the local road network. It is also noted that Council's Traffic Engineer has no objection to the proposed development, subject to conditions of consent.

Therefore, the carparking issue raised by the submission does not warrant refusal of the proposed development.

Land & Property Management Authority (LPMA)

Following notification as an adjoining landowner, the LPMA provided the following comment:

While the proposal does not directly impact on the Crown estate please ensure that the applicant does not undertake any activity on the Crown land or use the Crown land for any purpose associated with the development. The proponent may not:

- ◆ encroach upon the Crown land,
- ◆ remove any vegetation from the Crown land,
- ◆ stockpile materials, equipment or machinery on the Crown land,
- ◆ use the Crown land as access,
- ◆ direct stormwater discharges on the Crown land, or
- ◆ use the Crown land as asset protection zone.

The proposed development complies with the requirements of the LPMA.

Development Traffic Advisory Group (DTAG)

DTAG is chaired by Council's Traffic Engineer, and also involves representatives from the RTA and NSW Police. The proposed development was referred to DTAG for consideration. Minutes from the DTAG meeting held on 16 December 2010 note that advice from the RTA was required and would be provided by email. An email was received from the RTA on 14 February 2011, noting that the... *'RTA has no concern with proposed development application'*.

DECCW (NSW Office of Water)

The proposed development requires dewatering for the construction of the basements in both stages. As such, the application was referred to the NSW Office of Water (NOW) as Integrated development. Concerns with the original documentation relating to dewatering resulted in a 'Stop the Clock' notice, with NOW requesting further information, (similar to that requested by Council's Environmental Health Unit).

The revised Dewatering Management Plan was referred to the Department for further consideration. NOW has since issued General Terms of Approval, which have been incorporated into the recommended conditions of consent.

(e) Public interest

It is considered that the proposed mixed use development does not compromise the public interest. The proposal is generally considered to reflect the provisions of all applicable development control plans and intended development for the locality.

OPTIONS:

1. Approve the application, subject to the recommended conditions of consent
2. Refuse the application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has the option to appeal the matter in the NSW Land and Environment Court, should they be dissatisfied with the Panel's resolution.

POLICY IMPLICATIONS:

Nil

CONCLUSION:

The proposed development is consistent with the applicable environmental planning instruments, with an acceptable variation to Clause 32B of the North Coast REP. Having had regard for the proposed development and controls provided for the site it is considered that conditional consent is warranted.

UNDER SEPARATE COVER:

Nil

RECOMMENDATION:

That:

- A. State Environmental Planning Policy No. 1 objection to Clause 32B of North Coast Regional Environmental Plan regarding the overshadowing of a reserve be supported and the concurrence of the Director-General of the Department of Planning be assumed.
- B. Development Application DA10/0707 for a proposed mixed use motor showroom car repair station and commercial premises - staged development (JRPP) at Lot 16 Section 4 DP 2379; Lot 1 DP 1014402 No. 169-171 Wharf Street & Lot 20 Section 4 DP 2379 No. 58 Recreation Street, Tweed Heads be approved subject to the following conditions:

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan No's:
 - **SK-6.1 (Rev DA2):** Basement Floor Plan – Stage 1 (as amended in red), prepared by Burling Brown Architects and dated 9 February 2011;
 - **SK-6.2 (Rev DA3):** Ground Floor Plan – Stage 1, prepared by Burling Brown Architects and dated 9 February 2011;
 - **SK-6.3 (Rev DA1):** Level One Floor Plan – Stage 1, prepared by Burling Brown Architects and dated 10 February 2011;
 - **SK-6.4 (Rev DA2):** Elevations 1 of 2 – Stage 1, prepared by Burling Brown Architects and dated 9 February 2011;
 - **SK-6.5 (Rev DA2):** Elevations 2 of 2 – Stage 1, prepared by Burling Brown Architects and dated 10 February 2011;
 - **SK-6.6 (Rev DA):** Roof Plan – Stage 1, prepared by Burling Brown Architects and dated 9 February 2011;
 - **SK-7.1 (Rev DA2):** Basement Floor Plan – Future Stage (as amended in red), prepared by Burling Brown Architects and dated 9 February 2011;
 - **SK-7.2 (Rev DA1):** Ground Floor Plan – Future Stage, prepared by Burling Brown Architects and dated 9 February 2011;
 - **SK-7.3 (Rev DA1):** Level One Floor Plan – Future Stage, prepared by Burling Brown Architects and dated 9 February 2011;
 - **SK-7.4 (Rev DA):** Level Two Floor Plan – Future Stage, prepared by Burling Brown Architects and dated 29 September 2010;
 - **SK-7.5 (Rev DA):** Level 3-5 Typical Floor Plan – Future Stage, prepared by Burling Brown Architects and dated 29 September 2010;
 - **SK-7.6 (Rev DA2):** Elevations 1 of 2 – Future Stage, prepared by Burling Brown Architects and dated 10 February 2011;

- **SK-7.7 (Rev DA2):** Elevations 2 of 2 – Future Stage, prepared by Burling Brown Architects and dated 10 February 2011;
- **SK-7.8 (Rev DA2):** Sections, prepared by Burling Brown Architects and dated 9 February 2011;
- **SK09:** Premium Selection Pylon Signage, prepared by BMW Australia Pty Ltd and dated 11 November 2004;
- **SK10:** BMW Dealership Flagpoles, prepared by BMW Australia Pty Ltd and dated 27 October 2003;
- **SK10:** Dealer Name Sign, prepared by BMW Australia Pty Ltd and dated 30 August 2010;
- **SK12:** P5 Pylon Sign, prepared by BMW Australia Pty Ltd and dated 8 September 2010;

except where varied by the conditions of this consent.

2. Submission of a further Development Application(s) for the internal fitout for Stage 2 of the development, such to be approved by Council prior to their use or occupation. [GEN0005]
3. Any additional advertising structures/signs from those approved by this consent are to be the subject of a separate development application (where statutorily required). [GEN0055]
4. All illuminated advertising signage is to be fitted with necessary devices capable of permitting the change in intensity of illumination of the sign in order to regulate glare or other like impacts. [GEN0065]
5. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia. [GEN0075]
6. 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. [GEN0115]
7. A Sewer manhole is present on this site. This manhole is not to be covered with soil or other material. [GEN0135]
Should adjustments be required to the sewer manhole, then application shall be made to Council's Community and Natural Resources Division for approval of such works. [GEN0155]
8. Any business or premises proposing to discharge a pollutant discharge greater than or differing from domestic usage is to submit to Council an application for a Trade Waste Licence. This application is to be approved by the General Manager or his delegate prior to any discharge to sewer being commenced. A trade waste application fee will be applicable in accordance with Councils adopted Fees and Charges. [GEN0190]
9. The development is to be carried out in accordance with Councils Development Design and Construction Specifications. [GEN0265]
10. All loading and unloading of motor vehicles is to occur on site and not in adjoining streets or road reserve. [GENNS01]
11. Service and delivery vehicles for Stage 1 of the development must not exceed the size of a medium rigid vehicle (MRV) as defined in AS2890 - Parking Facilities Part 2: Off street commercial vehicle facilities; these dimensions being a width of 8.8m and length of 2.5m. [GENNS02]

12. Prior to the commencement of dewatering operations an examination of the quantity of pre-existing sediment within the stormwater drainage network that is intended to receive the de-watering discharge shall be undertaken by methods considered acceptable to Council's Stormwater Maintenance Engineer. Closed circuit television (CCTV) footage and a report of the findings of the examination shall be provided to Council's Stormwater Maintenance Engineer prior to the commencement of de-watering operations. [GENNS03]
13. Prior to the commencement of dewatering operations the applicant or their nominated representative shall consult with Council's Stormwater Maintenance Engineer in respect to the most appropriate method of connection of the de-watering system to Council's stormwater drainage system. The applicant or their nominated representative shall comply with any and all directions as may be provided by Council's Stormwater Maintenance Engineer. [GENNS04]
14. Staging of the development (Stages 1 & 2) shall be in accordance with the approved plans. [GENNS05]
15. Waste management on the site shall be carried out in accordance with the approved Waste Management Plan prepared by HMC Pty Ltd, dated October 2010, reference number 2010.117. [GENNS06]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

16. Section 94 Contributions

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

These charges will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 94 Plan current at the time of the payment.

A copy of the Section 94 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.

Stage 1

- | | |
|-------------------------------------|---------|
| (a) Tweed Road Contribution Plan: | |
| 46.8 Trips @ \$656 per Trips | \$30701 |
| (\$596 base rate + \$60 indexation) | |
| S94 Plan No. 4 | |
| Sector1_4 | |

Stage 2

- | | |
|-----------------------------------|----------|
| (a) Tweed Road Contribution Plan: | |
| 570.3984 Trips @ \$656 per Trips | \$374181 |

(\$596 base rate + \$60 indexation)

S94 Plan No. 4

Sector1_4

- (b) Extensions to Council Administration Offices
& Technical Support Facilities

0.615 ET @ \$1759.9 per ET \$1082.34

(\$1759.9 base rate + \$0 indexation)

S94 Plan No. 18

[PCC0215]

17. Section 94 Contributions

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

These charges will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 94 Plan current at the time of the payment.

A copy of the Section 94 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.

Heavy Haulage Component

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 5 prior to the issue of a construction certificate. The contribution shall be based on the following formula:-

$$\text{\$Con}_{\text{TRCP - Heavy}} = \text{Prod.} \times \text{Dist} \times \text{\$Unit} \times (1 + \text{Admin.})$$

where:

$\text{\$Con}_{\text{TRCP - Heavy}}$ heavy haulage contribution

and:

Prod. projected demand for extractive material to be hauled to the site over life of project in tonnes

Dist. average haulage distance of product on Shire roads
(trip one way)

\$Unit the unit cost attributed to maintaining a road as set out in Section 7.2 (currently 5.4c per tonne per kilometre)

Admin. Administration component - 5% - see Section 6.6

[PCC0225/PSC0185]

18. A **certificate of compliance** (CC) 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.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall **NOT** be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

Annexed hereto is an information sheet indicating the procedure to follow to obtain a Certificate of Compliance:

Stage 1

Water DSP4:	4.528 ET @ \$11020 per ET	\$49898.6
Sewer Banora:	8.198 ET @ \$5295 per ET	\$43408.4

Stage 2

Water DSP4:	23.9316 ET @ \$11020 per ET	\$263726.2
Sewer Banora:	35.5974 ET @ \$5295 per ET	\$188488.2

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

These charges to remain fixed for a period of twelve (12) months from the date of this consent and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

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

- [PCC0265]
19. All earthworks shall be graded at a minimum of 1% so that the site 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. Detailed engineering plans of cut/fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.
- [PCC0485]
20. A detailed plan of landscaping (for Stages 1 & 2) containing no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate for each stage. The plan must also detail landscape treatment (including species, edges, material finishes etc).
- [PCC0585]
21. The basement car parking is to be protected against the inflow of water to a level of 500mm above the design flood level of RL 3.1m AHD in accordance with Tweed Shire Council Development Control Plan Part A3 - Development of Flood Liable Land. This immunity shall be provided at all accesses including external stairs to the basement car park. The pump system shall be designed for a storm event with a 10 year average return interval (ARI 10) and shall have failsafe measures in place such that property (onsite and adjacent) is protected against pump failure. Consequences of the 100 year ARI storm event must also be addressed. Details of the basement stormwater pump-out system shall be submitted to and approved by the Principle Certifying Authority prior to

the issue of a Construction Certificate.

Installed pumps must be designed and installed in accordance with Section 9 of AS/NZS3500.3.2 1998 "*National Plumbing and Drainage – Part 3.2: Stormwater Drainage – Acceptable Solutions*"

[PCC0685]

22. Design detail shall be provided to address the flood compatibility of the proposed structure including the following specific matters:
- (a) Design flood level of RL 3.1m AHD.
 - (b) All building materials used below Council's design flood level must not be susceptible to water damage.
 - (c) Subject to the requirements of the local electricity supply authority, all electrical wiring, outlets, switches etc. should, to the maximum extent possible be located above the design flood level. All electrical wiring installed below the design flood level should be suitably treated to withstand continuous submergence in water and provide appropriate earth leakage devices.
 - (d) Define adequate provision for the flood free storage for goods and equipment susceptible to water damage.

[PCC0705]

23. 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. Application shall include engineering plans and specifications undertaken in accordance with Council's Development Design and Construction Specifications for the following required works:
- (a) Vehicular access
 - (b) A 100mm thick reinforced concrete footpath to a minimum width of 1.2m is required around the entire frontage of the site.

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

[PCC0895]

24. Details from a Structural Engineer are to be submitted to the Principal Certifying Authority for approval for all retaining walls/footings/structures etc taking into consideration the zone of influence on the sewer main or other underground infrastructure and include a certificate of sufficiency of design prior to the determination of a construction certificate.

[PCC0935]

25. The footings and floor slab are to be designed by a practising Structural Engineer after consideration of a soil report from a NATA accredited soil testing laboratory and shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.

[PCC0945]

26. Any sheet piling that utilises ground anchors that extend under public roads or land must not be used unless the applicant or owner enter into a contract regarding liability for the ground anchors and lodges an application under Section 138 of the Roads Act together with an application fee of \$10,000 and a bond of \$25,000 for each road frontage. This bond will be refunded upon the removal of the ground anchors. If the ground anchors are not removed prior to the occupation/use of the development, the bond shall be forfeited to Council.

[PCC0955]

27. Permanent stormwater quality treatment shall be provided in accordance with the following:
- (a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
 - (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils *Development Design Specification D7 - Stormwater Quality*.
 - (c) The stormwater and site works may incorporate water sensitive 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 shall be installed within the property, immediately prior to any vehicle entering or existing the site prior to any earthworks being undertaken.
 - (ii) Runoff from hardstand areas, (including car parking and hardstand landscaping areas and excluding roof areas) must be treated to remove oil and sediment contaminants prior to discharge to the public realm. All permanent stormwater treatment devices must be sized according to Council's *Development Design Specifications D7 - Stormwater Quality*, Section D7.12. Engineering details of the proposed devices, including maintenance schedules, shall be submitted with a S68 Stormwater Application for approval prior to the issue of a Construction Certificate.
 - (iii) Roof water does not require treatment, and should be discharged downstream of treatment devices, or the treatment devices must be sized accordingly.

[PCC1105]

28. Erosion and Sediment Control shall be provided in accordance with the following:
- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.
 - (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCC1155]

29. Medium density/integrated developments, excluding developments containing less than four attached or detached dwellings and having a Building Code classification of 1a, will be required to provide a single bulk water service at the road frontage. Any individual metering beyond this point shall be managed by occupants. Application for the bulk metre shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements.
- Note:** The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act, 2000 to be certified by an Accredited Certifier.
- [PCC1185]
30. Prior to the issue of a Construction Certificate, applications shall be lodged together with any prescribed fees including inspection fees and approved by Tweed Shire Council under Section 68 of the Local Government Act for any of the following works including (but not limited to):
- a. water;
 - Disconnection of existing water meters and provision of a Bulk meter. The meter is to be installed by Council at the Developer's expense,
 - b. sewerage, including;
 - An application shall be lodged for each stage of the development and approval is to be obtained prior to commencement of works for each stage of the proposed sewer relocation works.
 - The design of the sewer shall be such that no load from the building is transferred to the sewer pipe and where the sewer penetrates the structure, suitable flexible joints shall be provided to allow differential settlement.
 - The design of the relocation shall be in accordance with the requirements of Development Design Specification D12 Sewerage Systems and Council's Sewers – Works in Proximity.
 - c. drainage works, including;
 - the connection of a private stormwater drain to a public stormwater drain,
 - the installation of stormwater quality control devices,
 - erosion and sediment control works.
- [PCC1195]
31. In accordance with Section 68 of the Local Government Act, application shall be made to Council for any proposed sewerage drainage system. Detail shall include hydraulic drawings, pipe sizes, details of materials and discharge temperatures.
- [PCC1225]
32. Where any existing sewer junctions are to be disused on the site, the connection point shall be capped 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]
33. In accordance with Section 68 of the Local Government Act, 1993, any premises proposing to discharge into Councils sewerage system waste water other than domestic sewage, shall submit to Council a completed application for a Trade Waste Licence. This application is to be approved by the General Manager or his delegate PRIOR to the issuing of a Construction Certificate to discharge to Councils sewerage system.
- [PCC1255]
34. Pursuant to Section 68 of the Local Government Act, 1993 an approved pre-treatment device (eg. Oil/grease traps, separators, etc) shall be installed in accordance with Tweed Shire Councils Trade Waste Policy. Submission of detailed hydraulic plans and specifications indicating size, type, location and drainage installations in accordance with AS 3500 shall be submitted to Council for approval.
- [PCC1265]
35. Three copies of detailed hydraulic plans shall be submitted with all trade waste

applications which indicate size, type and location of pre-treatment devices. All plumbing and drainage installations to these devices shall comply with AS3500.

[PCC1275]

36. The Construction Certificate will not be issued over any part of the site requiring a Water Act license until a copy of the license has been provided to Council.

[PCCNS01]

37. Details of the treatment of the western wall of Stage 1 (along Recreation Street) must be submitted and approved by Council's General Manager or his delegate prior to the issue of a construction certificate for Stage 1. The details must include the final finish in terms of colour and the chosen pattern or motif and any proposed art walls.

[PCCNS02]

38. Detail on the proposed feature forecourt (in terms of landscaping or centre piece displays etc) is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a construction certificate for Stage 2.

[PCCNS03]

PRIOR TO COMMENCEMENT OF WORK

39. 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 Certifying Authority 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]

40. Where any pumps used for dewatering operations are proposed to be operated on a 24-hour basis, the owners of adjoining premises shall be notified accordingly prior to commencement of such operations.

[PCW0125]

41. 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 an accredited certifier, and
- (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
- (c) the principal certifying authority 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 licence if any residential work is involved, and

- (ii) notified the principal certifying authority 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]

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

[PCW0225]

43. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every fifteen (15) persons or part of fifteen (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]

44. **Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000**, 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 certifying authority 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]

45. All imported fill material shall be from an approved source. Prior to commencement of filling operations details of the source of the fill, nature of material, proposed use of material and confirmation that further blending, crushing or processing is not to be undertaken shall be submitted to the satisfaction of the General Manager or his delegate.

Once the approved haul route has been identified, payment of the Heavy Haulage Contribution calculated in accordance with Section 94 Plan No 4 will be required prior to commencement of works.

[PCW0375]

46. Please note that while the proposal, subject to the conditions of approval, may comply with the provisions of the Building Code of Australia for persons with disabilities your attention is drawn to the Disability Discrimination Act which may contain requirements in excess of those under the Building Code of Australia. It is therefore recommended that these provisions be investigated prior to start of works to determine the necessity for them to be incorporated within the design.

[PCW0665]

47. It is a condition of this approval that, if an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land or is likely to effect the integrity of the adjoining land, the person causing the excavation to be made must comply with the following:

- (a) The person must, at the person's own expense:
 - (i) preserve and protect the building / property from damage; and
 - (ii) if necessary, underpin and support the building in an approved manner.
- (b) The person must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars to the owner of the proposed work.

[PCW0765]

- 48. Dilapidation reports detailing the current general condition including the structural condition of the adjoining buildings/sites, infrastructure and roads are to be prepared and certified by a suitably qualified and experienced structural engineer. The reports are to be submitted to the PCA prior to commencement of ANY works on the site.

[PCW0775]

- 49. Prior to commencement of building works a stormwater drainage plan is to be submitted to and approved by the Principal Certifying Authority.

[PCW0955]

- 50. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area where required to the satisfaction of the Principal Certifying Authority.

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]

- 51. Prior to the removal of any excavated acid sulphate soil from the site, the applicant shall notify council's Environmental Health Officer of the location of the off-site acid sulphate soil treatment area.

[PCWNS01]

- 52. Prior to demolition works being carried out on site an asbestos audit conducted by an appropriately qualified person shall be carried out to identify any asbestos containing materials that will require handling, removal and /or disposal in accordance with relevant New South Wales WorkCover requirements.

[PCWNS02]

DURING CONSTRUCTION

- 53. All proposed works are to be carried out in accordance with the conditions of development consent, approved construction certificate, drawings and specifications.

[DUR0005]

- 54. The provision of 108 (Stage 1) and 203 (Stage 2) off street car parking spaces including parking for the disabled where applicable, as well as the provision of 30 (Stage 1) and 92 (Stage 2) bike spaces. The layout and construction standards to be in accordance with Tweed Shire Council Development Control Plan, Part A2 - Site Access and Parking Code.

[DUR0085]

- 55. Construction and/or demolition site work including the entering and leaving of 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]

56. 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]

57. All pumps used for onsite dewatering operations are to be installed on the site in a location that will minimise any noise disturbance to neighbouring or adjacent premises and be acoustically shielded to the satisfaction of Council's General Manager or his delegate so as to prevent the emission of offensive noise as a result of their operation.

[DUR0225]

58. All waters pumped from the site in the dewatering process are to be treated with an effective deodoriser to the satisfaction of Council's General Manager or his delegate to neutralise any offensive odours. The point of discharge shall be approved by Council's General Manager or his delegate prior to installation and shall include a water sampling outlet.

[DUR0235]

59. The wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of buildings with direct line of sight to the proposed building.

[DUR0245]

60. Pumps used for dewatering operations are to be electrically operated. Diesel pumps are not to be used unless otherwise approved by the Tweed Shire Council General Manager or his delegate.

[DUR0255]

61. 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]

62. Provision shall be made for the collection of builder's solid waste in accordance with the following requirements:

- (a) A temporary builder's waste chute is to be erected to vertically convey builder's debris to a bulk container.
- (b) The chute shall be located in a position approved by the Principal Certifying Authority.
- (c) A canopy shall be provided to the chute outlet and container to reduce the spillage of materials and nuisance caused by dust.

- [DUR0385]
63. 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]
64. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.
- [DUR0405]
65. 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 WorkCover NSW requirements and Occupational Health and Safety Regulation 2001.
- [DUR0415]
66. Excavation
- (a) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with WorkCover 2000 Regulations.
- (b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.
- [DUR0425]
67. If the work involved in the erection or demolition of a building:
- (a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or
- (b) building involves the enclosure of a public place,
- a hoarding or fence must be erected between the work site and the public place in accordance with the WorkCover Authority of NSW Code of Practice and relevant Australian Standards.
- Where necessary the provision for lighting in accordance with AS 1158 - Road lighting and provision for vehicular and pedestrian traffic in accordance with AS 1742 shall be provided.
- Any such hoarding, fence or awning is to be removed prior to the issue of an occupation certificate/subdivision certificate.
- Application shall be made to Tweed Shire Council including associated fees for approval prior to any structure being erected within Council's road reserve.
- [DUR0435]
68. 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, Occupational Health and Safety Regulation 2001.
- 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]
69. Minimum notice of 48 hours shall be given to Tweed Shire Council for the capping of any disused sewer junctions. Tweed Shire Council staff in accordance with the application lodged and upon excavation of the service by the developer shall undertake

the works.

[DUR0675]

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

[DUR0815]

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

[DUR0985]

72. 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 from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate.

[DUR0995]

73. 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]

74. Landscaping of the site shall be carried out in accordance with the submitted/approved landscaping plans.

[DUR1045]

75. All works shall be carried out in accordance with the Acid Sulfate Soil and Dewatering Management Plan prepared by ADG Consulting, dated 20 January 2011 and referenced ADG151.10.

[DUR1065]

76. All walls in the food preparation and storage areas shall be of solid construction. For this purpose walls in such areas may be of masonry or stud wall construction. If stud wall construction is used then the wall shall be lined as a **minimum** with 9mm thick high impact resistant material eg. Villaboard or Versilux lining or other suitable material(s) approved by Council's Environmental Health Officer **and** tiled to a height of at least 2 meters.

Masonry walls where not tiled may be cement rendered to provide a smooth faced impervious finish up to the underside of the ceiling.

Metal stud wall framing in lieu of timber framing shall be used in areas where the walls and floor surfaces will be subjected to high levels of moisture or alternatively as directed by Council's Environmental Health Officer.

All penetrations of the wall surface in food preparation areas shall be effectively sealed to the satisfaction of Council's Environmental Health officer.

[DUR1495]

77. All flooring materials in the food preparation and storage areas are to be impervious, non slip, non abrasive and capable of withstanding heavy duty operation. Where tiling is to be used epoxy grout finished flush with the floor surface is to be used in joints or alternatively all tiles are to be butt joined and free of cracks or crevices.

[DUR1505]

78. Separate hand washing facilities must be provided with warm water and located in a position where it can be easily accessed by food handlers and be of a size that allows easy and effective hand washing to the satisfaction of the General Manager or his delegate.

79. During the course of the construction and fitout of the kitchen/food premises periodic inspections must be arranged with Councils Environmental Health officer to ensure compliance with all health related conditions of approval and respective legislation. [DUR1545]
80. All shelving, benches, fittings and furniture on which appliances and utensils are positioned within the premises must be of durable, smooth, impervious material capable of being easily cleaned. [DUR1575]
81. The walls and floors of the premises must be lined, sealed or sheeted with an approved smooth impervious material capable of being easily cleaned. [DUR1605]
82. The walls immediately behind any basin shall be provided with an impervious splashback to a height of 450mm and at least 150mm either side of the basin. [DUR1615]
83. Any air-handling system, hot or warm water system or water-cooling system and any other regulated system as defined in Part 4, Section 43 of the Public Health Act shall be installed in accordance with the requirements of Part 2, Clauses 6, 7 and 8 of the Public Health (Microbial Control) Regulation 2000. [DUR1625]
84. Access to the building for people with disabilities shall be provided and constructed in accordance with the requirements of Section D of the Building Code of Australia. Particular attention is to be given to the deemed-to-satisfy provisions of Part D-3 and their requirement to comply with AS1428. [DUR1645]
85. Where a building or part of a building is required, under the provisions of Section D of the Building Code of Australia, to be accessible to permit use by people with disabilities, prominently displayed signs and symbols shall be provided to identify accessible routes, areas and facilities. The signage, including Braille or tactile signage, should be installed in accordance with the relevant provisions of the Building Code of Australia and achieve the minimum design requirements provided under AS1428. [DUR1685]
86. Where access for people with disabilities is required to be provided to a building, sanitary facilities for the use of the disabled must also be provided in accordance with the provisions Part F-2 of the Building Code of Australia. [DUR1695]
87. Pursuant to the provisions of the Disability Discrimination Act, 1992 (Commonwealth) the design of the proposed development shall facilitate access for the disabled in accordance with the relevant provisions of AS1428- Design for Access and Mobility. [DUR1705]
88. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works. [DUR1725]
89. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings. [DUR1795]

[DUR1875]

90. Where the kerb is to be removed for driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.
- [DUR1905]
91. During construction, a “satisfactory inspection report” is required to be issued by Council for all works required under Section 138 of the Roads Act 1993. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.
- [DUR1925]
92. All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction. Certification from a suitably qualified engineer experienced in structures is to be provided to the PCA prior to the issue of an Occupation/Subdivision Certificate.
- [DUR1955]
93. A certificate from a suitably qualified practicing structural engineer shall be submitted to Council and the Principle Certifying Authority within seven (7) days of the site being excavated certifying the adequacy of the sheet piling or other retaining method used to support adjoining properties.
- [DUR1965]
94. The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.
- [DUR2015]
95. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction/demolition.
- [DUR2185]
96. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials. A screened, graded and drained garbage storage area shall be provided within the boundary.
- [DUR2205]
97. Hazardous or industrial waste must be stored and disposed of in a manner to minimise its impact on the environment including appropriate segregation for storage and separate disposal by a waste transporter licensed by the NSW Department of Environment and Climate Change.
- [DUR2215]
98. The guttering downpiping and roof waste water disposal system is to be installed and operational before the roofing is installed.
- [DUR2245]
99. All stormwater from roofed and paved areas are to be connected directly into road drainage pits where available, kerb and gutter drainage canal or inter allotment drainage line where provided.
- All drainage systems shall comply with AS 3500.
- [DUR2305]
100. Council's Environmental Health Officer shall be advised within 24 Hours in the event of detection of any failure associated with the dewatering activity being carried out on the site.
- [DUR2315]
101. During construction, a “satisfactory inspection report” is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering and Operations

Division to arrange a suitable inspection.

- [DUR2445]
102. 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]
103. 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 NSW Code of Practice for Plumbing and Drainage.
- [DUR2495]
104. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993.
- [DUR2515]
105. All water plumbing pipes concealed in concrete or masonry walls shall be fully lagged.
- [DUR2525]
106. 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]
107. 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]
108. 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:-
- * 43.5°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]
109. A hose tap shall be provided adjacent to a grease arrester for cleaning purposes and shall be fitted with a RPZD for the purpose of back flow prevention.
- [DUR2675]
110. The recommendations contained in Section 7.2 of the report entitled “Supplementary Pre-demolition Investigation” prepared by ADG Consulting dated 27 January 2011 and referenced ADG151.10 shall be implemented where applicable in respect to excavation works involving sub-slab soils.
- [DURNS01]
111. The recommendations contained in Section 8.2 of the report entitled “Preliminary Site Investigation” prepared by ADG Consulting dated 19 April 2010 and referenced

ADG151.10 shall be implemented in respect asbestos containing building materials and the removal of all concrete slabs/bitumen and underground infrastructure during demolition works.

[DURNS02]

112. The maximum depth of excavation on site is not to extend beyond 4.0m below surface level unless an appropriately qualified environmental consultant is on site to assess any exposed soils for potential or actual acid sulphate soils. The applicant shall comply with any directions that are provided by the environmental consultant in respect to the management of any such exposed soils.

[DURNS03]

113. All excavated acid sulphate soil from the site shall be delivered to the off-site acid sulphate soil treatment facility prior to the completion of works each day.

[DURNS04]

114. All site dewatering operations shall be carried out in accordance with the provisions of the Acid Sulphate Soil and Dewatering Management Plan prepared by ADG Consulting dated 20 January 2011 and referenced ADG151.10.

[DURNS05]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

115. Prior to issue of an occupation certificate, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[POC0005]

116. 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 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0205]

117. The building is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the building to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.

[POC0225]

118. Application is to be made to Tweed Shire Council for a street address number. The number is to be prominently displayed prior to the occupation of the building.

[POC0245]

119. The proprietor of the food premises shall provide appropriate notification to the NSW Food Authority prior to commencement of operations by completing the "Notify a Food Business" form under the NAFSIS Heading on the following website www.foodnotify.nsw.gov.au or alternatively by contacting the NSW Food Authority on 1300650124.

[POC0625]

120. 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.

[POC0745]

121. Work as executed plans are to be provided to Council in accordance with Councils Development Design Specification, D13 and a CCTV inspection of the stormwater pipes and sewerage system to be dedicated to Council as public infrastructure including joints and junctions demonstrate that the standard of the system is acceptable to Council.

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 plans.

[POC0765]

122. On completion of work a certificate signed by a practising structural engineer is to be submitted to the Principal Certifying Authority to certify the structural adequacy of the structure.
123. The lots are to be consolidated into one (1) lot under one (1) title. The plan of consolidation shall be registered with the Lands Titles Office prior to issue of an occupation certificate for Stage 2. [POC0805]
124. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council. Written approval from Councils General Manager or his delegate must be issued prior to the issue of an Occupation Certificate. [POC0855]
125. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all s68h2 permanent stormwater quality control devices. [POC0865]
126. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate a final inspection report is to be obtained from Council in relation to the plumbing and drainage works. [POC0985]
127. Prior to the issue of a final occupation certificate, all conditions of consent are to be met. [POC1045]
128. Documentary evidence is to be provided demonstrating that an easement (minimum 3m wide) has been created to drain sewage within a wall or floor cavity of the proposed building. The easement is to burden the subject land and Council are to be listed as the authority to modify or release the easement. [POC1055]

The wording used in the easement documentation is to be as appended below.

"Easement for Drainage of Sewage within a Building"

1. *The body having the benefit of this easement may:*
 - (a) *drain sewage, sullage and other fluid wastes in pipes or any other sewage infrastructure located in wall or floor cavities or within a building constructed on each lot burdened, but only within the site of this easement, and*
 - (b) *do anything reasonably necessary for that purpose, including:*
 - *entering the lot burdened, and*
 - *taking anything on to the lot burdened, and*
 - *using any existing pipes or other existing infrastructure, and*
 - *carrying out works, such as constructing, placing, repairing or maintaining pipes and infrastructure.*
2. *In exercising those powers, the body having the benefit of this easement must:*
 - (a) *ensure all work is done properly, and*
 - (b) *cause as little inconvenience as is practicable to the registered proprietor and any occupier of the lot burdened, and*
 - (c) *cause as little damage as is practicable to the lot burdened and any improvement on it, and*
 - (d) *restore the lot burdened as nearly as is practicable to its former condition, and*
 - (e) *make good any collateral damage but only if such damage is not related to the removal of any obstruction that impedes access to the site of the easement or the pipes and infrastructure located within the easement and*

where such obstruction is damaged in the course of its removal the owner or occupier of the lot burdened shall indemnify the body having the benefit of this easement against all liability relating to such damage.

3. *The registered proprietor of the lot burdened indemnifies the body having the benefit of the easement against the following:*
 - (a) *any negligent installation or construction of pipes or infrastructure within the easement;*
 - (b) *any damage caused to the pipes or infrastructure through negligent acts, omissions, or accidental acts by any person not authorised by the body having the benefit of the easement or natural disasters (earthquakes, hurricanes, floods) wars, riots or other major upheaval beyond the reasonable control of the body having the benefit of the easement;*
 - (c) *any damage or injury to adjoining land, property or person arising from the failure of any of the pipes or infrastructure due to the negligent use or misuse of the pipes or infrastructure by the registered proprietor or occupier of the lot burdened or any person who is a servant, workman, tenant, invitee, employee or agent of the registered proprietor or occupier of the lot burdened.*
4. *Should any part of the pipes or infrastructure within the site of the easement be damaged by the registered proprietor or occupier of the lot burdened or by any person who is a servant, workman, tenant, invitee, employee, or agent of the registered proprietor or occupier of the lot burdened, the body having the benefit of this easement will repair the damage at the cost of the registered proprietor of the lot burdened.*
5. *In exercising these powers the body having the benefit of this easement is to have full and unimpeded right of vehicular or personal access to the site of the easement at any time;*
 - (a) *for the purposes of this easement, a reference to a body that is entitled to the benefit of this easement includes a reference to any person authorised by such a body,*
 - (b) *the body entitled to the benefit of this easement has an unrestricted right of vehicular or personal access at all times to pass and repass, with or without vehicles, machinery, implements and other.”*

[POCNS01]

USE

129. 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]
130. 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]
131. Hours of operation of the business are restricted to the following hours:
 - * 7.00am to 6.00pm - Monday to Saturday
 - * No operations are to be carried out on Sundays or Public Holidays
 - * All deliveries and pickups relating to the business are to occur within the approved hours

[USE0185]

132. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises. [USE0225]
133. The use being restricted to the floor area designated on the approved plan. [USE0415]
134. All loading/unloading to take place within the boundary of the subject property. [USE0525]
135. Any premises used for the storage, preparation or sale of food are to comply with the *Food Act* 2003, FSANZ Food Safety Standards and AS 4674-2004 Design, construction and Fit-out of Food Premises and other requirements of Councils Environmental health Officer included in this approval. [USE0835]
136. The carwash bay and detailing bay is not permitted for use by the general public. The bays must only be utilised by customers having their cars serviced at the car repair station on the subject site. [USENS01]
137. The tandem spaces within the basement carpark for Stage 1 must be nominated and maintained for staff use only. [USENS02]

GENERAL TERMS OF APPROVAL FOR A LICENSE UNDER THE WATER ACT 1912

General Conditions (all approvals)

1. Before commencing any works or using any existing works for the purpose of dewatering an approval under Part V of the Water Act 1912 must be obtained from the Department. The application for the approval must contain sufficient information to show that the development is capable of meeting the objectives and outcomes specified in these conditions.
2. An approval will only be granted to the occupier of the lands where the works are located, unless otherwise allowed under the Water Act 1912.
3. When the Department grants an approval, it may require any existing approvals held by the applicant relating to the land subject to this consent to be surrendered or let lapse.
4. All works subject to an approval shall be constructed, maintained and operated so as to ensure public safety and prevent possible damage to any public or private property.
5. All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry or sediments into any river, lake, waterbody, wetland or groundwater system.
6. The destruction of trees or native vegetation shall be restricted to the minimum necessary to complete the works.
7. All vegetation clearing must be authorised under the Native Vegetation Conservation Act 1997, if applicable.
8. The approval to be granted may specify any precautions considered necessary to prevent the pollution of surface water or groundwater by petroleum products or other hazardous materials used in the construction or operation of the works.
9. A license fee calculated in accordance with the Water Act 1912 must be paid before a license can be granted.

Conditions of water use (including irrigation)

10. If and when required by the Department, suitable devices must be installed to

accurately measure the quality of water extraction or diverted by the works.

11. All water measuring equipment must be adequately maintained. It must be tested as and when required by the department to ensure its accuracy.
12. The water extracted under the approval to be granted shall be used for the purpose of dewatering and for no other purpose. A proposed change in purpose will require a replacement license to be issued.

Conditions for bores and wells

13. Works for construction of bore must be completed with such period as specified by the Department.
14. Within two months after the works are completed the Department must be provided with an accurate plan of the location of the works and notified of the results of any pumping tests, water analysis and other details as are specified in the approval.
15. Officers of the Department or other authorised persons must be allowed full and free access to the works for the purpose of inspection and testing.
16. Any water extracted by the works must not be discharged into any watercourse or groundwater if it would pollute that watercourse.
17. The Department has the right to vary the volumetric allocation or the rate at which the allocation is taken in order to prevent the overuse of an aquifer.
18. the licensee must allow authorised officers of the department, and it's authorised agents reasonable access to the licensed works with vehicles and equipment at any time for the purposes of:
 - inspecting the said work
 - taking samples of any water or material in the work and testing the samples.
19. The licensee shall within 2 weeks of being notified install to the satisfaction of the department in respect of location, type and construction an appliance(s) to measure the quantity of water extracted from the works. The appliance(s) to consist of either a measuring weir or weirs with automatic recorder, or meter or meter(s) of measurement as may be approved by the department. The appliance(s) shall be maintained in good working order and condition. a record of all water extracted from the works shall be kept and supplied to the department upon request. The licensee when requested must supply a test certificate as to the accuracy of the appliance(s) furnished either by the manufacturer or by some person duly qualified.
20. The authorised work shall not be used for the discharge of polluted water into a river or lake otherwise than in accordance with the conditions of a licence granted under the protection of the environment operations act 1997. A copy of the licence to discharge is to be provided to the department.
21. The maximum term of this licence shall be three (3) months.
22. The volume of groundwater extracted from the work authorised by this licence shall not exceed 5 megalitres for the term of the licence.
23. The authorised work shall not be used for the discharge of water unless the ph of the water is between 6.5 and 8.5, or the water has been treated to bring the ph to a level between 6.5 and 8.5 prior to discharge, or the water is discharged through the council's sewerage treatment system.
24. The licensee shall test the ph of any water extracted from the work prior to the commencement of discharge and at least twice daily thereafter and record the date, time and result of each test in the site log. a copy of the records of the ph testing is to be returned with the form 'ag'.

25. The work shall be managed in accordance with the constraints set out in acid sulfate soil management plan and dewatering management plan, dated January 2011 by ADG Consulting.
26. The retention or holding pond must be lined with an impermeable material (such as clay or geotextile) to prevent seepage, leakage or infiltration of treated water.