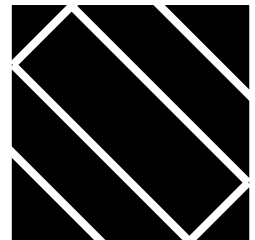


# + RESPONSE TO INFORMATION REQUEST & AMENDMENT

## DA 12/0364 "RIVER HEIGHTS" TOURIST ACCOMMODATION DEVELOPMENT COMPRISING 355 UNITS WITH ANCILLARY FACILITIES AND CAR PARKING FOR 375 VEHICLES

At Lot 1, DP 1168904 , Kirkwood Road, Tweed Heads South



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**RESPONSE TO INFORMATION REQUEST AND AMENDMENT OF  
DEVELOPMENT APPLICATION NO. DA12/0364**

**PROPOSED TOURIST ACCOMMODATION DEVELOPMENT  
AT LOT 1 DP 1168904 KIRKWOOD ROAD, TWEED HEADS SOUTH**

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**1.0 BACKGROUND**

On 23 August 2012 Development Application No. DA12/0364 was lodged with Tweed Shire Council.

The Development Application was publicly exhibited for 14 days from 26 September 2012 to 11 October 2012. A total of two public submissions were received during the exhibition period.

On 10 September 2012 correspondence was received from the Tweed Shire Council Development Assessment Unit, requesting that the Development Application be withdrawn by 14 September 2012 as a Cultural Heritage Assessment had not been provided. The applicant advised that detailed Cultural Heritage Due Diligence had been undertaken and requested an extension of time to 19 September 2012 to produce a Cultural Heritage Assessment. Council responded in the negative.

On 13 September 2012 correspondence was received from Tweed Shire Council's Engineering and Operations Unit, advising the find of what was thought to be Aboriginal Objects (basalt stone axes). The items were excavated during earthworks on Council's adjoining Kirkwood Road Extension Project. The applicant sought a site meeting with Council Officers and the Aboriginal representatives to allow the Project Archaeologist to view the objects. A meeting could not be arranged.

On 14 September 2012 a response was provided to Council's request that the application be withdrawn. The response provided a copy of a Cultural Heritage Due Diligence Assessment produced by Everick Heritage Consultants Pty Ltd. The Report conformed with the Office of Environment and Heritage Code of Practice for Archaeological Conduct in NSW.

On 30 January 2013 the applicant was advised that Council was preparing an Assessment Report to the JRPP recommending refusal of the Development Application. The applicant again sought to meet with Council Officers to discuss the issues raised as no information request has been provided to date. A response was received from Council indicating that the meeting was denied by Council's Director of Planning and Manager of Development Assessment.

The applicant was not aware of Council's issues until the Assessment Report was posted on the JRPP website (12 February 2013).

On 19 February 2012 various written submissions were presented to the JRPP addressing the matters raised in Council's Assessment Report.

On 19 February 2013 the JRPP met to consider the Development Application. Following representations by Council Officers, the public and the applicant's consultant team, the Panel resolved to defer the determination to allow adequate time for the applicant to respond to the issues raised by Council.

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Following the JRPP Meeting, the applicant instructed the consultant team to progress the required reports to address the issues raised in Council's Assessment Report. Unfortunately a period of significant rainfall hampered efforts to access the site with personnel and machinery to undertake the required work.

On 22 March 2013 correspondence was received from Tweed Shire Council's Development Assessment Unit, requesting additional information.

This Report addresses the various issues raised in Council's Information Request. As a result of the matters raised in Council's information request, only minor amendments have been made to the application.

The following sections of this report provide a description of proposed amendments to the exhibited proposal, a response to all issues raised in Council's Information Request, issues raised in the submissions, issues raised in Council's Assessment Report, as well as a summary and conclusion.

Amended and addendum technical reports and plans, are attached as annexures to this report. The relevance of each amended document is referenced in this report.

## **2.0 DESCRIPTION OF AMENDMENTS TO DEVELOPMENT APPLICATION**

In response to issues raised by Tweed Shire Council, we seek to amend the Development Application pursuant to Clause 55 of the Environmental Planning and Assessment Regulation 2000. Complete details of the proposed amendments are contained in the reports and plans attached to this document.

A summary of the proposed amendments is provided under the following headings.

### **2.1 Design Amendment to Communal Facilities Building**

A minor amendment has been made to the Floor Plan of the Communal Facilities building. The change relates to internal reconfiguration of the reception and administration area and the better provision for a kitchen facility to provide meals for guests of the development. The external changes to the western side of the building are the addition of a freezer, cool room and delivery bay.

The amended layout is shown on the amended Application Plans prepared by Paul Ziukelis Architects at **Annexure 1**.

### **2.2 Waste Storage Areas**

In response to issues raised by Council and following consultation with Council's waste contractor Solo Resource Recovery, the arrangements for waste storage and collection have been refined.

The Site Plan has been amended to provide six bin enclosures around the site which will be conveniently located to all units and accessible for collection vehicles. The enclosures will be roofed and provided with masonry block walls and sliding louvered panel gates.

The amended layout is shown on the amended Application Plans prepared by Paul Ziukelis Architects at **Annexure 1**. Correspondence from Solo Resource Recovery indicating that the proposed storage and collection arrangements are suitable is attached at **Annexure 3**.

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### 2.3 Service Vehicle Area

In response to issues raised by Council, the Application Plan has been amended to provide a service/delivery bay at the western end of the Communal Facilities building. The bay and the internal driveways to and from the bay are adequately dimensioned to cater for a heavy rigid vehicle (HRV).

### 2.4 Amended Stormwater Management Basins

In response to the issues raised by Council, amendments have been made to the detail of the proposed stormwater detention basins "A" and "B". The general location of both devices remain the same but the configuration of the basins and measures to control the discharge of water have been revised. Details are provided in the amended Preliminary Stormwater Management Plan (**Annexure 7**).

## 3.0 RESPONSE TO TWEED SHIRE COUNCIL INFORMATION REQUEST

The following subheadings provide a response to each issue raised by Tweed Shire Council in the letter dated 22 March 2013, and provide references to amended plans or reports.

### 3.1 Aircraft Noise

This issue is addressed in the detailed response prepared by CRG Acoustic Consultants Pty Ltd, which is attached at **Annexure 12**.

In summary, additional octave band measurements have been undertaken at the site and examples of building materials which satisfy the required sound transmission loss have been provided to demonstrate that compliance with AS2021 is achievable.

To enable suitable flexibility in the implementation of the consent, a condition which allows a selection of a building material of equivalent performance is preferred rather than specifying a single product.

### 3.2 Road Noise

Again, this issue is addressed in the detailed response prepared by CRG Acoustic Consultants Pty Ltd, which is attached at **Annexure 12**.

While the requested additional information is provided, it is noted that the acoustic building treatments required for aircraft noise will surpass the treatments required to address road traffic noise.

### 3.3 Food Preparation Areas

We note Council's request to provide detailed plans drawn at a scale of 1:50 detailing the food preparation areas in terms of equipment, finishes, hydraulic design, mechanical ventilation and servery areas.

Given that the matters requested are of a nature that is capable of being specified at the time that the building plans may be documented for construction, we request that the requested information be conditioned. An appropriate condition would require the fit out detail of food preparation areas to be approved by the General Manager of Tweed Shire Council (or his delegate) prior to the issue of a Construction Certificate.

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Please note that the Floor Plan of the communal facilities building has been amended to provide a better layout for the kitchen, including cool rooms and a service/delivery area. The amended plan of the building is attached at **Annexure 1**.

### 3.4 Waste Storage and Collection Arrangements

By applying the rates provided in Council's DCP, Section A15 – Waste Minimisation and Management, the waste generated at the site is estimated by applying the "motel" rate to the proposed tourist units (rate of 5L per bed space per day). For the proposed 519 bedrooms in the development we estimate that the tourist accommodation development would require waste storage as follows:

- ♦ 18,165L per week of general waste
- ♦ 3,633L per week of recyclable waste

The proposed waste generated from the development is to be stored in bulk bins located at six locations around the site.

The bin storage areas are to comprise a roofed, block work structure with sliding louver panel doors. The enclosures will be of sufficient size to accommodate a 3000L bulk bin for general waste plus a recycling bin. The storage areas will be sufficient for weekly collection (assuming full occupancy). If necessary, the bins may be collected on a more frequent basis by the waste contractor. The arrangements may be monitored by the park operator to ensure that the bins are appropriately maintained and managed to reduce potential nuisance from odour, visual impact or access for birds or other wildlife.

The location and details of the proposed bin storage areas are shown on the amended Application Plans at **Annexure 1**. As previously mentioned a letter from Solo Resource Recovery (confirming serviceability) is attached at **Annexure 3**.

### 3.5 Ecological Assessment

Council has requested additional ecological information. These matters have been reviewed and addressed by the Project Ecologists JWA Pty Ltd. The Revised Ecological Assessment is attached at **Annexure 4**.

In summary, the information requested by Council has been provided, including additional mapping, which overlays the development footprint including all batters and asset protection zones on a Vegetation Communities Map (refer to Figure 10 in the JWA report).

The loss of hollow bearing trees has been considered and the location of those trees plotted on an Aerial Photograph (refer to Figure 11 in the JWA report). Appropriate ameliorative measures are proposed, including limiting the number of trees to be removed to the minimum extent necessary to achieve an APZ. Where it is necessary to remove such trees, the hollow limbs will be retained and reused as hollow replacements on the site and nest boxes will be provided.

A Fauna Assessment has been undertaken. Threatened species have been documented and appropriate ameliorative measures have been proposed.

A detailed consideration of the provisions of State Environmental Planning Policy No. 44 has been provided and it is concluded that the site does not comprise "potential koala habitat" or "core koala habitat" as defined in the SEPP.

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The Section 5A Assessment (Assessment of Significance) was undertaken and concluded that the impacts of the proposed development would be unlikely to result in the local extinction of any of these species, and that there would be no significant impact upon any of the endangered ecological communities occurring on the site.

### **3.6 Engineering**

The matters raised in Council's Information Request relating to Engineering have been addressed in the letter from Knobel Consulting Pty Ltd and the amended Stormwater Management Plan and Engineering Report. These documents are attached at **Annexures 5, 6 and 7**.

The letter from Knobel Consulting Pty Ltd provides a detailed response to each of the matters raised in Council's Information Request. The proposed landforming of the site was reviewed, however is not considered practical to alter the proposed levels due to the need to obtain access from Kirkwood Road and the level of earthworks already undertaken at that frontage.

As discussed at the pre-lodgement meeting with Tweed Shire Council Officers, providing access to the tourist accommodation development through the residential neighbourhood to the west is not desirable. It was also acknowledged by Council at the pre-lodgement stage that substantial earthworks would be required given the design of the Kirkwood Road Extension Project.

Additional information in relation to the access and rates of discharge from the stormwater detention indicate that they are serviceable and will not increase the predevelopment peak discharge rates. The detention basin for Catchment B on the southern side of the site is located in the existing flow path from the site and incorporates measures to disperse the flow of detained water such that erosion of the SEPP 14 wetland will not occur as a result of the proposed development.

### **3.7 Planning**

Several issues were raised under the heading of Planning in Council's Information Request. Those items are addressed under the following sub headings.

#### **3.7.1 Tweed Development Control Plan 2008, Section A1 – Residential and Tourist Development Code**

Tweed Shire Council's Assessment Report of 8 February 2013 identified nine variations to the numerous controls contained within Tweed DCP 2008, Section A1 – Residential and Tourist Development Code.

The proposed use and building "Type" does not readily fit any of the categories provided by the Plan. Prior to lodgement of the Development Application Council Officers advised that the proposal would be assessed under the "Residential Flat Building" category. Clearly the proposed building types are not residential flat buildings. In addition the short term tourism use of the buildings does not require the same standards of residential amenity that would be expected for a residential dwelling and therefore such controls are largely irrelevant.

A response to each of the assessment comments raised by Council is provided in **Table 1** below.

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TABLE 1 - TWEED DEVELOPMENT CONTROL PLAN 2008, SECTION A1 VARIATIONS		
DCP CONTROL TO BE VARIED	TSC COMMENT	APPLICANT'S RESPONSE
<p>1. Variation to Chapter 2, Design Control 1 – Public Domain Amenity (Streetscape)</p> <p><i>Control E Facades visible from the public domain are to be well designed.</i></p>	<p><i>"Whilst the proposed development can be justified against the individual components of this control, concern is raised with the over streetscape when looking at the development as a whole. The design of each type is very similar and there is very little architectural variation, particularly when you are looking at a length of two storey units on either side of the street. Figure 5 below provides an example of this. It is considered that a better design could have been incorporated to provide different architectural features for each building type to break up the streetscape and provide different points of interest."</i></p>	<p>As indicated the proposal is justified against the individual components of the control.</p> <p>The proposal includes multiple design options to provide disparity between building forms. For example there are 7 building types:</p> <ul style="list-style-type: none"> <li>1 bed disabled (single storey),</li> <li>1 bed (2 storey),</li> <li>2 bed (2 storey),</li> <li>1 bed RV (2 storey),</li> <li>2 bed RV (2 storey),</li> <li>2 bed (alternative 2 storey option) and</li> <li>2 bed (3 storey) product.</li> </ul> <p>Of these 7 designs, there are 4 colour schemes. Therefore there is potential for 28 different options using the drawings as they stand.</p> <p>There are 180 individual buildings and therefore the maximum repetition of each option would be limited to 6 of each throughout the entire site.</p> <p>The streetscape elevation offered in Council's Assessment Report is an extract from the Landscape Plan, and no consideration is shown in the image to colour variation.</p> <p>In such a case, all 4 buildings would receive differing colour schemes, including various roof colours.</p>
<p>2. Variation to Chapter 2, Design Control 1 – Public Domain Amenity (Public Views and Vistas)</p> <p><i>Control A The location and height of new developments is not to significantly diminish the public views to heritage items, dominant landmarks or public buildings from public places.</i></p>	<p><i>"As noted elsewhere in this report, the issue of heritage items on the site is yet to be determined. Until a complete cultural heritage survey and assessment has been completed, it cannot be determined if the site contained any heritage items. The applicant has disregarded this particular component of the control."</i></p>	<p>A detailed Cultural Heritage Assessment and Test Excavations have been undertaken on the site.</p> <p>Those Reports conclude that there is no evidence to suggest that the site has cultural or physical heritage significance.</p>
<p>3. Variation to Chapter 2, Design Control 1 – Public Domain Amenity (Public Views and Vistas)</p>	<p><i>"Whilst it is acknowledged that the southern part of the site is being retained, insufficient information has been provided with regard to cultural heritage issues and impact upon flora and fauna. The proposal will remove the ridgeline and bushland as a result of the proposed extensive earthworks."</i></p>	<p>The natural visual qualities of the site have been significantly compromised by the significant earthworks and visually intrusive shotcrete retaining created by Tweed Shire Council road works on the northern side.</p>

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TABLE 1 - TWEED DEVELOPMENT CONTROL PLAN 2008, SECTION A1 VARIATIONS		
DCP CONTROL TO BE VARIED	TSC COMMENT	APPLICANT'S RESPONSE
<i>Control B The location and height of new developments is to be designed so that it does not unnecessarily or unreasonably obscure public district views of major natural features such as the water, ridgelines or bushland.</i>		A Visual Impact Assessment has been prepared by LVO Architecture which provides photomontages from the relevant observation points ( <b>Annexure 8</b> ). The report concludes that "the visual impacts of the proposal are considered to be compatible with the existing visual context."
<p>4. Variation to Chapter 2, Design Control 2 – Site Configuration (Landscaping)</p> <p><i>Control A Retain existing landscape elements on sites such as natural rock outcrops, watercourses, dune vegetation, indigenous vegetation and mature trees.</i></p>	<i>"The applicant's comments are not considered to justify the non-compliance with this control. Whilst the SEPP 14 area and buffer area is being maintained, insufficient information has been provided to determine the full impact upon the native vegetation and mature trees across the site and as such the non-compliance is not supported."</i>	<p>Additional Ecological Assessment has been undertaken to determine the impacts on the vegetation contained on the site, including mapping of mature vegetation.</p> <p>The Revised Ecological Report confirms that the development is not likely to have a "significant effect". The site is relatively isolated in terms of connections to other vegetated areas, being adjacent to the Pacific Highway and in proximity to a number of other designated roads.</p> <p>Adequate ameliorative measures are proposed to offset the loss of mature vegetation which is required to facilitate the development of the site as anticipated by the Locality Plan contained in TDCP B3, Banora Point West – Tweed Heads South.</p>
<p>5. Variation to Chapter 2, Design Control 2 – Site Configuration (Landscaping)</p> <p><i>Control C Locate and design the building footprint to enable the retention of existing trees.</i></p>	<i>"As noted elsewhere in this report, cultural heritage, landforming and flora and fauna issues remain unresolved. As such, the proposed variation is not supported."</i>	As previously mentioned, detailed Cultural Heritage Assessments and Ecological Assessments have been completed. The site does not contain any evidence of cultural significance and the ecological impacts are considered to be justified in the context that minimal impacts will be created on the good quality native vegetation on the site and all vegetation comprising an Endangered Ecological Community (EEC) will be retained with buffers.
<p>6. Variations to Chapter 2, Design Control 2 – Site Configuration (Topography, Cut and Fill)</p> <p><i>Control A Building siting is to relate to the original form of the land.</i></p>	<i>"The applicant's comments are not considered to adequately justify the proposed major variations to these controls. Given the landforming impacts (as discussed later in this report), the proposed variations are not supported. The proposal is not considered to be an appropriately designed site responsive development."</i>	<p>Council Officers acknowledged from the pre-lodgement stage that significant variations to the landforming controls of TDCP A1 would be required in order to provide access from Kirkwood Road and develop the site.</p> <p>The scale and topography of the site is such that 1m cut and fill control is not realistic.</p>

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TABLE 1 - TWEED DEVELOPMENT CONTROL PLAN 2008, SECTION A1 VARIATIONS		
DCP CONTROL TO BE VARIED	TSC COMMENT	APPLICANT'S RESPONSE
<p><i>Control E Site excavation / land forming is to be kept to a minimum required for an appropriately designed site responsive development.</i></p> <p><i>Control F The maximum level of cut is 1m and fill is 1m except for areas under Control J.</i></p>		<p>The proposed landforming of the site will achieve practical access and a commercially viable yield from the site. Notwithstanding this, the proposal has been designed to maintain appropriate residential amenity to properties to the west and minimise impacts on good quality native vegetation.</p>
<p><b>7. Variation to Chapter 2, Design Control 2 – Site Configuration (Topography, Cut and Fill)</b></p> <p><i>Control N Proposed variations to the controls must demonstrate that the excavation or filling of the site is in harmony with the natural landform / environment and will not adversely affect the adjoining properties.</i></p>	<p><i>"Given the number of potential impacts and suitability issues raised elsewhere in this report, the proposed development is not considered to meet the provisions of this control in that the excavation is not in harmony with the natural landform / environment. The applicant's justification for a variation to this control is not supported."</i></p>	<p>The harmony of the natural landform has been compromised by the significant earthworks undertaken at the northern side of the site as part of the Kirkwood Road Extension project. Previous road works for the Pacific Highway have also provided cuts on the eastern side.</p> <p>The proposed earthworks will not adversely affect the adjoining properties to the west as a 10m buffer of vegetation is to be retained along that boundary. In addition, the earthworks will not be visible from the residential properties to the west.</p> <p>The proposal will also remove the unsightly shotcrete retaining structure of the 20m+ high cut located immediately to the north of the site and instead provide a lower, landscaped batter up to the ground levels at the western boundary.</p> <p>Although the earthworks are significant it will represent an improvement on the existing stark appearance of the large shotcrete batter.</p>
<p><b>8. Variation to Chapter 2, Design Control 9 – External Building Elements (Roofs, Dormers and Skylights)</b></p> <p><i>Control A Relate roof design to the desired built form by:</i></p> <p><i>- using a compatible roof form. Slope, material and colour to adjacent buildings.</i></p>	<p><i>"Similar to that discussed in Variation 1, the proposed development incorporates a roof design for each building type which is very similar and there is very little architectural variation, particularly when you are looking at a length of two storey units on either side of the street. The applicant's comment is not supported. It is considered that a better design could have been incorporated to provide different architectural roof features for each building type to break up the streetscape and provide different points of interest."</i></p>	<p>We refer to the above response discussing the variation in building form being up to 28 different design/colour variations over 180 individual buildings, meaning there will only ever be a maximum of 6 buildings of each type that are exactly the same.</p> <p>In relation to the roof theme It is noted that the roof form is intentionally consistent as the proposal is part of a single tourist accommodation development. This is deemed to be a positive, not negative aspect to the design.</p>

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TABLE 1 - TWEED DEVELOPMENT CONTROL PLAN 2008, SECTION A1 VARIATIONS		
DCP CONTROL TO BE VARIED	TSC COMMENT	APPLICANT'S RESPONSE
		<p>The roofs have been designed to achieve: a high level of acoustic treatment; positioning of solar panels; and, efficient capture and storage of rainwater.</p> <p>There are 3 different roof colour options provided for variation.</p>
<p><b>9. Variation to Chapter 2, Design Control 9 – External Building Elements (Elevations visible from the Public Domain)</b></p> <p><b>Control A Design important elements such as front doors and building entry areas to have prominence in the building elevation and to be clearly identifiable from the street.</b></p>	<p><i>"The applicant's comments relate this control to the overall site. This approach is not considered to be correct. It is considered appropriate to apply this control to the individual buildings within the site. As such, the proposal is not considered to comply with this control in that such a similar design for each building does not allow the units to have prominence or be clearly identifiable. In summary, the proposed variations are not supported and provide further indication that the proposed development is not suitable for the subject site."</i></p>	<p>The controls of the DCP relate to a residential flat building that would normally have "frontage" to a public road. The proposal is a tourist accommodation project with 180 detached structures to an internal private driveway, not a "street". Unlike a Residential Estate where distinct individual character is sought to encourage visual simplicity for the identification and 'ownership' of property, a Tourist Accommodation Development relies on design characteristics such as symmetry, similarity, cohesion and uniformity to maintain a trademark image, or 'development-specific vernacular' associated to the commercial intent and marketability of its trade – in this case being 'recreational accommodation'. Tourist Accommodation requires a holistic design style for ultimate visual interpretation which extends to, and defines, the limits of the site. It is not unusual for the architecture of such facilities to be similar in appearance of materials, building scale, and site arrangement. The development should not be assessed in relation to residential development. The design is fluent and consistent throughout the development. Issues such as identification can be resolved, not only through the already provided 28 variations in the visual appearance, but also through way-finding signage, street naming and building numbering. It is anticipated that each of the 180 buildings will receive an individual 'botanical' name, based on local and native species from the immediate area. Internal street names are to receive local indigenous names for native North Coast NSW animals.</p>

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In summary, the proposal does involve variations to the controls contained within Council's DCP which relates to Residential Flat Buildings. Due to the nature of the proposed tourist accommodation development and the site characteristics, which effectively preclude residential use of the buildings, it is considered that the DCP and controls are not particularly relevant. Notwithstanding this the proposed variations to the identified controls are considered to be appropriate.

In addition, although the Development Application was lodged prior to the commencement of Section 79C(3A) of the Environmental Planning and Assessment Act 1979 (as amended), the proposed variations are consistent with the requirements of the amended Act, which require Consent Authorities *"to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development"*.

### **3.7.2 Tweed Development Control Plan 2008, Section A2 – Site Access and Parking Code**

Council has requested that the applicant demonstrates full compliance with this DCP with regard to the requirement for a service/delivery space for the communal facilities building.

This matter has been addressed by amending the Application Plan to provide a HRV loading bay at the western end of the communal facilities building.

The balance of the development maintains compliance with the numerical parking requirements of Council's Code.

Additional information relating to traffic engineering is provided in the revised report attached at **Annexure 9**.

### **3.7.3 Tweed Development Control Plan 2008, Section A4 – Advertising Signs Code**

No signage is proposed as part of the Development Application. A separate Development Application will be submitted for signage at a later date.

### **3.7.4 Tweed Development Control Plan 2008, Section B3 – Banora Point West – Tweed Heads South**

Council has requested that the applicant demonstrate compliance with Section B3.7.2 of the Plan which provides guidelines for Tourism development. Note that the Plan states *"These tourism areas will be catering for both family oriented accommodation together with 'resort type' facilities"*.

We note that the Statement of Environmental Effects addressed the relevant guidelines, but the numbering provided stated B3.7.3 rather than B3.7.2. The relevant information is reproduced below with correct numbering.

The Layout Plan in the DCP nominates the western part of the site for Tourist Accommodation purposes and the eastern part of the site for a Private Recreation Golf Course (refer to **Figure 1**).

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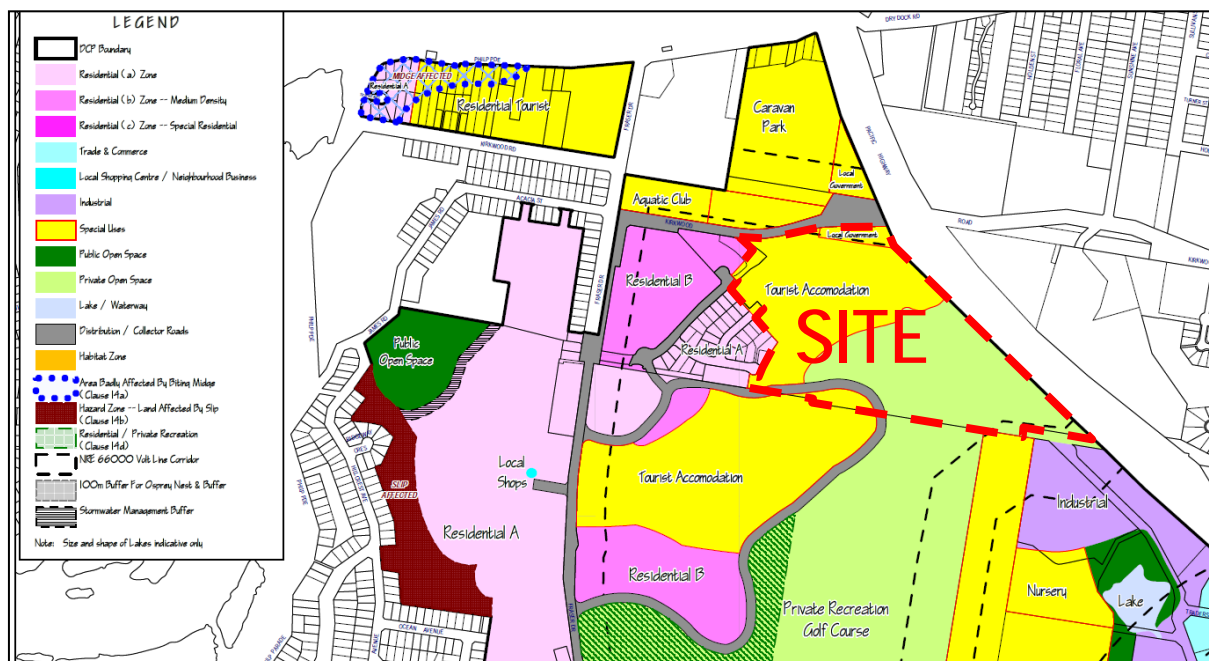


Figure 1 – Tweed DCP 2008, Section B3 Layout Plan  
Source: Tweed Shire Council

Part B3.7.1 of the DCP provides objectives for the development of the nominated Tourist Accommodation areas. The objectives are in the following terms:

*"To encourage the establishment of a range of development forms offering different leisure and hospitality activities.*

*To promote the complementary and simultaneous development of:*

- i. resort hotels;
- ii. budget family style resorts; and
- iii. caravan parks, cabins etc."

The proposed development, which due to its location has been designed to provide budget family style accommodation with appropriate on site recreation facilities, is considered to be consistent with the Layout Plan and objectives of the DCP for the nominated Tourist Accommodation land.

An assessment of the proposed development against the guidelines for tourist accommodation development under Tweed DCP 2008, Section B3 is provided in **Table 2**.

TABLE 2 - TWEED DEVELOPMENT CONTROL PLAN 2008 SECTION B3 COMPLIANCE ASSESSMENT		
CHAPTER B3.7 – TOURIST ACCOMMODATION		
PART B3.7.2 GUIDELINES		
GUIDELINE	ASSESSMENT COMMENT	COMPLIANCE
i. The circulation system within the development provides for safe and convenient pedestrian and vehicle movements;	<p>The proposed internal driveway network provides safe, two way, vehicular access throughout the site, with shared access for pedestrians.</p> <p>A second controlled access point is provided to the north which may be used to escape the site in the event of a bushfire, but under normal circumstances will not be open.</p>	Yes

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TABLE 2 - TWEED DEVELOPMENT CONTROL PLAN 2008 SECTION B3 COMPLIANCE ASSESSMENT		
CHAPTER B3.7 – TOURIST ACCOMMODATION		
PART B3.7.2 GUIDELINES		
GUIDELINE	ASSESSMENT COMMENT	COMPLIANCE
ii. Intersections with distributor and collector roads are safety designed and adequately spaced;	The proposed site access has been appropriately designed to access the proposed connection road to Kirkwood Road.	Yes
iii. The provision of adequate car parking;	The proposed car parking within the development complies with Tweed DCP 2008, Section A2.	Yes
iv. Noise abatement;	An Acoustic Report has been prepared to address the relative constraints of aircraft and road traffic noise.	Yes
v. Privacy to adjacent or adjoining residential development;	The proposed tourist accommodation development will be grade separated from the residential development to the west.	Yes
vi. The provision of public access, pedestrian and open space linkages;	A substantial area of ecologically significant vegetation is to be retained on the eastern part of the site including appropriate buffers.	Yes
vii. The existing amenity of the neighbourhood;	The proposed tourist accommodation development is accessed separately from and is orientated away from, adjoining residential development. In this respect the proposal will not adversely impact upon the existing amenity of the residential area to the west.	Yes
viii. Visual amenity;	The proposed development includes contemporary architectural design in order to provide appropriate visual amenity. The provision of quality landscaping together with the retention of the existing vegetation at the western side of the site (10m) and over the eastern part of the site will maintain suitable visual amenity both internally and external of the site.	Yes
ix. The effects of lighting; and	Lighting will be designed to contain light spill to the site.	Yes
x. The effects of the proposed hours of operation on the surrounding environment.	The site will be provided with on site management. Hours of operation of the recreational facilities will be as required to provide efficient and appropriate services to guests.	Yes

In summary, the proposed development is entirely consistent with Council's longstanding Development Control Plan that applies to the site, both in terms of the type of development and in terms of meeting the relevant development guidelines.

### 3.7.5 Cultural Heritage

A Cultural Heritage Assessment has been completed for the site including completion of surface clearing and a comprehensive set of archaeological test excavations of the parts of the site which were most likely to contain relics.

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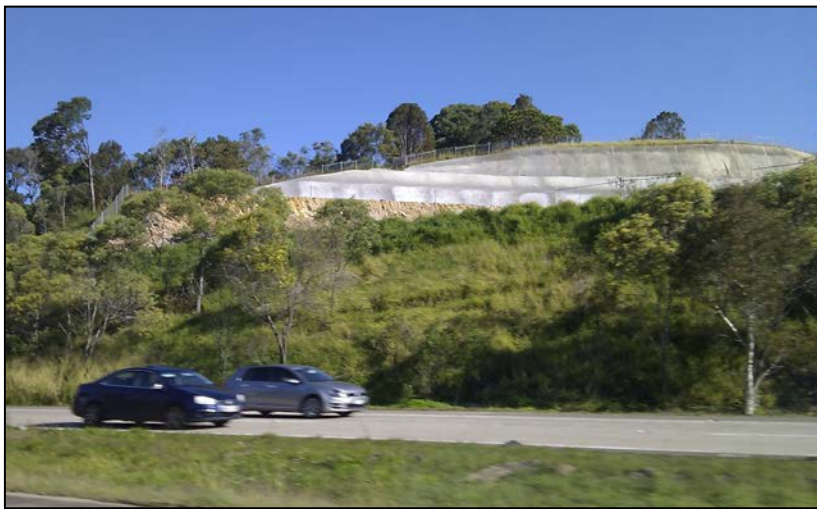
In summary, the Cultural Heritage Assessment concluded that no physical Aboriginal cultural heritage was identified within the project area. Therefore there will be no impacts to physical cultural heritage (Aboriginal Objects) if the Project is to proceed.

A copy of the Cultural Heritage Assessment and the Test Excavation Report are attached at **Annexures 10** and **11**.

### 3.7.6 Visual Amenity

A Visual Impact Assessment has been undertaken by LVO Architecture and is attached at **Annexure 8**. The assessment concludes that the visual impacts of the proposed development are considered to be compatible with the existing visual context and satisfy the objectives of the Tweed Local Environmental Plan.

As previously mentioned the visual quality of the northern side of the site has been significantly compromised by the extensive excavation and unsightly shotcrete retaining structure constructed by Tweed Shire Council as part of the adjoining Kirkwood Road Project.



Photograph 1 – Shotcrete Retaining along the northern side of site as viewed from the Pacific Highway

The proposed development will remove the shotcrete structure and reduce the stark visual appearance of the existing situation.

Instead, the proposal will provide the appearance of a tourist accommodation development, with the change in grade battered to the west in a north-south direction so that it will not be as visually prominent. The proposed batter on the western side will be lower, will be battered at a lesser angle and will be provided with landscaping.

### 3.7.7 Submissions

During the exhibition period a total of two public submissions were received. The issues raised in the submissions are addressed in Section 4.0 of this report.

### 3.8 Roads and Maritime Services

The items under this heading relate to the availability of a service vehicle area, access for garbage collection and considerations of impacts of road traffic noise.

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These matters have been addressed in the Traffic Report (**Annexure 9**), the Acoustic Report (**Annexure 12**) and the amended Application Plans (**Annexure 1**).

### **3.9 Rural Fire Service**

A detailed response to this item comprising a report titled - Bushfire Threat Assessment Additional Information Report, prepared by BCA Check Pty Ltd, Bushfire and Building Consultants, was submitted to Council on 28 May 2013.

The NSW Rural Fire Service has issued a 100B Bushfire Safety Authority for the project, indicating that they are satisfied with the proposed arrangements.

### **4.0 RESPONSE TO SUBMISSIONS**

The Development Application was publicly exhibited for 14 days from 26 September 2012 to 11 October 2012.

A total of two public submissions were received during the exhibition period. The key issues raised in these submissions are summarised and addressed in the following subsections.

#### **4.1 Tweed Heads Environment Group Inc.**

Expectation of Golf Course - There were no previous proposals for a golf course on the subject site, which is identified for tourist accommodation purposes in Tweed Development Control Plan 2008, Section B3.

Residential Accommodation - The zoning of the site and the aircraft noise controls at this site preclude residential use of the proposed tourist accommodation units.

BASIX - The proposed development is for tourist accommodation. Basix Certification is not required. However, rainwater tanks, insulation, water and energy efficient fixtures and appliances will be utilised.

Car parking - The proposed car parking is compliant with Council's code.

Bulk Earthworks - While the proposal does not comply with Council's DCP control of 1m of cut and fill, it is considered that the proposal achieves a positive outcome for the site by reducing the existing visual impact, conserving the wetland area and providing for a use of the land that will contribute to the local tourism industry and economy.

Access and TRCP Contribution Credits - The proposal is to construct part of the western side of Kirkwood Road to provide access to the project. The value of any such work which is consistent with Council's design, which is subject to the TRCP works schedule, will be applied as a credit against any monetary contribution that would otherwise be paid under that Plan. The only access to the residential area to the west is an alternate emergency access/egress gate to Harrier Street. The emergency access will be locked and only opened as an emergency response action to a bushfire event.

Acoustic Treatments - Appropriate acoustic treatments are proposed. Refer to Acoustic Report.

SEPP 44 and EPBC Assessment - SEPP 44 and EPBC issues are addressed in the Ecological Report.

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Acid Sulfate Soil Management Plan Road Work – The road works would be undertaken under the Part 5 Approval obtained by Tweed Shire Council.

Cultural Heritage – A detailed Cultural Heritage Assessment and Test Excavations have been undertaken. The relevant reports are attached.

Stormwater Management and Cut Depths – The stormwater management measures proposed for the site are considered to be appropriate, resulting in the same (or less) pre-development peak discharge rates. Additional detail has been provided to mitigate impacts on the SEPP 14 wetland. The maximum depth of cut are similar to those on the adjoining Council road project but are limited to the central part of the existing knoll. The completed project will result in lower cuts to the western side and an improvement to the visual amenity.

#### 4.2 B&S Robertson

Proposed Use – The proposed use is tourist accommodation.

Access to Residential Area to the West – The access to the site is proposed via the construction of part of the Kirkwood Road alignment to Fraser Drive. As mentioned previously an alternate emergency access/egress gate to Harrier Street is proposed. The emergency access will be locked and only opened as an emergency response action to a bushfire event.

#### 5.0 RESPONSE TO MATTERS RAISED IN TWEED SHIRE COUNCIL'S ASSESSMENT REPORT (8 FEBRUARY 2013) AS PRESENTED TO THE JRPP MEETING OF 19 FEBRUARY 2013

At its meeting of 19 February 2013 the JRPP considered an "Assessment Report and Recommendation" prepared by Tweed Shire Council and dated 8 February 2013.

We note that some matters which were raised by Council in the original Assessment Report did not form part of Council's Information Request dated 22 March 2012. We assume that the reason that some issues were not transferred to the formal Information Request were due to Council being satisfied of the preliminary responses provided in the applicant's submissions to the JRPP meeting.

However, in order to confirm the applicant's responses to the matters raised in the previous Assessment Report, our response to each issue is provided in the following table (**Table 3**).

TABLE 3 - RESPONSE TO ISSUES RAISED IN "ASSESSMENT REPORT AND RECOMMENDATION" PREPARED BY TWEED SHIRE COUNCIL AND DATED 8 FEBRUARY 2013		
ISSUE	TSC ASSESSMENT COMMENT	APPLICANT'S RESPONSE
Tweed LEP 2000		
Clause 4 - Aims of the Plan	<i>"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".</i>	The site is located within the urbanised area of Tweed Heads South and the locality is characterised as "developed" rather than "natural".  The proposal seeks to make an effective use of the available zoned land while minimising impacts on good quality native vegetation and conserving all EEC's on the site, plus a buffer.

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**TABLE 3 - RESPONSE TO ISSUES RAISED IN "ASSESSMENT REPORT AND RECOMMENDATION" PREPARED BY TWEED SHIRE COUNCIL AND DATED 8 FEBRUARY 2013**

ISSUE	TSC ASSESSMENT COMMENT	APPLICANT'S RESPONSE
	<i>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 not considered to meet the provisions of Clause 4 of the LEP, as the proposed development is not considered to be suitable for the subject site. The character of the Tweed is not retained and the development is not considered to be compatible with the Shire's environmental qualities.</i>	<p>The DCP that relates to the locality specifically indicates that the site is intended to be used as tourist accommodation.</p> <p>The Strategic Plan provides encouragement for tourism and the proposal is considered to strike an appropriate balance between social, economic and environmental considerations.</p> <p>In this regard the proposal is considered to be consistent with Clause 4 of Tweed LEP 2000.</p>
<b>Clause 5 - Ecologically Sustainable Development</b>	<i>"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 not considered to meet the provisions of Clause 5, with inadequate assessment undertaken to determine the full extent of potential impact upon the environment and surrounding locality."</i>	The applicant has provided a Revised Stormwater Management Plan, Ecological Assessment and Visual Impact Assessment to provide additional information for Council's assessment. Each of these reports indicate that the impacts of the development are able to be mitigated and in the case of visual impact is compatible with the character of the surrounding area. In our opinion the proposed earthworks will improve the existing situation where a very high concrete wall exists in a highly visible area at the northern boundary.
<b>Clause 8 – Consent Considerations</b>	<p><i>"(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:</i></p> <p><i>(a) it is satisfied that the development is consistent with the primary objective of the zone within which it is located, and</i></p>	<p>Clause 8 contains matters for the Consent Authority, however we do not agree with the conclusions in relation to the consistency with the zone objectives and other clauses of the LEP (refer below).</p> <p>The cumulative impacts of the development do not appear to be fully considered and balanced with potential positive cumulative impacts which may include:</p>

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**TABLE 3 - RESPONSE TO ISSUES RAISED IN "ASSESSMENT REPORT AND RECOMMENDATION" PREPARED BY TWEED SHIRE COUNCIL AND DATED 8 FEBRUARY 2013**

ISSUE	TSC ASSESSMENT COMMENT	APPLICANT'S RESPONSE
	<p><i>(b) it has considered that those other aims and objectives of this plan (the TLEP) that are relevant to the development, and</i></p> <p><i>(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.</i></p> <p><i>In this instance, the subject site is part zoned 6(b) Recreation and part zoned 2(e) Residential Tourist, the primary objectives of which are outlined in Clause 11 assessment below. Assessment against Clause 11 concludes that the proposed development is not consistent with the primary objective of the 6(b) zone.</i></p> <p><i>Other relevant clauses of the TLEP have been considered elsewhere in this report and it is not considered that the proposed development complies with the aims and objectives of each.</i></p> <p><i>Having regard to the potential impacts to the environment and surrounding locality, the proposal is considered to have an unacceptable cumulative impact on the locality and community in general.</i></p> <p><i>In conclusion, the proposed development is not supported as it does not meet the provisions of Clause 8(1)(a), 8(1)(b) or 8(1)(c)."</i></p>	<ul style="list-style-type: none"> <li>• The long term retention and maintenance of the ecologically significant parts of the site and the proposed ecological buffers including removal of weeds.</li> <li>• Reduction of the visual impact presented by the existing 27-28m high batter to the north by regrading the site, resulting in batters at the western boundary ranging in height from only 4m to 10m in height.</li> <li>• The creation of an economic use of the land which will make a positive contribution to the tourist market in the area and the local economy generally.</li> </ul>
<p><b>Clause 11 - Zone objectives</b></p>	<p><i>"As noted above, the subject site has two zonings. The majority of the site is zoned 6(b) Recreation and a small part of the site in the south western portion is zoned 2(e) Residential Tourist.</i></p> <p><i>The primary objective for land zoned 6(b) Recreation are:</i></p> <p><i>□to designate land, whether in public or private ownership, which is, or may be used primarily for recreational purposes.</i></p>	<p>In relation to compliance with the zone objectives we submit that Tourist Accommodation is a recreational use in itself (ie. it is an activity that holiday makers partake in, on vacation). For example, visitors may rest and recreate in the accommodation and facilities provided on the site. This interpretation is the same basis on which other accommodation uses for tourists, such as caravan parks, have been approved by Council on other sites zoned 6(b).</p>

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**TABLE 3 - RESPONSE TO ISSUES RAISED IN "ASSESSMENT REPORT AND RECOMMENDATION" PREPARED BY TWEED SHIRE COUNCIL AND DATED 8 FEBRUARY 2013**

ISSUE	TSC ASSESSMENT COMMENT	APPLICANT'S RESPONSE
	<p>The primary objectives for land zoned 2(e) Residential Tourist are:</p> <p><input type="checkbox"/> to encourage the provision of family orientated tourist accommodation and related facilities and services in association with residential development including a variety of forms of low and medium density housing and associated tourist facilities such as hotels, motels, refreshment rooms, holiday cabins, camping grounds, caravan parks and compatible commercial services which will provide short-term accommodation and day tourist facilities.</p> <p>The proposed development is best defined as Tourist Accommodation, pursuant to the provisions of the Tweed LEP 2000. Despite Tourist Accommodation being permissible with consent in both zones, the proposed development is not considered to meet the primary objective of the 6(b) zone.</p> <p>The applicant states that the... 'proposal is consistent with the zone objectives in that the development achieves a recreational use of the land providing for family orientated tourist accommodation.' This statement is not supported, with the site not considered to be used primarily for recreation purposes, particularly with regard to the density of the development.</p> <p>In terms of the 2(e) zone, the proposal is considered to be consistent with the primary zone objectives."</p>	<p>The tourist accommodation use is 'not antipathetic' to the zone objectives. Refer to <i>Schaffer Corporation Ltd v Hawkesbury City Council</i> (1992) 77 LGRA 21. The tourist accommodation use is consistent with the elements considered in <i>Gillespies v Warringah Council</i> (2002) 124 LGRA 147, (ie. '1. agreeing or accordant; compatible; not self-opposed or selfcontradictory; 2. consistently adhering to the same principles, course etc.').</p> <p>We are also aware of a tourist accommodation development approved by Council also on land zoned 6(b) to the north of the site (0006/2001DA).</p> <p>We are aware of a recent (December 2012) rezoning of land to the north of the site from 2(a) to 6(b) for the purpose of facilitating a Motel development.</p> <p>The Locality Plan in Tweed DCP 2008, Section B3 clearly shows the site as being required for Tourist Accommodation.</p> <p>Accordingly we do not accept that the proposed tourist accommodation use is inconsistent with the zone objectives. This is supported by Council's previous approvals of similar developments on land zoned 6(b).</p>
<b>Clause 15 - Essential Services</b>	<p>Clause 15 of the TLEP requires that Council be satisfied that the subject land has the benefit of essential services before issuing consent. Issues raised in this regard are discussed later in this report. In summary, insufficient information has been provided for Council to be satisfied that the provisions of Clause 15 have been met.</p>	<p>The advice from the Project Engineer is that they have had extensive consultation with Council Engineers and concluded that the site can be adequately serviced by all normal urban infrastructure.</p> <p>Additional detail is provided in the Engineering Report attached at <b>Annexure 6</b>.</p>

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**TABLE 3 - RESPONSE TO ISSUES RAISED IN "ASSESSMENT REPORT AND RECOMMENDATION" PREPARED BY TWEED SHIRE COUNCIL AND DATED 8 FEBRUARY 2013**

ISSUE	TSC ASSESSMENT COMMENT	APPLICANT'S RESPONSE
<b>Clause 17 - Social Impact Assessment</b>	<i>"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. The proposed development is not supported in that proper consideration of the social impacts arising from the development has not been undertaken. Further detail is provided in this regard under the DCP A13 heading."</i>	<p>Council's assessment accepts the positive economic impacts but considers that inadequate social impact assessment has been undertaken (in relation to impacts on adjoining residential uses).</p> <p>Measures to mitigate the amenity issues between the proposal and the residential uses to the west include the following:</p> <ul style="list-style-type: none"> <li>• A 10m wide vegetated buffer is located at the top of the proposed batter slope (to the east of the residential uses to the west) and the proposed development.</li> <li>• The residential uses are at a higher level than the proposed tourist accommodation uses.</li> <li>• The proposed tourist accommodation units will be located approximately 30m away from the residential uses to the west, due to the width of the vegetated buffer and the batter slope.</li> <li>• The project does not utilise the local road network associated with the residential development to the west (other than a statutorily required alternate access for emergency vehicles only).</li> </ul>
<b>Clause 22 – Development Near Designated Roads</b>	<p>In relation to Clause 22(4)...</p> <p><i>"The applicant states that the 'proposed development will incorporate contemporary design and quality landscaping which will not detract from the scenic amenity of the locality.' This statement is not supported. The proposed development incorporates extensive cut of the site (27m) which will obviously remove the majority of the mature trees covering the hilltop. The proposed 'quality landscaping' is not considered to be adequate in terms of the loss of vegetation. In addition, the large batters on the northern, western and southern portions of the site are proposed to be rock batters with limited opportunity for plantings."</i></p>	<p>We note that Council has no issue with the access, parking, or future upgrade requirements of this Clause. The road traffic noise issue has been dealt with separately by the Acoustic Engineer.</p> <p>Council indicates that the proposal will adversely impact upon the scenic amenity from the point of view of road users. It appears that Council have not considered the following points:</p> <ul style="list-style-type: none"> <li>• The existing 27m-28m high batter located immediately to the north of the site (Kirkwood Road project) will be reduced to a batter approximately 4m to 10m in height and landscaped.</li> </ul>

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**TABLE 3 - RESPONSE TO ISSUES RAISED IN "ASSESSMENT REPORT AND RECOMMENDATION" PREPARED BY TWEED SHIRE COUNCIL AND DATED 8 FEBRUARY 2013**

ISSUE	TSC ASSESSMENT COMMENT	APPLICANT'S RESPONSE
	<i>Given that the subject site is highly visible from the surroundings areas of Tweed Heads and South Tweed / Banora Point, as well as from the northern and southern approaches of the Motorway, the proposed development is not considered to meet the provisions of Clause 22(4)(f) in that it is considered to detract from the scenic values of the locality."</i>	<ul style="list-style-type: none"> <li>• The proposed batters at the western (high) side of the site will range from 4m to 10m in height, at a slope of 1:2 and will be vegetated at the top, bottom and where possible on the face.</li> <li>• The existing vegetation at the western side (skyline) 10m in depth will be retained.</li> <li>• The high conservation value vegetation and a 50m ecological buffer will be retained.</li> </ul> <p>In addition a Visual Impact Assessment has been prepared to further assist Council in the assessment of visual impact. The report concludes that the visual impacts of the proposal are considered to be compatible with the existing visual context.</p> <p>Council has made an assessment that the proposal is of residential character and therefore Clause 32(3) applies. We do not agree for the following reasons:</p> <ul style="list-style-type: none"> <li>• The proposal is development for the purpose of tourist accommodation.</li> <li>• Residential development is prohibited on the site.</li> <li>• The buildings are to be constructed with appropriate acoustic treatments.</li> <li>• Tourist accommodation visitors do not require the same level of acoustic amenity as a residential use.</li> <li>• Note that as per Hotels, Motels and Hostels, the proposed Tourist Accommodation buildings are capable of being acoustically treated.</li> </ul>
<b>Clause 44 – Development of Land Within Likely or Known Archaeological Sites</b>	<i>"Until such time that a thorough cultural heritage assessment has been undertaken (including a site inspection and test excavations), as per the provisions of the Code of Practice for Archaeological Conduct in New South Wales 2010, the proposed development is not considered to comply with Clause 44.</i>	A detailed Cultural Heritage Assessment and Test Excavations have been undertaken by Everick Heritage Consultants. The reports conclude that the site does not contain any evidence of cultural or physical heritage significance.

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TABLE 3 - RESPONSE TO ISSUES RAISED IN "ASSESSMENT REPORT AND RECOMMENDATION" PREPARED BY TWEED SHIRE COUNCIL AND DATED 8 FEBRUARY 2013		
ISSUE	TSC ASSESSMENT COMMENT	APPLICANT'S RESPONSE
	<i>As such, development consent cannot be granted by the consent authority."</i>	The project will not impact on any features of high intangible (non-physical) cultural significance and there will be no impacts to physical cultural heritage (Aboriginal objects) if the project were to proceed.
<p><b>75 Development control—tourism development</b></p> <p>(1) <i>The council must not grant consent to tourism development unless it is satisfied that:</i></p> <p>(a) <i>adequate access by road, railway or water transport (or any combination of them) exists or will be provided to service the development, taking into account the scale of the development proposed, and</i></p> <p>(b) <i>if the proposal involves permanent residential accommodation, all social and community services reasonably required by those residents exist in close proximity to the development, and</i></p> <p>(c) <i>the development will not be detrimental to the scenery or other significant features of the natural environment, and</i></p> <p>(d) <i>reticulated water and sewerage are available, or arrangements satisfactory to the council have been made for the provision of those facilities.</i></p> <p>(2) <i>In considering an application for consent to tourism development, the council must have regard to principles contained in the Tourism Development Along the New South Wales Coast: Guidelines.</i></p> <p>(3) <i>The council must not approve an application for large scale resort development unless it is within or adjacent to a prime tourism development area or adequate urban services are available.</i></p>	<p>Extracts from Council's Report are as follows:  <i>"The considerations of Clause 75 are noted below.</i></p> <p>(1) (a) <i>The proposed access to the site has raised concerns with regard to landforming issues and cultural heritage matters (as discussed later in this report). As such, it has not been determined that adequate access exists.</i></p> <p>(b) <i>Not applicable – the development does not propose any permanent residential accommodation.</i></p> <p>(c) <i>As discussed above, the proposed bulk earthworks associated with the development is considered to be detrimental to the scenery of the locality's natural environment.</i></p> <p>(d) <i>Water and sewer issues have been raised by Council's Water Unit (as noted later in this report). As such, this component of Clause 75 is not considered to have been met.</i></p> <p>(2) <i>The Guidelines nominate Tweed Heads / Kingscliff area as a 'Prime Tourism Development Area'. The proposed development, incorporating more than 100 accommodation units, is defined as large-scale development. Although the guidelines note that large-scale tourism development is allowable, it is noted that the development needs to be... 'sensitive to environmental features and provide a choice in development style and form'. In terms of environmental factors, the guidelines also require the following to be satisfied:</i></p>	<p>(a) - The landforming and cultural heritage issues have been previously discussed. The proposal provides suitable access.</p> <p>(b) – Not Applicable.</p> <p>(c) – The visual impact of the proposal has previously been discussed. The proposal will improve the existing situation by removing the very high concrete retained structure to the north. Appropriate measures are proposed to mitigate impacts on the natural environment including minimising impact on native vegetation and preserving the EEC vegetation on the site.</p> <p>(d) – The Engineering Report indicates that all normal urban services may be provided to the development.</p> <p>(2) –The proposed earthworks are required to provide practical access to the site from the extensive earthworks that has already been undertaken immediately to the north of the site. The proposal will retain existing vegetation at the top of the proposed batter and the proposed buildings will be positioned below the skyline. It is considered that the proposal represents an appropriate balance between the need to conserve vegetation, improve visual amenity of the area and deliver a positive economic outcome for the locality.</p> <p>(3) – Not applicable.</p> <p>In summary, the proposed development is considered to be not inconsistent with the relevant considerations under Clause 75 of the North Coast REP 1988.</p>

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**TABLE 3 - RESPONSE TO ISSUES RAISED IN "ASSESSMENT REPORT AND RECOMMENDATION" PREPARED BY TWEED SHIRE COUNCIL AND DATED 8 FEBRUARY 2013**

ISSUE	TSC ASSESSMENT COMMENT	APPLICANT'S RESPONSE
	<p><i>"In hilly or undulating country, ridges should not be built on. When viewed from access roads, beaches, public reserves and waterways, the skyline should appear to be continuously vegetated."</i></p> <p><i>As noted later in this report, the proposed development is not considered to be sensitive to environmental features associated with the subject site. The proposed development will effectively remove the existing hilltop and mature vegetation, which will impact upon the visual amenity of the site when viewed from access roads. As such, the proposal is not considered to have regard to the principles of the Tourism Development Along the New South Wales Coast: Guidelines.</i></p> <p><i>(3) Not applicable – the proposed development is not considered to be for a resort development.</i></p> <p><i>In summary, the proposed development is not supported in that the proposal does not adequately address the relevant provisions of Clause 75 of the North Coast REP."</i></p>	

## 6.0 SUMMARY AND CONCLUSION

Since being made aware of Council issues with the Development Application, the Project Team has undertaken additional work to provide the requested information in order to assist in the assessment of the proposal.

The proposed minor amendments to the Application Plans, together with the amended reports in relation to Cultural Heritage Assessment and Test Excavations, Acoustic, Visual Impact, Ecological, Bushfire, Landscape, Engineering and Traffic information have been provided to address the specific issues raised by Council Officers.

In summary, the amendments to the Development Application do not significantly change the scale or nature of the proposal. The additional information provided is considered to properly address the relevant issues raised by Council. In particular the revised information indicates that the proposal is unlikely to impact on any object or place of Aboriginal cultural or physical significance. The Visual Impact Assessment indicates that the proposed development is not visually intrusive from the key surrounding vantage points. It is considered that the proposal will actually improve the visual amenity of the area by reducing the visual impact of the existing concrete road works batter and instead providing lower landscaped batters to the western side, which are much less visually intrusive.

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The proposed development does involve substantial earthworks and will remove some existing native vegetation, however it is considered that the impacts created by the proposed development are balanced by the outcome to be achieved. In this respect the proposal will minimise impacts on good quality native vegetation, retain all of the EEC vegetation in the SEPP 14 wetland, maintain predevelopment peak discharge rates of stormwater, improve the current visual impact of the Kirkwood Road Shotcrete batter and deliver a significantly positive economic benefit to the local economy during the construction period with a direct investment of \$30 million. Our client has the resources to successfully complete the project as evidenced by other nearby completed developments.

The operational stage will also deliver continuing economic benefits to the local area through onsite employment and indirect support for service and tourism businesses and a significant contribution to Council's developer contributions (including the partial construction of the western alignment of the Kirkwood Road Project) and the ongoing rates base. Due to the design of the proposal including the proposed land forming, buffers and access arrangements, impacts on the amenity of adjoining properties is minimised.

Accordingly, approval of the amended proposal is considered to be suitable for the site which has long been identified in Council's DCP, Section B3 Locality Plan as "Tourist Accommodation". The proposal is to be undertaken in accordance with the various recommendations and mitigation measures contained in the suite of specialist reports to ensure that impacts are minimised, and that the project is sustainable and in the public interest.