

Minutes for this meeting will be confirmed at the Planning, Environment & Development Committee Meeting to be held in the Council Chambers, Council Administration Building, on 17 November 2005 commencing 5pm.



COFFS HARBOUR CITY COUNCIL
ORDINARY MEETING
(CITY BUSINESS UNITS COMMITTEE)
COUNCIL CHAMBERS
COUNCIL ADMINISTRATION BUILDING
COFF AND CASTLE STREETS, COFFS HARBOUR
3 NOVEMBER 2005

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COFFS HARBOUR CITY COUNCIL
ORDINARY MEETING
(CITY BUSINESS UNITS COMMITTEE)
3 NOVEMBER 2005

Mayor and Councillors

CITY BUSINESS UNITS DEPARTMENT REPORTS

B32 NANA GLEN TENNIS COURTS

Purpose:

Seeking Council approval for management of the Nana Glen Tennis Courts to be included in the management responsibilities of the Nana Glen Sport, Recreation and Equestrian Centre Management Committee

Description of Item:

Council is the owner of a parcel of land, being Lot 12 DP 11519, situated at 20-22 Grafton Street Nana Glen Rail. Improvements on this land include the Nana Glen Rural Fire Service Shed on its eastern side (with frontage to Nelson Street), and Tennis courts and small clubhouse on its western side.

Up until 2004, management of the Nana Glen Tennis Courts was basically undertaken on behalf of the community by the committee members of Nana Glen Tennis Club. In early 2004 Council received notification from the Nana Glen Tennis Club that its committee members had resigned their executive positions and the Club had now ceased to operate.

As a result of this loss of local management for the facility, the potential existed for eventual removal of the tennis courts and for the land to be returned to a passive park area.

Subsequent approaches from members of the local Nana Glen community indicated that although the Nana Glen Tennis Club no longer existed, there was still a level of demand by local tennis players to access and use the tennis courts. As such it became necessary to establish a form of local management for the facility.

Cont'd...

B32 Nana Glen Tennis Courts ...(Cont'd)

Discussion with committee members of the Nana Glen Sport, Recreation and Equestrian Centre Management Committee resulted in that committee indicating it would be prepared to incorporate management of the tennis courts in with its main management responsibilities for the Nana Glen Sport, Recreation and Equestrian Centre situated nearby in Morrows Road. The management committee has advised that it would prefer to manage the facility for an initial twelve month trial period in order to assess the impact of this arrangement on the management of its Morrows Road facility.

It is noted that the Nana Glen Sport, Recreation and Equestrian Centre Management Committee is a management committee consisting of local community members. This committee has been established by Council with management powers delegated to it in accordance with Section 377 of the Local Government Act 1993.

Sustainability Assessment:

- **Environment**

This proposal would have no additional impact on the environment in the Nana Glen locality.

- **Social**

The demise of Nana Glen Tennis Club resulted in the loss of local management for the tennis court facility. Potentially this could have led to the facility being removed and the land being turned back into a passive local park area.

This proposal for the tennis courts to be included in the management responsibilities of the Nana Glen Sport, Recreation and Equestrian Centre Management Committee provides for continuing local management of the facility. It will ensure continuing operation and provision of this recreational facility for use by the local community.

- **Economic**

Broader Economic Implications

The proposal is considered to have minimal discernible economic implications.

Management Plan Implications

It is considered that the proposal will have no adverse impacts on Council's Management Plan.

Consultation:

The proposal has been discussed with representatives from the Nana Glen Sport, Recreation and Equestrian Centre Management Committee, as well as local community representatives who are supportive of this arrangement.

Cont'd...

B32 Nana Glen Tennis Courts ...(Cont'd)

Related Policy and / or Precedents:

There are various Council owned facilities managed by committees appointed by Council, with delegated management authority under the provisions of Section 377 of the Local Government Act 1993.

This proposal adds an additional Council owned, local facility at Nana Glen to the management responsibilities of an existing Council appointed management committee.

Issues:

As indicated, Nana Glen Tennis Courts is a Council owned facility that does not currently have a formal local management structure. The Nana Glen Tennis Club, which previously looked after these courts, is no longer operational as a club, and this has resulted in the present situation.

It is apparent from requests received from local community members that Nana Glen does not want to lose this facility. The proposed management arrangement solves a problem of "long distance" management by Council.

By utilising the services of an existing, Council appointed management committee with management responsibilities for another sporting facility in the Nana Glen locality, this proposal would ensure the ongoing operation and availability of the tennis courts for local community members interested in participating in the sport of tennis. Although present use of the facility has been curtailed pending formal appointment of the management committee, it is noted that local interested community members have continued to maintain the courts in a playable condition.

Members of the Nana Glen Sport, Recreation and Equestrian Centre Management Committee have indicated that they be responsible for management of the Tennis Courts for an initial trial period of twelve months. This would enable the committee to assess the operational and cost impacts of the situation.

It is recommended that Council agree with the proposal and that the matter be reviewed at the end of the initial twelve month trial period.

Implementation Date / Priority:

It is intended that this proposal will be implemented immediately following Council's decision in the matter.

Cont'd....

B32 Nana Glen Tennis Courts ...(Cont'd)

Recommendation:

- 1. That the Nana Glen Sport, Recreation and Equestrian Centre Management Committee be appointed, and granted delegated authority in accordance with Section 377 of the Local Government Act 1993, to manage the Nana Glen Tennis Courts (being situated on Part Lot 12 DP 11519 Grafton Street Nana Glen Rail) on behalf of Council.**
- 2. That, in accordance with the request by the Nana Glen Sport, Recreation and Equestrian Centre Management Committee, this appointment be reviewed at the end of a twelve month trial period.**

Colin Spring
Director of City Business Units (Acting)

PED30 DEVELOPMENT APPLICATION 11/06 - DEMOLITION OF EXISTING BUILDINGS AND CONSTRUCTION OF NEW DEVELOPMENT COMPRISING 18 RESIDENTIAL UNITS AND FIVE RETAIL SHOPS - LOTS 7 AND 8 DP857331, 59-67 FIRST AVENUE, SAWTELL

Purpose:

At its meeting held on 20 October 2005, Council considered the above-described Development Application (DA) and resolved as follows:

"That Development Application 11/06 for the demolition of existing buildings and new development comprising an 18 residential unit and five retail shops with associated car parking on Lots 7 and 8, DP857331, 59-67 First Avenue Sawtell be deferred to the next meeting of Council, to enable an amended report to be prepared that explains the apparent inconsistencies amongst the various Council policies that apply to the land."

The following discussion outlines the relevant statutory and non-statutory policies and controls that apply to the subject land and explains the differing layers and complexity of these numerous policies.

Description of Item:

• **Legislative Background:**

The Environmental Planning and Assessment (EPA) Act creates an ascending/descending layer of instruments called "*environmental planning instruments (EPIs)*". The intention is that higher-level policies prevail over lower level policies and have greater statutory and legal standing. In descending order, the EPIs established by the Act are:

- State Environmental Planning Policies (SEPPs);
- Regional Environmental Plans (REPs); and
- Local Environmental Plans (LEPs)

Whilst the Act also establishes the existence of Development Control Plans (DCPs), a DCP is not considered to be an EPI. In simple terms, SEPPs have significant legal and statutory standing and prevail over REPs, LEPs and DCPs. Similarly, REPs prevail over LEPs and DCPs and a Council must not make an LEP that is inconsistent with a SEPP or REP. More relevant to this application, is the fact that a DCP, although acknowledged by the Act, does not have either the legal or statutory standing of an LEP, particularly as it does not require either the Minister's approval or a formal gazettal process. Whilst a DCP has legal status and is recognised by the Land and Environment Court (LEC), it is considered to be more of a policy or guideline which is adopted by Council and can be varied by Council. In contrast the provisions of an LEP cannot be varied except by way of a formal statutory process that generally requires the concurrence of the Director-General of the Department of Planning or the Minister.

Below the level of LEPs and DCPs which are formally acknowledged by legislation there are a range of policy documents that are utilised by Councils to provide additional detail, supporting information and general guidance in respect of the widest possible range of planning issues. These documents, policies, guidelines and information sheets are not acknowledged by the EPA Act and have no formal legal status. However, it is appropriate and well established

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Ped30 Development Application 11/06 - Demolition Of Existing Buildings And Construction Of New Development Comprising 18 Residential Units And Five Retail Shops - Lots 7 And 8 Dp857331, 59-67 First Avenue, Sawtell ...(Cont'd)

practice that Councils adopt a range of policies, guidelines and non-statutory plans to assist in guiding development. Whilst the LEC does take into consideration these policies when deliberating on appeals, it is recognised that they are in essence guidelines and can more easily be varied and/or amended than DCPs.

To add further complexity to these layers, the role of **draft** EPIs and DCPs must be considered. The EPA Act requires that a draft EPI has formal status once it is placed on public exhibition and therefore must be taken into consideration by a Council when determining a DA. The same principle applies to a draft DCP in that it becomes a matter for consideration once it has been placed on public exhibition. However, there are numerous court decisions that have established that this does not mean that a development must **comply** with the provisions of a draft EPI or DCP. It only means that Council must take into consideration the provisions of the draft instrument when determining an application. It is entirely open to a Council to approve a development that is inconsistent or does not comply with a draft LEP and/or draft DCP.

Taking into account the above-described layers of statutory and non-statutory documents that are established by legislation and/or by Council resolution, it is an extremely common occurrence to have a number of policy documents of differing legal status, applying to an individual parcel of land. During recent years the state government has attempted to institute proposals aimed at reducing the number and complexity of policies, to date, with little success. Previous initiatives such as "planFirst" and the recent requirement for LEPs to be rewritten, are examples.

- **Statutory and Non-statutory policies applying to the subject land:**

As outlined above, it is extremely common for a specific parcel of land to have a number of plans and policies having differing legal status applying to it. It is also quite common, although obviously not desirable, for there to be a level of inconsistency amongst these policies. With respect to the subject land, the following discussion summarises the plans and policies that apply to the land subject to this DA and the compliance or otherwise, of the proposed development with each document. Taking into account the above discussion of EPIs and instruments with lesser legislative standing, the information that follows is listed in descending order of statutory standing and legal significance.

- 1. Coffs Harbour LEP 2000**

- LEP 2000 has statutory and legal status pursuant to the EPA Act.
- In accordance with LEP 2000, the subject land is zoned Business 3C Town Centre and the proposed development is permissible with Council consent.
- Clause 21 outlines the controls relating to Heritage Items and Conservation Areas.
- Schedule 5 lists the heritage items gazetted in the LEP that are subject to Clause 21. The subject land **is not** included in the Schedule.
- Schedule 6 defines the land included in the Sawtell Heritage Conservation Area, which is also subject to Clause 21. The subject land **is not** included in the Schedule.
- **The development complies entirely with the provisions of the LEP.**

Cont'd....

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2. Business Lands DCP

- Adopted by Council 20 April 2000.
- Has statutory standing as an adopted DCP.
- Applies to the subject land by way of its zoning, i.e. applies to all land zoned Business 3C Town Centre.
- Applies specific density controls to each commercial zone. With respect to the Business 3C Town Centre zone, the maximum density permissible is 1:1. The subject development complies with this requirement.
- This DCP cross references other planning policies that apply to Sawtell, i.e. it requires buildings to be "designed in accordance with the special building design controls" outlined in the Information Sheet and draft DCP for Sawtell Town Centre.
- With respect to all other provisions within the DCP, i.e. boundary setbacks, vehicular access, loading/unloading and landscaping, the development proposes **full compliance**.

3. Off Street Car Parking DCP

- Adopted by Council 20 April 2000 and amended by Council 11 December 2002.
- Has statutory standing as an adopted DCP.
- Schedule B outlines parking requirements for Sawtell Town Centre. **The proposed development complies with these requirements.**

4. Draft LEP Amendment No 19

- The Draft LEP extends the Sawtell Conservation Area to include the subject land. It also proposes to add 16 individual properties as Heritage Items within LEP 2000. The additional properties include Lot 7 DP 875331 First Avenue, which is one of those subject to this DA. The Draft Plan lists Lot 7 as being of local significance.
- The Draft LEP was considered by Council at its meeting of 7 November 2002. Council resolved to adopt the amendment and forward it to the Minister for gazettal. No formal record of this referral can be located in Council or the Department's archives.
- As such, the Amendment has not been gazetted and remains a draft. It therefore has some legal and statutory standing because it has been publicly exhibited, however its status is limited in that Council is required only to take its provisions into consideration when determining a DA. Council is not bound to comply with these provisions.
- It is clear that Council's intention in November 2002 was that the subject land become part of the Conservation Area and be considered to have local significance. However, as the Amendment has not been gazetted, Council is not bound to comply with its provisions. In relation to the current application the reality is that the process followed in assessing the DA, the level of information lodged by the applicants and Council's ability to consider the DA would not be altered **whether or not** the Amendment had been gazetted.

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Ped30 Development Application 11/06 - Demolition Of Existing Buildings And Construction Of New Development Comprising 18 Residential Units And Five Retail Shops - Lots 7 And 8 Dp857331, 59-67 First Avenue, Sawtell ...(Cont'd)

- The listing of the subject buildings as being of local significance does not alter Council's ability to approve their demolition.
- The applicant was requested to provide a detailed Statement of Heritage Impact (SOHI). This report justified and supported the removal of the subject buildings. Council's Heritage Officer reviewed the SOHI and liaised with the New South Wales Heritage Office. Support to the proposal was given subject to modification to the northern elevation with due consideration to building form and materials used.
- Prior gazettal of the Draft Amendment would not in any way alter the recommendation to approve the development.
- **The development therefore complies with Draft Amendment No 19.**

5. Draft Sawtell Town Centre DCP

- At its meeting held on 7 November 2002, Council adopted the Draft Sawtell Town Centre DCP as part of a package of policy documents included with the Sawtell Masterplan and Draft Amendment No 19. However, in order for the DCP to be "made" in a statutory and legal sense, i.e. for its provisions to come into force, the EPA Regulations require that notice of Council's adoption of the Plan be placed in the newspaper. A review of Council's records indicates that this process did not occur, i.e. the adopted DCP was not notified in the newspaper. What this means is that the DCP remains a draft document as it has not been legally made. Discussions with staff members involved with the process at that time indicate that it was intentional and normal practice to not apply the DCP controls until such time as the Draft LEP amendment was gazetted. The implications are that the Sawtell Town Centre DCP remains a draft document, with limited statutory and legal status.
- As a Draft DCP, Council must take into consideration its provisions when assessing a DA. In this case **the development complies with the Draft DCP in all respects with the exception of height.**
- The Draft DCP permits a maximum height of two storeys; the development proposes part two-storey and part three-storey development. It is open to Council to vary the Draft DCP on the basis of its limited statutory status provided that Council has considered the issue. A full discussion of the reasons for supporting a maximum height of three storeys in this instance is contained in a later section of this report. If Council approves this application, it will not create a precedent as there is only one other site currently in the DCP which is yet to be developed, i.e. the site immediately to the north which has similar characteristics as this site.
- The site slopes to the rear, and the three-storey component will not impact on the First Avenue streetscape if approved. It should also be noted that the existing parapet to No. 63 First Avenue is 9.52m above the pavement level. The proposed height (of the two-storey building that fronts First Avenue) is 6.5m to the top of the parapet and 9.7m to the top of the roof ridge which is set back 8m from First Avenue, with intrusions of the dormer windows to within three metres of the boundary.

Cont'd...

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- It should be noted that had the Draft DCP been legally "made", the process of assessing and considering the current DA would not change and Council's ability to vary the provisions of the DCP would remain the same.
- It is a recommendation of this report to reinforce Council's support of the DCP as adopted in 2002, by formalising the DCP by advertising it.

6. Sawtell Masterplan

- The Sawtell Masterplan was adopted by Council on 7 November 2002. It included a package of policy documents and reports, not all of which were included in Council's resolution. The Masterplan itself has no statutory or legal status. It is a policy document indicating Council's intentions for the future planning of the area.
- **The proposed development complies with the intent and provisions of the Masterplan in all respects with the exception of height.**
- With respect to height, the Masterplan permits a maximum height of two storeys, whilst the development proposes part two-storey and part three-storey development. It is clearly open to Council to vary the Masterplan on the basis of its limited status as a policy document, provided that Council has considered the issue in question. A full discussion of the reasons for supporting a maximum height of three storeys in this instance is contained in a later section of this report.
- It should be noted that the Consultant's report appended to the Masterplan recommends both single-storey and two-storey development on the western side of First Avenue, however, this document did not form part of the package of policies adopted by Council in conjunction with the Masterplan. The Consultant's recommendation is therefore not applicable.
- In relation to the issue of demolition, the Masterplan does not prohibit the demolition of buildings within the Conservation Area, nor does it prohibit the demolition of buildings having a local significance heritage listing. Whilst the background report prepared by the external consultant recommended that identified local heritage items not be demolished, this recommendation was not endorsed by Council and the Consultant's report was not adopted.

7. Sawtell Town Centre Information Sheet

- Council currently has 22 Information Sheets providing policy advice and guidance on a range of issues. The Sawtell Town Centre Information Sheet existed prior to the Sawtell Masterplan and was based on previous concept plans for the locality.
- With respect to height, the Information Sheet states as follows:

"Buildings facing First Avenue will generally be restricted to two storeys to maintain the 'small scale' character of the area.

Three-storey developments may be considered fronting First Avenue providing:

 - *The development is consistent with the character of the area; and*
 - *The general design principles are met.*

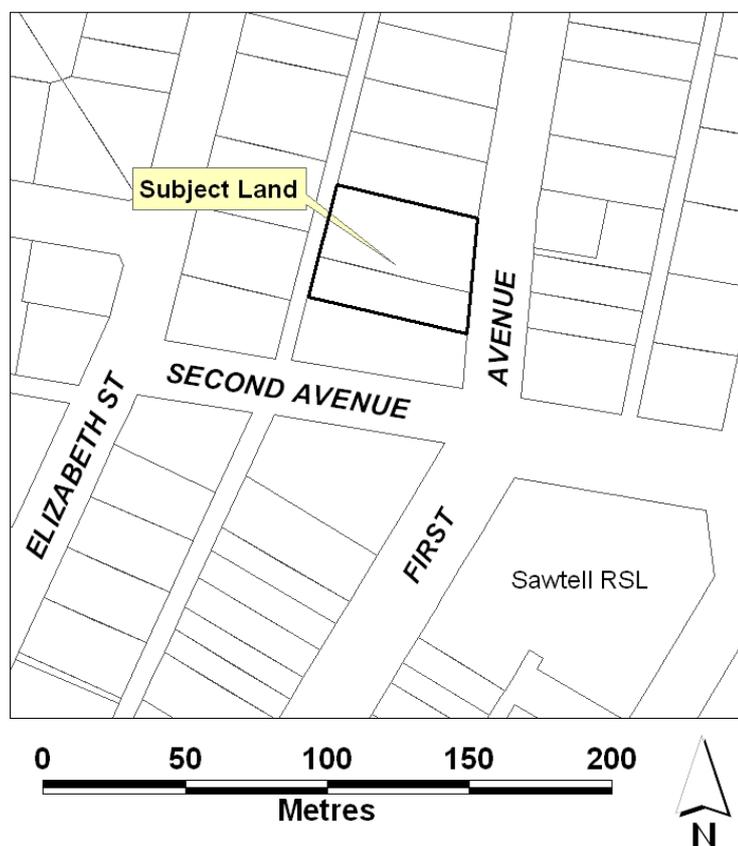
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The Information Sheet was included as part of the package of documents presented to Council with the Masterplan, despite the height limits proposed within it being contradictory to the Masterplan itself and the Draft DCP. However, whilst Council, at its meeting of 7 November 2002, adopted the Masterplan and Draft DCP, the Information Sheet was not adopted.

Proposed Development:

The application proposes demolition of all existing buildings on the site and the erection of a part two-storey and part three-storey development comprising 18 residential units of varying sizes and five retail shops, fronting First Avenue. The report recommends approval of the development subject to conditions.



Number 59-67 First Avenue, Sawtell is developed with older style commercial buildings of the 1950s and 1960s era, currently occupied by a Chinese restaurant, a hardware store, an upholsterer and first floor residential unit. The existing buildings (including outbuildings) occupy some 30-40% of the site.

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It is proposed to demolish the existing buildings and redevelop the site as follows:

- Construction of a two-storey and three-storey mixed use retail and residential building
- Car parking for 43 vehicles, including loading/unloading bay and garbage storage area
- Ancillary excavation, landscaping and stormwater works
- The commercial uses proposed are retail shops.

The estimated cost of the project is \$3.5 million.

Chronology of Application:

The applicant attended Coffs Harbour City Council's Technical Liaison Committee (TLC) on 9 June 2005. At that time the advice issued was that the proponent would need to provide a Statement of Heritage Impact and there would need to be suitable justification for the development to be three-storey. As the proposal: 1) replaces a large building of similar height; 2) provides suitable side set-backs; 3) reduces the bulk and scale of the building; 4) combined with the sloping site; support "in principle" was given to the proposal.

The DA was formally lodged with Coffs Harbour City Council (CHCC) on 12 July 2005; notification letters were issued 13 July 2005 and an advertisement was placed in the newspaper on 16 July 2005. The application was referred internally on 12 and 13 July 2005.

Upon receipt of internal comments, additional information was identified as being required to enable the application to progress. A letter was issued by CHCC on 12 August 2005 seeking the additional information from the applicant.

Amended plans and additional information was received by CHCC on 26 August 2005 enabling the DA to progress.

Sustainability Assessment:

• **Environment**

The proposal will have a positive impact on the environment. All car parking will take place off the rear laneway, providing car parking for the shops and units and customers. The proposal has received an in-principle support in terms of Energy Efficiency, able to meet the minimum NatHERS 3.5 stars rating requirement of Council. This is due to the construction and with an orientation of the units and outdoor living areas facing east or north, helping to capture sea breezes and providing an attractive and usable open space area for each unit.

• **Social**

The proposal will create a development that will provide new, attractive accommodation for those wanting to live in the Sawtell area. The proposal will provide units of differing sizes which will cater for a mixture of differing household groups wanting to live closer to Sawtell Beach coastal and recreation areas.

Cont'd....

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Access to the building will be provided via a series of stairwells and an internal lift to each floor of the building. The retail shops have been designed to be pedestrian accessible from First Avenue, with a lift providing access to the rear car parking area.

- **Economic**

The proposal will provide a new, well-designed mixed-use development that will improve the feasibility of the site and improve the street appeal, in accordance with the Draft Sawtell Development Control Plan (DCP) for First Avenue. Revitalisation of the town centre, and the improvements to the entry to Sawtell will all add economic benefit to the town centre. The development will provide employment for a whole range of sectors within the building industry during construction. Once completed, the development will also require on-going maintenance (i.e. landscaping, on site management and servicing) which will involve local businesses, while the shops will also provide good economic opportunities and vitality for the local commercial area both from their uses and employment opportunities. The current buildings and uses are a significant underdevelopment of the site and do not maximise the mixed use zoning of the site.

Broader Economic Implications

The project will value-add to and reinforce the business town centre of Sawtell.

Management Plan Implications

There is no impact on Council's Management Plan by the proposal.

Consultation:

The proposal has been advertised and notified, in accordance with the Notification DCP and 13 submissions have been received expressing the following concerns:

- *Contrary to the Sawtell Master Plan, Page 10*
- *Heritage buildings should be retained; does not conserve the heritage status of the site*
- *New development should be behind the existing buildings on the site*
- *An over-development of the site*
- *The village atmosphere will be eroded by this development, especially at the entrance to the shopping centre*
- *Setbacks of the residential component and height is contrary to the DCP for medium-high density development*
- *Gross floor area is larger than stated on their plans or application*
- *Inadequate parking to accommodate the larger units*
- *Inadequate landscaping areas*
- *Area is flood prone according to a 1998 Floodplain Management Study for Bonville*
- *The building is not unique, village style or heritage in appearance*

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- *Ground floor units will be noisy being so close to the car park*
- *Bad high density housing design is the cause of many conflicts*
- *Will create a very bad precedent for the area if this is approved*
- *Should allow a greater setback to the side boundaries to allow trees and landscaping*
- *The buildings are actually three storey and not two storey as required by Council's guidelines*
- *No loading or unloading bays provided on site*
- *Impact on the units from a future development to the north would be unacceptable for residents of those units*
- *Concern about the noise from the Sawtell Hotel on tourists and owner/occupiers of the units, causing a nuisance for them and potentially impacting on the operation of the Hotel.*

One letter of support has been received for the proposal, supporting the large amount of car parking provided on site, the increased densities of residential living, the good mix of land uses and the strong need to revitalise the First Avenue commercial area, an attractive proposal – a very positive step for Sawtell.

Comments on Submissions:

The concerns are responded to as follows:

1. Retention of buildings

The Sawtell Master Plan does not require the buildings to be retained. The submissions were quoting from the Heritage Consultant's report which is appended to the Master Plan - part of which has been adopted by Council and part has not been adopted by Council. This proposal does comply with the Sawtell Master Plan and does allow for the buildings to be demolished. Page 9 of the adopted Master Plan states:

"Scope does exist for a number of sites to redevelop and/or expand, such as:

- *The Chinese restaurant on the northern side of Second Avenue*
- *The double-storey building to the north of the Chinese restaurant "*

2. Village atmosphere will be eroded

Whilst the proposal has more of a modern design theme, there are heritage elements in terms of the post supported verandahs, dormer windows and height of buildings being generally in scale with the existing buildings in First Avenue.

The applicant states:

The village atmosphere will only be invigorated by the introduction of additional retail shops and residential apartments in Sawtell. ... will extend the vibrant retail strip ... whereas shops north of Second Avenue suffer from a lack of character, appropriate built form ... and a shortage of activity... and will enhance the gateway into First Avenue and embrace the heritage character with the reuse of the Sawtell bricks into the north façade. The building has

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Ped30 Development Application 11/06 - Demolition Of Existing Buildings And Construction Of New Development Comprising 18 Residential Units And Five Retail Shops - Lots 7 And 8 Dp857331, 59-67 First Avenue, Sawtell ...(Cont'd)

been designed to compliment the existing two and three storey buildings in First Avenue by incorporating a strong parapet to the street frontage, a distinguishable base, middle and top awnings to match those already existing along most of First Avenue. The northern elevation has been revised to incorporate the reuse of the Sawtell bricks in large panels expressing the banding that currently exists along the façade of No. 63."

These comments are supported by Council's Heritage Officer.

3. Overdevelopment of the site

Amended plans have been submitted detailing full compliance with Council's Floor Space Ratio (FSR) requirement of 1:1. This FSR relates to Business Lands (i.e. business uses). The proposal is a mixed-use development and the FSR is considered most suitable for the site.

4. Setbacks contrary to the Medium Density DCP

The Medium Density DCP does not apply to this Business Town Centre zone. Residential setbacks in a mixed use, commercial zone, do not have a minimum requirement and are instead determined by adjacent uses and the livability of the units on the site.

5. Inadequate parking to accommodate the needs of users and residents

The proposal fully complies with Council's Off Street Parking DCP for Sawtell, meeting the requirements for the units and retail uses. Car parking for Sawtell requires restaurants and retail shops to provide one car space per 23m² of gross floor area for either use. This proposal fully complies with the requirements for retail and/or restaurant if this is applied for in the future.

6. Inadequate landscaping areas

The landscape proposal fully complies with the landscape information sheet and has been approved by Council's Parks Branch.

7. Area is flood-prone

Full compliance with Council's City Services requirements has been met in terms of floor levels. The area is not flood prone according to Council's records.

8. Ground floor units will be noisy so close to the car park

The applicant has advised:

"The ground floor apartments have been designed with masonry walls around the rear courtyards to provide additional soundproofing. Generally noise levels generated from car parking areas are relatively low given cars are travelling at low speeds."

This is supported by Council staff.

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9. Bad high density housing design is the cause of many conflicts

The applicant states:

"This comment has no justification for this type of development."

It is agreed that there is no proof that a good quality development in this area would cause conflict and difficulties for residents within the development or nearby. This is not considered to be 'bad high density' housing, it is attractively designed and oriented towards First Avenue and the north, providing good quality design, meeting and exceeding Council's minimum standards. It is also not dissimilar to the newly developed mixed use development at the southern part of First Avenue, corner of Boronia Street and these units provide an attractive living alternative to units in purely residential areas.

10. Should allow a greater setback to the side boundaries to allow trees and landscaping

A suitable landscaping setback has been provided to both the northern and southern boundaries for the planting of trees and shrubs.

11. The buildings are actually three-storey and not two-storey as required by Council's guidelines

The applicant's response:

"The building has been designed to present a two-storey frontage to First Avenue with the use of the parapet construction. The third storey is primarily contained within the roof space with small dormer windows providing natural light and ventilation. The rear wing of the building steps down the site to visually maintain a two-storey development from First Avenue."

It is agreed that the development meets the guidelines as outlined in the Masterplan and the Sawtell DCP, by providing a two-storey façade to First Avenue. The development is in scale with adjacent development - the dormer windows being 'hidden' behind the first floor parapet. The three-storey residential units to the rear will have no impact on the First Avenue streetscape, being 'cut into the lower ground level' reducing any impact on nearby properties.

12. No loading and unloading bays

Amended plans have been submitted showing an on-site loading bay at the rear of the site, accessible off the rear laneway. This has been supported by Council's Engineers as being usable, practical and accessible.

13. Noise from the hotel

Noise nuisance from the nearby hotel and Sawtell RSL should not cause any more noise or nuisance for these residents than occurs at the moment with nearby residents and/or tourists that are close to or adjacent to the hotel, especially with the outlook of the units facing either east or north, away from the noise sources. Being located within a commercial area, some level of noise impact may be expected.

Cont'd...

Ped30 Development Application 11/06 - Demolition Of Existing Buildings And Construction Of New Development Comprising 18 Residential Units And Five Retail Shops - Lots 7 And 8 Dp857331, 59-67 First Avenue, Sawtell ...(Cont'd)

Other Council Departments' comments:

- **City Services**

No objection, subject to conditions. Stormwater pipe located across the rear of the property is to be relocated.

- **Building and Development**

No objection, subject to conditions.

- **Environmental Services**

No objection, subject to conditions.

- **Parks**

Some minor changes are suggested to be made to the landscape plans, otherwise the proposal is worthy of approval, subject to conditions.

- **Heritage Officer**

Support has been given by Council's Heritage Officer to remove both buildings. That is, for a whole-of-site redevelopment: *"No objection is raised to the removal and redevelopment of the single storey building at 59-61 First Avenue. While the demolition of the building at No. 63 may in some ways detract from the heritage character and amenity of the Sawtell Heritage Conservation Area, the redevelopment proposed can be modified to cater for suitable replacement buildings.*

Although the Sawtell Heritage and Building Design Guidelines prepared in 2002 suggest that the site could be redeveloped with the building at No. 63 being retained and development occurring at the rear of the site; I believe that redevelopment can reflect the main 1950s building (No. 63 First Avenue) materials and form, including the façade, without the need to retain the building. It should be noted that the redevelopment of the Tourist Information lot at No. 71 First Avenue is likely to and is more appropriate to, become the new gateway to Sawtell.

With some modification to the northern elevation, with consideration to building form and materials used, the proposal can be supported."

Amended Plans have since been submitted showing amendments to the northern wall treatment incorporating the use of some of the original building's bricks into the northern wall finish. Comments from Council's Heritage Officer advise:

"The revised northern wall elevation addresses some of the concerns previously raised. It is a more appropriate outcome for the site and can be supported."

Cont'd...

Ped30 Development Application 11/06 - Demolition Of Existing Buildings And Construction Of New Development Comprising 18 Residential Units And Five Retail Shops - Lots 7 And 8 Dp857331, 59-67 First Avenue, Sawtell ...(Cont'd)

Safer by Design - requirements have been considered in this proposal and it is considered that the street frontage shops provide a safe environment as do the residential units above, providing an outlook to the street 24 hours a day, creating a safer environment for pedestrians. The rear car park will also be illuminated after dark, ensuring that there is safety and security for residents coming and going, together with the residential units overlooking the car park.

Statutory Requirements:

• **Section 79C Evaluation**

Section 79C of the Environmental Planning and Assessment Act 1979 specifies the matters which a consent authority must consider when determining a DA. The consideration of matters is limited in so far as they must be of relevance to the particular application being examined.

The Section 79C evaluation is appended to this report (Appendix A) and provides a detailed assessment of the application.

The following relevant Statutory Instruments are also covered within the 79C evaluation.

- SEPP 65 – Residential Flat Design
- North Coffs Regional Environmental Plan (REP)
- State Environmental Planning Policy (SEPP) 71
- Coffs Harbour City Local Environmental Plan (LEP) 2000
- Sawtell Master Plan
- Draft Sawtell DCP
- Off Street Car Parking DCP
- Business Lands DCP
- Heritage Information Sheet
- Landscape Information Sheet

• **Compliance with the Sawtell Master Plan**

Compliance with the Master Plan has occurred in that it has taken into consideration the issues for the First Avenue, Sawtell area and in particular,

“Scope does exist for a number of ... sites to redevelop and/or expand, such as:

- *the Chinese restaurant on the northern side of Second Avenue, and*
- *the double storey building to the north of the Chinese restaurant. ...”*

This proposal better utilises the site’s potential, creating five new shops which will add to and enhance the commercial precinct of Sawtell, whilst providing 18 residential units in proximity to all services.

• **Heritage Controls for First Avenue, Sawtell**

No Conservation controls exist for this part of First Avenue, north of Second Avenue, covering the commercial area only. But they are proposed to be added in the future and are a part of the Sawtell Master Plan and Draft Sawtell DCP. There was also a proposal to consider the listing of No. 67 First Avenue as a Local Heritage Item, but this has not occurred to date and is not supported by the owners of this building.

Cont'd...

Ped30 Development Application 11/06 - Demolition Of Existing Buildings And Construction Of New Development Comprising 18 Residential Units And Five Retail Shops - Lots 7 And 8 Dp857331, 59-67 First Avenue, Sawtell ...(Cont'd)

The Master Plan does not prohibit the demolition of either of these buildings and Council's Heritage Officer has concurred with the removal of the buildings, subject to the northern wall treatment of the proposed building and based on the design response of the current proposal.

- **Compliance with the Draft Sawtell DCP**

Satisfactory compliance with the draft Sawtell DCP has occurred in all respects (see Section 79C Assessment, Attachment A).

Issues:

- **Demolition of the buildings**

The proposed demolition of the buildings has been addressed above. Whilst objectors have argued for retention of the existing buildings, Council's heritage officer has endorsed their demolition. The buildings are not heritage listed or in a conservation area, although they are proposed to be included in a future conservation zone.

- **Overdevelopment of the site**

Concerns raised by objectors regarding the potential overdevelopment of the site cannot be justified. The proposal meets the requirements of both the Master Plan and Draft DCP for Sawtell and has provided all required setbacks, floor space ratio of 1:1 for the mixed business use zone, open space requirements for the units, landscaping requirements, car parking, setbacks and height. The development is considered to be a good design that maximises the potential of the site.

- **Streetscape Character**

This new development will change the character of the street, and will provide an attractive northern entry to First Avenue's commercial precinct. Original bricks from the existing buildings will be used in the northern elevation of the building to add a feature and interest to the building. The two-storey development is in keeping with the character of the area and site, with a contemporary design, incorporating post supported verandahs and dormer windows to add some heritage elements to the theme of the building.

- **Mixed Use Zone and Use**

The mixed uses of retail and residential are considered to be most appropriate for this area and this zone. Good examples of how the two uses have been developed are located on the corner of First Avenue and Boronia Street, with retail and restaurants downstairs and residential units above. Shops, restaurants and units work well together and are encouraged to be located in this precinct. The three-storey scale of the development fronting First Avenue will not be repeated in First Avenue, under the new Draft Sawtell DCP, but the uses work well together and the existing buildings provide an attractive entry statement to First Avenue from the southern approach.

Summary:

The application for a part two-storey and part three-storey, mixed retail and residential unit development at First Avenue, Sawtell is in keeping with the Draft Sawtell DCP and Master Plan for Sawtell, meets the requirements of SEPP 65 in terms of design, and has the support of all branches of Council.

Cont'd...

Ped30 Development Application 11/06 - Demolition Of Existing Buildings And Construction Of New Development Comprising 18 Residential Units And Five Retail Shops - Lots 7 And 8 Dp857331, 59-67 First Avenue, Sawtell ...(Cont'd)

With all car parking provided off the rear laneway and the street appearance being in keeping with the scale and heritage character of the area, the proposal is considered to be an architecturally interesting and appealing building and will complement the area.

The concerns raised by those who made submissions can be partly overcome by conditions, however the retention of the buildings is not viable and Council's Heritage Officer supports their removal.

It is recommended that the development be approved, subject to conditions.

Recommendation:

- 1. That as Coffs Harbour City Council adopted the Sawtell Town Centre Development Control Plan on 7 November 2002, Council now notify/advertise the adoption of the Sawtell Town Centre Development Control Plan in accordance with the provisions of the Environmental Planning and Assessment Act (1979) and Section 21 Environmental Planning and Assessment Regulations (2000).**
- 2. That, in accordance with the Environmental Planning and Assessment Act (1979), Council pursue the gazettal of Local Environment Plan Amendment No. 19 to Coffs Harbour City Local Environmental Plan 2000.**
- 3. That Development Application 11/06 for an 18 residential unit and five retail shop development with associated car parking on Lots 7 and 8, DP857331, 59-67 First Avenue Sawtell be approved, subject to technical conditions (see Appendix B).**
- 4. That those who lodged submissions on this Development Application be notified of Council's decision.**

Gina Vereker
Director of Planning Environment and Development

Attachments:

APPENDIX A:

SECTION 79C EVALUATION

DEVELOPMENT APPLICATION 11/06

A. the provisions of:

i. any environmental planning instrument, and

- North Coast REP

This plan has complied with in terms of height and impact on the amenity of the area.

- North Coast Design Guidelines

Suggested lighter, smaller elements in the design with hoods, eaves, verandahs and so on. This proposal complies with these guidelines in that there is variety in the design of the development.

- NSW Coastal Policy

Relevant goals have been complied with.

- SEPP 65 (Design Quality of Residential Flat Development)

The principles of this SEPP have been complied with in terms of amenity, aesthetics, safety and security, providing a mix of housing sizes and styles, built form, density and landscaping with eastern and northern orientation.

- State Environmental Planning Policy No. 71 – Coastal Protection

The proposed mixed-use development satisfies the aims and matters for consideration in this Policy. The development site, whilst located within the Coastal Zone, is not affected by coastal processes and is not visible from the coastline. The site is clear of vegetation and all earthworks will require sediment and erosion control to prevent contaminated runoff into the stormwater system.

- Coffs Harbour City Council, Local Environmental Plan 2000

The site is zoned 3C Business Town Centre, which allows and encourages the development of mixed commercial and residential uses in this area. Both the retail and residential units are in accordance with LEP 2000, in respect of the objectives of the zone, providing development that contributes to the retail or commercial or social needs of the community and is compatible with the Town Centre Environment. The Draft Conservation area for this property, incorporating the area between Second Avenue and the northern extent of the commercial zone has not yet been adopted from a Draft into a final form. No heritage controls exist for these buildings. No other clauses in the LEP are applicable to these properties.

ii. any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and

The development application is not affected by the provisions of any Draft LEP.

iii. any Development Control Plan (DCP),

- Draft Sawtell DCP

Compliance with the Draft Sawtell DCP has occurred in the areas of –

- Heritage – recognition of the area as a potential conservation area has meant the design of the buildings have a contemporary appearance with a ‘heritage slant’ to the design, in accordance with the recommendations in the Sawtell Master Plan. Some elements of heritage design have been incorporated into the building, with support from the Heritage Committee and Heritage Officer of Council.
- Design Principles – complies with the requirements of a verandah for protection from rain and sun; colours textures and materials to reflect the theme of the village; no overlooking or impact will be had on adjacent residential neighbours; be of a scale compatible with the streetscape; energy efficient development; building entry ways be at the same levels as footpaths; first floor residential units to incorporate decks, verandahs, hoods, eaves, etc; and a height of two stories to First Avenue.
- Setbacks to First Avenue to be 0m, and also to side setbacks can be 0 metres. This proposal provides a 0m setback to First Avenue and partly 0m to the side boundaries and partly stepped in.
- Car parking (at one per unit with a floor area less than 100m² and two per larger unit) and one space per 23m² of floor area for retail or restaurant. The DCP also requires car parking on site to be maximised and be solely off the rear laneway, with landscaping around the car park.
- Rear laneways to be upgraded and re-asphalted with roll over kerbing for the width of the development site – complies.
- Loading and unloading bays to be provided on site. A loading bay has been incorporated into the design with access off the rear laneway.
- Open space required is a minimum of 12m² per unit, either on a balcony or at ground level. Each unit provides in excess of this requirement – from 14m² to 35m² and all face north or east.
- Floor space ratio of 1:1 has been complied with. The site area is 2,124m² and the GFA of all buildings is 2,123m².

iv. the regulations (to the extent that may prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,

Clause 92 of the Environmental Planning and Assessment Regulation 2000 provides that the document entitled “NSW Coastal Policy 1997” is to be considered in the determination of the development application.

This proposal does not conflict in any way with the NSW Coastal Policy.

B. the likely impacts of that development, including environmental impacts, on both the natural and built environments, and social and economic impacts in the locality,

The development will not result in any adverse environmental impacts in terms of acid sulfate soils, or heritage significance. Social and economic impacts will be positive in terms of providing an attractive development and residential accommodation for different

household types and economic benefits from the construction and ongoing maintenance will be ongoing while the commercial and residential development will add economic benefit to nearby and surrounding properties.

C. the suitability of the site for the development,

The site is rectangular and regular in shape, slopes to the rear and is currently underdeveloped. The site is also surrounded by a mixture of 60s and 70s style commercial development and more contemporary residential development to the rear, on the western side of the laneway. Good vehicular access is provided to the site via the rear laneway.

The site is appropriately zoned for the mixed-use development, while the proposal complies with Council's DCPs for this area in terms of scale and size of development proposed.

D. any submissions made in accordance with this Act or the regulations,

The application was advertised and notified and 13 submissions were received from nearby property owners and/or occupiers primarily concerned about the loss of the older style buildings on site and the contemporary development and compliance with the Master Plan and DCP. One letter of unconditional support was received for the proposal.

All technical sections of Council support the proposal subject to conditions.

The development does comply with Council's DCP for this area and the areas of concern by the neighbours has been addressed in the report.

E. the public interest,

The application is considered to be within the public interest.

APPENDIX B

Baird Salvarinas Hizar Architects Pty Ltd - 18 Residential Units/5 Retail Shops Lots 7 and 8, DP 857331, No. 59-67 First Avenue, Sawtell

Development Application No. 11/06 Schedule of Conditions

Additional Details or Applications:

1. Access and facilities for disabled persons being provided in accordance with the Building Code of Australia provisions. Details are to be submitted **prior to issue of the Construction Certificate**. The developer's attention is drawn to the provisions of the Disability Discrimination Act 1992.
2. A separate application is to be made to Council by the licensed plumber and drainer **prior to the commencement of any sanitary plumbing and drainage work on site**.
3. Submission of an application for Construction Certificate complying in all respects with the provisions of Environmental Planning and Assessment Act, Local Government Act and the Building Code of Australia. Work on any building shall not commence until the Construction Certificate has issued and Council has been notified of the Principal Certifying Authority.
4. Individual water meters are to be provided to all units and common areas. A water reticulation plan is to be submitted to Council for approval prior to water fitting work commencing.
5. *The following works are to be provided to serve the development with the works conforming with the standards and requirements set out in Council's Technical Guidelines for and .*
 - *Full lane reconstruction including kerb and gutter, pavement and asphalt surfacing; and reconstruction of sewer and stormwater mains clear of buildings. (Submission of plans for approval by Council **prior to the issue of a Construction Certificate** for all works proposed on the footpath adjacent to the site.)*

These works are to be completed prior to occupation of the development unless other arrangements satisfactory to Council for their completion at some other time are made.

No engineering works are to be undertaken until plans and specifications have been approved by Council.

All work is to be at the developer's cost.

Plans and specifications submitted later than six (6) months from the date of development approval shall comply with the Technical Guidelines for Subdivision and Development current at a date six (6) months prior to such submission.

Waste Requirements:

6. The following are to be provided prior to occupancy:
 - Residential waste should cater for at least half recyclable goods e.g. 1 x 1100L bin for recycling (future flexibility for organic waste in 2006).
-

- If bin washing is to be carried out, water must drain to sewer and comply with requirements of Liquid Trade Waste Guidelines 2005.
- Internal waste storage space is to be provided for source separation of waste within individual units.
- Clear signage is to be provided indicating waste bins and contents.
- Waste storage area is to be accessible to waste service collection and users.

Landscaping:

7. Landscaping provided in accordance with the approved landscaping plan and maintained in accordance with that plan at all times.

These works are to be completed prior to occupation of the development unless other arrangements satisfactory to Council for their completion at some other time are made.

Car Parking:

8. *Forty-three (43)* car parking spaces (sealed and linemarked) being provided on the development site. All car parking and vehicular manoeuvring areas being constructed in accordance Off-Street Carparking Development Control Plan. Carparking areas are to be maintained in a serviceable condition at all times. Details of car park paving and layout being submitted **prior to issue of the Construction Certificate**.

Sediment & Erosion Control:

9. Where excavation works or removal of vegetation is to take place on the site, control measures in Council’s Erosion & Sediment Control Policy and Practice for Building & Development Sites to prevent the erosion of soil are to be undertaken at each appropriate construction stage.

Pollution Control:

10. Construction works are to be to the following hours:

Monday to Friday	7.00 a.m. - 6.00 p.m.
Saturday	7.00 a.m. - 1.00 p.m. if inaudible from adjoining residential properties,
Otherwise	8.00 a.m. - 1.00 p.m.

No construction work is to take place on Sunday and Public Holidays.

11. Effective measures shall be taken to suppress dust emissions during the course of , details of dust control being submitted to Council for approval **prior to issue of the Construction Certificate**.

Demolition:

12. All materials containing asbestos are to be handled in accordance with the relevant requirements of WorkCover , the Occupational Health and Safety Act and Australian Standard AS 2601-2001 “*The Demolition of Structures*”.
13. No work is to be commenced upon the demolition or removal of the building until such time as the appropriate fees for disconnection of water and sewerage services are paid to Council where such services are no longer required.
14. The sewer drainage system shall be appropriately sealed to prevent ingress of water and debris into the Council main.

15. Arrangements are to be made with Council for the withdrawal of the garbage services and collection of waste bins.
16. A damage deposit of \$500.00 shall be lodged with Council as a bond to cover possible damage to Council property that may result during the removal of demolition material from the site. The deposit is to be lodged with Council and arrangements made for a dilapidation survey to be undertaken to assess the condition of Council property adjoining the land prior to the commencement of demolition work.
17. All waste building materials shall be recycled or disposed of to an approved waste disposal depot. No burning of materials is permitted on site. The site shall be graded to an even level with temporary erosion control measures being erected and maintained until the exposed areas of the site have suitably stabilised with grass cover.
18. All materials containing asbestos that are damaged or defective are to be handled in accordance with the Regulations under the Construction Safety Act and the Code of Practice issued by the New South Wales Department of Health, as well as the requirements of the Environment Protection Authority.

Energy Efficiency:

19. Hot water system(s) provided within the development is/are to comply with the requirements of Council's "Energy Efficiency Information Sheet". Heat pump type hot water units may cause a noise nuisance and are to be installed in a manner that will mitigate potential nuisance.

All kitchen and hand basin taps and washing machine(s) is/are to be fitted with flow restrictors and all showerheads are to be AAA rated (low flow).

All toilets are to be dual flush systems.

20. Prior to the issue of a **Construction Certificate**, certification from an accredited consultant* is to be provided to Council to the effect that the development is to achieve a 3.5 star NatHERS (Nation Wide Housing Energy Rating Scheme) rating or better.* = a consultant who is accredited by the NSW House Energy Rating Management Body.

Water & Sewerage Services:

21. The **Construction Certificate not being released** until a Certificate of Compliance pursuant to Division 5 of Part 2 of Chapter 6 of the Water Management Act 2000 evidencing that adequate arrangements have been made for the provision of water and sewerage services to and within the development is produced to Council.

a. The current contribution rate is:	Amount	Total
	100m²\$	(x .3 ET)\$
Works to satisfy increased demand within the area for shops 463.5m ² of industrial/commercial development		
Water	Headworks	4,441.66
	Reticulation	1,684.77
Sewer	Headworks	1,464.27
	Reticulation	2,719.36
Amount Payable		14,336.13

b. The current contribution rate is:	Amount	Total
	\$	\$
Works to satisfy increased demand within the area for 16 small units		

Water	Headworks	3,109.16	49,746.56
	Reticulation	1,179.34	18,869.44
Sewer	Headworks	1,024.99	16,399.84
	Reticulation	1,903.55	30,456.80
Amount Payable			115,472.64

c. The current contribution rate is:		Amount	Total
		\$	\$
Works to satisfy increased demand within the area for two large units			
Water	Headworks	4,441.66	8,883.32
	Reticulation	1,684.77	3,369.54
Sewer	Headworks	1,464.27	2,928.54
	Reticulation	2,719.36	5,438.72
Amount Payable			20,620.12

	Total
	\$
a)	14,336.13
b)	115,472.64
c)	20,620.12
Total	150,428.89
Minus Credits	<u>66,108.10</u>
Total Amount Payable	<u>\$84,320.79</u>

Developer Contributions:

22. Payment to Council of contributions, at the rate current at the time of payment, towards the provision of the following public services or facilities:

Notes

1. The contributions are to be paid prior to release of any Construction Certificate unless other arrangements acceptable to Council are made.
2. The rates will be adjusted in accordance with the procedures set out in Council's Section 94 Contributions Plans. The applicant is advised to confirm the contribution rate applicable at the time of payment as rates are revised at least annually.
3. If the development is to be staged, contributions are to be paid on a pro rata basis in respect of each stage.

	\$	\$
	Per Small	Per Large
	Unit (x 16)	Unit (x 2)
- Coordination and Administration	191.55	297.96
- Coffs Harbour Road Network	944.78	1,469.65
- Surf Rescue Equipment	49.19	76.51
- Regional Libraries	123.92	192.76
- Beach Protection Works	64.79	100.78
- Regional Open Space	208.34	324.08
- District Open Space	689.64	1,072.77
- Total	36,355.04	7,069.04

The Section 94 contribution is currently \$39,889.56 for the 18-unit development.

Contributions have been imposed under the following plans:

- Regional, District & Neighbourhood Facilities 2004
- Coffs Harbour Road Network 2003
- Coffs Harbour Local Roads, Trunk Drainage and Mines
- Extractive Industries 1999
- Surf Rescue Equipment 2003

The Contribution Plans may be inspected at the Council Administration Offices, 2 Castle Street, Coffs Harbour or on Council's web site, www.coffsharbour.nsw.gov.au.
