



AGENDA

PLANNING COMMITTEE MEETING

Tuesday 24 June 2008

Chairman: Mr Max Boyd AM

**Administrators: Mr Max Boyd AM
Mr Frank Willan**

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ITEMS FOR CONSIDERATION OF THE COMMITTEE:

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REPORTS THROUGH GENERAL MANAGER

REPORTS FROM DIRECTOR PLANNING & REGULATION

MATTERS FOR CONSIDERATION UNDER SECTION 79(C)(1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

The following are the matters Council is required to take into consideration under Section 79(C)(1) of the Environmental Planning and Assessment Act 1979 in assessing a development application.

MATTERS FOR CONSIDERATION

1. In determining a development application, a consent authority shall take into consideration such of the following matters as are of relevance to the development the subject of that development application:
 - (a) the provisions of
 - (i) any environmental planning instrument; and
 - (ii) any draft environmental planning instrument that is or has been placed on exhibition and details of which have been notified to the consent authority, and
 - (iii) any development control plan, and
 - (iv) any matters prescribed by the regulations,that apply to the land to which the development application relates,
 - (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts of the locality,
 - (c) the suitability of the site for the development,
 - (d) any submissions made in accordance with this Act or the regulations,
 - (e) the public interest.

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P1 [PR-PC] Development Application DA07/0471 for an Attached Dual Occupancy Being Part 2 & Part 3 Storeys, Swimming Pools & Demolition of Existing Building at Lot 2 DP 511812, No. 14 Moss Street, Kingscliff

ORIGIN:

Development Assessment

FILE NO: DA07/0471 Pt2

SUMMARY OF REPORT:

Council at its meeting of 3 June 2008 resolved that the item be deferred to be reported back to Council following further investigation of both the location and plans submitted.

In response to the resolution from Council, further investigation regarding the proposal's height and view impacts were undertaken. Council officers also met with the applicant to discuss the proposal. An addendum to this report is attached and includes a revised assessment in accordance with Council's Development Control Plan Section B18 and a submission from the applicant.

The applicant concludes the building cannot be further reduced in height as additional excavation would result in unnecessary disturbance to acid sulfate soils and the need for dewatering.

It is noted a Class One Appeal has been lodged with the Land and Environment Court.

The application seeks consent to construct 1 x 3 bedroom and 1 x 4 bedroom units within a part two and part three storey configuration. On-site car parking is provided within garages in the basement level, which are accessed internally via a lift from the proposed driveway.

A SEPP No. 1 submission is sought regarding the number of storeys of the development as the site has a 2 storey limitation as per the Tweed Local Environmental Plan 2000.

Six submissions have been received in relation to the proposal.

RECOMMENDATION:

That: -

- 1. State Environmental Planning Policy No. 1 objection to Clause 16 of Tweed Local Environmental Plan 2000 regarding the height of the building be supported and the concurrence of the Director-General of the Department of Planning be assumed.**

2. Development Application DA07/0471 for an attached dual occupancy being part 2 and part 3 storeys and demolition of the existing building at Lot 2 DP511812 No. 14 Moss Street, Kingscliff be approved subject to the following conditions: -

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos: 0.01, 1.01 - 1.04, 2.01 - 2.04, 3.01 - 3.04, prepared by Lightwave and dated 25/02/2008, except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0115]

3. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within or adjacent to the subject property.

[GEN0135]

4. The development is to be carried out in accordance with Councils Development Design and Construction Specifications.

[GEN0265]

5. This approval does not include jetties.

[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

6. Section 94 Contributions

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

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

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

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

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

| | |
|---|----------------|
| (a) Tweed Road Contribution Plan: | |
| 1.3 Trips @ \$782 | \$1,017 |
| S94 Plan No. 4 | |
| Sector6_4 | |
| (b) Open Space (Casual): | |
| 0.3054 ET @ \$167 | \$51 |
| S94 Plan No. 5 | |
| (c) Open Space (Structured): | |
| 0.3076 ET @ \$780 | \$240 |
| S94 Plan No. 5 | |
| (d) West Kingscliff – Open Space: | |
| 0.3076 ET @ \$2600 | \$800 |
| DCP Section B4 | |
| S94 Plan No. 7 | |
| (e) Shirewide Library Facilities: | |
| 0.3082 ET @ \$688 | \$212 |
| S94 Plan No. 11 | |
| (f) Eviron Cemetery: | |
| 0.374 ET @ \$131 | \$49 |
| S94 Plan No. 13 | |
| (g) Community Facilities (Tweed Coast - North) | |
| 1 ET @ \$492 | \$492 |
| S94 Plan No. 15 | |
| (h) Emergency Facilities (Surf Lifesaving): | |
| 0.31 ET @ \$200 | \$62 |
| S94 Plan No. 16 | |
| (i) Cycleways: | |
| 0.3068 ET @ \$352 | \$108 |
| S94 Plan No. 22 | |
| (j) Regional Open Space (Casual) | |
| 0.3076 ET @ \$855 | \$263 |
| S94 Plan No. 26 | |

(k) Regional Open Space (Structured):**0.3072 ET @ \$2327****\$715****S94 Plan No. 26**

[PCC0215/PSC0175]

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

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

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

Water DSP5: 0.34 ET @ \$9997 \$3,399

Sewer Kingscliff: 1 ET @ \$4804 \$4,804

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

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

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

[PCC0265/PSC0165]

8. In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 1979 (as amended), a construction certificate for **SUBDIVISION WORKS OR BUILDING WORKS** shall NOT be issued until any long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

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

All earthworks shall be contained wholly within the subject land. Detailed engineering plans of cut/fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.

[PCC0485]

10. A detailed plan of landscaping is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate.

[PCC0585]

11. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for any works within the road reserve.

[PCC0885]

12. Council will not permit ground anchors (to retain sacrificial sheet piling for basement excavations) within Council or private property, without prior consent from the property owner being obtained. If the land owner is Council, approval is required from the General Manager or his delegate, and the anchors are required to be removed upon completion of the works, unless a compensation amount is negotiated with Council.

[PCC0955]

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

- (a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.
- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management. Typical water sensitive features include infiltration, maximising permeable/landscaped areas, stormwater retention /detention/reuse, and use of grass swales in preference to hard engineered drainage systems.

[PCC1105]

14. An application shall be lodged and approved by Tweed Shire Council under Section 68 of the Local Government Act for any water, sewerage or drainage works prior to the issue of a construction certificate.

[PCC1195]

15. Documentary evidence is to be provided to demonstrate that the existing easement for drainage on Lot 2 DP 511812 is extinguished PRIOR to release of the construction certificate.

[PCCNS01]

16. Prior to the issue of a Construction Certificate the applicant shall demonstrate to the satisfaction of the General Manager or his delegate, that the proposed materials to be used on the roof of the development will not result in adverse impacts for neighbouring properties.

[PCCNS02]

17. A financial contribution of \$44,536 (calculated at the rate of \$1004/m²) for the portion of the boardwalk fronting the subject property is to be provided to Council in lieu of the proposed access pathway prior to issue of the construction certificate.

[PCCNS03]

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0005]

19. The erection of a building in accordance with a development consent must not be commenced until:
- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
 - (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - (c) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and

- (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

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

[PCW0225]

21. Residential building work:

Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - * in the name and licence number of the principal contractor, and
 - * the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - * the name of the owner-builder, and
 - * if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.

- (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

22. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every fifteen (15) persons or part of fifteen (15) persons employed at the site. Each toilet provided must be:-

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

[PCW0245]

23. Where prescribed by the provisions of the Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the site is prohibited.

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

[PCW0255]

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

- (a) The person must, at the person's own expense:
 - (i) preserve and protect the building from damage; and
 - (ii) if necessary, underpin and support the building in an approved manner.

- (b) The person must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars to the owner of the proposed work.

[PCW0765]

25. The building is to be protected from attack by termites by approved methods in accordance with the provisions of Australian Standard AS 3660.1, and:

- (a) Details of the proposed method to be used are to be submitted to and approved by the Principal Certifying Authority prior to start of works; and
- (b) Certification of the works performed by the person carrying out the works is to be submitted to the PCA; and
- (c) A durable notice must be permanently fixed to the building in a prominent location, such as in the electrical meter box indicating:-
 - (i) the method of protection; and
 - (ii) the date of installation of the system; and
 - (iii) where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and
 - (iv) the need to maintain and inspect the system on a regular basis.

Note: Underslab chemical treatment will not be permitted as the only method of treatment unless the area can be retreated without major disruption to the building.

[PCW0775]

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

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

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

[PCW0985]

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

[PCW1065]

28. Sewer main within site is to be accurately located and the Principal Certifying Authority advised of its location and depth prior to start of any building works.

[PCWNS01]

29. A demolition work plan is to be submitted to and approved by Council's General Manager or delegate prior to commencement of work.

[PCWNS02]

30. A dilapidation report detailing the current structural condition of the adjoining neighbouring buildings is to be prepared and endorsed by a qualified structural engineer. The report is to be submitted to the PCA prior to the commencement of works.

[PCWNS03]

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

[DUR0005]

32. Construction site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council: -

Monday to Saturday from 7.00am to 7.00pm

No work to be carried out on Sundays or Public Holidays

The proponent is responsible to instruct and control subcontractors regarding hours of work.

[DUR0205]

33. Minimum notice of 48 hours shall be given to Tweed Shire Council for the capping of any disused sewer junctions. Tweed Shire Council staff in accordance with the application lodged and upon excavation of the service by the developer shall undertake Works.

[DUR0675]

34. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited.

[DUR0815]

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

[DUR0905]

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

[DUR0985]

37. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate.

[DUR0995]

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

- Noise, water or air pollution
- Minimise impact from dust during filling operations and also from construction vehicles
- No material is removed from the site by wind

[DUR1005]

39. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

[DUR1795]

40. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils adopted Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to the issue of final occupation certificate.

[DUR1875]

41. Swimming Pools (Building)

- (a) The swimming pool is to be installed and access thereto restricted in accordance with Council's "Code for the Installation of New Swimming Pools" and Australian Standard AS 1926-1986 (Copy of code enclosed).
- (b) Swimming pools shall have suitable means for the drainage and disposal of overflow water.
- (c) The pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.

[DUR2075]

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

[DUR2085]

43. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction.
- [DUR2185]
44. A garbage storage area shall be provided in accordance with Council's "Code for Storage and Disposal of Garbage and Other Solid Waste".
- [DUR2195]
45. Appropriate measures are to be put in place during the construction and/or demolition period to prevent the transport of sediment from the site. Should any material be transported onto the road or any spills occur it is to be cleaned up prior to cessation of same days work and/or commencement of any rain event.
- [DUR2405]
46. The site shall not be dewatered, unless written approval to carry out dewatering operations is received from the Tweed Shire Council General Manager or his delegate.
- [DUR2425]
47. During construction, a "satisfactory inspection report" is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.
- [DUR2445]
48. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:
- (a) internal drainage, prior to slab preparation;
 - (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
 - (c) external drainage prior to backfilling.
 - (d) completion of work and prior to occupation of the building.
- [DUR2485]
49. Plumbing
- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
 - (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.
- [DUR2495]
50. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position.
- [DUR2505]
-

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

[DUR2535]

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

[DUR2545]

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

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

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

[DUR2555]

54. Where two (2) or more premises are connected by means of a single water service pipe, individual water meters shall be installed to each premise beyond the single Council water meter (*unless all the premises are occupied by a single household or firm*).

[DUR2615]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

55. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0205]

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

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

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

For multiple allotments having single access points, or other difficult to identify properties, specific arrangements should first be made with Council and emergency services before street number identification is provided.

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

[POC0265]

57. Prior to the issue of a final occupation certificate adequate proof and/or documentation is to be submitted to the Principal Certifying Authority to identify that all commitment on the BASIX "Schedule of Commitments" have been complied with.

[POC0435]

58. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all s68h2 permanent stormwater quality control devices.

[POC0985]

59. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.

[POC1045]

60. A second dilapidation report is to be prepared and endorsed by a qualified structural engineer at the completion of the works to ascertain if any structural damage has occurred to the adjoining neighbouring buildings. The report is to be compared with the first report and recommend a course of action to carry out repairs if required. The report is to be submitted to PCA prior to the issue of an occupation certification.

[POCNS01]

61. Documentary evidence is to be provided PRIOR to the issue of an occupation certificate that a 3m wide easement has been registered over the existing sewer line.

[POCNS03]

USE

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

[USE0125]

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

[USE0225]

64. All externally mounted air conditioning units, swimming pool pumps, water tank pumps and any other mechanical plant and equipment shall be acoustically treated so as to avoid the creation of offensive, or intrusive noise to any occupant of neighbouring or adjacent premises.
- [USE0235]
65. Upon receipt of a noise complaint that Council deems to be reasonable, the operator/owner is to submit to Council a Noise Impact Study (NIS) carried out by a suitably qualified and practicing acoustic consultant. The NIS is to be submitted to the satisfaction of the General Manager or his delegate. It is to include recommendations for noise attenuation. The operator/owner is to implement the recommendations of the NIS within a timeframe specified by Council's authorised officer
- [USE0245]
66. **Swimming Pools (Building)**
- (a) It is the responsibility of the pool owner to ensure that the pool fencing continues to provide the level of protection required regardless of and in response to any activity or construction on the adjoining premises. Due regard must be given to the affect that landscaping will have on the future effectiveness of the security fencing (Section 7 Swimming Pool Act 1992).
- (b) The resuscitation poster must be permanently displayed in close proximity to the swimming pool (Section 17 Swimming Pool Act 1992).
- [USE1295]
3. Should Council resolve to refuse the development application that it also resolve to defend the matter in the Land and Environment Court.

REPORT:

Applicant: Mr T Maddigan
Owner: Charminn Pty Ltd
Location: Lot 2 DP 511812 No. 14 Moss Street, Kingscliff
Zoning: 2(b) Medium Density Residential
Cost: \$1,200,000

BACKGROUND:

The subject site is regular in shape and slopes from the Moss Street frontage from 7.5m to 0.5m AHD at the rear of the property fronting Cudgen Creek. Vehicular access to the site is permitted from Moss Street. The site is 543.8m² and contains an existing dwelling. The site contains two title restrictions including easements for a sewer line and a drainage easement. The sewer line extends the rear of the site. Council has approved the extinguishment of the drainage easement, however this has not been formalised with the Land Titles Office.

A development application was lodged on 8 May 2007 for the construction of 1x3 bedroom and 1x4 bedroom units within a part two and part three storey configuration. The proposal also involves the demolition of all existing structures.

On-site car parking is provided within garages in the basement level, which are accessed internally via a lift from the proposed driveway.

The development application has been notified twice as a result of amendments made to the proposal. Six submissions have been received in response to the initial exhibition period. As a result of the issues raised in the submissions and those raised by Council staff the applicant amended the development. The main amendment involved the reduction of part of the buildings' overall height. No submissions were received in response to the amended proposal.

SITE DIAGRAM:



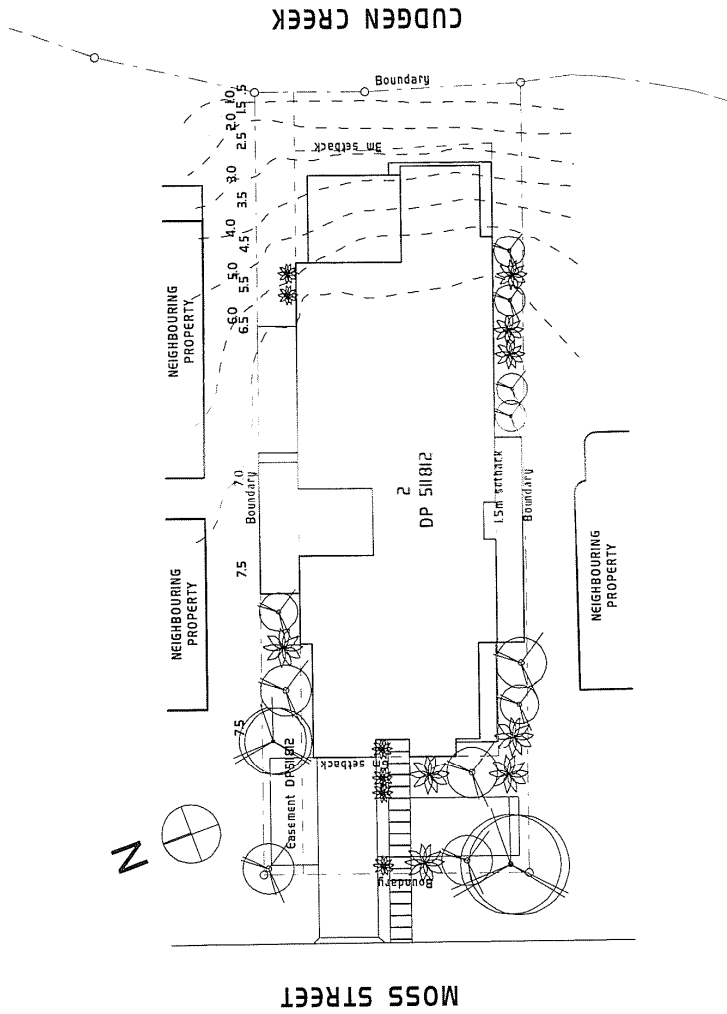
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Murwillumbah, NSW, 2484

Tweed Shire Council
Lot 2 DP 511812
No. 14 Moss Street, Kingscliff
File: G:\GIS_Jobs\Site Plan.Wor

Site Plan

Sheet: 1 of 1

DEVELOPMENT PLANS:



Job No. 1140 Issue 25.02.08 J Scale 1:200 Dwg No. DA 0.01

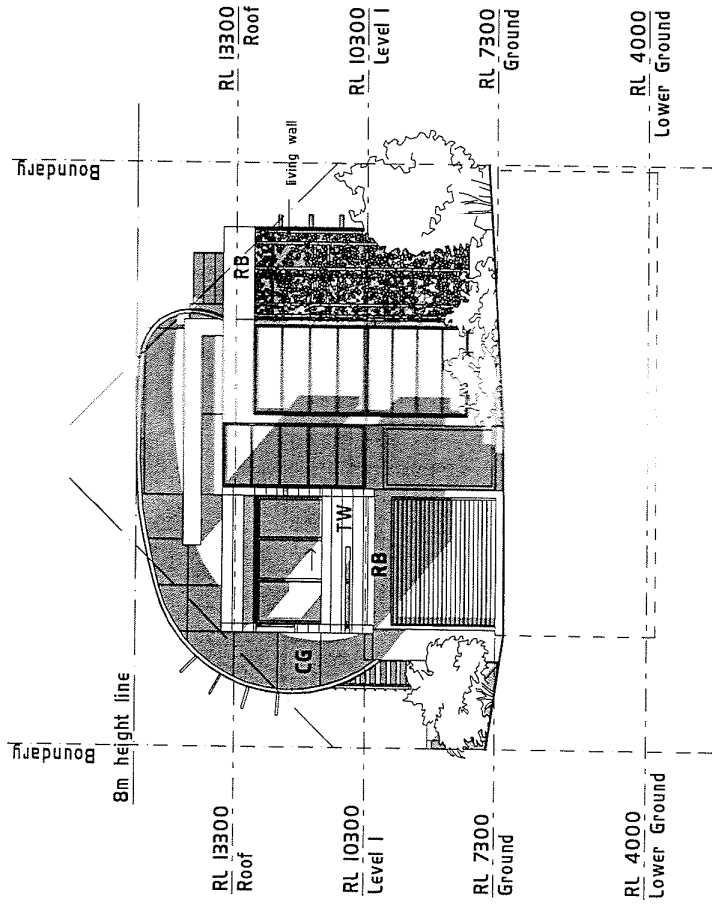


APPLICATION FOR DEVELOPMENT APPROVAL
 Tony Madigan
 CLIENT

Site Plan

14 Moss Street

LOT 2 on DP511812



- MATERIALS LEGEND**
- RB - Rendered blockwork - Painted finish
 - TW - 'Twinson' wall cladding
 - CG - Curtain glass
 - RC - Feature roof cladding
 - LV - Louvre sun awnings
 - BI - Rendered block balustrade
 - BZ - Curtain glass balustrade

14 Moss Street

LOT 2 on DP51812

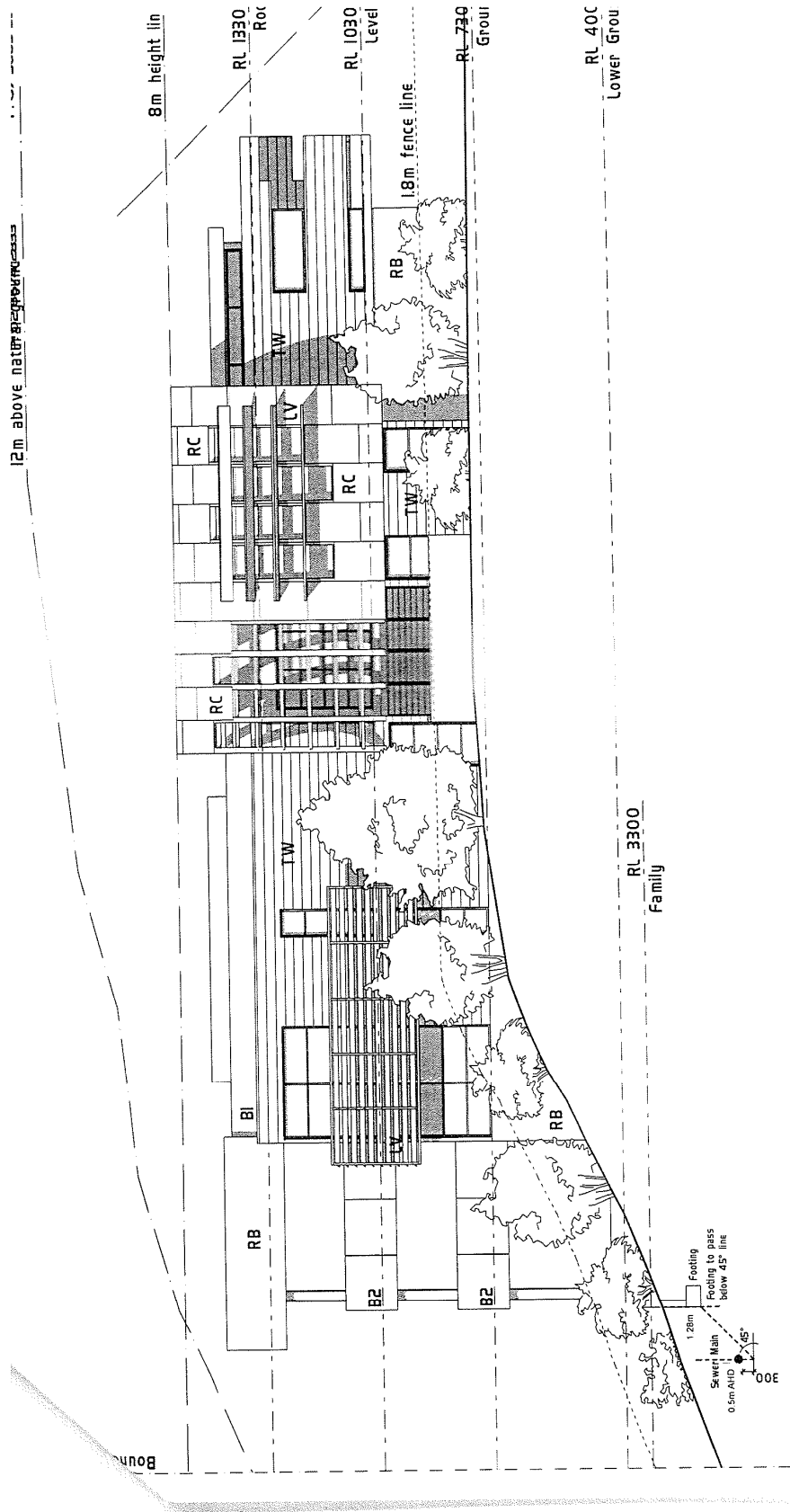
APPLICATION FOR
DEVELOPMENT APPROVAL
by Western Elevation

Tony Madigan

CLIENT

Job No. 1140 Issue 25,02,08 J-Scale 1:100 DWG





MATERIALS LEGEND

- RB - Rendered blockwork - Painted finish
- TW - Twinson wall cladding
- CG - Curtain glass
- RC - Feature roof cladding
- LV - Louvre sun awnings
- BI - Rendered black balustrade
- B2 - Curtain glass balustrade

Job No. 1140
 Issue 25.02.08
 J Scale H 00 DWG No. DA



APPLICATION FOR DEVELOPMENT APPROVAL
 Northern Elevation

Tony Madigan

CLIENT

14 Moss Street

LOT 2 on DPS1B2

P. 02 6674 2888 F. 07 3009 9



- MATERIALS LEGEND**
- RB - Rendered blockwork - Painted finish
 - TW - 'Twinson' wall cladding
 - CG - Curtain glass
 - RC - Feature roof cladding
 - LV - Louvre sun awnings
 - BI - Rendered block balustrade
 - B2 - Curtain glass balustrade

Job No. 1140 Issue 25/02/08 DA Scale 1:100 Dwg No.



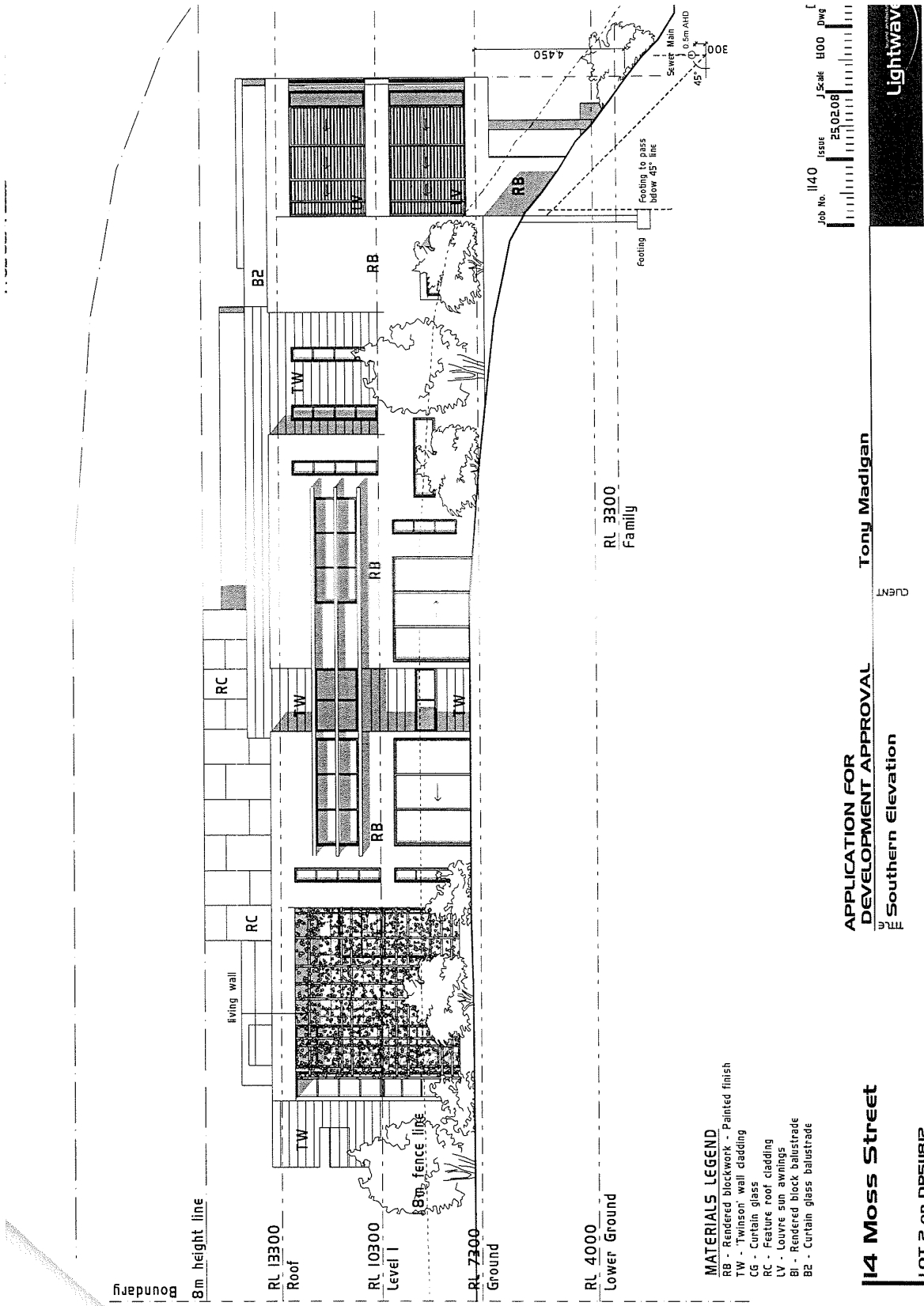
APPLICATION FOR DEVELOPMENT APPROVAL
 Eastern Elevation

Tony Madigan

CLIENT

14 Moss Street

LOT 2 on DP51812



- MATERIALS LEGEND**
- RB - Rendered blockwork - Painted finish
 - TW - 'Twinson' wall cladding
 - CG - Curtain glass
 - RC - Feature roof cladding
 - LV - Louvre sun awnings
 - BI - Rendered block balustrade
 - B2 - Curtain glass balustrade

Job No. 1140 Issue 1 Scale B100 DWG
25.02.08



APPLICATION FOR DEVELOPMENT APPROVAL
 CLIENT: Tony Madigan
 Southern Elevation

14 Moss Street
 LOT 2 on DP51812

CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**(a) (i) The provisions of any environmental planning instrument**Tweed Local Environmental Plan 2000Clauses 4, 5 and 8

The proposal is consistent with the aims and the ecological sustainable development principles outlined within the plan.

The subject site is zoned 2(b) Medium Density Residential. Multi dwelling housing developments are permissible in the zone with consent.

The primary zone objective relates to the provision of medium density housing which achieves good design outcomes. The applicable secondary objective refers to discouraging the under-utilisation of land for residential purposes.

The applicant has provided the following in relation to the objectives of the zone:-

‘The proposed development incorporates a level of design detail and consideration to adjacent allotments that will ensure that a quality urban design outcome will be achieved upon construction. In this regard, and with reference to the above, the proposed Dual Occupancy is considered to be consistent with the objectives of the 2(b) zone and represents a suitable use of residential zoned land. The proposed development is defined as ‘Dual Occupancy’ and is permissible with consent in the zone’.

Comment:

The applicant’s response in relation to the objectives of the zone is supported in this instance. The site has been maximised and developed efficiently given the constraints affecting the site. This is demonstrated further throughout this report.

Clause 15 of the TLEP requires that Council be satisfied that the subject land has the benefit of essential services prior to issuing consent. All essential services are available to the site.

Clause 16 aims to ensure that the height and scale of development is appropriate to its location, surrounding development and environmental characteristics of the land. The subject site is affected by a 2 storey limitation. In accordance with the definition of a storey as per the TLEP 2000, the proposal represents a partial 2 and partial 3 storey development. The areas of the building which represent 3 storeys include the curved architectural roof treatment and the rear portion of the building (the boat storage/sewing area) fronting Cudgen Creek. The SEE states the area of non-compliance is approximately 14.1m in length.

The applicant seeks consent to vary from this development standard by way of a SEPP No. 1 objection which is discussed later in this report.

Clause 35 relates to the management of disturbance of acid sulfate soils (ASS) to minimise subsequent impacts. Council's Environmental Health Officer has reviewed the proposal and advised the site is affected by land classes 1 and 5. The applicant submitted a preliminary Acid Sulfate Soil Assessment for Council's consideration. The Officer agreed with the findings of the report which indicated the development and associated works are unlikely to disturb ASS.

North Coast Regional Environmental Plan 1988

Clause 32(b)

This clause applies to the subject site as the NSW Coastal Policy applies. The proposal is consistent with the NSW Coastal Policy, Coastline Management Manual and North Coast Design Guidelines. The development will not result in overshadowing of the beach or waterfront open space.

Clause 43 of the North Coast Regional Environmental Plan 1988 (NCREP) provides guidelines for Council when considering residential development. These controls include density, the environmental constraints on the land and road widths. The density of the proposed development has been maximised without adversely affecting the environmental features of the land.

State Environmental Planning Policies

SEPP No. 1 enables Council to assume the Director's concurrence to a variation to a development standard where it is considered that strict adherence is both unnecessary and or unreasonable in the circumstances of the case.

As discussed previously the applicant has submitted a SEPP No. 1 to vary the number of storey permitted on the site.

Applicant's submission:

The applicant has based their justification for the variation on the judgements supported by the Land and Environment Court, particularly the judgement of Lloyd J in Winten Property Group Limited v North Sydney Council (2001):

“Is the development appropriate to its location and surrounding development?”

‘The site is located within the 2(b) zone and has therefore been identified for and previously developed as such, for the purposes of medium density residential housing. Inspection of the site confirms that the character is defined by the form and siting of existing buildings in the area and the fact that

the majority of same incorporate elements if not a majority form of three and four storeys.

The fact that the area is now covered by a 2 storey height restriction has been acknowledged, with the proposal presenting largely as a 2 storey structure from Moss Street, with the architectural treatment of the building ensuring that the upper level roof level appears primarily as a roof structure as opposed to a legitimate level in its own right.

The upper level ridge cap of the proposal will be set at 17.0m AHD. This compares favourably to surrounding developments many of which incorporate a higher physical height than that proposed. Whilst there are some similarities in actual height between the proposal and the existing non conforming structures to the east and the west, it is pertinent to note that the upper level is effectively presented as a 2 storey form and does not cover the entire roof form. Likewise, the rear extent of non compliance is limited largely to balcony forms only.

The encroachment to three storeys at the rear of the building is only visible from the creek itself and in the context of surrounding properties will present as far more compliant than that existing (refer 4 storey buildings to the east and west of site). 'Given the slope of the land to the very rear (adjacent to the creek) it is unavoidable that floor plates will continue, thus creating an extension of liveable area depicting a liveable third floor, albeit a level physically lower than the two (2) fronting Moss Street.

The future character of the area will largely be dictated by both the continued development of medium density forms, however in terms of scale, the future character will more commonly defined by the provisions of DCP 48, which will commonly sit at a height of 8m. Given the slope of the land and the character of existing buildings, it is expected that some variation to this requirement will be required in most instances. In this regard, the proposed development largely complies with the 8m height restriction, with the obvious exceptions of where the slope to the rear arises and the central upper floor level roofed area. In this regard, it is noted that the upper level roof form incorporates a curved form, thereby softening the visual prominence as opposed to more conventional roof forms. The latter effort is further assisted by the fact that no podium is proposed and flat roof forms are proposed at the lower levels.

When viewed from Moss Street, the area which exceeds 8m (as viewed by the public) is limited to an area of only 6.5m². The latter represents a mere 7% of the front façade coverage, thereby further demonstrating that the proposal represents a strong consistency with a 2 storey form as envisioned in DCP 48'.

'With respect to the character and amenity of properties to the rear, it is pertinent to note that the subject development will result in no unreasonable impact on these lands. In this respect, all views are maintained within reason, whilst no concerns exist in relation to overshadowing, privacy or the like. No view loss is expected'.

‘Is the development appropriate to the environmental characteristics of the land?’

‘The form of the proposed development and indeed the introduction of the three (3) storey elements is directly related to the slope of the land and a need to effectively keep some consistency with the forms of surrounding developments.

Significant efforts have been made to ensure that earthworks are limited, primarily by way of introducing the proposed car lift arrangement, which in turn has allowed a lowering of the building’.

‘Other points of relevance to this objection are outlined below:

- a) No view loss is expected in relation to the properties to the rear or those adjacent
- b) No overshadowing impacts are to be created on surrounding allotments’.

‘Given the analysis of this submission, we consider that to require compliance with the standard would be unreasonable and unnecessary in the circumstances of the case. Indeed, given the constraints posed by the site and surrounds and the desired future character of the area, the application of variation to the standard would be unlikely to have adverse impacts on the continued application of the control in other instances’.

The applicant’s SEPP No. 1 is attached to this report.

Assessment of the Applicant’s Submission

The proposed development is consistent with the scale of existing developments. When viewed from Moss Street the surrounding properties appear as two to three storey developments, the proposal appears as a two storey development from this frontage. The site slopes towards the creek which results in the three storey portion of the development fronting Cudgen Creek being largely hidden from Moss Street. When viewed from Cudgen Creek the existing developments appear as two to four storeys. This proposal appears as a three storey development.

Adjoining properties to the site will lose some of the view corridor towards Cudgen Creek. It is noted this corridor exists across the subject site. The proposed setback from the Cudgen Creek boundary will enable the retention of some of this view corridor. The adjoining properties will however retain the uninterrupted view of the Creek immediately east.

Overshadowing on adjoining developments will occur. The site located immediately south (16 Moss Street) will be most affected on June 21. The proposal however will not unreasonably overshadow 16 Moss Street, approximately 50% of the rear of the site will be free of shadow by 12 noon.

It is recommended that the SEPP1 objection be supported and concurrence to the variation to the number of storeys be assumed in this instance.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

Basix certificates were submitted demonstrating that the proposal meets the required targets.

SEPP No. 71 – Coastal Protection

The proposal was reviewed with regard to clause 8 of the SEPP. It is considered that the proposed development is not inconsistent with the SEPP.

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

There are no draft EPI's applicable to the proposed residential development.

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

Section A2 – Site Access and Parking Code

The assessment below indicates the proposal is consistent with the required on-site car parking as per Section A2 of the DCP for multi dwelling housing. Council's Development Engineer has reviewed the proposal and raised no objection to the proposal.

| Required | Proposed | Complies |
|--|--|-----------------|
| 2 spaces for 3 or more bed units = 4 spaces | 4 on-site car spaces 1 car wash bay | Yes |

Section A1 – Multi Dwelling Housing

The development application was submitted to Council prior to the adoption of the revised Section A1 of the DCP, as such the previous version of the Section has been utilised in the assessment. Design guidelines which are included in multiple sections of the DCP have not been reproduced in individual sections of this report.

An assessment of the acceptable solutions is provided below.

| Standard | Acceptable Solution | Proposed | Consistent |
|------------------------------------|---|--|--|
| Floor Space Ratio | 0.5:1 | Approximately 0.8:1 | Refer to performance criteria assessment below |
| Minimum Landscaped Area | 2 large dwellings x 80m ² = 160m ² | 353m ² | √ |
| Building Envelope | 45° from 3.5m high at the side and rear boundary (excluding eaves and the like) | Minimal variation sought on the Moss Street and Cudgen Creek frontages | Refer to performance criteria assessment below |
| Setbacks | Moss Street – 6m North-East side – 900mm South side – 900mm East (rear) – 3m | 6m 2m A BBQ area is proposed within this setback, this is considered to be acceptable given the design and size of the area 1.5m 3m | √ |
| Views, Visual and Acoustic Privacy | Direct views between living area windows of adjoining dwellings should be screened/obscured where ground floor and first floor windows are within a 9m radius from any part of the window of the adjoining dwelling and other windows within a 12m radius. Direct views from living rooms of dwellings into the principle open space area of another dwelling should be screened/obscured within a 12m radius. | Windows of the proposed developments' primary living areas are screened and are staggered to reduce overlooking into adjoining properties. In addition the balconies fronting Cudgen Creek have privacy screening. The setbacks proposed also assist in physical separation between the proposed and existing developments. | √ |

| | | | |
|---------------------------------|---|--|---------------------------|
| Minimum Private Open Space | 20% of site area (116m ²) with minimum dimension of 3m One part minimum 25m ² with minimum dimension of 4m directly accessible from a living area | 408m ² provided Unit 1 (lower unit): 152m ² Unit 2 (upper unit): 21m ² Communal: 235m ² | Refer to assessment below |
| Daylight & Sunlight | Sunlight to the principle area of ground level private open space of adjacent properties is not to be reduced to less than 2 hours between 9am and 3pm on June 21. Where existing overshadowing by buildings is greater than this, sunlight is not further reduced by more than 20%. | The shadow diagrams submitted demonstrate that the property immediately south of the subject site (16 Moss Street) will be most affected in June 21. The proposal however will not overshadow 16 Moss Street to less than 2 hours between 9am to 3pm, approximately 50% of the rear of the site will be free of shadow by 12 noon. | √ |
| Garage percentage of the street | The maximum width of garage fronting the street shall be 6m or 50% of the street frontage whichever is less | Consistent | √ |
| Car Wash Area | A turfed area is incorporated into the landscaping of the property and reserved for use as a communal car wash area. The area is appropriately identified. | The proposal contains an additional car space which will be appropriately conditioned. | √ |

FSR

It is generally accepted that the acceptable solution of 0.5:1 floor space ratio was not intended to apply to medium density development in the 2(b) zone due to its limiting nature. It is noted that many similar developments within the Tweed Shire operate at a similar density ratio. The FSR proposed is considered to be a satisfactory design response.

Building Envelope

Minimal variations to the building envelope are sought on the Moss Street and Cudgen Creek frontages. The Moss Street frontage variation consists of part of the curved roof with a maximum length of 1.5m and a section of the roof level being a maximum of 1.5m in length. The Cudgen Creek frontage variation consists of part of the curved roof being a maximum of 1.5m in length and a section of the upper floor being a total length of 2.4m.

The curved roof structure is a successful architectural feature which provides visual interest in the buildings' design. The building is articulated as its height increases, particularly on the upper level. The variations are not considered to result in unreasonable adverse environmental impacts particularly with regards to overshadowing and visual privacy.

Private Open Space

The total area provided for private open space exceeds that required by the acceptable solutions of the Section. The minimum area required per unit accessible from a living area has not been achieved. It is noted that the development provides for communal areas being located on the lower floor and the roof top deck which are substantial in size and are considered to be highly functional and suitable to medium density style living. Each unit is provided with a deck on the Moss Street and Cudgen Creek frontages. The decks overlooking the Creek are approximately 20m² which is considered to be an appropriate area for outdoor dining and recreation.

A9 – Energy Smart Homes

As discussed previously in this report, BASIX certificates have been submitted indicating the proposal will achieve the target requirements.

Section B9 – Tweed Coast Strategy

The proposed development is consistent with the aims of this Section.

B16 – Kingscliff

The subject site is situated within the Kingscliff Hill precinct and is identified as requiring a Type 5 Building.

The DCP requires the setbacks for type 5 buildings to be established in accordance with the building height plane and setbacks requirements of Section A1. The proposal is considered to be generally consistent with the section.

Section B18 – Tweed Coast Building Heights

| Standard | Requirement | Proposed |
|-----------------|---|----------|
| Building Height | External Wall Height: 9m (finished ground level to the uppermost ceiling or top plate of the highest external wall) | 9.9m |
| | Maximum Height: 11m (finished ground level to the highest point on the ridge of the roof and including all ancillary structures) | 11.8m |

An assessment of the proposal against the acceptable solutions is provided below.

In determining the application consideration should also be given to performance provisions within the DCP. The performance criteria relates to the minimisation of impacts on surrounding developments particularly overshadowing, privacy and the obstruction of views. New developments should be sympathetic to existing developments in scale and bulk.

As discussed previously in this report the development is not considered to result in unreasonable environmental impacts particularly with regards to overshadowing and privacy. Some views from adjoining properties across the subject site will be reduced as a result of the proposed development. These properties however will retain the uninterrupted views of Cudgen Creek.

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

NSW Coastal Policy

The subject land is affected by the coastal policy. The proposed development is not considered to be in conflict with the policies and strategies of the policy.

Demolition

Council's Building Surveyor has reviewed the proposal and recommended appropriate conditions of consent. The proposal is therefore consistent with the provisions of AS 2601.

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

There are no further impacts associated with the proposal in addition to those previously discussed.

(c) Suitability of the site for the development

The proposed design and configuration of the development is considered to be consistent with the desired land use character and pattern. The suitability of the site for the proposed development has been demonstrated by way of

general consistency with the environmental planning instruments and development control plan.

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

The development application has been exhibited twice as the result of amended plans. The initial development application was advertised for 14 days and resulted in 6 submissions being received. As a result of the issues raised in the submissions and matters raised by Council staff the applicant amended the development. The main amendment involved the reduction of the buildings' overall height. The amended application was exhibited for the same period; additional submissions have not been received.

The issues raised in the submission are detailed below.

| Issue | Comment | Assessment |
|--|---|--|
| Number of storeys | Objection to the part 3 storey component of the development as the site is affected by a 2 storey limitation. | <p>This matter has been discussed previously in this report the variation to the development standard has been assessed as a SEPP No. 1 submission.</p> <p>This matter does not warrant refusal of the development application.</p> |
| Consistency with Section A1 of the DCP | Concern was raised regarding whether the amount of landscaping provided is sufficient. | <p>This matter has been discussed previously in this report (Section A1 assessment). The landscaping proposed is consistent with the DCP.</p> <p>This matter does not warrant refusal of the development application.</p> |
| | The proposal exceeds the allowable roof height, directly impacting upon views from adjoining properties to the east and to the Creek. | <p>This matter has been discussed previously in this report. Neighbouring properties will retain the uninterrupted views of Cudgen Creek immediately adjoining their property and will retain some of the existing view corridor across the subject site to the Creek.</p> <p>This matter does not warrant refusal of the development application.</p> |

| | | |
|--|--|--|
| | <p>The proposal is inconsistent with DCP No. 43 in relation to building design provisions.</p> | <p>The DCP requires the setbacks for type 5 buildings (as per Section B16) to be established in accordance with the building height plane and setbacks requirements of Section A1. As discussed previously in this report, the proposal is considered to be generally consistent with the section.</p> <p>This matter does not warrant refusal of the development application.</p> |
| | <p>The proposal is inconsistent with DCP No. 48 in relation to the building height, setbacks and building envelope provisions.</p> | <p>This matter has been discussed previously in this report (Section B18).</p> <p>The development is not considered to result in unreasonable environmental impacts particularly with regards to overshadowing and privacy as a result of the height of the development. The setbacks proposed enable the retention of some view corridors.</p> <p>The extent of variation with regards to the building envelope is minimal and unlikely to result in environmental impacts.</p> <p>This matter does not warrant refusal of the development application.</p> |
| | <p>There are no constraints on the site and therefore no variations should be permitted.</p> | <p>The site is constrained with regards to its topography and existing title restrictions. The variations proposed by the applicant have been found to have merit.</p> <p>This matter does not warrant refusal of the development application.</p> |

| | | |
|---------------------------|--|--|
| Roof Design/ Treatment | Concern was raised regarding the potential for glare generated by the finish on the curved roof treatment. | <p>The applicant has advised that the roof treatment incorporates a brushed texture which will not be able to generate excessive glare. A condition of consent has been recommended regarding the use of materials which will not result in adverse impacts for neighbouring properties.</p> <p>This matter does not warrant refusal of the development application.</p> |
| | The roof line is not in keeping with the existing developments within the street. | <p>The roofline proposed has been amended since its initial exhibition period to reduce the height of the overall curve. The roofline is considered to create interest in the buildings' appearance and is not considered to result in adverse environmental impacts.</p> <p>This matter does not warrant refusal of the development application.</p> |

(e) Public interest

Despite the issues raised in the submissions, it is considered that the proposal is not contrary to the wider public's interests.

OPTIONS:

1. Assume concurrence and approve the development application with conditions.
2. Refuse the development application with reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has the right to appeal in the Land and Environment Court should he be dissatisfied with the determination.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The subject land is generally considered to be suitable for the proposed development. The proposed development is considered to be generally consistent with the applicable planning instruments and development control plans.

UNDER SEPARATE COVER/FURTHER INFORMATION:

To view any "non confidential" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).

1. Applicants SEPP1 Submissions (DW 1828858)
 2. Amendment to the Tweed Development Control Plan Section B18 assessment (DW 1839499)
 3. Applicant's submission (DW 1839501)
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P2 [PR-PC] Development Application DA07/0631 for a Telecommunications Facility including One (1) Monopole Structure with a Height of 20m, with Three (3) Antennas Located Around The Top of Monopole Creating a Total Approximate Height of 21.3m; One (1) Telstra Equipment Shelter with Approximate Dimensions of 2.28m x 3.28m x 3.0m High. Security Fencing Providing a Perimeter around the Leased Area which contains the abovementioned Structures of 6m x 8m x approx 2m High at Lot 10 DP 1014470, Casuarina Way, Casuarina

ORIGIN:

Development Assessment

FILE NO: DA07/0631 Pt1

SUMMARY OF REPORT:

State Environmental Planning Policy (Infrastructure) 2007, commenced 1 January 2008. The Policy enables (in relation to this application) development for the purposes of telecommunications facilities to be carried out by a public authority without consent on any land (reg. 114) or if the development is not carried out by a public authority it may be carried out by any person with consent on any land (reg. 115). The development is to be carried out by Telstra which is **not** a public authority pursuant to section 26 of the Telstra Corporation Act, 1991.

It is important to note that the Infrastructure SEPP contains a saving provision (reg. 11) which precludes this policy from applying to this application. However a fresh application would not be restricted by prohibitions in the Tweed LEP.

The applicant provided a list of alternative sites and reasons why these sites were unsuitable for the proposed development (see document titled 'Alternative Sites – Proposed Telecommunications Facility, Casuarina Beach' within this report).

An objector provided three alternative sites. These sites were forwarded to the applicant for assessment and comment. The applicant concluded that the site to which the development is proposed is the most suitable.

Amendments to the proposal after Council's Planning Committee held Tuesday 18 December 2007 include;

Access – access was proposed from Casuarina Way via an existing access through the Rugby Club around the perimeter of the sports fields to the proposed lease area.

The Rugby Club objected to the access to the facility through the sport fields (after the Council meeting), as such an alternative access was proposed via the existing access for

the SPS. The new proposed access via the existing SPS access has been reviewed and supported by Council's Strategic and Assets Engineer.

The Rugby Club also objected to the distance between the proposed lease area from the sports fields – the proposed lease area is slightly closer to the sports fields than the adjacent pumping station. As such amended plans have been provided (dated 08.04.08) rotating the facility placing the physical fence and facility two (2) metres behind the SPS. The proposed lease area therefore has changed to be consistent with the location of the facility. The increased setback will enable a variety in landscaping whilst being no closer to the sports fields than the existing sewer pumping station (advice from Council's Recreation Services Unit, that the existing landscaping along the perimeter of the SPS is being removed at the request of the Rugby Club).

Details of the amended proposal are as follows:

- One (1) monopole structure with a height of 20m, with three (3) antennas located around the top of monopole creating a total approximate height of **21.3metres** (note this a reduction on the initial proposed height of 31.4m).
- One (1) Telstra equipment shelter with approximate dimensions of 2.28m x 3.28m x 3.0m high.
- Security fencing providing a perimeter around the leased area which contains the above-mentioned structures of 6m x 8m x approx. 2m high.

RECOMMENDATION:

That Development Application DA07/0631 for a Telecommunications Facility including One (1) Monopole Structure with a Height of 20m, with Three (3) Antennas Located Around The Top of Monopole Creating a Total Approximate Height of 21.3m; One (1) Telstra Equipment Shelter with Approximate Dimensions of 2.28m x 3.28m x 3.0m High. Security Fencing Providing a Perimeter around the Leased Area which contains the abovementioned Structures of 6m x 8m x approx 2m High at Lot 10 DP 1014470, Casuarina Way, Casuarina be approved subject to the following conditions: -

GENERAL

1. **The development shall be completed in accordance with the Statement of Environmental Effects and Drawing Nos Q107325 sheet no. G1, S1, S2, S3 prepared by Connell Wagner and dated 08.04.08, except where varied by the conditions of this consent.**

[GEN0005]

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

[GEN0115]

3. **Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within or adjacent to the subject property.**

[GEN0135]
4. **The existing driveway may be used for light maintenance traffic after the construction phase.**

[GENNS01]
5. **Parking would be required to be provided on the tower site.**

[GENNS02]
6. **The Pump Station Driveway and Hard Stand areas are not to be occupied and therefore kept clear during construction to ensure Council have access to the pump well and switch board for operational requirements.**

[GENNS03]
7. **Any damage to the SPS driveway, pad or equipment during construction or maintenance of the facility is to be replaced or fixed to the satisfaction of Council.**

[GENNS04]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

8. **In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 1979 (as amended), a construction certificate for SUBDIVISION WORKS OR BUILDING WORKS shall NOT be issued until any long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.**

[PCC0285]
 9. **Design detail shall be provided to address the flood compatibility of the proposed structure including the following specific matters:**

All building materials used below Council's design flood level must not be susceptible to water damage.

Subject to the requirements of the local electricity supply authority, all electrical wiring, outlets, switches etc. should, to the maximum extent possible be located above the design flood level. All electrical wiring installed below the design flood level should to suitably treated to withstand continuous submergence in water.

Define adequate provision for the flood free storage for goods and equipment susceptible to water damage.

[PCC0705]
 10. **Prior to the issue of a construction certificate, a landscape plan is to be submitted to and approved by Council's Recreation Services Unit (you are advised to liaise with Council's Recreation Service Unit to ensure that the landscape is consistent with the proposed landscape east of the sewer pump station).**

[PCCNS01]
-

11. A lease agreement is to be entered into with Council in respect to the use of that part of the site occupied by the telecommunications facility.

[PCCNS02]

12. Prior to the issue of a construction certificate a proposed colour scheme(s) for the telecommunication facility is to be submitted to Council and approved by the General Manager or delegate.

[PCCNS03]

PRIOR TO COMMENCEMENT OF WORK

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

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

[PCW0215]

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

[PCW0225]

15. Where prescribed by the provisions of the Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the site is prohibited.

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

[PCW0255]

DURING CONSTRUCTION

16. Construction site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council: -

Monday to Saturday from 7.00am to 7.00pm

No work to be carried out on Sundays or Public Holidays

The proponent is responsible to instruct and control subcontractors regarding hours of work.

[DUR0205]

17. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).

[DUR0375]

18. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.

[DUR0395]

19. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.

[DUR0405]

20. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Occupational Health and Safety Regulation 2001.

[DUR0415]

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

- Noise, water or air pollution
- Minimise impact from dust during filling operations and also from construction vehicles
- No material is removed from the site by wind

[DUR1005]

22. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.

[DUR1025]

23. All works shall be carried out in accordance with Councils Acid Sulfate Soils Management Plan for Minor Works. A signed copy of this Management Plan shall be submitted to Council prior to the commencement of works.

[DUR1075]

24. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils adopted Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[DUR1875]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

25. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0205]

26. On completion of work a certificate signed by a practising structural engineer is to be submitted to the Principal Certifying Authority to certify the structural adequacy of the structure.

[POC0805]

USE

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

[USE0125]

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

[USE0175]

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

[USE0225]

30. All hazardous and/or dangerous goods shall be stored in accordance with requirements of WorkCover NSW.

[USE1035]

REPORT:

Applicant: Telstra Corporation
Owner: Tweed Shire Council
Location: Lot 10 DP 1014470, Casuarina Way, Casuarina
Zoning: 2(e) Residential Tourist
Cost: \$250,001

BACKGROUND:

The subject development application was lodged with Council on the 25th June 2007 seeking consent for the construction of a telecommunication facility. Details of the proposal are as follows:

- One (1) monopole structure with a height of 25m, with six (6) antennas in two (2) sets of three (3) located on top of monopole creating a total approximate height of **31.4metres**.
- One (1) Telstra equipment shelter with approximate dimensions of 2.28m x 3.28m x 3.0m high.
- Security fencing providing a perimeter around the leased area which contains the above-mentioned structures of 6m x 8m x approx. 2m high.

The application was advertised for a period of fourteen (14) days from Wednesday 25th July 2007 to Wednesday 8th August 2007. During this period no submissions were received. Council sought to re-advertise the development application with a more detailed description of the proposal namely stating the height of the monopole being 31.4metres in height.

The application was **re-advertised** for a period of fourteen (14) days from Wednesday 22nd August 2007 to Wednesday 5th September 2007. During that period thirty nine (39) objecting submissions were received. The most notable issue raised was regarding the height of the monopole structure being 31.4metres.

As a result of the submissions the applicant was advised to reduce the height of the monopole structure.

Amended plans were provided by the applicant on the 20th November 2007, depicting the monopole structure and antennas with a total height of **21.3metres**.

Details of the amended proposal are as follows:

- One (1) monopole structure with a height of 20m, with three (3) antennas located around the top of monopole creating a total height of **21.3metres**.
- One (1) Telstra equipment shelter with approximate dimensions of 2.28m x 3.28m x 3.0m high.
- Security fencing providing a perimeter around the leased area which contains the above-mentioned structures of 6m x 8m x approx. 2m high.

The precise location of the telecommunication facility on lot 10 DP 1014470 is approximately 3metres north of the existing pump station (lot 11 DP 1014470), approximately 14metres east of Tweed Coast Road and west of the Casuarina rugby sport fields.

Amended plans were provided by the applicant 8th April 2008, rotating the facility placing the physical fence and facility two (2) metres behind the SPS. The proposed lease area therefore has changed to be consistent with the location of the facility. The increased setback will enable a variety in landscaping whilst being no closer to the sports fields than the existing sewer pumping station.

This application was considered by the Planning Committee meeting on 18th December 2007 when it was resolved that: -

Development Application DA07/0631....be deferred to allow the applicant to consider further alternative sites and appropriate resident consultation.

As a result of that resolution the applicant held a resident consultation/meeting on the 5th March 2008 at Casuarina regarding any issues or concerns that the public have in relation to the proposal. The information/consultation session allowed residents to meet with the consultant and an independent electromagnetic radiation (EME) (health) expert to discuss site plans, technical information and the site investigation that had been undertaken.

The community was advised of the resident consultation meeting through advertising in the Tweed Daily, Border Mail Weekly and the Tweed Link. Details were also sent to the Casuarina Residents Association. A letter drop was performed on nearby properties on Casuarina Way, Cottonwood Lane, Cedar Court, Steelwood Lane, Eclipse Lane, Cornet Lane, Pirie Lane and Hyndes Lane.

An objector provided three alternative sites (see maps and photos attached). The applicant's assessment of these sites is as follows:-

Map 1 is an overall satellite photo of the area showing the three proposed alternative Telstra sites and relevant land marks. All three sites have existing land clearance.

Map 2 shows in more detail sites 1 and 2

Map 3 shows site 3

Site 1: This would be the preferable site for relocation of the tower. The access Rd was formerly Old Bogangar Rd and therefore still has a road base and could therefore accommodate heavy vehicle's. The road is located adjacent to the electricity easement and proceeds down to the creek. The Road at its narrowest point is 4m wide with very small saplings on either side (without the saplings it is around 7.5m wide). This narrow width only lasts a short distance and then widens up to 12-15m. Trees are growing sporadically on either side of the road with large area's of open space between the trees. At a worse case scenario 1 tree may need to be removed or its branches trimmed if the width of the access road was deemed

too narrow to accommodate the tower and its base station. This site is located within Telstra's 1km radius map See pictures 1 to 4

Site 2: There is an area of cleared land with no trees just behind the Koala fence. Overhead power lines run through this space, but there appears to be sufficient space either side of the line to accommodate the tower and base station. Located behind this area there are area's of cleared space. The site seems to be sited within Telstra's map. See Pictures 5&6

Site 3: Of the 3 sites this would be the least desirable, due to its proximity to residences. It is located just directly opposite Barclay Drive. The Tower would need to be situated towards the very back of the clearing. It also appears to be about 50m outside the Telstra radius. See pictures 7&8

As I mentioned before we have suggested these sites to Telstra and even offered to take them on a site visit. Each time there response has been the site at Casuarina is the optimal site. They have not been interested in considering any other site.

The applicants' response to the objectors' three alternative sites;

Following a request from Tweed Shire Council on 18th April 2008 the feasibility of establishing a telecommunications facility at the following three sites has been considered by Telstra.

Site1 – Former Road – Old Bogangar Road

This site known as Lot 9 on DP1001039 is under the ownership of "The Minister Administering the National Parks and Wildlife Act, 1974".

It has been suggested that a telecommunications facility could be developed on the land that was formally a road that has been closed off for a number of years. The former road has seen some vegetation regrowth but there is limited growth on the former road surface. No formal flora and fauna assessment has been carried out.

The site has been provisionally considered in terms of RF coverage, and it is determined that the required coverage may be achieved if a 25m facility was located at the southern end of the former road.

The site was discounted in June 2007 when the development application was submitted, as the LEP prohibited telecommunication facilities in the zoning 8(a) National Parks. The introduction of SEPP (Infrastructure) 2007 allows telecommunications facilities to be allowed on any land with consent, therefore Council requires further justification as to why Telstra has discounted this location.

Any lease or other commercial agreement between Telstra and National Parks will need to be agreed in accordance with National Parks and Wildlife Act 1974. Section 153D of the Act deals specifically with leases, licences and easements for telecommunications facilities. Section 153D (4) states:

“(4) The Minister must not grant a lease, licence and easement or right of way under this section unless the Minister is satisfied that:

- (a) there is no feasible alternative site for the proposed telecommunications concerned on land that is not reserved under this Act, and..”*

Furthermore, Telstra’s National Commercial Leasing Manager has confirmed that whilst Telstra has several existing leases with National Parks (NP’s), the process of establishing a facility within a National Park is not necessarily straight forward.

Telstra is aware that as part of the process, they would likely have to produce a “Review of Environmental Factors (REF’s)” to consider the proposal and its potential impacts on Cudgen National Park. Telstra has established several sites within National Parks in recent years requiring REF’s and has extensive experience of working with National Parks, in conjunction with the Crown Solicitors office to enter in to leases in this regard. One area that NP’s have been categorically insistent upon has been the investigation and consideration of alternative sites. The investigation of alternative sites is an explicit requirement under section 153D 4(a) of the National Parks and Wildlife Act 1974 No 80 (the Act) and would be a consideration within the REF

The current development application that has been recommended for approval by Council is clearly an alternative that is outside a Reserve, and therefore although technically and in land use planning terms the site could be sited at this location, it would be very unlikely that a commercial agreement could be arranged between the Minister and Telstra.

Site 2 – Land off Tweed Coast Road, North of Cudgen Creek

The site forms part of the road reserve and is located within the electricity easement. The site is located next to Lot 7 on DP875447.

The site has been assessed on technical grounds to establish if it would provide the required network coverage. The site is outside the required search ring and would therefore not provide the require network coverage objectives. Telstra’s technical RF engineer has indicated that the site is over 1km from the target area.

In terms of land use planning the site was discounted in June 2007 when the development application was submitted, as the LEP prohibited telecommunication facilities in the zoning 6(b) Recreation. The introduction of SEPP (Infrastructure) 2007 allows telecommunications facilities to be allowed on any land with consent, therefore Council require further justified why Telstra discounted this location.

The introduction of SEPP (Infrastructure) 2007, overrides the provisions of most environmental planning instruments, (including a LEP). The exceptions to this include SEPP 14 – Wetlands. This alternative site is discounted as it is located in a SEPP 14 wetland area, it is not considered preferable to develop on land that is clearly allocated to be protected from development.

If a facility was developed in this location Telstra would need locate the facility outside of the easement due to health and safety considerations (possibility up to 8m each side of the power lines). There is clearly not sufficient space to build the facility without protruding into the road on the adjoining property – Lot 7 on DP on DP875447, which is owned by Narui Gold Coast Pty. Limited.

Site 3 – Land west of Tweed Coast Road

The site forms part of the road reserve between Cudgen Nature Reserve and Tweed Coast Road and is formally known as Lot 8 on DP1014470 and owned by Tweed Shire Council.

The area is clear of any vegetation; however no formal assessment has been carried out. The land is low lying and few metres lower than the adjacent Tweed Coast Road.

The site was discounted in June 2007 when the development application was submitted, as the LEP prohibited telecommunication facilities in the zoning 7(a) Environmental Protection (Wetlands & Littoral Rainforest). The introduction of SEPP (Infrastructure) 2007 allows telecommunications facilities to be allowed on any land with consent, therefore Council require further justification as to why Telstra has discounted this location.

The site has been assessed technical grounds to establish if it would provide the required network coverage. The site is outside the search ring and it has been considered that it would not provide the require network coverage especially to the areas south of the Salt Resort.

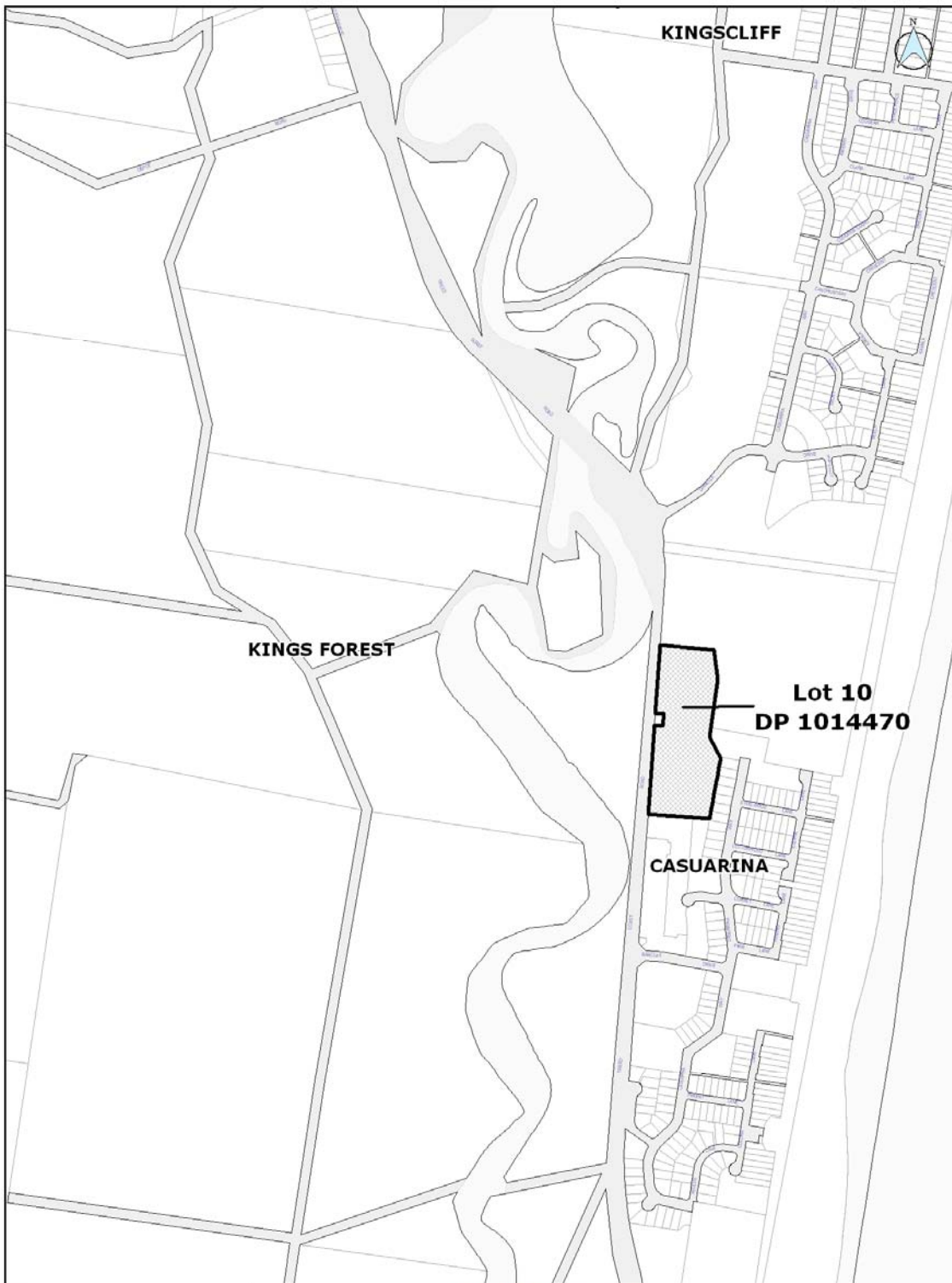
It is considered that the low lying area has high potential to flood causing build issues and potential damage to the electrical equipment


Telstra tries hard to strike a balance between providing services that we know people use every day and finding good local solutions for our equipment. The site selection process takes into account a number of factors, including site availability, technical coverage and build issues, land use planning constraints, and commercial viability. When determining the proposed site at Casuarina Beach, much of the land within our search area was considered to be unfavourable because telecommunications facilities are not permissible on this land under the Tweed Shire Council LEP 2000, however following the introduction State Environmental Planning Policy (Infrastructure) 2007 in January 2008 Council requested the above further justification of alternative sites.

The applicant advised Council 7th May 2008 that contact had been made with National Parks regarding the proposal on National Parks land. The applicant provided the following statement;

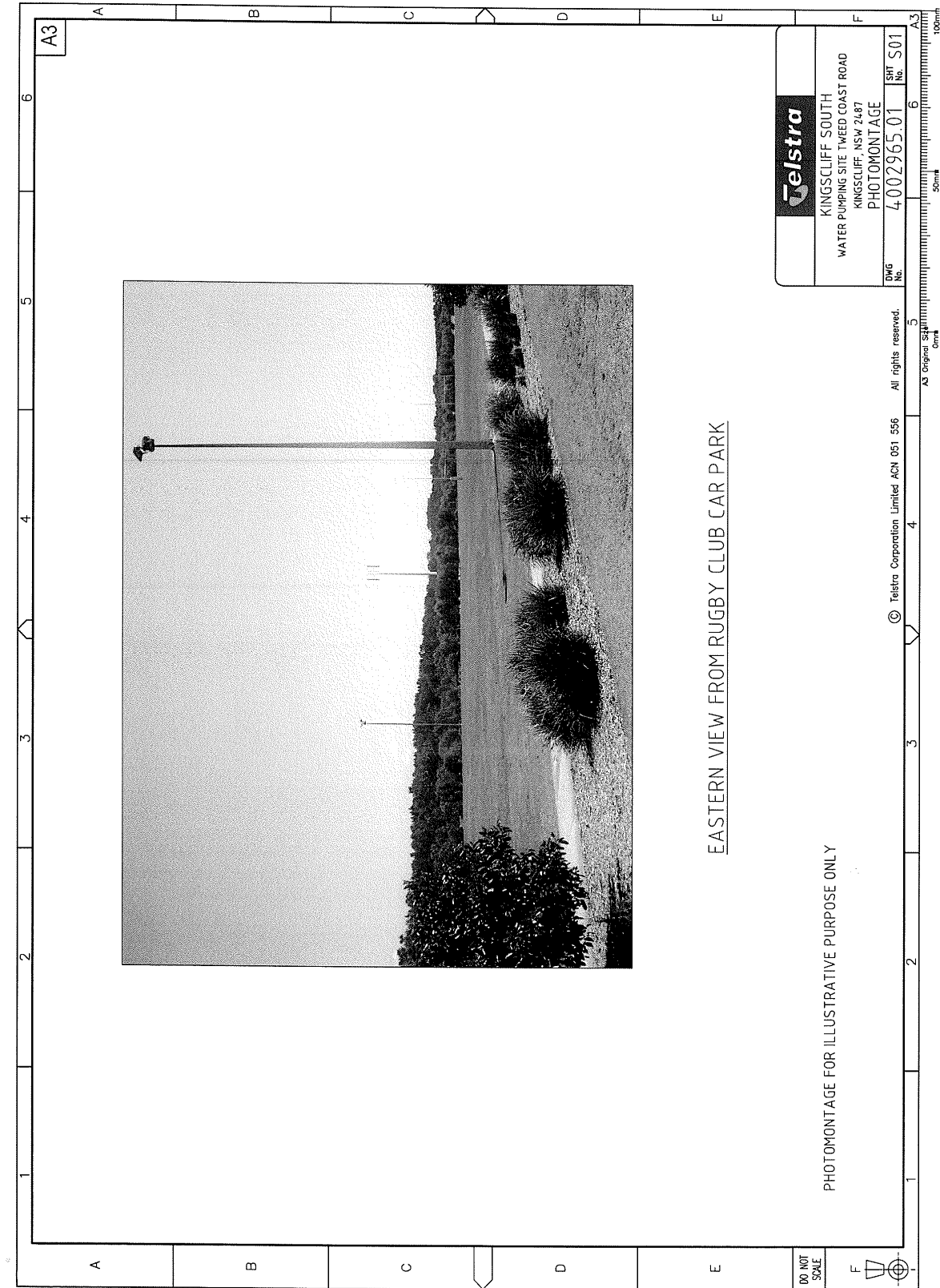
"National Parks confirmed that they would accept an application from Telstra to site a telecommunications facility on their land, and National Parks have in the past permitted telecommunication facilities on their land. However any telecommunications facility would be subject to Telstra demonstrating that there are no alternative sites outside a reserve. Any application to lease land for telecommunication facility will be subject to Section 153D of National Parks & Wildlife Act 1974, and a Review of Environmental Factors."

SITE DIAGRAM:



| | | |
|--|---|--|
| <p>© TWEED SHIRE COUNCIL 2007 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 816 Murwillumbah, NSW, 2484 Tel: (02) 6670 2409 Fax: (02) 6670 2483</p> | <p><i>Tweed Shire Council</i></p> <p>Lot 10 DP 1014470 Casuarina Way, Casuarina (DA07/0631)</p> | <p>Site Plan</p>  <p>Scale: 1:5,000 Sheet: 1 of 1</p> |
|--|---|--|

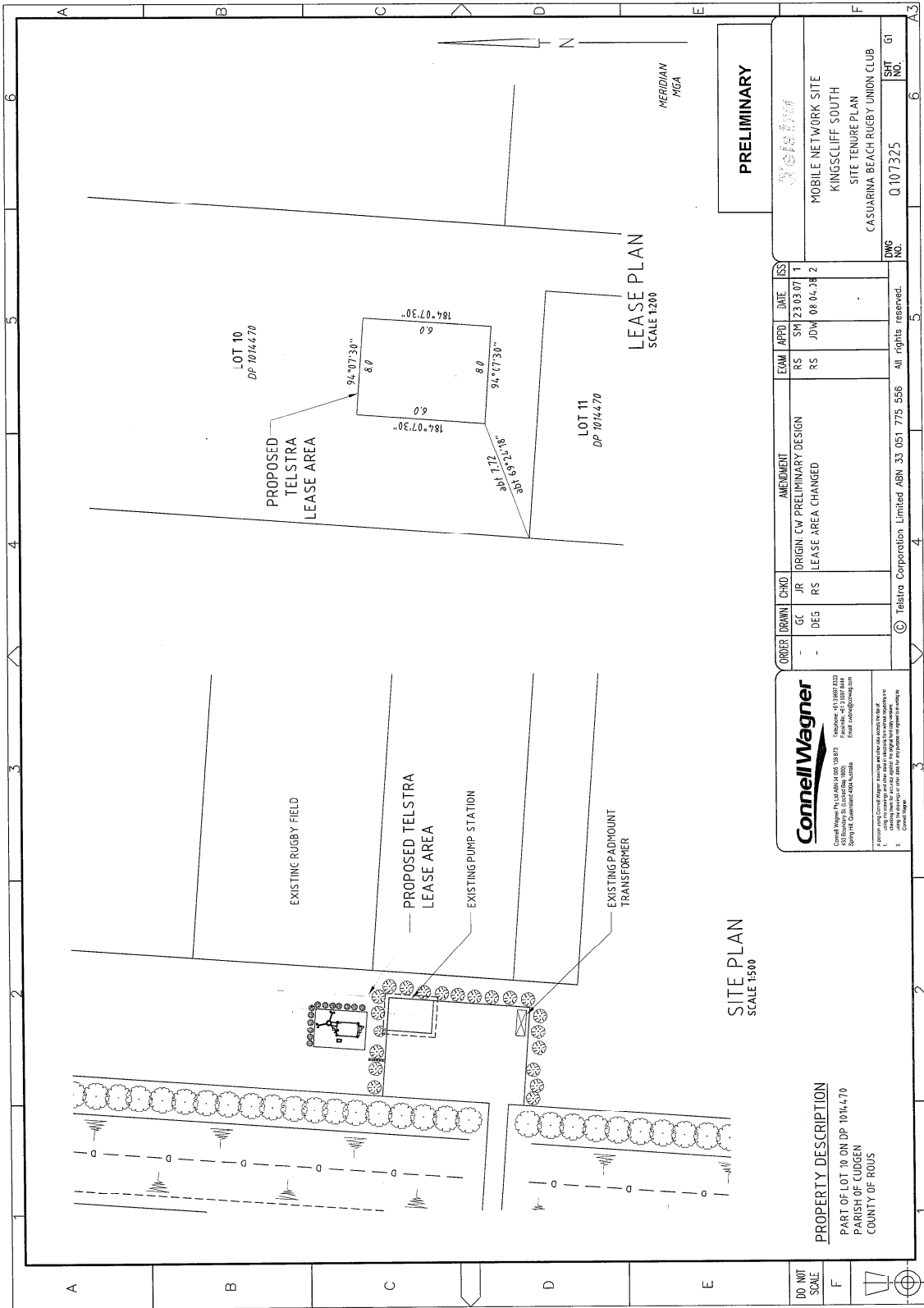
DEVELOPMENT PLANS:











PRELIMINARY

MOBILE NETWORK SITE
KINGSCLIFF SOUTH
SITE TENURE PLAN
CASUARINA BEACH RUGBY UNION CLUB

DWG NO. Q.107325
SHT NO. 61

| ORDER | DRAWN | CHKD | AMENDMENT | EXAM | APPRD | DATE | ISS |
|-------|-------|------|-------------------------------|------|-------|----------|-----|
| - | GC | JR | ORIGIN: CW PRELIMINARY DESIGN | RS | SM | 23/03/07 | 1 |
| - | DEG | RS | LEASE AREA CHANGED | RS | JDW | 09/04/08 | 2 |

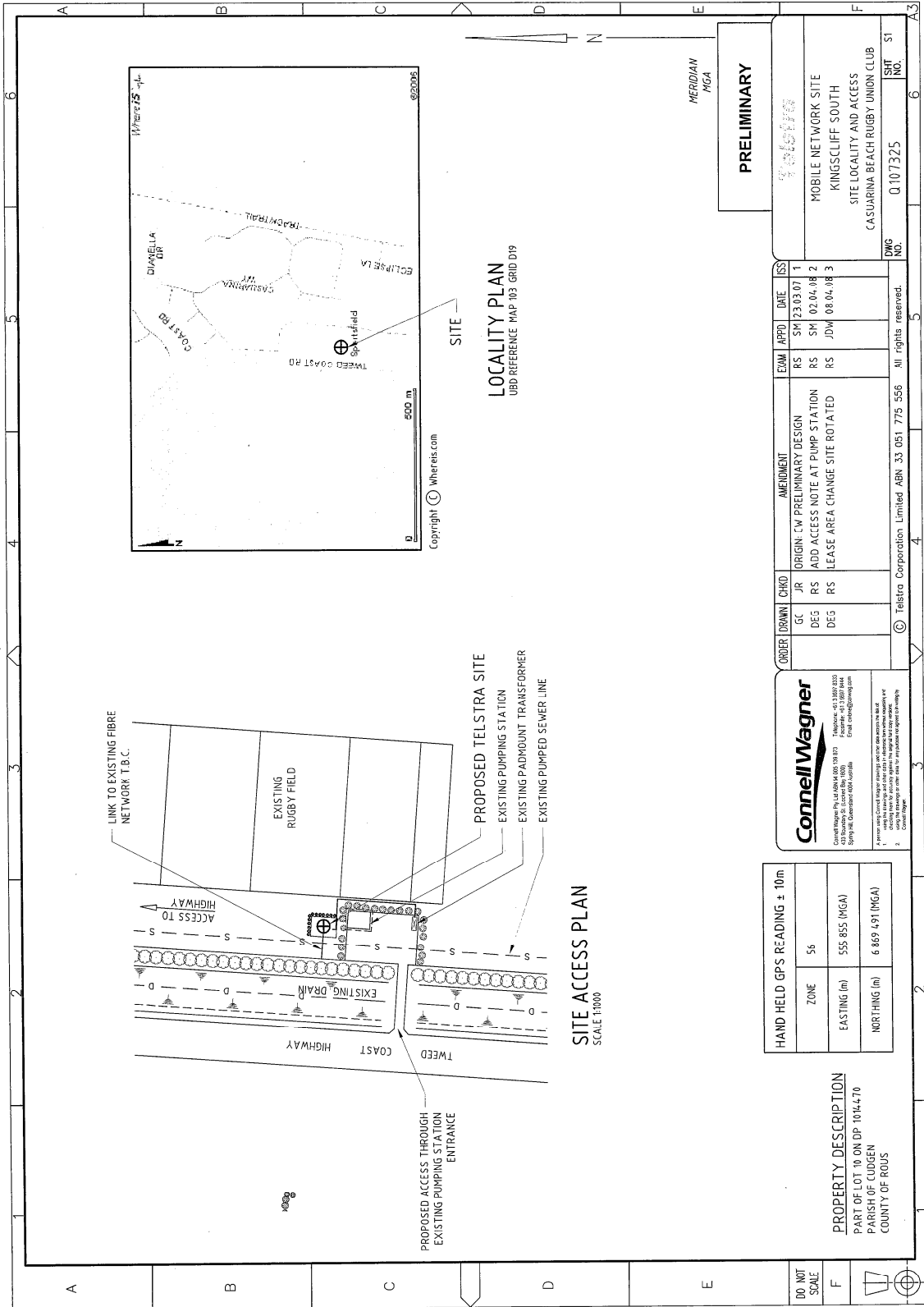
Connell Wagner

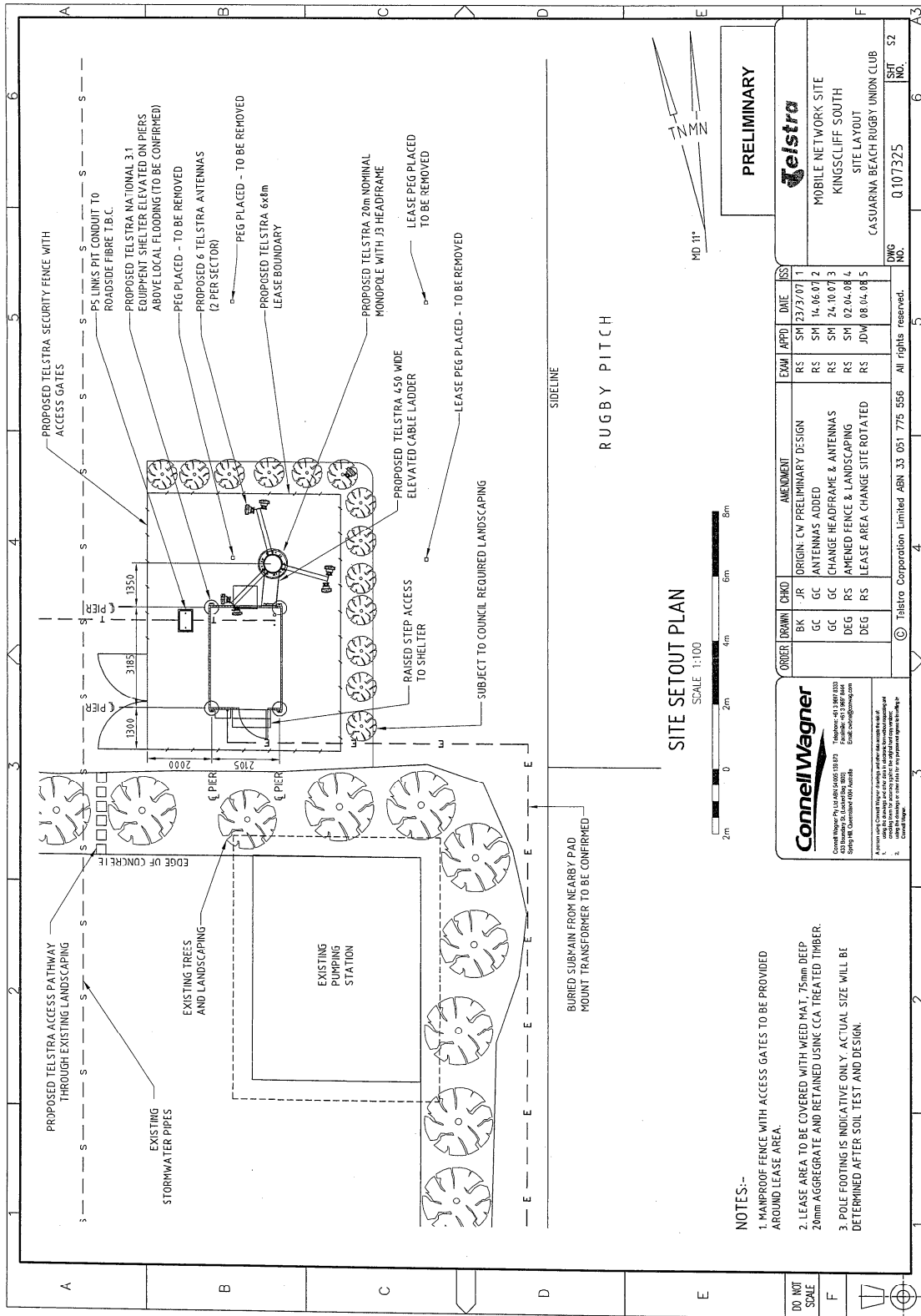
1000 Highway 6, Kingscliff NSW 2485
 Phone: 67 5327 444
 Fax: 67 5327 444
 Email: info@connellwagner.com

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PROPERTY DESCRIPTION
 PART OF LOT 10 ON DP 1014470
 PARISH OF CUDGEN
 COUNTY OF ROUS

DO NOT SCALE





PRELIMINARY

| | |
|---------------------------------|---------|
| Telstra | |
| MOBILE NETWORK SITE | |
| KINGSCLIFF SOUTH | |
| SITE LAYOUT | |
| CASUARNA BEACH RUGBY UNION CLUB | |
| DWG NO. | 0107325 |
| SHT NO. | 52 |

| ORDER | DRAWN | CHKD | AMENDMENT | EXAM | APPD | DATE | ISS |
|-------|-------|------|--------------------------------|------|------|----------|-----|
| BK | JR | GC | ORIGIN: CW PRELIMINARY DESIGN | RS | SM | 23/3/07 | 1 |
| GC | GC | GC | ANTENNAS ADDED | RS | SM | 14/06/07 | 2 |
| DEG | RS | RS | CHANGE HEADFRAME & ANTENNAS | RS | SM | 24/10/07 | 3 |
| DEG | RS | RS | AMENED FENCE & LANDSCAPING | RS | SM | 02/04/08 | 4 |
| DEG | RS | RS | LEASE AREA CHANGE SITE ROTATED | RS | JDW | 08/04/08 | 5 |

Connell Wagner
 Connell Wagner Pty Ltd ABN 54 000 519 371
 11 Hopwood Ave 3rd Floor 2200
 Spring Hill Queensland 4071
 Email: connellwagner.com.au
 Phone: 07 3261 2200
 Fax: 07 3261 2201

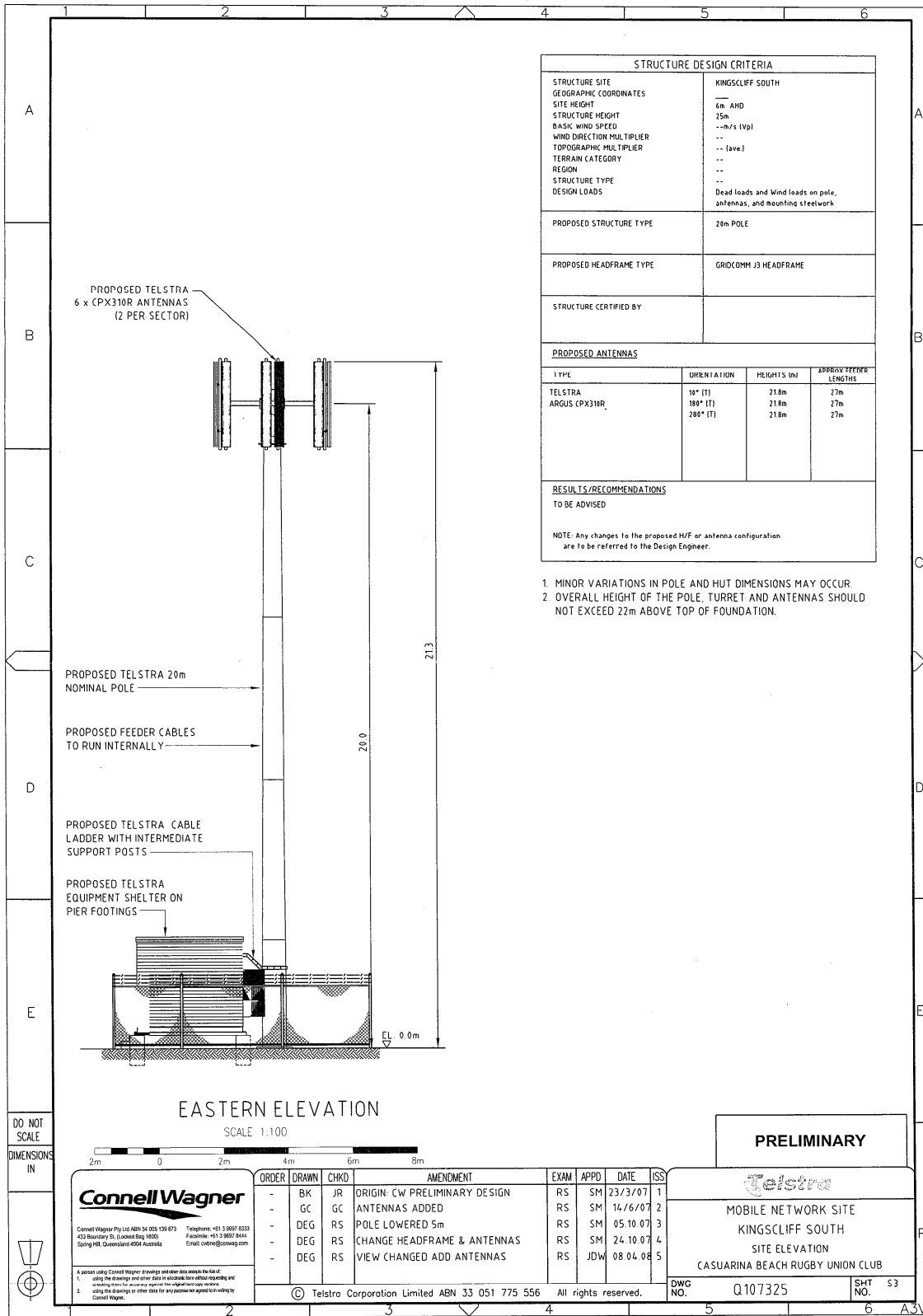
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SITE SETOUT PLAN

SCALE 1:100

- NOTES:-
1. MAINPROOF FENCE WITH ACCESS GATES TO BE PROVIDED AROUND LEASE AREA.
 2. LEASE AREA TO BE COVERED WITH WEED MAT, 75mm DEEP 20mm AGGREGATE AND RETAINED USING CCA TREATED TIMBER.
 3. POLE FOOTING IS INDICATIVE ONLY. ACTUAL SIZE WILL BE DETERMINED AFTER SOIL TEST AND DESIGN.



CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**(a) (i) The provisions of any environmental planning instrument**Tweed Local Environmental Plan 2000**Clause 4 Aims of the plan**

The proposal is consistent with the character of the locality how adjacent to existing public infrastructure namely street lighting, sports field lights and pumping station, with the area's environmental and residential amenities qualities retained through distance, landscaping and appropriate colouring of the pole.

The proposal is considered consistent with the clause.

Clause 8 Consent consideration

- (1) *The consent authority may grant consent to development (other than development specified in Item 3 of the Table to clause 11) only if:*
- (a) *it is satisfied that the development is consistent with the primary objective of the zone within which it is located, and*
 - (b) *it has considered those other aims and objectives of this plan that are relevant to the development, and*
 - (c) *it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.*

The proposal is defined by the Tweed LEP 2000 as a Telecommunication Infrastructure (Facility). The proposal is considered consistent with the primary objectives by being a related facility and service associated with the surrounding residential development including a variety of forms of low and medium density housing and associated tourist facilities of the 2(e) zone.

It is pertinent to note that under the draft LEP 2008 which is currently with Parliamentary Council awaiting an exhibition certificate the subject site is zoned RE1 - Public Recreation. Within the zone table Telecommunications facility is permitted with consent.

The other aims and objectives of this plan have been considered and addressed. The proposal is considered not to create an unacceptable cumulative impact on the community, locality or catchment

Clause 11 – The zones

The subject site is zoned 2(e) Residential tourist pursuant to the Tweed Local Environmental Plan 2000 (Tweed LEP 2000).

The objectives of the zone are as follows:-

**Zone 2 (e) Residential Tourist
Zone objectives**

Primary objective

- *to encourage the provision of family-oriented 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.*

Secondary objective

- *to permit other development which has an association with a residential/tourist environment and is unlikely to adversely affect the residential amenity or place demands on services beyond the level reasonably required for residential use.*

The proposal is defined by the Tweed LEP 2000 as a Telecommunication Infrastructure (Facility). The proposal is considered permissible with development consent and consistent with the objectives by being a related facility and service associated with the surrounding residential development including a variety of forms of low and medium density housing and associated tourist facilities of the 2(e) zone.

Clause 15 – Availability of essential services

Electricity supply is available to the site.

Clause 16 Building Heights

The site is identified on Council's Building Heights Map as being affected by a three (3) storey height limit. The proposed monopole structure has a total height of 21.3metres (note: as per definition pursuant to Tweed LEP 2000, the monopole structure cannot be measured by storeys as there is no space between two floors). The proposal is considered to be consistent with the objective of the clause given the location of the monopole adjacent to the Casuarina sports fields that contain four (4) light poles with a height of 18metres (DA06/0169 approved 15/06/2006), four sets of football goal posts with an approximate height of 16metres, and the numerous street lights that run parallel to Tweed Coast Way adjacent to the proposal and the subject site. The height and scale of the proposal is considered appropriate given the surrounding development.

Clause 22 – Development near designated roads

The proposed development site has frontage to Tweed Coast Road with access to the location of the telecommunication facility from the existing access from Tweed Coast Road that services the sewer pumping station. Council's Designated Road Map identifies Tweed Coast Road as being a designated road as such clause 22 (4) is required to be addressed.

(1) Objectives

- *to protect and improve the capacity, efficiency and safety of designated roads.*
- *to prevent development on designated roads that would detract from the scenic attractiveness of the area of Tweed.*
- *to prevent or reduce the potential impact of traffic noise on development adjacent to designated roads.*

Subclause (4);

(4) *The consent authority may grant consent to development on land to which this clause applies only if it is satisfied that:*

- (a) *the development (because of its nature, appearance, cumulative effect or illumination, or the intensity or the volume or type of traffic likely to be generated, or for another similar reason) is unlikely to constitute a traffic hazard or materially reduce the capacity or efficiency of the designated road, and*

The proposed telecommunication monopole being 21.3m in height is likely to be visible from Tweed Coast Road up to ~450m to the north (intersection of Dianella Drive to the north) and 1.3km to the south (intersection of Celerywood Drive to the south). However, the facility is not out character with either the street lighting along Tweed Coast Road or the 18m high sports field lights and the four sets of 16metre high rugby goal posts that are within close proximity to the proposal. In addition mature vegetation aligns the section of Tweed Coast Road where the facility is located. It is pertinent to note that the above mentioned structures i.e. sports lights are visible from the same distances.

The site gains access from Tweed Coast Road via the existing access that services the sewer pumping station. The access will only be used during the construction and maintenance (approx. four times a year) of the facility. Accordingly the facility will not create a traffic hazard.

- (b) *the location, standard and design of access points, and on-site traffic movement and parking arrangements, would ensure that through traffic movement on the designated road is not impeded, and ...*

The site gains access from Tweed Coast Road via the existing access that services the sewer pumping station. The access will only be used during the construction and maintenance (approx. four times a year) of the facility. Accordingly the facility is unlikely to impede traffic along Casuarina Way. The proposal obtains access and egress to the designated road, however, due to the infrequency of vehicles (four times per year) negligible impact will be experienced from the proposal.

- (c) ***the development, or proposed access to it, will not prejudice any future improvements to, or realignment of, the designated road, and ...***

The proposed development is setback approximately 13metres from Tweed Coast Road, the facility is located adjacent to an existing pumping station. The location of the facility is unlikely to restrict any future improvements or realignments to the designated road.

- (d) ***where the land is in Zone 1(a), 5(a), 7(a), 7(d), 7(f), or 7(l), the development is of a type that necessitates a location in proximity to the designated road for reasons other than only commercial advantage, and ...***

Not applicable, site zoned 2(e).

- (e) ***the development is of a type that is not sensitive to traffic noise or, if it is, it is located or adequate measures are included to ameliorate any potential noise impact, and ...***

The proposed telecommunication facility is considered a type of development that is not sensitive to traffic noise.

- (f) ***the development would not detract from the scenic values of the locality, particularly from the point of view of road users, and ...***

Adequate measures in the form of setbacks and landscaping on the frontage to the designated road and surrounding the facility will ameliorate any significant visual impact from the view of the road users.

- (g) ***where practicable, access to the land is provided by a road other than the designated road, and ...***

The site gains access from Tweed Coast Road via the existing access that services the sewer pumping station.

Originally access was proposed from the existing access around the perimeter of the adjacent sports fields, through the entrance of the Rugby Club, off Casuarina Way. The Rugby Club objected to this access route in favour for the existing SPS access.

- (h) ***in respect of any application for commercial or retail development near the Pacific Highway in Zone 1 (a), 7 (a), 7 (d), 7 (f) or 7 (l), the development: ...***

- (i) would not compromise the Highway's function as the North Coast's primary inter- and intra-regional road traffic route, and*
- (ii) would not contribute to the need to expend public money on the Highway to overcome the effects of ribbon development, and*
- (iii) would not compromise highway safety and efficiency, and*
- (iv) would not cause or contribute to the shifting of the retail/commercial foci of any town from the town centre to a highway-orientated site.*

Not applicable as proposal is for telecommunication facility in a 2(e) zone.

Clause 24 – Set backs to designated roads

N/A

Clause 34 – Flooding

The proposal is considered to be consistent with clause 34 due to the following justification;

- as the proposal is appropriate development that will not create an adverse effect of flooding on the community.
- The telecommunications facility will assist emergency services by providing telecommunications to the locality.

Clause 35 Acid sulphate soils

The location of the facility is identified as being affected by class 1 acid sulphate soils (any works below ground surface). It is expected that disturbance of the soil will occur during the construction of the facility accordingly appropriate conditions have been placed on the development consent.

Clause 39A – Bushfire Protection

The site is identified as being prone to bush fire. The telecommunication facility is considered to comply with the clause due to the following:

- The development will not create a significant adverse impact on the implementation on bush fire control strategies. The telecommunication facility will assist bush fire control by providing communications.
- The facility will not increase the threat to the lives of residents, visitors or emergency service personnel. The facility does not house residents or visitors.

- The facility will be constructed of non-flammable material and is clear of any dense vegetation.

North Coast Regional Environmental Plan 1988

Clause 32B Development control—coastal lands

The telecommunication facility does not contravene the objectives of the following policies;

- (a) the NSW Coastal Policy 1997,
- (b) the Coastline Management Manual, and
- (c) the North Coast: Design Guidelines.

The proposed development does not create any significant adverse effects to the public access to the foreshore, overshadowing to beaches, waterfront open space before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time).

State Environmental Planning Policies

State Environmental Planning Policy No. 71 – Coastal Protection

Clause 4- Land and development to which Policy applies

The subject site is located within the coastal zone, the application is required to be assessed against the relevant provisions contained within this policy.

Clause 8 Matters for consideration

The matters for consideration are the following:

(a) the aims of this Policy set out in clause 2,

The telecommunication facility is considered to be consistent with the aims of the policy.

(b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,

The proposed telecommunications facility will not alter the existing public access to and along the coastal foreshore.

(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,

The location of the facility is not along the coastal foreshore. No opportunities exist to provide new public access.

(d) *the suitability of development given its type, location and design and its relationship with the surrounding area,*

The proposed telecommunication monopole being 21.3m in height is considered not to be out character with the surrounding area considering the street lighting along Tweed Coast Road, the 18m high sports field lights and the four sets of 16metre high rugby goal posts that are within close proximity to the proposal. In addition mature vegetation aligns the section of Tweed Coast Road where the facility is located. The application proposes matching landscaping to surround the facility to the north and east where vegetation presently does not exist.

(e) *any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,*

The proposal will not create any overshadowing or view loss of the coastal foreshore, no additional impacts will be experienced on the coastal foreshore as a result of the proposal.

(f) *the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,*

The proposal is consistent with the surrounding street lights, the rugby sports field lights and the rugby goal posts.

(g) *measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,*

N/A, no removal of habitat is proposed or required.

(h) *measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats*

N/A, no removal of habitat is proposed or required.

(i) *existing wildlife corridors and the impact of development on these corridors,*

No loss of existing wildlife corridors is expected (no vegetation removal, vegetation placement proposed to the north and east of facility), the proposal will not create an adverse impact on any surrounding existing wildlife corridors.

- (j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,**

No impacts on coastal processes or coastal hazards are expected from the subject proposal.

- (k) measures to reduce the potential for conflict between land-based and water-based coastal activities,**

No additional conflict is likely to be created between land based and water based coastal activities.

- (l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,**

The application will not adversely impact on places of cultural significance.

- (m) likely impacts of development on the water quality of coastal waterbodies,**

No impacts are expected on the water quality of coastal waterbodies from the proposal.

- (n) the conservation and preservation of items of heritage, archaeological or historic significance,**

No adverse impact on the above listed items is expected from the proposal.

- (o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,**

N/A

- (p) only in cases in which a development application in relation to proposed development is determined:**

- (i) the cumulative impacts of the proposed development on the environment, and**
(ii) measures to ensure that water and energy usage by the proposed development is efficient.

No additional impacts on the environment or increase use in water and energy are expected.

Part 3 – Significant coastal development
9 Application of Part

The development is not significant coastal development as defined in Part 3 Clause 9 (development 100metres below mean high water). The area to be developed is not located within a sensitive coastal location (100metres above mean high water).

The proposal is considered to satisfy the aims and clause 8 matters for consideration.

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

N/A

(a) (iii) Development Control Plans (DCP's)

Section A2 – Site Access and Parking Code (DCP 2)

The proposed telecommunication facility is not defined within the policy, however given the facility is unmanned, with service vehicles expected to the facility for maintenance purposes only on average four (4) times per year. The provision of formal car parking is not required.

Access is proposed from the existing access from Tweed Coast Road that services the sewer pump station.

Section A3 – Development of Flood Liable Land

The site is identified as being prone to flooding, with a recommended 100yr flood level of 3.6m with an adopted minimal floor level for residential development of 3.9m (the proposal is not residential development). An appropriate condition (PCC 0705) has been placed on the development consent to ensure the provision of adequate flood free storage area and that building materials and electrical supply below the designed flood level must not be susceptible to water damage.

Section A11 Public Notification Policy

The application was advertised for a period of fourteen (14) days from Wednesday 25th July 2007 to Wednesday 8th August 2007. During this period no submissions were received. Council sought to re-advertise the development application with a more detailed description of the proposal namely stating the height of the monopole being 31.4metres in height.

The application was **re-advertised** for a period of fourteen (14) days from Wednesday 22nd August 2007 to Wednesday 5th September 2007. During that period thirty nine (39) objecting submissions were received. The most notable issue raised was regarding the height of the monopole structure being 31.4metres.

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

Clause 92 What additional matters must a consent authority take into consideration in determining a [development application](#)?

Clause 92 of the Environmental Planning and Assessment Regulations 2000 requires that the following matters be considered by the consent authority in determining a development application;

- The Government Coastal Policy
- AS 2601

"AS 2601" means the document entitled Australian Standard [AS 2601](#)—1991: *The Demolition of Structures*, published by Standards Australia, and as in force at 1 July 1993.

"Government Coastal Policy" means the publication entitled *NSW Coastal Policy 1997: A Sustainable Future for the New South Wales Coast*

The proposal is considered not to negate the objectives of The Government Coastal Policy, as the facility (but not limited to):

- is not located within an environmentally sensitive area,
- does not impede public access to beaches
- is not proposed on beach fore dunes

No demolition works are proposed or required.

93 Fire safety and other considerations

N/A

Clause 94 Buildings to be upgraded

N/A

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

The location of the facility is considered appropriately located in terms of context and setting adjacent to existing public infrastructure namely street lighting, sports field lights and pumping station.

Access to the facility is via Tweed Coast Road using the existing entrance of the sewer pumping station. The majority of traffic expected to the site will mainly be experienced during the construction of the facility with maintenance vehicles expected approximately four (4) times per year.

The telecommunications facility is considered not to generate any significant adverse impacts on the natural or built environments or socially or economically.

The Australian Government and the Australian Communications and Media Authority (ACMA) (Australia's regulator for broadcasting, the internet, radio-communications and telecommunications) published a Factsheet titled Mobile phone base stations and electromagnetic radiation (EME).

The following is an extract from the fact sheet;

*"ACMA has made mandatory EME exposure limits for installations such as broadcast towers and mobile phone base stations. The exposure limits set by ACMA were determined by the **Australian Radiation Protection and Nuclear Safety Agency (ARPANSA)** based on recent scientific findings and the world's best practice. **These limits are many times below a level of exposure to EME** that is known to have adverse effects on the human body and are consistent with **World Health Organisation** guidelines.*

*ACMA has adopted a precautionary approach to the regulation of EME, ensuring that **exposure limits** to emissions from communications transmitters are stringent and **lower** than those levels that have been found to cause adverse health effects.*

Public exposure to emissions from radio-communications transmitters is generally many times less than the exposure limits required by the standards. ARPANSA conducted audits of base stations between 1997 and 1999, and again in 2003. The results show low EME levels were found in areas accessible to the public."

The application was reviewed by Council's Environmental Health Services Unit to which the following comments were made;

EMR (electromagnetic radiation) – Before mobile phone base stations are built or upgraded, the network operator (carrier) is required to produce a report that shows the predicted levels of electromagnetic energy (EME) around the new or upgraded facility. The levels of these electromagnetic fields must comply with safety limits imposed by the Australian Communications and Media Authority (ACMA).

A report has been submitted detailing the estimated maximum cumulative EME levels (% of ACMA mandated exposure limit) produced by the site at ground level at the following distance from the antennas

5m = 0.0023%

50m = 0.036%

100m = 0.27%

200m = 0.12%

300m = 0.057%

400m = 0.032%

500m = 0.02%

The values of electromagnetic energy are given as percentages of the permitted limit. The results indicate that the **maximum estimated EME level is 0.31% of the ACMA mandated exposure limit at a distance of 114.91m.** The report demonstrates that the predicted emissions produced by the proposed facility are well within these standards. No further consideration required'.

(c) Suitability of the site for the development

Surrounding land use consist of the Tweed Coast Road to the west, pumping station to the south and the Casuarina sports fields surrounding the remainder of the proposal. The nearest residential property is 150 metres to the south east of the proposal.

The location and design of the proposal is considered suitable due to the surrounding infrastructure being the street lights that are located parallel to Tweed Coast Road, the 18m high sports field lights and the four sets of 16metre high rugby goal posts and the pumping station that are within close proximity to the proposal. In addition mature vegetation aligns the section of Tweed Coast Road where the facility is located and further landscaping is proposed around the facility.

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

In response to the various objecting submissions the applicant provided the following assessment of the issues raised in the following table below.

| Issue | Assessment |
|--|--|
| Height of the monopole at 31.4metres is highly visible | Telstra amended the design of the monopole by reducing the height from 31.4m to 21.3m. This has reduced the predicted network coverage, Telstra have accepted the loss in coverage to assist in reducing the visual impact of the proposal. The reduction will reduce the visibility of the monopole at the same time become more compatible with surrounding structures such as 18m field lights, 16m goal posts and street lights. |
| Location/site unsuitable | A search of the area has revealed that there are no other telecommunications facilities in the area. In order to reduce the number of facilities in the area Telstra would normally co-locate, but there are no such towers in the area. |

| Issue | Assessment |
|---|---|
| Health concerns from electromagnetic energy generated from the facility | Telstra relies on the advice of national and international health authorities such as the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA). The proposed maximum EME (electromagnetic energy) output of the base station will be 0.31% (less than 1%) of the maximum regulated level. |
| Alternative sites | <p>Telstra has a network of base stations throughout Australia and when an area is identified to have poor network coverage or capacity a new facility has to be located to fit into the existing network. Not all telecommunications are located in elevated positions such as a hill top, facilities are needed close to where people use their mobile phones. Telstra, where practicable will try and locate telecommunications equipment on existing structures or rooftops. A search of the area has revealed that there are no existing structures including water towers and roof tops that are suitable to house a telecommunications facility.</p> <p>See document titled 'Alternative Sites – Proposed Telecommunications Facility, Casuarina Beach' within this report</p> |
| Use of tree masts to disguise the monopole | The development of tree masts are appropriate in some circumstances, where the land has similar size trees and the tree mast will fit in amongst existing tall vegetation. A tree mast in this location may look out of place and increase the visibility of the structure. |

Alternative Sites - Proposed Telecommunications Facility, Casuarina Beach

Alternative Sites – Proposed Telecommunications Facility, Casuarina Beach

Following a community information session on Wednesday 5th March 2008 a number of local residents raised concerns that Telstra had not considered alternative sites. We are happy to provide the additional information and visibility of our site selection process.

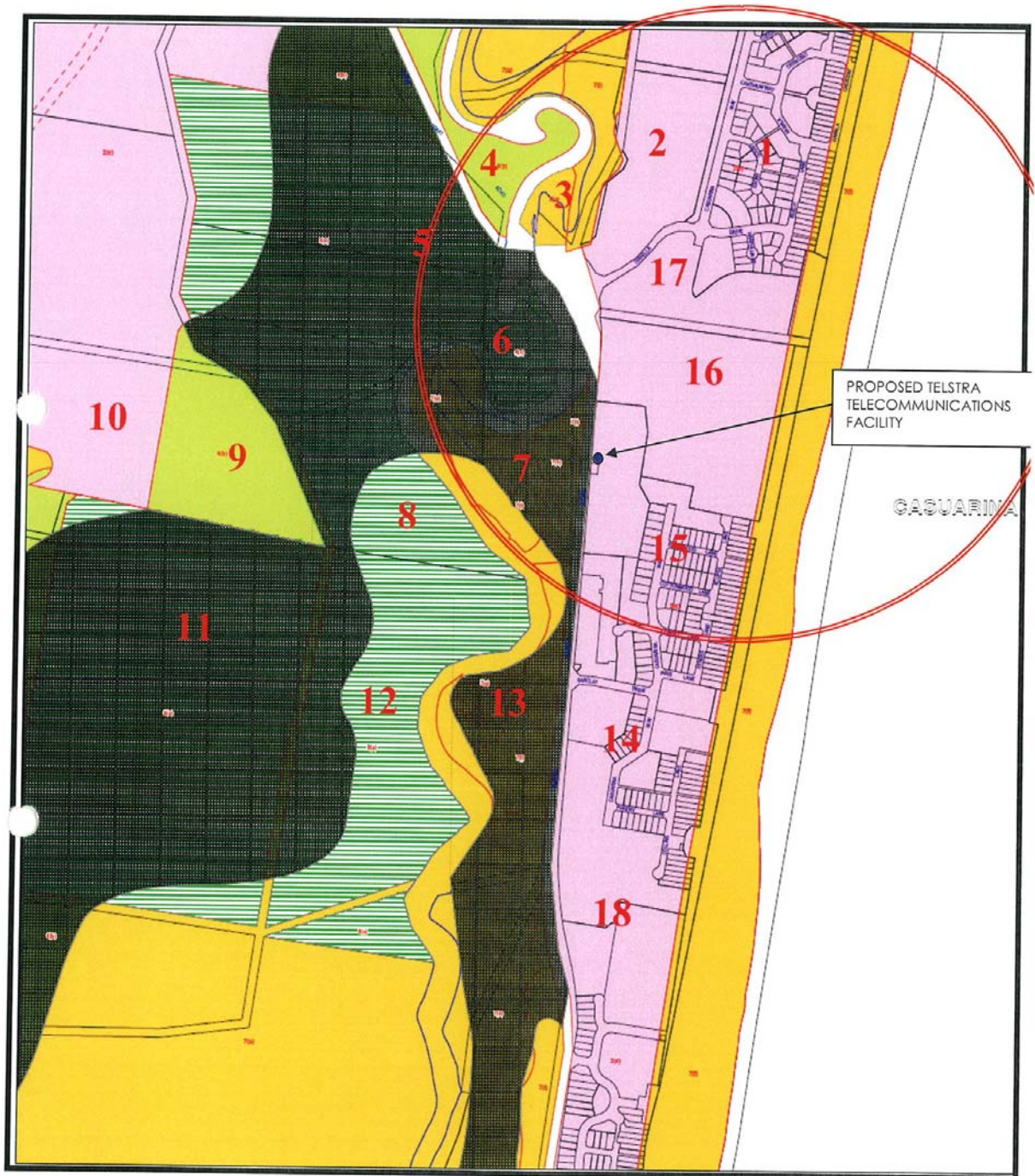
Telstra tries hard to strike a balance between providing services that we know people use every day and finding good local solutions for our equipment. The site selection process takes into account a number of factors, including site availability, technical coverage and build issues, land use planning constraints, and commercial viability. When determining the proposed site at Casuarina Beach, much of the land within our search area had to be ruled out because telecommunications facilities are not permissible on this land under the *Tweed Shire Council LEP 2000*.

Please see below the locations considered by Telstra for a new facility to improve coverage to the Casuarina Beach area.

| Number | Location | Reason the location was discounted |
|--------|---|---|
| 1 | 40 Kamala Crescent, Salt | The site is located north of the search area. A rooftop facility was considered as a possible option. The site was discounted as the body corporate were not willing to enter into a lease with Telstra and the roof was considered too low to provide the required radio coverage. This option was discounted after a scoping visit |
| 2 | Open Space, off Casuarina Way, Salt | The land is open recreational space that is owned by Tweed Shire Council. The site is open and lacks any built infrastructure. It is considered that a telecommunications facility in this location would impose a greater visual impact on the locality, than the current proposal. Council indicated that they would not favour a facility at this location, it was also considered to be too far north to provide the best network coverage. Discounted following informal discussions with Council. |
| 3 | Land between Old Bogangar Road and Cudgen Creek | The site was discounted at desktop stage as it is located on land designated in the LEP as 7(a) Environmental Protection (Wetlands & Littoral Rainforests). The LEP states that a telecommunications facility would be "Prohibited". |
| 4 | Land east of Tweed Coast and adjacent to Cudgen Creek | At the community meeting several members of the community requested that the proposed telecommunications facility be built on this land. The site was discounted at desktop stage as it is located on land designated in the LEP as 6(b) Recreation. The LEP states that a telecommunications facility would be "Prohibited". |

| | | |
|----|---|--|
| 5 | Land north of Cudgen Creek and West of Tweed Coast Road | The site was discounted at desktop stage as it is located on land designated in the LEP as 8(a) National Parks and Nature Reserves. The LEP states that any development in this zoning would be "Prohibited". |
| 6 | Nature Reserve | The site was discounted at desktop stage as it is located on land designated in the LEP as 8(a) National Parks and Nature Reserves. The LEP states that any development in this area would be "Prohibited". |
| 7 | Land west of Tweed Coast Road | The site was discounted at desktop stage as it is located on land designated in the LEP as 7(a) Environmental Protection (Wetlands & Littoral Rainforests). The LEP states that a telecommunications facility would be "Prohibited". |
| 8 | Nature Reserve | The site was discounted at desktop stage as it is located on land designated in the LEP as 8(a) National Parks and Nature Reserves. The LEP states that any development would be "Prohibited". The site is also outside the search area and would not adequately achieve the required coverage objections. |
| 9 | Recreation Land Kings Forest | The site was discounted at desktop stage as it is located on land designated in the LEP as 6(b) Recreation. The LEP states that a telecommunications facility would be "Prohibited". The site is also outside the search area and would not adequately achieve the required coverage objections. |
| 10 | Future Development Land, Kings Forest | This area was not considered as it was outside the search area. Following consultation throughout the DA process this area and areas further west were investigated, and were found to be outside the search area, would not therefore provide the required radio coverage. In relation to the Kings Forest area Telstra are currently looking at providing another telecommunications facility to cater for future development in the area. |
| 11 | Nature Reserve | The site was discounted at desktop stage as it is located on land designated in the LEP as 8(a) National Parks and Nature Reserves. The LEP states that any development in this zoning would be "Prohibited". The site is also outside the search area and would not adequately achieve the required coverage objections. |

| | | |
|----|--|---|
| 12 | Nature Reserve | The site was discounted at desktop stage as it is located on land designated in the LEP as 8(a) National Parks and Nature Reserves. The LEP states that any development in this zoning would be "Prohibited". The site is also outside the search area and would not adequately achieve the required coverage objections. |
| 13 | Land west of Tweed Coast | The site was discounted at desktop stage as it is located on land designated in the LEP as 7(a) Environmental Protection (Wetlands & Littoral Rainforests). The LEP states that a telecommunications facility would be "Prohibited". The site is also outside the search area and would not adequately achieve the required coverage objections. |
| 14 | Playfields Barclay Drive, Casuarina | A search of the area revealed that open space off Barclay Drive could be utilised. Given the constraints as previously discussed, these sites together with the proposed site were considered as potential locations. The proposed location at the Rugby Club playfields was pursued owing to the existence of a greater number of similar vertical features and water pumping station. The site is also outside the search area and would not adequately achieve the required coverage objections. |
| 15 | Casuarina Beach Residential Area | A desktop study discounted the area as it is characterised by residential dwellings, that are of insufficient height to facilitate a telecommunications facility |
| 16 | Open Space east of Tweed Coast Road | This area was discounted at stage as there are plans for future roads going through this land. The land is open and lack of vegetation that would assist with low level screening. Council did not favour an option at this location. |
| 17 | Land off Dianella Drive and Tweed Coast Road | The site is located within the search area, and considered a possible option for a Greenfield monopole site. The land owner was approached, but they decline the offer for a facility as they were unable to establish plans for what development was going to take place on the land. |
| 18 | Casuarina Beach Residential Area (south) | A desktop study discounted the area as it is characterised by residential dwellings that are of insufficient height to facilitate a telecommunications facility. |



(e) Public interest

The proposed telecommunication facility will provide for a greater/better telecommunications service for the locality.

OPTIONS:

1. Approve subject to conditions.
2. Refuse with reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has a right of appeal in the NSW Land and Environment Court if they are dissatisfied with the determination.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed telecommunication facility will provide for a greater/better telecommunications service for the locality. The location and design of the proposal is considered suitable without any significant adverse impacts on the natural and built environments, the communications facility will create a positive impact socially and economically by providing greater telecommunications coverage for the locality.

UNDER SEPARATE COVER/FURTHER INFORMATION:

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

1. Maps and pictures of alternative sites submitted by an objector (DW 1832231)
-

P3 [PR-PC] Residential and Tourist Code – Section A1 of Tweed DCP**ORIGIN:****Planning Reforms****FILE NO: GT1/DCP/A1****SUMMARY OF REPORT:**

This Report deals with the implementation of the draft Residential and Tourist Code (Section A1 of the Tweed Development Control Plan) in particular it seeks an extension to the savings provision for single detached dwelling houses.

On 22 April 2008 Council resolved to prepare an amendment to Tweed Development Control Plan Section A1 to include interim development controls in relation to the height and density limit in Hastings Point.

The draft Plan has been prepared in accordance with s 74C of the *Environmental Planning Assessment Act 1979* and has been publicly exhibited from 7 May to 6 June 2008, in accordance with ss 18–20 of the *Environmental Planning Assessment Regulation 2000*. Twenty one (21) submissions have been received.

In addition to those issues, other issues were raised also. In order to permit further consideration of the 'other' issues and to permit time for a detailed assessment of submissions and any necessary or preferential amendments a resolution seeking the adoption of the draft Plan has been deferred pending that assessment, and where necessary re-exhibition of the Plan. This report will be submitted to a later meeting.

On 13 May 2008 Council resolved to defer the operation of the DCP, as it relates to single detached dwellings, until 30 June on the basis of issues raised by the building industry, primarily project home builders, with respect to difficulties in their transition to attaining compliance with the new controls, particularly where prior contracts have been entered into. For a number of reasons not all of the dwelling applications falling into those categories can be lodged within that time frame, in some cases because the subdivision certificate is yet to be registered.

It is recommended that operation of the DCP, as per the earlier resolution, be carried forward to 31 December 2008 on the following basis:

- The application of the DCP controls in respect of a single detached dwelling house may not be strictly applied to a development application that clearly demonstrates that the contract for the erection of the dwelling house the subject of the application was entered into prior to 30 April 2008 and where the dwelling house was otherwise compliant under the planning provisions in force at the time, and

- An application for a single detached dwelling house being sought on the basis of prior contractual arrangements for erection shall both address the provisions and attain the provisions where they are capable of being met.

The recommendation of this report is based upon a consideration of fairness and the potential hardships of those persons who had entered into agreements and financing for a dwelling house prior to a change in the planning provisions. As evidenced in the submissions received from three major project home builders in the Tweed the number of likely applications is quite limited, approximately 75 properties.

RECOMMENDATION:

That: -

- 1. The provisions of Tweed Development Control Plan Section A1 in relation to single dwelling houses may not be strictly applied to development applications that are lodged by 31 December 2008 and that demonstrates that the contract for the erection of the dwelling house the subject of the application was entered into prior to 30 April 2008 and where the dwelling house was otherwise compliant under the planning scheme in force at that time, and**
- 2. An application for a single detached dwelling house being sought on the basis of prior contractual arrangements for purchase/erection shall both address the provisions of Tweed Development Control Plan - Section A1 and attain those provisions where they are capable of being met.**

REPORT:

As per summary.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

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