



TWEED
SHIRE COUNCIL

Mayor: Cr Warren Polglase

Councillors: P Youngblutt (Deputy Mayor)
D Holdom
B Longland
K Milne
K Skinner
J van Lieshout

Agenda

Ordinary Council Meeting Tuesday 15 December 2009

held at Murwillumbah Cultural & Civic Centre
commencing at 4.30pm

COUNCIL'S CHARTER

Tweed Shire Council's charter comprises a set of principles that are to guide Council in the carrying out of its functions, in accordance with Section 8 of the Local Government Act, 1993.

Tweed Shire Council has the following charter:

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively;
- to exercise community leadership;
- to exercise its functions in a manner that is consistent with and actively promotes the principles of multiculturalism;
- to promote and to provide and plan for the needs of children;
- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development;
- to have regard to the long term and cumulative effects of its decisions;
- to bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible;
- to facilitate the involvement of councillors, members of the public, users of facilities and services and council staff in the development, improvement and co-ordination of local government;
- to raise funds for local purposes by the fair imposition of rates, charges and fees, by income earned from investments and, when appropriate, by borrowings and grants;
- to keep the local community and the State government (and through it, the wider community) informed about its activities;
- to ensure that, in the exercise of its regulatory functions, it acts consistently and without bias, particularly where an activity of the council is affected;
- to be a responsible employer.

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CONFIRMATION OF MINUTES

- 1 **Minutes of the Ordinary and Confidential Meeting of Council held on 17 November 2009**

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. Minutes of the Ordinary Council Meeting held Tuesday 17 November 2009 (ECM 9035763).
 2. **Confidential Attachment** - Minutes of the Confidential Council Meeting held Tuesday 17 November 2009 (ECM 9033427).
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SCHEDULE OF OUTSTANDING RESOLUTIONS

2 Schedule of Outstanding Resolutions as at 15 December 2009

FOR COUNCILLOR'S INFORMATION:

18 November 2008

PLANNING COMMITTEE

P4 [PR-PC] Development Application DA07/0945 for Multi Dwelling Housing Consisting 34 Residential Units at Lot 290, 630 DP 755740; Lot 1 DP 781512, No. 7 Elsie Street, Banora Point

P 13 COMMITTEE DECISION:

Cr W Polglase
Cr K Skinner

RECOMMENDED that this item be deferred to allow for further negotiations with the applicant.

Current Status: To be reported to a future Council Meeting.

18 AUGUST 2009

MAYORAL MINUTE

a3 [MM] Tweed Food Bowls Vision

170

Cr J van Lieshout

RESOLVED that:-

1. Council Officers investigate and prepare a feasibility report on the potential for Northern Rivers region to increase its food growing capacity together with studies on food related industry initiative and more sustainable "Paddock to Plate" and "co-operative marketing" opportunities.
2. Council takes an active involvement in the \$1.9 million Northern Rivers Food Links Project and that a suitable workshop presentation on the "Draft Food Link Project Business Plan" be arranged.

Current Status: Workshop held on 22 September 2009, report to be prepared.

17 November 2009

ORDERS OF THE DAY

55 [NOM-Cr D Holdom] Local Government Aboriginal Network Conference 2012

444

Cr D Holdom

Cr K Skinner

RESOLVED that Council staff investigate and report back to Council on lodging a bid to hold the Local Government Aboriginal Network Conference in the Tweed Shire in 2012.

Current Status: Report to be prepared.

65 [NOM-Cr K Milne] Native Vegetation Clearing Education

448

Cr K Milne

Cr B Longland

RESOLVED that Council:

1. Encourages the Department of Environment Climate Change and Water (DECCW) to:
 - a) Adopt a zero tolerance policy to illegal native vegetation clearing and
 - b) Consider a marketing campaign to educate the community on the importance of this issue and informs the community how to report suspected breaches.
2. Invites representatives of the Department of Environment Climate Change and Water (DECCW) to present a workshop to Council on this issue.

Current Status: Workshop to be organised.

MAYORAL MINUTE

3 [MM-CM] Mayoral Minute for the period 9 November 2009 - 5 December 2009

Councillors,

COMMITTEE MEETINGS:

Attended by the Mayor

- 26 Nov 2009 - Murwillumbah Community Centre Committee Meeting – Coolamon Centre, Murwillumbah
 - 27 Nov 2009 - NOROC Board Meeting – Lismore City Council Offices, Goonellabah
 - 03 Dec 2009 - Arts Northern Rivers Board Meeting – Ballina Shire Council Offices, Cnr Cherry & Tamar St, Ballina
-

INVITATIONS:

Attended by the Mayor

- 11 Nov 2009 - Remembrance Day Service - Returned Services League of Australia, Kingscliff Branch – Kingscliff Cenotaph
- 12 Nov 2009 - Coolangatta Tweed Rotary Club Meeting – Opal Room, Level 3, Twin Towns
- 13 Nov 2009 - Tweed Academy of Sport Launch – The Sandbar & Grill Convention Centre, Casuarina
- 13 Nov 2009 - Mt St Patrick College Year 12 Formal – Murwillumbah Civic Centre Auditorium
- 16 Nov 2009 - Friendship Force Welcome to 19 visitors from Haliburton, Canada – Council Chambers, Murwillumbah Civic Centre
- 17 Nov 2009 - Kingscliff & District Chamber of Commerce Meeting – Saltbar Beachbar & Bistro, Bells Boulevard, Kingscliff
- 18 Nov 2009 - Business Insight Evening – hosted by TEDC and SCU – Saltbar Beachbar & Bistro, Bells Boulevard, Kingscliff (also attended by Crs Youngblutt, van Lieshout, Longland)
- 22 Nov 2009 - Dragon Boat Festival – Jack Evans Boat Harbour, Tweed Heads

Council Meeting held Tuesday 15 December 2009

- 23 Nov 2009 - Murwillumbah Historical Society Christmas Party – Murwillumbah Bowling Club, Condong St, Murwillumbah
- 25 Nov 2009 - Chamber of Commerce Dinner – Shanks, Coolangatta
- 26 Nov 2009 - TEDC AGM & Xmas Drinks – TRAG Murwillumbah – (also attended by Crs Youngblutt and Longland)
- 28 Nov 2009 - Terranora Tennis Presentation – South Tweed Bowls Club
- 30 Nov 2009 - Twin Towns Friends Association Christmas Luncheon – Tweed Heads Bowls Club, Florence St, Tweed Heads (also attended by Cr Longland)
- 03 Dec 2009 - Tweed Tourism AGM & Christmas Party – Twin Towns
- 04 Dec 2009 - Murwillumbah Chamber of Commerce Meeting – Murwillumbah Services Club
- 05 Dec 2009 - Kingscliff TAFE official welcome to 74 Japanese Students from Tohoku – Kingscliff TAFE Campus
- 05 Dec 2009 - Christmas Carols by the Sea – Salt, Kingscliff
- 05 Dec 2009 - Kingscliff Australian Volunteer Coastguard Christmas Party – Kingscliff Training Campus, Kingscliff

Attended by other Councillor(s) on behalf of the Mayor

- 11 Nov 2009 - Remembrance Day Service - Returned Services League of Australia, Murwillumbah Branch – War Memorial Civic Park, Murwillumbah (attended by Cr Barry Longland)
- 12 Nov 2009 - Kmart Wishing Tree Appeal Launch – Tweed City Kmart, Tweed Heads (attended by Cr Dot Holdom)
- 14 Nov 2009 - Bray Park Residents Community Day re: planned park, River Oak Drive, Bray Park (attended by Cr Phil Youngblutt)
- 27 Nov 2009 - Bundjalung Elders Council Celebration of 20 years – Lismore TAFE College, Conway St, Lismore (attended by Cr Dot Holdom)
- 27 Nov 2009 - Murwillumbah Advent Pageant & Parade – ending at Knox Park, Murwillumbah (attended by Crs van Lieshout and Longland)

Inability to Attend by or on behalf of the Mayor

- 19 Nov 2009 - Tourism & Transport Forum – Brisbane Convention & Exhibition Centre
- 26 Nov 2009 - NSW Volunteer of the Year Award - Ballina

- 27 Nov 2009 - Tweed Heads Police White Tie Charity Ball – Twin Towns Services Club
- 28 Nov 2009 - Tweed Unlimited Arts – Pioneer St, Banora Point
- 02 Dec 2009 - Thomas Noble & Russell Economic Briefing – Lismore Workers Sports Club, Goonellabah
- 03 Dec 2009 - Festival of Ability FNC – Alstonville Leisure & Entertainment Centre & Showground
- 04 Dec 2009 - Marsdens Law Group Christmas Get Together – Campbelltown Art Gallery, Campbelltown

CONFERENCES:

Conferences attended by the Mayor and/or Councillors

- NIL

Information on Conferences to be held

- 2&3 Mar 2010 - National Sea Change Taskforce, Australian Coastal Councils Conference – Byron Bay

Councillors, please refer to the Councillor portal for complete Conference information.

SIGNING OF DOCUMENTS BY THE MAYOR:

- 16 Nov 2009 - Renewal of Lease – Vodafone – Banora Point Water Reservoir, Terranora Road, Banora Point
- 24 Nov 2009 - Deposited Plan – Easement Lots 10 – 11, DP1014470

RECOMMENDATION:

That:-

1. **The Mayoral Minute for the period 09 November – 05 December 2009 be received and noted.**
2. **The attendance of Councillors at nominated Conferences be authorised.**

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ORDINARY ITEMS FOR CONSIDERATION

REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

- 4 [PR-CM] Development Application DA08/0752 for a Three Storey Dwelling with Double Garage, Double Carport, In Ground Swimming Pool & Courtyard Fencing at Lot 920 DP 880612, No. 12 The Hermitage, Tweed Heads South**

ORIGIN:

Building & Environmental Health

FILE NO: DA08/0752 Pt1

SUMMARY OF REPORT:

An application has been received to erect a new three storey dwelling with double garage, double carport, in ground swimming pool & courtyard fencing on the subject property. It is to be noted that this application was submitted prior to the adoption of DCP A1 Part A. Whilst the applicant is not obligated to fully comply with DCP A1 Part A the consent authority has to consider the requirements of Part A in its assessment.

The subject allotment is located on the western end of the cul-de-sac to The Hermitage and is subject to a three storey height limit under Tweed LEP 2000.

The allotment is vacant and has a fall to the rear of approximately 8 to 18 degrees.

The proposal also includes a variation to the six metre building alignment to permit the erection of a double carport, and courtyard fencing.

The proposal was notified and objections were received which were taken into consideration in the assessment of this application.

After a comprehensive assessment of the application and taking into consideration the objections it is considered that the variations to DCP Section A1 Part A are minor and justifiable for the reasons outlined in this report.

A response to the objections is included later in this report.

It is considered that the application is worthy of approval.

RECOMMENDATION:

That Development Application DA08/0752 for a three storey dwelling with double garage, double carport, in ground swimming pool & courtyard fencing at Lot 920 DP 880612, No. 12 The Hermitage Tweed Heads South be approved subject to the following conditions: -

GENERAL

- 1. The development shall be completed in accordance with the plans approved by Council and the Statement of Environmental Effects, except where varied by conditions of this consent.**

[GEN0015]

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

[GEN0115]

- 3. The sill height of the windows in the southern elevation of the rumpus and theatre are to be increased to be a minimum height of 1.5m above finished floor level or alternatively, fixed frosted glazing is to be provided where permitted by the Building Code of Australia.**

[GENNS01]

- 4. The courtyard fencing and gate is to have a minimum openness ratio of 60%.**

[GENNS02]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

- 5. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include engineering plans and specifications undertaken in accordance with Councils Development Design and Construction Specifications for the following required works: -**

(a) Vehicular access

[PCC0895]

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

[PCC0945]

- 7. A construction certificate application for works that involve any of the following:-**

- connection of a private stormwater drain to a public stormwater drain**
- installation of stormwater quality control devices**
- erosion and sediment control works**

will not be approved until prior separate approval to do so has been granted by Council under S68 of the Local Government Act.

- a) Applications for these works must be submitted on Council's standard s68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.
- b) Where Council is requested to issue a construction certificate for civil works associated with a subdivision consent, the abovementioned works can be incorporated as part of the construction certificate application, to enable one single approval to be issued. Separate approval under section 68 of the LG Act will then NOT be required.

[PCC1145]

8. An application shall be lodged together with any prescribed fees including inspection fees and approved by Tweed Shire Council under Section 68 of the Local Government Act for any water, sewerage, on site sewerage management system or drainage works including connection of a private stormwater drain to a public stormwater drain, installation of stormwater quality control devices or erosion and sediment control works, prior to the issue of a construction certificate.

[PCC1195]

9. Prior to the release of the construction certificate amended plans are to be submitted to the PCA indicating the sill height of the windows in the southern elevation of the rumpus and theatre are to be increased to be a minimum height of 1.5m above finished floor level or alternatively, fixed frosted glazing is to be provided where permitted by the Building Code of Australia.

[PCCNS01]

10. Prior to the release of the construction certificate detailed plans are to be submitted to the PCA indicating the courtyard fencing and gate will have a minimum openness ratio of 60%.

PRIOR TO COMMENCEMENT OF WORK

11. 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]

12. 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]

13. 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]

14. Residential building work:

- (a) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
 - * in the name and 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]

15. 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]

16. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the site is prohibited.

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

[PCW0255]

17. 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]

18. All roof waters are to be disposed of through properly jointed pipes to the street gutter, interallotment drainage or to the satisfaction of the Principal Certifying Authority. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZS3500.3.2. Note All roof water must be connected to an interallotment drainage system where available. A detailed stormwater and drainage plan is to be submitted to and approved by the Principal Certifying Authority prior to commencement of building works.

[PCW1005]

DURING CONSTRUCTION

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

[DUR0005]

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

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

[DUR0245]

22. **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]

23. **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]

24. **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]

25. **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]

26. **Excavation**

(a) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with WorkCover 2000 Regulations.

(b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

[DUR0425]

27. **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]

28. Landscaping of the site shall be carried out in accordance with the submitted/approved landscaping plans.
[DUR1045]
29. The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.
[DUR2015]
30. Swimming Pools (Building)
- (a) The swimming pool is to be installed and access thereto restricted in accordance with Australian Standard AS 1926.1 – 2007 & AS 1926.3 - 2003. (Refer Council's web site www.tweed.nsw.gov.au)
 - (b) Swimming pools shall have suitable means for the drainage and disposal of overflow water.
 - (c) The pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.
 - (d) Warning notices are to be provided in accordance with Part 3 of the Swimming Pool Regulations 2008.
[DUR2075]
31. Backwash from the swimming pool is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9.
[DUR2085]
32. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction/demolition.
[DUR2185]
33. The guttering downpiping and roof waste water disposal system is to be installed and operational before the roofing is installed.
[DUR2245]
34. 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]
35. 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]

36. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993.

[DUR2515]

37. 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]

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

- * 43.5°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
- * 50°C in all other classes of buildings.

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

[DUR2555]

39. The proponent shall comply with all requirements tabled within any approval issued under Section 68 of the Local Government Act.

[DUR2625]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

40. 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]

41. Prior to the issue of an occupation certificate,

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

[POC0235]

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

The street number is to be on a white reflective background professionally painted in black numbers 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]

43. 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]

44. All landscaping work is to be completed in accordance with the approved plans prior to any use or occupation of the building.

[POC0475]

45. 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]

46. Prior to the issue of a final occupation certificate, all conditions of consent are to be met.

[POC1055]

USE

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

[USE0125]

48. 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]

49. **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).
- (c) Warning notices required under Part 3 of the Swimming Pool Regulations 2008 shall be maintained at all times.

[USE1295]

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

[USE1305]

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

1. New construction is to comply with Appendix 3 – Site Bush Fire Attack Assessment of *Planning for Bush Fire Protection 2006*. In this regard the following design standards for construction are to be incorporated into the development:
 - a) New construction shall fully comply with Australian Standard AS3959-1999 '*Construction of buildings in bush fire-prone areas*' Level 3 with the exception that any external materials within 19 metres of the western boundary are to be non combustible.
2. Roofing shall be gutterless or have leafless guttering and valleys to prevent the build up of flammable material. Any materials used shall have a Flammability Index no greater than 5.
3. Roller doors, tilt-a-doors and the like shall be sealed to prevent the entry of embers into the building.
4. All fencing shall be constructed from non-combustible materials.
5. Glazing within 19 metres of the western boundary shall comply with the following;

Bush fire shutters

Where fitted, bush fire shutters shall —

- (a) be fixed to the building and be non-removable,
- (b) when in the closed position, have no gap between the shutter and the wall, the sill or the head greater than 2mm,
- (c) be readily manually operable from either inside or outside,
- (d) protect the entire window or door assembly,
- (e) be made from non-combustible material,
- (f) where perforated, have—
 - (i) uniformly distributed perforations with a maximum aperture of 2mm,
and
 - (ii) a perforated area no greater than 20% of the shutter.

Windows

Windows, including frames, shall have;

- (a) the openable portions screened using a mesh with a maximum aperture of 2mm made of corrosion resistant steel or bronze, and
 - (b) the window assemblies protected by a complying bush fire shutter or;
 - (c) where window assemblies are not protected by a complying bush fire shutter -
 - (i) Window frames, window joinery and hardware shall be metal.
 - (ii) Hardware fitted externally that supports the sash in its functions of opening and closing shall be metal.
 - (iii) Glazing shall be toughened glass minimum 5mm.
 - (iv) Seals to stiles, head and sills or thresholds shall be manufactured from materials having a Flammability Index no greater than 5.
6. At the commencement of building works the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and appendix 5 of *Planning for Bush Fire Protection 2006* and the NSW Rural Fire Service's document '*Standards for asset protection zones*'.
7. Water, electricity and gas are to comply with section 4.1.3 of *Planning for Bush Fire Protection 2006*.
8. To aid in fire fighting activities, unobstructed pedestrian access to the rear of the property shall be provided and maintained at all times.

REPORT:

Applicant: Peyton Properties Pty Ltd
Owner: Peyton Properties Pty Ltd
Location: Lot 920 DP 880612 No. 12 The Hermitage, Tweed Heads South
Zoning: 2(c) Urban Expansion
Cost: \$530,000

BACKGROUND:

The subject site encompasses an area of 715m² and is located on the western end of the cul-de-sac to The Hermitage and slopes down from the street at approximately 8 to 18 degrees.

The site is vacant and is triangular in shape with a narrow curved frontage of 9.755m, rear boundary length of 34.845m, southern side boundary of 36m and northern side boundary of 33.87m. Adjoining the site to the north is an established two storey dwelling at number 13 and to the south and separated by an unformed 4m wide pathway is a two storey dwelling currently under construction at number 11.

There are no Council services on the allotment which will be affected by the proposed development. It is to be noted that the site is affected by two easements; one is 2.5m wide which is to drain water located parallel with the rear boundary and the other is of variable width which is located in the south-eastern corner of the subject allotment.

The site slopes down from the street and has a change of level of about 7.5 m from the front boundary to rear boundary.

The subject site is zoned 2 (c) Urban Expansion and is located within a designated 3 storey area as per clause 16 of the Tweed Local Environmental Plan (LEP) 2000.

The primary objective of this zoning is :-

“to identify land for urban expansion (which will comprise mainly residential development focused on multi-use neighbourhood centres) and to ensure its optimum utilisation consistent with environmental constraints and the need to minimise residential landtake.”

This Development Application was lodged on 25 June 2008; being prior to 1 July 2008 compliance with DCPA1 Part A is not mandatory but is to be considered.

The plans submitted disclosed a three storey dwelling with an undercroft area having a subfloor height exceeding 1.5m. Since this constitutes a storey as defined in the Tweed Shire Council LEP the development application was notified as a four storey dwelling with double garage, double carport, inground pool and courtyard fencing.

Notification was required in accordance with the provisions of DCP Section A11 (Public Notification of Development Proposals) and in response five written objections to the proposal have been received including a petition with 21 signatures. This resulted in discussions with the applicant and their building designer. It was resolved that the plans would be modified in response to the concerns raised. Correspondence was sent to the applicant in confirmation to this and also advising of the bushfire requirements from the Rural Fire Service.

Amended plans and supporting documentation was submitted to Council on the 31 March 2009. The plans submitted included the following changes:

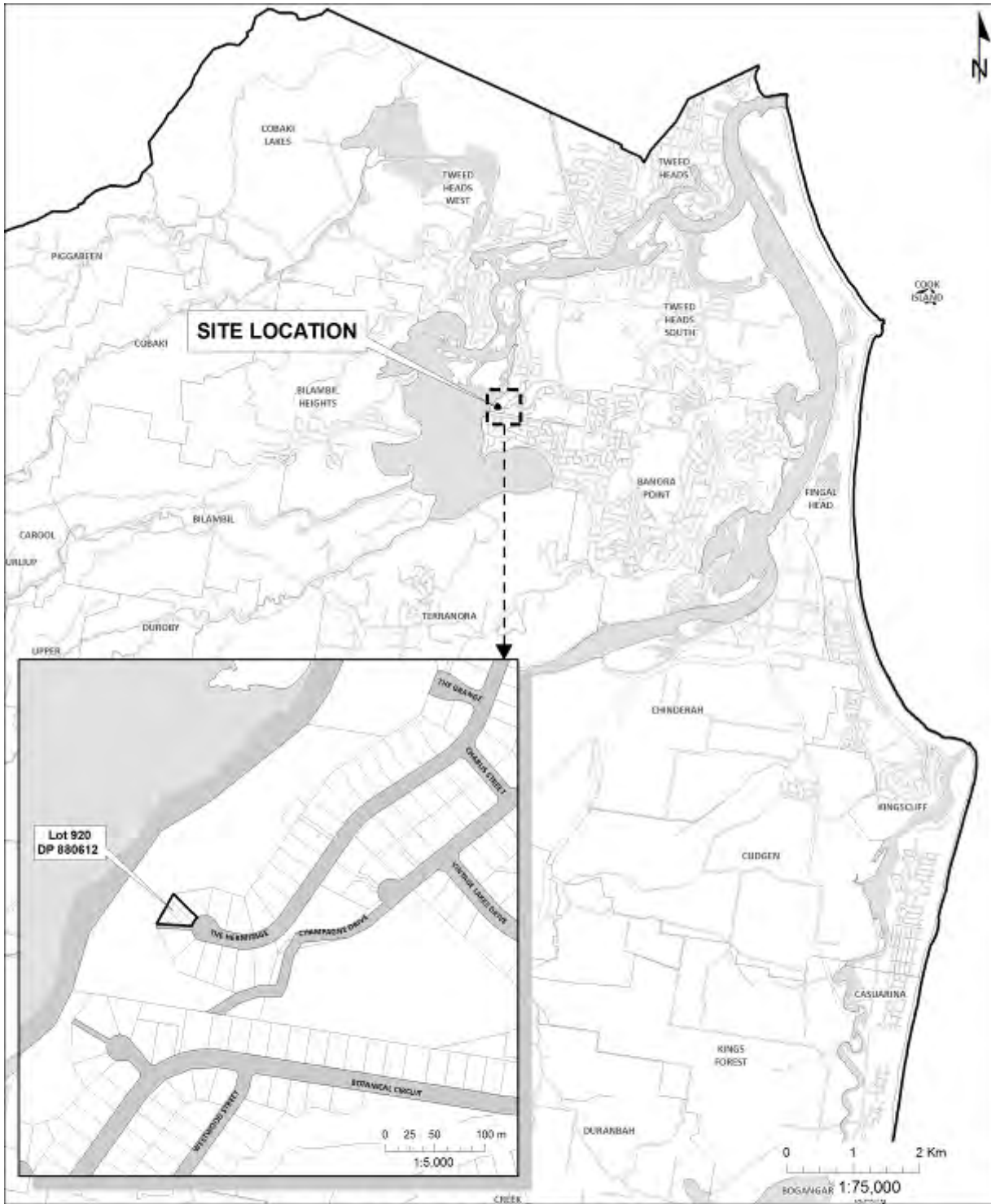
- i) The carport design was amended by locating the posts outside the two metre by two metre sight triangles.
- ii) The carport was reduced in area.
- iii) The roller door to the carport as originally proposed has been replaced by an electric roller gate having a transparency of 60%.
- iv) The undercroft area to the rumpus room (lowest level) which previously constituted a storey as it exceeded 1.5m has been amended by retained fill which has resulted in area of level usable outdoor space.
- v) Shadow diagrams have been submitted.
- vi) The applicant has provided a submission in support of their application.
- vii) The applicants building designer has provided a statement of environmental effects.

It is to be noted that the floor levels, setbacks, and heights of the proposal remain virtually the same as indicated on the plans submitted in June 2008 and March 2009.

The application was renotified to the same residents on the 7 April 2009 and in response two written objections were received one of which includes an architect's submission.

During assessment of these amended plans it was revealed that the proposal by definition is still considered to be a four storey dwelling and discussions with the Manager of Building and Environmental Health concluded that the proposal could not be recommended for approval. The applicant and their building designer were notified of this decision which resulted in a meeting on 4 August 2009 with the owners and their building consultant. At this meeting the Manager of Building and Environmental Health advised the applicant to submit amended plans incorporating the following changes; a minimum 1.5m setback off the north-eastern side boundary, a three storey dwelling complying with LEP2000 and a reduction in the overall length of the dwelling. On 15 October 2009 amended plans were received from Parameter Design Pty Ltd in respect of the recommended changes. These plans were not renotified as a result to the similarity of the proposal and as it was considered that the objections are still current and will be taken into account during the assessment of the application.

SITE DIAGRAM:

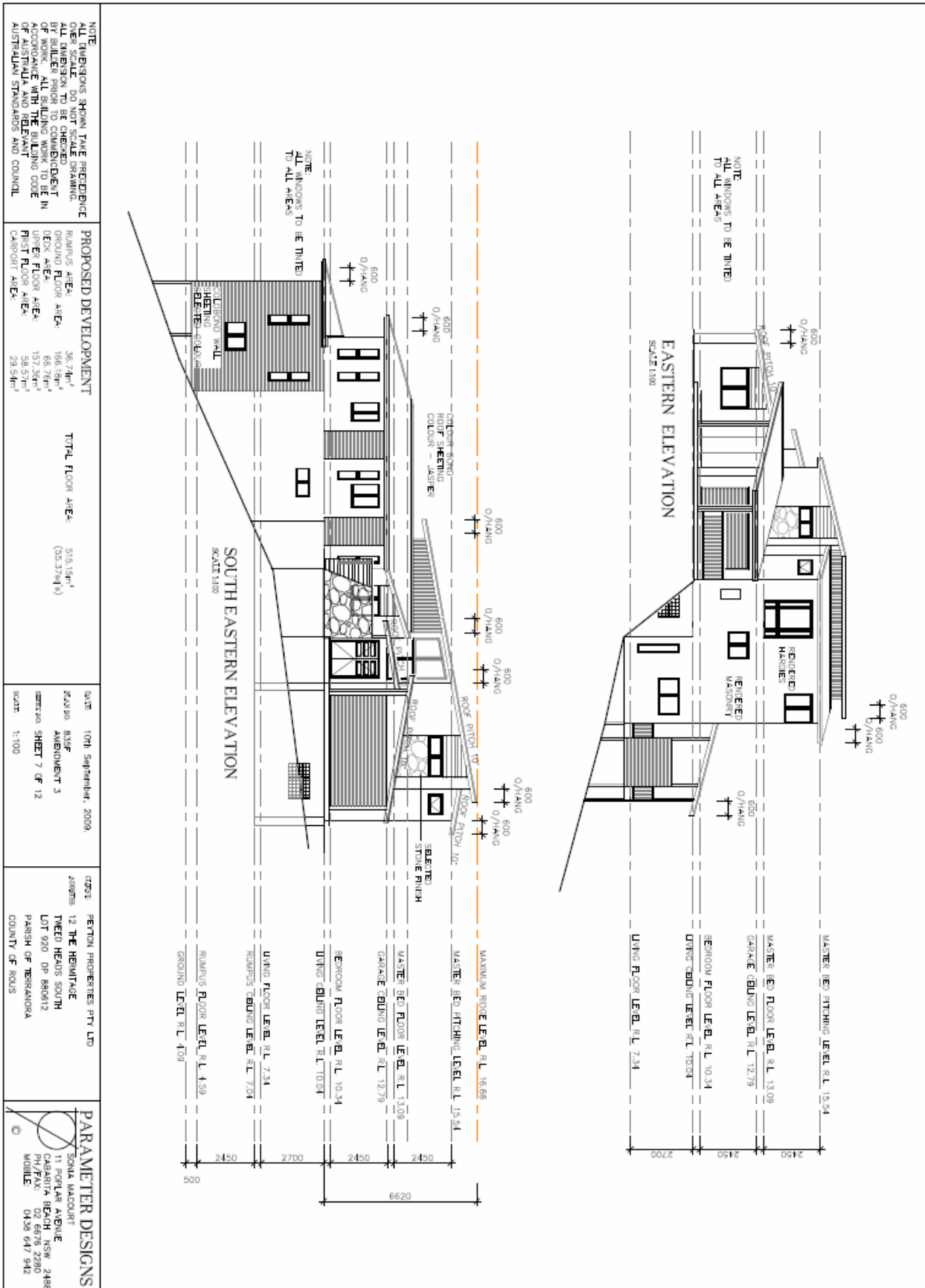


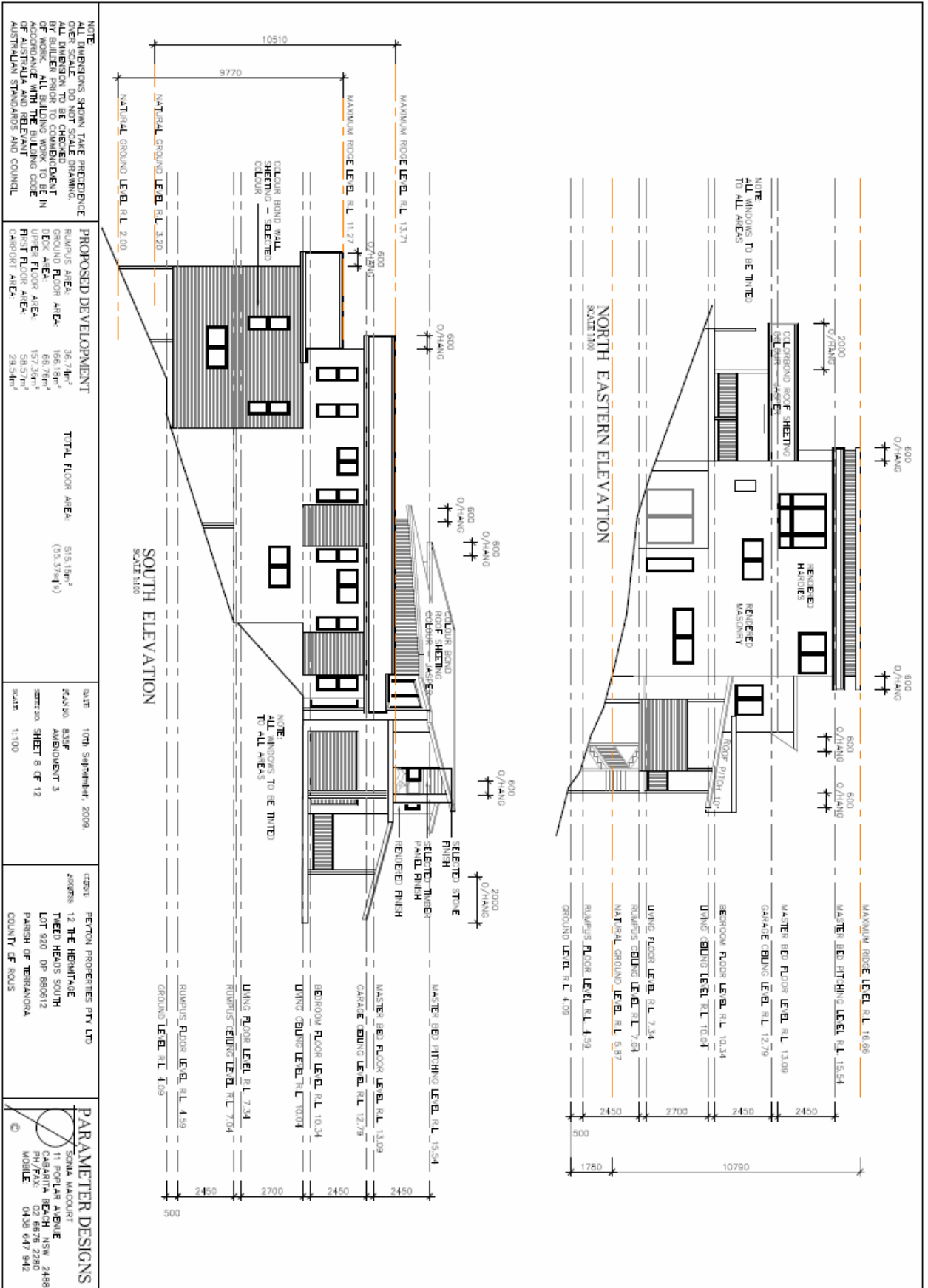
LOCALITY PLAN
Lot 920 DP 880612
No.12 The Hermitage, Tweed Heads South

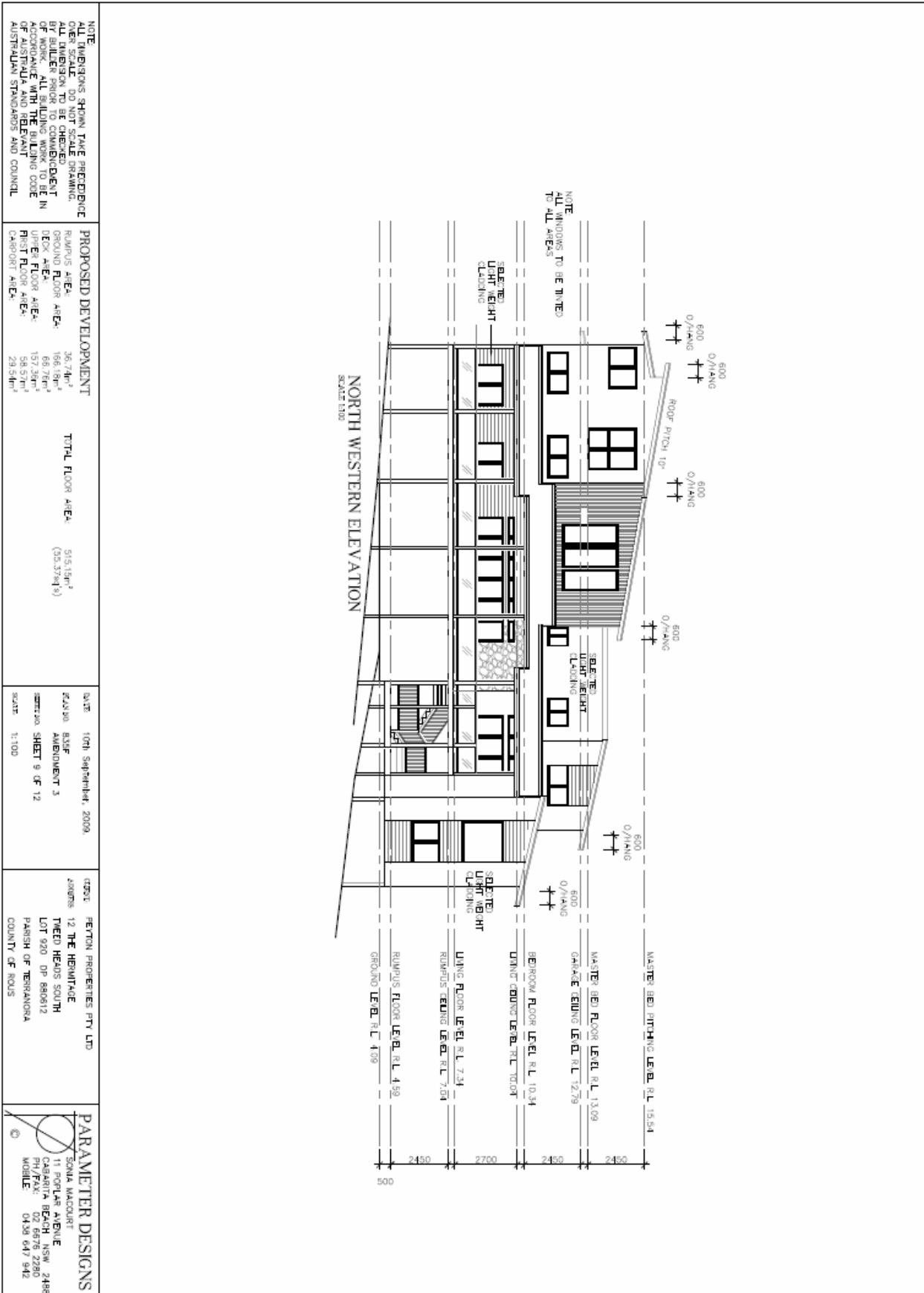
<p>Filename: z:\work\planning\urms\AAP_BB&W SitePlan.mxd Author: J. Gatchell - Planning Reforms Unit Date Printed: 1 December, 2009</p>	<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and it is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a 'hit' before you dig' enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.</p>	<p> GDA Coordinate System - MGA Zone 56 Datum - GDA 96</p>	<p> Cadastre: 1 December, 2009 © Dept. of Lands & Tweed Shire Council</p>	<p>City and Cultural Centre 3 Tunbulgun Road Murwillumbah NSW 2484 PO Box 616 Murwillumbah NSW 2484 T: (02) 6670 2400 / 1300 232 672 F: (02) 6670 2403 W: www.tweed.nsw.gov.au E: planningreforms@tweed.nsw.gov.au</p>	<p> TWEED SHIRE COUNCIL</p>
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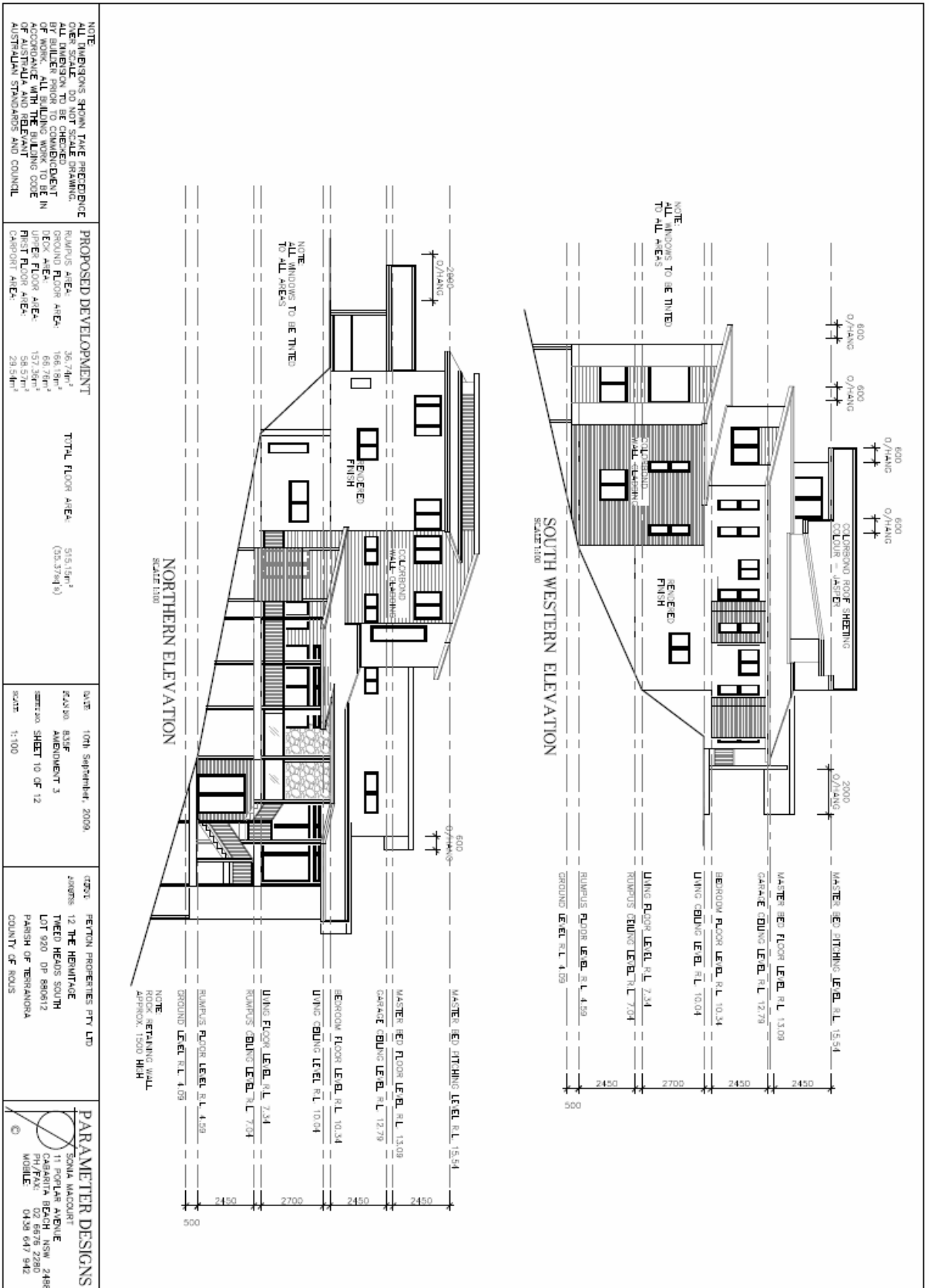
DEVELOPMENT PLANS:











CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

The application was lodged as a requirement of the Environmental Planning and Assessment Act 1979 and is required to be evaluated using the relevant terms of clause 79C of the Act.

As a part of the assessment process numerous site visits by Council's assessing officer have been undertaken to all of the surrounding properties. Impacts have been discussed with the applicant, their building designer and several of the objectors. The applicant was advised of Council's concerns and the likely modifications that would be necessary to allow reasonable compromise.

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

Part 1 Clause 4 - Aims of the Plan

The proposal satisfies the aims of the Tweed LEP in relation to the desired outcomes of the plan namely the management of growth in a responsible manner.

Clause 5 - Ecologically Sustainable Development

The proposal satisfies the principles of this clause as there will be no anticipated serious or irreversible environmental damage likely as a result of the proposed development.

Clause 8 Consent considerations

Zone Objectives

The subject site is zoned 2(c) Urban Expansion. The primary objective of the zone zoning is :-

“to identify land for urban expansion (which will comprise mainly residential development focused on multi-use neighbourhood centres) and to ensure its optimum utilisation consistent with environmental constraints and the need to minimise residential landtake.

This relates to the provision for and maintenance of low density residential development with a predominantly detached housing character and amenity. The secondary objectives relate to allow some diversity of housing types provided it achieves good urban design outcomes and the density, scale and height is compatible with the primary objectives. The proposed development is consistent with the primary objective of the zone.

Cumulative Impacts

The proposed building at three storeys is a response to the site conditions and the applicant's requirements. The proposed dwelling is unlikely to dominate the immediate streetscape. The proposal is unlikely to have an unacceptable cumulative impact on the community, locality or area of the Tweed as a whole.

The cumulative weight of objections of several surrounding properties was considered to be relevant and it is considered that the final design has addressed reasonably the main collective concerns of bulk and scale and privacy by increasing the north-eastern setback, reducing the length of the proposed dwelling house, reducing the dwelling house to a maximum of three stories and providing privacy screening.

Clause 11 - Zone

The subject site is zoned 2 (c) Urban Expansion and the proposed development being a single dwelling house will be consistent with the approved use of the site.

The immediate locality predominantly contains single dwelling houses and there is some dual occupancy in the neighbouring streets.

Clause 15 - Essential Services

The site has access to all necessary essential services including reticulated water supply, sewer, stormwater, electricity and telecommunications.

Clause 16 - Height of Building

The proposed development consists of a three storey dwelling which is permissible given that the subject site has a maximum three storey height limitation under clause 16 under the TLEP 2000. Also the applicant has lodged amended plans which propose a maximum overall height of 10.79 metres. The overall heights of the proposed development will be as follows:

- Dining/Rumpus 9.77m @ RL 11.27m
- Bedroom Four 10.51m @ RL 13.71m
- Master Bed/Garage 10.79m @ RL 16.66m

All of the above heights are measured from natural ground line and it is also to be noted that the planning controls which were in force at the time of lodgement prescribed a three storey height limit and did not set a maximum height. It is to be noted this application was lodged prior to the adoption of DCP A1 Part A which currently prescribes a maximum height of 9m. A response to this requirement is contained later in this report.

Clause 17 - Social Impact Assessment

Normal domestic impacts can be anticipated from the proposed development. These impacts are not anticipated to have any significant impact on the existing amenity of the area or the existing streetscape other than what could be reasonably expected.

Sloping sites always present challenges to privacy and overlooking of adjoining lots due to the slope of the allotments. However the design of the dwelling incorporates a deck to the rear which includes a privacy screen on the north-eastern side in order to minimise impact upon No. 13 The Hermitage.

Clause 35 - Acid Sulfate Soils

The allotment is not located in an area which is affected by acid sulphate soils.

Clause 39A – Bushfire Protection

The site is identified as being in a bushfire prone area. The application was referred to the Rural Fire Service for comments. Extra conditions have been added to the conditions of approval to help protect the dwelling from bushfire attack as recommended by the Rural Fire Service.

Other Specific Clauses

There are no other relevant clauses which are applicable to this proposal.

State Environmental Planning Policies

SEPP No 71 – Coastal Protection

The subject site falls within the coastal zone as identified under SEPP 71, however referral to the Department of Natural Resources is not necessary given the relatively minor nature of the proposal and its distance from any sensitive coastal locations. The development is generally consistent with the specific provisions and intent of Clause 8 of SEPP 71.

SEPP (Building Sustainability Index: BASIX) 2004

The Applicant has provided a valid BASIX certificate for the proposed development in accordance with the legislation and the latest amended plans.

It is considered that the requirements if this SEPP have been satisfied.

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

There are no draft environmental planning instruments on exhibition that are a relevant matter for consideration in the assessment of this application.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code Part A

In regards to compliance with the design controls out lined in section A1, when DCP Section A1 was adopted Council resolved that:

- The provisions of Tweed Development Control Plan Section A1 in relation to single dwelling houses not be applied to applications received prior to close of business on Monday 30 June 2008 and this decision was notified in the Tweed Link.

In this instance the development application was lodged with Council on 25 June 2008 and therefore has been designed to comply with Council's development requirements that were applicable before the introduction of A1.

Notwithstanding the above the requirements of A1 have been considered in the assessment of the application.

It should be noted that the most recent amended plans and supporting information were received by Council on 15 October 2009 and these plans were the result of information requested during the assessment of the application.

Section A1 of Tweed DCP introduced detailed parameters for improved site outcomes including the provision of deep soil zones, impermeable site area, private open space, landscaping, car parking, setbacks and general street presence.

Section A1 of the DCP is divided into two chapters.

Chapter 1 Building Types

The Building Type proposed is 'Housing'.

The DCP describes that housing developments generally contain up to two storeys and goes on to set the minimum and maximum standards required for this Building Type.

The DCP envisages primarily up to two storeys but does not prohibit three storeys, although it follows, that they demonstrate compliance with the mandatory controls of the DCP and must be permissible by the number of storeys permitted by the Local Environment Plan 2000 for the locality.

The proposal meets generally the mandatory controls of the DCP and specifically for chapter 1 as outlined below.

Objectives:

- To be well designed and attractive.
- To be of an appropriate scale relative to the existing or desired future pattern of development.
- To provide landscaped and deep soil areas on the lot.
- To provide amenity for residents without compromising the amenity of neighbouring properties.
- To address the street and to make a positive contribution to its established or envisaged streetscape character.
- To maximise the sustainability of the building during its lifecycle.

- To minimise the impact on the natural environment.
- To minimise the impact on the natural landscape through inappropriate or unnecessary cut and fill.

Controls

- a. Dwelling houses in existing urban areas must be consistent with the scale and character of surrounding dwelling houses or as envisaged through an adopted concept plan, locality plan, design statement or the like.
- b. In new subdivision areas dwelling houses are to be designed to conserve any natural landscape features of the site and surrounding area.
- c. In new subdivision areas dwellings must be consistent with any design scheme adopted for that subdivision.
- d. Deep soil areas are to be provided to the front and rear of sites in accordance with this Part.
- e. Entrances are to be clearly visible from the street, where the allotment has a street frontage, and there is to be a clear line of access to the building from the street.
- f. Dwelling houses are to meet the controls as set out in this Part A: Site and Building Design Controls.
- g. Dwelling houses on non urban zoned land shall not, for the purpose of this Plan, be restricted to the deep soil zone, setback and carport, garages and outbuildings controls where it is demonstrated that compliance with a particular control would be unreasonable in the circumstances.

The proposed building in its original form attracted many submissions objecting to the proposal particularly relating to the bulk and scale of the proposed dwelling, loss of views and loss of privacy. The final plans the subject of this report have addressed reasonably the concerns and are now considered to satisfy the objectives and controls of chapter 1 above.

Various amendments have been requested throughout the DA process in order to satisfy the objectives of the Design Controls of Chapter 2 of DCP A1 Part A, including the dwelling house and carport height, carport width, front deep soil zone, landscaping, garage setback and southern side boundary setback.

Further detail on the assessment of these issues is provided in the latter sections of this report.

Chapter 2- Site and Building Design Controls

Design Control 1-Public Domain Amenity

The proposed development whilst containing three stories will present to the immediate streetscape as a two storey dwelling house. However, the side elevations which consist of two and three stories will dominant more on the neighbouring properties than upon the street. The near triangular shape of the allotment having a radial frontage of 13 metres has resulted in the double carport occupying much of the 6.0 metre setback. The impact of this has been lessened to a degree by the front courtyard fencing being offset a maximum of 3.0 metres off the front boundary. The plans submitted indicate that this setback is to be landscaped which would provide physical relief to the streetscape. Also it is to be noted that the proposed double carport, courtyard fencing and transparent sliding fence all located within the six(6) metre primary building line will contribute to the streetscape. The proposed dwelling house incorporates a high degree of articulation and variety of form due to the façade, a varied roofline due in part to the double carport, different setbacks of the building form, the use of stone cladding and the timber detailing. Also the double entry doors of the proposed dwelling house will be visible from the public domain as required by the controls relating to streetscape and the design of the dwelling has been designed in sympathy with the topography of the site.

There has been a number of submissions received objecting to the location of the double carport within the six (6) metre primary building setback. This encroachment it is considered reasonable that the proposal will not be inconsistent with the established character of the street and public domain when the relationship of the buildings to the topography and the subject property being located towards the end of the cul-de-sac is taken into consideration. It should also be noted that many examples of variations to the building line within cul-de-sacs can be found throughout the Shire.

Streetscape and Public Views and Vistas

No public views or vistas will be affected by the proposal. Also there is a viewing corridor located between Number 11 and 12 due to the existence of the 4.0m wide pathway between both properties.

Design Control 2 -Site Configuration

Deep soil zones (DSZs)

The subject site has an area of 715m² and the proposed impermeable area of the site will be approximately 53.53% which satisfies the provisions of the DCP.

This will result in 56.47% of the site being permeable and available for rainwater infiltration. While the front deep soil area does not comply with the current DCP provisions adequate area will be available for deep soil zones at the rear of the site.

The rear deep soil zone which will be available after construction of the development will comprise an area having a minimum depth of 7.2m and minimum width of 29m which exceeds the minimum requirements of this section. There will be only 5.6m² available within the front setback available as a deep soil zone, however it is considered that the excess size of the rear deep soil zone will off set the short fall of the front deep soil zone. It is to be noted that the triangular shape of the front 6.0m setback limits the area available as a deep soil zone. Much of this setback has been utilised as a driveway and suspended deck. Whilst the deck has reduced the size of the front deep soil zone it has created usable open private space instead of leaving natural ground which would be difficult to maintain and use due to its grade. Variation to this control is also permitted within the DCP by way of the development being constrained by the existing site conditions, the allotment is within a subdivision created prior to the year 2000, the proposal is considered to be infill development, and the triangular shape of the primary front building setback. Furthermore the utilisation of the rear setback as a deep soil zone maximises the use of this area as private open space which has optimum solar access.

Impermeable Site Area

The area of the site is 715m² subsequently the maximum impermeable site area permitted by the controls is 65%. From the plans submitted the development will create an impermeable area of approximately 53.53% which will comply with the design control. This will allow adequate area to enable water to infiltrate the site.

External Living Areas

The proposed three storey dwelling contains kitchen, internal living areas comprising of; theatre, family and dining rooms located on the lower floor level which have direct interconnection to the rear deck which has north-western orientation, an area of 66.76m² and adjoins the proposed swimming pool. This deck has a privacy screen on the north-eastern side which reduces the privacy impact upon No. 13 The Hermitage.

On the lowest level there is a rumpus room which has an area of 36.74m² which is connected to the private open space via a deck and flight of stairs. These two external living areas satisfy the DCP requirement as they do not face the side boundaries, are of a design which minimises privacy impact and maximises solar access.

Landscaping

A landscaping plan compliant with the objectives for the landscaping component of Design Control 2 has been submitted which will soften the building in respect of its impact upon the immediate streetscape. The controls require at least the front garden to have at least one canopy tree with a minimum height of 10 metres. A variation in this regard is required to disregard this requirement due to the triangular shape of the allotment, the lack of adequate space for a 10m high tree and the potential damage that a tree of this size could have on the proposed development

Topography, Cut and Fill

The allotment is vacant and has a fall to the rear of approximately 8 to 18 degrees.

The design of the proposed development has responded to the site conditions by minimising cut and fill. It is to be noted that the proposed double carport and front courtyard decking are supported on suspended concrete slabs which provides near level vehicular access and a courtyard that can be utilised as usable open space. The proposal also includes a maximum of 500mm of cut which is permissible under the controls, in a small area of the lower ground floor being partially located under the garage, study and bedroom 2. Also the remainder of the lower levels are supported on suspended timber elements thus eliminating the need for cut and fill. This contrasts to the previous amended plans which detailed the rumpus room being supported on consolidated fill exceeding 1.5m in height.

Design Control 3 -Setbacks

The DCP contains the following requirements relating to building setback:

- a. Dwelling Houses are to be setback 6 metres from the street boundary.
- b. On corner allotments the setback along the secondary street (the street to dwelling has its secondary frontage) is 3m.
- c. In older established areas and on infill sites Dwelling Houses are to be consistent with the setback distance of neighbouring buildings and are to be the average of the setbacks of neighbouring dwellings on either side. This setback can be varied up to plus or minus 1m.
- d. Garages and carports, including semi-basement garages and attached garages, are to be set back a minimum of 1 metre from the dwelling's front facade.
- e. Council may approve the erection of a dwelling or garage, which does not comply with the required building line setback in circumstances, outlined elsewhere within this document, or where –
 1. The levels, depth and shape of the allotment, or
 2. The exceptional conditions of the site such as excessive grades or slope, make it necessary or expedient to do so, and:
 - the proposal will not affect the amenity of adjoining properties,
 - no valid objections are received from adjoining property owners,
 - the proposal will not create an unwanted precedent to the vicinity,
 - the structure is located a minimum of 900mm from the side boundary of the property,
 - the proposal will not impede on the required pedestrian and traffic sight lines.

The subject development proposes a double carport, and 2.0m high courtyard fencing which are to be located within the six (6m) primary setback. The double garage is proposed to stand 6.17m off the front boundary and does not stand 1.0m behind the facade of the remainder of the dwelling. Therefore in this regard a variation to the controls would be considered on the basis that; the proposal is infill development, the surrounding dwelling houses do not reflect this setback, approval would not affect the amenity of adjoining properties and an unwanted precedent would not be created.

The proposed dwelling house on the latest amended plans now stands a minimum of 1.5m off the north-eastern side boundary in order to reduce its impact upon the existing dwelling house at No. 13 The Hermitage.

The proposed dwelling house stands a minimum of 1.397m off the southern side boundary and whilst this does not observe the required 1.5m setback specified under the current DCP a variation is requested in this regard as there is a 4.0m wide pathway located between Nos. 11 and 13 The Hermitage and the shadow diagrams submitted indicate that the amenity of No. 11 will not be adversely affected.

Design Control 4 -Car Parking and Access

The design control requires the proposed vehicle access and parking to be consistent with Section A2 of the DCP.

The proposed dwelling house complies having a total of four off street car parking spaces provided, two in front and two behind Council's building line and vehicle access to these spaces is considered satisfactory as the levels allow motorists optimum vision of the street.

It is to be noted that the controls require carports to be one space wide or 4m this is impractical as it would restrict access to the double garage behind.

Design Control 5 -Height

Building Height

The DCP contains the following requirements relating to building height:

- a. 9m is the maximum overall building height for dwelling houses.*
- b. 8.5 m is the maximum wall plate height for dwelling houses.*
- c. Carports maximum height 3.5m for a flat roof and 4.5m for a pitched roof.*
- d. Detached garages are to have an eave height of no more than 2.7m and a maximum overall building height of 3.5 m for a flat roof and 4.5m for a pitched roof.*

The proposed building will have an overall maximum height of 10.79m which exceeds the specified maximum height. It is to be noted that the dwelling house by definition is three stories and at the time of lodgement the planning requirements in force prescribed a maximum of three stories but did not set a maximum height.

The original plans have been amended to achieve a proposed dwelling house not exceeding three stories and without any areas of fill exceeding 1.0m (in fact minimal fill is proposed). Accordingly a variation to this controls 9.0m height limit is sought based on the fact that the proposal satisfies the planning constraints applicable at the time of lodgement and a discussed in other sections of this report it is considered that the design of this dwelling house is a sensitive response to the topographical constraints of the site and overshadowing satisfies Design control 6.

The proposed double carport will have a maximum height of 4.0m as measured above the driveway slab and 6.0m at one point above the lowest ground level. Whilst these heights exceed the control requirement of 3.5m it is considered that a variation is required due to the topography of the site, the suspended carport slab allows safe vehicular access and the carport roof contributes to the articulated design of the dwelling house. It is to be noted that double carport dimensioned shade sail structures exist at number 10 and 20 The Hermitage within the 6m primary setback. Therefore a precedent exists for double carports to be located within the primary setback for the immediate area.

Ceiling Height

The control encourages a minimum ceiling height of 2.7m for habitable rooms. The architectural plans show a combination of ceiling heights being of 2.45m and 2.7m in order to reduce the overall height of the dwelling. The proposal complies with this control.

Design Control 6- Building Amenity

Sunlight Access

The dwelling house includes private open space by the provision of decks orientated to the north-west and therefore will receive sufficient access to sunlight.

This design control requires consideration of overshadowing from the proposed development during the most solar disadvantaged day of the year being between 9am and 3pm on 21 June within the winter solstice. The shadow diagrams submitted with the latest amended plans indicate that the property located to the south at No. 11 will experience over shadowing during in the winter months as the sun moves through the sky. These diagrams indicate that the shadow cast will satisfy the requirement of this control as stated below,

For neighbouring properties ensure:

- Sunlight to at least 50% of the principal area of private open space of adjacent properties is not reduced to less than 2 hours between 9 am and 3pm on June 21.
- Windows to living areas must receive at least 3 hours of sunlight between 9am and 3pm on 21 June.

Visual Privacy

As stated previously in this report overlooking of adjoining properties from active living areas has been minimised by their location and the use of a privacy screen on the north western side of the deck.

It is further recommended that the window of the theatre and the southern window of the rumpus be required to have a minimum sill height of 1.5m to reduce any impact on these areas upon the neighbouring properties.

The proposed building generally complies with the objectives of this control.

Acoustic Privacy

The sound insulation of this design complies with the objectives of this control and a suitable condition on the consent will be imposed to control air conditioning and other mechanical equipment.

View Sharing

The proposal satisfies this control as each of the neighbouring properties has its own exclusive opportunity to the views at the rear of their properties.

Natural Ventilation

The design complies with this control. The dwelling provides for adequate natural ventilation of the dwelling with openable windows and ample breeze paths.

Building Orientation

The dwelling has been sited on the property to optimize views and solar access and complies with the objectives of this control by the provision of active living areas to the north western aspect.

Building separation

The proposed building has been sited with adequate boundary setbacks and together with the privacy screen to the rear deck and sill heights of living rooms in the north-eastern and southern elevations it is considered that this control has been satisfied.

Design Control 7 – External Building Elements

Fences and Walls; Front, Side and Rear

The submitted architectural plans indicate that a 2.0m high courtyard fence located within the 6.0m primary setback is proposed with this application. Due to the topography of the site this courtyard fence is necessary to ensure adequate privacy to the open space located within the primary setback. The design of the courtyard walls and sliding gate incorporates transparent materials, slatted and stone clad portions which will complement the character of the proposed dwelling house and achieve a minimum openness of 60%. The controls limit the height of the fencing to 1.5m; however a variation to this is required for an additional 0.5m in height. This is necessary to achieve a reasonable level of privacy to the private open space located in the primary setback. Also it is to be noted that the fencing code in force at the time of lodgement did allow 2.0m high fencing in front of the 6.0m building line.

Also it is to be noted that No. 6 The Hermitage has front courtyard masonry fencing having a height in excess of 2.0m. Therefore a precedent is set in the immediate locality which provides support for the proposed courtyard fencing.

Roof

The roof satisfies the objectives of this section in that it contributes to the contemporary appearance of the dwelling house and will provide insulation to the internal spaces.

The design of the roof is consistent with the design requirements. A condition regarding the implementation of non-reflective roof materials has been included in the conditions.

Design Control 8 -Building Performance

The proposal is consistent with this design control. As discussed previously the proposal is consistent with the SEPP (Building Sustainability Index: BASIX) 2004.

Design Control 9- Outbuildings

There are no outbuildings proposed as part of this application.

Design Control 10- Swimming pools and spas

There is an inground swimming pool proposed as a part of this application which satisfies the applicable controls.

Design Control 11- Tennis Courts

There is no tennis court proposed as part of this application

Design Control 12 - Floor Space Ratio (FSR)

Under Tweed DCP A1 the maximum FSR applicable for this proposal is 0.55:1 for the dwelling house as the site has an area of 715m². The proposed FSR for the dwelling house is 0.476:1 which satisfies this design control.

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

Clause 92(a) Government Coastal Policy

The site is in a coastal zone and it is considered unlikely that the nature and scale of the proposed development will have any detrimental effects in this location.

Clause 92(b) Applications for demolition

No demolition is proposed as part of the development.

Clause 93 Fire Safety Considerations

None required.

Clause 94 Buildings to be upgraded

None required.

(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

Context and Setting

The design, scale and appearance of the dwelling are considered to be reasonable and generally consistent with the housing stock in this area.

Access, Transport and Traffic

Minimal impact is envisaged, the proposed is a single residence within an approved residential subdivision.

Flora and Fauna

No significant impacts anticipated as a result of the development.

(c) Suitability of the site for the development

Surrounding Land uses/Development

The proposal is not inconsistent with the surrounding land use and the site is suitable for the proposed development. The property is located within an existing residential area and utilities of reticulated water, public sewer and power are provided to the site. A mixture of old and new dwellings with varying architectural styles exist within the area, the design of the dwelling is considered to be in keeping with the existing residential character of the area.

Topography

The applicant has submitted a geotechnical engineer's report which confirms that the site is suitable for the proposed development.

Site Orientation

The active living areas have been oriented to the north to take advantage of solar access.

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

In accordance with Council's notification policy adjoining property owners were notified of the proposal and in response five written objections to the proposal were received including a petition with 21 signatures.

Amended plans and supporting documentation was submitted to Council on the 31 March 2009. The application was renotified to the same residents on the 7 April 2009 and in response two written objections were received one of which includes an architect's submission.

During assessment of these amended plans it was revealed that the proposal by definition is still considered to be a four storey dwelling and discussions with the Manager of Building and Environmental Health concluded that the proposal could not be recommended for approval. The applicant and their building designer were notified of this decision which resulted in a meeting on 4 August 2009 with the owners and their building consultant. At this meeting the Manager of Building and Environmental Health advised the applicant that the current proposal could not be supported and to submit amended plans incorporating the a minimum 1.5m setback off the north-eastern side boundary and a design proposing a three storey dwelling house complying with LEP2000. On 15 October 2009 amended plans were received from Parameter Design Pty Ltd in respect of the recommended changes. These plans were not renotified as a result due to the similarity of the proposal and as it is considered that the objections are still current and will be taken into account.

Each objection and a response are listed as follows:-

- *Loss of views of the north-western view of Terranora inlet from the approved dwelling yet to be constructed at No.11 The Hermitage due to the bulk, scale and height of the proposal, principles of view sharing not adhered to.*

Response – The neighbouring property has its own opportunity to view Terranora Inlet and it is a commonly held opinion that a neighbour does not have the right of a view across a neighbour's property.

- *The proposed development will cast a significant shadow over our living room, deck, master bedroom, garden and clothesline particularly in winter at No.11 The Hermitage. This in turn will substantially increase heating and cooling costs. Overshadowing from the development would restrict natural light and air to adjoining residences. The design of the dwelling house will create a canyon for almost constant wind pressure/movement and preventing light and sunshine to both sides. During heavy rainfall, such narrow corridor will fail to collect/absorb/divert water – erosion will be unavoidable, not only within the property but in the gardens next door.*

Response – The submitted shadow diagrams indicate that the proposed dwelling house satisfies design control No.6 in respect to sunlight access.

- *The development will cause a reduction in light to the master bedroom and bedroom four of No. 13 The Hermitage.*

Response – The submitted shadow diagrams indicate that the proposed dwelling house satisfies design control No.6 in respect to sunlight access. In particular on the 21 June between 9am and 3pm there is no shadow cast upon No. 13. It is to be noted that DCP A1 Part A requires assessment of sunlight access on 21 June being within winter solstice.

- *The bedrooms and deck of the proposal will allow a direct view into the master bedroom and bedroom 4 of No. 13 The Hermitage.*

Response – The submitted plans indicate a privacy screen to the north eastern end of the rear deck and Design Control No.6 of the DCP considers that overlooking from bedrooms is less concern than overlooking from the windows of other habitable rooms. This is due to their predominant night time use as opposed to active living areas which have a greater potential to affect the amenity of the surrounding properties.

- *Daylight will be reduced to the deck area and part of the swimming pool of No. 13 The Hermitage*

Response – The submitted shadow diagrams indicate that the proposed dwelling house satisfies design control No. 6 in respect to sunlight access. In particular on the 21 June between 9am and 3pm there is no shadow cast upon No. 13.

- *Building height exceeds maximum permitted. The four storey height is considered excessive, not consistent with the adjoining development.*

Response – Whilst this objection was valid in respect of the first and second submitted plans the latest amended plans propose a three storey dwelling house as defined in the Tweed LEP. It is considered that the proposal satisfies the objectives of DCP A1 Part A.

- *The height and location of the development is not in keeping with the immediate streetscape due to the size and the huge concrete fence. Most dwelling houses in this street are single and two storeys.*

Response – The front elevation of the proposed dwelling house presents to the immediate streetscape as an articulated two storey dwelling which is consistent with the established streetscape of the immediate locality. Whilst there are no other examples of courtyard fencing similar to that proposed in the immediate locality it is considered that approval will not adversely affect the streetscape due to the location of the subject site at the end of the cul-de-sac, the landscaping proposed in front of the courtyard wall as a means of soften its impact.

- *The size of the dwelling house not only suggests potential multiple occupancy, but is suitable for acreage, not for a steep, suburban block in a tight cul-de-sac*

Response – There is no evidence available to substantiate the potential of the development for multiple occupancy.

- *The location of the proposed dwelling to the rear reserve could easily assist fire to spread to surrounding dwellings*

Response – The proposed dwelling house is separated from the rear boundary by a reinforced concrete swimming pool with a rear setback of 6.6/12.2m. Also the application has been referred to the rural fire service who has recommended approval subject to the inclusion of conditions requiring compliance with AS 3959. These bushfire requirements have been formulated as a means of ensuring that the dwelling house has an appropriate degree of bush fire protection and the rural fire service have adequate access for fighting bushfires.

- *There is a stand of medium to tall gum trees which the owners of No. 12 may request be removed in order to improve their view over the Broadwater. Tree removal??*

Response – The applicant has not indicated that they will be requiring removal of the trees. The subject property is affected by Tree Preservation Order (1990) therefore removal of these trees which are more than 8 metres from the proposed development if approved would require approval from Council.

- *The double garage and double carport will add to the congestion to the cul-de-sac and may effect vehicle movements to other residents entering and leaving their residents. Also this will increase the potential for problems encountered by Council's garbage contractors.*

Response – there is no evidence available to support these claims. It is to be noted that as the driveway and levels of the carport and garage have minimal grade and the fencing satisfies the 2m by 2m sight triangle requirements the motorists should have optimum vision. Also the proposed four off street car parking spaces should reduce the incidence of on street parking by the applicant's household.

- *No structures in front of the 6 metre building line should be permitted. The double carport will have a negative effect upon the streetscape.*

Response – The building line policy in force at the time of this DA lodgement and design controls permits open structures such as fencing up to 2.0m in height and carports in front of the 6.0m building line. It is to be noted that double carport dimensioned shade sail structures exist at number 10 and 20 The Hermitage within the 6m primary setback. Therefore a precedent exists for double carports to be located within the primary setback for the immediate area.

- *The excavation so close to the public road could cause destabilisation and exceeds the 1 metre requirement brought in by Council in 2007.*

Response – There is no significant excavation proposed within the 6.0m setback. It is to be noted that the driveway/carport slab and front deck will be supported off a suspended slab.

- *The proposal is identified as two storeys, the site plan indicates three storey and it has been notified as a four storey.*

Response – The latest amended plans have been revised to represent a three storey dwelling as defined in the Tweed LEP.

- *The development will have an impact upon the environment.*

Response – It is considered that the proposal will satisfy the planning controls as detailed in this report.

- *The dwelling will stand close to the side boundaries*

Response – The proposed development is considered to satisfy the objectives of Design Control 3 in respect to setbacks as required by DCP A1 Part A.

- *Due to the waterfront locations of blocks 12 and 13 The Hermitage, this proposal will create a wind tunnel due to differential pressures created by a downdraft coming from the prevailing winds from the south & east. The wind tunnel will have the potential to produce not only irritating levels of decibels, but due to the down draft, pollution from the four car spaces will be evident should the occupants have their motors running whilst shifting cars in and out of garages and carports. I do not believe that this proposal has given any thought to the effects of the wind tunnel factor.*
- *The proposed development will create a canyon for almost constant wind pressure/movement and preventing light and sunshine to both sides. During heavy rainfall, such narrow corridor will fail to collect/absorb/divert water – erosion will be unavoidable, not only within the property but in the gardens next door (No.11).*

Response – This perceived affect is one which is not identified in the applicable planning controls for this type of development, namely the Tweed LEP and the DCP A1. Therefore this cannot be assessed under our planning controls and is not a relevant matter for consideration.

- *The location of the four car garage and carport on the western side is closest to our master bedroom and bedroom 2. The subject garage and carport should be located on the other side beside the 4 metre wide easement thus minimising any noise from vehicular movements.*

Response – Apart from the driveway achieving the required grades there are no planning controls which require us to consider which side of a particular property that a driveway, carport or garage should be located

- *The side boundary setback of the development is 1.37m appears in violation of the building code.*

Response – Whilst there were no applicable planning controls stipulating setbacks at the time of lodgement for this proposal, the latest plans comply with the BCA and DCP A1 Part A in respect of Controls. This includes a variation to the DCP A1 Part A Design Control 3 based on the affect being minimised due to the existence of a 4.0m wide pathway between 11 and 12. It is considered that the submitted shadow diagrams confirm the level of impact in accordance with Design Control 6 of the DCP.

(e) Public interest

The development will not prejudice the public interest.

OPTIONS:

1. Council resolves to approve the development application subject to conditions.
2. Council resolves to refuse the development application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be dissatisfied with the determination they have the right to appeal the decision in the Land and Environment Court which would incur financial costs to Council in defence.

Should the application be approved there is potential for one or more of the objectors to lodge an appeal against the adequacy of the processing of the application would incur financial costs to Council in defence.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

On balance the assessment of the relevant planning matters, it is considered that the proposed development is suitable for approval, subject to conditions.

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).*

Nil.

5 [PR-CM] Development Application DA09/0113 for a Nine (9) Lot Rural Residential Subdivision at Lot 2 DP 866690, No. 161 Cobaki Road, Cobaki

ORIGIN:

Development Assessment

FILE NO: DA09/0113 Pt1

SUMMARY OF REPORT:

This development application is being reported to Council due to the Department of Planning's Circular PS08-014 issued on 14 November 2008 requiring all State Environmental Planning Policy No. 1 (SEPP No. 1) variations greater than 10% to be determined by full Council. In accordance with this advice by the Department of Planning, officers have resolved to report this application to full Council. The standard is varied up to 49.45%.

The SEPP No. 1 variation relates to Clause 20(2)(a) of the Tweed Local Environmental Plan 2000 (LEP 2000) which states that consent may only be granted to subdivision of land within Zone 7(d) if the area of each allotment created is at least 40 hectares. Proposed lot 6 has a total area of 20.22ha and is inclusive of the totality of 7(d) zoned land and remnant vegetation on the subject site (17.5ha). This land is currently located within a 32.65ha allotment (existing 18% variation to this development standard) which comprises the subject site.

The applicant seeks consent for a nine (9) lot rural residential subdivision, including construction of a dedicated public road for access.

Concurrence was granted by the Director General in this instance for the following reasons:

- The proposal is consistent with the objectives of the zone; and
- The proposal allows for protection of the 7(d) land from further development.

The proposal was placed on public exhibition for fourteen days. No submissions were received.

It is considered that the application is suitable for approval, subject to conditions.

RECOMMENDATION:

That Development Application DA09/0113 for a nine (9) lot rural residential subdivision at Lot 2 DP 866690, No. 161 Cobaki Road, Cobaki be approved subject to the following conditions: -

GENERAL

1. **The development shall be completed in accordance with the Statement of Environmental Effects and**

- Plan No 16901 B (Site Plan) prepared by B & P Surveys and dated 8/5/08
- Figure 4.0 (Roadworks Layout) prepared by Opus Qantec McWilliam and dated July 2008
- Figure 6.0 (Road 2 Longitudinal Section) prepared by Opus Qantec McWilliam and dated July 2008
- Figure 6.1 (Road 2 Longitudinal Section) prepared by Opus Qantec McWilliam and dated July 2008,

except where varied by the conditions of this consent.

[GEN0005]

2. The use of crushing plant machinery, mechanical screening or mechanical blending of materials is subject to separate development application.

[GEN0045]

3. The subdivision is to be carried out in accordance with Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual and Councils Development Design and Construction Specifications.

[GEN0125]

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

[GEN0135]

5. A Subdivision Works Accredited Certifier (SWAC) shall be appointed to assume the responsibility for certifying the compliance of the completed public infrastructure (refer to Development Construction Specification C101.01 for variations).

The SWAC shall be accredited by the Building Professionals Board Accreditation Scheme, in the following categories,

C4: Accredited Certifier – Stormwater management facilities construction compliance

C6: Accredited Certifier – Subdivision road and drainage construction compliance

The SWAC shall provide documentary evidence to Council demonstrating current accreditation with the Building Professionals Board prior to approval and issue of any Construction Certificate.

[GEN0275]

6. Native vegetation within land currently zoned 7(d) Environmental Protection (Scenic / Escarpment) must be retained.

[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

7. Prior to the issue of a Construction Certificate, a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the works as set out in Council's fees and charges at the time of payment.

The bond may be called up at any time and the funds used to rectify any non-compliance with the conditions of this consent which are not being addressed to the satisfaction of the General Manager or his delegate.

The bond will be refunded, if not expended, when the final Subdivision/Occupation Certificate is issued.

[PCC0275]

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. Where earthworks result in the creation of embankments and/or cuttings greater than 1m high and/or slopes within allotments 17⁰ or steeper, such slopes shall be densely planted in accordance with a detailed landscaping plan. Such plan to accompany the Construction Certificate application.

Such plans shall generally incorporate the following and preferably be prepared by a landscape architect:

- (a) Contours and terraces where the height exceeds 1m.
- (b) Cover with topsoil and large rocks/dry stone walls in terraces as necessary.
- (c) Densely plant with sub-tropical (rainforest) native and exotic species to suit the aspect/micro climate. Emphasis to be on trees and ground covers which require minimal maintenance. Undergrowth should be weed suppressant.
- (d) Mulch heavily (minimum 300mm thick) preferably with unwanted growth cleared from the estate and chipped. All unwanted vegetation is to be chipped and retained on the subdivision.

[PCC0455]

10. All imported fill material shall be from an approved source. Prior to the issue of a construction certificate details of the source of fill, description of material, proposed use of material, documentary evidence that the fill material is free of any contaminants and haul route shall be submitted to Tweed Shire Council for the approval of the General Manager or his delegate.

[PCC0465]

11. 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 construction certificate application for Council approval.

[PCC0485]

12. 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]

13. A traffic control plan in accordance with AS1742 and RTA publication "Traffic Control at Work Sites" Version 2 shall be prepared by an RTA accredited person and shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate. Safe public access shall be provided at all times.

[PCC0865]

14. The proponent shall submit plans and specifications with an application for construction certificate for the following civil works and any associated subsurface overland flow and piped stormwater drainage structures designed in accordance with Councils Development Design and Construction specifications.

RURAL SEAL

- (a) Construction of a public road that meets or exceeds the following minimum standards: 6m wide carriageway with a 9m radius turning bulb.

Regarding the road cross-section, the applicant is to address the requirements of Council specification D7: Stormwater Quality - particularly D7.05(f). The use of Water Sensitive Urban Design (WSUD) is encouraged for the proposed new road, to soften the impact of the proposed urban-style road in the rural setting. Opportunities exist for avoiding kerb and gutter, improving stormwater management and reducing costs.

Note that for any WSUD features, the following matters must be specifically addressed.;

- A maintenance program is required to be prepared for the full life cycle of any WSUD features, particularly any biofiltration areas.
- Access must be individually addressed for each property, to ensure compatibility with any WSUD features.

INTERSECTIONS

- (b) Construction of a new intersection with Cobaki Road in accordance with AUSTRROADS Pt 5 "Intersections at Grade" giving particular attention to sight distance. All lots are required to have a sealed access driveway per TSC DCP Section A5 - sub-section A5.5.6: "Access to Dwellings".

ACCESS

- (c) All lots are required to have a sealed access driveway per TSC DCP Section A5 - sub-section A5.5.6: "Access to Dwellings".

[PCC0875]

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

[PCC0935]

16. Prior to the issue of a Construction Certificate for civil works the following detail in accordance with Councils Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

- (a) copies of compliance certificates relied upon
- (b) four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:
 - earthworks
 - roadworks/furnishings
 - stormwater drainage
 - landscaping works
 - sedimentation and erosion management plans
 - location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure)

The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 and Section 138 of the Roads Act to be certified by an Accredited Certifier.

[PCC0985]

17. 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.
- (d) Specific Requirements to be detailed within the Construction certificate application include:
 - (i) Shake down area along the haul route immediately before the intersection with the road reserve.

[PCC1105]

18. Erosion and Sediment Control shall be provided in accordance with the following:
-

- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 – Stormwater Quality*.
- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - “Code of Practice for Soil and Water Management on Construction Works”.
19. Stormwater discharge from the site's primary discharge point, being at chainage 126 along the new road, is to be dispersed to minimise erosion of the downstream depression. Details are to be provided with the construction certificate application.
- [PCC1155]
20. Where water is to be drawn from Councils reticulated system, the proponent shall: -
- Make application for the hire of a Tweed Shire Council metered standpipe including Councils nomination of point of extraction.
 - Where a current standpipe approval has been issued application must be made for Councils nomination of a point of extraction specific to the development.
 - Payment of relevant fees in accordance with Councils adopted fees and charges.
- [PCC1205]
21. The Construction Certificate will not be issued over any part of the site requiring a Controlled Activity Approval until a copy of the Approval has been provided to Council.
- [PCCNS01]
22. Prior to issue of the Construction Certificate, the applicant must submit a Threatened Species Management Plan to the satisfaction of Director Planning and Regulation addressing:
- (a) Proposed measures to protect, propagate and translocate (in accordance with *Guidelines for Translocation of Threatened Plants (SGAP)*) the threatened flora species Red Bopple Nut (*Hicksbeachia pinnatifolia*);
- (b) Proposed measures to be undertaken to avoid any impact upon the threatened fauna species Magpie Goose (*Anseranas semipalmata*) including measures to avoid drainage, sedimentation or pollution of the majority of waterways on the site and measures to ensure new and additional predators are not introduced to the site;
- (c) Details and measures to be undertaken to protect any further threatened species should they be found on site during or prior to construction.

[PCCNS02]

23. Prior to the issue of the Construction Certificate, the applicant must submit a Weed Management Plan to the satisfaction of Director Planning and Regulation addressing the removal of Cocos Palms and any other known environmental weeds from the development area.

[PCCNS03]

PRIOR TO COMMENCEMENT OF WORK

24. 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]

25. Prior to the commencement of works, the applicant shall ensure that a Site-Specific Safety Management Plan and Safe Work Methods for the subject site have been prepared and put in place in accordance with either:-

- (a) Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3rd Edition, NSW Government, or
- (b) AS4804 Occupation Health and Safety Management Systems – General Guidelines on Principles Systems and Supporting Techniques.
- (c) WorkCover Regulations 2000

[PCW0025]

26. 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]

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

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

[PCW0375]

28. Prior to start of works the PCA is to be provided with a certificate of adequacy of design, signed by a practising Structural Engineer on all proposed retaining walls in excess of 1.2m in height. The certificate must also address any loads or possible loads on the wall from structures adjacent to the wall and be supported by Geotechnical assessment of the founding material.

[PCW0745]

29. Civil work in accordance with a development consent must not be commenced until:-

- (a) a construction certificate for the civil work has been issued in accordance with Councils Development Construction Specification C101 by:
 - (i) the consent authority, or
 - (ii) an accredited certifier, and
- (b) the person having the benefit of the development consent:
 - (i) has appointed a principal certifying authority,
 - (ii) has appointed a Subdivision Works Accredited Certifier (SWAC) accredited in accordance with Tweed Shire Council DCP Part A5 – Subdivision Manual, Appendix C with accreditation in accordance with the Building Professionals Board Accreditation Scheme. As a minimum the SWAC shall possess accreditation in the following categories:
 - C4: Accredited Certifier – Stormwater management facilities construction compliance
 - C6: Accredited Certifier – Subdivision road and drainage construction compliance

The SWAC shall provide documentary evidence to Council demonstrating current accreditation with the Building Professionals Board prior to approval and issue of any Construction Certificate, and

 - (iii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment,
 - (iv) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Subdivision Works Accredited Certifier is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued, and
- (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the civil work.

[PCW0815]

- 30. The proponent shall provide to the PCA copies of Public Risk Liability Insurance to a minimum value of \$10 Million for the period of commencement of works until the completion of the defects liability period.

[PCW0835]

- 31. 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]

32. The proponent shall notify Councils Engineering & Operations Division of intention to commence drawing water in accordance with the requirements of the approval to draw water.

[PCW1045]

DURING CONSTRUCTION

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

[DUR0005]

34. If during construction works any Aboriginal object or relic is disturbed or uncovered, works are to cease and the Department of Environment, Climate Change and Water are to be notified immediately, in accordance with the provisions of the National Parks and Wildlife Act 1974.

[DUR0025]

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

36. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:

- A. Short Term Period - 4 weeks.

LAeq noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

- B. Long term period - the duration.

LAeq noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0215]

37. During filling operations,

- No filling is to be placed hydraulically within twenty metres (20m) of any boundary that adjoins private land that is separately owned. Fill adjacent to these boundaries is to be placed mechanically.
- All fill and cut batters shall be contained wholly within the subject land.
- All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications and to the satisfaction of the Principal Certifying Authority.

and upon completion,

- all topsoil to be respread and the site to be grassed and landscaped including battered areas.

[DUR0755]

38. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments".

The earthworks shall be monitored by a Registered Geotechnical Testing Consultant to a level 1 standard in accordance with AS 3798. A certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798 shall be submitted to the Principal Certifying Authority upon completion.

[DUR0795]

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

[DUR0815]

40. 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]

41. 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]

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

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

[DUR1005]

43. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. Such materials shall either be recycled or disposed of in a manner acceptable to Councils General Manager or his delegate.
- [DUR1015]
44. Landscaping of the site shall be carried out in accordance with the submitted/approved landscaping plans.
- [DUR1045]
45. 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]
46. Before the commencement of the relevant stages of road construction, pavement design detail including reports from a Registered NATA Consultant shall be submitted to Council for approval and demonstrating.
- (a) That the pavement has been designed in accordance with Tweed Shire Councils Development Design Specification, D2.
- (b) That the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils Construction Specifications, C242-C245, C247, C248 and C255.
- (c) That site fill areas have been compacted to the specified standard.
- (d) That supervision of Bulk Earthworks has been to Level 1 and frequency of field density testing has been completed in accordance with Table 8.1 of AS 3798-1996.
- [DUR1805]
47. During the relevant stages of road construction, tests shall be undertaken by a Registered NATA Geotechnical firm. A report including copies of test results shall be submitted to the PCA prior to the placement of the wearing surface demonstrating:
- (a) That the pavement layers have been compacted in accordance with Councils Development Design and Construction Specifications.
- (b) That pavement testing has been completed in accordance with Table 8.1 of AS 3798 including the provision of a core profile for the full depth of the pavement.
- [DUR1825]
48. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.
- [DUR1875]

49. Tweed Shire Council shall be given a minimum 24 hours notice to carry out the following compulsory inspections in accordance with Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, Appendix D. Inspection fees are based on the rates contained in Council's current Fees and Charges:-

Roadworks

- (a) Pre-construction commencement erosion and sedimentation control measures
- (b) Completion of earthworks
- (c) Excavation of subgrade
- (d) Pavement - sub-base
- (e) Pavement - pre kerb
- (f) Pavement - pre seal
- (g) Final inspections - on maintenance
- (h) Off Maintenance inspection

Stormwater Drainage

- (a) Excavation
- (b) Bedding
- (c) Laying/jointing
- (d) Manholes/pits
- (e) Backfilling
- (f) Permanent erosion and sedimentation control measures
- (g) Drainage channels
- (h) Final inspection - on maintenance
- (i) Off maintenance

Council's role is limited to the above mandatory inspections and does **NOT** include supervision of the works, which is the responsibility of the Developers Supervising Consulting Engineer.

[DUR1895]

50. All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction. Certification from a suitably qualified engineer experienced in structures is to be provided to the PCA prior to the issue of an Occupation/Subdivision Certificate.

[DUR1955]

51. The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.

[DUR2015]

52. The works are to be completed in accordance with Tweed Shire Councils Development Control Plan, Part A5 - Subdivision Manual and Design & Construction Specifications, including variations to the approved drawings as may be required due to insufficient detail shown on the drawings or to ensure that Council policy and/or good engineering practices are achieved.

[DUR2025]

53. The applicant shall obtain the written approval of Council to the proposed road/street names and be shown on the Plan of Subdivision accompanying the application for a Subdivision Certificate.

Application for road naming shall be made on Councils Property Service Form and be accompanied by the prescribed fees as tabled in Councils current Revenue Policy - "Fees and Charges".

The application shall also be supported by sufficient detail to demonstrate compliance with Councils Road Naming Policy.

[DUR2035]

54. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials.

[DUR2205]

55. All stormwater gully lintels shall have the following notice cast into the top of the lintel: 'DUMP NO RUBBISH, FLOWS INTO CREEK' or similar wording in accordance with Councils Development Design and Construction Specifications.

[DUR2355]

56. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR2375]

57. 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]

58. Access to adjoining Lot 1 DP 816914 is to remain open and functional at all times during the construction period.

The existing access driveway to the adjoining property is to be connected to the new road by appropriate footpath crossing treatment.

[DURNS01]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

59. Prior to issue of a subdivision certificate, all works/actions/inspections etc required by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[PSC0005]

60. Section 94 Contributions

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

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision 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 include indexation provided for in the S94 Plan and 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:

52 Trips @ \$1829 per Trips \$95,108

(\$1662 base rate + \$167 indexation)

S94 Plan No. 4

Sector4_4

(b) Open Space (Casual):

8 ET @ \$526 per ET \$4,208

(\$502 base rate + \$24 indexation)

S94 Plan No. 5

(c) Open Space (Structured):

8 ET @ \$602 per ET \$4,816

(\$575 base rate + \$27 indexation)

S94 Plan No. 5

(d) Shirewide Library Facilities:

8 ET @ \$374 per ET \$2,992

(\$374 base rate + \$0 indexation)

S94 Plan No. 11

(e) Eviron Cemetery:	
8 ET @ \$131 per ET	\$1,048
(\$131 base rate + \$0 indexation)	
S94 Plan No. 13	
(f) Emergency Facilities (Surf Lifesaving):	
8 ET @ \$113 per ET	\$904
(\$113 base rate + \$0 indexation)	
S94 Plan No. 16	
(g) Extensions to Council Administration Offices & Technical Support Facilities	
8 ET @ \$1996.8 per ET	\$15,974.40
(\$1996.8 base rate + \$0 indexation)	
S94 Plan No. 18	
(h) Cycleways:	
8 ET @ \$352 per ET	\$2,816
(\$352 base rate + \$0 indexation)	
S94 Plan No. 22	
(i) Regional Open Space (Casual)	
8 ET @ \$855 per ET	\$6,840
(\$855 base rate + \$0 indexation)	
S94 Plan No. 26	
(j) Regional Open Space (Structured):	
8 ET @ \$2327 per ET	\$18,616
(\$2327 base rate + \$0 indexation)	
S94 Plan No. 26	

[PSC0175]

61. Section 94 Contributions

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

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

Heavy Haulage Component

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

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

where:

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

and:

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

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

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

Admin. Administration component - 5% - see Section 6.6

[PSC0185]

62. Prior to the issue of a Subdivision Certificate a defect liability bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.

The bond shall be based on 5% of the value of the works (minimum as tabled in Council's fees and charges current at the time of payment) which will be held by Council for a period of 6 months from the date on which the Subdivision Certificate is issued. It is the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.

[PSC0215]

63. A bond shall be lodged prior to the issue of the subdivision certificate to ensure that the landscaping is maintained by the developer for a period of 6 months from the date of issue of a Subdivision Certificate. The amount of the bond shall be 20% of the estimated cost of the landscaping or \$3000 whichever is the greater.

[PSC0235]

64. All landscaping requirements shall be completed to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate.

[PSC0485]

65. Any damage to property (including pavement damage) is to be rectified to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate. 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.

[PSC0725]

66. Prior to the issue of a Subdivision Certificate, Work as Executed Plans shall be submitted in accordance with the provisions of Tweed Shire Council's Development Control Plan Part A5 - Subdivision Manual and Council's Development Design Specification, D13 - Engineering Plans.

The plans are to be endorsed by a Registered Surveyor OR a Consulting Engineer Certifying that:

- (a) all drainage lines, sewer lines, services and structures are wholly contained within the relevant easement created by the subdivision;
- (b) the plans accurately reflect the Work as Executed.

Note: Where works are carried out by Council on behalf of the developer it is the responsibility of the DEVELOPER to prepare and submit works-as-executed (WAX) plans.

[PSC0735]

67. All retaining walls in excess of 1.2m are to be certified by a suitably qualified geotechnical/structural engineer. The certification is to be submitted with the subdivision certificate application and shall state that the retaining walls have been designed and constructed in accordance with AS4678-2002 Earth Retaining Structures and are structurally sound.

In addition to the above certification, the following is to be included in the Section 88B Instrument to accompany the final plan of subdivision.

- (a) A restriction to user for each lot that has the benefit of a retaining wall that prevents any cut or fill greater than 0.3m in vertical height within a zone adjacent to the wall that is equal to the height of the wall.
- (b) Each lot burdened and or benefited by a Type 1 wall as defined in AS4678-2002 Earth Retaining Structures, shall contain a restriction to user advising the landowner of the need to maintain the wall in accordance with that standard.

Tweed Shire Council is to be nominated as the authority empowered to release, vary or modify the restrictions.

[PSC0785]

68. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of this Development Consent have been complied with.

[PSC0825]

69. The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:

- (a) Easements for sewer, water supply and drainage (where applicable) over ALL public services/infrastructure on private property.
- (b) Restrictions are to be created over Lots 1 to 8 stating that;

- The lot is not connected to a reticulated water service, and that all future owners will need to make alternative arrangements for a potable water supply, and to meet Rural Fire Service requirements.
- The lot is not connected to a reticulated sewer system, and any dwelling to be constructed on the site will need to provide an on-site sewage management system, generally in accordance with the recommendations of the "On-site Sewage Management Design Report" numbered HMC 2008.058, by HMC Environmental Consulting Pty Ltd, dated June 2008.
- Any dwelling to be erected on the site shall be located in the nominated building envelope in accordance with the Preliminary Contaminated Land Assessment Report for Lot 2 DP 866690 Cobaki Road, Cobaki. (prepared by HMC Environmental Consulting Pty Ltd and dated January 2009) Report: HMC 2008.167 and as approved by Development Consent DA09/0113. Alternative dwelling locations can be considered, but will require a contaminated lands investigation and separate approval of Council.

- (c) The existing Restriction-on-Title over the parent property Lot 2 DP 866690 regarding the protection of two Black Walnut (*Endiandra globosa*) trees located in the 7(d) zone - is to be reiterated and created over Lot 6 only. Burden: Proposed Lot 6. Benefit: Tweed Shire Council.

Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating the right of carriageway/easement to drain water shall make provision for maintenance of the right of carriageway/easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis.

Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of Council.

Privately owned infrastructure on community land may be subject to the creation of statutory restrictions, easements etc in accordance with the Community Land Development Act, Strata Titles Act, Conveyancing Act, or other applicable legislation.

[PSC0835]

70. Submit to Council's property officer an appropriate plan indicating the rural address number to both new and existing lots for approval. Prior to the issue of a Subdivision Certificate, each lot shall have its' rural address number displayed in accordance with Council's "Rural Addressing Policy".

[PSC0845]

71. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council with the application for Subdivision Certificate.

[PSC0855]

72. Where new state survey marks and/or permanent marks are placed a copy of the locality sketch relating to the marks shall be submitted to Council within three months of registration of the Subdivision Certificate in accordance with the Survey Practices Regulation.

[PSC0865]

73. Prior to registration of the plan of subdivision, a Subdivision Certificate shall be obtained.

The following information must accompany an application:

- (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
- (b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.

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

[PSC0885]

74. Prior to the application for a Subdivision Certificate a Compliance Certificate or Certificates shall be obtained from Council OR an accredited certifier for the following:-

- (a) Compliance Certificate – Roads
- (b) Compliance Certificate - Drainage

Note:

- 1. All compliance certificate applications must be accompanied by documentary evidence from the developers Subdivision Works Accredited Certifier (SWAC) certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual and Councils Development Design and Construction Specifications.
- 2. The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

[PSC0915]

75. The six (6) months Defects Liability Period commences upon the registration of the Plan of Subdivision.

[PSC0925]

76. Prior to the issue of a Subdivision Certificate, a properly dimensioned plan shall be lodged with Council showing the relative position of existing fences, road formation and boundaries. Any encroaching road boundary fence is to be relocated to the correct alignment prior to issuing a Subdivision Certificate. Any road widening deemed necessary following submission of the plan shall be dedicated at no cost to Council.

[PSC0945]

77. Prior to the issue of a Subdivision Certificate and also prior to the end of defects liability period, a CCTV inspection of any stormwater pipes installed and to be dedicated to Council including joints and junctions will be required to demonstrate that the standard of the infrastructure is acceptable to Council.

Any defects identified by the inspection are to be repaired in accordance with Councils Development Design and Construction Specification.

All costs associated with the CCTV inspection and repairs shall be borne by the applicants.

[PSC1065]

78. The production of written evidence from the local telecommunications supply authority certifying that the provision and commissioning of underground telephone supply at the front boundary of the allotment has been completed.

[PSC1165]

79. The production of written evidence from the local electricity supply authority certifying that the reticulation of overhead electricity (rural subdivisions) and energising has been provided to a point no less than 45 metres from the front boundary of each allotment.

The reticulation includes the provision of fully installed electric street lights to the relevant Australian standard. Such lights to be capable of being energised following a formal request by Council.

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

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

[PSC1175]

80. Prior to the issue of a subdivision certificate the applicant shall be issued with approval to operate an onsite sewerage management system under Section 68 of the Local Government Act 1993 for the existing system servicing the existing dwelling located on proposed Lot 9.

[PSCNS01]

81. The existing Right-of-Carriageway encumbering the front of the parent property is to be extinguished as part of the application for a Subdivision Certificate.

[PSCNS02]

GENERAL TERMS OF APPROVAL UNDER THE WATER MANAGEMENT ACT 2000 (Works requiring a Controlled Activity Approval)

Plans, standards and guidelines

1. These General Terms of Approval (GTA) only apply to the controlled activities described in the plans and associated documentation relating to DA09/0113 provided by Council and the additional information provided by Allen Patterson with letter dated 28 May 2009.

Any amendments or modifications to the proposed controlled activities may render these GTA invalid. If the proposed controlled activities are amended or modified the Department of Water & Energy must be notified to determine if any variations to these GTA will be required.

2. Prior to the commencement of any controlled activity (works) on waterfront land, the consent holder must obtain a Controlled Activity Approval (CAA) under the Water Management Act from the Department of Water & Energy. Waterfront land for the purposes of this DA is land and material in or within 40 metres of the top of the bank or shore of the watercourses identified.
3. The consent holder must prepare or commission the preparation of:
 - (i) Erosion and Sediment Control Plan
 - (ii) Soil and Water Management Plan
4. All plans must be prepared by a suitably qualified person and submitted to the Department of Water & Energy for approval prior to any controlled activity commencing. The plans must be prepared in accordance with Department of Water & Energy guidelines located at www.naturalresources.nsw.gov.au/water/controlled_activity.shtml
 - (i) Riparian Corridors
 - (ii) Watercourse crossings
5. N/A

Rehabilitation and maintenance

6. The consent holder must carry out a maintenance period of two (2) years after practical completion of all controlled activities, rehabilitation and vegetation management in accordance with a plan approved by the Department of Water & Energy.
7. N/A

Reporting requirements

8. The consent holder must use a suitably qualified person to monitor the progress, completion, performance of works, rehabilitation and maintenance and report to the Department of Water & Energy as required.

Security Deposits

9. N/A

Access-ways

10. N/A
11. N/A

Bridge, causeway, culverts and crossing

12. The consent holder must ensure that the construction of any bridge, causeway, culvert or crossing does not result in erosion, obstruction of flow, destabilisation or damage to the bed or banks of the watercourses or waterfront land, other than in accordance with a plan approved by the Department of Water & Energy.

13. N/A

Culvert

14. The consent holder must ensure that no materials or cleared vegetation that may obstruct flow, wash into the water body or cause damage to the river banks are left on waterfront land other than in accordance with a plan approved by the Department of Water & Energy.

Disposal

15. N/A

16. The consent holder must stabilise drain discharge points to prevent erosion in accordance with a plan approved by the Department of Water & Energy.

Drainage and Stormwater

17. The consent holder must establish all erosion and sediment control works and water diversion structures in accordance with a plan approved by the Department of Water & Energy. These works and structures must be inspected and maintained throughout the working period and must not be removed until the site has been fully stabilised.

Erosion Control

18. N/A

19. N/A

Excavation

20. The consent holder must ensure that (i) river diversion, realignment or alteration does not result from any controlled activity work and (ii) bank control or protection works maintain the existing river hydraulic and geomorphic functions, and (iii) bed control structures do not result in river degradation other than in accordance with a plan approved by the Department of Water & Energy.

Maintaining river

21. N/A

River bed and bank protection

22. The consent holder must clearly mark (with stakes using a GPS or peg out survey), protect and maintain a riparian corridor with a width of 10 metres measured horizontally landward for a distance 10 metres upstream and downstream from the site of the controlled activity (where possible) in accordance with a plan approved by the Department of Water & Energy.

23. N/A

Plans, Standards and Guidelines

24. N/A

25. N/A

26. N/A

27. N/A

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

1. At the issue of subdivision certificate and in perpetuity, the land surrounding the existing dwelling(s) on proposed Lot 9, to a distance of 10 metres, shall be maintained as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
2. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.
3. Public road access shall comply with section 4.1.3 (1) of 'Planning for Bush Fire Protection 2006'. A perimeter road nor a through road are required in this instance.

REPORT:

Applicant: Mr A Patterson and Mrs J Patterson
Owner: Mr AJ Patterson and Mrs JA Patterson
Location: Lot 2 DP 866690, No. 161 Cobaki Road, Cobaki
Zoning: 1(c) Rural Living & 7(d) Environmental Protection (Scenic/Escarpment)
Cost: \$1,000,000

BACKGROUND:

History

The site has been in the current ownership since 1992. Applications have been lodged over the subject site as follows:

- DA1584/92: dwelling
- D98/0189: attached dual occupancy – the (retrospective) addition of a flat to the lower level of the existing dwelling (1992) to create an extra occupancy. Approximate area of the flat is 86m² at one third of the gross floor area of the lower section. Contributions were paid for Section 94 Plans 4, 5, 11, 13, 16 and 18.
- DA02/0516: use existing packing shed to sell produce – application to formalise the sale of whole seasonal produce grown on the land with a display area of 15m² from an existing packing and storage shed located approximately 500m from Cobaki Road.
- CDC03/0263: bed & breakfast – complying application for construction of a building for B&B purposes – consent issued 23/09/03, expired 23/09/08.
- MP08_0107: 9-lot rural residential subdivision and internal road – the initial major project version of the current application.

The applicant met with Council officers at the Development Assessment Panel meeting held on Wednesday 4 June 2003 to discuss a proposed three-lot subdivision (two rural residential lots and a balance area). The development met the criteria as a 'state significant development' to be lodged with Planning NSW as the consent authority. No subsequent application was lodged.

Prior to the current application being lodged in March 2009, the developers met with Council officers at the Development Assessment Panel meeting held on Wednesday 30 April 2008.

The application was lodged with the Department of Planning under the SEPP (Major Projects) 2005 and Council was requested to provide details of key issues and assessment requirements in August 2008. The applicant requested that the Department of Planning review their decision, given the minor nature of the development. The department subsequently declared the project of Local Environmental Planning Significance with Tweed Shire Council to be the consent authority on 29 January 2009.

This application (DA09/0113) was lodged with Council on 9 March 2009.

The Subject Site

The subject land is described as Lot 2 DP 866690 Cobaki Road, Cobaki and has a total area of 32.65 hectares. The site is irregular in shape with frontage and existing vehicular access to Cobaki Road. The land has flat, moderate and steep slopes. The lower slopes have been used primarily for agricultural purposes including the growing of passionfruit, bananas, paw paw, tomatoes and small crops. The higher slopes contain remnant vegetation that will be retained.

The land is not identified as prime crop or pastureland by NSW DPI (Agriculture), nor is it identified as being of any significance in the Northern Rivers Farmland Protection project mapping. The applicant has ceased horticultural production in any event, as it is not economically viable.

Drainage paths flow across the subject site defined by natural grassed gullies and swales with no well defined banks. There is a southern drainage path near the existing access road that has rocks scattered within the swale drain and palm trees adjoining the gully. The northern drainage near the existing access has a predominant earth batter on the one side and minor slope on the other.

The majority of the site has been previously cleared for agricultural practices. There are a number of areas of retained vegetation within the site that support a mix of sclerophyll and rainforest species.

Existing improvements include a two storey dwelling, several farm sheds, nine dams and shade structures (hail nets on frames). The dwelling is to be retained within proposed Lot 9 but the shade structures will be removed. One small dam will need to be filled to enable construction of the public road.

A Section 88B restriction to user applies to the land. It includes:

- Restriction on Use (per DP 866690) that protects two Black Walnut Trees and associated enclosure fences located in the 7(d) zoned land within the subject site
- Easement to Supply Water at 2m wide in the north-eastern corner of the site which is well removed from any proposed development
- Right of Carriageway 20m wide and variable which covers the narrow access 'neck' of the property as it joins Cobaki Road, providing legal access for adjoining Lot 1 DP 816914. This will become the site's dedicated public road access but will still need to be formally extinguished as part of the subdivision process.

The site is located in an area generally characterised as rural residential / agricultural. Adjoining land to the south is utilised for grazing purposes. Land to the south and west is zoned for urban or rural residential purposes.

Site levels range from approximately RL 3m AHD adjacent to Cobaki Road to well in excess of RL 100m AHD in the south eastern corner of the site.

The Proposed Development

The applicant seeks consent for a nine (9) lot rural residential subdivision including construction of a dedicated public road for access. Land areas of the proposed lots are as follows:

- Lot 1 = 1.00ha
- Lot 2 = 1.16ha
- Lot 3 = 1.36ha
- Lot 4 = 1.20ha

- Lot 5 = 1.04ha
- Lot 6 = 20.22ha (retention of all 7(d) zoned land & 2.72ha of 1(c) zoned land)
- Lot 7 = 2.21ha
- Lot 8 = 1.00ha
- Lot 9 = 2.48ha (retention of existing dwelling)

The proposal includes:

- Subdivision of the site into 9 rural residential lots (Torrens Title)
- Creation of a new public road
- Works to include stripping, clearing and bulk excavation to form roadways, building platforms and driveways.

The plan of subdivision identifies proposed house sites on each of the lots. The location of these sites has been based on a consideration of site topography and drainage and aims to minimise cut and fill requirements for future housing. Proposed effluent disposal areas have also been identified for each of the sites.

The applicant proposes to construct a new 7m wide (kerb to kerb) road within a 20m / 16m wide road reserve, to connect to Cobaki Road. Minor road widening of Cobaki Road is required to ensure appropriate sight distance is provided for the new intersection being created. A Section 138 application will not be required as all required civil works will be covered by the construction certificate application.

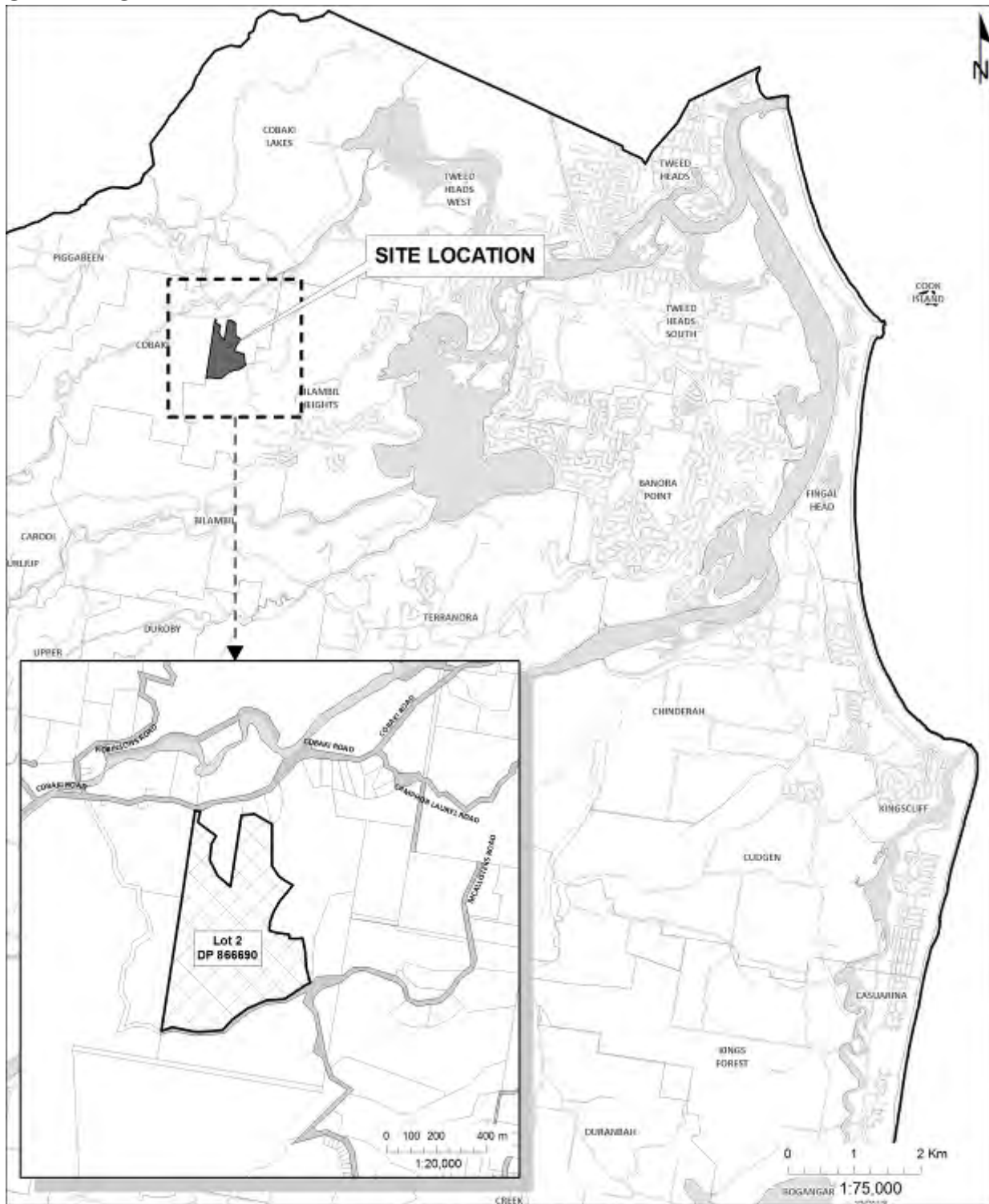
Public Submissions

The proposed development did not attract any letters of support or objection following exhibition of the application.

Summary

Having regard to the site's characteristics, the site history, intended use, proximity of surrounding rural residential development and environmentally sensitive land, amenity issues and an assessment against SEPP 1 and Clause 20(2)(a) of the Tweed LEP 2000 in particular, the proposed nine (9) lot rural residential subdivision is, on balance, considered suitable for the location and therefore the proposed development is recommended for approval.

SITE DIAGRAM:



LOCALITY PLAN
Lot 2 DP 866690
No.161 Cobaki Road, Cobaki

Filename: Z:\year\planning\tweed\A4P_B&W SitePlan.mxd	Author: J. Bachelor - Planning Reforms Unit	Date Printed: 1 December, 2009
<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no express warranties or statements expressed or implied, statutory or otherwise, about the accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "Dig before You Dig" enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.</p>	<p>GDA  Cadastre: 1 December, 2009 © Dept. of Lands & Tweed Shire Council</p> <p>Coordinate System - MGA Zone 56 Datum - GDA 94</p> <p>DO NOT SCALE OFF PRINT - NOT CERTIFIED</p>	<p>Civic and Cultural Centre 3 Tambouran Road Manildra NSW 2484 PO Box 316 Manildra NSW 2484</p> <p>T: (02) 6670 2400 / 1300 262 872 F: (02) 6670 2483 W: www.tweed.nsw.gov.au E: planningreforms@tweed.nsw.gov.au</p>



DEVELOPMENT PLANS:

North Arrow

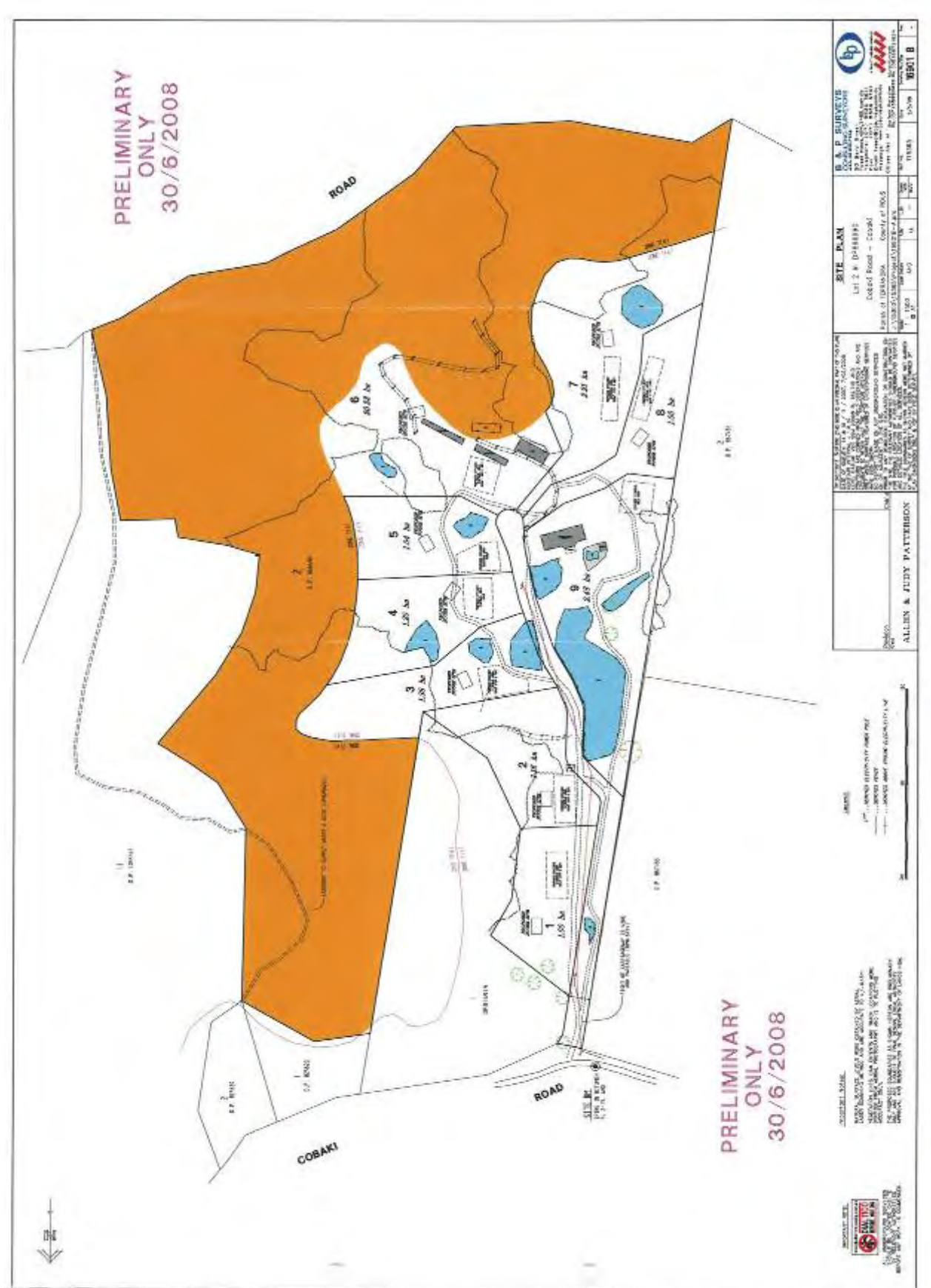
The hills to the east of the property is covered by plantation crops and dense forest communities. The forest through this area of the site will be retained and the plantations removed, providing grassed slopes with a forest background which will emulate the scenic pastoral character site of the surrounding valley.

The views from the site to the north are restricted by the narrow entry to the site from Cobaki Road. To the north of the site there is grazing land and properties on low lying land. The view into the site is also restricted to the entry off Cobaki Road. As this is the first identifying feature of the site, a distinctive landscape feature will be allocated to provide an entrance statement for the site.

South of the site the land rises up the mountain. The existing forest communities that grow on the slopes beyond the plantation crops form a deep green border before the slopes open into cleared grazing land. Rural dwellings can be seen in the far distance. This scenery forms an attractive rural backdrop to the landscape features of the site. The proposed development will have no significant impacts to views out of or into the site to the south.

The western boundary of the site adjoins with rural grazing land. The green pastoral land and the slopes of the opposite side of the valley dominate the views from the site in this direction. The site provides a vegetated profile to the west due to the dense landscape plantings along the western boundary. The intent of the landscaping for the proposed development will provide vegetation along this boundary to ensure scenic views from Cobaki Road and the adjacent properties are maintained.

CLIENT	PLAK NUMBER	LOCATION	TITLE	SCALE	DATE	DESIGN BY	ASSOCIATED CONSULTANTS
ALLEN PATTERSON	118 - AV	LOT 2 ON DP988690 COBAKI ROAD - COBAKI	SITE AERIAL VISUAL ANALYSIS	N/A	11/22/2008	Allen Patterson & Associates Ltd Lisa Marshall & Associates Julia Duffy & Associates	DARREN GIBSON PLANNING



B. & P. SURVEYS
 CONSULTING SURVEYORS
 105/106 WILSON ROAD, COVINGTON
 AUCKLAND 6100, NEW ZEALAND
 PHONE: 09 234 4298
 FAX: 09 234 4295
 WWW.BANDPSURVEYS.CO.NZ

SITE PLAN
 Lot 2 & (Others)
 Closed Road - Cobaki
 PART OF COBAKI, COUNTY OF KAITIAKI
 DISTRICT OF COBAKI

ALLEN & JUDY PATTERSON

NOTES
 1. ALL DIMENSIONS ARE IN METERS UNLESS OTHERWISE SPECIFIED.
 2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
 3. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE SPECIFIED.
 4. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE SPECIFIED.

PLANS
 1. LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9
 2. SITE PLAN
 3. SEWER MAINS PLAN
 4. WATER MAINS PLAN
 5. GAS MAINS PLAN





The new landscape (2) major lakes, these provide a great landscape feature for the proposed subdivision. This proposed road will run east from these lakes including the riparian and ecotone portions of the site. These wetlands will provide a wide range of landscape functions including seedbank, feeding influences on ecotone zones, habitat functions and the presence of the body of water adds to the sensory experience and provides an extra dimension to the surroundings and combines with the vegetated riparian corridors bordering the site.



The mature well established forest vegetation is setback 20m from the proposed road on the opposite side from the lake. This provides a natural backdrop and screens the landscape setting. The site itself will preserve the existing vegetation commitment on site.



The site contains various palms, including the coconut palm. These are providing a variety of landscape functions, including shelter, soil binding, an erosion control role. In recommended here names on site to fill the landscape function but they require maintenance to ensure they are not allowed to develop fruit. These may be gradually replaced and replaced by more suitable species.



Another great landscape feature on the site is a first class concrete for riparian on the left. This provides an edge to the subdivision. This area is open forest vegetation which provides the natural setting of the site and provides a buffering from other surrounding land uses.

- The landscape enhancement areas have been mapped along the banks of the existing lakes (Refer to Concept Design). These areas will include the coarse grasses that are already growing on the site. These areas will plantings with native and exotics to increase sediment levels into the existing water bodies.
- The existing sites on site have been conserved and will provide a riparian portion of forest enhancement, enhancing the bank of the future lake beds.
- Future riparian
- The riparian sites will be provided to adequately offset the impact of the site for riparian purposes. These can be used for turf or pasture with any growing areas.
- Native grasses areas: The existing areas and the future riparian areas will be planted with native grass species. The riparian sites will be planted with native grass species to enhance riparian function.

- The existing vegetation on site will be conserved by the development proposal. This planting allocation has provided a significant landscape feature for the site. This provides a backdrop for the surrounding landscape and provides a high level of biodiversity.
- The road reserve for the development should be planted in small groups in a suitable species to ensure that there is a mix of height and species in normal structures: plant layout.
- The road reserve areas should be planted with a mix of height and species to ensure a complete grass coverage is achieved with the road reserve.
- Proposed native tree
- The existing landscape has been conserved to provide the subdivision with a unique landscape character that adds to the location. An extensive retained provides a great opportunity to integrate the site from the surrounding landscape and provides a point of reference along the road.

CLIENT	PLAN NUMBER	LOCATION	TITLE	SCALE	DATE	DESIGN BY	ASSOCIATED CONSULTANTS
ALLEY PATTERSON	178 - PL	LOT 2.0M DP986680 COBAKI ROAD - COBAKI	PROPOSED DEVELOPMENT LANDSCAPE CONCEPT DESIGN	(A3) 1:2000 (A1) 1:1000	17/11/2008	John Bourke Laine Marshall Alan Oddy	CARREN GIBSON PLANNING

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 aims of the Tweed Local Environmental Plan 2000 (TLEP). The proposal represents sustainable economic development which is consistent with the area's environmental and residential amenity qualities.

Clause 5 - Ecologically Sustainable Development

The proposal is consistent with the principles of ecologically sustainable development. The carrying out of the development will not result in unacceptable cumulative impacts.

Clause 8 - Zone objectives

The site is zoned 1(c) Rural Living & 7(d) Environmental Protection (Scenic/Escarpment) as per the Tweed LEP 2000.

1(c) Rural Living Zone

Primary objectives of the 1(c) Rural Living zone relate to the enabling of rural residential development which does not compromise rural activities within the vicinity, detract from rural amenity or place unreasonable demands for the extension of public amenities or services. They also permit quality rural residential development that makes a positive contribution to existing local rural character.

The secondary object of the zone enables other development that is compatible with rural residential development.

The proposed rural residential subdivision is consistent with the applicable primary objectives of the zone in that it represents quality rural residential development of appropriate scale and character to that of the locality. It will not result in a burden on public amenities or services.

Dwelling houses not connected to Council's reticulated sewerage system are permissible if they are located on allotments with a minimum area of one (1) hectare (refer Clause 21 of the Tweed LEP 2000). All proposed lots meet the minimum requirement of one (1) hectare.

7(d) Environmental Protection (Scenic / Escarpment) Zone

Primary objectives of the 7(d) Environmental Protection (Scenic / Escarpment) zone seek to protect and enhance areas of particular scenic value to the area of Tweed as well as minimising soil erosion and preventing inappropriate development that may negatively impact upon the amenity of visually prominent locations.

The secondary objective permits other development that is compatible with the primary function of the zone.

It is noted that no development is proposed within this zone. It shall be retained in its entirety within proposed Lot 6.

As such, the proposed rural residential subdivision supports the primary intent of this zone by locating this environmentally sensitive land within a land parcel that includes the creation of a building platform on a 2.72ha portion of 1(c) Rural Living zoned land.

Creation of Lot 6 with a total area less than 40ha is discussed below (refer Clause 20 of the Tweed LEP 2000) and is the subject of a SEPP 1 Variation Report which has received the concurrence of the Director General.

Clause 15 - Essential Services

Country Energy has advised that the existing infrastructure is capable of servicing the proposed development. This may require the establishment of distribution substations, extending the high voltage (11,000V) supply from connection points.

Reticulated potable water and piped effluent disposal infrastructure is not available to the subject site.

Telecommunication services are currently provided to the area via Telstra infrastructure.

Clause 16 - Height of Building

There are no buildings proposed as part of the development application.

Clause 17 - Social Impact Assessment

The scale of this development proposal does not necessitate a social impact assessment.

Clause 35 - Acid Sulfate Soils

The site exhibits Class 5 Acid Sulfate Soils. The proposed works include construction of a roadway, building platform and driveways. These works are within 500m of Class 2 Acid Sulfate Soils, however, are considered minor and are unlikely to lower the water table below 1m AHD in the Class 2 land. Acid Sulfate Soils are unlikely to be a constraint for the proposed works.

Other Specific Clauses

Clause 19 – Subdivision (General)

This clause allows subdivision to take place on the subject land with development consent.

Clause 20 – Subdivision in Zones 1(a), 1(b), 7(a), 7(d) and 7(l)

The main objective of this clause is to prevent the potential for fragmentation of rural land that would lead to an adverse impact upon its agricultural and/or environmental character. It is also to prevent unsustainable development and to protect the area of Tweed's water supply quality.

Clause 20 provides for the subdivision in 7(d) zoned land if the area of each allotment created is at least 40 hectares. This application proposes to locate 17.5ha of 7(d) zoned land (along with 2.72ha of 1(c) zoned land) within a parcel with a total land area of 20.22ha.

It is proposed to use this 'undersized' lot for residential purposes by the creation of a building pad in the 1(c) zoned portion. It is therefore the subject of a SEPP 1 Variation Report which has received the concurrence of the Director General and is discussed in full at a later stage within this report.

Clause 21 – Subdivision in Zone 1(c)

The objective of Clause 21 is to ensure that the semi-rural character and environmental values of the locality are protected.

The proposal is in accordance with Clause 21 as each of the proposed lots which are not connected to the Council's reticulated sewerage system, have an area not less than 1ha. A tank water supply has been nominated for future dwellings and indicative areas for on-site treatment and disposal of sewage have been nominated and assessed as acceptable by the Environmental Health Unit.

Clause 26 – Development in Zone 7(d) Environmental Protection (Scenic/Escarpment)

The objective of this clause is to ensure that the development of land within this zone minimises soil erosion and preserves and enhances the scenic quality of the land and the locality.

Apart from some possible minor clearing works for boundary fencing (on the boundary with 1(c) zoned land) there is no development proposed in this zone.

Clause 31 – Development Adjoining Waterbodies

The relevant objective of this clause is to protect and enhance scenic quality, water quality, aquatic ecosystems, bio-diversity and wildlife habitat and corridors.

It applies to land that adjoins the mean high-water mark (or the bank where there is no mean high-water mark) of a waterbody. Waterfront land, for the purposes of this development application is land and material in or within 40m of the top of the bank or shore of the watercourses identified on the site.

Minor drainage paths are located on the subject site that encroach upon the existing and proposed new road alignment. Three culvert crossings are proposed under the new road alignment to maintain the existing drainage path flows. Modification of the existing water paths on site will be limited to discharging the existing overland flow under the road which will maintain the existing alignment across the property.

The application was referred, as integrated development, to the Department of Water and Energy. Please refer to an assessment undertaken (and subsequent approval granted) by DWE in a later section of this report. As such, the proposal complies with Clause 31.

Clause 34 – Flooding

The site is considered flood liable, however the affectation is limited to a very small inconsequential area along the north-western boundary. The nominated flood level for the site is RL 3.6m AHD. The flood liability is limited to the future roadway and will have no effect on future residential lots. Minor cut and fill for the road will necessitate slight filling of the flood plain which is deemed acceptable.

Clause 39 – Remediation of Contaminated Land

The objective of this clause is to ensure that contaminated land is adequately remediated prior to development occurring.

Please refer to a full assessment in accordance with SEPP 55 (Remediation of Land) in a later section of this report. As such, the proposal complies with Clause 39.

Clause 39A – Bushfire Protection

The objective of Clause 39A is:

- to minimize bushfire risk to built assets and people and to reduce bushfire threat to ecological assets and environmental assets.

The development application was forwarded to the Local Rural Fire Service on 20 March 2009 for consideration and comment, as the subject site is bushfire prone land. A response was received 23 April 2009. The Service recommended conditions to be attached to the development consent, should it be granted.

The conditions relate to Asset Protection Zones, Water and Utilities and Public Road Access.

Clause 54 – Tree Preservation Order

The objective of this clause is to enable the protection of vegetation for reasons of amenity or ecology. Any removal of vegetation as a result of this development proposal proceeding must be considered in terms of:

- the Tree Preservation Order 1990 - affects land zoned 1(c), and
- the Tree Preservation Order 2004 – affects land zoned 7(d)

and must obtain development consent.

The proposal is designed to avoid vegetation clearing, with dwelling sites, effluent disposal and access located within existing cleared areas of the site previously used for agricultural purposes. Minor clearing may be required for boundary fencing and possible alternative bushfire access.

A summary of vegetation to be removed and considered as part of this development application is outlined below:

- clearance of a narrow band of disturbed, fragmented vegetation which is bounded by Cobaki Road and a cleared paddock in order to widen Cobaki Road. This vegetation does support a single Red Bopple Nut sapling (approximately 1.5m in height) which is listed as 'vulnerable' under the Threatened Species Conservation (TSC) Act 1995 and the Environment Protection and Biodiversity Conservation (EPBC) Act 1999. It is recommended that this specimen be relocated to the area of suitable habitat within the mixed wet sclerophyll closed forest. The applicant has advised that his sapling will be relocated to a suitable portion of 7(d) land
- relocation of exotic species including a variety of palms, frangipani and succulents from the area designated for construction of the public road to other areas within the subject site.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

This clause states that council shall not consent to an application to carry out development on rural land unless it has first considered the likely impact of the proposed development on the use of adjoining or adjacent agricultural land and whether or not the development will cause a loss of prime crop or pasture land.

The recent history of the use of the site since 1992 has been for minor agricultural activities. The small parcel of land has been deemed of marginal agricultural value by the Department of Primary Industries.

Adjoining and surrounding land is utilised for rural residential and grazing purposes.

The development would not lead to a loss of prime crop and pasture land, or adversely impact upon any nearby agricultural activities.

Clause 15: Rivers, streams and wetlands

This clause aims to ensure the viability of wetlands or fishery habitats. The only waterbodies on this site are dams and drainage paths (which have been discussed as part of the integrated referral to the Department of Water and Energy).

Magpie Geese (vulnerable species under the TSC Act) visit the dams on an infrequent basis. Only one small dam out of nine will be removed for the purposes of building the new public road. The remaining dams will be retained in their current state. The proposed plan will not have an adverse effect on the life cycle of the species.

Clause 29A: Natural areas and water catchment

Clause 29A controls clearing of native vegetation in zones such as 7(d) Environmental Protection (Scenic/Escarpment). The only possible clearing within proximity of the 7(d) zone is minor for the purpose of boundary fencing associated with the division. This clearing is subject to control under the Native Vegetation Act 2003. The applicant has stated that he would prefer not to remove any vegetation within the 7(d) zone for the purpose of fencing.

In any case, such minor clearing will have little or no impact upon the scenic values of the site.

Clause 32B: Coastal Lands

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: Residential development

Clause 43 of the North Coast Regional Environmental Plan 1988 (NCREP) provides guidelines for Council when considering residential development. These controls include density, site erosion and environmental constraints on the land.

Site erosion will be minimised throughout the construction phase of the road and building pads and enforced via conditions of consent. The density of the proposed development has been maximised without adversely affecting the environmental features of the land.

SEPP No. 1 - Development Standards

As discussed, the applicant seeks to vary the development standard regarding minimum allotment size in the 7(d) zone for subdivision purposes as contained within Clause 20(2)(a) of the Tweed LEP 2000.

Clause 20(2) of the Tweed LEP 2000 states that:

Consent may only be granted to the subdivision of land:

(a) within Zone 1(a), 1(b2), 7(a), 7(d), or 7(l) if the area of each allotment created is at least 40 hectares.

The applicant contends that *the non-compliance in relation to minimum lot size is unavoidable, and the proposal is consistent with other controls and policies in the Tweed LEP and DCP.*

A SEPP No. 1 submission may be supported where the applicant demonstrates that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case and specifies the grounds of that objection. The applicant must also demonstrate the consistency with the aims of the SEPP.

In support of the proposed variation, the applicant has provided the following:

“The reasons for this objection, which are outlined below, show that in the circumstances of this case the strict application of the standard is unreasonable, unnecessary and would not be compatible with sound planning principles.

- *The area of 7(d) zoned land is currently less than Council’s minimum requirement*
- *The proposal will not result in further fragmentation of this land as it is proposed to be contained within a single allotment and nothing within the proposal will result in an adverse impact on this land*
- *The land is marginal agricultural land given soil type and topography*
- *The land is not identified as prime crop or pastureland by NSW DPI (Agriculture) nor is it identified as being of any significance in the Northern Rivers Farmland Protection project mapping*
- *The proponent has ceased horticultural production as it is not economically viable*
- *The proposed subdivision will result in a more economic and orderly use of land for a use consistent with those surrounding the site*
- *Non-compliance with the minimum lot size control does not raise any matter of significance for State or regional environmental planning*
- *No public benefit issues are adversely affected by the proposed development not complying with the minimum lot size.*

The application is consistent with the objectives of the Clause 20(2)(a) development standard in that:

- *Appropriate technical investigations have been undertaken in relation to ecology and visual impact, and are discussed in detail in the Statement of Effects. The 7(d) zoned land will not require clearing, except for minimal tree removal for the purposes of boundary fencing. The subdivision layout and proposed building envelope locations minimise visual impact.*
- *The proposal will have no impact on Tweed’s water supply quality. The management of site water has been addressed in the proposed Stormwater Management Plan and On Site Effluent Report accompanying the Statement of Environmental Effects.”*

Assessment of the applicant’s submission:

The following assessment of the SEPP No. 1 is based on the principles set by Chief Justice Preston (*Wehbe v Pittwater Council* [2007] NSW LEC 827).

- 1. The applicant must satisfy the consent authority that "the objection is well founded", and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case**

Chief Justice Preston has noted 5 ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. In this instance, the first option, being the objectives of the standard are achieved notwithstanding non-compliance with the standard has been adopted.

The objective of Clause 20(2)(a) of the Tweed LEP is achieved despite the variation to the development standard pertaining to minimum allotment size. The objectives of this clause ensure there are no detrimental impacts to the ecological or scenic values of the land and prevent further fragmentation.

The proposed rural residential subdivision is of a quality design that is consistent with surrounding development. It does not compromising the ecological or scenic value of the subject site.

The applicant's submission in relation to being well founded is supported.

- 2. The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979*; and**

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

The proposal provides for a Torrens Title subdivision that incorporates a new public road and no unreasonable burden on public infrastructure.

It is not considered that the granting of this application would hinder the attainment of such objectives.

- 3. It is also important to consider:**
 - a. whether non-compliance with the development standard raises any matter of significance for State or regional planning; and**
 - b. the public benefit of maintaining the planning controls adopted by the environmental planning instrument.**

The proposed non-compliance with Clause 20(2)(a) of the Tweed LEP 2000 is not considered to raise any matter of significance for State or regional planning.

No public benefit issues are adversely affected by not being able to maintain the development standard in this case as it already is non-compliant.

Chief Justice Preston notes that there is a public benefit in maintaining planning controls. However, the proposed non-compliance with the Tweed LEP 2000 is considered to be justified in this instance and is not likely to result in an adverse planning precedent as it is localised. As such, the granting of this application is unlikely to impact upon public benefit.

Concurrence was granted in this instance for the following reasons:

- The proposal is consistent with the objectives of the zone; and
- The proposal allows for protection of the 7(d) land from further development.

It is recommended that Council assume the Director General's concurrence.

As stated previously in this report, concurrence was granted in this instance by the Director General for the following reasons:

- The proposal is consistent with the objectives of the zone; and
- The proposal allows for protection of the 7(d) land from further development.

SEPP No. 55 - Remediation of Land

This policy provides controls and guidelines for the remediation of contaminated land and aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.

Council's Environmental Health Unit has advised that:

- Checks of aerial photographs indicate areas of grassland, forest and some cropping on the subject site
- Any agricultural products used by the applicant would have degraded and are unlikely to have resulted in the site being contaminated
- Sampling was undertaken in accordance with the NSW EPA Guidelines for Assessing Banana Plantations which showed minor elevations of arsenic, below the Health Investigation Level for residential A development.

The applicant has advised that:

- Prior to 1992, the property was used only for cattle and horse grazing
- He started cropping on the site in 1992 when the more residual chemicals were not available for sale
- No such chemicals have been used or stored on the property
- Products have not been applied for over two years.

In summary, the applicant has used non-persistent chemicals on site and results of the sampling have not indicated analytes above health investigation levels for the proposed residential use. It is unlikely that the dwelling sites have been impacted by soil contamination and the proposed dwelling sites appear suitable for residential use.

A Section 88B 'restriction to user' will be placed on the title requiring further contamination tests to be undertaken should any of the proposed dwelling sites be altered.

SEPP No 71 – Coastal Protection

This policy aims to ensure that development in the NSW coastal zone is appropriate and suitably located to ensure that there is a consistent and strategic approach to coastal planning and management and to ensure there is a clear development assessment framework for the coastal zone.

The subject site is located within the coastal zone (although it is not within a sensitive coastal location) and is therefore subject to the provisions of SEPP 71. Clause 18(1)(c) states that subdivision of rural residential land into more than five (5) allotments requires preparation of a master plan. The requirement for this Master Plan has been waived by the Minister of Planning given the minor nature of the development.

Clause 8 of the SEPP identifies matters for consideration. The proposal is consistent with the aims of the SEPP in that:

- Public access to or amenity of the coastal foreshore will not be affected as a result of the proposal
- The residential form is consistent with the rural nature of the surrounding locality
- There will be no adverse impact upon the scenic qualities of the coastline
- Habitat for the vulnerable 'Magpie Geese' species will be conserved
- The site will be managed with a Stormwater Management and Erosion and Sediment Control Plan
- Retention of any functional wildlife corridors, and
- Site constraints, such as topography, have been taken into account in the subdivision design which minimises earthworks.

The protection of cultural heritage has been addressed via a condition of consent, in the event items of cultural significance are discovered all site works shall cease immediately.

The proposed development is not considered to result in adverse cumulative impacts, which is evident throughout this assessment.

SEPP (Major Projects) 2005

The application was originally lodged with the Department of Planning under the SEPP (Major Projects) 2005 and Council was requested to provide details of key issues and assessment requirements in August 2008.

The applicant requested that the Department of Planning review their decision, given the minor nature of the development. The department subsequently declared the project of Local Environmental Planning Significance with Tweed Shire Council to be the consent authority on 29 January 2009.

SEPP (Rural Lands) 2008

This SEPP introduces rural planning principles to facilitate the orderly and economic use and development of rural lands for rural and related purposes. It provides controls for rural subdivisions and identifies State significant agricultural land. It also implements measures designed to reduce land use conflicts.

None of the provisions contained within the SEPP relate specifically to this site. The land is not considered State significant agricultural land. Measures designed to reduce land use conflicts are aimed at creation of residential land uses through subdivision on land that is adjacent existing farming activities, which does not apply to this development.

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

Draft TLEP amendment numbers 20, 21, 70 and 76 apply to the subject site. As per advice from the Department of Planning (Planning Circular 08-013) draft environmental planning instruments exhibited prior to 1 March 2006 and have not been gazetted are no longer required to be taken into consideration by consent authorities when determining development applications under section 79C of the EPA Act 1979. Therefore draft LEP amendment numbers 20 and 21 have not been considered in this assessment. Amendment numbers 70 and 76 are not relevant to the site.

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

Tweed Development Control Plan

A3-Development of Flood Liable Land

The site is considered flood liable, however the affectation is limited to a very small inconsequential area along the north-western boundary. The nominated flood level for the site is RL 3.6m AHD. The flood liability is limited to the future roadway and will have no effect on future residential lots. Minor cut and fill for the road will necessitate slight filling of the flood plain which is deemed acceptable.

A5-Subdivision Manual

DCP A5 provides various guidelines for the subdivision of land and aims to facilitate "best practice" subdivision development in line with the policies of Council and the State. The DCP defines "subdivision" liberally as "the division of land into two or more parts" and includes the creation of lots in community title subdivisions. Parts of this DCP that are applicable to the proposal have been addressed below with the conclusion that subject to various conditions attached to this report the application is compliant with the provisions of this part of the DCP.

The proposed road widths and lot sizes are considered acceptable. Road frontage dimensions are considered appropriate.

The smaller lot frontages in the cul-de-sac are scaled off the plans as 10m for Lot 7 and 14m for Lot 8. The A5 requirement for a minimum 9m kerb-line frontage for lots in urban cul-de-sac heads is not enforceable in rural situations, primarily as off-street parking is usually readily available in the rural areas. The hatchet shaped access handles for both these lots are not preferred but are acceptable.

A11-Public Notification of Development Proposals

Notification of the development was provided to adjoining land owners/properties in accordance with this section. The proposal was placed on exhibition for 14 days from 25 March to 8 April 2008. No submissions were received as a result of this process.

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

Clause 92(a) Government 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.

(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

Access, Transport and Traffic

Existing Right-of-Carriageway:

- The adjacent property, Lot 1 DP 816914 utilises this property's gravel driveway for access to Cobaki Road via a Right-of-Carriageway. The adjoining driveway is bitumen sealed within its own boundary. The proposed new (dedicated) road will address legal access for the adjoining property, with the existing driveway needing to be connected to the new road and at the same time ensuring unimpeded access for the neighbour during the construction phase. The existing Right-of-Carriageway will need to be extinguished as part of the plan / Section 88B submission.

Existing Driveway:

- The proposed new road will replace the existing driveway and retain much the same location. The existing driveway has been planted out with hundreds of palms and is very narrow in places. A landscaping plan will be required to address the loss of existing flora.

New Lots:

- Access to new individual rural lots is usually required to be provided via a 3m wide bitumen sealed driveway to 3m inside the property, plus a 3.6m wide gate in the fence.
- There is no requirement for a concrete footpath on the new road due to the rural setting and minimal traffic generation.

Kennedy Drive Catchment:

- As confirmed by prior correspondence with Council, the subdivision will generate an extra 52 vehicle trips per day. The existing road network is capable of handling this extra traffic. There is existing available capacity for Kennedy Drive at Cobaki Bridge for this traffic flow.

Intersections:

- The subdivision will create a new road intersection which is to be designed in accordance with "Austroads Guide to Traffic Engineering Practice Part 5: Intersections at Grade" booklet.

Drainage

Council's Development Engineers have requested further stormwater management solutions to be submitted as part of the Construction Certificate assessment. A condition has been applied accordingly.

Flora and Fauna

Ecological value of the site is considered low to moderate overall, with some habitat value contained within a number of water bodies scattered over the site and some faunal movement able to occur through treed areas on the steeper slopes. It should be noted that such areas are generally mapped as Camphor Laurel dominated.

Whilst this does not preclude threatened species presence, both flora and fauna, the vegetated slopes do not form part of the development site and are intended to be set aside within one larger lot to be retained by the present owners.

One threatened plant, the Bopple Nut (*Hicksbeachia pinnatifolia*) has been located within the road reserve of Cobaki Road and appears likely to be impacted by road widening required for sight distances. Bopple Nuts, similarly to Davidsons Plums, have recorded varying success in translocation efforts but are likely to succeed with preparation and care.

The property also has an Section 88B instrument on title protecting two Black Walnut (*Endiandra globosa*) trees within the 7(d) zoned area, towards the north-eastern corner of the site. This species is listed on the *Rare or Threatened Australian Plant list* (Briggs and Leigh) as a rare plant, however, it is not listed on the Schedules of the Threatened Species Conservation Act 1995 and the flora location is well clear of any proposed works.

A third threatened species, being a migratory bird, the Magpie Goose has been recorded as occasionally utilising farm dams on the site. Proposed works should not have direct impacts upon this species as the majority of water bodies are proposed to remain. This is assuming no severe pollution events occur.

Any filling or draining apart from the one small dam included within the current proposal must be considered in light of the species' habitat requirements such that seasonal use is not prevented.

A rare and threatened species management plan has been conditioned to deal with the above issues.

The only other issues of concern with regard to the proposed development is the presence of large numbers of weed trees, primarily Camphor Laurel (*Cinnamomum camphora*) on the steeper slopes, and within landscape plantings, with Cocos Palm (*Syagrus romanzoffianum*) being of greatest concern.

It is considered that Camphor Laurel has now been declared a Noxious Weed and thus the requirement to continuously control any stems less than 3m in height and to control 10% per year of the larger trees is covered under separate legislation (Noxious Weeds Act) and is an appropriate way to address the issue. A weed management plan has been conditioned to deal with exotic landscape species.

(c) Suitability of the site for the development

Groundwater

The subject site is classified as having Moderately High groundwater vulnerability. Sampling by Border Tech did not intercept groundwater with boreholes ranging from 1.6m – 3m in depth across the site. Groundwater is unlikely to be intercepted by the proposed works.

On-site Sewage Management

There is a current approval to operate for the existing onsite sewage management system currently connected to the dwelling on the site.

Waste

Residential waste collection services currently operate in this area by Solo Resource Recovery. They have agreed to service the additional lots and will be able to do so without the need for reversing or any other awkward manoeuvring.

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

The proposal was placed on public exhibition for fourteen days from 25 March to 8 April 2008. To date no submissions have been received.

Department of Water and Energy

The application was referred as integrated development to DWE for General Terms of Approval (GTA) for works requiring a Controlled Activity Approval under the Water Management Act 2000. These works entail works within land and/or placement of material in or within 40m of the top of the bank or shore of the watercourses identified.

The watercourses identified are minor overland drainage paths that are located in proximity to the existing access routes and proposed public road on the cleared sections of the subject site.

Council's consent must be consistent with the GTA proposed to be granted by the approval body. Accordingly, the GTA have been entered as conditions to be applied to the proposed development, should it be approved.

(e) Public interest

The proposed development is generally consistent with the applicable environmental planning instruments and the Tweed Development Control Plan. The development is considered to be in the interest of the general public.

OPTIONS:

1. Resolve to approve the development application with conditions; or
2. Resolve to refuse the development application with reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

Nil

CONTRIBUTIONS:

Applicable Section 94 contribution fees have been calculated for the additional eight (8) rural residential lots (taking into account the existing site credit of 2ET for all applicable contribution plans to cater for the existing attached dual occupancy which will be located on proposed lot 9) and applied as a condition of consent. No Section 64 Water or Sewer contributions apply. A breakdown of the calculations is on file.

CONCLUSION:

The proposed nine (9) lot rural residential subdivision is consistent with the applicable environmental planning instruments, the Tweed Development Control Plan and policies. The proposal will not result in adverse cumulative impacts. It is considered the site is suitable for the development.

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).

Nil.

6 [PR-CM] Development Application DA09/0460 for a Boundary Adjustment Subdivision at Lot 3 DP 602563; Lot 6, 7 DP 748802, No. 517, 519 and 525 Upper Burringbar Road, Upper Burringbar

ORIGIN:

Development Assessment

FILE NO: DA09/0460 Pt1

SUMMARY OF REPORT:

The proposed development seeks Council consent for a boundary adjustment subdivision which will result in the following configuration:-

- Proposed Lot 11 - Having an area of 4,729m² and a frontage to Upper Burringbar Road.
- Proposed Lot 12 - Having an area of 78.76ha and a frontage to Upper Burringbar Road.
- Proposed Lot 10 - Having an area of 3,253m² and a frontage to Upper Burringbar Road.

The applicants have stated that the reason for the boundary adjustment is to remedy all encroachments by existing improvements over existing lot boundaries and to provide further width for access around the existing dwelling on proposed Lot 11.

As the proposed subdivision will result in proposed Lots 10 and 11 being under the minimum allotment size they will therefore not enjoy a dwelling entitlement in accordance with the Tweed LEP. In this case, for the existing dwellings to remain lawful, existing use provisions will allow the continuation of previous rights to occupy a dwelling house on proposed lots 10 and 11. However, this may create some restrictions should the owners of these allotments intend on doing future development or building works. This issue has been raised with the applicant.

A SEPP 1 objection also accompanies the application. The objection is in respect of the planning standard identified within Clause 20 (2)(b) of the Tweed Local Environmental Plan 2000, specifically seeking variance to the 10 hectare minimum lot size development standard for the 1(b1) zone.

The SEPP 1 objection relates to proposed lots 10 and 11 being below 10 hectares. Also, Council does not have the authority to assume the Director-Generals Concurrence, as the boundary adjustment subdivision is between three allotments.

The Department of Planning have granted Director General's Concurrence, the purpose of this report is to have the application determined by a full Council as Council Officers do not have the delegation to determine a development application with a SEPP 1 objection greater than a 10 per cent variation of the applicable development standard.

After consideration of applicable environmental planning instruments, the Tweed Development Control Plan and various policies, the proposal is recommended for approval.

RECOMMENDATION:

That Development Application DA09/0460 for a boundary adjustment subdivision at Lot 3 DP 602563; Lot 6, 7 DP 748802, No. 519 Upper Burringbar Road Upper Burringbar No. 517, 519 and 525 Upper Burringbar Road, Upper Burringbar 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 2433D1-A3/2 prepared by N.C. White & Associates and dated 15/06/2009, except where varied by the conditions of this consent.**

[GEN0005]

- 2. The subdivision is to be carried out in accordance with Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual and Councils Development Design and Construction Specifications.**

[GEN0125]

DURING CONSTRUCTION

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

- 4. 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]

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

- Noise, water or air pollution**
- dust during filling operations and also from construction vehicles**
- material removed from the site by wind**

[DUR1005]

6. 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]

USE

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

[USE0125]

8. All wastes shall be collected, stored and disposed to the satisfaction of the General Manager or his delegate.

[USE0875]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

9. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of this Development Consent have been complied with.

[PSC0825]

10. The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act must include the following:

Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating the right of carriageway/easement to drain water shall make provision for maintenance of the right of carriageway/easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis.

Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of Council.

Privately owned infrastructure on community land may be subject to the creation of statutory restrictions, easements etc in accordance with the Community Land Development Act, Strata Titles Act, Conveyancing Act, or other applicable legislation.

[PSC0835]

11. Where new state survey marks and/or permanent marks are placed a copy of the locality sketch relating to the marks shall be submitted to Council within three months of registration of the Subdivision Certificate in accordance with the Survey Practices Regulation.

[PSC0865]

12. Prior to registration of the plan of subdivision, a Subdivision Certificate shall be obtained.

The following information must accompany an application:

- (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.

- (b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.

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

[PSC0885]

13. Prior to the issue of the subdivision certificate the applicant shall be issued with an Approval to Operate the existing onsite sewage management systems on proposed lots 10, 11 & 12 under the Local Government Act, 1993, and shall complete all system upgrades or replacements required by such Approvals, to the satisfaction of the General Manager or his delegate.

[PSCNS01]

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

1. At the issue of a subdivision certificate and in perpetuity, the land surrounding the existing dwelling(s) on all proposed lots, to a distance of 10 metres or to their respective property boundaries, shall be maintained as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

REPORT:

Applicant: Ms L Cotelli

Owner: Mr DF Cotelli, Mr GP Cotelli, Mrs LA Cotelli and Mrs LA Cotelli

Location: Lot 3 DP 602563; Lot 6, 7 DP 748802, No. 517, 519 and 525 Upper Burringbar Road, Upper Burringbar

Zoning: 1(b1) Agricultural Protection

Cost: Nil

BACKGROUND:

The proposed development seeks Council consent for a boundary adjustment subdivision between three (3) existing allotments:

- Lot 3 DP 602563 - Has an area of 2,834m² and contains an existing dwelling house and associated garage. Lot 3 is accessed via an existing right of carriageway burdening Lot 6 from Upper Burringbar Road.
- Lot 6 DP 748802 - Has an area of 79.17ha and contains two existing dwelling houses and associated rural outbuildings. Lot 6 is accessed via Upper Burringbar Road
- Lot 7 DP 748802 - Has an area of 1000m² and contains an existing dwelling house and associated garage. Lot 7 is accessed via Upper Burringbar Road.

The proposed subdivision will result in the following configuration:-

- Proposed Lot 11 - Having an area of 4,729m² and a frontage to Upper Burringbar Road.
- Proposed Lot 12 - Having an area of 78.76ha and a frontage to Upper Burringbar Road.
- Proposed Lot 10 - Having an area of 3,253m² and a frontage to Upper Burringbar Road.

The existing lot layout and proposed lot layout are provided in the body of this report for ease of reference.

The applicants have stated that the reason for the boundary adjustment is to remedy all encroachments by existing improvements over existing lot boundaries and to provide further width for access around the existing dwelling on proposed Lot 11.

No works will be required other than the adjustment of boundary fences. The easement to draw water servicing existing Lot 5 DP 605722 is also proposed to be extended (in a westerly direction) to service existing Lot 7 DP 748802 (proposed Lot 10). All other easements are to remain as per the current plan.

The subject land is located in the locality of Upper Burringbar with all lots having an existing boundary and access to Upper Burringbar Road. There is an existing lawful dwelling on each of the existing lots. Proposed Lot 12 has a second dwelling house erected upon the property. A search of Council's rates books from 1960 was conducted to confirm the legitimacy of the dwelling. The rates books state that there were two cottages erected on the property, therefore confirming that there were two dwelling houses erected on the property at that particular date. Based on the above evidence, it is considered that the two dwellings are lawful and attract the protection of Section 106 and are entitled to continue pursuant to Section 107 of the Environmental Planning and Assessment Act 1979.

The land generally falls in a northerly direction towards Upper Burringbar Road and then to the Burringbar Creek, which forms the northern boundary of existing Lot 6.

The application was originally submitted as a minor boundary adjustment. However, the proposed application is not considered to be a minor boundary adjustment in accordance with the Tweed Local Environmental Plan 2000 (Tweed LEP). A minor boundary adjustment is defined as:

'a subdivision of adjoining lots to create new lots none of which is significantly different in area, shape or dimensions from the corresponding former lot.'

In regard to the above definition the proposal cannot be considered minor as the proposed allotments exhibit different shape and dimensions. The application therefore is considered as a subdivision for the purposes of the Tweed LEP.

It must be noted that because the proposed subdivision will result in proposed Lots 10 and 11 being under the minimum allotment size they will therefore not enjoy a dwelling entitlement in accordance with the Tweed LEP. In this case, for the existing dwellings to remain lawful, existing use provisions will allow the continuation of previous rights to occupy a dwelling house on proposed lots 10 and 11. However, this may create some restrictions should the owners of these allotments intend on doing future development or building works. This issue has been raised with the applicant.

A SEPP 1 objection also accompanies the application. The objection is in respect of the planning standard identified within Clause 20 (2)(b) of the Tweed Local Environmental Plan 2000, specifically seeking variance to the 10 hectare minimum lot size development standard for the 1(b1) zone.

The SEPP 1 objection relates to proposed lots 10 and 11 being below 10 hectares. Also, Council does not have the authority to assume the Director-Generals Concurrence, as the boundary adjustment subdivision is between three allotments.

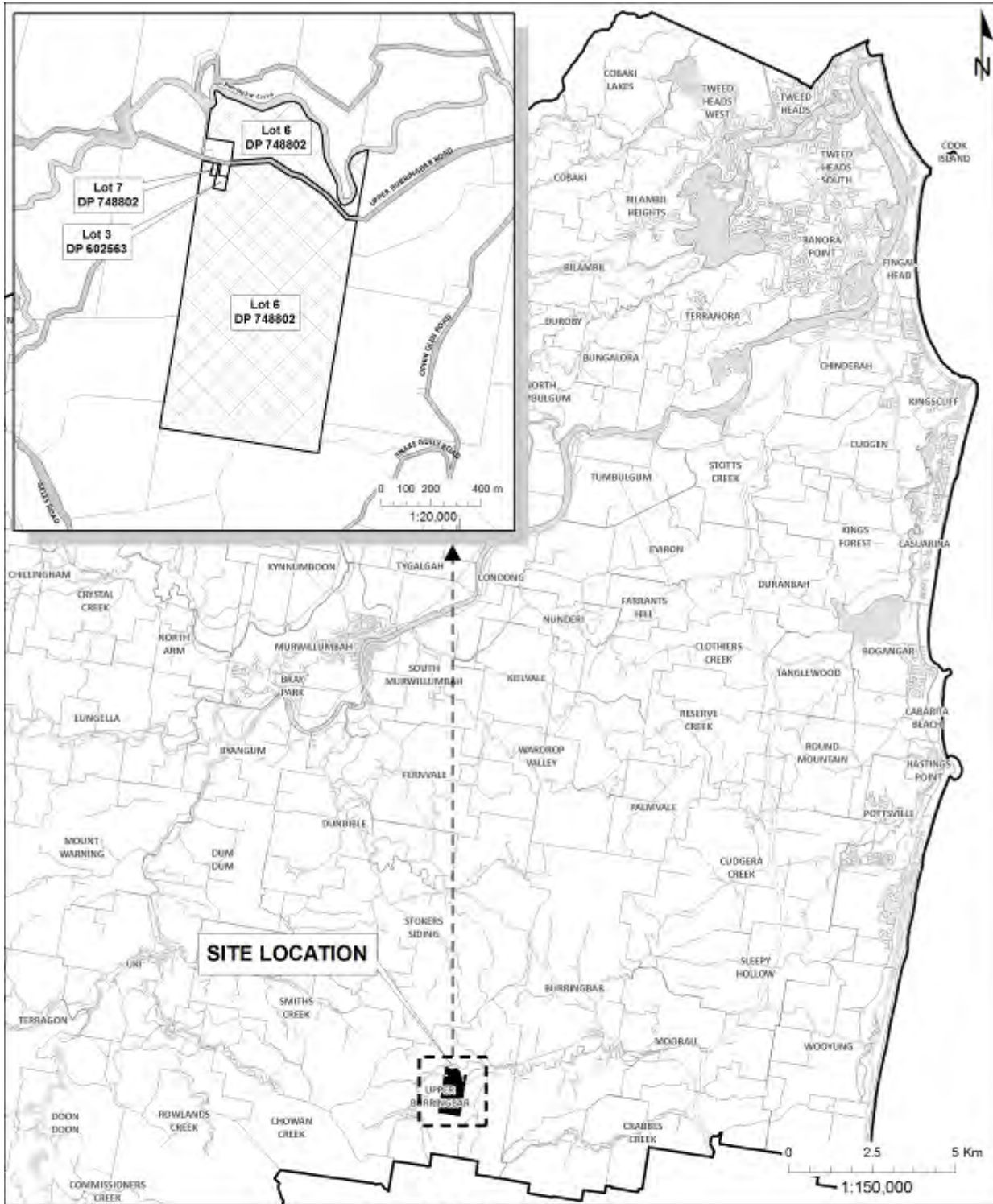
The application was therefore referred to the NSW Department of Planning requesting the Director-General's Concurrence. Concurrence was granted to vary the 10 hectare minimum lot size development standard. The Department of Planning advised that concurrence was granted in this instance for the following reasons:

- The adjustment to the boundaries is only minor transferring small areas of land from one lot to the two smaller lots to create three lots similar in size to the existing lots.
- The existing three lots have dwellings located on each lot, no new dwelling entitlements are to be given to these lots and no new lots will be created.

As the Department of Planning have granted Director General's Concurrence, the purpose of this report is to have the application determined by a full Council as Council Officers do not have the delegation to determine a development application with a SEPP 1 objection greater than a 10 per cent variation of the applicable development standard.

After consideration of applicable environmental planning instruments, the Tweed Development Control Plan and various policies, the proposal is recommended for approval.

SITE DIAGRAM:



LOCALITY PLAN

Lot 3 DP 602563; Lot 6 & 7 DP 748802
 No. 517, 519 and 525 Upper Burringbar Road, Upper Burringbar

Filename: z:\yesr\planning\mxd\A4P_B&W SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 1 December, 2009

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Coordinate System - MGA Zone 56
 Datum - GDA 84

Cadastre: 1 December, 2009
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3D PDF SCALE
 COM DIM - NOT CERTIFIED

One and Cultural Centre
 3 Tumbulghum Road
 Murwillumbah NSW 2484
 PO Box 816
 Murwillumbah NSW 2484

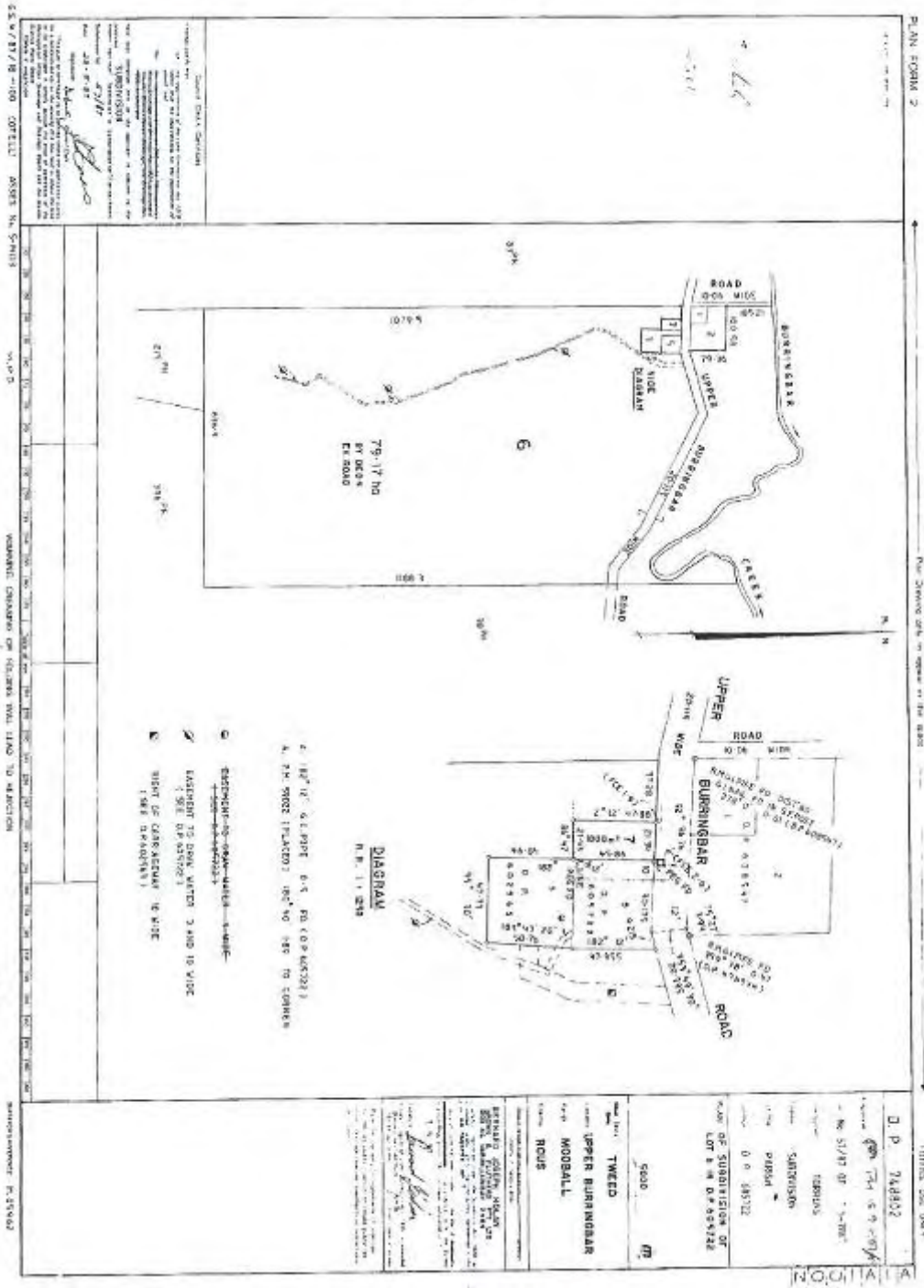
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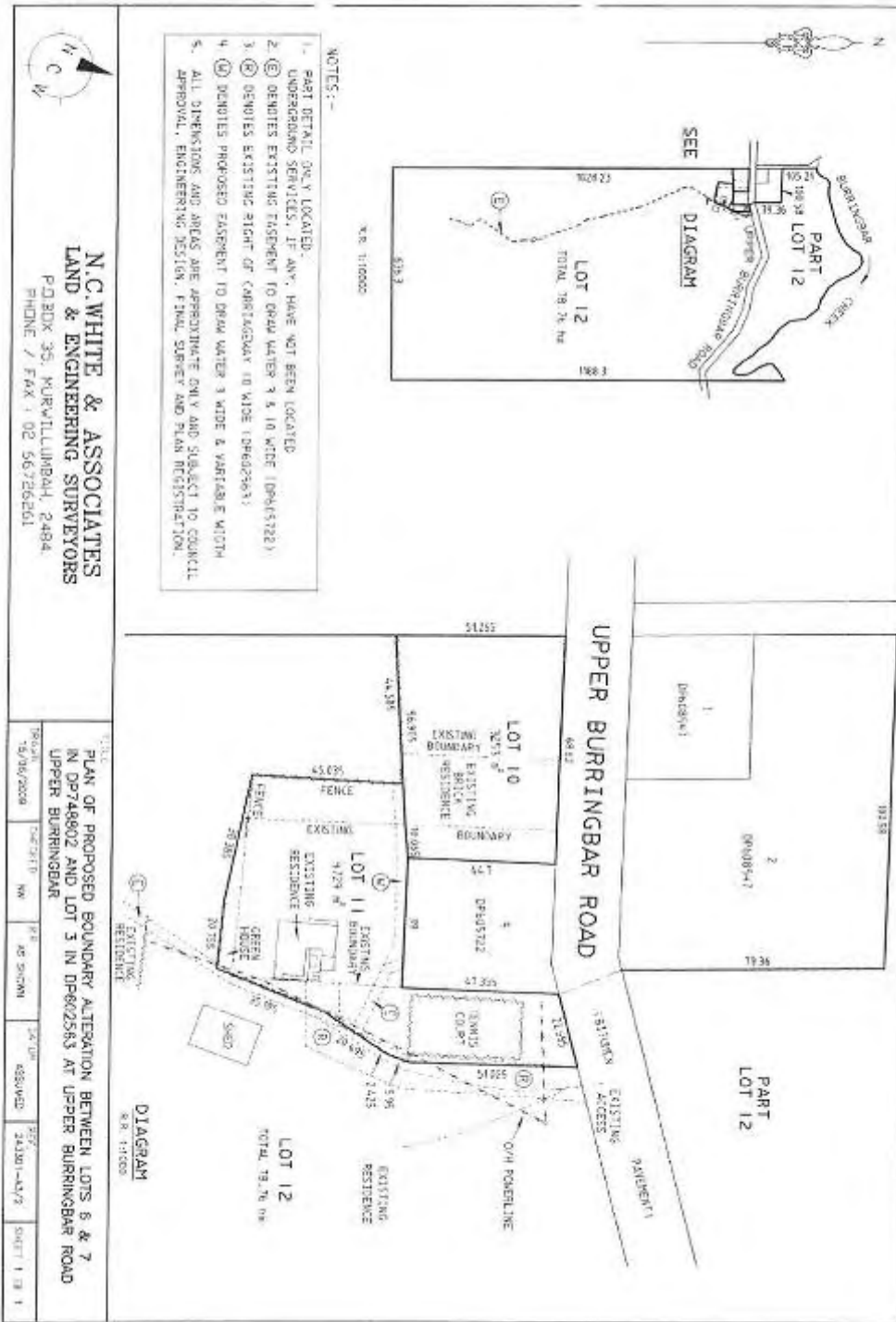
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DEVELOPMENT PLANS:

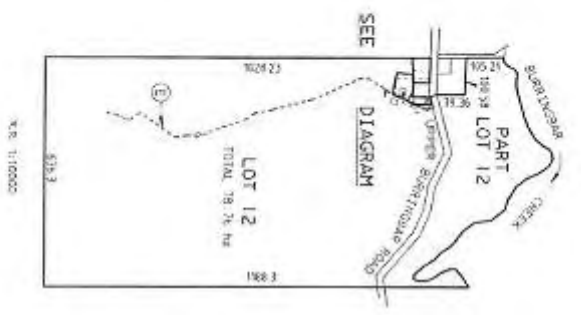
Existing layout



Proposed Layout



- NOTES:-
1. PART DETAIL ONLY LOCATED.
 2. UNDERGROUND SERVICES, IF ANY, HAVE NOT BEEN LOCATED.
 3. (A) DENOTES EXISTING EASEMENT TO DRINK WATER 3 & 10 WIDE (DP645722).
 4. (B) DENOTES EXISTING RIGHT OF CARTRIDGEWAY 10 WIDE (DP662563).
 5. (C) DENOTES PROPOSED EASEMENT TO DRINK WATER 3 WIDE & VARIABLE WIDTH.
 6. ALL DIMENSIONS AND AREAS ARE APPROXIMATE ONLY AND SUBJECT TO COUNCIL APPROVAL, ENGINEERING DESIGN, FINAL SURVEY AND PLAN REGISTRATION.



N.C. WHITE & ASSOCIATES
LAND & ENGINEERING SURVEYORS
 PO BOX 35, KURWILLUMBAH, 2484
 PHONE / FAX : 02 56726261

PLAN OF PROPOSED BOUNDARY ALTERATION BETWEEN LOTS 6 & 7
 IN DP748802 AND LOT 3 IN DP662563 AT UPPER BURRINGBAR ROAD
 UPPER BURRINGBAR

PROJECT NO	DATE	BY	CHKD	APP'D	REV
70/26/2009	12/11/09	AS	AS	AS	AS

DATE ISSUED: 24/12/09
 SHEET 1 OF 1

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 proposed development is considered to be consistent with the aims of the Tweed Local Environmental Plan. The proposed development is considered to be consistent with the vision of the shire "to manage growth so that the unique natural and developed character of the Tweed Shire is retained."

Clause 5 - Ecologically Sustainable Development

The proposed development is considered to be generally compliant with the principles of ecological sustainable development. The proposed development is on cleared land with existing dwellings and rural outbuildings improved on the site. Therefore the proposed development is considered to have minimal impact on the environment and in keeping with the precautionary principle, inter generational equity and the conservation of biological diversity and ecological integrity.

Clause 8 - Consent Considerations

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

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

In this instance, the subject site is zoned 1(b1) Agricultural Protection, the primary objectives of which are outlined below.

The proposed boundary adjustment subdivision is considered consistent with the primary objective of the zone as it will not change the status quo.

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

The proposal is not considered to contribute to any unacceptable cumulative impact in the community due to the established rural nature of the subject area.

Clause 11 - Zone Objectives

The subject land is zoned 1(b1) Agricultural Protection. The objectives of the 1(b1) zone include:-

Primary objective

- *to protect identified prime agricultural land from fragmentation and the economic pressure of competing land uses.*

Secondary objective

- *to allow other development that is compatible with agricultural activities.*

The proposed boundary adjustment subdivision's new configuration and proposed lot sizes will not have a significant impact on the agricultural potential of the site particularly for proposed Lot 12 as proposed Lots 10 and 11 will remain as rural residential allotments. Therefore the status quo will not change. It is also considered that the proposed configuration will not lead to establishing rural land use conflicts which will not result in the rural character and amenity being compromised.

Clause 15 - Essential Services

Water supplies are currently provided to each dwelling house by rainwater tanks. Onsite effluent treatment and disposal systems exist for each dwelling house.

Electricity and telecommunications are connected to both existing dwellings on the land. No additional infrastructure or physical works are required to service the proposed subdivision.

Clause 20 - Subdivision

This clause requires a minimum allotment size of 10 hectares in the 1(b1) zone. Proposed lots 10 and 11 do not comply with this development standard. An objection under State Environmental Planning Policy No.1 has been prepared by the applicant in this regard and is addressed later in this report.

Clause 57 – Protection of Existing Dwelling Entitlement

As previously stated, because the proposed subdivision will result in proposed Lots 10 and 11 being under the minimum allotment size they will therefore not enjoy a dwelling entitlement in accordance with the Tweed LEP. Clause 57 does not provide for the protection of these existing dwelling entitlements as the allotments are not being created for public purpose. In this case, for the existing dwellings to remain lawful, existing use provisions will allow the continuation of previous rights to have a dwelling house on each parcel of land. However, this may create some restrictions should the owners of these allotments intend on doing future development or building works.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

Clause 12 provides that consideration must be given to the likely impact of the proposed development on the use of the adjoining or adjacent agricultural land and whether the development will cause loss of prime agricultural land and whether the development will cause a loss of prime crop or pasture land.

It is considered that the proposed boundary would not result in a loss of prime agricultural land.

The surrounding land is used for cattle grazing and associated agricultural purposes, the boundary adjustment subdivision will not result in any land use conflict as the proposal will not change the status quo.

SEPP No. 1 - Development Standards

As discussed, the applicant seeks to vary the development standard identified within Clause 20 (2)(b) of the Tweed LEP, specifically seeking variance to the 10 hectare minimum lot size development standard for the 1(b1) zone.

The SEPP 1 objection relates to proposed lots 10 and 11 being below 10 hectares. The applicant contends that *the proposed development raises no matters of adverse significance in local, regional or state terms and no public benefit will result from the maintenance of the subject development standard in this case.*

A SEPP No. 1 submission may be supported where the applicant demonstrates that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case and specifies the grounds of that objection. The applicant must also demonstrate the consistency with the aims of the SEPP.

In support of the proposed variation, the applicant has provided the following:

The numerical control of the standard in this instance is considered unreasonable as the proposal endeavours to improve an existing situation with no additional lots or dwellings proposed. The Cotelli family who are the current and long time owners of the land have been farming the land for many years and which to improve the current lot configuration to better reflect the existing site improvements. The subject land exhibits a unique case of existing dwelling location and previously approved shape. This proposal is not considered to create an undesirable precedent but only to show that a relatively minor boundary adjustment can substantially improve an existing situation. Approval of this proposal will provide a practical location for lot boundaries with minimal negative impact on the subject or adjoining land.

Assessment of the applicant's submission:

The following assessment of the SEPP No. 1 is based on the principles set by Chief Justice Preston (*Wehbe v Pittwater Council [2007] NSW LEC 827*).

- 1. The applicant must satisfy the consent authority that "the objection is well founded", and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case**

Chief Justice Preston has noted 5 ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. In this instance, the first option, being the objectives of the standard are achieved notwithstanding non-compliance with the standard has been adopted.

It is considered that the standard is unreasonable and unnecessary in this instance as the current lot sizes of the two smaller lots already do not comply with the development standard and the purpose of this subdivision is in response to improving an existing situation by increasing the size of the two smaller lots with only minor impact on the larger lot. The changes result in both smaller lots being increased in size to be closer to the current minimum lot size of 10 ha. There are also no additional lots or dwellings proposed.

- 2. The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979*; and**

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

The proposal provides for a boundary adjustment subdivision between three lots. The proposed new lot configurations will not affect the current orderly and economic use of the land as the land that is being transferred from the larger agricultural lot will have a negligible affect on the agricultural potential of due to the small amount of land and the fact that this land is not currently being used for agricultural pursuits as it is adjacent to the existing dwelling houses.

It is considered that the proposed increased lot sizes for the two smaller lots will assist in providing a buffer and will greater reduce any potential land use conflicts with the continuing agricultural pursuits in the larger residue lot.

- 3. It is also important to consider:**
 - a. whether non-compliance with the development standard raises any matter of significance for State or regional planning; and**
 - b. the public benefit of maintaining the planning controls adopted by the environmental planning instrument.**

The proposed non-compliance with Clause 20(2)(b) of the Tweed LEP is not considered to raise any matter of significance for State or Regional planning.

There would also be little public benefit in maintaining the development standard in this case as proposed Lots 10 and 11 already do not comply with the development standard and the purpose of the subdivision is to improve an existing situation by increasing the size of the of the two smaller lots.

Chief Justice Preston notes that there is a public benefit in maintaining planning controls. However, the proposed non-compliance with the Tweed LEP 2000 is considered to be justified in this instance and is not likely to result in an adverse planning precedent as it is localised. As such, the granting of this application is unlikely to impact upon public benefit.

In addition, the Director-General's Concurrence has been granted to vary the 10 hectare minimum lot size development standard. Concurrence was granted in this instance for the following reasons:

- The adjustment to the boundaries is only minor transferring small areas of land from one lot to the two smaller lots to create three lots similar in size to the existing lots.
- The existing three lots have dwellings located on each lot, no new dwelling entitlements are to be given to these lots and no new lots will be created.

SEPP (Rural Lands) 2008

The subject land is within the 1(b1) Agricultural Protection Zone and the provisions of this SEPP apply to the proposed development.

Clause 7 Rural Planning Principles

The principles are stated and addressed as follows:

The Rural Planning Principles are as follows:

- (a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
- (b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*
- (c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*
- (d) in planning for rural lands, to balance the social, economic and environmental interests of the community,*
- (e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*
- (f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*

- (g) *the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*
- (h) *ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

The proposed development is compliant with the rural subdivision principles in the SEPP as the subdivision will not affect the continuance and potential productive sustainable activities to be undertaken on the property as the portion of land that will be afforded to the smaller lots is already being used for access and as gardens for the smaller lots.

Clause 8 - Rural Subdivision Principles

The principles are stated and addressed as follows:

The Rural Subdivision Principles are as follows:

- (a) *the minimisation of rural land fragmentation,*
- (b) *the minimisation of rural land use conflicts, particularly between residential land uses and other rural land uses,*
- (c) *the consideration of the nature of existing agricultural holdings and the existing and planned future supply of rural residential land when considering lot sizes for rural lands,*
- (d) *the consideration of the natural and physical constraints and opportunities of land,*
- (e) *ensuring that planning for dwelling opportunities takes account of those constraints.*

The proposal will not substantially alter the existing use of the land and cause land fragmentation. The land to be transferred from the larger agricultural lot will also have a negligible effect on the agricultural potential of the land while at the same time increasing the amenity for the two smaller lots-

Clause 10 - Matters to be considered in determining development applications for rural subdivisions or rural dwellings

The matters to be considered in determining a development application are stated and addressed as follows:

- (1) *This clause applies to land in a rural zone, a rural residential zone or an environment protection zone.*
- (2) *A consent authority must take into account the matters specified in subclause (3) when considering whether to grant consent to development on land to which this clause applies for any of the following purposes:*
 - (a) *subdivision of land proposed to be used for the purposes of a dwelling,*
 - (b) *erection of a dwelling.*

(3) *The following matters are to be taken into account:*

- (a) *the existing uses and approved uses of land in the vicinity of the development,*
- (b) *whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,*
- (c) *whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),*
- (d) *if the land is not situated within a rural residential zone, whether or not the development is likely to be incompatible with a use on land within an adjoining rural residential zone,*
- (e) *any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d).*

As stated previously in this report, the proposed boundary adjustment subdivision will not change the status quo. The proposed new lot configurations will not affect the current orderly and economic use of the land as the land that is being transferred from the larger agricultural lot will have a negligible affect on the agricultural potential of due to the small amount of land and the fact that this land is not currently being used for agricultural pursuits as it is adjacent to the existing dwelling houses.

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

Draft Tweed Local Environmental Plan - Amendment 21 - Vegetation Management

The aims and objectives of the draft Plan are as follows:

- To integrate the Tweed Local Environmental Plan 2000 with the New South Wales Natural Resource Management Reforms introduced by the State Government in 2003.
- To adopt a holistic and equitable approach for managing ecological process and significant areas in Tweed Shire that seeks to achieve environmental protection, economic development and improved social or cultural conditions.
- To conserve and enhance biological diversity, scenic quality and ecological integrity of the natural areas of Tweed Shire;
- To implement the Tweed Vegetation Management Strategy 2004.

Draft amendment 21 of the Tweed Local Environmental Plan 2000 is relevant to the subject site but does not have any direct impact upon the proposal.

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

Tweed Development Control Plan

Section A5 - Subdivision Manual

Council's Development Engineer has reviewed the application with respect to the provisions of Section A. The application is considered satisfactory subject to number of conditions of consent.

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

Bushfire

The application required an Integrated Referral to the NSW Rural Fire Service due to the bushfire prone nature of the land. In a response dated 25 November 2009, a Bushfire Safety Authority was granted subject to certain conditions of consent.

(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 likely impacts in addition to those previously discussed.

The proposal is consistent with the surrounding rural character. The site's suitability has been demonstrated throughout the assessment of the proposal including the assessment of the minimal environmental impacts and consistency with environmental planning instruments and the DCP. The proposed development will not change the status quo.

(c) Suitability of the site for the development

The suitability of the site for the development has been demonstrated by way of general consistency with the applicable environmental planning instruments and the Tweed Development Control Plan and minimal environmental impacts. The proposal is consistent with the residential character of the locality.

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

The application did not require notification under Council's Notification Policy.

(e) Public interest

The application is not considered contrary to the public interest as the application satisfies the objectives of Tweed Local Environmental Plan 2000.

OPTIONS:

1. Approve the application in accordance with the recommended conditions.
2. Refuse the application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be dissatisfied with the decision of the determination the applicant may determine to lodge an appeal with the Land & Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed development is consistent with the applicable environmental planning instruments, the Tweed Development Control Plan and policies. The proposal will not result in adverse cumulative impacts. It is therefore considered the site suitable for the development and warrants approval.

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).

Nil.

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7 [PR-CM] Development Application DA07/0022 for a Three (3) Storey Residential Flat Building Containing Five (5) Units at Lot 9 DP 14141, No. 21 Tweed Coast, Road Hastings Point

ORIGIN:

Development Assessment

FILE NO: DA07/0022 Pt9

SUMMARY OF REPORT:

On 21 July 2009 Council resolved to refuse this Development Application and accordingly continue to defend the Class 1 Appeal in the NSW Land & Environment Court.

Council actively defended the Appeal and appeared in Court on 15 and 16 October 2009, and 6 November 2009.

On 25 November the Senior Commissioner of the Land & Environment Court Tim Moore dismissed the Appeal and refused the Development Application in accordance with Council's previous decision to refuse the application.

Hunt & Hunt Lawyers (on behalf of the owner of the land) has since served notice on Council that they may be commencing additional legal proceedings to claim loss and damage that they say occurred as a result of Council's failure to consider a relevant matter in the exercise of its planning discretion when it determined the Development Application in June 2007. This matter has been referred to Council's Insurance Company to defend as necessary.

It is recommended that Council receive and note the Land & Environment Court Decision and the possible additional claim for loss and damage which has been lodged by the owner of the land.

RECOMMENDATION:

That:

- 1. Council receives and notes the Land and Environment Court Decision and the possible additional claim for loss and damage which has been lodged by the owner of the land.**
- 2. ATTACHMENT 3 is CONFIDENTIAL in accordance with Section 10A(2)(g) of the Local Government Act, 1993, because it contains information of a confidential nature that would, if disclosed:

(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege**

REPORT:

Applicant: PDK Developments
Owner: Ms LP Wiseman and Mr J Bortoli
Location: Lot 9 DP 14141, No. 21 Tweed Coast Road, Hastings Point
Zoning: 2(b) Medium Density Residential
Cost: \$1,100,000

BACKGROUND:

Council received DA07/0022 in January 2007. The original application sought approval for a 3-storey 6 unit multi-dwelling housing development at 21 Tweed Coast Road, Hastings Point (on the corner of Tweed Coast Road & Young Street). Amended plans were lodged that sought approval for seven units in a town house configuration.

At the time of the original assessment the amended proposal was considered to represent a good planning and design outcome for the site and locality generally. Subsequently Council approved the Development Application in June 2007 subject to conditions of consent.

The Development Application was challenged in the NSW Land & Environment Court by Hastings Point Progress Association Incorporated. Judge Pain determined that Council failed to adequately consider cumulative impact which was a statutory requirement of Clause 8 of the Tweed LEP 2000. The consent was determined void and of no effect.

The applicant then requested that Council re-assess the Development Application and make a determination on the proposal.

On 18 November 2008 Council resolved to refuse DA07/0022 which at that time sought approval for a multi dwelling housing development comprising seven town house units across three buildings all three storeys in height.

Following Council's refusal of this application the applicant lodged a Class 1 Merit Appeal with the NSW Land & Environment Court.

Council subsequently resolved (on 16 December 2008) to defend the Class 1 Merit Appeal lodged against Council's refusal.

The applicant obtained approval from the NSW Land & Environment Court to lodge amended plans (with the Court) for reconsideration. Furthermore, the Court granted leave to allow Council to re-consider the amended plans (as lodged on 5 May 2009) before the application progresses through the Court system any further.

In July 2009 the amended plans were considered by Council. The plans sought approval for the construction of a part two and part three storey residential flat building that comprises 5 units over ground level garaging.

The assessment concluded that as a result of the Interim Site Specific Controls that apply to Hastings Point (two storeys in height and no more than two dwellings per property) the amended application can not be supported. Whilst the amended design had a high degree of architectural merit it represented a medium density development that was not consistent with the predominant existing buildings in the area.

Accordingly the application was refused in accordance with the officer's recommendation.

It was this refusal that was ultimately challenged by the applicant in the NSW Land & Environment Court.

Council actively defended the refusal in an attempt to uphold the integrity of the Interim Controls applying to Hastings Point pending a Locality Plan for Hastings Point.

The Court Case primarily focussed on the integrity of the Interim Controls. The Senior Commissioner wanted to ensure that the Tweed DCP Section A1 Interim Controls were made in accordance with the required statutory process and that the reason for the controls was not merely to stop this one development.

Council engaged a consultant to review the controls applying to Hastings Point in August 2007 immediately after initial approval was given for this application.

Accordingly the Commissioner was satisfied that Council had followed due process in assessing the subject DA and further that the Interim Controls were validly made and had the legal weight of a DCP.

The Commissioner further concluded that the visual prominence of the proposed building is unacceptable, in a streetscape perspective, when viewed travelling in a southerly direction along Tweed Coast Road.

The full Land & Environment Court determination is attached to this agenda.

Possible Additional Legal Proceedings to Claim Loss & Damage

Hunt & Hunt Lawyers (on behalf of the owner of the land) has served notice on Council that they may be commencing additional legal proceedings to claim loss and damage that they say occurred as a result of Council's failure to consider a relevant matter in the exercise of its planning discretion when it determined the Development Application in June 2007.

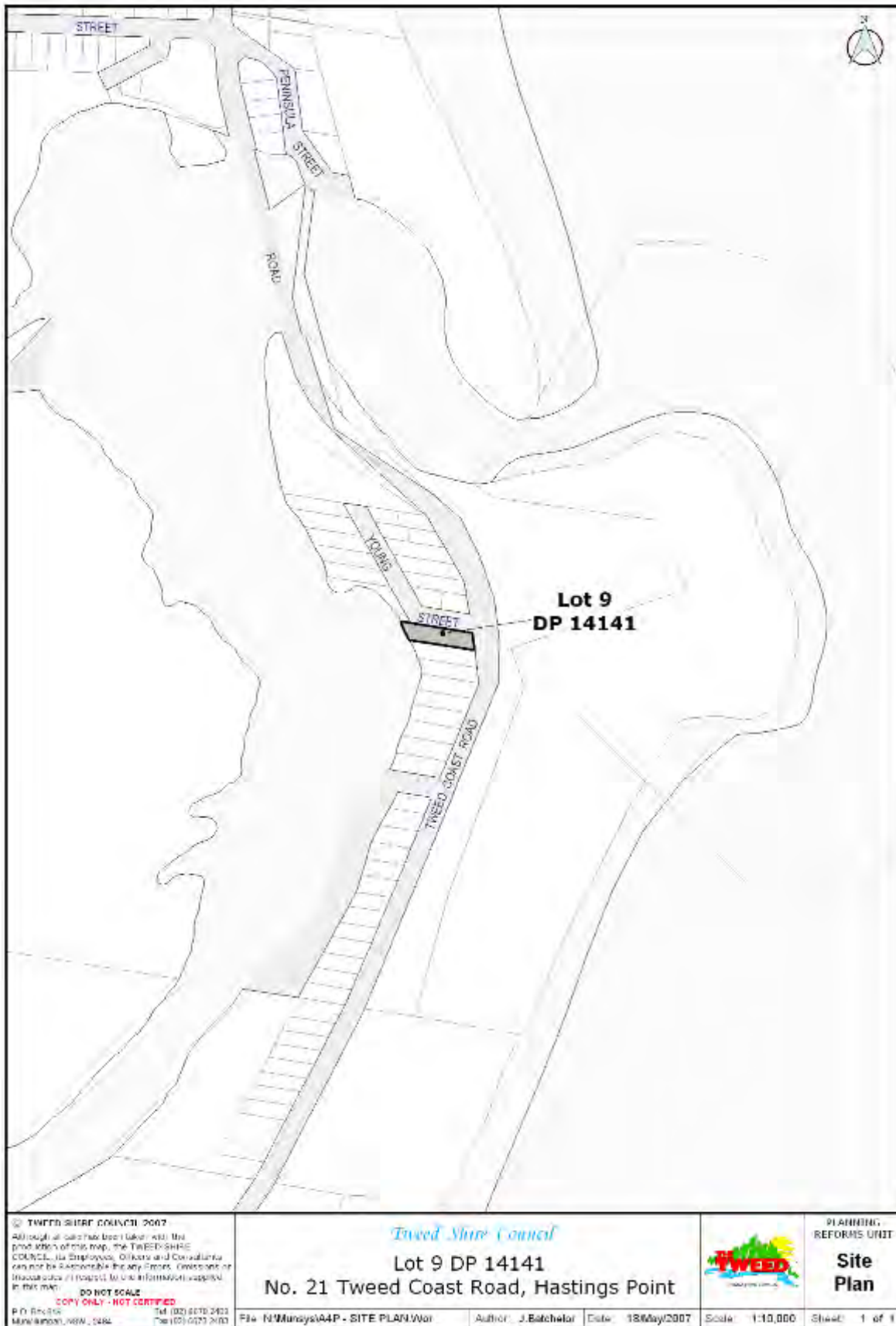
The loss and damage claimed includes:

- Lost development potential of the land, namely 7 units to possibly only five units;
- Holdings costs on the land;
- Devaluation costs for the value of the land from June 2007 to date;
- Legal costs including expert fees for advice since June 2007, and the legal costs of defending the action in June 2007

This matter has been referred to Council's Insurance Company to defend as necessary.

Council will be advised of the outcome of this matter should it proceed.

SITE DIAGRAM:



<p>© TWEED SHIRE COUNCIL 2007 Although all care has been taken in the production of this map, the TWEED-SHIRE COUNCIL, its Employees, Officers and Consultants cannot be responsible for any errors, omissions or inaccuracies (if any) to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 514 Tel: (07) 6670 2400 Murumbidgee NSW, 2484 Fax: (07) 6670 2400</p>	<p><i>Tweed Shire Council</i></p> <p>Lot 9 DP 14141 No. 21 Tweed Coast Road, Hastings Point</p>		<p>PLANNING REFORMS UNIT</p> <p>Site Plan</p>
<p>File: N:\Munisys\A4P - SITE PLAN\Wor Author: J. Batchelor Date: 18/May/2007</p>		<p>Scale: 1:10,000</p>	<p>Sheet: 1 of 1</p>

OPTIONS:

1. That Council receives and notes this report.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Council incurred legal costs defending this appeal and will incur additional legal costs defending the claim for loss and damage.

POLICY IMPLICATIONS:

The Appeal result has reinforced the validity of the Interim Area Specific Controls in Tweed DCP Section A1.

CONCLUSION:

The merits of DA07/0022 have been assessed and debated at length on numerous occasions. The Appeal result reinforces Council's assessment and provides strength to the Interim Area Specific Controls in Tweed DCP Section A1.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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1. Council Report - Planning Meeting held 21/07/2009 - DA07/0022 (ECM 9669729)
 2. NSW Land & Environment Court Decision DA07/0022 (ECM 9669731)
 3. CONFIDENTIAL – Hunt & Hunt Correspondence (Claim Loss & Damage) dated 24/11/2009 (ECM 9669732)
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8 [PR-CM] Draft Companion Animals Management Plan

ORIGIN:

Regulatory Services

SUMMARY OF REPORT:

A review of the Companion Animals Management Plan Policy has been completed in accordance with the Department of Local Government strategic task guide and Councils "*Promoting Better Practice Review*". This review has significantly updated the previous Companion Animal Management Plan Policy, accordingly, advertising of the Draft Plan is recommended to ensure all sectors of the community have the opportunity to provide comment.

RECOMMENDATION:

That: -

- 1. Council approves the public exhibition of the Draft Companion Animals Management Plan Policy.**
- 2. A further report be submitted to Council following the public exhibition seeking final endorsement of the plan.**

REPORT:

A review of the Companion Animals Management Plan Policy has been completed in accordance with the Department of Local Government strategic task guide and Councils "*Promoting Better Practice Review*". This review has significantly updated the previous Companion Animal Management Plan Policy, accordingly, public exhibition of the Draft Plan is recommended to ensure all sectors of the community have the opportunity to provide comment.

The original Companion Animals Management Plan provided an action plan to help establish stages of implementation and transitional periods associated with the introduction of the Companion Animals Act as well addressing resource issues and the upgrading of facilities.

The implementation included:

- The establishment of off leash exercise areas,
- The transition from an annual registration fee for cats and dogs to a lifetime registration and permanent identification (microchipping) scheme,
- A state wide register,
- Training in maintenance of the state wide register for Council
- Establishing internal procedures to compliment the new Act,
- The identification of restricted and dangerous dogs and the regulation of requirements associated with owning these animals,
- Education strategies to inform the public of legislative change,
- Training Council staff on the new legislation and associated issues of enforcement.

The new plan establishes Councils ongoing role in maintaining the current standard achieved from this implementation, whilst outlining the desired objectives of Councils role in animal management. These objectives include:

- Community Education to achieve responsible pet ownership,
- Increased rates of identification and registration of companion animals,
- The protection of the environment,
- Community amenity,
- Provision of facilities and service to the community

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

The draft plan contains a series of updated provisions.

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. Draft Companion Animals Management Plan (ECM 9693365)
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9 [PR-CM] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards

ORIGIN:

Director Planning & Regulation

SUMMARY OF REPORT:

In accordance with the Department of Planning's Planning Circular PS 08-014 issued on 14 November 2008, the following information is provided with regards to development applications where a variation in standards under SEPP1 has been supported.

RECOMMENDATION:

That Council notes the November 2009 Variations to Development Standards under State Environmental Planning Policy No 1 - Development Standards.

REPORT:

On 14 November 2008 the Department of Planning issued Planning Circular PS 08-014 relating to reporting on variations to development standards under State Environmental Planning Policy No. 1 (SEPP1).

In accordance with that Planning Circular, the following Development Applications have been supported where a variation in standards under SEPP1 has occurred: -

DA No.	Description of Development	Property Address	Date Granted	Development Standard to be Varied	Zoning	Justification	Extent	Authority
DA08/0869	dwelling, attached garage, swimming pool & fence	Lot 346 DP 1087716 No. 9 Cylinders Drive, Kingscliff	20/11/2009	Clause 32B(4)(b) – overshadowing	2(f) Tourism	<p>A SEPP No. 1 is sought for a variation to the North Coast Regional Environmental Plan 1988 relating to overshadowing of waterfront open space, as the proposed two storey dwelling will cast a shadow on the adjacent waterfront open space.</p> <p>The area of the coastal reserve that will be affected comprises a grassed area, coastal dune vegetation and a cycle way. The shadow will not impact on areas used for formal recreational activities.</p>	The proposed variation relates to the casting of shadows by a development in to the fore shore after 6.30 pm mid summer. The extent of variation is difficult to quantify as a percentage as it is timed based.	Tweed Shire Council
DA09/0523	Dwelling	Lot 383 DP 1134599 Overall Drive, Pottsville	20/11/2009	Clause 34B(4)(b) – overshadowing	2(a) Low Density Residential	<p>After assessment of the relevant planning matters, and taking into account the minor overshadowing to open waterfront space at Mooball Creek and also the constraints imposed by the geometry of the corner allotment it is considered that the proposed development is suitable for approval, subject to conditions.</p>	Greater than 10%	Tweed Shire Council

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

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).*

Nil.

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10 [PR-CM] Pottsville Employment Lands - Rezoning Application

ORIGIN:

Planning Reforms

FILE NO: GT1/LEP/2000/85 Pt1 and GT1/LEP/2006 Pt8

SUMMARY OF REPORT:

This report provides a progress report on Draft LEP 85 – Pottsville Employment Land (Part A) as well as recommended actions in respect of an alleged breach of the Tweed LEP and Tree Preservation Order on part of the site of the rezoning (Part B).

The rezoning application was lodged on 24 September 2008 following earlier Council resolutions in 2006, and has been the subject of intensive review and extensive consultation between Council Officers and the Applicant. The progress of the application has been impacted upon by the complexity of issues presented by the site and with the physical infrastructure requirements. Several key aspects of the proposal still require further investigation.

A major unresolved constraint to the rezoning is issue of on-site sewer infrastructure management and disposal, land contouring through earthworks, and environmental (vegetation) management.

The rezoning application originally included Council-owned land as part of the overall proposal. It has recently been acknowledged by both Council Management and the proponent that there is limited financial benefit and procedural complexities for Council to maintain its inclusion in the rezoning proposal. Furthermore, there is a need to maintain the land for its operational status for water supply infrastructure. On that basis, it is recommended that Council resolve to rescind part of a previous resolution, to formally establish this exclusion of Council land from the rezoning proposal.

Concurrent to the rezoning application, Council Officers are investigating an alleged breach of the Tweed Local Environmental Plan 2000 (Tweed LEP) in respect to tree clearing within a Tree Preservation Order (TPO) 2004 area within part of the rezoning site, and the further and consequential alleged wilful damage to an Aboriginal heritage significant (scar) tree. This matter is being pursued with the landowner, who for present purposes is not a party to the rezoning application.

It is necessary that any unlawful breach of the Tweed LEP be concluded prior to investigating the vegetation management issues with the rezoning application.

RECOMMENDATION:

That Council endorses Parts A and B in respect of land affected by Draft Local Environmental Plan No. 85 – Pottsville Employment Land.

PART A – THE REZONING APPLICATION

1. The resolution of 13 June 2006 in respect of preparing a draft Local Environmental Plan on Lot 12 DP 1015369, Lot 4 DP753328, Lot 1 DP 215998 and Lot 1 DP 1080884 is amended to relate to Lot 12 DP 1015369 only comprising the land bounded by a heavy black line identified in Figure 2 – ‘Extent of Draft LEP 85 Area Boundary’ of this report.
2. That item 2, 3 and 4 of the resolution of 13 June 2006 in relation to the preparation of the Draft Local Environmental Plan known as Amendment No.85 as referred to in this report be rescinded.

PART B – ALLEGED BREACH OF TWEED LOCAL ENVIRONMENTAL PLAN 2000

3. That the Director of Planning and Regulation refer the alleged breaches of the Tweed Local Environmental Plan relating to vegetation clearing in contravention of the Tweed Tree Preservation Order to Council’s Solicitors for legal advice in respect of ascertaining options in respect of legal proceedings.
4. That the restoration, regeneration, contributory off-set planting and protection of significant vegetation and or areas be included in any rezoning proposal on the land and in any legal proceedings for orders to remedy any established breach of the Tweed Tree Preservation Order.
5. That the fire damage to the ‘scar’ tree sited in the Aboriginal site referred to on the State Aboriginal Heritage Information Management System Register as “Kudgeree Avenue 1” be referred to the NSW Department of Environment, Climate Change and Water for their information and advice.

REPORT:

PART A – THE REZONING APPLICATION

BACKGROUND

Council's original resolution (13 June 2006)

Council resolved on 13 June 2006 to prepare a draft LEP over certain land at Pottsville to create a Trade/Industrial Area for employment-generating purposes. The resolutions of Council were as follows:

“RECOMMENDED that Council:

- 1. Advises the Department of Planning that it intends to prepare a draft Tweed Local Environmental Plan Amendment for Lot 12 DP 1015369, Lot 4 DP 753328, Lot 1 DP 215998, Lot 1 DP 1080884 Pottsville Road, Pottsville, in accordance with Section 54 of the Environmental Planning and Assessment Act.*
- 2. Negotiates with the landowners of this land to obtain funding for the Local Environmental Study and advises the landowners that a consultant will not be engaged until the relevant monies are received by Council;*
- 3. Exhibits the draft Local Environmental Plan Amendment in accordance with the Best Practice Guidelines published by the Department of Urban Affairs and Planning, January 1997 titled "LEP's and Council Land - Guidelines for Council's using delegated powers to prepare LEPs including land that is or was previously owned by Council";*
- 4. Engage a suitable qualified independent planning consultant to undertake the preparation of the draft Tweed Local Environmental Plan Amendment and Environmental Study.”*

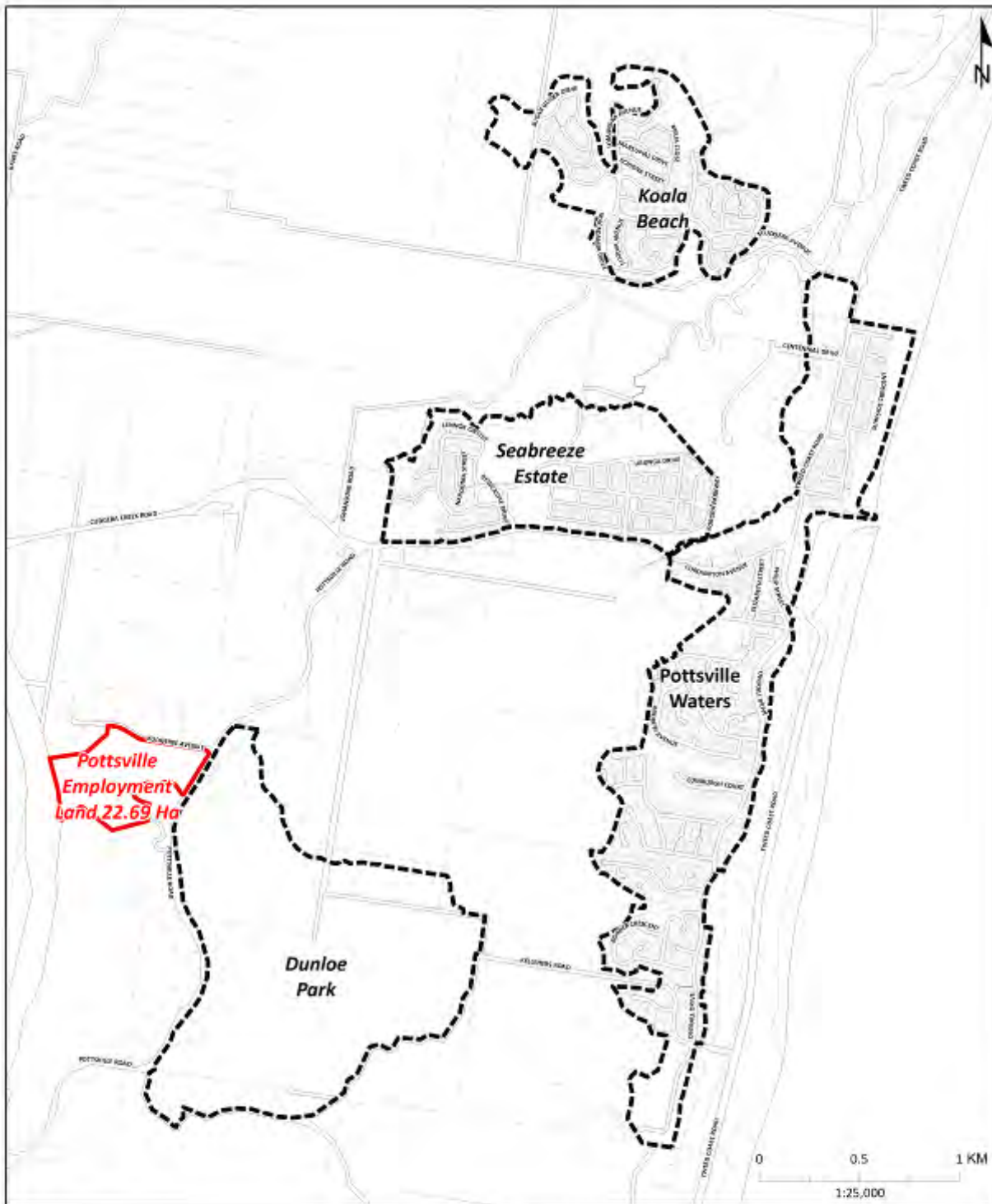
Rezoning submission received

A rezoning application was received on 24 September 2008 from Planit Consulting acting on behalf of Heritage Pacific Pty Ltd seeking the rezoning of the land from Rural 1(a) to “suitable industrial and/or commercial zones” (generally 4(a) Industrial) under the Tweed LEP 2000. Figure 1 – Locality Plan identifies the boundary area of the draft LEP.

The Application proposed to rezone land (Stage 1) in accordance with the Council's resolution, and included a larger area (Stage 2) adjoining and to the north (See ATTACHMENT 3). The area nominated as Stage 1 is identified in the Far North Coast Regional Strategy 2006 (FNCRS) and the Tweed Urban and Employment Land Strategy 2009 (TUE&LRS) as potential employment land.

The proposed Stage 2 land (refer to Figure 2) is not identified in the FNCRS and cannot be advanced until such time that the FNCRS is amended to include this land.

Figure 1 – Extent of Draft LEP 85 Area Boundary



Pottsville Employment Land
Locality Plan

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Author: J Satchler - Planning Reforms Unit

Date Printed: 9 October, 2009

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Coordinate System - MGA Zone 56
Datum - GDA 84

Cadastre: 9 October, 2009
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Murrumbidgee
NSW 2484
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Figure 2 – Proposed Rezoning Application Staging Plan

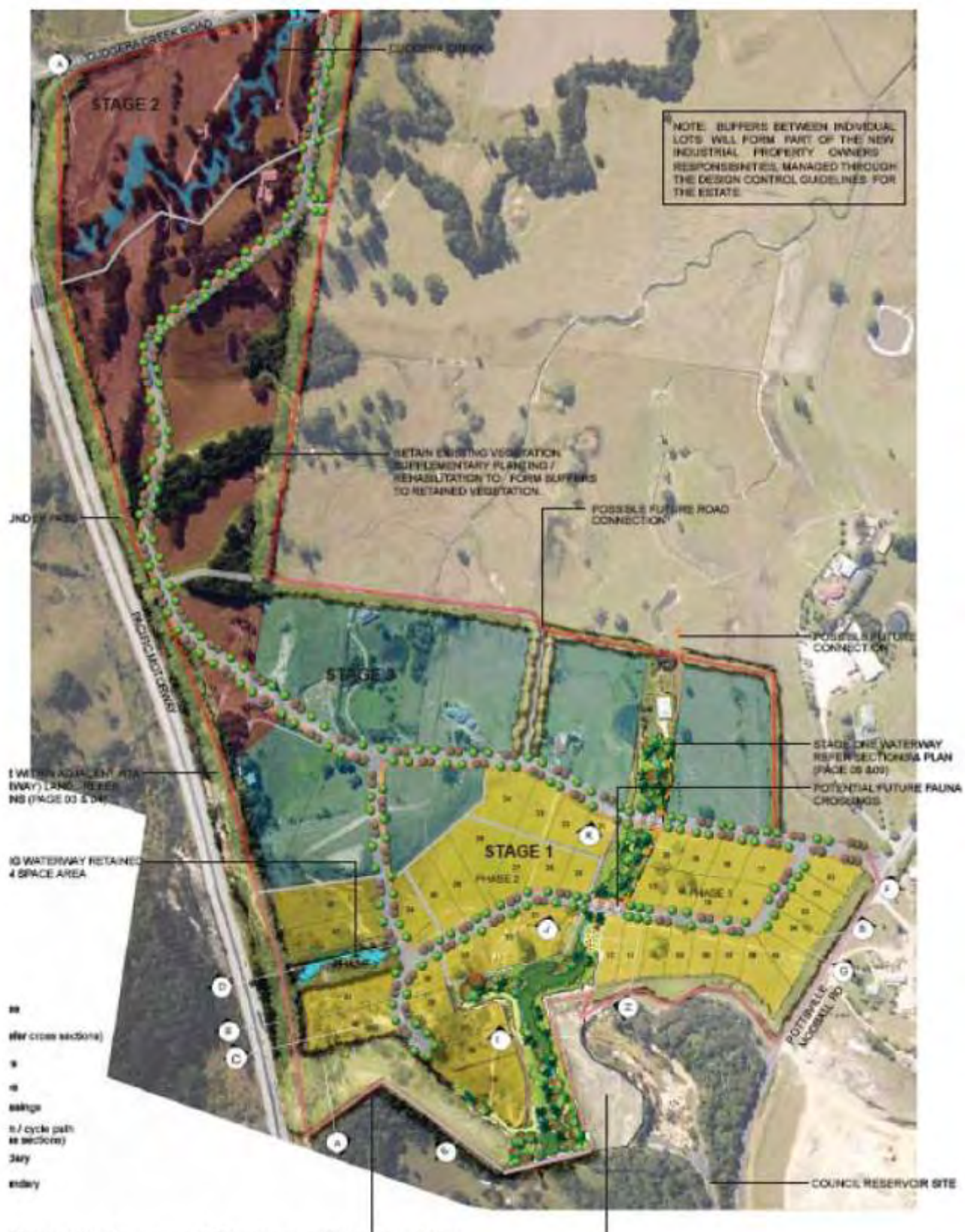


Figure 3: Proposed Conceptual Master Plan

PROGRESS OF ASSESSMENT OF REZONING APPLICATION

On 25 August 2009 Planit Consulting on request submitted amended documentation addressing concerns raised by Council Officers about the rezoning submission. A series of meetings have been held between the Council Officers and the proponent to attempt to resolve a number of major concerns with the proposal, including vegetation management, effluent disposal, geotechnical matters, stormwater management, land tenure and access to public land.

Both parties are committed to maintaining regular communication in an effort to progressively resolve these outstanding issues. It is expected that a further report on the rezoning will be submitted to Council in early 2010.

NEED TO AMEND COUNCIL RESOLUTION OF 13 JUNE 2006

Council Owned Land

Whilst there appeared to be a number of benefits to Council in its original decision in 2006 to be included in the land of Draft LEP 85, through the further investigation of the rezoning submission and assessment, it has been acknowledged by Council Management and the proponent that there is limited financial benefit to Council maintaining its inclusion in the rezoning. Furthermore, it has been recognised that there is a need for Council to protect the operational status of its land for water supply infrastructure.

Council's land is identified as Lot 4 DP 753328, Lot 1 DP 215997, and Lot 1 DP 1080884.

Therefore, *Item 1* of the 2006 resolution needs to be amended to reflect the changed status and scope of the Draft LEP. The extent of the draft LEP boundary is identified in Figure 1, above.

The Need for a Local Environmental Study

Item 2 of the 2006 resolution refers to the need to negotiate with the landowners for the funding of a Local Environmental Study (LES).

The Department of Planning advised in their letter of 29 June 2009 that an LES will not be necessary, which also sets aside the need for any funding negotiations. The earlier resolution should be amended to reflect the change in circumstances.

The Department of Planning has however provided a detailed list of matters which must be considered in the preparation of the rezoning submission.

Appointment of an Independent Planning Consultant

Item 4 of the 2006 resolution refers to the need to engage an independent planning consultant to prepare both the draft LEP and LES. This was seemingly premised on two fronts, firstly; as a landowner issues of probity and conflict of interest arise, and secondly; those issues would flow into the preparation of an LES. The proposal to exclude Council land from the rezoning will negate the need for Item 4.

Exhibition and Preparation of the Draft LEP

Item 3 of the 2006 resolution permits the public exhibition of the draft LEP and calls into effect 'Best Practice Guidelines'.

The first part authorises the public exhibition of the draft LEP notwithstanding that the status and ultimate form of the draft Plan would not have been referred to Council. This does not accord with the current practice of Council's Planning Department and as such it would be appropriate to enforce that practice, which is to seek Council's endorsement of the final draft Plan prior to any referral to the Department of Planning for an authority to publicly exhibit the Draft Plan.

The second part refers to guidelines published by the Department of Urban Affairs and Planning, January 1997 titled "*LEP's and Council Land - Guidelines for Council's using delegated powers to prepare LEPs including land that is or was previously owned by Council*". These guidelines have since been superseded and are of no relevance.

In light of the above Item 4 of the 2006 resolution should be amended accordingly.

In summary Items 2, 3 and 4 of the 2006 resolution should be removed. Item 1 of that resolution should be amended to reflect the actual land the subject of the current rezoning application and draft LEP Amendment No.85.

The Environmental Planning and Assessment Act 1979 introduced a new 'Plan Making' process on 30 June 2009. The amendments to the 2006 resolution proposed in this report have taken those changes into account and are designed to avoid triggering a fresh process. Under the savings provisions effective from 1 June 2009, the Draft LEP 85 has an 18 month timeframe within which it must be completed.

PART B – ALLEGED BREACH OF TWEED LOCAL ENVIRONMENTAL PLAN 2000

BREACH OF COUNCIL'S TREE PRESERVATION ORDER 2004 AND DAMAGE OF ABORIGINAL HERITAGE SCAR TREE

The property is identified in both the *Far North Coast Regional Strategy* in 2006 and subsequently within Council's *Tweed Urban and Employment Land Release Strategy* 2009 as potential Employment Lands. However, the site is constrained by both steep slopes and vegetation of conservation value. Refer to ATTACHMENTS 2 and 3.

Further evidence of the significance of the site is evidenced in the application of Council's 2004 Tree Preservation Order to cover approximately one-third of the site. This is further enforced by the proposed rezoning of the subject land to E2 Environmental Conservation zoning in the draft LEP 2010.

In addition, the Roads and Traffic Authority have considered the area of sufficient conservation value to construct a vegetated land bridge across the Pacific Highway just south of the site to facilitate connectivity of the landscape either side of the highway.

Comparison of recent aerial photography within the rezoning submission with Council's 2007 aerial photography raised concerns with regard to apparent vegetation loss within the TPO area.

Council Staff visited the site in early July and reported substantial clearing and burning on the site. The matter was referred to the Compliance Officer and Ecologist who visited the site on 20 July 2009 and confirmed that a significant area protected by TPO 2004 and previously vegetated was now denuded of vegetation and/or greatly thinned, and that much of the cleared vegetation was being burnt on site. Of particular concern was a fire that was burning the trunk of a moderately sized Brushbox tree, as the fire appeared to have been purposely constructed against the tree's trunk.

Further review of the rezoning documentation identified that this particular Brushbox tree had been referenced in one of the applicant's specialist reports as a "scarred tree" of Aboriginal cultural heritage significance and was subject to a record on the Department of Climate Change and Water (DECCW) Aboriginal Heritage Information Management System register.

The owners were requested to show cause as to why the vegetation had been removed and damaged. The landowners provided a written response but failed to adequately show cause or justification for their actions.

The significance of the vegetation clearing and the severity of damage to the identified Aboriginal significant 'scar' tree is considered very serious and a matter that may warrant prosecution.

Action is recommended for a breach of the Tweed Tree Preservation Order 2004, and damage of an Aboriginal place.

RELATIONSHIP BETWEEN POTENTIAL ACTION UNDER THE TWEED TPO 2004 AND REZONING APPLICATION

The alleged breach for vegetation clearing involves the registered landowners. The rezoning application involves Planit Consulting Pty Ltd and Heritage Pacific Pty Ltd. These two matters are, for the purposes of the parties involved, unconnected.

Notwithstanding that the parties are 'unconnected' the matters affecting the site are interrelated. The assignment of priority falls to the alleged unlawful breach of the Tweed LEP. This creates some difficulty for the applicant of the rezoning application because they are unable to finalise the full extent of the proposed rezoning, that is, the footprint of the proposed development, without establishing common ground on a property vegetation management proposal.

Council staff will be unable to assess or enter into negotiations on vegetation management for the site until the vegetation clearing issue has been settled with the registered landowners.

CONCLUSION:

The progress of this rezoning application has been impacted by a number of significant issues. An issue of particular note is sewerage provision, as any further development will be reliant upon an on-site sewerage scheme owing to the absence of capacity in the Hastings Point sewer treatment plant for new 'greenfield' development. This matter is being investigated by the applicant and it is anticipated that greater detail on the serviceability of the site will become available in early 2010.

A further issue involves vegetation management on the site. As discussed above, owing to the alleged and outstanding issues of breach of the Tweed LEP, in relation to vegetation clearing, Council Staff are unable to settle on an appropriate proposal until the alleged breach is resolved with the registered landowners.

The alleged vegetation clearing and apparent wilful damage to the Aboriginal significant scar tree is significant and in the absence of an appropriate response from the landowners to show just cause or justification it is recommended that the alleged breach be referred to Council's Solicitors for legal advice in respect of ascertaining options in respect of legal proceedings.

Following the satisfactory resolution to the alleged breaches, the vegetation management issues of the rezoning application can be assessed and subject to all other outstanding issues being satisfied the Draft LEP can be prepared for public exhibition.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Costs may arise from any legal expenses incurred in obtaining advice and should prosecution occur.

POLICY IMPLICATIONS:

The clearing of vegetation on land where the Tweed Tree Preservation Order (TPO) 2004 applies is permissible only with consent. The integrity of the TPO may be affected were appropriate redress of any unlawful breach is not pursued and appropriate remedy applied.

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. Extract from Tweed Urban and Employment Land Release Strategy 2009 (Figure 17) showing exclusion of vegetation on the south western portion of Lot 12 DP 1015369 (ECM 9421670)
 2. Extract from the Far North Coast Regional Strategy 2006 showing "indicative high level constraints" on the southern and eastern boundaries of the site (ECM 9421670)
 3. Boundaries of the Pottsville Employment Land Rezoning Submission and Other Studies (ECM 9421670)
 4. Chronology of Events (ECM 9421670)
 5. Ecologist report 20 July 2009 (ECM 9421670)
 6. Extract from Cultural Heritage Assessment (Everick Heritage Consultants, August 2008) (ECM 9421670)
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- 11 [PR-CM] Development Application DA09/0385 for a Telecommunications Facility (30 Metre High Monopole and Associated Infrastructure) at Lot 17 DP 778719, No. 19 Meadow Place Uki

ORIGIN:

Development Assessment

FILE NO: DA09/0385 Pt1

SUMMARY OF REPORT:

Council at its meeting of 17 November 2009 resolved as follows:

*“**RESOLVED** that this application be deferred for presentation at a future Council meeting following the conduct of a public meeting by Optus in the Uki community in order to properly gauge community opinion on this proposal and report the outcome of that meeting to Council.”*

Further to Council's resolution, Optus organised a meeting with Uki residents on Monday 7 December 2009 held at Uki Hotel. A copy of a report prepared by Optus detailing the outcomes and discussion of this meeting are attached to this Council report.

The full Council report is now reproduced below for Council's determination.

RECOMMENDATION:

That Development Application DA09/0385 for a telecommunications facility (30 metre high monopole and associated infrastructure) at Lot 17 DP 778719, No. 19 Meadow Place, Uki 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 S8479F, Sheets G1 – G4 prepared by Daly International dated 06/04/2009, 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. **Access to the site shall be upgraded to provide a bitumen seal from edge of the existing road carriageway of meadow Place to the property boundary.**
[GENNS01]

5. Erosion and Sediment Control shall be provided and maintained in accordance *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".
[GENNS01]
6. The access track from the property boundary at Meadow Place to the Optus Compound shall be upgraded to provide a driveway of minimum standard to allow a 2 wheel drive vehicle access to the compound under all weather conditions.
[GENNS01]
7. A Right of Carriageway shall be created over the existing property access road servicing the proposed Optus compound.
[GENNS01]
8. An easement for electricity supply (minimum 2m wide) shall be created (as required) over the electricity infrastructure within Lot 17 DP 778719 servicing the proposed Optus compound.
[GENNS01]
9. The monopole is to be painted mist green to blend with it's surrounds.
[GENNS02]
10. At the commencement of building works and in perpetuity the leased area shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
[GENNS03]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

11. 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]
12. Detailed design drawings for the proposed access road to the monopole site must be submitted for approval by Director Planning and Regulation. The location of native vegetation species must be indicated and named on the plans and measures to avoid or ameliorate impacts indicated. In particular, avoidance of the average 2m wide root plate for larger Brushbox (*Lophostemon confertus*) trees and avoidance of damage to the Strangler Fig (*Ficus watkinsiana*) roots must be demonstrated.
[PCCNS01]
13. A vegetation management plan must be submitted for approval by Director Planning and Regulation detailing compensatory works as an offset for loss of native species. Such works must include planting of a minimum of 30 native species and Camphor Laurel and other weed species control within a defined area no less than 1 hectare in area.
[PCCNS02]

PRIOR TO COMMENCEMENT OF WORK

14. 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.
15. 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. [PCW0215]
- [PCW0225]
16. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

[PCW0255]

17. 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]

DURING CONSTRUCTION

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

[DUR0005]

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

20. 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]

21. 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]

22. 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]

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

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

[DUR1005]

24. 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.
Any damage to property (including pavement damage) is to be rectified by the Developer to the satisfaction of the General Manager.

[DURNS01]

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 and 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]

31. Works must be completed by qualified bush regenerators in accordance with the approved vegetation management plan.

[USENS01]

REPORT:

Applicant: Optus Mobile Pty Ltd
Owner: Mr D Nelmes and Mrs C Timbs
Location: Lot 17 DP 778719, No. 19 Meadow Place Uki
Zoning: 1(a) Rural
Cost: \$200,000

BACKGROUND:

Council has received an application for the construction of a telecommunication facility at Lot 10 DP 778719, No. 19 Meadow Place Uki. The telecommunication facility will comprise of:

- A 30 metre high monopole with 6 panel antennas mounted on a circular headframe and 2 x 1.2 metre parabolic antennas at 26 metres.
- A prefabricated equipment shelter will be located at the base of the proposed monopole.
- A high security chain wire fence around the proposed compound;
- Ancillary and associated equipment including items such as safety equipment, amplifiers, diplexers, triplexers, mounts, feeders, cable trays, and other associated infrastructure which are all considered to be necessary to facilitate the safe operation of the authorised facilities.

Optus have stated that the purpose of siting a mobile tower in this location is that they have identified the need to improve digital mobile telephone coverage and to introduce the new Optus 3G mobile phone network to the areas of Uki, Dum Dum and rural surrounds.

The proposed site is located approximately 1.1 km north east of Uki Village on an elevated rural property. The subdivision pattern in this vicinity comprises of a mixture of small and large rural holdings used for both farming practices and residential occupation. The closest dwelling house to the facility is approximately 150 metres. The proposed location for the telecommunication facility is located amidst a dense plot of vegetation made up of predominantly camphor laurel trees with a number of native species. Access to the proposed site is achieved firstly via the existing driveway which leads to the existing residence on the property and secondly onto an existing dirt track.

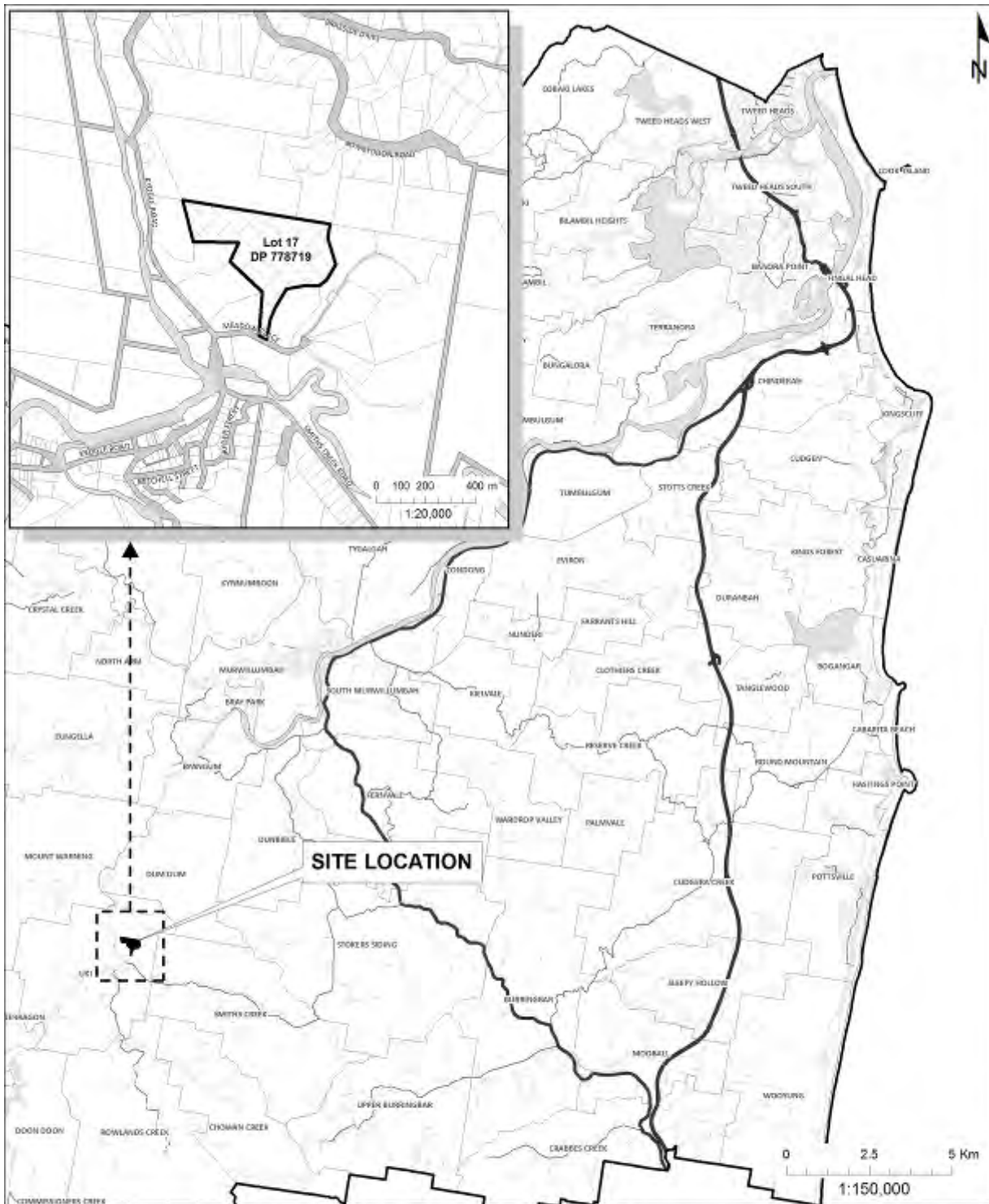
The applicants have stated that the proposed site was preferred as opposed to other locations in the Uki area for the following reasons:

- The elevated position of the site;
- The visual screening the existing tree cover affords;
- The Rural 1(a) zoning as opposed to an environmental protection zoning which incorporates a majority of the high points in Uki;
- The site is readily accessible;
- The availability of power at close range; and
- The lower ecological value of the site;

The application was advertised for a period of fourteen (14) days from Wednesday 22nd July 2009 to Wednesday 5th August 2009. During this period forty (40) submissions were received comprising of thirty four (34) objections and six (6) submissions in favour of the development. The most common issues raised were regarding the visual impact of the monopole, health concerns from electromagnetic energy generated from the facility and consideration of alternative locations. An assessment of the issues raised is summarised within the body of this report.

Following the assessment against the relevant heads of consideration, Council Officers consider that the proposed telecommunication facility will enhance the telecommunications services in Uki and the broader locality and therefore are recommending approval of the application. It is considered that the location and design of the proposal is suitable without causing any significant adverse impacts on the natural and built environments, the communications facility will also create a positive impact socially and economically by providing enhanced telecommunications coverage for the locality.

SITE DIAGRAM:



LOCALITY PLAN
Lot 17 DP 778719
No.19 Meadow Place, Uki

Filename: z:\esr\planning\mxd\AAP_B&W_SitePlan.mxd Author: J.Batchelor - Planning Reforms Unit Date Printed: 4 November, 2009

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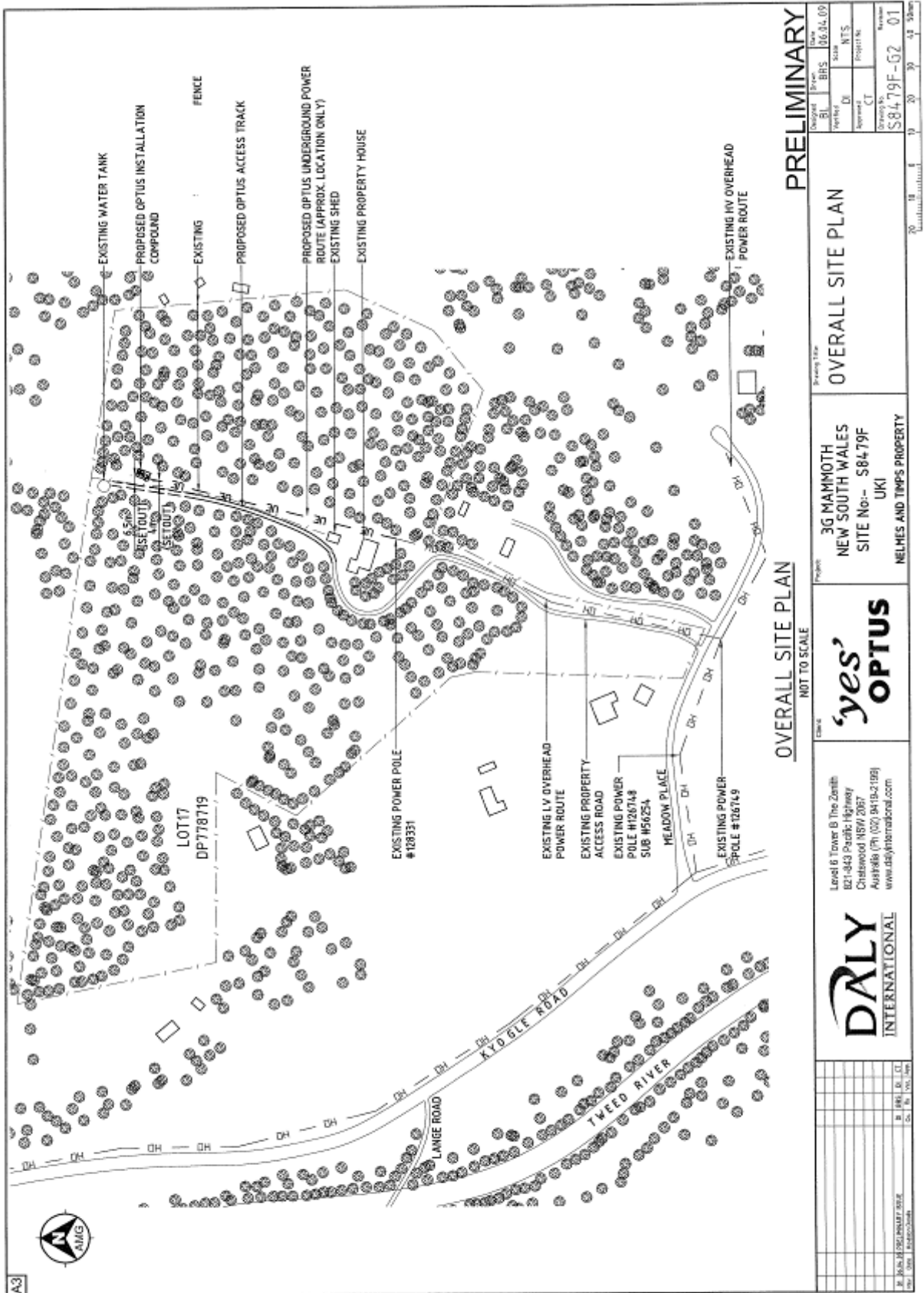
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TWEED
 SHIRE COUNCIL

DEVELOPMENT/ELEVATION PLANS:



PRELIMINARY

Client	BIS	Drawn	08/04/09
Project No.	S8479F	Scale	NTS
Approved	CT	Project No.	
Drawn By	S8479F-02	Revision	01

NOT TO SCALE

OVERALL SITE PLAN

Client: **'yes' OPTUS**

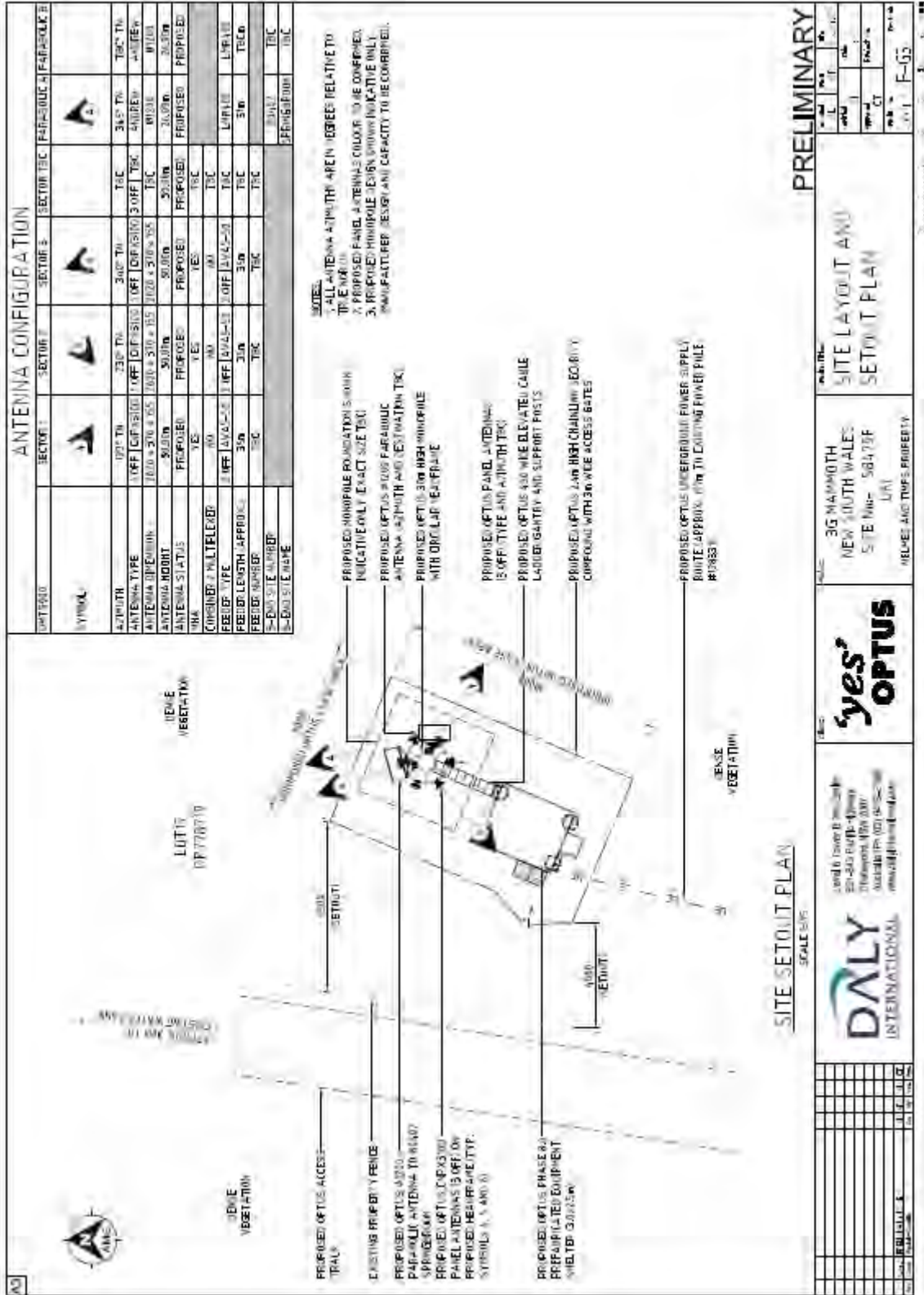
Project: **3G MAMMOTH NEW SOUTH WALES**
SITE No:- S8479F
UKI
NELMES AND TEMPS PROPERTY

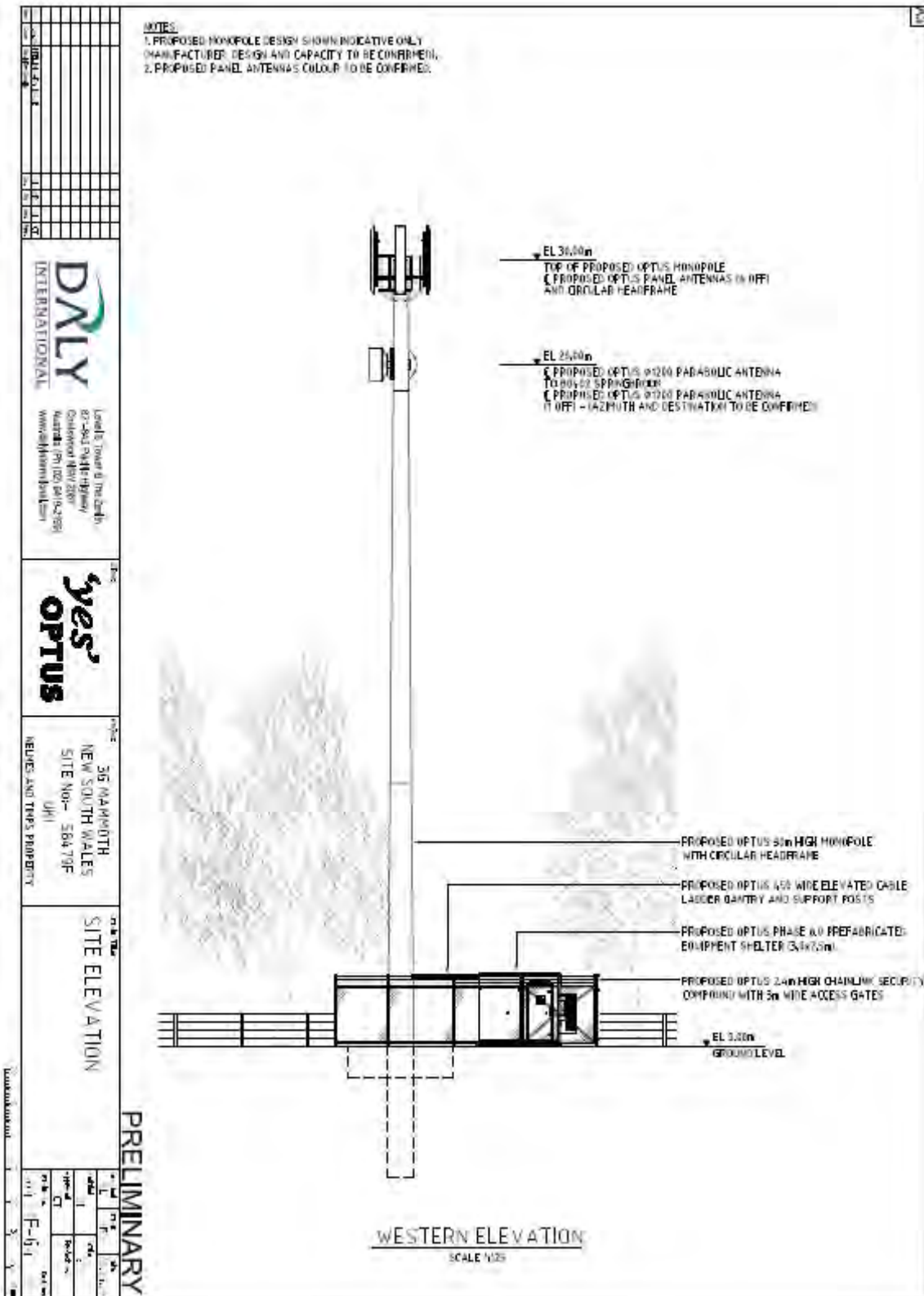
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CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The main objective of Clause 4 is:

“the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced.”

The subject proposal seeks consent for the erection of a telecommunications facility comprising of a 30 metre high monopole and ancillary infrastructure. The proposal involves minor modification to the natural environment in the form of the removal of a small clump of camphor laurel trees. The remaining vegetation including native species will not be touched. It is considered that the proposed development will have minimal impact on the natural environment.

In terms of the developed character of the area the proposal will facilitate better technological availability for people in the area which could potentially enhance economic viability in the area.

The proposed development is therefore considered to be consistent with the aims of this plan.

Clause 5 - Ecologically Sustainable Development

The proposed development is consistent with the four principles of ecological sustainable development by;

- a) not creating irreversible environmental damage.
- b) the environment is maintained for the benefit of future generations.
- c) the biological diversity and ecological integrity is retained and a fundamental consideration.
- d) the environmental qualities of the locality are retained.

Clause 8 Consent considerations

The subject land is zoned 1(a) Rural.

The primary objective of the 1(a) zone is to enable the ecologically sustainable development of land that is suitable primarily for agricultural and natural resource utilisation purposes and associated development and to protect rural character and amenity.

The proposal is consistent with the primary objective of the zone by aiding technological advancement in the rural area while not compromising the rural character and amenity of the area.

The proposed telecommunication facility is consistent with the secondary objective of the 1(a) zone by allowing development that is not suitable within an urban area due to the greater visual impact it generates and at the same time improving telecommunications in the locality. The proposed telecommunication facility is permissible with consent.

The other aims and objectives of this plan that are relevant have been considered and addressed within this report.

An assessment addressing relevant policies has been undertaken identifying that the development would not create an unacceptable cumulative impact on the community, locality or catchment.

Clause 11 - Zone objectives

Primary objectives

- *to enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilisation purposes and associated development.*
- *to protect rural character and amenity.*

Secondary objectives

- *to enable other types of development that rely on the rural or natural values of the land such as agri- and eco-tourism.*
- *to provide for development that is not suitable in or near urban areas.*
- *to prevent the unnecessary fragmentation or development of land which may be needed for long-term urban expansion.*
- *to provide non-urban breaks between settlements to give a physical and community identity to each settlement.*

The proposal is defined by the Tweed LEP 2000 as a Telecommunication Infrastructure (Facility). The proposal is considered permissible with development consent and is consistent with the objectives of the zone by aiding technological advancement in the rural area while not compromising the rural character and amenity of the area.

Clause 15 - Essential Services

Electricity supply is available from Meadow Place. Power is proposed to be supplied as an extension to this supply. The power supply is proposed to be run underground via a 2 metre easement.

Clause 16 - Height of Building

The proposed equipment shelter is single storey in height, with the associated tower being approximately 41m in height. Under the definition of storey within the Tweed LEP 2000 the tower can not be measured in storeys, however given the placement of the tower amongst vegetation of a comparable height and scale the proposal is considered consistent with the clause.

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.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

The council shall not consent to an application to carry out development on rural land unless it has first considered the likely impact of the proposed development on the use of adjoining or adjacent agricultural land and whether or not the development will cause a loss of prime crop or pasture land.

Due to the site being heavily vegetated, it is considered that the development will not cause a loss of prime crop or pasture land.

SEPP (Infrastructure) 2007

The proposed development is classified under Division 21 as development that requires consent from Council. The SEPP stipulates:

‘Development for the purposes of telecommunications facilities, other than development in clause 114, may be carried out by any person with consent on any land.’

Hence the application is applying for consent to erect the telecommunications tower.

SEPP (Rural Lands) 2008

The land is within the 1(a) Rural Zone and the provisions of this SEPP apply to the proposed development.

The principles are stated and addressed as follows:

The Rural Planning Principles are as follows:

- (a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
- (b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*
- (c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*
- (d) in planning for rural lands, to balance the social, economic and environmental interests of the community,*
- (e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*
- (f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*
- (g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*
- (h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

It is considered that the proposed development satisfies the rural planning principles as it will provide development on rural land that will contribute to the broader community needs by improving telecommunications in the locality.

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

N/A

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

Tweed Development Control Plan

A2-Site Access and Parking Code

Vehicular access to the site is proposed via Meadow Place. An existing driveway

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

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**

Noise

Some level of noise will be generated during the construction phase for the proposed monopole. During the operation phase of the lifespan of the monopole noise associated with use of air conditioning plants servicing the equipment shelter will be generated. However, considering the distance to nearby dwellings is approximately 150 metres, no significant impacts are anticipated. If the development is approved appropriate conditions of consent can be utilised to address any subsequent noise issue associated with construction works and the use of the air- conditioning units.

Lighting

The application does not make mention of any security lighting to be used at the facility. It is considered that this issue can be addressed by appropriate conditions of consent.

Contamination

The issue of contamination has been considered in the SEE. The SEE states that the site is heavily vegetated and the site has not been used for any other uses. Council's mapping system shows that there are no cattle dip sites within 200m of the proposed facility. An examination of the available aerial photos and topographical maps for the site also do not indicate that the site was used for any potentially contaminating activity.

Radiofrequency Electro Magnetic Emissions (RF-EME Levels)

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."

Radiofrequency Electro Magnetic Emissions (RF- EME) from the operation of the Base Station has been assessed and a report has been provided dated 24/04/09. This Report has been prepared in accordance with the requirements of The Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) and estimates the maximum cumulative EME levels (% of ACMA mandated exposure limit) produced by the site at ground level at the following distance from the antennas:

Distance from the antennas at 19 Meadow Place	Maximum Cumulative EME Level
0m to 50m	0.0051%
50m to 100m	0.0079%
100m to 200m	0.042%
200m to 300m	0.042%
300m to 400m	0.024%
400m to 500m	0.014%

The values of electromagnetic energy are given as percentages of the permitted limit. The results indicate that the **maximum estimated EME level is 0.042% of the ACMA mandated exposure limit at a distance of 202.67m**. The report demonstrates that the predicted emissions produced by the proposed facility are well within these standards. Therefore the operation of the Base Station is not expected to give rise to any RF- EME issue for the public.

Visual Impact

The proposed monopole is 30 metres in height and located on the top of an existing hill, some level of screening is afforded to the development from existing mature tree species that are located on the hill top. The undulating and winding terrain also assists in mitigating numerous view sheds to the site. The proposed monopole is to be painted mist green as to blend with its surrounds. The monopole structure has a relatively small circumference and the type of headframe is in a compact circular form as to further reduce the visual impact.

The following is a response provided by the applicant regarding the potential impact of the main view sheds of concern with this proposal.

- *Figure 3 below depicts view sheds when exiting and entering Uki village.*

Figure 3. Viewsheds entering and exiting Uki Village. Pink dot denotes the subject site.



Source: <http://imagery.maps.nsw.gov.au/>

- *Entering Uki heading north east along Kyogle Road “B”, the proposed monopole will not be visible.*
- *Entry into Uki heading south along Kyogle Road “A”; the proposed monopole is also unlikely to be detected until just before/driving past 1361 Kyogle road (refer to photo 6 below). The driver’s attention would have to be towards the left of the vehicle to view the proposed monopole. The impact of this view shed will be mitigated by vegetation which will make detection by drivers passing by difficult.*

Photo 6. Photograph taken from 1361 Kyogle road looking north east towards cherry picker and proposed site (proposed site located 140m behind cherry picker). The orange arrow indicates location of cherry picker. Pink arrow indicates compensation (distance & angle) for approximate location.



- Views from the main centre of the village area “C” (commercial/tourist area). The proposed site location is difficult to detect from the centre of the village because of the elevated terrain at the northern end of the village. It is not anticipated that the monopole would be visible from the central area of Uki Village.
- There is minimal to no detrimental effect when heading through Uki village along Kyogle Road due to the double factors of dense mature vegetation and sharply twisting roads/ undulating steep terrain that limits the “panoramic view sheds”. Panoramic view sheds are more common when driving through rural farmland largely cleared of the majority of vegetation combined with gently undulating terrain. The only area where varying degrees of view to the proposed monopole can be gained is at the end of Meadow Place. The figures below identify potentially 4 properties which may have Mount Warning and the proposed monopole in the same view shed.



From the information submitted above by the applicants, it is conceded that the proposed monopole may have some visual impact in public areas and on some neighbouring private properties as it will not be completely invisible as the facility needs a clear line of sight for transmission. However, the main view sheds of concern's impact is considered to be minimal as the applicants have designed the facility to be amongst existing mature tree species and the monopole is to be painted mist green as to blend with its surrounds.

Consideration of Alternative Sites

The applicant provided the following analysis of alternative sites:

"When looking at alternative sites there is a limit as to how far the 3G mobile base station can be located from the targeted coverage area (in this case the township of Uki). Even though 3G coverage from a mobile station may reach many kilometres out from the actual base station the greater the distance from the base station the greater degradation the 3G signal suffers. Signal degradation leads to commonly experienced problems such as dropping out, poor connectivity, etc.

Alternative sites considered - (please refer to Map 1)

A telecommunications facility at this location would have been prominent from the main street of Uki.

Candidate 2 - Lot 2 DP 581366 No. 22-30 Aults Road Uki

Difficulties were encountered in sourcing power to this site. Additionally it was also anticipated that there would be difficulty in getting heavy machinery to the site (for construction) due to the steep gradient of the terrain.

Candidate 3 - Lot 53 DP 755754, Langes Road, Uki

Inability to obtain tenure approval from the property owner.

Candidate 4 - Water Treatment works, end of Old Convent Road, Uki

As per candidate 1.

Candidate 5 - Water Reservoir at end of Grants Road, Uki

Existing layout of area around water reservoir is problematic. There was difficulty in locating an appropriate area for the facility to be erected.

Candidate 6 - Lot 4 DP 43844 1359 Kyogle Road, Byangum NSW

Insufficient space left on property to appropriately accommodate the proposed facility. Furthermore, the existing house is already located in the prime area for any proposed telecommunications facility.

Candidate 7 - Property at end of Sunrise Place, Uki

As per candidate 3.

Candidate 8 - Working Quarry site off Smiths Creek Road, East of Uki

Site was discounted from a radiofrequency perspective because the 3G signal to Uki was blocked by terrain of a greater elevation to the west of the quarry. Basically, the main intended target of the 3G coverage, Uki Village, would have received no coverage from this location. Please see Figure 1 for a 3D illustration. Additionally the quarry is also a working quarry which also makes it difficult to secure an area that will not impede quarry activities now and in the future.

Candidate 9 - Site located around Mt Wollumbin

This site was very difficult to access by heavy machinery due to the steep terrain. It is also probable that the creation of a significant power easement (20m wide) requiring tree removal, would have been needed if this site had been progressed.

Candidate 10 - Lot 17 DP 778719, 19 Meadow Place, Uki

Candidate 10 is situated on elevated terrain outside the main Uki village area. This candidate has many attractive features for telecommunications facility siting including access, power and good vegetation cover.

Following critical evaluation of the above candidates, a preferred nominated candidate is then selected. This selection is based on a number of key issues including radiofrequency coverage; planning/environmental considerations; engineering criteria; and the availability of the site and associated construction costs (as outlined in greater detail in Section 2.2 above).

In this particular instance, the proposed candidate identified as Candidate 10 at Lot 17 DP 778719, 19 Meadow Place, Uki was considered as the optimum outcome to provide Optus 3G mobile and wireless broadband to the Uki area."

Council is satisfied with the applicant's analysis as detailed above and accordingly has recommended approval for the subject site based on appropriate conditions of consent.

Flora and Fauna

The site is mapped under the Tweed Vegetation Management Strategy 2004 as Camphor Laurel dominated vegetation of low ecological significance and low ecological sensitivity. A site visit confirmed that the area upon which the monopole is proposed is mainly cleared and surrounded by Camphor Laurel, declared a Noxious Weed in Tweed Shire in March 2009. Camphor Laurel trees up to 6m as well as 10 rainforest edge species saplings 1 to 2m will require removal to enable the monopole erection. In addition, some further minor removal of native and exotic vegetation is likely along the proposed access road.

The larger site is mapped as Steep Protected Land in part with slopes over eighteen degrees. Ecological value exists within the occasional large (greater than 40cm diameter at breast height) Brushbox and Strangler Fig trees on the lot at lower elevation and regeneration of native rainforest seedlings is occurring in the vicinity of these trees. Despite the dominance of Camphor Laurel, these regenerating species indicate that the hillside could be rehabilitated to Brushbox Open Forest with a rainforest understorey over a period of time if significant effort were to be expended. Such occurrences are greater than 50m from the proposed monopole site and thus potential fauna using these trees are unlikely to be affected by installation of the tower.

Wildlife Atlas records for the surrounding 5km radius include records of a number of threatened flora and fauna species and the site is likely to provide occasional forage habitat for some of these threatened species such as the Grey-headed Flying Fox, Rose-crowned Fruit Dove and Superb Fruit Dove. However, the habitat is unlikely to provide roost sites for these species such that they could be considered resident on site.

(c) Suitability of the site for the development

The existing vegetation will provide a visual screen to the subject proposal. The elevated nature of the hill top affords the desired level of coverage to the proposed telecommunication tower. The proposed telecommunication facility will provide for a greater/better telecommunications service for the locality. The site has been deemed to be suitable for the proposal.

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

The application was advertised for a period of fourteen (14) days from Wednesday 22nd July 2009 to Wednesday 5th August 2009. During this period forty (40) submissions were received comprising of thirty four (34) objections and six (6) submissions in favour of the development. In response to the various objecting submissions the following assessment of the common issues raised is summarised below.

Objection	Response
Health concerns from electromagnetic energy generated from the facility	This has been discussed previously in this report.
Devaluation of property prices	The consideration of property prices is not a Section 79C matter for consideration.
Increased Traffic	The facility will be unmanned and service vehicles are expected to attend the facility for maintenance purposes only on average four (4) times per year. Due to the limited amount of servicing, additional traffic on Meadow Place is not considered an issue.
Alternative sites	<p>Optus 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. Optus, where practicable will try and locate telecommunications equipment on existing structures or rooftops.</p> <p>A search of the area has revealed that due to the area being generally rural, there are no existing structures such as water towers that would be suitable to house a telecommunications facility.</p> <p>In choosing the proposed location for the monopole, the applicants also considered a number of alternative sites, attached to this report is a copy of the applicants assessment of Alternative Sites.</p>
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.
Lack of community consultation	It is not a statutory obligation for the applicants to undertake community consultation.
Visual impacts	This has been discussed previously in this report.

(e) Public interest

The submissions that have been received are noted, Council currently has no specific policies in relation to telecommunication tower development. The proposal is a permissible form of development in the 1(a) zone and therefore can be assessed by Council.

The visual impact on the adjoining landowners will be minimal as the applicants have designed the facility to be amongst existing mature tree species and the monopole is to be painted mist green as to blend with its surrounds.

The communities concerns in regard to health risks are acknowledged and have been considered. However, current research indicates that the potential for health implications from EME levels is minimal. In this instance Council relies on the relevant standards from ARPANSA and other authorities. Council's Environmental Health Officers deemed the submitted information and reporting on the potential health risks of the monopole to be consistent with outlined Australian standards. The proposed development is consistent with all relevant guidelines and proposed to be conducted in accordance with outlined Australian standards. The proposed telecommunication facility will provide for a greater/better telecommunications service for the locality.

OPTIONS:

1. Resolve to adopt the recommendations made and approve the development application.
2. Resolve to refuse the development application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

If the applicant is dissatisfied with the determination a right of appeal exists in the Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed telecommunication facility will enhance telecommunications services in 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 enhanced 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. Applicant's assessment of alternative sites (ECM 8404297)
 2. Report prepared by Optus detailing the outcomes and discussion of meeting held 7 December 2009 (ECM 9734930)
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12 [PR-CM] Proposal to Amend the Rezoning Timeframe of the Tweed Urban and Employment Land Release Strategy 2009 for the Boyds Bay Garden World Site, Tweed Heads

ORIGIN:

Planning Reforms

SUMMARY OF REPORT:

A submission seeking a request to amend Table 9-1 of the Tweed Urban and Employment Land Release Strategy (TEULRS) 2009 relating to the staged release of a nominated employment investigation area from medium (10-20 years) to short term (0-10 years) relating to the Boyds Bay Garden World site was received by Council from Planit Consulting on 9 September 2009. The submission identifies that, should Council support an amendment to the Strategy, the proponents will advance an application to rezone the site from the current 1(a) Rural zone under Tweed Local Environmental Plan 2000 to a zone which will facilitate an employment generating, business park redevelopment, to include such uses as aviation servicing, bio tech, logistics/warehouses and food related industries.

This report addresses the strategic implications and planning merit issues relating to both the Strategy amendment proposal, and the general nature of the proposed business park use, for which Council will need to be satisfied that such a proposal is an economically viable use for this site.

From the officer's assessment of the proponents' submission, despite the current Strategy's identification that there is currently approximately 102 hectares of available, potentially useable zoned employment land within Tweed Shire, it was acknowledged that there are a number of favourable and strategic aspects relating to the location of the subject site and its proposed employment generating potential. However, the assessment also identified a number of site constraints, such as the impacts of Gold Coast Airport operations, regional and local road access, and proximity to Council's new Tweed Heads sewerage treatment plant, which require further investigation, prior to there being assurance that a future business park redevelopment is feasible for the site.

In any support of the proponents' proposed amendment of the TEULRS, Council needs to be provided with some certainty that the subject business park redevelopment proposal can resolve the major site constraint and planning issues identified above. One option is for Council to require a Development Application (DA) to be submitted concurrent to any rezoning application for the site. However, given the recent legislative changes to the State Government's plan making processes, whereby the submission requirements for the new "Planning Proposal" and "Gateway" system are much less onerous for any initial rezoning application, it may therefore be seen as an unreasonable imposition on the proponents in this instance to require the details of a full DA with their rezoning proposal. The option for a combined application under s 72J of the Act is nevertheless there should the proponent decide to proceed on that basis.

As an alternative approach to gaining greater certainty in establishing the viability of the proposed redevelopment of the Boyds Bay Garden World site, it is recommended that the proponents provided a detailed response to the main outstanding issues of their Strategy amendment submission in any Planning Proposal documentation, and that further prior consultation occur with the key relevant authorities, Tweed Shire Council, Gold Coast Airport and the Roads and Traffic Authority.

On the basis of this approach, it is considered that there are sufficient grounds for Council to support the proponents' request to amend Table 9-1 of the Tweed Urban and Employment Land Release Strategy (TEULRS) 2009 relating to the staged release of a nominated employment investigation area from medium (10-20 years) to short term (0-10 years) relating to the Boyds Bay Garden World site, subject to further consultation with relevant authorities, and resolution of the key planning and site constraint issues identified in this report.

RECOMMENDATION:

That:-

- 1. Council endorses the proposed amendment Table 9-1 of the Tweed Urban and Employment Land Release Strategy (TEULRS) 2009 relating to the staged release of a nominated employment investigation area from medium (10-20 years) to short term (0-10 years), as outlined in the submission received by Council from Planit Consulting on 9 September 2009, relating to the Boyds Bay Garden World site, Lot 10, DP 1084319, Tweed Heads.**
- 2. Approval of Point 1 above will be subject to the proponents providing a more detailed response to the main outstanding issues identified in this report, including further prior consultation occurring with the key relevant authorities, Tweed Shire Council, Gold Coast Airport and the Roads and Traffic Authority, as part of any future Planning Proposal application to rezone this site.**

REPORT:

Background

Following an earlier presentation to a Councillors Workshop, and subsequent meetings with Councillors and Council staff, a request to amend the Tweed Urban and Employment Land Strategy (TUELRS) 2009 relating to the Boyds Bay Garden World site was submitted by Planit Consulting Pty Ltd, on behalf of Leisure Brothers, on 9 September 2009. Please refer to Attachment 1 of this report for a copy of this submission.

The submission identifies that, should Council support an amendment to the Strategy, the proponents will advance an application to rezone the site from the current 1(a) Rural zone under Tweed Local Environmental Plan 2000 to a zone which will facilitate an employment generating, business park redevelopment, to include such uses as aviation servicing, bio tech, logistics/warehouses and food related industries.

The basis for the request is to amend the TUELRS strategy in respect of the nominated staged release of the subject land (refer Figure 1 below), which is identified as 'Airport Precinct' Area 2, and which is shown in Table 9-1 (refer Figure 2 below) of the TUELRS as a 'medium' term proposal. Under the definition provided in the strategy medium designation refers to a staged release timing of 10-20 years, meaning that the staged release of Area 2 was envisaged to commence in 2019 at the earliest.



Figure 1 – Area 2 (Airport Precinct) – Figure 14 Tweed Urban and Employment Land Strategy 2009

Table 9-1 Tweed Shire Employment Land Release Program

Potential Employment Locality	Gross Area (ha)	Net Area (ha)	Approximate Years supply (@ 10 ha per yr Shire wide demand)	Timing for commencement of rezoning	Comment
Airport precinct (Area 1)	14	11	1.1	Medium Term	Note that Area 1 is recommended for deletion from the Employment Lands Strategy and is not included in the supply calculations.
Airport precinct (Area 2)	29	23	2.3	Medium Term	Assumes 80% of land will yield lots.
Border Race Track (Area 3)	11	9	0.9	Short Term	Assumes 80% of land will yield lots.
Chinderah East (Area 4)	37	26	2.6	Short Term	Assumes 70% of land will yield lots due to vegetation buffers.
Wardrop Valley West (Area 5)	63	44	4.4	Long Term	Assumes only 70% of land will yield lots due to vegetation buffers and agricultural buffers
Wardrop Valley East (Area 6)	60	48	4.8	Short Term	Assumes 80% of land will yield lots
West Pottsville (Area 7)	144	86	8.6	Short /Medium Term	Assumes only 60% of land will yield lots due to rural residential and riparian buffers

Figure 2 - Table 9-1 – Tweed Urban and Employment Land Strategy 2009

Relevant Council Resolution

At the Council Meeting of 20 October 2009 when considering a progress report on the Planning Reforms Unit work program, Council resolved to bring forward the assessment of the request as a priority consideration within the works program, by way of the following resolution:

“RESOLVED that the Planning Reform Unit Work Program be amended to enable Council to consider Boyds Bay Garden World site as a short term priority.”

Assessment of the Site Suitability of a Rezoning and Future Business Park Use

The proponents' submission required referral to external agencies as well as to other Divisions within Council. The most notable areas requiring consideration can be summarised as; roads, sewer and water, flooding, and aircraft noise. Each of these critical areas provide guidance on the suitability of the land's potential for development under current conditions and assists with assessing the need to amend the Table 9-1 of the TUELRs strategy.

Preliminary assessment and verbal advice from the Roads and Traffic Authority has indicated that the road network, although requiring additional road works as part of any future development, is not likely to pose any insurmountable impediment to the development of the land. However, at the time of finalising this report, written confirmation of the RTA's verbal advice had not been received. Further, Council's Infrastructure Engineers' had likewise indicated that traffic issues would likely be manageable and would be best assessed in detail within a development application (DA). This advice applies equally to stormwater management which would also need to be addressed within a future DA. Flooding does not present a significant issue for the subject site particularly as the majority of the site will be above the design flood level of RL 2.6m AHD and given that the site is not subject to high flow or emergency response provisions.

Council's Water Unit has raised the issue of the subject site being within the 400m operational buffer zone to the Tweed Heads Waste Water Treatment Plant (WWTP), which requires a consideration of the location and use of the buildings within the site.

Another important issue requiring similar consideration about the ultimate use of the site is raised in a response from Gold Coast Airport (GCA) dated 18 November 2009 (refer Attachment 2). In particular, GCA has raised the need to consider; public health and safety, noise, lighting and materials, and height limitations.

The issues raised above require careful consideration of the ultimate uses upon the site and their location within the site. The Planit report addresses the perceived opportunities associated with the development of the site including raising the employment generation from traditional industrial land uses supporting about 40 workers per hectare to something more in the order of 60-70 workers per hectare.

Under more suitable conditions increasing the employment generation within new employment lands is highly desirable and would be consistent with the aims of the TUELRs. However, this approach is seemingly at odds with the limitations presented by the sites proximity to the airport and to a lesser extent because of its location within the 400m buffer zone to the WWTP.

Consequently, out of the uses identified as potentially suitable the lower employment generating warehouse and distribution uses may present the better option in the face of the constraints and issues raised. That said, further consideration is needed when taking into account those uses as they often require taller buildings, operate 24hrs per day and are of prefabricated materials, raising potential issues with the operational height limitation that seemingly will restrict building height to about 10metres, issues with lighting and reflectivity. Issues arising in relation to the WWTP buffer zone will be lessened with lower employment generating land and will fall more to the siting, location and design of building and car parks.

The above issues have been discussed with the proponents, who have since submitted some additional justification for their rezoning proposal, and expressing their commitment to undertake further detailed assessment should the ability to pursue a rezoning of the land arise.

TABLE 9-1 OF TWEED URBAN AND EMPLOYMENT LAND STRATEGY 2009

The Planit request is based on the need to amend Table 9-1 (Figure 2 above) to enable a rezoning to occur in a shorter time than the 10-20 years currently nominated.

The purpose of Table 9-1 comes from the aims of the TUELRS which to summarise is to ensure a replenishing 25 year supply of land to meet the employment needs of the Tweed in a coordinated and planned way.

There is a projected demand for between 110 and 250ha of employment over the next 25 years. Tweed has 231ha of zoned 'industrial' land of which about 138ha (about 102ha when discounted) is vacant undeveloped land and this represents about 10 years supply. The TUELRS objective is to identify suitable sites for future investigation with the aim of releasing land for rezoning to match demand; this is often referred to as the supply and demand nexus. This 'nexus' can be very useful in guiding the better utilisation of land, which is a naturally occurring practice in an environment of scarcity, opposed to underdeveloped and consumption which can occur when land is supply is plentiful and prices are comparatively low. This ideology underpins the operation and intent of the TUELRS.

The question that arises for consideration is whether, under the circumstances of the case presented in their submission, the applicant's request to amend Table 9-1 to bring forward the timing of the subject land should be supported?

Fundamentally this question is answered in the strategy in as much that it identifies a substantial amount of land already zoned but not developed, so much so, that is about 10 years supply. On analysis of the aims of the TUELRS it can be seen that the operational structure of the plan is to ensure that an oversupply of zoned land is not made available partly, in order to discourage underdevelopment and historic trends of land banking.

Despite the current Strategy's identification that there is currently approximately 102 hectares of available, potentially useable zoned employment land within Tweed Shire, it is the officers' opinion that that there are a number of favourable and strategic aspects relating to the location of the subject site and its proposed employment generating potential, which warrant the support of a shorter term release of the Boyds Bay Garden World site.

CONCLUSION

From the officer's assessment of the proponents' submission, despite the current Strategy's identification that there is currently approximately 102 hectares of available, potentially useable zoned employment land within Tweed Shire, it was acknowledged that there are a number of favourable and strategic aspects relating to the location of the subject site and its proposed employment generating potential. However, the assessment also identified a number of site constraints, such as the impacts of Gold Coast Airport operations, regional and local road access, and proximity to Council's new Tweed Heads sewerage treatment plant, which require further investigation, prior to there being assurance that a future business park redevelopment is feasible for the site.

In any support of the proponents' proposed amendment of the TEULRS, Council needs to be provided with some certainty that the subject business park redevelopment proposal can resolve the major site constraint and planning issues identified above. One option is for Council to require a Development Application (DA) to be submitted concurrent to any rezoning application for the site. However, given the recent legislative changes to the State Government's plan making processes, whereby the submission requirements for the new "Planning Proposal" and "Gateway" system are much less onerous for any initial rezoning application, it may therefore be seen to be unnecessary or unreasonable to require the proponents in this instance to provide a full DA with their rezoning proposal.

As an alternative approach to gaining greater certainty in establishing the viability of the proposed redevelopment of the Boyds Bay Garden World site, it is recommended that the proponents provided a detailed response to the main outstanding issues of their Strategy amendment submission in any Planning Proposal documentation, and that further prior consultation occur with the key relevant authorities, Tweed Shire Council, Gold Coast Airport and the Roads and Traffic Authority.

On the basis of this approach, it is considered that there are sufficient grounds for Council to support the proponents' request to amend Table 9-1 of the Tweed Urban and Employment Land Release Strategy (TEULRS) 2009 relating to the staged release of a nominated employment investigation area from medium (10-20 years) to short term (0-10 years) relating to the Boyds Bay Garden World site, subject to further consultation with relevant authorities, and resolution of the key planning and site constraint issues identified in this report.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

The recommendation of this report is to support an amendment to the Tweed Urban and Employment Land Strategy 2009 facilitating a change in policy relating to a specific site.

UNDER SEPARATE COVER:

*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. A copy of the submission of Planit Consulting dated 7 September 2009 (ECM 9692800)
 2. Advice from Gold Coast Airport dated 18 November 2009 (ECM 9692813)
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- 13 [PR-CM] S96 Applications D94/0015.04, T4/2794.01 and PN1074.04 to Amend the Three Existing Development Applications (D94/0015, T4/2794 and PN1074) to Facilitate an Amended Caravan Park Layout Comprising 148 Sites (from 180 sites) at Lot 382 DP 755740 and**

ORIGIN:

Development Assessment

FILE NO: PF4030/2620 Pt10

SUMMARY OF REPORT:

Council is in receipt of three (3) S96 Applications which all amend the existing layout of the former Banora Point Caravan Park (now known as River). The need for the three (3) S96 Applications is a direct result of how the Caravan Park was approved (which was over three separate applications). Subsequently, each consent needs to be amended to reflect the amended plans which show a revised allotment layout to reflect 148 caravan sites rather than the previously approved 180 sites. This is effectively achieved by increasing the size of each individual site. The general road layout has remained similar to the original pattern.

The subject site has had an extensive development and compliance history which was recently reported to Council on 18 November 2008 and 17 March 2009. The three S96 Applications to some extent seek to rectify the previous compliance matters and enable a lawful way forward for the development of the subject site.

In accordance with Council's previous resolutions the subject site and the current S96 Applications have been reviewed by Council's Solicitors to assist the assessment of these applications. The legal advice presents a finely balanced argument. Upon careful review of the advice Council Officers believe there is scope for the three S96's to be considered in a lawful manner. A complete copy of the legal advice is contained within a confidential attachment to this agenda.

The following report assesses the proposed amendments having regard to the Environmental Planning and Assessment Act and all applicable planning legislation. On balance of all the relevant heads of consideration this report concludes that the amendments will result in, minimal environmental impact, substantially the same development as that approved and that all relevant consultations and submissions have been undertaken. The results of such consultations do not warrant refusal of these applications.

Subject to the imposition of additional conditions of consent the three S96 Applications are recommended for approval.

RECOMMENDATION:

That:

1. The three S96 Applications D94/0015.04, T4/2794.01 and PN1074.04 for amendments (to facilitate an amended caravan park layout comprising 148 sites from 180 sites) to Development Consents (D94/0015, T4/2794 and PN1074) which all granted approval for part of the former Banora Point Caravan Park at Lot 382 DP 755740 and Lot 5 DP 828639 (formerly known as Lot 1 DP 583322) and unnamed road reserve, Pacific Highway East, Banora Point be approved subject to the three consents being amended to all read as follows:

1. The description on each development consent should read as follows:

“A CARAVAN PARK AND BUSHFIRE HAZARD REDUCTION WORK”
2. The conditions on each development consent should read as follows:

GENERAL

1. The caravan park shall have a layout comprising 148 long term sites as detailed within the Statement of Environmental Effects prepared by Planit dated July 2009 and Plan No A0.04 Issue D prepared by Lightwave (as approved by S96 Applications D94/0015.04, T4/2794.01 and PN1074.04 in December 2009) , except where varied by the conditions of this consent. [GENN005]
2. Prior to the installation of any structures on the site, the applicant shall obtain an Approval to Operate a Caravan Park under the provisions of Section 68 of the Local Government Act 1993. [GENNS01]
3. The prior approval of council shall be obtained before the installation of any structures on sites within the Caravan Park. All applications shall be made on the appropriate form and be accompanied with all plans and specifications as required under the provisions of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 and be accompanied by the appropriate fee. [GENNS02]
4. Prior to the installation of any structure (including manufactured home) on each site, the applicant is to obtain approval in respect of plumbing and drainage work under the provisions of Section 68 of the Local Government Act 1993. [GENNS03]
5. Prior to the installation of any structure (including manufactured home) on each site, the applicant is to obtain approval in respect of stormwater and drainage work under the provisions of Section 68 of the Local Government Act 1993. [GENNS04]

6. Prior to the issue of an Approval to Operate a Caravan Park under the provisions of Section 68 of the Local Government Act 1993 the applicant shall obtain an Approval to Operate an On-Site Sewage Management System under the provisions of Section 68 of the Local Government Act 1993 for the existing private sewage ejection pump station and associated sanitary drainage line and any associated attenuation storage vessel in accordance with the conditions as specified in the Approval to Alter/Modify an On-Site Sewage Management System Reference SEP08/0016 dated 11 November 2008.

[GENNS05]
7. Prior to the issue of an Approval to Operate a Caravan Park under the provisions of Section 68 of the Local Government Act 1993 the applicant shall obtain a satisfactory final plumbing inspection and satisfy all the conditions in respect of Sewer Approval No. SEW08/0090.

[GENNS06]
8. The Caravan Park shall be designed, constructed, maintained and operated in accordance with the relevant requirements of Subdivisions 1-8 of Division 3 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.

[GENNS07]
9. No part of the 7(a) zoned land can be used as part of the approved caravan park. This exclusion of the 7(a) lands includes an exclusion of use as passive recreational space in conjunction with the caravan park. The 7(a) zoned land can only be used to undertake bushfire hazard reduction as required by the conditions of this consent and utility installations once approved as statutorily required.

[GENNS08]
10. Prior to the installation of any structures on the site a non-flammable perimeter fence is to be erected to effectively separate the adjoining northerly and westerly wetlands from the development. Such fencing is to be of suitable design so as to prevent encroachment or intrusion onto the wetland areas and is to be erected along the full length of the boundary of each lot adjoining Lot 4 DP 828639 and Lot 7010 DP 1069421 and including the present Crown Road Reserve (with owners consent). Where boundary fencing necessitates vegetation removal, such removal must be limited to 3m either side of the boundary in accordance with the provisions of SEPP 14.

[GENNS09]
11. Other than minor vegetation required to be removed strictly for boundary fence provisions, no further removal of SEPP 14 or any other wetland or significant native vegetation or ecological communities including mangroves, saltmarsh, Swamp Oak (*Casuarina glauca*), Swamp Sclerophyll Forest or Littoral Rainforest is permitted without approval from the General Manager or his delegate.

[GENNS010]

12. **Asset Protection Zones must be provided wholly within land the subject of the subject applications.**
[GENNS11]
13. **No temporary or permanent dwelling or private facility or other structure apart from the perimeter road is permitted within 20m of the Mean High Water Mark of the Tweed River.**
[GENNS12]
14. **Provision must be made for traversable public pedestrian access to and along the foreshore of the Tweed River adjacent the full length of Lot 5 DP 828639 and Lot 382 DP 755740 being the land the subject of this development. A public benefit covenant (benefitting Tweed Shire Council) shall be imposed on the land to accommodate the public pedestrian access prior to installation of any structures on the land.**
[GENNS13]
15. **No construction or works are to proceed on the Crown road adjacent Lot 5 DP828639 or other Crown lands until due authorisation has been obtained from the Land and Property Management Authority under the Crown Lands Act 1989 for any existing structures and proposed improvements.**
[GENNS14]
16. **Appropriate easements to the satisfaction of the Land and Property Management Authority (LPMA) must be created with respect to any utilities on Crown land, including but not limited to sewerage pumping station, and to provide access to adjoining Crown lands (by Roads and Traffic Authority and LPMA).**
[GENNS15]
17. **Prior to issue of an approval to operate the applicant is to prepare a Vegetation Management Plan (as detailed below) for the buffer area to Tweed River.**

Furthermore, prior to the commencement of any controlled activity (works) on waterfront land, the consent holder must obtain a Controlled Activity Approval (CAA) under the Water Management Act 2000 from the Department of Environment, Climate Change and Water (DECCW). Waterfront land for the purpose of this consent is land and material in or within 40 metres of the top of the bank or shore of the Tweed River.

The consent holder must prepare or commission the preparation of a Vegetation Management Plan. All plans must be prepared by a suitably qualified person and submitted to the Department of Environment, Climate Change and Water (DECCW) for approval prior to any controlled activity commencing. The plans must be prepared in accordance with the DECCW guidelines located at: www.naturalresources.nsw.gov.au/water/controlled_activity.shtml

The plan should include a Vegetation Management Plan and Riparian Corridors

The consent holder must:

- i) carry out any controlled activity in accordance with approved plans and
- ii) construct and/or implement any controlled activity by or under the direct supervision of a suitably qualified professional and
- iii) when required, provide a certificate of completion to the Department of Environment, Climate Change & Water.

The consent holder must carry out a maintenance period of two (2) years after practical completion of all controlled activities, rehabilitation and vegetation management in accordance with a plan approved by the Department of Environment, Climate Change & Water.

The consent holder must establish a riparian corridor along the Tweed River in accordance with a plan approved by the Department of Environment, Climate Change & Water.

[GENNS16]

18. The site is to remain filled to at least the design flood level of 2.8m AHD.

[GENNS17]

GENERAL TERMS OF APPROVAL UNDER THE RURAL FIRE ACT 1997

1. This assessment is based in part upon the advice and recommendations within the Bushfire Threat Assessment Report, prepared by BCA Check Pty Ltd. All recommendations within that report shall be complied with, except where modified below.
2. At the commencement of building works and in perpetuity the existing Crown Road Reserve shall be managed as an inner protection area (IPA) as outlined within Appendices 2 & 5 of *Planning for Bush Fire Protection 2006* and the NSW Rural Fire Service's document *Standards for asset protection zones*.
3. Water, electricity and gas to the proposed dwelling on proposed Lot 101 are to comply with sections 4.1.3 of *Planning for Bush Fire Protection 2006*.
4. Internal roads shall comply with following requirements of section 4.2.7 of *Planning for Bush Fire Protection 2006*.
 - Internal roads are two-wheel drive, sealed, all weather roads.
5. Arrangements for emergency and evacuation are to comply with section 4.2.7 of *Planning for Bush Fire Protection 2006*.

General Advice – consent authority to note

This response recognises the current approval to operate a caravan park on the site within the existing layout. This original approval was issued prior to the implementation of Planning for Bush Fire Protection and no bush fire safety authority was issued by the RFS. The proposed modifications as conditioned will however provide a better outcome for the development.

2. ATTACHMENT NOS. 1, 2 AND 3 are CONFIDENTIAL in accordance with Section 10A(2)(g) of the Local Government Act, 1993, because it contains information of a confidential nature that would, if disclosed:
 - (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege

REPORT:

Applicant: Acegrange Constructions
Owner: Lifestyle Resorts Australia Pty Ltd and Department of Lands
Location: Lot 382 DP 755740; Lot 5 DP 828639 (formerly known as Lot 1 DP 583322) and unnamed road reserve Pacific Highway, Banora Point
Zoning: 6(b) Recreation
Cost: N/A to Section 96 applications

BACKGROUND:

The subject site has an extensive development and compliance history which have been reported to Council previously (see attachments). Specific to the current S96 Applications is the development history as follows:

- Permit Number PN1074 was granted approval on 14 November 1967 for a “caravan park and holiday units”;
- Development Consent No. T4/2794 was granted approval on 17 March 1986 for the “extensions to an existing caravan park to accommodate thirty six (36) movable dwelling sites); and
- Development Consent No. D94/0015 was granted approval on 24 June 1994 for the “additions to existing caravan park”. The plans show five additional caravan sites within the park.

The result of these development applications is a caravan park comprising 180 sites with a mix of long and short term sites. This was established in the NSW Land & Environment Court *Blackington Pty Limited v Tweed Shire Council* (a s.68 Appeal).

The three S96 Applications now seek to

- Amend the configuration of the caravan park to show 148 sites (road alignment slightly amended and some sites enlarged) ;
- Lot sizes now between approximately 100m²and 350m²;
- Deletion of 14th and 15th Avenue to improve road efficiency and enable larger allotments;
- Nominate all sites as long term sites;
- Relocation of amenities to 11th Avenue (detailed construction subject to separate application);
- Revised visitor parking location;

Note: No filling or clearing of the land is proposed with respect to this modification. Furthermore no drainage works are proposed with respect of this application.

The assessment of this modification must be undertaken on its merits based on the application as lodged with Council. It is not an opportunity to reconsider the merit of any of the original applications.

The legality and merits of the subject S96 Applications are finely balanced and are best articulated in the confidential attached legal advice.

However, having undertaken the merit assessment of this application in conjunction with the statutory planning provisions (including cumulative impact and precedent); and the prior compliance matters, on balance it is recommended that the subject application be recommended for approval subject to the recommended conditions of consent.

This course of action enables a lawful way forward for the development of the site and allows Council the opportunity to update the three consents which are out of date in terms of terminology and the process that should be followed into the future.

It is the recommended conditions of consent that give the ultimate consent boundaries and parameters in terms of the future process to be followed.

The current application which is being considered by Council is merely the change in the number of allotments within a previously approved Caravan Park. Part of the merit assessment undertaken included a review of all the additional (external) information available for the site. This included the applicant's current advertising material which clearly demonstrates the intended built form for the site (as shown in the attached earlier Council reports).

Whilst it seems that the applicant's ultimate built form may not reflect a traditional caravan park in appearance, this report demonstrates that the legislation enables and envisaged the use of manufactured homes within a caravan park. The ultimate appropriateness of the built form will be determined under licensing provisions as this application does not seek approval for the ultimate built form but rather an approval only for the site configuration.

Other Development Applications

Council is aware of two other applications that will affect the subject site:

The first is DA09/0064 which seeks approval for pools within the caravan park site. Referral comments received from DECCW and NSW Fisheries in regards to this application have been utilised for this assessment to ensure consistency between the applications. Should the subject S96's be determined by way of approval the swimming pool applications can then be determined under staff delegation.

The second is a possible Marina Development. Acegrange Constructions had Planit Consulting prepare a Preliminary Assessment report for a floating berth style marina (90 to 135 berths) and associated Marine Services & Tourist Facility comprising part of Lot 5 on DP 828639 at Banora Point (Tweed Heads), otherwise commonly referred to as Barneys Point. The Preliminary Assessment was provided to the Department of Planning to enable them to form a view of whether such an application would comprise a Major Project for which the Department of Planning would be the consent authority.

On 3 December 2009 the Department of Planning advised the applicant and Council that:

"I refer to your letter dated 12 October 2009 in which you sought the Minister for Planning's opinion that the above project is a Major Project under Part 3A of the Environmental Planning and Assessment Act 1979 (the Act). On 1 December 2009 the Deputy Director-General as delegate for the Minister for Planning declared the proposal as a project of only local environmental planning significance pursuant to clause 14(1) of Schedule 1 of the State Environmental Planning Policy (Major Development) 2005.

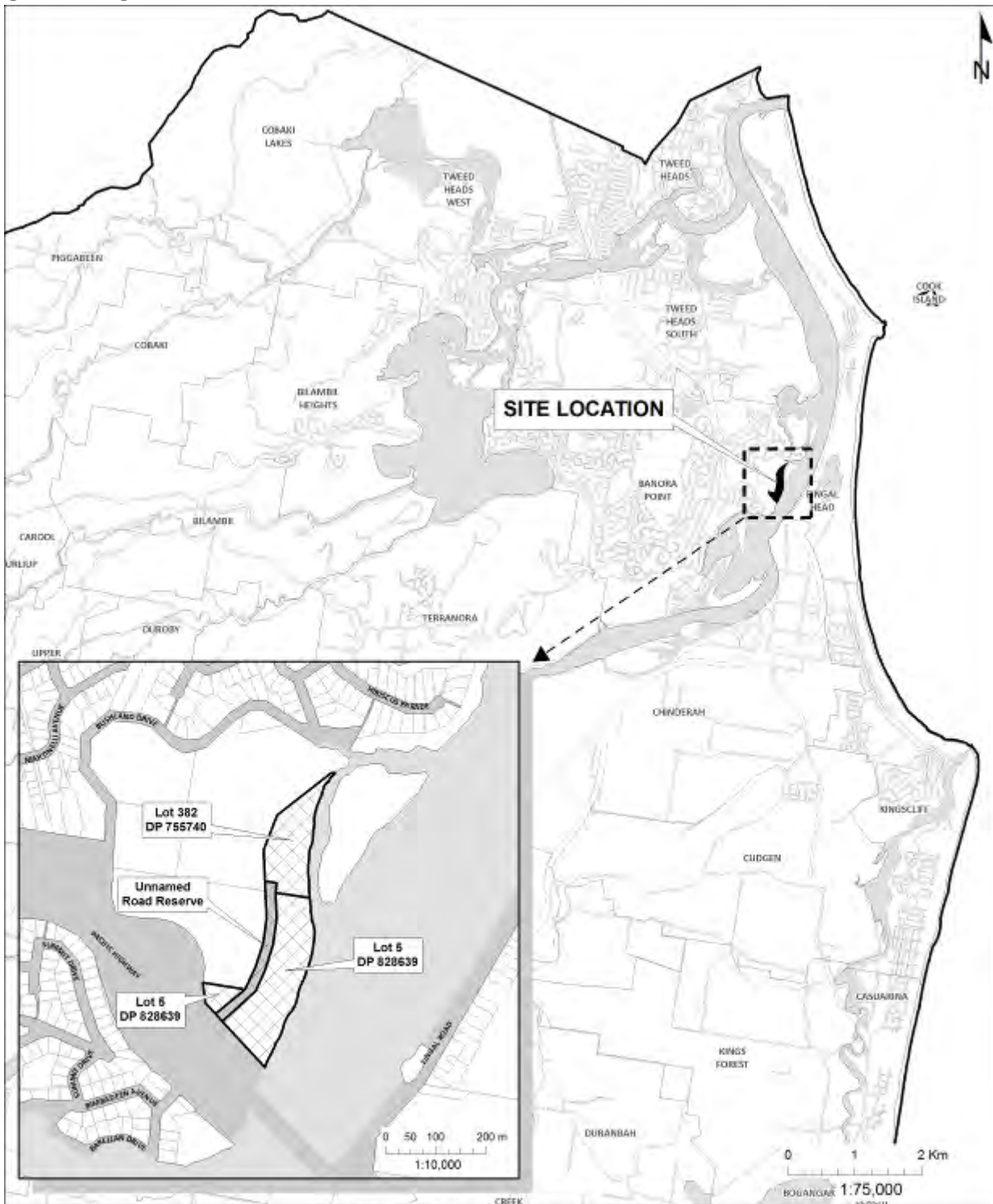
On this basis the proposal is now subject to the provisions of Part 4 of the Act, and is not a project to which Part 3A of the Act applies. A development application can now be lodged with Tweed Shire Council".

Therefore should the applicant proceed with an application for such a Marina, a Development Application would need to be prepared in accordance with Part 4 of the Environmental Planning & Assessment Act 1979. Such an application would then be assessed by Council's Technical Staff before being reported to the either Council or the Joint Regional Planning Panel (as the development may be greater than \$5M) for determination.

The applicant's Preliminary Assessment report is attached as a confidential item, for Councillors information only.

The Marina plans show that some of the proposed caravan park may be lost should the Marina development proceed. This does not impact the current S96 Applications as the applicant would have various options that effectively surrender part of their development consent in view of another development application proceeding.

SITE DIAGRAM:



LOCALITY PLAN

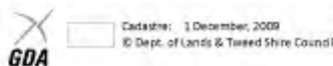
**Lot 382 DP 755740; Lot 5 DP 828639 (formerly known as Lot 1 DP 583322)
and unnamed road reserve - Pacific Highway, Banora Point**

Filename: z:\year\planning\mxd\A&P_@&W_SitePlan.mxd

Author: J Batchelor - Planning Reforms Unit

Date Printed: 1 December, 2009

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E: plan@reforms@tweed.nsw.gov.au



1962 AERIAL PHOTOGRAPH:



1976 AERIAL PHOTOGRAPH:



1987 AERIAL PHOTOGRAPH:



1996 AERIAL PHOTOGRAPH:



2007 AERIAL PHOTOGRAPH (note site is predominantly vacant excluding the office at present)



AERIAL PHOTO
Lot 5 DP 828639 and Lot 382 DP 755740
Pacific Highway East, Banora Point

Filename: z:\esr\planning\mcd\AAP_B&W_SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 9 November, 2009

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Cadastral: 9 November, 2009
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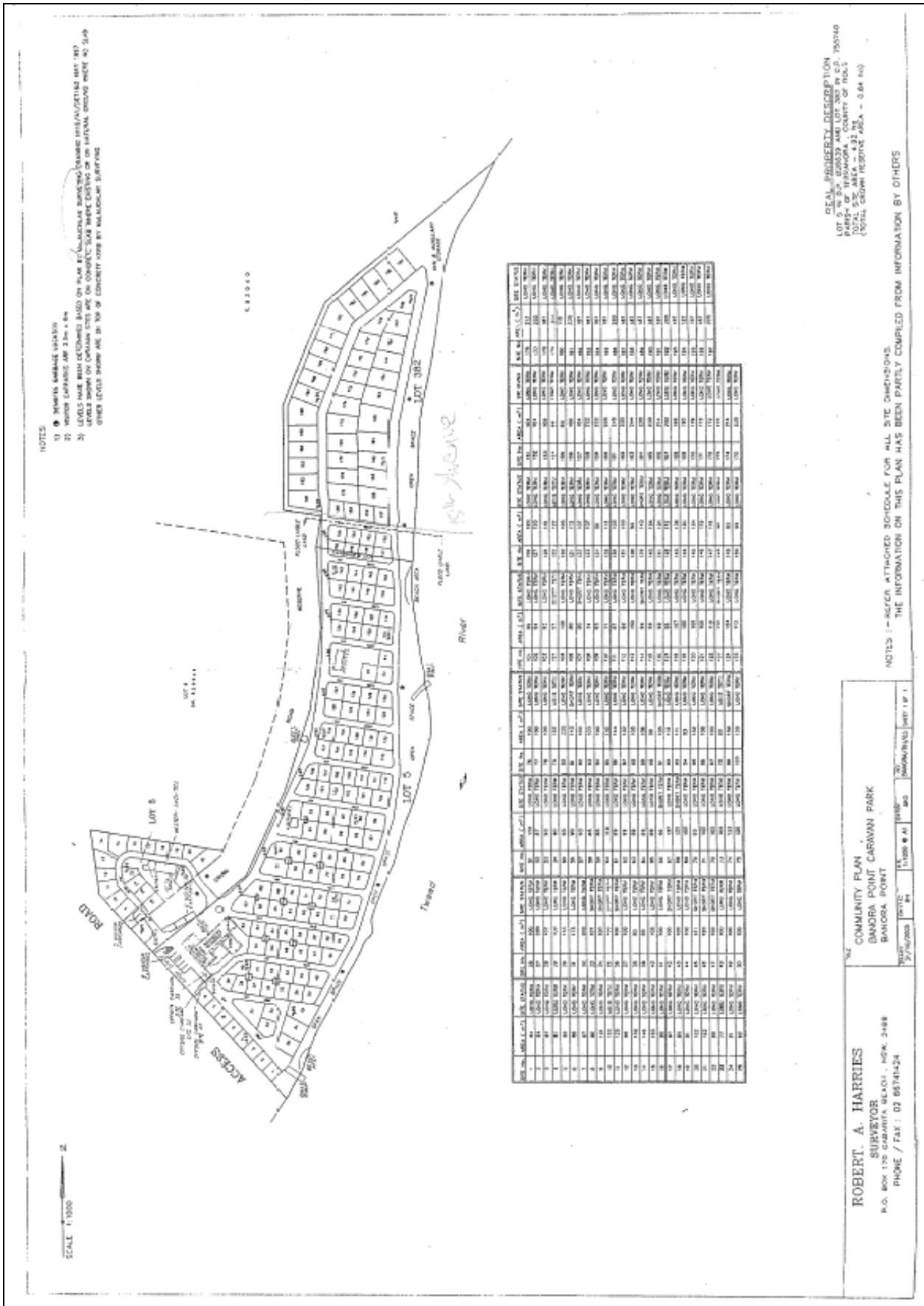
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TWEED
SHIRE COUNCIL

PREVIOUSLY APPROVED COMMUNITY PLAN (1999):



PROPOSED COMMUNITY PLAN:



Lot No.	Area (sqm)	Notes
101	1000	
102	1000	
103	1000	
104	1000	
105	1000	
106	1000	
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1250 Barneys Point Resort

Community Map

A0.04

Lightwave

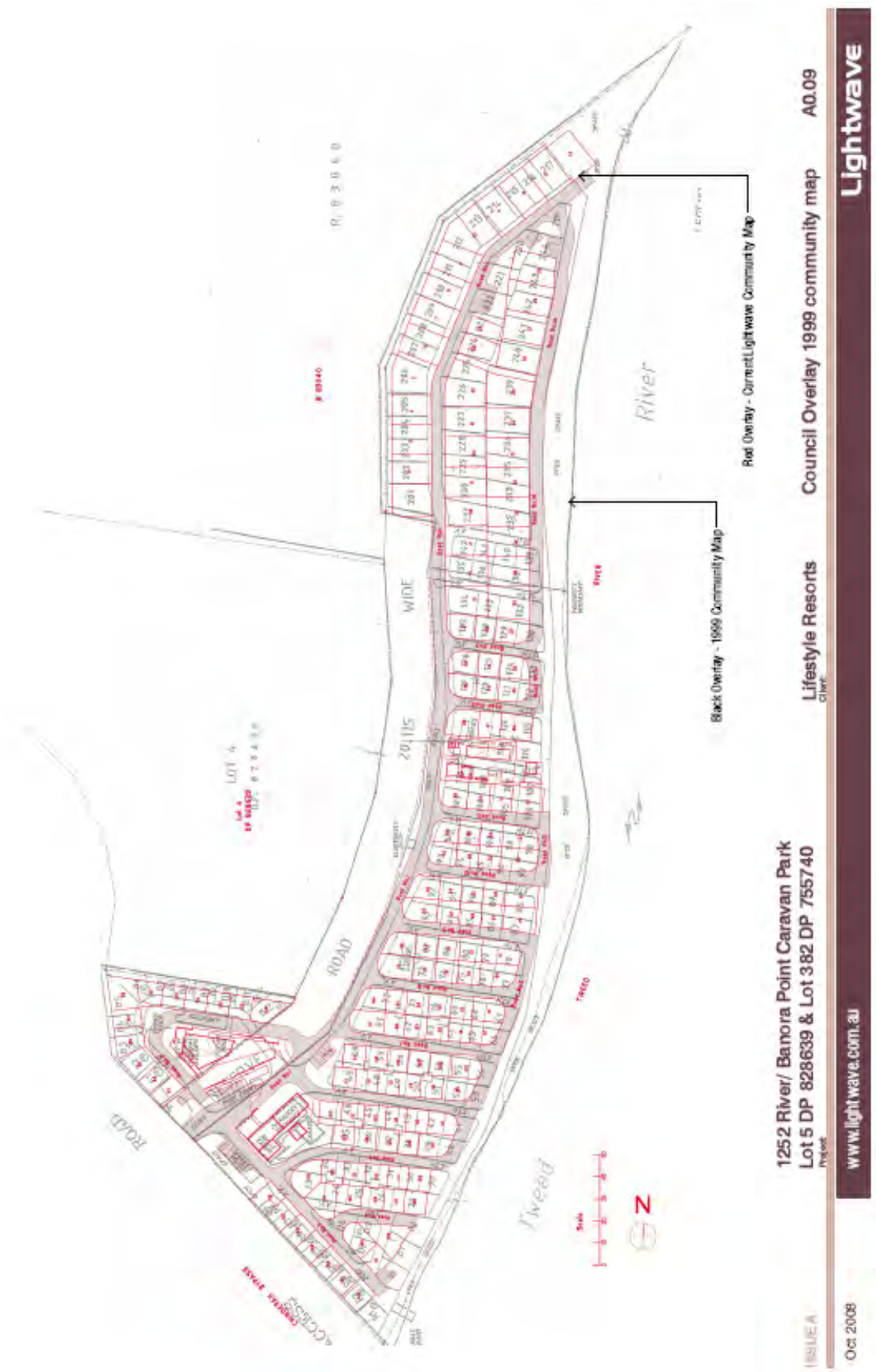
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Oct 2008 1:750@A1 1:1500@A3

www.lightwave.com.au

OVERLAY PLAN

Note: Red Overlay shows the applicants proposed layout at the time of lodgement of these S96's, the plan has since been amended in a minor manor as shown above. The overlay is still useful to demonstrate the changes between the previously community plan layout and the layout now proposed).



1252 River/ Banora Point Caravan Park
 Lot 5 DP 828639 & Lot 382 DP 755740

Lifestyle Resorts
 Council Overlay 1999 community map

Lightwave

Oct 2008

CONSIDERATIONS UNDER SECTION 96 & 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

S96 of the Act specifies that;

“(1A) Modifications involving minimal environmental impact

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1), (2) and (5) do not apply to such a modification.

- (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.*
- (4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.”*

Accordingly the following report addresses these heads of consideration.

To determine if the S96 Applications are of minimal environmental impact and substantially the same development a 79C (1) Assessment has been undertaken in the first instance:

79C (1) Assessment – Environmental Planning and Assessment Act 1979

The matters of relevance are addressed as follows:

Tweed Local Environmental Plan 2000

General Permissibility

The subject site is zoned part 6(b) Open Space (Recreation) and part 7(a) Environmental Protection (Wetlands and Littoral Rainforest).

Historically the approved caravan park occupied Lot 382 in DP 755740 and Lot 5 in DP 828639 within that part of the site which is zoned 6(b). In that section of the site a caravan park is permissible subject to an assessment against Clause 8(2) of the Tweed LEP 2000.

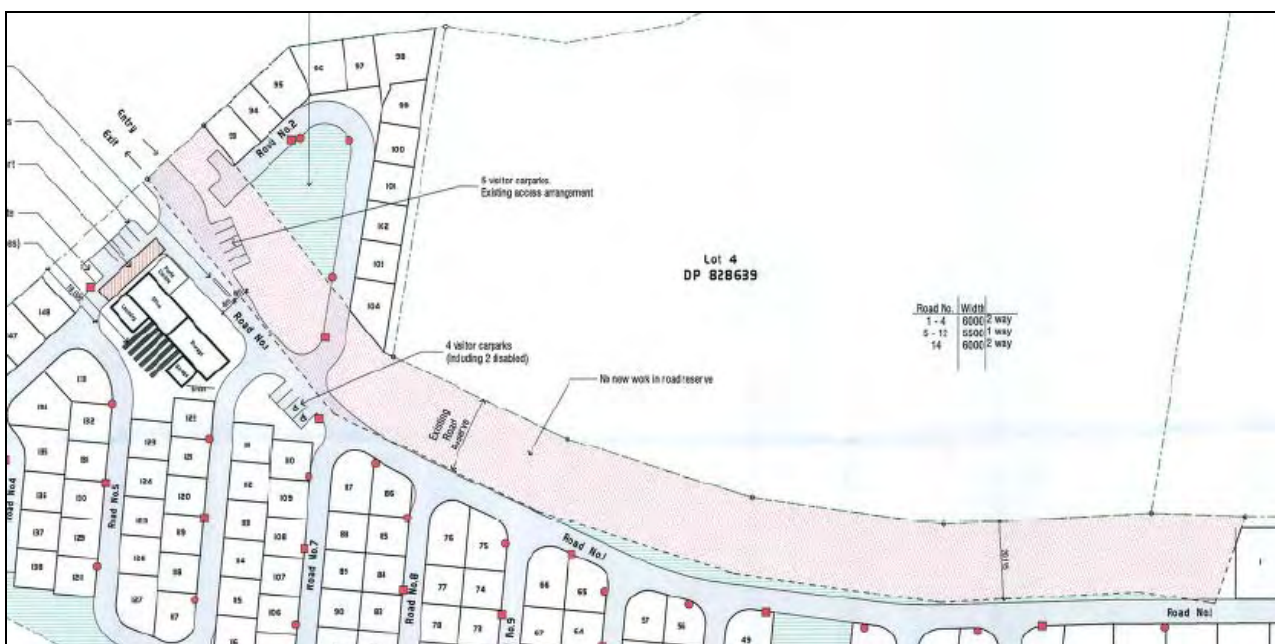
Over the years the applicant has utilised a lease from the Crown to use the adjoining Crown land for recreation and part of the driveway entrance. However, this aspect of site utilisation was never formally part of any of the development consents for the site.

The subject S96 Applications have sought to bring in the Crown Land as part of the development consent. Whilst Council's legal advice has indicated that this can be done within a S96 it does not negate the need for any land uses within the Crown land to be permissible.

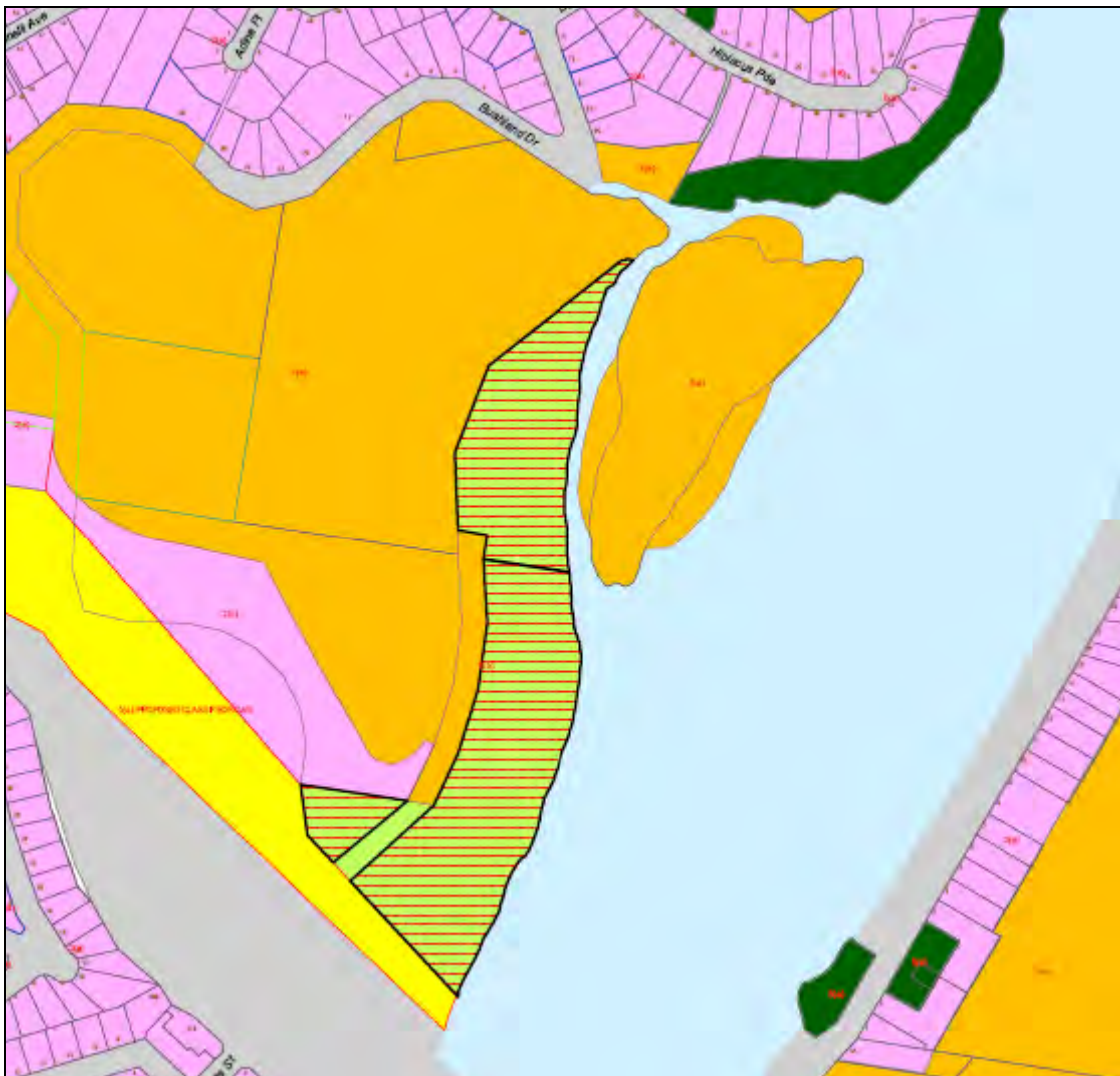
The Crown land is in part zoned 6(b) Open Space (Recreation) and in part zoned 7(a) Environmental Protection (Wetlands and Littoral Rainforest).

A caravan park is prohibited in the 7(a) section of the Crown Road.

Below is an extract from the plan demonstrating what structures are proposed within the Crown Road Reserve.



Below is an extract from the Tweed LEP 2000 Zoning Map demonstrating what part of the Crown Road is zoned 7(a) compared to that zoned 6(b).



From these plans the entrance way, roads, and visitors parking are all within that part of the site zoned 6(b) (which is permissible subject to satisfying Clause 8(2) of the Tweed LEP 2000).

The remaining part of the Crown Road zoned 7(a) shows no new work within this section of the site. It will however, be necessary to undertake bushfire hazard reduction work in this part of the site in accordance with the RFS General Terms of Approval. This land use is permissible in the 7(a) zone.

Having reviewed the applicant's legal advice on permissibility and Council's legal advice on permissibility (both attached as confidential attachments), the proposed modification is considered to be permissible with consent provided an additional condition of consent is incorporated into the consent which specifies that:

No part of the 7(a) zoned land can be used as part of the approved caravan park. This exclusion of the 7(a) lands includes an exclusion of use as passive recreational space in conjunction with the caravan park. The 7(a) zoned land can only be used to undertake bushfire hazard reduction as required by the conditions of this consent and utility installations once approved as statutorily required.

Use of the Crown Road has been problematic and the Land Property Management Authority (LPMA - formerly Department of Lands) has previously refused owners consent to lodgement of DA's and their modifications containing structures on the road reserve as permanent structures are not permitted under the Crown Lands Act on Crown Road Reserve and thus the road must be closed and ownership transferred.

LPMA have now provided owner's consent to the lodgement of the modifications based on discussions with the applicant relating to a potential land "swap" for foreshore land of equal or greater area. The letter and documentation granting owners consent refers to "our in principle agreement to a land exchange" and states that "such agreement should be predicated on achievement of development consent, approval of road closing, and other terms related to plan preparation, easement/s for infrastructure and right of access to adjoining lands, payment of costs and construction and maintenance of works on the foreshore lands.

The LPMA letter also refers to future provision or upgrade of a sewer pipeline through the adjoining Crown land zoned for environmental protection.

Two issues of concern are noted. The first is that the modification application specifically states that "dedication of foreshore land is not proposed as part of this modification", yet permanent structures are shown within Crown road reserve on the plans accompanying the Statement of Environmental Effects and thus would be approved by consenting to this modification. As this is an arrangement between two parties, the following conditions of consent (as requested by LPMA) are recommended:

No construction or works are to proceed on the Crown Road adjacent Lot 5 DP828639 or other Crown Lands until due authorisation has been obtained from the Land and Property Management Authority under the Crown Lands Act 1989 for any existing structures and proposed improvements.

Appropriate easements to the satisfaction of the Land and Property Management Authority (LPMA) must be created with respect to any utilities on Crown land, including but not limited to sewerage pumping station, and to provide access to adjoining Crown lands (by Roads and Traffic Authority and LPMA).

The second matter of concern is that the accompanying plans show that roadways encroach further into any potential foreshore reserve such that any such area is reduced, particularly taking into consideration the area occupied by existing riverbank rock revetment which is largely unusable. It is considered that the original 1 chain (roughly equal to 20m) is the minimum required riparian reserve acceptable and this aspect is recommended to be repeated in current combined conditions. The Department of Industry and Investment NSW (I&I NSW), formerly NSW Fisheries have also requested that this foreshore area be conditioned. Accordingly the following conditions are recommended:

No temporary or permanent dwelling or private facility or other structure apart from the perimeter road is permitted within 20m of the Mean High Water Mark of the Tweed River.

Provision must be made for traversable public pedestrian access to and along the foreshore of the Tweed River adjacent the full length of Lot 5 DP 828639 and Lot 382 DP 755740 being the land the subject of this development.

Clause 4 - Aims of the Plan

The land use is permissible within the zone as detailed above and the site can be appropriately conditioned to ensure the developed character of the site is adequately managed. Therefore, having regard to the proposed S96 Applications (only - as this is not an opportunity to re-assess the whole application) the proposal satisfies the aims of the Tweed LEP 2000.

Clause 5 - Ecologically Sustainable Development

The S96's seek to decrease the number of sites within an already approved Caravan Park. Subject to compliance with the recommended conditions of consent (specifically in regard to setbacks to Tweed River) the proposed modification is considered to satisfy the provisions within Clause 5.

Clause 8 – Consent Considerations

Clause 8(2) specifies that

- (8)(2) *The consent authority may grant consent to development specified in Item 3 of the Table to Clause 11 only if the applicant demonstrates to the satisfaction of the consent authority that:*
- (a) *the development is necessary for any one of the following reasons:*
 - (i) *it needs to be in the locality in which it is proposed to be carried out due to the nature, function or service catchment of the development,*
 - (ii) *it meets an identified urgent community need,*
 - (iii) *it comprises a major employment generator, and*
 - (b) *there is no other appropriate site on which the development is permitted with consent development (other than as advertised development) in reasonable proximity, and*
 - (c) *the development will be generally consistent with the scale and character of existing and future lawful development in the immediate area, and*
 - (d) *the development would be consistent with the aims of this plan and at least one of the objectives of the zone within which it is proposed to be located.*

The previously approved footprint of the Caravan Park does not need to be re-assessed against this provision.

The current S96 Applications have now included that part of the Crown Road Reserve which is zoned 6(b) Open Space Recreation. A Caravan Park is permissible with consent subject to satisfying Clause 8(2) as detailed above.

The driveway entrance, internal road and visitor car parking spaces are integral parts of the proposed modification to ensure a suitable access to the site. Therefore these facilities need to be in that location. There is no other appropriate location for these facilities. They enable access to the site in a manner which is consistent with the existing lawful development. Furthermore, the development as a whole satisfies the zone objectives as detailed below. Accordingly the proposed S96 Applications are considered suitable and permissible as Clause 8(2) is satisfied.

Clause 11 – The Zones

The proposed modification occurs entirely within that part of the site zoned 6(b) Open Space Recreation.

The 6(b) Zone objectives are:

Primary objective

- *to designate land, whether in public or private ownership, which is or may be used primarily for recreational purposes.*

Secondary objective

- *to allow for other development that is compatible with the primary function of the zone.*

The Tweed LEP 2000 does not specifically define “recreational purposes”. It does however have definitions for recreational establishment, recreational facility, recreation area, recreational vehicle area and recreational beach activities. These suite of definitions anticipate a wide variety of development types.

A Caravan Park is defined as land (including a camping ground) on which caravans (or caravans and other moveable dwellings) are, or are to be, installed or placed.

Having regard for all definitions, a Caravan Park can be considered a recreational purpose and accordingly the proposed modification is considered to satisfy the primary zone objective.

Clause 15 - Essential Services

The site is adequately serviced.

Clause 16 - Height of Building

The subject application does not seek approval for the construction of any building.

Clause 17 - Social Impact Assessment

Clause 17 states:

(1) Objective

- *to ensure proper consideration of development that may have a significant social or economic impact.*
- (2) *Where the consent authority considers that a proposed development is likely to have a significant social or economic impact in the locality or in the local government area of Tweed, the consent authority may grant consent to the proposed development only if it has considered a socio-economic impact statement in respect of the proposed development.*
- (3) *The socio-economic impact statement that the consent authority considers must do at least the following:*
- (a) *identify the likely future impacts of the development on the affected community,*
 - (b) *analyse the impacts in terms of magnitude, significance, duration, effect on current and future conditions and community services, and the like,*
 - (c) *determine if the impacts will cause a loss of amenity within the locality due to a net reduction in community services and facilities,*
 - (d) *determine and assess possible measures for the management or mitigation of likely impacts.*

The applicant has stated that:

“The proposal is considered unlikely to have any negative social impacts given that it entails a reduction in the number of sites and will continue, once approvals are appropriately in place to provide for a mix of housing types across varying price points.

Given that the proposal seeks only to reduce the yield and that such a move undoubtedly provides for positive environmental impacts, no detailed socio economic impact assessment has been undertaken.

An assessment pursuant to the checklist contained within Council’s DCP has been undertaken and can be found at Appendix H to this submission.”

The applicant’s comments are concurred with. The subject S96’s do not represent a significant social or economic impact and thus do not necessitate a detailed socio economic impact.

It is acknowledged that when consideration is given to the additional (external) material available (for example the advertising material) the change between the old Banora Point Caravan Park and the likely built form is quite different. However, the site is currently vacant and can be lawfully re-developed subject to the proper approvals being obtained. Were this application for a new caravan park a socio economic assessment would be required. However, the applications before Council are S96 Amendments to a previously approved Caravan Park. The S96’s do not seek approval for the ultimate built form and merely seek approval for a reconfigured park.

On this basis the S96's are considered to satisfy the provisions of Clause 17.

Clause 22 Development near Designated Roads

The subject site is adjacent to the road described as the Old Pacific Highway. This road is now essentially a suburban street.

The access to the site has been authorised by way of a S138 Approval.

The proposed S96 Application seeks to reduce the number of approved sites from 180 to 148. This change could theoretically reduce the overall traffic accessing the site, however, should the ultimate built form comprise manufactured homes each with three bedrooms traffic numbers may be similar to that previously approved or slightly higher.

Either way the existing road carriageway is capable of accommodating the proposed modification.

The applicant has completed a review of Clause 22 and concluded that the proposed modification satisfies Clause 22. This assessment is concurred with.

Clause 25 Development in Zone 7(a) Environmental Protection (Wetlands and Littoral Rainforests) and on Adjacent Land.

(1) *Objective*

- *to ensure that wetlands and littoral rainforests are preserved and protected in the environmental and economic interests of the area of Tweed.*

(2) *Unless it is exempt development, a person must not clear vegetation from, drain, excavate or fill land within Zone 7 (a) except with development consent.*

(3) *Consent must not be granted to the carrying out of development on land within Zone 7 (a) or on land adjacent to land within Zone 7 (a) unless the consent authority has taken into consideration:*

- (a) *the likely effects of the development on the flora and fauna found in the wetlands or littoral rainforest, and*
- (b) *the potential for disturbance of native flora and fauna as a result of intrusion by humans and domestic and feral animals, increased fire risk, rubbish dumping, weed invasion and vegetation clearing, and*
- (c) *a plan of management showing how any adverse effects arising from the development can be mitigated, and*
- (d) *the likely effects of the development on the water table, and*
- (e) *the effect on the wetlands or littoral rainforest of any proposed clearing, draining, excavating or filling.*

The applicant has stated that:

“The existing park adjoins land zoned 7(a) under the Tweed LEP 2000. The proposal seeks to simply modify the existing approved layout so as to reduce the approved number of sites. No expansion beyond the approved development footprints is proposed as demonstrated within the attached overlay plans. Given that this application seeks to modify only (as opposed to a standalone new development proposal), it is considered that the proposal will not have any impact upon the adjacent wetlands.

In this regard it is pertinent to again note that the proposed modification does not seek to comprise any clearing, filling or draining of the site. We also note that Council has approved the carrying out of servicing works to each of the proposed amended allotments as demonstrated in the plans and approvals attached at Appendix I to this submission.

A plan of management as referred to in Sub clause 3(c) above has been prepared and is contained within Appendix J to this submission. This plan of management contains a particular focus on the ongoing management of the interface between the site and the adjacent wetland, with works proposed (and management measures relating to same) within the Tweed River foreshore to be subject to a separately prepared plan of management associated with potential foreshore dedication linked to ongoing discussions with the Department of Lands.”

The above comments are generally concurred with.

Council’s Specialist Planner/Ecologist has reviewed the application and imposed the necessary conditions of consent to ensure management plans are enforced, adequate setbacks to the Tweed River are achieved and edge effects are minimised.

The NSW Rural Fire Service has imposed a General Term of Approval that specifies:

“2. At the commencement of building works and in perpetuity the existing Crown Road Reserve shall be managed as an inner protection area (IPA) as outlined within Appendices 2 & 5 of Planning for Bush Fire Protection 2006 and the NSW Rural Fire Service’s document Standards for asset protection zones.”

Bushfire Hazard Reduction (that is not exempt development) is permissible with consent in the 7(a) zone. Accordingly this S96 Application includes any necessary bushfire hazard reduction on the part of the Crown Road Reserve zoned 7(a). Such work shall be in accordance with the sites management plans and shall not impact on the ecological integrity of any other adjoining blocks of land.

Appropriate conditions of consent have been recommended to ensure the objectives of the 7(a) zone are met.

Clause 31 Development Adjoining Waterbodies

Clause 31 of Tweed LEP 2000 provides that consent must not be granted to land that adjoins the mean high water mark of a waterbody, within such distance as is determined by the consent authority of the mean high water mark unless it is satisfied that (amongst other things):

“adequate arrangements for public access to and use of the foreshore areas have been made in those cases where the consent authority considers that public access to and use of foreshore areas are appropriate and desirable requirements”.

As provided by LPMA, provision of a foreshore reserve would establish continuous public foreshore access in this location. In accordance with the original consent the appropriate distance is considered to be 20m (formerly one chain). This is contrary to the current Tweed River Estuary Management Plan which requires a 50m setback, however, the site benefits from existing consents and the current S96 does not vary the previously adopted setback provision.

Another application over the same land parcel DA09/0064 sought approval for two swimming pools and a foreshore esplanade. This application was referred to DECCW as it involved works that would potentially require a Controlled Activity Approval under the Water Management Act. DECCW General Terms of Approval required provision of a Vegetation Management Plan for the foreshore and implementation of revegetation works, amongst other things. It is considered appropriate that these conditions be included within the current modification application and accordingly they are included in the recommended conditions of consent.

Subject to the recommended conditions of consent Clause 31 is considered to have been adequately addressed.

Clause 34 - Flooding

The subject site has a design flood level of RL 2.8m AHD.

Council's current practice for approving the filling of land in Banora Point to increase flood immunity is to impose minimum fill requirements to design flood level. It is understood that approximately 0.3m of additional fill has been generally applied across the site to achieve a finished ground level of approximately RL 3.0m AHD.

The new fill exceeds Council's existing design flood level and therefore appears to meet current DCP-A3 requirements.

Given the site has been filled to at least design flood level, and the site's proximity and access to high land (Sextons Hill), there are no outstanding issues with regard to flooding.

The applicant will be required to prepare a flood evacuation plan for licensing purposes.

In DCP-A3 TSC requires the following information as part of a "Flood Response Assessment Plan":

- Expected number of occupants
- Typical demographics of occupants (families with children, retirees etc)
- 100 year ARI flood level and PMF level for the development site (RL 2.8m AHD and RL 5.4m AHD respectively)
- Nominated Flood Risk Management Approach for the development (avoidance, evacuation, shelter in place. Note that rescue is not an appropriate response for any development type)

- For evacuation, provide detail of nearest evacuation centre (as advised by the NSW State Emergency Service), the intended mode of transport to the centre, and indicative ground/road levels at significant points along the nominated evacuation route.
- Any special requirements for evacuation centre to cater for evacuees (food, water, waste, medicines etc)
- If shelter in place, provide details of refuge in accordance with Note 2 or Note 4 as applicable.

It is further noted that the applicant has previously upgraded stormwater drainage throughout their internal road system, including installing treatment devices prior to discharge to the river. Such works have been confirmed by way of a s68 Approval.

The current S96 Applications are adequate having regard to Clause 34 of the Tweed LEP 2000.

Clause 35 - Acid Sulfate Soils

The subject site is mapped as a Class 2 Acid Sulfate Soils area.

The proposed S96 Applications do not seek approval for any works that would interfere with acid sulfate material.

In assessing the current S96's Council Environmental Health Officers have been trying to ensure that any previously placed fill was free from contaminates (including acid sulfate soils). Sufficient documentation has now been provided by the applicant which demonstrates that the site is free from contaminates.

Clause 35 is considered satisfied.

Clause 39 – Remediation of Contaminated Land

As detailed above TSC has been trying to ensure that any previously placed fill was free from contaminates (including acid sulfate soils). Sufficient documentation has now been provided by the applicant which demonstrates that the site is free from contaminates.

Clause 39 is considered satisfied.

Clause 39A Bushfire Protection

The subject site is a mapped bushfire prone area.

In accordance with Planning for Bushfire Protection Guidelines 2006, Asset Protection Zones for the Special Fire Protection Purpose of a caravan park would usually require the development to be set back 50m from the bushfire hazard. The Bush Fire report provided with the application has considered the development as infill and used "exceptional circumstances" to justify 21 lots being in the "Flame Zone" (3m setback only) such that they would require construction provisions above the highest nominated Level 3 construction standard. Because caravans, moveable dwellings or manufactured homes may be built on the site without further consent, the provisions of S100B requiring referral to the Rural Fire Service would not be invoked and thus the detailed provisions within the plan will not be applied at the time of dwelling construction. Such provisions must thus be considered within the current application.

Accordingly the application was referred to the NSW Rural Fire Service who have provided General Terms of Approval which form part of the recommendation for approval.

It is noted that once dwellings exist on the site, the level of hazard to residents will be a cause for concern such that pressure may be placed upon adjoining Crown Land containing the Endangered Ecological Communities Littoral Rainforest and Swamp Sclerophyll Forest for provision of APZ's external to the development site, and thus the management of these lands for conservation value may be compromised (as has occurred on Council-owned SEPP 14 lands elsewhere). This should be prevented through provision of a flame proof boundary fence. A fence preventing resident access into the reserve has been previously conditioned but not built; therefore this aspect has been conditioned.

The applicant's bushfire report recommends that the entire site should be managed as an Inner Protection Area, which may conflict with requirements for revegetation of the foreshore. It is not appropriate for such a requirement to apply such that removal of native vegetation of high conservation value (mangroves, wetland or littoral rainforest species etc.) would be required and this aspect has been conditioned.

The NSW Rural Fire Service General terms of Approval only require the Crown Land to be maintained as an Inner protection Area and therefore existing foreshore vegetation and revegetation should be retained as per the recommended conditions.

Subject to the recommended conditions of consent Clause 39A is considered to have been adequately addressed.

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The proposed caravan park is not governed by this Section of the DCP.

A2-Site Access and Parking Code

Parking will need to be in accordance with the Regulations for Caravan Parks this will be enforced through the licensing provisions.

A3-Development of Flood Liable Land

The site has been filled in excess of the design flood level. Appropriate evacuation plans will be enforced through the licensing provisions.

A11-Public Notification of Development Proposals

The proposed S96 Applications were advertised in accordance with Clause 8(2) of the Tweed LEP 2000. Two submissions were received and are considered later in this report.

A13-Socio-Economic Impact Assessment

As detailed in the above report the applications before Council are S96 Amendments to a previously approved Caravan Park. The S96's do not seek approval for the ultimate built form and merely seek approval for a reconfigured park.

On this basis a detailed socio economic assessment was not required. A merit assessment and a review of the applicant's checklist for socio economic matters was considered adequate to determine that the subject application satisfies Clause 17 of the Tweed LEP 2000 and Tweed DCP Section A13.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 15: Rivers, streams and wetlands

This Clause states:

The council shall not consent to an application to carry out development for any purpose within, adjoining or upstream of a river or stream, coastal or inland wetland or fishery habitat area or within the drainage catchment of a river or stream, coastal or inland wetland or fishery habitat area unless it has considered the following matters:

- (a) the need to maintain or improve the quality or quantity of flows of water to the wetland or habitat,*
- (b) the need to conserve the existing amateur and commercial fisheries,*
- (c) any loss of habitat which will or is likely to be caused by the carrying out of the development,*
- (d) whether an adequate public foreshore reserve is available and whether there is adequate public access to that reserve,*
- (e) whether the development would result in pollution of the wetland or estuary and any measures to eliminate pollution,*
- (f) the proximity of aquatic reserves dedicated under the [Fisheries Management Act 1994](#) and the effect the development will have on these reserves,*
- (g) whether the watercourse is an area of protected land as defined in section 21AB of the [Soil Conservation Act 1938](#) and any measures to prevent soil erosion, and*
- (h) the need to ensure that native vegetation surrounding the wetland or fishery habitat area is conserved, and*
- (i) the recommendations of any environmental audit or water quality study prepared by the Department of Water Resources or the Environment Protection Authority and relating to the river, stream, wetland, area or catchment.*

The subject site has previously been reviewed by DECCW. As part of previously recommended conditions of consent DECCW required provision of a Vegetation Management Plan for the foreshore and implementation of revegetation works, amongst other things. It is considered appropriate that these conditions be included within the current modification application and accordingly they are included in the recommended conditions of consent.

The Department of Industry and Investment NSW (I&I NSW), formerly NSW Fisheries have also requested that this foreshore area be conditioned. Accordingly the following conditions are recommended:

No temporary or permanent dwelling or private facility or other structure apart from the perimeter road is permitted within 20m of the Mean High Water Mark of the Tweed River.

Provision must be made for traversable public pedestrian access to and along the foreshore of the Tweed River adjacent the full length of Lot 5 DP 828639 and Lot 382 DP 755740 being the land the subject of this development.

S68 Approvals have regulated the quality of water being discharged from the site to ensure adequate environmental protection measures are in place.

Subject to the recommended conditions of consent the proposed modification is considered suitable having regard to Clause 15 of the SEPP/REP.

Clause 32B: Coastal Lands

The proposed modification does not restrict access to a foreshore nor overshadow a foreshore area. Having regard to the NSW Coastal Policy 1997, the Coastline Management Manual, and the North Coast: Design Guidelines. The proposed S96 Applications are suitable for approval.

Clause 33: Coastal hazard areas

This clause specifies that:

Before granting consent to development on land affected or likely to be affected by coastal processes, the council shall:

- (a) take into account the Coastline Management Manual,*
- (b) require as a condition of development consent that disturbed foreshore areas be rehabilitated, and*
- (c) require as a condition of development consent that access across foredune areas be confined to specified points.*

The site adjoins the Tweed River and would be affected by climate change and any change in sea level. However, the site is not mapped as part of the Coastal Erosion Mapping.

Therefore subject to the site being designed above the design flood level (with adequate egress provisions) the proposed modification is considered suitable in regards to coastal hazards and the provisions contained within the Coastline Management Manual.

Clause 43: Residential development

This clause specifies that:

- (1) *The council shall not grant consent to development for residential purposes unless:*
 - (a) *it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land,*
 - (b) *it is satisfied that the proposed road widths are not excessive for the function of the road,*
 - (c) *it is satisfied that, where development involves the long term residential use of caravan parks, the normal criteria for the location of dwellings such as access to services and physical suitability of land have been met,*
 - (d) *it is satisfied that the road network has been designed so as to encourage the use of public transport and minimise the use of private motor vehicles, and*
 - (e) *it is satisfied that site erosion will be minimised in accordance with sedimentation and erosion management plans.*

The proposed modification (Caravan Park) is suitably located to ensure adequate access to services. Furthermore, the subject site is suitable for the proposed modification subject to the recommended conditions of consent.

Clause 75: Tourism development

The Clause specifies that

- (1) *The council must not grant consent to tourism development unless it is satisfied that:*
 - (a) *adequate access by road, railway or water transport (or any combination of them) exists or will be provided to service the development, taking into account the scale of the development proposed, and*
 - (b) *if the proposal involves permanent residential accommodation, all social and community services reasonably required by those residents exist in close proximity to the development, and*
 - (c) *the development will not be detrimental to the scenery or other significant features of the natural environment, and*
 - (d) *reticulated water and sewerage are available, or arrangements satisfactory to the council have been made for the provision of those facilities.*
- (2) *In considering an application for consent to tourism development, the council must have regard to principles contained in the Tourism Development Along the New South Wales Coast: Guidelines.*
- (3) *The council must not approve an application for large scale resort development unless it is within or adjacent to a prime tourism development area or adequate urban services are available.*

The proposed modification (Caravan Park) is suitably located to ensure adequate access to all necessary services. The proposed amendment is in keeping with the existing lawful use.

Clause 81: Development adjacent to the ocean or a waterway

- (1) *The council shall not consent to a development application for development on land within 100 metres of the ocean or any substantial waterway unless it is satisfied that:*
 - (a) *there is a sufficient foreshore open space which is accessible and open to the public within the vicinity of the proposed development,*
 - (b) *buildings to be erected as part of the development will not detract from the amenity of the waterway, and*
 - (c) *the development is consistent with the principles of any foreshore management plan applying to the area.*

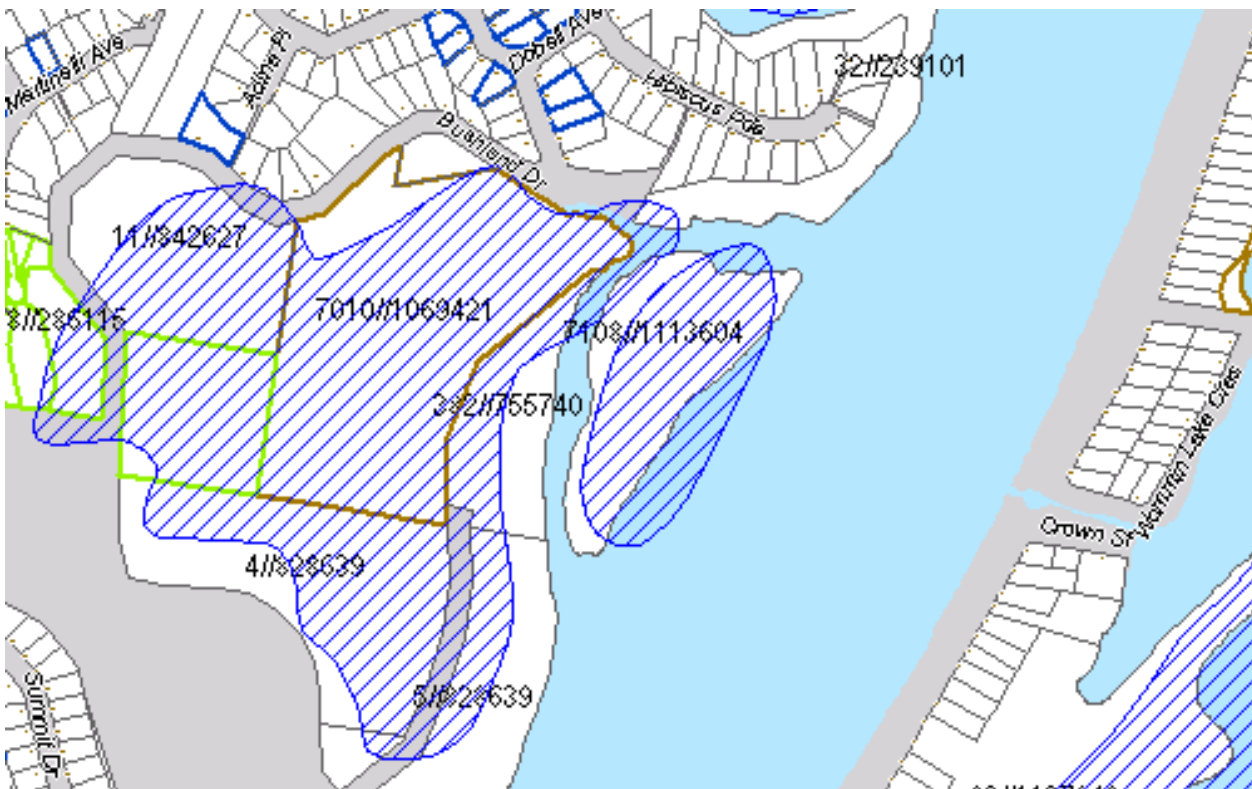
Appropriate conditions of consent have been recommended to ensure adequate foreshore space is managed in accordance with appropriate management plans.

This application does not seek approval for the ultimate built form as this will be assessed as part of the licensing provisions.

In summary the proposed S96 Application is considered acceptable having regard to the provisions contained within the SEPP REP.

SEPP No. 14 - Coastal Wetlands

SEPP 14 Coastal Wetland mapping overlaps the northern and western extent of the proposed modification site as shown below:



Civil Engineering Plans accompanying the applications indicate filling over the site including SEPP 14 mapped land totalling 24,795sq.m and earthworks involving cut of 15,140sq.m. Such works within SEPP 14 land would generally require concurrence and be considered designated development, however, the work has already been undertaken and approval must be considered as having been given within the 1986 consent (T4/2794) which required the site to be filled to the minimum design flood level of 3m AHD.

Draft guidelines prepared by DIPNR (2004) provide guidance in determining whether a development application is affected by SEPP 14. This is required as SEPP 14 boundaries are based on 1:25 000 hard copy maps. At a site scale, this “theoretical” on-ground boundary line is considered the centre line of a 50m wide “potential boundary zone”. Therefore, if the development application affects land within approximately 25m of the “theoretical” on-ground boundary line of a SEPP 14 wetland it may be considered within the “field identified boundary” of the SEPP 14 wetland if certain field recognition criteria are satisfied.

Field recognition criteria in DIPNR’s draft guidelines suggests that the disturbance footprint of the development application, whilst still within the “potential boundary zone” of the SEPP14 wetland, is not considered SEPP 14 wetland due to the absence of wetland vegetation. However Casuarina and Mangrove Forest occurs adjacent the site to the north and west, both being vegetation types included within field recognition criteria of SEPP 14 Coastal Wetlands. From a review of aerial photography and a site visit, wetland vegetation types protected under SEPP 14 may extend marginally into the site subject to the development application and any impacts must be avoided. This aspect has been conditioned.

The proposed S96 Applications are therefore not affected by SEPP 14.

SEPP No. 21 - Caravan Parks

Below is a series of relevant extracts from the document

- (1) *The aim of this Policy is to encourage:*
 - (a) *the orderly and economic use and development of land used or intended to be used as a caravan park catering exclusively or predominantly for short-term residents (such as tourists) or for long-term residents, or catering for both, and*
 - (b) *the proper management and development of land so used, for the purpose of promoting the social and economic welfare of the community, and*
 - (c) *the provision of community facilities for land so used, and*
 - (d) *the protection of the environment of, and in the vicinity of, land so used.*

- (2) *The strategies by which that aim is to be achieved are:*
 - (a) *(Repealed)*
 - (b) *by requiring that development consent be obtained from the local Council for development for the purposes of caravan parks, and*
 - (c) *by providing that development consent may be granted that will authorise the use of sites for short-term stays (whether or not by tourists) or for long-term residential purposes, or for both, and*

- (d) *by requiring that development consent be obtained from the local Council for the subdivision of land for lease purposes under section 289K of the [Local Government Act 1919](#).*

caravan park means land (including a camping ground) on which caravans (or caravans and other moveable dwellings) are, or are to be, installed or placed.

- (2) *Before granting development consent to the use of land for the purposes of a caravan park, a Council must determine:*
 - (a) *the number of sites (if any) within that land that the Council considers are suitable for long-term residence, within the meaning of the Local Government (Caravan Parks and Camping Grounds) Transitional Regulation 1993, and*
 - (b) *the number of sites (if any) within that land that the Council considers are not suitable for long-term residence, but are suitable for short-term residence, within the meaning of that Regulation.*

9 Subdivision of caravan parks for lease purposes

- (1) *Land may be subdivided for lease purposes under section 289K of the [Local Government Act 1919](#), but only with the development consent of the Council.*
- (2) *A Council must not grant such a development consent unless the Council is satisfied that each of the lots intended to be created for lease purposes by the proposed subdivision meets the requirements of the Local Government (Caravan Parks and Camping Grounds) Transitional Regulation 1993 for a site to be used for long-term residence.*

10 Matters to be considered by Councils

A Council may grant a development consent required by this Policy only after it has considered the following:

- (a) *whether, because of its location or character, the land concerned is particularly suitable for use as a caravan park for tourists or for long-term residence,*
- (b) *whether there is adequate provision for tourist accommodation in the locality of that land, and whether existing or potential tourist accommodation will be displaced by the use of sites for long-term residence,*
- (c) *whether there is adequate low-cost housing, or land available for low-cost housing, in that locality,*
- (d) *whether necessary community facilities and services are available within the caravan park to which the development application relates or in the locality (or both), and whether those facilities and services are reasonably accessible to the occupants of the caravan park,*
- (e) *any relevant guidelines issued by the Director, and*
- (f) *the provisions of the Local Government (Caravan Parks and Camping Grounds) Transitional Regulation 1993.*

The proposed Section 96 Applications can comply with the aims of SEPP 21.

The applications seek consent for 148 long term sites.

No lease is proposed as part of this application.

In regards to the matters for consideration the following responses are provided:

- (a) The site is suitable for long term residence and has access to all essential services.
- (b) The Tweed Coast currently has adequate provision for tourist accommodation. More recently Council has been advised by various local consultants that there is an oversupply of tourist accommodation and accordingly Council have been inundated with requests to convert tourist units into residential units.
- (c) The subject application does not seek approval for the ultimate built form of the subject site. The subject application only seeks approval for a reconfigured caravan park layout. There is no definitive advice that enables Council to confidently have regard for additional (external material i.e. advertising material) in assessment of this application.

Furthermore, there is no definition to define low cost housing.

A more familiar term is affordable housing.

The Act defines affordable housing as *housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument.*

The Department of Planning has recently produced documents such as SEPP (Affordable Rental Housing) 2009 which encourages new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

The proposed modification has not been lodged under this SEPP. This application seeks to reconfigure a previously approved caravan park. Assessing the future built form within this application against low cost housing criteria is not possible without looking to external additional material which is not necessary a lawful option.

Tweed Shire is a beautiful coastal area which has seen an increase in development pressure and an increase in the value of property as more people strive to move to the area.

The requirement to provide affordable housing does not rest on single developers and should be addressed under state, regional and local policies.

Locally Tweed Shire Council has not adopted an affordable housing policy and therefore affordability needs to be addressed by way of providing a variety of housing options across the whole shire not necessarily variety within every site.

The proposed modification only seeks an approval for a revised caravan park layout. The ultimate built form will be subject to a separate process, however, should the applicant proceed with the advertised product (in a lawful manner) then the proposed built form offers an alternative housing choice for residents within the shire and thus is considered acceptable.

- (d) Adequate services are available in the caravan park.
- (e) All applicable legislation has been considered.
- (f) An assessment against the Regulations has been undertaken and the proposed caravan park layout is therefore considered capable of accommodating a compliant built form.

Therefore, based on this assessment the proposed modification is considered suitable having regard to SEPP 21.

SEPP No. 44 - Koala Habitat Protection

The site adjoins land mapped as a secondary habitat for Koala's. Any bushfire hazard reduction work within the 7(a) land would need to have regard for the protection of habitat in adjoining properties.

SEPP No. 55 - Remediation of Land

The subject site is considered free of contaminates.

SEPP No 71 – Coastal Protection

Having regard to Clause 8 Matters for Consideration under SEPP 71 provision of a foreshore reserve would establish continuous public foreshore access in this location. In accordance with the original consent the appropriate distance is considered to be 20m (formerly one chain).

Subject to the recommended conditions of consent the proposed modification (s96's Modifications) is considered to satisfy the provisions of SEPP 71.

Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds And Moveable Dwellings) Regulation 2005

The applicant and Council have undertaken an assessment of the revised caravan park layout having regard to these regulations. Based on the information available it appears that the proposed layout is capable of accommodating a complying caravan park.

The advertised product ("River") may not necessarily achieve compliance with these provisions and accordingly the applicant may have to redesign the ultimate built form to achieve compliance with these Regulations.

Such matters will be addressed through the licensing and S68 provisions as required by the conditions of this consent.

Minimal Environmental Impact

The above 79C Assessment has demonstrated that the proposed modification will have minimal environmental impact subject to enforcement of the recommended conditions of consent.

Substantially the Same Development

Having regard for this criteria the applicant has provided that the proposed variations result in substantially the same development on the basis that:

- *The Development remains as a Caravan Park;*
- *The extent and general form of the development remains the same as that approved;*
- *The proposed amendments do not raise any environmental issues which have not already been investigated with the previous assessment of the proposal; and*
- *The changes to the layout of the allotments and internal road network are modest and are essentially the same as those originally approved.*

These are reasonable arguments to support these S96 Applications.

Council's attached legal advice reviews this matter in detail. It presents a finely balanced argument yet states that a more thorough examination is needed to examine the development purpose for which the modifications are sought i.e. the ultimate land use (which the applicant has asked Council to ignore for the purposes of this S96).

The subject site is presently vacant and whilst it previously contained modest caravans and cabins the land owner is entitled to re-develop their land. Council's obligation at this stage is to ensure any consent issued relates to a caravan park and a caravan park layout that is substantially the same as the existing development consents.

This can be achieved within the scope of these S96 Applications.

Firstly, the Caravan Park layout is certainly substantially the same as the existing approved layout. And secondly the S96 Determination Notice can clearly condition and re-enforce the nature of the consent which is for the purposes of a Caravan Park.

The future built form will need to be in accordance with all the applicable legislation applying to Caravan Parks.

Therefore it is recommended that in this instance the applicant's justification for substantially the same development is adopted and the applications be dealt with via S96 (1A) of the Act.

Submissions

The S96 Applications were jointly advertised and notified to nearby residents between 2 September 2009 and 16 September 2009. During this period Council received two (2) written submissions to the proposed amendments.

The issues raised in the submissions are detailed as follows:

Issue	Assessment
<p><i>Park Ownership – The application was prepared for Acegrange Constructions and specifically nominates Acegrange Construction as the owner of the property</i></p>	<p>The Application form nominates the applicant as Acegrange Constructions C/O Planit Consulting; however, the owner of the property is correctly listed as Lifestyle Resorts Australia and the Department of Lands (for the unnamed road which is Crown Land).</p> <p>Both Lifestyle Resorts Australia and Department of Lands have consented to the lodgement of the S96 Applications and accordingly Council is in a position to determine the applications.</p> <p>This objection does not warrant refusal or amendment of the applications.</p>
<p><i>The applicant's intention is to build a gated residential waterfront village. This is evidenced in the applicants Plan of Management and on the web.</i></p>	<p>As detailed in the above report Council is aware of the extra information available in relation to the applicant's intention for the subject site.</p> <p>This application seeks approval for a reduction in the number of sites within a previously approved caravan park. Any amendment to this application retains the site as a caravan park.</p> <p>The future built form within the caravan park will need to be considered by Council at the time of licensing.</p> <p>This objection specifically represents the finely balanced arguments as documented within the above report. However, on review the subject application is considered to warrant conditional approval.</p> <p>This objection does not warrant refusal or amendment of the applications.</p>
<p><i>Extra material available on the web conflicts ("River" - frequently asked questions) with the information within the S96 Applications.</i></p>	<p>As detailed in the above report Council is aware of the extra information available on the web in relation to the subject site.</p> <p>Council has reviewed the S96 Applications (as submitted) and assessed them on their merits while having regard to the applicable planning instruments.</p> <p>On balance it is recommended that these applications be approved subject to conditions of consent.</p> <p>This objection does not warrant refusal or amendment of the applications.</p>
<p><i>The removal of 18 short term sites and 14 long term sites to create a gated residential village is clearly not substantially the same development.</i></p>	<p>The above report has examined the "substantially the same test" having regard to the applications as submitted.</p> <p>Based on this review the applications are considered to satisfy this test and accordingly the applications have been recommended for conditional approval.</p> <p>This objection does not warrant refusal or amendment of the applications.</p>
<p><i>The proposed modifications and publically stated future use of the park fail to meet the requirements of SEPP 21, Tweed LEP 2000 and the Local Government (Manufactured Home Estates, Caravan parks, Camping Grounds and Moveable Dwellings) regulation 2005.</i></p>	<p>The above report has examined the objectives of the applicable planning instruments.</p> <p>Based on this review the applications are considered to satisfy this test and accordingly the applications have been recommended for conditional approval.</p> <p>This objection does not warrant refusal or amendment of the applications.</p>

Issue	Assessment
<p><i>The application is reliant on a land exchange as indicated on drawing 12797 - 14D, this appears to be subjective and may not eventuate.</i></p>	<p>Whilst the application details a possible land exchange between the applicant and the Department of Lands the appropriate owners consent from the Department of Lands has been received for the subject applications.</p> <p>The merits of the proposed S96 Application to reduce the overall sites from 180 sites to 148 sites do not rely on the land exchange. Such an arrangement could occur at any time subject to agreement between the parties.</p> <p>This objection does not warrant refusal or amendment of the applications.</p>
<p><u>Site Stress (Density)</u></p> <p><i>The proposed development will result in more people despite having less sites given the 3 and 4 bedroom dwellings.</i></p>	<p>The caravan park has approval for 180 caravan site. Assuming 2 people per site this would equate to 360 people over the entire property at any given time.</p> <p>The proposed S96 reduces the number of sites to 148.</p> <p>Having regard to the applicants advertising material the future structures (subject to a separate application) are 3 and 4 bedroom dwellings. Council's Urban Land Release Strategy assumes 2.6 people per dwelling (on average) which would equate to 384.8 people at any given time.</p> <p>The potential increase in population and (regularity of that higher population) is relatively minor (24.8 people) and on merit would be considered acceptable.</p> <p>This objection does not warrant refusal or amendment of the applications.</p>
<p><u>Affordable Housing</u></p> <p><i>The concept of selling 148 homes with a starting price of \$385,000 where previously caravans and manufactured homes could be installed for between \$30,000 and \$100,000 does not meet the requirement for low cost housing.</i></p>	<p>This matter has been addressed in the report above.</p> <p>The subject application does not seek approval for the ultimate built form of the subject site. The subject application only seeks approval for a reconfigured caravan park layout. There is no definitive advice that enables Council to confidently have regard for additional (external material i.e. advertising material) in assessment of this application.</p> <p>The Department of Planning has recently created documents such as SEPP (Affordable Rental Housing) 2009 to offer incentives for developers to supply affordable housing. However, the subject application has not been lodged under such a scheme.</p> <p>Should the applicant proceed with the advertised product (in a lawful manner) then the proposed built form offers an alternative housing choice for residents within the shire and thus is considered acceptable.</p> <p>This objection does not warrant refusal or amendment of the applications.</p>
<p><u>Tourist Accommodation</u></p> <p><i>The loss of short term sites will be sorely missed as there are no other short term stay accommodation options in Banora Point.</i></p>	<p>Tweed Shire Council does not have a requirement for a certain percentage of development to be short term versus long term accommodation. This is normally a factor determined by market forces.</p> <p>Council has zoned land across the shire which permits tourist accommodation the ultimate utilisation of this opportunity will always rest with market forces.</p> <p>This objection does not warrant refusal or amendment of the applications.</p>

Issue	Assessment
<p><u>Intended Future Use & Permissibility</u></p> <p><i>What is the intended future use of the park? Caravan park long term residential sites are distinctly different to a residential village. 148 x 3 or 4 bedroom homes is either a manufactured home estate or residential estate.</i></p> <p><i>The land in question has a Tweed LEP 2000 zoning of 6(b) and 7(a) respectively and either zoning precludes a manufactured home estate or residential village</i></p>	<p>The above report clearly balances the assessment of the proposed S96 Application (which seeks to reduce the overall sites to 148 from 180) verses the known information about the ultimate built form.</p> <p>The application which requires determination seeks a change in the number of sites within a caravan park.</p> <p>The land use has always been defined as a caravan park and will continue to be defined as a caravan park under the subject S96 Applications.</p> <p>A caravan park is a permissible land use within the subject zone (subject to consent and subject to Clause 8(2) of the Tweed LEP 2000).</p> <p>It is further noted that a manufactured home (which may be part of the future built form) is allowed to be assembled within an approved caravan park.</p> <p>Therefore as detailed within the above report the subject S96 applications are considered permissible with development consent.</p> <p>This objection does not warrant refusal or amendment of the applications.</p>
<p><u>Misleading Information</u></p> <p><i>It appears that Council is being given misleading information.</i></p>	<p>As detailed in the above report Council is aware of the extra information available in relation to the applicant's intention for the subject site.</p> <p>However, based on the manner in which the S96's have been lodged and the merits of that application the applications are recommended for conditional approval.</p> <p>This objection does not warrant refusal or amendment of the applications.</p>

In addition to the one objection summarised above the NSW Land & Property Management Authority (Crown Lands Division) wrote to Council during the exhibition period in addition to providing owners consent initially.

The department raised the following matters for consideration:

- SEPP 14 wetland and other sensitive environmental values on adjoining Crown land and any potential adverse impacts from adjoining development;
- Bushfire Risk Management and incursions from noxious pests and weeds;
- Suitable boundary fencing to contain unauthorised encroachments and address uncontrolled access by caravan park residents and pets;
- Stormwater discharge prevented from encroaching Crown land;
- Appropriate asset protection zones and environmental buffers within the development site itself;
- Possible land exchange between the unnamed crown road and the foreshore;

All of the above issues have been considered as part of the assessment of these Section 96 Applications. The issues are not considered to warrant further amendment or refusal and subsequently the current S96 applications are recommended for conditional consent.

OPTIONS:

1. Approve the S96 Applications in accordance with the recommended conditions of consent.
2. Refuse the S96 Applications and provide reasons for refusal.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be dissatisfied with the determination of these applications they have a right to make a Class1 Appeal (merit) to the NSW Land & Environment Court.

Should any objector be dissatisfied with the statutory assessment of these applications they have a right to make a Class 4 Appeal (process) to the NSW Land & Environment Court.

POLICY IMPLICATIONS:

The subject S96 Applications have been assessed on their merits having regard for the current legislative framework. This is the same process that would be undertaken for the re-development of any site. Therefore there are considered to be no policy implications associated with these applications.

CONCLUSION:

Each proposed amendment has been assessed on its merits and has been assessed in the context of the variation only, as this is not an opportunity to re-visit the original determinations.

Having balanced and assessed the S96 Applications against the current applicable controls, and the Council's legal advice the application is considered to warrant conditional approval.

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. Confidential Attachment – TSC Legal Advice from HWL Ebsworth Lawyers dated 3 November 2009 (ECM 9693011)
 2. Confidential Attachment – Applicant's Legal Advice (ECM 9693058)
 3. Confidential Attachment – Preliminary Environmental Assessment Proposed Marina, Marine Services & Tourist Facility Banora Point Caravan Park (ECM 9693059)
 4. Development Consent PN1074 no associated plans (ECM 8584897)
 5. Development Consent T4/2794 and Plans (ECM 8584902)
 6. Development Consent D94/0015 and Plans (ECM 8584908)
 7. Council Report 18 November 2008 (ECM 9693053)
 8. Council Report 17 March 2009 (ECM 9693056)
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REPORTS FROM THE DIRECTOR COMMUNITY AND NATURAL RESOURCES

14 [CNR-CM] Murwillumbah Community Centre

ORIGIN:

Director Community and Natural Resources

SUMMARY OF REPORT:

At its meeting of 24 January 2004 Council resolved to engage a design consultant and proceed with the concept for the Murwillumbah Community Centre on the Knox Park site. In March 2007 an assessment was undertaken of three architectural submissions to Tender HQ2006-178 – Murwillumbah Community Centre Expansion – Detailed Design. The assessment panel reviewed and recommended the engagement of Bud Brannigan Architects for the amount of \$126,060 (excl. GST). On 1 May 2007 Bud Brannigan was engaged to undertake the Design Consultancy with work to commence on the concept design only.

The concept has now been developed and the project is at the point where approval is required to complete detailed design. As a period of 2½ years has transpired since the engagement of the architect, and the estimate and scope of work have increased, a variation has been submitted which has increased the total engagement to \$180,900 (excl. GST).

The revised estimate for the project is \$3.1 million of which \$300,000 is funded via a bequest through the Lions Club, \$700,000 funded via asset sales and the remainder, \$2.1 million funded from grants. Council has previously resolved to apply for funding under the Federal Government's Regional Local Community Infrastructure Plan.

There are sufficient funds available from the sale of the Myall Street property to fund the detailed design phase.

RECOMMENDATION:

That Council:-

- 1. Endorses the concept design of the Murwillumbah Community Centre.**
- 2. Authorises Bud Brannigan Architects to proceed to full design under Contract Number HQ2006-178 and approves the variation in cost for the amount of \$54,840 (excl. GST).**

REPORT:

At its meeting of 24 January 2004 Council resolved to engage a design consultant and proceed with the concept for the Murwillumbah Community Centre on the Knox Park site. In March 2007 an assessment was undertaken of three architectural submissions to Tender HQ2006-178 – Murwillumbah Community Centre Expansion – Detailed Design. The assessment panel reviewed and recommended the engagement of Bud Brannigan Architects for the amount of \$126,060 (excl. GST) (refer confidential attachment). On 1 May 2007 Bud Brannigan was engaged to undertake the design consultancy with work to commence on the concept design only.

The concept has now been developed and the project is at the point where approval is required to complete detailed design.

Copies of the concept plans are attached. They detail a long curved building which runs the perimeter of the sports field. The existing building will be retained and modified to match the new facility.

The architect has submitted a revised pricing structure as there has been a period of 2½ years since the initial engagement, the building estimate has increased from \$1,250,000 to \$2,432,000 and scope of work has increased to include green initiatives and retention of the existing building. The total revised fee submitted by the architect is \$180,900 (excl. GST) which is an increase of \$54,840. The increase is appropriate and commensurate with a project of this scale.

The revised total estimate for the project is \$3.1 million of which \$300,000 is funded via a bequest through the Lions Club, \$700,000 funded via asset sales and the remainder, \$2.1 million funded from grants. Council has previously resolved to apply for funding under the Federal Government's Regional and Local Community Infrastructure Plan for the amount of \$1,700,000. The closing date for the grant is 15 January 2010. It is proposed that Council makes application for the amount of \$2,100,000.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

There are sufficient reserves available from the sale of the Myall Street property to fund the detailed design phase.

POLICY IMPLICATIONS:

Nil.

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. Confidential Attachment - memo regarding architectural submissions to Tender HQ2006-178 (ECM 1563642)
 2. Concept Plans (ECM 9691675)
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15 [CNR-CM] Richmond-Tweed Regional Library Service Business Model

ORIGIN:

Community & Cultural Services

SUMMARY OF REPORT:

The Richmond-Tweed Regional Library ("RTRL") provides library services to residents of four (4) local government areas over an area of 3,650 square kilometres servicing the shires of Ballina, Byron and Tweed and the City of Lismore. Evolving from three (3) separate service agreements from the 1970s, RTRL is now not recognised as a legal arrangement under the Local Government Act 1993 or the Library Act 1939. The original agreements indicate, and subsequent legal advice confirms, that the Executive Council responsibility and associated risks and responsibilities for RTRL rest with Lismore City Council. Recent legal advice confirms that the current governance model for RTRL is untenable with Lismore City Council currently exposed to high risk.

In considering the available options it is vital to understand that the current library agreement cannot be amended to reflect current operations and management of RTRL as RTRL is not a legal entity. The Minister for Local Government has also advised that the option of a company limited by guarantee is not valid. The report dealt with three models: the creation of a County Council, Administrative Council and the Shared Services model.

RECOMMENDATION:

That:-

- 1. Council supports the Administrative Council model for the Richmond-Tweed Regional Library Service.**
- 2. Council considers undertaking the role of the Administrative Council should Lismore City Council relinquish its current responsibilities associated with the Richmond-Tweed Regional Library Service.**

REPORT:

Background

The Richmond-Tweed Regional Library ("RTRL") provides library services to residents of four (4) local government areas over an area of 3,650 square kilometres servicing the shires of Ballina, Byron and Tweed and the City of Lismore. Evolving from three (3) separate service agreements from the 1970s, RTRL is now not recognised as a legal arrangement under the Local Government Act 1993 or the Library Act 1939. The original agreements indicate, and subsequent legal advice confirms, that the Executive Council responsibility and associated risks and responsibilities for RTRL rest with Lismore City Council. Recent legal advice confirms that the current governance model for RTRL is untenable with Lismore City Council currently exposed to high risk.

In considering the available options it is vital to understand that the current library agreement cannot be amended to reflect current operations and management of RTRL as RTRL is not a legal entity. The Minister for Local Government has also advised that the option of a company limited by guarantee is not valid.

The AECgroup was engaged by the Regional Library Service to advise the Board on the most appropriate model for the Richmond Tweed Regional Library Service.

Data Gathering

The AEC report was informed by:

- Literature Review: to develop a clear understanding of the current status quo and the requirements for the revised business model.
- Benchmarking Exercise: to develop a clear base model of library service delivery the RTRL performance was benchmarked against the Living Learning Performance Standards 2008-2009.
- Stakeholder Consultations: to develop a clear understanding of all parties of an acceptable, legal business model as a way forward from the current untenable situation consultation was undertaken with representatives from the following key stakeholder groups:
 - RTRL Library Steering Committee
 - State Library of New South Wales
 - Department Local Government
 - Individual member Councils within the RTRL
- Financial Analysis: to establish an indication of the likely financial implications of adopting each of the three models discussed.

Literature Review

Critical findings from the literature review are that RTRL can no longer continue to operate in its current business form and must move to a new Business model. While legal opinions differ between the Crown solicitor and the legal advice sought by RTRL, on a way forward, all legal advice received to date indicates that RTRL is definitely not a legal entity in its current form.

Indeed, this is also recognised in the forward plan for RTRL with detailed specific actions to be undertaken by the Library Director to resolve the issue in the coming twelve months.

Benchmarking Exercise

The high level findings of the benchmarking exercise are compiled in the Table below.

Table E:1: RTRL Performance Standards

Criteria	RTRL Performance against the Living Learning Performance Standards
Opening Hours	Above average
Borrowers as Percentage of the Population	Baseline level (48.4%)
Circulation per Capita	Exemplary
Visits per Capita	Baseline level
Expenditure on library materials per capita	Baseline level for 2009/2010 budget
Total Expenditure on library services per capita	Significantly below the baseline level

Stakeholder Consultations

The complete representation of key stakeholders involved in the consultation meeting are listed in **Table E:2**. *The findings of this consultation informed the Business Plan analysis.*

Table E:2 Key Stakeholders

Organisation	Name	Position	Representing
RTRL Library Steering Committee	Cr. Isaac Smith	Chair Regional Library Committee	Lismore City Council
RTRL Library Steering Committee	Cr Richard Staples	Deputy Chair	Byron Shire Council
RTRL Library Steering Committee	Cr. Susan Meehan	Library Committee Member	Ballina Shire Council
RTRL Library Steering Committee	Cr Katie Milne	Library Committee Member	Tweed Shire Council
RTRL Library Steering Committee	Martin Field	Director, RTRL	RTRL
RTRL Library Steering Committee	Rino Santin	Executive Member	Lismore City Council
RTRL Library Steering Committee	Paul O'Sullivan	General Manager	Lismore City Council
State Library of NSW	Cameron Morley	Acting, Director Public Libraries and Community Learning Services	State Library NSW
NSW State Department of Local Government	Michael Fleming	Director Reform Implementation Executive Branch	Department Local Government
NSW State Department of Local Government	David Alderman	Manager, Investigations and Review	Department Local Government
Ballina Shire Council	Phil Silver Paul Hickey Peter Morgan	Mayor General Manager Finance Manager	RTRL Member Council
Byron Shire Council	Mark Arnold Jim Bolger	Acting General Manager Manager Community Services Finance Manager	RTRL Member Council

Tweed Shire Council	Joan van Lieshout Dot Holdom Mike Raynor David Oxenham Gary Corbett Troy Green	Mayor Councillor General Manager Director Community & Natural Resources Manager Community & Cultural Services Director, Technology & Corporate Services	RTRL Member Council
Lismore City Council	Jenny Dowell Paul O'Sullivan Rino Santin	Mayor General Manager Finance Manager	RTRL Member Council

Business Models

The current RTRL business model has developed out of signed agreements between the member Councils pursuant to the Library Act 1939. Under the terms of the agreements, Lismore City Council acts as the Executive Council and bears the ultimate responsibility and associated risks for the library service under the agreement. Since 1985, the delivery of Library Services by the member Councils has been delegated to the RTRL Library Committee. All parties pay their contributions to the Library Committee, which then directs the operation of the library service through the Library Director. In practice, the RTRL Library Committee has delegated all Library Service operations to the RTRL Library Director who reports regularly to the Committee on service delivery, operations and financial matters.

Before considering the available options it is vital to understand:

- 1. The current library agreement cannot be amended to reflect the current operations and management of RTRL as RTRL is not a legal entity.**
- 2. Advice from the Minister for Local Government has also ruled out the option of a company limited by guarantee.**

The two business models which are considered to meet the established legislative requirements are a County Council and an Administrative Council model. Within the Administrative Council model there is an option for a Shared Services approach. The analysis findings in each case were that the current service delivery standard could remain unchanged.

County Council

The County Council model has support at a local government elected level and has also been identified as the most suitable model to maintain the current structure in a Review of RTRL undertaken in 1995. Since 1995 the State political landscape has changed and the current State Government position is not supportive of creating small Councils, including County Councils. There is also a push for increased shared service models with future amalgamations of Councils in NSW a definite possibility. Implications for RTRL are that any future amalgamation possibilities would include the Richmond Valley Councils and would exclude the Tweed Shire. This has implications for the Tweed Shire in entering into a permanent County Council model at this time.

There is some doubt whether the Library subsidy can be paid to a County Council with the fundamental question of whether a County Council constitutes a Local Authority for the purpose of the Library Act currently being assessed by the Crown solicitor.

In assessing this model the significant time and cost involved in setting up a County Council for the delivery of library services needs to be considered against the current significant risk faced by the Executive Council and the need for this risk to be resolved as quickly as possible.

Given that Ministerial consent for a County Council will not eventuate in the short-term and cannot be guaranteed over the long-term, the County Council model is not ideal at this time.

Administrative Council

The Administrative Council fundamentally changes the current autonomous model under which RTRL operates, with control moving from the Library Committee to the Administrative Council. Under the Administrative Council approach the administration of the library service is embedded within a broader Council administrative framework and has the potential to maintain current staff operational structures, ensuring minimal disruption for library staff and functionality across Shire boundaries and would maintain an inherent flexibility. All library staff would be employed by the Administrative Council.

Significant goodwill must exist between member Councils to ensure that a Service Level Agreement and a new Terms of Reference for the advisory role of the Library Committee could be developed and agreed to quickly. It should be noted that each Council agreed to an ongoing role of the Library Committee, albeit in an advisory capacity.

Early consultations identified support for the Administrative Council model; however, the support was contingent on one of the other Councils acting as Administrative Council as all member Councils recognise the additional risk that would be borne by the Administrative Council.

This model is achievable and does not require Ministerial approval to implement. To ensure maximum effectiveness for the Administrative Council this model would need to be committed to by member Councils for a minimum of 5 years with an option for a further 5 years. This has implications for RTRL in that any future amalgamation possibilities would include the Richmond Valley Councils and would exclude the Tweed Shire. This poses some risk for the Tweed Shire in entering into a long-term Administrative Council model when the makeup of the Administrative Council may change in the long-term. This risk is lessened if Tweed Shire becomes the Administrative Council.

The development and agreement of the Service Level Agreements could take significant time if there is not significant goodwill and trust between all member Councils. The Library Committee would need to agree to an advisory role with new Terms of Reference developed. Recommendation may depend on financial impacts and risks.

Shared Services

The Shared Services model is achievable in the short-term, does not require Ministerial approval to implement and requires significantly less rigorous service level agreements to be put in place, than the Administrative Council model. The Shared Services model also has the potential to be delivered under a County Council model with only the cooperative services being delegated to a County Council to deliver.

However, it fundamentally changes not only the autonomous model under which RTRL currently operates, but also the fundamental regional library operational model. This model relegates the responsibility for the delivery of library services back to the individual member Councils with efficiencies maintained with selected Shared Services such as Library Management System, Mobile Library, and collection acquisition.

Under this model the current staff operational structures will be significantly changed with library staff operating in the branch libraries being employed by the individual Councils and the Shared Services staff being employed by the Council administering / co-ordinating the agreed Shared Services.

Financial Analysis

Implementation Costs

The transition to any of the three models under consideration is almost certain to incur one-off implementation costs. Some of these implementation costs will be common to each of the models while others will vary depending on the model adopted.

One significant cost that is likely to vary according to the chosen model relates to the need for Councillor and Council staff resources in order to reach a mutually acceptable basis for the establishment and operation of the chosen model. Staff resources would be needed for the development of service level agreements and in reaching agreement on the appropriate disposal/allocation of assets. The scale of the establishment costs is likely to be determined by the willingness of each of the four Councils to co-operate when discussing the available options.

Once established a County Council can only be disbanded with Ministerial approval. The permanency of such a structure is likely to require additional resources to ensure the new body is appropriate for all parties and meets the appropriate corporate governance requirements. The need for additional resources is likely to mean the County Council model would take longest to establish and have the highest implementation costs. The requirement that all participating Councils agree to a minimum term as part of an Administrative Council model is also likely to incur significant implementation costs, which although lower than for a County Council, are likely to be higher than for the more flexible Shared Services Model.

Operating Costs

Given the success of the existing service delivery mechanism, it has been determined that where possible no change should be made to the customer facing elements of RTRL. Therefore, it has been assumed the costs of providing these services including purchasing books and other library materials and branch employee expenses would remain the same irrespective of the model adopted. The fundamental differences in the costs associated with each model relate to the functions which support service delivery.

The following table disaggregates constant costs (which remain the same under each model option) and variable costs (likely to change depending on the model implemented).

The changes in the variable costs are principally related to the service delivery support functions. The constant costs are taken from the RTRL 2008-2011 Forward Plan. Employee expenses have been reduced by the costs of the Library Manager's Contract and the salaries and on costs associated with the Regional Librarian, HR Manager and IT staff.

Table ES.3. Estimated Operating Costs Incurred Under each Model

Item	County Council	Administrative Council	Special Services
Constant Operating Costs			
Administration	\$97,900	\$97,900	\$97,900
Salaries and Overhead Expenses	\$3,211,047	\$3,211,047	\$3,211,047
Travelling Expenses & Subsistence	\$16,800	\$16,800	\$16,800
Expenses of Providing Assets	\$140,500	\$140,500	\$140,500
Library Service Working Expenses	\$226,510	\$226,510	\$226,510
Publications	\$260	\$260	\$260
Computer Processing Centre Expenditure	\$185,700	\$185,700	\$185,700
Fixed Assets/ Capital Expenditure	\$925,399	\$925,399	\$925,399
Transfers to Restricted Assets	\$100,962	\$100,962	\$100,962
Variable Operating Costs			
<ul style="list-style-type: none"> • Increased Workover Contributions: Additional costs incurred by Council as employer compared to RTRL. Premium is calculated as percentage of payroll: <ul style="list-style-type: none"> ○ Libraries 1.80% ○ Council 2.89% • SLAs: Service Level Agreements between service provider and service taker. Costs based on: <ul style="list-style-type: none"> ○ 16 hours preparation time (\$75 per hour) ○ 4 hours administration time(\$75 per hour) ○ 4 hours general manager time (\$100 per hour) ○ 1 hours Council time (\$1,000 per hour) 	\$-	\$39,743	\$39,743
	\$14,000	\$14,000	\$14,000

Item	County Council	Administrative Council	Shared Services
<ul style="list-style-type: none"> Dividend: Additional payment above service delivery costs required by service provider to compensate for risks. Estimate based on: <ul style="list-style-type: none"> 2.5% of operating expenses Administrative Council 1.5% of operating expenses Shared Services 	\$-	\$134,303	\$80,582
<ul style="list-style-type: none"> General Manager: Responsible for coordinating the whole library service including both service delivery and support. Estimated cost based on: <ul style="list-style-type: none"> 1 FTE \$120,000 salary plus 30% oncosts^(a) 	\$156,000	\$-	\$-
<ul style="list-style-type: none"> Regional Librarian: Responsible for the coordination of service delivery through the service area. Estimated cost based on: <ul style="list-style-type: none"> 1 FTE \$100,000 salary plus 30% oncosts Note <i>Current Regional Reader Services Manager paid \$86,000 plus 30% oncosts</i> 	\$130,000	\$130,000	\$111,800 ^(b)
<ul style="list-style-type: none"> Local Government Compliance Officer: Responsible for ensuring all processes are fully compliant with the requirements of the Department for Local Government. Estimated cost based on: <ul style="list-style-type: none"> 0.5 FTE \$65,000 salary plus 30% oncosts 	\$42,250	\$ ^(c)	\$ ^(c)
<ul style="list-style-type: none"> Finance Officer: Responsible for the management of Library finances. Estimated cost based on: <ul style="list-style-type: none"> 0.5 FTE \$65,000 salary plus 30% on costs Note: <i>Current finance officer appointed to RTRL paid \$10,800 gross with the current Director RTRL the designated Finance/Accounting Officer</i> 	\$42,250	\$ ^(c)	\$ ^(c)
<ul style="list-style-type: none"> HR Officer: Responsible for all library HR requirements. Estimated cost based on: <ul style="list-style-type: none"> 0.5 FTE \$65,000 salary plus 30% oncosts Currently RTRL HR Manager salary is \$49,000 plus oncosts for 4 days per week 	\$42,250	\$ ^(c)	\$ ^(c)

Item	County Council	Administrative Council	Shared Services
<ul style="list-style-type: none"> • IT Officer: Responsible for all IT services including in branch services. Estimated cost based on: <ul style="list-style-type: none"> ◦ Currently 1FT IT Manager \$82,000 plus oncosts and 1FT Trainee Assistant \$45,000 plus oncosts assumed no change under County Council model ◦ Administrative Council and Shared Services 1.5 FTE IT staff both positions at \$65,000 each as Management position no longer required 	\$165,750	\$126,750	\$126,750
<ul style="list-style-type: none"> • County Council Meeting Attendance Costs: Costs of payments to County Councilors 	\$30,000	\$-	\$-
Constant Operating Costs	\$4,905,078	\$4,905,078	\$4,905,078
Variable Operating Costs	\$605,461	\$444,796	\$372,874
Total Operating Costs	\$5,510,678	\$5,349,874	\$5,277,952

Notes: (a) Current Director's salary \$118,000 plus 30% oncosts (b) The Shared Services Coordinator role is a lesser role than the Regional Librarian role and calculated at 1FTE \$86,000 salary plus 30% oncosts, (c) Councils indicated these roles and costs could be absorbed within existing Council resources
Source: AECgroup

The differences in costs between the models relate to the management functions required to support library service delivery. In the County Council model, these functions are provided internally by the stand alone body. As a result, there are additional costs compared to the other models where consultations suggest these functions could be absorbed within existing Council operations at little additional cost and without the need to recruit additional staff or to secure other accommodation.

The additional costs under each management model show the same order as the establishment costs, with the County Council being more expensive than the Administrative Council and the Shared Services model having the lowest costs and reflect the higher costs involved in establishing the more permanent structures of the County Council and Administrative Services model.

It is essential to recognise these estimates are based on Councils being able to achieve the efficiency savings they identified during consultations and the responsibilities for library services combined with an existing division of Council with the Regional Librarian reporting to an existing Director. If these savings cannot be delivered the costs of services under the Administrative Service and Shared Services models could be significantly higher.

Were the Administrative Council required to increase its staff complement by two FTE positions and a Director, this would increase operating costs by approximately \$247,000 (based on a salary of \$100,000 for the Director and \$45,000 and on costs of 30%). This change would be large enough to make the Administrative Council more expensive than the County Council model and significantly increase the costs of the Shared Services model.

AEC Findings and Recommendations

The following sections provide a summary of the key findings following the analysis of the business model options available to the member Councils.

AEC Findings

1. There will be costs associated with the transition to any new model, in particular the cost of establishing the initial service agreement. The extent of these costs will be determined by the negotiating position adopted by each Council but are likely to be highest for the County Council and Administrative Council, with the establishment costs of the Shared Services model significantly lower.
2. A County Council model on the scale of the RTRL is likely to incur administrative inefficiencies compared to other models which would use the larger size of Council(s) existing support functions to absorb the costs of supporting library service delivery. There is ongoing uncertainty over the legal status of a County Council and its ability to receive the State Government library subsidy as well as an indication that the Department of Local Government may also have objections.
3. The ability of Councils to deliver the stated efficiency savings is a key risk in assessing between models. If Councils are unable to deliver these savings as stated the cost of operating the Administrative Services or Shared Services model could increase significantly.

4. Some Councils indicated they would be unwilling to support the establishment of another County Council unless it could be combined with an existing County Council model. However, the management costs of combining County Councils which cover different geographic areas combined with competing priorities for staff time are thought to make this an unworkable solution. It is also unknown whether this would receive State Government approval.
5. An Administrative Council model, which incorporates a role for the Library Committee, would comply with all relevant legislative requirements, allow member Councils to continue to deliver the existing regional library service while accessing the benefits of economies of scale in the provision of support functions.
6. An Administrative Council model is reliant on a member Council accepting the role including becoming employer to an additional 100 staff and being answerable for service delivery both within and outside of the Council boundary.
7. An Administrative Council model could be established relatively quickly (subject to agreeing terms and conditions), and could be used as a building block towards adoption of a County Council model if there was sufficient interest in pursuing this option over the longer-term.
8. The Shared Services model allows Councils greater control over service delivery within their boundary while accessing efficiency savings in strategic support functions such as procurement and IT support. By becoming employer, each Council would be able to absorb the additional requirement for support within their existing operations.
9. The Shared Services model would be the most flexible, avoiding the extended commitment inherent in the alternative options.
10. The Shared Services model could erode some of the service delivery benefits associated with the regional library approach.
11. The avoided costs associated with the Administrative Council and Shared Service models are dependent upon Councils being able to provide the required support services within their current resources as they have indicated they could do.

AEC Recommendations

1. Given that the current Executive Council is exposed to significant risk which needs to be resolved quickly and the current political landscape, the County Council model should not be pursued as a first option at this time.
2. Councils should establish whether any of the four Councils is willing to act as the Administrative Council.
3. If a Council is willing to act in this role, the Administrative Services model should be pursued as a first option in order to implement a library services management model which is:
 - a. Fully compliant with the terms of the legislation
 - b. Could maintain the current service delivery model
 - c. Would not require the establishment of a new entity

- d. Is not thought likely to incur significant additional operating costs
 - e. Has support at a State Government level
4. If an Administrative Council Model is pursued, a working committee made up of representatives from all four Councils should be established to consider:
- a. The treatment of the HQ building, the mobile library and other RTRL assets
 - b. The appropriate term of any agreement
 - c. The notice period to leave the group
 - d. The appropriate handling of Councils that wish to reduce their payments
 - e. Terms of reference for the Library Committee
5. If no Council is willing to act as Administrative Council, Councils should establish whether any of the four Councils would be willing to accept the administration role in the Shared Services model.
6. If a Council is willing to act in this role, the Shared Services model should be pursued in order to implement a library services management model which is:
- a. Fully compliant with the terms of the legislation
 - b. Would not require the establishment of a new entity
 - c. Is not thought likely to incur significant additional operating costs
 - d. Has support at a State Government level
7. If a Shared Services model is pursued a working committee made up of representatives from all four Councils should be established to consider:
- Which services should be shared and which should become the responsibility of individual Councils.
 - The most appropriate treatment of the HQ building, the mobile library and other RTRL assets.
 - The most appropriate co-ordination strategy for the Shared Services model.
 - The most appropriate strategy for the transfer and recruitment of RTRL library staff to each individual Council.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

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).*

Nil.

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16 [CNR-CM] Appointment of Community Representatives for Tweed Shire Disability Access Advisory Committee

ORIGIN:

Community & Cultural Services

SUMMARY OF REPORT:

This report seeks Council's resolution to appoint 8 community representatives for Tweed Shire Disability Access Advisory Committee.

RECOMMENDATION:

That Council considers and approves the following applicants: Vanessa Scott-White, Peter Stannard, Milena Morrow, Una Cowdroy, Ron Douglas, Victor Sparks, Beverly Kelso and Kirrily Twyford for community representation on Tweed Shire Disability Access Advisory Committee.

REPORT:

Expressions of Interest were advertised in Tweed Link on 29 September 2009.

Applications were received by 16 October 2009 from the following 9 nominees:

Vanessa Scott-White, Peter Stannard, Rhonda Jones, Milena Morrow, Una Cowdroy, Ron Douglas, Victor Sparks, Beverly Kelso and Kirrily Twyford.

Terms of Reference for this committee allow for a maximum of 8 community members to advise Council of community and organisational perspectives as well as make recommendations for consideration relevant to access issues.

Executive positions will be elected by the committee on an annual basis.

To ensure membership reflects representation from males/females, diverse age groups, diverse residential locations, carers, service providers and people with a broad range of disability, it is recommended that Council consider the following for representation on the Tweed Shire Disability Access Advisory Committee:

Vanessa Scott-White, Peter Stannard, Milena Morrow, Una Cowdroy, Ron Douglas, Victor Sparks, Beverly Kelso and Kirrily Twyford.

**Tweed Shire Disability Access Advisory Committee 2009
Summary of Expressions of Interest received by 16 October 2009**

Vanessa White	Scott-	Parent of child with a disability. Community Child Liaison Officer at Currumbin Special School. Broad experience in disability matters.	Murwillumbah resident
Peter Stannard		Volunteer Coordinator of Disabled Surfers - Far North Coast. Experience covers 30 years of access issues in the construction industry and working with people with disabilities in volunteer capacity	Banora Point resident
Rhonda Jones		Carer for vision impaired parent. Involved with local disability organisations. Experience in assisting people with vision impairment and the elderly.	Murwillumbah resident
Milena Morrow		Person with physical disability. Past member and previous Chair of Access Committee. Experienced and accomplished advocate for people with disabilities.	Terranora resident
Una Cowdroy		Person with disability. Past member of Access Committee. Experience working on disability matters and working groups for community projects to address access needs.	Banora Point resident
Ron Douglas		Person with vision impairment. Past member of Access Committee. Experience working on disability matters and working with people with disabilities.	Murwillumbah resident

Victor Sparks	Person with a disability. Past member of Access Committee. Experience working on disability matters and working groups for community projects to address access needs. Experience working in disability sports.	Murwillumbah resident
Beverly Kelso	Carer of person with a disability. Retired School Principal with experience working with students and adults with broad range of disability.	Tweed Heads resident
Kirrily Twyford	Spinal Cord Injuries Australia representative. Past member of Access Committee. Service provider with broad experience and expertise in disability/access issues.	Far North Coast resident

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

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).

Nil.

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17 [CNR-CM] Request for "In Kind" Support/Waive Fee

ORIGIN:

Community & Cultural Services

SUMMARY OF REPORT:

Council has received requests from various organisations asking that Council provides in-kind support/waives the fees for room hire. Details of the requests are reproduced in the body of this report.

In accordance with Section 356 of the Local Government Act 1993 - Donations, Council resolved on 6 October 2004 that:-

".... in future, all donations made by Council, whether in cash or in kind, be made by way of a resolution of Council."

RECOMMENDATION:

That Council:-

- 1. With reference to the request from United Hospital Auxiliaries of NSW Inc, provides the Tweed Heads Civic Centre:**
 - (a) South Sea Islander Room (including kitchen) free of charge for the 2010 meetings (11) to be held on 4 January, 1 February, 1 March, 5 April, 3 May, 7 June, 5 July, 6 September, 4 October, 1 November and 6 December 2010;**
 - (b) Auditorium for a reduced fee of \$105 being 50% of the full fee of \$210 for the Annual General Meeting to be held on 2 August 2010;**
 - (c) Auditorium for a reduced fee of \$110.50 being 50% of the full fee of \$221 for the fashion parade to be held on 31 May 2010;**
 - (d) Auditorium and South Sea Islander Room for a reduced rate of \$215 being 50% of the full fee of \$430 for the Annual Hospital Fete on 9 October 2010;**
 - (e) Decline the request for a reduction of fees for the set up of the Annual Hospital Fete on 7 and 8 October 2010;**

and that Council's support is recognised with the following acknowledgement "This programme has been supported by Tweed Shire Council".

2. With reference to the request from Rotary Club of Tweed Heads South Inc, provides the Tweed Heads Civic Centre for a reduced fee of \$555 being the Local Art and Craft rate for the Annual Art Show from 23 to 25 July 2010.
3. With reference to the request from Twin Towns Friends Association Inc, provides the South Tweed Community Hall free of charge for special activities on 24 March, 13 May, 26 May and 2 November 2010 and the HACC Centre at Tweed Heads South for meetings and training on 10 February, 10 March, 14 April, 12 May, 9 June, 14 July, 11 August, 8 September, 13 October, 10 November and 8 December 2010, and that Council's support is recognised with the following acknowledgement "This programme is supported by Tweed Shire Council".
4. With reference to the request from the Blind & Vision Impaired Support Group (NSW Far North Coast) Inc, provides the Banora Point Community Centre free of charge for one, 2 hour meeting on the third Monday of each month (excluding December and January) from February 2010 to November 2010, and that Council's support is recognised with the following acknowledgement "This programme has been supported by Tweed Shire Council".
5. With reference to the request from Quota International of Tweed Heads – Coolangatta Inc, declines the request for a reduction of fees for hire of the Tweed Heads Civic Centre on 16 and 17 July 2010 for the Craft Fair, including 2 hours set-up on 15 July 2010.
6. With reference to the request from Model United Nations Assembly, Rotary International District 9640, provides the Tweed Heads Civic Centre for a reduced fee of \$180 being 50% of the full fee of \$190 plus the full set-up fee of \$85 on 12 and 13 March 2010 for the MUNA 2010, and that Council's support is recognised with the following acknowledgement "This programme has been supported by Tweed Shire Council".
7. With reference to the request from Red Cross, Tweed Heads South, provides the South Tweed Community Hall free of charge on 16 December 2009 for the volunteers Christmas function, and that Council's support is recognised with the following acknowledgement "This programme has been supported by Tweed Shire Council".
8. With reference to the request from Twin Towns and District Garden Club Inc, provides the Tweed Heads Civic Centre:
 - (a) Auditorium for the Community rate of \$70 per meeting for monthly meetings held on the second Monday of each month from January to November 2010 (excluding September); and
 - (b) Auditorium for the Community Display rate of \$118 with the Friday set-up free of charge for the Annual Flower Show on 10 and 11 September 2010

and that Council's support is recognised with the following acknowledgement "This programme has been supported by Tweed Shire Council".

9. With reference to the request from Northern Rivers Symphony Orchestra, declines the request for a reduction of fees for hire of Tweed Heads Civic Centre for rehearsals in 2010.

REPORT:

Council has received requests from various organisations asking that Council provides in-kind support/waives the fees for room hire. Details of the requests are reproduced as follows:-

Organisation Name	Request	Est \$ Amount of Waiver	Recommendation	Meet Guidelines?
United Hospital Auxiliaries of NSW Inc (Tweed Heads Branch)	Request fee be waived and reduced for the hire of the Tweed Heads Civic Centre for 2010 meetings (10), fashion parade on 31 May 2010, Annual General Meeting on 2 August 2010, set up of Fete on 7 and 8 October and Fete on 9 October 2010.	\$1414.50	That the fee of \$984 be waived for the 2010 meetings and that the fee be reduced to \$430.50 being 50% of the full fee of \$861 for the Annual General Meeting, fashion parade and Fete. That the request for a reduction in the costs of the set-up of the fete be declined Fete.	Yes.
Rotary Club of Tweed Heads South Inc	Request fee be reduced for hire of the Tweed Heads Civic Centre from 23 to 25 July 2010 for the Annual Art Show.	\$888	That the fee be reduced to \$555 being the Local Art & Craft rate rather than the Commercial Display rate of \$1443.	Yes.
Twin Towns Friends Association Inc	Request fee be waived for hire of the South Tweed Community Hall for special activities on 24 March, 13 May, 26 May and 2 November 2010 and HACC Centre, Tweed Heads South for meetings and training on 10 February, 10 March, 14 April, 12 May, 9 June, 14 July, 11 August, 8 September, 13 October, 10 November and 8 December 2010.	\$663	That the fee of \$663 be waived.	Yes. Volunteer organisation undertaking significant work with the aged. As a volunteer organisation they do not receive any external funding.
Blind & Vision Impaired Support Group (NSW Far North Coast) Inc	Request fee be waived for hire of Banora Point Community Centre for one, 2 hour meeting on the third Monday of each month (excluding December and January) from February 2010 to November 2010 for group meetings.	\$320	That the fee of \$320 be waived.	Yes. Volunteer organisation who provides significant assistance to Blind and Vision Impaired community.

Quota International of Tweed Heads – Coolangatta Inc	Request fee be waived for hire of Tweed Heads Civic Centre on 16 and 17 July 2010 for the Craft Fair, including set-up for 2 hours on 15 July 2010.	\$0	That the request be declined as the Applicant charges a stallholders fee.	No.
Model United Nations Assembly, Rotary International District 9640	Request fee be reduced for hire of Tweed Heads Civic Centre on 12 and 13 March 2010 for MUNA 2010.	\$95	That the hire fee be reduced to \$95 being 50% of the full fee of \$190 plus the full set-up fee of \$85.	Yes. Youth affairs.
Red Cross, Tweed Heads South	Request fee be waived for hire of South Tweed Community Hall on 16 December 2009 for the volunteers Christmas function.	\$86	That the fee of \$86 be waived.	Yes.
Twin Towns and District Garden Club Inc	Request fee be reduced for hire of Tweed Heads Civic Centre for monthly meetings from January to November 2010 (excluding September) and for the Annual Flower Show on 10 and 11 September 2010.	\$144	That the fee for the meetings be charged at the Community rate of \$70 and that the fee for the Annual Flower Show be charged at the Community Display rate of \$118 which includes free set up.	Yes. The Applicant does not charge a stallholders fee for the Flower Show.
Northern Rivers Symphony Orchestra	Request fee be reduced for hire of Tweed Heads Civic Centre for rehearsals in 2010.	\$0	That the request be declined.	No.

A copy of each of the requests is reproduced below:



"Let us Hold High the
Lamp of Service for
the Welfare of our
Hospitals."

P.O. Box 1067,
Tweed Heads 2485
Phone: (07)

Mr Gary Corbett
Manager Community & Cultural Services
Tweed Shire Council
PO Box 816
MURWILLUMBAH NSW 2484

Dear Mr Corbett,

I wish to confirm bookings at the Tweed Heads Civic Centre for 2010 made with David Martain.

Islander Room	Monday	February 1 st
	Monday	March 1 st
	Monday	April 5 th
	Monday	May 3 rd
	Monday	June 7 th
	Monday	July 5 th
	Monday	September 6 th
	Monday	October 4 th
	Monday	November 1 st
	Monday	December 6 th

Auditorium	Monday	August 2 nd Annual General Meeting
	Monday	May 31 st Fashion Parade
		Setting up for fete on Thursday 7 th & Friday 8 th October
		Saturday October 9 th Annual Fete

Our members are grateful for Council's approval of the use of the South Sea Islander room and Auditorium for our meetings at no charge. We would be obliged if we could have the Auditorium for the fashion parade and the Islander Room and Auditorium for the Annual General Meeting at a reduced fee as in previous years. The flyers for the fashion parade and fete will contain the acknowledgement "The programme has been supported by the Tweed Shire Council".

We enclose a Certificate of Appreciation for David Martain for his assistance given to us at all times. He is always most helpful and obliging.

Yours sincerely

Marie Bolster
Secretary

United Hospital Auxiliaries of N.S.W. INC.

(Tweed Heads Branch)

President: June Young
Secretary: Marie Bolster
Treasurer: Helen Boddington

Secretary Ph: (07) 5590 4377
15 June 2009

CERTIFICATE OF
APPRECIATION
CIVIC CENTRE - TWEED
HEADS -
HIRE

TWEED SHIRE COUNCIL	
DOLLAR DONATIONS	
DOC. NO.	
RECD	- 2 JUL 2009
ASSIGNED TO	CORBETT, G
HARD COPY	<input type="checkbox"/>
IMAGE	<input checked="" type="checkbox"/>



ROTARY CLUB
of TWEED HEADS SOUTH Inc.
District 9640



LICENCES - LIQUOR -
DONATIONS

CIVIC CENTRE - TWEED HEADS -
HIRE

TWEED SHIRE COUNCIL
FILE No: ROTARY
DOC. No:
REC'D: 18 SEP 2009
ASSIGNED TO: CORBETT, G
HARD COPY <input type="checkbox"/> IMAGE <input checked="" type="checkbox"/>

Mr G. Corbett
Manager Community and Cultural Services
Tweed Shire Council
P.O. Box 816
MURWILLUMBAH
N.S.W. 2484

Dear Mr Corbett

We are now busy planning for our Annual Art Show for which we have booked the Tweed Heads Civic Centre for 23rd - 25th July, 2010. The proceeds from this will go towards assisting local youth to participate in our self development programmes and the Rotary programme - ROMAC. This latter brings in children from developing countries under 15 years of age who have serious medical problems that cannot be fixed in their own countries. Rotary returns them to their countries with a future and a feeling of self worth. In this Rotary is assisted by local surgeons who donate their time and talents to help.

We thank you and your colleagues for allowing us concessional venue hire fees in previous years and ask that you consider the same for our next year's event as a way of boosting the impact of our spending on youth.

Also, could you please note that we need formal permission from you to take alcohol on to the premises on the evening of Friday 23rd July for the official opening function. Liquor will not be sold.

Thank you in anticipation

Yours sincerely

PDG Margaret Hayes
Art Show co-ordinator
for President Charles Warrell

PO BOX 6087, Tweed Heads South, New South Wales, Australia 2486

2009 - 2010 Office Bearers

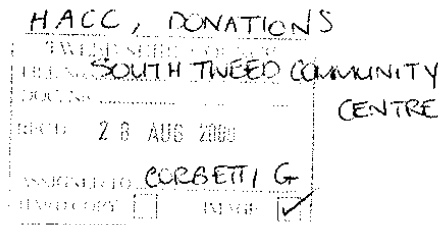
President: Charles Warrell • Secretary: Trevor Richens • Treasurer: Wendy Scarlett • President Elect: Tony Bryan

Twin Towns Friends Association, Inc.

6 Chardonnay Crescent, Tweed Heads South NSW 2486
Phone 07 - 5524 1841 Fax 07 - 5523 2282
ABN 83 953 937 501 - ICN 3496919

24th August 2009

The General Manager
Tweed Shire Council
PO Box 816
Murwillumbah NSW 2484



Dear Sir,

Use of HACC Centre and Community Hall, South Tweed Heads – 2010

During 2009 our group Twin Towns Friends Association Inc, a non-profit voluntary organisation was granted the use (free of charge) of the HACC Centre and Community Hall, South Tweed Heads.

We would appreciate your generosity in granting us the same for the calendar year of 2010 for the following activities:

- a) HACC Centre South Tweed Heads for the volunteers (meetings & training) on the second Wednesday of the months of:

February 10 th	June 9 th	October 13 th
March 10 th	July 14 th	November 10 th
April 14 th	August 11 th	December 8 th
May 12 th	September 8 th	

- b) Use of the Community Hall, South Tweed Heads to conduct special activities for clients and volunteers on the following dates in 2010.

March Wed 24 th	Seniors Ballroom Dancing Exhibition For Clients
May Thurs 13 th	Cuppa For Cancer
May Wed 26 th	Volunteers Certificate Of Appreciation
Nov Tues 2 nd	Melbourne Cup Luncheon For Clients

Wish to advise we have been in touch with David Martain requesting the dates above.

Thanking you once again it is surely appreciated.

Yours faithfully

Doreen Welsh (Co-ordinator)

**Twin Towns Friends Association, Inc. is an Organisation Supported Solely by
Volunteers & Community Sponsorship.**

**BLIND & VISION IMPAIRED SUPPORT GROUP
(NSW Far North Coast) Inc.**

ABN: 17 257 845 899

Y1015610



Thursday, 24 September 2009

Manager Community and Cultural Services
Tweed Shire Council
PO Box 816
Murwillumbah NSW 2486

DONATION

TWEED SHIRE COUNCIL
FILE NO. <i>BANORA POINT Community Centre</i>
DATE: <i>-7 OCT 2009</i>
ASSIGNED TO: <i>CORBETT, G.</i>
HARD COPY <input type="checkbox"/> <i>DATE</i>

Dear Sir

We appreciate your assistance to our group over the past year by providing a room at the Banora Community Centre free of charge. We would also appreciate it if this arrangement could continue to the end of 2010.

This request is for the waiving of fees for the use of a room at the Banora Community Centre from 12 noon until 2:00pm on the third Monday of each month, excluding December and January. Approximately 20 people are present on these occasions.

Thank you for considering our request

Yours Sincerely

Yvonne Hartley
Secretary

Address: PO Box 923 Banora Point NSW 2486

e-Mail: blind_visg@yahoo.com.au

Tel: President: Paul (07) 5524-5492

Treasurer: Jack (07) 5513 0144

Secretary: Yvonne (07) 5513 0144

Transport: Jenny (02)6679 3490



**Quota International of
Tweed Heads – Coolangatta Inc.**

P.O. Box 511, Coolangatta, Qld. 4225

"WE SHARE"
President Pam Ganderton Ph 07 5598 4878
Secretary Judith Turner Ph 07 5536 5563

The General Manager,
Tweed Shire Council,
P O Box 816
MURWILLUMBAH, NSW 2484.

CIVIC CENTRE - TWEED HEADS HIRE

TWEED SHIRE COUNCIL
FILE No: DONATIONS
DOC. No:
RECD -1 OCT 2009
ASSIGNED TO: CORBETT, G
HARD COPY <input type="checkbox"/> IMAGE <input checked="" type="checkbox"/>

Dear Sir,

RE: HIRE OF TWEED HEADS CIVIC CENTRE

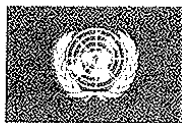
We would be pleased if you could forward to us your Schedule of Prices for hiring the Tweed Heads Civic Centre to hold our Craft Fair on 16th and 17th July, 2010. We would need to have access to the Main Auditorium and the Islander Room for 2 hours on the Thursday evening, 15th, in order to set up, and all day Friday and Saturday.

As we are a Service Organisation donating the profits of the Craft Fair to Charitable organisations within the region, we would like to know what is the criteria for us to qualify for a concession of the Hire Fee?

Yours faithfully,

Judith Turner
SECRETARY

Email: george.judy19@bigpond.com
23rd September, 2009.



Model United Nations Assembly

Rotary International - District 9640

Rotary Year 2009 - 2010



District Chairman - Graham Howie - 6 Suncrest Avenue, ALSTONVILLE NSW 2477
Phone: 02 6628 0624 fax: 02 6628 7244 mob: 0412 709935 e-mail: thehowies2@aapt.net.au

Wednesday, 30 September 2009

Mr Gary Corbett
Manager, Community & Cultural Services
Tweed Shire Council
PO Box 816
MURWILLUMBAH 2484

ROTARY
CIVIC CENTRE - TWEED HEADS - HIRE

TWEED SHIRE COUNCIL
FILE No: DONATIONS
DATE No:
REC'D - 1 OCT 2009
ASSIGNED TO: CORBETT, G
HARD COPY <input type="checkbox"/> IMAGE <input checked="" type="checkbox"/>

Dear Mr Corbett

RE: Rotary District 9640 Model United Nations Assembly (MUNA), 2010

I have confirmed with David Martain a booking for MUNA 2010 which will take place at the Tweed Heads Civic Centre on Saturday 13th March, 2010. I have also discussed with David the fact that the set-up of MUNA will take place on the Friday afternoon, 12th March.

You may not be aware that I have taken over the Chairmanship of this activity from John Tregurtha following his recent passing and I have been going through John's records for MUNA 2009.

I note that he approached you last year indicating that we would be willing to make a contribution towards the rent of the Tweed Heads Civic Centre. Last year, the Council charged our Committee an amount of \$183.20 for rent. I am not sure if this was a discounted rate but for MUNA 2010, while the Committee is more than happy to pay rent, we would be most grateful if the Council could consider a similar charge for next year's activity.

The Council's consideration in this matter and a Tax Invoice for the rent for MUNA 2010 would be appreciated so I can forward it to our District Treasurer for payment.

Thank you again for your continued sponsorship in this Rotary programme. We truly appreciated the Council's on-going support in assisting us to conduct MUNA over the past few years.

Yours sincerely

Graham Howie
District Chairman
MUNA 2010

From: Gary Corbett
Sent: Wednesday, 11 November 2009 12:47 PM
To: Carol Chandler
Subject: FW: South Tweed Heads Community Hall

Please place into ecm and task to me

From: Moloney, Lee [mailto:LMoloney@redcross.org.au]
Sent: Wednesday, 11 November 2009 12:21 PM
To: Gary Corbett
Subject: South Tweed Heads Community Hall

Good Morning Gary

End of year celebrations and Christmas parties are essential times to recognise, reward and value volunteers who give their time and skills to others in the community. I wish to hold a function for Red Cross volunteers in the South Tweed Heads Community Hall on the 16 December as a way to thank the volunteers and honour their contribution to the community through Red Cross programs.

Would Council please give consideration to waiving the fee for the hall hire for this event please to enable our resources to stretch a little further.

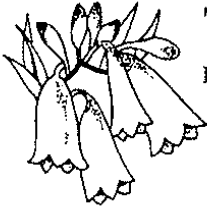
Red Cross is a not-for-profit organisation which provides many services to the people of the Tweed Shire and I would be most appreciative if Council could waive the hire fee in this instance.

Regards

Lee Moloney

Regional Coordinator Community Visitors Scheme
Cnr Mindjungbal Dr & Heffron Street, Tweed Heads South
Tel +61 07 55245799 | Mob +61 (0) 0418 160 819 | Fax +61 07 55247523 | Email
lmoloney@redcross.org.au
www.redcross.org.au

___ email-signature3



Twin Towns and District Garden Club Inc.

P.O. BOX 863, TWEED HEADS, 2485.

President

Betty Picklum
~~Secretary~~ 55349920 55349920
7th November 2009

The General Manager
Tweed Shire Council
PO Box 816
Murwillumbah
NSW 2484

Dear Sir

We wish to confirm our booking for the Civic Centre Main Hall, Tweed Heads for the second Monday of each month from January to November inclusive, for our monthly meetings, 7.30am till noon, with the exception of September as the meeting is cancelled due to our Annual Flower Show which we have tentatively booked with David Martain to be held on 11th September 2010. We would require use of the hall on Friday the 10th September to set up the exhibits.

It would be appreciated if the rental could be maintained at \$101 per month for the meetings & \$129 for the 11th September with the Friday set up free of charge.

We respectfully request that these rates be continued & look forward to an early response.

Yours Sincerely

B. Picklum
Betty Picklum
Secretary

DONATIONS.
CIVIC CLR - TH

TWEED SHIRE COUNCIL	
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THCE

General Manager
Tweed Shire Council
P.O.Box 816.
Murwillumbah. 2484.
N.S.W.

CIVIC CENTRE - TWEED HEADS -
TWEED SHIRE COUNCIL
FILE No: DONATIONS
DOC. No:
RECD: 30 OCT 2009
ASSIGNED TO: S. C. B. T. G.
HARD COPY IMAGE

Lyn McBurney
P.O.Box 576
Banora Point
2486 N.S.W.
28th October 2009.

Re. -- Use of Tweed Heads Civic Centre.

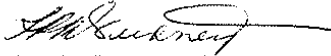
Dear Sir,

I am writing on behalf of the committee of the Northern Rivers Symphony Orchestra, to request reduced fees for the use of Tweed Heads Civic Centre for our rehearsal time during 2010.

In the past Tweed Shire Council has kindly provided sponsorship in this way. We appreciate the council's support. This will certainly assist in helping our unique regional orchestra to stay in existence and continue to bring high quality music to the people of the Tweed.

Thank you for your continued support.

Yours sincerely,



Lyn McBurney. (Orchestra Manager).

+

NR Symphony Orchestra - PO Box 5026

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should requests be approved for the waiving of fees for room hire, the income for the meeting room will be impacted by the amount of the fee reduction.

Should requests for "in kind" support be approved, this will impact on the costing of Council's involvement in the activity.

POLICY IMPLICATIONS:

In considering this request, reference should be made to:-

Festivals Policy.

Donations Policy.

Guidelines for Fee Reduction, Auditoriums, Meeting Rooms and Halls.

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).

Nil

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18 [CNR-CM] Draft NSW Coastal Planning Guideline: Adapting to Sea Level Rise; Draft Coastal Risk and Flood Risk Management Guides - Submissions

ORIGIN:

Natural Resource Management

SUMMARY OF REPORT:

A summary report for Council and submissions have been developed on the *Draft NSW Coastal Planning Guideline: Adapting to Sea Level Rise* (Department of Planning) and the *Draft Coastal Risk Management Guide* and *Draft Flood Risk Management Guide* (Department of Environment, Climate Change and Water).

RECOMMENDATION:

1. The submission on the *Draft NSW Coastal Planning Guideline: Adapting to Sea Level Rise* be endorsed and forwarded to the Department of Planning, and
2. The submission on the *Draft Coastal Risk Management Guide* and *Draft Flood Risk Management Guide* be endorsed and forwarded to the Department of Environment, Climate Change and Water.

REPORT:

Acronyms used in this report:-

ARI – Average Return Interval
CRA – Coastal Risk Areas
DCP – Development Control Plan
DECCW – Department of Environment, Climate Change and Water
DOP – Department of Planning
JTC – Just Terms Compensation
LEP – Local Environment Plan
SLR – Sea Level Rise

Comments were sought from relevant staff to develop a submission on the *Draft NSW Coastal Planning Guideline: Adapting to Sea Level Rise* to the Department of Planning and submissions on the *Draft Coastal Risk Management Guide* and *Draft Flood Risk Management Guide* to the Department of Environment, Climate Change and Water.

Part A of this report contains comments on the draft documents and **Part B** contains the proposed submissions to the relevant State Government departments.

PART A

Draft NSW Coastal Planning Guideline: Adapting to Sea Level Rise

A.1: Summary and Background

The projected rise in sea level is of major concern for integrated coastal zone management. In addition to higher projected storm surge and oceanic inundation levels, a rise in mean sea level will also result in recession of sandy shorelines. Tweed Shire has 37 kilometres of coastline, the majority of this is unconsolidated (sandy) shore.

Sea level rise will also have significant impacts on flooding behaviour in coastal floodplain areas and estuaries. Increased sea levels will in themselves inundate low lying land, but during storm and flooding events will raise tailwater levels and impede discharge from drainage and river systems, impacting on upstream areas. These impacts will in turn increase the frequency of flooding, increase damages caused by flood and storm events, and increase reliance on emergency response measures.

The Draft NSW Coastal Planning Guideline: Adapting to Sea Level Rise combines flooding and coastal erosion risks together as “Coastal Risk Areas” (CRAs).

One of the issues with the combining of these two hazard areas is that calculation of SLR within estuaries is complicated by attenuation (decrease) of tidal ranges and the differing foreshore slopes and geology. These factors make estimation of SLR within enclosed estuaries more difficult than open coastlines and will require locally derived water levels based on site-specific conditions.

The open coast (on unconsolidated or sandy geology) is less complicated in that the width of shoreline recession due to SLR can be estimated readily using accepted methodologies.

The Draft Guideline contains 3 main Sections:

- Section 2 - Identifying coastal risk areas
- Section 3 – Strategic and land use planning in coastal areas
- Section 4 – Development assessment in coastal areas

These Sections contain the six Climate Change Coastal Planning Principles.

A.2: Section 2 – Identifying Coastal Risk Areas

Section 2 discusses use of the NSW sea level rise planning benchmarks recently adopted by the Government. Reference is made to the NSW Government documents previously used in identification of coastal risk areas being the *Coastline Management Manual* (1990) and the *Floodplain Development Manual* (2005). Where these studies have been undertaken (Tweed has completed both coastal erosion and flood studies), the DECCW have produced additional guides to incorporate SLR benchmarks in flood risk and coastal risk assessments respectively.

Principle 1 – Assess and evaluate coastal risks taking into account the NSW sea level rise planning benchmarks.

Flooding

Identifying coastal flood risk areas involves mapping the 100 year ARI flood extent, plus a freeboard (typically 0.5m for habitable development), plus the impact of the Sea Level Rise Benchmarks (increases of 0.4m by 2050 and 0.9m by 2100, above 1990 mean sea levels). This requires Councils to undertake flood modelling that incorporates the sea level rise benchmarks. Tweed Shire Council has recently completed modelling of climate change scenarios, incorporating both NSW Government benchmark SLR and increased rainfall intensities.

Coastal Erosion

Tweed Shire Council undertook a Coastal Erosion Hazard Study in 2001. The SLR component incorporated in this study was 0.2 metres by 2050 and 0.5 metres by 2100. Funding has been obtained to incorporate the SLR Planning Benchmarks of 0.4 metres by 2050 and 0.9 metres by 2100 and adapt the currently adopted Tweed Shire Coastal Erosion Hazard Lines to the new NSW Government benchmark.

Principle 2 – Advise the public of coastal risks to ensure that informed land use planning and development decision-making can occur.

Once affected land is identified, Council needs to inform affected landholders. S149 Planning Certificates are one means of informing prospective land purchasers, however education of existing landholders would also be necessary.

Any management plans relating to flooding and coastal erosion risk need to incorporate an education and awareness component that utilises the full range of methods for getting the message out to new and existing residents.

A.3: Section 3 – Strategic and land use planning in coastal areas

This Section looks at the role of statutory land use planning instruments such as LEPs and DCPs in managing development in coastal risk areas.

Principle 3 – Avoid intensifying land use in coastal risk areas through appropriate strategic and land use planning.

The Guideline has implications for Council's Strategic Planning regime. It discourages the intensification of development in coastal risk areas and states that new urban centres should be sited away from coastal risk areas. However, in Tweed Shire the major population centres, infrastructure and services are located near the coast, and sterilising these areas from new development could result in significant stagnation of urban areas.

Council's current strategic planning focus on revitalising and better utilising existing centres (eg. Tweed Heads Masterplan), raising levels of services in villages (eg. Pottsville Locality Plan) and planning for future development (eg. Hastings Point Locality Plan) can all be seen as being contrary to this planning principle for land affected by SLR. It raises questions about the acceptability of such an approach to urban planning from a political and community perspective, and whether future emphasis on mitigating the impacts of sea level rise on these centres will be the result.

Principle 4 – Consider options to reduce land use intensity in coastal risk areas where feasible.

The Guideline promotes reduced land use intensity in risk areas, but acknowledges the difficulties involved in back zoning and planned retreat policies. Previously Council has undertaken voluntary house purchase in the worst affected flooding areas in South Murwillumbah, so similar schemes could be considered in the future if supported and subsidised by the Government.

The reference to feasibility in the Draft Guideline in this context is directed toward an evaluation of existing land capability and 'rights' to avoid the risk of requiring land acquisition. It recognises that reducing existing levels of development capacity unnecessarily, and by too much, may trigger the operation of the Just Terms Compensation (JTC) legislation. Therefore development capability should be matched to the identified risk. Adopting a risk management approach along those lines should achieve the desired reduction in development capacity without sterilizing the land or triggering the JTC.

A3.1: Discussion

The distinction between the two above Principles may be summarised as *avoidance* (Principle 3), which addresses 'forward' zoning and *reduction* (Principle 4), which addresses 'back' zoning.

Avoidance Mechanism (Principle 3)

In existing urban centres subject to identified CRA processes avoid intensifying the development capability of the land by:

- avoid rezoning existing urban zoned land that would cause intensification (eg. low density to medium or high density; industrial to commercial, commercial to mixed-use and the like); and,
- avoid new urban land rezoning (eg. rezoning from rural or agricultural to urban); and,
- avoid increasing development capacity through changes in development standards (eg. floor space ratio; site cover; building height; lot size); or,
- in appropriate circumstances minimising risk by providing urban design and engineering alternatives to development that can effectively manage the identified risk to the land and environment.

Reduction Mechanisms (Principle 4)

In existing urban areas where the coastal risk process is identified as high, investigate options for reducing the existing development capacity of the land to a level compatible with that risk by:

- reducing density through rezoning (eg. high or medium density to low density); or,
- without rezoning, using development standards to reduce density: floor space ratio; building height; site cover; and, increasing lot size); and,
- limiting land-uses by building typology (flat buildings to townhouses to villas to dual occupancy to dwelling houses; mixed-use to commercial, open space to environmental protection); and,
- in highly vulnerable and more extreme cases of risk any combination of all of the above.

A3.2: Impact on current strategic planning in Tweed Shire

Tweed's strategic land-use planning is based on the Council's current flood planning, which has provided a very strong basis for land-use management decisions to-date.

Although the conservative methodology embodied in the flood modelling and flood planning standards has resulted in many urban areas being filled to achieve a high level of flood immunity there will invariably be some areas that will now be affected or potentially susceptible to flooding resulting from SLR.

The predications for SLR and subsequent identification of CRAs will require consideration in any future strategic land-use planning and importantly any existing strategic policies will need to be evaluated as that information comes to light.

It is highly probable that the areas of greatest vulnerability are the older low-lying urban areas of the coast and along the creek and river foreshores. Early indications seem to be that whilst many existing areas may not be significantly impacted by SLR in isolation, in the broader sense, some areas may be affected indirectly because the predicted rainfall changes intensity will combine with the SLR to produce more widespread flooding.

Strategic land-use planning will therefore need to be more reactive and responsive in the short-term to ensure that land-use capability is matched to any identified risk as and when the information becomes available. This will be particularly important for implementing Principle 3 – 'avoidance.'

In summary, the need to adopt a sea level rise standard will impact on Tweed's strategic land-use planning both now and in the future. However, the extent of that impact will be indeterminable until work on the coastal risk areas is sufficiently progressed.

It is highly likely that several adopted strategic policies will need review and that LEP and DCP amendments will be required. In the meantime, any current strategic projects will need to be progressed on a precautionary basis where a potential SLR impact is foreseeable.

Given that there is sufficient urban zoned land in the Tweed to accommodate growth over the long-term any new rezoning proposals in the coastal zone or within an identified floodplain could be deferred in the short-term until the coastal risk area assessment is concluded.

A3.3: Implementation

The Draft Guideline highlights the two principle means for implementing Draft Principle 3 and 4 as local environmental plans (LEP) and development control plans (DCP).

LEPs have the ability to perform several functions including:

- control the type of land-uses permitted on land;
- regulate the extent (eg. density) of development;
- maintain the status quo, that is, leave things as they are; eg. zoning;
- introduce the status quo ante, that is, bring back a previous state by reducing intensity through back-zoning eg. where rural land has previously been zoned to 'urban expansion' or medium density it may be rezoned low density or in extreme cases back-zoned to rural or an equivalent zone based on development capacity and or intensity.
- guide decision making by providing special clauses and development standards that may, by way of example highlight special heads of consideration is coastal risk areas, require the consent authority to be satisfied of certain matters prior to consent being granted, or impose additional standards on certain types of development on land identified as risk affected.
- providing land and issue identification through maps and overlays.

DCPs can be used to provide greater detail on the land subject to coastal risk and can specify a greater number of detailed site and building design controls, particular to a site, area, locality, land-use or building type.

Unlike LEPs, managing and updating DCPs is by far simpler and quicker, making the DCP process more flexible and responsive to changing needs, this is particularly relevant when considering that CRAs will be identified progressively on an area by area basis.

The use of both LEPs and DCPs in strategic land-use planning is common place and the options raised in the Draft Guideline are generally available to councils now. However, areas for improving or strengthening the zone objectives and providing specific climate change based clauses in the NSW Government's Standard Instrument LEP will be dependant upon the Department of Planning being more flexible and receptive to locally tailored clauses than it has demonstrated in the preparation of the Shire-wide 'standard instrument' comprehensive LEP 2010.

A4: Section 4 – Development assessment in coastal areas

The Development Assessment guideline is based on minimising risks (Principle 5) and implementing management and adaption strategies (Principle 6).

An eight point planning criteria for proposed development in coastal risk areas is outlined in the draft guideline. Any development proposal will need to be assessed against the criteria. Development proposals will be required to satisfy the criteria by implementing management and/or adaption strategies such as constructing buildings or structures that are easily decommissioned, disassembled or relocatable.

The draft Guideline states that the assessment approach promotes appropriate development in coastal risk areas through the merit assessment of proposals based on social, economic and environmental factors, rather than strict compliance with a set of prescriptive development controls.

Principle 5 – Minimise the exposure to coastal risks from proposed development in coastal areas.

The development assessment process provides a further opportunity to ensure that future coastal development is appropriate to coastal risks. The Guideline provides eight planning criteria for proposed development in coastal risk areas:

1. Development avoids or minimises exposure to immediate coastal risks (seaward of the immediate hazard line)
2. Development provides for the safety of residents, workers or other occupants on-site from risks associated with coastal processes
3. Development does not adversely affect the safety of the public off-site from a change in coastal risks as a result of the development
4. Development does not increase coastal risks to properties adjoining or within the locality of the site
5. Infrastructure, services and utilities on-site maintain their function and achieve their intended design performance
6. Development accommodates natural coastal processes
7. Coastal ecosystems are protected from development impacts
8. Existing public beach, foreshore or waterfront access and amenity is maintained

These planning principles are subjective in nature and require extensive work by the applicant to demonstrate compliance in what is a complex and developing field. Reports of this nature usually prove difficult to assess by Council and are open to appeal, including third party appeals. The criteria above are generally more applicable to coastal erosion processes than flooding, adding to the difficulties. Objective criteria, such as revising flood planning levels are preferred by Council as they are readily understood and implemented by developers and assessing officers.

Principle 6 – Implement appropriate management responses and adaptation strategies, with consideration for the environmental, social and economic impacts of each option.

Implementation of the sea level rise Guideline will require changes to the LEP and DCP, including mapping of the areas subject to sea level rise related controls. Costs of implementation of the Guideline are potentially significant, and the Guideline is silent on possible Government assistance.

PART B

B1: Submission on the Draft NSW Coastal Planning Guideline: Adapting to Sea Level Rise (Department of Planning)

General Comments

Council supports the provision of guidelines from the State to address the potential impacts of climate change. However Council regards the current draft documents as inadequate to provide it with clear direction on these complex matters. The documents are inconsistent with previous floodplain guidelines, the methodologies are more applicable to coastal

erosion than floodplain management, and generally rely on subjective assessment criteria. This makes the application of the guidelines both ambiguous and onerous for Council.

Inconsistencies with other Guidelines

Practical Consideration of Climate Change (NSW Department of Environment and Climate Change, 25/10/07)

This Guideline required that Councils assess climate change impacts through modelling sensitivity analyses. The Guideline recommended consideration of low, medium and high sea level rise scenarios (0.18m, 0.55m and 0.91m increases respectively), as well as increases in peak rainfall intensities of 10%, 20% and 30%. On the basis of these modelled scenarios, the significance of climate change impact could be determined and appropriate measures put in place, such as amending flood planning levels or providing structural protection.

The current Draft Coastal Planning Guideline and Flood Risk Management Guide do not have regard to the existing 2007 Guideline, and do not even consider the potential impacts of increased rainfall intensity, which is critical for proper consideration of estuarine / riverine flooding. The draft documents fail to develop the flood related management strategies proposed in the 2007 Guideline.

Tweed Shire Council has already conducted modelling sensitivity analyses for medium and high climate change scenarios, for combined sea level rise and increased rainfall intensity, representing a considerable investment in terms of cost and resources. This investment would be wasted if remodelling of the sea level rise benchmarks (which are marginally less conservative than the 2007 Guideline advocates) had to be remodelled by Council.

Planning Circular PS 07-003 and Guideline on Development Controls on Low Flood Risk Areas - Floodplain Development Manual (NSW Department of Planning, 31/1/07)

This guideline specifies that unless there are exceptional circumstances, the 100 year flood (plus freeboard) should be adopted as the flood planning level (FPL) for residential development, and that residential development on land above the FPL should not be subject to flood related development controls. This guideline now needs to be reviewed with regard to sea level rise, with consideration given to raising FPLs to reflect the new coastal risk area. The impact of sea level rise on "low island" development and land where evacuation routes are severed by increased flood levels due to sea level rise also needs to be considered in a revision to this guideline.

Open Coast and Estuarine Impacts

The documents have been written with an emphasis on coastal erosion and seaward coastal processes, with respect to the impacts of sea level rise. The impacts of sea level rise on estuarine / riverine flooding on the landward side are extremely complex and have been over simplified by the figures and development assessment criteria in the documents. The Draft Coastal Risk Management Guide highlights the need to determine locally-derived design still water levels on a site-specific basis.

Mapping the coastal risk areas relating to coastal flooding is problematic. Unlike coastal erosion, where relationships between vertical sea level rise and horizontal erosion extents can be estimated by various methods, mapping of riverine flooding requires complex modelling. The requirement to map freeboard further complicates the mapping exercise, particularly in areas with steep flood gradient, or where topography is variable, such as filled allotments. It is acknowledged that this mapping is an extension of the "flood planning area" defined in the Department of Planning's Guideline of January 2007, however Council's experience with its draft Local Environment Plan (LEP) mapping has proven that artificially amending flood maps to account for freeboard is not feasible without the use of modelling programs, which comes at considerable cost.

There will also be cases where a property will be contained within the coastal risk areas for both coastal hazards and coastal flooding. The Guidelines need to specify which hazard, if any, takes precedence, and how the development of such land can be managed under two separate risk management approaches.

Where building design criteria are provided in the Guidelines, these too are largely based on coastal hazards, not flooding. Modular relocatable construction would not be suitable in coastal flood hazard areas, where flow velocities and debris impacts will be encountered, resulting in failures that put life and property at risk.

The flooding approach taken in the Guidelines only relates to the 100 year ARI flood event. The Guidelines need to advise the appropriate approach to other design flood events, including the probable maximum flood (PMF), which is important for consideration of emergency response and the assessment of critical development and infrastructure.

Subjective Criteria

The proposed eight Planning Criteria fail to provide Council with objective means of assessment of DAs, instead relying on subjective assessments of impact, which would be readily challengeable in court, particularly by third party objectors, with related legal defence costs. These criteria are more applicable to coastal erosion risks and do not adequately address estuarine flooding risk assessment and impacts. The criteria for consideration in the 2007 DECC Guideline were much more applicable to flooding processes relating to climate change impact.

Objective criteria to address risks associated with sea level rise, and climate change more generally, are therefore requested from the State. Without this level of guidance, it is likely that each Local Government Area will apply inconsistent approaches to their Development Control Plans, reducing the effective implementation of the State's sea level rise benchmarks. The State should coordinate this approach by prescribing development standards for development within the coastal risk areas, for both "greenfield" (land release) and "brownfield" (infill) sites.

Possible Greenfield Criteria

Design Flood Level = Minimum residential allotment fill level
= 1% AEP Flood Level + Climate Change

Minimum Habitable Floor Level
= 1% AEP Flood Level + Climate Change + Freeboard (typically 0.5m)

The 2100 sea level rise benchmark is considered to be appropriate for greenfield development, in line with the precautionary principles of sustainable development.

Possible Brownfield Criteria

Development controls have to consider whether it is feasible to provide structural protection to the site to reduce the risk of sea level rise (eg. flood levees), the design life of the proposed development, issues with vehicular access should fill and building levels be raised significantly above existing road levels, planning implications of additional fill and increased building heights (eg. overshadowing), and impacts on local flood behaviour of additional filling. While these controls are not numerically prescriptive, they can be demonstrated via engineering and planning documents from qualified professionals, which can be assessed relatively objectively, compared to the eight planning criteria proposed.

The 2050 sea level rise benchmark is generally considered to be appropriate unless development is critical infrastructure (hospitals, emergency services, sewage and water treatment plants, electricity sub-stations etc), in which case the 2100 sea level rise benchmark should be adopted.

Cost Imposition

The imposition of sea level rise considerations on local government is significant in terms of the cost of remodelling and mapping floodplains and coastal risk areas, amending and implementing new planning controls, and disseminating information to landholders and the community, and needs to be supported financially by the State and/or Federal Governments. The Guidelines should provide a commitment for funding assistance for local government (eg. grants programs), including the accessibility of subsidies for mitigation works (eg. works to raise existing levee defences where sea level rise reduces their level of protection for urban development).

Draft Principles 1 and 2 Comments

Tweed Shire Council has undertaken both Flooding and Coastal Erosion Risk studies and mapping exercises in accordance with the relevant State Government guidelines and procedures. Council would now need to re-assess these studies to determine if they are adequate under the proposed planning and risk management guidelines.

It is considered that flood risk and coastal erosion risk still need to be treated as separate processes with different procedures for assessing and quantifying the risk and methods of addressing this risk. They also have different implications for development and infrastructure under increased sea levels and other potential impacts from climate change such as storm intensity and frequency.

Further comment on the adequacy of the current guidelines under Principles 1 and 2 can be found above under General Comments.

Draft Principles 3 and 4 Comments

Strategic land use planning seeks to avoid intensifying land use in coastal risk areas. Further clarification of this point needs to be made.

The intent of strategic planning controls should be to limit the ability to increase habitable land use within coastal risk areas via rezoning or other amendments to LEPs, not to limit the ability to redevelop existing zoned land to the full potential of the zoning, subject to the appropriate development controls relating to flooding and climate change.

Capping of development due to potential sea level rise impacts is undesirable in most waterfront locations, and the stagnation of large tracts of urban zoned land in these areas is a key concern for Councils, and may not be supported by the NSW Floodplain Development Manual. Further, these landholders are likely to pressure governments to impose structural measures to protect their land with walls, levees, pumps and other structural means rather than have their land devalued. Back zoning would be unlikely to be pursued by Local Governments, and is inconsistent with other planning policies of the state, which aim to better utilise existing zones to increase densities and avoid urban sprawl and further land releases. An example is the Department of Planning's Tweed Heads Masterplan, which under the Guidelines will not be able to apply to waterfront land or flood liable land in Tweed Heads South, as was originally intended.

The use of both LEPs and DCPs in strategic land-use planning is common place and the options raised in the Draft Guideline are generally available to councils now. However, areas for improving or strengthening the zone objectives and providing specific climate change based clauses in the NSW Government's Standard Instrument LEP will be dependant upon the Department of Planning being more flexible and receptive to locally tailored clauses than it has demonstrated in the preparation of the Shire-wide 'standard instrument' comprehensive LEP 2010.

Model DCP

To implement the proposed provisions of the Draft Guideline a Development Control Plan would be the best instrument for implementation. The flooding components of the guideline could be inserted in existing flooding DCPs however a separate Plan for the coastal erosion component is recommended. In this regard a model DCP for sea level rise and coastal erosion prepared by the Department of Planning would assist with consistency for Coastal Councils.

LEP Template Provisions

The Tweed LEP currently contains clauses requiring assessment of sea level rise in relation to flooding and coastal erosion and whilst parts of SEPP-71 Coastal Protection have been inserted in the standard template stronger and more direct provisions that require consideration of sea level rise need to be formulated for the template. Alternatively SEPP-71 could be amended to be specific about sea level considerations.

Draft Principles 5 and 6 Comments

Redevelopment

The guideline should have specific provisions for redevelopment of sites that are currently zoned for more intense development that will be affected by new risks. eg. dwelling house located on a site zoned medium density.

Planning Criteria and Figure 4 of Guideline

Example of how each criterion can be met for the different scenarios (Figure 4 from Guideline) coastal x2 and flooding x2. The criteria needs to be more specific and or examples given of how the criteria can be satisfied. Currently the Criteria can be interpreted widely and not provide certainty for any stakeholder.

Minor development

Clarification regarding minor development should be provided as structures such as boat sheds provided as an example in the draft Guideline are not necessarily minor

Consultation Questions

1. In the absence of completed coastal hazard and flood studies which take the NSW sea level rise planning benchmarks into consideration, should councils be able to use investigation areas for planning or development assessment purposes?

Yes. Completion of coastal and flood studies can take a significant amount of time to complete. For the purpose of adherence to the precautionary principle, investigation areas should be used for planning and development assessment purposes as these can be determined quite rapidly using elevations and accepted coastal recession rates for flooding and coastal erosion risks respectively.

It is vital that these investigation areas are supported by State Policies to provide Councils with a legally defensible position should the inevitable legal appeals occur.

2. Should the NSW Government propose a set measure incorporating the sea level rise planning benchmarks for identifying investigation areas across the State?

Yes. For those areas without relevant completed studies provision of a number of measures suitable for the various applications and methods of interpretation would be a useful tool and to assist with appeals.

3. Should council rate notices or other mechanisms be used to advise or remind landowners if their properties are located in coastal risk areas?

S149 Certificates should identify a site's coastal risks, which will inform new purchasers. This option is only available where the risk is identified by expert study / report and should be consistent with advice provided for other risks eg. bushfire and flooding. A Council's need to inform existing landholders needs to be balanced by the landholder's own due diligence.

Notices / information in rates notices would only be valid as part of a wider education / awareness campaign. Statements made in rates notices, with insufficient background information, will only serve to raise uncertainty and confusion.

4. If land is subject to immediate coastal risks, should further development in these areas be prohibited?

This is dependant upon definition and scale of "development". Any development that may cause risk to third party private property rights is not suitable (eg. housing, private facilities). Other uses such as small scale public infrastructure and facilities may be suitable if temporary or removable and demonstrate public benefit.

Councils need to consider appropriate uses within the coastal zone and likely time frames for that use dependant on level of risk and development proposed. Unlike flood risk which has a return interval, coastal risks (outside of immediate hazard risk zones) relate to a set time period (eg. 50 or 100 year) therefore, some land uses / facilities / short term uses may be suitable.

"Immediate coastal risk" needs to be defined for flooding impact purposes. Prohibition of development of flood liable land is contrary to the NSW Floodplain Development Manual, which advocates a risk management based merit assessment of development proposals exposed to flood hazards. Most Councils already have policies in place to deal with "immediate" or existing flooding and coastal erosion risks.

5 . *How should consideration be given to potential coastal risk areas when zoning land in LEPs? ie. areas that may be at risk in the future due to sea level rise and other climate change parameters.*

Rezoning land to a greater intensification of use, or use that may increase risk to private property and life, should be based on the best available information and where there is any uncertainty or doubt as to the severity of potential risks a precautionary approach should prevail.

With respect to flooding, once these studies have been conducted the main considerations should be:

- Can the land be filled to design flood level (recommended to be 100 year flood level plus climate change allowance) without significant adverse impacts, when considered individually and cumulatively?
- Can development of that land adequately provide for flood emergency response - that is, can the land be safely evacuated to land above the probable maximum flood (PMF)?

Different considerations must be made for coastal erosion, as unlike flooding, the land and the development on it cannot be readily reinstated to its previous condition following an event.

6. *Should a model clause be developed for councils to use in LEPs to identify coastal risk areas using maps and to apply specific development controls to that identified land?*

Yes. A model clause would be consistent with current planning reforms by the Department of Planning. However the draft model clause provided has been written to address erosion risks for seaward land, and therefore does not adequately reflect the issues relating to flood based coastal risks. This is an overall criticism of the draft Guidelines, which needs to be addressed (refer to submission for commentary).

7. *Should a similar provision be incorporated directly into SEPP 71 – Coastal Protection to apply to development in the NSW Coastal Zone?*

Any provision included in SEPP 71 must be consistent with the LEP Model Clause.

8. *Should consideration be given to expanding the application of any coastal risk clause in SEPP 71 to also apply more broadly to the Sydney coastal region?*

No comment.

9. *If a relevant coastal hazard or flood study has not been completed or council has not identified an investigation area, should applicants be required to undertake their own coastal risk assessment as part of the DA requirements?*

Tweed Shire Council has completed the relevant coastal erosion and flood studies. However if current studies are considered inadequate, properties that could reasonably be considered to be with coastal risk areas, the responsibility to demonstrate whether or not the development can adequately address the increased risk in terms of property protection, structural integrity and providing for emergency response should be borne by the property developer / applicant.

In relation to flooding, if detailed flood modelling is not available for a site, it would appear reasonable and precautionary for the applicant to apply the full 0.9m increase in design flood level to the site, and then demonstrate whether or not the development can adequately address the risks outlined above.

10. Should this requirement only be restricted to large-scale or medium to high risk coastal developments?

All developments should undertake such an assessment. The variable may be the appropriate planning horizon for the development ie. should a single dwelling have a planning horizon of 2050 (0.4m sea level rise) or 2100 (0.9m sea level rise)?

11. Should new development be prevented in coastal risk areas that are already subject to coastal risks (as identified by an immediate hazard line)?

Yes - Refer to question 4.

B2: Submission to the Draft Flood Risk Management Guide and Draft Coastal Risk Management Guide (Department of Environment, Climate Change and Water)

Draft Flood Risk Management Guide

The draft Guide updates both the NSW Floodplain Development Manual and the Floodplain Risk Management Guideline: Practical Consideration of Climate Change (DECC 2007) with respect to sea level rise. Both of these documents relate to climate change impacts consisting not only of sea level rise, but also increases in rainfall intensity. It is therefore not valid for the Draft Flood Risk Management Guideline to update these documents (which Council is already in the process of implementing via two floodplain risk management studies) with sea level rise considered in isolation. This issue is further explained in Council's submission to the Department of Planning on the Draft NSW Coastal Planning Guideline: Adapting to Sea Level Rise.

The figures depicting the sea level rise planning area are overly simplistic when considering coastal flooding. The lower Tweed Valley and Tweed Shire coastal estuaries have variable topography, including filled urban land, resulting in non-linear edges to the floodplain and islands. Flood mapping can therefore only be determined by complex flood modelling, and even then it is not practically feasible to "map a freeboard" with the addition of flood gradient through these areas.

The Guide only goes so far as to provide advice on determining the areas affected by the sea level rise (SLR) benchmarks, that is the coastal risk area, in accordance with Principle 1 of the Draft Coastal Planning Guideline. It fails to provide specific floodplain management advice for the other principles - public education, avoidance and reduction of development in the coastal risk areas by strategic planning, development assessment issues (eg. flood planning levels, FPLs), and adaptation strategies (eg. building design). As such it is not a complete "risk management guide", leaving Councils to rely on the Draft Coastal Planning Guideline for flooding advice, however that document has been written with an emphasis on coastal erosion processes.

As an example, the Draft Coastal Planning Guideline promotes the use of modular, relocatable building units, which may suit coastal erosion scenarios, but would generally be unsuitable for flood risk areas due to flow velocities and debris impacts, potentially leading to catastrophic failure. It is considered that the 2007 DECC Guideline provided a much better basis for climate change consideration of flooding, and should have been the basis of the new Guide incorporating the Government's SLR benchmarks.

Where possible, the Guide should provide prescriptive advice on matters such as determining FPLs. This will ensure consistency across the LGAs, and proper implementation of the Government's SLR benchmarks.

Finally, it is noted that a number of photos of the 2007 Hunter Floods are used in the draft Guide. Areas outside the coastal zone such as Maitland and Morpeth are unlikely to be significantly influenced by sea level related flood events (unlike Newcastle), however as evidenced by the 2007 event, severe rainfall will have significant flood impacts. As high intensity rainfall is forecast to occur more frequently due to climate change, a holistic approach to climate change, incorporating both sea level rise and increased rainfall intensity is requested.

Draft Coastal Risk Management Guide

Section 3 and Figure 1 refers to coastal hazard studies providing coastal hazard lines assuming both no SLR and SLR in accordance with adopted benchmarks.

The purpose of "adding on" the SLR component is not adequately explained. The concern is that making this an addition, rather than incorporating it into the hazard lines, could make that component of the hazard zone contestable.

Given the reasonably high level of uncertainty under which all hazard lines are developed, tacking on the SLR component will add ambiguity within planning and development considerations and may make the hazard zones more open to debate, possibly forcing Council's into a position of legally defending planning decisions.

It would be useful for the Government to commit to ongoing review of the SLR predications and provision of support to Councils to update mapping as required.

This is a very good case for application of the precautionary principle and incorporation SLR benchmarks into the 50 and 100 year hazard lines.



Draft NSW Coastal Planning Guideline: Adapting to Sea Level Rise

BACKGROUND

The Draft Coastal Planning Guideline: Adapting to Sea Level Rise (the draft guideline) accompanies the NSW Government's Sea Level Rise Policy Statement and aims to provide practical advice to coastal councils on how sea level rise should be considered in future land use planning and development assessment in coastal NSW.

The policy statement, which underwent community consultation in early 2009 prior to its finalisation in November 2009, establishes sea level rise planning benchmarks of 40cm by 2050 and 90cm by 2100 (above 1990 mean sea levels).

The draft guideline encourages a risk-based approach to strategic land use planning and development assessment, taking into consideration these new benchmarks.

When finalised, it will be a landmark document which for the first time provides clear advice to councils for land use planning and development assessment in areas subject to coastal hazards.

COASTAL PLANNING PRINCIPLES

The draft guideline is based around the implementation of six coastal planning principles guiding sustainable development with consideration for sea level rise, and these include to:

1. Assess and evaluate coastal risks taking into account the NSW sea level rise planning benchmarks;
2. Advise the public of coastal risks and to ensure that informed land use planning and development decision-making can occur;
3. Avoid intensifying land use in coastal risk areas through appropriate strategic and land use planning;
4. Consider options to reduce land use intensity in coastal risk areas where feasible;
5. Minimise the exposure to coastal risks from proposed development in coastal areas; and
6. Implement appropriate management responses and adaptation strategies, with consideration for

the environmental, social and economic impacts of each option.

COMMUNITY CONSULTATION

The draft guideline has been released for community consultation until 11 December 2009.

Any interested parties are encouraged to lodge a submission. The guideline also includes consultation questions, seeking specific input on certain matters.

For more information on the guideline or to make a submission, please either call (02) 9228 6333 or visiting www.planning.nsw.gov.au

IDENTIFYING COASTAL RISK AREAS: PRINCIPLES 1 AND 2

The draft guideline adopts the sea level rise benchmarks, ensuring consistent consideration of the influence of sea level rise on coastal areas.

In identifying and evaluating coastal risks, councils should use the Coastline Management Manual and the Floodplain Development Manual, in addition to the advice contained within the draft Coastal and Flood Risk Management Guides, all prepared by the Department of Environment, Climate Change and Water (DECCW).

Revised coastal hazard studies should identify immediate and future hazard lines, factoring in the new benchmarks.

Where new coastal hazard and flood studies have not yet been completed, the draft guideline says councils may use investigation areas as an interim measure to indicate land likely to be subject to coastal risks due to future sea level rise.

The draft guideline says coastal risk areas (including identified coastal risk areas and investigation areas) can be mapped in a development control plan (DCP), and additional development standards or criteria may be added to the DCP which impose further controls

FACT SHEET

on the type of development permitted in these areas, for instance:

- Type of construction materials;
- Size of the development; or
- Need for the development to be relocatable or temporary.

STRATEGIC AND LAND USE PLANNING: PRINCIPLES 3 AND 4

The draft guideline says land use planning at the local, sub-regional and regional level should aim to avoid intensifying land use and, where possible, reduce land use intensity in coastal risk areas.

It advises councils to use their discretion in their strategic and land use planning to carefully weigh up the environmental, social and economic costs of altering land use intensity in coastal risk areas.

For instance, the draft guidelines says that changing land use from rural to urban or increasing the density of housing from low to medium or high density is strongly discouraged in high risk areas, and similarly new urban centres should be sited away from coastal risk areas.

The draft guideline encourages a reduction in land use intensity where feasible, however this should be carefully considered in light of the current land uses and use rights, existing environmental and planning constraints on development, land tenure and risk of requiring land acquisition.

For example, it may be appropriate to use the E3 Environmental Management zone for rural or undeveloped land seaward of the immediate hazard line that may require careful management due to ongoing risks from coastal hazards.

The draft guideline is designed to encourage a forward looking approach to coastal land use planning to prevent creating or exacerbating risks to property or life due to sea level rise.

DEVELOPMENT ASSESSMENT: PRINCIPLES 5 AND 6

The draft guideline provides clear direction to consent authorities for development assessment in coastal areas, outlining how proposals should be considered based on their location in the coastal risk area, in particular that:

- Proposed development within the immediate hazard line should be avoided;
- Proposed development seaward of the current 2100 hazard line should be assessed

- against strict planning criteria and be portable in the event of coastal erosion; and
- Proposed development seaward of the 2100 hazard line with sea level rise projections should be assessed against the strict planning criteria.

According to the draft guideline, any proposal located outside the coastal risk area – in other words behind the 2100 hazard line with sea level rise projections – is considered suitable for development with regard to coastal hazards, subject to merit based assessment of other relevant issues.

The draft guideline says the eight planning criteria should be considered by proponents when preparing a proposal, and by consent authorities when assessing a development application in a coastal risk area. These criteria state that the proposal should not impact on natural coastal processes, not increase coastal risks around the site and should protect coastal ecosystems from development impacts.

FURTHER INFORMATION

Department of Planning website:
www.planning.nsw.gov.au

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LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Increase in complexity and therefore time and cost of development assessment. The proposed "subjective" process will be overly complex and difficult to equitably apply across all applications. There are no proposals to cover Council's increased resource and cost commitments arising from these guidelines. The arbitrary abandonment of the *Practical Consideration of Climate Change (NSW Department of Environment and Climate Change, 25/10/07)* Guideline which Council has in good faith used for modelling climate change impacts on flooding in both the Tweed Valley and Coastal Creeks Studies is difficult to understand. If Council now has to remodel on a different guideline that ignores changes in rainfall intensity, the process will be costly to Council and will produce arguable inferior results.

POLICY IMPLICATIONS:

Significant changes are proposed to coastal and floodplain management, strategic planning and development of the newly identified risk areas. The proposals could result in development stagnation of the Lower Tweed and Tweed Coast regions.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

19 [CNR-CM] Proposed Biodiversity Grants

ORIGIN:

Natural Resource Management

SUMMARY OF REPORT:

On 27 January 2009 Council unanimously approved the implementation of a Biodiversity Grant Program to assist private landowners, community groups and researchers to undertake projects that contribute to maintaining and improving biodiversity values within Tweed Shire.

To date 48 landholders have submitted applications under the Biodiversity Grant Program. Site visits have been made to 26 properties, 24 of which meet the Grant's criteria (refer to table in report). The purpose of this report is to seek Council's approval to fund these 24 private landowners in accordance with the provisions of the Biodiversity Grant Program.

RECOMMENDATION:

That Council approves the expenditure for the total amount of \$56,300 under its Biodiversity Grant Program to assist the twenty-four (24) identified private landowners to undertake the projects listed in the report.

REPORT:

On 27 January 2009 Council approved the implementation of a Biodiversity Grant Program to assist private landowners, community groups and researchers to undertake projects that contribute to maintaining and improving biodiversity values within Tweed Shire. This initiative represents an important component of Council's Biodiversity Program.

The Biodiversity Grant Program supports projects that contribute to the following ecological priorities within Tweed Shire:

1. Rehabilitation of degraded habitats
2. Restoration of previously cleared areas
3. Threatened species recovery
4. Management of threatening processes
5. Monitoring and research

Applications under the program can be made throughout the year and are assessed using the following criteria:

1. Ecological benefits (eg. ecological status, multiple ecological priorities, contribution to State and regional biodiversity targets etc).
2. Value for money (including in kind contributions, external funding).
3. Technical capability and applicant track record.
4. Site security (preference will be given secure sites e.g. conservation covenants, Environmental Protection zones etc).
5. Ongoing maintenance requirements.
6. Spread of projects across ecological priorities and the Shire (including projects funded from other sources).

To date 48 landholders have submitted applications for the Biodiversity Grant Program. Site visits have been made to 26 properties, 24 of which meet the Grant's criteria. The purpose of this report is to seek Council's approval to fund these 24 private landowners under the Biodiversity Grant Program to assist them as per the table below.

Most of the proposed grants involve the provision of services by professional bushland regenerators to assist landholders to more effectively manage environmental weeds protect native vegetation and improve wildlife habitat. One site involves fencing to exclude stock from an environmentally sensitive area. A number of others involve planting and other works aimed specifically at enhancing and restoring koala habitat.

Surname	Location	Total costs (\$)	Detail
Gibbs/Zdesar	North Arm	900.00	Bush regeneration support. Strong landholder commitment to maintain works. Protect catchment of potentially high biodiversity wetland draining into Rous River.
Brady	Farrants Hill	1,500.00	Bush regeneration support. Strong landholder commitment to maintain works in mod.-high biodiversity value flora and fauna area with connection to other high value properties with landholder commitment.
Riordan	Farrants Hill	1,500.00	Bush regeneration support. Strong landholder commitment to maintain works in mod.-high biodiversity value flora and fauna area with connection to other high value properties with landholder commitment.
McCready	Farrants Hill	1,200.00	Bush regeneration support. Strong landholder commitment to maintain works in mod.-high biodiversity value flora and fauna area with connection to other high value properties with landholder commitment.
O'Brien	Murwillumbah	600.00	Bush regeneration support. Neighbourhood commitment to maintain works along degraded powerline clearing that degrades surrounding properties with mod.-high biodiversity value flora and fauna and landholder commitment.
FitzGerald	Upper Burringbar	1,200.00	Bush regeneration support. Strong landholder commitment to maintain works in high biodiversity value flora and fauna area with connection to other high value properties with landholder commitment.
Church	Nobbys Creek	2,790.00	Bush regeneration and revegetation support. Strong landholder commitment to maintain works in mod-high biodiversity value flora and fauna area with connection to other high value area. Possibly good Koala habitat.
Mitchell	Upper Burringbar	1,200.00	Bush regeneration support. Landholder commitment to maintain works, but physically restricted. Mod-high biodiversity value flora and fauna area with intact connection to other high value area.
Colby	Dungay	1,860.00	Bush regeneration and revegetation support. Strong landholder commitment to maintain works. No habitat linkage, except that it is riparian habitat. Severe erosion due to lack of vegetation.
Teis	Crabbes Creek	3,000.00	Bush regeneration support. Strong landholder commitment to maintain works in high biodiversity value flora and fauna area with direct connection to National Park. Possibly good Koala habitat.
Cousins	Burringbar	1,800.00	Bush regeneration support. Strong landholder commitment to maintain works in high biodiversity value flora and fauna area with connection to other high value areas. Possibly good Koala habitat.
Weston	Beltana Dve	2,130.00	Bush regeneration and revegetation support. Strong landholder commitment to maintain works in mod.-high biodiversity value flora and fauna area with connection to Council Reserve on Terranora Broadwater. Landholder hoping to encourage neighbours through a workshop with the Bush Regeneration team.
Lawrence (Tumbulgum Landcare)	Upper Duroby	4,595.00	Stock exclusion (fencing and watering). Strong landholder commitment to maintain works in high biodiversity value flora and fauna area with connection to other high value properties with landholder commitment.

Surname	Location	Total costs (\$)	Detail
Tunsted	Upper Crystal Creek	1,800.00	Bush regeneration support. Strong landholder commitment to maintain works in high biodiversity value flora and fauna area with connection to other high value National Park.
Klease	Urliup	1,200.00	Bush regeneration support. Strong landholder commitment to maintain works in high biodiversity value flora and fauna area with connection to other high value properties with landholder commitment. Good Koala habitat.
Hall	Duroby	2,625.00	Bush regeneration and revegetation support. Strong landholder commitment to maintain works in high biodiversity value flora and fauna area with riparian connection to other mod-high value properties.
Brannian / Sharman	Dungay	3,000.00	Bush regeneration support. Strong landholder commitment to maintain works in high biodiversity value flora and fauna area with direct connection to National Park.
Rippin	Rowlands Ck	3,000.00	Bush regeneration support. Strong landholder commitment to maintain works in high biodiversity value flora and fauna area with connection to other high value National Park. Possibly Koala habitat.
Richards	Uki	1,200.00	Bush regeneration support. Strong landholder commitment to maintain works in moderate biodiversity value flora and fauna area with connection to other moderate value properties.
Zijdemans	Burringbar	1,800.00	Bush regeneration support. Strong landholder commitment to maintain works in mod.-high biodiversity value flora and fauna area with connection to other high value areas.
Aldridge	Nobbys Ck	3,000.00	Bush regeneration support. Strong landholder commitment to maintain works in high biodiversity value flora and fauna area with connection to other high value properties and National Park. Good Koala habitat.
Kraemer	Duranbah	7,200.00	Koala food tree planting and bush regeneration support. Strong landholder commitment to maintain works that will provide connection directly to Cudgen Nature Reserve to south and east and other Biodiversity Grant property to west.
Cutts	Duranbah	7,200.00	Koala food tree planting and bush regeneration support. Strong landholder commitment to maintain works that will provide connection to Cudgen Nature Reserve via other Biodiversity Grant property to east.
		\$56,300.00	

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

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20 [CNR-CM] Pilot Project - Plastic Bag Free Villages

ORIGIN:

Natural Resource Management

SUMMARY OF REPORT:

At its meeting on Tuesday 20 October 2009 Council resolved to initiate discussion on the possibilities for the elimination of plastic bags from the Shire, including an approach to the Business Chambers to seek their involvement in this discussion.

Plastic Bag Phase-Out

South Australia enacted legislation banning the use of plastic check-out bags by all retailers from 4 May 2009. Other states, including NSW are also working towards a phase-out or reduction in plastic bag use.

The Coles Bay Model

In 2003, Coles Bay in Tasmania declared itself 'plastic bag free' after the local bakery worked with other retailers in the town to eliminate the use of plastic check-out bags. This model of retailer cooperation has since been adopted globally as an effective 'ground up' approach to reducing the environmental impact of plastic check-out bags.

Tweed Shire – a Village Approach

To effectively address Council's plastic bag resolution, it is recommended that the Coles Bay model be demonstrated at the local level through a pilot project. The findings of this pilot project would assist Business Chamber preparation for plastic bag phase-out in NSW.

By working with one or more villages that have only a small number of retailers, Council can create a local model for other localities in the shire to become plastic bag free.

RECOMMENDATION:

That Council endorses the implementation of a Plastic Bag Free Village Pilot Project.

REPORT:

Plastic Check-out Bag Phase Out

A national ban on plastic check-out bags could result in 4 billion less plastic bags ending up in Australia's landfills and environment every year.

In the first major step to achieving a national ban on plastic check-out bags, South Australia banned single-use polyethylene plastic bags from 4 May 2009. All types of retail outlets are affected by the ban.

In other Australian states, governments and retailers are also working towards a phase-out or reduction in plastic bag use. These developments pose a simple question for retailers and communities. Are You Ready?

These moves are the result of a five year national campaign for the eradication of single use plastic check-out bags. It's also part of an international push to reduce the hundreds of billions of plastic bags that get used globally every year.

How Coles Bay Became Plastic Bag Free

As one of Tasmania's most popular tourist destinations, Coles Bay has over 100,000 visitors a year. Back in 2002, Ben Kearney the town's baker, called Jon Dee, Founder of Planet Ark, asking for advice on how he could reduce his shop's usage of plastic bags. Jon suggested that Ben should try and get his shop and all of the other Coles Bay retailers to ban plastic bags at the check-out.

As a result, just after Anzac Day in 2003, Coles Bay became Australia's first plastic bag free town. The response from the public and media both here and overseas was incredibly positive. The outlets who banned the bags included two supermarkets, one of which was an IGA outlet.

Since the ban was implemented, this small Tasmanian town has stopped the use of over 1.75 million plastic bags. That's 1.75 million less plastic bags ending up in our landfills and environment. In one simple move, they showed that Australian communities could easily make the switch to living without plastic check-out bags. The retailers also benefited because they no longer had to buy plastic bags.

As alternatives to plastic check-out bags, the town's retailers offered a strong Australian-made paper bag, as well as a reusable bag.

For the last 5 years, the people of Coles Bay and all of their visitors have got into the habit of bringing their own bag every time they shop. Knowing that free plastic bags are not available has made the habit a lot easier to get into. If they do forget their bag, then the cheaper paper bag is available.

Since Coles Bay banned plastic check-out bags, other towns and communities have used them as a role model and followed suit. Even Modbury, which is based in England, used Coles Bay as their role model when they banned plastic check-out bags. Jon and Ben advised Modbury's Rebecca Hosking on how she could get her town to go plastic bag free. Their success in doing so generated a massive amount of coverage in the UK media about banning plastic bags.

As a result, many UK towns and communities are now following Modbury's example. Better still, the whole of South Australia is now be doing a Coles Bay.

Tweed Shire Council

At its meeting on Tuesday 20 October 2009 Council resolved to initiate discussion on the possibilities for the elimination of plastic bags from the Shire, including an approach to the Business Chambers to seek their involvement in this discussion.

Tweed Shire – A Village Approach

To effectively address Council's plastic bag resolution, it is recommended that the Coles Bay model be demonstrated at the local level through a pilot project. The findings of this pilot project would assist Business Chamber preparation for plastic bag phase-out in NSW.

By working with one or more villages that have only a small number of retailers, Council can create a local model for other localities in the shire to become plastic bag free.

A pilot project with one or more local villages would see the Tweed Shire having the first declared 'plastic bag free localities' in northern NSW and South-east Queensland. Large numbers of retailers around the state have stopped using plastic check-out bags, but the tiny NSW town of Kangaroo Valley, about 140km southwest of Sydney is the only declared 'plastic bag free town' on mainland Australia.

Pilot Program - Plastic Bag Free Village

If endorsed, a pilot program would run as follows:-

- Identify one or more villages that have commitment from 100% of the retailers to participate in the program (eg. Chillingham, Tyalgum, Uki)
- Enter into a Memorandum of Understanding with the retailers to set out program responsibilities.
- Provide a one-off supply of reusable shopping bags to retailers in the locality.
- Erect entry statement signage to the village.
- Assist with media coverage to promote the locality as 'plastic bag free'.
- Provide guidance for retailers to source affordable, long-term alternatives to plastic check-out bags.
- Monitor, evaluate and refine the program for consideration by Business Chambers.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Council's Sustainability Program has \$3,000 available for a pilot project of this nature. This would be sufficient to cover project costs including entry statement signage for the village and one-off supply of reusable shopping bags to retailers in the locality.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

21 [CNR-CM] Summary of River Health Grant Program Implementation 2008 – 2009 Financial Year

ORIGIN:

Natural Resource Management

SUMMARY OF REPORT:

This report provides Council with a summary of investment in river and riparian management, in the third year of implementation of the River Health Grants Program. The goal of this project is to improve the quality of Tweed Shire's raw potable water supply by subsidising works on private stream banks, for example by provision of off stream water for cattle. The source of funding for this program is Council's Water and Sewer Fund. As of October 2009, \$187,161 has been expended through the initiative. River Health Grant Agreements have been made with 39 landholders.

RECOMMENDATION:

That Council:-

- 1. Receives and notes the report on the Summary of River Health Grant Program Implementation in the 2008-2009 financial year.**
- 2. Approves the proposed River Health Grants included within this report.**

REPORT:

Since June 2006 Council's Waterways Program Leader has worked with landholders in the Upper and Mid-Tweed and Oxley River catchments to initiate riparian projects which serve to protect and improve water quality. The program was expanded to include properties in the catchment of Cobaki and Terranora Broadwaters in 2008. The goal of this program is to enhance the environmental condition of Tweed River and its Catchment and as such maintain the most important component of the Shires fresh water supply.

The River Health Grants Program has been successful in attracting a diverse range of landholders, from traditional farming to rural lifestyle blocks. Recent projects have ranged from fencing and cattle crossing construction at Mt Burrell to control of vine weeds in high conservation value riparian forest on Upper Duroby Creek. In each case of funding, an agreement with landholders has been signed which details Council's contribution to a project and the commitments and responsibilities of the land holder. Each grant is based on the agreement that the landholder will contribute significantly to the project, in most cases by undertaking agreed works, with materials supplied by Council.

A significant advantage of the project has been the ability to use Tweed Shire Council River Health Grants to enhance the outcome of projects being undertaken by the Northern Rivers Catchment Management Authority. In several instances Council has undertaken fencing of creek banks which has been followed up by weed control and revegetation with NRCMA grant funds.

The program has been very well received by the community and has made an immediate improvement in the riparian conditions of some areas by removing cattle from waterways.

A cumulative summary of the achievements of the project and schedule of the projects funded since commencement is provided below:

- Number of landholder agreements and grants - 40
- Total length of stream bank under improved management – 20.4 km
- Total Investment - \$187, 161

River Health Grants delivered in the 2008 – 2009 financial year were as follows:

Owner	Waterway	Objective	Council Contribution	Cost
Bates	Tweed River	Reduce impact of cattle on water quality	850m fencing materials 2 culverts and rock	\$10,663
Eberhard	Upper Perch Creek	Fencing of tributary of Tweed River & cattle crossing Fencing tributary and stock watering to reduce impact of cattle on water quality (*combined with NRCMA planting/regen project)	600m fencing materials, trough and pipe	\$3795
Quin	Smiths Creek	Riparian vegetation rehabilitation	3 days bush regen contractor	\$308
Cox	Cobaki Creek	Reduce impact of cattle on water quality. Fencing of Cobaki Creek. (*combined with NRCMA planting/regen project)	300 m fencing materials	\$1794
Butler	Smiths Creek	Reduce impact of cattle on water quality. Fencing and water point. Planting.	700 m fencing materials, trough, pipe and tank	\$6680
Jarvis	Smiths Creek	Reduce impact of cattle on water quality. Fencing and water point. Planting.	940 m fencing materials, trough, pipe and tank	\$7339
Bonser	Cobaki Creek	Reduce impact of cattle on water quality and existing riparian vegetation. Fencing. (*combined with NRCMA planting/regen project)	260 m fencing materials	\$1788
Zulu	Tweed River	Riparian vegetation rehabilitation	Planting and bush regeneration contractor assistance	\$550

Council Meeting held Tuesday 15 December 2009

Flemming	Rous River	Riparian vegetation rehabilitation to stabilise eroding river bank	Bush regeneration contractor	\$2674
Fairly	Rous River	Riparian vegetation rehabilitation to stabilise eroding river bank	Bush regeneration contractor	\$2920
Wilson	Upper Duroby Creek	Riparian vegetation rehabilitation. (*combined with NRCMA planting/regen project)	Bush regeneration contractor	\$3916
Schenk	Pumpenbil Creek	Riparian vegetation rehabilitation	Bush regeneration contractor	\$2840
Smith	Tweed River	Riparian vegetation rehabilitation	Bush regeneration contractor	\$3300
Clarke	Upper Duroby Creek	Fencing and water point	Fencing materials	\$3732
Russel	Korumbyn Creek	Stabilisation of eroding stream bank and planting	Supply of rock	\$4400
Westwood	Cobaki Creek	Reduce impact of cattle on water quality and existing riparian vegetation. Fencing and planting. (*combined with NRCMA planting/regen project)	Fencing materials and plants	\$1400

In addition to the completed grants shown above, it is proposed to support landholders with additional River Health Grants in the forthcoming months as detailed below.

Owner	Waterway	Objective	Council Contribution	Cost
Pickard	Back Creek	Riparian vegetation rehabilitation	Fencing material	\$4868
Lofts	Perch Creek	Riparian vegetation rehabilitation	Fencing material	\$5000
Dwyer	Tweed River	Riparian vegetation rehabilitation	Fencing material	\$872
Edwards	Tyalgum Creek	Riparian vegetation rehabilitation	weed control	\$4200
Waldren	Hopping Dicks Creek	Stabilise erosion of creek bank	Earth works	\$10,000
Teece	Tyalgum Creek	Stabilise erosion of creek bank	Earth works	\$5000
Assam	Midginbil Creek	Riparian vegetation rehabilitation	Fencing	\$7299
Total				\$37,239

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Funding for this project is to be sourced from the existing Water Supply Catchment Quality budget.

POLICY IMPLICATIONS:

This program is supported by the Water Supply Catchment Stream Bank Protection Policy.

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).

Nil.

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22 [CNR-CM] Lease to Telstra Corporation Limited – Equipment Shelter – Hospital Hill Reservoir – Karramul Street, Murwillumbah

ORIGIN:

Design

SUMMARY OF REPORT:

Council has received a request from Daly International Pty Ltd, on behalf of Telstra Corporation Limited, to enter into a lease agreement for an area of 24.75m². Telstra intends to construct an equipment shelter within the leased area as well as installing six panel antennae on the existing telecommunications tower at 29.9m CL to enhance the service to customers in Murwillumbah as part of Telstra's Next-G™ Network and to improve in-building coverage in the area.

Telstra considers that the proposed work is deemed to be a low impact facility pursuant to Division 21 of *SEPP (Infrastructure) 2007* and the *Federal Telecommunication (Low Impact) Determination 1997*. Telstra is required to provide notification of commencement of works and secure tenure for the facility.

Notification of the proposed works has been received and there are no objections to the use of the area sought to be leased by Telstra, immediately adjacent to existing telecommunications infrastructure. Negotiation of the rental is to be finalised, however, to enable Telstra to commence works early in 2010, it is recommended that Council approves entering into a lease with Telstra for a term of five years, with three further options of five years each subject to concurrence by Council that the development is a low impact facility, or alternatively the granting of development consent.

RECOMMENDATION:

That Council:-

- 1. Approves entering into a lease with Telstra Corporation Limited for five years with three options of five years each at a rental to be mutually agreed upon where Telstra bears all legal and registration costs subject to concurrence by Council that the proposed development is a low impact facility or alternatively the granting of development consent.**
- 2. Executes all documentation under the Common Seal of Council.**

REPORT:

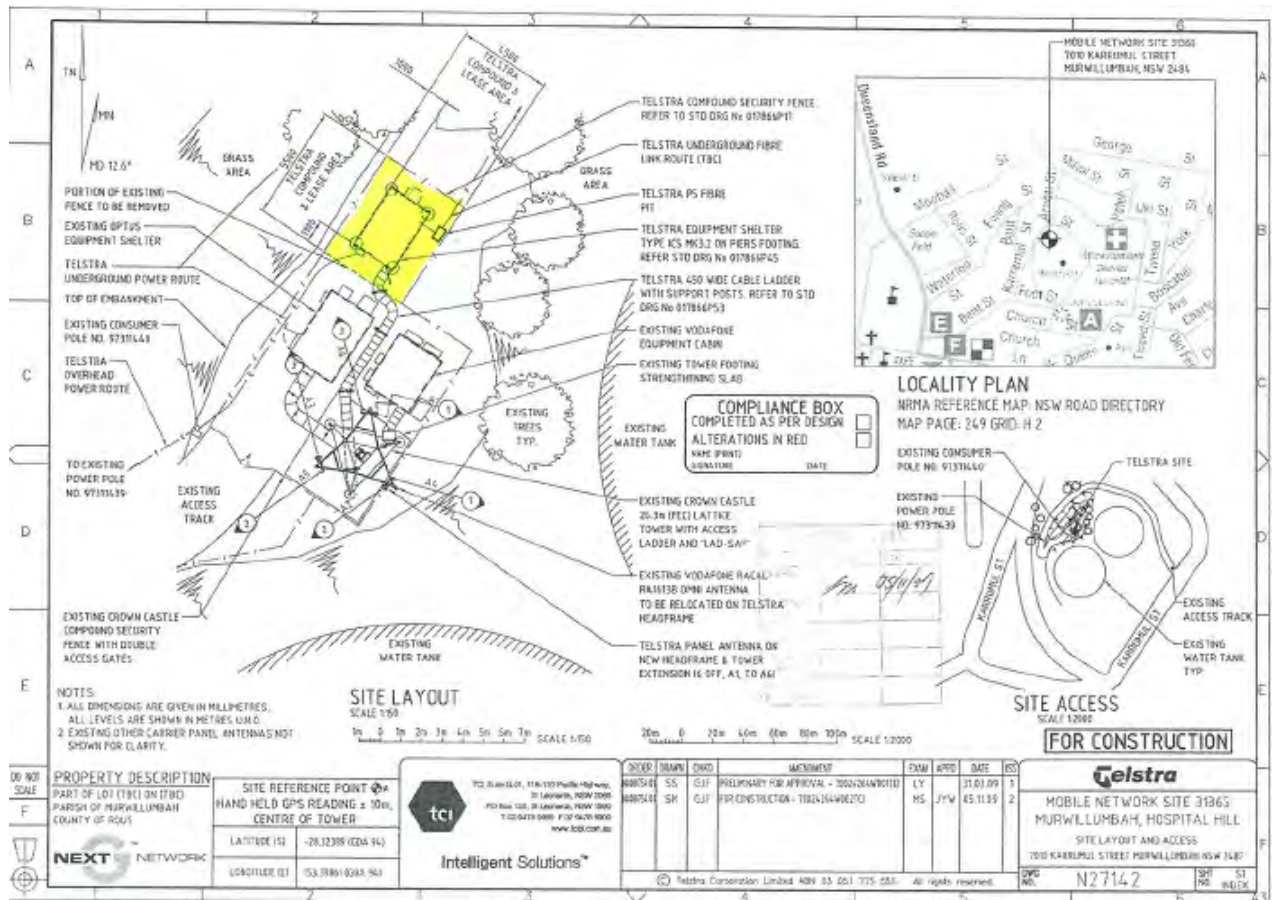
Council has received a request from Daly International Pty Ltd, on behalf of Telstra Corporation Limited, to enter into a lease agreement for an area of 24.75m². Telstra intends to construct an equipment shelter within the leased area as well as installing six panel antennae on the existing telecommunications tower at 29.9m CL to enhance the service to customers in Murwillumbah as part of Telstra's Next-G™ Network and to improve in-building coverage in the area.

Telstra considers that the proposed work is deemed to be a low impact facility pursuant to Division 21 of *SEPP (Infrastructure) 2007* and the *Federal Telecommunication (Low Impact) Determination 1997*. Telstra is required to provide notification of commencement of works and secure tenure for the facility.

Notification of the proposed works has been received and there are no objections to the use of the area sought to be leased by Telstra, immediately adjacent to existing telecommunications infrastructure. Negotiation of the rental is to be finalised, however, to enable Telstra to commence works early in 2010, it is recommended that Council approves entering into a lease with Telstra for a term of five years, with three further options of five years each subject to concurrence by Council that the development is a low impact facility, or alternatively the granting of development consent.

It is to be noted that the equipment shelter is proposed to be constructed on Council land, Lot 2 in DP 1044176, immediately adjacent to the north-eastern boundary of the existing fenced compound containing both Optus and Vodafone shelter sheds. The lattice tower at the reservoir site is within Crown land parcel Lot 7011 in DP 1058669.

The plan below shows the site:



LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

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).

Nil.

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23 [CNR-CM] Lease to Southern Cross University – Part of Courtyard Area at Tweed Heads Civic Centre

ORIGIN:

Director Community & Natural Resources

SUMMARY OF REPORT:

Southern Cross University have leased an area in the northern courtyard at Tweed Heads Civic Centre since 2006. The lease will expire on 26 March 2010 and a request to lease the area for another year with an option for a further year has been received.

The University has placed demountables in the leased area to provide further office space whilst further developing facilities in the Tweed, which remains ongoing.

There have been no issues arising from the use of the area by the University and it is recommended that Council approve entering into a further lease. The land is classified as operational so there are no statutory restraints in the leasing of the land.

RECOMMENDATION:

That :

- 1. Council approves entering into a lease with Southern Cross University to lease part of the northern courtyard at the Tweed Heads Civic Centre for a commencing rental of \$6,734.85 per annum to be CPI indexed each year for a term of one year and an option for a further year.**
- 2. All documents be executed under the Common Seal of Council.**

REPORT:

Southern Cross University have leased an area in the northern courtyard at Tweed Heads Civic Centre since 2006. The lease will expire on 26 March 2010 and a request to lease the area for another year with an option for a further year has been received.

The University has placed demountables in the leased area to provide further office space whilst further developing facilities in the Tweed.

There have been no issues arising from the use of the area and it is recommended that Council approve a new lease, with a commencing rental to be \$6,734.85. This figure is derived from the commencing rental in 2006 of \$6,000 with annual CPI increases determined to be the current market rental at that time.

It is now necessary to resolve to enter into a lease with the University and to execute all documentation under the Common Seal of Council.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

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).

Nil.

REPORTS FROM THE DIRECTOR ENGINEERING AND OPERATIONS

24 [EO-CM] Land Acquisition - Link Road between Macadamia Drive and Seabreeze Boulevard, Pottsville

ORIGIN:

Design

SUMMARY OF REPORT:

Council at its meeting of 8 May 2007 resolved to acquire part of Lot 3 in DP 1106275 and a section of Crown land within the creek bed of Cudgera Creek Pottsville for public road under the provisions of the Land Acquisition (Just Terms Compensation) Act 1991 for the purposes of the Roads Act, 1993.

The section of land contained within Lot 3 in DP 1106275 which was to be acquired for road was dedicated to Council in a plan of subdivision and noted as Lot 2 in DP 1087664.

A plan of acquisition has been registered as DP 1137819. The Council owned parcels to be acquired and dedicated as road are shown as Lots 1, 2, 4, 5 and 7, the Crown Land parcels are shown as Lots 3 and 6.

It is recommended that Council approves the acquisition of Lots 1 to 7 in DP 1137819 under the Land Acquisition (Just Terms Compensation) Act 1991 for the purposes of the Roads Act 1993.

RECOMMENDATION:

That:-

1. Council approves the acquisition of Lots 1 to 7 in DP 1137819 for public road under the provisions of the Land Acquisition (Just Terms Compensation) Act 1991 for the purposes of the Roads Act, 1993 and the making of the necessary applications to the Minister and/or Governor;
2. The subject land be dedicated as road following gazettal of the acquisitions; and
3. All documentation be executed under the Common Seal of Council.

REPORT:

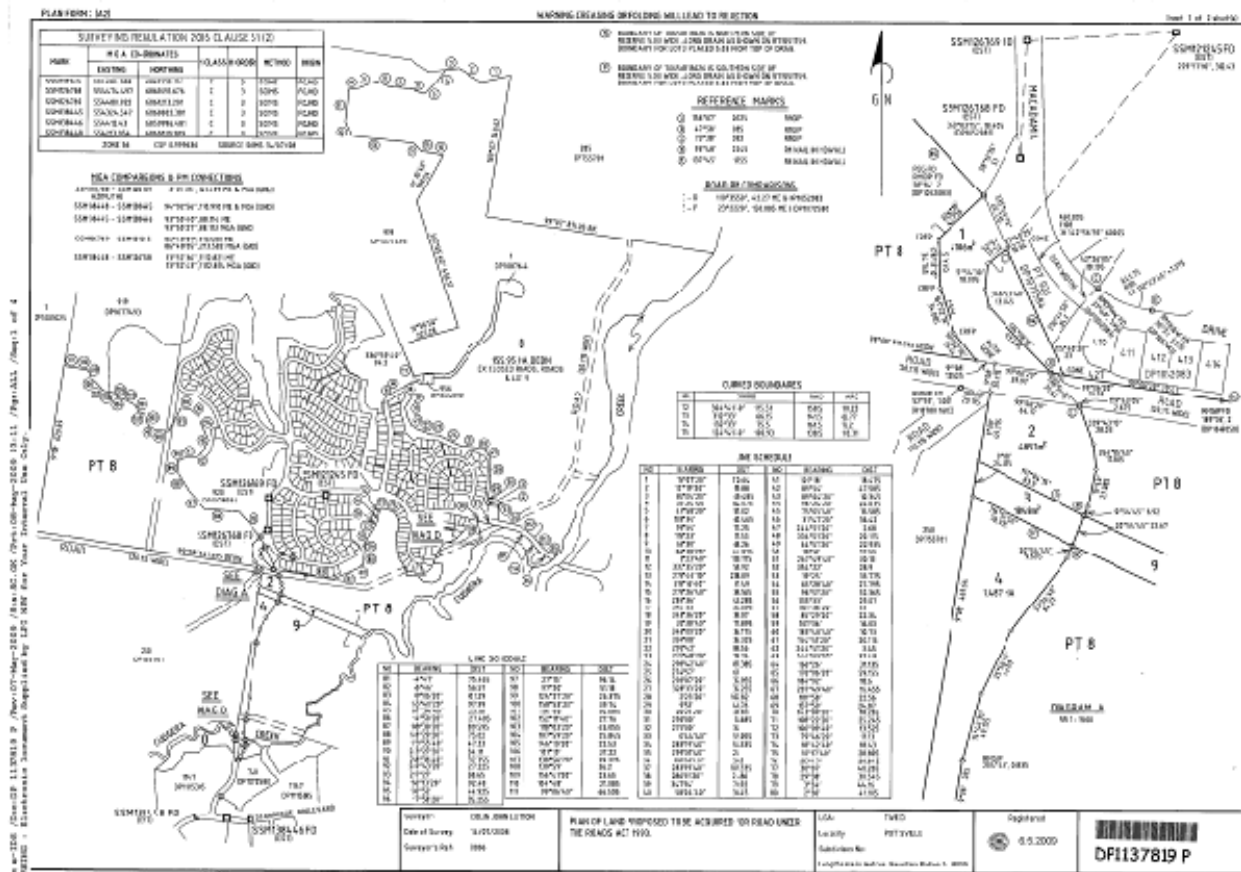
Council at its meeting of 8 May 2007 resolved to acquire part of Lot 3 in DP 1106275 and a section of Crown land within the creek bed of Cudgera Creek Pottsville for public road under the provisions of the Land Acquisition (Just Terms Compensation) Act 1991 for the purposes of the Roads Act, 1993.

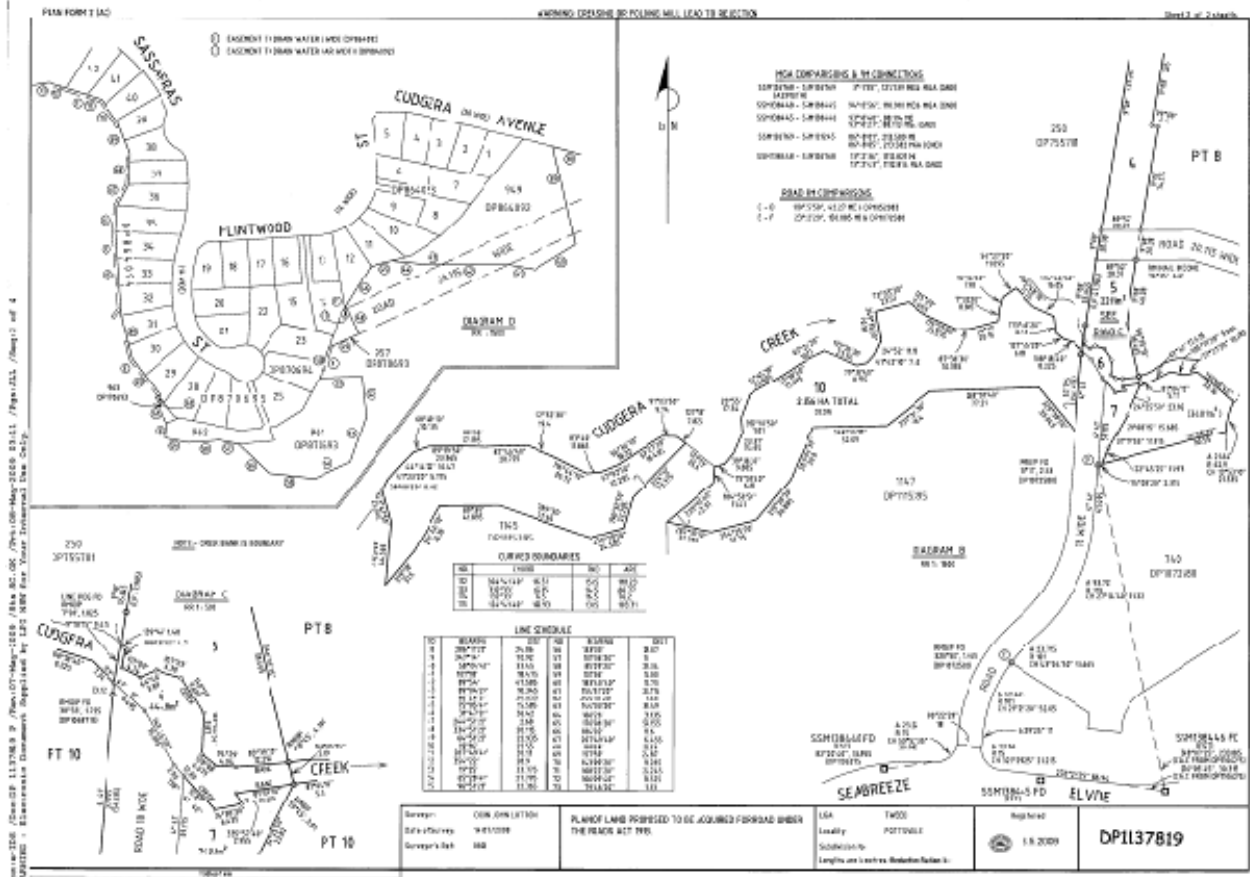
The section of land contained within Lot 3 in DP 1106275 which was to be acquired for road was dedicated to Council in a plan of subdivision and noted as Lot 2 in DP 1087664.

A plan of acquisition has been registered as DP 1137819. The Council owned parcels to be acquired and dedicated as road are shown as Lots 1, 2, 4, 5 and 7, the Crown Land parcels are shown as Lots 3 and 6.



It is recommended that Council approves the acquisition of Lots 1 to 7 in DP 1137819 under the Land Acquisition (Just Terms Compensation) Act 1991 for the purposes of the Roads Act 1993.

Plan of Acquisition





Box:e-IDS /Doc:DP 1137819 P /Rev:07-May-2009 /Sts:SC.OK /Prt:08-May-2009 03:11 /Fgs:ALL /Seq:3 of 4
 WARNING : Electronic Document Supplied by LPI NSW for Your Internal Use Only. **Printing will lead to rejection**

DEPOSITED PLAN ADMINISTRATION SHEET		Sheet 1 of $\frac{1}{2}$ sheet(s) 2
<p>SIGNATURES, SEALS and STATEMENTS of intention to dedicate public roads, to create public reserves, drainage reserves, easements, restrictions on the use of land or positive covenants.</p> <p>LOTS 1, 2, 4 & 5 (LAND IN 2/1087664) TO BE ACQUIRED AS PUBLIC ROAD. LOT 3 (CROWN LAND IN 7065/1113626) TO BE ACQUIRED AS PUBLIC ROAD. LOT 6 TO BE ACQUIRED AS PUBLIC ROAD. LOT 7 (LAND IN 1148/1115395) TO BE ACQUIRED AS PUBLIC ROAD.</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p>The Minister for Lands, in accordance with Part 2 Division 5 of the Surveying Regulation 2006, approves the determination of the water boundary as shown hereon. Department of Lands file: 08/10160 on 12/12/2008</p> <p style="text-align: center; font-weight: bold; font-size: 1.2em;">APPROVED</p> <p style="text-align: center;"><i>[Signature]</i> GRAHAM HARRIS GENERAL MANAGER CROWN LANDS DIVISION</p> </div> <p style="text-align: center; font-size: 0.8em;">Use PLAN FORM 6A for additional certificates, signatures, seals and statements</p> <p>Crown Lands NSW/Western Lands Office Approval I, <u>Nessie L. HURCUM</u> in approving this plan certify (Authorised Officer) that all necessary approvals in regard to the allocation of the land shown herein have been given</p> <p>Signature: <u><i>[Signature]</i></u> Date: <u>23 MARCH 2009</u> File Number: <u>GFO6HAB1</u> Office: <u>GRAFTON</u></p> <p style="text-align: center;">Subdivision Certificate I certify that the provisions of s.109J of the Environmental Planning and Assessment Act 1979 have been satisfied in relation to:</p> <p>the proposed..... set out herein (insert 'subdivision' or 'new road')</p> <p>* Authorised Person/General Manager/Accredited Certifier</p> <p>Consent Authority: Date of Endorsement: Accreditation no: Subdivision Certificate no: File no:</p> <p><small>* Delete whichever is inapplicable.</small></p>	<div style="text-align: center;">  DP1137819 S </div> <hr/> <p>Registered:  6.5.2009</p> <p>Title System: TORRENS & CROWN LAND</p> <p>Purpose: ACQUISITION</p> <hr/> <p>PLAN OF LAND PROPOSED TO BE ACQUIRED FOR ROAD UNDER THE ROADS ACT 1993.</p> <hr/> <p>LGA: TWEED Locality: POTTSVILLE Parish: CUDGEN County: ROUS</p> <hr/> <p style="text-align: center;">Surveying Regulation, 2006</p> <p>I, Colin John Lutton of Tweed Shire Council a surveyor registered under the <i>Surveying Act, 2002</i>, certify that the survey represented in this plan is accurate, has been made in accordance with the <i>Surveying Regulation, 2006</i> and was completed on: 14/07/2008</p> <p>The survey relates to Lots 1 - 7 incl only</p> <p>(specify the land actually surveyed or specify any land shown in the plan that is not the subject of the survey)</p> <p>Signature <u><i>[Signature]</i></u> Dated: 14/07/08..... <small>Surveyor registered under the Surveying Act, 2002</small></p> <p>Datum Line: SSM126768 - SSM126769 MGA</p> <hr/> <p>Plans used in the preparation of survey/compilation</p> <p>DP1087664 DP1113626 DP1106275 DP1068713 DP1115395 R7155 1759</p> <p style="text-align: center;"><small>(if insufficient space use Plan Form 6A annexure sheet)</small></p> <hr/> <p style="text-align: center;">SURVEYOR'S REFERENCE: 0806</p>	

* OFFICE USE ONLY

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

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. Copy of Council report and resolution to Council meeting held 8 May 2007 (ECM9691878).
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25 [EO-CM] Land Acquisition Limpinwood Road, Limpinwood

ORIGIN:

Director Engineering and Operations

SUMMARY OF REPORT:

Council has allocated funds to proceed with the upgrade of the school bus route along Limpinwood Valley Road, Limpinwood. In the course of surveying the existing road boundaries it was discovered that there was an historical anomaly whereby part of the existing road was actually formed over Lot 16 in DP 778624 and Lot 21 in DP 755696.

To correct this anomaly Council proposed to the respective landowners that the area in question be acquired by Council and dedicated as road reserve. The plan of land proposed to be acquired for Road under the *Roads Act* 1993 has been registered as DP 1143290 showing Lot 1 (Land in 16/778624) and Lot 2 (Land in 21/755696) as the land to be acquired as public road.

In lieu of monetary compensation the landowners have agreed to accept the transfer to them of road closure parcels being Lots 3 & 4 in DP 1143290 respectively. The compensation payable in this instance falls within Section 64 of the *Land Acquisition (Just Terms Compensation) Act*, 1991.

The acquisition is to proceed under the provisions of the *Land Acquisition (Just Terms Compensation) Act*, 1991 whereby an application is to be made to the Department of Local Government for approval to the acquisition.

RECOMMENDATION:

That :-

- 1. Council approves the acquisition of Lot 1 to 4 in DP 1143290 for public road and the compensation purposes under the provisions of the Land Acquisition (Just Terms Compensation) Act 1991 for the purposes of the Roads Act, 1993 and the making of the necessary application to the Minister and/or Governor;**
- 2. Council approves the compensation payable for the acquisition of lots 1 and 2 in DP 11432390 being transfer of road closure parcels being Lots 3 & 4 in DP 1143290.**
- 3. Lots 1 & 2 in DP 1143290 be dedicated as road following gazettal of the acquisition; and**
- 4. All necessary documentation be executed under the Common Seal of Council.**

REPORT:

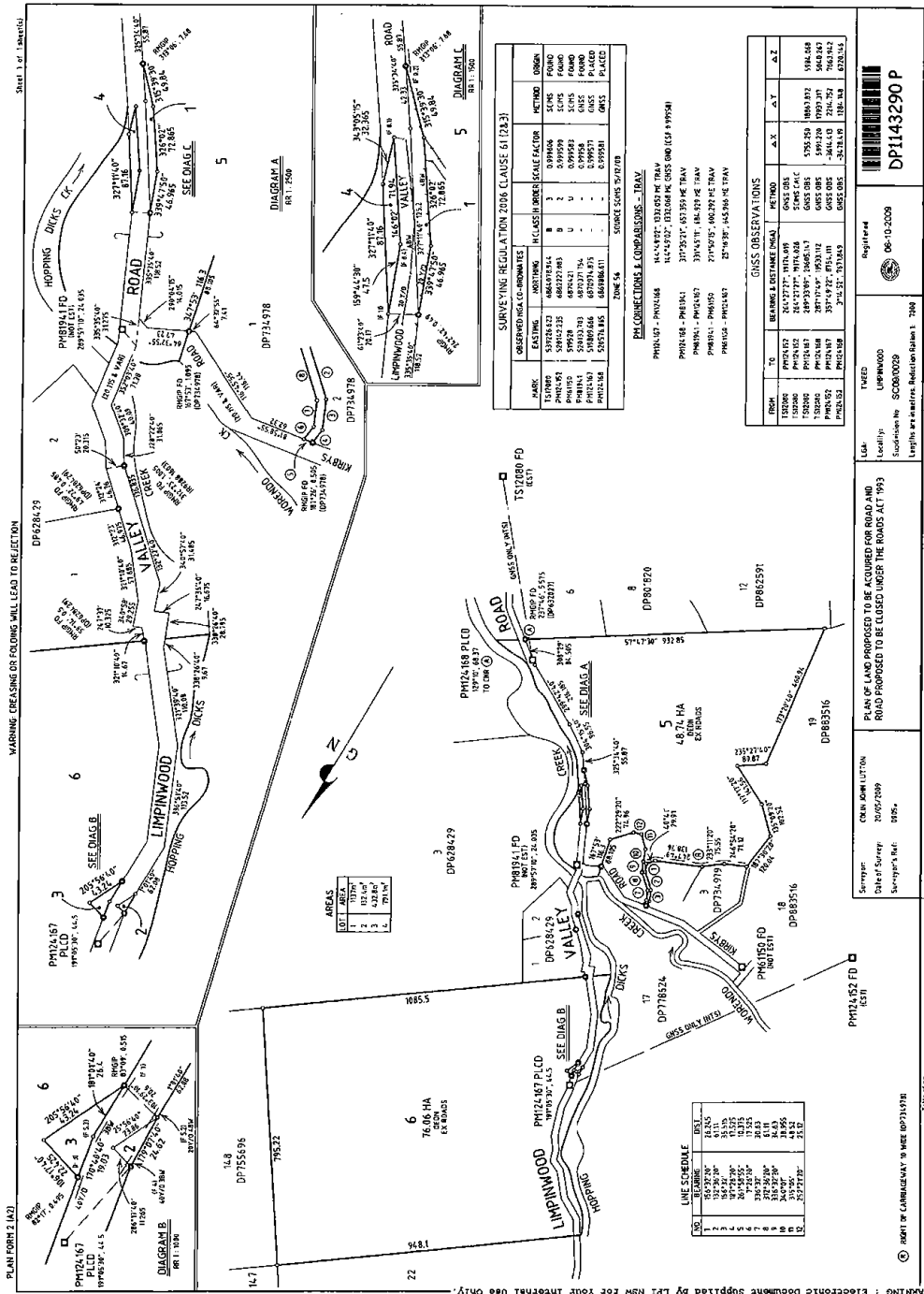
Council has allocated funds to proceed with the upgrade of the school bus route along Limpinwood Valley Road, Limpinwood. In the course of surveying the existing road boundaries it was discovered that there was an historical anomaly whereby part of the existing road was actually formed over Lot 16 in DP 778624 and Lot 21 in DP 755696.

To correct this anomaly Council proposed to the respective landowners that the area in question be acquired by Council and dedicated as road reserve. The plan of land proposed to be acquired for Road under the *Roads Act* 1993 has been registered as DP 1143290 showing Lot 1 (Land in 16/778624) now Lot 5 DP 1143290 and Lot 2 (Land in 21/755696) now Lot 6 DP 1143290 as the land to be acquired as public road.

In lieu of monetary compensation the landowners have agreed to accept the transfer to them of road closure parcels being Lots 3 & 4 in DP 1143290 respectively. The compensation payable in this instance falls within Section 64 of the *Land Acquisition (Just Terms Compensation) Act*, 1991.



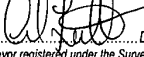

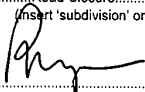
The acquisition is to proceed under the provisions of the *Land Acquisition (Just Terms Compensation) Act*, 1991 whereby an application is to be made to the Department of Local Government for approval to the acquisition.

A copy of DP 1143290 for reference purposes below:-



WARNING : Electronic Document Supplied by LPI NSW for Your Internal Use Only. Page: 1 of 2

Box:e-DeX /Doc:DP 1143290 P /Rev:07-Oct-2009 /Sta:SC.OK /Prt:08-Oct-2009 03:08 /Pgs:ALL /Seq:2 of 2
 WARNING : Electronic Document Supplied by LPT NSW For Your Internal Use Only. Printing will lead to rejection

DEPOSITED PLAN ADMINISTRATION SHEET		Sheet 1 of 1 sheet(s)						
<p>SIGNATURES, SEALS and STATEMENTS of intention to dedicate public roads, to create public reserves, drainage reserves, easements, restrictions on the use of land or positive covenants.</p> <p>LOTS 1 (LAND IN 16/778624) IS PROPOSED TO BE ACQUIRED AS PUBLIC ROAD. LOT 2 (LAND IN 21/755696) IS PROPOSED TO BE ACQUIRED AS PUBLIC ROAD.</p> <p>LOT 3 IS PUBLIC ROAD PROPOSED TO BE CLOSED (PREVIOUSLY LAND IN 21/755696 - VIDE PLAN R9288-1603).</p> <p>LOT 4 IS PUBLIC ROAD PROPOSED TO BE CLOSED (PREVIOUSLY LAND IN 71/755696 - VIDE PLAN R9288-1603).</p> <p>Use PLAN FORM 6A for additional certificates, signatures, seals and statements</p>	 <p>DP1143290 S</p>	*						
	<p>Registered:  06-10-2009 *</p> <p>Title System: TORRENS & CROWN</p> <p>Purpose: ACQUISITION</p>	<p>PLAN OF LAND PROPOSED TO BE ACQUIRED FOR ROAD AND ROAD PROPOSED TO BE CLOSED UNDER THE ROADS ACT 1993.</p>						
	<p>LGA: TWEED</p> <p>Locality: LIMPINWOOD</p> <p>Parish: CHILLINGHAM</p> <p>County: ROUS</p>							
	<p>Surveying Regulation, 2006</p> <p>I, Colin John Lutton of Tweed Shire Council a surveyor registered under the <i>Surveying Act, 2002</i>, certify that the survey represented in this plan is accurate, has been made in accordance with the <i>Surveying Regulation, 2006</i> and was completed on: 20/05/2009</p> <p>The survey relates to Lots 1 - 2 incl only. (specify the land actually surveyed or specify any land shown in the plan that is not the subject of the survey)</p> <p>Signature  Dated: 20/05/2009 Surveyor registered under the <i>Surveying Act, 2002</i></p> <p>Datum Line TS12080 -PM124152 Type: Rural</p>							
<p>Crown Lands NSW/Western Lands Office Approval</p> <p>I, <u>Stephen Boulton</u> in approving this plan certify (Authorised Officer) that all necessary approvals in regard to the allocation of the land shown herein have been given</p> <p>Signature:  Date: 27 August 2009 File Number: 07.05.H.212 Office: Gaithe</p>	<p>Plans used in the preparation of survey/compilation</p> <table border="0"> <tr> <td>DP628429</td> <td>DP734978</td> <td>DP778624</td> </tr> <tr> <td>DP883516</td> <td>R9288 1603</td> <td>R6026 1759</td> </tr> </table> <p>(if insufficient space use Plan Form 6A annexure sheet)</p>		DP628429	DP734978	DP778624	DP883516	R9288 1603	R6026 1759
DP628429	DP734978	DP778624						
DP883516	R9288 1603	R6026 1759						
<p>Subdivision Certificate</p> <p>I certify that the provisions of s.109J of the Environmental Planning and Assessment Act 1979 have been satisfied in relation to:</p> <p>the proposed <u>Road Closure</u> set out herein (insert 'subdivision' or 'new road')</p> <p> * Authorised Person/General Manager/Accredited Certifier</p> <p>Consent Authority: <u>Tweed Shire Council</u> Date of Endorsement: <u>25 August 2009</u> Accreditation no: Subdivision Certificate no: <u>SC09/0029</u> File no:</p>	<p>SURVEYOR'S REFERENCE:0905a</p>							

* OFFICE USE ONLY

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

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).*

Nil.

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26 [EO-CM] Application for Gate across Public Road Reserve - Bonnydoon Road, Uki

ORIGIN:

Design

SUMMARY OF REPORT:

An application has been received from the owners of Lot 93 in DP 807666 to retain a gate and stone pylon structure that provides an entry point to their property which has been erected across a Council public road reserve at Bonnydoon Road, Uki.

The gates were erected at the time of construction of the retreat in 2007. At this time the owners of Lot 93 also constructed and sealed at full cost to them the remaining section of Bonnydoon Road from the end of the Council formed and sealed section to the boundary of their property, being a length of approximately 90m.

Council records do not indicate that any approval or consent was sought or provided at that time for the construction of the road or the gate structure. The conditions set out in the original and then amended consent dated 24/8/2007 noted that a separate consent under S138 must be obtained prior to any access construction within the public road reserve.

An objection to the gates and structure has been received from the adjacent land owners, a copy of which is attached.

It is recommended that Council does not provide its consent to the gates and stone pylon structures within the Council public road reserve and in accordance with Section 107 of the Roads Act, 1993, directs the applicant to remove the obstruction within 60 days from the date of notification.

RECOMMENDATION:

That:-

- 1. Council does not provide its consent to the gates and stone pylon structures within the public road reserve and in accordance with Section 107 of the Roads Act, 1993, directs the applicant to remove the obstruction within 60 days from the date of notification.**
- 2. Council staff be authorised to remove the obstruction and invoice costs to the owners of Lot 93 DP807666, if the obstruction is not removed within the 60 day period.**

REPORT:

An application has been received from the owners of Lot 93 in DP 807666 to retain a gate and stone pylon structure that provides an entry point to their property which has been erected across a Council public road reserve at Bonnydoon Road, Uki.

The road reserve is currently a Crown road reserve however an application has been made to Land & Property Management for the transfer to Councils authority and is pending investigation.

The gates were erected at the time of construction of the retreat in 2007. At this time the owners of Lot 93 also constructed and sealed at full cost to them the remaining section of Bonnydoon Road from the end of the Council formed and sealed section to the boundary of their property, being a length of approximately 90m. Council records do not indicate that any approval or consent was sought or provided at that time for the construction of the road or the gate structure. The conditions set out in the original and then amended consent dated 24/8/2007 noted that a separate consent under S138 must be obtained prior to any access construction within the public road reserve.

Section 138 of the Roads Act 1993 states that inter alia a person must not erect a structure or carry out works in, on or over a public road, or dig up or disturb the surface of a public road otherwise than with the consent of the appropriate roads authority.

Section 128 of the Roads Act 1993 notes that a Roads Authority may grant the occupier of any land through which an unfenced public road passes to erect a gate across the road at any place at which the road intersects a boundary fence. The location of this gate structure is within the public road reserve at the end of the Council formed section of road and meets the boundary of Lot 80 DP 807666 and Lot 77 in DP 843738, its location does not however intersect the applicants land at Lot 93 in DP 807666.

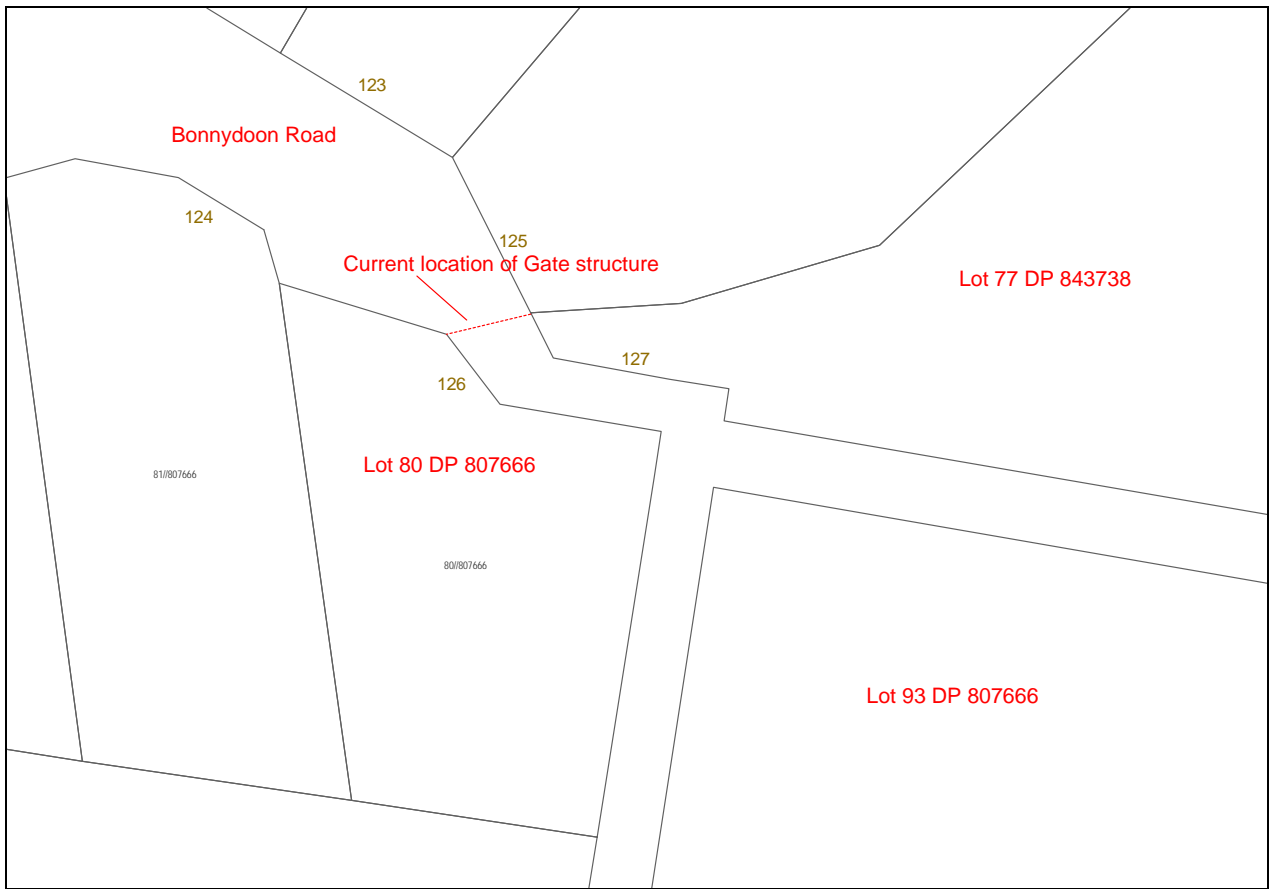
The applicant was requested in a letter dated 13 November 2009 to provide additional information to support the necessity for the gate and stone pylon structures to remain at their current location within the public road reserve. At the date of submission of this report there has been no response.

An objection to the gates and structure has been received from the adjacent land owners, a copy of which is attached. The objection provides that access to Lot 77 in DP 843738 has been impeded and restricts the formation of access. Entry to Lot 77 is located fully behind the fence structure. It further notes that any access formed at this time will be insufficient to allow large vehicles from accessing the property and therefore prevent the construction of a dwelling or other structure on Lot 77.

The objection further notes that the gate and stone pylon structure infers to other members of the public that Lot 77 is part of the commercial venture known as the 'Universal Peace Centre', which is a religious retreat, and discourages visitors and potential purchasers from entering past the point of the gates.

It is recommended that Council does not provide its consent to the gates and stone pylon structures within the Council public road reserve and in accordance with Section 107 of the Roads Act, 1993, directs the applicant to remove the obstruction within 60 days from the date of notification.

Below is a plan of Bonnydoon Road showing the area where the gate is located:-



Below are photos of the gate and stone pylons as well as the surrounding area:-



View looking north west back to Bonnydoon Road:-



Stone pylon and statue:-



LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

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. **Confidential Attachment** - Letter of objection (ECM 8737261).
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27 [EO-CM] Subdivision of Council Land for Road Purposes - Curtawilla Street, Terranora - Lot 28 in DP 250909

ORIGIN:

Design

FILE NO: DA09/0257

SUMMARY OF REPORT:

In 1997 Council approved an application to develop Lot 7 in DP 788000, located on Terranora Road, Terranora. The land subject of this report, Lot 2, is a Public Reserve located between Curtawilla Street and Lot 7. Please see the plan in the body of the Report.

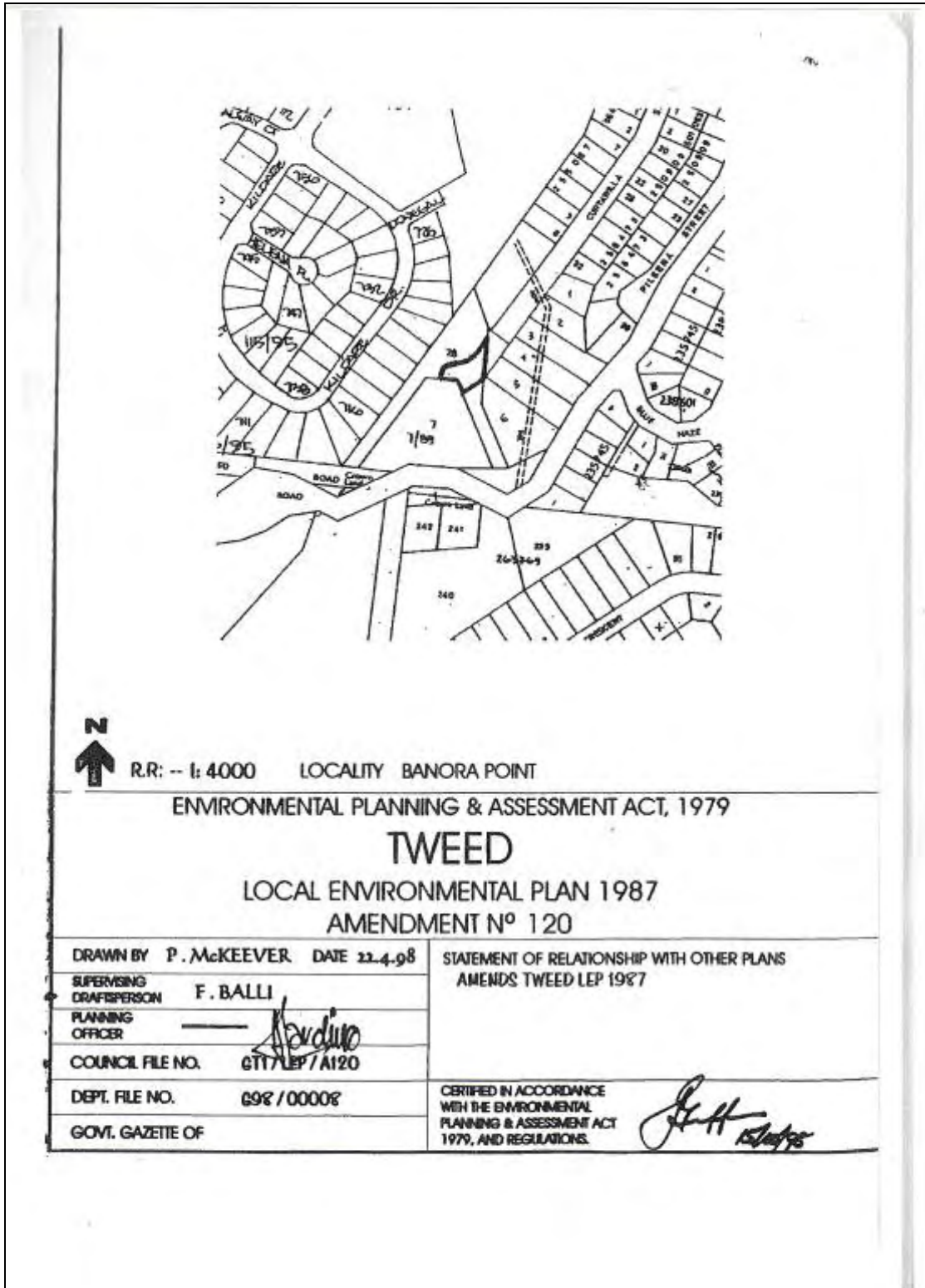
To enable the development to proceed it was conceded that a part of the Public Reserve needed to be re-classified to enable it to be excised and dedicated as road, as Lot 7 rises steeply from the south and cannot be accessed from Terranora Road

Part of Lot 28 was re-classified by LEP Amendment 120 in the Tweed LEP 1987, however, the development did not proceed. Another application has now been received from Halcore (Qld) Pty Ltd to develop Lot 7 and the applicant is also seeking to utilise the re-classified area of Lot 28 for access from Curtawilla Street to a proposed 6 Lot community title subdivision. The application has been assessed and approved, and it is considered necessary for Council to resolve to approve the subdivision of Council land and then subsequent sale.

RECOMMENDATION:

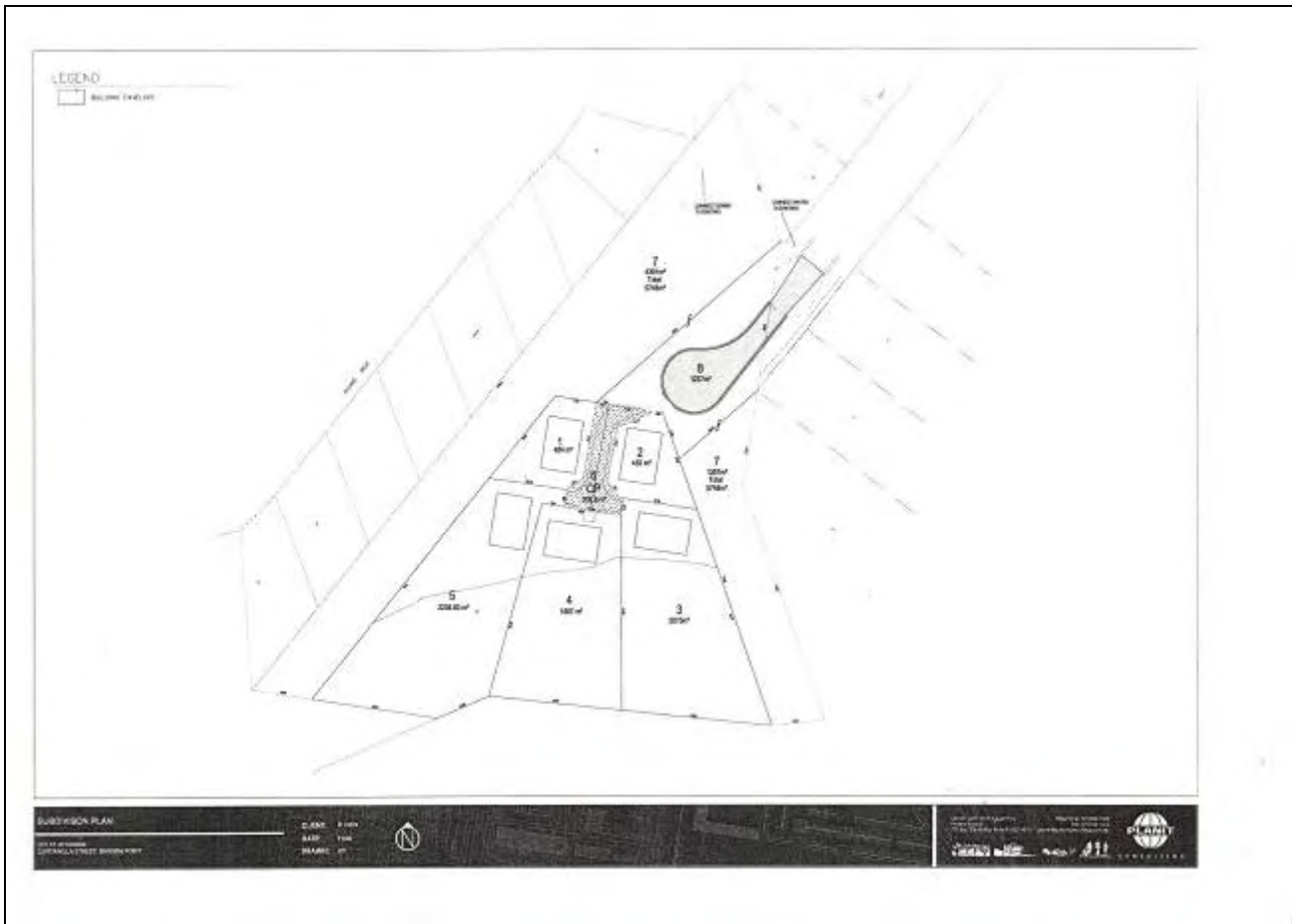
That:-

- 1. Council approves the actions to obtain subdivision of part of Lot 28 in DP 250909; and**
- 2. Council approves entering into a Contract for Sale with Halcore (Qld) Pty Ltd for the sale of that part of Lot 28 in DP 250909 to be subdivided and dedicated as road at a price to be determined by an independent valuer; and**
- 3. All documentation to be executed under the Common Seal of Council.**



The 1997 development did not proceed, however, Council has recently assessed an application from Halcore (Qld) Pty Ltd to subdivide the southern part of Lot 7, now known as Lot 12 in DP 1003644. The application has merit and will be approved, but it also requires the extension of Curtawilla Street over the Council land to the new subdivision.

The plan below shows the new development, together with the cul-de-sac to be constructed over Lot 28, the total area required to be dedicated as road will be 1, 237 m²:



Photographs of the public reserve are attached, showing where the proposed road will be, as well as showing that there is no infrastructure on the reserve, that it is mainly open space.

To enable the consent to issue, it is necessary for Council to approve the subdivision of Lot 28, as landowner, to create a lot to be dedicated as road.

The consent will issue with the following consent condition:-

“Prior to the release of the Subdivision Certificate, the applicant shall enter into a Contract for Sale with Council for the part of Lot 28 DP 250909 to be dedicated as road. The purchase price shall be determined by a valuation from an independent valuer, engaged at the applicant’s cost, of the current market value of the land.”

Therefore to enable the consent to issue, it is necessary to have the approval of Council, as landowner, to allow part of Lot 28 to be subdivided for road purposes for the benefit of the development of Lot 12. This will also ensure that Council will provide the title deed for Lot 28 to the developer to enable registration of his plan of subdivision.

To facilitate the practical aspect of the land transfer, it is also necessary to resolve to enter into a Contract for Sale with the developer, when an independent valuer has determined the market value of the land, which will take into account the value of the benefit to the developer.

Such a resolution will provide certainty to the developer that Council will sell the land to enable the subdivision to proceed. Settlement of the sale to the developer will occur when the plan has registered.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

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. Copy of Report to Council dated 17 December 1997 (ECM 9524236).
 2. Copy of Report to Council dated 7 October 1998 (ECM 9524239).
 3. Photographs of Reserve (ECM 9615412).
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28 [EO-CM] Cobaki Lakes Development - Application to Close and Purchase Part of Road Reserve - Parish of Terranora

ORIGIN:

Design

FILE NO: GR3/12/7

SUMMARY OF REPORT:

The developer of the "Cobaki Lakes Project" (the "Project") has lodged an application to close and purchase Council road reserves in the proposed Project area. The application was originally lodged with the Department of Lands (now known as the Land and Property Management Authority) in April 2008, but as the application related to Council public roads, the application did not proceed as it should have been lodged directly with Council.

The developer has now lodged the application with Council to close and purchase the Council road reserves within the Project area.

The applicant proposes to dedicate a new network of roads as part of the development of the Project to replace those roads sought to be closed. Council has assessed the proposal (in the context of the road network) and is of the view that it facilitates the orderly development of the Cobaki Lakes area.

One of the significant issues considered in the assessment of the application is that the proposed road network will maintain the existing road connection between Boyd Street and Piggabeen Road.

It is recommended that Council approves the closure of the road reserves. However to ensure that the physical connectivity between Boyd Street and Piggabeen Road is maintained during the construction of the new roads, it is recommended that the titles for the closed road parcels should not be transferred until such time as the applicant has registered the plan of subdivision which will effect the dedication of the new road and bring it into Council ownership. The dedication of the new roads will proceed in stages, and accordingly, the transfer of the road closure parcels will occur as separate lots concurrently with those stages.

RECOMMENDATION:

That:-

- 1. Council approves the closure of the road reserve which runs from the south western boundary of Lot 1 in DP 562222 to the north eastern boundary of Lot 209 in DP 755740 and the section that runs from the southern boundary of Lot 1 in DP 570076 to the northern boundary of Lot 54 in DP 755740 and along the northern boundary of Lot 55 in DP 755740;**

2. **Transfer of any road closure parcels to the applicant will only be completed when the plan of subdivision is registered and the new road replacing the existing road reserve is dedicated;**
3. **Should the new road not be constructed and dedicated within a reasonable time, then the road closure parcels will be dedicated as road;**
4. **The titles of all closed roads are to be consolidated with the adjacent land at the applicants cost when transferred to the adjacent land owner;**
5. **Easements be created over public authority reticulation services, if any; and**
6. **All necessary documentation be executed under the Common Seal of Council.**

REPORT:

Council has received an application to close and purchase road reserves at Cobaki, within the “Cobaki Lakes Project” area. The roads sought to be closed are highlighted in red in the plan shown below. This plan is also an attachment to this report:-



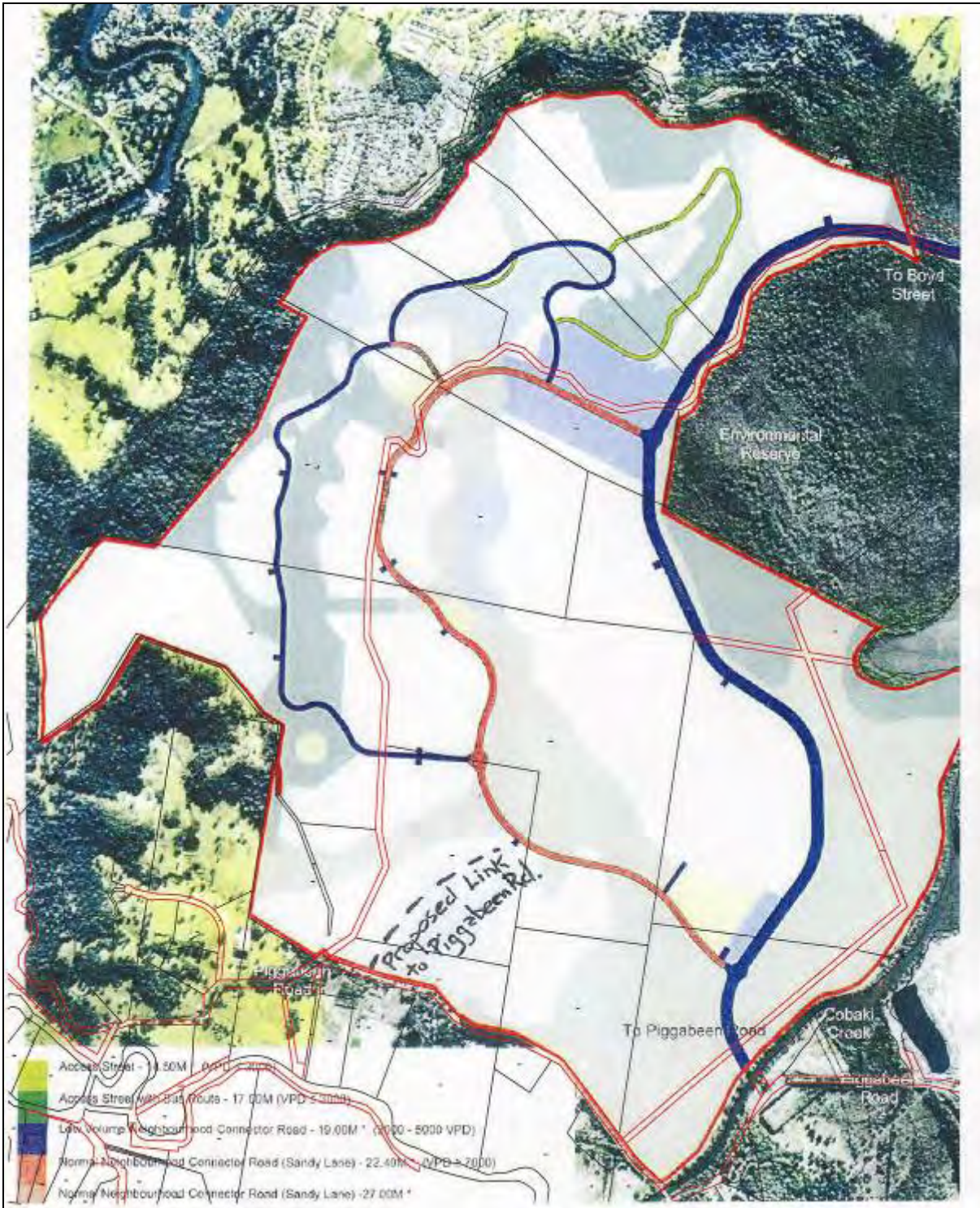
The plan shows two sections of road reserve seeking approval for closure and purchase. The first section runs in a north/south direction between the north eastern boundary of Lot 209 in DP 755740 (at the northern end) and the south western boundary of Lot 1 in DP 562222 to the south. The second section also runs in a north/south direction between the northern boundary of Lot 54 in DP 755740, along the northern boundary of Lot 55 in DP 755740 and then south to the southern boundary of Lot 1 in DP 570076.

The applicant proposes to dedicate a new network of roads as part of the development of the Cobaki Lakes Project to replace those roads sought to be closed.

Cobaki Lakes is a major urban expansion zone expected to accommodate in the vicinity of 10,000 people in 4,500 dwellings. The developer has 5 active development consents over the site dating back to 1992 and is currently reviewing the subdivision master plan and land uses proposed to reflect contemporary design. An overall concept plan has been submitted to the Department of Planning for assessment. Should the concept plan not receive the approval of the Department of Planning then the developer may make use one of the previously approved development consents to develop these parcels.

A report was submitted to Council at its meeting of 22 April 2008 which addresses many of the issues relating to the roads within the area. A copy of the report and resolution is attached.

The plan below shows both the existing and proposed road network at Cobaki Lakes. The proposed new road network is illustrated by solid coloured lines which show that connectivity between Boyd Street and Piggabeen Road is maintained. The existing road reserves sought to be closed are shown by open red lines. This plan is also an attachment to this report:-



Council's Policy on Road Closure and Purchase notes that "where the proponent is opening a more negotiable corridor serving the same access role" a road will be eligible for closure and purchase.

An inspection of the site has been conducted and it was determined that no Council or other service infrastructure is within or near the subject road reserves that would have any detrimental impact.

Council records indicate that there is no significant ecological sensitivity within the areas of the current road reserves. There does appear however to be a protected fauna corridor along the road reserve from Lot 1 in DP 562222 to Lot 202 in DP 755740 as well as some areas of secondary Koala Habitat. Further Lot 1 in DP 570075 to Lot 54 in DP 755740 appears to be a regional fauna corridor.

It is recommended that Council approves the closure of the road reserves. However to ensure that the physical connectivity between Boyd Street and Piggabeen Road is maintained during the construction of the new roads, it is recommended that the titles for the closed road parcels should not be transferred until such time as the applicant has registered the plan of subdivision which will effect the dedication of the new road and bring it into Council ownership. The dedication of the new roads will proceed in stages, and accordingly, the transfer of the road closure parcels will occur as separate lots concurrently with those stages.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

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. Copy of Council Report and Resolution dated 22 April 2008 (ECM 9617634).
 2. Copies of plans within report (ECM 9617629).
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29 [EO-CM] EC2009-122 Expressions of Interest for Foreshore, Boardwalk, Amenities Facilities, Landscaping and Associated Construction Works for the Jack Evans Boat Harbour

ORIGIN:

Planning & Infrastructure

FILE NO: GC12/3-2009122

SUMMARY OF REPORT:

Expressions of interest were called for Foreshore, Boardwalk, Amenities Facilities, Landscaping and Associated Construction Works for the Jack Evans Boat Harbour. A total of fifteen expressions of interest were received by the advertised closing date of 21 October 2009.

The Boat Harbour Upgrade has been the subject of numerous reports to Council. The detailed design has recently been completed.

The main objective of the expressions of interest was to receive interest from Contractors prepared to undertake the required works with a view to inviting about three Contractors to submit a fully priced tender.

The expressions of interest required the submission of prescribed information which was scored by a Council officer assessment panel.

This report provides a recommendation of three preferred Contractors who will be invited to submit a fully priced tender.

RECOMMENDATION:

That Council:-

- 1. Invites fully priced tenders from the following preferred Contractors for the Foreshore, Boardwalk, Amenities Facilities, Landscaping and Associated Construction Works for the Jack Evans Boat Harbour:-**
 - Seymour White Pty Ltd**
 - Neumanns Contractors Pty Ltd**
 - Multispan Pty Ltd.**

- 2. Invites fully priced tenders from the following alternative Contractors for the Foreshore, Boardwalk, Amenities Facilities, Landscaping and Associated Construction Works for the Jack Evans Boat Harbour should any preferred Contractor not be able or willing to tender (in order of preference):**
 - Abergeldie Constructions Pty Ltd**
 - GMW Urban Pty Ltd.**

REPORT:

Expressions of interest were called for Foreshore, Boardwalk, Amenities Facilities, Landscaping and Associated Construction Works for the Jack Evans Boat Harbour. A total of fifteen expressions of interest were received by the advertised closing date of 21 October 2009.

The Boat Harbour Upgrade has been the subject of numerous reports to Council. The design has recently been completed. 3D design images of the proposed construction have been provided as an attachment to this report.

The main objective of the expressions of interest was to receive interest from Contractors prepared to undertake the required works with a view to inviting about three Contractors to submit a fully priced tender.

The expressions of interest required the submission of prescribed information which was scored by a Council officer assessment panel.

The scope of the proposed works includes the provision of all materials, plant and labour for the construction of the following:-

- Removal of some concrete paths, modular seabees revetment (paving) and foreshore rock revetment as required;
- Demolition as required;
- Dewatering as required;
- Minor drainage works;
- Trenching for footings;
- Harbour earthworks and sand earthworks for the "beach" area;
- Concrete and granite paving works including compacted granular basecourse;
- Foundation Piling (nominated steel screw piles);
- Reinforced concrete works (foundations, retaining walls, planters, ramps, blinding, steps, seats, edging);
- Precast concrete works (walls, decking, platforms, facing panels);
- Carpentry (timber boardwalk, decking, seating);
- Metalwork (balustrades, rails, bollards, seating, recycle and litter bins, gratings);
- Painting (timber decking, panels, steel edging);
- Landscaping (remove weeds, subgrade cultivation, topsoiling, bioretention zones and garden beds, instant turfing, mulching, tree / shrub placement and maintenance period);
- Rock revetment works;
- Irrigation works;
- Construction of amenities building and kiosk building including all service connections;
- Electrical equipment (light poles and luminaries, bench seat lighting, LED strip lighting, conduits);
- Electrical equipment (main switchboard, controls, general power and light, etc).
- Electrical cabling and wiring for lighting;
- Conduiting for electrical cabling and future CCTV;

- Site works including set-out, temporary works, earthworks, roads, drainage, landscaping, etc;
- Preparation of 'Work – As – Executed' drawings;
- Temporary site services and site facilities including the Principal's site office, access, drainage, amenities etc;
- Site services including water supply, underground telecommunications, sewer and power services; and
- Environmental protection (including erosion and sediment control and removal / treatment of unsuitable dewatering), monitoring and maintenance activities.

Council's day labour crew is currently constructing the major drainage component of the construction which includes the installation of gross pollutant traps for water quality improvement.

The expressions of interest documentation included complete preliminary design drawings for contractors to gauge the extent and type of the works required.

A total of fifteen expressions of interest were received by the advertised closing date of 20 October 2009. Expressions of interest were received from the following companies:-

1. Abergeldie Constructions
2. Alder Constructions.
3. Civil Team Engineering.
4. Comfrey Constructions.
5. Dig It Landscapes
6. GMW Urban
7. Hutchinson
8. Landscape Solutions
9. MJ & SL Seery
10. Multi Span
11. Naturform
12. Neumann Contractors
13. Scape Shapes
14. Seymour White
15. Telfer & Co.

Expressions of Interest Assessment Panel

Prior to Expressions of Interests being called, an Assessment Panel was established to carry out the assessment of the expressions of interests. The composition of the Panel was as follows:-

<i>John Zawadzki</i>	Tweed Shire Council Traffic Engineer (Chairperson)
<i>Ted Gibson</i>	Tweed Shire Council Contracts Engineer
<i>Robert Hanby</i>	Tweed Shire Council Construction Engineer
<i>Georgina Wright</i>	Consultant Landscape Architect

The general terms of reference for the Assessment Panel were as follows:-

- Assess the expressions of interests submitted in accordance with the specified criteria;
- Undertake an individual initial assessment of the expressions of interest non-price data;
- Review any written responses;
- Identify and seek further clarifications (as required) from the submissions and review any qualifications and departures;
- Score all responses against the specified non-price assessment criteria and agreed assessment criteria weightings; and
- Summarise the assessment score results and sign the summary documents as a true record of the decisions made.

Expressions of Interest Evaluation

The expressions of interests were assessed by the Assessment Panel against the criteria set out in the Expressions of Interest document. This assessment is the subject of the Confidential Attachment. The attachment is listed as CONFIDENTIAL in accordance with Section 10A(2) (c) and (d) of the Local Government Act 1993, as discussion of the information in open Council would disclose commercial information, may prejudice the commercial position of the person who supplied it, or confer a commercial advantage on a competitor or reveal a trade secret.

The submissions were scored against various prescribed, non-priced criteria which attracted various weightings as follows:-

Assessment Criteria	Weighting
Experience and level of performance of the applicant on similar work; management experience; collaborative experience.	40%
Demonstration by the applicant of available resources.	20%
Proposed delivery methodology.	20%
Implementation of OHS management.	10%
Implementation of environmental management.	10%

A detailed assessment sheet which provides the Assessment Panel's scores for the above criteria and an overall score for each submission is shown in the confidential attachment to this report.

The five highest scoring companies are shown below in order:-

- Multi Span
- Neumann Contractors
- Seymour White
- Abergeldie Constructions
- GMW Urban Pty Ltd

The evaluation panel recommended that tenders be sought from the three top scoring companies with the two subsequently high scoring companies being offered backup tender roles should any of the three preferred tenderers not be able or willing to submit a tender for the works.

Early Contractor Involvement

The proposed tendering process will adopt an Early Contractor Involvement (ECI) process for this project to enable the selected tenderers to become fully aware of all obligations required under the contract, with the aim being to ensure that Council receives tenders which offer the best value for money. This EOI process involves the conducting of two workshops expected to be held in January and March 2010. Any design changes, as well as, alternative finishes and materials that offer project savings over the design detailed by the Landscape Architecture Consultants will be discussed.

Briefly the ECI process will allow the pre-qualified tenderers to review and comment on final draft tender documents with a view to:-

- refining risk allocation to best suit Tweed Shire Council and the Contractor,
- identifying and eliminating errors, ambiguities and discrepancies in the documents and
- identifying design and other improvements that can be incorporated in the documents and produce improved project outcomes.

The previous use of this ECI process has given considerable benefits to both clients and contractors. The anticipated ECI process will encompass the following (which may be subject to minor change):-

Phase 1 – Initial Contract Review Workshop (expected to be held early January 2010)

The intent of the workshop is to:-

- Issue the final draft contract documentation including drawings;
- Provide an update on the project approvals and anticipated date for invitation of prices;
- Discuss the philosophy of the contract and the importance of the collaborative contracting approach and how this is to be addressed in the documentation;
- Provide an overview of the Development Approval and environmental issues associated with the work; and
- Discuss the allocation of risks within the contract documentation.

Contractors will be expected to attend with their proposed key personnel for the project.

Phase 2 – Tenderers' Review Period (expected over January 2010)

Following the initial workshop, the pre-qualified Tenderers are provided 2 weeks to review the documentation and provide written response detailing: -

- Acknowledgement that they have reviewed the draft documentation including drawings and supplementary information provided;
- Identification of ambiguities, omissions, perceived errors and/or points of clarification in the documentation; and
- Identification of additions, changes, improvements that could enhance the project outcomes in the risk allocation register.

Phase 3 – Final Workshop & Contractor Interviews (expected to be held early February 2010)

An open forum workshop will be undertaken to discuss feedback on issues raised by pre-qualified Tenderers and changes that have been made to the documentation. Following the workshop, one-on-one interviews will be conducted with each pre-qualified Tenderer. The order and length of interviews will be determined following review of responses by pre-qualified Tenderers under Phase 2.

Throughout Phases 1 – 3 of the process, Contractors' performances will be assessed. This will form part of the overall tender evaluation criteria.

Phase 4 – Priced Tender Period (expected over March 2010)

On finalisation of the contract documentation, the pre-qualified Tenderers will be formally invited to submit a fully priced tender for the construction of the works.

A sum of \$5,000 will be paid on completion of Phase 3 to each pre-qualified Tenderer that fully participates in the procurement process.

Project Funding

As Council would be aware, Federal funding of \$1,818,182 was secured for the project in October this year.

The available budget for the proposed works is shown in the table below:-

PROJECT FUNDING	Cost \$ Excl. GST
Council (Loans) funding	\$5,000,000
NSW Department of Planning (Coastal Cycleway)	\$92,950
Council Section 94 (developer) Cycleway funds	\$92,950
Council Section 94 (developer) Regional Open Space funds	\$1,000,000
Federal funding	\$1,818,182
TOTAL	\$8,004,082

Unfortunately recent cost estimates for the Stage 1 work have shown that it is unlikely all of the foreshore works can be completed with the available funding. The tender documentation will require tenderers to price the proposed works in two portions – Stages 1A and 1B, with a view to either cutting back works or finding alternative design or construction techniques to minimise costs.

The Stage 1A/1B boundary is located at the rear of the Twin Towns complex. It is expected that the focal "beach area" will be able to be completed with the available funding.

Expected Project Timeframe

An indicative project timeframe for the tendering and construction process is as follows:-

- | | |
|---|------------------------|
| • Receive expressions of interest | October 2009 |
| • Select Preferred Tenderers | December 2009 |
| • Briefing workshops with Preferred Tenderers | January and March 2010 |
| • Invite tenders | March 2010 |
| • Close tenders | April 2010 |
| • Award Contract | April 2010 |
| • Complete construction | May 2011 |

Construction is expected to commence at the Coral Street end of the foreshore and move progressively westwards.

Council's day labour crews have already commenced construction of the major drainage and land forming works which are expected to be complete by April 2010.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The construction will occur over the 2009/2010 and 2010/2011 financial years. Funding is expected as advised in this report. Additional funding is being sort in terms of further federal government funding.

POLICY IMPLICATIONS:

The tendering process complies with Council policies and NSW legislation. The GC21 General Conditions of Contract is being used to encourage early contractor involvement and a co-operative partnership between contractor and principal.

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. **Attachment** – 3D images of proposed construction – Jack Evans Boat Harbour (ECM 9513345).
 2. **Confidential Attachment** – Supplementary Confidential Information to Agenda Item EC2009-122 (ECM 9513349).
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30 [EO-CM] EC2009-116 for the Supply of One (1) Heavy Commercial Haulage Truck and One (1) Fitted Tipper Body

ORIGIN:

Works

FILE NO: EC2009-116

SUMMARY OF REPORT:

This report outlines the tender for the supply of a One (1) Heavy Commercial Haulage Truck with One (1) Fitted Tipper Body for council operations. Recommendations have been formulated based on the Selection Criteria which is contained in the Tender Evaluation Pricing Report included in **CONFIDENTIAL ATTACHMENT A**. It is recommended that Council accepts the tender of Gold Coast Isuzu for EC2009-116 for the supply of the Prime Mover Chassis and accepts the tender of MiniBody Engineering Pty Ltd for EC2009-116 for the supply and fitting of the Tipper Body Unit.

Attachment A is **CONFIDENTIAL** in accordance Section 10A (2) (d) of the Local Government Act 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderers in terms of market competitiveness, by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest.

RECOMMENDATION:

That:-

- 1. The tender from Gold Coast Isuzu be accepted to the value of \$106,514.64 inclusive of GST.**
- 2. The tender from MiniBody Engineering Pty Ltd be accepted to the value of \$37,400 inclusive of GST.**
- 3. ATTACHMENT A be treated as CONFIDENTIAL in accordance with Section 10A(2)(d) of the Local Government Act, 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderer in terms of market competitiveness, by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest.**

REPORT:

Background

Council Tender EC2009-116 invited responses for the supply of a Heavy Commercial Haulage Truck and Fitted tipper Body Unit:-

The following assessment criteria were determined prior to the issuing of the Tender:-

1. NPV
2. Operator Evaluation
3. Maintenance Evaluation
4. Emissions
5. Safety

Tenders Received

A total of five responses were received for tender EC2009-116 supply of a Heavy Commercial Truck:-

1. Isuzu (x2)
2. Hino
3. Fuso
4. Nissan

A total of five responses were received for tender EC2009-116 supply and fitment of Tipper Body Unit.

1. RedDog Fabrications
2. Swiftco
3. Peak Engineering
4. MiniBody Engineering
5. McNamara

Tender Evaluation

The Tender Evaluation was conducted by Council's Tender Panel, consisting of Maintenance Technician, Fabrication Technician, Plant and Materials Coordinator, and Two Operators. A copy of the Tender Evaluation Report is included in **ATTACHMENT A** which is **CONFIDENTIAL** in accordance with Section 10A(2)(d) of the Local Government Act, 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderer in terms of market competitiveness by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest. Based on all assessment categories, Lengthy research and evaluations, it is recommended that:-

1. Gold Coast Isuzu be nominated for EC2009-116 for the supply of the Prime Mover Chassis.
2. MiniBody Engineering Pty Ltd is nominated for EC2009-116 for the supply of the Tipper Body Unit.

Details of Tenderer's relative competitiveness are shown in the Evaluation Report **CONFIDENTIAL ATTACHMENT A** which was endorsed by the Evaluation Committee.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Funding is provided within the 2007/2008 Budget for the supply of a 4x2 Heavy Commercial Tipper Truck.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

1. **Confidential Attachment A** – EC2009-116 for the supply of Heavy Commercial Haulage Truck with Fitted Tipper Body. (ECM 9693692).
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31 [EO-CM] EC2009-117 for the Supply of Three (3) Heavy Commercial Haulage Trucks and Three (3) Fitted Tipper Bodies

ORIGIN:

Works

FILE NO: EC2009-117

SUMMARY OF REPORT:

This report outlines the tender for supply of Three (3) Heavy Commercial Haulage Trucks and Three (3) Fitted Tipper Bodies for council operations. Recommendations have been formulated based on the Selection Criteria which is contained in the Tender Evaluation Pricing Report included in **CONFIDENTIAL ATTACHMENT A**. It is recommended that Council accepts the tender of Gold Coast Isuzu for EC2009-117 for supply of three (3) Prime Mover Chassis units and accepts the tender of MiniBody Engineering for the supply of One (1) Tipper Body Unit and accepts the tender of Peak Engineering for EC2009-117 for the supply of Two (2) Tipper body Units.

Attachment A is **CONFIDENTIAL** in accordance Section 10A(2)(d) of the Local Government Act 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderers in terms of market competitiveness, by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest.

RECOMMENDATION:

That:

- 1. The tender from Gold Coast Isuzu be accepted to the value of \$431,428.02 inclusive of GST.**
- 2. The tender from MiniBody Engineering Pty Ltd be accepted to the value of \$41,470 inclusive of GST.**
- 3. The tender from Peak Engineering be accepted to the value of \$79,473.56 inclusive of GST.**

4. **ATTACHMENT A** be treated as **CONFIDENTIAL** in accordance with Section 10A(2)(d) of the Local Government Act, 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderer in terms of market competitiveness, by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest.

REPORT:

Background

Council Tender EC2009-117 invited responses for the supply of Three (3) Heavy Commercial Trucks and Three (3) fitted Tipper Body Units:-

The following assessment criteria were determined prior to the issuing of the Tender:-

1. NPV
2. Operator
3. Maintenance Evaluation
4. Emissions
5. Safety

Tenders Received

A total of five responses were received for tender EC2009-117 supply of Three (3) Heavy Commercial Trucks:-

1. Isuzu (x2)
2. Hino
3. Fuso
4. Kenworth

A total of five responses were received for tender EC2009-117 supply of Three (3) fitted Tipper Bodies:-

1. RedDog Fabrications
2. Peak Engineering
3. Swiftco
4. McNamara
5. MiniBody Engineering

Tender Evaluation

The Tender Evaluation was conducted by Council's Tender Panel, consisting of Maintenance Technician, Fabrication Technician, Plant and Materials Coordinator, and two Operators. A copy of the Tender Evaluation Report is included in **ATTACHMENT A** which is **CONFIDENTIAL** in accordance with Section 10A(2)(d) of the Local Government Act, 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderer in terms of market competitiveness by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest. Recommendations appear below for the Tender.

Based on all assessment categories, lengthy research and evaluations, it is recommended that:-

1. Gold Coast Isuzu be nominated for EC2009-117 for the supply of Prime Mover Chassis's
2. MiniBody Engineering Pty Ltd be nominate for EC2009-117 for the supply of One (1) Tipper Body Unit.
3. Peak Engineering is nominated for EC2009-117 for the supply of Two (2) Tipper Body Units.

Details of the Tenderer's relative competitiveness are shown in the Evaluation Report **CONFIDENTIAL ATTACHMENT A** which was endorsed by the Evaluation Committee.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Funding is provided within the 2007/2008 Budget for the supply of Three (3) Heavy Commercial 6X4 Tipper Trucks.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

1. **Confidential Attachment A** – EC2009-117 (ECM 9661833).
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32 [EO-CM] EQ2009-130 Expressions of Interest for the Supply of Hardware, Electrical and Plumbing Materials as a Preferred Supplier

ORIGIN:

Contracts

FILE NO:

SUMMARY OF REPORT:

The existing Preferred Supplier arrangement for the supply of Hardware, Electrical and Plumbing materials expires on the 31 January 2010.

In accordance with Local Government (Tendering) Regulations , 1999 the process for the establishment of a new Preferred Supplier arrangement for the supply of Hardware, Electrical and Plumbing materials is required to be re instigated and as such has been duly advertised calling for nominations from local suppliers to be considered as Preferred Suppliers.

RECOMMENDATION:

That suppliers as listed in the body of the report be accepted as Preferred Suppliers and that they be formally contacted and requested to nominate the level of discount that will apply for all materials purchased by Council over the period of the Preferred Supplier arrangement.

REPORT:

The existing Preferred Supplier arrangement for the supply of Hardware, Electrical and Plumbing materials expires on the 31 January 2010 and to continue this arrangement the selection process is to be re instigated.

In accordance with the Local Government Tendering Regulations 1999 Expressions of Interest, closing 11 November 2009, have been sought from local suppliers who are willing to enter into a supply arrangement for the supply of Hardware, Electrical and Plumbing materials as a Preferred Supplier. The materials to be supplied are generally required on an as need be basis, are obtained locally and are outside existing specific material supply contract arrangements.

Suppliers nominating their interest in being considered as a Preferred Supplier and considered suitable will be contacted and requested to nominate the level of discount that will apply to all materials purchased from that particular supplier over the period of the agreement.

The Preferred Supplier agreement is for a twelve (12) month period with a further two (2) by twelve month extension options.

At the close of the advertising period expressions of interest had been received from the following suppliers:

Supplier	Material	Location
Bunnings Trade	Hardware	Murwillumbah & Tweed Heads
Budds Mitre 10	Hardware	Murwillumbah
JH Williams & Sons	Hardware	Murwillumbah
Brim's Builder's Hardware	Hardware	Tweed Heads
J Blackwoods & Sons P/L	Hardware	Southport
Southern Cross Fasteners	Hardware/ Fasteners	Tweed Heads
Tweed Bolt Supplies	Hardware/ Fasteners	South Tweed Heads
Aussie Fasteners	Hardware/ Fasteners	Murwillumbah
Ideal Electrical Suppliers	Electrical Materials	Tweed Heads South
Haymans Electrical	Electrical Materials	Tweed Heads South
Cetnaj	Electrical Materials	Tweed Heads
Lawrence & Hanson	Electrical Materials	Tweed Heads South
Regis	Electrical Materials	Molendinar
Toshiba International	Electric Motors	Murarrie QLD
Reece	Plumbing Materials	Tweed Heads South
Fluid Conveyancing	Plumbing Materials	Tweed Heads South

Interest in the Preferred Supplier arrangement was again high with sixteen submissions received. All of the above suppliers, with the exception of Bunnings, Brims Hardware, Aussie Fasteners, Lawrence & Hanson, Regis, Reece and Toshiba International are currently listed as Preferred Suppliers. Blackwoods were listed in the last Preferred Supplier arrangement however have since closed their premises at South Tweed Heads and have relocated to Southport.

The tender documentation for the Preferred Supplier arrangement had a Non- Exclusive of Supply Clause that stipulated that the supply arrangement shall not confer on the supplier an exclusive right to supply all the goods required by Council within the commodity range. Council shall have the right to obtain such goods from other sources and to enter into separate supply contracts with other suppliers.

The use of local or Shire based suppliers has worked well in past Preferred Supplier arrangements periods providing convenience for one off purchases or the pricing of materials in accordance with Council's Purchasing Policy and the continued use of local or Shire based suppliers is considered Council's best option.

It is recommended that the following suppliers be accepted as Preferred Suppliers and that they be formally contacted and requested to nominate the level of discount that will apply for all materials purchased by Council from that supplier over the period of the Preferred Supplier arrangement.

Supplier	Material	Location
Bunnings Trade	Hardware	Murwillumbah & Tweed Heads
Budds Mitre 10	Hardware	Murwillumbah
JH Williams & Sons	Hardware	Murwillumbah
Brim's Builder's Hardware	Hardware	Tweed Heads
Southern Cross Fasteners	Hardware/ Fasteners	Tweed Heads
Tweed Bolt Supplies	Hardware/ Fasteners	South Tweed Heads
Aussie Fasteners	Hardware/ Fasteners	Murwillumbah
Ideal Electrical Suppliers	Electrical Materials	Tweed Heads South
Haymans Electrical	Electrical Materials	Tweed Heads South
Cetnaj	Electrical Materials	Tweed Heads
Lawrence & Hanson	Electrical Materials	Tweed Heads South
Reece	Plumbing Materials	Tweed Heads South
Fluid Conveyancing	Plumbing Materials	Tweed Heads South

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

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).

Nil.

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33 [EO-CM] EC2009-126 Supply of Manual Traffic Control Teams for Council Works

ORIGIN:

Contracts

SUMMARY OF REPORT:

This report outlines the tender for the Supply of Manual Traffic Control Teams for Council Works with a twelve (12) month contract period commencing the 1 January 2010 with a possible two by twelve (12) month extension options. Recommendations have been formulated based on the Selection Criteria and Pricing Report included in **CONFIDENTIAL ATTACHMENT A**. It is recommended that Council accepts the tender of Traffic Control Services Pty Ltd for the Supply of Traffic Control Teams for Council Works.

Attachment A is **CONFIDENTIAL** in accordance Section 10A(2)(d) of the Local Government Act 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price. If disclosed, the information would be likely to prejudice the commercial position of the tenderers in terms of market competitiveness, by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest.

RECOMMENDATION:

That:-

- 1. The tender from Traffic Control Services Pty Ltd be accepted for the Supply of Traffic Control Teams for Council Works for a twelve (12) month period commencing 1 January 2010 with a possible two by twelve (12) month extension options.**
- 2. ATTACHMENT A be treated as CONFIDENTIAL in accordance with Section 10A(2)(d) of the Local Government Act, 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price. If disclosed, the information would be likely to prejudice the commercial position of the tenderer in terms of market competitiveness, by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest**

REPORT:

Background

Council Tender EC2009-126 invited responses for the provision of:-

Supply of Manual Traffic Control Teams for Council Works

The following selection criteria and weightings were determined prior to the issuing of the Tender:-

No	Criteria	Weighting %
1	Pricing	60
2	Resources	10
3	Demonstrated capability	5
4	Methodology	5
5	Team & experience	10
6	General performance hist	5
7	Similar Contracts	5

Tenders Received

A total of 13 responses were received for tender EC2009-126.

Tenders received are as follows:-

Submission	Tenderer
1	Guardrite Security & Traffic Management
2	Traffic Control Services Pty Ltd
3	JHA (TCB conforming Opt)
4	Trafco Pty Ltd
5	Workforce International
6	Tweed Traffic Control P/L
7	Construction Worker One P/L
8	Skildtraffic
9	Statewide Traffic Control P/L
10	Traffic Technologies
11	Evolution Traffic Control
12	Vale Group
13	Dialtone Traffic Control

Tender Evaluation

The Tender Evaluation was conducted by Council's Tender Panel, consisting of the Manager Works, Works Unit Maintenance Engineer and Engineering Admin Supervisor. A copy of the Tender Evaluation Report is included in **ATTACHMENT A** which is **CONFIDENTIAL** in accordance with Section 10A(2)(d) of the Local Government Act, 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price. If disclosed, the information would be likely to prejudice the commercial position of the tenderer in terms of market competitiveness by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest. Recommendations appear below for the Tender.

Based on rates submitted, availability of resources and industry experience, it is recommended that Tenderer Traffic Control Services Pty Ltd be awarded the contract for the Supply of Manual Traffic Control Teams for Council Works.

Details of Traffic Control Services Pty Ltd relative competitiveness are shown in the Evaluation Report **CONFIDENTIAL ATTACHMENT A** which was endorsed by the Evaluation Committee.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Funding is provided within the 2007/2008 Budget for the Supply of Manual Traffic Control Teams for Council Works.

POLICY IMPLICATIONS:

Nil.

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. Confidential Attachment A - EC2009-126 Supply of Manual Traffic Control Teams for Council Works (ECM 9667668).
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34 [EO-CM] Tendering Guidelines for NSW Local Government

ORIGIN:

Contracts

SUMMARY OF REPORT:

The Division of Local Government has issued Circular to Councils No. 09/39 titled Tendering Guidelines for NSW Local Government. In view of the fact that these Guidelines have been adopted under section 23A of the Local Government Act 1993, they must be taken into consideration by Council when exercising tendering functions.

The Guidelines have been prepared to encourage and support best practice procurement within the local government sector.

The Guidelines are meant to assist councils in applying clear policies, consistent procedures and effective risk management strategies in accordance with the Act, the Regulation and other relevant legislation.

In general, it is pleasing to note, Council's current documentation satisfies requirements set out in the Guidelines. However attention will be given to enhancing the requirements of the Guidelines in Council's relevant documentation.

This report summarises the Guidelines, outlines any changes from our current procedures and details any actions necessary to reach compliance with the Guidelines.

RECOMMENDATION:

That:-

- 1. The information contained in this report concerning Tendering Guidelines for NSW Local Government be noted, and**
- 2. Council officers review and revise, where necessary, Council's Procurement Policy, Procedures and relevant tender and contract documentation to comply with the Guidelines.**

REPORT:

The Division of Local Government has issued Circular to Councils NO. 09/39 entitled Tendering Guidelines for NSW Local Government. In view of the fact that these Guidelines have been adopted under section 23A of the Local Government Act 1993, they must be taken into consideration by Council when exercising tendering functions.

The Guidelines have been prepared to encourage and support best practice procurement within the local government sector.

The Guidelines are meant to assist councils in applying clear policies, consistent procedures and effective risk management strategies in accordance with the Act, the Regulation and other relevant legislation.

The Introduction to the Guidelines stresses that they should be used to strengthen previous publications. It states:-

“The use of these Guidelines will reduce the risk to Local Government in any tendering undertaken and should be used within the context of the Act and Regulation”

The Tendering Guidelines for NSW Local Government are divided into the following sections:

- Section One – Guiding Principles – sets out the overall principles that apply to the tendering process used by NSW local government.
- Section Two – Procurement Management – outlines processes necessary to effectively manage the tendering process.
- Section Three – The Tendering Process – outlines the stages involved in the tendering process with reference to specific legislative requirements and recommended practices.
- Section Four – Resources – provides useful publications, websites and contacts as well as a tendering checklist and list of commonly used terms in tendering, the purchase of goods and services and the disposal of property.

It is pleasing to note that, in general, Council’s current documentation satisfies requirements set out in the Guidelines.

Attention will be given to enhancing the requirements of the Guidelines in Council’s documentation in the following areas:

- **Quality Assurance** – Council’s standard tender documents include a section on Quality Assurance. This section will be reviewed and, if necessary rewritten, to more accurately reflect the standards set out in the Guidelines.

- **Contractor Performance Reporting** – The Guidelines suggest participation in the Department of Commerce (now known as Public Works) Contractor Performance Reporting system. Due to the fact that Council utilises NSW Public Works officers to project manage some contracts, their system has been utilised in preparing evaluation reports on tenderers. However a more formal arrangement is worthy of investigation.
- **Developing the Evaluation Criteria** – The Guidelines suggest that a Tender Evaluation Plan be completed before calling tenders. This is Council's current practice with a generic Tender Evaluation Plan being edited to suit each tender. The standard tender documentation however contains a general list of selection criteria (20 items). This should also be edited to suit the specific requirements for each tender as recommended in the Guidelines. The use of recycled and energy efficient products in tenders will also be included in the evaluation criteria and weighted accordingly in view of the need to achieve sustainability.
- **Developing the Tender Documents** – Our current tender documentation appears to conform to the requirements of the Guidelines apart from specifying the evaluation criteria as mentioned above.
- **Tendering Checklist** – Section Four of the Guidelines provides a comprehensive checklist of all activities associated with the tendering process, from selection of tendering method through to advising the tenderers of the outcome. Council currently has a checklist that additionally extends into the contract management phase. Consideration will be given to producing a two stage checklist, the first providing the items listed in the Guidelines for the tendering stage and the second to list items in the contract administration and supervision stage.
- **Overall Review** – In addition to the specific matters listed above, all relevant Council documentation will be reviewed to ensure compliance with the wording suggested on the Guidelines.

By carrying out the aforementioned actions, Council can be assured that, when considering expenditure of public monies by public tender, its actions are seen as:-

- Open, transparent and accountable
- Ensure it's dealings promote fairness and competition, and
- Obtain best value

Copies of the Tendering Guidelines for Local Government are available online on the "Publications" page of the Division of Local Government's website at www.dlg.nsw.gov.au

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Council is obliged to consider the Tendering Guidelines for NSW Local Government as they are issued under section 23A of the Local Government Act 1993.

POLICY IMPLICATIONS:

Carry out a review of the Procurement Policy and Procedure Documents.

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).

Nil.

35 [EO-CM] National Landscapes Viewing Locations

ORIGIN:

Works

SUMMARY OF REPORT:

At its meeting on 28 May 2009 Council resolved that a report be brought forward on the feasibility of establishing a series of dedicated scenic viewing locations with associated BBQ, picnic, toilet and lighting facilities, in strategic locations around the Tweed Shire to tie in with the National Landscapes program involving:-

- a) Various funding options be investigated
- b) Various methods of ascertaining prime viewing locations be outlined including community nominations.

This report identifies possible lookout locations and associated costs, and reports on progress towards establishing the National Landscapes Program.

RECOMMENDATION:

That:-

- 1. The information regarding the National Landscapes Program be received and noted.**
- 2. The matter be kept under review with Tweed Tourism to identify any opportunities for funding and linkages to the National Landscapes Program.**

REPORT:

Background

"The National Landscapes initiative is a partnership between the tourism and conservation management sectors that aims to capture and promote the best of Australia to achieve conservation, social and economic outcomes for Australia and its regions.

National Landscapes is an initiative to identify those areas with superlative natural and cultural experiences, distinctive to Australia and sought after by a global audience known as Experience Seekers - the target audience of Australia's tourism marketing organisation, Tourism Australia.

A landscape goes beyond individual National Parks or iconic visitor attractions. It also is not about municipal or States boundaries, instead it is united by its topography, environmental or cultural significance. This approach will encourage greater collaboration between the parties that govern, preserve and promote it.

In identifying Australia's quintessential landscapes, the aim is to encourage regional planning, including the appropriate provision of access and infrastructure in balance with natural and cultural conservation outcomes."

One of the nine adopted National Landscapes is "Australia's Green Cauldron" encompassing the area from Byron Bay to Lismore, Wiangaree, Boonah, Beaudesert and the Gold Coast, centred on the Wollumbin Mount Warning caldera. The Tourism Australia website provides information on the features, things to do & see, and a suggested itinerary for a drive through the region. The nominated route includes the Tweed Range Scenic Drive, Numinbah Road, Zara Road, Tyalgum Road, Tyalgum Road, Terranora Road, Tomewin Road and Bilambil Road. Any lookouts would need to be located on these routes.

Possible Lookout Sites

The possibility of providing roadside lookouts was considered by Council at its meetings on 8 May 2007 and 2 October 2007. Copies of these reports are attached.

Summarising the attached reports, locating, constructing and maintaining roadside lookouts has a number of issues to be overcome:-

1. Construction cost - depending on location costs are in the order of \$100,000. Facilities such as BBQ and toilets would easily double this amount.
2. Maintenance cost - experience with existing lookouts shows that regular maintenance is required to remove rubbish and deal with graffiti and vandalism. If BBQ's are provided they require regular cleaning and maintenance and a power supply. Annual ongoing costs are in the order of \$13,000 - \$25,000.
3. Resident opposition - there is an adverse impact on adjacent residences from lookouts through noise, litter and anti-social behaviour.

4. Safety - the roads that provide good views of the Tweed Valley are situated in mountainous terrain and are generally narrow and winding. This presents safety issues relating to safe access and egress from the lookout due to limited sight distance.
5. Maintenance of view - while there are several suitable locations for lookouts, they do not at present provide any views because of dense vegetation. Council would need to have the resolve to remove and keep clear this vegetation to establish a lookout.

Conclusions

The National Landscapes Program is aimed at linking together existing features and facilities to provide a cohesive regional tourist experience. To date there has been no funding of enhancement of built facilities. The Program is still evolving and there may be opportunities in the future. This might best be monitored through Tweed Tourism, where there is already good understanding and involvement in the Program.

Alternatively, Council could fund new or upgraded viewing facilities on the nominated routes. If this was the case then a capital budget of \$100,000 - \$200,000 is required per lookout, plus an ongoing maintenance budget of \$13,000 - \$25,000.

In the final analysis it is recommended that Council monitor the development of the National Landscapes Program through Tweed Tourism to identify any opportunities for establishment or upgrading of viewing locations.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

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. Council Report and Resolution from meeting held 8 May 2007 (ECM 9679245).
 2. Council Report and Resolution from meeting held 2 October 2007 (ECM 9679249).
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36 [EO-CM] Community Feedback on the Proposed Closure of a Public Walkway behind Numbers 62 - 72 Honeymyrtle Drive, Banora Point

ORIGIN:

Planning & Infrastructure

SUMMARY OF REPORT:

Council resolved at its 20 October 2009 meeting to advertise its intention to close a walkway behind numbers 62-72 Honeymyrtle Drive.

The proposal was advertised and this report addresses the issues raised by correspondents.

RECOMMENDATION:

That:-

- 1. Council gives notice in the Tweed Link of its intention to restrict pedestrian access to the road reserve area described as the walkway behind numbers 62-72 Honeymyrtle Drive, Banora Point for a period of twelve months.**
- 2. Council closes the walkway behind numbers 62 - 72 Honeymyrtle Drive, Banora Point by installing a fence and locked gate.**
- 3. An evaluation report in relation to the above recommendation is submitted to Council in twelve months for its review.**

REPORT:

Council at its meeting 20 October 2009 received a report concerning anti-social behaviour in walkways in Banora Point linking Honeymyrtle Drive, Golf View Court and Monterey Avenue. It was resolved that Council:-

- "1. *Advertises the proposed closure of the section of walkway behind numbers 62 to 72 Honeymyrtle Drive.*
2. *Writes to all adjoining property owners seeking comments on the proposed closure of the section of walkway behind numbers 62 to 72 Honeymyrtle Drive.*
3. *Requests regular night patrols of the area by the New South Wales Police."*

An advertisement was placed in the Tweed Link 17 November and residences in the vicinity of the proposal area were delivered a letter inviting submissions on the proposal to close a section of the public walkway behind numbers 62–72 Honeymyrtle Drive by means of gates and appropriate signage.

Five written responses have been received and the following is a summary of issues raised and the officer's comments on each issue:-

Issue 1 Request to also close the walkway from Monterey Avenue to Honeymyrtle Drive and transfer ownership of the land to adjacent land owners with an easement over the land.

The previous report to Council on this matter did not support the complete closure of the behind street network of walkways as they provide connections within the community for integration and pedestrian convenience.

Transferring ownership of the walkway land to the adjacent property owners is not a simple exercise as it would involve a unanimous agreement of the property owners and involves associated costs including surveys, legal changes to titles and application to the Department of Lands. As a matter of precedent Council would need to sell the land at its determined worth.

This process could take a minimum of three years and ownership of the properties may change in this period adding to the complexity of the process. This option is not considered viable in the short term and is not recommended.

Issue 2 As an alternative to closing the walkway, install signage proclaiming a curfew for night time usage and also designate the walkways as alcohol free zones.

Any signage installed by Council would require the resource capacity to enforce its proclamation. Given the nature of the initial complaints concerning these walkways it is unlikely that signage alone would have a reasonable level of abeyance. Signage installation would increase Council's responsibilities in the laneways whereas currently NSW police are the primary enforcement body of anti-social and criminal behaviour.

Issue 3 Close all walkways in this area including the link between Golf View Court and Honeymyrtle Drive

The previous report to Council on this matter did not support the complete closure of the street network of walkways as they provide connections within the community for integration and pedestrian convenience.

Issue 4 Concerns that closing off the walkways will only increase anti social behaviour by creating an area that is difficult to monitor and control. Therefore, transferring ownership of the walkway to adjacent property owners would be more effective.

Isolating the walkway by the installation of gates would remove any passive surveillance of the site and access would still be available from adjacent private properties.

Whilst these concerns have merit, construction of a gate and limiting access to the walkway has support from Tweed Heads Police who are considered the lead agency in these matters. Should Council resolve to install the gates Police will be requested to provide ongoing feedback to Council on any issues that may arise.

Issue 5 Letter of support for the advertised proposal.

Noted

It is recommended that Council proceeds with temporary closure of the walkway between numbers 62 to 72 Honeymyrtle Drive and publish its intention under Section 122 Roads Act, 1993. The site should then be monitored and a further report brought to Council in one year assessing feedback from stakeholders and residents.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Minor cost and resource allocation that can be accommodated by current programs.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

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37 [EO-CM] Spring Lifeguard Report

ORIGIN:

Recreation Services

SUMMARY OF REPORT:

The spring lifeguard report from Australian Lifeguard Service who are contracted to conduct lifeguard services on the Tweed beaches for Council is attached for Councillors information.

RECOMMENDATION:

That the Spring Lifeguard report be received and noted.

REPORT:

The following is a summary of the spring lifeguard report from Australian Lifeguard Service who are contracted to provide lifeguard services to the Tweed beaches:-



18th November, 2009

Mr Stewart Brawley
Tweed Shire Council
PO Box 816
MURWILLUMBAH NSW 2484

CABARITA, POTTSVILLE
BEACHES - DURANBAH, FINGAL,
TWEED SHIRE COUNCIL
FILE NO. SURF LIFESAVING
DOC NO.
REC'D - 1 DEC 2009
ASSIGNED TO: BRAWLEY, S
HARD COPY IMAGE

Dear Stewart,

RE: SPRING LIFEGUARD REPORT – TWEED

Thanks again for the opportunity to provide Lifeguard Services on behalf of Tweed Shire Council during the 2009 Spring Holidays. This Service was conducted by highly trained lifeguards with all aspects of the service complying with the Quality Management System.

During the period two lifeguards were provided at Duranbah, Fingal, Cabarita, Hastings Point, Pottsville, and Mooball Beaches with three lifeguards being provided at Kingscliff. The service was conducted each day between 0900 hours (9.00 am) and 1700 hours (5.00 pm) at all locations.

During the period, twenty three (23) rescues were performed. Fourteen (14) beachgoers required first aid treatment. Most incidents were minor with others being listed below:

- On 4 October before 9am at Duranbah, lifeguards treated a twenty five year old male board rider for a suspected spinal. He was placed on oxygen therapy and immobilized until the Ambulance arrived and transported him to hospital.
- On 11 October, Mooball lifeguards reported to Police that a member of the public's car was broken into and belongings were stolen. Police attended scene with suspect found.

A "preventative action" is where the lifeguard has advised a swimmer that they are swimming in a dangerous location, swimming outside the flags or has proactively provided other safety advice. It is undertaken usually when the swimmer is in danger of getting into trouble. All lifeguards were successful in achieving this priority throughout the period. Lifeguards carried out 1,540 preventative actions during the period.

It was observed that the lifeguards remained visible to the public and were always willing to offer advice to visitors, highlighting the attractions that exist in the local area. The weather conditions at times were hindered by high winds.

Once again thank you for the opportunity; it has been a pleasure working with Council. In the meantime, if you have any questions, don't hesitate to contact me.

Yours sincerely,



STEPHEN LEAHY

State Manager

Surf Life Saving Services Pty Ltd (trading as the Australian Lifeguard Service)
Sydney Academy of Sport, Wakehurst Parkway, (PO Box 430), Narrabeen NSW 2101

T: +61 2 9984 7188 | F: +61 2 9984 7199
E info@australianlifeguards.com.au | www.australianlifeguards.com.au

ABN: 80 055 582 762 | ACN: 055 582 762



LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

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).*

Nil.

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38 [EO-CM] Jobs Fund Grant - National Bike Paths Projects

ORIGIN:

Planning & Infrastructure

SUMMARY OF REPORT:

The Commonwealth Department of Infrastructure, Transport, Regional Development and Local Government has advised that funding of up to \$180,000 has been approved under the Jobs Fund - National Bike Paths Projects for the Bray Park Cycleway project. This cycleway will link Ray St to Riveroak Drive, through a widening of the cutting on Kyogle Road, at Bray Park, providing an essential link between the Murwillumbah CBD and the new estates in West Murwillumbah and beyond.

This significant project will be funded by a combination of grant funding, RTA funding, Council's cycleway budget, and Section 94 developer contributions.

Provision of funding is dependent on preparation and execution of the relevant funding agreements.

RECOMMENDATION:

That Council accepts the Jobs Fund - National Bike Path Projects grant of up to \$180,000 and authorises the General Manager to sign the relevant funding agreements to obtain this funding.

REPORT:

In a letter dated 27 October 2009 the Commonwealth Department of Infrastructure, Transport, Regional Development and Local Government advised that funding of up to \$180,000 has been approved under the Jobs Fund - National Bike Paths Projects for the Bray Park Cycleway project.

The project consists of extensive earthworks and rock pinning to widen and stabilise the existing Kyogle Road cutting, and construction of an off-road shared cycleway/footpath to link Ray St to Riveroak Drive in Bray Park. This project will provide an essential link between the Murwillumbah CBD and the new estates in West Murwillumbah and beyond, encourage recreational activities, and promote alternatives to car based transport.

This significant project will be funded by a combination of grant funding, RTA funding, Council's cycleway budget, and Section 94 developer contributions.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Provision of funding is subject to Council entering into a funding agreement / contract with the Commonwealth. The funding agreement is currently being drafted, and requires finalisation of design plans, tendering and contract arrangements, and budget details for the project.

POLICY IMPLICATIONS:

Nil.

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).

Nil.

39 [EO-CM] Provision of Flood Model Data

ORIGIN:

Director Engineering and Operations

FILE NO:

SUMMARY OF REPORT:

At Council's meeting of 21 July 2009, it was resolved to propose a fee of \$1000 for the provision of digital flood model data, and publicly advertise this proposed fee for 28 days.

An advertisement was placed in the Tweed Link on 28 July 2009, and no public submissions were received. It is therefore recommended that the new fee be adopted.

RECOMMENDATION:

That Council:-

- 1. Adopts a fee of \$1000 for the provision of digital flood model data.**
- 2. Updates the Revenue Policy Fees and Charges 2009/2010 accordingly.**

REPORT:

At Council's meeting of 21 July 2009, it was resolved to propose a fee of \$1000 for the provision of digital flood model data, and publicly advertise this proposed fee for 28 days. An advertisement was placed in the Tweed Link on 28 July 2009, and no public submissions were received.

Flood modelling data produced as part of flood studies is a valuable Council asset, which is in demand from the development sector to produce flood impact assessments for development proposals on flood liable land. Provision of the digital files saves developers considerable time and money, while providing Council with certainty of the quality of the model and its results.

Provision of flood model data would be subject to a licensing agreement, imposing restrictions on the use of the data, and ensuring that Council's rights and indemnities are maintained.

Council will continue to provide flood study data to State Government agencies without charge, but still subject to licensing arrangements.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The proposed fee will help recoup the cost of administering the provision of the digital data files, including licensing, fees, and copying of data onto media. It represents a small percentage (around 1%) of Council's investment in producing the flood models.

POLICY IMPLICATIONS:

Nil.

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).

Nil.

40 [EO-CM] Section 94 Contribution Plan Review

ORIGIN:

Planning & Infrastructure

SUMMARY OF REPORT:

Council's Planning & Infrastructure Unit submitted a report to Council in October outlining the status of the necessary review of all s94 Plans in accordance with the Minister's s94E Direction, and recommended that Council exhibit several draft plans at that time, which Council resolved to do. The plans were duly exhibited from 28 October 2009 to 25 November 2009 and the exhibition period is now closed. The plans, including minor amendments as a result of internal review during the exhibition period, are submitted with this report for Council approval.

RECOMMENDATION:

That Council:-

- 1. Approves the plans listed below to repeal and replace the existing versions in accordance with Clause 31 of the Environmental Planning & Assessment Regulations 2000:-**
 - a) Section 94 Plan No 1 - Banora Point West/Tweed Heads South Open Space Contribution (Version 10.1)**
 - b) Section 94 Plan No 2 - Banora Point West Drainage Scheme (Version 5.0)**
 - c) Section 94 Plan No 4 - Tweed Road Contribution Plan (Version 5.2)**
 - d) Section 94 Plan No 6 - Street Trees (Version 3.0.1)**
 - e) Section 94 Plan No 7 - West Kingscliff (Version 6)**
 - f) Section 94 Plan No 11 - Tweed Shire Library Facilities (Version 3)**
 - g) Section 94 Plan No 12 - Bus Shelters (Version 1.3)**
 - h) Section 94 Plan No 13 - Eviron Cemetery (Version 2)**
 - i) Section 94 Plan No 15 - Developer Contributions for Community Facilities (Version 5)**
 - j) Section 94 Plan No 18 - Council Administration Offices and Technical Support Facilities (Version 2.2)**
 - k) Section 94 Plan No 19 - Casuarina Beach/Kings Forest (Version 4)**
 - l) Section 94 Plan No 21 - Terranora Village Estate - Open Space and Community Facilities (Version 2)**

- m) **Section 94 Plan No 22 - Cycleways (Version 3)**
 - n) **Section 94 Plan No 25 - SALT Open Space and Associated Car Parking (Version 3)**
 - o) **Section 94 Plan No 26 - Shirewide Open Space (Version 4)**
2. **Gives Public Notice in the Tweed Link of Council's decision specifying that the above amended plans come into effect on the date of the notice.**

REPORT:

1. Background

The Minister for Planning issued a section 94E Direction on 13 January 2009 directing that unless Councils applied for an exemption, Development Consents issued after 30 April 2009 could not require developer contributions that exceed \$20,000 per dwelling.

Council's current section 94 developer contributions average around \$15,500 per dwelling and only exceed \$20,000 per dwelling in a number of limited areas being:-

Rural Inner North - current aggregate contribution \$23,020
Rural Inner West - current aggregate contribution \$21,148
Rural Other - current aggregate contribution \$23,072
Seaside City - current aggregate contribution \$62,950.80
Terranora (Area E) - current aggregate contribution \$21,207.80

Council formally applied for an exemption for these localities on 27 February 2009. The NSW Government set up a Review Panel to consider applications for cap exemptions from around 30 Councils. Tweed Shire Council's application was formally heard on 18 May 2009.

On 10 July 2009 the Minister issued a further section 94E Direction and accompanying letter advising that Council's application was unsuccessful except for the Seaside City locality.

The Direction advises:-

- "1. Apart from Seaside City, no new consent after 17 July 2009 can be issued that imposes an aggregate contribution greater than \$20,000 per residence or equivalent (excluding indexation).*
- 2. No new consent after 17 July 2009 can require monetary contributions towards library books or street tree planting*
- 3. Council must review all of its existing Section 94 Plans by the end of 2009 to ensure that they comply with the requirements of the June 2008 EP&A Amendment Act, that the NSW Government has not yet proclaimed. In this regard the review must also remove any requirement for contributions towards library book stock (about 40% of CP 11, now \$688 per lot), street tree planting (all of CP6 now \$297 per lot) and surf life saving facilities (all of CP16, now \$200 per lot). In the review, contributions towards administrative costs must be reduced from 10% (all existing s94 plans except CP4 Roads) to no more than 5%.*
- 4. In regard to the review by end of 2009, cemeteries (CP13, now \$131 per lot) and Council administration buildings and depot (CP18, now \$1,996.80 per lot) will not comply with the requirements of the June 2008 Amendment Act, however Council has loans that are financed by these contributions and the Amendment Act has a mechanism to apply for an exemption in such cases. The Minister's s94E Direction requires Council to prepare a business plan justifying any continued contributions for these facilities and the business plan must be independently verified and be consistent with the requirements of proposed Part 5B of the Amendment Act."*

Council's Planning & Infrastructure Unit has commenced the necessary review of all s94 Plans in accordance with the Minister's s94E Direction.

August 2009 Council Meeting: Version 2 of Contribution Plan No.23 (Offsite Parking) was adopted, following public exhibition. Amendments to CP23 were in accordance with the requirements of the Direction.

September 2009 Council Meeting: Amendments to Contribution Plan No.5 (Local Open Space) and Contribution Plan No.16 (Emergency Facilities - Surf Lifesaving) were resolved to be publicly exhibited. Version 3 of Contribution Plan No.10 (Cobaki Lakes) was also adopted at this meeting, following public exhibition.

October 2009 Council Meeting: the Contribution Plans the subject of this report were recommended for exhibition, which occurred from 28 October to 25 November 2009.

November 2009 Council Meeting Amendments to Contribution Plan No.5 (Local Open Space) and Contribution Plan No.16 (Emergency Facilities - Surf Lifesaving) were resolved to be adopted by Council following conclusion of the exhibition period.

December 2009 Council Meeting Exhibited plans submitted to Council for approval.

2. Amended Contribution Plans (December 2009)

Amendments to fifteen (15) Council s94 Contribution Plans are summarised in the following table and accompanying notes. The documents are attachments to this report. Four (4) remaining Plans did not require review, and are also listed below:-

Title	Version	Status	Occupancy Rates (1)	5% Admin (2)	Works Program (3)	Population (4)	DoP Template (5)	End Date (6)
Section 94 Plan No 1 - Banora Point West/Tweed Heads South Open Space Contribution	Version 10.1	To Council for approval	Yes	Yes	No change	Original	Previous	
Section 94 Plan No 2 - Banora Point West Drainage Scheme	Version 5.0	To Council for approval	N/A	Yes	Indexed	Original	No	
Section 94 Plan No 4 - Tweed Road Contribution Plan	Version 5.2	To Council for approval	N/A	Exists	No change	Original	No	
Section 94 Plan No 6 - Street Trees	Version 3.0.1	To Council for approval	No	No	No change	Original	No	17-Jul-09
Section 94 Plan No 7 - West Kingscliff	Version 6	To Council for approval	Yes	Yes	Indexed	Updated	Yes	
Section 94 Plan No 11 - Tweed Shire Library Facilities	Version 3	To Council for approval	Yes	Yes	Updated	Updated	Yes	
Section 94 Plan No 12 - Bus Shelters	Version 1.3	To Council for approval	Yes	Yes	Updated	N/A	Yes	
Section 94 Plan No 13 - Eviron Cemetery	Version 2	To Council for approval	Yes	Yes	Indexed	Original	Yes	
Section 94 Plan No 15 - Developer Contributions for Community Facilities	Version 5 (Amendment No 4)	To Council for approval	Yes	Yes	Updated	Updated	Yes	
Section 94 Plan No 18 - Council Administration Offices and Technical Support Facilities	Version 2.2	To Council for approval	Yes	Yes	No change	Original	Yes	
Section 94 Plan No 19 - Casuarina Beach/Kings Forest	Version 4	To Council for approval	Yes	Yes	Indexed	Updated	Yes	
Section 94 Plan No 21 - Terranora Village Estate - Open Space and Community Facilities	Version 2	To Council for approval	Yes	Yes	Indexed	Original	Yes	

Title	Version	Status	Occupancy Rates (1)	5% Admin (2)	Works Program (3)	Population (4)	DoP Template (5)	End Date (6)
Section 94 Plan No 22 - Cycleways	Version 3	To Council for approval	Yes	Yes	Updated	Updated	Yes	
Section 94 Plan No 25 - SALT Open Space and Associated Car Parking	Version 3	To Council for approval	Yes	Yes	Indexed	Original	Yes	
Section 94 Plan No 26 - Shirewide Open Space	Version 4	To Council for approval	Yes	Yes	Updated	Updated	Yes	
Section 94 Plan No 14 - Rural Road Upgrading, Mebbin Springs Subdivision, Kyogle Road, Kunghur		Superseded By Plan No.4 (TRCP), no review necessary						
Section 94 Plan No 20 - Public Open Space at Seabreeze Estate		Expired, no review necessary						
Section 94 Plan No 27 - Tweed Heads Master Plan - Local Open Space/Streetscaping		To be reviewed with new LEP						
Section 94 Plan No 28 - Seaside City		No review required for Ministers Direction						

Notes

- (1) **Occupancy rates** – unit occupancy estimates in the adopted Tweed Shire Urban Release Strategy 2009 are provided in the form of the number of persons per bedroom for units of 1-4+ bedrooms. To simplify levy application and cross-comparison it has long been desired that occupancy estimates and definitions be standardised across all Council's S94 plans and that where a levy is required for tourist development a rate per bedroom be provided. Where there is a 'Yes' shown in the "Occupancy Rates" column above, the levy rates have been amended to be provided in the form:-

	Persons
Per person	1
Detached dwelling/Lot (1 ET)	2.4
1 bedroom unit	1.3
2 bedroom unit	1.7
3 bedroom unit	2.1
4+ bedroom unit	2.4

- (2) **5% Admin** – Tweed Shire Council has applied a 10% administration charge to most of its developer contributions since 1998, based on real data provided by the Finance Unit. During the recent review of Council's S94 Plans by the Minister for Planning, the 10% charge was deemed to be excessive however, and required Council to reduce its administration charge to 5%. Therefore the plans have been amended to reflect this. The exceptions to this are:-

- CP 4 (Tweed Road Contribution Plan) – administration charge was already 5%;
- CP 6 (Street Trees) – Minister's Direction required that this levy no longer be charged on new consents, therefore the rates have not been altered;

(3) **Works Program** – The entry in this column denotes the following:

- Original – original works program has been retained as is. On this occasion there was a lack of time for detailed analysis and review of many of the Plans, particularly those with considerable history and previous amendments. It is intended that the works programs in these plans be reviewed and amended if necessary once the Minister's deadline has passed.
- Indexed – the costs in the works program and the resulting developer levies have been increased in accordance with Australian Bureau of Statistics and TSC published indices, as detailed in the plans themselves.
- Updated – an updated works program has been provided and included in the calculations in the plan. Specific works program updates for the relevant plans are summarised in the following table:

Title	Works Program Update
Section 94 Plan No 11 - Tweed Shire Library Facilities	Remove bookstock from works program as per Minister's s94E Direction
Section 94 Plan No 12 - Bus Shelters	Increase in construction cost for provision of a standard bus shelter.
Section 94 Plan No 15 - Developer Contributions for Community Facilities	Updated to reflect works completed and new works identified in the SGS Cultural and Community Facilities Plan.
Section 94 Plan No 22 - Cycleways	Updated to reflect value of works completed and outstanding within the cycleway network.
Section 94 Plan No 26 - Shirewide Open Space	Updated to include new works and construction estimates for Arkinstall Park from the Arkinstall Park Master Plan Implementation Plan (structured open space) and the inclusion of items from the Coastline Landscape Strategy contained in the Coastline Management Plan within Council's 7 year plan (casual open space).

- (4) **Population** – where detailed specific population analysis has not been required for the purpose of contribution calculation, and where time constraints have allowed, population figures in these plans have been updated, otherwise the original population estimates have been retained. It is intended that population projections in all plans be regularly reviewed and amended if necessary once the Minister's deadline has passed. Detail about specific population updates in the amended plans as exhibited:-

Section 94 Plan No 7 - West Kingscliff

Population in this plan is derived from estimating the persons per ha. The land area has not changed, but the occupancy estimates per dwelling have been updated in accordance with the Tweed Urban Land Release Strategy, hence the population figure has been revised for the structured open space levy calculation in this plan from 5226 to 5366 persons due to the amended occupancy rates.

Section 94 Plan No 11 - Tweed Shire Library Facilities

For the purposes of calculating the contribution per person, the future population for the Shire from 2006-2021 has been updated in accordance with the DoP 2005 "Preferred Series" population figures and results in a projection over the period of 30,603 persons, down from the previous estimate of 51,731.

Section 94 Plan No 15 - Developer Contributions for Community Facilities

This plan includes updated 2006-2016 estimates using rounded ABS Census and Dept of Planning Estimated Residential Population, revising the estimated growth to 2016 to be 2,300 persons for the South Coast district and 2,600 persons for the North Coast district. This is down from previous estimates of 2,700 (South Coast) and 3,200 (North Coast).

Section 94 Plan No 19 - Casuarina Beach/Kings Forest

Population figures used to calculate the structured open space component have been taken back to the total expected population in the locality / total works program which is more reflective of fair apportionment and nexus.

Section 94 Plan No 22 - Cycleways

CP 22 apportions the full value/cost of the cycleway to the total Shire population.

Previous versions of this plan estimated that in 2020 the Shire's total population would be 112,000. This has been revised down to 105,183 by the year 2021, based on the DoP 2005 "Preferred Series" population figures.

Section 94 Plan No 26 - Shirewide Open Space

The cost of the works in this plan, excluding an amount attributable to the existing population, is apportioned to the increase in population expected between 2006 and 2031. The Department of Planning's 2005 "Preferred Series" projection estimates that this will be 35,731 persons, down from 40,000 persons estimated in the previous version of this plan.

- (5) **DoP Template** – In most cases plans have been updated to fit to the latest Department of Planning Template for a S94 Plan. In cases where this has not occurred, plan age, original plan layout and structure are factors which made it unfeasible to restructure or reorganise these plans. Where possible suitable clauses to enable future indexation of rates in all plans have been included. A schedule to enable levying of contributions on Complying Development Certificates (where applicable) has also been included. Benefits of the new layout include separation between the administrative and strategic sections of the information in the plan. Plan details are now provided in the form:-

- Part A – Summary Schedules
- Part B – Administration
- Part C – Strategy Plan and Nexus
- Appendices/Schedules

- (6) **End Date** – for those plans which have, or will, cease to collect contributions for new consents, the end date is provided in this column.

3. Exhibition Period and Further Amendments (November 2009)

Following Council's resolution in October, the plans were exhibited from 28 October 2009 to 25 November 2009 and at the conclusion of the exhibition period, no public submissions had been received. Internal review resulted in the following requests for clarification which do not alter the intention or levy rates in the plan:-

CP 4 – Tweed Road Contribution Plan

In house research provided additional version history going back to Version 1 dated 5 December 1990 which has been added to the plan for adoption.

CP 7 – West Kingscliff

Note (2) to the Summary Works Program (Section 1.2) has been clarified to show the March 2003 valuation per ha of \$250,000.

CP 11 – Shirewide Library Facilities

Apportionment to tourist development has been retained as per the previous version of this plan and the change from a single medium density rate to the revised 'per bedroom' rates effectively reduces the overall contribution to be paid for tourist development in the majority of cases. This information is provided in this Council report for clarification only and results in no change to the plan as exhibited.

CP 12 – Bus Shelters

An internal submission was received from the Development Assessment Manager requesting clarification of the type of development to which the levy applies. The sentence in Section 1.1 Summary Scheduled which describes the type of development to which the levy applies has been clarified and now reads: "Does not apply to residential development in a rural zone or residential subdivision in a rural zone". This does not alter the intention of the plan as exhibited.

CP 13 – Eviron Cemetery

A typographical error in the exhibited plan has been corrected - the version of the plan to be presented for adoption is called Version 4 and not Version 2.

CP 15 – Developer Contributions for Community Facilities

Apportionment to tourist development has been retained as per the previous version of this plan and the change from a single medium density rate to the revised 'per bedroom' rates effectively reduces the overall contribution to be paid for tourist development in the majority of cases. This information is provided in this Council report for clarification only and it results in no change to the plan as exhibited.

CP 26 – Shirewide/Regional Open Space

Figures omitted in error added back to 'funded from other sources' column in the Structured Open Space works program - this does not change the amount to be funded by the plan or the calculated rates in the plan as exhibited.

All of the above amendments are considered minor and do not alter the intention or levy rates in the plans as exhibited and therefore the exhibited plans including the amendments described above are submitted for Council approval with this report.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The Minister has the absolute discretion to direct Councils to amend/withdraw a Section 94 Plan. Non compliance with the s94E Direction may trigger further Ministerial intervention in this regard.

Financial implications of the \$20,000 developer contributions cap have been documented in previous reports to Council and media reports, in terms of Council's ability to deliver key community infrastructure to a growing population. However as detailed in the attached Plans, reductions in pre-indexation contribution rates are not significant in the majority of cases.

POLICY IMPLICATIONS:

The Minister's s94E Direction directly influences infrastructure planning policy due to the imposition of the unproclaimed June 2008 amendment to the Environmental Planning & Assessment 1979.

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. Attachment 1 - CP01 Banora Point West/Tweed Heads South Open Space Contribution Version 10.1 December 2009 (ECM 9625005).
2. Attachment 2 - CP02 Banora Point West Drainage Scheme Version 5 December 2009 (ECM 9626071).
3. Attachment 3 - CP04 Tweed Road Contribution Plan CP No. 4 Version 5.2 December 2009 (ECM 9626090).
4. Attachment 4 - Plan No. 6 Street Tree Planting in Residential Areas Version 3.0.1 December 2009 (ECM 9626105).
5. Attachment 5 - CP07 West Kingscliff Version 6 December 2009 (ECM 9626128).
6. Attachment 6 - CP11 Tweed Shire Library Facilities Version 3 December 2009 (ECM 9626134).
7. Attachment 7 - CP12 Bus Shelters Version 1.3 December 2009 (ECM 9626143).
8. Attachment 8 - CP13 Eviron Cemetery Version 2 December 2009 (ECM 9626145).
9. Attachment 9 - CP15 Developer Contributions for Community Facilities Version 5 December 2009 (ECM 9626154).
10. Attachment 10 - CP18 Council Administration Offices and Technical Support Facilities Version 2.2 December 2009 (ECM 9626169).
11. Attachment 11 - CP19 Casuarina Beach/Kings Forest Version 4 December 2009 (ECM 9627182).
12. Attachment 12 - CP21 Terranora Village Estate Open Space and Community Facilities Version 2 December 2009 (ECM 9627186).
13. Attachment 13 - CP22 Cycleways Version 3 December 2009 (ECM 9627194).
14. Attachment 14 - CP25 SALT Open Space and Associated Car Parking Version 3 December 2009 (ECM 9627201).
15. Attachment 15 - CP26 Shirewide/Regional Open Space Version 4 December 2009 (ECM 9627208).

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41 [EO-CM] Kings Forest - Owners Consent by Council for Council Owned Roads

ORIGIN:

Director Engineering and Operations

FILE NO: GT1/51

SUMMARY OF REPORT:

The developer of Kings Forest, Leda Developments Pty Ltd has requested owner's consent from Council to include public roads in the Part 3A Concept Plan being determined by the NSW Department of Planning. It is proposed that consent be granted.

RECOMMENDATION:

That Leda Developments Pty Ltd be advised that:-

- 1. Council grants owner's consent for the inclusion of public roads in the Kings Forest Concept Plan.**
- 2. The above does not imply Council's consent to close the roads and transfer ownership to Leda Developments Pty Ltd. This will be the subject of further negotiations between the parties.**

REPORT:

Council has received a request from Leda Developments Pty Ltd by email dated 25 November 2009 together with a letter from Project 28 Pty Ltd dated 24 November 2009 as follows:-

From: Joan McLeod [mailto:JMcleod@ledaholdings.com.au]
Sent: Wednesday, 25 November 2009 3:24 PM
To: Patrick Knight
Subject: Kings Forest - Owners Consent for Council Owned Roads

Copy of the letter sent by mail follows and the map showing Council owned roads and crown roads adjoining and within the Kings Forest estate is an attachment.

Many of these road areas have already been zoned in the SEPP for Kings Forest however it is necessary to include owners consent for the road areas in the Concept Plan approval. As discussed, owners consent for the road areas to be included in the Concept Plan does not imply that they will be approved for closure or future purchase. It means that the Concept Plan designations apply to these road reserve areas whether they be for residential development, environmental protection or public open space, etc.

The final report for the Kings Forest Concept Plan is with the Government with all the submissions from State Agencies including Tweed Shire Council. Your assistance in seeking Council to provide owners consent at the next Council meeting is greatly appreciated, as it is urgently required.

Regards,

Noel Hodges

Leda Developments Pty Ltd
Level 1, 46 Cavill Avenue | Surfers Paradise QLD 4217
t: 07 5570 5500 | f: 07 5570 5050 | e: jmcleod@ledagc.com

PROJECT 28 PTY LTD



24 November 2009

The General Manager
Tweed Shire Council
PO Box 816
MURWILLUMBAH NSW 2484

Attention: Mr Patrick Knight
Director Engineering Services

Dear Sir,

Re: Owners Consent for Council Road Reserves in Kings Forest

There is a legal requirement to have all the road reserves in the Kings Forest estate included in the Concept Plan with owners consent. The inclusion of the road reserve areas will enable future subdivision applications to be submitted without complications where these roads are realigned, closed or remain as unformed roads in the Concept Plan development designations.

The future closure of these road reserve areas or realignment of them will only be sought where it is necessary to accord with the Concept Plan and then by separate applications. The provision of owners consent for these road reserves does not imply consent to the development or that approval will be granted for any road closures which may be sought.

Your early advice that Tweed Shire Council provides owners consent for the Council owned roads as shown on the attached plan to be included in the Kings Forest Concept Plan would be appreciated. The Council owned roads are E, L, M, N and P.

Yours faithfully,
PROJECT 28 PTY LTD

N. Hodges
Consulting Engineer

Enc.



PROJECT 28 PTY LIMITED ACN 003 919 613
Suite 14, Level 1, Cavill Park, 46 Cavill Avenue, Surfers Paradise, QLD 4217
TELEPHONE 07-5570 5500 FACSIMILE 07-5570 5050



There are a number of issues that must be determined prior to Council closing and dedicating current public roads (e.g. Depot Road) into the Kings Forest future subdivision layout. These include ensuring that Depot Road is not permanently closed to the public prior to the construction and dedication to Council of an alternative road access to the new sportsfields.

However in regard to granting of owner's consent for the roads to be included in the Concept Plan, there do not appear to be any implications in granting consent that would be adverse to Council or the public. Granting owner's consent would allow the cadastral layout to be consolidated and then notionally reconfigured with a new street layout for the purposes of the Concept Plan consideration and would result in a more practical approach to this issue.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Consent will permit the E P & A Act Part 3A processes to proceed in an orderly manner.

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).*

Nil.

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42 [EO-CM] Tweed Shire Coastal Creeks Flood Study

ORIGIN:

Planning & Infrastructure

SUMMARY OF REPORT:

The Tweed Shire Coastal Creeks Flood Study, commissioned in 2007, has now been completed.

The study uses two dimensional modelling to predict peak flood levels and velocities for 5 year, 10 year, 20 year, 50 year, 100 year, 500 year and PMF design floods in Cudgen Creek, Cudgera Creek, Mooball Creek and Marshalls Creek and their respective tributaries. It also predicts rises in the 100 year design flood arising from medium (20% increase in rainfall intensity and 55cm sea level rise) and high (30% increase in rainfall intensity and 91cm increase in sea level rise) impact climate change.

The flood study has been prepared in accordance with the NSW Floodplain Development Manual.

The report was placed on public exhibition from 14 October to 11 November 2009 and a public meeting was held on 28 October 2009. Two submissions were received, resulting in minor corrections to the report.

The final report is available for Council and public information.

The "Flood Study" predicts existing flood behaviour only i.e. flood levels for various design floods.

The next phase, or what to do about flooding or "Floodplain Management" is addressed in the next phase of the process called the "Floodplain Risk Management Study and Plan" which is about to commence.

The Tweed Shire Coastal Creeks Floodplain Risk Management Study and Plan (CCFRMS&P) will address flood modification (levees, mitigation etc), property modification, response (SES involved - awareness, readiness, warnings, evacuation, recovery), landuse planning and regulation in the floodplain (LEP, DCP amendments). Grant funds have been offered and accepted by Council for the CCFRMS&P and tenders will be called shortly to undertake this project.

RECOMMENDATION:

That:-

- 1. The Tweed Shire Coastal Creeks Flood Study be received by Council and made available to the public.**

2. **The Tweed Shire Coastal Creeks Floodplain Risk Management Study and Plan be prepared, in accordance with the NSW Floodplain Development Manual.**

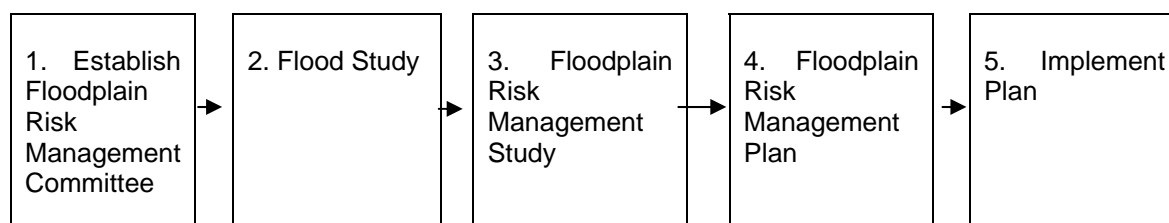
REPORT:

1. Background

1.1 NSW Floodplain Management System

The NSW Government’s adopted floodplain management process is contained in the 2005 “Floodplain Development Manual”.

The floodplain management planning process can summarised as:-



Activity		Description
1	Establish Floodplain Risk Management Committee	Includes council, community and departmental representatives (as is currently the case for the existing Tweed Shire Floodplain Management Committee)
2	Flood Study	Technical investigation of flood behaviour. Uses models to predict flood levels and velocities for a range of flood frequencies up to the PMF
3	Floodplain Risk Management Study	Hazard analysis. Identify and analyse management options including:- flood modification (mitigation), property modification, planning controls, flood planning levels, readiness/response/recovery (SES), emergency response. In particular address cumulative impacts, larger floods (up to PMF), climate change.
4	Floodplain Risk Management Plan	Adopt preferred options from above study.
5	Plan Implementation	Enact planning controls (LEP, DCP etc), plan/finance/execute mitigation and property modification works, flood emergency plans, awareness programmes, ongoing data collection and monitoring

1.2 Floodplain Management in Tweed Shire

Council over the years has commissioned previous flood studies for the Tweed River and coastal creeks (Cudgen, Cudgera and Mooball), based on one dimensional modelling. A two dimensional model was used to develop the Tweed Valley Flood Study in 2005 and a further update of this study has just been completed.

Planning Controls are mostly contained in *DCP Part A3: Development of Flood Liable Land*.

2. Tweed Shire Coastal Creeks Flood Study

2.1 Flood Study Completed

In 2007 BMT-WBM were commissioned to prepare a new flood study for the catchments of Cudgen Creek, Cudgera Creek, Mooball Creek and Marshalls Creek and their respective tributaries based on a contemporary 2 dimensional modelling technique (TUFLOW software). Due to known cross boundary flooding issues between Mooball and Marshalls Creeks, it was resolved to conduct a joint flood study with Byron Shire Council.

The model uses two dimensional modelling to predict peak flood levels and velocities for 5 year, 10 year, 20 year, 50 year, 100 year, 500 year and PMF design floods.

The flood study is now completed.

The flood study has produced a formal written report and an electronic package that includes the model, animations of design flood events and GIS software interpretive tools for design floods and the underlying digital elevation model (DEM).

2.2 Findings of the Flood Study

(a) Current Climate

The TUFLOW model in the flood study predicts the following flood levels:-

Location	Peak Flood Level (m AHD)						
	5 year ARI	10 year ARI	20 year ARI	50 year ARI	100 year ARI	500 year ARI	PMF
Marshalls Creek							
Marshalls Ck u/s of railway line at Billinudgel	3.41	3.59	3.80	3.96	4.13	4.38	5.88
Marshalls Ck u/s of Pacific Highway at Billinudgel	2.90	3.05	3.23	3.36	3.51	3.74	5.42
Yelgun Ck upstream of Kallaroo Circuit	2.29	2.34	2.66	2.93	3.11	3.61	5.63
Capricornia Canal at Berrimbilla Court	2.24	2.25	2.49	2.65	2.77	2.99	5.29
Capricornia Canal upstream of New Brighton Rd	2.24	2.26	2.50	2.66	2.77	2.99	5.18
Capricornia Canal at confluence with Marshalls Ck	2.23	2.27	2.50	2.66	2.78	3.04	5.18
Marshalls Ck at New Brighton	1.64	1.72	2.20	2.43	2.55	2.86	5.02
Marshalls Ck downstream of Orana Bridge	1.41	1.53	2.18	2.42	2.53	2.68	4.60
Marshalls Ck at downstream end	0.80	1.50	2.20	2.47	2.60	2.60	2.60

Location	Peak Flood Level (m AHD)						
	5 year ARI	10 year ARI	20 year ARI	50 year ARI	100 year ARI	500 year ARI	PMF
Mooball Creek							
Greenvale Court Bridge at Burringbar	25.68	26.04	26.60	26.84	27.15	26.88	28.66
Tweed Valley Way Bridge at Burringbar	17.76	18.09	18.57	18.79	19.01	18.94	20.70
Quinns Bridge at Mooball (Pottsville Mooball Rd)	12.77	12.87	12.98	13.09	13.21	13.19	14.38
Burringbar Creek Crossing at Pacific Highway	10.53	10.72	10.92	11.09	11.35	11.45	13.07
Crabbes Creek General Store	12.32	12.46	12.62	12.72	12.79	12.67	13.26
Wooyung Rd West of Tea Tree Rd (Canal Crossing)	3.30	3.27	3.62	3.80	3.94	4.16	5.90
Wooyung Caravan Park	2.60	2.63	2.89	3.09	3.25	3.67	5.79
End of Warwick Park Road	2.23	2.28	2.54	2.77	2.98	3.54	5.73
Black Rocks Bridge	1.54	1.68	2.08	2.39	2.68	3.38	5.61
Pottsville Water Estate	1.38	1.57	2.07	2.26	2.56	3.25	5.47
Tweed Coast Road Bridge at Pottsville	1.20	1.51	2.17	2.43	2.55	2.86	4.90
Cudgera Creek							
Cudgera Creek Road Interchange	11.73	11.82	11.91	11.94	12.02	12.03	12.76
Newcastle Drive at Seabreeze Estate	4.98	5.00	5.02	5.03	5.04	5.05	5.17
Lennox Circuit at Seabreeze Estate	2.91	2.94	2.98	3.01	3.03	3.09	4.52
Link Road Bridge at Koala Beach	1.99	1.98	2.18	2.35	2.42	2.51	4.60
Cudgera Avenue Bridge at Koala Beach	1.26	1.53	2.13	2.34	2.42	2.51	4.40
Christies Creek Channel West of Quarry	1.67	1.83	1.99	2.17	2.34	2.70	4.55
Tweed Coast Road Bridge	0.86	1.51	2.17	2.40	2.51	2.56	3.23
Cudgera Creek Outlet to Ocean	0.80	1.50	2.20	2.47	2.59	2.60	2.60
Cudgen Creek							
Clothiers Creek Road Crossing	2.40	2.55	2.74	2.99	3.19	3.54	6.01
Cudgen Lake Inlet (Clothiers Creek)	2.08	2.26	2.48	2.72	2.92	3.36	5.74
Cudgen Lake at Willow Avenue	2.08	2.26	2.47	2.72	2.92	3.36	5.73
Cudgen Lake Outlet	2.08	2.26	2.47	2.72	2.92	3.36	5.73
Tweed Coast Road Bridge at Casuarina	0.93	1.54	2.10	2.30	2.38	2.90	5.39
Sutherland St Bridge at Kingscliff	0.84	1.52	2.13	2.36	2.45	2.53	4.81
Cudgen Creek Outlet to Ocean	0.80	1.50	2.16	2.41	2.52	2.56	2.80

Note: ARI = Average Recurrence Interval

(b) Climate Change Impacts

Flood maps of the peak flood levels, depths and velocity x depth products are reported for both the medium and high impact climate change scenarios.

For each scenario, peak flood levels were also compared to the 100 year ARI peak design levels. As discussed previously, the comparison of these climate change scenarios with the 100 year ARI design flood is not straight forward as the design floods for current climate were based on a conservative 2.6 m AHD ocean tailwater, which already takes into account some allowance for sea level rise. This should be noted when considering the comparisons.

In the medium impacts climate change scenario (i.e. 20% increase in rainfall and 0.55m sea level rise), increases in peak flood levels of up to 0.5m are predicted for most of the floodplains downstream of the Pacific Highway. Burringbar Creek, Reserve Creek and Clothiers Creek upstream of the Pacific Highway are also predicted to be impacted by an increase of up to 0.5m. Peak flood levels in the lower sections of the floodplains (i.e. Mooball Creek downstream of the Tweed Coast Road Bridge in Pottsville, Cudgera Creek downstream of Seabreeze Estate, and Cudgen Creek downstream of the Tweed Coast Road Bridge) are predicted to increase to a lesser extent, by up to 0.2m.

In the high impacts climate change scenario (i.e. 30% increase in rainfall and 0.91m sea level rise), peak flood levels are predicted to increase even more as follows:-

- By up to 0.2m to 0.5m in Cudgera and Christies Creek Hastings Point and Cudgen Creek at Kingscliff
- By up to 1.0m in the lower Mooball Creek floodplain downstream of Warwick Park Road adjacent to Pottsville Waters and Black Rocks
- By up to 1.0m upstream of hydraulic structures and/or constrictions including the Pacific Highway in Mooball, the Tweed Coast Road downstream of Cudgen Lake, and the Tweed Valley Way in Burringbar.

2.3 Receipt and Exhibition of the Flood Study

The draft Flood Study was placed on public exhibition from 14 October to 11 November 2009 and a public meeting was held on 28 October 2009. Two submissions were received as follows:-

- 1.) Letter from two residents of Creek Street Hastings Point (see attachment)
The issues raised are generally not relevant to the Coastal Creeks Flood Study, as the flood study is required to examine existing flood behaviour, and does not include floodplain management options. Staff comments on the issues raised are included in the attachment.
- 2.) Minor amendments to the report from Matthew Lambourne as one of Byron Shire's community representatives on the joint TSC/BSC Floodplain Management Committee overseeing the study. The suggestions relate to Marshalls Creek in Byron Shire area and where appropriate the Flood Study report has been amended.

The final report is now available for Council and public information.

The Flood Study will be the major predictive tool used for Tweed Shire coastal creeks floodplain management in coming years.

It is proposed that Council formally receive the Tweed Valley Flood Study and make the flood study accessible to the public by:-

- Sale of the report in accordance with Council's relevant fees and charges
- Posting the report in pdf format on Council's website

3. Tweed Shire Coastal Creeks Floodplain Risk Management Study and Plan

The next phase of the Tweed Shire Coastal Creeks floodplain management project is the "Floodplain Risk Management Study and Plan". The Floodplain Development Manual advises this study to address:-

- Hazard analysis.
- Identify and analyse management options including:-
 - flood modification (mitigation),
 - property modification,
 - planning controls,
 - flood planning levels,
 - readiness/ response/recovery (SES), emergency response.
- Cumulative impacts, larger floods (up to PMF) and climate change.
- Identify and analyse management options
- Recommend preferred options

The Tweed Shire Coastal Creeks Floodplain Risk Management Study and Plan has received an offer of grant funds under the Natural Disaster Mitigation Program and Council has accepted the grant offer.

A technical brief has been prepared and quotations from suitably qualified consultants will soon be invited.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The Floodplain Risk Management Study and Plan is provided for in Council's budget and it is necessary to undertake the project in order to conform to the process outlined in the NSW Floodplain Development Manual.

POLICY IMPLICATIONS:

It is intended to update Council's DCP Section A3 - Development of Flood Liable Land to amend flood planning levels for the coastal floodplains in accordance with the Coastal Creeks Flood Study. This will be the subject of a separate report in the new year.

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. Public submission on Coastal Creeks Flood Study (ECM 9624974)
 2. Coastal Creeks Flood Study Report to be tabled at the meeting by the Director Engineering and Operations.
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REPORTS FROM THE DIRECTOR TECHNOLOGY AND CORPORATE SERVICES

43 [TCS-CM] 2009 Complaint Analysis Report for the period 1 July 2009 to 30 September 2009

ORIGIN:

Corporate Governance

SUMMARY OF REPORT:

Council's Complaints Handling Policy is a framework for the effective management of complaints.

A complaint is an expression of dissatisfaction, made in respect to a Council Officers role in the provision of service delivery or lack of service delivery that has allegedly affected an individual, group or body of stakeholders whether justified nor not.

It is not a request for service, (customer work request), or information or an explanation of a policy or procedure, or objections to a development application before Council determination.

A complaint can progress from Council's lack of action following the lodgement of a request for service or a request for information.

The Policy requires a complaint analysis report be reported to Council detailing type and outcomes/actions on a quarterly basis.

It is advised that for the period 1 July 2009 to 30 September 2009, 12 items were received which comply with the definition of a complaint. There are three complaints which have not been actioned, however they are being investigated.

The complaints principally refer to the:

- failure of Council Officers to comply with Council's Customer Service Charter in not responding to items within fourteen (14) days in accordance with the Correspondence - Response To Policy
- respondents being dissatisfied with the actions of Council officers in handling their original request for service
- respondents being dissatisfied that issues have not been dealt with by Council Officers

RECOMMENDATION:

That Council receives and notes the 2009 Complaints Analysis Report for the period 1 July 2009 to 30 September 2009.

REPORT:

The type of complaint has been categorised in accordance with categories used by the Department of Local Government. This methodology will assist in monitoring the effectiveness of Council's handling of complaints and improving service delivery.

Complaint Type	Quantity
Customer Service Service Standards	2

- Complaints related to Council Officers not responding to requests for information within 14 days which is the customer service standard in Council's Correspondence response to Policy.

A response has been sent to each of the complainants, providing the requested information.

Complaint Type	Quantity
Enforcement and Regulatory Powers Noise/Dust/Overgrown Land/Building	7

- Complaints related to noise matters still continuing, although they had previously been reported to Council.

The matters have been further discussed with appropriate parties, a response is to be developed for the complainants.

- Complainant not happy with councils' response concerning the clearing of a property.

Complainant has been advised that the property is being cleared.

- Complainant was concerned that Council Officers were not clearly investigating complaints.

Matters were discussed personally with complainant.

- Complainant advised that client was not happy with council's conduct- will institute legal proceedings.

Complaint issues are being investigated and managed by Council Officers.

- Complainant has numerous neighbourly issues, building issues, dumping of rubbish - previously investigated.

Complainant has been advised of actions being taken by Council in respect of the issues raised.

Engineering Services:

Complaint Type	Quantity
Roads	1

- Complainant was disappointed at Council's response with a road issue.

Complainant has been advised of the actions to be taken in respect of the complaint.

Natural Resource Management:

Complaint Type	Quantity
Water	1

- Complainant was concerned at the lack of correspondence regarding the introduction of the sewerage access fee.

Complainant has received a detailed response to the issues raised.

Complaint Type	Quantity
Coastal Crown Land Fingal Head	1

- Complainant had a number of issues concerning the management of coastal crown land at Fingal Head, including a response received from Council.

Complainant has received an acknowledgement letter, advising that the issues are being investigated.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

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).

Nil.

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44 [TCS-CM] Legal Services Report as at 30 September 2009

ORIGIN:

Governance

SUMMARY OF REPORT:

The Legal Services Report as at 30 September 2009 monitors the status on legal instructions, for current and for the quarter completed matters which have been issued to panel legal providers. The report includes payments to the various legal providers, and also payments for barristers and consultants where applicable.

RECOMMENDATION:

That the legal services report as at 30 September 2009 be received and noted.

REPORT:

Expenditure incurred on legal instructions for the period 1 July 2009 to 30 September 2009 is as follows:

	Category 1 Planning, Environmental & Local Government Law	Category 2 Commercial/Property Law
Sept Quarter	\$55,816	\$340
TOTAL	\$55,816	\$340

A summary of payments to each of the Legal Service Providers including barristers and consultants where applicable, for the period 1 July 2009 to 30 September 2009 is as follows:

Legal Service Provider	Category 1 Planning, Environmental, Local Government Law	Category 2 Commercial/Property Law
HWL Ebsworth	\$32,208	
Maddocks	\$8,530	
Marsdens	\$4,485	
Stacks Northern Rivers	\$10,593	\$340

LEGAL SERVICES REGISTER as at 30 September 2009

Legal Service Job Number	Service Provider	Category	Description of Matter	General Instructions	Costs to Date	Comments
CURRENT MATTERS						
A 1010.2690	HWL Ebsworth	1	Class 1 Appeal, D.A.08/0755 Seaside City, 24 Lot Subdivision Casuarina Way Kingscliff File DA 08/0755	Defend the matter in the Land and Environment Court.	09/10 4,536	In Progress – Land & Environment – On site meeting and S.34 Mediation held 21 October 2009.
A0029.2645	Marsdens	1	Class 4 appeal – 7 year Special Rate Variation	Defend the matter in the Land and Environment Court.	07/08 24,446 08/09 280,776 305,222	In Progress – Land & Environment judgement handed down 30 December 2008, applicants claim was unsuccessful, part costs claim awarded, Court of Appeal lodged- hearing set down for 15 February 2010.
A1010.2641	Marsdens	1	Class 4 appeal – DA06/0413, Re-development of the existing Hastings Point Holiday Caravan Park Hastings Point for the purposes of an aged care facility File DA 06/0413	Act on Council's behalf in the Land and Environment Court	07/08 8,188 08/09 1,129 09/10 1,257 10,574	In Progress – Council has been participating as a submitting appearance only- Land & Environment Court. Judgement handed down- Court of Appeal challenge dismissed- leave now sought to the High Court.
A1010.2643	Marsdens	1	Class 4 appeal – DA07/0022, Construction of 7 units – 21 Tweed Coast Road, Hastings Point Subsequent Development Application was refused by Council.	Act on Council's behalf in the Land and Environment Court	07/08 2,707 08/09 16,329 19,036	In Progress – Class 4 Appeal to Land & Environment Court, upheld Council decision. Class 1 appeal hearing scheduled for 15-16 October 2009.
A1310.2657	Stacks	1	Class 1 Appeal lodged by Plaintiff Consulting for amended application Statement of Claim - DA04/1028- 207 Farrants Hill Road- building encroachment. File DA04/1028	Defend the matter in the District Court of NSW	07/08 7,594 08/09 34,534 09/10 3,117 45,245	In Progress – hearing still not held- matter has been transferred from District Court to Land & Environment Court.

Legal Service Job Number	Service Provider	Category	Description of Matter	General Instructions	Costs to Date	Comments
A1010.2672	Stacks	1	Appeal to Supreme Court of Appeal – M.W. Allen (Lizzio Subdivision – Condong)	Represent Council in the Supreme Court and engage counsel where appropriate	08/09 29,609 09/10 7,476 37,085	In Progress – second appeal in the Supreme Court heard 16 October 2009. Judge reserved his decision.
COMPLETED MATTERS						
A1010.2649	HWL Ebsworth	1	Class 1 Appeal – deemed refusal – DA06/1054 – 2954 Kyogle Road Kungkur- Nightcap Village Staged Development	Act on Council's behalf in the Land and Environment Court	07/08 27,666 08/09 129,051 09/10 12,454 169,171	Completed – Land & Environment Court, on-site meeting held, without prejudice meetings held, applicant provided further information, matter discontinued 16 July 2009. D.A. approved 29 June 2009.
A1010.2684	HWL Ebsworth	1	File DA06/1054 Banora Point Caravan Park Refurbishment	Act on Council's behalf in relation to the management of approvals and enforcement actions.	08/09 10,625 09/10 15,218 25,843	COMPLETED – advice provided on proposed refurbishment.
A0029.2693	Maddocks	1	File PF4030/2620 Code of Conduct issues	Provide advice in relation to issues impacting upon Council's Code of Conduct.	09/10 8,530	COMPLETED – Advices provided
A1010.2688	Marsdens	1	File Code of Conduct D.A.05/0223.05 – 4 Wharf Street Tweed Heads – use of premises as a restaurant	Provide advice in relation to the commencement by Council of Class 4 action in the Land & Environment Court	08/09 729 09/10 1,491 2,220	COMPLETED – Advice provided, outlining issues.
			File DA05/0223			

Legal Service Job Number	Service Provider	Category	Description of Matter	General Instructions	Costs to Date	Comments
A1010.2694	Marsdens	1	DA 0006/2001 – Erection of Tourist Resort- Kirkwood Road Tweed Heads South File. DA1680/785	Provide advice in relation to the surrender of Development Consent	09/10 1,737	COMPLETED – Advice provided 2 September 2009.
A0029.2691	Maddocks	2	Brand - Copyright/Trademark	Provide advice in relation to issues impacting upon the copyright and trademark of Council's new brand.	09/10	COMPLETED – Advice provided
A1010.2685	Stacks	2	Recovery of Land & Environment awarded costs – McAuleys Road land clearing	Provide advice in relation to the most practicable method to recover the costs	09/10 340	COMPLETED – advice provided no further action being taken

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

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).

Nil.

45 [TCS-CM] Monthly Investment Report for Period Ending 30 November 2009

ORIGIN:

Financial Services

SUMMARY OF REPORT:

The "Responsible Accounting Officer" must report monthly to Council, setting out details of all the funds Council has invested and certification has been made in accordance with Section 625 of the Local Government Act (1993), Cl. 212 of the Local Government (General) Regulations and Council policies.

Council had \$130,007,527 invested as at 30 November 2009 and the accrued net return on these funds was \$428,265 or 3.90% annualised for the month.

RECOMMENDATION:

That in accordance with Section 625 of the Local Government Act 1993 the monthly investment report as at 30 November 2009 totalling \$130,007,527 be received and noted.

REPORT:

Report for Period Ending 30 November 2009

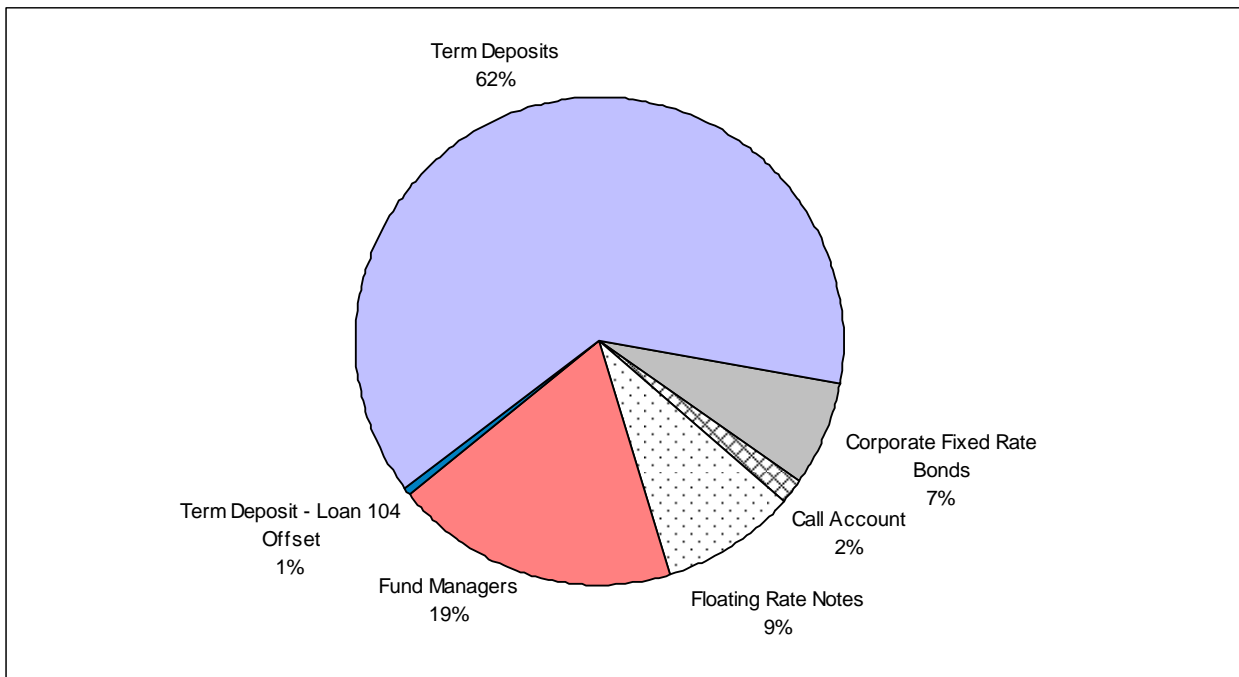
The "Responsible Accounting Officer" must report monthly to Council, setting out details of all the funds Council has invested and certification has been made in accordance with Section 625 of the Local Government Act (1993), Clause 212 of the Local Government (General) Regulations and Council policies.

1. RESTRICTED FUNDS AS AT 1 JULY 2009

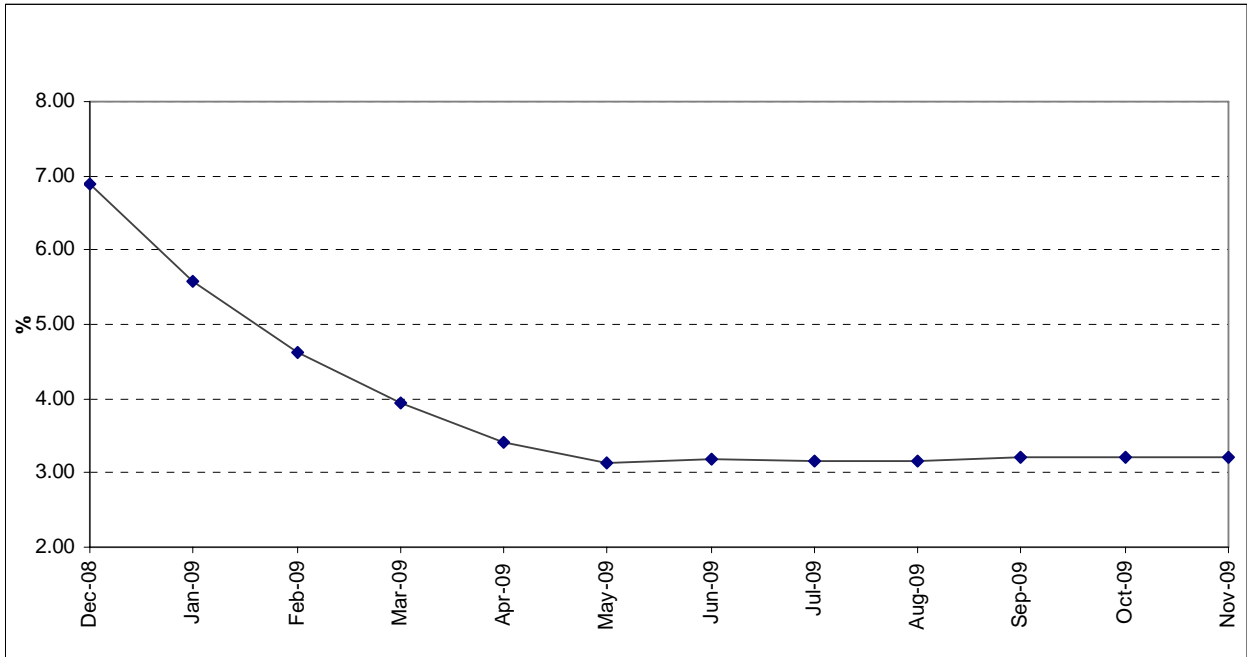
Description	(\$'000)			Total
	General Fund	Water Fund	Sewer Fund	
Externally Restricted	15,427	13,980	14,908	44,315
Crown Caravan Parks	10,145			10,145
Developer Contributions	29,762	19,327		49,089
Domestic Waste Management	8,035			8,035
Grants	3,794			3,794
Internally Restricted	13,816			13,816
Employee Leave Entitlements	1,685			1,685
Grants	2,535			2,535
Unexpended Loans	5,889			5,889
Total	91,088	33,307	14,908	139,303

Note: Restricted Funds Summary updated September 2009

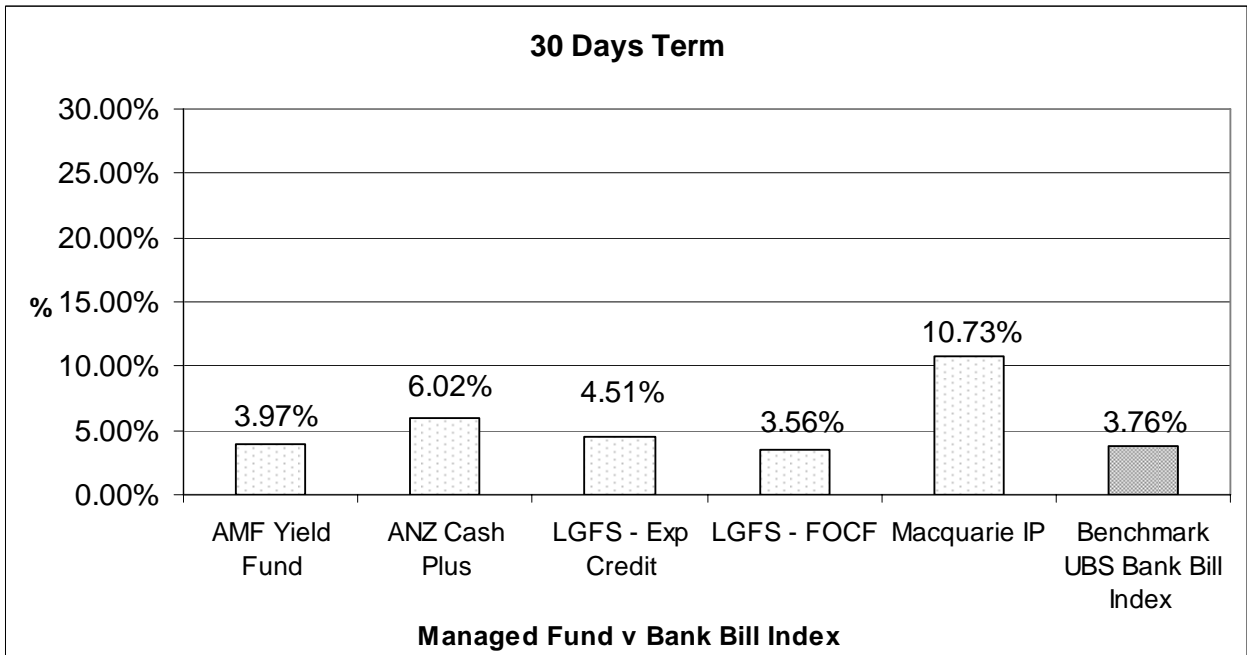
2. CURRENT INVESTMENT PORTFOLIO BY CATEGORY



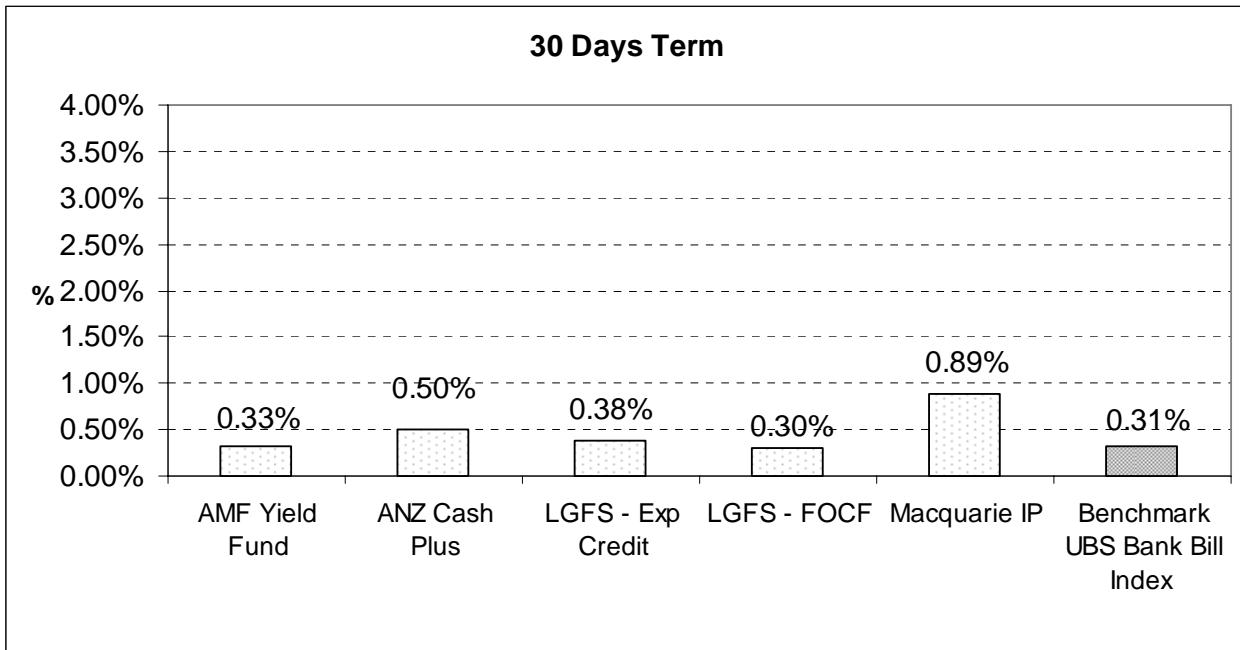
3. INVESTMENT RATES - 90 DAY BANK BILL RATE (%)



4. FUNDS MANAGERS PERFORMANCE FOR MONTH - NET OF FEES (ANNUALISED)



5. FUNDS MANAGERS PERFORMANCE FOR MONTH - NET OF FEES (NOT ANNUALISED)



6. FUND MANAGERS - DETAILED INFORMATION

Fund	Credit Rating	Percentage of Total Fund Managers Current Month	Fund Managers Balance end of Previous month	Fund Managers Balance end of Current month	Distribution for Month/Quarter	Distribution Paid
AMF Yield Fund	AAA	0.00%	\$1,114,730	\$0 *	\$1,096	Monthly
ANZ Cash Plus	AA	3.71%	\$893,218	\$898,834	\$2,041	Monthly
LGFS - Enhanced Cash	n/a	23.29%	\$5,625,194	\$5,647,070	\$1,269	Monthly
LGFS - FOCF	AA-	26.64%	\$6,438,131	\$6,460,226	\$22,095	Monthly
Macquarie IP	A	46.37%	\$11,177,513	\$11,245,606	\$0	Quarterly
Total		100%	\$25,248,786	\$24,251,736	\$26,501	

* AMF Yield Fund closed. Funds invested in term deposit for greater yield.

7. DIRECT SECURITIES

Investment Type	Final Maturity	Counterparty/ Product Name	Face Value	Market Value	% Return on Face Value	Credit Rating
Bond	08/11/2011	ANZ	1,000,000.00	1,022,490.00	5.15	AA
Bond	22/04/2013	ANZ	1,000,000.00	1,077,330.00	8.65	AA
FRN	17/08/2010	ANZ	1,000,000.00	984,193.00	4.26	AA
Bond	02/12/2010	Bank of Queensland	1,500,000.00	1,495,740.00	5.55	BBB+
Bond	02/12/2010	Bank of Queensland	1,000,000.00	997,160.00	6.00	BBB+
FRN	20/07/2010	CBA	1,000,000.00	1,002,407.65	4.15	AA
FRN	21/01/2011	CBA	1,000,000.00	1,005,460.43	4.80	AA
FRN	17/04/2012	CBA	1,000,000.00	1,016,934.80	4.41	AA
FRN	23/11/2012	Deutsche Bank	1,000,000.00	852,506.00	4.92	A+
FRN	24/01/2011	Macquarie/HSBC	2,000,000.00	1,966,582.79	4.43	A
FRN	08/03/2012	Members Equity	2,000,000.00	1,887,840.00	4.44	BBB-
Bond	22/01/2018	Merrill Lynch Zero Coupon Bond	2,000,000.00	2,280,000.00	7.28	AA
FRN	26/11/2010	NAB	2,000,000.00	2,000,251.15	4.43	AA
Bond	24/09/2012	Westpac	1,000,000.00	1,047,490.00	4.90	AA
Bond	24/09/2012	Westpac	1,000,000.00	1,047,490.00	5.15	AA
FRN	22/07/2010	Westpac	1,000,000.00	1,003,040.00	4.02	AA
Total			22,500,000.00	20,686,915.82	5.16	

ABS = Asset Backed Security
Bond = Fixed Rate Bond
CDO = Collateralised Debt Obligation
FRN = Floating Rate Note

8. TERM DEPOSITS

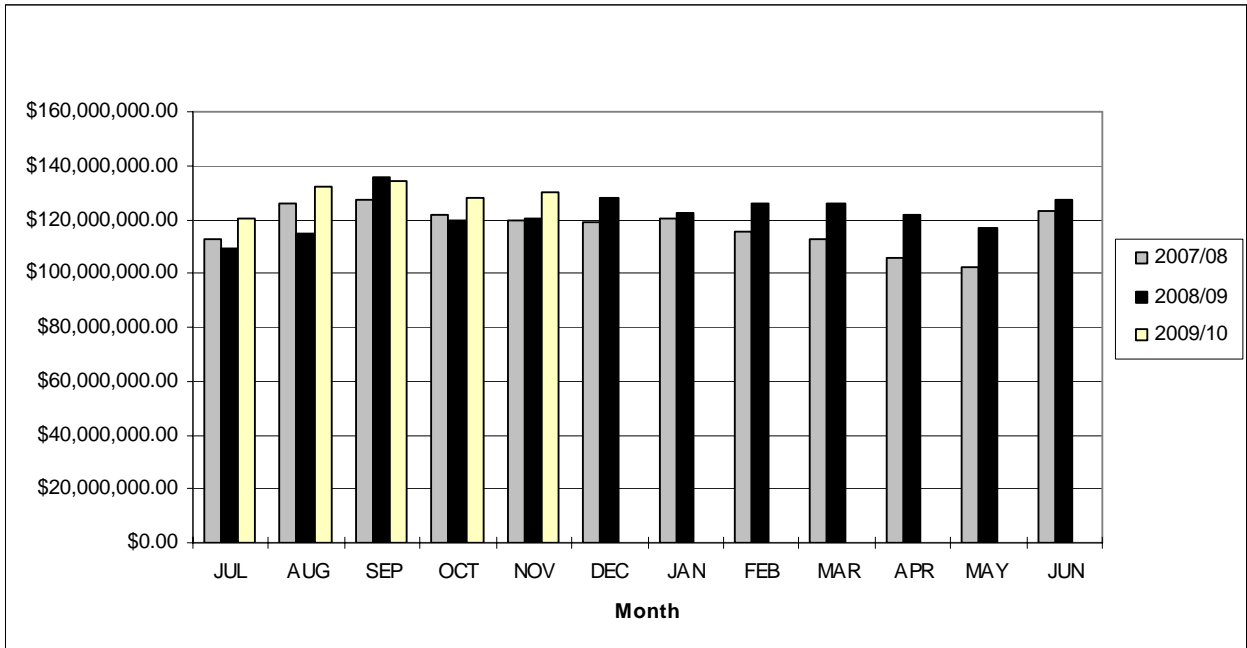
Lodged or Rolled	DUE	Counterparty	PRINCIPAL	TERM	% Yield	INCOME RECEIVABLE
02-Jun-09	01-Dec-09	National Australia Bank	1,000,000.00	106	4.390	12,749.04
10-Jun-09	15-Dec-09	Bank of Queensland	1,000,000.00	188	4.550	23,435.62
13-Aug-09	21-Dec-09	Bank of Queensland	3,000,000.00	130	4.450	47,547.95
27-Nov-09	21-Dec-09	LGFS	1,000,000.00	24	4.950	3,254.79
01-Jul-09	21-Dec-09	Westpac Bank	5,000,000.00	173	4.570	108,302.74
13-Oct-09	11-Jan-10	Westpac Bank	4,000,000.00	90	4.660	45,961.64
12-Oct-09	12-Jan-10	LGFS	2,000,000.00	92	4.500	22,684.93
10-Sep-09	12-Jan-10	Suncorp Metway	2,000,000.00	124	4.700	31,934.25
29-Jul-09	19-Jan-10	Westpac Bank	4,000,000.00	174	4.600	87,715.07

Council Meeting held Tuesday 15 December 2009

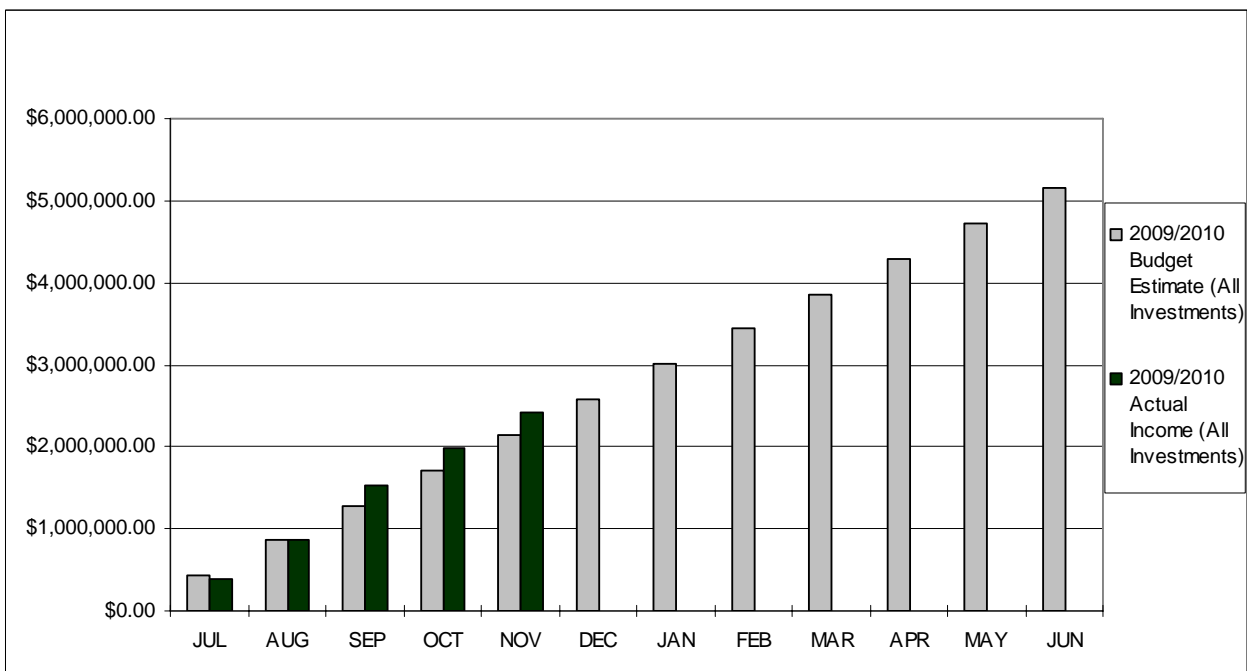
Lodged or Rolled	DUE	Counterparty	PRINCIPAL	TERM	% Yield	INCOME RECEIVABLE
11-Nov-09	03-Feb-10	Suncorp Metway Newcastle Permanent Building Society	1,000,000.00	84	5.450	12,542.47
13-Aug-09	09-Feb-10	Westpac Bank	1,000,000.00	180	4.910	24,213.70
10-Sep-09	09-Feb-10	Westpac Bank	2,000,000.00	152	4.860	40,477.81
11-Nov-09	16-Feb-10	Westpac Bank	1,000,000.00	97	5.230	13,898.90
21-Aug-09	17-Feb-10	Westpac Bank	4,000,000.00	180	4.800	94,684.93
18-Nov-09	18-Feb-10	IMB	1,000,000.00	92	5.200	13,106.85
25-Nov-09	23-Feb-10	Aust Defence Credit Union	1,000,000.00	90	5.320	13,117.81
25-Aug-09	23-Feb-10	National Australia Bank	3,000,000.00	182	5.440	81,376.44
30-Nov-09	01-Mar-10	LGFS	5,000,000.00	730	5.030	503,000.00
01-Sep-09	03-Mar-10	National Australia Bank	8,000,000.00	183	4.930	197,740.27
10-Sep-09	09-Mar-10	National Australia Bank	2,000,000.00	180	4.910	48,427.40
17-Nov-09	16-Mar-10	Adelaide Bendigo Bank	2,000,000.00	119	5.400	35,210.96
25-Nov-09	23-Mar-10	Police Credit Union SA	1,000,000.00	118	5.400	17,457.53
28-Oct-09	28-Apr-10	CBA	868,875.00	182	4.505	19,517.79
27-May-09	27-May-10	ANZ	2,000,000.00	365	4.450	89,000.00
16-Sep-09	13-Jul-10	Suncorp Metway Bank of	2,000,000.00	300	5.200	85,479.45
21-Aug-09	24-Aug-10	Queensland National Australia Bank	2,000,000.00	368	5.300	106,871.23
01-Sep-09	01-Sep-10	Members Equity Bank	4,000,000.00	365	5.530	221,200.00
07-Jul-09	05-Oct-10	Suncorp Metway	1,000,000.00	182	4.600	22,936.99
07-Oct-09	05-Oct-10	Westpac Bank	1,000,000.00	363	6.010	59,770.68
05-Nov-09	05-Oct-10	Westpac Bank	2,000,000.00	334	6.260	114,566.58
20-Oct-09	19-Oct-10	Bank of Queensland	1,000,000.00	364	6.050	60,334.25
20-Oct-09	19-Oct-10	Bankwest	1,000,000.00	364	6.000	59,835.62
17-Feb-09	16-Feb-11	Elders Rural Bank	1,000,000.00	729	4.620	92,273.42

Lodged or Rolled	DUE	Counterparty	PRINCIPAL	TERM	% Yield	INCOME RECEIVABLE
17-Feb-09	17-Feb-11	Adelaide Bendigo Bank	2,000,000.00	730	4.700	188,000.00
02-Apr-08	01-Apr-11	Suncorp Metway	3,000,000.00	1095	8.300	747,000.00
12-Nov-08	11-Nov-11	Suncorp Metway	4,000,000.00	1094	6.880	824,846.03
12-Nov-08	16-Nov-11	Investec Bank	1,000,000.00	1099	6.880	207,153.97
			82,868,875.00		5.231	

9. MONTHLY COMPARISON OF TOTAL FUNDS INVESTED

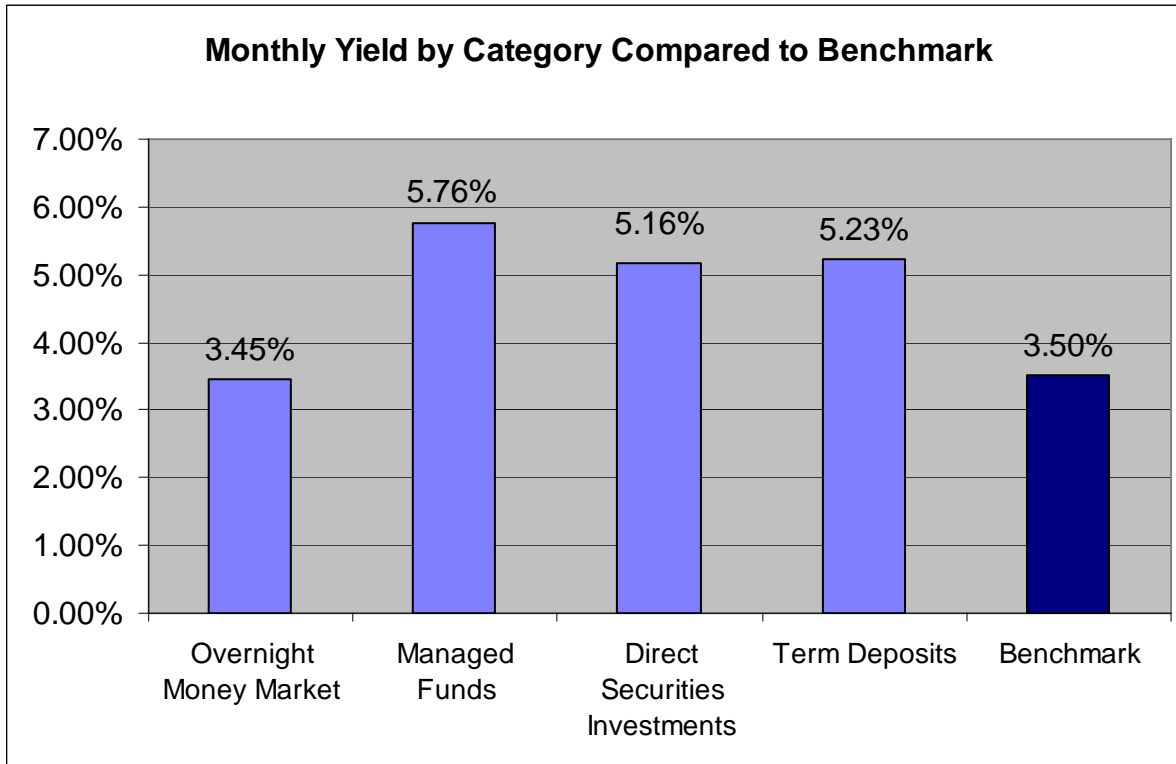


10. TOTAL PORTFOLIO INCOME YEAR TO DATE



11. PERFORMANCE BY CATEGORY

Category	Face Value	Market Value	Average Yield	Above/(Below) 30 day BBSW Benchmark
Overnight Money Market	\$2,200,000.00	\$2,200,000.00	3.45%	-0.05%
Managed Funds	\$24,251,735.85	\$24,251,735.85	5.76%	2.26%
Direct Securities Investments	\$22,500,000.00	\$20,686,915.83	5.16%	1.66%
Term Deposits	\$82,868,875.00	\$82,868,875.00	5.23%	1.73%
Benchmark	\$131,820,610.85	\$130,007,526.68	3.50%	Benchmark 30 Day UBS Bank Bill Index



12. SECTION 94 DEVELOPER CONTRIBUTIONS - MONTHLY BALANCES REPORT - PERIOD ENDING - 30 NOVEMBER 2009

Contribution Plan	Plan Description	End of month balance	Contributions received this month
01	DCP3 Open Space	3,674,243.19	\$0
02	Western Drainage	454,647.86	\$0
03	DCP3 Community Facilities	33,036.60	\$0
04	Tweed Road Contribution Plan	11,098,296.68	\$176,157
05	Open Space	1,393,965.45	\$22,972
06	Contribution Street Trees	188,183.44	\$0

07	West Kingscliff	814,317.33	\$0
10	Cobaki Lakes	-161.33	\$0
11	Libraries	1,506,391.48	\$6,718
12	Bus Shelters	38,323.30	\$422
13	Cemeteries	2,238.67	\$2,487
14	Mebbin Springs	68,391.18	\$0
15	Community Facilities	1,225,368.13	\$0
16	Surf Lifesaving	420,053.89	\$3,592
18	Council Admin - Tech Support	1,606,886.96	\$41,776
19	Kings Beach	1,043,015.30	\$0
20	Seabreeze Estate	570.56	\$0
22	Shirewide Cycleways	448,051.83	\$6,656
23	Shirewide Carparking	1,529,516.92	\$0
25	Salt Development	772,797.29	\$0
26	Plan 26 Shirewide Open Space	4,085,439.30	\$57,012
27	Tweed Heads Masterplan & Streetscaping	76,271.18	\$0
28	Seaside City	-640.07	\$0
91	DCP14	81,846.11	\$0
92	Public Reserve Contributions	102,895.62	\$0
93	Construct Roundabout West Murwillumbah	0.00	\$0
95	Bilambil Heights	490,121.25	\$0
96	Community Facilities Shire Wide	68,156.40	\$0
Total		\$31,222,225	\$317,792

13. ECONOMIC COMMENTARY

Global Economy

Asia is at the forefront of the global recovery. Asian economies are benefitting from a recovery in domestic demand, underpinned by stimulatory settings of both monetary and fiscal policy. Growth in China and India has been particularly strong.

Most advanced economies have grown during the three months to the end of September. Many of the advanced economies are operating with a high level of excess capacity and face significant medium-term fiscal challenges. Core inflation is low in most countries.

2010 presents a challenging global economic environment as consumers and businesses start to deleverage as a combination of rising interest rates and withdrawal of government fiscal stimulus create headwinds. The economic recovery currently underway in many countries may stall and a "double-dip" recession is a possibility.

Domestic Economy

A recovery in housing construction is now underway with leading indicators well above the levels of late 2008, although financing issues are constraining developers in the apartment market. The Australian population is growing at the fastest rate since the 1960s and this is leading to increased housing demand.

The labour market is generally not as weak as earlier forecast with unemployment steady at around 5.75% for the past five months. While there has been no growth in employment over the past year, the rise in unemployment has been contained by greater flexibility in the labour market, with many firms and workers agreeing to reduce working hours as the economy slowed - as well as a decline in the participation rate.

Conditions in the Australian economy are significantly better than was expected when the Reserve Bank (RBA) lowered the cash rate to 3% earlier in 2009. The Australian economy is operating with less spare capacity than earlier thought likely and the outlook for the next few years has improved, according to the RBA. The RBA judged it prudent to lessen the degree of monetary stimulus by increasing the cash rate by 25 basis points at its October, November and December meetings. The current 3.75% cash rate remains at a low level and a further gradual lessening of monetary stimulus is likely to be required as the "emergency" cash rate is replaced by a neutral cash rate. The move to a neutral cash rate is considered necessary if monetary policy is to promote sustainable growth in the Australian economy and keep inflation within the 2-3% target range.

Risks remain that withdrawal of fiscal and monetary stimulus measures in Australia during 2010, combined with any further financial "shocks" overseas, particularly in the US or China, may lead to the economy suddenly returning to recessionary levels.

Council's Investment Portfolio Performance

During November Council closed both the AMF Yield Fund and the ANZ Cash Plus Fund. The AMF Yield Fund, while returning a set margin above the 90DBBSW benchmark, is underperforming term deposits.

The ANZ Cash Plus Fund has been closed to new deposits and redemptions since November 2008 and is in the processing of being wound up. The current exit fee of approximately 2.5% of the amount redeemed is viewed as favourable compared with exit fees during the past year ranging between 5% and 12%.

All investment categories out-performed the UBS 30 day bank bill benchmark this month. Most managed funds in the Portfolio performed well, returning on average 5.76% annualised for the month or 2.26% above benchmark, compared with bonds 5.16% and term deposits 5.23%.

An indication of Portfolio performance is provided by totalling investment income for the month and disregarding changes in capital values. Council had \$130,007,527 invested as at 30 November 2009 and the accrued net return on these funds was \$428,265 or 3.90% annualised for the month.

Source: Oakvale Capital Limited

14. INVESTMENT SUMMARY AS AT 30 NOVEMBER 2009

GENERAL FUND

COLLATERISED DEBT OBLIGATIONS	0.00	
COMMERCIAL PAPER	0.00	
CORPORATE FIXED RATE BONDS	8,967,700.00	
FLOATING RATE NOTES	11,719,215.82	
ASSET BACKED SECURITIES	0.00	
FUND MANAGERS	4,116,082.65	
TERM DEPOSIT - LOAN 104 OFFSET	868,875.00	
TERM DEPOSITS	48,000,000.00	
CALL ACCOUNT	2,200,000.00	75,871,873.47

WATER FUND

TERM DEPOSITS	30,000,000.00	
FUND MANAGERS	17,454,770.40	47,454,770.40

SEWERAGE FUND

TERM DEPOSITS	4,000,000.00	
FUND MANAGERS	2,680,882.81	6,680,882.81

TOTAL INVESTMENTS **130,007,526.68**

It should be noted that the General Funds investments of \$75 million are not available to be used for general purpose expenditure. It is virtually all restricted by legislation and council resolution for such purposes as unexpended loans, developer contributions, unexpended grants and various specific purpose reserves such as domestic waste, land development and employee leave entitlements.

All Water and Sewerage Fund investments can only be expended in accordance with Government regulation and Council resolution.

Statutory Statement - Local Government (General) Regulation 2005 Clause 212

I certify that Council's investments have been made in accordance with the Local Government Act 1993, the Local Government (General) Regulations and Council's investment policies.



**Chief Financial Officer
(Responsible Accounting Officer)**

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

46 [TCS-CM] Joint Regional Planning Panel - Fees

ORIGIN:

Corporate Governance

SUMMARY OF REPORT:

To consider and confirm fees payable to the appointed Council representatives on the Northern Region Joint Regional Planning Panel (JRPP).

RECOMMENDATION:

That the:

- 1. Fee payable to the Council appointed representatives on the Northern Region Joint Regional Planning Panel is:
 - i. \$200 per hour with a capped payment of four (4) hours preparatory work/site inspections per application; and**
 - ii. \$200 per hour per Northern Region meeting – with a minimum of one (1) hour payable per meeting.****
- 2. Hourly fee is reviewed in conjunction with the preparation of the 2010/2011 budget.**

REPORT:

At the Extraordinary Council Meeting held on 30 June 2009 the following representation was determined to the Northern Region Joint Regional Planning Panel:

"Council nominates Dr Ned Wales and Mr Robert Quirk as Council's (2) representatives and Mr Steven Grimes as Council's (1) alternative member to participate in the Northern Region Joint Planning Panel, effective from 1 July 2009."

Since this resolution the Minister for Planning has confirmed that the Department will cover the remuneration of the State appointed members being Garry West, Pamela Westing and Dr John Griffin, while Council is to establish the fees payable to the Council representatives.

In determining the applicable fee consideration needs to be given to the anticipated time that these representatives will need to commit to undertaking this role on behalf of Council.

With this in mind the following recommendation is proposed:

The fee payable to the Council appointed representatives on the Northern Region Joint Regional Planning Panel is:

- *\$200 per hour with a capped payment of four (4) hours preparatory work/site inspections per application; and*
- *\$200 per hour per Northern Region meeting – with a minimum of one (1) hour payable per meeting.*

The hourly fee is reviewed in conjunction with the preparation of the 2010/2011 budget.

This proposed fee is deemed as being reasonable on an initial basis and the review in conjunction with the preparation of the 2010/2011 budget will take into account the matters that have been referred to the panel and the actual time that has been involved in considering these matters.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Expenditure will be incurred within the Planning and Regulations budget and reviewed on a quarterly basis.

POLICY IMPLICATIONS:

As per the requirements of the Joint Regional Planning Panels.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

47 [TCS-CM] Telecommunications Infrastructure Action Plan - Six Monthly Update

ORIGIN:

Director

SUMMARY OF REPORT:

At Council's meeting of 28 May 2009 it was resolved to endorse the Telecommunications Infrastructure Action Plan and establish a Telecommunications Infrastructure Action Plan Working Group comprising of representatives from each Division of Council.

Council also requested a six monthly progress report from this Group. This report details the progress to date in implementing the Telecommunications Infrastructure Action Plan.

RECOMMENDATION:

That Council receives and notes the current actions and outcomes resulting from the Telecommunications Infrastructure Action Plan.

REPORT:

The Telecommunication Infrastructure Action Plan has been a success for the Tweed Economic Development Corporation (TEDC) and Council. It has allowed for good discussions and consideration of the planning and infrastructure design requirements that will need to occur to accommodate fibre and the National Broadband Network (NBN). Through TEDC, the Plan has also assisted to educate business and developers of the importance of broadband to the future prosperity of the region.

The most significant advancement this period has been the submission under the Digital Regions Initiative (DRI) for a \$3.2M fibre backbone from Tweed to Murwillumbah through South Tweed, Terranora and Kingscliff. This has ultimately resulted in Tweed being a contributor to a regional NBN submission (the subject of a later report on this Agenda to endorse Tweed’s involvement in the submission).

A snapshot highlighting the progress of the tasks identified for Council to undertake as part of the Telecommunications Infrastructure Action Plan is provided below.

Actions that can be taken by Council:

Action Items	Outcomes
<p>1. Prepare policies within Council that support the development of communications precincts both green and brown field developments to be used to establish/house telecommunications street furniture such as towers, nodes, cable cabinets, etc.</p>	<p>A Draft Development Control Plan was developed and reviewed and forwarded to Telstra for comment. Telstra were of the view that it could be counter productive and restrict new technology or be in conflict with federal government NBN requirements.</p> <p>Whittlesea and Sunshine Coast City Councils were also approached concerning their infrastructure controls and requirements for new subdivisions. It is apparent that the federal government needs to make available design standards for conduit and fibre as soon as possible to assist councils prepare for NBN and the 1 July 2010 Greenfield estate deadline.</p>
<p>2. Establish regulatory controls on developers to work with mobile telecommunications carriers to identify precincts that are to be used for telecommunications towers and to include these in their preliminary concept plans to be presented to Council prior to any formal applications for development approval. These precincts could then be allocated for the specific purpose of locating telecommunications towers, in a similar way to land within a development, excised for the purpose of some utility ie. pumping station, electricity transformer, etc.</p>	<p>The Telecommunications Infrastructure Action Plan Working Group (TIAWG) facilitated Optus to present to Council and the Executive on their strategic planning for mobile phone tower deployment in the Shire.</p> <p>Optus is a member of the Mobile Carrier Forum, (MCF). The MCF comprises the three carriers deploying mobile networks, (i.e., Telstra, Optus and VHA, (the recently merged Hutchison and Vodafone)). The MCF’s Queensland Committee gave in principle support to meeting with TIAWG early 2010.</p>

Action Items	Outcomes
<p>3. Establish regulatory controls on property developers mandating that they lay ducting (pits and pipes) in all new green field developments suitable for optic fibre cable reticulation with ownership being vested with Council. The infrastructure providers, as noted earlier in this document (ie. Fujitsu, Pivit etc), advised that their business models show network viability for green field developments of 300 lots ore more.</p>	<p>This has been one of the most contentious and difficult areas to address. Significant investigations have been made into how other councils, such as Sunshine Coast and Whittlesea have been leading in this area. The most practical way forward is for the Department of Broadband, Communications and the Digital Economy to fast track design specifications for NBN which can be incorporated into conditions of consent and subdivision design specifications.</p>
<p>4. Establish regulatory controls on property developers mandating that they lay ducting (pits and pipes) in all new urban renewal developments suitable for optic fibre reticulation with ownership being vested with Council.</p>	<p>The Working Group is reviewing how other councils impose requirements on developers of brown field sites as well as any works to upgrade infrastructure. One such example is that any time a new driveway is cut or approved a conduit should be laid from boundary to boundary of the property and capped. It is then labelled fibre to the home (FTH/NBN) ready in preparation for NBN.</p> <p>One communication provider, Club Com, made a presentation to the TIAWG noting that their multi-storey residential buildings were fibre enabled to each unit. The Working Group will investigate this further.</p>
<p>5. Establish policies within Council to develop fibre optic infrastructure to connect its branch offices as part of its own telecommunications consumption requirements.</p>	<p>The potential for Council to adopt policy on installing optic fibre is currently being considered by the Executive Management Team / Corporate Management Team. However the opportunity has arisen and been taken for communications conduit to be laid underground at the Murwillumbah Airfield, in conjunction with water supply works. The conduit will provide a valuable future fibre link to the industrial precincts and urban developments east of the airfield.</p> <p>Telecommunications conduit has already been laid under Proudfoots Lane, Murwillumbah and at Cabarita as part of road works.</p> <p>Work has already commenced on establishing an optic fibre link between the Coolamon Centre and the Murwillumbah Civic Centre utilising recently decommissioned water mains. The fibre would supply high speed data between the sites and eliminate the need for the wireless link.</p> <p>The Kingscliff CCTV project incorporated a large run of Optic Fibre cabling. This cabling still has additional capacity which can be utilised by Council in the future.</p>

Action Items	Outcomes
	Specifications for laying telecommunications conduit and fibre at Jack Evans Boat Harbour is being considered as part of the capital works upgrade.
6. Establish policies within Council to facilitate telecommunications ducting (pits and pipes suitable for optic fibre cabling) to be included in all future capital works programs.	Design specifications for ducting and pipe investigated by Planning and Infrastructure Unit with Whittlesea and Sunshine Coast City Councils. At this point in time the preference is to implement the same standards or similar standards to NBN rollout but this is yet to be specified by the Federal Government. See also 5 above.
7. Establish policies to make available volumetric spare capacity of Council own ducting for use by other parties on commercial terms.	<p>This would be a future phase once ducting is available. This will be further explored as Council continues to rollout fibre optic network and or pit and pipe infrastructure.</p> <p>It is worth noting, however, that the Digital Regions Initiative grant application made in conjunction with TEDC and Country Energy, if successful, would enable fibre cores to be leased by private parties or ISPs providing commercial access, with revenue back to Country Energy as the infrastructure owners.</p>
8. Lobby the Federal Government to impose regulatory controls on Telstra to make available its last mile pits and pipes for use by other telecommunications service providers including lead-in cables.	Discussion with the Department of Broadband, Communications and the Digital Economy, Greenfields Development Unit, have indicated that their priorities are for regulating optic fibre as a minimum infrastructure standard for new greenfield sites as part of their new regulation to come into force on 1 July 2010. No lobbying of the federal government has been undertaken to date as it is inappropriate with impending NBN and the unclear effects that it may have on Telstra.

Action Items	Outcomes
<p>9. Lobby both State and Federal Governments to achieve better coordination of Agency spending on telecommunications in the Tweed region to achieve improved telecommunications infrastructure development.</p>	<p>The Federal Member of Richmond, the Hon Justine Elliot MP has been briefed on Council's Telecommunication Infrastructure Action Plan. She has forwarded this to the Minister for Broadband, Communications and the Digital Economy, Hon Stephen Conroy MP. The Federal Member has also been informed of Council's two applications to the Department of State and Regional Development which would have delivered mobile improvements to the region.</p> <p>The briefing led to the Federal Member encouraging Council to consider other Federal funding initiatives which resulted in the Digital Regions Initiative (DRI) submission being formally lodged. This in turn, is leading to a regional submission (the subject of a further council report on this agenda) to be considered for the next stage of the NBN rollout.</p> <p>It is clear there is a will and desire of both Federal and State Governments to improve telecommunications within the region. It is clearly a matter of timing and capacity to fund and rollout the initiatives such as NBN.</p>
<p>10. Lobby both State and Federal Governments for financial support to assist Council to facilitate the further development of telecommunications infrastructure.</p>	<p>After the preparation of the Telecommunications Infrastructure Action Plan, Council and TEDC established a joint venture proposal with Country Energy to provide optic fibre cabling between Tweed Heads, Kingscliff and Murwillumbah. This proposal was submitted to the Department of State and Regional Development for funding in May 2009 but was unsuccessful. The proposal and project scope was then revised and submitted to the National Broadband Initiative Program under the Department of Broadband, Communications and the Digital Economy. This grant is currently being considered.</p> <p>Council and TEDC will combine with Southern Cross University (subject to council endorsement – the matter of a later report) and other North Coast councils to lodge a regional submission under NBN. This region extends from Taree to Tweed Heads.</p>
<p>11. Prepare a register of Council facilities that Service Providers can access for use to house telecommunications equipment.</p>	<p>Under Consideration by Community and Natural Resources Unit.</p>

Action Items	Outcomes
12. Work with ACMA to educate property developers and planners on building cabling standards such as the <i>Digital Building Guideline</i> along with ACIF's <i>Building Access Operations and Installation Guideline</i> . These guidelines are designed to encourage multi-carrier access by providing greater clarity to carriers, carriage service providers and property developers/owners of multi-tenanted, multi-storey buildings of standard procedures across the telecommunications industry, resulting in savings in the administrative costs of all parties involved, as well as providing improved certainty in terms of the timing for provision of services, access to adequate power supplies, facility documentation requirements and improved security for carrier and property owner facilities.	No action has been taken in this respect, due to the impending requirements of NBN. If the project to be submitted under NBN, led by Southern Cross University is successful, regional education programs would be likely to occur as part of any new guidelines. The TIAWG does not intend to take any action until after 1 July 2010 Greenfield NBN deadline.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

48 [TCS-CM] National Broadband Network - Submission to Department of Broadband, Communications and the Digital Economy (DBCDE)

ORIGIN:

Director

SUMMARY OF REPORT:

The purpose of this report is to inform Council about the Commonwealth Government's implementation plans for the National Broadband Network (NBN) and the opportunity to present our region as a priority for the NBN rollout. The aim is to obtain endorsement for the Council to be a part of a regional submission being coordinated by Southern Cross University for our region to be the first on the mainland for the rollout of the National Broadband Network (NBN).

RECOMMENDATION:

That Council:

- 1. Joins with other Northern Regional Organisation of Councils (NOROC) and Mid North Coast Group Organisation of Councils (MIDGOC) members in making a joint business case submission to the Department of Broadband, Communications and the Digital Economy for our region to be the first on the mainland for the rollout of the National Broadband Network.**
- 2. Endorses Southern Cross University to be the lead agency for coordinating and submitting the National Broadband Network business case.**

REPORT:

Purpose

To inform Council about the Commonwealth Government's implementation plans for the National Broadband Network (NBN) and the opportunity to present our region as a priority for the NBN rollout. The aim is to obtain endorsement for the Council to be a part of a regional submission being coordinated by Southern Cross University for our region to be the first on the mainland for the rollout of the National Broadband Network (NBN).

National Broadband Network

The Government has announced it will establish a new company that will invest up to \$43 billion over eight years to build and operate a National Broadband Network (NBN) delivering super fast broadband to Australian homes and workplaces.

The NBN will mean people living away from major cities will have:

- less need to travel to obtain specialist services, saving people time and money;
- parity of and convenient access to city services;
- opportunities for communities to connect with one another using real time, high-definition video conferencing;
- competitive opportunities to conduct small and large scale business with national and international market opportunities;
- with fast and affordable broadband the location of a business is less restricted;
- cost of running a business can be reduced by having staff work from remote locations and from home thereby reducing lease expenses in expensive city office accommodation;
- access to study and higher education with content distributed online;
- employment training can be provided to develop staff in remote locations from a central point; and
- better access to information sources and tools that are typically located in major urban centres.

Access to high speed broadband is quickly becoming an essential service and the national construction of the NBN will realise similar economic benefits that the construction of highways, rail, ports and airports brought last century. In years to come, high speed broadband to the home will be just as essential to a person's well being as access to electricity, hot water and clean drinking water is today.

Some parts of the National Broadband Network initiative will take time to deliver – rolling out a new network across the country is a major and complex engineering task.

Tasmania was selected as the first region for the NBN rollout for several reasons:

- lowest level of broadband penetration of any state in Australia at 32% of households;
- The Tasmanian Government submitted a proposal as part of the National Broadband Network tender process; and
- Tasmania was well advanced in its planning and was ready to start work.

Opportunity for North Coast NSW

An opportunity exists to position North Coast NSW as the next regional area for the NBN rollout. There are a number of factors which make this submission possible and provide support for its success:

- The combined population number of the Mid North Coast and Northern Rivers regions is comparable to Tasmania but covering only half the area;
- Southern Cross University's expertise in Information Technology and commitment to supporting the regions take up and application of business and community broadband technologies;
- Like Tasmania, access to high speed competitive priced broadband in the regions is limited;
- Regional support from Local Government;
- Regional support from Universities, TAFE and other educational facilities; and
- Regional support from other agencies and groups.

The NBN Submission

In his recent visit to Grafton, Minister for Broadband, Communications and the Digital Economy, Stephen Conroy invited the region to provide a submission that provides a compelling business case for our region to be the first on the mainland for the rollout of the National Broadband Network.

Southern Cross University has taken the lead and committed resources to ensuring the region is in the best possible position to present our case. This submission will be coordinated through Professor Peter Croll, Professor of Information Technology & Information Systems at Southern Cross University. Coffs Harbour City Council is also committing resources through the Economic Development Unit to coordinate councils' input.

Matters to Consider

As part of the NBN rollout, the Office of Broadband, Communications and the Digital Economy has indicated that it will legislate that all new greenfield developments will have to install fibre optic networks to homes and workplaces from 1 July 2010. In preparation for this councils should commence considering how this will translate to planning codes and other infrastructure design specifications.

It no longer makes sense to connect new estates to outdated technology based on copper networks.

Implementation Date / Priority:

Indication of support for the project is to be provided by **14 December 2009**. (Note: Tweed Shire Council has been given dispensation to indicate support by 16 December 2009).

Submissions are to be presented to Department of Broadband, Communications and the Digital Economy (DBCDE) by 21 December 2009.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

No funding commitment is required to support the submission.

POLICY IMPLICATIONS:

National Broadband Network (NBN) will have implications to subdivision design specifications and conditions of consent.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

49 [TCS-CM] Draft Code of Meeting Practice Version 2.0

ORIGIN:

Corporate Governance

SUMMARY OF REPORT:

The Division of Local Government in August 2009 prepared an extensive Meetings Practice Note. These have been reviewed in relation to Council's existing Code of Meeting Practice version 1.9, with the result being a revised Code of Meeting Practice version 2.0 being prepared.

In accordance with Section 361 of the Local Government Act 1993, Council must before a Code of Meeting Practice is adopted, give public notice of a draft code and provide adequate time for submissions to be made on the draft code.

As the revised version 2.0 has incorporated a number of enhancements from the Practice Note, as well as retaining the essential components from the current code, there has been substantial change that the requirements of Section 361 of the Local Government Act 1993 should be followed, with due public notice being given of the revised code and inviting public submissions.

RECOMMENDATION:

That in accordance with Section 361 of the Local Government Act 1993, public notice be given of the revised Code of Meeting Practice version 2.0 inviting public submissions.

REPORT:

The Division of Local Government in August 2009 prepared an extensive Meetings Practice Note. These have been reviewed in relation to Council's existing Code of Meeting Practice version 1.9, with the result being a revised Code of Meeting Practice version 2.0 being prepared.

In providing the Meetings Practice Note the Minister for Local Government is quoted as saying:

"Efficient meetings help councils make better decisions for their residents and ratepayers.

- *The guidelines set out appropriate standards of behaviour and processes to help ensure that councillors, council staff and the community can participate in meetings.*
- *It is important that all voices are heard, that there are clear rules governing council meetings and that gatherings are orderly and productive"*

Enhancements to the existing code have been made that further reinforce the meeting practice methodology. The resolutions of Council from the November meeting regarding mobile phones and public gallery etiquette have also been added.

Part 5 has been reinforced with further clarification of motions being made that includes only the notice of motion will be included in the body of the business paper with any background/supporting documentation being included as an attachment to the business paper. Clarification on the speakers as well as the moving and seconding of motions has been made.

A new Part 11 – Questions on Notice has been added in accordance with the Practice Note with the major addition being that:

Questions on notice are to be provided to the General Manager in writing before 11.00am on the Monday of the week preceding the Ordinary Meeting of Council so as to be listed on the questions on notice agenda. This timeframe is the same as Notices of Motion.

Questions provided in this way and responses to those questions will be considered as council business. As responses to questions will be considered council business responses could form the basis for further motions on the same topic at the meeting.

Part 12 – Workshops has been added to provide guidance and clarity to the conduct of workshop sessions including the status of workshop documents.

The Practice Note highlights that there is no automatic right under the Act or Regulation for the public to participate in a council meeting, either by written submission or oral presentation. This includes being able to ask questions or address council meetings, or to comment on matters during meetings. Part 13 – Community access has been retained within the code and will be provided in accordance with decision of Council.

An enhanced definition of common terms has also been included.

Due to the significant changes, a copy of the previous version (1.9) is attached for reference.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

In accordance with Section 361 of the Local Government Act 1993, Council must before a Code of Meeting Practice is adopted give public notice of a draft code and provide adequate time for submissions to be made on the draft code.

The timeframe for this process is that the period of public exhibition must not be less than 28 days. The public notice must also specify a period of not less than 42 days after the date on which the draft code is placed on public exhibition during which submissions may be made to council.

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. Draft Code of Meeting Practice Version 2.0 (ECM 9700429).
 2. Code of Meeting Practice Version 1.9 (ECM 4053400).
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REPORTS FROM SUB-COMMITTEES/WORKING GROUPS

50 [SUB-CDAC] Minutes of the Community Cultural Development Advisory Committee Meeting held Thursday 5 November 2009

Venue:

Coolamon Cultural Centre

Time:

3.30pm

Present:

Ms Lesley Buckley (Cultural Development Officer), Ms Lesley Mye (Aboriginal Liaison Officer), Mr Gary Corbett (Manager Community and Cultural Services), Mr Michael Lill, Mr Max Boyd AM, Mr Ian Holston, Ms Judith Sutton, Dr Glenda Nalder, Ms Barbara Carroll, Ms Joan Daniels

Apologies:

Cr B Longland, Cr D Holdom, Ms Diane Wilder and Mr Phil Villiers

Moved: Barbara Carroll

Seconded: Michael Lill

That Mr Boyd be nominated to chair the meeting.

Carried Unanimously

Minutes of Previous Meeting:

Moved: Judith Sutton

Seconded: Barbara Carroll

RESOLVED that the Minutes of the COMMUNITY CULTURAL DEVELOPMENT ADVISORY Committee meeting held Thursday 3 September 2009 be accepted as a true and accurate record of the proceedings of that meeting.

Carried Unanimously

Business Arising:

Item from Meeting held 3 September 2009

1. Treasures of the Tweed Mural project

Work on the project has recommenced.

Item from Meeting held 3 September 2009 - General Business

1. Australian Business Arts Foundation (AbaF)

Ms Buckley provided an update on the AbaF Arts Connecting Communities program to assist with fostering the development of arts and business partnerships in the area.

The first planning session and two-day workshop were well-attended by a cross-section of stakeholders.

Mr Boyd expressed his appreciation for the excellent workshop and congratulated Ms Buckley on the success of the initiative.

General Business:

1. AUDITORIA

Ms Buckley advised that Council was unsuccessful in their application to the Jobs Fund for an upgrade of the Auditoria.

Mr Corbett advised that Council has undertaken to expend \$150,000 on the Tweed Heads auditorium with the following items to be included - new curtains, centre truss for lighting, new stage lighting and sound system.

In order to address some of the concerns of Murwillumbah Theatre Company regarding the recent increase in fees and charges, a meeting will be organised following the completion of the Auditoria Business Plan by consultant Samantha Muller. The Cultural Development Officer will liaise with Ms Crossan to advise that there is currently a Business Plan for the auditoria being developed.

2. CULTURAL SEEDING FUNDING

The Committee requested advice as to the status of Council's Cultural Seed funding. Ms Buckley advised that the fund has been fully expended and that the program was funded for just two years of the 7 Year Plan's cultural allocation.

Moved: Ian Holston
Seconded: Joan Daniels

RECOMMENDATION:

That the Committee requests Council to consider the re-establishment of Cultural Seed funding in light of the value of the program and its cost effectiveness in assisting many applicants in their successful development of their cultural projects

Carried unanimously

3. ARTS NORTHERN RIVERS - SERVICE DELIVERY AGREEMENT

The Committee were advised that the draft Service Delivery Agreement would be presented to Ms Randall by the Director of Natural Resources and the Manager for Community and Cultural Services for her consideration prior to going to Tweed Shire Council and the Board of Arts Northern Rivers.

Discussions took place regarding this process.

Members of the committee suggested a more productive strategy would be to send the newly drafted Service Delivery Agreement with a report to Tweed Shire Councillors and the ANR Board and concurrently to Ms Randall as the agreement is between Tweed Shire Council and the Arts Northern Rivers Board.

The Committee further agreed that it would be beneficial to identify the document as a Consultation Draft rather than final draft.

Moved: Barbara Carroll

Seconded: Dr Glenda Nalder

RECOMMENDATION:

That a consultation draft of the Service Delivery Agreement be forwarded to Councillors accompanied by a report from DCNR and MCCS with a recommendation that it then be forwarded to the Board of Arts Northern Rivers informing them of Tweed Shire Council's intention to enter into an agreement and requesting their feedback on the draft before the agreement is finalised.

Carried unanimously

4. CULTURAL DEVELOPMENT OFFICER REPORT

This report has been held over and will be presented at the next meeting

5. ABORIGINAL LIAISON OFFICER REPORT

Ms Mye provided an update on:

- Catch'N'Cook Program
- MOU signing/morning tea will be held in December 2009
- Bugalwena Aboriginal Health Services now added to the Terms of Reference of the Aboriginal Advisory Committee – Chris Appo is the representative
- Attended the NSW Local Government Aboriginal Network Conference – I was nominated and voted in on the Executive
- Interim DA Process nearing readiness
- Researching – Reconciliation Action Plan
- Aboriginal Engagement Protocols & Cultural Policy for Festivals & Events Conducted with/by Tweed Shire Council – discussion has been held
- Bec Couch commenced as Aboriginal Community Liaison Officer for the Tweed Byron Local Area Command on 2 November 2009 with another ACLO to commence on 16 November.

- Kings Forest and The Rise Estate Developers Partnership with the local Aboriginal Community – future meeting with members of the Aboriginal Advisory Committee to be arranged.
- The first 2010 NAIDOC planning Meeting to be held Wednesday 11 November 2009 Minjungbal Museum
- Unity Festival to be held on Saturday 14 November 2009 at the Tweed River Showground Branding Rail
- Yarn-Up was held on 28 October 2009 and was well attended.
- Wollumbin Consultative Group – Cultural Values Report

Moved: Dr Glenda Nalder

Seconded: Barbara Carroll

RESOLVED that the Aboriginal Liaison Officer report be received and noted.

Carried Unanimously

Next Meeting:

The next meeting of the Community Cultural Development Advisory Committee will be held on 10 December 2009, at 3.30 pm.

The meeting closed at 5.30pm.

EXECUTIVE MANAGEMENT TEAM'S COMMENTS:

Item 3 Arts Northern Rivers - Service Delivery Agreement

A more appropriate process of furthering a service agreement with Arts Northern Rivers would be for Director Community and Natural Resources to liaise with the CEO of Arts Northern Rivers.

EXECUTIVE MANAGEMENT TEAM'S RECOMMENDATIONS:

2. CULTURAL SEEDING FUNDING

The Committee's recommendation being:

"That the Committee requests Council to consider the re-establishment of Cultural Seed funding in light of the value of the program and its cost effectiveness in assisting many applicants in their successful development of their cultural projects."

be amended to read:

"That Council considers the re-establishment of Cultural Seed funding in light of the value of the program and its cost effectiveness in assisting many applicants in their successful development of their cultural projects "

3. ARTS NORTHERN RIVERS - SERVICE DELIVERY AGREEMENT

That the Committee's recommendation being:

"That a consultation draft of the Service Delivery Agreement be forwarded to Councillors accompanied by a report from DCNR and MCCS with a recommendation that it then be forwarded to the Board of Arts Northern Rivers informing them of Tweed Shire Council's intention to enter into an agreement and requesting their feedback on the draft before the agreement is finalised."

be amended to read:

"That the Director Community and Natural Resources negotiates a Service Level Agreement with the CEO of Arts Northern Rivers."

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51 [SUB-LTC] Minutes of the Local Traffic Committee Meeting held Thursday 26 November 2009

VENUE:

Mt Warning Meeting Room

TIME:

Commencing at 9.00am

PRESENT:

Committee Members: Cr Barry Longland (Deputy Mayor), Mr Mike Baldwin, Roads and Traffic Authority, Snr Constable Jason Thrupp, NSW Police on behalf of Snr Constable P Henderson, Mr Rod Bates on behalf of Mr Geoff Provest MP, Member for Tweed.

Informal: Mr John Zawadzki (Chairman), Mr Ray Clark, Mr Paul Brouwer, Ms Sandy Zietlow (Minutes Secretary).

APOLOGIES:

Mr Thomas George MP, Member for Lismore, Col Brooks; Mr Geoff Provest MP (Member for Tweed), Snr Constable Paul Henderson (NSW Police), Mr Paul Brouwer.

CONFIRMATION OF MINUTES OF PREVIOUS MEETING

Nil.

SCHEDULE OF OUTSTANDING RESOLUTIONS

[LTC] Schedule of Outstanding Resolutions 26 November 2009

From Meeting held 29 October 2009

1. [LTC] Eyles Avenue, Murwillumbah

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 3999809; Traffic - Committee; School Zones; Parking Zones; Safety; Eyles Avenue; Schools - Murwillumbah Public

SUMMARY OF REPORT:

From Meeting held 27/8/09 (Item B1)

Concern has been raised with cars parking in Eyles Avenue on the school side.

"These vehicles are causing problems for buses accessing the School Bus Zone. Could 'No Parking' at School finishing times be implemented here?"

Council officers will investigate this site and report to the meeting.

COMMITTEE ADVICE:

That:-

1. Council officers discuss with the School representatives the possibility of extending the 'No Parking' zone on the eastern side of Eyles Avenue to the intersection with Prince Street.
2. This item be placed on the Schedule of Outstanding Resolutions.

Current Status: That Item B1 from Local Traffic Committee meeting held 27 August 2009 and 24 September 2009 remain on the list of Outstanding Resolutions.

Current Status: That Item B1 from Local Traffic Committee meeting held 26 November 2009 remain on the list of Outstanding Resolutions.

-
3. [LTC] Kennedy Drive, Tweed Heads West

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 3948168; Traffic - Committee; Kennedy Drive, Tweed Heads; Kennedy Drive - Tweed Heads West; Norman Street; Parking - Zones; Traffic - Lights; Traffic - Roundabouts; Boat Ramps

SUMMARY OF REPORT:

From Meeting held 27/8/09 (Item B7)

Concern received in relation to increasing traffic problems along Kennedy Drive.

"In particular the intersection of Norman Street and Kennedy Drive causes local residents a great deal of frustration which is worsened by parking of boats and boat trailers using the boat ramp located on the opposite side of the road.

..... Norman Street is one of the few streets where right hand turns are permitted and this also contributes to traffic problems. He has suggested that either a roundabout or traffic lights are needed to facilitate turning into and out of Norman Street."

The Norman Street/Kennedy Drive intersection has been the subject of community concern for a number of years.

A concept design for a roundabout has been previously completed by Council officers and unfortunately there is insufficient room within the road reserve to install a small roundabout. The installation of traffic signals would not meet the warrants of the Roads and Traffic Authority of NSW guidelines.

Another alternative is to provide a narrow central median on Kennedy Drive which would prevent right turns from both the boat ramp area and Norman Street into Kennedy Drive. This is very undesirable as it would inconvenience many motorists and encourage possibly less safe "U" turns to be made on Kennedy Drive away from the intersection.

Council officers will advise the Committee of the accident history of this intersection.

Council officers advised that of seven accidents from 2005 to 2008, four of them were right rear crashes. The right turns were from Kennedy Drive into Norman Street. Council officers suggested that a right turn lane be further investigated with a view for reducing this type of crash.

COMMITTEE ADVICE:

That:-

1. Council officers further investigate the possibility of a right turn lane on Kennedy Drive into Norman Street.
2. That this item be listed on the Schedule of Outstanding Resolutions.

Current Status: That Item B7 from Local Traffic Committee meeting held 27 August 2009 and 24 September 2009 remain on the list of Outstanding Resolutions.

Current Status: That Item B7 from Local Traffic Committee meeting held 26 November 2009 remain on the list of Outstanding Resolutions.

4. [LTC] Tomewin Road, Dungay

ORIGIN:
Planning & Infrastructure

FILE NO: ECM 3948848; Traffic - Committee; Speed Zones; Tomewin Road; Dungay Creek Road

SUMMARY OF REPORT:

From Meeting held 27/8/09 (Item B9)

At the Local Traffic Committee meeting on 25 June 2009 the Police Representative requested that a speed limit review of Tomewin Road, north of Dungay Creek Road be undertaken with a view to adopting a fixed speed zone along this road.

Tomewin Road north of Dungay Creek Road is currently signposted as derestricted speed limit however its alignment inhibits speeds greater than about 70 km/hr.

Council's traffic data shows the following counts for Tomewin Road (at the tick gates - May 2008):-

756 vehicles per day with an 85th percentile speed of 58 km/hr.

It is suggested that the Roads and Traffic Authority of NSW conducts a speed limit review of Tomewin Road north of Dungay Creek Road.

Accident statistics for the 5 year period from July 2003 to June 2008 show 18 crashes on Tomewin Road with 14 of those being off path on curve, 16 were single vehicle and 4 of the crashes were motorcyclists, with 1 motorcyclist being a fatality.

COMMITTEE ADVICE:

That the Roads and Traffic Authority of NSW be requested to conduct a speed limit review of Tomewin Road north of Dungay Creek Road.

Current Status: That Item B9 from Local Traffic Committee meeting held 24 September 2009 remain on the list of Outstanding Resolutions.

Current Status: That Item B9 from Local Traffic Committee meeting held 26 November 2009 remain on the list of Outstanding Resolutions.

A1 [LTC] Kingscliff Central

ORIGIN:
Planning & Infrastructure

FILE NO: 7611986; 6886378; Traffic - Committee; Traffic - Parking Zones; Pearl Street

SUMMARY OF REPORT:

Requests received for 10 minute or 30 minute parking at Kingscliff Central Business District, 11 - 13 Pearl Street, Kingscliff as follows:-

"I as a local resident would like to see the area outside the bank be a 10min or 30min parking spot so that youre almost guaranteed a spot any day of the week."

"I request two parking spaces be provided for the purpose of customer's banking needs.

I have observed other office workers and tenants parking in front of Kingscliff Central all day.

This has resulted in regular customer complaints, especially the elderly and business customers."

Council officers have inspected the site and confirmed that there is a high demand for parking in this area. The request for time limited parking may assist the local businesses.

Council officers will investigate this matter further and report to the meeting.

It was suggested that Council officers investigate two hour parking in consultation with the business owners.

COMMITTEE ADVICE:

That this item be listed on the Schedule of Outstanding Resolutions.

Current Status: That Item A1 from Local Traffic Committee meeting held 29 October 2009 remain on the list of Outstanding Resolutions.

Current Status: That Item A1 from Local Traffic Committee meeting held 26 November 2009 remain on the list of Outstanding Resolutions.

BUSINESS ARISING

Nil.

A. FORMAL ITEMS SECTION

DELEGATIONS FOR REGULATORY DEVICES

A1 [LTC] Prospero Street, South Murwillumbah

ORIGIN:
Planning & Infrastructure

FILE NO: ECM834505, Traffic Committee, Parking Zones; Loading Zones

SUMMARY OF REPORT:

This item was considered at Item B2 of this Agenda.

Given the discussions on this item and the resolution for the implementation of changes to the regulatory signage, being the removal of the ¼ P signs in favour of "Mail Zone" signs it is recommended that Council be requested to relocate the existing ¼ P limited parking at the frontage of the Australia Post office in Prospero Street, South Murwillumbah to be relocated and the installation of a "Mail Zone" sign at the existing mail box location.

COMMITTEE ADVICE:

That the existing ¼ P limited parking currently at the frontage of the Australia Post Office in Prospero Street South Murwillumbah be relocated to enable a "Mail Zone" to be installed at the existing mail box location.

COMMITTEE RECOMMENDATION:

That arrangements be made for the existing ¼ P limited parking currently at the frontage of the Australia Post Office in Prospero Street, South Murwillumbah to be relocated to enable a "Mail Zone" to be installed at the existing mail box location.

FOR VOTE - Councillor Barry Longland, Snr Constable Jason Thrupp, Mike Baldwin
PRESENT. DID NOT VOTE - Rod Bates

B. INFORMAL ITEMS SECTION

B1 [LTC] Permission to use Shire Roads

ORIGIN:
Planning & Infrastructure

FILE NO: ECM8256375; Traffic Committee; Bicycle Matters; Sport & Recreation -
General

SUMMARY OF REPORT:

Request received for permission to utilise local roads surrounding Murwillumbah (non arterial roads) for the remainder of 2009 and for the 2010 bicycle road race program.

The request comes from the Murwillumbah Cycling Club and is to include Saturday Road Racing and Sunday Criterium Racing for the remainder of 2009 and throughout 2010.

The proposed dates are as follows:-

2009

November 15

December 20 12 19 26

2010

January 17 24

February 6 13 20 21 27

March 6 13 20 21 27

April 3 4 10 11 17 18 24 25

May 1 2 8 9 15 16 22 23 29 30

June 5 6 12 13 19 20 26 27

July 3 4 10 11 17 18 24 25 31

August 1 7 8 14 15 21 22 28 29

September 4 5 11 12 18 19 25 26

October 2 3 9 10 16 17 23 24 30 31

November 6 7 14 21 28

December 5 12 19 26

Each race is proposed on a Saturday and/or Sunday. Road racing starts at 2:00pm each Saturday and would normally be finished by 4:30pm. Criterium racing commences at 7:00am to 7:30am Sundays and to conclude no later than 9.30am.

Racing on Saturdays starts and finishes on Uriup Road opposite Pat Smith's Park.

The Criterium Racing is proposed to be held on a figure eight course in Lundberg Drive Murwillumbah (the new Industrial Estate off Wardrop Valley Road). The Local Traffic Committee at its meeting 25 June 2009 resolved the following:-

- "1. Road closures on Lundberg Drive, Kite Crescent, Honeyeater Circuit and Wardrop Valley Road be supported for the conduct of cycle races on Saturday 25 July 2009 from 1:00pm to 4:30pm and Sunday 16 August 2009 from 7:00am to 12:00pm, Saturday 24 October 2009 1:00pm to 4:30pm and Saturday 31 October 2009 1:00pm to 4:30pm subject to satisfactory controlled access being allowed during the events, Police approval and standard conditions.
2. That further road closures at other times will need to be further assessed by the Local Traffic Committee and further advised."

A complaint was received in relation to closing the roads for Criterium Racing. The Cycle Club has only proposed to hold these events on a Sunday to be concluded by no later than 9:30am.

The proposed Road Race and Cycle Criterium have been held successfully in previous years. It is recommended that the cycling events be approved subject to standard conditions, Police approval and satisfactory controlled access being allowed during the events.

COMMITTEE ADVICE:

That the cycling events be approved subject to standard conditions, Police approval and satisfactory controlled access being allowed during the events.

*FOR VOTE - Councillor Barry Longland, Snr Constable Jason Thrupp, Mike Baldwin
PRESENT. DID NOT VOTE - Rod Bates*

B2 [LTC] - Prospero Street, Murwillumbah

ORIGIN:
Planning & Infrastructure

FILE NO: ECM834505, Traffic Committee, Parking Zones; Loading Zones

SUMMARY OF REPORT:

Request received for "No Parking Australia Post Vehicles Only" signage to be installed directly outside South Murwillumbah Licensed Post Office, 22 Prospero Street South Murwillumbah.

The provision of restricted kerb side parking for the sole use of a single business is inequitable. It may be more appropriate in this case to provide time limited parking, however this may not be suitable for the Australia Post deliveries.

Council officers will inspect the site and businesses in Prospero Street, including Australia Post and report to the Committee.

COMMITTEE ADVICE:

That the existing ¼ P limited parking currently at the frontage of the Australia Post Office in Prospero Street South Murwillumbah be relocated to enable a "Mail Zone" to be installed at the existing mail box location.

*FOR VOTE - Councillor Barry Longland, Snr Constable Jason Thrupp, Mike Baldwin
PRESENT. DID NOT VOTE - Rod Bates*

B3 [LTC] Pearl Street, Kingscliff

ORIGIN:
Planning & Infrastructure

FILE NO: ECM7912927; Traffic Committee; Pedestrian Crossings

SUMMARY OF REPORT:

Request received for the current school crossing adjacent to St Anthony's School in Pearl Street, Kingscliff to be converted to a designated pedestrian crossing.

Two one hour pedestrian and vehicle counts were conducted at the children's crossing on Wednesday 11 November 2009. The results of these counts are as follows:-

	Pedestrians		Vehicles	Product:-Vehicles	x
	At crossing point	Within 50m of crossing point		Pedestrians	
11:30am	–				
12:30pm (no flags)	25	29	428	23,112	
2:30pm	–				
3:30pm (flags out)	40	1	573	23,493	

Eight pedestrians were observed in the 11:30am – 12:30pm time to cross without checking for cars approaching.

The school crossing supervisor reported that vehicles seldom obeyed the 40km/h school zone limit.

The product of vehicles and pedestrians for each hour would not comply with Roads and Traffic Authority Guidelines for the installation of a marked pedestrian crossing.

Concern was raised as to the colouration of the pavement at the school crossing. It was recommended that Council officers further investigate the reasons for the colouration and report back to the next Local Traffic Committee meeting. It was considered that the colouration should be removed as it provides the perception of a pedestrian crossing.

COMMITTEE ADVICE:

That this matter be referred to the next Local Traffic Committee meeting.

FOR VOTE - Councillor Barry Longland, Snr Constable Jason Thrupp, Mike Baldwin, Rod Bates

GENERAL TRAFFIC ADVICE

Nil.

NEXT MEETING:

The next meeting of the Local Traffic Committee will be held Thursday 17 December 2009 in the Mt Warning Meeting Room commencing at 9.00am.

There being no further business the Meeting terminated at 9.45am.

EXECUTIVE MANAGEMENT TEAM COMMENTS:

Nil

EXECUTIVE MANAGEMENT TEAM RECOMMENDATIONS:

A1 [LTC] Prospero Street, South Murwillumbah

As per the Committee's recommendation being:-

That arrangements be made for the existing ¼ P limited parking currently at the frontage of the Australia Post Office in Prospero Street, South Murwillumbah to be relocated to enable a "Mail Zone" to be installed at the existing mail box location.

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ORDERS OF THE DAY

52 [NOR] [TCS-CM] Meeting Dates January to December 2010

NOTICE OF RESCISSION:

Councillor D Holdom, K Skinner and W Polglase move that Council resolution at Minute No 437 of the Meeting held 17 November 2009 **be rescinded**.

The resolution at Minute Number 437 is as follows:

"... that the Code of Meeting Practice be amended for the Community Access session to be held from 2.00pm to 4.00pm prior to the commencement of the Council meeting at 5.00pm on the third Tuesday of the month from January 2010."

53 [NOM-Cr Holdom] Code of Meeting Practice - Meeting Dates for 2010

NOTICE OF MOTION:

Councillor D Holdom moves that in accordance with the Code of Meeting Practice:

1. The Council meetings and Community Access sessions for 2010 be confirmed as follows:

Community Access	Council
19 January	21 January
16 February	18 February
16 March	18 March
20 April	22 April
18 May	20 May
22 June	24 June
20 July	22 July
17 August	19 August
21 September	23 September
19 October	21 October
16 November	18 November
14 December	16 December

2. Council meetings to commence at 4.30pm.
3. The Reserve Trust meetings to be convened *before* Community Access (as shown above) on the set Tuesday commencing at 4.30pm to 4.45 pm.
4. Community Access sessions to be conducted from 4.45pm to 7.00pm.

5. The February 2010 meeting to be held at the Tweed Heads Civic Centre, Tweed Heads.
 6. The August 2010 meeting to be held at the Sustainable Living Centre, part of the Kingscliff Sewerage Treatment complex at Chinderah.
 7. Dinner will follow Community Access sessions for Councillors and Staff.
-

54 [NOM-Cr K Milne] Councillor's Expenses

NOTICE OF MOTION:

Councillor K Milne moves that all Councillor expenses are itemised, made publicly available and included in the next Council agenda.

55 [NOM-Cr J van Lieshout] Sound and Video-Council Chamber

NOTICE OF MOTION:

Councillor J van Lieshout moves that the General Manager investigates options for the supply and installation of appropriate sound and video system with all necessary attachments for the Council Chamber to ensure the optimum for communication during council meetings and community presentations.

The General Manager to report back to Council for the January 2010 meeting

56 [NOM-Cr K Skinner] Notification - Development Applications-Caravan Parks and Manufactured Home Estates

NOTICE OF MOTION:

Councillor K Skinner moves that a report be brought forward to Council from the Director Planning and Regulation which identifies appropriate amendments to Section A11 of Tweed Development Control Plan 2008 which will facilitate a more pro-active requirement for Council to advertise and directly notify the owners and residents of all Caravan Parks and Manufactured Home Estates and the like in the Tweed Shire of incoming development applications.

57 [NOM-Cr J van Lieshout] Presentations to Council

NOTICE OF MOTION:

It is of concern that various presentations to Council are made at the level of Management and Mayoral Office and not necessarily to other members of the elected body until a later stage! This in turn does not allow Council to be fully aware of the opportunities which may exist for the Shire. This also would provide full consultation with elected Council and Management in order to represent the community with a better understanding of current considerations.

I move that all presentations for future development and those of economic or social growth be advised to all Councillors with the opportunity for Councillors to attend those presentations at the time they are first presented either to Management or the Mayoral Office.

58 [NOM-Cr J van Lieshout] Development Application Process

NOTICE OF MOTION:

In order to keep the elected Council fully informed of any development applications which may be lodged at any time moves that a brief summary of details of all Development Applications lodged with Development Assessment of Tweed Shire Council be faxed or emailed to all Councillors at the time of lodgement process so that the elected body is kept fully informed.

CONFIDENTIAL ITEMS FOR CONSIDERATION

REPORTS THROUGH GENERAL MANAGER IN COMMITTEE

REPORTS FROM THE GENERAL MANAGER IN COMMITTEE

1 [GM-CM] Sports Tourism

REASON FOR CONFIDENTIALITY:

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(c) and (d) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business
 - (d) commercial information of a confidential nature that would, if disclosed:
 - (i) prejudice the commercial position of the person who supplied it, or
 - (ii) confer a commercial advantage on a competitor of the council, or
 - (iii) reveal a trade secret
-

REPORTS FROM THE DIRECTOR ENGINEERING AND OPERATIONS IN COMMITTEE

2 [EO-CM] Park Naming

REASON FOR CONFIDENTIALITY:

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(a) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (a) personnel matters concerning particular individuals (other than councillors)

3 [EO-CM] Request to Name Grandstand at Jim Devine Oval - Murwillumbah

REASON FOR CONFIDENTIALITY:

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(a) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (a) personnel matters concerning particular individuals (other than councillors)
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