

REPORTS FROM THE DIRECTOR PLANNING & REGULATION

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

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

MATTERS FOR CONSIDERATION

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



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10 [PR-CM] Development Application DA08/1216 for a Dwelling & Demolition of Existing Dwelling at Lot 2 DP 501165 No. 10a Boomerang Street, Kingscliff

ORIGIN:

Building & Environmental Health

FILE NO: DA08/1216 Pt1

SUMMARY OF REPORT:

ITEM DEFERRED FROM MEETING HELD:

21 July 2009

“RECOMMENDED that Development Application DA08/1216 for a dwelling & demolition of existing dwelling at Lot 2 DP 501165, No. 10a Boomerang Street, Kingscliff be deferred to the August Council meeting.”

An application has been received to demolish an existing three storey dwelling and construct a new larger three (3) storey dwelling on the subject property. The property is a battleaxe block situated on the southern side of Boomerang Street Kingscliff.

The application was notified to adjoining property owners and eight (8) submissions were received from eight (8) surrounding properties objecting to the proposal. The objectors' main concerns with the proposal were the bulk and scale of the dwelling, the impact on views, and impact on privacy. After extensive consultation with all parties the proposal has been modified twice from the original submission, with the final design being generally compliant with the mandatory controls of Council's DCP A1 and providing reasonable regard to the concerns of the objectors. There are still some objections from neighbouring residents in respect of the amended design.

The issues raised in the objections have been addressed within the body of this report.

On the balance of the assessment of the relevant planning matters, the context of other developments in the surrounding locality and the nature of the battleaxe block, it is considered that the proposed development is suitable for approval, subject to conditions.

RECOMMENDATION:

That Development Application DA08/1216 for a dwelling & demolition of existing dwelling at Lot 2 DP 501165, No. 10a Boomerang Street Kingscliff be approved subject to the following conditions: -

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects as amended and Plan Nos 037-01 issue H, 037-02 issue K, 037-03 issue H, 037-04 issue K, 037-06 issue M, 037-12 issue G, 037-30 issue J, 037-20 issue L, 037-21 issue L, prepared by Gary Grieve Design and dated July 08, except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0115]

3. Landscaping is to be provided and maintained in accordance with the approved plans and any additional landscaping on the site is to be limited to a maximum growth height of 24.65m AHD so as facilitate the view sharing considerations accommodated by the development.

[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

4. 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]

5. 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

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.

Where Council is requested to issue a construction certificate for civil works associated with this consent, the abovementioned works can be incorporated as part of the cc application, to enable one single approval to be issued. Separate approval under section 68 of the LG Act will then NOT be required.

[PCC1145]

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

[PCW1065]

PRIOR TO COMMENCEMENT OF WORK

7. 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]

8. 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]

9. 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]

10. 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]

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

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

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

[PCW0255]

12. Prior to commencement of work including demolition 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]

13. 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

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

Monday to Saturday from 7.00am to 7.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

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

[DUR0245]

16. 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]

17. 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]

-
18. 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]
19. 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]
20. The finished floor level of the building should finish not less than 225mm above finished ground level.
- [DUR0445]
21. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures", to the relevant requirements of the WorkCover NSW, Occupational Health and Safety Regulation 2001 and the approved demolition work plan.
- [DUR0645]
22. 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 Development Control Plan.
- Please note timber retaining walls are not permitted.
- [DUR0835]
23. 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]
24. All work associated with this approval is to be carried out so as not to impact on neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -
- Noise, water or air pollution
 - Minimise impact from dust during filling operations and also from construction vehicles
 - No material is removed from the site by wind
- [DUR1005]
25. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils adopted Design and Construction Specifications prior to the issue of a
-

- Subdivision Certificate and/or prior to any use or occupation of the buildings.
- [DUR1875]
26. No portion of the structure may be erected over any existing sullage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains.
- [DUR1945]
27. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction.
- [DUR2185]
28. 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]
29. 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]
30. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993.
- [DUR2515]
31. 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]
32. 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]

33. The structure is to be sited at least one metre horizontally clear of sewer main on site. All footings and slabs within the area of influence of the sewer main are to be designed by a practising Structural Engineer. The engineer is to submit a certification to the Principal Certifying Authority that the design of such footings and slabs will ensure that all building loads will be transferred to the foundation material and will not effect or be affected by the sewer main.
- [DUR2645]
34. A Sewer manhole is present on this site. This manhole is to be uncovered and if necessary, application shall be made to Council's Engineering & Operations Division for the raising of the manhole.
- [DUR2655]
35. No retaining walls or similar structures are to be constructed over or within the zone of influence of Council's sewer main.
- [DUR2705]
36. During construction the Principal Certifying Authority is to be provided with a Registered Surveyors' floor level certificate at each floor platform stage and when the roof framework is in place, to confirm that the height of the building is proceeding in accordance with the approved plans.
37. All externally mounted equipment such solar panels, other than antennas are not to exceed the maximum allowed construction height of 24.555m AHD.
- [DURNS02]
38. A new water meter service is to be provided to the property at the Boomerang Street frontage and arrangement made with Council's Water Unit for the removal of the existing service located on Rob Roy Crescent.
- [DURNS03]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

39. 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]
40. Prior to occupation of the building the property street number is to be clearly identified on the site by way of painted numbering on the street gutter within 1 metre of the access point to the property.
- The street number is to be on a white reflective background professional painted in black numbers 100mm high.
- On rural properties or where street guttering is not provided the street number is to be readily identifiable on or near the front entrance to the site.
- For multiple allotments having single access points, or other difficult to identify properties, specific arrangements should first be made with

Council and emergency services before street number identification is provided.

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

[POC0265]

41. 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]

42. 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]

USE

43. 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]

44. The building is to be used for single dwelling purposes only.

[USE0505]

REPORT:

Applicant: Mr RJ Bailey
Owner: Mr RJ Bailey and Mrs FA Bailey
Location: Lot 2 DP 501165, No. 10a Boomerang Street Kingscliff
Zoning: 2(a) Low Density Residential
Cost: \$400,000

BACKGROUND:

The property is zoned 2(a) Low Density Residential under Tweed Local Environmental Plan 2000 and is located on the southern side of Boomerang Street Kingscliff. The property is a battleaxe block containing an existing small three storey dwelling and a detached two storey shed and rumpus area. The property is situated on the side of Kingscliff hill with a northerly aspect and as a battleaxe block is situated in the middle of the surrounding properties.

An application has been received to demolish the existing structures and to construct a new three (3) storey dwelling on the subject property.

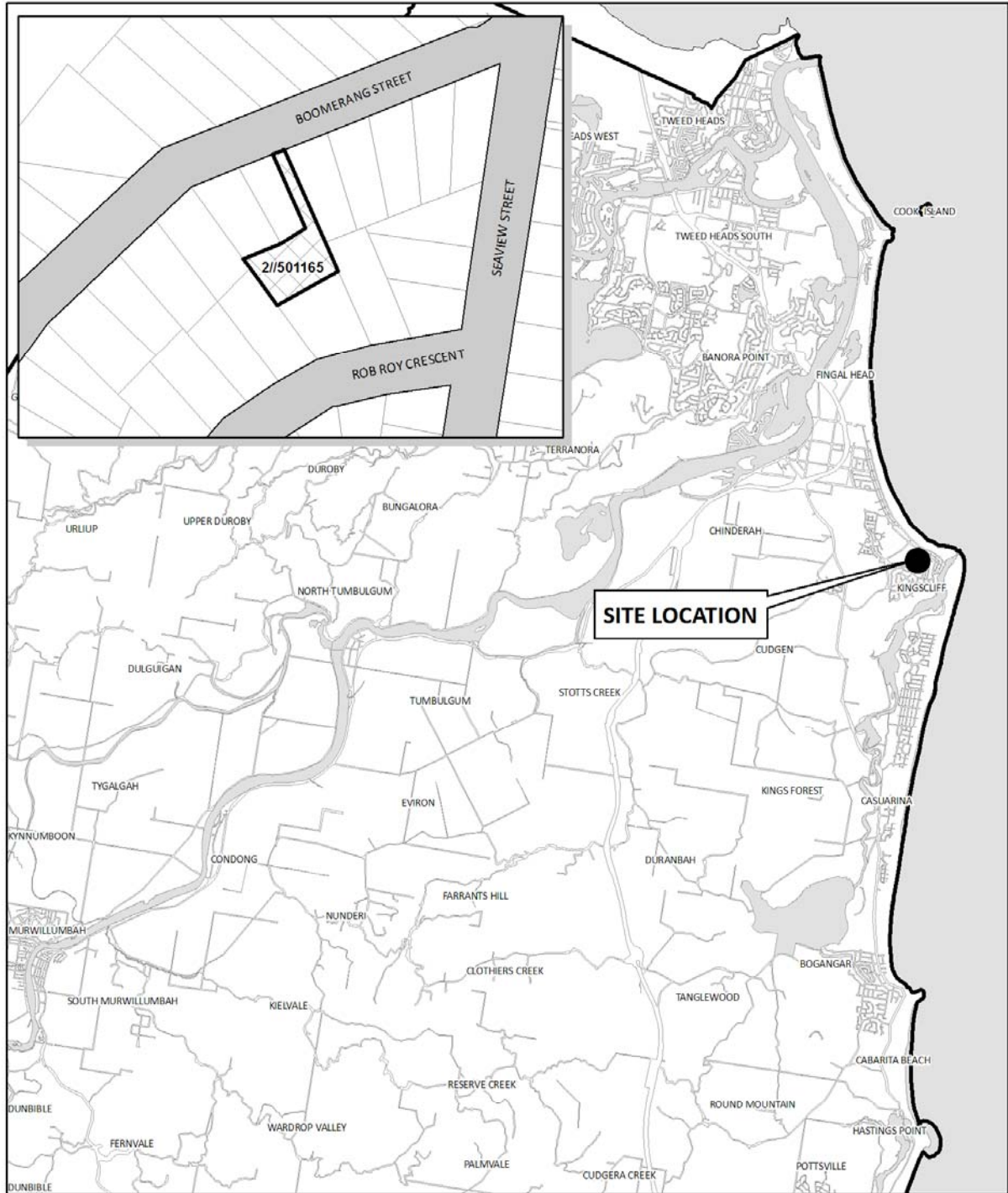
The application was notified to adjoining property owners and eight (8) submissions were received from eight (8) surrounding properties objecting to the proposal. The objectors' main concerns with the proposal were the bulk and scale of the dwelling, the impact on views, and impact on privacy. After extensive consultation and additional notification with all parties the proposal has been modified twice from the original submission, with the final design being generally compliant with the mandatory controls of Council's DCP A1 and providing reasonable regard to the concerns of the objectors.

The original design has been modified to address the objectors concerns by:

- reducing the length of the building by 1.7m
- reducing the top storey verandah overhang
- reducing the overall height of the building to be just below the existing roof at 24.555m AHD.
- providing privacy screening on the eastern end of the building.
- providing movable screens to northern edge of the upper verandah
- providing extensive privacy landscaping to the northern and eastern boundary
- changing the roof design

These modified plans are now the plans considered in this report and some neighbour's still maintain their objection to the development in its modified form.

SITE DIAGRAM:



LOCALITY PLAN

Lot 2 DP 501165
No.10a Boomerang Street, Kingscliff

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

Author: J.Batchelor - Planning Reforms Unit

Date Printed: July 10, 2009

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Cadastre July 10, 2009
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Coordinate System - MGA Zone 56
Datum - GDA 94

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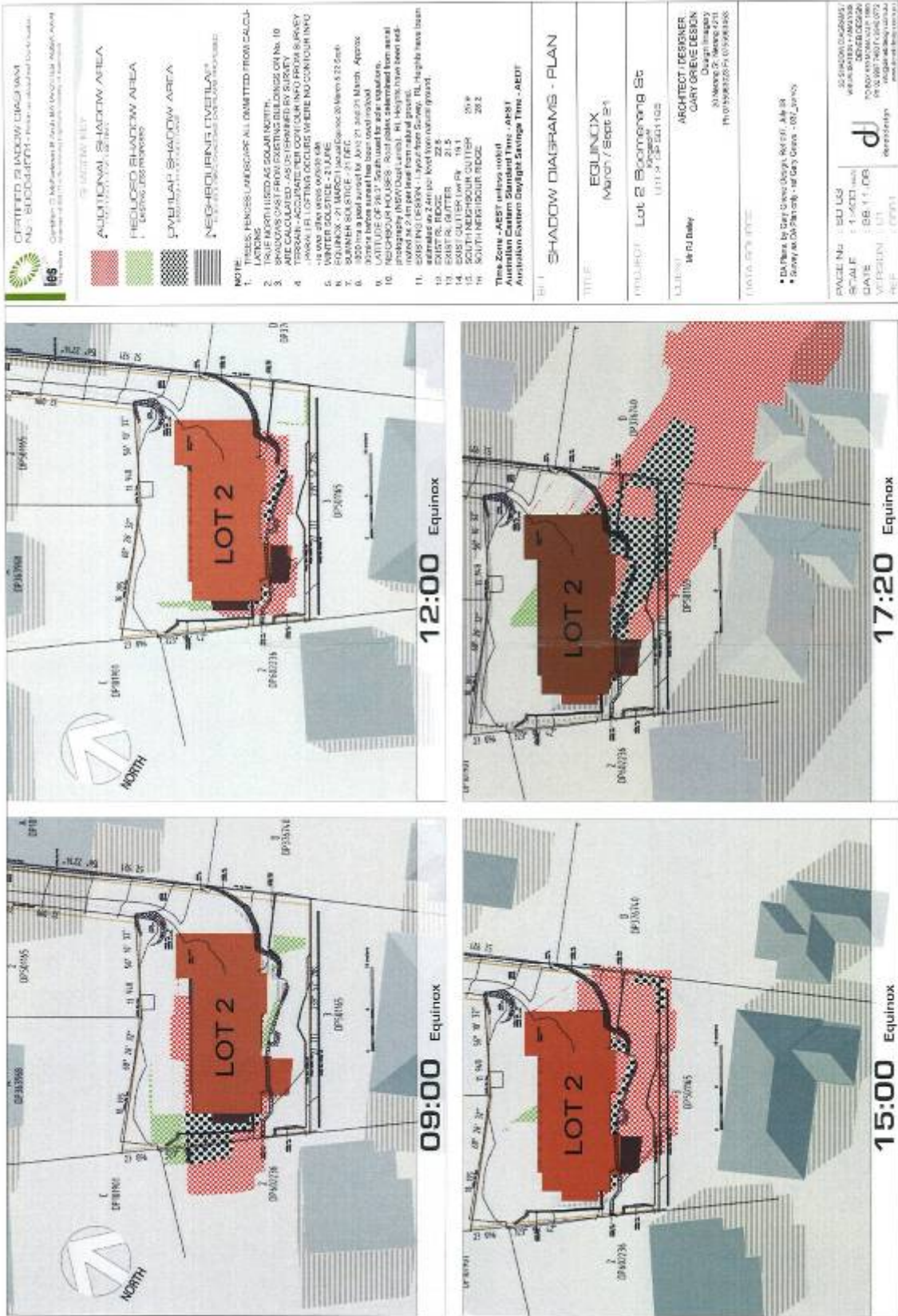
Tweed Shire Council

PO Box 816,
Murwillumbah
NSW 2484

Tel: (02) 6670 2409
Fax: (02) 6670 2483

DEVELOPMENT PLANS:

<p>CERTIFIED SHADOW DIAGRAM No: 1000000001</p> <p>1000000001 1000000001</p>	<p>SHADOW AREAS</p> <ul style="list-style-type: none"> RESIDENTIAL SHADOW AREA REDUCED SHADOW AREA EXCESS SHADOW AREA NEED BUILDING OVERLAP 	<p>NOTES:</p> <ol style="list-style-type: none"> 1. ALL SHADOWS CALCULATED USING 1000 HOURS ON 21st JUNE. 2. TRIPLE NORTH LIGHTS AS SOLAR NORTH LIGHTS. 3. SHADOWS ON LOT 2 HAVE BEEN CALCULATED ON 1000 HOURS ON 21st JUNE. 4. ALL SHADOWS ON LOT 2 HAVE BEEN CALCULATED ON 1000 HOURS ON 21st JUNE. 5. ALL SHADOWS ON LOT 2 HAVE BEEN CALCULATED ON 1000 HOURS ON 21st JUNE. 6. ALL SHADOWS ON LOT 2 HAVE BEEN CALCULATED ON 1000 HOURS ON 21st JUNE. 7. ALL SHADOWS ON LOT 2 HAVE BEEN CALCULATED ON 1000 HOURS ON 21st JUNE. 8. ALL SHADOWS ON LOT 2 HAVE BEEN CALCULATED ON 1000 HOURS ON 21st JUNE. 9. ALL SHADOWS ON LOT 2 HAVE BEEN CALCULATED ON 1000 HOURS ON 21st JUNE. 10. ALL SHADOWS ON LOT 2 HAVE BEEN CALCULATED ON 1000 HOURS ON 21st JUNE. 11. ALL SHADOWS ON LOT 2 HAVE BEEN CALCULATED ON 1000 HOURS ON 21st JUNE. 12. ALL SHADOWS ON LOT 2 HAVE BEEN CALCULATED ON 1000 HOURS ON 21st JUNE. 13. ALL SHADOWS ON LOT 2 HAVE BEEN CALCULATED ON 1000 HOURS ON 21st JUNE. 14. ALL SHADOWS ON LOT 2 HAVE BEEN CALCULATED ON 1000 HOURS ON 21st JUNE. 15. ALL SHADOWS ON LOT 2 HAVE BEEN CALCULATED ON 1000 HOURS ON 21st JUNE. 16. ALL SHADOWS ON LOT 2 HAVE BEEN CALCULATED ON 1000 HOURS ON 21st JUNE. 	<p>SHADOW DIAGRAMS - PLAN</p>	<p>TITLE SUMMER SOL-STOIF</p>	<p>PROJECT Lot 2 Broomfield St</p>	<p>CLIENT MRS HAWK</p> <p>ARCHITECT DESIGNER GARY GREENWOOD 30 WINDYBUSH ROAD MULLUMBUMBY NSW 2585 PH: 06 6822 0000</p>	<p>DATE 18/08/09</p> <p>SCALE 1:200</p> <p>DATE 18/08/09</p> <p>SCALE 1:200</p> <p>DATE 18/08/09</p> <p>SCALE 1:200</p>
<p>09:00 (AEST) Summer</p>	<p>12:00 (AEST) Summer</p>						
<p>15:00 (AEST) Summer</p>	<p>18:00 (AEST) Summer</p>						



DEFINED SHADOW DIAGRAM
 No. 1: BUBBLES/SHOTS - shade for window comparisons
 2: 10% Max. Solar Radiation
 3: 10% Max. Solar Radiation
 4: 10% Max. Solar Radiation
 5: 10% Max. Solar Radiation

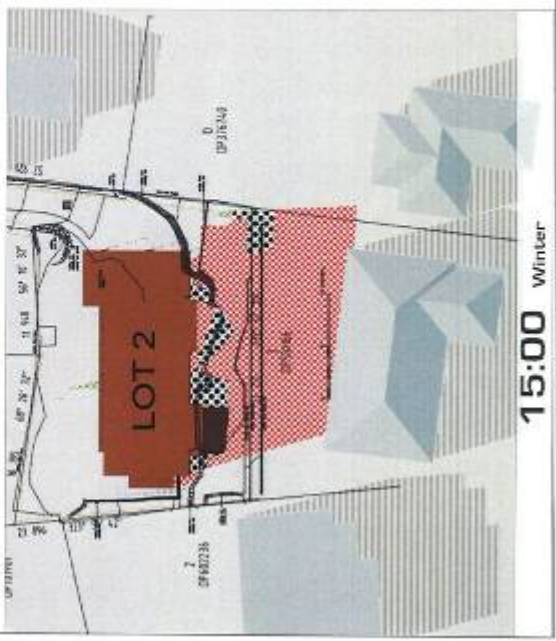
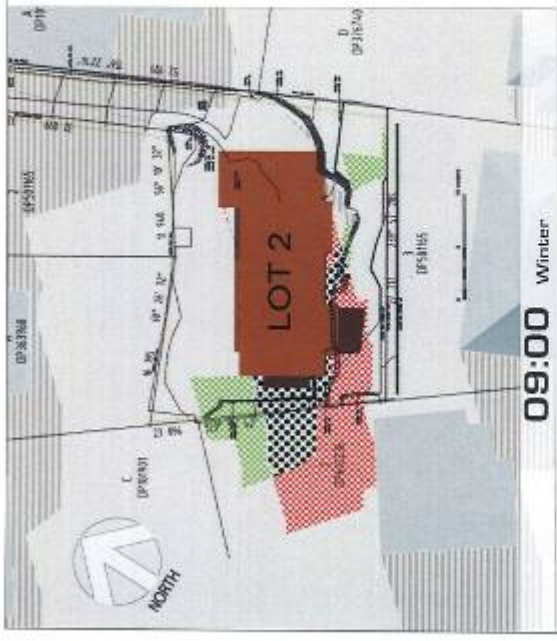
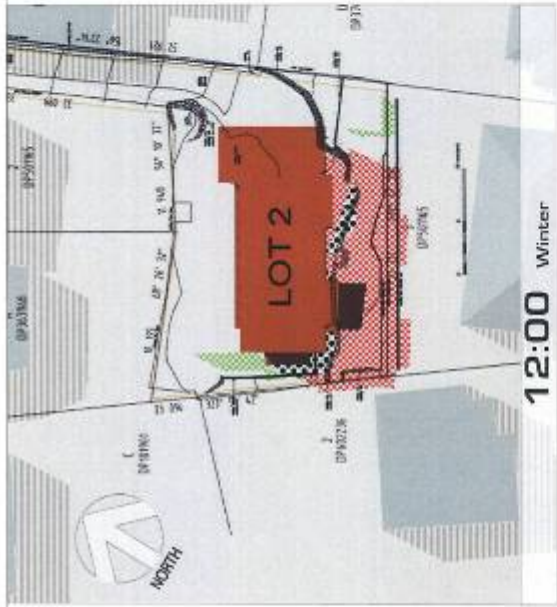
LEGEND

- ADJACENT SHADOW AREA
- REDUCED SHADOW AREA
- OVERLAP IS ALLOWED AREA
- MULTI-BUILDING OVERLAP

NOTE: THESE FIGURES ARE LIMITED TO THE FOLLOWING:

1. TRUE NORTH USED AS SOLAR NORTH.
2. SHADOWS CAST FROM EXISTING BUILDINGS ON 10/10/08.
3. THE CALCULATED SHADOWS ARE LIMITED TO THE PERMITTED CURTAIN COVERAGE.
4. PERMITTED CURTAIN COVERAGE IS 10% OF THE TOTAL FLOOR AREA.
5. PERMITTED CURTAIN COVERAGE IS 10% OF THE TOTAL FLOOR AREA.
6. WINTER SOLSTICE - 21 JUNE
7. WINTER EQUINOX - 21 SEPTEMBER
8. WINTER EQUINOX - 21 SEPTEMBER
9. SHADOWS BEFORE SUNSET HAS BEEN IDENTIFIED.
10. LOT 2 IS 20' WIDE SOUTH OF THE SHADOWS.
11. EXISTING DESIGN - Layout from Survey. Pt. Heights have been submitted as 2.4m per level from natural ground.
12. EXISTING DESIGN - 2.4m per level from natural ground.
13. EXISTING DESIGN - 2.4m per level from natural ground.
14. EXISTING DESIGN - 2.4m per level from natural ground.
15. SOUTH INDIAN SOLAR GUTTER - 25.3
16. SOUTH INDIAN SOLAR GUTTER - 25.3
17. SOUTH INDIAN SOLAR GUTTER - 25.3

Time Zone - AEST unless noted
 Australian Eastern Standard Time - AEST
 Australian Eastern Daylight Savings Time - AEDT



SHADOW DIAGRAMS - PLAN

TITLE WINTER SOLSTICE
 - June 21

PROJECT Lot 2 Broomberg St
 KAWAURI

CLIENT M. BROWN
 ARCHITECT/DRAWER
 GARY GIBSON DESIGN
 100 Broomberg St
 KAWAURI
 PH: 075522003 F: 075522045

DATE 10/20/09

SCALE 1:1000

DATE 2009.11.08

VERSION 01

DESIGNER DJ

PROJECT NO. 09090901

PROJECT NAME BROOMBERG ST

PROJECT ADDRESS Lot 2 Broomberg St
 KAWAURI

PROJECT CONTACT Gary Gibson
 100 Broomberg St
 KAWAURI
 PH: 075522003 F: 075522045

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Application will need to be gazetted.



R.P.D.
 LOT : 2
 DP : 501165
 PARISH : Cudgen
 COUNTY : Roos
 SHIRE : Tweed Shire
 LOCALITY : Kingscliff
 AREA : 789m²

DESIGNER
 Gary Grieve
 10/12 Boomerang Street
 Kingscliff NSW
 Ph: 7552 6500
 Mob: 0410 414 094
 Email: ggrieve@gsd.net.au

**GARY GRIEVE
DESIGN**

architectural design & drafting
 10/12 Boomerang Street
 Kingscliff NSW
 Ph: 7552 6500
 Mob: 0410 414 094
 Email: ggrieve@gsd.net.au

PROJECT
 Proposed residence

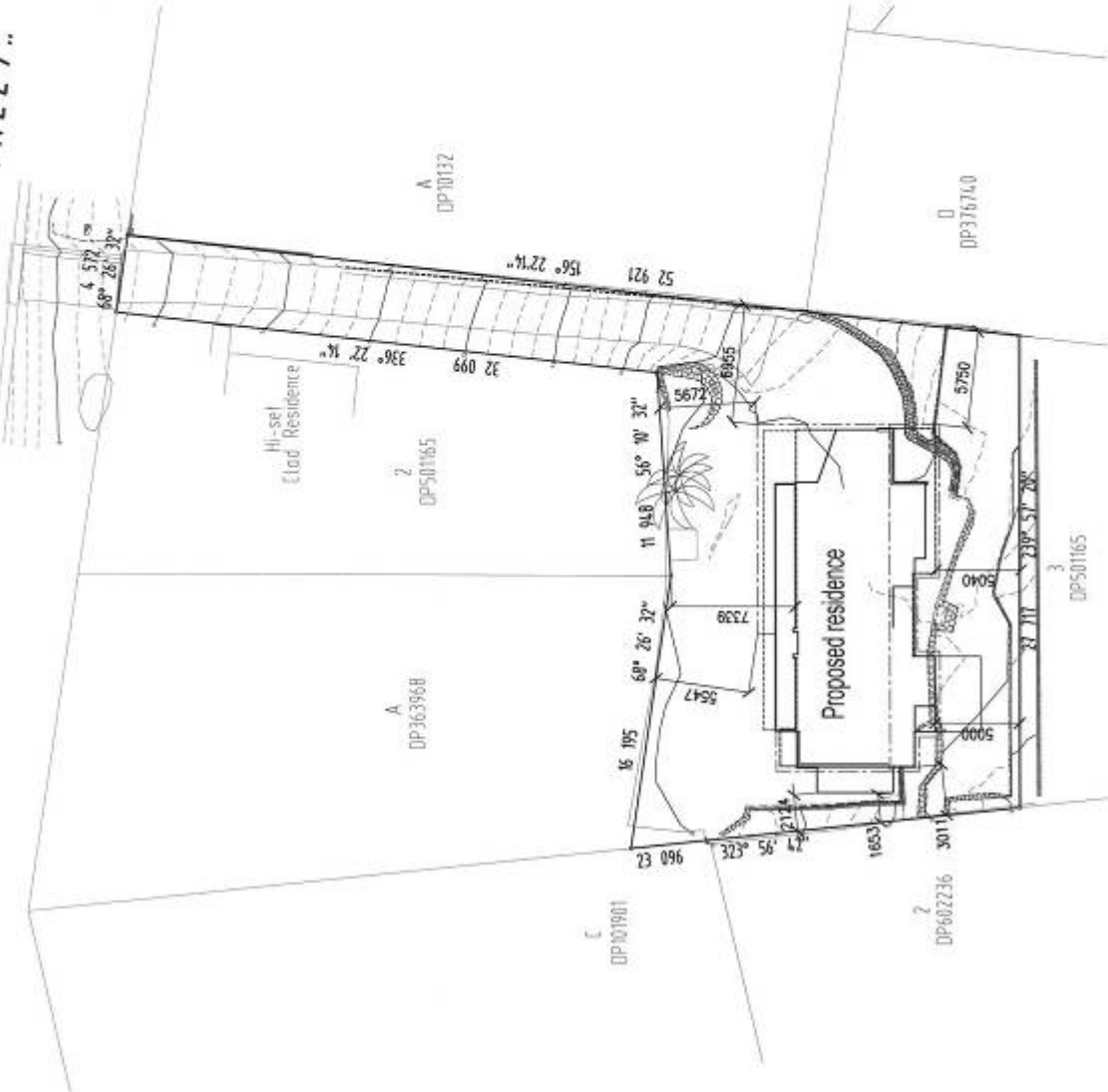
SCALE : 1:200
 DATE : 14/8/09
 DRAWN : GARY GRIEVE
 CHECKED : GARY GRIEVE
 PROJECT NO : 037-01
 SITE NO : 037-01
 DRAWING NO : 037-01-01
 DATE : 14/8/09

037-01 H

FLOOR AREAS	
location	area
ground	
total	130.6
first	
living	135.8
balcony	16.6
drying deck	13.6
second	
living	165.4
balcony	35.3

total floor area : 487.3

.. BOOMERANG STREET ..



(C) No sound copyright
Applicable soil profile to procedures



- Generally:
- 1 plant / sq.m.
 - 200mm pot size min recommended.
 - Taller accents proposed for entry & corner of site.

1	Site location	01/01/09
2	Site location - site change	12/01/09
3	Site location - site change	20/01/09
4	Site location - site change	20/01/09
5	Site location - site change	20/01/09
6	Site location - site change	20/01/09
7	Site location - site change	20/01/09
8	Site location - site change	20/01/09
9	Site location - site change	20/01/09
10	Site location - site change	20/01/09
11	Site location - site change	20/01/09
12	Site location - site change	20/01/09
13	Site location - site change	20/01/09
14	Site location - site change	20/01/09
15	Site location - site change	20/01/09
16	Site location - site change	20/01/09
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GARY GRIEVE DESIGN

architectural design & landscaping
 bus 0393966
 mobile 0410 414 094
 email - ggsdesign@ggsd.net.au

CLIENT
 R & F Bailey

PROJECT
 Proposed residence

LOCATION
 Lot 2, Boomerang Street,
 Kingscliff
 NSW

SCALE
 1:100

DATE
 06/10/09

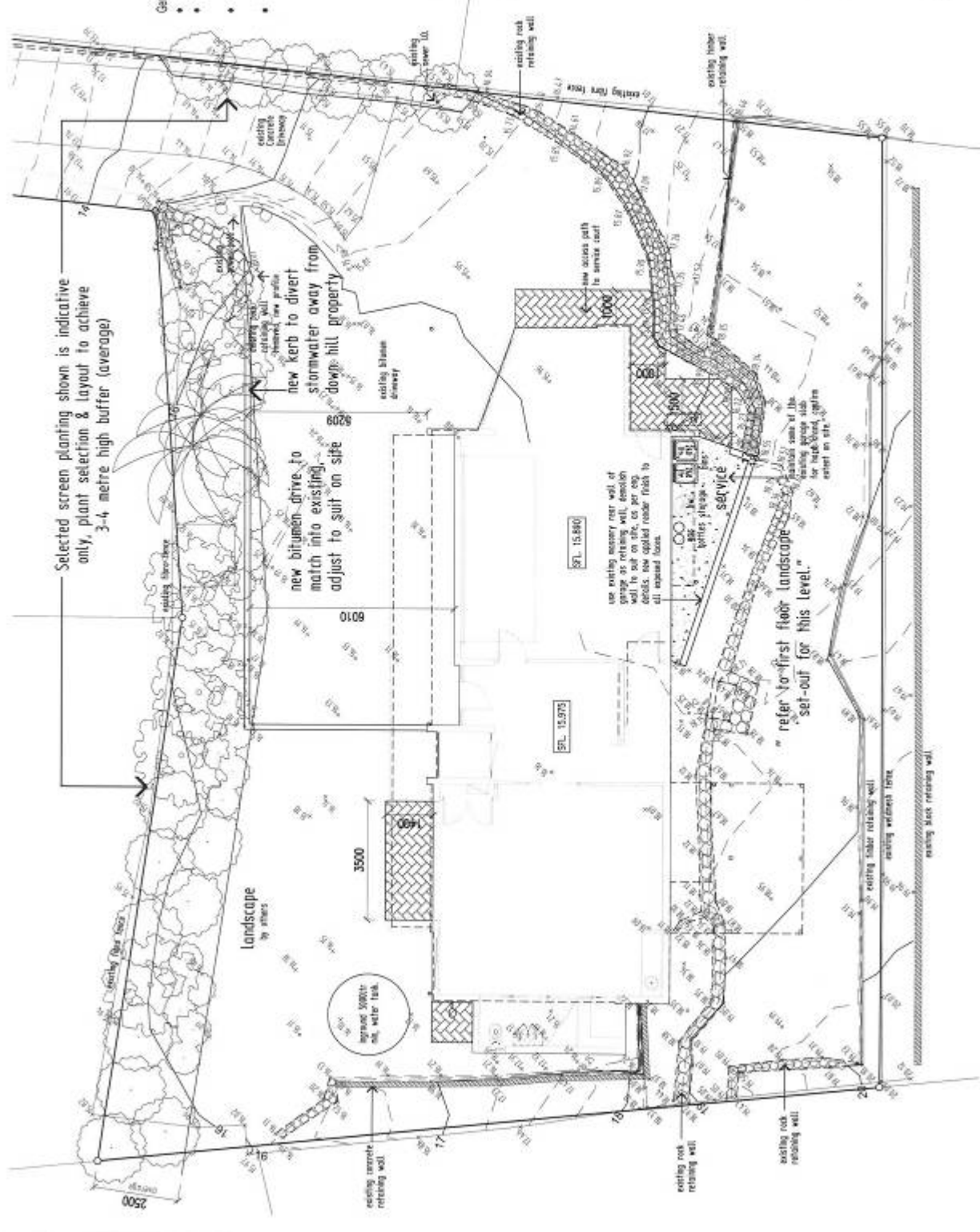
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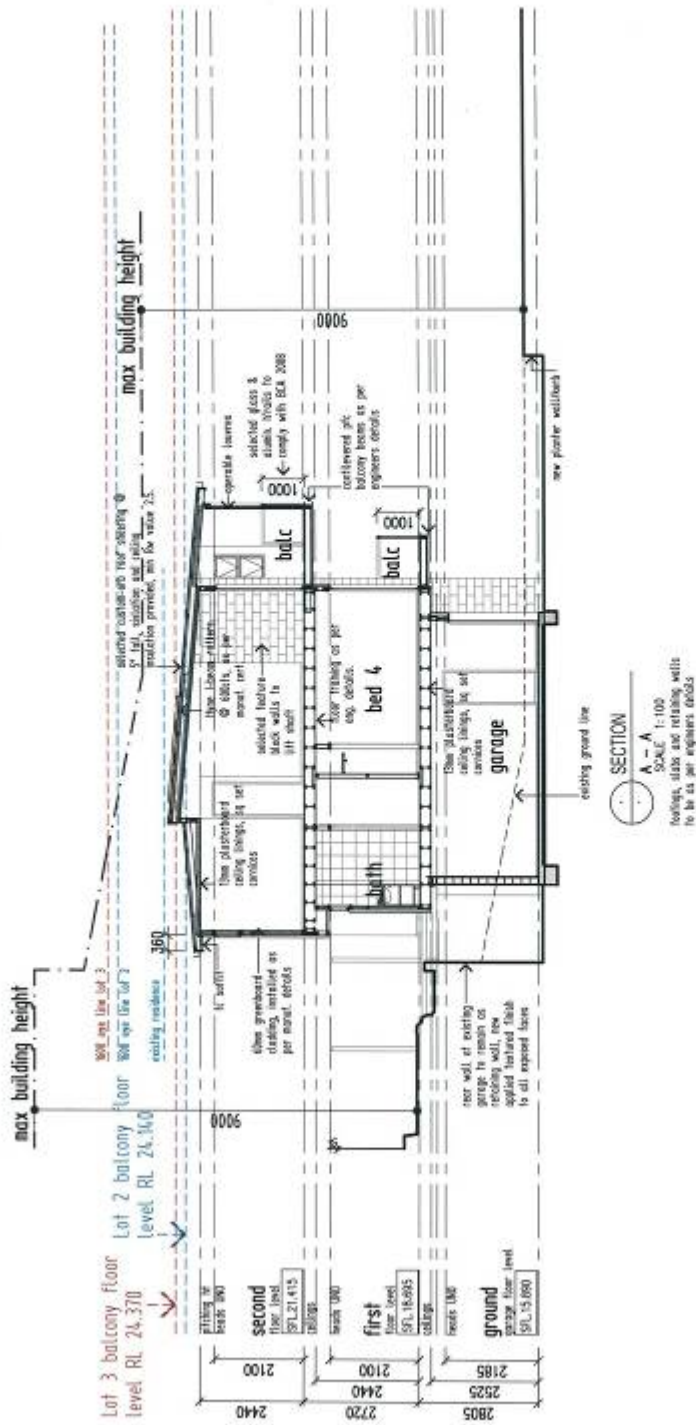
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037-03 H





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Section
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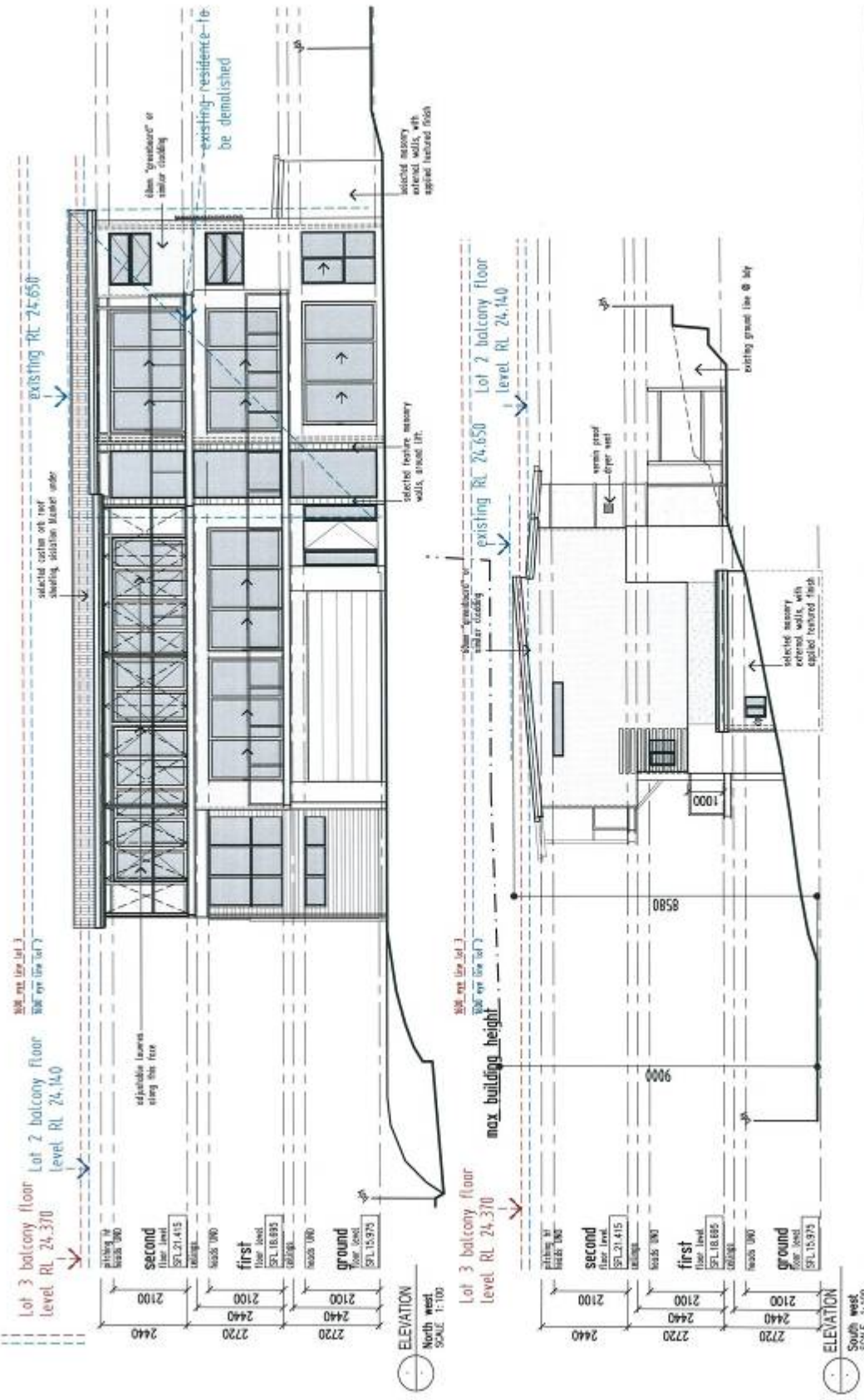
CLIENT
R & F Bailey
PROJECT
Proposed residence

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© No account is to be taken of any alterations made to this plan.



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CLIENT
 R & F Bailey
 Proposed residence

LOCATION
 Lot 2, Boomerang Street,
 Kingscliff,
 NSW

DATE
 2009

SCALE
 1:100

DATE
 24-08

NO. OF SHEETS
 037-20

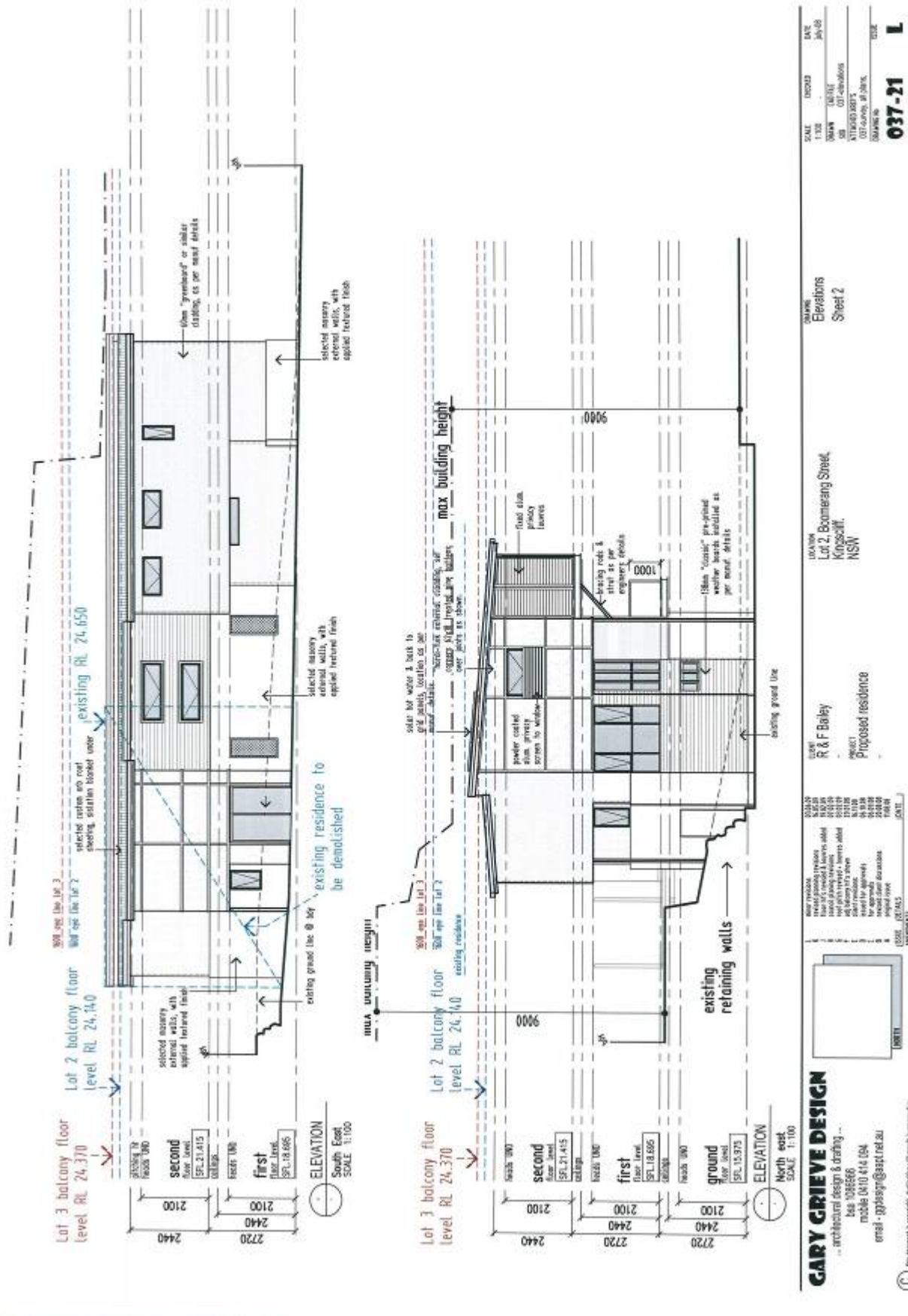
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PROJECT NO.
 037-20

DATE
 24-08

SCALE
 1:100

DATE
 24-08



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R & F Bailey
 Proposed residence

LOCATION
 Lot 2, Boomerang Street,
 Kingscliff,
 NSW

DATE
 03/08/09

SCALE
 1:100

PROJECT
 Proposed residence

DRAWN
 R & F Bailey

TITLE
 Elevations Sheet 2

03/08/09

037-21 L

The following photo montages have been provided to assist in evaluating the impact of the proposal noting that they have been provided as an approximate view only. The montages have been provided by the applicant on photos taken by Council's assessing officer.



Figure 1- Existing view from 10 Boomerang street rear yard



Figure 2- OVERLAY view from 10 Boomerang street rear yard.



Figure 3 –Solid Overlay view from 10 Boomerang street rear yard.



Figure 4-Existing view from 3 Rob Roy Crescent rear balcony



Figure 5- Overlay view from 3 Rob Roy Crescent rear balcony



Figure 6 - Solid overlay view from 3 Rob Roy Crescent rear balcony



Figure 7-View north from 5 Rob Roy Crescent main outdoor balcony



Figure 8 Overlay view north from 5 Rob Roy Crescent main outdoor balcony



Figure 9- Solid overlay view north from 5 Rob Roy Crescent main outdoor balcony



Figure 10- Existing view south from 14 Boomerang street rear patio



Figure 11- Existing view south from 12 Boomerang street rear yard

ASSESSMENT:

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 involving many hours. Impacts have been discussed in person on site with those most affected and different vantage points where included. The applicant was advised early of Council's concerns and the likely modifications that would be necessary to allow reasonable compromise.

The assessment also utilised the expertise of Council Senior Urban Design Planner who produced 3D imagery of the proposal in context to the surrounding built form and gave assistance in gauging impact and direction for the applicants design changes reflected in the final plans now the subject of this report.

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 2000Part 1 Clause 4 - Aims of the Plan

The aims or objectives of the plan are not compromised by the proposed development

Clause 8 Consent considerationsZone Objectives

The subject site is zoned 2(a) Low Density Residential. The primary objective of the zone 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 consistent with other dwellings in the area and the pattern emerging of reconstruction of the older homes to larger more modern homes of two and three storeys. The proposed dwelling is unlikely to be dominant amongst the Kingscliff hill when viewed from a distance. The proposal is unlikely to have an unacceptable cumulative impact on the community, locality or area of the Tweed as a whole. The battleaxe

block is somewhat unique for the hillside and requires noting in regard to cumulative impact.

The cumulative weight of objections of several surrounding properties is 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 reducing the height and length and providing privacy screening of various kinds.

Part 3 Clause 15 - Essential Services

All essential services are available within the area.

Clause 16 - Height of Building

The proposed height of the development (8.65m) complies with the three (3) storey control under the TLEP 2000 and 9m maximum height limitation affecting the subject site under Section A1 of Tweed DCP.

Clause 17 - Social Impact Assessment

A social impact assessment is not required given the relatively minor nature of the proposal being satisfied that it is unlikely to have a significant social or economic impact in the locality.

Part 7 Clause 35 - Acid Sulfate Soils

The site is not affected by acid sulfate soils

Other Specific Clauses

None apparent

SEPP (North Coast Regional Environmental Plan) 1988

Clause 43 - Development Control- residential development

The proposed development is consistent with the objectives of the North Coast Regional Environmental Plan 1988 Division 2 for Urban Housing requiring broader consideration of roads, access to services, transport, site erosion and of maximising density.

SEPP No 71 – Coastal Protection

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 BASIX certificate for the proposal which is consistent with the required energy target.

(a) (ii) any Draft Environmental Planning Instruments

None apparent

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

Section A1 of Tweed DCP applies and includes detailed parameters for improved site outcomes including the provision of height controls, 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 of course 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.

More detail is provided in the latter sections of this report.

Chapter 2- Site and Building Design Controls

Design Control 1-Public Domain Amenity

Streetscape and Public Views and Vistas

The proposed development is to be constructed on a battleaxe block and will not be readily visible from the street or other public domain. Because of its location the proposed dwelling will not compromise the objectives of this control.

Design Control 2 -Site Configuration

Deep soil zones (DSZs)

A large area of deep soil zone is available at the rear and is considered consistent with the objectives of this design control. The depth in metres of the deep soil zone falls short of the prescribed minimum depth of 5.5 metres due to the constraints of an existing retaining wall for an area of some 4 square metres. This is considered minor and is offset by the fact that most of the rear width of the property is available as deep soil zone. Variation to this control is also permitted within the DCP by way of the development being constrained by the existing site conditions of an existing dwelling located on a subdivision created prior to the year 2000.

The front deep soil zone is compliant as applied to a battleaxe block.

Impermeable Site Area

The area of the site is 789m² subsequently the maximum impermeable site area permitted at the completion of the development will be 60%. From the plans submitted the development will create an impermeable area of approximately 50.36% and will comply with the design control. This will enable water to infiltrate on the site.

External Living Areas

The dwelling makes provision for compliant external living areas in the form of balconies on the second and third level. The balcony on level 2 services primarily the bedrooms of the dwelling and the balcony of the third level will service the main living area of the dwelling. There is large boundary setback to the northern boundaries in excess of 5.5m and privacy to the lower properties will be enhanced by extensive landscaping on the north boundary and full height adjustable privacy screens on the upper balcony.

Landscaping

A landscaping plan is compliant with the DCP has been submitted with the application and has been designed specifically to soften the building into its surrounds and strategically to provide privacy to the neighbours.

Topography, Cut and Fill

The property is a sloping site with existing cut areas and existing retaining walls that generally comply with the prescribed maximum cut of 1.0m. The proposed dwelling incorporates a further cut of 300mm as a means of lessening the impacts of the development on adjoining properties in regard to views and bulk and scale. The variation is considered minor and reasonable considered the constraints of the site in context to the neighbouring properties.

Design Control 3 -Setbacks

The proposal is consistent with or in excess of the set back controls; having a 5.5-7.3 metres northern boundary setback, 1.6-3.0 metres western boundary setback, 5.7-6.9 metres eastern boundary setback and 5 metres from the southern boundary.

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 two off street car parking spaces provided behind Council's building line and vehicle access to these spaces is considered adequate.

Design Control 5 -Height

Building Height

The proposed height of the dwelling house is 8.65 metres which is consistent the maximum design control height of 9 metres. The wall plate height is 8.20m which is consistent with the maximum design control height of 8.50 metres.

Ceiling Height

The control encourages a minimum ceiling height of 2.7m for habitable rooms. The architectural plans show a ceiling height of 2.4m which was reduced from 2.7m in the original plans so as to reduce the overall building height. The proposal complies with the DCP.

Design Control 6- Building Amenity

Sunlight Access

The dwelling includes private open space by the provision of balconies orientated north and of the dwelling to access coastal and hinterland views and therefore will receive sufficient access to sunlight.

The proposed dwelling being a large rectangular shape will overshadow the adjoining southern side properties. The shadow diagrams submitted with the application show the extent of overshadowing of the original design which has not been required to be redrafted on the basis that the reduced building size will lessen the extent of shadow at the 9am and 3:00pm winter by approximately 2.5metres. The shadow diagrams indicate that some over shadowing will occur to different portions of southern properties during in the winter months as the sun moves through the sky. Shadowing is more extensive in the late afternoon as is to be expected from most developments.

The prescriptive requirement of this control is to ensure for neighbouring properties,

- 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.

The proposed dwelling complies and exceeds the sunlight requirements above.

Visual Privacy

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

The building has limited windows on the east, south and west elevations and those that are provided are designed with privacy screens or high level sills to minimise overlooking of adjoining properties.

With regard to the north elevation, the building orientates to the ocean view and privacy is a concern to the lower properties. In this regard the design incorporates a fixed privacy screen to the east end of the upper level balcony, full height movable privacy screens to the northern edge of the balcony and extensive landscaping screens.

These design features will provide for reasonable protection of visual privacy to the lower properties while at the same time allowing the building owner to take full advantage of the primary ocean views.

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 can be seen from the photo montages above. The building will not exceed the overall height of the existing building of 24.65m AHD and was reduced in overall length by 1700mm. This provides reasonable protection of important primary and iconic whole views of the properties above.

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 coastal views and solar access and complies with the objectives of this control.

Building separation

The proposed building has been sited with large boundary setbacks and therefore achieves separation with other buildings on adjoining properties well in excess of the minimum 8m required.

Design Control 7 – External Building Elements

Fences and Walls; Front, Side and Rear

The submitted architectural plans indicate that no fences are proposed with this application.

Roof

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 no pool proposed as a part of this application

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 0.65:1 for the dwelling as the site has an area of 789m² and the site coverage is less than 50%. The proposed FSR for the dwelling is 0.52:1.

Even when the area of the battleaxe handle is disregarded from the site area the proposed building still complies with the required FSR (Site area would be 642m², site coverage still less than 50% and FSR would be 0.61:1).

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

Clause 92(a) Government Coastal Policy

The proposal is consistent with the goals and objectives outlined within 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

Context and Setting

The property is redevelopment within an established residential subdivision which has been specifically created for residential development. The proposed development is of a design generally in keeping with the architectural style and residential character of the area taking into account the redevelopment occurring overall on the Kingscliff hill and the nature of this particular battleaxe block. On a hillside such as this it must be reasonable expected and is usually the case that the higher properties will overlook lower properties. In this proposal the applicant has address these specific concerns as previously noted.

Access, Transport and Traffic

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

Flora and Fauna

Minimal impact is envisaged; the site has no significant plantings and is part of an existing urban environment.

(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.

Site Orientation

The building has been centrally located on the property, with compliant boundary setbacks an orientation consistent with the design controls of DCP A1. The dwelling is set back 6 metres from the front property boundary and therefore complies with the set back requirements of DCP A1. The living areas of the dwelling have been mainly orientated to the north to optimise ocean views and breezes and solar access to the north.

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

The application was notified to surrounding properties when first received and again after the first amendment as the application did not address the initial concerns of Council's assessing officer or those of the objectors. A second amendment was then received which made numerous changes to address the concerns and these final plans were viewed by and discussed with those objectors most affected. During the initial notification, eight (8) written submissions were received. The issues raised have been summarised below:

Issue	Objection Comment	Assessment
Bulk and scale is excessive	The building is too large for the site and will impact adversely on amenity of surrounding building occupants and create a "hemmed in feeling"	The building was reduced in height and length, a balcony extension protruding to the north was removed and buffering landscaping is to be provided. Site coverage, boundary setbacks, building height and floor space ratios all comply with or are better than Council's adopted DCP. The building when viewed from the lower properties will extend across the skyline much further to the east than the existing building but will be much further away (towards the south) by approximately an additional 5m and will be buffered by landscaping. The battleaxe block was created in 1954 with no restrictions to foresee today's concerns. It is considered that the applicant has made reasonable amendments to respond to concerns given his right to develop the valuable site which exists essentially in the middle surrounding properties. Redevelopment was to be reasonably expected of the subject site and while the proposed building will be more imposing on surrounding property occupants than the existing buildings, the change can be compared to when a long term vacant site in an established residential area is finally built upon.
Loss of views	The proposal will have an extremely severe adverse impact on existing views for higher properties	The building has been reduced in height to 24.555m AHD to be no higher than the existing roof being at 24.65m AHD and has been reduced in length towards the east by 1.7m. This has significantly improved the views to be maintained by the properties above as can be seen in the photo montages. The proposal is now considered to comply with principles of view sharing referenced in the Tweed DCP A1. A condition of consent has been included to ensure construction adheres to the total height constraints nominated in the plans.

Issue	Objection Comment	Assessment
Loss of natural ventilation	Cool breezes may not be as prevalent on the higher properties	While some reduction in northern breezes may be experienced the building is considered to have sufficient separation from surrounding building to allow natural ventilation.
Loss of privacy	The height above lower properties and extensive balcony and windows on the north elevation will impact on privacy	This has been addressed in the amended plans by the inclusion of fixed and movable privacy screens as well as strategic landscaping. The building also has good boundary setbacks achieving reasonable separation. It must also be reasonably expected that dwellings on the lower part of a hillside will have reduced privacy as a consequence of higher dwellings.
Future trees may obscure views	Future tree planting may obscure views	While this is typically a civil matter between property owners a consent condition has been included to control mature landscaping height.
Safety of excavation	The earthworks may reduce the stability of the hillside	There are minimal earthworks and retaining work proposed beyond what exists and all works will be protected by the requirement to provide soil report and engineers design for the building. There is also no prior evidence of slip concerns in the area.
Landscaping effectiveness	Landscaping may not provide privacy in the long term	A condition relating to landscaping is included which requires the landscaping to be "...provided and maintained...". As with all conditions they are enforceable over the life of the development.
Items on roof	Will items such as solar panel exceed roof height and obstruct views	A condition has been included to prohibit all auxiliary installations other than antennas from exceeding the 24.555m AHD maximum height.

(e) Public interest

The proposed development raised no major implications in terms of the public's interest.

OPTIONS:

1. Council resolve to approve the development application subject to conditions
2. Council resolve 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 applications 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 which would incur financial costs to Council in defence.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

On the balance of 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.

- 11 **[PR-CM] Development Application DA09/0139 for Construction of a Carport for Four (4) Cars at Existing Retirement Village at Lot 214, 215, 216 DP 251004, No. 1-5 Tupia Avenue, Tweed Heads**

ORIGIN:

Development Assessment

FILE NO: DA09/0139 Pt1

SUMMARY OF REPORT:

The Development Application is being reported to Council as a result of being called up by Councillor Longland.

The applicant seeks development consent for the construction of onsite parking being a single storey four (4) car carport and the associated access, which is proposed as two (2) 6.0m wide driveways separated by a 1.25m wide grassed area at Lots 214, 215 and 216 DP 251004, No. 1–5 Tupia Avenue, Tweed Heads. The proposed development adjoins the boundary to the rear of the subject site and is accessed via Tupia Avenue.

The proposed development will result in non-compliances with DCP Section A1 Residential and Tourist Development of the Tweed Development Control Plan in relation to rear setbacks, deep soil zones, streetscape and carparking controls. The proposal is also inconsistent with Clause 33 of the State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004.

Following an assessment of the relevant council and state planning requirements, as well as the general planning merits, it is considered that the proposal is not suitable for approval, and is recommended for refusal.

RECOMMENDATION:

That Development Application DA09/0139 for construction of a carport for four (4) cars at an existing retirement village at Lot 214, 215, 216 DP 251004, Nos. 1-5 Tupia Avenue, Tweed Heads be refused for the following reason: -

- 1. The application fails to comply with the Tweed Development Control Plan Section A1 – Residential and Tourist Development Code and the SEPP (Housing for Older People and People with a Disability) 2004.**

REPORT:

Applicant: Flower & Samios Pty Ltd
Owner: The St Cuthberts Retirement Living Complexes Board of Management
Location: Lot 214, 215, 216 DP 251004, No. 1-5 Tupia Avenue, Tweed Heads
Zoning: 2(b) Medium Density Residential
Cost: \$40,000

BACKGROUND:Subject Site

The subject site is known as Lots 214, 215 and 216 in DP 251004, Nos. 1-5 Tupia Avenue, Tweed Heads. The subject site has a combined approximate land area of 4054m² and consists of an existing two storey retirement complex, made of three separate buildings, it is commonly known as St Cuthbert's Retirement Living Complex. The subject site has a width of approximately 60 metres and a depth of approximately 65 metres. The site has an internal landscaped area located between the existing buildings but is otherwise relatively free from formal landscape.

The subject site adjoins a Council reserve to the south of the site. Immediately to the north of the site is a residential unit complex.

The site and its surrounding lots are currently zoned 2(b) Medium Density Residential. The surrounding development is comprised of medium density residential, including townhouses and residential flat buildings.

Proposed Development

The proposal involves the construction of four (4) carports, adjoining block no.1. The proposed carport is to be situated adjoining the rear boundary, facing Tupia Avenue.

The development also incorporates two 6.0 metre wide driveways, gaining access from Tupia Avenue.

The proposed development incorporates a single story carport structure with a maximum height of 5.0m, width of 14.16m and length of 5.0m.

Site History

The subject site was created as part of a Council approved subdivision No. 110/75. The following Development Applications have been granted consent on the subject allotment/s:

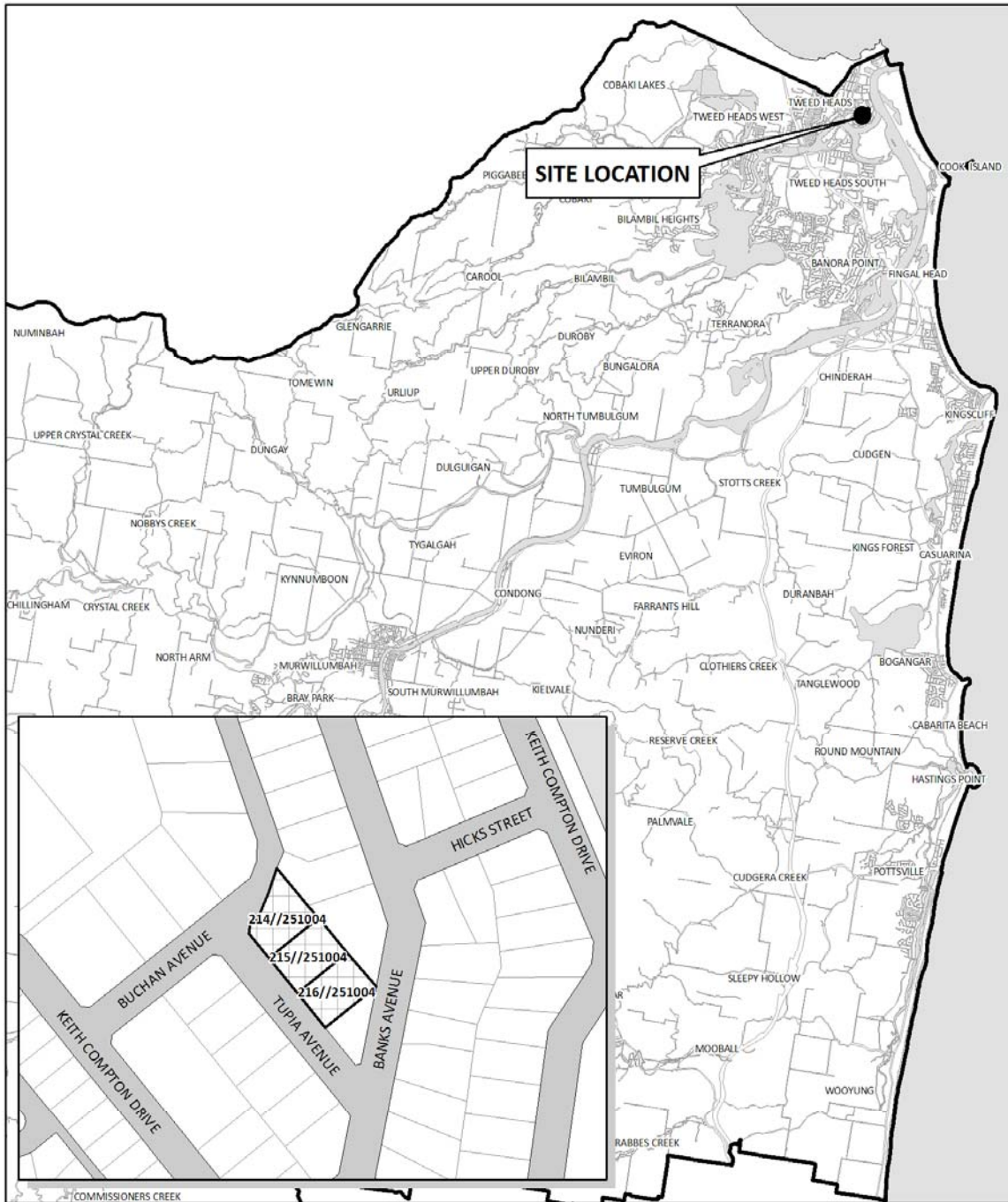
- Building Application 0042/95B – Carport was granted consent 13/02/95
- Building Application 0075/94B – Pergola was granted consent 02/02/94.

Further to the above, no consent could be located on Councils available records for the development of the retirement complex.

Summary

The proposal has been investigated and is not considered to be suitable to the site. It does not meet all of Council's applicable requirements within the relevant Development Control Plan or the provisions the SEPP (Housing for Older People or People with a Disability) 2004. The application has been assessed by Councils Technical Officers with objections being received from the Engineering and Operations Division with regards to non-compliances with Council's driveway access guidelines and the associated Section 138 application. The proposed construction of four (4) carports at an existing retirement complex is therefore not considered to warrant approval.

SITE DIAGRAM:



LOCALITY PLAN

**Lot 214 DP 251004 and Lot 215 DP 251004 and Lot 216 DP 251004
No's 1,3 and 5 Tupia Avenue Tweed Heads**

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

Author: J.Batchelor - Planning Reforms Unit

Date Printed: July 03, 2009

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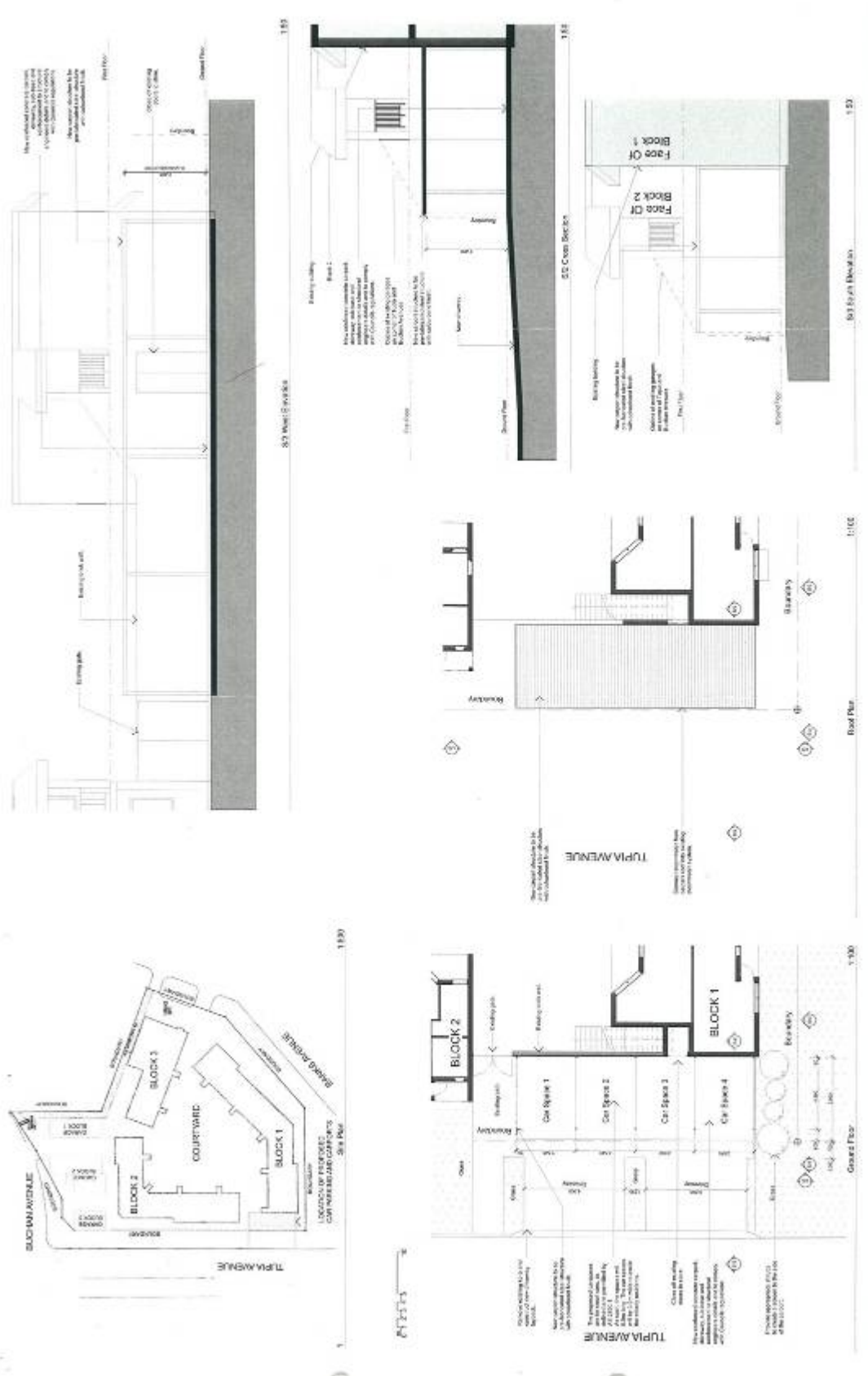
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Tweed Shire Council

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DEVELOPMENT PLANS:



	<p>DATE: 18/08/09</p> <p>PROJECT: Elizabeth Marley Court Proposed Carpark and Carport</p> <p>20 Banks Avenue, Tweed Heads</p> <p>PLANS & ELEVATIONS & SECTION</p> <p>DA001 / B</p>
	<p>08082</p>
<p>NAME: Elizabeth Marley Court Proposed Carpark and Carport</p> <p>20 Banks Avenue, Tweed Heads</p> <p>DATE: 18/08/09</p> <p>SCALE: 1:100</p> <p>PROJECT: Elizabeth Marley Court Proposed Carpark and Carport</p> <p>20 Banks Avenue, Tweed Heads</p> <p>DATE: 18/08/09</p> <p>SCALE: 1:100</p>	<p>NAME: Elizabeth Marley Court Proposed Carpark and Carport</p> <p>20 Banks Avenue, Tweed Heads</p> <p>DATE: 18/08/09</p> <p>SCALE: 1:100</p> <p>PROJECT: Elizabeth Marley Court Proposed Carpark and Carport</p> <p>20 Banks Avenue, Tweed Heads</p> <p>DATE: 18/08/09</p> <p>SCALE: 1:100</p>

DA09/0139.

location of proposed car port.



view from Tupia Ave looking north towards Buchan St.



view from Tupia looking east towards Banks Avenue.



view from Banks Ave. (looking North)



view from Banks (eastern boundary)



view from Banks (eastern boundary)



view from Buchan (northern boundary)



view from Buchanan (northern boundary)

Proposed site



view from Tupia of proposed devpt. site looking South



view of proposed site (Tupia Ave)

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 (TLEP)****Clause 4 - Aims of the Plan**

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

The subject development application is considered suitably in keeping with the above. The proposed development is minor in scale and consistent with the existing use of site, therefore it is considered to be in accordance with the aims of the plan.

Clause 5 - Ecologically Sustainable Development

The TLEP aims to promote development that is consistent with the four principles of ecologically sustainable development, being *the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms*. Broadly, the subject proposal is considered consistent with the above criteria, as the development is not likely to have significant ramifications for ecologically sustainable development.

Clause 8 - Zone objectives

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 2(b) Medium Density Residential, the primary objective of which is to provide for and encourage development for the

purpose of medium density housing (and high density housing in proximity to the Tweed Heads sub-regional centre) that achieves good urban design outcomes. The secondary objectives of the zone are to allow for non-residential development which supports the residential use of the locality, to allow for tourist accommodation that is compatible with the character of the surrounding locality, to discourage the under-utilisation of land for residential purposes, particularly close to the Tweed Heads sub-regional centre.

As discussed below, the development is inconsistent with the zone objectives.

Clause 11 – Zone Objectives

Primary objective:

- to provide for and encourage development for the purpose of medium density housing (and high density housing in proximity to the Tweed Heads sub-regional centre) that achieves good urban design outcomes.

Secondary objectives:

- to allow for non-residential development which supports the residential use of the locality.
- to allow for tourist accommodation that is compatible with the character of the surrounding locality.
- to discourage the under-utilisation of land for residential purposes, particularly close to the Tweed Heads sub-regional centre.

The proposal is defined as Housing for old people or people with a disability under the Tweed Local Environmental Plan 2000 and is permissible with consent under the 2(b) zoning. The proposed development meets the secondary objective of the 2(b) zone allowing for diversity in housing types.

The proposed development is considered ancillary to the existing retirement complex however the proposed development does not meet requirements as specified in Section A1 Residential and Tourist Development Code of the Tweed Development Control Plan and as such is not considered to achieve good urban design outcomes. It is not in keeping with the scale and setbacks of development on nearby lots.

Clause 15 - Essential Services

All relevant services are made available to the site. The subject land has access to water, sewer, electricity and telephone services. The proposed development does not have any impacts on the existing connections to the subject land. The proposal is compliant with Clause 15 of the Tweed Local Environmental Plan 2000

Clause 16 - Height of Building

The subject site is mapped as having a three (3) storey height limit under the Tweed Local Environmental Plan 2000. The proposed application is for a single storey four (4) car carport to an existing retirement complex. The proposal is deemed to be compliant with the provisions of Clause 16 of the Tweed Local Environmental Plan 2000.

Clause 17 - Social Impact Assessment

The objective of Clause 17 is to ensure proper consideration of developments that may have a significant social or economic impact and deems that where a proposal is likely to have a significant social or economic impact it must be accompanied by a socio-economic impact statement.

The proposed development does not require a formal social impact assessment. The impact of the proposal is deemed to be of a minor nature and unlikely to result in any major negative social impacts. It is therefore unlikely to have a significant social or economic impact and is subsequently compliant with Clause 17 of the LEP.

Clause 34 – Flooding

Council's flooding map indicates that the site is affected by flooding. The subject site is mapped as having a 1 in 100 year flood level of 2.6m AHD and an adopted minimum floor level of 3.1m AHD.

The objectives of clause 34 are to minimise future potential flood damage by ensuring that only appropriate compatible development occurs on flood liable land and to minimise the adverse effect of flooding on the community.

The consent authority must not grant consent to development on flood liable land unless the following has been considered.

- (a) the extent and nature of the flooding hazard affecting the land, and
- (b) whether or not the development would increase the risk or severity of flooding of other land in the vicinity, and
- (c) whether the risk or severity of flooding affecting the development could be reasonably mitigated, and
- (d) the impact of the development on emergency services, and
- (e) the provisions of Section A3 - Development of Flood Liable Land of *Tweed Development Control Plan*.

The proposed development is not considered to increase the risk or severity of flooding, will not have an impact on the capacity of the SES to gain access to the site and is considered consistent with Section A3 Development of flood liable land (as discussed under separate title in this report).

Clause 35 - Acid Sulfate Soils

The objectives of Clause 35 are:

- to manage to manage disturbance of acid sulfate soils to minimise impacts on water quality, ecosystems, infrastructure and agricultural and urban activities.
- to require special consideration and development consent for works, including some agricultural and infrastructure-related works, that would disturb soils or ground water levels in areas identified as having acid sulfate soils.
- to provide for a regime of self-regulation by those organisations which have demonstrated to the Council their ability to manage acid sulfate soils issues.

The subject site is identified on Councils mapping system as being subject to Acid Sulfate Soils – Class 2. The proposed development does require any excavation works and as such the proposal is considered to comply with the provisions of Clause 35 of TLEP 2000.

North Coast Regional Environmental Plan 1988

Clause 32B: Coastal Lands

1. This clause applies to land within the region to which the NSW Coastal Policy 1997 applies.
2. In determining an application for consent to carry out development on such land, the council must take into account:
 - (a) the NSW Coastal Policy 1997,
 - (b) the Coastline Management Manual, and
 - (c) the North Coast: Design Guidelines.
3. The council must not consent to the carrying out of development which would impede public access to the foreshore.
4. The council must not consent to the carrying out of development:
 - (a) on urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out the development would result in beaches or adjacent open space being overshadowed before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time), or
 - (b) elsewhere in the region, if carrying out the development would result in beaches or waterfront open space being overshadowed before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time).

The proposed development is landward of any known coastal erosion zones, is consistent with the North Coast Design Guidelines, Coastal Policy and Coastline Management Manual. The proposed application is minor in nature and is considered to comply with Clause 32B.

Clause 43: Residential development

Clause 43 states 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 development is considered ancillary to the existing retirement complex, there is no change to the existing density and the development will not adversely affect any environmental features. Public transport is available and the associated bus shelters are located adjacent to the subject site.

State Environmental Planning Policies

SEPP No 71 – Coastal Protection

The subject site is within the coastal zone (as per the NSW Government Coastal Policy 1997) and as a result is subject to the provisions of State Environmental Planning Policy No.71.

The proposal does not impact upon any known coastal erosion zones, does not restrict public access to foreshore reserves or parks, does not impact upon fish and marine vegetation and their estuarine habitats, and does not result in significant overshadowing of foreshore reserves or the beach. In terms of visual impacts, the proposed development will not result in any significant loss of views from a public place to the coastal foreshore.

The proposal does not offend the height provisions contained within the SEPP. The proposed development does not compromise the intent or specific provisions of State Environmental Planning Policy No.71 – Coastal Protection.

SEPP (Housing for Seniors or People with a Disability) 2004

The SEPP regulates the provision of residential care. The proposal does not impact upon the majority of controls contained within this SEPP, as the proposal is only for the addition of a four (4) car carport and does not alter the

level of services provided within the Residential Care Facility. The proposed development has been assessed against clause 33 neighbourhood amenity and streetscape of the SEPP due to the nature and location of the proposed development.

33 Neighbourhood amenity and streetscape

The proposed development should:

- (a) recognise the desirable elements of the location's current character (or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area, and
- (b) retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items that are identified in a local environmental plan, and
- (c) maintain reasonable neighbourhood amenity and appropriate residential character by:
 - (i) providing building setbacks to reduce bulk and overshadowing, and
 - (ii) using building form and siting that relates to the site's land form, and
 - (iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, and
 - (iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and
- (d) be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line, and
- (e) embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, and
- (f) retain, wherever reasonable, major existing trees, and
- (g) be designed so that no building is constructed in a riparian zone.

The proposed development involves the addition of a four (4) car carport to an existing retirement complex. The proposed development is not considered to comply with controls within DCP Section A1 in relation to setbacks, carport controls and streetscape requirements. Therefore the proposed development is not compliant with Clause 33 Neighbourhood amenity and streetscape of the SEPP.

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

There are no draft Environmental Planning Instruments applicable to this application.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

BUILDING TYPES
TOWN HOUSES (VILLAS)
<p><u>ASSESSMENT</u></p> <p>Not applicable – the proposed development application is for the addition of a carport to an existing retirement complex</p>
SITE AND BUILDING DESIGN CONTROLS
PUBLIC DOMAIN AMENITY
<p>Streetscape Controls</p> <ul style="list-style-type: none"> • Site design, building setbacks and the location and height of level changes are to consider the existing topographic setting of other buildings and sites along the street, particularly those that are older and more established. • Carports and garages visible from the public street are to; <ul style="list-style-type: none"> ○ be compatible with the building design, including roofs, ○ be setback behind the dwellings front elevation. • Minimise driveways and hardstand areas to increase the area for deep soil zones and landscaping and to reduce the visual impact of driveways and hard surfaces from the street. • Facades visible from the public domain are to be well designed by: <ul style="list-style-type: none"> ○ having important elements such as front doors and building entry areas prominent in the building facade and clearly identifiable from the street, ○ coordinating and integrating building services, such as drainage pipes, with overall facade design, ○ integrating the design of architectural features, including stairs and ramps, and garage/carport entries with the overall facade design, and by locating car parking structures on secondary streets where possible, ○ ensuring corner buildings have attractive facades which address both streets frontages, including the ○ careful placement and sizing of windows, ○ ensuring entrance porticos are single storey or of a scale relative to the building.
<p><u>ASSESSMENT</u></p> <ul style="list-style-type: none"> • The proposed development does not comply with required setbacks (discussed elsewhere in this report) and is not considered to comply with the existing topography of the area. • The proposed carport is visible from the street and is not considered to be compatible with the existing building and the carport is also forward of the existing buildings elevation. • The proposal consists of an additional two (driveways) to the existing site (in addition to an existing two access ways). • The proposed development of a carport is not considered to provide to the façade of the existing building. <p>The proposed development is not considered to comply with the deep soil</p>

<p>zones controls of Section A1.</p>
<p>Public views and vistas Controls</p> <ul style="list-style-type: none"> • The location and height of new development is to be designed to minimise the impact on public views or view corridors between buildings.
<p><u>ASSESSMENT</u></p> <ul style="list-style-type: none"> • The proposed development is set forward of the existing building and adjoins the boundary.
<p>SITE CONFIGURATION</p>
<p>Deep soil zones Controls</p> <ul style="list-style-type: none"> • Deep Soil Zones must be provided for all new developments and existing development, except on large lot rural or agriculturally zoned land. • All sites are to provide two Deep Soil Zones, one to the rear and one to the front of the property. • Rear Deep Soil Zones are to have minimum width of 8m or 30% of the average width of the site whichever is the greater and a minimum depth of 18% of the length of the site up to 8m but not less than 5.5m. Greater than 8m may be provided if desirable. • Rear Deep Soil Zones are to have soft landscaping; refer to Landscaping Section. • Deep Soil Zones cannot be covered by impervious surfaces such as concrete, terraces, outbuildings or other structures. • The Deep Soil Zone is to be included in the total permeable area for the allotment.
<p><u>ASSESSMENT</u></p> <ul style="list-style-type: none"> • The existing building was constructed prior to DCP Section A1 and the associated provisions. • The proposed development is located to the rear of the site and does not comply with the requirements for a rear deep soil zone, as the proposed development adjoins the rear boundary. • The rear deep soil zone has minimal existing landscaping and is proposing minimal further landscaping and is constrained due to the existing building. • The proposed development is of an impervious nature being a driveway and carport. <p>The proposed carport is not considered to comply with the deep soil zones controls of Section A1.</p>
<p>Impermeable site area Controls</p> <ul style="list-style-type: none"> • An allotment's runoff shall be dispersed onto grassed, landscaped or infiltration areas, of the allotment, unless this is inconsistent with the geotechnical stability of the site or adjacent/downstream land. • The concentration, collection and piping of runoff to the street gutter or underground stormwater system shall be minimised unless this is inconsistent with the geotechnical stability of the site or adjacent/downstream land.

- The maximum areas for impervious surfaces are:
 - 70% of the allotment - On lot sizes less than 500m².
 - 65% of the allotment - On lot sizes between 500m² and 750m² inclusive.
 - 60% of the allotment - On lot sizes greater than 750m².

ASSESSMENT

- **The runoff as a result of the proposed development will be dispersed onto a grassed area.**
- **The concentration in relation to the proposed application will runoff to the street gutter.**
- **The proposed development results in a total percentage of approximately 55% impervious surfaces which complies with the requirement, as the site is greater than 750sqm.**

Landscaping Controls

- Retain existing landscape elements on sites such as natural rock outcrops, watercourses, dune vegetation, indigenous vegetation and mature trees.

ASSESSMENT

The subject site is lacking in existing landscaping. As part of the proposed application there is the relocation of some existing smaller shrubs. Further planting as a screening method is proposed, this will result in further landscaping than is currently on the site.

SETBACKS

Rear setbacks Controls

- Carports may be located adjacent to the rear boundary.
- The minimum rear boundary setback is 5m or the deep soil zone whichever is the greater. The minimum building separation distances must be met.

ASSESSMENT

- **The carport is located adjoining and slightly encroaching the rear boundary.**
- **The subject site is an old development and does not have a rear Deep Soil zone, the proposed application is, however further reducing the grassed, landscaping area of the rear of the subject site.**

The proposed development is not considered to comply with the deep soil zones controls of Section A1.

CARPARKING AND ACCESS

Carparking generally

- Carparking is to be in accordance with Section A2 of the Tweed Shire Development Control Plan.
- Car park entries are to be located off secondary streets and laneways where these occur.
- The driveway width from the street to the property boundary is to be minimised.
- Vehicular movement and parking areas are to be designed to minimum

dimensions, to reduce hard surfaces on the lot, and increase the area available for landscaping.

- A garage or carport may be located in front of an existing dwelling if:
 - there is no other suitable position on the allotment; and
 - the carport or garage accommodates a single car space; and
 - there is no vehicular access to the rear or side of the allotment.
- Driveways cannot be roofed.

ASSESSMENT

- **Complies** - The proposed site is an existing building and was not subject to DCP Section A2 at time of approval. The proposed application is for the addition of a four (4) car, carport and therefore is considered to comply with Section A2, as it is for the addition of parking spaces.
- **Complies** - The proposed carport is to be located of a secondary street.
- **Complies** – The proposed application adjoins the boundary, therefore the driveway only covers the road reserve area (however the application proposes two additional driveways in addition to the existing access (two, each with entry and exit access ways)).
- **Complies** - There is no other position within the existing site that a carport could be constructed where it would not be located within the sites setbacks and adjoining a boundary.
- The proposed carport is to accommodate four (4) cars.
- Vehicular access is already existing at the sites frontage and one of the side boundaries (fronting Buchan Ave), the proposed development consists of an additional two (2) driveway entrances (each being 6m wide) to the rear of the property (Tupia Ave).
- The proposed driveway is not roofed.

Carports

Controls

- Carports cannot be wider than one car space width or 4m where other means of undercover parking is provided on-site.
- Double carports can only occur, on very steep sites or where there is no other solution possible for car parking on the site.
- Carports must not necessitate an extra driveway additional to the driveway for a garage or other parking structure.
- The design and materials used for carports must be in keeping with the main dwelling.
- The carport must not be enclosed on any of its sides.

ASSESSMENT

- **Does not comply** – the application is proposing the addition of four (4) carports to an existing retirement village.
- **Does not comply** – the application is proposing in excess of two (2) carports and is on a flat site.
- **Does not comply** – The proposed application is proposing two (2) new driveways with a combined width of 14.75m.
- The Design and materials used are considered suitably in keeping with the main building.
- The carport is not proposed to be enclosed on any of its sides.

A2-Site Access and Parking Code

The subject site consists of an existing retirement complex comprising of forty one (41) dwelling units and fourteen (14) car parks, averaging at 0.3 spaces per unit.

Section A2 of the Tweed DCP states that carparking is required in accordance with the SEPP (Housing for Seniors or People with a Disability) 2004.

The requirements as defined under the SEPP (Housing for Seniors or People with a Disability) 2004 are 0.5 spaces per bedroom, based on the existing development containing 41 units a minimum of 21 spaces are required under the current provisions.

The existing development does not comply with the current requirements for parking as determined under the SEPP, however the existing development was not subject to the SEPP at time of consent. As the application is not for an addition or alteration to the actual residential component of the subject site the carparking rates as under the SEPP are not considered applicable.

A3-Development of Flood Liable Land

The subject site is partially mapped as being flood affected on Councils GIS system. The subject site has a 1 in 100 year flood level of 2.6m AHD and an adopted minimum floor level of 3.1m AHD.

The proposal is for the addition of carport to an existing building and is considered compliant with the DCP requirements.

A11-Public Notification of Development Proposals

In accordance with Development Control Plan A11 – Public Notification of Development Proposals – the Development Application was notified for a period of 14 (fourteen) days from 27 April 2009 to 11 Monday 2009. During this time no submissions were received by Council.

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

The proposed development has been assessed against all relevant matters as prescribed by the regulations.

Clause 92(a) Government Coastal Policy

The proposed site is not located within the area covered by the Government Coastal Policy.

Clause 92(b) Applications for demolition

There is no demolition proposed as part of the application

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 subject site is generally level and contains no native vegetation other than managed grasslands. The subject site consists of an existing retirement complex, being in the formation of three detached buildings, with the existing carparking being provided to the north of the site, off Buchan Avenue. The site is predominately surrounded by medium density residential. The proposed development of a carport is considered ancillary to the existing use of the site and as such is in keeping with the setting of the area however the proposed location of the development is non-compliant with the existing site layout or the surrounding development.

Therefore the development is recommended for refusal.

Access, Transport and Traffic

Council's engineering department reviewed the subject proposal and raised concerns in relation to non-compliance with Councils driveway access to properties guidelines and do not support the application. The associated Section 138 application is not supported.

Flora and Fauna

No significant impacts anticipated as a result of the proposed development.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The proposed development is considered ancillary to the existing improvements on the subject site and is generally consistent with the uses of the surrounding developments. However the proposed carport is adjoining the boundary and is set forward of the existing buildings elevation, this component is not consistent with surrounding development and streetscape. It is not consistent with the current requirements under DCP section A2.

Topography and site orientation

It is not considered that the subject site is suitable for the proposed development. The subject site is constrained in terms of access, further the location of the proposed development does not comply with DCP Section A1, particular provisions under the SEPP (Housing for Seniors or people with a disability) 2004 or Councils requirements for driveway access to properties under Section 138.

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

The Development Application was notified for a period of 14 (fourteen) days from 27 April 2009 to 11 Monday 2009. During this time no submissions were received by Council.

(e) Public interest

The proposed development is considered to be consistent with the surrounding uses and has been designed to be compatible with the existing industrial development, therefore the proposal is considered to be in the wider public's interest.

OPTIONS:

1. Refuse the application in accordance with the recommendation for refusal.
2. Request amended plans demonstrating compliance with all matters raised within this report.
3. Council approves the application and the Director of Planning and Regulation provides the applicant appropriate conditions of consent.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be dissatisfied with the imposed conditions of consent they have the right to appeal the decision in the NSW Land and Environment Court.

POLICY IMPLICATIONS:

There are no policy implications in relation to this development.

CONCLUSION:

The subject land is not generally considered to be suitable for the proposed development. The proposed development is not considered to be generally consistent with the applicable Planning Instruments and Development Control Plans.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

12 [PR-CM] Development Application DA08/0755 for a 24 Lot Subdivision (18 lots into 24) at Lots 1-18 Section 4 DP 14895, Casuarina Way, Kingscliff

ORIGIN:

Development Assessment

FILE NO: DA08/0755 Pt1

SUMMARY OF REPORT:

Tweed Shire Council has been served with a Class 1 Appeal for the refusal of DA08/0755.

DA08/0755 was lodged in June 2008 and sought approval for a 24 lot subdivision (18 lots into 24 lots) within the Seaside City subdivision at Kingscliff.

On 17 June 2009 the Development Assessment Panel resolved to refuse the application for the following reasons:

1. *Pursuant to Section 79 (1) (b) the development proposal has not demonstrated due consideration to the likely impacts on the natural and built environment.*
2. *Pursuant to Section 79C(1)(c) the subject site is not considered suitable for the development as proposed at this point in time.*
3. *The proposal does not meet Clause 15 or Clause 39 of the Tweed LEP.*

It is recommended that Council resolve to defend the appeal as necessary. If all prior outstanding issues can be resolved by way of negotiated conditions of consent this can be undertaken within the Court process. If there are still technical issues with the proposed development the Court will be able to hear these matters and make a determination on behalf of Council as the consent authority.

RECOMMENDATION:

That Council defends the Class 1 Appeal (as necessary) for Development Application DA08/0755 for a 24 lot subdivision (18 lots into 24) at Lots 1-18 Section 4 DP 14895 Casuarina Way, Kingscliff.

REPORT:

Applicant: Seaside City Developments
Owner: Richtech Pty Ltd
Location: Lots 1-18 Section 4 DP 14895 Casuarina Way, Kingscliff
Zoning: 2(e) Residential Tourist & 7(l) Environmental Protection Habitat
Cost: Nil (subdivision)

BACKGROUND:

Tweed Shire Council has been served with a Class 1 Appeal for the refusal of DA08/0755.

DA08/0755 was lodged in June 2008 and sought approval for a 24 lot subdivision (18 lots into 24 lots) within the Seaside City subdivision at Kingscliff. This is proposed to be achieved by merging some blocks and creating 8 battle axe allotments.

Battle axe allotments are not considered desirable without forming part of an integrated housing scheme to guarantee a quality planning outcome. This view was expressed to the applicant throughout the assessment process, however, no change to the application was made.

Additionally the proposed site was not connected to essential infrastructure and had unresolved contamination issues.

Following five requests for the application to be withdrawn over a one year period the application was reported to the Development Assessment Panel for determination on 17 June 2009. The application was recommended for refusal primarily as the application had not be accompanied by all the necessary information, the site was not connected to all the necessary infrastructure services, and the site had unresolved contamination issues (please see **attached** the Development Assessment Planning Report).

Accordingly the Development Assessment Panel resolved to refuse the application for the following reasons:

- 1. Pursuant to Section 79 (1) (b) the development proposal has not demonstrated due consideration to the likely impacts on the natural and built environment.*
- 2. Pursuant to Section 79C(1)(c) the subject site is not considered suitable for the development as proposed at this point in time.*
- 3. The proposal does not meet Clause 15 or Clause 39 of the Tweed LEP.*

The official Determination Notice was signed and posted on 23 June 2009.

On 24 June 2009 Tweed Shire received a revised Engineering & Environmental Report by the applicant. However, as the refusal notice had already been issued Council was not in a position to reconsider the revised Engineering and Environmental Report.

The applicant has subsequently lodged a Class 1 Appeal with the NSW Land & Environment Court which has been accompanied by the revised Engineering and Environmental Report which the Court can take into consideration.

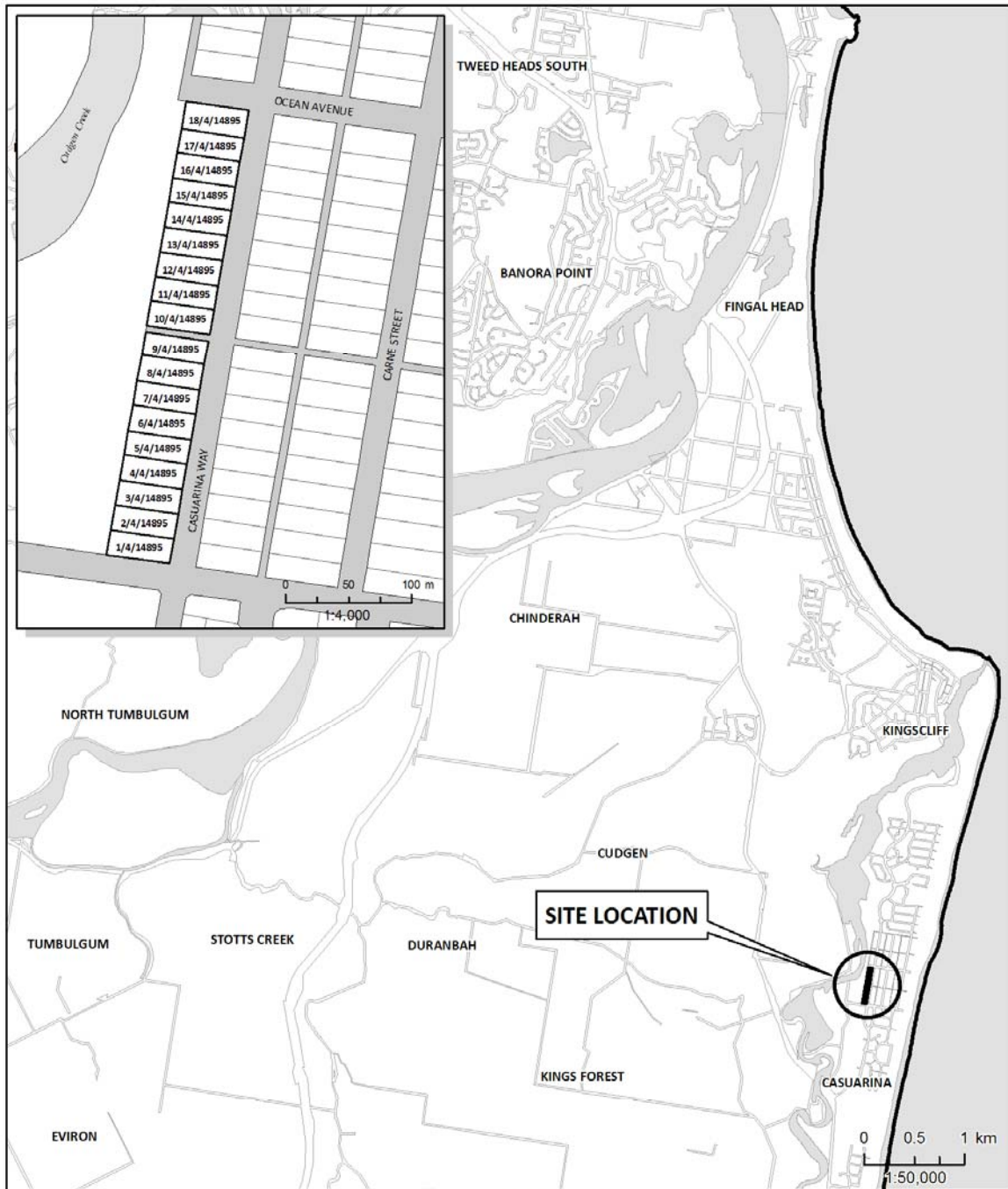
Tweed Shire Council staff are currently reviewing the revised Engineering and Environmental Report. This review will determine the issues associated with the upcoming case.

Whilst infrastructure services are still not physically available to the site Council has approved a Construction Certificate to enable the applicant to undertake civil works that would provide infrastructure services to the site.

The first call over is scheduled for 17 August 2009. Tweed Shire Council's Solicitors will appear on Council's behalf and seek an extension to the timetable to enable the technical review to be completed.

It is recommended that Council resolves to defend the Appeal as necessary. If all prior outstanding issues can be resolved by way of negotiated conditions of consent this can be undertaken within the Court process. If there are still technical issues with the proposed development the Court will be able to hear these matters and make a determination on behalf of Council as the consent authority.

SITE DIAGRAM:



LOCALITY PLAN
 Lots 1-18 Section 4 DP 14895
 Casuarina Way, Kingscliff

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

Author: J.Batchelor - Planning Reforms Unit

Date Printed: August 06, 2009

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and 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 "Dial 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.



Cadastral August 06, 2009
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Coordinate System - MGA Zone 56
 Datum - GDA 94

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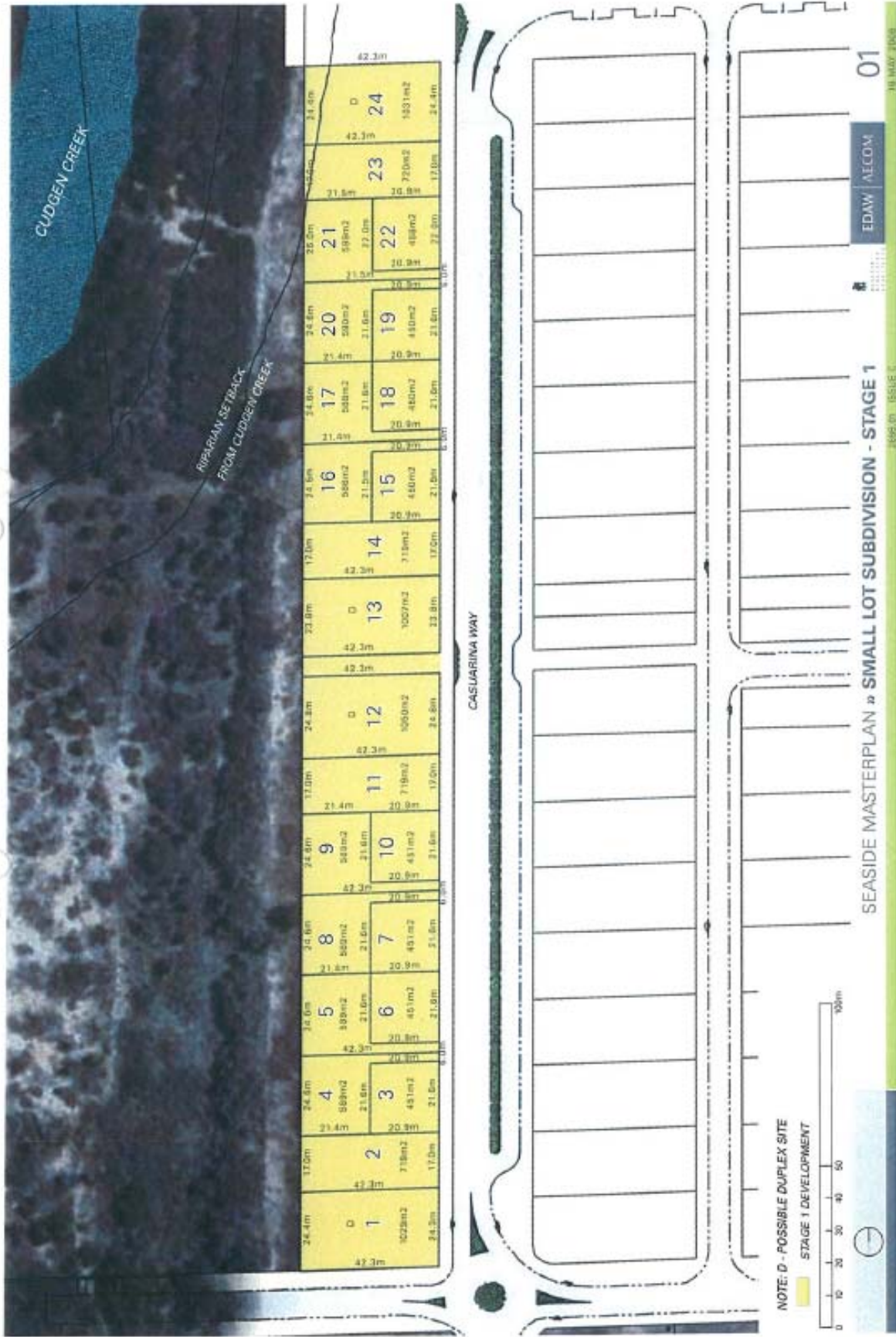


Tweed Shire Council

PO Box 816, Murwillumbah NSW 2484
 Tel: (02) 6670 2409
 Fax: (02) 6670 2483

SUBDIVISION PLANS

(As lodged with DA08/0755 in June 2008)





OPTIONS:

1. Defend the Appeal as necessary (this may result in negotiated conditions of consent).
2. Request the applicant to re-lodge the Development Application for reconsideration by Council at a Council meeting. Should this request be denied Council is to defend the appeal as necessary (this may result in negotiated conditions of consent).

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Defending this Appeal will have financial implications however limiting the issues will reduce costs wherever practical.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The Court is in a position to review additional material previously not available to Council. Accordingly it is recommended that Council defend this appeal as necessary which may result in negotiated conditions of consent or limited contentions for the Court to resolve.

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. Development Assessment Panel Report dated 17 June 2009 (ECM 3869295)
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13 [PR-CM] Development Application 1039/2001DA.02 for an Amendment to Development Consent 1039/2001DA for Commercial Boating Operations (Southern Boat Harbour) at Tweed River, Tweed Heads

ORIGIN:

Development Assessment

FILE NO: GR1/1/10 Pt3

SUMMARY OF REPORT:

The applicant seeks consent to include a recreational infra-red shooting activity in conjunction with the existing approved tourist facility, Tweed River Cruise boating operations.

The applicant has lodged a Section 96(2) application and proposes to undertake the activity from three sites within the Tweed River, a site opposite Dry Dock Road on the western side of Pacific Highway and two sites opposite Sunset Boulevard near Davey's Island.

The activity involves propelling a plastic disc (target) from the boat whilst patrons aim to hit the target. The target is propelled a maximum of 20m from the boat. Patrons hit the target via an infra-red light projected through an infra-red gun. The hit or miss of the target is recorded by a scoring machine. A staff member who is already waiting in the water collects the target and returns it to the boat.

The activity is to be operated infrequently for groups of up to five patrons. The vessel is anchored throughout the activity and the engine is turned off.

The proposal was placed on exhibition for 14 days and four submissions opposed to the activity have been received.

Consultation has occurred throughout the processing of the proposal with the NSW Police Force, the Gold Coast Airport and Civil Aviation Safety Authority, the NSW Maritime, the Department of Environment and Conservation and NSW Department of Lands.

It is therefore considered that this development application is suitable for approval subject to a range of conditions.

RECOMMENDATION:

That Development Application 1039/2001DA.02 for an amendment to Development Consent 1039/2001DA for commercial boating operations

(Southern Boat Harbour) at Tweed River, Tweed Heads be approved and the consent be modified as follows:

- 1. Delete Condition No. 1 and replace it with Condition No. 1A which reads as follows:**

- 1A. The development shall be completed in general accordance with the Statement of Environmental Effects and Local Environmental Plan extract map 1, undated, Site Plan undated and the Statement of Environmental Effects and the site plan prepared by Tweed Endeavour Cruises and dated 20 May 2009 (as amended in red), except where varied by the conditions of this consent.**

- 2. Add a new heading under existing Condition No. 2 which reads as follows:**

GENERAL for shooting activity

- 3. Add the following new conditions under the new heading “GENERAL for shooting activity” which read as follows:**

- 2.1 Prior to the commencement of the activity, the applicant shall liaise with the Civic Aviation Safety Authority (CASA). The applicant shall provide formal documentation to Council demonstrating approval has been obtained from CASA.**

- 2.2 The infra-red target shooting activity shall be limited to the three sites as indicated on the site plan, being a site opposite Dry Dock Road on western side of Pacific Highway and two sites opposite Sunset Boulevard near Davey’s Island. The applicant shall anchor west of Blue Waters Crescent when the Dry Dock Road site is used.**

- 2.3 Feeding of wildlife is not to be undertaken from the boat at any time.**

- 2.4 Only sequentially numbered discs are to be used as targets and all targets retrieved on each occasion. Before leaving a target shooting site, on each occasion, a stock-take shall be undertaken by the boat operator to ensure that all numbered discs are present. If any targets are missing a thorough search of the site and surrounds must be undertaken to retrieve any missing discs. Failure to retrieve all discs must be reported to the Director of Planning and Regulation or delegate.**

- 2.5 The boat motor, generator and stereo must to be turned off when target shooting occurs.**

- 2.6 Targets are to be shot only upstream from the anchoring site adjacent the Pacific Highway bridge (Dry Dock Road site) and anchoring must be west of Blue Waters Crescent as a minimum.**

- 2.7 Targets must be launched over open water to a maximum distance of 20m and must not be directed toward the shoreline at any time. Targets must not be launched until a person responsible for target collection is in place and ready to retrieve the target.**
- 2.8 No access to adjacent islands forming part of the Tweed Estuary Nature Reserve is authorised by this consent. No access is permitted without a licence from Department of Environment and Climate Change.**
- 4. Add a new heading under existing Condition No. 19 which reads as follows:**
- USE for shooting activity**
- 5. Add the following new conditions under the new heading “USE for shooting activity” which read as follows:**
- 19.1 Targets shall be fluorescent coloured and shall float.**
- 19.2 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.**
- 19.3 Hours of operation of the shooting activity are restricted to the following hours: -**
- 2 hours following sunrise until 2 hours prior to sunset, being full daylight hours only.**
- 19.4 Upon receipt of a noise complaint that Council deems to be reasonable, the operator/owner is to submit to Council a Noise Impact Study (NIS) carried out by a suitably qualified and practicing acoustic consultant. The NIS is to be submitted to the satisfaction of the General Manager or his delegate. It is to include recommendations for noise attenuation. The operator/owner is to implement the recommendations of the NIS within a timeframe specified by Council's authorised officer**
- 19.5 Patrons shall be transported to the site via courtesy buses and the like where possible.**
- 19.6 The sale or consumption of alcohol is not permitted whilst firearms are on board the vessel. Clear signage shall be displayed also advising of this.**
- 19.7 Firearms shall not be stored on the vessel outside of the authorised hours of operation.**

- 19.8** Signage visible from a distance of at least 100m shall be displayed on a minimum of both sides of the vessel whilst the activity takes place. The signage shall include the word 'infra-red' (at least 300mm in height) and to indicate the type of activity taking place. The signage shall include a telephone number to allow members of the public a contact opportunity prior to contacting emergency services or other government organisations. The telephone number shall be that for the Captain of the vessel or to a person in charge of the activity on board the vessel.
- 19.9** Prior to the initial commencement of the activity, the applicant shall arrange a notice within the Tweed Link and other media deemed appropriate by the General Manager or delegate to advise residence of the nature of the activity. The information shall include the nominated site areas of the activity and contact number/s of the organisation. The applicant shall provide documentary evidence to the General Manager demonstrating this has occurred.

REPORT:

Applicant: Tweed Endeavour Cruises
Owner: Department of Land and Water Conservation
Location: Tweed River, Tweed Heads
Zoning: Unzoned
Cost: Nil

BACKGROUND:

On 7 June 2002 consent was granted for the continued operation of the 'Tweed Endeavour Cruises'. The approval enables two tour boats to cruise the Tweed River to Tumbulgum on a daily basis. The application was lodged as a result of a Council resolution which sought to legalise all commercial boating operations within the southern boat harbour of Tweed Heads.

The current modification to the operation of the Tweed Endeavour Cruises was lodged with Council on 2 October 2007. Insufficient information and unsuitable site locations within the Tweed River have resulted in a lengthy assessment process.

The current modification seeks consent to undertake a recreational 'Laser Clay Shooting' activity from the boat. Laser Clay Shooting is a marketing name for the activity, clay targets and lasers are not used. The applicant proposes to use infra-red light to hit plastic discs (targets). The activity involves propelling the target from the boat and a small group of up to 5 people aiming to hit the target.

Patrons use modified guns which are equipped with infra-red light, similar to a television remote. The motors and generator of the boat are turned off prior to the commencement of the activity. Patrons are instructed how to use the guns before the activity commences and whilst the boat is anchored. The boat is anchored throughout the activity and the engine is turned off.

The targets are propelled from the boat by a catapult to a maximum distance of 20m. The catapult may be adjusted to shoot the disc to a specific distance (up to 20m). Only one target is dispensed at a time which the group aims to hit. The disc is fluro and is approximately 10cm in diameter. The disc is made from high grade plastic and reflective tape. The infra-red beam bounces off the reflective tape and returns to the gun.

An electronic scoring machine records whether patrons have hit or missed the target. The machine makes two noises, a 'ding' when the disc is hit and a 'splash' when missed. The volume of the scoring machine is adjustable; the maximum volume the applicant advises is below an average human's speaking level. The hit or miss noises are created electronically through a speaker system and are adjustable in volume.

One disc is propelled from the boat at 1 to 2 minute intervals. The target floats, however as a precaution foam is attached to the underside of the disc. A staff member who is waiting in the water on a surf ski approximately 20m from the boat, immediately collects the target and returns it to the boat. All discs are numbered for accountability.

The guns used are permanently converted to infra-red guns. The applicant is required by law to keep the guns locked in their cases until the activity commences. Upon completion of the activity the guns are also required to be locked away. The guns are valued at approximately \$7,000 each. As per the firearms laws, the guns cannot be used on the vessel unless a staff member has been permitted by the police with a master class license which gives permission to teach and supervise passengers on the use of this equipment. The master class licence is issued by the Fire Arms Department.

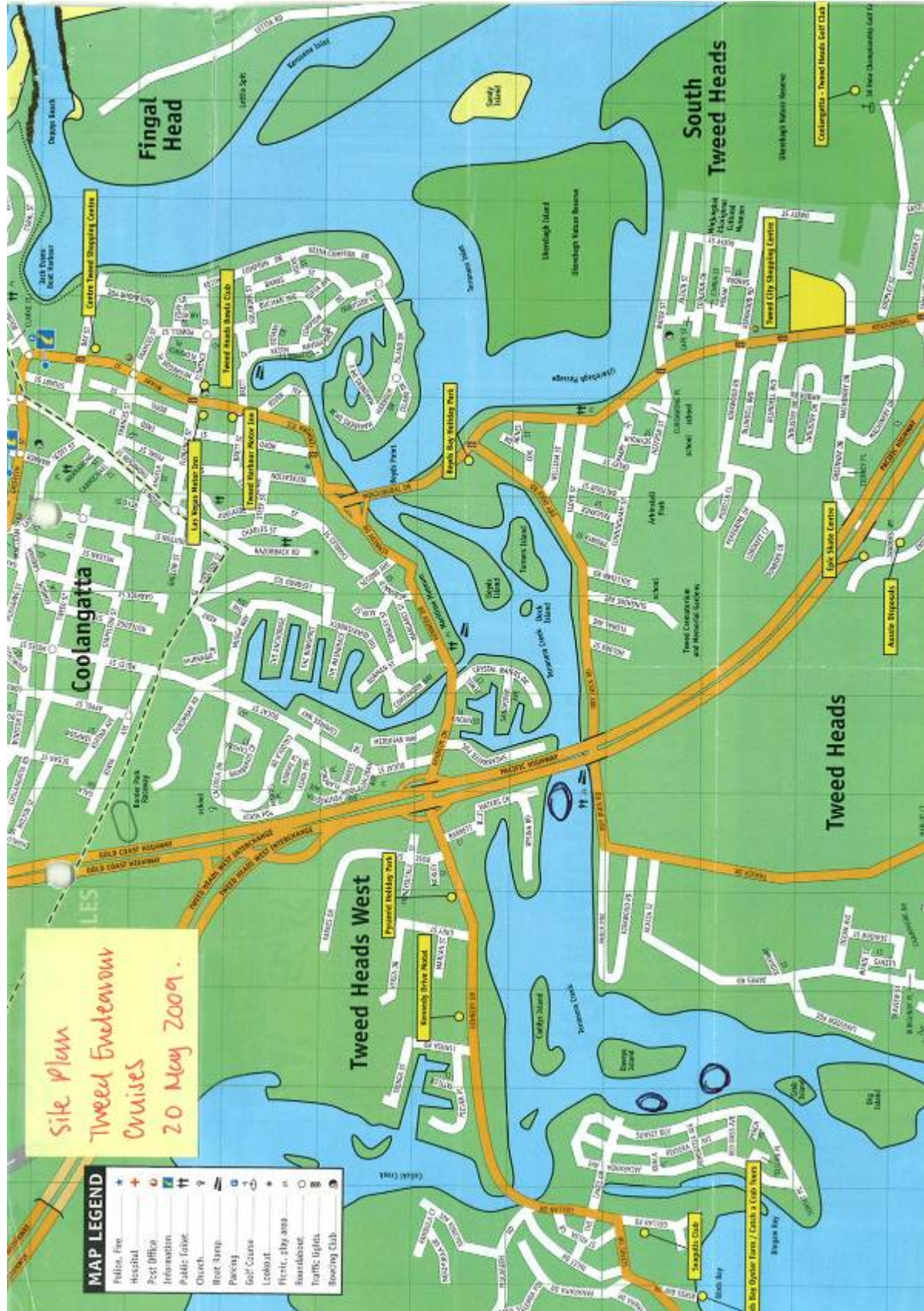
The applicant advises infra-red light is invisible to humans, aircraft and animals. The activity is designed for groups, it is not intended to be a regular cruise or to operate for individual persons. The applicant intends to market the activity to corporate and conference groups. The activity would take place every few months for a maximum of three hours. No alcohol or intoxicated persons are permitted in the area where whilst the activity occurs.

The proposal was recently re-advertised and re-exhibited. The previous areas within the Tweed River proposed to be used for the activity were deemed to be unsuitable. In consultation with council officers, three new sites have been identified to undertake the activity; a site opposite Dry Dock Road on western side of Pacific Highway and two sites opposite Sunset Boulevard near Davey's Island.

As a result of the exhibition period four submissions to the proposal were received.

Extensive consultation has occurred throughout the processing of the proposal including that with NSW Police Force, Gold Coast Airport and Civil Aviation Safety Authority, NSW Maritime, Department of Environment and Conservation and NSW Department of Lands who support the proposal.

SITE DIAGRAM:



CONSIDERATIONS UNDER SECTION 96 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

Section 96(2) Environmental Planning and Assessment Act 1979 (EPA Act 1979) and Division 12 of the Environmental Planning and Assessment Regulation 2000 enables Council as the consent authority to modify a development consent provided an assessment as per the legislation is undertaken. The following assessment concludes the development is consistent with the legislation, notably it is substantially the same development and the environmental impacts are deemed to be minimal. The original approval for the Tweed Endeavour Cruises was defined as a tourist facility. The proposed activity is ancillary to this tourist facility and is therefore not considered to be a new use.

Substantially the same development

The original development consent granted the continued operation of the 'Tweed Endeavour Cruises' (1039/2001DA). The approval was for a tourist facility and enables two tour boats to cruise the Tweed River to Tumbulgum on a daily basis.

The approval limits the 17 m and 20m vessels to a maximum of 100 persons each. Customers are transported to the public wharf within the southern boat harbour via a courtesy pick-up bus.

The modification seeks to operate generally within the same restrictions as per the original development consent. The hours of operation will be further restricted for the recreational shooting activity to limit impacts on residential land and wildlife. This is discussed in detail later in this report. The applicant seeks to introduce another type of recreational activity to the current approval. The proposal is substantially the same development.

The original DA was not integrated for the purposes of the EPA Act 1979. Council officers have however liaised with other authorities as a precautionary measure, including the NSW Police Force, the Gold Coast Airport (GCA) and Civil Aviation Safety Authority (CASA), the NSW Maritime, the Department of Environment and Conservation and NSW Department of Lands. The following responses were received in response to this consultation:

NSW Police Force

The NSW Police Force reviewed the proposal and evaluated the activity in accordance with a Safer by Design Evaluation process, identifying the activity as a medium crime risk.

The NSW Police Force identified possible community fears associated with people being sighted with firearms. Phone calls to appropriate authorities are anticipated by the NSW Police Force which would affect the efficiency of emergency services and other government organisations.

The NSW Police Force provided several recommendations to Council to overcome the above concerns which have been included within the conditions of consent, including appropriate advertising on the boat, the Tweed Link and other mediums. This advertising will act to inform the community about the nature of the activity and to provide contact details of the operator on board the vessel during the activity.

Gold Coast Airport (GCA) and Civil Aviation Safety Authority (CASA)

As the proposal involves infra-red beams the GCA and CASA have no objection to or requirements for the proposal.

NSW Maritime Authority

The Maritime Authority advised that no impacts are envisaged regarding potential maritime issues associated with the proposal, the Maritime Authority have no further interest in the matter.

Department of Environment and Conservation (DEC)

The DEC provided comments advising Council to consider the provisions of the Protection of the Environment Operations Act. Particular consideration of noise generation from the simulated gun activities travelling across water towards residential areas at Terranora and Fingal was recommended. DEC further advise Council to consider likely impacts on areas of native vegetation, with special reference to threatened or regionally significant flora and fauna species, populations and ecological communities. Further the DEC specifically highlight the need to address any impacts on bird life from the stimulated gun noise. These matters are discussed in detail within this report.

NSW Department of Lands

The Department was consulted regarding landowners consent who granted permission for the application to be lodged. The Department did not make any further comments.

The provisions of any environmental planning instrument

Tweed Local Environmental Plan 2000 (TLEP)

The subject site is not located in an area identified by any land use zone. Clause 13 of the TLEP requires development within unzoned land to be compatible with surrounding development and zones.

The suitability of the site for the cruises has been tested and supported as per the previous development application. The current activity is considered to be ancillary to the approved cruises and is therefore suitable for the proposed sites.

Clauses 4 and 8 of the TLEP have also been considered in the assessment of the modification. The anticipated environmental impacts and those on other users of the waters have also been considered throughout this assessment and are detailed within this report. The likely environmental impacts on wildlife in particular are deemed to be

acceptable and are discussed in detail later in this report. The NSW Maritime Authority have not identified any conflict between river users. The proposal will not result in adverse cumulative impacts.

Clause 33 of the TLEP requires that development in the vicinity of Coolangatta and Murwillumbah Airports and on route flight paths does not increase the risk of obstacles to aircraft. As previously discussed the proposal was referred the Gold Coast Airport and the Civil Aviation Safety Authority who raised no concern with the proposal provided infra-red beams are used.

State Environmental Planning Policies (SEPPs)

SEPP No 71 – Coastal Protection

The proposal is consistent with the aims of the SEPP and the matters for consideration. It is noted that approval has already been granted for the use of the river for two vessels. The proposal is considered to be ancillary to this approval, no significant change to the existing operation is proposed.

Access to and along the foreshore will remain unchanged. The sites chosen to anchor the vessel during the operation of the proposed activity are deemed to be suitable given the constraints of the river in terms of habitats and the like.

North Coast Regional Environmental Plan 1988

Clause 15: Rivers, streams and wetlands

This clause contains several matters for consideration for any development within a river, stream or the like.

The activity will not affect the existing amateur and commercial fisheries as no fishing is proposed. The sites have been chosen to avoid impacts on sea grasses and loss of habitats.

Clause 32B: Coastal Lands

The proposal is consistent with the NSW Coastal Policy 1997, Coastline Management Manual, and North Coast: Design Guidelines.

The development will not result in permanent overshadowing of the foreshore or waterfront open space such areas may be partially shadowed in the event the boat is moored.

There are no draft environmental planning instruments which are of relevance to the proposal.

Development Control Plan (DCP)

Section A2-Site Access and Parking Code

The current travel patterns and car parking arrangements for the Tweed River Cruises will continue to operate. This arrangement has been previously assessed and approved by Council.

There is no increase in numbers of patrons or boating services and therefore no new demand for car parking.

Currently most patrons arrive to the Wharf Street marina via a courtesy bus or private coach, private vehicles are also used. The Wharf Street marina contains a formal car parking area.

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

Further to the likely environmental impacts discussed previously the following impacts are discussed:

Impacts on wildlife

The three locations proposed to undertake the activity are west of the Pacific Highway near Dry Dock Road and two areas near Sunset Boulevard in Tweed Heads West. All are within open stretches of water in areas of the river without a suitable "shore", i.e. rock revetment covers the banks. Thus the activity is unlikely to have an adverse impact on roosting shorebirds. In addition, the applicant has agreed to ensure targets are sent out over open water rather than to the shoreline.

Additional information submitted indicates that noise generated by the activity such as the scoreboard will be controlled.

Two of the proposed sites are near Daveys Island within the Nature Reserve. However no shore access is proposed, the applicant has made a commitment to shoot the targets only over open water to a controlled distance (maximum of some 20m) Daveys Island is not known to contain a flying fox roost site.

Impacts on Osprey

Noise and disturbance can cause adult Ospreys to abandon eggs, chicks or a potential nest site. Nest site buffers are an established management tool designed to protect breeding birds and nest trees from unnecessary disturbance, especially during the breeding season and buffers should be maintained, or restored to, their pre-clearing state. Any works within a nest site buffer are to occur outside the breeding season. Brisbane City Council has determined that 300m is an appropriate buffer distance between the nest and any development. There are several Osprey nests within proximity of the proposed sites. The nests are located along a reasonably busy waterway and are subject to boating traffic on a regular basis.

The site considered to be most sensitive is that on Big Island (T16) as it has been found that Ospreys occupying natural nest sites in large trees can be more prone to disturbance when breeding or raising young when compared to those on artificial structures in more urbanised environments. The nearest proposed anchoring location to this nest is some 700m away.

The nest site near Kennedy Drive (T11) is some 890m from the nearest proposed anchoring site.

The anchoring site near the Pacific Highway bridge is likely within the 300m buffer to T13 (some 200- 250m away) and is of some concern. However, the nest site is already in a fairly exposed location adjacent to the noise of the Highway bridge traffic, Dry Dock Road traffic, walkers and recreational users of the area and passing river boat traffic. Providing the activity is aimed upstream and noise is controlled, impacts on ospreys are likely to be minimal. The vessel will be restricted to anchoring south of Blue Waters Crescent and closer to the northern bank in this locality to maximize the buffer distance, or else to avoid this site during the breeding season. Moving further upstream is limited by marine vegetation (seagrass beds) that could be damaged during anchoring.

Infrared radiation

Electromagnetic radiation exists in a range of frequencies called the electromagnetic spectrum. Each frequency has a specific wavelength and as the frequency decreases, the actual length of the wave gets longer. Infra-red radiation lies between visible light and microwave radiation on the spectrum. It has a longer wavelength and lower frequency than visible light and is most often felt as heat. Infra-red cameras and sensors have been used for photographing wildlife at night for many years without scientific reports resulting in relation to a danger posed from such practice. The activity is not proposed during darkness, thus should not impact on microbat or flying fox feeding behaviour.

Potential to pollute the waterway

It appears the applicant has chosen slower-moving areas within in the River to undertake the activity. The discs are brightly coloured with a reflective strip.

The information provided regarding the detail of the targets indicates they will remain in tact as they are made from high grade plastic. The disk is fluorescent in colour, being bright and highly visible. The targets also have a reflective tape on them. The targets float, however as a precautionary measure foam is super glued to the bottom to ensure it floats.

As previously discussed, the target is shot from the boat by a catapult which can be adjusted to shoot to a specific distance. Approximately 20 meters is the maximum distance a target is fired. When the target lands, a staff member on a surf ski picks up the clay and returns it to the boat. The person on the ski is already waiting about 20 meters from the boat to collect the clay. The clays are shot out at about 1 - 2 minute intervals. The targets are also numbered to assist in recording.

Suitability of the site for the development

The suitability of the River for the cruises has been tested and supported in the original development application. The current proposal is ancillary to that approval and is therefore suitable. As discussed the activity is likely to result in minimal environmental impacts.

Notification and submissions made in accordance with the Act or Regulations

The proposal was notified for a period of fourteen days from 21 November 2007 to 5 December 2007 to the general public. In response to the exhibition period nine submissions opposed to the proposal have been received.

The applicant subsequently amended the proposal in consultation with Council staff. The amended proposal was re-notified to those who previously lodged a submission. The proposal was placed on public exhibition for fourteen days from 1 July to 15 July 2009, this included advertising within the Tweed Link. In response to this exhibition period four submissions were received, these are summarised below:

Issue	Comment	Assessment
Consultation with other authorities	Council should seek expert opinions from such authorities as NSW Department of Environment and Climate Change, the NSW Police/Fire Arms Licensing Branch/Traffic Division, the Tweed/Gold Coast Airport Authorities and NSW Maritime.	As discussed within this report a number of authorities were consulted during the assessment of the proposal who raised no objection to the proposal.
Impacts on Wildlife	Within short distances of each of the three sites are four registered osprey nesting sites with each bird site having the potential to have nesting birds using the adjacent waterways to fish during the nesting cycle from April to September. The sites are T16, Big Island, T11 maritime Museum, T32 Wyuna Street and T13 Boyds Bay Bridge.	Impacts on these osprey nests were considered in the assessment of the proposal. The assessment concludes the osprey nests are unlikely to be affected due to the existing site considerations including their exposure to vehicular and boating noise of the road system and river.
	The Broadwater is known as a migratory habitat protected under the Jamba/Camba Treaties. An appropriate assessment needs to be undertaken.	<p>The sites proposed to be used in conjunction with the proposed activity are not proposed within the Broadwater. The original cruises have approval to use the Broadwater.</p> <p>The Jamba and Camba apply to the whole of Australia. Jamba and Camba list terrestrial, water and shorebird species which migrate between Australia and the respective countries. In both cases the majority of listed species are shorebirds. The major threat to shorebirds is loss</p>

Issue	Comment	Assessment
		of roost sites. This proposal will should not impact on these shorebirds as a result of the amended sites.
Impacts on Residential Areas	Other boat cruises feed birdlife which results in birds cumulating in the Terranora Inlet for example. This results in issues such as defecation.	The applicant has not proposed to feed birdlife as part of this proposal. A condition has been recommended as a precaution.
Impacts on motorists and authorities	<p>The site proposed opposite to Wyuna Street is very close to the bridge, the activity will draw the attention of drivers and passengers on the bridge.</p> <p>The general public, including other river users will not be conversant with what is taking place and will see shotguns being pointed and fired. Authorities are subsequently likely to receive many phone calls. Signs on the sides of the boat will not be visible from the Terranora Creek Bridge.</p>	<p>The signage recommended by the applicant is in line with that required by the NSW Police Force as discussed previously within this report. The signage is intended to inform the public of the activity taking place, in addition the applicant is required to advertise the proposal in the Tweed Link.</p> <p>It is considered unlikely that guns would be visible from the Tweed Bypass Bridge. Further the applicant is required to advertise and educate the community via the Tweed Link and other advertising mediums as previously discussed.</p>
Impact on aircraft	The activity is located a very short distance from the Tweed Heads/Coolangatta Airport and is practically right under one of the flight paths. Lasers can cause visibility and electronic tracking concerns to airline carriers.	The Gold Coast Airport and Civic Aviation Safety Authority were consulted during the assessment of this proposal, as previously discussed no concern was raised regarding the activity.
Evidence	The applicant has provided no evidence that the infra-red light is harmless to users and wildlife nor that alcohol restrictions will be enforced.	As discussed, the assessment concludes as the proposal will not occur during darkness, microbat or flying fox feeding behaviour will not be affected.
Compliance	There are no assurances that the discs will be collected in the fast moving murky water. If they are not collected they would be harmful to wildlife.	As discussed the applicant proposes to position a staff member in the water on a surf ski to collect the targets when they land on the water. The targets are fluoro and float. A stock take type system of the targets is also proposed.
Site Suitability	Information has not been provided advising that anchoring at the proposed locations does not constitute a boating hazard for other passing marine craft. The Dry Dock Road site is close to the Tweed	The NSW Maritime Authority were consulted during the assessment of the proposal, the authority raised no concern in relation to boating hazards.

Issue	Comment	Assessment
	Bypass Bridge with bridge pillar obstacles in a fast flowing river current.	
	The proposed site's at West Tweed Heads are located adjacent to Davey's Island, part of the Tweed River Nature Reserve, near a quiet residential area. Noise from convention groups together with other social activities over two hours is not conducive to the peacefulness of this reserve area and its quiet nearby residential neighbourhood.	The boating operations already have approval to cruise the Tweed River, with up to 100 persons on each vessel. The proposed activity will take a maximum of 5 patrons and 4 staff. The noise of this smaller group is likely to be significantly less than that of the larger regular cruise.
	Tourism activities of this nature are out of step with Federal and State Government support for eco-sensitive and environmentally sustainable tourism. The Land and Environment Court have formally acknowledged the environmental significance of the Tweed River in its rejection of the expansion of the Chinderah Marina. The operation of a laser clay shooting business is in direct conflict with the Court's assessment of the environmental significance of the Tweed River.	As discussed, the applicant has approval for two cruise vessels to cruise the river which can cater for up to 200 persons. The proposed activity will cater for a substantially smaller group of up to 9 people. The environmental constraints of the River have been considered in this assessment.
	This gun-based activity is in contradiction with local, state and federal values. This type of recreational activity is in conflict with the wishes of the local community for both the environment and cultural education of young people. Most levels of government in Australia are directing funds to activities that reduce violence in our community.	As previously discussed, the proposed activity uses infra-red light. Wildlife, humans, aircraft and the like cannot be harmed. The perceived harm of this activity may be allayed through advertising and educating the community.
Trial Period	Trial periods to assess the impact of noise through the number of local complaints, places an unfair and arduous monitoring load on the community.	The applicant has not proposed a trial period, however this is an option recommended within this report.

Public interest

Despite the issues raised in the submissions the proposal is considered to be in the public's interest. The proposal is consistent with the applicable legislation and will have minimal environmental impacts.

OPTIONS:

1. Council approves the proposal subject to conditions of consent.
2. Council approves the proposal subject to a trial period (12 months) and appropriate conditions of consent are provided to the applicant from the Director Planning and Regulation.
3. Council refuses the proposal with reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has a right of appeal if dissatisfied with the determination.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed target shooting activity is considered to be ancillary to the existing approval and is therefore substantially the same development. The proposed development has attracted a number of objections which are largely based on the suitability of the site. The assessment above demonstrates the environmental impacts associated with the proposal are deemed to be minimal.

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

14 [PR-CM] World Rally Championships

ORIGIN:

Development Assessment

SUMMARY OF REPORT:

The purpose of this report is to advise Council of actions undertaken in dealing with the World Rally Championship since the introduction of the Motor Sports (World Rally Championships) Act 2009.

The report also provides Councillors a copy of Council Officer's comments and recommended conditions regarding the World Rally Championship to be held in the Tweed and Kyogle Shires from 3 to 6 September 2009.

RECOMMENDATION:

That the report on the World Rally Championships be received and noted.

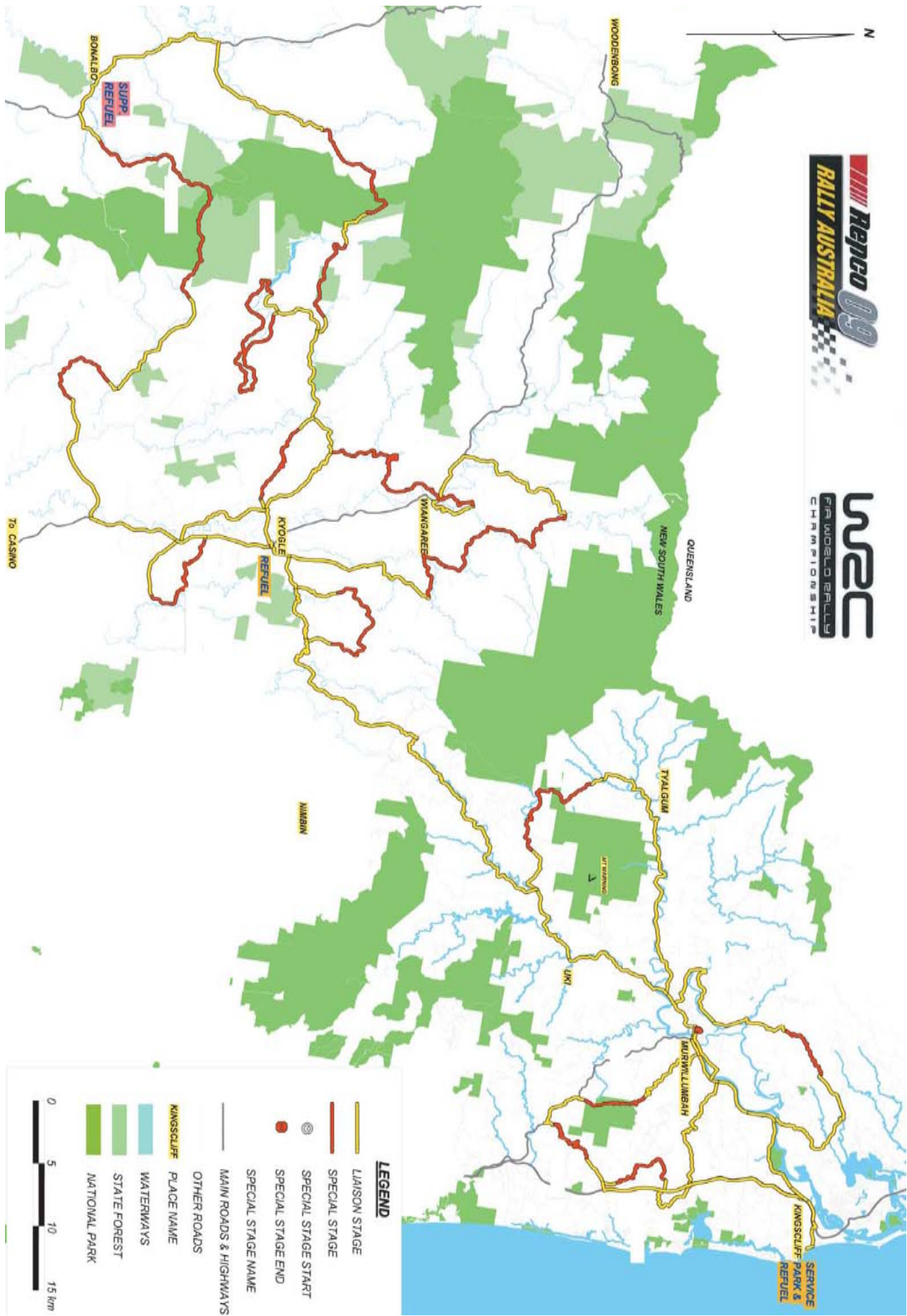
REPORT:

BACKGROUND:

Repco Rally Australia 2009 is a round of the Federal Internationale del'Automobile (FIA) World Rally Championship (WRC).

The route for Repco Rally Australia will cover just under 350km in competition roads in the Tweed and Kyogle Shires. The proposed event is scheduled for 3 to 6 September 2009 and will be held for an initial five events taking it through to 2019. The event comprises of 35 competitive special stages over 16 routes (some stages are repeated) between Burringbar and Bonalbo.

Below is a copy of the route.



REPORT:

The Motor Sports (World Rally Championships) Act 2009 (NSW) came into effect on the 1 July 2009 to facilitate the conduct of the WRC. The Act precludes a number of standard application processes that would, in ordinary circumstances, be required for an event of this nature.

Rally Australia wrote to Council on 1 June 2009 enclosing copies of all reports prepared for the WRC. Rally Australia encouraged feedback from both staff and Councillors and requested a workshop to discuss the reports. A copy of this letter is **attached**.

Council staff subsequently undertook an assessment and prepared a report as background to a workshop with the Councillors, which was held on 7 July 2009. The report containing Council Officer's comments is **attached**.

On 14 July 2009, Ian Macdonald, Minister for State Development wrote to Council advising that the NSW Department of Premier and Cabinet, through its Community and Events Division is facilitating cross-agency support and involvement in the WRC. A copy of the letter is **attached**.

By letter dated 27 July 2009, Council's General Manager responded to the Minister's letter advising of Council's actions to date and attaching a copy of the Council Officer's report on the World Rally Championships planning and environmental assessment reports. A copy of this letter is **attached**.

By letter dated 3 August 2009 the NSW Government's Homebush Motor Racing Authority wrote to Council confirming the enacting of special legislation to facilitate the event, and advising that the Minister for State Development had authorised the Homebush Motor Racing Authority of the Department of Industry and Investment to undertake any and all necessary functions to facilitate the event authorisations including the consideration of any responses or draft conditions considered appropriate by other key agencies or Local Government Councils. Therefore the Authority has now taken responsibility for addressing Tweed Council's submission for the World Rally Championship event. A copy of this letter is **attached**.

CONCLUSION:

This report provides advice to Council of actions undertaken in dealing with the World Rally since the introduction of the Motor Sports (World Rally Championships) Act 2009.

The report also provides Councillors a copy of Council Officers comments and possible conditions regarding the World Rally Championship to be held in the Tweed and Kyogle Shires from the 3 to 6 September 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. Copy of the letter from Rally Australia Pty Ltd dated 1 June 2009 (ECM 3919300)
 2. Council officer's assessment for the workshop which was held on 7 July 2009 (ECM 3919304)
 3. Copy of the letter from the Minister for State Development (Ian Macdonald) dated 14 July 2009 (ECM 3919306)
 4. Copy of the letter of response from Tweed Shire Council's General Manager dated 27 July 2009 (ECM 3919307)
 5. Copy of the letter from the Homebush Motor Racing Authority to Council dated 3 August 2009 (ECM 3922450)
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15 [PR-CM] State Significant Site Application - West Kingscliff (Gales Holdings Land)**ORIGIN:****Development Assessment**

FILE NO: PF1070/30 Pt1; PF1070/721 Pt1; PF1070/75 Pt1; DA1070/75 Pt1; PF1070/175 Pt1; PF1070/165 Pt1; PF1070/155 Pt1; PF1070/145; PF1070/135; PF1070/830; PF1070/125; PF1070/115; PF1070/105; PF1070/95; PF1070/40; PF5605/15; DA1460/1370; PF1460/1370; DA05/0004; DA05/0271; DA03/1258; DA04/1331; DA07/0122; DA05/1450; DA1460/1365; PF1460/1365; PF4445/10; GS4/93/76; PF1070/210

SUMMARY OF REPORT:

In November 2007 the NSW Minister for Planning agreed to consider West Kingscliff (Gales Holdings land) as a potential State Significant Site under the provisions of the SEPP (Major Project) 2005.

To pursue this further Council was required to undertake either a State Significant Study for the Gales Holdings Land or a Locality Plan for the wider Kingscliff area.

To date budgetary constraints and various unresolved litigation between Gales and Council have impacted upon the progression of these matters. However, at the April 2009 Council Meeting the Planning Reform Works Program was adopted. The program specifies that the commencement of the Kingscliff Locality Plan would be targeted for the 2010/2011 financial year (subject to further Council budget endorsement).

Given the advancement of the soon to be exhibited Draft Tweed LEP 2010 and the recent decision by the Land & Environment Court in relation to DA05/0004 (filling land in Turncock Street) the benefit in listing the Gales Holdings Land as a State Significant Site is considered to be no longer as evident.

As the State Significant Site application was made by Tweed Shire Council the Department of Planning has sought a status update on the application. The Department have advised that if Council is not progressing with the State Significant Study the application should be formally withdrawn.

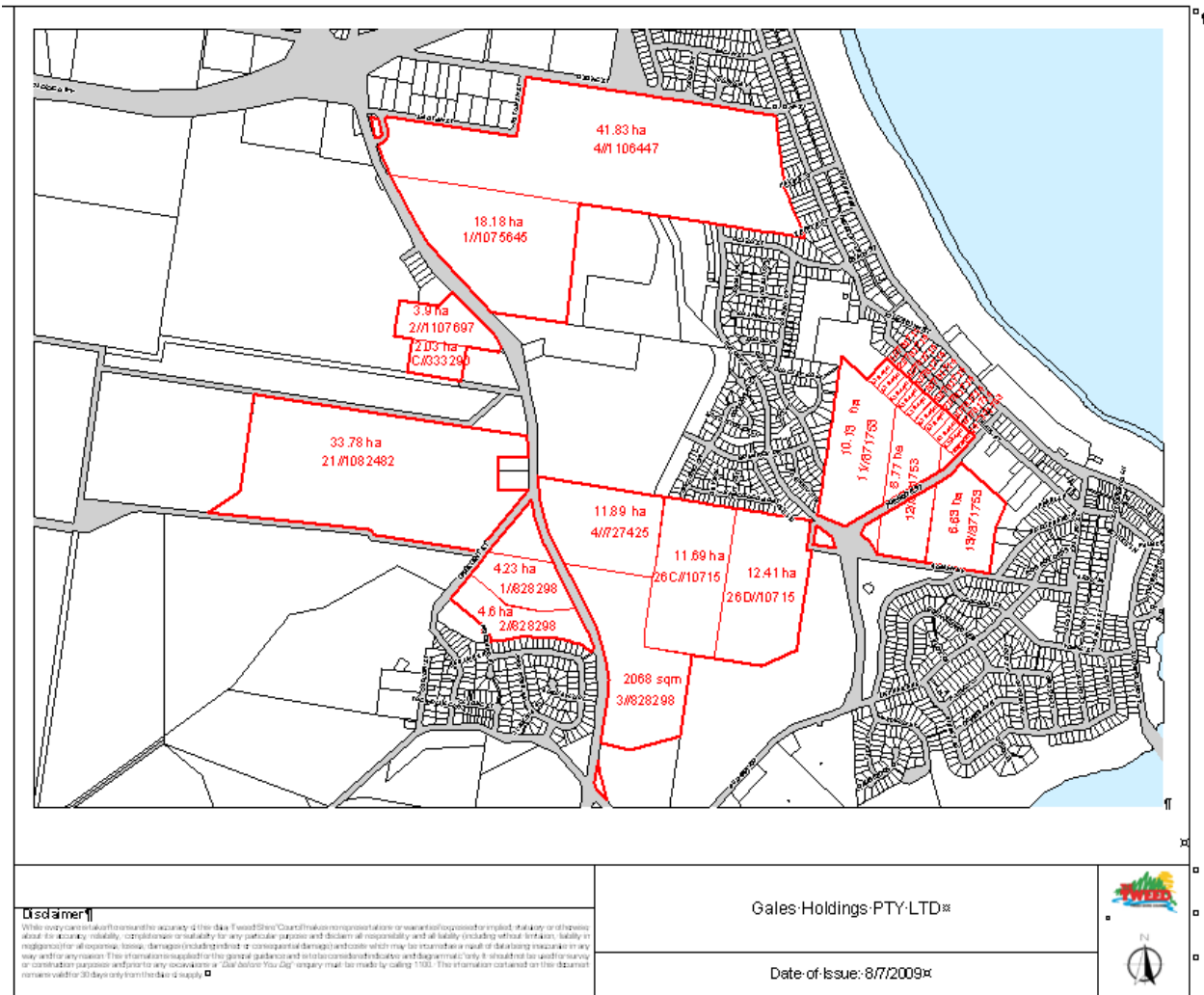
Withdrawal of the application is recommended as alternative strategic actions will be forthcoming in the form of the Kingscliff Locality Plan and the Draft Tweed LEP 2010. Furthermore, the withdrawal of the State Significant Application will not compromise the applicant's individual opportunities to develop the subject land by way of another process.



RECOMMENDATION:

That Council formally advises the Department of Planning that the Gales Holdings State Significant Site Application (Reference No. S07/01166) is withdrawn and no further action is required from the Department of Planning.

SITE DIAGRAM:



GALES HOLDINGS STRUCTURE PLAN
(NOT APPROVED OR ENDORSED BY COUNCIL)



ALLEN JACK & COTTIER
CONSULTANTS

Gales Holdings Structure Plan
Gales Holdings

The State Significant Site Process

The Department of Planning provided Council with a copy of then Draft Guidelines for State Significant Sites as duplicated below (flow chart included):

Introduction

The State Environmental Planning Policy (State Significant Development) (SSD SEPP) 2005 provides for the Minister to declare an area to be a State significant site. When declaring a site to be of State planning significance, the Minister will also establish the planning regime on that site.

These provisions will be used to deliver the State's planning objectives on major sites important in the implementation of the Metro Strategy and other regional strategies. The provisions will also be used to facilitate major investment in economic and employment generating development in NSW and the redevelopment of major State government sites.

In the past, when the Minister determined to develop a new planning regime on a major site, a regional environmental plan or SEPP had to be made. This has led to a proliferation of site specific planning instruments.

Under the provisions of the SSD SEPP, the Minister will amend the SEPP to add the site to Schedule 3 of the SEPP. These provisions will be kept under review and will be revoked when the State's planning objectives have been achieved on the site.

Criteria for a State Significant Site

A State Significant Site (SSS) must be of State or regional planning significance because of its social, economic or environmental characteristics.

When considering whether a site can be categorised as being of State significance, the Minister will consider whether the site meets one or more of the following criteria:

- (a) be of regional or state importance because it is in an identified strategic location (in a State or regional strategy), its importance to a particular industry sector, or its employment, infrastructure, service delivery or redevelopment significance in achieving government policy objectives; or*
- (b) be of regional or state environmental conservation or natural resource importance in achieving State or regional objectives. For example protecting sensitive wetlands or coastal areas; or*
- (c) be of regional or state importance in terms of amenity, cultural, heritage, or historical significance in achieving State or regional objectives. For example sensitive redevelopment of heritage precincts; or*
- (d) need alternative planning or consent arrangements where:
 - (i) added transparency is required because of potential conflicting interests*
 - (ii) more than one local council is likely to be affected.**

Procedures for being listed as a SSS

Nomination as a potential SSS

There are two methods by which the process for considering and including a site as SSS can be initiated. The Minister may initiate the process by nominating a site to be a potential SSS or a proponent may initiate the process by requesting that the Minister nominate their site to be a potential SSS.

Where a proponent makes a request that the Minister nominate the site as a potential SSS, the request should be accompanied by preliminary document that provides details of:

- *the site in its current zoning context;*
- *the State and regional significance of the site in terms of meeting the criteria outlined above; and*
- *future land use proposals*
- *views of the local Council*

Preliminary consultation with council

Prior to a proponent making a request of the Minister for the listing of the site as SSS, proponents should consult with the relevant local council to determine if the appropriate planning regime can be efficiently delivered through local planning processes.

Site Investigation

Prior to making a decision as to the State significance status of a site, the Minister may initiate an investigation into a potential SSS by requiring the Director-General to undertake a study or to make arrangements for a study to be undertaken for the purpose of determining:

- *the appropriate land use and development controls for the site.*
- *whether any future development on the site should be declared to be SSD*

The study is to assess:

- a) *the state or regional planning significance of the site*
- b) *the suitability of the site for any proposed land use taking into consideration environmental, social and economic factors, the principles of ecologically sustainable development and any State or regional planning strategy*
- c) *the implications of any proposed land use for local and regional land use, infrastructure, service delivery and natural resource planning; and*
- d) *any other matters required by the Director-General.*

Requirements for the investigation

In issuing any requirements for the study, the Director-General will consult relevant agencies and the local councils. The Director-General may also convene a Planning Focus Meeting to assisting in identifying and prioritising issues to be addressed in the Study.

If the proposed planning changes on the site are likely to affect threatened species, populations or ecological communities or their habitats, the Director-General must formally consult the Director-General of Department of Environment and Conservation and/or Director-General of Department of Primary Industries, regarding requirements for the Study under the provisions of s34A of the EP&A Act.

If the proposed planning changes on the site are likely to affect items on the State Heritage Register, the Director-General must formally consult with the Heritage Council regarding requirements for the Study under the provisions of s83 of the Heritage Act.

Exhibition and consultation

The Director-General will exhibit the study for a minimum of 30 days with an invitation to the public to make written submissions. The Director-General will send a copy of the study to the relevant councils and agencies for comment.

When submissions are received the Director-General will consider the matters raised and if relevant modify the proposal to minimise impacts on the environment or to make it more consistent with State or regional planning objectives.

Director-General's Assessment

The Director-General shall assess the study and the implications of the proposed changes in land use and provide recommendations to the Minister relating to.

- a) *the state or regional planning significance of the site*
- b) *the suitability of the site for any proposed land use*
- c) *the implications of any change in land use.*

The Minister may establish an independent panel at any phase of the process. For example advice may be required in relation to

- *matters to be considered in the study*
- *the proposed planning provisions and any technical assessment to arrive at these provisions*

The Minister and Director-General will take into consideration any recommendations made by the panel.

Minister's determination and SEPP amendment

If the Minister intends to proceed with declaring the site to be a State significant site, the Minister must consult with other relevant Ministers under s37 as part of the process of amending the SSD SEPP to list the site as State significant.

Following this advice, the Minister must make a determination as to whether the site is to be listed as SSS.

If the Minister determines to make the site SSS, the SSD SEPP must be amended to add the site and the relevant planning provisions to Schedule 3 of the SEPP. As a result the provisions in the council LEP will be amended and replaced by the provisions in the SSD SEPP.

SSS Planning Provisions

The planning provisions relating to a SSS will be listed in Schedule 3 of the SSD SEPP. Depending on the site, the planning provisions may relate to:

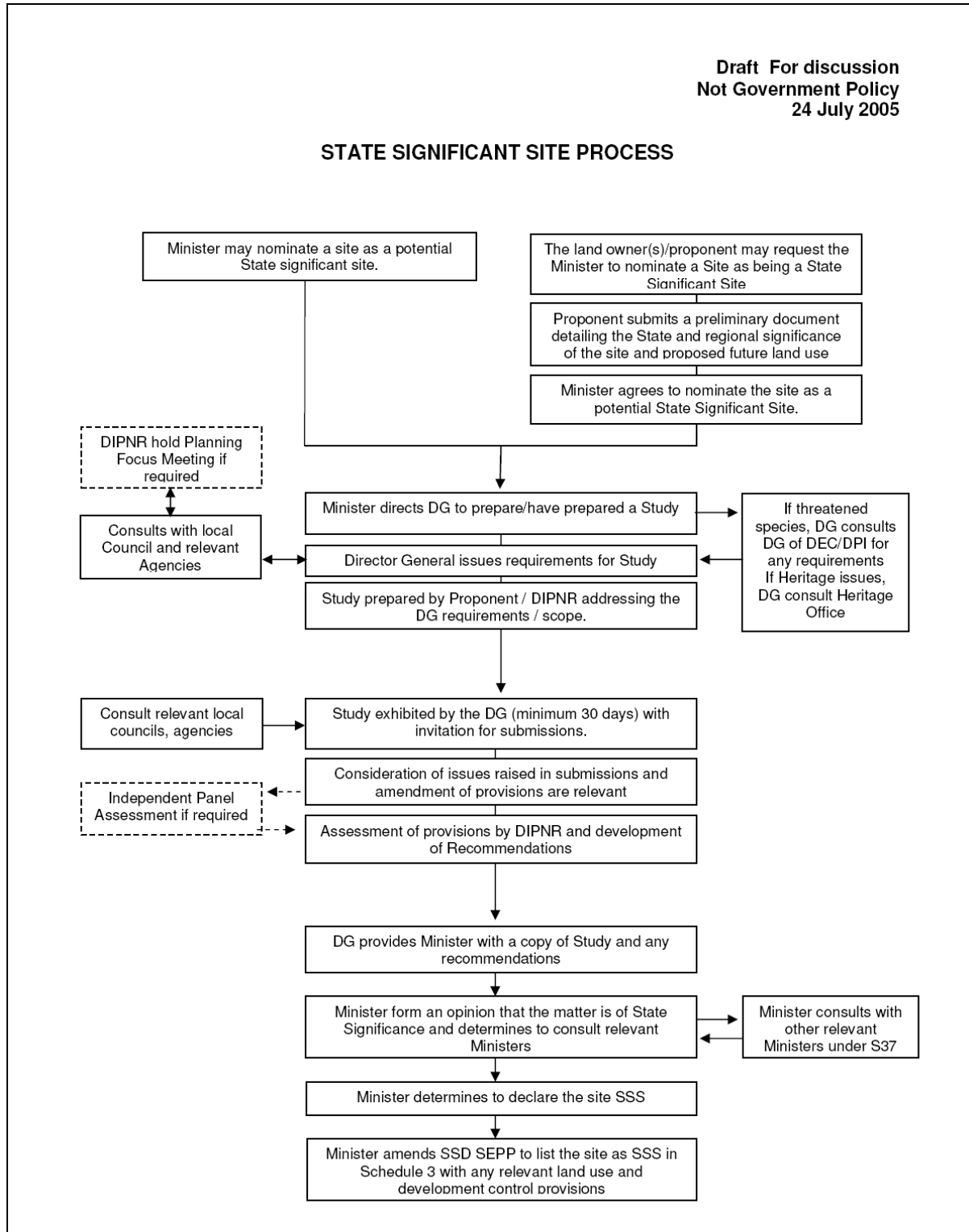
- *zoning and permitted land uses possibly accompanied by a map with layout of subsequent land uses on the site*
- *performance criteria applying to different types of development*
- *list of exempt or complying development with any relevant performance criteria*
- *list of any State significant development to be determined by the Minister and/or local development to be determined by council.*

Review of the SSS provisions

The SSD SEPP will be reviewed as a minimum every 5 years. At that time, a judgement will be made as to whether the State's planning objectives have been fully or partly achieved on the site.

As soon as these objectives, the State's approval role will be withdrawn and the planning provisions in the SSD SEPP will be integrated into the relevant LEP (sic).

STATE SIGNIFICANT SITE PROCESS FLOW CHART



Tweed Shire Council's State Significant Site Application Request

Following discussions with the then Council Administrators it was determined in June 2007 that Council would write to The Hon Frank Sartor as Minister for Planning seeking assistance with the *Gales-Kingscliff* land to ensure orderly planning can be achieved for the Kingscliff locality.

State Government intervention to “call in” the 220ha of land as a State Significant Site in accordance with the SEPP Major Project was considered a necessary request (at the time) to avoid unnecessary litigation and provide some sound planning for the long term development of the locality.

Subsequently the State Significant Site application was made by Tweed Shire Council in June 2007.

While reviewing this request the Department of Planning sought additional information in regards to:

- The location of the proposed District Department Store (based on Gales Structure Plan);
- The status of Tweed Shire Council's Retail Strategy;
- The status of Tweed LEP Amendment No. 14 (rezoning land to 4(a) Industrial near the old STP site);
- Tweed Vegetation Management Strategy;
- Cultural Heritage;
- Threatened and Protected Flora & Fauna (map re-produced below);
- Land ownership details;
- Cudgen Burial Ground;
- Chinderah Cemetery; and
- The status of Draft LEP Amendment No. 21 (Vegetation Management Strategy) map re-produced below.

Council provided further documentation to the Department of Planning in response to this request.

The Department of Planning Response

On the 5 December 2007 the following media release was received:



MEDIA RELEASE

The Hon Frank Sartor MP

*Minister for Planning
Minister for Redfern Waterloo
Minister for the Arts*

5 December 2007

NSW GOVERNMENT TO INVESTIGATE WEST KINGSCLIFF

Planning Minister Frank Sartor has begun the process of listing the West Kingscliff site in the Tweed Shire local government area as State Significant.

The Minister said Tweed Shire Council had written to him in June, requesting his intervention to help secure a proper, strategic approach for the area.

The local member, Geoff Provest has also recently called on the Minister to become involved.

"This is a complex site that has been the subject of protracted disputes," Mr Sartor said.

"This land could help to provide new jobs for the region, and it is in a sensitive coastal environment.

"For these reasons, it is appropriate that we take steps to subject any future proposals to rigorous assessment and public consultation.

"This site has the potential to generate significant social, economic and environmental benefits for NSW."

The site has been identified for possible land release in the Far North Coast Regional Strategy.

The Department of Planning agreeing **to consider** the *Gales-Kingscliff* land as a potential State Significant Site the Ministers intention was required to be published in the NSW Government Gazette No. 182.

DEPARTMENT OF PLANNING LETTER



NSW GOVERNMENT
Department of Planning

Contact: Liz Peterson
Phone: 02 9228 6224
Fax: 02 9228 6570
Email: elizabeth.peterson@planning.nsw.gov.au

Our ref: Y07/3104 (S07/01166)

Ms Genevieve Slattery
Tweed Shire Council
PO Box 816
MURWILLUMBAH NSW 2484

Attn: Ms Denise Galle (nee O'Brien)

Dear Ms Slattery,

Subject: Proposed Amendment to the Major Projects State Environmental Planning Policy

I am pleased to advise you that on 30 November 2007 the Minister for Planning agreed to consider your proposal for the land identified in the attached map, a potential State significant site under the provisions of the State Environmental Planning Policy (Major Projects) 2005 (Major Projects SEPP).

In considering whether to use the Major Projects SEPP, the Minister requested that I make arrangements for a study to be undertaken by the proponent (Tweed Shire Council) that will assess:

- (a) the State or regional planning significance of the site;
- (b) the suitability of the site for any proposed land use taking into consideration environmental, social or economic factors, the principles of ecologically sustainable development and any State or regional planning strategy;
- (c) the implications of any proposed land use for local and regional land use, infrastructure, service delivery and natural resource planning;
- (d) those parts of the site which should be subject to Part 4 of the EP&A Act, with the relevant Council as consent authority;
- (e) the details of the recommended zoning(s);
- (f) the development controls for the site that should be applied to the site;
- (g) the means by which developer contributions should be secured in respect of the site;
- (h) the flora and fauna values including endangered species and their impact on zoning boundaries;
- (i) Aboriginal heritage and archaeology issues and their impact on zoning boundaries;
- (j) the physical capability of the land including, but not limited to flooding, acid sulfate soils and ground water;
- (k) appropriate arrangements for the compulsory acquisition of land by the relevant council for open space purposes.
- (l) the agricultural significance of the land as identified in the Northern Rivers Farmland Protection Project and the impact on zoning boundaries; and
- (m) the retail and industrial needs of Tweed Heads and the Tweed Coast.

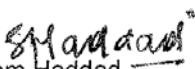
Strategic Sites and Urban Renewal – Strategic Assessment
23-33 Bridge Street SYDNEY NSW 2000 GPO Box 39 SYDNEY NSW 2001
Phone 02 9228 6111 Fax 02 9228 6150 Website planning.nsw.gov.au

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The study will be used to make recommendations to the Minister with regard to appropriate zoning and development controls for the site, and whether any subsequent development on the site should be declared to be a project subject to the provisions of Part 3A of the *Environmental Planning and Assessment Act 1979*, local development or exempt and complying development.

The Department looks forward to working with Council on this project. In the meantime should you wish to discuss this matter further, please do not hesitate to contact Mr Michael File, Director - Strategic Assessments on 9228 6407 or Liz Peterson, Senior Planning Officer – Strategic Assessments on 9228 6224.

Yours sincerely


Sam Haddad
Director General
14 DEC 2007

GOVERNMENT GAZETTE

9630

OFFICIAL NOTICES

14 December 2007

Department of Planning

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

State Environmental Planning Policy (Major Projects) 2005

NOTICE

I, the Minister for Planning, pursuant to clause 8 (1A) of State Environmental Planning Policy (Major Projects) 2005 (Major Projects SEPP), hereby give notice that I have received a proposal that Schedule 3 of the Major Projects SEPP be amended to add the site described in Schedule 1 of this Notice.

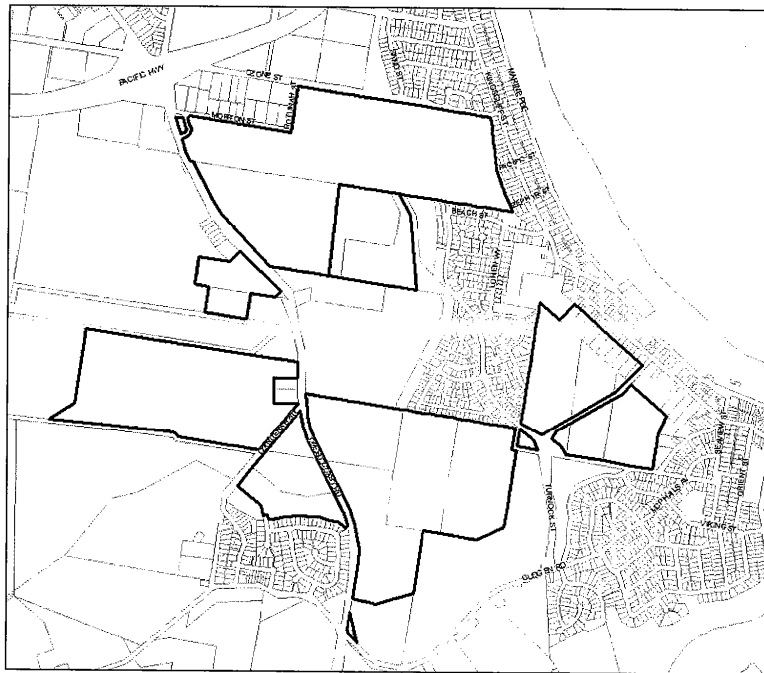
Dated, this 6th day of December 2007.

FRANK SARTOR, M.P.,
Minister for Planning,

SCHEDULE 1

The site known as the 'West Kingscliff' as shown edged heavy black on the map marked West Kingscliff – Cadastre, within the Tweed Local Government Areas.

West Kingscliff – Cadastre



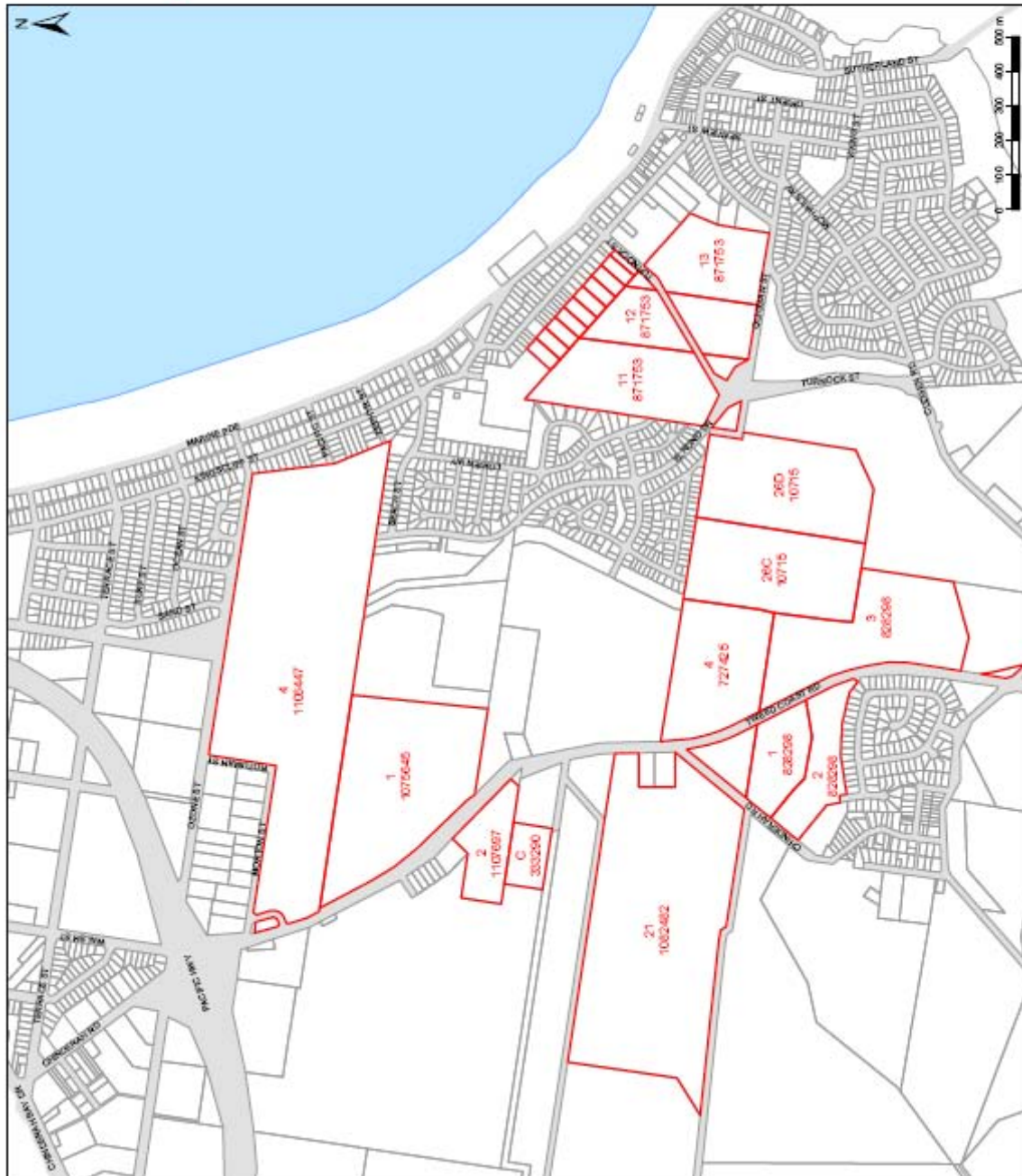
GOVERNMENT SITE PLAN

West Kingscliff, Tweed Shire
Gales Holdings Pty Ltd

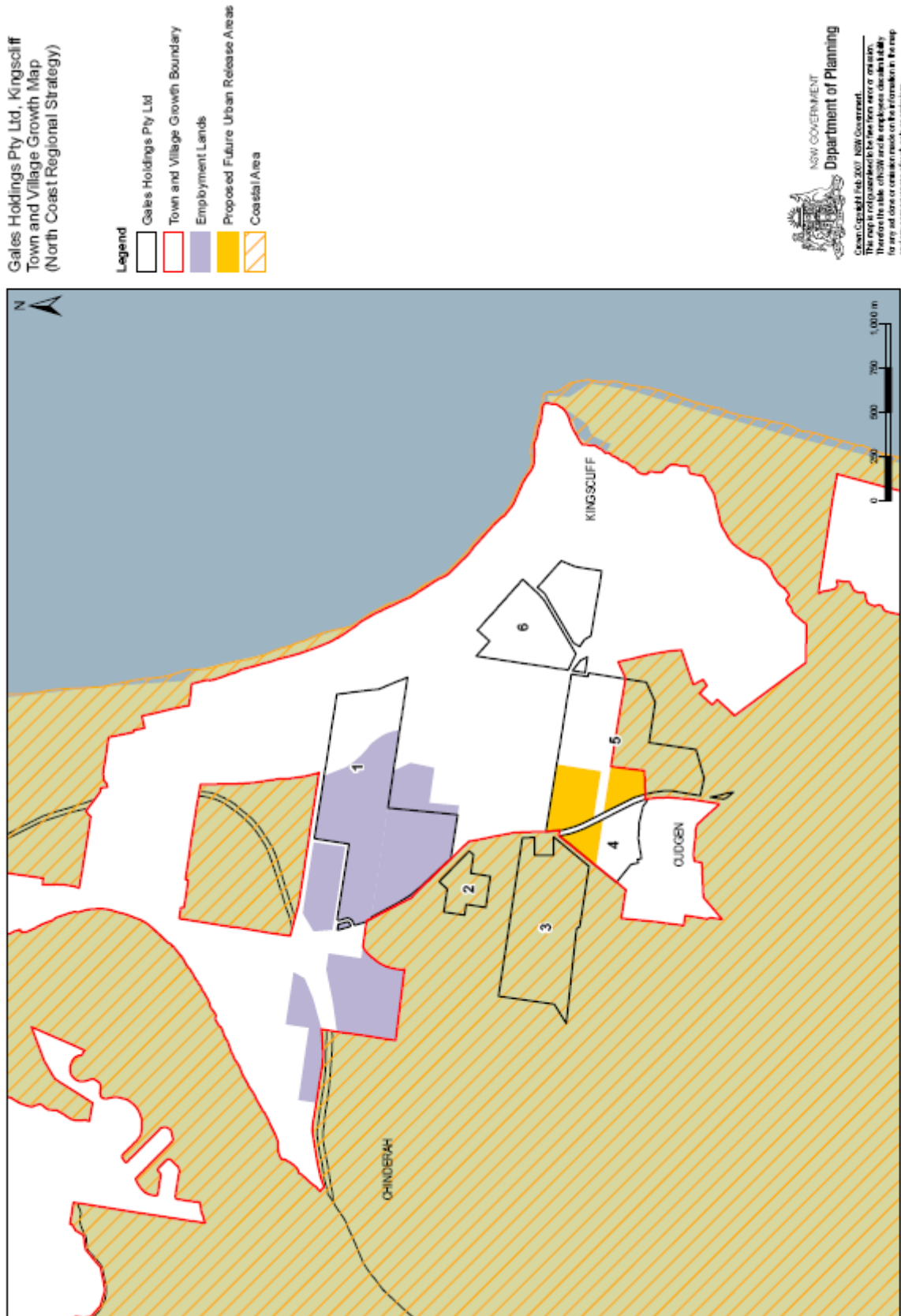
- Legend**
- Parcel Boundary
 - Gales Holdings Pty Ltd

NSW GOVERNMENT
Department of Planning

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PLAN IN RELATION TO THE FAR NORTH COAST REGIONAL STRATEGY



As detailed in the Department's letter of December 2007 the Department now required Council to undertake either a State Significant Study for the Gales Holdings Land (or possibly a Locality Plan for the wider Kingscliff area) to determine the appropriate zoning and development controls for the site.

To date, a variety of issues such as budgetary constraints attempts to resolve various litigation matters impacted on the progression of State Significant Study.

The Development Applications – A Status Update

DA04/1331 – Land filling and shopping centre, Turnock Street Kingscliff

Council received DA04/1331 in December 2004 which sought consent to fill land south of Turnock Street and construct a supermarket-based shopping centre. To facilitate this use, the application also sought to amend (Old) DCP No. 9 – West Kingscliff, re-locate an existing drain, construct a new internal private access road, and fill the supermarket envelope to between RL 3.0 and RL 4.0m AHD.

This was the second application Council had received for a supermarket based shopping centre in this locality. DA02/2092 sought approval for a shopping centre on the northern side of Turnock Street, Kingscliff. This application was refused in June 2003 due to numerous reasons including environmental constraints, strategic implications and drainage concerns.

Whilst DA04/1331 attempted to resolve the previous issues identified, major environmental constraints still existed. Due to these environmental constraints Council employed an Environmental Consultant to independently review the applicant's submitted documentation. This review was completed and the following conclusions were reached:

- The Mitchell's Rainforest Snail is likely to be significantly affected by the proposal. The loss of this habitat is of particular concern given that this species is listed as endangered under Schedule 1 of the Threatened Species Conservation Act and Critically Endangered under the Environmental Protection and Biodiversity Conservation Act 1999;
- The proposed development will impact on an Endangered Ecological Community and will have considerable impacts on the local habitat of the Wallum Froglet and the Bush Hen;
- Consideration should be given to re-designing and relocating the development onto the grassland/sedgeland association to the north of the existing drain.

Council was served with a Class 1 Appeal (deemed refusal) in the Land and Environment Court in relation to the determination of the subject application.

Council contested the Appeal in the Land Environment Court on the basis that the DA was statutorily invalid as it had not been accompanied by a Species Impact Statement.

On 27 February 2006, the Court held in relation to a preliminary point of law, that a Species Impact Statement (SIS) was required to accompany the development application as the development was likely to have a significant effect on the Mitchells

Rainforest Snail. (Talbot J (2006) Gales Holdings Pty Limited v Tweed Shire Council [2006] (10263 of 2005) 27 February 2006).

The applicant did not proceed to prepare a Species Impact Statement but rather entered into discussions and negotiations with Council during the time between September 2006 to May 2007.

Council tried to impress upon the applicant to look at this matter holistically to ensure a quality outcome. This holistic approach was not adopted by the applicant and subsequently the parties have failed to reach an agreement as to an acceptable means to progress the application.

On 2 August 2007, Gales brought a motion to amend DA05/0004 (detailed below) to incorporate the fill that previously formed part of this DA04/1331.

Council subsequently received the amended DA05/0004 on 15 November 2007.

The result of the amended application (DA05/0004) was that the Court held this application in abeyance until DA05/0004 was determined.

DA04/1331 has since been withdrawn and discontinued from the Court proceedings.

DA05/0004 – Land filling, Turnock Street Kingscliff

The subject application DA05/0004 was initially lodged in January 2005.

The proposal sought approval to fill 19.9ha of land both north and south of Turnock Street, Kingscliff. Approximately 450,000m³ of material would have been necessary to fill the land and construct a haul road. The haul road was required to truck the material from a stockpile site adjoining Tweed Coast Road Cudgen to the subject site in Turnock Street.

The applicant (*Gales-Kingscliff*) lodged a deemed refusal appeal in July 2005.

Council contested the appeal and argued that the DA necessitated the lodgement of a Species Impact Statement.

On 28 April 2006, the Court held in relation to a preliminary point of law, that a Species Impact Statement (SIS) was required to accompany the development application as the development was likely to have a significant effect on the Wallum Froglet, a threatened species, listed under the Threatened Species Conservation Act, 1995. (Talbot J (2006) Gales Holdings Pty Limited v Tweed Shire Council [2006] NSWLEC 212 (10264 of 2005) 28 April 2006).

On 1 September 2006, the Court stood the matter over until 8 January 2007 to allow the parties to negotiate.

During the period September 2006 to May 2007, discussions and negotiations occurred between the parties on a 'without prejudice except as to costs' basis. Council tried to impress upon the applicant to look at this matter holistically to ensure a quality outcome.

This holistic approach was not adopted by the applicant and subsequently the parties have failed to reach an agreement as to an acceptable means to progress the application.

In May 2007, the Court made directions in relation to a motion by Gales Holdings Pty Ltd (Gales) for approval to further amend the application. On 2 August 2007, Gales brought a motion to amend the development application.

At hearing on the motion on 2 August 2007, Council opposed the proposed amendment. The Court indicated its inclination to grant the amendment, subject to the provision of plans that clearly set out the proposal for which approval is being sought.

Council subsequently received the subject amended application on 15 November 2007. The amended application sought approval to:

Fill land north and south of Turnock Street for the purpose of preparing the land primarily for future urban residential subdivision development.

The key elements of the proposal are:

- a) *The filling of land north and south of Turnock Street. The filling 'envelope' or area to be filled covers approximately 17.6 hectares. The fill envelope would be filled (other than slopes and/or batters at the perimeter of the areas to be filled) to a minimum level approximating the design flood level for the locality (RL3.3m AHD).*
- b) *The retention of unfilled areas of land, both north and south of Turnock Street, including:*
 - i. *A largely undisturbed 1.0 hectare Wallum Froglet Habitat area immediately north of and fronting Turnock Street, Wallum Froglet Refuge Areas, Sediment Basin and Water Quality Pre-Treatment Area;*
 - ii. *An area in the north eastern corner of the subject land, north of Turnock Street, which includes a small assemblage of littoral rainforest vegetation, other vegetated areas, as well as land that is already at a level at or above the design flood level of RL3.3m AHD; and*
 - iii. *An area of approximately 0.88 hectares of land immediately south of Turnock Street and east of the Turnock Street / Elrond Drive roundabout, which includes some swamp forest vegetation.*
- c) *The construction of a new 3m x 2m Box Culvert under Turnock Street.*
- d) *The creation of an unfilled 'north-south oriented' open channel, north of Turnock Street, to convey upstream stormwater flow across the site to the Sediment Basin and Water Quality Pre-Treatment Area and thereafter to the main drainage system south of Turnock Street via the proposed Box Culvert under Turnock Street.*

- e) *The construction of a temporary haul road from Tweed Coast Road to the Turnock Street roundabout, to transport sand fill material from an approved excavation and deposition site west of Tweed Coast Road.*

Approximately 348,200m³ of fill material is necessary to fill the land. A further 10,800m³ of base course material would be required to construct the temporary haul road and other haulage roads within the actual fill sites.

Fill material for the filling sites at Turnock Street would be sand obtained from an existing approved sand extraction site (owned by Gales) located approximately 2 kilometres to the west, at Lot 2 DP 216705 Crescent Street, Cudgen (Development Consent 96/518,). This consent enables 400,000m³ of sand material to be removed by hydraulic methods to Lots 1 and 2 DP829298 Tweed Coast Road, Chinderah. The dredging of the sand material, its hydraulic delivery and stockpiling at the deposition site would be undertaken in accordance with development consent 96/518 and the associated approved Environmental Management Plan. It is proposed that once delivered to Lot 1 DP 828298, the sand would then be conveyed over Tweed Coast Road and transported from there via the temporary haul road to the proposed fill sites.

The required road base material would be obtained from a commercial quarry.

The works would be 'staged' from a filling sequencing and environmental management point of view.

The entire project is expected to take approximately 53 weeks to complete. Hours of operation would be 7.00 am to 6.00 pm Monday to Friday and 7.00 am to 1.00 pm Saturday. No work would be undertaken on Sundays or public holidays.

Council staff undertook an assessment of the above amended application and recommended that amended DA05/0004 should be refused based on the following reasons:

1. Approval will result in a conflict with existing conditions of consent D96/0518. The Respondent contends that the Court would not, in its discretion, approve the development application that will have the effect of amending D96/0518.

A condition of consent for DA96/0518 requires fill from the quarry to be permanently placed on Lot 1 in DP 829298. The proposed development seeks to utilise this fill on an alternative site which would be in conflict with the existing consent unless DA 96/0518 was modified.

2. The development application is not accompanied by a species impact statement contrary to s 78A, which is necessary because the proposed development is likely to have a significant effect upon Wallum Froglets and Endangered Ecological Communities, namely:
 - a. Freshwater Wetlands on Coastal Floodplains of the NSW North coast, Sydney Basin and South East Corner bioregions;

- b. Swamp sclerophyll forest on coastal floodplains of the NSW North Coast, Sydney Basin and South East Corner bioregions;
 - c. Swamp oak floodplain forest of the NSW North Coast, Sydney Basin and South East Corner bioregions;
 3. The proposed development is likely to create unacceptable impacts upon ecological communities, populations and species (including Wallum Froglets and the named Endangered Ecological Communities) that are not proposed to be controlled or ameliorated on the information submitted to date:
 - a. The application does not propose adequate measures to protect existing ecological communities (including EEC's), manage the retained areas, or compensate for habitat loss.
 - b. The proposed development is likely to have an unreasonable impact upon Wallum Froglets due to:
 - i. Inadequate protection measures offered for habitat;
 - ii. Viability of the proposed Wallum Froglet habitat area;
 - iii. Lack of adequate management measures for retained habitat areas;
 - iv. Lack of compensatory habitat to offset loss of habitat for this species.
 - c. The amended application has an unacceptable cumulative impact on the natural environment
 4. The proposed development will generate unacceptable levels of noise and dust and will affect the amenity of residents of Cudgen and Kingscliff. This is primarily due to the proposed conveyor system over Tweed Coast Road and the associated stockpiling and handling operations of the fill material. There are insufficient management and operational measures proposed in the material submitted to date to ensure noise impacts are controlled or ameliorated.
 5. The proposed development is unacceptable having regard to flooding issues as it removes flood storage from the Tweed Valley Floodplain, and the applicant has not demonstrated that it will not alter flooding behaviour and adversely affect adjoining land.
 6. The development application as proposed is inconsistent with applicable policies.
 7. The application would have an unacceptable impact on the local amenity during filling operations as being against the public interest and contrary to s 79C(1)(e) of the EPA Act.
 8. The application (specifically the conveyor system over Tweed Coast Road) would have an unacceptable aesthetic impact on the locality as being against the public interest and contrary to s 79C(1)(e) of the EPA Act.
-

9. The application has failed to demonstrate why approval should be granted for filling of land when the ultimate land use is not determined within an approved master plan concept and is considered as being against the public interest and contrary to s 79C(1)(e) of the EPA Act.
10. The application has failed to demonstrate how the proposed Wallum Froglet habitat area would be compatible within an urban design concept for the entire land parcel as being against the public interest and contrary to s 79C(1)(e) of the EPA Act.

In April 2008 Council contested the appeal before Chief Judge Preston in the Land & Environment Court of NSW, based on the above reasons for recommending the application for refusal

On 14 July 2008 Chief Judge Preston handed down his decision that the Appeal was upheld and DA05/0004 was approved subject to conditions of consent.

Before the consent becomes operational, Gales Holdings must satisfy the following conditions:

- Address Tweed Shire Council's environmental concerns by ensuring a 12-month monitoring program for the Wallum Froglet population, which is an Endangered Species;
- Revise the haulage route to minimise tree loss;
- Redesign the drainage system so it meets the agreed water quality needed to maintain the Wallum Froglet habitat.

Gales Holdings has two years to satisfy Council that the above matters have been completed satisfactorily.

Once the consent becomes operational (by satisfying the above conditions), Gales Holdings has to put in place restrictions on the covenant to protect the remaining habitat areas and implement management plans that incorporate at least five years of monitoring.

Importantly, the application approved by the court is significantly different from the original application lodged with Council in 2005.

The amended application reduces the overall fill envelope, leaves the east-west drain in its existing location, retains the existing Mitchells Rainforest Snail habitat area, incorporates habitat areas for the Wallum Froglet and conserves four areas of the subject site as environmental offsets for the vegetation lost.

The Alternative Strategic Direction

1. Kingscliff Locality Plan

Council did progress this approach in early 2007 by calling for Tenders to undertake a number of key strategic planning projects including a locality plan for Kingscliff.

Nineteen consulting firms responded to the project briefs, with approximately eleven companies expressing an interest in each of the projects.

At its meeting of 29 May 2007 Council considered a report on the tender process and evaluation and resolved to appoint a consultancy for each of the six projects except for Kingscliff locality plan, which was deferred pending the outcome of the then Court Actions involving *Gales-Kingscliff*. Furthermore, the 2007/2008 and 2008/2009 budget did not have sufficient funds to enable the project to proceed.

In March 2008 Council approached the Department of Planning with details of intended approach for the Locality Plan and sought funding assistance to fulfil this project, however, in July 2008 the Department of Planning advised that:

“With regard to Council’s proposal for a Locality Plan for Kingscliff now being prepared instead of the State Significant Study, the Departments view is that this is a local planning issue for the Tweed Council and that it goes beyond the ambit of the proposed State Significant Site Study process for the proposed site...”

Notwithstanding this, the Department is willing to assist Council with the preparation of the State Significant Site Study by managing the consultancy process for the study. Council would however be expected to fund the Study costs.”

A further attempt to secure funding for the Kingscliff locality plan was made by way of application in January 2009 under Round 6 of the Planning Reform Funding, however, this has also been unsuccessful.

2. Draft Tweed LEP 2010 (Stage 1)

The draft Shirewide ‘standard instrument’ LEP has been on-going since 2006 and in August 2008 the Department of Planning issued a conditional s 65 authority to publicly exhibit the draft Plan. Since then Council Officers have been negotiating with the Departments Regional and Sydney Office’s staff on an appropriate flood clause for the Tweed, and this matter is likely to be resolved by the end of July.

It was decided at the commencement of the Shirewide LEP to include any existing draft LEPs that were sufficiently progressed and public exhibition formed the basis of that test. The then draft LEP amendment 21, which was implementing recommendations of the Tweed Vegetation Management Strategy 2004 (TVMS), was rolled over into the Shirewide draft LEP and it has the effect of increasing the environmental protection zone mapping on land owned by Gales Holdings, among many other areas within the Shire.

Gales Holdings have raised their concern about this increase in environmental protection zoning and have submitted their own environmental assessments that raise issue with some of the findings and recommendations in the TVMS 2004. It will be necessary as either part of a locality plan or Stage 2 of the Shirewide LEP to further investigate the sites suitability/level for environmental listing and to

incorporate a broader range of environmental protection zones available under the standard LEP instrument.

Summary

Many of the issues previously unresolved on the *Gales-Kingscliff* land have now been resolved as a result of the Land & Environment Court Decisions. In addition, the Planning Reform Works Program was adopted by Council on 16 June 2009 and has identified the Kingscliff locality plan as a key strategic project for the 2010/2011 financial year. The ongoing strategic planning commitment to preparing both a locality plan and standard instrument LEP, therefore reduces the necessity for a State Significant Site listing over the land owned by Gales, particularly now that the Court cases have settled some significant long-term issues.

The key priority is to ensure that Kingscliff as a whole is developed strategically within the interests of the whole community (including *Gales-Kingscliff*), which will require representation of the broader Kingscliff and surrounding communities.

In summary, Council's identified commitment to preparing a robust strategic planning framework through best practice placed based planning policies that includes a locality plan for Kingscliff and Chinderah outweighs the need for a State Significant Site listing, which may otherwise provide less opportunity for community participation.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

This recommendation in regards to this matter reinforces the recently adopted Planning Reform Works Program. No additional policy implications are anticipated.

CONCLUSION:

Council has recently adopted the Planning Reform Works Program which sets a clear direction and prioritisation of Council's strategic planning program.

Council's withdrawal of the State Significant Site Application for Gales Holdings will have no impact on the recently adopted Planning Reform Works Program and furthermore will not hinder the applicant's ability to independently pursue any future development options on their land.

Accordingly it is recommended that the State Significant Site application be withdrawn from the Department of Planning and that Council pursue the Kingscliff Locality Plan as determined by the Planning Reform Works Program

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 [PR-CM] Update on Compliance Issues - Lot 11 DP 835413, No. 2 Boulder Close, Byangum

ORIGIN:

Director Planning & Regulation

FILE NO: DA02/0988 Pt 4

SUMMARY OF REPORT:

The purpose of this report is to update Council on various compliance investigations and actions relating to the existing agricultural operations at No. 2 Boulder Close Byangum, and to seek Council direction on further recommended actions.

The current operations were originally approved by Council in December 2002 through DA02/0988 for the erection of an agricultural storage shed and greenhouse structures. The application generated significant community interest at the time of its assessment, for both the owners of adjoining properties, and other residents in the region.

Throughout the construction of the new greenhouse and associated structures, and subsequent modifications and additions to the original application, Council officers have received numerous compliance complaints from adjoining property owners on issues mainly relating to the excessive glare from the hot house structures, stormwater drainage, insufficient landscaping, traffic safety concerns of the new approved road side stall, and general non-compliance with the conditions of the various development consents. The more recent concerns relate to the erection of a temporary shading structure.

Council officers have consistently attempted to liaise between the owners of the subject site, and adjoining neighbours. From the latest concerted effort to gain a resolution of outstanding glare and landscaping issues from the owners of Lot 11 (the subject site) and Lots 4 and 7 Boulder Close, there appears to be some mutual agreement to a proposal put forward by Council.

It has therefore been recommended that Council endorse a proposal to seek written agreement from the owners of Lots 11 and 4 Boulder Close, for the owners of Lot 4 Boulder Close to repair the existing electric fence adjacent to the common boundary with Lot 11 (thereby restricting the movement of their horses), and that a planting regime be undertaken by the owners along the entire length of their site's eastern boundary to provide a reasonable degree of screening of existing hot house and temporary structures, subject to prior consultation with Council's ecologist, and completion to the satisfaction of the Director Planning and Regulation.

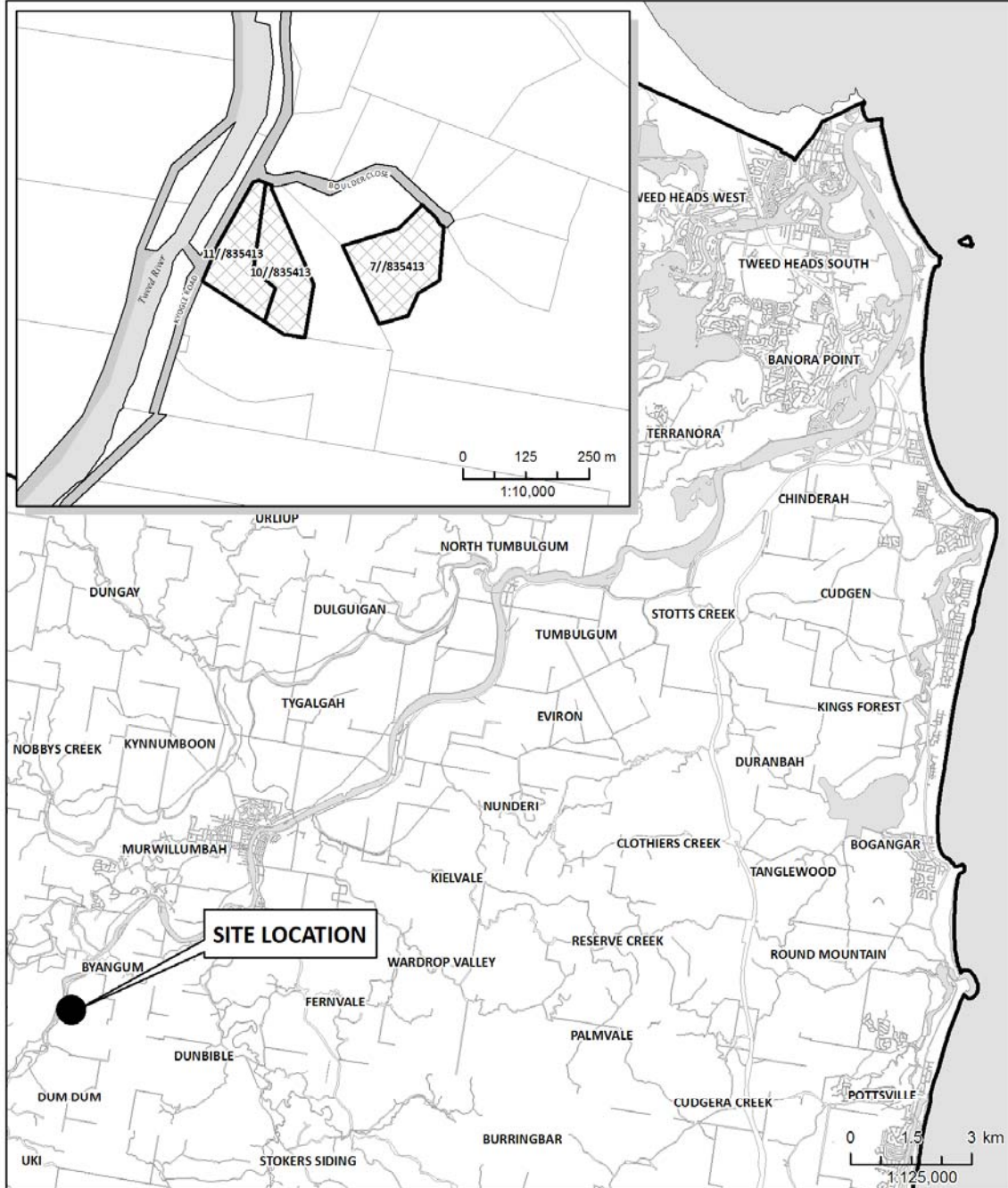
RECOMMENDATION:

That in respect of the existing agricultural operations at Lot 11 DP 835413 No. 2 Boulder Close, Byangum:

- 1. Council receives and notes this report;**
- 2. Council endorses a proposal to seek written agreement from the owners of Lots 11 (No 2) and 4 Boulder Close, for the owners of Lot 4 Boulder Close to repair the existing electric fence adjacent to the common boundary with Lot 11 (thereby restricting the movement of their horses), and that a planting regime be undertaken by the owners along the entire length of their site's eastern boundary to provide a reasonable degree of screening of existing hot house and temporary structures, subject to prior consultation with Council's ecologist, and completion to the satisfaction of the Director Planning and Regulation.**
- 3. ATTACHMENT 3 is CONFIDENTIAL in accordance with Section 10A(2)(a) or Section 10A(2)(g) of the Local Government Act 1993, because it contains personnel matters concerning particular individuals (other than councillors) and advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege.**

REPORT:

LOCATION OF SITES



LOCALITY PLAN

Lot 7 DP 835413, Boulder Close, Byangum
 Lot 10 DP 835413, No. 4 Boulder Close, Byangum
 Lot 11 DP 835413, No. 2 Boulder Close, Byangum

Filename: z:\esri\planning\mxd\A4P_B&W_SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: August 06, 2009

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Chronology of Main Development Consents and Compliance Actions for No 2 Boulder Close

4 December 2002 - DA02/0988 – Council granted development consent for the erection of an agricultural shed and greenhouse structures.

Condition 6 of the consent stated:

“6. A detailed plan of landscaping providing for a mixture of advanced nursery stock and other trees that provide effective screening is to be submitted and approved by the Director of Development Services prior to the issue of a Construction certificate. The landscaping is to be planted to the satisfaction of the Director Development Services before the shade cloth is attached to the structures.”

20 January 2003 - following the submission of a landscaping plan on behalf of the owner in December 2002 Council wrote to the owners’ consultant that Condition 6 had been satisfied.

24 January 2003 – Construction Certificate for DA02/0988 approved by a private certifier.

17 March 2004 – Council Meeting – following various complaints regarding the construction and commencement of the agricultural activities at 2 Boulder Close, a report from officers was submitted, and Council endorsed the following:

RESOLVED that the owners be advised in writing that: -

- “1 A Section 96 application is required to be lodged with Council within fourteen (14) days of been given notice for the adjusted position of the northern greenhouse or Council will commence proceedings for non-compliance with the development consent.*
- 2. The landscaping is to be maintained to the satisfaction of Council and inspections of the landscaping will be carried out. Failure to maintain the landscaping will result in action from Council including on the spot fines.*
- 3. A report is to be submitted to Council within fourteen (14) days of being given notice demonstrating that the existing stormwater system does not have an unacceptable impact on adjoining property. Alternatively, a Section 68 stormwater application under the Local Government Act, 1993 is to be submitted to Council within fourteen (14) days of been given notice. If an alternative stormwater management system is proposed the development consent is to be amended accordingly.*
- 4. Written confirmation is to be provided to Council within fourteen (14) days of being given notice that the reticulated watering system is used to convey water only and it is not used as a fertilising system.”*

18 August 2004 – Council Meeting – Council resolved the following in respect of a Section 96 application:

“RESOLVED that Section 96 application DA02/0988.02 for an amendment to Development Consent DA02/0988 for the erection of an agricultural storage shed

and greenhouse structures at Lot 11 DP 835413 Boulder Close, Byangum be amended as follows: -

1. Amend Condition No. 1 to read: -

1. *The development shall be completed in general accordance with the Plan No. 1A Amended Layout Plan, Plan No. 1A shed, Plan No. 1 Large Greenhouse and Plan No. 2 Small Greenhouse dated April 2004 and the Statement of Environmental Effects included in the application, except where varied by these conditions of consent.*

2. New Condition under Heading "GENERAL" to read: -

"Stormwater runoff from the agricultural storage shed and green houses is to be collected and discharged to the table drain west of the property access on Kyogle Road. An approval from Council, under Section 68 of the Local Government Act 1993 must be obtained prior to commencement of drainage works on or connecting to the road reserve. An application for Section 68 stormwater drainage approval must contain engineering details of proposed outlet pipe (location, size, class, levels), associated headwall and scour protection works. The application is to be submitted to Council within 7 days of the date of this consent."

17 March 2009 – DA08/1118 - Council Meeting – Council granted development consent for a fruit and vegetable roadside stall and signage.

Key Outstanding Compliance Issues

Drainage/Stormwater Run-off Impacts

The main complainants on this issue have been the owners of the adjoining property to the east, known as Lot 4 Boulder Close. These owners have argued since the initial advertisement of the initial DA in 2002, that the lack of adequate drainage design and increased, concentrated capture of the roofing of the main hot house structures and more recent road side stall and temporary fruit plantation structures on 2 Boulder Close, has significantly altered the natural overland flowpath in this locality, and creates major flooding concentrations towards the entrance of their property in times of moderate to heavy rainfall. These owners have also raised previous concerns regarding the dispersal of dangerous chemicals to their property through the stormwater run-off from the new hot house activities, which has previously been found not to be substantiated by the investigations of Council's Environmental Health Officers.

Council officers have made numerous site inspections in response to these concerns, and through a combination of first hand observations, direct discussions and the viewing of photographic evidence presented by the owners of Lot 4 Boulder Close, have made the following conclusions and taken the following actions:

"The issue of providing adequate stormwater drainage on the subject site for the various farm activities is complicated by the general topography, landscape and hydrology of this locality, and subsequent landform modifications on both the

subject site, and the adjoining property, No. 4 Boulder Close. The subject site is located in the lower point of a valley and surrounded by very high, steep sloping, rocky outcrop landforms, which naturally creates fast flowing water overflows in times of moderate to heavy rainfall, combined with occasional rising flood waters from the river on the opposite side of Kyogle Road. The owner of No. 4 Boulder Close has acknowledged that there was a natural stormwater flow path running diagonally across from the subject site's Kyogle Road frontage down to the low point of the driveway entrance to No. 4 Boulder Close. It is claimed that the increasing structures on the subject site are exacerbating the extent of this concentration of water, to the detriment of the adjoining owner. This issue has been complicated by the construction of the driveway through this lower part of No 4 Boulder Close, seemingly without related drainage pipes, which has created an artificial gully which adds to the countering of the natural overland flow."

Therefore, on a broader level, the officers have concluded that this locality is regularly inundated by heavy and concentrated overland stormwater movements, making it near impossible to totally restrict run-off from No 2 Boulder Close to adjoining properties. Nonetheless, Council has required the owners of No 2 Boulder Close to improve the drainage performance of the structures of their agricultural operations through the following:

- The installation of a stormwater pipe leading from the main water storage tanks to the site's Kyogle Road frontage and a Council table drain in the road reserve; and
- The installation of requesting that a 100 mm overflow pipe into the first water storage tank (adjoining the main hot house structure) as well as a connection to the 150mm stormwater pipeline which conveys water to the Kyogle Road table drain.

Council staff have recently been liaising with the owners of No 2 Boulder Close on this request, and they are currently in the process of undertaking these drainage rectification works.

Glare/Reflectivity from Existing Hot House Structures and Temporary Structure.

Adjoining property owners have raised this concern regularly since the lodgement of the original DA, in which it was argued that the lighter colour and texture of the main hot house structures generates excessive amounts of glare and reflectivity. In Council's assessment of the original DA and subsequent compliance actions, technical investigations were undertaken by experts in the field, and Council officers were satisfied that the degree of glare/reflectivity from the constructed hot houses at No 2 Boulder Close did not exceed conventional standards for agricultural structures.

Whilst not specifically required by the approved landscaping plan for the original DA, there have been various unsuccessful proposals (see Landscaping issue below) to plant new trees along the common boundary of No 2 Boulder Close and the adjoining Lot 4 Boulder Close, to create some form of vegetation screening from the glare/reflectivity of the main hot house structures.

However, the main complainants in respect of the glare/reflectivity are the owners Lot 7 Boulder Close, which is located in an extremely, high elevated position to the north east of No 2 Boulder Close, which would require dense tree screening up to 20-25 metres along the common boundary of No 2 and Lot 4 Boulder Close, to adequately block out the high degree of glare/reflectivity that these owners experience. The issue has been exacerbated by the erection of a temporary structure (with white netting and partial clear plastic sheeting) several months ago adjacent to the site's Kyogle Road frontage, to protect a new strawberry plantation.

From a recent inspection of Lot 7 Boulder Close, the officers have acknowledged the validity of the cumulative glare/reflectivity impacts of the original hot house structures and more recent temporary shading structure, and a need to work out a way of minimising these impacts.

Landscaping

The issue of providing sufficient landscaping on the original development site of No 2 Boulder Close for general visual amenity purposes, has now become more relevant as a compliance mechanism for minimising the glare/reflectivity of the main hot house and recent temporary shade structure.

Unfortunately, the details of the proposed landscaping for the original DA in 2002, and relevant condition of development consent (See Condition 6 in the Chronology above) were not very clear in specifying the height and species of the required planting. The plans for the original DA indicated broad groupings of planting along the site's Kyogle Road frontage, as well as along the eastern and common boundary with the adjoining Lot 4 Boulder Close. The information submitted by the applicant and assessment by Council officers focused primarily on providing an appropriate level of vegetative screening along Kyogle Road, and that stage, the proposed vegetation along the eastern boundary had no clear identification of a possible screening of glare/reflectivity.

The initial, primary focus on the visual amenity impacts along Kyogle Road continued through to the subsequent Landscape Plan submitted on behalf of the owners of No 2 Boulder Close following the granting of DA consent, and approved by Council officers in January, 2003. This Plan required taller, denser species of trees along the site's Kyogle Road frontage, whilst more limited tree coverage was specified for the site's eastern boundary, with a range of native species to be initially planted at a height range of 0.5m. to 1.5m., and typically expected to grow up to a maximum height range between 2 and 8 metres

In terms of fairness, it therefore has been difficult to require the owner of No 2 Boulder Close to carry out extensive, tall and mature tree planting along the eastern boundary for the purpose of minimising the glare/reflectivity impacts of the main hot houses, and more recent temporary shade structures.

The plantings along the eastern boundary have also been eaten way at various times by the horses that occupy the adjoining paddock of Lot 4 Boulder Close.

Recent Compliance Actions Undertaken by Council Officers

Strawberry bed:





Fruit & Vegetable Roadside Stall – approved 20 March 2009.





Site Visits by Council Officers

The erection of a temporary structure (with white netting and partial clear plastic sheeting) several months ago adjacent to the site's Kyogle Road frontage, to protect a new strawberry plantation, renewed another series of complaints from the owners of adjoining properties, Lots 4 and 7 Boulder Close, focusing on the validity of the use, and further concerns for glare/reflectivity and stormwater run-off.

Whilst Council officers disagree with the complainants regarding a need for a DA for the erection of the temporary structure, they did concur with the validity of the other issues.

It was therefore considered that the best way to respond to these concerns was to meet each of the three main property owners on site (No 2 Boulder Close, and Lots 4 and 7 Boulder Close), and attempt to negotiate a collaborative agreement between the parties. The site meetings were considered to be very productive, and helped in resolving a number of other matters, including the access and site management issues relating to the construction of the new roadside fruit stall on No 2 Boulder Close.

Proposal to Rectify Outstanding Compliance Issues

Following the site inspections, in June, 2009 the Director Planning and Regulation wrote to each of the owners of No 2 Boulder Close, and Lots 4 and 7 Boulder Close, (See an attachment of this report for a copy of this letter) recording the results of the site visits, and putting forward a proposal to rectify the outstanding compliance issues. Below is an extract from the Director's letter which identifies the proposal:

“There are 2 main options for re-addressing the glare impacts of the existing main hot house structures, either replacing or painting the existing white canvass material, or providing much higher, mature screening vegetation along the common boundary of Nos. 2 and 4 Boulder Close (a tree height of approximately 20-25 metres would be needed to screen the glare of views from No. 7 Boulder Close). Both of these options will come at an additional cost to the owners of No. 2 Boulder Close.

The option of either replacing or painting the existing covering of the main hot houses to a less reflective surface is likely to come at a significant cost to the owner of No. 2 Boulder Close, and will be difficult to achieve the right balance of sunlight access for the functioning of the hot houses, which on inspection are currently producing an appropriate temperature level for the growing of vegetable plants.

In terms of fairness, this option is likely to be challenged by the owner of No. 2 Boulder Close, who has pointed out that the glare issue was assessed and approved by Council in the original DA and post DA assessments by Council officers.

The second option of a new planting regime along the common boundary of Nos. 2 and 4 Boulder Close has its complications, mainly arising from the fact that the owners of Nos. 4 and 7 Boulder Close are seeking a shorter term solution to the reduction of the glare. The only possible way this could be achieved in the shorter term would be to require the owner to plant a series of mature trees (up to 20-25 metres in height), to adequately screen the glare of both the hot house structures and new strawberry plantation structure, when viewed from the property of No. 7 Boulder Close. The costs of such trees would be prohibitive, and unreasonable for the owner of No. 2 Boulder Close.

A suggested compromise approach to the planting is to require the owners of No. 2 Boulder Close to plant younger, appropriate species to provide an infill between the existing established trees located on the side of the No. 4 Boulder Close. Guidance on this planting regime could be provided through Council’s ecologist, who has recently visited the site and inspected the existing vegetation and soil conditions. Whilst these younger trees will take a number of years to reach maturity, it is considered that it is the most viable and cost effective means for addressing the glare issue.

The owners of No. 2 Boulder Close have recently been receptive to this option, but point out that the previous planting scheme failed due to the horses from No. 4 Boulder Close eating away and destroying the younger plants. I can verify from a recent site inspection that I did witness the horses, reaching over a poorly constructed wire fence and eating existing vegetation on No. 2 Boulder Close.

In the spirit of compromise, it has been suggested that the owners of No. 2 Boulder Close are prepared to meet the costs of the new planting regime, provided that the owners of No.4 Boulder Close would erect a new fence on their property, at a distance of one metre from the common boundary of Nos. 2 and 4 Boulder Close, to prevent the horses from eating away at any new planting regime. This fence would need to be provided along the entire distance of this common boundary.

As highlighted above, Council is seeking a spirit of compromise from each of the three property owners of Nos. 2, 4 and 7 Boulder Close to work towards an equitable resolution of the compliance issues. It would therefore be appreciated if you could provide a written response to the actions recommended in this correspondence."

Summary of responses from property owners to Director's correspondence

Copies of each of these submissions are provided as an attachment to this report.

Owners of Lot 4 Boulder Close

- Advised that they are not affected by the glare/reflectivity issue, but recognise the concerns it creates for the owner of Lot 7 Boulder Close.
- Agree with the actions required by Council officers in respect of improving the stormwater drainage performance of the main hot houses and the associated water tanks.
- Satisfied with the actions taken by the owners of 2 Boulder Close to erect barriers to prevent sediment and water entering their property, which were undertaken as part of the construction of the new roadside fruit stall in the northern part of the site.
- Not satisfied with the driveway access arrangements for the new roadside fruit stall at the intersection of Boulder Close and Kyogle Road, given its safety impact for their driveway entrance.

In terms of the landscaping proposal for the common boundary of 2 and Lot 4 Boulder Close, the following statements were made:

"I have spoken to Mr Mitchler on 24 June 2009 regarding the recommendations to reduce glare emanated from the "hothouse" structures by him planting screening trees (hopefully mature as recommended) and as previously described in the original DA undertakings.

He acknowledged to me "that he had no problem with our horses and had never had a problem with them allegedly eating his previous plantings".

As acknowledged we have been able to plant seedlings along this boundary which are now mature trees whilst the horses were on our property at 2 Boulder Close. We lost NO trees due in fact they would weed around the trees. Mr Mitchler did not think that erecting another fence would be needed but I stated we would be happy to place an electric fence along that boundary once he has planted the appropriate trees.

Also I am currently in the process of selling the horses and believe the erection of another fence on my side of the property would be no use at this time. I DO believe

that the current fence needs repair and tightening and will address this with Mr Mitchler.

I believe that these compromises are real and feasible in providing an equitable solution to the ongoing issues we have dealt with over the years since this development at 2 Boulder Close was approved by Council.”

Owners of Lot 7 Boulder Close

The response submitted by these owners has been identified as “In Confidence Without Prejudice”, and therefore has been included as a confidential attachment to this report. It generally reiterates ongoing concerns with the operations of No 2 Boulder Close.

Owners of Lot 11 (No 2) Boulder Close

- Identified concerns of having to deal with ongoing complaints from adjoining owners since 2003, and that they have provided compromises in responding to these complaints.
- They are willing to make further compromises, provided that a similar approach is taken by the owners of Lots 4 and 7 Boulder Close.

Recommended Proposal for Compromise on Landscaping Issues

It is apparent from the above responses to Council’s letter of 17 June, and from further verbal discussions with Council officers, that there appears to be an indication of co-operation between the owners of Lots 11 and 4 Boulder Close in addressing these issues. In particular, the owners of Lot 4 Boulder Close have stated that they are willing to repair the existing electric fence adjacent to the common boundary with Lot 11 (thereby restricting the movement of their horses), which should facilitate a better opportunity for the owners of Lot 11 to provide a more substantial, taller tree planting along their eastern boundary. The owners of Lot 11 have indicated that they are willing to undertake this additional planting on that basis. Any such planting regime would need to be undertaken in consultation with Council’s ecologist and to the satisfaction of the Director of Planning and Regulation.

As pointed out in earlier sections of this report, the planting of mature trees up to an approximate height of 20-25 metres is considered to be impractical and unreasonable in this instance, and that it would be more appropriate to require the owners of No. 2 Boulder Close to plant younger, appropriate species to provide an infill between the existing established trees located on the side of the No. 4 Boulder Close. Council’s ecologist has inspected this site and considers that a suitable planting regime of native trees can be achieved along the eastern boundary of No 2 Boulder Close. Whilst these younger trees will take a number of years to reach maturity, it is considered that it is the most viable and cost effective means for minimising the glare issues from No 2 Boulder Close for other adjoining and adjacent property owners.

It has therefore been recommended that Council endorse that a written agreement be sought from the owners of Lots 11 and 4 Boulder Close to formalise a suitable agreement in respect of the landscaping issues.

Further Compliance Concerns Raised by the Owners of Lot 7 Boulder Close

By email dated 31 July 2009, (a copy of this correspondence is provided in an attachment to this report) the owners of Lot 7 Boulder Close have raised further concerns with the operations of No 2 Boulder Close, including:

- The new “igloo greenhouse structure” does not have development consent, and is causing same level of reflectivity/glare impacts as the main hot house structures;
- The traffic safety concerns for the entry point for the new “fruit stall” on the site; and
- The location and character of the new “fruit stall” is not in accordance with the conditions of development consent.

The concerns of the first two points were addressed in Council’s letter dated 17 June 2009 to the property owners, a copy of which is provided as an attachment to this report.

In terms of the third point, Council officers have recently inspected the near to complete “fruit stall” building, and made the following observations:

- *“There should be no roof reflectivity. Any glare from the roof would be completely ameliorated by a thatch covering which I saw on the ground and is to be installed in the near future.*
- *The landscaping around the stall is acceptable. Some new plantings have been established and it is their intention to maintain surrounding landscaping. No issue.*
- *The floor area is not greater than the required 20m². It has been constructed in accordance with the approved plans. The structure appears larger than 20m² as the design incorporates an overhanging porch area to provide shade. No issue.*
- *The “power and drink fridges” is not a breach. The fact that power and a light are present is irrelevant. The single fridge is apparently for chilling vegetables grown on site. They confirm no ‘off site’ goods will be imported for sale – only primary produce grown on the farm. No issue.*
- *The setback from the roadway however, does not appear to be in accordance with the approved 7 metre setback from Kyogle Road deficient. If the fence was situated on the boundary, the setback would measure 5.2m.*
- *Whilst a Construction Certificate for the structure has been issued, due to the setback non-compliance, Council officers are withholding determination of an Occupation Certificate until the matter is resolved.”*

In light of the above investigations, the owners of Lot 11 (No 2) Boulder Close have agreed to lodge a Section 96 application in respect of DA08/1118 to address the apparent non-compliance of the recently completed fruit stall building with the approved setback of 7 metres from Kyogle Road.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

A letter dated 30 June 2009 from the owners of Lot 7 Boulder Close has been identified as "In Confidence Without Prejudice", and therefore has been included as a confidential attachment to this report. It should be read in conjunction with this section of the report.

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 letter from the Director of Planning and Regulation Tweed Shire Council, dated 17 June 2009 sent to the owners of No 2 Boulder Close, and Lots 4 and 7 Boulder Close (ECM 3867142)
 2. Copies of letters received from the owners of No 2 Boulder Close and Lot 4 Boulder Close in respect to Council's letter of 17 June 2009 (ECM 3788819)
 3. **Confidential Attachment** - Copy of letter received from the owners of Lot 7 Boulder Close in respect to Council's letter of 17 June 2009 (ECM 3788825)
 4. Copy of further email correspondence from the owners of Lot 7 Boulder Close dated 31 July 2009 (ECM 3789834)
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17 [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 July 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
DA08/1080	Attached dual occupancy	Lot 17 Sec 16 DP 758571 No. 9 Yao Street, Kingscliff	1/6/2009	Clause 51A	2(a) Low Density Residential	The replacement dual occupancy is of a high quality with better overall energy-efficient design which improves the streetscape and amenity of both the site and locality without compromising density controls within Clause 51A.	15.7%	Tweed Shire Council
DA08/1171	addition of deck to existing surf life saving club	Lot 7010 DP 1055324 & Lot 2 DP 1083851 Tweed Coast Road, Bogangar	1/6/2009	Clause 32B	6(a) Open Space & 5(a) Surf Lifesaving Club	The degree of overshadowing does not constitute a major impact on the coastal foreshore area.	The proposal contributed to a minor increase in the level of overshadowing from the existing surf life saving facility.	Tweed Shire Council
DA08/1240	Three (3) lot subdivision	Lot 6 DP 618873 No. 582 Upper Burringbar Road, Upper Burringbar	19/6/2009	Clause 20(2)(b)	1(b1) Agricultural Protection & 7(l) Environmental Protection (Habitat)	The section of the site zoned 7(l) is wholly contained within proposed Lot 3 and will not be further fragmented as a result of the subdivision. It is noted the 7(l) portion is already below the 40 ha development standard. No development works are proposed within this zone other than the habitat rehabilitation and enhancement work proposed within the applicant's Threatened Species Management Plan. The proposal is consistent with the objectives of 7(l) zone.	The portion of Lot 3 zoned 1(b1) is 12.455 hectares and the portion zoned 7(l) is 4.11 hectares. The 7(l) portion represents a 90% variation to the development standard.	Director General of the Department of Planning
DA08/1265	Two (2) storey dwelling	Lot 9 DP 627840 Clothiers Creek Road, Nunderi	1/6/2009	Clause 22	1(c) Rural Living	TLEP2000 stipulates 30m building line from designated road - applicant requested 7.4m building line relaxation	84%	Tweed Shire Council
DA09/0034	Boundary adjustment	Lot 3 DP 260422 & Lot 11 DP 1054638 No. 35	25/6/2009	Clause 20(2)(b)	1(a) Rural	The standard is unreasonable in this circumstance where the larger lot of 64.11ha is to be	Variation seeks to transfer 4.53ha from a complying lot (which remains	Director General of the Department of Planning

DA No.	Description of Development	Property Address	Date Granted	Development Standard to be Varied	Zoning	Justification	Extent	Authority
		Palmers Road, Terragon				reduced by 4.58ha to still comply with the standard at 59.53ha while the non-complying lot expands to 7.82ha from 3.24ha. The applicant contends that "significantly, the area to be transferred is severed presently from the parent lot by Palmers Road and is a rational annexure to the small western lot".	compliant) to an undersize lot (which remains undersize) to improve the agricultural viability of both properties.	
DA09/0037	two storey addition and deck to existing dwelling	Lot 3 DP 211861 No. 53 Adelaide Street, Tweed Heads	1/6/2009	Clause 16	2(b) Medium Density Residential	Addition only three storey for small section. Considered acceptable due to size of allotment, slope of land, narrow elevation of addition, position of addition towards centre of allotment.	Variation to two storey height limit to permit addition which will be partly three storey for a floor area of less than ten square metres.	Tweed Shire Council
DA09/0187	replace an existing old structure with general workshed/garage-boat storage structure & SEPP 1 objection to building setback	Lot 14 DP 729137 No. 797 Clothiers Creek Road, Clothiers Creek	5/6/2009	Clause 22	1(a) Rural	TLEP2000 stipulates a 30m building line to designated roads - applicant requested an 8m building line relaxation.	74%	Tweed Shire Council

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.



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