

Mayor: Cr Warren Polglase

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



Agenda Ordinary Council Meeting

Tuesday 20 October 2009

held at Murwillumbah Cultural & Civic Centre
commencing at 4.30pm

COUNCIL'S CHARTER

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

Tweed Shire Council has the following charter:

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

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CONFIRMATION OF MINUTES

- 1 **Minutes of the Extraordinary Council Meeting held Tuesday 15 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. Minutes of the Extraordinary Council Meeting held Tuesday 15 September 2009 (ECM 5733240).
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2 Minutes of the Ordinary and Confidential Council Meeting held Tuesday 15 September 2009

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1. Minutes of the Ordinary Council Meeting held Tuesday 15 September 2009 (ECM 6039814).
 2. **Confidential Attachment** - Minutes of the Confidential Council Meeting held Tuesday 15 September 2009 (ECM 5733218).
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SCHEDULE OF OUTSTANDING RESOLUTIONS

3 Schedule of Outstanding Resolutions as at 20 October 2009

FOR COUNCILLOR'S INFORMATION:

18 November 2008

PLANNING COMMITTEE

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

P 13 COMMITTEE DECISION:

Cr W Polglase
Cr K Skinner

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

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

28 May 2009

COUNCIL MEETING ORDERS OF THE DAY

17 [NOM] National Landscapes Viewing Locations

116

Cr K Milne
Cr D Holdom

RESOLVED that Council brings forward a report on the feasibility of establishing a series of dedicated scenic viewing locations with associated BBQ, picnic, toilet and lighting facilities, in strategic locations around the Tweed Shire to tie in with the National Landscapes program involving:-

- a) Various funding options be investigated

- b) Various methods of ascertaining prime viewing locations be outlined including community nominations.

Current Status: Report to be presented to a future Council Meeting.

18 AUGUST 2009

MAYORAL MINUTE

a3 [MM] Tweed Food Bowls Vision

170

Cr J van Lieshout

RESOLVED that:-

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

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

REPORTS FROM THE DIRECTOR TECHNOLOGY & CORPORATE SERVICES

33 [TCS-CM] Conduct Review Committee

211

Cr W Polglase

Cr K Skinner

RESOLVED that Council:-

1. Receives and notes the Interim Report of the Conduct Review Committee.
2. Council officers organises extensive workshops to further Councillors understanding of the Code of Conduct, the Media Policy, the Conduct Review Committee/Sole Reviewer Policy and the Code of Meeting Practice, as soon as possible.

Current Status: Workshop being scheduled for 30 October 2009.

15 September 2009

ORDERS OF THE DAY

50 [NOM-Cr K Milne] World Rally Car Championships/Conservation Based Tourism

287

Cr J van Lieshout

Cr K Skinner

RESOLVED that this Notice of Motion be deferred to the next meeting of Council to enable discussions with the Director Planning & Regulation in regards to conservation based eco tourism in the new Local Environmental Plan.

Current Status: To be considered at 17 November 2009 Council Meeting.

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MAYORAL MINUTE

4 [MM] Mayoral Minute for the period 08 September – 09 October 2009

Councillors,

COMMITTEE MEETINGS

Attended by the Mayor

- 24 Sept 2009 - Tweed Economic Development (TEDC) Meeting - TEDC Offices, 41-43 Commercial Road, Murwillumbah (Crs van Lieshout and Skinner also attended)
- 24 Sept 2009 - TRAG Foundation AGM – Tweed River Art Gallery, Mistral St, Murwillumbah
- 02 Oct 2009 - Aboriginal Advisory Committee Meeting, South Sea Islander Room, Tweed Heads Civic Centre, Brett St, Tweed Heads

INVITATIONS:

Attended by the Mayor

Cr Joan van Lieshout

- 09 Sept 2009 - Northern Joint Regional Planning Panel – Breakfast with Mayors and General Managers - Ramada Hotel, 2 Martin Street, Ballina
- 10 Sept 2009 - Tweed Seniors Expo, Seventh Day Adventist Centre, Racecourse Road, Murwillumbah
- 10 Sept 2009 - Public Education Awards - Far North Coast / Southern Cross Networks – Murwillumbah Civic Centre Auditorium
- 14 Sept 2009 - Citizenship Ceremony, 25 new citizens, Tweed Heads Civic Centre Auditorium

Cr Warren Polglase

- 18 Sept 2009 - Tweed Regional Art Gallery Foundation & Friends 21st Birthday Party, TRAG, 2 Mistral Street, Murwillumbah (Cr van Lieshout also attended)
- 19 Sept 2009 - Tweed Heads Skate Park Opening – Cnr Heffron St and Minjungbal Drive, Tweed Heads South

- 21 Sept 2009 - Jack Evans Boat Harbour - Turning of the sod to signal start of Stage One with Federal Member for Richmond, Justine Elliot – Cnr Coral St
- 24 Sept 2009 - Roads and Traffic Authority Meeting – Re: Road Proposal, Sexton's Hill & Kirkwood Road South Tweed Sports Club
- 28 Sept 2009 - AGM, Blair Athol Accommodation & Support Programme – Saint Monica's Catholic Church Hall, Golden Four Drive, Tugun
- 02 Oct 2009 - Murwillumbah Chamber of Commerce Breakfast, Murwillumbah Service Club
- 03 Oct 2009 - Caldera Art Launch – Murwillumbah Civic Centre Auditorium
- 09 Oct 2009 - Mayor's Welcome to attendees of the Australian Business Arts Foundation Planning Session – Coolamon Cultural Centre, Tumbulgum Rd, Murwillumbah

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

- 16 Sept 2009 - Tweed Valley Respite, Mind your Mind Expo
Grandview Room, Club Banora, (attended by Cr Joan van Lieshout)
- 19 Sept 2009 - Tweed Valley Respite, Opening of Palliative Care facility
Grandview Room, Club Banora, (attended by Cr Joan van Lieshout)
- 19 Sept 2009 - Relay for Life Opening Ceremony – Murwillumbah Showgrounds
(attended by Cr Barry Longland)
- 20 Sept 2009 - Burringbar RSL 90th Anniversary and laying of wreath - (attended by Cr Phil Youngblutt)
- 20 Sept 2009 - Wollumbin Bicycle Users Group (BUG) launch – Seventh Day Adventist Hall, Racecourse Road, Murwillumbah
(attended by Cr Barry Longland)

Inability to Attend by or on behalf of the Mayor

- 17 Sept 2009 - October "Going Sober in October for Aussie Kids" - Sydney
- 18 Sept 2009 - Tweed Heads Bowls Club – Annual Sponsors' Dinner – The Blue Room, THBC
- 19 Sep 2009 - Southern Cross University Graduation Ceremonies – Faculty of Art & Science and Faculty of Business & Law – Lismore Campus

CONFERENCES:

Conferences attended by the Mayor and/or Councillors

- 21-23 Sep 09 - River Symposium, Brisbane Convention & Exhibition Centre, (Cr Katie Milne attended)
- 07-09 Oct 09 - Local Government Aboriginal Network (LGAN) – Mantra Ettalong Beach, Gosford, NSW – (Cr Dot Holdom attended)

Information on Conferences to be held

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

- 19-20 Oct 09 - 2009 Tourism Symposium – Byron at Byron Resort, Byron Bay (Cr Joan van Lieshout attending)
- 03-06 Nov 09 - 18th NSW Coastal Conference – “Staying Afloat, Rising to the Challenges” – Ballina RSL Club, Ballina (Cr Barry Longland and Cr Katie Milne attending)
- 08-10 Nov 09 - 2009 ALGA National Local Roads and Transport Congress Mackay, Queensland

SIGNING OF DOCUMENTS BY THE MAYOR:

Cr Joan van Lieshout

- 09 Sept 2009 - Licence Agreement – Berth 16, Southern Boat Harbour, Tweed Heads
- 09 Sept 2009 - Licence Agreement – Berth 15, Southern Boat Harbour, Tweed Heads

Cr Warren Polglase

- 16 Sept 2009 - Funding variation – Podiatry Services – Department of Ageing, Disability and Home Care
- 21 Sept 2009 - Release of Easement – Lot 2, DP511812 – 14 Moss Street, Kingscliff
- 21 Sept 2009 - Licence Agreement – Berths 9, 10, 21 and 22, Southern Boat Harbour, Tweed Heads
- 21 Sept 2009 - Licence Agreement – Berth 19, Southern Boat Harbour, Tweed Heads

RECOMMENDATION:

That:-

- 1. The Mayoral Minute for the period 08 September – 09 October 2009 be received and noted.**
- 2. The attendance of Councillors at nominated Conferences be authorised.**

ORDINARY ITEMS FOR CONSIDERATION

REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE DIRECTOR PLANNING AND 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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- 5 [PR-CM] DA09/0466 - RISE Concept Plan Comprising Residential Retirement Living, Retail Commercial School and Open Space Precincts (MP08_0234) at Lot 1 DP 595529, Lot 1 DP 1033810, Lot 1 DP 1033807, Lot 4 DP 822786, Lot 31 DP 850230, Lot 2 DP 867486 and Lot 33 DP 1085109 Marana Street; Lot 31 DP 850230 Conmurra Avenue; Lot 2 DP 555026 147 McAllisters Road, Bilambil Heights**

ORIGIN:

Development Assessment

FILE NO: DA09/0466 Pt2

SUMMARY OF REPORT:

The purpose of this report is to seek Council's endorsement of the proposed submission to the Department of Planning on the Major Project Application (Concept Plan and State Significant Site Application) for the Bilambil Heights "Rise" Residential Community Development (MP08_0234).

It is the officer's overall opinion that the proposed development achieves many of the broader settlement imperatives provided in the State and local policy documents referred to in this report, in particular in the provision of diversification of housing mix, provision of commercial and retail opportunities and in the coordinated approach and provision to water, sewer and road infrastructure.

However, one of the fundamental considerations for any new development, regardless of scale or location, is the local context. To overcome or create a change in policy as to what level of or style of landscape is appropriate for the Tweed there would need to be proper community consultation that focuses on the importance and recognition of the existing landscape versus an alternative styled landscape, whether that be founded on hilltop development principles or otherwise.

The proposal requires substantial decisions in regards to the acceptability of the proposed infrastructure plans, hill top living (to a maximum height of eight stories) and the suitability of development within the proximity of significant vegetation (Precinct J). Furthermore, it raises some secondary strategic planning issues in regards to the rest of the Bilambil Heights Release Area.

It is considered that these issues should be raised with the Department of Planning by way of the attached submission.

RECOMMENDATION:

That Council:-

- 1. Endorses the attached draft submission and forwards it to the Department of Planning to enable future discussion between the Council, the Applicant and the Department of Planning; and**
- 2. Accepts to own, operate and maintain the potable water supply and sewerage reticulation system in the proposed RISE community title subdivision, excluding any portions of the development that are gated communities, and conditional on the developer;**
 - providing infrastructure in accordance with the requirements of DCP A5 and to the satisfaction of the Director of Community and Natural Resources;**
 - entering into an agreement with Council for the provision of the services;**
 - providing normal easements where services are to be provided within private land (other than the community lot).**
- 3. Requests that a report is brought forward outlining the options available to advance the strategic planning for Bilambil Heights Release Areas (including options in regards to the status of the Local Area Structure Plan prepared on behalf of the “Rise” development).**
- 4. Liaises with the Applicant regarding options for Community Facilities, including options for a review of S94 Plan No. 15 Community Facilities or alternatively a Voluntary Planning Agreement.**

REPORT:

Applicant: Terranora Group Management Pty Ltd
Owner: Terranora Group Management Pty Ltd, Tweed Shire Council, Tweed Shire Council, Kirra Investments Pty Ltd and Monowai Pty Ltd
Location: Lot 1 DP 595529, Lot 1 DP 1033810, Lot 1 DP 1033807, Lot 4 DP 822786, Lot 31 DP 850230, Lot 2 DP 86748 and Lot 33 DP 1085109 Marana Street; Lot 31 DP 850230, Conmurra Avenue; Lot 2 DP 555026 147 McAllisters Road, Bilambil Heights
Zoning: 1(a) Rural, 1(c) Rural Living, 2(a) Low Density Residential, 2(c) Urban Expansion, 5(a) Water Supply, 6(b) Recreation, and 7(d) Environmental Protection (Scenic/Escarpment)
Cost: \$141, 518,631

BACKGROUND:

The Bilambil Heights Urban Release Area, of which the RISE site forms part, was identified in Tweed Shire Council's Residential Development Strategy in 1991 as an "existing urban area". That Strategy was endorsed by the Director General of the Department of Planning in accordance with Clause 38 of the North Coast Regional Environmental Plan, 1988.

Subsequently, the North Coast Urban Planning Strategy (Department of Planning, 1995) identified the Bilambil Heights Urban Release Area as a "committed urban area".

More recently, the Far North Coast Regional Strategy 2006 – 2031, which was adopted by the Minister for Planning on 17 January 2007, identifies that part of the RISE site to which this Concept Plan relates (other than the Sports Park) as either within the "existing urban footprint" or as a "new release area".

On 17 December 1996, Tweed Shire Council adopted the Tweed Development Program. The Program documents the key strategic infrastructure required to serve the projected population to 2030 and co-ordinates the long term financing of key infrastructure with the release of land for urban development.

The Bilambil Heights Urban Release Area has been zoned for urban purposes since approximately 1991, however because of the fragmented land ownership and infrastructure capacity constraints, the Release Area has not been developed.

The subject site contains the former Terranora Lakes Country Club and associated facilities. It is a large and prominent land holding (187ha) all in single ownership under Terranora Group Management.

Terranora Group Management purchased the site in 1996 and has since obtained two main development approvals from Tweed Shire Council.

The first was in 1998 for a tourist resort (D96/0519). The consent approved the redevelopment of the former Terranora Lakes Country Club and establishment of an integrated, international standard Tourist Resort comprising 960 accommodation units and associated services and facilities, including Golf Course, Sports Centre, Village

Square and Environmental Centre. This consent had physical commencement acknowledged and remains active should the applicant wish to proceed with that project.

The second was in 2006 for a 76 lot subdivision (DA05/1351). The subdivision was over an area of approximately 6.959ha and had limited frontages to Marana and McAllister's Road. The site contained three golf course holes being part of the Terranora Lakes Country Club Golf Course.

The applicant has indicated that the previous resort approval was not viable and accordingly the applicant commenced the process of

1. A State Significant Site Application in accordance with the SEPP (Major Development) 2005 and
2. A concurrent Concept Plan.

Both applications are before the Minister for Planning as the consent authority, however, Council has been asked by the Department of Planning to provide comments on the two proposals in the form of a submission.

The Site

The site is located within the Bilambil Heights Urban Release Area 6km west of Tweed Heads. The land has frontage to and access from Marana Street at its south eastern corner. Marana Street links to Scenic Drive which is a major distributor road connection to Tweed Heads in the east.

In the north, the property has frontage to Cobaki Road which is also a major road connection to Kennedy Drive and Tweed Heads and ultimately, via Piggabeen Road and the proposed Cobaki Parkway, to the Tugun Bypass at the proposed Boyd Street interchange. The connection from Piggabeen Road to the Boyd Street interchange through the Cobaki Lakes is under construction in part.

The subject land comprises 187 hectares in varying zonings. Elevations of the land range from approximately RL 3m AHD towards its northern boundary to approximately RL 216m AHD in the middle of the site and 180m ADH towards its southern boundary, adjacent to Marana Street. Extensive views of the coast and valley are available from all over the site.

The site also accommodates significant flora which is primarily within the environmental protection areas.

The State Significant Site Application

Parts of the site are zoned for Urban Expansion purposes while other parts of the site are presently zoned 6(b) Recreation (the old club and golf course) and other various zones which necessitate a re-zoning to accommodate the proposal. The State Significant Site application incorporates a proposed re-zoning to facilitate the proposed urban development.

In August 2006 Darryl Anderson Consulting Pty Ltd prepared a State Significant Site Submission in respect of the Pacific Highlands Estate, as it was then known (now known as RISE).

The Submission was lodged with the Department of Planning in August 2006. Following discussions with the Minister for Planning and officers of the Department of Planning, the State Significant Site Submission was amended (August 2007) such that the whole of the development shown on the Draft Structure Plan and the Proposed Zoning Map, is within the existing urban footprint identified within the Far North Coast Regional Strategy (except for the proposed Sports Park).

On 6 November 2008, the Department of Planning advised that the Minister will deal with rezoning and development of the site as a State Significant Site and the Minister has also authorised the preparation of a Concept Plan.

A plan showing the Concept Plan boundaries as agreed to by the Minister is contained at Annexure 2.

On 5 February 2009, the Department of Planning provided the Director General's Environmental Assessment Requirements for the RISE Concept Plan and also provided the following advice in relation to listing the site as a State Significant Site in Schedule 3 of State Environmental Planning Policy (Major Projects):

"In considering whether to include the site in Schedule 3 of the Major Projects SEPP, the Minister has requested that the Director General make arrangements for a State Significant site study to be undertaken (by the proponent) that will assess:

- a. the State or regional planning significance of the site (having regard to the 'Guideline -State Significant Sites');*
- 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. the likelihood of the proposed rezoning for residential and employment purposes achieving the desired outcomes of the State Government's draft and adopted regional and sub-regional strategies;*
- e. the recommended land uses and development controls for the site that should be included in Schedule 3 including zones (Standard Instrument zones) and provisions for height, FSR (or other density controls), and heritage-listings. Maps related to these provisions should also be provided;*

The Department has reviewed the State Significant site study dated August 2007. It is recommended that the study be revised to more concisely cover the matters listed in this letter and be consistent with your Concept Plan proposal (e.g. in terms of the land covered and proposed uses etc). A combined report can be submitted for the application but it should be structured with separate sections clearly dealing with the State Significant site listing and the Environmental Assessment for the Concept Plan."

The current State Significant Site Study assesses items (a) to (e) above and is intended to facilitate rezoning of the site by way of a Listing in Schedule 3 of State Environmental Planning Policy (Major Projects).

The Concept Plan

The Minister for Planning has authorised the submission of a Concept Plan for the RISE site. In summary, the Concept Plan proposes

- 1804 residential dwellings (approx 4500 people) including;
 - 181 residential lots
 - 70 hillside housing homes
 - 160 resort apartments
 - 36 penthouses
 - 367 apartments
 - 176 villas and townhouses,
 - 16 art shop houses (SOHO units),
 - 100 retirement cottages,
 - 486 retirement apartments,
 - 12 retirement villas and
 - a nursing home with 200 beds.

- It will also include a number of retail and community facilities including a supermarket, restaurants and retail space.

In relation to infrastructure outside of the proposed Concept Plan boundaries as agreed to by the Minister, on 16 December 2008 (confirmed on 13 January 2009), Departmental Officers advised that the Spine Road and any other necessary infrastructure/utilities needed to support the Concept Plan (Stage 1) can be addressed as part of the Concept Plan Application. This can be done without needing to amend the Concept Plan boundaries.

As part of the State Significant Site Application the applicant proposes a variation to the existing 3 storey height limit. The proposal incorporates:

- Gross Floor Area (GFA) up to 2 stories in height (cottages, villas, apartments, retail, commercial space, residents clubs, community hall, school buildings, child care, etc) equates to 77% of the total target GFA;
- GFA for the 3rd storey equates to 15% of the total target GFA.
- GFA between 4 stories and 6 stories equates to 7% of the total target GFA.
- GFA between 7 stories and 8 stories equates to 1% of the total target GFA

The whole concept is proposed within a community title subdivision scheme with the first stage of the Concept Plan involving a conventional land subdivision to create five lots as summarised below:

TABLE 6 – FIRST STAGE SUBDIVISION		
LOT NO.	AREA	PROPOSED USE
934	4717m ²	Low Level Reservoir
935	2407m ²	Expanded High Level Reservoir
936	117.38ha	Future Urban Footprint for development of the various Precincts
937	66.8ha	Residue Stage 2 lot
938	4.513ha	Proposed Unstructured Open Space

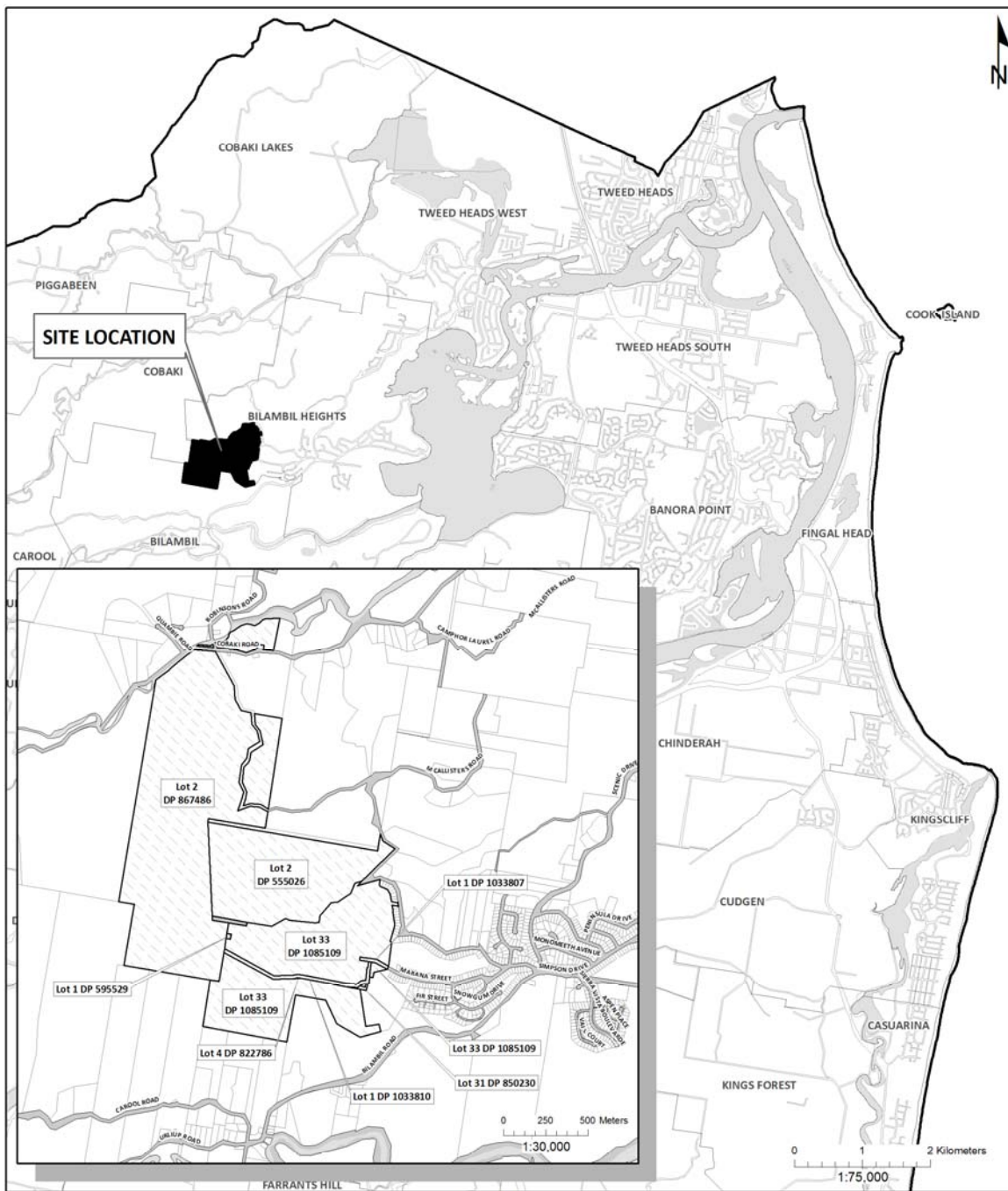
The Process

Should the Department of Planning approve this concept plan (with conditions) then future applications will be lodged with Council under Part 4 of the Environmental Planning and Assessment Act.

It is envisaged that this would include the initial Development Applications for:

- The construction of the Spine Road;
- The construction of all internal Roads;
- The initial subdivision as detailed within the concept plan.

SITE DIAGRAM:



LEGEND

- Lot 1 DP595529, Lot 1 DP1033810, Lot 1 DP1033807, Lot 4 DP822786, Lot 31 DP850230,
- Lot 2 DP867486 and Lot 33 DP1085109, Marana Street, Bilambil Heights;
- Lot 31 DP850230, Conmurra Avenue, Bilambil Heights;
- Lot 2 DP555026, 147 McAllisters Road, Bilambil Heights

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

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 24 September, 2009

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Cadastre 24 September, 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
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AERIAL PHOTOGRAPH

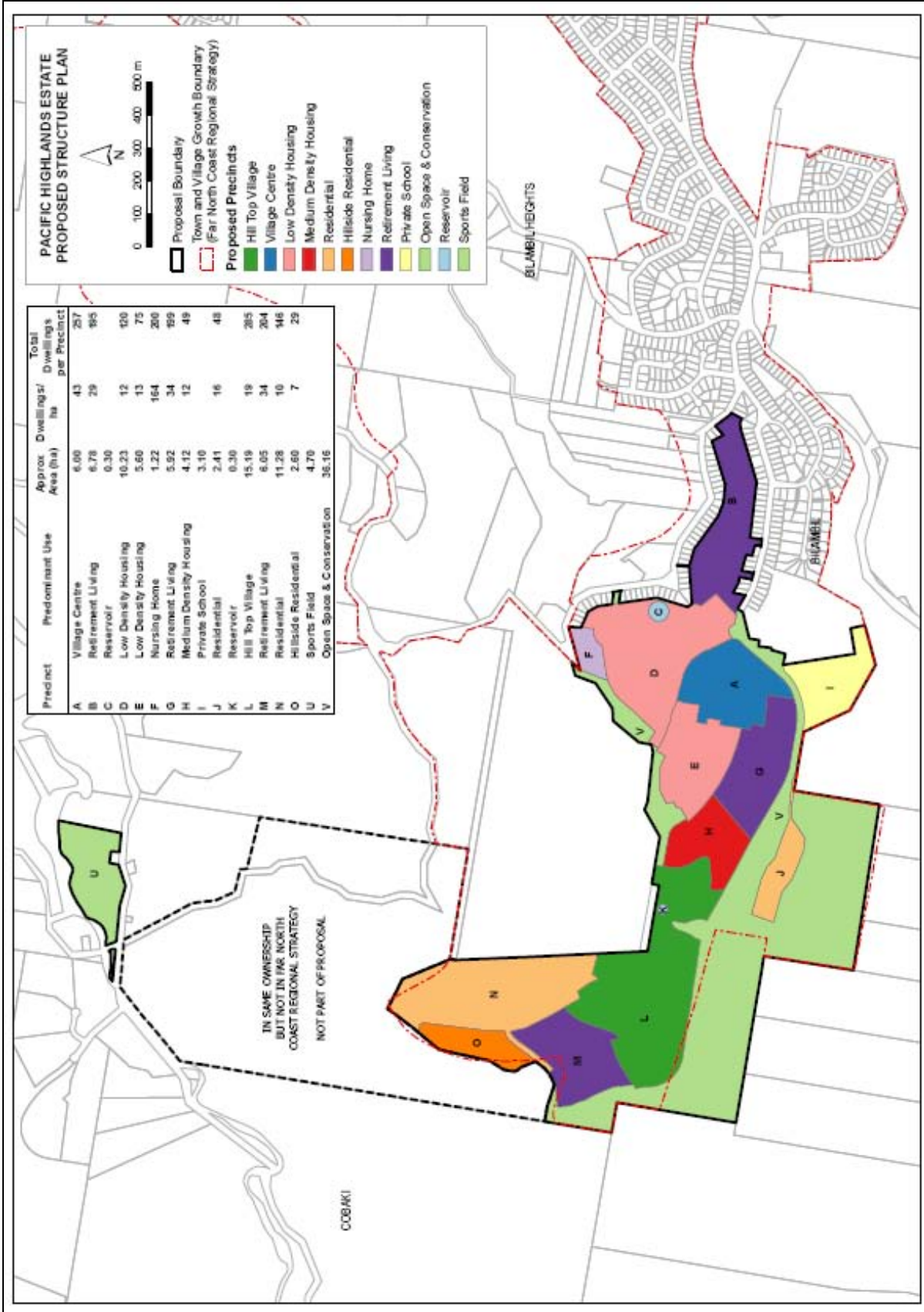


LEGEND / TITLE

Lot 1 DP 595529, Lot 1 DP 1033810, Lot 1 DP 1033807, Lot 4 DP 822786, Lot 31 DP 850230,
 Lot 2 DP 876486 and Lot 33 DP 1085109 Marana Street, Lot 31 DP 850230 Conmurra Avenue,
 Lot 2 DP 555026 147 McAllisters Road, Bilambil Heights

Filename: z:\gis\jobs\...1000	Author: J.Batchelor - Planning Reforms Unit	Date Printed: 19 October, 2009
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PROPOSED STRUCTURE PLAN



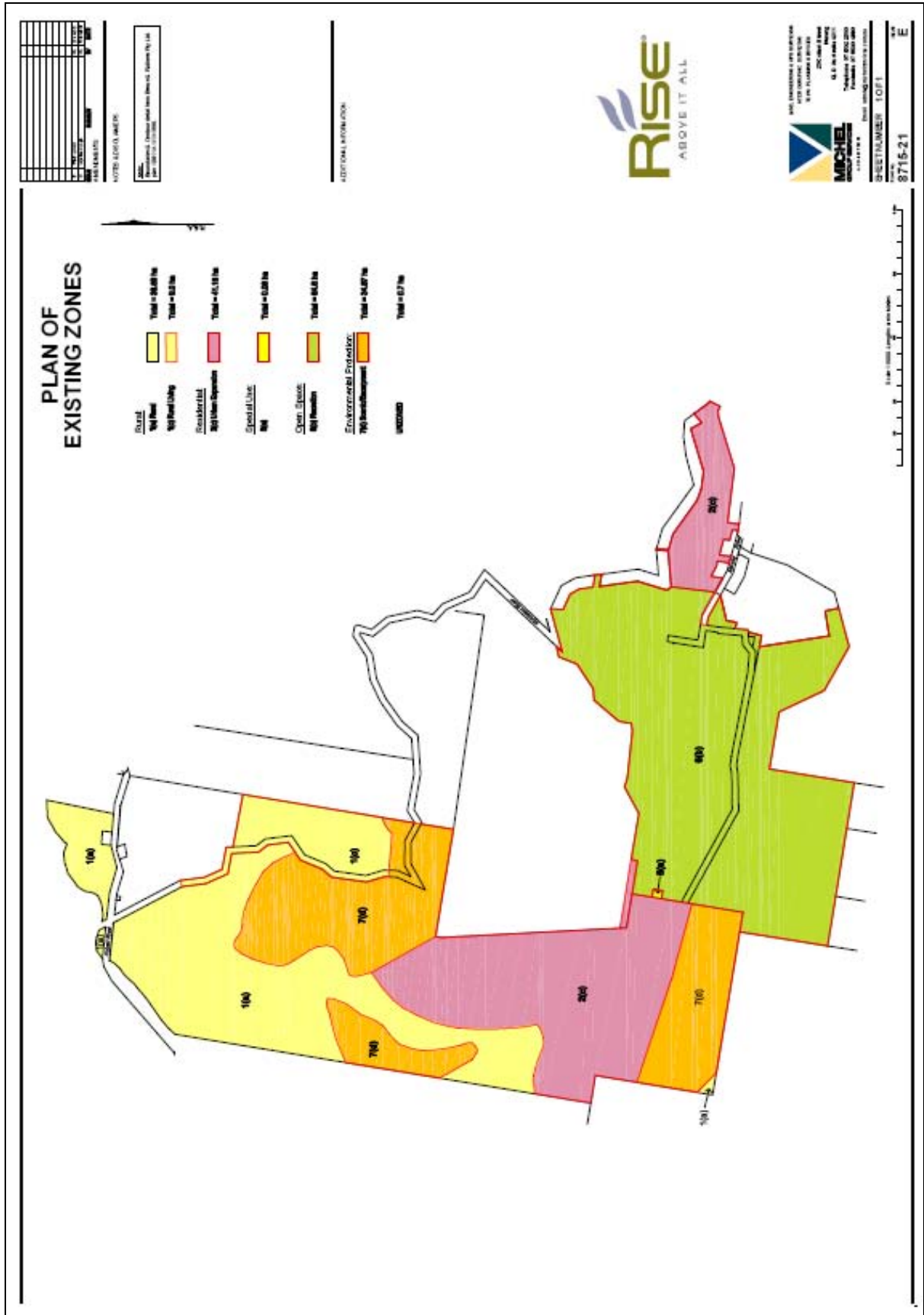
PRODUCT SUMMARY DATA

TABLE 5 – PRODUCT SUMMARY			
Precinct.	Product	Number.	Description / Av GBA / Av GLA / Av GSA.
A-1	Community Hall.	1	500 GBA.
A-2	Village supermarket.	1	1200 GLA.
A-3	Village Shopping Centre.	1	600 GLA.
A-4	Boulique Hotel apartments.	160	Apartments.
A-5	Tavern.	1	600 GLA.
A-6	Hospitality Training School.	1	700 GLA.
A-7	Local Business Suites & Retail.	1	3700 GLA.
A-8	Medium Rise Apartments.	38	4 Storey apartment building.
A-9	Medium Rise Apartments.	23	5 Storey apartment building (retail on GF).
A-10	Medium Rise Apartments.	36	6 Storey apartment building (retail on GF).
A-11	Child Care.	1	400 GLA
A-12	Private community Club building.	1	350 GBA.
A-13	Private community lap pool.	1	25m lap pool.
A-14	Private community Tennis court.	1	Court with pavilion.
B-1	Retirement Living.	15	Cottages.
B-2	Retirement Living.	180	3 Storey apartments.
B-3	Retirement Living Club building.	1	800 GBA.
C	Council Regional Water Reservoir		Land transferred to council.
D-1	Res A Housing Lots.	80	575 GSA
D-2	2 / 3 storey Townhouses.	40	3 bed / 2 car Townhouses.
E-1	Res A Housing Lots.	24	650 GSA
E-2	3 Storey Boulevard Villas.	45	3 bed / media / study / 2 car Townhouses.
E-3	3 Storey Townhouses.	6	3 bed / media / study / 2 car Townhouses.
F	Nursing Home Land.	1	3 storey 200 bed Nursing Home site.
G-1	Retirement Living.	25	Cottages.
G-2	Retirement Living.	162	3 Storey apartments.
G-3	Retirement Living.	12	2 storey villas.
G-4	Retirement Living Club building.	1	800 GBA.
H-1	Res A Housing Lots.	34	650 GSA
H-2	Hillside Housing Lots.	2	650 GSA
I	Private School.	1	Land Area.
J	2 & 3 Storey Townhouses.	36	3 bed / study / 2 car Townhouses.
K	Council Regional Water Reservoir		Land transferred to council.
L-1	Hilltop Plaza Penthouses.	5	Penthouse apartments.
L-2	Hilltop Plaza Sub Penthouses.	31	Sub- Penthouse apartments.
L-3	Hilltop Plaza apartments.	12	Lower level apartments.
L-4	Hilltop Plaza apartment facilities.	1	780 GBA
L-5	Hilltop Plaza retail / restaurants/ studios/ art school.	1	1,472 GLA
L-6	Retail art shop houses (Soho units).	8	South side of Ridge.
L-7	Art studios & shops.	8	As above, Ground floor, with units over.
L-8	Art house apartments.	16	North side, 2 storey apartments over art shops.
L-9	Art Facility / cafe building.	1	200 GLA
L-10	Hill top apartments (Nth Ridge).	137	Up to 6 storey over basement.
L-11	Hill top apartments (Nth Ridge).	28	2 storey flanking basement.
L-12	Health Spa.	1	600 GLA.
L-13	Hillside Housing Lots.	30	600 GSA
L-14	Res A Housing Lots.	15	575 GSA
L-15	3 storey Boulevard Villas.	17	3 bed / study / 2 car Townhouses.

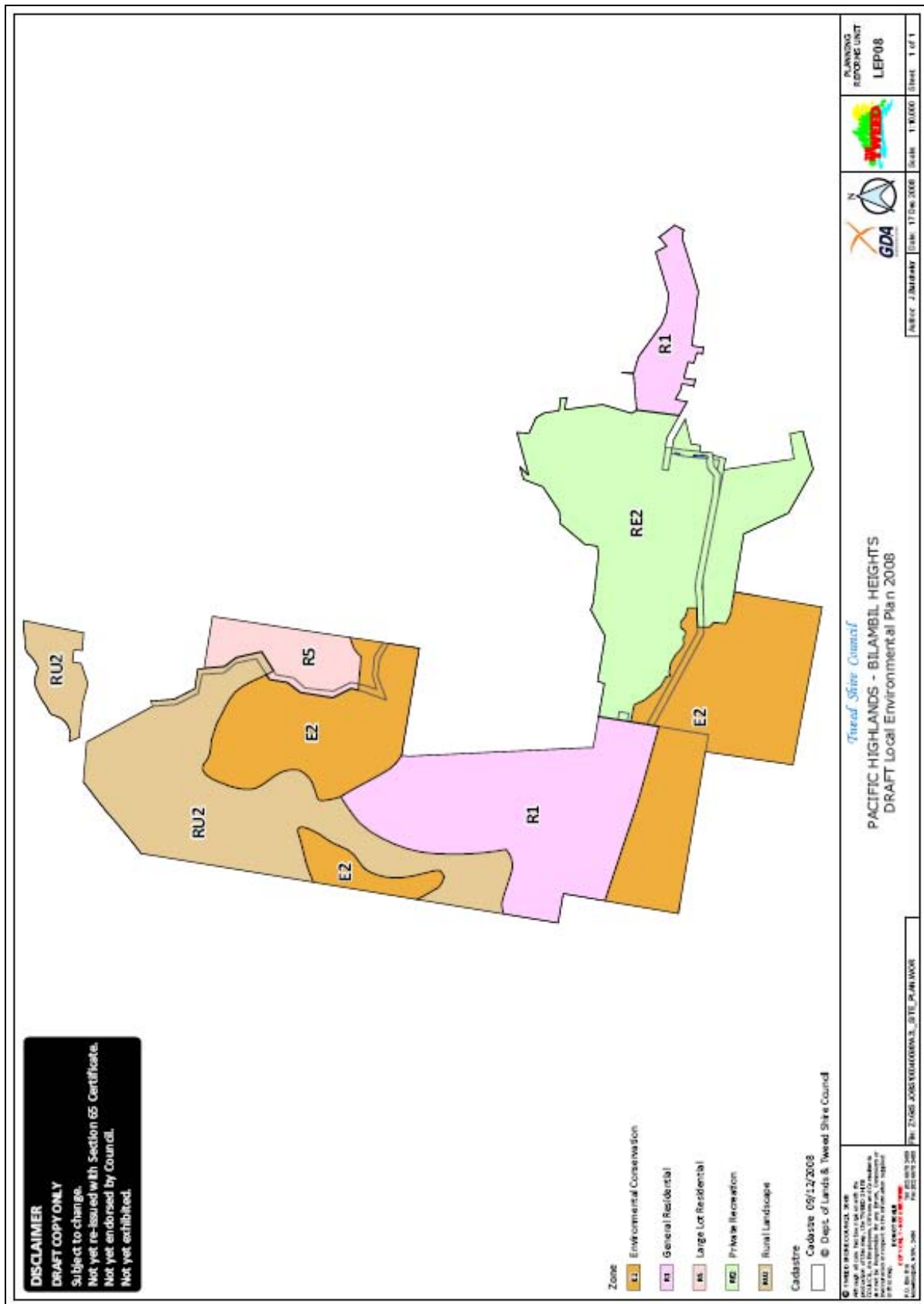
PRODUCT SUMMARY DATA (continued)

TABLE 5 – PRODUCT SUMMARY			
Preinct.	Product.	Number.	Description / Av GBA / Av GLA / Av GSA.
M-1	Retirement Living.	60	Cottages.
M-2	Retirement Living.	144	3 Storey apartments.
M-3	Retirement Living Club.	1	800
N-1	Res A housing Lots.	28	600 GSA
N-2	Villas	32	3 bed / 2 - 3 Storey Villas.
N-3	Retail shops.	1	375 GLA
N-4	Hillside Housing Lots.	11	650 GSA
N-5	Midrise Apartments.	70	3 storey apartments over basement.
N-6	Midrise Apartments.	7	2 to 3 storey apartments flanking basement.
N-7	Private community Club building.	1	350 GBA.
N-7	Private community lap pool.	1	25m lap pool.
N-7	Private community Tennis court.	1	Court with pavilion.
O-1	Hillside Housing Lots.	27	650 GSA
U	Sports Fields.	1	Public Sports Field land and amenities.
Product mix summary.			
	Residential Lots.	181	
	Hillside Housing Lots.	70	
	Hotel apartments.	160	
	Penthouses.	36	
	Apartments.	367	
	Villas & Townhouses.	176	
	Art shop houses (Soho units).	16	
	Retirement cottages.	100	
	Retirement apartments.	486	
	Retirement villas.	12	
	Nursing beds.	200	
	School area.	1	
	Retail space (Inc tavern) GLA.	4,447	
	Commercial space GLA.	5,300	
	Health Spa GLA.	600	
	Total residential dwellings.	846	ABBREVIATIONS: GFA – Gross Floor Area GLA – Gross Leasable Area
	Total including Hotel units.	1,006	
	Total Retirement dwellings.	598	
	Total Nursing beds.	200	
		1,804	
	Total commercial / retail GLA.	10,347	

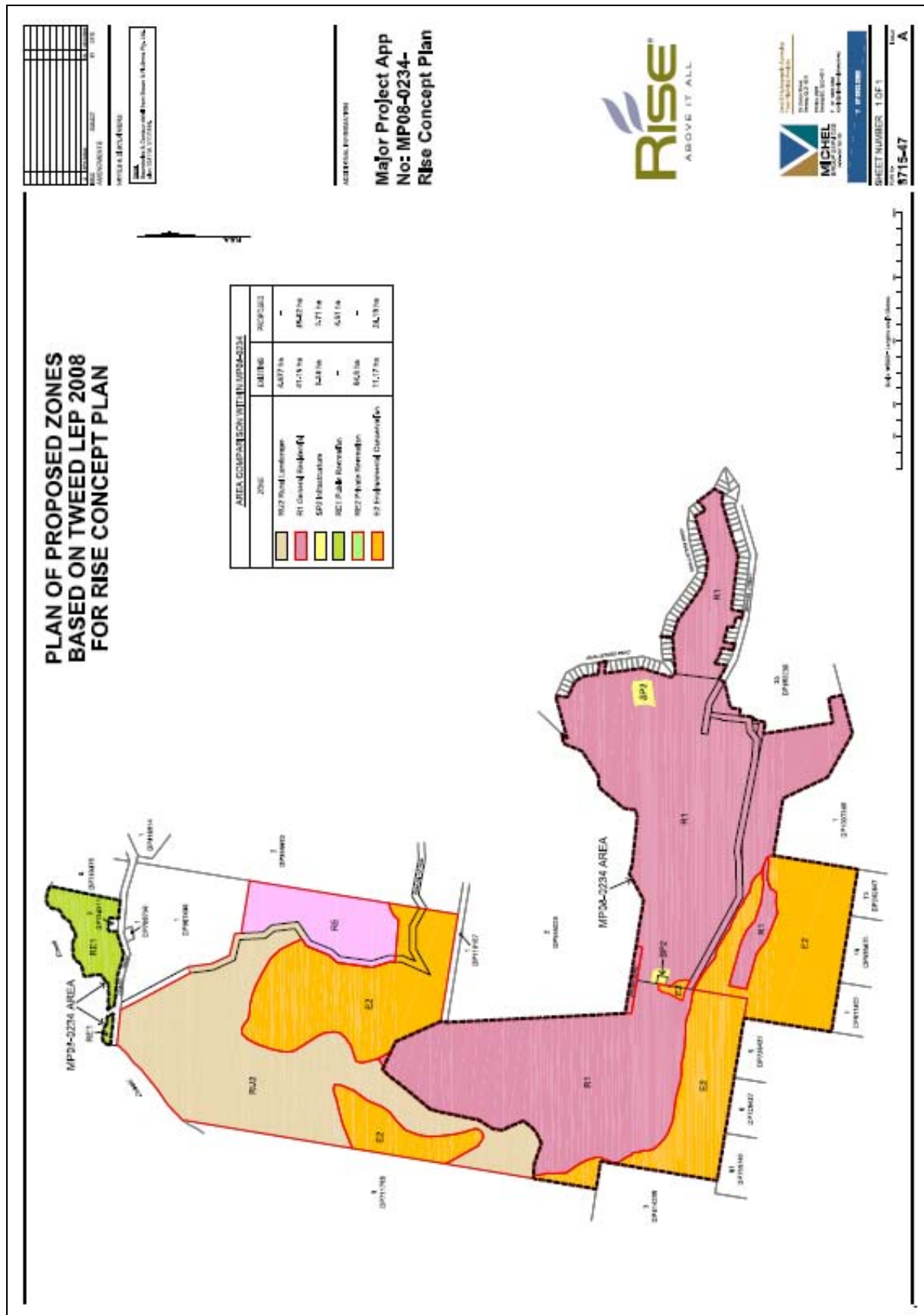
PLAN OF EXISTING ZONES



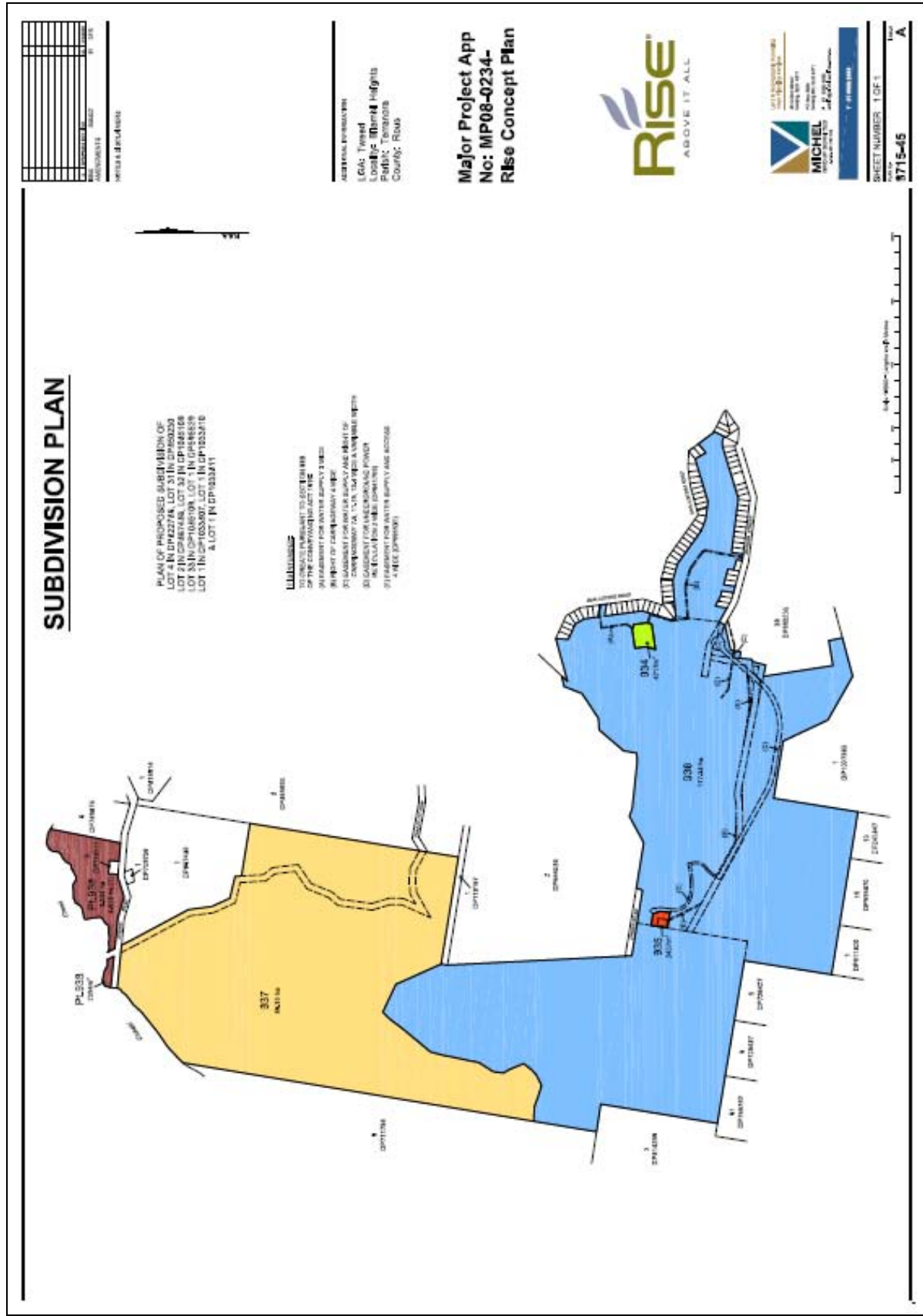
PLAN OF PROPOSED ZONES UNDER TWEED LEP 2008 (2010)



PLAN OF PROPOSED ZONES UNDER STATE SIGNIFICANT SITE APPLICATION



PLAN OF PROPOSED SUBDIVISION UNDER THE CONCEPT PLAN



THE CONCEPT MASTER PLAN

18

CONCEPT MASTER PLAN

PREFACE

The following criteria and reasoning have significantly determined the shape and content of the Concept Master Plan for Rise. In principle, it responds to a demonstrated need for planned future development of the region as envisaged by the Tweed Shire Council and the Department of Planning over the past 2 decades. As demographics change, so do the responses with regard to planning strategies.

This report has recognized these changes and proposes considered solutions.

SITE PLAN

The principle development components indicated on the plan and outlined in the project summary #14, represent the preferred various types of buildings and dwellings and their relationship with each other and the urban environment.



THE LANDSCAPE MASTER PLAN

2.0 Landscape Masterplan

- 1 **Ridgetop Entry Drive**
 - structural forest landscape
 - manicured landscape to road edge
 - landscape rhythm elements
 - landscape structure
- 2 **Community Events Lawn**
 - lawn terrace amphitheater
 - small stage area
 - vegetated parklands, terraced down slope
- 3 **Town Gully**
 - existing dam
 - walkable edge around dam
 - picnic shelter
- 4 **Hillside Gully Park**
 - existing dam
 - pathway on edge of hill
 - viewing platforms
- 5 **Urban Town Plaza**

The landscape master plan is made up of a combination of all private, semi private and public external areas. While the proposed landscape design principles can not dictate what is undertaken in private external spaces the design of all public and semi-private spaces can have a huge influence. Therefore, this landscape master plan is concerned with all levels of open space and streetscapes. The primary objectives of the landscape master plan are:

- To create an urban fabric that promotes safe pedestrian, cycle and buggy movement designed around the principles of 'streets as linear parks'.
- To create a clear hierarchy of streets and open space to maximise legibility and sense of place, and accommodates a fully connected network of pedestrian, cycle and buggy paths.
- Embrace the principle of 'water sensitive urban design', best practice.
- To establish a sense of identity and strong visual character complimentary to the site's location and surrounds within the hinterlands of the Tweed shire.
- To promote opportunities for appropriate social contact activities, ranging from passive to active recreational pursuits.
- To provide security and safety for all pedestrians, cyclists and motorists within 'Rise' through the appropriate landscape design of open space and streetscapes.
- To conserve and enhance bio diversity through the conservation, rehabilitation, revegetation and management of hectares of the site as protected vegetation zones.
- To respect and manage bush fire risk through the appropriate planting within the nominated asset protection zones (APZ).



Draft Submission

The State Significant Site Study and Concept Plan were circulated to Council Officers with expertise in the following fields:

- Ecologist
- Statutory & Strategic Planning
- Infrastructure Engineering (Flooding)
- Subdivision Engineering
- Building Surveyor
- Environmental Health
- Traffic
- Social Planning
- Entomology
- Water Services
- Natural Resource Management

Comments from Council Officers have been collated into the attached draft submission.

Major issues raised include the following:

Strategic Context

The subject site was identified in general terms in the *Tweed Residential Development Strategy* 1991 as an 'existing' urban area, and later in the *Far North Coast Regional Strategy* (2006) as a "proposed future urban release" area. The *Tweed Urban and Employment Land Release Strategy* 2009 (adopted 17 March 2009) also makes reference to the Bilambil Heights release area, which is seen as short to medium term proposal that is anticipated at providing for a population of about 7500 people.

The longstanding strategic land-use policy position has foreshadowed the urban development of the subject land, which would comprise a choice of housing types, local area catchment shopping, retail and commercial needs, community facilities and infrastructure.

In general terms the proposed development is consistent with the long-term strategic land-use intention for the area, as provided for in the State and local strategic planning policies referred to above.

Strategic Context / Relatedness

The subject site is part of much larger identified Bilambil Heights release area and is adjacent to the neighbouring Cobaki Lakes release area. The subject proposal must take into consideration at the very least its role within the broader Bilambil Heights release area and where practical in relation to Cobaki Lakes. These areas are to varying degrees linked and the development of the remainder of the Bilambil Heights release area seems to be contingent upon the development of the neighbouring Cobaki Lakes, particularly as it relates to traffic/road design.

It is essential that the release areas ultimately function in unison and that to do so essential services, such as, retail shopping, are neither under or over provided.

Consequently, a retail analysis, grounded on Council's adopted retail policy of 2005, will be required to demonstrate and justify both the provision and location of the required level of retail shopping needs.

Tweed 2000+ Strategic Plan and Tweed 4/24

The Tweed 2000+ is one of the overarching strategic vision documents for the Tweed and it is called up by the Tweed LEP 2000. The other Plan is the Tweed 4/24 Strategic Plan, also referred to as 'Tweed Futures.' This later Plan updates the earlier 2000+ Plan and represents a 'whole of Shire' policy approach to managing the future growth of the Tweed.

The 2000+, s 120, on page 34, sets out the individual release area requirements and includes the release area of Bilambil Heights. There are several key elements, the most notable being:

- commitment by the landowners for funding of Scenic Drive Diversion
- water and sewer provision so that there is no unnecessary duplication of mains and pump stations
- defined areas of dual occupancy and medium density development
- *houses not permitted on prominent ridgelines.*

In addition, 2000+ provides a section (125 on page 35) on 'existing urban areas.' This section identifies that the Tweed's urban environment requires an improvement in design, diversity and efficiency, capable of responding the changing demographic needs of the community. It seeks to achieve this by encouraging mixed-use neighbourhood centres, improving residential amenity, ensuring that housing design responds to the site, e.g. split level rather than excavation, diversity in construction material and so on.

The 4/24 Plan identifies that the earlier 2000+ Plan was heavily concerned with managing urban expansion and that while this is still required the attention to producing socially and sustainable responsible developments is paramount. It is important to note however the key elements of the community feedback provided on page 4, in particular as it relates to:

- maintaining quality of life and protecting the environment and natural beauty of the Tweed,
- planning for a balance between population growth, urban development and the environment,
- retaining prime agricultural land, farm viability, and managing rural subdivision and associated landscape impacts.

It goes further on page 7 to identify further community values, including:

- protection of the Tweed's natural beauty, scenic landscapes and environmental quality,
- less emphasis on urban expansion and avoidance of over-development,
- a quite and peaceful place to live, with a diversity of lifestyle options.

Under Section 7 – Managing Urban Development, "Strategic Directions," the Plan acknowledges the need to diversify new Greenfield urban developments away from the

traditional low density solely residential based to more sustainable mixed-use neighbourhoods which integrate land-use and transport planning, and active social infrastructure, such as, walkway and cycleway, public transport, community facilities and the like.

In summary, the proposed development attains many of the strategic imperatives of the 2000+ and 4/24 strategic plans, however, its most prominent failure (through the requested height variation to 8 stories) is achieved by not responding to the desired vision and community values in relation to protecting the scenic and landscape value and amenity of the Tweed. These policies seem to suggest that the prominent ridgelines should not be built on, this may pose some difficulty in relation to water servicing and may be too restrictive if applied literally to low rise, dispersed, building types, however, it serves to highlight what is arguably the single most design weakness with the proposed development, that, some of the biggest and more imposing developments are proposed in the most prominent locations.

It seems that the development generally achieves the mixed-use neighbourhood centres concept and the range of housing and business development required of any sustainable village, however, the height of buildings on the prominent ridgelines should be kept to a minimum.

Far North Coast Regional Strategy (FNCRS)

Town and Village Growth Boundaries

The subject site is identified within an identified town and village growth boundary under the FNCRS, as an existing urban footprint. The land is already zoned for urban purposes. However, the strategy clearly articulates and canvasses that not all land within a town and village growth boundary can be developed as this will depend on detailed investigation of the sites suitability.

The Strategy seeks to ensure that land identified for urban development is efficiently used without sacrificing the identify of the area. This may occur as a result of infill development and growth of existing town and villages, or, as is the case with Bilambil Heights it may occur as a result of a new village or town. In concert with the Department's Settlement Planning Guidelines 2007, the strategy reinforces the need to ensure that any new development strengthens the hierarchy of the settlement or in the case of Greenfield development ensures that an appropriate hierarchy is established, that housing choice is diverse, dependence of car travel and demand is reduced and there is range of mixed-use residential and employment development.

The proposed development generally achieves the desired outcomes under the strategy in its provision and diversity of housing and commercial/employment opportunities, **relative to the constraints and limitations of the site**, which is comprised of steep and hilly land.

Settlement Character and Design

The strategy identifies that as the region continues to grow the character of the area will evolve to reflect the demand changes brought on by the need for employment, better

services, diversification in housing and business, and in the provision of more sustainable and liveable settlements.

However, the strategy recognises that this evolution should not be at the expense of the underlying coastal values of the Region, and should help to define and enhance those values by offering greater opportunities to preserve and *protect important environmental and scenic landscapes*.

The proposed development has the ability to achieve many of the positive outcomes sought by the strategy, in particular in the delivery of a mixed-use and diversified housing and business development, however, it fails to address the impact on the natural environment / landscape that is likely to result from the siting of large buildings on prominent ridgeline locations.

The strategy recognises the need for new development to take account of the existing natural environment and character and although not specifically excluding consideration of the fundamental principles of ancient town and village concepts, as found elsewhere, the paramount and primary consideration should be the local context. In this regard the proposed development has not taken this principle of the Strategy into account and this appears to lead to an inconsistency, one that could in all probability only be overcome through proper community consultation about the importance and recognition of the existing landscape versus an alternative European styled landscape.

Urban Design / Natural Amenity

This issue ties in with the discussion above on the Tweed's strategic policies, but is nevertheless worthy of further comment.

The urban design philosophy of the proposal marks a significant departure from that pursued in the Tweed to-date, and is more characteristic of the hilltop style developments emerging in neighbouring Queensland. This is compounded by the variations sought (up to 8-storey) to the current 3-storey height restriction under Tweed LEP 2000 and will lead to a visual character and dominance of the development that is unprecedented in the Tweed. The development, if approved, would mark a significant turning point in the management of the Tweeds natural environment (character), particularly in terms of visual amenity.

European village/towns concepts of hill top (defendable) developments have been used as the model for the hill top village concept in Bilambil Heights. It is highly debatable and questionable as to whether such a model let alone a justification premised on this European concept has any place or relevance in the Tweed. The concept of sustainable concept village, which these old villages and towns provide appears to be the more relevant concept as it accords with the strategic policy and approach adopted by Tweed Council.

It does not appear that the Tweed Scenic Evaluation Report 2005 was considered in the design and evaluation of the proposal's impact on the natural environment.

Strategic Conclusion

It should be noted that the subject site has been identified as an urban release area for many years, despite the lands physical constraints. Nevertheless, the longstanding urban zoning and constraints should not be seen as of right to providing a development concept that does not accord with current State and local strategic policy.

It may be generally accepted that the proposed development does achieve many of the broader settlement imperatives provided in the State and local policy referred to in the attached submission, in particular in the provision of diversification of housing mix, provision of commercial and retail opportunities and in the coordinated approach and provision to water, sewer and road infrastructure, however, one of the fundamental considerations for any new development, regardless of scale or location, is the local context.

In this instance a consideration of the natural environment and landscape, having regard to the site's elevation and visual exposure to/from great distances, must be a primary consideration. All of the strategic policies referred to in the attached submission make reference and highlight the importance of respecting and retaining the scenic landscape, both from a regional perspective but also from a local community value perspective.

The proposed development seems to propose a 'new' concept for the Tweed, based on urban design and architecture concepts from elsewhere, and although a valid exercise in its own right it is one that has led the proposal to be inconsistent with the State Government's Far North Coast Regional Strategy and Council's overarching strategic planning policies, Tweed 2000+ Strategic Plan and Tweed 4/24 Strategic Plan, and ultimately the Tweed's communities values as expressed through those adopted policies.

To overcome or create a change in policy as to what level of or style of landscape is appropriate for the Tweed there would need to be proper community consultation that focuses on the importance and recognition of the existing landscape versus an alternative styled landscape, whether that be founded on hilltop development principles or otherwise.

Bilambil Heights Release Area –The Local Area Structure Plan

In 2006 the applicant approached Council regarding the timing and way forward for the Bilambil Heights Release Area. The applicant was advised that Council did not have the resources to advance the strategic planning options for the Bilambil Heights Release Area.

The applicant in consultation with Council Officers accordingly volunteered to undertake a Local Area Structure Plan that reviewed the constraints of the whole release area and set parameters for future growth within the release area. The covering letter associated with the Local Area Structure Plan stated:

"We enclose herewith three (3) copies of the Draft Bilambil Heights Local Area Structure Plan which has been prepared in accordance with the agreed scope of works and following consultations with Council officers in relation to earlier drafts.

The Draft Structure Plan is intended for use by Council and the Department of Planning only at this stage and accordingly Council is requested to treat the document as "Confidential".

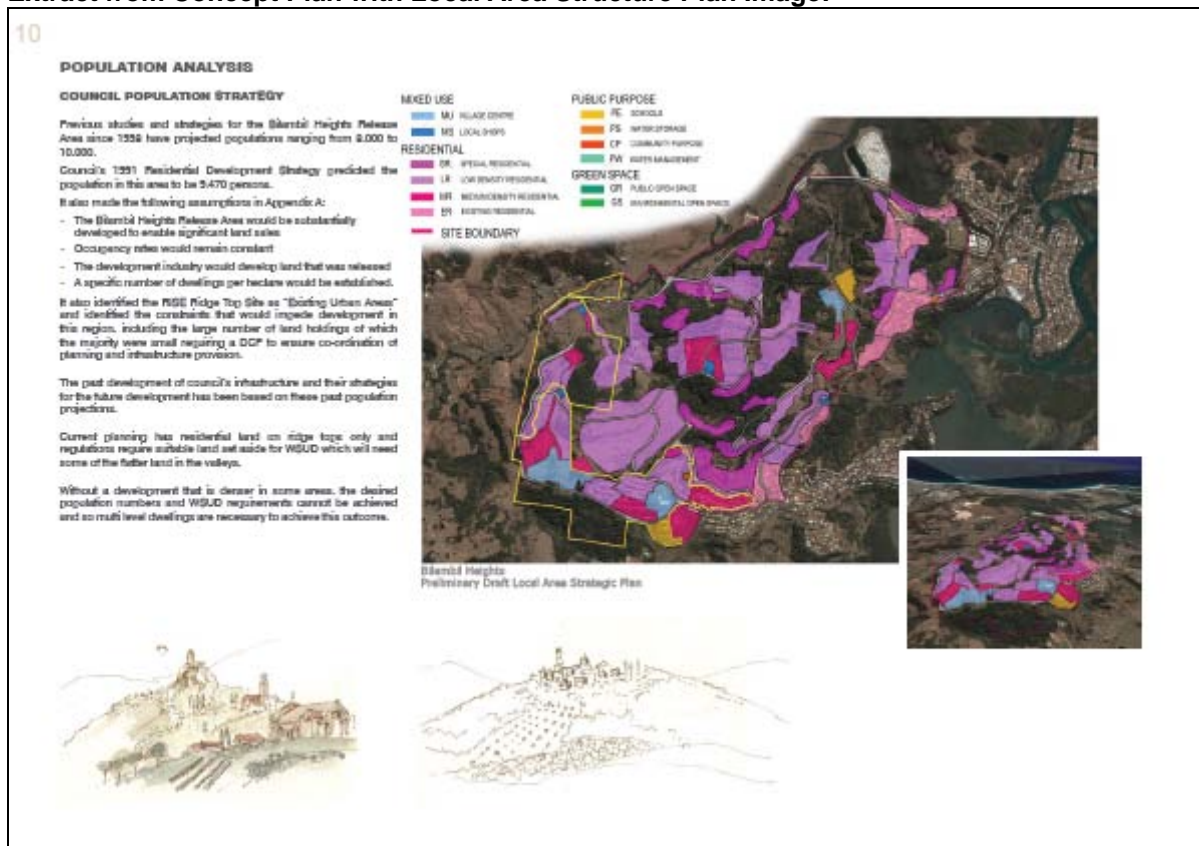
Until negotiations are concluded with Council and the Department of Planning in relation to the Pacific Highlands State Significant Site Submission and Concept plan, copyright in the Draft Bilambil Heights Local Area Structure Plan will remain with Terranora Group Management Pty Ltd.

In accordance with previous agreements, Council is also requested to confirm that credits in respect of future Section 94 contributions will apply to the Pacific Highlands development for the costs incurred by Terranora Group Management Pty Ltd in preparing the Draft Bilambil Heights Local Structure Plan.

It would be appreciated if Council could review the document and advise the Department of Planning that Council has no objection to the declaration of the Pacific Highlands site as a State Significant Site as proposed in our Submission to the Department dated August 2006.

Please do not hesitate to contact Darryl Anderson if you require any further information in relation to this matter."

Extract from Concept Plan with Local Area Structure Plan Image:



The Local Area Structure Plan was not publically exhibited and was never formally reviewed or reported to Council for any resolution. However, the applicant has indicated that verbal feedback was given by Council staff regarding the comprehensive nature of the Plan.

It is now understood that the Department of Planning has determined that the subject site (Rise) is large enough in its own right to be regarded as a State Significant Site independently of any other adjoining land that forms part of the Bilambil Heights Urban Land Release Area.

Whilst this might be true should the Department approve this concept plan it will have ramifications for Council's future planning of the remainder of the release area.

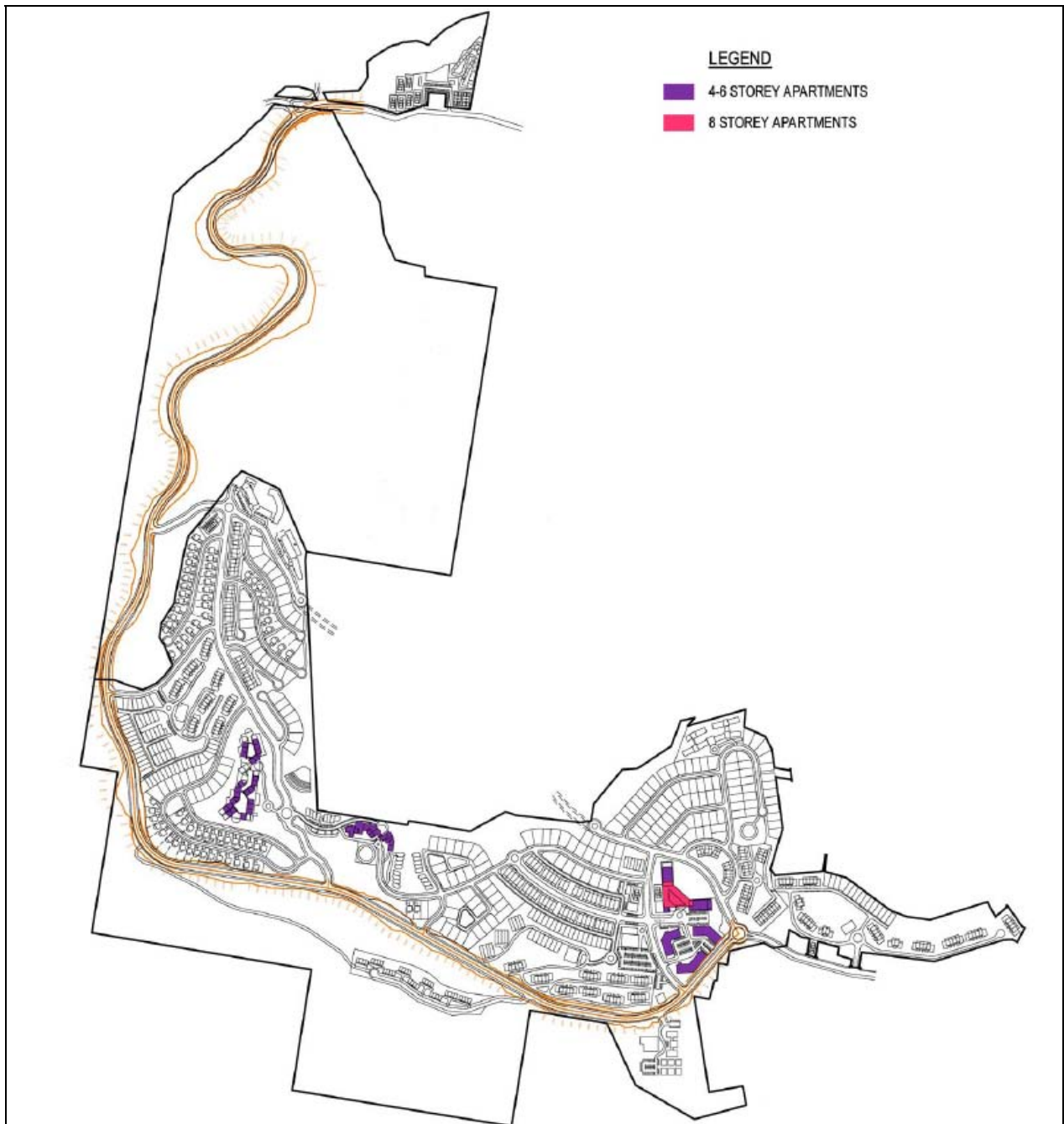
Council will need to re-consider the Strategic Planning options associated with Bilambil Heights and review whether the Local Area Structure Plan can or should be used as a basis for any future planning. Subsequently it is recommended:

That Council request that a report is brought forward outlining the options available to advance the strategic planning for Bilambil Heights Release Areas (including options in regards to the status of the Local Area Structure Plan prepared on behalf of the "Rise" development)

The attached submission also requests the Department of Planning to continue to liaise with Council on this project given the wider strategic implications associated with this development.

Height & View Analysis

The applicant has requested a variation to the statutory height limit of three stories in certain parts of the site. The applicant proposes a height limit of up to 8 stories as shown on the following plan:



The applicant has provided the following images and justifications for the requested height variation:

The visual amenity of the existing site and of the proposed development were assessed by observation and analysis when seen from frequently and, in some cases, less frequently accessed public locations, such as roads and streets from which the site is currently visible.

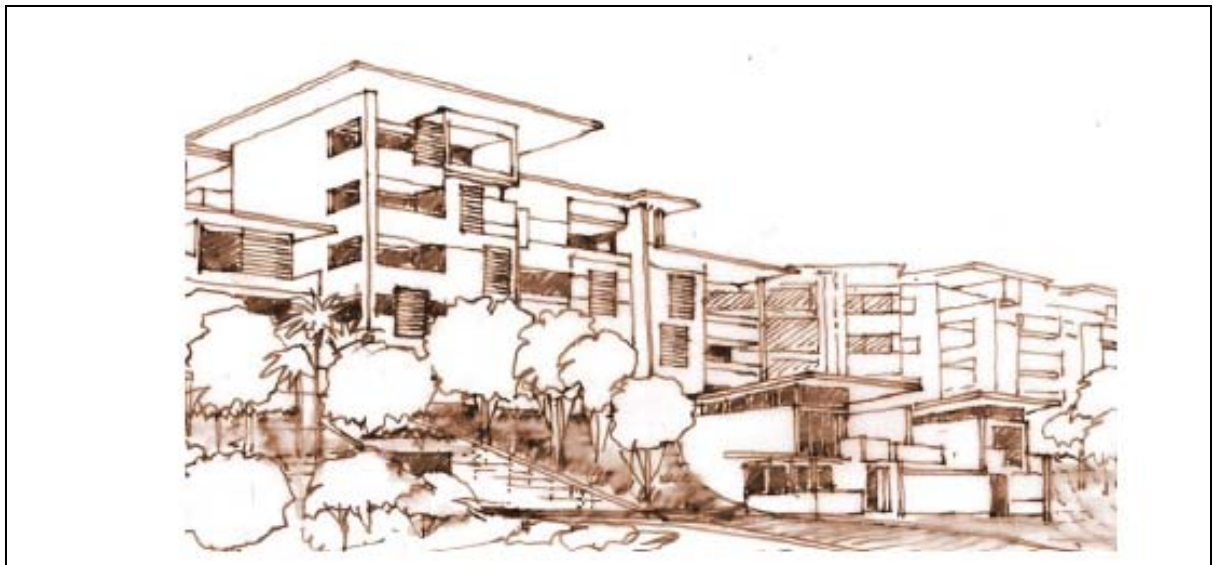
Although not as important as views from public spaces, similar views would also be obtainable from private properties near to the selected streets from which the observations were made.

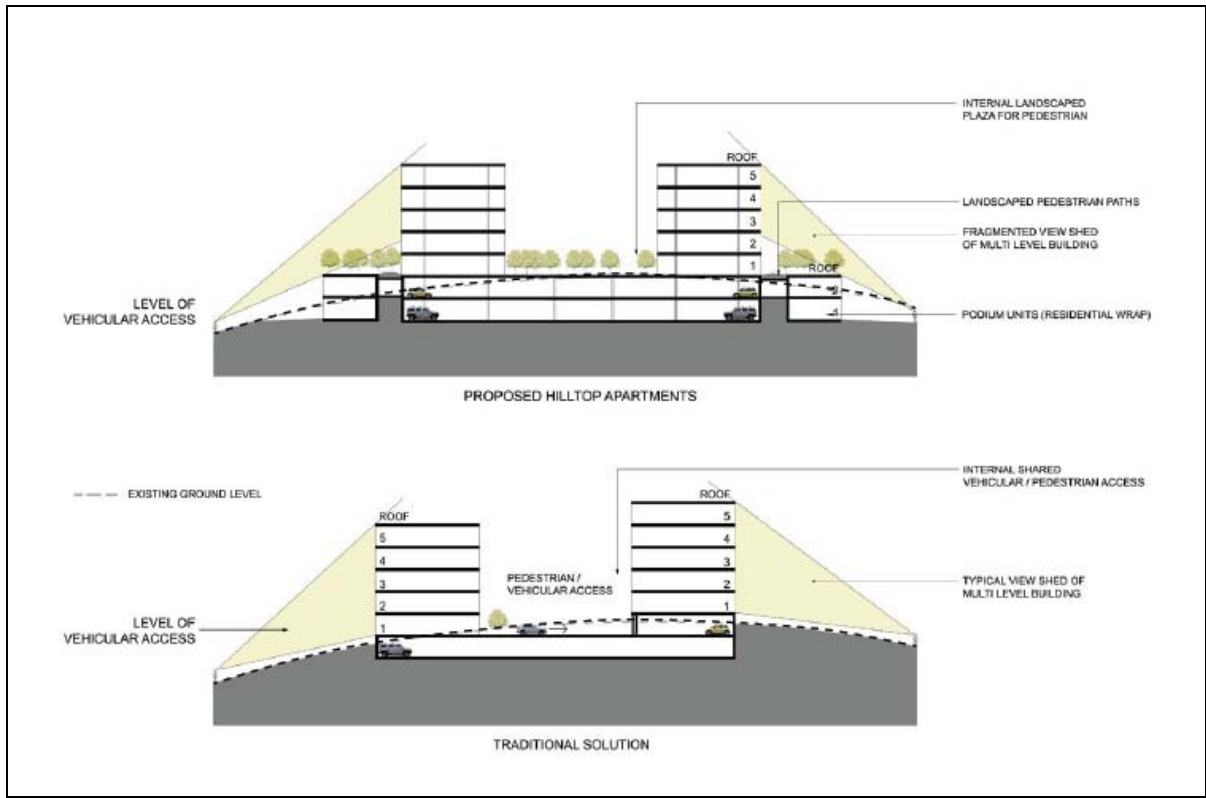
There are few locations from which the full extent of the site forms an important element in the view shed and even when it does, other existing urban developments are either more visually dominant or are more apparent.

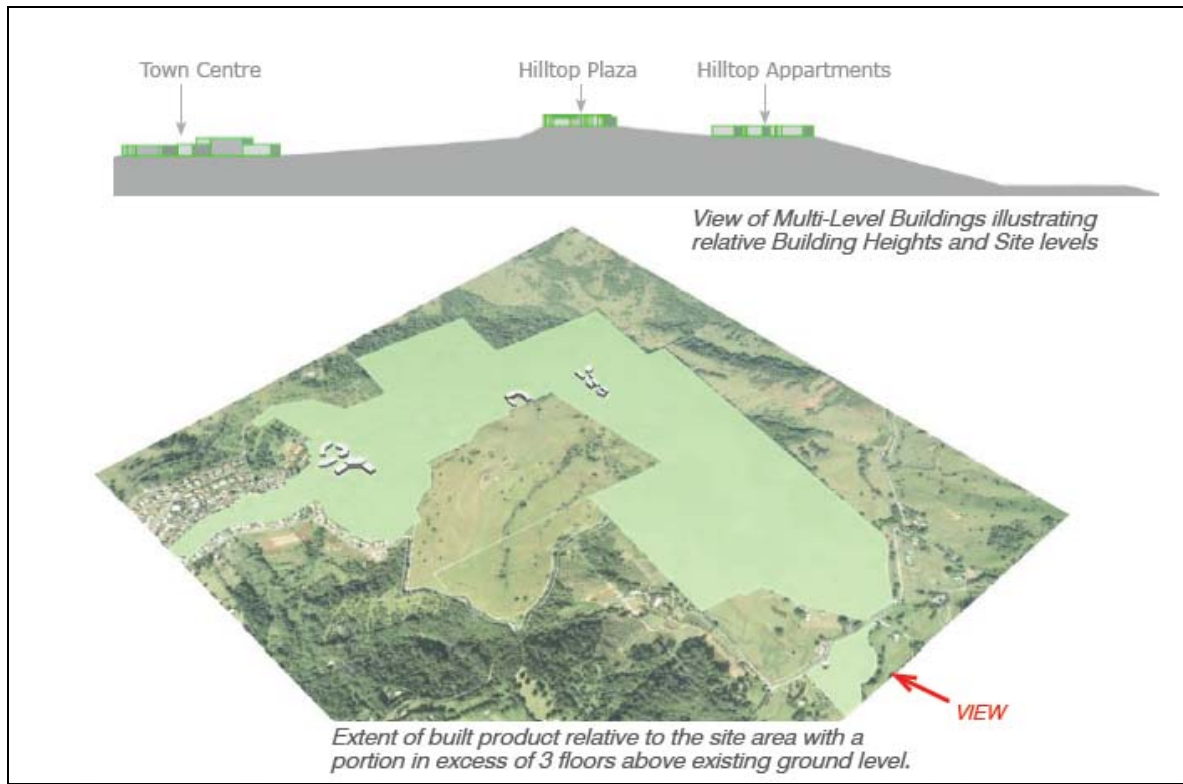
Viewed from locations where the site is quite visible, the parts of the site which are quite obvious will remain as open space and the parts of the site which will be subject to urban development will be visually subservient or screened from those viewpoints.

From the locations where proposed structures which exceed three storeys will be visible, they will not negatively impact the visual landscape due to building heights being restricted to mature native tree height, neutral colour selection for building finishes and distance from Viewpoints.

In summary, the findings of this Assessment indicate that, with regard to visual impact, this project should be allowed to be approved for development.







The proposed variation to height is a major policy decision that should be made at a more strategic level. To increase heights and density is a public policy decision that should take into account the rest of the Bilambil Heights Release Area, Cobaki Lakes and even Tweed Heads South. If it were to be determined that additional density was needed then an analysis should occur to determine the best place for that density and thus height.

It is now understood that the Department of Planning has determined that the subject site (Rise) is large enough in its own right to be regarded as a State Significant Site independently of any other adjoining land that forms part of the Bilambil Heights Urban Land Release Area. In Council's opinion it would be considered flawed if the height limits on the subject site were amended independent of any strategic analysis

The proposed increase in heights on a prominent ridgeline is contrary to all strategic direction that Tweed Shire Council has previously undertaken. It is acknowledged that the area of the proposed variations is small given the overall site area however the additional height is also proposed within the most prominent section of the site, and will be visible from a distance.

The applicants urban design principals for increased height (sustainability and creating a sense of place) have some merit, however, the real question is whether these principals fit within the context of this site.

The normal process for Council to consider a variation such as this is extensive public consultation. Council has not had the benefit of public consultation and is not the consent authority for this application.

The application has not satisfactorily demonstrated the public benefit associated with the proposed increase in height and accordingly it is recommended to the Department of Planning to retain the existing height limits in place for the site.

Concern is also expressed for Precinct B where larger building footprints (retirement units) are proposed to three stories in height. Whilst this area is subject to a three storey height limit the majority of homes in this location are single or double storey. Future applications in this area will need to demonstrate retained amenity and opportunities for view sharing for the existing residential properties.

Ecology

- The site is of very high conservation value, comprising *Lowland Rainforest in the NSW North Coast and Sydney Basin bioregions*, an Endangered Ecological Community and containing perhaps the highest concentration of threatened rainforest flora species of anywhere in NSW. The threatened species and community are under represented in conservation reserve and regarded as overcleared in the landscape.
- The site is subject to a Land and Environment Court case for which a judgement is yet to be handed down (*DECC vs Rawson*) relating to the damage and death of numerous threatened rainforest plant species. The defendant (contractor) has pleaded guilty to the removal of threatened flora species numbering in the hundreds while DECCW have estimated damage to more than 1,200 plants (Beaumont, DECCW pers. comm., 2009). Thus the site has already suffered a serious impact.
- Whether or not previous impacts are considered, the development footprint as it exists is considered to pose a significant impact to threatened species and ecological communities. If this development were to be assessed under the Biobanking system (being the only offsets policy in NSW with significant scientific rationale underpinning it) the entire area of Lowland Rainforest EEC would be 'red-flagged' and thus avoidance would be the only choice. This must then necessitate reconsideration of the development and its impacts.
- Cumulative impacts have not been adequately considered and further clearing of threatened species and communities is necessary for the spine road, integral to the development, to be built to relevant engineering standards.
- The Restoration proposal requires additional consideration to provide an effective offset strategy.
- Precinct J is an isolated development proposed amongst the larger remnant of Lowland Rainforest, and although partly cleared, its development would fragment and impact heavily upon the remnant, thus it cannot be supported on ecological grounds.
- The development as proposed is almost certain to result in a significant impact on threatened species and ecological communities due to the fact that there is significant habitat and EEC at risk of loss due to the current location of the spine road and associated components of the development. Any further loss of this highly significant vegetation community must be considered in the light of previous

damage and degradation to rainforest species and communities as well as the likely construction and operational impacts arising from the development.

It is considered that the options available to avoid a significant impact are to:

- Relocate the spine road and associated development away from the rainforest vegetation and undertake restoration of these sections of the site, or
- Avoid development and restore the habitat values within proposed Precinct J and protect the reasonably large and contiguous area of rainforest remnant in perpetuity as the only available suitable area to offset impacts arising from other parts of the site.
- In the absence of either option, the only conclusion that can be drawn is that a significant impact will arise if the development proceeds, thus the site is not suitable for the development and the proposal cannot be supported.
- The Statement of Commitments should reflect a commitment to remove Precinct J from the proposal and rehabilitate and protect the entire southern remnant.

Infrastructure Capacity

This Community Title Development is requesting a major departure from Council practice (DCP A5.6.1) in proposing that Council own, operate and maintain the potable water and sewer infrastructure within the community title subdivision.

Council Executive Management Team has agreed that Council could accept to own, operate and maintain the potable water supply and sewerage reticulation system in the proposed RISE community title subdivision, excluding any portions of the development that are gated communities, and conditional on the developer

- providing infrastructure in accordance with the requirements of DCP A5 and to the satisfaction of the Director of Community and Natural Resources
- entering into an agreement with Council for the provision of the services
- providing normal easements where services are to be provided within private land (other than the community lot).

Accordingly it is recommended that Council formally resolve to own, operate and maintain the potable water supply subject to the above conditions.

The attached letter to the Department of Planning details the technical requirements of Council in regards to infrastructure.

Traffic

A Transport Impact Assessment (the report) was submitted as part of the application by CRG dated 14 April 2009.

The report has used traffic generation rates from Council's Section 94 Plan No. 4 (Tweed Road Contribution Plan or TRCP) for the impact assessment. These traffic generating rates were also used in the calculation of spare traffic capacity for Kennedy Drive in a report from the Director Engineering and Operations to Council in June 2007.

The traffic generation rates as recommended in the RTA NSW's document "Guide to Traffic Generating Developments" should have been used for estimating development traffic, however, for the purposes of estimating a threshold of traffic for this development before the Cobaki Parkway is required to be constructed, the TRCP traffic generation rates can be used.

The report states that 68% of residential trips will use Kennedy Drive and therefore the project will need to generate 3,911 trips per day in order to generate 2,650 vehicles per day on Kennedy Drive. Apparently the percentage traffic distribution has been derived from the Veitch Lister Consulting traffic modelling.

This methodology is not concurred with. For the purposes of calculating spare capacity on Kennedy Drive in the report to Council stated above, all traffic generation west of the Cobaki Bridge was considered to access Kennedy Drive (i.e. 100%). The assessment of this development must assume the same, especially when considering that the TRCP traffic generation rates have been used rather than RTA rates (which are generally higher).

The assumed 68% distribution of traffic has major implications as to the traffic capacity threshold for the development when the Cobaki Parkway needs to be completed. The development of the site must be limited to the existing traffic generation credits attributed to the site (2,650 vpd) with 100% of this traffic accessing Kennedy Drive. Once this credit has been exceeded, the Cobaki Parkway must be in place for further development to occur in accordance with Council's resolution of April 2008.

Council's resolution stated (in part):

- "3. *The proposed Pacific Highlands project part of the Bilambil Heights land release may be permitted to progress beyond current restrictions based on traffic thresholds on Cobaki Bridge provided:-*

Cobaki Parkway is continuously constructed from Piggabeen Road to Boyd Street

The new "spine" road proposed through the site from Marana Street to Cobaki Road is constructed.

Cobaki Road from the "spine" road to Cobaki Parkway is upgraded.

4. *The remainder of the Bilambil Heights Land Release Area can only proceed beyond the current road volume allowances on Kennedy Drive when the Cobaki Parkway between Boyd Street and Piggabeen Road is continuously constructed, and then development must progress in a manner that progressively constructs the Scenic Drive Diversion from Piggabeen Road southward (i.e. all new development must have access to the Scenic Drive Diversion)."*

The report recommends the installation of traffic signals at the intersection of McAllisters Road and Scenic Drive. Traffic signal installation is not in accordance with Council's TRCP which has included the construction of a roundabout at this location. Traffic signals should only be considered after the consideration of the traffic impacts of a roundabout. A concept design of this roundabout has been completed by Council's Design Unit. There is no indication in the application of when this will be required in relation to staging of the development however it should be constructed as part of the first stage due to intersection safety considerations. Contribution credits under the TRCP could be obtained by the developer for its construction.

The report states that widening of Cobaki Road between the site and the Cobaki Parkway intersection should be to a 7m seal on a 9m formation however the report states that a traffic volume of around 3,000 vehicles per day is expected. This traffic volume would classify this part of Cobaki Road as a rural arterial which requires a 10m seal on an 11m formation under TSC's Development Design Specification D1.

Similarly the report states that some 3,000 to 4,000 vehicles per day will use McAllisters Road / Marana Street / Mountain View Esplanade and that this route will have a capacity for up to 5,000 vehicles per day (i.e a neighbourhood connector). This amount of traffic would require pavement widening to an 11m width (neighbourhood connector standard) under Council's DCP-A5 Subdivision Manual and TSC's Development Design Specification D1.

However existing pavement widths (which are around 9 metres) indicate that these roads fit the category of an access street widened for a bus route (i.e. maximum indicative traffic volume of 3,000 vehicles per day). Therefore 2 metres of road widening will be required along the length of this route, otherwise the traffic capacity will be limited to 3,000 vehicles per day, or only about 1,000 vehicles per day above current traffic volumes which imposes a significant limitation to the development as proposed.

The report states that a roundabout should be constructed at the Gollan Drive / Piggabeen Road intersection. This is supported, however this construction is not part of the TRCP and should be constructed by the developer at his cost. Again the timing of this construction has not been suggested within the report.

The traffic impacts of the proposed development traffic (including future development traffic along McAllisters Road) on the staggered T junction of Buenavista Drive / McAllisters Road and the McAllisters Road / Mountain View Esplanade intersections needs to be assessed by computer modelling – SATURN or other micro-simulation traffic modelling. The traffic impact assessment should provide recommendations as to any amendments or reconfigurations required at these intersections due to both development traffic and also 'ultimate' development traffic in the area.

The practicality of extending the road connections into adjoining properties should be investigated at least to a concept design stage to ensure that road construction is feasible into adjoining development sites.

In summary, further traffic assessment and clarifications are required to further this application.

Planning & Infrastructure Engineering

Stormwater Management

As a concept the applicant's proposed recycling of roof water and stormwater is generally acceptable, and has a number of advantages, including:

- Significant mitigation of post development stormwater runoff rates, minimising potential downstream impacts of the development;
- Reduction in potable water demand;
- Dual reticulation system based on recycled stormwater is likely to have a higher community acceptance than a recycled sewage effluent system.

Limitations of the systems include:

- The inability of the system to operate during dry weather, when storages are empty, and demand for outdoor irrigation uses is at its highest;
- To ensure that sufficient potable water systems are available in case of a system shut down, break down or prolonged dry period, the development will still need to be serviced with full sized infrastructure to cater for water peak demand, with no contribution from the recycled stormwater system. As such, there are no meaningful savings on water infrastructure, despite the reduced potable water demand. The requested reductions in headworks contributions for water supply are also unlikely to be supported by the Water Unit, thereby further reducing the financial incentives to provide the centralised recycling system (refer to separate comments by Peter Pennycuick regarding the request to reduce contributions).
- The investment in a centralised stormwater recycling system is questionable when compared with the relatively low cost of providing individual water tanks on future residential development, in accordance with BASIX. The duplication of infrastructure to collect, treat and reticulate the recycled stormwater throughout the development does not appear to be energy or resource efficient, if this water is to be primarily used for toilet flushing and outdoor irrigation. Domestic rainwater tanks already achieve this objective without the many kilometres of collection and distribution network. Dams, treatment wetlands and detention areas could still be harvested for irrigation of larger open space areas, and would need a relatively small collection and treatment system.

As stated, the concept of stormwater recycling and IWCM is generally supported for the development, however the applicant needs to consider whether the nominated system is the most economical and practical for the development. Ultimately this is a commercial decision for the developer, and not Council.

Flooding

The vast majority of the site is elevated well above regional flood levels, with the exception of the proposed playing fields on Cobaki Road, adjacent to Cobaki Creek (Precinct U). The applicant acknowledges that the fields are located in a high flow area, and are therefore subject to strict filling and development controls in Council's DCP-A3.

The applicant commits to undertaking more detailed flood impact assessment of the playing fields proposal in later stages.

Additional information is therefore requested should the applicant pursue the sports fields in this location.

Site Regrading

Due to the steep and undulating topography of the site, significant bulk earthworks are proposed to provide compliant road gradients and developable sites. The steepest parts of the site (>25%) will remain largely undeveloped. According to the engineering report, areas of the site requiring in excess of 5m cut or fill represent 6.27% of the total site area, and therefore comply with the DCP-A5 and D6 maximum of 10%.

The applicant requests deletion of retaining/batter height limits in DCP-A5 and D6 in order to achieve conforming road grades (max 12% as agreed by Council) on the Spine Road. As the Spine Road does not have direct allotment access, traverses difficult terrain, and is the main traffic link through the development, variations to retaining wall / batter heights are generally acceptable subject to future detailed design (including geotechnical and stormwater investigations), and in accordance with further comments from Council's Development Engineer. All other roads, whether in public or private tenure should comply with retaining/batter height limits imposed by DCP-A5 and D6 and maximum road gradients imposed by D1.

The concept design for the Spine Road, given the above variations to retaining / batter heights requires a wide road reserve in many areas, and this may need to be increased further during detailed design where road safety aspects of the road are examined (i.e. the need for central crash barriers in the steep, winding section of the road). Such requirements should be highlighted to the applicant via the Statement of Commitments.

Variations to Development Controls

The engineering report proposes a large number of variations or deletions to development controls and engineering specifications that apply to the subject development. These requests are dealt with in detail in the attached submission to the Department of Planning. However in general, variations to engineering specifications and the Subdivision Manual (DCP-A5) are not supported. These documents were produced with extensive industry consultation (particularly in the case of landforming policies), and where applicable adopt Natspec / Austroads / WSAA and Australian Standards. Minor variations that address specific site conditions or result in better engineering / town planning outcomes could be supported, however where aspects of asset longevity, public safety, maintenance and general community amenity are concerned, variations should not be granted.

Roads & Access

The main traffic route through the development is the Spine Road which extends off Marana Street around the western extent of the site and connects to Cobaki Road to the north. This Spine Road and the two proposed connector roads to the future urban release area to the north east are the only roads to be dedicated to Council as public roads. Other local roads remain under community title.

Clause A5.4.10 of DCP-A5 requires that future urban areas are adequately connected to the local movement network:

Future connections

Street stubs should be provided at spacing's of 200m or closer to enable street connections to be made to adjacent future urban areas. The location of these connection points should consider the future overall network requirements of the district.

Scaling along the site's northern/eastern boundaries the spacing between the two road stubs is approximately 1050m, which indicates that additional connection(s) are required. However the topography and subdivision's community title nature makes the 200m spacing impractical. It is proposed to request a third road stub off the main roundabout on Road 1, in the "Hilltop Village Area" (Precinct L). This will also require dedication of the section of Road 1 from the roundabout to the Spine Road. Limited contour information provided with the concept plan shows that this stub road should be feasible. This provides three nodes for future urban release areas to connect to, and provide desired links to future commercial centres and the Spine Road.

The applicant should investigate options for one addition connection point.

Development Engineering

The applicant has detailed future possible variations to:

- Tweed Shire Council's Development Control Plan Section A5 Subdivision Manual;
- Tweed Shire Council's Development Design Specification D1 – Road Design;
- Tweed Shire Council's Development Design Specification D6 – Site Regrade;
- Tweed Shire Council's Development Design Specification D9 – Cycleway and Pedestrian Pathway Design;
- Tweed Shire Council's Development Design Specification D11 – Water Supply;
- Tweed Shire Council's Development Design Specification D12 – Sewerage System;

A review of the requested variations is undertaken in the attached submission to the Department of Planning.

- Geotechnical Stability - The Geotechnical investigations undertaken by Border-Tech and Gilbert & Sutherland concluded that there are no geological conditions evident on the site which would indicate that the proposed development cannot be satisfactorily achieved. Specific detailed Geotechnical investigations will be required for each component or precinct of the development at the time of Development Application.
- Cul-de-sac requirements - Council's DCP - Section A5 specifies that the maximum cul-de-sac length should be 100m, servicing no more than 12 dwellings, however flexibility is given where the development site is constrained by landform alteration limits. In these circumstances the maximum length may be increased to 200m and 24 dwellings. A significant number of proposed roads do not comply, even with the more accommodating requirement.

Council's DCP – A5 already gives a variation in regards to topography constraints by raising the allowable length and number of homes allowed from 100m and 12 houses to 200m and 24 houses as stated above.

Cul-de-sac's reduce connectivity and are normally acceptable for a minimum number of properties.

The applicant should further investigate mechanisms for achieving compliance which may include larger allotments in constrained areas.

- Bushfire Prone Land - The application appears to seek asset protection zones off adjoining land. However the application also acknowledges that if at the time of the individual Development Applications for specific precincts in *R/SE*, the creation of easements on adjoining property is not possible, then the location of the proposed buildings may need to be re-evaluated. This will be the responsibility of the developer to determine at a later stage.

Open Space

- Structured Open Space

The proposed sports fields are inadequate due to flooding and do not cater for a standard configuration for multi purpose fields. Discussions have been held with the applicant to negotiate alternative arrangements to satisfy Council in relation to adequate provisions of sporting facilities.

It was determined that a Statement of Commitment could include:

"Subject to the density finally approved under the MP08-0234 application, or a pro-rata area calculation being adopted for adjusted densities in the final MP08-0234 approval, the applicant shall dedicate and embellish 4.42 hectares of structured open space in accordance with the development standards contained in Table A5-8.3 of Tweed Development Control Plan 2007, Part A5 or alternatively pay a contribution in lieu for the area that is not dedicated and embellished on the applicants land.

The amount of the contribution rates and shall be determined at the time of documentation of, and incorporated into, a Voluntary Planning Agreement (VPA) between the applicant and Tweed Shire Council. The VPA shall be finalised prior to the granting of development consent or major project approval for any part or precinct of the development approved by way of Concept Plan No. 08-0234 which creates residential lots or dwellings.

Should it be agreed that some sports facilities can be located at the currently proposed site, the VPA will require the applicant to dedicate and embellish on its land a component of the required 4.42 hectares no earlier than when the Spine Road construction is completed, or contributions in lieu to be paid on a pro-rata basis per precinct at the time of sealing of title plans by council for that precinct".

- Casual Open Space

3.47 hectares are required for casual open space. The developer has submitted drawings showing location, dimensions and slopes of the open space required to be developed, and a total area of 3.24 ha that meets Councils subdivision guidelines. This leaves a deficit of around 2,300m².

Resolution on the amount of casual open space required must occur before the proposed casual open space can be agreed to. Note that an additional 2.86ha of casual open space is proposed that does not meet the subdivision guidelines, and much of this adjoins land that does meet subdivision guidelines. A reanalysis of the proposed areas is expected to show the development can meet Council requirements.

All casual open space is proposed to remain in private ownership as part of the developments overall community title.

Being community title land, Council will have no responsibility, now or in the future, for managing the casual open space. This must be clearly defined in any development consent.

EHO Issues

There are no significant environmental health issues however the following conditions have been recommended:

- Any future Project Applications shall be submitted with the necessary information that addresses the recommendations as contained within the Contamination Assessment Summary provided by Gilbert and Sutherland dated April 2009 together with the provision for approval of all relevant assessment reports and any necessary Remediation Action Plans (RAP's). Following the conclusion of all contamination investigations and any necessary Remediation Works, the Contaminated Land Consultant shall provide a clear statement as to whether the land subject of the Project Application is suitable for the proposed use.
- Any future Project Applications shall be submitted with the necessary information that addresses the recommendations as contained within the Contamination Assessment Summary provided by Gilbert and Sutherland dated April 2009 in respect to the provision of an Acid Sulfate Soils assessment of the site of the proposed Sports Park in the event that any disturbance of the soils in this location is to occur as a result of any future Project Application for this area. Any Acid Sulfate Soils assessment shall be carried out to the satisfaction of the relevant consent authority.

Property

The site is burdened by several Crown and Council roads. Negotiations regarding this road closures is ongoing and is fully documented in the attached submission to the Department.

OPTIONS:

1. That Council endorse the key themes in the attached draft submission to the Department of Planning on the State Significant Site & Concept Plan for Bilambil Heights "Rise".
2. That the Council propose an alternative draft submission to the Department of Planning on the State Significant Site & Concept Plan for Bilambil Heights "Rise".

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

Council has the opportunity to make a submission to the Department of Planning on the proposed State Significant Site & Concept Plan for Bilambil Heights "Rise".

The purpose of this report is to seek Council endorsement of the key themes provided in the attached draft submission.

The proposal requires substantial decisions in regards to the acceptability of the proposed infrastructure plans, hill top living (to a maximum height of eight stories) and the suitability of development within the proximity of significant vegetation (Precinct J). Furthermore, it raises some secondary strategic planning issues in regards to the rest of the Bilambil Heights Release Area.

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. Director General Requirements (ECM 7215518)
 2. Draft Letter to Department of Planning (ECM 7215519)
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- 6 [PR-CM] DA09/0527 - Part 3A Major Project Application for a 84 Lot Residential Subdivision (MP05_0198) at Lot 1 DP 167380; Lot 2 DP 961928; Lot 1 DP 134787; Lot 5 DP 1117326, Walmsleys Road and Stott Street, Bilambil Heights

ORIGIN:

Development Assessment

FILE NO: DA09/0527 Pt2

SUMMARY OF REPORT:

The Department of Planning has received an application for a Major Project from Darryl Anderson Consulting Pty Ltd for an 84 lot residential subdivision of the above site. The application was lodged pursuant to Part 3A of the *Environmental Planning and Assessment Act 1979* and the Minister for Planning is the consent authority.

An Environmental Assessment (EA) and accompanying plans have been lodged and publicly exhibited from 31 August 2009 to 29 September 2009.

Council has received correspondence from the Department of Planning inviting Council to make a submission on the EA.

The purpose of this report is to provide Council with a summary of issues associated with the proposal and to seek Council endorsement of the draft submission.

It is considered that the nature, scale and design of the subject proposal are generally consistent with the broader planning objectives for this locality, subject to the applicant addressing a number of planning, engineering and environmental issues identified in this report.

RECOMMENDATION:

That Council endorses the attached submission to the Department of Planning on the Major Project Application for a 84 lot residential subdivision (MP05_0198) at Lot 1 DP 167380; Lot 2 DP 961928; Lot 1 DP 134787; Lot 5 DP 1117326, Walmsleys Road and Stott Street, Bilambil Heights and forwards it to the Coastal Assessment Branch of the Department of Planning.

REPORT:

Applicant: Darryl Anderson Consulting Pty Ltd
Owner: Mrs DL Millar, Mr R Walmsley, Mr PN Walmsley, Ms HJ Mabbutt and Mrs VM Bailey
Location: Lot 1 DP 167380; Lot 2 DP 961928; Lot 1 DP 134787; Lot 5 DP 1117326, Walmsleys Road and Stott Street, Bilambil Heights
Zoning: 2(c) Urban Expansion & 7(d) Environmental Protection (Scenic/Escarpment)
Cost: Nil

BACKGROUND:

The Department of Planning declared the proposal a major project and issued the Director General's Environmental Assessment Requirements (DGRs) on 11 March 2008.

On 17 June 2009, the proponent lodged an EA with the Department addressing the DGRs.

The EA and accompanying plans were on exhibition from 31 August 2009 to 29 September 2009.

SITE DESCRIPTION:

The subject land contains 4 lots at Walmsleys Road and Stott Street in Bilambil heights.

The lots have a total area of approximately 13.8 ha as follows:

Lot 1 DP167380 – 3.24ha
Lot 1 DP134787 – 2597m²
Lot 2 DP961928 – 5.6939 ha
Lot 5 DP1117326 - 4.62 ha.

Lot 5 is currently burdened by a number of easements and restrictions for services (5 metres wide) right of access (5 metres wide) right of access (10 metre wide and variable) and restriction of the use of the land (no further development be permitted unless a contaminated land assessment is approved and bushfire requirements are met).

Lot 5 is also benefited by a right of carriage way, easement to drain sewer and restriction on the use of land of adjoining lot 6 (whereby no objection will be raised by the registered proprietor of Lot 6 to stormwater run-off from Lot 5 providing that the registered proprietor of Lot 5 discharges the stormwater so that it reflects the existing natural drainage pattern of the catchment.

The land is significantly undulating with slope ranging from approximately 10m AHD on the north-western side to approximately RL 80m AHD on the southern side. The site includes areas with slope greater than 33%.

The majority of the site is cleared comprising of grassland and scattered trees. However several species are located on land adjacent to the 2(c) and 7(d) zone boundary. The applicant has indicated that there are no threatened plant species within the 2(c) land.

Land to the west of the subject site is currently used for cattle grazing. Adjoining land to the south is also used for cattle grazing and other agricultural purposes. The site itself has previously been used for small cropping and grazing.

The only improvements on the land is the farm shed located on lot 5.

The land is potentially contaminated from previous farm uses.

This subdivision straddles a ridge along which the extension of Stott Street will run to Walmsleys Road. A water main traverses the site and land immediately to the east and north is currently sewered.

PROPOSAL

The proposed 84 lot subdivision is comprised of 78 conventional lots and 6 community title lots. The application also includes the following components:

- Creation of 78 residential lots, a public reserve lot (Lot 13) and an additional lot (Lot 81) which will be created as a conventional lot and then further subdivided to create 6 community title lots including Lot C1 as common property for the private access road.
- Construction of a connector road (Road 1) connecting Walmsleys Road and Stott Street, designed with an 11 metre carriageway to accommodate buses.
- Construction of local access streets to service each lots (roads 2, 3, 4 and 5). Road 1 – 4 will be dedicated to Tweed Shire Council as public roads where as road 5 is proposed to be a private accessway under the community scheme applicable to lots c1 to c6.
- Bulk earthworks and landforming.
- Dedication and embellishment (including playground equipment, turfing, landscaping and seathing) of approximately 3645m² of casual open space (Lot 13).
- Upgrade Walmsleys Road.
- Establishment of bushfire asset protection zones on the perimeter of adjacent hazard areas.
- Construction of infrastructure including power, telephone services, reticulated water and sewer (including a pump station on lot 58).

It is proposed that the development will be implemented in seven stages as follows:

Stage 1 – construction of road 1 (Walmsleys Road to Stott Street), part of road 2 and lots 1 to 13.

Stage 2 – construct road 2, lots 14 to 31 and lot 81.

Stage 3 – subdivide proposed lot 81 to create 6 community title lots and construct private access (proposed lot c1) and provide services.

Stage 4 – construct part of roads 3 and 4 and lots 32 to 38.

Stage 5 – construct road 3 and lots 39 to 55.

Stage 6 – create lots 56 to 62.

Stage 7 – create lots 64 to 80.

Proposed lots range in size and from 635m² to 3.097 ha. Most lots are in the order of 600m² to 700m².

Provision of Services

The applicant has identified that stages 1 – 4 can be supplied by the existing downstream gravity sewer networks, however due to the low levels of the allotments in stages 5-7, construction of either individual pumping systems for the lots or construction of a Council sewer pumping station would be necessary in order for connection to the Council mains.

Community Title

The applicant has indicated that Lot 81 is proposed to be subdivided under the Community Land Development Act because it is discrete parcel with a difficult shape. In addition the provision of compliant public road access is difficult and a sewer pump will be required to service the community lots. As the lot yield is below Council's normal requirement of 50 lots minimum for a public sewer pump station, a private sewer pump station operated by the Body Corporate is proposed.

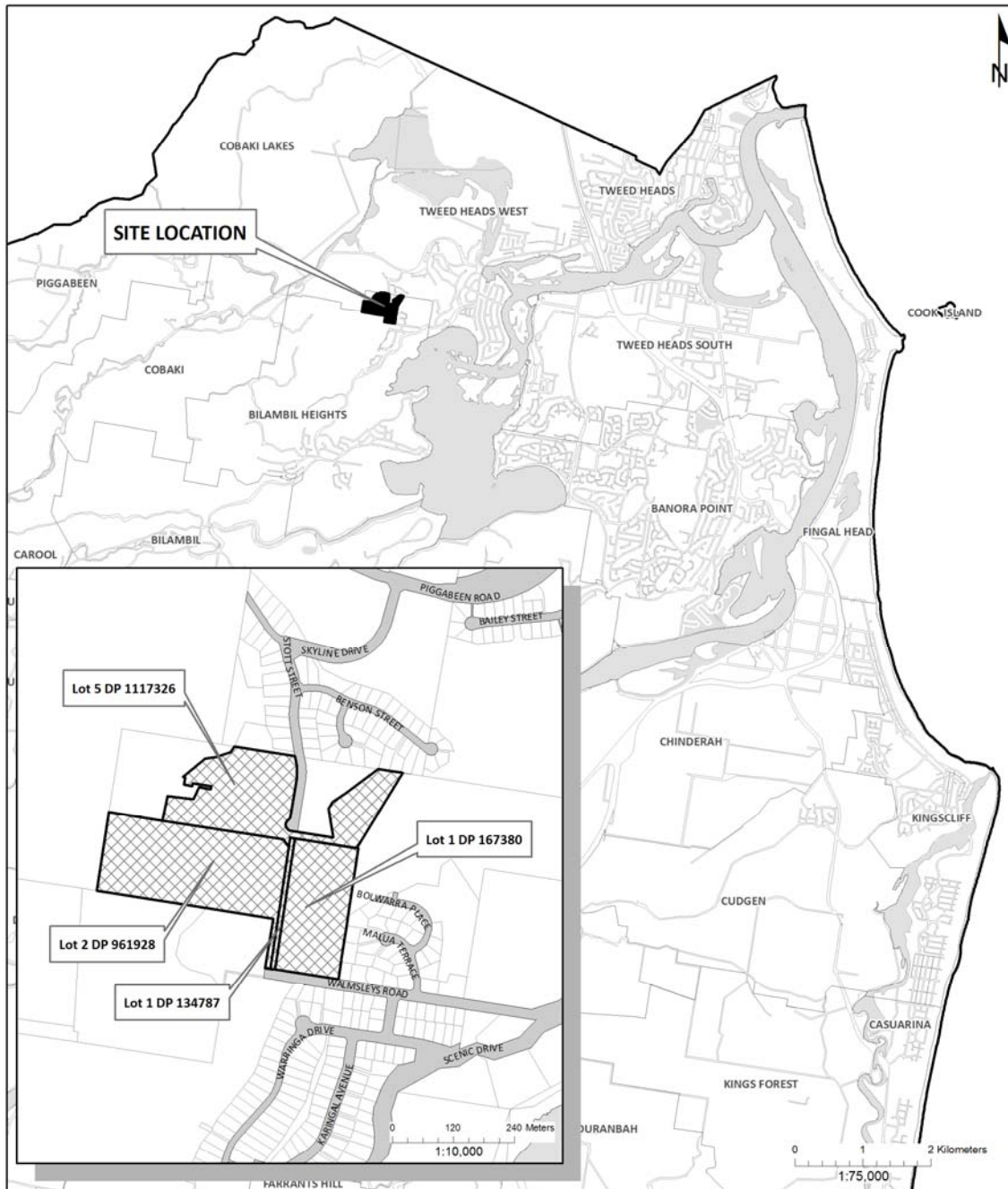
Built Form

The proposal includes a 'Future Residential Character and Built Form Report' prepared by BDA architecture dated 18 October 2007 proposed to apply to all dwellings. It includes variations to setbacks of car ports from the frontage (minimum reduced from 2 metres to 1 metre) and variations to rear setbacks. The applicant should provide further justifications to variations proposed to Council's Development Control Plan (DCP) A1 in this regard as well as clarify how the 'Future Residential Character and Built Form Report' is to interpreted in relation to Council's DCP.

It also includes slope sensitive design including split level homes and suspended floor homes where site exceeds 15%. This style of design is supported. It is also proposed to use warm natural materials such as timber and stone combined with metal feature panels, glass, aluminium and steel to achieve streetscape variety. A maximum of 50% of external masonry will be encouraged.

Colours are proposed to be non-reflective, natural earthy or green.

SITE DIAGRAM:



LEGEND

Lot 1 DP 167380; Lot 2 DP 961928; Lot 1 DP 134787; Lot 5 DP 1117326
Walmsleys Road and Stott Street, Bilambil Heights

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

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 24 September, 2009

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Cadastral 24 September, 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

CONSTRAINTS

The site is constrained as follows:

- Bushfire prone
- Nearby agricultural land
- Acid Sulfate Soil (class 5)
- Steep slope and slip
- Potential contaminated land
- SEPP 71 (Coastal Protection)
- Part of the site with high ecological status including open sclerophyll forests on bedrock substrate and rainforests (according to Council's GIS)
- Koala habitat (according to Council's GIS)
- Regional fauna corridor to the west (according to Council's GIS)

The EA includes specialist reports addressing these constraints.

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

The proposed development is not subject to matters under 79C of the Act as it is a Part 3A project. Notwithstanding, relevant documents are referenced in the Council Officer comments where applicable below.

COUNCIL OFFICER COMMENTS

Council officers from a variety of disciplines have reviewed the project and provided comments which are summarised below. Detailed comments are outlined in the draft letter to the Department of Planning attached to this report.

Planning

- The land is zoned 2 (c) Urban Expansion and 7 (d) Environmental Protection Scenic Escarpment. Clause 26 relates specifically to development in the 7(d) Environmental Protection (Scenic / Escarpment) zone. It seeks to minimise soil erosion and preserve the scenic quality of the land and the locality. No physical works are proposed on the land zoned 7(d) and it is proposed to be contained within one lot, along with approximately 1000m² of 2 (c) land on which a dwelling house can be located. The applicant advises that all land zoned 7(d) is will exclude any disturbance or landform changes. This should be included in the statement of commitments.
- The applicant has provided details on colours and built forms. These are to be light weight, slope sensitive and use earthy tones. This approach is acceptable and is incorporated into the statement of commitments.
- In terms of the 2 (c) Urban Expansion, residential subdivision is consistent with the purpose. It is noted that the aim of the Tweed Local Environmental Plan (TLEP) is to give effect to the desired outcomes, strategic principles, policies and actions

outlined in the Tweed shire 2000+ Strategic Plan. The 2000+ Strategic Plan states that:

The Bilambil Heights Release Area has major infrastructure impediments and requires a comprehensive multi-ownership planning approach. No development approvals for the release of land for residential development will be granted until such time as the Tugun Bypass and Cobaki Parkway are commenced to provide appropriate access to the regional network. Council resolution 17 May 2000.

In this instance, the proposed subdivision is a western smaller portion of 2 (c) zoned land identified in the Bilambil Heights urban release area. Whilst the Cobaki Parkway has not been constructed, trip allocation for access to Kennedy Drive has been allocated to this subdivision (when the DGRs were issued). In this regard, and given the existing subdivision and road pattern to the north and southeast of the proposal, the subdivision is considered to be a logical urban extension providing for connectivity, subject to adequate mitigation of various constraints and engineering issues raised below.

- Socio economic impact Clause 17 of the TLEP relates to social impact assessment. The EA includes an impact assessment in this regard and provides a suitable analysis of impacts.
- Clause 39A of the TLEP relates to bushfire protection and is relevant as the site is bushfire prone. The Department should be satisfied that the proposal complies with the *Planning for Bushfire Protection* policy. The proposed Asset Protection Zones (APZs) should be indicated on a plan in conjunction with existing on-site threatened species and Ecologically Endangered communities for clarity and assessment by ecological experts. Should the Rural Fire Service require a certain standard of dwelling construction, the Department should ensure that this does not conflict with the proposed slope sensitive, light weight building designs.
- Clause 44 of the TLEP relates to development of land within likely or known archaeological sites. The applicant has prepared a Cultural Heritage Report which concludes that the site does not possess the geographical features commonly associated with sites of Aboriginal cultural significance. It is recommended that the Department be satisfied that this advice is sufficient and should consult with the Tweed Byron Aboriginal Land Council.
- Clause 43 of the SEPP (North Coast Regional Environmental Plan) 1988 seeks to ensure residential density is maximised without adversely affecting the environmental features of the land. The EA identifies that the proposed 84 lots result in a yield of approximately 9 lots per hectare. Whilst the North Coast Urban Planning Strategy identifies a target yield of 15 dwellings per hectare, the on-site constraints and environmental zone land do not allow for a greater yield.
- The Draft Tweed LEP Amendment 21 – Vegetation Management was exhibited in December 2004 to March 2005. It replaced 7 (d) Environmental Protection (Scenic Escarpment) zoning with 7 (a) Environmental Protection (Significant Vegetation and Wildlife Habitat) zone. It also included relocating the 2 (c) / 7 (a) zone boundary to the west on that part of the site east of the aged care complex as well as back zoning the eastern part of Lot 4 from 2 (c) to 7 (a). The major project applicant is

not inconsistent with the Draft plan. No lots are proposed within any of the land to be zoned 7 (a).

- It is noted that regionally significant agricultural land is located approximately 250 metres to the north-west of proposed residential lots. The Department should seek advice from the Department of Primary Industries on the potential for land use conflict in this regard.

Ecological Issues

Council does not have the resources to provide a detailed ecological assessment of the proposal, however it is recommended that the Department assess (through independent ecological expert assessment) the following issues and ensure they are adequately addressed:

- The applicant has identified two species of koala feeding species on the site occurring in two areas. Whilst these trees constitute greater than 15% of the total number of trees in the upper strata, the applicant argues that the land does not comprise of core koala habitat as the amount of koala habitat present in the study area is small and no evidence of koalas was found.
- Rare and / or threatened species and endangered ecological communities are located on site (including the Black Walnut, Fine leaved Tuckeroo, Spiny Gardenia, Long-leaved Tuckeroo and Rough-shelled Bush Nut). A seven part test was provided and should be independently assessed. Sufficient buffers should be provided to limit edge effects.
- A regional fauna corridor is located to the west of the site (according to Council's GIS). The impact of the development on the fauna corridor should be investigated.
- A vegetation management plan should be prepared and independently assessed prior to approval of the concept plan.
- Matters in clause 8 of SEPP 71 (Coastal Protection) should be addressed.

Stormwater

An amended Stormwater Management Plan is required which in summary, includes the following:

- Relocation of some flow paths including re-directing major flow paths out of proposed lots.
- Demonstrate lawful point of discharge is provided.
- Address the existing restriction to user relating to stormwater runoff affecting the adjoining property.
- Ensure overland flow systems are clear of the sewer pump.
- Clarify details in relation to stormwater drainage, staging and on-site detention.
- Provide further design of inter-allotment drainage system.

- Ensure that Q100 overland flow is catered for.

Landforming

An amended landforming plan is required which includes the following:

- Height of retaining walls are limited to 1.2metres.
- Clarify height of all retaining walls and batters.
- Complies with requirements of inter-allotment batters.
- Provides additional detail of batters in battle axe lot access ensuring compliant driveways and sufficient area for building envelopes.

Roads and Access

An amended road design and additional traffic details are requested as summarised below.

- The width of pavement of the Walmsleys Road extension to Stott Street needs to be increased including the requirement for an intersection or a roundabout at the intersection of Walmsleys Road and new Road 1.
- Concerns with vertical alignment of the Walmsleys Road extension.
- Access to proposed lots and concerns with driveway gradient.
- Negotiations required with the adjoining proposed subdivision.
- Greater detail required for road gradients over 12% in terms of pedestrian access, cyclists, waste collection.
- Road 1 requires footpaths on both sides of the road as well as increased verge width and maximum grade of 12%.
- Road 2, 3 & 4 requires increase in footpath and verge width.
- Road 5 requires increased pavement, footpath and verge width as well as reduced retaining wall height.
- Additional detail is required for right of carriageways proposed.
- A traffic study is required to ensure adequate service is available on nearby intersections to access Scenic Drive.

Water

The EA included an Infrastructure Impact Assessment (IIA) in relation to sewer and water supply. In summary, a 150mm water main traverses the site along the alignment of the future extension of Stott Street. This main supplies the existing development in Stott Street from the Marana Ave, Bilambil Heights reservoir via a pressure reducing valve (PRV) in the vicinity of Lot 38 DP863486. For this development to gain a water supply from this main it will need to also have pressure reduction in place.

Council's Water Unit requires that the PRV be located in Walmsleys Road near the boundary of Lot 1 DP167380 and Lot 1 DP1034976. The same requirement is to be made of the current application through the current subdivision application DA09/0288 currently before Council which will also access water supply from this same main. Which ever development proceeds first will have to provide the PRV unless the proponents combine to share the costs. When this is constructed, the existing Stott Street PRV will be decommissioned.

IIA should demonstrate that head losses at peak flow including fire flow together with other existing and anticipated development demands can be met through this main.

The development should ensure rainwater tanks of sufficient size are provided to meet water sensitive urban design measures as adopted in the adopted Water Demand Strategy.

Sewer

Because of the ridge through the middle of the site, the sewerage system will have to be divided into eastern and western catchments.

The eastern section appears to be able to drain to Council's existing SPS2050 Bolwarra Place pump station. The pump station pumps appear to have been sized to permit the discharge from residential development in this proposals eastern catchment. The storage volume however is less than 8 hours of average dry weather flow and consequently, it is considered that at design stage, it will be necessary to demonstrate that the risk of overflow from this station is acceptable and what additional measures will be required to achieve this low risk of overflow.

One section in the eastern catchment is to be developed as a community title subdivision of 5 dwellings. Sewer constructed within this section shall be the property of the community title development. A manhole should be provided just within the boundary of the community title which will be the end of Council sewer and shall be marked accordingly.

The western catchment provides the developer with a greater challenge as only several lots will be able to drain to an existing sewerage system. The IIA suggests that due to terrain, a pressure sewer system should be considered for this area but acknowledges Council would probably prefer a gravity system with a single sewerage pump station.

Owing to the greater maintenance cost for the pressure sewer system, Council requires that the conventional sewerage system be constructed. Pressure sewer systems are only to be used where it can be demonstrated that a conventional system cannot be installed or in rural residential type developments not suited to conventional gravity sewerage with conventional sewerage pump stations. Council normally has a requirement for sewerage pump stations to serve a minimum of 50 lots, but in this case it would serve only 42 lots in this development. It may be possible for this pump station to serve a number of lots in the adjoining development at 57 Walmsleys Road, thereby averting the need for that development from relying entirely on pressure sewer system. It is required that the developer consider the requirement to service the adjoining land and provide a connection point to maximise amount of the adjoining development that could be served by the system.

Public Open Space and Landscaping

Whilst the size of the proposed public open space area is sufficient, there is concern with the slope of some parts as well as potential slope stability. The applicant should address these concerns.

An amended landscape plan is required, prepared by a suitably qualified landscape architect addressing proposed street trees and the proposed public reserve.

Contaminated Land

The EA included a Contaminated Land report however it was prepared six years ago and includes an out-dated proposed subdivision layout. An amended or addendum Contaminated Land report is requested.

Overhead Power Lines

High voltage overhead power lines currently cross the site. The bushfire management plan recommends that these lines are placed underground as part of this subdivision. If they are not, an Electric and Magnetic Radiation (EMR) report should be prepared by a suitably qualified person in respect to potential impacts of future residents in the vicinity of this line.

Statement of Commitments / Conditions

A number of amendments to the draft statement of commitments are proposed reflecting the comments summarised above.

OPTIONS:

1. Council endorse the attached draft submission and it is forwarded to the Coastal Assessment Branch of the Department of Planning.
2. Council amend the attached draft submission and the amended version is forwarded to the Coastal Assessment Branch of the Department of Planning.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The proposal is a Part 3A application and Council is not the Consent Authority.

POLICY IMPLICATIONS:

There are limited policy implications arising from the proposal. However the proposal is part of the Bilambil Heights urban release area and relevant to future strategic planning of the release area.

CONCLUSION:

The Department of Planning has invited Council to provide a submission on the Part 3A major project application for an 84 lot subdivision at Walmsley Road and Stott Street Bilambil Heights.

The major application has been reviewed by Council officers and comments are summarised in this report.

It is recommended that the attached draft submission detailing comments is forwarded to the Department of Planning.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Draft Tweed Shire Council letter to the Department of Planning (ECM 7036079)
-

7 [PR-CM] Development Application DA09/0415 for Additions to Multi Unit Dwelling - Small Roof Structure at Lot 11 SP 79988, No. 11/1-3 Murphys Road, Kingscliff

ORIGIN:

Development Assessment

FILE NO: DA09/0415 Pt1

SUMMARY OF REPORT:

The subject application seeks consent for the construction of a roof addition on a portion of an approved and constructed multi-dwelling development. The roof addition will cover an existing, trafficable roof deck area on building pod B. The roof structure is 6.2 metres by 4.88 metres, having an area of approximately 29.7 m². The height of the roof is 3.15 metres and is the same height as the existing roof over the lift run.

The application includes a SEPP 1 objection in regards to Clause 16 of the Tweed Local Environmental Plan 2000 (TLEP) relating to the height (exceeding the maximum height of three storeys by creation of a partial fourth storey component) and Clause 32B of the North Coast Regional Environmental Plan 1988 (NCREP) relating to overshadowing. In this regard, it is referred to Council for determination pursuant to the Department of Planning issued circular dated 14 November 2008.

The proposed development is considered to demonstrate compliance with the relevant planning instruments, apart from the proposed SEPP 1 objections. However it is considered that sufficient justification has been provided in this instance and the application is recommended for conditional approval.

RECOMMENDATION:

That Development Application DA09/0415 for additions to multi unit dwelling - small roof structure at Lot 11 SP 79988, No. 11/1-3 Murphys Road, Kingscliff be approved subject to the following conditions: -

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects prepared by Planit Consulting dated July 2009 and plans prepared by Lightwave Architecture for 1289 One Murphy's Rd, plan numbers SK.01 to SK. 09, Issue A, dated 01.07.09, 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]

BUSHFIRE PROTECTION

- 3. Construction shall comply with AS3959-1999 level 3 Construction of Buildings in Bushfire Prone Areas.**
- 4. Roofing shall be gutterless or have leafless guttering and valley are to be screened to prevent the build up of flammable material.**
- 5. The entire property shall be managed as an Inner Protection Area as outlined within Section 4.2.2 in the Planning for Bushfire Protection Guidelines 2001**
- 6. Balconies should be non-combustible as per AS 3959.**

[GENNS01]

- 7. No additional roof structures or roof terrace areas shall be proposed on the site unless otherwise approved by the General Manager or his delegate.**

[GENNS02]

- 8. The consent is limited to the proposed roof, supporting columns and existing balustrade indicated on the approved plans and does not include any additional walls.**

[GENNS03]

- 9. The colours and materials used in construction of the additional roof structure shall be compatible and consistent with the remainder of the existing building.**

[GENNS05]

PRIOR TO COMMENCEMENT OF WORK

- 10. 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]

11. 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]

12. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

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

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

[PCW0255]

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.

DURING CONSTRUCTION

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

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

[DUR0245]

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. 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]

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

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

[DUR1005]

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

[DUR1875]

20. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction/demolition.

[DUR2185]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

21. 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]

REPORT:

Applicant: Mr J Zupp and Mrs W Zupp
Owner: Kingscliff Properties Pty Ltd
Location: Lot 11 SP 79988, No. 11/1-3 Murphys Road, Kingscliff
Zoning: 2(b) Medium Density Residential
Cost: \$15,000

BACKGROUND:

Council's Development Assessment Panel granted a deferred commencement consent ([DA03/1375](#)) in relation to an application for multi unit housing (15 units) at the subject site. The consent allowed for four separate buildings, two rear buildings of three storeys in height and two buildings fronting Murphy's Road at two storeys. This consent also allowed for roof structure over the lift overrun, which although is of similar height to the proposed roof structure subject of this report, does not constitute a fourth storey component in accordance with the definition of 'storey'.

The original consent also allowed for a SEPP 1 objection in relation to overshadowing controls in clause 32B(4)(a) of the North Coast Regional Environmental Plan. During the assessment of the 'parent' application, the applicant submitted shadow diagrams and argued that the control was unreasonable and unnecessary for the following reasons:

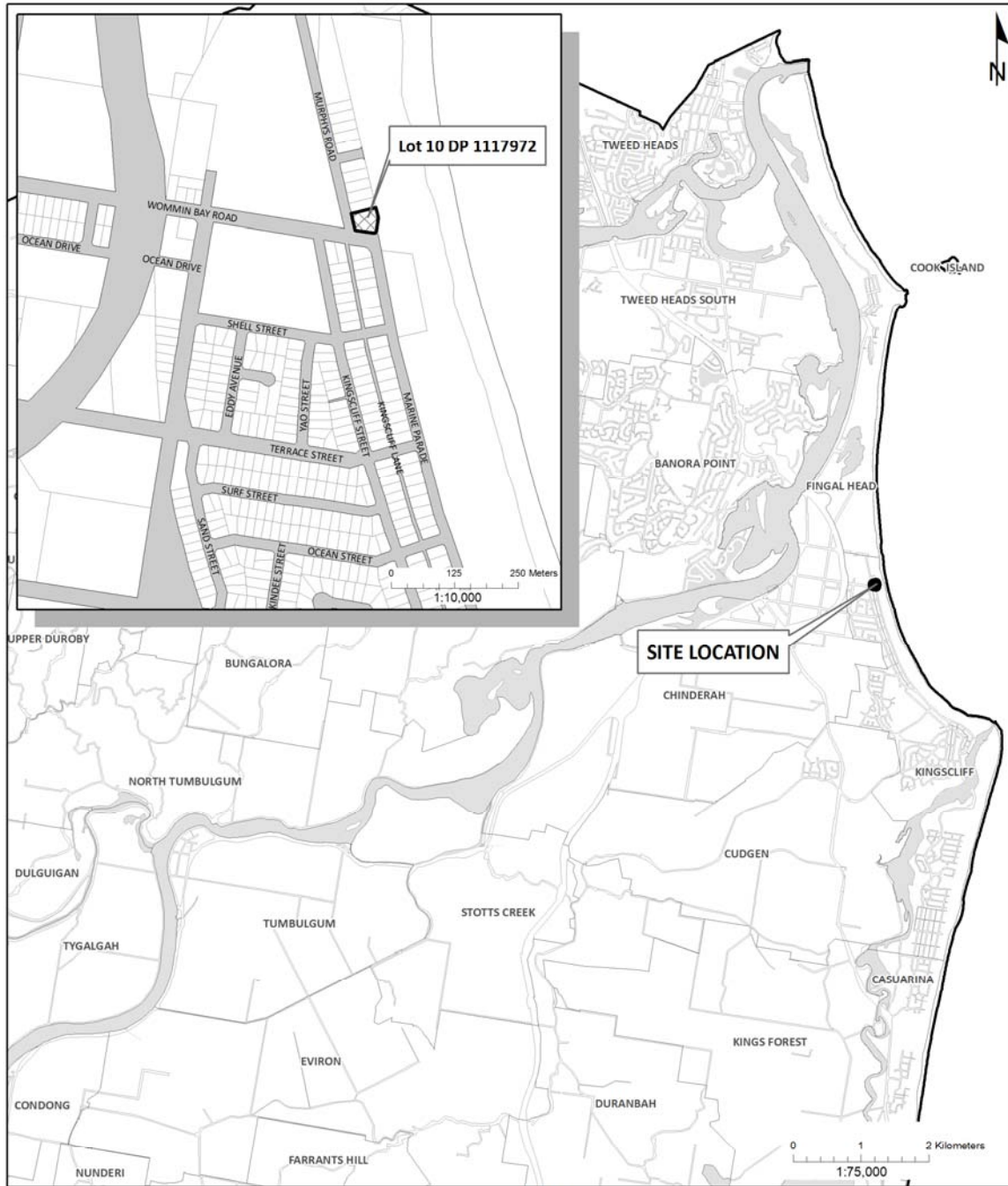
- *The shadow diagrams at Figure 3 show the extent of overshadowing by the existing and proposed buildings. Although the area of shadow will increase, it is still relatively minor (1205m²) in the context of the total area of foreshore reserve.*
- *In June shadows from the proposed building will increase by 205m² compared to the existing building, however, this is numerically insignificant.*
- *The area likely to be overshadowed prior to 3pm mid winter is 205m² and prior to 6.30pm mid summer is 1205m², which is numerically insignificant given the total foreshore and beach area available at Kingscliff.*
- *The shadows do not extend to the high water mark and therefore will not impact on sunbathers and surfers.*
- *Existing vegetation within the foreshore area already creates shadows.*
- *The area to be shadowed is not used by the public for picnics sunbathing or recreational activities because it is vegetated and poorly accessed.*

The SEPP 1 objection was supported.

On 4 September 2007, Council approved a section 96 modification ([DA03/1375.07](#)) to Pod 'B' allowing for a terraced deck area on the roof. This included additional open stair flights for access to the roof and incorporated a wall for weather protection to the lower floors.

The building subject of these approvals has recently been constructed.

SITE DIAGRAM:



LEGEND

Lot 10 DP 1117972; Lot 11 SP 79988
 No. 11/1-3 Murphys Road, Kingscliff

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Author: J.Batchelor - Planning Reforms Unit

Date Printed: 24 September, 2009

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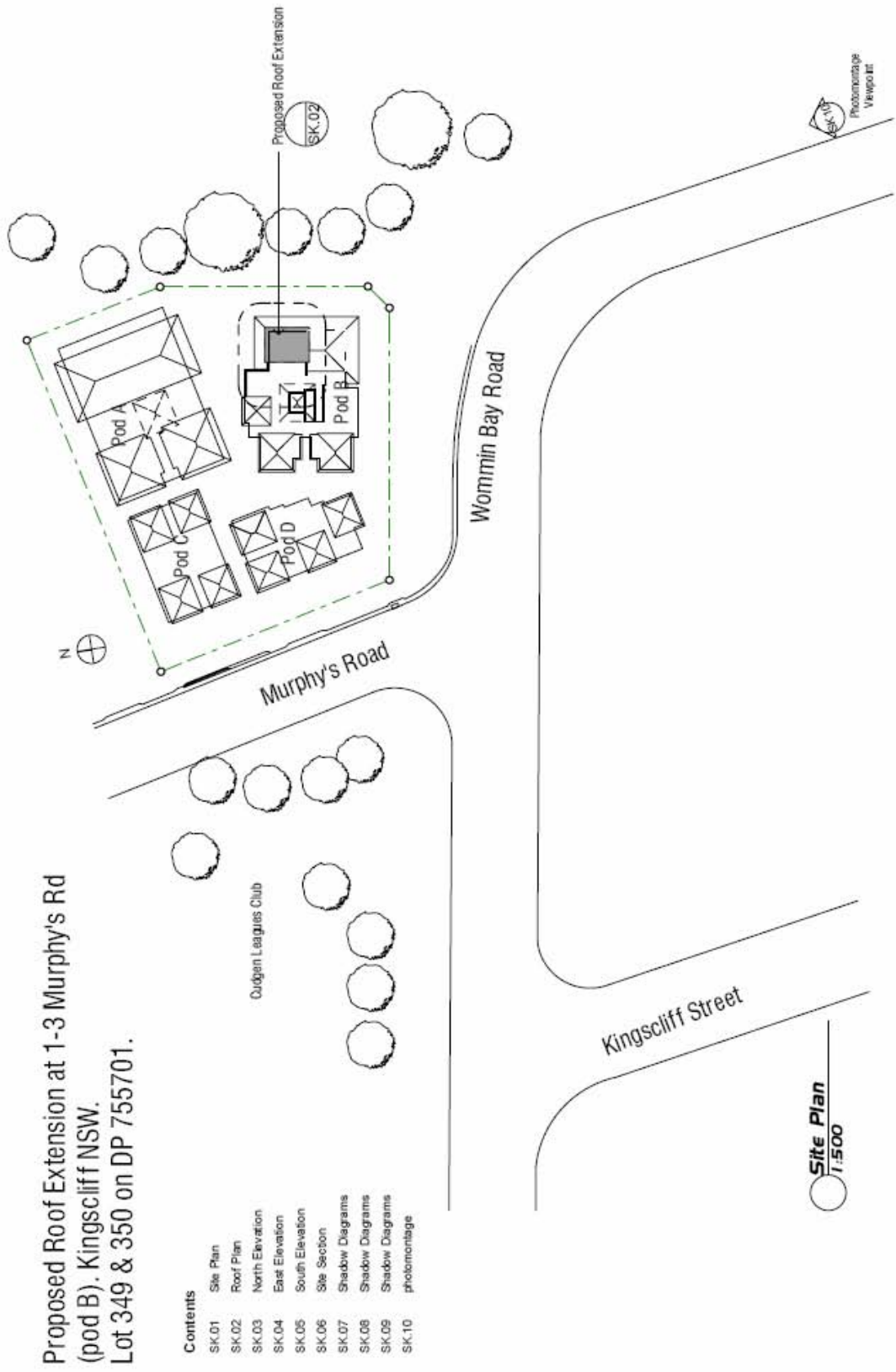
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DEVELOPMENT PLANS:



Proposed Roof Extension at 1-3 Murphy's Rd
(pod B). Kingscliff NSW.
Lot 349 & 350 on DP 755701.

Contents

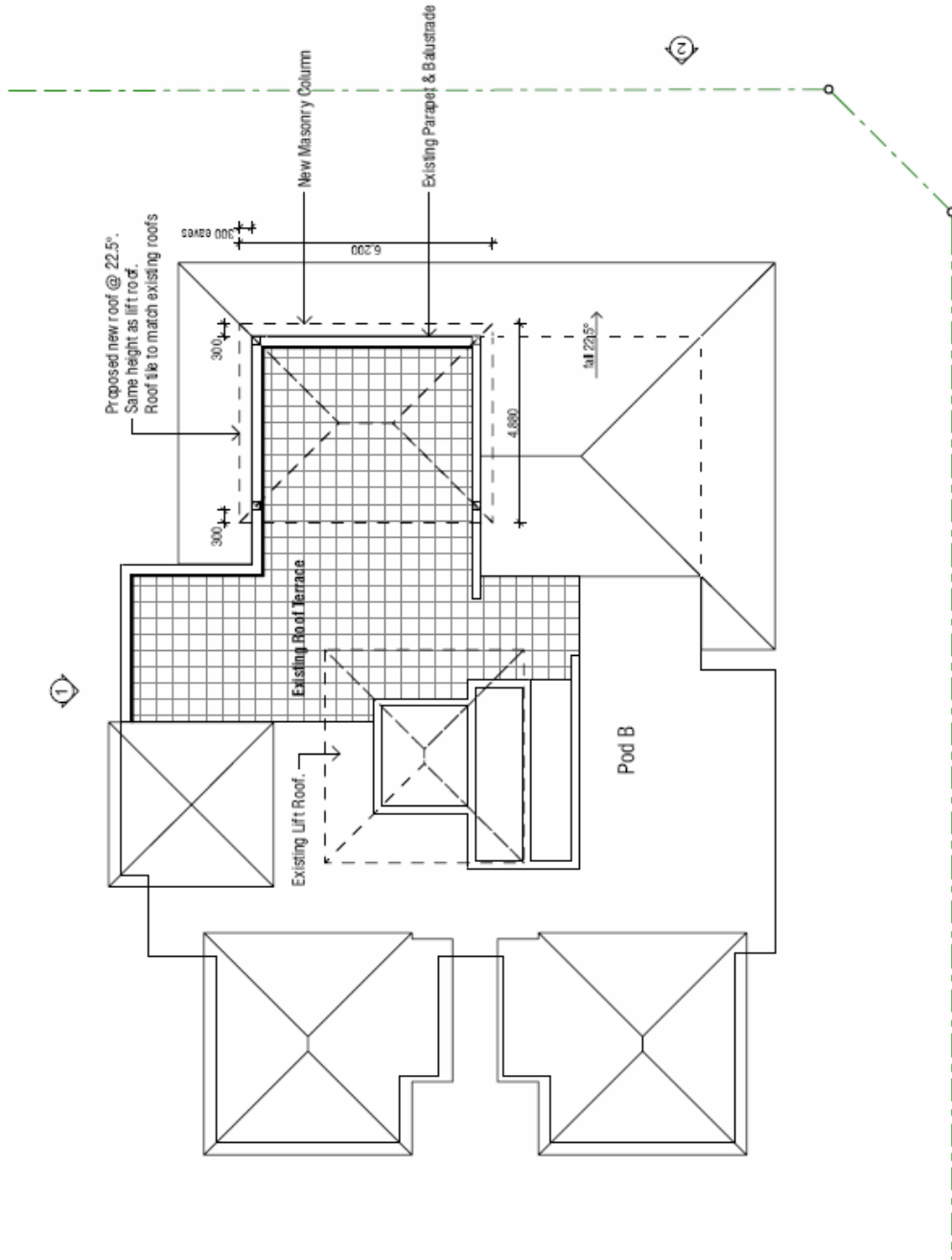
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- SK.02 Roof Plan
- SK.03 North Elevation
- SK.04 East Elevation
- SK.05 South Elevation
- SK.06 Site Section
- SK.07 Shadow Diagrams
- SK.08 Shadow Diagrams
- SK.09 Shadow Diagrams
- SK.10 photomontage

Issue: A 1289 One Murphy's Rd Eric & Wendy Zupp Site Plan Scale: 1:500, 1:1 SK.01

Date: 01.07.09 www.lightwave.com.au



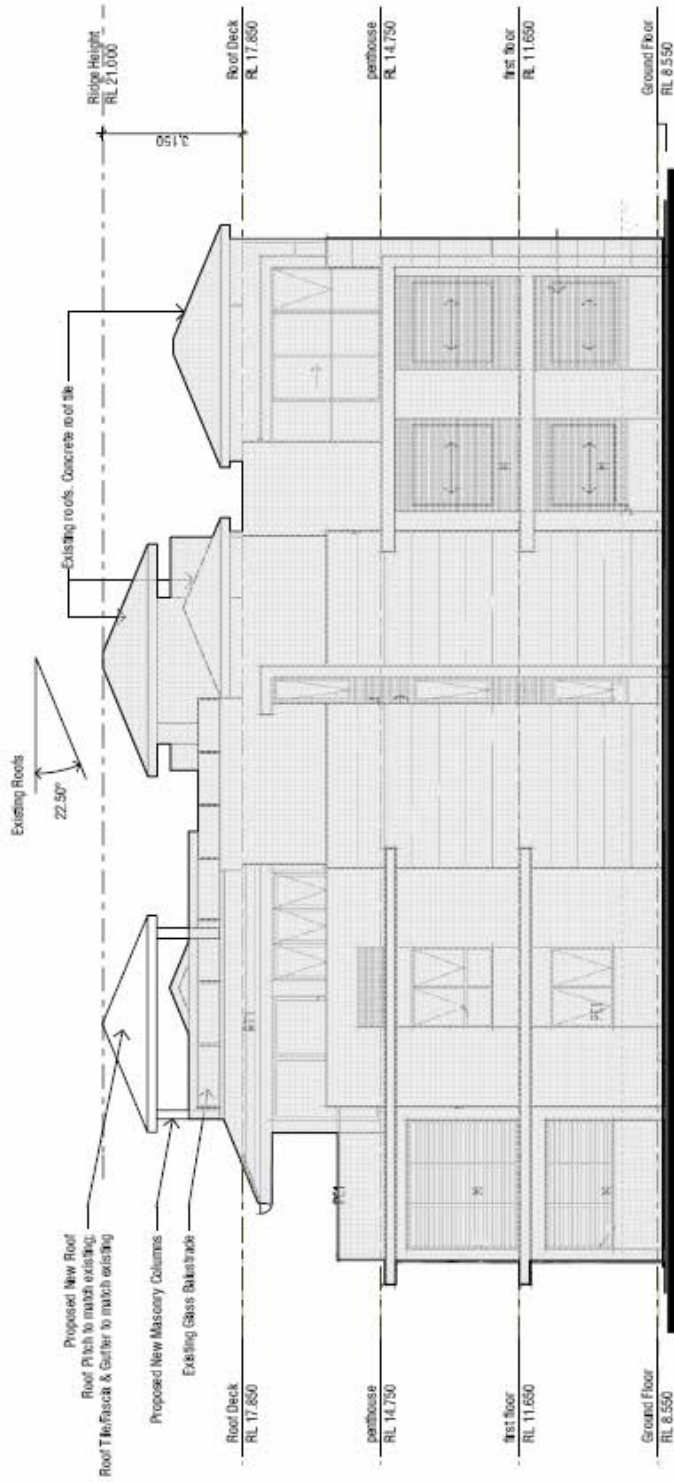
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○ Roof Deck
1:100

Issue: A 1289 One Murphys Rd Eric & Wendy Zupp Roof Plan Scale: 1:100 SK.02

Date: 01.07.09 www.lightwave.com.au **Lightwave**
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Issue: A

Scale: 1:100

SK.03

1289 One Murphys Rd

Eric & Wendy Zupp

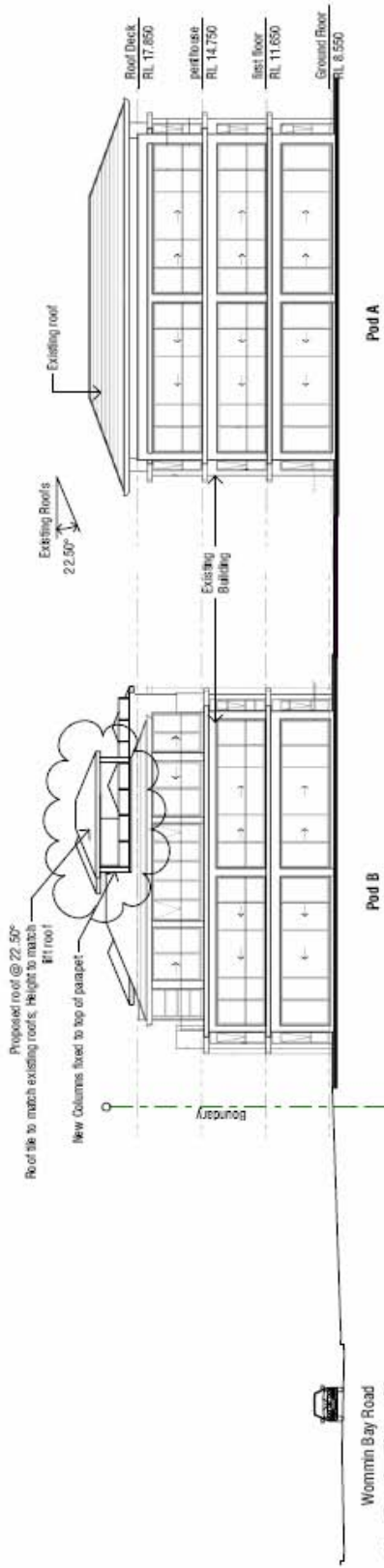
North Elevation

Date: 01.07.09

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Lightwave

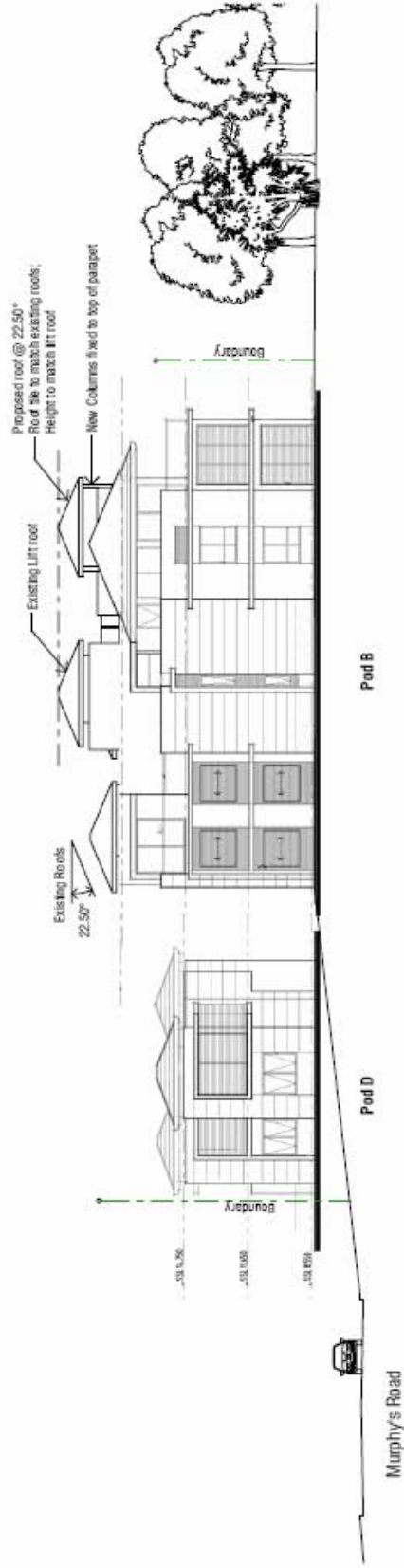
Lightwave Architecture Pty Ltd
100, Project 100, One Murphys Road, Parkville, VIC 3062, Australia
Tel: (03) 9412 1000, Fax: (03) 9412 1001



Wommin Bay Road
East Elevation
 1:200

Issue: A 1289 One Murphys Rd Eric & Wendy Zupp East Elevation Scale: 1:200 SK.04

Date: 01.07.09 www.lightwave.com.au L:\09 Projects\1289 One Murphys Road\Pod A\Pod A.mxd, 20/10/09 10:44:10 AM **Lightwave**



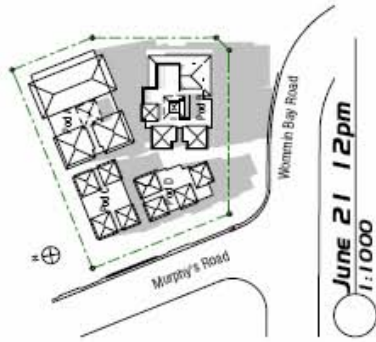
Issue: A 1289 One Murphy's Rd Eric & Wendy Zupp South Elevation Scale: 1:200 SK.05

Date: 01.07.09 www.lightwave.com.au L 101 Project 1289 One Murphy's Road, Pod D and B, 20/02/09 CAD: 1289/05 **Lightwave**

Proposed Roof



Existing Development



Note: Shadows for 6:00pm not shown as sunset at 4:30pm

Issue: A

1289 One Murphy's Rd

Eric & Wendy Zupp

Shadow Diagrams

Scale: 1:1000

SK.09

Date: 01.07.09

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Lightwave

L.W. Projects Use One-Stop-Shop-Products: AutoCAD, Revit, Ecotect, 3ds Max, Photoshop

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

(a) (i) The provisions of any environmental planning instrument

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The main objective of Clause 4 is:

“the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced.”

The subject proposal seeks consent for the construction of roof cover over a roof terrace on an existing building; the subject proposal is relatively minor in nature and scale and does not contravene the vision for the Tweed Shire.

Clause 5 - Ecologically Sustainable Development

The scale of the proposed development does not contravene the four principles of ecological sustainable development. It is within the confines of an existing building footprint and results in;

- a) no irreversible environmental damage.
- b) the environment is maintained for the benefit of future generations.
- c) the biological diversity and ecological integrity is retained and a fundamental consideration.
- d) the environmental qualities of the locality are retained.

Clause 8 - Zone objectives

The consent authority may grant consent to development only if:

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

The zone objectives are discussed below. The proposal is not of a significant scale and will not result in any unacceptable cumulative impact on the community, locality, catchment or Tweed Shire as a whole.

Clause 11- 2(b)Medium Density Residential

The subject site is located within the 2 (b) Medium Density Residential zone. The objectives of the zone are as follows:

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 Objective

- *To allow 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 subject proposal seeks consent for the construction of a roof over an approved roof terrace area within an existing medium development. The existing medium density development is encouraged by the zone objectives. The roof will provide a more usable open space terrace. The subject proposal is consistent with the objectives of the zone.

Clause 15 - Essential Services

The Objectives of the Clause are outlined as:

- *To ensure that development does not occur without adequate measures to protect the environment and the community's health;*
- *To ensure that development occurs in a coordinated and efficient manner.*

The subject proposal does not conflict with any existing provision of services. The proposal itself does not require any connection to services and is compliant with the requirements of Clause 15.

Clause 16 - Height of Building

The proposal to construct a roof structure over an existing trafficable roof terrace will constitute a partial forth storey. The site has a three storey height limit and a SEPP 1 objection in regard to the height requirements of Clause 16 has been made and assessment is outlined below.

Clause 17 - Social Impact Assessment

The objective of this clause is:

- *To ensure proper consideration of development that may have a significant social or economic impact.*

The subject proposal is considered to of a minor nature and does not require a social impact assessment and will not result in a significant social or economic impact.

Clause 34 – Flooding

The site is partially flood prone however the application for a roof over the roof terrace is at a level well above the minimum floor level. The existing floor levels were established in assessment of the parent application.

Clause 35 - Acid Sulfate Soils

No excavation is proposed and Acid Sulfate Soils are not affected by the proposal.

Clause 39A - Bushfire

The site is identified on Council's Bushfire Prone Land maps. The intent of clause 39A is to minimise bushfire risk to built assets and people and reduce bushfire threat to ecological environmental assets.

In determining whether to grant consent to development in bushfire prone areas, council must consider the following:

- (a) *whether the development is likely to have a significant adverse effect on the implementation of any strategies for bushfire control and fuel management adopted by the Bushfire Control Office established by the Council for the area, and*
- (b) *whether a significant threat to the lives of residents, visitors or emergency services personnel may be created or increased as a result of the development (including any threat created or increased by the access arrangements to and from the development), and*
- (c) *whether the increased demand for emergency services during bushfire events that is created by the development would lead to a significant decrease in the ability of the emergency services to effectively control major bushfires, and*
- (d) *the adequacy of measures proposed to avoid or mitigate the threat from bushfires including:*
 - (i) *the siting of the development, and*
 - (ii) *the design of structures and the materials used, and*
 - (iii) *the importance of fuel-free and fuel-reduced areas, and*
 - (iv) *landscaping and fire control aids such as roads, reserves, access arrangements and on-site water supplies, and*
- (e) *the environmental and visual impacts of the clearing of vegetation for bushfire hazard reduction.*

The consent authority must also have regard to the provisions of the document entitled Planning for Bushfire Protection, prepared by Planning and Environment Services, NSW Rural Fire Service in co-operation with the then Department of Urban and Transport Planning, and dated December 2001, and

must be satisfied that those provisions are, as much as is possible, complied with.

In considering these matters when the existing multi-dwelling development was originally assessed, the following comments were made:

“The subject site has been identified as having some bushfire risk as a result of the proximity to the crown land vegetation to the east. Previously, the NSW Rural Fire Service has provided that the bush fire risk is low. Vegetation to the east is narrow and the fire path is from the north so that ember attack would be lateral and not direct.

Despite this previous advice regarding Murphy’s Road, the proposed development was referred to the Fire Control Officer for an assessment of the fire risks associated with the subject development. After review of the amended plans the Fire Control Officer has advised that:

“The NSW Rural Fire Service is satisfied that this development proposal conforms to the specifications and requirements for Planning for Bushfire protection 2001 as required under section 79BA of the Environmental Planning And Assessment Act 1979 No. 203.”

The NSW Rural Fire Service have recommended 10 conditions of consent relating to construction standards, materials, the installation of sprinkler systems, the construction of a 1.8m high masonry radiant heat shield along the eastern boundary and the required asset protection distances specifically nominating that the proposed structure shall be no closer than 6 metres from the western (sic – eastern), boundary. However, the service goes on to say that:

“It is noted that the balconies of Pod A and B extend into the 6 metres APZ, whilst this is undesirable, if the above conditions are implemented this office of the RFS would not object to the proposal.”

Therefore, it is considered that the nominated setbacks coupled with the incorporation of proposed building standards according to AS3959 should provide adequate protection to the proposed development. Furthermore it should be noted that the properties to the north and the existing easement to the foreshore also afford protection to the development. While adequate reticulated water supplies already exist along Murphy’s Road that may be utilised for fire fighting purposes. No objection is raised for the proposed development from a bushfire perspective as long as the proposal conforms to the conditioned setbacks and building standards.”

The roof subject of this report does not extend beyond the boundaries of the approved building footprint and is not considered to introduce any new fuels or fire hazards. The existing requirements in relation to bushfire protection will remain relevant to the building as a whole.

Other Specific Clauses

There are no other specific clauses which are relevant to the subject proposal.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

Clause 32(b) relates to protection of foreshore areas and overshadowing.

The subject proposal is limited to an additional roof area on an existing development and will not impede public access to the foreshore.

The proposed roof is landward of any known erosion zones.

In terms of overshadowing, clause 32B requires that development should not result in beaches or adjacent open space being overshadowed before 3pm midwinter or 6.30pm midsummer.

As identified above, the consent for the existing multi-dwelling development allowed for some overshadowing of the adjoining 7(f) Environmental Projection zone – Coastal Land east of the development site. It is noted that vegetated 7(f) land extends east of the site for approximately 100 metres.

The additional shadow cast by the proposed roof structure is estimated at 10 metres to the southern existing shadow element after 6pm on December 21. The existing consent allowed for shadow of approximately 50 metres at this time.

The additional shadow cast by the proposed roof structure is estimated at 5 metres to the southern existing shadow element after 3pm on 21 June. The existing consent allowed for shadow of approximately 15 metres at this time.

An objection to this development standard is submitted and it is considered that the extent of shadow cast is acceptable in this instance (refer below for justification).

Clause 43: Residential development

The subject proposal does not change the density or the existing road network. The proposal is consistent with the requirements of Clause 43.

SEPP No. 1 - Development Standards

This policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or

unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.

The subject application contained a SEPP 1 objection in regards to:

- Clause 32B of the North Coast Regional Plan in relation to overshadowing and
- Clause 16 of the Tweed LEP 2000, relating to height.

A new 5 part test was outlined by Chief Justice Preston in recent decision *Wehbe v Pittwater Council* (2007) NSW LEC 827. He also rephrased the assessment process as follows:

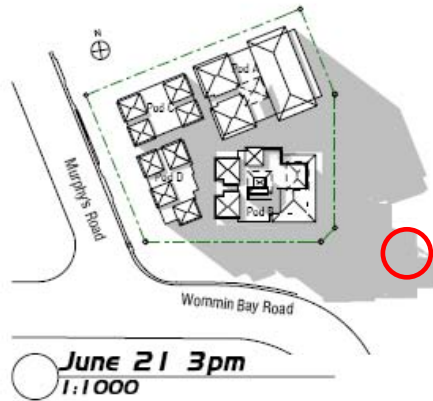
1. ***The applicant must satisfy the consent authority that “the objection is well founded” and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.***

The applicant provided the following reasons as to why the standard was considered to unreasonable and unnecessary in their particular case-

Firstly in regards to non-compliance with Clause 32B of the NCREP relating to overshadowing:

- *The extent of overshadowing at the prescribed time is considered to be minor in scale, relative to the overall size of the foreshore reserve;*
- *That area subject to overshadowing is vegetated and the overshadowing will not extend into active recreational areas such as the beach;*
- *The proposed overshadowing in no way precludes the future use or reclassification of the adjacent reserve;*
- *The overshadowing is minor in nature and at 3pm midwinter involves negligible impact;*
- *The proposal does not overshadowing the beach.*

Council officers agree that the additional shadow cast by the proposed roof element is relatively minor with regard to the existing shadow (see extract from shadow diagram below, new area circled).



Furthermore, the extract from Council's aerial photography demonstrates the relative location of the shadow with regard to the beach. The shadow clearly falls within the vegetated portion of the foreshore dunes. Shadow otherwise falls on the roads and does not impact on adjoining residences.

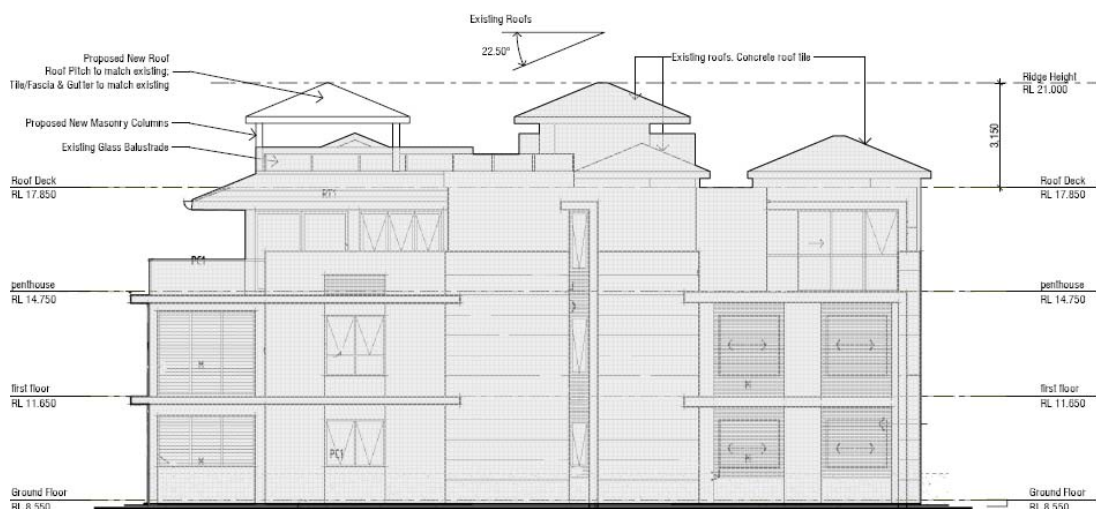


With regard to the above, it is considered that there is sufficient justification for the objection, as outlined further below.

Secondly in regards to Clause 16 of the Tweed LEP 2000, the applicant provided the following justification:

- *The height of the proposed new roofing element does not extend beyond the height of the existing roofing elements contained within the building;*
- *The additional structure actually assists in providing symmetry to the development and is entirely appropriate to the locality.*
- *The new roofing element does not result in any significant overshadowing of adjacent lands.*
- *The proposed new roof structure will result in a building that is responsive to the sites environmental characteristics particularly in relation to incorporating appropriate climatic design elements.*
- *The new roof structure will result in a building that is not only in keeping with the character of the locality but will actually enhance the distinctive coastal character of Kingscliff.*
- *The development will contribute to the local amenity of the area.*

Having regard to the elevation provided below, Council Officers agree that the additional partial 4th storey would be consistent with the scale and height of the existing roof structures. It is also integrated with the existing building form and would provide for additional roof articulation. Within the context of the existing building, and the limited impact likely from the proposed roof, the objection is considered well founded in this instance (refer further justification outlined below).



2. ***The consent authority must be of the opinion that “granting of consent to that development application is consistent with the aims of this Policy as set out in clause 3”.***

The aims of the policy are as follows:-

“This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act”.

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,*

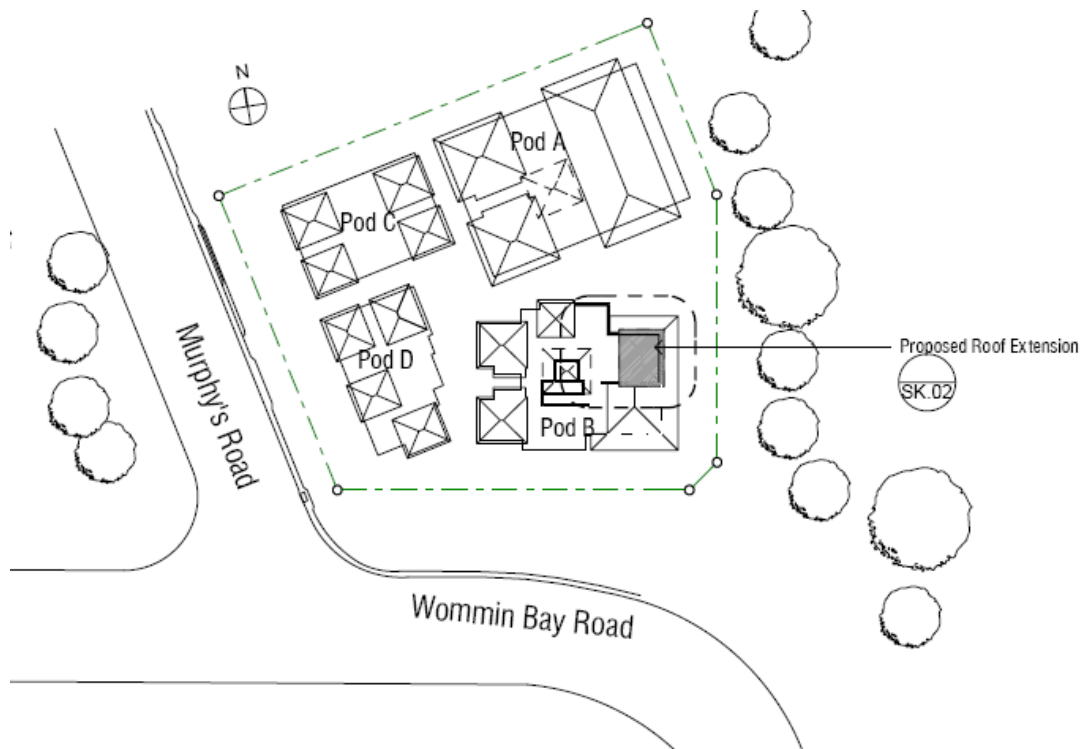
The proposed development will not affect the proper management, conservation of natural resources as it is proposed within an existing residential development. The proposed development is considered to be an orderly and economic use of the land, by enabling a more usable rooftop terrace for open space purposes. The proposal is consistent with the roof forms in the existing development.

3. *The consent authority must be satisfied that a consideration of the matters in clause 8(a) “whether non-compliance with the development standard raises any matters of significance for State or regional environmental planning; and (b) the public benefit of maintaining the planning controls adopted by the environmental planning instrument.*

It is considered that the proposed overshadowing is relatively minor and will not raise any matters for state or regional planning. The overshadowing will not impede the overall objectives of the clause, as the shadow is cast within vegetated 7(f) areas outside the useable beach and park areas. It will not reduce the quality of the useable foreshore area for the benefit and enjoyment of the public.

In terms of the additional height, it is not considered that the partial fourth storey is of significant scale and size to raise significant issues for regional planning. It is relatively small in scale and consistent with the existing height of the lift over-run. The proposed partial fourth storey is not considered to be detrimental to the public benefit as it has limited impact on surrounding properties. No overshadowing is created on adjoining residential properties. It is an open structure and is unlikely to have impact on views.

Further, the additional roof component is a small portion of the building located well within the existing confines of the development, away from adjoining development (refer extract of site plan below, with relative location of the proposed roof).




Preston expressed the view that there are five different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;

In accordance, with the judgment by Chief Justice Preston “development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives.” Therefore in accordance with Clause 16 and Clause 32B of the NCREP the development is relatively minor and will not be detrimental to future development in the area or the status of the adjacent nature reserve. Further, the applicant provided photomontages (refer below) that indicate the additional roof element is not out of scale with the existing development and will not detract from the scenic values of the locality.



 **Existing Development**
1:1.3



 **Proposed Roof**
1:0.8

2. ***The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;***

This is not considered relevant to the subject proposal as the underlying objective and purpose of Clause 16 of the Tweed LEP 2000 and Clause 32B of the North Coast Regional Plan are considered relevant.

3. ***The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;***

In this instance if compliance was enforced the rooftop terrace would be unusable due to shade, unless a compliant shade structure is proposed. The applicant has provided an image of a compliant shade structure (refer below) and it is considered that this would result in a more undesirable outcome in terms of building design. Given the nature and

scale of the proposal within the context of the existing building as well as the limited impacts associated with the additional roof, it is considered that non-compliance with Clause 16 and Clause 32B of the NCREP will not undermine the underlying objectives of the clauses (as above).



 **Compliant temporary structure**
1:1.3

4. ***The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;***

The standard has not been virtually abandoned or destroyed by Council.

5. ***The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.***

This is not relevant to the subject development; however the zoning and height limitation in areas adjoining the foreshore will inevitably result in some overshadowing.

With regard to the justification provided by the applicant above it is considered that the SEPP 1 objection in relation to clause 16 of the TLEP and 32B of the NCREP is acceptable in this instance.

SEPP No. 65- Residential Flat Building

SEPP 65 is applicable to the subject building due to the structure technically being over three storeys in height.

It is considered that the additional roof structure will compliment the existing design of the building by balancing the roof elements and providing additional articulation in the roof.

The proposal is considered consistent with the requirements of SEPP 65.

SEPP No 71 – Coastal Protection

As identified above, the proposed roof does not limit access to coastal foreshore areas or impact on coastal habitat. The proposed roof is considered to be consistent with the matters in SEPP 71.

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

There are no Draft instruments applicable to the subject application.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

Section A1 Residential and Tourist Development Code (of Council's Development Control Plan - DCP) is applicable to the subject proposal.

The subject proposal is considered to be compatible with the outlined requirements contained within the DCP. The proposed structure provides articulation to the roof and enables the roof deck to be utilised in all weather conditions.

A11-Public Notification of Development Proposals

The subject proposal was notified in accordance with the requirements of Council's DCP. Two submissions were received during the notification period and these are addressed further below.

B9- Tweed Coast Strategy

Section B9, of Councils DCP provides a strategic planning framework for the Kingscliff area, outlining preferred hierarchy of centres, roads and broader scale urban development strategies. The proposed partial fourth storey is of a minor scale and does not impact on the strategic planning intent for the region, as outlined in the Tweed Coast Strategy.

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

Clause 93 Fire Safety Considerations

The proposal does not include a change of use and this clause is not relevant.

Clause 94 Buildings to be upgraded

Council's building inspector has advised that the building and proposed works will comply with the Building Code of Australia and matters in clause 94 are satisfied.

(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 proposal seeks consent for the construction of a roof over an existing roof deck on 'Pod B'. The proposed structure is consistent with existing roof structures on 'Pod B' and will provide greater articulation.

The partial fourth storey component proposed does not include walls and will not result in substantial impacts to views, overshadowing or privacy. The proposed roof is associated with an existing three storey multi-dwelling residential flat building and is consistent with this context.

(c) Suitability of the site for the development

The location of the additional roof element within the site is well setback from boundaries and results in limited impacts. No other site constraints are relevant to the additional roof structure.

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

Two submissions were received during the notification process.

The main issues identified within the submissions are summarised in the table below, along with officer comment.

Issue Raised by Submitter	Officer Comment
The height of the existing lift over-run does not justify raising the height of any other section of the building to a partial fourth storey as the existing roof area over the lift is not a fourth storey.	It is agreed that the existing roof over the lift does not constitute a fourth storey as there are no levels within the lift shaft. Notwithstanding, the proposed fourth storey component is of a similar scale to the existing lift over-run and applies to only a small portion of the site.
The three storey height limit is critical as the building is sited on the foreshore.	The proposed fourth storey component does not include any enclosed walls and has limited impact on view corridors to the coast, nor does it result in significant increase in overshadowing of the foreshore.
The approval of this component on the building will allow for precedent for further extensions to the roof and extension of the fourth storey component.	A condition can be imposed to ensure that no additional roof structures are proposed on the building.
Extension of the shadow changes the original approval.	Agreed, however the proposal includes a SEPP 1 objection in relation to the shadow, assessed herein.

Issue Raised by Submitter	Officer Comment
Compliance of the existing building with the objectives of the TLEP 2000 2 (b) zoning is not justification for major deviations from policies that were part of the original approval.	Agreed. However it is considered that acceptable justifications are provided in relation to the SEPP 1 objections above.
Justification that the proposed roof is in sympathy with the existing roof line, is no justification.	It is considered that arguments in relation to the design outcome are relevant, particularly if the additional roof element is relatively minor, does not result in any impacts and provides for greater roof articulation.
Approval of additions and modifications of this manner result in precedent, particularly over other roof decks already existing in the Kingscliff area.	This concern is noted, however Council officers assess each individual proposal on its merit. Conditions shall be imposed to ensure that no additional roof elements are proposed and that the roof structure is not enclosed.
The proposed structure is substantial and contrary to the three storey height limit.	It is not considered that the proposed roof, being approximately 29m ² , is substantial within the context of the building and additional 3 buildings on the site.

The submissions were addressed by the applicant in correspondence dated 30 September 2009. An extract of the applicant's response to the submissions is provided below.

“Close scrutiny of the two submissions fails to reveal any real substance of note. Essentially the theme in both submissions appears to be an objection based on the fact that the structure constitutes a fourth storey. In this regard, the issue of the fourth storey has been comprehensively addressed in the material accompanying the development application. It is clear, in this instance, that compliance with this particular development standard is unreasonable. Moreover, when taking into consideration the characteristics of the structure, the fact that it doesn't add to the overall bulk of the building, that the overall height of the building is not increased, it is apparent that the proposal is innocuous.

When the application is assessed purely on merit, it is difficult to see how any reasonable person could consider that the proposal would have any significant impact.

Of relevance is the following:

- *The proposal does not result in any loss of views.*
- *The structure has been architectural designed and will be in harmony with the overall building design.*
- *The structure will not result in any substantial change to the external appearance of the building.*
- *The building itself will still present as a three storey development.*
- *The structure will substantially increase the residential amenity of the building.*
- *Approval of the application will in no way create a precedent. Applications for such structures in Kingscliff would be required*

to be assessed on individual merit and have particular regard to the relevant circumstance of each case."

With regard to the applicant's response, and responses provided in the table above, it is considered that sufficient justification is provided for the partial fourth storey and conditions should be imposed to limit additional alterations and additions.

(e) Public interest

The subject application is deemed to not compromise the public interest.

OPTIONS:

1. Resolve to adopt the recommendations made and approve the development application.
2. Resolve to refuse the development application for specified reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

If the applicant is dissatisfied with the determination a right of appeal exists in the Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The subject application seeks consent for the construction of a roof addition over an existing terrace roof area, resulting in a partial fourth storey height component in a three storey height limit area.

It is considered that sufficient justification has been provided to support the SEPP 1 objections made in relation to the height, and additional, minor overshadowing of the foreshore.

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.

8 [PR-CM] Development Application DA08/0293 for a Two Lot into Six Lot Subdivision at Lot 12 DP 825726; Lot 25 DP 870463, No. 19 & 26 Waterlily Close, Nunderi

ORIGIN:

Development Assessment

FILE NO: DA08/0293 Pt2

SUMMARY OF REPORT:

Council has received a subdivision application to create six allotments from an existing two allotments.

The site is zoned 1(c) Rural Living and is constrained with flooding, bushfire, slope, on-site dam and drainage. During the course of the assessment, Council officers have raised concern with flooding, stormwater drainage, effluent disposal and quality of information generally. Three information requests have been issued during assessment along with numerous site meetings.

The application was notified (twice due to error in plans) and Council received approximately 21 submissions during the notification period (including submissions lodged twice during the second notification period) objecting to the proposal. The issues raised by objectors relate mainly to concerns with flooding, drainage and impacts on the on-site waterbody.

Council officers are unable to support the application in its current form, due to concerns with landforming and inadequate proposed treatment of on-site sewer. There is also insufficient information to ensure there will be no impacts on the quality of the environment, aquatic habitats and on-site waterbodies.

It is therefore recommended that the application be refused.

RECOMMENDATION:

That Development Application DA08/0293 for a two lot into six lot subdivision at Lot 12 DP 825726; Lot 25 DP 870463, No. 19 and 26 Waterlily Close, Nunderi be refused on the following grounds: -

- 1. The proposal does not comply with clause 15 of the Tweed Local Environmental Plan as satisfactory arrangements have not been made for the removal and disposal of sewerage.**
- 2. The proposal does not comply with clause 21 of the Tweed Local Environmental Plan as each proposed allotment is not capable of**

accommodating adequate facilities for treatment and disposal of sewerage.

3. The information provided with the application is insufficient and the proposal may result in impacts on the amenity of the area and quality of the environment, including aquatic habitats.
4. The proposal does not comply with Council's Development Control Plan Section A5 – Subdivision Manual, particularly in relation to landforming.
5. The proposal does not adequately address issues raised by public submissions and is not in the public interest.

REPORT:

Applicant: Mr C Reeve and Mrs P Reeve
Owner: Mr CE Reeve and Mrs PM Reeve
Location: Lot 12 DP 825726; Lot 25 DP 870463, No. 19 and 26 Waterlily Close, Nunderi
Zoning: 1(c) Rural Living
Cost: N/A

BACKGROUND:

The application subject of this report was received on 26 March 2008 and a chronology of events during the assessment process is provided as background.

Date	Event
26/03/08	Application received
14/04/08-29/04/08	Application notified
24/04/08	Applicant amended subdivision plans correcting an error (boundary location adjacent to Hindmarsh Road reserve)
30/04/08	Council correspondence to the applicant requesting further details in relation to: <ul style="list-style-type: none"> - subdivision plan (more accurate detail) - preliminary engineering details addressing how the subdivision will be adequately constructed and serviced (details on reticulated water, stormwater management, earthworks details, proposed easements, localised flooding) - Localised flooding (demonstrate that building envelopes and access is flood free and any proposed filling will not result in adverse effects on floodwaters in the local catchment).
14/05/08–28/05/08	Application re-notified due to inaccuracies in the original plans. A total of 21 submissions were received including double ups.
19/05/08	Rural Fire Service provided terms of agreement
23/07/08	The applicant responded to Council's 1 st information request.
2/09/08	Council correspondence to the applicant requiring further information and advice in relation to water connection, stormwater and flooding which was inadequately addressed.
7/11/08	The applicant responded to Council's 2 nd information request.
6/01/09	Council correspondence to the applicant in relation to stormwater drainage and flood liability. This included the request for significant changes to the plans or withdrawal of the application.
5/06/09	The applicant responded to Council's 3 rd information request. This included minor modification to the proposed boundaries between lot 1, 2 and 3 (relating to continuity of ownership lot / house site), additional geotechnical details, civil engineering report, stormwater management plan, sediment and erosion control plan and addendum on-site effluent disposal report.

Proposal

Council is in receipt of an application for subdivision of two lots to create six lots at 17 and 26 Waterlily Close, Nunderi.

The proposal will result in allotments of varying sizes and access points as outlined the table below.

Proposed Lot	Size (ha)	Accessed from
1	1.004	Hindmarsh Road
2	1.002	Hindmarsh Road
3	1.000	Gumtree Court
4	1.001	Waterlily Close
5	1.150	Waterlily Close
6	1.000	Waterlily Close

The proposed allotments are of irregular shape and four of the six allotments will have narrow frontages or are in battle-axe configuration.

Site

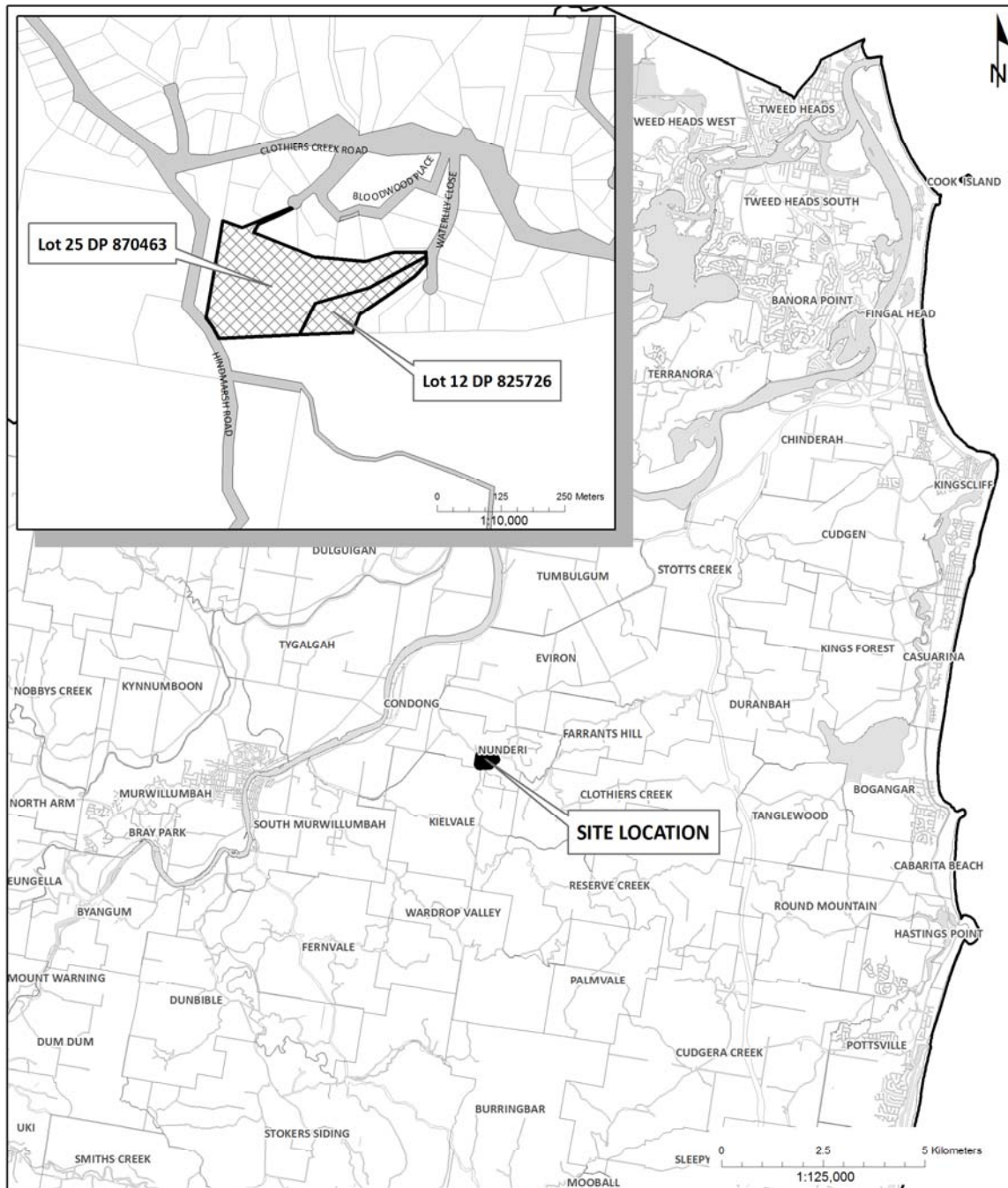
The subject site includes Lot 12 DP825726 and Lot 25 DP870463 and has a total area of 6.208 hectares (62,050m²) with Lot 25 having an area of 5.07 hectare and Lot 12 having an area of 1.138 hectares.

The site is predominately cleared but includes scattered stands of vegetation and an on-site dam and drainage channel.

The site is currently improved with two existing dwellings, both of which have access to reticulated water. The house on lot 25 is accessed via Hindmarsh Road. The house on Lot 12 is accessed via Waterlily Close. Grazing and rural residential development occurs in the locality.

Topography over the site varies from RL 20 metres AHD at its south-eastern corner (near the existing dwelling on Lot 12) to RL 2 – 3 metres AHD across the remainder of the site to the west, sloping upwards at the north-western location near the existing battle-axe arm of Lot 25.

SITE DIAGRAM:



LEGEND

Lot 12 DP 825726 and Lot 25 DP 870463
No. 19 & 26 Waterlily Close, Nunderi

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Author: J.Batchelor - Planning Reforms Unit

Date Printed: 24 September, 2009

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Cadastral 24 September, 2009
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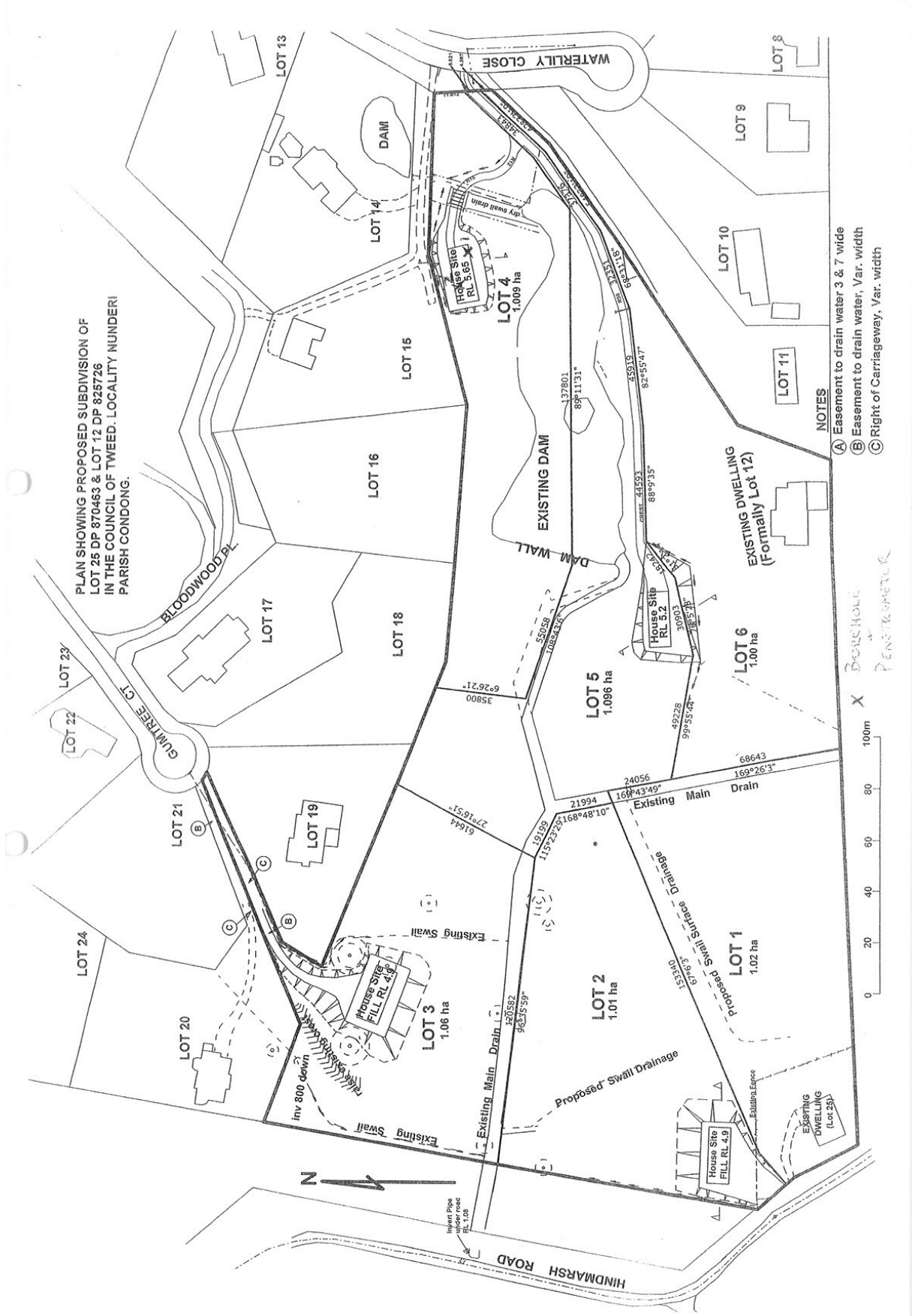
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DEVELOPMENT PLAN:



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 of states the aims of the plan which among other things, seeks to give effect to the strategic plan and the vision which is the “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” and to encourage sustainable economic development of the Tweed compatible with the area’s environmental and residential amenity qualities.

Clause 5 outlines that the objective of the TLEP is to promote development that is consistent with the principles of ESD, including the precautionary principle (that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

Clause 8 of the TLEP states that the consent authority may only grant consent to development if it is consistent with the primary objective of the zone (considered below) and the aims and objectives of the plan.

Clause 8 also requires that the consent authority needs to be satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected.

As outlined in this report, it is not considered that the application adequately demonstrates the proposal will not result in impacts on the environment or residential amenity of surrounding and future proposed dwellings, due to potential impacts from landforming and on-site effluent disposal.

Clause 11 of the TLEP outlines the zone objectives for the 1(c) Rural Living zone as follows:

Primary Objectives

- *To enable; rural residential in selected areas possessing particular environmental and servicing attributes which do not compromise the viability of rural activities on land in the vicinity, do not detract from the quality of the rural and natural environment and do not create unreasonable or uneconomic demands, or both, for the provision or extension of public amenities or services.*
- *To provide rural residential development of a design integration, quality and scale compatible with and making a positive contribution to, the character of the rural area in the vicinity.*

Secondary Objective

- *To enable other development that is compatible with rural residential development.*

The proposed subdivision will result in allotments with an area in the order of 10,000m². Allotments in the locality have an average area of approximately 4000m². The proposed subdivision is not out of character with the existing subdivision pattern in the area. Notwithstanding, the application does not include sufficient detail to demonstrate that the subdivision does not detract from the surrounding rural and natural environment, particularly in relation to potential impacts associated with treatment of effluent and landforming.

Clause 15 of the TLEP requires that available services are adequate and that development does not occur without adequate measures to protect the environment and community health prior to determining a development application.

Water:

In terms of water, the following comments have been made by Council's Water and Sewerage Systems Engineer:

"The first option for the provision of a "party line" water service along Hindmarsh Road from the existing reticulation in Clothiers Creek Road is not acceptable. Council's policy for water connections does not permit new "party lines" due to difficulties which arise through disputes between neighbours and when properties change ownership. Such a solution cannot be countenanced for a new subdivision.

The second option of providing the services by way of an easement for water supply from Gum Tree Court is also not permitted. Easements would not be vested in Council as Council responsibility would end at the meters in Gum Tree Court. Any problems would have to be resolved between neighbours, which is unacceptable.

The only option available for water connection is the construction of a minimum sized water main (100mm diameter) in Hindmarsh Road from Clothiers Creek Road to the proposed lots fronting Hindmarsh Road. It may be possible for the applicant to combine with the third party mentioned to construct this main.

It should also be noted that none of these options are unlikely to provide a supply capable of the normal fire demand at the house sites but the last will provide a better service than the applicant's two options."

In response to these comments, the applicant provided correspondence (received 7 November 2008) identifying that it was unfeasible to construct 100mm water main along Hindmarsh Road and that:

- Proposed Lot 1 has supply through easements for the last 25 years.

- Council has allowed landowners to place their own water supply pipes down Hindmarsh Road in the past and also allowed replacement very recently.
- There is no requirement for rural subdivision to provide town water. Supply for lot 1 and 2 can be achieved through provision of a 20,000 litre rainwater tank.

Council's Water and Sewerage Systems Engineer provided the following response:

"Party lines result in disputes particularly when there is a change of property ownership where the owner of the property to which the meter is attached can unilaterally disconnect the other properties, charge more than a fair share or otherwise come into dispute with the neighbouring property owner, usually with the result that Council is called upon to resolve the dispute.

In addition, Councils Works Unit as asset custodian of road reserves has advised that they will no longer permit new private mains within road reserves and in this particular case will not permit any additional private water service mains along Hindmarsh Road.

What has previously been permitted is not a justification for permitting the continued proliferation of unsatisfactory water services.

Water Unit also stands by its position with regards having long water services running through other properties, even with an easement in place. It is undesirable to have a battery of water meters at the narrow driveway to the proposed Lot 3 and it is also undesirable to have such a long water service through other properties in small diameter pipe. Such pipe will be susceptible to damage by the neighbouring property owners and may be considered an unreasonable burden on those properties.

The right way to provide water supply to the two lots is via a water main constructed in the road fronting the lots. As the proponent rightly observes, water supply is not essential to the rural residential subdivision and the provision of tanks of a suitable size is a viable alternative.

Consequently, no water supply headworks are applicable to the two lots not serviced and the water supply currently servicing the existing house should be used to supply the proposed Lot 3."

In this regard, conditions of approval would be required for acceptable connection to water, requiring connection of proposed lot 4, 5 and 6 to reticulated system existing in Waterlily Close as well as suitable water tanks on proposed lot 1 and 2 and connection of proposed lot 3 to the service in Gumtree Court. Because inter-allotment services are not allowed as above, the existing water connection to the existing house on proposed lot 1 would need to be de-commissioned and provided only to proposed lot 3.

Sewer:

The Statement of Environmental Effects included an on-site sewerage management design report prepared by HMC, dated February 2008. This was reviewed by Council's Environmental Health Officer (EHO) who initially advised (30 April 2008) that it was acceptable provided 88B restrictions were proposed over the land application areas (LAA).

Further advice was received from Council's EHO (3 June 2008) indicating the EHOs had subsequently been made aware that the site was flood prone and the proposed on-site sewer management design report would require review upon establishment of flood levels and extent of flooding. The design of lot 4 particularly was not supported due to flooding issues.

After receipt of further information from the applicant, the following comments were provided by the Environmental Health Unit (29 July 2009):

*"This comment relates to proposed **Lot 4** and the Report by Plumbing Works (Klaus Walter) 'On-site Treatment and Disposal of Waste-water' dated March 2009. The Plumbing Works report provides two design options for proposed **Lot 4**. It is noted the report only provides design capacity for a three bedroom dwelling.*

***Option 1** proposes primary wastewater treatment in a 3000L septic tank with the effluent subsequently passing through a secondary treatment process comprising a twelve (12) M² reed bed (horizontal flow constructed wetland) into a pump-well with pump device (unspecified) delivering the effluent for disposal into three (3) x 14.5M in length x unspecified width evapo-transpiration / absorption (ETA) beds. The ETA beds for option 1 are to be located adjacent to the lower northern section of the existing dam wall.*

***Option 2** proposes ablution treatment in a composting toilet (brand and type unspecified) and greywater (other domestic waste-water) treatment in a twelve (12) M² reed bed (horizontal flow constructed wetland) into a pump-well with pump device (unspecified) to pump the effluent for disposal into two (2) x 13.5M in length x unspecified width evapo-transpiration / absorption (ETA) beds. The ETA beds for option 2 are to be located immediately below Waterlilly Close boundary.*

*A site inspection was carried out on 28 July 2009. The area proposed for **option 1** is adjacent to the dam wall and below the surface water-level of dam. The general location was thoroughly waterlogged and surface water was observed to be ponding in the immediate vicinity of the proposed ETA beds location.*

The effluent disposal area identified in option 1 is considered to be unsuitable when assessed in accordance with NSW environment protection guideline "On-Site Sewage Management for Single Households" 1998, AS1547/2000 and "Soil Landscapes of the

Murwillumbah – Tweed Heads” D.T. Morand 1996 for the following reasons:

- *Poor drainage and low permeability of soils, waterlogged ground surface, dampness and surface water ponding in the area proposed for ETA beds (option1)*
- *Low septic absorption for soil materials and southerly aspect / exposure of the disposal area*
- *Proximity to standing water (dam), drainage channel and ephemeral waterway (proposed ETA beds are within the recommended buffer distances)*
- *High watertable*
- *Presence of groundwater springs and surface seepage of groundwater known to occur on similar sites (foothills) throughout the Nunderi area*
- *Historic and regular occurrence of failed effluent disposal areas and poorly performed on-site sewage management systems located on similar sites within the Nunderi area*

It is considered that the on-site sewage treatment and disposal method as detailed in option 1 of the Report by Plumbing Works (Klaus Walter) ‘On-site Treatment and Disposal of Waste-water’ dated March 2009 is unlikely sufficient to attain an acceptable level of environmental impact within the proposed allotment boundaries as assessed in accordance with NSW environment protection guideline “on-site Sewage Management for Single Households” and AS1547/2000.

It is recommended the application be refused due to the physical constraints restricting an acceptable level of environmental impact from proposed on-site sewage management of domestic wastewater from proposed Lot 4.”

Council’s Environmental Health Unit made additional comment in regards to option 2 on 6 October 2009.

Comments in relation to option 2 are outlined below.

“The on-site sewage treatment and disposal report by Plumbing Works (Klaus Walter) ‘On-site Treatment and Disposal of Waste-water’ dated March 2009 is considered inadequate because of the following:

1. *the exact location of the effluent Land Application Area (LAA) and reserve area in relation to ancillary infrastructure such as driveways and stormwater drains, and other site specific factors such as proximity and distance to property boundaries, drainage lines, ephemeral waterways and permanent water bodies, cannot be identified as a scaled site plan of the site identifying the LAA locations and site specific factors has not been provided.*
2. *there appears to be limited area for future expansion of the LAA if required as identified in the disclaimer at the back of the report.*

3. *the location of the soil sample bore hole horizons is not identified and the soil analysis methodology is poorly documented.*
4. *the site evaluation appears to be conflicting with and contradictory to the soil assessment because it indicates good drainage with no limitations and 1.5m to the water table when a site inspection by Council Officers on 28 July 2009 showed water ponding on the ground surface and waterlogged areas within the proposed allotment boundaries.*
5. *there is a lack of adequate detail with relation to the hydraulic design loading rates.*
6. *the proposed method of effluent treatment and disposal does not demonstrate adequacy for site limitations when assessed in accordance with NSW environment protection guideline "On-Site Sewage Management for Single Households" 1998, AS1547/2000 and "Soil Landscapes of the Murwillumbah – Tweed Heads" D.T. Morand 1996."*

In this regard, the application does not satisfy clause 15 with regard to adequate treatment of sewer.

Clause 16 of the TLEP applies to the height of buildings; in this instance this clause is not applicable as the proposal is for an outlined subdivision with no proposed building works.

Clause 17 of the TLEP requires Council to ensure proper consideration of developments that may have a significant social or economic impact. The proposed subdivision is not of a significant scale to have social or economic impact on the broader community, although potential impacts on residential amenity and natural environments are outlined herein.

Clause 21 relates to subdivision in zone 1(c) Rural Living and seeks to ensure that the semi-rural character and environmental values of the locality are protected. Clause 21 states that Council may only grant consent to subdivision of land in this zone for residential purposes only if:

- a. *each allotment will be connected to a reticulated water supply system, or a tank water supply will be provided to the satisfaction of the consent authority, and*
- b. *the consent authority is satisfied that each allotment created is capable of accommodating adequate facilities for the treatment and disposal of sewerage or will be connected to the Council's reticulated sewerage system, and*
- c. *in the case of land to be connected to the Council's reticulated sewerage system- the area of each lot created less than 0.4 hectare, and*
- d. *in the case of land not to be connected to the Council's reticulated sewerage system- the area of each lot created is not less than 1 hectare.*

Whilst conditions can be imposed to ensure that each new lot has adequate water supply, Council's Environmental Health Unit is not satisfied that each allotment is capable of accommodating adequate facilities for the treatment and disposal of sewerage.

It is not considered that the proposal complies with Clause 21(2b).

Clause 31 applies to development adjoining waterbodies. In summary, it seeks to protect and enhance scenic quality, water quality, aquatic ecosystems, bio-diversity and wildlife habitat and corridors. It also seeks to provide adequate public access to waterways and minimise the impact on development from known biting midge and mosquito breeding areas. The clause applies to land that adjoins the mean high water mark of a waterbody, or the top of the bank or shore of a stream, creek, river, lagoon or lake.

The site includes a dam and drainage channel. Council's ecologist has identified that the water system on-site is a fourth order stream. Whilst the on-site water bodies are not of significant order, given the proposed fill and on-site effluent disposal areas in proximity to the existing dam and weir, this clause is considered relevant and is addressed below.

(3) *Consent must not be granted to development on land to which this clause applies, within such distance as is determined by the consent authority of the mean high-water mark or, where there is no mean high-water mark, the top of the bank or shore of a stream, creek, river, lagoon or lake unless it is satisfied that:*

(a) *the development will not have a significant adverse effect on scenic quality, water quality, marine ecosystems, or the bio-diversity of the riverine or estuarine area or its function as a wildlife corridor or habitat, and*

Council's ecologist has identified that insufficient information is provided to determine if there will be impact on potential fish habitat and on-site aquatic flora. Impacts may arise from proposed filling and drainage works.

(b) *adequate arrangements for public access to and use of foreshore areas have been made in those cases where the consent authority considers that public access to and use of foreshore areas are appropriate and desirable requirements, and*

Public access is not appropriate at this site.

(c) *the development is compatible with any coastal, estuary or river plan of management adopted by the Council under the Local Government Act 1993 that applies to the land or to land that may be affected by the development, and*

There are no management plans applicable to the site.

(d) *the development addresses the impact of increased demand from domestic water supply on stream flow; and*

If the application is approved, conditions can be imposed to ensure adequate water supply.

- (e) *the development addresses the likely impact of biting midge and mosquitoes on residents and tourists and the measures to be used to ameliorate the identified impact.*

The applicant has not addressed this issue.

Clause 34 requires that the consent authority considers the impact of flooding and increased risk associated with flooding.

The site is flood affected and whilst there are outstanding issues with landforming, Council's Planning and Infrastructure Engineer is satisfied that this clause has been addressed adequately.

Clause 35 relates to acid sulphate soils (ASS) and requires that the consent authority is satisfied that acid sulphate soil can be adequately managed. The site is identified as class 3 and 5 on the ASS planning maps which means that ASS disturbance requires consideration where excavations greater than 1m below natural ground surface are proposed. Given the site is low lying, the proposal will require filling of house pads and access roads. Excavation greater than 1 metre deep is unlikely. Notwithstanding, if the application is approved, a condition is required ensuring that acid sulphate soils are not exposed or disturbed.

Clause 39 relates to potentially contaminated land. This matter is addressed below in relation to SEPP 55 Remediation of Land.

Clause 39A relates to bushfire potential land. The site is identified as bushfire prone and was integrated in this regard. The Rural Fire Service has reviewed the application and provided general terms of approval.

State Environmental Planning Policies

North Coast Regional Environmental Plan 1988

Clause 15 relates to wetlands or fishery habitats and requires that Council not consent to an application within, adjoining or upstream of a river or stream, coastal or inland wetland or fishery habitat or within the drainage catchment of these areas unless it has considered a number of matters. Relevant matters are discussed below.

- (a) *the need to maintain or improve the quality or quantity of flows of water to the wetland or habitat,*

Insufficient information is available to ensure the quality of water will be maintained (particularly given the location of the on-site effluent area and filling with relation to the dam).

- (b) *the need to conserve the existing amateur and commercial fisheries,*

The site is not of a scale that will affect amateur and commercial fisheries, however extent of fish habitation and impacts may arise from failure in on-site sewer systems or erosion and sediment associated with landfill.

- (c) *any loss of habitat which will or is likely to be caused by the carrying out of the development,*

Based on the current application, impacts on on-site aquatic habitat may arise and there is no certainty of protection based.

- (d) *whether an adequate public foreshore reserve is available and whether there is adequate public access to that reserve,*

Not applicable.

- (e) *whether the development would result in pollution of the wetland or estuary and any measures to eliminate pollution,*

The proposed on-site effluent systems are not acceptable to Council's EHO and may result in impacts on the environment.

- (f) *the proximity of aquatic reserves dedicated under the Fisheries Management Act 1994 and the effect the development will have on these reserves,*

Not applicable.

- (g) *whether the watercourse is an area of protected land as defined in section 21AB of the Soil Conservation Act 1938 and any measures to prevent soil erosion, and*

Not applicable.

- (h) *the need to ensure that native vegetation surrounding the wetland or fishery habitat area is conserved, and*

Based on the current application, impacts on on-site aquatic vegetation may arise and there is no certainty of protection based.

- (i) *the recommendations of any environmental audit or water quality study prepared by the Department of Water Resources or the Environment Protection Authority and relating to the river, stream, wetland, area or catchment.*

Not applicable.

Clause 12 relates to impact of development on agricultural activities.

The subject land is not deemed to be prime agricultural land and is not dissimilar to surrounding rural living in the immediate surrounds.

State Environmental Planning Policy No. 55 – Remediation of Land.

In terms of other potential contaminating activities previously occurring on the site, Council's EHO has reviewed the 1972 aerial photography which indicates no small cropping or bananas have been previously undertaken on the site (since that time). The parent subdivision file indicates that the subject site has been used for grazing. A statutory declaration has been provided with the current application from the owner who indicates he has been familiar with the land use going back to 1950s and is not aware of any potentially contaminating activities.

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

There are no Draft EPI's applicable to this site or application.

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

DCP A3 Development of Flood Liable Land

Design flood level for the site is identified at approximately RL4.8m AHD for the majority of the land (adopted minimum floor level RL 5.3m AHD).

The contours of the property create a low depressed area of RL 2.0m AHD, across all proposed allotments. An existing dam is located between proposed allotments 4 & 5.

Council's engineers have provided the following advice in terms of flooding:

"The applicant was previously requested to provide a "flood assessment" of the local catchment, to demonstrate that the proposed house pads were at a level above both the local and regional 100 year ARI flood levels, and to ensure that proposed obstructions to flow, such as driveway formations, would not create adverse impacts on adjoining land.

While a flood model has not been provided over the whole site, the applicant has provided hydraulic analyses at critical locations, such as the Lot 4 driveway, and refined the design to demonstrate compliance with Council requirements and provide failsafe measures to minimise impacts on adjoining land.

Following assessment of the submitted hydraulic analyses, no objection is raised to the development on flooding/drainage grounds. Any outstanding matters could be addressed via conditions of consent."

A3 (Development of flood liable land) requires a flood free dwelling site on each new allotment created. The construction of a flood free dwelling site will be permitted only where it can be demonstrated that such work will not have any adverse effects on floodwaters in the locality.

As identified below there are issues outstanding in relation to fill for the building envelopes and proposed location adjacent to the dam weir.

DCP A5 Subdivision Manual

Roads / Access

The proposed subdivision proposes to utilize three existing rural residential roads in Nunderi. Future Lots 4, 5 & 6 have access from Waterlily Close. Proposed Lots 1 & 2 access directly from Hindmarsh Road and proposed Lot 3 has a battleaxe access from the cul-de-sac on Gumtree Close.

Gumtree Court and Waterlily Close are rural residential local roads with kerb & gutter but do not contain a piped stormwater system.

Hindmarsh road is a rural collector road with no kerb & gutter.

In terms of access, proposed lot 1 and 2 will gain access from Hindmarsh Road and Council's engineer has identified that sight distance is adequate.

Proposed Lot 3 has access from Gumtree Court cul-de-sac via a battleaxe handle of varying width. A right of carriageway benefiting the subject lot and burdening adjoining Lot 20 DP 870463 is located over the battleaxe handle. The width of the battleaxe handle at Gumtree Court is 3.7m, increasing in width along the 100m length.

The access has an existing bitumen track in average condition. The long section provided for the driveway shows gradients up to 20%. No additional lots will service the existing right of carriageway, which currently serves 2 allotments, these being Lot 20 and 25 DP 870463 (subject lot). An easement to drain water is also located over the battleaxe handle.

It is noted that fill material required for construction of the Lot 3 driveway and house pad is located over the existing easement to drain water and right of carriageway created under DP 870463.

The easement to drain water will not be relevant in relation to the proposed earthworks and would need to be relocated over to Lot 20 DP 870463 to be effective.

Council's standards for a right of carriageway serving 2 lots in a rural subdivision include a 3.6m full width seal two coat bitumen seal.

Proposed Lot 4 has access to Waterlily Close via a battleaxe handle of varying width. The parent lot (Lot 12 DP 825726) has a frontage of 12m onto Waterlily Close and is also burdened by a right of carriageway 5m wide benefiting adjoining Lot 11 DP 825726.

A right of carriageway is proposed to provide services to future Lots 4 & 5. The proposed right of way is located over part of the existing access handle

which is not affected by the existing 5m wide right of carriageway. Gradients for the proposed right of way are adequate.

Proposed Lot 5 has access to Waterlily Close via a battleaxe handle of varying width and a proposed right of carriageway also serving proposed Lot 4 (see comments for Lot 4).

Lot 6 contains an existing dwelling and is burdened with a 5m wide reciprocal right of carriageway with adjoining Lot 11 DP 825726. The existing right of carriageway has a two coat bitumen seal in reasonable condition.

Landforming / Site Regrading

Section A5.4.6 of A5 (Subdivision Manual) applies to landforming and requires compliance with Council's Development Design Specification D6.

Council's Engineer has identified the following areas of non-compliance with D6.

Maximum height of retaining walls or batters:

Council's Development Design Specification D6 (Site regrading table D6.1 – maximum permissible combined height of retaining walls or batters) states that the maximum cut is 1.2m for a proposed allotment boundary. The proposed Lot 5 house pad will be 3m or greater in height.

Boundary setback:

Council's Development Design specification D6.05.6(c) states where retaining walls or batters are used to create a level difference between adjacent allotments, the top of batter or top of retaining wall shall be located a minimum 0.9m horizontally from the boundary. The proposed Lot 5 house pad does not comply with the minimum 0.9m boundary setback as the house pad is located partially within future Lot 6.

Retaining wall ownership:

The cut batter for the Lot 5 pad extends several metres into Lot 6. Council's Development Design Specification D6.06A(2) states that for retaining walls or batters in subdivisions that are on or adjacent to property boundaries, "the whole of the retaining wall(s) or batter is to be located on land belonging to the lower lot" unless otherwise directed by Council. Given that Lot 6 is already at the minimum 1ha lot size, the subdivision layout would need to be amended to comply with this requirement.

Council's Planning and Infrastructure Engineer has provided the following additional comments in this regard:

"In my previous memo, concern was raised relating to the location of the cut and fill batters for the Lot 5 house pad. The fill pad is downstream and adjacent to the dam spillway, raising concern as to the potential

impacts of a failure of the dam or high flow over the spillway. Cut batters for the Lot 5 pad also extend several metres into Lot 6, which is contrary to Development Design Specification D6.

These landforming issues were new to the latest submission provided by the applicant. Prior consultation and draft plans showed a smaller earthworks extent, with the pad configured to remain clear of the spillway and to contain earthworks wholly within the new lot (refer plans attached to submission dated 3 October 2008)."

It is considered inappropriate to approve the Lot 5 house pad in its current configuration, due to non-compliance with landforming standards and risk of failure.

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

The site is not located in the coastal zone and the Government Coastal Policy does not apply. The proposal does not include any buildings and clauses 92(b), 93 and 94 do not apply.

(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

Flora and Fauna

Council's specialist ecologist reviewed the application and the site and noted that the site would be considered to be a fourth order stream. It was also noted that Council's GIS mapping showed the western road reserve (Hindmarsh Road) as a likely barrier to fish passage. Refer photograph of on-site dam below. Council's ecologist concluded that:

"..all or most of the site was a headwater stream which has now been dammed and/or drained. It would have to be assumed that the site is performing an important stormwater detention function for the existing rural residential subdivision.

*At the time of the site visit the entire site was wet underfoot and the deep (1m or more) drains crossing the property contained water to a half bank-full level. In addition, evidence of water couch (*Paspalum distichum*), Smart Weed (*Persicaria* sp.) and sedges (*Cyperus* sp. and *Carex appressa*) followed the location of a former billabong visible on old aerial photographs. Submerged portions of all aquatic plants provide habitats for many micro and macro invertebrates. These invertebrates in turn are used as food by fish and other wildlife species (e.g. amphibians, reptiles, ducks, etc). After aquatic plants die, their decomposition by bacteria and fungi provides food (called "detritus") for many aquatic invertebrates. Smartweed seeds are heavily consumed by ducks, small birds, and small mammals.*

In terms of threatened species, the majority of the site is cleared and contains introduced pasture grasses with occasional scattered native and clumps of exotic trees. The dam itself forms a habitat for waterfowl and one submission listed use by both the Black-necked Stork and Freckled Duck, both threatened species under the TSC Act 1995. The former billabong area, although degraded and limited in area and connectivity, must be regarded as part of the Endangered Ecological Community Freshwater wetlands on coastal floodplains of the NSW North Coast, Sydney Basin and South East Corner bioregions. Although house sites are located out of this area, impacts are likely to occur through altered drainage patterns from the required fill."

Council's ecologist recommended that the proposal be refused or the number of lots proposed be reduced based on insufficient information to accurately assess impacts on threatened species, population and ecological communities.



Environmental Health

As identified above, the application does not demonstrate that on-site effluent systems will be adequate and there is no certainty that environmental health impacts will not arise.

Stormwater and Flooding

The site is flood affected as addressed above. Issues from required landforming are outlined above.

Traffic

Council's engineers have confirmed that the scale of the development will not have a detrimental impact on the local traffic network.

(c) Suitability of the site for the development

Contaminated Land

Boyd's cattle dip is located approximately 670 metres from the site. Council's EHO is satisfied that this is sufficient distance.

As addressed above, there are no other potential contaminating activities identified as previously occurring on the site.

Geotechnical Issues

A geotechnical site investigation prepared by Australian Soil and Concrete testing dated 30 March 2009 has been conducted on all lots which do not have an existing dwelling i.e. Lot 2, Lot 3, Lot 4 and Lot 5. Lots 1 & 6 have existing dwellings and access points. The report provides the following comments;

Lot 2

- The building pad has already been filled 1m above the remainder of the proposed allotment
- Building rubble has been used as fill material in the building envelope and will require removal.
- The site has poor drainage

Lot 3

- The proposed building pad is slightly raised from the surrounding lot
- The site has poor drainage
- Old machinery and equipment to be removed.

Lot 4

- Drainage is required to re-direct stormwater from other lots into the existing dam
- Site has poor drainage
- Building pad is cleared and grassed

Lot 5

- Signs of surface creep are present on the hill slope to the west of the building envelope, requiring the use of terracing and retaining structures.
- Drainage is to be directed away from adjoining Lot 6

- A large amount of cut material for the Lot 5 house pad is shown on adjoining Lot 6.

The application also provides the following information in regards to earthworks.

“In order to provide flood immune house sites the proposal includes minor filling on proposed lots 2 & 3; lot 4 will see existing topsoil removed and replaced with solid fill; while lot 5 will be subject to minor balance cut and fill.”

Any uncontrolled fill in the area of the building envelopes would be required to be removed and recompacted to a level 2 geotechnical certification.

It is noted from the contour plans that approximately 2 to 3 metres of fill material will be required to fill the proposed house sites to RL 5.0m for proposed Lots 2 & 3. The volume of fill required is approximately 3200m³.

The house pad for proposed Lot 5 (also located on proposed Lot 6) will require retaining structures and / or terracing, due to earthworks cut into the adjoining allotment. No detail has been provided in the amended application in relation to the height of the retaining structure required or details of the type of retaining structure.

Refer to comments above in relation to landforming and non-compliance with Council's Development Specification D6.

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

The application was initially notified from the 14 April 2008 – 29 April 2008. Fifteen submissions against the development were received within this period. Due to an error on the applicants submitted plan of subdivision the subject application required re-notification, the application was notified again from the 14 May 2008- 28 May 2008, all submission received during the first period where included in the new submission period. A total of 21 submissions were received (including 5 submitters who re-submitted objections) objecting to the proposal.

Issues raised by the objectors have been summarised and addressed in the table below.

Issue	Officer Comment
Access way proposed via a right of carriageway on adjoining lot.	Council's engineer did not raise concern with proposed carriageways or easements.
Loss of agricultural land.	The land is zoned 1 (c) and allows for smaller lots (to 10000m ²).

Issue	Officer Comment
Flooding issues	Council's Planning and Infrastructure Engineer is satisfied that flooding and drainage has adequately been addressed.
Environmentally sensitive lake providing habitat.	Insufficient information is provided to ensure that proposed landfilling and effluent treatment will not have an impact on the environment.
Limited room for septic systems (lot 4 and 5).	As above, Council's EHO are not satisfied that lot 4 has an acceptable on-site effluent system.
Impacts on adjoining property and environment from filling and change in drainage patterns.	As above, concerns are raised with the proposed fill, particularly associated with Lot 5 house pad as it is downstream and adjacent to the dam spillway, raising concern as to the potential impacts of a failure of the dam or high flow over the spillway.
The proposal is out of character with the surrounding area.	The proposed subdivision is not considered to be inconsistent with sizing and character of adjoining lots in the 1(c) zone.
Introduction of new dwellings and associated dogs and cats will impact on the environment.	This matter is a risk associated with all new development.
Concerns with bushfire.	RFS have reviewed the proposal and provided terms of approval.

(e) Public interest

Council Officers contacted the Department of Water and Energy 22/04/08 who advised they did not need a copy of the application.

As identified above, some of the submitters concerns have not been adequately addressed in the application and therefore, the proposal is not considered in the public interest.

OPTIONS:

1. Refuse the application based on the following grounds:
 1. The proposal does not comply with clause 15 of the Tweed Local Environmental Plan as satisfactory arrangements have not been made for the removal and disposal of sewerage.
 2. The proposal does not comply with clause 21 of the Tweed Local Environmental Plan as each proposed allotment is not capable of accommodating adequate facilities for treatment and disposal of sewerage.
 3. The information provided with the application is insufficient and the proposal may result in impacts on the amenity of the area and quality of the environment, including aquatic habitats.
 4. The proposal does not comply with Council's Development Control Plan Section A5 – Subdivision Manual, particularly in relation to landforming and
 5. The proposal does not adequately address issues raised by public submissions and is not in the public interest.
2. Give in principal approval to the application and request the Director of Planning and Regulation to submit a further report to Council providing recommended conditions of consent.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant will have appeal rights in the Land and Environment Court if they are dissatisfied with the determination.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

Council has received a subdivision application for a 6 lot subdivision.

The proposal is recommended for refusal due to issues primarily in relation to potential impacts from landfilling and inadequate treatment of effluent disposal.

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.

9 [PR-CM] Kings Forest Preferred Project Report - Concept Plan – Residential Community Development – Council’s Submission to the Department of Planning

ORIGIN:

Development Assessment

FILE NO: GT1/51 Pt9

SUMMARY OF REPORT:

The purpose of this report is to seek Council’s endorsement of the proposed submission to the Department of Planning on the Preferred Project Report (Amended Application) for Major Project Application (Concept Plan) for the Kings Forest Residential Community Development (MP06_0318).

Kings Forest has been subject to many years of planning including re-zonings, public enquiries and now a Major Project Preferred Project Concept Plan.

Tweed Shire Council is reliant on Kings Forest to ensure future population growth is managed. Furthermore, Tweed Shire Council has relied upon developer contributions (from urban land release areas such as Kings Forest) to ensure that future infrastructure needs are met.

It is crucial that planning for Kings Forest be done effectively.

The most important element to this is the critical review of the applicant’s Draft Kings Forest Development Code. The Code overrides Council’s existing planning provisions and provides a housing choice (of lots less than 450m² and as small as 175m²) presently not available in the Tweed. It is strongly recommended that this document be placed on public exhibition and that workshops are held between The Department of Planning staff and Council staff to ensure this document meets the needs of the Tweed.

A separate report on this Council Agenda prepared by the Director Engineering & Operations further addresses the Kings Forest Development Code and should be read in conjunction with this report.

Council has the opportunity to make a second submission to the Department of Planning on the proposed Preferred Project for Kings Forest. It is strongly recommended that Council, the applicant and the Department of Planning discuss the issues raised in this report (and the attached letter).

RECOMMENDATION:

That Council endorses the attached draft submission in respect of the Kings Forest Preferred Project – Concept Plan – Residential Community Development – and submits it to the Department of Planning.

REPORT:

Applicant: Leda Manorstead Pty Ltd

Owner: Leda Manorstead Pty Ltd

Location: Lot 76, 272, 323 and 326 DP 755701; Lot 6 DP 875446; Lot 2 DP 819015; Lot 40 DP7482; Lot 38A & 38B DP 13727; Lot 1 DP 129737; Lot 1 DP 781633; Lot 7 DP 875447; Duranbah Road, Kings Forest; Lot 1 DP706497 Melaleuca Road, Kings Forest; Lot 37A DP 13727 Cudgen Road, Cudgen

Zoning: 2 (c) Urban Expansion, 5(a) Special Use, 7 (a) Environmental Protection (Wetlands & Littoral Rainforest) and 7 (l) Environmental Protection (Habitat)

Cost: N/A

PROCESS:

An assessment of the Kings Forest Concept Plan (Environmental Assessment Report – EAR) was considered by Council at the Planning Committee Meeting of 17 February 2009. The minutes from that meeting reflect that it was

***RECOMMENDED** that Council receives and notes the attached draft submission on the Kings Forest Concept Plan Residential Community Development and that it be submitted to the Department of Planning.*

The Department of Planning subsequently forwarded Council's submission to the applicant with all other Government Agency submissions and individual submissions.

In addition the Department of Planning undertook their own assessment of the project and presented the applicant with two options in regards to advancing the concept plan:

“Option 1 – Deferral of Detailed Environmental Assessment

- *The Minister may approve a Concept Plan over the majority of the subdivision area subject to further detailed environmental assessment being undertaken in those areas prior to submission of future development (DA) or project applications (PA).*
- *However, should the Minister approve the Concept Plan in this way, the approval will give no certainty to the yield achievable in these areas or the final form of the Concept Plan layout. Further assessment would be required to determine the appropriate yield and development layout, having regard for the associated environmental impacts and the requirement for appropriate buffers. This may result in additional areas of open space or conservation areas being required as a result of later detailed environmental assessment.*
- *The Minister could determine that:*
 - a) *The terms of the Concept Plan approval clearly indicate that no particular yield is approved and that the final form of the development and yield will depend on further assessment; and*
 - b) *Detail the further assessment requirements to be imposed under section 75P(1)(a) or section 75P(2)(c).*
- *As such, it may be in Project 28's interest to undertake more detailed assessment of all environmental constraints now and set definitive buffers and*

- boundaries now to give certainty to the yield and the final form of the Concept Plan layout and facilitate the progression of future DAs.*
- *This option is not appropriate for areas that are proposed to be rezoned. Additional information to support the rezoning requests must be provided as part of the Concept Plan.*

Option 2 – Provision of Detailed Information

- *Additional detailed information is provided that allows the Department to complete a detailed assessment of the impacts of the proposed subdivision layout on the identified environmental constraints. This would enable the Minister to undertake an appropriate consideration of the environmental impacts of the proposal.*
- *The additional information provided would allow any rezoning to be made via an Order as part of the Minister's determination.*
- *The provision of detailed information now would give Project 28 certainty of the development yield and the final form of the subdivision/development layout, and would streamline any subsequent DA/PA process”.*

The applicant has undertaken additional environmental assessment and has proceeded to amend their proposal. The applicant reviewed the submissions (1397 in total as at 2/03/2009) and amended their application in an attempt to mitigate the issues raised. The amended application (Preferred Project Report) has now been forwarded to Council for its review.

Council has received 687 letters in regards to Kings Forest directly relating to protection for the Koala habitat.

This report undertakes a review of the amendments made in the Preferred Project Report based on the issues previously identified by Council.

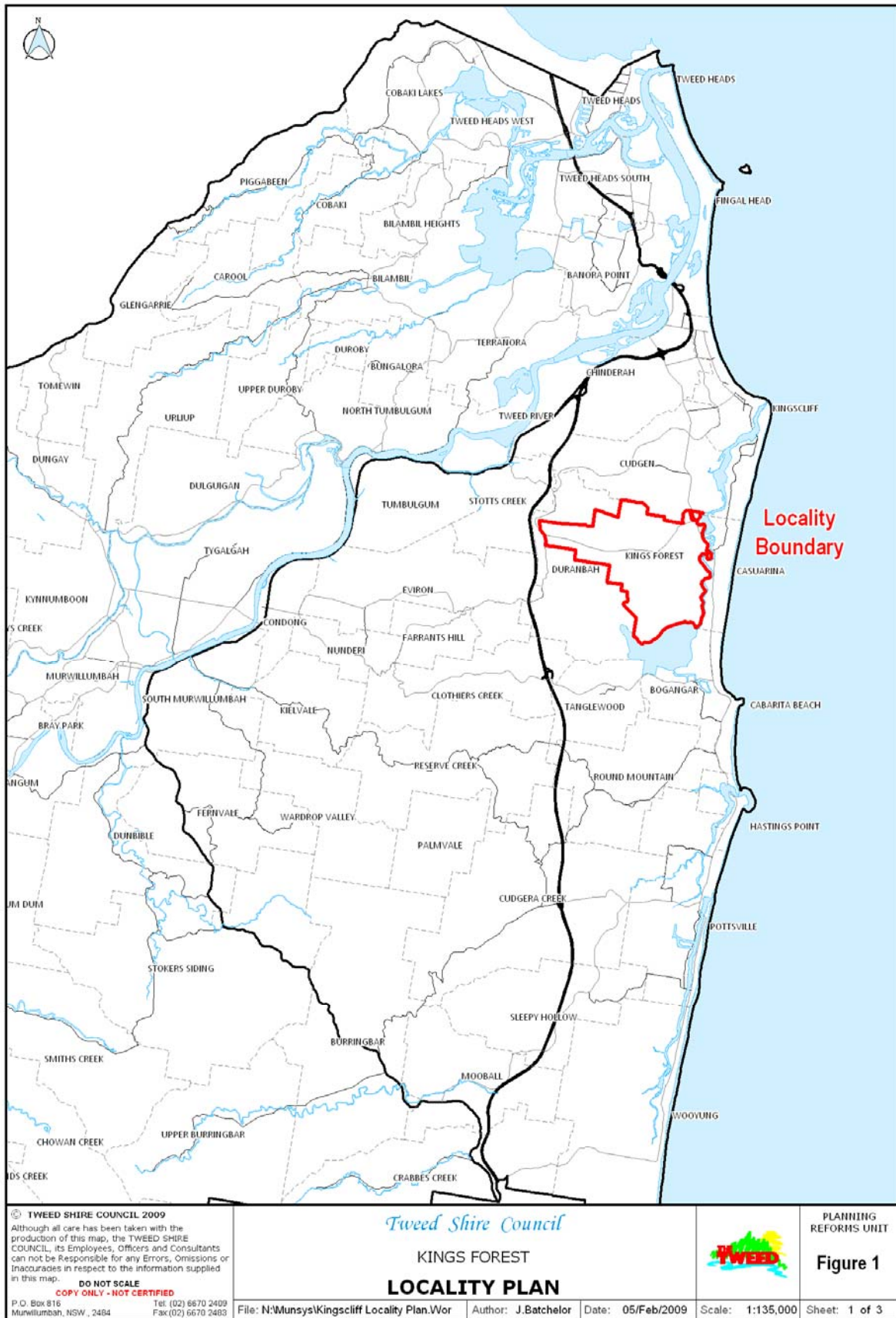
Importantly this report also undertakes a review of the applicant's Development Code which forms part of the Preferred Project Report. The Development Code has been prepared by the applicants and acts as the principal planning instrument that will guide all future development at Kings Forest.

The Development Code provides provision for approximately 90 - 95% of all accommodation (including unit development) within Kings Forest to be assessed by way of Complying Development provisions. It is therefore imperative that this document be thoroughly reviewed as the ultimate built future of one of Tweeds biggest urban land release areas will be guided by the developers Code.

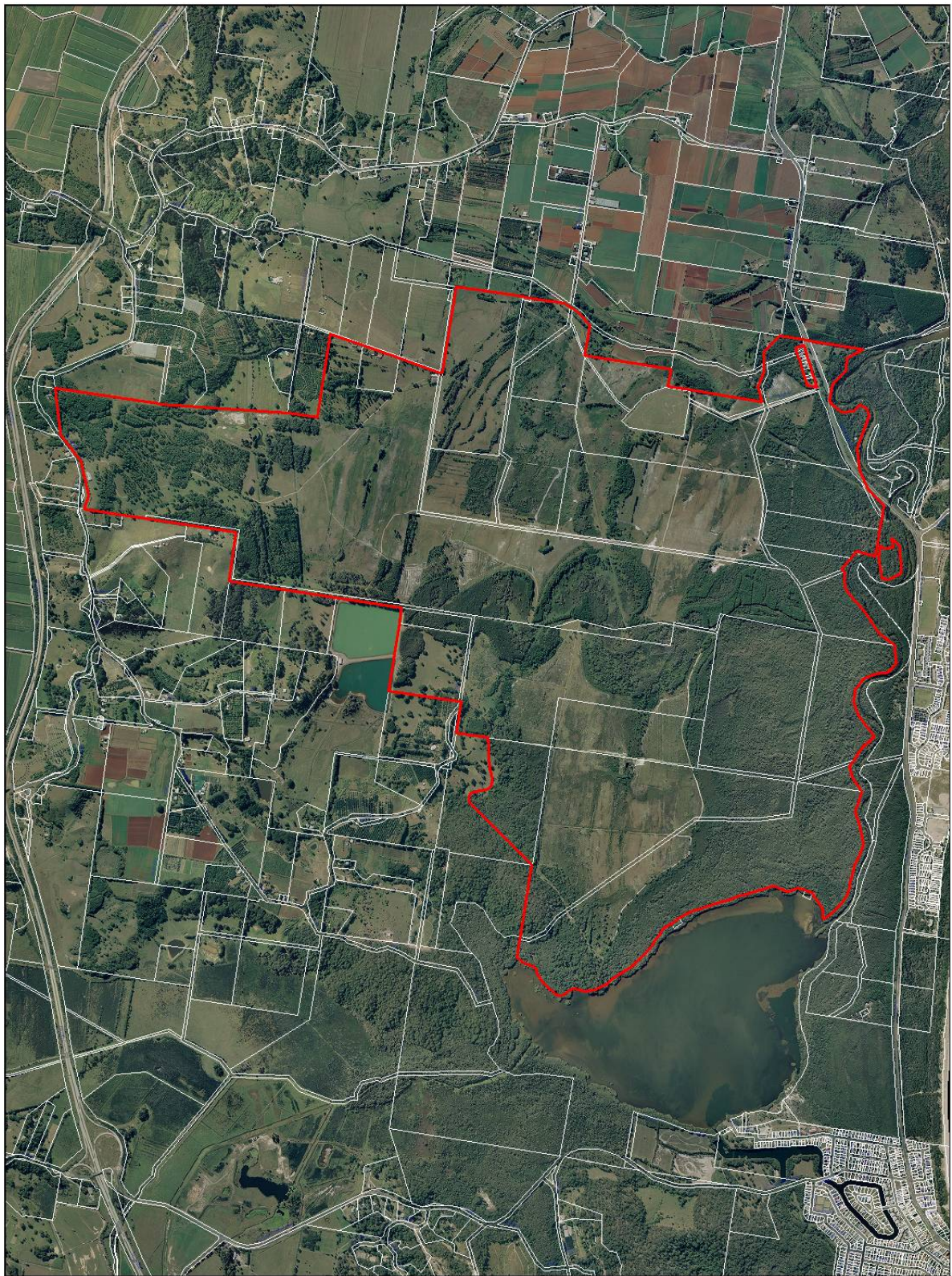
The Department of Planning will review the Preferred Project Report and any submissions made on the Preferred Project Report before determining the ultimate suitability of the project as the consent authority.

The previous Council Report (which included a complete site background) and submission to the Department of Planning are attached to this agenda for information purposes.

LOCALITY PLAN:



AERIAL PHOTOGRAPH:



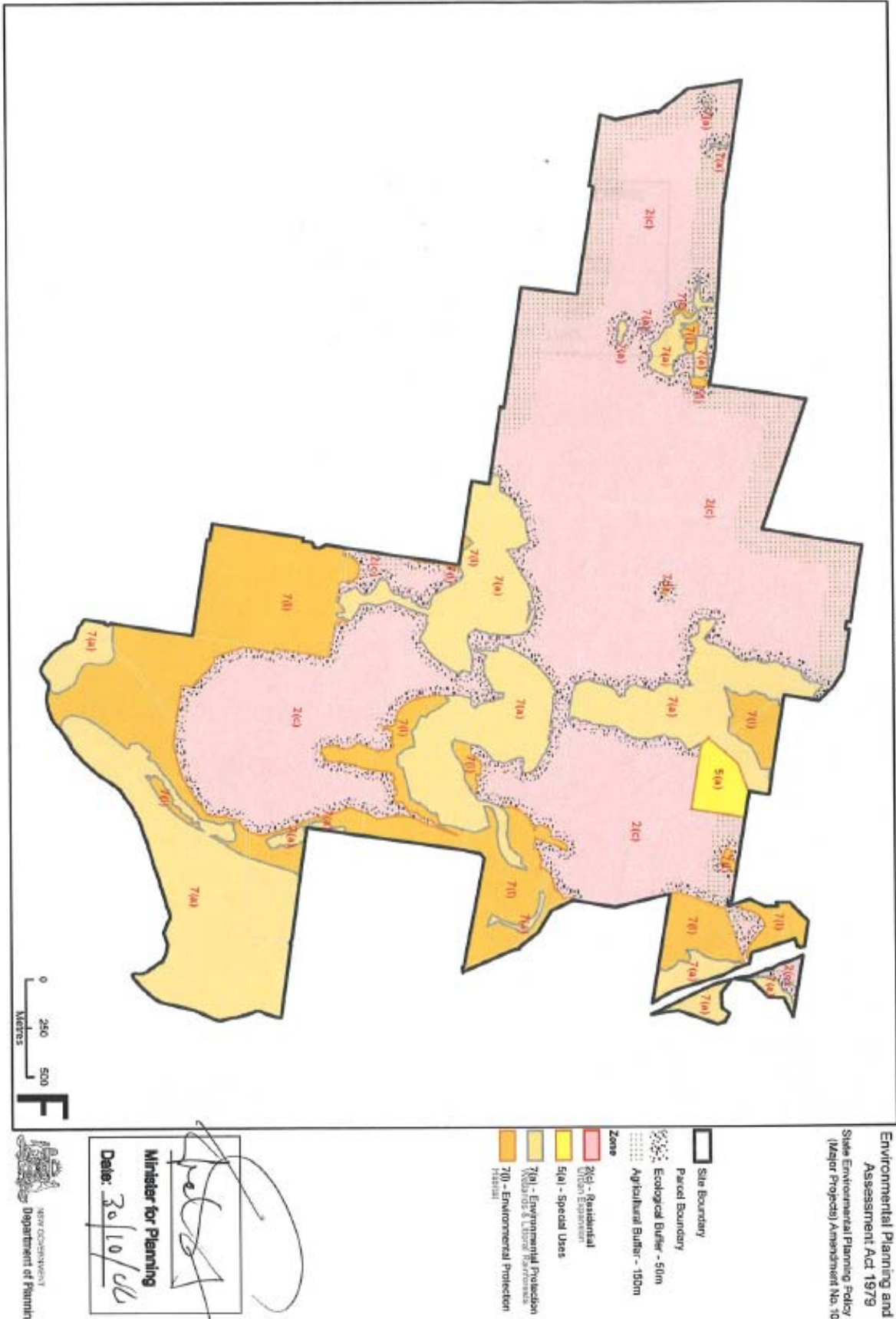
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Tweed Shire Council
KINGS FOREST
AERIAL PHOTO - TAKEN MAY 2007
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PLANNING REFORMS UNIT
Figure 2
Author: J.Batchelor Date: 05/Feb/2009 Scale: 1:20,000 Sheet: 2 of 3

SEPP (MAJOR PROJECTS) 2005 (AMENDMENT NO. 10) – ZONING MAP:



CHANGES WITHIN THE PREFERRED PROJECT REPORT (PPR)

The applicants Preferred Project Report incorporates the following additional information or amended detail:

- A revised concept plan which in summary shows:
 - Increased residential area (4.6ha)
 - One less school
 - Medium density east of town centre converted to detached and small lot residential
 - Community facility/education north of town centre deleted and area of town centre increased by 1ha
 - Density of 17 dwellings per ha (total 4500 dwellings and 10,000 people)
 - Dwelling mix amended to reflect 2250 detached (traditional and zero lot houses, 2070 small lot integrated/attached dwellings and 180 apartments.
 - A revised Development Matrix which utilises the Standard LEP Template terminology, deletes light industry from the employment land, removes GFA nomination, deletes estimated yield, and amends land use areas to reflect the changes in the concept plan
 - A new and separate Development Code which will override Tweed Shire Council's Development Control Plan to the extent of any inconsistency
 - A revised circulation, access and transport plan
 - An amended open space plan
 - An increase of 0.46ha of land to be zoned for environmental protection.
- A new Buffer Management Plan (Attachment G within the PPR) that seeks a variation to the buffer distances subject to future Project Applications with associated technical reports;
- Revised Management Plans as follows:
 - Feral Animal Management Plan (Attachment H within the PPR)
 - Weed Management Plan (Attachment I within the PPR)
 - Vegetation Management Plan (Attachment J within the PPR)
 - Threatened Species Management Plan (Attachment K within the PPR)
 - Koala Plan of Management (Attachment L within the PPR).
- New 7 Part Ecological Tests of the proposed roads through Cudgen Paddock and the site as a whole (Attachments E and F within the PPR) and associated revised assessments of the following:
 - Off site impacts (Attachment N within the PPR)
 - Cultural Heritage (Attachment O within the PPR)
 - Amended Rezoning Proposal (Attachment P within the PPR).

- New justification for future roads within the SEPP 14 land not to trigger the Designated Development provisions within Part 4 of the Environmental Planning & Assessment Act 1979; and
- An amended set of Statement of Commitments which include commitments in regard to:
 - Biodiversity
 - Golf Course Management
 - Flooding & Climate Change
 - Water Cycle Management
 - Groundwater
 - Geotechnical Conditions & Soils
 - Heritage
 - Bushfire Management
 - Traffic and Access
 - Emergency Services
 - Dedication of Lands

In addition a meeting held with the developer on Thursday 8 October 2009 revealed that the concept plan has been further amended to delete specific reference to the medium density components of the site (shown as dark pink on the concept plan). Instead the concept plan map will have one residential area which allows for a mix of dwelling types within it. This would create a salt and pepper effect throughout the development with single dwellings, duplex, triplex etc.

Accordingly this report shows the revised concept plan maps provided by the developer which is different to those maps currently on the Department of Planning's website.

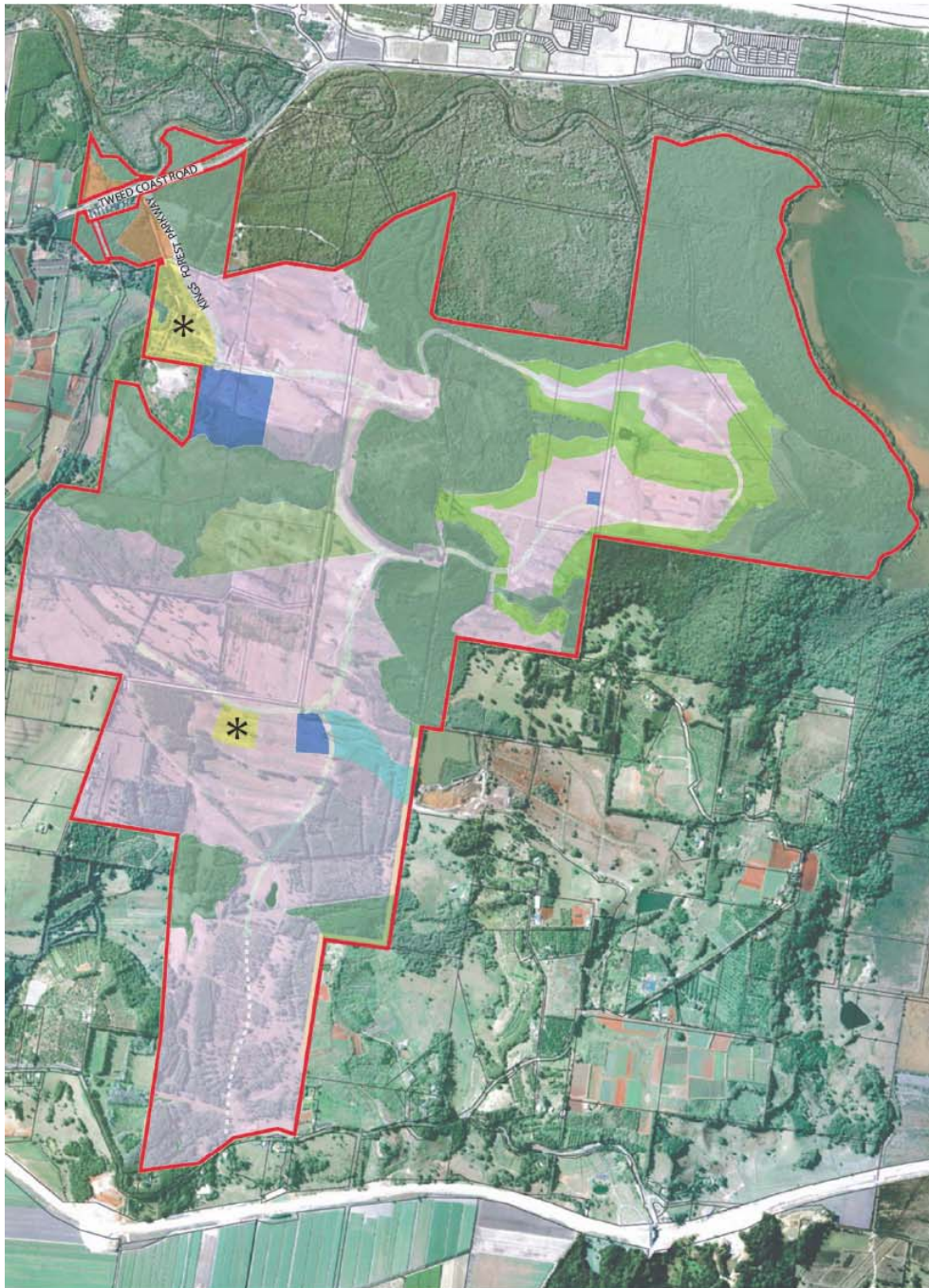
It is important to note that this development will result in a very different "product" to that currently experienced within the Tweed. The small lot style of development (lots as small as 125m²) was authorised within the SEPP (Major Development) 2005. However the type of buildings proposed and the amount has only really been established within the now submitted Development Code.

The following report duplicates some of the more critical amended plans from the applicants Preferred Project Report and provides a summary of the cores issues in relation to this amended proposal.

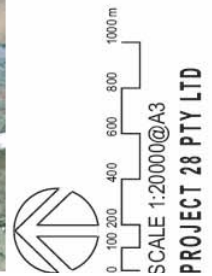
PREFERRED PROJECT CONCEPT PLAN:

- TOWN CENTRE / NEIGHBOURHOOD CENTRE
- RESIDENTIAL SMALL LOT INTEGRATED / ATTACHED
- COMMUNITY FACILITIES / EDUCATION
- EMPLOYMENT LAND
- GOLF COURSE
- STRUCTURED OPEN SPACE (ACTIVE) 17Ha
- ENVIRONMENTAL PROTECTION AREA
- LAKE
- * INDICATIVE STATE SCHOOL SITE

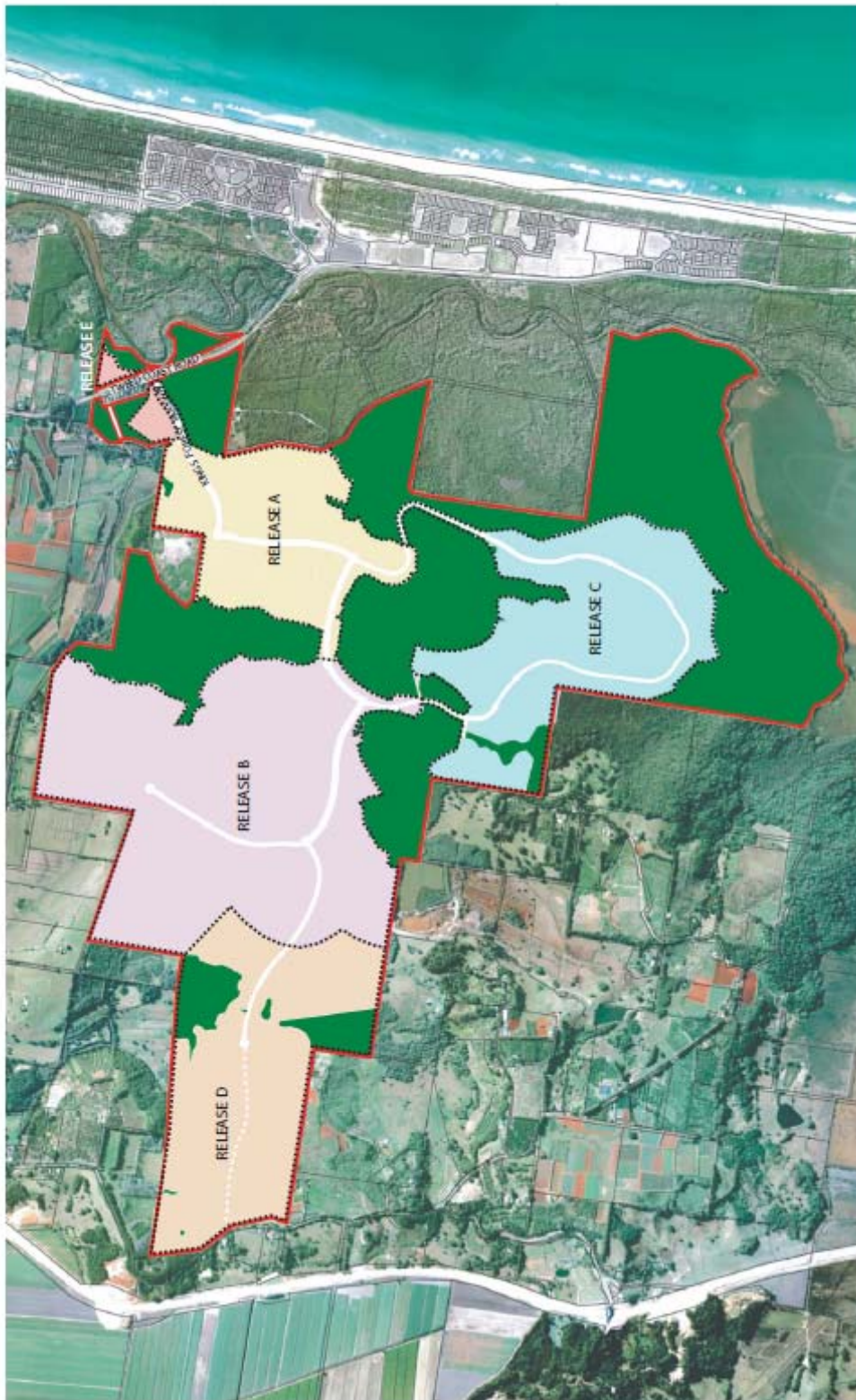
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CONCEPT PLAN
KINGS FOREST



PREFERRED PROJECT RELEASE AREAS:

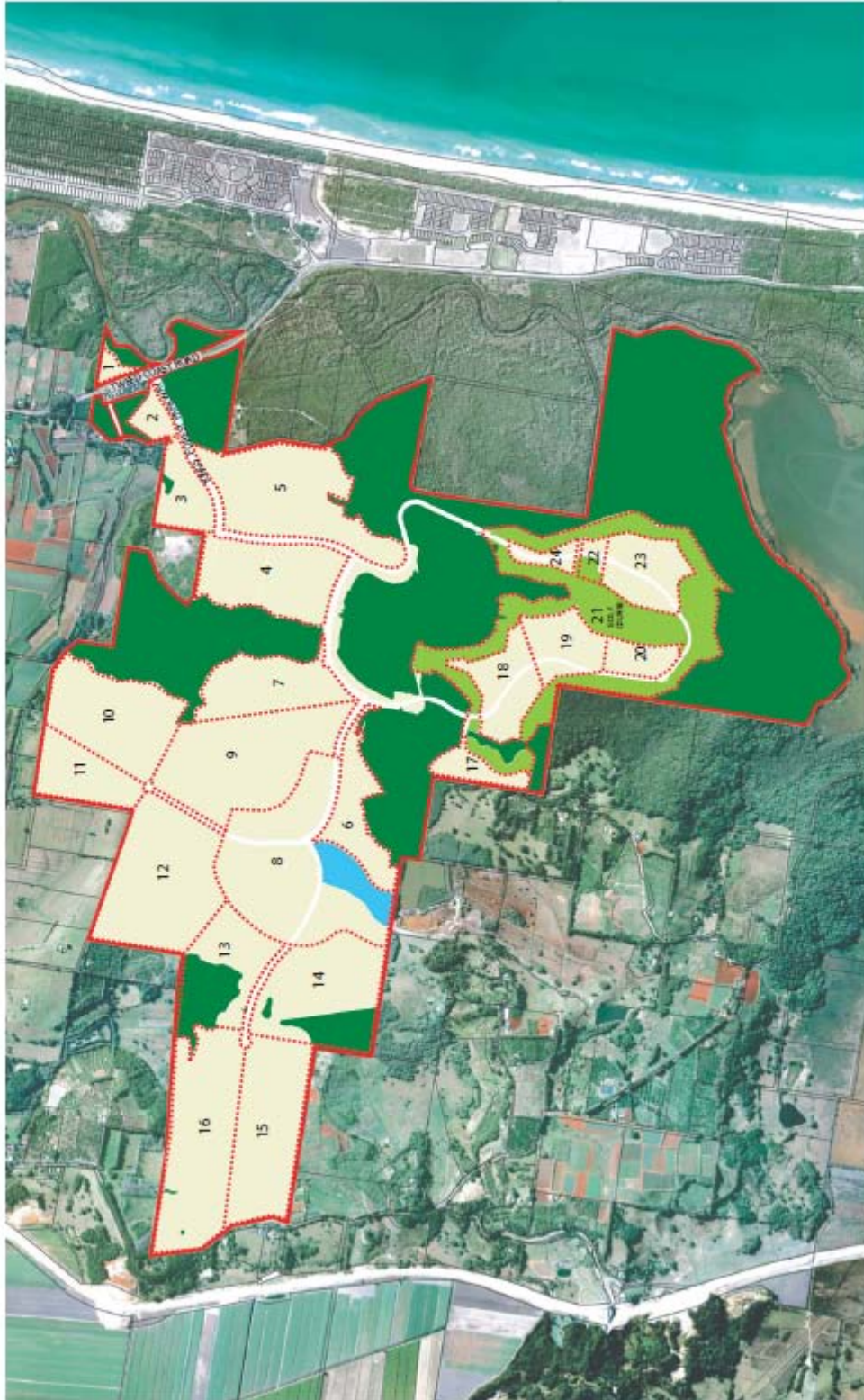


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RELEASE AREAS PLAN
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PREFERRED PROJECT PRECINCT AREAS:



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PRECINCT PLAN
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PREFERRED PROJECT DEVELOPMENT MATRIX:

Precinct	Indicative Uses	Total Area	Urban Design Principles
Town Centre	<ul style="list-style-type: none"> • Business premises • Carpark • Child care centre • Community facility • Education establishment • Entertainment facility • Environmental facility • Food and drink premises • Funeral chapel • Health services facility • Home business • Hotel or motel accommodation • Information and education facility • Medical centre • Office premises • Place of worship • Pub • Recreation area • Recreation facility (indoor) • Residential care facility • Residential types in Development Code • Restaurant • Retail premises • Roads • School • Seniors housing • Sewage reticulation system • Shop • Telecommunication facility 	11.0 ha	<ul style="list-style-type: none"> • Urban form controlled by Plan of Development in Precinct approval • Building height controlled by Development Code • Mixed uses are encouraged • Provide legible off-street parking • All required parking located within site • Create town square focus • Buildings facing main streets are encouraged to have active frontages • Pedestrian friendly streetscape with awnings • Create interesting buildings with articulated facades • Screen or conceal passive facades and service areas • Soften visual impact of carpark with landscaping • Incorporate urban art and public streetscaping • Must demonstrate sensitive interface with surrounding development • Ground floor facing main roads must be non residential use • Landscape concept to maintain visibility of retail uses • Incorporate passive surveillance and public safety principles
Neighbourhood Centres	<ul style="list-style-type: none"> • Business premises • Carpark • Child care centre • Community facility • Food and drink premises • Health services facility • Information and education facility • Medical centre • Office premises • Place of worship • Pub • Recreation area • Recreation facility (indoor) • Residential care facility • Residential types in Development Code • Restaurant • Retail premises • Roads • Seniors housing • Shop • Telecommunication facility 	3.0 ha	<ul style="list-style-type: none"> • Urban form controlled by Plan of Development in Precinct approval • Building height controlled by Development Code • Mixed uses are encouraged • Provide legible off-street parking • All required parking located within site • Incorporate public transport interchange • Create town square focus • Buildings facing main streets are encouraged to have active frontages • Pedestrian friendly streetscape with awnings • Create interesting buildings with articulated facades • Screen or conceal passive facades and service areas • Soften visual impact of carpark with landscaping • Incorporate urban art and public streetscaping • Must demonstrate sensitive interface with surrounding development • Ground floor facing main roads must be non residential use • Landscape concept to maintain visibility of retail uses • Incorporate passive surveillance and public safety principles
Residential Small Lot Integrated/Attached	<ul style="list-style-type: none"> • Carpark • Child care centre • Community facility • Environmental facility • Exhibition village • Home business • Hotel or motel accommodation • Recreation area • Recreation facility (indoor) • Residential care facility • Residential types in Development Code • Roads • Seniors housing • Sewage reticulation system 	401 ha	<ul style="list-style-type: none"> • Urban form controlled by Plan of Development in Precinct approval and in the Development Code • Building height controlled by Development Code • Principally higher-density housing forms and smaller lots • Create diversity of housing choice • Incorporate public open space within walkable radius of each dwelling • Designs must optimise residential amenity, privacy and solar access • Strong streetscape character with articulated setbacks • Repetitive designs and long buildings are discouraged • Incorporate passive surveillance and public safety principles
Community Facilities/Education	<ul style="list-style-type: none"> • Carpark • Child care centre • Community facility • Education establishment • Environmental facility • Health services facility • Information and education facility • Kiosk • Place of worship • Recreation area • Recreation facility (indoor) • Recreation facility (outdoor) • Roads 	14.5 ha	<ul style="list-style-type: none"> • Locate school buildings with integrated parking and shared facilities • Provide adequate safe setdown areas • Sporting facilities may be shared between schools and community • Must demonstrate sensitive interface with surrounding development • Enhance community education on surrounding environment
Employment Land	<ul style="list-style-type: none"> • Business premises • Carpark • Child care centre • Emergency services facility • Kiosk • Landscape and garden supplies • Office premises • Recreation area • Roads • Rural supplies • Service station • Shop (max 200m² GFA) • Vehicle sales premises 	7.0 ha	<ul style="list-style-type: none"> • Provision of diverse employment opportunities • Controlled by Development Code • All required parking located within site • Maintain vegetated buffer to other land uses • Must demonstrate sensitive interface with surrounding development
Golf Course	<ul style="list-style-type: none"> • Carpark • Environmental facility • Recreation facility (outdoor) • Registered club • Roads 	57.0 ha	<ul style="list-style-type: none"> • Course layout must address personal safety for residents • Maintenance facility to be located in screened location away from residential development • Address golf course nutrient management • Integrate buffers within golf course layout
Public Open Space	<ul style="list-style-type: none"> • Carpark • Community facility • Environmental facility • Food and drink premises • Kiosk • Recreation area • Recreation facility (indoor) • Recreation facility (outdoor) • Roads 	17.0 ha	<ul style="list-style-type: none"> • Include range of active and passive uses • Incorporate community facilities appropriate to residents needs such as ovals, amenities and carparking • Sporting facilities may be shared between schools and community • Incorporate stormwater path and treatment
Environmental Protection Area	<ul style="list-style-type: none"> • Environmental facilities 	336.5 ha	<ul style="list-style-type: none"> • Incorporate low-impact community trails for public and service access • Provide linkages in accordance with the Pedestrian and Cycle Network Plan
Proposed Lake	<ul style="list-style-type: none"> • Recreation area • Water body (artificial) • Water recreation structure 	9.0 ha	<ul style="list-style-type: none"> • Provide low-impact public access • Provide linkages in accordance with the Pedestrian and Cycle Network Plan
MAJOR ROADS		24.0 ha	
TOTAL		856.5 ha	

DEVELOPMENT MATRIX

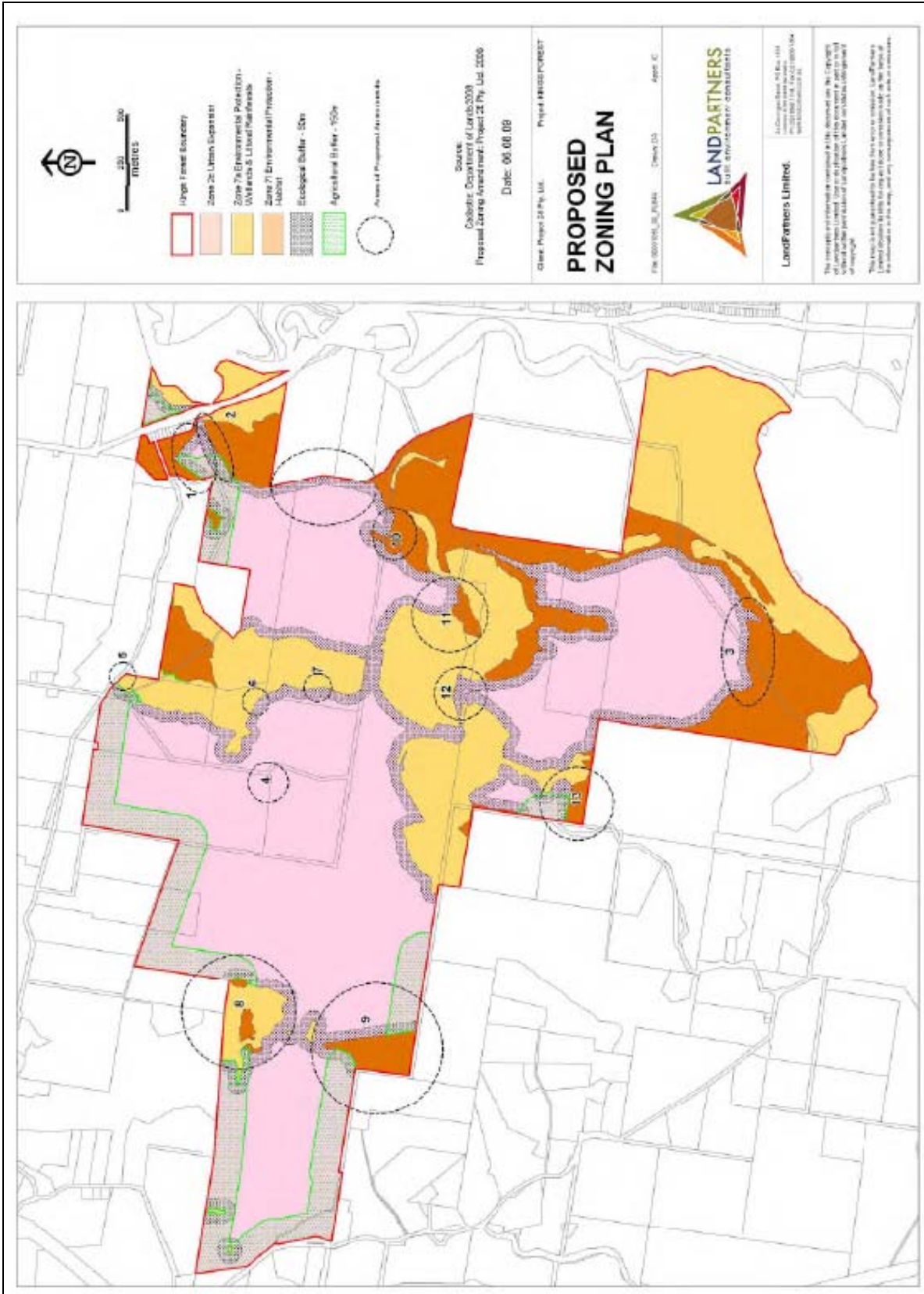
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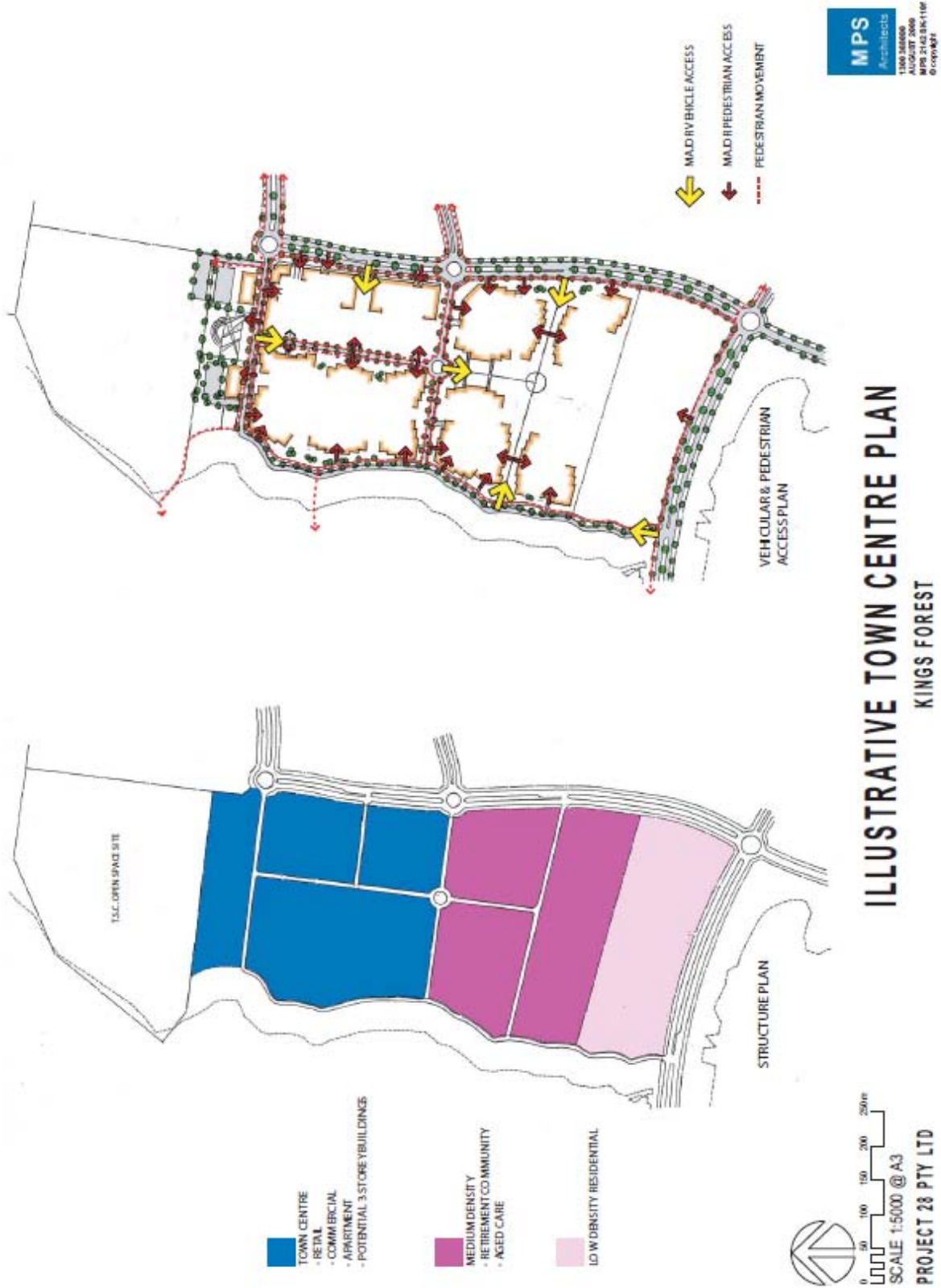


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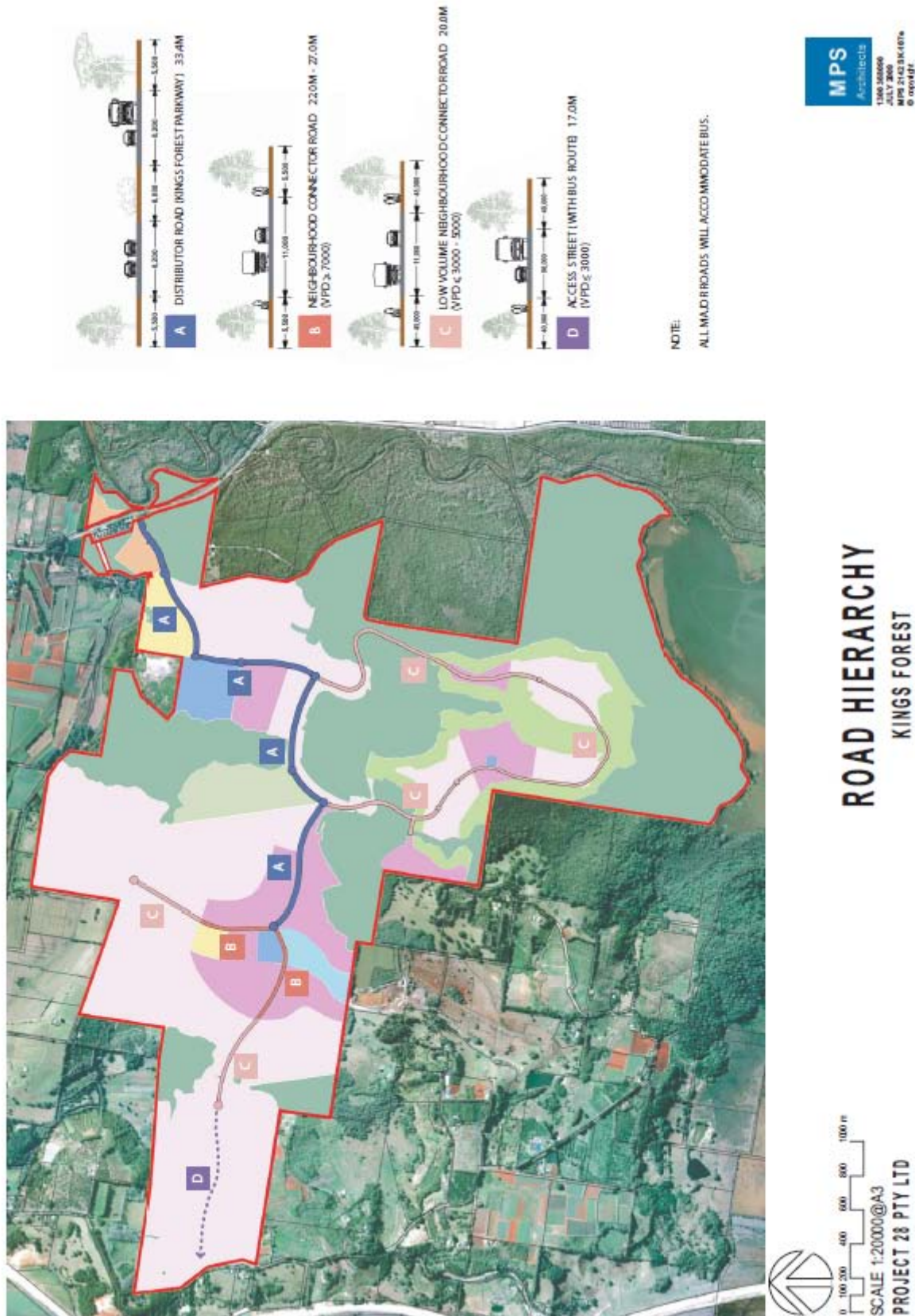
PROPOSED REZONING PLAN:



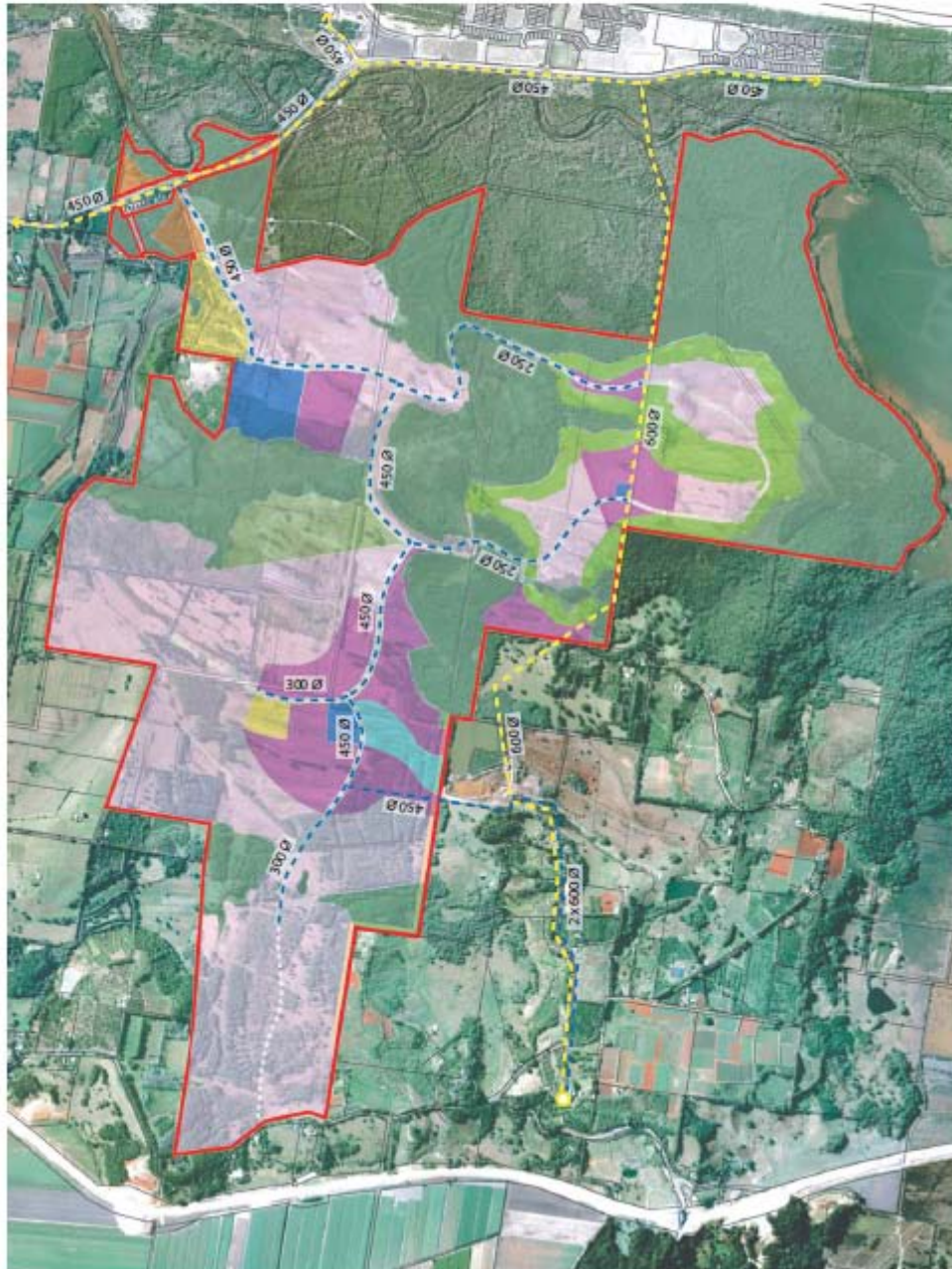
PREFERRED PROJECT ILLUSTRATIVE TOWN CENTRE:



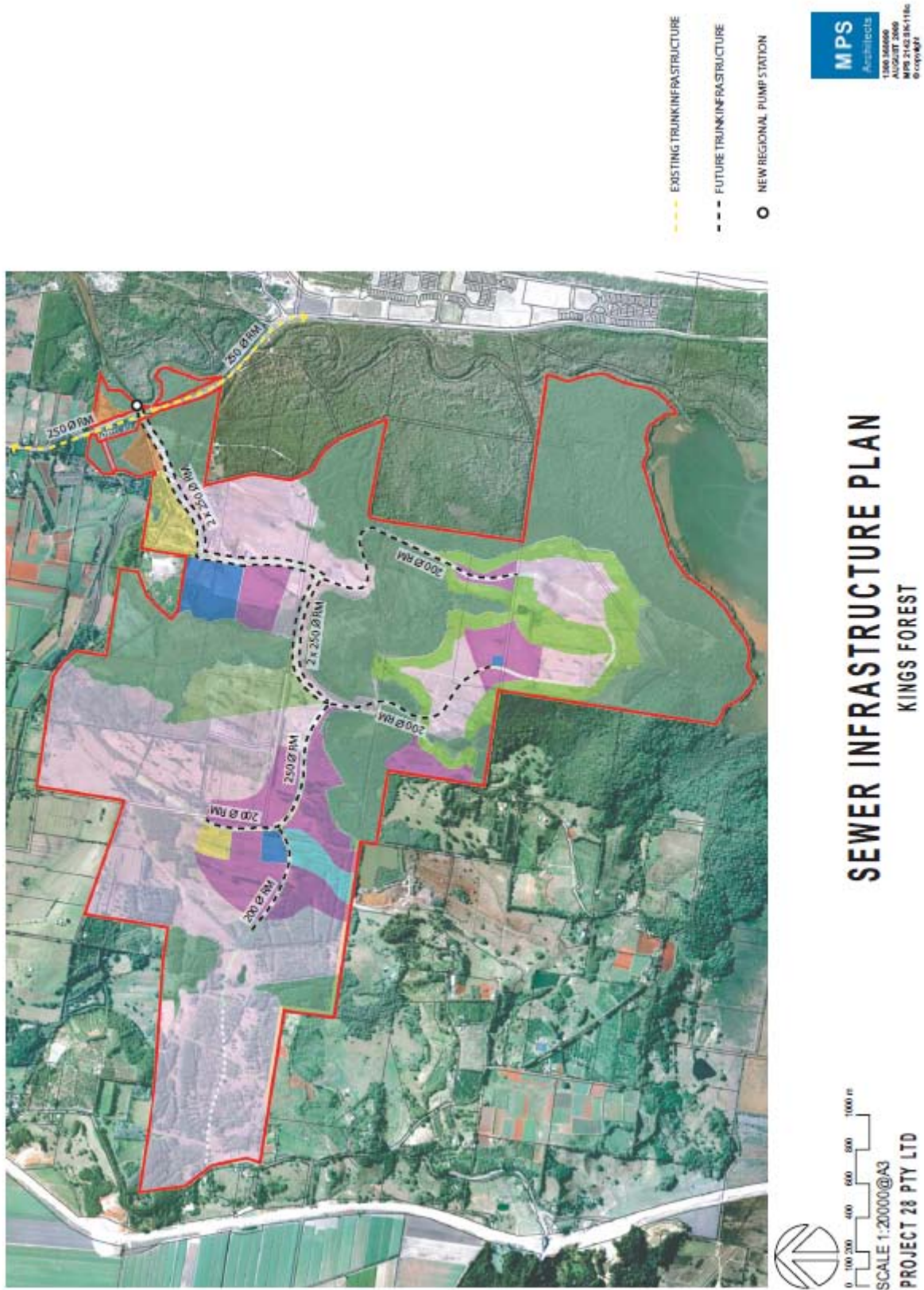
PREFERRED PROJECT ROAD NETWORK PLAN:



PREFERRED PROJECT Water INFRASTRUCTURE PLAN:



PREFERRED PROJECT SEWER INFRASTRUCTURE PLAN:



ISSUES:

The Preferred Project Report was circulated to Council Officers with expertise in the following fields:

- Ecology
- Development Assessment & Strategic Planning
- Social Planning
- Planning & Infrastructure Engineering (Flooding, Landforming, Stormwater)
- Development Engineering
- Building Surveyor
- Environmental Health
- Traffic
- Entomology
- Water & Sewer Services
- Natural Resource Management

Comments from Council Officers have been collated into the attached draft submission. Major issues raised include the following:

The Kings Forest Development Code

The Draft Kings Forest Development Code has been prepared by the applicant and is intended to form part of the Kings Forest Concept Plan should the Department of Planning issue an approval for the Concept Plan.

The Plan is intended to provide the design detail for development to be undertaken in accordance with the Concept Plan.

Effectively the Code would become a DCP for the site and essentially overrides certain parts of Tweed Shire Council's DCP and overrides the Council DCP specifically where there is an inconsistency.

However, Council staff are of the opinion that the document should default to Tweed Shire Council's standards and have variations justified on a case by case basis rather than a blanket removal of the detailed controls that have been developed for Tweed Shire over many years.

The Department of Planning have advised that the Code can act as a DCP due to the following legislative framework:

- *s79C of the EP&A Act lists the matters that need to be taken into consideration when determining a DA. Included in this list is "any development control plan". However, if you look at the note at the bottom of s79C, you will see that it states "See section 75P (2) (a) for circumstances in which determination of development application to be generally consistent with approved concept plan for a project under Part 3A."*
- *75P(2)(a) states "the determination of a development application for the project or that stage of the project under Part 4 is to be generally consistent with the terms of the approval of the concept plan,"*

- *In essence, this provision means that the application needs to be consistent with the Concept Plan approval. So where the Devt Code is inconsistent with Council's DCP, the Devt Code over-rides the DCP.*
- *This approach was taken with the Doonside Residential Precinct. See attached link for Instrument of Approval and Assessment Report: http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=206*
- *Its not officially 'made' as a DCP, but the Concept Plan approval requires any future DA to be consistent with the Concept Plan, which includes the Development Code.*

Council has always expected the lodgement of a Development Code within the Concept Plan, however, Council was also under the impression that this document would;

1. Be exhibited for public comment and
2. Adopt Council's DCP in its entirety and just incorporate additional provisions for small lots for which Tweed DCP does not cater for.

The proposed Code has not been exhibited for public comment.

The Code forms part of the Kings Forest Preferred Project Report (Attachment Q). The Preferred Project Report itself has not been publically exhibited and therefore the attached Code has not been exhibited. Both the PPR and Development Code do appear on the Department of Planning's website however no official notification of this exhibition has occurred.

It is understood from the applicant that the Code is based on the Department of Planning's future Draft Codes SEPP which allows for duplex's, triplex's etc to be Complying Development in certain circumstances.

This is a new concept and would operate in a similar way that the current Code SEPP overrides Tweed Shire Council's DCP Section A1 for houses in certain circumstances.

The current Code does not detail what proportion of the site would constitute Complying Development (under the Code) or form a higher density. However discussions with the applicant on 8 October 2009 indicate that approximately 90-95% of the accommodation would fit within the proposed Complying Provisions as detailed within the Code.

The key to the ultimate layout is within the "Plans of Development". The Code will require the lodgement of a "Plan of Development" at the time of subdivision for each stage. It will be at that point, that the appropriateness of the location of certain structures gets reviewed.

Council staff are still in discussion with the applicant to try to establish a better understanding of the Draft Kings Forest Development Code. The key areas of conflict between Council and the applicant in regards to the Code relate to the hierarchy of the Code in relation to Council's existing documents.

It currently seems that the Draft Kings Forest Development Code includes significant departures from Council's DCP and specifications. Instead of adopting Tweed DCP for the majority of the site and just adding additional information for small lot housing the Code essentially seeks to be the primary and overarching document for the site.

The Kings Forest Development Code quotes a number of standards which contradict each other, including the following;

- *"To adopt AMCORD and Queensland Streets standards where variation from stated controls is proposed."* (page 95 section 5.2)
- *"unless otherwise specified above all streets within the development shall generally be designed in accordance with Tweed Shire Council Development Design Specification D1 – Road Design."* (page 109 section 5.10)

Queensland Streets and Council's Development Design Specification D1 – Road Design standards differ significantly from each other with the Queensland Streets specification providing a much lower standard of road, i.e. reduced road widths, no footpaths on access streets or bus routes etc.

In regard to the proposed small lot housing and rear lane development, the principles are not necessarily opposed however due to the significance of the proposed variances and the effective introduction of new forms of development in the Shire (through the code), it is essential that the code is placed on public exhibition. Furthermore, the developer and the department had previously agreed that this would occur.

Council's own Development Control Plans have been specifically developed (over many years) with public consultation to suit the needs and requirements of the Tweed Shire Development Culture.

The introduction of a new Development Code for Kings Forest (effectively a DCP) which introduces significant changes to the existing policy position without public consultation or justification for the departures is not recommended to the Department of Planning.

A significant revision of the Development Code is recommended to ensure that the Development Code reflects Tweed Shire Council standards specifically in regard to key infrastructure provisions such as roads, water, sewer, footpaths etc.

Failure to provide key infrastructure to Tweed Shire Council specifications may result in Council declining dedication of key infrastructure as part of the future development of Kings Forest.

The attached Draft letter to the Department of Planning further indicates areas of inconsistency between Council's adopted Development Control Plan and the proposed Draft Kings Forest Development Code.

Proposed Dwelling Types

The Code introduces a new set of categories of development as follows:

Traditional Detached Dwelling: *in which only a garage wall may be built-to-boundary and which may also referred to as a Traditional Detached Home in this document.*

Zero-lot Dwelling: *___in which all or at least part of one side wall is built-to-boundary and which may also referred to as a Zero-Lot Home in this document.*

Terrace Dwelling: *in which all or at least part of both side walls are built-to-boundary and which may also referred to a Terrace Home in this document.*

Soho Dwelling: *in which limited commercial uses are combined with residential uses on the title.*

Mews Dwellings: *in which a group of more than three and up to six dwellings are located on a single lot that share a common driveway and often have frontages to two streets or a street and a park.*

These dwellings may be strata-titled/re-subdivided upon completion, often providing freehold title lots with reciprocal easements for access to the lots not located on the access street frontage, as outlined in Sections 5.8 and 5.9 regarding subdivision.

Shop-top Dwelling/s: *in which one or more dwelling/s is/are located on a single lot in association with a ground floor business use that fronts a street containing other commercial uses. If constructed appropriately, it is optional for the business use/s and the dwelling/s to be strata titled/ resubdivided separately from the residential uses upon completion, and the individual dwellings may also be strate-titled/re-subdivided upon completion, as outlined in Sections 5.8 and 5.9 regarding subdivision.*

Townhouse Dwellings: *___in which six or more dwellings in an attached format (maximum number of attached dwellings to be four) are located on a single lot and have direct access to the ground, share a common driveway, share common property, and share communal facilities. These dwellings must be strata-titled upon completion, as outlined in Sections 5.8 and 5.9 regarding subdivision.*

Villa Dwellings: *in which six or more dwellings in a detached format are located on a single lot and have direct access to the ground, share a common driveway, share common property, and share communal*

facilities. These dwellings must be strata-titled upon completion, as outlined in Sections 5.8 and 5.9 regarding subdivision.

Apartments:

in which two or more dwellings are located vertically in storeys and share car parking and common property. These dwellings must be strata-titled upon completion, as outlined in Sections 5.8 and 5.9 regarding subdivision.

Retirement Communities:

in which numerous attached and/or detached dwellings, club and recreational communal facilities and an administration component are located on a single lot. These dwellings must be strata-titled upon completion, as outlined in Sections 5.8 and 5.9 regarding subdivision.

Tourist Accommodation:

(other than hotel or motel accommodation) in which self-contained short-term accommodation units are located on a single lot along with communal facilities and a building manager. These dwellings may be strata-titled upon completion, as outlined in Part Sections 5.8 and 5.9 regarding subdivision.

Development Lot:

in which a large parcel of land is identified for future development subject to separate planning approval either compliant with the Development Code or within criteria set in a Plan of Development.

The most foreign concepts to Tweed's existing controls is the introduction of zero lot dwellings and terraces on smaller allotments. An example of the proposed controls is duplicated below:

Table 3.2.3.1: Zero Lot Lines, Side and Rear Setbacks of Zero Lot, Terrace and Soho Dwellings

Lot width	5m-10m	>10m-15m	>15m
Location criteria for zero lot line lots	Building to both boundaries permitted up to 2 storeys	Building to 1 boundary permitted up to 1 storey	May be permitted for garages of 9m maximum length on south or west boundaries, or in accordance with Figure 3.1.5.1 with DRP approval if not otherwise noted.
Length of zero lot line on boundary	20m of enclosed area where adjacent to a wall on the	18m of enclosed building + solid garden fences or	May be permitted for garages of 9m maximum with DRP

	adjoining lot of a length not in variance to the proposed wall by more than 2m in plan and 300mm in elevation, otherwise 9m	walls.	approval.
Ground Floor on side that contains a zero lot line but is not built to the boundary	2m to wall	1.5m to wall	Not applicable
Ground Floor on side that is not a zero lot line	900mm to OMP	1.2m to OMP	1.5m to OMP
First floor (excluding built to boundary walls but including parts over 4.5m high)	2m to wall	1.5m to wall	1.5m to OMP
Second Floor (if permitted excluding built to boundary walls but	2m to wall	2m to wall	2m to OMP

It is strongly recommended that this document be placed on public exhibition and that workshops are held between The Department of Planning staff and Council staff to ensure this document meets the needs of the Tweed.

Urban Design & Street Layout

The Code seems to imply that street connectivity will be minimised. This assumption is based on the following sorts of comments within the Code:

- 5.10 (2) *Street design to provide generally no more than 3 turns to be traversed from the furthest lot to the neighbourhood entrance. Local streets shall be designed to discourage through traffic.*
- 5.10 (3) *Cul-de-sacs are to be a maximum of 200m in length and 24 dwellings. Cul-de-sacs where used are to provide for pedestrian and cycle permeability.*
- 5.10 (4) *Aim to limit vehicle movements to less than 3000 vehicles per day per neighbourhood entrance road (300 – 600 dwellings). Larger neighbourhoods may require a Neighbourhood Collector to cater for increased vehicular movement.*
- 5.10 (5) *Each neighbourhood is to provide its own distinctive entry statement giving the neighbourhood its own distinct identity.*
- 5.10 (6) *The street network is to be designed to achieve the following principles:*

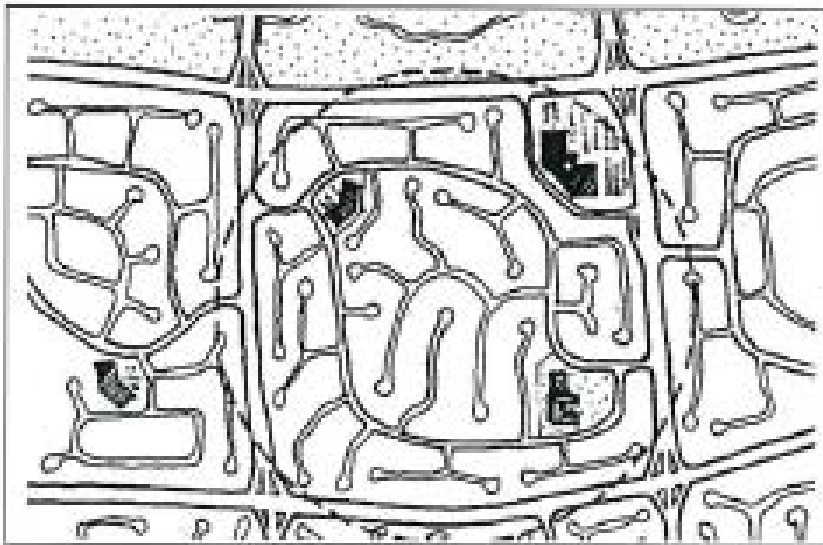
- (a) *establish a permeable pedestrian and cycleway network that is based on AMCORD principles,*
- (b) *encourage walking and cycling and reduce travel distances involving those activities,*
- (c) *maximise neighbourhood connectivity between residential neighbourhoods, community facilities and open space,*

Council has significant concerns with any proposed street layout that does not encourage vehicular permeability and connectivity. The neighbourhoods should not be built in isolation of one another but rather provide interconnections between each neighbourhoods.

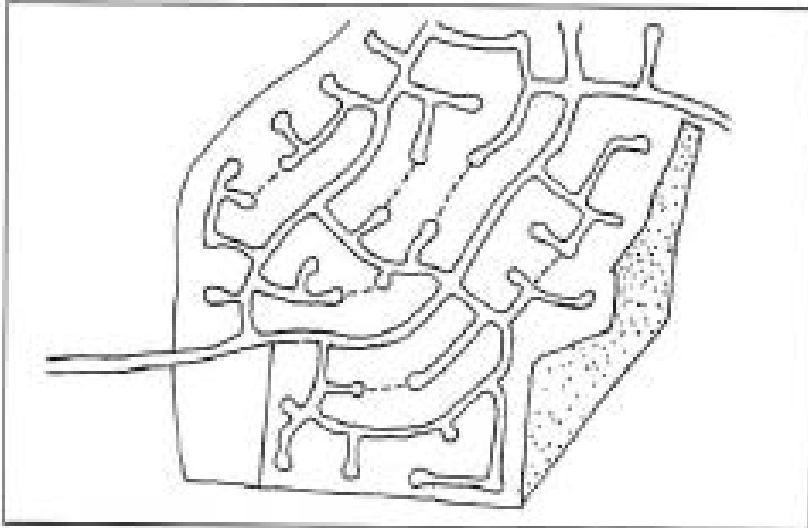
Connectivity within street layouts is encouraged within:

- Tweed Shire Council's Development Control Plan Section A5 – Subdivision Manual:
- The Department of Planning (Department of Urban Affairs & Planning) Residential Subdivision Handbook;
- The Western Australian Planning Commission "Introducing Liveable Neighbourhoods"
- QLD Department of Transport "Shaping Up" - Section 3.5. Used in Tweed DCP Section A5, at end of A5.4.8.

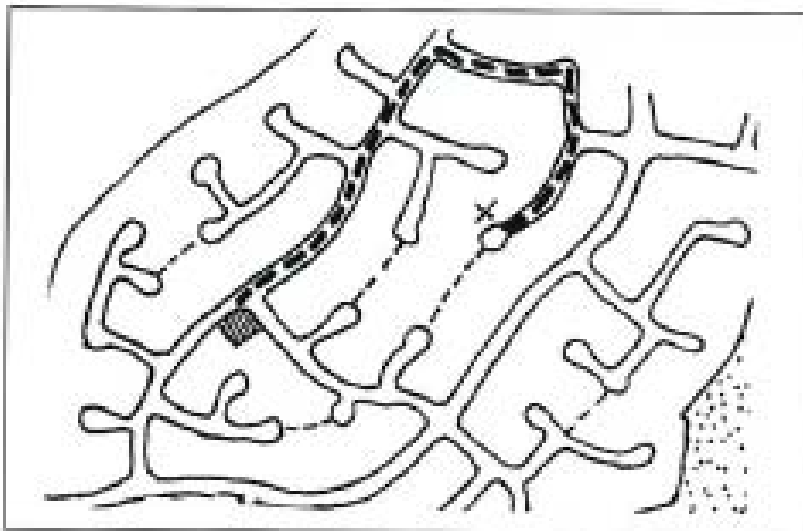
Below is some examples of how streets should **not** look like:



Conventional neighbourhood planning separates functions on a curving, hierarchical street network.



Too many dead end streets and random curving is disorienting and funnels traffic onto high volume roads.

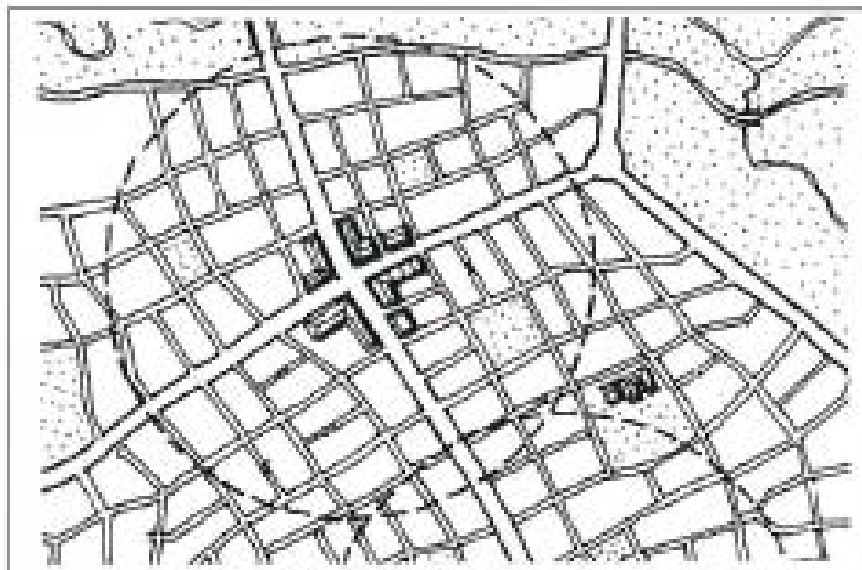


Getting from A to B is via C, D and E.

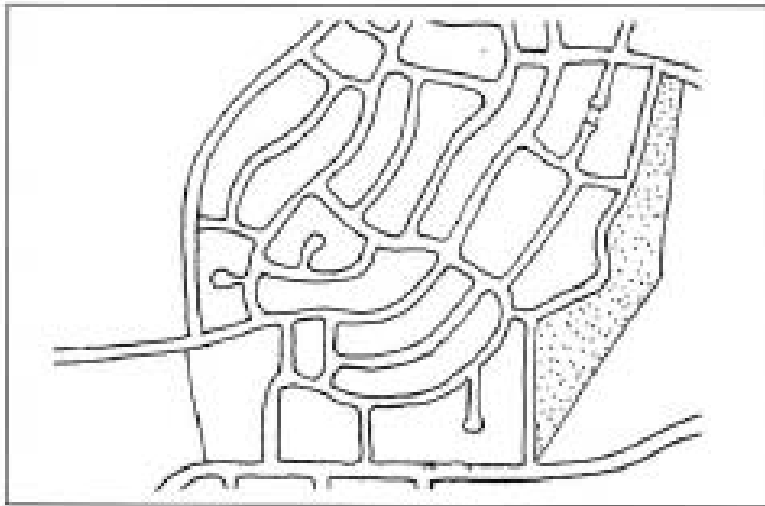


A long, dead end road is a poor quality cul-de-sac. This type of road creates confusing street patterns.

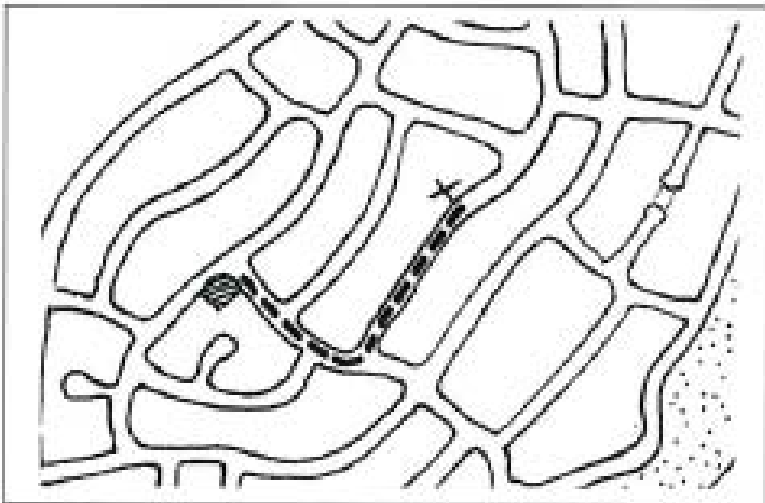
Below is a series of examples of how streets **should** look like:



Traditional neighbourhood planning co-locates activities on a connected street system.



Connected slow speed streets create legible places without the undesirable effects of through traffic. Cul-de-sac are possible within a connected street pattern when used infrequently or to solve a difficult block geometry.



Getting from A to B is simple and there are a variety of routes possible.



A true cul-de-sac is short and straight. People can easily understand the street pattern.

It is strongly recommended that this document be placed on public exhibition and that workshops are held between The Department of Planning staff and Council staff to ensure this document meets the needs of the Tweed.

Ecology

The site is of particular significance because of its mosaic of wetland, forest and wet and dry heathland communities, which comprise a series of interconnected systems whose connections should be maintained. Of particular importance are the sandplain Wallum communities, not adequately represented elsewhere in the Tweed.

Because of the above reasons, the site has recorded a number of threatened flora and fauna species and endangered ecological communities, all of which will suffer some habitat loss under the current proposal. The site has a particularly high diversity of threatened fauna species, many of which have limited room to move. The Koala, Long-nosed Potoroo (if still persisting on the site), Wallum froglet, Wallum Sedge frog, Bush Stone Curlew, Grass Owl, Common Planigale and Eastern Blossom Bat will be adversely affected by loss of habitat and the former four at least are likely to suffer significant impacts.

A positive outcome of the development will arise through dedication of some 150ha of land to be added to Cudgen Nature Reserve, forming an important connection between disjunct parcels, as well as likely dedication to Council of SEPP 14 wetlands surrounding drainage lines. Additional restoration is proposed of some 70 hectares of land.

Negative impacts will arise through direct loss of habitat as well as introduction of a number of threatening processes, including likely alteration of drainage regimes, motor vehicle strike and introduction of dogs and facilitation of the establishment of pest species.

Marked improvements to the proposal could be achieved if;

- existing habitat was expanded adjacent to core habitat rather than creating a number of linear reserves subject to edge and other impacts,
- Wallum habitats were retained and restored,
- stronger controls were implemented for domestic pets and
- dedicated fauna crossings were provided where roads crossed habitat areas.

Koala Plan of Management

Kings Forest has the potential to accommodate 10-15 Koala's based on the available habitat on site but up to 75 Koala's are said to exist in the locality which may cross or use the subject site at some time or another

Council's Ecologist and Biodiversity Officer have a different view on the best management techniques recommended by Dr Frank Carrick (the expert on behalf of LEDA).

Dr Frank Carrick is a known Koala expert and has done extensive research in QLD regarding reduced traffic speeds to reduce Koala mortality. He has an extensive resume of achievements in relevant fields of academia and research, and was appointed as a Member, General Division of the Order of Australia (AM) - "*for service to wildlife preservation, particularly in relation to koalas*" (1995 Queen's Birthday Honours List.)

Accordingly the applicants Revised Koala Plan of Management proposes:

- No Koala fencing
- Some dog fencing
- Some under road crossings (but without Koala fencing directing Koala's to it)
- Lower Speed Limits signposted at 50km or 60km (which reduces mortality rates)
- Traffic Calming Devices

The Koala would potentially interact with people, roads, cars, dogs and cats.

Council's Ecologist and Biodiversity Officer believe that the legislation (SEPP 44) requires more of the applicant. Specifically SEPP 44 states:

to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline. (Clause 3, SEPP44)

Council would be recommending:

- Assessment of the way the site is used by Koalas through radio-tracking surveys to establish home ranges, movement patterns, home-range trees and significant shelter trees with the data used to avoid and conserve habitat areas inclusive of home range trees and direct koala movement areas to best site fauna underpasses
- Establishment of baseline monitoring information prior to any construction or habitat loss
- An assessment of regional distribution and alternative habitat;
- Maximum mitigation of threatening processes e.g. fauna fencing to reduce impact from cars, no dog zones adjacent core koala habitat
- Maximum opportunities to increase “core koala habitat”
- Extensive monitoring and review

The revised Koala Plan of Management is not considered to reduce the risk of koala mortality arising from vehicle impact, dog attack and loss of habitat such that a significant impact on the local koala population could be ruled out.

Other threatened species

The site has recorded numerous threatened species of flora and fauna as well as Endangered Ecological Communities (TSC Act 1995). The precise numbers of each vary between parts of the documentation and in comparison to previous reports but are listed under the Assessment of Significance document as:

- Six (6) Threatened flora species;
- Nineteen (19) threatened fauna species recorded from the site;
- Six (6) Threatened fauna species predicted to occur on site; and
- Three (3) Endangered Ecological Communities.

However, three threatened flora species (Square-stemmed Spike Rush, Southern Swamp Orchid and Green-leaved Rose Walnut) and one threatened fauna species (Long nosed Potoroo) previously recorded on the site since 2000 are apparently no longer present.

It is considered that the cumulative impacts associated with site degradation to date, loss of habitat (particularly the under-represented heathland habitat) and construction and occupation of the development have not been considered within the assessments of significance. Consideration of realistic cumulative impacts is considered to lead to a likely significant impact upon Wallum froglets, Wallum Sedge frogs, Grass Owl and Bush Stone-curlew such that their continued viability cannot be guaranteed.

Proposed Rezoning

Previously proposed rezonings were not supported on the basis that rezoning to residential use where proposed would generally result in loss of established bushland, whilst rezoning to environmental protection largely required substantial restoration to achieve similar habitat values. Amendments have been made to the proposals and changes are supported. The following comments apply:

- It is noted that two areas previously proposed to be rezoned from environmental protection to residential use, being a finger of core Koala habitat in the central eastern part of the site and a linear area adjacent the eastern side of the Cudgen paddock, are no longer requested for rezoning and this is supported.
- The reasoning behind rezoning areas 1 and 2 (Depot Road precinct) to residential use is noted and support is still dependent upon a safe corridor linkage in this area such as a bridge or substantial dedicated fauna crossing(s), which do not form part of the present proposal.
- Rezoning of area 4 (area of Swamp Mahogany in central north of the site) to residential use is not supported due to disagreement with the reasoning used (explained in detail in previous submission) and because of the number of Koala records known from this locality.
- Rezoning to environmental protection as detailed is supported but it is noted that the bulk of these areas are contained within buffers anyway.
- It is considered far more important to protect and expand the Koala and other threatened species habitat in the east of the site and this should be the focus of any additional areas of environmental protection land. All additional areas presently proposed within this section of the report (some 16ha) would be considered far better located as a whole on the eastern side to afford better protection and expansion of existing habitat.
- In this regard expansion of environmental protection zoning over at least the eastern portion of the Cudgen Paddock would allow restoration of habitat for those species most affected by the development through the loss of sand plain communities within an area dedicated for conservation purposes rather than attempting numerous functions within a golf course scenario with no guarantee of success as habitat for threatened species.

Ecological Buffers

The proposed treatment of Ecological Buffers is not considered to comply with the relevant clauses of Amendment 10 (Kings Forest) of SEPP (Major Projects) in that justification for overall departure from vegetated buffers has not been provided.

Golf Course

In the areas of the greens and fairways of the proposed golf course on the Cudgen Paddock there appear to be no naturally vegetated buffers (Golf Course Management Plan (GCMP), Gilbert and Sutherland Pty Ltd 2008). These uses cannot be considered low impact in an ecological buffer as they facilitate and aggravate all the processes that the buffers are designed to protect against. Such processes include:

- edge effects (including changes to adjoining vegetation communities through desiccation and wind-throw, changes and disruption of hydrological regimes, increased predation rates etc);
- nutrient enrichment of low nutrient natural systems (against which the provision of nutrient stripping ponds will be ineffective in such low-lying terrain);
- invasions of weeds and native and introduced pest animal species; and

- predation by introduced and domestic animal species and
- initiate or exacerbate the operation of several Key Threatening Processes (KTPs, TSC Act, see below).

Restoration and rehabilitation

Commitment has been given to lodging detailed management plans for buffers, vegetation management, weed control, and threatened species habitat. Restoration works on the site are thus subject to a total of 4 different management plans as well as the Koala management plan. Whilst improvements in most plans are supported it is considered that holistic Habitat Restoration Plans should be lodged at each stage so that all of the issues involved in restoration are considered and contained within a single comprehensive plan per development area. Such plans must address planting and natural regeneration, weed control, habitat enhancement or creation for threatened species and buffer management (the main site for restoration works).

Revised Feral Animal Management Plan

The proposed measures are supported; however, the potential for large numbers of dogs on site and the introduction of mown grass within the golf course buffer is likely to increase opportunities for feral species including the Cane Toad, Red Fox and Indian Mynah.

Development Code

In relation to Tree Retention and Biodiversity the wording of proposed controls is non-specific and thus it would be difficult or impossible to enforce, e.g. “where possible”, “where applicable”.

It is considered that the code should at the very least be inclusive rather than exclusive i.e. state which specific Tweed DCP controls it overrides and include all others.

Statement of Commitments

Concern is raised that the PPR fails to make any legal commitment to the dedication of lands to the Cudgen Nature Reserve and leaves the process open to negotiation. Issues such as bushfire protection, sea level rise, flooding impacts and biodiversity losses need to be considered at the earliest possible stage and not “negotiated” at a later date. Matters such as bushfire protection measures within the Nature Reserve

Landforming

- No landforming plans were provided with the EAR, and the applicant was requested (by TSC) to provide contour plans and cross sections for the development. This information has not been incorporated within the Preferred Project Report. It is recommended that the Department of Planning insist upon a concept landforming plan being provided by the applicant to enable a proper assessment of the concept plan to be undertaken.

Stormwater

- The EAR lacked detail of the stormwater conveyance system through the development. A preliminary stormwater management plan was requested (by TSC) to address essential infrastructure issues including trunk drainage, legal points of discharge, provision for external catchments, staging, erosion and sediment control, and quality and quantity control measures. This information has not been incorporated within the Preferred Project Report. It is recommended that the Department of Planning insist upon a preliminary stormwater management plan being provided by the applicant to enable a proper assessment of the concept plan to be undertaken.

Proposed Lake

- Concept designs and plans of management were requested (by TSC) for the proposed lake. Council does not support the public ownership of the lake, and concerns were raised as to its role in stormwater management in the urban catchment. The applicant was requested to consider private ownership via a body corporate arrangement, provided it was offline to the stormwater management system.

The applicant responded with the statement: *"The design of the lake will be to reduce ongoing maintenance costs, however, a water body is required by Tweed Shire Council for stormwater treatment and a larger water body (lake) is more appropriate for aesthetic and recreational purposes."*

This statement is not agreed. The stormwater treatment wetland required by Development Design Specification D7 is not compatible with a large recreational lake, and while Council would accept the operation and maintenance of a treatment wetland, does not support public ownership of the lake. Maintenance responsibilities are vastly different, and the lake is considered an unacceptable imposition on Council, particularly if it is to be maintained at a standard required for recreational use. Further, it is unclear from the limited information provided to date how the proposed lake interacts with the existing lake on the adjoining sand quarry site, which given the prior industrial type of use, may have significant contamination, acid sulphate and water quality issues. Furthermore, it has the potential to be the subject of ongoing algal blooms and excessive nuisance weed growth and further, may be a public health issue should algal blooms include blue green algal species.

It is noted that if well designed and managed, the lake has potential amenity and visual benefits, but the water body itself offers no recreation potential. Similar to Lake Kimberly in size, it is anticipated there will be issues with recreation use of this lake due to its small size and potential water quality issues.

There is no indication on the plans that land surrounding the lake will be in public ownership. Should the lake be accepted, public access to the lake surrounds must be provided, and a water quality and weed management plan must be provided.

Proposed Golf Course

- The EAR was interpreted as having significant public stormwater infrastructure in the private golf course, including ecological buffer areas. A plan of management for the golf course drainage system was requested (by TSC).

The applicant responded with the statement: "...Long term ownership and responsibility for the operation and maintenance of the wetlands and swales within the golf course will be retained by the operator of the golf course. These swales and wetlands are integral to the management of water quality impacts from the golf course and less significantly from the residential areas. The detail of the stormwater drainage and catchment plan is contrary to the intent of the concept planning process. The requested level of detail will be influenced by detailed fill plans which will in turn be determined following detailed flood modelling (which is currently in preparation) and subdivision planning. Such a level of detail will be provided as part of the project application for the relevant stages of development."

Private stormwater management facilities within the golf course, to manage runoff from the golf course, are acceptable, subject to design at a later stage. However, public stormwater must remain separated from this private system. As public drainage must traverse the golf course land to discharge to Cudgen Creek, at least an easement over this conveyance path is required. This should be included in the Statement of Commitments.

These issues again highlight the importance of concept landforming and stormwater designs for the concept plan. In the case of the golf course and its ecological buffers, these designs have the potential to adversely impact on the local environment.

Roads, Footpaths & Cycleways

- Non-compliance with Council's DCP was noted with respect to many of the proposed road cross sections, and inclusion of water sensitive urban design (WSUD) elements (swales, bio-filtration trenches etc) was requested for consistency with the stormwater management plan for the development.

The applicant responded with the statement: *"The roads within the Kings Forest Development will all be subject to assessment and approval by Tweed Shire Council. Some of the roads in Kings Forest will be designed for water treatment and Councils standards will be utilised. The footpaths and walkways will also be designed to meet the council's standards, with the exception of the environmental areas where the Department of Environment and Climate Change have requested its standards will apply".*

This statement does not address the issues raised by Council. The Code overrides Council's standards, so inconsistencies between the Code and D1 cannot be resolved to Council's satisfaction, despite it being the public road authority. These issues can be resolved via additions to the Statement of Commitments, and/or amendments to the Development Code to adopt the road cross sections in D1, including the WSDU cross section.

Traffic Management

- As previously requested, a traffic impact analysis is required which includes an assessment of the major internal intersections. This has not been provided.

Developer Contributions

- The EAR stated that contributions should be negotiated with Council. This was not acceptable.

The applicant responded with the statement: *"The various stages of development will be submitted to Tweed Shire Council for subdivision approval. At this stage the Tweed Shire Council will apply all of the relevant S94 and S64 development contributions. The Council's Contribution Plans allow for negotiation of works in kind, credits and other practical approaches to the payment and timing of infrastructure in the development. This is normal procedure for all development in the Shire"*.

This statement is generally acceptable, however the Development Code (Section 5.7) now proposes a system of upfront payment of developer contributions at the time of subdivision based on the residential yield of that lot, at an assume rate per ET or bedroom. Such a system provides various undesirable consequences for Council, including:

- Payment of contributions may be considered to provide tacit approval for the future development of that site, prior to development applications being lodged.
- Upfront contributions cannot take into account indexation of contributions, amendments to plans and works programs, or new plans over time.
- An additional layer of administration is required to deal with over and under payments of contributions.

Council strongly objects to this method of payment and encourages the Department of Planning to liaise with Council on this matter.

Flooding & Climate Change

- In the absence of a landforming plan for the site, and subject to completion of Council's Coastal Creeks Flood Study, the preliminary flood assessment provided by the applicant was generally acceptable. The requirement for a detailed flood study and consideration of climate change at a later stage of the development was generally acceptable to Council.

The applicant advises that *"a revised flood assessment is being prepared"*. Outstanding issues can be dealt with via Statements of Commitment, however previous recommendations have not been adopted in the PPR, including the developer's acceptance of possible future changes in flood controls due to predicted climate change impacts (additional fill, increased freeboard, and the like).

Water Strategy

Integrated Water Cycle Management (IWCM)

Council requested a statement of commitment to ensure the provision of 5kL rainwater tanks on detached houses connected to 160 square metres of roof area with similar requirements for other buildings, multi-dwelling housing, etc to be plumbed for toilet flushing, cold water laundry tap and external uses.

The response to submissions advises it is the intent to provide rainwater tanks but suggests that common tanks could be used in some types of development and that on small lot housing, 5000 litre tanks may not be possible. It does however undertake to maximise rainwater collection to meet BASIX requirements.

As a general statement, this is satisfactory provided that there is some mechanism to carry it out, and where common tanks are used, the issue of top up from town water when the water level drops below a predetermined level is addressed from the billing perspective. If, for example, a mews dwelling lot is further subdivided into discrete Torrens Title lots as proposed in the Development Code, each lot will have individual water meters. In such a case, a common tank is not appropriate as there is no common property.

Water Supply

Council's submission was in general agreement with the proposed water infrastructure plan but required a commitment be given that a water supply infrastructure report be provided before the next stage of development. It also indicated that there was an error in the infrastructure plan where it incorrectly showed an "existing 450 dia main" in Tweed Coast Road north of Dianella Drive. No water main exists in that location. The submission also advised that Section 64 charges and a PID levy will apply to this development.

The response to submissions document advises that a water and sewerage strategy document will be included in the Project Application – Stage 1 Works.

A separate section of the response to submissions document, "Development Contributions" acknowledged that Tweed Shire Council will apply development charges (both S 94 and S 64) and signals the possibility of negotiating these charges, suggesting this as normal procedure. Council will not however reduce S64 Charges and levies but may negotiate on timing and works in lieu.

It is noted that no corrections or alterations to the Water Supply Infrastructure Plan were made in the Preferred Project Report Attachment R. Therefore it requires correction.

Sewerage Infrastructure

Council's submission provided some general detail of the external works associated with the connection of Kings Forest to sewerage at Kingscliff Wastewater Treatment Plant. It also commented on the sewerage infrastructure plan that showed a network of rising mains throughout the development and only the regional pump station at Tweed Coast Road. It didn't show any trunk sewers or internal pump stations. The sewer rising main

in Tweed Coast Road was also incorrectly identified as being 250 diameter instead of 225 diameter. It was required that the Statement of Commitments include an undertaking to provide a detailed sewerage infrastructure report before the next stage of development. The submission also advised that Section 64 charges will apply to this development.

The response to submissions document advises that a water and sewerage strategy document will be included in the Project Application – Stage 1 Works.

A separate section of the response to submissions document, “Development Contributions” acknowledged that Tweed Shire Council will apply development charges (both S 94 and S 64) and signals the possibility of negotiating these charges, suggesting this as normal procedure. Council will not however reduce S64 Charges and levies but may negotiate on timing and works in lieu.

It is noted that no corrections or alterations to the Sewerage Infrastructure Plan were made in the Preferred Project Report Attachment R. The layout shown is not necessarily accepted as correct and is considered not to be appropriate without compelling reasons not to adopt the normal system of gravity trunk sewers that helps minimise septicity and odour issues.

Open space & Landscaping

- The applicant should incorporate a Statement of Commitment which states:

The applicant will ensure open space, both structured (sports fields) and unstructured (casual parks) for the project complies with requirements for open space as described in Tweed Development Control Plan (DCP) Subdivision Manual: Section A5.4.11 and associated Tables A5-8, A5-8.2.1, A5-8.2.2, A5-8.2.3 and A5-8.3.

- There is no landscape vision or concept information submitted with this document. The previously submitted EAR of December 2008 included a Landscape Concept Plan but it appears to have been deleted. It is appropriate that such information be provided.

Accredited Certifier

- Should the proposed Development Code be adopted then it is recommended section 2.2 Complying Development be amended. This section requires that any Complying Development Certificates be issued by an Accredited Certifier. At this time Council Building Surveyors, who assess and issue Complying Development Certificates are not required to be Accredited Certifiers. The below extract from the proposed draft code should be amended as indicated in red.

2.2 Complying Development

Objectives

To specify types of development that are consistent with the Concept Plan and the Plan of Development applying to the land and which may therefore be approved quickly and efficiently without the need to lodge a Development Application with Council. Complying Development requires a Complying Development Certificate (CDC) to be issued by Tweed Shire Council or an Accredited Certifier, and, where noted, a DRP Pre-Approval Certificate issued by the Design Review Panel.

Statement of Commitments

Council recommended many amendments and additions to the draft Statement of Commitments. These are not addressed by the applicant in the response to submissions, and have been largely disregarded in the Final Statement of Commitments (Section 5.0 of the PPR).

This is a major concern and a disappointment for Council. The applicant has consistently resisted providing additional engineering detail for the proposal (such as landforming and stormwater management plans), with the reasoning that such detail is not necessary for a concept plan. On this basis, the outstanding infrastructure issues can only be resolved to Council's satisfaction via appropriate inclusions in the Statement of Commitments, and detailed assessment of future project applications. If amendments to the Statements of Commitments are not provided, Council is unable to resolve the engineering matters in contention, despite its role as the authority for public infrastructure networks,

It is acknowledged that the statement of commitments needs to principally relate to the concept plan and that future project applications will have additional requirements imposed on them. However, the acceptability of the concept plan rests with some of Council's recommended Statements of Commitments.

Planning

- As detailed within the original report the proposed development on the eastern side of Tweed Coast Road is uncharacteristic with the local area.

Tweed Coast Road is currently adjoined by agricultural land and well vegetated corridors. The vegetation in this area creates a buffer to residential developments (for example Casuarina) and softens the impact of urban land release areas.

The proposed development would change the character of this area through its proposed introduction of a retail precinct on the eastern side of Tweed Coast Road. Whilst the land in this location is zoned 2(c) Urban Expansion and would lawfully accommodate the proposed uses it would be considered uncharacteristic and is therefore not supported.

These issues were raised with LEDA and further negotiations should occur to investigate possible options to retain the unbuilt form on the eastern side of Tweed Coast Road.

The applicant was willing to discuss this matter with Council in more detail however, Council wanted this discussion to occur with the applicant and the Department of Planning, however, such discussions did not occur. Therefore the issue remains.

OPTIONS:

1. That Council endorse the key themes in the attached draft submission to the Department of Planning on the Preferred Project for Kings Forest.
2. That the Council proposes an alternative draft submission to the Department of Planning on the Concept Plan for Kings Forest.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Should the Department of Planning endorse the Preferred Project Report and associated Kings Forest Development Code Council may not accept dedication of future infrastructure unless Council's standards have been adopted.

CONCLUSION:

Kings Forest has been subject to many years of planning included re-zonings, public enquiries and now a Major Project Preferred Project Concept Plan.

Tweed Shire Council is reliant on Kings Forest to ensure future population growth is catered for. Furthermore, Tweed Shire Council has relied upon developer contributions (from urban land release areas such as Kings Forest) to ensure that future infrastructure needs are met.

It is crucial that planning for Kings Forest be done effectively.

Council has the opportunity to make a second submission to the Department of Planning on the proposed Preferred Project for Kings Forest. It is strongly recommended that Council and the Department of Planning discuss the issues raised in this report (and the attached letter).

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Draft Tweed Shire Council letter to Department of Planning on Preferred Project Report (ECM 7214464)
 2. Kings Forest Council Report and Minutes 17 February 2009 (ECM 7018103)
 3. Tweed Shire Council letter to the Department of Planning on the original Concept Plan 19 February 2009 (ECM 7019106)
-

- 10 [PR-CM] Development Application DA08/1241.07 for an Amendment to Development Consent DA08/1241 for a New Dwelling, Inground Swimming Pool and Detached Granny Flat at Lot 281 DP 1120559, No. 11 Woodfull Crescent, Pottsville**

ORIGIN:

Development Assessment

FILE NO: DA08/1241 Pt2

SUMMARY OF REPORT:

This application has been called up to Council by Councillor Van Lieshout for full consideration by Council.

Council is in receipt of a S96 Modification in relation to DA08/1241. The original application got approval for a new dwelling, an in ground swimming pool and a detached granny flat.

The S96 Modification presently before Council seeks to change the location of the proposed granny flat and obtain approval for an increase to the height of the new dwelling by 125mm (12.5cm) to rectify a building anomaly that occurred during construction of the house.

One objection has been received to this S96 Modification.

On balance of all the issues associated with this matter the proposed variation to the height of the new house is recommended for approval subject to conditions for the reasons discussed in this report.

RECOMMENDATION:

That Development Application DA08/1241.07 for an amendment to development consent DA08/1241 for a new dwelling, in ground swimming pool and detached granny flat at Lot 281 DP 1120559, No. 11 Woodfull Crescent, Pottsville be approved subject to the following changes being made to the conditions of consent:-

1. Delete Condition 1 and replace with a new condition 1A as follows:

1A. The development shall be completed in accordance with the Statement of Environmental Effects and the approved S96 Plans (DA08/1241.07) as follows:

- **Sheet Nos 1A, 2A, 3, 4, 5A, 6A, 7, 10, 12A, 13A, and 14A prepared by Parameter Designs and dated 09/06/2009, except where varied by the conditions of this consent.**

[GEN0005]

REPORT:

Applicant: Mr SG Read and Mrs P Read
Owner: Mr SG Read and Mrs PJ Read
Location: Lot 281 DP 1120559 No. 11 Woodfull Crescent, Pottsville
Zoning: 2(a) Low Density Residential and 7(d) Environmental Protection
(Scenic/Escarpment)
Cost: Nil

BACKGROUND:

On 14 April 2009 Council (under staff delegation) granted consent for a new dwelling, in ground swimming pool and detached granny flat at Lot 281 Woodfull Crescent, Pottsville (DA08/1241).

The subject site is a battle axe allotment accessed of a shared right of carriageway. The site is elevated and has distant ocean and valley views.

Construction of the new dwelling has commenced (with the roof now completed) in accordance with a Construction Certificate, however construction of the Granny Flat has not commenced.

Council is now in receipt of a S96 Modification to amend DA08/1241 that proposes the following amendments:

- Reposition the proposed granny flat which has the effect of:
 - Increasing the level of fill (800mm) under the proposed garage and granny flat;
 - Increasing the height of the proposed garage from RL 14.9m to RL 15.7m and
 - Increasing the height of the proposed granny flat from RL 14.2m to RL 15m.

- Increase the approved height of the main dwelling to reflect a minor building anomaly from RL 20.42m to RL 20.545 (12.5cm).

The S96 was originally just for the relocation of the Granny Flat. However, an adjoining neighbour noticed that the height of the partially constructed house appeared higher than that approved by Council. The adjoining neighbour had the partially constructed house surveyed and discovered the main house had been constructed 125mm (12.5cm) higher than the approved plans. The adjoining neighbour alerted Council to this non compliance.

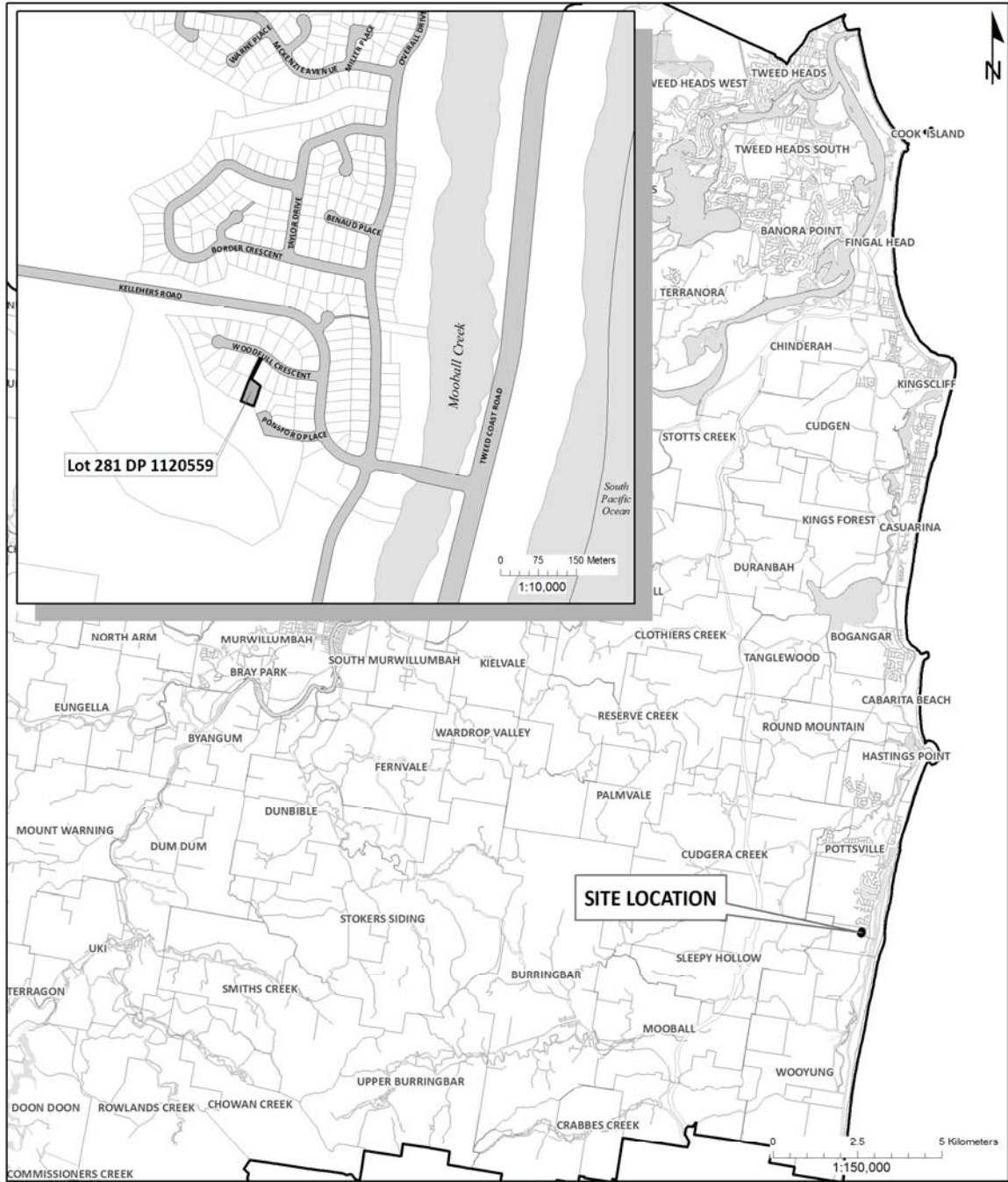
The owner of the subject property (DA08/1241) was alerted to the non compliance by Council and changed his S96 Modification to seek approval for the already constructed building height anomaly of an additional 12.5cm.

Accordingly, the increase in height of the main dwelling by 12.5cm is the main issue for consideration as part of this report.

This aspect of the modification has attracted an objection from an adjoining neighbour. The grounds for the objection are discussed in detail in the following report.

This matter has been reported to Council as Councillor Van Lieshout called up the application for full Council consideration.

SITE DIAGRAM:



LEGEND

Lot 281 DP 1120559
 No. 11 Woodfull Crescent, Pottsville

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

Author: J. Batchelor - Planning Reforms Unit

Date Printed: 30 September, 2009

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Cadastre 30 September, 2009
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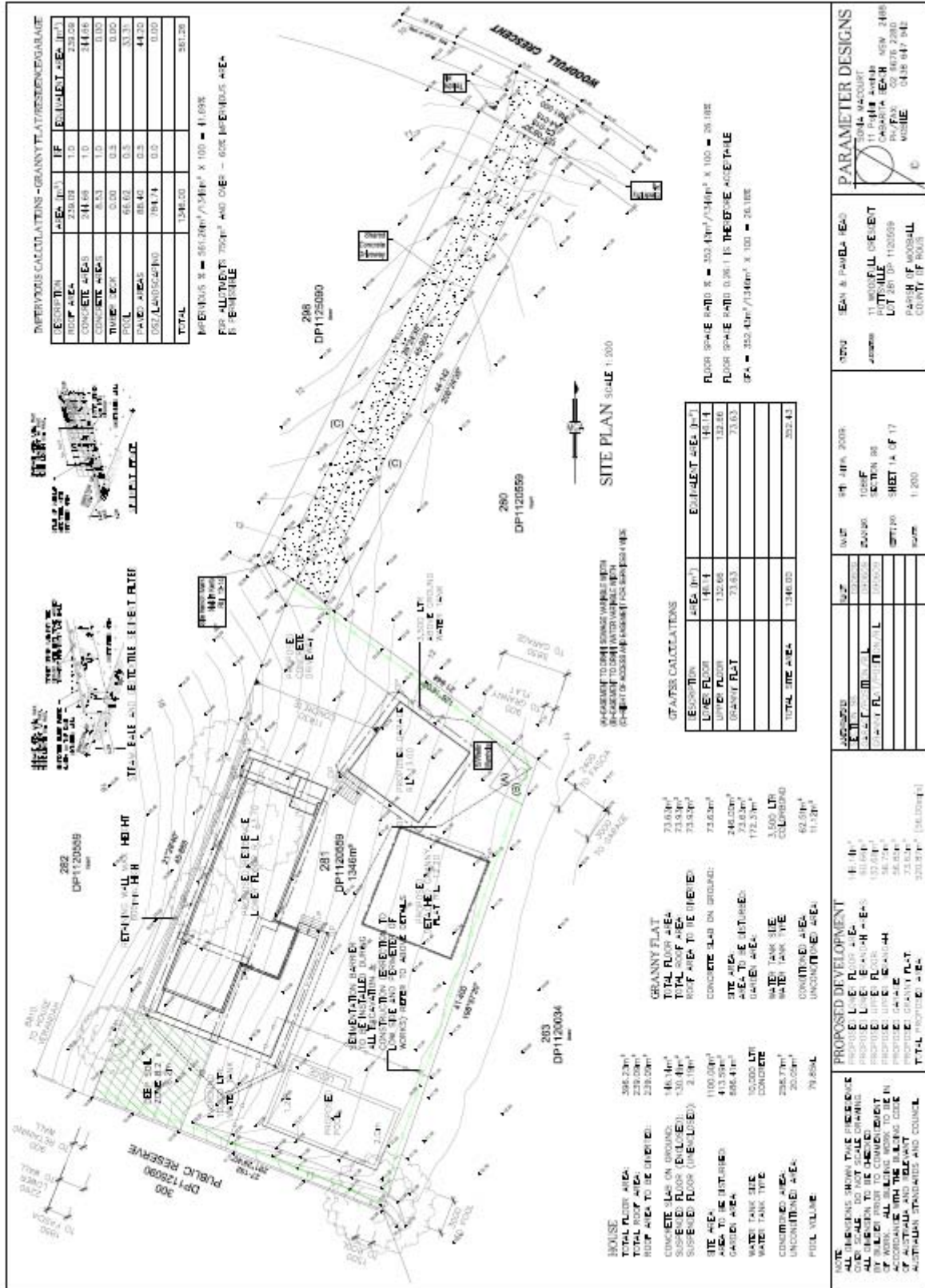
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 Datum - GDA 94

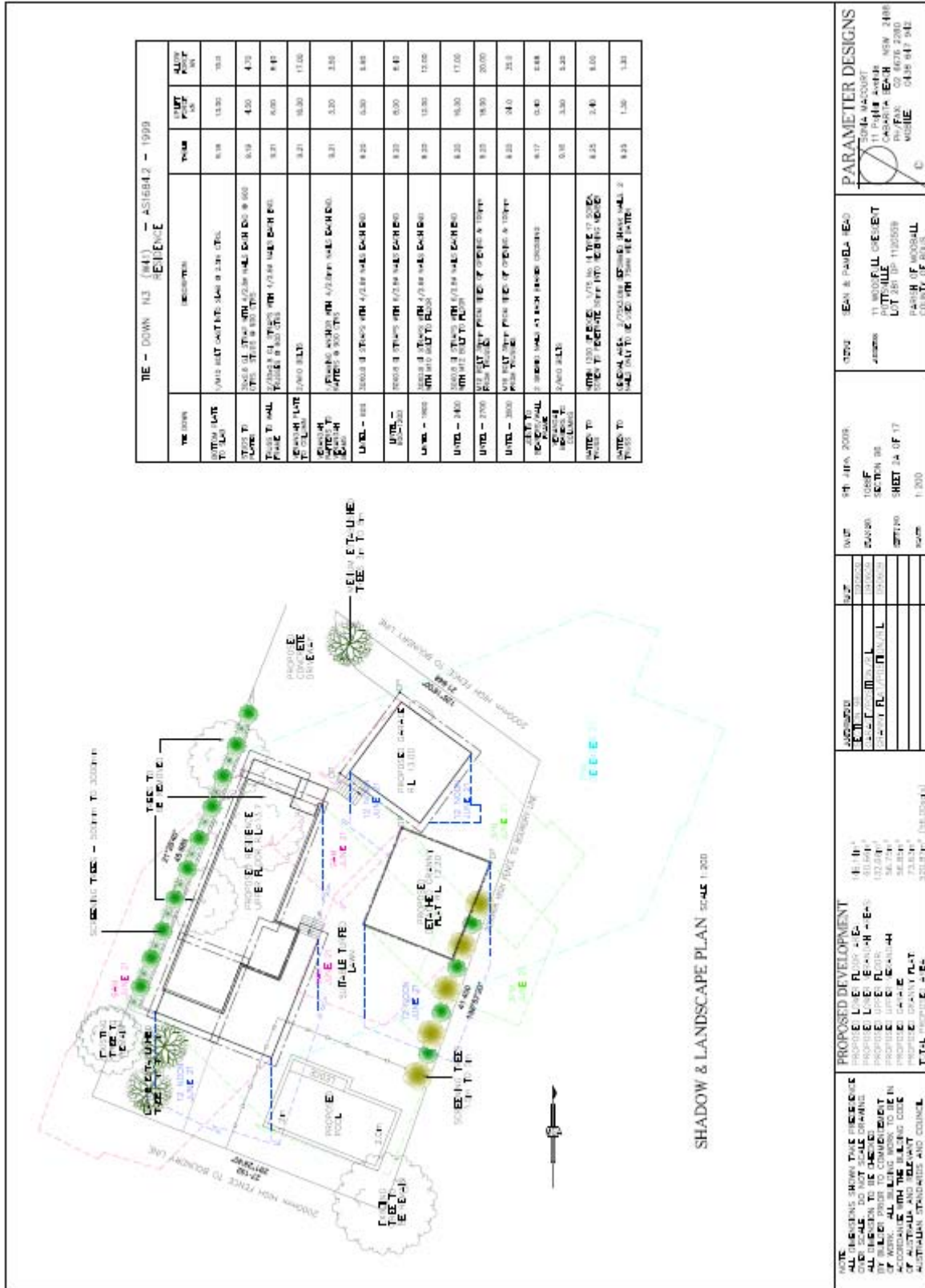
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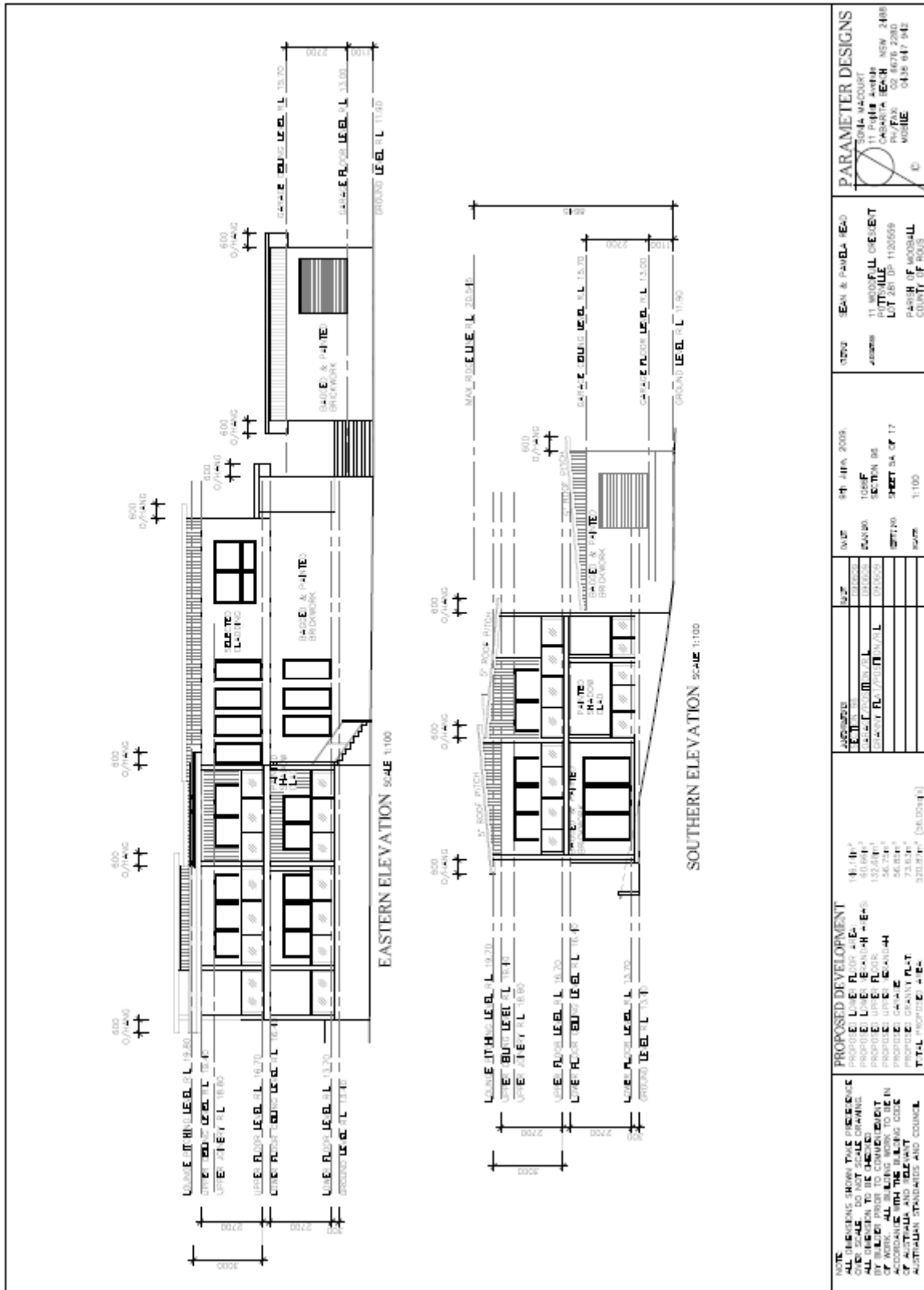


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DEVELOPMENT PLANS:







PARAMETER DESIGNS
 11 PULLIN STREET
 CARBONIA TERRACE NEW 2488
 PH/FAX 02 8676 2280
 MOBILE 0438 847 542

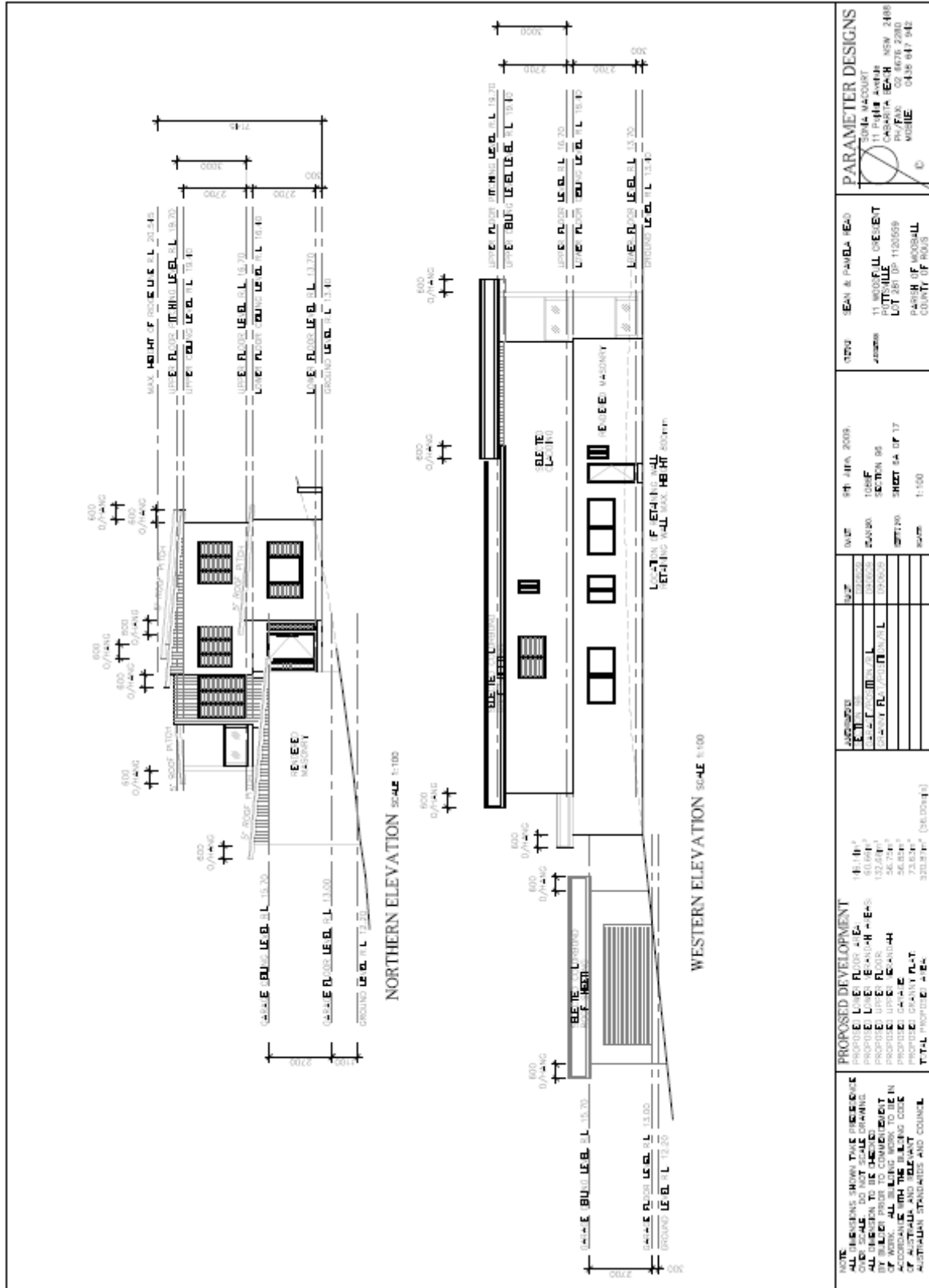
SEAN & PAVLA READ
 11 MOOREVILLE CRESENT
 POTTINGVILLE VIC 3408
 LOT 381 DP 1120559
 PARISH OF MOORSHULL
 COUNTY OF ROSS

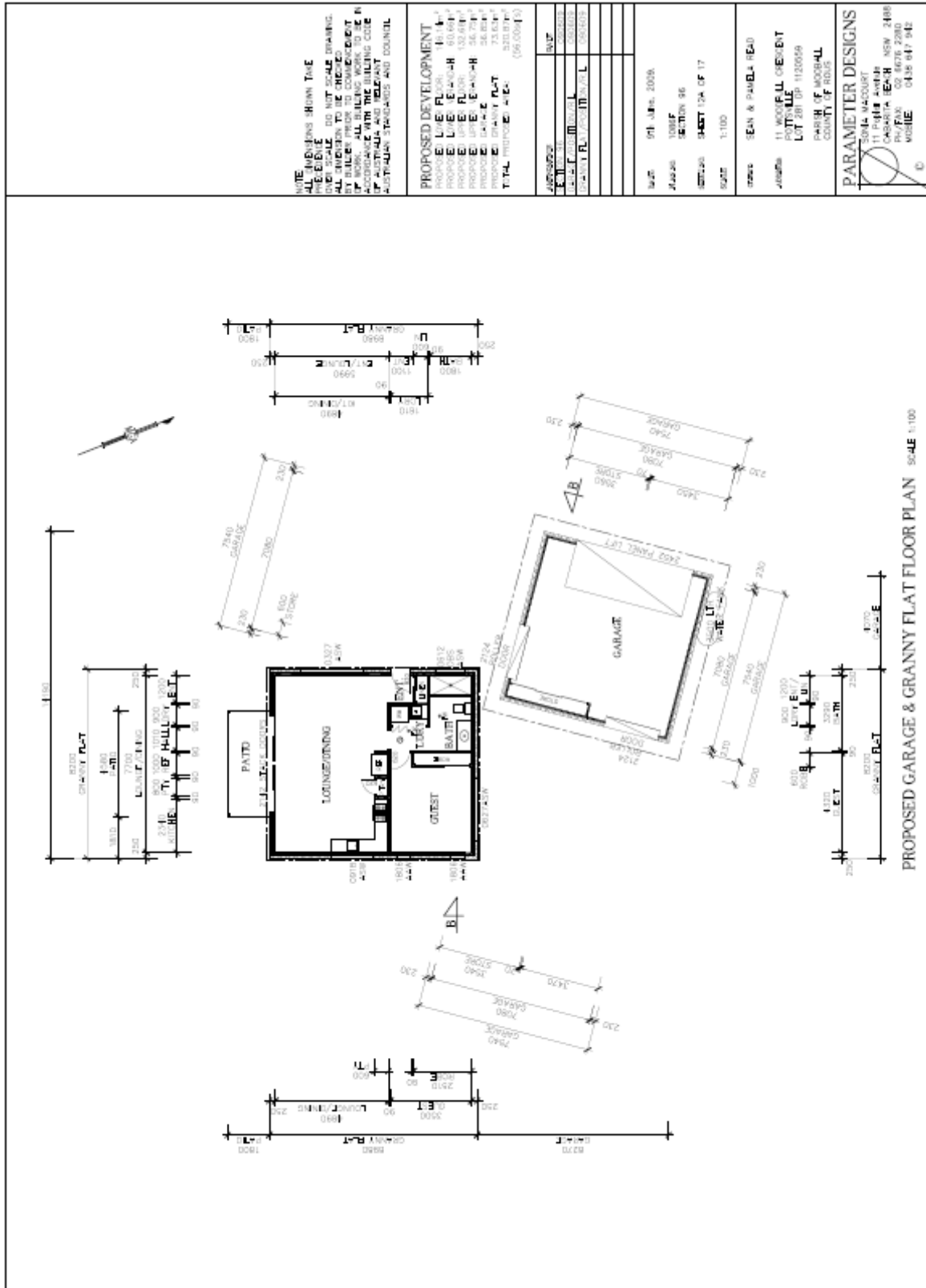
DATE 19 APR 2009
 1086F SECTION 06
 SHEET 04 OF 17
 SCALE 1:100

NO	DATE	DESCRIPTION
01	19/04/09	ISSUED FOR PERMIT
02	19/04/09	REVISED PER PERMIT
03	19/04/09	REVISED PER PERMIT
04	19/04/09	REVISED PER PERMIT

PROPOSED DEVELOPMENT	18.11m
PROPOSED LOWE FLOOR +E-	60.04m
PROPOSED LOWE EXPOSED +E-	12.21m
PROPOSED UPPER FLOOR +E-	46.83m
PROPOSED CHIMNEY +E-	73.83m
TOTAL PROPOSED +E-	320.21m

NOTE: DRAWINGS SHOWN TO THE RESERVE SCALE. ALL SCALES DO NOT SCALE DRAWING. ALL DIMENSIONS TO BE CHECKED BY BUILDER PRIOR TO CONSTRUCTION. DRAWING TO BE CONSIDERED VALID ONLY IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA AND DELEGATED AUSTRALIAN STANDARDS AND COUNCIL.





CONSIDERATIONS UNDER SECTION 79C AND 96(1A) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

Section 96(1A) of the EPA Act 1979 provides that a consent authority may, on application being made by the applicant modify the consent. The Act requires the consent authority to be:

(a) satisfied that the proposed modification is of minimal environmental impact

The proposed amendment satisfies this criterion as it will still result in a new house, in ground swimming pool and detached Granny Flat. The proposed amendments in location and overall height will have no foreseeable negative environmental impact.

(b) satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

The proposed amendments are minor in nature and will still result in a development that is substantially the same as the development to which approval was originally granted.

(c) satisfied that it has notified the application in accordance with the applicable legislation:

S96(1A) Modifications do not require notification to adjoining properties in accordance with Tweed DCP Section A11.

Notwithstanding the S96(1A) was notified to adjoining property owners given that the S96 stemmed from a compliance matter that was brought to Council's attention from an adjoining owner.

(d) satisfied that it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Following the notification period Council received one written objection to the proposed S96 Modification.

The objection was not focussed on the proposed changes to the Granny Flat but was specifically in regard to the new house being constructed 125mm higher than the previously approved plans.

The objection is duplicated below in its entirety:

“As Council is aware we are adjoining property owners and our property is at Lot 282 Woodfull Crescent, Pottsville. Would Council please note our objection to the proposed amended plans insofar as they relate to increasing the height of the main dwelling from RL 20.42m to RL 20.545m.”

The grounds of our objection are as follows:

- (a) On the 28th January 2009 we inspected the plans approved by Council for the dwelling to be built on Lot 281 to check the heights of the buildings to be erected. We relied on those approved plans when we signed the contract with our builder to build our home at Lot 282. Our architect had been instructed to draw up the plans for the erection of our house at Lot 282, so that we would have unobstructed ocean views from the second level of our home.*
- (b) Construction of our home began in June 2009. After the slab was poured we discovered that our architect had miscalculated the heights of the proposed buildings at Lot 281, we immediately stopped work on the building of our home and applied to Council to amend our plans, so that we could have the views we wanted. That reason was clearly set out in our application to Council dated 1 July 2009, which Council presumably sent to our neighbours, including those at Lot 281. Notwithstanding that none of our neighbours would be affected by an increase in the height of our house, our amended plans were drafted to keep our home within Council's height restrictions. Council approved the amendments to our plans on 27 July 2009, following which we resumed construction. The cost to rectify the miscalculation was substantial.*
- (c) On the other hand the main dwelling at Lot 281 has exceeded the height approved by Council because of an error on their builder's behalf. Notwithstanding that breach of Council's approval, construction on the main dwelling has continued.*
- (d) Had we known that our neighbours would build the main dwelling exceeding Council's approval, we would not have commenced the erection of our home rather we would have waited for the completion of the building work at Lot 281. We are now in a position where we are unable to change our plan to achieve the views for which they were approved.*
- (e) If Council approves an amendment to the plans to allow an increase in height of the main dwelling at Lot 281, it will have a significant impact on our enjoyment of our home because our ocean views will then be restricted. It may also affect the value of our home.*

We have no objection to the proposed amendments to the garage and granny flat."

The following photos depict the subject property and the objector's property:



Photo 1 (above) depicts the subject property (which is seeking approval for an increased height limit of 125mm for the constructed home) on the left and the objector's home (which is also under construction) on the right.

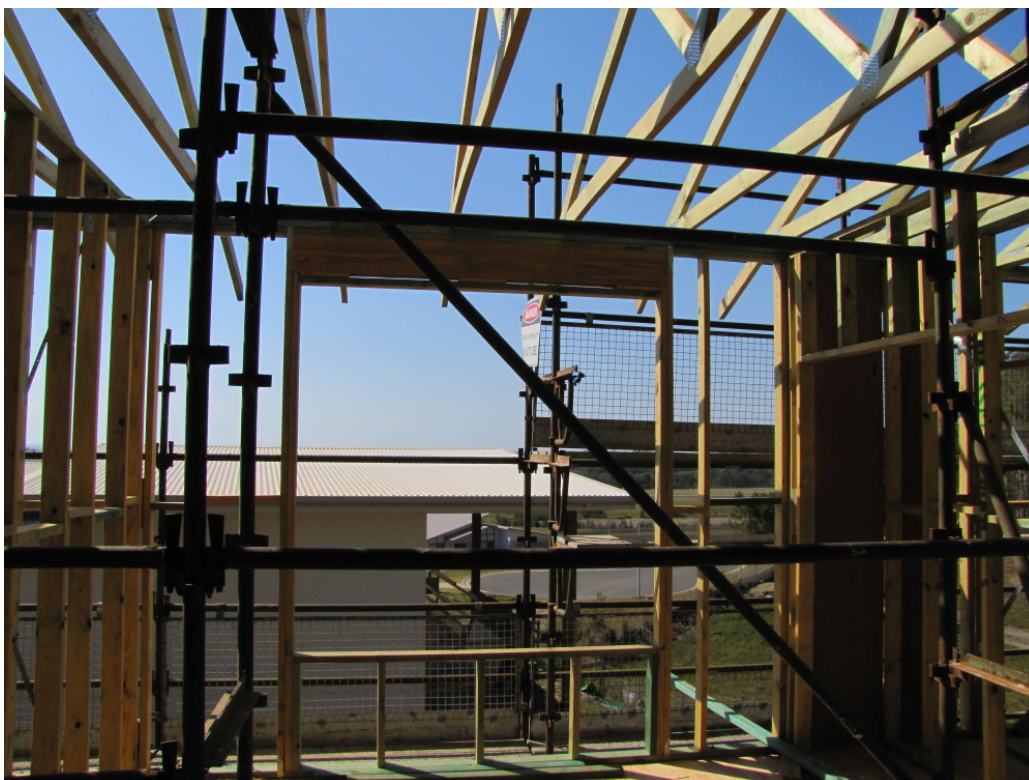


Photo 2 (above) is taken from the objector's home presently under construction and indicates that at this section of the house the horizon is not visible over the roof of the house at the subject property.



Photo 3 (above) is taken from the objector's home presently under construction and indicates that at this section of the house the horizon is visible over the roof of the house at the subject property (as the middle of the subject properties roof is lowered).



Photo 4 (above) is taken from the objector's home presently under construction and indicates that to the north there is an extensive outlook available.

In assessing the reasonableness of the proposed S96 Modification Council must have regard to the Tweed LEP 2000, and the Tweed DCP (specifically Section A1 – Residential and Tourist Code)

In accordance with the Tweed LEP 2000 the subject property (and the objector's property) is subject to a two storey statutory height limit (Clause 16 of the Tweed LEP 2000)

The subject property has an approval for a two storey dwelling (and Granny Flat) and therefore satisfies the two storey statutory height limit. The proposed modification will not impact on the number of storey's within the building, thus retaining a compliant building.

The objector's property has an approval for a technically defined partial third storey (which required approval by Council for the associated SEPP 1 objection).

In accordance with the Tweed DCP Section A1 – Residential and Tourist Code the subject property (and the objectors property) is subject to a maximum overall building height of 9m, with a maximum wall plate height of 8.5m.

The subject property has an approval for an 8.22m maximum overall building height and therefore satisfies the 9m height limit. The proposed modification will increase this maximum overall height to 8.345m which still represents a compliant building.

The objector's property has an approval for an 8.8m maximum overall building height and therefore satisfies the 9m height limit.

Given that the proposed height increase of 125mm satisfies the numerical provisions of the applicable planning instruments it is necessary to still undertake a merit assessment of the issue of view loss as expressed by the objector.

The following principle is extracted from recent court cases from the Land and Environment Court of NSW. The principle forms precedence for subsequent applications brought before the Court that may have similar planning issues.

View Sharing

The notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment. Taking all views away cannot be called view sharing, although it may, in some circumstances, be quite reasonable.

To decide whether or not view sharing is reasonable, a four-step assessment is adopted.

- A. *The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of Mount Warning, Point Danger, Razorback,) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible or where an*

island or structure is wholly visible are more valuable than one in which it is obscured.

- B. The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*
- C. The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House, obscurity of half of Mount Warning or the water interface of a headland. It is usually more useful to assess the view loss qualitatively using everyday terms as negligible, minor, moderate, severe or devastating.*
- D. The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

In applying the four step assessment technique to the subject site the following is noted:

The views that the objector wishes to retain are sideways views of the distant coast obtained when standing in bedrooms, a media room and an outdoor deck along the eastern boundary of the house. A balcony on the north eastern corner of the objector's property would have some sitting views to the northeast and standing views to the east. The existing sitting views are not affected by the proposed modification.

The extent of the impact is significant for the objector however, in planning terms they would be considered minor.

It is not reasonable to assume that such views could be retained. The proposed modification complies with the statutory height limit, complies with the DCP and provides for view sharing opportunities as the central part of the roof is lowered.

In addition the objector's property will still experience a significant outlook to the north.

For these reasons the proposed modification is recommended for approval notwithstanding that it will have some impact on the adjoining property.

Compliance

Whilst the subject building has already been constructed to the higher level it is not recommended to issue any Penalty Infringement Notices in this instance as the minor departure 125mm appears to have occurred as a result of a building anomaly. Survey has suggested that the slab height is correct and that the extra 125mm has occurred through the building materials used.

The applicant has sought to rectify the non compliance with the subject S96 and therefore subject to this S96 being approved no further action is recommended.

Miscellaneous

The proposed modifications are considered to be consistent with the design controls of the DCP Section A1.

The granny flat retains a minimum of 900mm setback from the eastern side boundary. Due to the granny flat no longer being positioned parallel to this boundary the setback gradually increases from this boundary.

The additional fill within the approved footprints of the garage and granny flat would only increase the development's overall height by 800mm. The additional fill is in harmony with the natural environment/landform and will not adversely affect adjoining properties by way of unreasonable levels of shadow and the like.

The overall height proposed within the modification satisfies the design control.

In all other regards the proposed S96 Modification is considered to satisfy the statutory planning legislation.

OPTIONS:

1. Approve the S96 Application as per the recommendation
2. Refuse the S96 Application with reasons for the refusal.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should Council resolve to approve the S96 Application as recommended there are no third party merit appeals as only judicial review is available.

Should Council resolve to refuse this S96 Application the applicant may lodge an appeal with the NSW Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

Whilst the proposed S96 is quite minor in nature, the associated impact for the affected properties is very real.

On balance the S96 (and specifically the minor increase in height of 125mm) is within the acceptable height limit imposed on the site and does not unreasonably impact on the adjoining properties having regard to the Court's interpretation surrounding view sharing principals.

Furthermore, the increase in height has resulted from an innocent building anomaly. It would be unreasonable to seek compliance with the previously approved height in this instance and therefore the S96 Application is recommended for approval.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

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