

[Agenda Report](#)

**TWEED SHIRE COUNCIL
MEETING TASK SHEET**

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Action Item - PLANNING MEETING Tuesday, 21 April 2009

Action for Item **P4** as per the Committee Decision outlined below.

ATTENTION:

PLEASE NOTE THE ADOPTION OF THE COMMITTEE RECOMMENDATIONS BY COUNCIL AT ITS MEETING HELD TUESDAY 21 APRIL 2009:

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**Cr D Holdom
Cr K Skinner**

RESOLVED that the recommendations of the Planning Committee held Tuesday, 21 April 2009 be adopted.

The Motion was **Carried**

TITLE: [PR-PC] Development Application DA08/1202 for a Saddlery at Lot 2 SP 79933, No. 2/11 Buchanan Street South Murwillumbah

The following person addressed the meeting of the Planning Committee on this matter.

Mr Nick Folkers on behalf of Mrs Katherine Sullivan.

**Cr D Holdom
Cr J van Lieshout**

PROPOSED that:

- A. Development Application DA08/1202 for a saddlery at Lot 2 SP 79933, No. 2/11 Buchanan Street South Murwillumbah be refused for the following reasons: -
1. Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated due consideration or compliance with the 4(a) zone

objectives within Clause 11 of the Tweed Local Environmental Plan 2000, as the proposed development does not:

- provide a direct service to industrial activities or their workforce;
- show a nature or scale that is inappropriate for other zonings.

2. Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated due consideration or compliance with Clause 8 (2) of the Tweed Local Environmental Plan 2000, as the proposed development does not:

- need to be in the locality due to its nature, function or service catchment;
- meet an identified urgent community need;
- comprise a major employment generator
- show there is no other appropriate site on which the development is permitted;
- show compatibility with the scale and character of existing and future lawful development;
- show consistency with the aims of this plan or at least one objective of the zone.

3. Pursuant to Section 79C(1)(c) the development site is not considered suitable for the development as proposed due to the proposal not being consistent with industrial use.

B. The operator and owner of premises be advised in writing that the use is unauthorised and is required to stop within 28 days of notice otherwise Council will commence appropriate proceedings to cease the use.

AMENDMENT

**Cr W Polglase
Cr P Youngblutt**

RECOMMENDED that this item be approved in principle with the Director Planning and Regulation to bring back conditions of approval to the next Planning Committee meeting for the consideration of Councillors.

The Amendment was **Carried**

**FOR VOTE - Cr P Youngblutt, Cr K Skinner, Cr B Longland, Cr K Milne, Cr W Polglase, Cr J van Lieshout
AGAINST VOTE - Cr D Holdom**

The Amendment on becoming the Motion was **Carried** - (Minute No P50 refers)

**FOR VOTE - Cr P Youngblutt, Cr K Skinner, Cr B Longland, Cr K Milne, Cr W Polglase, Cr J van Lieshout
AGAINST VOTE - Cr D Holdom**

TITLE: [PR-PC] Development Application DA08/1202 for a Saddlery at Lot 2 SP 79933, No. 2/11 Buchanan Street South Murwillumbah

ORIGIN:

Development Assessment

FILE NO: DA08/1202 Pt1

SUMMARY OF REPORT:

Council is in receipt of an application for first use at Lot 2 SP79933 No. 2/11 Buchanan St. Murwillumbah. The subject proposal seeks consent for the use of the industrial unit as a saddlery which the applicant defines as 'Bulky Goods' Retailing.

The development as proposed is currently being conducted unlawfully on the site.

The subject proposal has been assessed and is considered inconsistent with the objectives of the 4 (a) Industrial Zone as outlined with the Tweed Local Environmental Plan 2000. The proposal fails to satisfy the primary objectives of the zone and Clause 8 (2).

It is therefore recommended that the application be refused.

RECOMMENDATION:

That:

A. Development Application DA08/1202 for a saddlery at Lot 2 SP 79933, No. 2/11 Buchanan Street South Murwillumbah be refused for the following reasons: -

- 1. Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated due consideration or compliance with the 4(a) zone objectives within Clause 11 of the Tweed Local Environmental Plan 2000, as the proposed development does not:**
 - provide a direct service to industrial activities or their workforce;**
 - show a nature or scale that is inappropriate for other zonings.**
- 2. Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated due consideration or compliance with Clause 8 (2) of the Tweed Local Environmental Plan 2000, as the proposed development does not:**
 - need to be in the locality due to its nature, function or service catchment;**
 - meet an identified urgent community need;**
 - comprise a major employment generator**

- **show there is no other appropriate site on which the development is permitted;**
 - **show compatibility with the scale and character of existing and future lawful development;**
 - **show consistency with the aims of this plan or at least one objective of the zone.**
- 3. Pursuant to Section 79C(1)(c) the development site is not considered suitable for the development as proposed due to the proposal not being consistent with industrial use.**
- B. The operator and owner of premises be advised in writing that the use is unauthorised and is required to stop within 28 days of notice otherwise Council will commence appropriate proceedings to cease the use.**

REPORT:

Applicant: Ms K Sullivan
Owner: Ms HV Goodall
Location: Lot 2 SP 79933, No. 2/11 Buchanan Street South Murwillumbah
Zoning: 4(a) Industrial
Cost: \$19,000.00

BACKGROUND:

The subject industrial unit development was consented under DA06/1227- erection nine light industrial factory units.

The following approvals have been granted for other tenancies within the complex-

DA07/0978	takeaway food and general store.
DA07/1305	Dry food packaging/warehouse.
DA07/1323	Fit out motor vehicle repair station.

Council received a letter dated the 27/9/08 requesting clarification as to whether the proposed use of a 'Saddlery' was permissible in the subject tenancy and zoning. The letter sent to Council outlined the following:

'The saddlery would entail a direct to public outlet which incorporated the repair and manufacture of horse tack items plus the redistribution of Australian or imported saddlery items to both local and interstate clients.'

The letter additionally included a justification of the use as 'Bulky Good' due to saddles and associated horse equipment being generally large and requiring direct vehicle access.

Council sent a letter of response dated the 23/10/2008 defining the proposed use as 'Bulky Goods' allowed only with consent and must satisfy the provisions of Clause 8 (2) of the Tweed Local Environmental Plan 2000. The definition of Bulky Goods is as follows:

Use of premises for the sale by retail or auction, or the hire or display, of articles which are of such a size, shape or weight as to require:

- a) *large area for handling, storage or display, or*
- b) *direct vehicular access to premises by members of the public for the purpose of loading articles into their vehicles after purchase.*

It may include:

- a) *plant sales and hire (which may include associated repairs and service)*
- b) *vehicle part and accessory sales (which may include fitting).*
- c) *the sale of hardware, landscape or building supplies.*
- d) *the sale of furniture, floor coverings, light fittings, large electrical goods, swimming pools, spas or camping equipment.*

It does not include the sale of clothing or foodstuffs, or a motor showroom.

A development application for the proposed first use of tenancy two at Lot 2 SP 79933 as a 'Bulky good' retailing store was received by Council on 14/11/2008, registered on the 19/11/2008.

A site inspection conducted on the 15/12/2008 found the business in operation. The suggested operation of the business for repair and manufacture of horse tack items was not obvious as at the time no equipment for the repair of tack was visible. The business

appeared to be a retail store, with the proposed larger items being a minor percentage of the stock for sale. The provided vehicle access for the Unit had been blocked off and was not directly accessible to vehicles.

The applicant's consultant was contacted in regards to the illegal operation and inconsistency with the definition of 'Bulky Good' retailing. The consultant's response was as follows:

It is considered that the proposal satisfies clause 8 (2) of the TLEP 2000 as the business will compliment and support the major produce suppliers in immediate areas such as Norco, JH Williams and the Rural Buying Service. These major produce suppliers do not sell any horse gear. These businesses in close proximity benefit each other and the wider community.

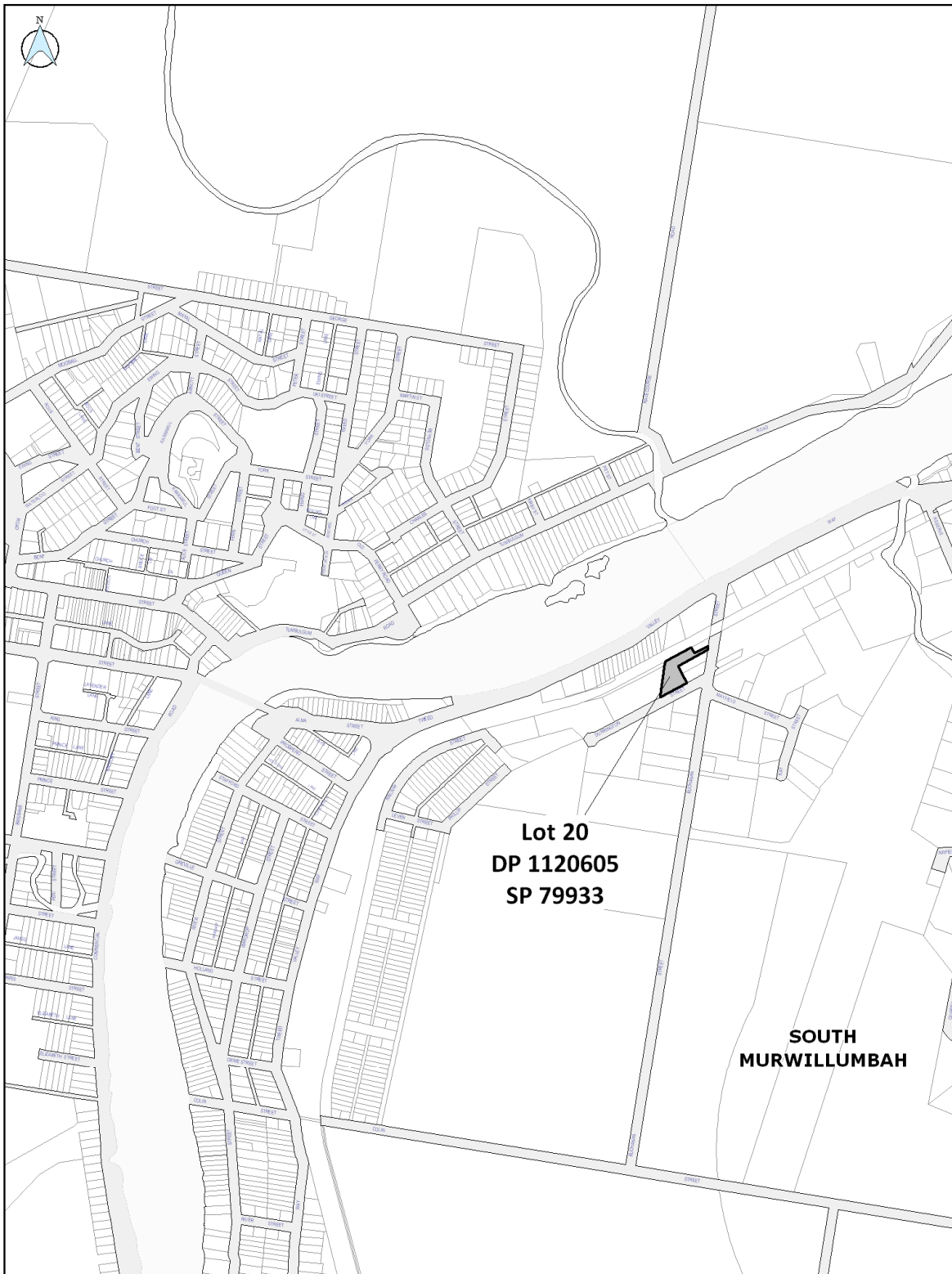
The business also requires direct vehicle access to the premises by the members of the public for the purpose of loading articles into their vehicles after purchase. It is a known fact that women comprise a large proportion of her clientele and as such handling items such as saddles and rugs is difficult and requires direct vehicle access.

The definition of bulky good provides that it may include the sale of furniture, floor coverings, light fittings, large electrical goods, swimming pools, spas or camping equipment.

Notwithstanding the advice provided to the applicant on the 23/10/2008 identifying a saddlery may be described as 'bulky goods', there is concern that the current operations do not strictly comply with the definition as direct vehicle access is not provided and a portion of large items sold (saddles etc) are relatively minor. Despite issues associated with the definition, assessment of the unlawful use as a 'bulky goods' retailing outlet is outlined below.

The subject site is legally described as Lot 2 SP 79933 located at 2/11 Buchanan Street South Murwillumbah. The subject allotment has an area of 3486.31 sq.m and is zoned 4(a) Industrial. The allotment contains nine industrial units, some of which are currently tenanted. The allotment has two access points, one battleaxe access off Buchanan Street and a secondary frontage to Durrington Street.

SITE DIAGRAM:



**Lot 20
DP 1120605
SP 79933**

**SOUTH
MURWILLUMBAH**

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Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map.
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Tweed Shire Council
Lot 20 DP 1120605 - Lot 2 SP 79933
No. 2/11 Buchanan Street, South Murwillumbah
File: Z:\GIS_Jobs\Site Plan.Wor
Author: J. Batchelor
Date: 30/March/2009
Scale: 1:5,000

Site Plan


Sheet: **1 of 1**

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

In this instance the proposal is seen as inconsistent with the aims of the plan as the subject proposal has not adequately shown compatibility with the permissible forms of development in the zone.

Clause 5 - Ecologically Sustainable Development

The proposal is seen to be compliant with the four principles of Ecologically Sustainable Development.

Clause 8 - Zone objectives

1. the consent authority may grant consent to development (other than development specified in Item 3 of the Table to clause 11) only if:
 - a) it is satisfied that the development is consistent with the primary objective of the zone within which it is located, and
 - b) it has considered those other aims and objectives of the plan that are relevant to the development, and
 - c) it is satisfied that the development would not have any 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 primary objectives of the 4 (a) Industrial Zone are outlined as-

- To provide land primarily for industrial development.
- To facilitate economic activity and employment generation.

The proposal does not provide land primarily for industrial development. Therefore the proposal is not seen as consistent with the primary objective of the zone.

2. The consent authority may grant consent to development specified in Item 3 of the Table to Clause 11 only if the applicant demonstrates to the satisfaction of the consent authority that:
 - a) the development is necessary for any one of the following reasons:
 - i) it needs to be in the locality in which it is proposed to be carried out due to the nature, function or service catchment of the development,
 - ii) it meets an urgent community need,
 - iii) it comprises a major employment generator.

In regards to the first component to Clause 8 (2) the proposal does not comply with any of the subject requirements. The unlawfully operating use is not dependant on being in the subject locality. The proposal is easily suited to commercial areas and would be better located to benefit from flow on trade. The proposal does not meet an urgent community need. The applicant outlines that the proposal is acceptable in the zone due to there being no other horse retailing businesses within the shire, this is a need but not an urgent community need.

The proposal does not comprise a major employment generator, the applicant has outlined the business will employ a maximum of one full time staff which does not equate to being a major employment generator.

- b) there is no appropriate site in which the development is permitted with consent development in reasonable proximity.

Comment:

Bulky Goods are permissible in the 3 (b) General Business and the 3 (C) Commerce and Trade zones. An area zoned 3 (c) Commerce and Trade is located directly north of the subject site. The proposal could be adequately located in this vicinity.

- c) the development will be generally consistent with the scale and character of the existing and future lawful development in the immediate area.

Comment:

Being located in an Industrial building it is consistent in scale and character of existing and future lawful development but is inconsistent with the nature of development. The proposal is predominantly retail and the items are not considered to be of a bulky nature. The proposal could be located adequately in any 3 (b) or 3 (c) zone.

- d) the development would be consistent with the aims of this plan and at least one of the objectives of the zone within which it is proposed to be located.

Comment:

The proposal is considered to be inconsistent with the aims of this plan and inconsistent with the objectives of the 4 (a) Industrial zone.

Clause 11- 4 (a) Industrial zone objectives

Primary Objectives

- To provide land primarily for industrial development.
- To facilitate economic activity and employment generation.

Secondary objective

- To allow non-industrial development which either provides a direct service to industrial activities and their work force, or which, due to its type, nature or scale, is inappropriate to be located in another zone.

The subject proposal is considered to be inconsistent with the Primary and Secondary objectives of the zone. The proposal does not provide a direct service to industrial activities or their workforce. Additionally both the nature and scale of the proposal are consistent with a use better suited to a 3 (b) or 3 (c) area. Areas of 3 (c) lands exist directly north of the subject allotment.

Compliance with Clause 8(2) requires that development satisfies all parts of the Clause (that is 8(2) a-d).

Clause 15 - Essential Services

The site has adequate service provision.

Clause 16 - Height of Building

Not applicable as the proposal is for a change of use not any built construction.

Clause 17 - Social Impact Assessment

The subject application does not require a social impact assessment.

Clause 35 - Acid Sulfate Soils

Not applicable as no excavation is proposed.

Other Applicable Clauses

Clause 47- Advertising Signs

The subject proposal seeks consent for one flush wall sign; the proposed sign is consistent with other development in the locality and does not create any issues of visual clutter. The proposed sign is consistent with the outlined requirements of Clause 47

North Coast Regional Environmental Plan 1988

Clause 47- Principles for Commercial and Industrial Development

Part 2 of clause 47 outlines that Council must take into consideration the principle that land used for industrial and commercial development should be located where it can be adequately serviced by the transport system and is accessible from urban areas. Given the proposed development is for use within an approved factory building it is considered that the proposed development is consistent with Clause 47

State Environmental Planning Policies

State Environmental Planning Policy NO 64- Advertising Signage

Although the subject proposal includes a business identification sign under Clause 9. of SEPP 64 the policy is not applicable to business identification signs.

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

There are no draft EPI's relevant to the subject site or proposal.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

The following comment applies to the original provision of car parking under the original development application for the existing Industrial Units (DA06/1227):

For the purpose of this application the rate of 1 space per 100m² of GFA applies. The development incorporates GFA total of 1341.5m² ground floor space plus 418.6m² mezzanine levels to give a total of 1760m² GFA. The application therefore requires 17.6 car spaces of rounded up to 18 car spaces. The 20% ESD principle reduction also applies which brings the car parking requirements down to 14 car spaces. The application proposes 34 car spaces, which exceeds the requirement giving the site a surplus credit of 20 car spaces if required for the individual first uses of the units. DCP2 is satisfied.

The required car parking rates for Bulky Good retailing are outlined as:

Staff= 0.25 per 100sq.m GFA

Customer= 1.75 per 100 sq.m GFA.

Unit 2 has three car parking spaces specifically designated for the use The GFA for the development is 165 sq.m including the mezzanine level; the proposed car parking is adequate. Additional overflow car parking is available due to the additional car parking provided for the Industrial development.

A4-Advertising Signs Code

A business identification sign has been erected on the industrial unit under the provisions of the DCP the following is outlined for Industrial development and proposed signage:

A4.3.3 Trade and Industrial Centres

- To permit the adequate display of information concerning the identification of premises, the name of the occupier and the activity conducted on the land.
- To place advertising signs so that they enhance the architectural and landscape presentation of the trade or industry and appear proportional to the scale of the building or space within which they are located.

- To improve the appearance of buildings with the design and placement of signs.
- To encourage a co-ordinated approach to advertising where there is multiple occupancy of sites.

The sign as erected is relatively small scale and is consistent with the scale of the industrial development on site and other signage. The erected signage is consistent with the provisions of the plan but was erected prior to gaining lawful consent.

A11-Public Notification of Development Proposals

The subject proposal was advertised for a period of fourteen (14) days from Wednesday 21 January 2009 to Thursday 5th February 2009. No submissions were received in this timeframe

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

There are no considerations under the Regulations which need to be considered.

(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

Investigation of the likely impacts of the proposal upon the built or natural environment is not considered to be required in light of the concerns detailed earlier in this report. Given the proposal is within an approved building, it is considered to result in minimal environmental impact.

(c) Suitability of the site for the development

The subject site is not considered suitable for the proposed development. The unlawful use is considered to be inconsistent with the provision of Industrial zoned land and better suited to another location. If the proposed use is approved it would take available Industrial stock away from permissible industrial uses. There is a potential for conflict of uses to occur when activities identified as only suited to the industrial zoning are conducted adjacent to this more commercial activity.

The approval of this proposed development is not considered to be a desirable outcome in terms of site suitability.

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

No submissions have been made in relation to the proposal.

(e) Public interest

The proposal is not considered to be in the Public interest and the unlawful use is considered to be inconsistent with the objectives of the zone and furthermore sterilizes the unit for any potential industrial uses.

OPTIONS:

1. Determine the application in accordance with the recommendation contained within this report.
2. Support the proposal and request appropriate conditions for approval by the General Manager or his delegate.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

If the applicant is dissatisfied with the decision as contained within this report they can appeal the decision to the Land and Environment Court.

As the activity is currently being conducted unlawfully and if the recommendation is upheld appropriate regulatory action will be pursued by Council Officers.

POLICY IMPLICATIONS:

The approval of the proposed saddlery in the 4(a) zone could set a precedent for people not correctly satisfying Clause 8 (2). The Clause needs to be applied with the required weight that it contains and cannot be supported if an applicant can only provide tentative justification for the permissibility of a development.

CONCLUSION:

The subject proposal is not considered to be a suitable form of development in the zone. The proposal would result in a sterilization of an approved industrial unit for any future permissible industrial development. The applicant has failed to adequately address Clause 8 (2). The subject proposal is considered to not be within the interest of the Public and should subsequently be refused.

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.
